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DEPARTMENT OF THE ARMY
THE JUDGE ADVOCATE GENERAL'S SCHOOL
600 MASSIE ROAD
CHARLOTTESVILLE, VIRGINIA 22903-1781

November 16, 2010

Administrative and Civil Law Department

I am writing in response to your Freedom of Information Act (FOIA) request for "Tip of the Spear." An unredacted copy of "Tip of the Spear" is enclosed.

The Office of The Judge Advocate General forwarded your request to the Center for Law and Military Operations (CLAMO), the custodian of the requested document. CLAMO is part of The Judge Advocate General's Legal Center and School, for which I am the primary point of contact regarding FOIA requests. If you have any questions or concerns related to this response to your request, please contact me at (434) 971-3367, or via email at scott.dunn@us.army.mil.

Respectfully,

A handwritten signature in black ink that reads "Scott E. Dunn".

Scott E. Dunn
Major, U.S. Army
FOIA Officer

Encl

TIP OF THE SPEAR



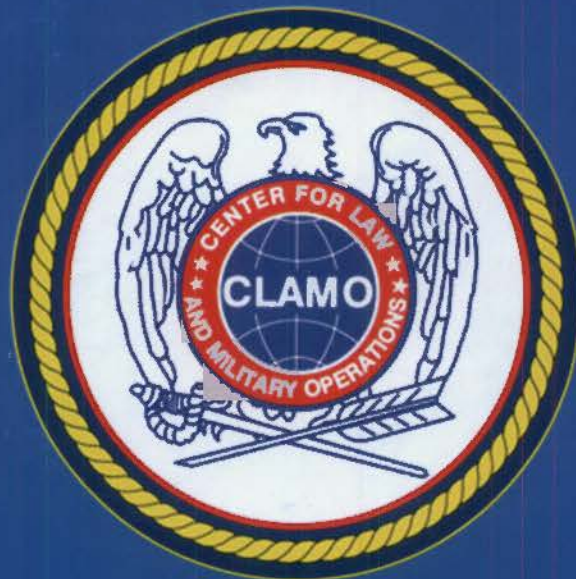
After Action Reports from July 2008 - August 2009

2009 Supplement

to

FORGED in the FIRE

**Legal Lessons Learned
During Military Operations
1994 - 2008**



**Center for Law and Military Operations
The Judge Advocate General's Legal Center & School
United States Army
Charlottesville, VA**

September 2009

TIP OF THE SPEAR

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Center for Law and Military Operations

September 2009

Due to the unfiltered nature of the After Action Report (AAR) comments contained herein, this volume is FOR OFFICIAL USE ONLY.

FOREWORD

The Judge Advocate General (TJAG) of the Army established the Center for Law and Military Operations (CLAMO) in 1988 at the direction of the Secretary of the Army. CLAMO's mission is to examine the legal issues arising during all phases of military operations and devise strategies for addressing them. It seeks to fulfill this mission in five ways. **First**, it is the central *repository* within The Judge Advocate General's Corps (JAGC) for all-source data, information, memoranda, after action materials, and lessons learned pertaining to legal support to operations, foreign and domestic. **Second**, it supports Judge Advocates (JAs) and other operational legal professionals by *analyzing* this data and information, *developing lessons learned* across all military legal disciplines, and *disseminating* these lessons and other operational information to the Army and joint community through publications, instruction, training, and databases accessible to operational forces worldwide. **Third**, it supports JAs in the field by responding to *requests for assistance*, engaging in a continuous exchange of information with the Combat Training Centers (CTCs) and their JA observer-controllers (O/Cs), and creating operational law *handbooks and training materials* for practitioners. **Fourth**, it facilitates the integration of *lessons learned* from operations and the CTCs into emerging *doctrine* and the *curricula* of all relevant courses, workshops, orientations, and seminars conducted at The Judge Advocate General's Legal Center and School (TJAGLCS). **Fifth**, in conjunction with TJAGLCS, it sponsors *conferences and symposia* on topics of interest to operational lawyers.

Over the last 14 years, CLAMO has published a variety of source materials on the legal issues faced in several different types of military operations. These include the following: *Law and Military Operations in Haiti 1994-1995*; *Law and Military Operations in the Balkans 1995-1998*; *Law and Military Operations in Kosovo 1999-2001*; *Legal Lessons Learned From Afghanistan and Iraq, Volume I*; *Legal Lessons Learned from Afghanistan and Iraq, Volume II*; *Law and Military Operations in Central America: Hurricane Mitch Relief Efforts, 1998-1999*; *U.S. Government Interagency Complex Contingency Operations Organization and Legal Handbook*; *Domestic Operational Law Handbook for Judge Advocates*; *Rules of Engagement (ROE) Handbook for Judge Advocates*; and the *Rule of Law Handbook (A Practitioner's Guide for Judge Advocates)*.

In 2006, CLAMO added a new resource to its library, *Forged in the Fire: Legal Lessons Learned During Military Operations*, which it updated in 2008 as a compilation of enduring lessons learned from military operations from 1994 to 2008. Before the introduction of this compendium, JAs had to research volume by volume and collect information from a variety of sources. This often led to the additional frustration of re-reading the same lessons from one operation to the next. This compendium attempts to gather all available lessons in key operational disciplines across the legal spectrum and place them under one heading that JAs could quickly search, read, and digest. Its intended use is alongside the handbooks, which summarize the law applicable in a particular practice area. CLAMO will update this compendium every few years with enduring lessons learned as our JAs and paralegals continue to be “forged in the fire” by practicing law in the most challenging, yet rewarding, environment imaginable—the U.S. military.

With the ever-changing operational environments of the current conflicts in Iraq and Afghanistan, however, CLAMO has recognized a need to disseminate the most recent experiences from JAs advising the warfighters at the forefront of these conflicts—the “tip of the spear.” Thus, this volume, *Tip of the Spear: After Action Reports from July 2008 – August 2009*, collects all of the After Action Reports (AARs) CLAMO has completed since the last update to

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Forged in the Fire. CLAMO's intent is to produce these yearly supplements between updates to *Forged in the Fire* in order to bridge the gap between AAR comments from current legal operations and enduring legal lessons learned.

The format of *Tip of the Spear* follows the doctrinal JAGC Lessons Learned Format found in Appendix H of *Field Manual 1-04, Legal Support to the Operational Army* (also included in Appendix A of this volume). Where helpful to present and locate the information, the editors of this volume have added supplemental subject headings to the table of contents without disrupting the numbering of the doctrinal outline. In addition to these headings, each chapter contains further unnumbered subheadings, which group similar subjects together for the benefit of the reader. Where appropriate, the editors have also included cross-references to other chapters and sections where the reader may find related information, as some legal issues could properly fall under multiple headings within the doctrinal format.

This volume presents the individual AAR comments in "IDR" format—issue, decision, and recommendation. The footnotes at the end of each comment refer to the original unit AARs, all of which are on file at CLAMO. Appendix B of this volume provides a brief overview of each unit/individual in order to provide the operational context of their comments. Although the reader may note that several units have provided similar or even conflicting comments on a particular issue, this volume purposely includes both repetitive and conflicting comments in order to portray for the reader not only the prevalence of such issues in the deployed environment, but also the different ways in which the JAs resolved those issues. Within any given subheading, the comments drawn from Operation Iraqi Freedom (OIF) precede those drawn from Operation Enduring Freedom (OEF), as the "OIF" and "OEF" text notes in the margins indicate. However, the reader should recognize that many of the comments from one operation could apply equally to the other.

The observations and comments reported in this volume are those of the legal personnel who deployed with the designated units. They are unfiltered and fall contextually into the area of operations and the command in which these legal professionals served. Consequently, do not view these recommendations as transferrable or applicable to all legal operations. The issues, decisions, and recommendations presented in this compendium do not necessarily represent the views of CLAMO or the JAGC. They simply record the results of the AAR process. CLAMO provides these results for your review, consideration, and possible implementation as you determine would be beneficial.

Finally, everything in CLAMO is a product of the imagination, contribution, and innovation of our JAs and other legal professionals in the field. CLAMO welcomes and solicits suggestions and contributions of relevant operational law materials from all sources. Please send any comments or ideas on how to improve this publication to CLAMO@conus.army.mil. Additionally, please visit our website at <https://www.jagcnet.army.mil/clamo>.

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I.B.1. Artifacts

OIF ISSUE: Request for AK-47s as unit artifacts

DECISION: Many units in the combat aviation brigade (CAB) wanted to bring AK-47s to their home station. Most of these requests were unsuccessful because the AK-47 had no historical value or because there were too many AK-47s already displayed at the home station. Each request generated much paperwork. The Center for Military History, which considers these requests, took over a year to reach a decision on each request.

RECOMMENDATION: Improve. Prohibit all requests for AK-47s. It is not worth the unit's time to make these requests.³

ISSUE: Antique weapons as cultural artifacts

DECISION: A Soldier wanted to bring home a 300-year-old muzzleloader firearm with a carved wooden stock. The brigade judge advocate (BJA) explained the firearm was an artifact and could not leave Iraq.

RECOMMENDATION: Sustain. JA's should continue to review all such requests to remove questionable objects to determine whether they meet the definition of an artifact before Soldiers remove them from foreign countries.⁴

I.B.2. War Trophies

War Trophy Policy

OIF ISSUE: War trophy prohibition

DISCUSSION: Marines in Iraq seem to be clear that war trophies and artifacts generally are something they cannot bring home. Although a few requests surfaced, the few that did occurred late in the deployment. The BN JA published a one-page summary of the policy on this matter answering most questions (i.e. "what can be brought back" and "what are the proper procedures").

RECOMMENDATION: Get the word out early to the Marines that they need to consult their chain of command and JAs before mailing these items home. Also, publish a one-page quick reference throughout the command to minimize confusion and raise awareness.⁵

ISSUE: Mandatory training on war trophy policy

² 3d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (14 Jan. 2009) [hereinafter 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

³ 1st Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (15 Jan. 2009) [hereinafter 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

⁴ 4th Brigade Combat Team, 10th Mountain Division (Light Infantry), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (5 Feb. 2009) [hereinafter 4BCT, 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

⁵ 1st Battalion, 9th Marines, Battalion Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – October 2008 (9 Jan. 2009) [hereinafter 1/9 Marines 2009 OIF AAR] (on file at CLAMO).

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DECISION: The theater no longer afforded the opportunity for Soldiers to collect war trophies. Nonetheless, theater policy still required a training briefing on the subject. It was unnecessarily confusing to brief Soldiers on the process for something they could not actually do. It would have been better to tell them plainly, there were no longer any war trophies for collection.

RECOMMENDATION: Improve. Eliminate this required training or at least make the training theater-specific.⁶

ISSUE: Lack of knowledge on war trophy and customs issues

DECISION: Before deployment, the 27Ds did not train on war trophy or customs rules. Once in theater, these issues started to pop up. Although this did not constitute a large part of their daily operations, it would have been nice to know this information before deployment. The 27Ds had to learn as the issues surfaced.

RECOMMENDATION: Improve. Ensure that your legal personnel are very familiar with war trophy issues and customs rules before deployment.⁷

ISSUE: Education on the request requirements

DECISION: Paralegals conducted the theatre departure briefings (Deployment Cycle System) to the units regarding the process of requesting artifacts and war trophies. A division FRAGO set forth the requirements. The approval authority was so high and the standard so difficult that requests to redeploy artifacts and war trophies were minimal.

RECOMMENDATION: Continue to educate units early in the deployment so units can sufficiently justify any requests and have enough time to process the request up through the approval authority.⁸

ISSUE: Understanding the rules on “war trophies”

DECISION: The Regimental Combat Team (RCT) JA felt there was no issue here as the rule is now quite clear. No one may retain weapons, and other trophies of a non-weapon nature require O-5 approval.

RECOMMENDATION: Improve. The rule is overly restrictive in denying battalion- sized units the ability to retain any demilitarized gear as a memorial to their tours in Iraq because of the fiction that an AK-47 saved is one we don’t have to buy for the Iraqi Army. However, this is a policy question.⁹

ISSUE: Lengthy approval process

⁶ 1st Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – March 2009 (28 Apr. 2009) [hereinafter 1BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

⁷ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

⁸ 2d Stryker Brigade Combat Team, 25th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – March 2009 (20 Apr. 2009) [hereinafter 2SBCT, 25ID 2009 OIF AAR] (on file at CLAMO).

⁹ Regimental Combat Team-5, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – July 2008 (7 Aug. 2008) [hereinafter RCT-5 2008 OIF AAR] (on file at CLAMO).

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DECISION: MNC-I ultimately denied the unit permission for travel to obtain war trophies after the unit expended much energy and many resources to gain the necessary general officer permission to bring the war trophy back to the continental United States (CONUS). The decision was to leave the war trophies in theater.

RECOMMENDATION: Improve. If the unit wants you to go through the lengthy and time-consuming process to gain permission to acquire a war trophy for display, the unit must commit to do the work to obtain the item and move it CONUS.¹⁰

ISSUE: War trophies

DECISION: Multi-National Corps – Iraq (MNC-I) policy allowed one war trophy per unit. There were no exceptions to this policy.

RECOMMENDATION: Sustain.¹¹

ISSUE: War trophies and gifted weapons

DECISION: MNC-I provided clear guidance on the qualifications for units and/or individuals to take war trophies and/or gifted weapons to home station. The personnel at MNC-I were well versed in the requirements. However, higher headquarters did not push this information down to the brigades.

RECOMMENDATION: Improve. Push MNC-I guidance through division to brigades. The brigade legal is the level that must gather all the documents—they need to know the requirements.¹²

Specific Cases

OIF ISSUE: Multiple requests to bring AK 47s back to CONUS

DECISION: Upon receipt of the requests, the BJA looked up the applicable rules and regulations. He discovered that the requests would not get approval and subsequently informed the requestor.

RECOMMENDATION: Know the applicable rules and regulations prior to deployment and educate the command. It is beneficial if the unit knows the rules up front because it was difficult to find guidance once in theater.¹³

ISSUE: Bomb casings as war trophies

¹⁰ 3d Infantry Division (Mechanized), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2007 – June 2008 (23 Sep. 2008) [hereinafter 3ID 2008 OIF AAR] (on file at CLAMO).

¹¹ 10th Mountain Division (Light Infantry), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, May 2008 – May 2009 (25 June 2009) [hereinafter 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

¹² 4th Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – June 2009 (14 Aug. 2009) [hereinafter 4-1 CAV 2009 OIF AAR] (on file at CLAMO).

¹³ 525th Battlefield Surveillance Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (12 Mar. 2009) [hereinafter TF525 2009 OIF AAR] (on file at CLAMO).

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DECISION: 214th Fires Brigade was stationed on an old Iraqi base. As such, it was commonplace to find old, empty bomb casings littering the base. Many soldiers used them in very creative ways, such as painting them, using them as planters, and using them as road markers. As the end of the deployment neared, units began to request authority to bring the bomb casings home. Higher headquarters denied the requests, stating the casings were “military property of the Iraqi Government.” Additionally, the unit was upset it could only bring back one item for the entire brigade. This left the battalions with no opportunity, even if they were new battalions without a lot of history.

RECOMMENDATION: Educate the Soldiers before the deployment on the burdensome approval requirements of getting artifacts and war trophies out of the country.¹⁴

ISSUE: Disposition of legal and illegal weapons

DECISION: Military Transition Teams (MiTTs) and other units regularly captured and seized both legal and illegal weapons. The Iraqi Army (IA) may obtain the legal weapons, so long as they do so through the authorized transfer system. However, Explosive Ordnance Disposal (EOD) must destroy all illegal weapons seized by coalition forces (CF).

RECOMMENDATION: Judge advocates (JAs) should know whether to characterize the weapons as “legal” and “illegal,” as well as the systems in place for destruction and/or transfer.¹⁵

OEF ISSUE: Exporting antique weapons as souvenirs

DECISION: Consistent with CENTCOM guidance, the command did not consider “old/antique” firearms from 1898 or earlier as “war trophies.” If someone purchased such a firearm they would bring it to the JAG office, where a CSTC-A JA would notarize an affidavit in which the owner stated that the firearm was of pre-1899 manufacture. The owner would then go to the Provost Marshal’s Office (PMO) and obtain the necessary customs clearance. This was permissible under General Order (GO) #1 and was more of an export control/customs issue than a “war trophy” issue.

RECOMMENDATION: Sustain the provision of notary services to assist Soldiers in this process.¹⁶

ISSUE: Use of improvised explosive device (IED) components as “training aids”

DECISION: Route clearance package (RCP) Soldiers said EOD unit had taken IED components back to CONUS as training aids, and they wanted to do the same. However, EOD was outside the BJA’s command. The BJA failed to find any authorities on point for the use of former enemy equipment, like IED components, as training aids. The BJA suggested returning the components to the EOD unit so EOD could bring them back as they had (apparently) done before successfully.

¹⁴ 214th Fires Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, April 2007 – July 2008 (20 Mar. 2009) [hereinafter 214th Fires BDE 2009 OIF AAR] (on file at CLAMO).

¹⁵ 3d Armored Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – January 2009 (22 Apr. 2009) [hereinafter 3ACR 2009 OIF AAR] (on file at CLAMO).

¹⁶ Combined Security Transition Command – Afghanistan, Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom (Sept. 2008) [hereinafter CSTC-A 2008 OEF AAR] (on file at CLAMO).

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RECOMMENDATION: Follow war trophy and artifact policy for “training aids” as you would with any other war trophy request.¹⁷

I.C. Civil Affairs (CA)

OIF ISSUE: CA involvement in the claims process

DECISION: It was not necessary for the Civil Affairs team to be involved in the claims process. They did a great job running the Civil Military Operation Center (CMOC). However, when it came to claims they were just another layer in between the claimant and the judge advocate (approval authority). Often, the Civil Affairs team would make promises the judge advocates could not keep.

RECOMMENDATION: Civil Affairs members should send all claimants to the judge advocate for adjudication of claims and limit promises or involvement in the process.¹⁸

ISSUE: UCMJ chain for CA units

DECISION: The CA commander had no idea who his Special Court-Martial Convening Authority (SPCMCA) was. The commander repeatedly asked for UCMJ advice from the BJA even though the BCT commander was not the SPCMCA for the Civil Affairs team.

RECOMMENDATION: Help the Civil Affairs teams identify to whom they “belong” for UCMJ purposes.¹⁹

ISSUE: Level of approval authorities for CA activities

DECISION: The approval levels for CA activities were too high, even for routine or non-controversial activities.

RECOMMENDATION: Improve. Push the approval levels further down towards the user level. Unnecessarily elevated approval levels hamper the units on the ground.²⁰

Interaction Between JAs and Civil Affairs

OIF ISSUE: Interaction between JAs and Civil Affairs

DECISION: The RCT worked hand-in-hand with the CA team concerning CERP. A few ratification problems required correction. Since the CA team for the RCT consisted of artillery officers, they were unaware how legally-intensive their mission was going to be. In addition, swamped with managing \$30 million dollars in projects, they were too busy to focus on “rule of law.” As a result, Judge Advocates (JAs) at the battalion level were doing the rule of law development. The CA officers seemed happy to throw the rule of law issues over the fence to the lawyer, even though judicial reform is doctrinally part of the civil affairs mission.

¹⁷ 420th Engineer Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, May 2008 – March 2009 (13 May 09) [hereinafter 420th EN BDE 2009 OER AAR] (on file at CLAMO).

¹⁸ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

¹⁹ *Id.*

²⁰ 4th Infantry Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (30 Apr. 2009) [hereinafter 4ID 2009 OIF AAR] (on file at CLAMO).

RECOMMENDATION: Commands need to do a better job of integrating JAs with the CA teams. They need education on how JAs can help them, and the JAs and CA need to work together on rule of law initiatives.²¹

ISSUE: Civil affairs involvement

DECISION: 214th Fires Brigade had three Civil Affairs (CA) teams show up midway through the brigade's tour. Their action was to support the Provisional Reconstruction Team (PRT). The PRT had been operating in country for a while. When the CA team arrived, they simply incorporated their operations into what the PRT had in place. The BJA's only responsibility with the PRT and CA teams was to be involved in the Commanders Emergency Response Program (CERP) approval process.

RECOMMENDATION: Do your best before deployment and during the deployment to establish a good working relationship with the PRT and CA teams.²²

ISSUE: Interaction with CA units

DECISION: Interaction with CA units came through the ICE (Infrastructure Coordination Element) team doing reconstruction with CERP and through the DoS's Provincial Reconstruction Team (PRT) on the FOB. As the CA unit did not have its own JA, the BJA provided legal advice to the CA units. This included project reviews and a fairly large fiscal law workload centered upon the approval of micro-grants. Because these required approval by the brigade commander, the BJA determined it was best he review these expenditures.

RECOMMENDATION: CA units do provide additional workload. Even if the CA unit had its own JA, the BJA should still review those things requiring approval by the brigade commander. Having legal advice coming from two different JAs would not be helpful.²³

ISSUE: Workload from CA unit

DECISION: The BJA received a considerable amount of work from the brigade's CA office. The BJA agreed to provide the legal review for all issues presented to the JA by Civil Affairs.

RECOMMENDATION: Improve. Assign a JA to a CA battalion or brigade to work exclusively on civil affairs issues.²⁴

ISSUE: Paralegal support to CA personnel

DECISION: One paralegal worked a lot with CA personnel, who were short-handed. He helped with a variety of tasks, including assembling project proposals, driving vehicles, helping to assess the local courtroom (to make sure the structure was sound and provided sufficient security), monitoring trials, etc. He traveled with CA personnel about once a week. He found CA personnel needed many attempts to understand the regimental finance office language and format requirements to get CA project proposals approved.

²¹ RCT-5 2008 OIF AAR, *supra* note 9.

²² 214th Fires BDE 2009 OIF AAR, *supra* note 14.

²³ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

²⁴ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 4.

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RECOMMENDATION: Sustain. The work allowed the paralegal to develop a relationship with CA personnel, learn more about Iraqi language and culture, and narrow the rift between line and staff. Once CA personnel were familiar with his presence and abilities, Soldiers were more comfortable coming to him with legal assistance and other issues. It gave the paralegal a better understanding of how Soldiers work and improved his perspective and empathy when reviewing investigations.²⁵

ISSUE: Legal review of CA plans

DECISION: A CA staff section created during the deployment really wanted a dedicated judge advocate (JA) to assist in their planning. The supporting legal office could not provide a dedicated JA, but was able to provide a point of contact that became familiar with the CA process and needs.

RECOMMENDATION: Identify early who is doing the project planning. Provide a legal planner for the effort to help guide it away from any legal pitfalls as early as possible in the process. Build a relationship with the G9 section so they bring the issue to the legal section ahead of time. Also, offer training as early as possible as to what is permissible and what is not. No one likes a surprise “legally insufficient” after spending a great deal of time and effort on a project.²⁶

ISSUE: Relationship with CA teams

DECISION: Three CA teams supported the Stryker Brigade Combat Team (SBCT) throughout the deployment in Iraq. Each team reported directly to a land owning battalion commander. The ability to influence their activities from the BCT level depended on the CA team and on the battalion commander. The interactions with the brigade judge advocate (BJA) was limited to the realms of claims and rule of law. The CA team operated the Government Information Center, where the BJA met with Iraqis to take in, adjudicate, and pay claims under the Foreign Claims Act (FCA).

RECOMMENDATION: Understand the reporting relationship of the CA teams and ensure your ability to work with them flows from the battalion commanders.²⁷

ISSUE: Fiscal review of Civil Affairs (CA) packets

DECISION: The CA unit attached to the BCT had no legal resources. As a result, the BCT legal team had to review all CA projects for fiscal responsibility. The BCT Non-Commissioned Officer-In-Charge (NCOIC) would do the initial intake and review, and then either the trial counsel (TC) or BJA would do the final review. The work generated from the CA unit was quite onerous and comprised a great deal of the BCT legal team’s workload.

RECOMMENDATION: Sustain this process if you have an NCOIC who is knowledgeable in this area. The best possible scenario is for the CA unit to bring their own attorney, but if that does not happen, ensure that you study “MAAWS” (Money as a Weapon System) handbook and

²⁵ 2SCR 2009 OIF AAR, *supra* note 1.

²⁶ 4ID 2009 OIF AAR, *supra* note 20.

²⁷ 2SBCT, 25ID 2009 OIF AAR, *supra* note 8.

are well versed in fiscal issues before deployment. The MAAWS guide is invaluable in providing fiscal support.²⁸

ISSUE: Assimilation of Civil Affairs judge advocates into the OSJA

DECISION: The 1AD Office of the Staff Judge Advocate (OSJA) assimilated the Civil Affairs judge advocates (JAs). The JAs were a force-multiplier for the operational law (OpLaw) section, particularly in the area of fiscal law, and review of information operations.

RECOMMENDATION: Sustain. Having the additional attorneys paid dividends for the OSJA.²⁹

ISSUE: Use of Civil Affairs judge advocates

DECISION: By their own admission, the CA brigade did not have enough legal work to keep its two CA brigade JAs gainfully employed. Consequently, the higher OSJA had the higher headquarters issue an order attaching one of the CA JAs to the higher OSJA office. While the CA brigade commander disputed the authority to order such an action, he was happy to provide the attorney on a voluntary basis.

RECOMMENDATION: Personnel actions such as these are often necessary, but it usually your personal relationship with the leadership involved that makes it happen. Even in the absence of formal authority, do not be afraid to use informal arrangements where both parties are amenable to the action.³⁰

ISSUE: Civil Affairs judge advocate

DECISION: The JA assigned to Civil Affairs stayed with that battalion and was not absorbed by the division legal office.

RECOMMENDATION: This JA was fully engaged in the Civil Affairs mission.³¹

OEF ISSUE: Staff Judge Advocate and Civil Affairs interaction

DECISION: The CSTC-A SJA office had no little to no direct involvement with CA except in the fiscal area. Civil affairs teams worked in conjunction with Provisional Reconstruction Teams (PRTs), who fell under TF-101/Regional Command (RC)-East or the other regional commands, and then under the International Security Assistance Force (ISAF). CSTC-A did not have a Civil Military Operations Center (CMOC). However, several issues came up from the field, particularly from the Army Regional Security Integration Commands (ARSIC), which had more regular interaction with the regional commands and PRTs. These issues primarily concerned the use of funding and funding sources. The SJA Office worked to coordinate funding-related issues with the regional commands and the JAs located out at the ARSICs.

²⁸ 4th Brigade Combat Team, 3d Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – December 2008 (25 Mar. 2009) [hereinafter 4BCT, 3ID 2009 OIF AAR] (on file at CLAMO).

²⁹ 1st Armored Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (19 Feb. 2009) [hereinafter 1AD 2009 OIF AAR] (on file at CLAMO).

³⁰ XVIII Airborne Corps, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – April 2009 (11 June 2009) [hereinafter XVIII ABC 2009 OIF AAR] (on file at CLAMO).

³¹ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

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RECOMMENDATION: Continue to provide requested support concerning funding issues.³²

ISSUE: **Civil Affairs judge advocates**

DECISION: There was no need for the attached Civil Affairs units to have an assigned JA. The CJTF-101 operational law (OpLaw) section had two JAs able to cover down on any legal issues due to their proactive interaction with the G-9.

RECOMMENDATION: Sustain.³³

Civil Affairs Involvement in Rule of Law (RoL)

OIF ISSUE: **CA involvement in RoL**

DECISION: The CA team did not place any emphasis on the RoL mission. Their focus was, with good results, on building schools, roads, etc.

RECOMMENDATION: Do not take the presence of CA assets as an automatic indicator of RoL expertise.³⁴

ISSUE: **Under-utilization of CA brigade judge advocates (BJAs) in RoL**

DECISION: It was good to have a CA JA on the ground who could keep the Corps headquarters apprised of legal matters affecting the CA BDE, and to assist the Corps in analyzing Civil Military Operations (CMO) assessments. There were two CA JAs assigned to the Corps CA separate BDE. Corps pulled the second JA up to work directly with the Corps staff.

RECOMMENDATION: CA JAs are a valuable resource, combining legal and civil affairs expertise in one professional—consider how best to tap and integrate into the overall RoL mission. Presently, the CA JA can play a vital role in assisting the development of Iraqi's RoL because most are embedded with the Provincial Reconstruction Teams (PRTs), which are U.S. Embassy teams located throughout the regions of Iraq. Additionally, CA JAs, as well as CA battalion JAs, are MNC-I's eyes and ears on the ground and provide liaison services between the Corps and Iraqi local government officials.³⁵

ISSUE: **Civil Affairs participation in RoL efforts**

DECISION: During coalition operations in Basra, CA units initially did not do significant RoL activities. Later, after Corps-level efforts began to take hold, they began to do more.

RECOMMENDATION: RoL efforts sometimes require emphasis from the higher headquarters to overcome inertia and get them moving.³⁶

³² CSTC-A 2008 OEF AAR, *supra* note 16.

³³ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

³⁴ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

³⁵ XVIII ABC 2009 OIF AAR, *supra* note 30.

³⁶ *Id.*

I.D. Civilians on the Battlefield/ Contractors

OIF ISSUE: Operation of military personnel on contracted flights

DECISION: MNC-I gave TF 525 an aerial exploitation asset, “Airsca,” as part of its mission in northern Iraq. “Airsca” flights operated pursuant to a contract with the company. “TF 525 placed military personnel on board to operate military equipment that enhanced its collection capabilities. After mission completion, the incoming unit determined the unit could not rely on a certain term in the contract that seemingly allowed the inclusion of military personnel on “Airsca” flights for collection purposes. Because of the restricted reading of the contract, the follow-on unit did not place its military personnel and equipment on these “Airsca” flights. This resulted in losing the enhanced collection capabilities pending the revision of the contract.

RECOMMENDATION: It is important to be aware of issues concerning civilians operating within the command ahead of the deployment. It is important to have an awareness of how civilians are operating and what they are doing, as well as whether the contract permits military personnel to operate alongside the contractors.³⁷

ISSUE: Coordinating the presence of contractors in the operational area

DECISION: Contractors did not have the same flexibility as Soldiers in responding to hostile acts and demonstrations of hostile intent. Additionally, the Gulf Region Division (GRD) of the U.S. Army Corps of Engineers (USACE) did not understand the battle space owner’s need to know what contractors were doing in the area. Finally, there was always a concern about the spillage of classified information over into contractor channels. Aegis ran a cell in the Division Main (DMain) Command Post. They reported to the Contractor Operations Center (CONOC), which fed information to the Chief of Operations (CHOPS).

RECOMMENDATION: The use of the CONOC was worthwhile after going through the initial hurdles of determining how it was going to work.³⁸

ISSUE: Training contractors

DECISION: There was a lack of quality control for the training provided to contractors stemming from uncertainty over who was responsible for providing the training. Initially, there were significant objections to some of the training materials contractors used. There was never a definite decision on how to approach this issue. The responsibility often fell to those for whom the contractor worked.

RECOMMENDATION: Improve. This issue needs command ownership closer to the ground level. Contractors should receive training through channels that include a legal review. A requirement for such a review and the conduct of the training should be part of the contract.³⁹

OEF ISSUE: Difficulty in identifying the identity, location, and employers of contractors

DECISION: CSTC-A had contractors from the United States, under contracts administered from the CONUS all the way down to the local contracting office located on the camp, which actually

³⁷ TF525 2009 OIF AAR, *supra* note 13.

³⁸ 4ID 2009 OIF AAR, *supra* note 20.

³⁹ *Id.*

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fell under an organization with its headquarters in Iraq. This issue came up primarily as a taxation issue when the Afghans became aggressive about it, but it also came up as a training issue. There was no mechanism for pulling up a list of the contractors by name and for whom they worked. CSTC-A SJA believes this will continue to be a significant issue with training and arming, especially when contractors get in trouble.

RECOMMENDATION: None.⁴⁰

ISSUE: Contractors on the battlefield

DECISION: Operation Enduring Freedom (OEF) has always been an economy of force action. This reality has led to an overwhelming number of contractors on the battlefield.

RECOMMENDATION: JAs should be prepared to deal with contractor-related issues in a deployed environment. JAs should be especially attentive to situations where contractors are conducting “inherently governmental functions.” This standard is subject to much interpretation and debate, so concrete examples should be provided whenever possible.⁴¹

Host Nation Issues Affecting Contractors

OIF ISSUE: Application of the Iraq Security Agreement (SA)

DECISION: Effective 1 January 2009, the Security Agreement (SA) applied to DoD contractors, resulting in questions about the status after that date of possible offences committed while Coalition Provisional Authority (CPA) Order No. 17, which had until then granted immunity from Iraqi law to contractors supporting the MNF, was in effect. The RoL section worked with international & operational law attorneys to determine whether contractors could face charges under Iraqi law for conduct that had occurred prior to 1 January on the basis that their immunity for that period had been removed. MNF-I forwarded this issues to DoD Office of the General Counsel (OGC).

RECOMMENDATION: JAs should check with higher headquarters before providing any response.⁴²

ISSUE: Contractor status under Iraq Security Agreement (SA)

DECISION: Multi National Force – West (MNF-W) and civilian contractors had concerns about Iraqi jurisdiction since many operated outside “the wire” and went off base. They were uncertain what would happen if the Iraqis detained them. The primary concern of MNF-W and of individual Marines was whether the Marines could use deadly force to prevent the Iraqi Security Forces (ISF) from taking contractors if the Iraqi government wanted to detain a contractor. There were similar concerns regarding the ISF attempting to detain or arrest Marines.

The SA forced MNF-W, and many contractors, to look at what kind of “contractor” they were (i.e., DoD employees or civilian company employees). This became a very important distinction to understand because the SA protects DoD employees but not civilian employees. In order to

⁴⁰ CSTC-A 2008 OEF AAR, *supra* note 16.

⁴¹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

⁴² Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, October 2008 – December 2008 (9 Feb. 2009) [hereinafter MNF-I Individual Augmentee FEB 2009 OIF AAR] (on file at CLAMO).

protect the contractors operating within MNF-W's command, the Staff Judge Advocate (SJA) drafted a "local agreement" and negotiated a short (two page) Memorandum of Understanding (MOU) between the Commanding General (CG), MNF-W, the Iraqi CG of the Anbar Operations Command, and the Provincial Chief of Police. This MOU established a procedure preventing the arrest of contractors, servicemembers, and DoD civilians by ISF without an arrest warrant. This MOU established a procedure for the ISF to serve the warrants upon a command representative from MNF-W for review and verification prior to Iraq exercising jurisdiction.

RECOMMENDATION: Commands should continue to work with their higher headquarters (HHQ), Iraqi provincial leadership, and all contractors to ensure they understand what the protections are and how to handle misconduct.⁴³

ISSUE: Educating the civilians attached to the SBCT about the Security Agreement (SA)

DECISION: The SBCT had a civilian "Human Terrain Team" and an embedded PRT, which consisted of civilians from third countries and from the United States. Once the SA took effect, the civilians on the team had concerns about exposure to the Iraqi criminal justice system, and many of them considered quitting. Division attempted to quell their concerns by drafting an information paper explaining the SA and the expected consequences.

RECOMMENDATION: Educate the civilians as much as possible so they can make an informed decision on whether to remain in country or leave immediately.⁴⁴

OEF ISSUE: Host nation taxation of contractors

DECISION: The Afghans felt they could reach out through the U.S. Embassy and get a list of employees/contractors to tax. CSTC-A did not have such a list. The Government of the Islamic Republic of Afghanistan (GIROA) started to get aggressive on the issue. The GIROA wanted all the private security contractors to register with the GIROA. The GIROA wished to tax them by the number of employees, weapons, and vehicles. This was an open issue at high levels as the CSTC-A SJA redeployed.

The source document for the issue is the 2003 Diplomatic Note executed with the transitional Islamic government. It addressed many things. Although described as the Status of Forces Agreement (SOFA), it is not a SOFA. The note does address taxes and it prohibits them. This precluded the Afghans from taxing DoD contractors. This was a rather large issue because it extended well beyond DoD (to entities like USAID) and was essentially an Afghan attempt to gain revenue. However, the DoS seemed to move quickly on this issue. CSTC-A's POLMIL Officer sent a letter back to the GIROA when they asked for a list of contractors. He told them CSTC-A did not have such a list. Of interest, when sending a note back, it might take over six months before a response would be forthcoming from the GIROA. This helped delay resolution of an issue it was not in the U.S. interests to resolve.

RECOMMENDATION: A future, more detailed, SOFA will likely eventually resolve this significant issue.⁴⁵

⁴³ I Marine Expeditionary Force (Forward), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – February 2009 (19 Feb. 2009) [hereinafter I MEF (FWD) 2009 OIF AAR] (on file at CLAMO).

⁴⁴ 2SBCT, 25ID 2009 OIF AAR, *supra* note 8.

⁴⁵ CSTC-A 2008 OEF AAR, *supra* note 16.

Civilian/Contractor Misconduct

OIF ISSUE: Jurisdiction over civilians for misconduct

DECISION: Central Command (CENTCOM) published guidance implementing the SECDEF memo of 10 Mar 08. CENTCOM delegated court-martial convening authority over civilians to Multi-National Corps – Iraq (MNC-I). MNC-I retained court-martial convening authority at that level. The first case following this policy implementation arose based on a late February attack (4 stab wounds with knife below armpit) by a U.S.-hired, Category 1 interpreter against a local national (LN) Category 1 interpreter. The charge was a single specification of Article 128, aggravated assault. The trial counsel amended the charges after the Article 32 hearing. MNC-I proceeded with a General Court-Martial (GCM) and obtained a plea agreement. The accused interpreter pled guilty at the GCM to one specification of assault, one specification of obstruction of justice, and one specification of false official statement. The court sentenced him to five months confinement. This was a straightforward test case of ability of a court-martial to assert jurisdiction over a contract interpreter. It is unclear at present how appellate courts will regard this type of conviction, and whether an appeal will occur. This case avoided some of the thornier issues, such as the application of forfeitures to civilians and how to enforce a sentence of hard labor.

RECOMMENDATION: The consultations required to get this case (a five-month guilty plea) charged and into court were at an extraordinarily high level. Unless the process is further streamlined (consultation with the Department of Justice, etc.) and delegated, it will NOT prove to be a useful tool at the unit level for keeping order.⁴⁶

ISSUE: Civilian/contractor misconduct

DECISION: When civilians/contractors committed misconduct on the FOB, the commander gave them 72 hours to leave the FOB. After an increase in civilian/contractor misconduct, the commander changed the policy. Under the new policy, the commander ordered the entire team of employers/employees off the FOB within 48 hours if one employee committed misconduct.

RECOMMENDATION: Sustain. The threat of banishment from the FOB inspired employers to keep positive control over their employees and discipline their employees immediately for any misconduct. The JA must be prepared to advise the commander as to what he/she can do in response to civilian/contractor misconduct.⁴⁷

ISSUE: Civilian contractors with alcohol on the FOB

DECISION: There were a few instances where civilian contractors provided alcohol to Soldiers on the FOB. When this occurred, either the Criminal Investigation Division (CID) or one of the judge advocates (JAs) would talk to that person's employer. Each time, the employer would fire the employee providing the alcohol, and that employee would have to leave the FOB.

RECOMMENDATION: Sustain. The employers were very cooperative and provided discipline to their employers when needed.⁴⁸

⁴⁶ RCT-5 2008 OIF AAR, *supra* note 9.

⁴⁷ 3ID 2008 OIF AAR, *supra* note 10.

⁴⁸ 4BCT, 3ID 2009 OIF AAR, *supra* note 28.

INTERNATIONAL & OPERATIONAL LAW

ISSUE: Contractor misconduct

DECISION: A contractor repeatedly sent classified information over the unclassified computer lines. This had the potential to jeopardize the lives of Soldiers. The BCT commander told him to stop, and he did so during the BCT's deployment. The unit raised the threat of "being fired" and created a file outlining his actions. At the end of the deployment, the discovered that he had done it again, and the BJA provided the information to the new command for action, as they deemed appropriate.

RECOMMENDATION: None.⁴⁹

ISSUE: Dealing with the complexity of issues arising from civilian misconduct

DECISION: Advice to Iraqi Police (IP) and the Security Force (SECFOR)/Quick Reaction Force (QRF) in the International Zone (IZ) consisted primarily of search and seizure issues, operational law issues, and dealing with the maze of civilian misconduct: DoD civilians, DoS civilians, contractors, LNs, and third country nationals (TCNs) within the IZ. The training at the Center for Law and Military Operations (CLAMO), as well as the military and civilian backgrounds of its JAs, rendered the Joint Area Support Group-Central (JASG-C) fairly well versed in this area.

RECOMMENDATION: Train on the effect the SA now has on civilian misconduct, and the theatre specific policies on how to handle civilian and contractual misconduct, including notice requirements, bars from FOBs, and bars from the IZ.⁵⁰

ISSUE: Contractor assault on a Soldier

DECISION: There was an accusation one U.S. contractor assaulted a Soldier in the course of a fight. The division decided not to forward the case to the Department of Justice (DoJ) for consideration. However, a DoJ decision not to act would have resulted in DoD obtaining court-martial jurisdiction.

RECOMMENDATION: Improve. Division should forward such cases to DoJ as a matter of course to receive an opinion. If DoJ declines prosecution, then division can determine if they want to prosecute.⁵¹

ISSUE: Disruptive behavior/attire of contractors

DECISION: The BCT commander imposed a dress code for civilians living and working upon the FOB. A female contractor was a disruptive influence upon the troops due to the sexually charged nature of her daily attire. The BCT directly approached the contracting company to impose the code and enforce it against its employees.

RECOMMENDATION: Sustain. A command directed dress code for civilian attire is a helpful way to ensure the civilian presence upon a FOB remains constructive instead of disruptive.⁵²

⁴⁹ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

⁵⁰ 50th Infantry Brigade Combat Team, New Jersey Army National Guard, Office of the Command Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – May 2009 (25 May 2009) [hereinafter 50 IBCT (NJARNG) 2009 OIF AAR] (on file at CLAMO).

⁵¹ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

ISSUE: Jurisdiction over contractors who wish to leave country after minor misconduct

DECISION: Contract employees chose to leave theater after committing minor misconduct not rising to a level warranting the commander's attention. In such cases, the BJA viewed this as largely an employment action in which the employee's desire to leave trumps anyone else's desire to restrain him.

RECOMMENDATION: Sustain. Examine the circumstances of the employee's departure in light of the Military Extraterritorial Jurisdiction Act (MEJA) and the Uniform Code of Military Justice (UCMJ), but if there is no criminal case, let the employee leave as is his/her right.⁵³

ISSUE: Eviction of contractors from FOBs

DECISION: Most dealings with contractors concerned removal from the FOB for minor misconduct. In one case, removal concerned a group of Lebanese Christians, who had been on the FOB for 4-5 years. The JA doubted they had, as alleged, been involved with an incident involving a mortar round landing on the FOB. Although the command wanted the contractors removed from the FOB, the JA was concerned about the extent of U.S. obligations to contractors in such circumstances (e.g., was the BCT required to ensure safe passage to the airport, etc.?).

RECOMMENDATION: Improve. Additional guidance setting out procedures and U.S. obligations regarding the eviction of contractors—particularly third-country nationals (TCNs)—from U.S. installations would be helpful.⁵⁴

ISSUE: Third country national (TCN) contractor misconduct

DECISION: Third country national (TCN) contractor misconduct led to an atypical detainee situation. The contractor met criteria for theater internment facility (TIF) transfer based on his actions. Coordination with Multinational Corps-Iraq (MNC-I) was helpful to manage this particular situation effectively.

RECOMMENDATION: TCN contractors present special issues. Early interaction with higher headquarters is essential.⁵⁵

OEF ISSUE: Handling U.S. contractor misconduct

DECISION: CSTC-A typically handled contractor misconduct by going to the contracting officer representative (COR), who was usually present on site. CSTC-A would explain what happened and would voice the command's request, including removal of the employee from country if appropriate. CSTC-A did not have or request any courts-martial of contractors.

RECOMMENDATION: Continue to handle contractor misconduct through the COR.⁵⁶

⁵² 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 4.

⁵³ 2d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – November 2008 (13 Jan. 2009) [hereinafter 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

⁵⁴ 2SCR 2009 OIF AAR, *supra* note 1.

⁵⁵ 1AD 2009 OIF AAR, *supra* note 29.

⁵⁶ CSTC-A 2008 OEF AAR, *supra* note 16.

ISSUE: Local national contractor misconduct

DECISION: The Afghan criminal justice system is not very functional and is very corrupt. Consequently, when a CSTC-A local national (LN) contractor got into legal trouble, even if there was no misconduct by the contractor, the Afghan criminal law system essentially became a “shake down” system. In other words, persons involved at all levels (police, prosecutors, judges, corrections) were looking for payment to release the individual. For example, in one incident a Kellogg, Brown, and Root (KBR) contractor was involved in an accident in which an Afghan child died. The accident was entirely the child’s fault. However, authorities immediately placed the driver under arrest and all of those involved (cops, courts, the victim’s family) were looking for money. The system was bribery-based, not fault-based. This occurred several times. Although CSTC-A had no authority to retain or refuse to turn over local national contractors, the SJA worked closely with the contractor and host nation officials in the Ministry of Interior (MoI) to try to ensure police did not inappropriately detain LN contractors.

RECOMMENDATION: Continue to work formally and informally with contractors and senior MoI officials to ensure they treat local national contractors appropriately. However, do not improperly intervene or attempt to unduly influence the sovereign Afghan system. As the justice system matures, this will become less of an issue.⁵⁷

[See also VI.C. MILITARY JUSTICE—Jurisdiction]

Wearing Military Uniforms/Carrying Weapons

OIF ISSUE: Civilian use of military uniforms

DECISION: Many civilians in Iraq wore military uniforms. Questions arose as to the implications under both the U.S. – Iraq Security Agreement (SA) and the Law of Armed Conflict (LOAC). MNF-I OSJA staffed throughout the MNF-I staff three documents in preparation to change the uniform policy: (1) an information paper discussing uniform use under both LOAC and the SA, (2) a Commander MNF-I policy change letter, and (3) the amended MNF-I uniform policy.

RECOMMENDATION: Sustain. Perform a robust socialization of significant policy change proposals among major subordinate commands (MSC’s) before conducting final staffing.⁵⁸

ISSUE: Arming contractors

DECISION: 2BCT did not arm its contractors. IEDs and sniper fire were the largest threats to these individuals, and tactically speaking, small arms did little to mitigate those risks. Moreover, individual contractors’ professional roles in theater did not merit their arguments to carry weapons, given the fact that most of them had Soldiers with them on missions outside the wire. Finally, insuring the proper level of weapons and ROE training would have only added rocks to rucksacks full of legitimate mission essential tasks.

⁵⁷ *Id.*

⁵⁸ Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, January 2009 – April 2009 (May 2009) [hereinafter MNF-I Individual Augmentee MAY 2009 OIF AAR] (on file at CLAMO).

TIP OF THE SPEAR

RECOMMENDATION: Sustain. Continue to examine contractors' requests to carry weapons in light of their role in theater. Some may merit such action; most will not.⁵⁹

ISSUE: **Arming of civilian contractors**

DECISION: There was a process in place for this in theater, but this is something more properly worked out in the predeployment stage.

RECOMMENDATION: Take care of this issue before the individual even arrives in theater.⁶⁰

OEF ISSUE: **Allowing interpreters to wear military uniforms**

DECISION: Most of CSTC-A's interpreters were local nationals and the question was whether they could wear a uniform. Different commanders took different approaches. The ARSIC-South commander felt there were too many people running around in uniform for whom he could not account. In contrast, the ARSIC West commander wanted interpreters in uniform because they were out in the field helping the troops look for the enemy. Both servicing SJA's were looking for support and resolution from CSTC-A on this issue. The answer CSTC-A gave was that if the Combatant Commander approved the wear of the uniform in the AOR and the interpreters had the distinctive insignia on their uniform, each Regional Commander could make his own decision for his respective area.

RECOMMENDATION: Continue to allow the Regional Commanders to make the final decision on this question.⁶¹

ISSUE: **Allowing contractors to carry arms**

DECISION: There were two large contractors in CSTC-A: MPRI and DYNCORP. MPRI contractors did not carry arms. DYNCORP was actually a Department of State (DoS) contract, and they were heavily armed. The U.S. Embassy constantly reminded CSTC-A the DYNCORP contract was a DoS contract. However, when there were issues, they wanted to talk to CSTC-A about training.

In February of 2007, CENTCOM issued a FRAGO delegating to the CSTC-A commander and the commander for CJTF-82/101 the authority to approve arming requests. This delegation made a lot of sense. However, because there was no system in place, CSTC-A discovered last fall there were instances of non-compliance with the rules.

CSTC-A had only one request during their tenure. MPRI employees, by contract, were not going to carry arms. CSTC-A did receive a request from a subcontractor for the engineers hired to protect some engineer work sites in the Kabul area.

CSTC-A's bigger issue was DYNCORP. Under the governing FRAGO, a DoD contractor had various requirements for approval to carry weapons. This included annual training and certifying their personnel did not have any domestic violence issues. The rules for DoS contractors, however, were less concrete. They require a "cooperative approach" with the DoS. In an effort to develop what that "cooperative approach" would be, CSTC-A queried the DoS to find out what

⁵⁹ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 53.

⁶⁰ 4ID 2009 OIF AAR, *supra* note 20.

⁶¹ CSTC-A 2008 OEF AAR, *supra* note 16.

the DoS rules. The rules appeared not to be as rigid as the DoD requirements. DoS assured CSTC-A that all their DYNCORP employees had received training because the Regional Security Officer (RSO) for the Embassy had a semiannual training program. However, DYNCORP would not release any information about what they actually did. CSTC-A decided to work under the theory that as long as the DoS said DYNCORP was in compliance, and as long as DoS assured CSTC-A of that, that was sufficient. In negotiations with DYNCORP, they seemed willing to work with CSTC-A. When the CSTC-A SJA redeployed from theater, all the paperwork was prepared and ready to go forward to bring DYNCORP into compliance with the CENTCOM FRAGO.

RECOMMENDATION: Ensure completion of the required certification paperwork.⁶²

Legal Assistance/Advice to Contractors

OIF ISSUE: Requests for legal assistance by civilian contractors

DECISION: Per guidance from MNC-I, the BJA only provided powers of attorney (POAs) and basic notary services.

RECOMMENDATION: Know the relationship between contractors and your command ahead of time. Know what services you may provide by checking with your higher headquarters.⁶³

ISSUE: Civilian requests for legal assistance

DECISION: The BCT received many requests from civilian contractors on the FOB for legal assistance. The BJA opted not to provide legal assistance, including notary and POA services.

RECOMMENDATION: Sustain. Time constraints on legal personnel did not leave extra time to provide legal assistance to those not entitled to it. If the BCT had a third attorney, this extra service may have been possible.⁶⁴

ISSUE: Legal information vice legal advice to contractors

DECISION: The OpLaw section could make the contractors aware of the new security agreement but could not give them legal advice on it. In order for contractors to receive legal advice, they had to go through their employer's legal counsel.

RECOMMENDATION: Know the limitations on the type of support you can offer contractors.⁶⁵

[See also V. LEGAL ASSISTANCE]

I.E. Detention Operations/Prisoner of War Issues

I.E.1. Article 5 Tribunals

OIF ISSUE: Training for Article 5 Tribunals

⁶² *Id.*

⁶³ TF525 2009 OIF AAR, *supra* note 13.

⁶⁴ 4BCT, 3ID 2009 OIF AAR, *supra* note 28.

⁶⁵ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

TIP OF THE SPEAR

DECISION: The unit never conducted any Article 5 tribunals. Any training focused upon this event is not likely to be relevant.

RECOMMENDATION: Eliminate this training in favor of something more relevant. If the intent of the training is to force legal personnel to consider the logistics of such proceedings, switch the scenario to something of more likely relevance. This could be a court-martial with local and unit witnesses or a mission to obtain a local warrant for detention.⁶⁶

I.E.2. Article 78 Reviews

No AAR comments.

I.E.3. Code of Conduct

No AAR comments.

I.E.4. Detainees & Detention Operations

I.E.4.a. Iraq/Operation Iraqi Freedom (OIF)

Detention Operations Process

OIF ISSUE: Bureaucracy in detention operations

DECISION: The detention operations chief fell under the operational law shop, but the operational law chief did not run detention operations. Despite this, only the operational law chief would attend the planning meetings. Often times, the command group and the various staff planners handed down new ideas in these planning meetings, which meant the operational law chief then had to brief the detention operations chief. The operational law chief did become somewhat involved in detention operations during the deployment so he was able to assist the detention operations chief and act in his absence. The added layer of bureaucracy between the detainee operations chief and the operational law chief, however, made it unnecessarily difficult for the detention operations chief to communicate with the planners and the command group. It was very cumbersome for the detention operations chief to vet everything through the operational law chief.

RECOMMENDATION: Improve. Remove the layer of bureaucracy so the detention operations chief does not have to go through the operational law attorney to communicate up the chain. Allow the detention operations chief to communicate directly with the Staff Judge Advocate (SJA) and eliminate the intermediary.⁶⁷

ISSUE: Division support for BCT detention operations

DECISION: The BCT received outstanding support from 3d Infantry Division and 10th Mountain Division when it came to detention operations. This ensured an efficient detention operation process for the BCT.

⁶⁶ 4ID 2009 OIF AAR, *supra* note 20.

⁶⁷ 3ID 2008 OIF AAR, *supra* note 10.

RECOMMENDATION: Work to maintain a positive working relationship with your higher headquarters.⁶⁸

ISSUE: Detention operations process

DECISION: During their deployment, the BCT processed approximately 1,200 detainees. The trial counsel (TC) would receive the packet from the S2 and then do the legal review. The detainee was either released, sent to Camp Bucca/Cropper for further detainment, or released to the Iraqi Police for prosecution. If released, the TC paid CERP money to the detainee (\$6/day).

RECOMMENDATION: Sustain. It is highly beneficial to forge a good relationship with the S2 shop. The collegial working relationship between the S2 shop and legal shop was invaluable to the detainee operations process.⁶⁹

ISSUE: Communication between division sections when conducting detention operations

DECISION: The division operational law (OpLaw) staff worked to form relationships with other staff sections involved in the detention operation process. Doing a little work up front created open communications and allowed the sections to work as a cohesive team. Even if they did not always agree on everything, they still communicated and completed the mission in a timely manner.

RECOMMENDATION: Sustain. Operations flow much smoother when all involved staff sections communicate. Whenever possible, work to forge relationships with other sections.⁷⁰

ISSUE: Division of labor between Provost Marshal's Office (PMO) and SJA

DECISION: The PMO is the office with primary responsibility for detention operations. Attorneys must be wary of PMO or G-2 assignments that are strictly administrative in nature. Once PMO abdicated responsibilities on issues, they were unwilling to reassert primacy when substantive issues arose.⁷¹

RECOMMENDATION: Set expectations between the two sections as early as possible. Also, engage at the corps level. As the MNC-I PMO did more admin tasks in the detention operations area, the division PMO followed suit.⁷²

ISSUE: Logistical support and planning for individual detention operations (DetOps)

DECISION: Involvement in early planning stages of unit operations, as those operations relate to detainee processing, is paramount to understanding the process and where a detainee would go when a maneuver unit encountered a detainee.

RECOMMENDATION: Sustain. Understanding the entire scope of operations made it easier for attorneys to give timely advice.⁷³

⁶⁸ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

⁶⁹ 4BCT, 3ID 2009 OIF AAR, *supra* note 28.

⁷⁰ 4ID 2009 OIF AAR, *supra* note 20.

⁷¹ 1AD 2009 OIF AAR, *supra* note 29.

⁷² *Id.*

⁷³ *Id.*

TIP OF THE SPEAR

ISSUE: Review of detention standard operating procedures (SOP)

DECISION: The bulk of the DetOps attorney's work consisted of reviewing detainee packets. The reduction in packet numbers eased the DetOps workload and allowed the DetOps attorney to revise the division's DetOps SOP. The SOP described detention facility procedures and set the standard for detention conditions. The DetOps attorney based his SOP on the one a previous unit drafted, which was very long (more than 200 pages), and contained inconsistent or redundant provisions, so personnel ignored some aspects of it.

The division republished the SOP twice during the deployment, with the final product being a significant improvement on the original. This SOP initially focused on detention facilities, with a second SOP dealing with apprehension procedures. The final version of the SOP dealt with all aspects of detention operations and resembled an operations order. Parts of the SOP continued to be relevant even after the Security Agreement legal framework came into effect.

RECOMMENDATION: Sustain. Once deployed, review of such policies and procedures will help to ensure their continued relevance.⁷⁴

ISSUE: Improvement of the process with warrant-based targeting

DECISION: The detention regime used before the Security Agreement took effect was not worth the effort. It was not at all crippling when units switched to warrant-based detentions. Units were still able to interrogate those held by Iraqi officials. Any loss of intelligence when units switched to warrant-based detentions did not appear to be significant based on reports from fellow staff sections.

RECOMMENDATION: We are much better off helping the Iraqis improve their own system and participating within it. Moving to their system has freed up attorneys, paralegals, and unit resources.⁷⁵

ISSUE: BJA involvement in the detention operations process

DECISION: The SBCT JA was involved in every aspect of the detention operations process. This included advising the S-2, the PMO, and the SBCT Commander, who served as the detention release authority. The SBCT JA (TC or BJA) formally reviewed 671 detainee packets during the deployment.

RECOMMENDATION: It is essential for the SBCT JA to understand the entire detention operations process, including the process at the long term holding facilities at the next higher holding levels.⁷⁶

ISSUE: Integration of detainee operations (DetOps) into the rule of law (RoL) section

DECISION: The functions of the detainee operations section and the RoL section remained separate but closely intertwined. At least 50 to 80% of the issues could properly fall under either section. As RoL becomes more prominent, the functions of these two attorneys are merging into one function.

⁷⁴ 4ID 2009 OIF AAR, *supra* note 20.

⁷⁵ *Id.*

⁷⁶ 2SBCT, 25ID 2009 OIF AAR, *supra* note 8.

RECOMMENDATION: Improve. Consider integrating the detainee operations attorney under the umbrella of RoL. As issues cross over between these two attorneys, they must be aware of each other's project initiatives, work assignments and priorities. The physical location of these two attorneys must be in close proximity. Additionally, as warrant-based targeting assumes priority over kinetic targeting, it may be advisable to have the RoL attorneys and detainee operations attorney fall under the operational law section in order to ensure unity of effort.⁷⁷

ISSUE: Access of the DetOps attorney to the SJA

DECISION: Due to the sensitivity and visibility of the issues, the DetOps attorney spoke directly to the SJA with respect to detainee issues. The ability to explain what the units were doing with certain detainees and why, helped avoid unnecessary consternation. For example, some staff members focused merely on not meeting timelines for detainee movements and not on the reasons why there may be delays.

RECOMMENDATION: Sustain. Additional levels of supervision are not desirable. The detainee operations attorney at division level should be an experienced captain. Due to the sensitivity and visibility of detainee issues, the detainee operations attorney must have free and unfettered access to the SJA.⁷⁸

ISSUE: Detainee operations points of contact and organizational chart

DECISION: There was no coherent organizational chart for detainee operations personnel like the organizational chart the Department of State (DoS) developed for RoL personnel. The detainee operations judge advocate had a need for all points of contact at the Central Criminal Court of Iraq (CCCI), Task Force 134 (TF-134), and the Magistrate Cell at the Theater Internment Facility (TIF), training teams, as well as detainee operations attorneys at MNC-I, other divisions, and subordinate Brigade Combat Teams (BCTs).

RECOMMENDATION: Improve. Place names and phone numbers to the detainee operations organization chart as soon as practicable after entering into the AO. Whenever practicable, make face-to-face introductions with these personnel.⁷⁹

Detention Operations Training

OIF ISSUE: Lack of training on theater-specific DetOps and interrogations procedures

DECISION: Before the division deployed, the OSJA provided detention operations and interrogations training. Unfortunately, it was of little use because it was very generic and failed to include any theater-specific training or SOPs.

RECOMMENDATION: Improve. Instead of going through generic training, it would be much more helpful for the JAs and paralegals to read theater-specific SOPs and vignettes. It would also be beneficial to read the current interrogation policies and speak to those JAs in theater that work with detention operations.⁸⁰

⁷⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ 3ID 2008 OIF AAR, *supra* note 10.

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ISSUE: Lack of understanding regarding the legal standards for detention operations

DECISION: Much like the brigades, the battalions seemed to have their own way of running detention operations. Unfortunately, they did not always understand the standards required when making the decision to hold a detainee.

RECOMMENDATION: Improve. Ensure the battalions receive some sort of standardized training so they understand the basic standards for detention operations. Also, the battalions should re-examine the basis for detention of their detainees and ensure they are being held according to legal standards.⁸¹

ISSUE: Training for incoming unit

DECISION: The regiment wanted to send one of its JAs to the Counterinsurgency (COIN) Academy. When bad weather forced cancellation of this plan, the JA was still able to brief the company commanders belonging to a couple of the incoming battalions upon arrival at FOB Warhorse. These JAs regarded it as important to get the JAG “foot in the door” with the arriving company commanders in order to acquaint them with the new detention paradigm. Detention operations no longer mean picking up a detainee and dropping him off at the Detainee Holding Area (DHA). Commanders are now required to develop mechanisms to obtain arrest warrants.

RECOMMENDATION: Sustain. Ideally, a JA from the outgoing brigade/regiment will accompany the command group to the COIN Academy. This allows the JA to ensure incoming company/squadron commanders are aware of the altered operational context, including changes in detention procedures.⁸²

ISSUE: Detention operations training

DISCUSSION: Although the battalion captured over 100 detainees, DetOps by coalition forces (CF) in 2008 has changed significantly. CF are no longer focusing on long-term detention for suspected insurgents within the coalition system. Regardless, Marines still need to know basic detainee processing procedures should they capture an insurgent. All Marines in the battalion received training in DetOps while at Exercise Mojave Viper. Once in theater, those individuals assessed to have a higher likelihood of capturing detainees received additional training tailored to their specific situation.

RECOMMENDATION: The battalion should have a DetOps SOP established prior to arriving in theatre.⁸³

ISSUE: Training on detention operations

DECISION: Since TF 525 had a Long Range Surveillance Company (LRSC) that conducted village engagements and detained suspicious individuals, they brought detainees onto the FOB. Detainee processing, however, was the responsibility of the battlespace owner, which was not TF 525. However, the Soldiers did have contact with the detainees and occasionally crossed the line between intake and interrogation.

⁸¹ *Id.*

⁸² 2SCR 2009 OIF AAR, *supra* note 1.

⁸³ 1/9 Marines 2009 OIF AAR, *supra* note 5.

RECOMMENDATION: Ensure detention operation training occurs before deployment, even if your unit's interaction will be minimal. All Soldiers need to be aware of the detention operation process and understand how to properly interact with, intake, and process detainees. The Soldiers also need to have thorough understanding of the difference between tactical questioning and interrogation. Beware of the line crossing.⁸⁴

ISSUE: Pre-deployment legal training for detention operations

DECISION: The BCT conducted an aggressive program before deploying to ensure the Soldiers were prepared to handle detention operations. The BJA, Provost Marshal, and S-2 teamed up to provide detailed classes to the Soldiers so everyone understood the entire process. The command fully supported this training plan and it ensured the Soldiers understood the importance of preparing detailed files for those detained.

RECOMMENDATION: Push for command support and conduct thorough detention operations training before deploying.⁸⁵

ISSUE: Training the Iraqis on "detention" skills

DECISION: The BCT JAs taught a three-day class to the Iraqi Army (IA) on detention operations. LEPs, the PMO, and the JAs taught topics. The focus was on forensics and sworn statements. The class culminated with a practical application. The Iraqis enjoyed it and acknowledged they had never had this kind of training before.

RECOMMENDATION: Establish a training plan and program for the IA.⁸⁶

ISSUE: Training on detainee packets

DECISION: The BCT received training on detention operations before the deployment. Specifically, they learned what a good detainee packet looks like and what should be in it. This really helped them to begin their detention operation mission right away instead of going through the training in theater and then learning as they went.

RECOMMENDATION: Sustain. All detention operations training should occur before the deployment. Every BCT should have at least one NCO who knows how to put together a detainee retention packet before deployment.⁸⁷

ISSUE: Development of "point of capture to detention facility" training exercises

DECISION: Focusing on the specifics of how to treat detainees in addition to the Standard Training Packages (STP) was quite helpful. The division commander made it a requirement for the entire division a year before deployment and again at individual readiness training (IRT). The unit provided these training packages to the BCTs already in theater when the division arrived.

⁸⁴ TF525 2009 OIF AAR, *supra* note 13.

⁸⁵ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

⁸⁶ *Id.*

⁸⁷ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 53.

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RECOMMENDATION: Sustain. This training familiarized everyone with the procedures involved in moving a detainee from point of capture to the detention facility.⁸⁸

ISSUE: Training to conduct detention operations

DECISION: Knowledge of detainee processing and how external visits and inspections of satellite detention processing sites are conducted is good preparation for the conduct of detention operations.

RECOMMENDATION: Sustain. Ensure you understand the detention process before you deploy. When you deploy, try to visit the people with whom you will work in order to have the best understanding of how they apply the process in practice.⁸⁹

ISSUE: Educating JAs and Soldiers on the detention standard

DECISION: The detention operations (DetOps) attorneys assessed the biggest challenge for JAs working in the detention area to be articulating complex standards in simple language like “probable cause.” The outgoing division had trained Soldiers to think in terms of “probable cause” because it was an easier standard to articulate than “imperative reasons of security,” viewed by both JAs and Soldiers as a meaningless term. JAs described “probable cause” in terms of “some reason to think a criminal act had been committed,” although they did not actually use that term in speaking to Soldiers—it was simply a means of ensuring JAs had a common understanding of the applicable standard and expressed it in a similar fashion.

Even units schooled in “probable cause” still detained everyone found in a house containing a suspected insurgent. This practice became more of an issue with the shift toward the Security Agreement warrant-based legal framework. In many cases, U.S. forces had previously detained individuals simply because their neighbors had said they were bad people. In some cases, brigades—and this was characteristic of units that had arrived as part of the surge—rolled up large numbers of Iraqis, then determined which ones to detain. Early in the deployment, U.S. forces sometimes detained Iraqis acquitted by the Central Criminal Court of Iraq (CCCI) and returned them to the theater internment facility (TIF). Even after the shift to a new legal framework, the DetOps attorney received phone calls from units asking about the possibility of detaining the brother, etc., of a wanted individual to persuade that individual to turn himself in.

However, in late 2008, U.S. forces finally shifted from detention because “someone was a bad individual” to detention because “someone had committed a bad act.” Some understood the change, but there was a great deal of momentum in terms of the old intelligence-driven process. The change was particularly significant for intelligence personnel. Not surprisingly, Iraqi Security Force (ISF) personnel turned out to be better at gathering intelligence on other Iraqis than U.S. forces had been. As a result, U.S. Soldiers at lower level units talked to their Iraqi counterparts, and then handed over already prepared warrant packets.

RECOMMENDATION: Improve. With the move to the Security Agreement legal framework, JAs must now also understand and be able to articulate the standards for obtaining Iraqi warrants and detention orders.⁹⁰

⁸⁸ 1AD 2009 OIF AAR, *supra* note 29.

⁸⁹ *Id.*

⁹⁰ 4ID 2009 OIF AAR, *supra* note 20.

ISSUE: Training on detainee packets and tactical site exploitation (TSE)

DECISION: Upon arrival in Iraq, DetOps attorneys focused on learning the way in which the Iraqi legal system worked, the elements required for successful prosecution, and the manner in which U.S. forces could help to provide those elements. Because of this analysis, they realized the Iraq legal system required more evidence for successful prosecution. CCCI judges were already relying heavily on photos as evidence.

U.S. forces normally provided evidence to CCCI through the detainee packets assembled by the capturing unit. Because the outgoing division had decentralized detention operations, brigades sent their detainee packets directly to the TIF. The quality of those packets tended to be uneven. DetOps attorneys tried to work with those units whose packets were of poor quality. They also worked closely with the division G2X, talking with him beforehand to ensure he knew the requirements for continued detention in order to discourage the possibility of apprehension where the unit could not meet the requirements.

Division units helped Task Force Troy teach small Iraqi units and conduct “train the trainer” sessions with ISF. DetOps attorneys also tried to organize an effort to assemble a site exploitation kit for U.S. Soldiers and encouraged units to teach their Soldiers to obtain basic elements such as a completed apprehension form, witness statements, and photos of the detainee with a weapons cache.

DetOps attorneys noted an improvement in detainee packets over time. They found the best method was to assemble a sample packet and distribute it to units, so Soldiers could see the required documents and the way they looked once complete. DetOps attorneys distributed the sample packet to new units upon arrival, and posted it prominently as well. Some units carried it when they conducted raids. Soldiers exposed to such materials did a good job of preparing detainee packets. DetOps attorneys also found it helpful to ensure Soldiers understood it was important to include in their statements the “why” of the actions they had taken at the point of capture.

The transition to the Security Agreement legal framework did not mean significant changes to these efforts or procedures. The detainee packet for a detainee held in a U.S. detainee holding area (DHA) now included an Iraqi warrant. As well, near the end of the deployment, it became standard division practice to add the targeting packet to the detainee packet.

RECOMMENDATION: Sustain. DetOps attorneys should begin working with units before deployment, training designated personnel to conduct site exploitation (and train their ISF counterparts to do so as well).⁹¹

ISSUE: Determining which Soldiers require more detailed site exploitation training

DECISION: DetOps attorneys concluded it was best not to try to make all Soldiers into experts. However, because the U.S. or ISF unit responsible for site exploitation often cannot remain on the scene for a long time because of force protection concerns, it is important for someone in each unit to possess at least some knowledge (Soldiers may not be able to wait for someone else to arrive at the scene and take control).

⁹¹ *Id.*

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RECOMMENDATION: Perhaps a unit that sent out a medic with every truck could ensure those medics received training, or perhaps the MPs would act as the source of expertise.⁹²

ISSUE: DetOps attorney familiarization with intelligence functions (auditing G2X course)

DECISION: One DetOps attorney audited the G2X course at Fort Huachuca before deployment. This allowed him to understand some of the terms used by intelligence personnel, their training, and some of their basic capabilities. The DetOps attorney found this knowledge helpful during the targeting/warranting process, where the JA may need to help determine whether there are sufficient grounds for detention/arrest.

RECOMMENDATION: Sustain. Auditing the G2X course may be very helpful for any JA expected to have significant interaction with military intelligence personnel. The JAG Corps can send 2-3 attorneys per G2X course.⁹³

ISSUE: Working with G2 personnel to understand basis and evidentiary requirements for detention

DECISION: JAs who challenge a G2 request for detention must be careful because repeatedly denying such requests may mean exclusion from the targeting process (e.g., the unit detains the individual in any case, allowing interrogation until release is required by the lack of substantiation for continued detention). Before the move to the Security Agreement legal framework, units often detained individuals for interrogation purposes until the end of the 14-day period (when guidance required a move to the TIF).

RECOMMENDATION: Improve. DetOps attorneys should work closely with intelligence personnel to ensure their understanding of the basis for detention under the Iraqi legal system, as well as the resulting evidentiary requirements.⁹⁴

ISSUE: Early designation of a DetOps attorney

DECISION: A few months before the deployment, the SJA assigned one JA to be the DetOps attorney. He attended the The Judge Advocate General's Legal Center and School (TJAGLCS) OpLaw short course, and briefed all brigade JAs while still in garrison, about six weeks before deploying. He focused on describing the standard required for detainee packets, to educate commanders and set expectations. Initially, DetOps was a full-time job for one attorney. The first attorney rotated to other duties, and two other attorneys served as the DetOps attorney throughout the deployment.

RECOMMENDATION: Sustain. Predeployment designation of a DetOps attorney allows that JA to receive proper training and to work with division and brigade personnel.⁹⁵

ISSUE: Support from the Navy

DECISION: The Navy provided two quality O-4s to support detention operations.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

RECOMMENDATION: Sustain. Having field-grade officers in those positions allowed them to participate effectively at the corps planning level.⁹⁶

ISSUE: Build relationships with other staff sections

DECISION: The detainee operations attorney talked daily with the G2, G3, Information Operations cell, Provost Marshall, division targeting cell, and law enforcement professionals (LEPs), among other staff members. Good relations with other staff sections allow the detainee operations judge advocate to integrate effectively into the mission.

RECOMMENDATION: Improve. Build relationships as soon as practical in garrison, pre-deployment exercises, and once in the AO. Understand the functions of other staff sections and integrate detainee operations into their mission.⁹⁷

ISSUE: Detainee processing in Provincial Iraqi Control (PIC) provinces

DECISION: All three of the provinces in the 4-1 CAV AO were PIC provinces. The unit had to turn over all detainees to Iraqi control within 24 hours. Consequently, they rarely kept detainees at field detention sites for very long. Once the detainees were in Iraqi facilities, the only applicable timelines were those under Iraqi law. Law enforcement professionals (LEPs) could still arrange to interrogate the detainees.

RECOMMENDATION: Sustain.⁹⁸

Role of Paralegals in Detention Operations

OIF ISSUE: Failure to include paralegals in detention operations

DECISION: The unit determined including paralegals in daily detainee operations was not necessary.

RECOMMENDATION: Improve. JAs must evaluate the need to give paralegals greater responsibility when working with detention operations and recognize that the paralegals can add value to the daily operations.⁹⁹

ISSUE: Insufficient number of paralegals working in the detention operations cell

DECISION: During the deployment, a majority of the paralegals working in the detention operations cell redeployed due to family care plan (FCP) issues, a custody battle, and reclassification. A minimum of three paralegals was necessary to keep detention operations afloat. In order to maintain those numbers, the unit had to pull a paralegal from another unit and seek augmentation from the division.

RECOMMENDATION: Improve. Although it is difficult to predict the future, ensure you have done all that is necessary to square your paralegals away before deployment. If there are any

⁹⁶ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁹⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁹⁸ 4-1 CAV 2009 OIF AAR, *supra* note 12.

⁹⁹ 3ID 2008 OIF AAR, *supra* note 10.

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issues, try to resolve them before deployment. Staff a minimum of three paralegals at the brigade headquarters in case division pulls one of them to the division level.¹⁰⁰

ISSUE: Paralegal role in detention operations

DECISION: The paralegals co-located with battalions took an active part in detention operations, conducting training with their units and maintaining oversight of the detainee collection points. This was helpful because detention standards were evolving continuously during the transition to a new legal framework under the Security Agreement (e.g., with respect to obtaining Iraqi witness statements), and the paralegals received feedback from battalion personnel about policy changes.

RECOMMENDATION: Sustain.¹⁰¹

ISSUE: Use of enlisted Marines in battalion DetOps

DISCUSSION: During Exercise “Mojave Viper,” the BN JA received three Marines (a staff sergeant, corporal, and lance corporal) to assist in DetOps. The training and practical application Mojave Viper provided was crucial to the BN’s later success. Once in Iraq, the BN effectively performed split operations, with one Detainee Collection Point (DCP) in the western half of the unit’s AO and another DCP in the eastern half. During the deployment, the BN detained over 95 Iraqis, usually in groups of one or two. As the responsible officer for DetOps, the BN JA relied heavily on the staff sergeant and corporal, who were the Staff NCO and NCO in charge of the DCPs, since the BN JA could only be physically present at one of the locations at a time.

RECOMMENDATION: Sustain. Marine NCOs are more than up to the task to provide oversight of DCPs in BN DetOps.¹⁰²

Tracking Systems for Detention Operations

OIF ISSUE: Lack of a central detainee database

DECISION: There was no single, centralized database to manage all of the detainees. This caused the detention operations JA to expend a lot of unnecessary time and energy. Each brigade identified detainees with their own systems of numbers. Consequently, it was difficult to locate a particular detainee or file or to be sure that the division and brigade were referring to the same detainee.

RECOMMENDATION: Improve. Create one central database for tracking all detainees and create a uniform method to identify every detainee within the theater.¹⁰³

ISSUE: Using detainee database to respond to inquiries

DECISION: The RoL section frequently received queries about whether a certain individual was in U.S. custody. RoL advisors searched a TF-134 Excel spreadsheet listing current and previous U.S.-held detainees maintained on the TF-134 SIPR website to find answers to these questions.

¹⁰⁰ *Id.*

¹⁰¹ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

¹⁰² 2d Battalion, 2d Marines, Battalion Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – November 2008 (18 Dec. 2008) [hereinafter 2/2 Marines 2008 OIF AAR] (on file at CLAMO).

¹⁰³ 3ID 2008 OIF AAR, *supra* note 10.

Because many Iraqi names are similar, or may be transcribed into English in a variety of ways, it was helpful to obtain as many details as possible from the individual seeking the information (e.g., date of birth, date of capture, etc.).

RECOMMENDATION: Sustain.

ISSUE: Tracking detainees from Special Forces units

DECISION: The brigade received many detainees onto their base from “other” units (Special Forces units). This caused problems when they forwarded reports of detention to HHQ without any visibility to the brigade. The result was calls from HHQ concerning detainees about which the brigade had no idea.

RECOMMENDATION: Be educated about the detention operations procedure, facilities, and timelines before deploying. In addition, establish relationships with all these “other” units so they feel comfortable and are willing to keep your command in the loop on their detention operations (especially if your commander is responsible for the base and anything that might happen to the detainees).¹⁰⁴

ISSUE: Managing and responding to the TF-134 release list

DECISION: It was an ongoing job to establish, develop, and refine an administrative tracking process that allowed the DetOps officer to not only seek input from the subordinate commands, but also from local provincial leaders and ISF. A solid tracking and spreadsheet system was essential. In addition, the use of interpreters in the detention operations release process was critical due to the challenges of trying figure out the names of detainees. This was true especially when the commands were interacting with the local populace and were trying to locate specific individuals without the assistance of Internment Security Numbers (ISNs).

RECOMMENDATION: Continue to utilize efficient tracking systems and processes. Utilize interpreters to assist with the processing of TF-134 release lists.¹⁰⁵

ISSUE: Tracking system for detainees turned over to Iraqi control

DECISION: The division did not assign a uniform tracking number to detainees they turned over to Iraqi control. Units having the Biometric Automated Toolset System (BATS) used it to input detainees at Iraqi facilities and track abuse allegations.

RECOMMENDATION: Improve. It is important to follow up on the condition and status of detainees turned over to Iraqi control. The tracking of detainees in the Iraqi system is an important metric to determine the success of the Rule of Law program.¹⁰⁶

ISSUE: Division-level detainee operations record tracking system

DECISION: The division determined the need for a comprehensive detainee tracking system. An ideal system would be web-based, have a separate tab for each unit, and include links to serious incident reports and investigations pertaining to allegations of abuse. Such a system

¹⁰⁴ 214th Fires BDE 2009 OIF AAR, *supra* note 14.

¹⁰⁵ I MEF (FWD) 2009 OIF AAR, *supra* note 43.

¹⁰⁶ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

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facilitates the unit's ability to respond to FOIA requests, as well as the commander's information requirements.

RECOMMENDATION: Improve. The division detainee operations section must maintain an adequate tracking system and pass this on to its successors. The best system is web-enabled and allows users to access detainee information. The system must possess simple search and report generating capabilities.¹⁰⁷

ISSUE: Combined Information Data Network Exchange (CIDNE)

DECISION: CIDNE is a contractor developed, web-based, SIPR based system. CIDNE provides a database of targeting and warrant information, site pictures, prison inspections, and records of key leader engagements (KLEs). The detainee operations attorney did not make full use of the capabilities of this system due to lack of training.

RECOMMENDATION: Improve. Understand how to use CIDNE before entering the AO. Take advantage of CIDNE training during Mission Rehearsal Exercise (MRX) and once in theater.¹⁰⁸

Detention Review

OIF ISSUE: Procedures for review of detainee packets

DECISION: The regiment did not implement a board system to review detainee packets because it was too difficult to assemble all the participants and, at times, the regiment handled more than fifty detainees over the course of a week. Instead, the detainee holding area (DHA) sent the packet to the regimental S2X. The regimental interrogators then had an opportunity to question the detainee. The S-2 summarized his views in a paragraph, and emailed the packet—including his comments—to the JA for review. The JA considered both the detainee's intelligence value and the level of evidence available. The JA then emailed the packet to the regimental executive officer (XO), to whom the commander had delegated responsibility for detention issues. The XO considered the packet materials, asked additional questions if necessary, then made his decision. Review of detainee packets had to occur very quickly because almost one week of the two weeks available had to be set aside for transportation to the theater internment facility (TIF).

RECOMMENDATION: Sustain.¹⁰⁹

ISSUE: Timeliness of detention packets

DECISION: Common practice in the BCT was for the S2 shop to review the detention packets and then send them to the legal shop for review. Each section had a certain amount of time to review the packets, but the S2 shop never stuck to the timelines. If a packet did not have enough evidence for the S2's liking, they would sit on the packet for an unreasonable amount of time. This would significantly shorten the legal shop's time for conducting reviews, which caused everyone to scramble.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ 2SCR 2009 OIF AAR, *supra* note 1.

RECOMMENDATION: Improve. Ensure the command understands the importance of timely detention packets, and the consequences of a late packet. Talk to your commander about this before the deployment so he or she will set, and enforce, timelines.¹¹⁰

ISSUE: Detention based on insufficient evidence

DECISION: The trial counsel (TC) was responsible for advising on detention operations and, therefore, reviewed the evidence packets. The deputy commander (DCO) was the detention review authority (DRA). The S2X reviewed the packet first, then the TC, then the Provost Marshal's Office (PMO). In some cases, the S2X relied on intelligence indicating the detainee was a key figure, although the intelligence did not necessarily confirm he was engaged in criminal activities. As a result, units sometimes detained individuals without witness statements confirming such involvement. The command initially accepted the S2X's arguments as a basis for detention, but as time went on, they began to realize individuals would only be subject to long-term detention if prosecution were possible. In fact, it became pointless to detain without sufficient evidence, because doing so might simply tip off the detainee that he was under coalition scrutiny.

RECOMMENDATION: Improve. The S-2 needs to better understand the importance of sufficient evidence in order to detain individuals.¹¹¹

ISSUE: Detention Review Boards (DRB)

DECISION: The BCT did not use DRBs. The BJA, S2X, and Deputy Commander (DCO) preferred a system in which each relevant staff section would review the packets and then offer their opinions to the DCO, who had the power to release per the delegation of authority from the BCT commander.

RECOMMENDATION: Sustain. Although each unit can decide its own detainee review process, 2BCT's BJA preferred this method because it allowed handling the military intelligence and legal issues distinctly, outside the confines of a formal meeting. In this way, the DCO did not have to listen to the voicing of divergent staff views when it was time to make a decision. Instead, the DCO could carefully review each argument put forth in the respective, written staff opinions.¹¹²

ISSUE: Detention Review Boards (DRBs)

DECISION: The unit leaned forward in its detainee processes and procedures by holding DRBs every other night, and discussing detainee packets immediately after compilation. The regimental commander (RCO) or the deputy regimental commander (DCO) chaired the boards, while the S2X (intelligence officer), a JA, and the PMO sat as members.

RECOMMENDATION: Encourage the command team to take an interest in detention operations. With one of the two senior officers chairing the DRB, the entire staff recognized the importance of the meetings and the mission. The command-emphasis greatly energized those members of the staff who compiled the detainee packets to pass on quality work performed in a timely manner. The prompt processing enabled the DRB to outpace the average unit's decision

¹¹⁰ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

¹¹¹ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

¹¹² 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 53.

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time on a given detainee. By the time the detainee stood before the board, the members (typically) had already had an opportunity to digest the merits of the case.¹¹³

ISSUE: Detention review board

DECISION: Under MNC-I policy, after the brigade commander made the decision to send a detainee to the Theatre Internment Facility (TIF), the TIF held the review board. Following MNC-I guidance expedited the process of transferring detainee to the TIF. It reduced process time significantly to allow the TIF to do the review instead of duplicating the review at division.

RECOMMENDATION: Sustain.¹¹⁴

ISSUE: Detainee packets

DECISION: The 3d ACR system for detainee intake and processing exceeded the standard for three main reasons: First, the facility noncommissioned officer (NCO) regularly sent units back to complete sworn statements if those they attempted to turn in failed to meet the minimum requirements. This increased scrutiny upon receipt of statements and evidence from the capturing unit fueled the process beyond intake. Second, once the packet left the facility NCO's desk, the provost marshal (PMO) reviewed the packet before passing it onto the paralegal assigned to prepare the cases for the DRB. Relentless review and quality control of the packets ensured the DRB reviewed a complete and organized file. Finally, the sheer volume of detainees brought into the brigade detention facility required lots of practice. During August and September 2008, the unit detained approximately 30 people per week.

RECOMMENDATION: BJAs and their paralegals should note this success is directly attributable to the strict quality control system they employed in this particular discipline. One unit, who performed a mission under the authority of the unit, adopted less-than-strict detention operation standards before working with the unit. After reviewing this subordinate unit's detention packets, the DRB decided to release every single one of the detainees the subordinate unit captured. Poor packets and planning yield poor results.¹¹⁵

ISSUE: Detention Review Board (DRB)

DECISION: A judge advocate (JA), the S2X (military intelligence officer for detention operations), a representative from the provost marshal's office (PMO), and the Special Troops Battalion (STB) commander comprised the DRB. Unfortunately, the members' roles became confused and the JA had to reign in the other members of the team. One point of friction centered on mission creep and the other sections' expectations of what they thought the JA should do.

RECOMMENDATION: Stay in the legal lane and do not perform tasks clearly outside of your expertise. Resist other officers' demands of your time if it conflicts with the legal mission.¹¹⁶

¹¹³ 3ACR 2009 OIF AAR, *supra* note 15.

¹¹⁴ 1AD 2009 OIF AAR, *supra* note 29.

¹¹⁵ 3ACR 2009 OIF AAR, *supra* note 15.

¹¹⁶ 3d Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – February 2009 (6 May 2009) [hereinafter 3BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

Detention Facility Inspections

OIF ISSUE: Division detention facility inspection procedures

DECISION: The division inspected its detention facilities on a monthly basis. The division inspector general (IG) played an important role in this regard, heading up a team that included Provost Marshal's Office (PMO), JA, and S2X representatives. The IG team was responsible for identifying issues (contained in the team's written report) and making observations (briefed directly to detention facility personnel). After the move to the Security Agreement legal framework, the division retained the ability to detain, but closed three of its Detainee Holding Areas (DHAs).

RECOMMENDATION: Sustain.¹¹⁷

ISSUE: Inspection team overload

DECISION: The slightest of problems related to detainee operations triggered "inspection team overload" due to the numerous U.S. government organizations playing a role in detainee operations and rule of law, including the Department of State (DoS) and the Department of Justice (DoJ). For example, agencies with no task to investigate a problem would respond. The response lead to too many people looking at the same issue and inhibited persons actually tasked to investigate. The detainee operations attorney and BJAs tried to deconflict these efforts but often could not prevent higher-ranking officials and other agencies from interfering in what should have been a unit-level investigation.

RECOMMENDATION: Improve. Although very important, allow persons tasked with investigating the detainee operations issue the space to complete their job. Hold these people responsible for accurate reporting. Only send additional response personnel when by the investigating officer requests additional personnel.¹¹⁸

ISSUE: Paying for food and medical supplies for detainees in Iraqi custody

DECISION: During inspections of Iraqi facilities, units often found those facilities lacking in food and medical supplies for detainees. The division initially considered the use of CERP funds to provide these supplies, but determined they would fall under the prohibition against using CERP to support Iraqi security forces. The Iraqi Ministry of Interior (MoI) was responsible for providing such supplies.

RECOMMENDATION: Sustain. Even if a use if for an allowable CERP purpose (like urgent humanitarian need), it still may run afoul of other CERP prohibitions. Logistic support improvement within the Iraqi system is necessary to improve prison conditions.¹¹⁹

Detainee Abuse Allegations

OIF ISSUE: Detainee abuse and illegal interrogation procedures by U.S. personnel

¹¹⁷ 4ID 2009 OIF AAR, *supra* note 20.

¹¹⁸ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

¹¹⁹ *Id.*

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DECISION: There was an incident where a U.S. military interrogator forced a detainee to stand with his arms out and hold water bottles for an extended period. An MP saw this incident and raised the issue that this conduct imposed a stress position. The unit conducted an AR 15-6 investigation and instituted additional education to U.S. personnel on proper interrogation techniques.

RECOMMENDATION: Improve. Expand supervision of interrogators and improve education of U.S. personnel involved in interrogations.¹²⁰

ISSUE: Allegations of detainee abuse by U.S. Soldiers

DECISION: While many allegations occurred, the unit easily refuted them because they documented all aspects of detention.

RECOMMENDATION: Sustain. The detention operations JA should view detention operations as a partnership with the Provost Marshal's Office (PMO) or whoever is running the detention facility. This makes it much easier to maintain oversight of the facility and follow up on abuse allegations.¹²¹

ISSUE: Establishing detainee abuse allegation procedures and reporting channels

DECISION: Direction from higher headquarters required the division to make simultaneous reports of any abuse allegations in relation to U.S. forces to MNF-I, MNC-I, U.S. Army Central (ARCENT), and the division commander. Division procedures called for those in charge of detention facilities to report abuse allegations through both operations and legal channels. Allegations automatically triggered a commander's investigation. An incident involving personnel from a unit other than the one responsible for running the facility could cause difficulties because all subsequent reporting needed to go up both chains of command.

RECOMMENDATION: Units should consider, during predeployment training, the development and implementation of detainee abuse reporting procedures.¹²²

ISSUE: Determining OSJA lead on investigations into detainee abuse allegations

DECISION: In terms of OSJA handling of investigations into detainee abuse allegations, it was never clear whether the administrative law (AdLaw) or DetOps attorneys should take the lead. The lack of clarity meant it was possible for such investigations to "fall through the cracks."

RECOMMENDATION: OSJAs must determine whether DetOps or AdLaw attorneys should handle investigations into detainee abuse allegations.¹²³

ISSUE: Situational awareness of prospective investigations into detainee abuse allegations

DECISION: Initially, many OSJA and other division personnel were on the distribution list for serious incident reports (SIRs), which warned them that a unit was likely to initiate an investigation. However, a rape incident captured in a SIR midway through the deployment

¹²⁰ 3ID 2008 OIF AAR, *supra* note 10.

¹²¹ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

¹²² 4ID 2009 OIF AAR, *supra* note 20.

¹²³ *Id.*

prompted the commander to restrict the SIR distribution list to staff principals. The DetOps attorney also established contacts with brigade personnel to get information from them about detainee abuse allegations. This information did not necessarily match up with division inspector general (IG) numbers. The DetOps attorney sent copies of abuse investigation reports received from brigade JAs to the IG, and sometimes also to the AdLaw section, until the Chief of Operations (CHOPS) decided brigade investigations could be distributed to division personnel only after they had been forwarded through operations channels.

RECOMMENDATION: Improve. Work with the command to ensure key OSJA personnel are included on the SIR distribution list. The responsible section should consider establishing one or more means of ensuring sufficient situational awareness of abuse allegations, as well as a tracking system.¹²⁴

ISSUE: BCT reporting of abuse allegations and other detention-related issues

DECISION: When the DetOps attorney discovered that brigades were suppressing abuse allegations, he again sought to nurture contacts with brigade legal teams. OSJA staff assistance visits to newly arrived brigades would have been useful in the DetOps area. Such visits would have allowed the DetOps attorney to review detention and investigation procedures with brigade personnel and establish points of contact. Once the OSJA became aware of abuse allegations, division paralegals were responsible for the office tracking of them. Doing so was a sensitive matter because units rarely appreciated others examining their conduct.

RECOMMENDATION: Improve. DetOps attorneys should consider the possibility of visits to newly arrived brigade legal teams to make face-to-face contact, review detention policies and procedures, and emphasize the necessity to inform the division OSJA of any abuse allegations.¹²⁵

ISSUE: Lack of detainee abuse files from predecessor unit

DECISION: Many detainee abuse cases occurred before the division took over Multi-National Division – Baghdad (MND-B). Unfortunately, the division's predecessor did not leave detailed files or case trackers. This left the criminal law NCOIC with very little information to use to piece together the open cases.

RECOMMENDATION: Improve. It is important to leave your replacement unit with a detailed case tracker and corresponding files. Try to close as many cases as possible before the transfer of authority.¹²⁶

ISSUE: Allegations of IA/IP abuse of detainees

DECISION: There were allegations about abuse of detainees. There was no U.S. involvement in these allegations, but the BCT nonetheless engaged the Iraqi commanders to ensure this type of behavior was not occurring.

RECOMMENDATION: Be aware of allegations and continue to engage the Iraqi commanders.¹²⁷

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

ISSUE: Iraqi on Iraqi abuse

DECISION: Soldiers witnessed Iraqi on Iraqi abuse, triggering U.S. investigations. Once complete, U.S. units handed the investigation to the appropriate IA or IP commander for action.

RECOMMENDATION: U.S. units have no authority to punish members of the IA or IP. However, they should continue to perform investigations of the observed incidents, handing them over to the Iraqis and forwarding the files up the chain of command to ensure they protect the U.S. personnel peripherally involved.¹²⁸

ISSUE: Division procedures for dealing with allegations of detainee abuse by ISF

DECISION: The prospect of conducting combined operations with ISF, or transferring detainees captured by U.S. forces to the ISF, raised the possibility that U.S. forces would need to deal with allegations of ISF abuse of detainees. The division was also responsible for inspecting five ISF detention facilities. U.S. units that became aware of abuse allegations were required to report them up through military police and rule of law (RoL) channels. U.S. forces had no requirement to investigate the incident, and U.S. guidance was to handle any incidents at the lowest possible level. The DetOps attorney pushed out this requirement to division MiTTs. Reporting abuse to the GoI always resulted in a response that “something was being done,” but the DetOps attorney was never able to verify what action the GoI actually took.

RECOMMENDATION: Improve. DetOps attorneys and RoL personnel should be aware that MiTTs assigned to the Ministries of Defense and the Interior may be able to provide information about action taken in response to allegations of detainee abuse.¹²⁹

ISSUE: Results of investigations of detainee abuse by Iraqi personnel

DECISION: Units responded well to allegations of detainee abuse by Iraqi security forces and prison personnel, investigating these allegations and taking pictures during inspections of Iraqi facilities. Units had to submit a serious incident report (SIR) through division to MNC-I for every allegation of abuse. In January 2009, MNC-I downgraded the classification for such reports to “Unclassified” so units could share the results with the appropriate Iraqi officials. However, units typically shared the results with higher-level government officials rather than with the Iraqi personnel at the detention facility.

RECOMMENDATION: Improve. In addition to sharing the results of detainee abuse investigations with higher-level government officials, it is important to debrief personnel cleared of allegations of detainee abuse and use this information to train personnel.¹³⁰

ISSUE: Detainee claims

DECISION: Claims judge advocates must be aware of the special procedures for handling claims from detainees stating that U.S. personnel abused or maltreated them. Upon receipt of an abuse claim from a detainee, claims judge advocates must notify the U.S. Army Claims Service (USARCS) immediately. They should also ensure that records are kept reflecting the date on

¹²⁸ 3ACR 2009 OIF AAR, *supra* note 15.

¹²⁹ 4ID 2009 OIF AAR, *supra* note 20.

¹³⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

which they notified USARCS of the abuse claim, and work closely with USARCS by updating them on the abuse claim's investigation.

RECOMMENDATION: None.¹³¹

Prosecution of Detainees (CCCI & Task Force 134)

OIF ISSUE: Understanding the Iraqi legal system in support of prosecutions at CCCI

DECISION: Ideally, U.S. forces transferred U.S.-captured detainees from the TIF to the Central Criminal Court of Iraq (CCCI) for prosecution. The pressure for such transfers and prosecutions increased during the deployment. These JAs needed to understand the Iraqi legal system in order to provide effective support to it, thereby improving the prospect of successful prosecutions.

In the Iraqi legal system, witnesses usually testify before an investigative judge (IJ), whether to obtain a warrant or provide evidence during the subsequent investigation. This is normally the only means of obtaining a sworn statement. When a U.S. unit obtained a warrant from an IJ, the IJ compiled a warrant file for the accused. The warrant file contained any evidence gathered at that point, including witness testimony.

After arrest, an IJ had to grant a detention order allowing the accused to remain in custody. The IJ responsible for investigating the case assembled a case file. That IJ could hear witness testimony, or could issue a request to an IJ in another location to do so. Any testimony was included in the case file, which also included the warrant file. Where one IJ was responsible for hearing the testimony used to obtain the warrant, but another IJ—e.g., at CCCI—subsequently assumed jurisdiction, the first IJ transferred the warrant file to the second IJ. While the material in the warrant file was admissible, the IJ who now had jurisdiction considered the statements in it to carry less weight than any testimony heard by him.

JAs became aware it was sometimes difficult to obtain testimony from witnesses who could disappear or die unexpectedly. When they obtained access to someone who was a potential witness for a matter CCCI was investigating or hearing, they emailed the CCCI JAs to ask the IJ with jurisdiction to issue a request for the individual's testimony. CCCI emailed back the order in Arabic. The JAs took the order to the local IJ, who heard the testimony and wrote the witness's statement in longhand. Once the statement was complete, the local IJ sent it to Baghdad through judicial channels by courier, or via the JAs. If he used a courier, the JAs asked for a copy, then scanned and emailed it to CCCI as well. Testimony ordered by an IJ in this way was admissible. This procedure augmented the case file with testimony from witnesses who might later be unavailable, and helped increase the prospect of a successful prosecution.

RECOMMENDATION: Improve. JAs who do not understand the host nation legal system will have difficulty supporting it by helping to locate witnesses and obtain testimony. Learning how the legal system works can be difficult. In this case, there was a difference between a book description of the Iraqi legal system or the information provided to JAs working at the Embassy level, and the way the system actually worked on the ground.¹³²

ISSUE: Lack of awareness regarding CCCI existence and role

¹³¹ XVIII ABC 2009 OIF AAR, *supra* note 30.

¹³² 2SCR 2009 OIF AAR, *supra* note 1.

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DECISION: Some U.S. forces are unaware of the existence and role of CCCI. During previous deployments, U.S. forces detained individuals and transferred them up the chain of command to the Task Force (TF) 134-run theater internment facility (TIF). Relatively few Soldiers were aware of the subsequent transfer of detainees to the Iraqi judicial system for trial before the CCCI. Although TF-134 provides liaison officers to division-level units, and these individuals sometimes brief BCT personnel on CCCI and its role, such briefings are not yet updated with information about the changes resulting from the Security Agreement legal framework.

RECOMMENDATION: JAs should assist commanders and staffs to educate Soldiers about CCCI's existence and role to improve understanding of the rationale for changes to detention procedures. Assigning Army JAs to TF-134 CCCI support positions would provide other CCCI personnel with improved understanding of the capabilities and limitations of U.S. Army units. Those JAs could also ensure such units receive timely feedback about their support to CCCI.¹³³

ISSUE: Corps Investigative Task Force (CITF)

DECISION: MNC-I has established the CITF, managed by the 733d MP Battalion (CID). The CITF also included legal, intelligence, and other law enforcement representatives (e.g., Office of the Staff Judge Advocate, law enforcement professionals (LEPs), Joint Expeditionary Forensic Facilities (JEFFs), and the Combined Explosives Exploitation Cell (CEXC)). The CITF's function was to develop targets for warrants, and support the resulting prosecution, as well as the prosecution of legacy detainees and individuals arrested in self-defense. The CITF sent CID agents to assist units to carry out these tasks, review the evidence, and forward it to the appropriate review authority (e.g., CCCI or TF-134, in the case of legacy detainees). A lower level unit interested in a specific individual could also ask for assistance in developing the material necessary to obtain a warrant or, if the individual is already in custody, the material to obtain a detention order and/or strengthen a prosecution file. However, most CITF work revolved around the legacy detainees. The CITF's role and procedures continued to evolve.

RECOMMENDATION: Sustain.¹³⁴

ISSUE: Establishment of prosecution task forces (PTFs) at division and brigade levels

DECISION: Divisions and brigades began to stand up PTFs. Divisions originally initiated the concept, but more and more BCTs followed suit. A PTF was usually composed of a representative from each landowning battalion, as well as from the various staff branches, including the JA (taking the lead in some cases), PMO, LEP, S2X (HUMINT), assistant S3, fire support coordinators, targeting officers, Iraqi Security Forces (ISF) liaison officer (if any), etc. PTFs generally categorized cases as those requiring warrants, those requiring detention orders (or those where U.S. forces should ensure ISF try to obtain one in order to allow continued custody), and those requiring the tracking of or support to a prosecution. PTFs were usually more concerned about current threats than about threats arising from legacy detention cases, although they still investigated legacy detention cases if requested to do so. One BCT developed a draft PTF standard operating procedure (SOP).

BCTs increasingly took responsibility for going directly to a CCCI IJ, working through the TF134 JAs assigned to CCCI. They informed division headquarters they were doing so, but

¹³³ Asymmetric Warfare Group, After Action Report, Operation Iraqi Freedom, November 2008 – April 2009 (17 Apr. 2009) [hereinafter AWG 2009 OIF AAR] (on file at CLAMO).

¹³⁴ *Id.*

division had explicitly or implicitly approved this process (e.g., because the target list was already pre-approved). However, once a BCT obtained a warrant, it was necessary to send that information up to the CITF and division PTF and through targeting channels to include it in databases.

RECOMMENDATION: Sustain.¹³⁵

ISSUE: Establishment of combined pre- and post-capture exploitation and intelligence cells (CP2CXC) at division and brigade levels

DECISION: The CP2CXC was a material concept for the PTF that is still under development. A CP2CXC was similar to a combined (Iraqi-U.S.) BCT joint operations center (JOC). It allowed pre-staging in the event of a time-sensitive target (TST)—when obtaining or executing a warrant—to make plans, gather personnel, and provide a central location to which personnel could return for witness interviews, document and media exploitation, IJ access, etc. A CP2CXC usually included both U.S. forces and their ISF counterparts (either Iraqi Army (IA) or Iraqi Police (IP) personnel, because these two forces do not necessarily work well together). Units successfully established physical facilities for initiating CP2CXCs in two locations. The buy-in of the Iraqis who accompany U.S. forces on any given mission was a vital aspect of the CP2CXC concept.

Ideally, each CP2CXC would include an IJ, who carried out all witness interviews immediately after the arrest/detention of a suspect to ensure anonymity and facilitate turn-around on detention orders. However, U.S. or Iraqi Army personnel who had received interrogation training were sometimes reluctant to cede priority to an IJ, or, more likely, an IJ was not always available. In that case, it was helpful for an Iraqi Army (IA) interrogator, an Iraqi Police (IP) investigator, or a judicial investigator to carry out the initial interview. When this occurs, a U.S. representative should be present to ensure the interview occurs in accordance with established rules. Use of a combined U.S.-Iraqi facility: (1) ensures U.S. forces comply with the Security Agreement (SA) requirement to hand over a detainee to the CIZA within 24 hours; (2) facilitates U.S. and Iraqi forces obtaining a detention order; and (3) makes it easier to track the detainee and potentially secure a legitimate confession due to shock of capture.

Most divisions closed down their division holding areas following the implementation of the SA. Most units were reluctant to detain insurgents on FOBs or to transfer them to the theater internment facility (TIF) because of all the new requirements.

RECOMMENDATION: Improve. Refine and implement the CP2CXC concept in additional locations.¹³⁶

ISSUE: Understanding the Central Criminal Court of Iraq (CCCI)

DECISION: It is imperative for JAs to understand the process at the CCCI level. This will better define ways for the BCT to handle detention operations for successful prosecutions.

RECOMMENDATION: Visit CCCI as soon as the command arrives in Iraq and watch their operations and process in person.¹³⁷

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

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ISSUE: Turnover of Navy and Air Force attorneys at TF-134

DECISION: The Navy and Air Force supply attorneys as individual augments to TF-134. Unfortunately, their assignments are between 4-6 months, and this creates issues for the BCT, which deploys for 12-14 months. The result is that relationship formation and files transfer occurs several times at the TF-134 level. This prevents continuity for the BCT. In addition, they do not understand the Army and the naming conventions of Army units. This makes witness coordination inefficient as they repeatedly sent witness requests to the wrong Army units.

RECOMMENDATION: Extend the assignments of the Navy and Air Force officers at TF-134 to 12 months.¹³⁸

ISSUE: Coordination with and lack of continuity on the part of CCCI JAs

DECISION: While the division OSJA preferred contact with CCCI to go through them, these JAs found working through an intermediary to be too unwieldy. They also found it frustrating to work with CCCI attorneys. USAF and USN JAs normally filled CCCI billets, and tended to be deployed for four months at a time.

RECOMMENDATION: Improve. Sister services will likely to continue to deploy their personnel for short tours (sometimes with an under lap, so no handover is possible), but Army JAs should encourage those personnel to improve continuity by developing office standard operating procedures.¹³⁹

ISSUE: Turnover of personnel at CCCI

DECISION: Attorneys at CCCI sometimes were in a position for a very short length of time. The high turnover rate at times slowed down the prosecution process and sometimes resulted in different standards. The division detainee operations judge advocate had to explain to new attorneys the perspective of the ground units and the difficulties in meeting CCCI's sometimes inflexible court schedules.

RECOMMENDATION: Improve. Personnel at CCCI should remain in jobs for longer periods. Understandably, personnel will turnover their positions. Assign personnel to a job at for a minimum tour length of at least six months. Detainee operations personnel should strive to build relationships at CCCI and educate them concerning the constraints on combat units. CCCI should allow for more flexibility when scheduling hearings.¹⁴⁰

ISSUE: Location of CCCI

DECISION: Trying Mosul cases in Baghdad made it difficult for both U.S. and Iraqi witnesses. Commanders scoffed at the amount of time Soldiers were out of the fight to attend hearings where they did not testify. It was rare enough to find an Iraqi willing to come forward and testify in Mosul, rarer still to find one willing to travel to Baghdad to testify.

¹³⁸ *Id.*

¹³⁹ 2SCR 2009 OIF AAR, *supra* note 1.

¹⁴⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

RECOMMENDATION: Corruption runs amok within the existing court structure and jurists who practice there, so the CCCI may be the best fit for the problem. However, a Baghdad court, no matter how well staffed and secured, cannot efficiently try Mosul cases. The government of Iraq, through the CCCI, needs to start a functioning, supported regional criminal court in or around Mosul (unlike the current major crimes court (MCC) nearby).¹⁴¹

ISSUE: CCCI liaison officer (LNO)

DECISION: CCCI assigned a JA LNO to the Multi-National Division – North (MND-N) headquarters to educate and train subordinate units on the central court’s rules and processes. The LNO, in turn, traveled to subordinate U.S. units and taught commanders and Soldiers the necessary evidentiary and administrative requirements for CCCI prosecutions.

RECOMMENDATION: Support this program to the fullest. The prospect of a just, operational regional CCCI court is tantalizing, but implausible in current times. The LNO may be the best training link you have between those who catch the bad guys (subordinate units) and those who prosecute them (CCCI), so utilize him/her as often as possible.¹⁴²

ISSUE: Use of LNO to TF-134

DECISION: In past deployments, due to problematic relationships between commands and TF-134, MNF-W assigned LNOs. They did so to ensure a way to get information from TF-134. Approximately six months into MNF-W’s deployment, the relationship with TF-134 developed to the point the LNO was unnecessary. MNF-W maintained a strong line of communication with TF-134. The CG also gave very clear guidance and made it a command priority, directing the staff sections to “make things work” regarding working with HHQ, including TF-134.

RECOMMENDATION: Continue to make strong communication and a positive working relationship with TF-134 a priority to eliminate the need to resource LNOs. Consistent communication is very important due to the high level of turnover for Navy and Air Force officers at TF-134.¹⁴³

ISSUE: Difficulty of obtaining timely air transport movements for CCCI witnesses

DECISION: One of the paralegals was responsible for assisting with the movement of U.S. witnesses to testify at CCCI. Air movement personnel typically assigned such personnel the lowest passenger priority—e.g., behind Soldiers travelling on leave. This resulted in repeated bumping of prospective witnesses, making travel particularly difficult for those located at remote FOBs—e.g., those based at FOB Normandy had to travel from there to FOB Warhorse, then to FOB Anaconda, and finally on to Baghdad. Excessive delays in arriving at CCCI might mean dismissal of the case. Excessive delays in returning from CCCI meant units lost the use of the Soldiers for much longer than necessary. The commander of one squadron called movement personnel at various passenger terminals, to no avail.

¹⁴¹ 3ACR 2009 OIF AAR, *supra* note 15.

¹⁴² *Id.*

¹⁴³ 1 MEF (FWD) 2009 OIF AAR, *supra* note 43.

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RECOMMENDATION: Improve. Units should consider issuing fragmentary orders (FRAGOs) ordering witness travel. They should also work with higher headquarters to ensure air movement assets throughout theater are aware of the priority placed upon U.S. support to CCCI.¹⁴⁴

ISSUE: CCCI witnesses

DECISION: The unit struggled to support the CCCI witness requests due to the operational tempo and geographic location. Specifically, by the time the unit received a witness request, the unit was unable to locate the requested witness and arrange travel to the CCCI.

RECOMMENDATION: CCCI must give earlier notice for witness requests.¹⁴⁵

ISSUE: Cooperation with CCCI attorney to improve detainee packet quality

DECISION: Assignment of a CCCI attorney to division also helped improve the quality of detainee packets. She looked at packets approved by the OSJA and provided an indication of how an Iraqi IJ might view them (e.g., “In my experience, the IJ said it would have helpful to have X or Y in this type of file”). This improved the prosecution rate in Baghdad because her review identified possible gaps in a detainee’s file within days of detention, not during the first review of the file upon transfer to the TIF. Before assignment of the CCCI attorney to the division, CCCI engagement with capturing units had been “hit and miss.” DetOps attorney participation on Multi-National Force Review Committee (MNFRC) boards was another helpful means of learning about essential elements of detainee packets.

RECOMMENDATION: Improve. Close cooperation with CCCI attorneys may pay off by increasing the prospect of successful Iraqi prosecutions.¹⁴⁶

ISSUE: Benefits of close cooperation with CCCI attorneys

DECISION: Working closely with the CCCI attorney also improved other aspects of cooperation with CCCI (e.g., moving witnesses, etc.). DetOps attorneys initially found it difficult to make contact with CCCI attorneys, and thought it would have been helpful to have travelled to the international zone (IZ) to meet them. The rapid turnover of CCCI attorneys, often seemingly without any handover with the outgoing attorney, caused difficulties for DetOps attorneys. Each new CCCI attorney seemed to have the same pile of files and needed to ask the same questions. Initially, TF-134 reviewed the detainee files, and then asked the capturing unit for more info. DetOps attorneys sent the request to the brigade or lower level unit, and then forwarded any response to TF-134. For those who went to CCCI, attorneys there would indicate the requirement.

RECOMMENDATION: Improve. DetOps attorneys should anticipate a requirement to work closely with CCCI attorneys, and should encourage them to prepare handover materials to improve continuity.¹⁴⁷

ISSUE: OSJA roles in coordinating witness support to CCCI

¹⁴⁴ 2SCR 2009 OIF AAR, *supra* note 1.

¹⁴⁵ 1AD 2009 OIF AAR, *supra* note 29.

¹⁴⁶ 4ID 2009 OIF AAR, *supra* note 20.

¹⁴⁷ *Id.*

DECISION: The division occasionally asked subordinate units to make U.S. witnesses available to testify at CCCI, and requested land-owning units to locate Iraqi witnesses believed to reside in their area of operations (AO) to determine their willingness to testify. The OSJA issued a FRAGO setting out procedures for dealing with CCCI witness support requests, and was responsible for oversight of the witness support process. The FRAGO included a questionnaire to determine whether Iraqi witnesses were willing to testify. Units were required to provide a response to the questionnaire ten days before trial. Units sometimes failed to produce U.S. witnesses at the required time, and sometimes reported Iraqi witnesses to be unwilling to testify (but this could also indicate unit unwillingness or inability to locate the Iraqi witness).

RECOMMENDATION: Improve. Legal personnel should be prepared to educate U.S. forces about the existence and role of CCCI. Division paralegals would have been better prepared to explain the CCCI role and witness support requirements to U.S. units if they had better knowledge of the CCCI themselves. A visit to CCCI, including a briefing on its role and procedures, would have been helpful in this regard.¹⁴⁸

ISSUE: **Sending legal personnel to the CCCI**

DECISION: The OpLaw section sent a non-commissioned officer (NCO) or JA to observe a CCCI hearing once a month. In addition to observing the hearing, that person would meet with Navy and Air Force personnel who worked at the CCCI. This way, they met face to face and could discuss certain issues. One issue was why it was not possible to send Army Soldier witnesses to the CCCI on a moment's notice.

RECOMMENDATION: Sustain. This practice worked well.¹⁴⁹

ISSUE: **Gathering CCCI prosecution lessons learned**

DECISION: Division OpLaw paralegals tracked detainees through the Iraqi legal system, and identified lessons learned. They sent these back to the capturing unit, indicating why prosecution had not occurred, or what sentence the detainee received upon conviction. While TF134 had assigned a CCCI attorney to the division, the OSJA usually liaised with CCCI on witness support issues via other CCCI attorneys located in the IZ.

RECOMMENDATION: Sustain. Units are more likely to absorb lessons drawn from actual events than from theoretical discussions of how the Iraqi legal system should work.¹⁵⁰

ISSUE: **Legacy detainee threat levels**

DECISION: The number one problem with “legacy detainees”—those which were in U.S. custody before the Security Agreement—was determining the priorities of prosecution and release. The Subject-Matter Threat Assessment Review (STAR) Board grouped legacy detainees into different threat levels and assigned them color codes as “green,” “amber,” or “red.” The colors corresponded to “low threat,” “medium threat,” and “high threat,” respectively. The “red threat” detainees were further broken into “dangerous radicals” or the highest threat level of “enduring security threats.” These threat categories drove the decision to release or prosecute a detainee and at what level.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

Disparities existed between the STAR Board and individual units as to which categories certain detainees fell. BCTs focused on their own priority prosecutions, which in some cases did not align with the STAR Board's determination. Moreover, the list shifted several times, resulting in wasted efforts of preparing cases for prosecution for detainees who the STAR Board later determined warranted release.

RECOMMENDATION: Improve. It is critical to determine the priority of prosecution and release early, so units can devote their efforts accordingly. In addition, the priority for prosecutions should focus on local prosecutions to help gain the support of local judges, take the burden off CCCI, and promote the rule of law in the eyes of the local populace.¹⁵¹

ISSUE: Forum to prosecute legacy detainees

DECISION: "Threat level" was the basis for the forum in which to prosecute a detainee. CCCI prosecuted detainees considered the most dangerous. Coalition Forces (CF) put the most effort into prosecuting "enduring security threats." Iraqi Provincial Courts (IPCs) often prosecuted detainees considered not as dangerous. A detainee case where evidence and witnesses were readily available had priority.

RECOMMENDATION: Improve. IPCs were most effective. Provincial judges supported prosecution of detainees turned over from Iraqi forces. A smaller CF "fingerprint" on the case usually resulted in better prosecutions.¹⁵²

ISSUE: Transferring detainees to Iraqi courts for prosecution

DECISION: An Iraqi investigative judge sought the release of a detainee for the purpose of prosecution in an Iraqi court. This detainee was also important to enable the judge to build cases against other insurgents. The capturing battalion received the request from the judge but was dilatory in processing the request and responding to the judge. This delay offended the judge. The situation required a key leader engagement (KLE) by the BCT to resolve the judge's discomfort.

RECOMMENDATION: Improve. Just as it is important to process detainees through the U.S. system in a timely manner, it is equally important to respond quickly to release requests for prosecution in the Iraqi courts. Unless U.S. forces have classified information indicating a particular detainee is a "bigger bad guy" than the Iraqis think, U.S. forces should turn detainees over to the Iraqis for prosecution whenever they ask.¹⁵³

ISSUE: Releasing legacy detainees for local prosecution

DECISION: The division and brigades sought to get lower-threat detainees released so local courts could prosecute them. However, units found the process of gaining approval from MNF-I and MNC-I to be time-consuming. These headquarters worried Iraqi forces might release the detainees rather than prosecute them.

¹⁵¹ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

¹⁵² *Id.*

¹⁵³ 4-1 CAV 2009 OIF AAR, *supra* note 12.

RECOMMENDATION: Improve. With respect to low-threat detainees, TF-134 should defer to the judgment of the BJA in deciding whether the local courts are ready to begin prosecutions. U.S. forces must balance the possibility of an unwarranted release by Iraqi officials with the need to start using the local Iraqi criminal justice system.¹⁵⁴

ISSUE: Relationships with Iraqi provincial judges

DECISION: The key to effective prosecution in Iraqi courts is an effective relationship between coalition forces and Iraqi provincial judges. Failure to give the head judges deference and recognition may result in the judges “poisoning” the pool of subordinate judges within the province. Successful prosecutions drop dramatically when the relationship with the head judge is sour. Moreover, some judges simply refused to use evidence coming from U.S. forces.

RECOMMENDATION: Improve. Treat the provincial chief judges with the same respect and courtesy due the provincial governor. This includes sending the appropriate rank of officer to engage these judges.¹⁵⁵

Release of Detainees

OIF ISSUE: Relationship of DetOps to RoL

DECISION: Detainee targeting relied heavily upon the recommendation from the Intelligence Officer, and often many detentions occurred because of distrust in the competence and trustworthiness of our Iraqi partners to adequately address security risks. With the anticipated expiration of United Nations Security Council Resolution (UNSCR) 1790, Coalition Forces (CF) began releasing an increasing numbers of long-term detainees. The BN organized a sort of parole system, which the Iraqi Police (IP) adopted. By the time of the BN’s redeployment, this process was Iraqi run with minimal Coalition oversight.

RECOMMENDATION: Although CF detention operations are largely outdated in Iraq due to the evolving international policy, it is important for DetOps to become part of the larger RoL efforts. DetOps seemed to focus on “hunting down and capturing bad guys” instead of the broader and more important goal of making the Iraqis responsible for their own country’s security operations.¹⁵⁶

ISSUE: Importance of coordination with provincial leadership for detainee release

DECISION: Upon arrival, MNF-W’s focus for the detention operations (DetOps) process was already on releasing, not detaining. The unit released hundreds of detainees per month. There was a 30-35 day period where MNF-W released over 1,000 detainees into their area of operations (the “Ramadan 1000”). This shift was due to the improving security situation in the area of operations. There was not a “command decision” to stop detaining people or start letting people out, but there was very close control from the CG on how many people to let out. One of the CG’s priorities was maintaining his relationships with the local tribal leadership and the political leaders. As a result, they all knew these detainees were coming, and the CG ensured the Iraqis were actually able to handle the number of releases back into the province. The CG listened to the Iraqis. When the provincial leaders informed him the releases were coming too fast, there

¹⁵⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

¹⁵⁵ *Id.*

¹⁵⁶ 2/2 Marines 2008 OIF AAR, *supra* note 102.

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was a “slow down” of releases. The local leaders were worried about the security situation. The provincial leaders later informed the CG that they were once again ready to accept an increased number of releases due in part to increased capabilities of the ISF. The CG coordinated directly with the local leaders.

RECOMMENDATION: Continue to listen to the provincial leadership about their capabilities. Although much of this information passed directly from the provincial leaders to the CG, the DetOps officer will have a huge role to play in this process, especially in keeping TF-134 informed of the ability to accept detainees for release.¹⁵⁷

ISSUE: Coordination with TF-134 for “mass releases” of detainees

DECISION: Ensure TF-134 is aware of the importance to continue “conditions-based releases” and the CG’s receipt of information from the provincial leadership. This policy allowed the battlespace owner, the commander on the ground, to have control over the number of releases and the pace of the releases. This requires a strong working relationship with TF-134 because it competes with some of their internal timelines and priorities. TF-134 and the MNF-W still “approved” detainees for release, but they had to wait until the province could safely release them into society. Once the security situation stabilized, the backlog cleared out very quickly. At one point, TF-134 could not keep up with the number of detainees MNF-W wanted to release.

RECOMMENDATION: In order to ensure the safe re-integration of detainees into the province, TF-134 must have knowledge of the security conditions on the ground. Although this will temporarily delay the release of some detainees, the backlog processes quickly.¹⁵⁸

ISSUE: Use of detainee photographs during the release process

DECISION: MNF-W obtained permission to use detainee photographs during the release process to assist in the warrant screening by local leaders. This was a very important piece of the command’s release process. Approximately 14 days before a release date, MNF-W provided local leaders a photo of the detainee so they could screen for Iraqi arrest warrants. MNF-W achieved this by obtaining access to the file in the Biometric Automated Toolset System (BATS) containing the photo of the detainee.

RECOMMENDATION: Continue this practice.¹⁵⁹

ISSUE: Incorporating local Iraqi leadership into the “guarantor” program

DECISION: For specific cases containing a lot of information on an individual or for “special releases,” MNF-W drafted a “guarantor” letter. The local leader making the request for release had to “sign for” the detainee and became responsible for future behavior. The Iraqi signing the letter was “guaranteeing” the released detainee would not engage in any insurgent or criminal behavior. The process could take some time for a specific MNF-W release request because the approval authority was the Deputy CG for DetOps, Multi-National Force-Iraq (MNF-I).

RECOMMENDATION: Continue to incorporate the local Iraqi leadership into the release process.¹⁶⁰

¹⁵⁷ I MEF (FWD) 2009 OIF AAR, *supra* note 43.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

ISSUE: Utilization of video teleconference (VTC) to coordinate detention release

DECISION: There was a tremendous effort to coordinate between the levels of the chain of command. One way that MNF-W achieved this was by using a VTC. This tool was extremely beneficial to the DetOps process. It enabled and forced people to be active players in the process.

RECOMMENDATION: Continue using VTCs as a means to coordinate with different commands, especially regarding DetOps.¹⁶¹

ISSUE: Releasing detainees to Iraqi Police

DECISION: Releasing detainees to the IP stations was an essential part of MNF-W's release, reintegration, and reconciliation process. IPs registered detainees at the IP stations. The police would then keep track of them, similar to a parole system (but not as formal as in the United States). Having pictures of the detainees ahead of time was a big part of the process. The sheiks, the guarantors, and the local community would know who was coming back to the local area.

RECOMMENDATION: Continue the process of providing photographs to the local leaders in the area and releasing detainees to the IP stations.¹⁶²

ISSUE: HHQ concern over providing photographs to local leaders before detainee releases

DECISION: Due to the high turnover at the HHQ, there were multiple cases of "concern" over this process due to a lack of awareness of the process. HHQ's initial response was that "this can't happen, and it is a violation of proper procedures." They made these assertions without knowing the background. They only saw photos "taken and provided" to the IP. They did not realize this was the start of a detailed process of reintegration. Using either the IP station or some local government facility and using the photographs to inform the local leaders who was returning is what allowed the local leadership to feel more comfortable with the increased number of releases. This process is what allowed "mass releases" to succeed.

RECOMMENDATION: Continue to utilize this process and be sure to continue to keep HHQ informed of the process. The incorporation of the Government of Iraq (GoI) into the release process is essential. The intent from this point forward is that everything is by, with, and through the Iraqis. Detention releases are no different.¹⁶³

ISSUE: Detainees' fear of release

DECISION: During the release process, detainees refused to get on the plane or the convoy because of a "fear for life," despite having approval for release. Sixty-five detainees objected to particular release sites, because they feared retributive harm. MNF-W therefore had the obligation to investigate and determine if it was a legitimate concern. Often MNF-W determined these detainees already had arrest warrants pending for them at the release site. Therefore, what they had was not a fear for life, but rather a fear of arrest, as they were simply going to go from one form of confinement to another. If they expressed a "fear for their life," MNF-W took their

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

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name and their photograph, presented it to the local authorities, and inquired into whether the local authorities knew of any reason why the detainee might have this concern. Occasionally, they would come back and report that an arrest warrant existed. On one occasion, MNC-I conducted an additional investigation to satisfy the International Committee of the Red Cross (ICRC). MNC-I sent a U.S. Army colonel to investigate. After a detailed investigation, there were no substantiated allegations of wrongdoing.

RECOMMENDATION: Continue the practice of investigating a detainee's "fear for life" concern to ensure it is not simply an attempt to avoid a legitimate arrest warrant.¹⁶⁴

ISSUE: Support of MNC-I in the detainee release process

DECISION: One of the benefits the SJA's office had from the beginning of the deployment was a positive relationship with MNC-I. There was nothing but solid and helpful mutual support across the board. That does not mean the commands always agreed, but it helped develop solutions with which everyone could operate.

RECOMMENDATION: Continue to make your relationship with your higher headquarters a priority.¹⁶⁵

ISSUE: TF-134's push to release detainees

DECISION: There was a tremendous push by TF-134 to conduct mass releases of detainees. As a result, actions required of the unit were substantial and often TF-134 did not consider the resources and logistical challenges of the unit.

RECOMMENDATION: Require taskings from TF-134 lawyers and division to be in FRAGO form and attempt to have a positive relationship with their staff to keep them informed of the challenges at the BCT level.¹⁶⁶

ISSUE: Transfer of detainees to ISF

DISCUSSION: As security improved in Ramadi, the battalion processed fewer detainees through the coalition system, which included the Regional Detention Facility (RDF) and the Theater Internment Facility (TIF). The battalion developed new procedures to hand over detainees to the Iraqi Police (IP) for local prosecution. The battalion established the "Ramadi Rule of Law Working Group," which included members of the Provincial Reconstruction Team (PRT), the Joint Prosecution and Exploitation Cell (JPEC), International Police Advisors (IPA), the District Police Transition Team (D-PTT), the Army Police Transition Team (PTT), the Marine Expeditionary Force (MEF) G-9 Rule of Law section, Law Enforcement Professionals (LEPs), the Human Exploitation Team (HET), and the battalion's operations officer, S-2, and JA. This working group met weekly to nominate and discuss new cases of detainees in U.S. custody for transfer to Iraqi authority. These discussions focused on what evidence U.S. agencies could provide to the Iraqis and how to accomplish the transfer of physical custody and evidence. These sessions also provided an opportunity to discuss updates on detainees U.S. forces previously handed over to Iraqi authorities.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ 2SBCT, 25ID 2009 OIF AAR, *supra* note 8.

RECOMMENDATION: Sustain. Continue to facilitate an orderly turnover of coalition detainees to Iraqi control. Establish procedures to set the Iraqis up for success in prosecuting these individuals. Maintain oversight of former coalition detainees to ensure they receive due process under Iraqi law.¹⁶⁷

ISSUE: Transfer of U.S.-captured detainees to ISF

DECISION: U.S. forces tended to transfer detainees to the Iraqi Army (IA) rather than the Iraqi Police (IP). They had a better relationship with the IA, and were more likely to be able to obtain return of the detainee from the IA for interrogation if required. Additionally, the Iraqi Minister of the Interior had to approve the transfer of any detainees in IP custody, and U.S. forces had to submit requests to him through the Civilian Police Assistance Training Team (CPATT). When one such request failed, the division made no further attempts. In Baghdad, the approval authority for IA transfers is the commander of the Baghdad Operations Command (BOC). The division could submit requests for IA transfers to him through the BOCAT or at the weekly meeting with the division commander.

After the transition to the Security Agreement legal framework, U.S. forces rarely requested the return of a detainee in IA custody (detainee transfer was easiest if it occurred at the point of capture during a combined operation). The GoI usually refused a transfer once an IJ had issued a detention order. Exceptionally, when U.S. interrogators believed access to the detainee to be particularly important, U.S. forces would ask the IJ who had issued the detention order to allow access to the detainee. MNC-I subsequently issued guidance prohibiting U.S. access once a detainee had entered the Iraqi legal system (interpreted by the division as “has seen a judge”).

U.S. interrogators could instead obtain access to a detainee in Iraqi custody by requesting the move of that detainee to .FOB. Justice or to the Old Ministry of Defense (MoD) building, where U.S. and IA forces were co-located, through a military transition team (MiTT). However, U.S. intelligence personnel, particularly interrogators, feared being associated in any way with an interrogation or detention facility where an incident involving “un-American treatment” might occur. They were also concerned about the prospect of Iraqi personnel witnessing U.S. interrogation tactics, techniques, and procedures (TTPs), resulting in an inability to prevent further distribution of knowledge of these.

The division released FRAGOs to address these concerns. U.S. forces used mobile interrogation facilities. An Iraqi guard escorted the detainee (who therefore remained in Iraqi custody), but remained outside the door throughout the interrogation. This was somewhat similar to US detention facility procedures, where an interrogation team is required to sign for a detainee.

RECOMMENDATION: Sustain. JAs advising on the mechanics of detainee transfer and/or interrogation should be aware of the existence of theater-specific policies and procedures.¹⁶⁸

ISSUE: Approval procedures requests for ISF to turn over ISF detainees to U.S. forces

DECISION: Earlier in the deployment, before warrant-based targeting came to the fore, U.S. forces sometimes asked the BOC to capture individuals wanted by the United States, but the BOC occasionally refused to give up the detainee once captured. In particular, such arrangements began to fall apart as GoI officials began to realize they did not have to do what U.S. forces

¹⁶⁷ 1/9 Marines 2009 OIF AAR, *supra* note 5.

¹⁶⁸ 4ID 2009 OIF AAR, *supra* note 20.

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wanted them to do. By late 2008, U.S. forces often found the only means of obtaining such cooperation was to purchase something for the ISF. One incident involved a company commander demanding a detainee from an Iraqi police station. A senior leader engagement was required to avert a major incident. New procedures required high-level approvals: the U.S. deputy commander was responsible for making such requests to his Iraqi counterpart.

RECOMMENDATION: Sustain. The move to work within the Iraqi legal system should significantly reduce the possibility that U.S. forces will request such transfers in the future.¹⁶⁹

ISSUE: Detainee release program

DECISION: At the operational level, there were no problems. However, it was educational to see how higher headquarters conducted the detainee review boards.

RECOMMENDATION: Understanding the differences in reviews conducted at the operational level and strategic level provides attorneys a good perspective on DetOps.¹⁷⁰

ISSUE: Oath of good citizenship

DECISION: Before a release of a detainee, MNC-I required units to administer an “oath of good citizenship.” However, MNC-I issued no further guidance, and no standard oath existed. The division detainee operations attorney developed an oath with the assistance of the division’s interpreters and the bilingual/bicultural advisor.

RECOMMENDATION: Sustain. Although guidance from higher headquarters is generally helpful, in this case, the detainee operations section found it was preferable to have an oath tailored to the local customs and dialect.¹⁷¹

ISSUE: Iraqi amnesty law

DECISION: In approximately February 2008, the Government of Iraq (GoI) passed a law granting amnesty to detainees accused of offenses before February 2008 if the alleged crime did not involve death or serious bodily injury. This resulted in the outright release of detainees held for weapons trafficking and minor assaults. Curiously, the amnesty law did not apply to offenses involving possession of false identification. However, when U.S. forces attempted to use this caveat to continue the prosecution of detainees who otherwise qualified for amnesty, they often found the Iraqi judges demanded to see the actual false identification documents. In many cases, this evidence was not available.

RECOMMENDATION: Improve. Work with LEPs to determine whether detainees otherwise releasable under the amnesty law were guilty of possession of false identification.¹⁷²

Warrant-Based Targeting (OIF)

OIF ISSUE: Changes to detainee operations resulting from Security Agreement implementation

¹⁶⁹ *Id.*

¹⁷⁰ 1AD 2009 OIF AAR, *supra* note 29.

¹⁷¹ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

¹⁷² *Id.*

DECISION: Although the BCT left theater before 1 January 2009, the brigade headquarters considered the implications of the new legal framework set out in the Security Agreement, in order to prepare its replacement BCT. The division stood up a Criminal Investigation Task Force (CITF), consisting of two JAs, as well as CID, Provost Marshal, and S2 representatives. The CITF was expected to work through the detention process with its Iraqi counterparts. The unit would either hand the resulting prosecution over to Iraqi authorities with some oversight (to ensure that they developed the case) or over for prosecution by a JA at the division level or at CCCI.

The BCT—due to its COB Speicher location (a Major Crimes Court is located in nearby Tikrit)—began to build its own brigade-level CITF. However, the BCT JAs determined all coordination with Iraqi authorities would occur at the battalion level, through interaction with their Iraqi counterparts (e.g., to obtain warrants and detention orders or prosecute cases at the Major Crimes Court). Because the prosecutor's role in the Iraqi criminal system is so minor, the BCT JAs considered it might not even necessarily be a JAG function to get a case to trial in the CCCI. However, they spent considerable time working on this issue, and personnel from 3d BCT, 25th Infantry Division assumed the responsibility when they arrived in theater to replace this BCT.

While the division concept called for the law enforcement professional (LEP) at each battalion to liaise with Iraqi authorities, each Battalion developed its own methods dealing with its Iraqi judges. Moreover, not every battalion had a LEP. The BCT instead required each battalion to ensure those already working with Iraqi courts would continue to do so in order to build contacts to obtain warrants and perhaps eventually support prosecutions. At the brigade level, because the BCT was located at COB Speicher, the Provincial Reconstruction Team (PRT) was responsible for working with Iraqi authorities. Through them, the BCT was able to go out and talk to some of the judges. However, all the arrangements were somewhat haphazard and ad hoc because there was no standardization at that point.

RECOMMENDATION: Improve. JAs should be aware that the arrangements for obtaining warrants and otherwise interacting with the Iraqi legal system are personality and location dependent.¹⁷³

ISSUE: Use of Signals Intelligence (SIGINT) pre/post implementation of the SA

DECISION: Before 1 January 2009, SIGINT could provide stand-alone evidence necessitating the detention of an individual in Iraq. In the new era of warrant-based detentions, SIGINT is more of a tool in U.S. hands, not the “be all end all” it once was (since we do not turn over classified information to the Iraqis).

RECOMMENDATION: Improve. Units must attempt to maximize the use of SIGINT while operating under the new SA.¹⁷⁴

ISSUE: Post-UNSCR detention policy

DECISION: MNF-I OpLaw attorneys consulted RoL attorneys regarding the establishment of post-UN Security Council Resolution (UNSCR) detention procedures. MNF-I issued SA implementation guidance via FRAGO in mid-December 2008.

¹⁷³ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

¹⁷⁴ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 53.

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RECOMMENDATION: Even JAs who have previously deployed to Iraq must ensure that they obtain newly-promulgated direction before advising in this area.¹⁷⁵

ISSUE: New FRAGOs concerning targeting and warrant requirements

DECISION: MNF-I OPLAW attorneys, in conjunction with RoL advisors, issued a December 2008 FRAGO about SA implementation, including targeting/arrest.

RECOMMENDATION: JAs deploying to Iraq should review relevant FRAGOs in order to be aware of new ROE and targeting direction.¹⁷⁶

ISSUE: Preparation of IJs before Security Agreement implementation

DECISION: U.S. forces could have done more work with the High Judicial Council (HJC) before implementation of the Security Agreement (SA) to ensure IJs had better awareness of the U.S. concept of warrant-based operations, and should have moved to a warrant-based arrest regime in a more controlled fashion. In fact, IJs issued many more warrants than required after the implementation of the SA. Oftentimes IJs issue warrants based on the relationship with the requestor in question, and it takes time to develop that relationship. However, U.S. forces need not form the relationship; instead, ISF should do so. In addition, the pre-SA Multi-National Corps – Iraq (MNC-I) fragmentary order (FRAGO) encouraging JAs to make contact with local judges had the unintended consequence in some locations of frightening judges who feared the idea of overt U.S. visits to their courthouses.

RECOMMENDATION: Improve. The move of U.S. forces to operate within a new legal framework would have benefited from increased prior consultation with those primarily responsible for activities within that framework.¹⁷⁷

ISSUE: Change in culture and responsibilities of U.S. forces

DECISION: After the Security Agreement came into force on 1 January 2009, U.S. forces were required to change their mindset. For the first time, the United States was not in charge. While U.S. senior leaders understood this, the culture of U.S. forces as a whole can be slow to change, and the division wanted to get ahead of this potential speed bump. Soldiers needed to realize this was no longer a kinetic operation, and U.S. forces are going to leave at some point. The change from kinetic operations was frustrating for many Soldiers because it meant involvement in police-type work, for which they lacked training. While U.S. forces can shift to a counterinsurgency (COIN) model and a policing role, doing so is difficult. They want to do a good job, but are uncertain if they do not get a consistent message about their roles and responsibilities. Asking Soldiers to be ready to conduct both offensive operations and stability operations may be difficult. Soldiers will need to understand the rules pertaining to both. However, carrying out policing-type duties is not inherently problematic if Soldiers understand such duties are also part of their mission.

RECOMMENDATION: Improve. Units arriving in theater need to ensure their Soldiers' skills are not limited to "kicking down doors and clearing rooms."¹⁷⁸

¹⁷⁵ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

¹⁷⁶ *Id.*

¹⁷⁷ Director, Interagency Rule of Law Coordinating Center, After Action Report, Operation Iraqi Freedom, June 2008 – June 2009 (29 June 2009) [hereinafter Director, IROCC 2009 OIF AAR] (on file at CLAMO).

¹⁷⁸ 4ID 2009 OIF AAR, *supra* note 20.

ISSUE: Mindset change

DECISION: Soldiers in the BCT who had deployed to Iraq before were used to searching houses and detaining individuals without a warrant. Under the SA, there were only limited exceptions allowing searches or arrests without a warrant. Some units had a difficult time waiting for the warrant process to work, especially when they were after insurgents who recently targeted U.S. forces.

RECOMMENDATION: Improve. Training in warrant-based operations must begin before deployment to change the mindset of those who previously operated under the old system. Units must learn to accept the Iraqi process.¹⁷⁹

ISSUE: Transition to Security Agreement (SA)

DECISION: In anticipation of the changes in detainee operations under the SA taking effect on 1 January 2009, the division commanding general (CG) decided Multi-National Division – Center (MND-C) would stop taking detainees under the UNSCR beginning on 1 October 2008. In addition to producing a fundamental shift in mindset from holding detainees to prosecuting them, this decision allowed the division units to perfect the warrant-based targeting process well before the SA took effect. The most important issues with regard to the transition were the capacity of the Iraqi facilities, logistics and the treatment of the detainees transferred to Iraqi custody. To address the latter issue, the division conducted more inspections of Iraqi facilities and trained the Iraqi personnel to fix their own problems with detainee treatment.

RECOMMENDATION: Sustain.¹⁸⁰

ISSUE: Early transition to warrant-based targeting

DECISION: 4-1 CAV began to employ warrant-based targeting in October 2008, several months before the Security Agreement (SA) went into effect.

RECOMMENDATION: Sustain. Warrant-based targeting gets detainees into the Iraqi system much faster. The early transition allowed the BCT to work out their warrant-based targeting procedures before the SA made them mandatory.¹⁸¹

ISSUE: Warrant-based detention pilot program

DECISION: Seizing the opportunity, the BCT developed a pilot program for obtaining warrants before the SA took effect. One of their subordinate battalions took a witness to a satellite court of the CCCI to testify before the investigative judge. As it turned out, the judge granted the warrant and the BCT improved its processes to best prepare their successor BCT.

RECOMMENDATION: Sustain. Successful warrant-based detention programs will include more and Iraqi involvement in the future. One practical note: the rumor that Iraqi judges distrust forensic evidence in totally is false. In truth, Iraqi judges have no problems with forensic evidence so long as the individual who performed the techniques testifies before them and

¹⁷⁹ 4-1 CAV 2009 OIF AAR, *supra* note 12.

¹⁸⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

¹⁸¹ 4-1 CAV 2009 OIF AAR, *supra* note 12.

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explains the forensic processes employed. Contrast this with the practice of providing reams of paper to the judge that explain the methods used and the results gathered from them.¹⁸²

ISSUE: Changes to detention operations caused by the SA

DECISION: Detention operations was a full-time job for the trial counsel. Every day brought some kind of detainee issue. The switch to post-UN Security Council Resolution operations necessitated a large training effort and a large rule of law effort to establish relationships with local judges to facilitate obtaining warrants.

RECOMMENDATION: Be proactive in anticipating these types of changes to the operating environment.¹⁸³

ISSUE: Interrogation of witnesses and suspects by U.S. forces

DECISION: U.S. forces may still be involved in the questioning of suspects (e.g., where an operation involves only U.S. forces, and IJs are reluctant to travel to the objective). However, U.S. forces should be aware of the limitations upon any statement obtained by U.S. forces or ISF personnel. An IJ may use the information provided in response to questioning, but it does not carry the same weight as a statement made to an IJ. However, where it is not feasible to bring a suspect before an IJ immediately, U.S. forces may assist their ISF counterparts in segregating a detainee, and constructing an interrogation plan, etc. As a practical matter, intelligence personnel are likely to prevail in the event of a contest with an IJ over first access to a detainee. However, those intelligence personnel must be aware an admission made to them may not be given significant weight in a court proceeding. Nonetheless, they may be able to use an admission to obtain additional investigative or intelligence leads.

RECOMMENDATION: Improve. JAs should work with commanders and staff to ensure sufficient understanding of relevant aspects of the Iraqi legal system.¹⁸⁴

ISSUE: The best method for obtaining warrants

DECISION: Tell the Iraqi security forces who you think they should arrest and give them the reasons why. The Iraqis can then go to the judge and get a warrant and make the arrest. This is much more effective, promotes the rule of law, and keeps the U.S. forces out of the detention business.

RECOMMENDATION: Have the Iraqis get the warrants for themselves. Any information the unit can put in front of a judge to get a warrant can also very effectively go before the judge in the hands of the Iraqi forces.¹⁸⁵

ISSUE: Information sharing in warrant-based targeting

DECISION: U.S. forces must pool information and coordinate their efforts. There is no Iraqi national warrant database. Although MNC-I is maintaining a Microsoft Excel spreadsheet into which U.S. forces can input warrant information, different units may have obtained warrants for

¹⁸² 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 53.

¹⁸³ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

¹⁸⁴ AWG 2009 OIF AAR, *supra* note 133.

¹⁸⁵ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

the same individual, without being aware of the duplication. Similarly, U.S. forces may be unaware that one of the Joint Expeditionary Forensic Facilities (JEFFs) also has data on an individual for whom they have obtained a warrant.

RECOMMENDATION: Improve. JAs should prepare a contact list prior to deployment. OTJAG Pre-Deployment Preparation (PDP) Program and the Center for Law and Military Operations (CLAMO) should continue efforts to assist unit JAs in establishing and maintaining mechanisms for information sharing and coordination.¹⁸⁶

ISSUE: Development of a warrant database

DECISION: MNF-I and the GoI were interested in developing a warrant database, so that MNF-I and GoI personnel throughout Iraq would be aware of the existence of an arrest warrant, once issued by an Iraqi judge. MNF-I and its units were still considering this question at time of departure from theater. At issue was whether to use a U.S.-only database, a database already relied on by Iraqi border enforcement personnel, or a simple spreadsheet with links, at least as an interim measure.

RECOMMENDATION: JAs deploying to Iraq and working in this area may wish to confirm whether this question has been resolved.¹⁸⁷

ISSUE: Development of a warrant database

DECISION: MNF-I OSJA liaised with TF-134, LAOTF, and the U.S. Embassy in Baghdad to learn whether the GoI had a warrant storage and retrieval system. Upon learning it did not, the OSJA captured in an information paper a short summary of the current U.S. initiatives to help the GoI develop such a system and briefed the initiatives to the MNF-I commander.

RECOMMENDATION: Sustain. The first efforts to assist the GoI in the development of a comprehensive national warrant database failed due a lack of desire among GOI agencies to share information. Ultimately, the U.S. helped empower Iraqi agencies in developing their own information databases capable of sharing information in the future.¹⁸⁸

ISSUE: “Front loading” of U.S. support to Iraqi prosecutions

DECISION: U.S. forces should, as a best practice, “front load” witness statements. Because there are few barriers between the phases of an Iraqi prosecution, a strong statement used to obtain a warrant is also useful for other purposes. The same statement may be sufficient to obtain a detention order, during the investigative hearing, and at trial (which may simply involve the trial panel cross-examining the accused on all material in the case file). The corollary is U.S. forces should not detain an individual unless the unit is willing to do the work at the outset to facilitate a successful prosecution. Furthermore, U.S. forces should be aware those who request a warrant based upon skimpy evidence may ruin their credibility with a particular IJ and the local populace if the insurgent is eventually released back in the neighborhood to wreak further havoc.

¹⁸⁶ AWG 2009 OIF AAR, *supra* note 133.

¹⁸⁷ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

¹⁸⁸ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

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RECOMMENDATION: Improve. JAs must work with commanders and Soldiers to educate them on the new requirements and the possible consequences of failing to adapt.¹⁸⁹

ISSUE: Involvement of U.S. forces in obtaining Iraqi warrants

DECISION: U.S. forces are working “by, with, and through” their ISF counterparts as much as possible to obtain warrants. These efforts are more successful in some locations than in others. However, a witness sometimes accuses ISF personnel, or is otherwise uncomfortable going to them. A witness may even refuse to testify if ISF are involved in the proceeding in any way. If this occurs, U.S. forces interview the witness, handling that individual as if he/she is an intelligence source. This might include taking the witness to the IJ, and probably means going directly to a CCCI IJ. Some local (non-CCCI) IJs do not want U.S. forces walking into their courthouses, but this is location-specific (e.g., in Baghdad).

RECOMMENDATION: Sustain.¹⁹⁰

ISSUE: Establishment of U.S. forces witness-handling teams

DECISION: Units may find it helpful to establish witness-handling teams—e.g., when a witness is reluctant to deal with Iraqi officials. Witness-handling teams are composed exclusively of U.S. forces. Identifying a potential witness is merely the first step. The team then determines what testimony the witness can provide, and how to protect the witness without bringing him onto a FOB, etc. Units could assign witness-handling responsibilities to anyone who has the ability to meet with host nation personnel outside of a FOB, and is comfortable in doing so—e.g., members of a MiTT or PTT, etc. Witness-handling team members must have the temperament to deal with Iraqis, probably in conjunction with a skilled interpreter. While units could assign witness-handling duties to a HUMINT collection team (HCT), doing so is not always appropriate. Use of an HCT runs the risk of revealing its identity or its connection with U.S. forces. Alternately, units could assign responsibility for witness handling to a Special Forces HUMINT team, etc. Ensuring the witness-handling team has the appropriate skill set is more important than assigning the responsibility to a particular organization.

RECOMMENDATION: Sustain. Units should consider assigning witness-handling responsibilities to appropriate personnel.¹⁹¹

ISSUE: Iraqi witness-handling procedures

DECISION: The establishment of procedures to identify, handle, observe, protect, and prepare witnesses (ideally “by, with, and through” the ISF) is a significant aspect of assisting U.S. units to implement Security Agreement legal processes in relation to warrants and detention. Most information available in theater suggests a witness can testify confidentially before an IJ. The witness can wear a mask or disguise in entering the room, but must show his or her face to the IJ, and produce two to four forms of identification. The witness makes a sworn statement, to which the IJ assigns a number. The IJ enters the witness name and number in the “secret witness book.” The book helps witnesses to understand what they are getting into and perhaps to feel more secure. Whether the trial panel has a right to demand the appearance of the secret witness is

¹⁸⁹ AWG 2009 OIF AAR, *supra* note 133.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

unclear, but a trial panel may throw out a case where there is a question about the secret witness's statement.

RECOMMENDATION: Sustain. Where appropriate, units should consider establishing procedures to facilitate the appearance of "secret witnesses" before an IJ.¹⁹²

ISSUE: Obtaining warrants from CCCI judges

DECISION: U.S. forces that obtain warrants directly from IJs rather than through ISF counterparts are tending more and more to do so through CCCI IJs, whether in Baghdad or at a provincial CCCI. There are three separate CCCI organizations in Baghdad (Karkh, which handles Coalition cases; Rusafa, which handles Iraqi cases; and FOB Justice). The Baghdad and other PRTs have strongly suggested U.S. forces deal only with CCCI, and not with local courts—i.e., U.S. forces should request warrants from CCCI IJs rather than from local IJs. According to the Baghdad PRT rule of law advisors, asking local IJs to issue warrants has an impact upon the day-to-day functioning of local courts. The basis appears to be the increase in workload plus the possible security concerns resulting from an IJ's involvement in terrorism cases. Indeed, a local IJ has asked some U.S. units not to return to his courthouse. In Ninewah, the visiting judges who have been staying on the FOB are going to move into the city and, therefore, may feel more constrained by security concerns. U.S. units with embedded IJs do not normally need to resort to CCCI IJs, unless a witness does not trust that IJ.

RECOMMENDATION: Sustain. U.S. forces must develop procedures for obtaining warrants. This will be location-dependent and will reflect the needs and desires of the IJ(s) in that location. U.S. forces may also wish to monitor judge performance for possible bias (e.g., due to intimidation).¹⁹³

ISSUE: Working with ISF and Iraqi judges to obtain Iraqi warrants

DECISION: Iraqi culture is significantly different from American culture. Working with Iraqis requires the development of personal relationships. Units trying to obtain Iraqi warrants should also be aware each judge's requirements might be different. In addition, some judges indicated they did not have authority to issue some types of warrants (e.g., for terrorist offenses). The Baghdad Operations Command Advisory Team (BOCAT) JA worked with Iraqi judges to get them to articulate their warrant requirements. As the 1 January 2009 transition to the Security Agreement legal framework approached, Iraqi judges became more assertive and more willing to describe their warrant standards.

U.S. forces were most successful in obtaining warrants when they began the process by determining, with their ISF counterpart unit, the identity of possible targets. The counterpart unit then went to the investigative judge (IJ) to obtain a warrant. If this process did not occur, the Iraqi unit might not cooperate (e.g., in some cases, ISF were not interested in arresting someone considered by U.S. forces to be a threat, but whom the Iraqis considered a community leader).

RECOMMENDATION: Improve. Units should be prepared to work closely with ISF counterparts to obtain or assist in obtaining Iraqi warrants and detention orders.¹⁹⁴

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ 41D 2009 OIF AAR, *supra* note 20.

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ISSUE: Involvement of intelligence personnel in the targeting/warranting process

DECISION: The division conducted targeting meetings, and assembled a tiered list of targets. Intelligence personnel were responsible for targeting coordination and de-confliction. Most intelligence personnel are very knowledgeable about the identity of hostile elements in theater, but tended to view their role in the targeting/warranting process as ending with identification of a target/suspect. They did not understand the impact upon the evolution to a warrant-based detention regime.

However, division DetOps attorneys identified a number of ways for intelligence personnel to assist. Before an attempted arrest, they can suggest the type of evidence for which those conducting the arrest operation should be looking (e.g., paper records for a suspected paymaster/financier). They also have the best understanding of the basis for the proposed arrest. While detainee interrogation normally focused on identifying other individuals in their networks, the DetOps attorneys sometimes explained to interrogators other types of information that might increase the prospect of a successful prosecution.

RECOMMENDATION: Improve. Intelligence personnel should be encouraged to understand the ways in which they can contribute throughout the entire targeting/warranting process. Working with law enforcement professionals (LEPs) may be helpful in educating intelligence personnel about possible uses of intelligence.¹⁹⁵

ISSUE: Difficulty of obtaining evidence on insurgent leaders and organizers

DECISION: An additional complication in training personnel to conduct tactical site exploitation is the possible lack of physical evidence to collect when detaining the leader of an improvised explosive device (IED) cell or similar figures. Arresting and prosecuting personnel participating in terrorist networks is similar to working in the area of organized crime, and requires specialized policing and prosecutorial skills to establish links. It was easier for units to conduct site exploitation when the target was a low-level insurgent caught in possession of a weapons cache than when the target was a mid- or upper-level leader or financier.

RECOMMENDATION: Improve. Units seeking the arrest of such individuals should work with LEPS and intelligence personnel to identify possible sources of evidence, such as documents or witnesses.¹⁹⁶

ISSUE: Creation of intelligence/law enforcement teams to obtain warrants for legacy detainees

DECISION: The division created teams consisting of intelligence analysts and LEPs. These teams assembled packets intended to obtain warrants for legacy detainees. This resulted in the issue of a number of warrants, and was the genesis of the prosecution task forces (PTFs) other divisions and brigades subsequently established. Representatives from this division's various PTFs met on a weekly basis.

RECOMMENDATION: Sustain.¹⁹⁷

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

ISSUE: Use of civilian LEPs following the transition to warrant-based detentions

DECISION: The use of LEPs was essential to this effort. Unlike interrogations, interviews by LEPs are unclassified. This made using these documents within the Iraqi judicial system much easier. LEPs are much better suited to warrant-based operations.

RECOMMENDATION: Sustain the use of LEPs to collect evidence and assist in warrant-based detentions. There is a need for people who can collect evidence and not just intelligence.¹⁹⁸

ISSUE: Law Enforcement Professionals (LEPs)

DECISION: Law enforcement professionals could be a good resource if you can engage them. As warrant-based detention operations became the norm, the LEPs provided more support and became part of the Detention Operations Prosecution Task Force.

RECOMMENDATION: LEPs are valuable in a variety of missions. Getting them excited and engaged early on often presents the greatest challenge.¹⁹⁹

ISSUE: Assignment of LEPs

DECISION: 4-1 CAV had one lead LEP at the BCT and four other LEPs who worked with the maneuver battalions/squadrons. These LEPs worked closely with the S2s and were vital to warrant-based targeting.

RECOMMENDATION: Sustain. It is essential to assign LEPs down to the battalion level.²⁰⁰

ISSUE: Evidence collection under warrant-based targeting

DECISION: Under warrant-based targeting, the focus shifted from U.S. forces putting detainee packets together to training the Iraqis to collect the evidence. Written statements from anyone, to include U.S. Soldiers, are inadmissible in the Iraqi judicial system. Iraqi's were taught about eyewitness testimony, as well as physical evidence collection. Some units began assisting their Iraqi counterparts with videotaping physical evidence collection.

RECOMMENDATION: Sustain. Warrant-based targeting requires partnering with Iraqi units to perform the evidence collection U.S. forces previously conducted themselves.²⁰¹

ISSUE: Obtaining warrants

DECISION: The process for obtaining warrants varied by unit. Sometimes the BJA would present evidence to the Iraqi judge to get the warrant. Other times the unit would assist the Iraqi Police (IP) in doing so.

RECOMMENDATION: The better option is to empower the IP to present evidence for obtaining warrants.²⁰²

¹⁹⁸ *Id.*

¹⁹⁹ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

²⁰⁰ 4-1 CAV 2009 OIF AAR, *supra* note 12.

²⁰¹ *Id.*

²⁰² 10th MTN DIV 2009 OIF AAR, *supra* note 11.

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ISSUE: Obtaining warrants from Iraqi investigative judges (IJs)

DECISION: U.S. forces had to obtain Iraqi warrants after the Security Agreement came into force. The specific requirements for obtaining a warrant depend upon the requestor's relationship with the IJ. Someone who has a good relationship with the IJ will normally face little difficulty, unless the IJ is having a bad day. Someone who does not have a good relationship may find the requirements onerous. Obtaining a warrant is also more difficult (and may be impossible) when the IJ is uneasy about some aspect of it (e.g., because of the identity of the suspect or the nature of the alleged offense).

RECOMMENDATION: Improve. JAs must be aware of the idiosyncratic nature of the Iraqi warrant process, and should assist their units to work with or through Iraqi Security Forces (ISF) partner units to develop the necessary relationship with a local IJ.²⁰³

ISSUE: Biometrics

DECISION: Biometrics works very well at the tactical level. Divisions and brigades were doing a good job of collecting the data. There was progress in using this data to facilitate warrant-based operations.

RECOMMENDATION: Sustain.²⁰⁴

ISSUE: Warrants based on biometric or forensic evidence

DECISION: The division went exclusively to Iraqi judges at the CCCI to obtain warrants based on biometric or forensic evidence, such as fingerprints or explosive residue. The judges at CCCI understood this evidence better than local judges did.

RECOMMENDATION: Continue to train Iraqi judges at all levels, but especially the provincial level, to process biometric and forensic evidence.²⁰⁵

ISSUE: Warrants for politically connected individuals

DECISION: Local judges were often afraid to issue arrest warrants for politically connected individuals. In such cases, the division sought warrants from judges at CCCI.

RECOMMENDATION: Improve. While the above practice reflects the realities of the security situation, rule of law efforts must continue to strive to help the Iraqis create the conditions in which judges at all levels may exercise their duties without fear of retaliation.²⁰⁶

ISSUE: Use of classified evidence

DECISION: While U.S. forces continued to use classified information, such as signals intelligence (SIGINT) and human intelligence (HUMINT), for kinetic targeting, they could not use this evidence for warrant-based targeting. In addition, they could not use evidence obtained

²⁰³ Director, IROCC 2009 OIF AAR, *supra* note 177.

²⁰⁴ XVIII ABC 2009 OIF AAR, *supra* note 30.

²⁰⁵ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

²⁰⁶ *Id.*

from detainees as the result of interrogation. Intelligence personnel were reluctant to reveal the identities of their HUMINT sources.

RECOMMENDATION: Use HUMINT sources to find out whether there are any other Local National who would be willing to testify against a particular individual.²⁰⁷

ISSUE: Combined operational planning for warrant-based operations

DECISION: Combined operational planning with Iraqi forces was key to the success of warrant-based operations. The Iraqi forces better understood what people could/would testify against targeted individuals. A good relationship between the BCTs and their Iraqi counterparts facilitated this process.

RECOMMENDATION: Sustain.²⁰⁸

ISSUE: Importance of understanding the Iraqi criminal procedure vs. substantive Iraqi law

DECISION: Detainee operations judge advocates working with Iraqi investigative and trial judges discovered knowing how the inquisitorial system worked was more important than understanding substantive Iraqi criminal law. Iraqi judges questioned witnesses and determined what criminal charges the facts warranted, and the judges' clerks wrote out the witnesses' statements. Judge advocates never had to argue why the evidence met the elements of a crime.

RECOMMENDATION: Improve. Deploying judge advocates should have a thorough understanding of Iraqi criminal procedures.²⁰⁹

ISSUE: Goal of warrant-based detention operations

DECISION: There was a disconnect between what success meant in warrant-based detention operations. Some people thought success meant the issuance of a warrant; others thought success meant successful prosecution.

RECOMMENDATION: There is a variety of ways to measure success under the new Security Agreement. Having an awareness of and an appreciation for the differences is essential.²¹⁰

ISSUE: Thinking beyond merely getting the warrant

DECISION: Some units viewed their responsibilities in detention operations as ending once they assisted the Iraqis in getting and executing the warrant. However, warrants were very easy to get, merely requiring testimony from two eyewitnesses (some IJs issued warrants based on one eyewitness). Under the Iraqi system, after the arrest, the IJ gathers evidence and may request additional evidence in order for him to certify a case for the trial judge. Thus, merely getting a warrant did not mean there would be enough evidence to prosecute the detainee successfully.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

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4-1 CAV took a long-term approach to warrant-based targeting. Even if there was enough evidence for a warrant, they did not pursue arrests until they gathered enough evidence for successful prosecution in the Iraqi judicial system.

RECOMMENDATION: Sustain. Thinking beyond merely getting the warrant will facilitate successful prosecutions and enhance the credibility of the unit in the eyes of the IP/IA and IJ, and it enhances the credibility of the Iraqi Judicial System to the Iraqi citizens.²¹¹

ISSUE: Detention mission extends beyond obtaining a warrant or transferring a detainee to Iraqi authorities

DECISION: The challenge in prosecuting U.S.-instigated cases at the Central Criminal Court of Iraq (CCCI) lies in persuading U.S. forces to change their perspective to understand the mission is not over once they hand over a detainee to Iraqi authorities. Additionally, U.S. forces should not equate simply obtaining a warrant or transferring a detainee to the Iraqi criminal justice system with success.

RECOMMENDATION: Improve. U.S. forces must realize detention of a suspect is only the first step in the process. Long-term detention will normally only be possible when supported by evidence (physical or in the form of witness testimony) allowing a successful criminal prosecution.²¹²

[See also I.O. INTERNATIONAL & OPERATIONAL LAW—Rule of Law/Judicial Reform]

I.E.4.b. Afghanistan/Operation Enduring Freedom (OEF)

Detention Operations Policy & Procedures

OEF **ISSUE: CSTC-A detention operations policy & focus**

DECISION: CSTC-A did not have a separate detainee operations policy. Instead, CSTC-A followed the CJTF-82/101 detention policy. There were several reasons for this command decision. It became an issue when a Marine battalion arrived in Afghanistan and wanted to know what the policies were. CSTC-A clarified the policy for them. If CSTC-A personnel were out with the mentor teams and training teams, the Afghans would assume custody over any detainees taken. Consequently, the detention would fall under their rules and not U.S. rules. On the war fighter side, the International Security Assistance Force (ISAF) policies differed from the Operation Enduring Freedom (OEF) policies. That was part of the reason CSTC-A decided to follow the OEF policy.

CSTC-A detention operations focused largely on the detention operations officer's work at Pol-E-Charki and the Afghan National Detention Facility (ANDF). The ANDF was co-located with the Pol-E-Charke prison. Several years earlier, Afghan Security Forces Funds (ASFF) refurbished one of the wings of the ANDF. There was an office formed at CSTC-A (Detainee Ops) to train the Afghan Army on running that facility.

RECOMMENDATION: No changes required.²¹³

²¹¹ 4-1 CAV 2009 OIF AAR, *supra* note 12.

²¹² Director, IROCC 2009 OIF AAR, *supra* note 177.

²¹³ CSTC-A 2008 OEF AAR, *supra* note 16.

ISSUE: Inconsistent application of detainee rules

DECISION: U.S. forces operating with coalition forces must improve the procedures to determine what set of detention operation rules apply when making a capture.

RECOMMENDATION: Improve. Units should review and understand the different rules pertaining to detention operations during pre-deployment training. Commanders should provide consistent guidance to soldiers in the field with respect to what set of rules to apply when U.S. forces are working with coalition partners.²¹⁴

ISSUE: Retaining responsibility for U.S. detention operations after the stand-up of USFOR-A

DECISION: USCENTCOM determined that CJTF-101 would retain responsibility for U.S. detention operations in Afghanistan after the establishment of (and transfer of National Command Element (NCE) responsibility to) U.S. Forces – Afghanistan (USFOR-A). This created a strange command and control (C2) relationship for the CJTF-101 OSJA: operational support through USFOR-A OSJA and a separate operational/strategic link directly to USCENTCOM that bypassed USFOR-A OSJA for detention issues. Unfortunately, many detainee issues could not be de-linked from other operational issues, so this was very awkward. A tactical-level OSJA should not routinely be making strategic-level detainee determinations, or directly responding to habeas litigation and numerous related inquiries from national/strategic-level organizations.

RECOMMENDATION: The detention chain-of-command should mirror the normal chain-of-command. CENTCOM and the Office of the Secretary of Defense (OSD) should set clear detention policies and let the command tasked with running detention operations work out the implementation.²¹⁵

ISSUE: Informational requirements becoming informal tasking authority

DECISION: The unit began receiving requests for further information and additional requirements from persons who received courtesy copies of email traffic for situational awareness only. This quickly became overwhelming due to the overwhelming number of parties with an interest in detainee operations.

RECOMMENDATION: The free flow of information thru technical channels for situational awareness should continue. Require formal taskings before responding to requests generated by persons only receiving information for situational awareness. Higher levels should help prevent interference at the lower levels.²¹⁶

ISSUE: Potential conflict of duties when performing DetOps and CJA duties

DECISION: The same attorney (a JA captain) served as both the CJTF-101 detention operations (DetOps) attorney and the Command Judge Advocate (CJA) for Task Force (TF) Guardian, which ran the Bagram Theater Internment Facility (BTIF). These roles could potentially create a

²¹⁴ 4th Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, March 2008 – March 2009 (12 May 2009) [hereinafter 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR] (on file at CLAMO).

²¹⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

²¹⁶ *Id.*

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conflict of interest. However, he was able to avoid any potential conflicts by being proactive and vigilant in avoiding such issues, understanding he had the responsibility to report abuses regardless of the role he filled.

RECOMMENDATION: Sustain. Legal advisors have to proactively “scan the horizon” for conflict issues and take steps to avoid any conflict of interest matters. If staffing allows, CJTF-101 should consider separating the TF Guardian CJA duties from those of the DetOps attorney.²¹⁷

ISSUE: Daily DetOps exchanges with OSJA

DECISION: The DetOps attorney and his OSJA established a daily consultation routine to confer on DetOps issues. In this particular deployment, the OSJA and the DetOps attorney engaged in daily afternoon dialogue sessions. These ensured timely exchanges, awareness of potential issues, and issuance of guidance.

RECOMMENDATION: Sustain. The inclusion of the regular daily meetings was critical to handling the difficult task of detention operations. DetOps remain a very sensitive and high profile issue, so anyone in that role must alert superiors to problems and keep them regularly informed.²¹⁸

ISSUE: Pre-deployment preparation for DetOps attorney

DECISION: The DetOps legal advisor did not have any prior exposure to DetOps and its legal fundamentals. Access to SIPRNET was limited before deploying. As a result, the DetOps attorney could not access the vital International Security Assistance Force (ISAF) and OEF DetOps material (guidance, policies, and SOPs) available via the SIPRNET. Compounding this lack of knowledge was the fact the assigned DetOps attorney did not have an opportunity to contact the person he was replacing, who had redeployed several months before the 101st Airborne Division deployment.

RECOMMENDATION: Improve. Having access to relevant DetOps material on SIPRNET and having communication exchanges with the deployed incumbent is extremely helpful in the pre-deployment training phase. The DetOps attorney needs to become familiar with all the DetOps policies available on the CJTF website, including policies on detainee abuse reporting, detainee deaths, and procedures for dealing with the International Committee of the Red Cross (ICRC). In addition, pre-deployment contact with the predecessor is critical for alerting the deploying DetOps attorney of the most current DetOps issues and potential policy changes. Include the DetOps attorney on the pre-deployment site survey (PDSS).²¹⁹

ISSUE: National caveats

DECISION: There are many nations involved in the ISAF coalition, each of which have national caveats in DetOps directly affecting U.S. DetOps. The DetOps attorney had to review the various caveats, since they “attach” to particular ISAF detainees. These caveats, in certain instances, trigger additional permissions, authorities, and national notification requirements. For example, all ISAF operations were joint with the Afghan National Army (ANA). National caveats of the ISAF unit involved in the particular mission could potentially apply if the ANA wanted to

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

transfer detainees they captured during the joint operation to a non-ISAF unit. As a result, DetOps became more difficult and legally challenging. In order to clarify these rules, the CJTF-101 DetOps attorney improved upon a Central Command (CENTCOM) PowerPoint presentation explaining the application of national caveats. This presentation was particularly helpful for judge advocates in briefing their units.

RECOMMENDATION: Sustain. Multinational operations often result in additional challenges for their attorneys and U.S. forces. Attorneys must pay particular attention to the often complicated and incongruent caveats affecting DetOps.²²⁰

ISSUE: **When does a detainee become a detainee under ISAF SOP 362?**

DECISION: It is not always clear under ISAF SOP 362 when an individual undergoing tactical questioning (TQ) becomes a detainee. Applying the “under the control” test does not always yield a clear-cut point in time when an individual undergoing TQ becomes a detainee. TQ of an individual does not automatically trigger detention, but the on-scene commander (OSC) has to weigh the particulars of each situation to determine if an individual becomes a detainee, thus triggering the requirement to submit the R2.

RECOMMENDATION: There are variables encountered in the field that can make the issue of detainee status unclear. DetOps legal advisors have to assist Soldiers and OSCs on the test and the differences between OEF and ISAF detainee status determinations. It may be better to leave the current leeway in ISAF SOP 362 in order to provide flexibility in different circumstances.²²¹

ISSUE: **Recommended changes to ISAF SOP 362**

DECISION: Headquarters, ISAF solicited input from CJTF-101 as to what changes they suggested to ISAF SOP 362 for detention operations. The DetOps attorney cited two areas of the SOP 362 requiring amending—the dual use facility procedures and clearer guidance on tactical questioning. On the latter issue, the SOP leaves the definition of “tactical questioning” open to national interpretation.

RECOMMENDATION: Improve. Current and future DetOps attorneys must become aware of the frailties associated with SOP 362 and endeavor to improve it when opportunities arise. Although Headquarters, ISAF had not implemented the recommended changes by the time of the division’s redeployment, CJTF-101 issued policy guidance to interpret “tactical questioning” consistent with the U.S. definition.²²²

ISSUE: **Fluidity of DetOps policies**

DECISION: Early in his deployment, the DetOps attorney had to adjust to the wide-ranging changes in DetOps guidance resulting from the presidential administration change.

RECOMMENDATION: Improve. During their pre-deployment phase, legal advisors should contact the person they will replace in order to improve knowledge and understanding of DetOps issues and associated material. However, it is not enough to know the current policies and procedures. It is equally important to understand what changes could be on the horizon and what

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

is driving those changes. Additionally, it is important for the DetOps attorney to know how the policies have evolved over time so he understands why they do/do not do certain things.²²³

Legal Review of Detention

OEF ISSUE: Legal review of “separation” packets

DECISION: The DetOps attorney reviewed all packets for the restricted interrogation technique of “separation,” which required General Officer (GO) approval. The DetOps attorney relied principally on FM 2-22.3, Chapter 10, for separation packet reviews. FM 2-22.3 fully explains separation procedures. Legal advisors in detainee operations have to be proficient with FM 2-22.3 and its guidance when dealing with detainees that qualify for separation.

RECOMMENDATION: Sustain. Familiarity with FM 2-22.3 is vital for separation packet reviews.²²⁴

ISSUE: “Separation” versus “segregation”

DECISION: There is a very important distinction between separation and segregation. The former is a restricted interrogation technique requiring GO approval, while the latter is for administrative or disciplinary reasons, with varying approval levels. Not all personnel working in DetOps understand this distinction. As some guards may preside over both separation and segregation, understanding of the distinction is critical.

RECOMMENDATION: Improve. All DetOps personnel involved in the request, administration, and review of these procedures should understand the difference between them in terms of their purpose, administration, and documentary requirements. If staffing permits, different personnel should handle separation and segregation.²²⁵

ISSUE: Review of Unlawful Enemy Combatant Transfer Requests (UECTRs)

DECISION: CJTF-101 units requesting to place detainees in the BTIF must complete an UECTR. The existing practice was for the unit judge advocate to conduct the legal review.

RECOMMENDATION: Improve. A CJTF-101 attorney (either the DetOps attorney or an administrative law attorney) should review all UECTRs. Unit JAs may feel undue pressure from their commands to transfer a detainee despite insufficient evidence.²²⁶

Detention Facilities

OEF ISSUE: Training Soldiers on field detention site (FDS) operations

DECISION: One of the recurring issues faced by the DetOps attorney was the need to train personnel staffing field detention sites (FDSs). Because there were not enough military police (MPs), particularly at smaller bases, units often used combat service support Soldiers (CBRN Soldiers, cooks, administrative personnel, etc.) to run the FDS. Moreover, since the 96-hour

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

ISAF detention limit meant there was not continuous occupation of FDSs, the personnel tasked to operate the FDS changed often. Not surprisingly, these Soldiers needed training on both the ISAF and OEF DetOps procedures. The DetOps attorney was a member of the mobile training team (MTT) from TF Guardian. This MTT travelled to various FOBs to ensure these assigned Soldiers had proper training and were conversant with the guidance and SOPs.

RECOMMENDATION: Improve. Many units handling detainees do not have dedicated MPs, so DetOps attorneys have to ensure any Soldiers re-assigned to this task receive proper training and are aware of the procedural requirements under the OEF and ISAF mandates in Afghanistan. Units should identify dedicated personnel who will be running the FDS and ensure they receive training before deployment.²²⁷

ISSUE: Dual use detention facilities

DECISION: Because of the OEF and ISAF mandates, detainee facilities in Afghanistan are sometimes “dual use.” Two different procedures exist in each facility to cope with detainees taken under one or the other mandate. The policy specified only OEF forces could guard OEF detainees, while only ISAF forces could guard ISAF detainees. This was a significant challenge for DetOps staff. They had to cope with two distinct detention regimes, creating what most regarded as unnecessary extra work and efforts.

RECOMMENDATION: Improve. While there are two distinct mandates operating in Afghanistan, commanders and their legal advisors should strive to simplify the unnecessarily complicated DetOps procedures. The policy should allow a single staff to guard all detainees within a given facility, regardless of whether they are ISAF or OEF detainees. The ISAF procedure is overly complicated and should give way to the OEF approach, which has a higher standard of care and treatment.²²⁸

ISSUE: Standards of care at field detention sites

DECISION: The DetOps attorney was a member of the mobile training team (MTT) assigned to inspect and verify procedures and processes in place at the various FDSs. One of the challenges encountered by the DetOps attorney was the desire by some (the “good idea fairy”) to implement measures, facility modifications, or procedures that exceeded what international law and detention operations policies required. While the local effect of these “good ideas” may appear to be beneficial, the overall and longer-term impact on DetOps could be negative and result in future inconsistencies and misunderstandings. The DetOps attorney had the expertise to know what law and policy required and what practices were merely “recommended.”

RECOMMENDATION: Sustain. Desires to pursue good idea initiatives exceeding the norms could have damaging effects on the overall DetOps mission. Maintaining compliance with DetOps standards is imperative. The DetOps attorney must be familiar with both the requirements of international law and the requirements of detainee policies to know what standard of care they require.²²⁹

ISSUE: Need to record and preserve intermittent but recurrent SOPs

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

DECISION: Units and the division have to do a better job of recording and preserving “hard-learned” procedures for infrequent but recurrent events such as Ramadan. The unit did not compile those particular lessons and had to go through the same scramble on the following Ramadan.

RECOMMENDATION: Improve. All legal advisors should promote efforts to record and preserve important procedures that may occur in the future, whether for themselves or follow-on units.²³⁰

Transfer & Prosecution of Detainees

OEF ISSUE: Proper turnover points-of-contact (POCs) for detainees

DECISION: The Route Clearance Package (RCP) turned a detainee (alleged IED triggerman) over to the wrong unit (International Security Assistance Force (ISAF) instead of an Operation Enduring Freedom (OEF) unit) upon arrival at a FOB. The detainee was, therefore, not available for questioning after delivery to local authorities and released per ISAF detainee procedures.

RECOMMENDATION: The Combined Joint Task Force (CJTF) should provide a FOB-by-FOB listing of by-name POCs for turnover of OEF detainees taken by elements that do not normally take detainees (RCP, Combat Logistics Patrols (CLPs), etc.).²³¹

ISSUE: Trial and release of detainees

DECISION: The ANDF was Afghan owned and operated with CSTC-A and MPRI mentors on hand to assist with training. All prisoners in the ANDF were originally captured by OEF forces; there were no GIRoA detainees in the ANDF. CSTC-A monitored the trial process and worked closely with DoS, DoD, ICRC, and GIRoA officials to ensure fundamental fairness in the trial process. Prisoners were tried under existing Afghan law. Because CSTC-A had no authority to control the trial process, whenever changes were necessary to ensure fairness, the CSTC-A DetOps office had to closely coordinate the effort with the U.S. Embassy.

The Afghans made all the decisions on trials and releases. CSTC-A had a USMC major who was the legal advisor to the detention operations (DetOps) office at CSTC-A. He had a tremendous amount of work and involvement with the coordination of the Afghan trials. There were large concerns when the first trials took place and resulted in several acquittals. He was very involved with the evidence transfer process and actually tried to find ways to ensure that the Afghans obtained all the possible evidence and the courts received it. It was an Afghan decision on how to release those people once they were at the ANDF. Conversely, it was a U.S. decision when they were at the Bagram Theater Internment Facility (BTIF) and Guantanamo Bay (GTMO). CSTC-A was not involved with the decision-making process, but the DetOps officer was very involved and was closely coordinating with CENTCOM and DoD in terms of the evidence and information.

RECOMMENDATION: None.²³²

ISSUE: Evidence transfer to Afghan system

²³⁰ *Id.*

²³¹ 420th EN BDE 2009 OER AAR, *supra* note 17.

²³² CSTC-A 2008 OEF AAR, *supra* note 16.

DECISION: One OEF-internal issue was the transfer of useful “evidence” from the U.S. to GIROA at the time of transfer. The disparity between “intelligence” and “evidence” made it very difficult for the Afghans to hold trials in some cases because there was little to no “evidence.” This was a theater-wide problem that the SJA’s DetOps legal advisor spent a lot of time working to improve.

RECOMMENDATION: Improve.²³³

ISSUE: Transfer of ISAF detainees

DECISION: ISAF units must transfer ISAF detainees to ANSF soon after capture. It is not always clear to which Afghan organization the U.S. should transfer detainees—the National Directorate of Security (NDS), the ANA, the Afghan National Police (ANP), or other Government of the Islamic Republic of Afghanistan (GIROA) organization. While the NDS tends to be the default transferee body, there are some locations and/or circumstances where a transfer to the ANA or ANP may be preferable. ISAF operations may have a bearing on which Afghan organization may receive the detainee. The commander of the capturing unit was generally in the best position to make this call.

RECOMMENDATION: Sustain.²³⁴

ISSUE: Evidentiary requirements for detention under ISAF operations

DECISION: ISAF SOP 362 mandates the use of the “R2” form to report all ISAF detainees. Aside from this mandatory paperwork, there was a wide variance in the information units collected and turned over to Afghan authorities.

RECOMMENDATION: Improve. ISAF should better standardize the collection of evidence and incorporate the requirements into SOP 362. The best forms of evidence under Afghan law include the following: photos of the detainee with the contraband; chemical residue tests, which Afghan courts are beginning to accept; samples of narcotics seized (units generally burn the narcotics on site); sworn statements from Afghans, including thumbprint signatures and identifying information; and statements from ISAF personnel (though the weight of such statements varies from judge to judge).²³⁵

Habeas Corpus Petitions/Requests for Information

OEF ISSUE: Control of prisoners for purposes of habeas petitions

DECISION: There was a prisoner from GITMO who brought a habeas petition in DC Circuit court. Although he had been transferred from GITMO to the ANDF in Afghanistan, he still filed his petition. In CSTC-A’s opinion, he was in the complete custody and control of the Afghans because he was in the ANDF. However, he maintained his habeas petition in DC district court and CSTC-A prepared a declaration for the head of CSTC-A’s detention operations asserting that the U.S. Government had no control over this process. One good indicator CSTC-A had no control over the process was the high number of acquittals. Despite this fact, Petitioners argued

²³³ *Id.*

²³⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

²³⁵ *Id.*

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that since CSTC-A originally had them in GITMO, their presence in the ANDF was a direct result of the initial U.S. detention and jurisdiction remained in U.S. Federal Court. Additionally, CSTC-A funded the ANDF and CSTC-A had mentors at the ANDF. Consequently, Petitioners maintained that even though the detainee was held at the ANDF, the U.S. Federal Courts still maintained jurisdiction over the habeas petition. The Court delayed ruling on the pending U.S. Motion to Dismiss pending a ruling by the U.S. Supreme Court.

RECOMMENDATION: This issue was never resolved. However, it is important that all future formal command statements regarding the ANDF make it clear that the ANDF is under the custody and control of the Afghanistan Government.²³⁶

ISSUE: Habeas corpus cases

DECISION: CJTF-101 had to provide five to six responses concerning detainees who were the subject of habeas corpus petitions in United States district courts. The DetOps attorney coordinated with CENTCOM on such requests, providing a general overview of detainee operations in Afghanistan, an unclassified description of the BTIF, and information as to where and when U.S. forces detained the individual in question. The emphasis in such responses was on fair treatment and access to a review process. The DetOps attorney maintained a file for each of the detainees who were the subject of ongoing habeas cases and briefed his replacement on their status.

RECOMMENDATION: Sustain. Preparing quick reference binders is highly recommended, especially for urgent turnaround issues like habeas corpus requests. These devices are invaluable to follow on replacements. Incoming DetOps attorneys should familiarize themselves with the ongoing habeas corpus cases as soon as possible after assuming duties. There will not be sufficient time to do so once urgent follow-up requests for information arrive.²³⁷

ISSUE: Requests for information

DECISION: CJTF-101 received frequent requests from various sources outside the chain of command for information about detainees, including ISAF, the GIRoA, and individual Afghans. The source of the request would affect the nature of the prepared response. The security classification of the contents of the response had to be appropriate for release to the particular source. The DetOps attorney typically prepared a report for internal use, one for ISAF, and one releasable to Afghans.

RECOMMENDATION: Sustain. DetOps attorneys have to be cognizant of the source of the information request. This may dictate the degree and security nature of the information released.²³⁸

I.F. Environmental Issues

OIF ISSUE: Priority of environmental issues in theater

DECISION: Given other priorities, strict compliance with U.S. environmental laws became an ancillary concern. Additionally, it was difficult to ascertain who had ownership of environmental

²³⁶ CSTC-A 2008 OEF AAR, *supra* note 16.

²³⁷ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

²³⁸ *Id.*

issues at the Forward Operating Bases (FOBs). Keep in mind the need for environmental baseline study, even if rudimentary, in establishing operating locations.

RECOMMENDATION: Improve. To the extent possible, follow applicable environmental guidelines and authorities.²³⁹

I.F.1. Environmental Damage from Military Operations

OIF ISSUE: **The JA's lack of inclusion in the planning process to establish new patrol bases**

DECISION: Due to the JAs late arrival to the planning process, many of the legal repercussions of setting up a new patrol base were absent from the planning process. One of the big issues the JA should have been involved in was whether a big group of trees could be cut down in order create a clearing. Other issues that came up were how close to a river a base could be positioned and review of the land records (if any could be found). The establishment of patrol bases in the south created many claims against the U.S. due to land use issues and crop damage.

RECOMMENDATION: Improve. Both the operational and the administrative law JAs should be involved in early to the planning process for the establishment of new bases and other operational land uses.²⁴⁰

ISSUE: **Soldier compliance with environmental guidelines and requirements**

DECISION: At the Soldier level, compliance in a foreign country is no different than compliance at home station. Soldiers readily comply at home station.

RECOMMENDATION: Ensure the Soldiers understand the same rules apply—clean up spills, dispose of materials appropriately, etc.²⁴¹

OEF ISSUE: **Low priority of environmental issues**

DECISION: Environmental issues were a very low priority in Afghanistan due to scarce manpower and funding resources. However, there was much talk of ensuring environmental sustainability. The brigade environmental Non-commissioned Officer (NCO) and United States Army Corps of Engineers (USACE) civilian made some local efforts at environmental requirements on the FOB, including Solid Waste Management Plans (SWMP) and Hazardous Waste Management Plans (HWMP). However, some of these initiatives were part of Logistics Civil Augmentation Program (LOGCAP) requests, but not implemented. In addition, LOGCAP only offered excessively expensive solutions that were overkill in light of the problem. An example was LOGCAP wanted to build multi-million dollar Hazardous Material Pharmacy (HAZMART) to deal with the small problem of disposal of used batteries. The BCT ended up doing nothing and continued to stockpile used batteries.

RECOMMENDATION: Fund and resource environmental programs in order to make it a priority.²⁴²

²³⁹ 1AD 2009 OIF AAR, *supra* note 29.

²⁴⁰ 3ID 2008 OIF AAR, *supra* note 10.

²⁴¹ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

²⁴² 420th EN BDE 2009 OER AAR, *supra* note 17.

I.F.2. Environmental Issues of Concern from Civilian Activities or Sabotage

No AAR comments.

I.G. International Assistance/Relations

I.G.1. U.S. Government – Host Nation (HN) Interaction

OIF ISSUE: Article 98 bilateral agreements

DECISION: The Embassy Political-Military (POL-MIL) section asked whether it should be considering an “Article 98” agreement with the GoI. “Article 98” refers to bilateral agreements signed between the U.S. and other nations to inhibit their cooperation with the International Criminal Court (ICC). Under the American Servicemembers’ Protection Act (ASPA), with some exceptions (e.g., NATO members, Israel, etc.), military assistance to a nation which had signed the ICC Statute was suspended until the nation signed an Article 98 agreement or the President granted a waiver. However, an amendment to the ASPA in January 2008 removed this provision. Constraints still exist in terms of providing Department of State (DoS) support to ICC Statute signatories (the “Nethercutt Amendment” applies to Economic Support Funds).

RECOMMENDATION: Monitor. POL-MIL will continue to examine this issue.²⁴³

ISSUE: Review of MOUs between various parties in Al Anbar Province and the central GoI

DECISION: MNF-W did a great deal of work reviewing various MOUs. The MOUs negotiated between the various parties in Al Anbar were occurring with a great deal of help from the central government and MNF-I. They were essentially encouraging a “cookie-cutter agreement” that simply would not work in Al Anbar Province due to differing provincial dynamics.

RECOMMENDATION: Utilize MOUs appropriate for the specific area of operations. A “boilerplate” approach, directed from Baghdad may not be appropriate or helpful in all provinces.²⁴⁴

ISSUE: “Forcing” the Iraqis to take “ownership”

DECISION: This was a decision for the CG, but it was especially applicable to fiscal law issues. MNF-W identified times when it became necessary to “force” the Iraqis into action (i.e. paying for something) by refusing to pay with U.S. dollars. It was clear that in order for the Iraqis to take control of an area of responsibility, MNF-W had to refuse sometimes to take action.

RECOMMENDATION: Continue to help the CG decide in what areas he is willing to accept “risk” by not taking action in an attempt to force the Iraqis into action.²⁴⁵

ISSUE: District and neighborhood advisory councils

²⁴³ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

²⁴⁴ I MEF (FWD) 2009 OIF AAR, *supra* note 43.

²⁴⁵ *Id.*

DECISION: The BJA did not involve himself in these non-democratically elected, U.S.-created bodies of Iraqis. They neither had the backing of the Iraqi people, nor did they have an Iraqi constitutional or legal basis.

RECOMMENDATION: Sustain. These U.S. constructs have little to no legitimacy in the eyes of the Iraqis, so do not invest valuable time and energy by propping them up with continued U.S. participation.²⁴⁶

ISSUE: Provincial Iraqi Control (PIC) process

DECISION: This JA had not heard of the PIC process until his regiment moved to Diyala province (after he had been in Iraq for nine months). While this was not a significant issue in the case of Diyala – which did not complete the PIC process during this JA’s deployment – he was nonetheless required to report on PIC progress.

RECOMMENDATION: Improve. Where such programs are in place, outgoing JAs should ensure incoming JAs have some awareness of the process and any requirement to support it.²⁴⁷

ISSUE: Status reports to GoI of prosecutions of U.S. Soldiers for deaths of Iraqis

DECISION: The MNF-I SJA was responsible for providing periodic updates to the GoI regarding the status of prosecutions of U.S. Soldiers for the deaths of Iraqis, and asked the RoL section to prepare this information. There was no central repository cataloging this information, particularly as trials sometimes occurred at home station many months after a unit redeployed. The RoL section had difficulty in obtaining updates in some cases, usually resorting to Google searches to try to obtain information.

RECOMMENDATION: JAs departing theater with units where such cases have arisen should provide contact information to the MNF-I RoL section prior to departure so that MNF-I can continue to track the disposition of the case can in theater.²⁴⁸

ISSUE: “National amnesty” versus “reconciliation”

DECISION: Knowing who has the authority to make these decisions is imperative. Brigade Combat Teams (BCTs) need guidance on the definition and limitations of each system. The division began a planning process where attorneys were able to assist in setting left and right limits on Iraqi law and interaction with local officials.

RECOMMENDATION: Sustain.²⁴⁹

ISSUE: Knowledge of local law and legislative issues

DECISION: A thorough understanding of local law and legislative issues is important. Many situations arose where knowledge of local law was imperative. Moreover, someone in the legal office needs to be aware of the potential effects on the mission if a proposed change in law becomes final. The legal office provided information papers to the commander preparing him for

²⁴⁶ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 53.

²⁴⁷ 2SCR 2009 OIF AAR, *supra* note 1.

²⁴⁸ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

²⁴⁹ 1AD 2009 OIF AAR, *supra* note 29.

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senior leader engagements. These information papers eventually became FRAGOs disseminated to brigade judge advocates (BJAs).

RECOMMENDATION: Sustain.²⁵⁰

ISSUE: Persuading Iraqi officials to improve interagency cooperation

DECISION: The ISF continue to resist obeying release orders issued by IJs. The Iraqi government created the Baghdad and Ninevah Operations Commands (BOC and NOC, respectively) by harvesting forces from an inefficient Ministry of Defense (MoD), but this command structure reduced the possibility of MoD oversight over those forces. It took U.S. pressure on the Prime Minister to get the NOC to release detainees with release orders. In other instances, reluctance to comply with requests from other government agencies took the form of denying performance the desired action is part of that ministry's role. However, Iraqi ministries are capable of interagency cooperation when their ministers have a personal relationship.

RECOMMENDATION: Sustain. As U.S. forces draw down their personnel and resources in Iraq, reducing their ability to directly influence Iraqi officials, JAs attempting to persuade reluctant officials to carry out a course of action should be aware of host nation power structures and how to use them to exert pressure.²⁵¹

OEF ISSUE: Misconduct by Afghan National Army and Police on training trips

DECISION: Over the last 3-4 years, there have been at least four instances (South Carolina, Fort Riley, Fort Polk, and Germany) in which ANA and ANP officers have engaged in sexual misconduct while on training trips outside of Afghanistan. In one case that occurred last year in Columbia, South Carolina involving the sexual groping of a hotel maid by an ANP LTC. The officer remained in jail in lieu of bond for nearly a year. These misconduct instances have created significant problems with relationships between the Afghans and officials in the U.S. and have raised the issue of whether there training programs outside the country should continue. Due to the latest incident, the CSTC-A CG determined that the CSTC-A leadership would review all training trips, that the trips must receive approval from very senior MoD or MoI officials, and that cultural awareness training would be mandatory for all trip participants prior to travel. The various incidents have also raised questions about diplomatic immunity. There was a misperception that travelers had immunity but the CSTC-A legal office confirmed with the DoS they did not. On a positive note, the misconduct raised questions by the CSTC-A leadership about the real need for many of the trips outside the country and resulted in the tightening down and heightened scrutiny over out-of-country travel.

RECOMMENDATION: Ensure awareness and sensitivity to the issue. If misconduct occurs, review the various previous emails about how GIRoA and DoS resolved the issues.²⁵²

ISSUE: Joint planning with Afghan officials

DECISION: Afghan involvement occurs at all levels of operations from planning through execution.

²⁵⁰ *Id.*

²⁵¹ Director, IROCC 2009 OIF AAR, *supra* note 177.

²⁵² CSTC-A 2008 OEF AAR, *supra* note 16.

RECOMMENDATION: Sustain. JAs should have an understanding of Afghan culture and interact with the Afghans on a regular basis. It is important for JAs to understand cultural/tribal sensitivities before conducting any operation or Key Leader Engagement (KLE).²⁵³

I.G.2. U.S. Government – Multinational Interaction

[See VIII. MULTINATIONAL OPERATIONS]

I.G.3. U.S. Government – International Organization Interaction

OIF ISSUE: Professional interaction with the United Nations (UN)

DECISION: The professional exchange of ideas with the United Nations Assistance Mission to Iraq (UNAMI) was valuable.

RECOMMENDATION: Understanding the different perspective and knowledge these organizations bring to the table creates more productive partnerships.²⁵⁴

OEF ISSUE: International law

DECISION: The operational environment mandates OpLaw JAs be knowledgeable in international law. OpLaw JAs should pay particular attention to North Atlantic Treaty Organization (NATO) and United Nation (UN) policies, which directly affect ISAF operations.

RECOMMENDATION: OpLaw JAs must monitor and be prepared to interpret NATO and UN policies. Actively monitor the actions of these and similar organizations before and during the deployment.²⁵⁵

International Committee of the Red Cross (ICRC)

OIF ISSUE: Working with ICRC to increase inspections of Iraqi facilities

DECISION: MNF-I and the U.S. Embassy worked with the International Committee of the Red Cross (ICRC) to encourage the ICRC to step up its monitoring of Iraqi detention facilities. MNF-I invited ICRC representatives to attend one of the weekly RoL meetings chaired by the Director, Interagency Rule of Law Coordinating Center (IROCC), at which MNF-I and Embassy RoL actors discussed past and proposed activities. As the number of U.S.-held detainees diminishes over the course of this year, U.S. forces will be increasingly reliant upon Government of Iraq (GoI) detention facilities and personnel. It is therefore helpful if organizations such as the ICRC are active in scrutinizing Iraqi detention activities and ensuring that they meet Iraq's human rights obligations.

RECOMMENDATION: Monitor and sustain.²⁵⁶

ISSUE: Increasing international oversight of Iraqi detention facilities

²⁵³ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

²⁵⁴ 1AD 2009 OIF AAR, *supra* note 29.

²⁵⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 16.

²⁵⁶ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

TIP OF THE SPEAR

DECISION: Beginning in December 2008, International Committee of the Red Cross (ICRC) representatives attended several Interagency Rule of Law Coordinating Center (IROCC) meetings. This provided an opportunity to focus ICRC attention on Iraqi detention issues, not just U.S. ones. The ICRC has since executed a memorandum of understanding with the Iraqi MoJ.

RECOMMENDATION: Sustain. Engaging international actors in this way will increase the accountability of Iraqi authorities for detention issues, as well as Iraqi capacity to deal with international bodies.²⁵⁷

ISSUE: Designation of single liaison to ICRC

DECISION: Members of the ICRC made frequent requests and demands of MNF-I vis-à-vis U.S. detention facilities, requiring a great deal of time and effort by MNF-I to coordinate ICRC visits and address its various concerns. MNF-I OSJA dedicated one member of its staff to act as the sole liaison from MNF-I to the ICRC.

RECOMMENDATION: Sustain. Having a single point of contact for the ICRC at MNF-I facilitated communication between the ICRC and MNF-I helping to maintain positive relations with the organization.²⁵⁸

ISSUE: Investigating ICRC concerns

DECISION: The ICRC, on several occasions, questioned the command about what ICRC representatives heard from detainees they interviewed in the Theater Internment Facility (TIF). Upon receiving letters from the ICRC, MNF-I tended to overreact before conducting an investigation or obtaining the facts. The Geneva Conventions, when talking about the release process, allow release coordination between the two signing parties. Follow on investigation into allegations did not reveal inappropriate behavior on the part of the command and did not identify any inappropriate processes and procedures regarding detainee releases.

RECOMMENDATION: Continue with the release process in place and thoroughly investigate ICRC concerns and allegations.²⁵⁹

ISSUE: ICRC inspection standards

DECISION: The standards for ICRC inspections were a bit nebulous. Some ICRC concerns, such as mail and the displaying of the appropriate Geneva Conventions, were not part of the inspection checklists the U.S. units used. This always led to the presence of these small issues when the ICRC conducted their inspections.

RECOMMENDATION: Obtain a copy of the ICRC checklist before they arrive. There is no reason the unit's own pre-inspection checklist should not include everything the inspector will check. There are cases where units may provide additional things or when logistics may preclude meeting certain requirements. However, what those requirements are should never be a surprise.²⁶⁰

²⁵⁷ Director, IROCC 2009 OIF AAR, *supra* note 177.

²⁵⁸ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

²⁵⁹ I MEF (FWD) 2009 OIF AAR, *supra* note 43.

²⁶⁰ 4ID 2009 OIF AAR, *supra* note 20.

ISSUE: Approval levels required for ICRC visits

DECISION: A visit by the ICRC required approval from the Multi-National Force – Iraq (MNF-I) level. This level is extremely high given our policy of openness towards the ICRC.

RECOMMENDATION: Lower this approval level. While there may be a need for the highest level to know about visits and their results, there is no need to make approval at such high levels a pre-condition for the visit itself.²⁶¹

ISSUE: ICRC concern over rights provided at temporary holding facilities

DECISION: The ICRC did visit a number of times. They were concerned the units did not provide all of the rights at the temporary holding facilities provided at the theater-level facilities.

RECOMMENDATION: Expect visits by the ICRC and be prepared to explain the rationale for what you do or do not provide at certain sites.²⁶²

ISSUE: Interaction with the ICRC

DECISION: The ICRC delegate was very surprised and very happy to see the level of participation and effort U.S. forces placed on detention facility inspections. U.S. forces could conduct surprise inspections of these facilities, where the ICRC could not.

RECOMMENDATION: Doing the right things right will advance the RoL mission and satisfy the ICRC. Things we may think are insignificant, such as providing a blanket to a detainee, meant a lot to the ICRC when they found out the U.S. forces routinely did things such as this.²⁶³

ISSUE: Training by ICRC

DECISION: Frequent professional interaction with the ICRC led to mutual respect and furthered the rule of law mission. When the ICRC gave a class to the JAs, it was on a very basic level and covered areas the JAs and paralegals were already familiar.

RECOMMENDATION: Sustain. Continue to support the relationship between the Multinational Forces-Iraq (MNF-I) liaison and the ICRC. Ask the ICRC to cover advanced topics when instructing an audience of JAs and include JAs in any training ICRC will provide to Iraqi officials managing detainees.²⁶⁴

ISSUE: ICRC inspections

DECISION: The command hosted frequent ICRC inspections. The facilities always passed. Any inspection in which the sole observation is a lack of two different kinds of fruit is successful.

RECOMMENDATION: Do not be leery of ICRC interaction. U.S. units do a great job of complying with the appropriate standards.²⁶⁵

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

²⁶⁴ XVIII ABC 2009 OIF AAR, *supra* note 30.

²⁶⁵ *Id.*

TIP OF THE SPEAR

ISSUE: **Changing conceptions of international humanitarian law and requirements**

DECISION: The unit noted an apparent increased “politicization” of the Geneva Conventions. Briefings received from some ICRC personnel appeared to expand the scope of the conventions in unfamiliar directions. This shift is moving away from the way we train and educate U.S. forces to understand their obligations.

RECOMMENDATION: This politicization by some is not helpful. To the extent it ceases to reflect the accepted understanding of what the conventions means, it undermines the credibility of those presenting the material.²⁶⁶

ISSUE: **Who interacts with the ICRC?**

DECISION: There was a single point of contact for the ICRC at the MNF-I level. This helped to control the flow of information.

RECOMMENDATION: Reach out to this point of contact. Just because there is a single POC does not mean you cannot communicate. It simply means you have to use the POC.²⁶⁷

OEF ISSUE: **ICRC training on LOAC & human rights**

DECISION: Over the course of the year, we had frequent contact with representatives from the ICRC. Some contact involved confinement conditions at the ANDF but most involved Mr. Kevin Baff, the ICRC’s contact point for Law of Armed Conflict (LOAC) training. While Mr. Baff was interested in reviewing coalition and Taliban LOAC training, he was most involved with assisting us with LOAC training for the ANA and ANP. He provided examples of training lesson plans for our consideration and visited training at the Kabul Military Training Center and the five ANA Corps. He was particularly impressed with the “picture” booklet that we assisted the Afghan TJAG in preparing concerning various LOAC/Soldier rights issues. The international community also desired human rights training for the ANP. Mr. Baff assisted with course development for ANA training. ANP training development was on-going. Training was the responsibility of DoS and their contractor DynCorp and focused less on actual police training then it did survivability-type training.

RECOMMENDATION: None.²⁶⁸

ISSUE: **ICRC interaction**

DECISION: The unit had frequent, routine interaction with the ICRC. The discourse was exceptional and extremely beneficial to both parties. The unit was certain of the ICRC’s ability to keep confidences. There was never a leak of information. There were some standards upon which the unit and the ICRC disagreed. However, the unit had such an exceptional ICRC liaison this did not affect the overall relationship. The ICRC was especially helpful in the repatriation of remains. Even the Law of War (LoW) compliance monitors were much more reasonable than those of many other organizations.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ CSTC-A 2008 OEF AAR, *supra* note 16.

RECOMMENDATION: Sustain this positive relationship. The ICRC and U.S. forces do not have an inherently adversarial relationship. Choose your primary point of contact for interacting with the ICRC very carefully. This person can make or break the relationship.²⁶⁹

ISSUE: Preparation for ICRC interaction

DECISION: The DetOps attorney was the deputy liaison to the ICRC for the division (the SJA was the “primary” liaison). At the commencement of the deployment, the DetOps attorney was not familiar with ICRC visit protocol and formalities. Knowing this in advance would have been helpful and would have made relationship building easier. However, the DetOps attorney maintained a good relationship with the ICRC.

RECOMMENDATION: Sustain. The ICRC plays an important and helpful role in DetOps in Afghanistan. Deploying DetOps attorneys should be familiar with ICRC detainee visit protocols and formalities. It is important to be friendly and courteous to the ICRC, to listen to their concerns, and forward these concerns to the appropriate commander. Moreover, the DetOps attorney should practice candor—be frank with the ICRC as to what we can and cannot do.²⁷⁰

ISSUE: Coordination for safe passage for ICRC

DECISION: In addition to being the liaison to the ICRC, the DetOps attorney had to coordinate with battle space owners to let them know when the ICRC would be traveling in their area.

RECOMMENDATION: Sustain.²⁷¹

ISSUE: ICRC visits & OPSEC

DECISION: Discussions regarding facilities and troop dispositions with ICRC representatives could easily cross over into the realm of classified information. Caution and vigilance are necessary to prevent any unintended discussions regarding classified aspects of detention operations. Some personnel mistakenly believed since ICRC reports are confidential, they can discuss classified information with ICRC personnel. Although ICRC personnel are very professional and meticulously protect the confidentiality of their inspections, classified information cannot be disclosed to them.

RECOMMENDATION: Improve. OPSEC vigilance is a requirement even when conducting formal ICRC inspections. Everyone interacting with the ICRC must be aware of what information is classified. The confidentiality of ICRC reports does not change the fact ICRC personnel do not have security clearances.²⁷²

I.G.4. U.S. Government/Non-Governmental Organization (NGO) Interaction

OIF ISSUE: NGO contacts

²⁶⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

TIP OF THE SPEAR

DECISION: Provincial Reconstruction Teams (PRTs) did not want to provide their NGO contacts to coalition forces. PRTs feared that sharing NGO contact information and working with coalition forces would marginalize them among the local population.

RECOMMENDATION: Improve. Knowledge sharing would allow for better planning and more efficient mission execution, even without direct military-to-NGO contact.²⁷³

ISSUE: **Coordination of relief efforts by NGOs**

DECISION: None of the NGOs was willing to submit to anyone else's control. This led to a disjointed, uncoordinated relief effort. There is no way for the U.S. Army to assert control over these organizations.

RECOMMENDATION: Push this issue to the host nation.²⁷⁴

OEF ISSUE: **Involvement with NGO contracting**

DECISION: CSTC-A worked with Morningstar and some of their efforts. Morningstar was involved in a contract to build a medical clinic in a very rural area. The contract was under the administrative oversight of the Kabul Regional Contracting Center. CSTC-A JAs facilitated Morningstar's inquiries to the Kabul Regional Contracting Office (KRCC) when the Afghan contractor failed to perform on a consistent basis. The KRCC had their own lawyer in Bagram so CSTC-A was careful not to intrude too much into their day-to-day operations on this issue, or on any issue involving KRCC. A lot of it was personal interaction—they trusted CSTC-A because of their timely informal guidance and responses.

RECOMMENDATION: As a practice point, be receptive to assisting other entities, but be careful not to usurp another legal office's responsibilities.²⁷⁵

ISSUE: **Briefing coalition partners/ NGOs**

DECISION: It is important that OpLaw JAs understand their targeted audiences' reasons and goals for operating in Afghanistan.

RECOMMENDATION: OpLaw JAs should understand and tailor their briefs to optimize the effects on the targeted audiences. OpLaw JAs should not use boilerplate briefs.²⁷⁶

I.H. Humanitarian & Civic Assistance

OIF ISSUE: **Inability to provide immediate humanitarian relief**

DECISION: It was ridiculously hard to help LNs with humanitarian assistance, such as halal meals and water. Fiscal restrictions would not allow the expenditure of O&M funds to assist the local populous. To the operators, trying to keep people from starving, this was unacceptable. DoS, which had the necessary funding, lacked the resources on the ground to do the mission.

²⁷³ 1AD 2009 OIF AAR, *supra* note 29.

²⁷⁴ 4ID 2009 OIF AAR, *supra* note 20.

²⁷⁵ CSTC-A 2008 OEF AAR, *supra* note 16.

²⁷⁶ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

RECOMMENDATION: Improve. We need additional funding authorities to do this kind of work, especially if stability operations are now one of our core competencies.²⁷⁷

ISSUE: **Use of equipment to assist the local population during humanitarian crises**

DECISION: There is no one else who is ever going to have a reverse osmosis water purification unit (ROWPU) at the ready. Consequently, to say someone else should be doing this mission to avert a humanitarian crisis would not be immediately responsive. There is no suitable substitute.

RECOMMENDATION: We need additional authorities allowing us to use this type of equipment to help the local population in such situations.²⁷⁸

OEF ISSUE: **Urgent humanitarian crisis preparation**

DECISION: Earthquakes and natural disasters will happen, and the local governments do not have the means to respond effectively.

RECOMMENDATION: This needs to be a constant “be prepared” mission while deployed in an underdeveloped country like Afghanistan.²⁷⁹

ISSUE: **Humanitarian and Civic Assistance (HCA)**

DECISION: HCA is an operational objective in the Afghan theatre and may present fiscal law issues.

RECOMMENDATION: OpLaw JAs should be aware of fiscal law issues and seek expert advice from JAs specially trained in that area. CJTF-101 was fortunate to have Air Force JAs well versed in fiscal law matters.²⁸⁰

I.I. Human Rights Law

OIF ISSUE: **Application of International Covenant on Civil and Political Rights (ICCPR)**

DECISION: Although there was no decision at the tactical/operational level at the time this unit redeployed, an open question existed regarding the applicability of international human rights law once the legal authority for detention operations shifted from United Nations Security Council Resolution (UNSCR) 1790 to the Security Agreement (SA). The legal showing required for coalition detention under the old system was a low bar—the question was whether it would meet the strictures of the customary international law (CIL) rules against arbitrary detentions. Additionally, since Iraq is also a party to the International Covenant on Civil and Political Rights (ICCPR), the question remained whether the following standards would apply:

ICCPR Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. **No one shall be deprived of his**

²⁷⁷ 4ID 2009 OIF AAR, *supra* note 20.

²⁷⁸ *Id.*

²⁷⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

²⁸⁰ *Id.*

liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. **Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.** It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. **Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.**

5. Anyone who has been the victim of unlawful arrest or detention shall have an **enforceable right to compensation.**²⁸¹

Specifically, how do we square this with the fact that Iraq has 20,000 “security detainees” in Camp Bucca with no international legal mandate for their detention after 31 December 2008? Are our detainee review panels (Multinational Force Review Committee, etc.) sufficient to meet the requirements of the ICCPR? What outcome if the answer is no? What is the Iraqi reaction?

RECOMMENDATION: None – this must be settled well above the tactical/operational levels.²⁸²

ISSUE: **United Nations Human Rights Office (UNHRO) visits**

DISCUSSION: Due to increased security and stability, the battalion coordinated multiple visits from the UNHRO to inspect Iraqi police detention facilities and practices. Although the MEF G-9 RoL section coordinated these visits with UNHRO, the battalion took on the responsibility of scheduling the visits with the IP stations and providing transportation and security for each visit.

RECOMMENDATION: Sustain. These visits are opportunities for Iraqi counterparts to display their progress before an impartial international audience.²⁸³

ISSUE: **Monitoring of human rights by international and nongovernmental organizations**

DECISION: Various organizations, such as the UN Assistance Mission for Iraq (UNAMI), ICRC, and Human Rights Watch (HRW), actively monitor U.S. and GoI activities to assess compliance with human rights standards. It is essential to cooperate with such organizations to assist them in obtaining accurate information about U.S. activities. JAs should also ensure that commanders are aware of the resulting reports so that they can respond to comments and questions about them (e.g., December 2008 HRW Report on the Central Criminal Court of Iraq).

RECOMMENDATION: Sustain.²⁸⁴

²⁸¹ Int’l Covenant on Civil and Political Rights, art. 9, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (emphasis added).

²⁸² AWG 2009 OIF AAR, *supra* note 133.

²⁸³ 1/9 Marines 2009 OIF AAR, *supra* note 5.

²⁸⁴ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

ISSUE: Human rights implications of giving detainee personal data to GoI

DECISION: The question arose as to whether handing over the personal data of U.S. security detainees to the GoI was a violation of detainees' human rights. Although it is not a human rights violation, Iraq is a party to the International Convention on Civil and Political Rights (ICCPR) and as such has an obligation not to arbitrarily violate a person's privacy. Handing over information such as a person's medical history, race, and religion, barring a legitimate need to know or valid GoI warrant, might facilitate an Iraqi violation of its own obligations under the ICCPR.

RECOMMENDATION: Improve. U.S. forces in Iraq should continue to strive to protect security detainee personal privacy information to the extent possible yet still comply with the disclosure requirements under the U.S. – Iraq Security Agreement.²⁸⁵

ISSUE: Host Nation (HN) reporting of violations

DECISION: HN reporting of human rights violations slowly improved during the deployment. At first, the reporting process was broken.

RECOMMENDATION: Sustain.²⁸⁶

ISSUE: Reporting timelines

DECISION: Reporting timelines on violations were difficult to follow. Corps required an immediate serious incident report (SIR) on suspected violations. However, in order to ensure the information was accurate and not a false report, BCTs often took longer than the timelines provided for reporting. There was not a conscious effort to disregard the timelines, but an effort to ensure the information was factually correct and the investigation was complete before sending it up.

RECOMMENDATION: Improve. There is a continual tension between immediately informing higher headquarters, and taking the time to ensure the information is not factually inaccurate or overblown.²⁸⁷

ISSUE: Human rights abuses by local authorities

DECISION: The best solution is to assist the local judiciary. They can get the detainee population down to manageable levels and significantly lessen the humanitarian problems in the prisons. Commanders should highlight problems faced by the local judiciary to obtain support from the host nation players in assisting the judiciary.

RECOMMENDATION: Use the local system to correct problems with local authorities.²⁸⁸

ISSUE: Human rights law continues to evolve in Iraq

²⁸⁵ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

²⁸⁶ IAD 2009 OIF AAR, *supra* note 29.

²⁸⁷ *Id.*

²⁸⁸ 4ID 2009 OIF AAR, *supra* note 20.

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DECISION: Although local authorities are trying to increase adherence to international human rights law, it remains a continuing effort. This unit compiled and disseminated a monthly report in Arabic and in English documenting the reported cases of Iraqi on Iraqi violations.

RECOMMENDATION: Be alert for human rights law violations. Follow doctrine on collecting and reporting of any human rights law violations. Continue to provide monthly reports to superior and subordinate commands so they may share with their Iraqi counterparts.²⁸⁹

I.J. Information Operations

OIF ISSUE: Impact of Solider photos on information operations (IO)

DECISION: A member of the Sons of Iraq (SOI) appeared in a photograph holding a knife to a Soldier's throat. Eventually these photographs found their way onto the internet. Although these were staged photographs and there was no real threat, they case an extremely negative message for the world to view and judge. The Soldier's commander decided to conduct an AR 15-6 investigation. The area in which the incident took place had little IP or IA representation.

RECOMMENDATION: Improve. Stress the importance of appropriate behavior when interacting with the SOI and how a seemingly innocent photograph can throw the U.S. military into a negative light if it falls into the wrong hands.²⁹⁰

OEF ISSUE: Accounting under the Small Rewards Program

DECISION: The IO officer, not the OSJA, tracked accounting for payments made under the Small Reward Programs. The IO officer successfully managed the program. This officer had experience with the program before assuming its management and control.

RECOMMENDATION: Sustain. Commanders should consider delegating this duty to an IO officer with proper training and experience.²⁹¹

Role of the Information Operations (IO) Attorney

OIF ISSUE: Importance of information operations

DECISION: Information operations played a large role in the deployment. This mission was high on the priority list for the command group. Having a JA familiar with this specialty is important.

RECOMMENDATION: JAs must be familiar with this area of the law.²⁹²

ISSUE: Dedicated IO judge advocate

DECISION: 1AD did not have a dedicated legal billet at the division level for information operations and special programs. It was more difficult to understand the mission and to steer the

²⁸⁹ XVIII ABC 2009 OIF AAR, *supra* note 30.

²⁹⁰ 3ID 2008 OIF AAR, *supra* note 10.

²⁹¹ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 214.

²⁹² 1AD 2009 OIF AAR, *supra* note 29.

process once an IO product was complete. Having a formal legal billet at the division level in special programs would be helpful at the planning stage for IO missions.

RECOMMENDATION: Improve.²⁹³

ISSUE: Dedicated IO judge advocate

DECISION: Before deployment, the XVIII Airborne Corps OSJA intended to assign the responsibility for reviewing IO products to one of the operational law attorneys as an additional duty. Upon realizing the magnitude of the job, they decided a dedicated judge advocate was necessary. The average number of PSYOP products requiring legal review increased from approximately twenty per day in the beginning of the deployment to over forty per day by the end of the deployment. Moreover, the IO judge advocate attended all of the information operations working groups and assisted the division judge advocates who did not have the same level of expertise in information operations.

RECOMMENDATION: Recognize the need for a dedicated information operations judge advocate at corps level before deployment. It is critical for this judge advocate to have a Top Secret security clearance because of the classification of the products requiring legal review. Rank is also an important consideration, as this judge advocate will need the maturity and moral courage to voice his or her opinion to an information operations staff consisting of colonels, lieutenant colonels, and majors. In addition, the assigned judge advocate must have the ability to make sound legal arguments based on the applicable FRAGOs and other guidance rather than merely stating IO products are legally sufficient or insufficient.²⁹⁴

ISSUE: Pre-deployment preparation for information operations

DECISION: The XVIII Airborne Corps OSJA did not adequately prepare for the information operations mission before deployment. Their Mission Rehearsal Exercise (MRX) did not incorporate the legal review of any information operations products, nor did the OSJA work closely with the Corps IO staff before deployment. Moreover, the Pre-Deployment Site Survey (PDSS) did not reveal the need for a dedicated information operations judge advocate. Fortunately, once assigned, the dedicated information operations judge advocate, as well as the operational law judge advocates, became heavily involved in the information operations processes, allowing them to learn quickly as they went. In addition, their extensive pre-deployment study of Iraqi history, culture, religion, and law proved to be invaluable in the development of effective IO products.

RECOMMENDATION: All judge advocates who will advise on information operations should prepare themselves before deployment. They need to be familiar with Field Manual (FM) 3.05-30 (Psychological Operations), Executive Order (EO) 12333 (United States Intelligence Activities, and AR 381-10 (U.S. Army Intelligence Activities), among other resources. They should attend the information operations short course at TJAGLCS. In addition to knowledge of the legal resources governing information operations, cultural awareness is crucial for effective information operations in terms of knowing the audience, their literacy level, the type of media that will be most effective in communicating to them. Finally, the OSJA should coordinate with

²⁹³ *Id.*

²⁹⁴ XVIII ABC 2009 OIF AAR, *supra* note 30.

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the corps IO cell before deployment and incorporate the legal review of IO products into MRXs.²⁹⁵

ISSUE: Preparation for IO

DECISION: Many of the after action reviews (AAR) used to prepare for this mission concentrate on peacetime operations. There was a lot of gap-filling required to understand how IO affects current operations. Only by reviewing theater-specific operation orders (OPORDs) and other documents would one be able to understand which regulations apply and to what extent they apply.

RECOMMENDATION: To understand the IO mission in theater, reviewing current OPORDs will be more valuable than reading AARs.²⁹⁶

ISSUE: Focus training on field issues

DECISION: Classroom training was helpful in understanding the strategic implication of information operations (IO); however, a greater emphasis on practical issues would be more beneficial for the field-level JA.

RECOMMENDATION: Improve.²⁹⁷

ISSUE: Attendance at working groups

DECISION: The information operations judge advocate attended all IO working groups. This allowed him to have input during the development phase of IO products and to assess their compliance with applicable FRAGOs and implementing guidance before completion. Early involvement made the IO section more receptive to the judge advocate's comments and generated credibility, especially given that the judge advocate also contributed his knowledge of Iraqi culture, religion, and law.

RECOMMENDATION: Sustain. Judge advocates should also begin to link in with the IO section during mission rehearsal exercises and pre-deployment working groups.²⁹⁸

ISSUE: Interaction with division information operations cells

DECISION: The MNC-I information operations judge advocate worked closely with division OSJAs, which typically did not have a dedicated IO attorney. Division-level attorneys sought the expertise of the IO judge advocate and allowed MNC-I to be the "bad guy" when necessary to disapprove IO products that were in violation of the guidance. In addition, the IO judge advocate disseminated the best practices learned from the divisions.

RECOMMENDATION: Sustain. It is important to synchronize IO efforts at all levels of command and across the battle space.²⁹⁹

ISSUE: Awareness and interpretation of FRAGOs and implementing guidance

²⁹⁵ *Id.*

²⁹⁶ IAD 2009 OIF AAR, *supra* note 29.

²⁹⁷ *Id.*

²⁹⁸ XVIII ABC 2009 OIF AAR, *supra* note 30.

²⁹⁹ *Id.*

DECISION: Judge advocates advising on information operations must keep abreast of all FRAGOs and guidance pertaining to the conduct of IO. Whereas the MNF-I FRAGO did not change throughout the deployment, the implementing guidance did. Judge advocates reviewing IO products needed to master this guidance in order to formulate sound legal arguments. Moreover, they needed to know which media were MNC-I's responsibility and which were the subordinate divisions' responsibility.

RECOMMENDATION: Sustain.³⁰⁰

Approval Authority for IO Products

OIF ISSUE: Approval authority

DECISION: It was critical for judge advocates to understand the approval authority for different types of IO messages and products. Because of the negative consequences of the attribution of certain types of IO products to the United States, MNC-I judge advocates were very cautious, sending products to MNF-I whenever it was doubtful that MNC-I could approve the product. Fortunately, the MNF-I approval authority was co-located with the MNC-I IO section, thereby facilitating the review of products.

RECOMMENDATION: Collocation of the higher approval authority and the subordinate IO section was advantageous.³⁰¹

ISSUE: Delay in release of information about a capture due to the elevated approval level

DECISION: It required CENTCOM approval to tell the public we captured a specific individual. The time lag for this made the information operation worthless. This did not help push the rule of law or demonstrate our competence.

RECOMMENDATION: Push this approval level down lower in the chain to shorten the time for approval or allow pre-approval. There is no reason why you cannot pre-approve the subsequent information operations message the same time you approve the operation to capture the individual.³⁰²

Legal Review of IO Products

OIF ISSUE: Reviewing PSYOP products

DECISION: The radio station at Baquba was the most significant IO effort in the regiment's area of operations, but required little JA input. On the other hand, CA units requested legal review of PSYOP products. Although the division had issued some guidance, the JA was uncertain as to what factors—other than his perspective as an objective observer—the review should consider.

RECOMMENDATION: Improve. More training and guidance would be helpful (e.g., increase the amount of information provided in the Operational Law Handbook).³⁰³

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² 4ID 2009 OIF AAR, *supra* note 20.

³⁰³ 2SCR 2009 OIF AAR, *supra* note 1.

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ISSUE: Conducting legal review of PSYOP products

DECISION: The BJA conducted a review of Psychological Operations (PSYOP) products. However, he did so without ever have received any training on the standards for these products.

RECOMMENDATION: Improve. Get training before deploying.³⁰⁴

ISSUE: Review of IO products

DECISION: All IO products had to go to MNC-I for approval. This resulted in the PSYOP team simply using pre-approved products. The BJA did not object to the approval level because it was an area of the law in which he had no training.

RECOMMENDATION: None.³⁰⁵

ISSUE: Review of information operations (IO) products

DECISION: The BCT JAs reviewed all information operation products the BCT created.

RECOMMENDATION: Sustain.³⁰⁶

ISSUE: Lack of a basic understanding by IO personnel

DECISION: Information Operations personnel created their own set of rules but were often unfamiliar with them. Much of the work done by the attorneys centered on educating them on IO policy (i.e., their own rules) and was not legal in nature.

RECOMMENDATION: Improve the training and education of IO personnel.³⁰⁷

ISSUE: Review of “wanted dead or alive” poster

DECISION: The BJA did not concur with using the poster.

RECOMMENDATION: Sustain. Units should not use “wanted dead or alive” posters because people may kill or abduct the wrong person and then demand payment from the U.S. government. Use of such posters may also violate domestic law.³⁰⁸

ISSUE: Review of the use of photographs of successfully captured wanted individuals

DECISION: The BJA did not concur with this use of detainee photographs.

RECOMMENDATION: Sustain. Do not use photographs of individuals detained by the U.S. government for propaganda purposes as it may conflict with Geneva Convention principles

³⁰⁴ 214th Fires BDE 2009 OIF AAR, *supra* note 14.

³⁰⁵ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

³⁰⁶ 4-I CAV 2009 OIF AAR, *supra* note 12.

³⁰⁷ 1AD 2009 OIF AAR, *supra* note 29.

³⁰⁸ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 4.

forbidding making detainees public spectacles and curiosities. Instead, units may publicize information of a successful capture without the detainee's image.³⁰⁹

ISSUE: Review of posters stating that "Allah wants you to . . ."

DECISION: The BJA did not concur with the posters.

RECOMMENDATION: Sustain. Do not use posters or other communications to the public espousing any particular religious view on the part of the U.S. government.³¹⁰

ISSUE: IO product review

DECISION: The BJA reviewed all IO products the SBCT produced for legal sufficiency. There was no education on this process before deploying, and the BJA learned everything about IO upon arriving in country. The primary source of education was division FRAGOs setting forth approval levels and appropriate subject matter.

RECOMMENDATION: Try to learn something about IO before deploying and find the applicable FRAGOs from HQ if possible to get access to the current ongoing FRAGO guidance.³¹¹

ISSUE: Legal review of IO campaign regarding Iraq's maritime interests

DECISION: The MNF-I OSJA briefed members of the IO staff regarding the major legal issues affecting Iraq's maritime interests and made recommendations regarding the characterization of Iranian incursions into Iraqi waters. The MNF-I OSJA consulted on the Department of State's position regarding the boundary. The OSJA recommended not characterizing Iranian incursions into Iraqi waters as a per se violation of international law, as the border between the two countries is currently in dispute. In addition, based on the outcome of the dispute, Iranian ships may enjoy limited passage rights through Iraqi waters as per the 1975 Algiers Accord.³¹²

RECOMMENDATION: The unit should coordinate any characterizations regarding the status of the Iraq/Iran maritime boundary with the U.S. Embassy in Baghdad (DoS).³¹³

ISSUE: Awareness of IO missions

DECISION: The OpLaw section had an excellent working relationship with the IO section. This allowed the OpLaw section to be proactive in reviewing IO efforts.

RECOMMENDATION: Sustain.³¹⁴

OEF ISSUE: Psychological Operations (PSYOP)

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ 2SBCT, 25ID 2009 OIF AAR, *supra* note 8.

³¹² 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 4.

³¹³ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

³¹⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

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DECISION: No clear policy exists on the left and right limits of PSYOP. PSYOP personnel continually relied on the OpLaw JAs to provide these limits by requesting legal reviews of their products.

RECOMMENDATION: In the face of unclear directives from higher authority, OpLaw JAs need to be prepared to render a “recommendation” on materials without providing a “legal review.” OpLaw JAs should also include, to the extent permissible, cultural advisors and Afghan nationals in the preparation and review of these materials.³¹⁵

I.K. Intelligence Law

Intelligence Law Training

OIF ISSUE: Training and education for military intelligence (MI) personnel

DECISION: MI battalions sought assistance from the Asymmetric Warfare Group (AWG), particularly before deployment. MI personnel need to understand and be aware of some of the new techniques and limitations. You cannot share classified information with Iraqi officials. U.S. units may sometimes use their HUMINT sources as witnesses, but a better method is to use the source to identify someone else who can testify. In this way, the witness learns only that U.S. forces are interested in obtaining his/her testimony, not the identity of the original source. The CP2CXCI might also help to coordinate and control this aspect, by allowing U.S. intelligence personnel to work closely with their ISF counterparts.

RECOMMENDATION: Improve. JAs should work with MI personnel before deployment to ensure sufficient understanding of the new legal framework and its impact upon their operations.³¹⁶

ISSUE: Knowledge of intelligence law

DECISION: The over-classification of products poses a problem. Moreover, JAs face a myriad of issues involving intelligence ranging from interrogations to warrant-based targeting.

RECOMMENDATION: JAs at all levels should seek the counsel and guidance of the S2 before digging through every intelligence regulation they can find on the United States Army Publishing Agency (USAPA) webpage. The S2 may serve as an excellent resource for new and experienced JAs alike.³¹⁷

ISSUE: Relationship building with MI personnel

DECISION: The intelligence community is, understandably, a closed one. They often act as their own experts. This makes it extremely difficult to provide intelligence law advice.

RECOMMENDATION: The solution to this is relationship-based. The JA community has to make an effort to build relationships with those inside the circle where these operations occur.³¹⁸

³¹⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

³¹⁶ AWG 2009 OIF AAR, *supra* note 133.

³¹⁷ 3ACR 2009 OIF AAR, *supra* note 15.

³¹⁸ 41D 2009 OIF AAR, *supra* note 20.

ISSUE: Training in intelligence law

DECISION: The G2X Course at Fort Huachuca is very valuable.

RECOMMENDATION: One or two OpLaw attorneys at the division level should attend, as should any MI Brigade JA.³¹⁹

ISSUE: Attendance at the intelligence law course

DECISION: Having a JA audit the Ft. Huachuca intelligence law course is valuable. It allowed the JA to speak the language at the staff level and understand the different platforms available in this area.

RECOMMENDATION: Sustain.³²⁰

OEF ISSUE: Intelligence law training

DECISION: OpLaw JAs attended the Intelligence Law course at The Judge Advocate General's Legal Center and School (TJAGLCS) before deployment.

RECOMMENDATION: Sustain.³²¹

Military Source Operations

OIF ISSUE: Military source operations

DECISION: TF 525 frequently conducted military source operations. It was important to become involved with the S2 in the source operations and to understand who can be a source and who can manage them. Having a working relationship with the S2 and other military intelligence (MI) personnel was essential for effective communication with the commanders.

RECOMMENDATION: Educate yourself before deployment on the "language" of source operations so you understand the process and gain credibility. Establish a working relationship with the S2 before deployment.³²²

ISSUE: What constitutes an "intelligence source"?

DECISION: The line between an intelligence source and just a contact is unclear. The concept of "every Soldier is a sensor" raises concerns as to what is normal interaction versus a source operation. There was no clear line at the lower levels.

RECOMMENDATION: This requires engagement by the legal community and having legal professionals with credibility speak on these issues.³²³

³¹⁹ *Id.*

³²⁰ 1AD 2009 OIF AAR, *supra* note 29.

³²¹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

³²² TF525 2009 OIF AAR, *supra* note 13.

³²³ 4ID 2009 OIF AAR, *supra* note 20.

TIP OF THE SPEAR

Security Clearances

OIF ISSUE: Lack of a TS/SCI level clearance

DECISION: The BJA only had a “secret” clearance. As a result, he was not able to examine much of the intelligence the commander reviewed to make operational decisions, which required a “top secret-sensitive compartmentalized information” (TS/SCI) clearance.

RECOMMENDATION: Obtain the TS clearance before deployment. As this tends to take quite a bit of time, begin the process early.³²⁴

ISSUE: Clearance levels

DECISION: None of the BCT JAs had Top Secret (TS) clearances. As a result, they had no input in or awareness of much of the issues that occurred in the intelligence area. This did not prevent them from receiving questions. However, the questions posed lacked detail and left out all the TS information. This made it impossible to provide sufficient advice to the commander.

RECOMMENDATION: At least one of the JAs at the BCT should have a TS clearance.³²⁵

ISSUE: Discerning Iraqi access

DECISION: Much of the work in this area concerns what information U.S. forces could share with the Iraqis. Of particular note was how to transform intelligence into evidence to facilitate warrant-based detention operations.

RECOMMENDATION: Consultation with foreign disclosure officer and the G2 staff enabled the OpLaw staff to develop workable solutions to these issues.³²⁶

[See also X.F.1. DOTMLPF—Personnel—Staffing (Security Clearances)]

I.L. Interrogations

Who Conducts Interrogations

OIF ISSUE: Interrogations vs. law enforcement interviews

DECISION: The issue arose as to whether and how to differentiate between interrogations within the meaning of FM 2-22.3 (Human Intelligence Collector Operations) and law enforcement interviews by the Joint Prosecution Exploitation Center (JPEC) and Law Enforcement Professionals (LEPs). The RCT JA drew a line for command HUMINT interrogators that permitted JPEC and LEP agents to conduct criminal questionings that did not conflict with the Detainee Treatment Act of 2005 and FM 2-22.3. The key distinction, in his view, was the purpose for conducting the questioning. The HUMINT personnel were adamant that only they could run “approaches.” The RCT JA never disputed this and specifically required the JPEC and LEP investigators to avoid techniques listed in the FM 2-22.3. The aim of JPEC and LEP

³²⁴ TF525 2009 OIF AAR, *supra* note 13.

³²⁵ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

³²⁶ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

questionings was to build criminal cases the Central Criminal Court of Iraqi (CCCI) and the local Iraqi courts could adjudicate.

RECOMMENDATION: Ensure deploying JAs are experts on FM 2-22.3 and the distinction between intelligence interrogations and other types of questioning. Otherwise, the HUMINT folks will circle the wagons to guard their territory. This will marginalize the effectiveness of JPEC and LEP in theater.³²⁷

ISSUE: Human Exploitation Team (HET) interrogations

DISCUSSION: A HET screened and/or interrogated all BN detainees at the BN detainee collection point (DCP) in order to assist in determining whether to release or further detain suspected insurgents. The battalion commander relied upon the S-2's intelligence assessment and the HET's interrogation reports to make a determination on a detainee. As the one person that kept pushing forward on processing detainees, the BN JA had to routinely check-in with HET and the S-2 to make sure that they were getting enough information to make a recommendation or disposition.

RECOMMENDATION: Get to know the Marines who will interrogate your detainees. On one hand, they will conduct interrogations in the BN DCP, which typically is the JAs responsibility. On the other hand, you will need their assessment in order to give the commander the best possible recommendation for disposition of a detainee.³²⁸

ISSUE: Agencies/personnel permitted to interrogate

DECISION: In preparation for executing the Security Agreement, one of the biggest problems forecasted was how to conduct interrogations in accordance with Iraqi law. It was difficult to get the G-2 personnel to agree on who and how the interrogations should be done from the U.S. perspective (i.e., should it be done by the G-2 interrogator or the law enforcement interrogator?). The fact that G-2 personnel had access to U.S. facilities and the law enforcement interrogators could only submit questions (to the G-2 personnel) exacerbated this problem.

RECOMMENDATION: Improve. As this situation matures, a better working relationship is essential.³²⁹

ISSUE: Use of LEPs to gather evidence

DECISION: The unit found the abilities of these individuals to vary greatly. Some were exceptional interviewers and could gather a great deal of useful evidence. Others were much less experienced in questioning suspects. Additionally, some had earned respect and credibility with their Iraqi police counterparts making them key players in training the local precincts on evidence preservation/collection and obtaining warrants.

RECOMMENDATION: Make an individual assessment, early on, as to the abilities of any supporting law enforcement professionals.³³⁰

³²⁷ RCT-5 2008 OIF AAR, *supra* note 9.

³²⁸ 1/9 Marines 2009 OIF AAR, *supra* note 5.

³²⁹ 1AD 2009 OIF AAR, *supra* note 29.

³³⁰ XVIII ABC 2009 OIF AAR, *supra* note 30.

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ISSUE: LEP interrogation of detainees

DECISION: The BCT commander signed a memorandum authorizing LEPs to conduct interrogations of detainees in Iraqi facilities. A FRAGO specified what the LEPs could and could not do. LEPs had to comply with the same standards governing interrogations in DoD facilities.

RECOMMENDATION: Sustain. Get LEPs into Iraqi facilities to interrogate detainees as soon as possible to assist the investigative judge (IJ) in developing the criminal case.³³¹

ISSUE: Interrogator resistance to evidence-collection interviews

DECISION: Some interrogators resisted also allowing the interview of detainees for evidence collection. It is best to use LEPs for evidence collection. Some units separated detainee time into interrogation time for interrogations or interview time for LEPs.

RECOMMENDATION: Units need a plan to make evidence collection a priority for their interrogators. Alternatively, they need a plan for allowing others who have an evidence focus to have access to detainees.³³²

ISSUE: Decreased intelligence

DECISION: In preparation for the Security Agreement, the division ceased long-term detentions in October 2008. After October, U.S. forces transferred every detainee to Iraqi forces within the 24-hour window. However, because U.S. forces were no longer interrogating these detainees, the amount of usable intelligence decreased significantly.

RECOMMENDATION: The reduction in intelligence gathering is a direct result of the decision not to send U.S. forces into Iraqi detention facilities to conduct interrogations.³³³

ISSUE: Effect of warrant-based detentions on the quality of intelligence obtained

DECISION: The unit experienced no problems. There were no complaints in this regard. There was some tension early on concerning who would get initial access to a detainee for questioning or interrogation—the law enforcement professionals or the interrogators.

RECOMMENDATION: Sustain. These questions sorted themselves out.³³⁴

ISSUE: Iraqis interrogations in U.S. detention facilities

DECISION: This was a recurring issue during the deployment. The decision early on was to allow Iraqis to conduct interrogations in U.S. detention facilities. However, before the Iraqis could conduct such interrogations, they had to receive U.S. approval, adhere to U.S. interrogation techniques, and agree to supervision by U.S. personnel.

RECOMMENDATION: Sustain. The cooperation between the Iraqi and U.S. personnel worked very well.³³⁵

³³¹ 4-1 CAV 2009 OIF AAR, *supra* note 12.

³³² 4ID 2009 OIF AAR, *supra* note 20.

³³³ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

³³⁴ XVIII ABC 2009 OIF AAR, *supra* note 30.

³³⁵ 3ID 2008 OIF AAR, *supra* note 10.

ISSUE: Multinational/agency interrogations

DECISION: The following circumstances presented at different times during the deployment: Iraqi officials requesting authorization to interrogate an Iraqi in a U.S. facility, U.S. officials seeking permission to interrogate an Iraqi in an Iraqi facility, and a non-Department of Defense (DoD) officials asking for the opportunity to interrogate an Iraqi in either location.

RECOMMENDATION: JAs need to familiarize themselves with the rules regarding these types of interrogations to avoid potentially disastrous scenarios where their unit stars in a vignette as an example of what not to do.³³⁶

ISSUE: Can FBI and CIA agents enter U.S. detention facilities?

DECISION: By policy, the FBI and CIA could enter the Theater Internment Facility (TIF) but not the division detainee holding area (DHA)-level facilities.

RECOMMENDATION: Sustain. There were no issues with this process.³³⁷

ISSUE: Interrogations at Iraqi facilities

DECISION: A cost to U.S. intelligence activities of turning detainee operations over to Iraqi forces was the loss of the fourteen days available for interrogation under the old system. MND-B had mobile interrogation teams to conduct interrogations at Iraqi facilities, but these interrogations had to comply with the same legal requirements as all other interrogations by DOD personnel, in addition to being logistically cumbersome.

RECOMMENDATION: Sustain. Units should realize they do not have unfettered access to detainees anymore and should develop an intelligence collection plan accordingly.³³⁸

Interrogation vs. Tactical Questioning

OIF ISSUE: Understanding the interrogation rules

DECISION: Although TF 525 had the assets to conduct interrogations, most of the interrogation teams were located on outlying FOBs. Soldiers co-located with the headquarters were only to perform detainee intake duties, not interrogations. However, there was some confusion as to what qualified as an “interrogation” versus tactical questioning and who could perform these interrogations.

RECOMMENDATION: Make sure the interrogation training identifies “who can ask what.” Ensure only those Soldiers trained for the job conduct interrogations.³³⁹

ISSUE: Tactical questioning

³³⁶ 3ACR 2009 OIF AAR, *supra* note 15.

³³⁷ 3ID 2008 OIF AAR, *supra* note 10.

³³⁸ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

³³⁹ TF525 2009 OIF AAR, *supra* note 13.

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DECISION: Soldiers trained and certified can conduct tactical questioning on or near the objective.

RECOMMENDATION: JAs must understand this is squarely in the S2's lane. Confer with the S2 to push scenario-based training to help the Soldiers understand the distinctions between tactical questioning and interrogations.³⁴⁰

OEF ISSUE: "Tactical questioning" versus "interrogation"

DECISION: Current policy does not allow interrogation at the brigade level. The capturing unit followed the field manual guidance and was careful not to cross over into the realm of interrogation.

RECOMMENDATION: Improve. Provide clear guidance as to how many times and when a unit may pursue tactical questioning with a detainee.³⁴¹

I.M. Law of War (LOW)/Law Of Armed Conflict (LOAC)

OIF ISSUE: Impact of the Security Agreement on applicability of LOAC

DECISION: The question arose as to whether LOAC continued to apply in Iraqi territorial waters upon entry into force of the U.S. – Iraq Security Agreement. The MNF-I OSJA advised that LOAC continued to apply within Iraq's territorial waters because the conflict in Iraq continued in the nature of an internal armed conflict under Common Article III of the Geneva Convention.

RECOMMENDATION: Sustain.³⁴²

I.M.1. Training

OIF ISSUE: LoW and ROE training

DISCUSSION: Most of the LoW and ROE training that took place during Exercise Mojave Viper addressed broad conventional warfare concerns. In BN-level decision making training evolutions, however, the BN JA was present in the COC with hard copies of the ROE. The BN JA was encouraged that the battalion commander and the operations officer viewed the ROE as a commander issue vice a "lawyer issue," though there were several instances in which the BN JA had to interject himself based on erroneous understandings of the ROE. Even when commanders are knowledgeable on ROE issues, it is necessary to stay alert for problems.

RECOMMENDATION: Improve. Pre-deployment legal training should provide extended instruction on the actual ROE used in theater. Most of the training focused on broad LoW principles, vice specific elements of the ROE that will govern operations.³⁴³

ISSUE: **Challenges to LOW training with geographically-dispersed units**

³⁴⁰ 3ACR 2009 OIF AAR, *supra* note 15.

³⁴¹ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 214.

³⁴² MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

³⁴³ 2/2 Marines 2008 OIF AAR, *supra* note 102.

DECISION: LoW training occurred before the deployment and quarterly thereafter. Because most of the interrogation teams and signals intelligence (SIGINT) teams were not collocated with our headquarters, we relied on the “battle space owners” to provide necessary quarterly training for our Soldiers. This worked well, but our unit needed more specific guidance on interrogations.

RECOMMENDATION: LoW training before the deployment is essential. As the judge advocate, be prepared to give this training. Ensure your paralegals at the outlying FOBs are prepared to conduct the LoW training for their battalions once in theater. Be prepared to ask “battle space owners” to pick up training for units that are TACON to them.³⁴⁴

ISSUE: Relevance of LoW training scenarios

DECISION: The scenarios in the standard training packages were not particularly relevant to the current environment. The unit developed its own scenarios based upon what the unit they were replacing indicated they were seeing on the ground.

RECOMMENDATION: Tailor your training scenarios to what your unit can expect to see in country.³⁴⁵

ISSUE: Tailoring ROE training to the audience

DECISION: Leaders, Soldiers, and staff sections all required training with different areas of emphasis. Tailoring the presentation to the audience made the presentations less sterile and less “lawyer-like.”³⁴⁶

RECOMMENDATION: Continue to adjust training significantly based upon the audience. Additionally, MiTTs also require a specific training package.

ISSUE: Use of actual incidents as training tools

DECISION: The unit viewed any actual incident raised up the chain with a legal question as an opportunity to produce a training aid.

RECOMMENDATION: Add these scenarios to the back of the training packets. They help to keep even required training fresh and relevant.³⁴⁷

ISSUE: LOW/ROE training

DECISION: The division published LOW and rules of engagement (ROE) training vignettes on a shared portal, to which brigade JAs and troops had access. Real scenarios taken from investigations formed the basis of the vignettes. The division required its units to conduct LOW/ROE training at least quarterly (more frequently if there had been a significant number of escalation of force (EOF) incidents. One of the OSJA paralegals was responsible for conducting the division’s predeployment training.

RECOMMENDATION: Sustain.³⁴⁸

³⁴⁴ TF525 2009 OIF AAR, *supra* note 13.

³⁴⁵ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

³⁴⁶ 4ID 2009 OIF AAR, *supra* note 20.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

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ISSUE: LOAC training to transition teams

DECISION: The unit provided a JA to train incoming transition teams at the Iraqi Assistance Group's Phoenix Academy at Camp Taji on the different issues the transition teams would encounter. Specifically, the JA distinguished what types of issues would be LOW/LOAC issues versus Iraqi law issues.

RECOMMENDATION: Sustain.³⁴⁹

ISSUE: Pre-deployment LOAC training

DECISION: The BCT JAs conducted LOAC training before deployment. Vignettes were extremely helpful for teaching Soldiers the rules, especially when the instructors changed one or two facts from the scenario and illustrated how this changed the outcome. The instructors stressed reporting and not covering up incidents. Moreover, the TC incorporated the U.S. v. Trevino court-martial, which had recently occurred at Fort Hood, into the training to show the ramifications of not complying with the LOAC.

RECOMMENDATION: Sustain. Clear and complete training in the LOAC before deployment can go a long way toward preventing LOAC violations.³⁵⁰

OEF ISSUE: Escalation of Force (EOF) training

DECISION: There were detailed steps in handling EOF incidents mandated by ISAF procedure. OEF forces adopted these steps. The BCT trained on EOF in theater and ensured training was continuous. The BDE JA created training slides based on the higher headquarters' FRAGOs.

RECOMMENDATION: Increase emphasis on training theater-specific EOF procedures (including reporting requirements) in the pre-deployment stage.³⁵¹

ISSUE: Company commanders providing LOW/LOAC training

DECISION: Due to the great distance between the FOBs, many times the JAs would provide company commanders with LOW/LOAC training. The commanders would then, in turn, deliver the training to their Soldiers. Company commanders delivered the most effective instruction to the Soldiers before leaving the FOB on a mission.

RECOMMENDATION: Sustain. With proper oversight and training from a JA, company commanders can provide very effective LOW/LOAC training. Classroom instruction should occur during the pre-deployment cycle, while in theater at the deployment site, and within small groups before departing the FOB.³⁵²

ISSUE: Command and staff OpLaw briefings

³⁴⁹ XVIII ABC 2009 OIF AAR, *supra* note 30.

³⁵⁰ 4-1 CAV 2009 OIF AAR, *supra* note 12.

³⁵¹ 420th EN BDE 2009 OER AAR, *supra* note 17.

³⁵² 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 214.

DECISION: OpLaw JAs provided the Commanding General (CG) and his primary staff with two days of LoW and LOAC training before deploying. OpLaw JAs gave detailed briefs on the controlling ROEs. This instruction demonstrated the CG took the subject matter seriously, which had a trickle-down effect on the subordinate commands. While deployed, the OpLaw JAs continued to provide this training on a periodic basis. This ensured the command was up to date on the most current changes to the ROE. The command also encouraged the OpLaw JAs to disseminate the information to the brigades personally.

RECOMMENDATION: Sustain.³⁵³

I.M.2. Violations

Reporting

OIF ISSUE: Role of paralegals in reporting violations

DECISION: Paralegals had little to no role in the investigations of any alleged LOW violations. When a LOW violation occurred, an AR 15-6 investigating officer was appointed. All information flowed directly from the ground unit, to the investigating officer, to the JA, and then to the brigade commander. The paralegals were not in the mix.

RECOMMENDATION: Review and possibly improve. BCTs and divisions should determine whether, and to what extent, paralegals should be included in the investigative process involving alleged LOW violations.³⁵⁴

ISSUE: Failure to report a detainee abuse case

DECISION: There was one ‘failure to report’ case involving allegations of detainee abuse from an interrogator. The accused received non-judicial punishment (NJP) for his failure to report the incident.

RECOMMENDATION: Ensure that all Soldiers know that there is a continuing obligation to report LOW violations even if it is not committed by U.S. service members.³⁵⁵

ISSUE: “Whistleblower” complaint by Soldier who reported an allegation of detainee abuse

DECISION: A Soldier who reported an allegation of detainee abuse received a letter of reprimand and no support for his next promotion.

RECOMMENDATION: Ensure the Soldier knows his rights and the command is not violating a Soldier’s rights.³⁵⁶

OEF ISSUE: Reporting requirements for allegations of LOW violations

DECISION: CJTF-82/101 and higher headquarters had stringent reporting requirements for LOW allegations involving U.S. and coalition forces, and there were several incidents

³⁵³ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

³⁵⁴ 3ID 2008 OIF AAR, *supra* note 10.

³⁵⁵ TF525 2009 OIF AAR, *supra* note 13.

³⁵⁶ 1AD 2009 OIF AAR, *supra* note 29.

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investigated. Less clear, however, was the responsibility of training teams embedded with ANA or ANP who observed potential LOW violations. Questions arose about what are they supposed to do/to whom were they to report. CSTC-A also had ongoing tension between the relationship of training teams serving as mentors/advisors and the conflict of “informing on” those you closely work with. This conflict also came up in the intelligence gathering area. CSTC-A's mentors had to work closely with their Afghan counterparts and personal relationships mean everything to Afghans. Therefore, if mentors reported something, it very likely would end the relationship. Most examples that came up involved graft or corruption and not LOW issues. As a general rule, and depending on the circumstances, we urged mentors to put pressure on the various Afghan systems to root out potential violations. In other words, to mentor the Afghan commander on the scene to report the matter to his superior, to the IG, or to the SJA. This effort met with mixed results.

RECOMMENDATION: Be aware of the issue and continue to push for appropriate investigation.³⁵⁷

Law of Armed Conflict Scenarios

OIF ISSUE: Using a schoolhouse as a sniper post

DECISION: The BJA received information that a small unit wanted to use the roof of a schoolhouse as a sniper post. The unit contended this action did not violate the LOAC because sniper/observers were only going to occupy the schoolhouse roof at night, when no one occupied the building. The BJA advised against this course of action because of the protected status of the schoolhouse under the LOAC. The unit did not use the schoolhouse for this mission.

RECOMMENDATION: Sustain. JA's should aggressively ensure all U.S. forces adhere to the principles of LOAC.³⁵⁸

ISSUE: Requisition of civilian property

DECISION: The BJA received information units were arriving at private residences in convoys and requesting the sole use of the residence to conduct surveillance operations. The BJA rejected this course of action as legally unsupportable. The permission obtained from those living at the residence did not have adequate voluntariness. The presence of armored vehicles and the accompanying firepower may have worked unduly to influence the person's free will.

RECOMMENDATION: Sustain. Advise against the practice of applying the pressure produced by a large display of force to obtain private residences for military use. The “voluntary” nature of the permission obtained is questionable.³⁵⁹

ISSUE: Disposition of dead bodies

DECISION: The BCT contacted the local Iraqi Police to dispose of bodies encountered during patrols.

³⁵⁷ CSTC-A 2008 OEF AAR, *supra* note 16.

³⁵⁸ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 4.

³⁵⁹ *Id.*

RECOMMENDATION: Sustain. Continue to contact the local Iraqi police to dispose of dead bodies encountered in the battle space.³⁶⁰

ISSUE: Collateral damage

DECISION: A commander called for fire on a weapons cache because he saw the threat as imminent, and in so doing destroyed a building. The regimental judge advocate (RJA) did not agree and reported the incident as a LOAC violation. Simply because a commander has a weapon at his disposal does not mean he is automatically entitled to use it, regardless of his idiosyncratic definition of “troops in contact” (TIC).

RECOMMENDATION: Do not be afraid to call a spade a spade. Re-teach the rules of engagement (ROE), and law of war training modules and scenarios often to keep commanders, staffs, and Soldiers abreast of their obligations and responsibilities.³⁶¹

ISSUE: Arming of ambulances

DECISION: The unit decided against arming ambulances or removing their protective emblems.

RECOMMENDATION: Take the long-term view. Do not ever weaken or give up your protection under the Law of War, even if the enemy is not respecting the rules.³⁶²

I.N. Legal Basis for Conducting Operations

I.N.1. Security Council Resolutions

OIF **ISSUE: Obligations under UNSCRs**

DECISION: The issue arose as to whether the U.S. has a legal obligation to share information regarding the Kurdistan Workers’ Party (PKK) with the Turkish government. The MNF-I OSJA advised that the U.S. does have such an obligation if the information in question constituted an early warning needed to prevent the commission of a PKK terrorist act against Turkey. The OSJA based its authority on U.N. Security Council Resolution (UNSCR) 1373.

RECOMMENDATION: Sustain.³⁶³

I.N.2. United Nations (UN) Reports

No AAR comments.

I.N.3. U.S. – Iraq Security Agreement (SA)

OIF **ISSUE: Transition from UNSCR authority to SA**

DECISION: United Nations Security Council Resolution (UNSCR) 1790, authorizing—under Chapter VII of the UN Charter—the presence of the Multi-National Force in Iraq and extending

³⁶⁰ *Id.*

³⁶¹ 3ACR 2009 OIF AAR, *supra* note 15.

³⁶² 4ID 2009 OIF AAR, *supra* note 20.

³⁶³ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

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the mandate set out in UNSCR 1546, expired on 31 December 2008. Since then, U.S. and other military forces are in Iraq and conduct operations there with the consent of the GoI. The Strategic Framework Agreement (SFA) and Security Agreement (SA), which may be found at http://www.mnfiraq.com/images/CGs_Messages/strategic_framework_agreement.pdf and http://www.mnf-iraq.com/images/CGs_Messages/security_agreement.pdf, respectively (also on file at CLAMO) set out the terms and conditions governing U.S. forces. In particular, the SA stipulates that U.S. forces must only conduct operations with the consent of and in coordination with the GoI. In addition, arrest and detention of Iraqis by U.S. forces must occur “through an Iraqi decision issued in accordance with Iraqi law,” and such persons must be “handed over to competent Iraqi authorities within 24 hours from the time of their detention or arrest.” The existence of an armed conflict provides a limited alternate basis for some actions. Thus, with limited exceptions, U.S. forces must base their actions on Iraqi consent and respect Iraqi law. In mid-December 2008, MNF-I issued a FRAGO providing details about SA implementation.

RECOMMENDATION: Any JA deploying to Iraq must be aware of significant changes to the legal framework.³⁶⁴

ISSUE: Iraq Security Agreement (SA)

DECISION: In contrast to the previous situation, where the MNF derived authority from UNSCRs and immunity from a CPA Order, the relationships between Iraq and U.S., as well as between Iraq and each of the coalition partners, including NATO (for members of the NATO Training Mission – Iraq, NTM-I), are set out in bilateral agreements. Furthermore, the SA applies only to U.S. forces, DoD civilians, and DoD contractors, not to civilians and contractors employed by other U.S. government agencies, such as the Departments of State and Justice. The applicable legal framework may affect an individual’s entry into and exit from Iraq, authority to carry a weapon, and the extent of protection from Iraqi law.

RECOMMENDATION: JAs should be aware that the legal framework for each coalition partner is set out in a bilateral agreement, and that the legal framework for U.S. government personnel depends upon the agency which employs the individual or contractor.³⁶⁵

Preparing for Transition to the Security Agreement Framework

OIF ISSUE: Transition to the Security Agreement legal framework

DECISION: The transition to the Security Agreement (SA) legal framework occurred just after the BCT redeployed. While corps got corps ready and division got division ready, little information passed down to the brigade. Moreover, there was no solicitation of brigade views or concerns regarding implementation of the new legal framework.

RECOMMENDATION: Improve. Consultation with the BCT would have been helpful because most battalions had already developed—during the reconciliation process—systems suitable for adoption or amendment in terms of warrant procedures.³⁶⁶

ISSUE: Anticipating requirements under the SA

³⁶⁴ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

³⁶⁵ *Id.*

³⁶⁶ IBCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

DECISION: One captain at the division was very good at anticipating the impact of the SA and disseminating information. His power point presentation served the SBCT well and helped in the adjustment period after the SA took effect.

RECOMMENDATION: Anticipate changes in the operating environment and call upon higher headquarters to do the same.³⁶⁷

ISSUE: Transition towards the Security Agreement (SA)

DECISION: Transition towards the Security Agreement (SA) was slow. There was a tremendous amount of confusion after the signing of the SA. MNC-I initially announced the BCTs would have authority similar to that under the United Nations Security Council Resolution (UNSCR). Because of the close-hold nature of the negotiations, information flow was slow and incomplete. Attorneys sometimes felt like the answer from higher was “figure it out yourself.”

RECOMMENDATION: Greater information sharing would have increased the ability of the JAs to plan and prepare their commanders and technical-channel subordinates for the application of the SA.³⁶⁸

ISSUE: Initial denial by units of the change in legal basis for conducting operations

DECISION: People tend to gravitate toward the answer they like best. Consequently, many units refused to acknowledge things were going to change significantly when the United Nations Security Council Resolution expired.

RECOMMENDATION: You have to force people to face hard choices. Do not assume away a looming problem. Shifts such as these require immediate guidance from higher. The lone harbingers of change should not be a couple of captains working at the division level.³⁶⁹

ISSUE: The amount of time it took to formulate a legal response to the changing situation

DECISION: This required bringing all of the JA leadership together. Only after the legal community was speaking with one voice could they effectively get and use their access to the actual decision-makers to force awareness.

RECOMMENDATION: If you are in a situation where you have to lead change, ensure you are leading a coordinated effort.³⁷⁰

ISSUE: Providing the leadership visibility over impending changes

DECISION: There were many opportunities to use the pulpit available to JAs to put issues in front of the commanding general.

RECOMMENDATION: Use the opportunities you have to affect positive change.³⁷¹

ISSUE: Understanding the Security Agreement (SA)

³⁶⁷ 2SBCT, 25ID 2009 OIF AAR, *supra* note 8.

³⁶⁸ 1AD 2009 OIF AAR, *supra* note 29.

³⁶⁹ 4ID 2009 OIF AAR, *supra* note 20.

³⁷⁰ *Id.*

³⁷¹ *Id.*

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DECISION: Training geared toward the Security Agreement (SA) and the Strategic Framework Agreement (SFA), as well as the role of the various SA committees, would be beneficial. Many implementation aspects of the SA are works in process, with committees and sub-committees working out implementation procedures. Knowledge of the different committees and what issues they handle is beneficial. Sometimes legal questions would crop up where the correct answer is simply to defer to the committee who “owns” the issue. As negotiations and discussions take place by committees handling issues relevant to Iraq, negotiation and execution of MOUs and MOAs is occurring.

RECOMMENDATION: Knowledge of these agreements would be beneficial to the JA deploying with the JASG-C. Basic negotiating skills and MOU/MOA drafting skills are also important in this regard.³⁷²

ISSUE: Anticipating the process changes under the SA

DECISION: In regards to criminally based detention, MNF-W tried to anticipate changes in the detention process. The CG’s philosophy was the Iraqis needed to be in the lead on most everything before the expiration of the UNSCR on 31 December 2008. This included detention. As a result, on 1 December, 30 days before the UNSCR expired, MNF-W ceased all security detentions, detaining only for criminal prosecution based on an Iraqi decision. By implementing the change 30 days before the UNSCR expiration, the command was able to “work out the kinks” in the process and establish an efficient process with the Iraqi Police and other Iraqi Security Forces.

RECOMMENDATION: None.³⁷³

ISSUE: Educating the MNF-W staff about the impact of the Security Agreement

DECISION: With the new Security Agreement came an entirely new set of training requirements. It was necessary to understand the impact on detention operations, the rules of engagement, and interaction with contractors. In addition, it required an entirely new mind-set, as MNF-W was not to be “the king of the hill” anymore. The “share the road” policy, along with the motto “by, with, and, through the Iraqis,” emphasized the importance of shifting the mind-set.

RECOMMENDATION: Continue to educate the MNF-W staff and Marines through training.³⁷⁴

ISSUE: Educating subordinate units on the Security Agreement

DECISION: The Iraqi SA went into effect shortly before TF 525 departed theater. The extent of impact on operations was unclear at that time. As a result, MNC-I conducted very helpful and informative video teleconferences (VTCs) with subordinate units.

RECOMMENDATION: Soldiers must be informed of the changes in current operations and understand how those changes impact their day to day mission. Maintain the VTCs in order to remain informed about changes the Iraqi SA continues to make in the operating environment.³⁷⁵

³⁷² 50 IBCT (NJARNG) 2009 OIF AAR, *supra* note 50.

³⁷³ I MEF (FWD) 2009 OIF AAR, *supra* note 43.

³⁷⁴ *Id.*

³⁷⁵ TF525 2009 OIF AAR, *supra* note 13.

ISSUE: OSJA role in explaining the Security Agreement

DECISION: The MNF-I OSJA produced several documents to assist the force in Security Agreement implementation. The OSJA promulgated a classified Security Agreement Implementation OPORD, standard training packages to assist incoming personnel in understanding the Security Agreement, and other force-wide documents as needed.

RECOMMENDATION: Sustain.³⁷⁶

ISSUE: Impact of the Security Agreement

DECISION: The SA implementation really drew the OSJA into the planning process. The commanding general was very forward thinking as to the impending changes and the OSJA was forward leaning in trying to figure out the impacts on the operational force.

RECOMMENDATION: Sustain. It is too late to train for an event after it occurs. Try to anticipate what the command will need in the way of training/explanation and provide it as early as possible.³⁷⁷

ISSUE: Security agreement training

DECISION: In preparation for operations under the security agreement, the OpLaw section developed audience-based presentations for leaders and for Soldiers explaining how the security agreement would affect their everyday operations. These presentations addressed omnipresent questions such as “Can I be arrested?” and “Do traffic laws apply to me?”

RECOMMENDATION: These presentations were essential to alleviate anxiety at both the leader and Soldier level.³⁷⁸

Interpretation of the Security Agreement

OIF ISSUE: Operations in the Shatt al Arab region

DECISION: The MNF-I OSJA IO attorney worked with MNF-W, NAVCENT, and the MNF-I CJ3 to learn what, if any, operations they contemplated along the Shatt al Arab river dividing Iraq and Iran. The OSJA advised that any military operations must be coordinated with the GoI as per the Security Agreement. Additionally, all U.S. operations must occur on the Iraqi side of the river boundary in compliance with the Security Agreement.

RECOMMENDATION: Sustain.³⁷⁹

ISSUE: Meaning of Security Agreement terms

DECISION: Commanders understood there has been a fundamental shift in legal framework, but there was still confusion about basic Security Agreement concepts such as the meaning of

³⁷⁶ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

³⁷⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

³⁷⁸ *Id.*

³⁷⁹ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

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“combat operations.” The AWG briefing used the term “self-defense” rather than “combat operations” to describe the basis for one of the warrantless exceptions. This diverged slightly from the terminology used by MNF-I, and was chosen because of incidents where Soldiers under attack felt they could not respond with lethal force. With respect to warrants, the “competent Iraqi authority” (CIZA) is an investigative judge (IJ). With respect to detention, a new MNC-I FRAGO may define the identity of the CIZA, but it probably will vary by location.

RECOMMENDATION: Improve. Deployed JAs should develop a common understanding of Security Agreement terms, and be prepared to educate commanders on those terms.³⁸⁰

ISSUE: Iraqi interpretation of Security Agreement

DECISION: As time progresses under the SA, U.S. “occupation” and Iraqi sovereignty will most likely remain at the forefront of many tensions. Many issues brigade level and below units deal with involve Iraqi interpretation of the SA and their perception of U.S. operations. When providing legal advice on operations under the SA, it was not only important to provide opinion on we could and could not do, but also what the Iraqi perception of such actions would be. This not only gave decision-makers another factor for consideration, but also facilitated planning on how to handle potential issues that rose out of the decision to conduct operations.

RECOMMENDATION: Sustain analyzing the potential Iraqi perception of conducting a U.S. operation.³⁸¹

ISSUE: Ambiguities in Iraqi law

DECISION: After the signing of the Security Agreement, where there were ambiguities in Iraqi law, the OpLaw section applied U.S. standards to the Iraqi law. For example, when explaining search law to commanders, the OpLaw section used the “reasonable expectation of privacy” analysis.

RECOMMENDATION: Be prepared to develop vignettes to explain ambiguities and variances in Iraqi law.³⁸²

[See also I.E.4.a. INTERNATIONAL & OPERATIONAL LAW—Detention Operations—Iraq (Warrant-Based Targeting)]

I.O. Rule of Law (RoL)/Judicial Reform

I.O.1. Iraq/Operation Iraqi Freedom (OIF)

Working with Host Nation Officials

OIF ISSUE: Importance of rapport with local authorities

DECISION: There were not many useful resources available to educate oneself on the RoL. The most useful asset in RoL operations was to simply have someone on the ground who could establish relationships with the local authorities and earn their respect.

³⁸⁰ AWG 2009 OIF AAR, *supra* note 133.

³⁸¹ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

³⁸² *Id.*

RECOMMENDATION: Sustain. It is crucial to allow someone who has established respect and rapport with the local authorities to take the lead in RoL operations.³⁸³

ISSUE: Developing personal relationships with Iraqi officials

DECISION: Personal relationships with key Iraqi officials are essential to the successful conduct of operations in Iraq.

RECOMMENDATION: Improve. Commanders and JAs must be aware developing a personal relationship involves more than occasionally inviting an Iraqi official to a U.S. meeting and handing over the portion of the document below the tear line. Reaching the type of relationship required for successful cooperation will involve going to each other's offices on a routine basis and chatting about family matters, etc.³⁸⁴

ISSUE: Conducting RoL operations in a culture where experience is highly valued

DECISION: Most JAs conducting RoL operations are very young. They do not have the credibility with local officials that comes with age.

RECOMMENDATION: Understand the culture in which you are operating. It may be beneficial to have older civilian PRT members serve as the public face of your RoL effort.³⁸⁵

ISSUE: Key leader engagements (KLEs)

DECISION: Key leader engagements are a valuable RoL tool. The brigades and PRTs were successful in conducting KLEs.

RECOMMENDATION: Although the division commander and other senior staff were willing to conduct the KLEs, their involvement was not a prerequisite for a successful engagement.³⁸⁶

ISSUE: Which practices were more effective than others?

DECISION: Key leader engagements (KLEs) (often at the MNF-I level) seemed to have the greatest immediate effect on the rule of law mission. Iraqis expected visits by the most senior individuals available. They did not receive as well anyone perceived as less important. Visits from corps-level personnel to brigades tasked with completing the missions were also essential. They helped foster understanding of the environment in which the brigades worked and facilitate the mission from the HQ level. Developing an early understanding of who the key interagency players are is imperative to the successful coordination of the rule of law efforts.

RECOMMENDATION: Sustain.³⁸⁷

ISSUE: Coordination of and preparation for RoL key leader engagements (KLEs)

³⁸³ 3ID 2008 OIF AAR, *supra* note 10.

³⁸⁴ AWG 2009 OIF AAR, *supra* note 133.

³⁸⁵ 4ID 2009 OIF AAR, *supra* note 20.

³⁸⁶ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

³⁸⁷ XVIII ABC 2009 OIF AAR, *supra* note 30.

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DECISION: U.S. leaders participating in RoL KLEs must share talking points so that at least all military leaders are transmitting the same message to all Iraqi officials. U.S. forces should also share KLE results with other RoL actors, especially when U.S. military and civilian leaders are engaging with the same Iraqi officials. U.S. forces should treat KLEs like targeting packages. Those preparing for the KLE should consider the information available, the U.S. leader best placed to engage, and the appropriate host nation official. For example, should the ambassador or the MNF-I commander raise the issue, and with the Minister of Defense, or the prime minister?

RECOMMENDATION: Improve. Assignment of an MNF-I point of contact for KLEs with each ministry helped to ensure coordination of messages, but KLEs require a disciplined effort, with participants avoiding any temptation to “shoot from the hip.”³⁸⁸

Rule of Law Coordination

OIF ISSUE: Synchronizing RoL efforts across neighboring areas

DECISION: Every two weeks, all the RoL practitioners conducted an online meeting via Adobe Connect/Breeze to remain apprised of what everyone else was doing.

RECOMMENDATION: Sustain this information conduit.³⁸⁹

ISSUE: Communications between all the RoL players

DECISION: Every two weeks, the unit conducted an online meeting via Breeze (Adobe Connect) with all of the RoL players.

RECOMMENDATION: Sustain this communication and method of communication. It was important for all the players to understand what the others were doing.³⁹⁰

ISSUE: Rule of law participation and coordination

DECISION: “Doing rule of law” is a team rather than an individual effort (e.g., by the PRT RoL advisor). In fact, many sections and individuals are involved in RoL activities, and this requires coordination. The PRT RoL advisor did call one meeting with division and LEPs, etc.

RECOMMENDATION: The RoL team should be located at the provincial level. PRT efforts right now focus on the Major Crimes Court, but there should be more interaction with the provincial judge. Additionally, the level of effort should be more intense than the current involvement (e.g., being out 2-3 hours per week), in order to get and maintain a better “finger on the pulse.”³⁹¹

ISSUE: Lack of a RoL working group to coordinate staff efforts

DECISION: Although the regimental JA attended weekly non-lethal targeting meetings, the regiment did not have a specific RoL working group. As a result, the actions of individual staff

³⁸⁸ Director, IROCC 2009 OIF AAR, *supra* note 177.

³⁸⁹ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

³⁹⁰ 4ID 2009 OIF AAR, *supra* note 20.

³⁹¹ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

officers affecting RoL were not coordinated. This led to inefficient use of unit resources—e.g., staff personnel did not coordinate travel requirements.

RECOMMENDATION: Improve. Regular meetings would help participants to maintain situational awareness of battle space conditions and ensure coordination of individual initiatives.³⁹²

ISSUE: Development of RoL working groups

DECISION: Military Police, Law Enforcement Professionals (LEPs), RoL advisors, and JAs would meet at least once a month to discuss current events and common goals. This paved the way for the BCTs and PRTs to facilitate development of Provincial Justice Councils, with membership consisting of Iraqi judges, investigative judges, corrections officers, police, Iraqi Army and Provincial Council and Governor's office representatives to identify and resolve RoL issues. It was most helpful when one charismatic local leader took charge in forming the PJC. Coalition RoL working group members would reach out to their Iraqi counterparts, which led to visible positive changes.

RECOMMENDATION: Sustain. RoL team members must find the willing and compelling local leader who can effect change, and consult with him to achieve real and lasting results.³⁹³

ISSUE: RoL coordination

DECISION: There is a need for coordination between the military, the PRT, and the police advisers.

RECOMMENDATION: Sustain. It is important to maintain good relationships and to stay coordinated with other RoL actors.³⁹⁴

ISSUE: Importance of MDMP in RoL planning

DECISION: The RoL attorney is not only an advisor but a planner as well. The RoL team must be ready to prepare mission plans and be knowledgeable of the Military Decision Making Process (MDMP). The attorney must be thoroughly versed in drafting annexes to OPORDs and developing campaign plans.

RECOMMENDATION: Before deployment, train the RoL attorney to do this type of work. Interject these responsibilities at the MRX. In theater, early and frequent interaction with the planning section was essential to accomplishing these tasks.³⁹⁵

ISSUE: Integrating the Provost Marshal Office (PMO) into RoL efforts

DECISION: Integrating the PMO was difficult because they were dual-hatted as both Corps and Force-level staff. This lack of smooth integration caused difficulty because they had both the cops and corrections pieces of the RoL effort.

³⁹² 2SCR 2009 OIF AAR, *supra* note 1.

³⁹³ 1AD 2009 OIF AAR, *supra* note 29.

³⁹⁴ *Id.*

³⁹⁵ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

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RECOMMENDATION: Work as best you can to integrate the PMO into the rule of law effort.³⁹⁶

ISSUE: Lack of communication between Baghdad and outlying areas

DECISION: MNC-I scheduled a training conference for IJ's in April 2009. The announcement came late and failed to provide details about reserving a seat in the conference. Moreover, due to the hierarchical nature of the Iraqi judicial system, IJs at lower levels would not attend without a formal invitation from their superiors. The PRTs and division RoL section tried unsuccessfully to make this happen, but ultimately MNC-I cancelled the conference due to lack of attendance.

RECOMMENDATION: Improve. There needs to be better coordination between Baghdad and outlying provinces, both from the Government of Iraq (GoI) and higher headquarters RoL sections.³⁹⁷

ISSUE: Potential for friction between the MNC-I and MNF-I staff

DECISION: There was no actual friction between the two headquarters. MNF-I was really focused upon strategic level matters and some RoL. The relationship was largely seamless.

RECOMMENDATION: Sustain. When each level of the command remains focused upon their own lane, things work well.³⁹⁸

ISSUE: Lack of a conceptual framework for RoL

DECISION: The unit did not inherit a conceptual framework for the RoL effort, making it necessary to create a framework and lay the groundwork for forward progress.

RECOMMENDATION: If you are in an area where no conceptual framework previously existed, be prepared to create one. Failure to do so leads to a fractured, uncoordinated effort.³⁹⁹

ISSUE: Strategic RoL guidance

DECISION: Not all people and missions are the same. There needs to be a greater emphasis on defining an end game in order to be able to measure effectiveness of the program.

RECOMMENDATION: Develop a senior-level working group to study what constitutes an effective RoL program, and then disseminate clear guidance to the field.⁴⁰⁰

ISSUE: Need for a common rule of law plan

DECISION: The unit tried to develop a unified common plan to get the Office of Provincial Affairs (OPA) and the Provincial Reconstruction Teams (PRTs) on the same page with the military RoL efforts.

RECOMMENDATION: You must establish a common plan so everyone knows the means and ends of all of the players in the fight.⁴⁰¹

³⁹⁶ XVIII ABC 2009 OIF AAR, *supra* note 30.

³⁹⁷ 4-1 CAV 2009 OIF AAR, *supra* note 12.

³⁹⁸ XVIII ABC 2009 OIF AAR, *supra* note 30.

³⁹⁹ 1AD 2009 OIF AAR, *supra* note 29.

⁴⁰⁰ *Id.*

ISSUE: Requirement for additional RoL guidance

DECISION: The BJA realized he did not know how the Iraqi justice system functioned in any detail, or where the problems were. Upon arrival in theater, he discovered numerous FRAGOs tasking the divisions with carrying out a RoL program, but little guidance explaining how to run one. He sought out the PRT RLA, because he had heard there was a civilian lawyer also trying to make the justice system work, but without the resources to do so. The PRT RLA in turn went looking for the BJA, whom he knew would be able to contribute many of the necessary resources. They soon went together to meet the provincial chief judge.

RECOMMENDATION: Improve. MNF-I or MNC-I should issue FRAGOs or a standard operating procedure explaining how to conduct a RoL program. However, such guidance would need to balance the necessity for JAs to be flexible in the development and execution of a RoL program. Because RoL is dependent on location and unit, RoL teams should drive RoL policy from the bottom up, rather than higher headquarters imposing it from the top down.⁴⁰²

ISSUE: Situational awareness of BCT RoL work

DECISION: The division RoL attorney visited BCT RoL attorneys in order to build situational awareness, and also aiding situational awareness were discussions between the SJA and BJAs, as well as RoL reports and biweekly Breeze chat sessions across the Division.

RECOMMENDATION: Sustain.⁴⁰³

ISSUE: Rule of law conferences

DECISION: There was a RoL conference hosted by MNF-I, with MNC-I in support. It was helpful to have the divisions and brigades attend and brief DoS and the rest of the RoL players on their efforts.

RECOMMENDATION: Sustain.⁴⁰⁴

ISSUE: Use of RoL conferences

DECISION: A May 2008 RoL conference held in Baghdad revealed a gap between military and civilian RoL actors. To bridge this gap, 2009 conference organizers asked each region to give a combined military/civilian presentation, touching on what had worked and what had not. Conference organizers also emphasized the requirement for military and civilian participation by asking the deputy commander to open the first day of the conference, and the deputy chief of mission to open the second. A few Iraqi officials also participated, allowing discussion about how the U.S. could assist Iraq in establishing RoL.

RECOMMENDATION: Sustain. RoL conferences have proved to be a good means of establishing networks and exchanging best practices in an emerging area involving many different actors.⁴⁰⁵

⁴⁰¹ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴⁰² 41st Fires Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – July 2009 (7 July 2009) [hereinafter 41st Fires BDE 2009 OIF AAR] (on file at CLAMO).

⁴⁰³ 1AD 2009 OIF AAR, *supra* note 29.

⁴⁰⁴ XVIII ABC 2009 OIF AAR, *supra* note 30.

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ISSUE: Distribution of information

DECISION: The unit used its web portal as a distribution tool. They posted everything to the portal for others to use, as needed.

RECOMMENDATION: Sustain. Having all of the information available is invaluable to the subordinate units.⁴⁰⁶

ISSUE: DoS lead at the operational level

DECISION: The Office of Provisional Affairs (OPA) was the RoL coordinating entity for the DoS at the operational level. In reality, they had very few personnel. The corps headquarters did try to develop a Unified Common Plan with OPA to place everyone on the same sheet of music.

RECOMMENDATION: Do what you can to achieve a common purpose. Recognize not all agencies divide responsibilities the same way the DoD does.⁴⁰⁷

ISSUE: Interaction level with the local PRT

DECISION: The unit decided it was beneficial for the RoL attorney to spend more time with the PRT.

RECOMMENDATION: The military RoL attorney should spend a few days a week with the PRT. This time should increase as RoL activities move to the forefront of the unit's mission.⁴⁰⁸

ISSUE: Establishment of IROCC to improve military-civilian RoL situational awareness and coordination

DECISION: The U.S. Embassy RoL Coordinator (RoLC) and MNF-I SJA established the Interagency Rule of Law Coordinating Center (IROCC) in August 2008. The IROCC became a coordinating and deconflicting body, immediately popular at the lower levels. The Director, IROCC assumed responsibility for a weekly meeting previously conducted by the MNSTC-I Civilian Police Advisory Training Team (CPATT). Meeting participants included MNF-I and MNC-I RoL section members, MNSTC-I and TF-134 RoL personnel, Law and Order Task Force (LAOTF) representatives, and Baghdad area Provincial Reconstruction Team (PRT) RoL Advisors (RLAs). One problem was that the IROCC interacted with military RoL personnel only at the force and corps levels, leaving MNC-I to move information up and down, to and from its subordinate commands. Aside from weekly meetings, the IROCC Director's first priority was to issue a RoL FRAGO reflecting the reality on the ground, one capable of implementation by subordinate units.

RECOMMENDATION: Sustain. The IROCC increased the situational awareness of those working in the RoL area, allowing better coordination of RoL efforts (e.g., minimizing the possibility of U.S. inspections of the same Iraqi detention facility within a short time).⁴⁰⁹

⁴⁰⁵ Director, IROCC 2009 OIF AAR, *supra* note 177.

⁴⁰⁶ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴⁰⁷ *Id.*

⁴⁰⁸ 4ID 2009 OIF AAR, *supra* note 20.

⁴⁰⁹ Director, IROCC 2009 OIF AAR, *supra* note 177.

ISSUE: Establishment, initial purpose, and subsequent refocusing of LAOTF

DECISION: The MNF-I commander and DoJ created the Law and Order Task Force (LAOTF) in early 2007. Their intent was to increase judicial throughput (the number of cases adjudicated by CCCI), improve the prospect of conviction, and improve Iraqi detention conditions. The concept of operations included the partnering of Iraqi investigators with international ones, with the hope of creating a cadre of very skilled Iraqi investigators. In addition, U.S. forces assigned JAs to mentor Iraqi judges. The judicial mentoring concept was problematic because it assumed young JAs with no particular knowledge of the Iraqi judicial system or language skills could successfully mentor experienced Iraqi judges. By 2008, LAOTF tended to focus on high-visibility prosecutions rather than on ensuring CCCI judges heard and decided as many cases as possible. However, in 2009, LAOTF refocused its efforts in two principal areas: joint investigative committees (JICs) and judicial throughput. The JICs, which provide warrants and detention orders, are currently the most important aspect of LAOTF operations.

RECOMMENDATION: Improve. Rapid personnel turnover may mean an organization strays from its original purpose, as knowledge of that purpose is lost. In particular, JAs working in the ill-defined RoL area may need to reassess the purpose and effectiveness of their efforts at frequent intervals.⁴¹⁰

Rule of Law Reporting

OIF ISSUE: Lack of feedback on effectiveness

DECISION: Receiving confirmation from higher headquarters that efforts are effective would be helpful to lower units. It is important to know if what they are doing is working or not working from higher headquarters' perspective.

RECOMMENDATION: Improve.⁴¹¹

ISSUE: AARs of RoL missions

DECISION: The chief of operational law required AARs on the missions RoL attorneys conducted. These AARs captured any outstanding questions the attorneys had, and helped the RoL team build the next mission. This ensured mission focus, and linkage to the RoL campaign plan, and also facilitated later compilation of a continuity book.

RECOMMENDATION: Sustain.⁴¹²

ISSUE: RoL requirements and assessments mandated by higher headquarters

DECISION: Some mandatory requirements were just not practical to implement. Higher headquarters sometimes directed the collection of metrics that did not appear useful at our level.

RECOMMENDATION: Always be mindful of what you are asking the lower units to do. Remain cognizant of what is feasible in the environment in which they are operating.⁴¹³

⁴¹⁰ *Id.*

⁴¹¹ 1AD 2009 OIF AAR, *supra* note 29.

⁴¹² *Id.*

⁴¹³ 4ID 2009 OIF AAR, *supra* note 20.

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ISSUE: Reporting requirements and requests for information from higher headquarters

DECISION: Reporting inputs and RFIs requested seemed Baghdad-focused. It was difficult to discern the reason for some of the requirements. Eight of the ten regular reporting requirements for the division OSJA were for RoL.

RECOMMENDATION: Examine reporting requirements and ensure they are truly necessary. If they are necessary, ensure subordinate units understand why to prevent the requirement from acting as a source of frustration. Recognize that progress in RoL can take time and often cannot be usefully measured on a monthly basis. Consider quarterly reporting.⁴¹⁴

ISSUE: Brigade reporting requirements

DECISION: The division commander received a written RoL report twice a month, a RoL command brief once a month and an additional RoL update at the battle update brief (BUB) once a month. Getting the brigades and PRTs to submit the required data in a timely fashion was often difficult.

RECOMMENDATION: Stay on top of the brigades and PRTs or you will have to play catch up. Keeping regular, informal, communication with brigades and PRTs can be invaluable to maintaining situational awareness throughout various provinces.⁴¹⁵

ISSUE: Unrealistic information requirements from higher headquarters

DECISION: Many information requirements the MNC-I RoL section sent down to BCTs were impractical. Typically, MNC-I would send emails requesting responses to twenty or more questions, such as how the Iraqi people viewed the judges in their districts. The BCT left these questions largely unanswered because of the impracticability of gathering the information. Unlike in Baghdad where all the players relevant to RoL are a short distance away, 4-1 CAV's AO spread over three provinces. Rule of law in the BCT occurred primarily at the battalion level, as the BCT JAs could not easily travel to outlying areas.

RECOMMENDATION: Improve. MNC-I needs to place RoL information requirements in a FRAGO, not in an email. The information requirements should have a purpose beyond merely updating MNC-I slides in order to justify putting Soldiers' lives at risk in gathering the data (for example, when the perception of the people of a local judge bears on whether a supervisory judge in Baghdad is corrupt).⁴¹⁶

ISSUE: RoL reporting requirements imposed by higher headquarters

DECISION: When requiring subordinate units to carry out detention and facilities assessments—including imposing duplicative requirements for courthouse assessments—RoL sections at higher headquarters should provide a rationale for doing so. Most units do not have the requested information and must set about obtaining it. Doing so, and forwarding it back up, does not appear to provide tangible results unless higher headquarters RoL staffs provide feedback.

⁴¹⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴¹⁵ *Id.*

⁴¹⁶ 4-1 CAV 2009 OIF AAR, *supra* note 12.

RECOMMENDATION: Improve. Higher headquarters RoL sections should explain, in passing down a requirement to collect RoL data, the reason for the information requirement (e.g., to assess and brief commanders on progress in the RoL line of operation).^{417\}

ISSUE: Current status of RoL projects

DECISION: The unit developed a monthly rule of law project report that contained which projects were ongoing, where those projects were, and the funding source of each project. Additionally, the report contained a directory of the key stakeholders and their contact information.

RECOMMENDATION: Sustain. Additionally, units in theater should add CLAMO to their distribution list. Before deploying, units should contact their counterparts in theater to get on the distribution list as well.⁴¹⁸

Role of Judge Advocates / Rule of Law Staffing

OIF ISSUE: JA involvement in the RoL and Governance

DECISION: JAs played a limited role in this mission. In the division RoL office, there was only one JA and three Civil Affairs officers. One JA remarked he would prefer one more JA working with him rather than the three Civil Affairs officers. The JA felt the training and experience a JA brings to the table makes him/her a valuable asset to the mission. In this officer's assessment and based upon his experience, often times JAs are better suited to plan and coordinate these missions than most Civil Affairs officers.

RECOMMENDATION: Improve. The JA involved recommends JAs have a larger role in the RoL mission. He recommends JAs take a leadership role in all RoL and Governance issues and take more initiative in engaging Iraqi Judge Advocates.⁴¹⁹

ISSUE: Involvement with the Provincial Reconstruction Team (PRT)

DECISION: The BJA did not work with the PRT. The PRT handled the RoL mission for TF 525.

RECOMMENDATION: Due to the new Iraqi SA, the BJA should become more involved in the RoL mission. If nothing else, make contacts in the PRT and become involved to the extent possible. Since we are now operating under Iraqi law, it is very important to understand the law and how it affects the rule of law.⁴²⁰

ISSUE: JA conduct of RoL activities as combat multiplier

DECISION: RoL is the number one area where JAs have the opportunity to act as combat multipliers, instead of simply fulfilling their traditional advisory role. It is also the area where JAs should be "plussed up," although this will be harder as U.S. forces draw down their presence in Iraq. While many JAs are comfortable conducting legal reviews of different reports, this is just

⁴¹⁷ 41st Fires BDE 2009 OIF AAR, *supra* note 402.

⁴¹⁸ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴¹⁹ 3ID 2008 OIF AAR, *supra* note 10.

⁴²⁰ TF525 2009 OIF AAR, *supra* note 13.

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part of the staff process. A JA only becomes a combat multiplier (i.e., contributes to achievement of the unit's mission) when he or she gets out and talks to Iraqi officials in police stations and courthouses.

RECOMMENDATION: Sustain. JAs should be encouraged to become combat multipliers by getting out of their comfort zone and off the FOB. The JAG Corps should prepare JAs to do more than just traditional "JAG stuff." JAs who simply review AR 15-6 investigations do not provide sufficient "value added." The biggest impediment to the RoL mission was the primary responsibility of "doing JAG stuff." Unlike combat arms personnel, providing "value added" to the mission means not just fulfilling the usual functions, but doing RoL as well.⁴²¹

ISSUE: Balancing the RoL mission

DECISION: The division had a strong RoL team and felt that RoL should be the main focus, even in the BCTs. As a result, the BJA worked with the PRT located on the FOB. This sucked up much of the BJA's time and became frustrating because division RoL personnel would often operate in the BCT's battle space without giving them a heads up. There was no clear definition of the RoL concept, which sometimes led to uncertainty in the performance of the mission. For example, part of the BJA's mission was to instruct one of the Iraqi judges, which was extremely awkward because the judge and the BJA were the same age.

RECOMMENDATION: JAs should not perform the RoL mission because it does not serve their clients. If JAs continue to do RoL at the BCT level, there must be a third attorney to focus on the RoL. There simply was not enough time to adequately perform the RoL mission with only two attorneys at the BCT.⁴²²

ISSUE: Personnel required for the RoL mission at the BCT level

DECISION: With just a major and a captain at the BCT level, they lack the personnel to do significant RoL activities.

RECOMMENDATION: The brigade needs a third JA to focus on rule of law, but even the additional person does not provide the required resources (transportation, security, etc.).⁴²³

ISSUE: Lack of a RoL coordinator on the PRT

DECISION: The BJA took on the role of the RoL coordinator. It was important the BJA pick up the mantle, as the other JAs in the BCT report to him or her. Having the person in charge interact with the Iraqis ensured they understood the value the unit placed upon RoL operations.

RECOMMENDATION: Have the BJA, not one of the subordinate JAs serve as the primary RoL coordinator in the brigade. It would be helpful for the PRT to have an attorney among its members.⁴²⁴

ISSUE: Respective roles of JAs and the PRT RoL advisor

⁴²¹ 2SCR 2009 OIF AAR, *supra* note 1.

⁴²² 4BCT, 3ID 2009 OIF AAR, *supra* note 28.

⁴²³ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴²⁴ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

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DECISION: With respect to RoL issues, the BJA is the enabler, but the PRT RoL advisor has the lead. Once off the FOB or COB, the BJA might attend a meeting with Iraqi judges, but the PRT RoL advisor is in charge. In addition, because the BCT had only two JAs and there was a division RoL JA, the latter assumed some of the RoL responsibilities that would otherwise have been assigned to the BCT. However, if the division JA needed BCT support, he would request it through the BJA.

RECOMMENDATION: Sustain.⁴²⁵

ISSUE: Responsibility for RoL

DECISION: MNF-W's RoL section did not fall under the responsibility of the SJA office. The RoL section functioned to support the development of Iraqi law and MNF-W viewed that as being part of Civil Military Operations (CMO). In addition, in August/September of 2008 the Provincial Reconstruction Team (PRT) took the lead on RoL development. This resulted in the assignment of CMO personnel to work under the PRT. This was a unique arrangement in which they essentially became liaisons with the PRT. This became an important transition because MNF-I and MNC-I were both using SJA channels for information about MNF-W's RoL development. As a result, MNF-W appointed an officer from the SJA's office to handle limited information requests from the PRT.

RECOMMENDATION: Even if the RoL is not an area the SJA will handle directly, be sure to assign an officer to handle the repeated information requests from HHQ.⁴²⁶

ISSUE: JA role in RoL

DECISION: A JA captain comprised the 3d ACR RoL staff. In conjunction with attorneys from the Department of Justice (DoJ) and the Department of Homeland Security (DHS), she coordinated the unit's RoL mission. Since local judges were on the dole of the enemy, and unwilling to offer reciprocal aid to the RoL team, the JA focused on the commander's RoL intent to "get the bad guys off of the street."

RECOMMENDATION: RoL, like all programs at the regimental or brigade level, ultimately belongs to the commander, and JAs must do their utmost to enact his initiatives and guidance based on the respective conditions in which the unit operates. This is true even in the face of comments from division such as, "Why can't you be like city X?"⁴²⁷

ISSUE: Requirement for JA involvement in RoL activities

DECISION: The BJA heard the term "rule of law" for the first time just before deployment. No one mentioned RoL from the division standpoint during mission rehearsal exercises (MRXs) at Fort Drum. The brigade commander's guidance to the BJA was to make the Iraqi justice system work, and he made the BJA commit to doing so.

RECOMMENDATION: Improve. BJAs must work in the RoL area or be held accountable for their failure to do so. JAs should not use a brigade commander who does not understand this as an excuse. If this occurs, the BJA should ask the division Staff Judge Advocate (SJA) to get the

⁴²⁵ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

⁴²⁶ 1 MEF (FWD) 2009 OIF AAR, *supra* note 43.

⁴²⁷ 3ACR 2009 OIF AAR, *supra* note 15.

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division commander to issue an order making RoL a priority. JAs at every level normally have the ear of their commanders, and must use this influence to advance RoL efforts.⁴²⁸

ISSUE: **Dedicated RoL attorney**

DECISION: It is imperative the office have at least one dedicated RoL attorney able to prepare for the RoL mission unencumbered before deploying.

RECOMMENDATION: The RoL attorney should train to a level where he or she is a subject matter expert in this area.⁴²⁹

ISSUE: **The dual-hatted RoL JA**

DECISION: The RoL JA served as the RoL lead under the OSJA and as the OSJA representative to the Governance, Reconciliation, and Economics Coordination Cell (GRECC). The GRECC's work with elections and capacity building involved a great deal of administrative law and fiscal law issues that also fell to the RoL JA to consider.

RECOMMENDATION: There was too much to do for a single person to hold both of these positions. If possible, allow the RoL JA to focus solely on RoL.⁴³⁰

ISSUE: **Interaction between the detention operations (DetOps) JA and the RoL section**

DECISION: The DetOps and RoL JAs tried to know each other's jobs. This provided great benefits with the signing of the Security Agreement and the subsequent decrease in detention operations. The DetOps attorney could then assist more heavily with RoL operations.

RECOMMENDATION: Sustain. Though not technically part of the RoL section, RoL and DetOps are related and each can contribute to the mission of the other.⁴³¹

ISSUE: **Lead on RoL**

DECISION: The lead for RoL efforts fell to the judge advocates.

RECOMMENDATION: This is going to happen. Ensure you and your people prepare for it.⁴³²

ISSUE: **Separating your personal staff and RoL staff roles**

DECISION: If you, as a JA, serve as a line of operation chief for the RoL, you must go through the regular staff process for RoL matters. You cannot use the access to the commander you have as a personal staff officer for UCMJ and ethics types of issues to advance your RoL plan. Failing to adhere to the typical staffing process will greatly agitate the rest of the staff.

RECOMMENDATION: Keep your two hats separate and distinct. When not advising on personal staff matters, use the usual staff processes in place.⁴³³

⁴²⁸ 41st Fires BDE 2009 OIF AAR, *supra* note 402.

⁴²⁹ 1AD 2009 OIF AAR, *supra* note 29.

⁴³⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴³¹ *Id.*

⁴³² XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴³³ *Id.*

ISSUE: The expansion of the importance of rule of law operations

DECISION: The division initially began with one attorney handling the rule of law mission on a part-time basis. By the end of the deployment, two attorneys were fully engaged in handling the rule of law tasks.

RECOMMENDATION: The focus of operations shifts constantly as the operational environment changes. Be prepared to reallocate resources accordingly.⁴³⁴

ISSUE: Size of RoL section

DECISION: Because of a difference in the number of legal professionals who deployed, this unit only had one person (captain) in the RoL section. The unit they replaced had three people including a lieutenant colonel (LTC).

RECOMMENDATION: Given the significance of this mission, a more robust section may be able to accomplish more. It would have been helpful to have someone to assist in drafting operation orders (OPORDs). Additionally, having a more senior officer in the RoL section would be beneficial at staff meetings and working groups where most officers were at the LTC level.⁴³⁵

ISSUE: Number of personnel devoted to RoL operations

DECISION: Over the course of the deployment, the RoL section grew tremendously. It began as a part-time job for the III Corps DSJA and an OpLaw attorney. It transitioned with XVIII Airborne Corps to a dedicated attorney operating in the OpLaw section and ended with eight personnel operating under their own RoL chief in a separate section.

RECOMMENDATION: As conditions change, so will the need for assets devoted to rule of law. Be aware of the changes in the environment driving required changes in staffing.⁴³⁶

ISSUE: RoL staffing

DECISION: The unit placed a JA LTC as the lead in the effort. Because detention operations are such a large part of RoL, the two O-4 (Navy) JAs working in detention operations also fell into the RoL section. With the transition to post-UNSCR authorities, Iraqi law took on a much larger role, necessitating the placement of an Iraqi law expert on the team. The team also had an additional attorney to serve as an action officer and a paralegal in support.

RECOMMENDATION: Sustain. The assignment of a senior JA and associated personnel reflects the level of importance afforded the RoL effort.⁴³⁷

ISSUE: Use of division JAs to backfill brigade JAs and to assume RoL responsibilities

DECISION: The division also sent their JAs to backfill brigade JAs, and allowed their RoL attorney to assume one brigade's RoL responsibilities. However, the regimental JA ran into

⁴³⁴ 4ID 2009 OIF AAR, *supra* note 20.

⁴³⁵ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴³⁶ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴³⁷ *Id.*

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resistance when trying to obtain a replacement for the civil affairs JA (or the offer of an individual no one else wanted).

RECOMMENDATION: Sustain. Division assistance boosted brigade RoL efforts, and allowed division RoL attorneys to understand the brigade RoL perspective – for example, when trying to determine the RoL information brigade JAs must report to higher headquarters.⁴³⁸

ISSUE: Translation of legal terms of art

DECISION: When working in the RoL area, you need an interpreter who can speak “legalese.” This is important because specific legal concepts are often difficult for interpreters with no legal training to translate.

RECOMMENDATION: Having an Iraqi lawyer serve as an interpreter is the best solution. Someone with this level of training is invaluable at any echelon when you have a RoL function to perform.⁴³⁹

ISSUE: Importance of a legally trained interpreter

DECISION: In Iraq, explaining in two different languages the subtleties between the law as written and the law as practiced is difficult for someone with no legal training.

RECOMMENDATION: If possible, try to hire an interpreter for RoL activities who has some level of legal training.⁴⁴⁰

ISSUE: Need for translator for RoL

DECISION: There is a significant need for an Arabic translator at the division level. The unit tried to hire a bilingual/bicultural advisor (BBA), but did not receive the funding to do so. PRTs and brigades had them. It was very frustrating not having someone who could speak the language and interact with Iraqi legal officials. After the Security Agreement took effect, not having a dedicated translator slowed warrant-based detention operations.

RECOMMENDATION: Work as many channels as possible to ensure a translator is available to RoL team.⁴⁴¹

ISSUE: Need for an Arabic speaker on the RoL team

DECISION: The unit was fortunate to have a JA who spoke Arabic. This attorney became the Iraqi law expert and was essential in understanding and facilitating rule of law issues.

RECOMMENDATION: It is a force multiplier to have an attorney or paralegal who can speak Arabic on the Rule of Law team. If at possible, deploy with a JA and paralegal who can speak the local language.⁴⁴²

ISSUE: Iraqi legal support to brigades

⁴³⁸ 2SCR 2009 OIF AAR, *supra* note 1.

⁴³⁹ 4ID 2009 OIF AAR, *supra* note 20.

⁴⁴⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴⁴¹ *Id.*

⁴⁴² XVIII ABC 2009 OIF AAR, *supra* note 30.

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DECISION: The brigades did not have direct Iraqi legal support. Division offices had Iraqi attorneys, but they rarely, if ever, ventured down to the BCTs.

RECOMMENDATION: Improve. The BCT's pilot program exploring best practices for future warrant-based operations and other ancillary initiatives greatly influenced by Iraqi law produced a practical suggestion to aid successive units assigned to Iraq: hire Iraqi attorneys to support BCTs directly. An excellent source for recommendations could be a local judge, who would then have a stake in seeing the program succeed (as long as you hired his choice).⁴⁴³

ISSUE: Iraq law attorney

DECISION: Division needs an attorney who knows not only substantive Iraqi law, but also local procedure and mores.

RECOMMENDATION: Sustain. Having a local attorney will decrease the number of times U.S. attorneys will approach local judges or members of the bar with relatively pedestrian questions.⁴⁴⁴

ISSUE: Use of Iraqi attorneys as advisors on Iraqi law

DECISION: The unit hired an Iraqi attorney to serve as an advisor. Nearly all those interviewed spoke some amount of English.

RECOMMENDATION: If at all possible, hire a local attorney to serve as an advisor to assist with the local courts.⁴⁴⁵

ISSUE: Need for a local national attorney

DECISION: MND-Baghdad had a local national attorney on their staff, and the Corps used him as required. It is important to realize many Iraqis holding jobs in the legal field do not necessarily have legal training.

RECOMMENDATION: There is a need to have an expert on local law available if you are doing RoL operations.⁴⁴⁶

ISSUE: Importance of increasing situational awareness for junior, corps-level, JAs

DECISION: Exposing corps-level JAs to divisions and brigades not only provided an opportunity for professional development, it reaped benefits for the corps RoL team. The JAs came back with a greater understanding of the effect corps-level requests for information or for rule of law missions had on the divisions and the brigades.

RECOMMENDATION: Sustain.⁴⁴⁷

ISSUE: Preparation for RoL duties

⁴⁴³ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 53.

⁴⁴⁴ 1AD 2009 OIF AAR, *supra* note 29.

⁴⁴⁵ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

⁴⁴⁶ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴⁴⁷ *Id.*

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DECISION: The RoL handbook, CLAMO training, and MRX were all valuable tools to prepare for the RoL mission. However, on the job training is the only practical way to understand the true scope of this mission.

RECOMMENDATION: The theory behind the mission is important, but be prepared to learn almost all the practical information while in theater. Understanding the battle space layout is imperative.⁴⁴⁸

Focus & Scope of the Rule of Law Mission

OIF ISSUE: Impact of security situation on establishment of RoL

DECISION: There was an unrealistic expectation on the part of higher headquarters for subordinate units to establish advanced RoL operations before the establishment of security in the area of operations (AO). One unit's AO, for example, was very agrarian and did not contain a courthouse. Because of this, the unit felt that it must establish a courthouse in the AO in order to further the RoL process. However, this particular AO lacked the level of security needed to establish a courthouse. Instead, the unit decided to focus its RoL mission on the first step of RoL, which is to establish a sufficient level of security.

RECOMMENDATION: Improve. The chain of command needs a greater understanding of the role security plays in the evolution of the RoL process.⁴⁴⁹

ISSUE: Effect of the operating environment on RoL efforts

DECISION: The BJA decided not to embark upon RoL trips within the battlespace. Factors effecting this decision included logistical constraints on transportation assets and the cost of leaving the BCT commander without legal support for prolonged periods. Not having dedicated transportation assets, conducting RoL trips meant spending no less than seven days away from the BCT commander and headquarters. Given the number and significance of the legal issues that arose in an average week, it was not a wise use of time to make those trips. Additionally, the kinetic environment meant RoL efforts were not a high priority for the unit. These factors combined to outweigh the benefits of RoL trips.

RECOMMENDATION: Sustain. Efforts to establish a secure environment is the first step in establishing the rule of law. Thus, trips to conduct, for example, courthouse assessments in an insecure environment may represent a distraction to the primary mission of the unit, which is security.⁴⁵⁰

ISSUE: Rule of law in Mosul

DECISION: Mosul's security situation did not warrant the typical "picking out windows and curtains for courthouses" RoL experience. The commander recognized this and placed priority on getting terrorists off of the streets, into the penal system, and prosecuted fully under the law.

RECOMMENDATION: RoL is security dependent and each region/city is different.⁴⁵¹

⁴⁴⁸ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴⁴⁹ 3ID 2008 OIF AAR, *supra* note 10.

⁴⁵⁰ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 4.

⁴⁵¹ 3ACR 2009 OIF AAR, *supra* note 15.

ISSUE: Different AOs had different RoL needs

DECISION: Higher headquarters must realize that depending on the security situation, the RoL mission differs in the various AOs. A “one size fits all” policy is not optimal.

RECOMMENDATION: Tailor reporting requirements and measures of effectiveness to specific provinces to more accurately capture the progress of the RoL mission.⁴⁵²

ISSUE: Effect of “overall security” on “RoL security”

DECISION: There is a decided positive effect on RoL security when the security of the province increases. For example, a rebel group in one province often would attend court hearings with weapons to intimidate the judges despite an armed and visible security presence at the courthouse. As security of the region improved and Iraqi Police matured, the rebels stopped coming to the courthouse. As a result, many more Iraqis availed themselves of the local courts.

RECOMMENDATION: You cannot overstate the second and third order effects of a stable environment.⁴⁵³

ISSUE: Preparation to handle RoL issues

DECISION: Kinetic activity was still high when this unit arrived in theater. The unit did not expect to conduct significant RoL operations and assigned one field grade officer to oversee RoL operations. Once security increased, the RoL mission grew tremendously. The unit found the Rule of Law Handbook to be a helpful resource for addressing this new mission requirement.

RECOMMENDATION: Units should be familiar with the Rule of Law Handbook, especially sections concerning interagency responsibilities, before deploying.⁴⁵⁴

ISSUE: Diversity of conditions and progress

DECISION: Differing conditions in different parts of the country dictated the stage and effectiveness of RoL operations. In places where there was not yet security, it was not realistic to expect significant RoL progress or devotion of efforts to RoL progress.

RECOMMENDATION: Understand all areas are different. “The enemy gets a vote.” Tailor your efforts and expectations to the conditions on the ground. Remember, your subordinate units know those conditions better than you do.⁴⁵⁵

ISSUE: RoL line of operation (LOO)

DECISION: RoL initially fell under the “Governance” LOO. Eventually, RoL became a standalone LOO.

⁴⁵² 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴⁵³ *Id.*

⁴⁵⁴ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴⁵⁵ *Id.*

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RECOMMENDATION: RoL should either remain separate (because it deals with agencies addressing discreet RoL problems), or more properly it should be identified as a meta-LOO, affecting governance, economics, and security LOOs. This would assist commanders in seeing RoL in its proper perspective.⁴⁵⁶

ISSUE: Short-term vs. long-term focus

DECISION: It appeared some PRT RoL sections focused on short-term, tangible goals. For example, the PRTs would buy and give many goods to the Iraqis. Consequently, they could record a numerical success of the mission. Unfortunately, this method lacked any long-term focus on nation building.

RECOMMENDATION: Only by supporting the Iraqis in their effort to improve their own systems will the RoL mission truly succeed. As the security agreement took hold, there was increased support for the local system and less reliance on the deliverance of goods and materials.⁴⁵⁷

ISSUE: Bringing RoL down to a manageable level by focusing on “due process”

DECISION: In deciding what RoL meant in terms of the ISF, the BJA and RLA decided to focus on “due process.” This would help to ensure U.S. forces, in creating the new ISF, had not simply created a new generation of thugs to replace those of the previous regime. A key issue in enhancing “due process” was to bridge the gap between the ISF and the judiciary by helping them to build a relationship. An initial U.S.-sponsored meeting between the provincial chief judge and provincial director of police (PDoP), which led to a firefight in the parking lot between their respective personal security details (PSDs), illustrates the initial lack of trust between the two organizations.

RECOMMENDATION: Sustain. Commanders and staffs will tend to view JAs as RoL subject matter experts. JAs must be capable of explaining and executing RoL in a way others can grasp. It is difficult to implement (or expect others to implement) a concept for which the scope is too large.⁴⁵⁸

Command Emphasis on the Rule of Law Mission

OIF ISSUE: Lack of RoL coordinator in the embedded Provincial Reconstruction Team (ePRT)

DECISION: The ePRT leader saw it as a feather in his cap to have turned down, multiple times, the addition of a RoL coordinator to his team. This unfortunate decision precipitated a tangible disinterest in RoL programs and engagement. Because the BCT invested such a negligible amount of effort and emphasis on RoL programs, against the counsel of the BJA, the command faced a steeper climb when shaping the environment brought on by the passage of the Security Agreement.

RECOMMENDATION: Improve. No dollars, no RoL advisor, no command emphasis, and no engagement with the local judiciary sets up for failure a BJA tasked with RoL development.⁴⁵⁹

⁴⁵⁶ 1AD 2009 OIF AAR, *supra* note 29.

⁴⁵⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴⁵⁸ 41st Fires BDE 2009 OIF AAR, *supra* note 402.

⁴⁵⁹ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 53.

ISSUE: Commander involvement

DECISION: Without commander involvement and “buy-in,” the RoL mission is nonexistent.

RECOMMENDATION: Commanders must be ready to conduct senior leader engagement when they enter the theater. Their interaction with the local authorities is imperative to RoL advancement.⁴⁶⁰

ISSUE: Resource allocation for RoL missions

DECISION: RoL missions come at a cost; they require transport and security support, which are often in short supply and needed elsewhere. A commander must support RoL if RoL missions are to receive the combat and combat service support they need.

RECOMMENDATION: Educate and persuade your commander to support RoL missions.⁴⁶¹

ISSUE: Scope of RoL operations

DECISION: RoL efforts must include more than just legal personnel to be effective. The PMO and Civil Affairs sections have large roles. This became especially evident as RoL grew into one of three primary lines of operation (LOO) for the command.

RECOMMENDATION: Bringing the different required staff section into concert with one another requires command emphasis. A RoL program handed off to legal personnel “because it has ‘law’ in it” will not succeed. It requires coordination and the entire staff giving way together. That only occurs if the commander places emphasis upon it occurring.⁴⁶²

ISSUE: The tension between RoL and operations

DECISION: Make no mistake about it; adhering to the RoL is a restriction upon operations. Moreover, conducting RoL operations comes at the cost of resources the command would otherwise dedicate to other missions.

RECOMMENDATION: Ensure your commanders understand RoL operations are not “free.” There has to be a command decision these operations are worth the operational costs.⁴⁶³

ISSUE: Priority of the RoL mission

DECISION: The BCT commander did not see RoL as a priority until the onset of warrant-based targeting. Due to the mindset of “we cannot do RoL unless we establish security first,” the brigade’s RoL program was in its infancy when other unit’s programs had reached maturity. The commander had little contact with local officials and jurists and paid the price when the U.S. fell under the terms of the Security Agreement. At a later stage in the process, the commander asked, “But how am I going to target people?” After the Security Agreement implementation, the Iraqi and U.S. decision makers had trouble working through problems because they had no history or

⁴⁶⁰ IAD 2009 OIF AAR, *supra* note 29.

⁴⁶¹ *Id.*

⁴⁶² XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴⁶³ 4ID 2009 OIF AAR, *supra* note 20.

TIP OF THE SPEAR

context dealing with each other. Lack of foresight concerning warrant-based targeting, Security Agreement implementation, and the RoL required the “Prosecution Task Force” to perform a host of last minute tasks.

RECOMMENDATION: The commander decides which programs receive emphasis and resources. To the extent possible, influence the staff and commander to enact RoL measures.⁴⁶⁴

ISSUE: Command support

DECISION: The division commander strongly supported the RoL mission. However, members of his staff differed as to what a successful RoL mission looked like and how to accomplish it.

RECOMMENDATION: It is important to get commander buy-in for the RoL mission to be successful.⁴⁶⁵

ISSUE: Use of brigade commander’s influence to further RoL efforts

DECISION: The commander’s attitude and commitment toward RoL is critical, because it filters down to U.S. forces and their Iraqi counterparts. The BJA accompanied the brigade commander, with whom he had a long-standing relationship, to initial meetings with senior provincial officials. As the BJA became more involved in Iraqi detention issues, he needed to meet with more junior Iraqi officials. If he required the brigade commander’s influence after an initial meeting, he asked him to attend a subsequent one.

RECOMMENDATION: Sustain. JAs who develop a good relationship with their commanders have a better chance of leveraging this relationship to increase their status and influence when dealing with Iraqi officials.⁴⁶⁶

Rule of Law Metrics

OIF ISSUE: RoL statistics

DECISION: The MNF-I RoL section often needed to provide detailed statistical information—for example, to determine the extent to which officials were applying criminal laws against those belonging to different sects. Some U.S. and Iraqi agencies compile statistics about various aspects of the Iraqi criminal justice system. For example, the MNC-I Provost Marshal tracks MoI and MoD detention facility capacity and use; the U.S. Department of Justice (DoJ) corrections advisor tracks MoJ detention facility and use; the Law & Order Task Force (LATOF) tracks investigation and trial numbers at CCCI Rusafa, and the Chief Justice of CCCI Karkh provides similar numbers from that court; and the HJC is able to provide some information about the application of the Amnesty Law). In most cases, however, the information collected is incomplete and may overlap and/or be inconsistent with that provided by another agency.

RECOMMENDATION: RoL practitioners must understand the source of numbers used (e.g., in the weekly RoL brief), including their source and any limitations, so they can explain these factors each time they pass the data on to another organization. This will help to avoid the numbers being used as the basis of unsubstantiated conclusions. For example, when numbers are

⁴⁶⁴ 3BCT, 4ID 2009 OIF AAR, *supra* note 116.

⁴⁶⁵ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴⁶⁶ 41st Fires BDE 2009 OIF AAR, *supra* note 402.

available to show the sectarian breakdown of an MoJ prison in a province, one should use them to extrapolate the sectarian breakdown in MoD and MoI detention facilities in that same province, particularly since the latter may hold the majority of those detained.⁴⁶⁷

ISSUE: Measuring effectiveness

DECISION: MNC-I developed measures of the effectiveness (MOE) for the RoL mission. However, the MOE were constantly changing.

RECOMMENDATION: As this mission matures, metrics accurately capturing MOE are important. These MOE should account for the differences in the various provinces and provide clearer criteria for success. In addition, having a tool to measure progression and regression of success in each province would be valuable.⁴⁶⁸

ISSUE: Difficulty in measuring RoL effectiveness

DECISION: It is difficult to evaluate the effectiveness of the RoL mission. As the RoL mission grew, the unit decided to incorporate the DoS maturity model to capture measures of performance/measures of effectiveness and to document successes and regressions in the RoL mission. The unit modified its CMO reporting to include information used in this model.

RECOMMENDATION: This was a worthwhile effort that contributed to getting everyone on the same sheet of music. Using common assessments keeps everyone working towards a common goal. However, DoS standards were not very concrete and were difficult for the military to use. Developing more concrete metrics would allow military units to provide more specific data on the performance/effectiveness of RoL efforts.⁴⁶⁹

ISSUE: Developing metrics to assess RoL progress

DECISION: Those who participated in drafting and updating the RoL LOO annex realized the difficulty of setting metrics to indicate success without thorough knowledge of how a system functions. For example, U.S. forces tracked the number of releases from the Rusafa detention facility in Baghdad, but subsequently learned the Rusafa facilities simply transferred most “released” detainees back to their initial detention facility (location of arrest/capture) rather than releasing them.

RECOMMENDATION: Improve. In setting metrics, RoL actors must consider how to define and achieve success. RoL actors should work with host nation personnel to achieve agreement that a proposed measure is in fact an important step, and to develop a plan to achieve it. The metric can then be shared with host nation personnel. Metrics should measure host nation products and efforts, not those of U.S. forces.⁴⁷⁰

Iraqi Law – Resources

OIF ISSUE: Resources for Iraqi law

⁴⁶⁷ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

⁴⁶⁸ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴⁶⁹ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴⁷⁰ Director, IROCC 2009 OIF AAR, *supra* note 177.

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DECISION: RoL practitioners may receive requests to give advice on Iraqi law. Iraqi criminal law consists of the 1969 Iraqi Penal Code and the 1971 Law on Criminal Proceedings, as amended by CPA Orders and subsequent legislation. CPA Orders, with the exception of CPA Order No. 17 (tied to the UNSCRs authorizing the MNF), remain in effect until replaced or amended by Iraqi law. In some cases, amendments to Iraqi law have been proposed, but are stalled or killed at different stages of the legislative process. The status of Iraqi legislation may not always be clearly indicated in its English translation. For example, the Iraqi legislation considered amendments to the Amnesty Law on two occasions subsequent to its February 2008 coming into force. Both sets of proposed amendments ultimately died. However, an English translation of one set of proposed amendments was posted on the CJ9 website. The RoL section benefited from the services of a cultural advisor, responsible for translating laws and accustomed to checking the Iraqi government website and making other enquiries to determine the status of pending legislation.

RECOMMENDATION: JAs attempting to advise on Iraqi law, including Iraqi criminal law, should be aware of the possibility that English translations have not been fully amended, and that English translations of laws or proposed changes to them will not always indicate whether they have actually entered into force.⁴⁷¹

ISSUE: Availability of host nation law

DECISION: There was no single location or agency presenting applicable host nation law for Soldiers or RoL practitioners.

RECOMMENDATION: Establishment of such a location or identifying an agency as primary contact should be a priority for any area in which we conduct extensive RoL activities.⁴⁷²

ISSUE: Difficulty in finding current Iraqi law

DECISION: There was no central repository of relevant Iraqi law. There was formerly an Iraqi law database on Lexis, but Lexis discontinued it. Having all of the law and the relevant CPA orders (which changed some of the previous law) in one place would be helpful. MNC-I had a good website, but it was far from comprehensive.

RECOMMENDATION: Build an Iraqi law repository consisting of all the basic documents in a single place to which everyone has access. It would be most helpful if it had the documents in both English and Arabic.⁴⁷³

ISSUE: Differing interpretations of Iraqi law

DECISION: The MNC-I RoL section often needed to confirm aspects of Iraqi criminal procedure (e.g., whether it was correct that some judges did not have authority to issue warrants for terrorist offences, whether statements from secret informants could be used at trial, etc.). The MNC-I RoL section did not have a cultural advisor, although MND-B did. The interpretation or explanation provided by judges in one area sometimes differed from that provided by the MND-B advisor. Similarly, MNF-I's cultural advisor might obtain slightly different information from consulting a senior Iraqi judge or prosecutor. In some cases, the discrepancies might have

⁴⁷¹ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

⁴⁷² 4ID 2009 OIF AAR, *supra* note 20.

⁴⁷³ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

resulted from difficulties in translating a concept. In other cases, the interpretation of local judges possibly resulted from fear (e.g., causing them to indicate the existence of a limitation not necessarily imposed upon them by law).

RECOMMENDATION: RoL practitioners drafting products to explain aspects of Iraqi criminal law should be cautious in relying upon the views of any single individual.⁴⁷⁴

ISSUE: Disparity between legal code and practice

DECISION: One of the significant challenges that the RoL team faced was trying to rectify the differences between how the legal system operated in practice compared to how Iraqi law said it was supposed to operate. For example, according to Iraqi law, a person jailed is supposed to see a judge within twenty-four hours. In reality, though, it would take exponentially longer.

RECOMMENDATION: Continue efforts to ensure Iraqis are following their written procedure and laws as much as possible.⁴⁷⁵

ISSUE: Importance of Iraqi law

DECISION: Knowledge of Iraqi law is essential when you are doing warrant-based detentions and conducting rule of law operations.

RECOMMENDATION: If you do not have any expertise in Iraqi law, develop some. Also consider hiring someone who has the expertise, such as an Iraqi attorney, to serve as an advisor.⁴⁷⁶

ISSUE: Pardon provision of Iraqi Anti-Terrorism Law

DECISION: The MNF-I RoL section reviewed a proposal which would encourage Iraqis involved in the contemplation of terrorist acts to provide information to the Iraqi authorities under the Anti-Terrorism Law provision stipulating that such an informant “shall be pardoned.” The RoL section consulted with Iraqi judges to determine whether the “pardon” referred to immunity from prosecution or to relief from an actual conviction. As far as they determined, Iraqi authorities would detain any such informant at least for the period required to confirm whether the information provided was accurate. If the information proved to be incorrect, the informant could be subject to prosecution on that basis.

RECOMMENDATION: Given the state of Iraqi detention, including the detention of individuals in the absence of detention orders or case files, the risk that an informant would end up detained for a significant period of time as a result of providing information is such that MNF-I assets should not attempt to encourage informants to come forward by publicizing the pardon provision.⁴⁷⁷

ISSUE: Illegality of the Baath party

⁴⁷⁴ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

⁴⁷⁵ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁴⁷⁶ IBCT, 4ID 2009 OIF AAR, *supra* note 6.

⁴⁷⁷ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

TIP OF THE SPEAR

DECISION: The MNF-I RoL section received a query about whether the Baath party was still illegal, which apparently had been the OSJA assessment at an earlier date. The section seeking the information thought that CPA Order No. 1 had imposed the ban. CPA Order No. 1, however, similar to more recent Iraqi legislation on de-Baathification, merely imposed penalties on those who had formerly belonged to the Baath party. The prohibition against the party is contained in the Iraqi Constitution.

RECOMMENDATION: JAs being asked to determine the status of Iraqi law in a particular area should consider the Iraqi Constitution, previous legislation, CPA Orders, and new legislation. JAs must search each body of law on an individual basis.⁴⁷⁸

ISSUE: Execution of warrants against former insurgents

DECISION: The MNF-I and Embassy senior leadership were concerned about the execution of long-standing warrants against Sons of Iraq (SoI) personnel, for acts that occurred prior to the move by such individuals to support the GoI. SoI personnel perceived the execution of such warrants as GoI persecution of them, but there is no basis in Iraqi law for ignoring the existence of a warrant. Iraqi arrest warrants do not expire and are valid throughout Iraq. They may only be cancelled by an investigative judge or through application of the Amnesty Law. However, the Amnesty Law does not apply to most alleged terrorist offences. U.S. leaders suggested the possibility of a GoI committee to review such warrants prior to execution, but the HJC opposed this idea as politicizing a legal process.

RECOMMENDATION: JAs should be aware of the tension resulting when those who have previously participated in an insurgency reconcile with the government.⁴⁷⁹

Knowledge & Training on Iraqi Law

OIF ISSUE: Training transition teams on Iraqi criminal justice system

DECISION: A LAOTF representative attending an Iraqi trial was surprised to hear comments from MNSTC-I transition team members indicating a lack of understanding of the Iraqi criminal justice system. He suggested a review of transition team training. The MNC-I RoL section was responsible for the training, consisting of a briefing on all legal issues which may be encountered by transition team personnel, including ROE, the Iraqi criminal justice system, the Iraqi equivalent of the UCMJ, and the parallel MoI system of police discipline. Although MNF-I and MNC-I RoL attorneys reviewed the training, it remained unclear whether the training was sufficient for transition teams.

RECOMMENDATION: JAs should review and revise any training touching on the Iraqi criminal justice system to ensure that it is accurate and sufficient for U.S. forces who must now rely upon aspects of it (e.g., arrest warrants and detention orders) to a far greater extent.⁴⁸⁰

ISSUE: Knowledge of Iraqi law

DECISION: The BCT JAs had no Iraqi law training before deployment but received many questions on the anti-terrorism law, warrants, etc. Even when translations of Iraqi law were

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

available (e.g., from the PRT), it was sometimes difficult to understand and interpret them. The Iraqi law slides and briefings available to the BCT JAs improved over time, as the transition to the Security Agreement legal framework approached. Now that arrest warrants are a requirement and based on an alleged violation of Iraqi law, knowledge of Iraqi law will become more and more important.

RECOMMENDATION: Improve. JAs should receive training on Iraqi law before deployment, and on a very practical level (i.e., not just as an interesting aside, but in terms of substantive offences and how they are charged, etc.).⁴⁸¹

ISSUE: The importance of having a basic knowledge of Iraqi Law

DECISION: It is important to be familiar with the Iraqi criminal code and Iraqi code of criminal procedures. This is especially true regarding arrests, warrants, and detention orders. It was important for MNF-W to understand the process. It was increasingly important for MNF-W to differentiate the requirements of Iraqi law and the requirements of the Security Agreement. The Security Agreement required MNF-W to turn over to competent Iraqi authority any detainee MNF-W apprehended. Under Iraqi law that detainee appears before an investigative judge.

It was also important to have knowledge of Iraqi law due to the questions that arose as MNF-W headed towards Provincial Iraqi Control (PIC). MNF-W spent a great deal of time researching Iraqi laws and attempting to identify authorities of the governor, police chiefs, and Iraqi army commanders.

RECOMMENDATION: Before deploying, learn as much as you can about Iraqi law and procedure.⁴⁸²

ISSUE: Need for knowledge of host nation law

DECISION: Before the implementation of the Security Agreement, knowledge of Iraqi law was not essential. It is now vital.

RECOMMENDATION: JAs, especially those working in rule of law, must have a working knowledge of the Iraqi legal system and Iraqi law.⁴⁸³

ISSUE: Lack of expertise in civil law system

DECISION: Conducting RoL operations in a country with a civil law tradition requires practitioners who have some familiarity with, if not expertise in, civil law.

RECOMMENDATION: Ensure your RoL advisors are training host nation personnel on the host nation's system, not necessarily on the system with which your personnel are most comfortable.⁴⁸⁴

ISSUE: Lack of knowledge concerning local law

⁴⁸¹ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

⁴⁸² 1 MEF (FWD) 2009 OIF AAR, *supra* note 43.

⁴⁸³ 41D 2009 OIF AAR, *supra* note 20.

⁴⁸⁴ *Id.*

TIP OF THE SPEAR

DECISION: You need to have an understanding of the local law in order to carry out effectively a RoL program.

RECOMMENDATION: Hire the legal expertise you need to make your operations effective. Whenever possible, do this even before you deploy. The division had an Iraqi lawyer, who was a U.S. citizen, as a contracted employee for the OSJA.⁴⁸⁵

ISSUE: **Level of understanding of host nation law**

DECISION: Knowledge of host nation law is extremely valuable.

RECOMMENDATION: The command should increase the priority of this area. It needs to be part of the command guidance, not just for JAs, but also for all Soldiers.⁴⁸⁶

ISSUE: **Knowledge of local law**

DECISION: Knowledge of the local law and procedure is imperative for the RoL attorney. RoL attorneys should make this a priority before entering theater. Once in theater, attorneys must stay abreast of potential legislative changes.

RECOMMENDATION: RoL attorneys should strive to learn as much as Iraqi law as possible before deploying. After arriving, get plugged in to the local legislative body and strive to understand the ramifications a proposed change in the law will have on your current operations set. If necessary, request a decision from the Chief Judge of the High Judicial Council to settle questions of law.⁴⁸⁷

ISSUE: **Knowledge of local law**

DECISION: It was critical to know and understand the local law. It is equally important to understand the local application of law, as this may differ from the codified language. Different judges often gave differing interpretations of what the law required.

RECOMMENDATION: Learn the local law. Be careful when asking a higher judge to clarify a point of interpretation. They may ask why you want to know. This can lead to problems if your question causes the higher judge to question the interpretation/judgment of the lower judge who gave a contrary opinion.⁴⁸⁸

ISSUE: **Use of RoL attorney to explain Iraqi law**

DECISION: After the Security Agreement took hold, it was more important than ever to understand Iraqi law. Unfortunately, many of the non-governmental organizations (NGOs) and various agency personnel were going directly to local judges for interpretations of local law. The judges felt overwhelmed by an influx of questions and requests for information.

RECOMMENDATION: The RoL attorney, the BJAs, and the PRTs were all in positions to answer most of these questions. Educating the various agencies of the resources available to

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴⁸⁸ XVIII ABC 2009 OIF AAR, *supra* note 30.

them would obviate the need to accost the judges for basic information. Designating the RoL attorney, BJAs, or PRT RoL advisor as the central point of contact for interactions with the judiciary in formal orders may also help maintain good relationships with local officials.⁴⁸⁹

ISSUE: Education on the Iraqi criminal law system

DECISION: U.S. personnel did not understand the Iraqi criminal law system. Higher headquarters pushed out training materials for various audience levels within the brigade. It was MNC-I mandatory training.

RECOMMENDATION: Sustain and Improve. The leadership received extensive training and seemed to grasp the judicial system. However, the leadership did not properly pushed to all levels within the brigade. It is necessary to push training of the Iraqi criminal law system down to lowest levels. Units can best accomplish this training at home station.⁴⁹⁰

ISSUE: Requirement for RoL personnel to be knowledgeable about the Iraqi legal system

DECISION: Good knowledge of the Iraqi legal system is essential for RoL personnel.

RECOMMENDATION: Improve. JAs should learn the substance and procedures of Iraqi law, as well as the role played by different actors within the judicial system. If not, a JA meeting with an Iraqi judge is likely to start explaining U.S. legal precepts and suggesting their implementation. Iraq already has a legal system, and JAs should refrain from telling Iraqi judges how it should work. While Iraqi judges may enjoy teaching JAs about the subtleties of the Iraqi legal system (e.g., “misdemeanor crimes are normally handled at the tribal level; Iraqis generally end up in front of a misdemeanor court only if their tribe does not care about them”), JAs should not ask questions about matters they can learn simply by reading the Penal Code or Law on Criminal Proceedings.⁴⁹¹

ISSUE: Using knowledge of the Iraqi legal system to suggest and implement RoL projects and programs

DECISION: RoL personnel should use their knowledge of the Iraqi legal system to develop a RoL action plan, avoiding programs that sound good to U.S. ears but do not reflect a good understanding of the respective roles of players within the Iraqi system.

RECOMMENDATION: Improve. Some U.S.-sponsored initiatives, such as a legal aid clinic and women’s bar association, are not a good fit for the Iraqi legal system. Defense attorneys do not have a role in the Iraqi legal system during the pre-trial phase, where the prosecutor is responsible for ensuring the system functions properly. During the post-trial phase, they can file motions and appeals. The limited role of defense counsel reduces the requirement for a bar association, particularly a women’s bar association (which has only about seven members). U.S.-sponsored initiatives should focus more on the development of relationships with Iraqi legal personnel, and less on the creation of institutions reflecting a U.S. rather than Iraqi reality.⁴⁹²

ISSUE: Knowledge of host nation legal system

⁴⁸⁹ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁴⁹⁰ 4-1 CAV 2009 OIF AAR, *supra* note 12.

⁴⁹¹ 41st Fires BDE 2009 OIF AAR, *supra* note 402.

⁴⁹² *Id.*

TIP OF THE SPEAR

DECISION: All U.S. RoL actors should now be versed in the Iraqi legal system. Those assigned to LAOTF can sit down with the judges and learn from them, but brigade and other JAs will not necessarily have such opportunities.

RECOMMENDATION: Improve. In contrast to earlier operations in Iraq, post-Security Agreement AARs have consistently identified a requirement for good knowledge of how the Iraqi criminal system works. Some information is available from the CLAMO website and the Rule of Law Handbook.⁴⁹³

Judicial Process

OIF **ISSUE: Understanding the identity, organization, and function of Iraqi judiciary**

DECISION: JAs should be prepared to determine the identity, role, and jurisdiction of Iraqi judges (if not conversant regarding this latter aspect, a judge could use it as a basis for failure to take action (e.g., “I cannot issue that warrant, the matter is outside my jurisdiction.”). JAs should also contact S2 personnel, who may be able to explain how the Arab culture works, as well as the existence and nature of relevant social and political networks.

RECOMMENDATION: Improve. Deploying JAs should obtain as much information as possible from outgoing personnel. A JA not already prepared to carry out the RoL mission will spend much of the deployment obtaining necessary information and trying to determine how to use it.⁴⁹⁴

ISSUE: Keeping the host nation (HN) system intact

DECISION: PRT RoL advisors were very good at not forcing a western legal system on the HN.

RECOMMENDATION: Sustain. It is important to remember all systems have value and the role of the RoL team is not to impose our legal system on the HN.⁴⁹⁵

ISSUE: Iraqi criminal justice system improvements

DECISION: The main problem for the Iraqi criminal justice system is an absence of good systems. IAD worked on helping the Iraqis to develop better systems.

RECOMMENDATION: Sustain. Getting the Iraqis to work their system without unsustainable technology enablers was the key to real and lasting progress.⁴⁹⁶

ISSUE: U.S. Army presence in courtrooms

DECISION: Oftentimes, Iraqi jurists do not want Soldiers in uniform parading around Iraqi courthouses while court is in session, lest the populace see the Iraqis as puppets. However, to highlight the difference between Mosul and most other Iraqi cities, the chief judge in Baghdad required (through proper U.S. command channels) armed Soldiers to stand behind the Iraqi judge

⁴⁹³ Director, IROCC 2009 OIF AAR, *supra* note 177.

⁴⁹⁴ 2SCR 2009 OIF AAR, *supra* note 1.

⁴⁹⁵ IAD 2009 OIF AAR, *supra* note 29.

⁴⁹⁶ *Id.*

while he presided over the courtroom. Furthermore, Soldiers searched court patrons as they entered the facility to ensure everyone's safety.

RECOMMENDATION: Securing U.S. and Iraqi personnel is paramount in U.S. RoL operations. Again, every theater's security situation is unique, and JAs must act accordingly.⁴⁹⁷

ISSUE: Presence of Soldiers in courthouses

DECISION: Once you transition to warrant-based detentions, it is natural for commanders to want their Soldiers present to "assist" in the process. Soldier presence jeopardizes the perceived neutrality of the court process.

RECOMMENDATION: Going through the Special Forces community or even the local Iraqi officials is a better way to keep your eye on what is happening in the courts.⁴⁹⁸

ISSUE: Encouraging Iraqi counterparts to respect RoL

DECISION: The JAs realized IA planning for a big push in Diyala province would result in an additional 400-600 detainees in a system already strained by existing detainee numbers, and requested the provision of CCCI Karkh judges to Diyala. Obtaining judges was easier than obtaining detainee release. When the judges ordered the release of detainees, the IA refused to comply. This was a problem unique to this province, because the IA commander retained release authority.

The MND-N CG mounted an IO campaign with the IA commander (if the commander does not follow the RoL, you cannot expect his Soldiers to do so either). In a similar fashion, expiration of the UNSCR assisted development of the RoL. It required U.S. forces to use the Iraqi legal system, instead of relying on the authority provided by the UNSCR, and encouraged the ISF to follow suit.

RECOMMENDATION: Sustain. U.S. commanders and mentors at all levels should encourage Iraqi counterparts to observe the RoL.⁴⁹⁹

ISSUE: Creation of Joint Investigative Committees (JICs) to support CCCI prosecutions

DECISION: In response to Special Forces complaints about the inability of the Iraqi judicial system to support their operations, Iraq established two JICs for each Baghdad CCCI. Participants included an Iraqi IJ, National Information and Investigation Agency (NIIA) investigators (intelligence background), a U.S. JA, and U.S. Navy (USN) criminal investigators. U.S. forces could replace the USN criminal investigators with paralegals, however, because their responsibilities did not include mentoring Iraqi investigators. Instead, they organized the logistical effort required to move JIC members to Camp Cropper when required.

RECOMMENDATION: Sustain. Establishment of the JICs resulted from recognition of the post-Security Agreement need, given U.S. reliance upon an effective Iraqi criminal justice system, to create mechanisms to work more closely with the Iraqis.⁵⁰⁰

⁴⁹⁷ 3ACR 2009 OIF AAR, *supra* note 15.

⁴⁹⁸ 4ID 2009 OIF AAR, *supra* note 20.

⁴⁹⁹ 2SCR 2009 OIF AAR, *supra* note 1.

⁵⁰⁰ Director, IROCC 2009 OIF AAR, *supra* note 177.

ISSUE: Strengthening Iraqi capacity to improve CCCI judicial throughput

DECISION: U.S. interest in Iraqi judicial throughput increased as it became clear that continued detention of U.S. security detainees (those held under United Nations Security Council Resolution (UNSCR) authority) would need to comply with Iraqi law. Providing the names of detainees whom U.S. forces intended to release resulted in Iraqi judges issuing arrest warrants and detention orders. The prospect of sending hundreds more detainees into an already-glutted Iraqi criminal judicial system threatened to make matters even worse.

To improve judicial throughput, LAOTF personnel tried to learn more about how CCCI Rusafa and the associated detention facility actually functioned. LAOTF worked with the DoJ International Criminal Investigative Training Assistance Program (ICITAP) advisors to obtain information and reviewed every detainee file, checking the logbook of movements (in which facility personnel would have noted any visit to an IJ).

They discovered 992 Rusafa detainees whom the Iraqi Army had arrested and who had been in the facility for between six months and five years. The last time they had seen a judge was upon issue of their detention orders. Of these, 288 detainees had not seen a judge for 2-3 years, hundreds more for 3-5 years, and dozens for more than five years. Part of the problem was that many of the IA commands in question have since disappeared, resulting in an Iraqi version of legacy detainees. In essence, the IA “walked away” from these detainees once captured, leaving them sitting in pretrial detention.

RECOMMENDATION: Sustain. Capacity building involves identifying a problem and asking the Iraqis how they will deal with it. In this case, the newly appointed Iraqi Justice Minister has seized this problem, engaging with the Ministry of Defense (MoD) and Iraq’s Chief Justice to resolve it.⁵⁰¹

ISSUE: Aligning U.S. RoL efforts with the way in which the Iraqi legal system functions

DECISION: LAOTF and the U.S. Embassy established a defense clinic at Rusafa more than a year ago. While it is unclear whether the concept of defense counsel is a good fit for the Iraqi criminal justice system, a defense attorney can advocate for a detainee in terms of process (e.g., the client has not seen a judge in the past year), rather than substance. As part of its move to refocus its efforts, LAOTF ceased participation in the defense clinic.

RECOMMENDATION: Improve. RoL initiatives are more likely to be sustainable when they strengthen an existing element of the host nation legal system. For example, U.S. RoL efforts have tended to focus on the Iraqi police in terms of improving Iraqi capacity to conduct criminal investigations, but Iraqi police investigators are not the equivalent of U.S. police investigators. Rather, judicial investigators (JIs) are a fundamental part of the Iraqi system, largely ignored in U.S. efforts to date.⁵⁰²

ISSUE: Implementation of computerized recordkeeping in the Iraqi criminal justice system

DECISION: U.S. personnel assisted the HJC to develop a computer network capable of handling criminal records. The U.S. intent was to expand the network incrementally, first from the HJC to

⁵⁰¹ *Id.*

⁵⁰² *Id.*

CCCI Rusafa, then to another detention facility. The goal was to achieve the capability to move information from data collection points to the central government. The plan was to do so by initiatives in individual ministries.

RECOMMENDATION: Improve. U.S. development of a large-scale criminal justice computer network intended to link several ministries has been ongoing for several years. RoL personnel involved in the planning of computer networks should avoid the temptation to attempt implementation of a government-wide solution (a project that would challenge even a developed nation) as the first step. It is helpful for those responsible for coordinating U.S. efforts in any particular area to be aware of information technology/information management (IT/IM) projects. For example, they can identify parallel initiatives or fold new proposals into existing projects, eliminating duplication or conflicting efforts.⁵⁰³

Logistical Support to Rule of Law Development

OIF ISSUE: Focus on “systems” vs. “things”

DECISION: Preparation for the RoL mission is paramount. The unit felt woefully underprepared for this mission. When the unit arrived in theater, the primary focus centered on giving things to Iraqis, not helping them fix their systems. After the unit took command, the RoL team developed a 3-phase approach to the mission: 1) compiling information from BJAs and PRT RoL coordinators; 2) developing a sustainable campaign plan; and 3) assisting the BCTs (who in turn were supporting the PRTs and their RoL advisors) in carrying out the plan.

RECOMMENDATION: Sustain. The RoL focus should be on improving the local systems, not merely on providing goods and materials. An organized plan of execution is important to the successful completion of this mission.⁵⁰⁴

ISSUE: Logistical and supply support to Iraqi judges

DECISION: The limit of “rule of law” involvement was infrastructure support and assistance with resources. For example, the SBCT JA wrote the CERP requests to get laptops for Iraqi courtrooms.

RECOMMENDATION: Do what the environment allows you to do, but do not force “American” justice upon the Iraqi judges. Some IJs will be more interested in interacting than others. Tailor your rule of law plan to both the operating environment and your Commander’s directives.⁵⁰⁵

ISSUE: Type of RoL support

DECISION: When the unit arrived, the RoL focus was on giving material things to the Iraqis. Additionally, it would be common for team to act as intermediaries between the local judges and provincial law enforcement personnel, including the Iraqi police (IP) and the Provincial Director of Police (PDoP). As security improved, the unit shifted the focus to improving the local systems and encouraging the local judges to work directly with IPs and other law enforcement agencies.

⁵⁰³ *Id.*

⁵⁰⁴ 1AD 2009 OIF AAR, *supra* note 29.

⁵⁰⁵ 2SBCT, 25ID 2009 OIF AAR, *supra* note 8.

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RECOMMENDATION: Sustain. Only by supporting the Iraqis in their effort to improve their own systems will the RoL mission truly succeed.⁵⁰⁶

ISSUE: Limiting the provision of U.S. logistic and financial assistance to Iraqis

DECISION: The BJA and PRT team leader significantly reduced the amount of U.S. logistic and financial assistance provided to the Iraqis in regards to RoL. The PRT provided \$75,000 to sponsor the three “Mud House” performances (a total of nine shows, three for each production), and the BJA funded the IP training only through the purchase of twelve chairs for the students. However, the BJA and PRT used Iraqi Commander’s Emergency Response Program (I-CERP) funds, rather than U.S. CERP, to refurbish courthouses only after due process began to progress. In addition, the RoL team focused on teaching judges, whose inability to access High Judicial Council (HJC) funds had forced to use their own money to purchase necessary courthouse items, to execute HJC budgets rather than relying on U.S. resources. Similarly, the RoL team refused to assist in fixing a broken-down generator, despite an Iraqi request to do so, forcing the Iraqis to become more self-reliant.

RECOMMENDATION: Sustain. Surprisingly, the judiciary found ways to get the job done without U.S. logistical and financial assistance and learned to come up with solutions on their own. Make a conscious effort to force Iraqis to use Iraqi resources in order for them to learn budget execution and proper prioritization of funding.⁵⁰⁷

ISSUE: RoL construction projects

DECISION: The construction of RoL complexes—secure facilities housing courthouses and judges in several locations—led to unintended consequences. U.S. forces had previously managed to obtain funds from the Ministry of Justice (MoJ) budget to construct the Rusafa RoL complex in Baghdad by going directly to Ministry of Finance officials. However, from that point on, the acting Minister of Justice focused on his missing money in all dealings with U.S. forces. Moreover, security improvements mean the Iraqi government has not embraced and will not fund additional planned RoL complexes.

RECOMMENDATION: Improve. JAs proposing construction projects should ensure such projects satisfy long-term needs and the Iraqi government is willing and able to maintain them. They should also be aware the Iraqi government can build more cheaply than the U.S. Army Corps of Engineers because of their respective construction standards.⁵⁰⁸

Engagements with Judicial Officials

OIF ISSUE: Criminal court oversight

DISCUSSION: The judiciary in Ramadi routinely heard and disposed of cases. Although this was not true of Anbar Province as a whole, Ramadi was moving criminal cases. The Anbar Felony Court also showed an adequate proficiency in moving cases.

RECOMMENDATION: Provide oversight to the criminal courts in your AO. Get to know the judges and the IP investigators observe their interactions and serve in an advisory role to both

⁵⁰⁶ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁵⁰⁷ 41st Fires BDE 2009 OIF AAR, *supra* note 402.

⁵⁰⁸ Director, IROCC 2009 OIF AAR, *supra* note 177.

sides. Many things could greatly increase the throughput of the judiciary, but judges will not implement anything if you cannot get them to view them as “Iraqi ideas.”⁵⁰⁹

ISSUE: Importance of engaging Iraqi judges

DECISION: Visiting Iraqi judges frequently increases their courage and credibility—it emboldens them. The more often the JA visited a judge, the more the judge made decisions. The JA saw the judge’s decision-making ability and willingness to do things in the proper fashion increase significantly. These improvements helped the JAs to make progress on operational issues (e.g., detention) and JAs who can tie their RoL efforts to operational issues will find it easier to get resources for those efforts. These JAs assisted in obtaining a number of Iraqi warrants. They passed the warrant to a U.S. maneuver unit for execution, ideally in conjunction with the IP (this did occur on a couple of occasions). They included the warrant in the detainee packet with copies of the testimony used to obtain the warrant, and helped to take witnesses back to court for trial.

RECOMMENDATION: Sustain. Where possible, JAs should work with Iraqi judges to improve their effectiveness. U.S. forces should also be encouraged to use Iraqi legal processes, which will in turn encourage Iraqis to rely upon them.⁵¹⁰

ISSUE: Iraqi Chief Judge’s availability

DECISION: Few people had access to Chief Judge Medhat, who resided at the Embassy complex in Baghdad. The frustration from the BCT’s perspective arose when local judges froze legal processes without further guidance from the Chief Judge’s office. If the lower court judges had more access the higher levels of court, things may have moved more swiftly.

RECOMMENDATION: Encourage the Chief Judge to increase his accessibility to the lower court judges. Improve the dissemination of information from the Chief Judge’s office so units can properly employ RoL initiatives.⁵¹¹

ISSUE: Engagements with senior Iraqi government personnel

DECISION: In late 2008, MNF-I issued a FRAGO intended to coordinate military engagements with senior Iraqi government personnel. This included individuals in the RoL area, such as Iraq’s Chief Justice. Any MNF-I assets wishing to engage with Chief Justice Medhat must coordinate with the MNF-I RoL section.

RECOMMENDATION: Sustain.⁵¹²

ISSUE: Meetings with Iraqi Chief Justice

DECISION: Representatives from MNF-I OSJA and the U.S. Embassy RoL Coordinator’s office met with Chief Justice Medhat, usually on a weekly basis, for a brief discussion of strategic-level issues and problems affecting Iraq’s High Judicial Council (HJC), which includes the majority of Iraqi judges. In order to increase HJC capacity, the MNF-I RoL section encouraged JAs

⁵⁰⁹ 1/9 Marines 2009 OIF AAR, *supra* note 5.

⁵¹⁰ 2SCR 2009 OIF AAR, *supra* note 1.

⁵¹¹ 3BCT, 4ID 2009 OIF AAR, *supra* note 116.

⁵¹² MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

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throughout theater to attempt to resolve HJC matters at the lowest possible level (e.g., resort to Provincial Chief Judges, etc.), before bringing problems to Chief Justice Medhat.

RECOMMENDATION: Sustain.⁵¹³

ISSUE: Working through Iraqi High Judicial Council (HJC)

DECISION: The most effective means of getting information such as statistics for assessments regarding local judges is to work through the Iraqi High Judicial Council (HJC). The Iraqi judiciary respects and follows a hierarchical system. Thus, judges were sometimes offended when U.S. forces approached them for information instead of the HJC. Further, often times the HJC already had the information the unit was seeking.

RECOMMENDATION: Work through the HJC to obtain data and information. If feasible, allow the HJC to provide the information or request it from their judges.⁵¹⁴

ISSUE: Role of the provincial chief judge in addressing shortfalls in investigative resources

DECISION: There were only about six judicial investigators in Wasit Province, such that investigations were often an Iraqi Police (IP) responsibility. Investigative judges (IJs) did not enjoy working with IP, whom they considered to lack training, and historically did not trust the IP. After the RLA and BJA tried unsuccessfully to obtain U.S. training for the IP, they suggested the IJ provide the training. The BJA asked an IJ what training the IP required, and drew up a possible syllabus based on his advice. The BJA then suggested to the provincial chief judge that the judges organize and provide the training. The provincial chief judge initially rejected the idea, but the BJA continued to raise the issue during subsequent meetings. The BJA provided the draft syllabus when the judge finally agreed to the proposed training, and the judge quickly adopted the training as his own initiative.

RECOMMENDATION: Sustain. Persuading the Iraqis to plan and implement the training means this initiative is likely to have a more lasting impact than U.S.-delivered training.⁵¹⁵

ISSUE: Allowing Iraqis to train Iraqis

DECISION: The BJA and RLA elected to take a step back when it came to training the Iraqis. Instead of handholding the Iraqis through training, the BJA and RLA left the Iraqis to their own devices. When particular training was necessary (i.e., the judicial investigator course), the BJA or RLA would continually suggest the initiation of the training to the appropriate Wasit Provincial authority (i.e., the provincial chief judge). They did so each time they met until the provincial authority decided on his own to implement the recommended training. Once the provincial government adopted the idea of conducting a training course, the BJA and PRT team leader were completely hands off and did not even supervise the training. The result was the provincial judiciary learned how to be self-reliant and appeared to be more committed to succeeding.

RECOMMENDATION: Sustain.⁵¹⁶

⁵¹³ *Id.*

⁵¹⁴ XVIII ABC 2009 OIF AAR, *supra* note 30.

⁵¹⁵ 41st Fires BDE 2009 OIF AAR, *supra* note 402.

⁵¹⁶ *Id.*

ISSUE: Liaison to investigative judges (IJs)

DECISION: 4-1 CAV established an Iraqi liaison with the IJs in their provinces. Depending on the competence of Iraqi Security Forces in the particular province, the liaison was sometimes a member of the IP, and other times a member of the Iraqi Army (IA). The purpose of the liaison was to keep abreast of what additional evidence the IJ needed and to gather this evidence.

RECOMMENDATION: Sustain. Having an Iraqi liaison to the IJ enhances credibility and keeps the system Iraqi-run.⁵¹⁷

Training the Iraqi Security Forces (ISF)

OIF ISSUE: Police investigations training

DISCUSSION: When 2d Battalion, 2d Marines assumed authority for its Area of Operations (AO), the Iraqi criminal justice system was already in place and functioning. The deficiency the unit most noted was the poor quality of the criminal investigations performed by the IP. The Provincial Court in Ramadi sent back a number of cases because they required further investigation. The BN JA focused on providing training to these Iraqi investigators by leveraging the BN's LEPs as well as requesting the attachment of a special agent from the Naval Criminal Investigation Service (NCIS) located at Al Asad. Much of this training and mentoring occurred informally during visits to the IP stations with the Police Transition Team (PTT) operations within our battle space. The BN also hosted a formal investigations symposium for all the IP investigators in the western region of the BN AO. The BN JA realized quickly through these interactions, however, that he did not know enough about Iraqi substantive law before deploying.

RECOMMENDATION: JAs require training on the substantive law of the country in which they will be operating. This training is crucial to being able to provide guidance and assistance to their host country partners. Although several venues exist to provide operational law training, these courses often focus on conventional and basic topics, instead of providing in-depth guidance on RoL matters. Furthermore, activities of the PTTs requires more effort to integrate BN JAs, LEPs, and international police advisors. The PTTs provide an ongoing and stable platform with organic transportation and security assets from which to accomplish RoL missions.⁵¹⁸

ISSUE: Development of ISF law enforcement skills

DECISION: ISF personnel can network effectively to obtain warrants, but are not necessarily capable of carrying out the steps required to achieve prosecution. When U.S. forces have attempted to work "by, with, and through" ISF in obtaining warrants, ISF have not necessarily learned or applied site exploitation skills. Some investigators have received training (either IP investigators, who take the lead until a case has been opened, or judicial investigators, responsible for investigating once an IJ has taken charge), but an insufficient number possess the required skills. Although IA or junior IP personnel are able to get a warrant in some cases—e.g., because they know the local IJ—the IJ may subsequently dismiss the case based upon the insufficiency of the evidence.

⁵¹⁷ 4-1 CAV 2009 OIF AAR, *supra* note 12.

⁵¹⁸ 2/2 Marines 2008 OIF AAR, *supra* note 102.

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RECOMMENDATION: Improve. U.S. forces should work with ISF counterparts to teach site exploitation skills.⁵¹⁹

ISSUE: “Train the trainer” training for Iraqi Police (IP)

DECISION: During the period in which the regiment was located at Camp Liberty, a squadron commander developed “train the trainer” training for IP personnel. This involved forty-five IP and lasted twelve days. One of the JAs was responsible for one day (six hours) of the training. He discussed human rights and issues involving police ethics (e.g., how a police officer should react if told by his supervisor to abuse a detainee, etc.). He relied upon material from civilian police assistance training team (CPATT) classes, which he reduced to a more manageable level.

RECOMMENDATION: Sustain. Participating in this training was the most rewarding task carried out by this JA during his deployment.⁵²⁰

ISSUE: Need to address basic needs of Iraqi Police (IP)

DECISION: Of the various players in the RoL mission, the IP needed the most assistance. For the most part, judges were well-versed in the law and were receptive to considering new types of evidence (e.g. forensic evidence), although continued mentorship in the use of scientific and forensic evidence was still necessary. Judges expressed frustration with poor police work and incomplete or inadequate investigations. Judges regularly dismissed many legitimate cases because of deficient investigative work. In addition to training in basic law enforcement skills, IPs required more comprehensive instruction in criminal law and procedure requirements.

RECOMMENDATION: Improve. Ensuring the success of criminal investigations and prosecutions will require placing greater emphasis on training IPs in Iraqi criminal law and procedure. Judges are only one part of the criminal justice system, and prosecutions suffer because of weak investigations.⁵²¹

ISSUE: “Blue Star Task Force”

DECISION: 4-1 CAV elements established the “Blue Star Task Force.” It combined the brigade’s military resources and assigned LEPs to review evidence packets for Iraqi’s who were either detained or a brigade target. Blue Star members worked closely with their IP/IA liaisons and sometimes direct with the IJ’s to put strong evidence packets together.

RECOMMENDATION: Sustain. The BCT briefed the Blue Star model was briefed to MND-C and MNC-I leadership. These commands were interested in incorporating the model within other provinces. Each province, however, is unique, so each BCT needs to find the model that fits their current environment circumstances.⁵²²

ISSUE: Training of Iraqi Police (IP) by Iraqi judges

DECISION: The judiciary organized and ran a month-long IP training course, twice a week, 1½ hours per day, for fifteen students (IP investigators) at a time. When the brigade departed theater,

⁵¹⁹ AWG 2009 OIF AAR, *supra* note 133.

⁵²⁰ 2SCR 2009 OIF AAR, *supra* note 1.

⁵²¹ 10th MTN DIV 2009 OIF AAR, *supra* note 1.

⁵²² 4-1 CAV 2009 OIF AAR, *supra* note 12.

the course was in its seventh iteration, and the judiciary was planning an advanced course. The PDoP, who fully supported the program, required IP students who failed the course to repeat it. The training reduced problems with Iraqi judges' acceptance of confidential informants, IP-witnessed statements, etc. It also allowed IP who completed the training to work as judicial investigators (JIs). Iraqi law had previously provided authority for this (statements may be taken before investigative judges, JIs, or IP), but the investigative judges—who did not view IP as credible investigators—did not accept such a practice. However, it is more difficult for judges, having provided the training to the IP, to object to their capabilities. The training also had a secondary effect of helping to break down the historic mistrust between the judiciary and IP.

RECOMMENDATION: Sustain. RoL team members obtained Iraqi agreement to the training concept, but did not organize or attend the resulting training sessions. Minimizing U.S. involvement in the training forced the Iraqi judges to deal with IP deficiencies and seemed to work well.⁵²³

ISSUE: Improving the ability of ISF to obtain warrants from local IJs

DECISION: The BJA developed a good relationship with the IJ designated by the provincial chief judge to deal with terrorism cases. ISF in Wasit Province did not usually obtain warrants from the Central Criminal Court of Iraq (CCCI), because Wasit judges disliked having outsiders deal with provincial issues. ISF were normally responsible for obtaining any required warrants. U.S. forces in Wasit Provinces who needed a warrant passed the request to the terrorism IJ through the BJA. The BJA noted ISF were sometimes hesitant to obtain warrants from IJs. One problem occurred when the basis for a warrant was information they obtained from a confidential informant. The training provided to the IP by the IJs helped to improve this situation, making IP more comfortable with going into the courtroom.

RECOMMENDATION: Sustain. If possible, RoL personnel should develop sufficient familiarity with the Iraqi judicial system to determine where problems are occurring and identify possible solutions.⁵²⁴

ISSUE: Integration of LEPs in the RoL team

DECISION: One of the LEPs assigned to the brigade became an integral part of the RoL team. He participated in the detention interviews and accompanied the BJA, brigade paralegal and interpreters to continue visits to detention facilities when the PTTs initially failed to provide the requested information. In addition, he led the BATS and HIIDE training provided to the IP.

RECOMMENDATION: Sustain. RoL teams should be prepared to make use of any skilled personnel available to them.⁵²⁵

ISSUE: Human rights training for Iraqi police

DECISION: The provincial directors of police requested human rights training for the Iraqi Police (IP). The BCT, in conjunction with the PRTs and division rule of law (RoL) section, provided some training materials to the U.S. partner units. However, the partner unit focus was on tactical training, and they did not understand the importance of the human rights training.

⁵²³ 41st Fires BDE 2009 OIF AAR, *supra* note 402.

⁵²⁴ *Id.*

⁵²⁵ *Id.*

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When the BCT RoL attorney framed its importance in terms of the professionalism of the IP, the partner units made it more of a priority.

RECOMMENDATION: Improve. Partner units must understand compliance with human rights law by the IP is essential to their effectiveness and is a central component of the RoL mission.⁵²⁶

ISSUE: Teaching military decision-making process (MDMP) to Iraqi Army

DECISION: After the Dhi Qar PRT RoL coordinator introduced him to Iraqi Army advisors who worked in the Iraqi military academy, the BCT RoL attorney taught a class to these advisors on how JAs advise their commands during MDMP.

RECOMMENDATION: Sustain. Rule of law “targets of opportunity” often arise in the process of meeting and talking to your Iraqi counterparts. Be prepared to use these opportunities to build relationships.⁵²⁷

Evidence Collection & Forensic Evidence

OIF ISSUE: Importance of IP investigators to the criminal justice system

DECISION: The efficiency of the criminal justice system correlated directly with the effectiveness of the Iraqi Police (IP) investigators and their competence in pulling together cases.

RECOMMENDATION: Have Criminal Investigation Division (CID) personnel assigned to the battalion level to mentor directly IPs in the process.⁵²⁸

ISSUE: Training initiatives concerning forensic evidence

DECISION: U.S. interest in improving the conviction rate of the CCCI, which is responsible for trying all terrorism-related offences, resulted in IROCC and MNF-I RoL section personnel obtaining additional information about the collection, analysis, and use of forensic evidence. IROCC and RoL section personnel initially met with British Embassy forensic team concerning the status of UK initiative (including establishment of Iraqi laboratories, training of technicians, and training of investigative judges, etc.). They also met with U.S. Criminal Investigation Division (CID) personnel to learn more about U.S. measures. While the primary mission of CID assets in Iraq is to support U.S. forces, CID personnel also provided forensic training. The Director, IROCC then arranged for an abbreviated version of the UK briefing at a weekly IROCC meeting. Finally, the Director, IROCC and the RoL section organized a “Forensic Forum,” for those active or interested in this area. One issue discussed at this meeting was that the MNC-I Provost Marshal was reviewing the contract for the Law Enforcement Professionals (LEPs) currently available to brigade commanders, to determine whether they would assume additional responsibilities in terms of forensic training or awareness. Another possibility was that the International Police Advisors (assigned to the police transition teams (PTTs)) might provide forensic training and/or awareness.

These meetings confirmed significant progress in establishing and staffing several forensic laboratories, some of which would be operational later that year. Considerable progress occurred

⁵²⁶ 4-1 CAV 2009 OIF AAR, *supra* note 12.

⁵²⁷ *Id.*

⁵²⁸ RCT-5 2008 OIF AAR, *supra* note 9.

in providing forensic training to Iraqi judges through the Jordan Judicial Institute, and a forensic training conference for judges occurred in Baghdad in early 2009. Forensic training for judges will also occur through the Judicial Education and Development Institute (JEDI) when it begins to offer courses (expected to occur by end 2009). Finally, while all new police at the Baghdad Police Academy receive instruction on forensic evidence, and some officers receive advanced training as well, the Forensic Forum confirmed the lack of an agency willing to spearhead an Iraqi national criminal investigator program, identified by the British Embassy as a necessary precursor to improving the collection of forensic evidence.

RECOMMENDATION: JAs working in the RoL area should be aware of—and ensure that any new initiatives are coordinated with—existing efforts concerning training on forensic evidence.⁵²⁹

ISSUE: Use of forensic evidence by Iraqi judges

DECISION: JAs should be aware of the many forensic initiatives already underway in Iraq (e.g., British Embassy Forensic Team and JEFFs). Those involved in one area are not always aware of efforts in other areas. More and more judges are willing to rely on forensic evidence, with increased enthusiasm observed even during the period from January to March 2009. In fact, a trial court convicted one individual on fingerprint evidence alone, although the appeal court may not sustain this verdict. An Iraqi expert introduced the fingerprints into evidence. The court treated him as one of the witnesses required by the Law on Criminal Proceedings.

Some judges now expect the filling out of a standard forensic evidence form. If this does not occur, even if they do not exclude the evidence, they may reduce its weight. The presenter must fill out the form in the manner preferred by the judge, and ideally, an Iraqi witness introduces the evidence. Otherwise, the judge may seize upon an error as a reason for ignoring a piece of evidence. In addition, defense attorneys may question how the evidence was found, and emphasize the lack of documentation regarding its authenticity.

The issue of forensic evidence reinforces the requirement for units to develop a personal relationship with their local IJ. Some JAs in Ninewah and other locations are doing a very good job of this. They act as their unit's gatekeeper, determining whether a matter should go before an IJ, and making sure it meets the IJ's requirements before doing so. Where possible, one JA should act as the IJ point of contact. The BCT commander may assist by meeting the IJ initially, then introducing the JA to him as his legal advisor. This leverages the commander's authority—i.e., "This is my legal advisor, and he represents my interests."

RECOMMENDATION: Improve. JAs should maintain some awareness of various forensic initiatives in order to supplement and support the efforts of other agencies wherever possible.⁵³⁰

ISSUE: Training on biometric and forensic evidence

DECISION: The BJA utilized KLEs to gauge the interest of IJs and Iraqi Security Forces (ISF) in training on biometric and forensic evidence. LEPs demonstrated the use of x-spray tests and other forensic techniques in these KLEs. Once the IJs and ISF expressed interest, the BCT arranged for Iraqi trainers from Baghdad to teach the IJs and ISF's about the use and reliability of biometric evidence, explosive residue tests, and other forensic evidence.

⁵²⁹ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

⁵³⁰ AWG 2009 OIF AAR, *supra* note 133.

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RECOMMENDATION: Sustain. Not only do training sessions on biometric and forensic evidence enhance the ability of ISF's and IJs to gather and evaluate evidence, but also it provides an opportunity for them to confer and break down the barriers of mistrust. However, it is critical to suggest this training rather than impose it; if the target audience does not buy into the need for the training, they will not attend.⁵³¹

Prisons

OIF **ISSUE: Transfer from overcrowded facilities**

DECISION: A detainee in GoI custody for more than 24 hours should normally have his or her detention reviewed by an investigative judge (IJ), who must then grant a detention order authorizing continued detention. The MoJ's Iraqi Correctional System (ICS, responsible for pre- and post-trial detention) requires a detention order before accepting a detainee into their facilities. The lack of detention orders means that many detainees remain in overcrowded Ministry of Defense (MoD) or Interior (MoI) facilities.

A detainee should also have a "case file," containing the allegations and/or charges as well as any evidence. The IJ responsible for investigating the case holds the case file, which must accompany a detainee during transfer to a less-crowded facility; if not, the detainee's case will not be investigated. While ICS officials are concerned exclusively about detention orders, case files are a High Judicial Council (HJC) responsibility. The absence of either a case file or a detention order can consign a detainee to detention on an indefinite basis. During this deployment, the absence of detention orders thwarted some attempts to transfer detainees from overcrowded facilities, while other detainees remained in detention despite a lack of information about their alleged offences.

RECOMMENDATION: JAs attempting to provide logistical and other support to the GoI should be aware of these documents and their significance, including the impact of their absence upon a proposed transfer. Otherwise, such impediments may only become clear when an official (e.g., ICS staff) raises them as a reason for refusing to act.⁵³²

ISSUE: Prison overcrowding

DECISION: In some areas of Iraq (e.g., Diyala Province), it appears that Iraqi Security Forces may sometimes detain large numbers of individuals in overcrowded MoD-run facilities. Attempts to transfer the detainees to less-crowded MoJ ICS-run facilities in Baghdad failed when it became clear that the detainees lacked detention orders. As a result, the HJC assembled a team of investigative judges (IJs) and support personnel to deploy from Baghdad to the location of the overcrowded facility on a temporary basis, to review their cases and order their release or continued detention pursuant to a detention order.

MNF-I assets provided transport and accommodation in support of this HJC deployment. Other proposed deployments sought to deploy IJs from one area (where they were ineffective due to security concerns) to another, and to rotate similar teams of IJs to and from one of the regional CCCI locations. MNF-I viewed any measures that would help to move detainees through the GoI system as positive, given the perception that many were held without detention orders or were spending considerable time awaiting investigation of their cases and trial determinations. On at

⁵³¹ 4-1 CAV 2009 OIF AAR, *supra* note 12.

⁵³² MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

least one occasion, GoI attempts to move HJC personnel in the absence of MNF-I support resulted in a last-minute phone call to MNF-I personnel requesting assistance when arrangements fell through.

RECOMMENDATION: JAs should be aware of the possibility that they will need to support HJC attempts to reallocate resources to improve judicial throughput and reduce detention facility overcrowding.⁵³³

ISSUE: Assignment of additional judges to relieve overcrowding in Iraqi facilities

DECISION: Each province varied on the timeliness of presenting detainees to IJ's. Under Iraqi law, a detainee case must go before an IJ within 24-hours of detention. Some judges enforced the timelines, while others did not. When the failure to enforce timelines contributed to overcrowding in Iraqi facilities, the BJA conducted key leader engagements (KLEs) to encourage the assigned IJ to request additional IJs from Baghdad. When these efforts were unsuccessful, the BJA would coordinate with the higher headquarters' Central Criminal Court of Iraq (CCCI) representatives and request direct coordination with CCCI for additional IJ's.

RECOMMENDATION: Sustain. KLEs are key to judicial reform efforts. Help the Iraqis take ownership of their system and develop sustainable solutions to problems they identify.⁵³⁴

ISSUE: Iraqi processes for tracking detainees

DECISION: Wasit central jail tracked its detainees using a spreadsheet, but other detention facilities did not. However, facility staff tended to know exactly how many detainees they were holding, as well as their status (pre-trial, post-trial, etc.). The RoL team tried to implement a central database accessible by all detention facilities in Wasit Province for court records and detainee files, but was unsuccessful due to the lack of a central network. The Iraqi judicial system relies upon a paper-based system.

RECOMMENDATION: Sustain. Iraqis are comfortable with a paper-based system. RoL personnel should learn what the host nation system is and how to work within it, rather than trying to propose and implement a system more suitable to U.S. conditions.⁵³⁵

ISSUE: Inspection of Iraqi detention facilities

DECISION: U.S. forces, including MNF-I personnel, Multi-National Security Transition Command – Iraq (MNSTC-I) transition teams, and MNSTC-I MoD/MoI human rights advisors conducted inspections of MoD and MoI detention facilities in order to improve detention practices. U.S. DoJ International Criminal Investigative Training Assistance Program (ICITAP) corrections advisors monitored conditions at MoJ facilities. Such monitoring became even more important in the post-UNSCR environment, as GoI agencies assumed increasing responsibility for detention; however, the post-UNSCR legal framework required Iraqi consent for detention inspections.

As with operations generally, U.S. forces, beginning in late 2008, were encouraged to conduct bilateral detention inspections. In theory, Iraqi personnel accustomed to participating in such

⁵³³ *Id.*

⁵³⁴ 4-1 CAV 2009 OIF AAR, *supra* note 12.

⁵³⁵ 41st Fires BDE 2009 OIF AAR, *supra* note 402.

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inspections with their U.S. counterparts would be less likely to consider prohibiting them after 1 January. Moreover, inspections were restyled “assessments,” to more accurately reflect the U.S.-Iraq partnership relationship.

RECOMMENDATION: JAs advising units on the conduct of detention assessments should be aware of the changed context.⁵³⁶

ISSUE: Working with IA and IP to improve conditions for Iraqi detainees

DECISION: The JAs visited Iraqi detention facilities and leaned on IP commanders to expand the space provided to the detainees. They tried to ensure they were getting hearings, and had food, water, and electricity for fans. The JAs also approached the IP and the judge and tried to hold them responsible to each other, to end mutual finger pointing.

RECOMMENDATION: Sustain. U.S. commanders and mentors at all levels should encourage Iraqi counterparts to improve detention conditions.⁵³⁷

ISSUE: Lack of oversight of Iraqi facilities

DECISION: The Government of Iraq (GOI) did not have positive control over their facilities. There were not enough judges to enforce the 24-hour requirement to review detentions and there were no teeth to enforce violations of this rule. In addition, Iraqis would not listen to U.S. general officers when they visited their sites, often presenting a “you are not my general. . .” attitude.

RECOMMENDATION: Improve.⁵³⁸

ISSUE: Interviewing detainees and assessing detention facilities

DECISION: The IP held any pre- and post-trial detainees in Wasit Province in Ministry of Interior (MoI) facilities (there was no Ministry of Justice post-trial facility in the province). The Iraqi Army (IA) transferred any detainees held more than a few days to the IP. To further “due process,” the BJA decided to find out how the IP managed the facilities, treated the detainees, and carried out the required interaction with other government agencies.

To obtain access to the detainees, the BJA first talked to the provincial chief judge, and asked him whether he thought it would be helpful for U.S. forces to canvass them. This would confirm for the judiciary whether the monthly prosecutor reports were accurate and, if not, whether the prosecutors should be visiting the detention facilities more often. The BJA then obtained the PDoP’s approval by agreeing U.S. forces would teach facility IP to use the Biometric Automated Toolset (BATS) to enter the detainees into the Handheld Interagency Identification Detection Equipment (HIIDE) (based on the belief U.S. forces were going to transfer HIIDE to Iraq upon departure, although this is no longer the case).

Over a sixty-day period, the RoL team interviewed, photographed, and enrolled every detainee in Wasit Province in HIIDE. The interviews consisted of obtaining answers to a standard list of questions for each detainee. The RoL team also included two full-time interpreters, but interviewing detainees from countries other than Iraq sometimes required passing information

⁵³⁶ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 42.

⁵³⁷ 2SCR 2009 OIF AAR, *supra* note 1.

⁵³⁸ IAD 2009 OIF AAR, *supra* note 29.

through two or more interpreters. Those conducting interviews also assessed the detention facilities.

The brigade's RoL paralegal created spreadsheets to track the resulting data, and was responsible for entering the data once interviews and assessments occurred. Once the RoL team had completed the initial assessment of all detainees, the brigade issued a fragmentary order (FRAGO) requiring its police transition teams (PTTs) to update the information every two weeks. The PTTs reported their findings to the BJA, who used them to update the master list.

RECOMMENDATION: Sustain. Establish early and frequent contact with key Iraqi players to gain access to detainees and detention facilities and influence the Iraqis into taking the lead on these matters.⁵³⁹

ISSUE: Dealing with issues revealed by the detainee interviews

DECISION: Conducting the detainee survey allowed the BJA to track the movement of detainees through the Iraqi legal system and identify any systemic problems. He discovered the only real problem was detainee abuse. The RoL team interviewed approximately 1000 detainees, resulting in about 100 allegations of abuse. For each allegation, the BJA created an abuse report, detailing the detainee's name, and the name of the detention facility or the person who had assaulted the detainee. He sent reports to the PDoP and the provincial chief judge, who initiated parallel investigations. The provincial chief judge sent the more serious allegations through the inspector general branch, which reviewed them under the Iraqi Penal Code. The PDoP dealt with other cases in accordance with the MoI disciplinary code, which relies upon separate judges and a separate detention facility.

The High Judicial Council (HJC) required public prosecutors to visit detention facilities on a bi-monthly basis, but the provincial chief judge of Wasit Province directed his prosecutors to make weekly visits. The police transition teams (PTTs) ceased their visits to detention facilities when their detainee lists matched those of the prosecutors. Because of the interview and visit program, detainees in Wasit Province began moving through the criminal system, not simply sitting in pretrial confinement for the better part of a year.

RECOMMENDATION: Sustain. Such efforts improve the prospect of detainees receiving due process in a timely manner, help to relieve the overcrowding of detention facilities, hold Iraqi officials accountable for detainee abuse, and increase the capacity of the Iraqi detention system to function independently.⁵⁴⁰

ISSUE: Improving Iraqi capacity to exercise oversight of Iraqi detention facilities

DECISION: Coalition Provisional Authority (CPA) Order No. 10 ordered consolidation of Iraqi detention facilities under the Ministry of Justice (MoJ), but MoJ facilities hold only about 55% of Iraqi detainees. U.S. Department of Justice (DoJ) International Criminal Investigative Training Assistance Program (ICITAP) advisors worked with MoJ corrections officers. These advisors did a good job of professionalizing this force, and MoJ facilities generally complied with international standards. Task Force 134 (TF134) also trained Iraqi corrections officers, and was responsible for inspecting MoJ facilities before transferring U.S.-held detainees to them. However, three other Iraqi ministries are responsible for the remaining 45% of detainees: the

⁵³⁹ 41st Fires BDE 2009 OIF AAR, *supra* note 402.

⁵⁴⁰ *Id.*

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Ministry of Interior (MoI), the Ministry of Defense (MoD), and the Ministry of Labor and Social Affairs (MoLSA). To reduce the possibility of abuse of detainees held by these other ministries, U.S. efforts focused on strengthening the capacity of Iraqi authorities to monitor their own detention facilities.

An MNC-I FRAGO directed battle space owners to inspect all detention facilities in their area of operations (after 1 January 2009, with the move to consent-based operations, “inspections” were referred to as “assessments”). This generated inspection reports and significant incident reports documenting abuse. The FRAGO required U.S. forces to take action to stop abuse where detainees were at imminent risk of harm, but no one was using the reports themselves as a basis for action. The IROCC worked with the Multi-National Security Transition Command – Iraq (MNSTC-I), which had human rights personnel at the MoD and MoI, to pass allegations to the senior levels of those ministries. A capacity-building approach then left it up to MoD and MoI authorities to take action (or not).

RECOMMENDATION: Sustain. U.S. forces created a list of priority facilities where abuse most commonly occurred, and handed any packets detailing any abuse allegations, including photos, to senior Iraqi government officials. This initiative sought to strengthen the capacity of Iraqi institutions by building connections between those at the institutional and operational levels, increasing the possibility that those institutions would intervene to correct operational deficiencies, once identified.⁵⁴¹

Educating the Populace

OIF ISSUE: Encouraging Iraqi law schools to organize legal symposia

DECISION: To further due process, the RLA and BJA sought initiatives to connect the ISF, legal community, and the populace. They encouraged the law school to organize symposia. The first involved the undergraduate faculty and the law school. The second dealt with human rights and the Constitution. A third discussed the post-Security Agreement economic situation. These events included professors, politicians, and economic advisors. The third symposium was open to the public as well, and involved a few hundred participants over two days. Neither the RLA nor the BJA attended the symposia.

RECOMMENDATION: Sustain. The BJA and RLA tried to build a relationship with anyone in the province who had anything to do with the law, empowering them, and decreasing the emphasis upon U.S. efforts.⁵⁴²

ISSUE: Sponsoring performances of the “Mud House” play

DECISION: The PRT, on three separate occasions, provided \$25,000 (using DoS Quick Response Funds (QRF)) to sponsor three performances of a comedy about the interaction of an Iraqi family (the “Mud House”). The PRT Public Diplomacy Officer took the lead on organizing the events behind the scenes. The intent of the play was to entertain and educate Iraqis about their civil liberties and constitutional rights. A law professor introduced the play with a speech about citizens’ rights under the Iraqi constitution and how ordinary Iraqis can help ISF protect those rights. U.S. forces personnel attended the performance only on the third day, along with their ISF counterparts. The PRT will also distribute DVDs of Mud House II at checkpoints.

⁵⁴¹ Director, IROCC 2009 OIF AAR, *supra* note 177.

⁵⁴² 41st Fires BDE 2009 OIF AAR, *supra* note 402.

RECOMMENDATION: Sustain. Be aware of the special resources available in the PRT (QRF funding and Public Diplomacy Officer). If the BJA did not have a good relationship with the PRT, this project would never have happened. The “Mud House” performance was another means of connecting the ISF, the legal community, and the populace. The hands-off U.S. approach seemed to work well. The MND-S wanted this effort duplicated throughout the AO.⁵⁴³

ISSUE: Opportunities to use JAs to train Iraqi attorneys

DECISION: In almost every instance, U.S. forces would train their Iraqi counterparts on their jobs. For example, our military police trained the Iraqi Security Forces. Currently JAs are not involved in this type of partner training.

RECOMMENDATION: Improve. Judge advocates should welcome the opportunity to work with local attorneys and legal advisors.⁵⁴⁴

[See also VIII. INTERAGENCY OPERATIONS]

I.O.2. Afghanistan/Operation Enduring Freedom (OEF)

Rule of Law Personnel & Training

OEF **ISSUE: Adequacy of pre-deployment training for JAs going into a RoL specific job**

DECISION: AARs by former brigade and regimental judge advocates from OIF were one source of information about RoL. Incoming JAs contacted in-theater JAs by email and this provided a wealth of information to review. The Operational Law of War Course at TJAGLCS contained a session on RoL. The AARs were helpful in gaining some perspective on what to expect when attaching to and deploying with a new unit and understanding how units execute the RoL mission in Iraq. However, the RoL model used in Iraq was not applicable in Afghanistan because the culture and legal system in Afghanistan were radically different. The TJAGLCS material was helpful for a general overview of RoL but did not prepare a JA to execute the RoL mission in Afghanistan. The email correspondence with the outgoing JA provided the clearest picture of what to expect upon arriving in country.

RECOMMENDATION: Deploying JAs should begin their professional work-up by reviewing the most recent and region-specific AARs available. Open up an email dialogue with the outgoing JA. Utilize SIPR for communication with your counterpart. SIPR access is more reliable while deployed and sometimes the only communication available in theatre. JAs deploying as RoL attorneys should try to take the TJAGLCS RoL Course instead of the Operational Law of War Course.⁵⁴⁵

ISSUE: Knowledge of Afghan religion and culture

DECISION: Western lawyers have insufficient knowledge of the religion and culture of Afghanistan. JAs deploying to Afghanistan into a RoL position should learn as much as possible about sharia law and the culture of Afghanistan.

⁵⁴³ *Id.*

⁵⁴⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

⁵⁴⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

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RECOMMENDATION: If possible, someone ought to prepare specialist training materials. TJAGLCS should reach out to the Department of State and other U.S. Government agencies to discover whether other resources are available.⁵⁴⁶

ISSUE: RoL practitioners need to understand CERP

DECISION: JAs deploying into a RoL billet need to have a solid understanding of CERP. The proper application of cash is critical. The need to understand CERP is increasing in significance due to new CENTCOM requirements for USFOR-A approval of RoL projects over \$500,000. The rules regarding high value CERP RoL projects are changing quickly.

RECOMMENDATION: RoL operatives must keep up to date with the changing guidance. RoL JAs must read and be familiar with the *Money as a Weapon System – Afghanistan* (“MAAWS-A”) publication (on file at CLAMO).⁵⁴⁷

ISSUE: BCT augmentation for RoL efforts

DECISION: Brigades require pre-deployment augmentation to perform the RoL mission.

RECOMMENDATION: When a BCT deploys and there is a clearly identified RoL mission for that BCT, there should be no question of assigning a third JA to the BCT before it deploys. That third JA would be the RoL JA for the BCT and would work for the BJA. This individual should be a Reserve Component (RC) augmentee, and he or she should come with a dedicated paralegal or a Military Police (MP) noncommissioned officer to support the RoL “courts, cops, corrections” focus that has come to be expected at the BCT level.⁵⁴⁸

ISSUE: Afghan attorneys as a potent force multiplier

DECISION: Task Forces hired Afghan attorneys to put an “Afghan face” on their RoL efforts. Afghan attorneys are invaluable. They will explain how things work, thus providing cultural awareness. They can travel to places unconstrained by force protection restrictions. They are good interpreters on legal issues (non-legally qualified interpreters can struggle with legal terms and concepts). A good Afghan attorney can provide training. He will also tell you which of your RoL efforts are likely to fail and why.

RECOMMENDATION: Task Forces should use Afghan Attorneys in advancing RoL.⁵⁴⁹

Focus & Coordination of the Rule of Law Mission

OEF ISSUE: Development of the rule of law

DECISION: Depending on what RoL definition one preferred, the entire CSTC-A mission could be considered RoL development. CSTC-A took a more narrow definition of RoL and considered ANP development as a true RoL mission. Given CSTC-A’s limited manning, they focused within ANP on the development of their legal system. CSTC-A’s SJA office served as facilitators

⁵⁴⁶ *Id.*

⁵⁴⁷ *Id.*

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.*

between the international community and CSTC-A. CSTC-A SJA attended meetings every quarter at the United Nations to ensure coordination of Focused District Development. There was also a coordination group at the Italian Embassy. Perhaps the most significant development during the year was TJAG's decision to place a LTC JA at the Embassy to work with the DoS RoL officer. That officer did a tremendous job to coordinate RoL efforts between the military forces, DoS, and the international community.

RECOMMENDATION: Maintain the position at the Embassy to coordinate RoL development.⁵⁵⁰

ISSUE: Lack of a defined national RoL strategy in Afghanistan

DECISION: Without any central coordination, there are too many competing efforts simultaneously occurring over wide sections of the operational area. There is no defined national strategy in Afghanistan with respect to the development of the rule of law.

RECOMENDATION: Improve. Better employment of resources is possible if units define priorities and coordinate actions. The CJTF leadership must actively plan, support, and coordinate RoL projects within its area. Consultation should occur with other agencies and NGOs conducting similar initiatives before embarking on projects. A central database of both successful and unsuccessful RoL projects should exist to allow project planners to be more effective.⁵⁵¹

ISSUE: Lack of RoL strategy from higher headquarters

DECISION: There was no detailed strategy for RoL from higher. CJTF-101 based its RoL guidance on the National Justice Program (NJP) and the National Justice Sector Strategy (NJSS). This focused on building justice sector infrastructure, training justice sector officials, and increasing RoL awareness by educating the population on their rights and responsibilities. (Comment: at the time of writing (August 2009), the U.S. Embassy in Kabul was finalizing a detailed RoL strategy for Afghanistan).

RECOMMENDATION: The legal system in Afghanistan is, to a large degree, still in the creation phase. It is important all RoL efforts support the NJSS and the NJP. Units must coordinate all RoL efforts with GIRoA ministries, the United Nations Assistance Mission in Afghanistan (UNAMA) and the U.S. Embassy.⁵⁵²

ISSUE: Short-term focus of RoL efforts

DECISION: Like unit deployments into Afghanistan, we are currently planning and conducting RoL on a one-year cycle. Rule of law is different from our normal mindset in that you do not want to leave everything "closed out" for the incoming unit. RoL requires a longer-term view. There should always be on-going RoL efforts that transcend each unit's one-year deployment cycle.

RECOMMENDATION: Units must learn not to measure success by what they can complete during their brief tenure in Afghanistan. It stands to reason that developing a long-term RoL

⁵⁵⁰ CSTC-A 2008 OEF AAR, *supra* note 16.

⁵⁵¹ 420th EN BDE 2009 OER AAR, *supra* note 17.

⁵⁵² 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

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“team” (multi-service/agency/NGO) specifically responsible for RoL efforts is ripe for Afghanistan. Relying on the U.S. Embassy and each individual BCT to “figure it out” and “make it happen” is not a synchronized, long-term effort.⁵⁵³

ISSUE: Synchronization of RoL efforts

DECISION: The synchronization of RoL efforts was greatly improved, but there is still plenty of room for improvements. The desire to “do something” at the local level is driving efforts that may not be in line with the desires of the higher authorities. Brigades have a lack of patience, stemming from their knowledge they only have a year on the ground. There is currently a strategy for RoL in Afghanistan, but it lacks a simple mechanism for linking local efforts of military units and NGOs to the overall strategy.

RECOMMENDATION: Develop a central RoL program that has long-term oversight of RoL efforts that foster implementing U.S. Embassy/GIRoA goals and resourcing/supporting local unit execution.⁵⁵⁴

ISSUE: RoL responsibilities of the Combined Security Transition Command – Afghanistan (CSTC-A)

DECISION: There was an overlap of some RoL efforts in the battlespace. The overall RoL efforts were the responsibility of CJTF-101 (the battlespace “owners”), but CSTC-A elements had responsibility for training security forces (including “cops”) within that battlespace. This was inefficient and caused some unnecessary confusion.

RECOMMENDATION: USFOR-A should provide a clear delineation of RoL roles and responsibilities to avoid duplication of efforts (“project fratricide”), or mission failure. In the absence of guidance from higher headquarters, sister units such as CJTF-101 and CSTC-A, should carefully coordinate efforts.⁵⁵⁵

ISSUE: Metrics/Measures of Effectiveness (MOE)

DECISION: Higher command established metrics to judge the effectiveness of RoL mission. However, there was no clear guidance as to how to operate a RoL program.

RECOMMENDATION: Brigade JAs should tailor their RoL programs to the needs of the residents in their Area of Operations (AO). A centrally planned RoL program will not be effective in a country as culturally and geographically diverse as Afghanistan.⁵⁵⁶

ISSUE: Use of money in support of RoL

DECISION: Our understanding of how to use money in support of RoL objectives is lacking. We are using cash as band-aids, but we are not addressing the underlying reasons for the bleeding. In some instances, the throwing around of money is actually counter-productive in that it leads to corruption, negatively impacts expectations, and causes other economic problems with no beneficial result. While CERP is definitely a “weapon” in the counterinsurgency fight, simply

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.*

⁵⁵⁶ *Id.*

spending U.S. taxpayer money for the sake of spending is not productive. Understanding the local culture and using money to encourage local development, security, and stability is one thing, spending millions of CERP dollars before the U.S. fiscal year ends just to get it spent is quite another.

RECOMMENDATION: Do not use “money spent” as a measure of performance or effectiveness.⁵⁵⁷

ISSUE: **Command support for the RoL mission**

DECISION: Nothing occurs in RoL unless commanders support it. Commanders need to be educated about the value of RoL.

RECOMMENDATION: TJAGLCS should consider incorporating a talk on RoL into the General Officer Legal Orientation (GOLO) and Senior Officer Legal Orientation (SOLO) courses.⁵⁵⁸

Host Nation Involvement

OEF ISSUE: **Host nation participation in rule of law projects**

DECISION: Include local nationals at both the planning and project execution stages.

RECOMMENDATION: Improve. To gain long-lasting support from the host nation, include local leaders in project planning. Local leaders are essential to gaining popular support for any initiative. Understand that within the Afghan culture, committees make decisions and one person will eventually emerge as a spokesperson. Do not reject host nation ideas merely because they are unfamiliar to western cultural norms. One example is the integration of tribal and Sharia law into the Afghan dispute system. Poorly planned projects, unilateral action, an unrealistic desire for tangible results, and/or a lack of patience while officials attempt to understand your concept, will result in wasted time, people and resources.⁵⁵⁹

ISSUE: **Host nation responsibility for RoL projects and stability efforts**

DECISION: Afghan agency heads and staff often shirk increased responsibilities.

RECOMMENDATION: Improve. Hold Afghan officials accountable to perform. Change will occur when initiated from within Afghan agencies. Resist the temptation to “do the work” for the Afghans for the sake of expediency. Establish goals and performance metrics early on in the project planning process. Work with Afghans to define progress schedules and acceptable performance standards. Motivation to engage in RoL projects should not stem from payments and other rewards, but rather place emphasis on the benefit of a stable government and peaceful society.⁵⁶⁰

ISSUE: **Educating Afghans on the Afghan Constitution**

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.*

⁵⁵⁹ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 214.

⁵⁶⁰ *Id.*

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DECISION: JAs need to ‘work with the grain’ to help Afghans understand that the Afghan Constitution accords with Islamic principles. TF Duke (3d BCT, 1st ID) RoL JAs talked to religious leaders in Konar Province about the widespread misconception amongst Afghans that the new Constitution is contrary to Islam. The aim was to set up a CERP project so that officials from the Department of Hajj and Endowments (in effect the ‘Ministry of Religion’ of the Government of the Islamic Republic of Afghanistan (GIROA)) could train provincial religious elders about the Muslim foundations underpinning the modern Afghan state.

RECOMMENDATION: Sustain.⁵⁶¹

ISSUE: Afghan media

DECISION: The Afghan media is weak. Accordingly, allegations of corruption go unchallenged. Units should encourage TFs to pursue legal awareness projects allowing discussion of abuses and corruption on the radio. Greater transparency and awareness of corruption is likely to discourage it. RoL JAs should consider supporting efforts by media outlets to report on RoL stories.

RECOMMENDATION: Note.⁵⁶²

Justice Sector

OEF ISSUE: Judicial reform

DECISION: Judges lack security and receive low wages. These conditions lead to an inconsistent application of the law. For example, the legal system pursues low-level criminals; however, crimes committed by suspected Taliban members go unprosecuted.

RECOMMENDATION: Improve. Use resources to provide security to judges and their families. Any significant judicial reform is unlikely until these conditions improve.⁵⁶³

ISSUE: Poor condition of justice sector infrastructure

DECISION: The Afghan justice sector infrastructure is in poor condition. CJTF-101 obtained building priorities directly from the Supreme Court, Attorney General’s Office, Ministry of Justice (MoJ), and Afghan Independent Bar Association (AIBA) for all provinces and districts in RC-East. CJTF-101 then passed these requirements to its subordinate Task Forces and PRTs and requested a timeline for the infrastructure construction. The U.S. Embassy later copied this method of planning and produced a new USG/GIROA-endorsed list.

RECOMMENDATION: GIROA is a centralized government that controls the provinces and districts from Kabul. Coordination of infrastructure projects both with the Kabul ministries and at local level is critical and avoids project duplication or shortfalls. It requires a combined top-down and bottom-up approach. There should be an individual at the PRT level dedicated to the RoL mission to give emphasis to RoL projects.⁵⁶⁴

⁵⁶¹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

⁵⁶² *Id.*

⁵⁶³ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 214.

⁵⁶⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

ISSUE: Training of justice sector personnel

DECISION: Training of justice sector personnel should be in accordance with established curricula. A variety of agencies provide training for justice sector officials. Most notable are the U.S. Agency for International Development (USAID), the Afghanistan Rule of Law Project (ARoLP) and the Department of State Bureau of International Narcotics and Law Enforcement Affairs (DoS/INL), which sponsors the Justice Sector Support Program (JSSP) and the Corrections Systems Support Program (CSSP). These agencies have well established training packages. However, some areas are too dangerous for civilian staff. If the military is to give training in these areas, it should follow established curricula. The goal should be to establish a training baseline for Afghan justice sector officials.

RECOMMENDATION: Communicate and coordinate your RoL training with other agencies. They will have good training curricula they will happily share if you can deliver training, or provide logistic support, in areas they cannot reach. Units should use Afghan attorneys as trainers to provide an “Afghan face.” This will also develop Afghan legal capacity for the future.⁵⁶⁵

ISSUE: Afghan Independent Bar Association

DECISION: Afghans have a poor understanding of the concept of law as a profession. CJTF-101 invested resources in supporting and mentoring the Afghan Independent Bar Association (AIBA). The AIBA provided the means to develop this understanding. Additionally, because of its independence, it could competitively challenge possible abuses by government attorneys. This happened during the reporting period when the Afghan police arrested a defense attorney. The AIBA challenged the arrest, which led to the release of the attorney.

RECOMMENDATION: Sustain. Most RoL efforts focus naturally on lawyers working within the official justice system. However, developing a wider understanding of professional and ethical legal standards is an important goal.⁵⁶⁶

ISSUE: Tribal/shura based justice system

DECISION: Most Afghans understand and accept an informal tribal/shura based justice system. CJTF-101 encouraged training for village elders who administer the informal justice system. The aim was to educate the elders as to which cases were appropriate for the informal system and which were not. The training also imparted some legal theory in an attempt to improve the elder’s handling of the minor cases that remain in the informal system.

RECOMMENDATION: The informal justice system is not going away for the time being. It has functioned, more or less, as it does now since time immemorial. It is an integral part of Afghan culture because the Kabul central government has historically been unable to provide legal services due to distance, terrain, and ethnic rivalries. It is well worth educating the elders as to when its use is inappropriate and how to use it in a manner more closely following the principles of the formal system. It is hoped that the new RoL strategy will provide guidance on implementation and integration of the formal and informal systems.⁵⁶⁷

⁵⁶⁵ *Id.*

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

Corrections Systems Sector

OEF ISSUE: The conditions of pre-trial jail facilities

DECISION: The Ministry of Interior (MoI), which is responsible for the Afghan National Police (ANP), operated its own pre-trial jail facilities. This was in contrast to the post-trial facilities, such as the Pol-E-Charki prison, which the Ministry of Justice (MoJ) owned and operated. Although both types of facilities (those MoJ operated and those MoI operated), were in very poor condition, CSTC-A's mission responsibility was to support the MoI, not the MoJ. Therefore, CSTC-A had an interest in looking at the MoI pre-trial jail facilities to attempt to ensure they met basic human rights standards, and, for example, to preclude another Abu Ghraib-type scenario. The primary focus of CSTC-A was the Kabul City jail, but they also monitored other jails around the country. CSTC-A received funding to work with the MoI to rehabilitate these jail facilities, which was an ongoing project.

There was a very successful Taliban-orchestrated prison break in Kandahar in the spring of 2008, which raised significant concerns that a similar incident could occur at Pol-E-Charki and elsewhere. Despite the fact that MoJ operated those prisons, the Ministry of Defense (MoD), and consequently CSTC-A, were requested to assist with security. Therefore, after the Kandahar incident, CSTC-A helped address funding issues with the overall security of the prison. President Karzai tasked the MoD to do some security work instead of the MoJ. The fiscal questions arising from using ASFF to help secure a MoJ prison were complex.

RECOMMENDATION: CSTC-A, as an organization, should try to stay away from the issue of prisons. The CSTC-A commander saw this issue as a black hole from which the command would have trouble extricating itself, and a mission for which it had not received funding. CENTCOM needs to coordinate with DoS on this issue to ensure overall stability in Afghanistan (you cannot have a reliable criminal justice system when there is a corrupt prison system).⁵⁶⁸

[See also VIII. INTERAGENCY OPERATIONS]

Afghan National Army (ANA) Legal Development Training Team (LDTT)

OEF ISSUE: Knowledge of basic geography, history and culture

DECISION: North American LDTT members had little to no time to prepare for the task. Many LDTT members consequently had very little knowledge of the history and culture of Afghanistan prior to participating in the project.

RECOMMENDATION: Improve. Acquire a minimum level of history of the region by reading books and articles. Read works by non-U.S. authors, such as Ahmed Rashid, for a non-western perspective. Understand the different governments that ruled Afghanistan since 1900. Understand some basic history of the Pakistan-Afghanistan and Pakistan-India struggles. At a minimum, know the names of the countries that border Afghanistan. Understand the commonly spoken languages are Dari (version of Farsi), Pashtu, Farsi, Russian, and English. Learn some basic Dari before you arrive.⁵⁶⁹

⁵⁶⁸ CSTC-A 2008 OEF AAR, *supra* note 16.

⁵⁶⁹ Individual Augmentee, Afghan National Army Legal Development Training Team, Combined Security Transition Command – Afghanistan, After Action Report, Operation Enduring Freedom, June 2008 – April 2009 (7 Aug. 2009) (on file at CLAMO).

ISSUE: Understanding of the Afghan learning and ANA decision-making process

DECISION: Some members of the LDTT were unprepared for the cultural differences in how Afghans learn and make decisions within their hierarchical system. LDTT members had to adjust their teaching style and have a lot of patience with their Afghan counterparts.

RECOMMENDATION: Improve. It is important to understand the influence of the former Soviet Union on the Afghan people. For example, the presence of a “hord mentality,”—i.e., “if you have one, I need two. If you have two, I need seventeen.” The Afghan teaching style is, “I’ll talk and you will listen.” Homework, reading and exams are foreign concepts.

Take some time to learn about Afghan culture. As a general statement, Afghans fear making a mistake; therefore even the smallest of decisions go up to a single source. Expect indirect answers from your Afghan partners. The truth is usually in one of their metaphors or stories. Independent Afghan decision does not usually happen unless you are in an informal situation. Most decisions require time and agreement by the whole group. Delegation is an unknown concept. Non-commissioned officers generally make chai tea and do not lead.

Understand that in the populated areas the Afghanistan legal system is a hybrid of provincial (code)/common law/tribal system. If the law is directly on point, you may get an answer. Most unsolved problems fall within “the gaps.”⁵⁷⁰

ISSUE: Points to consider when dealing with Afghans

DECISION: Afghans have a sense of humor and can find joy in life in the harshest conditions. They are hospitable, have a strong sense of family, and cherish friends. Generally, most Afghans enjoy a different sense of urgency and avoid disagreements. Afghans will initially trust. However, once you have demonstrated you are unreliable or you have broken a promise it is hard to regain their confidence. Afghans will look to your actions, not your words. They are patient people and but you must remember most have nothing to lose. The people are still reeling from decades of war.

RECOMMENDATION: Improve. If you tell the Afghans that something is a “good idea,” they will politely nod “yes.” Be true to your word and follow through. Do not make promises you cannot fulfill. The “carrot and stick” approach will not work unless you have a “big stick” and intend to use it.⁵⁷¹

ISSUE: Afghan legal officer versus Afghan lawyer

DECISION: Not all Afghan “legal officers” are lawyers. In fact, many Afghan legal officers have no formal legal training or education. Some Afghan legal officers in positions of authority cannot read or write. Furthermore, Afghan lawyers with degrees from Afghan law schools may or may not have the ability to function as a lawyer.

RECOMMENDATION: Improve. Do not under estimate the potential of your Afghan partners. Although some Afghan legal officers cannot read or write, do not assume that they will not display sound decision-making skills. On the other hand, there are some officers in positions of

⁵⁷⁰ *Id.*

⁵⁷¹ *Id.*

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authority with law degrees who are incompetent, are in place because of who they know or they were merely “first on scene” when the Americans arrived in 2001. Until the “old guard” departs, or someone removes them from office, progress within the ANA legal corps will be slow.⁵⁷²

ISSUE: Negative perceptions of Afghan leaders having dual citizenship

DECISION: Some Afghans in leadership positions have dual citizenship. The perception of many of the Afghan people is leaders with dual citizenship divert resources to themselves for personal gain. Afghan soldiers fear officials will use their dual nationality to leave the country with the money originally destined for the Afghan people when the United States eventually pulls its support to Afghanistan. This thinking leads to hoarding of resources within the Afghan National Army.

RECOMMENDATION: Improve. Government officials in Afghanistan are corrupt. Ideally, the Afghans in charge of the government have a stake in the outcome of the country. Project team members must be aware of this dynamic and appreciate the skeptical nature of their Afghan partners. Team members can show compassion to the Afghani plight without making a political statement. Simply acknowledge the issue of dual citizenship and express that any situation has room for improvement.⁵⁷³

ISSUE: Identification of Afghan training team instructors

DECISION: The North American team recommended instructors based on the results of interviews during the needs assessment. The Afghan members of the LDTT recommended instructors based not on who is “best suited” for the job, but rather the candidate’s rank, status, and standing among their peers and the possibility of a visit to the United States.

RECOMMENDATION: Improve. Understand that some Afghans do not consider what is best for the organization, but rather what is best for them personally. Do expect the Afghans always to agree with what is in the best interest of the project.⁵⁷⁴

ISSUE: Determining project goals

DECISION: After conducting a needs assessment, the Afghan and North American LDTT members agreed to project goals and tasks.

RECOMMENDATION: Sustain. Ensure the project reflects reality. Clearly state the project goals and refer back to them often. Do not allow the creation of something impossible to develop or sustain. If you do, the Afghans will never be able to repeat what you have worked to accomplish. The net result will be wasted time, effort, and resources.

Understand Afghanistan does have a military legal system comparable to the United States. Leaders in the Afghan legal corps have exposure to the U.S. military law system and at least a partial understanding of it. Give the Afghans responsibility to select what subjects and lessons to teach. Be sensitive to Afghan requests, but do not agree to move onto the next phase of the project for the sake of being expeditious. Resist the urge to tell the Afghans what they need or how to do their assignment. If you find the Afghans are not completing tasks on time, either they

⁵⁷² *Id.*

⁵⁷³ *Id.*

⁵⁷⁴ *Id.*

do not understand what is expected of them to they do not agree with the proposed action. In the latter case, chances are the task was probably “your idea” and they did not want to offend you, so they simply agreed with you. Your job is to balance their desires with the realities found on the ground.⁵⁷⁵

ISSUE: Project team member qualification and selection

DECISION: All non-sponsoring command project members had at least ten years of individual military experience. Non-sponsoring command team members consisted of judge advocates (JAs) from the U.S. Navy, U.S. Marines, and Canadian Forces (Navy). In addition to legally trained personnel, Canadian Forces (Air Force) also provided a “training development officer” to round out the team. The sponsoring command temporarily assigned a junior reserve Army judge advocate to act as the project liaison.

RECOMMENDATION: Improve. Rule of Law projects do not usually require intense legal theory, but rather a balance of legal knowledge and people skills. At a minimum, ensure project personnel have some awareness of Army procedures in combat operations. Do not insert personnel with very little ground combat experience into a hostile area of operations until they receive at least a country brief, basic defensive combat training and gear issue. Send team members to a Combat Readiness Center (CRC) for predeployment training.⁵⁷⁶

ISSUE: Development of the Afghan Basic Legal Officer Course (BLOC)

DECISION: The LDTT conducted analysis of each of the functional areas for which the ANA legal officers performed in the course of their duties. As a result, the LDTT identified the job requirements for ANA legal officers and defined the requisite duties, tasks, skills and knowledge. They selected the BLOC lessons from General Legal Subjects (GS); Military Justice (MJ) principles and concepts; duties and functions of the ANA Command Investigation Division (CID); and duties and functions of a Staff Judge Advocate (SJA).

RECOMMENDATION: Improve. The BLOC uses an “open architecture” theory to allow integration of future subjects into the course of instruction. The BLOC is only a starting point. The idea is to have a framework to work within, providing a guidepost to ensure a minimum competency at the combat corps level. Future developments include an ANA “Legal Training Directorate” within the Combat Support Services Division at the ANA Training Center in Kabul.⁵⁷⁷

ISSUE: Length of Afghan Basic Legal Officer Course

DECISION: The length of the course was four weeks. The daily course of instruction was no less than four hours. The course length and length of daily instruction was a function of the amount of material ready for delivery as of mid-January 2009. The Afghan National Army Basic Legal Officer Course was a joint effort between the LDTT members. Development of the course material was primarily the responsibility of the Afghans. North American members of the LDTT helped spur the development of the lessons and provided mentoring and instruction to “Train the Trainer.”

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.*

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RECCOMENDATION: Improve. Do not have a predetermined course or instructional day lengths without understanding the capacity of the Afghans to deliver the lessons. Working with the Afghans, determine a minimum class day and course length. Do not try to deliver too much material, but instead concentrate on the process. Afghans normally work from 0900 until noon. At noon, they have lunch for an hour and then return to work. Their day ends around 1500. Although this day may seem short in comparison to the duty hours of coalition forces, do not force a longer day simply because you want the Afghans to work longer days. Instead of demanding a longer course or instructional day, ask the Afghans to explain their logic and then hold them to the task.⁵⁷⁸

ISSUE: Delivery of Afghan Basic Legal Officer Course

DECISION: Approximately sixty Afghan legal officers and civilians trained over 23 instructional days. Eight Afghan instructors delivered over 225 hours of instruction. In total, the course took 30 calendar days to complete. The Afghan LDTT organized and coordinated significant events to include: opening and closing, speakers, public affairs coverage, class schedule, lodging, meals, transportation, exam, graduation certificates, course books assembly, and class room facilities.

RECOMMENDATION: Improve. Mentors must remain focused on the process and not necessarily the event. Although the course was a huge step forward, there was too much coalition involvement. Develop a course checklist, vice taking an “ad hoc” approach to delivering the course. What works in the United States is not necessarily going to work in Afghanistan. The Afghans must be able to deliver a course or instruction and then do it again with minimal coalition assistance.⁵⁷⁹

ISSUE: Afghan LDTT visit to the United States

DECISION: As an incentive, CSTC-A arranged for the Afghan LDDT to visit The U.S. Army Judge Advocate General’s Legal Center and School (TJAGLCS), Charlottesville, VA. While in Charlottesville, the Afghans attended actual classroom sessions and seminars, and received a lesson in teaching methods. Additionally, the CLAMO individual augmentee and the Afghan team conducted a post-course analysis of the ANA Basic Legal Officer Course.

RECOMMENDATION: Improve. CSTC-A used the visit to TJAGLCS as an incentive to the Afghan LDTT. During the course development phase, whenever the Afghan team strayed from its timeline or agreements the threat of trip cancellation became relevant. The problem with this approach is the Afghans always believed the trip would occur. The threat of trip cancellation became empty and meaningless.

The CSTC-A legal provided very positive trip feedback. At present, CSTC-A is searching for a military legal school to mentor and continue to develop the ANA legal corps. The intent is to have a military legal school continue to provide the same or similar support as provided during the LDTT. The idea of an affiliation with a military legal school is reasonable. A written agreement detailing funding and staffing for such a venture should be in place before making any commitments.⁵⁸⁰

⁵⁷⁸ *Id.*

⁵⁷⁹ *Id.*

⁵⁸⁰ *Id.*

ISSUE: Post LDTT support

DECISION: The North American component of the LDTT is not providing any further assistance or mentoring to the Afghans. CSTC-A legal mentors will continue to provide post-LDTT support.

RECOMMENDATION: Improve. The Afghan National Army, CSTC-A and its coalition partners plan to use the Basic Legal Officer Course (BLOC) as the training “cornerstone” for the ANA legal corps. All ANA and MOD legal officers will attend the BLOC by the end of 2009. There exists a possibility that an ANA Legal Training Directorate (LTD) will stand up in 2009-2010. The LTD hopes to affiliate itself with a US or foreign military legal center for continued mentoring. The long-term goal is to create an ANA Military Law Center and School from the ANA LTD.⁵⁸¹

ISSUE: Responsibilities of the sponsoring command in project planning and execution

DECISION: CSTC-A, the sponsoring command, did not adequately define project parameters, limitations, and goals. The sponsoring command’s stated concept did not reflect the situation on the ground. The sponsoring command shifted priorities when the original project planner departed the area of operations. Originally, the sponsoring command requested “an assist.” During the course development phase, the non-sponsoring command ended up assuming the responsibility to execute the project.

RECOMMENDATION: Improve. Before committing to a project, outside personnel tasked to accomplish the mission must obtain more than verbal assurances from the sponsoring command. Obtain written assurances and define the limits of assistance. An inherent disconnect will exist between the stated project goals and the reality on the ground if the sponsoring command does not maintain its responsibility for the outcome of the project.

When the planning element has redeployed and their replacements are either superficially involved or unilaterally change the project plan, persons from outside the sponsoring command will experience great difficulties at the project site. Persons temporarily assigned will have to assume the responsibility of the sponsoring command to accomplish the task or withdraw support.

The sponsoring command must invest themselves in more ways than verbal commitments. If the priorities of the sponsoring command staff do not align with the task assigned, unexpected challenges and friction will develop between project participants. Permanently-assigned persons will follow the direction of their immediate leaders.

Any Rule of Law (RoL) project should reflect the reality of the situation in the area of operations. Both the project sponsor and those assisting with execution must expect the project to take several different directions. Always keep the project goals in mind when addressing unplanned issues. Good ideas and intentions are a necessary element to project planning. Unfortunately, they are not always practical during project execution. If coalition forces accomplish most of the challenging tasks, the project will not have a legacy and the effort may be in vain. Resist the pull to accomplish tasks for the sake of meeting project deadlines or just to “get it done.”⁵⁸²

ISSUE: Project funding

⁵⁸¹ *Id.*

⁵⁸² *Id.*

DECISION: Project planners intended to fund the project with Afghan Security Forces Funds (ASSF). During the course development phase, a determination made at the Department of Defense general counsel's office restricted the use of ASSF from the original plan to pay for all project costs. ASSF actually funded only the travel expenses of Afghan soldiers and government officials for post-project debrief and training. Operations and Maintenance, Army (OMA) funded almost all other project costs, including travel expenses of a U.S. Soldier, sailor and Marine.

The original project planners rotated out of the area of operations before the limiting decision and before identification of any other funding source or monetary commitment. The sponsoring command did not immediately identify and secure other project funding. Canadian forces resourced the requirement once promised resources by the sponsoring command. Canadian forces used organic resources in order to continue the project. After receiving no funding reimbursement from the sponsoring command, DIILS pulled its direct project support.

RECOMMENDATION: Improve. The non-sponsoring command must obtain lines of accounting before committing any resources or personnel. The use of a third party at the sponsoring command as an intermediary is not an acceptable solution. Unless the project proponent provides advance funding, expect no end to fiscal problems during project execution. Without a solid commitment from the sponsoring command, team members without a funding cite will have the unenviable task of executing a project from their home station without knowing if, and when, they will receive monetary support.⁵⁸³

ISSUE: Canceling project support due to lack of funding

DECISION: The failure to indentify and provide timely funding resulted in a high frustration level at the non-sponsoring commands and wasted hundreds of labor hours. Lack of information crippled personnel at their home stations as they waited for word as to whether or not the project would continue. Throughout this entire process, personnel from outside of the sponsoring command were left in a "holding pattern," forever waiting for either word on new a funding source or an end to their project involvement. Without a readily available alternate appropriation, the remaining team members had to execute the project without any guarantee of funds. When the sponsoring command did identify funding, the amount provided was usually short of the request and weeks late.

RECOMMENDATION: Improve. Find alternate funding or consider canceling support to the project if the sponsoring command cannot provide a funding source. Before pledging project support, obtain a written commitment from the sponsoring command to fund the entire requirement. Before dedicating resources, give the sponsoring command a deadline to provide a funding document. If the sponsoring command cannot resolve their funding issue by a date certain, cancel project support.⁵⁸⁴

ISSUE: Maintaining interest in the project

DECISION: When the North American LDTT members left Kabul, both the Afghans and the other coalition team members lost interest.

⁵⁸³ *Id.*

⁵⁸⁴ *Id.*

RECOMMENDATION: Improve. Developing a Rule of Law project from opposite sides of the globe is extremely difficult. The project will fail without a task order from leadership. A primary duty of training team members must be project-related. Feedback and dialogue must be timely when developing course material.⁵⁸⁵

ISSUE: Project team member participation

DECISION: Due to failure of the sponsoring command to meet its time and monetary commitments, DIILS withdrew its support to the project and Canadian forces scaled back their effort. During the course development phase, a National Guard Bureau Soldier augmented the team for a few weeks. The sponsoring command assigned an Army Reserve judge advocate (JA) to coordinate the project at the deployment site. The sponsoring command assigned him to other duties shortly after he assumed the role of project liaison/coordinator. At the deployment site, all project planning and coordination fell to sponsoring command's legal administrator.

RECOMMENDATION: Improve. The sponsoring command must remain fully committed throughout the entirety of the project. It is unreasonable for the non-sponsoring command to assume the project lead without any resources or authority.⁵⁸⁶

ISSUE: Contractor support

DECISION: Contractors in Afghanistan play a very large role in the mission. U.S. contractors did not participate in the planning of this project. However, local national contractors were very influential on the Afghans involved with the project and were vital to the project's success. Their language skills, cultural awareness, and initiative were critical. On more than one occasion, these individuals risked their own health, welfare, and safety to support the project.

RECOMMENDATION: Improve. Both military personnel and contractors must have a clear understanding of the commander's intent. Involve contractors early in the project planning even if the project only tangentially impacts their mission. An intolerable situation will occur when the contractor believes the project will affect their mission. On the flipside, military personnel should be sensitive to the contractor's efforts, as the contractor will be in the area of operations usually long after the military redeploy.

Contractors and military personnel should communicate regularly and support each other even if not working directly on the project. Statements such as, "you parachute into theater only to stir the pot, leaving me to pick up the pieces" does not help the situation. The result will be contractor and military personnel working at cross purposes and without coordination of effort. Additionally, all parties will end up frustrated. The people we are trying to help will receive a mixed message.

Treat contractors as valued team members. Give contractors who are retired military, or in a reserve component, the same respect as any other person. Contractors should ask how to best support the military mission, instead of spending time "name dropping" and telling war stories. Both military personnel and contractors should be familiar with the joint ethics regulations (JER). Keep in mind that contractors are employees of a corporation and not active duty Soldiers.⁵⁸⁷

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.*

⁵⁸⁷ *Id.*

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ISSUE: The concept of decentralized work

DECISION: The concept of decentralized work to develop course material was unsuccessful. Not all team members contributed on a routine basis. Some team members experienced technical challenges such as logging into a web-based Share Point site. Technical challenges aside, unity of effort was missing from the project. Decentralized work actually became an impediment to accomplishing the task and prompted an unplanned trip from the United States to Kabul for the CLAMO individual augmentee.

RECCOMENDATION: Improve. The employment of new technology is logical given the great distance between the team members. In practical terms, however, the concept is better suited to a non-combat environment.⁵⁸⁸

ISSUE: Share Point technology

DECISION: In Phase I of the project, the LDTT stored information on the CSTC-A Share Point. Unfortunately, the inability to access the CSTC-A Share Point did not become obvious until the LDTT members left Afghanistan. Much of the data was essentially inaccessible once the team left Afghanistan. CSTC-A staff transferred the data a single file at a time to the CLAMO web-based Share Point where all team members were able to see and access the same information. The inability of the team members to access information on the CSTC-A Share Point was problematic during the entirety of the project.

The lack of one source of information was not the only problem. To compound matters, there was a period of several months where LDTT members were reluctant to use Share Point technology. At least one team member repeatedly could not access the web-based information sharing system. The inability of team members to contribute work product to a single Share Point resulted in wasted effort and duplicated work.

RECOMENDATION: Improve. Use only one web-based Share Point during the entirety of the project. Place a single team member in charge of the Share Point. Team members must make it a priority to use a single system or agree to some other form of communication. Team members should obtain Share Point training before joining the project.⁵⁸⁹

ISSUE: Information storage and transfer

DECISION: In September 2008, the Department of Defense (DoD) issued a policy on the use of portable storage medium (i.e., memory sticks). The new policy restricted the use of these memory storage devices. With the change in policy, these devices became unusable and the sharing of information became more difficult. The abrupt change in policy caused problems for several team members, as they had work product stored on portable memory devices. The net result was lost time and efficiency, as well as a great deal of frustration for some team members.

RECOMMENDATION: Improve. Most deploying personnel now understand the change to DoD policy. Expect future restrictions as technology evolves. Call ahead to the deployment location to determine and understand the current practice.⁵⁹⁰

⁵⁸⁸ *Id.*

⁵⁸⁹ *Id.*

⁵⁹⁰ *Id.*

ISSUE: Email as a substitute to Share Point

DECISION: Email became a surrogate for the Share Point. Problems also emerged with this technology. As some LDTT team members began to email their work, security systems often removed or altered files. Work product did not always get to all team members for peer review. These issues often led to duplication of effort as team members sometimes developed the same or similar material.

RECCOMENDATION: Improve. Use only one Share Point. All team members must commit to using the technology. Failure to use one database will result in wasted time and effort. Email is not an adequate substitute for a web-based Share Point when working with large files and when broadband capacity is limited.⁵⁹¹

ISSUE: Use of courier versus internet to communicate with Afghan partners

DECISION: Mail and courier service is slow and time consuming, but is the most effective way to get information to Afghan team members.

RECCOMENDATION: Improve. Do not rely on the internet to get information to non-coalition forces. Plan to use mail and couriers to get work product to your Afghan partners.⁵⁹²

ISSUE: Commercial phones, defense networks, and mobile technology

DECISION: The most reliable technology used during this project was mobile telephones. It is one of the most efficient means of direct communication. Commercial and defense networks usually worked without problems. Most Afghans have a mobile phone or have access to one.

RECCOMENDATION: Improve. Persons traveling to Afghanistan should know how to acquire an Afghan mobile phone in advance of their arrival. Alternatively, the host should make accommodation to provide a mobile phone for use upon arrival in country. Access codes and detailed dialing instructions are necessary in Afghanistan to connect land-based phones and mobile phones (and vice versa). These codes are also necessary when using commercial lines and defense networks between countries.

Some North American based mobile phones also have “data only” connectivity within Afghanistan. Explore obtaining phones such as a Blackberry with international service enabled before departing the United States. Network compatibility, connectivity, and availability will limit the usefulness of any of these systems. Observe operational security measures when using a mobile phone.⁵⁹³

ISSUE: Video teleconferences (VTC)

DECISION: Video teleconferences (VTC) were the primary means of communication during initial project planning. Although helpful, this technology was mostly unavailable for most of the remainder of the project. Limited network capability, bandwidth availability, system security issues, and problems with connectivity between different VTC systems, were just a number of the issues.

⁵⁹¹ *Id.*

⁵⁹² *Id.*

⁵⁹³ *Id.*

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RECOMMENDATION: Improve. Technical difficulties and cost still limit the use of VTC systems. A better solution would be to increase the use of point-to-point video services.⁵⁹⁴

ISSUE: **General comments**

DECISION: There is no single correct way to accomplish a Rule of Law (RoL) project.

RECOMMENDATION: Improve. Command support to your RoL project is an absolute necessity to achieve the mission goals. Assign someone who will be present throughout the entire project. Upfront project funding is critical to project success. Do not blindly believe all the stories you will hear about Afghanistan. The Afghans will be serious if you are serious, but never expect an immediate answer. Never underestimate the abilities of your Afghans partners. They will work as hard as you do, if given the chance. When taking on a monumental task such as the development of an Afghan basic legal officer course from the other side of the planet, there is no substitution for face-to-face meetings and relationship-building occurring over a cup of coffee or chai tea. Building relationships is key and most important aspect to your project success. The Afghans are a proud people. Once you gain their trust, they will not allow their friends to fail.⁵⁹⁵

I.P. Stability Operations

OIF ISSUE: **Rebuilding of infrastructure within one unit's AO**

DECISION: Once security was established in the AO, the unit wanted to begin rebuilding the infrastructure. Funding quickly became an obstacle and projects slowed. The unit was able to obtain Iraqi funding for some of the rebuilding projects.

RECOMMENDATION: Sustain. Units must figure out the best way to fund their projects, to include consideration of host nation sources, and continue to rebuild critical infrastructure for the Iraqi people.⁵⁹⁶

ISSUE: **Counterinsurgency (COIN) mindset vs. kinetic mindset**

DECISION: The BCT commander had the proper "mindset" and perspective, and it filtered down to the Soldiers. The BCT staff never trained to conduct COIN operations and learned while in Iraq.

RECOMMENDATION: Understand the environment you are in and adjust accordingly.⁵⁹⁷

ISSUE: **Unit focus during stability operations**

DECISION: Different units have different outlooks and mindsets concerning stability operations. Some units remain very much focused on lethal operations, to the detriment of the overall COIN mission. Units that have such a mindset may require retraining when they enter your operational area. All units newly assigned to the BCT had to undergo training at a BCT "academy." This training included instruction on RoL, rules of engagement, claims, and Iraqi law.

⁵⁹⁴ *Id.*

⁵⁹⁵ *Id.*

⁵⁹⁶ 31D 2008 OIF AAR, *supra* note 10.

⁵⁹⁷ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

RECOMMENDATION: A standard incoming unit training package can help adjust the thinking of units where the lethal mindset may be inappropriately prevalent. Re-train/emphasize the necessary points as often and as soon as possible.⁵⁹⁸

ISSUE: Setting the example for host nation forces

DECISION: Our conduct under the UNSCR created an alternate universe of law for Iraqis. Our own non-adherence to the established laws makes it less likely the locals will feel compelled to obey it. You cannot preach rule of law while presenting all of your own actions as an exception to it.

RECOMMENDATION: It is better in the long run to limit our freedom of action a bit in order to set a proper example for the local population.⁵⁹⁹

ISSUE: Integration of the local legal process into operations

DECISION: Integrating with the local legal process allows U.S. forces to present evidence the local population feels is legitimate.

RECOMMENDATION: This needs to be the rule and not the exception. It brings benefits in terms of both the RoL and governmental legitimacy.⁶⁰⁰

ISSUE: IA interaction with IP

DECISION: In some cases, IA personnel can exercise certain law enforcement powers, such as the authority to arrest (e.g., through PM Directive 90/S, establishing the Baghdad Operations Command (BOC)). However, in practice, IA personnel exercise much broader authority (e.g., IA personnel sometimes arrest IP personnel for setting up a roadblock without prior coordination with the IA, although this will not occur if a U.S. police transition team (PTT) accompanies the IP).

RECOMMENDATION: Improve. U.S. forces should encourage their IA counterparts to remain within the scope of their authority and improve cooperation with IP personnel.⁶⁰¹

ISSUE: Developing an Iraqi Army (IA) legal advisor capacity

DECISION: The unit tried to meet monthly with IA legal advisors with minimal results.

RECOMMENDATION: Current conditions may be ripe for re-invigorating IA legal advisor development.⁶⁰²

ISSUE: Resistance of units to involvement in law enforcement functions during stability operations

⁵⁹⁸ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

⁵⁹⁹ 4ID 2009 OIF AAR, *supra* note 20.

⁶⁰⁰ *Id.*

⁶⁰¹ AWG 2009 OIF AAR, *supra* note 133.

⁶⁰² XVIII ABC 2009 OIF AAR, *supra* note 30.

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DECISION: The AWG team observed significant unit reluctance to implement law enforcement techniques during the initial phase of Security Agreement operations. Units were more likely to embrace new roles if characterized as counterinsurgency (COIN) functions. In fact, a COIN mission requires units to work within a rule of law framework when the host nation has a functioning judicial system. Nonetheless, Iraq-bound units probably need to embrace law enforcement skills or the personnel who possess them (e.g., LEPs, MPs, etc.).

JAs may find it is preferable to assemble the evidence, and then detain; but command emphasis traditionally has focused on getting an insurgent off the street, even for a short time, rather than on obtaining a conviction (e.g., “rolling up” an insurgent paymaster a day or two before he’s due to pay group members). JAs will find it difficult to challenge this reasoning. Doing so requires demonstrating the Iraqi legal system works as it should. Demonstrating the system works means JAs must master and be able to navigate it skillfully with their Iraqi legal counterparts. It is a very cutting-edge, COIN strategy for JAs. However, the reality is that detaining an individual on even slim auspices may mean he/she remains in custody for a considerable time.

IA personnel tend to favor widespread “roll-ups.” They demonstrate the IA’s ability to carry out a large and coordinated effort, and creation of this perception is often more valuable than the actual operational gains. While a “roll-up” is the least effective method in COIN and law enforcement terms, it may still be a psychological success in a particular neighborhood. Despite such short-term advantages, the tactic also puts a strain on judicial resources. IJs must review each detainee’s circumstances to determine whether to grant a detention order. However, the IA views the interests of the judiciary as coming a distant second to its own.

RECOMMENDATION: Improve. JAs should work with their commanders and staffs to persuade them of the benefits of detaining individuals based on a well-substantiated warrant that may subsequently provide the basis for a detention order and a conviction.⁶⁰³

ISSUE: Warrant requirement for ISF operations

DECISION: Before 1 January 2009, neither U.S. nor ISF personnel were required to obtain a warrant in order to detain. U.S. forces simply informed their ISF counterparts they intended to detain a suspect. The requirement for U.S. forces to work within the Iraqi legal systems is also affecting ISF practices. At a briefing attended by U.S. personnel, ISF legal advisors briefed ISF personnel on warrant requirements. For example, they discussed a scenario whereby the ISF wanted to use a house as a sniper observation point, but could not obtain the consent of its occupant to enter the house. The ISF legal advisor concluded the ISF, even in possession of an arrest warrant, could not enter the house without such consent. This resulted in a heated discussion amongst ISF personnel. U.S. forces organized the meeting and held it in a U.S. training unit conference room, but ISF personnel participated enthusiastically once it was underway.

RECOMMENDATION: Sustain. U.S. forces should encourage ISF counterparts to adopt practices that respect Iraqi law.⁶⁰⁴

OEF ISSUE: Long-term stability legal planning

⁶⁰³ AWG 2009 OIF AAR, *supra* note 133.

⁶⁰⁴ *Id.*

DECISION: There was no strategic, long-term plan for the development of the ANA or ANP upon our arrival. One of our Deputy Commanding Generals (DCGs) tasked the entire staff with producing development plans that covered the next year and outlying years up until the ANA and ANP were self-sufficient. This plan was also to ensure that military efforts were consistent with contractor plans (MPRI and DynCorp). These plans served as a road-map for future training and development and will be modified as needed in the future.

RECOMMENDATION: None.⁶⁰⁵

ISSUE: **Sons of Afghanistan**

DECISION: Higher command ordered the creation of a Sons of Afghanistan program similar to the Sons of Iraq program.

RECOMMENDATION: OpLaw JAs should be prepared to deal with the legal issues arising from such a program and seek assistance from other subject matter experts (e.g., fiscal law JAs).⁶⁰⁶

Military Transition Teams (MiTTs)

OIF ISSUE: **Assignment of a division JA to a MiTT**

DECISION: One division JA served on a military transition team (MiTT), fulfilling a dual role as legal mentor to his Iraqi counterpart and legal advisor to his U.S. team members. Because MNC-I had directed subordinate units to mentor all Iraqi division and brigade legal advisors, but provided no additional resources to do so, the division OSJA filled the MiTT JA position with one of its captains. The MiTT JA spent a significant amount of time learning about the roles and responsibilities of his Iraqi legal advisor counterparts and the functioning of the Iraqi military justice system, as well as determining what his own roles and responsibilities should be. Learning about the Iraqi system became much more difficult when the available interpreter did not have a good grasp of Iraqi legal concepts.

RECOMMENDATION: Improve. JAs assigned to MiTTs in the future would benefit from receiving training about the roles and responsibilities of Iraqi legal advisors and Iraqi military courts, and guidance in terms of the mentoring role. Otherwise, each JA will spend much of the deployment educating himself/herself in these areas, making it more difficult to develop a good working relationship with Iraqi counterparts and leaving little time to provide any effective mentoring. MiTT JAs should also be aware that obtaining information from Iraqi legal advisors about Iraqi legal concepts will be significantly more difficult if available interpreters do not have a good grasp of both the Iraqi concept and the English vocabulary necessary to describe it.⁶⁰⁷

ISSUE: **MiTT JA responsibilities concerning administrative law and martyr packets**

DECISION: The MiTT JA spent much of the rest of his time dealing with administrative law issues. His main function in that area was advising on investigations, most of which concerned the martyr packets resulting from the death of Iraqi officials. Determining the identity of the deceased's employer and family (of which there could be more than one) was much more

⁶⁰⁵ CSTC-A 2008 OEF AAR, *supra* note 16.

⁶⁰⁶ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

⁶⁰⁷ 4ID 2009 OIF AAR, *supra* note 20.

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difficult than anticipated. U.S. forces hired some Iraqi officials before establishment of the Coalition Provisional Authority (CPA); the CPA hired some; and the GoI hired some. One of the two or three issues briefed to the commander daily was the number and status of martyr packets.

The MiTT also initiated some financial liability investigations of property loss (FLIPLs), mostly for Iraqi Soldiers who were absent without leave and still in possession of their equipment (the Iraqi division legal advisor spent perhaps 90% of his time on this).

RECOMMENDATION: Sustain.⁶⁰⁸

ISSUE: MiTT JA operational law duties

DECISION: The MiTT JA was involved in OpLaw and claims matters only to a limited extent, and did not provide any legal assistance to MiTT team members. He represented U.S. forces in Iraqi civilian court on claims matters. In the OpLaw area, he attended a targeting meeting. U.S. meeting participants included the G3, G2, JA, and deputy team chief, while Iraqi participants included the XO and G2. The Iraqi division deputy legal advisor was present at the beginning of meeting but then left. The Iraqi division legal advisor met with the Iraqi commander on a regular basis, although the MiTT JA was unsure how often or regarding which subjects. The Iraqi division legal advisor would occasionally inspect IA detention facilities, but there was no obvious result from such inspections. Because the IA detained personnel in many locations, it was difficult to track their numbers.

RECOMMENDATION: Sustain.⁶⁰⁹

ISSUE: Training provided to MiTT JA

DECISION: The MiTT JA spent about 2½ months conducting predeployment training with other MiTT members, and provided legal assistance to them during that period. MiTTs internally sourced from division resources (like this one) only complete the short MiTT training course at Fort Riley. However, division MiTT personnel received some predeployment language training in garrison as well as their normal military readiness training (e.g., on weapons). The language training included 1-2 hours every day, either with interpreters or online. MiTT personnel also received a four-hour block of training as foreign disclosure representatives before leaving Fort Hood. This allowed them to show to their Iraqi counterparts any material already approved for release to Iraq. The MiTT JA also found a 2006 Army Lawyer article on the Afghan military justice system to be helpful. After leaving Kuwait, those MiTT personnel who did not go to Fort Riley for training attended a three-week course at the Phoenix Academy at Camp Taji, Iraq.

RECOMMENDATION: Sustain.⁶¹⁰

ISSUE: MiTT JA's training responsibilities with respect to Iraqi partner unit

DECISION: The division established an ISF cell, responsible for inspecting Iraqi detention facilities, writing reports on them, and sending them up. The MiTT JA was interested in providing law of war (LOW) and rules of engagement (ROE) training to the Iraqi counterpart division's personnel. He found translated briefings on the U.S. shared drive possibly developed

⁶⁰⁸ *Id.*

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.*

for this purpose, but was uncertain whether Iraqi legal advisors or Soldiers were the intended audience. Part of the MiTT JA's role was to learn about available resources, and pass on his knowledge to other MiTT personnel, who would then work with the Iraqis to take advantage of them. He learned from the MNSTC-I SJA that U.S. contractors provide Iraqi Ministry of Defense (MoD) personnel with human rights training at an MoD training center. The MiTT's Iraqi counterpart division did not seem to be aware of the existence of the training center. It was also helpful for the MiTT JA to understand that Iraqis generally value attendance in foreign courses, should such opportunities arise.

RECOMMENDATION: Improve. MNSTC-I and MNC-I should assist MiTT JAs to work with their partner units to develop relevant training materials and learn about possible resources.⁶¹¹

ISSUE: Difficulty for JAs in mentoring older and more senior IA legal advisors

DECISION: In his mentoring capacity, the MiTT JA spent a significant amount of time attending staff meetings at the Iraqi headquarters in the company of the Iraqi division legal advisor, trying to assist the Iraqis in determining what was required. Working with the Iraqi division legal advisor, who was much more senior in rank and had been an attorney for thirty years, required considerable tact on the part of the MiTT JA. Previous MiTT support to the Iraqi division had consisted largely of providing administrative and infrastructure support (e.g., ensuring the division had sufficient supplies of paper, etc.).

RECOMMENDATION: SJAs selecting JAs to perform mentoring roles, such as with a MiTT, should consider whether individuals have the necessary non-legal skills to carry out this function.⁶¹²

ISSUE: Possible lack of jurisdiction for Iraqi military courts to try Iraqi Soldiers for offenses committed against U.S. forces

DECISION: In late 2007, an Iraqi Soldier killed two U.S. Soldiers. While a U.S. unit initially held the suspect and initiated forensic examination of the evidence by U.S. assets, the Baghdad military court eventually accepted the case and conducted a trial. Some of the proceedings occurred via VTC, allowing U.S. Soldiers who had returned to the United States to testify. The military judge raised the issue of jurisdiction only at the point of hearing the final witness, and found the court did not have jurisdiction over this offense. In his view, it would only obtain jurisdiction through an agreement between Iraq and the United States stipulating the use of military courts for such prosecutions.

RECOMMENDATION: JAs involved in discussions about dealing with such incidents should be aware of possible limitations in terms of Iraqi military jurisdiction.⁶¹³

I.Q. Rules of Engagement (ROE)/Targeting

OIF **ISSUE: Classification of the ROE**

⁶¹¹ *Id.*

⁶¹² *Id.*

⁶¹³ *Id.*

TIP OF THE SPEAR

DECISION: There was significant frustration over the fact that the entire ROE is classified due to three classified paragraphs. A majority of the Soldiers did not have a secret clearance, so they could not view the actual ROE. This complicated things and made it extremely difficult to train the average Soldier. The operational law JA had to brief an abbreviated version of the ROE.

RECOMMENDATION: Improve. Consider declassifying the portion of the ROE that is not classified SECRET.⁶¹⁴

ISSUE: Escalation of Force (EOF) hostile intent 25m rule

DECISION: During the deployment, an EOF concept appeared which indicated that Soldiers could only discern hostile intent once the threat was within 25m of a Soldier.

RECOMMENDATION: Improve. It is better to focus solely on hostile act/hostile intent (concepts well understood by Soldiers) without introducing the distance constraint. Soldiers understand that it is necessary to determine whether someone's actions amount to hostile intent. Simultaneously indicating there is no hostile intent until someone is 25m away confuses the issue.⁶¹⁵

ISSUE: Mentally retarded "suicide" bombers

DECISION: Sized and form-fitting vest bombs that were difficult to detect came into the area from a neighboring country. They were made for the mentally retarded residents of an institution for Down's syndrome patients. The patients were fitted with the bombs, taken to public places and instructed to walk toward targets. The vest bombs (C-4 & ball bearings) were command detonated by remote (cell phones). After a rash of bombings, post-mortem investigation revealed the bombers had Down's syndrome. Soldiers and commanders asked if it was legal to employ deadly force against approaching vest bombers who did not realize what they were doing. The BJA assured them if they identified the threat, use of deadly force was legal.

After the unit learned Baghdad institutionalizes those who suffer from Down's syndrome, the BCT immediately sent a patrol to the institution. The doctor in charge apparently made a hasty escape when he saw the patrol approaching. The unit found evidence of the plan and the doctor's participation in providing the size requirements.

The BCT incorporated mental institutions into the reconstruction plans. The unit also incorporated programs to assist/teach the mentally indigent into the education plans. The unit maintained a presence at mental institutions (3 visits per week) for the remaining nine months of the tour. This was highly effective and suicide vest bombers were not a factor from that point forward.

RECOMMENDATION: Have the BCT maintain a presence at the mental institutions within the operational environment. Implement education programs for the patients. Include the institutions in the S-9 plans.⁶¹⁶

ISSUE: Escalation of force (EOF) investigations

⁶¹⁴ 3ID 2008 OIF AAR, *supra* note 10.

⁶¹⁵ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

⁶¹⁶ 4th 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 4.

INTERNATIONAL & OPERATIONAL LAW

DECISION: The JAs were involved in reviewing EOF investigations. In all but one case, the EOF incident involved innocent civilians (or at least, no proven hostile intent). In most cases, the Iraqis involved in the incident were not paying attention or did not understand the signals used by U.S. forces. The U.S. Army has provided many useful tools for Soldiers to use in averting EOF incidents.

RECOMMENDATION: Sustain. JAs reviewing EOF investigations must be able to relate to the situation of the Soldier on the ground. In particular, JAs involved in teaching EOF procedures should understand and be able to talk intelligently about available tools. Obtaining such understanding is easier when a JA gets off the FOB at least occasionally.⁶¹⁷

ISSUE: Escalation of Force (EOF) incidents

DECISION: As the ROE and EOF procedures became more restrictive, the unit communicated these changes to its subordinate units in a timely and effective manner. This led to a recognizable decrease in the number of EOF incidents occurring in the area of operations. Over time, the unit also saw a significant decrease in the number of improvised explosive device (IED) attacks it sustained. The unit attributed the decrease in IED attacks to the decrease in EOF incidents. Regardless of causation, there was positive synergy. Specifically, as the Soldiers began to exercise more patience and became less inclined to use deadly force in the face of uncertainty, the local nationals became less hostile towards coalition forces.

RECOMMENDATION: Sustain.⁶¹⁸

ISSUE: Education on the risk of violating EOF policy

DECISION: The commander issued a message maintaining Soldier confidence but reminding them of the negative ramifications of violations of the EOF policy. As Soldiers began to understand and embrace the principles of counterinsurgency (COIN), the number of EOF incidents decreased significantly.

RECOMMENDATION: Sustain.⁶¹⁹

ISSUE: Coordination with Deputy Commanding General (DCG) for situational awareness of EOF issues

DECISION: Briefings by the OSJA to the Deputy Commanding General (DCG) increased the commander's situational awareness of EOF issues. The commander received weekly briefs on EOF incidents, statistics, and trends. These briefings assisted him in developing command messages and policies on EOF. Additionally, while working on the force protection working group, attorneys were able to meet regularly with one of the DCGs to explain the EOF issues. When the DCG briefed the commander, it reinforced the weekly EOF briefings.

RECOMMENDATION: Sustain.⁶²⁰

ISSUE: Reviewing the Significant Activities (SIGACTS) for ROE issues

⁶¹⁷ 2SCR 2009 OIF AAR, *supra* note 1.

⁶¹⁸ 1AD 2009 OIF AAR, *supra* note 29.

⁶¹⁹ *Id.*

⁶²⁰ *Id.*

TIP OF THE SPEAR

DECISION: The SIGACTS provided the best place to determine the number and type of ROE issues the unit encountered. Overall, it appeared Soldiers at the lowest levels understood the ROE. When there were issues, they were at the on-scene commander level with respect to troops in contact or air support.

RECOMMENDATION: Sustain.⁶²¹

ISSUE: Gaps in the MNC-I ROE

DECISION: Because MNC-I had limited ability to change the ROE from higher, it was difficult to modify and equally difficult to clarify certain inconsistencies. These limitations made it more difficult to explain the ROE to commanders.

RECOMMENDATION: Improve. Commanders need clear and accurate guidance on the ROE.⁶²²

ISSUE: Permissive vs. proscriptive interpretations of ROW

DECISION: ROE are generally permissive, but interpretations have made them proscriptive. These interpretations have made it difficult for units to attack some targets.

RECOMMENDATION: Return to the initial permissive mindset in order to return flexibility to tactical commanders.⁶²³

OEF ISSUE: Multiple Afghanistan ROE

DECISION: Multiple rules of engagement (ROE) exist within the Afghan area of operations. U.S. personnel must understand the limitations of other coalition forces.

RECOMMENDATION: Improve. Soldiers should review and understand the different ROE during pre-deployment training.⁶²⁴

ISSUE: International Security Assistance Force (ISAF) ROE

DECISION: The ISAF ROE affected mission planning and created confusion upon execution.

RECOMMENDATION: Improve. Take into consideration the effects of different ROE in the field and how they can affect mission planning and execution. Division and brigade personnel must understand both the U.S. and ISAF ROE. Consider conducting a “bottom-up” review of the ISAF ROE. Field commanders should send their interpretation of the rules to the brigade commander with further forwarding to the division for approval.⁶²⁵

ISSUE: ROE in a coalition environment (NATO)

⁶²¹ *Id.*

⁶²² *Id.*

⁶²³ 41D 2009 OIF AAR, *supra* note 20.

⁶²⁴ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 214.

⁶²⁵ *Id.*

DECISION: Coalition warfare means something at the headquarters level. There are two sets of ROE and targeting standards (in Afghanistan, they are NATO/ISAF and U.S./OEF). At the Soldier level, this is not an issue. Soldiers will only have to know the ROE applicable to the unit to which they belong. They are either in one category or in the other.

RECOMMENDATION: Sustain.⁶²⁶

ISSUE: Use of ROE pocket cards

DECISION: The CJTF-101 CG decided not to issue ROE pocket cards. In his assessment, Soldiers should memorize the basic essential ROE provisions typically found on ROE cards because there is often no time to consult a card before an engagement. Instead, the CG directed a leader's guide be published for all "green tab" leaders (squad leader to BCT commander) to carry, which (while unclassified) provided detailed LOAC, ROE, EPW/detainee, and funding information to assist leaders with "hip pocket" training and also answering daily issues arising at their levels.

RECOMMENDATION: Sustain. The creation of pocket cards may not be worth the expense or effort. It may be better to expend resources on actually training the Soldiers.⁶²⁷

ROE Changes

OIF ISSUE: Nesting ROE with higher headquarters ROE

DECISION: The proposed CENTCOM OIF Serial Two ROE were significantly different in language and format from the SECDEF OIF Serial Two ROE. The MNF-I OSJA drafted proposed CENTCOM OIF Serial Two ROE that nested with language and format of the SECDEF OIF Serial Two ROE (i.e., matching up the CENTCOM ROE paragraph topics and numbering with that of the SECDEF ROE). Although CENTCOM made some modifications to its ROE to track with the SECDEF ROE, it did not nest its ROE within the SECDEF ROE organization. MNF-I nested its OIF Serial Two ROE with that of CENTCOM.

RECOMMENDATION: Each subordinate command should strive to nest the language and format of its supplemental ROE to that of the parent ROE, making supplemental provisions sub-points within the existing parent paragraphs. Nesting ROE will help facilitate ease and consistency in reader understanding and application of the ROE provisions at all levels.⁶²⁸

ISSUE: Lead on ROE issues

DECISION: The SJA discussed ROE issues and understanding with the commanding general even before deployment. The command assumed the OSJA would take the lead on ROE changes, even though the C3 actually "owned" the ROE.

RECOMMENDATION: Sustain.⁶²⁹

ISSUE: ROE "changes" based upon statements by the commander

⁶²⁶ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

⁶²⁷ *Id.*

⁶²⁸ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

⁶²⁹ XVIII ABC 2009 OIF AAR, *supra* note 30.

TIP OF THE SPEAR

DECISION: If the commander issues verbal tactical guidance, you must ensure it gets into writing in an order so everyone knows. The order should be the result of coordination between the C3, the fire support coordinator, and the OSJA.

RECOMMENDATION: Ensure incorporation of tactical guidance formally into the ROE for subordinate units, as required.⁶³⁰

ISSUE: **Requirement to submit all local changes to the ROE to the higher headquarters**

DECISION: Units often did not adhere to this requirement.

RECOMMENDATION: Enforce this requirement. It is necessary to ensure all units in an area operate in a common, appropriate manner.⁶³¹

ISSUE: **Getting other staff sections to participate in a ROE working group**

DECISION: In concept, this can and should work. It is important to do this to combat the perception ROE are a “legal” thing. Additionally, ROE written without wide staff input require frequent explanation and interpretation when the situation is most time-constrained. This occurs because the operators do not understand it as written and will not care until they need it.

RECOMMENDATION: These meetings have to be discussions. It is not effective to send ROE proposals around for comment. The result is usually a lot of concurs and little understanding.⁶³²

ISSUE: **Changes in Collateral Damage Estimation (CDE)**

DECISION: After the Security Agreement took effect, higher headquarters issued new requirements and more restrictions when conducting CDE. When MNC-I would publish something new, the division targeting staff would sometimes publish it to the brigades without a legal review. This resulted in contradictions and ambiguities between the OPORDs and ROE.

RECOMMENDATION: Stay engaged with the targeting staff to ensure you are in the loop on all ROE changes. Confusion will ensue at the BCT level if the lawyers are not able to avoid conflicts between the OPORDs and the ROE.⁶³³

ROE/EOF Training

OIF ISSUE: **Pre-deployment ROE training**

DECISION: A short-notice deployment forced the regiment to condense much of its training. The Joint Multinational Readiness Center (JMRC) observed problems with ROE in relation to the first group of Soldiers. The regiment ensured subsequent iterations received ROE training before arrival at JMRC.

⁶³⁰ *Id.*

⁶³¹ 41D 2009 OIF AAR, *supra* note 20.

⁶³² *Id.*

⁶³³ 10th MTN DIV 2009 OIF AAR, *supra* note 11.

INTERNATIONAL & OPERATIONAL LAW

RECOMMENDATION: Sustain. Not providing essential training before arrival at a Combat Training Center (CTC) means CTCs must train Soldiers during the CTC rotation, rather than confirming the sufficiency of the training already received.⁶³⁴

ISSUE: ROE training was too general in scope and applicability

DECISION: The ROE training was not specific and failed to provide any theater specific examples or vignettes. Therefore, the JAs had to teach themselves and do a lot of on the job training.

RECOMMENDATION: Improve. Recommend offering training as soon as possible before deployment in order to provide enough time to ensure a thorough variety of in depth training. In addition, consider offering training using theater-specific ROE.⁶³⁵

ISSUE: Conducting ROE training upon arrival in theater

DECISION: New Soldiers arrived in theater via a monthly flight. The regiment provided a two-day training session each month for such new arrivals. The RJA was responsible for two hours of this training. He used it to cover ROE, detainee handling procedures, evidence collection, and General Order Number One (GO#1).

RECOMMENDATION: Sustain. ROE training upon arrival seemed to work well as the JA observed a difference when the regiment ceased to provide the training during the last few weeks of the deployment. It was important to ensure Soldiers who had previously deployed to Iraq were aware of the way in which the context and procedures had changed, and Soldiers who had never deployed before heard about important concepts a second time. The JA found such repetition helped Soldiers to be able to articulate concepts if required to do so for an investigation, etc.⁶³⁶

ISSUE: Conducting periodic ROE refresher training

DECISION: Company commanders conducted most quarterly ROE refresher training, although JAs did some. If desired, commanders could use a video presentation made by the JAs and hung on the regiment's webpage. The most difficult issue for most Soldiers continues to be distinguishing hostile intent. Units must anticipate ROE will constantly change (or at least TTPs will change), and schedule their training accordingly.

RECOMMENDATION: Sustain.⁶³⁷

ISSUE: ROE training in theater

DECISION: ROE training was ongoing in theater. A helpful tool for the Soldiers was to conduct EOF training using after action reviews (AARs) on escalation of force (EOF) incidents. This allowed for timely and realistic training. This was especially important after the TF moved to a FOB located in a different threat environment. As enemy tactics, techniques, and procedures (TTPs) were different, it allowed the soldiers to adjust quickly actions based on the timely training.

⁶³⁴ 2SCR 2009 OIF AAR, *supra* note 1.

⁶³⁵ 3ID 2008 OIF AAR, *supra* note 10.

⁶³⁶ 2SCR 2009 OIF AAR, *supra* note 1.

⁶³⁷ *Id.*

TIP OF THE SPEAR

RECOMMENDATION: Continue the practice of using EOF AARs to train the soldiers.⁶³⁸

ISSUE: ROE/EOF Training on warning shots & disabling shots

DECISION: The BJA taught a substantial amount of classes on Escalation of Force (EOF) and Rules of Engagement (ROE). Most of the training was “vignette” training and had an emphasis on the utilization of warning shots and disabling shots. To the BJA’s surprise, the Soldiers were still confused about when the EOF and ROE allow for warning shots and disabling shots. Soldiers did not understand disabling shots were only for vehicles. This lack of understanding when it came to the ROE was not limited to the younger Soldiers. It covered the entire unit, to include infantry officers in the S-3 shop.

RECOMMENDATION: Continue training throughout the deployment to ensure that the Soldiers and officers understand EOF procedures and the ROE.⁶³⁹

ISSUE: Soldiers understanding of the ROE

DECISION: The BCT Commander made it a point to stress to the command that the goal was not to simply blow everything up. The BJA was not aware of any complaints of the ROE hindering the Soldiers in any way.

RECOMMENDATION: None.⁶⁴⁰

ISSUE: Overall knowledge of the policies by the Soldiers

DECISION: The Soldiers worked hard to understand up-to-date EOF policy. As the commander modified the EOF policy, Soldiers quickly adapted.

RECOMMENDATION: Sustain.⁶⁴¹

ISSUE: ROE Training

DECISION: It was easy to train to the ROE. Although it was lengthy and cumbersome, it worked very well and was easily trainable to CDRs.

RECOMMENDATION: Sustain.⁶⁴²

ISSUE: Education on ROE/EOF

DECISION: The division developed weekly educational vignettes to emphasize the importance of ROE and EOF.

RECOMMENDATION: Sustain. When possible, draw the vignettes from real world events so that units may learn from each other’s successes and mistakes.⁶⁴³

⁶³⁸ TF525 2009 OIF AAR, *supra* note 13.

⁶³⁹ 214th Fires BDE 2009 OIF AAR, *supra* note 14.

⁶⁴⁰ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 2.

⁶⁴¹ IAD 2009 OIF AAR, *supra* note 29.

⁶⁴² *Id.*

⁶⁴³ *Id.*

ISSUE: Tailoring ROE training to the audience

DECISION: The complete ROE are complicated. Knowledge of the complete ROE is not necessary for every Soldier. The Soldiers need training only on those parts of the ROE likely to affect them.

RECOMMENDATION: Adjust your training to the audience. You will probably need at least two versions of ROE training—one for the Soldiers and one for the leaders.⁶⁴⁴

ISSUE: ROE training by unit leaders

DECISION: Who provided ROE training varied based upon where the unit was in the deployment cycle. Early on, it was the JAs and the brigade academy instructors teaching. Later, it became more of a train-the-trainer effort.

RECOMMENDATION: Soldiers learn best from one of their own. Transition as quickly as you can to having small unit leaders provide this training.⁶⁴⁵

ISSUE: Understanding the ROE of the battlespace owner

DECISION: It would be beneficial for deploying JAs to have training on the ROE and EOF policies as dictated by the specific battlespace owners. For Baghdad, Multi-National Division – Baghdad (MND-B) controls the area and its ROE and EOF policy differ, albeit slightly, from the standard of MNC-I.

RECOMMENDATION: Know the differences and know exactly which policies pertain to the specific battlespace.⁶⁴⁶

ISSUE: Understanding the ROE and EOF

DECISION: The JAs and paralegals taught the ROE and EOF rules to the Soldiers.

RECOMMENDATION: Sustain. Paralegals should continue to be technically and tactically competent because JAs are limited in moving around the battlespace and teaching a refresher course to every unit.⁶⁴⁷

ISSUE: Continuous ROE training

DECISION: Use of both pre-deployment training and training during deployment was not enough to ensure the troops applied the ROE as written and not modify them to suit various changing operational scenarios. The BJA provided constant monitoring of operations, making corrections to ROE application as needed to ensure consistency and strict adherence to the rules.

RECOMMENDATION: Sustain. JAs should not only train the ROE, both before and during deployment, but aggressively monitor operations to ensure correct application of the rules.⁶⁴⁸

⁶⁴⁴ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

⁶⁴⁵ *Id.*

⁶⁴⁶ 50 IBCT (NJARNG) 2009 OIF AAR, *supra* note 50.

⁶⁴⁷ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

⁶⁴⁸ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 4.

TIP OF THE SPEAR

ISSUE: **ROE training requirements and the “Share the Road” policy**

DECISION: ROE training within MNF-W was continuous. MNF-W conducted training before deploying, during the deployment as part of regularly scheduled training, and on an “as needed” basis. The MNF-W CG often directed re-set training after reviewing an investigation that revealed incorrect application of the ROE or demonstrated a lack of understanding. There was also an increased requirement for training within MNF-W due to the “Share the Road” policy, which II MEF (Fwd) implemented shortly before the I MEF (Fwd) arrival. This policy was a major shift in how patrols and convoys trained and operated in the Anbar Province. It required Marines to develop a “new mindset” with respect to convoys and interacting with, and reacting to, the Iraqi population. This shift in mindset developed through training and experience. The training was especially important because Marines had been training and conducting convoy operations a particular way for several years in Iraq and initially there was a tremendous amount of reluctance on the part of the subordinate commands to “share the road” with the Iraqi population. Al Anbar was the first province to implement this policy. Subsequently, as the security situation improved, MNC-I directed other provinces to adopt this policy as well.

RECOMMENDATION: Continue the training requirements and be sure to give special attention to educating the Marines about the “share the road” policy and the reasons behind it.⁶⁴⁹

ISSUE: **ROE Training**

DECISION: The 27Ds taught ROE periodically and made sure that every battalion received training.

RECOMMENDATION: ROE training should occur early and often. Kuwait is not the time or place to begin training.⁶⁵⁰

ISSUE: **Escalation of Force (EOF)**

DECISION: In Mosul, 3d ACR lived through virtually every EOF scenario imaginable. For his part, the RJA reviewed every single EOF investigation and re-trained the relevant units based on his analysis.

RECOMMENDATION: If your future area of operations is more lethal than non-lethal, you should lean forward and train EOF procedures well in advance of the deployment. Once in theater, cull the significant acts (SIGACTS), turn them into vignettes, and train the staff and commanders, so the Soldiers have the best information available.⁶⁵¹

ISSUE: **“Training, training, training”**

DECISION: The Soldiers understood and applied the ROE correctly throughout the deployment. This was, in large part, due to the training provided by the command. Vignettes are very helpful to the Soldiers. It is also important to remain focused on the training requirements for the ENTIRE deployments as a spike in incidents appear towards the end of the deployment when the

⁶⁴⁹ I MEF (FWD) 2009 OIF AAR, *supra* note 43.

⁶⁵⁰ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 53.

⁶⁵¹ 3ACR 2009 OIF AAR, *supra* note 15.

Soldiers tire. The key is to have the Soldier's supervisors—not a lawyer—teach the training/hold the vignettes.

RECOMMENDATION: Train ROE and make it a priority for the entire deployment.⁶⁵²

OEF ISSUE: Use of real life scenarios in ROE training for pilots

DECISION: Senior pilots helped the BJA create real life vignettes used in the ROE training slides. This worked well because the standard ROE for ground forces is not adequate for an aviation brigade. The standard ROE does not cover aviation specific situations, making it ineffective for pilots.

RECOMMENDATION: Sustain. Work with the CW5s in your brigade to create a useful and realistic training presentation.⁶⁵³

ISSUE: ROE training for aviation assets

DECISION: The CJTF-101's Aviation Brigade commander (whose BDE arrived mid-way during the CJTF-101 deployment) made an "ROE check ride" administered by the BJA mandatory for all of his BDE's "pilots in command." Key leaders had to do the same ROE training through NetMeeting discussions led personally by the BDE CDR. The products of this training changed frequently and came from the results of actual situations and investigations encountered by the BDE in Afghanistan. The result is that the pilots understood the ROE inside and out. There was no pushback because the BDE commander emphasized it and it came to be an accepted part of the check rides, which is a process all pilots accept.

RECOMMENDATION: Sustain. ROE are a commander's tool. Any time the commander takes ownership of the training, it is much more likely to be successful. Tailored training always works better than canned scenarios. Pilots do not need to train using scenarios describing them as walking on patrol.⁶⁵⁴

ISSUE: ROE training for the staff

DECISION: The OpLaw captain and NCO produced a dedicated OpLaw/Law of Armed Conflict (LOAC) training program focused on the specific Afghanistan rules of engagement the unit would use in theater. The operations staff in the G-3 and the Chief of Operations indicated this was the most valuable training they received.

RECOMMENDATION: Sustain. The more knowledgeable the staff is, the lighter the legal workload is in theater.⁶⁵⁵

ISSUE: ROE training for the command group

DECISION: The SJA and Deputy SJA (DSJA) also provided ROE training from cover to cover for the Commanding General (CG), Deputy Commanding Generals (DCGs), and Command

⁶⁵² 2SBCT, 25ID 2009 OIF AAR, *supra* note 8.

⁶⁵³ 101st Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, December 2007 – December 2008 (13 May 2009) (on file at CLAMO).

⁶⁵⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

⁶⁵⁵ *Id.*

TIP OF THE SPEAR

Sergeant Major. The CJTF-101 Fires chief also participated, and this training was presented as a combined CJ-3/SJA event.

RECOMMENDATION: Sustain. If it was important enough for the CG to understand it in detail, it reinforced the importance to the other General Officers and the Chief of Staff.⁶⁵⁶

ISSUE: Training on the Standing Rules of Engagement (SROE)

DECISION: The SROE stayed on the shelf the entire deployment. Teaching the SROE as a pre-deployment training tool is educational but is not mission focused beyond self-defense. It is simply not how we operate in Afghanistan.

RECOMMENDATION: Improve. Put SROE training in perspective for units deploying to Afghanistan. JFCOM, BCTP, and training teams must become intimately familiar with CENTCOM /OSD ROE for Afghanistan and also the NATO/ISAF ROE and must focus their training on this and not on the SROE.⁶⁵⁷

Collateral Damage Estimation (CDE)

OIF ISSUE: CDE training for JAs

DECISION: The regimental JA did not play a role in kinetic targeting until the unit moved to FOB Warhorse. Training was available in Baghdad throughout the deployment, but taking advantage of this became impractical once the regiment moved to FOB Warhorse. The JA was not responsible for working out the CDE level, only for comparing it to the ROE to determine the appropriate approval level. The most frequent issue was not whether the unit could conduct a strike, but whether or not they could destroy the entire palm grove in doing so. While CDE training would have been helpful, this JA considered additional practical rule of law training to be a greater priority.

RECOMMENDATION: Improve. JAs should be aware CDE training exists and should take steps to complete it as soon as possible upon arrival in theater.⁶⁵⁸

ISSUE: Training on ROE & CDE

DECISION: There was insufficient training on CENTCOM ROE/CDE for targeting. The CENTCOM ROE for targeting are sufficiently dense that they require training. The JA's third of the Venn diagram that constitutes ROE (law, policy, operations) is the law of armed conflict (LOAC) component. However, much of the CDE methodology is equal parts law, policy, and operations. If the operations officers and commanders are going to look to the lawyer to assume 100% staff responsibility for ROE, then JAs need to understand the details of CDE better. CDE is *technical*, in addition to legal and policy-based. JAs looked at targeting some High Value Individuals (HVIs) and the struggle to wade thru the CENTCOM ROE was daunting.

RECOMMENDATION: In LOAC/ROE classes, stress the basic things less (we all know the proportionality rule backwards and forwards now) and stress the specific ROE methodologies more.⁶⁵⁹

⁶⁵⁶ *Id.*

⁶⁵⁷ *Id.*

⁶⁵⁸ 2SCR 2009 OIF AAR, *supra* note 1.

ISSUE: A general lack of knowledge on CDE

DECISION: Before deployment, all JAs working in the operational law cell took the CENTCOM collateral damage class. This class was an excellent way to teach the JAs the proper way to review a targeting packet. It also gave them a better understanding of the CDE language, allowing them to gain the respect of their fellow planners.

RECOMMENDATION: Sustain. Any JA who may be involved in targeting and CDE should take the CENTCOM course. It is extremely helpful even if the JA does not pass the course. JAs must understand that CDE is full of legal issues, and they must possess a thorough understanding of the process if they want to speak intelligently about it. In addition, consider giving two hours of CDE instruction during the Operational Law Course offered at The Judge Advocate General's Legal Center and School (TJAGLCS).⁶⁶⁰

ISSUE: Training on targeting and CDE

DECISION: The BJA attended targeting meetings, but did not have any prior training or experience on targeting or CDE. When the TF changed missions, the BJA thought he might have to start dealing with CDE, but never did.

RECOMMENDATION: Even if you are not certain you will deal with targeting or CDE, as a BJA, you need to get the training before the deployment. You never know when your mission will change.⁶⁶¹

ISSUE: Understanding and review of CDE in the targeting process

DECISION: The BJA reviewed all planned kinetic strike targeting packages. His working knowledge of the process was a result of working with the targeteers within the brigade (Chief Warrant Officers).

RECOMMENDATION: Obtain training as early, and often, as possible in this area. Do not overlook the experts who are already resident in the unit as a source of training and education.⁶⁶²

ISSUE: CDE training

DECISION: The BJA was responsible for supporting the targeting process on a few occasions. This required him to have some understanding of the CDE terms used in that process. The BJA would have chosen to attend CDE training, had any been available during the deployment.

RECOMMENDATION: Improve. JAs involved in targeting should attend CDE training during or before deployment in order to understand the CDE system and what terms such as "CDE 1-5" mean.⁶⁶³

ISSUE: CDE training

⁶⁵⁹ RCT-5 2008 OIF AAR, *supra* note 9.

⁶⁶⁰ 3ID 2008 OIF AAR, *supra* note 10.

⁶⁶¹ TF525 2009 OIF AAR, *supra* note 13.

⁶⁶² 214th Fires BDE 2009 OIF AAR, *supra* note 14.

⁶⁶³ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 3.

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DECISION: The RJA did not have the requisite CDE methodology training, and therefore relied heavily on the division operational law attorneys for assistance with the scant number of deliberate, pre-planned targets engaged.

RECOMMENDATION: Although not a must, the RJA felt at least one of the attorneys on the team should attend the CDE methodology class before the deployment.⁶⁶⁴

ISSUE: **Need for training concerning CDE**

DECISION: Having this training allowed the JAs to speak the language of the targeteers.

RECOMMENDATION: At least one of the attorneys in the OpLaw section needs the formal CDE training.⁶⁶⁵

OEF ISSUE: **Training in collateral damage estimation (CDE)**

DECISION: The OpLaw attorneys attended the CDE qualification course for joint fires at Fort Sill.

RECOMMENDATION: Sustain. This training was extremely valuable in theater. In addition, it really helped the attorney get involved with the targeteers. Going through the course together paid big dividends in terms of facilitating later coordination.⁶⁶⁶

Targeting

OIF ISSUE: **Placement of a JA in the plans section**

DECISION: The division had an embedded JA in the plans section able to spot ROE/EOF issues at the earliest possible stage. This JA could provide guidance on a spectrum of issues and could provide a quick response to planners when issues arose.

RECOMMENDATION: Sustain. Note that it is important for the plans JA not to become just another action officer, or else there is a potential loss of the ability to objectively review products.⁶⁶⁷

ISSUE: **DOC legal presence**

DECISION: The unit maintained a permanent legal presence in the DOC. Ensuring either a lawyer or paralegal was always present in the DOC enabled the Operational Law section to maintain situational awareness of all operations. This decision also gave the operators easy access to timely legal advice.

RECOMMENDATION: Sustain.⁶⁶⁸

ISSUE: **Necessity of having a JA in the Command Operations Center (COC) 24 hours a day**

⁶⁶⁴ 3ACR 2009 OIF AAR, *supra* note 15.

⁶⁶⁵ 4ID 2009 OIF AAR, *supra* note 20.

⁶⁶⁶ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

⁶⁶⁷ 1AD 2009 OIF AAR, *supra* note 29.

⁶⁶⁸ *Id.*

DECISION: The pace of MNF-W operations did not require a 24-hour watch officer from the SJA section. It was necessary to maintain a “seat,” however, for coverage during operations or “events.” The SJA and staff were easily reachable 24/7 and could be in the COC within minutes.

RECOMMENDATION: Continue to have a presence in the COC, but it is not necessary to have a judge advocate posted 24 hours a day.⁶⁶⁹

ISSUE: **BJA involvement in targeting**

DECISION: The BJA conducted a considerable amount of targeting review work for the S3. However, the JA and the S3 had developed a good working relationship allowing for timely and accurate legal review of proposed targets. The BJA worked closely with the S3 to educate and train the targeting staff on what information the JA needed to conduct a thorough and expeditious legal review of proposed targets. The S3 routinely provided the information the JA typically required to conduct a legal review of proposed targets. This led to a more streamlined response from both the S3 and BJA of the vetting of proposed targets.

RECOMMENDATION: Sustain. Advanced work with the S3 to make sure they understand what information is critical to the JA for a proper and expeditious legal review is essential to streamlining the process of vetting proposed targets.⁶⁷⁰

ISSUE: **Reduction in deliberate kinetic targeting packages requiring legal review**

DECISION: There were only seven deliberate or pre-planned kinetic targeting packages during the entire deployment. All seven requests were for training purposes only. This was a huge reduction by historical standards for a command operating in Al Anbar Province. In addition, the processing of all seven of the targeting packages was during the first half of the deployment. As the security situation continued to improve, kinetic targeting decreased.

RECOMMENDATION: None.⁶⁷¹

ISSUE: **Kinetic targeting**

DECISION: Even after the signing of the security agreement, kinetic targeting still exists. While no actual kinetic operations took place, many plans involving kinetic activity still required legal review.

RECOMMENDATION: The security agreement does not obviate the need to understand the rules of engagement and kinetic targeting.⁶⁷²

ISSUE: **Tactical Operations Center (TOC) presence**

DECISION: The RJA and Squadron JAs maintained a steady TOC presence that paid increasing dividends as the deployment unfolded. Even when the Squadron JAs moved back to the Regimental legal office, the Squadron commander and staff grew so accustomed to receiving JA

⁶⁶⁹ I MEF (FWD) 2009 OIF AAR, *supra* note 43.

⁶⁷⁰ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 4.

⁶⁷¹ I MEF (FWD) 2009 OIF AAR, *supra* note 43.

⁶⁷² 10th MTN DIV 2009 OIF AAR, *supra* note 11.

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input that they often called to the regiment for legal advice on their own initiative. Working alongside of the rest of the staff in the TOC proved invaluable.

RECOMMENDATION: Find workspace in the TOC, if possible, so you are ready to brief your commander and staff on the spot.⁶⁷³

ISSUE: Training and responsibilities of night duty OpLaw NCO

DECISION: The OSJA assigned an OpLaw NCO to night duty in the operations center. He was responsible for reviewing all MNC-I and division FRAGOs issued during the previous twenty-four hours, and for extracting from them all issues of interest to division and brigade JAs. Because of doing so, he was able to answer questions about details contained in such documents, including the restricted target list, restricted grids, and approval levels. These last changed rapidly, and became a tricky issue when U.S. forces were conducting combined operations with ISF or operating in support of ISF. The uncertainty in this area increased during the transition to the Security Agreement legal framework. The night duty OpLaw NCO also sometimes dealt with detention issues. For example, the division would receive a detainee at the Detainee Holding Area (DHA) who lacked some of the necessary paperwork, and would ask whether there was a requirement to release.

RECOMMENDATION: Sustain. Units should not underestimate the importance of training paralegals in OpLaw issues, especially the NCO assigned to night duty. Many paralegals assume they will not have to deal with such matters. One training possibility is to attend the TJAGLCS Operational Law of War short course.⁶⁷⁴

OEF ISSUE: Presence of a judge advocate (JA) in the TOC

DECISION: A judge advocate was available at all times to provide a legal opinion with respect to targeting.

RECOMMENDATION: Sustain. JAs should integrate into the targeting solution nearest to the time of engagement. A continuous legal presence within the TOC does not increase targeting efficiency. A JA should be available to commanders at all times. However, to assist commanders best with targeting decisions, a JA should provide a legal determination in close proximity to the time of attack.⁶⁷⁵

ISSUE: Use of paralegals within the TOC

DECISION: Due to a lack of experience and training, the unit did not use 27Ds in the TOC.

RECOMMENDATION: Improve. 27Ds could be effective in the TOC, provided they receive additional training. Paralegals in the TOC when a judge advocate is not present could be a very good resource when called upon to provide targeting advice.⁶⁷⁶

ISSUE: Self defense vs. kinetic targeting

⁶⁷³ 3ACR 2009 OIF AAR, *supra* note 15.

⁶⁷⁴ 4ID 2009 OIF AAR, *supra* note 20.

⁶⁷⁵ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 214.

⁶⁷⁶ *Id.*

DECISION: Given the restrictive nature of the differing ROEs, some commanders would attempt to utilize “self defense” to conduct a kinetic operation.

RECOMMENDATION: Improve. OpLaw JAs must be vigilant to stop commanders’ end run around the controlling ROEs. OpLaw JAs should constantly remind commanders of the potential hazards of this course of action.⁶⁷⁷

Joint Operational Planning

OIF ISSUE: Creation of fusion cells to coordinate targeting and intelligence efforts

DECISION: U.S. forces are establishing fusion cells on FOBs, with BCT commanders or S-3s taking the lead and BJAs playing a major role. Some fusion cells involve all U.S. elements on a particular FOB, ranging from conventional to Special Forces elements, and including intelligence assets. The fusion cell combines those elements and assets to more efficiently and effectively target a network, rather than each targeting them in response to its own priority intelligence requirements (PIR). In other words, the fusion cell ensures U.S. assets do not duplicate efforts. Ideally, it also integrates U.S. forces with Iraqi elements for additional coordination and cooperation. Integration could occur at the level of an operations command (e.g., the Baghdad Operations Command (BOC) or Ninewah Operations Command), but is better achieved at a lower level. This is because the BOC, for example, concerns itself with the highest-level targets, and does not necessarily get into the details of other cases unless requested. If it is necessary to work with the BOC, the moment for targeting an individual may pass before the BOC can act. As a result, FOB Justice established a fusion cell, including a CCCI IJ, to assist with obtaining warrants, detention orders, or preparing a case for investigative hearing.

RECOMMENDATION: Sustain.⁶⁷⁸

ISSUE: Relationships with the Iraqi Army (IA) and Iraqi Police (IP)

DECISION: Especially since the implementation of the SA, the relationships with the IA and IP have become even more important. In addition, this need to remain involved with the IPs continued to expand due to the need to obtain warrants from the Iraqi judges. Because of this, the SBCT relied a great deal upon the IP to process the information and work closely with the SBCT S-2 and BJA. The SBCT stood up a new cell in the S2 shop for this purpose.

RECOMMENDATION: Establish and maintain a relationship with the IP and continue to move in a direction that encourages and enables them to “take over” the law enforcement process.⁶⁷⁹

ISSUE: Iraqis working in unison with U.S. forces

DECISION: After the Security Agreement took effect, there was a strong push from the leadership to integrate the Iraqis into U.S. operations. One initiative was allowing certain Iraqis on the Division Operations Center (DOC) floor. Although this initiative did not survive legal review, other efforts such as adding Iraqis to the division staff did.

RECOMMENDATION: Be prepared to review incorporating Iraqi officials into U.S. operations.

⁶⁷⁷ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

⁶⁷⁸ AWG 2009 OIF AAR, *supra* note 133.

⁶⁷⁹ 2SBCT, 25ID 2009 OIF AAR, *supra* note 8.

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ISSUE: **Joint targeting with ISF**

DECISION: The BCT sent the S2 and LEPs to Iraqi targeting meetings and invited trusted ISF personnel to the BCT targeting meetings. The BCT prepared all targeting slides in both English and Arabic. Although it took several months for this program to develop, over time the BCT and ISF arrived at the same “top ten” lists of most wanted individuals.

RECOMMENDATION: Sustain. Joint targeting is the key to warrant-based targeting. In areas of operation where joint planning had not occurred with the previous unit, it is critical to begin immediately building the relationships with ISF needed to make this process work.⁶⁸⁰

Border Operations

OIF ISSUE: **Cross-border operations**

DECISION: Coordination with MNF-I is important to understand what current agreements are in place. Transparency will allow subordinate commands to give the appropriate guidance to their commanders.

RECOMMENDATION: Improve. There should be a consolidated resource of cross-border authorities for easy reference.⁶⁸¹

ISSUE: **Border ROE**

DECISION: As U.S. forces continue to partner with Iraqi border security units, more specific ROE guidance regarding operations in the vicinity of international borders was necessary, specifically with respect to operations on the Shatt al Arab Waterway, which serves as a portion of the Iran/Iraqi border. The operational law attorney emphasized in advice and training packets, the strategic implications and the sensitivity of U.S. reactions to incidents on the Iranian border and developed new ROE guidance to handle those incidents.

RECOMMENDATION: The new ROE addresses this issue. Provide units operating near the Iranian border with resources and training packets to ensure they are prepared to deal with different incidents on the border. Understand the 1978 Algiers Accord, which sets the thalweg of the Shatt al Arab as the international boundary.⁶⁸²

ISSUE: **ROE for border scenarios**

DECISION: As 4-1 CAV pushed into Maysan province on the border with Iran, it was necessary to emphasize the ROE for border incursions, cross-border kidnappings, and other border scenarios. The BJA attended TOC rehearsals involving cross-border kidnapping scenarios into Iran.

⁶⁸⁰ 4-1 CAV 2009 OIF AAR, *supra* note 12.

⁶⁸¹ IAD 2009 OIF AAR, *supra* note 29.

⁶⁸² 10th MTN DIV 2009 OIF AAR, *supra* note 11.

RECOMMENDATION: Sustain and Improve. 4-1 CAVs predecessors did not have any TOC drills for cross-border incidents. 4-1 CAV conducted about three rehearsals throughout the year. More rehearsals are necessary.⁶⁸³

Special Operations Forces (SOF)

OIF ISSUE: SOF elements operating in MNF-W's battle space

DECISION: The Special Ops community did a good job of keeping MNF-W informed of what they were doing. This was possible due to strong efforts along communication lines to maintain positive relationships. The commanders made a concerted effort and assigned an LNO to MNF-W from the Special Ops commands. The LNO ensured good coordination and tracking between MNF-W and the Special Operations command.

RECOMMENDATION: Continue to maintain open lines of communication with the Special Ops community.⁶⁸⁴

ISSUE: Misconception of a different ROE for SOF

DECISION: There was a misconception that Special Operations Forces (SOF) were able to operate under a different set of ROE. This misconception was due to a lack of experience with the ROE and the fact that SOF units often operate under different or additional intelligence sources and information. This does not mean that SOF personnel are free to ignore the ROE.

RECOMMENDATION: Improve. Conduct SOF legal training stressing the point they do not operate under a separate set of ROE. SOF personnel must understand that they are legally required to abide by the ROE, just like every other Soldier.⁶⁸⁵

ISSUE: Interaction with Special Operations Forces (SOF)

DECISION: SOF restrictions appear in a limited distribution (LIMDIS) MNF-I FRAGO. It is necessary you understand what is in this FRAGO.

RECOMMENDATION: Maintain a copy of such LIMDIS authorities. Units need to pass this information from Chief of OpLaw to Chief of OpLaw.⁶⁸⁶

ISSUE: Identifying conventional and non-conventional forces in your operational area

DECISION: You have to know who is operating in your commander's area. It is essential you know who acts as your liaison to these units.

RECOMMENDATION: Make contact with the JAs assigned to these "other" types of units. Knowing to whom to talk is half the battle.⁶⁸⁷

OEF ISSUE: Fostering relationships with Special Operations Forces (SOF)

⁶⁸³ 4-1 CAV 2009 OIF AAR, *supra* note 12.

⁶⁸⁴ I MEF (FWD) 2009 OIF AAR, *supra* note 43.

⁶⁸⁵ 3ID 2008 OIF AAR, *supra* note 10.

⁶⁸⁶ 4ID 2009 OIF AAR, *supra* note 20.

⁶⁸⁷ *Id.*

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DECISION: Peer to peer technical channel communications is important. Everything is relationship based.

RECOMMENDATION: Encourage SOF JAs and paralegals to visit the OSJA. The OSJA must work to understand the SOF JA mission requirements and not be seen as an impediment to both SOF and conventional OSJAs working together in the same battlespace.⁶⁸⁸

I.R. Treaties & Other International Agreements /Arrangements

I.R.1. Asylum

OIF ISSUE: **Granting asylum or some other form of protection in the event of GoI aggression**

DECISION: U.S. forces do not have authority to grant members of the Mujahedin-e Khalq (MEK) asylum. However, under appropriate cases, U.S. forces could grant temporary refuge to members of the MEK for humanitarian reasons under conditions of urgency in order to secure life or safety of the requester against imminent danger. Processing requests for temporary refuge must comply with the requirements of Army Regulation (AR) 550-1, Processing Requests for Political Asylum and Temporary Refuge.

RECOMMENDATION: Sustain.⁶⁸⁹

OEF ISSUE: **Requests for asylum**

DECISION: Towards the end of our tour, Afghan soldiers raised two separate issues concerning asylum. In neither case did the individual requesting asylum feel in fear of his life. The OSJA reviewed previous Center for Law and Military Operations (CLAMO) materials on the matter and provided the guidance enclosed with this After Action Review (AAR) (on file at CLAMO). We also consulted with the Embassy Consulate and provided the Afghan soldiers with Embassy points of contact.

RECOMMENDATION: None.⁶⁹⁰

I.R.2. Status-of-Forces Agreements (SOFAs)

OEF ISSUE: **Status of Forces Agreement (SOFA) with Afghanistan**

DECISION: A 2003 Exchange of Notes that covers much of our troop activity in Afghanistan. There is also a NATO/ISAF Military Technical Agreement that covers much of ISAF's work. The Exchange of Notes is very rudimentary and will likely develop into a full-blown SOFA in the future as the country matures. Some people refer to the Exchange of Notes as a SOFA; some do not. Whatever the name, it provides guidance on taxes and immunities that were important topics during 2008. CSTC-A OSJA read the immunities clauses broadly and believed they clearly provided immunity to military and civilian employees, including non-Afghan contractors. CENTCOM disagreed with the CSTC-A OSJA on this interpretation.

⁶⁸⁸ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

⁶⁸⁹ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 58.

⁶⁹⁰ CSTC-A 2008 OEF AAR, *supra* note 16.

RECOMMENDATION: None. DoS will lead future SOFA negotiations, which they are not likely to initiate in the near future. Taxes, immunity, and land use rights will continue to be issues in the future and will be important topics for clarification.⁶⁹¹

I.R.3. Authority to Negotiate International Agreements

OIF ISSUE: Agreement on the joint use of Mosul Airport

DECISION: Initially, the Deputy G-9 presented a 3-page document discussing the multinational use of the Mosul Airport with various funding sources. After some reflection, there were seven or eight reasons (legal and non-legal) to recommend against signing the agreement. As the final 12-page document was re-drafted, it brought to light the practical problems and liability issues attendant to Iraqis jointly occupying and operating civil aviation from the airport. The commander eventually decided that the joint occupation of the airport was not in the best interest of U.S. forces.

RECOMMENDATION: Be wary of well-intentioned staff officers inadvertently creating an international agreement. You may be in a position where you will have to become the subject matter expert in an area where no one else is available.⁶⁹²

ISSUE: Inadvertent conclusion of international agreements

DECISION: Commanders do not understand what comprises an “international agreement” or who is authorized to conclude one.

RECOMMENDATION: Predeployment training should include a brief discussion on who can make an international agreement and what can be construed as an international agreement.⁶⁹³

ISSUE: Ensuring memoranda of agreement (MOAs) do not rise to the level of international agreements

DECISION: The negotiating of international agreements is the purview of the Department of State (DoS). This issue often came up with negotiations concerning the Sons of Iraq (SolIs) or projects requiring buy-in from the GoI. The unit added disclaimers and other language to make it clear these were not international agreements.

RECOMMENDATION: Make it clear to all the parties involved the agreements are not binding international agreements requiring DoS participation.⁶⁹⁴

ISSUE: Authority of host nation partners to sign agreements and arrangements

DECISION: Provincial Iraqi authorities are hesitant to sign anything without the authority carried by a “letter from Baghdad.”

RECOMMENDATION: Remove coalition forces from the process and allow the local government to work in the manner contemplated by their system.⁶⁹⁵

⁶⁹¹ *Id.*

⁶⁹² 1AD 2009 OIF AAR, *supra* note 29.

⁶⁹³ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

⁶⁹⁴ 4ID 2009 OIF AAR, *supra* note 20.

⁶⁹⁵ *Id.*

I.S. Weapon Systems

I.S.1. Legal Review on Weapons

OIF ISSUE: **The unauthorized use of sound suppressors on weapons**

DECISION: The unit was using weapon suppressors for some time without authorization. The BCT commander issued an order to end the use of the suppressors.

RECOMMENDATION: Improve. The BJA should be involved in the decision to use any new, non-standard weapons systems. If the BJA was involved in the decision whether the unit should use the sound suppressors, the unauthorized use would most likely not have occurred.⁶⁹⁶

ISSUE: **Legality of silencers on U.S. weaponry**

DECISION: Each request made for the use of a silencer requires review on a case-by-case basis under the principles of LOAC and fiscal law.

RECOMMENDATION: Sustain. Ensure the BJA reviews all such requests.⁶⁹⁷

ISSUE: **Ability to purchase silencers for use with sniper rifles**

DECISION: There was no definitive guidance readily available, although there was plenty of evidence this was a recurring issue. This became a command decision.

RECOMMENDATION: Weapons systems guidance should be accessible in a single consolidated location.⁶⁹⁸

ISSUE: **Use of a mine-clearing line charge (MICLIC) to clear a road**

DECISION: The unit used a CDE-like analysis to provide information to the commander for decision.

RECOMMENDATION: Provide the commander the information necessary to allow an informed decision, but ensure it is a commander making the ultimate decision.⁶⁹⁹

ISSUE: **ROE does not include certain weapons systems**

DECISION: It takes time to get approval to use weapons systems not listed in the ROE. When you cannot place a weapon into an established category, there is a lag time to get approval from higher headquarters to use that weapon.

RECOMMENDATION: Initiate the approval process as early as possible.⁷⁰⁰

⁶⁹⁶ 3ID 2008 OIF AAR, *supra* note 10.

⁶⁹⁷ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 4.

⁶⁹⁸ 4ID 2009 OIF AAR, *supra* note 20.

⁶⁹⁹ *Id.*

⁷⁰⁰ 1AD 2009 OIF AAR, *supra* note 29.

OEF ISSUE: **Legal review of weapons**

DECISION: There was no readily accessible central repository of legal reviews on weapons. Contractors were continually offering “new and improved” weapons systems to units. This forced the OpLaw JAs to conduct their own analysis of the weapons and/or weapons systems.

RECOMMENDATION: There should be a centrally located and continuously updated database of legal reviews of weapons. OpLaw JAs must still conduct a review of the weapon under the governing ROE.⁷⁰¹

I.S.2. Lethal Weapons

OIF ISSUE: **Knowledge of the arsenal**

DECISION: JAs should have baseline knowledge of what weapons and weapons systems are available to increase their situational awareness and their value to their commanders.

RECOMMENDATION: Improve. JAs should educate themselves before deployment on the capabilities of their units. If new weapon systems or units come into an existing theater, JAs should seek out an info brief on employment, capabilities and limitations of the system or unit.⁷⁰²

ISSUE: **Lack of knowledge concerning various weapons systems**

DECISION: JAs need more training on the effects and capabilities of the various weapons systems.

RECOMMENDATION: Additional training on this topic should occur at both the training centers and The Judge Advocate General’s Legal Center and School (TJAGLCS).⁷⁰³

OEF ISSUE: **The use of AK 47s by CSTC-A personnel**

DECISION: An issue arose several times about whether our military personnel, who were only issued light weaponry (9mm pistol), could use readily available foreign weapons (e.g., AK-47s) if they believed they needed such weapons for their personal security. CSTC-A OSJA rendered an opinion stating they could not, basing its reasoning on General Order Number One (GO #1) prohibitions, the lack of training on the weapons, and general policy considerations. The OSJA recommended if personnel really needed additional firepower, they should obtain proper U.S. weaponry.

RECOMMENDATION: The policy against carrying foreign weapons was valid and should remain in place.⁷⁰⁴

ISSUE: **The use of “matchking” rounds**

DECISION: There were questions raised over the year regarding the use of “matchking” rounds, which looked like hollow point ammunition. CSTC-A SJA reviewed the rounds in question and

⁷⁰¹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 33.

⁷⁰² 1AD 2009 OIF AAR, *supra* note 29.

⁷⁰³ 1BCT, 4ID 2009 OIF AAR, *supra* note 6.

⁷⁰⁴ CSTC-A 2008 OEF AAR, *supra* note 16.

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reached back to the Office of the Judge Advocate General (OTJAG), determining that the rounds had received a proper legal review and that there was no objection to them. They were in fact “open tip” bullets used for stability in long-range sniper operations and complied with the law of war. They did not expand on impact like hollow point ammunition.

RECOMMENDATION: Be aware Soldiers may refer to rounds as “hollow point” if they have that appearance, but the rounds may not actually be hollow point rounds.⁷⁰⁵

I.S.3. Less than Lethal Weapons

OIF **ISSUE:** The future of use of less than lethal weapons (LLW) by operating forces

DECISION: The RCT JA did not encounter any issues with LLW, but foresaw it being a larger issue in the future. See, for example, MARADMIN 560/08 (“Marine Corps Training and Use of Human Electro-Muscular Incapacitation (HEMI) Devices”). The message indicated the tasers contemplated for Marine use have undergone comprehensive legal review at the Office of the Judge Advocate General (OJAG) and at DoD OGC.

RECOMMENDATION: Maintain an awareness of this issue, as issues will arise on novel methods of employment. Future policy based considerations will arise that will require the judge advocate’s staff work.⁷⁰⁶

OEF **ISSUE:** Use of paintball guns in escalation of force (EOF) kits

DECISION: A battalion commander wanted to purchase an expensive paintball gun for inclusion into the EOF kit. The BJA identified a different paintball gun system previously approved by the Department of Defense and advised the Commander to order that one.

RECOMMENDATION: Equip battalions with a larger array of approved non-lethal weapons for EOF operations and training.⁷⁰⁷

⁷⁰⁵ *Id.*

⁷⁰⁶ RCT-5 2008 OIF AAR, *supra* note 9.

⁷⁰⁷ 420th EN BDE 2009 OER AAR, *supra* note 17.

II. ADMINISTRATIVE & CIVIL LAW

II.A. Army & Air Force Exchange Service (AAFES)

OIF ISSUE: **Local vendor AAFES policy**

DECISION: Local vendors were present on many Forward Operating Bases (FOBs) before AAFES arrived. These vendors continued business as usual, whereas local vendors arriving after AAFES arrived had to follow AAFES policies.

RECOMMENDATION: Improve. Clarify AAFES policy throughout the area of operations to provide consistency.¹

ISSUE: **Knives sold in the AAFES store**

DECISION: AAFES sold all types of knives in their store without regard to possible violation of relevant authorities (e.g., GO#1, federal and state weapons statutes and import regulations).

RECOMMENDATION: Improve. Require AAFES to post notifications at the knife display point. Several knives sold in the AAFES store may or may not be legal for import into the United States or other countries.²

ISSUE: **Contracted internet services**

DECISION: AAFES contracted with an internet service provider (ISP) to obtain internet access for Soldiers in their containerized housing units (CHUs). Such access is available at most FOBs. However, this ISP consistently breached its contract with AAFES by exceeding the set number of users, providing insufficient bandwidth, etc. The contract had been in place for several years, and the contractor had never been compliant. The command raised the issue with AAFES several times, and wanted to open up the contract for competition upon renewal; it also wanted to contract with two other ISPs at the same time without AAFES permission. In some cases, Soldiers were already contracting with other ISPs (who were providing better service) on the side. The division raised the issue to higher and higher levels, but AAFES renewed the contract for an additional five years without notifying the division. The situation at Victory Base Complex (VBC) is unlikely to improve because the number of Soldiers assigned there has increased.

RECOMMENDATION: Improve. Units assigned to VBC should take steps during predeployment training to ensure commanders and Soldiers are aware of the ISP shortcomings and adjust their expectations accordingly.³

ISSUE: **Contracts versus memoranda of understanding (MOUs)**

DECISION: At some FOBs, commanders were confused about the respective roles of contracts and MOUs, particularly in the AAFES area. Judge Advocates (JAs) had to educate such commanders on the roles and characteristics of contracts, particularly the way in which they

¹ 1st Armored Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (19 Feb. 2009) [hereinafter 1AD 2009 OIF AAR] (on file at CLAMO).

² *Id.*

³ 4th Infantry Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (30 Apr. 2009) [hereinafter 4ID 2009 OIF AAR] (on file at CLAMO).

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differed from MOUs. For example, U.S. forces must obtain services through contracts, which are subject to specific approval procedures. However, MOUs can implement contracts (e.g., if a contract allows use of a dining facility (DFAC), an MOU can clarify which DFACs are accessible).

RECOMMENDATION: Improve. JAs should be aware of a possible requirement to deal with AAFES issues, even when their unit commander is not the installation commander. In this case, the garrison was the responsibility of a reserve unit. Its JAs rotated frequently and did not necessarily have any knowledge of or experience with AAFES issues.⁴

ISSUE: Unauthorized vendors

DECISION: The United Kingdom (UK) allowed numerous private organizations to operate on its FOBS before the U.S. assumed control. One of these was a religious-based non-profit restaurant with a charter similar to the United Service Organizations (USO). After the transfer of the operating base to the U.S., the restaurant refused to sign an AAFES operating agreement, objecting to the percentage charged under a standard AAFES operating contract. The Multi-National Division-Central (MND-C) administrative law (AdLaw) section first had to evaluate the restaurant under the First Amendment to ensure it was not proselytizing or engaging in religious discrimination. They then determined that this organization would have to leave the FOB if it did not come under the AAFES umbrella. Realizing this, the restaurant ultimately negotiated an AAFES vendor contract.

RECOMMENDATION: Improve. Identify all non-AAFES tenants before moving into an operating base and explain the requirements for continued operation.⁵

OEF ISSUE: Weekly bazaar and vendor shops on Camp Eggers

DECISION: AAFES has the right of first refusal to provide vendor services. Initially, at Camp Eggers, AAFES was not interested in supporting anything other than a small Post Exchange (PX). Combined Security Transition Command – Afghanistan (CSTC-A) held a weekly bazaar that generated quite a bit of income for the local vendors. No one charged these vendors for the opportunity to operate a booth. The Morale, Welfare, and Recreation (MWR) program began shortly after the CSTC-A SJA arrived. The command allowed local vendors, such as a pizza place, Thai restaurant, Afghan shops, jewelers, and a massage parlor to open on Camp Eggers as it expanded. The vendors paid rent to the Garrison Commander's MWR Fund based on the square footage they occupied. The Afghans made money off these shops. The legal issue that arose was whether there was AAFES approval/refusal to operate these activities as AAFES concessions. The garrison commander had to work all of these issues. Garrison operations were a Title 10 operation (82d/101st), but the CSTC-A Staff Judge Advocate (SJA) got involved because these issues directly impacted CSTC-A personnel and Camp Eggers. The CSTC-A AdLaw attorney got very involved with AAFES support and provided a detailed Memorandum for Record (MFR) that set forth the historical framework behind this issue. It became potentially contentious when AAFES realized the level of potential income. However, AAFES limited its support to the installation to the PX, the contribution to the local MWR program was far less than the contributions from the Afghan concessionaires, and the Afghans generated MWR funds for Camp Eggers from these activities.

⁴ *Id.*

⁵ 10th Mountain Division (Light Infantry), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, May 2008 – May 2009 (25 June 2009) [hereinafter 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

RECOMMENDATION: Do not let the AAFES right of first refusal preclude the use of MWR concessionaires. Implement clear and definitive rules for the concessionaires to prevent bribes for the larger, more lucrative selling spaces at the bazaar.⁶

ISSUE: AAFES programs at remote bases

DECISION: For remote contingency operating bases (COBs) at which there were no AAFES employees, AAFES had a program under which it would send out a standard package of goods, which a representative of the unit would sign for and administer sales. In some cases, junior Soldiers were the unit designees signing for the goods and running the local “post exchange.” AAFES did not do a good job of tracking the inventories or overseeing the transfer of goods and funds when units changed out. The OSJA did not become aware of the program until AAFES contacted G1 for assistance in initiating financial recoupment against Soldiers who could not account for their AAFES inventories. Given the lack of oversight of the program by AAFES, it is likely some of the loss of accountability occurred under previous units.

RECOMMENDATION: Improve. AAFES should provide the division with a list of units/locations participating in this program. Division should institute a policy specifying procedures for implementing the program and a minimum rank for the unit’s accountable officer. Add the transfer of AAFES goods to the relief-in-place (RIP) checklists for units so units know to contact AAFES. At a minimum, an AAFES representative should be present to transfer the stocks and funds from one accountable officer to the next.⁷

II.B. Customs & Passports

OIF ISSUE: Getting passports for Marines in Iraq

DECISION: Some commanders pushed to get passports for Marines who arrived in Iraq without them. This would allow the Marines to travel internationally while on mid-deployment leave (one-year deployers). The Regimental Combat Team (RCT) JA thought this was a wasted effort. If a Marine did not have the forethought to obtain a tourist passport before deploying (all it takes is two photos and a trip to the post office), his view was the Marine should do as every other Marines on mid-deployment leave—go home to the Continental U.S. (CONUS). This took on a life of its own as a “troop welfare” initiative. In reality, it was paternalism to make up for the Marine not planning sufficiently for his own leave.

RECOMMENDATION: Prohibit legal assistance providers from assisting Marines in getting tourist passports. These carry a high risk of alcohol-related misconduct occurring while on leave overseas.⁸

ISSUE: Assisting Soldiers to obtain passports

⁶ Combined Security Transition Command – Afghanistan, Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom (Sept. 2008) [hereinafter CSTC-A 2008 OEF AAR] (on file at CLAMO).

⁷ 101st Airborne Division (Air Assault), Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom, April 2008 – June 2009 (28 Aug. 2009) [hereinafter 101st ABN DIV (AASLT) 2009 OEF AAR] (on file at CLAMO).

⁸ Regimental Combat Team-5, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – July 2008 (7 Aug. 2008) [hereinafter RCT-5 2008 OIF AAR] (on file at CLAMO).

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DECISION: The legal shop only gave Soldiers preliminary information on how to obtain a passport. The S-1 shop handled the rest of the process.

RECOMMENDATION: Sustain. Although the legal shop was happy to provide guidance, their heavy workload made it impossible to get more involved with the passport issue. Passports are an S-1 matter, and although many S-1 shops try to pawn this issue off as legal, try to encourage the S-1 shop to take the lead.⁹

ISSUE: PMO customs control officer

DECISION: The Provost Marshal's Office (PMO) customs control officer did not consistently apply regulations.

RECOMMENDATION: Improve. Require PMO customs briefings upon entry and exit from the area of operations.¹⁰

ISSUE: Special Immigrant Visa Program

DECISION: The Office of the Staff Judge Advocate (OSJA) assisted with special immigration visas under the program for interpreters in Iraq and Afghanistan. During the deployment, Congress authorized the issue of additional visas, but the Department of Homeland Security (DHS) provided no implementing guidance for those applying under the new auspices. AdLaw JAs advised new applicants to use the previous guidance, even though the accompanying quotas were already full. G-9/S-9 had the lead on this issue, but did not necessarily provide the required sense of urgency. To our knowledge, there was no effort to push this issue at higher headquarters by the appropriate agency.

RECOMMENDATION: Improve. Designation of a U.S. forces theater program manager at a level higher than division would have provided the necessary interface with DHS and allowed those involved at lower levels to answer questions and expedite the completion of applications. Personnel involved in visa requests should expedite the process as much as possible given the risk run by the interpreters. A number of legal issues, background checks, and improper completion of application forms can significantly delay the application process. There were also redundant checks, elimination of which would result in a more streamlined process.¹¹

ISSUE: Travel papers for Philippine nationals in Iraq

DECISION: During the deployment, the Philippine government issued guidance indicating it would not issue travel papers to its nationals working in Iraq. This caused problems for the division, the majority of whose LOGCAP workers were from the Philippines.

RECOMMENDATION: Improve. JAs should work through SJA channels to the U.S. Embassy in Baghdad to determine whether the U.S. government might be able to raise this issue with the Philippine government.¹²

⁹ 3d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (14 Jan. 2009) [hereinafter 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

¹⁰ IAD 2009 OIF AAR, *supra* note 1.

¹¹ 4ID 2009 OIF AAR, *supra* note 2.

¹² *Id.*

ISSUE: Customs

DECISION: Units had questions about what they could bring back from the deployment and would turn to the BCT legal office to answer these questions.

RECOMMENDATION: Coordinate with customs officials early on to determine what is permissible to bring back and what is not.¹³

ISSUE: Inconsistent customs agents

DECISION: The understanding of officials working in the customs realm as to what the guidance allowed varied tremendously. What one would allow, another would not.

RECOMMENDATION: Maintain a close relationship with the customs officials working with your units. Do not assume what they allowed in the past is still allowable.¹⁴

ISSUE: Contraband received via U.S. mail

DECISION: Mail coming to Iraq from the United States was not subject to the same rigorous screen customs inspectors applied in Iraq. Consequently, Soldiers complained that they could not mail things home their families had sent them. Soldiers had to place contraband received in the mail into amnesty boxes upon redeployment.

RECOMMENDATION: Improve. Brief Family Readiness Groups (FRGs) before deployment on what items they may ship into theater.¹⁵

ISSUE: U.S. mail and copyright violations

DECISION: Soldiers could have one copy of “bootleg” electronic media (e.g., movies, DVDs). The FOB post office allowed Soldiers to mail one copy of any copyright violated electronic material to the U.S.

RECOMMENDATION: Sustain.¹⁶

ISSUE: Immigration and passport renewal

DECISION: 4/1 CAV designated one paralegal to be the subject matter expert in immigration paperwork and passport renewal.

RECOMMENDATION: Sustain. This was an invaluable service to our Soldiers and many took advantage of the expedited procedures to become U.S. citizens.¹⁷

OEF ISSUE: Special Immigrant Visa Program

¹³ 1st Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – March 2009 (28 Apr. 2009) [hereinafter 1BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

¹⁴ XVIII Airborne Corps, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – April 2009 (11 June 2009) [hereinafter XVIII ABC 2009 OIF AAR] (on file at CLAMO).

¹⁵ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹⁶ *Id.*

¹⁷ 4th Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – June 2009 (14 Aug. 2009) [hereinafter 4-1 CAV 2009 OIF AAR] (on file at CLAMO).

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DECISION: Congress enacted legislation that permitted a certain number of Afghan (and Iraqi) translators to apply for Special Immigrant Visas after employment for one year, with an approval letter from a general officer. Details about CSTC-A's implementation of the program are contained in attached documents (on file at CLAMO). The OSJA processed Special Immigrant Visa paperwork. The office paralegal NCOIC administered the program and maintained an office database. One of four translators conducted the necessary translations. Of note, the one-year period is a minimum amount of time. Commands can elect to have longer waiting times. Within the country, Combined Joint Task Force (CJTF) 82/101 had its own program, as did Task Force (TF) Phoenix. TF Phoenix had a three-year waiting period and other administrative requirements. During the course of our tour, we noticed that many of our interpreters sought to apply for the program at the one-year point, which was just about the time that they were actually getting good at their jobs. We recommended to the Deputy Commanding General (DCG) who was CSTC-A's single POC for approval letters, that the waiting period be extended to two years, and he approved this recommendation. We noted that the security concern for interpreters working with CSTC-A was not quite the same threat to the interpreter as it was, for example, in Iraq. CSTC-A also took over the TF Phoenix program once they lost their general officer commander. Finally, in an effort to avoid forum shopping, we ensured that Embassy interpreters worked their requests through the Embassy, and not through CSTC-A.

RECOMMENDATION: Maintain and enforce the SOP.¹⁸

ISSUE: Processing passports

DECISION: Soldiers incorrectly assumed the brigade legal office could process passports. The BJA referred all passport-seeking Soldiers to the Passport Office at Bagram Airfield (BAF).

RECOMMENDATION: Emphasize the need for Soldiers to resolve all passport and visa related issues before deploying.¹⁹

II.C. Drawdowns

OIF ISSUE: Base closures

DECISION: Division procedures on how to close a patrol base were confusing. The BCT wanted simply to hand over the patrol bases, but there were problems with that approach. Often, no one had adjudicated land claims with the property owner (if one could find the owner). Therefore, units turned over the patrol bases to the Iraqis before the BCT could close out and resolve the claim.

RECOMMENDATION: Higher headquarters needs to provide a base closure SOP or Fragmentary Order (FRAGO) in order to simplify and speed up the base closure/handover process.²⁰

ISSUE: Legal input to drawdown OPORD

¹⁸ CSTC-A 2008 OEF AAR, *supra* note 6.

¹⁹ 420th Engineer Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, May 2008 – March 2009 (13 May 09) [hereinafter 420th EN BDE 2009 OER AAR] (on file at CLAMO).

²⁰ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 9.

DECISION: The Commander, Multi-National Force – Iraq (MNF-I) ordered his staff to produce a comprehensive Operations Order (OPORD) to guide U.S. forces in Iraq in the responsible drawdown of its current forces to approximately 50,000 personnel by the summer of 2010. The MNF-I SJA directed every branch of the OSJA to take stock of any OPORD or FRAGO it may have responsibility over and to incorporate them into the responsible drawdown OPORD. The OPORD also provided a brief description of MNF-I OSJA services and provided an overview of operational and personnel changes based on the drawdown.

RECOMMENDATION: Sustain. Identify early on one person, preferably an O-5, to coordinate the office's efforts to incorporate the legal contribution to such a comprehensive force level OPORD. This will help ensure that the project begins early enough to reach completion on time.²¹

[See also III.C.8. CONTRACT & FISCAL LAW—Fiscal Law—Donation & Disposal of Property]

II.D. Ethics/Joint Ethics Regulation (JER)

OIF ISSUE: Raffle

DECISION: A private organization requested approval to conduct a raffle to raise funds. It withdrew its request upon learning the division commander would deny the request before forwarding it to the higher headquarters. The approval authority rested with MNF-I.

RECOMMENDATION: Sustain. Follow JER and other policy guidance.²²

ISSUE: Expenditure of private organization funds

DECISION: Soldiers operated a private organization serving coffee. The private organization operated on donations.

RECOMMENDATION: Improve. Advise private organizations and informal fund managers of applicable regulations and requirements. Do not allow personnel on duty to perform private organization or informal fund business to such an extent that it interferes with their military duties.²³

ISSUE: JA as general officer (GO) aide

DECISION: The division commander appointed a JA as his aide.

RECOMMENDATION: Sustain. Ensure you contact TJAG's XO, and receive TJAG approval for such an appointment. The JA assigned as aide did not perform any legal duties, and the SJA and Chief of Staff specifically prohibited him from doing so.²⁴

ISSUE: Disposition of ethical violations

²¹ Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, January 2009 – April 2009 (May 2009) [hereinafter MNF-I Individual Augmentee MAY 2009 OIF AAR] (on file at CLAMO).

²² 1AD 2009 OIF AAR, *supra* note 1.

²³ *Id.*

²⁴ *Id.*

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DECISION: The division Chief of Military Justice decided to include the ethical rule violation into the list of Uniform Code of Military Justice (UCMJ) charges and to take the offenders to a court martial.

RECOMMENDATION: Sustain. When the ethical rule violation in question is only one of many related serious offenses, but itself constitutes a UCMJ violation, charging the ethics violation under the UCMJ helps prevent confusion in resolving the matter.²⁵

ISSUE: Unit fundraising

DECISION: There were many requests to conduct fundraising. It was difficult to keep a handle on them, but doing so was necessary to ensure every group received equal treatment.

RECOMMENDATION: Be aware once the command says yes to one group, they open the door to countless others. This is also a traditional garrison legal issue. Although the MNC-I OSJA can assist units, commanders, and staff regarding the rules, there should be one policy regarding fundraising, preferably by the garrison commander, who normally approves fundraising on the installation. This also provides for consistency in treatment to all fundraising requests.²⁶

ISSUE: Support to private organizations

DECISION: The UK allowed numerous private organizations to operate on its FOBs before the U.S. assumed control. The UK provided logistical support to the organization, including electricity, food, and housing. Once the U.S. took over these bases, the private organizations expected the same support. Because the JER does not allow direct support to private organizations, these organizations had to either sign a contract with AAFES or leave the FOB.

RECOMMENDATION: Improve. Identify all private organizations before moving into an operating base and arrange the appropriate contracts or reimbursement mechanisms to allow them to operate.²⁷

OEF ISSUE: Fundraising

DECISION: CJTF-101 allowed the use of community bulletin boards and living areas for fundraising during off-duty hours, while still prohibiting the use of government resources, including email, and fundraising in the government workplace.

RECOMMENDATION: Sustain. Allowing Soldiers to engage in fundraisers to support causes was good for morale. Ensure BJAs are provided the appropriate guidance.²⁸

ISSUE: Guidance on the use of military aircraft (MILAIR)

DECISION: Although the outgoing division reported receiving very few MILAIR requests, the 101st Airborne Division received numerous such requests, including for civilian translators,

²⁵ 4th Brigade Combat Team, 10th Mountain Division (Light Infantry), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (5 Feb. 2009) [hereinafter 4BCT, 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

²⁶ XVIII ABC 2009 OIF AAR, *supra* note 14.

²⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

²⁸ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

contractors, foreign nationals, and ANA personnel. There was substantial confusion as to the rules and approval authorities for the use of MILAIR. The DoD regulation governing MILAIR was outdated and did not seem to contemplate MILAIR requirements in a combat theater. The CENTCOM guidance was vague. Although letters of delegation from the Secretary of Defense (SECDEF) existed for the Iraq theater, there were fewer delegations for Afghanistan. The administrative law section put together a MILAIR smart book with the resources they had, but it was never completely clear how the process should work.

RECOMMENDATION: Improve. CENTCOM or USFOR-A should publish coherent, consolidated MILAIR guidance for the Afghanistan theater and obtain the appropriate delegation letters from SECDEF for the MILAIR process to run more efficiently. Include the material into the administrative law SOP.²⁹

ISSUE: Flying civilian translators MILAIR

DECISION: The most common MILAIR request involved civilian translators. Although the administrative law attorneys analyzed these individuals as U.S. government workers and recommended approval of such requests on a “non-interference, non-reimbursable, space-available” basis, the Air Force officer in G4 who coordinated MILAIR requests required analysis of them as foreign nationals, thus implicating the CG as the approval authority. This was unfeasible, particularly for short-notice requests.

RECOMMENDATION: Improve. CENTCOM or USFOR-A should publish coherent, consolidated MILAIR guidance for the Afghanistan theater and obtain the appropriate delegation letters from SECDEF for the MILAIR process to run more efficiently. Local policy should be to treat civilian translators working for DOD as government civilians rather than foreign nationals.³⁰

ISSUE: Additional baggage allowances for individual augmentees

DECISION: Individual augmentees rotate out of theater with more baggage than is permissible on the MILAIR flights traveling to either Kuwait or Kyrgyzstan. There was not a clear policy or process on how ship the excess baggage at government expense in theater. In one case, the chief of administrative law concluded the government could pay to ship an individual augmentees’ excess baggage, but the Air Force official in charge of the DHL account denied the request. The individual augmentee ended up shipping the baggage via DHL at his own expense, and then claiming the expense on his travel voucher.

RECOMMENDATION: Improve. There should be a theater-wide policy or process to allow the shipment of excess baggage at government expense when the additional clothing and equipment is necessary for the individual’s official duties.³¹

ISSUE: Travel regulations and business class travel

DECISION: Even in Afghanistan, the use of business class travel by both U.S. and Afghan officials was a recurring issue. U.S. travelers, such as the Commanding General (CG), fell under ordinary CENTCOM approval authority rules. Because of the CSTC-A XO’s personal interest in the subject, the SJA coordinated travel requirements with the CENTCOM SJA’s travel POC and

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

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worked through necessary paperwork requirements. In most cases, CENTCOM did not approve the travel, or the CG gave up on pursuing travel given the challenge of obtaining approval.

Afghan senior official travel was more problematic. Because CSTC-A paid for travel using Afghan Security Forces Funds (ASFF), U.S. travel rules applied. The Minister of Defense and his spouse had previously received approval for business class travel, though justification for prior travel was on file. When the CSTC-A OSJA reviewed its first request for travel, the OSJA had a difficult time obtaining necessary approvals from CENTCOM. The Minister was not a significant challenge due to his medical condition. His wife was a more difficult challenge but fortunately, she only traveled with him one time. The OSJA maintained the supporting documents on file. Given the difficulty with obtaining approvals, the CG concurred with the SJA's recommendation that the command not support business class travel by other senior Afghan officials. If they wanted premium class travel, then they had to pay for it.

RECOMMENDATION: Ensure proper authorization for travel. Past practice is not a reliable indicator.³²

Filing of Financial Disclosure Forms

OIF ISSUE: Office of Government Ethics (OGE) 450 forms

DECISION: The command did some OGE 450 forms in country. At first, the RCT JA believed waiving the requirement was best due to the difficulty in obtaining personal financial records in Iraq. However, concerns over procurement integrity and fiscal propriety outweighed the burden imposed, particularly given how "regular" Operation Iraqi Freedom (OIF) deployments have become.

RECOMMENDATION: File the forms while deployed. At this point, Marine OIF deployments are almost like Unit Deployment Program tours to Okinawa 10 years ago. The administrative burdens are not so onerous to justify waiver or extensions.³³

ISSUE: Electronic Standard Form (SF) 450 and SF 278 filing

DECISION: Mandatory SF 450 and SF 278 filers were exempt from electronic filing requirements.

RECOMMENDATION: Improve. Use the electronic filing system.³⁴

ISSUE: Combat zone SF 450 and SF 278 filing extension

DECISION: Authorities granted combat zone SF 450 and SF 278 filing extensions upon request.

RECOMMENDATION: Improve. Continue the combat zone delays, but encourage mandatory filers to comply with regular guidelines if possible, obviating future issues during the unit reset period, when many will PCS.³⁵

³² CSTC-A 2008 OEF AAR, *supra* note 6.

³³ RCT-5 2008 OIF AAR, *supra* note 8.

³⁴ IAD 2009 OIF AAR, *supra* note 1.

³⁵ *Id.*

ISSUE: SF 450 and SF 278 review

DECISION: The SJA was the initial SF 450 and SF 278 review authority. The division commander was the final review authority.

RECOMMENDATION: Sustain.³⁶

ISSUE: Required ethics training and filing while deployed

DECISION: The BJA decided to take advantage of the combat extension privileges until they returned to the home unit.

RECOMMENDATION: Sustain. The combat extension privileges can free up the deployed JA's time so he/she can devote greater effort and time to more immediate legal issues arising in the deployed environment.³⁷

ISSUE: Completion of the OGE 450

DECISION: The TF 525 commander had previous experience with the completion of OGE 450's; therefore, their completion was a priority. The commander wanted all 450s completed in theater, which was actually not difficult to accomplish.

RECOMMENDATION: Educate yourself and the commander before deployment on the OGE 450 process. It is also important to explain the process to those officers called upon to complete the form.³⁸

ISSUE: Filing of financial disclosure reports

DECISION: Only the brigade commander had to file and the online filing was a requirement.

RECOMMENDATION: Do not hesitate to contact the Department of Defense (DoD) Standards of Conduct Office with any questions you may have. They are very helpful.³⁹

ISSUE: Deferment of SF 278 and OGE Form 450 filings

DECISION: Most individuals in the unit took advantage of the deferment for filing allowed due to their presence in a combat zone. However, as this is a deferment, not an excusal, the unit returned home to find the current years filing now due before the deferred one from the previous year.

RECOMMENDATION: The ethics rules require adjustment and clarification to the field to prevent this from happening.⁴⁰

OEF ISSUE: Timely filing of SF 278 forms and OGE 450 forms

³⁶ *Id.*

³⁷ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

³⁸ 525th Battlefield Surveillance Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (12 Mar. 2009) [hereinafter TF525 2009 OIF AAR] (on file at CLAMO).

³⁹ 1BCT, 4ID 2009 OIF AAR, *supra* note 13.

⁴⁰ XVIII ABC 2009 OIF AAR, *supra* note 14.

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DECISION: The commander utilized his CONUS SJA to file his SF 278. Some officers responsible for submitting OGE 450 forms elected to request a “combat extension.”

RECOMMENDATION: Ensure filers receive education about the requirement before deploying. In addition, (although it posted after the filing deadline) the FRAGO generated by the Theater Ethics Advisor (TEA) was helpful in reminding filers about the requirement.⁴¹

Ethics Counselor Appointment & Training

OIF ISSUE: Appointment of ethics advisors

DECISION: Ethics advisors received their appointment at division level before leaving Germany. MNC-I did not provide the authority to appoint ethics advisors at the division.

RECOMMENDATION: Improve. MNC-I should provide the division authority to appoint ethics advisors.⁴²

ISSUE: Ethics counselors’ certification

DECISION: Before deployment, the SJA certified his ethics counselors according to United States European Command (USEURCOM) policy. Upon arrival in theater, the SJA did not require recertification; however, ethics counselors had to recertify in accordance with CENTCOM and MNF-I policy.

RECOMMENDATION: Improve. Before arrival in theater, understand the theater policy and that of the higher headquarters.⁴³

ISSUE: Appointed ethics advisor

DECISION: The BJA was not the appointed ethics advisor; however, the BJA assumed the role for the brigade.

RECOMMENDATION: Improve. The SJA should formally appoint the BJA as an ethics advisor.⁴⁴

ISSUE: Additional training on ethics issues

DECISION: The division AdLaw attorneys, who had only received training on ethics issues during the Judge Advocate Officer Basic Course (JAOBC), noted they often encountered ethical issues in responding to command questions and conducting fiscal law reviews. Although the Chief of AdLaw handled most queries, the other AdLaw needed sufficient knowledge to handle ethical issues in his absence and could therefore have benefited from additional training.

RECOMMENDATION: Improve. AdLaw attorneys may find it helpful to attend the Ethics Counselors course at the Judge Advocate General’s Legal Center and School (TJAGLCS) before deployment.⁴⁵

⁴¹ 420th EN BDE 2009 OER AAR, *supra* note 19.

⁴² IAD 2009 OIF AAR, *supra* note 1.

⁴³ *Id.*

⁴⁴ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

ISSUE: Ethics training on gifts and interaction with local & third country nationals

DECISION: None.

RECOMMENDATION: JAs need additional training on ethics, particularly on receiving gifts from foreign officials, and garrison type issues in dealing with local and third country nationals (vendors, interpreters and various contractors).⁴⁶

Gifts

OIF ISSUE: Gifts from the GoI

DECISION: The commander accepted gifts on the behalf of the U.S.

RECOMMENDATION: Sustain. Follow the Joint Ethics Regulations (JER).⁴⁷

ISSUE: Gifts of weapons

DECISION: The division policy was one weapon per unit. A newly established unit received an exception to policy.

RECOMMENDATION: Sustain. Follow division policy. Contact division to determine exceptions. Ensure division policy comports with higher headquarters' authorities.⁴⁸

ISSUE: Foreign gifts to commanders

DECISION: Dignitaries, government officials, and other Iraqi nationals frequently gave the Regimental Commanding Officer (RCO) gifts. The Regimental JA (RJA) developed a persistent system to identify, catalogue, and store the gifts in compliance with the Joint Ethics Regulation (JER), and other applicable policies and orders.

RECOMMENDATION: Learn the gift rules as soon as possible (your commander will undoubtedly receive gifts and ask you what he is supposed to do with them) and publish information papers to inform your commanders. Try to perform the legal reviews as the gifts come into the command's possession.⁴⁹

ISSUE: Identifying policies on gift acceptance authorities

DECISION: AdLaw attorneys found it difficult to determine the applicable policy in relation to authority to accept gifts on behalf of troops because some guidance was contained in an information paper, while some was in a FRAGO, etc.

⁴⁵ 4ID 2009 OIF AAR, *supra* note 2.

⁴⁶ 50th Infantry Brigade Combat Team, New Jersey Army National Guard, Office of the Command Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – May 2009 (25 May 2009) [hereinafter 50 IBCT (NJARNG) 2009 OIF AAR] (on file at CLAMO).

⁴⁷ 1AD 2009 OIF AAR, *supra* note 1.

⁴⁸ *Id.*

⁴⁹ 3d Armored Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – January 2009 (22 Apr. 2009) [hereinafter 3ACR 2009 OIF AAR] (on file at CLAMO).

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RECOMMENDATION: Improve. Commanders should ideally issue guidance for accepting gifts in a single document.⁵⁰

ISSUE: **Disposition of cases involving Soldiers accepting gifts**

DECISION: The unit court-martialed individuals who improperly accepted gifts.

RECOMMENDATION: Sustain.⁵¹

ISSUE: **Gifts in a deployed environment**

DECISION: The BCT legal office established a system very early for the necessary review of gifts.

RECOMMENDATION: Bring this issue up during predeployment training. The unit's members have to know of the requirements for a legal review before they arrive in country.⁵²

ISSUE: **Gifts to General Officers**

DECISION: There were many gifts provided to general officers over the course of the deployment. The majority of these gifts were under the allowable limit. The aide was responsible for the tracking of the gifts.

RECOMMENDATION: Ensure the aide maintains the proper paperwork and understands the need to maintain a relationship with the AdLaw section for review and reporting purposes. Do not wait until the end of tour to process gifts—handle them as they come in to avoid time pressures before redeployment.⁵³

OEF **ISSUE:** **Gifts from prohibited sources**

DECISION: The CG received unsolicited gifts from prohibited sources, such as news agencies, as well as subordinates during battlefield circulation. The CG's aide was very good about notifying the administrative law section about all such gifts. Although the prohibited sources clearly gave these gifts by virtue of the CG's official position, there was a misconception among members of the staff that the CG could receive such gifts in excess of the limits in the Joint Ethics Regulation (JER) by accepting them as "gifts to the Army." Based on the advice of the administrative law section, the CG either paid fair market value for the gifts or sent them back.

RECOMMENDATION: Sustain. Ensure commanders and staff officers understand there is no exception for acceptance of gifts from prohibited sources as gifts to the Army or the United States, unlike the exception for gifts from foreign governments. Make sure the Ethics Counselor completes a written legal review for each gift.⁵⁴

ISSUE: **Valuation of gifts from foreign governments**

DECISION: It was difficult for the administrative law section to determine the fair market value

⁵⁰ 4ID 2009 OIF AAR, *supra* note 2.

⁵¹ 4th 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

⁵² 4ID 2009 OIF AAR, *supra* note 2.

⁵³ XVIII ABC 2009 OIF AAR, *supra* note 14.

⁵⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

(FMV) in the United States for some gifts received from foreign governments. For example, rugs greatly varied in price depending on the size and quality. The administrative law section followed a hybrid approach to valuation, both consulting multiple vendors at the local bazaars and using internet resources to determine the U.S. FMV. When there was any doubt as to whether the gifts exceeded the \$335 limit for gifts from foreign governments, the administrative law attorneys erred on the side of caution and advised acceptance of the gift on behalf of the United States.

RECOMMENDATION: Improve. There was too much guesswork in the valuation of gifts from foreign governments. The General Services Administration (GSA) ought to have a central repository to which units can upload photos and descriptions of foreign gifts to obtain an approved FMV determination.⁵⁵

ISSUE: Where to deposit gifts from foreign governments

DECISION: Once the CG accepted gifts from foreign governments on behalf of the United States, the problem became what to do with the gifts. Although they attempted to send them to the GSA, the gifts came back in the mail as undeliverable. Similarly, they unsuccessfully tried the Office of the Administrative Assistant, Directorate of Logistics, which, according to the TJAGLCS Standards of Conduct Deskbook, is the central repository for gifts received on behalf of the Army. They ultimately advised the command to leave the gifts in the division headquarters as property of the United States.

RECOMMENDATION: Improve. There should be explicit guidance on where to deposit gifts accepted on behalf of the United States. It is impractical and cost prohibitive to send these gifts back to the United States, where they would have little meaning or use. It makes more sense to contact a central agency and get approval to leave the gifts in the receiving headquarters as government property.⁵⁶

ISSUE: Official Representation Fund (ORF) gifts and coins

DECISION: Gifts to foreign officials are an essential part of the quasi-diplomatic efforts of today's commanders. These issues affect the leadership of the command across the board.

RECOMMENDATION: Improve. Prepare these things before deployment. You will need them immediately upon arriving in theater.⁵⁷

II.E. Freedom of Information Act (FOIA)/Privacy Act (PA)

OIF ISSUE: Archiving and saving investigations for FOIA retrieval

DECISION: Multi-National Force – West (MNF-W) previously implemented a FRAGO that required archiving all investigations at Marine Corps Central Command (MARCENT). This allowed for continuity throughout the effort in Iraq and proved especially helpful when processing FOIA requests. MNF-W archived investigations by hanging a copy of the investigation on their website. This portion of the website was password protected, which allowed for limited access. MARCENT was able to obtain a copy of the investigation by going

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

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on the MNF-W website. This allowed MARCENT to have almost immediate access to completed investigations with minimal impact to the SJA staff.

RECOMMENDATION: Continue to archive all investigations at MARCENT. This will allow “one stop” shopping for FOIA requests and will alleviate a deployed SJA having to dedicate time and resources to search for historical documents. However, due to limited bandwidth, recommend coordinating with the Information Management Officer (IMO) to ensure MARCENT is able to access investigations.⁵⁸

ISSUE: FOIA records retention policy

DECISION: There was no FOIA records retention policy at the MNF-I, MNC-I, division, or brigade levels. Consequently, the OSJA found it difficult to respond to some FOIA requests, such as one for all records of CERP condolence payments in Iraq dating back to 2003.

RECOMMENDATION: Improve. MNF-I and MNC-I should develop and issue a long-term record retention policy to ensure consistency and transparency. In addition, outgoing units need to transfer files and records to the incoming unit in a manner that ensures rapid retrieval.⁵⁹

OEF ISSUE: FOIA training

DECISION: While the administrative law attorneys understood the substantive aspects of FOIA with the help of desk book materials from TJAGLCS, they needed additional training in the FOIA process. Some practical considerations included what staff section had overall responsibility, who should redact FOIA responses, who was the classification authority, who was the initial review authority, and to what staff sections to route FOIA requests.

RECOMMENDATION: Improve. At a minimum, all personnel and staff sections participating in the FOIA process in a deployed environment should receive training in garrison from the installation FOIA representative. In addition, given the high volume of FOIA requests to deployed units, CENTCOM should consider sending a trained DoD civilian to Afghanistan to work FOIA issues.⁶⁰

FOIA Requests

OIF ISSUE: FOIA requests from foreign nations

DECISION: Officials from the Netherlands requested a release of information under FOIA. Division sent the request to the Initial Denial Authority (IDA). MNC-I generated the denial.

RECOMMENDATION: Sustain. A foreign government is a “person” under the Act. The law, however, precludes “intelligence agencies” from disclosing records in response to any FOIA request made by any foreign government. Under the Act, the DoD is an “intelligence agency.”⁶¹

ISSUE: Response to FOIA and Privacy Act (PA) requests

⁵⁸ I Marine Expeditionary Force (Forward), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – February 2009 (19 Feb. 2009) [hereinafter I MEF (FWD) 2009 OIF AAR] (on file at CLAMO).

⁵⁹ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

⁶⁰ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

⁶¹ 1AD 2009 OIF AAR, *supra* note 1.

DECISION: Paralegals (27D) drafted the responses to all FOIA and PA requests.

RECOMMENDATION: None. This was an unusual situation. The 27D assigned to preparing FOIA and PA responses was a trained attorney.⁶²

ISSUE: **FOIA requests for hostile death investigations**

DECISION: The BJA handled few, if any, FOIA requests for hostile fire death investigations.

RECOMMENDATION: N/A.⁶³

ISSUE: **Responding to wide-scale FOIA requests including information held by other units**

DECISION: During the deployment, the division received a request from the ACLU for the total numbers of all friendly fire incidents resulting in deaths since 2005, as well as for all escalation of force (EOF) incidents resulting in Iraqi deaths. Because units tend to remove their own files from theater upon departure, along with any files pertaining to units organic to them, this division only had data for 2006 onward. The division processed its own records and also forwarded the ACLU request to the unit responsible for the earlier period.

RECOMMENDATION: Improve. Units preparing to depart theater may wish to leave a copy of investigations conducted in that area of operations (AO) with the incoming unit. In view of recent DoD constraints on universal serial bus (USB) port use, units preparing to deploy should develop a plan for removing copies of important data from theater.⁶⁴

ISSUE: **American Civil Liberties Union (ACLU) FOIA request**

DECISION: TF 525 complied with the ACLU FOIA request. It was much easier to comply with this onerous task after receipt of the FOIA redaction software from MNC-I.

RECOMMENDATION: Get the FOIA redaction software from your higher headquarters before deployment.⁶⁵

ISSUE: **ACLU FOIA request**

DECISION: The scope of this request was so large, the unit stood up "Task Force (TF) FOIA" to handle the request.

RECOMMENDATION: As outside entities have success with these wide-ranging requests, it becomes more likely similar wide requests will occur in the future. Be prepared to allocate the necessary resources to fill the request. The CENTCOM OSJA negotiated the ACLU FOIA request. When receiving these requests in theater, be sure to contact higher (MNF-I and CENTCOM) to determine if any other legal office is addressing such requests as well.⁶⁶

ISSUE: **"TF FOIA"**

⁶² *Id.*

⁶³ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

⁶⁴ 4ID 2009 OIF AAR, *supra* note 2.

⁶⁵ TF525 2009 OIF AAR, *supra* note 38.

⁶⁶ XVIII ABC 2009 OIF AAR, *supra* note 14.

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DECISION: MNC-I received a complex FOIA request and created TF FOIA to answer this request. The TF came to the division to collect records responsive to the FOIA request. Division personnel informally handled the logistics of support to the TF.

RECOMMENDATION: Improve. Use the FRAGO process to direct support for missions such as these. The FRAGO ensures the entire staff, not just the OSJA, is aware of the need for support.⁶⁷

OEF ISSUE: Responding to FOIA requests

DECISION: The CSTC-A J-6 did not have a FOIA POC and was often overwhelmed with the numerous and burdensome FOIA requests the unit received from CENTCOM, in particular the ACLU request and corresponding litigation. The OSJA did not inherit a viable filing system and thus were not sure how the command responded in the past to these similar FOIA requests. The CSTC-A AdLaw attorney worked closely with the J-6 and CENTCOM SJA POC to ensure command compliance with FOIA requests.

RECOMMENDATION: None.⁶⁸

ISSUE: Lead staff section on FOIA

DECISION: The division experienced a robust FOIA workload. Although the G6 section had a personnel billet for a Freedom of Information Agreement (FOIA) officer, the G6 appointed individual augmentees to the position without providing sufficient training. While the administrative law section performed legal reviews of FOIA responses, G6 also tried unsuccessfully to get the OSJA to do all the redactions as well.

RECOMMENDATION: Improve. G6 should have the lead on FOIA and should perform all redactions.⁶⁹

Redactions

OIF ISSUE: FOIA redactions

DECISION: FOIA responsibilities were unclear in relation to investigations. Initially the BCT redacted any requested reports, but division and/or corps later did so. BCT JAs can be responsible for this function if provided with the software.

RECOMMENDATION: Improve. Responsibility for this function should be clearly delineated.⁷⁰

ISSUE: Required use of REDAX™

⁶⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

⁶⁸ CSTC-A 2008 OEF AAR, *supra* note 6.

⁶⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

⁷⁰ 1st Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (15 Jan. 2009) [hereinafter 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

DECISION: During the deployment, the corps SJA mandated the use of the REDAX™ software when responding to FOIA requests. Office procedures changed to meet the new requirement.

RECOMMENDATION: When implementing policy changes at the corps level, provide advance warning to subordinate units. More specifically, promulgate a clear policy with respect to the use of REDAX™. If possible, make the policy known to incoming units before the deployment.⁷¹

ISSUE: Availability of REDAX™

DECISION: Only two licensed copies of REDAX™ were available at the division during the deployment. The mandatory requirement to use REDAX™, coupled with the shortage of licensed copies, lead to processing delays.

RECOMMENDATION: Improve. Make additional licensed copies of REDAX™ available at both the brigade and division.⁷²

ISSUE: REDAX™ Training

DECISION: REDAX™ users learned to use the program on the job without any formal training.

RECOMMENDATION: Improve. Provide training before changing policy or mandating use of a computer program such as REDAX™.⁷³

ISSUE: FOIA redaction software and licenses

DECISION: The BJA performed the job of redaction for those documents requiring the work but did not have the REDAX™ software available.

RECOMMENDATION: Improve. Use of the REDAX™ software gives documents released to the public a more professional look.⁷⁴

ISSUE: FOIA redaction software and licenses

DECISION: The division brought FOIA redaction software and licenses with them to theater. You must have a license before you can utilize the software. The software was very helpful because the AdLaw section had to redact several investigations during the deployment. Without the software, the redaction process would have been more time consuming and less efficient.

RECOMMENDATION: Sustain. Ensure your division legal team brings redaction software and at least 4-6 licenses. This is necessary because all of the legal shops will do some sort of redacting during the deployment.⁷⁵

ISSUE: Training units to do their own redactions

DECISION: The division AdLaw shop decided to encourage their units to do their own redactions. They gave the units access to the redaction software and drafted an information paper

⁷¹ 1AD 2009 OIF AAR, *supra* note 1.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

⁷⁵ 4ID 2009 OIF AAR, *supra* note 2.

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that explained the redaction rules. The legal shop then reviewed the redactions to ensure they were in accordance with the rules.

RECOMMENDATION: Sustain. As long as you train your units on redaction, there is no reason why they cannot redact their own investigations.⁷⁶

ISSUE: **Responsibility for FOIA redaction**

DECISION: The division was responsible for redactions on all killed in action (KIA) investigations. The AdLaw NCOIC carried out the redactions using Adobe REDAX™ software (this is now the only means used for redacting investigations), then sent a copy of the redacted and unredacted versions to MNC-I for release after review by the division G2 security manager. The brigades were not responsible for FOIA redactions. Using Adobe REDAX™ software requires an Adobe Professional license.

RECOMMENDATION: Sustain. Deploying divisions should ensure their personnel have the required software and training.⁷⁷

ISSUE: **Redactions**

DECISION: The brigade legal section had to do redactions for some investigations. The BJA allowed the NCOIC to perform this task.

RECOMMENDATION: Use paralegals to perform this task. They are more than capable of doing a great job.⁷⁸

ISSUE: **Redactions**

DECISION: The training of paralegals in the art of redaction is paramount to successfully managing the FOIA workload. The REDAX™ software proved invaluable and should be available to legal offices at all command levels. Additionally, the unit allowed divisions and Corps separates to send their investigations to the OSJA AdLaw section to assist in redactions, thus lessening the burden on the subordinate units.

RECOMMENDATION: Sustain. Ensure the legal professionals who will be working in this area have the appropriate tools to facilitate the redaction process.⁷⁹

ISSUE: **Redactions**

DECISION: Paralegals redacted information from FOIA requests using the REDAX™ software based on MNC-I policy. Although the MNC-I policy memorandum listed specific categories of information for redaction, the paralegals often had to use their judgment as to what information not squarely covered by the policy was nonetheless sensitive.

RECOMMENDATION: Sustain. With the proper training, paralegals are more than capable of performing the required redaction.⁸⁰

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ 1BCT, 4ID 2009 OIF AAR, *supra* note 13.

⁷⁹ XVIII ABC 2009 OIF AAR, *supra* note 14.

⁸⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

II.F. Inspections

OIF ISSUE: **Inspections of civilian living quarters**

DECISION: The office prepared an information paper for commanders to educate them on the process.

RECOMMENDATION: Sustain. If an issue will be recurring, resolve it with standing guidance.⁸¹

ISSUE: **Authority to inspect civilians on FOBs**

DECISION: The FOB commander has jurisdiction over the places he or she has under his or her control. This authority extends to the inspection of places occupied by civilians and non-military forces.

RECOMMENDATION: Sustain. Ensure commanders understand the distinctions between inspections and searches for evidence.⁸²

II.G. Internet Use

OIF ISSUE: **Common Access Card (CAC) access**

DECISION: CAC services were often difficult to obtain. Fortunately, most computers were not CAC access only. However, for those computers that were, this presented obstacles. Due to the difficulty that sometimes exists in obtaining CAC services, maintaining dual computer access may be a good thing.

RECOMMENDATION: Improve in the use of dual access computers or improve access to CAC services.⁸³

ISSUE: **“Blackouts” of internet service**

DECISION: Brigade policy controlled “blackouts,” or interruptions of internet service. Division did not influence the procedure.

RECOMMENDATION: Sustain.⁸⁴

ISSUE: **Unfettered internet access by OSJA personnel**

DECISION: OSJA attorneys sometimes needed to conduct research using websites normally blocked for access from NIPR workstations. The AdLaw NCOIC learned the procedure for justifying attorney access to the website in question. A quick workaround was to obtain access

⁸¹ 1AD 2009 OIF AAR, *supra* note 1.

⁸² *Id.*

⁸³ 3d Infantry Division (Mechanized), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2007 – June 2008 (23 Sep. 2008) [hereinafter 31D 2008 OIF AAR] (on file at CLAMO).

⁸⁴ 1AD 2009 OIF AAR, *supra* note 1.

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via the G2 section, because it had some workstations allowing unfettered internet access due to the need to monitor extremist websites.

RECOMMENDATION: Sustain. OSJA personnel should be aware of both methods for obtaining unfettered internet access.⁸⁵

ISSUE: Unclassified internet blackouts

DECISION: Often the S-6 disabled the internet after a casualty until the unit notified the Soldier's family. This was a significant hindrance to the legal mission since JAs do most of their work via the internet (i.e. legal research, witness coordination, etc.). Therefore, the BJA received an exception to policy and was able to continue to use the internet during blackouts.

RECOMMENDATION: Sustain. The BJA should request an exception to the blackout policy before deployment to prevent interference with the legal mission.⁸⁶

OEF ISSUE: Legal review of emails

DECISION: After numerous cases of the misuse of the Bagram-wide ("BAF-ALL") official email distribution list, the Chief of Staff required all such emails to receive a legal review.

RECOMMENDATION: This is an example of the expansive nature of administrative law. While the OSJA should support the command's directives, it may have been more appropriate for someone in the G6 shop to perform this duty with legal guidance. The OSJA should provide broad guidance to G6, but G6 should be responsible for daily compliance.⁸⁷

Personal Internet Access

OIF ISSUE: Access to unauthorized internet sites

DECISION: The command blocked any discovered unauthorized internet sites.

RECOMMENDATION: Improve. Ensure personnel understand and follow official internet use policies.⁸⁸

ISSUE: Privately owned ISPs

DECISION: Soldiers purchased satellite equipment and built private internet networks. Soldiers could charge others for internet service provided they did not operate a business for profit. The MWR department eventually provided free wireless internet service in common areas.

RECOMMENDATION: Discontinue privately owned internet systems. The private ISPs encountered subscribership contractual issues once free MWR internet service became available on the FOB.⁸⁹

⁸⁵ 4ID 2009 OIF AAR, *supra* note 2.

⁸⁶ 4th Brigade Combat Team, 3d Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – December 2008 (25 Mar. 2009) [hereinafter 4BCT, 3ID 2009 OIF AAR] (on file at CLAMO).

⁸⁷ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

⁸⁸ 1AD 2009 OIF AAR, *supra* note 1.

⁸⁹ *Id.*

ISSUE: FOB personal internet access

DECISION: Soldiers contracted with a local vendor for services to provide the troops a fee-based personal internet service.

RECOMMENDATION: Sustain. Ensure the contract includes a provision accounting for mandatory blackout periods occurring on the FOB.⁹⁰

ISSUE: ISP contractor vetting

DECISION: An ISP contractor took Soldiers' money for internet service then disappeared without providing the service. Failure of the contracted internet service provider to deliver the internet service to those living and working on the FOB remedied itself when a new individual appeared to fill the contract's requirements.

RECOMMENDATION: Sustain. Contractor vetting and contract performance monitoring helps prevent failure and/or inadequate contract performance.⁹¹

ISSUE: Personal internet agreements among Soldiers

DECISION: The unit allowed Soldiers to purchase individual internet services from LNs on the FOB. Usually, one Soldier would purchase the router along with the service and then allow other Soldiers to access the internet from their rooms for a fee. This often caused problems between the Soldiers because the internet either did not work or was very slow. Consequently, Soldiers wound up in the legal office wanting their money back.

RECOMMENDATION: Suggest to your commander that he/she not allow this practice. Give a brief to all Soldiers before deployment stating that this is off limits.⁹²

[See also X.D.2. DOTMLPF—Material—Information Management]

II.H. Investigations

OIF ISSUE: Security spillage investigations

DISCUSSION: Due to the high volume of classified materials in Iraq, spillages occur with greater frequency and require investigation. The BN JA had to work closely with the Regimental JA to ensure that these investigations satisfied the requirements of SECNAVINST M-5510.36.

RECOMMENDATION: Review Chapter 12 of SECNAVINST M-5510.36 before your battalion initiates a spillage investigation. Make sure the investigation officer uses the sample investigation format contained in the exhibits to Chapter 12, because it is slightly different from the standard JAGMAN format.⁹³

⁹⁰ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

⁹¹ *Id.*

⁹² 4BCT, 3ID 2009 OIF AAR, *supra* note 86.

⁹³ 1st Battalion, 9th Marines, Battalion Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – October 2008 (9 Jan. 2009) [hereinafter 1/9 Marines 2009 OIF AAR] (on file at CLAMO).

OEF ISSUE: **Aviation specific terminology**

DECISION: The BJA joined the aviation brigade eighteen months before deployment. This allowed her to integrate into the brigade and learn much of the aviation specific terminology. It also helped her to better understand the investigations and conduct thorough legal reviews.

RECOMMENDATION: Sustain. It benefits you to learn the aviation terminology before deployment. If you have time for nothing else, learn the differences between the aircraft.⁹⁴

ISSUE: **Loss of funds investigations**

DECISION: Since the brigade was part of the Joint Logistics Command (JLC) in Afghanistan, there were many “loss of funds” investigations. Financial Management Regulation (FMR) 05-06 directs these investigations. The BJA had no prior experience or education on these investigations, so she learned as she went. Luckily, there were two majors in the finance unit who knew how to investigate these issues.

RECOMMENDATION: Improve. If you are the JA for a logistics command with a finance company, familiarize yourself with FMR 05-06 before deployment.⁹⁵

II.H.1. Army Regulation (AR) 15-6 Investigations

OIF ISSUE: **DA PAM 15-6**

DECISION: This publication is in need of revision. It spends nearly all of its pages on the formal board procedures. These formal procedures are a very small part of the AR 15-6 work commands do on a daily basis.

RECOMMENDATION: Update the publication to provide more guidance to the IO performing an informal investigation. Someone should hyperlink the regulation’s text to forms and references.⁹⁶

ISSUE: **Publishing findings**

DECISION: The release of investigative findings was at the discretion of the BCT commander. The unit did not inform individuals exonerated by an investigation of the results as a matter of practice.

RECOMMENDATION: Improve. The unit should inform those exonerated by an investigation of the results.⁹⁷

ISSUE: **Marine endorsements of Army investigations**

⁹⁴ 101st Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, December 2007 – December 2008 (13 May 2009) [hereinafter 101st CAB 2009 OEF AAR] (on file at CLAMO).

⁹⁵ 101st Sustainment Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, January 2008 – February 2009 (13 May 2009) [hereinafter 101st SUST BDE 2009 OEF AAR] (on file at CLAMO).

⁹⁶ 1AD 2009 OIF AAR, *supra* note 1.

⁹⁷ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

DECISION: Units provided the MNF-W CG with several Army 15-6 investigations for his review. The process to obtain the CG's endorsement on these investigations was similar to the process used to endorse a JAGMAN. The CG endorsed investigations of "operational" incidents (such as EOF incidents, resulting in death, serious bodily injury, or substantial property damage). The CG could direct re-set training and, if follow on UCMJ action was required, provide the investigation to MNC-I for the Army to adjudicate.

RECOMMENDATION: None. There is no problem endorsing an Army 15-6 as if it were a JAGMAN investigation.⁹⁸

OEF ISSUE: Investigations in a joint environment

DECISION: It is very unwieldy to have every service have their own standards for conducting investigations. An example of this is the use of a JAGMAN (USMC) investigation versus an AR 15-6 investigation.

RECOMMENDATION: There should be a joint standard for investigations accepted by all the services.⁹⁹

ISSUE: Conducting classified investigations

DECISION: Due to the nature of combat operations in Afghanistan, the CJTF-101 OSJA quickly determined that just about every investigation included some classified information. In addition, CJTF-101 served as a conventional/lead unit for investigations into classified matters involving other nations or units. The other unit(s) involved also did parallel investigations, one classified and one unclassified, when the situation warranted doing so.

RECOMMENDATION: OSJAs must train to conduct and draft classified investigations, and learn how much of an investigation should be classified in order to avoid over-classification issues. Further, when operating in an environment where SOF operations are commonplace, it is extremely valuable to have a judge advocate who has legal experience within the SOF community.¹⁰⁰

Investigations Workload

OIF ISSUE: Investigation workload

DECISION: This regiment conducted approximately 250 investigations, about 200 of which were AR 15-6 investigations (the remainder were Line of Duty (LODs) and Financial Liability Investigations of Property Loss (FLIPLs)).

RECOMMENDATION: Sustain. Regimental and brigade JAs should anticipate handling a large volume of investigations.¹⁰¹

ISSUE: Number and types of investigations

⁹⁸ I MEF (FWD) 2009 OIF AAR, *supra* note 58.

⁹⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

¹⁰⁰ *Id.*

¹⁰¹ 2d Stryker Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, August 2007 – May 2008 (17 Feb. 2009) [hereinafter 2SCR 2009 OIF AAR] (on file at CLAMO).

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DECISION: The RJA used redacted copies of old investigations to brief investigative officers, and incorporated all of the relevant data into a master tracker to keep the command team informed. The unit completed EOF incident, negligent discharge, friendly fire, law of armed conflict, and virtually every species of investigation known to the U.S. Army.

RECOMMENDATION: Stay on top of your investigations practice by developing, borrowing, or stealing templates and trackers for each type of investigation. The 3d ACR is 33% larger than your average BCT, so prepare your team for a lot of work in this area.¹⁰²

ISSUE: Investigation workload

DECISION: The AdLaw section dealt with a significant volume of investigations during this deployment, resulting from more than 200 negligent discharges, 94 killed in action, a few friendly fire incidents, and several escalation of force (EOF) incidents. The number of investigations tracked by the AdLaw section was initially about 200 per week, but decreased over the course of the deployment to about 20.

RECOMMENDATION: Deploying legal teams should anticipate a requirement to handle a large volume of investigations.¹⁰³

ISSUE: Investigation statistics

DECISION: The BCT conducted 160 SBCT or division level AR 15-6 investigations. Many more occurred at the battalion level. Due to this amount of work, it is very important for the IO to understand the assignment/appointing order and the AR 15-6 guidelines right from the start.

RECOMMENDATION: Be prepared to handle a high number of investigations and be sure IOs complete training. Hold IO training for all officers before entering theater.¹⁰⁴

ISSUE: Investigations workload

DECISION: Investigations took a huge time commitment from the BJA. This included assisting the investigation officer and then conducting the legal review.

RECOMMENDATION: Educate yourself on the administrative requirements of investigations, the timelines required in country, and the “triggering” events that require an investigation.¹⁰⁵

ISSUE: Number of investigations

DECISION: The unit averaged almost one investigation a day. The affected battalion had a say in the identity of the appointed IO.

RECOMMENDATION: Discuss the investigations workload with the XO before the deployment.¹⁰⁶

¹⁰² 3ACR 2009 OIF AAR, *supra* note 49.

¹⁰³ 4ID 2009 OIF AAR, *supra* note 2.

¹⁰⁴ 2d Stryker Brigade Combat Team, 25th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – March 2009 (20 Apr. 2009) [hereinafter 2SBCT, 25ID 2009 OIF AAR] (on file at CLAMO).

¹⁰⁵ 214th Fires Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, April 2007 – July 2008 (20 Mar. 2009) (on file at CLAMO).

Tracking & Filing of Investigations

OIF ISSUE: MARCENT role

DECISION: MARCENT serves as the service administrative disposition authority for investigations. While units retained administrative authorities as Special Court Martial Convening Authority (SPCMCA) and General Court Martial Convening Authority (GCMCA) while deployed, upon redeployment MARCENT assumed these authorities over investigations. By forwarding all investigation to MARCENT, this should provide a capable repository for each unit's investigations while deployed in CENTCOM area of responsibility (AOR).

RECOMMENDATION: MARCENT should formalize this agreement in doctrine and directives.¹⁰⁷

ISSUE: Oversight of investigations

DISCUSSION: Everyone from the adjutant to the commander will be looking to you for guidance when an investigation is required. A preliminary inquiry (PI) will satisfy most investigation requirements. Although your adjutant can track all the minor investigations, the JA needs to take the lead on handling all significant PIs and Command Investigations.

RECOMMENDATION: Do not become the "investigations guy." However, all investigations required to go up the chain of command will travel via the SJA. Therefore, keep track of all investigations sent higher in the chain of command and make sure you receive the endorsements to the command's investigations and share them with the adjutant and the CO/XO.¹⁰⁸

ISSUE: Create an investigations matrix

DECISION: The division tracked the status of investigations using a matrix. Only some of the units in the chain of command were using a matrix to track investigations.

RECOMMENDATION: Improve. Track all types of investigations with a standardized matrix. The JAG Corps should promulgate the matrix standard. The design of the matrix should come from the end-users, with JAG Corps input. Units conducting an investigation should provide input to the matrix and separately attach any amplifying information under separate correspondence. Use the matrix as a tool to ensure timely completion of investigations and to ensure processing to final completion, to include any required follow through actions. If adopted by the JAG Corps, add the matrix format into standard reference libraries (i.e., CLAMO Deployed JA DVD).¹⁰⁹

ISSUE: Management of investigation files

DECISION: Many of the files required to complete an investigation were unavailable in electronic or paper format. The unavailability of digital attachments, enclosures, and exhibits to

¹⁰⁶ 1BCT, 4ID 2009 OIF AAR, *supra* note 13.

¹⁰⁷ II Marine Expeditionary Force (Forward), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2007 – February 2008 (8 July 2008) (on file at CLAMO).

¹⁰⁸ 1/9 Marines 2009 OIF AAR, *supra* note 93.

¹⁰⁹ 1AD 2009 OIF AAR, *supra* note 1.

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investigations frustrated the search for information and sometimes delayed the timely release of investigations.

RECOMMENDATION: Improve. Make electronic and paper copies of all current investigations before departing the AO. Digitize all enclosures, attachments, and exhibits. Ensure the incoming unit has all the investigations in both formats, and that both are readable. Make the investigation files a “turnover” item.¹¹⁰

ISSUE: Access to prior investigations

DECISION: You will need access to your investigations after you leave theater. Those remaining in theater will also require access to the same investigations.

RECOMMENDATION: Bring a copy of your investigations home with you on CDs. Additionally, leave electronic copies and a good index with the unit replacing you.¹¹¹

ISSUE: OSJA tracking of ongoing investigations

DECISION: The division SJA briefed the commander every morning on the number and types of ongoing investigations. The OSJA also submitted a weekly report to MNC-I, summarizing the status of all investigations. During the first part of the deployment, an AdLaw attorney rather than a paralegal was responsible for tracking investigations. This proved helpful because brigades sometimes sent inaccurate reports and were unresponsive to paralegal requests for clarification.

Commanders and staffs sometimes ask the AdLaw section to take on a variety of investigation-related tasks. This can include being responsible for the tracking of investigation-related statistics, such as suicide numbers, losses of sensitive items, negligent discharge numbers, etc. However, while the OSJA may be able to provide some numbers, the OSJA is not the office of primary interest for most matters. It therefore does not have full visibility of the issue, and the investigation numbers often do not add up.

RECOMMENDATION: Sustain. Legal teams preparing to deploy should anticipate a requirement to develop procedures for tracking and reporting on a large number of investigations. SJAs and deputy SJAs should also be prepared for command requests for the OSJA to take responsibility for a matter more properly within another staff branch’s purview.¹¹²

ISSUE: Tracking investigations

DECISION: The division AdLaw NCOIC was normally responsible for tracking reopened investigations. He also tracked executive summaries (EXSUMs) to determine whether an investigation was required. If so, he expected to see a report posted to the investigations portal in 7-10 days, although the commander sometimes abbreviated timelines (e.g., he required completion of negligent discharge investigations within 48 hours). Finally, he was responsible for tracking division approval of completed brigade investigations after posting to the portal. He tried to staff completed reports within 48 hours of receipt, or a least a day before the SJA would brief the commander. The commander did not delegate any authority to approve investigations.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² 4ID 2009 OIF AAR, *supra* note 2.

RECOMMENDATION: Division AdLaw sections should develop and implement procedures to staff and track investigations from initiation until approval at the division level.¹¹³

ISSUE: Transfer of completed investigations

DECISION: After the brigade commander signed the completed investigation, the brigade legal teams posted copies of it on a designated portal (to which normally only OSJA personnel had access). Posting rather than emailing investigation files allowed the transfer of up to 30MB rather than the email limitation of 7MB. The division AdLaw NCOIC received automatic notification of any new posting to the portal via an alert feature. He reviewed the investigation for completeness (e.g., whether the IO had made recommendations, signed the report, etc.). He also considered its substance (bringing any questions to an AdLaw attorney), and drafted the commander's response to it.

RECOMMENDATION: Sustain.¹¹⁴

ISSUE: Timeliness of investigations

DECISION: Investigations that required re-investigation tended to drag on for a long time. The division did not enforce time limits, except for those pertaining to FLIPLs and the 48-hour turnaround on negligent discharge investigations. Unless an investigation concerned a matter on which the division commander had visibility, commanders and staffs simply expected completion of investigations when personnel could find the time to get to them. No one at higher levels really put the division's feet to the fire in this regard. AdLaw personnel found this frustrating. In one case, the division had not yet closed a 2007 death investigation. Delays were usually due to leave or redeployment of required personnel.

RECOMMENDATION: Improve. A significant lapse of time following an incident makes it much more difficult to complete an investigation report and greatly reduces the report's utility.¹¹⁵

ISSUE: Tracking and storing investigations

DECISION: The MNF-I OSJA had to locate and deliver all investigative materials to the U.S. Attorney through CENTCOM regarding an incident involving Blackwater personnel. The OSJA conducted a search among its files, both hard and electronic, as well as requested the legal staffs of MNC-I also conduct a search for related materials among its files. Upon locating the materials, OSJA scanned the documents and emailed them to CENTCOM for delivery to the U.S. Attorney.

RECOMMENDATION: Sustain. Every legal office should maintain precise records of all the investigations it both had and currently has in its possession. A MFR should capture any actions related to the investigation, such as file transfers and information sharing regarding the investigation. This will help reduce duplicative work when requests for the same information come from the same requesting offices.¹¹⁶

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 21.

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ISSUE: Management and tracking of investigations

DECISION: Tracking down a particular investigation completed by a subordinate unit was often difficult, particularly when time was of the essence. This problem worsened when the unit who completed the investigation had redeployed.

RECOMMENDATION: Improve.¹¹⁷

ISSUE: Investigations tracker and database

DECISION: The division staff created an investigations tracker and database at the beginning of the deployment to track the status of investigations. The database tracked contract actions, 15-6 investigations, FLIPLs, and other time sensitive reports. It also included categories, such as negligent discharges, suicides, and loss of sensitive items, so the officer could quickly compile statistics and reports responsive to the commanding general's information requirements. The division promulgated the database to the brigades. However, they either used their own versions of a report tracking system or none at all. As a result, division paralegals had to transfer data manually from the brigade reports to the division database.

Updating the division database was time consuming and tedious. Division staff spent many hours obtaining and compiling information. Additionally, the database did not provide an easy method to identify time sensitive items, nor was it easy to locate information when requested by higher headquarters. Finally, the database was not viewable by other units, nor could they provide input.

RECOMMENDATION: Improve. Develop and implement a web-based, standard format database, which the headquarters and all subordinate units can access. The database should allow units to input, update, track, and append reports, as well as search and sort reports when there is an information requirement. The database must provide investigation timeline reminders. Until development of a single system, report tracking will always be incomplete and disjointed.¹¹⁸

ISSUE: Timeliness of AR 15-6 investigations

DECISION: The BCT imposed a 7-day time limit on all AR 15-6 investigations, regardless of who was the approval authority. Only the BCT XO could grant an exception. The BJA disseminated this requirement in a FRAGO, along with a requirement for the investigating officer (IO) to contact the BJA for a legal briefing upon appointment. The BJA maintained contact with the IOs throughout the investigation.

RECOMMENDATION: Sustain. Timely investigations are necessary to meet the command's information requirements. A short suspense helps to minimize the time IOs will be away from their normal duties.¹¹⁹

ISSUE: Filing of investigations

DECISION: The BJA instituted a practice of scanning all investigations, maintaining both a digital copy and the hardcopy at the BCT level, and sending a digital copy to division. Upon redeployment, the BJA brought both the hardcopy and a digital copy back to CONUS.

¹¹⁷ XVIII ABC 2009 OIF AAR, *supra* note 14.

¹¹⁸ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹¹⁹ 4-1 CAV 2009 OIF AAR, *supra* note 17.

RECOMMENDATION: Sustain. A central repository for investigations is essential to responding to FOIA and other information requests.¹²⁰

OEF ISSUE: Electronic investigations repository

DECISION: It is not feasible to maintain original paper copies of all investigations. Routine investigations must be stored electronically based on both their physical size and the ease of searches. The CJTF-101 administrative law section scanned all of the old investigations on hand, and made it their standard operating procedures (SOP) to scan new investigations, including scanning each exhibit as a separate document for easier access. They included a spreadsheet in the electronic database cataloging the investigations for easy retrieval. Because the CG was either the appointing authority or approval authority for the types of investigations that were most commonly the subject of FOIA and other requests, the division OSJA would always receive a copy of these investigations to scan into the electronic repository.

RECOMMENDATION: Sustain. As requests for copies of investigations increase, it is critical to maintain a central, easily searchable database.¹²¹

ISSUE: Timeliness of investigations

DECISION: The difficulty in travelling in the theater made longer deadlines the standard for investigations.

RECOMMENDATION: In some cases, the need to travel made 20-30 days the standard for completing an investigation.¹²²

Investigation Requirements

OIF ISSUE: Matrices of required investigations

DECISION: Every division under which this regiment served put out an investigations matrix, an amended version of the MNC-I matrix. One division added to the MNC-I investigations matrix by providing hotlinks to various resources. This was very helpful because the JAs did not then have to hunt through operations orders (OPORDs), FRAGOs, and regulations to determine the requirements for each investigation report. The JAs also used the investigations matrix to let other staff branches know the requirements.

RECOMMENDATION: Sustain. An investigations matrix, particularly one with hotlinks to relevant resources, is very helpful.¹²³

ISSUE: Higher Headquarters (HHQ) reporting requirements

DECISION: There was a spreadsheet used to satisfy the HHQ reporting requirement. The spreadsheet needed clarification, and units were constantly reinterpreting the investigative/submission requirements.

¹²⁰ *Id.*

¹²¹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

¹²² *Id.*

¹²³ 2SCR 2009 OIF AAR, *supra* note 101.

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RECOMMENDATION: MNC-I owes operational units some clarified guidance on investigative requirements that is not “Army-centric” in its requirements and terminologies.¹²⁴

ISSUE: Division investigation requirements

DECISION: The division OSJA required more investigations than the regulations required. As a result, this placed much more work on the BCT legal shop. Additionally, some of the BCT units were not clear on when an investigation was required. Often a division JA would call to the BCT and ask for an investigation that did not exist because no one knew that it was required.

RECOMMENDATION: Improve. Although it is important to document certain incidents through an investigation, BCT units do not have time to investigate every small incident. Relax the requirements.¹²⁵

ISSUE: Negligent discharge of a firearm

DECISION: Commanders must consider the facts and circumstances of a negligent discharge on a case-by-case basis. Injury or death due to the negligent discharge triggers an appropriate review and investigation.

RECOMMENDATION: Sustain.¹²⁶

ISSUE: Division requirements for 15-6 investigations

DECISION: At the direction of the division, the brigade conducted 15-6 investigations for every event that resulted in a death, whether there was a question regarding the facts or not.

RECOMMENDATION: Improve. Include the statements of two witnesses with any other incontrovertible facts of an event leading to death then incorporate them into a casualty report. If the report reveals questions regarding the casualty, a 15-6 may be justified and authorized. Otherwise, a 15-6 Investigation should not be the automatic result of every death occurring within the brigade’s AOR.¹²⁷

ISSUE: Required investigations

DECISION: MNC-I also amended the matrix setting out which incidents triggered which types of investigations halfway through the deployment. The amended matrix only mandated investigations required by regulation. For example, before the changes, the almost-daily Raven unmanned aerial vehicle crashes had required both Class C and safety investigations. The division also initially required AR 15-6 investigations to be conducted for all negligent discharge incidents, because some incidents early in the deployment had resulted in fatalities.

RECOMMENDATION: The MNC-I investigations matrix is useful in helping units to determine when they should conduct investigations.¹²⁸

¹²⁴ RCT-5 2008 OIF AAR, *supra* note 8.

¹²⁵ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 9.

¹²⁶ 1AD 2009 OIF AAR, *supra* note 1.

¹²⁷ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

¹²⁸ 4ID 2009 OIF AAR, *supra* note 2.

OEF ISSUE: Requirement for the GCMCA to appoint/approve death investigations

DECISION: AR 15-6 requires the General Courts-Martial Convening Authority (GCMCA) to appoint and approve death investigations. However, there are many General Officers (GOs) in command who are not GCMCAs. They are more than capable of exercising the appropriate judgment for these cases.

RECOMMENDATION: Allow the Special Court-Martial Convening Authority (SPCMCA) to appoint the investigating officer in these cases. Alternatively, if it must remain a GO, allow any GO in command who has an appropriate SJA advisor.¹²⁹

Investigating Officer (IO) Appointment & Briefing

OIF ISSUE: Paralegal support to IOs

DECISION: The paralegal gave IOs an investigations packet, and put them in touch with the JAs for a briefing before they commenced their work. He provided any necessary logistical support to IOs during the investigation, including helping them to prepare their reports in accordance with the XO's preferences. He reviewed all investigations before scanning them and sending them to the regimental JAs, ensuring the IO corrected omissions such as unsigned sworn statements. In some cases, the JAs also asked him to conduct a preliminary review to assess legal sufficiency. In other cases, they asked him to type up the Article 15 resulting from the investigation.

RECOMMENDATION: Sustain. Paralegals can help JAs to ensure IOs conduct investigations properly and in a timely manner, reducing the possibility they will require reopening.¹³⁰

ISSUE: Judge Advocate General's Manual (JAGMAN) Investigations (general)

DISCUSSION: Investigations are inevitable during a combat deployment. While company and battalion staff under the oversight of the Battalion (BN) JA can adequately handle most, the BN JA should undertake the more important investigations. The BN JA found it very useful to put together an investigation smart pack, which included shell documents, sworn statement forms, and copies of reference documents.

RECOMMENDATION: BN JAs should only act as the investigation officer for very serious command investigations.¹³¹

ISSUE: Advising the IO

DECISION: The same JA advised the IOs and reviewed the resultant investigations. No inherent conflict existed because they are essentially two distinct stages in the same process.

RECOMMENDATION: Sustain. In a situation with two JAs at a brigade, this is a necessity. In a situation with three JAs, this is still good practice.¹³²

¹²⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

¹³⁰ 2SCR 2009 OIF AAR, *supra* note 101.

¹³¹ 2d Battalion, 2d Marines, Battalion Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – November 2008 (18 Dec. 2008) (on file at CLAMO).

¹³² 2d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – November 2008 (13 Jan. 2009) [hereinafter 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

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ISSUE: IO requests for information

DECISION: MNF-I personnel, including those from other services, would occasionally ask RoL section members for information about conducting an AR 15-6 investigation. While MNF-I AdLaw JAs normally provided support to IOs, RoL section personnel could provide IOs with the August 2008 AR 15-6 IO guide available from JAG University, as well as links to the Army publications website, where they could find AR 15-6 and relevant fillable forms.

RECOMMENDATION: Sustain.¹³³

ISSUE: Appointment of IOs

DECISION: The division commander made the required IO appointments. Brigade commanders recommended the IOs to the division commander. IO selection occurred based on the nature of the incident and experience necessary to conduct the investigation. A DA-6 procedure was not controlling, and would not have been helpful.

RECOMMENDATION: Sustain.¹³⁴

ISSUE: Assignment of 27D to assist with investigation

DECISION: The unit assigned paralegals (27Ds), and in one instance, the legal administrator, to assist senior IO in complex investigations.

RECOMMENDATION: Sustain. Consider the nature and complexity of an investigation and assign appropriate support to the IO.¹³⁵

ISSUE: Investigation quality

DECISION: The quality of investigations depended in large part on the quality of the initial advice by judge advocates. Otherwise, the investigations tended to take a substantial amount of time to complete.

RECOMMENDATION: Dedicate time and resources (up to and including 27D and JA time to assist the IO in completing the report) to the process right from the start in order to enhance the quality and timeliness of investigations.¹³⁶

ISSUE: Guide for investigating officers

DECISION: The 1AD OSJA spent a lot of time helping investigating officers revise and assemble their investigations. Eventually, the OSJA put together a comprehensive how-to guide to investigations on compact disc, which included step-by-step instructions and all applicable forms and references. This improved the quality of investigations and reduced the amount of work the OSJA had to do to prepare or correct investigations.

¹³³ Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, October 2008 – December 2008 (9 Feb. 2009) (on file at CLAMO).

¹³⁴ 1AD 2009 OIF AAR, *supra* note 1.

¹³⁵ *Id.*

¹³⁶ *Id.*

RECOMMENDATION: Sustain. Develop a guide for investigating officers before deployment and use it in garrison to train officers on how to conduct investigations.¹³⁷

ISSUE: Appointing IOs

DECISION: Generally, the S-1 staff kept a duty roster of eligible officers and would inform the BJA of the selection of the IO. The JA would then help ensure those appointed as IOs were at least a grade higher than those who were or might become the focus of the investigation. On rare occasions, the brigade commander would specifically appoint an investigator based on the need for particular expertise.

RECOMMENDATION: Sustain.¹³⁸

ISSUE: Division support

DECISION: Some brigades conducted very good investigations, while others did not. The letter of appointment is one factor influencing the outcome of an investigation. Some are very specific, in terms of asking what the victim wore, etc., while others simply require the IO to investigate the circumstances of a death.

Division AdLaw attorneys—beginning with the outgoing division—realized problems tended to occur in certain brigades, and distributed sample appointment letters and other guidance to those units. They also found it helpful to spend time sitting down with an IO at the outset of the investigation because the IO might not read the IO packet. The outgoing division had recommended a practice of staff assistance visits to introduce S-1 personnel to the investigation paperwork and other essential elements instead of making elaborate IO packets.

RECOMMENDATION: Sustain. Providing brigade IOs, S-1s, and JAs with the tools to support effective investigations avoids having to reopen insufficient investigations and improves division-brigade JA relations.¹³⁹

ISSUE: Advising IOs

DECISION: The BJA performed all of the investigation legal functions.

RECOMMENDATION: The BJA should perform the investigation legal tasks.¹⁴⁰

ISSUE: Advising IOs

DECISION: JAs from the MNC-I AdLaw section were very involved in assisting and advising IOs in the completion of investigations. The experience level of the IO varied and some needed more help than others needed. At times, the IO did not treat completion of the investigation as a priority and this resulted in poor effort, quality, and timeliness.

¹³⁷ *Id.*

¹³⁸ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

¹³⁹ 4ID 2009 OIF AAR, *supra* note 2.

¹⁴⁰ 1BCT, 4ID 2009 OIF AAR, *supra* note 13.

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RECOMMENDATION: It is important for the JA and commanders to emphasize the importance of the investigation. Establish expectations early with the IO on how you can assist in the completion of the investigation.¹⁴¹

ISSUE: IO training

DECISION: Before deploying, the IBCT, as a National Guard unit, had several officers who, on the civilian side, were in law enforcement. They were proficient at investigating and writing reports. They made a competent pool of AR 15-6 IOs. In addition, the JAs gave training to IOs on how to conduct an AR 15-6 investigation. First Army and the Mobilization and Deployment (MaD) Brigade provided IOs with guides and sample administrative actions. The JAs had ample experience in this area. This resulted in high quality AR 15-6 investigations.

While in Iraq, the Joint Area Support Group – Central (JASG-C) AR 15-6 investigation process functioned well. The 15-6s were a steady, but not overwhelming, source of work. The appointment memos properly framed the issues and scope, appointed appropriate IOs, and appointed a legal advisor to the IO. The investigations and reports generally reflected quality efforts and the unit ensured timely legal reviews. The training received in this area was sufficient and relevant to the mission.

RECOMMENDATION: Sustain.¹⁴²

ISSUE: Single source for investigation appointment orders

DECISION: It was not always clear who should sign appointment orders. An investigations matrix identified the type of investigation, the appointing authority, and the time to complete the investigation. Unfortunately, not all subordinate units followed the matrix.

RECOMMENDATION: Improve. Ensure that all incoming units receive the MNC-I investigations matrix, as well as any additional investigation requirements of the division.¹⁴³

ISSUE: Specificity of appointment orders

DECISION: The BJA provided templates for 15-6 appointment orders and only contained sample questions referencing the investigation. The BJA also provided templates for LOD and FLIPL investigations in which she specifically included questions for the IO to answer in order to meet the regulation requirements for each type of investigation. .

RECOMMENDATION: Improve. Increasing the level of detail in the questions the IO must answer can facilitate a more complete investigation. BJAs should be cautious, however, to require answers only to those questions necessary for a thorough investigation, as opposed to burdening IOs with “nice-to-know” questions.¹⁴⁴

OEF ISSUE: Conducting investigations

¹⁴¹ XVIII ABC 2009 OIF AAR, *supra* note 14.

¹⁴² 50 IBCT (NJARNG) 2009 OIF AAR, *supra* note 46.

¹⁴³ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹⁴⁴ 4-1 CAV 2009 OIF AAR, *supra* note 17.

DECISION: Because the CSTC-A CG was not a GCMCA, CJTF 82/101 initiated most of the CENTCOM required casualty or friendly fire investigations, often times using investigating officers from CSTC-A or TF Phoenix. For internal CSTC-A issues, such as the loss of property, the CSTC-A DCG or XO typically initiated an AR 15-6 investigation and appointed a 15-6 officer. Overall, depending on the facts and circumstances of the incident giving rise to the 15-6, there was close coordination between the various SJA offices in country to ensure IOs properly conducted investigations.

RECOMMENDATION: None.¹⁴⁵

ISSUE: IO travel

DECISION: IO travel to remote FOBs in Afghanistan was difficult and time consuming. IOs were often away from their normal place of duty for several weeks.

RECOMMENDATION: Improve. IOs require command support and resources to conduct an expeditious, timely, and accurate investigation.¹⁴⁶

ISSUE: Specific, tailored appointment letters

DECISION: One of the most successful practices with regard to investigations was the use of appointment orders with specific questions for the investigating officer (IO) to answer, tailored to the facts of the particular incident. If the IO answered all of these questions, the investigation was sure to be thorough. The administrative law section maintained an appointment order template with the recurring questions specific to each major type of investigation. Often, the division Chief of Staff would add questions of his own. Always include a catch-all that asks the IO to provide “any additional information he/she deems important.”

RECOMMENDATION: Sustain. This practice ensured complete investigations the first time around.¹⁴⁷

ISSUE: Investigating officer (IO) guide

DECISION: The OSJA distributed a comprehensive guide for investigating officers.

RECOMMENDATION: Sustain.¹⁴⁸

Legal Review of Investigations

OIF ISSUE: Separation of advisory functions in relation to investigations

DECISION: The regimental JA tried to separate the advisory functions in relation to investigations. One JA generally acted as the legal advisor to the investigating officer, while the other conducted the legal review of the completed investigation and took it to the commander for signature. Occasionally, one JA did both. The only problem occurred when a Soldier asked for

¹⁴⁵ CSTC-A 2008 OEF AAR, *supra* note 6.

¹⁴⁶ 4th Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, March 2008 – March 2009 (12 May 2009) [hereinafter 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR] (on file at CLAMO).

¹⁴⁷ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

¹⁴⁸ *Id.*

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legal assistance as the result of an investigation (e.g., for GOMOR rebuttal or FLIPL). However, if necessary, a division legal assistance attorney could provide this advice over the telephone.

RECOMMENDATION: Sustain. Where JAs are able to separate the advisory functions in relation to investigations, the JA advising the investigating officer should be familiar with the preferences of the JA conducting the legal review.¹⁴⁹

ISSUE: Brigade level legal review of investigations

DECISION: Brigade level legal review of investigations slowed down the review process. Many times the legal review was incomplete or wrong. Findings of fact often did not support the brigade level legal reviews.

RECOMMENDATION: Improve. Brigades should not conduct legal reviews of investigations for which the division commander or higher is the approval authority.¹⁵⁰

ISSUE: Legal review of investigations at the brigade level

DECISION: Brigade level legal review of division-level investigations was not helpful to the review process and added time to the investigation process.

RECOMMENDATION: Improve. BJAs should conduct only a “quality review” of these investigations to ensure completeness. The brigade commander should add an endorsement and recommendation to the IO’s report, whenever appropriate.¹⁵¹

ISSUE: Use of paralegals in the investigations process

DECISION: Although the 1AD OSJA used judge advocates to brief investigating officers, paralegals assisted in tracking the status of investigations and in redacting reports of investigations as required.

RECOMMENDATION: Sustain.¹⁵²

ISSUE: Paralegal review of investigations

DECISION: Due to the heavy workload, the attorneys did not have a lot of extra time to deal with the tedious tasks associated with AR 15-6 investigations, such as drafting the appointment memos and reviewing all of the evidence. Therefore, the NCOIC stepped up and took over that role. The NCOIC drafted all memos, answered any of the investigating officer’s (IO) questions, helped the IO to gather documents, and reviewed the packets.

RECOMMENDATION: Sustain. Train your NCOIC to manage the 15-6s so that the attorney is free to focus on other work.¹⁵³

ISSUE: JA responsibilities

¹⁴⁹ 2SCR 2009 OIF AAR, *supra* note 101.

¹⁵⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹⁵¹ 1AD 2009 OIF AAR, *supra* note 1.

¹⁵² *Id.*

¹⁵³ 4BCT, 3ID 2009 OIF AAR, *supra* note 86.

DECISION: One of the two JAs effectively reviewed all investigations. The unit avoided the potential conflict caused by one JA both advising the investigation and reviewing the investigation. They did this through providing the pool of investigators basic non-case specific instructions and training regarding the conduct of investigations. The investigators themselves resolved any additional investigative advice needed during a current investigation or a division JA advised them.

RECOMMENDATION: Sustain. Provide both investigators and Soldiers subject to possible liability the contact number for the legal office at higher headquarters for those situations when the investigation's reviewer has a conflict with providing further advice.¹⁵⁴

ISSUE: Friendly fire (misconduct) investigations

DECISION: Friendly fire incidents usually involved Iraqi Security Forces (ISF), and often concerned cases of ISF mistakenly attacking U.S. forces. These normally resulted from poor communication. However, some incidents resulted from U.S. forces attacking U.S. forces. BJAs warned the AdLaw attorneys when their units conducted misconduct investigations. The AdLaw section received the completed reports, and then sent them to the military justice section to obtain their recommendations. This ensured the packet prepared for the division commander included all available options, so it did not then need to go to the military justice section to have a general officer memorandum of reprimand (GOMOR) drafted.

RECOMMENDATION: Sustain.¹⁵⁵

ISSUE: Procedures for dealing with legally insufficient investigations

DECISION: Due to his previous operational background, the Chief of AdLaw sometimes had additional questions about investigations assessed by brigade JAs as legally sufficient. Division AdLaw attorneys returned insufficient investigations to the brigades, increasing tensions with those JAs. The issue of insufficient investigations was most significant when the investigation concerned the death of a U.S. Soldier, because incomplete results would lead to questions from the family (e.g., the investigator was unable to determine if the death of a U.S. Soldier was due to friendly or sniper fire). However, the problem also occurred in relation to investigations into alleged detainee abuse (e.g., in one case, the IO did not question the alleged abuser).

RECOMMENDATION: Improve. JAs at all levels should ensure IOs understand the requirement to fully investigate all relevant issues.¹⁵⁶

[See also II.N. ADMINISTRATIVE & CIVIL LAW—Miscellaneous Administrative Law Topics (Casualty Briefings to Primary Next of Kin (PNOK))]

¹⁵⁴ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

¹⁵⁵ 41D 2009 OIF AAR, *supra* note 2.

¹⁵⁶ *Id.*

II.H.2. Line of Duty (LOD) Investigations

OIF ISSUE: Conducting LODs

DECISION: LOD investigations are now included on the MNC-I investigations matrix. A LOD investigation is required for every death, and is then included in the AR 15-6 investigation. The regulation requires medical personnel to initiate the LOD investigation and makes no exception for combat. If the medical treatment facility (MTF) did not complete the LOD investigation, the JAs asked someone else who had treated the Soldier to do so, if they were able to. An MTF conducting a LOD investigation does not need to determine who fired the bullet, just that the individual is dead. The associated AR 15-6 investigation determines the circumstances.

RECOMMENDATION: Sustain. JAs may find it useful to discuss the issue of LOD investigations with medical personnel to ensure they initiate and complete them when required. Absent JA prodding, medical personnel will not tend to worry about this issue.¹⁵⁷

ISSUE: Conducting LODs

DECISION: Some JAs expressed confusion over when and why a unit should conduct a LOD investigation. Furthermore, many of the Troop Medical Clinics (TMCs) also did not know when to initiate the investigations. It is the JA's job to ensure proper initiation of a LOD investigation.

RECOMMENDATION: Improve. JAs working at the brigades or in the division AdLaw office should be the experts on LOD investigations. They must receive adequate training in this area. Develop a matrix that sets out the "why" and "when" of the LOD investigations.¹⁵⁸

ISSUE: LOD determinations

DECISION: The unit conducted an abundance of LOD investigations in Iraq. JAs had a difficult time deciphering what benefits would be affected by a "not in the line of duty" determination. Although the JAs researched the regulations and even spoke to Veterans Affairs (VA) about this issue, they never received any clear guidance.

RECOMMENDATION: Improve. Since LOD investigations occur routinely in Iraq, JAs must receive adequate training in this area. A solid answer to the question above is essential to give the command and the families of deceased Soldiers accurate information.¹⁵⁹

ISSUE: Conducting LODs

DECISION: Obtaining the LOD investigations required JAs to prompt the doctors in the command. The doctors did not automatically push this information to the JAs.

RECOMMENDATION: Continue to educate the different command sections, particularly the doctors, on the LOD requirements.¹⁶⁰

ISSUE: Appropriateness of LOD

¹⁵⁷ 2SCR 2009 OIF AAR, *supra* note 101.

¹⁵⁸ 3ID 2008 OIF AAR, *supra* note 83.

¹⁵⁹ *Id.*

¹⁶⁰ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 9.

DECISION: The BJA saw few LOD investigations arising out of incidents occurring on the FOB and saw no such investigations arising out of incidents occurring outside the FOB boundaries.

RECOMMENDATION: Improve. Affirmatively evaluate whether incidents require LOD investigations.¹⁶¹

ISSUE: Coordination with medical staff

DECISION: Both suicide and attempted suicide resulted in a LOD investigation. Investigations into suicides were relatively straightforward, but those into attempted suicides encountered some confusion. According to the presumption set out in the LOD regulation, a Soldier is of sound mind except in the case of an attempted suicide. However, the regulation's provisions conflict, so medical personnel find them confusing. In some cases, they would conclude the death was not in the LOD when it clearly was. In other cases, garrison personnel, including junior officers or summer interns with little understanding of the context, conducted the investigation on behalf of the investigating officer.

RECOMMENDATION: Improve. The division conducted a Breeze session on this issue near the end of its deployment, but it is probably easiest to address problems in this area by educating medical personnel on LOD determinations before deployment.¹⁶²

OEF ISSUE: Conducting LODs

DECISION: Division guidance on LOD investigation requirements was vague for one of the battalions. Aside from the guidance in AR 600-8-4, division often added additional requirements for LOD investigations. Unfortunately, that guidance was not always clear and would periodically change.

RECOMMENDATION: Improve. Communication must improve between the division and the brigade.¹⁶³

ISSUE: Prolonged timeline for LODs

DECISION: The brigade had trouble completing a LOD investigation due to the significant amount of time it took to receive the death certificate. Often it took over three months for the death certificate to arrive from the United States. The unit could not complete the LOD investigation or release it to the family until receipt of the death certificate.

RECOMMENDATION: Improve. Work with the CAO to increase efficiency.¹⁶⁴

ISSUE: Generation of LOD investigations

DECISION: Despite a large number of injured Soldiers during the course of the deployment, the administrative law section only reviewed a few line of duty investigations. The medical treatment facility (MTF) did not do a good job of completing the DA Form 2173 for injured

¹⁶¹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

¹⁶² 4JD 2009 OIF AAR, *supra* note 2.

¹⁶³ 101st SUST BDE 2009 OEF AAR, *supra* note 95.

¹⁶⁴ *Id.*

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Soldiers. Similarly, unit SIs and G1 did not appear to know when to initiate a LOD investigation.

RECOMMENDATION: Improve. LOD determinations are important for documenting Soldiers' injuries, especially when it comes to their later disability ratings. The MTFs and SIs need additional training in LOD investigations. An information paper on when to initiate LOD investigations would be helpful.¹⁶⁵

II.H.3. Mishap and Safety Investigations

OIF **ISSUE: Unmanned Aerial Vehicle (UAV) mishap investigations**

DECISION: The 15-6 process is independent of the safety mishap investigation. Per the UAV mishap policy, forward all recovered UAV parts to the United States for analysis.

RECOMMENDATION: Sustain. Ensure witnesses and commanders understand the distinction between collateral and safety investigations.¹⁶⁶

ISSUE: Sufficiency of mishap and safety investigations

DECISION: AdLaw JAs encountered only a few of these investigations (e.g., due to vehicle rollovers or shower electrocutions), but those they reviewed generally suffered because the IO failed to ask enough questions. The investigation often adequately described what had happened and set out recommendations, but did not include the "hard questions" to determine why those involved did or did not take a critical action. The general practice was to conduct only a safety investigation, not a collateral investigation. Near the end of the deployment, AdLaw JAs found several safety investigations to be insufficient, requiring reinvestigation of the incident in question.

RECOMMENDATION: Improve. Those investigating these incidents should be prepared in a manner similar to other IOs.¹⁶⁷

II.H.4. Financial Liability Investigations of Property Loss (FLIPLs)

OIF **ISSUE: Multiple financial liability recommendations**

DECISION: Imposition of liability can occur only once per investigation. The same is true for funds recoupment.

RECOMMENDATION: Improve. Train staff to distinguish the purpose and function of FLIPL and 15-6 investigations with respect to financial liability determinations.¹⁶⁸

ISSUE: Commanders using FLIPL investigations as punishment

DECISION: FLIPL investigations and the resultant payments are not punishment and are separate from other administrative procedures (e.g., Art. 15, UCMJ).

¹⁶⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

¹⁶⁶ 1AD 2009 OIF AAR, *supra* note 1.

¹⁶⁷ 4ID 2009 OIF AAR, *supra* note 2.

¹⁶⁸ 1AD 2009 OIF AAR, *supra* note 1.

RECOMMENDATION: Sustain. JAs should ensure commanders understand the proper use of a FLIPL.¹⁶⁹

ISSUE: Lost sensitive/controlled item FLIPLs

DECISION: The first general officer in the chain of command approves lost sensitive item FLIPLs. His advising JA section should conduct the legal review.

RECOMMENDATION: Improve. The nature and character of the controlled item should determine the FLIPL review level regardless of its sensitive nature. Not all sensitive items are actually controlled items. Provide brigade commanders the authority to conduct limited review of sensitive items.¹⁷⁰

ISSUE: FLIPL investigations

DECISION: This unit completed a significant amount of FLIPLs for predominately three reasons. First, the previous unit immediately signed over all of their theater provided equipment (TPE) to the regiment and then continued to use, damage, and destroy some of it during the battle handover. Second, changes of command produced a lot of FLIPLs because commanders had a difficult time maintaining their stock and conducting monthly inventories. Finally, sensitive item FLIPLs proved burdensome since authorities above regiment had to approve the investigations.

RECOMMENDATION: FLIPLs, like all investigations, require constant attention and legal input. One best practice for this unit was to ensure the AR 15-6 investigation concerning a particular incident (e.g. hostile fire death, Class A accident) also addressed any issues of property accountability/financial liability so it could serve as the supporting investigation for the associated FLIPL, thereby expediting and simplifying the process.¹⁷¹

ISSUE: Conflicts of interest

DECISION: Without a third attorney in the BCT, it was difficult to prevent conflicts of interest with the FLIPLs. Between advising the IO, drafting the rebuttals, and advising the command, it was necessary to create a “Chinese wall” to prevent conflicts.

RECOMMENDATION: Improve. A third attorney would solve this problem. He/she could handle all rebuttals and avoid any potential conflicts.¹⁷²

ISSUE: Complexity of FLIPL issues in a joint environment

DECISION: There are situations where it is impossible to have “eyes on” all the items on a property book due to the dispersed location of many units. This led to unit’s conducting hasty account turnover that often did not identify missing property.

RECOMMENDATION: JAs should recognize the challenges facing units in a dispersed environment when applying a reasonable person standard when reviewing FLIPLs.¹⁷³

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ 3ACR 2009 OIF AAR, *supra* note 49.

¹⁷² 4BCT, 3ID 2009 OIF AAR, *supra* note 86.

¹⁷³ XVIII ABC 2009 OIF AAR, *supra* note 14.

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ISSUE: **FLIPLs and AR 15-6 investigations**

DECISION: There was confusion in cases which required an AR 15-6 investigation in addition to a FLIPL, such as the loss of sensitive items or vehicle rollovers. In such cases, the unit should conduct the AR 15-6 investigation first and use this as the underlying investigation for the FLIPL. However, often the S-4 appointed a separate FLIPL officer who was unaware of the ongoing AR 15-6 investigation. This caused an unnecessary duplication of work and in some cases jeopardized the integrity of the AR 15-6 investigation.

RECOMMENDATION: The OSJA should be responsible for drafting appointment memoranda for all such investigations. The appointment memorandum should require the AR 15-6 investigating officer to make the explicit findings required for a FLIPL (i.e., responsibility, culpability, proximate cause, and loss).¹⁷⁴

OEF ISSUE: **General officer review of all losses of controlled items**

DECISION: The Department of the Army (DA) policy (ALARACT 124/2006) requiring approval by the first GO in the chain of command for all Financial Liability Investigations of Property Loss (FLIPLs) regarding controlled items was overly cumbersome in combat. It resulted in too many FLIPLs requiring GO approval, even though they were due to combat loss.

RECOMMENDATION: Improve. While the policy reflects command emphasis on the accountability of controlled items, DA should tailor the policy to exclude instances in which the facts and circumstances clearly indicate the loss of the controlled item occurred as a direct result of combat operations.¹⁷⁵

ISSUE: **Accountability of U.S. Army equipment by personnel from other services**

DECISION: At a joint command like CJTF-101, Navy, Marine Corps, and Air Force personnel commonly sign for Army equipment. In reviewing FLIPLs, the administrative law section concluded servicemembers from the other services do not routinely receive briefings on Army accountability standards at the time they sign for the equipment. Their ignorance of the requirements may affect an investigating officer's willingness to hold them financially liable for a loss of accountability.

RECOMMENDATION: Improve. Supply personnel should provide servicemembers from other services with information on Army property accountability standards.¹⁷⁶

FLIPL Processing

OIF ISSUE: **FLIPL volume**

DECISION: FLIPLs increase upon arrival into theater and at the end of the deployment during account turnover.

¹⁷⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹⁷⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

¹⁷⁶ *Id.*

RECOMMENDATION: Be prepared to handle the spike in FLIPLs at the beginning and at the end of deployments, and plan deployment flow of personnel accordingly.¹⁷⁷

ISSUE: **Tracking FLIPLs**

DECISION: G-4 had the lead on FLIPLs, and received a weekly report from the brigades on items lost, found, investigated, etc. The AdLaw section tracked this report against investigations initiated. Once complete, a brigade sent a FLIPL to G-4, who then sent it to the OSJA. This worked fairly well, depending primarily on whether G-4 did a good job of screening the packet. In some cases, G-4 did not follow the procedural steps set out in the regulation (e.g., with respect to notice to the Soldier and allowing time for a response).

RECOMMENDATION: Improve. The OSJA should brief G-4 personnel on the required elements and procedures before deployment.¹⁷⁸

OEF ISSUE: **Rotating units**

DECISION: Since many units were non-organic to the brigade, there was a continuous changeover of subordinate units. There were always many FLIPLs generated right before a unit left theater. Unfortunately, many units did not complete their FLIPLs before departing theater. This caused problems because the FLIPLs would then fall through the cracks and simply disappear or they would go to division, who would have to waste manpower and time trying to get in touch with the units in the rear.

RECOMMENDATION: Improve. There must be finite deadlines for FLIPL completion well before a unit leaves theater and repercussions for failing to complete them.¹⁷⁹

ISSUE: **Redeployment and FLIPLs**

DECISION: Staff members increasingly had to conduct FLIPL investigations.

RECOMMENDATION: Improve. Legal staff should anticipate a surge of investigations before redeployment. Closely monitor investigation timelines and progress.¹⁸⁰

ISSUE: **Redeployment and FLIPLs**

DECISION: As redeployment neared, there was a rush on closing out FLIPL actions before redeployment. As a result, FLIPLs on 'organizational' property came home.

RECOMMENDATION: JAs must know the FLIPL process and be proactive to ensure S-4s are actually doing it and not leaving FLIPLs for last-minute resolution before redeployment.¹⁸¹

Briefing the FLIPL Investigating Officer

OIF ISSUE: **Briefing IOs**

¹⁷⁷ IAD 2009 OIF AAR, *supra* note 1.

¹⁷⁸ 4ID 2009 OIF AAR, *supra* note 2.

¹⁷⁹ 101st SUST BDE 2009 OEF AAR, *supra* note 95.

¹⁸⁰ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 146.

¹⁸¹ 420th EN BDE 2009 OER AAR, *supra* note 19.

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DECISION: IOs assigned to conduct FLIPLs do not necessarily obtain legal advice before doing so. The BJA would have avoided some effort at the conclusion of a FLIPL if they provided legal advice at the outset. The IO or financial officer would sometimes want to hold one individual accountable, while the appointing authority reviewing the FLIPL would come up with another list of names. When this occurred, the BJA could not determine liability, so would sometimes find no one was liable.

RECOMMENDATION: Improve. The S-4 should require FLIPL IOs to seek legal advice before commencing their investigation so they understand what they are looking for and how to go about obtaining it. The S-4 is aware of all FLIPLs and must assign numbers to them, so is in a good position to act as a gatekeeper.¹⁸²

ISSUE: Proximate cause determination

DECISION: The FLIPL IO determines proximate causation for the loss. This determination can be difficult and is often a point of contention.

RECOMMENDATION: Improve. The IO should consult a JA before making a proximate cause determination. JAs should ensure that IOs understand the concept of proximate cause, that it does not equate with ‘but-for’ causation, and the causes that can cause a break in causation between a given person’s action or inaction and the end result.¹⁸³

ISSUE: Understanding and identifying “proximate cause”

DECISION: “Proximate cause” was the most difficult issue for investigators. They must understand assigning liability requires a finding that a Soldier was responsible, negligent, and caused the loss. An IO who was insufficiently prepared before conducting the investigation might not canvass these issues, preventing the command from making a determination about individual liability. This frustrated the command, which sometimes then wanted to “split the difference.” However, the regulation requires a finding of “the proximate cause,” not “a proximate cause.” In some cases, the frustrated command would even find a Soldier liable despite legal advice to the contrary.

RECOMMENDATION: Briefing the IO at the outset of the investigation, or providing the IO with an appointment letter explaining these requirements, could help to avoid these difficulties. The AdLaw section also provided division IOs with a sample memo explaining which elements had to be established, and defining those terms, and forwarded the sample memo to the brigades for their use.¹⁸⁴

ISSUE: Briefing IOs

DECISION: IOs need to receive a pre-brief before they begin investigating.

RECOMMENDATION: Establish a brigade policy implementing a requirement for a legal pre-brief.¹⁸⁵

¹⁸² 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 70.

¹⁸³ 1AD 2009 OIF AAR, *supra* note 1.

¹⁸⁴ 4ID 2009 OIF AAR, *supra* note 2.

¹⁸⁵ 1BCT, 4ID 2009 OIF AAR, *supra* note 13.

ISSUE: Educating commanders

DECISION: Commanders do not necessarily understand it requires more than just a duty on the part of the Soldier to hold the Soldier financially liable. Commanders need training on this.

RECOMMENDATION: Teach commanders these standards at the Senior Officer Legal Orientation (SOLO) Course.¹⁸⁶

ISSUE: Detailed appointment orders

DECISION: The BJA used very detailed appointment orders for FLIPLs, spelling out the four requirements for liability and what terms such as “proximate cause” meant.

RECOMMENDATION: Sustain. This ensured IOs made findings on all elements of financial liability.¹⁸⁷

Legal Review of FLIPLs

OIF ISSUE: Legal sufficiency

DECISION: The RJA’s primary concern was to ensure each FLIPL contained a sworn statement identifying the equipment lost in the incident. This prevented the unit from using an incident as a means of clearing its property books. A second requirement was for any Soldier who lost gear to include a statement to this effect (no one else could do so on his/her behalf). The JA also tried to ensure FLIPL completion occurred in a timely manner.

RECOMMENDATION: Sustain.¹⁸⁸

ISSUE: Multiple “legal reviews”

DECISION: Legal reviews of FLIPLs sometimes occurred at both the BCT level and division level due to dollar amount of the loss. The BCT and division often disagreed on the FLIPL. In addition, for cases where the BCT did not conduct a legal review due to their opinion that the Soldier was not liable, the division often conducted a legal review or asked the BCT to do additional investigating. This was unnecessary.

RECOMMENDATION: Find a process that avoids double legal review and inefficient routing of FLIPLs to the division.¹⁸⁹

ISSUE: Review of completed FLIPLs

DECISION: The BCT legal NCOIC, after becoming familiar with what the BJA was looking for, would screen completed FLIPLs and occasionally return them to the battalions for additional work when necessary.

RECOMMENDATION: Sustain.¹⁹⁰

¹⁸⁶ *Id.*

¹⁸⁷ 4-1 CAV 2009 OIF AAR, *supra* note 17.

¹⁸⁸ 2SCR 2009 OIF AAR, *supra* note 101.

¹⁸⁹ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 9.

¹⁹⁰ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 70.

TIP OF THE SPEAR

ISSUE: **JA FLIPL review**

DECISION: The JA often discovered incomplete FLIPLs during the review process. The JA sent investigations back to the IO for additional information before forwarding them to the commander for final review.

RECOMMENDATION: A JA should review investigation prior to the IO's final submission. Wherever possible, the JA advising the IO should not also author the legal review.¹⁹¹

ISSUE: **Legal reviews**

DECISION: The division required brigade JAs to write a full legal review for each FLIPL. The division sent a FLIPL back to the brigade if it was missing paperwork, including a collateral investigation. For example, the loss of sensitive equipment required an AR 15-6 investigation. The brigade then attached this report to the FLIPL as an annex. The division also returned a FLIPL for further investigation if AdLaw attorneys noted the presence of a lead that, if followed up, could change the investigation findings.

RECOMMENDATION: Sustain.¹⁹²

ISSUE: **Legal reviews**

DECISION: The BJA reviewed many FLIPL investigations because the BCT commander insisted on strict enforcement of loss of property regulations against Soldiers liable for the loss. Although not required by regulation, higher headquarters required a written review of FLIPLs assessing no liability against the Soldier/officer.

RECOMMENDATION: Sustain the use of FLIPL investigations uniformly and fairly throughout the brigade. Improve, however, the requirement to conduct a written review not required by regulation. This additional burden did not appear worthwhile.¹⁹³

II.I. Labor/Employment Law

No AAR comments.

II.J. Law of Military Installations

OIF ISSUE: **Iraqi businesses on FOBs**

DECISION: A JA reviewed all requests to develop Iraqi businesses on a case-by-case basis.

RECOMMENDATION: Improve. Follow policies of the FOB commander, Army and Department of Defense regarding security and disposal of government property.¹⁹⁴

ISSUE: **Policy on naming facilities after deceased individuals**

¹⁹¹ 1AD 2009 OIF AAR, *supra* note 1.

¹⁹² 4ID 2009 OIF AAR, *supra* note 2.

¹⁹³ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹⁹⁴ 1AD 2009 OIF AAR, *supra* note 1.

DECISION: Any installation questions went to the garrison command. The division OSJA only encountered a question about naming a dining facility after a deceased Soldier. This required looking up the applicable regulation and working with the garrison command to follow the required procedures.

RECOMMENDATION: Sustain.¹⁹⁵

ISSUE: **Garrison legal issues**

DECISION: The operational HQs left the garrison legal issues to the legal shop of the unit serving the garrison commander/FOB mayor. Typical issues included AAFES, MWR, and fundraising.

RECOMMENDATION: Stay in your lane. You will have enough work to do without taking business from a unit/function with their legal advisors.¹⁹⁶

ISSUE: **Ownership/control of installation property**

DECISION: The division AdLaw section received numerous questions requiring them to determine what units were responsible for various property on the installation.

RECOMMENDATION: The OSJA should work with the base operations command to determine unit ownership of parts of the installation.¹⁹⁷

OEF ISSUE: **FOB command**

DECISION: The brigade commander (and deputy) took on the task of FOB administration, but it was never clear whether the “battlespace owner” had authority over the FOB. The brigade commander was an O-7, with the brigade headquarters located at FOB Sharana. However, as an engineer brigade, they were within the “battle space” of 4/101 BCT (TF Currahee). An old FRAGO outlining structure of forces aligned all tenants on the FOB under the engineer task force as “OPCON for BASEOPS,” with no further explanation. The BJA advised the brigade commander that, as the senior commander on the FOB, he could direct certain decisions, like declaring “Amber Weapons Status” (magazine in weapon, no round chambered.) The 4-101 commander (an O-6) politely objected to the “amber” decision.

RECOMMENDATION: The in-theater OPORD must include a more detailed explanation of intended command structure on each FOB (especially the large ones) holding a brigade headquarters.¹⁹⁸

ISSUE: **Base expansion**

DECISION: The administrative law attorneys frequently assisted in drafting land use agreements between CJTF-101 and the Afghan Ministry of Defense (MoD) to expand the boundaries of BAF. The attorneys did not have prior experience in drafting such agreements.

¹⁹⁵ 4ID 2009 OIF AAR, *supra* note 2.

¹⁹⁶ XVIII ABC 2009 OIF AAR, *supra* note 14.

¹⁹⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹⁹⁸ 420th EN BDE 2009 OER AAR, *supra* note 19.

RECOMMENDATION: Improve. This may be an area to include in the Operational Law of War course in the future. Consult often with the legal counsel at Corps of Engineers units who frequently have expertise in this area.¹⁹⁹

II.K. Medical Issues

OIF ISSUE: “Hope MD”

DECISION: A thoughtful battalion surgeon started a program pairing needy Iraqi civilian patients (mostly children) with U.S. donors. Three university hospitals provided some funding for the program, while U.S. Army doctors vetted the Iraqi patients for program suitability. The BJA examined “Hope MD,” and decided the Army physicians were not involved in a prohibited activity. However, they could neither solicit donations on behalf of the Army nor champion “Hope MD” as a U.S. Army program.

RECOMMENDATION: Sustain. Caring, considerate Soldiers may start a program like this during subsequent tours. Be aware they are replete with ethical issues, but they are not per se invalid.²⁰⁰

ISSUE: Medical discharges

DECISION: Soldiers traveled to Germany, where officials declared them mentally unfit for military service and sent them back to the U.S. without the Soldiers’ command knowing of the action. BJAs contacted their legal counterparts in Germany to request assistance in engaging hospital personnel about contacting a Soldiers’ command when intending to give medical discharges.

RECOMMENDATION: Sustain. Requesting the assistance of fellow attorneys can help maximize time and resources when addressing an issue in another area of responsibility.²⁰¹

ISSUE: Medical resource availability

DECISION: Medical resources were not available on the FOB to assist with the medical processing requirement for an administrative separation. As a result, the unit transported all Soldiers going through the administrative separation process to another camp or FOB, which could accommodate this requirement. This resulted in significant delay in the action.

RECOMMENDATION: Attempt to streamline this process by learning how to efficiently request transportation assets. Put the transportation requirement into a FRAGO so that it is not a choice, but rather an order.²⁰²

Medical Treatment of Non-Military Personnel

OIF ISSUE: Medical “rules of engagement” (MROE)

¹⁹⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

²⁰⁰ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 132.

²⁰¹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

²⁰² TF525 2009 OIF AAR, *supra* note 38.

DECISION: Medical units had their own ROE when it came to the provision of medical services. At times, the chief of operations asked the OSJA to opine whether U.S. medics had the authority to treat certain Iraqis for medical conditions. The unit determined that unless the division caused the medical condition, Iraqi doctors provided the treatment.

RECOMMENDATION: Continue to coordinate closely with the Division Surgeon in answering these questions.²⁰³

ISSUE: **Medical entitlements**

DECISION: Follow the established guidance to determine entitlements and other actions.

RECOMMENDATION: Sustain. Obtain a copy of treatment eligibility charts.²⁰⁴

ISSUE: **Transportation of foreign nationals receiving medical treatment**

DECISION: Provide transportation to foreign nationals under the care of the U.S. government according to regulation. The regulation does not always provide a practical or humanitarian result. For example, the regulation requires the capturing unit to return a detainee to the point of capture and it does not allow for third party transportation such as taxis.

RECOMMENDATION: Improve. Reexamine law and policy related to transportation of persons in the care of the United States.²⁰⁵

ISSUE: **Contractor access to U.S. MTFs**

DECISION: The most frequent medical question was whether contractors were entitled to obtain care from a U.S. MTF. Commanders and staffs tended to prefer an across the board answer regarding all contractors, but this cannot be provided because the response in each case is contract dependent. Although MNC-I normally directed such questions to the garrison legal staff, those personnel rotated frequently and sometimes required assistance with the questions.

RECOMMENDATION: Sustain. AdLaw JAs should be prepared to answer questions in this area in coordination with the Garrison Command JAs.²⁰⁶

ISSUE: **U.S. medical support to Iraqi health facilities**

DECISION: A second issue was whether U.S. medical personnel may assist in Iraqi health facilities or provide medical supplies to them. Medical personnel may provide *de minimis* service and supplies (e.g., small amounts of gauze), but this does not include giving away expired medical equipment.

RECOMMENDATION: Sustain.²⁰⁷

ISSUE: **U.S. medical support to non-U.S. nationals**

²⁰³ 1AD 2009 OIF AAR, *supra* note 1.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ 4ID 2009 OIF AAR, *supra* note 2.

²⁰⁷ *Id.*

TIP OF THE SPEAR

DECISION: Questions arose as to whether Iraqis and other non-U.S. nationals may receive medical support from U.S. medical personnel and in U.S. controlled/operated clinics.

RECOMMENDATION: While the answers to these types of issues are generally clear, units must be aware of where to find the regulations governing this particular issue. Oftentimes the approval authority for providing support is held at the strategic level, in this case MNF-I/MNC-I (The Corps Surgeon was dual hated as the MNF-I Surgeon), or the MNF-I Chief of Staff.²⁰⁸

ISSUE: Volunteer burn clinic

DECISION: The BJA discovered one of the brigades started a burn clinic and operated it immediately outside of the FOB. Not only was the clinic receiving CERP-funded medical supplies, but also it was accepting volunteer services by non-medically trained Soldiers and civilians from the FOB. The division CG and the division surgeon ordered the clinic to shut down. Later a private organization staffed by local Iraqi doctors operated the clinic.

RECOMMENDATION: Although, on its face, it was a good humanitarian effort it violated the Medical ROE and fiscal laws.²⁰⁹

OEF ISSUE: Medical support to senior Afghan officials

DECISION: Over the course of the year, CSTC-A received several requests for medical support for senior Afghan officials. For example, the brother-in-law of one of the Afghan Supreme Court Justices said the Justice needed a prescription filled at our clinic for a medication that was not available on the local economy. The OSJA confirmed that U.S. policy was to support medical support for senior officials and worked through each request on an individual basis. Additionally, a specific issue came up when the Minister of Defense received treatment at Walter Reed Army Medical Center (WRAMC) and received a bill for his treatment. We coordinated this issue with the WRAMC SJA and resolved the bill.

RECOMMENDATION: None.²¹⁰

ISSUE: Agreements to provide medical care

DECISION: An agreement existed authorizing President Karzai to receive medical treatment at BAF. The administrative law section had a hard time tracking this document down.

RECOMMENDATION: Improve. There needs to be a central repository at CJTF-101 for all documents such as this one.²¹¹

ISSUE: Violation of the Medical Rules of Engagement (MROE)

DECISION: The MROE allowed U.S. forces to provide medical treatment to local nationals (LNs) for injuries posing a threat to life, limb, or eyesight, as well as those injuries U.S. forces caused. Contractors were to use the KBR medical clinic, not the military clinics. Local medical units routinely treated both contractors and local nationals in violation of the MROE. Moreover,

²⁰⁸ XVIII ABC 2009 OIF AAR, *supra* note 14.

²⁰⁹ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

²¹⁰ CSTC-A 2008 OEF AAR, *supra* note 6.

²¹¹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

the clinic on BAF was open to all LNs for routine medical care one day per week, and TF MED set up clinics for LNs outside of BAF as a “humanitarian assistance” mission. These MROE discrepancies persisted throughout the deployment.

RECOMMENDATION: Improve. In addition to violating the MROE, these practices are potential fiscal law violations. Medical projects such as this, which go beyond the “de minimis” Humanitarian and Civic Assistance (HCA) authorization under 10 U.S.C. § 401 to use of Operations and Maintenance (O&M) funds, must go through the proper funding channels. In addition, resource management personnel need training in the proper funds to use for humanitarian assistance.²¹²

ISSUE: Changes to the MROE

DECISION: The Division Surgeon changed the MROE to allow “follow up” medical care to LNs who were previously under U.S. medical care. This change did not receive a legal review. This authority was sometimes used as the basis to provide medical care to other LNs.

RECOMMENDATION: Improve. The Division Surgeon’s cell should staff all proposed changes to the MROE through the administrative law attorney for compliance with any administrative and fiscal law restrictions.²¹³

II.L. Military Personnel Law

OIF **ISSUE: Working relationship with the Brigade S-1 on military personnel issues**

DECISION: Mental health evaluations and related issues, processing AWOLs, dropping Soldiers from the rolls (DFRs), and REFRADs required a close working relationship with the Brigade S-1. Although the responsibility for these issues lies mainly with the S-1 shop, the OCJA stepped up to act as a catalyst to ensure the proper coordination took place.

RECOMMENDATION: Training or information in these areas would be extremely helpful. Clear lines of responsibility between the forward unit, rear detachment, OCJA, and the state OSJA will make it easier to deal with issues such as Failure to Report (FTR)/drop from rolls (DFR), absent without leave (AWOL), release from active duty (REFRADs), and lack of support inquiries. Train the trainer info for deploying JAs would be helpful in this regard. Finally, give incoming JAs the relevant JASG-C/MNC-I/MNF-I policies. Familiarity with the SOPs and policies, which affect daily guidance before arriving in theatre, would be beneficial.²¹⁴

II.L.1. Administrative Separations

OIF **ISSUE: Personality disorders**

DECISION: The administrative law JAs did not have a strong grasp on the process of removing a Soldier from theater once the command approved the 5-13 separation packet. This caused needless turmoil and inconsistent procedures.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ 50 IBCT (NJARNG) 2009 OIF AAR, *supra* note 46.

TIP OF THE SPEAR

RECOMMENDATION: Improve. The unit should establish an SOP for separations, including the preparation of packets and the process for physical removal from theater.²¹⁵

ISSUE: Separations due to inadequate family care plans (FCPs)

DECISION: One of the biggest problems the unit faced was the use of the family care plans (FCPs) to obtain a separation from the Army. Many Soldiers thought that by claiming their FCP was no longer valid, they could easily get out of the deployment and the military. Unfortunately, it worked for many Soldiers and the command eventually sent them home. However, there was always a lengthy delay between the time the command marked the Soldier for separation and the time the Soldier actually left theater. This caused more work for the command because they now had an idle Soldier to look after and one less Soldier to carry out the mission.

RECOMMENDATION: Improve. Ensure that the Soldier provides adequate proof that his/her FCP has failed. Do not allow the Soldier to get out of the deployment on a falsity. However, if the Soldier is chaptered, the quicker the commander can get the Soldier out of theater and off his books, the better.²¹⁶

ISSUE: Replacing separated Soldiers

DECISION: The unit did what they could to keep the process of removing an individual from the books moving in order to get the numbers down. This helped the commander obtain his needed combat strength.

RECOMMENDATION: Sustain. If someone is waiting to be chaptered out of the Army, the unit should consider moving the Soldier out of theater to the rear detachment. This clears the books and allows the commander to receive a replacement.²¹⁷

ISSUE: Coordinating separations

DECISION: For chapters and administrative separations, it is important to form good relationships with the other players, such as the transition point, finance, and medical sections. All sections must work together in order to process the separation in a timely manner. If you do not form these relationships, you will run into roadblocks.

RECOMMENDATION: Sustain.²¹⁸

ISSUE: Escorts for separated Soldiers

DECISION: The brigade provided an escort to travel with individuals just separated from the military back to garrison. Travel back to garrison would correspond to times when other members of the brigade were returning to garrison for other reasons.

RECOMMENDATION: Sustain. To minimize disruption to force levels, wait to assign a member to an escort until someone is returning to the U.S. for other purposes.²¹⁹

²¹⁵ 3ID 2008 OIF AAR, *supra* note 83.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ 4ID 2009 OIF AAR, *supra* note 2.

²¹⁹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

ISSUE: Pressure to separate due to the requirement to reach a certain deployment percentage threshold

DECISION: The unit began scrubbing its deployable numbers early.

RECOMMENDATION: Start early in identifying those who will not deploy due to pending separation and process them for separation as quickly as possible.²²⁰

ISSUE: The halting/delay of administrative separation packages

DECISION: After approval of the separation in country, civilian employees at Fort Bragg delayed these actions. Civilian employees at Ft. Bragg apparently did not like the format of the paperwork sent from theater. It was unclear why this happened, but it appears it was the result of minor administrative “preferences” and not “requirements.” This resulted in a significant processing delay and a loss of accountability for the separated Soldier.

RECOMMENDATION: Establish an effective tracking system to follow the separations of Soldiers sent home from theater. If an error exists in the process, identify it as soon as possible and gain a clear understanding of what the civilian employees require.²²¹

OEF ISSUE: Positive urinalysis

DECISION: When the New York National Guard (NYNG) rotated with the South Carolina National Guard at TF Phoenix, CSTC-A learned that the NYNG unit deployed with them several Soldiers who had tested positive for drugs while training at Fort Bragg. The NYNG then sought to separate these soldiers and return them to CONUS despite the fact they had elected to bring them to Afghanistan. Personnel regulations required general officer approval, which is why this issue came to our attention. Our CG was reluctant to return Soldiers when the command brought them to Afghanistan. He did not believe this made any sense. We returned the packets to TF Phoenix for further reconsideration and did not receive them back before our rotation.

RECOMMENDATION: Units should bring the Soldiers and have them serve the entire tour or leave them for separation. Do not bring them to country and then process them for separation after two months in theater.²²²

ISSUE: Separation checklist

DECISION: There was confusion about how much of the separation medical exam and mental evaluation should occur in theater. Early in the deployment, the brigade commander signed a memo waiving in-theater exams, which were not available, allowing decision on separation to occur at Fort Hood (the battalion’s rear location). Later, the brigade discovered the BAF hospital could do the physical.

RECOMMENDATION: Equip large forward military treatment facilities to complete separation physicals.²²³

²²⁰ 1BCT, 4ID 2009 OIF AAR, *supra* note 13.

²²¹ TF525 2009 OIF AAR, *supra* note 38.

²²² CSTC-A 2008 OEF AAR, *supra* note 6.

²²³ 420th EN BDE 2009 OER AAR, *supra* note 19.

Where to Process Administrative Separations

OIF ISSUE: Administrative separations during deployment

DECISION: The regiment separated most Soldiers before or after the deployment. When a unit separates a Soldier during a deployment, it is helpful to complete as much processing as possible in theater despite the difficulty of obtaining medical and psychological examinations there. This avoids having the Soldier spend a long time waiting at the rear detachment. Otherwise, this may cause problems for the rear detachment, which is responsible for a large number of Soldiers in various stages of leaving the Army. However, some Soldiers were unable to remove all of their equipment from theater upon departure, and it was sometimes difficult for the unit to accomplish this. Soldiers occasionally had to wait at the rear detachment because their belongings had been lost in transit or the unit had failed to pack and return them and/or for completion of the resulting FLIPL.

RECOMMENDATION: Improve. Legal teams should work with their units to improve their understanding of the importance of assisting in the prompt packing up and removal of such Soldiers' belongings from theater.²²⁴

ISSUE: Conducting administrative separations in theater

DECISION: There was one administrative separation (positive urinalysis case) brought from the rear. It resulted in a suspended Other Than Honorable (OTH) discharge. This case came forward due to legal officer error. Once the unit was forward, the government was disadvantaged because the defense knew that we could not get an expert forward to testify. Additionally, the Marine's officer in charge wanted to keep the Marine because he was an extraordinarily high performer.

RECOMMENDATION: It is important to clear the unit's legal rolls and drop Marines with pending legal issues from the deployment.²²⁵

ISSUE: Completing administrative separations in theater

DECISION: The BCT could not finish all of the required steps for these actions downrange, so they made the decision to send Soldiers awaiting separation back to CONUS.

RECOMMENDATION: Sustain. Commanders must understand they may not be able to complete all of the steps in a deployed environment. Consequently, if they really want Soldiers separated, the Soldiers may have to return to their home stations to do so.²²⁶

ISSUE: Location of separation

DECISION: The command separated members in theater before returning them to garrison. The brigade had the resources available to perform both a medical and mental evaluation in theater.

RECOMMENDATION: Sustain. Continue to provide the resources necessary to complete separation before leaving theater, i.e., both physical and psychological professionals.²²⁷

²²⁴ 2SCR 2009 OIF AAR, *supra* note 101.

²²⁵ RCT-5 2008 OIF AAR, *supra* note 8.

²²⁶ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 132.

²²⁷ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

ISSUE: Location of separation

DECISION: Although the initial command inclination was to send the Soldiers home for separation, it was possible to assist the command with completion of almost 90% of the administrative separation checklist. This eased the burden upon the rear detachment when it was time to process the Soldiers in CONUS.

RECOMMENDATION: Continue to complete as much of the process in Iraq as possible.²²⁸

OEF ISSUE: Administrative separations before deployment

DECISION: Soldiers scheduled for administrative separation remained with the rear detachment for processing.

RECOMMENDATION: Improve. The rear detachment requires experienced and trained staff to handle administrative separations.²²⁹

ISSUE: Completing separations

DECISION: The paralegal specialist (27D) for the rear detachment took charge of all administrative separations sent home. She ensured each separation was complete and the Soldier was properly out-processed. She also tracked each separation and sent the tracker forward to the BJA every week. The forward brigade commander was very interested in the outcome of each action.

RECOMMENDATION: Sustain. This process worked well.²³⁰

ISSUE: Separation of National Guard Soldiers

DECISION: This brigade, a United States Army Reserve (USAR) brigade, had command and control over a National Guard battalion. USAR never resolved whether the command should administratively separate Soldiers, or release them from active duty (REFRAD) and return them to their State for punishment. The brigade had never processed an AR 635-200 separation on a National Guard Soldier.

RECOMMENDATION: Determine preference of State Active Guard on separations before a National Guard unit deploys under the command of Active or Reserve higher headquarters.²³¹

II.L.2. Conscientious Objectors

OIF ISSUE: Processing conscientious objector cases

DECISION: The unit required its Soldiers claiming conscientious objector status to travel with the brigade into theater for the processing of their cases.

²²⁸ 2SBCT, 25ID 2009 OIF AAR, *supra* note 104.

²²⁹ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 146.

²³⁰ 101st CAB 2009 OEF AAR, *supra* note 146.

²³¹ 420th EN BDE 2009 OER AAR, *supra* note 19.

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RECOMMENDATION: Sustain. Require members claiming conscientious objector status to travel with the unit into theater before processing the claim rather than leaving them behind in garrison for disposition.²³²

ISSUE: **Legal support to conscientious objector claimants**

DECISION: The division legal assistance office provided legal support for members claiming conscientious objector status.

RECOMMENDATION: Sustain. Seek higher headquarters legal support to provide adequate representation to members claiming conscientious objectors status.²³³

OEF ISSUE: **Processing of conscientious objector packets**

DECISION: Units did a poor job of processing conscientious objector packets in a timely manner. Some cases were not processed in an expeditious manner. In making his recommendation, the GCMCA had to account for all of the processing time.

RECOMMENDATION: Improve. Train units to report conscientious objector packets to their BJA, who can advise on the process and track its progress. Failure to process these packets in a timely manner can result in Inspector General (IG) complaints or congressional inquiries, and can harm the Army's legal position should the Soldier initiate action in a federal court.²³⁴

II.L.3. Evaluation Reports

II.L.3.a. Enlisted

No AAR comments.

[For issues concerning paralegal NCOERs and rating chains, see X.F.3. DOTMLPF—Personnel—Personnel Actions (Awards, Evaluations, Adverse Actions)]

II.L.3.b. Officer

OIF ISSUE: **Reviewing evaluation reports**

DECISION: The command required the RCT JA review one adverse “fitrep” on an officer to “bulletproof” it from collateral attack.

RECOMMENDATION: None.²³⁵

ISSUE: **Relief for cause OERs**

DECISION: The BJA reviewed all relief for cause OERs with the BCT S1.

RECOMMENDATION: Sustain.²³⁶

²³² 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

²³³ *Id.*

²³⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

²³⁵ RCT-5 2008 OIF AAR, *supra* note 8.

ISSUE: Rebuttal of poor evaluation reports

DECISION: The legal assistance attorney advised numerous reserve component individual augmentees who received mediocre OERs just before redeployment. The raters did not counsel the rated officers, nor did the evaluations comply with the regulation. Because of the timing of the evaluations, the legal assistance attorney was not able to assist all of these clients fully before they redeployed.

RECOMMENDATION: Legal in-briefs and out-briefs during the mobilization process and in Kuwait should include information on how to rebut poor evaluations. Reserve component Soldiers need continued access to legal assistance services after demobilization.²³⁷

OEF ISSUE: Impact of referred reports on awards

DECISION: A CW2 received a referred OER and then received an end of tour award directly conflicting with the OER.

RECOMMENDATION: S-1 should not process awards that have not gone through a Soldier's rater.²³⁸

[For issues concerning JA OERs and rating chains, see X.F.3. DOTMLPF—Personnel—Personnel Actions (Awards, Evaluations, Adverse Actions)]

II.L.4. Females in Combat

OIF ISSUE: Search/checkpoint units (“lionesses”)

DECISION: The criteria for women to serve in these units are generally, fundamentally understood. Marines interpret the restrictions far more literally than law and DoD policy require. In the RCT JA's view, infantry battalions conducting stability operations in Iraq are not, at this stage of the contingency operation, “likely to participate in combat” within the meaning of the governing law and regulations. Infantry battalions in Iraq are no more likely to engage in combat against an armed enemy than any combat logistics unit or other unit travelling the roads of Iraq, but we have no problem assigning women to combat logistics battalions and Marine wing support squadrons. It is true that there may be other more practical reasons not to assign women to infantry battalions (separate billeting/showering/heads, etc.), but we should cite those reasons and not the women in combat policy.

RECOMMENDATION: The utilization of Marine “lionesses” required an understanding of the DoD and USMC position (“likely to participate in combat”). There is no reason, legal, regulatory, or practical that higher could not assign women judge advocates to regimental headquarters in Iraq. RCT-5 had eight women assigned, including 2 officers. One of these women was the Motor Transport Platoon commander, who was the officer on the staff most likely to come in contact with the enemy while she was conducting convoy operations.²³⁹

²³⁶ 4-1 CAV 2009 OIF AAR, *supra* note 17.

²³⁷ *Id.*

²³⁸ 420th EN BDE 2009 OER AAR, *supra* note 19.

²³⁹ RCT-5 2008 OIF AAR, *supra* note 8.

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ISSUE: **Special Operation Forces (SOF)**

DECISION: Females supported SOF units in an auxiliary role.

RECOMMENDATION: Improve. Take precautions to ensure females not mistakenly assigned to direct combat.²⁴⁰

ISSUE: **Female paralegal in an infantry battalion**

DECISION: The female member provided the infantry battalion legal support without any adverse issues arising due to her gender.

RECOMMENDATION: Sustain.²⁴¹

OEF ISSUE: **Compliance with DOD policy**

DECISION: CJTF-101 received press inquiries concerning an incident in late April 2007 that resulted in a female medic receiving the Silver Star. Although DOD policy prohibits the assignment of females to smaller direct ground combat (DGC) units engaging in deliberate offensive action against the enemy, the reality of operations in Afghanistan is female Soldiers often find themselves in combat situations. For example, due to cultural sensitivities, female Soldiers often accompany patrols in order to give them the capability to search female local nationals.

RECOMMENDATION: Sustain. Continue to properly advise commanders of the policy.²⁴²

II.L.5. Hazing

OIF ISSUE: **Commanders' handling of hazing**

DECISION: The RCT had significant hazing investigations occur in two different infantry battalions. Both infantry battalion commanders were very reluctant to see the hazing incidents as hazing. The bottom line is the facts established by the investigations in both instances constituted hazing, but labeling them "hazing" was heretical for these commanders. They were unable to understand the senior leadership would rather see them attack the hazing problem head on than duck it. Denying hazing exists when it really does has the potential to get commanders relieved. Most Marine Corps field grade officers remember the public hits the Marine Corps took in the 1990's over hazing. Most of our company grade officers and half our gunnery sergeants and below have no memory of those controversies.

RECOMMENDATION: Calling a spade a spade, investigating, and disciplining Marines guilty of hazing is leadership. Commands will continue to struggle against hazing so long as we vilify commanders whose units have hazing incidents occur on their watch. These two commanders were deathly afraid of being branded, the RCT JA believed, providing a disincentive for objective assessment.²⁴³

²⁴⁰ IAD 2009 OIF AAR, *supra* note 1.

²⁴¹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

²⁴² 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

²⁴³ RCT-5 2008 OIF AAR, *supra* note 8.

ISSUE: Prosecuting hazing

DECISION: The unit prosecuted such incidents under the UCMJ.

RECOMMENDATION: Sustain. Continue vigorous efforts to prosecute hazing incidents under the UCMJ.²⁴⁴

ISSUE: Reporting requirements

DECISION: There were many cases in Multi-National Division – Center (MND-C) of junior NCOs in leadership positions mistreating their Soldiers under the guise of corrective training. One hazing trend in particular resulted from the fact the latrines in the life support areas (LSAs) were often far from some Soldiers' living quarters. This prompted them to urinate in empty water bottles and leave the water bottles in their rooms. Upon discovering urine bottles in their Soldiers' rooms, NCOs often incorporated the urine bottles into corrective training. In one extreme case, an NCO poured urine on a Soldier and made the Soldier drink urine while performing flutter kicks. Due to the seriousness of this trend and the potential for media outcry about such hazing, the MND-C military justice SOP included reporting requirements to division for all hazing incidents. In addition, the division trial counsel re-emphasized the distinction between corrective training and punishment in an information paper.

RECOMMENDATION: Sustain. In addition, emphasize the prohibitions on hazing in pre-deployment briefings.²⁴⁵

II.L.6. Homosexuality

OIF ISSUE: Violation of homosexual conduct policy

DECISION: There was one occurrence member within the brigade violating the homosexual conduct policy. The unit separated the individual from the Army due to drug use, not for homosexuality.

RECOMMENDATION: None.²⁴⁶

II.L.7. Lautenberg Amendment

OIF ISSUE: Dealing with violations

DECISION: Conviction for an offense that triggers application of the Lautenberg Amendment provisions, even where the offense occurred several years ago, can affect a Soldier's ability to obtain a security clearance. However, Soldiers can obtain policy exceptions, so AdLaw attorneys need to be familiar with the relevant procedures. In addition, some occupations do not require a security clearance. This means that where a unit wants to retain a Soldier, it is possible to administratively separate that individual, assign him/her to a new classification through the duration of the deployment, and then send him/her to the new military occupation school once back at home station. (NOTE: All Soldiers known to have, or whom commanders have

²⁴⁴ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

²⁴⁵ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

²⁴⁶ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

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reasonable cause to believe have, a qualifying conviction are not mobilization assets and are non-deployable for missions that require possession of firearms or ammunition.)

RECOMMENDATION: Sustain. AdLaw attorneys should be familiar with these workarounds.²⁴⁷

II.L.8. Letters of Reprimand

OIF ISSUE: Conflicts in advising on reprimands

DECISION: One squadron was located at a FOB away from the regimental headquarters. On a few occasions, the paralegal based at the squadron first advised the command on a General Officer Memorandum of Reprimand (GOMOR), then advised the Soldier in question, because it was difficult to get Soldiers to FOB Anaconda to see an attorney. While this was not ideal, the paralegal was as enthusiastic about advocating for the Soldiers as he had been for the command.

RECOMMENDATION: Improve. If necessary, JAs should provide legal advice to Soldiers in remote locations by telephone.²⁴⁸

ISSUE: GOMOR drafting responsibilities

DECISION: The division command issued many letters of reprimand throughout the deployment because the majority of investigations resulted in a GOMOR or a letter in a Soldier's theater file. Military justice personnel drafted GOMORs until about halfway through the deployment, when the command reassigned that function to the AdLaw section (normally responsible for these when in garrison). In drafting GOMORs, AdLaw personnel have the advantage of being familiar with the investigation prompting the GOMOR.

RECOMMENDATION: Sustain.²⁴⁹

ISSUE: Impact of reprimands on retention bonuses

DECISION: JAs advising commanders on letters of reprimand should be aware a letter in a theater file could have the unintended consequence of disqualifying a captain or lieutenant from receiving a retention bonus.

RECOMMENDATION: Sustain.²⁵⁰

ISSUE: Templates

DECISION: The BJA sent reprimand templates to the battalions for common incidents such as negligent discharges. All the battalions had to do was fill in the names and specifics of the incident.

RECOMMENDATION: Sustain.²⁵¹

²⁴⁷ 4ID 2009 OIF AAR, *supra* note 2.

²⁴⁸ 2SCR 2009 OIF AAR, *supra* note 101.

²⁴⁹ 4ID 2009 OIF AAR, *supra* note 2.

²⁵⁰ *Id.*

²⁵¹ 4-1 CAV 2009 OIF AAR, *supra* note 17.

II.L.9. Relief for Cause

OIF ISSUE: Retention of authority

DECISION: The division Commanding General (CG) reserved disposition of relief for cause actions for senior personal, i.e., E-8 or higher. The brigade both suspended and removed the individual in question until the division could take action on the relief.

RECOMMENDATION: Sustain. Suspend and remove an individual from duty while the removal action becomes final to prevent a continuation of the member's poor leadership.²⁵²

ISSUE: Causes for relief

DECISION: There were several instances prompting reliefs for cause in the BCT: (a) sending personal emails to General Petraeus and telling troops they were going to die; (b) unjustified firing of weapon at Iraqi Police officers after IED exploded; (c) Throwing a rock at and hitting the face of another Soldier to get his attention; and (d) three reliefs for cause for extorting and threatening local national workers (General courts-martial subsequently convicted all three).

RECOMMENDATION: Sustain.²⁵³

OEF ISSUE: Leadership failures at remote FOBs

DECISION: There were a number of officers relieved for cause at remote FOBs.

RECOMMENDATION: Improve. Select soldiers for duty at remote FOBs who can operate independently. Choose only the best-qualified officers and NCOs to lead at remote sites. Proper command oversight at remote FOBs occurs through increased and frequent command visits. During pre-deployment training, conduct realistic training for staff destined for deployment at remote site by placing detachments in distant locations.²⁵⁴

ISSUE: Suspension vs. relief

DECISION: Because the relief of officers from command is a rare occurrence in garrison, units did not have knowledge of the proper procedures. Brigade and battalion commanders did not understand they could only temporarily suspend a subordinate commander. The first GO in the chain of command must approve a permanent relief from command.

RECOMMENDATION: Improve. Ensure commanders use the correct language and make the proper notifications when suspending a subordinate commander with the intent to relieve him or her.²⁵⁵

²⁵² 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 25.

²⁵³ *Id.*

²⁵⁴ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 146.

²⁵⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

II.M. Morale, Welfare, & Recreation (MWR)

OIF ISSUE: Use of command MWR funds

DECISION: The command received two dollars per soldier per quarter. At the end of the deployment, the MWR funds were unspent.

RECOMMENDATION: Improve. Follow rules and regulations with respect to the expenditure of command MWR funds. Some uses of MWR funds near the end of the deployment were questionable.²⁵⁶

ISSUE: Free Armed Forces Network (AFN) television

DECISION: Free AFN television was allowable only in common areas, without an exception to the regulation on point.

RECOMMENDATION: Sustain. Follow the regulation, or seek and secure the appropriate exception to the regulation. Do not allow personnel to run AFN television signals to private sleeping quarters in an immature theater, when resources are scarce.²⁵⁷

ISSUE: Spending of “Operations & Maintenance, Army” (OMA) funds for MWR purposes

DECISION: Confusion arose as to whether the division could spend OMA funds for MWR purposes, or only MWR-appropriated OMA funds. Some took the view that, as in garrison, a unit could use OMA funds to buy t-shirts for an event co-sponsored by MWR. However, others believed the division could buy t-shirts, but only with MWR-appropriated money. The division’s inability to determine the point of contact for the Victory Base Complex (VBC) MWR compounded the difficulty of dealing with these issues, as did frequent personnel transitions at the garrison OSJA.

RECOMMENDATION: Improve. AdLaw attorneys may wish to identify the MWR point of contact before deployment because the command will inevitably want to schedule MWR activities to celebrate a special event during the deployment. In addition, TJAGLCS should consider adding an MWR paragraph to the Fiscal Law Deskbook.²⁵⁸

II.N. Miscellaneous Administrative Law Topics

OIF ISSUE: Implementation of ARCENT coin policy at division level

DECISION: The MNF-I and MNC-I coin policies were inconsistent with a newly issued (and more restrictive) ARCENT coin policy. The division redid its policy memo to bring it into line with the narrower ARCENT policy. The discrepancy between the ARCENT and other theater policies concerned the percentage of unit personnel to whom the commander could award coins, not just the dollar amount a commander can spend on coins (e.g., a commander can only buy coins for one-third of force personnel, not for the entire force).

²⁵⁶ IAD 2009 OIF AAR, *supra* note 1.

²⁵⁷ *Id.*

²⁵⁸ 4ID 2009 OIF AAR, *supra* note 2.

RECOMMENDATION: Improve. Theater policies should be consistent with those issued by higher headquarters.²⁵⁹

ISSUE: **Working relationship with the Brigade S-1**

DECISION: Mental health evaluations and related issues, processing AWOLs, dropping Soldiers from the rolls (DFRs), and REFRADs required a close working relationship with the Brigade S-1. Although the responsibility for these issues lies mainly with the S-1 shop, the OCJA stepped up to act as a catalyst to ensure the proper coordination took place.

RECOMMENDATION: Training or information in these areas would be extremely helpful. Clear lines of responsibility between the forward unit, rear detachment, OCJA, and the state OSJA will make it easier to deal with issues such as Failure to Report (FTR)/drop from rolls (DFR), absent without leave (AWOL), release from active duty (REFRADs), and lack of support inquiries. Train the trainer info for deploying JAs would be helpful in this regard. Finally, give incoming JAs the relevant JASG-C/MNC-I/MNF-I policies. Familiarity with the SOPs and policies, which affect daily guidance before arriving in theatre, would be beneficial.²⁶⁰

ISSUE: **Building relationships with CONUS stakeholders before deploying**

DECISION: In-person visits to the Human Resources Command (HRC), Office of the Judge Advocate General (OTJAG), and the Office of the Congressional Legislative Liaison (OCLL) increased the awareness of the JAs in the Administrative Law section. HRC personnel were essential to understanding the processes for hostile deaths, accidental deaths, and fratricides. They were also essential to understanding how to process and communicate investigations in the field to family members. Although there was no specific topic OTJAG addressed during the deployment, it was beneficial to the processing of certain actions, such as Article 138 claims, to understand OTJAG's preference. OCLL required time-sensitive information from the field, especially high-visibility investigations which caught congressional attention. Knowing the judge advocate liaison at OCLL helped process these requests in a timely manner. Understanding the priorities and responsibilities of the various stakeholders facilitates in-theater efforts to provide valuable products and reports to those stakeholders.

RECOMMENDATION: Sustain.²⁶¹

OEF ISSUE: **Staffing of administrative law section**

DECISION: AdLaw is the "catch-all" section. CJTF-101's two administrative law attorneys became the action officers for most issues not fitting squarely into the other legal disciplines, including some non-legal work.

RECOMMENDATION: Sustain. At least two attorneys are necessary to cover administrative law at the CJTF/division level.²⁶²

²⁵⁹ *Id.*

²⁶⁰ 50 IBCT (NJARNG) 2009 OIF AAR, *supra* note 46.

²⁶¹ XVIII ABC 2009 OIF AAR, *supra* note 14.

²⁶² 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 7.

Casualty Briefings to Primary Next of Kin (PNOK)

OIF ISSUE: Information flow to PNOK

DECISION: Information flowed to the next of kin before the official briefing team arrived to give the brief, often causing unnecessary confusion. The briefing team came to realize that the families often received a lot of information about the death of their loved one before the team arrived for the briefing. For example, Human Resources Command (HRC), the Casualty Assistance Office (CAO), CID, and members of the unit might all speak to the family before the briefing team arrived. This caused inaccuracies in the information and frustration to the family. For example, someone initially told a family the death of their Soldier was due to hostile fire when in fact it was due to friendly fire. The rear detachment SJA was part of the briefing team and attempted to coordinate with all individuals who had passed information to the family to determine what information the family had already received.

RECOMMENDATION: Improve. Before a briefing, learn who, if anyone, made contact with the family and what information they conveyed.²⁶³

ISSUE: Family dynamics affecting PNOK briefing

DECISION: One widow refused to hear the next of kin briefing with her in-laws because they did not get along. The briefing team did not have another copy of the brief for the parents of the deceased.

RECOMMENDATION: Improve. Learn the family dynamics before attempting the briefing and be prepared with a second copy of the briefing in case the widow/widower refuses to allow parents of deceased soldier to participate in the initial briefing.²⁶⁴

ISSUE: PNOK briefs

DECISION: The RCO decided to bring the RJA to certain PNOK briefs. As a valued member of the staff, the RJA endeavored to demonstrate to the family (if asked) that the investigation was complete, that the Army left no stone unturned, and that no witness slipped through the cracks.

RECOMMENDATION: Take an active role in the PNOK briefs, ensuring the product makes sense given the “redact-too-much” tendencies of the staff. Prepare to accompany the commander on PNOK briefs, if called upon to do so.²⁶⁵

²⁶³ 31D 2008 OIF AAR, *supra* note 83.

²⁶⁴ *Id.*

²⁶⁵ 3ACR 2009 OIF AAR, *supra* note 49.

III. CONTRACT & FISCAL LAW

III.A. Contract Law

[Editor's Note: This section of the outline presents information that is of general application to contract and fiscal law attorneys. Issues specific to contract law are found under section III.B. Deployed Contracting.]

Working with Other Players in the Contracting Process

OIF ISSUE: Commanders' understanding of contractual requirements

DECISION: Marines at the tactical level, including commanders, have an insufficient appreciation for who supports them, what contractual arrangements exist to provide that support, what remedies we have when the support is absent, how we go about availing ourselves of these remedies.

RECOMMENDATION: Improve. Joint Contracting Command – Iraq (JCC-I) is not a customer friendly entity. They may as well be on the moon with regard to the help they provide regiments and battalions in the field. They must become more customer-friendly.¹

ISSUE: Working with the contracting officer (KO)

DECISION: You may need information that only the KO maintains (i.e., you cannot provide legal advice concerning a contract without seeing the contract). The KO maintains the contract.

RECOMMENDATION: Improve. Develop a good working relationship with the KO.²

ISSUE: Working with the Comptroller

DECISION: It is important to ensure the Comptroller does not provide legal advice to staff sections or Major Subordinate Commands (MSCs). This applies even regarding straightforward legal matters with which he or she is familiar with from experience. Applying law/regulations to facts is the lawyer's job.

RECOMMENDATION: Improve. Develop a good working relationship with the Comptroller and ensure he/she understands the Judge Advocate's role.³

ISSUE: Importance of a positive working relationship with the comptroller

DECISION: The MNF-W fiscal law attorney and the comptroller worked together on a daily basis. Their positive working relationship was critical to the success of the command advice on fiscal law issues.

¹ Regimental Combat Team-5, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – July 2008 (7 Aug. 2008) [hereinafter RCT-5 2008 OIF AAR] (on file at CLAMO).

² Multi-National Force – West, Office of the Staff Judge Advocate (Fiscal Law Section), After Action Report, Operation Iraqi Freedom, February 2007 – July 2008 (Oct. 2008) [hereinafter MNF-W Fiscal Law 2008 OIF AAR] (on file at CLAMO).

³ *Id.*

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RECOMMENDATION: Improve. Work to maintain a positive working relationship with the comptroller's office.⁴

ISSUE: Interaction with brigade fiscal law staff

DECISION: The division fiscal law attorney reached out to the BCT staffs in an effort to head-off potential problems.

RECOMMENDATION: Improve. Individual personalities caused certain brigade staff members to have a better relationship with division staff. Division attorneys should reach out to all brigades to keep informed of issues, and vice versa.⁵

ISSUE: Use of staff assistance visits to improve division fiscal law support to brigades

DECISION: The single best means of improving division fiscal law support to brigades would have been to conduct a staff assistance visit to each incoming unit. Such a visit would include representatives from G4, G8, G9, and the legal team, and would cover topics such as what a contract should look like, what issues raise flags, and important points of contact. Subordinate units begged for such a program, but the division command resisted instituting it—in fact, the chief of staff issued guidance prohibiting unnecessary trips off the FOB. Nonetheless, the fiscal law attorneys believe the payoff in this area would have been very significant. Many fiscal law problems result from miscommunication, and the commander of an incoming unit inadequately briefed by the outgoing unit would soon find himself being “hammered” by the division command on fiscal law matters.

RECOMMENDATION: Improve. The predeployment program for first-term captains may help to address some fiscal law problems, but incoming brigades could also send their JAs to spend a couple of days with the division OSJA upon arrival to ensure a good handoff.⁶

ISSUE: Division of responsibility between division and brigade

DECISION: The fiscal law review process was electronic, with the brigade initiating the packet. The division G-8 required BJAs to conduct a full fiscal law review. Division fiscal law attorneys simply scanned this unless they felt the packet to be incomplete (15-20% of time), in which case, they also wrote a full review. In addition, any requirement for MNC-I approval triggered full brigade and division fiscal law reviews. Some BJAs questioned the requirement for a full brigade legal review because their command did not require it, nor did the MAAWS require one. Division fiscal law attorneys suggested brigades take this up with the incoming division.

RECOMMENDATION: Improve. Division staffs should consider, during predeployment training, the appropriate level at which full fiscal law reviews will occur.⁷

⁴ 1 Marine Expeditionary Force (Forward), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – February 2009 (19 Feb. 2009) [hereinafter 1 MEF (FWD) 2009 OIF AAR] (on file at CLAMO).

⁵ 1st Armored Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (19 Feb. 2009) [hereinafter 1AD 2009 OIF AAR] (on file at CLAMO).

⁶ 4th Infantry Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (30 Apr. 2009) [hereinafter 4ID 2009 OIF AAR] (on file at CLAMO).

⁷ *Id.*

ISSUE: Fiscal law coordination at brigade, division, and corps levels

DECISION: The division fiscal law attorneys established a good relationship with brigade JAs by asking questions when an aspect of a fiscal law opinion was unclear. They also occasionally spotted an issue missed by a brigade JA. When this occurred, they called the JA to discuss before putting their concerns in writing. Similarly, brigade JAs who realized a review was a “close call” warned division fiscal law attorneys before forwarding the legal review to them. In some cases, a brigade JA who knew the proposed course of action was legally permissible or impermissible sought their opinion to provide “top cover.”

The MNC-I fiscal law section was very helpful, and the division fiscal law attorneys spoke to them 2-3 times per day, discussing all packets before forwarding them up, and highlighting potential problems. The only area of potential friction arose in interpreting project splitting in terms of CERP contracts. The CERP guidelines do not define this in the same way the FAR do for OMA-funded contracts.

Coordination complications did occur when the division formed Task Force Gold (based on an engineering brigade) to go into Sadr City. While TF Gold was supposed to coordinate funding issues with one of the BCTs (which had CERP authority, while the TF did not), TF Gold sent some CERP requests directly to the BCT commander without prior coordination between TF and BCT JAs. This meant the division fiscal law attorneys were sometimes required to arbitrate between two sets of JAs.

RECOMMENDATION: Sustain. Close coordination between fiscal law attorneys working at the various levels minimizes the possibility of confusing and annoying commanders with conflicting fiscal law opinions.⁸

ISSUE: Requirement for OSJA and staffs to review and track FRAGOs

DECISION: Fiscal law cooperation with MNC-I was so good that MNC-I FRAGOs never surprised the division fiscal law attorneys, but division FRAGOs sometimes did (e.g., one directing units to purchase metal detectors and give them to their Iraqi counterparts). While division procedures called for the staffing of FRAGOs through all sections, such coordination did not necessarily occur. The OpLaw section issued a monthly summary of changes in the OpLaw area, but fiscal law guidance changed too rapidly to implement a similar system. The fiscal law attorneys would simply warn other JAs they expected issue of an important FRAGO and would hold affected fiscal law packets until its receipt.

RECOMMENDATION: Improve. OSJA sections responsible for reviewing FRAGOs in their respective areas of responsibility should consider whether they raise legal issues requiring the legal review of another section.⁹

ISSUE: Relationship with MNC-I

DECISION: The division contract and fiscal law attorney enjoyed a good relationship with her counterparts at MNC-I. In addition to calling MNC-I several times per day, the division attorney consulted extensively with MNC-I on bigger projects, such as the movement of the division headquarters to Basra. Getting the backing of MNC-I helped the division contract and fiscal law

⁸ *Id.*

⁹ *Id.*

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attorney when explaining her legal opinions to higher-ranking staff officers and commanders. The attorneys at MNC-I were willing to act as the naysayers when necessary.

RECOMMENDATION: Sustain.¹⁰

OEF ISSUE: Corps of Engineers staff-manning level

DECISION: The U.S. Army Corps of Engineers (USACE) had massive personnel shortfalls for their mission. They were building things for CSTC-A, and for every other U.S. Government agency. When it came to contract oversight/dispute, they just did not have the people to cover the issues. Additionally, when it came to potential contract disputes, they invariably applied a risk-averse perspective (can they win on a case) to a war zone, where it was not always appropriate.

RECOMMENDATION: Improve. The process did not work well for CSTC-A.¹¹

ISSUE: Relationships with the J4 and brigade contracting officer

DECISION: The BJA worked closely with the Joint Logistics Command (JLC) J4 section and the contracting officer. This association created an efficient process for contract review and approval. Often, the contracting officer accompanied the BJA to brief the brigade commander on contract issues.

RECOMMENDATION: Sustain. Creating good relationships with other staff members is extremely beneficial.¹²

Contract & Fiscal Law Staffing/Workload

OIF ISSUE: Capabilities required of the Eastern Area Counsel Office (EACO)

DECISION: EACO provided single-task, short-term contingency contracting attorney support at the beginning of the deployment (for approximately 90+ days) and at the end of the deployment (for approximately 90+ days). During the deployment, the contingency contracting attorney support came via reach-back. Contingency contracting issues arose during this break in support (for example, an inappropriate claim for approximately \$4 million by a contractor). Additionally, partial integration of the capability into the MNF-W command structure occurred as the attorney worked with the OSJA. MNF-W had a requirement for a contingency contracting attorney throughout the entire deployment cycle.

RECOMMENDATION: Improve. The contingency contracting attorney should deploy as a full-time member of the MAGTF OSJA. This will ensure necessary access and oversight over contingency contracting requirements as well as provide the necessary support over the entire duration of the deployment cycle.¹³

¹⁰ 10th Mountain Division (Light Infantry), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, May 2008 – May 2009 (25 June 2009) [hereinafter 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

¹¹ Combined Security Transition Command – Afghanistan, Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom (Sept. 2008) [hereinafter CSTC-A 2008 OEF AAR] (on file at CLAMO).

¹² 101st Sustainment Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, January 2008 – February 2009 (13 May 2009) [hereinafter 101st SUST BDE 2009 OEF AAR] (on file at CLAMO).

¹³ II Marine Expeditionary Force (Forward), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2007 – February 2008 (8 July 2008) (on file at CLAMO).

ISSUE: Use of paralegals in fiscal law

DECISION: The paralegals performed the initial scrub of micro-grant proposals. This was important due to the huge number of these proposals.

RECOMMENDATION: Improve. Use your paralegals to perform initial looks. They are more than capable of spotting issues and can focus the JA's review. This saves a tremendous amount of effort and time.¹⁴

ISSUE: Amount of time devoted to contract and fiscal issues at the BCT

DECISION: These types of issues took up about 60% of the BJA's time.

RECOMMENDATION: Improve. Be prepared to perform a great deal of fiscal and contract work.¹⁵

ISSUE: Contract law workload

DECISION: Contract law comprises less than 15% of issues in the deployed environment.

RECOMMENDATION: Improve. Anticipate low contract law demand during the predeployment cycle and make the appropriate staffing decision. Understand basic contract concepts such as the use of Federal Acquisition Regulation (FAR), "source selection" evaluation criteria, project conversion, and the Commander's Emergency Response Program (CERP).¹⁶

ISSUE: Fiscal law work schedule

DECISION: The workday length was usually in excess of 13 hours. The fiscal law attorney received very little time off, as the job was in high demand. Demands outside of fiscal law, such as sergeant's time training, "hails and farewells," and other mandatory events required the fiscal law attorney to forego almost all personal time.

RECOMMENDATION: Improve. Assign an additional attorney to work fiscal law issues.¹⁷

ISSUE: Clearance needed for fiscal review of Army compartmentalized classification management (ACCM) programs

DECISION: ACCM programs require a specific security clearance level and additional read-on. The fiscal law attorney did not have requisite clearance, thus was unable to be read-on. After consultation, the SJA directed the fiscal law attorney to draft a legal opinion for his signature of a questionable ACCM funding request.

RECOMMENDATION: Improve. A Top Secret/Sensitive Compartmentalized Information (TS/SCI) clearance may be required to review fiscal law issue relating to ACCM funding. To ensure the fiscal law attorney understands the issue he or she must have enough of the facts of an ACCM operation to give competent legal advice. The fiscal law attorney cannot personally give

¹⁴ 1st Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – March 2009 (28 Apr. 2009) [hereinafter 1BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

¹⁵ *Id.*

¹⁶ 1AD 2009 OIF AAR, *supra* note 5.

¹⁷ *Id.*

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a valid legal opinion without an understating of the ACCM operation, but may be able to assist the SJA or another with the requisite clearance to draft an opinion.¹⁸

ISSUE: Staffing of the fiscal law section

DECISION: The division deployed with three of its organic brigades, as well as with other non-organic units. The fiscal law attorneys did not promulgate a significant amount of guidance, preferring instead to rely upon the MNC-I MAAWS. The division fiscal law burden increased with the shift to a largely non-kinetic environment. One fiscal law attorney was insufficient to handle the workload, which often included thirty CERP-funded contracts per day and slightly fewer OMA-funded contracts. However, the number of contracts, particularly Sons of Iraq (Sol) ones, “shot through the roof” near the end of the fiscal year, and the division commander retained contract approval authority.

The division assigned a second AdLaw attorney to work in the fiscal law area on a full time basis. One fiscal law attorney worked exclusively on CERP issues, while the other looked after all other fiscal law matters. At one point, division fiscal law attorneys had to approve 400 contracts in two days. While their review tended to be superficial, they wanted to ensure they saw all contracts.

Two JAs worked in both the OpLaw and fiscal law sections during the deployment, and both indicated the fiscal law workload was greater. While the OpLaw mission is important (and picked up in the lead up to the Security Agreement), the fiscal law mission was heavier. Assignment of the fiscal law attorneys to the AdLaw section worked well, but the nature of the CERP mission means it is important to be in constant contact with other branches, such as S9. At the division level, the fiscal law attorneys could even form their own section.

RECOMMENDATION: Sustain. OSJAs preparing to deploy should work with the outgoing units to assess the workload in each section and the numbers of JAs required to accomplish the mission.¹⁹

ISSUE: Assessing fiscal law workload to determine fiscal law staffing requirements

DECISION: By the second half of the deployment, the fiscal law section was tracking the type of action, dates, and units to assess the volume of its workload. This allowed the incoming division to compare its previous deployment workload to this division’s workload to assess the staffing requirements, and determine whether the workload increased significantly at different times throughout the year. Division G8 and G9 personnel also tracked numbers for the same reason. The division used the data to make an MTOE submission, because while the amount of OMA funds spent remained constant, the number of CERP actions increased. The division also spent new types of funds (e.g., DDR and I-CERP).

RECOMMENDATION: Sustain. Dramatic changes in the responsibilities of U.S. forces in Iraq will likely require deploying OSJAs to adjust their staffing numbers from previous deployments.²⁰

ISSUE: Paralegal support to fiscal law section

¹⁸ *Id.*

¹⁹ 41D 2009 OIF AAR, *supra* note 6.

²⁰ *Id.*

DECISION: The fiscal law section did not have paralegal support, but the attorneys were not sure assigning paralegals would have helped in view of the electronic staffing process. Reviewing electronic files possibly took longer than reviewing paper files (because it took longer to flip through them), but other staff branches found the electronic process to be helpful. Perhaps a paralegal could have assisted in reviewing packets for sufficiency (nominally a G9 responsibility), since the fiscal law attorneys usually rejected packets when they were incomplete. The fiscal law section did use the services of the AdLaw NCOIC to deal with the influx of condolence payments resulting from the Sadr City operation. He reviewed the packets and drafted the initial legal review. One of the fiscal law attorneys then finalized it.

RECOMMENDATION: Improve. In assessing section workloads and staffing, OSJAs should also consider the type of work and whether a JA or paralegal can best carry it out.²¹

ISSUE: Requirement for fiscal and OpLaw attorneys to work closely together

DECISION: The fiscal law and OpLaw attorneys had to synchronize their activities very closely, although coordination between these two areas may be difficult at the division level. One possibility not explored by this division would have been to assign a fiscal law attorney to attend planning meetings in order to spot potential fiscal law issues. OpLaw attorneys normally attended such meetings, but sometimes did not have sufficient fiscal law knowledge to spot issues because this was an area of very rapid change. This occasionally resulted in the issue of FRAGOs that raised fiscal law issues, because the fiscal law section found out about them only when brigade JAs asked questions.

RECOMMENDATION: Improve. OpLaw attorneys should be aware of the requirement to spot fiscal law as well as OpLaw issues, and obtain fiscal law expertise sufficient to allow them to do so or enlist the assistance of fiscal law attorneys when discussing new courses of action.²²

ISSUE: Number of contract and fiscal law attorneys at division level

DECISION: The division deployed with only one trained contract and fiscal law attorney. The workload was intensive for one attorney, and having only one left no one to cover down on contract and fiscal law during the attorney's absences. It took the primary contract and fiscal law attorney a month to train another attorney to take her place while she went on leave.

RECOMMENDATION: Improve. There should be at least two attorneys trained in contract and fiscal law at the division level.²³

ISSUE: Right seat/left seat ride for continuity in fiscal law

DECISION: Before deployment the MND-C contract and fiscal law attorney had minimal contact with her counterpart, who redeployed before she arrived. The outgoing contract and fiscal law attorney did not prepare an adequate continuity book. Consequently, the incoming attorney had a difficult transition and relied heavily on MNC-I attorneys for theater-specific contract and fiscal law training.

²¹ *Id.*

²² *Id.*

²³ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

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RECOMMENDATION: Improve. It is critical to conduct a good transition between outgoing and incoming attorneys, particularly in a complex area like contract and fiscal law. A good continuity book, along with extensive face-to-face discussions, can help the incoming unit avoid the pitfalls the outgoing unit faced.²⁴

ISSUE: Continuity in fiscal law

DECISION: Air Force and Army Reserve judge advocates deployment cycles overlapped with those of XVIII Airborne Corps. In addition, one of the fiscal law judge advocates from XVIII Airborne Corps deployed two months before the main body. This overlap allowed continuity between III Corps and XVIII Airborne Corps. Furthermore, unlike the other OSJA attorneys, the fiscal law attorneys did not rotate positions mid-tour.

RECOMMENDATION: Sustain. Continuity in fiscal law is very helpful to avoid a steep “learning curve” for newly deployed judge advocates. Moreover, it takes time to build rapport with the players involved in deployment contracting.²⁵

OEF ISSUE: Use of joint assets

DECISION: There were no Army judge advocates performing contract and fiscal law legal functions within the headquarters. Two lieutenant colonels and a major from the Air Force were the supporting attorneys. Their skill set was phenomenal. Even an installation the size of Fort Campbell had no judge advocate with this level of expertise.

RECOMMENDATION: When in a joint environment, use the increased specialization expertise that comes with having a wider pool from which to draw personnel.²⁶

ISSUE: Rotation of contract & fiscal law attorneys

DECISION: The Air Force personnel who filled the contract & fiscal law billets at CJTF-101 rotated every six months. Fortunately, the rotations were staggered, so there was always an experienced attorney in the section.

RECOMMENDATION: Sustain.²⁷

ISSUE: Contract and fiscal law workload

DECISION: The office staff consisted of three attorneys and several paralegals. The senior attorney had previous contract and fiscal law experience. The two junior contract attorneys were not as experienced. During the period of 1 November 2008 to 1 May 2009, the unit completed more than 900 legal opinions and 1,400 contract actions worth over \$8 billion.

RECOMMENDATION: Improve. Legal staff sent downrange should have at least a minimal understanding and experience in contract and fiscal law.²⁸

²⁴ *Id.*

²⁵ XVIII Airborne Corps, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – April 2009 (11 June 2009) [hereinafter XVIII ABC 2009 OIF AAR] (on file at CLAMO).

²⁶ 101st Airborne Division (Air Assault), Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom, April 2008 – June 2009 (28 Aug. 2009) [hereinafter 101st ABN DIV (AASLT) 2009 OEF AAR] (on file at CLAMO).

²⁷ *Id.*

Contract & Fiscal Law Training

OIF ISSUE: The need for fiscal law training using theater specific vignettes

DECISION: Due to the accelerated deployment timeline of the division, the JA who ended up doing fiscal law did not have any training before deployment. Tailoring training to specific theater issues would have been helpful.

RECOMMENDATION: Improve. Plan ahead, deciding early in the deployment process which JAs will fill the different positions in the SJA office. Ensure everyone receives adequate training before deployment.²⁹

ISSUE: Training

DECISION: This is increasingly a substantial portion of the operational lawyer's practice as the Logistics Civil Augmentation Program (LOGCAP) support to operations continues to grow.

RECOMMENDATION: Improve. There needs to be fiscal/contract training for the deployed environment that goes beyond the purpose, time, and amount tests. There needs to be specific training on how to research fiscal law through Comptroller General opinions and other administrative agency resources (Office of Management and Budget (OMB) opinions, etc.) and we need a substantial block of training in contingency contracting. A substantial block of real, detailed training is worth the time and effort.³⁰

ISSUE: Mentoring junior attorneys

DECISION: Given the pace of the MNF-W practice, this may be a challenge at times. However, it is certainly worth the effort because so few company grade attorneys have exposure to fiscal law.

RECOMMENDATION: Improve. Take time to mentor junior attorneys in fiscal law.³¹

ISSUE: Understanding the basics of fiscal law

DECISION: The BJA received minimal fiscal law training before deployment. The training was not very helpful aside from issue spotting. MNC-I was a fantastic help to the BJA with fiscal law issues. They were always very informative and responsive.

RECOMMENDATION: Improve. It is important for JAs to understand the basics of fiscal such as purpose, time, and amount. This requires research and a solid relationship with your higher headquarters. Train before you deploy and make contact with your higher headquarters fiscal shop as soon as possible. If possible, obtain training on specific fiscal issues that are relevant to your mission.³²

²⁸ *Id.*

²⁹ 3d Infantry Division (Mechanized), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2007 – June 2008 (23 Sep. 2008) [hereinafter 31D 2008 OIF AAR] (on file at CLAMO).

³⁰ RCT-5 2008 OIF AAR, *supra* note 1.

³¹ MNF-W Fiscal Law 2008 OIF AAR, *supra* note 2.

³² 525th Battlefield Surveillance Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (12 Mar. 2009) (on file at CLAMO).

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ISSUE: Fiscal law training

DECISION: In the deployed environment, fiscal law comprises more than 85% of contract and fiscal law issues.

RECOMMENDATION: Improve. Increase pre-deployment training. JAs should spend more time and emphasis on fiscal law issues in the pre-deployment cycle. In the Basic Course, there is too much emphasis on contract law. Prior fiscal law experience in the deployed environment is very helpful.³³

ISSUE: Developing expertise in contracting

DECISION: The unit sent a JA to serve in an internship with Contracting Command for eight months before the deployment. The SJA of the unit replaced in theater had served as the action officer for contracting and fiscal law issues.

RECOMMENDATION: Improve. It did not appear to work well to have the SJA serving as an action officer. Consequently, creating some other expertise in contracting law before the deployment allowed the office to have a proper action officer for those issues.³⁴

ISSUE: Sufficiency of pre-deployment fiscal law training

DECISION: The regimental JA had completed the JA Officer Basic Course (JAOBC) less than three years before deploying (the period during which the JAG Corps does not expect JAs to need to return to TJAGLCS for additional training). While the fiscal law portion of the JAOBC gave him sufficient knowledge to identify purpose, time, and amount issues in conducting his fiscal law reviews, he often did not know the intended line of funding at that point. However, even if he had known the source of funding, he knew little about the various Iraq-specific funds upon deployment.

RECOMMENDATION: Improve. The newly developed JAG Corps pre-deployment program could include a module on the different types of funds available in a specific theater. The severe consequences incurred by fiscal law errors means this area of the law is not conducive to on-the-job training.³⁵

ISSUE: Understanding the fiscal funding process

DECISION: Post-mobilization training and the MRX has to emphasize to the project managers there is a defined funding process and how it works. The directorates need to understand the need to coordinate their projects and to understand the funding process. Many were unfamiliar with the steps and the necessity for detailed and cogent letters of justification (LOJ). The OCJA, along with the Comptroller, should fill the role of training the directorates. Training received at CLAMO was beneficial to the success of the contract and fiscal law mission. Perhaps future training could also consist of a “train the trainer” approach. JAs would then be better able to train

³³ 1AD 2009 OIF AAR, *supra* note 5.

³⁴ *Id.*

³⁵ 2d Stryker Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, August 2007 – May 2008 (17 Feb. 2009) [hereinafter 2SCR 2009 OIF AAR] (on file at CLAMO).

those who will be in charge of the JASG-C directorates and ultimately responsible for preparing and submitting requests for funding.

RECOMMENDATION: Improve. Ensure the directorates understand the funding process and rules, and coordinate and plan their projects accordingly.³⁶

ISSUE: BCT fiscal law training

DECISION: Because the team deployed with late-notice fills, they did not receive basic fiscal law training, despite the best efforts of the brigade and supporting SJA office. There simply was not time to get to a fiscal law course.

RECOMMENDATION: Improve. Due to circumstances it could not control, the brigade's experience was atypical. In typical cases, brigade legal personnel should receive at least a basic purpose, time, and amount fiscal law course before deployment.³⁷

ISSUE: Knowledge of fiscal law at the BCT level

DECISION: A common trend MND-C noticed was the lack of knowledge of fiscal law at the BCT level. Some BJAs were unaware of the basic fiscal law references, such as the MAAWS, as well as common fiscal law concepts, such as project splitting, systems analysis, and the MILCON threshold. In some cases, BJAs would "shoot from the hip" without having a firm grasp of the legal issues and would fail to consult the division contract and fiscal law attorney for assistance. In other cases, the BJAs deliberately signed off on projects, allowing division to be the one to deny the project. In at least one BCT, it was apparent the brigade S4 and S9 were writing the purchase requests and supporting legal opinions on which the BJA signed off blindly.

The 10th Mountain Division attempted to mitigate the lack of fiscal law understanding at the BCT level by reviewing every single purchase request, even those for which the BCT commander was the approval authority, before the request went to G8 for funding. In addition, the division sent a team (consisting of the G4, G8, contract and fiscal law attorney, and a BCT S9) to Kuwait to do fiscal law training for incoming BCTs task organized under 10th Mountain Division. The training consisted of two 4-hour briefings covering the major funding sources and the lessons learned. Unfortunately, this training took key personnel out of the division headquarters for four days. The division had to discontinue the training after a single iteration due to the demands of the move to Basra.

RECOMMENDATION: Improve. Knowledge of fiscal law can make a BJA very value-added. Deploying BJAs should attend the Fiscal Law Course at TJAGLCS. The division should proactively conduct fiscal law training for BCT-level personnel involved in the project approval process. Having a second attorney trained in fiscal law would improve the division's ability to conduct this training for incoming BJAs.³⁸

ISSUE: Pre-deployment contract and fiscal law training

³⁶ 50th Infantry Brigade Combat Team, New Jersey Army National Guard, Office of the Command Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – May 2009 (25 May 2009) [hereinafter 50 IBCT (NJARNG) 2009 OIF AAR] (on file at CLAMO).

³⁷ 4th Brigade Combat Team, 10th Mountain Division (Light Infantry), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (5 Feb. 2009) [hereinafter 4BCT, 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

³⁸ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

TIP OF THE SPEAR

DECISION: The primary 10th Mountain Division contract and fiscal law attorney attended the Contract Attorney's Course and the Fiscal Law Course at The Judge Advocate General's Legal Center and School (TJAGLCS).

RECOMMENDATION: Improve. Although, the TJAGLCS courses were very good, deploying contract and fiscal law attorneys should familiarize themselves with theater-specific references and guidance, including the *Money as a Weapons System* (MAAWS) handbook.³⁹

ISSUE: Appropriate fiscal law training for paralegal NCOs

DECISION: Paralegals on the ground with units have the first and best chance to keep their commands out of trouble when it comes to spending money. The units look to them for on-the-spot observations as to whether something passes the straight-face test. When the unit leadership says, "Hey we want to buy Thing X for Person Y," the paralegal must have enough knowledge to raise a red flag when necessary.

RECOMMENDATION: Improve. The brigade senior paralegal should attend any BCT JA course along with his attorneys. The training for the paralegals does not need to focus on the rules for OMA versus CERP or I-CERP or those types of determinations. It needs to enable them to spot issues and keep the command from acting too hastily in the troublesome areas. It should focus on real-world scenarios. The requirement is more for Government ethics types of issues (gifts, fundraising, endorsement, etc.), as opposed to per se fiscal law instruction.⁴⁰

ISSUE: Pre-deployment training

DECISION: In preparation for deployment, the MNC-I fiscal law attorneys attended both the two-week Contract Attorneys Course and the one-week Fiscal Law Course at TJAGLCS. In addition, they performed some fiscal law duties at home station with the tutelage of the civilian contract and fiscal law attorney. Finally, they contacted their predecessors to gain awareness of current fiscal law guidance and issues.

RECOMMENDATION: Sustain. The Contract Attorneys Course is adequate preparation for fiscal law attorneys at MNC-I since only five percent of the workload involves contract law. For the ninety-five percent of the workload consisting of fiscal law, deploying fiscal law judge advocates should supplement the Fiscal Law Course with intensive study of theater-specific fiscal documents. Advanced access to the MNC-I fiscal law shared drive, or the previously mentioned central repository, would be beneficial for deploying judge advocates. This would give deploying judge advocates an opportunity to examine previous fiscal law legal reviews, and to review the most current fiscal law references (e.g., FRAGOs; DoD policy memos; MAAWS).⁴¹

ISSUE: Training on CERP prior to deploying

DECISION: The precise contours of the program started as somewhat of a mystery and are always changing. It takes a deliberate effort by MNC-I to push new info on CERP down to the lawyers at the tactical level. Fighting with comptrollers over proper uses of CERP was painful.

³⁹ *Id.*

⁴⁰ XVIII ABC 2009 OIF AAR, *supra* note 25.

⁴¹ *Id.*

There exists a corporate culture where they believe they are the only ones who can possibly understand financial management regulations.

RECOMMENDATION: Improve. There needs to be more training for JAs on CERP before deploying.⁴²

OEF ISSUE: Need for more experienced fiscal law instructors with recent deployment time

DECISION: The BJA did not attend a fiscal law course at TJAGLCS before deployment. The only formal fiscal law training that the BJA received was during OBC. Unfortunately, although the instructor may have given sound textbook instruction, he did not have recent deployment experience. Consequently, he could not give any realistic or hands-on training.

RECOMMENDATION: Improve. BJAs for logistics units should attend the fiscal law course prior to deployment. Additionally, the instructors at the JAG school should have recent deployment experience. They are not helpful if they cannot provide theater specific, technical instruction.⁴³

ISSUE: Predeployment contract and fiscal law training

DECISION: Academic instruction provided to deployed contract and fiscal law attorneys did not adequately prepare the lawyers for the challenges faced in the deployed environment.

RECOMMENDATION: Improve. Academic instruction does not always complement the actual situation on the ground in a deployed environment. Commanders are mission-focused. An academic answer to a deployed contracting or fiscal law issue is not helpful. Attorneys deploying to overseas contingency operations should understand meeting the mission may sometimes require lawyers to “think creatively.” Contract and fiscal law lawyers should work hard to get to “yes” without violating the law. If possible, avoid giving answers of “why something cannot be done.”⁴⁴

Contract & Fiscal Law “Reach-back” Capability

OIF ISSUE: Fiscal and contract law “reach back” assistance

DECISION: MNF-W’s fiscal law mission was extremely challenging and time consuming. Contract and fiscal attorneys from Western Area Counsel Office (WACO) and Eastern Area Counsel Office (EACO) deployed in support of MNF-W for approximately three months at the beginning and three months at the end of MNF-W’s yearlong deployment. As a result, the ability to “reach back” to experts via e-mail and phone was critical during periods when a WACO or EACO attorney was not deployed. The officers relied upon in CONUS were extremely responsive and helpful. This capability and relationship was essential to handling the myriad of complex fiscal and contract law issues encountered. This was especially important because most judge advocates do not have the training or experience to handle complex fiscal and contract issues.

⁴² RCT-5 2008 OIF AAR, *supra* note 1.

⁴³ 101st SUST BDE 2009 OEF AAR, *supra* note 12.

⁴⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 26.

TIP OF THE SPEAR

RECOMMENDATION: Improve. Obtain as much education as possible about fiscal law before deploying and maintain solid “reach back” capabilities while deployed.⁴⁵

ISSUE: The development of “fiscal and contract law” specialists within the USMC judge advocate community

DECISION: With the increased focus on and importance of fiscal and contract law in a deployed environment, a combination of TJAGLCS graduates, the deployment of WACO/EACO attorneys, and “reach back” can meet the USMC mission. Ideally, a WACO or EACO attorney would deploy for the entire deployment to handle all contract issues, and fiscal issues as needed. The contract law attorney embedded himself in the MNF-W contracting office. This enabled him to have increased visibility on contracting issues, to support the contracting office on a daily basis. If unable to deploy for the entire deployment, “reach back” capability is essential. It is difficult for a judge advocate, without any specialized training in contract law, to advise commanders on complex contract issues. This makes the deployment of contract law attorneys or “reach back” capability vital to mission success. The USMC likely does not have a large enough community to “focus” a JA’s career beyond what is already being done with WACO and EACO. The education at TJAGLCS is sufficient to allow advising commanders. Finally, unless deployed, USMC JAs will not advise commanders on a substantial amount of fiscal and contract law issues.

RECOMMENDATION: Sustain. There is not a critical need to further expand the area of “fiscal and contract law expertise” within the USMC JA community. However, it is essential that those judge advocates at WACO and EACO, who have the expertise, are available to assist by deploying, or at a minimum, through “reach back” capability.⁴⁶

ISSUE: Fiscal law reach-back

DECISION: The division was reluctant to use fiscal law reach-back capability, as “home station” policies conflicted with MNC-I policy.

RECOMMENDATION: Sustain. Use reach-back capability only with the understanding it is advisory in nature.⁴⁷

ISSUE: Reach-back for division fiscal law attorneys

DECISION: Most attorneys are knowledgeable in fiscal law matters but not always in contracts (even the MNC-I fiscal law attorneys knew more about fiscal law than contracting). Brigades asked many questions about what they could negotiate, and it was difficult to obtain information about this. Joint Contracting Command – Iraq (JCC-I) was not very responsive, but reservists were sometimes very good resources, particularly those who are government contracting attorneys in civilian life. The fiscal law attorneys used the fiscal law reach-back mechanism and found it very responsive. U.S. Army Legal Services Agency (USALSA) Contracting and Fiscal Law Division (KFLD) contracting law reach-back support was also helpful.

RECOMMENDATION: Improve. JCC-I should consider providing additional contracting law resources for the use of other JAs in theater.⁴⁸

⁴⁵ 1 MEF (FWD) 2009 OIF AAR, *supra* note 4.

⁴⁶ *Id.*

⁴⁷ 1 AD 2009 OIF AAR, *supra* note 5.

⁴⁸ 4 ID 2009 OIF AAR, *supra* note 6.

III.B. Deployed Contracting

Contract Authority

OIF ISSUE: **Authority to enter contracts**

DECISION: Many in the brigade looked to the BJA to handle contracting issues, particularly to obligate the U.S. Government via contract. The BJA advised those requesting contracting assistance he did not have the authority to obligate the government. The BJA referred the individual to the contracting office with proper contracting authority.

RECOMMENDATION: Sustain. The BJA must be aware of his/her limitations to obligate the U.S. Government to ensure the brigade understands the limits. Provide greater emphasis to educating members during pre-deployment training of the limits of contracting authority.⁴⁹

ISSUE: **Selection and training of unit-contracting officer's representative (COR)**

DECISION: The division chief of staff responded to contracting problems by issuing a memo explaining Federal Acquisition Regulation (FAR) requirements, etc. G8 also tried to institute a practice of identifying a unit COR before departure from the United States, instead of while in Kuwait. The COR was usually a first lieutenant or a staff sergeant, generally from the infantry or armor branch, and in some cases did not have the appropriate expertise. The COR received a 45-min presentation once in Baghdad. The Army Audit Agency (AAA), which reviewed division fiscal operations during the deployment, recommended the COR be chosen more carefully and receive training while still in garrison.

RECOMMENDATION: Improve. Ideally, units should choose and train their COR before departure from garrison.⁵⁰

ISSUE: **Separation of Project Purchasing Officer (PPO) and Paying Agent (PA) duties**

DECISION: Despite clear guidance in the MAAWS to the contrary, some units appointed the same individual as both a PPO and a PA. Finance generally did not catch this violation. This created opportunity for fraud, a problem Iraqi cultural business practices exacerbated. For example, with respect to "Sons of Iraq" (SOI) contracts, some dual-hatted PPO/PAs were paying only ninety percent of the contract price and pocketing the rest, an accepted practice in Iraqi business culture.

RECOMMENDATION: Improve. BJAs should ensure their brigades and battalions appoint separate PPOs and PAs. Moving from a cash-based project payment system to one based on electronic funds transfer (EFT) will also reduce opportunities for fraud.⁵¹

Contract Review

OIF ISSUE: **Contract education and review of contracts in country**

⁴⁹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 37.

⁵⁰ 4ID 2009 OIF AAR, *supra* note 6.

⁵¹ XVIII ABC 2009 OIF AAR, *supra* note 25.

TIP OF THE SPEAR

DECISION: It is important to try to get pre-deployment education in Contract Law. The BJA did not have any and it would have been helpful. In addition, it may have helped assist in resolving an issue that arose in country—contract review responsibilities. It was unclear who was supposed to review contracts. The Defense Contract Management Agency (DCMA) is supposed to provide Contract Administration Services to the Department of Defense Acquisition Enterprise and its partners to ensure delivery of quality products and services to the war fighter, on time and on cost. This did not happen, and the 3d Infantry Division OSJA was unable to assist with this issue either.

RECOMMENDATION: Improve. Either become educated and able to review contracts for legal sufficiency or find a way to get support from DCMA, your HHQ OSJA, or “reach back” resources. Make sure you understand your respective lane of fire when it comes to contract authority. Division will often not understand what your assets are down at a FOB, especially when FOBs often have units from different commands present (this brigade had MND-C, MNC-CS, MNC-I, MNF-I, etc.).⁵²

ISSUE: BJA review of contracting proposals

DECISION: The BJA offered to review contracting proposals, but made it clear to those seeking the review he/she had no authority to obligate the U.S. and was not a contracting officer. The brigade legal section could only assist with proposals based upon their basic knowledge of contract law.

RECOMMENDATION: Sustain. If the BJA is going to review contracting proposals, he/she must make it clear that the review is for drafting and content sufficiency only, not for contract purchasing approval.⁵³

ISSUE: Contract justifications and SOW determination

DECISION: Division contract and fiscal law attorney did not conduct a complete “bottom-up” review of contracts.

RECOMMENDATION: Improve. Throughout the deployment, ensure the staff includes a trained contract and fiscal law attorney. The regional contracting command already conducts contract reviews. Train the contract and fiscal law attorney to spot issues and to use his time wisely between fiscal law and contract law.⁵⁴

ISSUE: Division procedures for review of contracting packets

DECISION: Division fiscal law attorneys tried to ensure legal review of contracting packets occurred within 48 hours of arrival in the section. Because the brigade commander in question could see, via an automated system, exactly where the packet was sitting, staffs could not blame OSJA personnel when they were not responsible for a delay. However, since the weekly essential services (Sewer, Water, Electricity, Agriculture, Trash – Health (SWEAT-H) meeting occurred on Tuesday morning, OSJA personnel often received packets intended for discussion at the

⁵² 214th Fires Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, April 2007 – July 2008 (20 Mar. 2009) [hereinafter 214th Fires BDE 2009 OIF AAR] (on file at CLAMO).

⁵³ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 37.

⁵⁴ 1AD 2009 OIF AAR, *supra* note 5.

meeting late on Monday night, and the SJA became accustomed to explaining the late arrival had not yet permitted legal review.

RECOMMENDATION: Improve. OSJA personnel should educate division staffs before deployment to ensure their understanding of the timelines required for legal reviews.⁵⁵

ISSUE: **Executing contracts ahead of the review process**

DECISION: Following the combat operations in Sadr City, fiscal law attorneys noted even more division pressure to award contracts quickly in order to encourage the momentum toward increased peace and decreased attacks. Although there were numerous efforts to push spending within legal limits, units eager to succeed implemented some projects before any division review. This forward leaning posture resulted in a number of investigations and audits. A related problem was the security situation in Sadr City, which made it difficult for units to monitor contract progress. The initial concept called for the hiring of a surveyor who could then propose potential projects. While this was non-contentious, units then hired Iraqis to do “good stuff” (i.e., they engaged in general job creation as a means of paying those who had previously been shooting at US forces). In fact, guidance from higher indicated units should use trash pickup contracts as a short-term default measure. Because units generally kept dollar limits below division review thresholds, the fiscal law attorneys did not necessarily hear about such contracts until they were already in place. When they were had a chance to assist, they worked to identify the project, helped to draft the statement of work, and ensured contracts included specific numbers, a completion date, and an indication of GoI plans to assume the responsibility, to minimize the possibility of U.S. forces taking over Iraqi government functions.

RECOMMENDATION: Improve. Commanders should receive education before deployment on CERP and basic contracting rules (e.g., contracted work cannot occur until a contract is in place), ensuring they are aware of the possibility units will not be able to provide CERP-funded aid immediately upon conclusion of an operation.⁵⁶

ISSUE: **Legal advice to regional contracting commands**

DECISION: During the movement of MND-C to Basra, the MND-C contract and fiscal law attorney and the chief of the regional contracting command attended all the planning meetings. In the absence of attorneys from Joint Contracting Command, Iraq (JCC-I), the MND-C contract and fiscal law attorney was the only attorney available to provide legal advice to the regional contracting command.

RECOMMENDATION: Sustain. Attorneys assigned to JCC-I should provide legal advice to the regional contracting commands.⁵⁷

OEF ISSUE: **Lack of training on contract review**

DECISION: The BJA conducted initial reviews of all purchase request and commitments (PR&Cs). She had no prior training in this area, so she worked with the S4 and learned as she went.

⁵⁵ 4ID 2009 OIF AAR, *supra* note 6.

⁵⁶ *Id.*

⁵⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

TIP OF THE SPEAR

RECOMMENDATION: Improve. Contract review training is necessary before deployment, especially in areas of dollar limitations, joint acquisition review board (JARB) procedures, and contract specifications.⁵⁸

ISSUE: **Continuously changing guidance from division on contract requirements**

DECISION: Most contracts had to go through division due to the dollar limitations. The division contract office often changed their documentation requirements regarding contract packages. This was frustrating to the BJA because division required a certain document one month, and the next month they wanted a different document.

RECOMMENDATION: Improve. The division requirements must be clear and consistent.⁵⁹

ISSUE: **Legal review of contract documents**

DECISION: The JAs obtained a checklist that allowed a systematic approach to contract review.

RECOMMENDATION: Improve. Personnel were not prepared to review contracts. Require a refresher in contingency contracting and additional practical exercises during JRTC.⁶⁰

ISSUE: **Contractual advice to the command**

DECISION: CSTC-A provided a significant amount of informal contracting advice to other commands such as JCC-I/A and the Kabul Regional Contracting Center (KRCC). However, the CSTC-A SJA was not the legal advisor to the contracting execution agency. That was the Afghanistan Engineering District (construction) or the KRCC. Much of what CSTC-A did was driven by who they knew in these offices. Understanding the process helped clarify for the CSTC-A CG the limits of his authority in this area. Even though they were located on Camp Eggers, the KRCC was part of JCC-I/A and had a separate chain of command.

RECOMMENDATION: Improve. Be sensitive to the fact that contracting is a major tool for your commander. You have to keep him or her informed of the process.⁶¹

Contract Formation & Administration Issues

OIF **ISSUE:** **Initiation of new ISF service contracts upon transfer of former U.S. facilities**

DECISION: Questions often arose in relation to transferring contracts for services to the ISF when transferring responsibility for former U.S. installations. The contract law attorneys determined the ISF must initiate a new contract in such circumstances (e.g., for cleaning latrines).

RECOMMENDATION: Sustain. JAs can expect commanders and staffs to ask this and similar questions more and more frequently as U.S. forces draw down in Iraq.⁶²

⁵⁸ 101st Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, December 2007 – December 2008 (13 May 2009) (on file at CLAMO).

⁵⁹ 101st SUST BDE 2009 OEF AAR, *supra* note 12.

⁶⁰ 4th Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, March 2008 – March 2009 (12 May 2009) (on file at CLAMO).

⁶¹ CSTC-A 2008 OEF AAR, *supra* note 11.

⁶² 4ID 2009 OIF AAR, *supra* note 6.

ISSUE: Lack of unit tracking of contract duration leading to unauthorized commitments

DECISION: Unauthorized commitments occurred frequently, primarily when units allowed work pursuant to a contract to continue without renewing the contract. This seemed to result from a lack of time at brigades, as well as a deficiency in tracking mechanisms—e.g., due to a poor handover between units. The division G4 held a monthly Breeze chat session, to which the fiscal law attorneys contributed one slide (e.g., things to look at in terms of service contracts, etc.).

RECOMMENDATION: Improve. Work with units before deployment to improve their awareness of potential problems.⁶³

ISSUE: Fraud in the contracting bidding process

DECISION: To enforce accountability for contract materials, the unit recorded serial numbers of serialized items, such as generators. It was also helpful to take photographs of both the contractor and the materials as the contractor took delivery. Additionally, the unit ensured contractors signed their names to documents the same way each time. The brigade also had a large number of sole source projects. Once the brigade indentified a contractor as trustworthy, the unit would use the contractor repeatedly over others known to be corrupt.

RECOMMENDATION: Sustain. A contractor's reliability should be a factor to determine the qualifications and acceptability of a contractor.⁶⁴

ISSUE: Contract cost tracking

DECISION: The MND-C contract and fiscal law attorney personally tracked contract costs on projects, particularly in cases where contracting officers awarded multiple contracts to meet a requirement. The engineers did not do a good job of reporting expenses. Moreover, while the MND-C G8 tracked costs on individual contracts, they did not aggregate the costs of multiple contracts to track the overall project cost. The MND-C contract and fiscal law attorney had to warn G8, the division engineers, and the command if a proposed project was close to the \$750K military construction (MILCON) threshold for the use of Operation and Maintenance, Army (OMA) funds.

RECOMMENDATION: Improve. It is not the job of the contract and fiscal law attorney to track contract costs. The engineers should report costs, and the contracting officer should track them to ensure the overall project does not exceed the MILCON threshold.⁶⁵

OEF ISSUE: Utilizing existing contractual agreements

DECISION: When CSTC-A (DoD) took over the Afghan National Police (ANP) training mission, it just agreed to utilize the existing DoS contract already in place by entering into a Memorandum of Agreement (MOA). They gave the money to the DoS, per the MOA, and let DoS continue to manage the contract. This made it more difficult for the DoD to effectuate ANP training, because the contractor resisted DoD oversight or direction and frequently stated they only had to respond/react to DoS.

⁶³ *Id.*

⁶⁴ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 37.

⁶⁵ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

TIP OF THE SPEAR

RECOMMENDATION: Improve. Since they were using DoD funds, CSTC-A should have considered pushing for DoD contracts. This issue is well documented/laid out by a joint DoD/DoS investigation focused on the ANP development.⁶⁶

Performance Work Statements (PWS)/Statements of Work (SOW)

OIF **ISSUE: Development of the contract's statement of work (SOW)**

DECISION: The originator routinely attempted to shape a deployed contract without understanding the distinction between contract and fiscal law. Most common deployed contract law issues relate to the development of the contract's SOW. Before development of the SOW, the JA provided the originator of the request with a legal opinion.

RECOMMENDATION: Improve. Keep the contracting officer informed of all significant contracting requests, and advertise the availability of the JA to assist in drafting the SOW.⁶⁷

ISSUE: Division fiscal law review of performance work statements

DECISION: The fiscal law attorneys reviewed contracts primarily to determine whether they had any legal objection to them, focusing mainly on the letter of justification. They amended the performance work statement (PWS) more often for CERP-funded contracts than for OMA-funded ones, but did not have time to rewrite PWSs on a routine basis. They sometimes put a packet on hold while awaiting a response from the initiating unit regarding a question or observation (e.g., "It is unclear what work the contractor will perform."). However, they might simply flag a contract as insufficient, warning G4 to expect problems down the road. Because Joint Contracting Command – Iraq (JCC-I) also reviewed contracts, the fiscal law attorneys were less concerned about identifying all potential problems.

RECOMMENDATION: Sustain. To avoid unauthorized commitments, those responsible for service contracts should be aware of their expiration dates, and that renewal can take 30 days. BJAs may wish to consider working with brigade personnel responsible for CERP submissions before deployment to ensure a good understanding of packet requirements such as letters of justification.⁶⁸

III.C. Fiscal Law

III.C.1. Acquisition & Cross-Servicing Agreements (ACSAs)

OIF **ISSUE: Lack of ACSA with the GoI**

DECISION: The fiscal law attorney felt pressure to approve transfer of materials to GoI during drawdown. Civil affairs personnel often ignored the advice of the fiscal law attorney for sake of the IO mission. For example, the requesting official ignored advice concerning an aviation fuel request to eradicate insects (fuel used to power a crop duster) in an Iraqi agricultural field.

⁶⁶ CSTC-A 2008 OEF AAR, *supra* note 11.

⁶⁷ 1AD 2009 OIF AAR, *supra* note 5.

⁶⁸ 4ID 2009 OIF AAR, *supra* note 6.

RECOMMENDATION: Improve. Enter into an ACSA with GoI. Demand for property transfers is high during the drawdown period.⁶⁹

ISSUE: The lack of an ACSA with Iraq

DECISION: The provision of logistical and other support to Iraqi must occur via other means, such as a Foreign Military Sales (FMS) case.

RECOMMENDATION: JAs should be aware of the lack of an ACSA, particularly as U.S. forces draw down their presence in Iraq.⁷⁰

ISSUE: Use of ACSAs to dispose of equipment/facilities turned over by coalition partners

DECISION: When MND-C began the transition to MND-S at Basra, it inherited the FOB the British formerly occupied. In order to take possession of the buildings and property left behind, MND-C needed to request purchase under the ACSA. The British created a compendium of items on the FOB. The British assigned a price to the buildings and equipment based on their condition. The contract and fiscal law attorney determined if the items were transferrable under the ACSA, and performed the systems analysis for the purposes of the expense/investment threshold. The division then forwarded the request to MNC-I for negotiation under the ACSA.

RECOMMENDATION: Improve. Contract and fiscal law attorneys need to understand how ACSAs work and be able to review ACSA requests for forwarding to higher headquarters.⁷¹

ISSUE: Legal reviews of ACSA exchanges

DECISION: The BJA used the *Money as a Weapons System* (MAAWS) handbook when reviewing transfers of supplies under an ACSA and cited the appropriate part of the ACSA in her legal review.

RECOMMENDATION: Sustain.⁷²

OEF ISSUE: ACSAs and involvement with CENTCOM

DECISION: ACSA issues came up primarily in terms of “giving” CSTC-A equipment to foreign nations. CSTC-A had one particular incident where the French were asking for resources and running it up through the operational channels. There was a strong desire to get it done. However, when CSTC-A started digging into the issue they learned the French had gone to CENTCOM twice already, and CENTCOM stated they could not have the resources. The mechanics of “how” to utilize existing ACSAs is often complicated. The CJTF-82/101 G-4 shop was responsible for handling orders and billing. However, as long as there was an ACSA in place for the country that CSTC-A leaders wanted to support, it provided an extra option from the procurement and fiscal law perspective.

⁶⁹ 1AD 2009 OIF AAR, *supra* note 5.

⁷⁰ Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, October 2008 – December 2008 (9 Feb. 2009) (on file at CLAMO).

⁷¹ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

⁷² 4th Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – June 2009 (14 Aug. 2009) [hereinafter 4-1 CAV 2009 OIF AAR] (on file at CLAMO).

TIP OF THE SPEAR

RECOMMENDATION: Closely coordinate with the ACSA office at the CJTF G-4 and talk with CENTCOM to ensure your coalition partners are not trying an “end run around” you.⁷³

ISSUE: “Lift and sustain” authority as an alternative to ACSA transfer

DECISION: Some coalition partners, such as Poland and other Eastern European countries, were financially unable to pay through an ACSA for services/equipment. The BDE sought to use “lift and sustain” authorities for poorer coalition partners.

RECOMMENDATION: Improve. Ensure necessary personnel understand the limits of “lift and sustain” authorities.⁷⁴

III.C.2. General Fiscal Law Issues

OIF ISSUE: The MNC-I MAAWS publication

DECISION: Updated regularly, the MAAWS provides a ready resource for deployed judge advocates. It covers all available funding sources and their proper use.

RECOMMENDATION: Improve. Gain and maintain a good familiarity with the MNC-I MAAWS publication.⁷⁵

ISSUE: Funding sources

DECISION: Be aware of all available funding sources for the Department of Defense, Department of State, Government of Iraq, and their appropriate uses.

RECOMMENDATION: Improve. Review the pamphlet, *Money as a Weapons System* (MAAWS).⁷⁶

ISSUE: Fiscal law resources

DECISION: The *Money as a Weapon System* (MAAWS) guide is the best resource for deployed JAs who are going to handle fiscal law issues in Iraq. Updated approximately twice a year, it is important to maintain communication with MNC-I to obtain the most current version.

RECOMMENDATION: Improve. Obtain and review the MAAWS prior to deployment.⁷⁷

ISSUE: Importance of the MNC-I publication, *Money as a Weapons System* (MAAWS)

DECISION: The MAAWS book is central to fiscal law practice in Iraq. Updates to the book occur approximately every six months and override all prior FRAGOs dealing with fiscal issues. The MAAWS carries the same weight as a FRAGO, because it is the Commanding General’s Guidance. It is critical for judge advocates to be very familiar with the latest version and

⁷³ CSTC-A 2008 OEF AAR, *supra* note 11.

⁷⁴ 420th Engineer Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, May 2008 – March 2009 (13 May 09) [hereinafter 420th EN BDE 2009 OER AAR] (on file at CLAMO).

⁷⁵ MNF-W Fiscal Law 2008 OIF AAR, *supra* note 2.

⁷⁶ *Id.*

⁷⁷ I MEF (FWD) 2009 OIF AAR, *supra* note 4.

understand its preeminence over MNC-I FRAGOs, since many units tried to use old FRAGOs as authority even after the MAAWS superseded them.

RECOMMENDATION: Improve. Deploying fiscal law attorneys and brigade judge advocates should study the MAAWS in depth before deploying. They should also circulate this reference to everyone on their staff who will deal with fiscal issues.⁷⁸

ISSUE: Command knowledge of fiscal approval authorities

DECISION: The BJA provided information in a command briefing early on concerning the proper approval authorities.

RECOMMENDATION: Improve. Provide the information as early as possible in the training cycle. Following this guidance allows the command to consider these issues throughout the pre-deployment preparation.⁷⁹

ISSUE: Central repository for fiscal documents

DECISION: The MNC-I fiscal law judge advocates routinely posted fiscal documents on the MNC-I intranet, but in many cases the subordinate units were unable to access this intranet.

RECOMMENDATION: Improve. There needs to be a central repository for all fiscal documents accessible by all judge advocates in theater, as well as in garrison as they prepare for deployment.⁸⁰

ISSUE: Complexity of the fiscal law review process

DECISION: Structured like a municipal government, the JASG-C served essentially as the Green Zone's property owner and was responsible for security, administration and control of real property. Internal to the JASG-C was an Installations Directorate, which included a Department of Public Works and a Department of Public Safety, a Security Directorate and a Support Operations Directorate, which ran and maintained FOBs. External to the JASG-C was an International Zone Transition Team, made up of representatives from MNC-I, MNF-I, MNSTC-I, and JASG-C. Each one of these organizations and entities had some role to play in the operation and transition of the Green Zone to the GOI. There was no centralized planning cell internal to the JASG-C whereby the directorates synthesized their efforts in transitioning the IZ. Instead of being proactive, JASG-C was reacting to the demands of MNF-I and MNSTC-I. This reactive posture became challenging during the fiscal law review process. Due to the seemingly piecemeal submission of projects, it became difficult to determine if MNF-I was approaching, or breaching, funding thresholds (i.e. OMA \$750,000 threshold for construction). There were many different projects in the IZ. Sometimes the projects were within the same FOB and even sometimes within the same building. Several were under consideration at any given time by different entities, each with their own funding stream. The overarching issue became how to define a project. Since MNC-I was the fiscal authority for JASG-C, legal reviews were the first of a series of checks and balances. The MNC-I OSJA performed the actual legal review necessary for validation of the project.

⁷⁸ XVIII ABC 2009 OIF AAR, *supra* note 25.

⁷⁹ 1BCT, 4ID 2009 OIF AAR, *supra* note 14.

⁸⁰ XVIII ABC 2009 OIF AAR, *supra* note 25.

TIP OF THE SPEAR

RECOMMENDATION: Improve. Establish a close working relationship with MNC-I OSJA and practice transparency in reviews in order to provide correct advice in a timely manner.⁸¹

OEF ISSUE: Selecting the proper appropriation

DECISION: Funding appropriations for contract actions usually involved OMA or OPA.

RECOMMENDATION: Improve. Using the proper funding authority is critical to keep projects from delay or stalling out. During project planning, creative analysis and thinking is critical, especially if a defense appropriation bill does not contain a specific authorization. A project may require several different appropriations to achieve the end-result.⁸²

Fiscal Law Legal Reviews

OIF ISSUE: Getting to “yes”

DECISION: Goal number one is to “get to yes” legally.

RECOMMENDATION: Sustain. Do it ethically and legally.⁸³

ISSUE: Role of fiscal law JA as lawyer and counselor

DECISION: Legal advisors did not limit advice strictly to “legal matters.”

RECOMMENDATION: Improve. Do not be afraid to speak up or to raise non-legal concerns as appropriate. It is important to be a legal advisor as well as “objective counselor” for non-legal matters arising during the validation board process.⁸⁴

ISSUE: Providing legal advice

DECISION: At the end of the day, you only provide advice.

RECOMMENDATION: Improve. Document your legal advice, in particular in cases where you advice will likely be ignored.⁸⁵

ISSUE: “Get to yes” versus “Moral toad in the road”

DECISION: Staff at higher echelons in the command persistently pressured attorneys to “get to yes.” However, one attorney in the BCT recalled his training at the JAG School to provide a voice of reason and moral courage in the field. This poses a legitimate question: “Does the JAG Corps stress one over the other?” In the fiscal debate, getting to yes appears to override any semblance of reason in light of the definition of CERP.

RECOMMENDATION: Improve. Kudos to the JAG School for developing two themes many graduates still cling to as foundational principles for their legal practice: “get to yes for your commander” and “provide the voice of reason and moral courage for your command.” Although

⁸¹ 50 IBCT (NJARNG) 2009 OIF AAR, *supra* note 36.

⁸² 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 26.

⁸³ MNF-W Fiscal Law 2008 OIF AAR, *supra* note 2.

⁸⁴ *Id.*

⁸⁵ *Id.*

not polar opposites, these two themes can lead people to very different places when they analyze substantive legal issues. The JAG School may consider the effect of its message and determine the best way to proceed.⁸⁶

ISSUE: Providing written legal reviews

DECISION: Most lawyers assigned to MSCs have little fiscal or procurement experience. Generally, it is most efficient for all concerned to have written legal reviews provided at the MNF-W level. This will also ensure consistency.

RECOMMENDATION: Improve. MSC judge advocates need not provide written legal reviews of proposed O&M, or other, projects.⁸⁷

ISSUE: Reliance on prior precedent to determine contract funding approval authority

DECISION: The unit often used prior precedent to determine proper authority to fund a contract in common situations. Generally, the division staff concurred with the brigade funding recommendation or its project justification.

RECOMMENDATION: Improve. Research contract and fiscal law issues. Understand the current approval authorities. Do not rely on prior precedent as authority, i.e. “that is the way we always did it.” Clearly articulate the reasons for the expenditure of the funds. Watch funding limits and the type of funds used.⁸⁸

ISSUE: Redundant fiscal law reviews by JAs at different levels

DECISION: The RJA conducted a legal review of every document sent up through legal channels. In the case of purchase request and commitments (PR&Cs), two of the divisions under which the unit served required the RJA to do a full legal review, while the other simply required his signature on the PR&C. The benefit of requiring JAs at various levels to carry out full fiscal law reviews of the same matter is unclear, as it may simply result in disagreement between those JAs about the legality of the proposed course of action. For example, a division fiscal law attorney found one PR&C to be legally insufficient, due to a misunderstanding. The deputy SJA then had to do a legal review of the regimental JA’s legal review.

RECOMMENDATION: Improve. Requiring only the JA advising the approval authority to conduct a full legal review would reduce duplication. For example, the division OSJA could be responsible for the full legal review of a transaction requiring division approval. As a matter of professional courtesy, any JA who intends to make a finding that contradicts a previous legal review should first discuss the matter with the JA who wrote that review.⁸⁹

ISSUE: Fiscal law reviews

DECISION: The RCO wanted the RJA to examine anything having to do with money. The RJA’s ability to issue spot saved him many headaches.

⁸⁶ 3d Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – February 2009 (6 May 2009) [hereinafter 3BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

⁸⁷ MNF-W Fiscal Law 2008 OIF AAR, *supra* note 2.

⁸⁸ 1AD 2009 OIF AAR, *supra* note 5.

⁸⁹ 2SCR 2009 OIF AAR, *supra* note 35.

TIP OF THE SPEAR

RECOMMENDATION: Improve. The Judge Advocate General's Legal Center and School (TJAGLCS) Graduate Course proved especially helpful for identifying fiscal and contract law issues. If the RJA/BJA has not attended the Graduate Course, then send one attorney to the Fiscal Law Course at TJAGLCS, ensure they contact their fiscal law counterparts in theater, and hand them a copy of the latest MNC-I *Money as a Weapons System* (MAAWS) publication.⁹⁰

ISSUE: Audit awareness and fiscal review

DECISION: As the deployment progressed, the operating environment demanded less detention operations focus and more fiscal focus. As a result, the SBCT JA was heavily involved in the fiscal process and conducted 2,931 Commanders Emergency Response Program (CERP)/Iraqi - CERP (I-CERP) reviews. It was important to ensure the command had an awareness audits would be forthcoming and it was critical to "do things right" when it came to the area of fiscal law.

RECOMMENDATION: Educate the commander and staff about the consequences of failing to follow the law when it came to fiscal issues. Conduct "Money as a Weapons System" and "Color of Money" briefings prior to deploying.⁹¹

ISSUE: Audits

DECISION: The unit's CERP program met the standard, as higher did not make anyone aware of large problems.

RECOMMENDATION: Do not be surprised by an inspection or audit. Sometimes having a proper, useful paper trail means providing more factual information in your legal reviews. At least have enough factual background in the review to determine to what action your review applies long after the fact.⁹²

ISSUE: Legal reviews of fiscal law matters

DECISION: The BJA drafted detailed legal reviews for all fiscal law issues, to include a summary of the facts, citation of the appropriate law, and application of the law to the facts. This practice was particularly beneficial during an audit for CERP expenditures to justify into which category the project fell. This made the BJA's thought process clear to all echelons who reviewed the documents.

RECOMMENDATION: Sustain. In fiscal law matters, a simple "no legal objection" is grossly insufficient.⁹³

III.C.3. Operations & Maintenance (O&M) Funds

OIF ISSUE: The validation board process for Operations & Maintenance (O&M) projects

⁹⁰ 3d Armored Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – January 2009 (22 Apr. 2009) (on file at CLAMO).

⁹¹ 2d Stryker Brigade Combat Team, 25th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – March 2009 (20 Apr. 2009) (on file at CLAMO).

⁹² 1BCT, 4ID 2009 OIF AAR, *supra* note 14.

⁹³ 4-1 CAV 2009 OIF AAR, *supra* note 72.

DECISION: Multi National Force – West (MNF-W) used the Materiel Acquisition Review Board (MARB) validation process, along with the pre-MARB (preliminary meeting) for O&M funded projects over \$50,000, as required by a fragmentary order (FRAGO). The MNF-W fiscal law attorney was a key participant.

RECOMMENDATION: Improve. JAs should have a general familiarity with the mechanics of the boards and the role of the various staff sections. JAs must have a firm grasp on the proper use of O&M funds (as well as other available funding sources when a proposed project falls outside of the rules controlling the expenditure of O&M).⁹⁴

ISSUE: The use of O&M funds

DECISION: Understand the use of O&M and funding limitations.

RECOMMENDATION: Improve. Review the MAAWS and Fiscal Law Deskbook from The Judge Advocate General's Legal Center and School (TJAGLCS).⁹⁵

ISSUE: Construction of a deployment memorial

DECISION: There is no authorization to use any type of funds to construct a memorial to fallen Soldiers. Additionally, division cannot accept a gift of a deployed memorial from a private organization. The unit submitted a special exception to policy to the Department of the Army (G1) to use "home station funds" to purchase the memorial. Army G1 gave approval, but added to its letter a handwritten comment indicating this is a "one-time" exception to policy.

RECOMMENDATION: Improve. Making this allowable requires a change to Army regulations. Regulations should change, while allowing the expenditure of OMA in appropriate circumstances, to allow for unit members and friends of the organization to donate memorials to those units. Ideally, the memorials should be of such design that they are amenable to relocation should that be required. This change would comport with longstanding Army tradition.⁹⁶

ISSUE: Use of OMA to fund supplemental photographic history

DECISION: Attempts to classify a "yearbook project" as an IO project stretch the principles of fiscal law. Publishing a supplemental photographic history in both English and Arabic failed legal review. After obtaining a waiver, the unit used OMA to fund a supplemental photographic history. All Soldiers were able to purchase a supplemental photographic history for their personal use at the cost the government paid.

RECOMMENDATION: Improve. A supplemental history must focus on a specific mission set. Use the supplemental photography history to create a historical record. Do not classify a supplemental photographic history as a "yearbook."⁹⁷

ISSUE: Use of O&M for PSYOP contracts

⁹⁴ MNF-W Fiscal Law 2008 OIF AAR, *supra* note 2.

⁹⁵ *Id.*

⁹⁶ 1AD 2009 OIF AAR, *supra* note 5.

⁹⁷ *Id.*

TIP OF THE SPEAR

DECISION: Within the division itself, psychological operations (PSYOP) contracts accounted for about two-thirds of the Operations & Maintenance (O&M) budget. The unit used these contracts to purchase leaflets, banners, and printing cartridges (though they eventually obtained the latter through the supply system). The division also hired contractors for PSYOP purposes, including media analysis and support to local radio stations and newspapers.

RECOMMENDATION: Sustain.⁹⁸

ISSUE: U.S. forces support to January 2009 GoI elections

DECISION: MNC-I issued an info paper on election support, based on a U.S. Army Central Command (ARCENT) opinion indicating units could use OMA for certain types of support and CERP for others. However, the division commander issued more restrictive policy guidance requiring his personal approval for any election-related spending. This did not appear to present problems for U.S. forces, which were merely responsible for providing the outer security cordon.

RECOMMENDATION: Sustain. During the deployment, units should expect “election spending” guidance.⁹⁹

ISSUE: Funding of information operations (IO) products

DECISION: Other than a general prohibition on giving away Operations & Maintenance, Army (OMA)-funded items, there was no formal fiscal guidance as to the limitations on the purchase of items for information operations (IO). Fiscal attorneys relied on Field Manual (FM) 3-05.30, Psychological Operations (PSYOP), to define the operational mission of PSYOP for using OMA funds. They approved the purchase of billboards and other printing, as well as trinkets, T-shirts, and soccer balls with IO messages for distribution to the Iraqi populace. Per the DoD FMR, units cannot use CERP for IO products, even for those with a pro-democracy message.

RECOMMENDATION: Improve: MNC-I should issue explicit guidelines for the funding of IO products.¹⁰⁰

ISSUE: Funded costs of construction projects funded by OMA funds

DECISION: Judge advocates in the field generally were unaware the \$750,000 threshold on OMA-funded construction projects only applied to “funded” construction costs, not to movable personal property inside the building or re-locatable buildings (RLB) meeting the RLB standards in AR 420-1. Consequently, units unnecessarily tried to justify portions of larger construction projects as being independent projects in order to fall below the OMA construction threshold. Due to the unavailability of Contingency Contracting Authority (CCA) in Iraq in FY08, a failure to get the project under the threshold meant the unit could not fund the project at all.

RECOMMENDATION: Improve. The TJAGLCS Fiscal Law Desk Book should more clearly explain the difference between funded and unfunded costs of construction projects.¹⁰¹

ISSUE: Project splitting—interdependent vs. interrelated OMA construction projects

⁹⁸ 4ID 2009 OIF AAR, *supra* note 6.

⁹⁹ *Id.*

¹⁰⁰ XVIII ABC 2009 OIF AAR, *supra* note 25.

¹⁰¹ *Id.*

DECISION: There is no clear rule concerning what makes two or more OMA construction projects interdependent (considered one project for funding purposes) versus interrelated (funded separately). Midway through the deployment, the ARCENT staff judge advocate issued the “COB Ramrod” opinion, which addressed the interdependent/interrelated distinction and seemed to give guidance for the CENTCOM area of operations contrary to DA PAM 420-1. The opinion addressed building an operating base from scratch, stating the construction of a dining facility on the base was merely interrelated, vice interdependent, with the housing units and other buildings on the base.

Commanders and engineers in Iraq have seized upon this guidance to justify splitting projects fiscal attorneys and comptrollers previously considered interdependent projects. The Department of Defense (DoD) Office of Government Contracting (OGC) failed to clarify the confusion, stating the distinction was context dependent. In order to express their uneasiness without issuing opinions contrary to ARCENT guidance, MNC-I fiscal law attorneys wrote extensive, five- to ten-page opinions explaining why particular projects were not interdependent for the purpose of the \$750,000 OMA construction threshold. Auditors are more likely to be forgiving when there is a well-reasoned legal opinion in the project packet.

Generally, when analyzing whether particular construction projects were interdependent or interrelated, the MNC-I OSJA looked at a number of factors:

- (1) Functionality (are we building a tactical operations center (TOC) and a life support area (LSA) or 2 LSAs?);
- (2) Do either of these facilities rely on one another to operate (e.g., the tower and the airfield);
- (3) Geographic location (how far apart are these facilities—are they separated by a road, or on completely opposite sides of the forward operating base (FOB)?);
- (4) Timing (are we constructing these projects simultaneously?);
- (5) What units will these facilities support (are they all supporting the same unit?).

RECOMMENDATION: Improve. Brigade and division judge advocates need to understand their legal reviews of projects stay with the project packet and are subject to audit. They must therefore be very familiar with the rules against project splitting and be able to justify in detail why two interrelated projects are not interdependent.¹⁰²

ISSUE: Identification of centrally managed items

DECISION: Division fiscal law attorneys encountered few issues in the area of OMA funding, because publications such as MNC-I’s *Money as a Weapon System* (MAAWS) clearly set out the rules. However, they found it difficult to identify centrally managed items (e.g., some items used by aviation assets). While they did have a Department of the Army (DA) list of centrally managed items, they understood this to be incomplete. G8 was unable to answer most questions about centrally managed items.

RECOMMENDATION: Improve. Units preparing to deployment may wish to try to obtain a complete list of centrally managed items.¹⁰³

¹⁰² *Id.*

¹⁰³ 4ID 2009 OIF AAR, *supra* note 6.

TIP OF THE SPEAR

ISSUE: Centrally managed items

DECISION: Under DFAS-IN 37-100-09, Appendix A, units may not use OMA funds to purchase centrally managed items, such as certain types of radios. Supply personnel can determine if an item of equipment is a centrally managed item by looking in Federal Logistics Data (FEDLOG) at the Material Category (MATCAT) code. See DFAS-IN 37-100-09, Appendix A, Figure 3. Where a particular item a unit wanted to purchase was not listed, MNC-I attorneys determined its status by analogy to the purpose and capability of other centrally managed items.

RECOMMENDATION: Improve. Brigade judge advocates and supply personnel need to be aware of the prohibitions on using OMA funds to purchase centrally managed items. Per ARCENT policy (ARCENT G8), judge advocates must review all OMA purchases exceeding \$10K.¹⁰⁴

ISSUE: Purchasing military issue items with OMA funds

DECISION: Deploying units frequently wanted to purchase items such as boots, camelbacks, fleece jackets, and body armor, which are normally issue items. Although there is no specific prohibition against purchasing issue items, fiscal attorneys argued it would violate the Purpose Statute to spend OMA funds for equipment the Army normally supplies (e.g., is this a “necessary” expense if the Army has already issued or is in the process of issuing the equipment?). There were also safety issues, since every piece of Army issue equipment must be compatible with other Army equipment, as well as perception issues with certain units buying better equipment. Without a specific prohibition to cite to commanders, fiscal law attorneys found it difficult to put out guidance against purchasing such equipment, especially in cases where the equipment was temporarily unavailable through normal supply channels. In general, fiscal attorneys first checked to see if the PEO Soldier Army Certification Program had approved desired equipment (see <https://peosoldier.army.mil/faqs/CertProg.asp>). In the latter case, they advised units purchasing such equipment to get documentation from the issuing agency stating the items were not available.

RECOMMENDATION: Improve. The Department of the Army should issue specific guidance concerning the purchase of issue items with OMA funds.¹⁰⁵

ISSUE: Funding of joint security stations (JSS)

DECISION: With respect to the funding of joint security stations (JSS) occupied by both Iraqi and U.S. forces, the use of OMA funds is only proper for those expenditures for which U.S. forces are the primary beneficiary. For example, when purchasing barrier material for perimeter force protection of a JSS, attorneys often had to choose between OMA and ISFF, since both U.S. and Iraqi forces occupied the JSS. In order to use OMA funds, the U.S. Soldiers had to be the primary beneficiary of the expenditure, so attorneys looked at factors such as population (number of U.S. troops vs. Iraqi troops), and the intended duration of U.S. presence at the base. The MNC-I fiscal law attorneys considered a perimeter wall such as this a “dual-use” facility.

For other expenses on the base, it was often easier to justify the expense clearly as either OMA or ISFF (MNC-I fiscal law attorneys labeled these “exclusive use facilities”). For example, on the JSS, U.S. troops often had separate dining facilities and living quarters from Iraqi forces. Thus,

¹⁰⁴ XVIII ABC 2009 OIF AAR, *supra* note 25.

¹⁰⁵ *Id.*

OMA funded the U.S. facilities, and ISFF funded the Iraqi facilities. Note that units had to request Iraqi Security Forces Funds (ISFF) from Multi-National Security Transition Command-Iraq (MNSTC-I) to pay for expenses for which Iraqi forces were the primary beneficiaries. When funding a station for U.S. forces to use and eventually transfer to Iraqi Security Forces (ISF), fiscal attorneys had to make a judgment call as to who was the primary beneficiary of the project.

RECOMMENDATION: Sustain.¹⁰⁶

ISSUE: Systems analysis for the expense/investment (OMA/OPA) threshold

DECISION: Normally, the Army purchases investment items (those having long-term benefit beyond the fiscal year purchased) using Other Procurement, Army (OPA) funds. However, DOD organizations must use OMA funds to purchase investment items costing up to \$250K per item or per system, as appropriate. Fiscal law employs systems analysis to determine whether to aggregate multiple related purchases for the purposes of the expense/investment threshold. Brigade judge advocates (BJAs) had a difficult time spotting whether investment items were part of a system, particularly with respect to automation equipment. As a result, they sometimes erroneously used OMA funds to purchase investment items individually when these items were in fact designed to function together to meet the requirement. The exception for FY09 raising the expense/investment threshold to \$500K for contingency operations did not completely solve this problem, because units tend to spend up to the threshold no matter how high it is.

RECOMMENDATION: Brigade judge advocates need to work with their S-6s or other subject matter experts to explain the function of individually purchased components and whether they are necessary to meet a larger requirement. In addition, BJAs must include the cost of stocked components when they combine with newly purchased components to create a system. Finally, BJAs should review DFAS-IN 37-100-09, Appendix A, which has an extended discussion of the systems analysis with regard to computer systems, software systems, and networks (NIPR/SIPR, WAN/LAN).¹⁰⁷

OEF ISSUE: Vehicle lease program

DECISION: Operations and Maintenance-Army (OMA) funds paid the cost of vehicle leases. Most of the lease vehicles will never have a useful life after the contingency operation. There is no coordination of effort to determine the vehicle requirement. There are too many vehicles in theater when alternate sources of transportation are available.

RECOMMENDATION: Improve. The Army is paying far too much for vehicle leases with respect to the value received. Using OMA funds to pay for vehicle leases is not necessarily the smartest use of resources. A better approach to meeting vehicle requirements is use Other Procurement-Army (OPA) dollars to purchase vehicles. Centrally manage all purchased vehicles from within the country.¹⁰⁸

ISSUE: Excessive leasing of non-tactical vehicles (NTVs)

DECISION: Although there was a prohibition against purchasing NTVs, units in Afghanistan continue to spend millions of dollars to lease NTVs. In addition to adding to the extreme traffic

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 26.

congestion on BAF, there were questions as to the quantity of NTVs really needed to fulfill the mission. For example, some offices had a NTV for each person in the office.

RECOMMENDATION: Improve. Fiscal law attorneys should scrutinize the expenditure of funds for NTVs to ensure there is a bona fide need for additional vehicles.¹⁰⁹

III.C.4. Commander's Emergency Response Program (CERP)

OIF ISSUE: Validation board process for CERP projects

DECISION: MNF-W used the Resource Allocation Working Group/Resource Allocation and Assessment Board (RAWG/RAAB) validation process for CERP projects over \$50,000. The Deputy Commanding General chaired the RAAB. Appendix B of the MAAWS handbook provided a detailed overview of the proper use of CERP.

RECOMMENDATION: Improve. Judge Advocates should have a general familiarity with the mechanics of both the RAWG and the RAAB and the role of the various staff sections. The MEF fiscal law attorney must have a firm grasp of the rules governing the use of CERP funds.¹¹⁰

ISSUE: CERP friction

DECISION: The commanding general (CG) told subordinate commanders to "Make me bankrupt on CERP...Spend \$17 million by November." This attitude pervaded all echelons of the command, such that subordinate commanders replaced roll-up statistics with competitive CERP reporting. Whoever spent the most money caught the CG's eye. Juxtapose this concept with a legal staff tasked with helping the commander act as a responsible steward of the U.S. funds, and you have a bit of a conundrum.

RECOMMENDATION: Improve. Understanding counterinsurgency is one thing; frivolous spending is quite another. Attorneys must recognize the inherent tension subordinate commanders suffer under when they receive encouragement to spend while operating in the gray areas of CERP funds.¹¹¹

ISSUE: Emphasis on process vs. spending

DECISION: Higher headquarters consistently asked why the BCT was not spending enough CERP and I-CERP funds.

RECOMMENDATION: Improve. Commands should emphasize the proper procedures, as well as the necessity, quality, and sustainability of the project rather than encouraging a certain dollar amount of expenditures.¹¹²

ISSUE: CERP spending

DECISION: The division commander made the SOI his first concern and, from a fiscal law perspective, SOI contracts consumed the first half of the deployment. CERP spending was slow

¹⁰⁹ *Id.*

¹¹⁰ MNF-W Fiscal Law 2008 OIF AAR, *supra* note 2.

¹¹¹ 3BCT, 4ID 2009 OIF AAR, *supra* note 86.

¹¹² 4-1 CAV 2009 OIF AAR, *supra* note 72.

during the first three months of the deployment, but accelerated rapidly as the deployment progressed. The division theme became, “Here’s your money, now go and spend it, legally.” During the morning brief, the chief of staff challenged units to outspend him, and the brigade commanders briefed the division commander on money spent rather than on battles fought, particularly after there was a downturn in attacks per day. The commanders’ focus shifted to talking with Iraqi officials about their actual needs, or about possible Iraqi sustainment of a US-funded reconstruction project. The units’ focus should be on selecting worthwhile, sustainable, projects so they spent money wisely. By the end of the deployment, the division could not spend its CERP funds fast enough, and fiscal law attorneys found it necessary to review packets because of staff sloppiness in putting them together, not just to assess the fiscal law aspects of the proposed project.

RECOMMENDATION: Improve. Excessive reliance on spending CERP funds quickly without a focused approach may lead to projects the GoI cannot or will not sustain.¹¹³

ISSUE: CERP funds versus Operations & Maintenance, Army (OMA) funds

DECISION: Commanders directed the expenditure of CERP funds when the unit planned the project with OMA.

RECOMMENDATION: Improve. Commanders often wanted to use CERP versus OMA funding. Mixing of funding is a violation of fiscal law.¹¹⁴

ISSUE: Gray areas within CERP

DECISION: “Urgent humanitarian need” has confounded a number of JAs since the inception of CERP. Building a wall around Sadr City makes sense for security purposes, but painting the wall to hire locals does not sound as if it meets the intent of the CERP guidelines. Moreover, one may argue swimming pools and soccer fields aid the indigenous population’s return to normalcy, but the suggestion to build an entire soccer stadium (complete with concession stand and Astroturf) should make more than one officer pause.

RECOMMENDATION: Improve. Non-legal personnel are going to push the envelope when it comes to CERP, and JAs need to know the rules well enough to support or challenge a particular project.¹¹⁵

ISSUE: Review of CERP projects

DECISION: The BJA reviewed every proposed project.

RECOMMENDATION: Improve. The *Money as a Weapons System* (MAAWS) Guide is invaluable when reviewing projects in Iraq. Everyone involved in this area has to be very familiar with its provisions. The book is a “one-stop” single source of everything you need to know.¹¹⁶

ISSUE: Legal advice versus policy advice concerning CERP projects

¹¹³ 4ID 2009 OIF AAR, *supra* note 6.

¹¹⁴ 1AD 2009 OIF AAR, *supra* note 5.

¹¹⁵ 3BCT, 4ID 2009 OIF AAR, *supra* note 86.

¹¹⁶ 1BCT, 4ID 2009 OIF AAR, *supra* note 14.

TIP OF THE SPEAR

DECISION: At times, the BJA would forward a CERP packet to the division or corps fiscal law shop for their review. Higher headquarters would not authorize the project because the expenditure would not meet an emergency need.

RECOMMENDATION: Improve. There is a difference between a legally objectionable CERP project and an ill-advised one. Lawyers should not confuse the two. Injecting individual policy persuasions infringes on the commander's fundamental prerogative to decide.¹¹⁷

ISSUE: CERP guidance

DECISION: CERP FRAGOs and SOPs were outdated. Division (or higher) should provide interpretation of what is acceptable, or not. CERP has stretched to the point where a plain reading of the written guidance is not allowing JAs to advise their commanders properly.

RECOMMENDATION: Improve. Continue to call your HHQ for CERP guidance. Written products are not always true and accurate guidance.¹¹⁸

ISSUE: Inadequacy of CERP requests

DECISION: The BJA received and reviewed a great number of inadequately drafted CERP fund requests. The BJA constantly trained and retrained members submitting requests for CERP. However, retraining members on the proper drafting requirements for a CERP request typically occurred only after the BJA made the corrections in the draft requests.

RECOMMENDATION: Improve. Encourage those submitting CERP fund requests to amend all their own requests, based on the recommendations of the BJA.¹¹⁹

ISSUE: Misunderstanding of authorized CERP categories

DECISION: The BJA reviewed many CERP fund requests for items and services not authorized under CERP. The BJA did not concur with inappropriate CERP fund requests and attempted to educate the members making the request regarding authorized CERP fund usages.

RECOMMENDATION: Improve. Not everyone will have the opportunity for adequate pre-deployment training. To the maximum extent possible, keep personnel in the same positions throughout the deployment. Although some changes are inevitable (injuries, poor performance, etc.), moving trained personnel generates a training requirement for the new personnel.¹²⁰

ISSUE: Unreasonable expectations for CERP

DECISION: The brigade staff had an unreasonable view of CERP funds as an inexhaustible and readily available source of funding for various pet projects. The BJA aggressively monitored CERP fund requests and educated the brigade staff on its uses and limitations.

¹¹⁷ 2d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – November 2008 (13 Jan. 2009) (on file at CLAMO).

¹¹⁸ 3d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (14 Jan. 2009) (on file at CLAMO).

¹¹⁹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 37.

¹²⁰ *Id.*

RECOMMENDATION: Sustain. JAs should ensure they have a thorough understanding of CERP regulations before arriving in theater and should closely monitor all CERP requests and uses for compliance with regulations.¹²¹

ISSUE: **Commander's lack of understanding on how to use CERP funds**

DECISION: During the first part of the deployment, commanders brought CERP packets to the JAs for review after they had already been approved and paid out. Commanders often did things wrong and incorrectly paid out a CERP claim. Commanders did not understand battle damage versus non-battle damage.

RECOMMENDATION: Improve. Train your commanders early so that they understand when a CERP claim can be paid, and if possible educate them to bring CERP packets to the JA for legal review before the claim is approved and paid.¹²²

ISSUE: **Determining whether proposed projects meet CERP requirements**

DECISION: The Government Accountability Office (GAO) also reviewed division fiscal law operations during the deployment. GAO found all division projects to be legal but noted units were not always following their own procedures—e.g., too many exceptions to policy. MNC-I started tightening up on projects, perhaps for this reason. While Congress intends CERP to be a flexible source of funding, MNC-I fiscal law attorneys took the view proposed projects had to fall into permissible CERP categories and fulfill an urgent humanitarian requirement. Some requirements were self-evidently urgent, but it was not clear funding a museum or pool qualified as such, and MNC-I would kick such packets back. The Army Audit Agency (AAA) also flagged CERP-funded projects they did not think met the CERP definition of an “urgent humanitarian requirement.” However, an “urgent humanitarian requirement” could differ a great deal depending on the operating environment (OE), and the commander in one OE might be able to mount a case for a project that would not be justifiable elsewhere (e.g., for improvements to the Baghdad zoo, or measures to deal with sewage issues, etc.). In any event, most projects were small, and none was egregious in the view of the fiscal law attorneys. In some cases, the AAA also misunderstood the type of project.

RECOMMENDATION: Improve. Where there is room for disagreement between fiscal law attorneys as to whether a proposed project meets CERP criteria, it is necessary to ensure units include the facts supporting such a determination in the packet.¹²³

ISSUE: **Coordination of CERP projects with the Baghdad PRT and Baghdad authorities**

DECISION: During the deployment, the fiscal law attorneys, the MNC-I claims attorney, and the division's Iraqi-American attorney advisor collaborated on the drafting and signature of two MOUs intended to improve coordination of CERP projects with the PRT and Baghdad authorities. The first was between the Baghdad amanat (city government), the governor of Baghdad province, and the Baghdad PRT, and required including proof of property ownership in the CERP packet. This avoided the construction of soccer fields, etc., on private property, and a subsequent claim by the property owner.

¹²¹ *Id.*

¹²² 1st Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (15 Jan. 2009) [hereinafter 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

¹²³ 4ID 2009 OIF AAR, *supra* note 6.

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Implementation of this MOU, even though non-binding, increased Iraqi interest in the selection of contractors and materials, and led to a second MOU. The parties signed the follow-on MOU in January 2009 and set out procedures to determine the nature of the project and responsibility for funding it. The MOU also established a technical board with a non-voting Iraqi government representative to select the contractor and verify property ownership. U.S. forces have sometimes tended to use the same contractors for multiple contracts, but the new procedures may help to ensure wider distribution of contracts. Moreover, they may improve the possibility that the resulting construction will be in accordance with the Iraqi building code, and the GoI will be willing to assume maintenance costs.

RECOMMENDATION: Sustain.¹²⁴

ISSUE: **Project splitting**

DECISION: Civil affairs teams consistently sent split project proposals to different fiscal law attorneys. This forum shopping led the BJA to track all fiscal law matters closely to avoid having more than one attorney review a project.

RECOMMENDATION: Sustain the practice of tracking contract and fiscal law matters closely.¹²⁵

ISSUE: **Project splitting with CERP**

DECISION: The MNC-I fiscal law section sought to prevent project splitting by subordinate units to subvert the \$500,000 approval limit for division commanders and restrictions contained in DoD guidance. Often, division fiscal law attorneys did not recognize when two or more projects were interdependent.

RECOMMENDATION: Improve. Judge advocates at all levels need to be familiar with the layout of their battle space and keep track of previous CERP projects in order to ensure new projects are not actually a subpart of a previous project.¹²⁶

ISSUE: **Sustainability of CERP projects**

DECISION: Many CERP projects that originally complied with the CERP guidance later became subject to misuse or abandonment by the Iraqis. As a result, MNC-I began to require a letter of sustainment for every construction project over \$50,000, whereby a local Iraqi official promised to monitor the project and expend funds necessary to maintain it.

RECOMMENDATION: Sustain.¹²⁷

ISSUE: **CERP condolence payments for contractor-caused damage**

DECISION: The MNC-I *Money as a Weapons System* (MAAWS) handbook does not specifically address whether CERP condolence payments are payable for damage caused by

¹²⁴ *Id.*

¹²⁵ 3BCT, 4ID 2009 OIF AAR, *supra* note 86.

¹²⁶ XVIII ABC 2009 OIF AAR, *supra* note 25.

¹²⁷ *Id.*

contractors. For example, the MAAWS CERP guidance in Appendix B authorized battle damage payments and condolence payments for the death, physical injury, or property damage “resulting from U.S., coalition, or supporting military operations not compensable under the Foreign Claims Act.” There was no further guidance as to whether actions by contractors constituted “supporting military operations.” The MNC-I OSJA used a case-by-case approach, generally determining if the contractor action resulting in the injury, death, or damage was critical to or closely-tied to the military mission, CERP was payable.

RECOMMENDATION: Sustain. It is preferable to leave the MAAWS as is and require justification for a proposed condolence payment for contractor-caused damage on a case-by-case basis.¹²⁸

ISSUE: Commingling of funds (e.g., CERP and DDR)

DECISION: The fiscal law attorneys dealt with the commingling of Disarmament, Demobilization, and Reintegration (DDR) and CERP funds. For example, units bought sewage sucker trucks with CERP funds, and used DDR funds to pay stipends to Iraqis participating in the associated training in order to remain under DDR ceilings. The attorneys determined use of multiple types of funding in the same area was permissible as long as they were incidental to one another. This became a hot issue with the end of the fiscal year, when commanders were trying to use up all available funds. The fiscal law attorneys identified these as probably the most contentious.

RECOMMENDATION: Improve. Projects involving multiple sources of funding require careful staffing. Division personnel were reluctant to take the time to do this.¹²⁹

ISSUE: Division procedures for legal review of CERP contracts

DECISION: The brigades were responsible for initiating most CERP-funded contracts. Division fiscal law attorneys conducted a secondary review of brigade contracts. Brigade letters of justification for CERP contracts tended to be much better when JAs were involved in the process. Division fiscal law attorneys reviewing an insufficient packet contacted the legal or S8 section to talk about problems with the submission, depending how the brigade had set up its CERP responsibilities.

RECOMMENDATION: Sustain.¹³⁰

ISSUE: Dissemination of new CERP limitations

DECISION: Updates to the DOD Financial Management Regulation (FMR), which occurred approximately every six months, contained new restrictions and limitations of the use of CERP. There was a delay of several months before updating the MAAWS accordingly. MNC-I did a good job pushing the changes down to the division fiscal law attorneys, who in turn educated their own staffs as well as their subordinate BCTs.

RECOMMENDATION: Sustain. All units need to comply with the latest fiscal guidance.¹³¹

¹²⁸ *Id.*

¹²⁹ 4ID 2009 OIF AAR, *supra* note 6.

¹³⁰ *Id.*

¹³¹ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

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ISSUE: **Fiscal “audits” by HHQ**

DECISION: An Army CERP audit team from Baghdad inspected MNF-W’s CERP projects. The audit team selected a group of CERP projects to review (approximately 50). As part of the inspection process, they conducted interviews, examined paperwork, and conducted site visits of ongoing and completed projects. MNF-W knew about the inspection team’s visit ahead of time and had to produce documentation, including legal reviews, and arrange logistics for the visits to the projects. Maintaining an efficient “fiscal” process with detailed validation boards was very beneficial. The MNF-W G-9 section had the lead for the audits, however the SJA office had significant involvement, including providing documentation and participating in the interview process.

RECOMMENDATION: Ensure the fiscal law approval process is organized and documented in anticipation of future inspections and audits. Maintain the required legal reviews on all CERP projects. Maintaining documentation that accurately captures the approval process was essential to the successful results of MNF-W’s audit.¹³²

ISSUE: **CERP audits**

DECISION: Two major trends developed with regard to audits. First, as Operation Iraqi Freedom (OIF) has progressed, and particularly after the surge, auditors have become much less forgiving in terms of the proper uses of CERP funds. Large-scale projects often garnered media scrutiny, which in turn drew the attention of auditors. Even projects meeting CERP criteria when initially built came under scrutiny when the Iraqis failed to maintain them or put them to unintended uses. As a result, the MNC-I commander directed future CERP projects be smaller in scale. Second, even small-scale projects attracted the attention of auditors when aggregated. For example, some units were issuing CERP micro-grants liberally to many residents of a particular area, without following the MAAWS guidance and without monitoring the progress of the recipient’s business. While these were small projects individually, they came under scrutiny “in the aggregate,” and the units involved did not have the documentation to justify all of the micro-grants.

RECOMMENDATION: Improve. Fiscal law judge advocates must ensure all proposed CERP projects comply with applicable guidance. Additionally, they must ensure that each CERP project has the proper documentation, so it can withstand audit scrutiny 1-2 years after executing the project.¹³³

OEF ISSUE: **Liberal use of CERP funds**

DECISION: During the deployment, units “liberally interpreted” CERP guidelines during project planning and execution.

RECOMMENDATION: Improve. Contract and fiscal law attorneys should understand the purpose of CERP and the categories of projects authorized for its use. CERP is an immediate way to fund projects to assist local nationals. Exercise great care when using CERP funds. Ensure the beneficiaries of the project are local nationals.¹³⁴

¹³² I MEF (FWD) 2009 OIF AAR, *supra* note 4.

¹³³ XVIII ABC 2009 OIF AAR, *supra* note 25.

¹³⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 26.

ISSUE: Valuation of CERP projects

DECISION: Units valued and awarded CERP projects in U.S. dollars. However, payments made to local national contractors were in local currency. After contract award, the fluctuating currency exchange rate was not a consideration to determine the project's value.

RECOMMENDATION: Sustain.¹³⁵

[See also IV.C. CLAIM—Solatia]

Funding “Sons of Iraq”

OIF ISSUE: Confusion over how to pay Sons of Iraq (SOI)

DECISION: Payment to the SOI was through a government contract. Non-lawyers would incorrectly refer to certain individuals as SOI when they were not, which created an expectation in the individual and others that they were entitled to the advantages of SOI. Even if the person was in fact a member of the SOI, unless they were on the list of those covered by the contract, they were not entitled to the same payment.

RECOMMENDATION: Sustain. Continue to keep a tight hold on who has SOI status so others who are not entitled to the money are not paid. Evaluate whether modifying an existing contract to bring the new members of the SOI under its terms for payment is necessary, rather than waiting for the renewal of the contract to add the individuals.¹³⁶

ISSUE: Unauthorized alteration of SOI contracts

DECISION: At one point in the deployment, the division altered the SOI pay scale without realizing that this violated the terms of the contract. Also, members of the unit would often promise to pay SOI for services when the contract did not specify such services. This caused many issues that usually did not end to the satisfaction of both parties.

RECOMMENDATION: Improve. Ensure a JA is part of the decision-making process when it comes to altering the terms of the SOI performance. Avoid giving verbal promises to pay. The better practice is to capture all government obligations in writing.¹³⁷

ISSUE: Use of CERP to pay for Sons of Iraq (SOI) contracts

DECISION: When the BCT arrived, its predecessor had been using CERP funds to pay SOI, apparently with the division's agreement. When the new division arrived, this was longer permissible, probably due to a change in interpretation rather than a change in CERP policy. As a result, there was about a 6-week period where contract renewals were permitted, but new contracts were not. The division eventually pushed out a boilerplate contract, after which contract approval was non-problematic as long as the contract total was under the threshold.

RECOMMENDATION: Improve.¹³⁸

¹³⁵ *Id.*

¹³⁶ 31D 2008 OIF AAR, *supra* note 29.

¹³⁷ *Id.*

ISSUE: Limitations on SOI contracts

DECISION: Commanders had difficulty understanding why SOI were paid (at the time) with U.S. funds, but could not conduct operations in conjunction with U.S. forces. We no longer pay SOIs with U.S. funds, eliminating this problem.

RECOMMENDATION: Improve. If we use similar contracts elsewhere, JAs should educate commanders regarding the concept of command responsibility, as well as the requirement to reduce the possibility it will arise in connection with U.S.-funded armed militias.¹³⁹

ISSUE: Contracts for Sons of Iraq (SOI) services

DECISION: The BJA reviewed several contracts for “Sons of Iraq.” Once the unit completed the first few contracts correctly, they used them as models for any follow-on contracts for the same services.

RECOMMENDATION: Sustain. Use correctly implemented and funded contracts as models for future contracts for the same services funded by the same available funds.¹⁴⁰

ISSUE: Use of CERP funds for Sons and Daughters of Iraq services

DECISION: The unit used CERP to pay Daughters of Iraq to conduct pat down services to help prevent attacks by female bombers. The bombers were often mentally ill women strapped with bombs and sent into public places.

RECOMMENDATION: Sustain. Use females to conduct pat down searches of other local national females in order to help prevent an offense of local cultural sensitivities.¹⁴¹

ISSUE: CERP projects to employ former Sons of Iraq (SOI)

DECISION: After MNC-I issued a moratorium on new security contracts and new hires within the Sons of Iraq (SOI), units searched for other ways to employ military-aged males. CERP projects for trash pickup became a common means of doing so. Despite a prohibition from carrying weapons under the trash pickup contracts, in a few cases an auditor discovered the military-aged males employed under these contracts were actually patrolling the streets as if they were operating under a security contract. Moreover, when the GoI agreed to take over payments for SOI working security contracts, they only agreed to pay those SOI currently on the rolls as performing security contracts, not former SOI or any other individuals who were currently performing trash pickup.

RECOMMENDATION: Improve. Close oversight of CERP contracts to employ former SOI is necessary to ensure the contract employees are only performing those tasks for which the contract calls.¹⁴²

ISSUE: Funding “Sons of Iraq” (SOI)

¹³⁸ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 122.

¹³⁹ *Id.*

¹⁴⁰ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 37.

¹⁴¹ *Id.*

¹⁴² 10th MTN DIV 2009 OIF AAR, *supra* note 10.

DECISION: The original funding source for the “Sons of Iraq” (SOI) program was CERP, using the authorization for temporary contractor guards to protect “critical infrastructure,” a term the MAAWS did not further define. Battle space owners designated the critical infrastructure in their area of operations. Several issues arose with regard to these CERP contracts. First, there was insufficient monitoring of these contracts by the landowning units, giving the contracts the appearance of being mere payoffs, with the SOI guarding insignificant infrastructure or not guarding anything at all. Second, auditors began questioning whether these contracts met an “urgent humanitarian need” under the CERP guidance, particularly when the contracts lasted longer than six months. Consequently, MNC-I limited the contracts to six months. Moreover, units had an incentive to keep the contracts shorter, both to keep the projects at a lower approval level according to the dollar amount and to motivate their SOI to perform up to expectations.

Eventually, MNC-I began to phase out the CERP SOI program altogether due to the Government of Iraq’s (GOI) decision to assume responsibility of the program and the individual SOI members. This left MNC-I units to look for other ways of employing the former SOI in their area. One option they used was the Disarmament, Demobilization, and Reintegration (DDR) Program, a two-year authorization to use a subset of Iraqi Security Forces Funds (ISFF) for vocational training. However, the DDR Program expired at the end of Fiscal Year (FY) 2008 without renewal.

When XVIII Airborne Corps’ rotation ended, commanders were turning back to CERP to employ former SOI. Since the competition requirements of the Federal Acquisition Regulation (FAR) do not apply to CERP contracts, commanders often directed CERP contracts to former SOI leaders to employ their SOI as manual laborers.

RECOMMENDATION: Improve. Judge advocates should inform their commanders the SOI program is ending. Similarly, commanders should not expect a reinstitution of the DDR program.¹⁴³

Iraqi Commander’s Emergency Response Program (I-CERP)

OIF ISSUE: I-CERP

DECISION: In April 2008, the GoI provided \$300 million for use by coalition forces to fund certain categories of urgent reconstruction projects to benefit the Iraqi people. A Memorandum of Understanding (MOU) between MNF-I, and the Supreme Reconstruction Council of GoI, established the parameters of the program. The MOU limited I-CERP to eight categories and to only certain provinces, but did not subject I-CERP to the same cost limitations per project as CERP. As a result, units used I-CERP for larger projects and CERP for smaller projects. The biggest mistake brigade judge advocates made is confusing the I-CERP categories with ordinary CERP. Another issue was the boundaries of provinces eligible for I-CERP projects did not always align with unit boundaries.

RECOMMENDATION: Improve. Judge advocates must realize I-CERP is not a U.S. authorization and is subject to Iraqi oversight. Therefore, they must ensure proposed I-CERP projects fall squarely within one of the eight authorized categories.¹⁴⁴

¹⁴³ XVIII ABC 2009 OIF AAR, *supra* note 25.

¹⁴⁴ *Id.*

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ISSUE: The use of Iraqi CERP (I-CERP)

DECISION: In the spring of 2008, a new type of CERP became available to U.S. forces in Iraq: I-CERP. Although the money used in the I-CERP program comes from the Iraqi government, the planning, management, and oversight of I-CERP projects remains the responsibility of U.S. forces. One noteworthy feature of I-CERP is the dramatic restriction placed on its use. Unlike the broad mandate applicable to traditional CERP, Appendix C of MNC-I's MAAWS publication specifies that I-CERP may only be used for projects relating to: 1) water purification plants; 2) schools; 3) health clinics; and 4) city planning facilities. Three other types of projects (roads, sewers, irrigation, and non-reconstruction projects that promote small business) may be funded with I-CERP, but only by exception and only with the approval of a major subordinate command's commanding general.

RECOMMENDATION: Improve. Stay involved in the planning, management, and oversight of I-CERP.¹⁴⁵

ISSUE: Issues arising in relation to I-CERP spending

DECISION: Creation of the Iraqi CERP (I-CERP) concept occurred during the division's deployment, and the fiscal law attorneys took part in extensive discussions with MNC-I through the development period. An MOU with the GoI spells out the rules for spending I-CERP. These are more restrictive than CERP guidelines because the GoI agreed only to the creation of eight very small categories. I-CERP guidance included permissible and impermissible uses, but commanders concluded a use not specifically listed as impermissible must be permissible. Commanders also found it confusing they could not use I-CERP funds in circumstances where they could previously have used CERP funds.

Brigades continuously sought exceptions to I-CERP policy, particularly to provide electricity and condolence payments. The mechanism for obtaining an exception was to submit the proposal to MNC-I, which would present it to the Supreme Reconstruction Council. MNC-I quickly put out additional guidance notifying units to limit spending of I-CERP funds to "bricks and mortar." GoI officials sought to exercise more authority over the spending of I-CERP funds, but division personnel explained the requirement to use U.S. contracting channels to deal with I-CERP-funded projects.

RECOMMENDATION: Improve. Commanders should be educated before and during the deployment about the rules for spending I-CERP funds. G8, G9 and fiscal law attorneys should develop and implement policies and procedures for the staffing of I-CERP project proposals.¹⁴⁶

ISSUE: Staffing projects as both CERP and I-CERP proposals

DECISION: The division quickly spent its I-CERP allocation then waited to obtain access to additional I-CERP funds. Because of this, G9 developed a policy to allow the staffing of projects as both CERP and I-CERP proposals. The division used I-CERP funds to pay for the project, if they were available, but CERP funds if they were not.

RECOMMENDATION: Sustain. This practice provided maximum flexibility for obtaining funding.¹⁴⁷

¹⁴⁵ MNF-W Fiscal Law 2008 OIF AAR, *supra* note 2.

¹⁴⁶ 4ID 2009 OIF AAR, *supra* note 6.

ISSUE: Whether I-CERP contracts qualified as U.S.-funded contracts

DECISION: The fiscal law attorneys did not resolve whether the use of I-CERP funds qualified as U.S.-funded contracts under the two U.S.–GoI MOUs, but Joint Contracting Command – Iraq (JCC-I) attorneys took the position that the use of I-CERP funds required less coordination, not more. While it was unclear to division fiscal law attorneys why this would be the case, it was a moot point because the division had no I-CERP funds to spend after MOU implementation.

RECOMMENDATION: Improve. Newly deployed fiscal law attorneys should check to determine whether this position has changed.¹⁴⁸

ISSUE: Friction with DoS and PRTs over the use of I-CERP

DECISION: The DoD FMR requires the use of I-CERP before regular CERP when both are available. Even though DoD was the responsible agency for spending I-CERP, DoD gave the PRTs considerable authority to nominate I-CERP projects. A few PRTs in turn relinquished authority for designating projects to the Iraqi provincial governors, who wanted to use it for their pet projects. These governors convinced the PRTs to use regular CERP for some projects so I-CERP would be available later for their pet projects. MNC-I came down hard on the division for not spending the currently available I-CERP, since MNC-I had been trying to negotiate with the GOI for more I-CERP.

RECOMMENDATION: Improve. Division fiscal law attorneys must ensure PRTs understand the rules for using I-CERP before making promises to provincial governors.¹⁴⁹

ISSUE: Incomplete I-CERP guidance

DECISION: I-CERP guidance included projects that can be approved at the brigade, division, and corps levels. However, when a project requires corps approval, an Iraqi board must also approve it. This step is not within I-CERP guidance, and B JAs had difficulty receiving I-CERP fund approval because the guidance did not clearly outline the entire process.

RECOMMENDATION: Improve. I-CERP guidance should provide more details as to the exact procedures and approvals required.¹⁵⁰

ISSUE: Use of I-CERP

DECISION: The division controlled I-CERP funds. The B JA did not always agree with the division JAs on the I-CERP funded projects in the BCT's battle space. Since the division JAs did not work with the BCT command group and were not present in the area, they did not understand the types of projects that the command wanted. This caused division to commit I-CERP funds to projects that were not wanted or needed.

RECOMMENDATION: Improve. The commanders who own the battle space where the projects are located should control I-CERP funds.¹⁵¹

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

¹⁵⁰ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 122.

III.C.5. Security Forces Funds

Iraqi Security Forces Fund (ISFF)

OIF ISSUE: **Changes to policies and procedures applicable to Iraqi Security Force Funds (ISFF)**

DECISION: Some time ago, the MAAWS created two subsets of ISFF: Transition Team Integration Funds (TTIF), and Quick Response Funds (QRF). Most TTIF requests received by the fiscal law attorneys were for IA support, especially during the period when the Iraqi Army (IA) was trying to integrate the SOI. They included spending on uniforms, furniture, construction, computers, copiers, office supplies, internet services, and fuel. However, some TTIF requests were for Iraqi Police (IP) support, especially when the IP began to establish academies, and included barriers and speed bumps. The division chief of staff did not approve all of these examples; they merely demonstrate the types of requests made.

QRF use was limited to goods or services, and the division could authorize requests up to \$50,000. QRF requests often focused on detention-related items, such as air conditioners, mattresses, etc. A requested amount exceeding \$50,000 meant a TTIF request became a QRF request and required MNC-I approval—e.g., the division might consolidate several TTIF requests and send them up as a single QRF request. The 2009 National Defense Authorization Act (NDAA) changed the guidance, essentially eliminating the possibility of TTIF use. The change also meant a QRF-funded item needed to be mission-essential. Certification indicating the Iraqi Security forces (ISF) could not otherwise fund the acquisition was not a requirement.

RECOMMENDATION: Sustain. Fiscal law attorneys were required to become aware of and respond quickly to changes in the rules regarding various types of funding.¹⁵²

ISSUE: **Use of QRF for short-notice combat service support**

DECISION: A variation on QRF use occurred when ISF required short-notice combat service support. This could include anything that was a Class 1/2/3/4 supply item, the absence of which could result in mission failure. In such circumstances, U.S. forces could obtain the required U.S. supply items and transfer them to the ISF. The transfer had to have a timeframe that did not permit use of QRF procedures (e.g., when IA units moved to Basra for Operation Charge of the Knights). Such transfers were a G4 responsibility, and the OSJA initially had no real visibility on them. G4 compiled the vouchers on a monthly basis, and then backfilled the cost from QRF to avoid causing an OMA violation. By the end of deployment, however, QRF funding changes meant the AdLaw section reviewed the transfers.

RECOMMENDATION: Sustain.¹⁵³

ISSUE: **Payment of reward money from ISFF and DoD funds**

DECISION: The 2009 NDAA also eliminated the use of ISFF to pay rewards. Units may now only pay rewards with DoD reward funds. Use of ISFF for this purpose had meant Iraqi officials

¹⁵¹ 4th Brigade Combat Team, 3d Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – December 2008 (25 Mar. 2009) (on file at CLAMO).

¹⁵² 4ID 2009 OIF AAR, *supra* note 6.

¹⁵³ *Id.*

performing their jobs sometimes received reward bonuses. In contrast, units may only use DoD reward funds when an individual performs in a way that is more than just doing his/her duty. This determination is very fact-specific, making it difficult to find agreement between division and brigade JAs as to whether an achievement is “above and beyond” the individual’s duty.

It is inappropriate to pay contractors with DoD reward funds—this also limits their usefulness. This prohibition caused confusion throughout the transition period, during which SOI personnel belonged to the ISF, but continued to receive U.S. salaries. The division decided to pay rewards only after expiry of the U.S. contracts.

RECOMMENDATION: Sustain.¹⁵⁴

ISSUE: Improperly drafted purchase requests to get around restrictions on ISFF

DECISION: The FY09 National Defense Authorization Act (NDAA) narrowed the permissible uses of Iraqi Security Forces Funds (ISFF), disallowing them for permanent construction and for the purchase of equipment not meeting a training need for Iraqi forces. There were several cases of units drafting purchase requests to make it look as if the requirement was for U.S. forces, when in fact the requirement was for Iraqi forces. Such requests had previously received denials for ISFF.

RECOMMENDATION: Improve. Fiscal law attorneys need to be vigilant as to the true purpose of a purchase request, especially when there was a denial of a similar request for ISFF.¹⁵⁵

Afghan Security Forces Funds (ASFF)

OEF ISSUE: Use of Afghan Security Forces Funds (ASFF) versus Title 10 funds

DECISION: Divisional units wanted to characterize spending as appropriate for use of ASFF. CSTC-A controlled these funds, which flowed down to CSTC-A from the Defense Security Cooperation Agency (DSCA). Therefore, it was much easier for CSTC-A personnel to request support with ASFF, than with Operations and Maintenance (O&M) funds. The divisional units (CJTF-82/101) controlled the Title 10 O&M funds, which were much more limited in amount and scope. There was a tension between CSTC-A/TF Phoenix and CJTF-82/101 regarding the use of O&M funds. The CJTF-82/101 position was ASFF should fund all TF Phoenix requirements, since TF Phoenix had the mission of training the ANA. However, the correct analysis involved the status of the requiring activity (U.S. or Afghan), not the mission of the personnel. Consequently, the CSTC-A SJA frequently had to determine, often contrary to the divisional unit’s desire, which pot of money was proper in any given case.

RECOMMENDATION: Closely monitor proposed spending to ensure units are using the right pot of money. Provide proactive written fiscal law guidance as necessary.¹⁵⁶

ISSUE: Improper use of ASFF funds

DECISION: CSTC-A had some instances where units used Afghan Security Forces Funds (ASFF) to directly support U.S. forces. These expenditures constituted violations of the Purpose

¹⁵⁴ *Id.*

¹⁵⁵ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

¹⁵⁶ CSTC-A 2008 OEF AAR, *supra* note 11.

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Statute and were potential Anti-Deficiency Act (ADA) violations. CSTC-A also had issues where units used O&M money and the contract lapsed without anyone knowing it. Trying to fix these numerous fiscal law issues was a complex and time-consuming process.

RECOMMENDATION: Improve. You must have contracting officers in sufficient numbers to facilitate proper oversight of these issues.¹⁵⁷

ISSUE: **Attempts to use CERP to build facilities for Afghan Security Forces (ASF)**

DECISION: Direct the use of ASFF for this type of expenditure.

RECOMMENDATION: Improve. Educate PRTs and CA personnel regarding ASFF and the prohibitions on using CERP for this purpose.¹⁵⁸

ISSUE: **Afghan Security Force Funds (ASFF)**

DECISION: The purpose of ASFF is to organize, train, and equip Afghan security forces. There is wide misconception in the field as to the proper purpose and use of ASFF.

RECOMMENDATION: Improve. ASFF is not a Title 22 appropriation. ASFF is Title 10 money. At one time, part of the DoS mission was to organize, train, and equip security forces. During this conflict the DoS has abrogated that responsibility. Now, the Department of Defense is responsible for the mission.¹⁵⁹

III.C.6. Construction Funding

OIF ISSUE: **Project scoping when taking over a FOB**

DECISION: During the planning for MND-C to move to Basra as MND-S, the contract and fiscal law attorney had to review the scope of the projects needed to ensure the FOB could meet the requirements of the new division headquarters. Because it was an existing FOB, they viewed each building/requirement as a separate project. Each life support area (LSA) could be a separate project, as long as they were for different units. In cases where the interior of the buildings acquired from the British were not complete, the cost of acquiring the building under the ACSA did not count toward the \$750K threshold for the projects to finish the building interiors.

RECOMMENDATION: Improve. Contract and fiscal law attorneys need to understand the different scope analysis that applies to improving an existing FOB as opposed to building a new FOB from scratch.¹⁶⁰

OEF ISSUE: **UMMC**

DECISION: The \$750k threshold of Unspecified Minor Military Construction (UMMC) severely restricted ability of the BDE commander to construct facilities in a timely manner. Use relocatable buildings and other forms of personal property for facilities as much as possible because

¹⁵⁷ *Id.*

¹⁵⁸ 420th EN BDE 2009 OER AAR, *supra* note 74.

¹⁵⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 26.

¹⁶⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

they do not count against the UMMC threshold. This was the only way to accomplish mission objectives in a timely manner.

Note: Use re-locatable buildings properly classified as personal property in accordance with the applicable guidance, and increase unfunded project costs because they do not count against the UMMC threshold. This was the only way to accomplish mission objectives in a timely manner. See memoranda from Assistant Secretary of the Army for Installations & Environment (ASA(I&E)), and from the Office of the Assistant Chief of Staff for Installation Management (ACSIM) (on file at CLAMO).

RECOMMENDATION: Improve. The \$750k threshold for UMMC should increase to \$3 million for contingency operations.¹⁶¹

ISSUE: Conflicts between UMMC projects and military construction (MILCON) projects

DECISION: The BJA provided a list of possible conflicting projects, totaling approximately \$20 million, to the CJ-7. The CJ-7 then cancelled or modified projects as appropriate to avoid conflicts. Further, the BDE should require an OPORD or other written directive from HHQ before beginning the design and before seeking funding.

RECOMMENDATION: Improve. The S-3/CJ-3 need to be intimately involved in the design phase of projects and the CJ-7 needs to compare all directives for UMMC to MILCON requests.¹⁶²

ISSUE: The “New Kabul Compound” (NKC)

DECISION: About 4-5 years ago, the plan was to downsize from Camp Eggers. The design of a small compound took place in an effort to solve the problem. The new compound appears too small now that it looks like the U.S. needs more troops in Afghanistan. A great deal of money has already gone into the new compound. CSTC-A forwarded this problem to the Combined Joint Task Force (CJTF), as the project appeared to need an additional 10 million dollars in military construction funds to complete the Admin Building at the NKC. The ultimate conclusion was to add an additional \$7M to a pending Corps of Engineers request, which bumped up the cost of completing the NKC from \$92M to \$99M. However, ARCENT ultimately opined that the NKC Admin Building was a complete and usable facility and the additional funds needed to complete the Admin Building’s communication equipment requirements could come from O&M funds.

RECOMMENDATION: Improve. Be aware of changes in thresholds as projects change or grow over time. Coordinate closely with higher HQs, as necessary. Keep in mind that the chain of command for funds may not be the chain of command for operational issues.¹⁶³

ISSUE: Determining project “scope of work”

DECISION: Work relating to contract law consisted primarily of assisting engineers to develop “scope of work” for non-MILCON construction projects.

¹⁶¹ 420th EN BDE 2009 OER AAR, *supra* note 74.

¹⁶² *Id.*

¹⁶³ CSTC-A 2008 OEF AAR, *supra* note 11.

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RECOMMENDATION: Improve. Contracting officers should take time to ensure engineers developing projects have a basic understanding of fiscal law. Establish relationships between engineers and legal staff early in the deployment.¹⁶⁴

ISSUE: Understand contract funding limitations

DECISION: Engineers sometimes developed project cost estimates based on the funding ceiling instead of actual requirement. Project cost estimates sometimes came in at or just under funding limitations. Many projects classified as new requirements were actually repair, maintenance, or life, health, and safety (LHS) related.

RECOMMENDATION: Improve. In a contingency environment, engineering and legal staff must be able to distinguish the different funding categories and types of projects. Unless the project classification is proper, funding limits may slow down the project during the review process. For example, personal property is not a construction cost.¹⁶⁵

ISSUE: Construction contracting “systems analysis”

DECISION: Combining portable housing units together did not constitute a system; therefore, this did not exceed funding thresholds. Health and safety was a valid purpose to join portable housing units together.

RECOMMENDATION: Improve. During contingency operations contract and fiscal law attorneys should pay close attention to the reasons given by engineers when projects appear on their face to violate fiscal rules and regulations.¹⁶⁶

ISSUE: “Complete and useable” building analysis

DECISION: A “complete and usable” building receives no support from other facilities and is not mission related to another structure.

RECOMMENDATION: Improve. Critical to meeting mission requirements is a proper analysis. First, determine if the building is dependent on other building or can stand alone. Before declaring a building as “complete and usable,” look at the building’s use. Ask the question, is the mission of the proposed building interrelated with others?¹⁶⁷

[See also III.C.3. CONTRACT & FISCAL LAW—Fiscal Law—Operations & Maintenance (O&M) Funds]

III.C.7. Other Funding Sources

OIF ISSUE: Use of official representation funds (ORF) for elements at home station

DECISION: The commander often wanted to use ORF to purchase items for individuals back at home station. The rear detachment did not have a relationship with these individuals or an interest in spending money for this purpose. While the ORF regulation does not prohibit

¹⁶⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 26.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

spending ORF in such circumstances, theater policy memos indicate ORF use should occur in Iraq.

RECOMMENDATION: Improve. JAs should educate commanders on ORF constraints during predeployment preparations.¹⁶⁸

ISSUE: Disarmament, Demobilization and Reintegration (DDR) funds

DECISION: The unit used DDR to transition former detainees and former CERP-funded security guards back into the society by providing them with education and job skills.

RECOMMENDATION: Improve. Stay involved in the process.¹⁶⁹

ISSUE: Use of demobilization, disarmament, and reintegration (DDR) funds

DECISION: DDR funds were yet another subset of ISFF, intended for use for IA/IP personnel. Although DDR funds had been in place for a year before this division's arrival, there was no clear guidance on how to implement expenditures. This resulted in a buildup of two years' worth of DDR funds available for spending. The division decided to use the funds to deal with the transition of SOI to the GoI. In contrast to the CERP funds previously used for SOI support, the Federal Acquisition Regulation (FAR) applies to ISFF spending. As a result, the division had to amend its original plan to use CERP-like packets to approve the use of DDR funds, as these did not meet FAR requirements.

The division ultimately decided to use DDR funds to fund training and apprenticeship programs for SOI, young men, and former U.S. detainees. In some cases, it authorized use of DDR funds to buy training equipment, but rejected such requests where the cost of the equipment far exceeded the stipends provided to the trainees during their training. For example, the division did not approve the use of DDR funds to purchase the sewage-sucking trucks required to provide training in sewage sucking. The lack of clarity regarding the spending of DDR funds made the fiscal law attorneys feel as if they were simply stumbling along. Fortunately, MNC-I subsequently decided not to allocate any more funds to this subset of ISFF.

RECOMMENDATION: Improve. Understand that spending available funds requires the necessary implementing guidance to allow the expenditure.¹⁷⁰

ISSUE: Coordination of DoD reconstruction activities with the Baghdad PRT

DECISION: Any coordination with the Baghdad PRT regarding fiscal matters occurred via the weekly SWEAT-H meeting. Participants included the PRT head, S9, G8, SJA, Task Force Business, etc. The fiscal law attorneys attended on a couple of occasions. The meeting consisted of viewing a 60-slide PowerPoint presentation of all Baghdad-based DoD-funded reconstruction projects, including DDR-funded ones. Participants reviewed each packet, discussing problems with local government, related PRT activities, etc.

PRT personnel did not brief participants on DoS-funded projects, and division personnel did not seek DoS funding for projects that did not qualify for CERP funds. However, PRT personnel did

¹⁶⁸ 4ID 2009 OIF AAR, *supra* note 6.

¹⁶⁹ MNF-W Fiscal Law 2008 OIF AAR, *supra* note 2.

¹⁷⁰ 4ID 2009 OIF AAR, *supra* note 6.

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approach the division with spending proposals, about 75% of which the division approved. Whether or not the PRT asked DoS to fund the other 25% is unknown. The SWEAT-H meeting was not a forum in which to make a determination whether and who was to fund a project—the division had already decided to fund any project briefed at a SWEAT-H meeting.

RECOMMENDATION: Improve. The drawdown of U.S. forces in Iraq likely means DoS will need to assume greater responsibility for funding and supervising reconstruction activities.¹⁷¹

ISSUE: Requests for Other Procurement, Army (OPA) funds

DECISION: When purchasing the computer networks for the new division headquarters at Basra, MND-C had to request OPA funds using an operational need statement (ONS). Even viewing the SIPR, NIPR, and CENTRIX networks as separate systems, the project exceeded the expense/investment threshold for using OMA funds. Although the G6 was the requestor, the fiscal law attorney's role was to ensure the request captured all the costs of each system.

RECOMMENDATION: Contract and fiscal law attorneys should be familiar with the example in the *Money as a Weapons System* (MAAWS) handbook for requesting OPA funds via ONS.¹⁷²

OEF ISSUE: Counter narcotics money (Section 1033 certification) funds

DECISION: A CENTCOM, but non-CSTC-A organization, requested that the CSTC-A DCG certify the organization met statutory requirements to obtain Section 1033, counter-narcotics, funding. CSTC-A initially balked at any involvement of the command in this issue, despite the fact that a previous DCG had made certifications in the past. The U.S. Embassy refused to make the required 1033 certification. Information about this issue is contained in the historical files. The DCG prodded the OSJA to do what they could to assist and, in the end, the OSJA required the requestor to provide the statutorily required documentation to the DCG so that he could rely on it to make a recommendation.

RECOMMENDATION: Improve. Overall, this is a complex area of fiscal law. Working closely with the CENTCOM SJA this difficult legal problem may be resolved.¹⁷³

ISSUE: Source of funding for CSTC-A activities and fiscal complexity

DECISION: The way you receive funding in Afghanistan is entirely different from the way you get money in Iraq. The Foreign Military Sales (FMS) layer of complexity is important to understand. It is an extremely complex fiscal environment. A great tension existed between the CJTF units and CSTC-A over the use of O&M funds. Every time CSTC-A needed O&M funds they had to go to the CJTF for it. In the mind of the CJTF fiscal law attorneys, CSTC-A should use Afghan Security Forces Funds for everything, since the CSTC-A mission was a training mission. The CJTF's focus was on the mission of the U.S. personnel supported, but the proper legal analysis was on the status of the Soldier supported (U.S. or Afghan).

RECOMMENDATION: Due to the complexity and sensitivity of the issues involved, individuals without any fiscal experience should not be sent to fill purely fiscal billets. This was not the environment for "learn as you go."¹⁷⁴

¹⁷¹ *Id.*

¹⁷² 10th MTN DIV 2009 OIF AAR, *supra* note 10.

¹⁷³ CSTC-A 2008 OEF AAR, *supra* note 11.

ISSUE: Pseudo-Foreign Military Sales (FMS) cases

DECISION: CSTC-A ran into a problem when it came to the U.S. Army Corps of Engineers (USACE) and the Defense Security Cooperation Agency (DSCA). There was a tension between real world, timeliness concerns in country and getting issues resolved with a long-term view satisfying the lawyers within the Corps, DoD General Counsel's Office, and within DSCA. There were many challenges. For example, even if the Real Estate Specialist on the ground with CREST wanted to solve an immediate problem, she had to overcome numerous hurdles and legal objections back up the chain of command in the United States. Decisions were made in the states in certain circumstances by personnel who had never been to Afghanistan, had no understanding of what was going on in theater, and had no appreciation for the lack of records, or the ongoing escalating conflicts/ altercations between landowners and U.S. Forces. They insisted on a "by the book" approach.

The same environment existed within DSCA. They controlled the Afghan Security Forces Funds (ASFF) and the Foreign Military Sales (FMS) process. Many of the ANA and ANP requirements received their funding via the pseudo-FMS case process. You have to use the FMS process to support the Afghans directly. However, the FMS process is designed for peace operations. It does not work in combat and is like fitting a square peg into a round hole. For example, CSTC-A might need weapons for the ANA to engage the Taliban tomorrow. For the FMS process, CSTC-A had to go through a letter of offer and acceptance. This is a long, time-consuming process. If CSTC-A directly received funds to procure the equipment necessary to support the ANA and ANP, they could have procured the necessary equipment far more quickly. However, because the funding went through pseudo-FMS cases, it could take as long as 150 days to get something you needed yesterday due to the burdensome FMS process rules.

DSCA following their own rigorous rules designed to operate in peace-time did not work in the combat environment. Although DSCA did make efforts to accelerate the FMS process, it was still lengthy and did not give the commander enough flexibility to help the Afghans fight the Taliban as quickly as needed. Having the ASFF flow through the pseudo FMS process is not efficient. DSCA takes the position the use of ASFF to fund pseudo-FMS cases in Afghanistan is just like regular FMS, even to the extent where DSCA objected to the use of ASFF to fund the ANA while the ANA was participating in combat operations. Although CSTC-A committed itself to helping the Afghans engage the Taliban, DSCA's position was that once the engagement commences, the prohibition on conducting pseudo FMS activities prevents the use of ASFF. Therefore, we can no longer fund ANA support with ASFF. This issue was unresolved at the time of redeployment.

RECOMMENDATION: The pseudo-FMS process needs modification to accommodate timely support to the ANA during combat operations, or the funds need to flow outside the FMS process. Additionally the personnel back in the United States must understand Afghanistan is not like Iraq, and one solution does not apply everywhere. Additionally, personnel in the United States need to understand that the funds flow to CSTC-A differently than the funds flow to MNSTC-I.¹⁷⁵

ISSUE: Sponsorship of Afghan units

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

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DECISION: Other countries often donated equipment to the ANA and handled through the CSTC-A Multi-Support Cell. However, the donation issues took an important and unexpected turn when countries proposed sponsoring Afghan battalions with cash, but wanted to impose restrictions on the operational use of the sponsored battalion. For example, the Spanish wanted to support a battalion and make a donation to fund the battalion, but wanted the battalion to remain in the Spanish AOR. From an operational perspective, the CSTC-A commander did not want an Afghan unit to be restricted from moving due to the strings attached to a donation.

RECOMMENDATION: Improve. Be cognizant of the condition accompanying donations.¹⁷⁶

III.C.8. Donation & Disposal of Property

OIF ISSUE: Foreign property issues near the end of the deployment

DECISION: Near the end of the deployment, 1AD was trying to get guidance from MNC-I on what they could give to Iraqis. The division disseminated information papers and email guidance to educate commands on what the guidance and rules authorized.

RECOMMENDATION: Improve. Continue to attempt to educate commands on the process.¹⁷⁷

ISSUE: Property transfer to GoI

DECISION: Due to possible violations of fiscal law, several property transfers to the GoI did not occur. In several cases, monetary thresholds prevented the transfer action.

RECOMMENDATION: Sustain. Continue JA review before property transfer to GoI. Before transfer of property to the GoI, take into consideration the value of the property, and appropriate property disposal mechanisms.¹⁷⁸

ISSUE: Giving property purchased with O&M funds to the GoI

DECISION: Subordinate commands within MNF-W were pulling back more and more from forward operating bases (FOBs) and entry control points (ECPs). The fiscal law shop at MNC-I was extremely helpful and valuable in this area of law, specifically with respect to the procedures and the type, quantity, and value of gear that MNF-W was authorized to hand over to the GoI or ISF (Iraqi Security Forces). As U.S. forces continue to depart Iraq, this particular issue will continue to grow. Unfortunately, as it stands now, the Foreign Excess Personal Property (FEPP) rules and procedures are very restrictive.

RECOMMENDATION: Improve. Create a process to alleviate some of the burden on units regarding obtaining “approval” from MNF-I to declare an item “excess” and appropriate for turnover to the Iraqis. Make sure JAs understand the FEPP rules, educate the units early, ensure the units identify equipment they want to leave as early as possible, and get the required documents processed through HHQ. Although the JAs are certainly not the lead on this issue, they need to be prepared to educate the other staff sections on the rules and assist as required.¹⁷⁹

¹⁷⁶ *Id.*

¹⁷⁷ 1AD 2009 OIF AAR, *supra* note 5.

¹⁷⁸ *Id.*

¹⁷⁹ 1 MEF (FWD) 2009 OIF AAR, *supra* note 4.

ISSUE: Transfer of foreign excess personal property (FEPP) to ISF

DECISION: MNC-I approval was necessary for FEPP proposals, but division fiscal law attorneys conducted a quick review of files before forwarding them up. In most cases, it was difficult to find that the item in question was indeed surplus to U.S. requirements. Items for which units sought approval included t-walls, office furniture, bunk beds, mattresses, etc.

MNC-I had promulgated little guidance at the outset of the deployment, but issued additional guidelines in an August 2008 FRAGO in response to U.S. transfers to the ISF of high mobility multipurpose wheeled vehicles (HMMWVs) and mine resistant ambush protected (MRAP) vehicles. In one instance, a U.S. commander had ordered his subordinate commanders to give HMMWVs to their Iraqi counterparts. While transfer of a U.S. supply item to the ISF is possible if it does not violate policy prohibitions, the transfer of MRAPs raises technology transfer issues. U.S. forces may also lend items to ISF to carry out a joint mission (e.g., metal detectors in order to increase security at election polling sites). However, such a proposal runs into problems if U.S. forces intend to drop off a hand-receipted item and return to collect it later (e.g., because the presence of U.S. forces at Iraqi election sites is undesirable).

RECOMMENDATION: Improve. Briefing commanders on this issue during predeployment training will reduce the prospect of having to investigate improper transfers.¹⁸⁰

ISSUE: Foreign Excess Personal Property (FEPP)

DECISION: Base and outpost closures generated a great deal of items appropriate for turning over to the Iraqis.

RECOMMENDATION: Obtain a copy of the higher headquarters guidance on this process.¹⁸¹

ISSUE: Transfer of U.S. property to the Government of Iraq (GOI)

DECISION: Under AR 735-5, the Army may not transfer or otherwise dispose of U.S. government property unless specifically authorized by law. The MNC-I fiscal law section received two to three calls per day from units requesting to give items such as vehicles, metal detectors, and razor wire to the Iraqi Security Forces (ISF). This became a big issue when shutting down joint security stations (JSSs) and other outposts after the surge. MNF-I established particular procedures for transferring such Foreign Excess Personal Property (FEPP). These procedures required MNF-I to deem the property as excess and which established certain dollar caps per item and per forward operating base (FOB). See the information paper (Subject: Material Disposition – Transfer of Personal Property to the Government of Iraq (GOI) and the Iraqi Security Forces (ISF)) (on file at CLAMO).

RECOMMENDATION: Improve. Disseminate the enclosed information paper to all units.¹⁸²

ISSUE: Disagreement with the HHQ over transfer of property to Iraqis

DECISION: The brigade encountered some confusing guidance from HHQ in the area of fiscal law, specifically giving property away to the Iraqis (T-walls). The CG was telling commanders

¹⁸⁰ 4ID 2009 OIF AAR, *supra* note 6.

¹⁸¹ 1BCT, 4ID 2009 OIF AAR, *supra* note 14.

¹⁸² XVIII ABC 2009 OIF AAR, *supra* note 25.

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to give U.S. Government property and equipment to the Iraqis in order to build checkpoints. The BJA researched the issue and thought it was not consistent with sound fiscal law principles. When he asked the division OSJA, they did not provide clear guidance/support. As a result, the BJA advised against it, and wrote several “memoranda for the record” detailing from where the approvals came. When a new division took over for the previous division, they identified this practice of handing over equipment as impermissible under fiscal law principles and immediately stopped the practice.

RECOMMENDATION: Improve. Do your best to advise your commander about the law and do your best to bring issues to the attention of your HHQ OSJA as well. When your efforts fail, be sure to capture your advice in MFRs and retain them in case of investigation.¹⁸³

ISSUE: Transfer of equipment to the Government of Iraq (GoI)

DECISION: Every time a U.S. installation closed, issues arose as to whether units could transfer equipment to the GoI. Initially, Multi-National Corps - Iraq (MNC-I) failed to initiate the appropriate guidance for such transfers. The division AdLaw attorney issued her own implementing guidance and forwarded a copy of this guidance to MNC-I. Although MNC-I changed much of this when it issued its own policy, the initiative at the division level prompted higher headquarters to act. Units must now comply with the MNC-I policy on transferring Foreign Excess Personal Property (FEPP) and complete a FEPP Financial Liability Investigation of Property Loss (FLIPL) to remove the items from the unit property book.

RECOMMENDATION: Improve. Often, higher headquarters will be slow to issue guidance on how to implement its directives. JAs must be prepared to do the necessary research and staff coordination and issue their own guidance. Submitting such guidance to higher headquarters for approval can either provide top cover or spur action by the higher headquarters. When acting in the absence of guidance, JAs should document their actions and legal rationale in a memorandum for record.¹⁸⁴

III.D. Logistics Civil Augmentation Program (LOGCAP) Contracting

OIF ISSUE: LOGCAP program management

DECISION: The management of LOGCAP contracts occurred at the regional contracting office. The regional contracting offices did not respond quickly to requests for information by the fiscal law attorney. At the division level, fiscal law attorneys conducted only basic contract review using “boilerplate” memos to determine if the contract violated monetary thresholds. These actions constituted at least 15% of total fiscal law attorney workload. Although LOGCAP contracts review was a significant portion of workload, the process was very easy. Eventually, sheer volume of LOGCAP requests made the review a “rubber stamp” process. The division eventually pushed the LOGCAP contract reviews down to the BJAs.

RECOMMENDATION: Improve. The operation and management of the LOGCAP program must be clear and understandable. Personnel at the regional contracting center must place

¹⁸³ 214th Fires BDE 2009 OIF AAR, *supra* note 52.

¹⁸⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

personality issues aside and be responsive to calls. The review process should not become a routine process.¹⁸⁵

ISSUE: Advising on LOGCAP contracts

DECISION: Division fiscal law attorneys found it difficult to distinguish between contracts falling under LOGCAP III or IV, qualifying as “stand-alone” or “capacity-based,” and never really achieved clarity in this regard. The MAAWs and TJAGLCS desk books did not provide sufficient detail. The G4 LOGCAP manager was the best-informed individual in terms of LOGCAP contract details, but understood them from a logistics, rather than legal, standpoint.

RECOMMENDATION: Improve. MNC-I, and TJAGLCS, should amend their respective products to include a level of detail sufficient to allow fiscal law attorneys to provide advice on LOGCAP matters.¹⁸⁶

ISSUE: Informal restrictions on use of LOGCAP contracts

DECISION: When planning the construction of the new division headquarters in Basra, MND-C originally planned to use the LOGCAP III contract. However, after a considerable amount of planning, MNC-I, and LOGCAP headquarters in Rock Island, said they could not use LOGCAP III, since a general officer had promised Congress the DOD would not award any new contracts under LOGCAP III. This resulted in a lot of time wasted.

RECOMMENDATION: Improve. Start early on the procurement planning for large projects to allow time for competition requirements. Be aware of informal LOGCAP restrictions.¹⁸⁷

OEF ISSUE: Funding LOGCAP contracts with ASSF

DECISION: In some cases, ASSF funded LOGCAP contracts. This action was improper.

RECOMMENDATION: Improve. From a fiscal perspective, this was an area that needed to be funded with O&M, even though CSTC-A did not have its own O&M funds.¹⁸⁸

ISSUE: Vague or incomplete LOGCAP contracts

DECISION: In some cases, LOGCAP (KBR) contract provisions were not clear and sometimes did not include all aspects of required service (e.g., a maintenance contract that did not include a building on the FOB in question).

RECOMMENDATION: None.¹⁸⁹

ISSUE: LOGCAP contractors performing inherently governmental functions

DECISION: LOGCAP contractors are performing inherently governmental functions at deployment sites. For example, one contractor performed government inspections, ordered and supplied material, supplied labor, and accepted work on the government’s behalf.

¹⁸⁵ 1AD 2009 OIF AAR, *supra* note 5.

¹⁸⁶ 4ID 2009 OIF AAR, *supra* note 6.

¹⁸⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 10.

¹⁸⁸ CSTC-A 2008 OEF AAR, *supra* note 11.

¹⁸⁹ *Id.*

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RECOMMENDATION: Improve. There must be “checks and balances” between the inspection and the work order process. Contractors should not write their own work order. In essence, they are placing orders to a government. To improve the situation, the U.S. Government must provide more inspectors and contracting personnel.¹⁹⁰

ISSUE: Commanders’ use of LOGCAP contracting

DECISION: LOGCAP became the commander’s first choice versus other types of contracting because the contractor generally delivered on time and within acceptable standards.

RECOMMENDATION: Improve. LOGCAP contracting costs were excessive. For almost eight years, the Government has been building forward operating bases (FOBs) and other structures in the Afghan theater of operations. To make an effective change, capacity within the armed forces or with local national companies must increase. This statement is true for services as well as construction. More LOGCAP contractors are not necessarily the answer, as all three LOGCAP contractors seemed to follow the same pricing scheme.¹⁹¹

ISSUE: Laundry waiver required by LOGCAP

DECISION: In order for Soldiers to get their clothes laundered, the LOGCAP contractor required Soldiers to waive any claim for loss or damaged items. There is no privity of contract between the Soldiers and the LOGCAP contractor. The contractor cannot impose such a restriction.

RECOMMENDATION: Sustain. Develop a procedure to review long-term deployed contracts. Do not assume all the contractual terms are satisfied merely because the work occurs. For example, in the laundry contract, the contractor was also responsible for sewing services.¹⁹²

¹⁹⁰ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 25.

¹⁹¹ *Id.*

¹⁹² *Id.*

IV. CLAIMS

IV.A. Foreign Claims

IV.A.1. Individual and Corporate Claims Against the United States

OIF ISSUE: **Litigation resulting from a Turkish employee killed by U.S. Forces in Iraq**

DECISION: The family of an individual employed by a Turkish company in Iraq and killed by U.S. forces several years ago made a claim for damages to a Turkish court. That court sent a request to the U.S. Embassy asking for confirmation that the family had rejected offered U.S. compensation. The Turkish court provided sufficient information to identify and locate the U.S. Army officer that dealt with the matter. He in turn provided the name of the JA who had dealt with the issue. Both forwarded copies of emails, which the RoL section then passed to the Embassy for transmission to the Turkish court.

RECOMMENDATION: Retaining a personal copy of email and other files resulting from a deployment may prove useful, particularly as it can be very difficult to determine the disposition of unit records.¹

IV.A.2. Claims of Foreign Governments

OEF ISSUE: **Claims involving the Afghan National Army (ANA)**

DECISION: CJTF-82/101 and TF Phoenix were involved with processing claims against U.S. forces. The CSTC-A paralegal NCOIC assisted with processing these claims. CSTC-A was, however, very involved with assisting the ANA in establishing a system to process claims against their army. For example, claims involving the ANA taking over a house for a military mission. We had very limited success in making the Afghan system work but expended considerable effort in working with the MoD to evaluate and investigate claims and to budget for them.

RECOMMENDATION: None.²

ISSUE: **Claims for damage caused by other coalition nations**

DECISION: There were no claims filed during the BDE's deployment. However, the Polish were conducting the airdrops from U.S. aircraft, and the actual drop was to occur upon the order of a U.S. command. A Polish JA asked if U.S. forces could pay claims resulting from planned airdrops of Polish supplies to Polish troops.

RECOMMENDATION: None.³

¹ Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, October 2008 – December 2008 (9 Feb. 2009) (on file at CLAMO).

² Combined Security Transition Command – Afghanistan, Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom (Sept. 2008) [hereinafter CSTC-A 2008 OEF AAR] (on file at CLAMO).

³ 420th Engineer Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, May 2008 – March 2009 (13 May 09) [hereinafter 420th EN BDE 2009 OER AAR] (on file at CLAMO).

IV.A.3. Claims Within the HN that Could Affect U.S. Interests or Operations

Real Estate Claims

OIF **ISSUE:** **Payment to Iraqi landlords for land use by U.S. forces**

DECISION: Upon arrival, the regiment found payment of some land leases (dating back at least two years) had stalled. These JAs made some progress on the issue by the time of departure, but the process is very cumbersome. The package must go back and forth several times between the unit and the U.S. Army Corps of Engineers (USACE) Gulf Regional Division (GRD), responsible for payment of land leases. The GRD approval process envisions developed nations with functioning land title systems, and requires a level of documentation unrealistic in Iraq (e.g., where land records may be sketchy or non-existent). It does not reflect the fact U.S. forces have used the land for an installation for two years without paying any money to anyone. If the incoming JAs take no action, the progress made by the current JAs is lost. Settling claims for outstanding land lease payments is not a JA function, but it is an equity and force protection issue. The claimants show up in the claims system, and cannot find anyone else to care about the issue.

RECOMMENDATION: Improve. GRD requires additional personnel to move files through the process more quickly, and should adapt its requirements to reflect the type of documentation available in a given theater. In some cases, it is easier to pay money for damage than for land use.⁴

ISSUE: **Working with the Contingency Real Estate Support Team (CREST)**

DECISION: CREST was not helpful at all. This was true even after face-to-face meetings with CREST, MNC-I, the division, and the BCT.

RECOMMENDATION: Do not utilize CREST or rely on them for assistance. If possible, adjudicate the claim without them.⁵

ISSUE: **Real estate claims**

DECISION: Finding compensation for land owned by the Iraqis that U.S. forces requisitioned was very difficult. The lease creating organization, CREST, located in Baghdad, was maddeningly difficult to work with. Their requirements to draft leases did not accurately reflect the reality of property ownership in western Al Anbar Province. As a result, land use by the U.S. forces becomes akin to the eminent domain theory in the United States.

RECOMMENDATION: Real property lease policies need to reflect the reality within the battalion's battle space. Many times these leases are for significantly smaller cash amounts than most Civil Affairs (CA) group projects, so it may be possible to grant CA the authority to administer such payments.⁶

⁴ 2d Stryker Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, August 2007 – May 2008 (17 Feb. 2009) [hereinafter 2SCR 2009 OIF AAR] (on file at CLAMO).

⁵ 3d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (14 Jan. 2009) [hereinafter 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

⁶ 2d Battalion, 2d Marines, Battalion Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – November 2008 (18 Dec. 2008) [hereinafter 2/2 Marines 2008 OIF AAR] (on file at CLAMO).

ISSUE: GRD pressure to pay rent claims

DECISION: The GRD pressed the brigade to pay out large amounts of money as rent to individuals who could not prove ownership of the property in question. The brigade insisted on supporting documentation to demonstrate ownership and to justify the high amounts of rent the GRD advocated.

RECOMMENDATION: Sustain. Ensure the basis of a claim, such as for rent, is legitimate.⁷

ISSUE: Land use claims

DECISION: The Gulf Regional Division (GRD) office was terribly understaffed. They did not have nearly enough people to cover the area.

RECOMMENDATION: GRD should assess how many people it requires to process land use agreements for an area the size of Iraq and with Iraq's complicated land ownership rules and lack of sophisticated documentation.⁸

ISSUE: Iraqi land leases

DECISION: The BCT legal team received no training on Iraqi land leases before deployment. They found that leases were a big part of their claims mission since many of the claims depended on whether a land lease existed, and then what the terms of that lease stated. They had to learn as they went with the help of division.

RECOMMENDATION: Improve. Training on land leases is important to the claims mission. An information paper would be helpful.⁹

ISSUE: Delinquent land lease payments to Iraqi landowners

DECISION: Upon arrival to Iraq, 1AD discovered there was a substantial backlog in land lease payments to deserving Iraqis. According to the Iraqis, frequent rotation of units was a contributing factor to the backlog as units repeatedly "handed off" claims from one unit to the next.

RECOMMENDATION: Do not rotate personnel responsible for handling these payments. 1AD did not rotate the NCOIC out of Client Services for most of the deployment. This allowed this NCOIC to take ownership of multiple claims and ensure payments to the Iraqis.¹⁰

ISSUE: Coordination with the Gulf Region Division (GRD)

⁷ 4th Brigade Combat Team, 10th Mountain Division (Light Infantry), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (5 Feb. 2009) [hereinafter 4BCT, 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

⁸ 1st Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – March 2009 (28 Apr. 2009) [hereinafter 1BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

⁹ 4th Brigade Combat Team, 3d Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – December 2008 (25 Mar. 2009) [hereinafter 4BCT, 3ID 2009 OIF AAR] (on file at CLAMO).

¹⁰ 1st Armored Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (19 Feb. 2009) [hereinafter 1AD 2009 OIF AAR] (on file at CLAMO).

TIP OF THE SPEAR

DECISION: In order to effectively process land lease claims it is essential to have a good relationship with GRD of the USACE. This required “face to face” meetings with GRD representatives in the operating environment. In addition, establishing a IAD SOP ensured the process was efficient and effective, and became the GRD standard.

RECOMMENDATION: Sustain.¹¹

ISSUE: Determining value of land lease payments

DECISION: The IAD claims office utilized the agricultural experts in the division G-9. Ultimately, after discussion the office established an average standard (approximately \$3,000 per year for five years) for a given sized plot.

RECOMMENDATION: Sustain. Establishing a standard payment scale for the area is helpful. Establishing this standard in conjunction with G-9 is a good practice.¹²

ISSUE: Real estate claims

DECISION: The MNC-I claims JA did not have prior training on how to handle real estate claims. Nevertheless, MNC-I dealt with real estate claims because the subordinate landowning units sometimes did not know how to process them. Previously, the Gulf Regional Division (GRD) of the U.S. Army Corps of Engineers (USACE) had investigated real estate claims. More recently, GRD assigned this responsibility to the landowning unit, with the exception of the deed and title search, which a local national had to perform, and the negotiation of the lease, which GRD performed. The claims JA must determine whether U.S. forces occupied the property in question, how long they occupied it, and whether they caused any damage. For past occupations of property, the rent portion, as opposed claims for damages during the occupation, does not count toward the FCC’s approval limit. The claims JA then sends this information to GRD, which hires a contractor to do a deed and title search verifying ownership and which negotiates the rent on behalf of the unit. The unit then pays the recommended rent out of Operations and Maintenance (O&M) funds.

RECOMMENDATION: Claims JAs at all levels need to be familiar with the process for investigating and paying real estate claims. Often this will not be obvious in the regulations, as local practices will develop. It is best to contact the local USACE real estate claims chief to determine what the current process entails.¹³

OEF ISSUE: Land use policy

DECISION: There was no detailed, comprehensive land policy in Afghanistan concerning the use of land by U.S. forces. The issue of land use was something on which CSTC-A directly briefed the MoD. It was a contentious issue in Afghanistan because the U.S. had paid leases to individual landowners over a period of years, and the historical files and attachments to this AAR help explain this issue in detail [on file at CLAMO]. It was a substantial amount of money for these individual landowners. In 2006 the Deputy Commanding General (DCG) for Combined Forces Command – Afghanistan (CFC-A) (CSTC-A’s predecessor command) signed an

¹¹ *Id.*

¹² *Id.*

¹³ XVIII Airborne Corps, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – April 2009 (11 June 2009) [hereinafter XVIII ABC 2009 OIF AAR] (on file at CLAMO).

agreement with the GIRoA Minister of Defense stating the GIRoA would now pay these leases. This was an attempt to restore the confidence of the people in the GIRoA. However, the GIRoA had not budgeted for the money and was not paying the landowners. This resulted in landowners coming to the front gates of U.S. installations demanding payment from U.S. forces.

CSTC-A tried to resolve this issue by providing Afghan Security Forces Funds (ASFF) to the MoD. For this reason, CSTC-A had to brief the MoD. CSTC-A wanted to provide MoD with the money with which to negotiate and pay the leases in a fair and reasonable amount. According to the MoD, CSTC-A had been paying too much to compensate the local landowners for the use of their land. The MoD would not agree to this plan. Ultimately, it was fortunate the MoD refused to agree to use the ASFF for this requirement because the final U.S. DoD OGC fiscal law opinion was that CSTC-A could not use ASFF for this purpose. Instead, DoD OGC and the Office of the Secretary of Defense (OSD) Comptroller (and the Army Budget Office) opined that O&M was appropriate because U.S. Forces were occupying the land. This final DoD opinion created even more headaches and confusion, especially for the units controlling the Title 10 O&M funds.

The International Security Assistance Force (ISAF) also used a different standard for resolving land claims in Afghanistan. They had a Military Technical Agreement (MTA) upon which they relied to say they were not going to pay for any land ISAF was occupying. There were U.S. forces as a part of ISAF. The Afghans did not understand how U.S. Forces as part of ISAF did not have any legal obligation to compensate local landowners while OEF U.S. forces had a history of compensating local landowners. This created confusion and frustration. Moreover, different countries took different approaches, so it was difficult to get a complete resolution on land use issues. CSTC-A tried to push for an over-arching diplomatic solution to the land issues in Afghanistan through resolution by the Ambassador and President Karzai.

RECOMMENDATION: None. Upon redeployment, it was still unresolved.¹⁴

ISSUE: Threatened violence and a lack of records for land use

DECISION: There were physical altercations between landowners and Coalition Forces (CF) on their claimed property. GIRoA officials also received a great number of death threats stemming from land use and there were allegations of a land mafia. Poor documentation of land ownership contributed to the problems. Inadequate records led to many claims for the same piece of land. Sorting this out ultimately fell on the Contingency Real Estate Support Team (CREST), but CSTC-A shared the goal of solving the problem as quickly as possible. One solution CSTC-A tried was to give the Ministry of Finance a deadline to fix the problem or the U.S. would withhold \$45 million in (Afghan National Army) ANA salary augmentation. The Ministry of Finance made representations that they were working the issue by the deadline but were unable to fix it.

RECOMMENDATION: It remains a high-level issue that needs attention so that CF have access to the land needed to conduct operations.¹⁵

¹⁴ CSTC-A 2008 OEF AAR, *supra* note 2.

¹⁵ *Id.*

IV.A.4. Foreign Claims Act (FCA)

OIF ISSUE: **Fitting the FCA into Iraq**

DECISION: The BJA did not believe the FCA is suitable for the processing of claims in Iraq. The FCA contemplates a detailed investigation will be done to establish whether negligence exists. This kind of investigation to adjudicate claims is not feasible in Iraq. As a result, the JA must decide how liberal or conservative they want to be as FCA pay authorities. There is not a consistent standard among BCTs in Iraq and no guidance is available.

RECOMMENDATION: More guidance from USARCS is a necessity.¹⁶

ISSUE: **Level of interpretation for claims under the FCA**

DECISION: The BJA interpreted the facts of a claim in a light most favorable to the claimant.

RECOMMENDATION: Sustain. Use of this standard helps ensure the U.S. government errs on the side of granting the claim, thus helping to build goodwill among the populace.¹⁷

ISSUE: **Combat activities exclusion**

DECISION: The MNC-I claims office noted a wide variance in the interpretation of the combat activities exclusion by JAs at subordinate commands. Some claims JAs refused to pay valid claims, arguing the money would end up supporting the insurgency. Other claims JAs interpreted the combat exclusion very narrowly. Realizing AR 27-20 does not lay out a bright-line rule as to what are combat activities and what are not, the MNC-I claims JA consulted old claims to see how her predecessors dealt with similar facts. In gray areas, the claims JA would look at the nexus of the activity to combat operations. With recurring issues, such as damage caused by helicopter flares and presence patrols, MNC-I disseminated guidance regarding similar previously adjudicated claims to subordinate units.

RECOMMENDATION: Sustain. Incorporate recurring scenarios into mission rehearsal exercises to train JA in the nuances of the combat activities exclusion.¹⁸

ISSUE: **Claims for requisitions of private property**

DECISION: The MNC-I claims JA dealt with several high-value claims arising out of the requisition of private property for military purposes. In one case, a commander used salt berms at a salt factory to detonate unexploded ordnance (UXO), destroying millions of dollars worth of salt. In another case, U.S. forces occupied the Ramadi College of Agriculture, kicking the adjacent landowner off his property, to establish a security barrier and using that landowner's construction materials for force protection. Both of these cases went to USARCS for approval due to the dollar amount. In both cases, USARCS said they were not payable as claims but rather the units should treat them as retroactive contracts for the requisition of goods. The MNC-I claims JA and contract & fiscal law JAs disagreed with this interpretation.

¹⁶ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 5.

¹⁷ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 7.

¹⁸ XVIII ABC 2009 OIF AAR, *supra* note 13.

RECOMMENDATION: Claims JAs should be aware of the USARCS view concerning claims arising out of requisitions as retroactive contracts. It is crucial to educate units to immediately report any property they requisition in order to determine an appropriate method of payment.¹⁹

Planning for the Claims Mission

OIF ISSUE: Addition of claims mission during deployment

DECISION: The regiment assumed a claims mission upon arrival at FOB Warhorse and had to learn the claims process through trial and error. The regiment's legal team paid claims at FOB Warhorse and FOB Normandy, where one of the JAs normally spent two weeks of each month.

RECOMMENDATION: Improve. Deploying JAs should be aware reorganization of units may result in responsibility for new missions, and should train and prepare accordingly.²⁰

ISSUE: Procedures for dealing with claims attributable to a departed unit

DECISION: From June through October, the legal team dealt with a backlog of 400 claims, paid out \$720,000, and left 75 claims adjudicated but not yet paid out. Because of the backlog and because they had to settle some new claims resulting from the actions of the unit they replaced, they had to track down personnel from that unit to confirm whether the claims should be paid (e.g., "Did you drop a bomb on this house on this date?" or "Yes, but we paid it" etc).

RECOMMENDATION: Improve. Legal teams should obtain contact information for the outgoing commanders and first sergeants (i.e. by obtaining a copy of the unit's in garrison command roster) before their redeployment. They should also obtain a copy of the S5's list of claimants whose claims the unit already settled.²¹

ISSUE: Claims responsibility at COB Speicher

DECISION: The units previously responsible for this BCT's battle space did not handle FCA claims. Instead, the division co-located at COB Speicher did so. When this BCT arrived, the division asked it to do claims. The BCT CDR was reluctant to do so because this would have entailed dealing with claims from other COB Speicher units. There is only one COB Speicher CMOC, and it handles civil-military operations for the entire province. The BCT did handle all of its own CERP condolence payments. The division relief in place (RIP) order for the incoming BCT required them to take responsibility for claims. However, that BCT had only two JAs.

RECOMMENDATION: Improve. Units co-located at a COB should consider how claims responsibility will be assigned, and ensure sufficient resources will be available to deal with the claims mission.²²

ISSUE: Backlog of claims from preceding unit

¹⁹ *Id.*

²⁰ 2SCR 2009 OIF AAR, *supra* note 4.

²¹ *Id.*

²² 1st Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (15 Jan. 2009) (on file at CLAMO).

TIP OF THE SPEAR

DECISION: When the BCT arrived in theater, they inherited approximately 160 claims from the preceding unit. This caused a backlog at the CMOC. Since the records were not always complete, it was difficult to process all of these past claims.

RECOMMENDATION: Improve. Complete and close out as many outstanding claims as you can before re-deployment. If you have to leave open claims for the next unit, make sure that you have clear and concise records of each claim (include relevant SIGACTs and/or claims cards).²³

ISSUE: Backlog of claims after transfer of authority (TOA)

DECISION: When the BCT took over the AO, there was a huge backlog of unadjudicated claims because the last unit stopped paying claims well before TOA. In addition, there was no tracker to decipher who had received payment, and who had not. The BCT decided to pay claims up to the time they actually left theater so that the incoming unit would not have this same issue.

RECOMMENDATION: Sustain. If possible, pay claims right up to TOA so that the next unit does not have the headache of trying to play “catch-up” with their claims mission.²⁴

ISSUE: Claims and condolence payment accounts

DECISION: The BN JA received his appointment as a one-person Foreign Claims Commission (FCC) before deploying, and the Civil Affairs (CA) detachment set up the a CERP condolence account for the BN JA to pay condolence payments for combat damages. CERP condolence payments were limited to combat-related damages and capped at \$2500 per claim with a 90-day limit. Foreign Claims Act (FCA) payments for non-combat related damages had a \$15,000 per claim cap with at two-year limit for payment. As kinetic activity plummeted, the need for CERP condolence funding became minimal.

RECOMMENDATION: Prior to deploying, confirm you have an FCA account established. Make sure you set up a CERP condolence payment account as soon as possible upon arrival in theater. Paying any claim will require prior coordination with the disbursing office since they will provide the money and the disburser necessary to pay claims, so get to know them.²⁵

ISSUE: Appointment of Foreign Claims Commissions (FCCs)

DECISION: The BCT did not receive any training on foreign claims prior to deployment and did not know that they needed to have someone appointed as an FCC. Consequently, it took them about 30 days after arrival in theater to get an FCC appointment and start paying out the claims.

RECOMMENDATION: Improve. Get the necessary training and appointments before deployment so that you can start to pay claims immediately. Ms. Joanne Roe at USARCS is extremely helpful in this process.²⁶

ISSUE: Use of the three-member FCC

²³ 2d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – November 2008 (13 Jan. 2009) [hereinafter 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

²⁴ 4BCT, 3ID 2009 OIF AAR, *supra* note 9.

²⁵ 1st Battalion, 9th Marines, Battalion Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – October 2008 (9 Jan. 2009) [hereinafter 1/9 Marines 2009 OIF AAR] (on file at CLAMO).

²⁶ 4BCT, 3ID 2009 OIF AAR, *supra* note 9.

DECISION: Because the brigade had three JAs, they were able to stand up their own three-member FCC.

RECOMMENDATION: If you are able to do so, having a three-member FCC is a huge combat multiplier due to the increased monetary limit of the claims it can approve.²⁷

ISSUE: Claim documents in Arabic

DECISION: The BJA depended heavily upon Iraqi interpreters to translate claims written in Arabic.

RECOMMENDATION: Sustain. A competent interpreter is an indispensable tool to the BJA.²⁸

ISSUE: Division of labor when conducting claims operations

DECISION: The brigade's Reserve third JA was primarily responsible for the claims program. However, the paralegals had a very heavy role in the claims mission. The NCOIC was the paying agent, while another paralegal NCO was responsible for the claims documentation.

RECOMMENDATION: Use your paralegals for this mission. Because it is not a standard garrison mission, ensure they have the required training to hit the ground running.²⁹

ISSUE: Pay-agent certification

DECISION: Pay-agents did not receive their "certification" until IAD arrived in Iraq.

RECOMMENDATION: Obtain certification before arriving in Iraq. However, the oversight did not hinder operations, as it was easy to correct.³⁰

ISSUE: Claims cards

DECISION: Despite bringing thousands, the brigade did not have enough claims cards. The brigade handed out every claims card they could obtain and resupply was slow.

RECOMMENDATION: Units should deploy with as many claims cards as possible.³¹

ISSUE: Amount of foreign claims work

DECISION: The unit paid over \$2 million in foreign claims.

RECOMMENDATION: Be prepared to conduct the claims mission.³²

ISSUE: Claims "caseload"

²⁷ 1BCT, 4ID 2009 OIF AAR, *supra* note 8.

²⁸ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 7.

²⁹ 1BCT, 4ID 2009 OIF AAR, *supra* note 8.

³⁰ IAD 2009 OIF AAR, *supra* note 10.

³¹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 7.

³² 1BCT, 4ID 2009 OIF AAR, *supra* note 8.

TIP OF THE SPEAR

DECISION: The SBCT received and processed almost 5,000 claims from Iraqis. They paid 1,130 claims totaling \$4,819,700. The caseload required an efficient and streamlined claims process.

RECOMMENDATION: Try to be administratively efficient with the claims received due to the high number of claims received.³³

ISSUE: Keeping leadership informed of the claims process

DECISION: The leadership was supportive of the overall claims process. The claims officer informed the SJA of the claims statistics.

RECOMMENDATION: Sustain.³⁴

Tort & Special Claims Application (TSCA)

OIF ISSUE: Lack of knowledge of USARCS website and inability to access it efficiently

DECISION: The legal shop did not know about the USARCS website until late into the deployment. In addition, once discovered, it proved to be useless due to the many variations of names used by Iraqis. Additionally, when used in the field, it took too long to access.

RECOMMENDATION: Improve the website training, database, and access issues or eliminate the webpage.³⁵

ISSUE: Use of USARCS-provided claims computers

DECISION: The lack of bandwidth made using these computers for their intended purpose impossible. There was simply no way to run the Tort and Special Claims Application (TSCA) program successfully.

RECOMMENDATION: As Iraq is a very mature theater, we should expect bandwidth to be even more limited in immature theaters. Applications that rely on real-time, fast internet access are not likely to be successful in a deployed environment. The use of application-based programs may provide more utility and be easier to operate in a deployed environment.³⁶

ISSUE: TSCA program

DECISION: Under Army Regulation (AR) 27-20 (Claims), the TSCA Program, which is accessible through JAGCNet, is mandatory for recording and reporting foreign claims. One of the primary purposes of TSCA is to prevent fraud and forum shopping by claimants by allowing any claims office to access claims submitted by an individual. However, TSCA did not work well in Iraq. First, unless all claims offices follow the transliteration guide for entering in a claimant's name, the program will not catch duplicate submissions by the same individual. Second, Iraqis citizens generally go by multiple names. Most significantly, the program was only

³³ 2d Stryker Brigade Combat Team, 25th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – March 2009 (20 Apr. 2009) (on file at CLAMO).

³⁴ IAD 2009 OIF AAR, *supra* note 10.

³⁵ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 5.

³⁶ XVIII ABC 2009 OIF AAR, *supra* note 13.

accessible to units having a very good internet connection and was not available at all in the field, where many claims are taken in. Consequently, most units were not using TSCA.

RECOMMENDATION: A new program is necessary. It is possible TSCA-lite will fix this problem. In the absence of an internet-based program, JAs who are processing claims outside of their battle space should contact the landowning unit's JA to ensure the Army is not processing duplicate claims.³⁷

Where & When to Intake/Pay Claims

OIF ISSUE: Claims payment frequency

DECISION: The BN JA made a concerted effort to scale back the number of claims his BN paid. The first claims day that the BN JA hosted resulted in a deluge of Iraqis looking to receive payment for undocumented claims that were three to four years old. As a result, he carefully tracked any actions that could result in claims through the company leadership and the Combat Operations Center (COC). Additionally, the BN JA stressed the necessity of using claims days on an "as needed basis," rather than at set intervals. This targeted claims payment process helped to counter the Iraqi's notion that U.S. forces pay for their problems, vice our damages. The BN additionally designated each company executive officer as a CERP Project Purchasing Officer (PPO), although the companies did not pay any claims.

RECOMMENDATION: As U.S. forces continue to reduce their presence in Iraq, there should be fewer claims requiring payment. Although prompt payment for damages caused by Marines are an important part of the IO fight, care should be taken not to "incentivize" Iraqis to concoct claims which U.S. forces should not rightfully pay.³⁸

ISSUE: Claims and condolence payment processing

DECISION: The BN JA was responsible for running the battalion's claims day operations. Prior to 1/9's arrival, Ramadi had four claims days per week at various locations. The BN JA scaled this back to two claims days per month at one central location in the city (Ramadi business center).

RECOMMENDATION: Sustain.³⁹

ISSUE: Conducting claims missions at the patrol bases vice the large installations

DECISION: The decision to pay claims at company patrol bases was very beneficial to the commanders in the field. It empowered them and gave them visibility in the eyes of the local community. It also was easier for evidence collection in order to adjudicate the claims. A drawback was the time required by the legal office to travel to the patrol bases and the time out of the office.

RECOMMENDATION: Sustain.⁴⁰

³⁷ *Id.*

³⁸ 2/2 Marines 2008 OIF AAR, *supra* note 6.

³⁹ 1/9 Marines 2009 OIF AAR, *supra* note 25.

⁴⁰ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 5.

TIP OF THE SPEAR

ISSUE: The brigade's method of accepting and paying out claims

DECISION: The brigade referred all claimants to a local Civil Military Operations Center (CMOC). The brigade scheduled pay out days at the front gate of the FOB under heavy guard.

RECOMMENDATION: Sustain. Use CMOC resources to assist in claim payouts.⁴¹

ISSUE: Claims processing by non-landowning units

DECISION: MNC-I had a claims mission despite not being a landowning command and thus not having its own CERP funds designated for distribution as part of the claims program. The MNC-I claims section received the bulk of its claims from the National Iraqi Assistance Center (NIAC) in the International Zone (IZ). Because there was widespread publicity informing Iraqis where to file claims, the NIAC took in claims originating throughout the country, particularly from claimants who fled from other areas to the comparative safety of Baghdad. The MNC-I claims office found it very difficult to investigate claims arising in other battle spaces. When they contacted the JAs responsible for the battle space in which the claims arose, they often did not get a timely response due to the much higher operational tempo of the BCTs. Moreover, some units routinely failed to pick up their claims from NIAC. Without the ability to investigate these claims, the MNC-I claims office had to deny what might otherwise be valid claims. Furthermore, when MNC-I denied claims under the combat activities exclusion, it did not have the ability to compensate the claimant with CERP condolence payments. They encountered resistance from the landowning units when they tried to forward the denied claims to them for consideration as CERP payments.

RECOMMENDATION: Non-landowning units should not process claims. Claims JA resources at such commands should relocate to the BCTs to augment their ability to process foreign claims.⁴²

Investigating Claims

OIF ISSUE: Procedures for investigating claims

DECISION: A paralegal who dealt with claims at the squadron level found it helpful to develop contacts with the S2, first sergeant, and platoon leaders. When a claimant came forward, he first checked the SIGACTs in the Combined Information Data Network Exchange (CIDNE) database to verify whether the alleged damage had occurred and was likely due to the actions of U.S. forces. If nothing there corresponded to the claimant's description, he checked with the S2 to determine whether there had been a firefight with insurgents at a corresponding date and time. If this yielded no result, he spoke to the maneuver unit responsible for the area. He also dealt with the unit if it was necessary to travel to a location to confirm the destruction of a building. In some cases, this was unnecessary because maneuver unit personnel were able to confirm the circumstances in which the destruction occurred. Although Soldiers gave out claims cards, the team seldom used them as the basis for claims payment.

RECOMMENDATION: Sustain.⁴³

⁴¹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁴² XVIII ABC 2009 OIF AAR, *supra* note 13.

⁴³ 2SCR 2009 OIF AAR, *supra* note 4.

ISSUE: The use of electronic media to confirm claims

DECISION: The claims NCO used storyboards, Command Post of the Future (CPOF), situation reports (SITREPs), and other electronic media to assist in the decision to approve a claim. Although not dispositive, it helped a claimant if the incident they described appeared in an incident report or other unit report.

RECOMMENDATION: Sustain. Ensure your claims NCO knows how to use the CPOF and all other computer systems so he/she can view all necessary reports.⁴⁴

ISSUE: Ensuring claims are legitimate and confirmed

DECISION: There was pressure from the command to spread good will through the claims mission. However, claimants often would have little to no evidence to prove their claims or their claims were beyond the date the U.S. could compensate for their loss. Therefore, the claims team had to be vigilant in their assessments of each claim. Often there were disputes within the claims team as to what claims should be paid.

RECOMMENDATION: Improve. Ensure strict adherence to the Foreign Claims Act (FCA) rules. Recognize it is okay not to pay an unconfirmed claim, regardless of the pressures of your command. If you are lenient with the rules, claimants will spread the word and inundate your claims office with questionable claims.⁴⁵

ISSUE: Utilizing SIGACTs at the division level to investigate claims

DECISION: It was not helpful to try to utilize SIGACTs at the division level to determine the legitimacy of claims. Often, SIGACTs did not match up with the types of claims handled by 1AD (land claims). Payments made utilizing SIGACTs were most beneficial at the brigade and battalion level.

RECOMMENDATION: None.⁴⁶

ISSUE: Methods to help ensure valid claims

DECISION: The local national interpreter reviewed the claims for any suspicious indicators. The NCOIC checked alleged events leading to claims submitted against significant activity (SIGACT) reports.

RECOMMENDATION: Sustain. Use local national expertise to help check the validity of claims as well as SIGACTS to validate whether an alleged event did or did not happen due to the presence of U.S. forces in the area.⁴⁷

ISSUE: Working with commanders to confirm claims

DECISION: The BCT claims shop had good communications with the commanders in the battle space. Often, the commanders would give them a heads up as to who would be coming to the

⁴⁴ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 23.

⁴⁵ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 5.

⁴⁶ 1AD 2009 OIF AAR, *supra* note 10.

⁴⁷ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 7.

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CMOC to present a claim. They would also send in pictures of the damage. This helped to ensure that only proper claimants were paid.

RECOMMENDATION: Sustain. If possible, work with the commanders to improve efficiency.⁴⁸

ISSUE: **Claims cards (or equivalent)**

DECISION: The BCT units made effective use of the claims cards by writing their names or a short note on the card. This helped the claims personnel to better discern a valid claim. Additionally, if a claims card was not available, the Soldiers would then scribble a note on a piece of paper along with their name and unit.

RECOMMENDATION: Sustain. Train the troops early on to use the claims cards and give as much information as possible on the cards.⁴⁹

ISSUE: **Investigation of claims exceeding the approval authority of the FCC**

DECISION: The three-member FCC at MNC-I received several claims from one-member FCCs for approval because of the dollar amount. The unit flew these claims in by helicopter and dropped them off with only a recommendation as to approval. The MNC-I claims JA was unable to process these claims without the landowning unit first conducting the investigation.

RECOMMENDATION: The landowning unit is responsible for investigating the claim before sending it up to a higher level FCC along with a recommendation for adjudication.⁵⁰

ISSUE: **Verification of claims incidents through serious incident reports (SIRs)**

DECISION: The claims JA had difficulty verifying incidents resulting in claims through the database of SIRs on the Combined Information Data Network Exchange (CIDNE). There was a lack of uniformity in how units reported these incidents. For example, units could use several different terms for similar incidents, such as “vehicle accident”, “road traffic accident” or simply “RTA”. Most SIRs did not include the names of the local nationals involved in the incident.

RECOMMENDATION: Create standard language and categories for SIR entries into CIDNE. Require units reporting vehicular accidents to include the name(s) of the local nationals involved.⁵¹

OEF ISSUE: **Investigating claims**

DECISIONS: Going outside the wire and personally investigating claims was a good deterrent against false claims. Personal investigation by the claims judge advocate also proved to the local nationals the U.S. was serious about the claims program and they could rely on it for proper settlement.

⁴⁸ 4BCT, 3ID 2009 OIF AAR, *supra* note 9.

⁴⁹ *Id.*

⁵⁰ XVIII ABC 2009 OIF AAR, *supra* note 13.

⁵¹ 4th Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – June 2009 (14 Aug. 2009) [hereinafter 4-1 CAV 2009 OIF AAR] (on file at CLAMO).

RECOMMENDATION: Sustain. As circumstances permit, personally investigate claims, but a careful cost-benefit analysis must be made based on the threat.⁵²

Fraudulent Claims

OIF ISSUE: Procedures for eliminating claims fraud

DECISION: The claims system generally works well, but does not allow elimination of the possibility of fraud caused by multiple claims. It was impossible to track claimants in a database solely by means of their names. In addition to variations in spelling (e.g., Mohammed, Muhammed, Mohamed, etc.), each unit previously assigned to that location had developed its own separate claimant databases, ranging from a MS Word document, to an Excel spreadsheet, to an Access database. This legal team used the Biometric Automated Toolset System (BATS) and the Handheld Interagency Identification Detection Equipment (HIIDE) to identify claimants. An interpreter who works in the same geographic area over a long period can also be helpful in reducing the possibility of duplicate claims.

RECOMMENDATION: Sustain. Institution of a theater-wide database with standardized naming protocols would be helpful. Units should adopt use of BATS and HIIDE as a standard practice and, where possible, should obtain the services of a dedicated claims interpreter.⁵³

ISSUE: Fraudulent claims cards

DECISION: Personnel at the CMOCs discovered claimants sometimes presented fraudulent claims cards in an attempt to collect more than once on the same claim. When this happened, they would confiscate the fraudulent cards and send them to MNC-I. Corps would keep a record of it and then send copies to all of the CMOCs so everyone was aware of the false claim.

RECOMMENDATION: Sustain. Consider using biometric equipment, if available.⁵⁴

ISSUE: The prevention of fraud in the claims mission

DECISION: The division foreign claims commission (FCC) met regularly to adjudicate claims from the brigades exceeding the brigade monetary limit. The division would also adjudicate individual claims for the brigades, as requested, if BJAs were on leave or backlogged. Additionally, if the claim came directly to the division office, the office sent the claims to the respective brigades. On the rare occasion division adjudicated the claim, division always coordinated the claim with the brigade and the brigade was responsible for making payment. The division claims JA kept in regular communication with the respective brigades. Otherwise claimants would sometimes forum shop to get a favorable outcome or receive double payment for the same claim.

RECOMMENDATION: Sustain. Ensure open communication between the brigade and division claims personnel. Keep detailed trackers and continually compare trackers with the brigades.⁵⁵

⁵² 101st Airborne Division (Air Assault), Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom, April 2008 – June 2009 (28 Aug. 2009) [hereinafter 101st ABN DIV (AASLT) 2009 OEF AAR] (on file at CLAMO).

⁵³ 2SCR 2009 OIF AAR, *supra* note 4.

⁵⁴ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 23.

⁵⁵ 4th Infantry Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (30 Apr. 2009) [hereinafter 4ID 2009 OIF AAR] (on file at CLAMO).

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ISSUE: Fraud and forum shopping

DECISION: The MNC-I claims office realized Iraqis commonly attempted to submit fraudulent claims and engage in forum shopping of the same claim among multiple claims offices. When processing claims arising in other units' battle space, the claims office contacted the landowning unit's JA to determine whether they had already processed a claim or CERP payment for the particular incident. Most claims offices in Iraq also used internal trackers including the claimant's name, summary of the claim, and date of incident in order to prevent duplicate claims.

RECOMMENDATION: Sustain.⁵⁶

ISSUE: Use of BATS/HIIDE for claims processing

DECISION: The MNC-I claims office did not have access to BATS or HIIDE for use in processing claims.

RECOMMENDATION: Use of BATS or HIIDE to screen potential claimants can help identify insurgents, the processing of whose claims would be against public policy, and identify persons submitting fraudulent or duplicate claims. Subordinate units with access to BATS had great success in catching "double-dippers" at claim centers.⁵⁷

ISSUE: Theater claims tracking system

DECISION: The internet-based Tort and Special Claims Application (TSCA) program, which the U.S. Army Claims Service (USARCs) mandates, did not work in theater. Since they did not receive a claims tracker from the outgoing unit, 4-1 CAV developed their own claims tracker to prevent duplicate claims. The claims attorney did not have access to the Biometric Automated Toolset System (BATS) or Handheld Interagency Identification Detection Equipment (HIIDE) equipment for claims processing.

RECOMMENDATION: Improve MNC-I should start a theater-wide claims tracker. Moreover, each claims office should have access to BATS or HIIDE to screen fraudulent claimants.⁵⁸

ISSUE: Use of cameras by escorts to prevent fraudulent claims

DECISION: An incident occurred in which local nationals working on the COB backed their vehicle into a burn pit. Fortunately, the escort had a camera on hand and documented the accident, thus precluding a later claim by the local nationals.

RECOMMENDATION: Sustain. It was a good practice for escorts to carry cameras.⁵⁹

OEF ISSUE: Use of BATS to catch duplicate claims

DECISIONS: As part of the CJTF-101 claims SOP, the personnel at the entry control point (ECP) entered all claimants into BATS. The Air Force claims paralegal recommended this as a

⁵⁶ XVIII ABC 2009 OIF AAR, *supra* note 13.

⁵⁷ *Id.*

⁵⁸ 4-1 CAV 2009 OIF AAR, *supra* note 51.

⁵⁹ *Id.*

means of catching individuals attempting to submit multiple claims from the same incident. Some potential claimants did not want to enroll in BATS and instead choose to drop their claim.

RECOMMENDATION: Sustain. Enroll claimants in BATS to preclude duplicate claims.⁶⁰

IV.B. Personnel Claims

OIF ISSUE: Personnel claims

DECISION: Send personnel claims to the rear for adjudication. The experience level of those in the rear was significant compared to the claims officer in Iraq. In addition, the amount of personnel claims was minimal so this process of sending all claims to the rear was acceptable.

RECOMMENDATION: Continue to send all personnel claims to the rear for adjudication. This is best for the claimant Soldier and the command.⁶¹

ISSUE: Adjudication of personnel claims

DECISION: The division claims office was the only adjudicator of personnel claims for Soldiers in the division's AO. Brigade legal offices collected claims and sent the packets to division for adjudication. If the claim was payable under the Personnel Claims Act (PCA), division emailed the adjudication and a copy of the claims file in "pdf" format to the III Corps claims office at Fort Hood for payment. The outgoing division's policy had been to process the PCA claims of Soldiers who were from Fort Hood and forward any other Soldiers' claims to their home stations. However, with the assistance of the III Corps claims office, the division claims office adjudicated and processed for payment all claims for Soldiers in the division's AO, regardless of the garrison from which the Soldier had deployed.

RECOMMENDATION: Sustain.⁶²

ISSUE: Garrison mentality in processing Personnel Claims Act (PCA) claims

DECISION: While still in garrison, the XVIII Airborne Corps claims office processed numerous PCA claims arising from pilferage of 82d Airborne Division containers while en route to Afghanistan through Pakistan. JAs who had not previously deployed took a strict view as to what items were reasonable to have in a combat zone under Army Regulation (AR) 27-20, paragraph 11-6e, denying claims for things such as microwaves and game systems. Moreover, the claims office required the same level of proof of ownership, value, and loss as it required for PCA claims submitted for household goods in garrison. In many cases, the deployed claimants were unable to meet this standard. The denial of these claims resulted in low morale for the deployed Soldiers.

RECOMMENDATION: Pre-deployment legal briefings should include instruction on the standards for filing PCA claims and should encourage Soldiers to document all personal property shipped in advance of the deployment. Units should prepare detailed inventory sheets for all personal property and military equipment. Since all PCA claims arising from a deployed theater must be sent back to the home station for processing, the garrison claims office should have an

⁶⁰ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 52.

⁶¹ 1AD 2009 OIF AAR, *supra* note 10.

⁶² 4ID 2009 OIF AAR, *supra* note 55.

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understanding of what items of personal property are common in the combat zone in order to determine what is reasonable. They should consider being more lenient as to the level of proof required of a deployed Soldier. Furthermore, when a commander knowingly allows Soldiers to ship certain personal property in unit containers, there should be a presumption that the property is reasonable to have in a combat zone.⁶³

ISSUE: Contractor claims for personal property loss

DECISION: Since claims by contractors are not recognized under the Personnel Claims Act (PCA), claims JAs should be familiar with the Military Claims Act (MCA). AR 27-20, paragraph 2-15g requires contractors to go to the contracting officer first to determine whether the claim is payable under the contract before submitting a claim under the MCA. Claims JAs should employ the same reasonableness standard as with PCA Claims and recognize contractors often bring personal property unreasonable for a combat zone.

RECOMMENDATION: USARCS now requires online training, including coverage of the MCA, before appointment as a deployed FCC.⁶⁴

ISSUE: Proof of ownership of high-value items

DECISION: There were many instances of damage to Soldiers' housing areas due to enemy attack or electrical fires. Often, the only evidence proving a Soldier owned certain items was a sworn statement from themselves and other Soldiers. The MNC-I claims office was fairly lenient in accepting sworn statements as proof of ownership, unless the claim was patently unreasonable.

RECOMMENDATION: Encourage units to use high-value inventory forms for their housing units, particularly to document high-value items acquired in the deployed theater. Encourage Soldiers to take photos of their personal property in order to facilitate claims in the event their housing areas are destroyed.⁶⁵

ISSUE: Processing of personnel claims by paralegals

DECISION: The claims paralegal did the bulk of the work in processing PCA claims and sending them to the home station claims office. Paralegals prepared the files, checked fair market value of items and worked with Soldiers to complete their claim packets. Attorneys conducted a double-check of the packet and drafted a legal review.

RECOMMENDATION: Sustain. Since the home station claims office actually adjudicates deployed PCA claims, paralegals can assume full responsibility for preparing the claims files in the deployed theater and sending them to the rear.⁶⁶

OEF ISSUE: Claims for personal gear lost during deployment due to pilferage of a connex

DECISION: Many U.S. containers fall victim to pilferage during transport through Pakistan into Afghanistan. Claims regulations and procedures do not fit this scenario. However, the BDE processed and paid most claims.

⁶³ XVIII ABC 2009 OIF AAR, *supra* note 13.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

RECOMMENDATION: Recognize this is an extremely common claims scenario and provide specific procedure for pilfered shipment of personal gear.⁶⁷

IV.C. Solatia

OIF **ISSUE:** Making solatia payments to members of the Sons of Iraq (SOI)

DECISION: SOI members cannot receive compensation under the FCA nor accept condolence payments under CERP. To fill the void, the BCT instituted a practice whereby SOIs would receive solatia payments out of O&M funds.

RECOMMENDATION: Sustain this legally creative way to reward those sacrificing much for the country of Iraq.⁶⁸

ISSUE: Solatia payments

DECISION: The unit used solatia to compensate family members of those SOI killed in action.

RECOMMENDATION: Sustain this practice barring any overt prohibitions from higher.⁶⁹

OEF **ISSUE:** The use of solatia

DECISION: CSTC-A followed CJTF 82/101 guidance on the use of solatia payments and urged the payment of claims for several incidents involving U.S. forces. The OSJA also successfully urged the payment of a solatia claim for an incident involving contractor personnel. In this particular incident, KBR also made a “solatia-like” payment to the aggrieved claimant.

RECOMMENDATION: None.⁷⁰

CERP Condolence Payments as a Part of the Claims Program

OIF **ISSUE:** Condolence payments given by the FCC

DECISION: The FCC was the same person who decided and then paid out the condolence payments. It was a bit awkward when the same person denied a claim under the FCA, but then approved the condolence payment. The Iraqi claimants didn’t understand this process and it left many confused and frustrated. Also, the FCC didn’t show much emotion or sympathy for the claimant.

RECOMMENDATION: Improve. A person other than the FCC should approve/deny the condolence payments. Also, because we are trying to demonstrate good will and kindness to the Iraqis, it would be appropriate to show compassion when conversing with the claimants.⁷¹

⁶⁷ 420th EN BDE 2009 OER AAR, *supra* note 3.

⁶⁸ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 23.

⁶⁹ 3d Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – February 2009 (6 May 2009) [hereinafter 3BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

⁷⁰ CSTC-A 2008 OEF AAR, *supra* note 2.

⁷¹ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 23.

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ISSUE: **CERP condolence payments**

DECISION: After the Jaish Al Mahdi burned the Jamilla Market, the command wanted locals to receive condolence payments. Civil Affairs concurred, and forwarded improperly screened packets to the JAs, who had to exercise a modicum of moral courage for the brigade and say “no.” The intent of the condolence payment program is to compensate Iraqis for losses caused by U.S. forces, not to make the Iraqi people whole from damages wrought by any imaginable source.

RECOMMENDATION: Beware of Civil Affairs’ proclivity to say “yes” to any opportunity to spend U.S. funds in furtherance of the goal to rebuild Iraq. Sometimes the right answer is “no.”⁷²

ISSUE: **The need for approval to pay CERP condolence and battle damage claims**

DECISION: The unit produced a SOP endorsed by the brigade commander indicating pre-approved payment categories and amounts. For example, a broken window might be pre-approved for a payment of \$20. This allowed the units on the ground to pay on the spot for things they damaged. This ability to pay immediately was of tremendous value from a goodwill and information operations perspective.

RECOMMENDATION: Develop a mechanism that follows the guidance and allows units to make small payments on the spot.⁷³

ISSUE: **Claims planning for combat operations**

DECISION: After a coalition offensive into Sadr City, MND-B established a claims intake center in Sadr City. The claims arising from the operation, however, quickly overwhelmed the MND-B JAs. Although many of the claims were likely non-compensable under the FCA due to the combat activities exclusion, the claims JAs nonetheless denied many of the claims based on insufficient investigation. In addition, many commanders approved payment of CERP condolence payments beyond their monetary approval limits to compensate civilians for damage in the wake of the operation. Claims JAs then denied these claims, not only because of the monetary amounts, but also because intelligence indicated that insurgents caused much of the damage. In this case, the commander did know the limits but did not want to be the one to deny the claims. The commander was well intentioned because he was trying to win hearts and minds, but he did so in an impracticable manner.

RECOMMENDATION: Improve. Planning for claims and condolence payments must be a part of every major combat operation. Commanders need to be aware of how much they can approve and what the proper procedures are. Units should appoint unit claims officers and incorporate measures in their planning to promptly investigate and pay claims and condolence payments resulting from major pre-planned operations. Note that “solatia” is only authorized for one purpose in Iraq: payment to families of Sons of Iraq (SOI) martyrs. All other “solatia” type cases fall under CERP condolence payments.⁷⁴

[See also III.C.4. CONTRACT & FISCAL LAW—Fiscal Law—Commander’s Emergency Response Program (CERP)]

⁷² 3BCT, 4ID 2009 OIF AAR, *supra* note 69.

⁷³ 1BCT, 4ID 2009 OIF AAR, *supra* note 8.

⁷⁴ XVIII ABC 2009 OIF AAR, *supra* note 13.

V. LEGAL ASSISTANCE

V.A. Children

OIF ISSUE: **Increase in family law cases**

DECISION: Comparison between the historical cases within the division to the cases encountered in Iraq revealed legal assistance needs increased. Family law issues increased 15-20% upon deployment (divorce, non-support, child custody).

RECOMMENDATION: Be sure to have the resources available to handle an increase in legal assistance needs within the division upon deployment.¹

V.A.1. Adoption

OIF ISSUE: **Stepchild adoption**

DECISION: Although it is not a common issue in deployed environments, legal assistance JAs should not assume they would not encounter adoption questions, particularly with stepchild and sibling adoptions.

RECOMMENDATION: Be prepared to handle a wide variety of legal assistance issues, but also maintain reach-back capability with the home station legal assistance office.²

V.A.2. Custody

OIF ISSUE: **Misuse of deployment status of custodial parent-Soldier by the noncustodial parent**

DECISION: A common trend is for a noncustodial parent to attempt to use the deployment status of a custodial parent-Soldier as a basis for modifying a child custody order. One argument noncustodial parents frequently use is the harmful effect the deployment of the custodial parent has on the child in terms of leaving and later trying to reestablish the parental relationship. Another common argument is that the deployed parent is prone to combat-related stress and post-traumatic stress disorder (PTSD), which can in turn harm the child.

RECOMMENDATION: Pre-deployment briefings should emphasize the importance of deployed custodial parents maintaining connections with their children and documenting parental involvement. This can help ensure the deployment does not become a means for attacking the Soldier's fitness to be the custodial parent.³

OEF ISSUE: **Child custody**

DECISION: The first Chief of Client Services during the 101st Airborne Division deployment was a family court judge in his civilian capacity, and thus was able to understand the issues and

¹ 1st Armored Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (19 Feb. 2009) [hereinafter IAD 2009 OIF AAR] (on file at CLAMO).

² XVIII Airborne Corps, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – April 2009 (11 June 2009) [hereinafter XVIII ABC 2009 OIF AAR] (on file at CLAMO).

³ *Id.*

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assist soldiers on child custody matters. However, not all JAs filling this billet deploy with the requisite knowledge of child custody concepts.

RECOMMENDATION: Improve. All legal assistance attorneys need to have a working knowledge of general family law concepts, which will enable them to better research and advise on child custody laws for specific states.⁴

V.A.3. Paternity

OIF **ISSUE:** **Paternity cases and child support orders**

DECISION: The legal assistance JA had numerous clients with default judgments entered against them in paternity cases, resulting in child support orders.

RECOMMENDATION: Legal assistance attorneys should be familiar with the Servicemembers Civil Relief Act (SCRA) provisions for reopening default judgments. Furthermore, attorneys should be familiar with AR 608-99 to advise the client's commanders as to whether any support obligation exists or should terminate due to lack of court jurisdiction to order the support.⁵

V.A.4. Child Support

OIF **ISSUE:** **Providing child support legal assistance at the brigade level**

DECISION: The BJA would provide some basic advice regarding the requirement to pay child support but could not provide full legal assistance due to conflicts and deployment demands.

RECOMMENDATION: Sustain. When a JA may have a conflict of interest, the JA should not advise any further than to say generally members have a requirement to pay their child support obligations.⁶

V.B. Citizenship

OIF **ISSUE:** **Citizenship requests by Marines and visa/ naturalization requests by interpreters**

DECISION: There were scores of Marines seeking citizenship. In addition, visa/naturalization applications for the Special Immigrant Visa program for interpreters consumed a great deal of time.

RECOMMENDATION: JAs need some basic level of training regarding forms and processes, as well as agency interaction of Department of State (DoS), U.S. Citizenship and Immigration Services (USCIS), etc. In addition, we owe answers to those interpreters who assist us at immense personal risk.⁷

⁴ 101st Airborne Division (Air Assault), Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom, April 2008 – June 2009 (28 Aug. 2009) [hereinafter 101st ABN DIV (AASLT) 2009 OEF AAR] (on file at CLAMO).

⁵ XVIII ABC 2009 OIF AAR, *supra* note 2.

⁶ 4th Brigade Combat Team, 10th Mountain Division (Light Infantry), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (5 Feb. 2009) [hereinafter 4BCT, 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

⁷ Regimental Combat Team-5, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – July 2008 (7 Aug. 2008) [hereinafter RCT-5 2008 OIF AAR] (on file at CLAMO).

OIF ISSUE: Effect of Soldier's death on his widow's immigration packet review by USCIS

DECISION: The issue was resolved such that the widow would not lose her status if she left the country for the funeral. The JA worked through the regulations and brought about a successful outcome.

RECOMMENDATION: Sustain. Although immigration is more a GI function than a legal function, encourage JAs to assist Soldiers and their families with these issues. Citizenship is extremely important to them and it will vastly improve their morale and keep them focused on the mission if they are not worried about it.⁸

ISSUE: Unfamiliarity with citizenship legal assistance

DECISION: Although not a traditional legal area, many Soldiers came to the JA office for citizenship assistance. The JAs received no training in this area and had to teach themselves the process for submitting a citizenship packet. A Soldier can gain citizenship much faster in Iraq due to the expedited process for members serving overseas.

RECOMMENDATION: Improve. Citizenship is becoming a more common issue, and it is important to understand the citizenship process and how to assist Soldiers to use the expedited program. JAs would benefit from more training.⁹

ISSUE: Training on citizenship and local national (LN) visas

DECISION: The BCT legal shop received many clients wanting assistance with their citizenship applications. In addition, there were many LNs working on the FOB who wanted help filling out their special visa applications. The legal shop assisted these clients even though citizenship falls under the S1 duties. The legal shop did not have any training on processing LN special visas and had to learn the process, which was very time consuming.

RECOMMENDATION: Improve. If possible, stress to the command before deployment that citizenship issues are part of the S1 mission. If the command wants JAs to help LNs with visa applications, then JAs must become familiar with the process and the required documentation.¹⁰

ISSUE: Resources for citizenship cases

DECISION: Citizenship issues were a major issue for the legal assistance office. The legal assistance office established an SOP for Soldiers to utilize when applying for citizenship, which contained products obtained online.

RECOMMENDATION: Sustain. Create an SOP, or handouts, for the Soldiers to use when they are interested in applying for citizenship. Make maximum use of online resources.¹¹

⁸ 3d Infantry Division (Mechanized), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2007 – June 2008 (23 Sep. 2008) [hereinafter 3ID 2008 OIF AAR] (on file at CLAMO).

⁹ *Id.*

¹⁰ 3d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (14 Jan. 2009) [hereinafter 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

¹¹ 1AD 2009 OIF AAR, *supra* note 1.

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ISSUE: Paralegal support for citizenship cases

DECISION: The legal assistance attorney trained the paralegal on how to process and assist Soldiers with this process. If the questions became complex the attorneys would assist, but the paralegals handled most of the questions themselves.

RECOMMENDATION: Sustain. Train paralegals to assist Soldiers, with appropriate supervision from attorneys, in basic citizenship processing and questions.¹²

ISSUE: Lack of training on citizenship issues

DECISION: Once in theater, the division chief of client services realized the need to help Soldiers receive their citizenship through the expedited naturalization program. Since she had no prior training in this area, she studied the rules and regulations and learned as she went. She also trained her NCOIC. This worked well because the NCOIC could then teach his paralegal specialists the citizenship process, ensuring everyone was on the same page.

RECOMMENDATION: Improve. Ensure all personnel working in the client services office receive training on the U.S. citizenship process before deployment.¹³

ISSUE: Assisting an Iraqi interpreter with his visa application

DECISION: TF 525 utilized an Iraqi interpreter, who had been working faithfully for the U.S. since 2003. The command highly supported the visa request. This process was very important to not only to the Iraqi, but also to the units he served with. Although the BJA did not have much information on this process, he researched the issue and helped the Iraqi with his visa application.

RECOMMENDATION: Continue to assist worthy applicants by putting them in touch with the appropriate contacts and assisting them with the application requirements.¹⁴

ISSUE: Citizenship packets

DECISION: The Non-Commissioned Officer in Charge (NCOIC) assisted numerous Soldiers with their citizenship packets through the U.S. Citizenship and Immigration Services (USCIS) expedited program and helped approximately 55 local national (LN) translators with their Special Immigrant Visa packets. This was a coordinated event with Criminal Investigation Division (CID) and Provost Marshal's Office (PMO). Since the legal team received no training before deployment, there was a steep learning curve at the beginning of the deployment.

RECOMMENDATION: Improve. Citizenship training should be one of the focus areas at the Combat Training Centers (CTCs). Training in this area before deployment is necessary. An information sheet with the points of contacts (POCs) at the embassy is extremely helpful for logistics coordination.¹⁵

¹² *Id.*

¹³ 4th Infantry Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (30 Apr. 2009) [hereinafter 4ID 2009 OIF AAR] (on file at CLAMO).

¹⁴ 525th Battlefield Surveillance Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (12 Mar. 2009) (on file at CLAMO).

¹⁵ 4th Brigade Combat Team, 3d Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – December 2008 (25 Mar. 2009) [hereinafter 4BCT, 3ID 2009 OIF AAR] (on file at CLAMO).

ISSUE: Assistance to interpreters with visa applications

DECISION: The unit assisted a great number of interpreters with citizenship issues.

RECOMMENDATION: Assistance in this area can be a largely paralegal function. It simply requires research and assistance in filling out the required paperwork.¹⁶

ISSUE: Soldiers' citizenship status

DECISION: Legal assistance JAs encountered clients whose green card expired while deployed.

RECOMMENDATION: Commanders should be aware of the citizenship status of their Soldiers and start the necessary renewal processes before deployment.¹⁷

ISSUE: Posthumous citizenship

DECISION: None.

RECOMMENDATION: With many non-citizen servicemembers serving in theater, legal assistance JAs should become familiar with the procedures for posthumous citizenship.¹⁸

ISSUE: Citizenship for translators

DECISION: Current immigration law allows for a limited number of translators to apply for expedited citizenship. Although most translators were aware of the program and the required documentation, the MNC-I legal assistance office served as facilitators in the process and posted information on the shared drive for units to access.

RECOMMENDATION: Sustain.¹⁹

V.C. Debtor/Creditor Issues

OIF ISSUE: Education regarding debtor and creditor issues

DECISION: This training must occur before the deployment. If a command waits until arriving in Iraq, it is too late. Soldiers must learn of potential pitfalls in advance of the deployment in order to avoid the problems.

RECOMMENDATION: Continue with training before the deployment.²⁰

ISSUE: Increase in debtor/creditor issues

DECISION: These issues had a significant emotional impact on Soldiers and Airmen in a deployed environment. Many were fraudulent issues.

¹⁶ 1st Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – March 2009 (28 Apr. 2009) [hereinafter 1BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

¹⁷ XVIII ABC 2009 OIF AAR, *supra* note 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 10.

TIP OF THE SPEAR

RECOMMENDATION: Sustain. Utilize the legal assistance attorneys in the rear or others geographically proximate to the creditor to assist with these issues.²¹

ISSUE: Negotiating debtor/creditor issues

DECISION: It proved to be very beneficial simply to call the creditor with the Soldier in the office to negotiate a resolution. Often, the Soldier was going to leave for several days and was eager to resolve the issue immediately. Creditors seemed willing to negotiate and understood the need to handle the issue telephonically.

RECOMMENDATION: Sustain. Be willing to make phone calls for the Soldier to resolve debtor/creditor issues. This will require a worldwide Class A line for the legal assistance office.²²

ISSUE: Pre-deployment resolution of debt

DECISION: Legal assistance attorneys had clients whose debt issues came to a head during the deployment, particularly with regard to predatory lenders.

RECOMMENDATION: Commanders should make every effort to identify debt issues and help their Soldiers resolve these issues before deployment. Legal assistance attorneys can facilitate this process by questioning their clients about existing debts during will counseling.²³

V.D. Divorce

OIF ISSUE: Requirement to provide family support pending divorce

DECISION: In some cases, the spouse of a deployed Soldier decided to seek a divorce, but dragged out the proceedings because he/she was receiving support under AR 608-99.

RECOMMENDATION: Improve. Amending AR 608-99 would improve the prospect of Soldiers in such circumstances receiving fair treatment.²⁴

ISSUE: Variance among state divorce laws

DECISION: Legal assistance attorneys must discover where the Soldiers from their non-organic brigades reside to assist them effectively in divorce proceedings and other legal assistance matters. Utilizing the home post's state divorce law gave the legal assistance attorneys a head start on researching the state law. Family law issues continue to abound and tapping into the JAGCNet's reserve attorney list helped the deployed attorneys tremendously.

RECOMMENDATION: Sustain. The legal assistance attorneys were able to effectively research state divorce law and give their clients competent advice.²⁵

ISSUE: Deployed Soldiers signing separation agreements without legal advice

²¹ 1 AD 2009 OIF AAR, *supra* note 1.

²² *Id.*

²³ XVIII ABC 2009 OIF AAR, *supra* note 2.

²⁴ 2d Stryker Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, August 2007 – May 2008 (17 Feb. 2009) (on file at CLAMO).

²⁵ 3ID 2008 OIF AAR, *supra* note 8.

DECISION: In several cases during the deployment, Soldiers received separation agreements drawn up by their spouse's civilian attorney. These sometimes contained custody clauses that made the father's custody of the children, or visitation of the children, entirely contingent upon the mother's whims and her assessment of the emotional bond between father and child, etc. Soldiers did not always obtain legal advice before signing such agreements.

RECOMMENDATION: Improve. JAs providing pre-deployment training/education should emphasize the desirability of obtaining legal advice before signing such agreements.²⁶

ISSUE: **Cases involving Louisiana state law**

DECISION: The brigade dealt with two cases (one will, one divorce) under Louisiana state law. Attempts to contact Fort Polk for advice were unsuccessful.

RECOMMENDATION: Improve. Contact Fort Polk before deployment to confirm contact information to obtain advice on issues subject to Louisiana state law.²⁷

ISSUE: **Assisting divorce cases while deployed**

DECISION: The BCT assisted approximately 75 Soldiers with divorce issues. It is therefore important the JA providing this legal assistance have an awareness of many different states' laws on divorce. In addition, specific states require specific forms. In order to obtain these forms, Soldiers would have to go on-line and pay for them.

RECOMMENDATION: Find a way for the Army to provide the forms for the Soldiers who are getting divorced while deployed.²⁸

ISSUE: **Conflict cases**

DECISION: Occasionally, both spouses came in seeking legal assistance. This placed the office in the position of a potential conflict. In such cases, the division conflict of interest policy came into effect.

RECOMMENDATION: Sustain. Draft and publish the policy, and secure an attorney for the second spouse from a different legal office. Depending on the tempo of the military justice docket, TDS may also be able to assist.²⁹

ISSUE: **Lack of information on state divorce laws and procedures**

DECISION: The chief of client services helped clients with *pro se* divorces in five states. This required her to research five different state divorce procedures and find the necessary documentation and forms. Since each state requires slightly different paperwork, this consumed much of her time.

²⁶ 1st Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (15 Jan. 2009) (on file at CLAMO).

²⁷ *Id.*

²⁸ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 10.

²⁹ 1AD 2009 OIF AAR, *supra* note 1.

TIP OF THE SPEAR

RECOMMENDATION: Improve. Reserve and National Guard JAs should compile a divorce packet for their respective states and place them on JAGCNet. This packet should contain all necessary documentation and forms, as well as an SOP on state divorce law and procedures.³⁰

ISSUE: Helping Soldiers with their *pro se* divorce

DECISION: The chief of client services decided she would assist all Soldiers with their *pro se* divorces. She discovered that even if a state charged money for forms and documentation, she could usually get the forms free if she sent an email explaining the deployed status of the Soldier.

RECOMMENDATION: Sustain. Go the extra mile for your client, especially in a deployed environment. Taking one burden off their shoulders helps them to focus on their mission and remain clear-headed.³¹

ISSUE: Divorce counseling

DECISION: Legal assistance attorneys routinely advised on AR 608-99 family support with divorce clients.

RECOMMENDATION: Sustain.³²

ISSUE: Separation agreements

DECISION: Consistent with XVIII Airborne Corps practice in garrison, deployed legal assistance attorneys did not draft separation agreements but assisted Soldiers in finding templates and reviewed and explained separation agreements.

RECOMMENDATION: Sustain.³³

ISSUE: American Bar Association's (ABA) "Operation Standby"

DECISION: The outgoing unit informed the 4-1 CAV legal assistance attorney about the ABA's "Operation Standby" program, under which volunteers agreed to communicate with legal assistance attorneys on a pro bono basis to advise them on state specific family law. The program requested Soldiers not contact the volunteers directly.

RECOMMENDATION: Sustain. The "Operation Standby" program is a useful resource. See the website (<http://www.abanet.org/family/military/operationstandbylist.pdf>) for more information.³⁴

ISSUE: Empowering clients for *pro se* divorces

DECISION: Whenever possible, the 4-1 CAV legal assistance attorneys put clients in touch with pro se resources for divorce.

³⁰ 4ID 2009 OIF AAR, *supra* note 13.

³¹ *Id.*

³² XVIII ABC 2009 OIF AAR, *supra* note 2.

³³ *Id.*

³⁴ 4th Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – June 2009 (14 Aug. 2009) [hereinafter 4-1 CAV 2009 OIF AAR] (on file at CLAMO).

RECOMMENDATION: Sustain. Refer legal assistance clients to self-help measures whenever possible.³⁵

V.E. Powers of Attorney

OIF ISSUE: **Power of Attorney (POA) preparation before deployment**

DECISION: The RCT JA office prepared nearly 100 POAs in six months.

RECOMMENDATION: Continue to try to complete the POAs before deploying.³⁶

ISSUE: **Acceptability of scanned POA with no raised seal**

DECISION: Our unit warned clients about the possibility some institutions will not accept scanned POA. As a result, no client returned to complain when a POA was not accepted.

RECOMMENDATION: Sustain. Continue to provide advanced warning to clients that scanned POA may not be accepted. Advise clients that the best course of action is to mail the original POA to the intended agent.³⁷

ISSUE: **Notary stamp versus notary seals**

DECISION: When scanning documents, the notary seal does not always show up. The receiving party will not accept notarized documents unless they can see the notarization stamp. The NCOIC brought a notary stamp as well as the seal. When scanned POAs or other notarized documents were sent to the U.S., the notary used notary stamp (shows up on scans).

RECOMMENDATION: Sustain. Make sure that your NCOIC brings a notary stamp to Iraq.³⁸

ISSUE: **Correct names for powers of attorney (POAs)**

DECISION: It is very important to spell correctly the names or any information on the POA. Misspellings increase the chance a business can refuse the POA.

RECOMMENDATION: Sustain. Also be sure to inform the Soldier of what the POA can (or cannot) accomplish for them.³⁹

ISSUE: **Assisting contractors with POAs**

DECISION: Several contractors on the base received multiple POAs from the legal assistance office. There was nowhere else for them to obtain legal assistance. The legal assistance office was willing to help.

RECOMMENDATION: Sustain. Ensure your office has the authorization to provide legal assistance to the contractors making the request.⁴⁰

³⁵ *Id.*

³⁶ RCT-5 2008 OIF AAR, *supra* note 7.

³⁷ 3ID 2008 OIF AAR, *supra* note 8.

³⁸ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 10.

³⁹ 1AD 2009 OIF AAR, *supra* note 1.

⁴⁰ *Id.*

TIP OF THE SPEAR

ISSUE: **Education of Soldiers on POAs**

DECISION: Pre-deployment legal briefings did not include information explaining the dangers of general POA's. Consequently, the MNC-I legal assistance office encountered many clients who had given POAs to untrustworthy individuals who used the POA to the Soldier's detriment. Many of these Soldiers reported they had not received legal advice concerning their need for a POA and were unaware they could have used a special POA to meet their needs. Although paralegals typically prepare POAs for Soldiers, they are not able to give legal advice. Once misuse of a POA occurred, it was very difficult to revoke the POA effectively without retrieving the original POA.

RECOMMENDATION: Improve. Legal assistance attorneys should conduct briefings about the nature of POA's and the dangers of general POA's at the legal station during Soldier Readiness Checks (SRCs).⁴¹

V.F. Voting

OIF ISSUE: Lateness of absentee ballots

DECISION: The paralegals established a very robust write-in ballot campaign because absentee ballots were not arriving in time.

RECOMMENDATION: Concentrate effort on the use of write-in versus absentee ballots. They serve the same function, and Soldiers can submit them well in advance of any required deadlines. There is no need to wait on the arrival of an absentee ballot.⁴²

V.G Servicemembers Civil Relief Act (SCRA)

OIF ISSUE: Court noncompliance with SCRA

DECISION: Some civilian courts do not comply with the requirements of the SCRA. For example, only a handful stopped proceedings for a deployed Soldier. To add to this problem, opposing counsel often neglect to mention the other party was deployed. The unit viewed this as a problem best addressed at the Department of the Army level. However, individual JAs were still of some service to the deployed Soldiers.

RECOMMENDATION: Sustain. Inform the JA technical chain of command of such problems early on. Encourage JAs to be proactive in working with local courts to enforce the SCRA.⁴³

ISSUE: SCRA knowledge

DECISION: JAs performing deployed legal assistance duties must become experts on the SCRA, particularly the provisions concerning court stays. The MNC-I legal assistance office produced information papers discussing various SCRA provisions to inform Soldiers of their rights and to help clients prepare for their legal assistance appointments. LA attorneys routinely assisted their

⁴¹ XVIII ABC 2009 OIF AAR, *supra* note 2.

⁴² 1BCT, 4ID 2009 OIF AAR, *supra* note 16.

⁴³ 3ID 2008 OIF AAR, *supra* note 8.

clients in drafting letters requesting court stays, lease terminations, and interest caps, and helped their clients get letters from their commanders verifying their deployment status.

RECOMMENDATION: Sustain.⁴⁴

ISSUE: Misunderstanding of the 6% interest cap

DECISION: Many Soldiers did not understand the 6% cap on interest payments under the SCRA applies only to pre-service debt. However, the legal assistance office disseminated information about how certain popular financial institutions, such as USAA, voluntarily offered interest caps and/or interest-free payments during deployments.

RECOMMENDATION: Educate Soldiers about SCRA protections during pre-deployment legal briefings and encourage them to see if their banks or other creditors will offer limitations on interest payments even when not required by statute.⁴⁵

OEF ISSUE: SCRA issues

DECISION: SCRA issues were common. The CJTF-101 legal assistance office was fortunate to have a smart paralegal familiar with the SCRA.

RECOMMENDATION: Improve. All legal assistance attorneys need to have a working knowledge of SCRA concepts before deployment.⁴⁶

V.H. Uniformed Services Employment and Reemployment Rights Act (USERRA)

OIF ISSUE: Training on USERRA

DECISION: If you have Reserve units in your command, you owe it to them to provide training in USERRA.

RECOMMENDATION: If your third attorney is a Reserve JA, he or she is absolutely the correct person to perform this training. Because of the additional skills and experiences a Reserve JA brings to the fight, it is advantageous to have your third attorney be a Reservist as opposed to another Active Component JA.⁴⁷

V.I. Wills

OIF ISSUE: Will worksheets to speed up SRP

DECISION: Wills are the only pre-deployment Soldier Readiness Processing (SRP) station that requires extra work from the Soldiers. The division created a will worksheet Soldiers could fill out at the legal station. This expedited the process so Soldiers could move through the SRP stations quicker. The JAs then typed up the information at a later time and date.

⁴⁴ XVIII ABC 2009 OIF AAR, *supra* note 2.

⁴⁵ *Id.*

⁴⁶ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 4.

⁴⁷ 1BCT, 4ID 2009 OIF AAR, *supra* note 16.

RECOMMENDATION: Sustain. Conduct SRPs as far out from the date of deployment as possible in order to give adequate time to provide a complete will worksheet and time for actual will preparation.⁴⁸

ISSUE: **Support to pre-deployment SRP**

DECISION: The corps legal office handled all of the SRP duties, such as will drafting.

RECOMMENDATION: A higher headquarters, not the deploying unit, should perform this function to allow the deploying unit legal section to focus on actually deploying.⁴⁹

V.J. Tax Preparation

OIF ISSUE: **Insufficient time to set up a deployed tax center and train its staff**

DECISION: The JA who ran the tax center deployed with little time to set up and prepare the tax center. It was difficult to obtain the necessary equipment, software, and on-line access to tax resources. It also made it difficult to train the paralegals who assisted in the tax center. In addition, the JAGCNet tax site requires updating, as the material posted was seven years old.

RECOMMENDATION: Improve. If command wants a tax center downrange, it must allow the proper amount of time to provide training to the staff and provide the requisite equipment for the mission. Also, update the JAGCNet tax site.⁵⁰

ISSUE: **Tax preparation**

DECISION: The BCT did not have a Tax Center, but one existed at the division. An attorney from the division was available to assist the Soldiers from the BCT in completing their taxes. Many utilized the service, but many also deferred until returning home.

RECOMMENDATION: Continue to offer the service and make sure to advertise it to the Soldiers.⁵¹

ISSUE: **Tax center**

DECISION: Due to personnel resources, the division OSJA did not operate a tax center. Instead, legal assistance published information in the Contingency Operating Base (COB) Speicher newspaper. Information included the combat zone tax extension and online resources Soldiers could use if they desired to file their taxes in theater.

RECOMMENDATION: Sustain. Due to the combat zone tax extension, there is not enough demand for tax preparation services to justify running a tax center.⁵²

ISSUE: **Taxes**

⁴⁸ 31D 2008 OIF AAR, *supra* note 8.

⁴⁹ 1BCT, 4ID 2009 OIF AAR, *supra* note 16.

⁵⁰ 31D 2008 OIF AAR, *supra* note 8.

⁵¹ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 10.

⁵² 1AD 2009 OIF AAR, *supra* note 1.

DECISION: Although division recommended Soldiers file their returns when they re-deployed, the RJA arranged for Soldiers to file by providing a computer, a workstation, and a systematic guide on how to file simple returns.

RECOMMENDATION: If a Soldier expects a refund, they should file as soon as possible. Lean forward and ensure they have the means to file while deployed.⁵³

ISSUE: Lack of voluntary income tax assistance (VITA) certification

DECISION: No member of the OSJA was VITA certified, which meant no one could prepare tax returns. Since there was a need for tax assistance on the FOB, client services set up a tax center where Soldiers used a web-based program to complete their taxes. The chief of client services received training on the IRS.gov website and then drafted an SOP. Her 27Ds used this SOP to assist clients with their tax questions.

RECOMMENDATION: Improve. Send at least one JA to get VITA certified before deployment. There is no way to certify once in theater. The VITA certification usually only happens early in the year, so forward planning is necessary.⁵⁴

ISSUE: Tax preparation

DECISION: MNC-I did not operate a tax center due to manning issues. None of the MNC-I legal assistance attorneys had specialized training on income tax regulations or tax preparation software. However, MNC-I published an information paper instructing Soldiers on how to inform the Internal Revenue Service they qualify for the combat zone extension. This was sufficient to solve the majority of tax assistance questions.

RECOMMENDATION: Due to the combat zone exclusion for deployed military pay and the combat zone tax filing extension, there is a reduced need for tax preparation services in a deployed theater. It is important to educate Soldiers on the tax extensions before deployment and to advise them whether to use special powers of attorney to allow their spouses to file their taxes. Nonetheless, the legal assistance office should have at least one attorney trained to do taxes and to use tax preparation software. The OSJA should also assess the need for tax preparation services and set aside time in accordance with the demand.⁵⁵

V.K. Miscellaneous Legal Assistance Topics

OIF ISSUE: Legal assistance workload

DECISION: The legal assistance office received many more clients than originally anticipated, both forward and in the rear detachment. The legal assistance workload never declined, and if anything, increased. The paralegals had to step up their participation and become more involved in screening cases. The screening helped to lessen the workload.

⁵³ 3d Armored Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – January 2009 (22 Apr. 2009) (on file at CLAMO).

⁵⁴ 4ID 2009 OIF AAR, *supra* note 13.

⁵⁵ XVIII ABC 2009 OIF AAR, *supra* note 2.

TIP OF THE SPEAR

RECOMMENDATION: Improve. Evaluate the need for greater legal assistance coverage at the division level. Consider the need for a third attorney to work in legal assistance at the brigade level.⁵⁶

ISSUE: Cyclical nature of legal assistance while deployed

DECISION: Early on in the deployment, there is very little legal assistance work. However, it picks up significantly as the deployment progresses.

RECOMMENDATION: Do not base your needs assessment on the first few weeks or months in theater. Your client services JA can do other duties initially, but expect legal assistance to require more resources later. Do not make a difficult-to-undo personnel decision (such as redeploying the client services JA) until you can determine the true scope of the required workload.⁵⁷

ISSUE: OpLaw attorney doing legal assistance

DECISION: The second attorney in the OpLaw section stood watch on the DOC floor and did legal assistance for two months of the deployment while he was on night shift.

RECOMMENDATION: Sustain. It is possible for attorneys in different sections to do legal assistance in a deployed environment.⁵⁸

ISSUE: Landlord/tenant education

DECISION: The Legal Assistance Office at Fort Campbell wrote articles in the local newspaper discussing the challenges encountered by Soldiers when deploying. It educated the local populace and property owners about the legal rights enjoyed by Soldiers. This served to minimize the problems encountered by Soldiers if they attempted to terminate their leases properly because the property owners were educated about the process.

RECOMMENDATION: Publish an article in the local papers before deploying that explains the legal rights of Soldiers.⁵⁹

ISSUE: “Surge” Soldier training on legal assistance issues before deploying

DECISION: The BCT spent a great deal of time trying to handle all legal assistance issue before deploying. This included not only handling of outstanding issues but also helping Soldiers understand the possible pitfalls that can occur while deployed (cell phone contracts, etc).

RECOMMENDATION: Improve. Make training Soldiers on legal assistance issues a priority before deploying.⁶⁰

ISSUE: Legal assistance at the Marine battalion level

⁵⁶ 3ID 2008 OIF AAR, *supra* note 8.

⁵⁷ 10th Mountain Division (Light Infantry), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, May 2008 – May 2009 (25 June 2009) (on file at CLAMO).

⁵⁸ *Id.*

⁵⁹ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 10.

⁶⁰ *Id.*

DECISION: Deployed Marines have a host of legal assistance problems. BN JAs provide a crucial and necessary service by addressing these legal assistance concerns. While deployed, the BN JA addressed most minor issues such as powers of attorney, wills, and notarizations. The BN JA referred questions about marital separations or divorce to legal assistance attorneys at the Regimental Combat Team (RCT) or (Marine Expeditionary Force) MEF level, who conducted counseling via email or telephone. Immigration concerns comprised another popular legal assistance issue. Immigration issues proved more difficult to find information about from higher headquarters.

RECOMMENDATION: Prior to deployment, BN JAs need to be realistic and set well-advertised parameters on which legal assistance services will be available while deployed. The U.S. is a better place to execute marital separations, divorces, and naturalization applications. Regimental and division SJAs can assist BN JAs by making members of their legal staff available for legal assistance support.⁶¹

ISSUE: Willingness to serve the Soldier

DECISION: The legal assistance office made sure never to turn a Soldier away who needed help. The office handled a wide variety of issues: will creation, voting assistance, notarization, marriages, etc.

RECOMMENDATION: Sustain. Always do all you can to help Soldiers.⁶²

ISSUE: Absence of “HotDocs” program

DECISION: The legal assistance office did not have the “HotDocs” program. Attempts to obtain it from the Legal Assistance Branch were unsuccessful (i.e. it could not be loaded on computers on the @s-iraq.centcom.mil domain). The division used the internet for all their legal assistance research.

RECOMMENDATION: Improve. Advise senior leadership of the issue and have network policies modified to allow needed software.⁶³

ISSUE: Knowledge of legal assistance issues for reservists

DECISION: There was a reserve legal assistance attorney in the legal assistance office, and this officer handled all the “reserve” legal assistance issues.

RECOMMENDATION: Sustain. Disseminate information regarding legal assistance issues frequently encountered by reservists to the brigades, where a legal assistance attorney with the requisite specialized knowledge might not exist.⁶⁴

ISSUE: Ensuring attorney client confidentiality in a deployed environment

⁶¹ 2d Battalion, 2d Marines, Battalion Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – November 2008 (18 Dec. 2008) (on file at CLAMO).

⁶² 1AD 2009 OIF AAR, *supra* note 1.

⁶³ *Id.*

⁶⁴ *Id.*

TIP OF THE SPEAR

DECISION: It was not difficult to ensure attorney client confidentiality in the legal assistance office. Although the office was not expansive, measures ensured the office respected the privilege.

RECOMMENDATION: Sustain. Be sure to consider the need to maintain the attorney-client privilege when laying out office space plans.⁶⁵

ISSUE: Providing legal assistance to units from different states

DECISION: Several different units falling under the division command were from different states and solutions were therefore not universal.

RECOMMENDATION: Be prepared to research state specific laws, or to reach back to Army JAs conducting legal assistance in those states, and utilize VTCs to share lessons with other legal assistance attorneys within Iraq.⁶⁶

ISSUE: Difficulty in giving legal assistance advice due to differences in state law

DECISION: The BJA attempted to provide very basic and general legal assistance information and document drafting services to requesting Soldiers while deployed.

RECOMMENDATION: Improve. A state-by-state comparison table should exist for the major common legal assistance issues faced by members of the military.⁶⁷

ISSUE: Preventing conflicts of interest due to the JA's constant legal services to the command

DECISION: The BJA would advise a member requesting legal assistance of the following: (a) The JAs work for the commander. Therefore, there was no attorney/client privilege. Thus, if the member thinks there may be a conflict with the commander, they may leave the office at that time with no adverse consequences; (b) The JAs may have an academic discussion with the member regarding the law only, but they may not represent the member in any forthcoming action; (c) Unless the member's concern affects an issue derived from a law of the same state in which one of the JAs is certified to practice, the member cannot take the advice given as legal advice.

RECOMMENDATION: Sustain. Deployed JA's must take measures to prevent a conflict of interest before providing a member with legal assistance. When a conflict exists, provide the member with the contact information of a JA at higher headquarters.⁶⁸

ISSUE: Legal assistance conflicts

DECISION: Legal assistance conflicts exist and pose problems for the command. This unit initially had two attorneys, so the JA regularly saw legal assistance clients. In one instance, the JA saw a client on a purely legal assistance matter. On a separate occasion, the same client threatened his commander, thrusting himself into the UCMJ pipeline. This caused a conflict leading the commander to preclude the JA from seeing any more legal assistance clients. The

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 6.

⁶⁸ *Id.*

trial counsel took the bulk of the legal assistance mission until the third attorney came and assumed the duty.

RECOMMENDATION: Legal assistance conflicts are not mental creations of the faint of heart. JAs must find ways to avoid depriving the commander of their critical counsel. For this reason, among others, a third attorney is a “must have” at the brigade.⁶⁹

ISSUE: Civilians receiving military legal assistance

DECISION: All civilians on the FOB were entitled to legal assistance if they possessed a letter of authorization entitling them to legal services or if they were mission essential personnel. If they did not fall into these categories, the division client services office only provided notary services. However, the chief of client services directed them to a website where they could draft their own wills and powers of attorneys. The civilians then brought these documents back to the client services office for notarization.

RECOMMENDATION: Sustain. Assist civilians on the FOB to the extent you have authority to do so, but always try to point them in the right direction.⁷⁰

ISSUE: Legal assistance statistics

DECISION: One SBCT JA conducted legal assistance two full days per week. During the course of the deployment, this officer had 1,100 visits from clients. 75-80% of the visits related to domestic issues.

RECOMMENDATION: Ensure you have a third attorney to handle the LA mission.⁷¹

ISSUE: Basic understanding of legal assistance and the power of the notary seal

DECISION: It is important to have at least a basic understanding of the fundamentals of legal assistance. In addition, take a notary seal into country with you and utilize it as often as possible on documents for the commander. The local Iraqis prefer to see the seal on documents and it adds credibility to the documents in their eyes.

RECOMMENDATION: Utilize the notary seal in accordance with the law, but make every effort to use it as much as possible, especially for documents presented to the Iraqis.⁷²

ISSUE: Amount of legal assistance work

DECISION: The legal assistance practice was remarkably busy.

RECOMMENDATION: You need to have a third attorney to provide a reasonable level of legal assistance services. It is helpful if that person is a Reservist because they will have reach back for advice to expert civilian colleagues that military attorneys simply do not have.⁷³

⁶⁹ 3d Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – February 2009 (6 May 2009) (on file at CLAMO).

⁷⁰ 4ID 2009 OIF AAR, *supra* note 13.

⁷¹ 2d Stryker Brigade Combat Team, 25th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – March 2009 (20 Apr. 2009) (on file at CLAMO).

⁷² 214th Fires Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, April 2007 – July 2008 (20 Mar. 2009) (on file at CLAMO).

TIP OF THE SPEAR

ISSUE: RoL JAs approached by Soldiers in the International Zone (IZ) seeking legal assistance

DECISION: The Joint Area Support Group (JASG) JAs provide legal assistance in the IZ (now located at FOB Union III).

RECOMMENDATION: Sustain.⁷⁴

ISSUE: Variety of services provided

DECISION: Recurring legal assistance issues consisted of divorce, separation and child custody, non-support inquiries, SCRA (landlord/tenant, debtor/creditor and stays of legal proceedings), as well as some USERRA issues. Ministerial duties such as notaries and witnessing of signatures were sources of steady work. The OCJA supported approximately 15,000 U.S. military members and civilian contractors in the IZ with legal assistance. Accordingly, JASG-C responded to legal assistance issues rooted in jurisdictions in which they had no license to practice or familiarity with the relevant procedural or substantive law. With regard to referrals to private attorneys, JASG-C contacted state bar associations and SJA offices at military installations within a Soldier's home state in order to answer questions on practice, procedure, and substantive law and to obtain attorney referrals. The many manuals and resources on legal assistance issues, as well as their legal backgrounds, prepared JASG-C well for navigating these issues.

RECOMMENDATION: None.⁷⁵

ISSUE: Proxy marriage

DECISION: Legal assistance attorneys assisted clients with proxy marriages and double-proxy marriages pursuant to Montana law. This allowed two service members to marry by proxy while still physically present in theater.

RECOMMENDATION: Legal assistance attorneys should be aware of Montana law regarding proxy marriages. Attorneys should consider going beyond pure legal advice by ensuring their clients are not merely seeking a double proxy marriage to qualify for cohabitation while deployed.⁷⁶

ISSUE: Reservist support

DECISION: Two United States Army Reserve (USAR) judge advocates served as the primary legal assistance attorneys for MNC-I. These attorneys had extensive experience in family law from their private practice. Moreover, their deployment cycles differed from that of XVIII Airborne Corps, allowing them to provide continuity as the MNC-I OSJA changed out.

RECOMMENDATION: Sustain.⁷⁷

⁷³ 1BCT, 4ID 2009 OIF AAR, *supra* note 16.

⁷⁴ Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, October 2008 – December 2008 (9 Feb. 2009) (on file at CLAMO).

⁷⁵ 50th Infantry Brigade Combat Team, New Jersey Army National Guard, Office of the Command Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – May 2009 (25 May 2009) (on file at CLAMO).

⁷⁶ XVIII ABC 2009 OIF AAR, *supra* note 2.

⁷⁷ *Id.*

ISSUE: Pre-deployment legal briefings

DECISION: Although deploying XVIII Airborne Corps Soldiers received legal briefings on the law of armed conflict and rules of engagement, they did not receive adequate briefings on pre-deployment legal issues such as wills, powers of attorney, tax extensions, and the Servicemembers Civil Relief Act (SCRA). As a result, legal assistance attorneys dealt with client issues resolvable before deployment, such as the termination of cell phone contracts and letters requesting the 6% interest cap.

RECOMMENDATION: Improve. Soldiers should receive information on deployment-related legal issues either in conjunction with other pre-deployment briefings or during the Soldier Readiness Checks (SRC).⁷⁸

ISSUE: JAGCNet legal assistance forum

DECISION: Deployed legal assistance attorneys used the JAGCNet legal assistance forum as a reach-back capability for answering legal assistance questions. The forum was often helpful in answering questions and disseminating new laws, such as mortgage relief and SCRA cell phone contract terminations. However, its utility depended on whether other attorneys read the question and responded in a timely manner.

RECOMMENDATION: Deployed legal assistance attorneys should check the JAGCNet legal assistance forum regularly. In addition, the forum's utility would improve if subject-matter experts at OTJAG and/or TJAGLCS used the forum to disseminate the latest laws and updates.⁷⁹

ISSUE: Legal assistance video teleconferences (VTCs)

DECISION: The MNC-I legal assistance office conducted video teleconferences (VTCs) with their division counterparts every two months to share legal assistance issues. This was very helpful, particularly regarding less common issues such as posthumous citizenship. It was also helpful to make introductions as divisions changed out.

RECOMMENDATION: Sustain.⁸⁰

ISSUE: Contractors as clients

DECISION: The MNC-I legal assistance office provided limited legal assistance services to civilian contractors. The office readily provided powers of attorney and notary services to contractors. However, for larger issues they required the contractor to show proof of their contractual entitlement to legal assistance services. For third-country nationals (TCNs) whose contracts did not entitle them to legal assistance services, attorneys and paralegals would nonetheless try to point them in the right direction.

RECOMMENDATION: Sustain. Legal assistance attorneys should be familiar with the limited services they may provide to contractors under AR 27-3, paragraph 2-5a(7).⁸¹

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

TIP OF THE SPEAR

ISSUE: Providing legal assistance to contractors

DECISION: The unit provided legal assistance to contractors on a case-by-case basis. They did not provide legal assistance to a contractor if the matter involved the United States (i.e., in an adverse administrative context).

RECOMMENDATION: Improve. If the matter involves the United States, limit legal opinions and only communicate them to the contracting officer.⁸²

ISSUE: Partnering with co-located units to provide reciprocal legal assistance

DECISION: The BCT and the co-located sustainment brigade agreed to see each other's legal assistance clients in order to minimize conflict cases.

RECOMMENDATION: Sustain.⁸³

ISSUE: Identity theft

DECISION: In advising clients on identity theft, legal assistance attorneys referred them to the Federal Trade Commission identity theft website. Clients were able to take it from there.

RECOMMENDATION: Sustain. Refer legal assistance clients to self-help measures whenever possible.⁸⁴

ISSUE: Legal assistance support to outlying FOBs

DECISION: Three of the BCT's maneuver battalions were not collocated with the BCT headquarters. The BJA sent the legal assistance attorney and a paralegal to these units' locations approximately every two weeks to provide legal assistance support. Sometimes these visits included the chaplain, S1 personnel, and finance personnel.

RECOMMENDATION: Sustain.⁸⁵

OEF ISSUE: Conduct of legal assistance by CSTC-A

DECISION: Though not staffed to provide legal assistance support, in order to provide better support to Camp Eggers personnel, the CSTC-A AdLaw attorney assisted with legal assistance matters. He had the time and did not encounter any unique legal assistance issues. Note that the garrison command, which is a CJTF 82/101 function, is authorized a legal assistance/command attorney. The CSTC-A OSJA did not believe this slot was necessary as it was not a full-time job, and urged CJTF 82/101 not to fill it. If they did fill it, we wanted the officer to fall under our technical supervision. CSTC-A did produce a paper on who was entitled to legal assistance on the Camp upon discovering that a civilian contract included access to such services.

RECOMMENDATION: None.⁸⁶

⁸² 1AD 2009 OIF AAR, *supra* note 1.

⁸³ 4-J CAV 2009 OIF AAR, *supra* note 34.

⁸⁴ *Id.*

⁸⁵ *Id.*

ISSUE: Allowing paralegal specialists (27Ds) to notarize documents without attorney supervision

DECISION: One battalion 27D operating in the Iraq theater of operations could not notarize documents without attorney supervision. The BJA interpreted the meaning of “supervision” to be the physical presence of the attorney when the 27D stamped the document. Therefore, Soldiers on outlying FOBs had to travel to the brigade headquarters to get a notarization. The 27D could not travel to them because the supervising attorney was too busy to travel with the 27D.

RECOMMENDATION: Improve. JAs must realize their 27Ds are qualified to perform notary services without their physical presence. This allows more flexibility in the legal office and permits a 27D to provide needed services to Soldiers on outlying FOBs.⁸⁷

⁸⁶ Combined Security Transition Command – Afghanistan, Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom (Sept. 2008) (on file at CLAMO).

⁸⁷ 101st Sustainment Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, January 2008 – February 2009 (13 May 2009) (on file at CLAMO).

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VI. MILITARY JUSTICE

VI.A. General Orders

OIF ISSUE: Awareness of General Orders (GOs)

DISCUSSION: Marines need to know and understand the General Orders applicable in theater to raise the overall awareness level. The Battalion (BN) Judge Advocate (JA) created and provided training during monthly reset that included a “General Order” slide show.

RECOMMENDATION: Review copies of all applicable GOs prior to deploying (i.e., Central Command, Multi-National Corps – Iraq, Multi-National Force – West). Review your local base orders, as many bases now have their own GOs. Examine all the applicable orders for your battalion and determine if a battalion policy is required.¹

ISSUE: Alcohol use

DECISION: Despite the General Order Number One (GO#1) prohibition of alcohol, possession of alcohol continued to be a problem in theater. The reasons noted for the continued problem with alcohol possession were: (1) Many units were remotely located, thus making communication/education opportunities sporadic and infrequent; (2) Alcohol in Iraq was readily available to troops in the field, especially because local nationals often gifted alcohol to the troops. The Brigade Judge Advocate (BJA) addressed the issue of alcohol possession with units when opportunities to do so presented themselves.

RECOMMENDATION: Sustain. Despite continued challenges with education and enforcement, the prohibition against alcohol under GO#1 should remain. Efforts to prevent possession are less onerous than the challenges of addressing the potential effects of widespread use of alcohol in theater.²

ISSUE: Restrictions on personal cameras

DECISION: The command made it clear to the troops they could carry and use a digital camera, but they were not free to use the photographs any way they please. The command was most diligent in enforcing the strictest photography rules in detainee operations and casualty operations.

RECOMMENDATION: Adequate enforcement of a brigade-wide photography ban is not reasonably enforceable. Emphasize in pre-deployment training the difference between the use of battlefield photographs used for sensitive site exploitation and consequence management, and the personal use of such photographs.³

¹ 1st Battalion, 9th Marines, Battalion Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – October 2008 (9 Jan. 2009) [hereinafter 1/9 Marines 2009 OIF AAR] (on file at CLAMO).

² 4th Brigade Combat Team, 10th Infantry Division (Light Infantry), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (5 Feb. 2009) [hereinafter 4BCT, 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

³ *Id.*

ISSUE: Operational security (OPSEC) prohibition against personal cell phone and camera use off the FOB

DECISION: The division commander wanted to ban personal cell phone and camera use off installations to prevent Soldiers from posting photos on the internet for OPSEC reasons, but this was difficult because many Soldiers are required to use their cameras for official purposes. The division General Order Number 1 (GO#1) did include a prohibition against possessing personal cell phones and cameras off the FOB, but some Soldiers worked at joint security stations (JSSs) where they required such items that the unit had not purchased. This meant the prohibition was unenforceable unless it occurred in conjunction with other misconduct. As a result, the division issued an order mandating units purchase the necessary cameras and other electronic equipment so Soldiers did not need to use personal equipment. The division also allocated dollars to make the required purchases. Additionally, the division issued a G-7 policy memo on blogs and websites, requiring Soldiers to register them for scrutiny by the OPSEC manager. When the OPSEC manager suspected policy violations, he asked the AdLaw attorneys for recommendations on how to proceed. The discovery of pornography on both NIPR and SIPR workstations resulted in an investigation and treatment as a military justice issue.

RECOMMENDATION: Improve. JAs should work with commanders before deployment to ensure enforceable GO#1 prohibitions. Ultimately, when the commander decides a provision will be in GO#1, JAs should be prepared to assist in finding ways to execute the commander's intent.⁴

ISSUE: Pornography

DECISION: The prohibition on pornography in the Multi-National Division – Center (MND-C) GO#1 did not define pornography. The Office of the Staff Judge Advocate (OSJA) followed a “you-know-it-when-you-see-it” interpretation.

RECOMMENDATION: It is probably better not to define pornography, but to include a list of non-exclusive examples.⁵

OEF ISSUE: Perceived disparity in punishments between officers and enlisted

DECISION: There appeared to be an unfair disparity between the punishments received by officers and enlisted personnel both for violations of General Order Number One (GO#1) and for negligent discharges (NDs). For example, officers who had a negligent discharge generally received a General Officer Memorandum of Reprimand (GOMOR). Enlisted Soldiers, on the other hand, typically received non-judicial punishment (NJP).

RECOMMENDATION: Improve. While there are sometimes good reasons for different punishments for officers and enlisted members, commanders should be cognizant of perceptions of inequality and of officers “getting off easy.” It may be appropriate for a commander to withhold UCMJ authority over certain types of cases to preclude unwarranted perceptions.⁶

⁴ 4th Infantry Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (30 Apr. 2009) [hereinafter 4ID 2009 OIF AAR] (on file at CLAMO).

⁵ 10th Mountain Division (Light Infantry), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, May 2008 – May 2009 (25 June 2009) [hereinafter 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

⁶ 101st Airborne Division (Air Assault), Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom, April 2008 – June 2009 (28 Aug. 2009) [hereinafter 101st ABN DIV (AASLT) 2009 OEF AAR] (on file at CLAMO).

Drafting & Updating GO#1**OIF** ISSUE: **Experience necessary to draft GO#1**

DECISION: A JA who had a good idea of what was needed in GO#1 due to his experience on a military transition team (MiTT) co-drafted a revision to the Multi-National Division – Baghdad (MND-B) GO#1 during the deployment. This JA lived on a small Forward Operating Base (FOB) where there was little oversight on the Soldiers. Consequently, he knew what Soldiers did to get themselves into trouble and what would be effective in the GO.

RECOMMENDATION: Sustain. If possible, a JA with the type of experience mentioned above should help draft the GO.⁷

ISSUE: **Continually updating GO#1**

DECISION: The Division decided to review GO#1 continually and update when necessary.

RECOMMENDATION: Sustain. View GO#1 more as a living document than a set order because things change quickly in theater. It is important to look constantly at your GO in order to update it effectively.⁸

OEF ISSUE: **Issuing a GO#1**

DECISION: Upon their arrival in country, Combined Security Transition Command – Afghanistan (CSTC-A) Staff Judge Advocate (SJA) and Deputy Staff Judge Advocate (DSJA) reviewed the necessity for having a separate CSTC-A GO#1. They determined that a separate GO#1 was not necessary, since both the CENTCOM GO#1 and the Combined Joint Task Force (CJTF) 82/101 GO#1 already covered CSTC-A personnel. The only issue that did arise that a separate GO#1 might have addressed concerned the use of alcohol by foreign service personnel on Camp Eggers. The unit ultimately decided that such an order was not necessary and informed foreign personnel about the prohibition on alcohol use on Camp Eggers through other means. Note that each service had different opinions about their requirement to observe CJTF 82/101's GO#1. For example, the Air Force had a GO#1 that came out of 9th Air Force and believed it applied to them and not CJTF's GO#1. The unit did not have any issues with the Marines or Navy.

RECOMMENDATION: None.⁹

Applicability of General Orders**OIF** ISSUE: **GOs applicable to MNF-I**

DECISION: The Multi-National Force – Iraq (MNF-I) Rule of Law (RoL) section was occasionally asked for information about the GOs to which MNF-I personnel were subject. The relevant GO#1s for MNF-I personnel were Central Command (CENTCOM) GO #1B and Multi-National Corps – Iraq (MNC-I) GO #1.

⁷ 4ID 2009 OIF AAR, *supra* note 4.

⁸ *Id.*

⁹ Combined Security Transition Command – Afghanistan, Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom (Sept. 2008) [hereinafter CSTC-A 2008 OEF AAR] (on file at CLAMO).

TIP OF THE SPEAR

RECOMMENDATION: None.¹⁰

ISSUE: Trying to follow two different GOs

DECISION: During the deployment, the Brigade Combat Team (BCT) had to follow two different GOs: one from corps and one from division. This became confusing at times, because each GO had different rules and there were often issues with definitions (i.e., “reside” vs. “cohabitate”).

RECOMMENDATION: Improve. There is nothing that you can do to change the fact that there are multiple GOs. You should get smart on them early and then train your units so they understand exactly what they can and cannot do under these GOs.¹¹

ISSUE: Application of GO#1

DECISION: If you were a U.S. Soldier, GO#1 applied to you. Which HQ’s version of GO#1 applied was sometimes a more difficult question.

RECOMMENDATION: Make it clear to Soldiers GO#1 applies. Do not discuss possible exceptions in large audiences to which any exceptions are not likely to apply.¹²

ISSUE: Resolution of conflicting orders

DECISION: Confusion arose when Soldiers from one unit violated the policies or GOs of another unit while they were located on the other unit’s FOB. When such issues came up, the Multi-National Division – Central (MND-C) policy was for the landowning commander’s policies to control.

RECOMMENDATION: Sustain. Ensure policy memoranda and general orders have a clear application paragraph specifying the provisions apply to all personnel in the commander’s area of operations.¹³

Sexual Relations & Opposite Sex Visitation

OIF ISSUE: Changes in division visitation policy

DECISION: The regiment fell under three different divisions during the deployment, each with its own visitation policy. This meant regimental personnel were initially subject to a no-visitation policy, later expanded to a twelve-hour visitation policy. In the latter instance, the division commander required commanders to justify imposing a more restrictive policy. Compliance with the policy changes, however, did not appear to cause any difficulty for regimental personnel, nor did the change in General Court Martial Convening Authority (GCMCA).

¹⁰ Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, October 2008 – December 2008 (9 Feb. 2009) (on file at CLAMO).

¹¹ 1st Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (15 Jan. 2009) [hereinafter 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

¹² XVIII Airborne Corps, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – April 2009 (11 June 2009) [hereinafter XVIII ABC 2009 OIF AAR] (on file at CLAMO).

¹³ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

RECOMMENDATION: Sustain. Ensure the unit briefs personnel on any policy change resulting from a change in division headquarters.¹⁴

ISSUE: Confusion regarding the visitation policy

DECISION: A GO issued in the field allowed for opposite sex visitations. However, one brigade commander issued a supplemental order, which prohibited such visitations. Some units said that they were unaware of the further restrictions and operated based on the general order.

RECOMMENDATION: Improve. JAs must ensure the Soldiers understand what rules apply to them regarding the visitation policy. If there has been a further restricting order handed down by a subordinate commander, ensure that the Soldiers are aware of it.¹⁵

ISSUE: “No sex” and visitation policy

DECISION: The BCT had experienced many problems during its previous deployment. The commander (CDR) instituted a “no sex” policy, but did not include this in GO#1. Consequently, the BCT CDR decided not to use violation of the prohibition as a basis for punishment, except that Soldiers who became pregnant while deployed were subject to adverse action. However, most battalions had a no visitation policy.

RECOMMENDATION: Improve. A visitation policy is preferable to a “no sex” policy.¹⁶

ISSUE: Visitation with the opposite sex

DECISION: The BCT CDR decided to impose a more restrictive order than the division. The division’s order only prohibited visitation behind closed doors with the opposite sex in the evening. The BCT prohibited it at all times. This order was in place the entire deployment.

RECOMMENDATION: Sustain. Impose a similar restrictive order. The belief is it minimized risk for the commander.¹⁷

ISSUE: Lack of clarity in GO#1

DECISION: Due to the mixture of U.S. Soldiers, civilian contractors, local nationals, and coalition forces living on one FOB, the wording in GO#1 was not always clear as to the cohabitation and comingling limitations. This caused issues particularly in the area of the visitation policy.

RECOMMENDATION: Improve. Before you draft the GO, ensure you know the situation on the FOB and form the order with clarity.¹⁸

¹⁴ 2d Stryker Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, August 2007 – May 2008 (17 Feb. 2009) [hereinafter 2SCR 2009 OIF AAR] (on file at CLAMO).

¹⁵ 3d Infantry Division (Mechanized), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2007 – June 2008 (23 Sep. 2008) [hereinafter 3ID 2008 OIF AAR] (on file at CLAMO).

¹⁶ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 11.

¹⁷ 3d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (14 Jan. 2009) [hereinafter 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

¹⁸ 4ID 2009 OIF AAR, *supra* note 4.

ISSUE: Confusion with different versions of GO#1 throughout Iraq

DECISION: Camp Liberty is a big FOB, housing many different units, some of which have differing GOs. This caused confusion because a GO violation in one unit may not be a GO violation in another unit. This applied in particular to different visitation policies. Soldiers often did not understand what their GO#1 visitation policy allowed them to do. The differing visitation policies were especially confusing when a member of one unit went to visit a member of another unit.

RECOMMENDATION: Improve. There should be one GO#1 throughout the Iraq theater of operations.¹⁹

ISSUE: Restrictive unit containerized housing unit (CHU) policy

DECISION: The Task Force (TF) 525 commander elected to have a more restrictive CHU policy than the CENTCOM GO#1. The CENTCOM GO#1 only prohibited “overnight stays” by members of the opposite sex. However, the TF 525 order implemented a policy that prohibited any “visitation” by members of the opposite sex. The commander did not implement a “no sex” order.

RECOMMENDATION: Sustain. The TF 525 visitation policy seemed to work well. Consider implementing a similar policy.²⁰

ISSUE: Prohibitions on sexual relations

DECISION: The chief of justice initially drafted the MND-C GO#1 to prohibit sexual relations between unmarried couples. However, the Commanding General (CG) instead decided to deal with the problem of sexual relations using a visitation policy, which prohibited opposite sex visitation in the living quarters after 2200 hours and before 0700 hours. The BCTs could make their own policies more restrictive, but most of them adopted similar policies.

RECOMMENDATION: Sustain. The visitation policy approach eliminated the need to prove actual sexual relations.²¹

VI.B. Judiciary

OIF ISSUE: Judicial coverage in theater

DECISION: There was insufficient judicial coverage in theater.

RECOMMENDATION: If the UCMJ is intended to be expeditionary, the supporting establishment must be as well. We should either deploy military judges adequately to satisfy the demand or admit that the UCMJ is a garrison tool. We cannot have it both ways.²²

¹⁹ *Id.*

²⁰ 525th Battlefield Surveillance Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (12 Mar. 2009) [hereinafter TF525 2009 OIF AAR] (on file at CLAMO).

²¹ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

²² Regimental Combat Team-5, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – July 2008 (7 Aug. 2008) [hereinafter RCT-5 2008 OIF AAR] (on file at CLAMO).

ISSUE: Judicial support

DECISION: Because of the Multi-National Force – West (MNF-W) CG's Mission-Essential Task List (METL) prioritization, there was a decline in military justice requirements. The unit used alternative dispositions, when available and appropriate. Notwithstanding, military justice matters requiring a military judge did occur from time to time. Military judges deployed on a temporary rotating basis. During the deployment, the Piedmont Judiciary supported three military judge rotations. The biggest challenge during the rotation was ensuring completion of the Marine Corps required pre-deployment training program (PTP) requirements. Military judges deployed at the request of the OSJA, II Marine Expeditionary Force (II MEF). The Officer in Charge (OIC) of the Legal Service Support Team (LSST), Iraq would originate the request to the OSJA, II MEF, based on receipt of referred charges and requests for legal services from the requesting command. While deployed, military judges assisted only with military justice matters.

RECOMMENDATION: The judiciary should identify deployable military judges and complete PTP early (prior to a request from the OSJA, II MEF). II MEF OSJA will coordinate deployment upon request from the OIC, LSST Iraq. Consider multi-tasking the judiciary once in theater, particularly to assist in the area of RoL efforts.²³

ISSUE: Judicial support

DECISION: The judiciary provided excellent support to the BCT. The judges were available, flexible, and understanding of the challenges associated with conducting cases in a deployed environment.

RECOMMENDATION: Sustain.²⁴

ISSUE: Availability of judicial support

DECISION: MNF-W ended up not having a judge for all but two full months of their deployment. This became a significant challenge for how MNF-W dealt with criminal cases. Often, the defense effectively used the unavailability of a judge to their advantage. It is not necessary for a judge to deploy full-time, though, as there is simply not enough work (34 cases preferred, but many ended up at Summary Courts-Martial or Article 15s). However, it was necessary to pre-plan and coordinate judicial support with the judiciary.

RECOMMENDATION: Incorporate the judiciary into the planning process as early as possible and be sure to communicate judicial issues and changes to the forward SJA and legal teams.²⁵

ISSUE: Flexibility with the judiciary

DECISION: The judges were very understanding of the logistical challenges encountered by the Stryker Brigade Combat Team (SBCT) when it came to conducting military justice matters. They remained very flexible during the deployment as long as the judge could see planning had been ongoing. It was helpful to save emails showing steps taken to schedule hearings.

²³ II Marine Expeditionary Force (Forward), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2007 – February 2008 (8 July 2008) (on file at CLAMO).

²⁴ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 17.

²⁵ I Marine Expeditionary Force (Forward), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – February 2009 (19 Feb. 2009) [hereinafter I MEF (FWD) 2009 OIF AAR] (on file at CLAMO).

TIP OF THE SPEAR

RECOMMENDATION: None.²⁶

ISSUE: **Introductions to the rotating judges**

DECISION: The chief of military justice made a point of introducing himself to the rotating military judges when they arrived in theater. This facilitated the docketing process for cases later and was essential to a good working relationship between the military judges and the military justice section.

RECOMMENDATION: Sustain.²⁷

ISSUE: **Court reporters assigned to individual military judges**

DECISION: The unit did not assign its court reporter to an individual military judge. In doing so, the unit would relinquish a level of control over its court reporter. This would make it more difficult for the chief of military justice to track the court reporter's projects.

RECOMMENDATION: Sustain.²⁸

OEF ISSUE: **Unrealistic expectations for a combat environment**

DECISION: There is no dedicated courtroom in Afghanistan. Traveling judges appeared to sometimes have unrealistically high expectations for the physical courtroom setup and transient living accommodations in Afghanistan. Afghanistan has been an economy of force mission and is still very much a spartan, combat environment in most locations. It is not realistic to expect the command to devote resources to dedicated court facilities when there are Soldiers still living in tents.

RECOMMENDATION: Improve. Judges should remain flexible and adaptable to the situation on the ground. The court should relay its requirements and preferences—clearly delineated—in advance, and remain true to the judiciary's proud history of service under any conditions.²⁹

ISSUE: **Assigned military judge for Afghanistan**

DECISION: A military judge rotated into Afghanistan approximately once every few months to conduct courts-martial.

RECOMMENDATION: As the U.S. military presence in Afghanistan increases, the JAG Corps should consider assigning a military judge to Afghanistan on a regular deployment cycle.³⁰

ISSUE: **Docketing**

²⁶ 2d Stryker Brigade Combat Team, 25th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – March 2009 (20 Apr. 2009) [hereinafter 2SBCT, 25ID 2009 OIF AAR] (on file at CLAMO).

²⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

²⁸ 1st Armored Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (19 Feb. 2009) [hereinafter 1AD 2009 OIF AAR] (on file at CLAMO).

²⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

³⁰ *Id.*

DECISION: The brief presence of military judges in theater sometimes made docketing very difficult. On one occasion, the judge was not able to arrive in theater until two months after referral.

RECOMMENDATION: Improve. The judiciary should be more flexible and responsive regarding scheduling cases in theater. It should consider standard court terms (one week per month, announced in advance) or permit tentative docketing of preferred cases before referral.³¹

ISSUE: **Which comes first, referral or the establishment of the trial term?**

DECISION: The unit's preference was not to prefer and refer a case until it knew when the next trial term was. This precluded the unit from unnecessarily tolling the speedy trial clock. The judiciary, however, preferred not to set a trial term until it knew which cases were through the referral stage.

RECOMMENDATION: Improve. The sheer magnitude of the logistics involved and managing expectations was difficult enough without the added stress of uncertain trial timing.³²

VI.C. Jurisdiction

OIF ISSUE: **Refusing non-judicial punishment (NJP)**

DECISION: A sailor deployed on the United States Ship (USS) Arleigh Burke for local operations for two weeks off the coast of Virginia (as routine as it gets for the Navy) cannot refuse NJP. However, a Marine in an infantry battalion in Al Qaim, 150 miles from the nearest trial counsel or military judge, can refuse NJP and tie the hands of the commander to administer discipline.

RECOMMENDATION: It is time for the Commandant of the Marine Corps and Office of the Judge Advocate General levels to push to remove the right to refuse NJP for Marines deployed in contingency operations.³³

ISSUE: **Recognizing the different command relationships with your non-organic units**

DECISION: Modularity makes all areas of military legal practice difficult. Judge advocates must work with the S-1 to stay on top of all relationships between the brigade/division and the non-organic units. This is especially important when a commander faces trying to punish, for example, Soldiers from a company based out of Fort Hood, Texas, attached to a battalion from Alaska, assigned to a brigade from Fort Stewart, Georgia. One method used to alleviate any confusion was to continually seek out new commanders rotating into the unit and provide them with a comprehensive in-brief on legal issues/trends in the area, and what type of command jurisdiction they held.

RECOMMENDATION: Sustain. Continue to work closely with the S-1 shop to examine command relationships and train all new commanders coming into theater to ensure there are no jurisdictional issues.³⁴

³¹ *Id.*

³² *Id.*

³³ RCT-5 2008 OIF AAR, *supra* note 22.

TIP OF THE SPEAR

ISSUE: Differences in command authority between Reservists, National Guardsmen, and Active Duty

DECISION: The sustainment brigade in particular had a mix of U.S. Army Reserve (USAR) and National Guard units attached to their active duty headquarters. It is important to ensure that your commander has the authority to conduct a certain action on his Soldier before it occurs. Otherwise, the action may become void and may cause personnel issues. The BJA served with the sustainment brigade only one month before deployment, and therefore did not have a lot of time to learn the differences in how command authority differs between these components.

RECOMMENDATION: Improve. Ensure that if your unit is composed of different components, you take the time to learn the command structure and authority each component holds over the Soldiers within its unit.³⁵

ISSUE: Understanding command and control relationships

DECISION: It is important the BCT commander and his JAs understand the command relationships for units and Soldiers attached to his command. It is important not only for the commander, but the JAs need to know it to understand responsibilities for administrative law, 15-6s, and UCMJ authority.

RECOMMENDATION: Have the command clearly identify in writing, what authority it has and what its command responsibilities are.³⁶

ISSUE: Division of responsibility for units assigned to a BCT

DECISION: This BCT was “pure” except for a Stryker battalion, which was only assigned to the BCT for a couple of months. During this period, the BCT had administrative control (ADCON) of the Stryker battalion, including UCMJ authority, investigations, and Financial Liability Investigations of Property Loss (FLIPL).

RECOMMENDATION: Improve. For such a short time period, it would have been better for the parent unit to retain responsibility for these matters. For example, the BCT JAs would have had difficulty supporting a major court-martial involving that unit and requiring extensive travel across the battle space. Because both the BCT and the Stryker battalion’s parent unit were within MND-N area of operations (AO), they did have the same CG. Had this not been the case, handling such responsibilities would have been even more difficult for the BCT JAs.³⁷

ISSUE: Military Transition Teams (MiTTs) assigned to division

DECISION: Jurisdictional questions often arose due to the frequent movement of MiTTs throughout the division’s area of responsibility.

RECOMMENDATION: Improve. Have the battle space owner retain jurisdiction over MiTTs to alleviate jurisdictional issues.³⁸

³⁴ 3ID 2008 OIF AAR, *supra* note 15.

³⁵ *Id.*

³⁶ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 17.

³⁷ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 11.

³⁸ 1AD 2009 OIF AAR, *supra* note 28.

ISSUE: Withholding UCMJ authority

DECISION: The battalion commander chose to withhold Article 15 jurisdiction for all pornography cases. As a result, the unit saw a decrease in the number of pornography cases.

RECOMMENDATION: Sustain.³⁹

ISSUE: Jurisdiction in theater

DECISION: The command published monthly task organization charts, but challenges remained because multiple units, enablers, and individual augments flooded, and sometimes confused, the operational picture.

RECOMMENDATION: Study the task organization charts, monthly updates, and fragmentary orders (FRAGOs) to keep abreast of all local changes. Learn the difference between administrative control (ADCON), tactical control (TACON), and operational control (OPCON). MiTTs proved especially perplexing.⁴⁰

ISSUE: Rear detachment jurisdictional alignment

DECISION: The OSJA should set up a jurisdictional alignment in conjunction with the members of the G3 or G5 staffs to ensure the command relationships planned by the operators coincide with the alignment set up by the GCMCA. While no actual problems developed, had the effort been coordinated from the beginning, it would have led to greater clarity and understanding. The deployed military justice handbook provides excellent examples of how to do this well.

RECOMMENDATION: Improve. Every deploying unit should utilize the deployed military justice handbook and JAs should feed this information to the G3 and G5 staff elements.⁴¹

ISSUE: Authority of brigade deputy commander (DCO)

DECISION: Brigade deputy commanders are sometimes under the mistaken belief his/her position possesses the same command authority as that of the brigade commander. Provide frequent corrective advice to the brigade DCO regarding the limits of his/her authority.

RECOMMENDATION: Improve. An incoming BJA should reiterate during in-briefing the difference between the commander's authority and that of his/her deputy, then request the commander's support in helping to make this point clear to the rest of his/her staff. For example, the brigade commander should provide clear instruction to his/her DCO regarding the limits of the deputy's command authority during in-brief consultations.⁴²

ISSUE: Pending cases during redeployment

DECISION: Jurisdiction over pending cases during redeployment was often difficult to determine due largely to logistical concerns over witnesses, especially local national witnesses.

³⁹ *Id.*

⁴⁰ 3d Armored Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – January 2009 (22 Apr. 2009) [hereinafter 3ACR 2009 OIF AAR] (on file at CLAMO).

⁴¹ 4ID 2009 OIF AAR, *supra* note 4.

⁴² 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 2.

TIP OF THE SPEAR

The unit usually sent pending cases during times of redeployment back with the redeploying unit.

RECOMMENDATION: Sustain. The unit must work these cases out on a case-by-case basis.⁴³

ISSUE: Jurisdictional issues with a reserve battalion

DECISION: A reserve battalion became a part of the task force but left their “flag” at home. As a result, the unit had to get a provisional designation. Thankfully, the BJA was familiar with the process due to Trial Counsel Assistance Program (TCAP) pre-deployment training on jurisdictional issues.

RECOMMENDATION: Maintain the training on jurisdictional issues before deployment. Ensure the BJA understands the different types of authority a commander can have over assigned or attached units, (i.e. TACON, OPCON, ADCON).⁴⁴

ISSUE: Size of MNC-I’s jurisdiction

DECISION: The MNC-I Criminal Law section was responsible for supporting eighteen brigades and all civilians accompanying the force (148,000). This resulted in the largest military justice jurisdiction in the entire DoD. The section adequately covered the workload.

RECOMMENDATION: Designate the most experienced trial counsel (TC) or senior TC in the military justice division as the point of contact (POC) for civilian misconduct issues. The designated TC should then become the “subject matter expert” on the Military Extraterritorial Jurisdiction Act (MEJA) and UCMJ procedures for handling civilian misconduct issues in a deployed environment, thereby, freeing up other trial counsel to focus on providing military justice support to the command.⁴⁵

ISSUE: Cases involving civilians accompanying the force

DECISION: The MNC-I Criminal Law section had no concrete guidance on the interplay between MEJA and the UCMJ jurisdiction at the time of their deployment. As a result, many items were instances of first impression and solved during the deployment.

RECOMMENDATION: Be flexible and be prepared to establish new processes and procedures no one in DoD has previously established.⁴⁶

ISSUE: Area jurisdiction

DECISION: MND-C practiced area jurisdiction, under which landowning units had UCMJ jurisdiction over all units on their FOBs. One BCT was an exception, retaining command-line jurisdiction over one of its battalions operating in MND-N via a memorandum of understanding (MOU). In some cases, the division had to attach individuals to a landowning command for UCMJ after the misconduct occurred.

RECOMMENDATION: Sustain.⁴⁷

⁴³ *Id.*

⁴⁴ TF525 2009 OIF AAR, *supra* note 20.

⁴⁵ XVIII ABC 2009 OIF AAR, *supra* note 12.

⁴⁶ *Id.*

⁴⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

ISSUE: Jurisdictional alignments for UCMJ

DECISION: The outgoing unit did not have an adequate jurisdictional alignment for UCMJ. It addressed the BCTs and their subordinate battalions as being their own special court-martial convening authorities (SPCMCA) and summary court-martial convening authorities, respectively, but was too broad to account for all of the separate units operating in MND-C's area of operations. These included the MiTTs, police transition teams (PTTs), psychological operations (PSYOP) detachments, and civil affairs (CA) teams, and engineer battalions. Consequently, it took a long time to determine all of the units present and which convening authorities these units should fall under for UCMJ. Moreover, it was difficult to keep track of the smaller units coming and going. The division was never able to put together a written jurisdictional alignment. It handled issues on a case-by-case basis—first asking units how they did their UCMJ actions before, then checking the task organization and relying on the unit's attachment orders.

RECOMMENDATION: Improve. Deploying division headquarters should attempt to get a task organization and the current jurisdiction alignment from the outgoing unit before deployment and use this to plan their own jurisdictional alignment for UCMJ. Upon arrival in country, the division can tweak this alignment by accounting for departed and newly arrived units. The chief of military justice should continue to work with the S3 throughout the deployment to keep track of unit movements and other changes to the task organization and revise the jurisdictional alignment accordingly.⁴⁸

ISSUE: Extending reservist on active duty for UCMJ purposes

DECISION: MND-C preferred court-martial charges against a reservist who was redeploying and leaving active duty. The chief of justice contacted the Reserve Component point of contact at MNC-I, who instructed them how to discharge the Soldier from the reserves and bring him onto active duty. The division G1, however, was unfamiliar with this process, causing the trial counsel to take the initiative to do all the paperwork to keep the Soldier on active duty and attach him to the division for UCMJ purposes.

RECOMMENDATION: Ensure G1 is familiar with the process of extending reservists on active duty for UCMJ purposes.⁴⁹

ISSUE: Jurisdiction over joint services

DECISION: Although there never was a need for Army commanders to assert UCMJ jurisdiction over servicemembers from the other services, the MND-C OSJA did not have a plan for doing so.

RECOMMENDATION: Legal planning for joint operations should include a plan for administering UCMJ to servicemembers from the other services.⁵⁰

ISSUE: Military justice jurisdiction at the mobilization-training site (Camp McGregor & Fort Bliss)

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

TIP OF THE SPEAR

DECISION: Military justice for the 50th Infantry Brigade Combat Team (IBCT) became the most prominent issue at the mobilization-training phase. Initially, confusion existed regarding jurisdictional issues and which command—Mobilization and Deployment (MaD) Brigade (BDE) or First Army—held jurisdiction. The disposition of cases involving senior leader misconduct (E-8 and above) was one example. Both commands identified themselves as the controlling authority.

RECOMMENDATION: Refer the matter to the OSJA for both commands and await resolution. Also, request guidance as to which policy is controlling.⁵¹

ISSUE: Withholding of jurisdiction for senior officer and senior non-commissioned officer (NCO) misconduct

DECISION: For senior leader misconduct (E-8 and above), MNC-I withheld jurisdiction for disposition of disciplinary matters. For those matters not withheld, the Joint Area Support Group – Central (JASG-C) commander did not possess UCMJ authority over its Soldiers. Summary, Special, and General Court-Martial convening authority resided elsewhere. Although the MNC-I OSJA was extremely professional and accommodating, the overall disciplinary process, from initial notification to disposition, was cumbersome, since JASG-C did not have non-judicial punishment (NJP) authority. Having NJP imposed by a separate command eliminated the JASG-C commander's ability to impose military justice as he deemed appropriate for members of his command. It also precluded swift justice, one of the key benefits of military justice.

RECOMMENDATION: The JASG-C should request, and be appointed, a provisional commander for purposes of administering military justice. If this is not possible or otherwise not granted, it would be beneficial to have clear direction, as early as mobilization site training, regarding the convening authorities and military justice personnel with whom the JASG-C will have to coordinate. Either way, review by JASG-C JAs of all MNC-I policies pertaining to military justice, before arrival in theatre, is highly beneficial.⁵²

ISSUE: Implementation of UCMJ actions before deploying

DECISION: To implement UCMJ actions, all of which stayed at the Article 15 level, it was necessary for the 50th IBCT to coordinate with the Mobilization and Deployment (MaD) Brigade (BDE) TC. This officer would prosecute Article 15 matters or any disciplinary matter which, in the normal course, would extend beyond departure date and was serious enough to attach the soldier to the MaD BDE for processing (as opposed to carrying the matter forward). The IBCT also established a good working relationship with the OSJA, Fort Bliss. They were supportive and accommodating to military justice needs of the IBCT, and the unit coordinated all military justice actions with that office (to include Article 15 matters disposed of within the 50th IBCT). It was important to establish OSJA, Fort Bliss "buy-in" in the event a Soldier declined the Article 15 and demanded trial by court-martial. Although this process was generally smooth and productive, it did slow down when the MaD BDE TC was out of the office or otherwise unavailable.

⁵¹ 50th Infantry Brigade Combat Team, New Jersey Army National Guard, Office of the Command Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – May 2009 (25 May 2009) [hereinafter 50 IBCT (NJARNG) 2009 OIF AAR] (on file at CLAMO).

⁵² *Id.*

RECOMMENDATION: Have an alternate TC assigned to coordinate with reserve units undergoing training and establish good relationships with the supporting Continental United States (CONUS) OSJA.⁵³

ISSUE: Notification to MNC-I of felony misconduct by civilians

DECISION: It is critical brigades and battalions notify the MNC-I Criminal Law section immediately of felony misconduct by civilians. If the accused is in pre-trial confinement, it makes timeliness very important. There is a great deal of coordination required with the Department of State (DoS) and Department of Justice (DoJ). Under DoD Directive 5525.7, Implementation of the Memorandum of Understanding (MOU) Between DoJ and the DoD Relating to the Investigation and Prosecution of Certain Crimes, the DoJ Criminal Division, Domestic Security Section (DoJ/DSS) will have the first opportunity to review and accept for prosecution a MEJA-related offense. It may take up to two weeks for the DoJ to coordinate with an Assistant U.S. Attorney (AUSA) office with a “nexus” to the accused and a willingness to prosecute the case. If the DoJ cannot find an AUSA willing to prosecute or declines to pursue prosecution of the case in federal district court, then the MNC-I Chief of Military Justice should obtain a declination letter from the DoJ/DSS memorializing its decision. Coordinating with MNC-I also prevents the DoJ from getting calls from multiple different sources.

In addition to working with the DoJ, if a non-U.S. citizen is the accused, the DoS should receive notification as well so they can coordinate with the accused’s host nation Embassy (Political Military (POL-MIL) and/or Legal Attaché section).

The resources and manpower needed to prosecute these cases cannot be overstated. There are many challenges: escort/chaser coordination, diplomatic issues in travel, U.S. jurisdiction challenges, U.S. Marshal coordination, DoD law enforcement coordination, AUSA and F.B.I. coordination and relationship building, witness coordination, potentially obtaining country clearances, civilian counsel coordination, etc.

RECOMMENDATION: Despite the challenges of prosecuting cases against civilians in a deployed environment, once the decision is made to attach jurisdiction, you simply have to “treat them like a soldier.” UCMJ jurisdiction attaches once they arrive in the Installation Transportation Office (ITO) as a DoD contractor or contractor employee. MEJA jurisdiction and UCMJ jurisdiction are separate, but concurrent jurisdictional schemes. Advise commanders to follow the procedures outlined in DoD Instruction 5525.11, Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the U.S., Certain Service Members, and Former Service Members. When exercising their UCMJ Article 2(a)(10) authority over “civilians serving with and accompanying the force,” military justice personnel must ensure the protections and procedures outlined in the Rules for Courts-Martial apply to civilians assigned to the command just as they would any other member of the U.S. Armed Forces.⁵⁴

OEF ISSUE: The CSTC-A commander was not a GCMCA

DECISION: The CSTC-A CG was a SPCMCA under the CJTF 82/101 GCMCA, as was the TF Phoenix commander. Given that both the CTSC-A CG and the CJTF 82/101 commander were major generals, this concerned the CSTC-A CG. He raised the issue several times during the year to the SJA and to senior officer Judge Advocate General (JAG) visitors about why he was not a

⁵³ *Id.*

⁵⁴ XVIII ABC 2009 OIF AAR, *supra* note 12.

TIP OF THE SPEAR

GCMCA. The CSTC-A OSJA explained to the CG that the command staffing was not adequate to provide services required of GCMCA commands, but the issue still irritated the CG.

RECOMMENDATION: None.⁵⁵

ISSUE: "Joint justice"

DECISION: Although the Manual for Courts-Martial (MCM) permits joint justice, there was no unified service approach to military justice. Each service handled its own military justice matters. The CSTC-A CG was not a GCMCA but did have authority under the MCM to designate the senior official of each service who would handle that service's justice matters. The OSJA closely coordinated all justice matters with CJTF 82/101 and TF Phoenix. Note that the TF Phoenix commander was also a Special Courts Martial Convening Authority so, for military justice purposes, was equivalent to the CSTC-A CG. Fortunately, CSTC-A had very little serious misconduct. Note that the Air Force was the most clear that they would not have anything to do with the Army military justice chain. When there was Air Force misconduct, the Air Force handled it through its channels. The Marines and Navy used their senior representatives at Camp Eggers to handle the misconduct.

RECOMMENDATION: The CJTF OSJA handled military justice matters and were incredibly helpful when CSTC-A needed them.⁵⁶

ISSUE: Lack of UCMJ jurisdiction

DECISION: The brigade commander did not always have jurisdiction over personnel assigned to his unit. Consequently, the commander was unable to take immediate disciplinary action on personnel from other services and contractors.

RECOMMENDATION: Improve. Implement a division policy memorandum to address the jurisdiction before deployment. The policy memorandum should reflect the operational realities within the area of operations. Specifically address in the document how to handle sister service and contractor misconduct.⁵⁷

ISSUE: Monitoring jurisdiction charts

DECISION: The brigade jurisdiction chart was very confusing until the BJA physically identified each subordinate unit. She then made an organizational chart and continually updated it as units moved in and out of theater.

RECOMMENDATION: Sustain. Due to modularity, non-organic units frequently change in and out of a brigade during deployment. Therefore, it is critical to continually monitor and chart these units' movements.⁵⁸

ISSUE: UCMJ authority over joint services

⁵⁵ CSTC-A 2008 OEF AAR, *supra* note 9.

⁵⁶ *Id.*

⁵⁷ 4th Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, March 2008 – March 2009 (12 May 2009) [hereinafter 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR] (on file at CLAMO).

⁵⁸ 101st Sustainment Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, January 2008 – February 2009 (13 May 2009) [hereinafter 101st SUST BDE 2009 OEF AAR] (on file at CLAMO).

DECISION: Several CJTF-101 task forces included members and commanders from the Air Force, Marines, and Navy. In practice, the other services handled their own servicemembers' misconduct. The Air Force had a separate GCMCA over Air Force personnel (AFCENT Commander), with concurrent jurisdiction residing with the commander, CJTF-101. The Navy and Marine Corps typically sent their personnel out of theater when misconduct arose. Having separate jurisdictions for different branches of service sometimes created confusion and disparity in punishments for similar offenses. Army personnel generally received the most punishment for similar offenses.

RECOMMENDATION: Improve. The UCMJ allows for the administration of UCMJ against servicemembers from other services. There should be a single UCMJ chain of command for all servicemembers within a joint unit. We are still a long way away from purple justice.⁵⁹

ISSUE: Designation of CSTC-A as an additional GCMCA

DECISION: The CJTF-101 CG was the only active GCMCA in Afghanistan. The CG of CSTC-A was a MG who had a significant military justice caseload in his command and wanted to be a GCMCA.

RECOMMENDATION: Improve. Consider designating additional commands as GCMCAs when appropriate.⁶⁰

ISSUE: Legal action against civilian contractors under Military Extraterritorial Jurisdiction Act (MEJA)

DECISION: CJTF-101 had a case in which a civilian contractor killed a local national. The Criminal Investigation Division (CID) conducted a full criminal investigation into the death. The command exercised UCMJ jurisdiction over the contractor under Article 2. The commander confined the civilian accused in the detention cell (D-Cell) at BAF using military pretrial confinement procedures as applied to a civilian accompanying the force. Later, the chief of administrative law prepared the request to the Department of Justice (DoJ) to assert jurisdiction under MEJA, using the two-page checklist created by DoJ and DoD to outline the process. Once DoJ agreed to take jurisdiction, a federal district court in Virginia conducted a telephonic custody hearing. Federal marshals escorted the accused out of theater.

RECOMMENDATION: Sustain. Ensure the MEJA checklist is part of the military justice SOP.⁶¹

[See also I.D. INTERNATIONAL & OPERATIONAL LAW—Civilians on the Battlefield/Contractors (Civilian/Contractor Misconduct)]

⁵⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

⁶⁰ *Id.*

⁶¹ *Id.*

VI.D. Magistrates

OIF ISSUE: Pretrial confinement (PTC) in theater

DECISION: The unit did not order PTC once in theater. In fact, the unit did not even order confinement.

RECOMMENDATION: The Regimental Combat Team (RCT) commander found it infinitely more useful to convert confinement to hard labor without confinement, which served as a larger deterrent than 30 days out of the field at Camp Arifjan's air-conditioned brig.⁶²

ISSUE: Lack of magistrates

DECISION: At one point during the deployment, there was a lack of magistrates. This caused a rushed procedure to appoint new magistrates to keep the military justice procedures running smoothly. The unit also had to assign a new magistrate prosecutor back in garrison.

RECOMMENDATION: Improve. Units should be prepared to plan for additional time to obtain the appointment of new magistrates. If a unit is required to constitute a Magistrate's Court back at home station, realize you need lead time to work out the appointment of the new magistrate prosecutor with the United States (U.S.) Attorney's Office.⁶³

ISSUE: Request for magistrate services

DECISION: Conflicts often led to magistrates being unable to perform their function.

RECOMMENDATION: Improve. Appoint and train an adequate number of magistrates before entering the area of operations (AO). On FOBs, have several magistrates available, or have magistrates available from the next higher headquarters. Use military judges to train magistrates before entering the AO.⁶⁴

ISSUE: Training for part-time military magistrates

DECISION: There were two part-time military magistrates at MND-C. Both were first-term captains who had never done military justice work.

RECOMMENDATION: Improve. Ideally, part-time military magistrates should have military justice experience. In addition, these magistrates should receive training from a military judge before performing magistrate duties.⁶⁵

OEF ISSUE: PTC logistics

DECISION: The convening authority is responsible for the planning and expense of ordering an accused into pretrial confinement.

⁶² RCT-5 2008 OIF AAR, *supra* note 22.

⁶³ 3ID 2008 OIF AAR, *supra* note 15.

⁶⁴ 1AD 2009 OIF AAR, *supra* note 28.

⁶⁵ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

RECOMMENDATION: Improve. Diligently pursue a PTC hearing before transferring the accused out of Afghanistan. Closely monitor PTC timelines. Know who the magistrates are and have their contact information available as soon as practical after entering the area of operations.⁶⁶

ISSUE: Pre-trial confinement

Decision: The nearest authorized confinement facility was in Kuwait. This made placing Soldiers in pre-trial confinement logistically difficult, since it would take the accused and at least two escorts away from the unit for up to two weeks at a time every time the accused needed to move between the confinement facility and the unit. As a result, units decided against placing Soldiers in pre-trial confinement.

RECOMMENDATION: Trial counsels should advise commanders as to the requirements for placing Soldiers in pre-trial confinement.⁶⁷

VI.E. Provisional Units

OIF ISSUE: Standing up provisional units

DECISION: Due to the advanced deployment timeline, the provisional units stood up very quickly. It was not always clear what unit had control over which personnel. Once the division redeployed, the provisional unit stood down and the reservist JAs left the office. This left a gap in legal operations, as many of the JAs who were back from the deployment went on block leave.

RECOMMENDATION: Sustain. Make sure creation of provisional units occur well in advance. Advise commanders on the process for setting up a provisional unit. All commanders should know whether provisional units will stand up at the battalion level or just the brigade level. In addition, it is important to know what authority the provisional unit will have under the UCMJ. Upon redeployment, know when the rear detachment is standing down and how the orders will be phrased. The provisional unit effectively ends upon returning from deployment. Therefore, it is important for all commanders, both rear and forward, to know exactly when that will be, as someone must still be in charge of the rear detachment operations. One recommendation is to wait until the end of block leave to stand down the provisional unit.⁶⁸

ISSUE: Unit Identification Codes (UICs)

DECISION: 1AD (Rear) did not exist as a unit. The division support command (DISCOM) remained in the rear and acted as the rear detachment command. The DISCOM commander acted as the special courts-martial convening authority (SPCMCA), while the V Corps commander acted as the general courts-martial convening authority (GCMCA). This arrangement made certain administrative and military justice actions more confusing than necessary.

RECOMMENDATION: Plan to stand up provisional units in the rear and seek respective UICs well in advance of the main body's deployment.⁶⁹

⁶⁶ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 57.

⁶⁷ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

⁶⁸ 3ID 2008 OIF AAR, *supra* note 15.

⁶⁹ 1AD 2009 OIF AAR, *supra* note 28.

TIP OF THE SPEAR

ISSUE: Leaving key military justice personnel in the rear

DECISION: The division left two trial counsel, one military court-reporter, and two civilian court-reporters in the rear-detachment provisional unit. For the first couple of months of the deployment, there was not very much military justice progressing in the forward units. In contrast, the rear-detachment was knee deep in military justice actions for the first couple of months. The court-reporter who deployed forward did not have any records to transcribe for the first couple of months, so he worked in operational law. He would have been more useful in the rear detachment helping the other court-reporters with transcription.

RECOMMENDATION: Improve. The division must consider leaving more military justice personnel behind, at least for the first couple of months. They can always deploy forward once the military justice picks up in theater. The division must weigh the value of moving records of trial through the post-trial process in the rear-detachment versus having a court-reporter sitting idle in theater.⁷⁰

ISSUE: Lack of rear-detachment support

DECISION: Division required that each BCT leave behind one paralegal non-commissioned officer (NCO). However, this did not seem like a fair trade to this BCT because they received very little support from the rear-detachment. In fact, the legal personnel on rear-detachment acted as if the forward units were there to support them. The rear-detachment JA sent Soldiers forward who had court-martial charges pending against them without giving the BCT JAs any advanced notice. The unit could have easily completed many of the cases (absent without leave (AWOL), desertions, etc.) by the time it re-deployed, but they were still pending at the time it returned home.

RECOMMENDATION: Improve. If forced to leave behind a member of your legal team, you should receive full support from the rear detachment legal personnel. They exist to support you, not the other way around.⁷¹

ISSUE: Importance of weekly rear detachment scrubs for non-deployable Soldier status

DECISION: The rear detachment TC decided to attend the weekly scrubs. He discovered military justice actions units had not yet brought to his attention. The chapter actions were very important to the commanders, both deployed and in garrison, so this was a good way for the TC to keep track of them.

RECOMMENDATION: Sustain. It is beneficial to the legal office if a member of your rear detachment attends these weekly meetings.⁷²

OEF ISSUE: Lack of legal personnel left on rear detachment

DECISION: The brigade decided to leave one JA and one non-commissioned officer in charge (NCOIC) on the rear detachment. Since there were 3,000-4,000 Soldiers in the rear detachment, the legal office was extremely busy. They often worked late nights and weekends. The BJA was

⁷⁰ 31D 2008 OIF AAR, *supra* note 15.

⁷¹ 4th Brigade Combat Team, 3d Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – December 2008 (25 Mar. 2009) [hereinafter 4BCT, 31D 2009 OIF AAR] (on file at CLAMO).

⁷² 41D 2009 OIF AAR, *supra* note 4.

a first term captain and, although he did a great job, he could have used more supervision and guidance. He also could have used more time to transition from a trial counsel to a BJA.

RECOMMENDATION: Improve. When a brigade has over 3,000 troops in the rear detachment, there must be adequate legal support.⁷³

ISSUE: Need for a consolidated rear detachment legal office

DECISION: Due to lack of space, the BJA's office was at the Sustainment Brigade Troops Battalion (SBTB) and the legal NCOIC was at another location. The BJA had to use human resource specialists (42As) to perform legal functions because he had no paralegal specialists (27Ds). This caused inefficiency and prolonged legal procedures.

RECOMMENDATION: Improve. If possible, consolidate the rear detachment legal office.⁷⁴

[See also X.F.4. DOTMLPF—Personnel—Rear Detachment Staffing & Reserve Augmentation]

VI.F. Searches

OIF **ISSUE:** Difference between searches and inspections

DECISION: Commanders did not understand the difference between searches and inspections. Despite lengthy conversations, some company commanders failed to grasp this concept. Legal personnel had a requirement to train commanders on the differences between the two. The unit charged the 27Ds at the outlying FOBs with training their battalion commanders. This was difficult at first because they did not know the differences themselves. The TC tried circulating a copy of a "probable cause" memo so that commanders understood what one would look like for a search, but this simply resulted in units putting together "probable cause" memos for health and welfare inspections.

RECOMMENDATION: Improve. More education is required for both commanders and paralegals. 27Ds should be knowledgeable on searches and inspections so they are able to competently advise and train their Battalion commanders. Furthermore, the JAs should train all commanders thoroughly on this issue before and throughout the deployment. Nonetheless, in some cases, BCT legal teams may have to be satisfied with ensuring units are aware they should contact the BCT JAs before conducting any search.⁷⁵

ISSUE: Educating commanders on search authority

DECISION: There was an illegal search while deployed. The BJA used this as an opportunity to educate the other commanders on proper searches. The BCT trial counsel (TC) briefed each commander for two to three hours individually and then briefed all the incoming commanders as they prepared to take command or immediately after they took command.

⁷³ 101st SUST BDE 2009 OEF AAR, *supra* note 58.

⁷⁴ *Id.*

⁷⁵ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 11.

TIP OF THE SPEAR

RECOMMENDATION: Continue the education process to ensure commanders understand how to conduct a search properly.⁷⁶

ISSUE: Educating commands regarding search authorizations

DECISION: The unit discovered many rear detachment commands did not understand the difference between health and welfare inspections and searches. In fact, many commands thought they could search a Soldier's barracks room indiscriminately. To correct this problem, the unit encouraged commands to seek legal guidance before conducting any searches or inspections.

RECOMMENDATION: Sustain. TCs should make themselves easily accessible to commands, and educate commanders on inspection and search distinctions.⁷⁷

ISSUE: Request for search warrants

DECISION: The rules of evidence are applicable on FOBs. Magistrates routinely turned down search warrant requests due to a lack of probable cause.

RECOMMENDATION: Improve. Advocates for search warrants must provide enough facts for the magistrate to make a logical connection to the evidence sought and the place searched.⁷⁸

ISSUE: Inspections of personal mail

DECISION: All Soldiers underwent a urinalysis test and a subsequent health and welfare inspection upon return from Environmental Morale Leave (EML). Unfortunately, many Soldiers tested positive for drugs and other prohibited substances at random times unrelated to EML. The command deduced Soldiers' had contrived a system to receive drugs via the mail, so when a Soldier checked his mail, his NCO stood next to him as he opened it.

RECOMMENDATION: Perform the requisite legal review, if your commander suggests such a policy.⁷⁹

ISSUE: Difference between searches and inspections

DECISION: Commanders often did not understand the difference between a search and an inspection and would often fail to conduct either the search or inspection correctly. Make frequent efforts to explain the difference to commanders one-on-one.

RECOMMENDATION: Improve. Emphasize the difference between a search and an inspection during pre-deployment training and continue to advise and educate commanders one-on-one. Be wary of commanders who may elect to use the more expedient method over the correct one.⁸⁰

ISSUE: Conducting searches for contraband among civilians living on the FOB

⁷⁶ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 17.

⁷⁷ 1AD 2009 OIF AAR, *supra* note 28.

⁷⁸ *Id.*

⁷⁹ 3ACR 2009 OIF AAR, *supra* note 40.

⁸⁰ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 2.

DECISION: Authorization for the search of civilian living spaces occurred upon a finding of probable cause for the existence of contraband.

RECOMMENDATION: Sustain. Equally and aggressively enforcing the rules banning contraband among both military and civilian personnel will help maintain the overall readiness of the force living and working on the FOB.⁸¹

ISSUE: Education of commanding officers

DECISION: It is important “search authorization” education continue in theater. Do not assume the commanding officers know the difference between an inspection and a search.

RECOMMENDATION: Continue to educate commanders while deployed.⁸²

ISSUE: Local nationals (LNs) selling drugs and alcohol

DECISION: There are shops on FOB Kalsu where LNs sell their goods. Unfortunately, there were allegations that the LNs were also selling drugs and alcohols to U.S. Soldiers. Based on probable cause, Criminal Investigative Division (CID) performed random searches at the shops and found credible evidence that some of the LNs were indeed selling drugs and alcohol.

RECOMMENDATION: Sustain. Once the command caught an LN, the command banned him or her from the FOB.⁸³

OEF ISSUE: Searches of personnel or places on Camp Eggers

DECISION: Camp Eggers technically belonged to the garrison commander. The garrison commander issued search authorizations for locations on Camp Eggers. Conversely, the appropriate commander of the servicemember authorized searches of personnel. The unit did not encounter the need for a military magistrate. Trial Defense Service (TDS) personnel were located at Bagram Airfield and were helpful with any defense services needed for Camp Eggers’ personnel.

RECOMMENDATION: None.⁸⁴

ISSUE: Authority to authorize searches

DECISION: Base Operations (BASEOPS) was the owner of all billeting spaces on BAF. This created confusion about who could authorize a search of billeting spaces. Commanders of the individuals occupying the billeting still asserted authority to search their Soldiers’ living quarters.

RECOMMENDATION: Improve. Clarify the “ownership” of housing units and disseminate guidelines to commanders.⁸⁵

ISSUE: Searches of contractors

⁸¹ *Id.*

⁸² 2SBCT, 25ID 2009 OIF AAR, *supra* note 26.

⁸³ 4BCT, 3ID 2009 OIF AAR, *supra* note 71.

⁸⁴ CSTC-A 2008 OEF AAR, *supra* note 9.

⁸⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

TIP OF THE SPEAR

DECISION: The question arose whether commanders could authorize searches of contractors assigned to their commands. The trial counsel advised them they could do so, but encouraged the commander to consult with the contractor's supervisory chain in appropriate cases.

RECOMMENDATION: Sustain. Contraband possession by contractors can affect the unit's good order and discipline.⁸⁶

VI.G Trial Defense Service (TDS)

OIF ISSUE: TDS's ability to manipulate the system

DECISION: As a mark of zealous advocacy for their clients, TDS persistently tried to push hearings and trials as close to the redeployment date of key units as possible in order to complicate the logistical challenges faced by trial counsel. In furtherance of this delay strategy, defense counsel would often cite tentative dates at other Multi-National Divisions (MNDs) as reason for delays in other jurisdictions. The chiefs of justice in the MNDs were not talking to each other enough or tracking other MNDs courts-martial sufficiently to determine whether these requested delays were truly necessary.

RECOMMENDATION: Improve. Chiefs of military justice must communicate with their peers in other MNDs to determine accurately the necessity of delays requested by TDS counsel.⁸⁷

ISSUE: Trial Defense Service (TDS) automation and vehicle support

DECISION: The division OSJA was co-located on Camp Liberty with a TDS office. The support brigade responsible for providing support to TDS was located at Camp Taji, some distance from Baghdad, and was initially unaware of this responsibility. The support requirement included provision of a paralegal. The MNC-I OSJA, also intended to play a role in supporting TDS requirements, was located at Camp Victory. This made the division OSJA the nearest OSJA to the TDS office. The division OSJA provided support on an unofficial basis, including automation support, a vehicle, and the temporary loan of a paralegal to cover the gap between the departure and arrival of reservist paralegals.

RECOMMENDATION: Improve. Providing support such as a vehicle in the absence of any formal obligation to the TDS office was difficult to justify to the division G4, and meant the OSJA had to give up one of its own vehicles. OSJAs located in close proximity to a TDS office might wish to consider signing a memorandum of agreement to clarify support responsibilities.⁸⁸

ISSUE: Coordination of transportation for defense counsel

DECISION: As a courtesy, the division military justice section assisted some defense counsel by coordinating their transportation for courts-martial and witness interviews. However, TDS attorneys began to expect and even demand division coordinate their travel, which became a burden to the military justice section.

⁸⁶ *Id.*

⁸⁷ 31D 2008 OIF AAR, *supra* note 15.

⁸⁸ 41D 2009 OIF AAR, *supra* note 4.

RECOMMENDATION: The division OSJA should not be responsible for coordinating transportation for TDS attorneys. Either the TDS paralegals or MNC-I, which has responsibility for TDS, should make the necessary travel arrangements.⁸⁹

TDS Staffing & Availability of TDS Support

OIF ISSUE: Assignment of TDS personnel

DECISION: The sustainment brigade commander wanted to take the TDS personnel with them on the deployment. This would have denied division any type of reasonable access to the TDS JAs. Division had to refuse the sustainment brigade's request to take TDS. However, the sustainment brigade did manage to take all of the TDS paralegals. The division ultimately decided to give TDS one of its mobilized reservists to help with the caseload.

RECOMMENDATION: Improve. Find an equitable way to distribute the TDS paralegals so that no TDS shop is hurting for help.⁹⁰

ISSUE: Understaffed TDS offices, both forward and on rear detachment

DECISION: Often times, Soldiers went to the TDS office just to find it closed. TDS was always short of staff and did not communicate well about when they closed down shop. The force structure simply has not recognized just how busy the TDS shops really are.

RECOMMENDATION: Improve. TDS should post its hours of operation in each office of the legal shop. TDS should re-evaluate the importance of its rear detachment TDS requirements compared to its forward TDS requirements and staff the offices accordingly.⁹¹

ISSUE: Marine Legal Services Support Team (LSST)

DECISION: The LSST at Al Taqaddum and Fallujah provided telephonic non-judicial punishment (NJP) counseling when needed. The defense counsel for MNF-W were excellent in supporting the battalion and worked around the schedule of the Marines.

RECOMMENDATION: Ensure you have current contact information for the defense counsel servicing your AO.⁹²

ISSUE: Processing support of administrative actions with the rear detachment

DECISION: The TDS shop agreed to conduct a "one day" processing session with the BCT to assist with advising the Soldiers before the BCT's deployment. This allowed for an efficient process and helped clean up remaining cases quickly.

RECOMMENDATION: Work with TDS shop to conduct this "one day" processing set up.⁹³

ISSUE: Reducing TDS potential conflicts of interest

⁸⁹ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

⁹⁰ 3ID 2008 OIF AAR, *supra* note 15.

⁹¹ *Id.*

⁹² 1/9 Marines 2009 OIF AAR, *supra* note 1.

⁹³ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 17.

TIP OF THE SPEAR

DECISION: In one case, all members of a platoon required TDS counseling. However, TDS had already assigned attorneys to the principals (conflicting out the entire office). Additional TDS attorneys had to come from Kuwait.

RECOMMENDATION: Improve. The TDS office should be more aware of the potential for conflict of interest problems and, where required, could erect “Chinese walls” to avoid conflicting the entire office from providing assistance.⁹⁴

ISSUE: Access to TDS

DECISION: When facing a court-martial, Soldiers had to wait at times for several weeks before meeting with their defense counsel. The unit recognized this was primarily due to the limited number of defense counsel in theater given the large size of the jurisdiction.

RECOMMENDATION: Deploy more defense counsel, and ensure continuous coverage of all AOs with TDS attorneys (leaves, etc.).⁹⁵

ISSUE: Paralegal support to TDS

DECISION: When 1st Armored Division (IAD) deployed as a partially transformed division, it left one paralegal in the rear to support the garrison TDS mission. Once deployed, the OSJA discovered the deployed TDS office did not have sufficient paralegal support. Despite TDS being a corps mission, V Corps told the IAD OSJA to support the TDS office with a paralegal. The IAD OSJA did not have enough paralegals to provide a permanent TDS paralegal.

RECOMMENDATION: Improve. TDS offices should have their own Table of Distribution and Allowances (TDA) authorizations. In lieu of same, have Reserve Component (RC) paralegals assigned to TDS command. These paralegals should deploy with RC TDS attorneys.⁹⁶

ISSUE: Lack of TDS support

DECISION: The TDS offices at Camp Liberty did not have sufficient staffing for their workload. The attorneys were overworked and, as a result, often took an unreasonable amount of time to return packets. This understaffing also resulted in poor counseling for their clients. TDS attorneys were also often gone from the FOB to other destinations or training and unavailable to their clients.

RECOMMENDATION: Improve. The theater requires more TDS attorneys. A TDS attorney should be available to help clients in a deployed environment 24 hours a day. The Soldiers they are assisting have unpredictable availability and need seen when their missions dictate. Make an effort to ensure there are always defense attorneys available on the FOB. The bottom line is there is a need for more deployed TDS attorneys.⁹⁷

ISSUE: Lack of NCOs staffed in TDS offices

⁹⁴ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 11.

⁹⁵ IAD 2009 OIF AAR, *supra* note 28.

⁹⁶ *Id.*

⁹⁷ 4ID 2009 OIF AAR, *supra* note 4.

DECISION: Paralegal specialists in the rank of E-4 or below staffed the TDS offices on Camp Liberty. This caused problems because they did not have the knowledge or expertise to catch mistakes, nor did they understand how to manage logistics for their attorneys when they traveled off the FOB. Exasperating the paralegals lack of experience was the fact that they were primarily mobilized reservists with minimal active duty time. Place emphasis on the importance of the TDS mission and the appropriate training and level of staffing. In the absence of this, the criminal law NCOIC provided support to the TDS attorneys so they could achieve their mission.

RECOMMENDATION: Improve. Take great care in assigning trained, experienced, paralegals as the TDS NCOICs. Place emphasis on the importance of this position and the need for quality, high speed, NCOs to tackle this job.⁹⁸

ISSUE: Availability of TDS

DECISION: The field logistics of providing service members adequate one-on-one consultation time with TDS was challenging. For Article 15 cases, members viewed the TDS informational video and had an opportunity to call by phone a TDS lawyer. For cases dealing with more senior NCOs, with potential other than honorable (OTH) separations and courts-martial, efforts occurred to transfer the member from the field unit, allowing the member more opportunity to visit with a TDS lawyer in person.

RECOMMENDATION: Sustain. For most cases, especially Article 15 cases, a phone call is an adequate means of providing the member TDS support. However, TDS may insist on seeing the member in person for more serious cases. In such cases, make efforts to ensure the member receives adequate opportunities to meet with a TDS lawyer, either by a visit from the TDS lawyer or by sending the member to visit the lawyer.⁹⁹

ISSUE: TDS support

DECISION: One defense attorney covered three brigades located at different bases. This arrangement left Soldiers in situations where they had to wait for a considerable amount of time to see an attorney, if at all. Any illusions of making Article 15 processes swift disappeared quickly.

RECOMMENDATION: Improve TDS coverage for the maneuver units.¹⁰⁰

ISSUE: Lack of TDS support

DECISION: Often, TDS would not make themselves available to the Soldiers on FOB Kalsu, and it was extremely difficult to receive any TDS support. Many of the TDS attorneys were difficult to deal with, but unfortunately, you had no choice because you needed their services. Furthermore, on the rare occasion that TDS would travel to FOB Kalsu, the BCT legal NCOIC handled all logistics because TDS attorneys refused to take responsibility for their travel and accommodations.

⁹⁸ *Id.*

⁹⁹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 2.

¹⁰⁰ 3d Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – February 2009 (6 May 2009) (on file at CLAMO).

TIP OF THE SPEAR

RECOMMENDATION: The attitude of most (but not all) TDS personnel must change so that they realize that they are part of the solution, not the problem. The TDS office needs solid 27Ds who can handle logistics and have common sense. TDS attorneys need to have the autonomy to provide services to their clients without the permission of their Regional Defense Counsel (RDC).¹⁰¹

ISSUE: Access to TDS

DECISION: It was not feasible to have TDS personally initially counsel every Soldier facing non-judicial punishment.

RECOMMENDATION: The unit received permission to show the Article 15 counseling video at its location and provided the Soldier an opportunity and private location from which to consult with TDS telephonically following the video.¹⁰²

ISSUE: Request for additional paralegal support in capital cases

DECISION: TDS may request, and the judge may order, the provision of a dedicated paralegal for the TDS attorneys defending in a capital cases. If granted in one case, it is certain the request will follow for any other on-going cases.

RECOMMENDATION: Whenever possible, mobilize paralegal Soldiers to fill this role. Otherwise, these personnel will have to come out of hide for the unit.¹⁰³

ISSUE: TDS availability and support before deploying

DECISION: The biggest hurdle for the 50th IBCT in the administration of military justice was getting Soldiers counseled by TDS for Article 15s. TDS was located at the main post on Fort Bliss and they would only see Soldiers two days a week (Tuesday 0900 or Wednesday 1300). If soldiers were missing a document, TDS denied them a counseling session. This occurred even if the document was collateral to the Article 15 and did not impair upon the ability to give advice (i.e., flag for adverse action). On several occasions, the unit member accompanying the soldier offered to have the missing document faxed immediately. TDS still denied service to the Soldier. This caused the Soldiers to return a second day and miss additional training. If Soldiers were late for the start of the Article 15 counseling process (a short film), they were unable to see TDS counsel. An additional problem developed when charging several Soldiers with misconduct for the same event. TDS was only able to speak to one of the Soldiers, citing a conflict in advising the others. The unit received no guidance on how to arrange for alternate defense counsel. It seemed TDS had to deal with significant numbers. They either did not have enough time scheduled for Soldier counseling and/or did not have enough resources to keep up with the workflow. This resulted in a rigid posture, which turned Soldiers away. During the IBCT's last two weeks, TDS became flexible and accommodating, giving Soldiers priority in order to clear up matters before departure. These burdens caused needless problems for Soldiers, as well as unit officers or NCOs transporting soldiers, who had to take time away from training to visit TDS. It is important to note Camp McGregor is approximately 30-35 miles from Fort Bliss, and it is a

¹⁰¹ 4BCT, 3ID 2009 OIF AAR, *supra* note 71.

¹⁰² 1st Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – March 2009 (28 Apr. 2009) [hereinafter 1BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

¹⁰³ XVIII ABC 2009 OIF AAR, *supra* note 12.

burden on units undergoing training validation to deploy to transport soldiers to Fort Bliss for TDS counseling.

RECOMMENDATION: Make more TDS resources available to advise Soldiers from reserve units undergoing training. In addition, these Soldiers should be a priority for TDS counseling. A TDS counsel who could visit Camp McGregor at certain times would be a great improvement for units training for validation. Lastly, TDS packet requirements for Article 15 counseling should be standard, in writing, and made known to training units upon their arrival at the training site.¹⁰⁴

ISSUE: TDS Support

DECISION: The BCT received its TDS support from Balad, which was in the Multi-National Division – North (MND-N) AO, even though the BCT was in MND-S. It took a long time for Soldiers to get assigned counsel, delaying the processing and resolution of cases.

RECOMMENDATION: Improve. Additional TDS attorneys and paralegals should deploy to Iraq. There should be at least one TDS attorney and one paralegal per Multi-National Division.¹⁰⁵

ISSUE: Unrealistic expectations by TDS

DECISION: The Senior Defense Counsel (SDC) made unrealistic demands for moving accused personnel and witnesses for client counseling and case preparation. Often the SDC would ask for mass movements of accused personnel for Article 15 or court-martial counseling. Sometimes the SDC asked to have clients remain at Balad for up to two weeks to meet intermittently while their counsel handled other cases. On at least one occasion, a TDS attorney cancelled meetings with clients after the unit used ground movement to transport the client to the TDS attorney.

RECOMMENDATION: Improve. TDS needs to understand the logistical and safety issues with moving Soldiers and escorts throughout theater and plan their schedules accordingly. TDS should conduct more telephonic counseling and should consider traveling to meet their clients and witnesses.¹⁰⁶

OEF ISSUE: Lack of TDS coverage

DECISION: On occasion, all of the TDS attorneys on Bagram Airfield left at the same time. They attended conferences in Kuwait for a week at a time, leaving no TDS coverage. This was especially problematic when units leaving theater had pending actions requiring TDS support. Often, when Reserve or National Guard units left Afghanistan with incomplete actions, the actions never reached completion.

RECOMMENDATION: Improve. If TDS must attend conferences during deployment, they should go in shifts instead of leaving an entire airfield without TDS support.¹⁰⁷

¹⁰⁴ 50 IBCT (NJARNG) 2009 OIF AAR, *supra* note 51.

¹⁰⁵ 4th Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – June 2009 (14 Aug. 2009) [hereinafter 4-1 CAV 2009 OIF AAR] (on file at CLAMO).

¹⁰⁶ *Id.*

¹⁰⁷ 101st SUST BDE 2009 OEF AAR, *supra* note 58.

VI.H. Trial Logistics

OIF ISSUE: Determining whether to conduct courts-martial in a deployed environment

DECISION: The regiment conducted three courts-martial during the deployment, and brought the single contested court-martial into theater with them. The number of Soldiers involved in the court-martial determined whether to conduct it in Iraq or in garrison. If the number was high, holding it in Iraq was preferable.

RECOMMENDATION: Sustain. However, units considering whether to conduct courts-martial in a deployed environment should be aware the logistic burden of doing so is usually significant.¹⁰⁸

ISSUE: Logistic issues for consideration in conducting deployed courts-martial

DECISION: The key to supporting a court-martial was planning it far enough in advance. The JAs began holding meetings with their paralegals some weeks ahead. It was necessary to obtain country clearances for those visiting Iraq for the purpose of the court-martial. Witnesses came from other FOBs and contingency operating bases (COBs) within Iraq, but also from Germany and the United States. The regiment also brought in Criminal Investigative Division (CID) and TDS personnel. Escorts brought the accused from the confinement facility in Kuwait. Use of Military Airlift Command (MAC) flights avoided paying for commercial flights.

RECOMMENDATION: Sustain. Deploying legal teams should obtain as much contact information as possible from the redeploying units (e.g., for the confinement facility).¹⁰⁹

ISSUE: Responsibility for logistic issues arising from court-martial trials

DECISION: At some point in a military justice matter (e.g., Article 32 or court-martial), brigades hand off responsibility for the proceeding to division. This can result in confusion over responsibility for any associated logistic issues (e.g., out-of-country witnesses, security clearances, etc.). In some cases, the brigade assumes the division is handling matters, while the division assumes the brigade is doing so, creating a risk that neither will actually make the required arrangements.

RECOMMENDATION: Improve. Those involved in such a hand-off should confirm responsibility for logistic matters. In determining this, divisions should keep in mind that brigades often have the necessary personnel as well as a strong interest in looking after their own proceedings.¹¹⁰

ISSUE: Lack of theater-specific SOPs

DECISION: Everyone knows there are certain recurring logistical issues associated with military justice—moving witnesses in and out of theater, transferring cases, paying for experts, confining people. However, there is no permanently established way to do these things. It is discovery learning for every new unit.

¹⁰⁸ 2SCR 2009 OIF AAR, *supra* note 14.

¹⁰⁹ *Id.*

¹¹⁰ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 11.

RECOMMENDATION: Improve. The senior military justice shop in a theater should publish a detailed SOP via FRAGO as soon as possible, and modify it as conditions dictate, on how these things will occur in the specific theater. There is no reason why such an SOP should not exist in a mature theater.¹¹¹

ISSUE: Trials as a burden

DECISION: Commanders did not like the logistical load brought on by trials (or the loss of Soldiers available for the fight), therefore they did not forward many cases for court-martial. Their attitude remained consistent: mission first, misconduct second.

RECOMMENDATION: Acknowledge the environment you operate in, but do not allow major crimes to go unpunished. Tactfully impress upon your commanders the importance of maintaining discipline through appropriate general or special court-martial proceedings.¹¹²

ISSUE: Difficulty of trial logistics

DECISION: When the military justice NCOIC arrived in theater, his replacement left a specific SOP for managing trial logistics. However, because Soldiers rotated through Iraq on a constant basis, it became difficult to track the latest point of contact. The NCOIC had to forge relationships continually with new personnel to keep on top of things.

RECOMMENDATION: Sustain. Forge healthy relationships with those with whom you must work to manage the trial logistics. Leave a detailed and thorough SOP for your replacement. Ensure the SOP is complete with contact names, phone numbers, and email addresses.¹¹³

ISSUE: Court-martial coordination

DECISION: FOB Kalsu did not have a courtroom, so Victory Base Complex (VBC) in Baghdad held all courts-martial. Therefore, courts-martial personnel had to travel from FOB Kalsu to VBC. The NCOIC coordinated all logistics for the courts-martial including travel and lodging. Because the commanders were so accommodating, it was not necessary to cut a fragmentary order (FRAGO) for each court-martial.

RECOMMENDATION: Sustain if you have a competent NCOIC. If your commanders are cooperative, work through them to coordinate your witnesses. That way it was not necessary to cut a FRAGO.¹¹⁴

ISSUE: Logistical burden of courts-martial while deployed

DECISION: The trial counsel had to ensure commanders understood the additional cost in times of effort and personnel to conduct judicial proceedings in country. This allowed commanders to make a reasonable calculation as to what a case was “worth.”

¹¹¹ 1AD 2009 OIF AAR, *supra* note 28.

¹¹² 3ACR 2009 OIF AAR, *supra* note 40.

¹¹³ 4ID 2009 OIF AAR, *supra* note 4.

¹¹⁴ 4BCT, 3ID 2009 OIF AAR, *supra* note 71.

TIP OF THE SPEAR

RECOMMENDATION: Ensure commanders understand the increased burden to their unit at a time when the unit already has many competing demands. Otherwise, he commander may insist upon a disposition he or she may later come to regret.¹¹⁵

OEF ISSUE: Disposition of cases in theater

DECISION: There is pressure to dispose of all cases in theater. This appears to be the result of a desire to minimize the impact on the war-fighting units that would come after witnesses go home, a desire to save money, and a desire to have the perception the command is capable of taking care of all of its business in-theatre. These desires are understandable and, in a strictly academic sense, laudable. However, in practice, they frequently result in great injustice.

Without exception, the company, battalion, and brigade commanders for whom the BJA worked were left very dissatisfied with the results of this emphasis on prosecuting cases in theater. In several very serious cases, such involuntary manslaughter and possession of massive amounts of child pornography, the desire to prosecute in-theatre resulted in “selling the cases cheap” and failing to present compelling evidence because critical witnesses were not available to travel into Afghanistan. In these cases, the company, battalion, and brigade commanders actually recommended (strongly) the cases return to the states. The Combined Joint Task Force (CJTF) disagreed. The lower level commanders were extraordinarily dissatisfied with the results in both cases.

RECOMMENDATION: Examine the institutional emphasis on “trying cases forward” that exists in the JAG Corps. Serious cases should receive the attention and funding they deserve. The pressure to sell cases cheap when they are tried in-theatre does not serve the military justice system. Rear detachment OSJA’s should be robust enough to accept and try cases sent back for serious attention.¹¹⁶

ISSUE: Setting deadlines for beginning legal actions

DECISION: Since many units were non-organic to the brigade, subordinate units were constantly entering and leaving theater. This often made it difficult to complete both administrative and court martial actions. It was onerous to track who was leaving on what date and what actions were still open. Units often left theater with incomplete actions or had to leave personnel behind to complete an action.

RECOMMENDATION: Improve. Set timeframes in a FRAGO that delineate the latest date before departure from theater an action can begin. Units must then delay all actions falling after that date until they return to their home station.¹¹⁷

¹¹⁵ 1BCT, 4ID 2009 OIF AAR, *supra* note 102.

¹¹⁶ 420th Engineer Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, May 2008 – March 2009 (13 May 09) [hereinafter 420th EN BDE 2009 OER AAR] (on file at CLAMO).

¹¹⁷ 101st Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, December 2007 – December 2008 (13 May 2009) [hereinafter 101st CAB 2009 OEF AAR] (on file at CLAMO).

Courtroom Infrastructure

ISSUE: Courtroom infrastructure

DECISION: The “court shack” located on Contingency Operating Base (COB) Speicher lacked the minimal infrastructure (i.e. phones and internet access) necessary to allow visiting military judges to work. The unit secured the funding necessary to equip its “court shack” with phones and internet access.

RECOMMENDATION: Sustain. Evaluate the court facilities immediately upon arrival, as securing funding and executing needed improvements can take some time.¹¹⁸

ISSUE: Court reporter facilities and resources

DECISION: The court reporter’s workstation was in a high traffic area, which presented many distractions.

RECOMMENDATION: Improve. Place the court reporter’s workstation in a less heavily traveled area and ensure the court reporter has the necessary equipment and programs before deploying.¹¹⁹

ISSUE: Utilization of video teleconference (VTC) for Article 39a sessions

DECISION: The new rules allowing for Article 39a sessions by VTC were a huge benefit in a deployed environment both administratively and fiscally.

RECOMMENDATION: Sustain. Continue to utilize this new authority.¹²⁰

ISSUE: Lack of facilities needed to conduct courts-martial

DECISION: The forward operating base (FOB) lacked the facilities needed to conduct courts-martial. The unit secured the funding necessary to build a makeshift courtroom facility on the FOB. The cost and quality of construction for the courtroom was minimal, but adequate for conducting courts-martial. The BJA obtained judicial support for the courtroom before construction, helping to manage judicial expectations in the deployment environment.

RECOMMENDATION: Sustain. Continue to seek ways of keeping military justice relevant and accessible in the deployed environment.¹²¹

ISSUE: Telephonic testimony

DECISION: The use of telephonic testimony required the use of calling cards and knowledge of the dialing procedures for reaching witnesses in the United States.

¹¹⁸ 1AD 2009 OIF AAR, *supra* note 28.

¹¹⁹ *Id.*

¹²⁰ 1 MEF (FWD) 2009 OIF AAR, *supra* note 25.

¹²¹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 2.

TIP OF THE SPEAR

RECOMMENDATION: Trial counsels should test the equipment and their calling cards before the court-martial. The OSJA or BCT should purchase calling cards for use during courts-martial and Article 32 hearings rather than have the trial counsel use his or her personal calling card.¹²²

OEF ISSUE: Need for a dedicated courtroom

DECISION: There was no dedicated courtroom on Bagram Airfield (BAF). Instead, a small conference room was set up for each court-martial. This required frequently tearing down and setting up the court-martial equipment. Consequently, the equipment did not always function properly.

RECOMMENDATION: Improve. A dedicated courtroom is necessary to an efficient court-martial process.¹²³

ISSUE: Lack of dedicated courtroom

DECISION: Bagram Airfield (BAF) lacked a dedicated courtroom building. The military justice section typically had to coordinate through BASEOPS to get a building for courts-martial. However, on several occasions, BASEOPS withdrew their authorization to use a particular building for courts-martial because they wanted to use it for other purposes. Even when division issued a FRAGO tasking BASEOPS to provide a building for the courtroom, the unit balked. On other occasions, the division coordinated to use the CG's "Jirga Center" for courts-martial, but they were subject to the good graces of nearby units for panel deliberation rooms, witness holding areas, and other court-martial facility requirements.

RECOMMENDATION: Improve. The process has begun to construct a dedicated courtroom on BAF. Military justice personnel should continue to ensure the new facility meets all of the requirements for a court-martial.¹²⁴

Panel Selection

OIF ISSUE: Panel pool for capital cases in the rear

DECISION: The panel pool from which to draw was very small due to the number of deployed personnel.

RECOMMENDATION: Remain cognizant of the ability to draw from elsewhere on post for these panels. While outside the typical unit pool, it can occur if considered ahead of time.¹²⁵

ISSUE: MNC-I panel selection process

DECISION: Establishing a General Court Martial (GCM) panel in a deployed environment is challenging due to re-deployments and competing manpower priorities.

RECOMMENDATION: Establish a panel immediately upon arriving to theater and work closely with the G-1 to ensure re-deployment dates will allow the panel to stand for a sufficient period.¹²⁶

¹²² 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹²³ 101st CAB 2009 OEF AAR, *supra* note 117.

¹²⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

¹²⁵ XVIII ABC 2009 OIF AAR, *supra* note 12.

¹²⁶ *Id.*

ISSUE: Panel selection

DECISION: MND-C needed to select three or four different court-martial panels during their deployment because the units changed out so often. For the first panel selection, the chief of justice sent out an advance notice to the BJAs via email and followed it up with the formal tasking requirement to submit panel nominees. This worked well the first time, but for the remaining panel selections, the chief of justice had to rely on the orders process to get the BCTs to comply.

RECOMMENDATION: Use the orders process for panel selection.¹²⁷

ISSUE: Panel member excusals

DECISION: The SJA had authority to approve panel member excusal requests based on leave or temporary duty (TDY). The military justice section maintained a chart of the leave dates for panel members. Although many panel members attempted to get excusals, citing their units' operational tempo, most declined to submit a formal excusal once they found out it would have to go to the CG for approval.

RECOMMENDATION: Sustain.¹²⁸

OEF ISSUE: Panel selection

DECISION: The CJTF-101 CG selected only Army personnel to sit on court-martial panels.

RECOMMENDATION: Sustain. If you are not practicing joint military justice, there is no need to include panel members from other services.¹²⁹

Movement of Court-Martial Personnel

OIF ISSUE: Movement of panel members

DECISION: The unit struggled with convening courts-martial member trials when scheduled to occur. Specifically, many members were located in remote areas of the jurisdiction. This made travel to COB Speicher for courts-martial trials difficult.

RECOMMENDATION: Improve.¹³⁰

ISSUE: Air travel in theater for witnesses and judges

DECISION: Air travel in theater is challenging. Often, witnesses and judges had difficulty traveling. Being "bumped" from flights into Baghdad occurred frequently. In order to assist with travel, the Commanding General, MNC-I signed a standing "priority memo." The memo to the air officers responsible for prioritizing flights made it clear witnesses and judges were a high priority for travel.

¹²⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹²⁸ *Id.*

¹²⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

¹³⁰ 1AD 2009 OIF AAR, *supra* note 28.

TIP OF THE SPEAR

RECOMMENDATION: Maintain the “priority memo.”¹³¹

ISSUE: Coordinating movement of witnesses, panel members, and counsel

DECISION: The MND-C OSJA handled all coordination from Camp Victory for the movement of witnesses, panel members, and counsel within Iraq for courts-martial. Although the original intent was for the BCTs to be in charge of trial logistics for their cases, in most cases they were too busy to do so. In other cases, the BCTs declined to help, saying the case belonged to the division once the CG referred it for court-martial. Making these travel arrangements from Camp Victory was difficult. Although the MNC-I Commander had issued a policy memorandum giving court-martial personnel priority for air travel, the Air Force personnel at the airfield terminals often ignored this policy. The Chief of Justice made it a practice to provide witnesses and panel members at least seven days advance notice of the court-martial dates so they would have adequate time to get to Camp Victory. In addition, he always informed the BJA and brigade trial counsel of the travel arrangements so they could facilitate the process from their end.

RECOMMENDATION: Sustain. Incorporate a section on trial logistics into the military justice SOP so all parties understand their responsibilities in the process.¹³²

ISSUE: Requests to send witnesses back to CONUS for courts-martial

DECISION: The BCT received numerous untimely requests to send BCT Soldiers back to CONUS for courts-martial.

RECOMMENDATION: Improve. Units requesting deployed witnesses to travel back to CONUS for trial must initiate the process early, starting with a warning order to the forward unit indicating the trial date and the justification for the witnesses. The requesting unit must produce the travel orders for the Soldier to travel at least two weeks before the court-martial.¹³³

OEF ISSUE: Witness movement

DECISION: Due to the enormous size of the jurisdiction and the unreliability of travel in a rugged, mountainous combat zone, the unit found bringing witnesses and other trial participants to BAF for courts-martial challenging. The unit began scheduling witness travel as far in advance as possible, but relied too much on bartering to get court-martial personnel on particular flights.

RECOMMENDATION: Improve. CJTF-101 should issue a policy giving witnesses, panel members, and counsel priority for air movement during courts-martial trial terms. The military justice section should arrange to bring witnesses from within theater to BAF at least three days before trial. The lead time should be longer for witnesses coming from outside Afghanistan.¹³⁴

ISSUE: Billeting for judges and witnesses

DECISION: There was a shortage of billeting spaces available at BAF, especially during the transition of authority (TOA) period. On one occasion, accused and the trial counsel ended up in

¹³¹ XVIII ABC 2009 OIF AAR, *supra* note 12.

¹³² 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹³³ 4-1 CAV 2009 OIF AAR, *supra* note 105.

¹³⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

the same billeting hut. On another occasion, when there was no space available for the judge, the judge had to share a room with the unit's RoL attorney.

RECOMMENDATION: Improve. The military justice section should alert BASEOPS as far in advance as possible as to particular billeting needs. CJTF-101 should look into the possibility of constructing dedicated billeting areas near the new courtroom for court-martial personnel traveling from outside BAF.¹³⁵

Civilian Counsel & Civilian Witnesses

OIF **ISSUE: Bringing a non-U.S. citizen into Iraq for a court-martial**

DECISION: The unit had to bring into theater the sister of a Soldier of Mexican nationality as a witness in a military justice case. Due to the witness' citizenship, Kuwait would not allow the witness to travel through Kuwait. Ultimately, the witness had to turn around and fly back home. This was a huge waste of military resources, the witness' time and efforts, and was detrimental to the court-martial.

RECOMMENDATION: Improve. It is crucial to determine what documentation Kuwait requires to allow non-US citizens to pass through their country. Before travel, the JA should review these requirements and ensure that the witness has all necessary documentation.¹³⁶

ISSUE: Civilian defense counsel

DECISION: The NCOIC brought five civilian attorneys into Iraq during his deployment and found that many logistical hurdles needed clearing before receiving approval for their arrival. The NCOIC had to coordinate with Mr. Mayfield at Office of the Judge Advocate General (OTJAG), the rear detachment G2, and CENTCOM for country clearances, as well as the Kuwait liaison officer (LNO). Once in Kuwait, the LNO helped the civilians get their body armor and flights to Iraq. Once in Iraq, the NCOIC had to handle all logistic support, including transportation and lodging. The process for obtaining an interim secret clearance for civilian defense counsel was also unclear.

RECOMMENDATION: Improve. It would be helpful to have a SOP setting out how to bring such individuals into country, and who is responsible for them once they arrive, as well as the procedure for obtaining an interim secret clearance. Although the NCOIC was able to figure out this process and find the necessary POCs, it would have been helpful to receive the SOP from the previous unit. Units that do not receive an existing SOP upon arrival should seek out this information as soon as possible in order to develop their own SOP.¹³⁷

ISSUE: Theatre clearances for civilian defense counsel

DECISION: MNC-I (XVIII Airborne Corps) initially took the lead in securing the clearances. However, after the XVIII Airborne Corps left, MNC-I placed the onus back upon the division and its subordinate units. This reversal placed extra work on the division and brigade JAG offices.

¹³⁵ *Id.*

¹³⁶ 3ID 2008 OIF AAR, *supra* note 15.

¹³⁷ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 11.

TIP OF THE SPEAR

RECOMMENDATION: Improve. The higher headquarters should establish an SOP detailing how to obtain these clearances.¹³⁸

ISSUE: Witness production

DECISION: Requesting witnesses from the Continental United States (CONUS) or from Iraq and arranging travel proved to be extremely difficult. The TDS lawyers often placed requests for production of witnesses very close to scheduled trial dates.

RECOMMENDATION: Improve. Require TDS lawyers to place witness requests as far out as possible from trial.¹³⁹

ISSUE: Lack of training regarding witness production

DECISION: The Soldiers tasked with coordinating witness production for courts-martial cases did not receive adequate instruction on the process for arranging witness travel to Germany. The Soldiers had to teach themselves as they went along.¹⁴⁰

RECOMMENDATION: Improve. Hire a civilian to serve as the central witness production coordinator. If this is not feasible, create thorough SOP explaining the steps for producing witnesses.

ISSUE: Civilian witnesses

DECISION: Civilian witnesses would often not appear to testify at trials. The brigade would either proceed with the case without the witness in question or attempt to locate someone or something that could replace the threatened evidence.

RECOMMENDATION: Sustain. Witness availability will always be a challenge in the deployed environment. Work these issues on a case-by-case basis.¹⁴¹

ISSUE: Use of pretrial agreements to limit civilian witnesses from outside Iraq

DECISION: For guilty pleas, terms requiring the waiver of appearance of civilian sentencing witnesses by the accused in the pretrial agreement were non-negotiable. Because the 10th Mountain Division held only fourteen guilty pleas and no contested courts-martial, they never actually had to bring in a civilian witness from outside Iraq.

RECOMMENDATION: Sustain.¹⁴²

OEF ISSUE: Travel and logistics for civilian defense counsel into theater

DECISION: The accused is responsible for paying the cost to transport civilian defense counsel into theater. The government coordinates all logistical support and clearances.

¹³⁸ 1AD 2009 OIF AAR, *supra* note 28.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 2.

¹⁴² 10th MTN DIV 2009 OIF AAR, *supra* note 5.

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RECOMMENDATION: Improve. Calculate, document, and record the cost to bring the civilian defense counsel into theater. Ensure the trial defense counsel knows the costs.¹⁴³

ISSUE: Civilian travel into theater

DECISION: Arranging travel for civilian witnesses and defense counsel into theater was very problematic. Civilians must have a passport, country clearance, visa, interceptor body armor (IBA), Kevlar helmet, and a DoD identification card before traveling to Afghanistan for trial. The unit learned the requirements through trial and error. In one case, a civilian witness was unable to board the aircraft leaving Kuwait because of the lack of a DoD ID card. Once the military justice section learned the process, they incorporated it into their military justice SOP.

RECOMMENDATION: Improve. Start the process for civilian witnesses at least 45 days before trial. The military justice NCOIC must be an expert on this process. Maximize the use of VTC capabilities, including expanded authorities based on new HD VTC capabilities. This will not only save much time and money, it will be far less disruptive to units and will save lives by eliminating unnecessary combat zone travel.¹⁴⁴

ISSUE: Civilian expert witnesses

DECISION: Arranging for expert witnesses to participate in courts-martial held in theater was a difficult and time-consuming process. In addition to the normal requirements for a civilian to enter Afghanistan, the unit also needed to ensure the contracting office drafted the appropriate contract for the expert witness. The military justice section typically used the CG memorandum approving the expert witness request to develop the statement of work for the contract.

RECOMMENDATION: Improve. Begin the process for expert witnesses at least 60 days before the court-martial. The contract for expert services should avoid using exact dates of performance, as travel delays and other factors can cause the court-martial date to shift. The military justice section should ensure the expert does not perform any work until both sides sign the contract.¹⁴⁵

ISSUE: Civilian defense counsel expenses

DECISION: The travel of civilian defense counsel into theater is at no expense to the government. Therefore, the military justice section needed to coordinate with G8 to establish procedures for civilian counsel to compensate the United States Government for any food, billeting, and travel provided while in theater. Someone had to collect the sign-in sheet from the dining facility to document civilian counsels' meals. Upon departure from theater, the unit presented the civilian defense counsel with a bill for those amenities.

RECOMMENDATION: Improve. These procedures need to be in the military justice SOP.¹⁴⁶

Capital Litigation

OIF ISSUE: Capital litigation

¹⁴³ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 57.

¹⁴⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

TIP OF THE SPEAR

DECISION: The unit had three capital cases occurring at the same time in the rear detachment. The unit created a capital litigation section to focus exclusively on these very resource-intensive actions.

RECOMMENDATION: Units must take a hard look at these cases with an eye towards determining whether they truly must be capital cases. In cases where it is necessary they be so, the JAG Corps needs to take a more centralized approach. By either expanding the Trial Counsel Assistance Program (TCAP) or using the Special Victim Prosecutors, a truly experienced and expert team should try these types of cases.¹⁴⁷

ISSUE: Logistics associated with capital litigation

DECISION: These cases required two to three hundred witnesses each and all of the management and fiscal requirements that entailed. It was not the environment for a junior or inexperienced legal administrator, especially without a very senior command paralegal to assist.

RECOMMENDATION: Consider carefully who is going to fill the rear detachment warrant officer billet. If you do not have any one warrant officer with sufficient experience to do it alone, consider using two instead. If you have a master sergeant paralegal, consider leaving him or her back and be vocal about the need for one if you do not have one.¹⁴⁸

ISSUE: Capital litigation support

DECISION: The sheer volume of logistics involved in moving that number of witnesses and the associated paperwork and personnel actions will overwhelm a legal office. It requires the use of outside assets to accomplish the necessary tasks.

RECOMMENDATION: Use the tasking mechanisms already present in the unit. Go to the tasking section of the G-3 and have an order cut directing units to support the effort in specific ways.¹⁴⁹

ISSUE: Monitoring workload of trial counsel who is trying a capital case

DECISION: Trying a capital case brings stress to bear upon the trial counsel that is orders of magnitude above what is typical for a court-martial action. It can be a very, very pressure-filled and frustrating experience.

RECOMMENDATION: Carefully monitor the personnel involved in these cases. As these cases are very long-term actions, be alert for signs of burnout and frustration. If necessary, be prepared to move counsel to other duties, even ahead of the completion of the case. This does not indicate failure on their part. It is recognition of the stress involved in trying these types of cases, especially for inexperienced counsel.¹⁵⁰

¹⁴⁷ XVIII ABC 2009 OIF AAR, *supra* note 12.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

Confinement

OIF ISSUE: Confinement due to summary court-martial sentence

DECISION: It was a huge aggravation to the commander to send a Soldier into confinement as the result of a summary court-martial sentence. The confinement facility was located in Kuwait and required two escorts. This often left the escorts away from their mission for over a week.

RECOMMENDATION: Sending a Soldier into confinement required a lot of extra work and time constraints for both the commander and the legal shop. Hard labor is a suitable substitution for confinement. However, you must take care that your BCT commander does not influence the summary court-martial officer or dictate the punishment for a summary court-martial.¹⁵¹

ISSUE: Confinement orders

DECISION: Confinement facilities refused to accept Soldiers without an original signed confinement order. This required division Soldiers to travel unnecessarily to the confinement facilities to deliver the original confinement order.

RECOMMENDATION: Improve. Change the regulation to allow for digital signatures and/or scanned copies of the original confinement order.¹⁵²

ISSUE: Maintaining good contacts at the Kuwait confinement facility

DECISION: When the division arrived in theater, their predecessors gave them a decent SOP on how to place a Soldier into pre-trial confinement. The SOP contained contact information for Navy personnel who ran the confinement facility. Unfortunately, Navy personnel switched out quite frequently, making it difficult to keep track of the correct contact information. To solve this issue, a criminal law NCO traveled to Kuwait to meet everyone at the confinement facility personally and figure out the continuity piece.

RECOMMENDATION: Sustain. Although it is not always possible, send one of your NCOs to the confinement facility a couple of times during your deployment to maintain a solid list of contacts.¹⁵³

ISSUE: Confinement facility procedures

DECISION: In several instances, the confinement facility in Kuwait refused to in-process confinees because the escorts did not arrive with the required documentation.

RECOMMENDATION: The chief of military justice should obtain a copy of the confinement facility procedures before deployment and push this out to all BJAs.¹⁵⁴

OEF ISSUE: Post-trial confinement paperwork

¹⁵¹ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 17.

¹⁵² 1AD 2009 OIF AAR, *supra* note 28.

¹⁵³ 4th 4ID 2009 OIF AAR, *supra* note 4.

¹⁵⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

TIP OF THE SPEAR

DECISION: Because the nearest authorized confinement facility available was in Kuwait, the unit found it very difficult to arrange for post-trial confinement while in theater. The unit discovered this was primarily due to not having access to the confinement facilities' SOP and pertinent regulations. The unit had to contact the confinement facility on multiple occasions before obtaining the needed references and information regarding points of contact to arrange for confinement. Once they obtained this information, the unit included it along with templates of the required paperwork in its military justice SOP.

RECOMMENDATION: Sustain. Continue to update the SOP with the requisite references, paperwork, and contact information to arrange for confinement.¹⁵⁵

ISSUE: Confinement extensions in Kuwait facility

DECISION: In general, the limit on sentences for post-trial confinees to get to the confinement facility in Kuwait was thirty days. However, the confinement facility policy allowed exceptions for good cause. In numerous courts-martial in Afghanistan, the accused received 60-90 days of confinement with no punitive discharge. CJTF-101 sought exceptions for extended confinement in Kuwait to prevent these convicted Soldiers from having to go to confinement facilities in CONUS and to avoid the rear detachment having to process them once their confinement ended. Once the military justice section figured out the proper procedures for extensions on the confinement limit for Kuwait, they included the procedures, as well as sample documents and points of contact, in the military justice SOP.

RECOMMENDATION: Sustain.¹⁵⁶

Post-Trial Processing

OIF ISSUE: Records of Trial (ROTs)

DECISION: The Government lacked adequate equipment to produce ROTs quickly. This forced the division to try numerous approaches. These included sending transcripts back to the rear detachment, seeking assistance from Defense Automated Printing Service (DAPS) in Germany, and a combination of other approaches.

RECOMMENDATION: Improve. Deploy with a stand-alone printer and sufficient toner to produce ROTs.¹⁵⁷

ISSUE: Use of substitute service provisions during post-trial procedures

DECISION: After consulting with the Criminal Law Department at The Judge Advocate General's Legal Center and School (TJAGLCS), the Chief of Justice implemented a practice of substitute service of the record of trial (ROT) under Rule for Court-Martial (RCM) 1104(b)(C). For guilty pleas, the chief of justice also ensured a waiver of personal service was a term of the pretrial agreement. Before implementing this practice, it often took over thirty days to mail the ROT to accused confined in Kuwait and to receive back the return receipt. Under the new practice, the military justice section served the ROT on the defense counsel. This practice reduced post-trial processing time significantly.

¹⁵⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

¹⁵⁶ *Id.*

¹⁵⁷ 1AD 2009 OIF AAR, *supra* note 28.

RECOMMENDATION: Sustain. At least one military judge commented this was a good practice.¹⁵⁸

OEF ISSUE: **Post-trial processing**

DECISION: Post trial processing is a difficult task that is especially challenging in Afghanistan. The division had significant issues with post-trial processing due both to the inexperience of military justice personnel and the departure of units from theater. One BCT conducted several courts-martial right before redeployment. It became a challenge to get the record of trial (ROT) to the counsel and accused. Moreover, with frequent RIP/TOAs, it is essential to ensure that the proper commander signs each action at every stage.

RECOMMENDATION: Improve. In addition to ensuring division military justice personnel receive training in post-trial procedures, the division needs a good post-trial SOP. In addition, at the time of referral, the Chief of Military Justice should provide trial counsels with a checklist of post-trial requirements and timelines.¹⁵⁹

VI.I. Urinalysis Program

OIF ISSUE: **Running the program in country**

DECISION: Urinalysis is broken in theater. Units are deploying without sufficient resources (coordinators, bottles, etc.) to conduct urinalysis in theater. Presence of drugs in theater is on the rise.

RECOMMENDATION: Improve. In order to have an efficient program, units must arrange for resources.¹⁶⁰

ISSUE: **Conducting urinalysis tests in Iraq**

DECISION: The BCT continued testing while deployed. The command conducted the required 10% testing but also tested everyone upon their return from leave.

RECOMMENDATION: Continue the testing while deployed.¹⁶¹

ISSUE: **Establishing drug-testing policy**

DECISION: Some units wanted to test everyone returning from leave. Other units simply wanted to test specific individuals (one unit tried this tactic several times in a row). Universal testing is not a problem, and might have a deterrent effect (and some units have the same policy in garrison, testing all Soldiers returning from leave).

RECOMMENDATION: Improve. The command should set out its leave testing policy in a policy letter so any reliance upon such testing is clearly not arbitrary.¹⁶²

¹⁵⁸ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹⁵⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

¹⁶⁰ RCT-5 2008 OIF AAR, *supra* note 22.

¹⁶¹ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 17.

¹⁶² 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 11.

TIP OF THE SPEAR

OEF ISSUE: Urinalysis program in theater

DECISION: Test results normally take three to five months and are difficult to obtain. The chain-of-custody for the sample is difficult to maintain. Specifically, transportation and delivery of the samples to the lab is difficult and time consuming.

RECOMMENDATION: Improve. A urinalysis program is difficult to maintain while in theater. Establish procedures to operate an effective urinalysis program before deployment. Focus on collection, chain-of-custody and reporting.¹⁶³

ISSUE: Sample storage

DECISION: Samples became lost or unusable because the Post Office on the FOB did not have secure storage to hold samples for shipment to lab.

RECOMMENDATION: Ensure postal operations include capability to support a urinalysis program.¹⁶⁴

ISSUE: Application of urinalysis program to other services

DECISION: A CJTF-101 FRAGO directed monthly 10% urinalysis in accordance with Army Regulation (AR) 600-85, The Army Substance Abuse Program. Some subordinate Air Force units initially balked at the requirement applying to their service, but when these units raised the issue through the Air Force channels, their higher headquarters asked why they would not want to conduct urinalyses of their units. The Air Force units ultimately complied with the FRAGO.

RECOMMENDATION: Improve. We must think and act more jointly. When drafting the CJTF-101 urinalysis policy, research the other services requirements and obtain buy-in from those services' higher headquarters. (Note that AR 600-85, dated 2 February 2009, now directs battalion commanders to test 4% on their unit on a weekly basis).¹⁶⁵

VI.J. Victim Witness Liaison Program

No AAR comments.

VI.K. Miscellaneous Military Justice Topics

OIF ISSUE: Use of R&R-bound Soldiers as escorts for Soldiers departing theater

DECISION: When escorts were required for Soldiers departing theater, the regiment never sent Soldiers out of theater for the sole purpose of escort duty. For example, the unit put one Soldier for whom there was an arrest warrant in Texas on a Dallas rest and recuperation (R&R) flight. Rear detachment personnel picked him up at the Dallas airport. The unit assessed the risk of escape during travel to be minimal.

¹⁶³ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 57.

¹⁶⁴ 420th EN BDE 2009 OER AAR, *supra* note 116.

¹⁶⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

RECOMMENDATION: Sustain.¹⁶⁶

ISSUE: Military justice duties at the Marine battalion level

DISCUSSION: Upon attachment to the battalion, the BN JA functioned as a de facto legal officer coordinating all administrative separations and military justice issues. While he was happy to do this as a way of being a force multiplier for the adjutant, it did blur his focus as the RoL specialist. The corporal and lance corporal assigned to assist the BN JA with DetOps doubled as legal clerks. Military justice in Iraq was difficult due to the limited capabilities of the Legal Services Support Team (LSST). Their defense counsel were frequently conflicted out of cases or unavailable. Likewise, military judges were at a premium. As a result, there were few options for case dispositions.

RECOMMENDATION: Advise battalion commanders prior to employment, of the limitations of military justice support (unless the MEF-level command will offer more robust support). Ideally, the BN JA should provide advice and oversight to the BN adjutant in his role as Legal Officer. However, it is likely that most BN JAs will assume these duties as “the lawyer.”¹⁶⁷

ISSUE: Number of courts-martial

DECISION: Mid-way through the deployment, the SJA of the division called a special “Breeze session” (internet chat) to confess he expected to see more courts-martial cases making their way through the military justice system.

RECOMMENDATION: Try the cases you can, but do not stretch cases unworthy of trial. Encourage anxious commanders about the court-martial process in theater and inform the technical chain of command about any new or noteworthy cases. There are no blotters downrange, so make an affirmative effort to capture the crime in your area of operations (AO).¹⁶⁸

ISSUE: Military justice workload at the BCT level

DECISION: The Stryker Brigade Combat Team (SBCT) JA office handled 227 Article 15s, 11 administrative separations, 1 General Court-Martial, 1 Special Court-Martial, and 7 Summary Courts-Martial.

RECOMMENDATION: The combination of legal assistance, military justice, detention operations, claims, and fiscal law made it critical to have a third attorney at the BCT.¹⁶⁹

ISSUE: Amount of military justice work

DECISION: The TC spent perhaps 10% of his time on military justice.

RECOMMENDATION: Military justice will not be the resource and time consumer it is in the garrison environment.¹⁷⁰

¹⁶⁶ 2SCR 2009 OIF AAR, *supra* note 14.

¹⁶⁷ 2d Battalion, 2d Marines, Battalion Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – November 2008 (18 Dec. 2008) (on file at CLAMO).

¹⁶⁸ 3ACR 2009 OIF AAR, *supra* note 40.

¹⁶⁹ 2SBCT, 25ID 2009 OIF AAR, *supra* note 26.

¹⁷⁰ 1BCT, 4ID 2009 OIF AAR, *supra* note 102.

TIP OF THE SPEAR

ISSUE: Military justice staffing

DECISION: The forward unit had three trial counsels, a chief of military justice, an NCOIC, a pre-trial NCO, and a post-trial NCO. All of the separate brigades had their own trial counsels.

RECOMMENDATION: This staffing was sufficient to cover the military justice requirements forward.¹⁷¹

ISSUE: Criminal investigation division (CID) support

DECISION: CID rarely departed their forward operating base (FOB), and they balked at direction to investigate cases outside of the CID “comfort zone.” The Regimental Judge Advocate (RJA) made an effort to solve the problem by meeting with the CID battalion commander, but made no headway in the end.

RECOMMENDATION: Do not count on CID support for crimes not reported to the upper echelons of the command. With this in mind, initiate Army Regulation (AR) 15-6 investigations, commander’s inquiries, and other examinations promptly to ensure prosecution of offenses not rising to CID’s level of interest.¹⁷²

ISSUE: Gauging the convening authority’s notions for case disposition

DECISION: Sending a BDE into theater to work for a non-parent division made gauging the new convening authority’s notions for case disposition difficult. The BJA and TC took the time to try to get to know the convening authority in order to better understand and anticipate what recommendations for case disposition he/she would support.

RECOMMENDATION: Improve. Closer working ties with the Chief of Military Justice at the division level can assist the BJA in seeking resolutions to pending cases.¹⁷³

ISSUE: Soldier counseling

DECISION: MND-C experienced numerous instances of Soldiers pointing their weapons at their NCOs during counseling sessions, including one such instance resulting in a murder. In response, the OSJA spurred the BCTs to change their policies on how to conduct Soldier counseling, requiring two NCOs to be present and to take away the Soldier’s weapon before starting the counseling session.

RECOMMENDATION: Sustain.¹⁷⁴

ISSUE: Dissemination of military justice policies and reporting requirements

DECISION: Initially, the chief of justice issued military justice policies and reporting requirements via memoranda and policy letters. However, subordinate BCTs often ignored this guidance, prompting the OSJA to incorporate legal guidance in FRAGOs for the remainder of the deployment. Nonetheless, some BCTs still disregarded reporting requirements, likely out of

¹⁷¹ XVIII ABC 2009 OIF AAR, *supra* note 12.

¹⁷² 3ACR 2009 OIF AAR, *supra* note 40.

¹⁷³ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 2.

¹⁷⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

concern the division would interfere in their business if the BCT reported certain cases of misconduct. Because of a strong relationship between the division trial counsel and the brigade trial counsels, the division would often become aware of reportable misconduct the BCTs failed to report. Due to the pattern of BCTs ignoring division directives, the division commanding general (CG) had to go as far as re-emphasizing to the BCTs their obligation to comply with FRAGOs.

RECOMMENDATION: Improve. The division OSJA should disseminate legal guidance and reporting requirements using the orders process from the beginning of the deployment.¹⁷⁵

ISSUE: Relationship with non-organic BCTs

DECISION: Upon arrival to the MND-C area of operations, the division chief of justice sent out an introductory email to all of the BJAs, followed by an individual phone call to each of the BJAs. Rather than asserting the authority of the division headquarters right away, the chief of justice stressed the division OSJA was there to support the BCTs. Before changing any of the military justice policies of the outgoing division, the chief of justice solicited feedback on new policies from the BJAs, though none of the BJAs ultimately gave any feedback. Although face-to-face introductions by the chief of justice were not practicable right away, the division paralegals were able to visit the BCTs periodically. With respect to the disposition of misconduct, the division deferred to what the BCTs wanted unless it was clearly inappropriate.

RECOMMENDATION: Sustain. Division chiefs of justice should anticipate potential tensions with non-organic BCTs.¹⁷⁶

OEF ISSUE: Prosecuting detainee abuse cases

DECISION: Article 92 (Orders Violation) and/or Article 128 (Assault) of the Uniform Code of Military Justice (UCMJ) were the two articles used to charge an accused with detainee abuse.

RECOMMENDATION: Improve. Update the UCMJ to include an Article 134 offense that covers the breadth of detainee abuse issues.¹⁷⁷

ISSUE: Workload shift when deployed

DECISION: In garrison, criminal law is absolutely the number one priority. Once deployed, it became the fifth priority behind DetOps, OpLaw, RoL, and investigations. However, although it is no longer the top priority, the requirements do not change for actions, post-trial processing, etc.

RECOMMENDATION: You have to triage criminal law processing, and adjust pre-trial agreement terms to encourage more deals. The expectation that you will be able to try as many contested cases to the same standard you can in garrison is unrealistic.¹⁷⁸

ISSUE: Decrease in the authority of the chief of justice (COJ)

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 57.

¹⁷⁸ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 6.

TIP OF THE SPEAR

DECISION: The appointment of special victim prosecutors who may be senior to the COJ, coupled with the fact the COJ is not in the rating chain of the trial counsels, has diminished the authority of the position.

RECOMMENDATION: Improve. This is especially problematic in an era when our expertise in our core competency of military justice is suffering.¹⁷⁹

ISSUE: Competence of brigade trial counsels

DECISION: A by-product of the BCT structure is a lack of military justice mentorship and training for new BCT trial counsels.

RECOMMENDATION: Improve. In addition to the new policy placing BCT trial counsels at division when in garrison, the JAG Corps should consider having the chief of military justice rate the trial counsels and have the BJA serve as the intermediate rater. This would make the BCT trial counsel more responsive to the leadership and mentorship of the chief of military justice.¹⁸⁰

ISSUE: Qualifications of CJTF-101 military justice personnel

DECISION: Personnel filling key Criminal Law billets in joint OSJA must have sufficient experience—including military justice experience—to provide adequate advice and assistance to BCT-level trial counsel.

RECOMMENDATION: Improve. It is critical for the CJTF-101 military justice personnel to understand post-trial procedures, as errors in post-trial processing can lead to the overturning of cases on appeal. Furthermore, subordinate unit trial counsels will not contact division for assistance if the division attorneys are not experienced enough to help.¹⁸¹

ISSUE: Qualifications of CJTF-101 military justice personnel

DECISION: There was often a disparity in experience between active duty and Reserve Component (RC) trial counsels. RC trial counsels often had far more legal and trial experience than their active duty counterparts of the same rank. However, active duty trial counsels often had more military justice experience, which made it easier to navigate pre-trial and procedural aspects of UCMJ action.

RECOMMENDATION: Sustain. Hand-select trial counsel and pair co-counsel carefully. Regardless of component, it proved effective to ensure that each trial team included an experienced courtroom advocate with an attorney who had some court-martial experience.¹⁸²

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

Military Justice Resources

OIF ISSUE: Deployed Military Justice Handbook

DECISION: The Deployed Military Justice Handbook was very useful. However, the forms in the handbook are only hardbound and in portable document format (.pdf) digital format. This means that you cannot type information into the form, but must instead re-type the entire form.

RECOMMENDATION: Improve. Create a Microsoft Word version of the Deployed Military Justice Handbook.¹⁸³

ISSUE: Resources for case law research

DECISION: The internet connection at the division headquarters was too slow to accommodate effective legal research on Lexis or Westlaw. Using search terms was nearly impossible and even retrieving a case by citation took a long time. Fortunately, the OSJA had a database of sample motions and brought along several hard-copy military justice references, including Court-Martial Procedure, Military Evidentiary Foundations, Military Criminal Justice: Practice and Procedure, and Military Rules of Evidence Manual. These books were invaluable.

RECOMMENDATION: Deploying military justice practitioners should be aware of the limited internet capacity and plan for legal research accordingly. Electronic copies of common motions, as well as the case law references in the above books, can be helpful for identifying cases. Paralegals can then spend the time to download specific cases from Lexis or Westlaw.¹⁸⁴

Military Justice Training

OIF ISSUE: NCO lack of familiarity with Article 15s and the UCMJ

DECISION: NCOs do not get sufficient exposure to UCMJ matters on Title 32 status, rather only to adverse administrative matters. Therefore, when addressing military justice matters, the 50th IBCT had captains performing work normally handled by NCOs. This then required the Command Judge Advocate (CJA) to perform the captain's work. The NCOs tried hard and succeeded in getting up to speed, but would have benefitted by more UCMJ training before mobilization.

RECOMMENDATION: Improve. NCOs should receive intensive training in the UCMJ. This would include commonly violated articles (particularly Article 92 violations, GO#1, and lawful regulations) and the processing and drafting of Article 15s and GOMORs/Letters of Reprimand (LOR).¹⁸⁵

ISSUE: Pre-deployment training for the Chief of Military Justice

DECISION: The judge advocate that deployed as Chief of Military Justice was originally to deploy as the Chief of Administrative Law. In the few weeks he had to prepare, he conducted extensive hands-on training with the garrison Chief of Military Justice, focusing on post-trial procedures.

¹⁸³ 4ID 2009 OIF AAR, *supra* note 4.

¹⁸⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

¹⁸⁵ 50 IBCT (NJARNG) 2009 OIF AAR, *supra* note 51.

TIP OF THE SPEAR

RECOMMENDATION: The judge advocate designated to be the deployed chief of justice should attend the Military Justice Manager's Course.¹⁸⁶

¹⁸⁶ 10th MTN DIV 2009 OIF AAR, *supra* note 5.

VII. MULTINATIONAL OPERATIONS

OIF ISSUE: Effect of expiration of UNSCR 1970 on coalition partners

DECISION: Once UNSCR 1970 expired, and the Security Agreement (SA) and Strategic Framework Agreement (SFA) went into effect, those coalition partners planning to remain in Iraq after 1 January 2009, including NATO, began to consult with the Government of Iraq (GoI) regarding legal arrangements for their continued presence in Iraq. The GoI required legally binding agreements, approved by the Council of Representatives (CoR) and the Executive. In late December, the GoI passed legislation authorizing the Executive to negotiate such agreements with the Coalition partners. Both Australia and the United Kingdom (UK) each subsequently signed one with the GoI.

RECOMMENDATION: With the expiration of UNSCR 1970 on 31 December 2008, JAs should be aware that coalition partner personnel are subject to a legal framework that differs from that of the U.S. and may preclude their participation in certain activities.¹

ISSUE: Different bilateral agreements for partner countries

DECISION: The requirement for separate bilateral agreements for partner countries in Iraq creates entirely different legal regimes for every partner.

RECOMMENDATION: U.S. JAs need to have copies of these agreements. They can significantly affect operations and authorities.²

ISSUE: OSJA involvement in multinational operations

DECISION: The OSJA for Multi-National Force – Iraq (MNF-I) advised the MNF-I staff daily concerning multinational operations. The staff consisted of multinational members serving in various leadership positions. In addition, the chief of the international law section of the OSJA was an Australian colonel.

RECOMMENDATION: Sustain.³

ISSUE: Level at which the JA operates in a coalition environment

DECISION: You never know at which level you will serve. Even junior JAs may find themselves in meetings in which they are the representative for the U.S. view on an issue. This can be uncomfortable for inexperienced legal professionals.

¹ Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, October 2008 – December 2008 (9 Feb. 2009) (on file at CLAMO).

² XVIII Airborne Corps, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – April 2009 (11 June 2009) [hereinafter XVIII ABC 2009 OIF AAR] (on file at CLAMO).

³ Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, January 2009 – April 2009 (May 2009) [hereinafter MNF-I Individual Augmentee MAY 2009 OIF AAR] (on file at CLAMO).

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RECOMMENDATION: You have to prepare yourself as best you can. While not a diplomat or empowered to speak for the command, you may have a seat at the table and a role to play in facilitating mutual understanding.⁴

ISSUE: **Employment of the JA's atypical skill set**

DECISION: During coalition operations, the JAs had to act as a pseudo XO and liaison officer due to their problem-solving, writing, and dispute resolution abilities. These often capitalized on their direct access to the command.

RECOMMENDATION: In a coalition environment, a great many things find mutually acceptable resolution at levels below that of the respective commanders. JAs should expect to play a role in this.⁵

Implications of Domestic Law & Politics

OIF **ISSUE:** **Effect of domestic events on troop availability**

DECISION: National elections can drive troop availability. Parties may campaign upon a platform of ending a country's participation in certain operations, or a crisis at home may require the recall of deployed troops.

RECOMMENDATION: Remain apprised of world events. You have to have a view of more than just the events of the country in which you are serving.⁶

ISSUE: **Effect of domestic law on operational abilities**

DECISION: As is the case with U.S. operations, coalition partners must conduct operations in compliance with their own domestic law. This can affect things in different ways. For example, some countries' privacy laws forbid sharing with third parties information obtained by the government. This means they cannot share certain intelligence. Some countries have statutory definitions of self-defense that control the application of the term in their ROE.

RECOMMENDATION: You have to be aware of these restrictions. Arguing over something mandated by law is not going to be productive. Coalition partners are no freer to disregard their country's laws than we are ours.⁷

ISSUE: **Use of biometric data by coalition partners**

DECISION: Certain partners cannot use the Biometric Automated Toolset (BATS), as their domestic law prohibits the transfer of the collected information to third parties.

RECOMMENDATION: The unit may need to attach a U.S. Soldier to certain partner units if the operation anticipates the collection of biometric data.⁸

ISSUE: **Facilitating command actions by drafting politically acceptable documents**

⁴ XVIII ABC 2009 OIF AAR, *supra* note 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

DECISION: It often fell to the attorneys to work jointly behind the scenes to compose requests and correspondence protecting the political necessities of both countries.

RECOMMENDATION: Be prepared to assume the role of facilitator. JAs may have to play the role of diplomat in coalition operations.⁹

ISSUE: **Use of Political-Military Advisors (PMAs) by partner nations**

DECISION: Some allies have a much different use for their PMAs than U.S. forces do. The PMAs are very much in the decision-making process. As their concerns are strictly political, they can appear pacifist at times.

RECOMMENDATION: Understand political concerns may drive partner military decision-making in a way and to an extent unfamiliar to U.S. personnel.¹⁰

ISSUE: **Effect of a sending nation's political cycle**

DECISION: The election cycle of a partner nation can affect its troops' operational footing. As elections approach, the political leadership of a partner nation may instruct their forces to avoid offensive operations or emplace similar restrictions.

RECOMMENDATION: Judge advocates (JAs) have to be aware of the reality of the effect of politics on operations. You have to familiarize yourself with world events because they do affect the forces on the ground.¹¹

ISSUE: **Funding rule of law (RoL) efforts during coalition operations**

DECISION: Partner funding may flow differently than our own. RoL funding for the British went through their embassy. Our RoL funding went through the civil affairs channels.

RECOMMENDATION: No matter who controls the funding, coordination of effort is a requirement.¹²

Rules of Engagement (ROE)

OIF ISSUE: **Working with coalition rules of engagement (ROE)**

DECISION: Given each contributing nation's specific restrictions and requirements, it requires an intelligence preparation of the battlefield (IPB)-like analysis to work out the troops-to-task issues. An operation may require more or less of a certain country's troops depending upon what the mission entails.

RECOMMENDATION: Do the preparatory work up front. You must have a good understanding of who can do what.¹³

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

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ISSUE: Overall ROE applicability

DECISION: Having the ROE of one's own forces apply to the overall operation does not eliminate the need to know the ROE of partner forces. While U.S. ROE may be applicable to the operation itself, if anyone in the chain to accomplish a mission is working under a different national ROE or caveat, the most restrictive ROE may limit the operation. For example, a U.S. airstrike mission maybe flown by a UK pilot under Australian joint tactical air control. If either of those partners have national ROE or caveats stating it is not appropriate for them to drop a bomb on this particular target, there is no bomb drop. The mission will not go through, regardless of it being a U.S.-directed mission.

RECOMMENDATION: You must be aware of the restrictions under which our partner forces conduct operations.¹⁴

ISSUE: Applicability of national ROE and caveats can change when U.S. forces are in the lead or by geographic location

DECISION: Although partner forces will follow their own ROE, their own rules may give them leeway to apply U.S. ROE when taking part in U.S.-led operations or when operating in areas controlled by a different partner.

RECOMMENDATION: If you have legitimate cause to label something as a U.S. operation where U.S. ROE will apply, doing so may allow your coalition partner to apply U.S. ROE.¹⁵

ISSUE: National caveats

DECISION: There was a lack of a comprehensive understanding of national caveats (things that other entities simply would not do) at the higher headquarters level. Although there was a dedicated officer responsible for understanding the differences, inquiring about the caveats and getting a workable answer at the operational level was difficult.

RECOMMENDATION: Easier access to a dedicated point of contact and references defining the operational limitations for our coalition partners would facilitate the planning process.¹⁶

ISSUE: Training of U.S. ROE to coalition partners

DECISION: Even if the partner forces applied U.S. ROE, U.S. JAs did not train them on the U.S. ROE. There were not enough JAs to do so.

RECOMMENDATION: In reality, the extent to which partners followed the ROE was an internal matter for their command, not one in which U.S. JAs had a role.¹⁷

ISSUE: Documentation of ROE differences

DECISION: You have to distribute an understanding of the differences down to the lowest level to prevent sending unnecessary troops from one country to do something the other country's

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 1st Armored Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (19 Feb. 2009) (on file at CLAMO).

¹⁷ XVIII ABC 2009 OIF AAR, *supra* note 2.

troops can do or uselessly tasking an asset to do something its country's ROE does not allow. For example, if one partner's ROE does not allow its air weapons teams to fire in certain instances, it may be necessary to task a different nation's team to fly a mission where those circumstances might apply.

RECOMMENDATION: The unit created a one-page summary delineating the distinctions between the ROE of the two coalition partner countries. It was a quick-reference for the commands to use.¹⁸

OEF **ISSUE: Ready reference worksheet for ROE**

DECISION: OpLaw JAs developed a "cheat sheet" listing the countries that were members of various international bodies, (i.e. ISAF and NATO). This allowed the JAs to quickly assess a situation and provide timely, sound legal advice under the applicable ROE.

RECOMMENDATION: Sustain.¹⁹

[See also I.Q. INTERNATIONAL & OPERATIONAL LAW—Rules of Engagement (ROE)/Targeting]

Interoperability/Integration

OIF **ISSUE: Conducting operations next to/with multi-national partners**

DECISION: It is imperative the command gets as much information from HHQ about the command relationships ahead of time. Calls for support, deliberate targeting, etc., can get very complicated if the entire staff does not have a grasp on who is responsible for what.

RECOMMENDATION: Educate yourself about the command and control relationship of all units as soon as possible.²⁰

ISSUE: National restrictions

DECISION: Australian policy restricted MNF-I's Australian Chief of International Law at the OSJA from any involvement in detainee operations. The MNF-I SJA instructed office members not expose our Australian officer to detainee issues.

RECOMMENDATION: Sustain. Respecting Australian wishes in this matter helps develop good will between countries.²¹

ISSUE: Expectations for missions conducted in another country's historical operational area

DECISION: When U.S. forces move in to assume control of an operational area recently held by a coalition partner, it can be a sensitive matter. The coalition partner may feel the U.S. "taking

¹⁸ *Id.*

¹⁹ 101st Airborne Division (Air Assault), Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom, April 2008 – June 2009 (28 Aug. 2009) (on file at CLAMO).

²⁰ 214th Fires Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, April 2007 – July 2008 (20 Mar. 2009) [hereinafter 214th Fires BDE 2009 OIF AAR] (on file at CLAMO).

²¹ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 3.

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over” the area indicates a U.S. discounting of their worth and accomplishments as soldiers. This can lead to a great deal of friction initially, especially if U.S. forces act arrogantly and earn the resentment of the partner forces.

RECOMMENDATION: Be aware of these sensitivities. Ensure your personnel understand it is unhelpful to alienate their partners by characterizing the operation as anything but a cooperative effort.²²

ISSUE: **Difficulty in establishing connectivity**

DECISION: The communications systems used by our partners were not 100% compatible with our own.

RECOMMENDATION: Do not assume connectivity, even in a mature theater, if you move into an area wired by a partner nation. Carry hardcopies of what you will need initially, as your electronic pipes may not be available for some time. There is a dire need for 100% compatible communications. If necessary, U.S. forces should provide the required equipment on a temporary basis, regardless of who pays for it.²³

ISSUE: **Access to and use of FRAGOs by coalition partners**

DECISION: Some coalition partners did not have access to the FRAGOs issued by their higher U.S. headquarters. It is impossible to have coordinated efforts when the subordinate command does not even know what the higher command has ordered it to do. The liaison officer system failed completely in this regard.

RECOMMENDATION: Subordinate units have to have direct access to the orders issued by their higher headquarters. Do not assume your coalition partner units are receiving your directives.²⁴

ISSUE: **Qualifications of liaison officers**

DECISION: This position is extremely important in coalition operations.

RECOMMENDATION: As much as it hurts, send your best officers. This is not an opportunity to rid a headquarters of a less-than-stellar performer. It pays great dividends when you have an effective liaison officer.²⁵

ISSUE: **Use of allied officers as the POC at the MNF-I level for U.S.-specific subjects**

DECISION: There was an allied officer serving as the primary point of contact (POC) for all ROE for U.S. forces. Through no fault of the officer, it was very difficult to have a partner in that position. Our partners simply have a perspective different from our own.

RECOMMENDATION: It is great to have an allied officer as a partner, but not perhaps as the lead for a subject as U.S.-specific as the ROE for U.S. forces.²⁶

²² XVIII ABC 2009 OIF AAR, *supra* note 2.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

ISSUE: Integrating partner forces into your higher headquarters' organization

DECISION: There is a temptation simply to do the required actions for the partner forces. This precludes them from developing systems to do these things themselves.

RECOMMENDATION: Help them build themselves into your organization. Coalition operations have to be very much a “teach them to fish” environment.²⁷

ISSUE: Facilitating the integration of incoming coalition units

DECISION: Coalition units rotate just as U.S. forces do. Newly arrived units in the process of setting up their systems present the best opportunity for establishing the necessary integration.

RECOMMENDATION: Surge the resources necessary to integrate these units immediately upon their arrival. This might mean a temporarily increased liaison component.²⁸

ISSUE: How to build coalition interoperability

DECISION: JAs must become more familiar with how our partners do business. It is reasonable to assume our special relationship with the British means we will frequently work together.

RECOMMENDATION: It would be helpful to send more U.S. JAs to the UK's operational law course. While the travel is expensive, it is a small investment to build a cadre of U.S. legal personnel who understand the UK's approach to operational law. Given the relative size of their legal services, it is likely JAs will encounter some of the same people in future operations.²⁹

ISSUE: Interaction with multinational personnel

DECISION: It is worthwhile to integrate yourself with them. Their different experience and perspective are valuable. They often have greater international law experience, as they focus much of their efforts there.

RECOMMENDATION: You have to take the initiative and seek them out. As one would expect, they can feel as though they are in someone else's sandbox, which may make them hesitant to initiate the opening of communication.³⁰

ISSUE: Importance of personality

DECISION: Not all officers have the personality to work successfully with coalition partners. It takes a certain degree of patience, objectivity, a willingness to listen carefully, and ability to see a partial success as still a success.

RECOMMENDATION: Senior JAs must consider very carefully who they send to fill this role. These officers are the lens through which our partners view U.S. attitudes.³¹

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

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ISSUE: Understanding of boundaries and battlespace

DECISION: U.S. understanding of where a border or boundary runs may differ from that of our partners. This is extremely important as on what side of certain lines you are can dictate your operational authorities and ROE.

RECOMMENDATION: Establish a common understanding of where these boundaries run.³²

ISSUE: Level of clearance required for coalition operations

DECISION: Partner officers need a sufficient clearance level to be effective.

RECOMMENDATION: Allied partner officers serving with U.S. forces should arrive with their country's highest level of security clearance. While the levels do not precisely correlate, having their country's highest levels makes it more likely they can obtain a U.S. clearance high enough to allow them the necessary access.³³

Misconduct by Coalition Partners

OIF ISSUE: Alcohol and multi-national interaction

DECISION: It is impossible to stop the flow of alcohol into the hands of other multi-national partners. All that a command can do is to try to keep it out of the hands of U.S. forces.

RECOMMENDATION: Understand the chain of command and have an awareness of the command and control. This issue is best resolved commander to commander (i.e. "I can't control what you do in your command, but please keep it away from my troops.")³⁴

ISSUE: Misconduct by coalition members

DECISION: The unit had an allied officer handle the investigation or information coordination requirements for misconduct by coalition members. This helped avoid the perception the U.S. was prosecuting a coalition partner.

RECOMMENDATION: Whenever possible, have an allied officer handle coalition misconduct issues.³⁵

ISSUE: Coordination of multinational military justice issues

DECISION: It is very easy to go native when working for partner forces in a coalition environment. Traffic tickets issued by partner forces, General Order #1, and other attachment issues all arose.

RECOMMENDATION: There is a need for a mechanism with which to address these issues.³⁶

³² *Id.*

³³ *Id.*

³⁴ 214th Fires BDE 2009 OIF AAR, *supra* note 20.

³⁵ XVIII ABC 2009 OIF AAR, *supra* note 2.

³⁶ *Id.*

VIII. INTERAGENCY OPERATIONS

VIII.A. Interagency Coordination

OIF ISSUE: **Interagency Rule of Law Coordinating Center (IROCC)**

DECISION: The IROCC formed in mid-2008 to coordinate Multi-National Force – Iraq (MNF-I) and U.S. Embassy Rule of Law (RoL) planning and activities. The Director, IROCC, a judge advocate colonel, occupied a Department of State (DoS) position, and wore civilian clothing most of the time. He chaired a weekly RoL meeting attended by RoL personnel, most participating through video teleconference (VTC). MNF-I representatives included the OSJA RoL section, Multi-National Corps – Iraq (MNC-I), Multi-National Security Transition Command – Iraq (MNSTC-I), Law and Order Task Force (LAOTF), and Task Force (TF) – 134. Embassy representatives included the RoL Coordinator (RoLC), senior Federal Bureau of Investigations (FBI) and International Criminal Investigative Training Assistance Program (ICITAP) corrections advisors, Bureau of International Narcotics and Law Enforcement (INL), and Baghdad PRT personnel. Most of these organizations provided a brief update on their activities during the past week as well as on those planned for the subsequent week. In some cases, the meeting included briefings of general interest (e.g., on forensic initiatives).

The IROCC meetings ensured that most RoL personnel had a general understanding of developments in related areas, and could serve to deconflict areas of overlap when necessary (e.g., inspections of the same detention facility over a short period of time). They also highlighted issues of general concern, such as procedural changes intended to make it easier to forward U.S. reports concerning allegations of abuse by Government of Iraq (GoI) personnel the appropriate GoI agencies for action.

RECOMMENDATION: Sustain.¹

ISSUE: **USG interagency reluctance to allow establishment of a RoL coordination mechanism**

DECISION: The 2007 surge led DoS to request the provision of additional military personnel to provide administrative assistance to existing RoL efforts in Iraq. The intent of the Army's Judge Advocate General (TJAG) in providing a JA colonel (O-6) was to assist the U.S. Embassy with strategic planning. The JA colonel initially worked as part of the U.S. Embassy Baghdad Political Section's Office of Constitutional and Legislative Affairs. The focus of this office was to strengthen the Iraqi Council of Representatives (Parliament), a focus too narrow for the coordinating role TJAG had intended the JA to play. The Embassy RoLC and MNF-I SJA subsequently agreed to establish the Interagency RoL Coordinating Center (IROCC), intended to act as a RoL fusion cell. USG RoL personnel would continue to fulfill their individual RoL responsibilities, but the combining of MNF-I and RoLC efforts would create synergy.

The IROCC initially met with resistance from senior Embassy personnel (who disliked both the fusion cell concept and the idea of military involvement in what they viewed as a DoS area of responsibility), and from some RoLC personnel (who were unhappy with the idea of working

¹ Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, October 2008 – December 2008 (9 Feb. 2009) [hereinafter MNF-I Individual Augmentee FEB 2009 OIF AAR] (on file at CLAMO).

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under the supervision of a military O-6). MNF-I issued a FRAGO explaining the requirement to coordinate USG RoL efforts across the interagency sphere, and the purpose of the IROCC as the body intended to carry out that coordination. Creation of the IROCC posed no threat to military RoL personnel, and it ultimately took only a few weeks for RoLC personnel at the lowest levels to embrace the concept as well. However, IROCC proponents overcame the resistance from senior Embassy personnel only by assuring them the concept required no additional DoS personnel.

RECOMMENDATION: Improve. USG RoL personnel have consistently identified a requirement for USG RoL coordination in both Iraq and Afghanistan. Nonetheless, JAs should plan to encounter – and develop strategies to overcome – institutional resistance to the establishment of coordination mechanisms.²

ISSUE: DoS reluctance to allow DoD personnel to engage in RoL coordination meetings with international community RoL representatives

DECISION: Establishing the IROCC helped to bring increased coherence to the U.S. government effort. However, DoS opposed IROCC interest in then reaching out to international community RoL actors, arguing that it was a DoS responsibility to do so. While DoS representatives did attend some meetings with international organizations, little action resulted from them. Sometimes it seemed DoS personnel would rather see the mission fail than allow DoD personnel to intrude in what they viewed as their sphere.

RECOMMENDATION: Improve. For the reasons described above, it is often difficult for DoS personnel to embrace the RoL role. Given such constraints, it would be preferable from the standpoint of achieving USG goals to allow other USG personnel to assist DoS personnel where possible.³

ISSUE: Lack of RoLC technical chain

DECISION: The IROCC provided a coordination function at a level above MNF-I and the Embassy RoLC. In the absence of the IROCC, MNF-I or RoLC would have needed to fill the coordination role. One obstacle to RoLC doing so is that many Embassy RoL personnel are DoJ attorneys, often used to operating in a completely autonomous fashion (e.g., as prosecutors). Perhaps as a result, no “technical chain” operated within the RoLC organization.

RECOMMENDATION: JAs working with interagency RoL personnel should be aware of the possible lack of internal coordination of RoL activities.⁴

ISSUE: Coordination of interagency efforts by IROCC

DECISION: It took some time to get all the players on the same sheet of music. When the RoL effort really began to explode, the Department of Defense (DoD) and DoS began talking in earnest and getting things together. This was essential. The establishment of the Interagency Rule of Law Coordinating Center (IROCC) brought key U.S. interagency players to the table.

² Director, Interagency Rule of Law Coordinating Center, After Action Report, Operation Iraqi Freedom, June 2008 – June 2009 (29 June 2009) [hereinafter Director, IROCC 2009 OIF AAR] (on file at CLAMO).

³ *Id.*

⁴ *Id.*

INTERAGENCY OPERATIONS

Those players included LAOTF, USAID, MNSTC-I, TF-134, and DoS. Later the Iraqi Ministry of Interior (MoI) and Ministry of Defense (MoD) became part the IROCC.

RECOMMENDATION: It is difficult to conduct RoL operations without a centralized plan. Once the coordination began to occur at the interagency level, real progress became possible. The earlier this coordination occurs, the more you can accomplish.⁵

ISSUE: Joint Campaign Plan (JCP)

DECISION: The MNF-I and U.S. Embassy JCP underwent a revision in late 2008. The JCP coordinates and will serve to prioritize U.S. government efforts, particularly as U.S. resources are drawn down. RoL became as a separate line of operation (LOO) (with its own annex) for the first time, recognizing the importance of progress in this area to maintaining gains already made in the security arena. A team headed up by the Director, IROCC, along with representatives from both MNF-I and the Embassy RoLC's office, drafted the RoL annex to the JCP.

The MNF-I RoL section was responsible for providing a weekly RoL briefing to the Commanding General (CG), MNF-I, as part of the Battle Update Assessment (BUA). Once a month, this RoL brief also included an update on progress towards achieving JCP RoL conditions. Ensuring joint participation in the drafting of the RoL JCP Annex meant that the end result was more comprehensive. In particular, Embassy RoL personnel were aware of initiatives in the civil law area, of which MNF-I RoL personnel had little or no knowledge.

RECOMMENDATION: Sustain. MNF-I and Embassy personnel should continue to cooperate closely in terms of planning and prioritizing RoL activities. RoL practitioners should also be aware of other planning documents, including the Embassy's RoL Strategic Action Plan (ROLSAP), the MNC-I Unified Common Plan, and PRT Joint Common Plans (written in concert with their military partners).⁶

ISSUE: Lead agency for RoL

DECISION: The Department of State (DoS) attorney (Judicial attaché at the Embassy) was in the lead for RoL.

RECOMMENDATION: You need to build and keep a relationship with DoS, working with any intermediate headquarters as appropriate.⁷

ISSUE: Lack of a DoS representative at the division

DECISION: It would have been valuable to have a DoS representative at division. PRTs were somewhat responsive to requests for information made by the RoL attorney. However, having a conduit to work through would have been helpful in prodding the PRTs who failed to respond to the requests from the military (vice diplomatic) channels. Moreover, on occasion, the division felt they were out of the loop on decisions made by the State Department that affected current RoL operations.

⁵ XVIII Airborne Corps, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – April 2009 (11 June 2009) [hereinafter XVIII ABC 2009 OIF AAR] (on file at CLAMO).

⁶ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 1.

⁷ 1st Armored Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (19 Feb. 2009) [hereinafter 1AD 2009 OIF AAR] (on file at CLAMO).

TIP OF THE SPEAR

RECOMMENDATION: Improve. Although the Office of Provincial Affairs was an option, it was still at the MNC-I level. Having a representative at the division level would alleviate the frustrations felt when DoS made mission-effecting decisions without division input.⁸

ISSUE: Use of a Rule of Law Coordinator (RoLC)

DECISION: The RoLC worked for the DoS, but was an active duty officer. Having this individual bridge the gap between the two agencies worked very well.

RECOMMENDATION: Sustain. It is very beneficial to have someone with a foot in each camp at the top of the structure.⁹

ISSUE: Know the missions of the assisting agencies

DECISION: It is important to understand what the Department of State (DoS) and Department of Justice (DoJ) missions are. You must realize these agencies have different perspectives on certain issues and often times, a different reason for being there.

RECOMMENDATION: An appreciation of your partners' capabilities and limitations will allow you to successfully plan and carry out a RoL mission.¹⁰

ISSUE: Limitations of other agencies

DECISION: Political constraints really limit what the DoS can do. This is through no fault of its own; it is simply the environment in which they must operate.

RECOMMENDATION: You must be aware of the constraints and limitations under which your partners are working. It does you no good to rail against something over which they have no real control.¹¹

ISSUE: Importance of interagency coordination to RoL mission

DECISION: Coordination with interagency partners is the cornerstone of the RoL mission. Frequent interaction and coordination with agency partners will increase the likelihood of success of any RoL objective. The weekly IROCC meetings played a critical role in ensuring all stakeholders had the information they needed to complete the mission successfully. For example, the addition of a centralized calendar system reduced the possibility of multiple agencies visiting the same rule of law prospect on different days, thus saving time, money, and resources for other missions.

RECOMMENDATION: Sustain. Continue to grow the RoL conference. Additionally, units should liaison before deploying with the RoL partners both stateside and in theater to ensure they understand how each agency adds value to the RoL mission.¹²

ISSUE: Importance of location

⁸ 10th Mountain Division (Light Infantry), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, May 2008 – May 2009 (25 June 2009) [hereinafter 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

⁹ XVIII ABC 2009 OIF AAR, *supra* note 5.

¹⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 8.

¹¹ XVIII ABC 2009 OIF AAR, *supra* note 5.

¹² *Id.*

INTERAGENCY OPERATIONS

DECISION: It was much easier for LAOTF and MNSTC-I to meet with their Iraqi counterparts because they were in the same location.

RECOMMENDATION: Proximity of work space facilitates coordination. To the extent you have any control over your location, consider closer to be better.¹³

ISSUE: Effectiveness of routine interaction

DECISION: In those places where you had day-to-day contact with your counterparts, whether interagency or multinational, things worked much more effectively.

RECOMMENDATION: You have to reach out to others to establish these routine contacts. Relationship building is the key.¹⁴

ISSUE: Tour length for DoS personnel

DECISION: DoS personnel seemed to have much longer tour lengths than military personnel, albeit with more frequent and longer leave periods. This was very helpful to establish continuity in the interagency process.

RECOMMENDATION: Use their longevity as best you can. Establish contact early and draw from their longer-term view and capacity.¹⁵

ISSUE: Level of interagency collaboration with BCT

DECISION: Only one person on one occasion from another U.S. agency ever visited the Brigade Combat Team (BCT) during the deployment (a member of the U.S. Agency for International Development (USAID)). The purpose of the visit was to discuss how the unit spent CERP funding.

RECOMMENDATION: Improve. Interagency collaboration is important at all levels.¹⁶

ISSUE: DoS cultural aversion and structural obstacles to participation in RoL activities

DECISION: U.S. RoL actors involved in interagency coordination should be aware of the extent to which involvement in RoL activities conflicts with aspects of DoS culture. Despite the high-level policy documents assigning overall responsibility for U.S. RoL efforts to DoS (e.g., National Security Presidential Directive (NSPD) 44), the idea of nation building tends to be anathema to foreign service officers. Diplomats are usually responsible for representing US interests and reporting on host nation views and activities. In contrast, telling the host nation how to do things usually results in achieving “persona non grata” status. As a result, the direction provided by NSPD 44 is culturally difficult for DoS to embrace. In addition, the DoS view is that NSPD 44 simply represents a mandate to coordinate rather than lead U.S. government (USG) reconstruction efforts.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 4th Brigade Combat Team, 10th Mountain Division (Light Infantry), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (5 Feb. 2009) (on file at CLAMO).

TIP OF THE SPEAR

The Department of Defense (DoD), which was originally opposed to involvement in reconstruction, has now institutionalized this responsibility through Field Manual (FM) 3-07, although it remains difficult for DoD to plan for and fund its activities based on the expectation that the DoS will fail to fulfill its role. Nonetheless, this is the most likely scenario. While DoD has been growing its capacity to conduct stabilization and reconstruction, DoS simply relies on its ability to outsource the capability. For example, DoS has several contract managers and hundreds of contractors working on RoL in Iraq, but few DoS employees. DoS also uses DoD funds to obtain the services of additional contractors (e.g., \$400 million dollars, which pays for 750 international police advisors). However, DoS contractor managers who have no deployment or RoL-related experience may find it difficult to administer such contracts. Furthermore, relying primarily upon contractors to carry out RoL activities makes it difficult for DoS to provide RoL leadership to other USG RoL players or fulfill the RoL coordination function.

RECOMMENDATION: Improve. JAs assigned to RoL responsibilities should be aware of DoS cultural sensitivities and institutional obstacles and adjust their expectations and planning accordingly.¹⁷

OEF **ISSUE: Current assessment of interagency RoL efforts**

DECISION: We have to do a better job in the RoL area. As a JAG Corps, JAs have not yet embraced or cracked the code on successfully engaging other organizations in the interagency world. Having a judge advocate sitting with Department of State (DoS) in the U.S. Embassy in Kabul was invaluable for getting people to see the benefits of cooperation.

RECOMMENDATION: We should acknowledge we have had difficulties with interagency coordination in the past and move beyond any previous slights, whether intentional or unintentional, real or perceived. RoL conferences in theater were successful and beneficial in helping the players understand how to work together. The JAGC should have an exchange with the DOS to foster mutual understanding and respect. Courses at TJAGLCS should directly address the interagency environment and encourage interaction with the DOS.¹⁸

ISSUE: Other players in the RoL mission

DECISION: There are many other U.S. Government agencies (i.e., DoS/INL, USAID), inter-government organizations (IGOs) (i.e. UNAMA), and non-governmental organizations (NGOs) (i.e., Max Planck Institute) working to develop the RoL in Afghanistan. It is important those involved coordinate these various efforts as closely as possible. CJTF-101 encouraged task forces to communicate with and coordinate their efforts with USG agencies, IGOs, and NGOs in their areas. One task force hosted meetings twice a month with all the RoL agencies in its AO. This was a good practice.

RECOMMENDATION: Establish contact with the RoL agencies in your AO and try to work together. The other agencies are invariably ready and willing to cooperate.¹⁹

¹⁷ Director, IROCC 2009 OIF AAR, *supra* note 2.

¹⁸ 101st Airborne Division (Air Assault), Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom, April 2008 – June 2009 (28 Aug. 2009) (on file at CLAMO).

¹⁹ *Id.*

Information Sharing

OIF ISSUE: Sharing of information between MNF-I and U.S. Embassy

DECISION: Embassy RoL and other personnel are often monitoring issues in the RoL area, and may prove to be a valuable source of information. In some cases, the CG, MNF-I and the Ambassador required briefings on the same issue. This occurred, for example, when staff members prepared information papers to support the attendance of those individuals or their staff members at the weekly Iraqi National Security Council (NSC) meeting. U.S. agencies normally received the NSC agenda a few days prior to the meeting. The MNF-I RoL section, when tasked with preparing an information paper for the CG, would send its draft to the Embassy representative preparing the parallel product to the Ambassador, who would then reciprocate. While the format used for the products was quite different, it was helpful to exchange the information and ensure that all U.S. representatives conveyed a consistent message to the GoI.

In other cases, the RoL section responded to questions to which Embassy personnel had previously prepared responses (e.g., discussion of proposed amendments to the Amnesty Law, discussion of the GoI suspension of death penalty implementation, etc.). In such cases, the sharing of information by Embassy RoL personnel allowed MNF-I to provide more complete and accurate information in a more timely fashion.

RECOMMENDATION: Sustain. MNF-I RoL practitioners should develop and maintain communication with Embassy RoL and other personnel (e.g., Political, Pol-Mil, Constitutional & Legislative Affairs, and Legal Advisor sections).²⁰

ISSUE: Information sharing

DECISION: U.S. forces share rule of law information (e.g., civil capacity and biometric data) on the Combined Information Data Network Exchange (CIDNE) network. Most of our interagency partners had access to that network, but Iraqis do not.

RECOMMENDATION: Use of a central database such as CIDNE is important. Continue to develop alternate methods of sharing rule of law information with partners who are not privy to the CIDNE system.²¹

ISSUE: Best network for interagency coordination

DECISION: Our reliance on the SIPR network makes it difficult to share information with the Iraqis. Additionally, other U.S. agencies also do not have as robust a SIPR capacity.

RECOMMENDATION: Improve. If working in the interagency process, you must have access to the NIPR network.²²

²⁰ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 1.

²¹ XVIII ABC 2009 OIF AAR, *supra* note 5.

²² XVIII ABC 2009 OIF AAR, *supra* note 5.

Provincial Reconstruction Teams (PRTs)

OIF ISSUE: Required staffing of and numbers for PRT RoL teams

DECISION: Two of this regiment's three JAs augmented the provincial RoL team, which consisted of a Department of Justice (DoJ) contractor, a civil affairs JA, and a bilingual bicultural advisor (BBA). This BBA, an Iraqi-American lawyer, was a key member of the RoL team, worth ten JAs in terms of progressing RoL. He understood Iraqi law, could talk to Iraqi judges, and—when pushed around by them—could push back.

This number of personnel is the minimum for a provincial-level PRT-led RoL team, and PRT staffing should ideally be more robust. This team never managed to visit all thirteen courthouses, even when supplemented by the two JAs (it missed three or four). In any case, simply visiting courthouses once every six months for the purpose of a courthouse assessment is useless. By now, U.S. RoL efforts should have progressed beyond assessing courthouses.

RECOMMENDATION: Improve. Where possible, the DoJ or division OSJA should provide the additional resources necessary to carry out the RoL mission. Ideally, the number of RoL personnel should be sufficient to allow them to work with Iraqi legal personnel on a daily basis. In addition to the PRT RoL team, every major FOB responsible for working with Iraqi courthouses should have adequate RoL personnel.²³

ISSUE: Working with PRT RoL personnel to ensure consistency of military and PRT goals

DECISION: The regiment's JAs observed a disconnect between the regiment's mission and the PRT's priorities.

RECOMMENDATION: Improve. JAs should work with PRT RoL personnel to bridge the gap between their efforts and those of the military and achieve unity of effort.²⁴

ISSUE: Coordination of JA and PRT RoL efforts

DECISION: The regiment's JAs were frequently unaware of Baghdad PRT efforts, and often arrived at an Iraqi courthouse only to find PRT personnel had visited the previous day. While it was good that the Baghdad PRT RoL section was increasing in size, RoL efforts required both focus and coordination. The JAs understood there was a master plan, but instead it seemed more people kept on showing up in the same places, asking basic questions, and offering to supply computers. In many cases, the judge already had a computer, and knew how to use it, but did not use it every day.

RECOMMENDATION: Improve. JAs working in the RoL area should make strong efforts to coordinate their activities with those of other RoL actors. In particular, as U.S. forces begin to draw down in Iraq, RoL actors must eliminate duplication of effort and resources to the greatest extent possible.²⁵

ISSUE: Synchronization of RoL efforts with PRT RoL advisors

²³ 2d Stryker Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, August 2007 – May 2008 (17 Feb. 2009) [hereinafter 2SCR 2009 OIF AAR] (on file at CLAMO).

²⁴ *Id.*

²⁵ *Id.*

DECISION: Unity of effort with the PRT RoL advisors was initially difficult. The unit held a conference with PRT RoL advisors and anyone else who had a hand in RoL activities. Apparently, no one told the RoL advisors they should focus their efforts on system improvement vice delivering material items to the Iraqis. The unit held a similar conference before redeploying to educate the incoming division RoL section.

RECOMMENDATION: Both conferences were valuable; however, the turnover with the incoming section was especially important.²⁶

ISSUE: PRT command structure

DECISION: There was not a military-type command structure in PRTs. It was difficult to find a hierarchical structure on which to rely. Finding a counterpart to work with was difficult because of a lack of a standard chain of command.

RECOMMENDATION: It takes a little more time than normal to figure out with whom you should be working at the PRTs. Meet and establish relationships with PRT personnel early.²⁷

ISSUE: Lack of PRT knowledge of the MAAWS

DECISION: Knowledge of the *Money as a Weapons System* (MAAWS) handbook would have provided the PRT with basic fiscal rules and procedures. Since they never read it, they often sent unallowable requests up to the approval authorities. Moreover, the PRT would refer to one of their funding authorities as “CERP” although the actual authority differed from military CERP. The result was there was much disagreement between the PRT, the BJA, and even the division as to what they could/would approve. This type of scenario contributed greatly to a deteriorating relationship between the PRT and the division.

RECOMMENDATION: Try to get the PRT and the division on the same sheet of music when it came to “taskings” and project management. Make sure everyone is using precise terms in a precise way.²⁸

ISSUE: Coordination with PRT on CERP spending for RoL

DECISION: An MNF-I unit wanted to use CERP funds to pay salaries for Iraqi paralegal-equivalents, to facilitate the processing of cases by Iraqi investigative judges. The unit determined that this was an acceptable use of CERP funds, but the Provincial Reconstruction Team (PRT) was concerned about the plan. That unit proposed to raise the issue with the Embassy’s Office of Provincial Affairs (OPA).

RECOMMENDATION: Improve. Units contemplating courses of action in areas of PRT interest should liaise at an early point with their PRT counterparts in order to ensure consensus and coordination.²⁹

ISSUE: Interagency coordination in the RoL

²⁶ 1AD 2009 OIF AAR, *supra* note 7.

²⁷ *Id.*

²⁸ 214th Fires Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, April 2007 – July 2008 (20 Mar. 2009) [hereinafter 214th Fires BDE 2009 OIF AAR] (on file at CLAMO).

²⁹ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 1.

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DECISION: Cooperation with the provincial reconstruction team (PRT) in Mosul depended largely on the personalities involved, and the 3d ACR attorneys and the PRT team interacted quite well with one another.

RECOMMENDATION: Introduce yourself to the members of the PRT responsible for RoL early on in the rotation. 3d ACR observed their “utter reliance” on the PRT during warrant-based targeting operations.³⁰

ISSUE: PRT relationship with higher headquarters (HHQ)

DECISION: The PRT had significant problems when trying to work with HHQ when it came to RoL. Since there was not a PRT team at the division, several times throughout the deployment the brigade PRT would send “conflict” up the PRT DoS chain of command. This was usually in response to the division “telling” the PRT to do/not do something. Since the division had no ability to “task” the PRT, this caused significant problems. The brigade commander would then get emails from division alleging “non-support” by the PRT. The BJA’s ability to help smooth this over was non-existent.

RECOMMENDATION: Improve. There needs to be a division level PRT coordinator.³¹

ISSUE: Getting on the same sheet of music with the PRT

DECISION: The unit negotiated a joint common plan between MND-B and the Baghdad PRT. This plan laid out the respective responsibilities and goals.

RECOMMENDATION: This was a painfully long document and process to produce it, but it was essential. It provided guidance to all the parties and ensured coordinated effort.³²

ISSUE: Co-location of PRTs and BCTs

DECISION: In provinces where the PRTs and BCTs were co-located, the RoL team accomplished more.

RECOMMENDATION: If possible, locate PRTs and BCTs in the same part of the province so they can share ideas and work together for the best possible results.³³

ISSUE: Co-location of work areas

DECISION: The BJA and RLA offices were initially located a few minutes apart. Given the need for frequent consultation and coordination, the RLA subsequently relocated to be closer to the RoL team.

RECOMMENDATION: Sustain. Close collaboration improves the prospect of successful RoL operations, and is easier when RoL team personnel are co-located.³⁴

³⁰ 3d Armored Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – January 2009 (22 Apr. 2009) (on file at CLAMO).

³¹ 214th Fires BDE 2009 OIF AAR, *supra* note 28.

³² 4th Infantry Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (30 Apr. 2009) (on file at CLAMO).

³³ 10th MTN DIV 2009 OIF AAR, *supra* note 8.

ISSUE: Obtaining unit assets to support PRT RoL mission

DECISION: Supporting RoL requires JAs to leave the forward operating base (FOB) and interact with Iraqi officials, but one division prohibited its RoL attorney from leaving the FOB. Being able to leave the FOB or PRT requires obtaining security and movement assets. These JAs drew a link between their unit's mission and RoL. For example, effective courts are important in establishing a safe and secure environment. With the link made, they found the unit was more willing to support RoL efforts (an activity that is good for the unit is more likely to receive resources).

RECOMMENDATION: Sustain. JAs should link RoL with their unit's mission to obtain the security and movement assets necessary to allow movement outside the FOB. Where possible, PRTs should have dedicated assets to ensure their availability.³⁵

ISSUE: Coordination between PRT and brigade assets

DECISION: The BJA and RLA cooperated extensively because the brigade commander set the tone in this regard. The brigade commander must do so; the PRT team leader cannot. The RLA, who was older than the BJA and had experience as a judge, used his age and experience to bring the BJA up to his level in the eyes of Iraqi officials by introducing and working with the BJA as his equal partner.

RECOMMENDATION: Sustain. The RLA had relevant experience and existing relationships with Iraqi judges, while the BJA brought knowledge of the Iraqi systems and brigade resources to the RoL team. Bringing these assets together meant both were more productive than on an individual military or PRT level. Constant coordination between the BJA and RLA is critical.³⁶

ISSUE: Coordinating RoL key leader engagements (KLEs) with the PRT RLA

DECISION: The BJA and RLA coordinated their KLE efforts by strategizing together to determine who could most effectively conduct the engagement. Once the RLA and BJA knew each other well, they attended meetings with Iraqi officials either together or separately. The BJA generally met with IA and IP officials (building on the brigade commander's relationship with IA and IP commanders), visited with the judiciary, assessed all detention facilities, and dealt with the PTTs. The RLA visited detention facilities only when they preceded a meeting with a judge, which both the BJA and RLA normally attended. However, each trusted the other to pass on any relevant information from any meetings either one was unable to attend.

RECOMMENDATION: Sustain. Coordination allowed the RoL team to make maximum use of available resources, while the participation of both the RLA and BJA in meetings with Iraqi judges ensured the dissemination of a unified and consistent U.S. message.³⁷

ISSUE: Access of RoL team members to PSD and military movement assets

³⁴ 41st Fires Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – July 2009 (7 July 2009) [hereinafter 41st Fires BDE 2009 OIF AAR] (on file at CLAMO).

³⁵ 2SCR 2009 OIF AAR, *supra* note 23.

³⁶ 41st Fires BDE 2009 OIF AAR, *supra* note 34.

³⁷ *Id.*

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DECISION: When the RLA arrived, PRT personnel had been unable to leave the FOB for 2-3 weeks, with all moves off the FOB conducted by military movement assets. Once restrictions lessened, the RLA was able to request the use of a PSD for one move per week. He had a scheduled meeting each week with the provincial chief judge. The brigade provided all other RoL team movement support. When the 41st Fires Brigade arrived, the RoL team began to conduct multiple moves per day. The difference arose from the new brigade commander's attitude, commitment, and support to the RoL effort (as well, the previous unit had lacked movement assets and other resources). The BJA requested military movement through the S3. All RoL team movement qualified as mission essential. If the S3 was unable to support a move, the BJA often requested and received the use of the brigade commander's PSD, if available.

RECOMMENDATION: Sustain. The RLA benefited from access to military movement assets, which are more flexible than a PSD. A PSD's members focus on their narrow mission, ensuring the security of those they are protecting. Military movement assets support the broader military mission. If the RoL team's mission included walking in the street, military movement assets would determine a way to enable this. The RLA, as well as the BJA, developed a good relationship with key brigade personnel (such as the S3), making it easier to obtain access to required resources.³⁸

ISSUE: Selling RoL to the PRT leadership

DECISION: The BJA and RLA developed slides to explain RoL to the PRT leader, to sell them on the team's activities in this area.

RECOMMENDATION: Sustain. Obtaining the support of the PRT leadership is nearly as important as having the support of the brigade commander. The RLA also reinforced the interagency aspect of RoL efforts in Wasit Province by ensuring he included the BJA's name on every product briefed to the PRT DoS chain of command.³⁹

ISSUE: Obtaining support of those responsible for RoL at the highest levels of the military and civilian chains of command

DECISION: RoL personnel were responsible for briefing their activities up the military and PRT DoS chains of command. Although some began to take notice of the high level of RoL activity in Wasit Province, RoL team members became frustrated with routine conference calls with their chains of command because no one seemed to be reading their reports in detail. However, when the U.S. Embassy RoL Coordinator (RoLC) visited Wasit Province, he indicated he would support their efforts by providing any necessary resources. Once the RoL team had established this conduit, they were able to cut quickly through the layers of bureaucracy. For example, they could ask the RoLC to take an issue to Iraq's Chief Justice. This was helpful because RoL team members were meeting with Iraqi officials three to four times each week. If they were asking Iraqi judges to do something, RoL team members needed to be able to reciprocate quickly by providing answers to Iraqi questions.

RECOMMENDATION: Sustain. The relationship between the RoLC and the MNF-I SJA is also critical. The RoL team pushed issues up both chains.⁴⁰

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

ISSUE: In-theater RoL preparation for JAs

DECISION: A PRT RLA is responsible for writing up weekly narratives to inform the PRT chain of command of RoL activities. A newly arrived JA should ask to read the last several narratives, as well as the RLA's work plan. On FOB Delta, the RLA coordinated work plan development, execution, and subsequent modifications.

RECOMMENDATION: Sustain. JAs should seek as much information as possible about conditions in their area of operations, particularly about RoL initiatives already attempted or in place, before implementing additional projects or programs.⁴¹

ISSUE: Center for Army Lessons Learned (CALL) PRT Handbook

DECISION: This was a very good handbook, but the 2007 version is in need of updating.

RECOMMENDATION: Suggest CALL update the handbook and publish a new version.⁴²

VIII.B. Points of Contact

OIF ISSUE: Other government agencies (OGA)

DECISION: Although there were no significant legal issues from this matter, it is important to understand which other government agencies (OGA) are operating in your battlespace. If one of these agencies creates a problem in your AO, it may become your commander's problem for action.

RECOMMENDATION: Maintain situational awareness and points of contact for OGA in your AO.⁴³

ISSUE: With whom to interface at the brigade or provincial level

DECISION: It was important to know whether the BCTs or the PRTs was the better point of contact for a province. This varied among the provinces.

RECOMMENDATION: Do not assume a PRT is truly in the lead in a province. Their effectiveness can vary depending upon the security situation, resources available, and personalities involved. In some provinces, the PRT is absolutely the driving force. In others, the unit has the actual lead.⁴⁴

ISSUE: Lack of a comprehensive RoL directory

DECISION: There is a strong need for a comprehensive list of points of contact (international, interagency, and local) and locations of interests for RoL attorneys. Unless information sharing improves, RoL attorneys who enter the theater must reinvent the wheel each time. This is

⁴¹ *Id.*

⁴² XVIII ABC 2009 OIF AAR, *supra* note 5.

⁴³ 1st Battalion, 9th Marines, Battalion Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – October 2008 (9 Jan. 2009) (on file at CLAMO).

⁴⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 8.

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inefficient and it grates on the local nationals, PRTs, and other of entities who previously provided this information.

RECOMMENDATION: There must be a searchable database with the information necessary to facilitate a seamless transfer from one RoL section to the next.⁴⁵

[See also I.Q. INTERNATIONAL & OPERATIONAL LAW—Rule of Law (RoL)/Judicial Reform]

⁴⁵ *Id.*

IX. HOMELAND SECURITY OPERATIONS

OIF ISSUE: **Lack of training in domestic operational law issues**

DECISION: A reservist who backfilled the division rear detachment had experience with domestic operational law issues. Therefore, he was used to fill the gap, making it unnecessary to train another judge advocate (JA) in this area.

RECOMMENDATION: Improve. You cannot always count on having reservists with experience in domestic operational law. Recommend each rear detachment dedicate one JA as the lead on domestic operational law issues, such as hurricanes and wild fires. This JA will require adequate training before assuming such duties.¹

- A. Homeland Defense
 - 1. Defense Support to Civilian Authorities
 - a. Military Support to Civilian Law Enforcement & Posse Comitatus Act
 - b. Special Events
 - c. Civil Disturbances
 - 2. Port Security & Customs
- B. Consequence Management
 - 1. Disaster Relief
 - 2. Weapons of Mass Destruction (WMD)
- C. Counter Drug Operations
- D. Counter Terrorism
- E. Intelligence Law & Policy Considerations
- F. Rules for the Use of Force
- G. Status & Relationships of Different Agencies and Sub-Agencies Participating in Homeland Security Operations
- H. Funding

¹ 3d Infantry Division (Mechanized), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2007 – June 2008 (23 Sep. 2008) (on file at CLAMO).

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X. DOCTRINE, ORGANIZATION, TRAINING, MATERIAL, LEADERSHIP, PERSONNEL, & FACILITIES (DOTMLPF), AND COUNTRY MATERIALS

X.A. Doctrine

OIF **ISSUE: Reserve component augmentation**

DECISION: Although the deployment was 15 months, reservists could only mobilize for 12 months. The unit did not send a second augmentation request. The unit decided to receive a couple of additional attorneys straight from the Basic Course instead.

RECOMMENDATION: Sustain. This system worked well for this unit.¹

ISSUE: Temporary Change of Station/Permanent Change of Station (TCS/PCS) policy for reservists

DECISION: The current policy states that if a reservist mobilizes for more than six months he or she must either PCS to that location, or the TCS expenses that he or she would ordinarily receive will stop. There is no grandfathering benefit of those already mobilized with regard to the TCS/PCS policy. However, you can get a waiver, which the unit succeeded in doing.

RECOMMENDATION: Sustain. Carefully consider whether this policy unnecessarily penalizes those reservists mobilized for long-term duty. In the Active Component, a long-term deployment usually results in a financial benefit, not a penalty.²

ISSUE: Certification to deploy from a legal perspective

DECISION: The JAG Corps lacks any formal requirement for certifying a legal office as ready to deploy. There is no independent check of whether the office has the necessary training and personnel to function effectively in a combat zone. The current assumption seems to be the Staff Judge Advocate (SJA) concerned will raise his or her hand if they feel their office needs help. There is, of course, a tremendous personal disincentive to doing so.

RECOMMENDATION: Improve. Someone outside of the office concerned (ideally, Battle Command Training Program (BCTP)) needs to be responsible for assessing the office objectively. Whether one of the training centers or the BCTP does it, there ought to be some formalized certification process headed by an outside observer. Even if it remains the responsibility of the SJA concerned to certify his or her office is ready to deploy, some standardized guidance as to what such a certification decision should entail would be of value.³

¹ 3d Infantry Division (Mechanized), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2007 – June 2008 (23 Sep. 2008) [hereinafter 3ID 2008 OIF AAR] (on file at CLAMO).

² *Id.*

³ 1st Armored Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (19 Feb. 2009) [hereinafter 1AD 2009 OIF AAR] (on file at CLAMO).

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ISSUE: Non-doctrinal use of a judge advocate (JA) on a military transition team (MiTT)

DECISION: The unit initially provided one specially selected JA to work as part of a MiTT. However, the JA was not doing very much legal work, and the office needed him to support legal operations.

RECOMMENDATION: First, being part of a MiTT requires the right person. This is not a typical JA role, and the vast majority of JAs are not prepared to serve on such a team. Second, until more progress occurs with the Iraqis, the JA will not be doing very much legal work on these teams. Therefore, it will be a management decision whether the JA is of more value serving in a more traditional JA role. If legal work is limited, another line officer can fill a spot on a MiTT. A line officer cannot fill a spot in the legal office.⁴

ISSUE: Presence of the trial counsel (TC) at the brigade

DECISION: As the time to deployment draws near, there is an increased need to have the TC present at the brigade. Not only does the court-martial emphasis fall off, but also the emphasis on administrative separations increases dramatically. There is also increased need for training.

RECOMMENDATION: Have the TC gradually transition to spending more time with the brigade as the deployment approaches.⁵

ISSUE: Use of reach-back to the larger JAG Corps to answer questions and concern

DECISION: The fiscal law reach-back program may be a good model, but there may be issues with applying it to other areas. In other areas, the solution is very fact-specific. It may just take too long to explain the facts and the host of previous efforts that led to this point.

RECOMMENDATION: Continue with the fiscal law reachback, but consider carefully the utility of reachback for other topics.⁶

ISSUE: Ethical conflicts at the brigade level

DECISION: There is a lack of specific guidance on what is permissible for brigade JAs concerning legal functions that raise ethical conflict issues. JAs in the field are uncomfortable with the amount of risk they assume in having to figure this out on their own.

RECOMMENDATION: Provide some form of standards of conduct guidance on recurring issues. These include whether a JA can review an investigation for which he or she served as the advisor to the investigator or whether a JA can draft a will for someone and then later advise on an unrelated disciplinary action against that person. A quick survey of the field would likely reveal other areas of concern.⁷

⁴ 4th Infantry Division, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (30 Apr. 2009) [hereinafter 4ID 2009 OIF AAR] (on file at CLAMO).

⁵ 1st Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, March 2008 – March 2009 (28 Apr. 2009) [hereinafter 1BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

⁶ XVIII Airborne Corps, Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – April 2009 (11 June 2009) [hereinafter XVIII ABC 2009 OIF AAR] (on file at CLAMO).

⁷ 10th Mountain Division (Light Infantry), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, May 2008 – May 2009 (25 June 2009) [hereinafter 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

OEF ISSUE: The garrison legal mission in a brigade-centric deployment environment

DECISION: Divisions and their organic brigades can now expect to have their deployment windows permanently out of synch. This means you may deploy a division headquarters and yet have an entire division's worth of troops remaining at home station. While the augmentation from the Reserve Component is spectacular, they may lack experience and will most likely be unfamiliar with the processes already in place in the headquarters they augment.

RECOMMENDATION: Doctrinally, we should combine a core cadre of experienced Regular Army judge advocates with Reserve Component augmentees. The Active Army (AA) and RC personnel should be fully integrated as paralegals, action attorneys, and supervisory attorneys. For example, if the installation SJA is an active JA, consider appointing a RC JA as the DSJA. Additionally, during deployment, ensure that an AA or RC warrant officer remain at home station as the legal administrator.⁸

ISSUE: Handling of U.S. naturalization ceremonies and citizenship issues

DECISION: Doctrinally, naturalization issues are a J-1/G-1 function. However, the legal office nearly always fields these issues, to include the logistics of naturalization ceremonies.

RECOMMENDATION: Be prepared to execute this mission. Should OSJAs continue to be expected to perform this mission in deployed theaters, the JAGC should consider requesting doctrinal responsibility for this mission in order to receive the resources that go with it.⁹

ISSUE: Naturalization ceremonies

DECISION: It is difficult to convince other staff sections naturalization ceremonies are not solely a JAG Corps function. It is almost impossible to manage the logistics and operations without additional support and the requisite authority to task other sections.

RECOMMENDATION: Clear and concise guidance is necessary to ensure other staff sections understand they share responsibilities for these events. While the JAG Corps has ownership and the lead on preparation, without dedicated support from multiple other staff sections, these events are nearly unmanageable.¹⁰

“Foundation of Four”

OIF ISSUE: Role of the senior command paralegal NCO

DECISION: There is a lack of doctrine concerning the specific role and authority level of the senior command paralegal NCO. There is no commonly accepted understanding of what this individual is supposed to do.

RECOMMENDATION: Improve. The JAG Corps doctrine should spell out the role of this individual. As it stands now, it varies from office to office based upon the personal understanding of the NCO and his or her SJA. It would be beneficial for these two individuals to

⁸ 101st Airborne Division (Air Assault), Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom, April 2008 – June 2009 (28 Aug. 2009) [hereinafter 101st ABN DIV (AASLT) 2009 OEF AAR] (on file at CLAMO).

⁹ *Id.*

¹⁰ *Id.*

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attend the SJA Course together, perhaps with the Legal Administrator also. An increase in the number of breakout sessions would ensure everyone received appropriate instruction. It might mean less continuing legal education credit, but it would result in a better course.¹¹

ISSUE: Supervisory and rating chain for the division OSJA sergeant major (SGM)

DECISION: The current doctrine does not make it clear for whom the SGM works. This can cause a point of friction within the division OSJA.

RECOMMENDATION: The doctrine needs to address this issue clearly. The relationship should more closely reflect the way the rest of the Army approaches it. In other words, it should be clear the SGM works directly for the SJA. Doctrine should spell out the relationship between the SJA and the SGM as akin to that of a commander and his or her command sergeant major.¹²

ISSUE: Delineation of roles and responsibilities for senior leaders

DECISION: The doctrine does not clearly spell out the roles and responsibilities of the command paralegal Non-commissioned Officer (NCO) and legal administrator, especially in reference to their roles relative to that of the deputy SJA (DSJA). While it is appropriate to leave some flexibility within the doctrine, it should not be so vague as to provide no guidance. This leads to every office handling these relationships differently. There ought to be a clear norm, with variations occurring only as the result of affirmative decisions by the SJA concerned.

RECOMMENDATION: Make it clear within the doctrine what the norms and expectations are for those in these roles. SJAs should identify these roles and TJAG should validate them.¹³

ISSUE: Defining the leadership team at the division and corps

DECISION: The “Foundation of Four” concept is unique in the Army structure. Now that there are SGMs at the division level, the concept of the leadership team needs re-examining. In other units, the leadership team consists of the senior officer and enlisted Soldier. While deputies and administrators have important roles, they are not part of the “leadership team” as most of the Army understands it.

RECOMMENDATION: More clearly define the roles of the SGM at the division level.¹⁴

ISSUE: Importance of the E-9 in the OSJA structure

DECISION: There is no substitute for the E-9 SGM in the OSJA. They are able to do so many things for the office. Their informal contacts and arrangements are invaluable and worth mentioning. They are also able to work issues with brigade chief paralegal NCOs, and even BJAs in an advisory/voice of experience mode.

RECOMMENDATION: Maintain. This authorization is a home run for the division OSJA.¹⁵

¹¹ 1AD 2009 OIF AAR, *supra* note 3.

¹² 10th MTN DIV 2009 OIF AAR, *supra* note 7.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Legal Administrator

OIF ISSUE: Doctrinal role of the legal administrator

DECISION: Currently, the role of the legal administrator is idiosyncratic and based upon the personalities of the SJA and legal administrator involved. There is no consistency across units.

RECOMMENDATION: The legal administrator community should carefully consider what it wants its role to be and have doctrine solidify that understanding.¹⁶

ISSUE: Military justice role of the legal administrator

DECISION: The legal administrator chief warrant officer (CWO) really only did witness travel.

RECOMMENDATION: The CWO can fill a larger military justice role. He or she can be a great asset in the post-trial process.¹⁷

ISSUE: Use of legal administrator in other roles

DECISION: The CWO became the primary claims investigator. This use was very effective, as the CWO often serves as the pay agent anyway. Having the CWO do both roles made the process much more efficient. The CWO also assisted with the processing of Financial Liability Investigations of Property Loss (FLIPLs) and served on a committee reviewing continued detention packets. The CWO also started to screen legal assistance clients.

RECOMMENDATION: Sustain. The CWO can assist judge advocates in many areas.¹⁸

OEF ISSUE: Role of the legal administrator

DECISION: The legal administrator performs an essential function throughout the deployment by ensuring the smooth internal operation of the legal office. During the deployment, the legal administrator took on some non-standard roles, such as serving as a Class A pay agent for weekly claims missions, and augmenting the Rule of Law section as required (inside and outside the wire). At the end of the deployment, the legal administrator was invaluable in enabling the office to survive the crush of evaluations and awards. The legal administrator was the only one in the office who understood the evaluation systems for all four services.

RECOMMENDATION: Sustain. The legal administrator has the experience and knowledge to be of use in a variety of areas. In this case, the legal administrator understood the role of claims and contributed greatly to the mission. Legal administrators can also get more involved in the area of rule of law. Many local legal organizations require infrastructure, materials, and resources to enable the delivery of legal services to the populous. Our legal administrators fill the role of assessing and resourcing these things in our system and can do the same in other systems.¹⁹

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

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Role of the E-8 Paralegal

OIF ISSUE: The proper role of the E-8 paralegal in the division and corps structures

DECISION: Undecided. The questions as to what exactly the authorized E-8 is supposed to be doing, who is to manage him or her, and who is to rate this NCO are not easily resolved. While the slot is labeled as “Military Justice NCO,” assigning this person just to military justice duties makes him or her a specialist in that field. At the E-8 level, this NCO should be a generalist, not a specialist in a particular field. It does not make sense to have this E-8 under an E-7 platoon sergeant, as occurs when the E-8 serves as simply the military justice NCO. However, it is valuable to have an E-8 doing military justice who has some authority over the E-7 senior paralegal NCOs at the brigade level.

RECOMMENDATION: The JAG Corps needs doctrine or guidance addressing this issue. As it stands currently, every unit handles this question differently.²⁰

ISSUE: Role of the master sergeant in the division

DECISION: His or her role depends on the mission. However, in a deployed environment, they could greatly contribute by helping to meet the requirement for 24/7 coverage of the division operations center. Consequently, it would be best if they received training on battlestaff operations. In the alternative, they could also stay back to provide experienced NCO leadership in the installation rear.

RECOMMENDATION: Making this person a criminal law expert serving in the military justice section may not be the best use of this experienced NCO.²¹

ISSUE: What to do with the E-8 assigned to the division

DECISION: Although the unit did not have a fill for this position, the expectation was the E-8 would manage all the enlisted personnel in a platoon sergeant type of role.

RECOMMENDATION: Assigning this NCO to do only criminal law is not a good use for him or her.²²

ISSUE: Use of E-8 paralegal as the division’s criminal law NCO

DECISION: It is unrealistic to place this master sergeant (MSG) in the criminal law section focusing solely on criminal law. The division SGM cannot mentor this individual to become a SGM if he or she is acting as a specialized expert in criminal law.

RECOMMENDATION: Place the MSG in charge of the executive portion of the OSJA. Have his or her duties include concentrating on training management for the office. He or she should work to ensure Soldiers are receiving the necessary training, such as attendance at NCO Education System (NCOES) schools.²³

²⁰ XVIII ABC 2009 OIF AAR, *supra* note 6.

²¹ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

²² *Id.*

²³ *Id.*

Rule of Law (RoL) Mission

OIF ISSUE: RoL as a core JA competency

DECISION: During the deployment, the JAs at the regiment stumbled by accident into involvement in the RoL area. While others would not have criticized them for remaining in their office on the Forward Operating Base (FOB) to focus on traditional JA duties, they wanted to make a greater contribution to their unit's mission. They assessed they could best do so through extensive RoL efforts. Legal teams that are short of personnel will drop the RoL mission first. RoL should be a core competency. It is the JA's most important contribution to the mission. These JAs were not adequately prepared to carry out RoL responsibilities. During this deployment, these responsibilities included working with judges, then forcing judges to work with police, and coordinating between Provincial Reconstruction Teams (PRTs) and judges, etc.

RECOMMENDATION: Improve. The JAG Corps must provide practical training in theater-specific RoL and how each JA should act in order to maximize their effectiveness for the command and the local populace.²⁴

ISSUE: Doctrine on the RoL mission

DECISION: Doctrine on the RoL mission is nascent but important. HQDA-level doctrine is imperative to ensure everyone is working with the same mission in mind.

RECOMMENDATION: Sustain, but consider the introduction of theater-specific doctrine (much like theater-specific Rules of Engagement (ROE)) as the rule of law mission will vary from country to country.²⁵

ISSUE: Emerging doctrine

DECISION: Doctrine on the RoL mission is emerging. As it does, it is important to go back and synchronize any pre-doctrinal resources to ensure they match the new doctrine.

RECOMMENDATION: Synchronize any future updates to the Rule of Law Handbook with the doctrine. Additionally, consider whether doctrine is driving the JAG Corps towards rule of law as a new core competency.²⁶

OEF ISSUE: Doctrine required on primacy within the Army for RoL efforts

DECISION: The CJTF-101 OSJA observed that because RoL has the word "law" in it that it is a JA issue/problem to be resolved. However, the CJTF-101 OSJA was not adequately resourced or staffed to be the CJTF-101 lead for RoL. Because the RoL is focused on developing governance capabilities, rather than the delivery of legal advice, there is a solid doctrinal argument that RoL is a Civil Affairs mission for the J-9, rather than a legal mission for the OSJA. This is a doctrinal gap that must be addressed, and then properly resourced. RoL quickly became "JA mission creep" that clearly distracted the OSJA from its doctrinal mission of advising the commander and staff in combat. The CJTF-101 OSJA struggled to adequately lead other staff RoL efforts,

²⁴ 2d Stryker Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, August 2007 – May 2008 (17 Feb. 2009) [hereinafter 2SCR 2009 OIF AAR] (on file at CLAMO).

²⁵ XVIII ABC 2009 OIF AAR, *supra* note 6.

²⁶ *Id.*

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interact with the U.S. Embassy RoL efforts, and coordinate the various BCT RoL plans and concepts all while only being resourced a single JA individual augmentee to perform the mission. Like the CJTF-82 before it, the CJTF-101 “robbed Peter to pay Paul” by taking JAs from other areas to resource the RoL requirement, which is not effective when limited to only approximately 15 JAs to provide operational legal support. OSJA support to a CJTF RoL mission is a coordinating staff function like that of any other line of operation and should be treated as such.

RECOMMENDATION: The right place for the RoL mission appears to be within Civil Affairs. However, they (CA/CJ-9) do not have the resources to do it. Attorneys definitely should be involved in the effort, but it should be those judge advocates serving in Civil Affairs units or S-9/G-9/J-9/CJ-9 sections, and not the JAs in the OSJA, unless doctrine is changed to reflect the RoL mission and accompanying manpower so it is not an economy of effort for the OSJA.²⁷

ISSUE: Institutional commitment to the RoL mission

DECISION: If the JAG Corps is going to keep the RoL mission, there needs to be an institutional commitment to building expertise in this area.

RECOMMENDATION: Designating a Legal Support Organization (LSO) to develop expertise in this area would be a start. RoL augmentees could then come from this unit. Awarding an additional skill identifier in RoL would also demonstrate we value the expertise and force us to think carefully about what qualifies one to perform RoL functions.²⁸

Marine Corps Doctrinal Issues

OIF ISSUE: Synchronizing the planning legal support & legal services support

DECISION: Responsibility for planning the commander’s legal support and legal services support remains haphazard. The respective commander’s SJA, who is responsible for providing legal advice to that commander and subordinate commanders, also provides legal service planning for the commander’s legal service support. Legal service support planning is often a function of the Legal Service Support Section (LSSS) as part of the Marine Logistics Group (MLG) general service support to the Marine Expeditionary Forces (MEF) (but ONLY focused on military justice). These two planning efforts are competing for the same scarce legal resources. In addition, operation planning cycles and training opportunities are continuous. There is no single lead planner for legal requirements across the legal service tasks or the operational unit spectrum.

RECOMMENDATION: Establish a unified legal service planning effort that captures both commander and command legal service support requirements. The legal planner should be resident within the MEF OSJA.²⁹

ISSUE: Legal planning

DECISION: II MEF used local SJAs and the Officer-in-Charge (OIC) of the LSSS to conduct initial planning for the deployment. Once the II MEF (Forward) stood up, planning and

²⁷ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

²⁸ *Id.*

²⁹ II Marine Expeditionary Force (Forward), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2007 – February 2008 (8 July 2008) [hereinafter II MEF (FWD) 2008 OIF AAR] (on file at CLAMO).

execution shifted to that unit. However, MEF-wide legal planning continued as an ongoing requirement. There is no established MEF-wide legal planner. Each major subordinate command (MSC) planned for its own legal requirements, but all legal sourcing came primarily from the MLG. MLG is responsible for legal service support, although this support is generally provided as services to commands and marine clients (such as military justice and legal assistance). Respective SJAs remain responsible for commander legal services (ROE/Escalation of Force (EOF), investigations, RoL, detainee operations, etc.), yet don't have the judge advocate (JA) troops for these tasks. These JAs will come for the MLG from outside of the MEF force (individual augmentees) and from redistribution of internal JA assets. Also, the deployment, training and JA sourcing cycles are out of synch due to the broad disparity of organizations involved in each particular cycle (MEF, school houses, Manpower Management Officer Assignments (MMOA), etc.). Finally, there is a requirement for coordination and planning at all levels during pre-deployment, deployment, and post-deployment.

RECOMMENDATION: A MEF-level legal planner can provide greater synchronization of operational legal requirements against on-going force legal requirements.³⁰

X.B. Organization (Force Structure)

OIF ISSUE: Organizational challenges upon redeployment

DECISION: Upon redeployment, some units brought legal issues back with them, including ongoing investigations, military justice matters, ethics issues and personnel matters. Some units kept assigned judge advocates to address these issues, while other unit judge advocates returned to their parent units. In addition, units that disbanded did not necessarily have a parent unit to forward legal issues.

RECOMMENDATION: Planning, agreement and coordination of the stand down and transfer of legal issues from deployed units require II MEF force-wide coordination. This will eliminate seams and protect commands from missing any associated legal requirements.³¹

ISSUE: U.S. forces staffing for Rule of Law (RoL) responsibilities

DECISION: The Combined Joint Special Operations Task Force (CJSOTF) requested additional Reserve Component JAs for deployment. Higher JA authorities initially approved the request, but the positions went unfilled (for reasons unknown). CJSOTF JA personnel may have a requirement to visit advanced operating bases (AOBs) to assist with highly important RoL issues. This necessarily degrades legal support to the command element (due to length of travel time within theater) if the command lacks augmented legal support. Cooperation with Iraqi Security Forces (ISF) personnel is a major part of the CJSOTF mission in Iraq, consistent with the doctrinal assignment of the foreign internal defense function to special operations forces (SOF). In view of the anticipated withdrawal of U.S. combat forces in Iraq over the next two years, the CJSOTF mission there may well expand. If so, there may be an expectation CJSOTF takes the lead, requiring additional JAs to support its AOBs.

Some units requested and obtained additional Criminal Investigation Division (CID) agents from 733d MP Battalion for operational support (i.e., investigating potential Central Criminal Court of Iraq (CCCI) cases). While some commanders may be able to use Law Enforcement Professionals

³⁰ *Id.*

³¹ *Id.*

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(LEPs) for additional support, some LEPs do not have the required skills (e.g., experience only in U.S. “white collar” crime). However, after 1 January 2009, deployed units also began to scrub their rosters to determine whether reserve augmentees employed in other military capacities also had civilian law enforcement skills.

RECOMMENDATION: Additional legal support to CJSOTF will be crucial for continued success of this counterinsurgency mission. Before deployment, commanders should consider the impact of changes to the legal framework, and may need to amend their organization or assignment of responsibilities. The Office of The Judge Advocate General (OTJAG) Personnel, Plans, and Training Office (PP&TO) should maintain a list of JAs with SOF experience who are willing to rapidly deploy in cases of legal support shortages or intensive legal operations (e.g. witness rehearsal, investigative judge (IJ) interaction, CCCI case preparation).³²

ISSUE: Ensuring consistency of advice across BCTs

DECISION: It was sometimes helpful to speak to BJAs in other brigades to determine how they were addressing similar issues. If one BJA allowed something other BJAs recommended their unit not do, news of this would reach the other brigades and cause problem.

RECOMMENDATION: While everyone is capable and independent, it is sometimes helpful to discuss issues with other BJAs.³³

ISSUE: Use of JAs for non-legal projects

DECISION: Commanders who need a quality written product may seek to make JAs the action officers for those projects, even when there is no legal issue. They do so because JAs tend to be well organized and articulate.

RECOMMENDATION: Be aware of this natural tendency. If allowed to go unchecked, non-legal duties will occupy time needed to meet legal requirements.³⁴

ISSUE: Organizational relationship between the BCT and MiTTs

DECISION: There were frequent questions from the brigade regarding the organizational relationship between it and MiTT's. Many MiTT team members went through the entire deployment not knowing who served as their rater. Units not indigenous to the brigade came to the BCT commander at mission's end asking him to rate them. No one seemed to have a clear understanding of the command and support structure for MiTT team personnel. The BJA answered the legal questions from MiTT teams as they arose.

RECOMMENDATION: Improve. The brigade should be aware from the start of the organizational relationships between the various units, organizations, and agencies residing with the brigade's area.³⁵

³² Asymmetric Warfare Group, After Action Report, Operation Iraqi Freedom, November 2008 – April 2009 (17 Apr. 2009) [hereinafter AWG 2009 OIF AAR] (on file at CLAMO).

³³ 4th Brigade Combat Team, 10th Mountain Division (Light Infantry), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – February 2009 (5 Feb. 2009) [hereinafter 4BCT, 10th MTN DIV 2009 OIF AAR] (on file at CLAMO).

³⁴ *Id.*

³⁵ *Id.*

ISSUE: Staffing of OSJA positions

DECISION: The MTOE for the division OSJA includes eleven officers on the assumption BJAs will pick up a number of responsibilities. In response to an OSJA request based on previous after action reviews (AARs), the Personnel, Plans, and Training Office (PP&TO) agreed to provide the OSJA with 1-2 additional personnel over authorized strength. The OSJA also staffed requests for reserve component (RC) personnel (a six-month process) to augment the BCT legal teams. The OSJA deployed with thirteen officers, twelve paralegals, and a legal administrator. Two additional paralegals would have been helpful in both the deployed office and with the rear detachment.

RECOMMENDATION: Sustain. Units preparing to deploy should discuss the anticipated workload with the outgoing unit to determine whether to make a request to PP&TO for additional legal personnel.³⁶

ISSUE: Pool of legal personnel from which to draw when deploying

DECISION: The current division structure provides enough people from whom to draw for deployment.

RECOMMENDATION: Consider very carefully whom you will take. Just because you have the authorization does not mean the forward location is the best place for all of your personnel. If you do not need them to deploy, do not deploy them.³⁷

ISSUE: Proximity to higher headquarters

DECISION: When a division is co-located with its headquarters, great working relationships develop. These relationships pay great dividends with respect to information sharing and legal support.

RECOMMENDATION: Take advantage of the physical proximity when you are near your higher headquarters. Cultivating personal and professional relationships with your counterparts at higher levels will help when you later request assistance from them.³⁸

ISSUE: Relationship of RoL and DetOps to OpLaw

DECISION: The OpLaw section chief would have preferred to have the RoL and DetOps sections under him. Because there were three separate sections, it was difficult to maintain visibility on certain issues. This was particularly troublesome when an issue one section was working on affected one or both of the other sections. Additionally, it became increasingly difficult to cover down on the other sections when the lead attorney was not available.

RECOMMENDATION: Have the RoL and DetOps sections report to the Chief of OpLaw.³⁹

ISSUE: 24-hour legal operations in the division operations center (DOC)

³⁶ 4ID 2009 OIF AAR, *supra* note 4.

³⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

³⁸ *Id.*

³⁹ *Id.*

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DECISION: The unit wanted 24-hour JA legal representation on the DOC floor, but this was not necessary.

RECOMMENDATION: Although not strictly required, it is sometimes important not to appear different from other staff sections. If the S-1 and S-3 are staffing positions 24 hours, the legal operational law section should also do so if possible.⁴⁰

ISSUE: Operational area overview

DECISION: The context in which you are working is important. Your personnel should know who is located where, who is commanding and controlling whom, and what their missions are. This sounds simplistic, but it is something legal offices often overlook.

RECOMMENDATION: It is important people understand how what they are doing fits into the larger picture. Take the time to give them the original lay down and revisit it any time there are significant changes. Personnel are very appreciative when you keep them informed.⁴¹

ISSUE: MNF-I organization chart

DECISION: The organizational relationships of the varying organizations in MNF-I were unclear and often difficult to ascertain. Despite having an electronic acronym dictionary on the MNF-I portal, there was no central location providing a comprehensive list describing who and what the purposes are of the varying organizations throughout MNF-I. After some trial and error, searching both online and making phone calls, one could obtain an explanation of an organization's relationship to other entities, including its chain of command.

RECOMMENDATION: Improve. Provide a comprehensive electronic schematic of the organizational relationship of every organization associate with MNF-I, including non-coalition organizations. There is no reason in the age of computers that such a list could not be constructed and posted online for theater use. Such a list should reside on the MNF-I main portal page.⁴²

OEF ISSUE: Control of judge advocate assets within the area of operations (AO)

DECISION: An officer assigned to another unit in the AO performed duties as a judge advocate without prior coordination with the battalion or higher headquarters. Legal advice and opinions from this officer led to forum shopping and degraded unit effectiveness.

RECOMMENDATION: Improve. Understand which units have JAs assigned. Develop a proposal to better utilize legal assets when other units have legal assets within the AO. If an agreement with the other unit is not possible, ensure JAs do not stray from assigned duties and do not provide legal advice with prior approval.⁴³

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, January 2009 – April 2009 (May 2009) [hereinafter MNF-I Individual Augmentee MAY 2009 OIF AAR] (on file at CLAMO).

⁴³ 4th Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, March 2008 – March 2009 (12 May 2009) [hereinafter 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR] (on file at CLAMO).

Number of Judge Advocates at the BCT Level

OIF ISSUE: Requirement to have three JAs assigned to the regiment or brigade

DECISION: The regiment had three JAs throughout the deployment. While the regiment's modification table of organization and equipment (MTOE) previously had one JA slot, it now has two. Joint Multinational Training Command (JMTC) provided the two additional JAs. One acted as the regimental JA, responsible for most communication with the regiment commander. The second JA was the trial counsel (TC) and dealt with administrative law (AdLaw) issues. The third JA looked after operational law (OpLaw) matters. The regimental JA attended most staff processes, except those which fell in a particular area (e.g., the OpLaw JA attended targeting meetings, etc.).

The three JAs were not very busy when based at Camp Liberty due to dispersal of regimental assets. They took advantage of this to work more with the squadrons (e.g., providing training on sensitive site exploitation, coordinating squadron access to law enforcement professionals (LEPs), and establishing and maintaining contacts with Iraqi police and judiciary) in order to get more information about how the Iraqi criminal justice system functioned. The move to FOB Warhorse resulted in a significant increase to the legal workload, as the legal team took on greater detention, claims, and additional RoL responsibilities. The regimental JA tried to assign one of his JAs to work at FOB Normandy on a full-time basis, and tried to acquire two more JAs, one to support the regimental headquarters, and one to do RoL.

RECOMMENDATION: Improve. Every regiment or brigade should have at least three JAs.⁴⁴

ISSUE: Legal assistance workload at the BCT level

DECISION: The legal assistance workload at the brigade in theater seemed heavy for only two attorneys. Legal assistance required more dedicated attorney support.

RECOMMENDATION: Evaluate the need for a third attorney to perform legal assistance at the brigade level in theater.⁴⁵

ISSUE: Need for a third JA in the BCT

DECISION: The BCT legal team consisted of two JAs for several months. Although they managed just fine, both JAs had a huge workload and sometimes had trouble working out conflict cases.

RECOMMENDATION: Improve. The BCT needs a third JA to help manage the workload and assist with conflict cases, claims, legal assistance, and detention operations.⁴⁶

ISSUE: Requirement for third BCT JA

DECISION: The BCT put in a request for a third JA, but someone denied it. The volume of work handled by the BCT JAs was significant. It would be helpful if the paralegals could assist

⁴⁴ 2SCR 2009 OIF AAR, *supra* note 24.

⁴⁵ 3ID 2008 OIF AAR, *supra* note 1.

⁴⁶ 3d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (14 Jan. 2009) [hereinafter 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

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by attending some of the meetings, but the staff representation at most meetings consisted entirely of other officers, making this option unrealistic. Because this BCT had only two JAs, whenever one JA was away from the office, the second JA had to cover off all activities. The division did backfill the BCT JAs during their leave. While BCTs may request a third JA, commanders are unlikely to do so. BCTs are doctrinally entitled to two JAs, not three, and commanders dislike asking for help. In contrast, a BCT commander is usually happy to accept the presence of a third JA if the JAG Corps determines they will provide one to the BCT.

Any brigade that has battlespace will have additional responsibilities, such as claims and detention operations. Two JAs are able to provide sufficient support in garrison (where there are fewer meetings, etc.), but will have difficulty handling the increased workload due to deployment. For example, deployment results in many more investigations, including FLIPLs. While the legal review of these reports does not take long, it is time-consuming just to read them. Two JAs may, in some cases, be able to manage on their own, but doing so requires them to opt out of certain tasks (e.g., claims, rule of law). This may in turn have an impact on relations with their division counterparts, who may perceive the BCT JAs as being reluctant to perform their mission (rather than simply lacking the necessary resources). In this case, relations between the BCT and division legal teams were somewhat tense, due in part to this issue.

RECOMMENDATION: Improve. Any BCT that will be responsible for battlespace while deployed should receive a third JA as a matter of course, possibly a reservist.⁴⁷

ISSUE: Attorney support to BCTs

DECISION: This BCT had two attorneys for most of its deployment. A third JA arrived approximately eight months into the rotation. The Army force structure process has not provided a third JA slot at the brigade.

RECOMMENDATION: Improve. Brigade legal sections deal with a breadth of legal issues equal to those of handled at division, but on a smaller scale. If a brigade does not have three attorneys, division SJAs should consider removing the requirement for brigade legal sections to provide legal assistance and claims support.⁴⁸

ISSUE: Personnel at BCTs

DECISION: Although having additional judge advocates would always be helpful, there was a greater need for additional judge advocates at land-owning BCTs having a combat mission. An additional attorney could assist with the rule of law and claims mission, which comes with being a land-owning unit, as well as with conflict clients in legal assistance. The division legal assistance office had to take conflict clients from the BCTs. Two judge advocates were sufficient from non-land owning units, such as the combat aviation brigade and engineer brigades.

RECOMMENDATION: BCTs should request additional judge advocates as far in advance as possible.⁴⁹

⁴⁷ 1st Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – November 2008 (15 Jan. 2009) [hereinafter 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

⁴⁸ 2d Brigade Combat Team, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – November 2008 (13 Jan. 2009) [hereinafter 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR] (on file at CLAMO).

⁴⁹ 1AD 2009 OIF AAR, *supra* note 3.

ISSUE: Addition of a third JA at BCTs

DECISION: Two attorneys cannot cover the plethora of legal issues presented in the normal course of business at the BCT. Whether covering legal assistance duties or helping the BJA with other areas while attorneys took Environmental Morale Leave (EML), the third attorney's presence proved invaluable as the mission proceeded. The legal office can survive with two attorneys, but it can thrive with three.

RECOMMENDATION: Argue for the third attorney position early and often. If division will not send an active duty attorney, request an activated reservist to fill the slot. Incorporate the BCT commander in the discussion and win his endorsement before pushing too hard against the system.⁵⁰

ISSUE: Need for additional JA at the BCT

DECISION: Only two JAs served in the brigade. Two JAs at the brigade level are inadequate for the workload. There was more than enough work to justify an additional JA at the brigade level.

RECOMMENDATION: Improve. Augment the BCT with an additional JA when possible.⁵¹

ISSUE: Legal personnel required at the brigade level

DECISION: Three attorneys and three paralegals were sufficient to handle the workload at that level. Brigades need a third JA. This third JA, at the very least, is essential for the legal assistance function. For the people the legal assistance attorney helped, the assistance was invaluable.

RECOMMENDATION: Resource these units with a third JA.⁵²

ISSUE: Need for a third JA at the BCT

DECISION: The additional deployed Reserve JA was absolutely necessary. Any deployed BCT needs a third attorney.

RECOMMENDATION: Ensure deployed brigades receive augmentation by a third attorney.⁵³

ISSUE: Unclear process and no feedback on request for a third JA

DECISION: The unit submitted the request for a third JA six months in advance, but never received any feedback on the progress of this request. The request was apparently successful, as a voluntarily mobilized JA contacted the unit to inform the BJA he would join the unit in Kuwait.

⁵⁰ 3d Brigade Combat Team, 4th Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, December 2007 – February 2009 (6 May 2009) [hereinafter 3BCT, 4ID 2009 OIF AAR] (on file at CLAMO).

⁵¹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

⁵² 4ID 2009 OIF AAR, *supra* note 4.

⁵³ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

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RECOMMENDATION: Keep the requesting unit apprised of the status of its request. This allows the unit to plan for how it will conduct operations and allows it to begin setting up its division of labor and makes self-development and training more efficient.⁵⁴

ISSUE: Client services without a third JA

DECISION: The BCT cannot effectively provide client services without the presence of a third JA. You need a separate legal assistance office. Many offered services would be impossible to provide without a third JA.

RECOMMENDATION: Obtain augmentation by a third JA.⁵⁵

ISSUE: Need for a third JA at the BCT

DECISION: This BCT had only two JAs; one BJA and one TC. Although they managed just fine, it would have been a tremendous help to have a third JA. There was certainly enough work to gainfully employ a third attorney, especially in the areas of RoL, investigations, and legal assistance.

RECOMMENDATION: Improve. Send a third JA to each maneuver BCT to help with the workload and eliminate conflicts.⁵⁶

ISSUE: Number of JAs at the brigade level

DECISION: Two JAs may not be enough for ground maneuver brigades and sustainment brigades. The sustainment brigades need the additional personnel to assist with their large military justice workload.

RECOMMENDATION: While an additional JA may be worthwhile in the deployed environment, there might not be a need for him or her in garrison. One possibility is to mobilize a Reserve JA to assist while deployed and leave the garrison staffing as it currently stands.⁵⁷

ISSUE: Need for a third JA at the BCT level

DECISION: Having a third JA at the brigade would be very helpful. RoL and detainee operations are, themselves, a full time job.

RECOMMENDATION: Provide a third JA for ground-owning brigades whenever possible.⁵⁸

ISSUE: Third attorney at the BCT level

DECISION: The legal workload at the BCT level made it critical to have a third attorney. A deploying BCT cannot wait several months for a reservist augmentee.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ 4th Brigade Combat Team, 3d Infantry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, October 2007 – December 2008 (25 Mar. 2009) [hereinafter 4BCT, 3ID 2009 OIF AAR] (on file at CLAMO).

⁵⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁵⁸ *Id.*

RECOMMENDATION: Improve. Add a third active duty JA at the BCT level for deployments.⁵⁹

ISSUE: **Procedures for requesting a third attorney**

DECISION: Upon arrival to Fort Hood, the BJA immediately started the process to have a third JA assigned to the BCT for the deployment. She received conflicting guidance as to how a BCT gets a JA reservist mobilized for deployment. A mobilized reservist joined the BCT in Iraq two months after the BCT's deployment.

RECOMMENDATION: Improve. PP&TO should publish the process for requesting a third JA to all division SJA's and BJAs.⁶⁰

OEF ISSUE: **JA support in the area of operations**

DECISION: There was not enough judge advocate/legal support staff in the RC East area of operations.

RECOMMENDATION: Improve. The mission supports additional judge advocate support. Assigning two additional judge advocates and two additional 27Ds to the brigade would be beneficial. The recommended staffing within the brigade should include an O4 as the BJA and the RoL liaison; a reserve O3 as a legal assistance attorney; and, a second O3 as an Assistant BJA who primarily practices military justice; and, third O3 to handle AdLaw and operational requirements. At least two additional 27Ds are necessary at the BCT to perform duties as the BJA directs.⁶¹

ISSUE: **Number of brigade JAs**

DECISION: During the deployment, each Brigade Combat Team (BCT) had two JAs assigned. The BJS was primarily responsible for the RoL mission, as well as operational issues. The TC handled military justice issues as well as legal assistance and claims issues.

RECOMMENDATION: BCTs should have at least three JAs. The third JA would allow the trial counsel to focus on military justice issues without the appearance of conflicts.⁶²

Reserve Component

OIF ISSUE: **Use of a Reserve JA as the deployed deputy**

DECISION: The previous unit used a mobilized Reserve JA as the deputy while deployed. In this particular case, this did not work out well.

RECOMMENDATION: Consider carefully whether it is best to place within the "Foundation of Four" a brand new member, with whom none of the team has any experience. Given the already

⁵⁹ 4th Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – June 2009 (14 Aug. 2009) [hereinafter 4-1 CAV 2009 OIF AAR] (on file at CLAMO).

⁶⁰ *Id.*

⁶¹ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 43.

⁶² 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

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significant challenges of being a deputy in a deployed environment, it is not the place to begin learning the deputy role, if the office can avoid it.⁶³

ISSUE: Timing of RC mobilization

DECISION: The supporting LSO mobilized ahead of the active component legal office. Consequently, the legal office met some of the supporting RC Soldiers after the active legal office arrived in theater. This was good for continuity, as these RC Soldiers served a portion of their time under the outgoing office in theater and stayed on for the incoming office. However, this left a large gap in coverage for the rear detachment when the RC Soldiers supporting that mission had to demobilize before the active component office returned.

RECOMMENDATION: Consider carefully the timing of the mobilization of RC assets. Their twelve-month mobilization timeline is not flexible and there are advantages and disadvantages no matter how it occurs.⁶⁴

ISSUE: Number of Reserve units mobilized to support the deployment

DECISION: By the end of the deployment, three different LSOs had mobilized to support the forward and rear sections of the active legal office.

RECOMMENDATION: Depending upon the mobilization timing and the number of locations the Reserve units are supporting, the requirements are much more complicated than a simple “one LSO for each headquarters.”⁶⁵

ISSUE: Number of Reserve legal personnel mobilized per deployed active duty legal personnel

DECISION: Any rule of thumb such as “one Reserve Soldier for every three active duty sent forward” is invalid in the modular force. A higher headquarters may now deploy and leave a significant number of its organic units back at home station. Any ratio developed when a headquarters deployed with all of its organic units may now result in a greatly understaffed rear detachment.

RECOMMENDATION: Make mobilization decisions based upon a careful consideration of the units/workload remaining in the rear after the active duty headquarters departs.⁶⁶

ISSUE: Utility of Reserve augmentation

DECISION: If not for the exceptional fills from the Reserve component, the OSJA would not have been able to accomplish its mission.

RECOMMENDATION: Sustain. Reserve augmentation is essential when you still have a complete installation to run while the division headquarters is away.⁶⁷

ISSUE: Timing limitations of Reserve augmentation mobilization

⁶³ IAD 2009 OIF AAR, *supra* note 3.

⁶⁴ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

DECISION: Reserve augmentation was very beneficial; however, starting the 365-day clock at the mobilization site causes problems. It means the mobilization will not cover the typical yearlong unit deployment.

RECOMMENDATION: Adjust the mobilization process to ensure it covers the way our Army currently fights.⁶⁸

[See also X.F.3. DOTMLPF—Personnel—Rear Detachment Staffing & Reserve Augmentation]

Marine Corps Organization & Force Structure Issues

OIF **ISSUE: The scope of the II MEF (Forward) commander's legal services**

DECISION: The scope of legal services provided by judge advocates varied significantly from the traditional roles expected of judge advocates in garrison. There was an expectation to surge to support unanticipated legal requirements. This constant diversification and fluctuation of commander legal service requirements required an adept maneuvering of legal capabilities, which in turn required the judge advocates to be multi-capable in order to follow shifting among tasks. A discreet specialization of legal capabilities did not support the operational commander.

RECOMMENDATION: Deployed JAs and SJAs must have operational flexibility to surge legal capabilities. This flexibility must be included in operational orders, as "guarantees" made in garrison may become meaningless once deployed.⁶⁹

ISSUE: Integration and utilization of enlisted paralegals (4421s and 4429s)

DECISION: Generally, enlisted paralegals were underutilized. OSJA, MNF-W deployed with two enlisted legal administrators (4421s), a MSgt and a Cpl. Each Regimental Combat Team (RCT), Marine Air Wing (MAW) forward and Marine Logistics Group (MLG) forward deployed with one 4421. The Army BCT deployed with five enlisted members. Many of the tasks at each SJA office included a number of administrative and legal administrative functions such as tracking detainee releases, drafting/reviewing standardized endorsements, legal assistance client management, initial investigation review, report generation, and managing legal training programs. With only two 4421s at the SJA office or only one 4421 at the MSCs, JAs completed these tasks, unlike the Army BCT who used their enlisted to complete these tasks. Most of the time, JAs did not have the time to train their enlisted on these capabilities, although some JAs made the time and reported great success and desire to help from the enlisted members. Often times, JAs were reluctant to utilize 4421s for various reasons, including the 4421s being fully employed with other enlisted tasks or because JAs had no confidence in the capabilities of 4421s to execute more complex legal administrative duties. This resulted in some 4421s being underutilized or utilized only for general enlisted tasks such as office maintenance, watch-standing, and on-call administrative errands. Other than PDLT, 4421s had received no pre-deployment specialized legal training to broaden their capabilities.

RECOMMENDATION: Additional 4421s should deploy to execute tasks JAs currently perform. 4421s need specialized enlisted PDLT and proactive integration. Additionally, educate JAs on

⁶⁸ *Id.*

⁶⁹ II MEF (FWD) 2008 OIF AAR, *supra* note 29.

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how to better train and integrate their enlisted members. Legal planners must identify suitable legal tasks for the enlisted and develop appropriate training programs.⁷⁰

ISSUE: Maximizing judge advocate capabilities at the RCT level

DECISION: Many legal issues (investigations, claims, detainee operations, RoL, military justice and administrative separations) began at the battalion level, but were ultimately resolved at the RCT level. Most BN JAs were inexperienced, first-tour JAs, who frequently and soundly relied on the RCT JA for legal oversight. RCT JAs were also well-located geographically and structurally to identify and resolve many legal requirements. In effect, RCT JAs have become the level II legal care providers for their commanders, commands, and subordinate units. RCT legal detachment consisted of three officers and one enlisted member.

RECOMMENDATION: Given the growing role of the RCT JA, better planning, sourcing, and training of the RCT JA and associated legal staff is necessary. As MNF-W moves to operational over watch, a properly planned, sourced, and trained RCT legal detachment could take over many of the operational legal tasks associated with the RCT and its subordinate units.⁷¹

ISSUE: The nature of legal tasks

DECISION: Both the MLG forward and MAW forward JAs supported a General Court-Martial Convening Authority (GCMCA). These commands were located on large military bases (Camps Taqqaddum and Al Asad, respectively) with multiple multi-service tenant commands, significant civilian contractor population and ongoing staff requirements. Many legal tasks were similar to the tasks associated with a CONUS installation, including reviewing civilian contracting issues (barring for misconduct), advising on MJ/disciplinary issues among tenant commands, and conducting administrative legal reviews of SOPs, policies and directives. While they encountered some operationally oriented issues (ROE/EOF training, minimal detainee operations, etc.), primarily well-rounded and experienced JAs successfully executed this mission with minimal staff requirements.

RECOMMENDATION: These MSC judge advocates must receive broad legal training and have 8-10 years of judge advocate experience, including assignment to an SJA office.⁷²

ISSUE: Non-traditional legal requirements

DECISION: Judge advocates fulfilled non-traditional legal requirements. For example, Rule of Law billets (such as Rule of Law Coordinator, Deputy Rule of Law Coordinator and LNO (liaison to the Provincial Chief Judge)) are traditionally a Civil Affairs function, but became a judge advocate responsibility across the force. Also, JAs were assigned non-legal detainee operations tasks (such as Task Force Military Police JA, tracking detainee releases, coordinating detainee movements, organizing release ceremonies, etc.). In addition, JAs filled “any officer” requirements, such as HQ Company Executive Officer, 2d MLG and G-3 Iraqi Security Forces, and Ministry of Interior (MoI) Coordinator. For the most part, JAs executed these billets and tasks successfully; however, given the high-demand/low-density of JA capabilities, as well as the significant amount of legal requirements, these other billets and tasks should be closely re-examined and revalidated.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

RECOMMENDATION: Judge advocates are capable of filling/satisfying non-traditional legal requirements; however, it represents a misuse of scarce resources in light of competing legal requirements.⁷³

ISSUE: The adequacy of the geographic distribution of LSST Iraq

DECISION: LSST Iraq dispersed geographically among three major Forward Operating Bases (FOBs). With the MLG forward, the senior defense counsel, a court reporter, and the legal service chief were located at Camp Taqqaddum. Camp Fallujah, with the command element and RCT, housed the OIC (dual-hatted as the Deputy SJA for the II MEF (FWD)), a defense counsel, a trial counsel, and a military justice officer. Al Asad Airbase, with the MAW forward and an RCT, had one legal assistance attorney. Dispersing the Team in this manner maximized the ability of local units to have access to general legal service support. Initially, the defense bar requested to co-locate defense counsel in order to improve defense services; however, this never occurred because these same attorneys provided critical legal assistance in their dispersed locations. This legal requirement was in greater demand than the defense counsel services. Having the OIC dual-hatted as the Deputy SJA allowed for quick assessment of general legal service support requirements followed by quick re-assignment of a judge advocate to fill these requirements while minimizing movement about the battle-space.

RECOMMENDATION: The dispersed legal service support concept was validated and should continue.⁷⁴

ISSUE: Tasks assigned to LSST Iraq judge advocates

DECISION: Although LSST Iraq judge advocates had initial billet assignments, aside from the defense counsel, they were all rotated and multi-tasked to address legal requirements as necessary. For example, the trial counsel was surged to the BCT in Ramadi to support increased detainee operation legal requirements. Similarly, the military justice officer surged to the RCT in Fallujah to support claims and lease operations as well as to the command element to support investigative review requirements. The defense bar remained independent and focused on defense services although they also provided legal assistance support on their respective bases. The OIC executed these surges, given his ability to proactively or immediately respond to requirements while dual-hatting as the Deputy SJA, MNF-W. This allowed him access to assess legal requirements across the MAGTF. This innovative non-traditional multi-tasking of LSST judge advocates was not a relinquishment of control of this logistics function; rather it validated the broad capabilities available in a LSST if proactively managed. Regular commander briefings mitigated misperception and explained the shifting requirements served by the LSST judge advocates.

RECOMMENDATION: LSST Iraq judge advocates represent a critical general legal service support capability that can function across the legal service support spectrum of tasks for both commands and commanders. Allowing LSST judge advocates to remain single-task focused would have been a misuse of limited judge advocate resources. Dual-hatting the OIC as the MNF-W Deputy SJA also served to increase responsiveness of these capabilities. Assigning a

⁷³ *Id.*

⁷⁴ *Id.*

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deputy OIC to collocate with the MLG for daily access and coordination would further reinforce the logistics function and relationship of the LSST Iraq.⁷⁵

ISSUE: Remain-behind element (RBE) requirements

DECISION: The majority of legal resourcing for MNF-W 06-08 came from the local area (defined as II MEF judge advocates and via Marine Corps Installations-East (MCI-East), Marine Corps Base (MCB) Lejeune, Marine Corps Air Station (MCAS) Cherry Point, and MCAS New River judge advocates). In addition, the Eastern Area Counsel Office (EACO) and the Piedmont Judicial Circuit provided specialized legal capabilities. The remaining legal resourcing for MNF-W 06-08 came from global sourcing solutions. Force generation was primarily II MEF with augmentation from MARFORCOM, MARFORPAC, and MARFORRES units.

Although the local area experienced a decrease in local service member population, there was not a similar decrease in legal requirements as tracked by various reports (MJ, AdSep, Investigations, Freedom of Information Act (FOIA), legal assistance clients, etc.). RBE legal advisors faced a constant risk of a decline in legal service scope, quality, and timeliness, as well as human resource fatigue. To address the risks, RBE employed various strategies including activating various reservist types (Active Duty Special Work (ADSW), Individual Mobilization Augmentee (IMA), etc.) to fill critical billets and the consolidation or sharing of legal administrative functions. Consolidation/sharing were most effective where documents and processes were standardized. This highlighted the need for more comprehensive training of basic judge advocate and enlisted skills as well as the need for a cross-leveling of skills to allow multi-tasking of service members. Arguably, this was exactly what the Legal Service Support Section (LSSS) envisioned to accomplish when formed over 20 years ago. We, as a community, with the Judge Advocate Division (JAD) in the lead, have failed to execute the standardization of documents and processes that formed the foundational basis for consolidation of legal assets into the LSSS. Finally as RBE reorganized units to adjust to the deployment of subordinate units and elements, substantial legal support by the SJA (not the LSSS) was required to clarify command authorities, realign routing processes, and ensure timeline driven processes.

RECOMMENDATION: Commander and command expectation management was critical to addressing the risk of decline of legal service scope, quality, and timeliness. Use of reservists and consolidation/sharing of legal administrative functions were enablers that highlighted the necessity of comprehensive training and cross-leveling of skills. Pre-plan and monitor RBE command authority and legal processing as units deploy and redeploy.⁷⁶

ISSUE: An identifiable benefit of the battalion judge advocate concept

DECISION: One of the benefits of having battalion judge advocates was a basic understanding of how the arrest warrant process worked. The judge advocates ensured the Marines received effective training on the new warrant-based criminal detention process.

RECOMMENDATION: None.⁷⁷

ISSUE: Experience level of RJAs

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ I Marine Expeditionary Force (Forward), Office of the Staff Judge Advocate, After Action Report, Operation Iraqi Freedom, February 2008 – February 2009 (19 Feb. 2009) [hereinafter I MEF (FWD) 2009 OIF AAR] (on file at CLAMO).

DECISION: The RJAs were usually experienced lawyers that had already attended TJAGLCS. It would have been a luxury to have this experience at the MNF-W staff. However, their skills were more beneficial at the regimental level.

RECOMMENDATION: Attempt to continue sending lieutenant colonels who have attended TJAGLCS as RJAs.⁷⁸

ISSUE: Personnel challenges upon redeployment

DECISION: Judge advocate personnel fills came primarily from 2MLG, then other MARFORCOM units, and then global sourcing (reservists, MARFORPAC and HQMC). Judge advocates redeployed with their assigned units. These units either did not have judge advocates on their T/O or disbanded upon redeployment. There wasn't a plan to reintegrate judge advocates with their parent units which resulted in judge advocates working two billets, abbreviating post-deployment leave, or not being timely integrated back into units. Primarily, this problem occurred with II MEF internal assignments. Individual augmentees did not report similar problems.

RECOMMENDATION: Planning, tracking, and coordinating the reintegration of deployed judge advocates and enlisted members requires II MEF force-wide coordination. This will allow quicker and smoother reintegration of scarce resources.⁷⁹

X.C. Training, Military Decision-Making Process (MDMP), & Readiness

X.C.1. Army

X.C.1.a. Annexes

OIF ISSUE: Understanding the current mission and objectives in theater

DECISION: In preparation, the office gave its personnel a classified briefing on the current operations order. This was effective in educating personnel on what the larger unit was attempting to achieve. It also provided some understanding of the means the unit was using to accomplish this.

RECOMMENDATION: Sustain. The current operations order is not difficult to get and is an excellent way to bring people up to speed on the current mission in theater.⁸⁰

ISSUE: Preparation of legal annexes

DECISION: The regimental JA and senior paralegal NCO were very involved in writing the legal annex before departure, and the senior paralegal NCO updated it during the deployment.

⁷⁸ *Id.*

⁷⁹ II MEF (FWD) 2008 OIF AAR, *supra* note 29.

⁸⁰ IAD 2009 OIF AAR, *supra* note 3.

RECOMMENDATION: Sustain. Regimental/brigade JAs and senior paralegal NCOs should expect to draft the legal annex. However, there is no need for extensive training, because the annexes issued by a division form the basis of any annexes prepared at the regiment/brigade level. Regimental/brigade legal personnel will simply tailor the division annex to their own requirements.⁸¹

Fragmentary Orders (FRAGOS)

OIF ISSUE: The FRAGO system is too unwieldy

DECISION: The FRAGO system is broken. There is a multitude of outdated guidance still circulating. It is difficult to determine if you have the latest policy or guidance on a particular subject. The unit did away with the issuance of legal FRAGOs as the primary means of recording changes. Instead, the unit updated the legal operations order (OPORD) itself. This ensured all the legal guidance was readily available from a single source. If the OPORD said it was so, it was the latest guidance.

RECOMMENDATION: Continue to push a FRAGO to inform the field of changes, but ensure the guidance makes it into the OPORD. This allows you to cull the old guidance and provides a single place to find the current guidance. The unit pushes so many FRAGOs, there is no way to remain current or know whether there is a historical FRAGO dealing with the issue.⁸²

ISSUE: Assimilating all of the diverse guidance present in the various FRAGOs

DECISION: The legal section is in a unique position to perform this task because every FRAGO undergoes a legal review. No other section reads every FRAGO.

RECOMMENDATION: Someone has to do it, and legal can do it. However, the legal section would need to step up and take this on as a serious, time consuming, task on a continuing basis.⁸³

ISSUE: Drafting of FRAGOs

DECISION: Paralegal NCOs are more than capable of drafting FRAGOs.

RECOMMENDATION: Delegate FRAGO-writing tasks to paralegals.⁸⁴

ISSUE: FRAGO and orders writing

DECISION: JAs need training on writing FRAGOS and orders. This is how the Army communicates and coordinates.

RECOMMENDATION: Incorporate practical exercises using this skill into training and education that is already occurring.⁸⁵

ISSUE: Knowledge of the FRAGO process

⁸¹ 2SCR 2009 OIF AAR, *supra* note 24.

⁸² 4ID 2009 OIF AAR, *supra* note 4.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

DECISION: JAs have to understand before they deploy how the FRAGO system works and how to write a FRAGO. You cannot count on personal relationships to induce a unit to perform a task. This is particularly true in rule of law efforts. No matter how good your relationship with a subordinate unit's JA, they will not be able to get their command to execute something in the absence of an order.

RECOMMENDATION: Train on staff processes and FRAGO writing before you deploy.⁸⁶

X.C.1.b. Field Standing Operating Procedures

OIF ISSUE: Information storage and retrieval

DECISION: The information the OSJA produced was difficult to locate on its computer systems, thus making future use of the materials difficult and causing the research of some issues more than once. The OSJA made steps to improve its information management by creating the "Eyrie" on its SharePoint resident on the MNF-I network. The Eyrie was an electronic library broken up into branches (i.e., International and Operational law, AdLaw, Detainee Operations, and Rule of Law, etc.), then into subjects. Once a document reached a completed stage, the office posted the document to the Eyrie. For uncompleted and ongoing products, each branch also had an electronic workbench or site used for short-term storage and collaboration. The OSJA instituted rules that prevented posting incomplete documents on the Eyrie.

RECOMMENDATION: Sustain. Institute this type of information management as soon as the legal office stands up. This will prevent overwhelming the staff due to the task of implementing new practices and the need to organize older files.⁸⁷

ISSUE: Overuse of the SIPR system in theater making future use of the same materials too restrictive in CONUS

DECISION: Almost everything that goes on in theater occurs on the SIPR system. Little, if any, real work occurs on the NIPR side.

RECOMMENDATION: Improve. Much of what a legal office does should occur on the NIPR systems. There should be greater attempts to conduct classified work orally with clients rather than in writing. Make attempts to serve clients on the NIPR systems first. Any conversations requiring a classified discussion should be oral, then as a last resort in writing and classified.⁸⁸

OEF ISSUE: Determining who provides advice to whom

DECISION: The SJA principally advised the commanding general. The Deputy advised the deputy commanders. The legal division chiefs advised appropriate staff principles. The J1, J4 & IG should interface with the chief of administrative law, and the J-2, J-3, and J-5 should consider the chief of OpLaw their principal advisor. The chief of contract and fiscal law advised the J-7 and J-8. The RoL chief advised the J-9. The OSJA SGM was the liaison to the CJTF-101/division CSM.

⁸⁶ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁸⁷ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 42.

⁸⁸ *Id.*

TIP OF THE SPEAR

RECOMMENDATION: Sustain. It is impractical for the SJA to be the advisor of first resort for every member of the staff. The logical partnering of key attorneys with the right staff principals improves the quality and responsiveness of legal advice to our clients. It is also efficient and improves the professionalism of our legal staff.⁸⁹

ISSUE: Pre-convoy operational briefings

DECISION: There is a significant difference between a British and an American-led convoy. The British conduct a full pre-convoy briefing outlining the mission, emergency escape procedures, and sensitive equipment destruction responsibilities. This comprehensive briefing ensures members of the team fully comprehend their roles in the event something goes wrong.

RECOMMENDATION: Use the British model for all convoys.⁹⁰

ISSUE: Garrison rules in a deployed environment

DECISION: Various rules and regulations negatively affected morale in the deployed environment. Rules such as the mandatory use of a PT belt everywhere on the installation may have value while in garrison, but may warrant reconsideration in combat.

RECOMMENDATION: Units must guard against the imposition of apparently frivolous rules and regulations that add little benefit, but significantly degrade morale.⁹¹

X.C.1.c. MDMP

OIF ISSUE: Pre-deployment electronic exercises involving participation in MDMP

DECISION: The JAs were involved in pre-deployment electronic exercises.

RECOMMENDATION: Sustain. The electronic exercises helped the JAs to understand how MDMP works, and allowed them to have a better understanding during the deployment of the role of campaign synchronization and other meetings.⁹²

ISSUE: Using pre-deployment training to form relationships with commanders and other staff sections

DECISION: Establishing a good relationship with squadron commanders meant including the JAs in unit pre-deployment preparation, beginning with ROE. Participation in pre-deployment training also led to the JAs being “dialed in” with other staff, including the S2 and S2X personnel. This ensured they knew what was going on with interrogations, and allowed them to understand what the unit was doing in terms of intelligence and targeting. S2X personnel also provided information about the identity of Iraqi judges and the way in which they fit into the local power structure, as well as the Iraqi way of thinking and the best methods of getting along with Iraqis. This was useful in understanding how to develop relationships with Iraqi judges.

⁸⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² 2SCR 2009 OIF AAR, *supra* note 24.

RECOMMENDATION: Sustain. Participation in pre-deployment preparation allows JAs to develop good relationships with key individuals and sections within their unit. Because this unit only had three maneuver squadrons, the JAs became well acquainted with their commanders, who then sought out JA assistance once deployed (e.g., for training on site exploitation). As well, seeing what was going on in other staff sections made one JA better at doing RoL.⁹³

ISSUE: JA role in the planning process

DECISION: The BJA inserted himself into the planning process early so he could help shape the idea at its inception versus waiting around for plans to find their way to his desk. In this way, he was able to stave off projects and plans initiated on an unsound legal footing.

RECOMMENDATION: Sustain. Do not sit in the TOC and wait for issues to rise to your level. Negligent patience places the BJA in the unenviable position of having to recommend against a plan late in the game because he did not get involved earlier in the process. Go to planning meetings and get involved. Do not sulk at your desk and wait for issues.⁹⁴

ISSUE: BJA knowledge and understanding of the military decision-making process (MDMP)

DECISION: This BJA took the “BCT Operations” elective during the Graduate Course, but thought that he did not really need it because he had deployed before as a Command JA. However, that previous deployment was not with an infantry brigade. Deploying with an infantry brigade was completely different because the command and staff viewed doctrine and MDMP as being very important. The BJA was aware of MDMP concepts, but had never dealt with them in detail.

RECOMMENDATION: Improve. Teach judge advocates MDMP. It is the single most important issue that the BCT (now Military) Operations elective should cover. Instead of writing a paper as an elective requirement, JAs should produce an order. In addition, a JA responsible for writing a legal annex must understand the meaning of concepts such “facts, assumptions, implied tasks, constraints,” etc. This is not something appropriate for the JA Basic Course, but it should be included in the Graduate Course (perhaps in the Military Operations elective).⁹⁵

ISSUE: Inapplicability of the MDMP process to the legal mission

DECISION: Other than its use by the operational law attorney in the division plans cell, the OSJA did not find the formal MDMP was helpful for planning the division legal support.

RECOMMENDATION: Sustain. For internal planning, the OSJA need not use the MDMP if it is not helpful. Realize, however, the rest of the Army does use it and does require legal input to the orders process.⁹⁶

ISSUE: Learn the process

⁹³ *Id.*

⁹⁴ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 48.

⁹⁵ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 47.

⁹⁶ 1AD 2009 OIF AAR, *supra* note 3.

TIP OF THE SPEAR

DECISION: Become educated on the MDMP. The credibility gained by having facility with the MDMP will serve operational JAs very well.

RECOMMENDATION: Sustain.⁹⁷

ISSUE: **Pre-deployment training & staff integration**

DECISION: In addition to their MRX at Grafenwoehr, the division staff practiced conducting targeting and other meetings to test the division battle rhythm. These meetings also helped to integrate the OSJA with staff sections with whom they did not normally work in garrison.

RECOMMENDATION: Sustain.⁹⁸

ISSUE: **MDMP use in RoL**

DECISION: The unit used MDMP to write the RoL plan.

RECOMMENDATION: Sustain. RoL practitioners must have a working knowledge of MDMP.⁹⁹

ISSUE: **JA involvement in the planning process**

DECISION: Although the JAs did not actively participate in the planning process throughout the deployment, at least one member of the legal team observed the importance of the JA perspective in the initiation and development of the unit's plan.

RECOMMENDATION: Inject yourself into the planning process where appropriate so you can affect those orders directly influencing the legal realm.¹⁰⁰

ISSUE: **JA knowledge of MDMP**

DECISION: JAs need the instruction that used to take place at the Combined Arms and Services Staff School (CAS3).

RECOMMENDATION: Make instruction mirroring what used to occur in CAS3 mandatory before graduation from the JA Officer Basic Course.¹⁰¹

ISSUE: **Understanding by young JAs of the functions and requirements of other staff sections**

DECISION: Inexperienced JAs do not understand what the other staff sections do or how the Army works.

RECOMMENDATION: JAs need instruction on this in the Basic Course. It might be beneficial to require Judge Advocate Tactical Staff Officer Course (JATSOC) completion before graduation

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ 3d Armored Cavalry Regiment, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, November 2007 – January 2009 (22 Apr. 2009) [hereinafter 3ACR 2009 OIF AAR] (on file at CLAMO).

¹⁰¹ 4ID 2009 OIF AAR, *supra* note 4.

from the Basic Course. The current training deadline is too late for JAs who deploy during their first assignment.¹⁰²

ISSUE: Choosing stability operation projects through MDMP

DECISION: Nominations for stability operation projects came through the battalions or the PRT. The BCT used MDMP to select certain projects for funding. The BJA attended all MDMP sessions to ensure the projects complied with the law. One heavily monitored item was the “Sons of Iraq” contracts. The BJA reviewed all contracts and made sure the commander was able to pay them according to the contract.

RECOMMENDATION: Sustain. It is important for the attorney to be part of the MDMP, even if they do not contribute to every discussion. That way the BJA can determine if the projects are within the law before selection and can answer any questions that may arise during the discussion.¹⁰³

ISSUE: Participation in MDMP

DECISION: Most issues discussed in the MDMP were not legal in nature. However, it was important to integrate the BJA into the process and to be present during the MDMP as a member of the primary staff. One way to make sure you understand the MDMP process and are a valuable member of the staff is to understand what the other staff sections do. Participating in the unit’s mission rehearsal exercise (MRX) was a crucial way to understand this and allows for better staff integration once deployed.

RECOMMENDATION: Participate in as many pre-deployment exercises as possible.¹⁰⁴

ISSUE: Meeting attendance

DECISION: 95% of the time, there is little to no value in your attendance at some meetings or updates. However, your presence builds your credibility for the 5% of the time you have to raise your hand to voice a concern. Attending these meetings also helps to hone your sense of what your office may be missing. The knowledge of current happenings you gain allows you to focus in on those things with which you have to dig into the details.

RECOMMENDATION: Although not of immediate value every time, attending meetings with the rest of the staff does have its benefits.¹⁰⁵

ISSUE: Attending pre-meetings before regular updates

DECISION: While attendance at meetings is necessary, it is much less frequently necessary to attend the “meetings to prepare for the meeting.” There may have been a time when JAs had to force themselves into meetings, but those days may have passed unless you really have a need to monitor closely someone or something. The other members of the staff now know what JAs bring to the table. They will tell the JA if they need to be there.

¹⁰² *Id.*

¹⁰³ 4BCT, 3ID 2009 OIF AAR, *supra* note 56.

¹⁰⁴ 525th Battlefield Surveillance Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, September 2007 – December 2008 (12 Mar. 2009) [hereinafter TF525 2009 OIF AAR] (on file at CLAMO).

¹⁰⁵ XVIII ABC 2009 OIF AAR, *supra* note 6.

TIP OF THE SPEAR

RECOMMENDATION: You do not need to attend every pre-brief or preparatory meeting.¹⁰⁶

ISSUE: **Knowledge of the orders process**

DECISION: Orders development and the orders process is something everyone needs to understand, even administrative law personnel. This includes how to write orders and fragmentary orders. The mobilized rear detachment needs it also, as the entire operational law section will deploy. First-time deployers have no idea how important this process is for getting any level of support.

RECOMMENDATION: This needs more emphasis in JAG training and has to come early in JA training, preferably the Basic Course.¹⁰⁷

OEF ISSUE: **Lack of training on topics brigade staff officers should know**

DECISION: Before deployment, the BJA had little to no training on MDMP from the legal perspective, drafting an OPORD, or writing a legal annex. These are all very important fundamentals, especially when working on a brigade staff.

RECOMMENDATION: Improve. It is important for the BJA to have respect as a vital member of the brigade staff. This will not happen if she is inexperienced in certain key areas.¹⁰⁸

ISSUE: **Staff officer skills**

DECISION: Operational JAs are members of the joint staff and should be familiar with and competent in MDMP and the writing of fragmentary orders (FRAGOS).

RECOMMENDATION: Operational JAs should complete Judge Advocate Staff Officers Course (JATSOC) before deploying. During deployment, JAs should continue to learn the finer points of MDMP and writing FRAGOS by interacting with the subject matter experts. JAs should also utilize 27Ds in this process.¹⁰⁹

X.C.1.d. Office Mission Essential Task List

OIF ISSUE: **The lack of descriptive standardized METL for judge advocates**

DECISION: USMC doctrine provides that JAs provide legal advice. This standard is so broad as to be useless. II MEF (Forward) prepared a ten-task METL for deploying JAs and had the commanding general (CG), II MEF and II MEF (Forward) prioritize the tasks. This allowed legal planners to focus legal planning, manning, structure, and training. Because the METL is not standard across the Marine Corps, joining units and commanders often established their own judge advocate or legal tasks priorities. This produced a misperceived mismatch of legal resources.

¹⁰⁶ *Id.*

¹⁰⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

¹⁰⁸ 101st Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, December 2007 – December 2008 (13 May 2009) [hereinafter 101st CAB 2009 OEF AAR] (on file at CLAMO).

¹⁰⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

RECOMMENDATION: While operational planners are best located to standardize the JA METL based on mission analysis, the initial basis of legal communities functions/tasks should be established Marine Corps wide as part of the Military Occupational Specialties (MOS) manual and Training and Readiness (T&R) manual. These legal functions need to be specific and tailored so that commanders can make resource allocations decisions.¹¹⁰

ISSUE: METL for the Marine battalion judge advocate

DECISION: From a senior JA perspective, battalion judge advocates had basic capabilities, but many of their products required significant oversight. For example, investigations conducted or reviewed often needed corrective HHQ endorsements; MJ and administrative separations advice needed correction, and ROE/EOF oversight was required by corps and force level directives. Battalion judge advocates appeared fairly integrated regardless of the time of attachment to the unit. From the reports, it appeared that the use of battalion judge advocates varied significantly depending on the experience of the battalion command group and the deployed judge advocate. There were no established employment tasks. For units that did not have a battalion judge advocate, the RCT and combat element provided the necessary legal support without degradation of services.

From a battalion commander/XO perspective, a battalion judge advocate is a positive and critical asset. Integration occurred in all surveyed units, with greatest satisfaction in those units where integration occurred early on. Uniformly, the desire was for integration before Mojave Viper (MV) and Coyote Viper (CV). As noted above, utilization depended on the battalion command group and the judge advocate's experience. Although MNF-W CG published and promulgated legal METLs, the battalion either didn't use them or didn't know about them. The diverse tasks assigned to the battalion judge advocates included non-legal tasks. In some cases, judge advocates were given other staff roles such as the executive officer, adjutant, detention point OIC, etc.

From a BN JA perspective, BN JAs uniformly spoke positively on their experiences. Although they made some mistakes, all BN JAs felt as if they had made critical contributions. Early integration was generally preferable, with pre-MV and CV being the most desired course of action. Access to the command group was consistently present. The command group primarily assigned tasks to the battalion judge advocates based on their previous experiences with judge advocates. These assignments included both non-legal and legal tasks.

RECOMMENDATION: Since there are no established METLs for battalion judge advocates, HQMC (generally) and the MEF (specifically) should define specific tasks associated with battalion judge advocates. Given that the MEF does not control battalion training, a service-wide approach is necessary. In addition, given that the MEF will have the latest mission analysis for the deploying units, a MEF-wide approach is necessary. Furthermore, assign judge advocates to a battalion based on mission analysis instead of habit or entitlement. Currently, most battalions desire a judge advocate because other battalions deployed with one. There was little to no mission analysis conducted to determine if a judge advocate or even an enlisted paralegal is necessary to fulfill the battalion requirement. As deployments change, either in location or mission, battalion judge advocates continue to be assigned regardless of whether the associated requirements will change.¹¹¹

¹¹⁰ II MEF (FWD) 2008 OIF AAR, *supra* note 29.

¹¹¹ *Id.*

OIF ISSUE: Multiplication of actions “requiring” legal review

DECISION: The staff constantly asked for a “legal review” of actions. Of these, perhaps 30% were actually legal in nature. Our ability to add value to any staff product can lead to us overwhelming ourselves. We then cannot devote the necessary time to those things that actually do require detailed legal review. The expectation has become we can do a quality legal review immediately in every case.

RECOMMENDATION: Improve. Prioritize legal reviews, and do not hesitate to say, “This does not appear to require a legal review” in appropriate cases. If the exigencies of combat require you to give an opinion without time sufficient to do a normal, well-researched, quality review, caveat your opinion as such.¹¹²

X.C.2. Combat Training Centers

OIF ISSUE: CTC training on warrant-based targeting

DECISION: It is difficult to provide appropriate training in an evolving area. JRTC offered training on obtaining warrants, but the condensed nature of the training made it appear easy (e.g., walk over to the judge and ask for one). This downplays the logistics and other issues discussed throughout this report, such as witness preparation.

RECOMMENDATION: CTCs should ensure that commanders and staffs are aware of some of the possible hurdles to be overcome in obtaining warrants, as well as some of the possible work-arounds (e.g., working through Iraqi Security Forces (ISF) counterparts or CCCI).¹¹³

ISSUE: Fiscal law training at National Training Center (NTC) and Joint Readiness Training Center (JRTC)

DECISION: This unit conducted training rotations at both NTC and JRTC. Neither training center provided adequate training on the processing of contract and fiscal law requests. The emphasis during the rotations was on spending money, not completing the proper paperwork.

RECOMMENDATION: Improve. The Commander, Operations Group (COG) at each CTC should make the project approval process a priority during training rotations.¹¹⁴

X.C.2.a. Battle Command Training Program (BCTP)

OIF ISSUE: Claims and rule of law training during Mission Rehearsal Exercises (MRXs)

DECISION: Pre-deployment MRXs did not include sufficient training on claims and RoL. The same was true for subordinate BCTs who went through the CTCs.

RECOMMENDATION: Improve. MRXs should include realistic training on claims, including real estate claims and leases, as well as rule of law. In addition, judge advocates and paralegals working in these areas should receive advanced cultural awareness training, and additional relevant training, such as the use of Biometric Automated Toolset System (BATS)/Handheld

¹¹² 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

¹¹³ AWG 2009 OIF AAR, *supra* note 32.

¹¹⁴ 4-1 CAV 2009 OIF AAR, *supra* note 59.

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Interagency Identification Detection Equipment (HIIDE) to screen claimants and prevent double recovery.¹¹⁵

ISSUE: MRX detention operations injects

DECISION: MRX detention injects lacked sophistication.

RECOMMENDATION: Improve. MRX inject detention packets should resemble detention packets used in theater as closely as possible (i.e. they should contain dummy intelligence products).¹¹⁶

ISSUE: Overall impressions

DECISION: BCTP was very good but their scenarios were not always current. It was important to share expectations before commencing a training exercise. Since theater operations are so fact-specific, it was hard to generate legal issues at the MRX. Some of the most valuable training involved getting the new OpLaw JAs familiar with the MDMP process. Having good interaction with the current OpLaw section already in theater was also very helpful.

RECOMMENDATION: Sustain.¹¹⁷

ISSUE: RoL at the MRX

DECISION: The MRX should include RoL scenarios requiring senior leader engagement. It is important to plant RoL issues into the non-legal targeting cycle in plans and effects.

RECOMMENDATION: Improve. Training on this mission is critical.¹¹⁸

ISSUE: MRX

DECISION: Training should mirror current events in theater. Make the command group aware at the MRX that RoL is important so they take it seriously in theater.

RECOMMENDATION: Improve. Interject current, realistic scenarios into the MRX, especially with respect to the RoL mission.¹¹⁹

ISSUE: Introduction of commander-controlled ROE into the MRX

DECISION: Explaining which sections of the ROE the Division Commander owned at the MRX gave him plenty of time to review and reflect on any potential changes he wished to make when he took command.

RECOMMENDATION: Sustain.¹²⁰

ISSUE: The use of legal injects in the exercises

¹¹⁵ 1AD 2009 OIF AAR, *supra* note 3.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

TIP OF THE SPEAR

DECISION: Legal injects requiring the OSJA to coordinate with other staff sections are especially helpful and very beneficial.

RECOMMENDATION: Continue to use injects the OSJA cannot complete internally. The interaction these injects require with other staff sections teaches the new JAs the roles of the other staff sections and builds the expectation and ease of coordination essential to operations in theater.¹²¹

ISSUE: Presence of currently deployed personnel at the MRX

DECISION: It was extremely valuable to have currently deployed personnel present at the MRX.

RECOMMENDATION: Continue to sustain this effort. It is well worth the difficulty in getting personnel back from in theater.¹²²

ISSUE: The focus of the MRX

DECISION: The corps MRX very much focused on how the Joint Operations Center (JOC) worked. This resulted in a great many of the legal personnel involved not being very busy, as they were not typically involved in JOC operations. The support the unit provided during the MRX for its replacement unit made the training much more realistic.

RECOMMENDATION: Have the currently deployed unit provide as many real-world scenarios as it can for use at the MRX. This gives a truer feel for the level of effort required and the types of issues the unit can expect to see once deployed.¹²³

ISSUE: Effectiveness of the MRX

DECISION: Having a week of training from Joint Forces Command (JFCOM) followed by a week of training from BCTP personnel was not effective. By splitting it up, it makes it difficult for either training source to invest fully in the training. Having visitors who were currently serving in theater was very helpful.

RECOMMENDATION: Meeting the other staff members was the biggest advantage of the exercise. The unit undergoing the training has to make out of the exercise what they can on their own.¹²⁴

ISSUE: Currency of injected scenarios and questions

DECISION: Some injects for the unit's mission rehearsal were a little stale. However, the unit provided a great number of current events for use in the training of the incoming headquarters.

RECOMMENDATION: Have the predecessor unit provide the training issues for the incoming unit. It ensures the currency and relevance of the issues presented.¹²⁵

¹²¹ 4ID 2009 OIF AAR, *supra* note 4.

¹²² *Id.*

¹²³ XVIII ABC 2009 OIF AAR, *supra* note 6.

¹²⁴ *Id.*

¹²⁵ *Id.*

ISSUE: Setting the team before the training

DECISION: Due to timing, no person holding a position in the rehearsal exercise ended up holding that position while deployed. This prevented meeting and integrating with their staff cohorts ahead of the deployment.

RECOMMENDATION: If possible, establish the duty positions in time to train in those positions during the exercise.¹²⁶

ISSUE: Bringing in deployed personnel to support the MRX

DECISION: It is extremely helpful to have people from the deployed unit attend the MRX and describe their day-to-day life. It is especially valuable because personnel can talk peer to peer with their counterparts and future deployers can ask those little things they would not typically ask in a larger forum.

RECOMMENDATION: Sustain. This is well worth the cost in money and effort for deployed personnel to attend the MRX for the deploying unit.¹²⁷

ISSUE: Utility of the MRX

DECISION: The MRX was valuable for the legal section. It will continue to be so as long as the scenario writers are working closely with deployed personnel to ensure the scenarios remain relevant.

RECOMMENDATION: Sustain. Although it is difficult to do when you are still responsible for running an installation legal office, getting your personnel to the MRX is worthwhile. It is here they can learn how the staff functions and begin to build their staff relationships.¹²⁸

ISSUE: Personnel at the MRX

DECISION: Only operational law personnel participated in the MRX.

RECOMMENDATION: Improve. It would be beneficial to have everyone participate in order to begin building relationships with the rest of the staff. The MRX was instrumental in providing an understanding of what other skills would be necessary while deployed.¹²⁹

ISSUE: Staff integration at the MRX

DECISION: One of the many benefits of the MRX was the interaction with the other staff sections. The staff quickly realized the value of having a legal representative at the table. Since this practice was commonplace at the MRX, it continued as a matter of course in theater.

RECOMMENDATION: Sustain. Being part of the team at the MRX will pay dividends in theater.¹³⁰

¹²⁶ *Id.*

¹²⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

TIP OF THE SPEAR

ISSUE: Deployed staff returning for MRX

DECISION: Allow part of the deployed OpLaw staff to assist with the incoming unit's MRX. The OpLaw team thought the currently deployed attorneys who supported the MRX provided the best preparation for deployment.

RECOMMENDATION: Sustain.¹³¹

ISSUE: Non-governmental organization (NGO) briefing at MRX

DECISION: The briefing on NGOs was excellent. It covered which NGOs are in theater, what their missions are, and their attitude and demeanor towards the U.S. military.

RECOMMENDATION: Sustain. This briefing should be required for all OpLaw attorneys.¹³²

ISSUE: Mission rehearsal exercise (MRX) for RoL

DECISION: The MRX training was helpful. The Governance, Reconciliation, and Economics Coordination Cell (GRECC) coordination began here. The unit used the opportunity to figure out how they intended to work things out through this cell.

RECOMMENDATION: Sustain. The sooner you begin your interaction with non-habitual contacts, the better.¹³³

ISSUE: Lack of training on PRTs

DECISION: Units would benefit from PRT coordination training at the MRX.

RECOMMENDATION: If feasible, train the RoL attorney early on the role the DoS plays in the mission. Optimally, have the Department of State provide training or participate in the MRX.¹³⁴

OEF ISSUE: Training for joint legal operations

DECISION: The JA trainers at JFCOM and BCTP must develop and focus pre-deployment training on conducting legal/OSJA operations in a joint environment.

RECOMMENDATION: In addition to JFCOM and BCTP pre-deployment training, the Service TJAGs should together consider developing a joint legal operations elective, perhaps as part of the Graduate Course at TJAGLCS, in order to fully teach joint legal operations and TTPs/lessons learned for upcoming section chiefs, DSJAs, and SJAs expected to be able to deploy successfully to joint OSJAs.¹³⁵

ISSUE: Transition from a division to a combined or joint staff

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

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DECISION: Division OSJAs do not normally transition into a joint OSJA. Nor do they become NATO LEGADs, which is the situation in RC-East in Afghanistan. Again, BCTP and JFCOM, must be able to educate and train division and corps OSJAs to assume these missions.

RECOMMENDATION: Training for these things has to occur before the mission rehearsal exercise in order for the deploying unit to fully benefit from implementing what it learned during the MRX and any/all other pre-deployment training.¹³⁶

X.C.2.b. Joint Multinational Readiness Center (JMRC)

OIF ISSUE: Pre-deployment training at the Combat Training Centers (CTCs)

DECISION: The regiment participated in a training rotation at the Joint Multinational Readiness Center (JMRC). The paralegals trained with their squadrons, but not all the JAs were able to be there at the same time, nor did the senior paralegal NCO attend, due to an ongoing court-martial. The training did not provide sufficient exposure to non-lethal effects.

RECOMMENDATION: Improve. As many legal personnel as possible should attend the CTC rotation. This is the best way for legal teams to prepare for deployment. While CTC training does not last long enough to expose legal personnel to all aspects of the legal mission, it provides the best simulation of deployment conditions. Completing courses and “reading stuff out of a book” provides insufficient preparation. Commanders should also request the CTC to provide a good range of non-lethal injects, as this is often the area of operations with which Soldiers are least familiar.¹³⁷

X.C.2.c. Joint Readiness Training Center (JRTC)

OIF ISSUE: ICRC training at JRTC

DECISION: The ICRC inspected the BCT detention holding area (DHA). The BCT was prepared for this inspection in large part because of the training received at JRTC. An actual ICRC representative was at JRTC, and this provided tremendous training and “real world” preparation for the deployment, along with interaction with this international organization. JRTC also helped to identify before the deployment what some of the DHA challenges would be.

RECOMMENDATION: Continue to have the ICRC at JRTC to help units prepare for the deployment.¹³⁸

ISSUE: Lack of training at JRTC for 27Ds

DECISION: There was a lot of down time at JRTC for the 27Ds because there were very few classes set up for them. Most of the time, they were not even in the “box.” The training did not allow the 27Ds to have much interaction with their battalions and there was no training on how to perform the claims mission or detention operations, which would have been very helpful for their deployment.

¹³⁶ *Id.*

¹³⁷ 2SCR 2009 OIF AAR, *supra* note 24.

¹³⁸ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

TIP OF THE SPEAR

RECOMMENDATION: Improve. JRTC needs to adequately train the 27Ds as well as the JAs for deployment. They should include training on legal missions that will see in Iraq, such as detention operations and claims.¹³⁹

ISSUE: Lack of useful training for 27Ds at JRTC

DECISION: The training provided at JRTC was not very useful to the 27Ds. They did not receive any training on claims, military justice, or anything else that was part of their core mission in Iraq. The little training they did receive was very superficial and failed to get into to any detail.

RECOMMENDATION: Improve. JRTC should focus on the primary legal missions that the 27Ds will perform during their deployment. For example, they need training on how to conduct the claims mission, including review of a claims packet to learn what should be in the packet and what the required level of proof is to validate a claim.¹⁴⁰

ISSUE: JRTC rotation

DECISION: Participation in the JRTC exercise proved invaluable as it allowed the brigade legal section to witness the staff function and operate as a team.

RECOMMENDATION: Sustain. Not all JAs and paralegals have deployed or spent time working on a staff. Rotations through the CTCs foster staff integration and permit the brigade legal section to inject itself during the formative stages of the team building process.¹⁴¹

ISSUE: Legal injects during the JRTC rotation

DECISION: There were very few measurable, legal injects during the unit's JRTC rotation. It appeared as if the plan did not lend itself enough time to properly work through and discuss relevant legal issues. Of the issues presented, few were of a non-lethal nature.

RECOMMENDATION: Improve. In as much as CTC rotations mean to prepare all staff sections for their upcoming deployments, they should inject pertinent legal issues. This would allow the legal observer controllers to assist the brigade legal section while they work through topics germane to their future missions.¹⁴²

ISSUE: Lack of fiscal law training at JRTC

DECISION: A large part of the deployed legal work is fiscal law. The unit's JRTC rotation did not train the unit on fiscal law.

RECOMMENDATION: Improve. JRTC might consider adding basic fiscal law scenarios to its training.¹⁴³

ISSUE: AR 15-6 investigation training

¹³⁹ *Id.*

¹⁴⁰ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 47.

¹⁴¹ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 48.

¹⁴² *Id.*

¹⁴³ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

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DECISION: There were too many events requiring AR 15-6 investigations during the BCT's JRTC rotation. It took key players away from other training events.

RECOMMENDATION: Improve. The JRTC can shorten training events dealing with AR 15-6 investigations.¹⁴⁴

ISSUE: Missing key brigade personnel for the pre-deployment training

DECISION: The brigade went through part of the training at JRTC without the BJA, the Provost Marshal Officer (PMO), and the brigade XO.

RECOMMENDATION: Improve. The brigade should strive to ensure all its key personnel obtain pre-deployment training, preferably together.¹⁴⁵

ISSUE: Key leader engagement (KLE) training

DECISION: Neither the BJA nor the TC attended the KLE training at JRTC.

RECOMMENDATION: Improve. JRTC should expand the training opportunities for KLE to include all commanders and staff members who are likely to conduct KLEs.¹⁴⁶

ISSUE: Claims training

DECISION: The BCT received eight claims packets to process during their JRTC rotation, with role players acting as the claimants. The claims implicated a variety of legal issues that could arise under the Foreign Claims Act.

RECOMMENDATION: Sustain and Improve. All members of the BCT legal team should get a chance to process claims at JRTC. The BJA should discuss each packet with the paralegals to walk them through the analysis.¹⁴⁷

ISSUE: Mock detainee training classes to ISF

DECISION: At JRTC, some of the brigade's subordinate units had trouble creating detainee packets. Although guidance from the BJA during the rotation resulted in some improvements, these units did not have an opportunity to practice training their ISF counterparts.

RECOMMENDATION: Improve. Build additional opportunities into the JRTC scenario for maneuver units to train their ISF counterparts in detention operations and warrant-based targeting.¹⁴⁸

OEF ISSUE: Brigade staff training at JRTC

DECISION: There was limited time to train the staff as a comprehensive/combined unit at JRTC.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ 4-1 CAV 2009 OIF AAR, *supra* note 59.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

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RECOMMENDATION: Improve. Increase training scenarios for officers and enlisted in an effort to integrate them into the staff organization before deployment. Add nonorganic units to the brigade before JRTC to prevent the inconsistent training and lack of familiarity with the staff. A relationship established early in the training cycle increases efficiencies during the deployment and allows personnel to develop familiarity before arriving in the area of operations.¹⁴⁹

X.C.2.d. National Training Center (NTC)

OIF ISSUE: **Absence during NTC**

DECISION: The regimental judge advocate (RJA) missed the regiment's NTC rotation and felt a bit out of the loop when he joined the unit a few months before the deployment. The Deputy RJA attended the training cycle and found the experience invaluable.

RECOMMENDATION: Participation in the training center cycles is oftentimes beyond the control of the individual JA. However, if you can go, you should go so you can experience the critical staff integration phase of the rotation.¹⁵⁰

ISSUE: **Legal training at NTC**

DECISION: NTC was not useful because it failed to provide the right kind of training for the brigade's mission. Furthermore, instead of teaching the legal team how to perform a legal mission, Observers/Controllers (O/Cs) simply told the JAs and 27Ds to do something, and then "rated" them on how well they completed the task. Additionally, some of the areas that were covered in NTC, such as Article 5 Tribunals and CCCI prosecutions, were not even part of the brigade's legal mission in Iraq.

RECOMMENDATION: Improve. The training during NTC should provide guidance and instruction on *how to* perform critical missions such as claims, Commanders Emergency Response Program (CERP) and detention operations. This training should consist of more than just telling the legal team to do something, and then sitting back while they stumble through the exercise. Actual training and guidance on the relevant legal missions in Iraq is essential to success.¹⁵¹

ISSUE: **NCO training at NTC**

DECISION: The NCO legal training at NTC was not at all helpful and was sometimes insulting to one's intelligence. For example, the O/Cs handed the NCOIC a bag of fake money and told the NCOIC to create a CERP program, with no further instruction or guidance. There was no training on how to be an effective NCO during a deployment.

RECOMMENDATION: Improve. One of the best things to teach at NTC is how to handle the logistics in Iraq. This was one of the greatest challenges to the NCOIC during the deployment. The NCOIC was in charge of moving court-martial personnel from FOB Kalsu to the courthouse on Victory Base Complex, ensuring that the attorneys could travel either by air or by convoy to complete their missions. This coordination ensured clients were able to see their defense attorneys face to face when necessary, and got Soldiers to and from the embassy for their

¹⁴⁹ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 43.

¹⁵⁰ 3ACR 2009 OIF AAR, *supra* note 100.

¹⁵¹ 4BCT, 3ID 2009 OIF AAR, *supra* note 56.

citizenship applications. This is all very complicated in a deployed environment. NTC provides a perfect forum to instruct in this area.¹⁵²

ISSUE: Training the targeting cycle

DECISION: The training at the NTC was good regarding the process (meetings) required for the targeting cycle.

RECOMMENDATION: JAs have to be a part of this process and this expectation begins when the unit sets up its processes at the training center rotation.¹⁵³

ISSUE: ICRC presence at training centers

DECISION: The presence of the ICRC was very beneficial. It gives the unit a sense of seriousness when they see from the beginning that outsiders will be checking their work.

RECOMMENDATION: Continue to have the ICRC participate in the training rotations.¹⁵⁴

ISSUE: Training on Article 5 tribunals

DECISION: NTC required the unit to conduct Article 5 tribunals. One of the stated rationales was to train units on the logistical requirements of moving witnesses.

RECOMMENDATION: Improve. Training on Article 5 tribunals is unnecessary, as they rarely occur in theater and will never occur at the brigade level. Units do not need to disrupt other training events to practice moving witnesses.¹⁵⁵

ISSUE: Training for the claims mission

DECISION: There was no training in claims at NTC.

RECOMMENDATION: Make the settling of a claim a training objective at NTC.¹⁵⁶

ISSUE: Claims training at NTC

DECISION: Claims training at NTC focused on the logistics of establishing a claims program rather than the actual adjudication of claims.

RECOMMENDATION: Improve. Units will generally fall in on an existing claims process in theater. Training at NTC should focus on adjudication of sample claims.¹⁵⁷

OEF ISSUE: Quality of the pre-deployment training

DECISION: Only the brigade staff attended the NTC rotation. Here, the BJA contacted the forward deployed division that served as her brigade's higher headquarters. She obtained

¹⁵² *Id.*

¹⁵³ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

¹⁵⁴ *Id.*

¹⁵⁵ 4-1 CAV 2009 OIF AAR, *supra* note 59.

¹⁵⁶ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

¹⁵⁷ 4-1 CAV 2009 OIF AAR, *supra* note 59.

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documents from them and got a better idea of her legal mission. The time at NTC allowed the brigade staff to work together and become familiar with each other. However, the training centered very much on Operation Iraqi Freedom (OIF) instead of Operation Enduring Freedom (OEF).

RECOMMENDATION: Improve. Although the training was beneficial in many ways, it must place more emphasis on OEF.¹⁵⁸

X.C.3. Predeployment Training Material

OIF ISSUE: Requirement for theater-specific training

DECISION: Of the nine-person regimental legal team, only two JAs and one paralegal had previously deployed. These JAs could have benefited from theater-specific training, particularly in the areas of fiscal law and RoL. It is difficult to fit in training before deployment because of the need to provide support to the deploying unit. Once in theater, JAs are generally too busy to leave their regiment/brigade for training, particularly because weather and other transport issues mean travel may result in significant delays in returning to the unit. However, these JAs had some spare time during the 10-14 days spent in Kuwait, during which other regimental personnel were preparing their equipment, etc.

RECOMMENDATION: Improve. While in Kuwait, it would be helpful for JAs to spend two days or so with someone familiar with their division's policies. The trainer could be from the regiment/brigade or the division level. However, if a division OSJA representative conducted the training, it would need to be someone with broad knowledge (e.g., the deputy SJA). The trainer could bring a CD of relevant materials and walk the new JAs through them. Upon arrival in theater, it is helpful if the outgoing regimental/brigade JA assembles a welcome packet of most recent FRAGOs, etc.¹⁵⁹

ISSUE: Lack of claims training for the 27Ds

DECISION: For the NCOIC, claims proved the busiest legal mission. Before deployment, the 27Ds had very little training on how to conduct the claims mission. Therefore, they all had to learn as they went.

RECOMMENDATION: Improve. 27Ds need adequate training in claims since they play a large role in the deployed legal claims mission.¹⁶⁰

ISSUE: Conduct “checklist” training for all rear detachment commanders on pending legal actions

DECISION: To ensure timely processing of pending legal actions in the rear detachment, it is important to conduct face-to-face training with the commanders. This not only serves to process the existing cases out of the Army, but also serves as great training on how to process future cases when the judge advocates will not be there to help.

RECOMMENDATION: Sustain.¹⁶¹

¹⁵⁸ 101st CAB 2009 OEF AAR, *supra* note 108.

¹⁵⁹ 2SCR 2009 OIF AAR, *supra* note 24.

¹⁶⁰ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

ISSUE: MNF-I is an acronym-rich environment

DECISION: It is useful to arrive in theater already in possession of at least some knowledge of the identity and roles of MNF-I's major subordinate commands (e.g., MNC-I, Multi-National Security Transition Command-Iraq (MNSTC-I), Law and Order Task Force (LAOTF), TF-134, etc.). Close cooperation with the U.S. Embassy RoL Coordinator (RoLC) then requires familiarization with a second set of acronyms for other U.S. government agencies and programs (e.g., International Criminal Investigative Training Assistance Program (ICITAP), International Narcotics and Law Enforcement (INL), etc.). Immersion, prior to departure, in TJAGLCS RoL discussions and recent Iraq lessons learned helped provide a level of familiarity, but the same effect could have been achieved by reviewing some of the chapters in the CLAMO Rule of Law Handbook.

RECOMMENDATION: JAs deploying as individual augmentees, particularly in the still-new RoL subject area, will be better prepared to “hit the ground running” if they attempt to obtain some familiarity with the names and roles of the various organizations involved prior to arrival.¹⁶²

ISSUE: Pre-deployment training

DECISION: Before deploying, the unit conducted multiple VTCs with the unit it would be replacing. It was a requirement all chiefs and noncommissioned officers in charge participate. The unit used these VTCs to build the situational awareness of its Soldiers.

RECOMMENDATION: Sustain.¹⁶³

ISSUE: Digital left seat/right seat ride

DECISION: Use of SIPR portals provided a means to begin transition education long before setting foot in country. This was the means for some of the best preparation.

RECOMMENDATION: Sustain. Do not overlook the capability today's technology provides in allowing transition training to begin before face-to-face coordination is possible.¹⁶⁴

ISSUE: Utility of early SIPR access

DECISION: The SIPR network contains useful pre-deployment training material, but it is hard to access.

RECOMMENDATION: Improve. Arrange early SIPR access to support pre-deployment training.¹⁶⁵

ISSUE: Pre-deployment concentration areas

¹⁶¹ *Id.*

¹⁶² Individual Augmentee, Multi-National Force – Iraq, Office of the Staff Judge Advocate (Rule of Law Section), After Action Report, October 2008 – December 2008 (9 Feb. 2009) [hereinafter MNF-I Individual Augmentee FEB 2009 OIF AAR] (on file at CLAMO).

¹⁶³ 1AD 2009 OIF AAR, *supra* note 3.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

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DECISION: The attorneys identified four critical areas to focus on before the unit deploys: First, JAs must learn what other staff sections do, and discern how those tasks comport with the legal mission. Second, JAs should refresh their knowledge of basic Soldier skills, because such skills receive little attention in garrison. Third, the RJA should try to identify each person's role in the section as quickly as possible so his/her subordinates can familiarize themselves with the pertinent resources, policies, and practices. Fourth, attorneys should make an effort to connect with their counterparts in theater at their soonest opportunity.

RECOMMENDATION: Incorporate these observations into your pre-deployment training objectives, and realize some on the job training is part of our profession.¹⁶⁶

ISSUE: International and operational law knowledge/staff coordination

DECISION: Staffs and commanders constantly pose non-legal questions to JAs at the regimental, brigade, squadron, and battalion levels. To effectively issue spot, and parse out the wheat from the chaff, JAs need to learn the roles of, and coordinate with, the other staff sections. This allows the JA to discern when to punt and in what direction to kick the ball when an issue arises.

RECOMMENDATION: There are certain areas JAs should know cold: the ROE, detention operation policies and procedures, Security Agreement implementation policies, the basics of fiscal and contract law, and how to perform an AR 15-6 investigation and the resultant legal review, etc. However, JAs must also be comfortable with on the job training because they are not going to know everything before they deploy.¹⁶⁷

ISSUE: Pre-deployment training at the division

DECISION: The division did not go to a CTC for pre-deployment training. Instead, they completed a great deal of pre-deployment training at their home station. This included several different kinds of training, such as MRXs, theater specific training, Soldier readiness training, and MOS-related training. Legal personnel trained in convoy procedures, spotting IEDs, land navigation, vehicle rollover, nuclear-biological-chemical (NBC) response, and weapons ranges, among other things. This training was great because it always stressed safety first.

The OpLaw and AdLaw shops participated in multiple MRXs. The division was also able to pull the Command Post of the Future (CPOF) repository from Iraq and train on real-life scenarios. The training usually lasted an average of five days per month. The OSJA also did much cross training among the paralegal specialists so everyone knew how to do everyone else's job.

RECOMMENDATION: Sustain. Any type of pre-deployment training available to you is extremely beneficial, especially if it stresses safety. Although the training may seem painful at times because the legal office is always busy with other things, especially before a deployment, take the time to complete as much pre-deployment training as possible. You will thank yourself later.¹⁶⁸

ISSUE: Identifying with whom you will be working in other staff sections

¹⁶⁶ 3ACR 2009 OIF AAR, *supra* note 100.

¹⁶⁷ *Id.*

¹⁶⁸ 4ID 2009 OIF AAR, *supra* note 4.

DECISION: The OSJA used offers of pre-deployment training as a chance to get to know the other staff sections with whom they would interact.

RECOMMENDATION: Offer other sections legal training focused upon their piece of the fight. This is of benefit to them and shows you are aware of their specific needs. Other than the training the staff sections receive during the MRX, this may be the only training they receive.¹⁶⁹

ISSUE: Contacting your predecessor

DECISION: Most of the division paralegal specialists did not make contact with their predecessors before they deployed.

RECOMMENDATION: Improve. Make contact with your predecessor well before deployment. This makes the transition less painful because you know what you are stepping into and what pre-deployment training will benefit your mission.¹⁷⁰

ISSUE: Pre-deployment training requirements for division OpLaw NCOs

DECISION: Division OpLaw NCOs were responsible for tasks such as compiling the daily EXSUM. To do so, they needed to know how to work the CPOF technology. One of the division's legal NCOICs received extensive training on the CPOF. He was able to create events and training vignettes based on real incidents. He also created a RoL training site on the CPOF that listed all of the judges, attorneys, and courts throughout the division AO. All of this information was saved on the CPOF and passed down to the division's replacements.

Division OpLaw NCOs also needed to know how to use the Blue Force Tracker, but only saw such tools during the MRX, command post exercises (CPXs), and other division pre-deployment exercises. OpLaw NCOs were also responsible for updating the brigade welcome package posted on the division portal. This provided BJAs with a list of up to date training materials, the investigations matrix, and operations orders, and included hotlinks to important documents.

RECOMMENDATION: Improve. Units should seek pre-deployment training for their paralegals on tools such as CPOF. At the very least, your NCOIC should receive training on the CPOF. Units should curtail Force XXI Battle Command, Brigade-and-Below (FBCB2) and Blue Force Tracker training in favor of CPOF training.¹⁷¹

ISSUE: Continuing legal training

DECISION: The OSJA leadership cross-trained their 27Ds before deployment. They wanted to make sure each 27D could fill every role once in theater. Every 27D received training in each core legal discipline. This training continued once in theater. It helped to prevent complacency and boredom.

RECOMMENDATION: Sustain. Cross-training your 27Ds helps to improve their skill set. It also guarantees you always have someone to cover another legal section in theater if someone is on leave or otherwise has to leave theater.¹⁷²

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

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ISSUE: Understanding the “basics” of many issues

DECISION: The BJA worked in many areas in which he had little previous experience. This forced him to learn while in country. Many of these subjects could have been studied and learned prior to deploying but there was never time (or a need) to do so. This was especially the case since he was a first-tour captain. Topics included understanding the passport process, ethics and gifts, inspection/search rules, the basics of property books systems for investigations, and law of military installations (e.g., establishing speed limits).

RECOMMENDATION: Do your best to at least have an awareness of the unique issues you may encounter in a deployed environment as a BJA. The best way to do this is to communicate with other experienced BJA, read after action reports, and attend pre-deployment training at the training centers (in which his brigade never had an opportunity to participate).¹⁷³

ISSUE: Early coordination with subordinate SJA offices

DECISION: Before deployment, the OSJA led a two-day conference with their division-level legal office counterparts to discuss expectations and to begin building long-term relationships that would facilitate resolving issues in theater.

RECOMMENDATION: Sustain. This was excellent way for all the legal players to get “face time” with one another and develop a leadership connection before arriving in theater. Also, use Video Teleconferencing (VTC) to connect with the currently deployed legal staffs that are remaining in theater after the new legal leadership arrives.¹⁷⁴

ISSUE: Timing of team building exercises

DECISION: Personnel do not want to be away from their families during pre-deployment unless necessary. Consequently, conducting training or team building on weekends or after the duty day is detrimental to morale.

RECOMMENDATION: Conduct these activities during the workweek or regular duty day. If you are going to do an off-site, do it in the middle of the week, not on a weekend. People appreciate the break from the norm and appreciate not having it interfere with their time with their family.¹⁷⁵

ISSUE: Focus of the pre-deployment preparation (PDP) program

DECISION: Currently, deploying units have to approach the JAG Corps to request the resources they need to deploy. If warfighting is our most important function, the more logical approach is to have the stakeholders approach the unit to ask what the units needs. This may have been the original concept of the PDP program, but it seems to have evolved away from this concept.

RECOMMENDATION: At set intervals in a unit’s deployment timeline (perhaps 180, 90, 30 days out) convene a teleconference or VTC of all the major stakeholders and the deploying

¹⁷³ 214th Fires Brigade, Brigade Judge Advocate, After Action Report, Operation Iraqi Freedom, April 2007 – July 2008 (20 Mar. 2009) [hereinafter 214th Fires BDE 2009 OIF AAR] (on file at CLAMO).

¹⁷⁴ XVIII ABC 2009 OIF AAR, *supra* note 6.

¹⁷⁵ *Id.*

OSJA's leadership. Use this forum to ask the OSJA leadership what it is they need and reach an agreement on how to provide it. The current pull system should be a push system out to the unit.¹⁷⁶

ISSUE: Providing training for the operational force

DECISION: Any time something occurred that would ripple throughout the force, the OSJA found it helpful to be proactive in developing a standard training package on the issue.

RECOMMENDATION: Sustain. Commanders are appreciative when the staff gets out in front of issues, rather than having issues drive them.¹⁷⁷

ISSUE: Preparation

DECISION: Members of the OpLaw section prepared by reading the RoL handbook, reading FM 3-24 (Counterinsurgency), corresponding with the unit in theater, and reading the ROE several times in order to become very familiar with it. They also read non-legal books, such as Life in the Emerald City, which provided perspective on the operating area. Additionally, they found the Collateral Damage Evaluation (CDE) training to be quite beneficial.

RECOMMENDATION: Early interaction with your counterparts in theater will guide your preparation. Stay engaged by reading the currently deployed unit's website and materials.¹⁷⁸

ISSUE: Dissemination of information and training

DECISION: You have to be aggressive about getting useful information out to those who need it.

RECOMMENDATION: Lean forward and make recommendations. If there is an upcoming commander's conference, ask to address the group concerning issue X or propose that someone go on the next battlefield circulation to train unit Y.¹⁷⁹

ISSUE: Knowledge management

DECISION: Legal personnel need training on the various means of knowledge management. This includes SharePoint and CPOF.

RECOMMENDATION: Provide legal personnel some basic training on these systems before deployment.¹⁸⁰

ISSUE: Internal office training

DECISION: Although the division did a great deal of country-specific training, it is always more valuable to do it in a smaller group.

RECOMMENDATION: Whenever possible, conduct your training as an office. People will be more engaged and more willing to ask questions and participate.¹⁸¹

¹⁷⁶ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

OEF ISSUE: Training Reserve and National Guard JAs

DECISION: Reserve and National Guard JAs augmented many active duty legal offices in Afghanistan. Although this was a great help and greatly appreciated, they did not have the requisite military justice training to be effective at their jobs. They also did not seem to understand the requisite level of military formality required on active duty.

RECOMMENDATION: Improve. During pre-deployment training, the JAs in these units must focus more of their training on military justice. They should also receive a course on military customs and courtesy.¹⁸²

ISSUE: Pre-deployment training

DECISION: The unit benefitted from a three-month slide to the right of its deployment date. The unit's predecessor was very good in supporting the unit's mission rehearsal exercise (MRX). During the academic phase of the training, the Joint Forces Command (JFCOM) training, the Leadership Development and Education for Sustained Peace (LDESP) cultural classes, and the Center for Law and Military Operations (CLAMO) tailored training were all invaluable.

RECOMMENDATION: If you can schedule these kinds of educational resources, they are well worth the investment. Mission creep in the garrison tasks can keep you from concentrating as much as you would like on preparation for deployment. No matter the pressures otherwise, you have to invest the time to prepare for your deployment.¹⁸³

ISSUE: Preparing people for the environment

DECISION: The unit had very few personnel who had previous deployment experience. Most captains had not deployed before and did not know what to expect. The unit set up a room with unclassified maps and products related to the deployed location. This provided the inexperienced personnel a means to learn what they could about the environment and spark questions and discussion.

RECOMMENDATION: Sustain. Many Soldiers will not have enough experience even to know what they do not know. Information overcomes the fear of the unknown and greatly reduces anxiety concerning deployment.¹⁸⁴

ISSUE: Utility of cross-training

DECISION: Everyone in the legal office trained on someone else's job. This conscious effort to cross-train was a huge success.

RECOMMENDATION: Do not overlook the need for cross-training among the "Foundation of Four." It would have been helpful to do this also. The SJA and DSJA should be interchangeable, as should the legal administrator and sergeant major. This redundancy is essential. It allows for

¹⁸¹ *Id.*

¹⁸² 101st Sustainment Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, January 2008 – February 2009 (13 May 2009) [hereinafter 101st SUST BDE 2009 OEF AAR] (on file at CLAMO).

¹⁸³ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

¹⁸⁴ *Id.*

smooth day and night shift interoperability, coverage during planned absences such as flights and R&R, and unplanned absences.¹⁸⁵

ISSUE: The length of the “train-up”

DECISION: While the unit found the Mission Rehearsal Exercise (MRX) valuable, it found the overall length of the pre-deployment “train-up” excessive. It is important to ensure Soldiers get into the mindset that they are deploying. In the same respect, though, you must free up more time for them to spend with their families.

RECOMMENDATION: With an eye toward providing the Soldiers more personal time, conscientiously guard against marginally valuable obligations.¹⁸⁶

Schools & Courses

OIF ISSUE: Paralegal training

DECISION: The 27D advanced individual training (AIT) course does not cover substantive military justice concepts, knowledge of which would allow paralegals to spot legal issues. Paralegals learn how to type up certain documents, but they do not, for example, learn the law relating to search and seizure. As a result, the BJA had to spend time educating one of his battalion paralegals about the difference between legal and illegal searches.

RECOMMENDATION: Improve. If possible, paralegals should have some understanding of common legal issues. This is not to allow them to provide legal advice, but simply to enable them to spot legal issues as well as potential problems, in order to know when to encourage their units to seek legal advice.¹⁸⁷

ISSUE: Lack of relevant training at AIT, Advanced Non-commissioned Officer Course (ANCOC), and Basic Non-commissioned Officer Course (BNCOC)

DECISION: The service schools are teaching old material that is no longer correct or relevant to students. As a result, 27Ds are confused when they get into theater and learn the information they received is incorrect. Furthermore, this causes a huge learning curve since 27Ds must now learn the information they did not receive in AIT, ANCOC, or BNCOC.

RECOMMENDATION: Improve. Update these courses to base them on current information.¹⁸⁸

ISSUE: Noncommissioned Officer Education System (NCOES) attendance

DECISION: While an Army-wide problem given the current operating environment, there is a definite lack of emphasis on getting Soldiers to the proper NCOES schools within the proper timeline.

RECOMMENDATION: The JAG Corps (along with the Army), needs to properly prioritize NCOES attendance.¹⁸⁹

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 47.

¹⁸⁸ *Id.*

¹⁸⁹ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

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ISSUE: Subject matter trained at NCOES

DECISION: What paralegals are doing in the field should serve as the validation for the training they receive.

RECOMMENDATION: Convoy operations, covering the DOC floor, along with setting up and functioning in a Tactical Operations Center (TOC), are all things paralegals are doing. Training in these types of areas should be part of their education.¹⁹⁰

ISSUE: Auditing the S2X course at Fort Huachuca

DECISION: The regimental JA attended the first week of the S2X course at Fort Huachuca before deployment. This provided him with a good understanding of S2X perspectives.

RECOMMENDATION: Sustain. The course was in its infancy at that time, but might be useful for a division or brigade detention operations attorney.¹⁹¹

ISSUE: The need for cross-training among paralegals and a short course for brigade NCOs

DECISION: Too often, paralegals did not know enough about deployed legal practice to help their beleaguered officers stem the tide of legal actions. Although the paralegals were ready and eager to help, they sometimes did not know enough in a specific subject area to add any significant assistance.

RECOMMENDATION: Improve. Units should cross-train all paralegals before deployment to expose them to all areas of the law. TJAGLCS should develop a short course specifically suited for brigade chief paralegal NCOs. Those NCOs who attend the short course can then use that knowledge to train their Soldiers for the deployment. If TJAGLCS can provide a BCT elective for those graduate course students headed to BCTs, why can't they create a similar short course for NCOs?¹⁹²

ISSUE: Utility of short courses and other preparation

DECISION: The unit sent personnel to various short courses, including an intelligence short course at Fort Huachuca, a Deployed Trial Counsel Course at Fort Bragg, and various short courses at TJAGLCS in Charlottesville.

RECOMMENDATION: Sustain/Improve. The intelligence course was useful. The Trial Counsel Course was not very useful. The Operational Law short course at TJAGLCS was overly theoretical. It lacked information of practical application and was not specific to the current fight. This recent Brigade Judge Advocate Mission Primer (BJAMP) training development may have addressed this.¹⁹³

ISSUE: Operational law training for paralegals

¹⁹⁰ *Id.*

¹⁹¹ 2SCR 2009 OIF AAR, *supra* note 24.

¹⁹² 3ID 2008 OIF AAR, *supra* note 1.

¹⁹³ 1AD 2009 OIF AAR, *supra* note 3.

DECISION: 27D paralegals had insufficient training on OpLaw pre-deployment, which hampered their ability to assist on OpLaw tasks.

RECOMMENDATION: Improve. Where possible, paralegals should receive relevant specialized pre-deployment training.¹⁹⁴

ISSUE: Relevant, timely RoL schoolhouse training

DECISION: Invite deployed JAs to give presentations on the current state of RoL at the short courses. Instructors tried hard, but presented outdated information or information already modified by current operations.

RECOMMENDATION: Improve.¹⁹⁵

ISSUE: Training for rear detachment leaders

DECISION: Typically, the officers and non-commissioned officers in charge of rear detachments do not have experience running entire offices with more than a handful of personnel. On the job training achieves the desired, albeit delayed, result, but sometimes the adjustment causes undue burdens on all involved.

RECOMMENDATION: Develop a course for rear detachment leaders to better prepare them for the anticipated duties they will face. If a course is not a reachable goal, develop a “smartbook.”¹⁹⁶

ISSUE: Pre-deployment training for fiscal law attorneys

DECISION: One of the fiscal law attorneys completed both the TJAGLCS fiscal law and contracting courses before deployment. He characterized this as excellent preparation, although the information provided about new sources of theater-specific funding was insufficient. A second attorney completed the online fiscal law course during the deployment. This was helpful in terms of explaining about CERP funds, but otherwise included only 1-2 hours of material during the entire course about deployment-related issues.

RECOMMENDATION: Sustain. Attorneys working in the fiscal or contracting law area benefit significantly from obtaining TJAGLCS training before or during the deployment.¹⁹⁷

ISSUE: Utility of the BJAMP training coordinated by the PDP program

DECISION: The course of training was very useful and effective.

RECOMMENDATION: Sustain this effort. It is impossible to get junior JAs to all the short courses they would need at the Legal Center and School. This training fills a real need.¹⁹⁸

ISSUE: CDE training

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ 4ID 2009 OIF AAR, *supra* note 4.

¹⁹⁸ XVIII ABC 2009 OIF AAR, *supra* note 6.

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DECISION: JAs who will cover the JOC floor benefit greatly from the training. It makes JOC operations more comfortable and familiar.

RECOMMENDATION: It is a valuable course. Having knowledge of the CDE process and the underlying assumptions is very beneficial.¹⁹⁹

ISSUE: Operational Law of War Course

DECISION: This is a valuable course, but it could be better. For someone who has never deployed, this course alone is not enough.

RECOMMENDATION: At least one member of the operational law team (officer or NCO) should attend the course. The course should use fewer schoolhouse instructors and instead pull in recent deployers to serve as instructors.²⁰⁰

ISSUE: Utility of JATSOC

DECISION: JATSOC was a worthwhile course, but it quickly became a “click through” exercise due to its length.

RECOMMENDATION: The information needs to be part of the Basic Course to ensure JAs actually absorb it.²⁰¹

ISSUE: JATSOC

DECISION: The direct-commissioned JA in the OpLaw section felt JATSOC was an extraordinary tool for preparing for deployment. Although he could only complete 75% of it before deployment, the information about writing FRAGOs and OPORDs was invaluable.

RECOMMENDATION: Mandate completion of JATSOC before deployment. Supervisors should allow their attorneys enough time to complete JATSOC during the workday. Once in theater, connectivity is so poor accessing JATSOC is impossible.²⁰²

ISSUE: Refresher training for BJAs

DECISION: The BJA served in a previous assignment between the Graduate Course and her assignment as a BJA. Consequently, she did not have up to date training in areas such as fiscal law, administrative law, and operational law.

RECOMMENDATION: Improve. The JAG Corps should create one- to two-week refresher course for BJAs, focusing on fiscal law and investigations.²⁰³

OEF ISSUE: Operational Law of War Course

¹⁹⁹ *Id.*

²⁰⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

DECISION: OpLaw JAs should attend the Operational Law Course at TJAGLCS before deploying.

RECOMMENDATION: TJAGLCS should tailor the Operational Law Course to current, theater-specific issues facing JAs. There should be separate, SECRET-level breakout briefings on the Iraq and Afghanistan theaters of operation. TJAGLCS needs to stress the study and implementation of the various ROEs affecting the Afghanistan theater of operations.²⁰⁴

Use of After Action Reviews (AARs) & Other CLAMO Resources

OIF ISSUE: Use of AARs prior to deploying

DECISION: The RCT JA did not participate in any formal “pre-deployment legal training” classes. He did review one AAR but it was too old to be very helpful. One of the captains who worked for the RCT JA did attend training.

RECOMMENDATION: At a minimum, attend a Fiscal Law/Contracts course and a Rule of Law course. The operating environment in Iraq is making attendance at a traditional Operational Law course less important. In addition, more current after action reports would be helpful to the deploying judge advocates.²⁰⁵

ISSUE: Preparing the legal community for the next deployment

DECISION: Capturing the best practices and lessons learned was a continuing requirement for II MEF (Forward). This process began early in the deployment and continued throughout the post-deployment period. Early on, the unit decided that all AARs, lessons learned, and best practices would be subject to peer and chain of command review in order to identify those things that would benefit the entire judge advocate force. Similarly, planning for a post-deployment conference began in December (before redeployment). The post-deployment conference included II MEF legal planners and other organizations with an interest in capturing legal lessons learned (CLAMO, Marine Corps Judge Advocate Operations (JAO), and Marine Corps Center for Lessons Learned (MCCLL)).

RECOMMENDATION: Continue to emphasize the importance of capturing lessons learned. All products need to be disseminated and widely available to legal planners and legal deployers; forward service-wide recommendations as necessary.²⁰⁶

ISSUE: Capturing lessons learned in real time

DECISION: Someone needs to be present in theater to capture lessons learned and their context in real time.

RECOMMENDATION: Whether it is someone from CLAMO or some other organization, there needs to be someone shadowing the unit during the deployment to capture what is occurring. The unit involved in the fight does not have the time or resources to devote to getting it all down as it occurs. A separate entity without a role in the current fight could observe neutrally and provide a

²⁰⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

²⁰⁵ Regimental Combat Team-5, Regimental Judge Advocate, After Action Report, Operation Iraqi Freedom, January 2008 – July 2008 (7 Aug. 2008) (on file at CLAMO).

²⁰⁶ II MEF (FWD) 2008 OIF AAR, *supra* note 29.

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much more detailed cataloging of lessons learned. This would facilitate getting the lessons learned to the replacement unit faster.²⁰⁷

ISSUE: Use of AARs

DECISION: Most units did not read AARs before their deployment because they did not know where to find them or they thought other resources were more helpful.

RECOMMENDATION: Improve. JAs and paralegals can learn valuable lessons and tips from AARs, especially from units that have recently redeployed.²⁰⁸

ISSUE: NCOIC forum on JAGCNET and CLAMO familiarization

DECISION: Many paralegals had not heard of CLAMO before they deployed and did not know how CLAMO could help them. Some stated they previously used the NCOIC forum on JAGCNET before it went away. The paralegals think it would be very helpful to bring the NCOIC forum back in order to provide assistance to paralegals in the field.

RECOMMENDATION: Improve. Ensure that paralegals receive adequate training tools both before and during their deployment. It would be helpful for CLAMO to offer a familiarization brief at the NCO academy (or even at AIT), akin to that given to the Judge Advocate Officer Basic Course (JAOBC) students.²⁰⁹

ISSUE: Not knowing what to “study” for the deployment

DECISION: The brigade went to JRTC, but because they did not know what to expect from their mission in Iraq, it was difficult to know what questions to ask. Because they did not know what they did not know, it was hard to know what they should learn before deployment.

RECOMMENDATION: Improve. Read AARs and talk to your predecessors long before you deploy. There are some 27Ds who have never heard of CLAMO. Get the word out to everyone that CLAMO has many AARs that help indicate what you need to focus on for the deployment.²¹⁰

ISSUE: CLAMO and JAG School products

DECISION: The JAs had more material than they could read from Iraq, let alone material from CLAMO and the JAG School.

RECOMMENDATION: Obtain SIPR access before deploying and correspond with your counterpart as much as possible. Much of the historical lessons learned from CLAMO and the School are not relevant anymore.²¹¹

ISSUE: Use of previous lessons learned

DECISION: The unit had its personnel review previous CLAMO lessons learned publications dealing with the specific areas assigned to particular personnel.

²⁰⁷ XVIII ABC 2009 OIF AAR, *supra* note 6.

²⁰⁸ 31D 2008 OIF AAR, *supra* note 1.

²⁰⁹ *Id.*

²¹⁰ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 48.

²¹¹ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

RECOMMENDATION: Sustain. This was very effective in forming an understanding of what legal personnel had encountered during previous operations and deployments.²¹²

ISSUE: **CLAMO support**

DECISION: CLAMO briefed the OSJA about the top after action review comments and trends in each of the core legal disciplines. This was helpful, especially to personnel who had not previously deployed. In addition, the OSJA used the CLAMO website for Iraq resources.

RECOMMENDATION: Sustain.²¹³

ISSUE: **Pre-deployment training opportunities**

DECISION: The pre-deployment training provided by CLAMO was useful. It would be beneficial to open more short courses up to attendance by NCOs. While some do get to attend the Operational Law of War Course, the Fiscal Law courses should also be available.

RECOMMENDATION: Open more courses up to attendance by NCOs. Paralegals can better assist their attorneys if they understand the issues the attorneys face.²¹⁴

OEF ISSUE: **Post-deployment AAR process**

DECISION: Soldiers were unaware of the post-deployment AAR process and did not understand how to better prepare for the CLAMO interview.

RECOMMENDATION: Improve. Soldiers should be aware of the AAR format found in FM 1-04. Explanation of the information within that publication should occur during Joint Readiness Training Center (JRTC) exercises. There is a need to establish a method to collect lessons learned information during the deployment. A web-based AAR data collection tool would be very helpful.²¹⁵

ISSUE: **Lack of AAR collection while in theater**

DECISION: CLAMO should collect AARs while the unit is still in theater. This way the information is still fresh in everyone's minds.

RECOMMENDATION: Improve. CLAMO personnel should travel with those on the Article 6 visits in theater.²¹⁶

ISSUE: **Need for a 27D to assist with the CLAMO AAR collection**

DECISION: The CLAMO personnel currently lack a 27D. This is unfortunate because 27Ds from recently re-deployed units feel much more comfortable speaking to a fellow 27D. They would be able to open up a bit more and speak freely. Although it is a good idea to speak first

²¹² 1AD 2009 OIF AAR, *supra* note 3.

²¹³ *Id.*

²¹⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

²¹⁵ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 43.

²¹⁶ 101st SUST BDE 2009 OEF AAR, *supra* note 182.

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with the JAs and 27Ds together in order to spark ideas, the 27Ds should then break off into a separate group.

RECOMMENDATION: Improve. Send a 27D to CLAMO to help conduct the AARs.²¹⁷

ISSUE: **CLAMO resources**

DECISION: The training CLAMO provided was valuable. However, CLAMO's database of Afghanistan information is still very much in its infancy.

RECOMMENDATION: It would be most helpful to have a specific Afghanistan-specific site with Afghanistan lessons learned and specific unit information on the SIPR side.²¹⁸

Non-legal Training

OIF ISSUE: **The lack of basic Soldier skills among the JAs**

DECISION: Because of the condensed time line before deployment, many JAs did not get the basic Soldier skills that they felt were necessary for the deployment. For example, some JAs were never trained on how to properly clear their weapons, talk on a radio, drive a High Mobility, Multi-Purpose Wheeled Vehicle (HMMWV), or use Blue Force Tracker. Nothing can embarrass a young JA more than standing in front of a clearing barrel with no knowledge of what to do next.

RECOMMENDATION: Improve. Judge advocates need basic Soldier skills training outside of that provided by Individual Readiness Training (IRT), and outside the presence of other units in order to minimize embarrassment. To set members of our office up for success, we must take the time to teach officers these skills. The Basic Officer Leader Course (BOLC) should solve some of these problems; nonetheless, office-wide refresher courses should still occur well in advance of deployment.²¹⁹

ISSUE: **Junior JAs were not able to qualify at the range**

DECISION: A lack of available time left JAs unable to qualify.

RECOMMENDATION: Improve. Give JAs the opportunity to qualify at the range and to practice other basic Soldier skills before deployment.²²⁰

ISSUE: **Warrior skills training**

DECISION: The unit's NCOs provided the majority of the common Soldier task and warrior skills training.

RECOMMENDATION: Sustain. NCOs are more than capable of providing this type of training. The office should resource them and rely upon them to provide it.²²¹

ISSUE: **Soldier skills and IRT**

²¹⁷ *Id.*

²¹⁸ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

²¹⁹ 3ID 2008 OIF AAR, *supra* note 1.

²²⁰ *Id.*

²²¹ IAD 2009 OIF AAR, *supra* note 3.

DECISION: Although the OSJA participated in a weeklong IRT including convoy operations training, its judge advocates and paralegals did not receive enough training on individual Soldier skills before deployment. Many of them would not be able to successfully lead a convoy, perform truck commander duties, react to IEDs, or operate a radio if operational necessary required them to do so. The division Soldiers did get additional training in Kuwait on IEDs.

RECOMMENDATION: Improve. It is crucial that all personnel, regardless of MOS, be capable of performing basic Soldier skills and be able to react to contact while performing duties outside their FOBs. In addition, IRT should include familiarization training with the latest vehicles and equipment, such as the Mine Resistant Ambush Protected (MRAP) vehicle.²²²

ISSUE: Convoy training

DECISION: Some JAs who accompanied the PRTs felt unprepared for convoy operations. Without weapons or communications training, JAs felt they could not adequately assist in an emergency.

RECOMMENDATION: Improve. If feasible, train the OpLaw attorneys on basic convoy operations before deployment, and then drill it whenever possible.²²³

ISSUE: What type of pre-deployment training to conduct

DECISION: The unit determined it was best to sharply focus the pre-deployment training. If it was not something the OSJA would realistically encounter during the deployment, they did not train on it. This helped avoid the “check the block” mentality and focused the training on what was truly of value.

RECOMMENDATION: Focus your training plan. An OSJA does not need to be proficient on every task required of a rifle platoon.²²⁴

ISSUE: Academic pre-deployment training

DECISION: The unit began its pre-deployment training with two and a half days of academic classes very early on in the training process.

RECOMMENDATION: Sustain. This was a great way to get people thinking about what was approaching without stressing them too heavily too soon.²²⁵

ISSUE: Types of useful pre-deployment training

DECISION: The unit brought in a nutritionist and a financial counselor to talk to the Soldiers and officers. The unit also conducted a combatives program and weapons familiarization.

RECOMMENDATION: Approach the military skills (combatives, weapons familiarization) training as team-building events. By not focusing on checking the block of a training

²²² *Id.*

²²³ *Id.*

²²⁴ XVIII ABC 2009 OIF AAR, *supra* note 6.

²²⁵ *Id.*

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requirement, you return the fun to soldiering and decrease the stress level associated with pre-deployment training.²²⁶

ISSUE: Utility of convoy training for paralegals

DECISION: The unit sent four paralegals into theater early to attend convoy training. This was very good training for these Soldiers, personally and professionally. While the OSJA never conducted its own convoy operations, it was worthwhile to have these paralegals ready to do so if the need or opportunity arose.

RECOMMENDATION: Sustain. This is worthwhile training even if there is no certainty you will have to execute this mission.²²⁷

ISSUE: Lack of emphasis on weapons training and other basic Soldier skills

DECISION: There are Soldiers carrying around weapons for which they are not properly qualified. Our Soldiers are not value added during an emergency in convoy operations because they have no M240B or HMMWV/MRAP training. Their first attempt to fasten the seatbelt in a helicopter should not be during an operational lift.

RECOMMENDATION: Expend the resources and manage the training to ensure paralegals are as much professional Soldiers as they are legal professionals.²²⁸

ISSUE: Training attorneys and paralegals to be staff officers/NCOs

DECISION: Legal personnel have to understand how a staff works. They need to know what the various sections do, how the orders process works, how a unit develops and executes a campaign plan, how to advise senior officers, and how to present information effectively. For example, after the commanding general has been out in battlefield circulation all day, in the heat, in full gear, he does not have the time or energy to read a law review article. He wants to know in 25 words or less what he needs to do/decide.

RECOMMENDATION: Do not overlook the need to ensure your legal professionals are also professional staff officers/NCOs.²²⁹

ISSUE: Non-legal training on staff skills

DECISION: Non-legal training as a staff officer was very important and very rewarding. Your day-to-day existence while deployed is very event-driven.

RECOMMENDATION: You should prepare as best you can legally, but recognize you will have to deal with things you could not anticipate. Consequently, you should spend some time training on those staff skills you know you will need regardless of events. It is hard enough addressing novel legal issues without the added stress of learning to function as part of a larger staff.²³⁰

ISSUE: Language and cultural training

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

²²⁹ *Id.*

²³⁰ *Id.*

DECISION: Iraqi history and culture were good topics for training. A little bit of basic Arabic language training is also necessary. It means a great deal to the judges and officials you meet if you can greet them and introduce yourself in their native language. This is important because you will go on battlefield circulation with the commanding general and you will meet various Iraqi officials.

RECOMMENDATION: Spend some time on this type of training. In hindsight, more language training would have been beneficial.²³¹

OEF ISSUE: Training for mobilized reservists at Fort McCoy

DECISION: Approximately 75% of the pre-deployment training at Fort McCoy was a waste of time. For example, a block of instruction was required for senior leaders on what SOPs are and why the Army uses them. Some of the training also involved learning how to use equipment the trainers acknowledged the BDE would not have in theater (radios, vehicles). In addition, much of the training was for a deployment to Iraq. A large portion of the training was fluff (learning to load a vehicle the BDE would not have in theater pursuant to an unrealistic load plan not in the BDE SOP.)

Useful training included marksmanship, weapons familiarization, first aid, medical evacuation, and convoy operations. Yet, these did not receive the proper attention. Finally, a large portion of the training at Fort McCoy was duplicative of the training the BDE received at their month long Annual Training (AT), which ended two weeks before mobilization.

RECOMMENDATION: Scrub the 1st Army training plan for mobilizing reservists and eliminate inappropriate training. The JAGC should set up its own pre-mobilization training program that focuses on JAG specific skills and the basic soldier skills emphasized before deployment.²³²

ISSUE: Training of individual augmentees (IAs)

DECISION: Despite the fact that these IAs performed the same missions and faced the same dangers in Afghanistan, individual services provided radically different training to their deploying judge advocates. Army personnel go to Fort Benning for approximately five days of training and to draw equipment. The Air Force had two programs, one involving corps-level mentors who went to Fort Riley and received several months of intensive training and the other of approximately of one month. The Navy and Marine Corps provided approximately one month of training at various locations. Army training at Fort Benning was grossly deficient. Army personnel did not receive necessary survival training, including Combat Lifesaver Training, that was necessary to protect themselves while deployed to Afghanistan. While some of our active component personnel were adequately prepared because of training received at other duty locations; other personnel, including reserve personnel, were not.

RECOMMENDATION: Training requirements should be re-evaluated.²³³

²³¹ *Id.*

²³² 420th Engineer Brigade, Brigade Judge Advocate, After Action Report, Operation Enduring Freedom, May 2008 – March 2009 (13 May 09) (on file at CLAMO).

²³³ Combined Security Transition Command – Afghanistan, Office of the Staff Judge Advocate, After Action Report, Operation Enduring Freedom (Sept. 2008) [hereinafter CSTC-A 2008 OEF AAR] (on file at CLAMO).

CONUS Replacement Center (CRC) & Soldier Readiness Processing (SRP)

OIF ISSUE: Overall impressions of CRC

DECISION: The CRC provides convenient “one-stop” preparation for individuals travelling to the CENTCOM area of operations. Individual augmentees from the Army and other services may stage into theater through the CRC at Fort Benning, GA. The training begins on a Saturday, takes place over the course of a week, and may culminate immediately with a Military Air (MILAIR) flight to Kuwait allowing onward transport to Iraq or Afghanistan. The week at CRC includes issue of required gear, administrative and medical processing, and first aid, counter-IED, and weapons training. Complete a significant amount of computer based training prior to arrival at CRC. Augmentees should register several weeks in advance of the desired training dates at <https://www.infantry.army.mil/crc/>.

RECOMMENDATION: Sustain use of CRC by TJAGLCS personnel deploying as individual augmentees.²³⁴

ISSUE: Adequacy of pre-deployment training for individual augmentees at CRC

DECISION: One week of training was adequate time to prepare for deployment for a member going to a staff position in Iraq.

RECOMMENDATION: Improve. The CRC staff should provide clearer instructions of daily equipment needed for each day’s activities.²³⁵

ISSUE: Information dissemination at CRC

DECISION: The CRC’s scheduling material seldom gave details regarding the full day’s activities. Personnel going through the CRC pre-deployment program during the month of January were often without proper cold weather gear due to a lack of communication from the training staff. Thus, students often went prepared to spend a day in an indoor class, only to learn that they would be spending most of the day outside.

RECOMMENDATION: Improve. The CRC staff and/or schedule materials must better inform the students of the details of the next day’s activities, especially of those times spent outdoors so the students can dress appropriately for the weather.²³⁶

ISSUE: CRC Scheduling

DECISION: On the day of departure from CRC, the staff required the students to remain outside in the cold for half a day before the students were able to board a bus for Freedom Hall. Rather than let the students wait for the buses in the warmth of their rooms, the staff insisted that the students freeze in the cold until the buses arrived to deliver the students to Freedom Hall.

RECOMMENDATION: Improve. The CRC staff must better coordinate the arrival of buses with the time the students must produce their bags. Thus, once a student delivers his/her bags, the

²³⁴ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 162.

²³⁵ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 42.

²³⁶ *Id.*

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student should be able to immediately board a bus for delivery to Freedom Hall or go back to their rooms if the buses encounter a delay.²³⁷

ISSUE: Lack of long-term storage available at CRC for items not needed in theater

DECISION: The CRC provided little, if any, time to travel to a mail facility capable of taking and mailing large amount of equipment. Thus, attempts to find time to mail home civilian clothes not needed in theater failed and added more weight to baggage.

RECOMMENDATION: Improve. The CRC should either provide dedicated times when students may be able to travel to a mail facility or center should provide its own mailing facilities for the students preparing to deploy.²³⁸

ISSUE: SRP legal staffing

DECISION: Due to a lack of staffing power, there were not enough JAs to provide adequate legal services at the SRP. One major and one captain are inadequate to service an entire brigade's legal needs at the SRP pre-deployment training.

RECOMMENDATION: Improve.²³⁹

ISSUE: Manning for the pre-deployment Soldier Readiness Program (SRP) and Family Deployment Fair (FDF)

DECISION: During the brigade SRP and FDF, division offered the BJA attorney support, but no paralegals. Because the mission encompassed numerous powers of attorney (POAs), and few wills, the BJA recognized the need for a robust paralegal presence vice a larger attorney workforce.

RECOMMENDATION: Stress the importance of paralegal support during the SRP process. Send your brigade's paralegals out to their battalions to take care of the unit's POA needs before the SRP.²⁴⁰

ISSUE: Providing legal assistance briefs, appointments, and operational training briefs to reservists before deploying to ensure unit readiness

DECISION: Once the state mobilization process commenced, units rotated through the Fort Dix Joint Readiness Center for in-processing, medical, dental, legal, etc. During the legal assistance portion of this process, Soldiers receive several briefs (wills, powers of attorney and the laws protecting reservists called to active duty (Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA)). Soldiers also had an opportunity during this time to meet one-on-one with a judge advocate to draft a will and/or power of attorney and to discuss legal issues unique to a soldier. The wills, powers of attorneys, and legal consults were a joint effort between the OSJA New Jersey National Guard and the OSJA at Fort Dix. The process worked relatively well.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ 3ID 2008 OIF AAR, *supra* note 1.

²⁴⁰ 3BCT, 4ID 2009 OIF AAR, *supra* note 50.

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Soldiers also received mandatory legal briefings pertaining to UCMJ, rules of engagement, code of conduct and escalation of force. The judge advocates deploying with the unit provided these briefs. This procedure worked well, and had the added benefit of having the unit become familiar with the deploying judge advocates.

Unfortunately, there is not enough time allotted during the state Soldier Readiness Processing (SRP) to educate Soldiers as to the importance of resolving family law issues (divorce, paternity, child custody, support, etc.), before entering Title 10 active duty and deploying to the Fort Bliss mobilization station. Within days of arrival at Fort Bliss, and over the next several months, there was a steady stream of legal assistance consults with Soldiers dealing with divorce, paternity, child custody and child support. Individual Soldiers received counseling and referral to civilian counsel when appropriate. Judge advocates provided advice and education to commanders about Soldier support obligations. Commanders spent a considerable amount of time meeting with legal advisors, counseling Soldiers, and responding to complainants about family support matters. The geographic separation of the Soldier from New Jersey made these issues more difficult to resolve. The Soldier should have resolved many of these issues before mobilization.

RECOMMENDATION: Allot more time before, and during, the state SRP process to brief and counsel soldiers as to the importance of resolving all potential family issues before mobilization. In addition, the soldier must be proactive in his or her pre-deployment family planning.

Place greater emphasis on pre-mobilization training, particularly soon after the mobilization order is first given. Do not wait for the state SRP. No less than six months before soldier's activation on Title 10 orders, review and reaffirm family plans. Encourage Soldiers to have the family care plan arrangements formalized in a process the courts will recognize and honor (such as a written custody agreement).

On support issues, unit commanders and rear detachment commanders need training on applicable Army policies. Generally, when a unit is at a mobilization site, the best practice is the rear detachment commander should take the complaint from the ex-spouse or person seeking support. The rear detachment commander should then communicate with the unit commander, who in turn should consult with the servicing judge advocate before carrying out his/her command responsibilities regarding non-support.

Judge advocates need to give training regarding the division of responsibility, and processing of matters, between the forward command, rear detachment (Title 10), BDE S-1 and state Joint Force Headquarters (JFHQ) (Title 32). In particular, the training must cover these as they affect the processing of soldiers who fail to report for mobilization (Dropped From Rolls (DFR) processing) and on support issues. Confusion on the division of responsibility for the DFR processing of a soldier who failed to mobilize was common. It got to the point where one JA had to sit down with the commanders and S-1 shop to teach and reinforce the different steps and responsibility.²⁴¹

²⁴¹ 50th Infantry Brigade Combat Team, New Jersey Army National Guard, Office of the Command Judge Advocate, After Action Report, Operation Iraqi Freedom, June 2008 – May 2009 (25 May 2009) (on file at CLAMO).

Marine Corps Predeployment Training

OIF ISSUE: Improving pre-deployment legal training (PDLT)

DECISION: Uniformly, JAs cited PDLT as the most valuable training received. The training must be current and focused; the use of “canned” briefs or “fundamentals” briefs was, and must continue to be, discouraged. The training must be relevant to the mission capabilities required of the judge advocate (e.g., CERP training vice Anti-Deficiency Act training). The training must also be comprehensive, covering the broad legal topics (ROE/EOF, detention operations, Rule of Law, claims, investigations, etc.) and non-legal topics (Marine Corps Planning Process (MCP), area of operations briefs, basic Marine skills training, etc.).

RECOMMENDATION: PDLT must reflect the changing mission and battlefield. It must be the “just out the door” training. Due to the amount of legal and non-legal training involved, consider expanding its duration and audience.²⁴²

ISSUE: Improving Unit/Marine training

DECISION: Most training continues to rely on “canned” or “fundamentals” briefs, which serve only as refreshers. Mojave Viper/Cajun Viper (MV/CV) training has begun to incorporate legal issues for both judge advocates and non-judge advocates, but it must be up-to-date. MRX/Marine Air-Ground Task Force (MAGTF) Staff Training Program (MSTP) training remains solely focused on operationally kinetic issues with little legal involvement. Units/Marines face a more legally complex battlefield, which the senior USMC leadership recognizes, but USMC training does not. Examples include RoL engagements, detainee transfers, “O&M support” to other agencies, and investigation requirements.

RECOMMENDATION: The MEF, with assistance from HQMC, must engage training commands and organizations to update training materials and begin developing methods of inserting mission based legal issues into unit training. MSTP must develop Mission Essential Scenario Lists (MESLs) that incorporate the above.²⁴³

ISSUE: Pre-deployment legal training (PDLT)

DECISION: MNF-W used instructors from recently re-deployed units to share their experiences. In addition, the MNF-W SJA, Deputy SJA, and the Chief OpLaw attorney also attended the XVIIIth Airborne Corps (MNC-I) PDLT in Fort Bragg, NC. Substantively, the training presented little unavailable elsewhere. However, one cannot overstate the benefit of meeting the HHQ. This was instrumental in developing the strong relationship maintained between MNF-W and MNC-I. Knowing who is on the other end of an email or phone line is important.

RECOMMENDATION: Attempt to meet the HHQ staff face-to-face before deploying.²⁴⁴

ISSUE: Sufficiency of basic legal training

DECISION: The Naval Justice School (NJS) and the Basic Operational Law Training Course formed the basis for training for most Marine judge advocates. While providing fundamental

²⁴² II MEF (FWD) 2008 OIF AAR, *supra* note 29.

²⁴³ *Id.*

²⁴⁴ I MEF (FWD) 2009 OIF AAR, *supra* note 77.

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information, the classes were only generally applicable to providing legal services in theater. However, often times this was the only training judge advocates received in certain legal areas, such as legal assistance.

RECOMMENDATION: Basic training must be comprehensive and provide fundamental skills across legal service capabilities.²⁴⁵

ISSUE: Sufficiency of advanced legal training

DECISION: Advanced legal training generally covered military legal schools continuing legal education classes, such as NJS, Law of Military Operations, SJA Courses, and the Air Force JAG School Information Operations course. Uniformly, JAs reported that these courses were beneficial to preparing them for deployment. Availability of funded seats through Judge Advocate Support (JAS), HQMC and coordinating local work schedules with scheduled course dates were the biggest obstacles to obtaining this training.

RECOMMENDATION: First, when a judge advocate is deploying, local SJAs must make them available for these training opportunities. Second, JAS, HQMC as the judge advocate community Continuing Legal Education (CLE) sponsor should prioritize funded seats and coordinate their allocation with the deploying MEF.²⁴⁶

ISSUE: Arming enlisted paralegals (4421s/4429s) with the necessary skills for a deployed environment

DECISION: Enlisted members were assigned to the Combat Element (CE) OSJA (MSgt/Cpl), Major Subordinate Commands (MSCs) (Regimental Combat Teams (RCTs)/Lance Corporals LCpls, Marine Air Wing (MAW) forward/Corporal (Cpl), MLG forward/Cpl), and the Legal Services Support Team (LSST) (SSgt 4421 and Sgt 4429). Although no specific training plan existed for the enlisted, they were invited and participated in the PDLT training with the judge advocates. Additionally, they contacted and received information from their counterparts deployed in Iraq or recently redeployed from Iraq. Their capabilities were a product of formal schooling, experience, and billet assignment. Although the unit attempted to integrate them further during the MRX and work up, generally they continued their normal duty assignments until right before the deployment. Most capabilities were developed “on the job” after their arrival.

RECOMMENDATION: Broad capability development and a deployment training plan that supports established legal METLs and demonstrates an integration of the enlisted members with the judge advocates is critical.²⁴⁷

X.C.4. Service Academies

No AAR comments.

²⁴⁵ II MEF (FWD) 2008 OIF AAR, *supra* note 29.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

X.D. Material**X.D.1. Automation & Communications Equipment****OIF ISSUE: Responsibility for automation support**

DECISION: The regiment's legal team identified digital scanners as well as NIPR and SIPR access as being important to accomplishing their mission. The regimental headquarters and the squadron SIs provided NIPR computers and printers for the JAs and paralegals, but the senior paralegal NCO had to push the squadrons to provide even shared SIPR access to their paralegals. Because the regiment used SIPR for the preparation and transmission of all AR 15-6 investigation reports, it hooked up its digital senders to the SIPR rather than NIPR network.

RECOMMENDATION: Sustain. Legal teams preparing to deploy should ensure their personnel have sufficient access to NIPR, SIPR, and digital senders.²⁴⁸

ISSUE: Additional equipment needed to support a unit's legal services

DECISION: Most units deployed with sufficient equipment, however, the challenge was getting reliable equipment assigned to the SJA office. Equipment such as scanners, thumb-drives and external hard drives are increasingly essential to JAs completing their legal tasks. Whether it is forwarding investigations, establishing historical files or conducting training, the JAs must compete with other staff sections for limited resources. Sending the JA to a unit with an expectation that the unit will satisfy this requirement is unrealistic, as standardized unit training and equipment (T/E) does not account for JAs as part of the unit's table of organization (T/O).

RECOMMENDATION: Deployed JAs attached to units must have an established T/E that is mission based.²⁴⁹

ISSUE: The need for computers, printers, and scanners immediately upon entering theater

DECISION: Some BJAs did not hand-carry any office equipment from Kuwait into Iraq with them. Because the connexes did not arrive into theater until weeks after the Soldiers, some of the BCT legal offices did not have the necessary equipment readily available to run the legal shop.

RECOMMENDATION: Improve. Carry into theater the equipment necessary to get the legal shop up and running right away.²⁵⁰

ISSUE: Lack of computers

DECISION: Not every JA and paralegal consistently had their own computer in theater. One paralegal ended up signing for a computer from the re-enlistment section so both attorneys would have a computer. Another computer came from division because a JA from another division did not bring a computer. At one point, there were only five computers for six personnel. In addition, one paralegal had trouble with his computer and it had to go to Germany for repair. There was no replacement for this computer. Some people had to take their own computers into theater. Also, Adobe Pro was the most needed software that was not always available in theater.

²⁴⁸ 2SCR 2009 OIF AAR, *supra* note 24.

²⁴⁹ II MEF (FWD) 2008 OIF AAR, *supra* note 29.

²⁵⁰ 3ID 2008 OIF AAR, *supra* note 1.

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RECOMMENDATION: Improve. In the months leading up to deployment, ensure that every member of the JA shop has a computer, if possible.²⁵¹

ISSUE: Often times, computers are required to stay down range

DECISION: If the unit brings its own external hard drives into theater, the unit should be able to leave with the same hard drives upon return. The hard drives can store all of the unit's work products (such as investigations), therefore allowing the originating computers to remain in theater.

RECOMMENDATION: Improve. Consider bringing external hard drives into theater to store the unit's work products.²⁵²

ISSUE: Obtaining logistic support, including computers, etc

DECISION: The BCT legal team had no trouble obtaining any logistic support, largely because its Chief Paralegal NCO had already deployed with that BCT, and was therefore able to obtain any required items. There is no requirement for the Electronic Judge Advocate War-Fighting System (EJAWS) set in a mature theater. This BCT JA has used it only during the response to Hurricane Katrina when – in the complete absence of other infrastructure – he needed the camera, scanner, computer, printer, etc.

RECOMMENDATION: Sustain.²⁵³

ISSUE: Office equipment

DECISION: The BCT legal shop frequently used digital senders, voice recorders, and CDs with legal programs on them (such as DL Wills) to facilitate their legal mission. These were very helpful resources, especially since the BCT was not located with its higher headquarters and had to scan and email documents over to it on a regular basis.

RECOMMENDATION: Sustain. Ensure your legal shop is properly equipped with everything needed to effectively accomplish the legal mission. Digital senders become even more important when a unit is not co-located with its higher headquarters.²⁵⁴

ISSUE: Lack of a color printer

DECISION: The legal shop did not have a color printer in the office. Many times the mission required documents printed in color, such as the detention packet cover pages. The lack of a printer impeded the legal mission because a 27D would then have to take time out from his or her job to walk to another office in search of a color printer.

RECOMMENDATION: Improve. Talk with your S4 shop before deployment to ensure you have all the office equipment that you will need during your deployment.²⁵⁵

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 47.

²⁵⁴ *Id.*

²⁵⁵ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

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ISSUE: Theater-provided equipment (TPE)

DECISION: The OSJA did not have full knowledge of what TPE would remain. Consequently, they brought numerous desktop and laptop computers, many of which they ended up sending back to the rear.

RECOMMENDATION: Improve. Make contact with unit you are replacing to assess the type and condition of TPE, as well as the plan for lifecycle replacement of TPE. Get recommendations from the outgoing unit as to what equipment you should bring.²⁵⁶

ISSUE: Automation

DECISION: The NCOIC of the legal section brought three months worth of office supplies to begin the deployment. Even with this amount of forethought, the section experienced difficulties due to the lack of computers. More officers required both SIPR and NIPR computers than originally conceived. Not only did the office need additional computers, but scanners and copiers as well.

RECOMMENDATION: The RJAs cannot overstate the importance of computer and scanning support during the deployment. Lean as far forward as possible during the pre-deployment procurement phase and bring as many computers, copiers, scanners, and supplies as you can.²⁵⁷

ISSUE: Usefulness of the Judge Advocate Warfighting System (JAWS) equipment

DECISION: The JAs did not use the JAWS equipment much.

RECOMMENDATION: The regular issued office equipment was adequate to perform the JA job in theater.²⁵⁸

ISSUE: Using dual monitors while drafting investigation reports

DECISION: The brigades sent their weekly reports to the division, and the division would then compile a division report. To streamline this process, the AdLaw NCOIC used dual monitors to compile his report. One monitor displayed the brigade report, while he worked on the division report on the second monitor. This worked well because it prevented printing out each brigade report every week. This dual monitor screen also worked well when conducting research because you pulled up research on one screen while working on the report on the second screen.

RECOMMENDATION: Sustain. If possible, every section should have a computer hooked up to dual monitors.²⁵⁹

ISSUE: OSJA office equipment

DECISION: VTCs with the outgoing division were helpful in establishing what to bring in terms of automation. Because conditions in Iraq tend to reduce a computer's lifespan to 1-2 years, the OSJA took new computers as well as extra computers, printers, and digital senders, in case any

²⁵⁶ 1AD 2009 OIF AAR, *supra* note 3.

²⁵⁷ 3ACR 2009 OIF AAR, *supra* note 100.

²⁵⁸ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

²⁵⁹ 4ID 2009 OIF AAR, *supra* note 4.

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equipment broke in the middle of the deployment. The division occasionally had to replace brigade as well as division equipment. The criminal law section had its own digital sender, and used it to send documents to other trial counsel.

RECOMMENDATION: Sustain. This practice worked well. Bring extra equipment because things will break. The SJA office always had working office equipment, which meant they never had to delay their mission due to a malfunction. Digital senders are essential to the criminal law office.²⁶⁰

ISSUE: Availability of scanners and printer cartridges

DECISION: Scanners are an incredibly valuable tool for the deployed JA. Printer cartridges were a scarce resource in theater.

RECOMMENDATION: Ensure that you have sufficient access to scanners and printer cartridges.²⁶¹

ISSUE: Lack of equipment in client services office

DECISION: The MNC-I client services office was in a standalone building, separate from the rest of the MNC-I legal office. Both legal assistance and claims lacked a working photocopier, having to rely on a scanner in the Trial Defense Services office to scan documents for printing.

RECOMMENDATION: The client services office should have a color printer/copier, especially for claims, which regularly works with photographic evidence.²⁶²

ISSUE: Distribution of claims computers

DECISION: Each brigade received five computers. This number was excessive for their needs.

RECOMMENDATION: Provide a more realistic allotment.²⁶³

ISSUE: Ability to purchase automation

DECISION: Assessing it was more difficult to obtain automation equipment while deployed, the OSJA erred on the side of leaving the rear short of equipment.

RECOMMENDATION: This worked out well, as the rear detachment was readily able to purchase what they needed.²⁶⁴

OEF ISSUE: Use of digital senders

DECISION: Subordinate units on outlying FOBs had one 27D and no attorney. Therefore, it was necessary to use the digital sender to forward legal packets to the BJA on Bagram Airfield for review. Without the digital sender, this process would have been extremely difficult to accomplish.

²⁶⁰ *Id.*

²⁶¹ TF525 2009 OIF AAR, *supra* note 104.

²⁶² XVIII ABC 2009 OIF AAR, *supra* note 6.

²⁶³ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

²⁶⁴ *Id.*

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RECOMMENDATION: Sustain. The digital sender is the most important piece of equipment in the legal office during deployments.²⁶⁵

ISSUE: **Automated data processing (ADP) equipment**

DECISION: There was a shortage of automated data processing equipment at deployment sites. The unit requisitioned equipment through the supply system to correct the deficiency.

RECOMMENDATION: Improve. Establish with the outgoing unit the ADP requirement at the deployment sites. Create a list to ensure the brigade legal staff has the proper equipment, parts and supplies at the deployment site. At minimum, the legal staff requires a “stand alone” printer, digital sender, and a dedicated shared drive for the legal department.²⁶⁶

ISSUE: **Need for secure communications at home station**

DECISION: No one understood how much deployed legal work uses classified systems. Legal offices need Secure Internet Protocol Router (SIPR) drops and Secure Voice Over Internet Protocol (SVOIP) phones while in garrison. Getting these installed has a very large lead-time.

RECOMMENDATION: Start asking now to get these capabilities. Installation may not even occur in time for your unit’s next deployment, but it will never occur if no one ever initiates the effort.²⁶⁷

Software

OIF **ISSUE:** **Obtaining DL Wills and Redax software**

DECISION: The brigade provides automation, but legal-specific software has to come from higher in the technical chain.

RECOMMENDATION: Ensure you have a way to obtain the required automation.²⁶⁸

ISSUE: **JAG-specific software**

DECISION: Network managers in the G-6 realm do not always allow the installation of software and applications the JAG Corps requires.

RECOMMENDATION: Ensure IT managers can confirm everything legal professionals need to perform their jobs has clearance for installation on Army systems.²⁶⁹

ISSUE: **Foreign language typing**

DECISION: Typing in Arabic requires a special plug-in for the Microsoft Word application. This plug-in was nearly impossible to find and install.

²⁶⁵ 101st CAB 2009 OEF AAR, *supra* note 108.

²⁶⁶ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 43.

²⁶⁷ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

²⁶⁸ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

²⁶⁹ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

RECOMMENDATION: Ensure you have the ability to create documents using the alphabet of the host nation.²⁷⁰

Prohibition of Universal Serial Bus (USB) Memory Devices

OIF ISSUE: Solutions to memory stick prohibition

DECISION: Midway through the deployment, DoD policy prohibited the use of memory sticks. This increased the difficulty of information sharing and manipulation. In particular, some information received from Embassy and other organizations via NIPR, subsequently needed posting on SIPR to ensure increased access. Once the prohibition came into effect, transfers occurred using a CD or other method. In some cases, given the limitations of RoL section workstations (many of which were unable to read or burn CDs), it was easiest simply to print a document and use a digital sender to scan it to the other network, exercising caution to ensure that the resulting file was not too large to email. This became more of a problem when email attachment sizes were limited in mid-December. On one occasion, an email attachment inviting GoI personnel to attend a U.S.-led conference required splitting it into multiple documents. Fortunately, Adobe Acrobat Professional facilitated this type of manipulation, and it was loaded on some RoL section workstations. Where a file could not be printed and scanned (e.g., photos required for BUA use), the RoL section was sometimes forced to request assistance from other organizations, such as the CJ9 Media Operations Center (MOC). The MOC had the capability to transfer photos from digital cameras and burn them onto a CD. The memory stick prohibition resulted in an additional layer of difficulty when trying to obtain and share information with a multitude of different organizations, most of which did not have access to MNF-I shared drives. The RoL section needed to be creative in finding and utilizing various work-arounds.

RECOMMENDATION: JAs should prepare for challenges resulting from information-handling constraints. As usual, digital senders proved to be a valuable asset.²⁷¹

ISSUE: DoD ban on devices using universal serial bus (USB) ports

DECISION: The prohibition against USB port access occurred partway through the deployment. It resulted in a significant operational impact because OSJA personnel were used to saving files to memory sticks or external hard drives to mitigate the risk of losing data due to a computer crash. In addition, OSJA personnel required to give briefings in locations outside the office transported such briefings via memory stick. Although one workaround was to save files to a CD or DVD, the legal administrator discovered many OSJA workstations could neither read nor burn CDs and DVDs (although the software was installed, the harsh environment often reduced their functionality). He determined which workstations worked so OSJA personnel could rely them, worked with G6 personnel to copy files off memory sticks, and used a stand-alone workstation to clean external hard drives long enough to remove required files from them.

RECOMMENDATION: Improve. Deploying units should assume the ban on use of memory sticks will continue, and should devise workarounds for backups, as well as for removal of division files from theater upon completion of the deployment.²⁷²

ISSUE: DoD prohibition on use of USB flash drives

²⁷⁰ *Id.*

²⁷¹ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 162.

²⁷² 4ID 2009 OIF AAR, *supra* note 4.

DECISION: The USB prohibition made it extremely difficult to execute the court reporter mission. The government stand-alone computer used by the court reporters for transcription would not burn CDs. Therefore, the court reporters transferred the information from the FTR Gold equipment onto the court reporters' personal laptop computer, burned it onto a CD, and then transferred it back to the government computer for transcription. This was an inconvenience because it added an extra step to the process.

RECOMMENDATION: Improve. The DoD prohibition on USB drives must be more flexible to allow for mission execution. There should be certain exceptions to this policy.²⁷³

ISSUE: **Need for external data storage not reliant upon a USB connection**

DECISION: The division purchased a network attached storage device that attached to the LAN, instead of through a USB.

RECOMMENDATION: Purchase a 2-Bay SATA Enclosure and terabyte disks to use for external storage.²⁷⁴

Video Tele-Conferences (VTCs)

OIF ISSUE: **Use of VTCs to deal with geographic separation of MNF-I sections**

DECISION: Most MNF-I sections were previously co-located in the U.S. Embassy Annex, based in the Republican Palace, but the return of the Palace to the GoI meant that sections moved to other locations, principally Camp Victory, FOB Union III, and the New Embassy Compound (NEC). Most MNF-I OSJA personnel were based at Camp Victory, while the RoL section and the legal advisor to the Security Agreement Secretariat were located at the NEC. This geographic separation resulted in the OSJA and other MNF-I sections becoming increasingly reliant on meetings where at least some participants attend via VTC. The RoL section often used a Tandberg secure VTC link for this purpose. VTC proved useful for OSJA meetings, MNF-I Joint Campaign Plan (JCP) meetings, Interagency Rule of Law Coordinating Center (IROCC) meetings, MNC-I RoL meetings with MND/F RoL personnel, and for a December 2008 Security Agreement question and answer session with many of the JAs in theater.

RECOMMENDATION: Practitioners should consider the use of VTC equipment as a means of communication.²⁷⁵

ISSUE: **Utilization of VTCs and the MNC-I “weekly roll-up”**

DECISION: Sharing of information was very important for MNF-W. MNC-I conducted a monthly VTC and provided a “weekly roll-up,” via email, capturing everything they were working on each week. It allowed MNF-W to have an awareness of issues experienced by other subordinate commands.

RECOMMENDATION: Continue to request an “information push” from HHQ.²⁷⁶

²⁷³ *Id.*

²⁷⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

²⁷⁵ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 162.

²⁷⁶ I MEF (FWD) 2009 OIF AAR, *supra* note 77.

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ISSUE: Communications using means other than email or phone calls

DECISION: The office did quarterly video teleconferences with those outlying stations with that capability. There were also regular Breeze (Adobe Connect) sessions by functional areas. There was no overall division SJA Breeze meeting.

RECOMMENDATION: The difficulties with travel make these alternate means of communication essential.²⁷⁷

ISSUE: Pushing out information to subordinate echelons via VTC

DECISION: The OSJA did monthly video teleconferences with the divisions and corps separate brigades.

RECOMMENDATION: Ensure the participants all have time to talk. This allows it to be more than just one-way communication. It can become a round-table/discussion forum.²⁷⁸

ISSUE: VTC capability for rear courtroom

DECISION: The OSJA established both secure and unsecure VTC capability in its home station courtroom. They have used it for the sentencing portion of a court martial.

RECOMMENDATION: Sustain. This technology saves travel expenses and the time of witnesses when it is available.²⁷⁹

X.D.2. Information Management

OIF ISSUE: Lack of templates and knowledge management

DECISION: Few documents exist attorneys can use to form a solid foundation for their deployed practice. Even if an attorney does not use every document in a purported “template library,” they can measure their own products against those as a type of professional re-assurance. Moreover, conscientious units currently create sites for their products, but as soon as the unit re-deploys the portal disappears. There is no nexus to connect the library with the next user.

RECOMMENDATION: Attorneys continue to re-create the wheel in relatively mature theaters. Not only do attorneys need to see examples of the documents they will use on a day-to-day basis, but they also need to understand the process in which attorneys and staff utilize said documents. The JAG Corps needs a SIPR repository to avoid the loss of critical templates.²⁸⁰

ISSUE: Types of example products available

DECISION: Need more example products that deal with rewards, CERP, etc. There are a great many components you have to put in place to run a rewards program (pay agent appointments, approval Standard Operating Procedures (SOPs), approval memos, trackers, etc.)

²⁷⁷ 4ID 2009 OIF AAR, *supra* note 4.

²⁷⁸ XVIII ABC 2009 OIF AAR, *supra* note 6.

²⁷⁹ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

²⁸⁰ 3BCT, 4ID 2009 OIF AAR, *supra* note 50.

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RECOMMENDATION: Find a good SOP and post it where everyone can have access and use it for ideas and examples.²⁸¹

ISSUE: **Disseminating current operations**

DECISION: The unit kept a running log from the JOC floor. They also did a weekly update to the Chief of Staff, to include Hot Items.

RECOMMENDATION: Sustain. Feed this type of weekly update to the incoming unit so they can stay abreast of the current issues facing the deployed unit. [Note: Though not mentioned by the unit, providing CLAMO a courtesy copy of that traffic will allow CLAMO to feed the most current information into the training and development base at TJAGLCS and the training centers.]²⁸²

OEF ISSUE: **Handling classified material**

DECISION: During deployment, there is authorization for open storage nearly everywhere. This can lead to some very bad habits concerning the safeguarding of classified material.

RECOMMENDATION: Improve. Legal offices require pre-deployment training on the proper handling of classified information.²⁸³

Information Sharing & Computer Networks

OIF ISSUE: **Insufficient Secure Internet Protocol Router (SIPR) connectivity in CONUS**

DECISION: The rear detachment needs SIPR connectivity. The lack of rear SIPRNET hindered communication with forward counterparts.

RECOMMENDATION: Improve access to SIPR communications in the rear.²⁸⁴

ISSUE: **Non-Secure Internet Protocol Router (NIPR) and SIPRconnections**

DECISION: There was a lack of NIPR and SIPR connections within the brigades and Trial Defense Services (TDS). Most computers in theater were set up with SIPR connections, although most sections in the division legal shops also had NIPR. TDS was strictly NIPR configured, whereas the brigades had a lack of NIPR connections. Due to the disparity in NIPR versus SIPR connections available to the various JAs in theater, communication was often an issue.

RECOMMENDATION: Improve. Grant JAs greater access to both SIPR and NIPR configured computers for all sections of the deployed legal shop.²⁸⁵

ISSUE: **Exception to the NIPR “blackout” policy**

²⁸¹ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

²⁸² XVIII ABC 2009 OIF AAR, *supra* note 6.

²⁸³ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

²⁸⁴ 3ID 2008 OIF AAR, *supra* note 1.

²⁸⁵ *Id.*

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DECISION: Whenever the BCT suffered a casualty, the NIPR line was immediately “blackout” until notification of the Soldier’s family. This meant BCT personnel could not access the NIPR during that time. This made it extremely difficult for legal personnel to conduct research or stay in contact with their 27Ds at the outlying FOBs. As a result, the BJA requested and obtained an exception to this policy so the legal office would continue to have NIPR access while the rest of the BCT was in a “blackout” period.

RECOMMENDATION: Sustain.²⁸⁶

ISSUE: Information sharing

DECISION: The MNF-I RoL section relied on access to three networks (NIPR, SIPR, and CENTRIXS) for connectivity and information management. The unit posted information of interest to other organizations in theater on the RoL section’s SIPR SharePoint site, to which both MNF-I and Embassy personnel generally had access. Sharepoint use is a relatively recent initiative; unfortunately, shared drives maintained the older files which other RoL personnel and even other members of MNF-I OSJA (located at Camp Victory, and therefore using a separate server) lacked access.

Other MNF-I organizations also posted information of potential interest to RoL practitioners. These include the MNF-I CJ9 governance section, which posted English translations of Iraqi laws as well as legislation-related info papers and other materials, on its website. TF-134 also posted information about U.S.-held detainees. Finally, the MNC-I RoL section used its SharePoint site for maintaining various databases.

The MNF-I RoL section also had the ability to post items on a NIPR SharePoint site, but was not doing so, in part because NIPR access is more limited. In particular, Embassy personnel, who used a separate “OpenNet” DoS intranet, did not generally have NIPR access. In contrast, the Embassy maintains a SIPR website, allowing access to useful materials such as Embassy cables.

CENTRIXS, which could be accessed by Coalition partners as well as U.S. personnel, was used to host MNF-I policies and broadcast the BUA.

In some cases, different networks used different versions of the same software. For example, CENTRIXS used an earlier version of PowerPoint than was available on SIPR. This could result in compatibility issues with PowerPoint BUA briefings prepared on a SIPR workstation and requiring subsequent transfer to CENTRIXS. As well, MNF-I NIPR workstations used a version of Word earlier than that used by GoI personnel who were then unable to attachments originating from MNF-I workstations. As a result, the MNF-I RoL section cultural advisor had to ensure that documents requiring transmission to GoI officials were in a format compatible for the recipient. The MNF-I RoL section facilitates RoL information sharing by posting RoL materials (e.g., info papers) to its SIPR SharePoint website.

RECOMMENDATION: RoL practitioners should be aware that useful RoL resources are available on SIPR, and should attempt to post items of common interest to their own sites. Moreover, they should be aware of common information-sharing problems and possible work-arounds.²⁸⁷

²⁸⁶ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 47.

²⁸⁷ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 162.

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ISSUE: Saving classified work product for future use

DECISION: The unit saved classified work product to “approved” storage media and transported it to home station in accordance with regulations. The unit left classified material it did not save to storage media at the deployment site. Accessing the deployment site system from home station is not possible.

RECOMMENDATION: Improve. Properly classify work product. Before deployment, research rules and regulation with respect to storage and transportation of classified material. Anticipate a desire to retain in unit historical files at home station some classified work product, and plan accordingly.²⁸⁸

ISSUE: Use of Microsoft Breeze chat rooms

DECISION: The OSJA conducted a biweekly Breeze chat with its brigade judge advocates (BJAs) in order to disseminate information and discuss issues. Each unit or branch of the division OSJA briefed their top three issues, alternating each Breeze (e.g., brigades briefed one week, then division two weeks later, etc.). It was helpful for BJAs to hear how their peers were resolving issues. Moreover, this facilitated support between brigades.

RECOMMENDATION: Sustain.²⁸⁹

ISSUE: SIPR/NIPR Availability

DECISION: An adequate number of SIPR computer terminals are available. NIPR terminals within the workspaces are not always available.

RECOMMENDATION: Improve. Increase the number of NIPR terminals within the workspaces, where appropriate.²⁹⁰

ISSUE: Access to networks

DECISION: BLS members needed access to both NIPR and SIPR networks.

RECOMMENDATION: Obtain access to both networks. Legal works flows through both, even in a deployed environment.²⁹¹

ISSUE: Utility of materials, such as those from CLAMO

DECISION: The BJA did not make use of CLAMO materials, as most of what they needed in the field came from MNC-I or MND-B.

RECOMMENDATION: Improve. A CLAMO SIPR presence would help make its resources more relevant to the deployed JA.²⁹²

ISSUE: Access to a NIPR computer

²⁸⁸ 1AD 2009 OIF AAR, *supra* note 3.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

²⁹² 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

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DECISION: All legal personnel need access to a NIPR computer. In the RoL arena, DoS operates in the NIPR environment. Additionally, everyone needs it for legal research. Our legal research capabilities have no mirror on the secure network.

RECOMMENDATION: Ensure the command understands the importance of this access. This is not a “nice to have” but a “must have” in a mature theater.²⁹³

ISSUE: Shared MND-B computer portal

DECISION: The division set up a computer portal for all MND-B units. This allowed MND-B Soldiers to scan and save their documents to the portal, eliminating the need to email large files piecemeal. The portal also sent you an alert whenever someone placed a document in your file folder. The division’s replacements had access to all documents on the portal and could then use this portal themselves.

RECOMMENDATION: Sustain. In a deployed environment, this was the most efficient way to transfer and share documents. It also provided for increased continuity and efficient turnover with the incoming unit.²⁹⁴

ISSUE: Using the division’s shared drive to disseminate training materials

DECISION: The unit posted all training materials, such as RoL, ROE, and Law of War (LOW) training, to the MND-B shared drive. Everyone in the division had access to these training materials. Commanders could easily pull up training briefs and give instruction to their Soldiers.

RECOMMENDATION: Sustain. The shared drive was extremely useful in ensuring all members of the division could easily access the training materials.²⁹⁵

ISSUE: Data storage and transportation back to CONUS

DECISION: There was a misunderstanding about responsibility for storing all data from the MND-B shared drive and transporting it back to Fort Hood. Three months later, the data remains on the MND-B shared drive. This is unfortunate because many great SJA products saved on the shared drive are unavailable to the SJA office. As a result, re-invention of the wheel is necessary and many needed documents, such as open case files and post trial documents, are lost.

RECOMMENDATION: Improve. If possible, save all-important data on media that you control before leaving theater.²⁹⁶

ISSUE: Poor network speed

DECISION: The computer systems were too slow, especially the internet on the green side of the system, causing a good deal of time to be wasted simply waiting for system to work. If the OSJA needed something that have otherwise been available on the internet, such as at JAGCNET, it was

²⁹³ 4ID 2009 OIF AAR, *supra* note 4.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

sometimes easier and faster to simply call to the United States and request another legal office, such as CLAMO, to send the document to us rather than try to get it online.

RECOMMENDATION: Improve. Personnel in theater should have faster computer systems.²⁹⁷

ISSUE: **Use of reporting requirements as an information-sharing opportunity**

DECISION: The OSJA had to produce a weekly update to the chief of staff. It contained the issues of importance and the priorities for the OSJA. The OSJA also sent this document to the lower echelons. It gave them some visibility of what the corps was doing and what was important at the time.

RECOMMENDATION: Sustain.²⁹⁸

ISSUE: **SIPRNET access for claims**

DECISION: The MNC-I claims attorney did not have a dedicated SIPR computer for use in reviewing significant activities (SIGACTs) for potential claims or for investigating claims.

RECOMMENDATION: The claims judge advocate should have an assigned SIPR computer.²⁹⁹

ISSUE: **Required connectivity**

DECISION: Information flows through both the NIPR and SIPR domains. Digital senders are essential.

RECOMMENDATION: Do not underestimate the need to fight for these resources. Just because you know you need it does not mean those who set it up have the same understanding.³⁰⁰

ISSUE: **Access to various information portals**

DECISION: The security on the MNF-I portal made it impossible to access without creating an account for each person individually. The passwords for these accounts would expire at regular intervals, requiring re-establishing the account.

RECOMMENDATION: Improve the accessibility to the portal. The point is to make information more available.³⁰¹

ISSUE: **Need for CENTRIXS accounts**

DECISION: Claims JAs needed CENTRIXS accounts to coordinate claims operations with multinational partners.

RECOMMENDATION: Do not assume only operational law personnel require special access.³⁰²

²⁹⁷ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 42.

²⁹⁸ XVIII ABC 2009 OIF AAR, *supra* note 6.

²⁹⁹ *Id.*

³⁰⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

³⁰¹ *Id.*

³⁰² *Id.*

JAGCNet & JAG Web-based Applications

OIF ISSUE: Submission of on-line military justice reports

DECISION: During the deployment, the military justice NCOIC had to submit on-line military justice reports periodically. However, this process did not work very well because it was extremely difficult to get into the website. Once you finally got in, it was hard to manipulate the data and submit the report.

RECOMMENDATION: Improve. Either terminate the on-line submission of military justice reports or create a more user-friendly website.³⁰³

ISSUE: JAGCNET's lack of organization

DECISION: JAGCNET contains helpful information, but its organization could use improvement. Instead of structuring it by organization such as CLAMO, OTJAG, TJAGLCS, and so forth, organize it by core legal discipline. For instance, if you are looking for a jurisdictional alignment chart, you should not have to look through CLAMO's website, and then OTJAG criminal law's website, and then so on until you find it. You should be able to go to one military justice link that combines all organizations' military justice material.

RECOMMENDATION: Improve. Overhaul JAGCNET so that it is easy to search for needed material.³⁰⁴

ISSUE: Military Justice Online

DECISION: The unit could not use this "required" technology while deployed. Even as a high-level headquarters, they did not have sufficient non-secure bandwidth to make it work. The web-based application would time out as users tried to populate it with data. The unit even tried to speak with the Signal personnel who maintained the deployed servers to determine if there was some way to set up a server for it locally to prevent the need to hop the data halfway across the world. However, the system used by the wider Army was not compatible with the Lotus Notes-based application. The unit also determined keeping the application updated with the number of units going and going from the jurisdiction would be a full-time job for any person.

RECOMMENDATION: Instead of having the application based on the web, push it as an installable software package residing on the local machine. It could then transmit the data at regular intervals, rather than in real-time. The bandwidth issue makes this tool unusable in the deployed environment, even in a theater as mature as Iraq.³⁰⁵

ISSUE: Bandwidth issues

DECISION: The shortage of bandwidth made any web-based application impossible to use. This included Military Justice Online, the claims database, and Lexis/Nexis. Additionally, shutdowns for casualties also limited availability. Finally, many people failed to realize any downtime in the network also meant the phones would not work.

³⁰³ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 48.

³⁰⁴ 4ID 2009 OIF AAR, *supra* note 4.

³⁰⁵ XVIII ABC 2009 OIF AAR, *supra* note 6.

RECOMMENDATION: These JAGC applications have to be able to operate in an off-line mode that allows for burst data transmissions in the background. Nothing requiring a constant active internet connection is feasible for a deployed environment.³⁰⁶

OEF ISSUE: Need for “JAGCNet-lite”

DECISION: Due to bandwidth limitations, JAGCNet did not run well in the deployed environment.

RECOMMENDATION: Improve. There is a need for a “JAGCNet-lite” which has all of the essential resources for deployed judge advocates, but uses less bandwidth.³⁰⁷

X.D.3. Supplies & Equipment

OIF ISSUE: Obtaining office supplies while deployed

DECISION: Legal personnel normally obtained all supplies through the supply system without any difficulty. Legal teams should deploy with sufficient supplies of toner, however, as the quality of toner available in theater tends to be hit and miss. The single major difficulty arose when a squadron placed under a brigade had such problems obtaining required items through the brigade that the paralegal simply purchased them himself.

RECOMMENDATION: Legal teams should consult with the outgoing unit to try to determine supply requirements and the likelihood of being able to satisfy them in theater.³⁰⁸

ISSUE: Captains competing with majors in other staff sections for supplies

DECISION: It was always a challenge for captains to get needed supplies when they must compete with majors from other staff sections.

RECOMMENDATION: Improve. The division SJA shop needs to support its captains and ensure they are equipped with the necessary supplies to do their job.³⁰⁹

ISSUE: Office supply and logistical requirements

DECISION: Replacement toner ink for copy machines was difficult to obtain in the AO. Shared telephone access with other work sections limited telephone use.

RECOMMENDATION: Improve. Contact redeploying unit to determine office supply requirements and deficiencies. Ensure the unit deploys with a minimum 90-day supply of all consumable office supplies. Install additional telephones in shared workspaces.³¹⁰

ISSUE: Determining the OSJA requirement for office supplies

DECISION: The division OSJA packed enough equipment for the entire 15-month deployment, including many of the office supplies it expected to use in Iraq. Although units can now obtain

³⁰⁶ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

³⁰⁷ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

³⁰⁸ 2SCR 2009 OIF AAR, *supra* note 24.

³⁰⁹ 3ID 2008 OIF AAR, *supra* note 1.

³¹⁰ 1AD 2009 OIF AAR, *supra* note 3.

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most supplies in theater, it is sometimes difficult to get the exact item desired (e.g., the paper size available in theater is A4, making legal packets made of two different sizes of paper awkward to handle). Item quality also varies (e.g., toner), and in some cases, an item is more expensive (e.g., paper), or orders are subject to delays.

RECOMMENDATION: Sustain. Ensure your office brings ample supplies of both equipment and supplies. Expect significant delays and abnormalities when ordering such things during your deployment. In particular, units should consider taking sufficient printer cartridges for the entire deployment, because they are expensive to replace in theater and the quality of replacement cartridges is sometimes unsatisfactory.³¹¹

ISSUE: Need for extra court reporting equipment

DECISION: In order to record and then transcribe a court martial, the court reporters needed the following equipment: microphones, mixers, foot pedals, and headsets. If any of this equipment broke, they could not complete the transcription. Therefore, it was essential to bring extra equipment in case anything broke.

RECOMMENDATION: Sustain. To save yourself unnecessary distress, bring extra equipment.³¹²

ISSUE: Using FTR Gold equipment for transcription

DECISION: The division court reporters used For the Record (FTR) Gold to transcribe courts-martial. FTR Gold has better microphones, and you do not have to transfer files with this equipment. It also allows the deployed court reporters to send files to court reporters in garrison for assistance in completing them when necessary.

RECOMMENDATION: Sustain. This equipment is far more efficient than other transcription equipment.³¹³

ISSUE: Surge protectors for the mixers

DECISION: The division brought extra surge protectors for the For the Record (FTR) Gold mixers. This proved to be a smart decision because a couple of the mixers blew out in theater due to the Iraqi voltage.

RECOMMENDATION: Sustain. Bring extra surge protectors to Iraq. You may have trouble obtaining them once in theater.³¹⁴

ISSUE: Obtaining new Manuals for Courts-Martial (MCMs)

DECISION: The BCT could only obtain MCMs by going through the battalion paralegals.

³¹¹ 4ID 2009 OIF AAR, *supra* note 4.

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

RECOMMENDATION: The JAG Corps needs a published central point of contact for obtaining MCMs. Much like CLAMO distributes various handbooks, someone should have a similar responsibility with MCMs.³¹⁵

ISSUE: **Obtaining MCMs**

DECISION: The division had to obtain MCMs for some of its subordinate units.

RECOMMENDATION: Call 703-588-6735 to request additional copies of the MCM.³¹⁶

ISSUE: **Determining what to ship forward**

DECISION: The unit coordinated extensively with the unit they would replace to determine what to bring forward.

RECOMMENDATION: Make contact and discuss this specific question. There is a great deal of theater-provided equipment already in place.³¹⁷

OEF ISSUE: **What materiel to bring from home station**

DECISION: Units do not typically deal with theater provided money and resources. Consequently, the unit underestimated the amount of supplies and equipment already on hand in theater.

RECOMMENDATION: The pre-deployment site survey (PDSS) is critical for validating requirements. Every office must get their Deputy SJA on the site survey. Additionally, the OpLaw attorney is also a good person to send on the survey. However, the ship date for supplies and equipment is so far out, the PDSS may occur too late to be of much help in this area. The legal administrators of the incoming and outgoing units need to talk to each other very early in the process to determine what the unit should send forward.³¹⁸

ISSUE: **Task Force-owned equipment**

DECISION: A significant amount of “task force” equipment will remain in theater after the current unit redeploys. A good PDSS will assist units in creating a realistic packing list.

RECOMMENDATION: Be wary about following prescribed or recommended packing lists. Units must be ready to tailor their lists to their particular needs.³¹⁹

ISSUE: **Accurate tracking of shipments**

DECISION: There were numerous occasions when the unit did not receive the correct (or correct quantity) of items. On other occasions, it received material that should have gone to other units.

RECOMMENDATION: It is imperative the unit maintain an accurate accounting of what material it orders and what it actually receives.³²⁰

³¹⁵ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

³¹⁶ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

³¹⁷ *Id.*

³¹⁸ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

³¹⁹ *Id.*

Property Book/Transfer of Property

OIF ISSUE: Theater property book

DECISION: Many deploying units do not realize there is a theater property book. Consequently, they take too much property with them. Theater-provided equipment (TPE) already exists on the ground in theater. You will inherit a great deal of property already paid for by MNF-I and MNC-I.

RECOMMENDATION: Contact the unit you are replacing and gain a clear understanding of what will be waiting for you when you arrive. You can probably take much less equipment than you initially envision.³²¹

ISSUE: Who will be the property book officer

DECISION: The legal administrator, command paralegal, and E-8 are all senior enough to handle property book responsibilities.

RECOMMENDATION: If you have the E-8 available, he or she can take on the property book duties.³²²

ISSUE: Personnel required as part of the advanced party

DECISION: The outgoing unit will be in a hurry to transfer its property. Ensure your hand receipt holder and your information technology person are part of the advanced party.

RECOMMENDATION: Sustain. Additionally, there should also be someone of relatively senior rank present to represent your office and fight for resources.³²³

OEF ISSUE: Property book

DECISION: The SGM managed the property book. The E-8 assigned to the military justice section could also fill this role.

RECOMMENDATION: The property book manager must be a mature, conscientious leader who can effectively execute this responsibility.³²⁴

Individual Equipment

OIF ISSUE: Additional equipment required for the individual JA

DECISION: Most units published a standardized gear list. However, publishing them late or changing them frequently, makes it difficult for the individual judge advocate. In addition, non-

³²⁰ *Id.*

³²¹ XVIII ABC 2009 OIF AAR, *supra* note 6.

³²² *Id.*

³²³ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

³²⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

standardized gear items were often useful during the deployment. Judge advocates that had previously deployed and previous AARs provided this important information.

RECOMMENDATION: Judge advocates must have access to previously deployed judge advocates and AARs before their deployment.³²⁵

ISSUE: Carrying of individual chemical protection gear

DECISION: Theater policy required individual chemical protection gear to be available in within two hours. It was an unnecessary burden to have to have this gear immediately available to the individual Soldier when the threat did not require this level of readiness.

RECOMMENDATION: Consolidate this gear at a supply activity on the FOB and relieve the individual of the burden of packing it into and out of country.³²⁶

ISSUE: Too much issued gear in preparation for deployment

DECISION: This individual augmentee carried four large duffle bags in and out of theater.

RECOMMENDATION: Improve. As an officer going to a staff position at MNF-I, five uniforms were two too many. Although arrival into theater was in the month of January, there was never a need to wear the heavy winter combat boots or other cold weather gear. In a mature theater like Iraq, virtually every working space a staff officer would occupy had heat or cooling with some efficiency.³²⁷

X.E. Leadership

OIF ISSUE: Joint experience

DECISION: For operational level commands, it is helpful for the SJA to have joint experience.

RECOMMENDATION: Although not required for JAs, joint experience is helpful at the operational level.³²⁸

ISSUE: Knowing your people and their strengths/limitations

DECISION: In some instances, it may be necessary to create alternate lines of leadership outside the standard rank seniority mode. This may be necessary if the senior person has a different emphasis or must focus their efforts elsewhere.

RECOMMENDATION: You can do this by giving the individual a strong deputy or adjusting the structure and/or workflow of the section. Before doing any of these things, you should explain it thoroughly to the affected individuals.³²⁹

ISSUE: People gravitate towards their comfort zone and what they enjoy

³²⁵ II MEF (FWD) 2008 OIF AAR, *supra* note 29.

³²⁶ IBCT, 4ID 2009 OIF AAR, *supra* note 5.

³²⁷ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 42.

³²⁸ XVIII ABC 2009 OIF AAR, *supra* note 6.

³²⁹ *Id.*

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DECISION: This may cause some things that are outside this comfort zone to go undone or unheeded. You have to monitor what may not be occurring because of this human tendency.

RECOMMENDATION: Pay attention to your legal “spider sense.” It may prompt you to nudge some effort by others towards an area you sense no one is properly covering.³³⁰

ISSUE: Use of a personal barometer

DECISION: The SGM served as the personal barometer for the SJA. The SJA and SGM would go to the first meeting of the morning together. This allowed the SGM to gauge the SJA’s mood and ensure everything was going all right. This meeting also gave the SGM an opportunity to see all the other SGMs and CSMs.

RECOMMENDATION: As a senior leader, it is important to have a battle buddy to ensure you are taking appropriate care of yourself.³³¹

ISSUE: Left seat/right seat ride

DECISION: Human nature leads the incoming personnel to feel as though they know what they need to know. The tendency is for personnel to discount the left seat/right seat ride process.

RECOMMENDATION: Pay attention and emphasize to your people the need to gain all the information they can during this process. Experience matters and the people with the experience are only available to help for a very short period.³³²

ISSUE: “Nest-building” during the transition period

DECISION: It is human nature for people to want to set up their “space” as soon as possible. In some instances, the desire for incoming unit personnel to fix up their living spaces detracted from the transition process.

RECOMMENDATION: Improve. There will be plenty of time for building a new porch after the outgoing unit leaves. Ensure personnel are taking advantage of having the outgoing unit present to do a solid transition. It requires a solid leadership team to ensure this occurs.³³³

ISSUE: Receiving a good battle handoff from your predecessor

DECISION: For the most part, the division received a great battle handoff from their predecessors. However, not all of the handoffs were equally complete. Sometimes it was because the person leaving Iraq was in a hurry to finish their job. Other times it was because the incoming person did not take an adequate amount of time to soak in the information.

RECOMMENDATION: Improve. Regardless of the time your predecessor spends with the handoff, it is your responsibility to take advantage of their knowledge and get everything that you need out of him/her.³³⁴

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

³³³ 1AD 2009 OIF AAR, *supra* note 3.

³³⁴ 4ID 2009 OIF AAR, *supra* note 4.

ISSUE: When to send over the leadership

DECISION: It is best to send the action officers over early, not the leadership. The leadership on the ground is not going to get up and give over their chair. They cannot while they still have their own leadership to support. Consequently, it is best to send over first those who can assume duties under the eye of their outgoing counterpart.

RECOMMENDATION: Send the leadership late in the process and have them begin with battlefield circulation, as it will be difficult to do leadership visits once the mission is fully underway.³³⁵

ISSUE: Assembling the right leadership team

DECISION: Having a bad fit within the leadership team of any organization makes it tough on the entire team. In the vast majority of the cases, the problems that arise while deployed are not the result of something new. It is something those involved have identified as an issue previously.

RECOMMENDATION: If there is any inkling of a personality conflict or other issue (personal, social, or otherwise) known before the deployment, you have to make changes before arriving in theater. Nothing will “get better” in theater. It only gets much worse.³³⁶

ISSUE: Unity at the head of the organization

DECISION: Whether you are talking about the “Foundation of Four” or the BJA/brigade senior paralegal, there has to be a sense of unity at the head of the organization. Members of these organizations have to see their leaders working together, going to lunch together, and talking to each other. It is obvious when this unity is missing.

RECOMMENDATION: Even if your relationship is great, ensure there are visible indications that it is. The members of your team do notice.³³⁷

ISSUE: Off-site leader development

DECISION: The OSJA took a few days during the workweek to conduct leader development and team-building at an off-site location.

RECOMMENDATION: Sustain. This is a great way to build your team without the distractions inherent in your daily office environment.³³⁸

ISSUE: Opportunities to put out your leadership messages and themes

DECISION: The leadership weaved their messages into their opportunities to address their people. It is important for people to hear things more than once and to hear what they need to hear at that moment.

³³⁵ XVIII ABC 2009 OIF AAR, *supra* note 6.

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

RECOMMENDATION: Use promotion, farewell, award, and birthday ceremonies as opportunities to communicate your messages. Weave them into these opportunities you have to address the collective group.³³⁹

ISSUE: Preparing inexperienced personnel for deployment

DECISION: Conditions will be the most austere immediately upon arrival. Let them know they may spend some time living in tents.

RECOMMENDATION: Prepare your Soldiers for the worst case.³⁴⁰

ISSUE: Setting the direction of the organization

DECISION: As the SJA, you have a responsibility to set the overall direction of the office.

RECOMMENDATION: “Vision” is not just for commanders of units. You should pick three or four simple things your people can fall back upon to know what it is you consider important. Whether you call it a vision or “rules to live by,” it is important your people understand what it is you expect and what is important to you.³⁴¹

ISSUE: Changes in personnel assessments

DECISION: Deployments are a crucible. People will surprise you. Some “superstars” will check out mentally before the fight is over and previously dubious performers will rise to levels well above their pay grade.

RECOMMENDATION: It can be surprising when previous peak performers begin to “mail it in.” Deployment does take its toll. You have to figure out for your people a way around their cultural resistance to telling the boss when they are having difficulties.³⁴²

ISSUE: Formation of cliques within the office

DECISION: Although expected, this problem did not materialize for the office.

RECOMMENDATION: Maintain an awareness of this potential problem. Be alert for signs of a breakdown in cohesiveness.³⁴³

ISSUE: Periodic counseling

DECISION: People sincerely appreciate legitimate counseling. This includes, not only telling them what they are doing well, but also letting them know where you think they can improve.

RECOMMENDATION: Even though deployed, you must make yourself do periodic counseling. You should not limit counseling to OER time. Doing so provides no opportunity for the individual to improve or make course corrections.³⁴⁴

³³⁹ *Id.*

³⁴⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*

ISSUE: Switching assignments midway through the deployment

DECISION: For the most part, the OSJA did not move personnel around at the midway point. This was a conscious decision.

RECOMMENDATION: This is a leadership call based upon the individuals involved. You have to know your people to determine what will work best.³⁴⁵

OEF **ISSUE:** Role of the senior command paralegal

DECISION: One of their principal roles should be looking out for those isolated 27Ds who have no one else from the JAGC at their locations. Additionally, because he or she is now a Sergeant Major (SGM), he or she will attend a great many Division Command Sergeant Major meetings that previously had no legal professionals present.

RECOMMENDATION: The legal office requires an aggressive SGM who will get on a helicopter and visit the paralegals at the outlying locations. This can be a full time job given the difficulties with travel in Afghanistan. Having a SGM who does this is a phenomenal benefit. Attending the Division CSM meetings is also valuable because a great many issues arise from ideas discussed there. Having early visibility is very helpful.³⁴⁶

ISSUE: The role of the SGM

DECISION: Having a SGM assigned to the unit is invaluable. A strong working relationship between the unit SGM and the Division CSM will protect and advance the interests of the unit.

RECOMMENDATION: Sustain.³⁴⁷

ISSUE: Article VI visits for joint personnel

DECISION: If you have joint service legal providers, you can expect visits from the senior JAG leadership from every service.

RECOMMENDATION: Be aware of the standard you set with the first visit. You have to be careful to provide equivalent resources for each visit. Now that TJAGs are all lieutenant generals (or vice admirals), it significantly increases the protocol burden on the command when they visit.³⁴⁸

Access to the Leadership

OIF **ISSUE:** Access to the commander for processing of legal actions

DECISION: In close coordination with the brigade XO, the BJA and TC held short, regular meetings with the commander to ensure timely processing of actions requiring his signature.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

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RECOMMENDATION: Sustain. The commander's schedule was so tight that longer meetings held less often would have been detrimental to timely legal practice in the brigade. BJAs must urge XOs to adopt this practice, and be willing to go to the commander if the XO precludes access or sets up an unworkable schedule for the delivery of legal services.³⁴⁹

ISSUE: Direct access to the commander

DECISION: The executive officer (XO) tried to limit the RJA's access to the commander on different occasions.

RECOMMENDATION: Fight this fight early. JAs need direct, unfiltered access to the commander so they can properly advise on all areas of the law. Some issues require the strictest confidence, excluding all unnecessary parties from hearing. Unfiltered does not mean unfettered: the XO is not an officer with whom one should trifle regularly, so respect his/her authority and firmly justify your reasons for bypassing them en route to the commander.³⁵⁰

ISSUE: JA access to the brigade commander

DECISION: The BJA asked the commander whether he could visit him when an issue came up or whether he needed an appointment. The commander said to visit anytime there was an issue.

RECOMMENDATION: Sustain. Having direct access to the brigade commander is essential for expeditious resolution of legal issues in theater.³⁵¹

ISSUE: Availability of the SJA

DECISION: Accessibility is the key. You have to be available, and not just in word.

RECOMMENDATION: Do more than tell the office your door is always open. Demonstrate you genuinely want and expect people to come to you. This can result in you having to deal with some things better handled by the deputy SJA or at a lower level, but the open communications is important enough to outweigh this disadvantage.³⁵²

Trust in Subordinates

OIF ISSUE: NCOs want more trust from the lawyers

DECISION: The perception was that inexperienced captains displayed the greatest lack of trust. JAs would often fail to inform their NCOs about what was going in the office. They would ask questions of other staff members due to lack of time rather than tasking out research projects to the NCOs. Also, JAs would call back to the division to double check the answers given by their NCOs.

RECOMMENDATION: Improve.³⁵³

ISSUE: Communicating decisions, public criticism, and trust

³⁴⁹ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 48.

³⁵⁰ 3ACR 2009 OIF AAR, *supra* note 100.

³⁵¹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

³⁵² 4ID 2009 OIF AAR, *supra* note 4.

³⁵³ 3ID 2008 OIF AAR, *supra* note 1.

DECISION: Some direction to staff created confusion with respect to the identity of the true decision maker. There were also some public comments critical of one staff section. The staff felt micromanaged early in the deployment cycle. After time, leadership changed and a trust relationship developed. Productivity, work environment, and morale correspondingly increased.

RECOMMENDATION: Improve. Praise junior staff in public and provide critical comments in private. Trust the staff to work to complete the mission. Make mission objective clear and provide timely feedback.³⁵⁴

ISSUE: Allow personnel to do their jobs and underwriting mistakes

DECISION: The leadership gave personnel the freedom to do their jobs. This freedom was beneficial across the entire office.

RECOMMENDATION: It is human nature to want to control as much as possible. However, it is very beneficial if your people feel they have the freedom to do their jobs, even if it means occasional missteps.³⁵⁵

Relationship Building

OIF **ISSUE: Being the junior officer on a staff**

DECISION: As the junior officer on the staff, the BJA had to forge relationships and earn respect. He worked hard to integrate himself into the staff and become a team player. He learned early to never “dime out” another staff officer, but instead, try to work with that officer to come up with a solution amenable to both parties. In order to be seen as a part of the team, the BJA would smoke cigars with other staff officers.

RECOMMENDATION: If possible, work on team building and integration into the staff before the deployment. This can be especially challenging as the junior officer *and* the lawyer. Interpersonal relationships become very important and require constant work to maintain. Help others when you can and do not discount the benefit of the cigar pit conversations with other staff officers. In a deployed setting, the cigar pit helps to build discussions and trust that can assist in staff relationships.³⁵⁶

ISSUE: Becoming familiar with the BCT staff sections

DECISION: The BCT integrated with the staff as much as possible in the months leading up to the deployment and during the JRTC rotation.

RECOMMENDATION: Improve. Interact with the staff sections early on so you become familiar with them. This way they are already accustomed to you and your role in the BCT.³⁵⁷

ISSUE: Building relationships

³⁵⁴ 1AD 2009 OIF AAR, *supra* note 3.

³⁵⁵ 4ID 2009 OIF AAR, *supra* note 4.

³⁵⁶ TF525 2009 OIF AAR, *supra* note 104.

³⁵⁷ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 48.

TIP OF THE SPEAR

DECISION: Building of personal relationships with the rest of the staff is essential. If any of your leadership does not feel this is “what they do,” your organization will suffer for it. Establishing personal relationships will go a long way towards facilitating many of the things you will need to accomplish, especially in the realm of personnel and staffing actions.

RECOMMENDATION: Take the time to develop personal relationships with the rest of the staff. Human nature dictates you will receive increased cooperation and assistance from someone with whom you have taken the time to form a positive relationship. Failure to do so may result in closed doors inhibiting your freedom of action.³⁵⁸

ISSUE: Willingness to conduct staff coordination with other division staff sections

DECISION: The more inexperienced captains were not at all afraid to coordinate with other sections. Young people who did not know what they did not know were very open to learning.

RECOMMENDATION: Do not be leery of bringing an inexperienced team into a challenging environment. They make up for their lack of experience in energy and openness to learning.³⁵⁹

ISSUE: Creating and maintaining good relationships with other offices

DECISION: It was necessary to work with other offices on the FOB in order to manage logistics for the OSJA. Any type of travel, lodging, or transportation required coordination with offices such as the mayor’s cell, the G4 section, and G3 Air, among others. Communication is the key to success. It is necessary to maintain open lines of communication and acquire public relations skills.

RECOMMENDATION: Sustain. Recognize the importance of a good relationship between the OSJA and other offices on your FOB. What matters is whom you know and who knows you.³⁶⁰

ISSUE: Difficulty for TC socializing with non-JA peers

DECISION: One difficult thing trial counsels (TCs) may not realize when they step into the job is it is sometimes necessary for you to either court-martial or take action against an officer in your unit with whom you have become friends. This is a tough situation, but the TC must always remain professional and do what is right.

RECOMMENDATION: Find a good balance and remember people hold you, as a JA, to a higher standard than others within your unit. Know it is okay to conflict yourself out of a case if it is too personal.³⁶¹

ISSUE: Always being available to your commanders/staff members

DECISION: As a trial counsel, you must always make yourself available to your commanders and make sure they always know who will fill in for you when you are on leave or will not be available for some reason. This includes before, during, and after your deployment. Just because

³⁵⁸ 1AD 2009 OIF AAR, *supra* note 3.

³⁵⁹ 4ID 2009 OIF AAR, *supra* note 4.

³⁶⁰ *Id.*

³⁶¹ *Id.*

you are getting ready to deploy does not mean you can slack off on your responsibilities. Understand you will get questions and requests from staff officers as well as the commanders.

RECOMMENDATION: Sustain. Remain professional and ensure your commanders and fellow staff officers can trust and rely on your services.³⁶²

ISSUE: Providing support to the SJA

DECISION: The division paralegal SGM was able to recognize the leadership style of the SJA and ensure she reflected that style in her own leadership. They always maintained an open relationship between the SGM and SJA, which helped to provide a united front.

RECOMMENDATION: Sustain. The SGM should always lend support to the SJA and promote her leadership style.³⁶³

ISSUE: Relationships matter

DECISION: Your relationship with your subordinate organizations is very important. It does not hurt to acknowledge you understand when you are stepping into their sandbox.

RECOMMENDATION: Let your subordinate organizations know when you are going to have to involve yourself at their level. If they understand the reason for it, it is less likely to be detrimental to the relationship.³⁶⁴

ISSUE: Establishing relationships with the rest of the staff

DECISION: The normal summer turnover cycle provides a great opportunity to establish relationships. Many people are new and the pace of major events slows, so you can establish a rapport from the start.

RECOMMENDATION: Use the summer transition period to build relationships.³⁶⁵

ISSUE: Sister service relationships

DECISION: The unit invited the Marines attend the unit's pre-deployment training. The JA leadership also attended the Marines transfer of authority in country.

RECOMMENDATION: Make these types of efforts. The personal relationships you form with other SJAs are extremely important.³⁶⁶

ISSUE: Relationships among the "Foundation of Four"

DECISION: These relationships are extremely important. Both the relationship and the relative roles of each are a product of the personalities involved. Everyone must be coordinated or it is extremely detrimental to the functioning of the office.

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ XVIII ABC 2009 OIF AAR, *supra* note 6.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

TIP OF THE SPEAR

RECOMMENDATION: These types of things, while not a problem in most units, are worth discussing in detail in forums such as the Sergeant Majors' Symposium.³⁶⁷

ISSUE: Relationship between the BJA and the brigade senior paralegal

DECISION: This relationship needs careful cultivating by both parties. There is the potential for great conflict if the BJA is inexperienced and not willing to pay heed to the advice of the senior NCO.

RECOMMENDATION: This relationship cannot fail. If it does, the brigade will flounder. The mechanics of this relationship needs discussion and focus in the classroom, in training, and during symposiums.³⁶⁸

ISSUE: Encourage peer communication at the lower ranks

DECISION: Establishing linkages is important, even at the captain-to-captain level. This is especially helpful in the areas of fiscal and administrative law. The legal professionals at the subordinate headquarters are much more likely to pick up the phone and call a fellow captain they know on a personal level.

RECOMMENDATION: If you are on a large base and co-located with some of your subordinate units, encourage your captains to share meals with their counterparts in other headquarters.³⁶⁹

ISSUE: Encouraging reaching out by lower echelons

DECISION: Personnel at lower echelons will reach out with questions or concerns if they sense your level will add value to their efforts or if they have a personal relationship with your people. This is important to allow heading off problems before they truly become problems.

RECOMMENDATION: Ensure your people understand they have a responsibility to set the conditions for success by the lower echelons. The higher echelons have the ability to develop true expertise through specialization. It is important to share this expertise and ensure the lower echelons know you have it to share.³⁷⁰

ISSUE: NCO contacts

DECISION: The legal NCOIC made a point to befriend the supply sergeant and the S1 NCOIC. These relationships proved quite helpful over the course of the deployment.

RECOMMENDATION: Foster important relationships early and often, so you can ensure proper coverage and support of the legal team and staff NCO integration.³⁷¹

ISSUE: Use of informal contacts and agreements

DECISION: Your chief paralegal NCO can "make you some money" with his or her ability to interface with other SGMs.

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ 3ACR 2009 OIF AAR, *supra* note 100.

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RECOMMENDATION: Allow your SGM the latitude to use his or her peer contacts for the benefit of the organization.³⁷²

ISSUE: **Establishing relationships with the rest of the staff**

DECISION: The division legal personnel built many relationships with the rest of the staff through conversations around the cigar pit.

RECOMMENDATION: Do not pass up opportunities to have non-work discussions with your co-workers. Personal relationships help make the professional relationships work more smoothly.³⁷³

ISSUE: **Use of the higher technical chain for leadership issues**

DECISION: The senior JAs above you in the technical chain are a great resource when working through how to deal with leadership issues. The SJA is the senior lawyer in the command, but that does not preclude him or her from seeking assistance. He or she is not in this alone.

RECOMMENDATION: Although we call it a technical chain, do not hesitate to use it to seek non-technical advice. It is acceptable to ask for thoughts and advice on non-technical matters.³⁷⁴

ISSUE: **Relationships with the BCT staff**

DECISION: The BJA attended all meetings involving the S2 and S3 and maintained a good working relationship with all BCT staff members. In addition, the BJA ensured she was on all of the relevant email distribution lists. The BCT commander did not like to sign anything unless the BJA had seen it.

RECOMMENDATION: Sustain. Good relationships with the BCT staff are vital, especially given the breadth of issues in which the BJA must involve herself.³⁷⁵

OEF ISSUE: **Forging relationships with senior pilots**

DECISION: The senior pilots are very knowledgeable and can answer almost any aviation question. They are usually happy to assist and eager to train junior pilots on the ROE.

RECOMMENDATION: Sustain. If possible, form relationships with the senior pilots in your brigade and use their knowledge to help you with legal training.³⁷⁶

ISSUE: **Participation in unit missions**

DECISION: The brigade legal personnel tried to get out with members of their unit as often as possible. This helped them understand what the Soldiers went through on a daily basis and the stress under which they operated. It also helped them to give more accurate and meaningful legal instruction regarding the rules of engagement and escalation of force.

³⁷² 10th MTN DIV 2009 OIF AAR, *supra* note 7.

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ 4-1 CAV 2009 OIF AAR, *supra* note 59.

³⁷⁶ 101st CAB 2009 OEF AAR, *supra* note 108.

TIP OF THE SPEAR

RECOMMENDATION: Sustain. If possible, get off the FOB with different units in your brigade to learn what they do.³⁷⁷

ISSUE: Developing OSJA cohesion

DECISION: Individual augmentees provide a breadth of experience and skill sets. The core group from a division or corps OSJA provides cohesion and esprit de corps. The “Foundation of Four” sets the tone, and the CJTF-101 quickly established that it was a joint OSJA and not Army-centric (which immediately and continually resulted in a “one team” attitude).

RECOMMENDATION: Sustain. This mixed staffing of the JMD provides the best of both worlds. However, it takes some effort to make the disparate elements function as a team. Make an effort to make everything “purple.” For example, the unit had a group breakfast on Saturday for all legal personnel on the airbase. At these gatherings, someone from each Service presented “joint trivia” and the OSJA presented impact awards, such as the Joint Service Achievement Medal, to deserving personnel without regard to whether they came from the division OSJA or were an individual augmentee. After a while, keeping things “purple” becomes automatic. However, if you do nothing (or worse, create an atmosphere of always relying on only the division OSJA personnel and ignoring the IAs), there will be a significant divide.³⁷⁸

ISSUE: Building a team from newcomers and legacy deployed personnel

DECISION: Due to the asynchronous deployment schedules of personnel filling the JMD, about half the personnel in the legal office had already been in theater a while upon the arrival of the incoming division headquarters personnel. It was a challenge to bring these people, many of whom were not Soldiers, into the fold and make them feel like a part of the team. This can be especially difficult if the incoming nucleus headquarters unit has a very strong internal esprit and sense of identity.

RECOMMENDATION: The incoming unit consciously needs to ensure legacy personnel feel they are part of the team. As a Corps, judge advocates need to do a better job with acknowledging and accepting not everyone may think the Army way of doing something is necessarily the best way to do it.³⁷⁹

ISSUE: Meeting those with whom you will be communicating in theater

DECISION: The CJTF-101 SJA and Deputy SJA made a trip to Central Command (CENTCOM) in Tampa to meet those with whom they would be dealing from Afghanistan. The operational law attorney went on an interagency staff ride in Washington, DC to meet officials from the Drug Enforcement Agency, DoD Counterdrug officials, etc. The 101st ABN DIV (AASLT) OSJA hosted a CLAMO pre-deployment conference and invited the BJAs for non-101st units that would be deploying with the CJTF-101 to attend at Fort Campbell. These face-to-face meetings were extremely valuable, especially in the case of individuals who had to deploy with little or no notice. Even with constrained time and opportunities, this is an area warranting the devotion of energy and effort.

³⁷⁷ 101st SUST BDE 2009 OEF AAR, *supra* note 108.

³⁷⁸ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

³⁷⁹ *Id.*

RECOMMENDATION: In an era of email and instantaneous communications, personal relationships remain important (which the CJTF-101 OSJA quickly learned was especially so when deployed in combat). Being able to put a face to a signature block or phone message greatly increases the chances of coordination and cooperation. Make these visits a priority. They are well worth the effort. Even if the evolving command structure in Afghanistan means less frequent division contact with CENTCOM, make the effort with whoever the higher headquarters will be (USFOR-A for the CJTF; the CJTF OSJA for the BCTs).³⁸⁰

ISSUE: **The relationship between the SGM and the legal administrator**

DECISION: A synergy between these two key leaders is a force multiplier. Although each has his or her distinct and separate duties, they can cover down for one another and as serve as each other's "battle buddy."

RECOMMENDATION: It is critical to foster this relationship at the earliest opportunity.³⁸¹

Relationship Between the Corps/Division OSJA & Brigades

OIF **ISSUE:** **Defining the legal technical chain**

DECISION: The JAG Corps must do a better job of defining the legal technical chain. The division SJA is the senior officer in the legal chain for most matters coming out of the BCT. However, the reality is that his or her captains are working on the issues and making decisions and recommendations. This is problematic for the BJA after he makes a "legal sufficiency" determination only to have a captain disagree and override the decision. This makes for a difficult working relationship and it is unclear if the captain even has the authority to do this.

RECOMMENDATION: Uncertain. However, finding a way to get majors to the division level would help the BJAs who are also majors (Note: the two captains at the BCT liked having captains at the division, as opposed to a major).³⁸²

ISSUE: **Division to brigade coordination**

DECISION: At times, junior lawyers at division would disagree in writing with a brigade legal opinion without ever giving the BJA a courtesy call detailing the substance of the disagreement and subsequent decision to overrule the brigade position. This practice does little to build bridges in the technical chain of command.

RECOMMENDATION: Improve. Disagreements occur and all should handle them professionally. If lawyers in the same technical chain draw different legal conclusions, courtesy calls or face-to-face meetings are better than blindsiding the other attorney. Collegiality and courtesy should rule in such situations.³⁸³

ISSUE: **Relationship with division**

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

³⁸³ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 48.

TIP OF THE SPEAR

DECISION: The RJA's relationship with division changed with the rotation of SJAs and their supporting cast of captains and majors. At times, the division office support to the regimental legal office accounted for daily successes; yet, at other points in the deployment, the inexperienced JAs made simple projects cumbersome.

RECOMMENDATION: Do your best to be flexible with new leaders (and their styles of leadership), as well as the newer members of the JAG Corps. Invariably, you will need assistance from them, and they from you, during your deployment. Realize "success or failure depends on relationships."³⁸⁴

ISSUE: Interaction with non-organic BCTs

DECISION: The OSJA experienced varying degrees of cooperation with the non-organic BCTs falling under them for the deployment. While certain BCTs were very supportive of the division OSJA, even offering their paralegals to assist with other units' courts-martial, other BCTs resisted any interaction with their deployed higher headquarters. This unit made efforts to build a relationship with these BCTs by pushing down JA and paralegal support when BCT personnel were on leave, by conducting battlefield circulation to meet the subordinate Brigade Operational Law Teams (BOLTs) in person, and by inviting the BOLTs to OSJA events.

RECOMMENDATION: The division OSJA should be proactive before deployment to establish relationships with the non-organic BCTs who will fall under the division during deployment.³⁸⁵

ISSUE: The BJA has two bosses

DECISION: Having both a BCT and division structure co-exist makes both structures less effective. This gives the BJA two bosses, the division SJA and the BCT commander. These two senior officers often disagree. One may order the BJA to do exactly what the other ordered him not to do.

RECOMMENDATION: Improve. The military should field only BCT's or divisions in theater, not both at the same time.³⁸⁶

ISSUE: Experience level of the technical chain

DECISION: The typical JA technical chain presupposes an increasing level of experience up the chain. This does not hold true when the brigade legal section is conversing with a division legal staff consisting largely of judge advocates on their first tour of duty.

RECOMMENDATION: Be aware that those higher in the technical chain may not always have a wealth of experience from which to draw. While they may be talented and hard-working, they may be relatively junior and new to the Army and JAG Corps.³⁸⁷

ISSUE: Higher headquarters SJA action on particular issues

³⁸⁴ 3ACR 2009 OIF AAR, *supra* note 100.

³⁸⁵ 1AD 2009 OIF AAR, *supra* note 3.

³⁸⁶ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

³⁸⁷ *Id.*

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DECISION: The BJA often had to send legal issues (e.g., project funding requests) up to the higher headquarters SJA level for legal review and action. This requirement is a function of funding approval authorities and not of decisions made at the brigade level.

RECOMMENDATION: Sustain. Although the BJA often had to seek higher SJA support, the BJA received adequate support and responses from the higher headquarters SJA.³⁸⁸

ISSUE: Know who you work for as a BJA

DECISION: It is important to recognize that although you work for the brigade commander, you also have to maintain positive working relationships with your in-country SJA technical chain, as well as your SJA from home station. Each will play a major role in your ability to serve your commander successfully. Poor relationships, or no relationship, will only serve to make your life more difficult, especially for a first tour captain with no other JAs or paralegals at the brigade.

RECOMMENDATION: Invest time into your relationship not only with your brigade commander, but also with other SJAs.³⁸⁹

ISSUE: Importance of relationships and communication for meeting information requirements

DECISION: Open communications, both up and down the technical chain, were essential. It helps if you know why people are asking for certain information. Open communications also resulted in a good relationship higher up the chain with the corps headquarters.

RECOMMENDATION: You cannot take personally the requests of higher headquarters for information. They are asking because they have a need to do so. Tell those further down the chain when and why you are “pinging” them about a certain subject. Once they understand why you need the information, they are less likely to be upset at your requests for it. Similarly, because every brigade commander has a different approach, it is helpful if the brigade level lets the division know why there might be some resistance to a requirement at the lower level. Having open communications allows the BJAs to come to the division SJA even when it puts them between the brigade commander and the division.³⁹⁰

ISSUE: Responsiveness of higher headquarters and informal guidance

DECISION: The division leadership and staff operated solely from FRAGOs, yet in an effort for efficiency, guidance sometimes came from corps informally with the expectation that it would be the enduring standard. Additionally, close coordination with the corps team was essential to vet issues properly and to ensure guidance was forthcoming from the appropriate decision maker.

RECOMMENDATION: It is important to memorialize in writing anything you expect to serve as enduring guidance and publish it as part of an order. Having something in writing is vitally important to the lower levels as they approach their commands to implement the guidance.³⁹¹

ISSUE: Division OSJA interaction with brigade legal teams

³⁸⁸ *Id.*

³⁸⁹ 214th Fires BDE 2009 OIF AAR, *supra* note 173.

³⁹⁰ 4ID 2009 OIF AAR, *supra* note 4.

³⁹¹ *Id.*

TIP OF THE SPEAR

DECISION: The division conducted quarterly VTCs with its brigade legal teams, and sent out two of its “Foundation of Four” for periodic lunches or dinners with them. The SJA also dropped in on legal teams when in their vicinity with the division commander. The division invited brigade-level JAs to Camp Liberty on two occasions, hosted two conferences, and also saw brigade legal personnel when they attended MNC-I events or participated in monthly MNC-I VTC. The division hosted an organizational day in the summer, including a game of dodge ball and a DFAC supported “pot-luck.” Finally, the division organized a fall RoL symposium for any brigade-level JAs working in the RoL area.

RECOMMENDATION: Sustain.³⁹²

ISSUE: Maintaining good relations between the division and brigade legal staffs

DECISION: Sometimes relationships are very dependent on personalities. The division SJA had the ability to soothe and guide the BJAs while not stepping on their toes causing unnecessary tensions. The SJA also spoke with the brigade commanders to ensure they understood a legal opinion or to suggest the BJAs needed certain training without causing the brigade to think the BJA was betraying the unit by contacting the technical chain for assistance. This shaped a congenial relationship and helped produce a smooth working relationship.

RECOMMENDATION: Sustain. No matter the personality, it always helps the brigade/division relationship to do things tactfully.³⁹³

ISSUE: BJAs not following SJA advice

DECISION: The BJAs belonged to their respective brigades. This meant the SJA was not the senior rater. Therefore, there were fewer consequences if the attorneys decided not to follow the SJA’s guidance. Normally this happened only when the brigade commander had an opinion or intent that differed from the SJA’s. In these cases, the brigade attorneys find themselves caught between “siding” with their brigade commander who senior rated them, or their SJA.

RECOMMENDATION: Improve. This problem stems from the SJA not being the senior rater for the BJA. The SJA is the most experienced attorney in the division and holds that position because of that knowledge and experience. Because the brigade commander now senior rates the BJAs, the SJA has less control over them. SJAs must work diligently with the BJAs to ensure they receive support and all levels of headquarters can legally meet and support the command’s intent. (NOTE: The rating scheme for BJAs, in accordance with AR 623-3 and TJAG guidance, calls for them to be rated by the SJA and senior rated by the BCT commander, although variations may be necessary, especially in a deployed environment.)³⁹⁴

ISSUE: BJA personality and rating chain

DECISION: Due to the potential isolation of BJA, it is important that they possess a strong, confident, personality and good communication skills. It is also helpful if they have experience in a brigade and can speak the language. The SJA should remain in the BJA’s rating chain so she

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

can provide assistance when needed, keep a watch over the brigade legal mission, and step in with the brigade leadership when necessary.

RECOMMENDATION: Improve. Require the SJA be in the BJA rating chain, particularly while deployed, and ensure careful filling of the BJA positions.³⁹⁵

ISSUE: Lack of pre-deployment communication with BJAs in non-organic units

DECISION: The division joined and then gained non-organic brigades once in theater. The division legal leadership had little, if any, communication with the BJAs before deployment. Consequently, the BJAs and the division legal leadership did not have the opportunity to develop relationships until the deployment. The lack of a pre-established relationship meant it would take a bit of time to develop a synchronized relationship between the SJA and BJA.

RECOMMENDATION: Improve. More communication, relationship development, and expectation management before deployment would help this situation. Additionally, the SJA should remain in the BJA rating chain.³⁹⁶

ISSUE: Tension between the brigades and the division

DECISION: At times, the BJAs and the division chief of OpLaw had differing opinions. This caused tension between the brigades and the division. It was sometimes awkward because the division chief was a captain, while the BJA was a major.

RECOMMENDATION: Improve. Although brigade and division legal personnel will always have their minor differences, the situation may improve if the division chief of OpLaw is a major and can speak to the BJA as a peer.³⁹⁷

ISSUE: Communication between the division and brigade legal offices

DECISION: The brigade legal personnel were supposed to send an administrative report to the division OSJA once per week. This did not always happen. The division AdLaw 27Ds would then call the brigade legal office and ask about the reports. Other times during the week, the division 27Ds would call the brigades to request information missing from the reports. This sometimes caused tension and often the brigade legal personnel would not listen to the division 27Ds because they were only E4s.

RECOMMENDATION: Improve. Communication between the division and brigade legal offices must progress.³⁹⁸

ISSUE: Using division as the “bad guy”

DECISION: When discussing projects proposed by members of the BCT, a staff member at higher headquarters invited BJAs to approve every request, but then call higher headquarters to alert them to a project that needed disapproval. This would allow the higher headquarters to take the blame and allow the BJA to escape the wrath of his own brigade. The motive to assist the

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*

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brigade legal officers was commendable, but the idea was wrong. The BJA provided legal reviews that were accurate and true.

RECOMMENDATION: Make the unpopular choice and render legal opinions according to the law. If commanders learn of any practice to the contrary, it will ruin one's own credibility and injure the JAG Corps' reputation.³⁹⁹

ISSUE: Coordination with the division

DECISION: The BCT had excellent coordination with their division. While there were occasional disagreements where reasonable people could disagree, everything occurred in a collegial atmosphere.

RECOMMENDATION: Foster good relationships with both higher and subordinate headquarters. These relationships are not inherently adversarial.⁴⁰⁰

ISSUE: Meeting subordinate units

DECISION: The division personnel were not able to meet the personnel in their subordinate units as early as they would have liked.

RECOMMENDATION: It is important to meet the personnel in subordinate units and introduce yourself as soon as possible. It is helpful to establish a personal relationship that goes beyond being a voice on a phone or email in an inbox. It is possible to visit the larger operating bases as a single day trip.⁴⁰¹

ISSUE: Interaction with BJAs

DECISION: When it works, it is wonderful. There are many, many great BJAs. However, there are a few bad ones. Some will "go native" for their unit and there is very little you can do about it. There is regulatory and statutory authority for the technical chain to exercise oversight and supervision. Nevertheless, in practical terms, you can do little if the unit wants to shield "their" lawyer from the influence of JAs higher in the technical chain. This is the most difficult leadership challenge. You have no control or ability to change the situation.

RECOMMENDATION: This needs addressing openly. It is a real dilemma because if it gets bad enough, the only recourse is to take it eventually into command channels. Doing so puts the JAG Corps up on the radar screen of the larger Army in a very negative way. We look as though we cannot resolve our differences internally. Open communication is the key to avoiding this dilemma. However, the desire for communication has to exist on both sides.⁴⁰²

ISSUE: The divided loyalties of the BJA

DECISION: The BJAs are in an extremely difficult position between their brigade commander/unit and their obligations to their JAG technical chain.

³⁹⁹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

⁴⁰⁰ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

⁴⁰¹ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁴⁰² *Id.*

RECOMMENDATION: While some of this tension is unavoidable, this issue needs emphasizing to BJAs at their courses and to the commanders at the Senior Officer and General Officer Legal Orientation (SOLO) courses.⁴⁰³

OEF **ISSUE:** The proper way to communicate tasks

DECISION: The division often failed to issue legal tasks via a FRAGO or an OPORD. As a result, the brigade-level staff would not execute based solely on the BJA's verbal communication. If it was in a FRAGO or OPORD, however, it became an order and units accomplished it.

RECOMMENDATION: Improve. If you want anything done, you must put it into a FRAGO or OPORD.⁴⁰⁴

ISSUE: Relationship between the division SJA and the brigade JAs

DECISION: Brigades and division headquarters are all on different deployment cycles. Brigade JAs know they are going to have limited overlap and interaction with division SJAs. Consequently, they are investing time in their relationship with the brigade and not with the division legal office.

RECOMMENDATION: The BJA-SJA relationship is a two-way street. Both benefit greatly from a positive working relationship. This is important for the 10-14 JAs in the brigades under a typical division. Brigade JAs and Division SJAs must communicate freely and frequently. SJAs and BJAs must take the time to get to know one another and must trust one another. Brigade commanders will often contact a division SJA directly since they are peers in the rank structure. During the deployment, SJAs must actively seek opportunities to assist the BJAs in any way possible. Do not just call down to the brigades in times of need. Traveling to the brigades early and often helps maintain a positive relationship.⁴⁰⁵

ISSUE: Fostering relationships with brigade personnel

DECISION: The CJTF-101 had those brigade attorneys who were going to serve under the headquarters while deployed come to meet the headquarters personnel at home station before the deployment.

RECOMMENDATION: Sustain. This worked out well. It is good to begin forming personal relationships as soon as possible.⁴⁰⁶

Battle Rhythm & Morale

OIF **ISSUE:** Long hours with no time off

DECISION: If a judge advocate is unable to think clearly or concentrate on the mission, he/she is not adding value to the office. Although it was the division policy that all officers/Soldiers receive one day off per week, the SJA office only took an average of one day off per month. Some leaders thought this was necessary due to the workload. However, leaders must balance the

⁴⁰³ *Id.*

⁴⁰⁴ 101st SUST BDE 2009 OEF AAR, *supra* note 182.

⁴⁰⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁴⁰⁶ *Id.*

TIP OF THE SPEAR

necessity to work excessive hours with little time off with an officer/Soldier's ability to sustain these work hours without creating a negative effect on morale and efficiency.

RECOMMENDATION: Improve. If possible, give all members of the SJA office at least a half day off per week. Recognize that everyone needs a little down time and time to decompress. Enforcing this policy will create a positive environment and all members of the team will work with an increase in energy and effectiveness.⁴⁰⁷

ISSUE: Personal time off

DECISION: The 27Ds located with the BCT received one day off per week, plus a half-day off on Sunday. Sometimes the mission did not allow for this, but if possible, the 27Ds had this time off.

RECOMMENDATION: Sustain. If possible, give your 27Ds at least one day off per week. A weekly half day off for the attorneys goes a long way as well.⁴⁰⁸

ISSUE: Ownership of the mission by Soldiers at all levels

DECISION: Throughout the deployment, the division commander emphasized the impact each individual Soldier on the overall effort.

RECOMMENDATION: Sustain. Emphasizing how the contribution of each Soldier fits into the big picture helps give each Soldier ownership of the mission.⁴⁰⁹

ISSUE: Time off

DECISION: Office personnel were generally able to take one day off per week.

RECOMMENDATION: Sustain. This worked well. Personnel were happy to have this opportunity and it still allowed the office to surge efforts when necessary.⁴¹⁰

ISSUE: Encouraging teamwork

DECISION: "Mandatory fun" events were hit and miss in fostering teamwork. It was far better to give people a reason to work together by having them act as part of teams with a common "enemy."

RECOMMENDATION: Sustain/improve. The G-1 section makes a good common "enemy" for the OSJA. Challenge them to various competitions requiring your office to work together to defeat the G-1.⁴¹¹

ISSUE: Mandatory team building activities

DECISION: After witnessing a high level of tension in the previous division, which 1AD replaced, the OSJA scheduled numerous team-building activities, such as sports, movie nights,

⁴⁰⁷ 3ID 2008 OIF AAR, *supra* note 1.

⁴⁰⁸ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 48.

⁴⁰⁹ 1AD 2009 OIF AAR, *supra* note 3.

⁴¹⁰ *Id.*

⁴¹¹ *Id.*

and barbeques. At one point, there were as many as five such mandatory activities scheduled per week. Despite the intent of such activities, there were complaints about them being excessive and conflicting into individuals' desire to decompress on their own. This was a prevailing issue during informal sensing sessions.

RECOMMENDATION: Improve. Realize excessive or unpopular mandatory team building activities can have the opposite effect on morale than intended. Seek input from subordinates on team building activities and even allow them to plan individual events.⁴¹²

ISSUE: Split-based operations

DECISION: If your office works out of two different locations, even if on the same operating base, there is the potential for an "us/them" mentality to develop, particularly if there are different levels of stress and more unfavorable working conditions at one of the locations. This can be very detrimental to morale and cohesion.

RECOMMENDATION: Sustain. Consider carefully where you will have your senior leadership sit. It may be necessary to have sufficient senior leadership representation at the outlying location. Additionally, bringing people together for common things, such as meals, can help prevent the formation of any "us/them" divisions.⁴¹³

ISSUE: Different work hours among various sections of the OSJA

DECISION: The IAD OSJA made the decision before deployment that some of its personnel would work in the division headquarters, while the rest of its personnel would work in a separate building (Building 1701), which also supported Contingency Operating Base (COB) Speicher. It soon became apparent those working in the division headquarters worked significantly longer hours. This caused animosity between the two sections. Mid-tour rotation between the two locations helped ameliorate this disparity.

RECOMMENDATION: Sustain. Rotation of personnel during the deployment can help alleviate perceptions some individuals are working harder than others.⁴¹⁴

ISSUE: It is a "sprinting marathon"

DECISION: The Regimental Commanding Officer (RCO) did not take half or full days off, and the staff mimicked the frenetic pace, shredding the oft cited, "it's a marathon, not a sprint" mantra. The RJA never left work before 2100, but he ensured his paralegals and subordinate attorneys took time off.

RECOMMENDATION: Like it or not, the commander's schedule is your schedule when you work on a regimental/brigade staff, so try to capitalize on the late hours and obtain signatures or guidance for investigations and projects. Force your people to ignore your example by enforcing day off and half-day policies.⁴¹⁵

ISSUE: Differences in work conditions between division and brigade

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ 3ACR 2009 OIF AAR, *supra* note 100.

TIP OF THE SPEAR

DECISION: Electronic newsletters circulated showing images and telling stories demonstrating the higher quality of life and superior facilities at higher headquarters. These newsletters had a negative impact on morale at the lower levels. Soldiers who lived in much more austere conditions did not want to see the volleyball game, the 5K fun run, or the swimming party.

RECOMMENDATION: Keep such communications internal to the unit concerned. Do not widely disseminate photos of office parties or the schedule for off-duty days. Doing so frustrates those who do not enjoy the same benefits.⁴¹⁶

ISSUE: Division and OSJA leave and Morale, Welfare, and Recreation (MWR) policies

DECISION: The division command, particularly the chief of staff, was adamant about the need for division personnel to have time off and relax during this fifteen-month deployment. OSJA personnel had one full day and Sunday mornings off per week, when possible. The division command established a club with representatives from each staff section, responsible for organizing one event per month (e.g., Kentucky Derby, chair race, etc.). The OSJA organized a monthly presentation of some sort, including birthdays and “SJA attaboys.” While personnel generally did individual PT, the OSJA occasionally organized an office sports event such as a fun run (e.g., Law Day run).

RECOMMENDATION: Sustain.⁴¹⁷

ISSUE: Battle rhythm

DECISION: The division chief of staff ordered, and the SJA enforced, everyone taking one day off per week, plus a half-day on Sunday.

RECOMMENDATION: Although many people warned against doing this, it was very effective. While there were times when compliance was not possible due to mission requirements, it did work well overall.⁴¹⁸

ISSUE: Taking time off to relieve stress

DECISION: The division chief of staff mandated all division personnel must take one day off per week if the mission allowed. Due to the operational tempo, the OpLaw team did not usually take that day off. This led to increased stress and decreased morale.

RECOMMENDATION: Improve. Although the mission does not always allow for it, take a day off when you can. It is important to rest your mind and take some time for yourself.⁴¹⁹

ISSUE: Minimizing the stress on your legal personnel

DECISION: The division chief of staff directed everyone in the division to take one day off per week if the mission allowed. This was a great policy because it allowed everyone to have some down time, which is not always possible during a deployment. In addition to the time off, the

⁴¹⁶ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

⁴¹⁷ 4ID 2009 OIF AAR, *supra* note 4.

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

paralegal specialists had ample time to conduct PT. The criminal law NCOIC ensured he did not place extra or unnecessary stress on his subordinates.

RECOMMENDATION: Sustain. Realize a deployment, particularly a 15-month tour, is a marathon, not a sprint. Maximize your time, but ensure your subordinates get plenty of rest and PT.⁴²⁰

ISSUE: **The importance of maintaining a positive work environment**

DECISION: The SJA made a conscious effort to keep the work environment relaxed.

RECOMMENDATION: Personality matters. It is worth the effort to understand the personalities of the people with whom you work. Holding team-building events and fun games was well worth the time spent. Never underestimate the benefit of a good chair race or paper airplane competition. If there is growing tension between members of the office, place them on the same team for these events.⁴²¹

ISSUE: **Maintaining a positive legal team**

DECISION: The division SJA was very good at bringing her legal team together and building a cohesive team. She encouraged the entire SJA office to come together once a month to socialize and relax. Although sometimes you did not feel like going to these social gatherings, you were always glad you went. The SJA gave out praise at these gatherings and kept it very positive. This kept the OSJA team engaged and morale high.

RECOMMENDATION: Sustain. This practice was very positive and good for the team.⁴²²

ISSUE: **Techniques for maintaining morale**

DECISION: The office had an Organizational Day, bringing in everyone possible from the outlying offices. There was also a monthly birthday bash, just as the office did in garrison. The SJA also handed out “superkid” stickers when personnel did something of note.

RECOMMENDATION: Use every opportunity you can for team building. Some of it may seem silly, but people appreciate the effort even if they sometimes make fun of it.⁴²³

ISSUE: **Maintaining high morale through a positive attitude and caring approach**

DECISION: The OSJA leadership stayed positive and showed both JAs and paralegal specialists they cared about them. The leadership was supportive, always visited their personnel, and was sincere when they asked about their families. The SJA organized an office social gathering once per month where everyone was able to relax and enjoy each other’s company. The office personnel could take one day off per week, had time to perform physical fitness, and participated in the division “quarterback club” (a monthly division morale event).

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *Id.*

⁴²³ *Id.*

TIP OF THE SPEAR

RECOMMENDATION: Sustain. If possible, allow your personnel to take one day off per week to re-charge even if there are some weeks when the time, or entire time, off is not possible. It goes a long way when the leadership stays positive and truly cares about their subordinates.⁴²⁴

ISSUE: The leadership's influence on morale

DECISION: The division OSJA leadership was excellent. Both the SJA and senior paralegal NCO truly cared about their staff. They visited people on a regular basis to ask how they were doing, inquire about their family, and listen to any suggestions. They also ensured members of their legal staff took one day off per week if the mission allowed.

RECOMMENDATION: Sustain. Remember leadership actions deeply affect morale.⁴²⁵

ISSUE: Displaying a positive attitude

DECISION: The SJA had a discussion with the office leadership about the importance of presenting a unified front on issues. This included reminders to “vent up, not down.”

RECOMMENDATION: Everyone needs a release valve, but it is important you express frustrations and concerns to the appropriate audience. The leadership's attitude can trickle down through the entire office.⁴²⁶

ISSUE: Time off

DECISION: The BJA instituted a time off policy that paid dividends in morale. Paralegals worked weekdays from 0900 – 2000 and 0900 – 1800 on the weekends. They also had one day off every week. The attorneys took a half a day off once a week and typically worked from 0830 – 2300. Everyone had the opportunity to conduct PT in the morning.

RECOMMENDATION: Sustain the practice of giving people time off. Fifteen months is a long time to work seven days a week for over twelve hours a day.⁴²⁷

ISSUE: Perception of unfairness

DECISION: Brigade members and their families take a considerable hit personally and especially to their family relationships due to the members' deployments to Iraq. However, many members who managed to dodge the deployment appear to receive rewards for their lack of sacrifice. JAs deployed to Iraq and performed their duties honorably despite the sacrifices it required, professionally and personally.

RECOMMENDATION: Improve. Whether a member actively avoided deployment should be a negative factor when considering that member for promotion over someone who deployed voluntarily, all things being otherwise equal.⁴²⁸

ISSUE: Battle rhythm

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ 3BCT, 4ID 2009 OIF AAR, *supra* note 50.

⁴²⁸ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

DOTMLPF & COUNTRY MATERIALS

DECISION: The Division Commanding General set a “15/7/2” rule for the division. Mission permitting, the leaders were encouraged to implement these guidelines that set the daily schedule at 15 hours of work, 7 hours of sleep, and 2 hours of physical training. The weekly schedule also allowed for the workday on Sunday to begin at 1200.

RECOMMENDATION: Maintain this schedule if the mission allows for it. Fifteen months is a long time and the nature of hard working Soldiers tends to be to overwork themselves in the beginning of the deployment only to end up burned out at the end.⁴²⁹

ISSUE: Importance of time off

DECISION: There was an expectation everyone would take a half day off at least once a week.

RECOMMENDATION: You have to reinforce the importance of having time for yourself. One way to emphasize this importance is to ask people when they last took some time off.⁴³⁰

ISSUE: Managing the personality/tension cycle during a long deployment

DECISION: The unit noticed several general trends. The first personality friction point occurs internally at about three months. At this point, people have become comfortable with each other and the work. They begin to realize “I have to deal with Person X for another 9-12 months.” At the six-month mark, the external stressors begin to show and family issues begin to pop up. Things actually improve at around 9 months as the leave cycle is in full swing. If the deployment is a 15-month one, things get rough again at 12-13 months.

RECOMMENDATION: Team building helps. This office’s softball team helped pull them together as a group. Additionally, every two weeks or so, they gathered for a movie classic chosen by the SJA. These were movies the younger office members might never have seen or chosen to watch on their own, but they were classics with some type of legal, military, or moral underpinning appropriate for discussion. The unit also resurrected its leader development program (LDP) about half way through the deployment. LDP is something we do as professionals and it provided another forum for bringing the team together to discuss something beyond the work in front of them.⁴³¹

ISSUE: Highlighting accomplishments

DECISION: It is important to highlight the great work your people are doing. As a leader, you cannot be shy about pointing them out to others.

RECOMMENDATION: This is critical. Although it is sometimes uncomfortable to do because you feel as though you are also indirectly shining a positive light on yourself, you have to do it.⁴³²

ISSUE: Mental stress of deployment

DECISION: Everyone struggles mentally at some point with deployment. However, everyone will always default to telling the boss they are fine.

⁴²⁹ 214th Fires BDE 2009 OIF AAR, *supra* note 173.

⁴³⁰ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁴³¹ *Id.*

⁴³² 10th MTN DIV 2009 OIF AAR, *supra* note 7.

TIP OF THE SPEAR

RECOMMENDATION: You have to be sensitive to this reality. Figure out how to get someone in an unguarded moment so they will speak freely to you if you suspect there may be an issue. While most people can work through these times with support, sometimes it is better to send home someone whose situation is preventing them from functioning.⁴³³

ISSUE: Downtime for self and personnel

DECISION: You have to have some way to get away from work, be it reading, movies, running, etc. This is important for both you and your people. Any place you, as the leader, are personally present, is, in some ways, “work” for your subordinates. This is true even in informal social settings.

RECOMMENDATION: People need some time to be themselves away from the boss. It is okay for the leader not to be present at events, even if it is something most of the office is doing.⁴³⁴

ISSUE: Maintaining balance

DECISION: It is important to take care of yourself and your people. Keeping fit, taking part in hobbies, and maintaining a positive focus will help fight against mental and emotional fatigue.

RECOMMENDATION: Carve out personal time for yourself and your people.⁴³⁵

ISSUE: Time off

DECISION: The division policy was that everyone came into work late on Sundays, eventually as late as 1800. As a result, everyone had most of the day off. This paid tremendous dividends.

RECOMMENDATION: It is important to have something that separates at least one day from all the rest. It gives people something to which to look forward and prevents the “Groundhog Day” feeling where every single day is just like the previous day.⁴³⁶

ISSUE: Mandatory morale events

DECISION: Morale is extremely important. However, do not attempt to make “fun” mandatory. Everyone has their own routine and mandatory events are not fun.

RECOMMENDATION: Instead of mandatory events, encourage and allow your people to do their own thing.⁴³⁷

ISSUE: Office cohesion

DECISION: The three legal professionals in the OpLaw section did not have a lot of time together to effectively bond before deploying. This did not become an issue in theater. However, they would have benefitted from having more time together as a team.

⁴³³ *Id.*

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ *Id.*

RECOMMENDATION: When possible identify the members of the section early and allow them to train and learn together.⁴³⁸

OEF ISSUE: **Rest plans**

DECISION: The CG, CJTF-101 determined in the first month of the 15-month deployment that everyone in the CJTF-101 staff would have two half-days off per week in order to ensure that they were mentally prepared for the daily demands of a long deployment. This was essential for the psyche. In addition, the OSJA provided an additional day off to all personnel each month after the first few months. The amount of time off provided varied by each person's tour length. The downside was that there were not a lot of things to do when not in the office, so it could be difficult to distance yourself mentally from work even when you have time off.

RECOMMENDATION: Be sensitive to the need for time off for mental breaks. The SJA and DSJA must set the example.⁴³⁹

ISSUE: **Personal time**

DECISION: The unit encouraged personnel to exercise during daytime hours. Additionally, everyone enjoyed a half-day off on Fridays and Sundays.

RECOMMENDATION: Sustain.⁴⁴⁰

ISSUE: **Time off**

DECISION: The unit gave each Soldier a half day off twice a week (Friday and Sunday). This practice was good for morale and broke up the monotony.

RECOMMENDATION: Improve. To the extent coverage of all legal support requirements allows, give personnel a full day off rather than two half days each week.⁴⁴¹

Physical Training

OIF ISSUE: **Physical training (PT) program**

DECISION: The OSJA initially held group physical training every morning. However, this program was unpopular and did not improve most individuals' Army Physical Fitness Test (APFT) scores. The office eventually moved to an individual PT program.

RECOMMENDATION: Sustain (individual PT). An individual PT program when deployed generally better accommodates the varying missions, schedules, and needs of OSJA members. Supervisors should nonetheless ensure their subordinates are conducting quality PT.⁴⁴²

ISSUE: **Importance of PT**

⁴³⁸ *Id.*

⁴³⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

⁴⁴² 1AD 2009 OIF AAR, *supra* note 3.

TIP OF THE SPEAR

DECISION: Daily physical training is important for both physical and mental well-being. It is very easy to let it slide, but it is important you and your personnel do PT.

RECOMMENDATION: Have a personal physical training regimen. However, organized PT is problematic in a deployed environment. Afford your people the time to do PT on their own and they will do it.⁴⁴³

ISSUE: PT

DECISION: Doing PT is great for stress and morale. The unit had a “1000 mile challenge” encouraging all personnel to log 1000 miles running or through equivalent exercises. While not required, several people took up the challenge.

RECOMMENDATION: Again, mandatory events are seldom fun. However, you can encourage people to keep up their level of fitness. Provide them the time to do so.⁴⁴⁴

OEF ISSUE: Importance of physical activity

DECISION: It is important to maintain a level of physical activity. This is a stress break as well. The CJTF-101 SJA decided before deploying that PT would not be an organizational event (except for the APFT, and intermittent group PT sessions). Instead, this would be an individual requirement each day and would be an opportunity for each person to have time away from the demands of the office.

RECOMMENDATION: Elevate the importance of taking time for physical activity for its overall wellness benefits. Consider how to train your office to inculcate this before you even deploy.⁴⁴⁵

Professional Development

OIF ISSUE: Exposure of junior JAs to BCT operations

DECISION: The SJA increased the situational awareness for junior, division-level OpLaw JAs by exposing them in person to corps and brigade-level legal operations.

RECOMMENDATION: Sustain. Exposing division-level JAs to the brigades and the corps not only provided an opportunity for professional development, it reaped benefits for the OpLaw team. The JAs returned with a greater appreciation of the workload and missions at the different leadership levels.⁴⁴⁶

ISSUE: Allowing the division staff to travel off the FOB

DECISION: The division periodically allowed the division staff to travel off the FOB and go out on missions with other units. This improved morale because it allowed people to get off the FOB and do something different. The OSJA leadership was supportive of this program.

⁴⁴³ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁴⁴⁴ *Id.*

⁴⁴⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁴⁴⁶ 1AD 2009 OIF AAR, *supra* note 3.

RECOMMENDATION: Sustain. Allow division personnel to go out on other missions if they want to do so. This takes away some of the boredom and helps people recharge.⁴⁴⁷

ISSUE: Providing developmental experiences

DECISION: The leadership made it a point to allow JA captains an opportunity to do non-JA things. This included going out on missions and participating in tasks outside the legal arena. A push by the CG to get each JA out on developmental missions was prevalent after the Article 6 visit by TJAG in which JA training opportunities was a topic of discussion.

RECOMMENDATION: Allow legal personnel occasionally to do things unrelated to the legal field. This is educational for them. No one wants to deploy for a year or more and return having seen only the computer screen on his or her desk.⁴⁴⁸

ISSUE: Corps-level leader development program

DECISION: The corps commander brought in civilian life leaders to share their perspective and thoughts.

RECOMMENDATION: Draw from what your headquarters is doing to prompt your thinking concerning what you wish do to with your office or section.⁴⁴⁹

ISSUE: Getting people off the FOB

DECISION: People appreciate the opportunity to do more than stare at a computer screen for twelve months. While combat tourism is not acceptable, there are plenty of legitimate reasons to have people travel to other locations. Especially in a division headquarters, there are often air travel opportunities, which are relatively safe.

RECOMMENDATION: Look for bona fide reasons to have legal personnel participate in missions outside the wire.⁴⁵⁰

ISSUE: Allowing interaction by others with senior leaders

DECISION: You have to allow your subordinates opportunities to be in front of the commanding general, other general officers, and other senior leaders. If done, when the SJA is gone for some reason, having someone else giving the advice or briefing is not a significant emotional event. It also gives the junior officer a window into the expectations and requirements of the senior leadership and how more senior JAs interact with those leaders.

RECOMMENDATION: This is very important from a developmental and mentoring perspective. One such opportunity is allowing the deputy SJA to brief all general officer memoranda of reprimand and general officer Article 15s.⁴⁵¹

ISSUE: Exposing personnel to all aspects of operations

⁴⁴⁷ 4ID 2009 OIF AAR, *supra* note 4.

⁴⁴⁸ *Id.*

⁴⁴⁹ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁴⁵⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁴⁵¹ *Id.*

TIP OF THE SPEAR

DECISION: The SJA rotated the personnel who sat in with him during the morning battle update brief. This allowed them to see the big picture and more than just their piece of the fight.

RECOMMENDATION: Sustain. This is a good way to expose inexperienced legal professionals to the breadth of military legal issues.⁴⁵²

OEF ISSUE: **Providing personnel temporarily to brigades**

DECISION: The CJTF-101 SJA sent the CJTF-101 operational law attorneys out to a brigade for 7 to 10 days each in order to see the battlefield and units they are supporting on a daily basis, learn what life is like at a forward operating base/combat outpost, and experience how their advice impacts the overall mission. These OpLaw JAs were all first-term captains and only had experience at the division level. This helped them gain a brigade perspective (and they were “sponsored” by the BCT BJAs who readily supported this program). The CJTF-101 OSJA also sent attorneys to cover for the brigade attorneys during their leave periods.

RECOMMENDATION: Sustain. Though painful for the CJTF OSJA, this was invaluable, and you cannot replicate it in training.⁴⁵³

Visits to Outlying Locations

OIF ISSUE: **Battlefield circulation by SJA**

DECISION: Whenever possible, the IAD SJA visited his subordinate brigade judge advocates (BJAs). This was especially helpful given all brigades falling under IAD were not organic to the division.

RECOMMENDATION: Sustain.⁴⁵⁴

ISSUE: **Visits to outlying locations**

DECISION: It is important to get out and visit the outlying locations where legal personnel are working. The SJA was able to get to every location at least once, but regretted not being able to visit more often.

RECOMMENDATION: These visits are important to morale and establishing a personal relationship with the legal personnel in the subordinate units. Visit as often as you can, but be aware travel restrictions and duty requirements make it extremely difficult.⁴⁵⁵

ISSUE: **Travel to other legal offices**

DECISION: The SJA travelled with the CG when he travelled to other locations

RECOMMENDATION: While there, use the time the CG is in meetings to meet the legal personnel working at the location.⁴⁵⁶

⁴⁵² *Id.*

⁴⁵³ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁴⁵⁴ IAD 2009 OIF AAR, *supra* note 3.

⁴⁵⁵ 4ID 2009 OIF AAR, *supra* note 4.

⁴⁵⁶ XVIII ABC 2009 OIF AAR, *supra* note 6.

ISSUE: Visiting other locations

DECISION: Only by visiting other locations can you accurately assess morale, workload, and conditions.

RECOMMENDATION: It is very good to go out and see how other people are living. You have to get out and represent the leadership. This is true for senior leaders at all levels. The smaller outposts need and value these visits the most.⁴⁵⁷

OEF ISSUE: Oversight at remote FOBs

DECISION: The brigade had personnel dispersed within a vast operating area. Brigade leadership was unable to visit frequently at all deployment locations.

RECOMMENDATION: Improve. Commanders and key staff must take the opportunity to visit all outlying FOBs on a routine basis. Routine visits to remote locations can occur by joining an Article 6 inspection team, a VIP contingent, or other group that visits remote locations.⁴⁵⁸

Developing Paralegals

OIF ISSUE: Paralegal mentoring

DECISION: S1 sections do not always embrace their paralegals (“If you were not S1, you were nothing”), and do not necessarily mentor them.

RECOMMENDATION: Improve. S1 personnel do not always provide appropriate mentoring. Senior paralegal NCOs should be ready to fill this void if required.⁴⁵⁹

ISSUE: Give more responsibility to the paralegals

DECISION: Paralegals feel if they are in the loop and allowed to take on more responsibility, they would be a great help to the JAs and would feel like they were part of the team. Many of the JAs did not share enough information with the paralegals or allow them to do some of the research/preparation work to help lighten their work load.

RECOMMENDATION: Improve. JAs must learn to trust in the abilities of their paralegals and keep them in the loop. If used properly, paralegals can add extreme value to the office and help to lighten the judge advocate’s work load.⁴⁶⁰

ISSUE: Continuing education for the 27Ds

DECISION: The NCOIC ensured all of the 27Ds continued their education in Iraq. As a result, all 27Ds received a promotion or recommendation for promotion in theater.

RECOMMENDATION: Sustain. If the mission and time allows for it, enable your Soldiers to continue their education and their training so they remain competitive for promotion.⁴⁶¹

⁴⁵⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁴⁵⁸ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 43.

⁴⁵⁹ 2SCR 2009 OIF AAR, *supra* note 24.

⁴⁶⁰ 3ID 2008 OIF AAR, *supra* note 1.

⁴⁶¹ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

ISSUE: Ensuring no one overloads 27Ds with unnecessary work

DECISION: Although the NCOIC expected his 27Ds to complete all of their work in a timely and competent manner, he tried to prevent any one 27D from becoming overloaded with too much work and/or responsibilities. This seemed to keep harmony in the office, while preventing the work product from declining due to excessive strain.

RECOMMENDATION: Sustain. Each member of the legal team must pull their weight, but adding unnecessary pressure will only cause the work product and morale to decline.⁴⁶²

ISSUE: Legal personnel caught between their division SJA and BCT commander

DECISION: A MNC-I policy stated that BCT commanders must receive permission from the corps or division SJA before moving paralegals from a consolidated office down to their respective battalions.

RECOMMENDATION: Improve. JA leaders need to recognize that paralegals are assigned directly to the battalion in the BCT. The BJA, TC, and senior paralegal will ensure that the paralegals are only doing paralegal work.⁴⁶³

ISSUE: Control of paralegal assignments/deployments

DECISION: This issue pitted a battalion CSM versus the NCOIC of the rear detachment legal office. The CSM decided to take “his” paralegal forward to support a 200-person headquarters company and battalion staff. The NCOIC balked, but ultimately gave in to the CSM because the NCOIC had no authority to hold a paralegal back at a consolidated legal center while his unit of assignment deployed. The paralegal deployed and, in three months, completed three Article 15s with no other legal work.

RECOMMENDATION: Improve. Obtain authority for senior paralegals to control paralegal assignments in a manner similar to that exercised by SJAs. Non-legal deployments hamper paralegals’ development, and in this particular case, the Soldiers’ desire to remain in the Army.⁴⁶⁴

ISSUE: Making your subordinate paralegals part of the team

DECISION: The division paralegal SGM left her office and visited her Soldiers several times a week. She would periodically gather them together for sergeant’s time training, but would also use these meetings as a forum to promote open communication. Often she would let her Soldiers make mistakes, if they did not hurt anyone, in order to make them stronger. The SGM took suggestions and made her Soldiers a part of the decision-making process.

RECOMMENDATION: Sustain. Keep your Soldiers in the loop at all times so they understand what is going on during a deployment. If you make them a part of the process, they will take ownership and give one hundred percent.⁴⁶⁵

⁴⁶² 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 47.

⁴⁶³ *Id.*

⁴⁶⁴ 1AD 2009 OIF AAR, *supra* note 3.

⁴⁶⁵ 4ID 2009 OIF AAR, *supra* note 4.

ISSUE: Getting personal with your paralegals

DECISION: The SGM gathered all of her paralegal specialists well before deployment and dared to get personal with them. She kindly inquired about topics ranging from bank accounts to family life in order to root out any issues. The SGM did not do this to invade anyone's privacy or intrude into private lives, but to discover any problems that might affect the deployed mission. This method opened up communication, allowing many problems to surface. Once discovered, they were able to take care of most problems before the Soldiers deployed.

RECOMMENDATION: Sustain. Although some people are uncomfortable getting too personal with their Soldiers, this type of communication is necessary. They solved all problems before deployment and any issues that arose in Iraq were minor.⁴⁶⁶

ISSUE: Guiding your paralegals

DECISION: It is important to try to establish a working relationship with the paralegals before deployment. To the extent you can, identify "lanes" of responsibility ahead of time so that your office is not adjusting in theater.

RECOMMENDATION: Work up front pays off and this ties into the NCOER challenges as well. Working relationships in a deployed environment are often different from in garrison. This makes it even more important to establish roles and responsibilities as soon as possible.⁴⁶⁷

Taking Care of Families

ISSUE: Focus on the family

DECISION: The office leadership decided to focus on the families.

RECOMMENDATION: Focus on the families. The effort to do this was time well spent. Taking care of families removes a huge stressor from the shoulders of your Soldiers. The families really appreciate it also, especially those that have not yet been through a deployment.⁴⁶⁸

ISSUE: Setting the tone for the importance of spending time with families

DECISION: The stress of preparing for deployment and normal garrison activities will eat away the time available for families, but this time is very important.

RECOMMENDATION: The leader has to set the example in this area. If not, the junior leaders will continue to push their people until they board the aircraft and there will be no opportunity to spend that valuable time with the family.⁴⁶⁹

ISSUE: Passing information to the families during the pre-deployment process

DECISION: The unit gave families a briefing on where they were going and what they would be doing. This helped with some of the fear of the unknown from the minds of the family members.

⁴⁶⁶ *Id.*

⁴⁶⁷ TF525 2009 OIF AAR, *supra* note 104.

⁴⁶⁸ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁴⁶⁹ *Id.*

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RECOMMENDATION: Sustain. This was very valuable. Simply knowing how your family member would be living while deployed is a great comfort to those family members remaining behind.⁴⁷⁰

ISSUE: **Topics for pre-deployment training for the families**

DECISION: The office addressed the most difficult issues first. They presented information on how casualty notification worked. Topics also included the mechanics of leave and the extra pay the Soldiers would receive.

RECOMMENDATION: These presentations to the smaller group were more effective than the large, division-wide briefings.⁴⁷¹

ISSUE: **Communications back to the families**

DECISION: The unit sent a monthly newsletter back to the families. The maintenance of the distribution list for this product was difficult. Maintaining it was the responsibility of the office, not the spouses.

RECOMMENDATION: Require your personnel to have at least one person's email on the list as an emergency contact. If a person did not want anyone on the distribution list, require them to tell the SJA why.⁴⁷²

ISSUE: **Keeping families informed during the deployment**

DECISION: The office produced an informal Family Readiness Group newsletter. It was strictly an internal document for the families of legal personnel. The "Foundation of Four" reviewed the document before it went out.

RECOMMENDATION: Sustain. The families very much valued this communication. They would definitely inquire if it went out late.⁴⁷³

ISSUE: **Keeping families informed**

DECISION: The OSJA kept the people in the rear informed through newsletters and slides with pictures.

RECOMMENDATION: Sustain. This worked well to ease the concerns of those back home.⁴⁷⁴

OEF ISSUE: **Pre-deployment family time**

DECISION: The brigade staff does not have enough time with their family immediately before deploying to a theater of operations. Constant pressure by leadership created an atmosphere where staff members continually felt pressure to get "something done" on a "never ending list."

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² *Id.*

⁴⁷³ *Id.*

⁴⁷⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

RECOMMENDATION: Improve. Provide staff with more time off to spend with their family before deployment. Consider innovative initiatives such as non-traditional work schedules. Publically acknowledge the sacrifice the staff makes during the workup cycle. Request the division staff to perform non-critical functions during the deployment workup cycle.⁴⁷⁵

X.F. Personnel

X.F.1. Staffing

OIF ISSUE: Interpreters in the legal shop

DECISION: The BCT legal shop had an interpreter allocated to their office. He was invaluable to many of the legal missions including claims, Rule of Law, and establishing a courthouse.

RECOMMENDATION: Sustain. Ask your predecessor if the legal shop has an interpreter. If not, approach your commander early to emphasize the importance of an interpreter to the legal mission.⁴⁷⁶

ISSUE: Immediate PCS upon re-deployment

DECISION: Twelve to fifteen month deployments are unnatural family events. Throw in the months leading up to the deployment and both the Soldier and his or her family need a significant rest upon re-deployment. Extended block leave is not enough to stabilize a family separated by this much time. JAs should have the option to stabilize for a year before moving to a new post. Reuniting as a family, looking to sell a house, re-engaging the office you have not worked at for over a year amounts to a lot of pressure for JAs. Coming home from a fifteen-month deployment should not be more stressful than being in Iraq, but it has been.

RECOMMENDATION: Examine the possibility of giving JAs this stabilization option.⁴⁷⁷

ISSUE: The lack of flexibility in managing reassignments

DECISION: Changes of station for assignments appear to be immutable certainties, regardless of whether a move at that time makes sense for the Soldier and his family. It is difficult to understand why the JAG Corps cannot exercise some discretion in moving Soldiers, given the already stressful contemporary operating environment. A Soldier already having three or four years on station should not preclude him or her staying a year longer if it makes sense in their particular case.

RECOMMENDATION: Allow for some flexibility in the take out list, to a point, if it means the option of more stability for the benefit of the Soldier and his or her family.⁴⁷⁸

ISSUE: Manning

DECISION: The MTOE for the regiment authorized six attorney positions. This structure allowed the RJA to place an attorney with each of the cavalry squadrons at the beginning of the

⁴⁷⁵ 4BCT, 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 43.

⁴⁷⁶ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

⁴⁷⁷ 3BCT, 4ID 2009 OIF AAR, *supra* note 50.

⁴⁷⁸ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

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deployment, while ensuring sufficient coverage at the headquarters with the three other attorneys. Halfway through the deployment, two of the attorneys (Reservists) re-deployed, so the RJA pulled all of the attorneys up to the Regimental level to ensure each level of the command received the proper amount of legal support.

RECOMMENDATION: Ample legal authorizations empowers the senior lawyer to make adjustments mid-rotation otherwise unavailable to brigade judge advocates struggling to provide services with two or three attorneys.⁴⁷⁹

ISSUE: **The challenge of differing deployment timelines in the modular force**

DECISION: There is a great shortage of legal personnel available to deploy with the separate brigades who are soon to depart after the headquarters returns. No one who just returned can go. This places the corps in a position where the OSJA has to send personnel they do not really know out to take these jobs.

RECOMMENDATION: Consider carefully the “patch chart” for your subordinate units.⁴⁸⁰

ISSUE: **Redistribution of legal assets**

DECISION: The personal relationships built with the senior leadership of the separate units went a long way towards making them receptive to the idea of allowing their legal personnel to support the legal mission elsewhere. Additionally, the unit made it clear in the operations order the higher headquarters SJA and Senior Command Paralegal had the authority to assess and reallocate legal assets.

RECOMMENDATION: It is nice to have the order upon which to fall back. However, it is for more effective to get voluntary buy-in through the personal relationships you establish with the leaders in those subordinate units. “Drug deals” are better than coercion.⁴⁸¹

ISSUE: **Importance of having a SGM**

DECISION: The division OSJA has to have their authorized SGM. Having an E-8 is not sufficient. The division staff is so rank-heavy, a SGM is essential to level the playing field.

RECOMMENDATION: Ensure the OSJA has its authorized SGM.⁴⁸²

ISSUE: **Brigades deploying under-strength**

DECISION: A brigade has authorizations for seven paralegals, some are deploying with only four or five. This is insufficient given the workload at the brigade level.

RECOMMENDATION: Emphasize the need for brigades to deploy with their full complement of paralegals. If necessary, divert paralegals from the division to the brigade to ensure they have

⁴⁷⁹ 3ACR 2009 OIF AAR, *supra* note 100.

⁴⁸⁰ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁴⁸¹ *Id.*

⁴⁸² 10th MTN DIV 2009 OIF AAR, *supra* note 7.

the personnel necessary to do this. The division can rely upon the MSE to make up shortages, the brigades cannot.⁴⁸³

OEF ISSUE: **Over-staffing the legal office**

DECISION: The brigade decided to bring one JA and one legal NCOIC. This worked well. There was not enough legal work in the brigade for additional legal personnel.

RECOMMENDATION: Sustain. Bring only the legal personnel needed to accomplish the mission.⁴⁸⁴

ISSUE: **Transfer of authority (TOA)**

DECISION: The unit set a clear single moment in time when responsibility shifted from the outgoing to the incoming individual.

RECOMMENDATION: Do this on an individual basis and announce it formally via email and other methods. Do not let shoulder patches determine from whom personnel get their advice. Questions go to the person in the chair. There can only be one Chief of Operational Law at a time.⁴⁸⁵

ISSUE: **Workload for chief of client services**

DECISION: The CJTF-101 client services office had two paralegals but only one judge advocate. The duties of the chief of client services included both claims and legal assistance. At times, the workload in these two areas was overwhelming for a single JA.

RECOMMENDATION: Improve. Although two paralegals are adequate for client services, there should be two judge advocates, both of which are able to cover down on claims and legal assistance duties.⁴⁸⁶

ISSUE: **Overlap of chief of client services**

DECISION: Reserve component individual augmentees filled the CJTF-101 chief of client services (claims and legal assistance) billet. The major who served in this position during the first eight months of the deployment had two months overlap with his replacement, who remained beyond the 101st Airborne Division's redeployment. Although the overlap was helpful, it was more than was necessary. Furthermore, there was insufficient workspace for two attorneys and this made for difficult working conditions. The primary difficulty was not having a dedicated computer for the new attorney. An attorney or paralegal cannot perform the job adequately without their own computer.

RECOMMENDATION: Improve. Two weeks overlap for the chief of client services is sufficient. Coordinate the deployments of individual augmentees to eliminate excessive overlap and allow the replacement to stay on longer into the next cycle.⁴⁸⁷

⁴⁸³ *Id.*

⁴⁸⁴ 101st SUST BDE 2009 OEF AAR, *supra* note 182.

⁴⁸⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

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ISSUE: **CLAMO assistance**

DECISION: No representative from CLAMO made a site visit to CJTF-101.

RECOMMENDATION: CLAMO representatives should make periodic site visits to the combatant commands in Afghanistan. These visits would be welcomed and provide CLAMO representatives with invaluable information to pass along to JAs preparing to deploy to Afghanistan.⁴⁸⁸

ISSUE: **CLAMO assistance**

DECISION: CLAMO sent a dedicated RoL attorney (UK LtCol) to augment the CJTF-101 OSJA for 3 months.

RECOMMENDATION: Sustain. This assistance was invaluable. The officer's expertise contributed greatly to the CJTF-101 mission.⁴⁸⁹

Assigning the Right People to the Right Jobs

OIF ISSUE: **Choosing RoL attorneys based on possession of required skills and abilities**

DECISION: RoL includes coordination and mentoring activities. Successful RoL efforts require some knowledge about the way in which the host nation legal system functions, as well as the ability to develop relationships with interagency and host nation personnel.

RECOMMENDATION: Improve. The JAG Corps should put more thought into the selection of personnel for specific jobs. RoL personnel must have the personality and skills to work with Iraqi judges, etc., allowing the RoL team to put its "best foot forward."⁴⁹⁰

ISSUE: **Long-term personnel assignments by outgoing leadership**

DECISION: In some instances, the office leadership will change before deployment. The outgoing leadership is, however, in a position to make decisions regarding personnel assignments that will carry through well into the deployment. This has the potential to inhibit the incoming leadership's ability to structure the office as they feel is best.

RECOMMENDATION: Be cognizant of whether you are tying the hands of the incoming leadership regarding personnel moves. Take a step back and allow the leadership taking the office into the deployment the maximum possible freedom of action.⁴⁹¹

ISSUE: **Deciding whom to deploy**

DECISION: The unit did a side-by-side position comparison with the unit they were to replace. This helped identify what positions they would need to fill. The next step was to list by name the previous deployment experience present in their office.

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ 2SCR 2009 OIF AAR, *supra* note 24.

⁴⁹¹ 1AD 2009 OIF AAR, *supra* note 3.

RECOMMENDATION: Sustain. These comparisons are necessary to making an informed decision on who must deploy. In some cases, the job comparison may indicate you do not need someone. The experience comparison may indicate there are some in the office who have already borne quite a heavy deployment load. You should give due consideration to the necessity of deploying these personnel.⁴⁹²

ISSUE: **If the transition timeline makes it an issue, who should set the deployment roster—the outgoing or the incoming SJA?**

DECISION: The outgoing SJA had already established who was going to deploy and who was not, as well as the initial deployment job assignments.

RECOMMENDATION: This was appropriate because the outgoing SJA knew the personnel and the incoming SJA had not had time to make the personal assessments necessary for these decisions.⁴⁹³

ISSUE: **Assignment of responsibilities to OSJA personnel**

DECISION: Foundation of Four members began to consider office assignments about six months before deployment, and assigned personnel to the various sections approximately 4-5 months before departure. OSJA personnel worked in those areas from that point on. This allowed them to obtain training, become familiar with that area of law, and make contact with their counterparts in theater via email, telephone, and VTC. This was particularly helpful as most JAs were very junior and few OSJA personnel had previously deployed. The office experienced a very high rate of turnover during the summer immediately before deployment. At the deployment's midpoint, all officers, except branch chiefs, and several enlisted Soldiers rotated to different responsibilities. This helped further develop the team and kept the deployment experience fresh.

RECOMMENDATION: Sustain. OSJA leaders should identify the strengths and weaknesses of office personnel as soon as possible, and employ them accordingly. In this case, personality, prior experience, and the ability to work with others in the team formed the basis for OSJA assignments.⁴⁹⁴

ISSUE: **Lack of experienced legal personnel at division**

DECISION: The division legal staff was extremely new and inexperienced as a whole. This included both JAs and paralegal specialists with little to no deployment experience. Although this division legal team worked well together and accomplished their mission, this may not always happen with such a new team.

RECOMMENDATION: Improve. Whenever possible, PP&TO should staff the division legal office with experienced JAs and paralegals, as well as with new personnel just out of school. The brigade legal teams look to the division SJA office for higher headquarters guidance. With brand new personnel, this is sometimes difficult to accomplish because the division personnel know no more than the brigade personnel.⁴⁹⁵

⁴⁹² *Id.*

⁴⁹³ 4ID 2009 OIF AAR, *supra* note 4.

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.*

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ISSUE: Effectiveness of a captain when dealing with senior staff

DECISION: The Army being a rank-based system, the rank worn by the legal advisors is important. More senior staff members often discount the advice of a captain. In the competition for resources on an Army staff, to include a spot at the table, decisions often occur based solely on rank. This means a captain will often lose a seat at a meeting first, even if he or she is the lawyer.

RECOMMENDATION: The JAG Corps needs to be cognizant of this and address it directly when making assignment decisions.⁴⁹⁶

ISSUE: Competent chief of justice

DECISION: The division chief of justice had vast experience in military justice. This was an enormous benefit to the division, especially to the trial counsel (TCs) serving under him. Although the brigade TCs were not co-located with their chief of justice, it was imperative they had the ability to reach back to their chief and receive proficient and sound advice when needed.

RECOMMENDATION: Sustain. If possible, place a JA with criminal law experience in the chief of justice slot.⁴⁹⁷

ISSUE: Experience level of section chiefs at the division level

DECISION: In the divisions, the chiefs are first-term captains. These are very junior personnel.

RECOMMENDATION: Open the communications channels very early and often. The JAs in those positions have to know they can reach up for assistance.⁴⁹⁸

ISSUE: The necessity of making personnel moves

DECISION: You have to “have the right people in the right seat on the bus.” Ensure you carefully examine whether all of your personnel are serving where they can best serve the organization.

RECOMMENDATION: If there is some current staffing that is not the best fit, make the personnel changes necessary.⁴⁹⁹

ISSUE: Lack of field grade officers in the OSJA

DECISION: Not having another experienced field grade officer forward is problematic. You end up having a captain advising a major general in combat if the SJA is away for any reason. However, if you do not leave someone experienced behind, you are at the mercy of what the Reserve mobilization process provides. There will probably be a general officer leading the installation during the deployment and he or she expects the legal support not to fall off because of the deployment. The deployed division commanding general is also not going to forget completely about the installation. He will still be involved in what goes on there.

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*

⁴⁹⁸ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁴⁹⁹ *Id.*

RECOMMENDATION: The deputy SJA part of the division structure is a critical weakness in how the division is set up. It may be necessary to bring in another active component deputy to serve as the active component experience in the installation OSJA when the division headquarters deploys.⁵⁰⁰

ISSUE: Experience level of JAs at the division

DECISION: There was a small point of friction when brigade JAs (typically majors) would call the division, where all the JAs (to include the deputy SJA for a while) were captains.

RECOMMENDATION: The division OSJA has only a few authorized field grade officers. Consequently, it is important to fill the authorized positions with the authorized rank.⁵⁰¹

ISSUE: Importance of dedicated expertise in contract and fiscal law

DECISION: Contracting and fiscal law makes up a huge part of the workload in a deployed environment.

RECOMMENDATION: You have to have at least one attorney dedicated solely to contract and fiscal law issues. Preferably, you should have two such attorneys.⁵⁰²

ISSUE: Seniority of division OSJA personnel

DECISION: The unit, for a time, had no field grade officers deployed other than the SJA. The division needs a field grade deputy SJA, chief of justice, and chief of operational law.

RECOMMENDATION: Fill these positions as authorized.⁵⁰³

OEF ISSUE: Lack of seniority when a division-level staff fills a combined/joint JMD

DECISION: Legal office division chiefs in the CJTF-101 OSJA were O3 JAs when their peers elsewhere (such as MNF-I /MNC-I in Iraq) were often O4/5 JAs. These O3 JAs are shouldering great responsibilities and are rising to the occasion. However, the learning curve for getting these O3 JAs to the necessary level of experience and understanding while deployed in combat is significant. The question is not one of ability, but of client confidence.

RECOMMENDATION: Every effort should be made to ensure that division-level OSJAs identified for deployment as higher-level OSJAs above their normal division mission are fully resourced/manned to accomplish that mission. That said, JAG Corps captains routinely rose to the challenge and performed at the field-grade level, while many paralegals performed the roles of captains.⁵⁰⁴

⁵⁰⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁵⁰¹ *Id.*

⁵⁰² *Id.*

⁵⁰³ *Id.*

⁵⁰⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

Joint Manning Document (JMD)

OIF ISSUE: Adequacy of the JMD

DECISION: The JMD did not reflect the reality of the mission on the ground. The unit took a 15% cut in authorizations on the JMD. However, the mission actually grew, rather than decreased. Because the JMD did not adequately cover the needs of the unit, the unit drew in legal assets from those units underutilizing their legal personnel to make up the difference. Every battalion and separate brigade is authorized some form of legal support. However, not all units have an equal amount of legal work for those legal professionals.

RECOMMENDATION: Carefully assess how your subordinate units are using their legal personnel. If they are underutilized, seek having those personnel support the legal mission where there is a shortage of available legal personnel.⁵⁰⁵

ISSUE: Making changes to the JMD

DECISION: The legal office sought to change the JMD to not only reflect the jobs and rank requirements already in place, but also the MTOE of the incoming unit. This was not to seek a gain in personnel, but to make the document more accurate. Additionally, the unit sought to avoid coding positions as Army-specific unless necessary. This allowed other services to fill those requirements.

RECOMMENDATION: The unit should start early in the process of updating the JMD because changes can take a year to take effect. Try to make the document truly joint by avoiding service-specific coding where possible.⁵⁰⁶

ISSUE: Use of Navy Worldwide Individual Augmentation System (WIAS) personnel

DECISION: Use of Navy WIAS personnel in detention operations worked very well. They were able to coordinate very effectively with the Navy personnel working in Task Force 134.

RECOMMENDATION: Sustain. Although it was strange seeing Navy personnel doing this job, they were able to advocate effectively for the divisions and brigades.⁵⁰⁷

OEF ISSUE: Personnel manning

DECISION: Personnel manning was a challenge, as changes to the Joint Manning Document (JMD) are very difficult to make. The unit was much more successful in justifying and obtaining Request for Forces (RFF) changes through the G3 then with changing and maintaining the JMD.

RECOMMENDATION: None.⁵⁰⁸

ISSUE: How many people to deploy when filling a JMD

⁵⁰⁵ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ CSTC-A 2008 OEF AAR, *supra* note 233.

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DECISION: Some thought the unit actually brought too many personnel. Because of the asynchronous deployments inherent in a JMD, there were already many people on the ground and staying beyond the division's arrival. The division did not adequately factor these personnel in when they looked at it as a purely divisional fight.

RECOMMENDATION: Because units do not typically deal with a JMD, the pre-deployment site survey (PDSS) is critical for setting the tone for validating the mission rehearsal exercise and determining whom to bring.⁵⁰⁹

ISSUE: **Lack of rank in the division structure, especially when filling a JMD**

DECISION: Judge advocate captains are carrying a very large burden. At a very early point in their careers, they are carrying greatly increased responsibilities in the deployed environment. They are meeting this challenge extremely well. When they do rotate back out of theater, they return to garrison very much matured and a great deal more valuable to the office.

RECOMMENDATION: Remain cognizant of the heavy load these junior officers are carrying. They will excel, but be very alert for signs they might be struggling.⁵¹⁰

Rotation of Personnel

OIF ISSUE: **Division attorneys backfilling BJAs on leave**

DECISION: The division sent attorneys to the brigades to backfill the JAs when they left for EML. This practice exposed young JAs to the BCT life, broadened their professional horizons, broke up the monotony of working at the division, and inspired productivity when they returned to the division.

RECOMMENDATION: Sustain. This practice paid great dividends to both the brigades who needed the extra help and the individual JA that was able to experience the practice of law at the BCT level. This practice is a great employment of resources.⁵¹¹

ISSUE: **Bringing division level JAs down to the BCT for missions**

DECISION: It was beneficial to bring officers from the division down to the BCT to witness claims and detention operations requirements. It adds perspective and helps them realize some of the challenges a BCT has that a division might not have when processing actions.

RECOMMENDATION: Implement a plan to allow division attorneys to come to the BCT for short periods.⁵¹²

ISSUE: **Switching jobs during a deployment**

DECISION: Switching jobs can help in maintaining office cohesion, especially if the office works out of different locations. It can also help to combat boredom over the course of a long

⁵⁰⁹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁵¹⁰ *Id.*

⁵¹¹ 3ID 2008 OIF AAR, *supra* note 1.

⁵¹² *Id.*

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deployment. Finally, switching jobs provides an expanded experience base from which to pull people for backfilling during leave or other absences.

RECOMMENDATION: Sustain.⁵¹³

ISSUE: **Rotation of personnel to BCTs**

DECISION: The OSJA rotated most of its judge advocates and paralegals through different jobs during the deployment. This helped broaden the experience of individuals, as well as keep them from getting bored in one job. The division also rotated its judge advocates down to the BCTs, particularly when BCT judge advocates were on leave. In addition to benefitting the BCTs, which otherwise would not have attorneys to backfill their own attorneys, this practice benefitted the division. It gave the division judge advocates a better perspective on how they can help the BCTs and how division policies affect the BCTs. This division was able to do this because, as a legacy division, it had more judge advocates than a transformed division.

RECOMMENDATION: Sustain if personnel resources permit.⁵¹⁴

ISSUE: **Rotation of division OSJA personnel midway through the deployment**

DECISION: The OSJA deployed for fifteen months, and most OSJA personnel spent the entire time in theater (one JA remained in the rear for an additional sixty days after the rest of the unit deployed, and one trial counsel returned a few months early to assist the rear detachment). The OSJA decided to rotate JAs and paralegals to different positions midway through the deployment. The rotation provided personnel employed in high-intensity positions with a break from that pace, and reduced the possibility of boredom by exposing OSJA personnel to a new area of law, allowing them to become more well rounded. The OSJA division chiefs – who did not rotate – provided continuity in each area.

RECOMMENDATION: Sustain. Units should consider the utility of a rotation of personnel to other duties midway through the deployment.⁵¹⁵

ISSUE: **Switching NCOIC duty positions during the deployment**

DECISION: The division legal office switched senior NCOs halfway through the deployment. This allowed them to experience new leadership positions and learn a different skill set. This also prevented burnout and kept them fresh.

RECOMMENDATION: Sustain. If possible, switch the NCOICs to new positions midway through the deployment. This works well for senior NCOs, but may not be necessary for the junior enlisted paralegals. They will swap internally and do not receive a rating in their job positions.⁵¹⁶

ISSUE: **Switching out paralegals during the deployment**

⁵¹³ 1AD 2009 OIF AAR, *supra* note 3.

⁵¹⁴ *Id.*

⁵¹⁵ 4ID 2009 OIF AAR, *supra* note 4.

⁵¹⁶ *Id.*

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DECISION: The division OSJA decided to switch out their paralegals during the deployment, giving them the opportunity to work in a different area of law. This was especially beneficial to the AdLaw paralegals because they have to look at death and injury constantly through all the investigations. It weighs on them after awhile and they need a break. The practice of changing around the paralegals keeps them fresh and prevents complacency.

RECOMMENDATION: Sustain. Resist the urge to leave your paralegals in their current jobs because they know their job well. Placing them in another job helps them to grow professionally and provides your office with fresh, revitalized paralegals.⁵¹⁷

ISSUE: Rotation of judge advocates

DECISION: The SJA rotated most judge advocates to different jobs midway through the deployment, with the exception of the fiscal law attorneys. This allowed for professional development through broader deployed experiences. The SJA determined, however, that the need for a high level of expertise and continuity in fiscal law outweighed the benefits of rotating positions.

RECOMMENDATION: Sustain.⁵¹⁸

ISSUE: Sending higher headquarters personnel to perform duties at the brigade level

DECISION: This was a very valuable experience. All those who served at the brigade level came back with a new perspective and understanding of the challenges at that level.

RECOMMENDATION: If possible, provide this experience for higher headquarters JAs.⁵¹⁹

ISSUE: Swapping out deputy SJAs during the deployment

DECISION: The requirement to send the deputy to the Graduate Course necessitated swapping out deputies. This was very difficult to do, especially as the acting deputy then was a CPT. The swap generated a host of “Change of Rater” OERs at the 3-month mark.

RECOMMENDATION: If possible, avoid having to make this kind of change.⁵²⁰

ISSUE: Changing jobs during the deployment

DECISION: Although originally intending to switch people around to allow the building of additional expertise, almost every officer expressed a preference to remain in their current role. A major reason for this was the relationships they had built up with the other staff sections with whom they worked. Those staff sections had also come to rely on a particular JA as their point of contact on certain issues.

RECOMMENDATION: In this case, it worked out better to have individuals stay with the same jobs. However, if you do this, cross-training is still vitally important. People will be absent for leave and other missions, so it is important you have someone who can fill in for them.⁵²¹

⁵¹⁷ *Id.*

⁵¹⁸ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁵¹⁹ *Id.*

⁵²⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁵²¹ *Id.*

TIP OF THE SPEAR

ISSUE: **Rotation of personnel out of country**

DECISION: If you have the flexibility to rotate people out of country after six months, do so.

RECOMMENDATION: Be aware of needs versus wants. Any attorney can do legal assistance. If you do not absolutely need a Soldier deployed, do not deploy the Soldier.⁵²²

ISSUE: **Rotating attorneys in the OpLaw section**

DECISION: While it would be great for professional development, there is a debilitating effect if you rotate the OpLaw attorney mid-deployment. The OpLaw attorney is successful partly because of the relationships that attorney has built with the relevant staff sections. If you rotate someone new into OpLaw, it puts him or her at a significant disadvantage. This might result in a decrease in section effectiveness.

RECOMMENDATION: Keep the OpLaw attorneys in the section during the entire deployment.⁵²³

OEF ISSUE: **Deployment cycles**

DECISION: The OSJA had a large number of personnel rotate back to CONUS midway through the deployment. The OSJA identified the battle replacements before its initial deployment, thereby making the transition during turnover much easier. The replacements were able to set up a line of communication with their in-theater counterparts well in advance of deploying. Making the deployment shorter was a great morale boost for those individuals who rotated during the deployment.

RECOMMENDATION: Sustain. To the extent resources allow, rotate OSJA personnel for shorter deployments. Some key positions, however, should not rotate.⁵²⁴

ISSUE: **Deploying/redeploying personnel midway through the deployment**

DECISION: The 101st ABN DIV (AASLT) OSJA had more legal personnel interested in deploying than there were positions on the JMD for them to fill. As a result, the personnel from the 101st ABN DIV (AASLT) legal office were able to turn over several positions halfway through the deployment to newly deployed personnel from home station. The only personnel who remained in theater for the entire tour were the SJA, DSJA, the chief of OpLaw, the chief of detention operations, the SGM, and one other paralegal. This worked very well and it helped keep fresh personnel in the fight. This was possible because the sizeable legal mission remaining at home station meant there was a significant pool from which to draw personnel. Further, the rotation occurred at the 7-8 month point of the 15-month deployment, so the rotating personnel were able to gain significant experience.

RECOMMENDATION: Do this if you are able. It creates a certain amount of turmoil, but it is manageable if you select the correct people. Because the fight in Afghanistan really is seasonal, make the switch in the winter months when fighting is at an ebb. The feared pushback from the

⁵²² *Id.*

⁵²³ *Id.*

⁵²⁴ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

leadership and other staff sections did not materialize because the office coordinated this well ahead of time. Most staff primaries wished they had the flexibility to do the same with their personnel.⁵²⁵

ISSUE: Rotating personnel in theater

DECISION: The 101st ABN DIV OSJA office initially brought forward about one-third of its attorneys to fill positions on the CJTF-101 OSJA JMD. Except for a small number of key positions (e.g., SJA, DSJA, Chief of OpLaw, and DetOps JA), most attorneys rotated during the deployment. The rotation provided the division a great opportunity to train twice as many attorneys during the deployment.

RECOMMENDATION: Allowing personnel to rotate early is generally a good thing. It can be challenging bringing the new attorneys up to speed. However, the benefit for the division and the JAG Corps of having twice as many combat-proven attorneys outweighs this burden.⁵²⁶

Brigade Judge Advocate Qualifications

OIF ISSUE: Rank of regimental JA (RJA)

DECISION: This captain JA, who replaced the previous RJA partway through the deployment when the RJA left for the Graduate Course, had prior service in armored units, and had served with the regiment before deploying. While he was able to do the job as a captain, it helped that he had already been with the unit for some time before moving into the RJA role. A senior captain with the right experience can do the job. Obviously, it helps if the XO “gets it,” but staff members who want to blow off the RJA will do so regardless of his/her rank.

RECOMMENDATION: Improve. Assigning a major as RJA is preferable to assigning a captain. Ideally, that JA should serve throughout the entire deployment, particularly since other branches do not withdraw their deployed personnel for courses equivalent to the Graduate Course. If the JAG Corps must replace a regimental/brigade JA, it is best to do so with a JA already with the unit. This ensures the JA already has a relationship with squadron/battalion commanders. The extent to which JAs can create relationships with their staff counterparts is the basis for the ability to do the job and provide “value added.”⁵²⁷

ISSUE: Appropriate level of rank/expertise for brigade-level JAs

DECISION: Most other majors on the brigade staff have a level of knowledge and expertise equivalent to a post-Graduate Course JA. The JA assigned to an infantry BCT should have attended the Graduate Course, although this is not as important for a JA assigned to a sustainment unit or combat aviation brigade. While a first assignment JA can handle TC duties, a direct commission officer who has just been promoted from lieutenant to captain might have some difficulty doing so. He or she will probably lack detailed knowledge of how the Army works. The assignment of BCT TCs should also reflect the level of support available from division JAs. In many cases, first assignment brigade TCs are finding that the division’s chief of military justice is also a first assignment captain, who is unable to provide answers to the difficult questions that they themselves are unable to resolve. This lack of experience may extend to

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ 2SCR 2009 OIF AAR, *supra* note 24.

TIP OF THE SPEAR

OSJA staff included only one post-Graduate Course major. Other than the deputy SJA, division SJA personnel generally lacked experience.

RECOMMENDATION: The BJA should be a post Graduate Course major. While a first assignment captain can serve as TC, the TC benefits from having a level of Army knowledge.⁵²⁸

ISSUE: **BJA relief in place (RIP) requirements**

DECISION: There is not a need for two full weeks of RIP for the BJAs. A few days is plenty of time.

RECOMMENDATION: Attempt to minimize the amount of time scheduled for a RIP.⁵²⁹

ISSUE: **Pre-graduate course captains as BJAs**

DECISION: The pre-graduate course captains had more of a tendency to “go rogue” with their units and not work as well with others.

RECOMMENDATION: Be mindful of the experience level and temperament required to serve successfully as a BJA. The job is not the place for an inexperienced JA who does not yet understand how the technical chain works.⁵³⁰

ISSUE: **JA assignments**

DECISION: The regiment/brigade/battalion is not the right place for a first tour JA. The regiment is a crucible for character and skill, not a cocoon. The operational tempo did not lend itself to the level of mentorship required for a young JA. Furthermore, JAs at these commands serve as mouthpieces for the entire Corps at a point in their careers where they know very little about practicing law or the Army.

RECOMMENDATION: Assigning first tour JAs to regiments, brigades, and battalions does not serve the command, the JAG Corps, or the individual officer.⁵³¹

ISSUE: **Captain in a major’s position**

DECISION: The JAG Corps placed a judge advocate CPT in an O4 staff billet. The BCT staff often gave the legal opinions of the O3 judge advocate less weight due to JA’s position as the most junior staff member.

RECOMMENDATION: Improve. The legal representative on the brigade staff should be at least an O4 in order to deal with others on the staff with greater parity. It is not a question of being able to do the job. It is a question of being able to handle more readily those situations where the legal outcome does not support the ranking officer’s desired result.⁵³²

ISSUE: **Appropriate level of experience for maneuver brigade BJAs**

⁵²⁸ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 47.

⁵²⁹ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

⁵³⁰ 1AD 2009 OIF AAR, *supra* note 3.

⁵³¹ 3ACR 2009 OIF AAR, *supra* note 100.

⁵³² 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

DECISION: One brigade had a captain as their BJA. This captain struggled in that environment because he was too junior for the job in that unit primarily because he had a brigade commander and deputy commander who were not JAG friendly.

RECOMMENDATION: Deviate from the programmed rank requirement only in very special circumstances and only when the senior JA closest to the unit and possible fill assesses the person as an appropriate fit for that specific unit. In almost every case, a maneuver brigade BJA should be a major.⁵³³

ISSUE: Experience level of BJAs

DECISION: One maneuver brigade had a senior captain as its BJA. The brigade leadership was not supportive of its legal team causing tension between the SJA and the brigade leadership. It was a very frustrating situation.

RECOMMENDATION: Be prepared to support your BJAs who may have a demanding, unfriendly, brigade leadership. The division must try to be understanding and think about the situation in which the junior JA is operating and provide the JA with the support and guidance needed in that environment.⁵³⁴

ISSUE: Experience level of the BJA and the manning of the office

DECISION: This brigade had only one judge advocate deployed with it. The brigade also did not have any paralegals assigned to it. In addition, this particular BJA had only been in the Army for eight months prior to deploying.

RECOMMENDATION: Although it was a rewarding and great experience, it was this judge advocate's opinion the billet requires a second or third tour captain. It is very difficult for a junior CPT to hold court in staff meetings when all other staff officers are field grade officers. In addition, the brigade needs to have a paralegal assigned to it. If a JA deploys, a 27D needs to be with him or her. They are a necessary team.⁵³⁵

ISSUE: Proper experience level for BJAs

DECISION: The best fit is a post-Graduate Course major.

RECOMMENDATION: Additionally, a prior job as a Chief of AdLaw or similar position is an excellent lead-in.⁵³⁶

OEF ISSUE: Placing a captain in a major's BJA position

DECISION: The sustainment brigade BJA position currently calls for a major. However, due to the lack of majors in the division, a captain filled the position. Although this worked out well because the captain was competent and assertive, there really should be a major in that position. The brigade commander's staff is composed of field grade officers. Therefore, the BJA does not receive the respect or authority they deserve because they are a captain.

⁵³³ 4ID 2009 OIF AAR, *supra* note 4.

⁵³⁴ *Id.*

⁵³⁵ 214th Fires BDE 2009 OIF AAR, *supra* note 173.

⁵³⁶ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

RECOMMENDATION: Improve. If possible, fill the BJA position with a major.⁵³⁷

Paralegal Staffing & Utilization

OIF ISSUE: Consolidation of paralegals allows training to occur

DECISION: Four paralegals were located with their squadrons until the legal office consolidated all but one of the paralegals at the regimental headquarters upon arrival at FOB Warhorse. While dispersed, paralegals were responsible mainly for military justice, legal assistance, and investigations. Consolidation allowed training in and exposure to other aspects of the legal mission, including detention operations and claims.

RECOMMENDATION: Sustain. Consolidation is the best option when squadrons/battalions are co-located with the regiment/brigade headquarters. Dispersal to S1 offices during a deployment means paralegals will spend considerable time on non-legal duties such as driving, mail runs, sweeping up, awards, flags, etc.⁵³⁸

ISSUE: Dispersal of paralegals increases their knowledge of their unit's role

DECISION: Four of the paralegals spent several months with their dispersed squadrons. While they knew their own jobs, they were not familiar with the unit's mission. The time spent with the unit gave them a better working knowledge of what the unit actually did.

RECOMMENDATION: Sustain. The decision to disperse or consolidate paralegals will depend on the individual circumstances of the unit, mission, and paralegal.⁵³⁹

ISSUE: Paralegals as notaries

DECISION: Only E5 paralegals and above trained to do so can notarize documents, including powers of attorney. The notary function is an important one for subordinate units not co-located with the regimental/brigade headquarters.

RECOMMENDATION: Improve. Assigning an E4 or below paralegals who cannot notarize documents to a squadron or battalion not co-located with its parent headquarters significantly reduces the paralegal's ability to assist that unit. Paralegals could receive notary training during AIT or from the senior paralegal NCO. TJAGLCS should issue notary stamps to paralegals, once trained and approved to serve as notaries.⁵⁴⁰

ISSUE: Paralegal utilization

DECISION: The JAs did not fully utilize paralegals assigned to the squadrons. In comparison to civilian paralegals—responsible for running legal offices—the training and employment of Army paralegals is limited (e.g., Art. 15s, claims, etc.). Paralegal skills do not allow their employment in areas outside the Art. 15/claims domains.

⁵³⁷ 101st SUST BDE 2009 OEF AAR, *supra* note 182.

⁵³⁸ 2SCR 2009 OIF AAR, *supra* note 24.

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

RECOMMENDATION: Improve. The JAG Corps should train and use its paralegals more fully. Paralegals should receive additional training to allow their participation in other areas (e.g., detention).⁵⁴¹

ISSUE: Paralegals at the battalion headquarters

DECISION: Some geographically distant battalions wanted a paralegal with them in order to facilitate their legal actions. Although this is a good idea in general, the paralegal must be strong-willed and experienced in order to make independent judgments uninfluenced by members of the command. The paralegals must also recognize the line between processing legal actions and giving legal advice, and be able to communicate with their BJA instead of turning into dangerous “yes men/women” for the battalion. Furthermore, some battalion paralegals reported being underworked and underutilized, while the paralegals at the BCTs were overworked. One battalion paralegal started out by working on claims and detention operations, but ended up running the Post Exchange (PX).

RECOMMENDATION: Improve. Not all distant battalions had their own paralegal stationed with them, but those paralegals isolated from their BJAs did a great job utilizing their independent judgment and knowing when to contact their BJA. The SJA/BJA should get involved when battalions do not have enough legal work for their paralegal and convince the commander to send the paralegal to the brigade where he/she can assist with the heavy legal load.⁵⁴²

ISSUE: Additional paralegals

DECISION: The unit had to use its paralegals for the tax center or for legal assistance. The unit wanted another paralegal to go with the JA to assist with detainee operations. The legal shop could have extended its hours with more paralegals.

RECOMMENDATION: Evaluate the need for more paralegal support.⁵⁴³

ISSUE: The exclusion of paralegals in humanitarian effort missions

DECISION: Although the paralegals knew that humanitarian efforts were occurring, JAs did not include them in any of the missions. Instead, JAs kept humanitarian and civic assistance operational information close-hold.

RECOMMENDATION: Review and possibly improve. SJAs should periodically review and re-evaluate the decision whether, and to what extent, deployed JAs should include paralegals on humanitarian and civil assistance operations. Paralegals are intelligent, able-bodied Soldiers who can add value to such operations.⁵⁴⁴

ISSUE: Whether to consolidate paralegals at the BCT HQ

DECISION: This BCT had one paralegal per battalion. The Chief Paralegal NCO as well as the two paralegals assigned to the Brigade Support Battalion (BSB) and Special Troops Battalion

⁵⁴¹ *Id.*

⁵⁴² 31D 2008 OIF AAR, *supra* note 1.

⁵⁴³ *Id.*

⁵⁴⁴ *Id.*

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(STB) worked in the brigade HQ legal office; the other four paralegals were located with their own battalions at other FOBs. Most of these battalion paralegals were NCOs and had previous deployment experience. In one case, an E4 (promoted to E5 during the deployment) was assigned to a battalion, but it was her second deployment, and her commander respected her. Do not assign a PFC to a battalion because of the training requirement. He or she instead needs to work in the consolidated legal office under the supervision of the senior paralegal.

From the start of the deployment, the command wanted the 27Ds out with their battalions on outlying FOBs, although the BJA did not think this was a good idea at first. However, as the deployment went on, it became clear that the 27Ds were true assets to the battalions and to the legal shop. They could handle many of the battalion's legal needs and acted as liaisons between the BJA and the battalion command.

One paralegal per battalion is sufficient. Where two JAs are assigned to a BCT, the support of a single paralegal (the Chief Paralegal NCO) is also sufficient. In this case, the Chief Paralegal NCO's duties included reviewing the Article 15 reports submitted by the battalion NCOs. The paralegals located with the battalions also provided support at times. For example, when the TC was dealing with a trial, the paralegal for the battalion in question would come to COB Speicher to assist the TC (e.g., for a week at a time) and would continue to handle any battalion issues from that location (i.e., he or she was not backfilled).

RECOMMENDATION: Sustain. The decision to consolidate or disperse paralegals will depend upon the location of support units and the experience level of those paralegals. One paralegal assigned to the brigade and to each battalion is sufficient.⁵⁴⁵

ISSUE: Paralegal support to battalions

DECISION: The BCT sent paralegals to each subordinate stand-alone battalion. The decision was largely a concession to the battalion sergeants major who wanted "their paralegals" with the rest of the battalion.

RECOMMENDATION: Improve. Seasoned NCOs are perfectly equipped to go to the battalion staff and function as an excellent issue spotter and advisor for the command. However, 27Ds fresh out of basic training and AIT do not belong at the battalions. These Soldiers would serve their battalions better by working initially under the watchful eye of the brigade NCOIC. At some point in the deployment, these younger Soldiers may prove their mettle and be sent to the battalions with the NCOIC's blessing.⁵⁴⁶

ISSUE: Rotating 27Ds to different job positions

DECISION: During the deployment, the NCOIC continually switched his 27D personnel to different jobs every 3 months. This caused the NCOIC to do a bit more work in terms of training and picking up the slack while the 27Ds became familiar with their new jobs, but it also allowed the 27Ds to learn all aspects of legal jobs within in the BCT. It also kept them fresh and prevented them from getting too comfortable in one position.

⁵⁴⁵ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 47.

⁵⁴⁶ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 48.

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RECOMMENDATION: Sustain. Although difficult at times, this practice allows all 27Ds to receive a wide range of training.⁵⁴⁷

ISSUE: Assignment of BCT paralegals

DECISION: The original plan the BCT commander supported was to keep all of the paralegals at the BCT. The reality was this was not feasible, as there was a battalion away from the BCT. Ultimately, this battalion received a staff sergeant. Although he was underutilized, it was important he was a staff sergeant in order to be able to “take care” of himself away from the BJA. It also helped avoid having to stand duty and participate in other jobs more junior Soldiers have to complete.

RECOMMENDATION: If it becomes necessary to send a paralegal away from the BCT and down to a battalion, make sure he/she is senior enough to ensure the unit does not misuse him/her. In addition, try to keep the large majority of the paralegals at the BCT.⁵⁴⁸

ISSUE: Use of paralegals for non-legal taskings

DECISION: The BJA consolidated the 27D personnel in one location on the FOB. However, the BJA was not able to take full advantage this due to the inability to insulate them from non-legal taskings.

RECOMMENDATION: Improve. Co-located brigades should form a consolidated legal center. Do not allow the 27Ds to be subject to non-legal taskings while on the FOB, with the possible exception of periodic guard duty. Where there are multiple battalions on the FOB, each of the NCO 27D’s should work at one location on the FOB.⁵⁴⁹

ISSUE: Battalion (BN) paralegals working in the S1 shop

DECISION: Some units under this task force were located on outlying FOBs. The paralegals in some of these units worked in the battalion S1 shop. This was the wrong thing to do, as it resulted in the paralegals working as S1 clerks and mail clerks. It did not encourage the command or staff to employ them as staff NCOs or to handle any legal actions. Instead, the battalion called the BJA for simple legal administrative matters that the paralegal should have handled.

RECOMMENDATION: Ensure units do not pull paralegals from their legal duties. It is okay for the paralegal to help out in the S1 shop if things are slow, but not to the detriment of their legal skills. The command must understand the paralegal should be their first call when a legal issue surfaces. Talk to the BN SGM ahead of time since he has the ability to drive how the unit utilizes the paralegal.⁵⁵⁰

ISSUE: Amount of available paralegal support

DECISION: The amount of available paralegal support was sufficient. The unit did not have a need for additional paralegal support.

⁵⁴⁷ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

⁵⁴⁸ *Id.*

⁵⁴⁹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

⁵⁵⁰ TF525 2009 OIF AAR, *supra* note 104.

TIP OF THE SPEAR

RECOMMENDATION: The BCT may have a need for an additional paralegal assigned at the brigade level only if all of the unit's battalions are not co-located with the BCT headquarters. This would leave the brigade NCOIC as the only paralegal supporting the attorneys at the brigade, which would be inadequate.⁵⁵¹

ISSUE: Resistance to consolidation of paralegals by non-organic units

DECISION: The consolidation of paralegals was necessary to the efficient provision of legal services. The BCT did not give subordinate battalions the option to not participate.

RECOMMENDATION: Non-organic units must understand they have to support the mission of the unit under whose control they fall.⁵⁵²

ISSUE: Proper experience level for paralegals

DECISION: It has to at least be an NCO out at a stand-alone battalion.

RECOMMENDATION: Keep the lower ranking paralegals near the senior paralegal NCO for training and supervision.⁵⁵³

ISSUE: Use of paralegals on the DOC floor

DECISION: Following the practice of their predecessors, the OSJA initially assigned a judge advocate to the legal desk in the DOC. However, they realized a capable paralegal noncommissioned officer who had attended the Operational Law Course and whom the operational law judge advocate trained could competently represent the OSJA. This was especially true given other sections (provost marshal, engineers, and medical) used their NCOs in DOC. This practice worked well so long as there was always a judge advocate available by phone, if not in the workspace just outside the DOC floor, to give any necessary legal advice.

RECOMMENDATION: Sustain. This is a good opportunity for NCOs to be value-added in operational law. Where personnel resources only allow one person to work the night shift, however, this person must be an attorney.⁵⁵⁴

ISSUE: Use of paralegals

DECISION: Paralegals can perform a great many tasks if given the opportunity to do so. They can handle a great deal of the detainee operations work, publish FRAGOs, make witness requests, draft detention operations legal reviews, and monitor the combat information center.

RECOMMENDATION: Use your paralegals to the fullest extent possible. They are true combat multipliers.⁵⁵⁵

ISSUE: Experience level of paralegals assigned to BCTs

⁵⁵¹ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ 1AD 2009 OIF AAR, *supra* note 3.

⁵⁵⁵ 4ID 2009 OIF AAR, *supra* note 4.

DECISION: Paralegals who are MOS transfers into the JAG Corps may come in at higher levels of rank, but they do not have the legal experience a typical paralegal of that rank has. There cannot be an expectation their rank alone somehow qualifies them to hold a position in a brigade. It is unrealistic to expect them to learn how to be a paralegal at the same time they are trying to run a legal office in a deployed brigade.

RECOMMENDATION: Do not send MOS-transfer paralegals to a deploying brigade before they have sufficient experience concerning legal matters. Doing so is detrimental to both the paralegal and the unit.⁵⁵⁶

ISSUE: **An experienced quality NCO is necessary in the RoL section**

DECISION: Because of operational tempo, having a good NCO is imperative to track the various missions, arrange for both air and convoy transportation, and to consolidate data for the various reporting requirements. It is an added benefit if this NCO can speak Arabic.

RECOMMENDATION: Ensure the best qualified NCO works in the rule of law section.⁵⁵⁷

ISSUE: **Deployment of sustainment brigade paralegals**

DECISION: The sustainment brigade has two assigned paralegals to support the TDS mission.

RECOMMENDATION: The brigade must take both of these paralegals into theater and allow them to perform their assigned roles with TDS. The division does not have paralegals to give up to TDS when the sustainment brigade fails to do this.⁵⁵⁸

ISSUE: **Utilization of the OpLaw NCO**

DECISION: An experienced OpLaw NCO can stand a DOC floor watch, draft FRAGOS and otherwise contribute significantly to the section.

RECOMMENDATION: Selecting the right NCO to support the OpLaw attorneys is necessary to the success of the team.⁵⁵⁹

ISSUE: **Shifting of paralegal authorizations from the mission support element (MSE) to the Installation Management Command (IMCOM)**

DECISION: This shift results in a loss of control over these authorizations. While the MSE belongs to the Division Special Troops Battalion (DSTB), paralegals assigned to IMCOM belong to the garrison. Although there are protections in place, such as requiring TJAG approval before altering these authorizations, their placement in IMCOM makes a cutting of the authorizations more likely.

RECOMMENDATION: Leave these authorizations within the MSE.⁵⁶⁰

ISSUE: **Place of duty of the DSTB paralegal**

⁵⁵⁶ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁵⁵⁷ *Id.*

⁵⁵⁸ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁵⁵⁹ *Id.*

⁵⁶⁰ *Id.*

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DECISION: The DSTB is authorized a paralegal. For the purposes of professional development and ensuring this paralegal performs legal duties, it is important their place of duty be the OSJA.

RECOMMENDATION: Have this paralegal perform their duties at the OSJA. It may be necessary to explain to the DSTB command sergeant major that this is best for the Soldier and the unit. If the paralegal is at the OSJA, the entire OSJA can perform the legal work the DSTB requires. If the paralegal is down at the battalion, he or she is the sole legal resource available to the battalion.⁵⁶¹

ISSUE: Interaction between the division's E-6 criminal law NCO and the BCT senior paralegals

DECISION: The relationship between the E-6 and the brigade E-7s was good. If there were ever a problem, the division OSJA CSM would step in to fix the issue.

RECOMMENDATION: There is no need for an E-8 in criminal law to ensure compliance from the BCTs.⁵⁶²

OEF ISSUE: 27Ds performing work details

DECISION: The brigade legal NCOIC participated in the same work details as other enlisted members of the brigade. This included guard duty, platoon sergeant, sergeant of the guard, and so on. This gave the legal shop instant credibility. Often, Soldiers brought their legal issues to the NCOIC because they saw him as a team player.

RECOMMENDATION: Sustain. Participating in these work details brings respect to your legal shop and shows that you can pull your own weight.⁵⁶³

ISSUE: Ensuring your 27Ds are properly utilized at the battalion level

DECISION: The BJA and legal NCOIC worked with the brigade executive officer before deployment to draft a memorandum delineating the duties and responsibilities of a 27D. This memorandum served as guidepost for the battalions, preventing them from using their 27Ds as mail clerks or S1 assistants.

RECOMMENDATION: Sustain. This preventive measure worked well.⁵⁶⁴

ISSUE: Overstaffing of enlisted personnel

DECISION: Although the JMD only called for a senior paralegal, a court reporter and a military justice non-commissioned officer in charge (NCOIC), the OSJA deployed with five enlisted personnel. These five were in addition to the TDS paralegal (a Marine Corps billet), legal assistance paralegal (a Navy billet), the claims paralegal (an Air Force billet), and the administrative law paralegal (a Navy billet). There was insufficient work and office space for the additional paralegals who deployed from Fort Campbell. The OSJA decided to use the extra two

⁵⁶¹ *Id.*

⁵⁶² *Id.*

⁵⁶³ 101st SUST BDE 2009 OEF AAR, *supra* note 182.

⁵⁶⁴ 101st CAB 2009 OEF AAR, *supra* note 108.

paralegals to augment the 101st Combat Aviation Brigade (CAB) and the detainee operations section.

RECOMMENDATION: Improve. Deploy only with the personnel necessary to fill the JMD billets.⁵⁶⁵

Information Technology (IT) Support Personnel

OIF ISSUE: **Information Management Officer (IMO)/Information Technology (IT) specialist**

DECISION: Both the division and corps structures need an IMO/IT specialist. While the legal administrator has performed this role in the past, legal administrators are no longer specialists in this field.

RECOMMENDATION: Harvest 27D positions from some of the very small, specialized “battalions” and trade them for authorized Signal positions as an IMO/IT specialist in the division and corps OSJA. For example, both CID and Explosive Ordnance Disposal (EOD) battalions have assigned paralegals. However, these battalions have very few personnel and the 27Ds assigned there are not routinely engaged in legal work. Give up these positions to grow the Signal Corps, provided the growth occurs in the legal offices.⁵⁶⁶

ISSUE: **IT support**

DECISION: There is a need for a full time IT person at the division level. The OSJA did a great deal of self-support for IT. Those sections who had to rely on the G-6 section often found themselves waiting for some time for support.

RECOMMENDATION: If possible, dedicate someone to take on the IT mission.⁵⁶⁷

ISSUE: **Importance of having someone conversant with information technology**

DECISION: IT is extremely important. On today’s battlefield, if your IT is non-functional, you are combat ineffective.

RECOMMENDATION: As important as IT is, it does not warrant having a member of the Signal Corps assigned to the OSJA. The division G-6 section has responsibility for providing that level of support. However, having someone with an affinity for IT and perhaps an additional duty appointment to assist with it is beneficial.⁵⁶⁸

ISSUE: **Appointment of an IT paralegal**

DECISION: The use of an IT paralegal was very beneficial. When not busy within the office, this paralegal spent time with the G-6 section. This allowed the paralegal to build trust with the G-6, making the G-6 comfortable with allowing them permissions not usually given to those outside the G-6 section.

⁵⁶⁵ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁵⁶⁶ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁵⁶⁷ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁵⁶⁸ *Id.*

TIP OF THE SPEAR

RECOMMENDATION: Sustain. Building the same kind of trust relationship with the Division Operations Center personnel by the DOC paralegal was also beneficial.⁵⁶⁹

Security Clearances

OIF **ISSUE:** Obtaining ‘Secret’ and ‘Top Secret’ clearances for OSJA personnel

DECISION: Most, but not all, OSJA personnel had a ‘Secret’ clearance before deployment. In some cases, the lack of a clearance occurred because the application got lost somewhere in the process or was missing a required item. If necessary, the command can grant a theater clearance. The SJA, deputy SJA, and OpLaw attorneys require ‘Top Secret’ clearances, and it may also be helpful for at least some AdLaw attorneys to have them as well (e. g., to process ‘Top Secret’ investigations). In some cases, the chief paralegal NCO and legal administrator may also require ‘Top Secret’ clearances (e.g., to allow them to fill in for other OSJA personnel).

RECOMMENDATION: Sustain. Units should check the status of security clearances early, and check often upon the status of those pending approval to ensure applications are not lost or incomplete. The issue of ‘Top Secret’ clearances is a consideration at the outset if an OSJA expects to rotate attorneys and paralegals midway through the deployment.⁵⁷⁰

ISSUE: Security clearance for MNF-I augmentees

DECISION: A ‘Secret’ level clearance is adequate 95% of the time for an International and Operational Law Branch attorney at MNF-I. However, those with only a ‘Secret’ clearance had to vacate any meetings requiring a ‘Top Secret’ clearance. Others in the office had to attend even if they had not been initially assigned the issue in question.

RECOMMENDATION: Improve. If possible, those entering into theater to serve at the International and Operational Law Branch at MNF-I OSJA should attempt to obtain at least a ‘Top Secret’ clearance before deploying.⁵⁷¹

OEF **ISSUE:** Need for higher level security clearances

DECISION: There is a need within the legal office for levels of access beyond just SECRET.

RECOMMENDATION: In addition to the SJA, DSJA, legal administrator, and SGM, the DetOps attorney, the OpLaw attorney, and the AdLaw attorney all should carry TOP SECRET (TS)/Sensitive Compartmentalized Information (SCI) clearances. This is especially true for the DetOps attorney. Additionally, the appropriate headquarters should read these individuals on to those programs for which they will be providing legal advice. Both the 160th Special Operations Aviation Regiment and CENTCOM performed this function for this unit.⁵⁷²

X.F.2. Work Schedules

OIF **ISSUE:** Determining requirement to staff the legal office 24/7

⁵⁶⁹ *Id.*

⁵⁷⁰ 4ID 2009 OIF AAR, *supra* note 4.

⁵⁷¹ MNF-I Individual Augmentee MAY 2009 OIF AAR, *supra* note 42.

⁵⁷² 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

DOTMLPF & COUNTRY MATERIALS

DECISION: The JAs initially staffed their office 24/7, but the nature of their mission did not require this, either at Camp Liberty or at FOB Warhorse. After they ceased 24/7 operations, staff sections who required legal advice after office hours called the senior paralegal NCO, who located the required JA.

RECOMMENDATION: Sustain.⁵⁷³

ISSUE: Office manning

DECISION: This BCT was assigned two JAs, a major and a captain. Both worked in the same office, at the brigade headquarters. The captain (TC) attended the morning shift change at 0930 and the major (BJA) attended the evening one at 2130. The BJA began to attend both shift changes, but ceased doing so because of demand. The BJA attended all the meetings, including XO sync as well as plans, targeting, reconstruction working groups, commander update briefings, and battle update assessments. The BCT previously in the battlespace had held separate lethal and non-lethal targeting meetings, but this BCT combined both.

RECOMMENDATION: Sustain.⁵⁷⁴

ISSUE: 24-hour operations

DECISION: The OSJA maintained 24-hour operations on the division operation center (DOC) floor. In addition, during periods in which they had extra attorneys, they ran a night shift in other sections. This worked out well in the administrative law section, because the night shift attorneys were able to review more investigations and other actions without fielding phone calls.

RECOMMENDATION: Sustain if personnel resources permit.⁵⁷⁵

ISSUE: Typical working hours

DECISION: One JA would arrive at the office around 0900 in the morning and the other around 1200. The first would stay at the office until about 2400 to 0100 and the other would stay until just before sunrise. The hours of the day the enemy came out to fight drove the office hours.

RECOMMENDATION: Sustain. The BJA allowed Sundays as a day of rest when operations allowed. However, no one ever actually took Sunday off. The operational tempo and the fact there was nothing to do on the FOB except work meant everyone always worked on Sundays. It was not a requirement anyone report for duty on Sundays, but everyone did anyway.⁵⁷⁶

OEF ISSUE: Staffing to deal with time zone challenges

DECISION: CONUS-based personnel would call at the beginning of their workday, which was actually at the very end of the day in Afghanistan. At about 1730-1830 local time, elements in the U.S. would ramp up their activity for the next eight hours. The problem of time differentials did require some adjustments.

⁵⁷³ 2SCR 2009 OIF AAR, *supra* note 24.

⁵⁷⁴ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 47.

⁵⁷⁵ 1AD 2009 OIF AAR, *supra* note 3.

⁵⁷⁶ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

TIP OF THE SPEAR

RECOMMENDATION: To meet this challenge and remain responsive to non-local requirements, the SJA and DSJA staggered their times in the office. There was a big overlap during the day in theater to deal with the local requirements. The field-grade Air Force judge advocates were also a great pillar of support in keeping things running smoothly and providing sound office leadership.⁵⁷⁷

[See also X.E. DOTMLPF—Leadership (Battle Rhythm & Morale)]

X.F.3. Personnel Actions (Awards, Evaluations, Adverse Actions)

OIF **ISSUE: Tracking officer evaluation reports (OERs) and awards for OSJA personnel**

DECISION: The OSJA used trackers for OERs and awards. The OER tracker included brigade JAs and trial counsels because the SJA was in their rating chain. When a new brigade arrived in theater, the legal administrator determined the status of its JAs' OERs, as well as the date on which their next OER was due. He then worked back from that point in order to request a support form from the JA in question and OER comments from the SJA. The legal administrator also tracked award submissions for OSJA personnel including, in some cases, awards for assignments at garrison before the deployment.

RECOMMENDATION: Sustain. OSJA personnel should be aware the SJA is responsible for a number of legal personnel beyond those within the OSJA itself.⁵⁷⁸

ISSUE: Bringing troublemakers forward

DECISION: In a push to increase the number of Soldiers deploying into theater, the command decided to bring all the problematic Soldiers forward. These Soldiers would then work in Iraq for 15 months and get chaptered out of the Army upon redeployment. This was unfair to the Soldier and caused problems within the unit.

RECOMMENDATION: Improve. Sending Soldiers forward pending either criminal or administrative action can be problematic. They are prone to conflict, which will only cause the command more problems. If the command intends to chapter them from the Army, leave those Soldiers home and let the rear detachment take the appropriate action.⁵⁷⁹

OEF **ISSUE: Different standards for Individual Augmentees (IAs)**

DECISION: The brigade had several IAs from sister services. Although these IAs' orders attached them to the brigade, the brigade commander did not have jurisdiction over them for administrative or punitive actions. Therefore, when an IA got into trouble, his immediate commander could provide input, but could not direct his/her punishment. Often, the parent chain of command would not support the recommendation of the immediate commander and the IA would go unpunished. This caused angst in the brigade because other Soldiers saw the disparate treatment and perceived a double standard.

⁵⁷⁷ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁵⁷⁸ 41D 2009 OIF AAR, *supra* note 4.

⁵⁷⁹ *Id.*

RECOMMENDATION: Improve. IAs should fall under the same jurisdiction as the rest of the brigade so the commander can treat all members of his/her unit equally.⁵⁸⁰

Evaluations & Rating Chain

OIF ISSUE: Paralegal rating chain

DECISION: The rating chain for paralegals dispersed to their squadrons did not include any legal personnel. However, in one case, the senior paralegal NCO provided input to S1 channels. In another case, the S1 obtained information from the civil affairs personnel with whom the paralegal had spent considerable time working.

RECOMMENDATION: Sustain. S1 personnel may not be aware of the full range of legal issues handled by the paralegal, and may appreciate an offer to provide legal input to the evaluation.⁵⁸¹

ISSUE: JA rating chain

DECISION: The regimental JA served three SJAs, and was not the RJA at the outset of the deployment. The move of a regiment/brigade once deployed, or the rotation of the supervising division headquarters, may mean the rating SJA barely knows the regimental/brigade JA and is even less likely to have any detailed knowledge of the TC. In this case, the RJA suspected the SJA would not be able to “pick the TC out of a lineup.”

RECOMMENDATION: Improve. SJAs and regimental/brigade JAs should discuss this issue and determine the best means of dealing with it in view of their particular circumstances.⁵⁸²

ISSUE: JA evaluation reports

DECISION: In the JA rating chain for administrative law attorneys, the chief of administrative law was the rater and the SJA was the senior rater.

RECOMMENDATION: Sustain.⁵⁸³

ISSUE: Division chief paralegal NCO review of Noncommissioned Officer Evaluation Reports (NCOERs)

DECISION: The unit’s chief paralegal NCO experienced some resistance with brigade combat team (BCT) sergeants major when trying to review NCOERs for NCOs at non-organic BCTs falling under this unit during the deployment.

RECOMMENDATION: BJAs should facilitate review of their subordinates’ NCOERs by the division chief paralegal in order to ensure their evaluations contain the right wording for career progression.⁵⁸⁴

ISSUE: Writing NCO evaluation reports (NCOERs)

⁵⁸⁰ 101st SUST BDE 2009 OEF AAR, *supra* note 182.

⁵⁸¹ 2SCR 2009 OIF AAR, *supra* note 24.

⁵⁸² *Id.*

⁵⁸³ 1AD 2009 OIF AAR, *supra* note 3.

⁵⁸⁴ *Id.*

TIP OF THE SPEAR

DECISION: The deployment was the first time the BJA rated an NCO. As a result, the BJA was ignorant of the evaluation process and had to learn while deployed. It was beneficial to communicate with the Sergeant Major about the NCOER process to get up to speed as quickly as possible.

RECOMMENDATION: JAs should receive instruction on how to draft an officer evaluation report (OER) and NCOER properly, as well as the counseling requirements. Identify before deployment Soldiers you will evaluate and do as much of the process up front as possible. If you do not know how to prepare an OER/NCOER, find someone who can teach you.⁵⁸⁵

ISSUE: BJA's rating chain

DECISION: During the deployment, the BJA received two OERs; the first one included the division SJA as the intermediate rater, the second one did not. Since the division SJA did not have much interaction with the BJA, he did not know enough about his work ethic and experience to rate him effectively.

RECOMMENDATION: Do not have the SJA in the rating chain. Keep the rating chain within the BCT.⁵⁸⁶

ISSUE: BJA's rating chain

DECISION: The brigade XO knows far more about the BJA's daily job performance than does the division SJA.

RECOMMENDATION: It is best that the rating chain for the BJA remain internal to the brigade. Remove the SJA as the BJA's rater. Instead, make the SJA the intermediate rater.⁵⁸⁷

ISSUE: Handling the requirement to rate the brigade JAs

DECISION: The SJA tried to talk to all of the corps separate brigade commanders. It was useful to let them know the SJA met weekly with the CG and about the policy of withholding senior level misconduct to the CG. During this conversation, the SJA would also bring up the need for the subordinate JA to talk freely with the JA technical chain and the need for the SJA to have a place in the rating chain of the JA.

RECOMMENDATION: Sustain. There never was an issue when the SJA had an opportunity to speak directly with the brigade commander and manage expectations.⁵⁸⁸

ISSUE: Rating chain for BJAs

DECISION: The division did not see Officer Evaluation Reports (OERs) for the deployed brigades falling under their operational control. However, the currently deployed brigades from the division will receive a rating from the deployed SJA for whom they work.

⁵⁸⁵ TF525 2009 OIF AAR, *supra* note 104.

⁵⁸⁶ 4BCT, 3ID 2009 OIF AAR, *supra* note 56.

⁵⁸⁷ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

⁵⁸⁸ XVIII ABC 2009 OIF AAR, *supra* note 6.

RECOMMENDATION: Whether or not the SJA of the higher deployed headquarters rates the BJAs depends on the timing. Where the timing works out, the deployed SJA should rate the BJAs in the brigades under the division's control.⁵⁸⁹

ISSUE: **Rating chain for the command paralegal NCO of the division and corps**

DECISION: FM 1-04 states, "The deputy SJA coordinates the efforts of the legal administrator and command or chief paralegal NCO throughout the OSJA." Some argue this indicates the deputy SJA should serve as the rater for the command paralegal NCO, a sergeant major (SGM). However, the SGM works directly for the SJA. Consequently, the rating chain of the SGM should mirror the rest of the division or corps staff. In every other staff section, the staff principal rates his or her SGM.

RECOMMENDATION: Clarify the doctrine to make it clear the SGM works directly for the SJA. Likewise, make it equally clear the SJA is the proper rater for his or her SGM.⁵⁹⁰

X.F.4. Rear Detachment Staffing & Reserve Augmentation

OIF **ISSUE:** **Determining rear detachment staffing requirement and obtaining RC support**

DECISION: JMTC required the regiment to provide two paralegals to staff the garrison legal center. The senior paralegal NCO chose to leave behind a paralegal who had just finished Advanced Individual Training (AIT) and could not go on his own to a squadron, and a paralegal who was soon to leave the JAG Corps. The latter had a good knowledge of military justice. A Reserve Component (RC) JA and two paralegals came to augment the legal center six months into the deployment. The legal center served about 600 Soldiers, conducted at least one court-martial per month (on average, two), and chaptered out more than 100 Soldiers during the deployment.

RECOMMENDATION: Improve. Legal teams requiring RC support during their deployments should be aware the processing of such requests is likely to require several months.⁵⁹¹

ISSUE: **Paralegal support on the rear detachment**

DECISION: The unit had only one paralegal to do the work of two to three paralegals. The military justice section of the rear detachment could have used two to three paralegals.

RECOMMENDATION: Evaluate the need for additional paralegal support in the rear for military justice.⁵⁹²

ISSUE: **Rear detachment JAs**

DECISION: The brigade left one trial counsel (TC) for rear detachment. This level of staffing was adequate for the workload.

RECOMMENDATION: Sustain. The brigades only need one TC for rear detachment duties.⁵⁹³

⁵⁸⁹ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁵⁹⁰ *Id.*

⁵⁹¹ 2SCR 2009 OIF AAR, *supra* note 24.

⁵⁹² 3ID 2008 OIF AAR, *supra* note 1.

⁵⁹³ *Id.*

TIP OF THE SPEAR

ISSUE: Leaving behind rear detachment personnel

DECISION: The BCT left behind one very competent 27D to staff the rear detachment legal shop. The rear-D 27D was able to assist the forward deployed legal team and helped facilitate the administrative separation process when the packets went back to home station.

RECOMMENDATION: Sustain.⁵⁹⁴

ISSUE: Establishment of the rear detachment as a separation authority

DECISION: In order to process the last few legal matters after the BCT commander had deployed, it is essential to have already set up the rear detachment commander as the separation authority.

RECOMMENDATION: Sustain.⁵⁹⁵

ISSUE: Leaving the TC behind to clean up legal issues

DECISION: Try to spend as little time in Kuwait as possible. The two weeks the BCT spent sitting in Kuwait was not legally-intensive and was wasted time for the BJA. One way to assist with this is to keep one of the captains with the rear detachment for as long as possible to clean up last minute legal issues (25-30 chapter separations were still pending). In addition, make it a topic of awareness for the brigade commander to ensure the command assists with expedited travel arrangements for the captain to “catch up” to the BCT in time for the transfer of authority.

RECOMMENDATION: Leave an officer behind for a short period to assist with unresolved legal actions.⁵⁹⁶

ISSUE: Personnel in the rear detachment

DECISION: The garrison does not disappear when you deploy. There is still a great deal of legal work in the rear.

RECOMMENDATION: Think very carefully very early in the process about whom you intend to leave back. The rear office will require experienced leadership to function effectively.⁵⁹⁷

ISSUE: Reservist support

DECISION: The OSJA requested reservist support approximately six to seven months before the deployment. However, due to the bureaucracy and mobilization process, the reservists did not arrive until two to three months after the deployment began. Two RC judge advocates deployed forward, while five RC personnel backfilled the Wiesbaden Legal Center. Because RC personnel could only deploy for twelve months, their later deployment ended up coinciding with division’s fifteen-month redeployment.

⁵⁹⁴ 1BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 47.

⁵⁹⁵ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

⁵⁹⁶ *Id.*

⁵⁹⁷ 1AD 2009 OIF AAR, *supra* note 3.

RECOMMENDATION: Improve. Units should request RC augmentee support as early as possible. The request must be by paragraph and line number (on an approved MTOE) and indicate whether the individual will deploy or not. This also helps to manage expectations and prevent later issues by indicating whether RC judge advocates will deploy or remain in the rear. Once mobilized, the RC Soldiers must work in the position for which the unit requested them. Moreover, once requested and the mobilization process begins, the unit cannot turn off the request.⁵⁹⁸

ISSUE: Under lapping Reserve support

DECISION: The division attorneys deployed in September 2007, and left a skeleton crew behind to run the rear detachment legal office. This 50% reduction in staff hampered the legal office, because the Reserve support package did not arrive in Germany until November 2007, and did actually start to work until the latter part of December. Moreover, the Reservists mobilized on 365-day orders, which meant they arrived after the main body deployed, and left before the main body returned. With an ever-increasing footprint due to the post closings at Darmstadt and Hanau, these factors reduced the rear detachment's ability to accomplish the legal mission.

RECOMMENDATION: Improve. Draft a request for Reserve support that provides a three-month cushion on either side of the deployment. Consider placing the mobilized Reservists on extended orders to facilitate required extensions and movements.⁵⁹⁹

ISSUE: Composition of the Reserve support package

DECISION: Among other Soldiers, a Reserve major and master sergeant made up part of the Reserve support package. After the original rear OIC PCS'd to the Graduate Course, it fell to an active duty captain JA to serve as OIC. Meanwhile an active duty sergeant first class ended up filling most of the role of senior paralegal NCO, rather than the USAR MSG. After some initial awkwardness, the major filled in brilliantly as the chief of client services. The MSG helped the office tremendously, but not in the critical areas needed.

RECOMMENDATION: Improve. Avoid situations where majors work for captains, and request a warrant officer, instead of a senior paralegal NCO, to backfill the division SJA office. Even where the unit requested an RC legal administrator, present rules do not allow for garrison backfill for a legal administrator who deploys, yet the functional need for the office remains.⁶⁰⁰

ISSUE: Civilian hires vs. Reserve support

DECISION: The rear detachment received excellent civilian support from the civilian hires made while the unit deployed. However, the CG decided to permit the temporary hires too late in the process to bring in employees from abroad, which proved problematic when seeking quality attorneys. Moreover, the hiring process delayed the arrival of the workers for so long that overall office productivity decreased.

RECOMMENDATION: Instead of complementing the rear detachment with civilian hires, request more Reserve support so personnel arrive in time to help stem the initial tide of work.⁶⁰¹

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.*

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.*

TIP OF THE SPEAR

ISSUE: Installation sponsors for mobilized reservists

DECISION: The unit designated one Soldier to serve as a point of contact for the eight mobilized reservists who were arriving in Germany. As a result, the mobilized reservists did not receive much of a welcome when they arrived in Germany and had to discover for themselves the location of important facilities such as the commissary, PX and mess hall.

RECOMMENDATION: Improve. The unit should provide a separate sponsor for each individual mobilized.⁶⁰²

ISSUE: Rear detachment leadership

DECISION: The rear detachment mission is extremely important. You need a very strong deputy serving in the rear detachment.

RECOMMENDATION: Carefully select your rear detachment personnel to ensure they have the strong leadership necessary for the challenges of the mission.⁶⁰³

ISSUE: Personnel necessary for the division rear detachment

DECISION: The bulk of the work was not military justice, so more than just trial counsel expertise is necessary. Two paralegals were also part of the rear detachment.

RECOMMENDATION: It definitely requires two attorneys consistently, but at times needs three JAs. Two paralegals, plus a noncommissioned officer in charge, are probably sufficient for enlisted staffing.⁶⁰⁴

ISSUE: Captains in majors' positions

DECISION: The rear detachment officer-in-charge (OIC) of the legal office was a captain with less than two years of service, although the duty position called for a major. More and more, placing a captain in a major's slot is not the exception, but the norm. This may not be the best service to the command and the individual JA when this happens. First, the captain is advising on many issues for which they are unaware of the potential consequences by mere lack of experience. Second, because of their rank, others do not see them as an equal staff member, on par with the other field grades on the commander's staff. Often, others shut captains out of meetings or dismiss their advice because of their rank. Last, the expectation is the captains do a major's job, with all of the responsibility and accountability. This is not fair to the captain or the command.

RECOMMENDATION: Improve. If the JAG Corps cannot staff the major positions with majors, only assign very senior captains to these positions.⁶⁰⁵

ISSUE: Lack of a dedicated rear detachment trial counsel

⁶⁰² *Id.*

⁶⁰³ 4ID 2009 OIF AAR, *supra* note 4.

⁶⁰⁴ *Id.*

⁶⁰⁵ *Id.*

DECISION: The rear detachment had a new trial counsel every 3-5 months. It was challenging for commanders and units to adjust to this high rate of turnover.

RECOMMENDATION: Improve. If possible, minimize changes in the rear detachment throughout the deployment in order to avoid unnecessary learning curves.⁶⁰⁶

ISSUE: Amount of experienced senior leadership remaining back with the rear detachment

DECISION: The senior leadership of the rear legal office came from the mobilized Reserve unit. Their lack of knowledge as to the typical manner in which the headquarters conducted business made it difficult for them to be fully effective as early as possible.

RECOMMENDATION: Someone from the active component with sufficient seniority and understanding of the typical processes should remain back in the rear detachment. At a minimum, one senior officer and one senior paralegal should stay back to provide leadership and “know-how” concerning the systems in place at the post, camp, or station. In this case, it may have been helpful to make the stay-back chief of justice the Deputy SJA to allow him/her the formal authority to provide that leadership.⁶⁰⁷

ISSUE: Splitting the SJA/Deputy SJA team upon deployment

DECISION: It is not a good idea to split the SJA/Deputy team between the forward and rear. Both members of this team should go forward together. However, there is a need for experienced active duty leadership in the rear.

RECOMMENDATION: Bring in or leave a senior active duty member back to fill one of the “Foundation of Four” slots remaining in the rear. This puts that active duty experience at the table during the discussion of any new ideas or initiatives.⁶⁰⁸

ISSUE: When to put “faces to spaces” for the Reserve augmentation

DECISION: The unit established an early link to determine what was needed both rear and forward. The two units locked this in by June for a January deployment.

RECOMMENDATION: The earlier you can reach this level of fidelity, the better. It allows people to begin preparing for their role in the mission.⁶⁰⁹

ISSUE: Relationship development with the supporting Legal Support Organization (LSO)

DECISION: The active component leadership made it a point to take a trip to meet with the LSO.

RECOMMENDATION: While it seems expensive to travel just to meet people, this was well worth it to begin to establish this relationship as early as possible.⁶¹⁰

ISSUE: Integration of the supporting LSOs

⁶⁰⁶ *Id.*

⁶⁰⁷ XVIII ABC 2009 OIF AAR, *supra* note 6.

⁶⁰⁸ *Id.*

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.*

TIP OF THE SPEAR

DECISION: The unit determined early who would be providing support. The “Foundation of Four” made a trip to visit this unit at their home station to meet them and exchange thoughts.

RECOMMENDATION: The earlier you can do this, the better. It is very important you make them a part of your team as soon as you can. They really appreciate the message of support sent by your willingness to go out to meet them.⁶¹¹

ISSUE: Leadership in the rear detachment

DECISION: The LTC deputy SJA initially stayed behind with the rear detachment.

RECOMMENDATION: This was effective to provide some active component experience initially in the rear detachment.⁶¹²

ISSUE: Timing of mission support element (MSE) authorizations

DECISION: The unit did not have its MSE authorizations very long before deployment. This actually worked to the advantage of the unit. MSE personnel were willing to extend, which allowed them to be present until after the unit returned.

RECOMMENDATION: Consider carefully the timing of the mobilization and the willingness of personnel to extend, as the limitation to 365 days can cause a lack of coverage at the end of the deployment.⁶¹³

ISSUE: Installation functions at home station

DECISION: With the modular force, you have to be prepared to have the entire installation run as normal in the absence of the division headquarters and regular OSJA.

RECOMMENDATION: The difficult determinations are whom you will take forward and whom you will leave behind to support the installation mission. Be honest in your assessments of who you need and what they can do.⁶¹⁴

ISSUE: Lack of a senior NCO in the rear

DECISION: The unit OSJA did not have a senior paralegal back in the rear detachment. There was a staff sergeant. While the staff sergeant did an admirable job, it was difficult for him to motivate the necessary support from the DSTB.

RECOMMENDATION: A senior paralegal in the rear detachment would have helped this. In this case, that role fell to the senior paralegal in the MSE.⁶¹⁵

OEF ISSUE: Relationship with the Legal Support Organization (LSO)

⁶¹¹ *Id.*

⁶¹² 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁶¹³ *Id.*

⁶¹⁴ *Id.*

⁶¹⁵ *Id.*

DECISION: The rear detachment enjoyed phenomenal support from the 139th LSO. Before deployment, the division legal professionals spent a drill weekend with their counterparts. This face-to-face meeting helped align expectations and ensured a rather seamless transfer when the division deployed. The quality, experience, and motivation of the RC JAs from the 139th LSO who augmented the Fort Campbell OSJA were amazing.

RECOMMENDATION: Early and frequent interaction with the LSO is crucial to the success of the rear detachment legal office.⁶¹⁶

ISSUE: Psyche of the civilian workforce

DECISION: There is a natural apprehension among most civilian employees as the unit prepares to deploy. These employees are concerned about who their new supervisors will be and whether there will be personality conflicts and the like. The civilian employees will benefit from frank discussions about the change in personnel and their role in the rear detachment organization.

RECOMMENDATION: The unit must remember the deployment not only adds stressors to the uniformed service members, but to the civilian workforce as well.⁶¹⁷

[See also VI.C. MILITARY JUSTICE—Provisional Units; X.B. DOTMLPF—Organization (Force Structure)(Reserve Component)]

X.G Facilities

OIF ISSUE: Event planning concerns

DECISION: The MNF-I SJA and Embassy RoL Coordinator wanted to host a working-level RoL conference in late December 2008 or early January 2009. However, planning such an event became increasingly difficult with the changes to MNF-I basing, including the return of the Republic Palace to the Government of Iraq (GoI). The RoL conference moved to mid-February, and the New Embassy Compound (NEC) hosted it.

RECOMMENDATION: JAs involved in planning any similar event must be aware of the difficulties involved in finding billeting and logistic support for 50+ personnel.⁶¹⁸

ISSUE: Location of legal offices within division headquarters

DECISION: The OSJA offices were located in a high-traffic area near the entrance of the division headquarters. The partitions separating the cubicles from the common walkways were only four feet high, allowing passers-by to see documents and computer screens within the OSJA area. Adjacent to the OSJA was the Public Affairs Officer (PAO), which routinely had civilian reporters present. People in PAO could easily overhear matters members of the OSJA were discussing. On several occasions, these reporters overheard and reported sensitive issues about detainees.

RECOMMENDATION: Improve. If possible, send an OSJA representative on the pre-deployment site survey (PDSS) to assess the quantity and quality of office space against the needs

⁶¹⁶ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁶¹⁷ *Id.*

⁶¹⁸ MNF-I Individual Augmentee FEB 2009 OIF AAR, *supra* note 162.

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of the legal mission. The OSJA must have a work environment conducive to legal work, with sufficient privacy to enable discussion of sensitive issues.⁶¹⁹

ISSUE: Fiscal law workspace

DECISION: The fiscal law department was next to PAO, OpLaw section, and the RoL section. The physical location of the fiscal law attorney was small and had no privacy. Computer access was adequate. The office shared a telephone with other departments sharing the same space. The personnel exercised great care when discussing or reviewing secret information.

RECOMMENDATION: Improve. The fiscal law office should not be in a place where others can overhear sensitive information. The physical location should be adequate to allow some degree of reasonable privacy and to allow attorney to protect unclassified but sensitive information. Before arrival in the Area of Operations (AO), ensure the chief paralegal coordinates space requirements with command sergeant major.⁶²⁰

ISSUE: Dining Facility (DFAC) reinforced roof structures

DECISION: The reinforced roof of the DFAC probably saved 300 lives.

RECOMMENDATION: Sustain. Although there were concerns over funding his project, it was well worth it.⁶²¹

ISSUE: Legal administrator supervision of contracted work to complete new legal center

DECISION: The OSJA was responsible for moving the camp's legal center midway through the deployment. This meant buying new furniture, as well as setting up a new courthouse (planned by the outgoing division, but not completed by the time of its departure). The legal administrator worked with the contractors on finishing touches such as wall paneling, floor coverings, and trim.

RECOMMENDATION: Sustain. The move of U.S. forces from Iraqi cities and force drawdowns may require OSJA personnel to be involved in infrastructure projects and office moves.⁶²²

ISSUE: Whether legal personnel should room together

DECISION: Both working and living in close proximity can allow small idiosyncrasies to become overwhelming annoyances. The office did have legal personnel who shared living quarters, but most who lived together did not work together.

RECOMMENDATION: There may be some advantage to having legal personnel room with personnel from other sections, as it is an opportunity to learn about what other officers do. However, you can have legal personnel room together successfully if you pair them properly.⁶²³

ISSUE: Moving a headquarters location

⁶¹⁹ 1AD 2009 OIF AAR, *supra* note 3.

⁶²⁰ *Id.*

⁶²¹ 4BCT, 10th MTN DIV 2009 OIF AAR, *supra* note 33.

⁶²² 4ID 2009 OIF AAR, *supra* note 4.

⁶²³ *Id.*

DECISION: There is no utility to moving personnel to a new location until the communications infrastructure is functional. There is nothing you can do in the current fight until the location is wired and running.

RECOMMENDATION: The days of piling paper manuals into a Tough Box are long past. If you do not have access to your electronic pipelines, you cannot provide the necessary support. Consequently, it does no good to rush your leadership to a new location. If you do, they will experience a great deal of frustrating downtime.⁶²⁴

ISSUE: Obtaining resources

DECISION: You have to fight for things. If you are not aggressive in trying to get what you need, the headquarters will inadvertently forget about the requirements of the OSJA. This includes things like office space, places on the manifest, and even day-to-day things.

RECOMMENDATION: Be aggressive about asking for what you need.⁶²⁵

ISSUE: Location of OSJA leadership in garrison

DECISION: The OSJA garrison facilities are in poor condition. The division offered to make a location in the main headquarters available for the leadership.

RECOMMENDATION: Separating legal operations into too many locations is detrimental to the mentoring and oversight responsibilities of the senior leadership.⁶²⁶

ISSUE: Separation of the BJA from the rest of the legal personnel

DECISION: The BCT fell in on an office arrangement in which the BJA worked at the BCT headquarters, while the rest of the legal personnel worked at the COB Adder consolidated legal office about a mile away. The BJA maintained this arrangement because she did not want to give up office space. However, having split operations was a huge mistake. In addition to the communications and logistical complications, the legal personnel in the other office did not have situational awareness of the battlespace. This made it hard for the BJA to assign work requiring staff coordination. Moreover, it hindered the ability of the captains to step into the BJA role when necessary, since they lacked knowledge of current operations and had not established a working relationship with the rest of the BCT staff.

RECOMMENDATION: Improve. All legal personnel should work at the BCT headquarters. The BJA has to convince the XO of the need for additional office space. The only separate office should be for client services. The BJA should ensure the captains build relationships with the BCT staff and keep abreast of current operations so they are confident in stepping up when necessary, and the rest of the staff has confidence in them. The incoming unit followed the BJA's advice and corrected this problem.⁶²⁷

OEF ISSUE: Storage space for sensitive compartmentalized information (SCI)

⁶²⁴ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁶²⁵ *Id.*

⁶²⁶ *Id.*

⁶²⁷ 4-1 CAV 2009 OIF AAR, *supra* note 59.

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DECISION: Although there may be authorization for open storage of ordinary Secret documents, SCI material requires dedicated safe storage space.

RECOMMENDATION: Offices need appropriate storage space for both physical and electronic SCI material.⁶²⁸

ISSUE: Lack of physical space

DECISION: The unit had 14 people in one room. While this can be great for camaraderie, productivity decreases tremendously. It simply takes longer to get things done with all of the distractions.

RECOMMENDATION: Be prepared for the limitations of your physical environment. Consider methods such as staggered workdays and flexible physical training hours to decrease the number of people who have to be present at the same time.⁶²⁹

ISSUE: Office set-up

DECISION: The leadership made a conscious decision to set the office up in an “L” formation with each attorney (with the exception of legal services) having a cubicle in an open bay. This set-up allowed for daily attorney interaction and increased office camaraderie.

RECOMMENDATION: The physical layout of the office is an important decision. Where practicable, a set-up that encourages teamwork will foster a greater esprit-de-corps.⁶³⁰

ISSUE: Lack of a courthouse

DECISION: This unit continued the efforts of its predecessor in trying to get a courthouse constructed on the installation. The lack of a courthouse posed multiple problems, including recurring use of the Commanding General’s conference room for military justice proceedings.

RECOMMENDATION: Units should place priority on constructing a dedicated courthouse in order to administer justice effectively in theater.⁶³¹

ISSUE: Cash collection at the dining facility (DFAC)

DECISION: Many of the unit’s visitors were on invitational travel orders and received per diem allowances. Under the travel regulations, these visitors must pay for their meals at the DFAC. However, the DFAC was not set up to collect cash or any other form of payment.

RECOMMENDATION: Units should proactively address this issue to ensure adherence to applicable travel and financial regulations.⁶³²

⁶²⁸ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

⁶²⁹ *Id.*

⁶³⁰ *Id.*

⁶³¹ *Id.*

⁶³² *Id.*

Legal Assistance Facilities

OIF ISSUE: The unit had use of a trailer for their legal shop

DECISION: The trailer had two separate sections, with JAs in one section and the four paralegals in the other. With both JAs working in the same office, one attorney would have to leave the room when the other JA had a legal assistance client. Because there was not enough space for four people to sit all day, the unit decided to divide the hours in the day. The unit also decided to offer extended hours, which worked well for them and for the individuals they served.

RECOMMENDATION: Sustain the use of flexible scheduling to make use of limited space.⁶³³

ISSUE: The lack of office space and privacy when advising clients

DECISION: Due to the lack of office space, legal assistance attorneys had to counsel their clients in a cubicle space with little to no privacy. As a result, the clients did not feel that they had privacy with their attorney, as anyone walking by, including their commanders, could see a legal assistance attorney was assisting them.

RECOMMENDATION: Improve. Although sometimes difficult to come by, it would be advantageous to find additional office space, especially for the legal assistance attorneys.⁶³⁴

ISSUE: Legal assistance facilities

DECISION: Having a separate legal assistance location was a great benefit.

RECOMMENDATION: If at all possible, find a separate space. This is importance for confidentiality and places the client more at ease.⁶³⁵

ISSUE: Space for legal assistance

DECISION: The unit had a dedicated annex for legal assistance, but client confidentiality is always a problem while deployed.

RECOMMENDATION: Make the best of what you have. Do not be afraid to take a client somewhere away from the office if the office is not sufficiently private for them to speak freely.⁶³⁶

Pre-Deployment Site Survey (PDSS)

OIF ISSUE: Obtaining information about the deployed office environment

DECISION: It is helpful to learn as much as possible about the facilities that will be available before deployment. This assists in planning for automation and other requirements, and helps to ensure OSJA personnel know what to expect upon arrival. The outgoing division provided the OSJA with an office diagram.

⁶³³ 3ID 2008 OIF AAR, *supra* note 1.

⁶³⁴ *Id.*

⁶³⁵ 1BCT, 4ID 2009 OIF AAR, *supra* note 5.

⁶³⁶ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

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RECOMMENDATION: Sustain. More knowledge allows better preparation and helps to reduce stress caused by the unknown.⁶³⁷

ISSUE: **SJA attendance during the PDSS**

DECISION: The SJA took part in the PDSS. The SJA learned that OSJA operations in theater are very similar to those in garrison.

RECOMMENDATION: The PDSS was valuable because the SJA returned with pictures of the work and housing areas. These allowed the SJA to eliminate the fear of the complete unknown for personnel who had never before deployed.⁶³⁸

ISSUE: **Participation in the PDSS by the SJA**

DECISION: The MNF-W SJA was not able to secure a space to attend the PDSS. Although it did not prevent him from successfully accomplishing the mission, it is something that would have been helpful had he been able to participate. The follow-on SJA was able to participate in the PDSS and this proved extremely beneficial in his preparation for deployment and significantly aided the turnover process between the two offices.

RECOMMENDATION: Participate in the PDSS, if feasible.⁶³⁹

ISSUE: **Utility of the PDSS**

DECISION: In the era of email and video teleconferencing, there is much less utility for the SJA to go on a PDSS. However, the OSJA is a large section, so it is valuable from the perspective of being in on the ground floor of allocating office space.

RECOMMENDATION: The SGM is a better candidate for PDSS travel than the SJA.⁶⁴⁰

OEF ISSUE: **Pre-Deployment Site Survey (PDSS)**

DECISION: The SJA and DSJA went on the PDSS for the unit. They received a copy of the hand receipt while they were there.

RECOMMENDATION: In retrospect, it may have been more valuable to send the legal administrator or SGM in lieu of the DSJA, given the focus on property and billeting.⁶⁴¹

⁶³⁷ 4ID 2009 OIF AAR, *supra* note 4.

⁶³⁸ *Id.*

⁶³⁹ 1 MEF (FWD) 2009 OIF AAR, *supra* note 77.

⁶⁴⁰ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁶⁴¹ 101st ABN DIV (AASLT) 2009 OEF AAR, *supra* note 8.

X.H. Country Materials

Host Nation Law & Legal System

OIF ISSUE: Knowledge of Iraqi legal system

DECISION: The JAs became familiar with relevant law, such as the Iraqi Constitution, Penal Code, and Law on Criminal Proceedings. They also used the CLAMO Rule of Law Handbook.

RECOMMENDATION: The RoL Handbook should contain a chapter on how the Iraqi legal system should work (e.g., the difference between a judicial investigator and investigative judge). (NOTE: the 2008 edition of the RoL Handbook contains a brief summary of Iraqi criminal law and procedure.)⁶⁴²

ISSUE: Host nation law

DECISION: There are no pre-existing programs aimed at indoctrinating deploying JAs in the basics of Iraqi law, so they are on their own to prepare for this aspect of the mission.

RECOMMENDATION: Improve. When the U.S. operated under various United Nations Security Council Resolutions, this void may have been acceptable. However, now that the Security Agreement is in place, the JAG Corps must lean forward in preparing its lawyers to confront the significance and impact of host nation laws on U.S. operations. Obtaining slots in Army-wide courses may help, but a comparative law course at TJAGLCS may offer the most bang for the buck. The JAG Corps may also consider employing Iraqi attorneys (or Dan Stigall, an Iraqi legal expert actually in the Army) to develop a curriculum suitable for instruction.⁶⁴³

ISSUE: Pre-deployment legal training materials on Iraqi Law

DECISION: Iraqi Law education and materials would have been beneficial.

RECOMMENDATION: Improve.⁶⁴⁴

ISSUE: Knowledge of Iraqi law

DECISION: Know the Iraqi constitution, the criminal code, and the criminal procedure before deploying. The MNF-I RoL section had a tremendous website with a wealth of information on Iraqi law. In addition, MNF-I was responsive to questions. Before deployment, an OpLaw attorney provided a brief on Iraqi law to the staff during a command-sponsored brownbag lunch.

RECOMMENDATION: Sustain. JAs must be conversant in Iraqi law.⁶⁴⁵

ISSUE: Post-Security Agreement knowledge of Iraqi law

DECISION: Everyone giving OpLaw advice should be thoroughly familiar with Iraqi law.

⁶⁴² 2SCR 2009 OIF AAR, *supra* note 24.

⁶⁴³ 2BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 48.

⁶⁴⁴ 3BCT, 101st ABN DIV (AASLT) 2009 OIF AAR, *supra* note 46.

⁶⁴⁵ 1AD 2009 OIF AAR, *supra* note 3.

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RECOMMENDATION: Knowledge of the local law is essential in the post-SA era.⁶⁴⁶

ISSUE: **Ready reference for Iraqi law**

DECISION: Compile a comprehensive collection of the most important Iraqi laws and their interpretations.

RECOMMENDATION: Although MNC-I had a subject matter expert in Iraqi law, a ready reference book or searchable electronic repository containing the essential Iraqi law is needed.⁶⁴⁷

Cultural Awareness

OIF ISSUE: **Cultural awareness for OSJA personnel**

DECISION: OSJA personnel received cultural awareness training before deployment, and the outgoing unit briefed them on this as well. It is helpful to know “dos and don’ts.” Many OSJA personnel must work with host nation personnel (e.g., in doing claims, detention, RoL, etc.). The DetOps attorneys suggested any personnel responsible for detention facilities should receive language and cultural interaction training. While the division Inspector General spoke to detainees held in division facilities, the DetOps attorney would have done so if he had not. During this deployment, even the legal administrator worked with host nation contracting personnel to complete the Camp Liberty courtroom and legal center.

Once deployed, OSJA personnel included an Iraqi-American attorney who was a useful source of local knowledge. He had worked in the office for four or five years and knew local investigative judges. He invited Iraq’s Chief Justice to speak to division personnel, and asked the Chief Appeals Judge to talk to a number of JAs.

RECOMMENDATION: Improve. DetOps JAs in particular assessed they had not spent sufficient time learning about Iraqi culture, language, and foreign disclosure during pre-deployment training. In addition to pre-deployment briefings and resources provided by the outgoing unit, OSJA personnel may find it helpful to use resources such as Rosetta Stone language training.⁶⁴⁸

ISSUE: **History and culture of Iraq**

DECISION: In preparation for deployment, the TC read the book Understanding Iraq by William Polk and the U.S. Army publication, Instructions for American Servicemen in Iraq During World War II. Both of these resources proved helpful to understanding the history and culture of Iraq. In addition, he read a book on comparative trial systems to improve his knowledge of civil law systems. Finally, he read as much background as he could on the provinces for which his unit would be responsible.

RECOMMENDATION: Sustain. An understanding of the history, culture, and current events of your AO is critical.⁶⁴⁹

⁶⁴⁶ 10th MTN DIV 2009 OIF AAR, *supra* note 7.

⁶⁴⁷ *Id.*

⁶⁴⁸ 4ID 2009 OIF AAR, *supra* note 4.

⁶⁴⁹ 4-1 CAV 2009 OIF AAR, *supra* note 59.

APPENDIX A. JAGC Lessons Learned Format

This appendix provides the format the U.S. Army Judge Advocate General's Corps (JAGC) uses to capture legal lessons learned. The format is based upon the six core legal disciplines, the emerging areas that U.S. forces practice in multinational, interagency, and civil support operations, and the Joint Vision 2020 concept of doctrine, organization, training, materiel, leadership, personnel, and facilities (DOTMLPF).

Units draft their After Action Reports (AARs) using the issue, decision, and recommendation (IDR) methodology. These reports address particular issues in discrete areas of the law the command and legal personnel faced during operations, as follows:

ISSUE: Define the issue confronted.

DECISION: How was the issue resolved and what was the rationale?

RECOMMENDATION: What should be sustained or improved in this particular area to assist addressing this issue in the future?

I. International and Operational Law

- A. Chemical Biological, Radiological, Nuclear, and High-yield Explosives
 - 1. Chemical Weapons/Riot Control Agents
 - 2. Biological Weapons
 - 3. Nuclear Weapons (components or nuclear materials (e.g. uranium, plutonium))
 - 4. Delivery Systems for Chemical, Biological and Nuclear Weapons
 - 5. High Yield Explosives
- B. Artifacts and War Trophies
 - 1. Artifacts
 - 2. War Trophies
- C. Civil Affairs
- D. Civilians on the Battlefield/Contractors
- E. Detention Operations/Prisoner of War Issues
 - 1. Article 5 Tribunals
 - 2. Article 78 Reviews
 - 3. Code of Conduct
 - 4. Detainees and Detention Operations
- F. Environmental
 - 1. Environmental Damage from Military Operations
 - 2. Environmental Issues of Concern from Civilian Activities or Sabotage
- G. International Assistance/Relations
 - 1. U.S. Government/Host Nation (HN) Interaction
 - 2. U.S. Government/Multinational Interaction
 - 3. U.S. Government/International Organization Interaction
 - 4. U.S. Government/Non-Governmental Organization Interaction
- H. Humanitarian and Civic Assistance
- I. Human Rights Law
- J. Information Operations

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- K. Intelligence Law
- L. Interrogations
- M. Law of War (LoW)/Law of Armed Conflict (LOAC)
 - 1. Training
 - 2. Violations
- N. Legal Basis for Conducting Operations
 - 1. Security Council Resolutions
 - 2. United Nations Reports
- O. Rule of Law (RoL)/Judicial Reform
- P. Stability Operations
- Q. Rules of Engagement (ROE)/Targeting
- R. Treaties & Other International Agreements/Arrangements
 - 1. Asylum
 - 2. Status-of-Forces Agreements
- S. Weapon Systems
 - 1. Legal Review on Weapons
 - 2. Lethal Weapons
 - 3. Less than Lethal Weapons

II. Administrative and Civil Law

- A. Army & Air Force Exchange Service
- B. Customs and Passports
- C. Drawdowns
- D. Ethics/Joint Ethics Regulation
- E. Freedom of Information Act (FOIA)/Privacy Act
- F. Inspections
- G. Internet Use
- H. Investigations
 - 1. 15-6
 - 2. Line of Duty
 - 3. Mishap and Safety Investigation
 - 4. Financial Liability Investigations of Property Loss
- I. Labor/Employment Law
- J. Law of Military Installations
- K. Medical Issues
- L. Military Personnel Law
 - 1. Administrative Separations
 - 2. Conscientious Objectors
 - 3. Evaluation Reports
 - a. Enlisted
 - b. Officer
 - 4. Females in Combat
 - 5. Hazing
 - 6. Homosexuality
 - 7. Lautenberg Amendment
 - 8. Letters of Reprimand
 - 9. Relief for Cause
- M. Morale, Welfare and Recreation

APPENDIX A: JAGC LESSONS LEARNED FORMAT

III. Contract and Fiscal Law

- A. Contract Law
- B. Deployed Contracting
- C. Fiscal Law
 - 1. Acquisition Cross-Servicing Agreements (ACSAs)
 - 2. General
- D. Logistics Civil Augmentation Program (LOGCAP) Contracting

IV. Claims

- A. Foreign Claims
 - 1. Individual and Corporate Claims Against the U.S.
 - 2. Claims of Foreign Governments
 - 3. Claims Within the HN that Could Affect U.S. Interests or Operations
- B. Personnel Claims
- C. Solatia

V. Legal Assistance

- A. Children
 - 1. Adoption
 - 2. Custody
 - 3. Paternity
 - 4. Child Support
- B. Citizenship
- C. Debtor/Creditor Issues
- D. Divorce
- E. Powers of Attorney
- F. Voting
- G. Servicemembers Civil Relief Act (SCRA)
- H. Uniformed Services Employment and Reemployment Rights Act (USERRA)
- I. Wills

VI. Military Justice

- A. General Orders
- B. Judiciary
- C. Jurisdiction
- D. Magistrates
- E. Provisional Units
- F. Searches
- G. Trial Defense Service (TDS)
- H. Trial Logistics
- I. Urinalysis Program
- J. Victim Witness Liaison Program

VII. Multinational Operations

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VIII. Interagency Operations

- A. Interagency Coordination
- B. Points of Contact

IX. Homeland Security Operations

- A. Homeland Defense
 - 1. Defense Support to Civilian Authorities
 - a. Military Support to Civilian Law Enforcement & Posse Comitatus Act
 - b. Special Events
 - c. Civil Disturbances
 - 2. Port Security & Customs
- B. Consequence Management
 - 1. Disaster Relief
 - 2. Weapons of Mass Destruction (WMD)
- C. Counterdrug Operations
- D. Counterterrorism
- E. Intelligence Law & Policy Considerations
- F. Rules for the Use of Force
- G. Status & Relationships of Different Agencies and Sub-Agencies Participating in Homeland Security Operations
- H. Funding

X. Doctrine, Organization, Training, Material, Leadership, Personnel, & Facilities (DOTMLPF) and Country Materials

- A. Doctrine
- B. Organization (Force Structure)
- C. Training, Military Decision Making Process (MDMP), and Readiness
 - 1. Army
 - a. Annexes
 - b. Field Standing Operating Procedures
 - c. MDMP
 - d. Office Mission Essential Task List
 - 2. Combat Training Centers
 - a. Battle Command Training Program (BCTP)
 - b. Combined Maneuver Training Center (CMTC)
 - c. Joint Readiness Training Center (JRTC)
 - d. National Training Center (NTC)
 - 3. Predeployment Training Materials
 - 4. Service Academies
- D. Material
- E. Leadership
- F. Personnel
- G. Facilities
- H. Country Materials

APPENDIX B. Unit Overviews

The following overviews provide background information on the units whose After Action Reports (AARs) make up this volume. The intent of this information is to provide context for their AAR comments.

Iraq – Operation Iraqi Freedom

XVIII Airborne Corps served as Multi-National Corps – Iraq (MNC-I) from February 2008 to April 2009. The corps headquarters assumed authority of MNC-I in the midst of the “surge,” successfully completing a 15-month deployment. During this time, Iraq held secure provincial elections, the U.S. and Iraq signed the Security Agreement, and coalition forces conducted innumerable successful counterterrorism operations. When XVIII Airborne Corps arrived in theater, Iraq had more than 700 attacks during a one-week period. When they redeployed, attacks had decreased to less than 100 per week. MNC-I successfully partnered with Iraqi Security Forces (ISF) to ensure the success of Operation Charge of the Knights, in which the ISF drove Muqtada al-Sadr’s Mahdi Army out of the city of Basra.

1st Armored Division (1AD) deployed to Northern Iraq in September 2007 and assumed authority of Multi-National Division – North (MND-N) near the end of the “surge.” 1AD successfully served as MND-N from September 2007 through December 2008. MND-N is geographically and ethnically diverse and consists of seven Iraqi provinces north of Baghdad. MND-N’s troop strength was roughly 30,000 U.S. troops and four to five Iraqi divisions. During its deployment, 1AD, by, with, and through its Iraqi counterparts, successfully coordinated counterinsurgency operations that allowed for the successful implementation of the Security Agreement in January 2009.

3d Infantry Division (3ID) served as Multi-National Division – Center (MND-C) from March 2007 to June 2008. The division headquarters, consisting of approximately 1000 Soldiers, assumed authority of MND-C in the midst of the “surge.” MND-C consisted of four Iraqi provinces south of Baghdad (Babil, Karbala, Najaf, and Wasit), roughly the size of the state of West Virginia. During its 15-month deployment, 3ID conducted more than a dozen operations to establish security and worked tirelessly to rebuild the government and economic capacity of its provinces. At the conclusion of its deployment, 3ID turned what was initially a sanctuary for al-Qaeda in Iraq into an area that was seeing economic resurgence due to the improved security situation in the region.

4th Infantry Division (4ID) served as Multi-National Division – Baghdad (MND-B) from November 2007 to February 2009. As MND-B, 4ID’s area of operations (AO) consisted of the Iraqi province of Baghdad. 4ID initially took over as MND-B near the end of the “surge.” At that time, the number of lethal attacks was still high. However, as the mindset of the forces and the population changed, MND-B was able to transition its focus to training the Iraqi Police (IP) and establishing civil control of Baghdad.

10th Mountain Division (10th MTN DIV) deployed from May 2008 to May 2009, taking over for 3ID as MND-C. Originally, 10th MTN DIV controlled 5-6 brigades and covered eight provinces. In April 2009, the division took leadership of the Basra province, incorporating what was Multi-National Division – Southeast into MND-C, ultimately forming Multi-National

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Division – South (MND-S). Their operating area contained many multinational forces, including the Polish, British, and Georgians. Additionally, the division worked with an Italian provincial reconstruction team (PRT) in one province. Overall, there was not a great deal of kinetic activity in the operating area. However, some cities were significantly less stable than others.

I Marine Expeditionary Force (Forward) (I MEF (FWD)) served as Multi-National Force – West (MNF-W) from February 2008 to February 2009. MNF-W's AO consisted of one province, Al Anbar, which is roughly the size of the state of North Carolina. As MNF-W, I MEF (FWD) fell directly under Multi-National Corps – Iraq (MNC-I) in the chain of command. MNF-W controlled Regimental Combat Teams (RCTs) 1 and 5, the 1st Marine Logistics Group (Forward), the 1st Marine Aircraft Wing (Forward), and a number of U.S. Army, Iraqi, and Coalition units. During its 12-month deployment, I MEF (FWD) and its partners in the Iraqi Security Forces (ISF) made tangible and long-lasting contributions to the overall security situation in Al Anbar, which helped usher in an era of peace and prosperity in the province.

II Marine Expeditionary Force (Forward) (II MEF (FWD)) served as MNF-W from February 2007 to February 2008. As MNF-W, II MEF (FWD) fell directly under MNC-I in the chain of command. MNF-W controlled Regimental Combat Teams (RCTs) 2 and 6, the 2d Marine Logistics Group (Forward), the 2d Marine Aircraft Wing (Forward), and a number of U.S. Army (including the 1st Brigade Combat Team, 3ID), Iraqi, and Coalition units. During its 12-month deployment, II MEF (FWD) saw a dramatic change in the security situation on the ground. Initially, Al Anbar was a haven for al-Qaeda in Iraq. However, during its 12-month deployment, II MEF (FWD) saw dramatic improvements in security and stability throughout Al Anbar.

2d Stryker Cavalry Regiment (2SCR) deployed to Iraq from August 2007 to May 2008, in the midst of the “surge.” The unit's initial AO was in Baghdad under MND-B. During the deployment, 2SCR moved to the Diyala province, in northern Iraq, operating under MND-N. The regimental judge advocate's (RJA) office consisted of three judge advocate (JA) captains and five paralegals. The regiment dispersed its paralegals while in Baghdad, but consolidated them after the move to FOB Warhorse.

3d Armored Cavalry Regiment (3ACR) served in Iraq from November 2007 to January 2009. Its AO was northern Iraq, comprising Ninewa Province and a portion of *Salah ad-Din* Province. The AO included Mosul (a city of several million people located on the Tigris River), the Tigris River valley to the south, and a long border with Syria to the west. 3ACR, the Army's only heavy armored cavalry regiment, was one of four (later three) brigade/regimental-level maneuver units operating under MND-N. The 3ACR legal team included six attorneys, two of which were mobilized reservists, and ten paralegals.

Regimental Combat Team-5 (RCT-5) deployed to western Al Anbar province from January 2008 to January 2009 (the AAR in this volume covers operations through July 2008). RCT-5's higher headquarters was MNF-W. RCT-5 controlled anywhere from 4-5 battalions, and its AO covered the entire western portion of Al Anbar province—a 30,000 square mile area, roughly the size of South Carolina, or about 19.5% of Iraq. The RCT-5 JA's office was comprised of a lieutenant colonel as the Regimental Judge Advocate (RJA), a captain as the Deputy RJA, and one paralegal. During its 12-month deployment, RCT-5, by, with, and through its partners in the ISF, made substantial and enduring contributions to the overall security situation in western Al Anbar, which helped usher in an era of peace and prosperity in the province.

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4th Brigade Combat Team, 1st Cavalry Division (4-1 CAV) deployed to Iraq from June 2008 through June 2009, serving under MND-C, which became MND-S. The BCT established its headquarters at Contingency Operating Base (COB) Adder/Tallil Air Base, near Nasiriyah in Dhi Qar Province. The 4-1 CAV AO consisted of three provinces in Southern Iraq: Muthanna, which borders Saudi Arabia; Dhi Qar; and Maysan, which borders Iran. All three were Provincial Iraqi Control (PIC) provinces, which meant the ISF had the lead in most operations. The 4-1 CAV legal team included a major as the Brigade Judge Advocate (BJA), a captain as the trial counsel (TC), a reserve component captain, and five paralegals.

4th Brigade Combat Team, 3rd Infantry Division (4BCT, 3ID) deployed to southern Iraq from October 2007 to December 2008, in the midst of the “surge.” 4BCT’s AO was located in MND-C. At the beginning of its deployment, 4BCT, 3ID commenced counterinsurgency operations aimed at stopping the flow of weapons and terrorists into southern Iraq and Baghdad. The 4BCT Soldiers worked with their Iraqi Security Force (ISF) counterparts in missions to keep insurgents out and reduce the sectarian violence that plagued the area. As terrorist and militia influence in the AO diminished, 4BCT’s efforts shifted to reconstruction and building the capacity of local government to serve the basic needs of citizens in the area. 4BCT transferred authority at FOB Kalsu December 18, 2008 and returned to Fort Stewart, Georgia, after their 15-month deployment.

1st Brigade Combat Team, 4th Infantry Division (1BCT, 4ID) deployed to the Al Rashid District, Baghdad, Iraq from March 2008 to March 2009, serving under MND-B. For the initial month, the BCT saw significant kinetic activity, but this quickly transitioned to what became primarily a training team mission and a great deal of reconstruction work. The BCT legal team consisted of three JAs, one of whom was a mobilized Reservist in the rank of major, one E-7 non-commissioned officer in charge, and six paralegals.

3d Brigade Combat Team, 4th Infantry Division (3BCT, 4ID) deployed to Eastern Baghdad, Iraq from late November 2007, near the end of the “surge,” to February 2009. 3BCT served under MND-B for the 15-month deployment. Given that its AO included Sadr City, 3BCT, 4ID was the main effort in MND-B. The deployment essentially consisted of 4 phases: (1) the 3-month long relief in place(RIP)/transition of authority (TOA), (2) the Sadr City fight, (3) the rebuilding of Sadr City (and numerous fiscal issues), and (4) the implementation of the Security Agreement and warrant-based targeting. The legal team initially consisted of 2 JA’s (a major and a captain) and 5 paralegals forward, with 1 rear detachment paralegal. In addition, the BCT received a second captain JA for approximately 8 months of the deployment.

4th Brigade Combat Team, 10th Mountain Division deployed from Fort Polk, Louisiana to Baghdad (FOB Loyalty) from November 2007 to February 2009, near the end of the “surge.” The BCT served directly under MND-B. Their operating environment in eastern Baghdad encompassed the districts of Rusafa, Karadah and Nissan. 4BCT’s primary missions were the training of ISF and maintaining security in the AO. Within its three districts, there were nearly 15,000 Iraqi Army personnel and Iraqi Police. Later, Sons of Iraq joined the ISF to augment Gol security and stability. During the BCT’s deployment, the improved security situation enabled 4BCT to foster a return to normalcy for Iraqis in eastern Baghdad by conducting humanitarian aid missions, providing improved essential services, and promoting economic growth.

2d Stryker Brigade Combat Team, 25th Infantry Division (2/25 SBCT) and its 4,500 Soldiers deployed to northwest Baghdad from December 2007 to March 2009, near the end of the “surge.” 2/25 SBCT belonged to MND-N and was responsible for an AO of 1,300 square miles.

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2/25 SBCT conducted more than 30,000 patrols, many of them with its ISF counterparts, which led to the establishment of a safe, secure, and stable environment for the Iraqi people. In addition to combat operations, 2/25 SBCT was instrumental in rebuilding infrastructure, such as electrical systems and transportation networks. 2/25 SBCT seized more than 1,100 weapons caches, completed numerous school and hospital improvement projects, and facilitated micro-grants to Iraqi business owners.

1st Brigade Combat Team, 101st Airborne Division (Air Assault) (1/101 BCT)

deployed to Iraq from September 2007 to November 2008, as part of the “surge.” The 1BCT’s AO was in Salah-al-Din province, in northern Iraq, operating under MND-N. 1/101 BCT was a traditional BCT with 2 infantry battalions, a cavalry squadron, a field artillery battalion, a brigade support battalion, and a special troops battalion. The BCT legal team consisted of a BJA major, one captain, and seven paralegals. One additional paralegal remained at Fort Campbell to work with the rear detachment.

2d Brigade Combat Team, 101st Airborne Division (Air Assault) (2/101 BCT)

deployed from Fort Campbell, Kentucky to Iraq from October 2007 to November 2008, near the end of the “surge.” President Bush shortened its tour to 13 months from the expected 15 months. The unit served in northwest Baghdad under MND-B, where violence plunged, including a 50 percent decline in overall attacks in the area and a more than 90 percent drop in murders. Success with improving the security situation and stemming violence across the unit’s area of operations enabled the early redeployment. With the restoration of security, the Soldiers of 2/101 focused on reconstruction efforts—including the rebuilding of several schools—and allowed for the return to normalcy for the Iraqis. The 2/101 legal team consisted of two attorneys (a major and a captain) for most of the deployment. Approximately eight months into the deployment, the BCT received a third attorney.

3d Brigade Combat Team, 101st Airborne Division (Air Assault) (3/101 BCT)

deployed to Iraq from September 2007 to November 2008 in the midst of the “surge.” 3/101 BCT was one of four BCTs operating under MND-C. Its AO was the southern belt of Baghdad, Iraq, a historically bad area. 3/101 BCT, which included approximately 3,500 Soldiers, consisted of two infantry battalions, a cavalry squadron, a field artillery battalion, a brigade support battalion, a special troops battalion, and an armor company. The BCT legal team consisted of one BJA major, two captains, six paralegals, and one generator mechanic who was transferring to be a paralegal. One paralegal remained at Fort Campbell to work with the rear detachment.

41st Fires Brigade deployed to Iraq from June 2008 to July 2009 as a brigade minus a battalion, leaving two organic battalions and a total personnel strength of about 1,800. Its AO was Wasit Province, south of Baghdad. The brigade headquarters was on FOB Delta, near the provincial capital of Al Kut. The brigade fell under MND-C, which subsequently became MND-S. At the outset of the deployment, ISF began standing up in the province. Wasit Province returned to Provincial Iraqi Control (PIC) in October 2008. The brigade legal team consisted of two JA captains and four paralegals. The BJA worked extensively with the Wasit Provincial Reconstruction Team (PRT) Rule of Law Advisor (RLA), focusing on improving “due process” in the Iraqi legal system.

50th Infantry Brigade Combat Team (IBCT), N.J. Army National Guard

(NJARNG) deployed to Iraq from June 2008 to May 2009. During the deployment, the 50th IBCT did not function as a brigade, but rather the various units of the 50th IBCT proceeded to different locations/missions within Iraq. The Office of the Command Judge Advocate (OCJA)

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remained with the Joint Area Support Group-Central (JASG-C), which was a major subordinate command of Multi-National Force – Iraq (MNF-I) and the battle space owner of the International Zone (IZ), or “Green Zone,” in Baghdad. The JASG-C mission was to administer and secure the IZ. After January 1, 2009, the mission expanded to include the transfer of responsibility to secure the IZ to the Government of Iraq (GoI). The OCJA was responsible for rendering legal advice to the JASG-C, as well as operational law advice to the Joint Defense Operations Center (JDOC).

214th Fires Brigade deployed from Fort Sill, Oklahoma to Iraq from April 2007 to July 2008, in the midst of the “surge.” The brigade served directly under 3ID in MND-C, south of Baghdad. The brigade’s legal assets consisted of only one JA (a junior captain) and no paralegals.

525th Battlefield Surveillance Brigade (TF 525) deployed to Iraq from September 2007 to December 2008 in the midst of the “surge.” The unit deployed as the Army’s first battlefield surveillance brigade and reported directly to MNC-I. Though initially given a legacy military intelligence brigade’s mission to provide multi-disciplined intelligence assets to the Multi-National Divisions, MNC-I tasked the brigade with the additional responsibility of forming an Intelligence, Surveillance, and Reconnaissance (ISR) task force, Task Force 525 (TF 525). TF 525’s primary mission was to conduct ISR missions to identify and locate foreign terrorist networks and safe havens in northern Iraq.

1st Battalion, 9th Marines (1/9 Marines) deployed from Camp Lejeune, North Carolina to Ramadi, the provincial capital of Al Anbar, from March 2008 to October 2008. 1/9 fell directly under Regimental Combat Team-1 (RCT-1), which was subordinate to MNF-W. The legal support for 1/9 Marines consisted of one JA captain.

2d Battalion, 2d Marines (2/2 Marines) deployed to Al Qaim, located in the Al Anbar province of Iraq from January 2008 to November 2008. 2/2 Marines fell directly under RCT-5, which was subordinate to MNF-W. Al Qaim was the first part of Al Anbar province to effectively throw out or kill Al Qaeda, and therefore, by 2008 it was the most advanced city in Al Anbar both economically and politically. During its deployment, 2/2 Marines focused its efforts on aiding and training its ISF counterparts in counter-insurgency and security operations. The legal support for 2/2 Marines consisted of one JA captain. In addition, the JA received a staff sergeant, corporal, and lance corporal to assist with the detention operations mission.

Asymmetric Warfare Group (AWG) deployed to Iraq from November 2008 to April 2009. The AWG stood up in 2005 as part of the aftermath of the creation of the Joint Improvised Explosive Device (IED) Defeat Organization (JIEDDO), established when IEDs first became a problem in Iraq. The JIEDDO is a Department of the Army (DA)-level unit primarily staffed by field operators. AWG is a sister unit answering to the Army G-3, and responsible for examining emerging threats and determining how units should deal with them. AWG has four squadrons (A, B, C, and D), each of which is broken down into troops. Of those troops, at least one is in Iraq and one in Afghanistan at all times (i.e., a troop is designated as being there, but AWG personnel are assigned to that troop on a rotating basis). The AWG Iraq Troop was under the operational control (OPCON) of CENTCOM and the tactical control (TACON) of MNC-I. In late 2008, AWG Iraq Troop requested an AWG team to evaluate and propose best practices for warrant-based targeting and operations conducted pursuant to the Security Agreement. The three-person team (an operational specialist, intelligence analyst, and judge advocate) deployed in November 2008 and consisted of AWG members with law enforcement, intelligence, and prosecution backgrounds, respectively.

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Director, Interagency Rule of Law Coordinating Center (IROCC), a judge advocate colonel, deployed to Iraq from June 2008 to June 2009. Originally assigned to the U.S. Embassy, Baghdad Political Section's Office of Constitutional and Legislative Affairs, he assumed the newly-created position to coordinate the activities of military and civilian rule of law (RoL) actors throughout Iraq. As Director, IROCC, this JA was responsible to the MNF-I Staff Judge Advocate (SJA), and the U.S. Embassy Rule of Law Coordinator (RoLC). In April 2009, as part of the merging of senior U.S. forces headquarters in Iraq, this JA assumed responsibility for the Law and Order Task Force (LAOTF), a joint military and civilian (Department of Justice) organization providing legal and logistical support to the Central Criminal Court of Iraq (CCCI) at Rusafa, as well as the Rusafa Prison.

Individual Augmentee, MNF-I, Office of the Staff Judge Advocate (RoL Section), a Canadian judge advocate major, deployed to Iraq from October 2008 to December 2008. This individual augmentee worked in the MNF-I RoL section, whose primary mission was to assist the GoI in establishing the RoL throughout Iraq. The MNF-I RoL section is located at the New Embassy Compound (NEC) in Baghdad, Iraq.

Individual Augmentee, MNF-I, Office of the Staff Judge Advocate, a Coast Guard judge advocate, deployed to Iraq from January 2009 to April 2009. Although initially slated to serve in the MNF-I RoL Section, this individual augmentee performed duties across the legal spectrum.

Fiscal Law Attorney, MNF-W, was an individual augmentee who deployed to Iraq from February 2007 to July 2008, during the "surge." This Marine Corps judge advocate was the section officer in charge (OIC) of the MNF-W Fiscal Law section during this deployment.

Afghanistan – Operation Enduring Freedom

Combined Security Transition Command – Afghanistan (CSTC-A), in conjunction with the Government of the Islamic Republic of Afghanistan (GIROA), International Security Assistance Force (ISAF), and other international community partners, is responsible for plans and programs aimed at generating and developing the Afghan National Security Forces (ANSF) to enable GIROA to achieve security and stability in Afghanistan. The CSTC-A Office of the Staff Judge Advocate (OSJA) mission set is concentrated on three areas: command legal support, Ministry of Defense legal development, and Afghan National Army (ANA) legal development. Headquartered at Camp Eggers, the CSTC-A OSJA is a joint service, coalition organization with military personnel from the United States Army, Navy, Marine Corps, and Air Force, as well as military personnel from Canada and contracted civilian advisors.

101st Airborne Division (Air Assault) deployed to Afghanistan from April 2008 to June 2009 in support of Operation Enduring Freedom (OEF). The division headquarters, located at Bagram Airfield, served as the headquarters for both Combined Joint Task Force 101 (CJTF-101) and the NATO ISAF Regional Command-East (RC-East), commanding 12 brigade-sized subordinate commands and task forces. CJTF-101 also served initially as the U.S. National Command Element (NCE) for all U.S. forces in Afghanistan, until the creation of the separate U.S. Forces – Afghanistan (USFOR-A) command. RC-East consisted of 14 provinces, including much of the volatile border region between Afghanistan and Pakistan. The incoming 101st ABN DIV (AASLT) personnel fell in on a Joint Manning Document (JMD) that included Navy, Marine, Air Force, and U.S. Army Reserve (USAR) individual augmentee attorneys and paralegals. About half of the personnel assigned on the JMD remained with the CJTF-101 OSJA

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after the TOA on 8 April 2008. Personnel staying on included all the contract and fiscal law attorneys (USAF), the chief of military justice (USAR), and the chief of client services (USAR). There were typically 25-30 attorneys and paralegals in the CJTF-101 OSJA at Bagram Airfield, and 100-120 attorneys and paralegals throughout Afghanistan who fell under the technical supervision of CJTF-101.

4th Brigade Combat Team (BCT), 101st Airborne Division (Air Assault) (4/101 BCT) deployed to Afghanistan from March 2008 to March 2009. 4/101 BCT was part of the U.S.-led Regional Command East (RC East), under overall command of the International Security Assistance Force (ISAF). The BCT headquarters was at FOB Salerno in Khowst province, and its AO included the provinces of Paktika, Paktia, Khowst, Ghazni, Logar, and Wardak. The BCT legal team consisted of a BJA major, two JA captains (one of whom was a USAR individual augmentee), and eight paralegals. While the NCOIC and four of the paralegals were consolidated at the BCT headquarters, the remaining three paralegals were at outlying FOBs with their respective battalions.

101st Combat Aviation Brigade, 101st Airborne Division (Air Assault) (101st CAB) was deployed to Bagram Airfield (BAF) from December 2007 to December 2008 under the overall command of CJTF-101 as part of the Operation Enduring Freedom (OEF) mandate. Headquartered out of BAF, the brigade task force provided full spectrum aviation support to CJTF-82, CJTF-101, Combined Joint Special Operations Task Force (CJSOTF), and ISAF across an AO the size of Texas. ISAF and OEF ground troops in Afghanistan were often dependent upon 101st CAB aviation for transportation needs, logistical support, force protection measures, and security-reconnaissance patrols. The 101st CAB legal team consisted of a BJA major, a JA captain, and six paralegals, one of which was assigned to the National Guard intelligence battalion attached to the brigade during the deployment. While the attorneys, NCOIC, and two paralegals operated primarily on BAF, the 101st CAB had paralegals located with outlying units at FOB Salerno, Jalalabad Airfield (JAF), and Kandahar Airfield (KAF).

101st Sustainment Brigade, 101st Airborne Division (Air Assault) deployed from Fort Campbell to Afghanistan as part of OEF from January 2008 to February 2009 and served as the Joint Logistics Command (JLC) under CJTF-101. Based at Bagram Airfield (BAF), the JLC provided logistical support to coalition forces throughout Afghanistan. The JLC legal office consisted of one CJA and one NCOIC paralegal from the 101st Sustainment Brigade, as well as two battalion paralegals from nonorganic units attached to the brigade during deployment.

420th Engineer Brigade, a U.S. Army Reserve unit based in Texas, deployed to Afghanistan from May 2008 to May 2009 in support of Operation Enduring Freedom (OEF). Based at FOB Sharana in Paktika province, the brigade did not own battle space, but provided combat engineer support to CJTF-101 and ISAF units, including route clearance. The brigade's legal team consisted of three judge advocates and four paralegals.

Individual Augmentee, Afghan National Army (ANA) Legal Development Training Team (LDTT) deployed to Afghanistan intermittently from June 2008 to April 2009 as part of a contingent of U.S. and Canadian personnel augmenting CSTC-A. The overall purpose of the LDTT project was to develop capacity within the ANA to provide consistent, self-sustained, and accurate legal instruction. The short-term goal was to develop an ANA basic legal officer course (BLOC). The long-term intent was to have the ANA use the BLOC to develop future instruction. The target audience of the training was primarily Afghan legal officers (Afghan lawyers and non-lawyers). The mission culminated in the First ANA BLOC in March 2009.

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APPENDIX C. Glossary of Abbreviations & Acronyms

This glossary lists the abbreviations and acronyms used within this volume. In some cases, parenthetical information is included for clarification.

4421	Paralegal (USMC)
4429	Court Reporter (USMC)
27D	Paralegal Specialist (Army)
42A	Human Resource Specialist
AA	Active Army
AAA	Army Audit Agency
AAFES	Army and Air Force Exchange Service
AAR	After Action Review/Report
ABA	American Bar Association
ACCM	Army Compartmentalized Classification Management
ACLU	American Civil Liberties Union
ACR	Armored Cavalry Regiment
ACSA	Acquisition Cross-Servicing Agreement
ADA	Anti-Deficiency Act
ADCON	Administrative Control
AdLaw	Administrative Law
ADP	Automated Data Processing
ADSW	Active Duty for Special Work
AFN	Armed Forces Network
AIBA	Afghan Independent Bar Association
AIT	Advanced Individual Training
ANA	Afghan National Army
ANCOC	Advanced Non-Commissioned Officer Course
ANDF	Afghan National Detention Facility
ANP	Afghan National Police
ANSF	Afghan National Security Forces
AO	Area of Operations
AOB	Advanced Operating Base
AOR	Area of Responsibility
APFT	Army Physical Fitness Test
AR	Army Regulation
ARCENT	U.S. Army Central
ARoLP	Afghanistan Rule of Law Project
ARSIC	Army Regional Security Integration Command

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ASFF	Afghan Security Forces Funds
ASPA	American Servicemember's Protection Act
AT	Annual Training
AWG	Asymmetric Warfare Group
AWOL	Absent Without Leave
BAF	Bagram Airfield
BASEOPS	Base Operations
BATS	Biometric Automated Toolset System
BBA	Bilingual Bicultural Advisor
BCT	Brigade Combat Team
BCTP	Battle Command Training Program
BDE	Brigade
BJA	Brigade Judge Advocate
BJAMP	Brigade Judge Advocate Mission Primer
BN	Battalion
BN JA	Battalion Judge Advocate
BNCOC	Basic Non-Commissioned Officer Course
BOC	Baghdad Operations Command
BOCAT	Baghdad Operations Command Advisory Team
BOLC	Basic Officer Leader Course
BOLT	Brigade Operational Law Team
BTIF	Bagram Theater Internment Facility
BUA	Battle Update Assessment
BUB	Battle Update Brief
C2	Command and Control
CA	Civil Affairs
CAB	Combat Aviation Brigade
CAC	Common Access Card
CALL	Center for Army Lessons Learned
CAO	Casualty Assistance Office
CBRN	Chemical, Biological, Radiological, Nuclear
CCA	Contingency Contracting Authority
CCCI	Central Criminal Court of Iraq
CDE	Collateral Damage Estimation
CDR	Commander
CENTCOM	Central Command
CENTRIXS	Combined Enterprise Regional Information Exchange System
CERP	Commander's Emergency Response Program
CEXC	Combined Explosives Exploitation Cell
CF	Coalition Forces
CFC-A	Combined Forces Command – Afghanistan

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CG	Commanding General
CHOPS	Chief of Operations
CHU	Containerized Housing Unit
CIA	Central Intelligence Agency
CID	Criminal Investigation Division
CIDNE	Combined Information Data Network Exchange
CIL	Customary International Law
CITF	Corps Investigative Task Force; Criminal Investigation Task Force
CIZA	Competent Iraqi Authority
CJA	Command Judge Advocate
CJSOTF	Combined Joint Special Operations Task Force
CJTF	Combined/Joint Task Force
CLAMO	Center for Law and Military Operations
CLE	Continuing Legal Education
CLP	Combat Logistics Patrol
CMO	Civil Military Operations
CMOC	Civil Military Operations Center
CMTC	Combined Maneuver Training Center
COB	Contingency Operating Base
COC	Command Operations Center; Combat Operations Center
COG	Commander, Operations Group
COIN	Counterinsurgency
COJ	Chief of Justice
CONOC	Contractor Operations Center
CONUS	Continental United States
COR	Contracting Officer Representative
CoR	Council of Representatives
CP2CXC	Combined Pre- & Post-Capture Exploitation & Intelligence Cells
CPA	Coalition Provisional Authority
CPATT	Civilian Police Assistance Training Team
Cpl	Corporal (USMC)
CPOF	Command Post of the Future
CPX	Command Post Exercise
CRC	CONUS Replacement Center
CREST	Contingency Real Estate Support Team
CSM	Command Sergeant Major
CSSP	Corrections Systems Support Program (Afghanistan)
CSTC-A	Combined Security Transition Command – Afghanistan
CTC	Combat Training Center
CWO	Chief Warrant Officer
DA	Department of the Army

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DAPS	Defense Automated Printing Service
DCG	Deputy Commanding General
DCMA	Defense Contract Management Agency
DCP	Detainee Collection Point
DDR	Disarmament, Demobilization, and Reintegration Funds
DetOps	Detention Operations
DFAC	Dining Facility
DFR	Dropped From Rolls
DHA	Detainee Holding Area
DHS	Department of Homeland Security
DISCOM	Division Support Command
DMain	Division Main
DOC	Division Operations Center
DoD	Department of Defense
DoJ	Department of Justice
DoJ	Department of Justice
DoS	Department of State
DOTMLPF	Doctrine, Organization, Training, Materiel, Personnel, Leadership
DRA	Detention Review Authority
DRB	Detention Review Board
DSCA	Defense Security Cooperation Agency
DSJA	Deputy Staff Judge Advocate
DSTB	Division Special Troops Battalion
EACO	Eastern Area Counsel Office
ECP	Entry Control Point
EML	Environmental Morale Leave
EO	Executive Order; Equal Opportunity
EOD	Explosive Ordnance Disposal
EOF	Escalation of Force
ePRT	Embedded Provincial Reconstruction Team
EXSUM	Executive Summary
FAR	Federal Acquisition Regulation
FBCB2	Force XXI Battle Command, Brigade-and-Below
FBI	Federal Bureau of Investigations
FCA	Foreign Claims Act
FCC	Foreign Claims Commission
FCP	Family Care Plan
FDF	Family Deployment Fair
FDS	Field Detention Site
FEDLOG	Federal Logistics Data
FEPP	Foreign Excess Personal Property

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FLIPL	Financial Liability Investigation of Property Loss
FM	Field Manual
FMR	DoD Financial Management Regulation
FMS	Foreign Military Sales
FMV	Fair Market Value
FOB	Forward Operating Base
FOIA	Freedom of Information Act
FRAGO	Fragmentary order
FRG	Family Readiness Group
GAO	Government Accountability Office
GCM	General Court-Martial
GCMCA	General Court Martial Convening Authority
GIC	Government Information Center
GIRoA	Government of the Islamic Republic of Afghanistan
GO	General Order; General Officer
GO#1	General Order Number One
GoI	Government of Iraq
GOLO	General Officer Legal Orientation
GOMOR	General Officer Memorandum of Reprimand
GRD	Gulf Regional Division
GRECC	Governance, Reconciliation, and Economics Coordination Cell
GSA	General Services Administration
HAZMART	Hazardous Material Pharmacy
HCA	Humanitarian and Civic Assistance
HCT	HUMINT Collection Team
HHQ	Higher Headquarters
HIIDE	Handheld Interagency Identification Detection Equipment
HJC	High Judicial Council (Iraq)
HMMWV	High-Mobility Multipurpose Wheeled Vehicle
HN	Host Nation
HQ	Headquarters
HQDA	Headquarters, Department of the Army
HQMC	Headquarters, Marine Corps
HRC	Human Resources Command
HRW	Human Rights Watch
HUMINT	Human Intelligence
HVI	High-Value Individual
HWMP	Hazardous Waste Management Plan
IA	Iraqi Army
IA	Individual Augmentee
IBA	Interceptor Body Armor

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IBCT	Infantry Brigade Combat Team
ICC	International Criminal Court
ICCPR	International Convention on Civil and Political Rights
ICE	Infrastructure Coordination Element
I-CERP	Iraqi Commander's Emergency Response Program
ICITAP	International Criminal Investigative Training Assistance Program
ICRC	International Committee of the Red Cross
ICS	Iraqi Correctional System
IDA	Initial Denial Authority (FOIA)
IED	Improvised Explosive Device
IG	Inspector General
IGO	Inter-Governmental Organization
IJ	Investigative Judge (Iraq)
IMA	Individual Mobilization Augmentee
IMCOM	Installation Management Command
IMO	Information Management Officer
INL	Bureau of International Narcotics and Law Enforcement Affairs (DoS)
IO	Investigating Officer; Information Operations
IP	Iraqi Police
IPB	Intelligence Preparation of the Battlefield
IPC	Iraqi Provincial Court
IROCC	Interagency Rule of Law Coordinating Center (Iraq)
IRT	Individual Readiness Training
ISAF	International Security Assistance Force
ISF	Iraqi Security Forces
ISFF	Iraqi Security Forces Funds
ISN	Internment Security Number
ISP	Internet Service Provider
IT	Information Technology
IZ	Iraq (generally); International Zone
JA	Judge Advocate
JAD	Judge Advocate Division (USMC)
JAG	Judge Advocate General
JAGC	Judge Advocate General's Corps
JAGMAN	Manual of the Judge Advocate General (USN, USMC)
JAO	Judge Advocate Operations (USMC)
JAIBC	Judge Advocate Officer Basic Course
JARB	Joint Acquisition Review Board
JAS	Judge Advocate Support (USMC)
JASG	Joint Area Support Group
JASG-C	Joint Area Support Group - Central

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JATSOC	Judge Advocate Tactical Staff Officer Course
JCC-I	Joint Contracting Command – Iraq
JCP	Joint Campaign Plan
JEFF	Joint Expeditionary Forensic Facilities
JER	Joint Ethics Regulation
JFCOM	Joint Forces Command
JFHQ	Joint Force Headquarters
JI	Judicial Investigator (Iraq)
JIC	Joint Investigative Committee
JMD	Joint Manning Document
JMRC	Joint Multinational Readiness Center
JMTC	Joint Multinational Training Command
JOC	Joint Operations Center
JPEC	Joint Prosecution Exploitation Center
JRTC	Joint Readiness Training Center
JSS	Joint Security Station
JSSP	Justice Sector Support Program (Afghanistan)
KBR	Kellogg, Brown, & Root (contractor)
KIA	Killed in Action
KLE	Key Leader Engagement
KO	Contracting Officer
LAOTF	Law and Order Task Force
LCpl	Lance Corporal (USMC)
LDESP	Leadership Development and Education for Sustained Peace
LDP	Leader Development Program
LEGAD	Legal Advisor (NATO)
LEP	Law Enforcement Professional
LHS	Life, Health, and Safety
LIMDIS	Limited Distribution
LN	Local National
LNO	Liaison Officer
LOAC	Law of Armed Conflict
LOD	Line of Duty
LOGCAP	Logistics Civil Augmentation Program
LOO	Line of Operation
LOR	Letter of Reprimand
LoW	Law of War
LRSC	Long-Range Surveillance Company
LSA	Life Support Areas
LSO	Legal Support Organization
LSSS	Legal Service Support Section (USMC)

TIP OF THE SPEAR

LSST	Legal Services Support Team (USMC)
MAAWS	Money as a Weapons System
MAAWS-A	Money as a Weapons System – Afghanistan
MAC	Military Airlift Command
MaD	Mobilization and Deployment
MAGTF	Marine Air-Ground Task Force
MARB	Materiel Acquisition Review Board
MARCENT	Marine Corps Central Command
MARFORCOM	Marine Forces Command
MARFORPAC	Marine Forces Pacific
MARFORRES	Marine Forces Reserve
MATCAT	Material Category
MAW	Marine Air Wing
MCA	Military Claims Act
MCAS	Marine Corps Air Station
MCB	Marine Corps Base
MCC	Major Crimes Court (Iraq)
MCI-East	Marine Corps Installations-East
MCLLL	Marine Corps Center for Lessons Learned
MCM	Manual for Courts-Martial
MCP	Marine Corps Planning Process
MDMP	Military Decision Making Process
MEF	Marine Expeditionary Force
MEJA	Military Extraterritorial Jurisdiction Act
MESL	Mission Event Scenario List
METL	Mission Essential Task List
MFR	Memorandum for Record
MI	Military Intelligence
MICLIC	Mine-Clearing Line Charge
MILAIR	Military Air
MILCON	Military Construction
MiTT	Military Transition Team
MLG	Marine Logistics Group
MMOA	Manpower Management Officer Assignments (USMC)
MNC-I	Multi-National Corps-Iraq
MND	Multi-National Division
MND-B	Multi-National Division – Baghdad
MND-C	Multi-National Division – Center
MND-N	Multi-National Division – North
MND-S	Multi-National Division – South
MNF-I	Multi-National Force – Iraq

APPENDIX C: GLOSSARY

MNF-W	Multi-National Force – West
MNSTC-I	Multi-National Security Transition Command – Iraq
MOC	Media Operations Center
MoD	Ministry of Defense
MOE	Measures of Effectiveness
MoI	Ministry of Interior
MoJ	Ministry of Justice
MOS	Military Occupational Specialty
MOU	Memorandum of Understanding
MP	Military Police
MRAP	Mine Resistant Ambush Protected (Vehicle)
MROE	Medical Rules of Engagement
MRX	Mission Rehearsal Exercise
MSC	Major Subordinate Command
MSE	Mission Support Element
MSG	Master Sergeant
MSTP	MAGTF Staff Training Program
MTA	Military Technical Agreement
MTF	Medical Treatment Facility
MTOE	Modification Table of Organization and Equipment
MTT	Mobile Training Team
MV/CV	Mojave Viper/Cajun Viper
MWR	Morale, Welfare, and Recreation
NATO	North Atlantic Treaty Organization
NBC	Nuclear-Biological-Chemical
NCE	National Command Element
NCO	Non-Commissioned Officer
NCOER	Non-Commissioned Officer Evaluation Report
NCOES	Non-Commissioned Officer Education System
NCOIC	Non-Commissioned Officer in Charge
ND	Negligent Discharge
NDAA	National Defense Authorization Act
NDS	National Directorate of Security (Afghanistan)
NEC	New Embassy Compound
NGO	Non-Governmental Organization
NIAC	National Iraqi Assistance Center
NIIA	National Information and Investigation Agency
NIPR	Nonsecure Internet Protocol Router (Network)
NJP	Non-Judicial Punishment
NJP	National Justice Program (Afghanistan)
NJS	Naval Justice School

TIP OF THE SPEAR

NJSS	National Justice Sector Strategy (Afghanistan)
NSC	National Security Council
NSE	National Support Element
NSPD	National Security Presidential Directive
NTC	National Training Center
NTV	Non-Tactical Vehicle
O&M	Operations and Maintenance
O/C	Observers/Controller
OBC	Officer Basic Course
OCLL	Office of the Congressional Legislative Liaison
OE	Operating Environment
OEF	Operation Enduring Freedom
OER	Officer Evaluation Report
OGA	Other Government Agencies
OGC	Office of the General Counsel
OIC	Officer in Charge
OIF	Operation Iraqi Freedom
OMA	Operations and Maintenance, Army
ONS	Operational Needs Statement
OPA	Office of Provisional Affairs (DoS)
OPA	Other Procurement, Army
OPCON	Operational Control
OpLaw	Operational Law
OPORD	Operation Order
OPSEC	Operations Security
ORF	Official Representation Funds
OSC	On-Scene Commander
OSD	Office of the Secretary of Defense
OSJA	Office of the Staff Judge Advocate
OTH	Other Than Honorable
OTJAG	Office of The Judge Advocate General (Army)
PA	Privacy Act
PA	Public Affairs
PA	Paying Agent
PAO	Public Affairs Officer
PCA	Personnel Claims Act
PCS	Permanent Change of Station
PDF	Portable Document Format
PDLT	Pre-Deployment Legal Training (USMC)
PDOP	Provincial Director of Police (Iraq)
PDP	Pre-Deployment Preparation Program

APPENDIX C: GLOSSARY

PDSS	Pre-Deployment Site Survey
PI	Preliminary Inquiry
PIR	Priority Intelligence Requirements
PJC	Provincial Justice Council
PMA	Political-Military Advisor
PMO	Provost Marshal's Office
PNOK	Primary Next of Kin
POA	Power of Attorney
POC	Point of Contact
POLMIL	Political-Military
PP&TO	Personnel, Plans, and Training Office
PPO	Project Purchasing Officer
PR&C	Purchase Request & Commitment
PRT	Provincial Reconstruction Team
PSYOP	Psychological Operations
PT	Physical Training
PTC	Pretrial Confinement
PTF	Prosecution Task Force
PTT	Police Transition Team
PX	Post Exchange
QRF	Quick Reaction Force
QRF	Quick Response Funds (DoS)
QRF	Quick Response Fund (subset of ISFF)
RC	Regional Command
RC	Reserve Component
RCC	Regional Contracting Command
RCO	Regimental Commanding Officer
RCP	Route Clearance Package
RCT	Regimental Combat Team (USMC)
RDC	Regional Defense Counsel
Rear-D	Rear Detachment
REFRAD	Release From Active Duty
RFF	Request For Forces
RFI	Request for Information
RIP	Relief in Place
RJA	Regimental Judge Advocate
RLB	Relocatable Building
ROE	Rules of Engagement
RoL	Rule of Law
RoLC	Rule of Law Coordinator
ROLSAP	Rule of Law Strategic Action Plan

TIP OF THE SPEAR

ROT	Record of Trial
RSO	Regional Security Officer (DoS)
SA	Security Agreement
SBCT	Stryker Brigade Combat Team
SCRA	Servicemembers Civil Relief Act
SDC	Senior Defense Counsel
SECDEF	Secretary of Defense
SECFOR	Security Force
SF	Special Forces
SFA	Strategic Framework Agreement
SGM	Sergeant Major
SIGACT	Significant Activity
SIGINT	Signals Intelligence
SIPR	Secure Internet Protocol Router (Network)
SIR	Serious Incident Report
SJA	Staff Judge Advocate
SOF	Special Operations Forces
SOFA	Status of Forces Agreement
SOI	Sons of Iraq
SOLO	Senior Officer Legal Orientation Course
SOP	Standard Operating Procedures
SOW	Statement of Work
SPCMCA	Special Court-Martial Convening Authority
SROE	Standing Rules of Engagement
SRP	Soldier Readiness Processing
STAR	Subject-Matter Threat Assessment Review (Board)
STB	Special Troops Battalion
STP	Standard Training Package
SVOIP	Secure Voice Over Internet Protocol
SWEAT-H	Sewage, Water, Electricity, Academic (school), Trash, and Health
SWMP	Solid Waste Management Plans
T&R	Training and Readiness (USMC)
T/E	Training and Equipment (USMC)
T/O	Table of Organization (USMC)
TACON	Tactical Control
TC	Trial Counsel
TCAP	Trial Counsel Assistance Program
TCN	Third Country National
TCS	Temporary Change of Station
TDA	Table of Distribution and Allowances
TDS	Trial Defense Service

APPENDIX C: GLOSSARY

TEA	Theater Ethics Advisor
TF	Task Force
TIC	Troops In Contact
TIF	Theater Internment Facility
TJAG	The Judge Advocate General
TJAG	The Judge Advocate General
TJAGLCS	The Judge Advocate General's Legal Center and School
TMC	Troop Medical Clinic
TOA	Transfer of Authority
TOC	Tactical Operations Center
TPE	Theatre Provided Equipment
TQ	Tactical Questioning
TS	Top Secret
TS/SCI	Top Secret/Sensitive Compartmentalized Information
TSCA	Tort and Special Claims Application
TSE	Tactical Site Exploitation
TST	Time-Sensitive Target
TTIF	Transition Team Implementation Fund
TTPs	Tactics, Techniques, and Procedures
U.K.	United Kingdom
UAV	Unmanned Aerial Vehicle
UCMJ	Uniform Code of Military Justice
UECTR	Unlawful Enemy Combatant Transfer Request
UIC	Unit Identification Code
UMMC	Unspecified Minor Military Construction
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMI	United Nations Mission for Iraq
UNSCR	United Nations Security Council Resolution
USACE	U.S. Army Corps of Engineers
USAID	United States Agency for International Development
USAR	United States Army Reserve
USARCS	U.S. Army Claims Service
USB	Universal Serial Bus
USCIS	United States Citizenship and Immigration Services
USERRA	Uniformed Services Employment and Reemployment Rights Act
USFOR-A	United States Forces – Afghanistan
USG	United States Government
USN	United States Navy
USO	United Service Organizations
USS	United States Ship

TIP OF THE SPEAR

UXO	Unexploded Ordnance
VA	Veterans Affairs
VBC	Victory Base Complex
VITA	Voluntary Income Tax Assistance
VTC	Video Teleconference
WACO	Western Area Counsel Office
WIAS	Worldwide Individual Augmentation System (USN)
WMD	Weapons of Mass Destruction
WRAMC	Walter Reed Army Medical Center
XO	Executive Officer

JUDGE ADVOCATE GENERAL'S
CORPS

