TIP OF THE SPEAR

After Action Reports from August 2009 - August 2010

2010 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 2010

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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.

Since its establishment in 1988, 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. The *Forged in the Fire* 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 the *Forged in the Fire* 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 August 2009 – August 2010*, collects all of the After Action Reports (AARs) CLAMO has completed since last year's

Tip of the Spear: After Action Reports from July 2009 – August 2010. It is CLAMO's intent 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, discussion, 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. The majority of IDR's come from operations in Afghanistan and Iraq, but other operations are also represented such as Kosovo and Haiti.

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, nor full endorsement by the leadership of the organization. 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. INTERNATIONAL & OPERATIONAL LAW

I.A. Chemical, Biological, Radiological, Nuclear, & High-Yield Explosives

I.A.1. Chemical Weapons/Riot Control Agents

ISSUE: Use of 0-chlorobenzalmalononitrile (CS) gas to respond to riot

DISCUSSION: Towards the end of the deployment, approximately 500 Afghans rioted in the city of Delaram, Nimruz Province. The riot went on for about three days and, at one point, some of the rioters shot weapons into a platoon sized position. The Marines could not positively identify the individuals firing at them and did not return fire. Since the unit had CS gas, it looked into the feasibility of either using it to disperse the crowd or turning it over to the Afghan National Police (ANP) to use. Ultimately, the unit elected to do neither.

RECOMMENDATION: JAs need to know whether their Marines have riot control agents such as CS gas and the approval authorities for using them. The BN JA referred the matter to the RCT-3 JA and the 2d MEB Staff Judge Advocate (SJA) for legal guidance.[1]

ISSUE: 0-chlorobenzalmalononitrile (CS) gas

DISCUSSION: During the deployment, a riot broke out in the city of Delaram in Nimruz Province, which was in one of RCT-3's battalion AOs. The riot went on for several days and escalated to the point of rioters throwing rocks and other objects into a platoon-sized position. In order to defuse the situation, the battalion considered using CS gas to dispel the crowd. The RJA worked with the battalion JA and the 2d MEB SJA to conduct a legal review on the use of CS gas in this situation. The review concluded the battalion could use it so long as the unit did not use the CS gas as a means or method of warfare, but they should not turn any CS gas over to the Afghan National Police (ANP) to use.

RECOMMENDATION: JAs need to know what riot control agent their units have, and what the rules and approval authorities are for using them.[2]

ISSUE: Issuing pepper spray for personal protection

DISCUSSION: The unit addressed the possibility of providing female Soldiers pepper spray for defense against assault. Previously there had been an allegation of rape (ultimately determined a fabrication) occurring in and around the unit's living area, an incredibly dark, poorly lit area, and it was believed that female Soldiers began carrying knives with them for protection. Some thought that pepper spray might be a viable alternative option. The unit examined the issue and determined the complexity associated with the Army providing the training and issuing the spray

[1] 2d Battalion, 3rd Marines, Battalion Judge Advocate OEF After Action Report, 14 April 2010, Deployed May 2009 – November 2009, Forward Operating Base Delaram, Nimruz Province, Afghanistan (hereinafter "2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09"; on file at CLAMO).
[2] Regimental Combat Team – 3, 2d Marine Expeditionary Brigade, Regimental Judge Advocate, OEF After Action Report, 14-15 April 2010, Deployed April 2009 – October 2009, Camp Dwyer, Helmand Province, Afghanistan (hereinafter "RCT-3, OEF AAR, APR 09 - OCT 09"; on file at CLAMO).

and the great possibility that it would be transported off the installation for use made this too difficult and risky an effort.

RECOMMENDATION: The issuing of pepper spray probably poses more risks than advantages.[3]

ISSUE: Use of mace spray for self-defense

DISCUSSION: There was some concern Soldiers on FOBs (especially females) might be at risk of assault. The brigade considered, but ultimately decided against, the possibility of issuing mace spray to vulnerable Soldiers for use in self defense. The Division operations law cell helped support the legal analysis.

RECOMMENDATION: There is almost no limit to the creativity of questions upon which you will be asked to advise. Consult widely and intelligently with the relevant specialist lawyers before giving a considered response.[4]

ISSUE: Riot control agents

DISCUSSION: In response to USFOR-A's tactical directive, many Operational Detachment Alphas (ODAs) sought guidance from CJSOTF-A on the possible implementation of riot control agents (RCAs).

RECOMMENDATION: Legal advisors must be familiar with theater specific policies regarding implementation of RCAs and educate other staff members early in the planning process.[5]

ISSUE: Remission of the Chemical Reconnaissance Detachment (CRD)

DISCUSSION: In response to an increase in use of homemade explosives by insurgents, CJSOTF-A remissioned the CRD to assist in sensitive site exploitation (SSE) which facilitated better detainee packets.

RECOMMENDATION: Sustain. Flexibility and familiarity with available enablers is a key skill-set for ARSOF legal advisors.[6]

ISSUE: Taliban 'chemical attack' on girls' schools

[3] 1st Cavalry Division, Staff Judge Advocate OIF After Action Report, 1 April 2010, Deployed January 2009 – January 2010, Multi-National Division – Baghdad, Camp Liberty, Baghdad, Iraq (hereinafter "1CD OIF AAR, JAN 09 - JAN 10"; on file at CLAMO).
[4] 504th Battlefield Surveillance Brigade, Brigade Judge Advocate OIF After Action Report, 3 May 2010, Deployed November 2008 – November 2009, Contingency Operating Base Sykes, Tal Afar, Iraq (hereinafter "504th BfSB, OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).
[5] 7th Special Forces Group (Airborne), CJSOTF-A Legal Advisor OEF After Action Report, 26 May 2010, Deployed 22 July 2009 – 02 February 2010, Bagram, Afghanistan (hereinafter "7th SFG OEF AAR, JUL 09 - FEB 10"; on file at CLAMO).
[6] 3rd Special Forces Group (Airborne), Group Judge Advocate OEF After Action Report, 22 July 2010, Deployed January 2010 – May 2010, Bagram, Afghanistan (hereinafter "3rd SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).

DISCUSSION: There were allegations the Taliban attempted to poison girls' schools by scattering a white powder in them. The Brigade Judge Advocate (BJA) was happy to confirm that, if true, this was illegal.

RECOMMENDATION: Expect the unexpected in Afghanistan.[7]

I.A.2. Biological Weapons

No AAR comments.

I.A.3. Nuclear Weapons

No AAR comments.

I.A.4. Delivery Systems for Chemical, Biological, Radiological and Nuclear Weapons

No AAR comments.

I.A.5. High-Yield Explosives

No AAR comments.

I.B. Artifacts & War Trophies

I.B.1. Artifacts

ISSUE: Reviewing war trophy packets

DISCUSSION: The legal advisor worked through the S-3 channels and put a deadline for the SOTF's acceptance of war trophy packets. The legal advisor also placed the requisite approval guidance in the DOWNREP (a report sent to subordinate AOBs). The SOTF paralegal then reviewed and answered questions from interested SOTF-C elements.

RECOMMENDATION: Sustain. Provide guidance and set reasonable deadline for the acceptance of war trophy packets. Utilize paralegals to scrub packets and spot simple mistakes.[8]

ISSUE: Proper paperwork for antique weapons

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[7] 1st Combat Support Brigade (Maneuver Enhancement), Task Force Warrior, OEF After Action Report, 20 October, 2009, Deployed June 2008 – September 2009, Bagram Airfield, Afghanistan (hereinafter "1 CSB (ME) OEF AAR, JUN 08 - SEP 09"; on file at CLAMO).

[8] 2d Battalion, 10th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OIF After Action Report, 15 June 2010, Deployed July 2009 – March 2010, Victory Base Complex, Baghdad, Iraq (hereinafter "2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10."; on file at CLAMO).

DISCUSSION: Soldiers can purchase and import an antique firearm from Afghanistan provided they produce the proper paperwork when they process through customs upon re-deployment. Specifically the paperwork is an affidavit stating the weapon was manufactured before 1898 and not cartridge or end loaded. These firearms are also inoperable. The SOTF paralegal would confirm the weapon was inoperable and manufactured before 1898 and then notarize the Soldier's affidavit.

RECOMMENDATION: Sustain.[9]

ISSUE: Processing antique weapon approval forms

DISCUSSION: Client services assisted Soldiers in completing and complying with applicable regulations dealing with antique weapons.

RECOMMENDATION: Sustain. This is a client services issue and should remain one.[10]

I.B.2. War Trophies

ISSUE: Preparation for war trophy issues

DISCUSSION: Expect to deal with issues relating to war trophies. During the deployment, the BCT commander designated the S-2 as the BCT's historian. This appeared to work well.

RECOMMENDATION: Before deploying, BCT legal personnel should be research theater policies regarding to war trophies so they are prepared to handle these issues when they arise.[11]

ISSUE: War trophy limits

DISCUSSION: The Iraqi Army (IA) wanted to give a large mortar firing system captured from insurgents to one of the 2/4 BCT's battalions as a show of appreciation. The IA decommissioned the weapons system, rendering it incapable of firing. The BCT legal office processed the packet, forwarding it through division to Multi-National Corps – Iraq (MNC-I) for approval. The TC verified the packet contained everything in accordance with MNC-I policy, including a letter from the Iraqi equivalent of an O-6 releasing the weapon, a letter from a U.S. O-5 or above (in this case, the squadron commander) accepting the gift for unit display purposes, verification of the weapon's decommissioned status (in this case, a memo from the company commander and a mortar platoon leader), and a customs form for returning the weapon system to CONUS. Although MNC-I policy required 14 days to process the request, the unit did not receive the gift until 7 days prior to redeployment. Consequently, they had to expedite the process.

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[9] 3rd Battalion, 3rd Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 03 June 2010, Deployed January 2010 – May 2010, Bagram Airfield, Afghanistan (hereinafter "3/3 SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).

[10] 82d Airborne Division, Staff Judge Advocate OEF After Action Report, 23 June 2010, Deployed June 2009 – June 2010, Regional Command—East, Bagram Airfield, Afghanistan (hereinafter "82D ABN OEF AAR, JUN 09 - JUN 10"; on file at CLAMO).

[11] 3d Brigade Combat Team, 1st Infantry Division, OEF After Action Report, 29 August 2009, Regional Command (RC) – East, Forward Operating Base (FOB) Fenty, Jalalabad, Afghanistan, Deployed July 2008 – June 2009 (hereinafter "3BCT, 1ID OEF AAR, JUL 08 - JUN 09"; on file at CLAMO).

RECOMMENDATION: Improve. The BCT should consider publishing the war trophy policy in the redeployment fragmentary order (FRAGO) approximately 30 days before redeployment to ensure requests will arrive at MNC-I in a timely manner. However, because MNC-I policy allows only one war trophy per brigade-size unit, BCTs should be cautious not to over-publicize the policy, lest they have to resolve multiple competing war trophy requests by their subordinate units.[12]

ISSUE: Unauthorized items

DISCUSSION: Some Soldiers tried to ship pistols home in conex boxes. Customs agents confiscated them, and the unit charged the Soldiers with various offenses under the Uniform Code of Military Justice (UCMJ).

RECOMMENDATION: Be vigilant and remind Soldiers of the rules and regulations governing war trophies.[13]

ISSUE: Legal review of artifacts and war trophies packets

DISCUSSION: Like most deployments, the JAs had to deal with the usual flood of sub-unit artifact and war trophy packet requests before redeployment. While time consuming, these tasks were not overly problematic given the readily available guidance and fragmentary orders (FRAGOs) available in theater.

RECOMMENDATION: Sustain. The necessary legal guidance regarding artifact/war trophy packets associated with OIF deployments has matured sufficiently such that these tasks are becoming relatively straightforward.[14]

ISSUE: War trophy processing

DISCUSSION: The process for sending war trophies back to the United States was necessarily bureaucratic and time consuming.

RECOMMENDATION: If a unit is interested in acquiring war trophies for historic display, it should prepare as early as possible. Ideally, the S4 section should have a grip on the paperwork and procedures before deployment. There may not be enough time to work through all the issues once deployed.[15]

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[12] 2d Brigade Combat Team, 4th Infantry Division, OIF After Action Report, 15 September 2009, Deployed September 2008 – August 2009, Forward Operating Base (FOB) Echo, Diwaniyah, Qadisiyah Province, Iraq, Contingency Operating Base (COB) Basra, Basra Province, Iraq (hereinafter "2BCT, 4ID OIF AAR, SEP 08 - AUG 09"; on file at CLAMO).

[13] 2d Brigade Combat Team, 1st Armored Division, Brigade Judge Advocate OIF After Action Report 25 September 2009, Deployed July 2008-June 2009, Forward Operating Base (FOB) Hammer/Camp Stryker, Iraq (hereinafter "2BCT, 1AD OIF AAR, JUL 08 - JUN 09."; on file at CLAMO).

[14] 3d Brigade Combat Team (BCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 3 November 2009, Deployed October 2008 – October 2009, Multi-National Division – North (MND-N), COB Speicher, Tikrit, Iraq (hereinafter "3BCT, 25ID OIF AAR, OCT 08 - OCT 09."; on file at CLAMO).

[15] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.

ISSUE: Required paperwork for war trophies

DISCUSSION: Numerous units were interested in taking war trophies home. The BJA provided the requisite paperwork to the unit, the volume of which dissuaded the units from proceeding further.

RECOMMENDATION: Sustain. The BJA was able to concentrate her efforts on more pressing operational initiatives.[16]

ISSUE: MNC-I war trophy policy

DISCUSSION: MNC-I policy allowed one war trophy per brigade. The brigade legal section disseminated the Corps policy early and often, posting it on the brigade legal web portal and briefing it at command meetings.

RECOMMENDATION: Sustain. Do not let the requirements be a surprise. The use of command meetings and SharePoint to publish higher policies proved effective.[17]

ISSUE: Lead staff section for war trophy issues

DISCUSSION: The actual mechanics of bringing back a war trophy is not a legal function. It is a customs issue that falls under the purview of the Provost Marshal Officer (PMO).

RECOMMENDATION: Be alert for forum-shopping in this area. Because the rules are very restrictive, individuals will try to find someone who will say yes. Ensure the legal office and PMO operate under the same understanding of the rules.[18]

ISSUE: Abandoned enemy individual equipment

DISCUSSION: Battalion level commanders had the authority to approve Soldiers' requests to keep helmets, bayonets, and other abandoned enemy individual equipment as souvenirs. The requesting Soldiers provided statements describing the circumstances by which they came into possession of such equipment. The approval documents were necessary to get the equipment through the customs inspection.

RECOMMENDATION: Sustain. Approval of these requests is a judgment call by the commander. Be prepared to assist commanders with questions.[19]

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[16] 159th Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate OEF After Action Report, 5 November 2009, Deployed December 2008 – December 2009, Bagram Airfield, Afghanistan (hereinafter "159th CAB, OEF AAR, DEC 08 - DEC 09"; on file at CLAMO).
[17] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09. 3d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate OIF After Action Report, 4 February 2010, Deployed December 2008 – November 2009, Joint Security Station Loyalty and Forward Operating Base Hammer, Baghdad, Iraq (hereinafter ""; on file at CLAMO).
[18] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[19] 3rd Heavy Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 2 February 2010, Deployed December 2008 – December 2009, Forward Operating Base Marez, Ninewah Province, Iraq (hereinafter "3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09"; on file at CLAMO).

ISSUE: Displaying trophy weapons in unit areas

DISCUSSION: Several units had trophy weapons on public display in unit areas. One Mayor's Cell had approximately 30 weapons on display; another unit in excess of 100. One collection included a Glock pistol issued to the Iraqi police, subsequently lost or stolen, then appearing, without explanation, in one of the displays. Most of the weapons had no history attached to them. Departing units or contractors had probably left most behind because it was too difficult to export them as war trophies, or because they did not qualify as war trophies. It was impossible to tell whether these weapons were abandoned (they were often found in or around living areas or in trash receptacles) or true war trophies or how long they had been in the possession of the unit/activity displaying them. There was no extant regulation or order to cover these weapons.

RECOMMENDATION: The advice to the garrison commander was to regulate the possession of these trophy weapons through inventorying them, attempting to determine their history (and thereby their status), rendering them nonfunctional, and properly securing them. The command produced a policy letter to this effect. The command also adopted a weapons amnesty policy which covered weapons discovered or abandoned during the unit's presence in theater.[20]

ISSUE: War trophies

DISCUSSION: The rules and guidelines regarding war trophies are well established and known. The Division Provost Marshal's Office (PMO) had oversight on war trophies and published an easy to follow spreadsheet explaining the rules and procedures. The brigade legal section made sure it was "on the same page" as PMO with regard to the rules governing war trophies. When questions arose, the BJA would direct all inquiries towards PMO's easy to follow spreadsheet.

RECOMMENDATION: Sustain. War trophies are not necessarily a legal function. Know who has the lead on war trophies and ensure everyone is operating under the same understanding of the rules.[21]

ISSUE: Unit requests to bring weapon back to United States for official display

DISCUSSION: SOTF-W had a large quantity of seized weapons from previous rotations. During initial relief in place/transfer of authority (RIP/TOA), members of the outgoing unit asked the JA to look into the requirements for shipping a captured enemy rifle back to the U.S. for official display at the unit's headquarters. The JA researched the issue and determined the requirements and parameters for doing so. After considering the requirements of the process, the unit leadership decided not to pursue this course of action.

RECOMMENDATION: Sustain.[22]

ISSUE: Prior requests for war trophy approval

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[20] 326th Area Support Group, Task Force Jayhawk, Staff Judge Advocate OIF After Action Report, 3 March 2010, Deployed November 2008 – October 2009, Victory Base Complex, Iraq (hereinafter "326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09"; on file at CLAMO).
[21] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[22] Sea Air Land (SEAL) Team 7, Special Operations Task Force – West (SOTF-W), Detachment Judge Advocate OIF After Action Report, 14 April 2010, Deployed March 2009 - September 2009, Al Asad Airbase and Ramadi, Iraq (hereinafter "SOTF-W OIF AAR, MAR 09 - SEP 09"; on file at CLAMO).

DISCUSSION: The request to ship the captured rifle back to the U.S. stemmed from the previous rotation, which forced the incoming JA to handle issues from the previous deployment.

RECOMMENDATION: Improve. JAs should complete all outstanding matters before redeploying. If unable to do so, the outgoing JA should thoroughly brief the incoming JA on all outstanding matters.[23]

ISSUE: Compliance with federal weapons regulations

DISCUSSION: Before shipping to the U.S., captured/gifted weapons must be "unusable" as opposed to rendered "not functional" (i.e. from removal of parts). Otherwise, U.S. Customs or The Bureau of Alcohol, Tobacco, and Firearms (ATF) will not permit the entry into the U.S.

RECOMMENDATION: Sustain. JA's should double check with units if they understand the meaning of "rendered unusable" when war trophy situations arise.[24]

ISSUE: War trophies policy

DISCUSSION: MNC-I policy permitted brigades and divisions to bring back one war trophy or demilitarized weapon by submitting a standard packet to Corps (through Division) for approval. If a brigade desired to bring back additional memorabilia, it required a Corps-level exception to policy.

RECOMMENDATION: Sustain.[25]

ISSUE: Taking captured weapons as war trophies

DISCUSSION: During an operation, a Marine company seized control of an old Chinese rocket launcher. This company wanted to keep the rocket launcher as a war trophy. The JA reviewed the applicable U.S. Central Command (CENTCOM) guidance, which strictly prohibited keeping captured weapons. He informed the company it could not keep the weapon.

RECOMMENDATION: JAs must know the applicable regulations dealing with captured enemy weapons. CENTCOM's policy strictly prohibits the keeping of seized weapons and mandates units turn the weapons over to the Government of the Islamic Republic of Afghanistan (GIRoA).[26]

ISSUE: War trophy guidance

DISCUSSION: In an effort to dispel any questions on the front end, towards the end of the deployment, the RJA prepared and presented to RCT-3 a PowerPoint presentation on war trophy guidance. This proved to be an effective means of avoiding confusion and ensuring compliance with the rules.

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[23] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 22.
[24] 25th Infantry Division, Staff Judge Advocate OIF After Action Report, 11 March 2010, Deployed November 2008 – November 2009, Multi-National Division – North, Contingency Operating Base Speicher, Iraq (hereinafter "25 ID OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).
[25] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[26] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 1.

RECOMMENDATION: Sustain.[27]

ISSUE: War trophy guidance

DISCUSSION: The Central Command (CENTCOM) order prohibited servicemembers from taking "enemy" munitions as war trophies, but did not encapsulate friendly expended munitions. As a result, the DSJA had individuals approach him who wanted to take home pieces of U.S. expended ordnance, claiming CENTCOM does not prohibit friendly war trophies. In order to ensure strict compliance with the order and to avoid in problems with customs, the DSJA advised the command and Marines not to take any items home except for what they purchased at local bazaars or markets.

RECOMMENDATION: Sustain.[28]

ISSUE: The complexity of war trophy policy

DISCUSSION: Pre-deployment training did not sufficiently cover the war trophy policy, and there was variation in theater as to the correct procedures.

RECOMMENDATION: Include war trophies policy in pre-deployment training. Try to avoid learning on the job when the policy may be inconsistent and hard to find.[29]

I.C. Civil Affairs (CA)

ISSUE: Presence of a civil affairs (CA) unit

DISCUSSION: For a time after the departure of the previous CA unit, TFF did not have a CA unit. The commanding general (CG) determined it would be beneficial to have such a unit, given the non-kinetic nature of the mission. Based upon the CG's personal interest, the unit eventually received a CA unit from Hawaii.

RECOMMENDATION: If possible, it is beneficial to have a CA unit to perform CA functions, especially when the mission is clearly a stability operation in a mature operating environment. It may take high-level emphasis to obtain these assets when they are not readily available due to operations elsewhere.[30]

ISSUE: Legal support to CA units

DISCUSSION: The CA unit did not come with any dedicated legal support. While the unit had great expertise in G9 functions, they did not have any legal expertise. They did not bring an

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[27] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 2.
[28] 2d Marine Expeditionary Brigade, Deputy Staff Judge Advocate, OEF After Action Report, 22 March 2010, Deployed April 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB DSJA, OEF AAR, APR 09 - NOV 09"; on file at CLAMO).
[29] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.
[30] Task Force Falcon, 40th Infantry Division, California National Guard, Command Judge Advocate, Kosovo Forces 11 After Action Report, 9 January 2010, Deployed February 2009 – November 2009, Camp Bondsteel, Kosovo (hereinafter "KFOR-11 AAR, FEB 09 - NOV 09"; on file at CLAMO).

assigned judge advocate (JA). Because the G9 supervised the CA unit, their legal issues flowed to the TFF legal section through the G9.

RECOMMENDATION: Do not assume all enablers will arrive with their authorized legal support. As the legal section supporting the higher command, be prepared to provide legal advice in the absence of the authorized judge advocate.[31]

ISSUE: Fiscal law

DISCUSSION: A Civil Affairs (CA) company augmented CJSOTF-A, which in turn pushed Civil Affairs Team – Alphas (CAT-As) to the SOTFs as well as provided an OIC for the civil military operations center (CMOC). CJSOTF-A's geographic limitations on battlefield circulation meant CERP projects oversight was limited; however, risk was mitigated by extensive premission and deployment training in the fiscal law authorities governing CERP, humanitarian and civic assistance (HCA) "de minimis" rule, and theater policies distinguishing short-term versus long-term projects.

RECOMMENDATION: Sustain. Legal advisors must work closely with the J9 and the CA company commander as well as the Advanced Operating Base (AOB) commanders and ODA team leaders (through their BN legal advisors) to ensure all involved understand the processes and implications of CERP projects fiscally and upon operational impacts. [32]

ISSUE: Working relationship with civil affairs (CA) teams

DISCUSSION: A battalion 27D (paralegal specialist) at an outlying forward operating base (FOB) established a close working relationship with the attached civil affairs team (CAT). In taking the initiative to establish close ties with the CAT, this paralegal advanced the BCT's rule of law (RoL) mission. He was also in a position to provide critical information regarding certain efforts back to the BJA and assist the BJA in coaching the CAT with CERP and solatia proposals.

RECOMMENDATION: Sustain.[33]

ISSUE: CAT interpreters

DISCUSSION: The CAT interpreters were extremely good at their jobs. The brigade legal team's close working relationship with the CAT allowed them to utilize the CAT's interpreters when needed.

RECOMMENDATION: Sustain.[34]

ISSUE: Civil Affairs (CA) utilization

DISCUSSION: The BCT had a CA company attached to it. After the 1 January 2009 implementation of the U.S.-Iraq Security Agreement (SA), CA operations became the BCT's main effort. The BCT used the CA teams as the paying agents for Commander's Emergency Response Program (CERP) condolence payments.

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[31] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.
[32] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 6.
[33] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[34] *Id.*

RECOMMENDATION: Sustain. As kinetic operations decrease, BCTs should look to maximize the use of CA teams.[35]

ISSUE: Legal review of civil affairs projects

DISCUSSION: The brigade judge advocate (BJA) reviewed all civil affairs projects before the Deputy Commander (DCO) received them. Beware of the well-intentioned staff members who may engage in "project splitting" in order to keep the total cost of the project under certain fiscal thresholds.

RECOMMENDATION: Sustain.[36]

ISSUE: Lack of a Civil Military Operations Center (CMOC) at FOB Warhorse

DISCUSSION: For unknown reasons, the brigade did not stand up and run a CMOC at FOB Warhorse. The SBCT had a CMOC in the area of operations (AO) but it would have been much more convenient to have one at FOB Warhorse. This decision directly led to problems for the legal staff during scheduled claims days, since many of the Iraqis present at the gate were there for civil affairs reasons and not claims (e.g., looking for detained relatives, various requests for help, complaints, etc). Without a CMOC, disgruntled Iraqis besieged the claims staff with their problems. While they tried to help or notify the BCT leadership as best they could, the claims staff could not deal with these matters. Consequently, many Iraqis became frustrated and unsatisfied with the inaction.

RECOMMENDATION: Improve. A commander's decision to forego a CMOC has serious implications and unanticipated effects. Legal sections cannot fill the void and absorb these civil affair activities into its scope of duties.[37]

ISSUE: Impact of departure of the supporting Civil Affairs (CA) unit on the brigade legal section

DISCUSSION: A National Guard unit conducted CA activities for the brigade. The legal staff often relied on them for transport around the AO for things such as claims. However, the team disbanded after the 30 June 2009 cut-off date for coalition troops to leave urban areas because they could not effectively perform their mission under the restrictions. This directly affected the legal staff since they lost their primary source for road moves. The legal staff had to move their claims operations to Abu Ghraib, where they also needed official Iraqi permission to conduct the claims mission out of the qadaa council building. It took a month to transition to the new area and make the local population aware of the change.

RECOMMENDATION: Improve. Legal teams that come to rely on CA staff or upon a Civil Military Operations Center (CMOC) should have contingency plans for the potential loss of these capabilities.[38]

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[35] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 12.
[36] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 13.
[37] 1st Stryker Brigade Combat Team (SBCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 13 November 2009, Deployed September 2008 – September 2009, Multi-National Division – North (MND-N), FOB Warhorse, Diyala Province, Iraq (hereinafter "1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09"; on file at CLAMO).

ISSUE: Review of Civil Affairs (CA) contracts

DISCUSSION: There was a CA company co-located on the JSS. CA officers requested the brigade legal section review several high dollar contracts. While the BJA found potential for fraud, waste, and abuse in the implementation of the contracts, there was little he could do because Multi-National Security Transition Command – Iraq (MNSTC-I) drafted them. The BJA put the MND-B fiscal lawyers on notice and advised the Contracting Officer Representatives (CORs) to address their concerns with the contracting office and to document their discussions and disagreements prior to paying out questionable expenses under the contract.

RECOMMENDATION: Be prepared to field requests for assistance from CA teams, especially in contract and fiscal law areas. Contracting issues, however, do not come up as often as fiscal ones.[39]

ISSUE: Interaction of the BCT with civil affairs (CA) teams

DISCUSSION: The brigade legal section conducted fiscal reviews for all Commanders' Emergency Response Program (CERP) projects from CA teams in the BCT AO, as well as from unaffiliated CA teams operating in the Kurdistan region. Each of the battalions had their own S9, who forwarded all projects to the BCT S9.

RECOMMENDATION: Sustain. This arrangement allowed the CA teams to support the battalion commander's project focus. The teams also helped synchronize the projects with the provincial government and the Provincial Reconstruction Team (PRT).[40]

ISSUE: Relationship with Civil Affairs Group (CAG)

DISCUSSION: Typically, the CAG had the lead on most of the 2d MEB Commander's Emergency Response Program (CERP) projects going on in RC-South. The contingency contracting attorney built a relationship with the CAG early on in the deployment and made a habit of attending the Civil Military Operations (CMO) working group and various other CAG planning meetings. This not only helped the JA to have good visibility on ongoing CERP projects, but also enabled the JA to provide input on projects and ensure they complied with guidance.

RECOMMENDATION: Sustain. Build a good relationship with the CAG right away and participate in their working groups.[41]

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[38] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 24 November 2009, Deployed October 2008 – September 2009, Camp Liberty, Baghdad, Iraq (hereinafter "2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09"; on file at CLAMO).
[39] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[40] 2d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 4 & 9 February 2010, Deployed January 2009 – December 2009, Forward Operating Base Warrior, Kirkuk, Iraq (hereinafter "2-1 CAV, OIF AAR, JAN 09 - DEC 09"; on file at CLAMO).
[41] 2d Marine Expeditionary Brigade, Contingency Contracting Attorney, OEF After Action Report, 18 February 2010, Deployed July 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB Contingency Contracting Attorney AAR JUL 09 - NOV 09"; on file at CLAMO).

ISSUE: Small civil affairs (CA) unit supporting the BCT

DISCUSSION: The CA unit supporting the BCT was an under strength unit of only five personnel. They did not have any armored vehicles for themselves and thus were reliant on the BCT for their transportation needs. Had they been more a more robust unit, the JAs and paralegals could have probably used their services for RoL activities, as well as other related legal matters.

RECOMMENDATION: Improve. CA units can help extend the range and effectiveness of the legal staff. Where possible, merge complementary legal operations into CA activities.[42]

ISSUE: Interaction between JAs and Civil Affairs (CA)

DISCUSSION: 30th HBCT conducted approximately 8 million dollars in Commander's Emergency Response Program (CERP) projects. The CA team primarily had the lead on these CERP projects. The CA team was well versed in G9 functions, but did not have any legal expertise. Since each CERP project needed a thorough legal review, the BJA made a concerted effort to work closely with the CA team. The BJA sent the fiscal law attorney to as many CA meetings as possible.

RECOMMENDATION: Sustain. Judge advocates (JAs) should attend CA meetings and work closely with the CA team. Failure to do so can lead to matters not meeting the legal requirements, which can in turn make trouble for the commanders.[43]

ISSUE: Interaction with Civil Affairs (CA) judge advocates

DISCUSSION: One CA battalion had its JA at a separate location. He worked for the Provincial Reconstruction Team (PRT) in Kirkuk. The second CA battalion had a different focus. That battalion's JA worked in the Division's Governance working group, but not for the Division OSJA. There was no direct interaction with CA at the Division level. In some cases, CA personnel did go to the Division JA located at the tactical Command Posts away from the Division Main.

RECOMMENDATION: The command post JAs pushed these requests for assistance back to the legal section serving the local brigade. Because the brigade owned the battle space, the command post JA wanted to head off any forum shopping.[44]

ISSUE: Interaction with Civil Affairs Groups (CAG)

DISCUSSION: The battalion had a reserve unit CAG attached to it. The JA recognized the importance of the CAG to the battalion's operations and fostered a positive working relationship with the CAG's officer in charge (OIC). The JA provided legal reviews for many of the CAG's projects.

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[42] 3rd Brigade Combat Team, 10th Mountain Division, Brigade Judge Advocate OEF After Action Report, 29 January 2010, Deployed November 2008 – January 2010, Forward Operating Base Shank, Logar Province, Afghanistan (hereinafter "3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10"; on file at CLAMO).
[43] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[44] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.

RECOMMENDATION: CAGs are force multipliers. JAs should establish a close working relationship with the CAG and provide legal reviews of all CAG projects.[45]

ISSUE: Civil Affairs (CA) support and local laws

DISCUSSION: One of the first CA-related tasks the 172d BDE had to tackle at the beginning of the deployment was supporting Iraqi authorities for the highly contentious national elections. Iraqi federal and provincial law placed certain limits on the ability of 172d BDE to provide support. The BJA had to research Iraqi laws to determine the implications for the brigade's election support efforts. The brigade's CA efforts were sensitive to not offending any Iraqi laws or appearing as influencing the electoral process. Fortunately, an attorney from the U.S. Agency for International Development (USAID) was able to supply the BJA with materials to help grasp the Iraqi legal landscape.

RECOMMENDATION: Any deployed attorney must be ready, on occasions, to be able to brief the commander regarding the significance of local laws in an AO. This may be a critical CA task for the unit's success in an AO where an event is about to occur, such as a volatile national election.[46]

ISSUE: Relationship with Civil Affairs Group (CAG)

DISCUSSION: The CAG attached to RCT-3 was a reserve unit. Since many of the CAG's projects involved fiscal and contract law, the RJA befriended the CAG, attended their meetings on a regular basis, and educated them on the *Money As A Weapon System - Afghanistan* (MAAWS-A) guide. Additionally, the JA office both RJA and Deputy RJA were heavily involved in the creation of the CAG RCT standard operating procedures (SOP).

RECOMMENDATION: Sustain.[47]

ISSUE: Legal guidance to Civil Affairs Group (CAG)

DISCUSSION: The G-9's CAG took the lead on Commander's Emergency Response Program (CERP) projects, which significantly involved contract and fiscal matters. As a result, CAG often came to the DSJA with legal questions about fiscal law, contract law, and even land use.

RECOMMENDATION: Judge advocates (JAs) should maintain a basic understanding of fiscal and contract law in order to provide adequate legal guidance to CAG.[48]

ISSUE: SJA and Civil Affairs (CA) interaction

DISCUSSION: The SJA integrated himself into the planning phase of CA operations, especially Commander's Emergency Response Program (CERP) projects. The SJA's early involvement in the planning phase allowed him to spot issues and offer alternatives that streamlined the approval process.

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[45] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 1.
[46] 172d Infantry Brigade, Brigade Judge Advocate OIF After Action Report, 5 February 2010, Deployed November 2008 – December 2009, Forward Operating Base Kalsu, Iskandariyah, Iraq (hereinafter "172d IN BDE, OIF AAR, NOV 08 - DEC 09"; on file at CLAMO).
[47] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 2.
[48] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.

RECOMMENDATION: Sustain. SJAs should involve themselves at the planning phase of CA operations to facilitate the legal review process and help ensure project approval.[49]

ISSUE: Review of Civil Affairs' Commander's Emergency Response Program (CERP) packets

DISCUSSION: The SOTF legal advisor reviewed all of the attached Civil Affairs units' CERP packets for fiscal law issues. He utilized Money as a Weapons System – Afghanistan (MAAWS-A) to review the packets before sending up to CJSOTF-A for final legal review.

RECOMMENDATION: Sustain. A scrub at the SOTF level helped catch any issues early in the process before sending to CJSOTF-A. This made the approval process at CJSOTF-A more efficient.[50]

ISSUE: Fiscal law review of Civil Affairs (CA) packets

DISCUSSION: The SOTF legal advisor provided an informal legal review of all CA packets even though the CJSOTF-A legal advisor conducted the official legal review. The vast majority of issues the SOTF legal advisor spotted in these packets were fiscal law issues.

RECOMMENDATION: Sustain. SOTF legal advisors should review all CA packets and be involved in the planning process. This helps resolve issues at the outset and makes for smoother approval at higher levels.[51]

ISSUE: Understanding Money as a Weapons System – Afghanistan (MAAWS-A)

DISCUSSION: The SOTF legal advisor relied on MAAWS-A, specifically the section on Commander's Emergency Response Program (CERP), when reviewing CA packets.

RECOMMENDATION: Sustain. SOTF legal advisors and all other judge advocates (JAs) should be familiar with MAAWS-A before deploying.[52]

ISSUE: Fiscal law and Civil Affairs

DISCUSSION: A Civil Affairs (CA) company augmented CJSOTF-A, which in turn pushed Civil Affairs Team – Alphas (CAT-As) to the SOTFs. Often the CAT-As were not well versed in the Fiscal law authorities governing CERP, *de minimis* humanitarian and civic assistance (HCA) (which Operations and Maintenance – Army (OMA) dollars may fund), and theater policies distinguishing short-term versus long-term projects.

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[49] Combined Forces Special Operations Component Command – Afghanistan, Staff Judge Advocate OEF After Action Report, 2 May 2010, Deployed August 2009 – November 2009, Kabul, Afghanistan (hereinafter "CFSOCC-A OEF AAR, AUG 09 - NOV 09"; on file at CLAMO).
[50] 3rd Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 27 May 2010, Deployed July 2009 – December 2009, Herat, Afghanistan (hereinafter "3/7 SFG(A) OEF AAR, JUL 09 - DEC 09"; on file at CLAMO).
[51] 2d Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 25 May 2010, Deployed July 2009 – January 2010, Camp Brown, Kandahar, Afghanistan (hereinafter "2/7 SFG(A), OEF AAR, JUL 09 - JAN 10"; on file at CLAMO).
[52] *Id*.

RECOMMENDATION: Sustain. Legal advisors must work closely with the J9 and the CA company commander to ensure CA projects comply with applicable authorities and policies. The legal advisor attended the weekly CAT-A video teleconferences (VTCs) to spot issues early and offer solutions to the problems.[53]

ISSUE: Review of Civil Affair Commander's Emergency Response Program (CERP) packets

DISCUSSION: Per the U.S. Forces-Afghanistan (USFOR-A) Money As A Weapon System (MAAWS) CERP standard operating procedure (SOP), any CERP project over $25,000 required a formal written legal review. The SOTF Commander would not approve any CERP project at his level without a formal written legal review. The SOTF legal advisor, therefore, reviewed and produced formal written legal reviews for all CERP packets before the SOTF-East Commander's approval.

RECOMMENDATION: Sustain. Although this created a little more paper, it was overall a good practice. A scrub at the SOTF level of any legal issues related to CERP requests that were higher than the SOTF-Commander's approval level helped catch any issues early in the process. This made the approval process at higher levels to include CJSOTF-A more efficient.[54]

ISSUE: Misinterpretation of CERP authority

DISCUSSION: On occasion, the ODAs attempted to utilize CERP funds in unauthorized ways. While their intent was noble, it did not fall within the scope of CERP purpose or expenditure.
RECOMMENDATION: Ensure legal advisors and the S-9 Civil Affairs officer closely scrutinize CERP packets to ensure CERP expenditures comply with the MAAWs SOP and federal law.[55]

ISSUE: Reviewing Civil Affairs (CA) expenditure of Commander's Emergency Response Funds (CERP)

DISCUSSION: The Legal Advisor reviewed and ensured all CA CERP packets complied with controlling guidance.

RECOMMENDATION: Sustain. Early JA involvement in the process ensured CA resolved any fiscal law issues before submitting its packet for action and approval.[56]

ISSUE: Command and control of Civil Affairs (CA) teams

DISCUSSION: At the beginning of the deployment, the OpLaw JAs assisted other staff sections with figuring out to whom the CA teams belonged. Subordinate units could not find the source documents which attached the CA teams to them. The OpLaw JAs went through the FRAGOs to find the C2 relationships.

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[53] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 5.
[54] 3/3 SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 9.
[55] *Id.*
[56] 10th Special Forces Group (Airborne), Group Judge Advocate OIF After Action Report, 19 May 2010, Deployed July 2009 – February 2010, Joint Base Balad, Iraq (hereinafter "10th SFG OIF AAR, JUL 09 - FEB 10"; on file at CLAMO).

RECOMMENDATION: Sustain. Figuring out C2 relationships was part of a larger problem on the battlefield. CA teams presented a unique issue as often they were never formally attached to a battlespace owner (BSO) but instead operating independently. As an OpLaw attorney, do not overlook the C2 structure of separate units such as CA teams.[57]

ISSUE: CA and the collection of intelligence

DISCUSSION: During the deployment, the question arose at what point CA personnel collecting information and atmospherics in an area started crossing the line into collecting intelligence from sources.

RECOMMENDATION: Sustain. Be wary of CA personnel who attempt to operate outside their legal authorities. CA personnel may not run sources or create source networks.[58]

I.D. Civilians on the Battlefield/ Contractors

Wearing Military Uniforms and Carrying Weapons

ISSUE: Weapons training for civilian contractors

DISCUSSION: Civilian contractors will often arrive in theater with a weapon. However, some civilian contractors request a weapon once they arrive in theater. Providing civilian contractors with weapons is problematic, especially regarding proper weapons training. Many contractors desire a weapon, but are not always able to train to unit standards.

RECOMMENDATION: Units should not permit civilian contractors to obtain a weapon in theater unless the civilians receive training to the standards of the unit to which they are coming.[59]

ISSUE: Wear of military uniform by civilians

DISCUSSION: Service regulations prohibited interpreters and other civilians accompanying the force from wearing the Marine Corps combat utility uniform (MCCUU). However, it was mission critical to ensure the safety of interpreters when they accompanied Marines on missions. In order to remedy this situation, interpreters wore flame retardant "frog" suits when they were accompanying Marine forces.

RECOMMENDATION: JAs should be aware of service regulations regarding the wear of military uniforms by civilians, and find a solution that will comply with regulation while at the same time ensuring adequate protection of the civilian.[60]

ISSUE: Contractor wear of the Army Combat Uniform (ACU)

DISCUSSION: The Security Agreement (Article 13) restricted the wear of uniforms to members

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[57] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[58] *Id.*
[59] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 2.
[60] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.

of the U.S. Armed Forces. Presumably for this reason, higher headquarters issued a fragmentary order (FRAGO) restricting the previously loose standard for who could wear the Army Combat Uniform (ACU), having previously included Department of the Army (DA) contractors as authorized wearers. The new policy limited those authorized to wear the ACUs to military personnel. The policy did provide for exceptions, however. Ultimately, exceptions were granted for the Safety Officers (DA employees) and the Law Enforcement Professionals (LEPs) (DA contractors) when working off the forward operating bases (FOBs). This technically violated the Security Agreement, and the granted exceptions really negated the breadth of the new policy (exceptions swallowing the rule). The ultimate issue raised, though, was a fear of singling out individuals who would be working closely with U.S. forces while off the FOB that might make them prime targets. The balance of promoting safety of supporting personnel under the circumstances weighed greater than the risk of getting challenged on the Security Agreement violation.

On a side note, 1CD did have concerns whether its host nation interpreters would violate local Iraqi laws if they were caught wearing the ACUs. The OSJA determined as long as it was depleted of any military insignia or appurtenances, then it was no longer a foreign uniform such that it would violate the Iraqi law forbidding such wear. As far as the unit could tell, higher headquarters approved every request for an exception to policy. No requests for exception were submitted on behalf of Kellogg, Brown & Root, Inc. (KBR) employees or other general contractors.

RECOMMENDATION: If you are going to issue rules, be wary of the exceptions swallowing the rules. Send up requests for exception where appropriate under the circumstances.[61]

ISSUE: Arming of contractors

DISCUSSION: It requires approvals from higher before contractors can carry arms at the FOB or outside the wire. The implementation of the U.S.-Iraq Security Agreement on January 1, 2009 significantly changed the "legal landscape" regarding jurisdiction over and immunities of contractors. JAs assisted commanders with approval packets for higher headquarters' review. The JAs arrived in Iraq just as the new Security Agreement came into force, and no one was exactly sure of the reach of this emerging issue.

RECOMMENDATION: The impact of the new Security Agreement is still evolving, but processes and legal interpretations relating to contractors are beginning to mature. It is important for deploying JAs to seek the latest information from the deployed JAs they will replace.[62]

ISSUE: Contractors and interpreters wearing uniforms

DISCUSSION: Guidance from higher was that contractors and interpreters could not wear the ACU pattern uniform. The new Security Agreement prohibited the practice unless Multi-National Forces – Iraq (MNF-I) approved. As expected, numerous requests for exemptions went to higher headquarters for approval.

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[61] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.

[62] 3d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate (BJA) OIF After Action Report, 16 September 2009, Deployed December 2008 – July 2009, Ninewah Province, Iraq (hereinafter "3-1 CAV OIF AAR (1st Half), DEC 08 - JUL 09"; on file at CLAMO).

RECOMMENDATION: The impact of the new Security Agreement is far reaching. All JAs should become familiar with it, especially those redeploying to Iraq with units that may not be aware of the new legal regime in place since January 1, 2009.[63]

ISSUE: Contractors wanting to be armed

DISCUSSION: Many contractors requested permission to be armed. The Legal Advisor ran all such requests up to USF-I for action.

RECOMMENDATION: Sustain. JAs need to be prepared to deal with contractors wanting to be armed.[64]

ISSUE: Contractor entitlements

DISCUSSION: The Legal Advisor required any contractor who sought an entitlement, whether it was to fly using military air or seeking legal assistance, to bring a copy of his contract in for review. The contract spoke for itself and allowed the Legal Advisor to determine whether the contractor was entitled to certain services.

RECOMMENDATION: Sustain.[65]

ISSUE: Contractor arming requests

DISCUSSION: The MNC-I administrative law (AdLaw) section processed a steady flow of requests for contractors to carry weapons, particularly as the use of personal security contractors (PSCs) significantly increased over time. The biggest issues were with the types of weapons and ammunition they were proposing to use.

RECOMMENDATION: Scrutinize these requests closely. The AdLaw section found errors in virtually every packet (unauthorized weapons, outdated contracts, etc.).[66]

ISSUE: Arming contractors and the need for weapons cards

DISCUSSION: The MNC-I operational law (OpLaw) section learned contractors were deploying off the FOBs on Counter IED missions while carrying small arms for self-defense. They were unaware of Iraqi criminal jurisdiction over them and the requirement, under Iraqi law, for weapons cards to make their possession of firearms lawful. The contractors were at risk of arrest every time they went on a mission, even if they did not fire their weapons. The issue arose because the contract predated the Security Agreement.

RECOMMENDATION: Ensure contractors are aware of their legal position and are protected as far as possible.[67]

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[63] *Id.*
[64] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 56.
[65] *Id.*
[66] I Corps & 2d Legal Support Organization, Combined Staff Judge Advocate OIF After Action Report, 16 May 2010, Deployed March 2009 – March 2010, Reserve Mobilization February 2009 – February 2010, Camp Victory, Iraq & Fort Lewis, Washington (hereinafter "I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10"; on file at CLAMO).
[67] *Id.*

ISSUE: Wear of military uniforms by contractors

DISCUSSION: After the Security Agreement (SA) came into force on 1 January 2009, Iraqi authorities began to object to U.S. employed contractors wearing military Army Combat Uniforms (ACUs). However, contractors were very vocal in their resistance to giving up the ACUs since they regarded it as a personal safety matter and a contract issue. Contractors were issued cards (written in English and Arabic) containing the express authorization for them to wear ACUs off the FOB under certain conditions. If picked up for violating Iraqi law and/or Article 13 of the SA, the contractors could present these cards to Iraqi authorities. The guidance also made it clear contractors could not wear any distinctive unit or deployment patches.

RECOMMENDATION: Sustain. There are a number of legal and policy reasons to keep contractors physically distinguished from fighting forces. There should be more defined guidance regarding contractors wearing uniforms to preclude any confusion amongst units as to what they can wear and what is permissible in terms of patches. Another possible consideration involves the issuing older pattern ACU or Battle Dress Uniforms (BDUs) to contractors.[68]

ISSUE: Use of camouflage utility uniform by civilian contractors

DISCUSSION: In accordance with Multi-National Force – Iraq (MNF-I) Policy Memo 11-1 dated May 2009, the command prohibited civilian contractors from wearing the camouflage utility uniform while in theater. The unit did allow an exception for LEPs. Due to the nature of their employment, the command authorized LEPs to wear the older style camouflage utility uniform. This exception was in place to provide added protection for LEPs, while at the same time ensuring they were distinguishable from Marines, Sailors, and Soldiers.

RECOMMENDATION: Sustain. It is important to know early in the deployment the theater commander's policy regarding the wear of the military uniform by civilian contractors. If the local commander has discretion, he should make a decision that provides adequate protection for civilian contractors, while simultaneously ensuring civilians are distinguishable from servicemembers.[69]

ISSUE: Weapons possession by civilian contractors

DISCUSSION: Some civilian contractors carried weapons. The RCT-8 RJA office made sure the command was aware of which civilian contractors could carry weapons and what actions the command could take (i.e., debarment from the base) if it discovered contractors carrying unauthorized weapons.

RECOMMENDATION: Sustain. JAs should be familiar with the orders and regulations addressing civilian contractors carrying weapons in theater and know which contractors may carry weapons and which may not.[70]

ISSUE: Interpreter wear of Army Combat Uniforms (ACUs)

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[68] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.
[69] Regimental Combat Team 8 (RCT-8), Multi-National Force – West (MNF-W), Deputy Regimental Judge Advocate, OIF After Action Report, 18 December 2009, Deployed January 2009 - October 2009, Al Asad, Iraq (hereinafter "RCT-8, OIF AAR, JAN 09 - OCT 09"; on file at CLAMO).
[70] *Id.*

DISCUSSION: MNC-I policy prohibited interpreters from wearing ACUs. This policy made the targeting of interpreters easier. The brigade legal section lobbied with MNC-I to have this policy changed. Eventually, lead interpreters (such as those for command groups) were able to wear ACUs.

RECOMMENDATION: Allow lower level commanders the flexibility to determine who wears what uniform in their formations.[71]

ISSUE: Contractor arming reviews

DISCUSSION: MNF-I FRAGO 09-109 required the legal review by MNC-I of all requests by contractors to carry arms. The MNSTC-I operational law (OpLaw) attorney did a preliminary legal review of such requests from MNSTC-I contractors to ensure the packets met all requirements and to strengthen the justification where appropriate. In cases where the arming of a particular contractor or group of contractors was not appropriate, the OSJA could advise the MNSTC-I chief of staff, who could in turn decline to sign the endorsement letter required for the packet.

RECOMMENDATION: Sustain/Improve. A suggested improvement to the system is to make the contractor arming requests and approvals electronic and to maintain them in a database. This would allow for easy retrieval of the request should incidents occur or any questions arise as to the contractor's authority to carry arms. Such a database could also assist in monitoring compliance with periodic training requirements such as rules for the use of force (RUF) and law of armed conflict (LOAC).[72]

ISSUE: Armed Contractor Oversight Branch (ACOB)

DISCUSSION: The MNF-I J3 Protection Division established the ACOB to oversee armed contractors' compliance with Department of Defense (DoD) requirements. When armed contractors had weapons incidents, such as negligent discharges, the contracting company had to do an investigation into the circumstances, determine what weapons training the individual had received, and conduct remedial action or de-arming procedures. For MNSTC-I contractors, the MNSTC-I Commanding General (CG) could either accept the contractor's investigation or order his own investigation. The OSJA advised in this process. The ACOB then considered the investigation and determined whether to revoke the individual's authority to carry arms.

RECOMMENDATION: Sustain.[73]

ISSUE: Wear of uniforms by contractors

DISCUSSION: Throughout the deployment, the policy on contractors wearing military uniforms remained unsettled. Contractors did not want to give them up because they felt it gave them additional protection. Multi-National Corps Iraq (MNC-I) issued a memo instructing contractors not to wear uniforms but at the same time saying contractors could submit a case-by-case

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[71] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[72] Multi-National Security Transition Command – Iraq (MNSTC-I), Staff Judge Advocate OIF After Action Report, 28 December 2009, Deployed June 2009 – July 2010, Phoenix Base, Baghdad, Iraq (hereinafter "MNSTC-I OIF AAR, JUN 09 - JUL 10"; on file at CLAMO).
[73] *Id.*

"exception" application. During the deployment, the new policy did not change things, since MNC-I approved all exception applications, particularly for linguists and others who routinely left the COBs via military aircraft.

RECOMMENDATION: Improve. There is a legal imperative to distinguish civilian contractors from combatants. The belief that wearing military uniforms affords greater protections to contractors is questionable.[74]

ISSUE: Contractor arming requests

DISCUSSION: The Division OpLaw attorneys confronted several of these arming requests. USFOR-A had a policy which was nested with the CENTCOM policy. The Div OpLaw section hung the required paperwork and the policies on its portal and forwarded all requests to USFOR-A.

RECOMMENDATION: Sustain. Publish the required paperwork and policy early to facilitate quick approval / disapproval.[75]

Civilian/Contractor Misconduct

ISSUE: Civilian misconduct

DISCUSSION: There were a few instances where civilian contractors were caught committing criminal misconduct (e.g. drug possession) on FOBs. Whenever this occurred, the brigade legal section had to immediately report it to Multi-National Corps – Iraq (MNC-I), which later became United States Forces – Iraq (USF-I), via a serious incident report (SIR) and seek guidance on handling the situation because MNC-I had jurisdiction.

RECOMMENDATION: Be prepared to handle civilian contractor misconduct. JAs should know who has jurisdiction and what steps the command should take when civilian contractors commit serious misconduct on FOBs.[76]

ISSUE: Contractors and criminal conduct

DISCUSSION: When a contractor commits misconduct, there are three options for addressing the misconduct. The least serious option is the debarment program (discussed below under "Law of Military Installations"). There are two options for criminal prosecutions in serious cases. Prosecutions can occur under either the Uniform Code of Military Justice (UCMJ) (if the contractors are subject to the UCMJ as civilians accompanying the force) or the Military Extra-territrorial Jurisdiction Act (MEJA). Prosecutions are complicated procedures, particularly under the MEJA, as this requires coordination with the Department of Justice (DoJ). The system for detaining contractors in custody needs careful coordination with the OSJA at the Corps level.

RECOMMENDATION: Find out what procedures you must follow when dealing with contractor criminal misconduct and ensure you co-ordinate closely with the criminal law division at the Corps level.[77]

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[74] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[75] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[76] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[77] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 20.

ISSUE: Contractor misconduct

DISCUSSION: After a careful review of the entire case file, CJSOTF-AP would usually remove any of its contractors accused of misconduct from theater. This was necessary due to CJSOTF-AP's high OPTEMPO.

RECOMMENDATION: Sustain.[78]

ISSUE: Contractor misconduct

DISCUSSION: When the parent company discovered a contractor was drinking alcohol, it immediately removed him/her from theatre.

RECOMMENDATION: Sustain. This sometimes happened without the BJA learning of the underlying misconduct.[79]

ISSUE: Legal assistance to contractors

DISCUSSION: Contractors attempted to utilize the brigade legal office for legal assistance matters. The applicable Army Regulation limits availability to those contractors specifically authorized legal services in their contract. TF Thunder only provided legal assistance services to retired military or those specifically authorized legal assistance in their contracts.

RECOMMENDATION: Change AR 27-3 to allow all contractors in theatre access to legal services.[80]

ISSUE: Contractors and discipline

DISCUSSION: A minority of contractors cause discipline problems. This can include breaches such as supplying alcohol and drug to soldiers. There is a gap in the disciplinary regime for contractors. The Department of Justice will only consider a Military Extraterritorial Jurisdiction Act (MEJA) prosecution in the most serious cases (i.e. homicide, rape etc). In practice, the punishment most easily available to a military commander is to ban an offending contractor from the base. This is plainly inappropriate for all but the most minor of infractions and is probably of limited effect, as the contractor may be able to get another job on a new base. The situation is further complicated on BAF because it has a large population (circa 21K) and there is no overall base commander.

RECOMMENDATION: Streamline and clarify the disciplinary procedures for contractors to allow the effective implementation of concurrent military/DOJ jurisdiction.[81]

ISSUE: Priority of the Uniform Code of Military Justice (UCMJ)

DISCUSSION: JAs should advise commanders to assert their statutory authority over civilians in their battle space. UCMJ jurisdiction over civilians existed before MEJA and continues to exist

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[78] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 56.
[79] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 16.
[80] *Id.*
[81] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.

now. A close study of MEJA will reveal that it defers authority to UCMJ asserted jurisdiction. JAs would do well to advise commanders that disciplinary issues involving civilians (and military for that matter) are not just an avoidable nuisance. Discipline over civilians in the field ought to be a jealously guarded prerogative of the commander. Commanders should not abdicate this to the Department of Justice without good reason.

RECOMMENDATION: The benefit to the commander in maintaining control and discipline over everyone in his battle space is worth the little inconvenience, especially as it is the JAs who do the heavy lifting in running cases through the UCMJ.[82]

ISSUE: Contractors' access to legal assistance services

DISCUSSION: The number of contractors assisting the U.S. Army in OIF is unprecedented and growing. Many of these contractors show up seeking legal assistance, including a growing number of non-American contractors. For example, the brigade had several Ugandan contractors in its AO. In order to verify entitlements to legal assistance, the JAs had to review individual contracts to determine if the agreed services provisions included legal assistance. The brigade legal section did not have all these contracts on file, so they often required the contractors to produce copies of their contract in order to verify entitlements.

RECOMMENDATION: Sustain. The growing number of contractors on deployed military operations demands JA familiarity with how to review contracts for legal service entitlements.[83]

ISSUE: Contractor misconduct

DISCUSSION: Terminating the services of contractors due to poor performance or for disciplinary issues can be difficult if the parent company does not fully cooperate. In one case, a contractor was operating his own privately leased vehicle, without authorization, and in violation of camp orders. While the parent company did cooperate, they did not want to provide a copy of the employment contract (probably because they did not want to divulge the contractor was making $157K as a bilingual/bicultural advisor). However, the JAs got a copy of contract from the offender (he showed up seeking legal assistance and gave a copy to the JA).

RECOMMENDATION: Improve. Where issues arise with contractors violating general or camp orders, notify their parent contract companies early and elicit their cooperation.[84]

ISSUE: Contractor misconduct

DISCUSSION: A contractor murdered a local national (LN) on a FOB in retaliation for an earlier incident in which the LN set another contractor on fire. The BJA immediately alerted higher headquarters to the incident via a serious incident report (SIR).

RECOMMENDATION: Sustain. Utilize the S-3 channels to alert higher headquarters to all cases of serious civilian/contractor misconduct.[85]

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[82] *Id.*
[83] 1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09, *supra* note 37.
[84] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.
[85] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.

ISSUE: Potential Uniform Code of Military Justice (UCMJ) authority over contractors

DISCUSSION: One AOB commander heard rumors about potential contractor misconduct. The AOB commander requested the legal advisor provide a brief to all contractors on SOTF-C's ability to exercise UCMJ jurisdiction over contractor misconduct.[86]

ISSUE: Contractor misconduct

DISCUSSION: There is a variety of means available to deal with contractor misconduct. For the most egregious misconduct, charges are possible under the Uniform Code of Military Justice (UCMJ) or under the Military Extraterritorial Jurisdictional Act of 2000 (MEJA), but there are many possible complications and legal obstacles with both. There have not been many prosecutions under MEJA due to a variety of procedural challenges and legal hurdles. Administrative action to remove the contractor from the base location is always possible, and an administrative bar letter is usually the most effective way of quickly removing an offending contractor (but it does nothing to punish the contractor for the offense). Explaining the above options to an agitated commander can be tricky, especially if the commander wants the offending contractor imprisoned and court-martialed.[87]

ISSUE: Firing interpreters for misconduct

DISCUSSION: An interpreter was suspected of misconduct meriting investigation by the Naval Criminal Investigative Service (NCIS). The JA advised the command on the requisite paperwork to remove him from the position and reviewed the paperwork before submitting it. The JA also coordinated with Naval Criminal Investigative Service (NCIS) to conduct the investigation.

RECOMMENDATION: Sustain. Interpreters present special issues. Early interaction with the command and higher headquarters streamlines the process of removing interpreters for potential misconduct. Army JAs deploying with the Navy must know the scope of NCIS' mission set before deploying. Note, the mission sets of NCIS and Army Criminal Investigation Division (CID) are different.[88]

Miscellaneous

ISSUE: Afghan Security Guards (ASG)

DISCUSSION: CJSOTF-A employed ASG for static security at many remote team locations. A continual challenge was the commercial manner in which USFOR-A would seek to apply contractor oversight policy (rules and regulations) to ASG, *e.g.* personal security company insurance requirements

RECOMMENDATION: Legal advisors need to understand the operating environment and provide realistic legal interpretations for operational implementation.[89]

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[86] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 8.
[87] 2010 Brigade Judge Advocate (BJA) Symposium, 10-12 May, 2010, The Judge Advocate General Legal Center and School (TJAGLCS), Charlottesville, VA (hereinafter "BJA Seminar, combined AAR, 10-12 MAY 2010"; on file at CLAMO).
[88] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 22.
[89] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 6.

RECOMMENDATION: Sustain. Contractors need to know their actions are punishable under the UCMJ.[90]

RECOMMENDATION: Military operations in Iraq and Afghanistan have caused an explosion in the number and roles of contractors in the battle space. BJAs should expect to deal with contractor misconduct at least once during a deployment.[91]

ISSUE: Civilian contract truck drivers in military convoys

DISCUSSION: Civilian vehicles driven by third country national (TCN) contractors accompanied military vehicles in supply convoys. On at least one occasion, a civilian oil tanker lost control and crashed. Evacuation of the driver occurred via ground units to a nearby military hospital. The truck was abandoned in place. The contracting agent charged the military for use of the vehicle and the cargo, taking no responsibility for the driver.

RECOMMENDATION: Improve. Judge advocates (JA) must get involved in all aspects of the operations to include understanding the procedures and protocol for cleaning-up damage to environment, truck recovery, and medical evacuation.[92]

ISSUE: Incorporating contractors into the unit

DISCUSSION: The command viewed military and civilians as one team, incorporating civilian contractors as best possible into the unit structure. Although not assigned to the unit, contractors unofficially became the "31st Company."

RECOMMENDATION: Sustain. Contractors are critical to mission success. To the extent consistent with the Joint Ethics Regulation (JER) and within the company's contract, incorporate contractors in the structure of the command.[93]

ISSUE: Staged accidents against civilian contractors

DISCUSSION: Under the SA, civilian contractors are subject to Iraqi jurisdiction for any violations of Iraqi law. In one incident, U.S. contractors were driving trucks through Basra when some Iraqi civilians pushed a damaged car into the trucks' path to make it look like there was an accident. Iraqi Police (IP) sought to assert jurisdiction over the contractors and put them in jail for causing the accident. The only thing that saved the contractors was the fact they had a video camera in the lead vehicle, which allowed them to prove there was no accident.

RECOMMENDATION: Sustain. Encourage contractors to continue to use video cameras in their vehicles. U.S. forces must be aware of the status of civilian contractors under the SA and know what they can/cannot do to assist the contractors.[94]

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[90] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 8.
[91] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 87.
[92] 4th Sustainment Brigade, OIF After Action Report, 28 August 2009, Deployed March 2008 – June 2009, Army Central Command (ARCENT), Camp Arifjan, Camp Beuhring, Camp Virginia, & Ali Al Saleem Air Base, Kuwait (hereinafter "4th SUST BDE (OIF) MAR 08 - JUN 09"; on file at CLAMO).
[93] 4th Combat Aviation Brigade (4th CAB), 4th Infantry Division (Mechanized), OIF After Action Report, 28 August 2009, Deployed June 2008 – June 2009, Multi-National Division – Baghdad (MND-B), Camp Taji, Iraq (hereinafter "4th CAB OIF AAR, JUN 08 - JUN 09"; on file at CLAMO).

ISSUE: Lack of recourse for third country national (TCN) contractor employees

DISCUSSION: The BJA became aware of TCN contractor employees working under conditions approaching involuntary servitude. It was common practice for contractors to take the passports of its TCN employees and pay only by direct deposit. This left the TCN employees with no way to leave the country if they so desired. Many such TCNs were afraid to make a complaint for fear of reprisal.

RECOMMENDATION: Improve. The U.S. government should better scrutinize the labor practices of entities with which it contracts. There should be an independent "ombudsman" with whom contractor employees can lodge complaints against their employers.[95]

ISSUE: Obtaining contracts to determine contractor responsibilities

DISCUSSION: TF Thunder had a large contingent of civilian contractors. TF Thunder Legal needed copies of the contracts to determine TF Thunder's responsibilities and obligations regarding each contractor. The BJA worked through CJTF-82 to secure the contracts.

RECOMMENDATION: Sustain. Use higher headquarters to work the appropriate contracting channels to secure the contracts. CAB BJAs should be prepared to deal with many civilian contractors due to the technical issues surrounding aviation repairs.[96]

ISSUE: Applicability of the U.S.-Iraq Security Agreement to civilian contractors

DISCUSSION: Under the U.S.-Iraq Security Agreement (SA), civilian contractors, with the exception of Department of Defense (DoD) personnel, are subject to Iraqi law. Consequently, civilian contractors, to include embedded law enforcement professionals (LEPs) serving as law enforcement subject matter experts in support of designated U.S. Army and Marine units, could be tried under the Iraqi criminal justice system for any suspected violations of Iraqi law. The unit recognized this issue as an item of particular concern because LEPs, as part of their law enforcement duties, carried weapons. For example, if a LEP exercised self-defense when attacked, Iraqi authorities could potentially arrest and try the LEP in accordance with Iraqi law. In order to prepare for these situations, the unit held a "Response to Iraqi Civilian Arrest" working group to plan appropriate responses to Iraqi authorities arresting civilian contractors or even U.S. servicemembers.

RECOMMENDATION: Sustain. JAs should be familiar with the SA and its ramifications. Units should plan and prepare for how to react in situations where Iraqi authorities arrest civilian contractors or U.S. servicemembers. See DAJA-IO Information Paper on US-Iraq Security Agreement (SA)—Potential Effects on Contractors dated 5 January 2009 (on file at with the Center for Law and Military Operations (CLAMO)).[97]

ISSUE: The use of law enforcement professionals (LEPs)

DISCUSSION: Each of the brigade's four maneuver battalions had a LEP. The BCT

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[94] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.
[95] *Id.*
[96] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 16.
[97] RCT-8, OIF AAR, JAN 09 - OCT 09, *supra* note 69.

commander had operational control (OPCON) and administrative control (ADCON) over the LEPs. The LEPs were a force multiplier and taught Iraqis how to build investigative packets and preserve evidence. Units did not initially know how to use their LEPs, but eventually figured it out once warrant-based targeting made evidence collection essential.

RECOMMENDATION: Sustain. The Iraqis improved significantly in their investigative techniques and evidence preservation under the tutelage of the LEPs. Continue the use of LEPs in conducting sensitive site exploitation (SSE).[98]

ISSUE: Management of interpreters

DISCUSSION: There was a lack of managerial oversight of interpreters. This led to numerous instances of interpreter misconduct and misuse of government air assets.

RECOMMENDATION: Be prepared to deal with a host of legal issues arising from interpreter misconduct.[99]

ISSUE: Protecting interpreters

DISCUSSION: In accordance with All Marine Corps Activities message (ALMAR) 004/08, the Marine Corps prohibits civilian personnel accompanying the force from wearing the Marine Corps combat utility uniform (MCCUU). Additionally, the Army contract under which the interpreters operated required interpreters to report for work wearing Army camouflage. These requirements resulted in interpreters working with Marine units becoming easy targets for insurgents. Since interpreters are a key asset in the counterinsurgency (COIN) fight, this became very problematic. In order to remedy this, the SJA office assisted the unit in devising a plan to protect interpreters properly while ensuring the unit complied with the applicable policies and regulations governing civilians wearing the MCCUU.

RECOMMENDATION: JAs need to be aware of service restrictions on interpreters wearing the military uniform and assist in implementing a plan ensuring both the safety of interpreters and compliance with the rules.[100]

ISSUE: Base access for contractors

DISCUSSION: The number of personnel on forward operating bases (FOBs) was light due to operational tempo and restrictions on the number of military personnel authorized in Afghanistan. It was a real burden on the unit when a contractor seeking access to a FOB had a local national (LN) who could not meet the necessary requirements to walk on a FOB unaccompanied. The unit would have to pull personnel from the already light guard force to escort the contractors.

RECOMMENDATION: JAs, especially contracting attorneys, and contracting officers should advise vendors/contractors that if you are a company who wants to do business with the U.S. in a deployed environment, you must have at least some employees who can comply with base procedures for unescorted access.[101]

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[98] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[99] *Id.*
[100] 2d MEB Contingency Contracting Attorney AAR JUL 09 - NOV 09, *supra* note 41.
[101] *Id.*

ISSUE: Law of War (LoW) training for contractors

DISCUSSION: In accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.7402-4, all contractors must receive basic LoW training to accompany U.S. Armed Forces deployed outside the United States. Typically, LoW training for U.S. contractors takes place at a military-run training center before deployment. However, pre-deployment LoW training for contractors does not always occur.

RECOMMENDATION: Make sure contractors are compliant with DFARS LoW training requirements. JAs need to be prepared to assist in providing LoW training to contractors in theater if the need arises.[102]

ISSUE: "Abandoned" third country nationals (TCNs)

DISCUSSION: Companies bring thousands of TCNs into Iraq to work on U.S. contracts. In one case, an employment broker sent hundreds of Sri Lankan, Indian, and other TCNs to Iraq by a on behalf of a subcontractor to work on a prospective U.S. contract, but the work never materialized. The contractor effectively abandoned the TCNs without work and without returning them to their home country. They lived within the "doughnut hole" near Baghdad International Airport (BIAP) (VBC surrounds BIAP, which is under Iraqi jurisdiction; thus BIAP forms a "doughnut hole" in the middle of the larger surrounding VBC complex of bases).

The TCNs were in what was, in effect, a refugee camp. There were concerns of unsanitary conditions, mistreatment, illegal confiscation of passports, the presence of illegally held weapons in the camp, and the potential for riots. A UN representative requested access to the camp but was denied access except when accompanied by personnel from the garrison command. During a visit at the camp, the Iraqi Police (IP) raided the camp because of the reports of illegal weapons. It was hard to establish who was responsible for the people in the camp.

While there was no liability on the U.S. Government relating to these individuals, they were brought into the country in hopes of serving U.S. contracts, and thus there were potential adverse publicity problems if they were abandoned. The contractor had not asked anyone in the U.S. Government to bring prospective workers into Iraq but rather did this on its own initiative under the mistaken belief it was going to be awarded subcontracts on different contracts throughout the country. In the end, the prime contractor, the garrison command, and the UN worked together to convince the subcontractor it had a responsibility to drastically improve the conditions of the area where it was keeping the TCNs and to return the TCNs to their homeland as soon as possible.

RECOMMENDATION: Ensure contractors are accountable for the welfare of people they bring into the country and that they cannot or should not bring workers into the country unless those individuals have a specific position on a specific contract. Consider all the "tools" available to you in this situation. The subcontractor had existing subcontracts on VBC and elsewhere throughout Iraq, and the management personnel lived on VBC and had the status of contractors accompanying the force. As such, and given the potential trafficking in persons violations existent at the "refugee camp," the garrison command reminded them of the potential for being barred from the installation for this conduct if they did not rectify it immediately.[103]

ISSUE: Contractor involved in a motor vehicle accident

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[102] *Id.*
[103] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 20.

DISCUSSION: A contractor working with SOTF-W was seriously injured in a motor vehicle accident while on a mission. After reading the applicable Manual of the Judge Advocate General (JAGMAN) provisions and consulting with Navy JAs in San Diego, the JA recommended the command conduct a Navy litigation report (LITREP), the primary purpose of which is to prepare and defend the legal interests of the Navy in claims proceedings or civil litigation. Through his employer, the contractor requested details of the accident to provide to his insurance company. Because a LITREP constitutes attorney work-product, SOTF-W was unable to provide the actual report to the contractor. However, the command provided key facts, such as those contained in a police report, to the contractor to assist him in filing his insurance claim.

RECOMMENDATION: Sustain. Army JAs filling a Navy slot must be familiar with Navy investigations before deploying and seek guidance when necessary.[104]

ISSUE: Journalists and lost accreditation

DISCUSSION: Iraqi authorities arrested an American journalist touring the operational area after he could not find his U.S. Army sponsored credentials. While he was in custody, the JAs had to determine if there was any responsibility or liability for the activities of the journalist. The Iraqi authorities turned the journalist over to U.S. control. The JAs advised him he was subject to Iraqi law and he had no special protections. He signed a waiver to that effect.

RECOMMENDATION: With the passage of the SA, any Americans traveling in Iraq are fully subject to Iraqi laws. Even those with sponsored credentials have to understand they are not immune to the host nation's laws. JAs must be aware of jurisdictional issues under any Status of Forces Agreements (SOFAs) that may exist as well as the application of host nation laws to include not only U.S. Forces, but also contractors and U.S. citizens.[105]

ISSUE: American tourists in Iraq

DISCUSSION: Iraqi authorities took American tourists into custody who, without permission, drove into Iraq from Turkey. The Iraqis turned them over to U.S. forces, who advised the tourists about being subject to Iraqi law.

RECOMMENDATION: Occasionally, JAs will have to deal with Americans civilians who are unfamiliar with the application of host nation laws or have the mistaken belief they have immunity like American troops. JAs must be aware of jurisdictional issues under any Status of Forces Agreements SOFA that may exist as well as the application of host nation laws.[106]

ISSUE: Lost hikers traveling into Iran

DISCUSSION: When the American hikers wandered into Iran from Iraq, MND-N units conducted searches in the border areas near Iran for any sign of the lost hikers. At the time of this writing they remain in Iranian custody.

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[104] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 22.
[105] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[106] *Id.*

RECOMMENDATION: Civilians can unintentionally thrust U.S. forces into delicate search operations near the borders of adversaries. JAs should be prepared to advise on any rules of engagement (ROE) and international law governing operations near the border.[107]

ISSUE: Impact of the Security Agreement on contractors

DISCUSSION: With the announcement of the SA in late 2008, many contractors expressed concerns over the lack of immunity from Iraqi law. Commanders were also concerned and consulted the JAs about the possibility of arrests or incarcerations of contractors by Iraqi authorities. JAs explored contingencies and legal courses of action in advance of the SA implementation date. However, it turned out to be a non-issue during the deployment, since contractors adhered to Iraqi laws and no wave of arrests occurred. Aside from generally informing contractors that they were now subject to Iraqi law under the SA, JAs advised them to get their legal advice from employing company's own legal counsel, not from the Division legal office.

RECOMMENDATION: The advent of a new legal regime will often raise numerous potential issues for JAs to consider. However, many of these potential issues may never actually materialize. JAs have to check with their higher HQs in such situations to determine how much legal advice they can provide to contractors.[108]

ISSUE: Control of law enforcement professionals (LEPs)

DISCUSSION: Who commands and controls LEPs in the field is often difficult to determine. Moreover, trying to find a copy of the LEP contracts is nearly impossible, as they do not carry copies and the contracting companies are overseas. This issue is frustrating when trying to quickly discipline and/or remove unsatisfactory contractors.

RECOMMENDATION: Improve. Command and control of contractors has to improve. It would be helpful to have a one-stop repository at Corps level or elsewhere where JAs can research these contracts.[109]

ISSUE: Contracted police trainers

DISCUSSION: 172d BDE had tremendous success with contractors from the U.S. providing police and security training to Iraqi Security Forces (ISF). Comprised of retired Federal Bureau of Investigation (FBI) agents and police officers, these contractors enabled 172d BDE to provide professional training to Iraqi Police (IP). These contractors also participated in the 172d BDE's Prosecution Task Force (PTF) by providing experienced investigative skills to help prosecute local insurgents and criminals in the Iraqi courts. With decades of policing knowledge, these contractors worked well with the BDE legal staff and were accustomed to evidential and prosecutorial issues. They contributed significantly to 172d BDE's efforts and specifically to the PTF mission success.

RECOMMENDATION: Sustain. This is another example of contracted services that can significantly enhance a BDE's effectiveness and capabilities.[110]

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[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] 172d IN BDE, OIF AAR, NOV 08 - DEC 09, *supra* note 46.

ISSUE: Providing support to contractors

DISCUSSION: The SJA had to answer numerous questions from the different staff sections as to the types of support CFSOCC-A could provide to contractors. Questions ranged from whether CFSOCC-A could issue body armor to whether contractors can fly using military air (MILAIR) assets.

RECOMMENDATION: The SJA would review the individual contractor's contract to determine the scope of support CFSOCC-A could provide. When necessary, the SJA would ask one of the other staff sections to track down a specific contract.[111]

ISSUE: Contactor killed in the scope of his employment

DISCUSSION: A contract mechanic volunteered to leave the firebase to assist with the recovery of a mine resistant ambush protected (MRAP) vehicle. En route to recover the MRAP, anti-Afghan forces attacked the convoy and killed the contractor. The contractor's contract limited his work to the firebase. The issue was whether the contractor died within the scope of his employment.

RECOMMENDATION: Legal advisors need to be prepared to deal with these types of issues. Here the SOTF legal advisor did not learn of the contractor's presence on the convoy until after the attack. Following the contract mechanic's death, the SOTF legal advisor scrubbed every CONOP for contractors' names. When he identified a contractor, he would pull the contractor's contract and see whether the contract allowed for such activity.[112]

ISSUE: Contractor's personnel effects

DISCUSSION: After the contract mechanic's death there was confusion as to who should be in charge of collecting, cataloguing and shipping the contractor's personnel effects home. The parent company wanted to, but Army Regulation (AR) 638-2, specifically chapters 17 and 18, stated the Army should be in charge.

RECOMMENDATION: Follow the AR when collecting, cataloguing, and shipping a contractor's personal effects home.[113]

ISSUE: Utilization of Afghan Security Guards (ASG)

DISCUSSION: ODAs contract (through a theater-wide standard DOD contract) with local nationals to provide fire base security. These local national are civilians and are not affiliated with the Government of the Islamic Republic of Afghanistan (GIRoA). Many of these ASG have been employed with USSF for many years and trained and fought with them during the early stages of Operation Enduring Freedom (OEF).

RECOMMENDATION: Implement and reemphasize the left and right limits of contracted ASG and private security companies under Department of Defense (DOD) contract at all stages of pre-deployment training. Most importantly, DOD contract security employees cannot participate in

[111] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 49.
[112] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 50.
[113] *Id.*

offensive operations. Legal advisors must remain pro-active to ensure compliance with all applicable DOD policy and federal law in this area.[114]

ISSUE: Contractors wanting to perform combat missions

DISCUSSION: Contractors employed to train the Afghan National Police (ANP) would periodically request to accompany the ANP on combat patrols. The OpLaw attorneys spotted these requests and recommended disapproval. However, the contractors would continue to push these requests to Division hoping for a different answer.

RECOMMENDATION: Sustain. Attorneys must keep an eye out for contractors, particularly private security companies (PSCs), attempting to expand their roles and involving themselves in combat missions and other inherently governmental activities.[115]

ISSUE: Contractors working with the Drug Enforcement Agency (DEA)

DISCUSSION: Contractors assisted the DEA with training the National Interdiction Unit (NIU) and Sensitive Investigative Unit (SIU). They would ask the DEA for permission to accompany these forces on combat missions as part of their training mission. For instance, one contractor would assist the radio operator on a mission while another would "train" the heavy weapons team. The OpLaw attorneys would review each CONOP which outlined this type of training on mission and asked to what extent these trainers were actually taking part in combat operations. Eventually, the Division staff elevated the issue to the higher headquarters for action.

RECOMMENDATION: Sustain. Although contractors are employed by another executive agency, they are still operating within your battlespace. Therefore, your commander still has the obligation to ensure their conduct falls within the bounds of their contract and law.[116]

ISSUE: Always go to source documents when researching issues

DISCUSSION: Often, staff members would consult with the OpLaw JAs on a legal issue and make statements of fact that were based not on a FRAGO or policy, but instead on "that's how it always has been done." OpLaw JAs cannot accept these statements as ground truth. Instead, JAs must actively find the source of the legal requirement. Especially in an area as sensitive as detention operations in an operating environment as dynamic as Afghanistan, legal and policy guidance rarely remains static. Therefore, it is critical that JAs ensure that they find the legal or policy foundation embraced in FRAGO rather than accepting historical anecdotes as fact.

RECOMMENDATION: Sustain. OpLaw attorneys frequently found that old guidance had been superseded by FRAGO. Do not rely on other staff members' "oral traditions," because they are frequently incorrect.

ISSUE: Become a scholar of operational requirements

DISCUSSION: The OpLaw JAs read and kept accessible important FRAGOs and other directives. They found throughout the deployment that they were valued added to the staff as "the Oracle" of critical information on which other staff sections could rely. This ability to

[114] 3/3 SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 9.
[115] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[116] *Id.*

problem solve by knowing where to find guidance greatly assisted the entire staff and saved them from wasting precious time in short suspense situations.

RECOMMENDATION: Sustain. Although OpLaw JAs are not necessarily librarians, you can assist the staff in all operations by being the most educated person on the current guidance embodied in FRAGO or other documents.[117]

ISSUE: Distribution of weekly FRAGO digest

DISCUSSION: The Division OpLaw attorneys read every FRAGO identifying legal issues that affected both the Division and subordinate headquarters. Weekly they would distribute a FRAGO digest to the BJAs which contained the relevant parts of the published FRAGOs. This proved especially helpful for the young JAs at subordinate units who perhaps did not have good relationships with their S-3s or who were otherwise left out of the loop.

RECOMMENDATION: Sustain. This proved greatly helpful for subordinate unit JAs who had not the time, resources, or experience to read the FRAGOs and identify the relevant guidance contained therein.[118]

ISSUE: Maintenance of OpLaw Knowledge Capture

DISCUSSION: The Division OpLaw section maintained its knowledge capture which was the internet repository of relevant international and operational law resources. Constant maintenance of this electronic database greatly facilitated quick research on issues.

RECOMMENDATION: Sustain. Ensure that you periodically update the electronic database as necessary when new guidance is published. This includes discarding superseded FRAGOs or guidance to avoid confusion.[119]

ISSUE: Publishing of information papers

DISCUSSION: If someone asked the Division OpLaw section a question more than once, the JAs would then create an information paper or white paper on that topic. Initially, the OpLaw section would post the info paper on its internet portal. As the deployment wore on, it began attaching the info papers to FRAGOs, so Soldiers would actually read them. This proved very effective.

RECOMMENDATION: Sustain. Create info papers pertaining to frequently asked questions and attach them to FRAGOs. This will cut down on the amount of queries on common issues.[120]

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[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.*

I.E. Detention Operations/Prisoner of War Issues

I.E.1. Article 5 Tribunals

No AAR comments.

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)

Warrant-Based Targeting

ISSUE: Assisting in detainee prosecutions at CCCI

DISCUSSION: The legal advisor worked closely with CJSOTF-AP's liaison officer (LNO) to CCCI to secure national warrants when ODAs could not get local warrants. The legal advisor also would coordinate with the ODAs to secure witnesses for CCCI cases.

RECOMMENDATION: Sustain. Legal advisors should foster a good working relationship with LNOs to CCCI.[121]

ISSUE: Relationships with local authorities for obtaining warrants

DISCUSSION: Units that had good relationships with local authorities were more successful when it came to obtaining warrants and having people detained.

RECOMMENDATION: Empower the local authorities. The more you do so, the more success you will have.[122]

ISSUE: Importance of working with local judges

DISCUSSION: The legal advisor stressed the importance of working with local investigative judges to secure warrants before the deployment. The SOTF-C commander also stressed the importance of this before the deployment.

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[121] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 8.
[122] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.

RECOMMENDATION: Legal advisors should seek command emphasis of securing local arrest warrants when possible. ODAs are more receptive to command guidance than legal advice on operational issues. Legal advisors also must be prepared to assist in securing national level warrants when an ODA cannot obtain a local warrant.[123]

ISSUE: "Prosecution-based targeting"

DISCUSSION: After the implementation of the Security Agreement (SA), the BCT commander referred to warrant-based targeting as "prosecution-based targeting" in order to emphasize the end state and to focus beyond merely getting the warrant. Several months before the SA implementation, the BJA accompanied the outgoing BJA to meet with an investigative judge (IJ) to determine the requirements for getting a warrant. They found getting the warrant itself was not very difficult, but the amount of evidence needed for the warrant was not enough to prosecute the detainee successfully. Therefore, the BCT continued to emphasize the collection of evidence for prosecution, even after obtaining a warrant. The ideal situation would have been to obtain enough evidence for a complete prosecution packet prior to detention. However, practically, the BCT needed to remove targets from the battlefield quickly, resulting in timely warrants with follow-through by the BCT Prosecution Task Force to complete the prosecution packet with the IJ. In addition, they worked with the IJs to determine what evidence the IJ still needed.

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.[124]

ISSUE: Transition to warrant-based targeting

DISCUSSION: Although the BCT prepared for the transition to warrant-based targeting by determining the requirements of IJs, the BCT did not actually implement its warrant-based targeting procedures until a few days before the implementation of the SA. Consequently, they had difficulty at first in determining who was a "competent Iraqi authority" (CIZA) to whom they could turn over detainees.

RECOMMENDATION: Improve. Although it is tempting to continue using the more advantageous detention procedures as long as possible, units should attempt to implement new procedures as far in advance as possible of the official implementation of those procedures in order to work out all of the kinks in the process. It also would have been helpful to get commanders used to the new system (and prevent them from getting too reliant on the old system during the first few months of the deployment).[125]

ISSUE: Development of evidence and actionable intelligence using IJ interrogations

DISCUSSION: Most of the evidence the BCT obtained against potential detainees was signals intelligence (SIGINT) based and classified. The G2 balked at allowing the BCTs to provide this information to IJs to support warrant applications. However, an incident in February 2009 turned the BCT on to the use of IJs to develop evidence and actionable intelligence. During a convoy

[123] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 8.
[124] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 17 September 2009, Deployed October 2008 – June 2009, Camp Liberty, Iraq (hereinafter "2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09"; on file at CLAMO).
[125] *Id.*

attack, one of their squadrons had to take a seriously injured insurgent to the Camp Cropper detention facility. Although Camp Cropper accepted the individual for medical treatment, accepting the individual for detention purposes required a detention order from an IJ, as well as a letter from a CIZA requesting U.S. forces to detain the individual in a U.S. facility. In obtaining the detention order (which later involved bringing the IJ to the Camp Cropper hospital to speak with the detainee), the unit learned the information the IJ obtains from his interrogation of the detainee becomes evidence, whereas sworn statements from Soldiers are not acceptable evidence in the Iraqi system. The IJ allowed U.S. personnel to observe interrogations and use the information.

RECOMMENDATION: Sustain. It is essential to build good relationships with the IJs. Because of this, the IJ never had a problem with U.S. forces being present while he conducted the questioning of the detainee. Moreover, the sooner the unit could get a detainee in front of the judge, the more the evidence provided by the detainee in his confession to the judge was usable as actionable intelligence for future targeting. This process allowed the unit, in conjunction with Iraqi Security Forces (ISF), to bring down an RKG3 (anti-tank grenade) network. Furthermore, the success of this process got battalion commanders to buy into the concept of "prosecution-based targeting."[126]

ISSUE: Prosecution Task Force (PTF)

DISCUSSION: The brigade established the PTF to coordinate "prosecution-based targeting" and see the process through from targeting through prosecutions. Although the BCT commander chaired the PTF and sat in on its meetings once a week, the day-to-day officer in charge (OIC) was the head of the fires and effects coordination cell (FECC). Other participants included the BJA, targeting officer, Assistant S2, S2 analysts, Provost Marshal, and law enforcement professionals (LEPs). The PTF assisted in developing a "top ten" list for targeting and assisted in getting detainees to a CIZA.

RECOMMENDATION: Sustain.[127]

ISSUE: Joint targeting

DISCUSSION: The BCT had its own target list, separate from the IA target list. The BCT used its law enforcement professionals (LEPs) to do affidavits to get warrants. It then turned the targets over to special operations forces (SOF) via the Basra Area Operations Center (BAOC) to action the target with ISF. The BCT did not involve ISF in the targeting process until after it got the warrant. The BCT did not allow Iraqis in the tactical operations center (TOC).

RECOMMENDATION: Improve. It would have been better to involve two or three trustworthy ISF representatives in the BCT targeting process from the beginning. This would save the BCT the trouble of developing a targeting packet and obtaining a warrant for an individual the ISF would refuse to target.[128]

ISSUE: Combined Pre and Post Capture Exploitation Cell (CP2CXC)

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[126] *Id.*
[127] *Id.*
[128] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.

DISCUSSION: The BJA developed a CP2CXC for the brigade. The CP2CXC was a material concept for the PTF. 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. An element of the CP2CXC was co-located with the Combined Information Center (CIC) on the Iraqi side of Taji.

RECOMMENDATION: Sustain. The Asymmetric Working Group (AWG) has since cited the CP2CXC as a "best practice." Co-locating with the CIC allowed the brigade to track detainees from unilateral Iraqi operations and collect biometric from these prisoners. Co-location also provided a mechanism to ensure the Iraq Army (IA) was meeting minimum international standards in their treatment of detainees.[129]

ISSUE: Warrant packets

DISCUSSION: The SBCT developed an unclassified warrant packet concurrently with the development of intelligence. The brigade found wire diagrams in "mafia" format—with leaders ("dons") at the top, mid-level bosses ("capos"), and soldiers—were helpful for explaining a target's relevance and criminality to the investigative judge (IJ).

RECOMMENDATION: Sustain. Creating an unclassified warrant packet reduces the unit's reliance on the foreign disclosure officer (FDO). Packets with the doctrinal intelligence wire diagram format were too complicated for the IJs to follow.[130]

ISSUE: Periodic changes in detention operations (DetOps) guidance

DISCUSSION: With the SA coming into force on 1 January 2009, the HBCT transitioned to warrant-based targeting. After some time, higher headquarters issued a number of FRAGOs regarding warrant procedures, release operations, and handling methods/means. DetOps was a dynamic topic requiring nuanced changes to reflect developments in U.S. policy. As such, it slowly evolved during the deployment and did not reach a "steady state."

RECOMMENDATION: JAs must monitor DetOps/release-related higher guidance due to the sensitive nature of the topic and the reshaping of strategic policy.[131]

ISSUE: Importance of understanding Iraqi law for warrant-based targeting

DISCUSSION: It is crucial for JAs to understand how the inquisitorial system works and the nuances of Iraqi substantive law. The implementation of the SA forced the brigade legal section to learn and understand Iraqi criminal procedures to secure warrants and ensure convictions.

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[129] 56th Stryker Brigade Combat Team, 28th Infantry Division (Mechanized), Pennsylvania Army National Guard, Brigade Judge Advocate OIF After Action Report, 24 September 2009, Deployed January 2009 – September 2009, Camp Taji, Iraq (hereinafter "56th SBCT (PA NG) OIF AAR, JAN - SEP 09"; on file at CLAMO).
[130] *Id.*
[131] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.

RECOMMENDATION: Deploying JAs should have a thorough understanding of Iraqi criminal procedures. The most unique part of the deployment was figuring out the Iraqi justice system to prevent the system from kicking back arrested targets.[132]

ISSUE: Obtaining warrants

DISCUSSION: JAs need to understand this process and encourage battalion or company level commanders to invest time with the local IP chief and his investigator to support this process. If there is a target of interest, it is important to check with the local police precinct to determine if there is an existing warrant supported by evidence the local police can use to pick up the target. BCT JAs were engaged in the warrant process when new forensic evidence linked an incident to a suspect. In this case, the BCT JA would prepare a cover letter to the Iraqi investigative judge (IJ) outlining evidence developed by U.S. crime labs, along with other available evidence to support a warrant package.

RECOMMENDATION: Improve. This process can be time consuming, and a dedicated RoL attorney is necessary to support this process properly. Further, local courts sometimes are resistant to the admission of evidence generated by U.S. labs and time lags further complicate the issue. Iraqi crime lab capacity needs substantial improvement to move the society away from an evidentiary system nearly entirely based on testimonial evidence.[133]

ISSUE: Best approach for obtaining an Iraqi warrant

DISCUSSION: There are several core requirements to obtain a warrant from an Iraqi judge. These requirements include a photo of the individual, full Iraqi name if possible, summary of the criminal events as detailed as possible, at least one eyewitness, disposition of evidence or turn over the evidence if it still exists, identification of the location of the crime for jurisdictional purposes, crime scene and other related photos, and declassified link diagrams. Some judges, however, had additional requirements. As the PTF identified the additional requirements some judges were imposing, the PTF sought to build all warrant packages applying the "strictest requirements approach."

RECOMMENDATION: Sustain. The key to success is to get to know the judges and what they want. Talk with the judges, peers, and those you are replacing to learn this.[134]

ISSUE: Evolution from warrant-based to evidence-based targeting

DISCUSSION: Operations under the Security Agreement evolved from warrant-based to evidence-based targeting. It is relatively easy to get a warrant to arrest individuals who are a threat to safety and security. However, absent some admissible evidence, this will not take them out of circulation for very long.

RECOMMENDATION: The key is to develop a case supported by evidence with the aim of convicting the guilty.[135]

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[132] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[133] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.
[134] 1st Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 3 February 2010 & 29 March 2010, Deployed February 2009 – January 2010, Joint Security Station War Eagle, Baghdad, Iraq (hereinafter "1-1 CAV BCT OIF AAR, FEB 09 - JAN 10"; on file at CLAMO).
[135] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.

Detainee Abuse Allegations

ISSUE: Detainee abuse by Iraqis

DISCUSSION: During inspections of Iraqi facilities, U.S. forces took statements from and photos of the detainees. The BCT reported allegations of detainee abuse by Iraqis through division to MNC-I, for eventual transfer to Iraqi internal affairs personnel. These investigations sometimes resulted in the relief of prison staff or IPs.

RECOMMENDATION: Sustain. It is important to the rule of law in Iraqi for U.S. forces to report cases of detainee abuse by Iraqis, even if the result is the dismissal of pro-U.S. officials.[136]

ISSUE: Allegations of detainee abuse at the point of capture (POC)

DISCUSSION: Detainees routinely claimed U.S. or Iraqi Soldiers abused them upon capture. Initially, TF MP North was responsible for initiating an AR 15-6 investigation into these allegations. The new procedure for POC allegations involved Military Police Investigators (MPI), assigned to the TIF, collecting a statement from the detainee, preparing a report, collecting any medical evaluations and pictures, and sending this information along with the detention packet through the TF MP North Command Judge Advocate (CJA) to the CJA, TF 134.

RECOMMENDATION: Sustain. If TF 134 deactivates, MPI should forward the investigation packets directly to the SJA responsible for providing legal support to the capturing unit.[137]

ISSUE: Tracking detainee abuse allegations

DISCUSSION: Detainees not only claimed abuse by U.S. or Iraqi soldiers at the POC and in the TIF, they also made repeat allegations months later. It is crucial to maintain a detainee abuse tracker to keep an accurate record of these allegations. It is also invaluable for answering Freedom of Information Act (FOIA) requests or other inquiries, and preparing for U.S. Army Central (ARCENT) inspections.

RECOMMENDATION: Sustain.[138]

ISSUE: Insufficient documentation for detainees

DISCUSSION: The Security Agreement imposed new requirements for in-processing detainees into the TIF. The detention packet must now include a detention order signed by an Iraqi judge, a request from a "competent Iraqi authority" (CIZA) (now exclusively an Iraqi judge) to transfer the detainee to coalition forces, and a memorandum signed by an O6 or higher indicating detainee requires internment. Although capturing units must provide a capture tag, a property receipt, and two sworn statements, the absence of these items will not prevent the detainee from in-processing into the TIF. Capturing units attempted to process detainees at Camp Cropper without the necessary documentation. Furthermore, capturing units often did not properly coordinate with

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[136] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.
[137] 11th Military Police Brigade, United States Army Reserve (USAR), OIF After Action Report, 17 September 2009, Deployed August 2008 – June 2009, Camp Cropper, Iraq (hereinafter "11th MP BDE OIF AAR, AUG 08 - JUN 09"; on file at CLAMO).
[138] *Id.*

TIF requirements before bringing detainees to the TIF. This caused tension between the capturing units and the TIF. Good coordination between JA staffs is critical to ensure capturing units know what documentation they must produce. Capturing units must quickly forward documentation to the TIF CJA for legal review in order to ensure there is no delay in processing detainees into the TIF. Good coordination between G3 detention operations (DetOps) and the CJA is crucial in ensuring units understand and comply with documentation requirements.

RECOMMENDATION: Ensure the TIF does not assign an Internment Serial Number (ISN) number to a detainee until they receive the correct documentation. TF 134 policy at the time the 11th MP BDE redeployed from theater in June 2009 required the TIF to coordinate with TF 134 before turning away a capturing unit for lack of insufficient documents under the Security Agreement. In order to avoid such confrontations with capturing units, coordinate with the respective JAs supporting these units as well as the Multi-National Corps – Iraq (MNC-I) OSJA shortly after arriving in theater to ensure a system for obtaining and transferring these documents to the TIF is still in place.[139]

ISSUE: Guard responsibilities of the capturing unit

DISCUSSION: Capturing units sometimes failed to guard detainees (primarily at the Camp Cropper Combat Support Hospital) who had insufficient documentation to in-process into the TIF. Capturing units must understand that it is their responsibility to guard detainees until they have produced sufficient documentation to in-process the detainees into the TIF.

RECOMMENDATION: Improve.[140]

ISSUE: Intelligence law attorney's role in detainee abuse investigations

DISCUSSION: While CENTCOM required immediate investigation of all abuse allegations, the intelligence law attorney did not have a direct role in this process.

RECOMMENDATION: The judge advocates from the units of the assigned Investigating Officer (IO) should perform the function of advising the IO.[141]

ISSUE: Allegations of detainee abuse by Iraqi officials

DISCUSSION: The unit did several inquiries and investigations to clear U.S. forces in cases of alleged detainee abuse by Iraqis if it was conceivable they might be involved. The unit also observed training in which Iraqi judges told the Iraqi police that if the judiciary learns the police are abusing people, the police will go to jail.

RECOMMENDATION: Sustain. It is always best for Iraqi officials to hear from other Iraqi officials about their obligations under Iraqi law.[142]

ISSUE: Medical examination of detainees before turnover to Iraqi custody

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[139] *Id.*
[140] *Id.*
[141] Chief of Intelligence Law, Multinational Forces – Iraq (MNF-I), OIF After Action Report, 27 October 2009, Deployed June 2008 – May 2009, Combined Joint Staff – 2 (CJ2), Camp Slayer, Iraq (hereinafter "MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09"; on file at CLAMO).
[142] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.

DISCUSSION: Detainees may claim U.S. or Iraqi Soldiers abused them upon capture. In order to curtail the credibility of unfounded abuse allegations, 30th HBCT made a practice of conducting thorough medical reviews of its detainees before turning them over to the Iraqis at the JSS. Documenting a detainees physical condition before being handed over to the Iraqis served as an effective means of protecting the command not only from unfounded allegations of abuse, but also from being blamed for later abuse by Iraqi authorities.

RECOMMENDATION: Sustain. Whenever possible, conduct a medical review of all detainees before handing them over to the Iraqis.[143]

ISSUE: Allegations of detainee abuse

DISCUSSION: A detainee claimed U.S. personnel punched him in the stomach during his initial medical screening. Despite the lack of physical evidence the JA recommended the command conduct an informal commander's inquiry. During the period of the informal inquiry, additional evidence turned up possibly corroborating the detainee's story. At that time, the JA recommended the command turn the investigation over to NCIS.

RECOMMENDATION: Immediately investigate all allegations of abuse. When evidence may implicate U.S. personnel, the command should turn the investigation over to the responsible criminal investigative command.[144]

ISSUE: Providing medical treatment to detainees under Iraqi control

DISCUSSION: A detainee sustained wounds during a joint operation and remained under the custody and control of a partnered Iraqi Security Forces (ISF) unit. During a visit to the Iraqi detention facility, a Navy Corpsman noticed the detainee's condition had deteriorated. The command subsequently moved the detainee to a U.S. medical facility and treated him before returning to ISF custody.

RECOMMENDATION: While it is important not to interfere unnecessarily in a foreign internal defense (FID) partner's operations, JAs must understand and explain to their commanders and unit personnel their respective obligations under international law.[145]

Prosecution of Detainees

ISSUE: Relationship building with Iraqi judges

DISCUSSION: The importance of building up good relations and understandings with Iraqi judges cannot be overstated. Prosecution of insurgents depends heavily on the evidence presented in the Iraqi courts, so it is important to understand the Iraqi judicial system and the legal and evidential threshold Iraqi judges expect. Knowing these requirements will improve the prospects of obtaining a conviction.

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[143] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[144] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 22.
[145] *Id.*

RECOMMENDATION: Improve. There is a great deal of material readily available on NIPR/SIPR and the internet on the Iraqi judicial system and their civil code approach to prosecutions. Taking time to meet with the judges and develop a professional relationship will greatly assist in perfecting evidence packets for prosecutions.[146]

ISSUE: Converting intelligence into evidence for prosecution packets

DISCUSSION: In order to develop sufficient and material evidence for use in prosecutions of insurgents in Iraqi courts, it is important for JAs to be "plugged into" and familiar with intelligence and targeting cell personnel to develop a process for generating evidence packets. Classified information must be "sanitized" into unclassified evidence. The collaborative efforts of the JA, intelligence, and targeting personnel can greatly assist in converting the information into releasable evidence.

RECOMMENDATION: Sustain. JAs involved in the prosecution of insurgents have to work closely with those who can take actionable intelligence and convert it into sufficient evidence packets.[147]

ISSUE: Intelligence vs. evidence

DISCUSSION: The conceptual difference between intelligence and evidence is sometimes difficult for personnel without legal training to understand. Because legal personnel are well aware that unusable evidence (for example, evidence from an illegal search) may as well not even exist for the purposes of prosecution, they tend to have much less difficulty with this distinction. Commanders do not have this advantage. Likewise, some intelligence personnel felt intelligence qualifies as evidence, yet they were not willing to share it with Iraqi judges. They had to be educated on the distinction and the fact that Iraqi judges cannot simply accept anything less than actual evidence for authorizing warrants.

RECOMMENDATION: In Iraq, the challenge of turning intelligence into evidence is a difficult concept for some to appreciate fully. You must work to educate your commanders and staff to understand the distinction between intelligence and evidence. If you cannot show it to a judge, it is useless for obtaining a warrant from a judge. JAs are better suited than most to judge the merits of evidence packets. When the JAs were involved in the process heavily, the results were better. It can be helpful to have those most familiar with host nation evidentiary requirements (such as attorneys working with the Central Criminal Court of Iraq) review the sufficiency of what the command has available.[148]

ISSUE: Prosecution Task Force (PTF)

DISCUSSION: The BJA led the SBCT Prosecution Task Force (PTF). The PTF transformed actionable intelligence into evidence for the purposes of arresting, detaining, prosecuting and convicting insurgents. The PTF synchronized the efforts of the targeting cell, counter-intelligence and interrogation personnel, law enforcement professionals (LEPs), S2, Iraqi Police advisors, and battalion personnel. The PTF's work helped obtain over 1000 warrants, which they entered into the Combined Information Data Network Exchange (CIDNE).

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[146] 3-1 CAV OIF AAR (1st Half), DEC 08 - JUL 09, *supra* note 62.
[147] *Id.*
[148] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.

RECOMMENDATION: Sustain.[149]

ISSUE: Detainee targeting cards

DISCUSSION: The SBCT created a series of unclassified "baseball cards" of targets for detention to give to sheiks, IA, and Iraqi Police (IP). These cards were also helpful in the brigade's information operations campaign and for coordination with division and Task Force (TF) 134.

RECOMMENDATION: Sustain.[150]

ISSUE: Building competence for the Prosecution Task Force OIC

DISCUSSION: The JA assigned to be the PTF OIC was not aware of this mission until he arrived in Iraq. He did on the job training with the PTF OIC from another brigade in Baghdad to learn how the process worked. The division OSJA also provided information about the program they had collected, though they were still learning the process as well. There was no formalized training for the program.

RECOMMENDATION: Improve. Identify the PTF OIC before deployment and seek training materials from deployed units. The PTF OIC should attend the Counterinsurgency (COIN) Academy at Taji. Division OSJAs should disseminate a roster of PTF OICs to improve collaboration and issue identification.[151]

ISSUE: Need for intelligence assets in the PTF

DISCUSSION: The brigade PTF did not have an organic intelligence analyst, nor was the PTF co-located with the brigade. This made it difficult to build cases. The PTF had a slot for an analyst, but personnel shortages prevented the BCT from filling it.

RECOMMENDATION: Improve. The PTF need an intelligence analyst to be effective in developing linkages to support prosecutions. Having an analyst also would have helped to speed up the process of declassifying documents necessary to build the warrant packages for the Iraqi investigative judges (IJs).[152]

ISSUE: Prosecution Task Force (PTF)

DISCUSSION: 30th HBCT established a PTF to coordinate "prosecution-based targeting." The BJA served as the action officer for the PTF. Other participants included the targeting officer, the S-2, S-2 analysts, the S-7 (information operations officer), LEPs, and the battalion S-2s. The PTF met weekly with the battalions participating via Breeze.

RECOMMENDATION: Sustain.[153]

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[149] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 129.
[150] *Id.*
[151] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 134.
[152] *Id.*
[153] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.

ISSUE: PTF's interaction with the Joint Investigative Committee (JIC) and local investigative committees

DISCUSSION: PTFs must be prepared to interact with both the JIC and local investigative committees. Both of these entities are composed of Iraqi judges and investigators. The JIC will only consider terrorism crimes against U.S. or Iraqi forces. The local investigative committees have broader subject matter jurisdiction but limited physical jurisdiction. The use of local investigative committees created an opportunity for U.S. commanders to have cases of interest considered. They accomplished this by influencing the investigators to refer it to a local committee. It also created a challenge in that once a case went to a local committee, that committee could pass it to another committee, causing the PTF to lose visibility of the case. If it became necessary to regain visibility of the case, the PTF could coordinate with the Iraqi detention facility. The Iraqi investigator who worked with the PTF called other local committee investigators to track the case down.

RECOMMENDATION: Sustain. The key to this process is to have good relations with the Iraqi investigators, as they had the ability to call the detention facility investigative judge to gain information about the case.[154]

ISSUE: Waning deference to U.S. interests in CCCI

DISCUSSION: In the Central Criminal Court of Iraq (CCCI), any cases brought by U.S. forces only faced increased scrutiny. There were not many convictions arising from these types of cases.

RECOMMENDATION: Understand the benefit of the doubt no longer accrues to U.S. forces. As Iraqi officials assert Iraq's sovereignty, they are going to hold U.S. forces to a very high standard.[155]

ISSUE: Building a successful warrant-based targeting system in a unit

DISCUSSION: The brigades who did warrant-based targeting well were those who had the S2 and the S2X join the targeting team. If the command empowered them to provide what they could in an unclassified environment to a judge, the brigade did well.

RECOMMENDATION: Successful brigades would have regular meetings with judges where the brigade's law enforcement personnel and others briefed the judge on what the brigade had and then ask if a warrant was possible. Building allies in all the staff sections and partnering with the Iraqis made them successful.[156]

ISSUE: Use of targeting warrant officers in warrant-based targeting

DISCUSSION: Use your targeting warrant officers to translate between what the lawyers are saying and what the intelligence officers are saying. Targeting warrants have the expertise to understand both sides.

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[154] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 134.
[155] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[156] *Id.*

RECOMMENDATION: Use the technical expertise resident on the staff when you can.[157]

ISSUE: Difficulty securing local warrants

DISCUSSION: Several SOTF-N ODAs had trouble securing local arrest warrants due to judicial corruption. The battalion legal advisor worked through CJSOTF-AP legal section and the Warrant Assistance Group (WAG) in Baghdad to secure national level warrants from the Central Criminal Court of Iraq (CCCI).

RECOMMENDATION: Sustain. Judicial corruption and fear of reprisal is still an issue and JAs need to know how to obtain national level arrest warrants.[158]

ISSUE: Importance of CJSOTF-AP prosecutor at CCCI

DISCUSSION: Iraqi judges refused to go on "judge runs"—trips by CJSOTF-AP's CCCI prosecutor and a CCCI judge to AOBs to hear local complaints and witnesses in order to issue warrants for ultimate prosecution at CCCI—citing security concerns after the August bombings. This impeded the ODAs' ability to secure arrest warrants. The battalion legal advisor worked with CJSOTF-AP's CCCI prosecutor to convince a judge at CCCI to issue warrants based on video teleconference (VTC) testimony. The judge had never done this before.

RECOMMENDATION: Sustain. Personal relationships at CCCI were crucial in accomplishing this initiative.[159]

ISSUE: Cultural sensitivity in placing JAs at CCCI

DISCUSSION: Higher headquarters must take into consideration cultural sensitivities before placing a JA at CCCI. The placement of a female JA at CCCI resulted in a lag in the warrant process.

RECOMMENDATION: Improve. Higher headquarters must take into consideration cultural sensitivities of Iraqis. Mission requirements may necessitate deviating from U.S. norms.[160]

ISSUE: CJSOTF-AP legal individual augmentees (IAs)

DISCUSSION: CJSOTF-AP's legal IAs at CCCI encountered a steep learning curve understanding SF and its missions. The legal IAs unfamiliarity led to misunderstandings that negatively affected SOTF-N initiatives. The battalion legal advisor's proactive interaction with and education of his counterparts at CCCI solved this problem.

RECOMMENDATION: Improve. CJSOTF-AP's CCCI JAs should first serve at CJSOTF-AP to gain situational awareness of SF and its overall mission before going to CCCI.[161]

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[157] *Id.*
[158] 1st Battalion, 5th Special Forces Group (Airborne), Battalion Judge Advocate OIF After Action Report, 11 March 2010, Deployed 25 July 2009 – 25 January 2010, Contingency Operating Base Speicher, Tikrit, Iraq (hereinafter "1/5 SFG OIF AAR, JUL 09 - JAN 10"; on file at CLAMO).
[159] *Id.*
[160] *Id.*
[161] *Id.*

Release Operations

ISSUE: Detainee release committees

DISCUSSION: For detainee releases, the BCT received a list from Task Force 134 (TF-134) approximately 30 days out. The BCT's S2 and LEPs redacted the files and passed them to both the IA and IP. A copy of the redacted file also went before a provincial release committee comprised of the Basra chief of police, a human rights advocate, two city council members, and a tribal sheik leader. The committee jointly decided what they should do with each detainee.

RECOMMENDATION: Sustain. This process worked well and ensured local government officials were prepared to deal with released detainees, many of whom were still dangerous.[162]

ISSUE: Lack of evidence

DISCUSSION: Reputation evidence is not enough to keep a detainee in a theater internment facility (TIF). Often, detention review boards (DRBs) would release detainees because of a lack of evidence.

RECOMMENDATION: Improve. Know what type and what amount of evidence is sufficient to maintain custody of detainees. Disseminate this information throughout the BCT. Highlight successes and failures to commanders.[163]

ISSUE: Detainee release operations

DISCUSSION: The BCT deployed just before the implementation of the Security Agreement (SA) on 1 January 2009. They only received a copy of the SA after arriving in the AO, and they even provided the first Arabic translated copies to the local government officials. One of the key implications of the SA was the closing down of detention facilities. Coalition forces began wholesale reviews of detainees with a view towards releasing back into Iraq society those Iraqi detainees no longer deemed a threat. JAs had to review release packets to ensure the release candidates did not need to enter the Iraqi judicial system.

RECOMMENDATION: Sustain. The role of the JA is instrumental to the success of the release program and monitoring if any candidates should enter the Iraqi judicial system.[164]

ISSUE: Corrupt Iraqi Police (IP) in the detainee release process

DISCUSSION: During the push to release coalition detainees, some corrupt IP commanders fabricated grounds to seize some detainees in order to seek a ransom from the families of the prisoners. Thereafter, the brigade demanded the IP produce warrants before transferring detainees, and they even tried to set up weekly meetings to verify warrants. Complicating this further is the warrant record keeping practices of the IP.

RECOMMENDATION: Improve. Commanders and JAs have to be on guard against corrupt IP authorities.[165]

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[162] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.
[163] *Id.*
[164] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 13.

ISSUE: The intelligence law attorney's role in political requests for the release of detainees

DISCUSSION: Iraqi officials often made requests for the release of certain individuals.

RECOMMENDATION: Requested releases have to undergo a review process to determine if they are viable candidates for release.[166]

ISSUE: Force Strategic Engagement Cell (FSEC) detainee releases

DISCUSSION: In some rare instances, 2HBCT had little to no warning of the release of certain detainees by the FSEC, whose mission is to foster reconciliations between various Iraqi factions and the Iraqi government. In these instances, the brigade had been building prosecution cases against these individuals, so the no/short notice releases caught them by surprise. The unit would have exhausted fewer resources in building prosecution cases had there been adequate notice.

RECOMMENDATION: FSEC's mission is paramount to the success of integrating fractious elements of Iraqi society back into the fold. Consequently, their strategic level decisions may not necessarily run parallel to brigade tactical operations.[167]

ISSUE: Handling mass detainee releases

DISCUSSION: The unit faced the issue of facilitating the release of hundreds of security detainees in a "safe and orderly" manner after years of confinement in the Theater Internment Facility (TIF). The unit resolved the issue by vetting and categorizing the detainees into groups from low-threat individuals to higher threat individuals and releasing the lower threat individuals earlier in the year while gradually building towards the release of the higher threat individuals. Additionally, they spread out the releases over the year and throughout the country in such a manner as to slowly and equally release detainees and allow them to reintegrate into Iraqi society while simultaneously preventing their return to insurgent activities.

RECOMMENDATION: Those responsible for vetting and categorizing the detainees should strive to push lists out to subordinate units and local Iraqi authorities. By doing so, local Iraqi leadership can work with the battlespace owner to attempt to find members of the local community who can act as guarantors. Alternatively, they can attempt to find evidence sufficient for the issuing of an Iraqi arrest warrant, thus preventing release.[168]

ISSUE: Last minute changes to the monthly detainee release roster

DISCUSSION: Task Force - 134 (TF-134) would change drastically the monthly detainee release lists just days before a scheduled TIF release of detainees. This "wild" change a short time before the release made logistical planning for the release very difficult. More importantly, there would often be an Iraqi family at the release site expecting the release of a son or brother, only to discover that coalition forces had taken their son or brother off the release list at the last minute. Thus, the on-scene commander had to deal with upset Iraqi citizens and attempt not to

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[165] 1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09, *supra* note 37.
[166] MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09, *supra* note 141.
[167] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.
[168] RCT-8, OIF AAR, JAN 09 - OCT 09, *supra* note 69.

lose "hearts and minds." The appearance from the battalion and regimental level was that, at times, higher headquarters was simply playing a "numbers game," making drastic last minute changes. This practice made it very difficult to explain to families why the TIF was not releasing their son or brother as promised.

RECOMMENDATION: The unit dealt with the situation by attempting to engage only local Iraqi leadership early in the process so the unit could determine for whom the Iraqis might be interested in issuing a warrant. However, the unit did not inform the families until just before the release. This practice helped reduce the likelihood of Iraqi families expecting a return that might not occur. Once TF-134 determines whom it will release from the TIF in a given month, the TIF should release those individuals during that month unless they transferred the individual to the Government of Iraq (GoI) pursuant to a valid warrant.[169]

ISSUE: JA presence during detainee releases

DISCUSSION: In the past, it was common during detainee releases from the TIF for local Iraqi authorities to re-detain some of the released detainees without a valid arrest warrant. Worse yet, the former detainees might fall victim to an extra-judicial killing at the hands of local Iraqi Police (IP).

RECOMMENDATION: In an effort to ensure full compliance with the Geneva Conventions and avoid the appearance of the U.S. government being complicit to unlawful arrests or extra-judicial killings of former U.S. detainees by local Iraqis, Multi-National Corps – Iraq (MNC-I) began requiring a judge advocate (JA) to be present at each detainee release site before any detainee releases. It was the JA's responsibility to oversee the detainee release process and ensure the actual release of all detainees. Only when the local Iraqi authorities could produce a valid arrest warrant would the JA permit them to take custody of a former detainee.[170]

ISSUE: Prevention of unauthorized re-detention by Iraqi authorities during detainee releases

DISCUSSION: Due to its required participation in the detainee releases, the RCT-8 RJA office discovered two things. Not only would local Iraqi authorities attempt to re-detain released detainees, but members of the GoI National Information and Investigation Agency (NIIA) would often be present at detainee releases and attempt to take released detainees into custody as well. The NIIA is the GoI's equivalent of the U.S. Federal Bureau of Investigation (FBI). Once NIIA agents realized the JAs would not permit them to take custody without a valid warrant, they began to adapt their methods and would try to persuade the JA that they were only interested in giving the released detainee a ride home. The RCT-8 JAs always had to be cognizant of both local Iraqi authorities and NIIA personnel to ensure Iraqi authorities did not take custody of released detainees without a valid arrest warrant.

RECOMMENDATION: Sustain. JAs must be cognizant of how local Iraqi authorities treat detainees when released and ensure the Iraqis do not re-detain any released detainees without a valid arrest warrant. Failure to do so might make U.S. forces appear complicit in any human rights violations that might potentially occur at the hands of these Iraqi authorities.[171]

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[169] *Id.*
[170] *Id.*
[171] *Id.*

ISSUE: Logistical difficulties in ensuring JA presence at each detainee release site

DISCUSSION: RCT-8's AO covered the entire western portion of Al Anbar province—a 30,000 square mile area, which included five provincial districts. Each provincial district served as a release site for all detainees from that district. Due to the vastness of RCT-8's AO and the limited number of JAs in the RJA office, ensuring a JA was present at each release site when detainee releases occurred was problematic. The RJA office had to utilize both JAs from its office, as well as borrow the two JAs from RCT-8's subordinate battalions to ensure a JA was present at each detainee release site. Additionally, since there were five release sites and only four JAs available to cover down on detainee release sites, the unit would either release detainees from the fifth detainee release site in one of the other four locations or borrow a JA from higher headquarters to help cover.

RECOMMENDATION: Improve. MNF-W, MNC-I, or TF-134 could temporarily provide one or two JAs to help support detainee releases in large AOs such as RCT-8's AO. This would significantly relieve the burden on the ground combat unit of ensuring a JA is present during releases and units release detainees in an expeditious manner at a location nearest their homes.[172]

ISSUE: Partnering with Iraqi Police (IP) in the detainee release process

DISCUSSION: Task Force 134 coordinated with the Division Provost Marshal's Office (PMO) on a weekly basis for detainee releases from the Theater Internment Facility (TIF). By the terms of the Security Agreement (SA) and the Iraqi Constitution, the BCT could not transfer detainees to the IP without a warrant. The chief of the Kirkuk Province's major crimes unit, who had responsibility for terrorism cases, had concerns over his ability to perform a proper warrant check on these detainees. He suspected many of them had provided false identification at the time of capture. In order to address these concerns, the BCT arranged to conduct joint interviews of the released detainees with the IP. The BCT's law enforcement professionals (LEPs) worked closely with the Iraqi detectives during these interviews. In addition, a JA, paralegal NCO, or PMO NCO, was present at each interview to ensure it did not become an interrogation.

RECOMMENDATION: Sustain. Although the interviews did not bear out the IP chief's suspicion (of the 250 detainees released, only 11 had warrants against them), this was a huge win for the partnership with the IP. It created good will that led to cooperation in other areas.[173]

ISSUE: Detainee releases

DISCUSSION: One of the key implications of the SA was the closing down of U.S. and coalition detention facilities. As a result, the TIF regularly released a large number of detainees into each AO every month. The aim was to re-integrate back into Iraqi society those detainees that no longer posed a threat. Multi-National Corps – Iraq (MNC-I) provided its subordinate units with lists each month of those detainees the TIF would release. In order to prevent the release into Iraqi society of those detainees who still posed a threat, 30th HBCT's PTF thoroughly reviewed each list and engaged local Iraqi authorities to see if there was sufficient evidence to get a warrant from an Iraqi judge. If so, the PTF worked with the local authorities to secure arrest warrants before the detainee release occurred. The Iraqi Police (IP) could then immediately arrest the detainee upon release from the TIF.

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[172] *Id.*
[173] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.

RECOMMENDATION: Sustain. The success of the release program hinges upon a thorough vetting of each detainee identified for release and units working with Iraqi judges to obtain arrest warrants for those detainees who belong in the Iraqi judicial system.[174]

ISSUE: "Strategic" release requests

DISCUSSION: Units at the tactical or operational level would often ask for the release of a detainee for "strategic" reasons, such as to gain influence with a certain local leader. Higher authorities rarely granted these requests, even in those cases where a lack of evidence made eventual release likely anyway. Conversely, higher headquarters would often direct strategic releases with minimal coordination at the operational or tactical level and at a time when the information operations advantage had dissipated.

RECOMMENDATION: Recognize all levels have legitimate reasons for wanting to expedite the release of certain individuals. Do not reject requests out of hand simply because they originate at a lower level. Be especially liberal in granting requested releases if it is a virtual certainty a lack of evidence will require eventual release anyway. If the unit has to let someone go, it may as well try to leverage that release for influence.[175]

ISSUE: Use of release transition points

DISCUSSION: Having the detainees spend time at a brigade transition point was very valuable. The brigade provided them with clothing, while the time allowed local authorities the chance to see exactly whom the unit intended to release. As detainees often used assumed names, having the local authorities actually look at the individuals was important. In some instances, the local authorities were able to transition into Iraqi custody those for whom there was an outstanding warrant or the Iraqis were able to get warrants where needed.

RECOMMENDATION: Use transition points, but set a limit on the time detainees can remain there. The transition cannot be for an indefinite period. Five days was usually sufficient for the transition.[176]

ISSUE: Responsibility for release operations

DISCUSSION: It is unclear who has overall responsibility for the release process. The intelligence process drives much of it, but the Provost Marshal also has a very large role.

RECOMMENDATION: This is not really a legal function. There is no need for legal personnel to have the lead in release operations.[177]

ISSUE: Strategic releases of detainees

DISCUSSION: There needs to be a central clearinghouse of information so brigade efforts to prosecute detainees are not blindsided by the strategic releases of detainees ordered by higher headquarters. These no-notice releases disrupted and short-circuited the work going into building up prosecution cases with partner Iraqi judicial authorities. As a result, many of the local Iraqi

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[174] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[175] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[176] *Id.*
[177] *Id.*

partners were frustrated with their BDE PTF counterparts. BDE PTF credibility suffered as a result.

RECOMMENDATION: Improve. The BDE legal staff would be greatly appreciate some alert or short notice of impending strategic releases of detainees in order to avoid credibility issues with local partners and needless prosecution efforts.[178]

ISSUE: Detainee release question under the Fourth Geneva Convention

DISCUSSION: As legacy detainee releases became the norm, the question arose as to where to release them. The Fourth Geneva Convention makes either the point of capture or home of record acceptable. However, many detainees were unwilling to provide their home of record. Additionally, issues arise when the home of record is outside the releasing unit's operational area.

RECOMMENDATION: It is generally less complicated to return detainees to the point of their capture. The use of Breeze (Adobe Connect), liaison officers, and phone calls all helped to deconflict release operations.[179]

ISSUE: Difference in releasability determinations between TF 134 and Division

DISCUSSION: Often times, TF 134 made releasability determinations based on factors other than the immediate threat to the units in the AO where the detainee was destined. While TF 134 would analyze geo-strategic and geo-political factors, the Division focused much more on the localized threat a certain individual posed.

RECOMMENDATION: Work with TF 134 to understand each other's perspective. [180]

ISSUE: Tracking detainees turned over to the Government of Iraq (GoI)

DISCUSSION: CJSOTF-AP experienced difficulty in tracking the status of detainees once it transferred physical custody to the GoI.

RECOMMENDATION: Improve. JAs should assist the foreign internal defense mission by encouraging and mentoring their Iraqi counterparts to adopt systems and procedures necessary to track individual detainees through their system.[181]

ISSUE: Impact of Security Agreement on detainees

DISCUSSION: The U.S.-Iraq Security Agreement (SA) radically changed detention operations. Initially, there was tremendous uncertainty on the true impact on operations with respect to all the detainees held prior to the implementation of the SA, because the SA (Article 22, paragraph 4) suggested the release of all detainees for which no arrest warrants were issued. As time progressed, the unit developed a system to prosecute (those with valid arrest warrants issued) or release legacy detainees in accordance with policy (in a "safe and orderly manner" as agreed to by Iraqi officials). Generally there were about 500-700 detainees releases per month theater wide .

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[178] 172d IN BDE, OIF AAR, NOV 08 - DEC 09, *supra* note 46.
[179] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[180] *Id.*
[181] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 56.

RECOMMENDATION: For prosecution issues, Task Force (TF) 134 and its bevy of sister service attorneys did an outstanding job. For releases, close coordination with TF 134 was important. G-2X, the Provost Marshal's Office (PMO), and the Operations NCOs are critical for detainee tracking purposes.[182]

ISSUE: Changed nature of detention operations

DISCUSSION: The outgoing unit really set the tone for detention operations. They had closed all of their internment facilities. When the new unit arrived, there were very few detainees on hand. The unit never held any detainees or took any into custody. All detainees went directly to Iraqi custody. The occasional unit would pick someone up and ask for advice on how to proceed. The legal section would inform the unit they never should have taken the detainee in the first place, but would scrub the records to see if there was an outstanding warrant on the detainee.

RECOMMENDATION: Ensure currently deploying units understand how much detainee operations in Iraq have changed.[183]

ISSUE: Detainee operations going forward

DISCUSSION: All brigades did things a little differently. Those brigades with good relationships with their Iraqi counterparts were able to accomplish a lot; other brigades were unable to do so. If the brigade detained someone and there was no warrant in place, the legal section would ask the unit if they collected any evidence. If the unit had no evidence, they would have to let the individual go. The legal section also facilitated linking the unit up with special operations forces (SOF) to determine if these forces had an interest in the detainee.

RECOMMENDATION: Ensure units understand the requirements for a warrant and/or evidence if they do not want to have to release immediately someone they detained.[184]

ISSUE: Access to detainees through Task Force 134

DISCUSSION: Getting LEPs and Iraqi officials access to detainees held in the TF 134 facility at Camp Cropper was difficult. It sometimes took more than a month to get Iraqi officials into the facility to serve Iraqi warrants. TF 134 seemed to have an ownership mentality over the detainees, even though the officials of a sovereign Iraq had a right to access. This difficulty of access affected the relationships between the brigades and their Iraqi partners.

RECOMMENDATION: Understand Iraq belongs to the Iraqis. Even detainees under our control are subject to the processes of a sovereign Iraq.[185]

Detention Facility and Inspections

ISSUE: Inspection of Iraqi detention facilities

[182] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[183] *Id.*
[184] *Id.*
[185] *Id.*

DISCUSSION: Some Iraqi detention facilities did not cooperate with U.S. or Iraqi inspectors. In one case, Iraqi internal affairs sought assistance from the BCT to gain access to an Iraqi facility. When the BCT pressed the facility on this issue, the facility staff kicked U.S. inspectors out as well.

RECOMMENDATION: BJAs should realize the dynamics between the prisons and other GoI agencies in their AO. Under the SA, U.S. forces have less leverage to force compliance by GoI officials.[186]

ISSUE: Spot inspections of TIFs

DISCUSSION: There is a continued focus on the need to maintain very high standards in detention facilities. Surprise inspections are a very useful tool for ensuring the guard force rigorously applies the detention standard operating procedures (SOPs) and guidance. A regime of surprise inspections helped to identify potential problems at the TIFs and helped to avoid serious detainee abuse allegations.

RECOMMENDATION: Sustain. Allow the TIF commanders to continue surprise visits. Note the JA role on visits is more advisory—to observe the guard force, to engage them in discussion, to ensure they understand Rules of for the Use of Force (RUF) and to answer any questions the guard force might raise during the JA's visit.[187]

ISSUE: Detention visits/inspections by outside agencies

DISCUSSION: MNC-I would occasionally visit to inspect detention operations. The International Committee of the Red Cross (ICRC) also visited early on during the unit's rotation, but there were no such visits after the Security Agreement came into force.

RECOMMENDATION: Recognize there is significant outside interest in detention operations. Be prepared to facilitate outside visits and encourage them.[188]

Detention Operations and Transfers

ISSUE: Overcrowding in GoI detention facilities

DISCUSSION: CJSOTF-AP tasked its operational detachment alphas (ODAs) – commonly known as A-Teams – to track the number of detainees their partner forces had in their detention facilities. This was an effort to prevent overcrowding in Iraqi detention facilities.

RECOMMENDATION: Sustain.[189]

ISSUE: Coordinating detainee movement

DISCUSSION: The J3 Sergeant Major coordinated all air movements and transfer of detainees.

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[186] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.
[187] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 138.
[188] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[189] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 56.

RECOMMENDATION: Sustain. Movement is an operational matter and coordination and oversight should occur through operational channels.[190]

ISSUE: Soldier frustration concerning restrictions on detention

DISCUSSION: The controlling CJTF-101 and ISAF rules of engagement (ROE) and detention policies placed certain limitations on the brigade. Soldiers and commanders used to operating in the Iraq theatre of operations became frustrated.

RECOMMENDATION: The BJA should explain the policy reasons behind these limitations to commanders at all levels before the deployment. Educating commanders and Soldiers is essential.[191]

(ISSUE: Division of pre-Security Agreement detention operations duties

DISCUSSION: The outgoing BCT's brigade judge advocate (BJA) handled all legal aspects of detention operations. This BCT's BJA decided to split those duties between the BJA and the trial counsel (TC). The BJA performed the pre-detention review of intelligence and attended targeting meetings, while the TC conducted a post-detention review of the sufficiency of the evidence in the packet. They carried some of this practice over to warrant-based targeting.

RECOMMENDATION: Sustain. Although this division of responsibility is not necessary, this BCT found it helpful to have two sets of eyes on the packet. In addition, this allowed both attorneys to maintain situational awareness and proficiency regarding detention operations.[192]

ISSUE: Detainee tracking

DISCUSSION: The brigade did not do a good job of tracking detainees after turning them over to CIZAs . After capture, battalions instead focused on the next target.

RECOMMENDATION: Improve. Involve the military transition teams (MiTTs), which maintained a database of all the prisoners at the facilities their partner units operated.[193]

ISSUE: Merits of the old detention operations (DetOps) regime

DISCUSSION: The legacy DetOps regime which operated before the implementation of the SA worked well.

RECOMMENDATION: The SA has its drawbacks. Although every theater is different, if the United States has occasion to sign a security agreement in Afghanistan or elsewhere, it should strongly oppose allowing host nation officials to deny warrants. Nothing should prevent U.S. forces from going after individuals who threaten them.[194]

ISSUE: Responsibility for detention operations

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[190] *Id.*
[191] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[192] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 124.
[193] *Id.*
[194] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.

DISCUSSION: Initially, the judge advocates advised on detention operations. As time went on, judge advocates gained more of a leadership role in this area. After the security agreement, the judge advocates were essentially in control of the entire mission.

RECOMMENDATION: Improve. Success breeds confidence. However, if possible, try to maintain the role of advisor in detention operations.[195]

ISSUE: Biometrics

DISCUSSION: Continue the use of the Biometric Automated Toolset System (BATS)/ Handheld Interagency Identification Detection Equipment (HIIDE) in detention operations. Often, these systems would confirm suspicions that an individual was using a fake Iraqi national identification ("Gencia") card. The use of a fake Gencia card is punishable under Iraqi law. Even if the command lacks sufficient evidence to convict a person for terrorist-related activities, the possession of a forged national identification card can lead to several years' incarceration.

RECOMMENDATION: Sustain.[196]

ISSUE: Detainee access to defense counsel

DISCUSSION: Many detainees facing serious charges at CCCI and IHT received inadequate representation due to difficulties over pay, safety, and base access. Camp Cropper did the best it could to facilitate visits by defense counsel, but the problems with securing adequate defense representation cannot be solved at the camp level alone. Initiatives from Multi-National Force – Iraq (MNF-I) and the Department of State (DoS) are necessary to create and fund legal clinics, to pay for lawyers, and to arrange for their secure transportation.

RECOMMENDATION: Regularly review the attorney access procedures at Camp Cropper and Taji to ensure detainees are receiving sufficient attorney access.[197]

ISSUE: Common deficiencies in detainee packets

DISCUSSION: These are common errors in detainee packets: 1) No written detention order; 2) Detention order not signed by an Iraqi judge; 3) No request from the Iraqi government to transfer the detainee to U.S. custody; 4) Iraqi documents not translated; and 5) Insufficient evidence. These errors indicate an ongoing need for training on the mandatory requirements for detainee packets, and for coordination between units so these requirements are widely understood. Finally, it highlights the necessity of prescreening detention packets to ensure they meet the required standard.

RECOMMENDATION: TIF legal personnel should regularly coordinate with MNC-I OSJA or brigade judge advocates (BJA) to ensure capturing units understand these requirements.[198]

ISSUE: Integration of Iraqi Correctional Officers (ICOs)

DISCUSSION: The TIF continued to integrate ICOs.

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[195] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 13.
[196] *Id.*
[197] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 138.
[198] *Id.*

RECOMMENDATION: JAs should conduct further research to identify and answer legal problems arising from the integration of ICOs at the TIF. In particular, two issues still require resolution: 1) the use of deadly force by ICOs; and 2) liability for damage ICOs cause to military leased vehicles.[199]

ISSUE: Contractors working at the TIF

DISCUSSION: Contractors supplemented the military guard force for the first time in TF MP North at the Taji TIFRC.

RECOMMENDATION: Be aware contractor guards may only use lethal force for self-defense. They are not authorized to use less than lethal force (e.g., tasers, OC spray, nonlethal shotgun, stun grenades), nor are they authorized to use lethal force against escaping detainees after they have breached the outermost barrier of the TIF and there no other means to prevent the escape. (Note: as of June 2009, military guard forces are no longer authorized to use deadly force against escaping detainees when they otherwise do not present an imminent threat of serious bodily harm or death). Ensure that contractor guards operate in accordance with their contract of employment.[200]

ISSUE: Detainee property

DISCUSSION: There have been incidents where detainee property has been lost or stolen due to inadequate accountability procedures. It is necessary to initiate CID or 15-6 investigations into the loss or theft of detainee cash or property.

RECOMMENDATION: Regularly review the SOPs for maintaining cash and property. It is good practice to make regular visits to those personnel responsible for maintaining accountability for detainee property to ensure they follow the SOPs.[201]

ISSUE: Requests for access to detainees for interrogation purposes

DISCUSSION: Persons requesting access to our detainees must have the proper licenses, training and authorization to conduct interrogations.

RECOMMENDATION: It is typically the role of the Joint Interrogation Debriefing Center (JIDC) attorneys to review these requests. There must be a process in place to ensure those granted access comply with the rules of the facility while conducting their interrogations.[202]

ISSUE: Staff lead in tracking detentions

DISCUSSION: The brigade's Provost Marshal Officer (PMO) tracked detainees in the Iraqi system. The brigade commander knew where the detainees of interest were at all times. While the legal section could have performed this function if it had a third attorney, it did not and there was no reason for it to be a legal function.

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[199] *Id.*
[200] *Id.*
[201] *Id.*
[202] MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09, *supra* note 141.

RECOMMENDATION: Sustain. Not everything pertaining to detainees is a "legal" issue. This is best left in the PMO's lane. It is high profile enough to warrant having a field grade officer in the lead, but that need not be an attorney.[203]

ISSUE: Staying current with changes in Iraqi criminal law

DISCUSSION: Iraqi law can change through legislation and ministry orders. One key change occurring during the deployment involved the rules allowing for "secret witnesses" at the Central Criminal Court of Iraq (CCCI). Units often first learn about such changes informally. Once a rumor circulated of a key change, the PTF attempted to obtain the change through official channels and analyze it for impact on the warrant process.

RECOMMENDATION: Improve. U.S. Forces – Iraq (USF-I) and Department of State (DoS) personnel who engage with the Iraqi Higher Judicial Council (HJC) need to identify potential changes in Iraqi law and provide this information to the PTFs as early as possible to ensure they can develop warrant packets consistent with Iraqi law.[204]

ISSUE: Building Iraqi and U.S. forces' understanding of the Iraqi criminal process

DISCUSSION: The need to conduct warrant based targeting required both Iraqi Army (IA) and U.S. Army personnel to understand the basic principles of Iraqi criminal procedures. To ensure a common operating picture, the BCT conducted joint training with both U.S. and IA personnel in attendance. In some cases, the IA brought their legal advisors. These training programs were effective in opening up lines of communication between U.S. forces and their IA counterparts. Iraqi legal advisors were also very helpful in explaining the Iraqi process in greater detail.

RECOMMENDATION: Improve. Programs such as this should target smaller audiences to bring key U.S. and IA commanders and staff together. This should occur at the company level and above. Command support is essential for this program. In this BCT, the command supported the process, and this was critical.[205]

ISSUE: Transferring detainees to Iraqi custody

DISCUSSION: With the exception of the Theater Internment Facility (TIF), there were no U.S. controlled and operated detention facilities in 30th HBCT's AO. Additionally, under the Security Agreement (SA) between the U.S. and Iraq, whenever U.S. forces detained individuals, they had 24 hours to turn them over to Iraqi authorities. As a practice, when 30th HBCT detained someone, they would take him to the Joint Security Station (JSS) for the Iraqis to hold.

RECOMMENDATION: Sustain. Have a plan in place to turn detainees over to Iraqi authorities within the period set forth in the SA.[206]

ISSUE: Lack of detention operations billet

DISCUSSION: SOTF-W did not have a designated detention operations billet. As such, the mission fell to the JA and Chief Master-at-Arms (Navy Military Police).

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[203] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[204] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 134.
[205] *Id.*
[206] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.

RECOMMENDATION: JAs should be ready to step in and fill this role.[207]

ISSUE: Interaction with U.S. Marines at regional detention facilities (RDF)

DISCUSSION: The Marine Expeditionary Force (MEF) was reluctant to accept detainees at their RDF. This was in part due to the Marines redeploying from Anbar Province. The JA had to coordinate with the MEF OSJA and RDF command to ensure the SEALs were providing the requisite paperwork to the Marines and the Marines were following higher guidance on acceptance of detainees.

RECOMMENDATION: Build rapport with the "landowning" unit and RDF personnel to ensure smooth acceptance of detainees. JAs also need to be ready to stand firm and confront MEF and RDF personnel when they attempt to impose additional requirements for detainee acceptance.[208]

ISSUE: Detention operations under the Security Agreement

DISCUSSION: The Security Agreement brought big change to detention operations in Iraq. Before the Security Agreement, the BfSB envisioned having its own detention facility. This was no longer a possibility after the Security Agreement came into force. Detention was only possible under an Iraqi warrant. The system was to run "by, with, and through" the Iraqi authorities. In general, units had to transfer detainees quickly to the Iraqis.

RECOMMENDATION: Ensure you have trained all your Soldiers in the new Security Agreement. This is particularly true for Soldiers who have pre-Security Agreement operational experience and might not be aware of the new constraints.[209]

ISSUE: Policy shift in detainee operations (DetOps)

DISCUSSION: The JAs devoted substantial time and effort, as did many 172d BDE Soldiers, to training for DetOps during the pre-deployment phase. However, shortly after arriving in Iraq, the implementation of the new Security Agreement (SA) resulted in a major shift in DetOps policy. U.S. military units had to transition to immediate transfers to ISF and could no longer conduct DetOps. The brigade did not realize the impending shift in DetOps policy in advance of deploying, and the announcement came with little warning. When the change occurred, higher headquarters issued a lengthy and detailed fragmentary order (FRAGO) to all units.

RECOMMENDATION: Improve. All JAs and military leaders have to be ready for major shifts in national policy and must react promptly to such changes.[210]

ISSUE: Command frustration over changing environment for detention operations

DISCUSSION: Previously, units could enter a town and detain a large number of people based solely upon suspicion. Once the transition to the use of Iraqi law occurred, there had to be an evidentiary basis to keep these people detained. This caused great frustration for commanders who enjoyed the freedom of operating under the previous system.

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[207] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 22.
[208] *Id.*
[209] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.
[210] 172d IN BDE, OIF AAR, NOV 08 - DEC 09, *supra* note 46.

RECOMMENDATION: Educate the command as soon as possible concerning changes in the operating environment. Ensure they understand how the situation has changed. As many people rotate back through Iraq, be alert for those who attempt to use their previous experience in ways no longer applicable.[211]

ISSUE: Coordinating detainee movement with higher headquarters

DISCUSSION: Higher headquarters tasked an ODA to transfer a high-level detainee from Iraqi custody to U.S. custody in order prosecute through CCCI. However, higher headquarters failed to inform the battle-space owner. This created some animosity between the capturing unit and the ODA.

RECOMMENDATION: Improve. All interested parties need to cooperate to coordinate detainee custody transfers. There is a lot of misinformation among conventional forces regarding SF and their mission. Open lines of communication helps break down these misperceptions and leads to better working relationships.[212]

ISSUE: Detention process slide show

DISCUSSION: The battalion legal advisor created a detention process slide show to educate ODAs and U.S. Forces – Iraq (USF-I) counterparts on the subject matter. The battalion legal advisor distributed the information through operational channels. The battalion legal advisor also conducted training for all Area Support Teams (ASTs) and had them post the slide show on their desks. This allowed the ASTs to answer requests for information (RFIs) from ODAs quickly and accurately.

RECOMMENDATION: Sustain. Educating ODAs on the requirements and processes of detainee custody transfer is imperative and helps establish trust between the ODAs and the legal section.[213]

ISSUE: Reviewing and assisting in the concept of operations (CONOP) approval process

DISCUSSION: The battalion legal section ensured every time a CONOP mentioned CJSOTF-AP Temporary Holding Facility (THF) that it also contained the detention process slide show. This helped reinforce the requirements and procedures of CJSOTF-AP THF and prevented problems.

RECOMMENDATION: Sustain. JAs must be proactive and look for ways to support ODAs.[214]

ISSUE: Tracking detainees

DISCUSSION: The SOTF-N legal section created a detainee tracker. It included the detainee's name, date of capture, last known Iraqi facility to have custody of the detainee or U.S. facility if

[211] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[212] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 158.
[213] *Id.*
[214] *Id.*

transferred to U.S. custody, and other identifying information. This provided the legal section with some visibility on detainee status. It is still impossible to track a detainee once the detainee is in the Iraqi system.

RECOMMENDATION: Sustain. Tracking detainees in the Iraqi system is a military police (MP) issue. JAs should have a tracker to help them answer requests from their command and should also inform the command of the difficulties in tracking detainees in the Iraqi system. Detainees were tracked from the capturing unit to the CCCI-K through to trial when transferring to U.S. custody for CCCI prosecution. Alternatively, detainees turned over to the provincial level for prosecution were not tracked beyond the initial detention facility, e.g., detainees were turned over to the Iraqi's and often moved without our knowledge, thus there was no way to track them.[215]

ISSUE: Managing expectations of higher headquarters' taskings in detention operations

DISCUSSION: CJSOTF-AP considered tasking ODAs to track detainees in the Iraqi system. The JAs from the SOTFs discussed this matter and presented a position paper to CJSOTF-AP outlining their concerns and advising against this course of action. The issue was once the detainee entered the Iraq system, not only did it become an Iraqi issue, but there was no way for the teams to monitor movement of Iraqis through the system in addition to their assigned duties. The ODAs were already over-tasked. CJSOTF-AP listened to the SOTFs and did not follow through on implementing this course of action.

RECOMMENDATION: Sustain. Work with other SOTF JAs to protect ODAs from infeasible courses of action from higher headquarters.[216]

Iraqi Judges

ISSUE: Identifying uncooperative judges

DISCUSSION: The legal advisor worked closely with SOTF-C's ODAs to identify uncooperative local investigative judges. The legal advisor would then work with the CJSOTF-AP legal advisor to bring pressure on responsible Iraqi authorities to have the investigative judge removed or influenced.

RECOMMENDATION: Sustain. Legal advisors should seek to identify uncooperative investigative judges and the reason for the particular judge's refusal to issue warrants, if possible.[217]

ISSUE: Knowledge of Iraqi laws

DISCUSSION: The legal advisor studied the Iraqi penal code before deploying. This provided the legal advisor with a general understanding of the Iraqi system.

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[215] *Id.*
[216] *Id.*
[217] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 8.

RECOMMENDATION: Sustain. Legal advisors must have a general understanding of Iraqi laws and judicial system before deploying.[218]

ISSUE: Relationship building with IJs and police investigators

DISCUSSION: The brigade was fortunate to have both the Central Criminal Court of Iraq (CCCI) and a CCCI satellite court within its AO. The IJs had particular competency in terrorism cases, which local judges forwarded to them. A team from the brigade, consisting of the BJA or TC, an interpreter, a LEP, a targeting cell NCO, and an S2 analyst met with the IJs weekly. This was not just to talk business, but also to build a relationship. Likewise, this team also met regularly with the police investigators for the same purpose. This was a critical relationship as well, since all evidence had to go through the police investigator to the IJ. The brigade was successful in getting the police investigators and IJs in the same room, which allowed them to simplify the transfer of evidence.

RECOMMENDATION: Sustain. The brigade's relationships with the IJs and police investigators were critical to their success in warrant-based targeting. The targeting cell NCO and S2 analyst were helpful during these visits because they could discuss future targets for which the brigade would be seeking warrants.[219]

ISSUE: "Judge runs"

DISCUSSION: The brigade brought IJs and police investigators to Camp Liberty in what they termed "judge runs." The brigade pulled detainees out of Camp Cropper and put them before the IJ as witnesses against active targets in the network (but not as an accused, since this may require a defense attorney under Iraqi law). During these sessions, the S2 gave an opening statement using a link diagram. Although these statements did not count as evidence, they gave the IJ the background information he needed to interrogate the detainees. They let the judge know who the detainee is, who the detainee knows in the insurgent network, and who the brigade wanted to target.

RECOMMENDATION: Sustain. This process largely replaced classified HUMINT and produced actionable intelligence. In allowing the S2 to make the opening statements to the IJ rather than doing it himself, the BJA gave the S2 a stake in the process, causing the S2 to champion the brigade's "prosecution-based targeting."[220]

Miscellaneous

ISSUE: Intelligence (J2) and legal fusion

DISCUSSION: The Legal Advisor created a detainee tracking system in coordination with the J2 on the CJSOTF-AP Share Point Portal. This allowed all members of CJSOTF-AP to track the status of a detainee from point of capture (POC) through conviction and have immediate access to all the detainee's paperwork. The Legal Advisor hung all pertinent legal documents (i.e. warrant, CIZA Memo, Detention Order, etc…) on the site and ensured it remained updated throughout the process.

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[218] *Id.*
[219] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 124.
[220] *Id.*

RECOMMENDATION: Sustain. Fusing the process with the J2 proved highly successful and gave more people visibility of detainee operations.[221]

ISSUE: Use of paralegal to track detainees

DISCUSSION: The legal advisor tasked his paralegal to track detainees. The paralegal would monitor all operational summaries to identify the names and locations of all detainees. The paralegal was able to track the detainee up to the time the detainee entered Iraqi custody. There is still no verifiable way to track detainees in Iraqi custody.

RECOMMENDATION: Sustain. Utilize paralegals to monitor and track detainees. All efforts should be made to take the burden off the ODAs in this area.[222]

ISSUE: Importance of working with host nation counterparts

DISCUSSION: The legal advisor met weekly with his ISOF counterpart to improve existing Iraqi detainee processing procedures. The end state of this being a more transparent detention system with the added benefit of gaining real time, actionable intelligence the Iraqis can utilize to create target packets.

RECOMMENDATION: Sustain. Legal advisors should take every opportunity to influence and improve existing Iraqi detention and targeting systems.[223]

ISSUE: Over-classification of information

DISCUSSION: Units tend to over-classify products, particularly products from detention operations. Over-classifying products is unhelpful because it inhibits the ability to share documents with non-U.S. individuals. In particular, there may be a requirement for information in a combined operation with Iraqi security forces in order to gain convictions or to support investigations into detainee abuse allegations made against Iraqi soldiers. You cannot easily share this type of information if it is over-classified.

RECOMMENDATION: Study the standards and process for information classification as part of your own professional development. As a general principle, most CJA files should be, and can be, stored in an unclassified medium. Try to ensure that units do not over-classify their products.[224]

ISSUE: Intelligence law attorney's role in detention operations

DISCUSSION: The implementation of the Security Agreement was a significant event. The role of the CJ2X where the intelligence law attorney worked was to conduct threat assessments of detainees. The CJ2 set up national-level boards to review detention files and rank order the threats. Some staff personnel from other agencies had concerns about setting up these boards because of the potential of involvement in Guantanamo-like litigation.

RECOMMENDATION: The ranking of detainees helped focus the units' evidence-seeking efforts. Briefing the players on how the Iraqi system views evidence was very helpful. Lawyers

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[221] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 56.
[222] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 8.
[223] *Id.*
[224] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 138.

were able to determine what intelligence was available for use by law enforcement personnel to lead them to admissible evidence.[225]

ISSUE: Mission of the Law and Order Task Force (LAOTF)

DISCUSSION: LAOTF supports several missions to include the PTFs. The full scope of the LAOTF mission, however, is not well defined, and in some cases it was difficult for the BCT PTF to obtain information from LAOTF due to LAOTF's multiple missions. This was further complicated by the fact that some of LAOTF's members were from other services and on shorter tours. The LAOTF played a critical role in supporting the JIC, but because of their various requirements they appeared at time to be unable to support the PTFs in a timely fashion.

RECOMMENDATION: Improve. The role and mission of the LAOTF needs to be better defined so PTFs can improve the processing of cases into the JIC.[226]

ISSUE: Use of law enforcement professionals (LEPs)

DISCUSSION: The 30th HBCT commander assigned the unit's LEPs to work under the BJA. The LEPs proved to be a valuable asset to not only the BJA, but also the BCT as a whole. They trained Iraqis on how to collect and preserve evidence. The LEPs also assisted the BCT with warrant based targeting and the detainee release program.

RECOMMENDATION: Sustain. Continue the use of LEPs. JAs should work closely with them. They are a force multiplier with detention operations, warrant based targeting, and even the rule of law (RoL).[227]

ISSUE: Detention based upon weapons possession

DISCUSSION: Weapons possession policies for Iraqis were a constantly changing standard. Units will want to know what constitutes a violation worthy of immediate detention.

RECOMMENDATION: You must hunt down very early in your deployment the real answer from the Iraqi officials in your area.[228]

ISSUE: Imminent threat detentions

DISCUSSION: The detention of someone as an imminent threat also eventually became a partnered operation. If there was no releasable information to use for a warrant, this authority allowed detention, but it required the approval of the Commanding General (CG). The CG would then inform the Iraqi commander of the Baghdad Operations Center (BOC).

RECOMMENDATION: Detention on this authority is very tenuous under the Security Agreement. Consequently, the unit tried to scale back its use tremendously. The Chief of Operations (CHOPS) had the same view and was often the first hard look when units posed this as a detention basis.[229]

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[225] MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09, *supra* note 141.
[226] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 134.
[227] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[228] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[229] *Id.*

ISSUE: Fostering a relationship with the Chief of Operations personnel

DISCUSSION: CHOPS served as a filter between the operators and the attorneys. In this role, they would recognize omissions in packages submitted to the operational law (OpLaw) attorneys and would return them for additional information.

RECOMMENDATION: Once you have established mutual trust and respect, this type of "triage" allows the OpLaw attorneys to focus more on their work at hand and less on quality control.[230]

ISSUE: Immediate detention versus deferred gratification

DISCUSSION: The question the detention operations attorney most often answered was, "Do we have lawful authority to go after this person?" Often, this is not an easy question to address succinctly. Iraqi law requires detaining authorities (police, military, etc.) to have a warrant before they arrest. Without a warrant, the Iraqi judge will free the detained person immediately. This is counter-productive. Commanders might "know" someone is a "bad guy," but without a warrant, a detention will simply be an exercise in "catch-and-release." This can be a dangerous practice. Since the detainee now knows who the judge is, it could potentially put the judge's life at risk.

RECOMMENDATION: Educate your commanders that waiting to build a stronger evidence package against an individual before detaining him will result in a greater chance of continued detention and eventual conviction.[231]

ISSUE: Embedding a TF 134 attorney with the Division OSJA

DISCUSSION: Having a TF 134 judge advocate embedded with the Division allowed the judge advocate to understand how a Division operates and provided the Division a liaison to explain why a certain detainee posed a greater threat in the division's AO than TF 134 might have realized.

RECOMMENDATION: Sustain. A good relationship with TF 134 is critical to the success of a Division's detention operations in Baghdad. The TF 134 attorneys acted like "translators" for 1CD and MNF-I/MNC-I personnel.[232]

ISSUE: Low priority for detention operations in some units

DISCUSSION: There were some brigades where the judge advocates were not as focused on operational law. Their focus was on fiscal law. In one such brigade, the point of contact for detention operations was the Provost Marshal, not the judge advocate.

RECOMMENDATION: Understand commanders of subordinate units set the emphasis for their units. Not everyone will assign the same priorities.[233]

ISSUE: Interaction between detention operations and rule of law

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[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] *Id.*

DISCUSSION: The detention operations and rule of law attorneys sat next to each other. At first, they had separate spheres. Eventually they began to merge. Part of the reason was there was not enough mission work to go around, but another part was that the detention operations needed help getting access to the Law and Order Task Force (LAOTF) later in the deployment.

RECOMMENDATION: Be prepared for roles to change as missions change on the ground.[234]

ISSUE: Operators tend to default to detainee rules they know

DISCUSSION: The attorneys understood the standards of Iraqi law for handling detainees were very different from our own standards. The people who had the most trouble with this concept were the operators. They constantly defaulted to applying a U.S. standard.

RECOMMENDATION: It is important to continually train operators to understand the Iraqi legal system. The operators do not need to be experts, but they should be familiar with the unique terms and processes of Iraq law. The end state should be that they are comfortable with a different legal system and can follow its rules when necessary.[235]

ISSUE: Need for and difficulty with witnesses

DISCUSSION: Upon the transition to Iraqi law, the need for witnesses to testify against detainees became paramount. However, getting witnesses to come forward and testify was difficult, as they did not often trust the ability of U.S. and Iraqi authorities to protect them.

RECOMMENDATION: You have to build trust relationships within the Iraqi populace before they will trust you enough to risk testifying. If you never reach this level of trust, you will be unable to obtain the witnesses necessary under the Iraqi system.[236]

ISSUE: Training U.S. forces in Iraqi law

DISCUSSION: Once detentions could only occur in accordance with Iraqi law, there was a need for units to know and understand those laws. In some areas, the Iraqi forces were reluctant to arrest people for what they saw as U.S. purposes. U.S. resistance to using Iraqi law mirrored, or perhaps was a contributing source of, this reluctance.

RECOMMENDATION: Legal personnel gave classes on major Iraqi laws, such as the anti-terrorism law, and on Iraqi evidentiary requirements in an attempt to help U.S. forces to use Iraqi law to accomplish their objectives.[237]

ISSUE: Categorization of detainees

DISCUSSION: We have a system of categorizing individuals in detention according to their perceived threat level. It is essential we follow our own rules and do not arbitrarily categorize individuals. It is also important to talk to the Iraqis during the categorization process so there are no surprises later that necessitate "special" releases.

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[234] *Id.*
[235] *Id.*
[236] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[237] *Id.*

RECOMMENDATION: Try to use a stable standard of categorization. Constant changes to the release process and standards damage our credibility and that of the system.[238]

ISSUE: Current state of detention operations in Iraq

DISCUSSION: Detention operations are now much more simply another facet of rule of law operations.

RECOMMENDATION: There is definitely no longer a need to dedicate a JA full-time to detention operations at the Division level in Iraq.[239]

ISSUE: U.S. forces not allowed inside Iraqi courts

DISCUSSION: Local Iraqi authorities prohibited U.S. forces from entering local courts. This prevented U.S. forces from securing local arrest warrants.

RECOMMENDATION: Be prepared to deal with these sorts of situations and have a course of action in place to secure national level warrants.[240]

ISSUE: Gaining trust of ODAs on detention matters

DISCUSSION: ODAs inevitably will distrust the detention process. It is essential for JAs to know the detention process thoroughly. The battalion legal advisor's knowledge and proactive advice built the ODAs' trust and confidence in the battalion legal section.

RECOMMENDATION: Sustain. All JAs need to know the detention process cold. Thoroughly research operational law issues and avoid providing advice without researching the issue.[241]

ISSUE: S-3 lead on detainee movement

DISCUSSION: Coordinating movement of detainees is not a JAG function. Detainee movement is an operational matter.

RECOMMENDATION: Sustain. Continue to use the S-3 section to coordinate and facilitate detainee movements.[242]

ISSUE: CJSOTF-AP THF paperwork requirements

DISCUSSION: The CJSOTF-AP THF's paperwork requirements were stringent. Failure to have proper paperwork resulted in the release of detainees. The battalion paralegal established a close working relationship with the THF JA and created THF-approved sample paperwork, which he distributed to the ODAs.

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[238] *Id.*
[239] *Id.*
[240] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 158.
[241] *Id.*
[242] *Id.*

RECOMMENDATION: Sustain. Constantly look for ways to support ODA missions. However, be careful not to take over this role. Ensuring proper paperwork is not a JAG function. The onus is on the ODAs and AOBs to ensure the capturing unit properly fills out the paperwork. The sample paperwork ensured this happened.[243]

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

Transfers

ISSUE: Transfer of detainees to Bagram Theater Internment Facility (BTIF)

DISCUSSION: The request and approval process to transfer high value (HV) detainees to the BTIF often took on average five days due to the high level of approval authorities. As a result, in such cases the BCT often exceeded the 96-hour maximum holding period imposed under ISAF guidance. This resulted in further explanations and staff responses up the chain of command. Legal staffs have a significant role in the compilation and accuracy of the information in the detainee packets, including matters of timeliness.

RECOMMENDATION: The ISAF time limit does not necessarily align with the current transfer approval process of HV detainees to the BTIF. Be prepared to respond to questions from higher headquarters on the time limits and status of detainees.[244]

ISSUE: Transfer of detainees to Afghan authorities

DISCUSSION: There were a few occasions where the BCT wanted to conduct a local transfer of a detainee, but both Afghan National Police (ANP) and Afghan National Directorate of Security (NDS) authorities wanted the same detainee. The common practice was to hold off on any transfers until the two sides could negotiate and come to an understanding concerning who should take the detainee.

RECOMMENDATION: Sustain. The ANP and NDS have similar and overlapping mandates with respect to detainees. Consequently, there will be occasional disagreements between the two requiring mediation by U.S. forces.[245]

ISSUE: Lack of Afghan government officials to receive detainees

DISCUSSION: When 2/3 Marines arrived in its AO, there was no local government in a majority of the AO other than tribal leadership. As a result, the unit often struggled to find competent Afghan authorities to whom it could transfer its detainees. This required the BN JA to coordinate with other staff sections, higher headquarters, adjacent units, and outside agencies to find Afghan authorities within their AOs willing to take custody of detainees.

RECOMMENDATION: JAs need to be prepared to search the AO for competent Afghan authorities to whom to turn over detainees. Once found, JAs should attempt to foster long-term working relationships with them.[246]

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[243] *Id.*
[244] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 42.
[245] *Id.*
[246] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 1.

ISSUE: Afghan National Security Forces (ANSF) and detention operations

DISCUSSION: The ANSF can be an effective force for carrying out detention operations, but they may need mentoring and development to bring them to their full potential. For example, some ANSF were unaware of the correct action, under Afghan law, regarding high-value security detainees, which is to transfer them to the National Directorate of Security (NDS – the Afghan equivalent of the FBI). The unit mitigated this lack of knowledge by enabling local attorneys to train the ANSF in the correct procedures.

RECOMMENDATION: The ANSF can be effective in the conduct of detention operations, but a JA should always see whether they need training and education to improve their performance.[247]

ISSUE: International Security Assistance Force (ISAF) 96-hour rule

DISCUSSION: The ISAF 96-hour rule, which required units to transfer detainees to Afghan authorities or else release them within 96-hours of capture, was very challenging. Specifically, the unit found it very difficult to gather evidence and find appropriate Afghan authorities willing to take custody of a detainee within the 96-hour period. As a result, RCT-3 released approximately 150 of its detainees in lieu of transferring them to Afghan authorities.

RECOMMENDATION: ISAF should be more flexible with the 96-hour rule. In some AOs, it is nearly impossible to execute a transfer to Afghan authorities within the 96-hour timeline. [Note: as of March 2010, U.S. forces may hold detainees for up to 14 days.][248]

ISSUE: International Security Assistance Force (ISAF) 96-hour rule

DISCUSSION: ISAF time limitations on detainee operations were very challenging. ISAF time limitations required all ISAF units to either release or transfer detainees to Afghan authorities within 96-hours of capture. In most of RC-South, and all of 2d LAR's AO, Afghan authorities/forces were non-existent, which made complying with ISAF detention operations rules a planning nightmare. Until the government established a local police force, 2d LAR had to either release their detainees within a couple of days of capture, or arrange air transport to Lashkar Gah, the capital of Helmand Province, where the detainees could be transferred to the Afghan National Directorate of Security (NDS).

RECOMMENDATION: In an ideal world, ISAF should change the 96-hour rule to allow more time to hold detainees. In the meantime, JAs need to understand ISAF rules governing detention operations, and assist their units in coming up with a plan that satisfies mission requirements and complies with ISAF rules. (Note: as of March 2010, U.S. Forces are may hold detainees for up to 14 days).[249]

ISSUE: Incorporating detainee transfer request (DTR) training into PMT

DISCUSSION: The legal advisor forced ODAs to walk through the detention process during PMT. This allowed the legal advisor to work with and educate the Soldiers on the exact requirements of the DTR and answer questions on the spot.

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[247] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.
[248] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 2.
[249] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.

RECOMMENDATION: Sustain. Early training is crucial for successful DTRs.[250]

ISSUE: Coordinating air movement of detainees from multinational partners' airfields

DISCUSSION: Multinational partners controlled several airfields in RC-W. These multinational partners often closed the airfields, which prohibited U.S. air assets from landing.

RECOMMENDATION: Be prepared to deal with this issue and work with the S-3 to identify U.S. operated airfields within your area of operations. It is prudent to establish an FDS at a location with a US controlled airfield.[251]

Prosecution of Detainees

ISSUE: Combat operations and the collection of evidence for prosecution

DISCUSSION: The nature of combat operations do not always allow for the orderly or complete collection of evidence for use in any future criminal prosecution of captured insurgents. Sometimes the unit bases detention of suspicious individuals on mere presence in a combat related location. Aside from presence, little other evidence exists for use in prosecution. Moreover, Soldiers conducting combat are not generally concerned with the preservation of evidence or collection of such evidence when bullets are still flying in the area.

RECOMMENDATION: The realities of combat may limit evidence collections by Soldiers. The eventual prosecution of suspected insurgents may not always be possible since the focus at the time of detention is on combat, not evidence collection.[252]

ISSUE: Prosecution of detainees in Afghanistan

DISCUSSION: While U.S. forces in Iraq have been involved in evidence based targeting operations for a few years to prosecute detainees, the situation in Afghanistan is still in its infancy. The judiciary in Afghanistan is fraught with problems, the prosecutors are often ill-trained, and the level of corruption in the police and other security forces is widespread. The threat to Afghan officials and judges seen as working with ISAF forces further complicates the situation and progress in the south and east of Afghanistan. Afghans in governance and rule of law capacities are common targets of violence and intimidation.

RECOMMENDATION: BJAs deployed to Afghanistan will find the situation there trails behind the progress levels found in Iraq for prosecuting captured insurgents.[253]

ISSUE: Converting intelligence into prosecution evidence

DISCUSSION: In order to develop the evidence for use in prosecutions of captured insurgents, JAs need to help intelligence staff to develop unclassified evidence packets from classified

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[250] 3/3 SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 9.
[251] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 50.
[252] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 42.
[253] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 87.

targeting products. The collaborative efforts of the legal and intelligence staffs can convert a great deal of the classified information into releasable evidence.

RECOMMENDATION: Sustain. JAs in both Afghanistan and Iraq must be capable of assisting in the prosecution of captured insurgents by providing local national prosecutors with evidence derived from actionable intelligence information.[254]

ISSUE: Evidence development standard operating procedure (SOP)

DISCUSSION: Robust collection and use of evidence was critical for four reasons: 1. unclassified, releasable evidence is the raw material for prosecutions in the Afghan system; 2. it is the raw material to pressure the Afghan government to prosecute corrupt officials; 3. it is the raw material for the coalition IO campaign throughout the theater; and 4. it is the raw material for detention operations as the detention review boards (DRBs) strongly prefer unclassified, releasable evidence.

The OSJA recognized that with no SOP, there existed a gap that needed to be filled. A SOP would force evidence collection to "intrude on the consciousness of the targeters." The SOP covered the entire lifecycle of evidence's use in actioning a target from collection of the evidence to tracking the evidence and case through the Afghan system. To create the SOP, the J-3 tasked the various staff sections to provide input. This ensured that the SOP was an operations product and not merely a JAG product. Furthermore, this process made it a collective staff product in which all sections were invested. In order to emphasize the directive nature of the SOP, the CG signed an implementation memorandum directing that evidence development would be considered in every combat mission and an evidence development slide would be part of every concept of the operation (CONOP). Further, the J-3 published the SOP in a FRAGO.

The SOP's effect was profound, forcing commanders to consider evidence in the targeting process rather than scrambling to gather it after detention. Not only did proper use of evidence enable prosecution, but it also assisted BSOs in identifying corrupt officials who would release detainees in spite of the evidence. This forced the Afghan government to hold their officials accountable for their actions. The integration of evidence collection in targeting additionally supported combined operations with Afghan forces to include the justice sector personnel. Very simply, the evidence SOP supported the overall COIN strategy.

RECOMMENDATION: Sustain. If the CJTF does not fall in on a robust evidence collection SOP of this nature, consider creating one with command support and involvement. Proper collection and use of evidence in targeting and prosecution will greatly enhance the COIN strategy's overall effectiveness.[255]

Detainee Operations General

ISSUE: Preparation to conduct detainee operations (DetOps)

DISCUSSION: Before the deployment, intelligence estimates indicated the BCT was not likely to encounter many insurgents and therefore should not devote too much time to DetOps-related training. Not surprisingly, the BCT encountered heavy combat as the weather in the AO

[254] *Id.*
[255] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.

improved in the spring and summer. They eventually took over 400 detainees during the course of the deployment.

RECOMMENDATION: Always be prepared for DetOps, despite any estimates to the contrary.[256]

ISSUE: Primary staff responsibilities

DISCUSSION: Detention operations became a primary staff responsibility for the CJSOTF-A legal section, because CJSOTF-A neither has a provost marshal on its joint manning document (JMD) nor has organic military police assets. This required the legal section to coordinate and facilitate detainee movements, track detainees, and process detainee transfer requests (DTRs).

RECOMMENDATION: Legal advisors and paralegals must be prepared to assume this role and where possible coordinate assistance from available military police assets in theater. The legal section should also establish a close working relationship with supporting air assets.[257]

ISSUE: Witness requests

DISCUSSION: JTF-435 often requested CJSOTF-A to send witnesses to the detention facility to testify at detention review board (DRB) hearings. Almost all of these witnesses were CJSOTF-A sources (as opposed to host-nation sources) and governed by relevant DoD policies. Confusion existed within JTF-435 in understanding how to comply with existing DoD policies when requesting CJSOTF-A sources to testify and the difference between a CJSOTF-A source and an ANA/ANP source.

RECOMMENDATION: Improve. Legal advisors must be familiar with all relevant DoD and theater policies and procedures implicit in detention operations and subsequent Rule of Law processes.[258]

ISSUE: Detention Operations (DETOPS) in Afghanistan

DISCUSSION: BJAs returning from Afghanistan have reported dramatic changes in the conduct and approach to DETOPS. Task Force (TF) 435 has stood up to regulate and eventually transfer all DETOPS to Afghan authorities. TF 435 now runs DETOPS at Bagram Airfield and has begun to modify DETOPS processes. With respect to ISAF operations, the Commander of ISAF has changed the 96-hour holding period to a longer period. U.S. forces operating under Operation Enduring Freedom (OEF) have also adopted this longer period (previously it was 10 days). This change allows for reasonable exploitation of detainees. Moreover, ISAF forces may now interrogate detainees instead of just tactical questioning.

RECOMMENDATION: BJAs deploying to Afghanistan should contact the incumbent JAs they are going to replace to discuss DETOPS activities and procedures. The situation is dynamic, so staying current is critical.[259]

ISSUE: Detainee holding areas (DHAs) at outlying FOBs

[256] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 42.
[257] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 6.
[258] *Id.*
[259] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 87.

DISCUSSION: Afghanistan presents a host of issues limiting the BJA's ability to travel the battle space. The BJA encouraged his paralegals at the outlying FOBs to understand the detention standard operating procedures (SOPs) and to drop by DHAs to assess their compliance. This allowed the BJA to have situational awareness of places to which it was difficult for him to travel.

RECOMMENDATION: Sustain. Paralegals at outlying FOBs are a great source of ground intelligence to the BJA.[260]

ISSUE: Complexity of detention operations

DISCUSSION: The procedures and rules regulating detention operations are complex and differ according to the type of mission. For instance, you cannot transfer detainees captured on an International Security Assistance Force (ISAF) mission into OEF detention. An observer might assume that ISAF and OEF mission must be easy to differentiate. This is not the case. TF Warrior was a national contribution to ISAF. It was not clearly either OEF or ISAF. CJTF failed to clearly define it either way until later in the deployment when CJTF produced a colored organizational chart that clearly defined each unit's role. However, this was merely the first level of complexity. Once the mission was settled you had to follow the guidance from the Afghan Government; the North Atlantic Treaty Organization (NATO) and ISAF; and Regional Command – East (RC-E), and this guidance changed continually.

RECOMMENDATION: Plan operations with the endgame in sight. Involve a JA in the preliminary planning of any operation where detention of persons is likely. This helps ensure the plan conforms to the requirements of the detention regime and will support the commander's intent. But remember that there are no easy solutions: the 'rules of the game' will change frequently. At the least be aware of this and try to keep pace with the changes. Detention operations are highly dynamic. Just because a certain practice is appropriate now does not mean that it will still be appropriate next week. Despite the confusion, it is important to hold to the fundamental point that you must treat detainees in accordance with the Geneva Conventions.[261]

ISSUE: ICRC inspections of detention facilities

DISCUSSION: Lower level commanders may wish to establish field detention facilities due to the tactical situation. If done, the ICRC will want to inspect the detention facilities, and the unit must enable the ICRC inspection.

RECOMMENDATION: Note. In general, the best advice is not to establish field detention facilities unless it is essential. Commanders must understand the burden and risks in detaining people. Where you know that you are going to take over an existing detention facility be very careful with your pre-deployment preparations: get up to speed with the detention Standing Operating Procedures (SOPs) and review them thoroughly. Carry out comprehensive right-seat and left-seat ride handovers with your predecessors. Detention operations are highly demanding and you will need to get into it big time and work hard at maintaining control. Keep the JA in the information loop to monitor developments.[262]

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[260] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[261] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.
[262] *Id.*

ISSUE: Detention training for non-organic units conducting ground operations

DISCUSSION: The BJA was not expecting to have any detainee issues due to TF Thunder's mission set. However, there was a military intelligence battalion attached to the TF that conducted ground operations. One of these operations resulted in a detainee. The question was who detained the individual. Following this incident, the CJTF initiated training to the TF.

RECOMMENDATION: Sustain. Provide detainee operations training to units of the TF that will conduct ground operations. CAB BJAs should also be familiar with the makeup of their TF before arriving in theatre to plan accordingly.[263]

ISSUE: Training for detention operations

DISCUSSION: The new route clearance battalion started seizing detainees, persons suspected of being Improvised Explosive Device (IED) triggermen, during route clearance patrols (RCPs). Their predecessors had never done this and, accordingly, no one had thought it necessary to train the route clearance battalion in detainee operations. The battalion took approximately 50 detainees during the course of the deployment. It was necessary to train the route clearance battalion in detainee handling in theater. The BJA wrote a training package for detention. The training gave the RCPs the necessary skills to handle detainees effectively.

RECOMMENDATION: Do not assume your unit will necessarily operate in just the same way as your predecessors. The situation may change and require you to complete unfamiliar tasks. Know what tasks your Soldiers are performing on the ground. Occasionally going out on patrol with them is an excellent way to find out what they are doing. If they have to do tasks they are not trained to do, quickly step in to fill any training gaps. This is especially important for sensitive tasks like detention.[264]

ISSUE: Rescission of the ISAF 96-hour rule

DISCUSSION: For several years, ISAF forces could only hold detainees for up to 96 hours. The 96-hour rule did not permit sufficient time for the capturing ISAF unit to process and question detainees before release at point of capture or transfer to Afghan authorities. Many units suspected that captured insurgents remained uncooperative and simply bided their time until the 96 hours expired. In mid-March 2010, after 4-25 ID redeployed, the ISAF Commander increased the holding period to 14 days. Units now have more time and greater flexibility to gather information from detained persons.

RECOMMENDATION: Afghanistan-bound units must know and understand the change, since there are many references to the old 96-hour rule in ISAF and NATO guidance, orders, and instructions.[265]

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[263] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 16.

[264] 168th Engineer Brigade, Mississippi Army National Guard, Brigade Judge Advocate OEF After Action Report, 30 March 2010, Deployed December 2008 – November 2009, Regional Command – East, Bagram Air Field, Afghanistan (hereinafter "168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09"; on file at CLAMO).

[265] 4th Brigade Combat Team (Airborne), 25th Infantry Division, Brigade Judge Advocate OEF After Action Report, 27 March 2010, Deployed February 2009 – February 2010, Forward Operating Base Salerno, Khowst Province, Afghanistan (hereinafter "4BCT, 25ID OEF AAR, FEB 09 - FEB 10"; on file at CLAMO).

ISSUE: Operation Enduring Freedom (OEF) detainees

DISCUSSION: 4-25 ID conducted joint ISAF-OEF patrols to allow use of the OEF 10-day rule in lieu of the ISAF 96-hour rule. OEF Soldiers from non-ISAF units operating in the 4-25 ID battle space (e.g., Special Forces, engineers, Marines, etc.) would take control and possession of detainees captured during the joint patrol and could operate under their 10-day OEF rule. This allowed coalition forces the ability to more effectively exploit detainees.

RECOMMENDATION: This is no longer an issue since both ISAF and OEF units are operating under the 14-day time limit.[266]

ISSUE: Weekly detention facility inspections

DISCUSSION: In accordance with BCT and Division orders, detention facilities required a weekly inspection by a field grade officer. 4-25 ID decided to utilize a small group of inspectors to ensure compliance with applicable standards concerning adequacy of facilities and detainee handling. The BJA, BCT Chaplain, and BCT Surgeon split duties conducting the weekly walk through. The previous BCT used different field grade officers every week, which made it difficult for officers to identify trends or assess changes over time.

RECOMMENDATION: Sustain. It is better to have a small group of officers conduct inspections versus a large pool of inspectors.[267]

ISSUE: Embedded National Directorate of Security (NDS) prosecutor at detention facility

DISCUSSION: In accordance with applicable detainee handling procedures, detainees not accepted into the Bagram Theater Internment Facility (BTIF) were released at point of capture or transferred to Afghan custody. Afghan authorities rarely prosecuted the transferred detainees, which caused significant dissatisfaction amongst coalition personnel. Afghan authorities relied on a technicality of Afghan law to justify the low number of prosecutions; Afghan law requires the release of persons in police custody unless a prosecutor signs off on a prima facie case within 72 hours of the person's initial detention. Given the overlapping timelines for detention (ISAF detention for 96 hours ran concurrently with the Afghan 72 hours), coalition forces routinely kept detainees beyond the Afghan 72 hour period, allowing Afghan authorities to claim prosecutions were then barred due to non-compliance with the 72-hour rule. Embedding a NDS prosecutor at the FOB Salerno detention facility solves the problem. This arrangement affords the NDS prosecutor direct access to evidence, the statements of Soldiers, and the detainee himself, all within 72 hours of detention. Moreover, it provides extra time to deal with the matter. [Note: 4-25 ID completed final coordination with Afghan authorities to execute this initiative, but redeployed before the NDS prosecutor was actually working at FOB Salerno. The unit replacing 4-25 ID planned to implement the initiative.]

RECOMMENDATION: Sustain. Measures like embedding a NDS prosecutor at the detention facility greatly increase the likelihood of prosecutions of Afghan insurgents.[268]

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[266] *Id.*
[267] *Id.*
[268] *Id.*

ISSUE: Creation of detention standard operating procedure (SOP)

DISCUSSION: The BN JA created a detention SOP and distributed it throughout the battalion. The SOP set forth all stages of the detention process from point of capture (POC) to trial and/or release.

RECOMMENDATION: Sustain. Provide clear and understandable detention SOP to all Marines.[269]

ISSUE: Constructing temporary holding facilities

DISCUSSION: When 2d LAR arrived in its AO, there was no prior military presence or working local government, which resulted in there being no holding facilities whatsoever in the AO. 2d LAR constructed a battalion holding facility using the checklist in Standard Operating Procedure (SOP) 362: Detention of Non-ISAF Personnel. 2d LAR used this holding facility as a place to safely, securely, and temporarily house detainees within in the 96-hour window.

RECOMMENDATION: Sustain.[270]

ISSUE: Establishing an Afghan National Police (ANP) holding facility

DISCUSSION: Once the government established a local ANP force in the 2d LAR AO, 2d LAR assisted them with constructing a holding facility, which complied with Geneva Convention standards. The completion of this facility gave 2d LAR the option to transfer a detainee to the local ANP.

RECOMMENDATION: Sustain.[271]

ISSUE: Navigating the different detention policies in theater

DISCUSSION: There are different detention policies in Afghanistan for Operation Enduring Freedom (OEF) detainees and International Security Assistance Force (ISAF) detainees. JAs must know the differences and be able to explain and provide real-time guidance on detention issues to the command.

RECOMMENDATION: Deploying JAs should contact the outgoing JA before deploying and start to track issues before arriving in theater. This allowed the SJA to provide accurate guidance on the different detention policies in theater.[272]

ISSUE: In-processing tent at FDS

DISCUSSION: The SOTF paralegal established an in-processing tent at the SOTF's FDS. At the tent, the ODA team members would complete the requisite paperwork, receive hot food and drink, and have access to the other key players in the detention processing system. This process led to more efficient and effective detainee transfer requests (DTR), which the ODA team members appreciated.

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[269] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 1.
[270] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.
[271] *Id.*
[272] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 49.

RECOMMENDATION: Sustain. SOTF legal advisors and paralegals must look for creative ways to help ODAs accomplish their mission.[273]

ISSUE: Detention operations information paper

DISCUSSION: The SOTF legal advisor coordinated with other staff sections and drafted a detention operations information paper. The legal advisor sent the information paper through the S-3 to the AOBs who in turn sent it out to the ODAs, thereby ensuring all personnel received the paper. The legal advisor answered any individual questions regarding the information paper.

RECOMMENDATION: Sustain. Working with other interested staff sections makes for a better product. Close staff integration is essential in detention operations.[274]

ISSUE: Establishing FDS

DISCUSSION: Air movement in Afghanistan is difficult, especially in the winter months. Legal advisors need to be proactive and work with the S-3 to find suitable locations for a FDS.

RECOMMENDATION: Sustain. Work with the S-3 to find suitable locations to establish a FDS.[275]

ISSUE: Pre-fabricated FDS

DISCUSSION: The contracting process in Afghanistan is long and slow. This, combined with the fact operational needs change and may require relocation of the FDS, makes the use of a pre-fabricated and pre-approved FDS desirable.

RECOMMENDATION: Legal advisors should know pre-fabricated and pre-approved FDS are available.[276]

ISSUE: Building Afghan partner forces' capacity

DISCUSSION: The SOTF legal advisor constantly stressed the importance of building Afghan capacity to deal with detainees resulting from combined operations between SOTF-S's ODAs/DETs and their Afghan partnered forces. The SOTF-S Commander also stressed the importance of this to his ODAs before deployment and throughout. The goal was to build capacity of the Afghan partner units in identifying and detaining enemy combatants, as well as conducting useful post-capture detention activities.

RECOMMENDATION: Sustain. SOTF legal advisors should constantly brief all Soldiers in the SOTF throughout the deployment on the importance of building host-nation capabilities. Command "buy-in" is crucial to the success of these efforts.[277]

ISSUE: Pre-deployment training on detention operations

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[273] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 50.
[274] *Id.*
[275] *Id.*
[276] *Id.*
[277] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 51.

DISCUSSION: The SOTF legal advisor was aware of the applicable rules and regulations applicable to his SOTF before deploying. However, knowing the rules and regulations is different from implementing proper procedures and safeguards to ensure the following of these rules and regulations downrange.

RECOMMENDATION: Improve. Practical exercises should take place during pre-mission training (PMT) on detention operations. Specifically, all deploying legal advisors must know how to complete a good detainee transfer request (DTR) before deploying. This would alleviate the inherent growing pains one goes through in theater.[278]

ISSUE: One-man detention operations cell

DISCUSSION: The SOTF legal advisor became a one-man detention operations fusion cell and coordinated virtually all aspects of SOTF-S's detention operations. This forced the SOTF legal advisor to build strong working relationships with other staff sections to ensure the DTRs he submitted contained sufficient evidence.

RECOMMENDATION: SOTF legal advisors must be prepared to handle all aspects of detention operations. Integration with air operations and intelligence is imperative.[279]

ISSUE: Detention operations is a hot button political issue

DISCUSSION: A U.S. Senator (who is also a Colonel in the Air Force JAG Corps) visited Kandahar and requested a brief on detention operations. The SOTF legal advisor, therefore, had to brief a U.S. Senator on SOTF detention operations, as well as general OEF and ISAF detention operations in Afghanistan. The U.S. Senator was very interested and asked many questions on how detention operations are resourced and executed in Afghanistan.

RECOMMENDATION: SOTF legal advisors must treat detention operations as a no-fail mission with significant political interest and oversight.[280]

ISSUE: Primary staff responsibilities

DISCUSSION: Detention operations became a primary staff responsibility for the CJSOTF-A legal section because CJSOTF-A has neither a provost marshal on its joint manning document (JMD) nor organic military police assets. This required the legal section to coordinate and facilitate detainee movements, track detainees, and process detainee transfer requests (DTRs).

RECOMMENDATION: Legal advisors and paralegals must be prepared to assume this role and, where possible, coordinate assistance from available military police assets in theater. The legal section should also establish a close working relationship with supporting air assets.[281]

ISSUE: Abuse allegations

DISCUSSION: The vast majority of detainee abuse allegations consisted of complaints of abuse

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[278] *Id.*
[279] *Id.*
[280] *Id.*
[281] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 5.

at the hands of Afghan forces. Confusion existed outside CJSOTF-A as to the approval authority to allow U.S. forces to investigate Afghan on Afghan abuse allegations.

RECOMMENDATION: Legal advisors must be familiar with all detainee operations policies and procedures. Legal advisors should get proper clarification on the need to investigate Afghan on Afghan abuse allegations early in their deployment.[282]

ISSUE: Coordination with Task Force (TF) 435, Detainee Operations

DISCUSSION: TF 435, the new theater wide Detention Operations authority, became fully operational on or about 1 January 2010. As with most newly operational commands, there are growing pains. Some of the main challenges resulting from these growing pains were the submission of requests for information (RFIs). TF 435 would submit RFIs in the form of witness requests for the appearances of ODA members and their Afghan partnered forces that pertained to upcoming detainee review boards (DRB) to CJSOTF-A and sometimes directly to SOTF-East with unrealistic suspenses. This resulted in CJSOTF-A being unable to adequately answer and provide input and provide the necessary witnesses

RECOMMENDATION: Improve. TF 435 must have a better understanding of the operational and geographical constraints when submitting RFIs to units for pending DRBs.[283]

ISSUE: Better coordination and communication between TF 435, CJSOTF-A and the SOTFs

DISCUSSION: In one instance, TF 435 put out a new detention operations policy on 1 March 2010. CJSOTF-A and SOTF-E continued to operate under the old policy because they had no knowledge TF 435 published a new policy. TF 435 placed this information on its web-portal. CJSOTF-A was unable to access this portal.

RECOMMENDATION: Improve. TF 435 must better coordinate and communicate with other units and use operational channels when posting new policies. TF 435's web-portal needs to be easily accessible and not password protected so units such as CJSOTF-A and SOTF-E can review all applicable TF 435 policies to ensure compliance.[284]

ISSUE: Legal advisor served as SOTF-E detainee operations officer-in-charge (OIC)

DISCUSSION: Due to a lack of organic PMO/MP assets, the legal advisor served as the detainee operations OIC. He worked closely with other staff sections from point of capture to incarceration.

RECOMMENDATION: Sustain. Detainee operations is a high visbility and 100 percent success mission. Legal advisors must be prepared to undertake nontraditional roles due to their unique skill sets.[285]

ISSUE: Coordinate field detention site (FDS) training

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[282] *Id.*
[283] 3/3 SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 9.
[284] *Id.*
[285] *Id.*

DISCUSSION: One of the first things the legal advisor did during his deployment was coordinate with TF 435 to send its mobile training team (MTT) to conduct training and certification for SOTF-E's FDS guard force.

RECOMMENDATION: Sustain. Legal advisors should know of this training team and work closely with them. The MTT personnel were professional and great to work with.[286]

ISSUE: Training the FDS guard force

DISCUSSION: The legal advisor worked with the SOTF paralegal and the first sergeant from the battalion's headquarters support company (HSC) to select Soldiers for certification to guard detainees.

RECOMMENDATION: Sustain. The unit must properly train, supervise, and select all involved.[287]

ISSUE: Number of Soldiers trained to guard detainees

DISCUSSION: Circumstances one cannot predict arise during combat operations. The legal advisor should understand this and ensure adequate numbers of Soldiers have training to respond to "surge" situations requiring the guarding and movement of detainees.

RECOMMENDATION: Sustain. The legal advisor, in coordination with SOTF paralegal and HSC first sergeant, ensured a "pool" of trained Soldiers were available to respond to "surge" requirements.[288]

ISSUE: Educating Soldiers on the legal implications of certain words

DISCUSSION: Early in the deployment ODAs were using "detainee" to describe a person in Afghan custody. The legal advisor had to work with the teams to educate them on the potential legal implications of this term both in radio communication and in written reports. Persons in Afghan custody are not U.S. detainees.

RECOMMENDATION: Improve. ODA team leaders and sergeants must know the potential legal implications of certain words before deploying. Use pre-mission training (PMT) to educate them on this point.[289]

ISSUE: S-2 coordination on DTRs

DISCUSSION: The legal advisor worked closely with the S-2 to bolster DTRs with available all source information.

RECOMMENDATION: Sustain. Close coordination and understanding with the S-2 is imperative to drafting successful DTRs.[290]

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[286] *Id.*
[287] *Id.*
[288] *Id.*
[289] *Id.*
[290] *Id.*

ISSUE: Detention operations smart book

DISCUSSION: The legal advisor created a detention operations smart book, which contained all requisite forms and examples of them. He used the smart book as a training aid during PMT, burned it on a disc, and gave it to each ODA before deploying.

RECOMMENDATION: Sustain.[291]

ISSUE: Detainee abuse allegations

DISCUSSION: The legal advisor expected abuse allegations and trained on it during PMT. He created a battle drill and walked through each step during PMT.

RECOMMENDATION: Sustain. Legal advisors should expect abuse allegations and have a battle-drill in hand before deploying.[292]

ISSUE: Lack of capacity at the Detention Facility in Parwan (DFIP)

DISCUSSION: The DFIP's capacity is necessarily limited. Therefore, units will transfer a majority of detainees to the Afghan government likely through a partnered force. This creates an incentive for the BSO to ensure that the Afghan government successfully prosecutes the detainee in the Afghan system after U.S. forces hand him off. Good unclassified evidence packets are critical for this effort.

RECOMMENDATION: Sustain. The DFIP will never be the primary organization to which the BSO turns over detainees. Working by, with and through Afghan partners toward prosecution in the Afghan system must be the reality.[293]

ISSUE: Operational Law (OpLaw) JAs as members of the Detention Operations (DetOps) team

DISCUSSION: The Division OpLaw attorneys spent a large portion of their time facilitating information flow between staff sections, primarily in support of DetOps. As the OpLaw attorneys knew not only the key members of the staff but also the legal requirements embodied in the field of DetOps, they were well positioned to get the right people involved in issues early on. As the deployment wore on, the op law attorneys brought key staff sections together to discuss issues rather than simply be a conduit of information from one staff section to another. For instance, rather than passing information from the provost marshal officer (PMO) to the chief of operations (CHOPS), the JAs would schedule an informal meeting with them to discuss issues. Facilitating this collaborative approach proved effective in detention operations.

RECOMMENDATION: Sustain. OpLaw JAs working in DetOps must be technically proficient attorneys and staff members. Knowing the key players in the DetOps process will allow the JA to become an effective member in the Det Ops team at the division level. Building these

[291] *Id.*
[292] *Id.*
[293] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.

relationships on the staff will also allow JAs to stay in the loop as issues arise, so they may conduct legal analysis early and often to avoid roadblocks in the process.[294]

ISSUE: JAs brought in to deal with non-legal issues in DetOps

DISCUSSION: Because the OpLaw JAs gained the trust of other staff sections, those sections would often consult with them on non-legal issues. Largely this occurred with the more complex problems associated with DetOps. Other staff sections relied on the JA's analytical expertise to assist them in meeting the commander's intent. Additionally, other staff section viewed consultation with the OpLaw JAs as providing them top cover. Over time, this became the core mission of the OpLaw JAs.

RECOMMENDATION: Sustain. Gain the other staff sections' trust as a competent JA and staff member, and they will bring you into the team to discuss and solve complex issues. This makes you more value added to the command. However, with limited JA resources, understand that this "mission creep" may detract from your ability to accomplish your core tasks.[295]

ISSUE: Reviewing Detainee Transfer Requests (DTRs)

DISCUSSION: The OpLaw JAs reviewed every DTR during the deployment. Frequently, the JAs caught relatively obvious or simple mistakes in the packets, many of which were not even legal in nature. Additionally, while these packets are routine, other staff sections continued to make repeat mistakes, even after months overseas. For instance, oftentimes, other staff sections would incorrectly count the number of days that a detainee had been in U.S. custody, which can have drastic implications.

RECOMMENDATION: Sustain. Do not assume that these packets, because they are routine, are being done correctly. Getting a JA set of eyes on every DTR will spot small issues early in the process before they become showstoppers down the road.[296]

ISSUE: Joint Task Force (JTF)-435's failure to coordinate with battlespace owners (BSOs)

DISCUSSION: Part of JTF-435's mission was coordinating detainee releases at the theater level. However, in doing so, they failed to adequately coordinate with either RC-East, or the individual BSOs. This failure in coordination created friction in two ways. First, BSOs were many times unaware that JTF-435 was releasing detainees into their battlespace. Second, JTF-435 was releasing detainees to government officials within the community that the BSOs were specifically trying to discredit.

RECOMMENDATION: Improve. JTF-435 needs to ensure its staff understands its oversight and operational role by enabling the BSOs to accomplish the successful tactical execution of DetOps in a COIN OE. It is imperative that JTF-435 work with, and not parallel to, the various BSOs.[297]

ISSUE: Better coordination and communication with JTF-435

[294] *Id.*
[295] *Id.*
[296] *Id.*
[297] *Id.*

DISCUSSION: JTF-435 put out a new detention operations policy and placed it on its web-portal and relied on technical chain communications rather than the military tasking authority process of fragmentary orders when coordinating detainee releases.

RECOMMENDATION: Improve. JTF-435 must better coordinate with other units and use operational channels when posting new policies and conducting detainee release operations.[298]

ISSUE: Legal advisors involved with detainee operations

DISCUSSION: It is imperative to understand the most current policies and to understand the underlying core source authorities.

RECOMMENDATION: Early identification of DetOps legal advisors is key in setting conditions for that individual to have adequate time to seek out and become familiar with all applicable policies and authorities regarding detention operations.[299]

ISSUE: Coordinate field detention site (FDS) training

DISCUSSION: One of the first things to do upon deployment is to coordinate with JTF-435 to send its mobile training team (MTT) to conduct training and certification for FDS guard force.

RECOMMENDATION: Legal advisors should be aware of this training team and work closely with them. The MTT personnel were professional and great to work with.[300]

ISSUE: International Committee of the Red Cross (ICRC) assistance in DetOps

DISCUSSION: ICRC is a professional organization that is generally of the same opinion as the U.S. as to how to run a detention facility. It also facilitates and funds family visits to detainees which reduces such burdens on the BSOs and TIF TF.

RECOMMENDATION: Sustain. The legal advisor should serve as the primary LNO to ICRC when the opportunity arises and foster a respectful working relationship.[301]

ISSUE: Law Enforcement Interviews

DISCUSSION: At times, requests will be made by law enforcement entities that are outside of the Department of Defense (DoD) to conduct interviews of detainees in DoD custody.

RECOMMENDATION: Thoroughly understand the policies and authorities that govern non-DoD entity access to detainees in DoD custody.[302]

ISSUE: ISAF SOF detainees caused unique issues

DISCUSSION: At times ISAF SOF pushed detainees to field detention sites run by Operation

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[298] *Id.*
[299] *Id.*
[300] *Id.*
[301] *Id.*
[302] *Id.*

Enduring Freedom units and the B-TIF. In such cases, the ISAF SOF did not have a clear understanding of their nation's own policies governing detention operations which could have strategic implications.

RECOMMENDATION: Seek out coalition legal advisors and cross-walk national caveats that pertain to detention operations.[303]

ISSUE: Detainee Review Board (DRB) Legal Advisor role and responsibilities

DISCUSSION: After realignment from the ECRB to the DRB process, the panel did not have a legal representative (there was a legal representative – but not an engaged participant). Due to the semi-adversarial proceeding between the "recorder" and the "personal representative" it is imperative that the legal advisor to the DRB be active and explain the applicable standards and criteria as well as address panel questions.

RECOMMENDATION: Ensure the legal advisor to the DRB understands the significance of playing an "active role" in the DRB process.[304]

ISSUE: Responding to requests for assistance (RFA)

DISCUSSION: Detainee operations often operate under very strict timelines and guidance. This limited time-window emphasizes the importance of responding to RFAs.

RECOMMENDATION: During the "triage" of detainee operations RFAs, judge advocates should set "operational impact" as a more significant criteria than rank of the requesting officer.[305]

Kosovo and Detention Operations

ISSUE: Lack of detention operations in Kosovo

DISCUSSION: There are currently no military-executed detention operations in Kosovo. During the KFOR 11 rotation, the unit finally tore down the camp detention facility. It is highly unlikely U.S. forces would ever detain anyone. The authority to do so does not exist at the task force level. The Kosovo police are the first responders, followed by European Union Law Enforcement (EULEX).

RECOMMENDATION: Training in detention operations is of little to no use for KFOR units.[306]

I.F. Environmental Issues

ISSUE: Trash disposal in Kosovo

DISCUSSION: During the rotation, the landfill previously used to dispose of Camp Bondsteel's

[303] *Id.*
[304] *Id.*
[305] *Id.*
[306] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.

trash closed. This created an operational problem, as the trash had to go somewhere. Although some recommended burn disposal as we do in Iraq and elsewhere, it would be unacceptable to do so in Europe. The unit had to find a new landfill to use.

RECOMMENDATION: With an eye towards the long-term problem, the unit also implemented a recycling program on the camp. While there was initial resistance to this from a fiscal perspective, waste disposal was a real operational concern warranting the expenditure of operations and maintenance (O&M) funds, if necessary.[307]

ISSUE: Preserving archaeological finds

DISCUSSION: The commander of the brigade's human terrain team (HTT) observed human bones while a contractor was filling HESCO barriers. The HTT leader stopped the contractors and alerted U.S. Embassy officials, who in turn contacted the proper Iraqi authorities. The Iraqi authorities were very grateful for the effort and concern.

RECOMMENDATION: Sustain. Iraq is a nation steeped in history and national treasures. Soldiers should be prepared to spot and report potential archaeological finds. Preserving and protecting Iraqi history is an important part of our strategic partnership efforts.[308]

I.F.1. Environmental Damage from Military Operations

ISSUE: Fuel tanker damaged in convoy

DISCUSSION: During a convoy mission, a civilian oil tanker driven by a third country national (TCN) lost control and crashed. The driver abandoned the truck in place. The fuel oil cargo leaked out of the vehicle into the desert. The contracting agent charged the military for the cargo, taking no responsibility for the driver or his actions. The procedures to clean-up fuel oil spills in the area of operations were unclear.

RECOMMENDATION: Improve. Understand the contractual provisions with regard to procedures and protocol for damage to the environment and truck recovery. Though the information was routed to the correct entity through the S3 channels, judge advocates can assist if questions arise about contract enforcement. JAs should get involved in all aspects of the operations. Problems in the brigade can become your problem very quickly. Ensure that you are on the distribution list for commander's critical information requirements (CCIRs) and the battle captain updates.[309]

ISSUE: Open pit burning of trash

DISCUSSION: Despite repeated complaints to the chain of command about the potential dangers of open pit burning of garbage and other debris, the practice still continues at some FOBs and Combat Outposts (COPs). The resulting smoke and other byproducts may endanger the health of Soldiers and local nationals.

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[307] *Id.*
[308] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[309] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 92.

RECOMMENDATION: Improve. Commanders have a duty to care for the well being and health of their Soldiers.[310]

ISSUE: Return of land previously used as a training range

DISCUSSION: Overall, commands are not very effective at returning real estate. The unit determined it no longer needed one of its training ranges. When the unit went to return the land to its owners, some multinational partners insisted the unit conduct an environmental assessment before returning the land. The unit refused, instead providing a statement indicating they had assumed control of the land on this date and were relinquishing it on this date in the same condition. The unit had no idea what may have occurred on the land before its arrival, or before the military assumed control.

RECOMMENDATION: Without any knowledge of what may have occurred on the land previously, do not conduct unnecessary assessments that open the command up to liability for things about which it had no knowledge.[311]

ISSUE: Environmental issues during forward operating base (FOB) closures

DISCUSSION: During RCT-8's deployment, there was a significant reduction in the size of the U.S. military presence in Iraq. Consequently, a number of U.S. FOBs closed when U.S. forces pulled out of them. The RJA office had to spend a significant amount of time becoming familiar with the applicable orders and regulations dealing with base closures in Iraq. This included becoming well versed in environmental law. Applicable orders and regulations required units to complete an Environmental Site Closure (ESC) survey as a prerequisite to any base closure. The purpose of the ESC survey was to ensure U.S. military personnel were not leaving anything behind that could be an environmental hazard or potentially jeopardize the safety of the local population. Although ESC surveys were an S-4 function, the RJA office provided legal oversight.

RECOMMENDATION: The RJA office found it very beneficial to get with the S-4 experts early on to identify potential base closure environmental issues such as brass lying around live fire ranges or oil spills at the motor pool, and work together to remedy these deficiencies. Be familiar with base closure procedures, to include applicable environmental law orders and regulations. Be prepared to support the S-4 during the closure of FOBs by providing legal oversight.[312]

ISSUE: Environmental recovery during base closure

DISCUSSION: As part of base closure, U.S. forces had to comply with certain environmental standards, such as cleaning up oil spills. Consistent with Article 8 of the Security Agreement, these stem from Iraqi environmental regulations. The BJA sat in on in-progress reviews (IPRs) concerning base closure, but did not have occasion to advise on environmental standards as the issue was not raised.

RECOMMENDATION: Obtain a copy of all applicable environmental standards from the U.S. Army Corps of Engineers (USACE) in order to advise commanders accordingly. As part of their acceptance of closed bases, ensure the GoI signs a statement or memorandum of agreement

[310] 1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09, *supra* note 37.
[311] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.
[312] RCT-8, OIF AAR, JAN 09 - OCT 09, *supra* note 69.

acknowledging U.S. compliance with all environmental standards at the time of transfer. This will help avoid later claims of environmental damage.[313]

ISSUE: Liability for burning of palm groves

DISCUSSION: One of the BCTs wanted to destroy the brush vegetation in and around palm groves due to the threat of improvised explosive devices (IEDs) there and the use of the cover by insurgents. The potential damage caused by burning could have triggered liability issues and would have detrimental effects on the local population's support for coalition forces. After refining its plans with the JAs, the unit's controlled burn both minimized damage and eased the concerns of the local Iraqis.

RECOMMENDATION: Sustain. Force protection operations are instances where JAs can influence commanders to make operational decisions that balance desired effects with legal risks.[314]

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

ISSUE: Fuel contamination

DISCUSSION: Environmental problems are becoming more important. They can arise relatively frequently, and incidents like fuel spills and fires cause them. As a start point, it is wise to deal with these problems using the same standards and procedures required by regulation in CONUS. If you cannot apply CONUS regulations, for whatever reason, the BJA should consult with higher authority.

RECOMMENDATION: Note.[315]

ISSUE: Mass graves

DISCUSSION: Thousands of Haitians died in the earthquake, and both the local populace and international responders had to collect many of the corpses from collapsed buildings. To deal with the large numbers of corpses, local authorities used mass graves, but some were too shallow and became exposed in heavy rains. Scavenging dogs, birds, and rodents consumed the human remains, thereby creating a health hazard. Commanders became very concerned with the inability of local authorities to deal with the problem. The BCT commander sought the advice of the JAs as to whether the BCT could take action unilaterally. The JAs advised they could where the circumstances jeopardized health and safety of U.S. forces, but that the local officials had the legal responsibility for the graves. Fortunately, the 2-82 ABN did not have to engage in any such action since the local government took steps to rebury the corpses.

RECOMMENDATION: The inability of host nation governments in disaster situations to carry out their legal obligations can result in a situation where the U.S. Army has to take corrective action in order to avoid a health/safety emergency for U.S. forces.[316]

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[313] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 19.
[314] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[315] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.

I.G. International Assistance/Relations

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

ISSUE: Value of having an Iraqi attorney on staff

DISCUSSION: Hire a bilingual (English-Arabic) Iraqi attorney. The cost is minimal and the benefits are great. This attorney can liaise with local judges, coordinate training events, and provide much-needed assistance in the processing and verification of warrants.

RECOMMENDATION: Sustain. The Iraqi attorney assisted in translating Iraqi legal documents, coordinating judge visits, and verifying the legitimacy of warrants.[317]

ISSUE: Traditional "shura" system

DISCUSSION: Afghanistan has a traditional system of local governance based upon the shura, a committee of elders who discuss problems with the aim of arriving at consensus solutions. The shura is deeply rooted in Afghan culture.

RECOMMENDATION: Remember the importance of the shura system and resist any temptation to bypass the elders when making decisions that will affect a local community. It is always wise to consider the opinions of the local shura. The key takeaway is: do not try to change how the Afghans do business.[318]

ISSUE: Corruption in Afghan government

DISCUSSION: Corruption is an endemic problem in Afghanistan. The TF launched an education campaign to make people aware corruption was illegal.

RECOMMENDATION: Sustain.[319]

ISSUE: Working with Afghans

DISCUSSION: It is important to treat the Afghans with respect and to be especially sensitive about Islam. For instance, although Afghans working on a coalition installation did not appear to be particularly offended at seeing non-Muslims eating during the Ramadan fast, a Westerner was reportedly shot at for drinking water during the fast at a police station.

RECOMMENDATION: Develop your cultural understanding before and during your deployment.[320]

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[316] 2d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate Haiti After Action Report, 23 April 2010, Deployed January 2010 – March 2010, Operation Unified Response, Port-au-Prince, Haiti (hereinafter "2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10"; on file at CLAMO).
[317] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 13.
[318] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.
[319] *Id.*

ISSUE: Iraqi Army (IA) judge advocates (JAs)

DISCUSSION: The IA has JAs at brigade (BDE) level and higher. Typically, an IA BDE has one judge advocate and an IA division has two. BJAs should engage with them to learn their focus and to understand their unit's mission better. The IA does not have police powers or the power to try civilians. U.S. JA engagements with Iraqi JAs can help them process their cases into civilian courts. BJAs should anticipate IA soldiers who are witnesses to attacks and/or involved in the detention of insurgents will require permission from the Iraqi Ministry of Defense (MoD) in order to participate in a civilian court prosecution. Iraqi JAs and commanders often express frustration when courts release insurgents. When such outcomes occur, the IA often concludes the judges are corrupt. BJAs can also learn more about civil court cases from their IA counterparts, as they often appear in court to represent the Iraqi Ministry of Defense when private claimants sue the Government of Iraq (GoI) seeking compensation for land occupied by the IA.

RECOMMENDATION: Sustain. Working with IA JAs is the purview of the BJA, as the PRT does not engage with them.[321]

ISSUE: Repatriation of deceased third country national (TCN) contractor

DISCUSSION: During the deployment, a former TCN contractor died of natural causes. The employing company contractor that had brought the TCN into Iraq initially denied any responsibility for repatriating the body. The company subsequently recognized its responsibility for returning the person (or, in this case, the body, to its home country) and repatriated the body. To ensure compliance with all requirements related to this type of activity, it was necessary to be directly involved with seeing everything was done, making it necessary to coordinate with the following: the Department of State (DoS); local governmental Iraqi authorities to arrange an autopsy; the GoI to obtain a permit to fly the remains out of the country; the individual's home country to obtain a permit to repatriate the body into the country; a local on-post medical contractor to store the body in refrigeration while the necessary permits were being obtained; and an airline for transportation of the remains.

RECOMMENDATION: Take care that contractor companies do not evade their responsibilities. Establish liaison with the DoS's in-country attorney(s) early in your deployment so they can identify the appropriate DoS personnel to work with on issues requiring dealing with the host government on non-military matters.[322]

ISSUE: Legal advisors to Iraqi ministries

DISCUSSION: As an additional duty, the MNSTC-I SJA was the senior mentor/advisor to the General Counsel for the MoD. A rule of law (RoL) section within MNSTC-I's ITAM-MoI directorate had two contractor lawyers who were responsible for advising the General Counsel for the MoI and judges in the MoI courts. The MNSTC-I SJA viewed the role of the SJA in the advisory mission as monitoring and coordinating advice across MoD and MoI to ensure it was

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[320] Afghan National Police Legal Mentor, Combined Security Transition Command – Afghanistan, OEF After Action Report, 16 December 09, Deployed November 2008 – November 2009, Location: Camp Eggers, Kabul, Afghanistan (hereinafter "CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09"; on file at CLAMO).
[321] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.
[322] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 20.

accurate and consistent. To this end, the OSJA published a legal annex that designated the OSJA as the coordinating office within MNSTC-I for RoL and legal advisement. Although there was no formal mechanism to force coordination between the ITAM-MoI contractor lawyers and the OSJA, one of MNSTC-I's standard procedures before funding a program in one ministry was to staff it to see whether it applied to the other ministry.

RECOMMENDATION: The role of coordinating the legal advisory mission requires the full attention of an individual to be successful. MNSTC-I should have a legal advisory directorate separate from the OSJA to coordinate mentoring and advising MoD and MoI. This structure would resolve a potential conflict of interest of being action officers immersed in the day-to-day advisory mission on the one hand, and performing a legal review of advisory projects on the other hand in the context of the OSJA.[323]

ISSUE: Use of key leader engagements to help the GoI resolve intra-government disputes

DISCUSSION: During a detention facility inspection, Iraqi human rights officials and the facility commander raised allegations of abuse against each other. Rather than intervene directly in the dispute, the SJA engaged the MoD General Counsel to try to get the Iraqis to resolve the dispute themselves. In addition, the MNSTC-I advisors to the MoD engaged at various levels to emphasize the importance of the human rights program.

RECOMMENDATION: Sustain. Use the advisory relationships with counterparts in the GoI to influence them to resolve intra-government disputes.[324]

ISSUE: Requests for election security support

DISCUSSION: In preparation for the elections in early 2010, the GoI established the Election Security Support Council (ESSC). Although a general from the Ministry of Interior (MoI) headed the ESSC, the council was distinct from MoI and was not itself a "security force." Therefore, the ESSC was not eligible to request Iraqi Security Forces Funds (ISFF), for which MNSTC-I was the custodian. Moreover, MNSTC-I could not approve the use of ISFF for any election security projects which did not benefit the "security forces of Iraq." Units therefore had to fund certain projects, such as fortifying a school for use as a polling station, with the Commander's Emergency Response Program (CERP). The public position of the MoI was they did not need any assistance from the U.S. for the elections. However, ISF units at the lower levels were requesting such support. MNC-I, in conjunction with MNSTC-I, decided CERP requests to support the elections had to come from the ESSC, while ISFF requests had to come from the MoI.

RECOMMENDATION: Sustain. It must be clear from the request who will be the beneficiary, since CERP and ISFF are mutually exclusive. Also, realize while Iraqi ministries may state they do not need U.S. assistance for political reasons, ground units have a different perspective.[325]

ISSUE: Land use agreements

[323] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 72.
[324] *Id.*
[325] *Id.*

DISCUSSION: The Legal Advisor reviewed all SOTFs' advanced operating bases (AOBs) land use agreements before submitting them to USF-I for final GoI consideration.

RECOMMENDATION: Sustain. JAs need to ensure higher headquarters fully understands the operational requirements of the JAs' units. This allows higher headquarters to better advocate on behalf of the units when negotiating with the GoI.[326]

ISSUE: Afghan National Directorate of Security (NDS) embed program

DISCUSSION: Throughout the deployment, the CJTF OSJA worked with the staff and the Asymmetrical Warfare Group (AWG) to develop a program to embed NDS prosecutors in subordinate units. The purpose was to have the NDS prosecutor collect evidence during the targeting process and on the objective for use at trial. Further, the NDS prosecutor, as a member of the federal security forces, had direct lines to judges to whom he could present the case. Their mandate additionally allowed them to work with any municipal or federal security force to include the Afghan National Army (ANA) and Afghan National Police (ANP). This facilitated the gathering of warrants pre-detention and the prosecution of the case post-detention. By the deployment's end, NDS embedded only a handful of agents with ISAF units but with great success. Additionally, use of the NDS supported the evidence collection SOP by forcing units to create releasable evidence early in the targeting process for release to the NDS embed.

RECOMMENDATION: Sustain. While this program was only in its infancy upon the CJTF's departure, it showed great promise. NDS agents are well-trained, educated, and resourced investigators/prosecutors with national jurisdiction. NDS is one of the only reliable federal agencies in Afghanistan. Embedding the agents in the units supported the concept of coalition operations and also facilitated targeting and prosecution. Note though that NDS may not be the best option for every BSO. In some cases, local prosecutors may be reliable enough for U.S. forces to consider partnering with them.[327]

ISSUE: Learn the host-nation criminal justice process

DISCUSSION: Understanding the host-nation criminal justice process from a practitioners' point of view is imperative. This point of view facilitates the "operationalization" of concepts and initiatives at the tactical and operational levels.

RECOMMENDATION: Seek out host-nation practitioners for sustained engagement and if possible embed host-nation practitioners within ROLOPS.[328]

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

ISSUE: Maintenance of consistent training standards across a coalition

DISCUSSION: Different countries have different training standards and methods. Keep communicating with coalition partners to ensure training is as uniform as possible.

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[326] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 56.
[327] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[328] *Id.*

RECOMMENDATION: Note.[329]

ISSUE: Utility of linguistic ability for interacting with host nation and coalition partners

DISCUSSION: The reporting officer for this AAR could speak Hindi/ Urdu (closely related languages which are widely understood in Afghanistan), Italian, and Spanish. He used Hindi/Urdu to communicate with the Afghans and Italian and Spanish while working with coalition military and police mentors. An ability to speak languages is invaluable in building rapport and mutual understanding, especially in a multi-national training environment.

RECOMMENDATION: Develop your ability to communicate in other languages (see also, Country Materials, below).[330]

ISSUE: Establishing a working relationship with multinational partners

DISCUSSION: SOTF-W operated throughout two regional commands. These regional commands fell under Italian and German combatant commands. SOTF-W's legal advisor coordinated trips to these regional commands to introduce himself to his multinational counterparts.

RECOMMENDATION: Sustain. Building partnerships is critical in a multinational operating environment.[331]

ISSUE: Understanding national caveats

DISCUSSION: The SOTF legal advisor worked closely with the SOTF's fire support officer (FSO) to de-conflict potential national caveat issues before they arose, especially when considering coalition countries' national caveats for close air support (CAS).

RECOMMENDATION: SOTF legal advisors must be aware of other countries' national caveats and how they affect operations. SOTF legal advisors should leverage the understanding and expertise of other staff officers early in the planning process. SOTF legal advisors must also be well versed in the special instructions (SPINs) to the air tasking order (ATO).[332]

ISSUE: Different legal traditions and definitions

DISCUSSION: Multi-national partner forces have different legal traditions and definitions from those of U.S. forces. For example, "imminent" does not mean the same to a British officer as it does to a U.S. judge advocate (JA).

RECOMMENDATION: SOTF legal advisors must understand these differences and work with multi-national partners to avoid any misunderstandings.[333]

ISSUE: Coalition partners' withholding of information

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[329] CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09, *supra* note 320.
[330] *Id.*
[331] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 50.
[332] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 51.
[333] *Id.*

DISCUSSION: Particularly in sensitive areas such as the infliction of civilian casualties (CIVCAS), coalition partners tended to either not report the incident to RC-East or instead would refuse to release updated information after the initial serious incident report (SIR). Through engagement between commands at high levels, this got better throughout the deployment. Initially though, it was quite difficult to get coalition partners to respond to requests for information (RFIs) reference politically sensitive incidents that might have serious repercussions. Division OpLaw JAs continuously looked out for incidents that involved coalition partners and continued to press them for information as necessary. Additionally, the JAs would involve the SJA as necessary to get the command to exercise the necessary pressure to get information. For instance, the Polish unit subordinate to RC-East would frequently fail to answer RFIs. The OpLaw JAs would go to the SJA who would then get assistance from the Chief of Staff (CoS) or the Assistant Division Commander-Operations (ADC-O).

RECOMMENDATION: Sustain. Division OpLaw JAs must watch the SIGACTs and prompt the coalition legal advisors (LEGADs) for information as necessary. Additionally, the JAs must involve higher ranking members of the command if the subordinate units refuse to respond to the requests.[334]

ISSUE: Build relationships with coalition legal advisors (LEGADs)

DISCUSSION: The LEGADs at coalition units can be of great assistance to get information. However, coalition commands neither support their LEGADs appropriately with communications and automation nor involve them in operations. However, the Division OpLaw attorneys worked hard to build these relationships in spite of poor communications. This proved to be a benefit as the deployment wore on.

RECOMMENDATION: Sustain. Work hard to build relationships with coalition LEGADs.[335]

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

International Committee of the Red Cross (ICRC)

ISSUE: International Committee of the Red Cross (ICRC)

DISCUSSION: Often ICRC requests regarding detainee abuse allegations and LOAC violations were dated and contained very limited information resulting in extensive efforts on behalf of CJSOTF-A to inquire further and try to determine if additional information existed regarding the event in question. All requests for inquiry were received from USFOR-A.

RECOMMENDATION: Sustain. A close working relationship with the joint operations center chief and the concept of operations manager was key in streamlining this process of responding to the ICRC. Understanding staff functions is critical in leveraging access to information and available skill sets.[336]

ISSUE: Detainee processing

[334] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[335] *Id.*
[336] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 6.

DISCUSSION: Challenges existed at times with the in-processing of detainees from CJSOTF-A to the theater detention facility due to some confusion by JTF-435 as to applicable authorities and standards. Part of this confusion was attributed to the fact that JTF-435 was an OEF entity while the theater targeting list (no other targeting process was authorized in Afghanistan) was an ISAF product (further complicated by the matrix nature of ISAF & USFOR-A).

RECOMMENDATION: Potential conflicts or gaps in processes, such as in detention processes, need to be quickly identified and addressed, especially due to the time constraints and strategic implications associated with detention operations.[337]

ISSUE: International Committee of the Red Cross (ICRC) visits

DISCUSSION: The ICRC routinely requested access to inspect DHAs. The BJA coordinated these inspections through the BCT Provost Marshal's Office (PMO), which was responsible for overall detainee operations.

RECOMMENDATION: Sustain. The BJA should have situational awareness of all such inspections.[338]

ISSUE: ICRC visits to Camp Cropper

DISCUSSION: Maintaining a positive relationship with the International Committee of the Red Cross (ICRC) based on mutual respect and shared values can greatly assist the detention mission. A good relationship allows for constructive criticism and creates an atmosphere of transparency and legitimacy. Carefully plan ICRC visits and support them logistically. In particular, take great care to ensure all detainees and all detention areas are available and open to the ICRC. Any delay in providing access, or a failure to allow access, breeds mistrust. You can mitigate difficulties with providing access by advance planning for the visit. ICRC delegates tend to prefer more frequent and informal meetings in an office rather than the traditional Army approach of a formal briefing with PowerPoint slides in a conference room. JAs play a key role as liaison officers during ICRC visits because many of the issues raised are legal and because the ICRC team will usually include an attorney.

RECOMMENDATION: Sustain.[339]

ISSUE: Interaction with the United Nations Development Program (UNDP)

DISCUSSION: UNDP is a United Nations entity that supports various governance and RoL activities. UNDP activities include the execution of RoL and human rights training programs. The BJA's efforts to engage with UNDP were unsuccessful, as their attorney would not respond to email. Iraqi Army judge advocates had expressed to the BJA their interest in the programs, but were unable to access them even though they were a target audience.

RECOMMENDATION: Improve. Senior level leaders at the U.S. Forces – Iraq (USF-I) level should engage the U.S. Embassy RoL Coordinator to determine how to access UNDP training.[340]

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[337] *Id.*
[338] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[339] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 138.
[340] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.

ISSUE: United Nations (UN) status and privileges

DISCUSSION: During the deployment there was a road traffic accident (RTA) involving a UN officer and U.S. forces. The UN believed the accident was the fault of the U.S. individual involved. Under its procedures, the UN wanted to conduct its own investigation into the RTA, but the U.S. unit would not cooperate. The UN received U.S. documents about the RTA, but nothing more. Following this incident, questions arose about the status of the UN on the installation and whether their compound was subject to a compliance inspection. The garrison legal office did not give concurrence for an inspection of the UN compound.

RECOMMENDATION: You will need to understand the legal status and privileges of the international organizations sharing your base.[341]

ISSUE: United Nations Assistance Mission to Afghanistan (UNAMA) cooperation

DISCUSSION: UNAMA had an office in RC-E, and was interested in participating, where possible, with the BCT's rule of law (RoL) efforts. UNAMA, however, lacked personnel and financial resources, so they looked to harmonize their RoL activities with larger units in the AO.

RECOMMENDATION: Sustain. International organizations like UNAMA will often look to partner their limited resources in joint efforts. Cooperation with such units can lead to other benefits and positive spin off effects.[342]

ISSUE: Maintaining positive relations with international organizations

DISCUSSION: The International Committee of the Red Cross (ICRC) and the United Nations Assistance Mission in Afghanistan (UNAMA) visited often and wanted information on detainees. The DSJA made a practice of providing the ICRC and UNAMA with a report every time the unit took a detainee.

RECOMMENDATION: Sustain. In today's counter insurgency (COIN) fight, it is highly important to maintain positive relations with not only the populace of the host nation, but also with key international organizations.[343]

ISSUE: Interaction with the International Committee of the Red Cross (ICRC)

DISCUSSION: Representatives of the ICRC requested to meet with representatives from CFSOCC-A to discuss matters of importance to both organizations. The SJA, along with the Chief of Staff, attended such meetings. The meeting proved beneficial to both organizations.

RECOMMENDATION: Sustain. It is important to foster a positive working relationship with ICRC representatives.[344]

ISSUE: International Committee of the Red Cross (ICRC)

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[341] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 20.
[342] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 265.
[343] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.
[344] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 49.

DISCUSSION: The USFOR-A Staff Judge Advocate (SJA) forwarded ICRC requests to CJSOTF-A's legal advisor. These requests sometimes resulted in the legal advisor having to conduct further investigation/inquiry. The legal advisor would coordinate with the ICRC to facilitate the necessary witness interviews to adequately respond to USFOR-A's requests.

RECOMMENDATION: Sustain. Early coordination with ICRC facilitated a streamlined investigation/inquiry as well as lifted the perception of "secrecy" surrounding CJSOTF-A.[345]

ISSUE: Interaction with the International Committee of the Red Cross (ICRC)

DISCUSSION: The Legal Advisor coordinated with USF-I before any ICRC visits to CJSOTF-AP's THF.

RECOMMENDATION: Sustain.[346]

ISSUE: Relations with the International Committee of the Red Cross (ICRC)

DISCUSSION: The CJTF OSJA encouraged its subordinate JAs to work with the ICRC. In Afghanistan, the ICRC is an ever present entity. Its operators are professional and will work with the units to resolve issues. Further, the ICRC maintains strict confidentiality of any information given them by coalition forces (and enemy forces, for that matter). Finally, the ICRC can assist U.S. forces in detainee releases which is invaluable.

RECOMMENDATION: Sustain. Good relations with the ICRC are greatly helpful. Note however that the same cannot be said for other NGOs such as Amnesty International or the American Civil Liberties Union (ACLU).[347]

I.G.4. U.S. Government/Non-Governmental Organization (NGO) Interaction

ISSUE: Cooperation with outside agencies

DISCUSSION: Outside agencies and the ground-holding BCT are not always as well coordinated as they ought to be. Outside agencies are invariably well intentioned, but their grasp of 'military reality' may be weak. In one example, an NGO initiated a project, but then abandoned it. This caused confusion and disappointment amongst the local population. Remember that other organizations have very different cultures. They may be reluctant to make contact with the military.

RECOMMENDATION: Work hard at maintaining good relationships and communications with outside agencies. The majority of outside agencies will come onto BAF. You can use this access opportunity to foster good communications. Do not be surprised if you have to do more than your fair share of work to keep a relationship in good standing.[348]

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[345] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 5.
[346] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 56.
[347] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[348] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.

ISSUE: Intelligence law attorney interaction with the International Committee of the Red Cross (ICRC)

DISCUSSION: The intelligence law attorney did not have any direct interaction with the ICRC. The attorney, however, did advise a General Officer conducting a large-scale investigation of abuse allegations forwarded by the ICRC. Some of those who made allegations to the ICRC could not recall their allegations when interviewed for the investigation. Additionally, the detainee documentation made it clear some of the allegations were factually impossible.

RECOMMENDATION: Detainee documentation at all stages of detention is vitally important. Pictures of the detainee's condition at capture, reports of medical personnel, etc. are all important in disproving later allegations. Units must understand the importance of these additional administrative requirements.[349]

ISSUE: Starting up of non-governmental organizations (NGOs)

DISCUSSION: The judge advocates did not deal directly with NGOs, except to review CERP projects in which the NGOs had some involvement. The embedded Provincial Reconstruction Team (ePRT), however, worked closely with NGOs and proposed a conference on educating people on how to start up an NGO.

RECOMMENDATION: Sustain. NGOs can have a very positive impact on the area and bring outside resources to bear on problems of concern to the population and, therefore, the unit.[350]

ISSUE: Interaction with non-governmental organizations (NGOs)

DISCUSSION: The SJA attended numerous meetings with many NGOs. These meetings proved beneficial because the SJA was able to explain SOFs' mission interests. The meetings also afforded the SJA with significant and important networking opportunities.

RECOMMENDATION: Sustain. JAs must be prepared to interact with NGOs and should use opportunities to meet with them as a learning experience, for networking opportunities and to work in conjunction with NGOs for mission accomplishment.[351]

I.H. Humananitarian & Civic Assistance

ISSUE: Fiscal authorities

DISCUSSION: During this deployment, CJSOTF-A assisted in natural disaster response on more than one occasion to include flooding, landslides and avalanches.

RECOMMENDATION: Familiarity with the fiscal authorities governing HCA is crucial when the operating environment has very little infrastructure to address natural disasters. The ability to

[349] MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09, *supra* note 141.
[350] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[351] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 49.

incorporate CERP and other authorities contained in deployment orders greatly expanded on assisting in these HA missions.[352]

ISSUE: Humanitarian aid for Iraqi prisons

DISCUSSION: The BCT had the Karkh Area Command detention facility, run by the Ministry of the Interior, in its AO. The conditions at the facility were deplorable in terms of the basic humanitarian needs: food, sanitation, and beds. The BCT struggled with how to fund humanitarian relief for the prison. This type of expenditure did not seem to fit squarely under Iraqi Security Forces Funds (ISFF). Likewise, CERP guidance prohibited the use of CERP for prison facilities.

RECOMMENDATION: Improve. There is a need for clear funding authority for humanitarian relief in Iraqi prisons.[353]

ISSUE: Use of the Commanders' Emergency Response Program (CERP) for humanitarian assistance

DISCUSSION: CERP remains an effective tool for providing humanitarian assistance. However, increasing bureaucracy and constraints on the use of CERP have somewhat reduced its value as an 'emergency' response.

RECOMMENDATION: Sustain. However, note the current cap of $25K with a limit of $5K per project does not go a long way. A more realistic allowance would be $100K with a limit of $10K per project.[354]

ISSUE: CERP safeguards

DISCUSSION: CERP procedures change regularly. They are a constantly moving target. This is not a JA problem to fix but the JA must ensure that officers do not lose their careers by inadvertently breaching the CERP procedures. There are two particular problems. The first is continuity. The PRTs mostly administer the funds. A PRT is generally in theater for nine months. This means that three different PRTs can be involved in a project throughout its life cycle. This lack of continuity means that there is huge potential for things to get lost, for contracts to fall through, or for money to be wasted. The second problem is the definition of success. There is a risk that the definition of success is seen, in simple terms, as spending money. Commanders who fall prey to this definition of success may be tempted to spend money aggressively. This is not a good way to get value for money and may consequently run afoul of the applicable fiscal guidelines.

RECOMMENDATION: Note. Guard against the risk of misusing CERP.[355]

ISSUE: Responsibility for humanitarian and civic assistance (HCA) work in Kosovo

[352] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 6.
[353] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 124.
[354] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.
[355] *Id.*

DISCUSSION: USAREUR controlled HCA funding. Requests went through a robust G-3/7/9 process.

RECOMMENDATION: Although this process resides primarily outside JAG channels, attorneys still must do a fiscal law review. In addition, attorneys should review other spending to ensure the unit is not inadvertently attempting to spend O&M funds on what are HCA projects.[356]

ISSUE: Utility of small humanitarian assistance projects

DISCUSSION: The PMTs regularly organized small humanitarian assistance projects. Examples included giving toys and school supplies directly to children after clearing it with the local shura of elders.

RECOMMENDATION: Sustain. These small gestures helped to foster good relations with the local people.[357]

ISSUE: Providing support to pilgrims and others

DISCUSSION: The BJA was involved in all planning operations. This allowed him to identify fiscal restrictions on the expenditure of Operations and Maintenance (O&M) funds for humanitarian and civic assistance purposes. He could then identify other appropriate pots of money the brigade could use to assist the local populous and pilgrims.

RECOMMENDATION: Sustain. The BJA needs to be involved in all aspects of planning.[358]

ISSUE: Funding local soccer tournaments

DISCUSSION: The BCT wanted to sponsor a large soccer tournament and use unit funds to pay for it. Fiscal restrictions prevented the unit from paying for it. The BJA and other staff elements coordinated with the Department of State (DoS) to find additional sources of money. The DoS was able to contract with "Football Unity" to organize the tournament. This soccer tournament had a positive impact on the brigade's information operation (IO) campaign.

RECOMMENDATION: Sustain. JAs need to be aware of additional sources of money to fund such activities.[359]

ISSUE: Medical care

DISCUSSION: Sometimes, battalion corpsman shops will set up local medical offices to provide healthcare to locals. Initially, the *Money As A Weapon System - Afghanistan* (MAAWS-A) and the Commander's Emergency Response Program (CERP) standard operating procedures (SOP) left a gray area regarding where the line is drawn between CERP healthcare and humanitarian and civic assistance (HCA). The updated MAAWS-A addressed this issue. If the unit is not doing CERP healthcare as defined by the MAAWS-A and CERP SOP, or "de minimis" HCA, the unit is executing in the wrong direction.

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[356] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.
[357] CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09, *supra* note 320.
[358] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[359] *Id.*

RECOMMENDATION: Be cognizant of what medical care, if any, units are providing locals and ensure it either falls within the CERP healthcare category or "de minimis" HCA definitions. Educate corpsman and medical professionals as to what is permissible under CERP healthcare and what qualifies as "de minimis" HCA.[360]

ISSUE: Kinetic mindset hindering humanitarian and civic assistance (HCA) projects

DISCUSSION: Some brigades came in with a kinetic mindset, which hindered their ability to do HCA projects. Others embraced the changed circumstances. For example, one brigade converted its field artillery battalion into a non-lethal effects unit to assist the PRT in moving around the battlefield.

RECOMMENDATION: Assist your unit in fitting its mindset to the operational environment. Current operations require units that are flexible and adaptable. If all you have is a hammer, everything looks like a nail.[361]

ISSUE: Permissive operational environment

DISCUSSION: The BJA found the Haiti deployment to be the most permissive operational environment in his military experience. The Haitian people were grateful for U.S. assistance and openly welcomed them. The Haitian government supported any help the 2-82 ABN could provide. The deployment into Haiti was so quick there was no standing orders/guidance structure in place. The Joint Task Force (JTF) headquarters was also arriving at the same time, and there were no established forward operating bases (FOBs). Moreover, there was little functioning infrastructure, and the mission parameters were undefined beyond the goal of providing humanitarian aid and disaster response. In short, the operational environment in Haiti offered tremendous flexibility to the BCT to conduct a variety of tasks and missions.

RECOMMENDATION: BCTs and JAs deploying as the "first responder" to a humanitarian assistance/ disaster response (HA/DR) mission can expect to find a wide scope of operational flexibility to deal with the situation on the ground.[362]

ISSUE: "Dialing back" Soldiers' combat instincts on a disaster response mission

DISCUSSION: After eight years of combat operations and high intensity conflict experiences in Afghanistan and Iraq, many of the 2-82 ABN Paratroopers had an ingrained combat mindset of how to operate on deployments. However, the situation and setting in Haiti was not a place requiring a combat mindset. Commanders had to remind Paratroopers they were not in combat and aggressive measures on patrols or for food distribution security tasks were not necessary.

RECOMMENDATION: JAs should be aware of the claims and liability issues that could arise with overly aggressive Soldiers in a HA/DR operation.[363]

ISSUE: Removal of helmet and body armor during humanitarian missions

[360] 2d MEB Contingency Contracting Attorney AAR JUL 09 - NOV 09, *supra* note 41.
[361] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[362] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 316.
[363] *Id.*

DISCUSSION: In order to present a less aggressive image and presence, commanders ordered Soldiers not to wear helmets or body armor. In addition, Paratroopers had to sling weapons on their backs unless a force protection issue arose.

RECOMMENDATION: While not directly a legal issue, JAs must be familiar with the legal implications that might flow from such command decision such as those with associated rules of engagement (ROE) and force protection.[364]

ISSUE: Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) funds

DISCUSSION: One of the unique aspects of this mission was the role OHDACA funds have in humanitarian operations. OHDACA funds enable U.S. forces to respond rapidly and effectively to humanitarian crises including assisting the victims of storms, earthquakes, and other disasters.

RECOMMENDATION: JAs deployed overseas on humanitarian/disaster response mission should be familiar with OHDACA funding.[365]

ISSUE: Medical Civil Action Programs (MEDCAPs)

DISCUSSION: MEDCAPs are a good tool during COIN operations. Some units may desire to run battalion level clinics.

RECOMMENDATION: JAs need to be aware of fiscal law and other limitations on MEDCAPs and advise commanders of those limitations before setting up a MEDCAP.[366]

ISSUE: Fiscal law issues and Humanitarian and Civic Assistance

DISCUSSION: SOF frequently conducts Humanitarian and Civic Assistance (HCA) missions, which present a host of fiscal law issues. The SJA would issue spot and research fiscal law issues. When necessary, the SJA would engage the subject matter fiscal law experts (SMEs) at U.S. Forces Afghanistan (USFOR-A).

RECOMMENDATION: JAs should be prepared to spot fiscal law issues in HCA missions and seek SME advice when necessary.[367]

ISSUE: Unaccompanied minors aboard ship

DISCUSSION: At the beginning of operations in Haiti, the unit medically evacuated five children to the USS Bataan with no parent or guardian.

RECOMMENDATION: Units should establish a policy at the outset of the operation that they will not bring a child aboard United States (U.S.) vessels without a parent or guardian

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[364] *Id.*
[365] *Id.*
[366] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.
[367] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 49.

accompanying the child. If the unit does bring an unaccompanied child aboard ship, it should be the responsibility of U.S. forces to track down the child's parents.[368]

ISSUE: Repatriation of unaccompanied minors

DISCUSSION: One of the more challenging issues was determining how to repatriate the unaccompanied minors, whom the unit had medically evacuated aboard ship, back to Haiti upon completion of their medical treatment. JTF-Haiti originally directed to have the children turned over to United Nations Children's Fund (UNICEF) or the Government of Haiti (GoH). However, it became apparent that UNICEF and GoH were not proactively trying to find the children's parents and re-unite them. As a result, the 22d MEU took it upon themselves to try to re-unite the children with their parents.

The SJA's first step to repatriate a minor was to interview the minor in order to obtain as much information as possible about the child's family, home, etc. The key to interview success was identifying a translator to build a rapport with the child, and to approach the discussion from different angles until the child finally remembered additional pieces of information such as names, landmarks, etc. The interview process was not easy due to many factors, including the child's young age, the traumatic event the child had been through, the significant length of time the child had spent away from his family on a ship, and the language barrier.

The SJA's second step was to take pictures of the child (front and profile), and with the help of ship personnel, assemble a flyer using facts developed during the personal interview coupled with the photos. Next, the SJA traveled to the Civil Military Operations Center (CMOC) near the child's hometown and had CMOC personnel assist with finding the child's family.

RECOMMENDATION: Sustain. If the need arises to repatriate unaccompanied minors back to their home nation, implement the program devised above.[369]

ISSUE: Pre-deployment training for S-4

DISCUSSION: The SOTF legal advisor trained the S-4 on CERP before deployment in anticipation of the potential SOTF-S would provide humanitarian and civic assistance.

RECOMMENDATION: Sustain.[370]

I.I. Human Rights Law

ISSUE: Tailored training

DISCUSSION: Because FID is a primary mission for Special Forces, human rights training for Special Forces and for their partnered forces is an on-going event. Often the trainer will not be a judge advocate and the level of education of the partnered host nation force will run the full

[368] 22d Marine Expeditionary Unit, Staff Judge Advocate After Action Report, 13 May 2010, Deployed 17 January 2010 – 1 April 2010, Operation Unified Response, Haiti Earthquake Relief (hereinafter "22d MEU (Haiti OUR) JAN 2010"; on file at CLAMO).
[369] *Id.*
[370] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 51.

spectrum. Additionally, one must be aware of foreign cultures' subtle nuances when determining how to effectively transmit information, *e.g.* written versus verbal, classroom versus field, etc.

RECOMMENDATION: As much as possible, tailor training packages to the trainer and the audience to maximize effectiveness.[371]

ISSUE: Improving respect for the rights of women

DISCUSSION: The BCT encouraged the use of local centers of gravity, such as shura councils, to raise and discuss women's rights. The local national leadership, including local judges, assumed the leading role in the discussions. While BCT paralegals observed these meetings, they kept their role to a minimum out of respect and to build local consensus.

RECOMMENDATION: Sustain.[372]

ISSUE: Human rights law in the shura system

DISCUSSION: Developing human rights compliance in the shura system is a delicate issue. It is sensible to be realistic about what is possible in injecting the concept of human rights into the traditional system. Change may take a generation to develop.

RECOMMENDATION: Note. Be careful of American hubris. Do not seek to impose your notion of human rights on the Afghans. The Soviets taught us that if you meddle too much in Afghanistan you lose.[373]

ISSUE: Human trafficking

DISCUSSION: The TDS office occasionally advised and represented Soldiers who were facing court-martial for frequenting a local brothel in downtown Kuwait City. This local brothel had Chinese women on staff who were possible victims of human trafficking. The Army Criminal Investigation Division (CID) discovered Soldiers involved in this misconduct through joint sting operations run with local Kuwaiti authorities, which targeted U.S. service members. Consequently, CID and other United States (U.S.) government entities were well aware of the human trafficking allegations. In spite of this, the brothel was a popular place among the civilian contractors, though it was off limits to military personnel.

RECOMMENDATION: Improve. The U.S. government should prohibit civilian contractors from frequenting any brothels that may be involved in human trafficking. Furthermore, the U.S. government should encourage Kuwaiti authorities to shut down any establishments involved in human trafficking.[374]

ISSUE: Afghan human rights standards

DISCUSSION: RoL practitioners must have a realistic appreciation of Afghan human rights

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[371] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 6.
[372] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[373] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.
[374] Trial Defense Services, Kuwait, Senior Defense Counsel After Action Report ,13 October 2009, Deployed June 2008-August 2009, Camp Arifjan, Kuwait (hereinafter "SDC Kuwait TDS AAR, JUN 08-AUG 09"; on file at CLAMO).

standards. One of the most difficult areas is equality of the sexes. The Afghan constitution states everyone has equal rights. Nevertheless, the constitution also defers to the higher law of the Sharia, which has specific rules about gender. For example, the testimony of four female witnesses under Sharia law has probative value equal to the testimony of two male witnesses. The RoL practitioner must remember his or her purpose is not to try to displace Afghan law with Western standards of human rights. Remember that what may appear as a contradiction to the Western mind, may be fully harmonized by the Afghan mind. Any perceived attempt to displace Islamic principles would be deeply counterproductive and would play into the hands of the Taliban.

RECOMMENDATION: The establishment of RoL cannot happen overnight. Chief Justice Roberts said the "rule of law is a cathedral which is built one brick at a time." A different metaphor would come from math: you cannot teach algebra to someone who cannot count. Likewise, the RoL practitioner must be realistic and pragmatic. We cannot change everything in a short period, especially where 75% of the populace is illiterate. It would be a great achievement if Afghan security forces were committed to fostering basic principles of natural justice. The development of more sophisticated Western notions of human rights at this point may be far beyond reach.[375]

ISSUE: Reporting Iraqi-on-Iraqi detainee abuse

DISCUSSION: Any credible information of abuse of Iraqi prisoners by Iraqi personnel generated a serious incident report (SIR) to Division.

RECOMMENDATION: Sustain. Ensure subordinate units are aware of the reporting requirement.[376]

ISSUE: Reporting Iraqi-on-Iraqi detainee abuse

DISCUSSION: Military transition teams (MiTTs) often observed indications of abuse of detainees by Iraqi Army (IA) personnel. This generated serious incident reports (SIRs) to division. In one case, the BCT conducted an engagement with the chief of police concerning allegations of abuse by one of his investigators.

RECOMMENDATION: Improve. Although there is no investigation requirement for U.S. forces in these situations, instruct units of the reporting requirement. Encourage MiTTs to inform their Iraqi counterparts once they make the report. However, it is also necessary to develop a more robust senior level engagement strategy. In Mosul, many Iraqis do not consider anything to be important unless it comes to them from Baghdad.[377]

ISSUE: Trafficking in people

DISCUSSION: An unusual incident involved some women from a third country seeking protection and asylum on VBC. The women claimed a job broker brought them to Iraq by offering them work with AAFES. However, they said the jobs never materialized, and when they arrived in Baghdad they were sent out onto the local economy purportedly to serve as domestic servants. However, they claimed they were being held in Baghdad against their will, mistreated,

[375] CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09, *supra* note 320.
[376] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.
[377] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 19.

and forced into sexual relations with their employers or into prostitution. The women were allowed access to VBC. The mayor's cell supplied the women with food, clothing, lodging and medical care. There was no question of granting protection, and there is a regulation for dealing with this type of issue (Army Regulation (AR) 550-1 covers requests for political asylum and temporary refuge). The CJA's office acted as a go-between with MNC-I, Multi-National Forces – Iraq (MNF-I) liaison with DoS, and DoS itself, and worked the approval through medical command for medical care for the individuals beyond life, limb, and eyesight care. The Iraqi Police and the Federal Bureau of Investigations (FBI) investigated the case.

RECOMMENDATION: Expect the unexpected. Ensure that your unit personnel know to contact you early as unusual situations develop and that they are comfortable involving you in these unusual situations because they know you will assist. Know the regulations or how to find them, and maintain good working relations with MNC-I, MNF-I, and the DoS. You will need their help if something like this happens.[378]

ISSUE: Applicability of the Leahy Amendment

DISCUSSION: The Leahy Amendment, a provision appearing in annual appropriations laws since the late 1990s, prohibits U.S. assistance to foreign military units "if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary determines that the government of such country is taking effective measures to bring responsible members of the security forces unit to justice." A similar version appearing in the 2006 Defense Department Appropriations Act (§ 8069 of P.L. 109-148) covers only the provision of training to security forces. The DoD implementation of the Leahy Amendment allows the Secretary of Defense (SECDEF) to waive the provision if he finds that "extraordinary circumstances" require it and reports such circumstances, as well as the purpose and duration of the training program and the U.S. and foreign security forces involved in the training program, to Congress within 15 days. The DoD has sought no such waiver for training in Iraq.

To implement the Leahy Amendment, DoS policy requires each U.S. Embassy to have a "vetting procedure" to review the backgrounds of security forces receiving the proposed training or assistance. The DoS elected not to follow its Leahy Amendment vetting policy in the cases of U.S. training and other assistance to the ISF. This was due to the security constraints of ongoing armed conflict, a lack of embassy resources, a lack of GoI capacity for self-regulation, and the scale of the undertaking to train, equip, and assist both the Iraqi Army (IA) and Iraqi Police (IP).

Although earlier opinions of the MNSTC-I OSJA determined the Leahy amendment did not apply as a matter of law due to the procedures appropriating ISFF, coordinating opinions with the Joint Staff agreed the Leahy Amendment would apply by policy. Both DoS and DoD have carried out the goal of the Leahy Amendment by aggressively shaping an environment more respectful of human rights. They have done so in the following ways: by pressing the GoI for adherence to Iraqi legal requirements in arrests and detentions; nationwide inspections of detention facilities; conducting investigations of allegations of detainee abuse and extrajudicial killings and taking action against the offender in such cases; integrating human rights training into the curriculum for police and military trainees; and embedding transition teams with IP and IA units where they can report and prevent human rights violations.

RECOMMENDATION: The MNSTC-I OSJA should continue to review the applicability of the Leahy Amendment to current funding appropriations, as well as identify the issue during strategic

[378] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 20.

planning for fiscal appropriations used to fund security assistance once ISFF goes away. Because the Leahy Amendment clearly applies to the Foreign Military Financing (FMF) program, which will be a key component of the future U.S.-Iraqi security partnership, U.S. advisors can use this as leverage to encourage their GoI counterparts to continue to improve human rights compliance within their organizations.[379]

ISSUE: Reporting human rights violations

DISCUSSION: The MNSTC-I OpLaw attorney was the legal advisor to the Iraq Training and Advisory Mission – Ministry of Defense (ITAM-MoD) directorate, which in turn advised the Iraqi MoD. The OpLaw attorney advised ITAM-MoD on how to report the human rights violations they observed in MoD detention facilities. By putting these reports in writing and capturing the pertinent details, ITAM-MoD could document human rights abuses both for reporting to MNF-I and the Department of State (DoS) and for use in engaging the appropriate authorities in the GoI.

RECOMMENDATION: Sustain.[380]

ISSUE: In person human rights training to Naval Special Warfare (NSW) operators

DISCUSSION: The JA traveled to most detachments in SOTF-W to provide a block of instruction on controlling human rights law and the rules of engagement (ROE).

RECOMMENDATION: Sustain. The JA was able to build trust and rapport amongst the NSW operators. The JA was also available to discuss ROE questions "off-line" with NSW operators who were hesitant to send questions through official channels.[381]

ISSUE: Training Iraqi Special Operations Forces (ISOF) in human rights law

DISCUSSION: The JA provided a block of instruction to ISOF on human rights law.

RECOMMENDATION: Improve. This training must be part of the foreign internal defense (FID) training the NSW operators conduct with their Iraqi counterparts. ISOF would be more receptive to NSW-provided training.[382]

ISSUE: Human rights compliance checks in Iraqi facilities

DISCUSSION: Both Corps and Division headquarters, on different occasions, requested information on human rights compliance in Iraqi prisons in the BDE's AO. Because of the SA provision on Iraqi sovereignty, the BDE lacked any legal authority to visit and inspect the prisons. Even if the inspection visits were permissible, the brigade did not have the personnel to investigate and monitor such facilities. 172d BDE did not have an organic military police unit for the deployment.

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[379] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 72.
[380] *Id.*
[381] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 22.
[382] *Id.*

RECOMMENDATION: The SA has "closed the doors" to many activities U.S. forces formerly conducted without restriction. In some instances and locations, Iraqi authorities are taking a more rigid interpretation on the application and reach of the SA.[383]

ISSUE: Human rights training for disaster response missions

DISCUSSION: One of the issues the JAs discovered during the deployment was the SOUTHCOM directive requiring mandatory human rights training for all Soldiers deployed to Haiti. 2-82 ABN found out about the requirement three weeks into the deployment. The JAs managed the speedy training program by pushing the training packages and cards out to Soldiers. It took one week to complete the training across the BCT.

RECOMMENDATION: Any hastily deployed units and JAs must be ready to comply with mandatory directives from the combatant command (COCOM) responsible for the area of operation (AO). If possible, scan applicable COCOM directives in advance.[384]

ISSUE: Promoting human rights without the authority to direct compliance

DISCUSSION: Initially, through partnership, the PMO would go out and observe local Iraqi detention facilities. Conditions there were often substandard.

RECOMMENDATION: Even if you cannot direct changes, you can have a positive impact by influencing change through funding and mentoring.[385]

ISSUE: Training Iraqis in human rights law

DISCUSSION: The BfSB JA trained Iraqi Security Forces (ISF) colleagues in the basic principles of human rights law, principally the humane treatment of detainees. The training included producing pamphlets.

RECOMMENDATION: Sustain. You need to be realistic about what you can achieve: the Iraqis have a deeply ingrained culture of treating detainees poorly. However, it is important to try to challenge this culture.[386]

ISSUE: Human rights training for disaster response missions

DISCUSSION: One of the issues discovered during the deployment was the SOUTHCOM directive requiring mandatory human rights training for all Soldiers deployed to Haiti. 3d ESC became aware of the requirement prior to the deployment. However, the requirement only applied to units deploying after 3 Feb (3d ESC deployed that day). The requirement was later broadened to include a mandate that everyone in Haiti receive the training, either prior to deployment or after they were already on the ground. The 3d ESC SJA managed the speedy training program by pushing the training packages and cards out to Soldiers as well as civilian personnel from partner agencies such as the Defense Logistics Agency (DLA).

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[383] 172d IN BDE, OIF AAR, NOV 08 - DEC 09, *supra* note 46.
[384] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 316.
[385] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[386] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.

RECOMMENDATION: Any hastily deployed units and JAs must be ready to comply with mandatory directives from the combatant command (COCOM) responsible for the area of operation (AO). If possible, scan applicable COCOM directives in advance.[387]

ISSUE: Pre-deployment training of ODAs

DISCUSSION: The SOTF legal advisor trained all SOTF-S ODAs before deployment on Human Rights Law and the potential fallout from the ODAs' partnered forces' failure to follow it, i.e. the Leahy Amendment.

RECOMMENDATION: Sustain.[388]

ISSUE: Helping ODAs train their partner forces

DISCUSSION: The legal advisor created a block of instruction including training aids for the ODAs' use when briefing their Afghan partner forces in the areas of human rights law.

RECOMMENDATION: Sustain. Instruction of Human Rights Law is part of Foreign Internal Defense (FID) instruction which Special Forces (SF) are trained to do as part of their SF schooling. Provide them with the material and let the ODAs adapt the training to the operating environment.[389]

ISSUE: Briefing Iraqi Special Operations Forces (ISOF)

DISCUSSION: CJSOTF-AP's THF JA tailored a brief on human rights law for his ISOF counterpart. This allowed ISOF's attorney to brief his unit.

RECOMMENDATION: Sustain. JAs should seek out opportunities to advise and mentor their counterparts on all legal matters.[390]

I.J. Information Operations

Legal Reviews

ISSUE: Legal review

DISCUSSION: At one point, a "wanted" poster was distributed which included a copy of the detention warrant with the names of the judge and witnesses. The public release of this type of information could have had dire consequences.

RECOMMENDATION: Review all information operations products.[391]

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[387] 3d Sustainment Command (Expeditionary), Operation Unified Response, Staff Judge Advocate After Action Report, 23 April 2010, Deployed February 2010 – March 2010, Toussaint L'Ouverture Airport, Port-au-Prince, Haiti (hereinafter "3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10"; on file at CLAMO).
[388] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 51.
[389] 3/3 SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 9.
[390] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 56.
[391] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 13.

ISSUE: Review of information operations (IO) products

DISCUSSION: One of the JAs routinely reviewed IO products. While there is no broad legal guidance on such reviews, the JA used common sense to prevent any "over the top" products or photos/captions from leaving the brigade.

RECOMMENDATION: Sustain. If staffing permits, the legal staff should objectively evaluate IO products for sensational, misleading, or unfavorable pictures/information.[392]

ISSUE: Review of IO products

DISCUSSION: The BJA conducted an informal legal review of all brigade-created IO products. The BJA used common sense, as well as guidance contained in division fragmentary orders (FRAGOs) in reviewing these products.

RECOMMENDATION: Improve. Try to obtain training on IO before deployment.[393]

ISSUE: Use of detainee photographs in posters

DISCUSSION: The BJA objected to the use of photographs of previously detained individuals on posters announcing their impending release.

RECOMMENDATION: Sustain. Do not use photographs of previously detained U.S. detainees in posters. This may present a conflict with the principles of the Geneva Convention. Instead, it may be possible to use photographs generated by the Iraqis.[394]

ISSUE: Lack of knowledge of information operations

RECOMMENDATION: No one at the brigade had a detailed understanding of information operations. The Operational Law Handbook enabled the BJA to spot the issues and seek guidance from higher when necessary.

DISCUSSION: Improve.[395]

ISSUE: Reviewing Psychological Operations (PSYOP) products

DISCUSSION: Judge advocates reviewed all PSYOP products before publication or distribution. Many times, a legally trained individual can spot potential problems others might overlook.

RECOMMENDATION: Sustain. Although the intent of the PSYOP community is noble, their products sometimes require additional scrutiny.[396]

ISSUE: Legal reviews of information operations (IO) products

DISCUSSION: The BN JA provided legal reviews for IO products when necessary.

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[392] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.
[393] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[394] *Id.*
[395] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[396] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.

RECOMMENDATION: Sustain. JAs need to be prepared to conduct legal reviews of IO products.[397]

ISSUE: Information operations (IO) training

DISCUSSION: Before deploying, most JAs have no idea what information operations are or what the IO section brings to the fight. During deployment though, an effective JA needs to work closely with IO.

RECOMMENDATION: JAs should receive some form of pre-deployment training on IO, even if it is just an hour-long internet course.[398]

ISSUE: JA interaction with IO

DISCUSSION: The RCT-3 RJA worked closely with the IO section by attending IO meetings and the IO Effects Board working group. Working closely with IO enabled the RJA to spot and address legal issues in the unit's IO campaign, and made the IO section more receptive to his legal advice.

RECOMMENDATION: Sustain.[399]

ISSUE: Legal review of Information Operations (IO) projects/products

DISCUSSION: IO can be a powerful weapon in the COIN fight. Often, IO projects/products target civilians. Sometimes those messages consist of saying untrue things to local civilians, which is not necessarily the best tactic.

RECOMMENDATION: JAs should conduct at least an informal legal review of all IO projects/products. When reviewing IO products, JAs should use common sense, as well as run a Law of War (LoW) analysis.[400]

ISSUE: Attending IO meetings

DISCUSSION: The DSJA recognized the need for legal input in IO products. In order to ensure legal input occurred, he attended IO meetings.

RECOMMENDATION: Sustain. In order to ensure IO personnel are receptive to legal advice, JAs should establish a good working relationship with IO early on and attend IO meetings.[401]

ISSUE: Approval levels for information operations

DISCUSSION: The general officers at the Division level thought the approval levels for information operations (IO)/psychological operations products were too high. There seemed to be resistance at the higher levels to updating the authorities and rules in this area.

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[397] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 1.
[398] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 2.
[399] *Id.*
[400] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.
[401] *Id.*

RECOMMENDATION: As the environment changes, information operations take on a much more expansive role. Consider empowering subordinates contribute directly to the fight.[402]

ISSUE: Attending information operations (IO) meetings

DISCUSSION: The BJA had one of the JAs regularly attend all S-7 IO meetings. This allowed the BJA to have input during the development phase of IO products and to assess their compliance with applicable fragmentary orders (FRAGOs) and implementing guidance before completion.

RECOMMENDATION: Sustain. Early involvement made the IO section more receptive to the JA's comments and generated credibility.[403]

ISSUE: Information Operations (IO) working group

DISCUSSION: JAs participated in the BCT's IO working group. A primary focus of the IO working group was consequence management; the BCT wanted to ensure it beat the Taliban and was first in getting messages out to the community following an event with potential strategic importance (e.g., a patrol that resulted in civilian casualties). JAs ensured messaging complied with legal and mission objectives, and acted as honest brokers where messaging opinions and discussions differed.

RECOMMENDATION: IO is critical in COIN operations and ensuring legal input is extremely important.[404]

ISSUE: Change in controlling rules regarding information operations

DISCUSSION: The unit was initially generating both attributable and non-attributable products. The rules changed to prohibit the development of products by us for Iraqi use. The unit could then train the Iraqis to do the same thing, but the unit itself could not do it and attribute it to the Iraqis without a very high level of approval. While the Iraqis could do it with the unit's training, they were disinclined to resource it and the unit could not pay for it. Consequently, there was a decrease in products in the public domain that were not unit-attributed. This resulted in the loss of a very valuable tool for the command.

RECOMMENDATION: Understand the rules can change. Be alert for the second and third order consequences of the changes. These are not always obvious.[405]

ISSUE: Attendance at the Information Operations (IO) Course

DISCUSSION: The SJA attended the IO Course at The Judge Advocate General's Legal Center and School (TJAGLCS) before deploying. This course proved very useful.

RECOMMENDATION: Sustain. JAs preparing to deploy should take the IO Course at TJAGLCS.[406]

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[402] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[403] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[404] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 265.
[405] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.

ISSUE: Nesting of IO legal reviews

DISCUSSION: The SJA reached out to his subordinate and higher commands when dealing with IO issues, especially legal reviews. In doing so, the SJA ensured the nesting of all products in the higher command's guidance.

RECOMMENDATION: Sustain. Unity of effort and IO themes are important, and JAs should help facilitate uniform product themes.[407]

ISSUE: Does the Security Agreement cover information operations?

DISCUSSION: Information Operations (IO) are, arguably, one of the last truly unilateral operations U.S. forces can carry out following the Security Agreement. For U.S. forces, it is also the last way to interact with the Iraqi population. When deciding whether an IO operation falls under the Security Agreement, you have to decide whether the IO operation is a "military operation." You can only make this decision based on the facts of each case.

RECOMMENDATION: You must consider the specific circumstances of each information operation in deciding whether the Security Agreement applies.[408]

ISSUE: The legality of IO under Iraqi Law

DISCUSSION: You can argue some IO products are illegal under Iraqi domestic criminal law. While this might not seem to concern U.S. military personnel, who are not subject to Iraqi jurisdiction, it is of concern to contractors and Iraqi staff who are so subject.

RECOMMENDATION: Legal advisers should know, and consider the effect of, Iraqi domestic law when reviewing IO.[409]

ISSUE: IO attorneys need to be strong and independent

DISCUSSION: IO is a demanding environment for the legal adviser. Unsurprisingly, IO operators are intelligent and forceful clients. An attorney working in IO must maintain his or her independence in order to give clients the best possible legal advice.

RECOMMENDATION: IO attorneys should have an officer evaluation reporting chain outside the IO office to assist the provision of honest and independent legal advice.[410]

ISSUE: All IO products must have legal approval

DISCUSSION: IO operators may offer up a concept of an operation for legal review in the expectation that, once the concept receives approval, they can produce products in line with the concept without further legal review. This is dangerous. Each IO product should receive legal review.

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[406] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 49.
[407] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 49.
[408] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 66.
[409] *Id.*
[410] *Id.*

RECOMMENDATION: Ensure all IO products receive a legal review.[411]

General Comments

ISSUE: IO involvement with PTF

DISCUSSION: The IO section was an integral part of the PTF. IO assisted the PTF with such things as producing posters of wanted individuals.

RECOMMENDATION: Sustain.[412]

ISSUE: Building capacity

DISCUSSION: "By, with and through" is the mindset that governs the full spectrum of operations within Afghanistan. All endeavors should seek to set conditions for interaction with partnered Afghan security forces and key engagements with representatives from the Government of the Islamic Republic of Afghanistan (GIRoA).

RECOMMENDATION: Professional reading and research into areas of FID and SFA as well as reaching out to members of the JAGC with such backgrounds would help in developing this crucial mindset.[413]

ISSUE: Counterinsurgency (COIN) operations and information operations (IO)

DISCUSSION: IO activities are an integral part of COIN operations in any region of Iraq or Afghanistan. Legal staff can contribute to IO with respect to those activities and products associated with Rule of Law (RoL). Winning the support of the local population is possible when it has confidence in the legitimacy and fairness of the government, the judiciary, and the police. Using IO to reach out to the local population can assist in defeating the insurgents if the messaging shows RoL progress and achievements. One BCT experimented with using one of its contracted Afghan attorneys to make radio broadcasts on RoL efforts and projects in the area of operations (AO). He hosted local government officials as well, allowing them to discuss their measures to make the province more stable.

RECOMMENDATION: Legal staff can play an integral part in the IO aspect of COIN operations. If there is a RoL component to the mission, try to capitalize on the progress by using IO to educate the local nationals.[414]

ISSUE: Educational materials from USAID Afghanistan

DISCUSSION: The United States Agency for International Development (USAID) produced many valuable products addressing Afghans directly. One of these contained various radio messages to educate Afghans on their rights and legal liberties under their constitution. Other print products, which USAID allowed the military to reproduce, were valuable tools in the education and legal awareness aspects of the RoL mission.

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[411] *Id.*
[412] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[413] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 6.
[414] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 87.

RECOMMENDATION: Continue to use such products.[415]

ISSUE: Detainee release facilities as an IO tool

DISCUSSION: The BCT converted its detainee facility into a more relaxed and comfortable release facility for released coalition detainees, resembling a "halfway house." The facility was equipped with TVs, carpets, other comforts and recreation items. The intent was to ensure the release process created a favorable impression of U.S. forces and also to ease the former detainees back into Iraqi society by offering sympathetic amenities and materials.

RECOMMENDATION: Sustain. This is a positive example of an IO campaign aimed at improving the reintegration of detainees back into Iraqi society.[416]

ISSUE: Funding information operations

DISCUSSION: You cannot use CERP to pay for information operations campaigns. However, the distinction between public awareness and information operations is not always obvious. As a rule of thumb, information operations are generally advancing a command message.

RECOMMENDATION: Take care to ensure CERP does not pay for information operations. Remember that fiscal constraints imposed by Congress, DoD, COCOM and CJTF are orders that officers in the US military are bound to follow.[417]

ISSUE: Funding source for purchase of radio airtime

DISCUSSION: When the unit first arrived, the CA unit on the ground was able to use specific CA authorities to purchase radio airtime. After the CA unit departed, the command tried to continue some of these CA functions using O&M funding, but could not.

RECOMMENDATION: Understand what is permissible for one type of unit may not be permissible for a different unit. The departure of an enabler may result in the loss of a previously available capability. This sounds simple when referring to a physical capability, but is less obvious when referring to a fiscal capability.[418]

ISSUE: Funding IO campaigns

DISCUSSION: The BCT commander was a huge proponent of IO. The Brigade Commander wanted to purchase billboards to support the brigade's IO campaign. The BJA determined the use of Commander's Emergency Response Program (CERP) monies would not be appropriate and investigated other sources of money. The division G-9 had a separate pot of money for just such an operation.

RECOMMENDATION: Sustain. IO campaigns present fiscal law issues. JAs need to be prepared to spot them and seek additional sources of money to fund the effort.[419]

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[415] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[416] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 13.
[417] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.
[418] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.
[419] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.

ISSUE: Putting partner units out front

DISCUSSION: After securing the appropriate money for humanitarian assistance, the brigade would coordinate with its Iraqi counterparts to distribute the assistance. For example, humanitarian aid packages for religious pilgrims would go to the National Police, who would then hand it out. The same occurred when an NGO donated wheelchairs. The brigade allowed the Iraqi unit to assemble them and hand them out.

RECOMMENDATION: Sustain. This resulted in huge information operations (IO) success stories for the brigade.[420]

ISSUE: IO as "terrain denial"

DISCUSSION: Removing a target's anonymity can preclude the target from using a particular area. For example, the unit used posters and billboards to put up the face of persons wanted by the Iraqis. It makes it difficult for that person to move freely in the area in which his face is known.

RECOMMENDATION: Sustain. The unit had a great success when an Iraqi policeman at a checkpoint recognized an individual from a depiction of the individual on a T-wall barrier at the checkpoint. Take care, however, to ensure what you are depicting is accurate.[421]

ISSUE: Radio and television broadcasts

DISCUSSION: 4-25 ID executed a three-prong RoL strategy: human capacity building, infrastructure development, and public awareness initiatives. Radio and television broadcasting increased public knowledge and awareness about the Afghan Constitution, government structure, and the formal justice system. Literacy rates in Afghanistan are extremely low. Using print media has limited value for IO messaging.

RECOMMENDATION: Sustain. Radio programming is the primary means of disseminating information in Afghanistan, much like it was in the U.S. before television.[422]

ISSUE: Ensuring compliance of information operations with Iraqi laws

DISCUSSION: One of the information operations (IO) ideas contemplated for capturing suspected insurgents was to televise "wanted" commercials on local television stations. The OSJA determined this technique would violate Iraqi law, but such commercials would be permissible if there was an outstanding Iraqi warrant on a suspect. Knowledge of Iraqi laws relevant to IO is necessary when embarking on novel IO activities.

RECOMMENDATION: Sustain. Before embarking on novel IO projects, determine the possible jurisdiction and application of any local and national laws.[423]

ISSUE: Seeking public informational assistance

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[420] *Id.*
[421] *Id.*
[422] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 265.
[423] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.

DISCUSSION: The unit wanted to develop IO products asking the public to provide information concerning individuals the unit would otherwise have to release from detention. There was initial resistance to this idea at higher levels, but they eventually allowed it.

RECOMMENDATION: Understand the information you need is often in the public at large. Seek ways to access this source.[424]

ISSUE: Lack of training before deployment

DISCUSSION: The SOTF legal advisor did not have much training on information operations (IO) before deploying.

RECOMMENDATION: Improve. Legal advisors should attend the IO short course before deploying.[425]

ISSUE: Building capacity

DISCUSSION: Psychological Operations and CA assets attached to CJSOTF-A sought to build tactical level capacity within the various partnered Afghan forces.

RECOMMENDATION: Sustain. Close coordination with the J39 and J9 in these capacity-building initiatives ensured compliance with U.S. law and policies.[426]

ISSUE: Participation in psychological operations (PSYOPS) working group

DISCUSSION: A Division OpLaw attorney attended the PSYOPS working group to spot issues. Additionally, Division OpLaw attorneys reviewed every CONOP and product prior to approval.

RECOMMENDATION: Sustain.[427]

I.K. Intelligence Law

Intelligence Law Training

ISSUE: Sources of intelligence law and guidance

DISCUSSION: It is extremely difficult to know if you have all the controlling guidance. Different executive agencies have responsibilities for aspects of the field. Both the Defense Intelligence Agency (DIA) and the Central Intelligence Agency (CIA) have rules covering licensed activities. The Undersecretary of Defense for Intelligence also promulgates rules, as does Central Command (CENTCOM).

RECOMMENDATION: Recognize the sources of intelligence extend beyond just the federal code and service regulations.[428]

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[424] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[425] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 50.
[426] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 5.
[427] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.

ISSUE: Training in intelligence law

DISCUSSION: An attorney in a BfSB will need a basic understanding of intelligence law. The BfSB attorney attended a week of training at the U.S. Army Intelligence Center at Fort Huachuca. This was not an official course, but rather informal training set up by the Fort Huachuca Intel Law Training JAs. In retrospect, some pre-deployment training at the U.S. Army Intelligence and Security Command (INSCOM), Fort Belvoir, would have been beneficial. A few days at Fort Huachuca and a few days at INSCOM would have been more beneficial than an entire week at INSCOM. The JA also attended the Intelligence Law course at The Judge Advocate General's Legal Center and School (TJAGLCS). Although beneficial, the JA wishes that she had a bit more knowledge of intelligence capabilities prior to the course.[429]

RECOMMENDATION: Someone should review the training requirements for BfSB attorneys.[430]

Security Clearance

ISSUE: Need for "top secret" (TS) clearance

DISCUSSION: In today's operational environment, especially at the brigade level, it is critical for JAs to work closely with the S-2 shop in reviewing intelligence and operational plans in order to identify legal issues before the commander makes operational decisions. This is nearly impossible to do adequately if the JA only has a "secret" clearance. Much of the intelligence is classified "top secret" or "top secret-sensitive compartmentalized information" (TS-SCI). Fortunately, the BJA had a TS clearance before deploying.

RECOMMENDATION: At least one JA at the BCT level should have a TS-SCI clearance before deploying. Since obtaining a TS clearance is a time intensive process, so JAs should start it as early as possible.[431]

ISSUE: Need for training on intelligence law

DISCUSSION: Prior to deployment, none of the OpLaw attorneys had formal training on intelligence law as the leadership did not emphasize training on this area of law. Neither of the attorneys attended the intelligence law course. Therefore, they quickly found that they did not even have enough knowledge to spot issues in this broad yet specialized field of law. During the deployment, a high ranking DA civilian was working to create an intelligence law database for deployed practitioner's use, but it was not fully functional by the end of the deployment.

RECOMMENDATION: Improve. OpLaw attorneys must receive some training on intelligence law prior to deployment, so they know at least how to frame the legal analysis. Attendance at the intelligence law course would be ideal. In the absence of formal training, the JAs should liaise with their counterparts in the J-2 section to discuss common issues while deployed.[432]

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[428] MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09, *supra* note 141.
[429] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.
[430] *Id.*
[431] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[432] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.

General

ISSUE: Intelligence law support

DISCUSSION: Awareness of intelligence law is a tremendous asset. It is helpful for the guard force JAs to have a general understanding of intelligence law and to forge early coordination with the Joint Integration and Debriefing Center (JIDC) lawyers. This will help to ensure the requirement for intelligence does not supersede the requirement to ensure proper care and treatment.

RECOMMENDATION: Sustain. A general awareness of intelligence law is sufficient.[433]

ISSUE: Rewarding tip offs

DISCUSSION: The Small Rewards Program for rewarding individuals who come forward with useful information (for instance reporting the location of unexploded ordnance) could use clarification to distinguish it from formal intelligence operations.

RECOMMENDATION: Clarify the procedures for the Small Rewards Program.[434]

ISSUE: Number of attorneys with experience in intelligence law

DISCUSSION: A very limited number of people on active duty have experience and training in intelligence law.

RECOMMENDATION: Intelligence law is extremely broad as a topic and is highly regulated. While it is possible to learn intelligence law on the job, this is not the optimum solution. Given the growing scope of this field, the JAG Corps should develop a larger contingent of personnel on active duty with expertise in this area.[435]

ISSUE: Legal review of source recruitment requests

DISCUSSION: Military intelligence units wanting to recruit a Human Intelligence (HUMINT) source was the most common action requiring review. Recruitment allowed the unit to task the source.

RECOMMENDATION: Reviewing these requests requires a five-step approach. First, does the requesting unit have the specific training, authorization, and authority/mission to collect this type of intelligence? If not, they may have to pass this source to a higher authority. Second, is the source an acceptable individual for recruitment? Third, who specifically is doing the recruiting? Do they have the training, authority, and qualifications (Skill level 35) to recruit? Fourth, what has the source provided in the past and what can they provide in the future? Fifth, is there conflict with another agency? You must ensure the source is not involved with different agencies. This de-confliction usually occurred at the CENTCOM level.[436]

ISSUE: Qualification to run sources

[433] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 138.
[434] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.
[435] MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09, *supra* note 141.
[436] *Id.*

DISCUSSION: Many people think they have the authority to run sources, but actually lack the qualifications to do so. Running a source without the necessary qualifications is a violation of law, regulation, and policy. It is also exceptionally dangerous for both the source and the person running the source.

RECOMMENDATION: Individuals must understand the difference between tactical questioning and running a source. Train units on where the line lies so they do not get into trouble.[437]

ISSUE: Converting intelligence into evidence

DISCUSSION: The Interim Intelligence Reports (IIRs) appear in a central database. The Law and Order Task Force (LAOTF) would run queries of this database against their target set. If the name of a person of interest appeared, they would request access to the detainee. On many occasions, the resulting interview with Law Enforcement Personnel (LEPs) and an Iraqi Investigator would get results that differed from the interrogation.

RECOMMENDATION: When the LEP interview did produce a statement implicating a person of interest, the statement then went before an Iraqi judge. If the judge thought the information was worthwhile, it was vital to get the person before the judge. Only those statements made in the presence of the judge carry any weight as evidence in the Iraqi system. Once the judge took the statement, he could then use it as the basis for a detention order.[438]

ISSUE: Counter-intelligence (CI) operations

DISCUSSION: Each individual service can run a CI program. Such programs rely heavily on Human Intelligence (HUMINT). This area of the law is highly regulated and the approval authorities for it typically do not reside in theater. For example, search authorizations in this realm have to go back to the Army Counter-Intelligence Coordinating Authority in DC.

RECOMMENDATION: Certain aspects of this work can appear to be law enforcement work. However, it is actually an intelligence operation and those conducting such operations must staff them appropriately. These operations present significant legal issues and those conducting them rely on the supported units for legal advice. Brigade and Division judge advocates should make contact with their local CI personnel. They operate in Iraq out of the local Field Office – Iraq.[439]

ISSUE: Requirements for intelligence operations training in the U.S.

DISCUSSION: The rules are much more rigorous in the US or if the target is a US person.

RECOMMENDATION: You have to know who has oversight over the activity in which you are training. Even for training purposes, you cannot use intelligence equipment or procedures to collect information on US locals.[440]

ISSUE: Expertise in intelligence law in Kosovo

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[437] *Id.*
[438] *Id.*
[439] *Id.*
[440] *Id.*

DISCUSSION: The USAREUR OSJA provided great reach-back support for expertise in intelligence law.

RECOMMENDATION: Because of the specificity of this area of the law, reach back to experts if you do not have your own expertise.[441]

ISSUE: Communication concerning intelligence issue

DISCUSSION: It was very difficult to communicate in this realm. Not only could you not tell all interested parties the same things, but also the number of KRONUS terminals for this type of communication was very limited. There were only 10 or so KRONUS terminals on all of Camp Bondsteel. This was a huge problem. Because of the difficulty in communicating in this realm, it is natural for things to occur in very narrow channels. Legal may not be in the loop.

RECOMMENDATION: It helps if the CG is aware of this tendency and points the staff towards the legal office. The CG needs only to ask once or twice, "Has legal seen this?" before the coordination begins to occur without prompting.[442]

ISSUE: Experience with intelligence law

DISCUSSION: Very few JAs have experience and training in intelligence law. However, in today's operational environment, it is critical for JAs to be familiar with at least the basics of intelligence law. A BCT without a JA familiar with intelligence law advising the unit on the legal requirements is setting itself up for failure.

RECOMMENDATION: Improve. Intelligence law is an extremely broad topic. Learning intelligence law on the job is possible, but is certainly not an ideal approach. The JAG Corps needs emphasize it more by making intelligence law part of its curriculum and providing regular training in it.[443]

ISSUE: Intelligence collection on American companies

DISCUSSION: During the deployment, intelligence background checks commenced on a number of local national subcontractors. During the checks, however, intelligence personnel discovered the prime contracting companies were American. JAs advised G2 staff of U.S. law forbidding collection on American companies.

RECOMMENDATION: Rather than "collect" on the company, intelligence personnel simply asked the company openly for the required information. The company provided it. Not all intelligence personnel may understand the reach of the prohibition on intelligence gathering on American companies overseas. American companies have many of the same protections as American citizen individuals.[444]

ISSUE: Unavailability of intelligence as evidence

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[441] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.
[442] *Id.*
[443] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[444] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.

DISCUSSION: A great deal of good intelligence is not available for use as evidence in court. There needs to be a way to share this information with the legal system.

RECOMMENDATION: Be aggressive about declassifying whatever it is possible to declassify. Avoid over-classification. Even if you cannot share the intelligence itself, be alert for opportunities to use the information it conveys to point local officials in the right direction.[445]

ISSUE: Human intelligence collection in a disaster response mission

DISCUSSION: A unit in the BCT approached the JAs to ask if it was possible to determine if intelligence-related funds were available to establish and commence a human intelligence (HUMINT) collection operation on suspected criminal gang threats to humanitarian operations and efforts. After review and consultation, higher headquarters denied the HUMINT proposal.

RECOMMENDATION: JAs should be aware that HUMINT operations have constraints that may limit these types of operations in a HA/DR situation.[446]

ISSUE: Need for "Top Secret" (TS) security clearance

DISCUSSION: In an operational setting, it is critical for the JA to have the same clearance level as his or her commander. The JA cannot be relevant in all discussions and give sound legal advice to the commander if the JA does not know what the commander knows. In order to know what the commander knows, the JA must have the proper clearance to review intelligence and operational plans, which is nearly impossible to do if the JA only has a "secret" clearance. Much of the intelligence is classified "top secret" or "top secret-sensitive compartmentalized information" (TS-SCI).

RECOMMENDATION: At least one JA at each unit should have a TS clearance.[447]

ISSUE: Collecting intelligence

DISCUSSION: Operational forces are using advanced surveillance technology and equipment more frequently in modern warfare.

RECOMMENDATION: JAs need to be aware of the rules and regulations governing the use of modern technology. Specifically, JAs need to know and advise their units on who can collect intelligence.[448]

ISSUE: Need for a better system of collecting intelligence at the Soldier level

DISCUSSION: Current intelligence directives require intervention of military intelligence (MI) officials at certain stages of interaction with local nationals (when they become a "source"). However, Iraqi and Arab culture does not have the same approach to these relationships as our MI policies do. For example, when an older male officer/NCO is engaging a local elder, he is likely to get much more information than a young (at times, female) MI officer. When a MI

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[445] *Id.*
[446] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 316.
[447] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 2.
[448] *Id.*

officer steps into continue the conversation with the local elder, it often results in the discussion ending quickly thereafter.

RECOMMENDATION: Arabic cultures respect older, experienced males. It is important to include cultural considerations like these in the planning process. If not, the MI community and the operators they support are in danger of violating regulations and laws. OpLaw attorneys often encountered frustrated MI professionals because of this.[449]

ISSUE: Need for a centralized debriefing program

DISCUSSION: The Division G-2X developed a software program that would allow Soldiers who interacted with the local populace to feed information into a central database. MI officers would read the information and debrief the Soldiers. This system, called "Abraxas Web," was extremely controversial in Baghdad and throughout Iraq. However, some of the ideas were forward-thinking and could be helpful to commanders.

RECOMMENDATION: From a legal perspective, it is worth looking into something like Abraxas Web, because it provides a way to legally deal with these situations. However, the MI community may not be comfortable with Abraxas Web, as the information gathered was not by specifically trained personnel and terminology used may not be exacting.[450]

ISSUE: Learning to apply intelligence law in practice

DISCUSSION: Applying intelligence law in foreign countries is different than in the U.S. It is also surprisingly difficult to apply the general provisions of the law to specific intelligence collection techniques (which can be very technical and hard to grasp).

RECOMMENDATION: Let your intelligence operators educate you about what they are doing. Do not assume, just because you are a lawyer, that you are an oracle of legal wisdom able to hand down judgments on stone without engaging fully with the issue first. Have a Socratic discussion with your operators before forming a view. Let them explain to you what they are doing and how the technical side works in detail. Most experienced intelligence operators will have a good feel for the legal parameters of their work. Talk to them about their understanding of the law, and then use your training as a lawyer to test and assess their layman's knowledge. If you work this way, you will quickly develop your knowledge of the application of intelligence law and you will gain the trust and respect of your operators.[451]

ISSUE: Turning intelligence into evidence

DISCUSSION: Perhaps the biggest issue confronting a JA working with intelligence law is the problem of turning intelligence into evidence: going from "what we know" to "what we can prove in court." Perhaps the most contentious part of this is using HUMINT sources as witnesses.

RECOMMENDATION: You will need to work with Iraqi judges on these issues. Each judge will have a different procedure, and you will need to speak with the judge in advance to find out how he will approach the issue of protecting sensitive witnesses. You must also speak to your

[449] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[450] *Id.*
[451] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.

operators. They understand the sensitivities and will have a good idea of how to get around them. For instance, the BfSB was able to use captured cell phones as evidence. The Iraqis were quite happy to accept them as evidence and to harvest the phone's log for telephone numbers.[452]

ISSUE: Intelligence law in Detention Operations (DetOps) and Rule of Law (RoL)

DISCUSSION: In DetOps and RoL, the emphasis on turning intelligence products and processes into evidence and evidentiary processes requires a thorough understanding of intelligence products and processes.

RECOMMENDATION: DetOps legal advisors as part of their pre-mission training (PMT) should attend the Intelligence Law course and coordinate closely with their J2/G2/S2 to better understand intelligence products and processes.[453]

I.L. Interrogations

ISSUE: Combined interrogations

DISCUSSION: U.S. certified interrogators sought to conduct interrogations of individuals in Afghan custody. The legal advisor worked closely with the J2X to ensure all interrogations complied with applicable U.S. law and theater-specific regulations. Additionally, CJSOTF-A developed a standard operating procedure to establish guidelines for interrogations.

RECOMMENDATION: Sustain. Close coordination with the J2X and senior interrogator ensured compliance with theater policies. If possible, develop and publish a standard operating procedure through operational channels.[454]

ISSUE: Use of Iraqi interrogations

DISCUSSION: The BCT S2 section routinely obtained copies of IP interrogation reports, which they used for future targeting. The BCT never sent its own personnel to Iraqi facilities to conduct interrogations. Instead, the BCT would furnish a list of questions to the IP and let them conduct the interrogations.

RECOMMENDATION: Sustain. Before entering into an intelligence sharing arrangement such as this, it is important to first establish a relationship with the IP and the prisons. Allowing the Iraqis to conduct their own interrogations furthers their development and keeps BCT personnel out of an area that can be fraught with legal issues.[455]

ISSUE: Intelligence law attorney's role in interrogation operations

DISCUSSION: The intelligence law attorney had general oversight over interrogations. The CJ2 attorney's role was to ensure all interrogations complies with all applicable guidance.

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[452] *Id.*
[453] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[454] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 6.
[455] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.

RECOMMENDATION: Sustain. Interrogations received a great deal of scrutiny.[456]

ISSUE: Iraqi judge interviews of detainees

DISCUSSION: Iraqi judges routinely came to question detainees while permitting S2 personnel to observe the interviews. At times, Iraqi judges would sometimes use techniques like mild "fear up" to try to elicit further information. Since they were present, some S2 personnel expressed concerns Iraqi judges could be infringing U.S. interrogations policies. The JAs had to reassure them that the Iraqi judges' methods were lawful under Iraqi law and not a violation of U.S. interrogation measures.

RECOMMENDATION: Sustain. While this interview technique was acceptable, legal and S2 staffs have to ensure partners' methods do not violate basic human rights and minimum detainee treatment standards.[457]

ISSUE: Conflicting guidance on interrogation

DISCUSSION: During the deployment, intelligence and legal staffs noted on a few occasions there was conflicting guidance on interrogation methods between ISAF and CJTF 101/82. It seemed the two levels did not necessarily agree or align with respect to interrogation guidance. The BCT had to reconcile the "disconnects" in favor of the guidance mirroring legal and permissible national direction.

RECOMMENDATION: Sustain. JAs should advise superiors of gaps or friction points in interrogation guidelines so no one crosses over into any illegal activities. Interrogations and detainee handling are two sensitive areas of military operations in which JAs have to take a proactive approach to ensure the client unit's compliance and understanding.[458]

ISSUE: Knowledge of in-theater interrogation requirements

DISCUSSION: Some U.S. Special Operations Forces (SOF) have specialized training, which, in conjunction with theater-specific indoctrination, allows them to conduct interrogations. The JA knew the theater-specific requirements for interrogations and ensured he distributed the information to the operational chain of command, intelligence personnel, and operators.

RECOMMENDATION: Sustain. JAs must ensure all personnel are aware of the requirements for interrogations in theater.[459]

ISSUE: Tactical questioning versus interrogation

DISCUSSION: The JA stressed the difference between tactical questioning and interrogation and provided scenarios to help demonstrate the point. This included, "tactical questioning stops when a detainee is placed in a vehicle and transported anywhere."

RECOMMENDATION: Sustain. Continue to provide clear guidance on the difference between the two.[460]

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[456] MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09, *supra* note 141.
[457] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.
[458] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 42.
[459] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 22.

ISSUE: Authority to obtain or get access to detainees in Iraqi custody

DISCUSSION: On a few occasions, intelligence personnel wanted detainees in Iraqi control sent to U.S. Army facilities for interrogations. However under the SA, Iraqis retain sovereignty over their detainees, and there is no legal transfer means. The JAs encouraged intelligence personnel to seek permission from the Iraqis to conduct the interviews in the Iraqi prisons, though there were initial difficulties in determining which Iraqi official could give this permission.

RECOMMENDATION: Sustain. Interrogations in Iraqi prisons are just as effective as in U.S. facilities. The SA places approval authority for detainee interrogations in the hands of Iraqis.[461]

ISSUE: Old mindsets on interrogation

DISCUSSION: Some commanders with previous deployments in Iraq, before the SA came into effect, believed that they could simply order interrogations without regard to Iraqi laws or jurisdiction over detainees. They had to be re-educated on the legal changes following the implementation of the SA.

RECOMMENDATION: Sustain. JAs have to look out for any old mindsets amongst commanders and Soldiers about operations in post-SA Iraq.[462]

ISSUE: Failure to obtain timely intelligence

DISCUSSION: International Security Assistance Force (ISAF) SOPs prohibited interrogations of detainees. This hampered the Human Exploitation Teams' (HETs) ability to obtain timely intelligence from detainees.

RECOMMENDATION: Improve. SOPs need to allow for interrogations as close to the point of capture as possible.[463]

ISSUE: ISAF interrogation policy

DISCUSSION: According to the ISAF SOP 362 and other ISAF memorandum, ISAF did not permit units to interrogate ISAF detainees. The only means of questioning a detainee was through tactical questioning.

RECOMMENDATION: JAs must keep abreast of ISAF rules regarding interrogations and advise their units on the differences between tactical questioning and interrogation.[464]

ISSUE: Interrogations in warrant-based targeting

DISCUSSION: When there was a planned operation to pick someone up, the interrogation plan was a planned part of the operation from the start.

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[460] *Id.*
[461] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[462] *Id.*
[463] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 1.
[464] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.

RECOMMENDATION: If one of the unit's goals is to get information from an individual, plan for how you are going to have access to the individual after turning him over to the Iraqi authorities.[465]

ISSUE: Questioning by law enforcement professionals

DISCUSSION: LEPs could not use the interrogation approaches they used in their civilian careers. They could only do questioning. Consequently, LEP interviews required close oversight to ensure they did not cross any lines.

RECOMMENDATION: Keep interrogations and LEP interviews separate. Trying to combine the two needlessly complicates things. Having the LEPs focus on information concerning legacy detainees and the interrogators focus on getting current intelligence helped keep things separate.[466]

ISSUE: Field interrogations

DISCUSSION: The Security Agreement greatly limited the access for U.S. troops to detainees for the purposes of interrogation. In general, detainees were no longer available for interrogation once U.S. forces transferred them to the Iraqis in accordance with the Security Agreement. The only workable alternative was to conduct field interrogations (interrogations by trained interrogators outside of fixed facilities) close to the point of capture before transferring the detainee. Multi-National Force – Iraq (MNF-I) laid down this new method in a policy.

RECOMMENDATION: Keep your Soldiers up to date and trained on any new policy. Ask higher headquarters for specific guidance. Some of the policies are broad and do not touch on specific "real world/on the ground" interrogation scenarios.[467]

ISSUE: Intelligence versus evidence

DISCUSSION: The SOTF legal advisor worked closely with the senior interrogator in an effort to secure evidence the SOTF legal advisor could use for the detainee's DTR.

RECOMMENDATION: Sustain. This proved highly effective in creating good DTRs.[468]

ISSUE: Combined interrogations

DISCUSSION: U.S. certified interrogators sought to conduct interrogations of individuals in Afghan custody. The legal advisor worked closely with the J2X to ensure all interrogations complied with applicable U.S. law and theater-specific regulations.

RECOMMENDATION: Sustain. Close coordination with the J2X and senior interrogator ensured compliance with theater policies.[469]

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[465] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[466] *Id.*
[467] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.
[468] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 51.
[469] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 5.

I.M. Law of War (LOW)/Law Of Armed Conflict (LOAC)

I.M.1. Training

ISSUE: Wealth of operational law (OPLAW) material

DISCUSSION: There is a wealth of OPLAW related material available to any deploying JAs and paralegals from three sources: the Secret Internet Protocol Router Network (SIPRNET), the Center for Law and Military Operations (CLAMO), and the incumbent legal team in the theater of operations. With a little bit of searching on SIPRNET, JAs can find material related to targeting, collateral damage estimate guidelines, International Security Stabilization Force (ISAF) materials, Operation Iraqi Freedom (OIF) guidance, escalation of force (EOF) guidance, ROE, Department of Defense directives and other materials. As well, CLAMO has a repository full of deployment related information that is easy to access and download. Finally, an excellent way to obtain specific, up to date materials for a future deployment to a particular area of operations is to link up with a deployed JA or NCOIC by phone or email and begin a dialogue on the AO's current state of legal issues and materials.

RECOMMENDATION: Deploying JAs and paralegals should mine SIPRNET and CLAMO for deployment related information and communicate with a deployed colleague to obtain current information and materials on the deployed environment.[470]

ISSUE: Utilize ODAs to train partner forces

DISCUSSION: The legal advisor provided ODAs with training packets they could use to teach their partner forces LoW issues.

RECOMMENDATION: Sustain. Iraqi forces are more receptive to receiving training from their combat advisors than from U.S. legal advisors.[471]

ISSUE: Misperception of Special Forces (SF) mandate

DISCUSSION: There was a common misperception among conventional forces that SF operates outside controlling rules and regulations. Educating conventional units on the role of SF and their ability to be force multipliers early in the rotation was critical.

RECOMMENDATION: SF battalion legal advisors must circulate the battlefield and explain SF's mandate in theater to their fellow judge advocates (JAs).[472]

ISSUE: Vignettes

DISCUSSION: The BCT legal team continued to create new vignettes throughout the deployment to train and educate Soldiers on LOAC and ROE issues. It frequently utilized investigation findings to create these vignettes.

RECOMMENDATION: Sustain.[473]

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[470] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 87.
[471] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 8.
[472] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 158.

ISSUE: LoW training to aviators

DISCUSSION: TF Thunder commander was proactive in ensuring all Soldiers assigned to his command received constant and updated Law of War (LoW) training. The Commander conducted frequent working groups during which all present watched and discussed gun tapes from actual missions. The BJA continually updated training vignettes based on real world events and findings and recommendations of various investigations.

RECOMMENDATION: Sustain.[474]

ISSUE: Usefulness of pre-deployment LoW training at JMRC

DISCUSSION: The LoW training provided by the JAG Observer/Controller (O/C) from the Joint Multinational Readiness Center was fantastic.

RECOMMENDATION: Sustain this effort. While it is no doubt difficult to have this person deploy to Camp Atterbury to provide training for a Kosovo rotation, it is well worth it.[475]

ISSUE: Use of actual incidents as training tools

DISCUSSION: The brigade legal team used actual incidents as training aids.

RECOMMENDATION: Sustain. Add these scenarios to training packets to keep required training relevant. This also helps to remove the stigma associated with the investigation that follows one of these incidents.[476]

ISSUE: Pre-deployment LOAC training

DISCUSSION: The brigade legal section conducted extensive LOAC training before deployment. The training continued throughout the deployment as well. Constant training and command emphasis on the importance of understanding the strategic goals is a must. Special emphasis on escalation of force (EOF) issues is necessary. While a particular shoot may be justified under the controlling rules of engagement (ROE), it may not always be smart.

RECOMMENDATION: Sustain. Ensure Soldiers know the history of their area. When was the last vehicle-borne improvised explosive device in the area? Has there ever been one? These things help define what is reasonable certainty in a given situation.[477]

ISSUE: LoW training

DISCUSSION: The LoW training the unit used was based on the First Army PowerPoint presentation. The unit supplemented this with the CJTF-101 escalation of force (EOF) training package.

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[473] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[474] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 16.
[475] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.
[476] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[477] *Id.*

RECOMMENDATION: The training packages are fit for their purpose, but you must take care to make them as relevant and lively as possible. Use your relationships with your predecessor unit to get practical examples, which will bring the training to life. Furthermore, try to use speakers who will have some presence and credibility with the students.[478]

ISSUE: Periodic LOAC training

DISCUSSION: Throughout its deployment, 30th HBCT conducted refresher LOAC and rules of engagement (ROE) training from time to time. The brigade legal section assisted in providing this training.

RECOMMENDATION: It is imperative JAs understand the LOAC, as well as the most up to date ROE, and are prepared to provide unit training on it.[479]

ISSUE: Sufficiency of standard LoW training

DISCUSSION: JAs do not need additional training in LoW if they plan before deployment and get the entire standard training package available through The Judge Advocate General's Legal Center and School (TJAGLCS) and elsewhere.

RECOMMENDATION: Sustain. The level of generic LoW training available is appropriate.[480]

ISSUE: Continuous LOAC training

DISCUSSION: The BN JA briefed all companies within the battalion on LOAC before deploying, while in-processing into theater, and throughout the deployment. The constant training proved hugely effective.

RECOMMENDATION: Sustain. Constant and continuous training resulted in zero LOAC violations. The training also afforded the JA the opportunity to interact with Marines and answer questions in person.[481]

ISSUE: LoW training

DISCUSSION: No one goes on deployment intending to commit a LoW violation. Typically, LoW violations occur due to lack of understanding the rules. Training is the key to preventing LoW violations.

RECOMMENDATION: JAs should ensure their units understand and appreciate the LoW. Often, the understanding and attitude of the command trickles down. JAs should provide training on the LoW, especially to young commanders, on a regular basis.[482]

ISSUE: Use of standard training packages (STPs) and unclassified classes

DISCUSSION: The unit used the STPs for rules of engagement (ROE) and LoW training. They

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[478] 168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09, *supra* note 264.
[479] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[480] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[481] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 1.
[482] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.

did not train on any theater-specific ROE during the pre-deployment period due to the impending changes under the Security Agreement and the new ROE due from Central Command (CENTCOM).

RECOMMENDATION: Rather than confuse Soldiers with something that is changing, stick with the basics if you find yourself in a flux situation.[483]

ISSUE: LoW training is best delivered by a JA with deployed experience

DISCUSSION: The Soldier audience will be more receptive to a JA trainer whom they assess to be credible.

RECOMMENDATION: If possible, try to use a JA with operational experience to deliver LoW training.[484]

ISSUE: Coordinating training with sister services

DISCUSSION: Before deploying, the legal advisor provided the attached MARSOC unit's legal advisor LoW/LOAC training slides. This ensured a uniform block of instruction for all Soldiers and Marines who operated in SOTF-W.

RECOMMENDATION: Sustain. Close coordination with sister service judge advocates is important to ensure uniform blocks of instructions are given to all before deployment.[485]

ISSUE: Utilizing actual incidents as training tools

DISCUSSION: The SOTF legal advisor created training vignettes based on actual events experienced by ODAs on combat missions during the deployment. The SOTF-S commander would then ensure all Soldiers viewed the training packets and sought clarification from the legal advisor as necessary.

RECOMMENDATION: Sustain.[486]

ISSUE: Continual training

DISCUSSION: LoW/ROE training was a constant in SOTF-S's battle rhythm. The SOTF legal advisor kept the training fresh by developing vignettes based on actual incidents.

RECOMMENDATION: SOTF legal advisors need to stress the importance of constant LoW/ROE training and search for ways to keep the training fresh and relevant so Soldiers learn from the training, as opposed to just "check the box."[487]

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[483] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[484] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.
[485] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 50.
[486] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 51.
[487] *Id.*

I.M.2. Violations

ISSUE: Spikes in LOAC and ROE/RUF violations

DISCUSSION: The majority of alleged violations of LOAC and ROE/RUF happened in the first three months or the last three months of the deployment. Anecdotally, the earlier alleged violations tended to be due to inexperience and over-aggressiveness, while the latter alleged violations tended to result from wear and tear on the Soldiers' mental, physical, and emotional stability. Units must be aware of these higher risk periods and focus their training accordingly. The 11th MP BDE, unfortunately, added to these statistics by initiating three investigations during the command's last two weeks in theater. These resulted in several Soldiers receiving punishment under the Uniform Code of Military Justice (UCMJ) or adverse administrative action.

RECOMMENDATION: Improve. Monthly refresher training in LOAC and ROE/RUF is essential.[488]

ISSUE: Post-deployment reporting of alleged LoW violation

DISCUSSION: A Soldier of a unit previously in the brigade's area alleged a member of his platoon shot and killed two unarmed Iraqi civilians. The Soldier made this allegation while out-processing from the Warrior Transition Unit (WTU). The staff at WTU immediately alerted Criminal Investigative Division (CID) of the allegations. CID is investigating the claims.

RECOMMENDATION: Be prepared to deal with allegations from previous deployments and following your own deployment. Some things will not come to light until much later. Consequently, it is important to leave investigative records with successor units and to maintain the unit's investigative files.[489]

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RECOMMENDATION: Be prepared to deal with allegations from previous deployments and following your own deployment. Some things will not come to light until much later. Consequently, it is important to leave investigative records with successor units and to maintain the unit's investigative files.[490]

ISSUE: Conditions contributing to LOAC violations

DISCUSSION: A company commander task organized under a sister BCT in MND-N was relieved from command for allegedly putting a gun to a detainee's head. Many factors likely contributed to this otherwise outstanding commander's actions. The commander had had multiple deployments, had lost his battalion commander in an improvised explosive device (IED)

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[488] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 138.
[489] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[490] *Id.*

attack, and had a terminally ill family member. His unit was responsible for the most dangerous areas of Mosul, and they had been conducting 24-hour operations.

RECOMMENDATION: Commanders should recognize the pressures—both personal and mission-related—that can contribute to otherwise good Soldiers committing LOAC violations.[491]

ISSUE: LOAC violations

DISCUSSION: Sometimes when a relatively minor breach of the LOAC occurs by a servicemember, units have a tendency to want to handle it in-house such as through non-judicial punishment (NJP). When this occurs, units may unintentionally overlook investigation and reporting requirements.

RECOMMENDATION: JAs need to be involved in handling LOAC violations when they occur. Be aware of the different reporting and investigation requirements. Ensure units know that even minor breaches require reporting.[492]

ISSUE: Use of white phosphorous (WP) mortar rounds

DISCUSSION: During the deployment, an international journalist published an article alleging that the use of WP mortar rounds was a war crime, which position was not in line with U.S. policy or its interpretation of international law. The motivation for this article appeared to be an effective enemy information operations campaign. As a result, the RJA sent out guidance to the unit on the proper use of WP. Specifically, units can use WP for marking, obscuring, and screening, but not as a means or method of warfare, such as using it to when a more appropriate shell fuse combination was appropriate and available.

RECOMMENDATION: JAs need to be well versed in the LOAC and ensure they provide timely guidance to their units.[493]

ISSUE: Accusations by Iraqi detainees against Iraqis

DISCUSSION: The unit collected accusations of abuse of detainees and forwarded them to MNC-I, who would then engage Iraqi officials. The unit did not assess this to have much effect.

RECOMMENDATION: Other than reporting, you can do little within a system that does not police its own.[494]

ISSUE: Use of detainees to search for unexploded ordnance

DISCUSSION: One unit allegedly had detainees searching for unexploded ordnance. This violates the LOAC requirements to protect those under the control of military forces. As a result, MNF-I required LOAC training theater-wide for all similar type units.

RECOMMENDATION: Be aware these types of things can still happen.[495]

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[491] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.
[492] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 2.
[493] *Id.*
[494] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[495] *Id.*

ISSUE: Soldiers wearing civilian clothes—"beards and cargo pants"

DISCUSSION: Issues constantly evolved as to whether Soldiers conducting certain intelligence operations can wear civilian clothes (the "I want to be cool factor because cool guys in the movies and Special Forces wear civilian clothes"). Because of the Security Agreement and other factors, it became a command/JA effort as to whether they could wear civilian clothes under the LoW, and more importantly, whether they should.

RECOMMENDATION: Work closely with the commander on these difficult issues—where technically it may be a "yes" answer, but a "should we?" discussion needs to happen.[496]

ISSUE: Inconsistent guidance on responding to LOAC violations

DISCUSSION: The Department of Defense, USCENTCOM, MNF-I, and MNC-I guidance on the response to LOAC violations were not entirely consistent. The DoD Directive concerning reportable events was published in 2006, and refers to other DoD Directives concerning the format and frequency of reports. The secondary DoD Directives have changed, and that change has resulted in some lack of clarity concerning the format and frequency of reports. This was a potential source of confusion and friction for Current Operations officers who were attempting to ensure that MNC-I was complying with its obligations to report LOAC violations.

RECOMMENDATION: Review guidance on a regular basis to ensure it is consistent and complete.[497]

ISSUE: Dealing with allegations of abuse by coalition partners in detention operations

DISCUSSION: There was some resistance to the reporting of allegations of detainee abuse up the command channel, with an apparent preference for keeping allegations in technical channels. This seeming failure to understand the importance of allegations regarding detainee abuse, and the duty to report them, was disappointing.

RECOMMENDATION: All staff officers need training on the importance of speedily reporting allegations of abuse to commanders. The curriculum for training officers needs a review to ensure it makes the point clearly.[498]

I.N. Legal Basis for Conducting Operations

I.N.1. Security Council Resolutions

ISSUE: Current status of the legal basis for Kosovo operations

DISCUSSION: The legal basis for KFOR remains United Nations Security Council Resolution (UNSCR) 1244 and the Military Technical Agreement. While the U.S. has recognized Kosovo's

[496] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.
[497] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 66.
[498] *Id.*

independence, KFOR works for NATO. NATO's official position is "status neutral." Consequently, members of TFF are also officially status neutral.

RECOMMENDATION: Ensure Soldiers understand this distinction.[499]

ISSUE: UN role in Kosovo

DISCUSSION: Because of UNSCR 1244, the UN originally had a huge role in Kosovo. As the theater has matured, the UN role has diminished greatly. The UN has a very small role today. EULEX has stepped in to take over. This makes the legal basis documents much less relevant on a day-to-day basis, though they are still important.

RECOMMENDATION: It is worth keeping an eye on the legal basis for the operation, as it may change in the future. Those agreements, though, are not of much utility in daily operations.[500]

I.N.2. United Nations (UN) Reports

No AAR comments.

I.N.3. U.S. – Iraq Security Agreement (SA)

ISSUE: New security agreement and the mindset of re-deploying Soldiers

DISCUSSION: The U.S.-Iraq Security Agreement of 1 January 2009 redefined issues such as jurisdiction, detention, authority for military operations, and immunities, as well as others. The BJA found many Soldiers were quick to assume processes and TTPs from their previous OIF tours still applied. Soldiers who have previous OIF deployments have to become aware of the new legal basis and that the "old ways of doing operations" no longer apply.

RECOMMENDATION: Sustain. The finer points and implications of the new Security Agreement affect how the U.S. Army can conduct operations in Iraq. It is important to educate commanders and Soldiers on the significant changes occurring since the implementation of the new security agreement.[501]

ISSUE: Security Agreement training and "road show"

DISCUSSION: The BJA conducted a training "road show" with company commanders and above at each of the battalion headquarters concerning the impacts of the Security Agreement on operations. He developed a flow chart explaining the evidence needed to obtain warrants both for detention and for searches. The BCT commander had the chart blown up and placed in the tactical operations center (TOC). The BCT commander and S3 attended these training events, making it clear "this is how we are going to operate under the Security Agreement."

[499] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.
[500] *Id.*
[501] 3-1 CAV OIF AAR (1st Half), DEC 08 - JUL 09, *supra* note 62.

RECOMMENDATION: Sustain. The BCT commander's buy-in to the process gave the BJA legitimacy and set the tone for operations under the Security Agreement. This was especially helpful in keeping the battalions on track even though their Iraqi Army (IA) counterparts did not always abide by the warrant requirement for searches.[502]

ISSUE: Interpreting the "out of the cities" provision of the Security Agreement

DISCUSSION: In accordance with the U.S.-Iraq Security Agreement (SA), after 30 June 2009 U.S. forces could no longer operate in Iraqi cities without permission from the GoI. The MND-S Commanding General (CG), the 2/4 BCT commander, Basra city officials, and the Iraqi Army (IA) met to decide how they would jointly interpret the "out of the cities" provision for Basra. They determined U.S. forces would need a GoI escort (usually IA) to operate within the Basra city limits. However, nighttime resupply missions (as opposed to combat operations) would not require an escort.

RECOMMENDATION: Sustain. It is important to have a common understanding of what the SA requires.[503]

ISSUE: Understand the security agreement

DISCUSSION: It is imperative you understand the security agreement and can explain its application to other staff members.

RECOMMENDATION: Others will rely on you for this information. Be prepared.[504]

ISSUE: Training on Security Agreement (SA)

DISCUSSION: The BJA was the subject matter expert for the SA implementation. He gave classes to the SBCT leadership and brigade leadership and transition teams entering theater at the Counterinsurgency and Security Operations Center (COINSOC).

RECOMMENDATION: Sustain. It is critical for everyone to have a common understanding of the requirements of the SA and its effect on operations.[505]

ISSUE: Lack of guidance on the Security Agreement

DISCUSSION: The first time the JAs saw the SA was only after they arrived in Iraq. Their efforts to get detailed guidance and clarifications from higher went unanswered. The BCT commander and his staff held discussions with provincial Iraqi officials in advance of the SA's effective date of 1 January 2009. This paid tremendous dividends, since the Iraqi leadership was also unclear on the implementation of the SA at the local level. The JAs provided the commander with their interpretations of the SA.

RECOMMENDATION: Sustain. The late distribution of the SA was regrettable and made the implementations particularly challenging for all levels of command. It is commendable the

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[502] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 124.
[503] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.
[504] *Id.*
[505] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 129.

commander and local leaders collaborated on successfully implementing the SA at the local level.[506]

ISSUE: Lack of guidance on the Security Agreement (SA)

DISCUSSION: The SBCT lacked detailed understanding of the implications of the SA before its implementation on 1 January 2009. Detailed guidance often took an extended period of time to receive. On a positive note, the Iraqi local authorities and judges were keenly interested in the SA and developed their own interpretations of its provisions.

RECOMMENDATION: Improve. The late distribution of the SA made its implementation challenging for all levels. Units deploying to Iraq should liaise with deployed counterparts to understand the intricacies of how various entities apply and interpret the SA in their respective AOs.[507]

ISSUE: Anti-Americanism following pull out of urban areas under the SA

DISCUSSION: A great deal of anti-American sentiment accompanied the SA deadline of 30 June 2009 for the U.S. military to pull out of the urban areas. Some Iraqis regarded it as a "great victory" over the Americans. Adding to this was the Governor of Diyala publically stating any U.S. forces in urban areas without Iraqi escorts would be trespassing and violating of the SA. The SBCT's successor unit was not aware of this consequence until after they arrived in the AO, and they consequently had to adjust their tactics, techniques, and procedures (TTPs).

RECOMMENDATION: The advent of the SA and the corresponding pull out of urban areas has created a very different operating environment. Units and Soldiers should not rely on previous OIF deployment experiences for any upcoming deployments to Iraq since the SA has resulted in an operational environment having more restraints and constraints than before, especially in places like Diyala Province.[508]

ISSUE: Differing interpretations of SA

DISCUSSION: When the 30 June 2009 the deadline for U.S. forces to leave urban areas came into force, the local Iraqi authorities interpreted the SA's restrictions on urban area transits in a more far reaching manner than did U.S. forces (i.e., restrictions on road moves in or near urban areas). Some Iraqi units viewed the SA as completely denying any U.S. presence in urban areas, including those for any logistical purposes. In response, the brigade leadership took an operational pause to avoid creating any friction and to seek higher chain of command guidance as to what was permissible under the SA.

RECOMMENDATION: Sustain. In order to prevent any needless flare up of emotions, an operational pause is sometimes a preferred course of action.[509]

ISSUE: Lack of training before transitioning to the SA

DISCUSSION: The brigade deployed to Iraq just before implementation of the SA. The brigade

[506] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 13.
[507] 1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09, *supra* note 37.
[508] *Id.*
[509] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.

received little information regarding the transition from the unit it was replacing or higher headquarters. People knew it was coming, but were not giving out any information. They may not have even had any to give.

RECOMMENDATION: Improve. Greater information sharing would have increased the brigade legal team's ability to plan and prepare its commanders and Soldiers regarding the implementation of the SA.[510]

ISSUE: Defining "U.S. combat forces" after 30 June 2009

DISCUSSION: The SA called for U.S. combat forces to leave Iraq's cities on or about 30 June 2009. The agreement did not clearly define "U.S. combat forces."

RECOMMENDATION: Sustain. Not all ambiguity is bad. The inherent ambiguity in the language allowed for reasonable interpretations of the term.[511]

ISSUE: Lack of timely information concerning the Security Agreement

DISCUSSION: The contents of the U.S.-Iraq Security Agreement (SA) were not available until the implementation of the SA. This made it difficult to conform training and operations to changing standards.

RECOMMENDATION: Improve. Higher headquarters should disseminate bilateral agreements to military leaders in advance of implementation.[512]

ISSUE: Iraqi jurisdiction over U.S. Soldiers

DISCUSSION: The U.S.-Iraq Security Agreement (SA) provides for the country of Iraq to have criminal jurisdiction over Solders who commit serious crimes within Iraq while not on duty. As a practical matter, Soldiers in Iraq are always "on duty" while in the country. The BJA trained Soldiers on the limits of the SA. Soldiers were surprised to learn the country of Iraq could possibly have criminal jurisdiction over them.

RECOMMENDATION: Improve. This issue may become more important as the security situation in Iraq continues to stabilize, particularly if Soldiers have greater mobility and freedom within giving rise to the possibility of Soldiers committing crimes while not on duty. BJAs should continue to train Soldiers on the limitations and nuances of the SA.

ISSUE: Control of airspace under the U.S.-Iraq Security Agreement (SA)

DISCUSSION: The general rule under Article 9 of the SA was Iraq owned the airspace, but this article also authorized U.S. Government aircraft unimpeded overflight for the purposes of implementing the agreement. The BCT interpreted this to mean they could fly unmanned aerial vehicles (UAVs) without Iraqi permission. Their Iraqi counterparts agreed to this, since the UAV flights were not intrusive and kept insurgent activity down.

RECOMMENDATION: Sustain. Consult the SA whenever there are questions.[513]

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[510] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[511] *Id.*
[512] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 19.

ISSUE: Security Agreement training

DISCUSSION: The BJA and S3 created a series of vignettes for the BCT commander to brief to senior Iraqi commanders explaining the BCT's viewpoint of operations following the 30 June 2009 implementation of the "out of the cities" provision of the SA. The BCT commander had these PowerPoint briefings translated into Arabic. The scenarios included casualty evacuations, security support to major events, counterfire, logistics operations, and civil affairs (CA) operations. The vignettes first explained the actions the BCT would take in these scenarios. They then identified the potential friction points with Iraqi Security Forces (ISF), such as the need to move rapidly past ISF checkpoints. Finally, the training explained why such actions were not a violation of the SA and stressed the need for communication.

RECOMMENDATION: Sustain. Reaching a common understanding with their Iraqi partners gave the BCT room to operate. This training successfully allayed the concerns of the Iraqis as to what U.S. forces were doing (such as when a security element accompanied CA personnel to Iraqi shops to verify the proper use of micro-grants).[514]

ISSUE: Interpreting the Security Agreement's (SA) "out of the cities" provision for ODAs

DISCUSSION: Some Iraqis sought to remove ODA team houses from cities following the 30 June 2009 deadline for U.S. troops to leave the cities in accordance with the SA. The battalion legal advisor reviewed the SA and drafted a position paper for his commander. His commander used this paper to discuss the matter with MND-N. Eventually, the GoI intervened and allowed the ODAs to remain in the cities.

RECOMMENDATION: Sustain. Be prepared to deal with SA issues and respond accordingly. Be prepared to seek clarification of whether blanket terms applying to standard U.S. forces apply equally to ODAs. Collaborate with other SOTFs and when in doubt seek guidance and support from higher.[515]

ISSUE: Combined operations under the SA

DISCUSSION: Some of the ODAs' Iraqi partners thought the SA disallowed combined operations. The battalion legal advisor provided information papers to all AOB commanders with specific references to the SA provisions authorizing these operations.

RECOMMENDATION: Sustain. Be prepared to deal with SA issues and respond accordingly.[516]

ISSUE: Understand the security agreement (SA)

DISCUSSION: There was constant discussion amongst the BCT staff members about what the unit could and could not do under the SA. Furthermore, the Iraqis did not hesitate to report it if they thought the unit violated the SA.

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[513] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 134.
[514] *Id.*
[515] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 158.
[516] *Id.*

RECOMMENDATION: It is imperative JAs understand the SA and are your unit's subject matter expert on the SA. Your commander and his staff will rely on you for this information. Be prepared.[517]

ISSUE: Educating Iraqi Security Forces (ISF) on SA

DISCUSSION: Local ISF did not totally understand the SA. 30th HBCT, along with the military transition team (MiTT), engaged the ISF and attempted to educate them on the SA.

RECOMMENDATION: Sustain.[518]

ISSUE: Impact of Security Agreement (SA) on operations

DISCUSSION: From the Division's perspective, the SA completely changed the legal landscape of military operations from previous deployments in Iraq. It led to commanders having to change operations away from kinetic based ones to evidence-prosecution based operations. After the SA implementation of 1 January 2009, the goal of operations was to gather sufficient evidence for the conviction of insurgents in the Iraqi court systems. The SA was a forcing function that completely changed military operations emphasis pertaining to RoL activities. Commanders had fewer and fewer tools, so RoL because relatively more important.

RECOMMENDATION: A bilateral agreement, like the U.S.-Iraq SA, can drastically alter the nature of military operations. JAs in other theaters of operations should be prepared for similar effects if similar agreements occur.[519]

ISSUE: Clarification of vague Security Agreement provisions

DISCUSSION: With the implementation of the SA on 1 January 2009, there was significant concern over a number of vague provisions in the document. The language in the SA itself did not address all issues affecting military operations. Ultimately, the solutions for many of these questions arose from discussions, opinions, and the analysis of BCT/Division JAs in collaboration with their Iraqi partners. One example of this was the development of a definition for "joint operations." The establishment of these types of interpretations was a bottom-up effort, not a top-down driven one. Those U.S. units more closely partnered with Iraqi units tended to have the clearest and most reasonable views on the matters.

RECOMMENDATION: The development of answers to complex legal questions can sometimes be the product of cooperative efforts at lower legal levels as opposed to high-level, imposed positions.[520]

ISSUE: Leaving Security Agreement interpretation to the local level

DISCUSSION: After the SA came into effect, units were still waiting for Baghdad and higher U.S. headquarters to tell them what to do. The determination was, however, to let those at the local level figure it out.

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[517] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[518] *Id.*
[519] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[520] *Id.*

RECOMMENDATION: Improve. It would have been better to know up front that the plan was to leave interpretation to the local level. The uncertainty of not knowing who would decide created unnecessary stress.[521]

ISSUE: Acknowledging interpretation versus text of the Security Agreement

DISCUSSION: In the time leading up to the "out of the cities" deadline in June 2009, there was heavy reliance on local interpretation of the SA. Recognize it will be a consistent role for U.S. JAs to give their interpretations of foreign agreements and laws. However, once the cities deadline approached, the Iraqis began pointing much more to the actual text of the agreement and asserting their right to determine what the actual agreement said. This was frustrating for commanders, who wanted to rely on U.S. interpretation contained in various fragmentary orders (FRAGOs). The legal niceties of what the term "city" meant was not ultimately as important as what the Iraqis thought it meant.

RECOMMENDATION: Improve. It would have been better to let commanders know up front that FRAGOs were U.S. interpretations only and the Iraqis actually have the sovereign authority to determine for themselves what the SA text meant.[522]

ISSUE: Uncertainty about SA effects

DISCUSSION: With the short time between the announcement date and the implementation date of the SA, U.S. commanders and Iraqi counterparts had many questions about the consequences and application of the SA. There was also uncertainty over the overlapping nature of Iraqi law and the SA. The JAs interpreted these issues as best as they could in the absence of any precedents or judicial interpretations. Iraqi authorities also sought JA assistance in the application of their federal and provincial laws since federalism was new to Iraq.

RECOMMENDATION: Much of the Iraq legal regime is still in its infancy, so JAs have to help commanders and Iraqis in navigating the new legal landscape.[523]

ISSUE: Security Agreement (SA) training

DISCUSSION: In order to help Soldiers understand the important legal implications of the newly implemented SA, the BJA created a 25-minute video to highlight the key aspects for Soldiers. He emailed the video file to BDE units so they could view the training anywhere, including in the field where most of the troops were located for long periods.

RECOMMENDATION: Sustain. The use of PowerPoint presentations has its limits, so a novel approach like this to get the message out is helpful.[524]

ISSUE: Late notice of Security Agreement

DISCUSSION: Like other OIF units deployed in Iraq at the same time, 172d BDE had little warning about the details and implications of the new Iraq-U.S. SA. Much of the SA developed

[521] *Id.*
[522] *Id.*
[523] *Id.*
[524] 172d IN BDE, OIF AAR, NOV 08 - DEC 09, *supra* note 46.

in secrecy, as delicate bilateral negotiations were ongoing into late 2008. After its release, MND-S issued a very large and helpful FRAGO, but it was a challenge for brigades to implement the SA in a very short time period. Many looked to the JAs to help decipher and determine the application of the SA in daily BDE activities.

RECOMMENDATION: The late issuance of the SA led to extensive work and efforts to meet deadlines such as leaving urban areas. JAs have to be prepared to help commanders work through complex issues associated with bilateral agreements and related orders/FRAGOs.[525]

ISSUE: Interpreting the Security Agreement (SA)

DISCUSSION: The Corps level allowed the Division level to work out many of the specifics to fill the voids left by the vague language of the SA. The Division Commander and the Iraqi General commanding the Baghdad Operations Center (BOC) agreed on what U.S. forces would remain in Baghdad. However, there appeared to be some miscommunication on the Iraqi side. The BOC and the Ministry of Defense (MoD) did not agree. As a result, MNC-I issued warning orders (WARNOs) containing very strong language indicating what must go. This was unnecessary, as there was already an agreement in place. Conversely, the Division did not dictate to the brigades what they had to close, but reminded the brigades U.S. forces were eventually leaving. As whole brigades redeployed with no replacements, this was a forcing function to close bases.

RECOMMENDATION: Do not dictate requirements unless necessary. As long as subordinate commands understand the intent, they will accomplish it through their partnered units.[526]

ISSUE: Reaction to changes under the Security Agreement

DISCUSSION: Some units were very resistant to the changes. The outgoing unit, however, set the incoming unit up for success by issuing orders directing warrant-based targeting and the establishment of prosecution task forces (PTFs). They ordered units to stop detaining people based upon "speculative intelligence" and directed the establishment of relationships with Iraqi officials.

RECOMMENDATION: Placing these directives in an order was the ideal thing to do. It forced many units to adapt to the SA. Later on, the higher headquarters could shift from directing changes to serving as a facilitator.[527]

ISSUE: Defining the "out of the cities" requirement (SA Article 24)

DISCUSSION: This aspect of the SA took some weeks to work out. It was clear what many units thought it meant was not at all what the Iraqis thought it meant. The English version of the SA called for the withdrawal from Iraq cities, villages, and localities of all U.S. "combat" forces, whereas the Iraqi version supposedly provided for the withdrawal of all forces. This was a huge difference in that U.S. forces did not view the logistical tail units were not "combat" forces, but the Iraqis could not tell the difference anyway. As a result, upon implementation of the "out of the cities requirement" the unit deliberately began "reverse-cycle operations" moving during the hours of darkness. It was a self-imposed constraint to get through the transition period and was

[525] *Id.*
[526] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[527] *Id.*

extended several times because it was working well. Despite the freedom of movement authority, the unit created a daily movement plan to provide information to the Government of Iraq (GoI) as a coordinating effort so it could expect specific transit missions through the area. The information also served as a central database to provide a means of refuting alleged violations of this provision.

RECOMMENDATION: Understand the sensitivity of this provision. Be prepared to refute allegations U.S. forces are violating the provision.[528]

ISSUE: Educating Soldiers on the Security Agreement

DISCUSSION: Every brigade that came into the Division AO received a visit from Division attorneys. The attorneys talked to personnel about what detention operations were under the SA. They discussed the need for warrants and spent a lot of time with the battalion S-2s and the brigade attorneys.

RECOMMENDATION: Take the time to educate incoming units. Even if they are arriving from elsewhere in the country, there is no guarantee they previously operated under the same understandings.[529]

ISSUE: Unhelpful creative ambiguity in the Security Agreement

DISCUSSION: The MNC-I staff was still working out the practical application of the Security Agreement in the early days of I Corps' tour. The Security Agreement is very general. The expressed intent of those negotiating the SA was that the general language was intentional, allowing flexibility in application. However, commanders did not want flexibility; they wanted certainty. At the local level, Iraqis read the general language to be in their favor, and by US personnel in their favor. This created a perception of non-compliance with the SA, and could potentially have affected the long-term working relationship of US Forces with Iraqi officials. Without certainty, there was a continual risk of disagreement with the Iraqis over the effect of the Security Agreement. These disagreements were solved normally through command guidance to determine whether the Iraqis were making reasonable interpretations, and then to ensure that Iraqis were given the perception that U.S. Forces were in compliance with the SA. Irreverent critics said the SA was "like a ninth grade book report."

RECOMMENDATION: Improve. When drafting international agreements, do not automatically assume flexibility is always good. Imprecise drafting may cause disagreements about the meaning of the agreement. In turn, this can lead to lengthy and tiresome debates between both parties' command structures about the meaning of the agreement in the particular circumstances at hand.[530]

ISSUE: Translation of the Security Agreement

DISCUSSION: Some of the translation of the Security Agreement was not as precise as it should have been. For instance, the Arabic translation of the English word "depot" was an Arabic word meaning "storage facility." They are not the same thing. The Iraqis consequently became unhappy with the locations of ammunition storage facilities because they thought them covered

[528] *Id.*
[529] *Id.*
[530] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 66.

by the Security Agreement. However, it had never been the U.S. intention to address ammunition storage facilities in the Security Agreement. Another example was the coordination of resupply convoys. U.S. combat patrols were undoubtedly required to have an Iraqi escort. However, the position with regard to resupply convoys was unclear. The Iraqis thought these also required escorts. Disagreements like this were very common. Given the situation, it does not matter what the Americans think about the Security Agreement, but it matters quite a lot what the Iraqis think.

RECOMMENDATION: Improve. Precision in translation is very important in drafting an international agreement. Ensure you use the best translator you can find.[531]

ISSUE: Procedure for handling alleged breaches of the Security Agreement

DISCUSSION: There was no procedure for dealing with alleged breaches of the Security Agreement. This was further complicated by Iraqi partners' authority at all levels, from platoon commander to ministerial the level, to make complaints about alleged Security Agreement breaches. The majority of complaints were about an alleged failure to coordinate in accordance with the Security Agreement.

RECOMMENDATION: MNC-I issued a fragmentary order (FRAGO) setting out the process for dealing with complaints about alleged breaches of the Security Agreement. This was called "Alleged Security Agreement Violations" (ASAV – by acronym or 'a-sav' phonetically). The thrust of the FRAGO was to deal with complaints at the lowest practical level. The MNC-I OpLaw section dealt with complaints at the Corps level just as if they were Congressional inquiries. Modern technological aides, particularly Blue Force tracker, were invaluable in investigating complaints. MNC-I prepared a memorandum setting out the facts as the investigation had established them and handed over the memorandum to the Iraqis at a meeting. The Iraqis seemed to be happy with this process. In all, MNC-I staffed approximately 60 complaints in this way. The paralegals made a database of the ASAVs to maintain a record of the complaints. In retrospect, it would have been better if DoS could have owned the process for complaints.[532]

ISSUE: Ensure understanding of and compliance with international agreements

DISCUSSION: We have seen the difficulties in ensuring a shared understanding between Americans and Iraqis as to the terms of the Security Agreement. Do not assume, however, all Americans will automatically share an understanding of international agreements. In one case, a Brigade Judge Advocate (BJA) decided the Security Agreement had no effect in law. His reason for this novel assessment was that the Senate had not ratified the Security Agreement. Consequently, he proposed to run his brigade's area of operations under the legal framework of the old "Provincial Iraqi Control" provisions.

RECOMMENDATION: Do not assume, because something appears obvious, that all will share the same assessment. Communicate with, educate, and direct your people about international agreements.[533]

ISSUE: Who decides when a dispute over the meaning of an international agreement has been resolved, and who records and communicates the resolution?

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[531] *Id.*
[532] *Id..*
[533] *Id.*

DISCUSSION: There was frequent debate, and disagreement, about the meaning of the Security Agreement. It was never clear whether an issue was a settled one. There was no arbitration and resolution mechanism in the Security Agreement. Furthermore, the mechanism for communicating settled precedents to concerned parties was unclear.

RECOMMENDATION: When drafting an international agreement, consider including a mechanism for the resolution of disputes. Furthermore, think about how you will disseminate guidance and precedents. MNC-I's view was to use a FRAGO, but this may not suit all circumstances.[534]

I.O. Rule of Law (RoL)/Judicial Reform

I.O.1. Iraq/Operation Iraqi Freedom (OIF)

Focus & Scope of the Rule of Law Mission in Iraq

ISSUE: RoL strategy

DISCUSSION: There was no clear RoL strategy from higher headquarters.

RECOMMENDATION: Improve. Higher headquarters should provide an overall RoL strategy with benchmarks so BCTs can focus their RoL plans accordingly.[535]

ISSUE: RoL assessments

DISCUSSION: The BJA had to start his RoL plan from scratch due to a lack of prior assessments.

RECOMMENDATION: Improve. It is not possible to come up with a workable RoL plan without a good handover of assessment tools from the previous unit. [536]

ISSUE: Command emphasis

DISCUSSION: The Multi-National Force – Iraq (MNF-I) commander stated if he had only one dollar to spend on Iraq, he would spend it on RoL.

RECOMMENDATION: Sustain. Command emphasis is vital to the success of the RoL mission.[537]

ISSUE: Lack of a central focus in the RoL mission

DISCUSSION: It is quite difficult to execute a mission that has no apparent focus. Brigades have an enormous amount of latitude (and funding) to execute the RoL mission but lack direction,

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[534] *Id.*
[535] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.
[536] *Id.*
[537] *Id.*

metrics, or parameters to define success. This discretion led to disagreements with embedded Provincial Reconstruction Teams (ePRTs) over RoL end states.

RECOMMENDATION: Improve.[538]

ISSUE: There is more to RoL than money

DISCUSSION: Commander's Emergency Response Program (CERP) money is plentiful and easily spent. However, it is unrealistic to believe you can "CERP" rule of law into existence. This mission takes a multilayered and focused initiative to succeed.

RECOMMENDATION: Judges and local nationals may want you to buy them things and not utilize their own procurement system. Although purchasing equipment (laptops, furniture), supplies (e.g., paper), and building courthouses produces tangible data on a commander's report, there are many other ways you can effect positive change in the rule of law mission. This brigade's experiences indicated that using CERP funding to purchase items for RoL just bred dependencies from the local judiciary who then stopped using their own procedures to acquire even basic office supplies.[539]

ISSUE: Division of RoL responsibilities

DISCUSSION: The BJA and the Provincial Reconstruction Team (PRT) agreed to divide the responsibilities for RoL. The PRT focused on engaging judicial officials, with whom they had a preexisting relationship. The BJA focused on the prisons and IP. The BJA and PRT met regularly to discuss their provincial-level joint common plan.

RECOMMENDATION: Work with the PRT and other agencies to find the right division of RoL responsibilities for your AO. PRT personnel should attend the TJAGLCS Rule of Law Course so we can co-op them into doing things our way.[540]

ISSUE: Integration with embedded Provincial Reconstruction Teams (ePRTs)

DISCUSSION: Early and frequent integration with ePRTs is crucial to the success of the RoL mission. Relationship building remains a vital component of this mission.

RECOMMENDATION: Sustain.[541]

ISSUE: Rule of Law (RoL) operations

DISCUSSION: The JAs worked collaboratively with the Provincial Reconstruction Team (PRT) Department of Justice (DoJ) attorney responsible for RoL activities in Salah ad Din Province. Together, they achieved positive results and RoL progress. The JAs provided active support to the PRT RoL efforts such as co-hosting a two day judicial conference for fifty Iraqi judges in March 2009. A benefit of the conference for the JAs was the building of personal relationships and trust with the Iraqi jurists. Most importantly, the judges built relationships among each other, as well as with the provincial director of police and several of his investigators who also attended

[538] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 13.
[539] *Id.*
[540] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.
[541] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 129.

the conference. Building these relationships was crucial to the success of Salah ad Din's justice system.

RECOMMENDATION: Sustain. RoL efforts can take many forms. Having a solid, motivated PRT RoL Coordinator significantly helped contribute to the nation-building process in Salah ad Din Province.[542]

ISSUE: Introducing new evidence collection techniques to the Iraqi justice system

DISCUSSION: It is critical to remember the expertise in Iraqi law and its judicial system resides with Iraqis judges and attorneys. The JAs and PRT RoL Coordinator recognized this and worked with the Iraqi justice system stakeholders to facilitate the functioning of their courts. One means used to help Iraqi judges and the Iraqi Police (IP) understand coalition forces' evidence collection capabilities was to open the Joint Expeditionary Forensics Facility (JEFF) lab to them so they could understand and use the JEFF's forensics capabilities in the Iraqi court system. Iraqi judges' tours of the JEFF lab enabled them to understand this dynamic evidential capability. The Chief Judge of Iraq granted permission to the Salah ad Din provincial chief judge to admit evidence from the JEFF lab into the Salah ad Din courts. This required a trained Iraqi investigator to work at the JEFF lab to certify evidence. However, this requirement contributed to the advancement of rule of law since three investigators received training and many others gained a basic knowledge of the lab.

RECOMMENDATION: Sustain. Examples like the one cited above are one of many means by which RoL efforts can contribute to advances in evidential law and proceedings.[543]

ISSUE: Relationship building with Iraqi government leaders

DISCUSSION: Building relations with the Iraqis authorities was instrumental to helping them take full ownership and responsibility for stability and security. The BCT and its JAs regularly hosted Iraqi counterparts at COB Speicher, such that it became almost a daily occurrence to receive them for formal and informal visits. So frequent were the visits that one of the paralegals became adept at brewing Iraqi chai tea.

RECOMMENDATION: Sustain. The time and efforts that go into relationship building are often instrumental to the success of nation building and RoL measures.[544]

ISSUE: Lack of formal RoL program

DISCUSSION: There was no formal military RoL program for Iraq during the brigade's deployment. It appeared the Law and Order Task Force (LAOTF) handled the Iraqi judges and the PRT handled the overall rule of law. The BJA had to create his own program to meet the operational needs of the brigade.

RECOMMENDATION: Improve. There should be an overarching RoL program for Iraq.[545]

ISSUE: Need for third JA at the brigade level to conduct RoL

[542] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 13.
[543] *Id.*
[544] *Id.*
[545] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.

DISCUSSION: Without the mobilized reservist, the brigade legal team would not have had a RoL program.

RECOMMENDATION: Sustain. BCTs need at least three JAs in a deployed environment.[546]

ISSUE: Lack of a RoL advisor in the ePRT

DISCUSSION: There was no civilian RoL advisor in the Embedded Provisional Reconstruction Team (ePRT). It is hard to be serious about an effort if the supposed lead in that effort is an unfilled position.

RECOMMENDATION: Improve. If an effort is truly important, it should warrant appropriate staffing.[547]

ISSUE: Unrealistic information requirements from higher headquarters

DISCUSSION: MNC-I constantly requested the brigade to provide unrealistic reporting and duplicative requirements. For example, it would request the brigade to provide information on all courthouses within its AO.

RECOMMENDATION: Improve. Due to security concerns, Iraqi judges did not like a heavy troop presence at their courthouses. Higher headquarters should realize this and not task brigades to conduct assessments requiring large troop concentrations.[548]

ISSUE: Brigade-organized RoL conference

DISCUSSION: The BJA organized a RoL conference at JSS Loyalty. The BJA made recommendations as to curriculum for the conference, but left it up to his Iraqi counterparts to decide on the content. Investigative Judges (IJs) from the Rusafa Area Command (RAC) ran the conference and explained the importance of the rule of law to their counterparts in the Iraqi Army (IA), Iraqi Police (IP), and other interested parties in attendance.

RECOMMENDATION: Sustain. All RoL efforts such as this should be organized and run by the appropriate Iraqi authorities. Doing so increases the legitimacy of the Government of Iraq (GoI).[549]

ISSUE: ROL metrics

DISCUSSION: Stick with quantifiable metrics – not qualitative. Poorly conceived metrics drive requests for information (RFIs) that do not give meaningful insight into the conditions in the AO.

RECOMMENDATION: Improve. Metrics should be quantifiable.[550]

ISSUE: Identifying the RoL players

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[546] *Id.*
[547] *Id.*
[548] *Id.*
[549] *Id.*
[550] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.

DISCUSSION: JAs need to assess quickly with which the players they need to work. This includes commanders, PMO personnel, S2, Iraqi Police, investigators, judges, and personnel outside of Army control, such as Provincial Police Transition Teams (PPTTs), International Police Advisors (IPAs), and LEPs, as well as those working with PRTs and the Department of State.

RECOMMENDATION: Improve. There is great focus on getting to know the judges. BJAs should place similar emphasis on getting to know those involved with Iraqi investigations, as well as others involved in RoL operations. The critical node in the Iraqi criminal justice system is the investigating officer or "IO" (detective), who conducts the investigation under the "supervision" of the Iraqi investigative judge (IJ). Developing training for these police officers was a critical line of effort for the brigade's maneuver commanders to improve rule of law. Until the quality of IOs and their investigations improve markedly, there is little hope of seeing insurgents convicted in Iraqi criminal felony court.

The BDE's land-owning battalion commanders, the BDE S2, and BJA worked closely with the PPTT to host a number of forums to offer training on basic investigative and forensic techniques to IO's within the province throughout the deployment. The Division Office of the Staff Judge Advocate (OSJA) and PRTs need to place more emphasis on creating regional or national training opportunities for Iraqis involved in all aspects of the criminal justice system; however, the critical area of focus should be increasing the police professionalism of the IOs. On-the-job training is more value-added than classroom instruction and that is the role of the IPAs.[551]

ISSUE: Command support to RoL

DISCUSSION: The BCT commander viewed RoL as an essential part of the security line of operation (LOO). He was willing to spend the required funds.

RECOMMENDATION: Sustain. Command support to the RoL mission is essential. With such support comes prioritization of funding and BCT assets.[552]

ISSUE: Division/Corps support to RoL conferences

DISCUSSION: RoL conferences bringing together JAs, PRTs, and their Iraqi judicial counterparts are high impact and low cost events. These conferences should involve a meal and training, as these help set the conditions for building the relationships necessary to support RoL operations.

RECOMMENDATION: Improve. These events can occur efficiently at the regional and national level. In conjunction with the U.S. Embassy, the division level and higher can most effectively fund and manage them.[553]

ISSUE: Shift in focus for RoL engagements

DISCUSSION: When 3rd Infantry Division replaced 25th Infantry Division as MND-N, the

[551] *Id.*
[552] *Id.*
[553] *Id.*

division OSJA encouraged BJAs to focus on engaging their IA counterparts and let the Provincial Reconstruction Teams (PRTs) focus on engaging Iraqi judges.

RECOMMENDATION: Sustain/Improve. Iraqi judges are more comfortable talking to attorneys who are in civilian clothes. However, if JAs are to focus on IA legal advisors, they need guidance in developing an agenda for these engagements.[554]

ISSUE: Use of Commander's Emergency Response Program (CERP) in RoL

DISCUSSION: The use of CERP funds was critical to advances in RoL operations. With virtually no ability to influence funding decisions at the highly centralized Iraqi Higher Judicial Council (HJC), CERP was the main tool for building RoL infrastructure at the provincial and local levels.

RECOMMENDATION: RoL personnel need to forecast the amount of CERP they will need for RoL projects early in conjunction with the effects coordinator and G8.[555]

ISSUE: Selection of the Division RoL chief

DISCUSSION: The RoL attorney for the brigades is often the brigade judge advocate (BJA), who is likely to be a major. Having a captain (CPT) as the Division RoL chief can be problematic, especially when it comes to requesting information from and tasking the brigades. BJAs did not respond well to a CPT trying to get information. Moreover, RoL at the Division level is a very briefing-intensive area, for which JA CPTs may not be well suited. The Division OSJA experienced considerable improvement in this regard when it assigned an O-5 JA as the RoL chief.

RECOMMENDATION: The Division RoL chief should be at least a major with significant briefing experience, as well as proficiency in PowerPoint.[556]

ISSUE: Division RoL staffing

DISCUSSION: Upon arrival in Basra, the Division implemented a significantly more active RoL program than the previous unit (which had moved to Basra in the final month of its deployment). The development of RoL into the Division's main effort required adjustments in staffing. For the first part of the deployment, one JA and one G9/civil affairs (CA) CPT attempted to handle all the RoL requirements (reporting to higher headquarters, civil-military operations (CMO) briefings, battlefield circulation, meetings, etc.). A noncommissioned officer (NCO) assisted on a part-time basis. The OSJA eventually added two O-5 JAs and a dedicated NCO.

RECOMMENDATION: Division RoL staffing depends on the level of command emphasis on the RoL mission. In operations with intensive stability and civil capacity building efforts, the Division RoL section should have a minimum of two to three JAs and one to two G9 officers. In addition, the RoL section should have at least one full-time NCO to allow the attorneys to

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[554] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 19.
[555] 34th Infantry Division, Minnesota Army National Guard, Staff Judge Advocate OIF After Action Report, 23 February 2010, Deployed April 2009 – February 2010, Multi-National Division – South, Basra, Iraq (hereinafter "34ID, OIF AAR, APR 09 - FEB 10"; on file at CLAMO).
[556] *Id.*

concentrate on the legal work and to push/pull information while the JAs are conducting battlefield circulation.[557]

ISSUE: Preparation for RoL operations before deployment

DISCUSSION: The unit was in contact with its predecessor unit in country. They talked with the deployed unit throughout its deployment. They were on the deployed unit's email distribution list.

RECOMMENDATION: Make early contact with the unit you are replacing. You must get access to their knowledge portals, both classified and unclassified. Understanding the applicable FRAGOs and overarching parameters for RoL was essential. You cannot overstate the importance of having access to this type of information before you deploy. The outgoing unit should send a weekly situation report (SITREP) to the incoming unit. It is sometimes best to hang the information on an accessible portal and send the link, rather than filling up the recipient's inbox. All of these things help prevent the re-invention of the wheel once you get on the ground.[558]

ISSUE: Utility of the RoL Course at the JAG School

DISCUSSION: The three attorneys at the Division who most directly dealt with RoL matters all attended the initial RoL short course in June 2008. The course at that time seemed focused well above the operational or tactical level. It did not provide the students with a sufficient appreciation of the need for interagency relationships or even knowledge of who all of the players are in the RoL realm.

RECOMMENDATION: If people could get a look at all of the different agencies involved in RoL, it provides a better understanding of how to leverage those assets. It allows you to advise the command better by giving them options as to whom else may be more easily able to provide the command's desired effect.[559]

ISSUE: Need for Soldier skills training for RoL participants

DISCUSSION: People who work in the RoL area are outside the wire a great deal. Ensuring they have the Soldier skills necessary in that environment is very important.

RECOMMENDATION: More preparation for conducting tactical operations off the operating base, such as marksmanship, combat lifesaver, and convoy operations would put people at greater ease. It would allow them to serve as an asset, rather than simply being along for the ride. It really is a matter of force protection and safety.[560]

ISSUE: Judge advocate role in RoL

DISCUSSION: Iraqi judges responded better to fellow attorneys than they did to commanders. There are still questions as to who is in charge in the RoL arena. However, it is a certainty there is a window of opportunity for JAs to make positive gains with the judiciary proper. For

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[557] *Id.*
[558] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[559] *Id.*
[560] *Id.*

example, the Iraqi Chief Judge's approval for local judges to use forensic evidence came about as the result of coordination through judge advocate channels. The same was true of the implementation of an Iraq-wide judicial security plan.

RECOMMENDATION: Understand the JAG Corps does not own the whole of rule of law, but judge advocates are uniquely suited to engaging certain aspects of it. One of the most obvious aspects is that of reconstitution/reconstruction of the judiciary. This is due both to the judiciary's ease in speaking to other lawyers and the technical chain's ability to engage directly the higher-level host nation judiciary.[561]

ISSUE: Pre-deployment RoL strategy

DISCUSSION: The Division RoL JA recommended that deploying BCTs and Division develop a strategy for RoL before leaving on a deployment. The strategy has to consider strengths, weaknesses, assets, objectives and RoL landscape.

RECOMMENDATION: Sustain. Having a roadmap of goals, objectives, activities, and capabilities will enable RoL JAs to hit the ground at a faster and more competent pace.[562]

ISSUE: Relations with PRT for RoL

DISCUSSION: Division JAs often need the assistance of the PRT for accomplishing RoL activities.

RECOMMENDATION: Sustain. It is critical to ensure establishment of good relationships.[563]

ISSUE: Lead for the RoL effort

DISCUSSION: The unit often faced issues concerning who should be in charge of the RoL effort. A great number of different people and sections touch different aspects of RoL. You have to know who has the responsibility for compiling and reporting RoL metrics so you have a coherent structure through which to think, gather, analyze, plan, and execute RoL missions in the operational environment. Command and G3/G5 elements need to understand the importance of the RoL in a mature counterinsurgency (COIN) environment and understand reporting channels to effectively gather, report, analyze, plan, and execute RoL missions. Failure to adequately establish RoL staff structures and reporting channels before deployment may lead to disjointed efforts that fail to accurately identify trends and events.

RECOMMENDATION: Fusion of RoL efforts has to occur at a central point. Recommend G3/G5 involvement as the point of collection/analysis to ensure appropriate command attention and tasking ability. Having the G3/G5 involved makes success in RoL more likely. They are the people who determine the allocation of resources. For the lower level headquarters, if the taskings do not flow through operations channels, it does not get the command's emphasis.[564]

ISSUE: Commander involvement as RoL moves to the forefront of operations

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[561] *Id.*
[562] *Id.*
[563] *Id.*
[564] *Id.*

DISCUSSION: Continued growing emphasis on RoL has placed the attention of commanders on legal areas in which they previously had little interest. Many do not yet understand how their legal sections can assist in this area. Consequently, they may often raise concerns within the operational chain without seeking, or even considering, the availability of advice from their legal advisors. This can result in many "the sky is falling" kinds of reactions occurring without the knowledge of the BJA or SJA.

RECOMMENDATION: Encourage commanders to seek the counsel of their own legal advisors when concerned about host nation legal issues. Often, their own legal advisors can allay these concerns or demonstrate why they should not be concerns at all.[565]

ISSUE: Success of RoL depends on command emphasis

DISCUSSION: There is a correlation between the success of RoL and the amount of support given by commanders. Civil affairs units and JAs do not have the ability to allocate Division or BCT resources towards RoL operations. Ultimately, Division and BCT commanders are the only ones that can order personnel, materials, and certain funding for RoL projects and activities. Therefore, commander buy-in is critical to RoL progress. For example, prior to the SA, one BCT commander did not visit a judge, warden, or police chief in 15 months while the JAs conducted frequent engagements. Commanders ought to give RoL the same level of dedicated effort as do RoL operatives.

RECOMMENDATION: RoL efforts are more effective when commanders are committed to its plans, objectives, and effects.[566]

ISSUE: RoL effectiveness and command backing

DISCUSSION: In Iraq, the Department of State (DoS) has personnel and contractors actively working to advance RoL. However, they tend to be limited in numbers and lack capacity to move RoL endeavors forcefully. Similarly, JAs have the proper skill set for RoL, but they do not possess vehicles or forces (needed for securing judges, for example). In short, RoL is too important to allow it to reside in a legal technical channel alone. RoL is more effective when commanders champion it and conduct RoL as G3-led operation. Lawyers may well be the single most important role players, but RoL needs to be an operational effort synchronized by the command.

RECOMMENDATION: It is best to fix responsibility for RoL as an operation under the direction of the G3 and commanders.[567]

ISSUE: Funding RoL activities

DISCUSSION: One of the RoL activities undertaken during the deployment was a conference for Iraqi judges in the AO. Many of these judges did not even know each other within the same province. Convening a conference for them took several months of planning. More importantly, trying to find funding for the conference was a challenge. After a great deal of phone calls and request, the Division RoL JA was able to find funding sources. Military funds do not exist for

[565] *Id.*
[566] *Id.*
[567] *Id.*

this. Getting funding for such RoL activities is not patently simple or obvious. The unit ended up using Department of State funds.

RECOMMENDATION: Improve. JAs should not have to devote inordinate amounts of time to searching for RoL funding sources. Knowing where the funds are and how to access them are critical. The RoL course should further address funding sources available.[568]

ISSUE: RoL at different echelons

DISCUSSION: RoL differs greatly by echelon. The highest command is operating at the diplomatic level, essentially. A battalion, on the other hand, operates on the day-to-day schedule of police chiefs, judges, and wardens. Each echelon works RoL, but the lower echelon faces a different time constraint. Consequently, JAs at the lowest levels often devised solutions to problems created by the necessarily vague language in the SA.

RECOMMENDATION: Lower level units are most effective when empowered to resolve issues. Fortunately, MNC-I afforded great latitude for RoL purposes.[569]

ISSUE: Interaction between the brigade and the Division in RoL efforts

DISCUSSION: Some BCTs were not very interested at all in RoL. Pushback from these BCTs on Division or higher RoL requirements was common. In instances where informal Requests for Information/Requests for Assistance (RFI/RFAs) were ineffective, BCTs had to be reminded of the requirements under published OPORDS and FRAGOs. For others, simply sending emails to lower level RoL attorneys about the requirements worked fairly well.

RECOMMENDATION: Ensure all RoL collections, reporting, and operational requirements are included in the published OPORD or FRAGO. This ensures access to information and operations should informal requests be denied. JAs must understand how to draft and publish FRAGOs. This is how units relay requirements. Sometimes, in the absence of a FRAGO, a subordinate unit may be unable to muster the will or resources to comply with the requirements. G3 or S3 personnel can assist legal personnel in learning to draft FRAGOs.[570]

ISSUE: Importance of reporting RoL issues up the chain of command

DISCUSSION: BCTs often provide RoL information up the chain of command and never hear anything in return about RoL reports. One frequently reported item from BCTs was the security concerns for and threats against Iraqi judges. Those reports did make their way up the chain of command, and MNC-I ordered through operational channels the implementation of security measures for judges and courts.

RECOMMENDATION: Sustain. Despite the demand for information from higher levels, BCT and RoL JAs can make commanders aware of key issues in their particular AOs.[571]

ISSUE: Importance of relationship building in RoL efforts

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[568] *Id.*
[569] *Id.*
[570] *Id.*
[571] *Id.*

DISCUSSION: It is critically important to build good relationships with RoL counterparts in that area of operations (AO). Division JAs were often reliant on PRT RoL personnel and their assets for transport, information, advice, and a host of other matters.

RECOMMENDATION: Meet all RoL actors within the AO that the RoL JA will interact with at some point. Relationships built through frequent and sustained communication will allow the RoL JA to leverage the assets and knowledge these individuals have to help in moving people in a common direction.[572]

ISSUE: BCT JA RoL efforts

DISCUSSION: From the Division perspective, RoL success was largely the result of the exceptional efforts of BCT JAs. Most of RoL happens at the brigade level. These JAs engage directly in RoL tasks with Iraqi counterparts and are often in the lead of U.S. efforts to rebuild Iraq. However, the Division SJA also made an impact by getting personally involved in the BCT's RoL programs by visiting judges and other authorities in the AO. The senior rank demonstrated to the Iraqis the serious interest and commitment of the JAs to RoL efforts.

RECOMMENDATION: Sustain. Although typically swamped with a variety of legal issues and demands, BCT JAs are pivotal to the RoL efforts. Be cognizant, though, that RoL is not the only iron they have in the fire. Senior SJA involvement can also develop important equities with Iraqi judges, and his direct involvement reinforced the commitment the Commanding General (CG) had made to the RoL effort.[573]

ISSUE: Diminishing influence in RoL

DISCUSSION: Following the withdrawal of U.S. forces out of the cities, the U.S. forces started to lose influence with the Iraqis. The understandable Iraqi view was a wish to move on. The sight of a U.S. Army Mine-Resistant Ambush-Protected (MRAP) vehicle outside an Iraqi Court, for instance, began to look wrong. Increasingly, the focus of RoL missions fell upon the PRTs, who continued to work closely with the Iraqis.

RECOMMENDATION: Continue to ask whether your contribution adds value in the light of the developing situation.[574]

ISSUE: Working on RoL with the Department of State

DISCUSSION: Good relations with DoS on RoL are important, as there can be tensions. Soldiers tend to be strongly oriented towards achieving quick results, while DoS officers may take a much longer-term view. One example of the typical types of friction that will arise was when the Iraqis wished to adopt a judicial computer system used by their neighboring judges in Jordan. The proposal seemed like a quick win to the military, The system was tried and tested, but DoS personnel were resistant to the concept for reasons the military could not understand (ironically, the DoS in Jordan sponsored the Jordanian computer system).

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[572] *Id.*
[573] *Id.*
[574] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 66.

RECOMMENDATION: Understand DoS leads on RoL, but it needs military support. Expect to have cultural differences with DoS but work to minimize any potential frictions with open, frequent, and honest communication.[575]

ISSUE: Reporting on RoL

DISCUSSION: The PRTs did some great work in RoL but often this message was unheard because some reported solely up DoS channels.

RECOMMENDATION: PRTs should communicate progress to all interested parties. Full communication will enable coordination of RoL efforts.[576]

ISSUE: The need for a "cradle to grave" approach in RoL

DISCUSSION: The advent of warrant based targeting under the Security Agreement caused great interest in the process of getting warrants. This was good, as far as it went, but getting a warrant against an individual did not mean anyone would face conviction, let alone jail time. Indeed the authorities might arrest targeted individuals on a warrant only for the target to disappear into the Iraqi system with no-one knowing whether the court system convicted the target or simply released him.

RECOMMENDATION: RoL practitioners must aim to help the entire criminal justice system. It does no good to focus exclusively on one part of the process; the whole must work if it is to be effective. This requires a metric for tracking cases from the cradle to the grave.[577]

ISSUE: Iraq has no national register of warrants

DISCUSSION: There is no national register of warrants in Iraq. There is no system for filing warrants, and the judge who issues the warrant will not keep a copy of it. Arrest warrants are valid nationwide and they never expire. There is a malign tendency to use warrants as a tool of control and power. For instance, an influential Iraqi might cause the issue (but not the execution) of a warrant against a potential rival. One could then keep this warrant in reserve, against some undetermined future day when it might be beneficial to have the rival arrested. Naturally, this is highly corrosive of the RoL. Members of the Sons of Iraq, concerned at becoming targets for being Sunni, would ask U.S. forces whether there were any arrest warrants outstanding against them, but the lack of a register made the question impossible to answer.

RECOMMENDATION: Be aware, the lack of a national warrant register allows abuse of warrants.[578]

ISSUE: Metrics in RoL are subjective

DISCUSSION: It is difficult to measure RoL. In 2004-2005 quantifiable metrics (number of courthouses, computers, judges, etc.) were popular. However, these things do not necessarily equate to good standards in RoL. Nowadays, RoL metrics tend to focus on perceptions, but it is difficult to gauge what Iraqis think about the RoL

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[575] *Id.*
[576] *Id.*
[577] *Id.*
[578] *Id.*

RECOMMENDATION: Metrics in RoL are highly subjective.[579]

ISSUE: Setting the example in Rule of Law

DISCUSSION: The adage "actions speak louder than words" is valid in the RoL context. When the Iraqi law suited the interests of U.S. forces, we would steadfastly follow it. Too often, though, when the law was problematic, we would seek ways to work around it. The Iraqis notice such departures.

RECOMMENDATION: You cannot convince people to act in accordance with the law, even when it is in their personal best interests, if you do not know the standard and are unwilling to adhere to that standard.[580]

ISSUE: Educate your own commanders about why prosecutions fail

DISCUSSION: Commanders tend to view any failure to convict as evidence of judicial corruption. However, this is not invariably the reason for a failure to convict. The real reason may be as simple as a lack of admissible evidence. Alternatively, cases might be resolved through conciliation and payment of compensation, procedures consistent with Iraqi law.

RECOMMENDATION: Educate your commanders as to why prosecutions are failing. Do not allow them to make unsubstantiated assumptions. If prosecutions are failing through a lack of evidence, we may need to ensure admissible evidence is getting to trial. Putting the blame on unsubstantiated allegations of corruption is corrosive of trust and unhelpful.[581]

ISSUE: Educate JAs in the local law

DISCUSSION: JAs need to understand the legal system in which they are working. Too often JAs make assumptions based on their own knowledge and training from the U.S., without understanding the local legal culture and history. Furthermore, the implementation of the Security Agreement brought with it a requirement for Soldiers at all levels to know Iraqi law. For instance, post Security Agreement, when U.S. Soldiers stop an armed Iraqi, they have to know the Iraqi weapons law. There is no longer any other basis on which to assess the situation. Naturally, once this became obvious, commanders asked the JAs to brief them on the local law. The MNC-I RoL section assessed that 60-70% of questions from BCTs were about Iraqi law.

RECOMMENDATION: As one Iraqi judge put it, "If you are going to tell me how to improve our law, at least do me the favor of having read it." You cannot operate as a deployed attorney without knowing the key provisions of the local law. JAs should receive training in the local legal system before they deploy. A two or three day course would be ideal.[582]

ISSUE: The importance of local attorneys

DISCUSSION: Some Divisions had local Iraqi attorney/linguists, although Corps did not.

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[579] *Id.*
[580] *Id.*
[581] *Id.*
[582] *Id.*

RECOMMENDATION: A reliable local attorney—particularly someone with good local contacts (current personal contacts are very important in Iraqi society)—would have greatly assisted in coming to grips with the legal environment.[583]

ISSUE: Incorporating RoL into the staff process

DISCUSSION: Doctrine does not clearly define RoL. This generates uncertainty as to the correct staffing process for RoL, especially as the Department of State (DoS) is the lead for RoL. The MNC-I OSJA view was that, within the headquarters, the civil-military integration branch (J9) should lead on RoL; however, it was clear from the outset that the OSJA had to take the lead based upon the guidance from the command, despite the fact that they OSJA was not staffed to fully support a RoL mission.

RECOMMENDATION: Army doctrine should define RoL and assign it to a specific staff branch. While there are some doctrinal references to RoL belonging to Civil Affairs and thus the G9, TJAGLCS has published the only military reference on the subject and commanders look to their Judge Advocate for RoL support.[584]

ISSUE: Regional variation in RoL

DISCUSSION: From Corps level, the RoL section noticed there was variation between the Divisions as to how they conducted their RoL missions. For instance, one Division delegated RoL missions to embedded officers in Provincial Reconstruction Teams (PRTs), while another Division kept ownership of a very active, command-led, approach to RoL. At first glance, these variations appeared to be due to a lack of coordination. However, closer inspection revealed the difference was attributable to local variations in the RoL situation throughout Iraq. Different places have different priorities.

RECOMMENDATION: Be aware priorities in RoL may vary from place to place, but ensure all are driving toward the same goal rather than diverging.[585]

ISSUE: The role of a Corps headquarters in RoL

DISCUSSION: Brigade Combat Teams (BCTs) and PRTs execute the majority of RoL missions. They do this because they own ground and they have direct contacts with the Iraqis. However, BCTs and PRTs will lack awareness of the wider RoL picture due to their focus "down and in" on their area of operations. Corps and Division headquarters add value by communicating and coordinating RoL efforts. Corps had few opportunities for direct communication with the Iraqi justice system at the tactical level, but it did have meetings with the Iraqi Chief Justice, Medhat al-Mahmoud, which was valuable in gaining a strategic overview of RoL and a sense for Iraqi judicial philosophy at the highest level. The Chief Justice was interested in Iraq-wide solutions to RoL problems rather than disparate regional fixes.

RECOMMENDATION: A Corps headquarters should focus its RoL efforts on coordinating the RoL efforts of subordinate headquarters and engaging with the senior judiciary.[586]

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[583] *Id.*
[584] *Id.*
[585] *Id.*
[586] *Id.*

ISSUE: RoL focus on police, courts system, and corrections is too narrow

DISCUSSION: The Army skews its RoL focus towards cops, courts, and corrections. These are areas where the Army partners effectively with elements of the U.S. Government (USG) and host nation elements and achieves some success. However, the RoL has strong economic components that can lead to lasting improvements. The ability to create economic prosperity is a key element to the RoL, but many JAs and senior officers lack the required skills to facilitate effectively the development of commercial ventures that promote the RoL.

RECOMMENDATION: Improve. There is a greater focus on partnering with police and judicial officials than on commercial activity. In complex environments such as Iraq and Afghanistan, RoL requires Civil Affairs and JAs to partner effectively with commercial and financial interests. This requires more training and use of outside expertise to build this capacity.[587]

ISSUE: Preparing for the rule of law mission

DISCUSSION: Before deploying, the RoL attorney interacted regularly with his deployed counterpart, attended the Rule of Law Course at The Judge Advocate General's Legal Center and School (TJAGLCS), and read the CLAMO Rule of Law Handbook.

RECOMMENDATION: Sustain. Each of these approaches provided an integral piece of pre-deployment preparation.[588]

ISSUE: Need for command emphasis in RoL

DISCUSSION: If the commander directs emphasis on rule of law, there will be emphasis. If the CG does not think it is important, it will be very difficult to get anything moving in this arena.

RECOMMENDATION: Determine early on in the deployment how your commander views rule of law efforts. Based upon this assessment, be realistic about what you can accomplish.[589]

ISSUE: Defining the RoL mission remains difficult

DISCUSSION: There is no standard definition of RoL. Each unit must independently define the mission. While this provides flexibility to the commander, it takes time to understand the operating environment.

RECOMMENDATION: Be prepared to exercise tactical patience when developing the RoL program.[590]

ISSUE: RoL at MND-B/USD-C is different

DISCUSSION: Not only is Baghdad home to U.S. Forces – Iraq (USF-I) and LAOTF, it houses the Ambassador and other senior Department of State (DoS) and Department of Justice (DoJ)

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[587] 492d Civil Affairs Battalion, 364th Civil Affairs Brigade, Brigade Judge Advocate OIF After Action Report, 17 April 2010, Deployed January 2009 – February 2010, Camp Victory, Iraq (hereinafter "492d CA BN OIF AAR JAN 09 - FEB 10"; on file at CLAMO).
[588] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[589] *Id.*
[590] *Id.*

officials. Given the robust diplomatic presence in Baghdad and relatively safe environment, almost all RoL efforts are lead by the DoS.

RECOMMENDATION: Sustain. The DoS should have the lead in the RoL mission. Prepare to be subordinate to almost every other agency conducting RoL in Baghdad. This is a shift in paradigm from most other RoL efforts in almost every other AO.[591]

ISSUE: Division-level rule of law operations in Baghdad

DISCUSSION: It was very difficult to effectively coordinate RoL efforts in Baghdad because of the involvement of so many higher-level echelons. The Iraqi officials in Baghdad engaged at higher levels, making efforts at the Division level duplicative, disruptive, or uncoordinated. The Provincial Reconstruction Team – Baghdad (PRT-B) seemed to have its own agenda that sought to co-opt the Division when beneficial to them, but was dismissive at other times. Outside the environs of Baghdad, there is much more opportunity for RoL key leader engagements at the Division level.

RECOMMENDATION: Understand that who else is present in your operational environment may limit the extent to which you can participate directly in RoL engagements.[592]

ISSUE: Flexibility in developing a RoL program allows for creative thinking

DISCUSSION: The RoL attorney formulated a two-prong approach to the mission. One track concentrated on the conventional mission set of building civil capacity by providing resources to the local leaders and judiciary. The other track aimed to improve the success of the operational mission by improving U.S. forces' access to the Iraqi criminal justice system, thus increasing the chances of a detainee being tried and convicted.

RECOMMENDATION: In Baghdad, where there is an established criminal justice system that is relatively secure and functional, focusing on less conventional efforts may be beneficial.[593]

ISSUE: Coordinating RoL efforts with various interagency players is difficult

DISCUSSION: Numerous agencies play a role in RoL efforts in Baghdad. For example, RoL missions required coordination with the Embassy, PRT-B, the International Narcotics & Law Enforcement (INL) officials, the Justice and Law Enforcement Advisors (JALEA), and LAOTF. It is almost impossible to reach consensus, and even more difficult to determine what missions the other agencies were conducting.

RECOMMENDATION: Improve. It is impossible to share resources and expertise when you lack visibility.[594]

ISSUE: Coordinating RoL efforts within Division and with brigades

DISCUSSION: Division hosted a biweekly Adobe Breeze session with many staff sections, the PRT, BCTs, and their partnered embedded-PRTs (ePRTs). This regular meeting had a positive

[591] *Id.*
[592] *Id.*
[593] *Id.*
[594] *Id.*

effect because it provided a dedicated time to discuss the current mission focus. Additionally, it was valuable because it brought the ePRTs together with the Baghdad PRT. It was evident that, in the absence of these sessions, they did not communicate.

RECOMMENDATION: Sustain. Identify the staff sections that have a role to play in RoL operations and engage with them early.[595]

ISSUE: Executing higher headquarters' CERP projects to repair national-level institutions

DISCUSSION: After the disestablishment of the Sons of Iraq program, there was an abundance of Commander's Emergency Response Program (CERP) money. Multi-National Force – Iraq (MNF-I) immediately engaged the INL officials and DoS requesting "shovel-ready ideas" for CERP projects. MNF-I then began assigning CERP projects to individual brigades. This approach deviated from the established norm in which brigades routed CERP projects up through the chain of command for approval. Unfortunately, when issuing the task orders, MNF-I did not take into account that the brigades and battalions had withdrawn from most of Baghdad and the remaining personnel lacked the capacity to handle the projects.

RECOMMENDATION: Sometimes it is easy to lose perspective at a higher headquarters. On certain occasions, it may be valuable to engage with the unit that you are tasking to determine its capabilities, especially when deviating from standard procedures.[596]

ISSUE: Rule of law funding

DISCUSSION: During deployment, BCTs had quite a bit of CERP money and were under tremendous pressure to spend it. However, they often lacked enough personnel to plan, implement, and monitor projects that would spend those funds. Additionally, in Baghdad, BCTs are supposed to support the DoJ and DoS, which has the lead on the RoL mission.

RECOMMENDATION: Unless Congress funds the appropriate agencies to conduct the RoL mission, units without the capacity will continue to undertake these projects because they have the funds.[597]

ISSUE: Making an impact in Baghdad in RoL

DISCUSSION: Battalions and companies make differences with the local institutions. With national level institutions, a higher-level headquarters will have to strike a balance. They will need to allow subordinates flexibility and creativity, but also ensure they address national level institutions consistently.

RECOMMENDATION: Assist tactical units in determining where they can effect positive change.[598]

ISSUE: Centralized vs. decentralized planning and execution in RoL

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[595] *Id.*
[596] *Id.*
[597] *Id.*
[598] *Id.*

DISCUSSION: Landowning units are closest to the fight and best understand the problems in their AO. However, they are not capable of rebuilding national level institutions such as courthouses. Instead of tasking local units to commit to long-term projects, one national-level agency should be responsible for planning projects such as courthouse assessment and reconstruction. Local units would then be free to engage with the local populace and work on the physical repairs. Judge advocates would act as liaisons between the landowner and the national-level agency.

RECOMMENDATION: Improve. A national level agency could effectively monitor the progress of long-term projects and ensure they continue as new brigades enter an AO.[599]

ISSUE: Validating the use of RoL metrics

DISCUSSION: Concrete statistics are valuable for measuring effectiveness in most mission areas. Rule of law, however, is not one of them. The RoL attorney developed metrics based on anecdotes that outlined progress and setbacks of each project. This allowed the Division more visibility on the actual impact of a particular RoL mission.

RECOMMENDATION: Statistical data briefs well, but it is difficult to get from brigades and, frankly, not a useful measuring stick.[600]

Iraqi Judges, Courts, Prosecutions and Related Matters

ISSUE: Judicial automation

DISCUSSION: Judges and clerks prepared court records and legal documents using carbon paper. The judges were receptive to getting laptops to automate the system. However, the brigade did not ultimately go through with the project.

RECOMMENDATION: Carefully consider the utility of providing automation capability to the Iraqi judicial system. In many cases, the judges and court personnel do not put computers to good use to overhaul their records system.[601]

ISSUE: Presence of U.S. forces in Iraqi courts

DISCUSSION: The Baghdad Provincial Reconstruction Team (PRT) RoL section issued conflicting guidance about visits to courtrooms. On the one hand, the PRT wanted assessments of the courtroom facilities. On the other hand, the PRT told units their presence in Iraqi courtrooms could be detrimental to the RoL. Consequently, some of the battalions in the brigade did not have adequate knowledge of the needs of the courtrooms in their AO or the key players. The one court the brigade did visit often was CCCI, but once CCCI moved from its location on a U.S. base, the judges asked U.S. forces not to come to the courtroom.

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[599] *Id.*
[600] *Id.*
[601] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 124.

RECOMMENDATION: Improve. Have a better strategy for empowering the battalions to further RoL efforts. Determine if visits by U.S. forces to courtrooms is necessary to achieving RoL goals. Use relationships with the judges to get assessments of what the courts need.[602]

ISSUE: Training of Iraqi judges

DISCUSSION: Individually, Iraqi judges were receptive to receiving training from the JAs and PRT legal staff, but in Diyala Province, they would not go near an American base to receive the training unless the Provincial Chief Judge approved the training as a group activity. The Provincial Chief Judge would not approve it until he obtained the endorsement of the Iraqi Ministry of Justice (MoJ), which never seemed to provide approvals. The attempts to stage training on forensic evidence kept running into the same bureaucratic delays.

RECOMMENDATION: Improve. Persistence and patience is often the only way to cope with some of the Iraqi institutional apathy to allowing legal training. The chain of command has to be engaged to help speed up the process.[603]

ISSUE: Iraqi judge relationship

DISCUSSION: Two things occurred over the course of the second half of the deployment that led to some strains on the relationship with 2HBCT's usual Iraqi judge. The first was the inability to continue with the "judge runs" due to travel restrictions into urban areas after 30 June 2009. The Iraqi judge now had to make his own way to Camp Liberty to conduct interviews with detainees. The second was the inability to get him access to the Post Exchange (PX) which was something he desired. They were able to get the judge and his assigned Iraqi Police (IP) investigator base access badges, permitting unescorted access to the base, as well as a vehicle pass and a Dining Facility (DFAC) pass. However, they could not give him PX access because, in the absence of an exception to policy, permitting him to shop at the PX would have violated Article 19 of the SA. It was likely the Iraqi judge felt slighted by not getting the same privilege as contracted Iraqis laborers (the Iraqi judge was roughly an O-7 equivalent). Although the Iraqi judge continued to work with the JAs, he may have been more "energetic" had he received the PX privileges.

RECOMMENDATION: Improve. Do not underestimate the importance of certain gestures and modest access privileges to building productive relationships with local authorities. To his credit, the Iraqi judge in this case did not withhold his services as a bargaining chip to obtain the badge and PX privileges.[604]

ISSUE: In-person visits with local officials

DISCUSSION: It is not always necessary or wise to visit local officials in person. It is generally difficult to coordinate with the battalions to get a convoy operation scheduled. In addition, the site visits are not generally in the safest locations, which results in having a very short window of time to conduct the visit. Moreover, some officials were offended when the unit disrupted their day-to-day operations with an unplanned or short-notice visit.

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[602] *Id.*
[603] 1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09, *supra* note 37.
[604] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.

RECOMMENDATION: Conduct many of the routine "check-up" visits with local officials via cell phone. This would save units time and resources while accomplishing the same goals. (Note: This BCT had an Iraqi attorney on staff).[605]

ISSUE: Investigative judge hearings at Camp Cropper

DISCUSSION: In 2009, the first investigative judge (IJ) hearings occurred at Camp Cropper. The IJ is responsible for investigating an allegation and making a preliminary determination as to whether to release a criminal suspect from custody or hold the detainee for further proceedings before a trial judge. TF MP North constructed a courtroom in Compound V specifically for use by the investigative judge. Soldiers from the 519th MP BN built the judge's bench and other furnishings, while detainees supplied artwork for the courtroom as part of the detainee art program.

The unit treated IJs as distinguished visitors during their time in Cropper. In general, the judges seemed to appreciate the support they received, but there were some problems. On the first day, the TIF guard force conducted a physical search of the judge and his staff. This caused great offense to the judge. It was also necessary to feed the judge at the dining facility (DFAC) because he did not consider the ICO DFAC appropriate.

Identifying and moving detainees to their hearings required careful planning. A FRAGO accomplished much of this, but coordination between G-3, the CJA section, the Magistrate Cell, and the Law and Order Task Force (LAOTF) was necessary to make the process run smoothly.

RECOMMENDATION: Sustain. It is seemingly small points (i.e., up-to-date access memoranda, special instructions to the guard force and reserved DFAC tables) that avoid potential problems that might damage the working relationship with the Iraqi legal system.[606]

ISSUE: Crowded court facilities and capabilities

DISCUSSION: Iraqi courts are teeming with cases. Cases cover the full gamut of legal matters including family law, property disputes, traffic issues and tort cases. While it was clear there remain issues with a lack of adequate resources and capacity problems, the local population has "bought into" the process, as evidenced by their participation. In addition to supplying the courts with computers and other equipment, the legal team sent information technology (IT) staff to assist and train the Iraqi court staff and judges.

RECOMMENDATION: RoL operations are yielding desired results, albeit at a pace limited by scarce funds and resources. Every theater's security situation is unique, and RoL teams must tailor their efforts accordingly.[607]

ISSUE: Modernization of Iraqi courts

DISCUSSION: Despite the efforts of coalition troops, many Iraqi courts are unable to provide adequate security for officials and they are technologically out-of-date. Computers and photocopiers are rare commodities. These courts function in a fractured, disjointed manner and are entirely reliant on clerks, files, carbon paper and old-fashioned filing systems. Much RoL

[605] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 13.
[606] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 138.
[607] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 13.

progress could occur with modern technology, adequate training, and the long term financial and logistical means to support the system.

RECOMMENDATION: Improve. RoL improvements have to be sustainable so simply providing computers on a one-time basis will not work. A long-term plan with training and funding is necessary to displace the old paper and file system.[608]

ISSUE: District Prosecution Support Teams (DPSTs)

DISCUSSION: With the significant drop off in combat operations, RCT-8 focused its efforts on working with local Iraqi Security Forces (ISF) and the local Iraqi judiciary to criminalize the insurgency. RCT-8 increased its efforts to train local law enforcement and local judges and ensure judges had adequate security to prosecute cases safely. In order to do this, RCT-8 developed DPSTs for each provincial district, which typically consisted of the battlespace owner, LEPs, the JA, ePRT personnel, and intelligence personnel. The DPST would meet regularly to plan leader engagements (LEs), training for judges and law enforcement personnel, and prosecution assistance.

RECOMMENDATION: Sustain. RCT-8 learned having all facets of the unit involved in RoL, not just the JA and ePRT, led to a substantial improvement in the spread of the RoL throughout its AO.[609]

ISSUE: Forensic evidence training

DISCUSSION: DPSTs worked with the Joint Prosecution and Exploitation Center (JPEC) to train local Iraqi judges and law enforcement personnel on forensic evidence. One of the DPST's goals was to make the Iraqis comfortable with forensic science and evidence. This required a significant number of LEs and training evolutions with Iraqi judges and Iraqi law enforcement. As a result, by the end of its deployment, RCT-8 began seeing local Iraqi judges and law enforcement use forensic evidence in the prosecution of cases.

RECOMMENDATION: Sustain.[610]

ISSUE: Use of trends from convictions at the Central Criminal Court of Iraq (CCCI)

DISCUSSION: The BJA would monitor and spot trends regarding successful convictions at CCCI. He would then report these trends to the brigade at commander conferences and via SharePoint. For example, if a detainee was being cleared of explosive charges, but convicted of possession of fake identification, the BJA would let the Soldiers know so they could adjust accordingly.

RECOMMENDATION: Sustain. Continue to monitor and report trends of successful convictions at CCCI.[611]

ISSUE: Hiring an Iraqi attorney to interface with local courts

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[608] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.
[609] RCT-8, OIF AAR, JAN 09 - OCT 09, *supra* note 69.
[610] *Id.*
[611] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.

DISCUSSION: After the SA took effect, the BCT ceased to take in new security detainees. As a result, the IP handled the investigations into attacks on U.S. forces, with support from the BCT. To support this process, the BCT retained a local attorney to support their interface with the local courts. They initially hired this attorney using field ordering officer (FOO) money after coordination with the Joint Contracting Command-Iraq (JCC-I). They retained this attorney for one day per week at a rate of $75 per hour. They identified this attorney through JA interface with the Iraqi clerk of court's office in the local juvenile court. Upon the unit's redeployment, the TC developed a statement of work for a six-month services contract to hire an Iraqi attorney as a consultant to augment the brigade's rule of law efforts. It was pending review with the contracting officer at JCC-I.

This attorney and the BCT TC would appear in the IJ's chambers to support the investigation and prosecution of those suspected of attacking U.S. Forces. When necessary, the BCT also retained local attorneys to support the criminal appeals process. Local attorneys were reluctant to take such cases because of fear of retaliation by criminal or insurgent elements. As a result, legal support to an appeal could cost $2,000 per case.

RECOMMENDATION: Sustain. A trained Iraqi attorney is essential to navigating the Iraqi legal system. The BCT commander was more than willing to pay the attorney's fee and appeal costs if it meant taking an insurgent off the streets. However, for longer-term employment of an Iraqi attorney, it is necessary for higher headquarters to anticipate this requirement and to draft a theater-level services contract and statement of work, as all land-owning units could benefit from the advice of such consultants who are experts in navigating the local criminal justice system.[612]

ISSUE: Interactions with IJs after the SA

DISCUSSION: Following the implementation of the SA, prosecution of insurgents suspected of attacks against U.S. forces occurred in the Iraqi courts as ordinary criminal cases. In the Iraqi civil law system, the U.S. forces assumed the role of the "victim." Before allowing their appearance in court or the judge's chambers, the IJs demanded proof of authority for a JA to represent the U.S. Government. The BCT commander signed a power of attorney (POA), prepared in both English and Arabic, designating the TC as the command's legal representative, with the authority to designate other legal representatives. This worked well, especially with the notary seal.

RECOMMENDATION: Improve. The brigade legal section can only discover local requirements such as this through close coordination with local judges. Although the solution was successful, the TC only discovered it after having difficulty gaining access to the local courts. This difficulty highlights the need to have a dedicated RoL attorney at the BCT level.[613]

ISSUE: Evidence transfer to the Iraqis

DISCUSSION: In many cases, the BCT had good evidence of a crime against U.S. forces, but had problems getting that evidence into the case file. In the Iraqi system, you cannot easily add evidence to the case file at trial. Moreover, judges had little understanding and hence accorded little weight to expert testimony and forensic evidence. The report generated through the application of technology to analyze physical evidence is not necessarily admissible. There needs

[612] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.
[613] *Id.*

to be early planning on how to use evidence derived from the application of advanced technology in an Iraqi court. The use of U.S. labs also can lead to delays in the development of evidence. This also affects its usefulness in supporting Iraqi prosecutions.

RECOMMENDATION: Improve. A JA familiar with Iraqi evidentiary standards needs to undertake planning for the admission of forensic reports. Furthermore, the Iraqis need to have more domestic forensic lab capacity. Developing and staffing a proposal to the Multi-National Security Transition Command – Iraq (MNSTC-I) to fund improvements to the provincial crime lab was a second, critical line of effort for the brigade to improve rule of law in Kirkuk. The Iraqis have a national forensic strategy that is heavily Baghdad centric. Labs outside of Basra, Baghdad, and Erbil have few resources to process forensic evidence. At redeployment, it looked as though Kirkuk would receive about $300K in additional equipment funded by MNSTC-I to establish an initial operating capability as a comparative lab. Judges will need training to become familiar with these new forensic techniques and forms of non-testimonial evidence (DNA, fingerprints, etc.). Coordinating and hosting lectures by members of the three national labs in Iraq to train local judges should be an area of keen focus for higher headquarters.[614]

ISSUE: Lack of judicial security

DISCUSSION: One of the biggest obstacles to RoL in Iraq is fear by the judges due to a lack of judicial security. The personal security details (PSDs) available to judges were in short supply. For example, in the BCT's AO, there were only approximately 80 PSD personnel for 60 judges. Many of these PSDs were not armed and/or trained, and they only provided protection during normal work hours. Criminals kidnapped one judge at his house. There is insufficient security of judges and no protection of witnesses or attorneys involved in insurgency cases. Even the police were fearful—they typically gave very neutral and vague answers when testifying in terrorism cases. The BCT laid the groundwork toward the end of the deployment for improved training for judicial PSDs.

RECOMMENDATION: Improve. This is a strategic level issue for which USF-I must devote considerable time and resources. Fear leads to reluctance to prosecute aggressively high profile cases. People often perceive this as evidence of corruption. However, the BCT perceived this reluctance as related more to a lack of security than corruption. Although the courts are open and functioning, serious crime will continue to go unpunished until judges and attorneys feel secure in proceeding to conviction in these cases.[615]

ISSUE: Need for a dedicated Prosecution Task Force

DISCUSSION: The Iraqi courts lacked the capacity to process serious crime cases. Most cases resulted in dismissals, with few convictions. In some cases this was a result of intimidation by local criminal and insurgent elements. However, the judges were also not accustomed to processing cases built upon highly technical and forensic evidence.

RECOMMENDATION: Improve. To help overcome this capacity deficit, it is necessary to have a full time RoL JA to head a Prosecution Task Force to manage these cases and to support the local court in the development of their capacity to manage technical and forensic evidence. Further, this Prosecution Task Force needs augmentation by both an interpreter and an Iraqi

[614] *Id.*
[615] *Id.*

attorney. There also needs to be a strategic level focus in supporting local courts in their ability to manage complex cases. RoL is important enough to warrant these efforts.[616]

ISSUE: Impediments to getting convictions in Iraqi courts

DISCUSSION: In an effort to improve their ability to get convictions of insurgents in Iraqi courts, the BJA got translated copies of the case files. He found the case files were typically a passive collection of statements by an Iraqi investigator. The investigators rarely asked follow up questions. No matter how much a given witness might have to say, the investigator generally reduced the final statement to two-thirds of a page, resulting in many lost details. In one case, the judicial investigator refused to interview a U.S. NCO who witnessed and chased down a grenade thrower because the NCO was not the "victim." At trial, some judges used any factual variances as an excuse to dismiss a case, and the Iraqi prosecutors commonly pointed out evidentiary flaws in cases and argued for dismissal. Moreover, the judges seemed to give more weight to Iraqi testimony (even if from friends and family of the accused insurgent) than to testimony by U.S. personnel.

RECOMMENDATION: Recognize the impediments to getting convictions in Iraqi courts. One IP chief admitted to his Police Transition Team (PTT) mentor, "no matter how much you try, you will never get a conviction in this court." It is critical to have a dedicated attorney to serve on the Prosecution Task Force to follow cases from the investigation stage through trial, as criminal cases can be won or lost at the investigation stage in the Iraqi system.[617]

ISSUE: Autopsy reports in support of prosecution by the local judiciary

DISCUSSION: The Iraqi investigators required an autopsy to pursue murder investigations related to Soldiers killed in engagements with insurgents. However, official autopsy reports could take considerable time to obtain.

RECOMMENDATION: The BCT had the staff medical officer prepare a brief memorandum outlining the cause of death. The unit only used this procedure when the decedent was a Soldier.[618]

ISSUE: Gaining acceptance and access to local courts in criminal cases

DISCUSSION: The BCT commander issued a power of attorney (POA) to one of the JAs to represent the United States in court and in the chambers of the investigative judge (IJ). This was a suggestion of the IJs. Once he granted the POA, the IJs allowed the JA to appear in court as the authorized representative of the United States, essentially acting as the "victim" in criminal cases against insurgents accused of crimes against U.S. forces. Before this, access was impossible; after this it was very easy.

RECOMMENDATION: Sustain. If there is a desire to use the Iraqi courts to seek prosecution of Iraqi criminals, prepare a POA in conjunction with the local IJ. However, JAs acting in a RoL advisory capacity do not need a POA, since the work is not representational in nature. Moreover,

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[616] *Id.*
[617] *Id.*
[618] *Id.*

the unit should use different JAs in the advisory and representational capacities in order to avoid the appearance of a conflict of interest with the IJ.[619]

ISSUE: Intimidation of local Iraqi judges

DISCUSSION: Iraqi judges were afraid of local insurgents and thugs. This had a clear impact on pending cases, as there were numerous pending cases where the judge released the individuals for "lack of evidence" when the judges feared for their lives. To help counter this, both U.S. forces and Iraqi authorities devoted resources to train unskilled personal security detail (PSD) teams to protect the judges.

RECOMMENDATION: Improve. Additional resources are needed to support the professionalization of the judicial PSD teams to counter the effects of intimidation.[620]

ISSUE: Battalion legal advisor attendance at judges' conference

DISCUSSION: MND-N organized a conference for all the judges in northern Iraq. The battalion legal advisor attended this meeting and used it as a networking tool.

RECOMMENDATION: Sustain. Establishing personal relationships with host nation judges, as well as fellow JAs, makes the job easier and provides situational awareness to JAs putting them in a better position to advise their command on ROL issues.[621]

ISSUE: Utilizing Central Criminal Court of Iraq (CCCI) to obtain warrants

DISCUSSION: SOTF-W's preferred method of obtaining warrants was to use local judges. However, when impossible to do so for one reason or another, SOTF-W would utilize CJSOTF-AP's CCCI prosecutor to secure national level warrants.

RECOMMENDATION: Sustain.[622]

ISSUE: Securing convictions in Iraqi courts

DISCUSSION: The JA advised the command, detachments, and N-2 about the requirements necessary to ensure convictions in the Iraqi courts, including the need for two eyewitnesses to the detainee's criminal behavior.

RECOMMENDATION: Improve. Early interaction with the N-2 is critical along with establishing the purpose of a particular operation. If the end state is merely to disrupt an organization, detachments need not closely follow the requirements for a successful prosecution. However, it should be the goal of all operations to detain and prosecute detainees to bolster the rule of law in Iraq.[623]

ISSUE: Use of traveling judges

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[619] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 19.
[620] *Id.*
[621] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 158.
[622] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 22.
[623] *Id.*

DISCUSSION: In some places, the courts were not open to U.S. involvement. The Iraqi Chief Judge sometimes opted to send in traveling judges with no ties to the local area to hear cases where justice proceedings appeared non-functional.

RECOMMENDATION: This is acceptable as a short-term fix, but does nothing to build capacity or trust in the local system. Legal personnel must educate commands on the long-term benefits of making the local system work.[624]

ISSUE: Command tendency to view evidentiary failings as "corruption"

DISCUSSION: When commanders failed to get the results they wanted, they often defaulted to the view the local judges were corrupt. They were then surprised when traveling judges would also fail to make anticipated rulings. In actuality, it was often a failure to meet the evidentiary standard, rather than any corruption, that resulted in these outcomes. Commanders thought traveling judges would be a rubber stamp to solve their "problem," but this was not the case.

RECOMMENDATION: Educate the command by using analogies to the U.S. system, to include conviction rates in our own federal courts. Help them to understand what the evidentiary standards are and then show them how the unit failed to meet the standard in particular cases. The absence of a conviction or a warrant sometimes indicates only that the judge is doing his job.[625]

ISSUE: Dispelling corruption beliefs

DISCUSSION: During the deployment, a number of commanders believed that certain Iraqi judges were corrupt because they released suspected insurgents or would not issue warrants. The JAs reviewed the cases, collected data, and had to explain to these commanders that the Iraqi judges were in fact upholding Iraqi law and determining cases correctly under Iraqi legal standards. Where warrants failed tended to be where the evidence was insufficient or weak. JAs even referred to U.S. federal court evidential practices to show similar approaches and determinations.

RECOMMENDATION: Sustain. Scrutiny of host nation laws and judicial application of those legal standards can help dispel allegations of corruption. JAs can educate commanders on HN laws and help prevent undeserved perceptions of corruption.[626]

ISSUE: Recognizing the traditional dominance of the executive over the judiciary in Iraq

DISCUSSION: One can make a lazy assumption that RoL difficulties in Iraq are due to poor judges. However, the problem is not the judges. Under Saddam Hussein, the executive controlled the judges. Today this legacy lives on in reluctance amongst judges to challenge the executive.

RECOMMENDATION: Understand the history and culture of the system with which you work.[627]

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[624] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[625] *Id.*
[626] *Id.*

ISSUE: Keep up to date on emerging local law

DISCUSSION: You need to know what the law is in Iraq and how it is developing. Something like an Official Gazette, particularly if it is on the internet where your local attorneys/interpreters can monitor it, would be very helpful.

RECOMMENDATION: Establish a system to monitor local legislative developments. In Iraq, make sure you have access to the Official Gazette.[628]

ISSUE: Mentoring Iraqi JAs

DISCUSSION: Corps had a partnership with the Iraqi Ground Command. The Corps OSJA helped and assisted the Iraqi JAs throughout the deployment. On handover, the Iraqi Ground Command had an office of approximately one dozen attorneys.

RECOMMENDATION: Find, engage with, and mentor your Iraqi JA colleagues. The JAG School should host suitable Iraqi students in the Basic and Graduate courses. If we are going to maintain a strategic partnership with the Iraqis, we need a mechanism for continuing our JAG Corps' partnership with the Iraqi legal advisors.[629]

ISSUE: Forensics training

DISCUSSION: A number of Iraqi judges could not accept forensics evidence since they did know anything about it and such advanced evidence lacked higher-level endorsement. The Division RoL section organized training for Iraqi judges in order to introduce and explain forensics. The Iraqi judges deemed the training a success. It was the interaction of the higher levels of the JA technical chain with the Iraqi judiciary that secured the approval of the Chief Judge to use forensics in the courts. Securing $3K to conduct this training was another challenge in trying to find an appropriate source of funds for this sort of RoL training.

RECOMMENDATION: The higher levels of the JA technical chain are uniquely suited to bring issues like this one to the attention of Iraq's highest judicial officials. Forensics training has benefitted many Iraqi judges and courts in terms of providing them with an alternative evidential means to determine guilt or innocence.[630]

ISSUE: Use of forensics by judges

DISCUSSION: Both the Iraqi judges and the Iraqi Police (IP) investigators required training in forensics before they were willing to use it in cases. After they received training, the judges were more willing to rely upon forensics evidence. In Kirkuk, the judges even began weakening the "two required eyewitnesses" rule to include only one witness, when supported by forensic evidence.

RECOMMENDATION: Realize no one is going to use new techniques or procedures they do not understand. It takes education before the members of a system will adopt any changes to their

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[627] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 66.
[628] *Id.*
[629] *Id.*
[630] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.

established way of doing business. They have to see the advantage they gain by making the change.[631]

ISSUE: The importance of judicial security

DISCUSSION: Judges are particularly vulnerable to attack and intimidation.

RECOMMENDATION: Focusing on judicial security will help judges to discharge their duties without intimidation.[632]

General

ISSUE: Prison overcrowding

DISCUSSION: Every prison in Iraq is overcrowded. The BCT tried to improve judicial throughput by holding conferences between investigative judges (IJs) and Iraqi Police (IP). The IJs were trying to enforce the law by ordering the release of prisoners for whom there was insufficient evidence. The IP would simply refuse to present the cases to the IJs when there was not enough evidence because they did not want to see a "bad guy" go free. The IP did not show up to the first conference. The second conference occurred as the BCT was redeploying.

RECOMMENDATION: Improve. Continue to facilitate cooperation between the IJs and IP. The new prison facility in Basra will help alleviate some of the overcrowding, but the one of the underlying causes remains slow judicial throughput.[633]

ISSUE: No RoL coordinator in embedded Provincial Reconstruction Team (ePRT)

DISCUSSION: The RoL coordinator position in the ePRT was unfilled until near the very end of the deployment. This likely slowed overall RoL progress in the AO, but the JAs managed to concentrate on a number of discrete projects that both directly and indirectly improved Iraqi RoL prospects.

RECOMMENDATION: Improve. RoL success often depends on the personnel and resources assigned as well as the level of priority it receives. It is important to have ePRT RoL coordinators in place so they can orchestrate the various plans, projects and activities instead of having brigade JAs doing it as an additional duty.[634]

ISSUE: Forensics training and RoL

DISCUSSION: One activity that helped advance RoL in the AO was the forensics training given to the local Iraqi judge and some Iraqi Police (IP). After receiving training from the Joint Expeditionary Forensics Facility (JEFF), the Iraqi judge and IPs were able to understand and use biometric evidence in criminal proceedings for the prosecution of insurgents.

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[631] *Id.*
[632] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 66.
[633] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 35.
[634] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.

RECOMMENDATION: Sustain. When possible, providing such training to judges and police broadens the breadth and scope of evidence available for trial.[635]

ISSUE: Use of embedded Provincial Reconstruction Team (ePRT) personnel for RoL

DISCUSSION: Local Iraqi judges often responded better to engagements by Department of State (DoS) ePRT personnel than to military forces or even JAs. Often times the local judges, who are predominately-older civilian gentlemen, would take offense to a 29-year-old JA in a military uniform attempting to "mentor" them. The RCT-8 RJA office resolved this issue by helping ePRT truly be the lead on RoL issues and, particularly, engagements with local Iraqi judges. The RJA office made an added effort to have the ePRT DoS personnel conduct as many of the LEs as possible and have the JA (or other military personnel) present, but not lead the discussion. By engaging the ePRT resources, the RCT-8 RJA office noticed Iraqi judges greeted them much more openly, and the LEs usually went well.

RECOMMENDATION: Sustain. Continue to make DoS ePRT personnel the lead in RoL. The DoS should increase the manning of its ePRT teams with more RoL experts (lawyers) who have the experience and seniority to engage and mentor Iraqi judges without offending them.[636]

ISSUE: Coordination across the Multi-National Force for judicial security

DISCUSSION: One of the biggest successes in the RoL arena was the provision of judicial security. Multi-National Division – North (MND-N) initially pushed the issue up to MNF-I. The reason for the success of the initiative is that MNF-I undertook the project and coordinated it across the force. When the MNF-I RoL section realized the access MNSTC-I had to the MoI officials in charge of judicial security and coordinated actions between MNSTC-I, the MNDs, and BCTs, it resulted in the synergy needed to solve the problem.

RECOMMENDATION: Sustain. RoL success requires a coordinated effort and synchronized efforts at the GoI, provincial, and local levels.[637]

ISSUE: RoL coordinator for MNSTC-I

DISCUSSION: MNSTC-I had numerous directorates whose advisory missions dealt with various aspects of the rule of law. Unlike MNF-I and MNC-I, which both had O-5 RoL chiefs, MNSTC-I did not have an organization to coordinate RoL across the command. The SJA stated in the legal annex the OSJA would be responsible for coordinating RoL, but the OSJA did not have the resources for this mission. As a result, the RoL efforts in the individual directorates remained largely unsynchronized and unfocused.

RECOMMENDATION: Improve. A security transition command like MNSTC-I requires a full-time RoL section to coordinate the RoL initiatives across the directorates. This would assist the MNF-I RoL mission and the Interagency Rule of Law Coordinating Committee (IROCC) by virtue of MNSTC-I's unique access to the Iraqi ministries and would synchronize the disparate RoL efforts within MNSTC-I. The merger into USF-I will largely mitigate this problem because

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[635] *Id.*
[636] RCT-8, OIF AAR, JAN 09 - OCT 09, *supra* note 69.
[637] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 72.

the USF-I RoL section will fall under the MNSTC-I SJA in his new role as DSJA for Rule of Law and Iraqi Training.[638]

ISSUE: Use of embedded Provincial Reconstruction Team (ePRT) for RoL

DISCUSSION: The ePRT had the lead on RoL and tasked the BJA with providing support. This seemed to be an effective means of accomplishing the RoL mission, especially regarding key leader engagements (KLE) with local Iraqi judges. The judges were receptive to mentoring from the older civilian gentlemen who made up the ePRT.

RECOMMENDATION: Sustain. Continue to try to make the ePRT the lead in the RoL mission.[639]

ISSUE: Obtaining local warrants

DISCUSSION: SOTF-W's commander made it a priority to obtain local arrest warrants. The JA, along with other members of the staff and detachments, coordinated key leader engagements (KLE) with local judges. These relationships helped the detachments obtain local arrest warrants and legitimize the GoI.

RECOMMENDATION: Sustain. Detachments should utilize local judges to obtain warrants.[640]

ISSUE: Reporting extrajudicial killings

DISCUSSION: Detachments were receiving credible reports of extrajudicial killings happening within Anbar Province. SOTF-W collected these and reported them to CJSOTF-AP.

RECOMMENDATION: Sustain. Forward all reports of extrajudicial killings to higher headquarters.[641]

ISSUE: RoL visits to volatile areas

DISCUSSION: Conducting RoL activities in areas where violence and insurgent attacks are ongoing requires extra vigilance and dedicated planning. With a platoon or more of Soldiers putting themselves in harm's way as security on convoys and at destinations, RoL key leader engagements (KLEs) must have clearly defined objectives that maximize use of time and resources to build relationships, relay messages, and gather information needed for RoL reporting, analysis, and planning. RoL visits must accomplish concrete goals and make substantive steps. Rapport building is a crucial aspect of dealing with the Iraqi judiciary. If the purpose of the visit is to meet a judge for the first time and build rapport, then such social interaction may be necessary before engaging in serious business discussions. The planning process for a judicial KLE is not just how to get there, but what you are going to get when you get there. Develop a coherent plan for engaging judges to build rapport and then attack issues or gather information as needed.

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[638] *Id.*
[639] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[640] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 22.
[641] *Id.*

RECOMMENDATION: When taking Soldiers and equipment into hostile areas for RoL visits, the JAs have to ensure tangible RoL objectives and activities are taking place. Plan the engagement. Know what you are going to ask and how you will follow-up. It is helpful to let the PRT take the lead, and you could do so easily if you planned it ahead of time. Those involved in KLEs need to ask "what is this question or discussion doing to further the RoL effort? Is the visit going to build rapport, relay a command message, or gather information?" If the visit isn't advancing those efforts or a particular mission, then a reassessment is necessary.[642]

ISSUE: Importance of the translator

DISCUSSION: Having a skilled and competent translator for RoL interaction with local officials is necessary for exchanges with local officials. Their valuable assistance is instrumental in ensuring accurate translations of information, especially when there are subtle nuances and differences in dialects. The use of the same translator is beneficial with local nationals in that they help build relationships and there is consistency in how things are translated which makes it easier to identify and develop trends.

RECOMMENDATION: If you can, find a translator with some type of legal background. That way, they understand the terminology and will not struggle with the nuances. "Must" vs. "may" matters in the legal realm.[643]

ISSUE: Focus of RoL

DISCUSSION: Units and commanders have a tendency to think of RoL only in terms of justice matters. This is only a small part of RoL. Unless you view RoL as a wider issue of governance, you miss many aspects of it you can affect.

RECOMMENDATION: Encourage units and commanders to take a wider view of RoL. Its success or failure can occur at the political level (key leader engagements), the criminal justice level (courts, cops, corrections), or at the social impact level (people relying on the law and its outcomes).[644]

ISSUE: Rule of law metrics

DISCUSSION: The unit used metrics such as the number of warrants issued, number of people sent to confinement in Baghdad, number of operating courthouses, etc. However, the unit's tracker also included a U.S. assessment of the evidence presented in the case and the case outcome.

RECOMMENDATION: Sustain the evaluation by judge advocates of the evidentiary strength of cases. This is the best means of determining whether the outcomes by a particular court or judge are corruption-based. Be wary of relying too heavily on metrics that show only trends. They may show what is happening, but not why it is happening.[645]

ISSUE: Benefit of having the Iraqi Police take the lead

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[642] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[643] *Id.*
[644] *Id.*
[645] *Id.*

DISCUSSION: It is essential to partner with the Iraqis and let the IP take the lead in cases. The Iraqis are very good at using the Iraqi system. The further out front the IP were, the more likely it was the Iraqi judge would favorably view the case.

RECOMMENDATION: Let the Iraqis take the lead in using their own system. Be prepared to train and support them as necessary.[646]

ISSUE: Importance of knowing Iraqi law

DISCUSSION: In Iraq, you have to know Iraqi law. It is not only important for you to function, but it is important for allowing you to assist the Iraqis in functioning. Often, the Iraqis themselves do not know what their law says. You can help educate them on the many changes occurring in their system.

RECOMMENDATION: If you are going to perform a rule of law function, it is essential you know Iraqi law.[647]

ISSUE: Advising the command on host nation law

DISCUSSION: Judge advocates have to educate the command on host nation law. Commands may default to thinking the system is corrupt when the outcomes are not what they expect. In fact, non-compliance with host nation evidentiary standards often leads to the dismissal of cases. Educating commanders on what they need to be successful is crucial. They need to appreciate the host nation legal system and what is the acceptable norm in the host nation judicial system. Further, commands need proactive advice from JAs on how to structure operations to develop usable evidence for criminal convictions.

RECOMMENDATION: Judge advocates have to be able to provide advice on host nation law to their commands. Knowledge of this law is essential. Pre-deployment education on host nation legal systems and processes will help manage expectations and assist in allowing the unit to better plan and structure for COIN operations.[648]

ISSUE: Use of dual language Iraqi law copies

DISCUSSION: It was helpful to have copies of Iraqi laws in a format showing English and Arabic translations side by side in order to minimize variations of translations. However, it is not clear who has the authority to approve the English version. There are many unofficial or draft versions of Iraqi laws floating around, so it is also important to ensure that key RoL players have the official version.

RECOMMENDATION: Translating Arabic into English is not a precise science, so having a commonly agreed version helps RoL participants minimize translation differences. Always cite to the translation you are using in your analysis, as differences can be significant. The OSJA and DoS officials should determine the authoritative English versions of such documents and maintain a central repository of them.[649]

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[646] *Id.*
[647] *Id.*
[648] *Id.*
[649] *Id.*

ISSUE: Library of local law

DISCUSSION: Being able to speak intelligently on the law is important. Showing an interest in Iraqi law shows and engenders respect with Iraqi legal officials.

RECOMMENDATION: It is vital to have a library of local law and study it as you would in any other jurisdiction in which you find yourself practicing. This includes more than the criminal code. Election law and the provincial powers law were also very important.[650]

ISSUE: Prosecution Task Force (PTF)

DISCUSSION: Perhaps 172d BDE's most important RoL effort was the creation of the PTF to prioritize the prosecution of criminal and insurgent cases occurring in the AO. The PTF looked at a number of recurring fact pattern cases in their AO, prioritized them according to strength of the trial worthiness, and then pursued them in provincial courts using the Iraqi Penal Code and Article 4 of the Terrorism law. At the federal level, the Central Criminal Court of Iraq (CCCI) had a backlog of cases. This made the provincial route more efficient. As a result, the PTF was able to assist in the prosecution of 20 fact pattern cases. In one province, eight cases the PTF worked on resulted in eight death penalty convictions. The PTF had over 40 military and interagency experts and included intelligence, Special Forces, Criminal Investigation Division (CID), law enforcement contractors, forensics, civil affairs, etc. The brigade commander appointed the BJA as the head of the PTF.

RECOMMENDATION: Sustain. The use of a PTF, comprised of motivated players, can greatly improve the odds of prosecuting criminals and creating evidence from intelligence.[651]

ISSUE: Need for a national warrant database

DISCUSSION: One of the primary difficulties in dealing with detainees is the lack of a national database for outstanding warrants. Without such a centralized warrants database, it is not possible to determine if someone in custody may be the subject of an outstanding warrant. On two occasions, the brigade determined outstanding warrants existed on individuals who otherwise met release criteria.

RECOMMENDATION: Improve. A means to collect, store, and share outstanding warrants would greatly benefit the ability of the Iraqi police and judiciary to apprehend wanted individuals.[652]

ISSUE: Using an interpreter to analyze warrants

DISCUSSION: 172d BDE used the services of a local national contractor to read Iraqi arrest warrants in order to determine the possible English derivations of the name and other information in the warrant. Someone familiar with the local Iraqi dialect was much better at interpreting the information and could alert JAs and Soldiers to the subtle dialect variations of the names, locations, and details contained in the warrant.

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[650] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[651] 172d IN BDE, OIF AAR, NOV 08 - DEC 09, *supra* note 46.
[652] *Id.*

RECOMMENDATION: Sustain. The use of local nationals to translate information can prove to be helpful if the language contains different dialects and other nuances that may result in different English translations.[653]

ISSUE: Improving U.S. forces' access to the Iraqi criminal justice system

DISCUSSION: One of the two major areas of focus for the RoL attorney was facilitating the process between capture and trial of a detainee. As such, the attorney acted as a conduit between the brigades conducting detentions and the justice system. In other words, the RoL attorney ensured that subordinate units had a place to take witnesses and evidence.

RECOMMENDATION: When building civil capacity is not your primary mission, you must find other areas to make an impact.[654]

ISSUE: Poor communication between LAOTF and tactical units led to case management concerns

DISCUSSION: LAOTF worked with Iraqi investigative committees that often lacked evidence or needed more information from a witness. If LAOTF had engaged the unit who initially conducted the detention—either directly or through landowning units—the unit may have been able to collect or provide the information LAOTF sought.

RECOMMENDATION: Improve. Consistently engage with LAOTF to determine what information they require. Act as a conduit between LAOTF and the units involved.[655]

ISSUE: The inability for units to track LAOTF's progress on cases

DISCUSSION: LAOTF does not make its case tracker available externally. This presents problems for units who could facilitate progress on certain cases by providing missing evidence or information. It also frustrates leaders at the unit who conducted the detention who desire to know how their efforts are contributing to the overall mission.

RECOMMENDATION: Improve.[656]

ISSUE: Improve the unity of effort by co-locating DoD and DoS personnel

DISCUSSION: In Baghdad, the Division and its subordinate brigades partnered with Provincial Reconstruction Teams (PRTs). However, PRT-Baghdad and the Division were not co-located. Face-to-face visits required a convoy or helicopter transport.

RECOMMENDATION: Improve. Face-to-face coordination is essential to the success of the RoL mission. Since there is no unity of command in RoL, it is imperative the agencies communicate continually.[657]

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[653] *Id.*
[654] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[655] *Id.*
[656] *Id.*
[657] *Id.*

ISSUE: Use of Iraqi attorneys for expertise in local law

DISCUSSION: MND-B (now USD-C) has an Iraqi law attorney on staff. From accessing the local culture to explaining the type of impact a certain project will or will not have, this attorney's perspective was immeasurable. He was part of radio shows, communicated with judges, did translations, etc. While he sat in the Administrative Law section, he performed across the spectrum.

RECOMMENDATION: Sustain. Having an Iraqi attorney was invaluable for the RoL effort. In particular, having a U.S. citizen who is also an attorney in the local national system is a tremendous asset.[658]

ISSUE: Key leader engagements (KLEs)

DISCUSSION: KLEs are valuable tools that have a positive effect on the RoL mission. Ensure, however, you are not duplicating or, even worse, ruining another entity's efforts.

RECOMMENDATION: Coordinate as much as you can to prevent unintentionally working at cross purposes.[659]

ISSUE: Interpreters and the rule of law

DISCUSSION: Do not assume an otherwise competent interpreter is able to translate legal words. Some interpreters have very little knowledge of legal terminology. Consequently, they may use imprecise language. This is a potential powerful source of miscommunication and confusion, especially as an otherwise effective translator may mask his or her difficulties from you.

RECOMMENDATION: Ensure your interpreter knows legal terminology. A sheet listing commonly used legal words and their translations may assist your interpreter. Meet with your interpreter prior to mission if possible to discuss terminology and make sure they have an understanding of how the Iraq and U.S. systems work and differ from each other. This will help greatly with translation.[660]

I.O.2. Afghanistan/Operation Enduring Freedom (OEF)

Courts, Prosecution, Evidence

ISSUE: Possible RoL judge advocate (JA) at the SOTF level

DISCUSSION: The SOTF legal advisor did not have the time necessary to circulate SOTF-C's battle space and conduct key leader engagements (KLEs) with local investigative judges.

RECOMMENDATION: Improve. CJSOTF-AP should work with the JAG Corps to augment current manning in order to send another judge advocate (JA) to each SOTF to conduct KLEs

[658] *Id.*
[659] *Id.*
[660] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.

with local judges. These additional rule of law (RoL) JAs should be TACON to the SOTFs and OPCON to CJSOTF-AP.[661]

ISSUE: Lack of physical evidence and witness testimony at Afghan trials

DISCUSSION: A meeting between the AWG, CSTC-A (Det. Ops), DoS/INL, and prosecutors from the National Directorate of Security (NDS) – the Afghan entity charged with prosecuting terrorism-related cases – confirmed detainees transferred from U.S. detention at the Bagram Theater Internment Facility (BTIF) to Afghan authorities arrive without the physical evidence linking the detainees to the crime. The NDS prosecutors stated the lack of physical evidence, along with a lack of witness testimony and justification for holding the person beyond 72 hours (per Afghan criminal procedure rules), is what led the Afghan courts to acquit and/or give a sentence of "time served" to the detainees. Improvements have been made since Joint Task Force (JTF) 435 took control of detention operations, but the gap still exists at the local (provincial) level when captured insurgents do not qualify for transfer to the Detention Facility in Parwan (DFIP). Afghans will always have the excuse insurgents are acquitted due to the lack of U.S. / Coalition Forces (CF) support for Afghan rule of law procedures until we partner with trusted Afghan prosecutors to better prepare and track the transfer of evidence and detainees at the local level.

RECOMMENDATION: Improve. CF must do a better job of coordinating detainee transfers at a local (provincial) level when captured insurgents are not transferred to the DFIP, create sustainable systems for storing and preserving physical evidence to transfer with the detainee, and integrate witness testimony in the targeting process.[662]

ISSUE: Leveraging nontraditional working relationships

DISCUSSION: The AWG leveraged nontraditional working relationships with rule of law enablers located in higher commands and with interagency partners to facilitate meetings with and specific requests to Afghan officials.

RECOMMENDATION: Sustain. JAs should seek out, foster, and leverage nontraditional working relationships to advance foreign internal defense / security force assistance mission sets.[663]

ISSUE: Getting the ground truth on the Afghan justice system

DISCUSSION: Many individuals told the AWG the Afghan justice system was broken. These individuals claimed corruption was the root cause for the system's collapse. The team refused to take these statements at face value and wanted to see where and why people perceived the system as "broke." To better understand the "why" and "how," the team tracked actual Paktika Province cases from beginning to end to identify specific weaknesses and strengths in the system from capture to prosecution and then develop general recommendations to work within and support the Afghan system.

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[661] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 8.
[662] Asymmetric Warfare Group, Group Judge Advocate OEF After Action Report, 8 June 2010, Deployed October 2009 – April 2010, Bagram Airfield, Afghanistan (hereinafter "AWG, OEF AAR, OCT 09 - APR 10"; on file at CLAMO).
[663] *Id.*

RECOMMENDATION: Sustain. JAs should not take at "face value" what everyone else believes or says. Take them to task and ask who that person talked to that works with Afghan legal officials in your area of operations (AO). Then follow up with exchanges between Afghans and CF to fully flesh out your specific AO's challenges. JAs need to employ critical analysis, seeking out ways to identify faults and provide constructive and realistic feedback to get the system functioning.[664]

ISSUE: Failing to meet Afghan threshold for convictions

DISCUSSION: The case study and meetings revealed that U.S. Forces were not providing Afghan prosecutors with the evidence necessary to secure convictions pursuant to Afghan evidentiary standards. Similar to the U.S., Afghan prosecutors do not wish to present losing cases in court.

RECOMMENDATION: Improve. JAs need to understand fully how the Afghan justice system works day-to-day. Academic treatises only take a JA so far. JAs must communicate with Afghan practitioners in their specific AO to learn the intricacies of the justice system and the personalities involved.[665]

ISSUE: Tailoring training for Afghans

DISCUSSION: Judicial and prosecutorial training must orient towards the Afghan system and Afghan cultural norms and sensitivities. It is naïve for outsiders to believe Afghans are going to change their customs and practices after attending a coalition-sponsored training event. However, recent cases have show Afghan willingness to consider and accept biometric and forensic evidence provided the evidence can be explained sufficiently in their native language.

RECOMMENDATION: Improve. Training should be accordant with Afghan cultural norms and sensitivities and incorporate realistic, sustainable, incremental changes or improvements. Take advantage of the presence of Combined Joint Task Force (CJTF) Paladin, Combined Explosive Exploitation Cell (CEXC), Explosive Ordinance Disposal (EOD), and other counter-IED facilities in your AO to familiarize Afghan legal officials with forensic evidence that incriminates IED facilitators.[666]

ISSUE: Functional understanding of Afghan laws

DISCUSSION: JAs must educate themselves on Afghan laws. Academic treatises and Afghan attorney advisor (AAA) assistance is not enough. JAs must learn the Afghan system from Afghan practitioners, not just Afghan scholars or contracted Afghan attorneys.

RECOMMENDATION: Improve. JAs should seek opportunities to work with and learn from Afghan practitioners knowledgeable in how the Afghan system actually operates.[667]

ISSUE: Reliance on Afghan attorney advisors (AAAs, on contract)

DISCUSSION: AAAs are excellent resources for JAs and provide a wealth of insight into

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[664] *Id.*
[665] *Id.*
[666] *Id.*
[667] *Id.*

Afghan culture and legal system. However, JAs must be cautious to take AAAs' guidance as ground truth. While highly educated, many AAAs never prosecuted a case in the Afghan system or worked a case with the proper governing body. Since AAAs are contracted and earn significantly higher salaries than Afghan government attorneys, be cognizant of the potential friction between the two. AAAs may be vetted by the U.S., but still live off-base and interact with the populace; therefore, Afghan prosecutors may not trust the AAAs with law-enforcement senstitive information (i.e. ongoing investigations into corrupt local officials).

RECOMMENDATION: JAs should utilize their AAAs wisely in order to gain access and placement with individuals who know how the system operates on a day-to-day basis.[668]

ISSUE: Understanding the structure of NDS

DISCUSSION: There are different branches or departments within NDS. Each branch has a specific responsibility with a particular chain of command, from which it cannot deviate. Even Afghans assisting the AWG did not know this fact because NDS has historically been a secretive organization due to its KGB roots. The NDS Prosecution Department (NDSPD) has jurisdiction over all terrorism related cases and has Provincial and District offices that may or may not be manned due to capacity and security issues.

RECOMMENDATION: JAs must be aware of NDS's structure and which branches within NDS are responsible for terrorism-related cases. JAs should reach out to establish personal relationships with the NDSPD in their AO to assist with developing stronger cases against captured insurgents, which supports the Governance and Security COIN lines of operations (LOOs).[669]

ISSUE: Utilizing law enforcement professionals (LEPs)

DISCUSSION: LEPs (contractors with MPRI, managed overall by CID command) are enablers attached to deploying units to utilize for law enforcement mentorship and development at Division and Brigade level. Soon LEPs will have individuals down to the company level. LEPs bring subject matter expertise not organic to U.S. Forces. LEPs with international experience add value in integrating host nation (HN) criminal law and procedures from an investigatory perspective.

RECOMMENDATION: Pre-deployment or immediately upon deployment, seek out LEPs with international experience who are augmenting your unit or available to assist your unit.[670]

ISSUE: Integrate targeting with HN criminal prosecutions

DISCUSSION: Throughout the targeting process, to include pre-mission analysis, JAs should seek to integrate HN criminal law, procedures, and prosecutors in order to set favorable conditions for securing convictions in the Afghan system, particularly when the target is unlikely to qualify for transfer to the DFIP. Determining how to secure a conviction after detention is too late. DFIP CID agents and attorneys are currently attempting to develop evidence on the cold cases for DFIP detainees, which will prove very difficult as it did for the thousands of detainees that were eventually released by JTF 134 in Iraq.

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[668] *Id.*
[669] *Id.*
[670] *Id.*

RECOMMENDATION: Front load the process when possible by identifying required evidence and by incorporating a competent Afghan prosecutor into the targeting process.[671]

ISSUE: Afghan collection of evidence

DISCUSSION: Afghan security forces should be on site when evidence collection occurs. Afghan prosecutors (i.e. NDSPD) should provide guidance on what evidence is best to secure convictions and significant sentences. LEPs, interpreters, Multi-Function Teams (MFTs) and other U.S. force multipliers must work with their Afghan counterparts to ensure evidence collection occurs in accordance with Afghan rules and regulations. Afghan-collected evidence is better than U.S.-collected evidence, as Afghan judges may give it more weight at trial.

RECOMMENDATION: Incorporate Afghans in all aspects of the operation, especially in evidence collection.[672]

ISSUE: Focus Targeting Force (FTF)

DISCUSSION: FTF is a U.S. action-arm within a brigade combat team (BCT) that is usually partnered with ANSF. The FTF has special training in conducting tactical-call outs, kinetic operations, collection of evidence (i.e. tactical site exploitation) and completing the requisite forms necessary to help ensure convictions in the Afghan system.

RECOMMENDATION: JAs should be aware of the FTF and seek ways to enhance its capabilities. Training is important, and JAs need to be involved.[673]

ISSUE: NDS prosecutor-certified prosecution support packets (PSPs)

DISCUSSION: The lack of physical evidence at an Afghan trial is not insurmountable. PSPs are REL Afghan-produced forensic reports. The reports are developed by lab technicians at the CJTF Paladin level II CEXC lab. Two NDS Prosecutors are embedded at the lab as part of the AWG/Paladin pilot project to train Afghans on real-world forensic evidence collection and analysis. This training will enable them to provide expert testimony to Afghan judges on IED-related cases with evidence derived (and declassified) from U.S. exploitation. The use of NDS prosecutor-certified PSPs can secure convictions, as demonstrated by the first convictions of 4 insurgents prosecuted by Afghan NDS attorneys before Afghan judges at the DFIP (8-9 June 2010, ABCNews). NDS prosecutors embedded with U.S. forces at CJTF Paladin are the only Afghan prosecutors that are certified to produce PSPs. NDS Prosecutors also have been approved to embed at the DFIP and interview detainees for law enforcement purposes. AWG observed NDSPD interviews and how they used unclassified evidence to explain the insurgent's culpability, which led to the insurgent's admissions to building and emplacing IEDs.

RECOMMENDATION: Sustain. NDS prosecutors are essential for building strong insurgent cases for prosecution in the Afghan system.[674]

ISSUE: Afghan attorneys

[671] *Id.*
[672] *Id.*
[673] *Id.*
[674] *Id.*

DISCUSSION: The RoL team had an Afghan attorney. This attorney was invaluable and provided great insight into Afghan law and cultural subtleties. He also provided a uniquely Afghan perspective on RoL projects and the overall international effort in Afghanistan.

RECOMMENDATION: Sustain. Young Afghan attorneys are the future of an Afghanistan that embraces the RoL. Efforts should continue to mentor and train these attorneys in a way acceptable to them and to the people of Afghanistan.[675]

ISSUE: Linking the informal judicial system with the formal judicial system

DISCUSSION: Numerous brigades worked to foster a link between the informal and formal justice system. In doing so, they promoted justice that is relevant to the average Afghan. Projects included legal training for shuras and mullahs.

RECOMMENDATION: Sustain. RoL projects should continue to strengthen the links between the informal system and the formal system. This is in line with Afghan culture and history.[676]

ISSUE: Corruption in the Afghan judicial system

DISCUSSION: Corruption is rampant in all areas of the Afghan judicial system.

RECOMMENDATION: RoL efforts are destined to fail unless the Government of the Islamic Republic of Afghanistan (GIRoA) confronts this evil. RoL projects, such as legal awareness radio spots, could be helpful in educating Afghans on their rights under their Constitution. Once armed with that knowledge, they may be in a position to demand more from GIRoA.[677]

ISSUE: Prosecutor salary increase

DISCUSSION: The GIRoA needs to increase the salary for its prosecutors. The current salary for prosecutors makes them susceptible to corruption and intimidation.

RECOMMENDATION: Continue to petition higher headquarters and GIRoA to increase prosecutors' pay.[678]

ISSUE: Need for criminal investigative teams

DISCUSSION: One of the realities in Wardak and Logar provinces is the need for a strengthened prosecution and investigation capability amongst the Afghan forces. Much of their system is still in its infancy and undermanned.

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[675] Rule of Law Section, Combined Joint Task Force – 82, Individual Augmentee OEF After Action Report, 18 February 2010, Deployed October 2009 – January 2010, Bagram Airfield, Afghanistan (hereinafter "Individual Augmentee, CJTF-82 RoL Section, OEF AAR, OCT09-JAN10"; on file at CLAMO).
[676] *Id.*
[677] *Id.*
[678] *Id.*

RECOMMENDATION: Improve. Any units headed for AOs in Afghanistan that have not had any U.S. or ISAF presence should be prepared to work with Afghan counterparts who may be marginally established and barely functioning.[679]

ISSUE: Bi-monthly meetings with Chief Judge and provincial prosecutor

DISCUSSION: The BN JA met with the Farah Provincial Chief Judge and Prosecutor on a bi-monthly basis. He used these meetings to enquire as to the court's needs, provide training opportunities, and seek assistance in having prosecutors sent down to the districts. Safety concerns prevented the latter from happening.

RECOMMENDATION: Sustain. JAs must engage provincial officials and provide training and mentoring to bolster rule of law efforts.[680]

ISSUE: Prosecutorial training

DISCUSSION: The BN JA used the Justice Sector Support Program (JSSP) and the U.S. Department of State (DoS) to provide training to 20 local prosecutors. The training focused on the fundamentals of building a case and the basic laws.

RECOMMENDATION: Sustain. Rule of law in Afghanistan is going to take time. Keep the training simple and provide material support and mentoring when possible.[681]

ISSUE: Evidentiary challenges

DISCUSSION: A multi-functional approach (incorporating integrated intelligence and law enforcement enablers) assisted in maintaining a balance between intelligence exploitation and evidence preservation both during the pre-capture and post-capture phases. This "balance" is imperative in conducting ROLOPS.

RECOMMENDATION: Sustain.[682]

ISSUE: Evidence preservation.

DISCUSSION: Accountability and preservation of physical evidence is imperative in successful ROLOPS, especially when the host nation criminal justice system heavily relies on the presentation of physical evidence at subsequent judicial hearings.

RECOMMENDATION: Identify early and train individuals tasked to be evidence custodians at the tactical and operational levels (BN through BDE).[683]

Scope and Focus of Afghan ROL Efforts

ISSUE: Absence of overall RoL plan

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[679] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 42.
[680] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 1.
[681] *Id.*
[682] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[683] *Id.*

DISCUSSION: Panelists to the 2010 BJA Symposium agreed that both Iraq and Afghanistan lacked an overall or strategically coordinated RoL plan or way forward. While Division and Corps headquarters had some regional RoL goals or activities, most of the BJAs were largely responsible to forge their own RoL plans with the assistance of any other interested parties in the AO, such as a provincial reconstruction teams (PRTs). Not all PRTs had RoL coordinators, so even they had limited interests in such activities. Accordingly, many BJAs had flexibility to take on projects that they felt could make a difference in their AO. The key for success was to get buy in and support from the BCT commanders who would allocate resources and endorse financial proposals.

RECOMMENDATION: Where BJAs find a lack of RoL planning in their AO, they should approach the BCT commander to map out a realistic and supportable RoL plan.[684]

ISSUE: Security and RoL

DISCUSSION: When a security situation is poor, trying to advance a sweeping RoL plan may be too optimistic. RoL needs an improved security situation with stability to be able to proceed. It is difficult to find judges and prosecutors willing to risk their lives in places where violence and death threats are common. Unfortunately, southern Afghanistan is an area where such violence and instability exist. BCT commanders and BJAs involved in RoL activities need to assess conditions in their AO and the prospects for RoL success. Even in less stable environments, though, there are still RoL opportunities out there such as legal training, forensics training, limited RoL and governance infrastructure improvements, and public awareness campaigns.

RECOMMENDATION: BJAs need to assess the security and stability aspects of their AO in formulating RoL plans and activities. Advise the BCT commanders of the assessment and get command and staff buy in to a plan or approach for RoL.[685]

ISSUE: Who is responsible for RoL

DISCUSSION: No one person, directorate or unit can deal with all RoL activities and functions in Iraq and Afghanistan. It involves a multidisciplinary approach and allocation of personnel and resources. Army doctrine dictates that Civil Affairs has the lead for RoL; the reality in Iraq and Afghanistan shows many different units and personnel deal with the abundance of RoL issues surrounding cops, courts, and corrections. All the BJA panelists agreed that RoL activities proceed only inasmuch as the BCT commander supports the effort. They devote the resources and allocate Soldiers that they feel will achieve what is necessary. Without the commander's support and buy in, the BJA's RoL efforts will likely fail.

RECOMMENDATION: Based on experiences in Iraq and Afghanistan, the BJA's biggest ally in making real progress in RoL activities is the BCT commander. By themselves, legal staffs lack the resources and personnel to conduct RoL efforts.[686]

ISSUE: RoL activities as a force multiplier

[684] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 87.
[685] *Id.*
[686] *Id.*

DISCUSSION: RoL is one area where JAs have the opportunity to act as a force multiplier, instead of simply fulfilling their traditional advisory role. Success and progress in RoL can easily advance counterinsurgency (COIN) operations by making strides in establishing civilian support for the local government and judiciary.

RECOMMENDATION: Sustain. RoL is one area where JAs can add value to the BCT's mission with the potential of yielding very real and visible results.[687]

ISSUE: Importance of the translator

DISCUSSION: Having skilled and competent translators for RoL interaction is necessary for meaningful RoL exchanges with local officials. Their assistance is instrumental in ensuring accurate translations of information, especially when there are subtle nuances and differences in dialects. The use of the same translator is beneficial in that he or she helps build relationships and translates consistently, making it easier to identify trends.

RECOMMENDATION: If possible, find translators with some type of legal background to conduct RoL activities. They are much more likely to appreciate legal terminology and nuances.[688]

ISSUE: Employment of Afghan attorney-advisors

DISCUSSION: One of the BJA panelists recounted how his unit employed Afghan attorney-advisors with the provincial reconstruction teams (PRTs) in the AO. The Afghan attorney-advisors facilitated key leader engagements (KLEs) and seminars and provided expert advice on governance. These attorney-advisors' knowledge enabled them to provide skilled advice on Afghan laws, legal processes, and jurisprudence.

RECOMMENDATION: Instead of using more U.S. Army JAs and Department of State (DoS) attorneys to do RoL in a host nation, consider using a local national attorney-advisor. They are much more competent in local laws and practices, they can interface directly with local nationals, and they usually can double as a translator to help all sides reach consensus.[689]

ISSUE: Rule of Law Course

DISCUSSION: The BJA and the Reserve JA attended the Rule of Law Course at The Judge Advocate General's Legal Center and School (TJAGLCS).

RECOMMENDATION: Sustain.[690]

ISSUE: Non-commissioned officer (NCO) involvement in RoL mission

DISCUSSION: BJAs should encourage NCOs to be involved in the RoL mission. The brigade legal office's NCOIC spearheaded the brigade's RoL mission with oversight from the BJA.

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[687] *Id.*
[688] *Id.*
[689] *Id.*
[690] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.

RECOMMENDATION: Sustain. Although this might not work for every brigade, the NCOIC's maturity and professionalism made it a success here.[691]

ISSUE: Use of third JA for RoL mission

DISCUSSION: The BJA requested a third JA before deploying. The third JA allowed the brigade legal team to cover all legal issues and the RoL mission.[692]

RECOMMENDATION: BCTs with similarly diverse mission requirements need at least three JAs.

ISSUE: Variance in the RoL mission

DISCUSSION: RoL is AO centric. As such, a more structured approach may not afford the brigade the flexibility to meet the needs of a specific community.

RECOMMENDATION: JAs must tailor their RoL objectives to meet the specific needs of differing AOs.[693]

ISSUE: Afghan attorney advisors (AAAs)

DISCUSSION: The brigade had six AAAs. The brigade used them as cultural advisors, translators and subject matter experts on Afghan law. Although their primary mission was RoL, they were available to assist in other areas as well, most notably helping out in claims and real property leases. The BJA determined the RoL mission could more effectively use the AAAs with their skill sets if they were spread across the battle space. As an additional benefit the provincial reconstruction teams (PRTs) would greatly benefit from the AAAs' assistance. Thus, the BJA sent them down to the PRTs in Kunar and Laghman.

RECOMMENDATION: Sustain. The BJA maintained accountability and control over the AAAs and only lent them to the PRTs when appropriate. The RoL mission blossomed immediately after sending AAAs to outlying provinces.[694]

ISSUE: Training Afghans

DISCUSSION: The brigade legal team provided products to the Afghan National Police (ANP) on RoL. However, the brigade legal team would not conduct the training except with AAAs. Rather, the AAAs would conduct all RoL training without U.S. presence.

RECOMMENDATION: Sustain.[695]

ISSUE: "Huquq" training

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[691] *Id.*
[692] *Id.*
[693] *Id.*
[694] *Id.*
[695] *Id.*

DISCUSSION: The brigade organized a five-day period of instruction on legal issues to the Huquq, which is responsible for all legal matters in Afghanistan except for criminal matters. The AAAs, along with Afghan judges, prosecutors, and legal professors provided the instruction.

RECOMMENDATION: Sustain. Have the Afghans teach and train other Afghans on their laws and constitution. Maintain oversight to ensure situational awareness of the nature and quality of the instruction.[696]

ISSUE: Religious leaders' training

DISCUSSION: The brigade legal team organized legal awareness training for local mullahs in Kunar Province. The brigade tasked its AAAs to provide the training. No U.S. personnel were involved other than in behind-the-scenes preparation. This pilot program was limited to one province because the Chief of the Department of Haj and Religious Affairs for Kunar was the only one showing receptivity to the program at the time, but the BJA thought success in Kunar would increase interest in other provinces.

RECOMMENDATION: Sustain. Use AAAs to educate local religious leaders on Afghan laws and the Afghan constitution as a means to disseminate legal information to the people and improve legal awareness. Anticipate controversy among commanders and others that might see this as a violation of the Western concept of the separation of church and state.[697]

ISSUE: Taking over ongoing projects

DISCUSSION: Plan to have RoL projects in progress when replacing unit arrives in theater.

RECOMMENDATION: Sustain. A successful RoL mission requires a working knowledge of the current RoL efforts in the AO and depends on relationships formed with key personnel in the justice sector. Having projects in progress when the replacing unit arrives allows its RoL team to interact with and maintain positive relationships established with key players.[698]

ISSUE: RoL strategy at the brigade level

DISCUSSION: The Brigade prosecuted its RoL effort through four lines of effort. These were: 1) Resources & references; 2) Human capacity; 3) Proper use of the law; and 4) Infrastructure. It is important to assess accurately the resources available for supporting RoL and to conduct a realistic evaluation of where a positive effect is possible. If you spread your focus too wide, nothing will get done. Accordingly, TF Warrior concentrated its efforts at the provincial level with an emphasis on developing RoL areas that meshed with the Brigade's mission of developing security. It is important to keep RoL projects simple; they can become more sophisticated later. Conferences and key leader engagements (KLEs) are good. If you are not conducting KLEs, regularly talking to the judges and prosecutors, then you probably are not doing effective work in RoL.

RECOMMENDATION: Sustain.[699]

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[696] *Id.*
[697] *Id.*
[698] *Id.*
[699] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.

ISSUE: Developing human capacity in RoL

DISCUSSION: The Brigade instituted a more advanced RoL Training and Evaluation Program (RoLTEP). The aim was to improve the standards, and more importantly, the interaction between the "cops, courts, and corrections" (the 3 Cs) components of the criminal justice system. The criminal justice system was the focus because it most directly affected the Brigade's mission of stability operations. RoLTEP worked by collecting the Afghans who were responsible for the 3 Cs and training them on the procedures for executing an arrest warrant. Once the people received training on the theory, they received encouragement to execute live warrants. There was a 'talk through' and 'walk through,' followed by a live run. A RoLTEP cycle would take a week to execute in each province and would be synchronized with quick impact projects.

RECOMMENDATION: Sustain.[700]

ISSUE: Building infrastructure for RoL

DISCUSSION: The history of building RoL infrastructure is bedeviled with the construction of unneeded buildings, which no one could maintain, or that duplicated other projects by other aid donors working in ignorance of the efforts of others. Before TF Warrior built any RoL buildings, they asked all the Afghans involved in a potential project (district, provincial, and ministerial level officials) to confirm the requirement in writing. They ensured local commanders and PRTs were read into the plan. Furthermore, they deconflicted construction plans with outside donors. This deconfliction occurred by hosting a monthly RoL Working Group, which involved as many people as the BJA could get hold of who were involved in RoL in the TF Warrior AO, including individuals from Kabul.

RECOMMENDATION: Sustain.[701]

ISSUE: RoL and the civilian surge

DISCUSSION: TF Warrior received a Department of State attorney to work RoL. This individual was one of the first of the 'civilian surge.' It is very valuable to have such an individual who can act as a RoL Coordinator.

RECOMMENDATION: There is a need for more civilians. An observation: we are good at echeloning military forces for battle. But we forgot to echelon follow-on civilian agencies to do post-conflict development.[702]

ISSUE: RoL and command support

DISCUSSION: In a military organization, nothing happens unless a commander supports it.

RECOMMENDATION: Ensure your commander is aware of the importance of RoL and communicates that importance to his staff. Command support will have a dramatic effect on your ability to get things done in RoL. Look at your commander's key leaders chart. It will list people like governors, directors, police chiefs, councils and shuras. Check to see that it lists judges too. Too often the key leaders chart omits the judicial branch. Educate your commander in the

[700] *Id.*
[701] *Id.*
[702] *Id.*

importance of the judges: businesses will want to know that there is a functioning judiciary to protect their interests.[703]

ISSUE: RoL strategy

DISCUSSION: The RoL strategy flows from the NATO mission and the campaign plan. There is an "Action Plan" that specifically addresses mentoring the MoI, which owns the police. Confusingly, due to the division of ministries within the Government of the Islamic Republic of Afghanistan (GIRoA), the police are not part of the same RoL strategy applied to the Afghan Ministry of Justice (MoJ).

RECOMMENDATION: Work to understand the higher-level framework for RoL. You need to know where your piece fits into the puzzle.[704]

ISSUE: Corruption in the ANP

DISCUSSION: Unfortunately, the Afghan police have never enjoyed much respect. Historically, the appointment of police was not merit-based. Officers purchased their appointments, and this encouraged them to accept bribes to "make a return on their investment." Today there are many allegations of corruption against the ANP. Nevertheless, with coalition mentoring in place, the ANP system for selecting officers is changing to become more merit-based, and it is working to root out and prosecute corruption.

RECOMMENDATION: The allegations of corruption against the ANP highlight the need to train them in RoL. Training exclusively in basic policing skills is not enough; that will only produce better thugs. The ANP need training in how to be ethical police.[705]

ISSUE: Duplication of RoL trainers

DISCUSSION: Many organizations are working to improve the RoL in Afghanistan. This is a good thing. It is better to have too many than too few. However, you will need to communicate and integrate with the other organizations in order to deconflict and coordinate efforts.

RECOMMENDATION: Know who else is working in your lane and coordinate with them.[706]

ISSUE: The difficulty of metrics in RoL

DISCUSSION: Metrics in RoL are subjective, yet the system expects practitioners to provide some assessment of progress.

RECOMMENDATION: Be realistic when working with RoL metrics. Do not pretend that they are more than a subjective assessment.[707]

ISSUE: Coordination in RoL

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[703] *Id.*.
[704] CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09, *supra* note 320.
[705] *Id.*.
[706] *Id.*.
[707] *Id.*.

DISCUSSION: There are many different agencies involved in RoL, and most of them are ready to lend a hand. The personnel working in the Justice Sector Support Program (JSSP) of the Department of State's (DoS) Bureau of International Narcotics and Law Enforcement Affairs (INL) were exceedingly helpful. The idea of developing regional training for the ANP in RoL evolved from an ongoing dialogue with JSSP.

RECOMMENDATION: The need for RoL development is so great that there is plenty of work to go around for everyone. Networking is important. Be open and communicate with others working in RoL. Be a self-starter, move about and talk to people, spot RoL issues, and work on them in coordination with other agencies.[708]

ISSUE: Flexibility in RoL

DISCUSSION: You may find your RoL job will change and develop during your tour. Let this happen.

RECOMMENDATION: Keep your eyes open for new opportunities, be flexible, and avoid fixing yourself to one way of working.[709]

ISSUE: RoL and counterinsurgency (COIN)

DISCUSSION: A COIN campaign must be in accordance with the RoL principles. If it is not, the campaign will not be legitimate. This is neither obvious nor intuitive.

RECOMMENDATION: Ensure your overall campaign comports with RoL principles.[710]

ISSUE: Comparative law

DISCUSSION: A RoL practitioner needs a good understanding of the legal system he or she is trying to assist. A new RoL mentor must prepare for deployment by reading as widely as possible on the Afghan legal system and Sharia law. Learning must continue in theater.

RECOMMENDATION: Afghan attorneys are an invaluable teaching resource to improve one's understanding of Afghan law and to understand that legal paradoxes are not necessarily contradictions. A RoL practitioner must continue to develop his understanding by speaking with his Afghan colleagues about their legal system.[711]

ISSUE: Mentoring Afghans

DISCUSSION: There is a tendency among Afghans to view their Western mentor as "a person to get them stuff." You must try not to fall into the trap of becoming this person. A little tough-love may be necessary.

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[708] *Id.*
[709] *Id.*
[710] *Id.*
[711] *Id.*

RECOMMENDATION: Do not get overly friendly with Afghans you are mentoring, as this can enable the wrong type of behavior. Observe, assess, make a plan of action, and stick to it.[712]

ISSUE: Reality shock and overcoming your inbuilt perceptions in RoL

DISCUSSION: RoL mentors from the West are likely to find it very difficult to come to terms with the low level of performance amongst the ANP. One's initial enthusiasm may quickly give way to disappointment, frustration, and complacency. You will have to face up to the fact that improvement takes time. However, this does not mean that it is not worth trying to improve the standard of RoL. We need to take a long-term view and count our progress over time where there is a series of small steps forward, and progress occurs in small increments. Sometimes a few steps forward are accompanied by a couple steps back.

RECOMMENDATION: Note. You will find RoL work to be a very rewarding opportunity if you are realistic about what is possible and learn to count your success in small steps.[713]

ISSUE: Manual (Non-doctrinal) for training non-lawyers on RoL

DISCUSSION: The ANP legal mentoring team a manual during the deployment for training non-lawyers on RoL. A copy of it is on file with CLAMO.

RECOMMENDATION: Obtain a copy of the "Police Mentoring Team Manual – Afghanistan" from the CLAMO website.[714]

ISSUE: Use of an IA at CJTF level

DISCUSSION: The CJTF level of command is unique. In the RoL area it acted as a conduit between its brigades and higher headquarters located in Kabul.

RECOMMENDATION: The CJTF level of command is not the best utilization of an IA for a pure RoL mission. IAs would better serve the RoL mission at a national headquarters or down at the brigade level.[715]

ISSUE: Working with civilians in ROL

DISCUSSION: The Stability Operations Cell consisted of military and civilian personnel. It is critical to understand the agencies the civilians work for, to include the Department of State and U.S. Agency for International Development (USAID).

RECOMMENDATION: An IA should know how these agencies work and their mission statements before deploying.[716]

ISSUE: A-Z Guide to Afghanistan Assistance

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[712] *Id.*
[713] *Id.*
[714] *Id.*
[715] Individual Augmentee, CJTF-82 RoL Section, OEF AAR, OCT09-JAN10, *supra* note 675.
[716] *Id.*

DISCUSSION: The A-Z Guide to Afghanistan Assistance is an invaluable resource and is located at www.areu.org.af.

RECOMMENDATION: IAs preparing to deploy and JAs already in theater should know of and use this resource.[717]

ISSUE: Establishing RoL metrics

DISCUSSION: There was an issue in determining effective RoL metrics. The building of courthouses, prosecutors' offices, and other hard structures briefs well but does little to demonstrate the advancement or deterioration of RoL in a particular area.

RECOMMENDATION: Improve. Focus more on linking the formal justice system to the Afghan people's need for relevant justice. Two metrics worth exploring are, (1) where does the judge sleep, and (2) if someone steals your bike where do you go?[718]

ISSUE: Afghan perception data

DISCUSSION: Brigades used their Afghan attorneys to conduct legal awareness training. The underlying goal of this training and accompanying radio programs and advertisements was to increase Afghan awareness of their legal rights. Determining the effectiveness of these efforts will take time. JAs can utilize perception data trends to determine the effectiveness of their RoL program.

RECOMMENDATION: Sustain. JAs would be wise to advise their command that gathering perception data will take time.[719]

ISSUE: Understanding of Afghan culture and law

DISCUSSION: The IA read articles relating to Afghan culture and law from various sources, to include the CLAMO website.

RECOMMENDATION: Sustain. JAs would benefit from understanding Afghan law and culture. Knowing different tribal allegiances and ways may help craft effective RoL programs.[720]

ISSUE: JTF-435's role in RoL

DISCUSSION: This is just another example of the confusing C2 structure in Afghanistan. JTF-435 interpreted its RoL mission as overall coordinator. However, the CJTF's reading of the FRAGO was that JTF-435's RoL mission extended only to corrections and detention operations. By the end of the deployment, USFOR-A had still not clarified JTF-435's role. JTF-435 aggressively pursued a broad mandate to control RoL. The CJTF OSJA attempted to argue that having a RoL actor at that high a level would anger the brigade commanders who thought they controlled RoL within their battlespace.

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[717] *Id.*
[718] *Id.*
[719] *Id.*
[720] *Id.*

RECOMMENDATION: Improve. USFOR-A or CENTCOM needs to clarify JTF-435's RoL mission. Additionally, it is advisable that its role be limited as much as possible.[721]

ISSUE: Judicial pay supplements

DISCUSSION: Afghan judges earn less than junior Afghan Soldiers. This creates the opportunity for corruption as they attempt to supplement their income by other means. The CJTF proposed using CERP to supplement their pay, but USFOR-A prohibited it. Furthermore, USFOR-A did not come back with an alternative. This issue was unresolved at the time of the CJTF's redeployment.

RECOMMENDATION: Improve. Figuring out how to supplement judicial pay is critical for the RoL effort.[722]

ISSUE: JTF-435's lack of coordination with BSO's in RoL

DISCUSSION: JTF-435's mandate not only included control over DetOps, but also RoL. As part of its mission, JTF-435 would conduct key leader engagements (KLEs) with local government officials. However, often the BSOs were marginalizing the negative influencers with whom JTF-435 was conducting KLEs. In other words, while the BSO was distancing itself from a certain official in an effort to delegitimize him, JTF-435 was reaching out to the same individual to bolster his popular support. This lack of unity of effort undermined the overall RoL effort within the area of operations.

RECOMMENDATION: Improve. JTF-435 must synch its theater RoL plan with the individual BSOs operating at the tactical level. BSOs have the best intelligence on which personalities ISAF should support and delegitimize. Further, USFOR-A must clarify JTF-435's RoL mission as it is currently amorphous. As JTF-435 refines its RoL effort, it will likely synch its efforts better with individual units.[723]

ISSUE: RoL C2 relationship with JTF-435

DISCUSSION: It was unclear what the command relationship was between CJTF-82 RoL Operations (ROLOPS) and JTF-435 RoL efforts e.g. Higher Command vs. Parallel (mutually supporting) Command. This lack of clarity resulted in operational challenges and coordination gaps when implementing changes to prior existing procedures and policies.

RECOMMENDATION: Improve. When a new entity/organization comes into existence among existing entities/organization operating in the same line of effort/operations, a clear understanding of the command relationship is imperative in order to maintain momentum and unity of effort.[724]

General

ISSUE: Urinalysis program for the ANP

[721] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[722] *Id.*
[723] *Id.*
[724] *Id.*

DISCUSSION: The urinalysis program for the ANP is a good idea, but it appears to be failing in its application. It is widely alleged that the abuse of drugs is rife in the ANP. The urinalysis program aims to test at least 10% of personnel every month, but very few ANP come up positive. This mismatch casts doubt on the program.

RECOMMENDATION: Improve the implementation of the program by requiring integrity in collection of urine samples.[725]

ISSUE: Classification of RoL materials

DISCUSSION: There is a tendency to classify materials that need not be classified. The working relationship between the RoL team and other agencies, including GIRoA and non-governmental organizations (NGOs), demands that all RoL materials be unclassified.

RECOMMENDATION: Improve.[726]

ISSUE: Combined Information Data Network Exchange (CIDNE)

DISCUSSION: One will be able to view all RoL projects in a defined area by using CIDNE.

RECOMMENDATION: JAs preparing to deploy become familiar with the system and its applications.[727]

ISSUE: Slow RoL progress

DISCUSSION: As the first real ISAF presence in the Wardak and Logar provinces, the BCT legal staff began RoL activities from scratch. Although there was an Afghan judicial presence in the AO, it took time to conduct initial meetings and key leader engagements (KLEs). Establishing these relationships and assessing the RoL "starting point" is necessary before there can be any sort of RoL plan. The Afghan chief judges in the provinces were initially apprehensive about being involved with ISAF. Over time, many warmed up to the BCT overtures.

RECOMMENDATION: Establishing a RoL "way ahead" is typically slow when a BCT arrives in a brand new AO. The priority is to establish a secure and sufficient foothold in an AO. Moreover, the local judiciary, police, and other RoL contacts may be hesitant to embrace RoL advances by the BCT and RoL team. Relationship building may take time and getting RoL buy-in may take longer.[728]

ISSUE: Unit resistance to new RoL attorney

DISCUSSION: The BCT tasked its brigade support battalion (BSB) with the RoL mission. It took a few months before a dedicated RoL attorney arrived in theater (four months). The BSB was initially resistant to accept his presence and was lukewarm to his efforts. They even neglected to invite him to meetings. It seemed they were distrustful of him and were concerned

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[725] CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09, *supra* note 320.
[726] Individual Augmentee, CJTF-82 RoL Section, OEF AAR, OCT09-JAN10, *supra* note 675.
[727] *Id.*
[728] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 42.

he could disturb the established working relationships. With time and some relationship building, the RoL attorney was able to integrate himself into the battalion's RoL mission and became an asset to them.

RECOMMENDATION: Improve. It is understandable some units that have been doing RoL for some time might be reluctant to welcome a late arriving RoL attorney. Any JA confronted with this sort of problem must put the team at ease and not disrupt established tempos. The key to becoming a member of such a team is to earn their trust and to demonstrate value to their mission.[729]

ISSUE: Working with company commanders in RoL activities

DISCUSSION: RoL can be much more than just efforts directed at the "3 Cs" of cops, courts and corrections. One great way to advance RoL is to engage the company commanders who work on a daily basis with local authorities and ordinary Afghans. If those company commanders leverage RoL activities in their daily interactions with Afghans, it is much easier to achieve RoL objectives of security, governance, functioning police, and judicial institutions, etc.

RECOMMENDATION: Sustain. RoL activities have to be more than just a JA or PRT function. All commanders, units, and Soldiers can contribute to RoL in their daily interactions with Afghans.[730]

ISSUE: Use of training to advance RoL relationships

DISCUSSION: One of the things that helped open doors and build relationships with Afghan police, judges, and prosecutors was the offer of training in a variety of topics. The JAs and Military Police made many offers to train units and officials in evidence collection, forensics, fingerprinting, ethics, human rights, and other areas.

RECOMMENDATION: Sustain. Many Afghan officials are eager to learn and gain knowledge of issues affecting their profession. It is quite easy to put together these training sessions and they have proven to be tremendous enablers in building relationships.[731]

ISSUE: Employment of Afghan attorney-advisors

DISCUSSION: 4-25 ID continued its predecessor's practice of employing Afghan attorney-advisors at the BCT headquarters and with the PRTs. Afghan attorney-advisors (one at the BCT, one at each PRT) helped facilitate key leader engagements (KLEs), plan seminars and other training events, and provide expert advice on Afghan law and governance. The attorney-advisors' knowledge enabled them to provide skilled advice on Afghan laws, legal processes, and jurisprudence.

RECOMMENDATION: Instead of U.S. Army JAs and Department of State (DoS) attorneys trying to determine Afghan law, it is much more effective, easier, and cheaper to employ an Afghan attorney-advisor. They are very competent, can interface directly with Afghans, and can speak English, which is a valuable skill because few Afghans speak English. Afghan attorney-

[729] *Id.*
[730] *Id.*
[731] *Id.*

advisors are hired as contractors working for the BJA. They should be graduates of recognized Afghan law schools such as Kabul University or Khowst University.[732]

ISSUE: RoL Continuing Legal Education (CLE) seminars

DISCUSSION: Human capacity building is essential to effective governance in Afghanistan and was a major component of the BCT's RoL strategy. 4-25 ID and its Afghan attorney-advisors organized, funded, and executed seminars for judges, prosecutors, defense attorneys, police investigators, and other legal professionals at quarterly CLE courses at Kabul University Law School. Over 400 attended the 4 courses. Topics included criminal law and procedure, civil law and procedure, contract law, commercial transactions, ethics and legal professionalism, and trial advocacy. Afghan government officials, including several Supreme Court justices and representatives from the Office of the Attorney General, served as instructors and facilitated discussions. The seminars were fully supported by the Supreme Court, the Office of the Attorney General, and the Ministry, of Justice who sent letters to provincial and district officials encouraging attendance.

RECOMMENDATION: Sustain. Human capacity building is essential to effective governance in Afghanistan. In accordance with COIN strategy, Afghans, preferably senior government officials, should lead seminars and other training events in order to create a linkage between attendees and the Afghan government.[733]

ISSUE: RoL civics training program

DISCUSSION: Human capacity building is essential to effective governance in Afghanistan and was a major component of the BCT's RoL strategy. 4-25 ID and its Afghan attorney-advisors organized, funded, and executed 35 week-long seminars for over 2,100 local government officials, school teachers, women, shura members, and tribal elders at numerous locations throughout the battlespace. The BCT initially conducted the courses in the provincial capitals, but subsequently pushed them down to the district-level, with several courses occurring in the most remote sections of Paktika province, the most rural area in the BCT AO. Topics included the Afghan Constitution, government structure, human rights, women's rights, and the relationship between the formal and informal justice systems. The provincial governors and district sub-governors fully supported the seminars and frequently attended opening and closing ceremonies, where attendees received certificates and RoL related publications to carry back to their villages. Local judges and prosecutors served as instructors, creating a linkage between attendees and the Afghan government.

RECOMMENDATION: Sustain. Human capacity building is essential to effective governance in Afghanistan. In accordance with COIN strategy, Afghans, preferably senior government officials, should lead seminars and other training events in order to create a linkage between attendees and the Afghan government.[734]

ISSUE: RoL related radio and television call-in shows

DISCUSSION: 4-25 ID started a weekly RoL related radio call-in show in Khowst Province. The broadcasts increased public knowledge and awareness about the Afghan Constitution,

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[732] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 265.
[733] *Id.*
[734] *Id.*

government structure, and the formal justice system. The PRT Khowst Afghan attorney-advisor used a weekly call-in format and had the Provincial Chief Judge, the Provincial Chief Prosecutor, and other government officials as guests. Many Afghans now have coalition provided radios-in-boxes (RIABs), allowing them to listen to broadcasts without a need for batteries or reliable power sources. Following the success of the radio show, PRT Khowst's Afghan attorney-advisor launched a weekly television show with a similar call-in format.

RECOMMENDATION: Sustain. This innovative IO and RoL project effectively reached and educated Afghans about the Constitution, government structure, and the formal justice system. In accordance with COIN strategy, guests included senior Afghan government officials, to create a linkage between listeners and the Afghan government.[735]

ISSUE: RoL publications for Afghans

DISCUSSION: 4-25 ID distributed over 130,000 books and other publications to raise public awareness and to educate Afghans on governance and RoL topics. Publications included the Afghan Constitution, civics books, criminal procedure books, and RoL themed comic books for children and for illiterate adults. 4-25 ID printed the publications using Commander's Emergency Response Program (CERP) funds. PRT DoS advisors and BN civil affairs officers distributed the publications to audiences throughout the BCT AO.

RECOMMENDATION: Sustain. RoL publications are an easy way to educate Afghans on their legal system and laws. Involving PRT-level DoS advisors in distributing the publications is a good example of interagency cooperation.[736]

ISSUE: Key leader engagements (KLEs)

DISCUSSION: The BCT commander was on his fourth Afghan tour and took the view U.S. Army leaders should not be front and center in KLEs. Rather, in accordance with COIN strategy, the focus should be on linking Afghans, including tribal elders, to the Afghan government. U.S. Army leaders should work to identify sources of instability or discontent, identify an Afghan government official who, if properly resourced, could eliminate the source of instability or discontent, resource that official, and provide effective mentorship and partnership to ensure the source of instability is eliminated. U.S. Army leaders should meet with Afghan leaders as needed to facilitate this approach, but should not be front and center. The goal is fostering Afghan interactions and participation in their own governance.

RECOMMENDATION: Sustain. Using such an approach forces Afghans to take responsibility for themselves and their system of governance.[737]

ISSUE: Jirga intern program

DISCUSSION: Most Afghans do not know about, respect, or trust the formal justice system. The informal justice system, consisting of jirgas led by community and tribal leaders, has existed for many years and enjoys wide use. 4-25 ID struggled to identify ways to link the formal and informal justice systems. The jirga intern program was a pilot program suggested by the DoS RoL advisor to have law students and new Afghan attorneys serve as interns. The Dean of

[735] *Id.*
[736] *Id.*
[737] *Id.*

Khowst University Law School would select the best students to serve as interns with 4-25's Afghan attorney-advisors serving as intermediaries to establish the intern relationship with the community and tribal leaders. Interns would attend jirgas, offer input from the formal justice system (e.g., what does the Constitution or statutes say on the issue being discussed), and record the decision. [Note: 4-25 ID completed final coordination with Afghan authorities to execute this initiative and secured CERP funding, but redeployed before the first interns were selected. The unit that replaced 4-25 ID planned to implement the initiative.]

RECOMMENDATION: Sustain. This innovative RoL project will create a linkage between the formal and informal justice systems, which furthers COIN strategy of linking the people to the government.[738]

ISSUE: Counter-Narcotics Justice Task Force

DISCUSSION: The battalion utilized the Counter-Narcotics Justice Task Force when it detained criminals that met the statutory threshold for prosecution at the Counter-Narcotics Tribunal (CNT) in Kabul. The Counter-Narcotics Justice Task Force was well staffed and able to handle these cases, to include transporting the detainee to Kabul.

RECOMMENDATION: Sustain. JAs should be aware of the Counter-Narcotics Justice Task Force (CNJTF) and push as many cases there as possible, as required by the Counter Narcotics Law.[739]

ISSUE: Assisting the PRT with RoL mission

DISCUSSION: UNAMA had the lead at the operational level for the RoL mission, and the PRT had the lead at the tactical/battalion level. In 2d LAR's AO, the PRT had only one advisor working RoL. The Marines had much more capability than the one PRT advisor in carrying out the RoL mission.

RECOMMENDATION: JAs should get to know the PRT RoL advisor early on, set up roles, and discuss what unit assets are available to assist in accomplishing the RoL mission.[740]

ISSUE: Using law enforcement professionals (LEPs)

DISCUSSION: LEPs were a tremendous asset the unit used to train local police how to investigate crimes and preserve evidence.

RECOMMENDATION: When conducting COIN operations, continue to attach LEPs to infantry battalions. Units should involve LEPs in the RoL mission.[741]

ISSUE: Lack of local government

DISCUSSION: In 2d LAR's AO, the local government was practically non-existent. Initially there was only one governor and later a police chief. As part of their RoL program, the unit

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[738] *Id.*
[739] *Id.*
[740] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.
[741] *Id.*

began recruiting a police force off the streets of the local village. By the end of the deployment, the local village had a standing police force and a local jail.

RECOMMENDATION: Sustain.[742]

ISSUE: Networking among RoL players

DISCUSSION: The SJA attended as many RoL working groups at the U.S. Embassy as possible. While not always practical to attend, these meetings afforded the SJA a networking opportunity and allowed him to track the overarching RoL mission in Afghanistan.

RECOMMENDATION: Sustain. Unity of effort within the RoL line of effort/operation (LOE/LOO) is important. JAs should maintain situational awareness of RoL missions.[743]

ISSUE: Identifying Reserve JAs to serve in RoL billets

DISCUSSION: Reserve JAs have special skill sets not existing in the active component. These would prove beneficial when constructing a RoL program.

RECOMMENDATION: Improve. The Judge Advocate General's (JAG) Corps should establish a process to identify Reserve JAs with special skill sets, such as court administration or in other subject areas, useful to RoL operations.[744]

ISSUE: Convincing the S-2 of the benefit of NDS prosecutor interviews

DISCUSSION: JAs must work early and often with the S-2 to explain the utility of NDS prosecutors conducting detainee interviews. As Afghans, NDS prosecutors easily notice subtleties American interrogators and analysts often miss. NDS prosecutors can help build a strong case and simultaneously provide the S-2 with valuable intelligence received from the detainee.

RECOMMENDATION: JAs must work with the S-2 to explain the benefits of NDS prosecution partnerships, prosecution-based targeting, and NDSPD-led law-enforcement interviews.[745]

ISSUE: Commander support for RoL critical

DISCUSSION: Command emphasis is the currency of success for any operation. The CJTF OSJA focused its efforts in RoL while not being the action officers for the program necessarily, but rather in convincing commanders to prioritize RoL at the CJTF and consequently the brigade levels. This entailed conducting an "internal IO campaign" with the CG. For instance, the SJA would recognize brigade RoL successes to the CG who would then speak to those successes during the governance Commander's Update Brief (CUB). When RoL was briefed at the CUB, brigade commanders then realized this was a CJTF priority. Additionally, the SJA would give the CG questions on RoL programs to ask brigade commanders during battlefield circulation. Once brigade commanders heard the CG ask about RoL, they began to place command emphasis

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[742] *Id.*
[743] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 49.
[744] *Id.*
[745] AWG, OEF AAR, OCT 09 - APR 10, *supra* note 662.

on it at their level. This was particularly effective to prompt those commanders who were more focused on lethal operations.

RECOMMENDATION: Sustain. RoL will only gain traction if CJTF and brigade commanders emphasize it. SJAs should make a concerted, yet subtle, effort to gain command emphasis of the program as necessary. Command emphasis is perhaps the greatest resource the CJTF can provide to ensure mission accomplishment in RoL.[746]

ISSUE: Operationalizing the CJTF RoL program

DISCUSSION: The SJA found that RoL success was contingent upon the J-3 spearheading the effort rather than the special staff. The only way that the CJTF would dedicate resources to RoL, as with any other military mission, was if the J-3 led the mission planning and coordination.

RECOMMENDATION: Sustain. Do not keep RoL in JAG channels. The CJTF staff must treat RoL like any other combat mission and have the J-3 take the lead in planning. This will facilitate bringing the full complement of CJTF staff resources to bear on the mission. Additionally, it will ensure that the RoL mission supports the overall Governance Line of Operation mission of transparent, functional and accountable governance.[747]

ISSUE: Supporting brigade RoL programs

DISCUSSION: As the battlespace owners (BSOs), brigades were in the best position to execute the RoL mission. The CJTF supported this through providing RoL programs that brigades could tailor to their unique needs. It additionally allowed the CJTF to create programs that were better nested with the theater wide RoL effort. This helped remedy the persistent disconnect between the various brigade RoL programs and Kabul's RoL strategy.

RECOMMENDATION: Sustain. The CJTF accomplishes its RoL mission more effectively by providing resources (to include command emphasis) and guidance to the BSOs instead of dictating specific RoL efforts.[748]

ISSUE: Challenges to the CJTF RoL program

DISCUSSION: RoL efforts faced a number of challenges. Namely, enemy situation, terrain, and lack of resources (i.e. commo, mobility, personnel, etc.) were the primary adverse factors. The CJTF left it to the BSO to assess the effects of terrain and enemy situation on the RoL effort as it was in the best position to do so. The CJTF attempted to assist in mitigating the effects of lack of resources by dedicating additional personnel and other resources to the mission.

RECOMMENDATION: Sustain. Again, RoL is primarily a brigade level effort. They are in the best position to tailor a program to the situation on the ground in their AOs. The CJTF however does have resources that it can flex to the BSO to assist it in its mission. The CJTF obtained 10 ROL Judge Advocates from the Army, Navy, and Air Force through an RFF. Four of the Judge Advocates were assigned to the CJTF's higher headquarters, USFOR-A, while the remaining six Judge Advocates were flexed out to brigade level BSOs.[749]

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[746] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[747] *Id.*
[748] *Id.*
[749] *Id.*

ISSUE: RoL program in Afghanistan is weak

DISCUSSION: Afghanistan is at least three years behind Iraq in RoL.

RECOMMENDATION: For those with OIF experience, do not assume that the Afghanistan RoL program is as well coordinated or resourced at the theater level. While it is getting better, the RoL program in Afghanistan is still in its infancy.[750]

ISSUE: Emphasize RoL to VIP visits

DISCUSSION: The SJA leveraged every opportunity to inform VIP visitors of the RoL mission and its importance. This included visits from U.S. Senators as well as TJAG.

RECOMMENDATION: Sustain. As the RoL mission is both new and resource intensive, gaining support at the policy-making level is important.[751]

ISSUE: RoL program must survive a RIP

DISCUSSION: In order for the RoL mission to succeed in Afghanistan, commands must create programs which survive a RIP. If every time a unit leaves theater the replacing unit reinvents the RoL program, it will ultimately fail. That is why the CJTF created provisions in the evidence SOP that ingrained elements of the RoL mission in the operational planning process for the brigades. Then these brigades would brief their counterparts who were replacing them, and the program would have some continuity.

RECOMMENDATION: Sustain. The CJTF needs to be aggressive in implementing realistic programs in order that they become ingrained in the subordinate units' operational planning processes and other staff sections.[752]

ISSUE: Enable BCT RoL engagements

DISCUSSION: When at the operational level, seek out opportunities to assist ROLOPS engagements at the tactical level. Often, RoL SMEs are not organic at the tactical level resulting in missed opportunities to conduct key leader engagements (KLEs) ISO ROLOPS.

RECOMMENDATION: ROLOPS legal advisors should understand the concept of providing and managing operational level enablers to the tactical level.[753]

ISSUE: Know all existing stakeholders

DISCUSSION: Understanding the mission of the Combined Security Transition Corps – Afghanistan (CSTC-A) allowed for the CJTF-82 ROLOPS to request Afghan National Army logistics in order to observe criminal trials conducted at the Afghan National Detention Facility in Pol-A-Charki, vicinity of Kabul.

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[750] *Id.*
[751] *Id.*
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[753] *Id.*

RECOMMENDATION: Identify all existing stakeholders and their missions in your theater of operations in order to leverage available resources.[754]

ISSUE: Classification

DISCUSSION: Sharing of information is critical to the success of ROLOPS. Sharing information with host-nation counterparts builds rapport and capacity. Unclassified information is the operational standard when sharing information with host-nation governmental representatives.

RECOMMENDATION: Thoroughly understand the classification processes, seek out and build rapport with your foreign disclosure officer, then coordinate closely with your intelligence counterparts to seek out ways of building unclassified information packets.[755]

ISSUE: Targeting

DISCUSSION: Understanding the various targeting processes and products (*e.g.* Joint Priority Effects List (JPEL), Joint Prioritized Shaping & Influence List (JPSIL)) is crucial to integrating ROLOPS from the strategic through the operational levels.

RECOMMENDATION: Seek out and build rapport with your counterpart in charge of targeting; in most instances that will be a fires officer (field artillery) but in some cases can be other branches when working with non-lethal targeting (*e.g.* civil affairs, psychological operations).[756]

ISSUE: Civilian-military integration

DISCUSSION: Because the operating environment was generally non-permissive, the civilian counterparts could not operate on an equal footing (*e.g.* inability to action concepts and assess). This inability to gather information from the operating environment resulted in a heavy dependence on the military counterparts' abilities to gather information.

RECOMMENDATION: Realize this inequality when attempting to integrate with civilian counterparts and seek to mitigate the effects of this inequality.[757]

ISSUE: Internal evaluation

DISCUSSION: It is imperative at times to conduct an internal assessment of processes and procedures in order to identify any existing actions that are fueling corruption among host-nation counterparts. Actions that fuel corruption undermine ROLOPS and create animosity among other stakeholders.

RECOMMENDATION: Establish internal review procedures and assessments as part of PMT.[758]

ISSUE: Human Terrain Teams (HTT)

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[754] *Id.*
[755] *Id.*
[756] *Id.*
[757] *Id.*
[758] *Id.*

DISCUSSION: HTTs provided a pool of SMEs that could be employed as a "sounding board" when developing possible culturally viable courses of action. This process assisted in distinguishing whether a response or line of reasoning proffered by host-nation counterparts constituted legitimate responses or a façade with underlying motives. The ability to make such assessments is critical to security force assistance (SFA) and building genuine capacity.

RECOMMENDATION: Seek out assigned members of HTTs to your organization and build rapport.[759]

Kosovo and ROL Efforts

ISSUE: Parties responsible for RoL efforts in Kosovo

DISCUSSION: The RoL mission is the direct responsibility of EULEX. However, at the very least, legal personnel will have to advise the command on how to approach judges and officials accused of corruption.

RECOMMENDATION: When working in the RoL arena in Kosovo, EULEX is a great senior partner. It is also beneficial to interact with embassy personnel and have a relationship with the U.S. Agency for International Development (USAID). Recognize TFF does not have the lead in this area, but can contribute.[760]

ISSUE: Initial discouragement of participation in the RoL mission

DISCUSSION: During the unit's pre-deployment training, the constant refrain was that the mission was to provide a "safe and secure" environment and "freedom of movement." Trainers actively discouraged participation in RoL activities for fear the unit might step on the toes of EULEX. During an Article 6 visit, The Judge Advocate General (TJAG) stated it would be acceptable for legal personnel to interact with the local national judiciary. When TFF attorneys began working in this area, the EULEX and UN lawyers welcomed the help and wondered aloud why TFF attorneys had not come aboard in this area earlier.

RECOMMENDATION: Make RoL a part of every mission. It is too important to ignore. Even if not the primary focus of the mission, JAs can undertake actions in concert with others to strengthen the RoL.[761]

ISSUE: Paralegal acceptance of the RoL mission

DISCUSSION: The unit's paralegals did not initially understand contributing to the RoL mission was part of their job. Early on, they did not see the need for the additional tasks in this area. However, RoL emphasis paid huge dividends for the command. Consequently, it was a necessary part of their practice. The paralegals eventually came to embrace these efforts when they saw the benefits it provided.

RECOMMENDATION: Not all JAGC personnel have experience with RoL operations. Just as it is sometimes necessary to educate the command on its importance, it may also be necessary to

[759] *Id.*
[760] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.
[761] *Id.*

educate members of the legal team. Soldiers perform much more effectively when they understand the "why" of what the leaderships asks them to do.[762]

I.P. Stability Operations

ISSUE: Legal basis for HA/DR operations in Haiti

DISCUSSION: The legal basis for the HA/DR operations in Haiti was host nation request and invitation. Haiti and the U.S. did not implement any last minute status of forces agreements (SOFAs). The closest thing to a privileges and immunity agreement was the 10 May 1995 Exchange of Notes between the U.S. and Haiti. As best the JAs could determine in the short time they had before leaving for Haiti, the 1995 Exchange of Notes was still in force and applicable. DoS subsequently confirmed the application of the Exchange of Notes.

RECOMMENDATION: Immunities and privileges during operations in another country are important factors for JAs to determine and brief commanders so there are no subsequent issues with Soldiers' activities and conduct.[763]

ISSUE: Soldier mindset in stability operations

DISCUSSION: One of the issues arising during the pre-deployment phase was the mindset of Soldiers who had previously served in Salah ah Din Province in during the 2006-7 deployment. The BCT's previous deployment was in the same province and it focused on combating the insurgency. Soldiers had to be re-educated on the developments in the AO and the nature of conducting stability operations. The commander took an active part in promoting the training geared towards stability operations.

RECOMMENDATION: Sustain. Success in training Soldiers and changing old mindsets is a leadership issue that only will be as successful as the command's efforts. JAs can actively assist the commander by reaching out and ensuring Soldiers understand the correct legal underpinnings of the mission.[764]

ISSUE: Iraqi Police (IP) technology gap

DISCUSSION: The IP continue to rely on coalition forces for certain evidence to get warrants against insurgents. This largely flows from the lack sophisticated signals intelligence (SIGINT) capabilities. Without these capabilities, it is doubtful that existing practices for getting warrants based on SIGINT will continue after coalition forces leave.

RECOMMENDATION: Improve. The use of SIGINT based evidence practices will likely cease unless the IP can overcome the current technology gap.[765]

ISSUE: Use of human terrain teams (HTTs)

DISCUSSION: A Reserve lieutenant colonel headed the 4-5 people on the HTT. They attempted

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[762] *Id.*
[763] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 316.
[764] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 13.
[765] 2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09, *supra* note 38.

to blend into the population get feedback from the local people. Although there were no real legal issues, they worked closely with the battalions.

RECOMMENDATION: It definitely helped to have a uniformed individual in charge of the team.[766]

ISSUE: Counterinsurgency (COIN) Academy

DISCUSSION: The BJA was able to attend the Counterinsurgency (COIN) Academy in Baghdad. The instruction covered best practices, lessons learned, Iraqi culture, etc.

RECOMMENDATION: Sustain. BJAs should aggressively seek to attend the COIN academy, as it gave the BJA increased credibility with the staff and was helpful in the RoL mission.[767]

ISSUE: Transition to stability operations for the security transition command

DISCUSSION: MNSTC-I as an organization began with the task of recreating the security structure of Iraq by injecting huge amounts of money and equipment into the country. The next phase, over which the current OSJA presided, consisted of enabling the Iraqi security structure by developing ministerial capacity—everything needed to administer and sustain the ISF, including logistics, budgeting, disciplinary systems, etc. The final stage of the lifespan of the security assistance command will be to transfer the mission back to the DoS and to help set up a functioning Office of Security Cooperation (OSC) under the Embassy.

RECOMMENDATION: Work closely with the Partnership Strategy Group – Iraq (PSG-I), which is the strategic planning cell for MNSTC-I, to ensure the command is using ISFF currently in ways which will support the vision for the U.S.-Iraq security partnership beyond 2011 and to ensure the proper legal authorities will exist to accomplish U.S. goals.[768]

ISSUE: Need for coordination between the security transition command and operational units

DISCUSSION: MNC-I was the operational sister command to MNSTC-I under MNF-I. Many individuals and organizations within both MNC-I and MNF-I did not understand MNSTC-I's mission or its unmatched access to the highest levels of the MoD and MoI. MNSTC-I operated and advised at the Iraqi ministerial level down to the schoolhouse level of the ministries (the components analogous to the U.S. Army Training and Doctrine Command (TRADOC)). From that point on in the hierarchy, MNSTC-I handed off responsibility for ISF training to MNC-I, where units down to the company level performed the day-to-day assistance to their Iraqi counterparts.

An example of the lack of awareness of MNSTC-I assets occurred when a brigade commander wanted to conduct a joint exercise with his Iraqi counterparts at a particular FOB. Apparently unaware MNSTC-I had constructed a combat training center at the immediately adjacent FOB for this very purpose, the brigade commander approved a project to fund his own joint exercise.

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[766] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[767] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.
[768] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 72.

RECOMMENDATION: The biggest improvement needed is better coordination both up to USF-I and down to the brigade level. Operational units need to maximize the unique access to the Iraqi ministries the security transition command possesses. They also need to be aware of projects MNSTC-I has completed so they can make use of them to advance their own training and advisory mission.[769]

ISSUE: Relationship with Advise & Assist Brigades (AABs)

DISCUSSION: There was only one AAB operating in Iraq at the time of this report. MNSTC-I did not have any contact with the AAB. By August 2010, the operational component of USF-I will consist mainly of six AABs organized two each under three U.S. divisions.

RECOMMENDATION: AABs need to understand the force structure and what enablers are present at the USF-I level. AABs should push their issues up the chain of command so former MNSTC-I elements operating under the Deputy Commanding General for Assistance and Training (A&T) can engage Iraqi officials at the ministerial level.[770]

ISSUE: Mentoring Iraqi JAs

DISCUSSION: The BfSB supported an Iraqi unit, which had a JA. The Iraqi JA had been to law school but was unfamiliar with how legal advisors were supposed to function in a military unit. The BfSB JA took on the mentoring of the Iraqi JA and arranged a meeting once a month. This helped to develop the Iraqi JA, who became more involved in advising on issues in his units. However, you may need to be ready to confront Iraqi prejudices as part of the mentoring process. For instance, The BfSB JA was a female. This was somewhat of an issue from the Iraqi JA's perspective.

RECOMMENDATION: Mentor JAs in the Iraqi units you support. They can be a key asset for dealing with detainees and evidence issues in areas where rule of law is mostly governed by the Iraq Army.[771]

ISSUE: Economic development--more skills and experience, fewer bodies

DISCUSSION: One of the most important projects during the deployment for the Rule of Law/Economics Team Advisor was the Baghdad International Airport (BIAP) economic development zone. The BIAP economic development zone consisted of a business hotel, an office tower, and a large convention center for trade shows. The project required close coordination with host nation and foreign investors and with U.S. and host nation government officials. The major skill sets required for economic stability operations are finance, accounting, budgeting, forecasting, and general understanding of commercial law beyond contract and fiscal law.

RECOMMENDATION: Improve. The majority of these skill sets are not organic to the CA and JAG Corps, at least within the active component. Further, experience is more important in these areas than training. Greater effort is necessary to identify active duty and reserve component

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[769] *Id.*
[770] *Id.*
[771] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 4.

officers with the particular skill sets required to perform economic development. Redundant personnel with limited experience hinders to the mission.[772]

ISSUE: Stability operations cell at CJTF

DISCUSSION: DoS personnel ran the CJTF stability ops cell. They generally operated only on the unclassified network. Additionally, the focus of its operations was to provide pre-decisional information briefs to the command. Due to its lack of classified network use and its focus on PowerPoint presentations, it was of limited use to the OSJA.

RECOMMENDATION: Carefully consider the support you give to the stability operations section.[773]

I.Q. Rules of Engagement (ROE)/Targeting

ROE and Targeting Training

ISSUE: Multinational force targeting

DISCUSSION: CJSOTF-A worked with attached multinational SOF that operated under OEF guidelines with national caveats. CJSOTF-A also operated with multinational SOF and general purposes forces (GPF) that operated under ISAF guidelines with national caveats. Lastly, CJSOTF-A operated in locations where multinational forces controlled crucial enablers (*e.g.* Spanish forces operated the airfield at Herat) with different operating procedures in addition to national caveats.

RECOMMENDATION: Thorough understanding of the OEF and ISAF policies, where they differed, and how those differences could impact operations during planning and contingencies is imperative. Furthermore, a thorough understanding of national caveats and operating procedures is imperative in order to mitigate potential adverse operational impacts.[774]

ISSUE: Re-educating Soldiers on ROE

DISCUSSION: After eight years of combat operations and high intensity conflict experiences in Afghanistan and Iraq, many Soldiers are deploying again to those countries. However, ROE in both countries have changed and these returning Soldiers need to be re-educated on the current ROE. Current versions of the ROE tend to be more restrictive regarding the use of force than the older ones. The goal is to make sure Soldiers and commanders will not rely on ROE that were in place two to three years ago.

RECOMMENDATION: JAs need to participate in ROE training for all Soldiers, focusing on breaking Soldiers of habits learned under old ROE.[775]

ISSUE: ROE training responsibility

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[772] 492d CA BN OIF AAR JAN 09 - FEB 10, *supra* note 587.
[773] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[774] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 6.
[775] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 87.

DISCUSSION: Doctrinally, ROE are a command responsibility. However, many JAs continue to find themselves primarily responsible to lead training or to give lectures to Soldiers and their immediate supervisors. While JAs should be involved in training to some degree, commanders and supervisors should be the ones to deliver the training. Soldiers are much more likely to appreciate ROE provided by their squad and platoon leaders. Additionally, small unit leaders must be able to recite and know the ROE, as they will not have the time in the field to review Soldier Cards or call the JAs on the radio when a firefight breaks out.

RECOMMENDATION: Each BCT is composed of subordinate units that have varying talent levels when it comes to ROE training. The involvement of JAs in ROE training is a balancing act. The JAs can and should help but, at the end of the day, leaders have to be able to understand ROE and apply them correctly in the field without assistance.[776]

ISSUE: Standard TJAGLCS training slides

DISCUSSION: The BJA used a TJAGLCS training package to teach ROE to convoy commanders. The BJA modified the material to reflect the actual situation in theater. Soldiers are not interested in, nor do they have a need to know, the history and development of ROE. They would rather understand when they can/cannot shoot, and if they do, whether they will go to jail if they make a mistake. Many of the training materials are theoretical and intended for a more sophisticated audience. Nonetheless, the training was well received.

RECOMMENDATION: Improve. Consider the audience at the ROE briefing when using standard training materials. Keep the training material simple. Write ROE training discussions into words convoy commanders can understand. ROE training material provided by TJAGLCS often does not reflect reality on the ground. As the BJA, go to convoy commander's briefings. Talk to them and understand their terminology. Develop a good working relationship with convoy commanders.[777]

ISSUE: Collateral Damage Estimation (CDE) training

DISCUSSION: Within the 3BCT, only two people were CDE trained—the senior targeting NCO and the BJA. Having more staff CDE trained and certified was desirable. CDE training would greatly benefit Soldiers in the field when faced with hasty use of force situations where collateral damage could ensue.

RECOMMENDATION: All deploying JAs should try to take the course as a means to grasp the issues associated with use of force, proportionality, and collateral damage. Where possible, those JAs accompanying deploying units that could be engaged in kinetic operations should endeavor to get CDE training before deploying.[778]

ISSUE: ROE training

DISCUSSION: At the behest of the BCT commander, the BCT legal team ran an escalation of force (EOF) lane during the BCT's situational training exercise (STX) lanes. They provided 3-4 hours of training on ROE/EOF principles, and then tested these principles on the lane, which

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[776] *Id.*
[777] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 92.
[778] 3-1 CAV OIF AAR (1st Half), DEC 08 - JUL 09, *supra* note 62.

involved a traffic control point (TCP) scenario. They were successful in training Soldiers and commanders that Iraq was no longer a high intensity conflict (HIC) environment, stressing the changing notions of what constitutes hostile intent during stability operations.

RECOMMENDATION: Sustain. The BJA noticed a significant difference between the aggression of the organic battalions that went through this training and the non-organic battalions under the BCT during the deployment. The BJA should strive to ensure these non-organic units understand the BCT commander's intent with regard to conservative use of force.[779]

ISSUE: Quick reference chart

DISCUSSION: It is imperative you know or can quickly find the answer to the following questions: 1) Which weapons systems can be used against which targets? and 2) Who has the authority to fire that system?

RECOMMENDATION: Multi-National Division – North (MND-N) developed a classified color-coded chart for quick ready reference. Find and use this chart. (Note: The 1 OCT 09 version of this chart is on file with CLAMO).[780]

ISSUE: Collateral Damage Estimation (CDE) Training

DISCUSSION: The BJA reviewed hundreds of targeting packets. Being able to understand the targeteers' language and explain the CDE information is important.

RECOMMENDATION: Sustain. JAs need not be expert in CDE, but must have facility with it.[781]

ISSUE: Situational awareness

DISCUSSION: Initially, personnel on patrol would throw candy to local children. This practice attracted a significant amount of foot traffic to the roadside. After time, the unit stopped throwing candy. Eventually, the local children started throwing rocks at the Soldiers. The battalion commander ordered the Soldiers not to engage the children.

RECOMMENDATION: Although the Soldiers would have been able to defend themselves in this type of situation, the battalion commander made the decision that political and societal concerns outweighed the indignity of Soldiers being hit with rocks.[782]

ISSUE: Pre-deployment ROE training

DISCUSSION: The JA at the Regional Training Center (RTC), Fort Dix, gave his ROE brief in a classroom environment and not during a tactical exercise. Classroom based ROE training is not as good as tactical ROE training.

RECOMMENDATION: Students should learn ROE in a tactical environment so they have an immediate chance to apply in practice what they have learned. This is not the case for an ROE

[779] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 124.
[780] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 13.
[781] *Id.*
[782] *Id.*

brief in a classroom environment. The JA instructor should participate in the tactical exercise to highlight the ROE/EOF principles taught in class. This is particularly important given that the outgoing unit had reported an increase in ROE/RUF issues several months before the 11th MP BDE arrived in theater.[783]

ISSUE: ROE violations during pre-deployment training exercises

DISCUSSION: An RTC instructor used the wrong terminology in classifying detainees and told Soldiers it was acceptable to hood detainees.

RECOMMENDATION: JAs assigned to support the RTC should review cadre LOAC training to ensure that it is legally compliant.[784]

ISSUE: Inconsistent ROE briefings

DISCUSSION: Three NCOs from the RTC drill sergeant cadre gave different briefings with different perspectives on ROE. This inconsistency confused Soldiers. The cadre should ensure they all give the same ROE brief. JAs should review the slides to ensure compliance with First Army's briefing requirements.

RECOMMENDATION: Eliminate classroom ROE/RUF training or present it so Soldiers can immediately apply the material taught in the classroom in a tactical environment.[785]

ISSUE: ROE training at Camp Shelby

DISCUSSION: The training the unit received at Camp Shelby, Mississippi was atrocious. Non-legal personnel briefed the rules of engagement (ROE) on nine occasions, one of which repeatedly included the phrase "by whatever means necessary." Moreover, all versions were different. Eventually, Camp Shelby allowed the unit to do its own ROE training.

RECOMMENDATION: Improve. Non-legal personnel should not brief the ROE.[786]

ISSUE: Collateral Damage Estimation (CDE) training

DISCUSSION: Within the BCT, one JA and the senior NCO paralegal were the only individuals who received training and certification in CDE. The training occurred after arrival in theater. Consequently, the JA and NCOIC were active in targeting activities.

RECOMMENDATION: Sustain. Having legal staff familiar with and trained in CDE makes them invaluable to BCT operations.[787]

ISSUE: Aviator specific ROE training

DISCUSSION: The TF commander required all aviators to participate in ROE working groups conducted via Breeze Chat System. The BJA, with input and technical assistance from the Air

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[783] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 138.
[784] *Id.*
[785] *Id.*
[786] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 129.
[787] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 13.

Mission Commander (AMC), constantly updated briefs and talking points to keep the topics relevant. The TF Commander constantly reminded his aviators they "own their bullets."

RECOMMENDATION: Sustain. Catering ROE briefs and discussions to fit the target audience should continue. Commanders and BJAs should discourage the use of canned ROE briefs.[788]

ISSUE: Training the ANP in the use of force

DISCUSSION: Absent a combat situation, the ANP's training is to use force in self-defense mode with the aim of capturing criminals and bringing them to justice. However, the difficulties in exercising this restraint are immense. The ANP are very much a force under fire. They regularly take heavy casualties, and attrition rates are high.

RECOMMENDATION: Note.[789]

ISSUE: ROE training

DISCUSSION: The brigade legal section created and briefed a classified version of the ROE for commanders before they left Kuwait. They also conducted ROE training in Kuwait for every Soldier in the unit. This training was always done in a live environment. The use of a video by another unit for ROE training was not very effective.

RECOMMENDATION: Sustain. The more you train, the better.[790]

ISSUE: Use of paralegals to brief ROE to battalions

DISCUSSION: Each of the brigade's paralegals briefed his/her own battalion on the ROE with a JA present.

RECOMMENDATION: Sustain. This helps build the paralegal's credibility and ensures the command understands the paralegal is a subject matter expert to whom the unit can address questions. The more you put the legal personnel in front of them, the more comfortable the command becomes with them.[791]

ISSUE: Collateral Damage Estimation (CDE) training

DISCUSSION: The BJA did not have any formal CDE training before deploying. He did receive informal training from the BCT Fire Support Coordinator (FSCORD) in Iraq.

RECOMMENDATION: Improve. JAs should receive some formal and/or informal training on CDE before deploying.[792]

ISSUE: Collateral Damage Estimation (CDE) training

[788] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 16.
[789] CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09, *supra* note 320.
[790] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[791] *Id.*
[792] *Id.*

DISCUSSION: Both the BJA and TC took the 5-day CDE course before deployment. Although they did not use it much during the deployment, it was a useful skill to have.

RECOMMENDATION: Sustain.[793]

ISSUE: Escalation of force (EOF) training during the deployment

DISCUSSION: Growing concern about ISAF forces' use of excessive force led to increasingly restrictive guidance from ISAF HQ to halt the instances of EOF incidents resulting in Afghan civilian deaths and injuries. The BCT legal staff and the command staff conducted training during the deployment to implement the revised guidance. There was frustration from the troops in this regard since it is difficult to change tactics mid-stream, but the BCT trained extensively during the deployment to conform to the new guidance.

RECOMMENDATION: It is sometimes quite difficult to implement new command guidance significantly changing tactics, techniques, and procedures (TTPs), especially when the old TTPs resonate with the Soldiers. Taking an active part in the training by the brigade legal section helped instill the new TTPs in a manner that achieved the objective and also helped Soldiers appreciate the instances where EOFs would be justified and defensible.[794]

ISSUE: ROE training

DISCUSSION: The RC JA provided ROE refresher training to the battalions. Soldiers often asked him for specific parameters they should use in determining hostile intent.

RECOMMENDATION: Stress to Soldiers that their determinations of hostile intent are dependent on their particular situation. Use examples to show how what might be hostile intent in one fact pattern may not constitute hostile intent in a different scenario.[795]

ISSUE: Collateral Damage Estimate (CDE) training

DISCUSSION: Having CDE training gave Division JAs a better understanding and more informed ability to contribute to kinetic operational planning. Additionally, it gave them credibility amongst the operators since they could actively participate in the deliberations.

RECOMMENDATION: Sustain. Where possible, provide CDE training to junior JAs and paralegals who participate in operational law issues.[796]

ISSUE: Need for CDE training at TJAGLCS

DISCUSSION: Currently there is little training on the joint targeting methodology. With large-scale operations in Iraq and Afghanistan to continue for some time, the Operational Law of War (OPLOW) Course should have more targeting training incorporated. This training should include the CDE methodology. Right now, JAs can say, "I know this is a CDE number and I know this number is okay, but I do not know where this number comes from." There is a need to train more

[793] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.
[794] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 42.
[795] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 134.
[796] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.

people on the methodology. This training makes it much easier to involve yourself in the process. Some Division and BCT JAs were able to get further this type of targeting training from the Central Command (CENTCOM) fires team.

RECOMMENDATION: Make the training available at TJAGLCS, but continue to seek outside opportunities in the interim.[797]

ISSUE: ISAF ROE and escalation of force (EOF) training

DISCUSSION: Much of the ISAF ROE and EOF guidance is classified. However, not all Marines have a secret clearance, which makes training difficult.

RECOMMENDATION: When providing ROE and EOF training you should know your audience. The DSJA chose to give a watered down version and speak generally about the rules when providing training to Marines without a clearance.[798]

ISSUE: Commanders' competency in ROE

DISCUSSION: Commanders, especially company and platoon commanders, should know the ROE like lawyers know the ROE. When commanders know the ROE as well as the lawyers, ROE and LoW violations will be almost non-existent.

RECOMMENDATION: JAs should focus their training towards commanders and encourage them to become ROE subject matter experts.[799]

ISSUE: Collateral Damage Estimation (CDE) training

DISCUSSION: The OSJA sent a number of its operational law attorneys to a CDE course. These attorneys earned certification as instructors. Having CDE-qualified attorneys on the staff is extremely valuable when interaction with the fires and targeting cells. Taking this course allows you to get to know the targeteers, as well as the process itself. The relationships established provide dividends beyond just the kinetic targeting realm.

RECOMMENDATION: At least one person in the operational law section should attend this training.[800]

ISSUE: Training on tactical directives

DISCUSSION: The legal advisor created briefs for all tactical directives. He would then push the training briefs through operational channels and be available for questions.

RECOMMENDATION: Sustain. Air mobility is limited, which makes face-to-face training difficult. Utilize operational channels to ensure all ODAs receive and understand the tactical directives.[801]

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[797] *Id.*
[798] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.
[799] *Id.*
[800] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[801] 3/3 SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 9.

ISSUE: Collateral damage estimation (CDE)

DISCUSSION: The legal advisor was more involved in targeting this rotation than in past rotations. While his fires support officer (FSO) was a great teacher, the legal advisor had a steep learning curve.

RECOMMENDATION: Improve. Legal advisors should attend the CDE course before deploying.[802]

ISSUE: Collateral damage estimation (CDE) training

DISCUSSION: The JAs reviewed relatively few operations involving the possible kinetic strike of a target (dropping a bomb on a structure). However, there was a need for the reviewer to understand the methodology that lay behind the information on the PowerPoint slide the operators presented for approval when those limited situations arose. Otherwise, the legal reviewer had no recourse but to "sure hope all those guys got all of those numbers right."

RECOMMENDATION: Understanding of the CDE process is important in those situations where it arises. The possible negative consequences are too severe to rely upon hope as a method. Knowledge of the CDE process helps enable meaningful legal review.[803]

ISSUE: ROE training failures

DISCUSSION: During the early stages of Operation Marjah, it became clear that junior officers failed to grasp fundamental concepts of the ROE such as hostile act and hostile intent. Perhaps more troubling was that the JAs assigned to these units oftentimes also interpreted the ROE incorrectly, making it more restrictive than necessary. The CJTF OpLaw attorneys only discovered this issue when media reports from the battlefield showed junior officers complaining about restrictions in the ROE that did not exist.

RECOMMENDATION: Improve. At the CJTF level, OpLaw attorneys must remain vigilant and constantly work with JAs at subordinate units to ensure that they are conducting training on the ROE and that they understand fundamental concepts underlying the ROE.[804]

ISSUE: ROE Vignette Training

DISCUSSION: The Division OpLaw JAs found that vignette based training was most effective. Presenting Soldiers with vignettes based on real world engagements got them involved in the training and thinking through the decision process about whether or not to use lethal force. Additionally, using vignettes forced the Soldiers to think through what articulable facts supported or failed to support using lethal force in a certain situation.

RECOMMENDATION: Sustain. This type of training is the most effective. Soldiers will not absorb the information contained in lengthy PowerPoint presentations where the JA is talking at them rather than involving them in a discussion.[805]

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[802] *Id.*
[803] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 66.
[804] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[805] *Id.*

ISSUE: Using 15-6 investigations for ROE training vignettes

DISCUSSION: The Division OpLaw attorneys would review all of the 15-6s involving escalation of force (EOF) or other ROE issues and use the findings and recommendations for ROE training vignettes. The OpLaw attorneys would then provide those vignettes to the JAs at subordinate units for training purposes.

RECOMMENDATION: Sustain. This practice got the most realistic training information to Soldiers as fast as possible. This works much better than JAs attempting to create training vignettes from scratch.[806]

Targeting and Collateral Damage Estimation (CDE)

ISSUE: Lethal and non-lethal targeting

DISCUSSION: The unit eventually went to a one-week targeting cycle. They would do lethal and non-lethal separately and then brief both to the commander at the same time. The BJA participated in this process.

RECOMMENDATION: Sustain. Both lethal and non-lethal targeting are rife with legal issues. The legal team has to be involved in this process.[807]

ISSUE: Non-kinetic approach to targeting insurgents and smuggling activities

DISCUSSION: The targeting cell would review all available potential evidence from both U.S. and Iraqi sources to build packets to take to Iraqi courts—both local Iraqi courts and the Central Criminal Court of Iraq (CCCI). In August 2009, Chief Judge Medhat ordered the CCCI court in Mosul closed, and the case load shifted to the local Iraqi courts. The Judges were very helpful in educating the process.

RECOMMENDATION: Sustain.[808]

ISSUE: Battalion legal advisor attendance at SOTF targeting meetings

DISCUSSION: The battalion legal advisor attended all SOTF-level targeting meetings. This allowed him to track the overall operating picture and assist in obtaining warrants when required. It also helped integrate him with other members of the staff.

RECOMMENDATION: Sustain.[809]

ISSUE: Legal reviews of pre-planned targets

DISCUSSION: The BJA conducted a legal review of all pre-planned targets, to include pre-planned indirect fire packages.

RECOMMENDATION: Sustain.[810]

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[806] *Id.*
[807] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[808] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 19.
[809] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 158.

ISSUE: Weaponeering to avoid excessive collateral damage

DISCUSSION: A battalion (BN) wanted to destroy the overgrown brush in a palm grove to eliminate IED and insurgent threats. Their initial plan involved something like carpet-bombing. That would have been wholly disproportionate. After discussion about proportionality and other concerns (environmental and liability), the BN came back with a plan involving a controlled burn with oil drums. The oil drum plan worked well, left minimal damage, and it achieved the desired effect.

RECOMMENDATION: Sustain. There is often a variety of ways to achieve a desired effect. The one that accomplished the effect without undue risk is the preferred legal option.[811]

ISSUE: Transition to warrant-based targeting

DISCUSSION: This transition was a major event for those units who went through it. However, it was less of an issue for units following ones that had already adopted this approach. It is always easier to "go with what you know" than to adopt new procedures. However, doing so even in advance of the deadline requirement can help set up follow-on units for success. You may have time to work through some of the difficulties inherent in any new approach and can then pass this learning on to the new unit.

RECOMMENDATION: Be forward-looking in your determination as to when to adopt new changes you know are coming. Delaying a transition as long as possible is not always the best approach to long-term success.[812]

ISSUE: Targeting meetings

DISCUSSION: The RCT-3 RJA attended targeting meetings to build up his situational awareness and inject legal advice into the targeting process in a timely manner.

RECOMMENDATION: Sustain.[813]

ISSUE: "No-strike" targets on a previously used range complex

DISCUSSION: Higher headquarters really tightened up on targets considered "no-strike," even if they were present on a previously used range. The unit had to have the GoI take control of the property and declare it a range so the unit could use it as such. The unit never could find any documentation of this having occurred in the past.

RECOMMENDATION: You have to be able to show the GoI paperwork to be able to remove the structures on the range from the "no-strike" list. The correct officials have to approve the agreement to use the area as a range.[814]

ISSUE: Need for kinetic targeting skills

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[810] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 19.
[811] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[812] *Id.*
[813] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 2.
[814] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.

DISCUSSION: All of the Division's targets were non-kinetic and warrant-based. However, there were still other units doing kinetic targeting. The extent to which this occurred is not releasable.

RECOMMENDATION: There is still a need to have an understanding of the kinetic targeting process.[815]

ISSUE: Non-lethal targeting summit

DISCUSSION: The G3 held a summit on targeting during which all subordinate units, including Special Operations Forces (SOF) and conventional forces, presented their view of Al Qaeda in Iraq (AQI) in their area. There was a great deal of disagreement. However, everyone came away talking, and this meeting began to occur multiple times a week.

RECOMMENDATION: This meeting was essential to getting things synchronized. The weekly meetings that resulted were also extremely useful for attorneys. Attorneys could sit in to get situational awareness. If there was a bad arrest, this forum allowed conventional units to coordinate with SOF and other organizations that had good relationships with judges. The meeting solved problems before they mushroomed.[816]

ISSUE: Frequency of imminent threat targeting

DISCUSSION: By the end of the deployment, the Division was doing less than one of this type of target a month.

RECOMMENDATION: Understand this "U.S. only" form of targeting is very quickly disappearing in Iraq.[817]

ISSUE: Understanding targeting packets

DISCUSSION: The SJA had a collateral damage estimate (CDE) course at the Naval Justice School (NJS) before deploying. This block of instruction provided the SJA with the fundamental building blocks necessary to understand CDE. The SJA also learned from and sought the advice of SMEs on staff to explain the finer details of the targeting process.

RECOMMENDATION: TJAGLCS should adopt a similar course of instruction. JAs must seek out SMEs to teach them the finer intricacies of targeting. JAs should not hesitate to seek assistance from SMEs when necessary.[818]

ISSUE: Intel fusion cell for targeting

DISCUSSION: The legal advisor participated in the intel fusion cell during the planning phases for target development. This early participation allowed the legal advisor to address legal issues as an integrated member of the battle staff, fostering rapport and cohesion.

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[815] *Id.*
[816] *Id.*
[817] *Id.*
[818] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 49.

RECOMMENDATION: Sustain. SOTF legal advisors must be willing to serve as a legal subject matter expert (SME) on a battle staff versus viewing themselves solely as a "special staff" or "personal staff" officer who conducts a "legal review" at the end of the planning process.[819]

ISSUE: Transparent joint targeting

DISCUSSION: Transparent joint targeting is a concept where both Iraqi and U.S. personnel are involved in the targeting process. Most targeting happens at the Division level. Joint targeting can be difficult. For instance, there may be concerns over the security of shared intelligence, and, in contentious cases, it may strain cooperation. Since there was no precedent for transparent joint targeting, it was difficult to establish. The birth pangs were flippantly termed "riding the pain train with the JFEC (Joint Fires Effects Cell)." Some of the difficulty stemmed from operators preferring a binary yes/no process, like following an electrical circuit plan. This is understandable, but it does not promote critical thinking in the targeting process. A further point of interest in the development of transparent joint targeting was the debate as to whether there should be an Iraqi Judge on the Combined Targeting Cell (CTC). The Iraqi Judges themselves rejected the notion because they thought their prospective membership of the CTC would compromise their judicial independence, a perfectly proper and understandable position.

RECOMMENDATION: Working "by, with, and through" the Iraqis is now the model in Iraq. The development of transparent joint targeting was an important part of the transition to the new model. Do not underestimate the frictions involved in working with the Iraqis in such a sensitive and potentially contentious area.[820]

ISSUE: Recognize the underlying cultural tension in joint targeted operations

DISCUSSION: The Iraqi perception of joint operations was very different from the U.S. perception. It is important to recognize and accept this underlying cultural tension. Be careful of glib expressions like "putting an Iraqi face" on an operation. The implied assumption is the Americans are behind the scenes, pulling the strings. Nothing could be further from the truth. The Iraqis want to be in charge in their own country and they have no difficulty in asserting their sovereign authority. We are pretending if we think we are still in the driver's seat.

RECOMMENDATION: Know your limitations.[821]

ISSUE: Establishing and maintaining the aim of targeted operations--convicting the guilty

DISCUSSION: There is a temptation to see warranted operations as the be all and end all of targeted operations. This is incorrect. The aim of targeted operations is not just to take out warrants against the enemy. The aim is to punish the guilty by prosecuting and convicting them.

RECOMMENDATION: It is important to keep the end state of conviction in mind. This end state ought to shape and define targeted operations. It is not enough just to get a warrant. The requirement to convict needs continuous support throughout to ensure there is sufficient admissible evidence.[822]

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[819] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 50.
[820] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 66.
[821] *Id.*
[822] *Id.*

ROE and Related Guidance

ISSUE: No notice deployments and ROE

DISCUSSION: For the no notice deployment to Haiti after the devastating earthquake of 12 January 2010, the BJA, in conjunction with higher echelon legal offices, drafted a proposed ROE card. They used the Standing ROE (SROE) and the Joint Staff (JS) issued Execute Order (EXORD), with adjustments to fit the humanitarian/disaster response situation in Haiti. The draft ROE card went up to SOUTHCOM, which approved it in time for the first flight out to Haiti. The fast approval enabled the JAs to get ROE cards printed and distributed. Interestingly, some commanders expressed doubts as to the legitimacy of the card. They were not convinced the ROE on the card applied, based on their experiences in Afghanistan and Iraq. Consequently, the JAs had to explain the ROE generation and approval process.

RECOMMENDATION: JAs faced with a no notice deployment have to be creative and take the initiative to ensure ROE are in hand for a mission. After that, it may take some time to get commanders on board with ROE that differ from what they are accustomed to seeing in Afghanistan or Iraq.[823]

ISSUE: Changing Afghanistan ROE to decrease civilian casualties

DISCUSSION: In 2009 and 2010, the Commander of International Security Assistance Forces (ISAF) amended the ISAF ROE to try to cut down on the number of civilian casualties. Such incidences turn the Afghan population against ISAF and hurt the overall COIN strategy. Some of the changes include a prohibition on warning shots, the sharing of roads with civilian vehicles, reduced convoy speed, and other measures designed to avoid the use of force on civilians. JAs have to ensure their BCT Soldiers are aware of the changes and that amendments make it out to remote troop locations with any training vignettes available.

RECOMMENDATION: ROE in Afghanistan are changing to reflect the changing nature of the conflict there. JAs can assist in the training, and they can facilitate compliance with the changes by providing vignette-based training.[824]

ISSUE: Aviation rules of engagement (ROE)

DISCUSSION: The ROE are no different with respect to the aviation mission. The BJA delivered ROE brief to pilots, and the other JAs were constantly ready to provide OPLAW oversight as needed.

RECOMMENDATION: Sustain. Due to experience, pilots understand the ROE. Continue to train pilots and air crew on ROE. Ensure all JAs are proficient on the ROE in order to provide the critical training and analysis during combat operations.[825]

ISSUE: ROE classification

[823] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 87.
[824] *Id.*
[825] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 93.

DISCUSSION: The controlling ROE for Afghanistan are classified "secret." This in turn presents challenges for the BJA to provide detailed instruction to all Soldiers in the brigade. The BJA prepared an unclassified version to brief Soldiers before deployment.

RECOMMENDATION: The Judge Advocate General's Corps (JAG Corps) should create an unclassified Afghanistan ROE brief.[826]

ISSUE: ROE cards

DISCUSSION: The BCT commander required the creation of a ROE card before deployment. He further required each Soldier in the BCT to carry the ROE card in his/her uniform.

RECOMMENDATION: Sustain. The BCT commander demonstrated he took the matter seriously, which trickled down to the junior Soldiers.[827]

ISSUE: Indirect fire (IDF) authorities

DISCUSSION: JAs must know the controlling authorities regarding IDF. JAs should also have a familiarity with the weapons and munitions the brigade uses to conduct these missions.

RECOMMENDATION: JAs should receive and provide classified training on IDF ROE, to include ISAF SOP 398, and establish a close working relationship with the targeteers before deploying.[828]

ISSUE: ROE restrictions

DISCUSSION: ROE restrictions are emotive. They impose limits on troop activities and they risk the introduction of perverse distortions. For instance, it is arguably easier to kill someone than it is to detain them. There is a balance between respecting Afghan culture and retaining sufficient military advantage to be combat effective. Arguably, we have reached a culminating point in terms of ROE restrictions. You can trace many of the problems caused by alleged excessive use of force back to insufficient troop concentrations. Soldiers who are outnumbered will call for fast air support, with consequent risks of collateral damage, sooner than troops who enjoy the advantage of overmatching their enemy with their organic infantry weapons alone. But one of the key principles, in a COIN fight, is that the coalition will always assume more risk to soldiers through more restrictive ROE and tactical directives than is required by 'law.' The population is the prize and any perception that the coalition is using force excessively is likely to damage coalition legitimacy.

RECOMMENDATION: Understand that ROE is a difficult, complex, and controversial attempt to match the use of force to an operational concept, and ROE restrictions may generate unforeseen second and third order effects. The key for JAs is to educate and convince commanders, particularly company and battalion commanders of the reality that national and international level leaders make ROE decisions to answer political concerns about the nature of the campaign. Commanders must remember to view ROE actions not through the eyes of their E-1s and E-2s but through the eyes of their O-10s and SESs.[829]

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[826] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[827] *Id.*
[828] *Id.*
[829] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.

ISSUE: Maritime ROE

DISCUSSION: The legal advisor drafted a maritime ROE for SOTF-C's NSW element down in Basrah. This ROE was necessary due to the maritime border between Iraq and Iran.

RECOMMENDATION: Legal advisors in a joint command need to be prepared to identify nontraditional ROE issues then assist in finding a solution to such unique ROE questions, such as drafting maritime ROE.[830]

ISSUE: ISAF Tactical directive

DISCUSSION: TF Thunder did not have an opportunity to review or comment on ISAF Tactical Directive dated 1 July 2009 prior to it being finalized, despite serious limitations on use of aviation assets.

RECOMMENDATION: Commanders should ensure CAB units have a chance to review and comment on all proposed tactical directives.[831]

ISSUE: ROE for riot control

DISCUSSION: The largest ROE issue was determining how U.S. forces could respond to riots and disturbances and how others could respond. The command needs to know whether it can or cannot use particular responses.

RECOMMENDATION: Commanders need education in this area as they come into theater. Staying up to date and knowledgeable on the ROE is full employment for lawyers.[832]

ISSUE: Know the ROE

DISCUSSION: The RCT-8 RJA office was responsible for providing ROE and LOAC training during the deployment. Refresher ROE and LOAC training began almost immediately upon arriving in theater. Consequently, the RCT-8 JAs had to be familiar with LOAC and study up on the most current ROE before deployment.

RECOMMENDATION: Sustain. The ROE is ever changing. Ensure all JAs are familiar with LOAC and have carefully studied the current ROE before deployment.[833]

ISSUE: Monitoring and reporting applicable FRAGOs

DISCUSSION: Each member of the brigade legal team reviewed the daily FRAGOs for changes to the ROE. These Soldiers would pass the information along to the BJA who would then post the changes to the legal section's SharePoint and brief the changes at commanders' conferences and via the Breeze system.

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[830] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 8.
[831] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 16.
[832] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.
[833] RCT-8, OIF AAR, JAN 09 - OCT 09, *supra* note 69.

RECOMMENDATION: Sustain. All members of the brigade legal team should monitor the daily FRAGOs. However, only one person should post the information to the legal team's web portal.[834]

ISSUE: Brigade welcome packets and operational law updates

DISCUSSION: Division was good in sending applicable FRAGOs and summaries to the brigade for distribution.

RECOMMENDATION: Sustain. While the Division was good in sending this information, it is no substitute for the legal team's independent reading and monitoring of daily FRAGOs.[835]

ISSUE: Defining "on-scene commander" for ROE purposes

DISCUSSION: The division ROE used the term "on-scene commander" (OSC) without defining the term. The brigade S3 identified the need to determine whom the brigade wanted to have weapons release authority in particular situations, such as those when the only data the BCT had was a video feed from a UAV. The S3 and BJA proposed courses of action (COAs) to the BCT commander for these special situations, and the commander designated the appropriate authority required where the "on-scene commander" was to make firing decisions based upon video feed. However, they were careful not to limit the ability of the on-scene chain of command to make decisions in troops-in-contact (TIC) situations.

RECOMMENDATION: Sustain. Ensure higher headquarters is aware of ROE interpretations once the command settles upon its understanding.[836]

ISSUE: Development of Iraqi ROE

DISCUSSION: The Iraq Training and Advisory Mission (ITAM) – Air Force assisted the Iraqi Air Force in developing its ROE. However, no judge advocates at MNSTC-I advised on the process. A similar program to develop maritime security ROE went similarly unadvised by MNSTC-I.

RECOMMENDATION: Improve. The OpLaw JA should work with ITAM to ensure Iraqi ROE complies with the law of armed conflict and takes into account policy considerations.[837]

ISSUE: Soldier-level resistance to the "share the road" policy

DISCUSSION: The 29th IBCT has deployed twice to Kuwait. Both times, the brigade's mission was to provide security support for logistics convoys going into Iraq. During the first deployment, the policy in effect was to create a "protective bubble" of space around the convoy. No civilian vehicles were to enter in between vehicles in the convoy or to pass the convoy.

During the most recent deployment, however, there was a change in policy—"share the road." The "share the road" policy required Soldiers to allow vehicles to enter or pass the convoy. Generally, Soldiers were uncomfortable with this policy. It took time for Soldiers to understand

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[834] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[835] *Id.*
[836] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 134.
[837] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 72.

and adopt the escalation of force (EOF) procedures associated with the "share the road" policy. Soldiers had to unlearn many skills and procedures they learned in the prior deployment.

RECOMMENDATION: Improve. Develop comprehensive EOF pre-deployment training consistent with the operational environment.[838]

ISSUE: Need for all OSJA members to know operational law and the ROE

DISCUSSION: Due to mission requirements, leave, and other unforeseen reasons, it was common for legal personnel outside the Division operational law (OpLaw) section to have to staff the Division Operations Center (DOC) floor. The Division staff saw all JAs as interchangeable and expected them to know operational law.

RECOMMENDATION: The OpLaw section should conduct cross-training and familiarization with other members of the OSJA periodically throughout the deployment. At a minimum, OpLaw attorneys should disseminate changes in the ROE throughout the OSJA.[839]

ISSUE: Disseminating ROE changes to subordinate units

DISCUSSION: Throughout the deployment, the MNC-I ROE changed significantly, as kinetic operations gave way to capacity building and rule of law development. MND-S produced FRAGOs to transmit these changes to subordinate units. However, some units did not realize the changes and continued to operate under the previous ROE.

RECOMMENDATION: ROE changes are infrequent, yet they can have a profound impact on the mission if subordinate units are unaware of them, misunderstand them, or otherwise do not follow them. Send a courtesy email to all brigade judge advocates (BJAs) upon publication of significant ROE changes. Conduct a bi-monthly OpLaw meeting via video tele-conference (VTC) with the brigades to review current issues.[840]

ISSUE: Importance of legal reviews in non-lethal operations

DISCUSSION: In a counterinsurgency (COIN) environment, information operations (IO) and the use of money as a weapon system play major roles. Most of the OpLaw section's pre-deployment preparation centered on ROE and lethal operations. Once in theater, they quickly had to become familiar with approval authorities for IO products, use of the rewards program, and CERP guidelines in order to review non-lethal operations.

RECOMMENDATION: Before deployment, OpLaw attorneys should be familiar with: (1) the most recent higher headquarters FRAGO on IO approval authorities; (2) the rewards program standard operating procedures (SOP); (3) most recent higher headquarters FRAGO regarding the release of detainee names and photos; and (4) the MNC-I *Money As A Weapons System* (MAAWS) book.[841]

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[838] 29th Infantry Brigade Combat Team, Hawaii Army National Guard, Command Judge Advocate OIF After Action Report, 7 March 2010, Deployed October 2008 – August 2009, Camp Arifjan, Kuwait (hereinafter "29th IBCT (HIARNG) OIF AAR, OCT 08 - AUG 09"; on file at CLAMO).
[839] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 555.
[840] *Id.*
[841] *Id.*

ISSUE: Cross border operations

DISCUSSION: 4-25 ID's AO included border areas with Pakistan, which caused additional concerns for kinetic operations since the Taliban used the border for transit and ambush purposes. JAs must ensure commanders know cross-border ROE and are sensitive to possible sovereignty issues.

RECOMMENDATION: Sustain. JAs must have a thorough knowledge of ISAF and U.S. ROE to ensure commanders respond appropriately without creating strategic level violations.[842]

ISSUE: Counterfire

DISCUSSION: JAs are not generally well prepared to deal with the legal aspects surrounding counterfire. After an attack on a base or unit has occurred, the rules and procedures on striking back are unclear and not well advertised. There needs to be clearer guidance on what constitutes positive identification (PID), the durations of PID, and the time limits for counterfire. The only form of training in counterfire is on the job training at the Division or BCT level.

RECOMMENDATION: Improve. Counterfire is a concept with which JAs are not familiar until they are at a unit on a combat deployment. It is important to learn about this topic before deploying to a volatile area.[843]

ISSUE: Avoidance of deliberate targeting through "troops in contact" determination

DISCUSSION: Some units avoided the deliberate targeting process, which they regarded as onerous, by making a "troops in contact" (TIC) call. By calling a TIC, a unit can engage an enemy/hostile object with direct/indirect fire under self-defense principles. At issue was whether these TICs involved an imminent attack. Many soon realized that such TICs often led to excessive property damage and loss of Iraqi lives. Deliberate targeting seeks to limit such losses. Moreover, calling a TIC diverts air and artillery assets away from others who may in fact need it for a real TIC or pre-planned mission. Commanders at all levels sought to cut down on such TIC calls.

RECOMMENDATION: Sustain. Calling a TIC in order to avoid deliberate targeting is unnecessary and may result in unnecessary damage and losses.[844]

ISSUE: Change in focus away from non-kinetic operations

DISCUSSION: Two cases illustrate the need for changing mindsets. In one case, after someone fired ineffective rockets at U.S. forces, the unit responded by firing twenty illumination rounds. These rounds ended up burning down homes in the local area. In another case, after incoming fire, the unit authorized the Air Force to drop bombs forty-five minutes after the incoming fire. Both of these actions did nothing deter more attacks and served only to potentially enrage the local populace. The desire to "do something" can be powerful, but is not always something smart upon which to act.

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[842] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 265.
[843] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[844] *Id.*

RECOMMENDATION: Improve. Focus on the need for a new mindset. Emphasize this point to the commanders who attend the Senior and General Officer Legal Orientations (SOLO/GOLO) at TJAGLCS.[845]

ISSUE: Working relationship with the S-3

DISCUSSION: The BN JA developed a close working relationship with the battalion's S-3 and S-3A. This allowed the BN JA to provide timely ROE advice to commanders in the field.

RECOMMENDATION: Sustain. JAs must work closely with the S-3.[846]

ISSUE: Hastily developed ROE for HA/DR mission

DISCUSSION: After the warning order, the JAs were in contact with higher command to see if there were any ROE for Haiti. In the absence of established ROE, the JAs wrote up a proposed ROE card using the Standing ROE (SROE) and the Execute Order (EXORD), with adjustments to fit the HA/DR situation in Haiti. The draft ROE card went up to SOUTHCOM, and they approved it in time for the first departure (<48 hours). The fast approval enabled the JAs to get ROE cards printed and distributed. Interestingly, some 2-82 ABN commanders expressed some doubts as to the legitimacy of the card and approvals. They were not convinced the ROE on the card applied, based on their experiences in Afghanistan and Iraq. As products of their experiences in those theaters, the JAs had to explain the ROE process and authorities to them.

RECOMMENDATION: JAs faced with a no notice deployment have to be creative and take the initiative to ensure the ROE are in hand for a mission. After that, it may take some time and effort to get commanders on board with ROE that may differ from what they are accustomed to seeing in Afghanistan or Iraq.[847]

ISSUE: ROE competency

DISCUSSION: There are different ROE in Afghanistan that are mission dependent. Additionally, the ROE in Afghanistan is significantly different from the ROE in Iraq.

RECOMMENDATION: JAs should maintain a binder with all applicable ROE, to include supplemental measures, and ensure they train their units on the differences.[848]

ISSUE: Use of warning shots

DISCUSSION: Unlike in Iraq, the ROE authorizes Marines to use warning shots against dismounted threats. Under the right circumstances, and when implemented correctly, warning shots proved to be an effective de-escalation of force tool against possible threats that were dismounted.

RECOMMENDATION: JAs need to ensure they train their units on when the ROE authorizes the use of warning shots.[849]

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[845] *Id.*
[846] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 1.
[847] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 316.
[848] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 2.

ISSUE: Tactical Directive training

DISCUSSION: In July 2009, the ISAF Commander issued his Tactical Directive. ISAF units had 96 hours to ensure they briefed every servicemember on the Tactical Directive. Simultaneously, RCT-3 was participating in the Marine Corps' largest heliborne operation since the Vietnam War.

RECOMMENDATION: In order to satisfy the ISAF Commander's requirement, RJA created a PowerPoint presentation on the Tactical Directive and taught Tactical Directive classes. RCT-3 pushed out the PowerPoint presentation to all its battalions and personnel who were unable to attend the classes due to operational requirements. Conduct home station training at the secret level before deployment.[850]

ISSUE: Significant decrease in kinetic strike operations

DISCUSSION: The unit did one kinetic strike for another Division because their systems could not reach the target area. In spite of the low number of missions, the commander still put a lot of emphasis on taking the fight to the enemy. Consequently, the unit worked on keeping the guns hot and trained. However, the majority of incoming resulted from rockets placed on a rail with a timer. Consequently, any counterfire was not going to hit the enemy, just collateral concerns. Air weapons teams could get on station quicker than counterfire could.

RECOMMENDATION: Resist the urge to shoot back just because you can. It may not always make sense, tactically, operationally, or strategically to conduct counterfire.[851]

ISSUE: Timeframe for ROE development

DISCUSSION: The unit anticipated getting a revised ROE in the first few months on the ground. CENTCOM published a ROE and subsequently revoked it. MNF-I quickly published its version after that. MNC-I then took three or four months to publish its version. This version conflicted with the higher level's version in some places. The targeteers apparently developed their annex without consulting any legal advisors and could not answer questions as to why things were the way they were.

RECOMMENDATION: ROE should be a coordinated staff product. However, it should not take so long to publish a new version when higher headquarters provides one. If an intermediate headquarters is going to take a very long time with it, consider publishing your own version and submitting it to the intermediate headquarters for approval.[852]

ISSUE: Precise use of terminology in the ROE

DISCUSSION: Some versions of the ROE seemed to use the terms "Designated Terrorist Organizations," "Declared Hostile Forces," and "Declared Terrorist Organizations" interchangeably.

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[849] *Id.*
[850] *Id.*
[851] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[852] *Id.*

RECOMMENDATION: Do not use terms of art without due regard for their differences. This is very confusing for subordinate organizations. Be as precise in your language as possible. Be prepared to explain why you chose one term over another.[853]

ISSUE: ROE for humanitarian missions

DISCUSSION: XVIIIth Airborne Corps issued ROE largely based upon the Standing ROE (SROE) and the Joint Staff Execute Order (EXORD). The SJA distributed the Operation Unified Response (OUR) ROE to the 3d ESC main body before it departed. After arriving in Haiti, the Joint Task Force issued a fragmentary order (FRAGO), Soldier's Card, and ROE training package.

RECOMMENDATION: Any JAs with units hastily deployed to humanitarian mission must be flexible in terms of ROE—they arrive late and training will be limited. JAs must be prepared to help commanders with ongoing ROE issues due to the abbreviated training timeframe associated with humanitarian assistance/disaster response missions.[854]

ISSUE: Soldier's card

DISCUSSION: The SJA created a 3d ESC Soldier's Card that not only had the ROE on it, but also main points from the General Order (GO) #1 and Public Affairs Office (PAO) guidance. A great deal of U.S. media was in Haiti, and reporters would try to "ambush" Soldiers for a story. Having the PAO guidance helped Soldiers to understand their "left and right limits" when dealing with the media.

RECOMMENDATION: Sustain. A Soldiers' card with ROE, PAO guidance, and GO #1 points may not always be possible, but it benefits Soldiers by giving them key guidance in a concise format.[855]

ISSUE: Mission essential equipment designation

DISCUSSION: The 7th Sustainment BDE wanted to have their boats working in the Port-au-Prince harbor designated as mission essential equipment. The OUR ROE designated aircraft and certain vehicles as mission essential, and Soldiers could defend them with deadly force. However, higher command was not in favor of changing the status of the boats and eventually denied the request. 3d ESC felt the boats had similar properties and functions as the mission essential designated aircraft and vehicles.

RECOMMENDATION: The designation of mission essential property that Soldiers may defend with deadly force is dependent on many legal and policy factors. JAs must weigh these factors with higher echelon JAs and counsel commanders as to the merits of seeking a mission essential equipment designation change.[856]

ISSUE: Lack of classified communications systems/networks for requesting ROE changes

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[853] *Id.*
[854] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 387.
[855] *Id.*
[856] *Id.*

DISCUSSION: The 7th Sustainment BDE wanted to have their boats working in the Port-au-Prince harbor designated as mission essential equipment for the purpose of the ROE. One of the unique problems encountered in trying to submit a ROE amendment was the lack of classified networks/communication systems to make the ROE amendment request. Any ROE amendment request generally has to reference provisions in the classified SROE enclosures. In order to get around the problem, 3d ESC and the higher level command agreed 3d ESC could submit the request without reference to the SROE enclosures.

RECOMMENDATION: Any unit or JAs operating in an unclassified communication infrastructure will eventually run into a problem with classification. Solving classification problems involves discussion with higher-level commanders and using technical nets to avoid compromising classified information.[857]

ISSUE: ROE cards

DISCUSSION: Although the Marines had trained to the applicable ROE, Marine Forces South (MARFORSOUTH) was significantly behind on issuing ROE cards to the unit. As a result, the Marines went approximately a week with boots on the ground before receiving ROE cards.

RECOMMENDATION: Improve. If possible, units should issue ROE cards before boots hit the ground. Additionally, JAs should make sure issued ROE cards do not conflict with the actual ROE.[858]

ISSUE: Requesting additional escalation of force (EOF) guidance

DISCUSSION: Initially, higher headquarters provided rather skimpy guidance regarding the application of EOF procedures. Specifically, the only authorized EOF measure provided was to issue verbal warnings to any perceived threat. Due to the apparent difficulty of operating under this guidance, the unit asked higher headquarters for additional guidance, which prompted them to make the needed changes.

RECOMMENDATION: Sustain. When ROE or EOF guidance is unclear or appears to be inadequate, units should not hesitate to contact higher headquarters for additional guidance.[859]

ISSUE: Protection of property

DISCUSSION: The ROE allowed deadly force to protect "mission essential property" (U.S. aircraft or military weapons or civilian property designated by JTF-H or CDD USSOUTHCOM. Specifically, necessary and proportional force, up to and including deadly force, could be used against individuals or groups of individuals who commit, or were about to commit, and act likely to cause damage or loss of property designated as "mission essential." EOF measures were to be used first when the time and circumstances permitted. Subordinate commanders could submit requests for additional property to be designated as "mission essential" via JTF-H J3.

RECOMMENDATION: Sustain.[860]

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[857] *Id.*
[858] 22d MEU (Haiti OUR) JAN 2010, *supra* note 368.
[859] *Id.*
[860] *Id.*

ISSUE: Weapons posture

DISCUSSION: The Marines operated with their weapons in condition 4 the entire operation. Specifically, each Marine ensured there was no magazine inserted, the chamber was empty, the action was closed, and the safety was on. However, other units had different weapons postures. For instance, some units had loaded magazines inserted in their weapons.

RECOMMENDATION: Improve. When conducting humanitarian assistance (HA) missions such as the one in Haiti, there should be uniformity with regard to weapons posture. The lack of uniformity will cause confusion in the local populace.[861]

ISSUE: Coalition partners' understanding of "imminent threat"

DISCUSSION: Coalition partners have a different understanding of "imminent threat" than U.S. Soldiers.

RECOMMENDATION: Legal advisors need to know these differing understandings before deploying or at the earliest opportunity after deployment and raise these issues during the planning process.[862]

ISSUE: De-conflicting different ROE

DISCUSSION: CJSOTF-AP elements utilized Joint Special Operation Aviation Command (JSOAC) assets. JSOAC had its own ROE, which conflicted with CJSOTF-AP's controlling ROE. The Legal Advisor worked with JSOAC's legal advisor to de-conflict these issues before operations.

RECOMMENDATION: Sustain. JAs operating in a joint environment need to know and understand the various controlling ROE and de-conflict when necessary.[863]

General

ISSUE: Clarity

DISCUSSION: Because USFOR-A and ISAF was a matrix staff with a dual-hatted commander, sometimes directives and policies were unclear as to the applicability to OEF forces. This lack of clarity at times resulted in conflicting opinions by different entities within Afghanistan and external support entities to Afghanistan as to issues (*e.g.* the difference between the IJC's and Combined Air Operations Center's (CAOC's) definition of troops-in-contact).

RECOMMENDATION: Especially when the higher command is a matrix staff with subordinate units operating under differing theater guidance, additional emphasis in ensuring clarity in application is warranted.[864]

ISSUE: "Green on blue" incidents

[861] 22d MEU (Haiti OUR) JAN 2010, *supra* note 368.
[862] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 50.
[863] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 56.
[864] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 6.

DISCUSSION: There were occasions when Afghan National Police (ANP) and Afghan National Army (ANA) fired upon TF Thunder air assets. TF Thunder aviators responded accordingly under the self-defense rules of the controlling ROE. Subsequently, the ANP or ANA would contend it was only trying to communicate with the air assets.

RECOMMENDATION: Be prepared to deal with such incidents and conduct requisite investigations accordingly.[865]

ISSUE: Changing of the operational environment to non-kinetic operations

DISCUSSION: This deployment was unorthodox, as there was no kinetic targeting. Therefore, there were no ROE/LOAC, troops in contact (TIC), or self-defense questions for the brigade legal section. The brigade legal section dealt with warrant-based targeting under the SA and Iraqi Code of Criminal Procedure.

RECOMMENDATION: Understand the nature of the environment is changing and has changed.[866]

ISSUE: Integration of Iraqi security forces (ISF) into mission planning

DISCUSSION: The BCT set up an area of the tactical operations center (TOC) for liaisons from the IA and IP. The ISF personnel did not have access to classified information.

RECOMMENDATION: Sustain.[867]

ISSUE: Border operations

DISCUSSION: Corruption in the Iraqi border enforcement ministry affected the BCT's AO, as border officials would accept bribes and allow in contraband. The brigade legal section coordinated with Multi-National Corps – Iraq (MNC-I) to obtain copies of information related to Iraqi ministries and border regulations. The goal was to use warrant based targeting operations to deter the activity, in conjunction with the use of roving patrols by Soldiers on the border.

RECOMMENDATION: Improve. If the BCT AO has a foreign border, the BJA and commanders need to know the rules governing border operations.[868]

ISSUE: Producing daily operational summaries (OPSUMs)

DISCUSSION: The MND-S OSJA produced daily OPSUMs, which consisted of several sections. The first section summarized new fragmentary orders (FRAGOs) from MND-S and Multi-National Corps – Iraq (MNC-I) relevant to the MND-S OSJA, including any new legal specified or implied tasks. The second section summarized major significant activities (SIGACTs), including MND-S Commander's Critical Information Requirements (CCIRs) and other events for which the OSJA needed situational awareness, even if they did not have direct legal implications. The final section summarized the Command Group and OSJA task list to

[865] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 16.
[866] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[867] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 40.
[868] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 19.

effectively manage and track key taskings, thereby achieving increased efficiency within the office.

RECOMMENDATION: Sustain. The OpLaw NCOIC should produce the daily OPSUM and disseminate it to the OSJA and brigade legal sections. The OSJA should determine the criteria and format for the OPSUM before deployment, including which events constitute major SIGACTs and legal SIGACTs. In addition to summarizing legal tasks coming from MNC-I and MND-S FRAGOs, the OpLaw NCOIC should track legally significant draft FRAGOs and Division requests for information (RFIs).[869]

ISSUE: SPINS to the ATO

DISCUSSION: SPINS are essentially ROE for aircrews and could change on a daily basis. This is important to know in a joint operating environment.

RECOMMENDATION: Improve. All JAs operating in a joint environment need to be aware of the processes and procedures their sister services utilize.[870]

ISSUE: Use of contracted air

DISCUSSION: Combined operations on nexus targets with U.S. law enforcement agencies (LEAs) presented a challenge because they contracted for their air assets. Based on existing theater policies, as well as applicable principles of International Law, e.g. Law of War / Armed Conflict, the unit developed a standard operating procedure to ensure continued support for future combined operations.

RECOMMENDATION: Clear understanding of the operational requirements in light of applicable policies and law is imperative in a non-traditional interagency operating environment.[871]

ISSUE: Continued training in theater

DISCUSSION: With the issuance of the USFOR-A tactical directive, close air support (CAS) procedures changed. Of equal importance were the differences between OEF and ISAF policies guiding procedures for escalation of force (EOF) and deliberate targeting.

RECOMMENDATION: Sustain. Thorough understanding of the OEF and ISAF policies, where they differed, and how those differences could affect operations during planning and contingencies is imperative.[872]

ISSUE: Lack of pre-planned kinetic strikes

DISCUSSION: Prior to deployment, the Division OpLaw attorneys trained extensively on the targeting process, primarily pre-planned strikes. During the deployment, the CJTF only executed two pre-planned strikes across its battlespace. Most kinetic strikes were instead in response to troops in contact.

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[869] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 555.
[870] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 51.
[871] *Id.*
[872] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 5.

RECOMMENDATION: Improve. The predeployment training, to include the mission rehearsal exercise (MRX) must be precisely tailored to the overseas situation. While understanding the basics of targeting to include the collateral damage estimate (CDE) process is critical, precious predeployment training time should be focused on other missions of the OpLaw attorney.[873]

I.R. Treaties & Other International Agreements /Arrangements

I.R.1. Asylum

ISSUE: Asylum for Mujahadeen-e-Khalq (MeK)

DISCUSSION: U.S. military leaders were concerned that Iraqi military authorities might mount a military operation against the MeK, an Iranian extremist enclave dug in locations in northern Iraq. Some of the MeK members were American, and the chief concern was that they and their colleagues would seek U.S. military protection or ask for asylum. Luckily, the threat of such an attack never emerged during the deployment, but the issue remains a concern for the U.S. forces in the area.

RECOMMENDATION: Any U.S. military units faced with the same or similar issue in other operational areas should have contingencies worked out with DoS. Coming to the aid of a minority group in another country carries significant policy consequences. Any JAs faced with a similar situation, where contingencies are not in place, should immediately contact and coordinate with higher headquarters.[874]

I.R.2. Status-of-Forces Agreements (SOFAs)

ISSUE: Afghan Status-of-Forces Agreement (SOFA)

DISCUSSION: Currently, there is no SOFA between the United States (U.S.) and the Government of the Islamic Republic of Afghanistan (GIRoA). Once there is a SOFA in place between the U.S. and the GIRoA, it is critical that the JAs in the Trial Defense Services (TDS) office be cognizant of what the SOFA lays out in order to determine who has jurisdiction when U.S. servicemembers commit crimes off base.

RECOMMENDATION: Note.[875]

ISSUE: Understanding the SOFA in Kuwait

DISCUSSION: A vehicle carrying four U.S. Soldiers was in a traffic accident in Kuwait. The accident killed the driver. The Soldier on the passenger side of the vehicle attempted to grab the wheel to prevent the accident. There was some concern the actions of this Soldier on the

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[873] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[874] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[875] Trial Defense Services, Combined Joint Task Force – 101, Individual Augmentee Attorney, OEF After Action Report, 5 November 2009, Deployed July 2008-July 2009, Bagram Airfield, Bagram, Afghanistan (hereinafter "CJTF-101 TDS OEF AAR, MAY 08-MAY 09"; on file at CLAMO).

passenger side of the vehicle could be a criminal offense under Kuwaiti law. The unit resolved the situation under the SOFA, but there were some difficulties with the process.

RECOMMENDATION: Improve. SOFA incidents evolve rapidly and require a quick response. A deep understanding of the SOFA is not necessary, but JAs should have a basic familiarity with the SOFA and know where to find the necessary expertise. Quickly develop a basic understanding of Kuwaiti SOFA and learn SOFA points of contact in theater.[876]

ISSUE: Lack of central repository for SOFAs

DISCUSSION: There is no central repository for Status-of-Forces Agreements (SOFAs). This forced the SJA to search for each individual SOFA.

RECOMMENDATION: Improve. The JAG Corps should create and update a central SOFA repository.[877]

ISSUE: Legal basis for humanitarian/disaster operations in Haiti

DISCUSSION: Just before the deployment, the SJA scanned the Center for Law and Military Operations (CLAMO) website and became aware of the 10 May 1995 Exchange of Notes between the U.S. and Haiti, which provided legal coverage and protections for U.S. military personnel on authorized operations in Haiti.

RECOMMENDATION: Immunities and privileges during operations in another country are important factors for JAs to determine and to brief commanders before deployment.[878]

ISSUE: Operating in accordance with international treaties, SOFA's, agreements, directives, and SOPs

DISCUSSION: The Afghanistan AO is highly visible to the international community. Additionally, units operating in Afghanistan are subject to the numerous ISAF SOPs, Regional Command SOPs, directives, treaties, and international agreements to not only reference, but also enforce. Every commander on the battlefield is saturated with regulations, making actual compliance extremely difficult.

RECOMMENDATION: JAs must be aware of all applicable SOPs, directives, regulations, treaties, and international agreements, and ensure their units operate accordingly. If a unit's lawyer does not know the rules, no one else will.[879]

I.R.3. Authority to Negotiate International Agreements

No AAR comments.

[876] 29th IBCT (HIARNG) OIF AAR, OCT 08 - AUG 09, *supra* note 838.
[877] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 49.
[878] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 387.
[879] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.

I.S. Weapon Systems

I.S.1. Legal Review on Weapons

ISSUE: Use of white phosphorous (WP)

DISCUSSION: WP is not a chemical weapon, but people widely and mistakenly categorize it as such. Accordingly, its use tends to attract adverse attention. A complaint indicated a WP round, fired by coalition forces, allegedly burned a child in the TF Warrior AO. It subsequently transpired mortars had fired WP rounds to make a smokescreen to allow allied coalition troops to break contact. A U.S. Joint Terminal Attack Controller (JTAC) had called for this fire in support of the coalition partners. Unfortunately, the unit had not reported this incident to TF Warrior. This caused confusion when reports of the incident reached HQ ISAF.

RECOMMENDATION: The use of WP ammunition is likely to attract attention. Try to ensure reports of its use occur in accordance with extant SOPs and record the events clearly in order to support any subsequent required investigation.[880]

ISSUE: Coalition interpretations

DISCUSSION: Characterization of weapon systems on air platforms differed among coalition partners. This directly affected procedures for deliberate targeting. For example, an interpretation of whether a weapon system is a direct fire weapon system as opposed to an indirect fire weapon system governed the targeting and approval procedures.

RECOMMENDATION: Sustain. In a coalition setting where mutual support is possible, prior planning and coordination with coalition counterparts is an imperative.[881]

ISSUE: New weapons and ammunition

DISCUSSION: Units may push to get a hot new weapon or ammunition currently available on the market. However, not all weapons and ammunition on the market are authorized to be used by U.S. forces in combat. For example, a 2d MEB unit during the deployment attempted to acquire new ammunition recently reviewed by the Department of Defense (DoD). Upon thorough review, the 2d MEB SJA discovered Navy Code 10 (International and Operational Law) had not reviewed the particular ammunition in question and the DoD legal review was not as inclusive as it initially appeared.

RECOMMENDATION: If aware of new weapons or ammunition, make sure it has passed through all legal reviews, to include Navy Code 10 LoW review and Naval Treaty Implementation Program review. Then, read the legal reviews to ensure the unit's intended use of weapon or ammunition is in accordance with the guidelines set forth in the legal review.[882]

ISSUE: Weapons review requirement

DISCUSSION: Every weapon issued to servicemembers has gone through a legal review to

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[880] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.
[881] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 5.
[882] 2d MEB Contingency Contracting Attorney AAR JUL 09 - NOV 09, *supra* note 41.

ensure compliance with the LOAC. However, with today's innovation and advanced technology, we are always improvising and sometimes creating things out on the battlefield.

RECOMMENDATION: JAs need to be aware of what weapons their units are using, especially those created on the battlefield. Remember that all weapons require a legal review before use during military operations, and advise your commands accordingly.[883]

ISSUE: Requests to use hollow point ammunition

DISCUSSION: Some units wished to use more lethal hollow point ammunition. They pointed to its increased effectiveness and use by other forces.

RECOMMENDATION: Restrict units to using what the Army issues them. What other units can use is not an authorization for all units to do the same.[884]

ISSUE: Legal review of Active Denial System

DISCUSSION: Higher headquarters tasked a brigade (BDE) in RC-East to field test an Active Denial System. The BDE requested, and the CJTF OpLaw section found, the Department of the Army legal review for the weapons system. The BDE still wanted a legal review on whether or not the new weapons system complied with the ISAF ROE which obviously differed from the OEF ROE and took into account coalition policies. The OpLaw section conducted a legal review and routed through the SJA finding that the weapons system complied with the ISAF ROE.

RECOMMENDATION: Sustain. In a coalition environment, not only must the weapons system have a proper legal review under AR 27-53, but it must also be employable under the coalition ROE.[885]

I.S.2. Lethal Weapons

ISSUE: Recreational shooting of privately owned weapons

DISCUSSION: Off-duty personnel were shooting exotic and foreign weapons on a contractor's firing range on a recreational basis. This raised the question as to the source of the ammunition and restrictions in General Order Number 1 (GO#1) concerning possession and discharge of privately owned weapons. It appeared the contractor was supplying the ammunition as opposed to using U.S. ammunition, which was compatible with some of the weapons.

RECOMMENDATION: Because of the ethics issues involved, the command adopted a policy to control the practice.[886]

ISSUE: Claymore mines

DISCUSSION: In Afghanistan, there is theater guidance on the use of claymore mines.

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[883] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 2.
[884] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.
[885] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 10.
[886] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 20.

RECOMMENDATION: Be aware of theater specific guidance on employing claymore mines and seek approval before using.[887]

I.S.3. Less than Lethal Weapons

ISSUE: Effectiveness of less than lethal weapons

DISCUSSION: Because of the reviews of 15-6 investigations on escalation of force (EOF) incidents, the JAs noticed a clear and positive trend of the effects of less than lethal weapons on preventing injuries, claims, and other undesirable consequences as compared to lethal weapon EOFs. They brought this to the attention of commanders to demonstrate the benefits of these weapon systems.

RECOMMENDATION: Sustain. The analysis of 15-6 investigations in this manner demonstrates one of the ways JAs can educate and highlight important effects to commanders and influence operations in the field.[888]

ISSUE: Lack of familiarity with arsenal

DISCUSSION: Soldiers had access to over 20 different less than lethal weapons on patrol. Most of them did not receive training on a number of them.

RECOMMENDATION: Improve. Soldiers should receive scenario-based training on each weapon before they arrive in theater. The first time a Soldier uses the weapon should not be on an actual mission.[889]

ISSUE: Less than lethal weapons encourage early resort to force

DISCUSSION: There is a paradox that troops who have access to less than lethal weapons will use force more readily than troops equipped with lethal weapons. This increased readiness to use less than lethal force is not advantageous. For instance, troops adopted a 'TTP' of throwing water bottles at vehicles that were perceived as being a threat because they strayed too close to convoys. But the soldiers would not have answered the perceived threat by a resort to deadly force. If we had not adopted the water bottle TTP then neither the convoy nor the civilian vehicles would have suffered any damage. Soldiers were simply throwing water bottles and breaking civilian windscreens because they could, for no real benefit.

RECOMMENDATION: You should critically analyze proposals for less than lethal TTPs. They may simply result in soldiers using force more readily without any real benefit. This will have a detrimental effect on civilian perceptions.[890]

ISSUE: U.S. capability in less than lethal (LTL) weapons employment

DISCUSSION: Our LTL capabilities are pathetic when compared to other forces. Part of this stems from the use by other countries of their national police (for example, the Italian carabinieri)

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[887] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 28.
[888] 3-1 CAV OIF AAR (1st Half), DEC 08 - JUL 09, *supra* note 62.
[889] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 13.
[890] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 7.

for this mission. These forces have a dedicated civil disturbance mission in their home country, which U.S. forces lack. They have millions and millions of dollars in LTL equipment (such as water cannon tricks) we simply do not have.

RECOMMENDATION: The civil disturbance control task is very important to the Kosovo mission. As our own equipment is mediocre, ensure you are aware of the capabilities resident with other countries and their rules for employing those capabilities.[891]

ISSUE: Use of less than lethal weapons

DISCUSSION: Iraqi children would often throw rocks at the brigade convoys. These kids would also throw pieces of wood into the road in an effort to time and obtain the spacing of the convoys' vehicles. Convoy commanders were concerned about these threats. The BJA advised on the applicable ROE and what actions would be legal under it. However, not all legal courses of action would be smart decisions.

RECOMMENDATION: Be prepared to deal with situations that call for the use of less than lethal weapons. The brigade received permission from higher to use a long range acoustic device (LRAD) to keep the children from conducting these activities.[892]

ISSUE: Bean bag guns

DISCUSSION: The brigade attempted to use bean bag guns in EOF situations when there was no immediate threat to its Soldiers.

RECOMMENDATION: Sustain. The changing operating and security environment in Iraq made the use of these weapons safer for the brigade's Soldiers.[893]

ISSUE: Use of unauthorized non-lethal weapons

DISCUSSION: After the implementation of the SA and the transition away from kinetic operations, one unit began to use paint ball guns as a non-lethal means of force. Although the unit's intentions were to avoid lethal effects, the Army has not authorized this particular equipment for force protection, though some forms of paint ball guns had authorization.

RECOMMENDATION: Commanders and their JAs have to maintain a lookout for the use of unauthorized weapons, including non-lethal ones.[894]

ISSUE: Increasing frequency of use of less-than-lethal methods

DISCUSSION: Units requested more and more less-than-lethal equipment.

RECOMMENDATION: As the situation continues to stabilize, be prepared for more and more requests for less-than-lethal equipment, such as the LN303 paintball gun.[895]

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[891] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 30.
[892] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 17.
[893] *Id.*
[894] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 24.
[895] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 3.

II. ADMINISTRATIVE & CIVIL LAW

II.A. Army & Air Force Exchange Service (AAFES)

ISSUE: AAFES sales of alcohol at Camp Shelby

DISCUSSION: The AAFES post exchange (PX) at Camp Shelby stocked alcohol despite the fact the over 4000 mobilized Soldiers who shopped there were subject to General Order #1, which restricted alcohol consumption.

RECOMMENDATION: Improve. AAFES should take into account unit policies when determining what to stock in its stores. If AAFES must sell alcohol at Camp Shelby, it should run a separate Class Six store, which the commander can make off limits to mobilizing units.[1]

ISSUE: AAFES prices and practices at Camp Shelby

DISCUSSION: Prices in the Camp Shelby PX were much higher than the gas station immediately off post. The PX also raised the prices for haircuts and removed all hair clippers from the store.

RECOMMENDATION: Improve. The Camp Shelby commander should address these exploitive tactics.[2]

ISSUE: AAFES involvement in local vendor bazaar

DISCUSSION: AAFES has embedded itself in the running of the main BAF bazaar. They impose a 20% tax, but it is not clear what benefit service personnel gain from AAFES' involvement. For instance, they do not offer service personnel a warranty for goods purchased at the bazaar.

RECOMMENDATION: JAs should be careful to scrutinize AAFES involvement to ensure they are providing best value for the Soldier. [3]

ISSUE: Authorized AAFES patrons in Kosovo

DISCUSSION: The Post Exchange (PX) was the number one attraction at Camp Bondsteel. All visiting local officials wanted the opportunity to shop there. The unit coordinated with the AAFES attorney in Europe on this issue. The determination was that it was ultimately the CG's decision.

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[1] 56th Stryker Brigade Combat Team, 28th Infantry Division (Mechanized), Pennsylvania Army National Guard, Brigade Judge Advocate OIF After Action Report, 24 September 2009, Deployed January 2009 – September 2009, Camp Taji, Iraq (hereinafter "56th SBCT (PA NG) OIF AAR, JAN - SEP 09"; on file at CLAMO).
[2] *Id*.
[3]. 1st Combat Support Brigade (Maneuver Enhancement), Task Force Warrior, OEF After Action Report, 20 October, 2009, Deployed June 2008 – September 2009, Bagram Airfield, Afghanistan (hereinafter "1 CSB (ME) OEF AAR, JUN 08 - SEP 09"; on file at CLAMO).

RECOMMENDATION: The CG decided to authorize use on a one-time basis. Continuing use would not have been helpful to the local economy. Supporting the local economy was part of the mission. The command also searched individuals going both in and out of the gate in order to ensure no one was leaving with an excessive number of PX items (such as blue jeans) for resale off post.[4]

ISSUE: Security Agreement (SA) and access to the Post Exchange (PX)

DISCUSSION: The SA prohibited Iraqi Security Forces (ISF) from using PXs on VBC. This was a sensitive issue. Local national (LN) contractor personnel had been granted PX access by their employer's contract with the U.S. Senior ISF officers living or working on the installation were accustomed to using the PX and were unhappy at now being unable to shop there. The SA did allow for an exemption to the prohibition whereby nominated individuals could use the PX, provided there was formal agreement to the exemption by the appropriate SA joint committee. The issue of an exemption was raised in the joint committee forum; however, the Iraqi representatives were not willing to agree to any exemptions. Thus, VBC enforced the SA provisions.

RECOMMENDATION: Be polite but firm to both LNs and sponsor military units in responding to complaints and inquiries about the policy. Work with AAFES and the security guards outside the PX on implementation of the policy. Post signs at the PX in English and Arabic to say ISF were not authorized to use the PX due to the SA. Unless the command says otherwise, be the point of contact (POC) on this issue (including having your phone number on the signs at the PX) because the mayor's cell personnel will either not understand the issue or will not agree with it, resulting in miscommunication of the policy. Do not blame the GoI for the policy—say only that the SA prohibits the access and do not offer explanations on why the prohibition is in place or suggest the GoI caused the prohibition.[5]

ISSUE: Non-standard contracted shops at FOB Shank

DISCUSSION: A danger for unit JAs moving into a new AO is the possibility of pre-contracted local services contracted in ways not always exactly in accordance with administrative or AAFES guidelines. Upon the BCT arriving at FOB Shank in the Logar province, the JAs discovered a number of improperly contracted shops/services. Under these flawed contracts, the owners of these shops were required to hold a percentage of the profits for the FOB units. In one case, a shop had accumulated a balance of over $50K for the FOB units. The JAs put a stop to any of the proposed transfers of money.

RECOMMENDATION: The JAs contacted AAFES to seek their help to rectify, ratify or modify the impugned FOB contracts. Unfortunately, AAFES still had not cured the defective contracts when the BCT's deployment ended.[6]

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[4] Task Force Falcon, 40th Infantry Division, California National Guard, Command Judge Advocate, Kosovo Forces 11 After Action Report, 9 January 2010, Deployed February 2009 – November 2009, Camp Bondsteel, Kosovo (hereinafter "KFOR-11 AAR, FEB 09 - NOV 09"; on file at CLAMO).
[5] 326th Area Support Group, Task Force Jayhawk, Staff Judge Advocate OIF After Action Report, 3 March 2010, Deployed November 2008 – October 2009, Victory Base Complex, Iraq (hereinafter "326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09"; on file at CLAMO).
[6] 3rd Brigade Combat Team, 10th Mountain Division, Brigade Judge Advocate OEF After Action Report, 29 January 2010, Deployed November 2008 – January 2010, Forward Operating Base Shank, Logar

ISSUE: AAFES stores provide prime targets for improper solicitations

DISCUSSION: Given their proximity on the FOB and the relationship the stores engender with the Soldiers, there is a natural tendency to think that AAFES stores are part of the Army "team." Because of this misperception, some members of the Division staff felt comfortable soliciting AAFES for donations for a unit fundraiser. Fortunately, the OSJA was able to provide advice recommending against the solicitation.

RECOMMENDATION: Sustain. Vigilance and education are keys to preventing potential improper solicitations, especially in a deployed environment where it is easy to get lulled into a sense of camaraderie with AAFES.[7]

ISSUE: Lack of legal authority to lease space to local vendors outside of the AAFES approved vendors program

DISCUSSION: AAFES had exclusive authority with respect to vendors operating on Camp Phoenix. Over time, a practice evolved of charging local national vendors a fee for the privilege of operating on post through weekly markets or bazaars. Although this practice existed at Camp Phoenix for years, there appeared to be very little documentation reflecting the circumstances under which the local national vendor concession contracts were originally negotiated, the authority under which they were entered, and the extent to which AAFES knew of, agreed to, and/or acquiesced to them. These markets or bazaars provided the task force with significant leverage with respect to force protection, community outreach, and a means to improve local business practices and to stimulate the local economy. Money collected from these leases funded local Morale, Welfare, and Recreation (MWR) events. Some vendors would lease space to other vendors outside of the AAFES approved vendors program. In February 2009, CJTF-101 published a legal opinion warning this practice was illegal and should not continue. Later, the CJTF-101 OSJA issued a slightly toned down version stating it could not find any authority for this practice and there could be fiscal law, operational security (OPSEC), and contract authorization issues, particularly with respect to competition with AAFES. There was a push to have local vendors become AAFES vendors, but the vendors did not like doing this. As a result, the base lost a source of MWR money. In the end, it was clear there was no authority to charge the vendors rent. At smaller bases, this is still an issue.

RECOMMENDATION: Improve. Either get the vendors to become authorized AAFES vendors or do not allow this practice to continue. Be aware that these memoranda of agreement exist and be aware of the historical path these vendors have worked with AAFES.[8]

ISSUE: AAFES' right of first refusal

DISCUSSION: Army Regulation (AR) 215-1 gives AAFES the right of first refusal to

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Province, Afghanistan (hereinafter "3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10"; on file at CLAMO).

[7] 25th Infantry Division, Staff Judge Advocate OIF After Action Report, 11 March 2010, Deployed November 2008 – November 2009, Multi-National Division – North, Contingency Operating Base Speicher, Iraq (hereinafter "25 ID OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).

[8] 33d Brigade Combat Team, Illinois Army National Guard, Brigade Judge Advocate OIF After Action Report, 20 March 2010, Deployed December 2008 – August 2009, Camp Phoenix, Afghanistan (hereinafter "33d BCT (ILARNG), OEF AAR, DEC 08 - AUG 09"; on file at CLAMO).

individuals and/or groups wanting to operate concessions on U.S. bases in theater. In an attempt to stimulate the local economies and foster good will with their neighbors many base mayors attempted to allow local nationals to operate concessions on U.S. bases.

RECOMMENDATION: Judge advocates (JAs) need to be aware of AR 215-1 and work with base mayors and commanders to ensure all operations on post comply with existing ARs.[9]

II.B. Customs & Passports

ISSUE: Obtaining a U.S. passport while in Iraq

DISCUSSION: Soldiers are sometimes required to possess a current passport to travel to countries other than the U.S. The brigade legal office helped obtain passports for Soldiers in the area of operations by working with the U.S. Embassy. Soldiers personally appeared at the U.S. Embassy (Green Zone) to fill-out required paperwork and to present other application materials.

RECOMMENDATION: Improve. Soldiers desiring to travel to locations outside of the United States during morale leave should possess a current passport before deploying. Paralegals, or other brigade staff, can obtain a special designation from the U.S. Embassy to assist with passport processing. With this special designation, passport processing can decrease to as little as two weeks.[10]

ISSUE: Paralegal support for immigration issues

DISCUSSION: The brigade dedicated one paralegal to handle all passport and immigration issues.

RECOMMENDATION: Sustain.[11]

ISSUE: Passport officer qualification

DISCUSSION: It was very fortunate to have one of the JAs qualified as a passport officer, since there was a steady demand for citizenship, immigration, and passport issues (approximately 25 a month). The JA was the only one qualified in MND-N, so there were requests coming from all over the division AO. The JA received the training at the Embassy in Baghdad. There is no prior training that can qualify a Soldier to accept passport requests.

RECOMMENDATION: Sustain. The time and effort of getting this training can be very productive for processing Soldiers' requests and, in turn, can be very conducive to improving

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[9] 82d Airborne Division, Staff Judge Advocate OEF After Action Report, 23 June 2010, Deployed June 2009 – June 2010, Regional Command—East, Bagram Airfield, Afghanistan (hereinafter "82D ABN OEF AAR, JUN 09 - JUN 10"; on file at CLAMO).

[10] 4th Combat Aviation Brigade (4th CAB), 4th Infantry Division (Mechanized), OIF After Action Report, 28 August 2009, Deployed June 2008 – June 2009, Multi-National Division – Baghdad (MND-B), Camp Taji, Iraq (hereinafter "4th CAB OIF AAR, JUN 08 - JUN 09"; on file at CLAMO).

[11] 3d Brigade Combat Team, 1st Infantry Division, OEF After Action Report, 29 August 2009, Regional Command (RC) – East, Forward Operating Base (FOB) Fenty, Jalalabad, Afghanistan, Deployed July 2008 – June 2009 (hereinafter "3BCT, 1ID OEF AAR, JUL 08 - JUN 09"; on file at CLAMO).

morale. Those wishing to receive the same qualification should apply for the training as soon after arriving in theater.[12]

ISSUE: Requests for customs approvals of shipped gifted weapons

DISCUSSION: A few 2HBCT units received weapons as gifts from grateful Iraqi partner units. The BJA had to review and coordinate customs handing of the property (demilitarization, compliance paperwork, registration). There is excellent customs guidance available on Non-secure Internet Protocol Router/Secure Internet Protocol Router Network (NIPR/SIPRNet). The key to success is early action and communications with customs offices.

RECOMMENDATION: Sustain. The units involved were very pleased the gifted weapons were able to make it back to the U.S. and pass though all the customs layers successfully.[13]

ISSUE: Obtaining passports

DISCUSSION: The CJTF-82 CJ1 was the central location for Soldiers to obtain passports. TF Thunder Legal made Soldiers aware of the process, location, and paperwork required to obtain passports.

RECOMMENDATION: Sustain. One central location to process passport applications was the best course of action.[14]

ISSUE: Intellectual property laws in Kosovo

DISCUSSION: There is little to no enforcement of intellectual property laws in Kosovo, if any even exist. Consequently, pirated media (movies, music, software) was very common.

RECOMMENDATION: The command must understand the situation from the outset and set the limits it feels are necessary, if any, concerning the return of this media to home station where copyright enforcement does occur.[15]

ISSUE: Use of passports in Europe

DISCUSSION: It was generally quicker to use passports to travel in Europe than it was to show your orders and identification. Border control agents usually did not look twice at a passport, but often had to ask questions before granting entrance with orders.

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[12] 3d Brigade Combat Team (BCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 3 November 2009, Deployed October 2008 – October 2009, Multi-National Division – North (MND-N), COB Speicher, Tikrit, Iraq (hereinafter "3BCT, 25ID OIF AAR, OCT 08 - OCT 09"; on file at CLAMO).

[13] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 24 November 2009, Deployed October 2008 – September 2009, Camp Liberty, Baghdad, Iraq (hereinafter "2HBCT, 1ID, OIF AAR (2d Half), OCT 08-SEP 09"; on file at CLAMO).

[14] 159th Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate OEF After Action Report, 5 November 2009, Deployed December 2008 – December 2009, Bagram Airfield, Afghanistan (hereinafter "159th CAB, OEF AAR, DEC 08 - DEC 09"; on file at CLAMO).

[15] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.

RECOMMENDATION: It is beneficial to carry your passport to Kosovo, as you never know when you might have cause to travel while there (TDY, emergency leave, etc.). Obtain a passport before you deploy.[16]

ISSUE: Customs issues during redeployment

DISCUSSION: Towards the end of the deployment, servicemembers often have numerous questions about what items are permissible to carry through customs. For instance, one Marine had obtained a nightstick as a gift from an Iraqi Police (IP) officer and wanted to know if he could take it through customs. The RJA office had to research U.S. customs laws, Federal Aviation Administration (FAA) laws, Department of Transportation (DoT) laws, and applicable U.S. military orders and regulations to provide appropriate guidance.

RECOMMENDATION: Improve. Be prepared to answer questions about what is permissible to take through customs. JAs should research and gather all applicable regulations from the U.S. Customs Office, FAA, DoT, as well as the U.S. military early on in the deployment so they will be prepared to answer questions when they arise.[17]

ISSUE: Passports

DISCUSSION: Many personnel of RCT-8 were interested in obtaining passports during the deployment so they could use their two-week leave to travel somewhere other than the United States. It took nearly three months into the deployment before the Legal Services Support Team (LSST) was able to train individuals to do everything required in order to issue passports. However, this was very late in the deployment for those who hoped to go on leave early and, more importantly, the LSST limited the number of passports that they would process in a given month. Typically, those slots filled up the morning of the first day of the month.

RECOMMENDATION: Improve. Ideally, servicemembers should get their passports before deployment. However, units should ensure legal assistance attorneys receive training before deployment in the certification required to issue passports. Additionally, the command should obtain for the LSST the necessary resources to process the number of required passports so they can better provide this benefit.[18]

ISSUE: Assisting Soldiers to obtain passports

DISCUSSION: The brigade legal office provided Soldiers with the required information via a link on its web portal. The link would direct Soldiers to the DoS webpage.

RECOMMENDATION: Sustain.[19]

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[16] *Id.*

[17] Regimental Combat Team 8 (RCT-8), Multi-National Force – West (MNF-W), Deputy Regimental Judge Advocate, OIF After Action Report, 18 December 2009, Deployed January 2009 - October 2009, Al Asad, Iraq (hereinafter "RCT-8, OIF AAR, JAN 09 - OCT 09"; on file at CLAMO).

[18] *Id.*

[19] 3d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate OIF After Action Report, 4 February 2010, Deployed December 2008 – November 2009, Joint Security Station Loyalty and Forward Operating Base Hammer, Baghdad, Iraq (hereinafter "3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09"; on file at CLAMO).

ISSUE: Customs

DISCUSSION: Customs is not necessarily a legal function. In theater, PMO had the lead on customs. Absent specific questions about the law, the brigade legal section did not handle customs issues.

RECOMMENDATION: Sustain.[20]

ISSUE: Passports

DISCUSSION: The mechanics of issuing passports is not a legal function. As a result, the 30th HBCT S-1 shop had the lead on passports.

RECOMMENDATION: Sustain. There tends to be more legal work in the deployed environment than there are JAs to do it. Do not hesitate to let other staff sections take the lead on functions that do not require a lawyer.[21]

ISSUE: Passport Acceptance Agents (PAAs)

DISCUSSION: Deployed servicemembers often seek out passports, not only for use during environmental morale leave (EML), but also for trips they have planned as soon as they return from deployment. Although passports are typically a G1 function, the issue frequently migrates to the OSJA. The U.S. Embassy in Baghdad offered Passport Acceptance Agent (PAA) training, which a Division paralegal attended. A trained PAA can accept passport applications without the Soldier having to travel to Baghdad. Soldiers appreciated this service, and there was a bigger demand than expected.

RECOMMENDATION: Send two paralegals to the PAA training at the Embassy. This will allow coverage if one PAA is out on a mission or on EML. Also, realize along with this service will come the need for passport photos. Although the Division had a Soldier who volunteered to take and print passport photos, this is something the unit should be prepared to provide. It is therefore necessary to have a camera, an inkjet photo printer, and photo paper.[22]

ISSUE: Appointment as passport agent

DISCUSSION: One of the Division JAs, who also augmented a BCT, received an appointment as a passport agent by the U.S. Embassy in Baghdad. She had to attend a two-day course in Baghdad. This appointment allowed her to receive passport applications from Soldiers, witness their signatures under oath, and turn them in to the Embassy for processing. Had she not served as a passport agent, Soldiers requiring passports would have to personally appear before a consular or the U.S. Embassy in Baghdad.

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[20] 30th Heavy Brigade Combat Team, Brigade Judge Advocate OIF After Action Report, 16-17 March 2010, Deployed April 2009 – January 2010, Forward Operating Base Falcon, Baghdad, Iraq (hereinafter "30th HBCT (NG) OIF AAR, APR 09 - JAN 10"; on file at CLAMO).
[21] *Id.*
[22] 34th Infantry Division, Minnesota Army National Guard, Staff Judge Advocate OIF After Action Report, 23 February 2010, Deployed April 2009 – February 2010, Multi-National Division – South, Basra, Iraq (hereinafter "34ID, OIF AAR, APR 09 - FEB 10"; on file at CLAMO).

RECOMMENDATION: Sustain. There should be passport agents at every major U.S. base. This appointment was particularly helpful for Soldiers who just gained citizenship while in Iraq, as they would then require a passport to visit their former country. The downside, however, was others would try to take advantage of the availability of the passport agent to get short notice passports to go to another country on leave. Realize, however, even though the Embassy processed the passports on an expedited basis, the process still typically took about two months.[23]

ISSUE: Passport processing

DISCUSSION: The JA passport agent's appointment limited her to processing twenty passports per month. For tracking purposes, the embassy required her to mail them via DHL or FedEx rather than through the U.S. Postal Service.

RECOMMENDATION: Sustain. The passport agent typically held passport requests until the end of the month for mailing so she could mail them all together. This also allowed her to prioritize the passport applications in favor of those from new citizens if she had more than twenty.[24]

ISSUE: Accessibility of passport agents

DISCUSSION: There was one passport office in Baghdad with individual passport agents in Balad and Speicher. The agent on COB Speicher was not available when the unit arrived. Additionally, Soldiers could not go through the COB Speicher agent during the last few months of the deployment given that the passport might not make it back from Baghdad before redeployment. Moreover, when the agent was not available for any reason, there was no one available to perform that mission.

RECOMMENDATION: Increase the number of agents in theater and train a passport agent from your unit prior to deployment. If establishing a cut-off period for applying for a passport, ensure units are aware of that date. If feasible during the last few months of deployment after that cut-off date, send one agent on a regular circuit to outlying units to improve accessibility and reduce the logistical burden on those units.[25]

ISSUE: Change in customs policy regarding DVDs

DISCUSSION: During deployment, U.S. Customs changed its policy on how many bootleg DVDs a Soldier could lawfully bring back to the United States. The previous policy permitted Soldiers to bring back one DVD of each movie title. The current policy permits Soldiers to bring back only one DVD in total.

RECOMMENDATION: Ensure Soldiers are aware of the current customs policies so they do not spend money on items they cannot take back with them. Update Soldiers as the rules change.[26]

ISSUE: Immigration issues

DISCUSSION: 2-82 ABN encountered many Haitians who wanted to immigrate to the U.S.

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[23] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[24] *Id*.
[25] *Id*.
[26] *Id*.

since they had relatives there. Invariably, many questions came to the JAs about immigration and visas. The preferred solution was to steer these people to the U.S. Embassy, which was close by in Port-au-Prince. They routinely deal with such issues.

RECOMMENDATION: Immigration questions will abound in countries in which a large number of inhabitants have familial ties with the U.S. JAs have to be prepared to deal with these issues and those cases where Soldiers have relatives in the AO.[27]

ISSUE: Passport agents

DISCUSSION: During the first four months of the 1CD's deployment, they had a paralegal from the sustainment brigade who was a certified passport agent. This certification allowed the paralegal to accept passport applications from Soldiers without them having to travel to the U.S. Embassy in Baghdad. When this paralegal redeployed, there were no passport agents on Camp Liberty. Passport processing took six to ten days if the Soldier was able to travel to the embassy, but up to ten weeks if they applied online.

RECOMMENDATION: The Division legal assistance office should have someone certified as a passport agent.[28]

ISSUE: Customs clearance review and letters

DISCUSSION: The administrative law (AdLaw) section provided servicemembers a formal customs review to demonstrate to U.S. officials the item in their possession was a gift and not historical property.

RECOMMENDATION: Sustain. An AdLaw attorney should liaison with senior officers and staff before the deployment regarding customs clearance reviews and letters. He or she should coordinate regularly with general officer (GO) aides to ensure reviews are complete.[29]

ISSUE: Overload of requests from S-1 to assist with passports

DISCUSSION: The workload for passport requests, mostly from translators, was an administrative nightmare. The workload was very large, and although there were no big issues, the S-1 constantly requested assistance from the brigade legal section.

RECOMMENDATION: Be prepared to assist the S-1 with passport requests.[30]

ISSUE: Special Immigrant Visa Program

DISCUSSION: The SJA received requests from the field from units seeking help getting Afghan

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[27] 2d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate Haiti After Action Report, 23 April 2010, Deployed January 2010 – March 2010, Operation Unified Response, Port-au-Prince, Haiti (hereinafter "2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10"; on file at CLAMO).
[28] 1st Cavalry Division, Staff Judge Advocate OIF After Action Report, 1 April 2010, Deployed January 2009 – January 2010, Multi-National Division – Baghdad, Camp Liberty, Baghdad, Iraq (hereinafter "1CD OIF AAR, JAN 09 - JAN 10"; on file at CLAMO).
[29] *Id*.
[30] 33d BCT (ILARNG), OEF AAR, DEC 08 - AUG 09, *supra* note 8.

citizens and interpreters U.S. visas. The SJA put the unit in touch with the appropriate individuals to handle the matter.

RECOMMENDATION: Sustain. JAs must be prepared to deal with this issue and should find those persons able to assist.[31]

ISSUE: Customs delays

DISCUSSION: During the deployment, 3d ESC expected delivery of various items from the express airline company DHL, but the Haitian custom agents constantly delayed the admission of these items. The express airline company employees would not release 3d ESC's packages and materials until Haitian customs agents cleared the deliveries. After investigating the delays and rumors of the customs agents wanting under the table payments, the SJA found the problem of held up deliveries stemmed from the Haitian customs agents not showing up for work (the SJA heard anecdotally that Haitian customs agents died or could not work due to the earthquake). The delays continued because of the lack of customs agents to attend to the workload of inbound deliveries.

RECOMMENDATION: When a disaster strikes an area, do not expect all local government departments to function normally. In circumstances like the Haiti earthquake, Army units and JAs must be prepared for delays in various local government functions such as customs. Additionally, the JTF level command should be prepared to address these issues with the local government and attempt to work out a solution.[32]

ISSUE: Special Immigrant Visa (SIV) Program

DISCUSSION: The SOTF legal advisor utilized his paralegal specialist to handle the SIV program. This program authorizes Afghan translators working with the U.S. military to apply for special visas.

RECOMMENDATION: Sustain.[33]

ISSUE: Knowledge of Central Command's (CENTCOM) customs policies

DISCUSSION: The chief of administrative law constantly checked CENTCOM's customs policies and updated the administrative law's web portal to reflect the most current policies.

RECOMMENDATION: Sustain. JAs should not assume that customs policies remain static. Constantly monitor, update and distribute current theater policies.[34]

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[31] Combined Forces Special Operations Component Command – Afghanistan, Staff Judge Advocate OEF After Action Report, 2 May 2010, Deployed August 2009 – November 2009, Kabul, Afghanistan (hereinafter "CFSOCC-A OEF AAR, AUG 09 - NOV 09"; on file at CLAMO).
[32] 3d Sustainment Command (Expeditionary), Operation Unified Response, Staff Judge Advocate After Action Report, 23 April 2010, Deployed February 2010 – March 2010, Toussaint L'Ouverture Airport, Port-au-Prince, Haiti (hereinafter "3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10"; on file at CLAMO).
[33] 2d Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 25 May 2010, Deployed July 2009 – January 2010, Camp Brown, Kandahar, Afghanistan (hereinafter "2/7 SFG(A), OEF AAR, JUL 09 - JAN 10"; on file at CLAMO).
[34] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.

II.C. Drawdowns

ISSUE: Backhauls of material and supplies

DISCUSSION: As unit are redeploying, tasking to brigades to haul materials out of theater is increasing.

RECOMMENDATION: Improve. To prevent slowing down operations, units trucking retrograde material back to Kuwait for processing should ensure "Bill of Lading" documentation is accurate.[35]

ISSUE: Turning over facilities

DISCUSSION: When U.S. forces turned over bases and outposts to the GoI, the Foreign Excess Personal Property (FEPP) policies prevented the turnover of certain items, such as toilets and generators, which were necessary for a working facility. Without these items, the Iraqis simply would not use the facilities.

RECOMMENDATION: Improve. Adjust the MNC-I FEPP policy to maintain a baseline working facility before transfer to the GoI.[36]

ISSUE: Giving away old equipment

DISCUSSION: You cannot simply give away old equipment. Doing so requires you go through the Defense Reutilization and Marketing Office (DRMO). The unit eventually transferred some old laptops through this process.

RECOMMENDATION: The final determination was that the pain to go through this process outweighed the actual benefit gained from transferring the property. [37]

ISSUE: Basing rights

DISCUSSION: The JA led SOTF-W's efforts to provide a legal basis to have its operating bases placed on the "Agreed Areas and Facilities List," which would allow SOTF-W assets to remain at those locations. Failure to have a base's name placed on the list required obtaining a separate agreement with the GoI. However, this separate agreement did not have the same protections as the SA.

RECOMMENDATION: JAs should be prepared to deal with base closure issues and seek guidance and assistance from higher when required.[38]

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[35] 4th Sustainment Brigade, OIF After Action Report, 28 August 2009, Deployed March 2008 – June 2009, Army Central Command (ARCENT), Camp Arifjan, Camp Beuhring, Camp Virginia, & Ali Al Saleem Air Base, Kuwait (hereinafter "4th SUST BDE (OIF) MAR 08 - JUN 09"; on file at CLAMO).
[36] 2d Brigade Combat Team, 4th Infantry Division, OIF After Action Report, 15 September 2009, Deployed September 2008 – August 2009, Forward Operating Base (FOB) Echo, Diwaniyah, Qadisiyah Province, Iraq, Contingency Operating Base (COB) Basra, Basra Province, Iraq (hereinafter "2BCT, 4ID OIF AAR, SEP 08 - AUG 09"; on file at CLAMO).
[37] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.

ISSUE: Ancillary legal issues surrounding base closures

DISCUSSION: Base closures presented the JA with a host of other ancillary issues ranging from securing bases with local nationals, paying local national security officers, and other fiscal law issues. When possible, the JA would seek clear guidance from higher. However, many times there were no clear answers, which forced the JA to lay out the potential risks associated with all courses of action to his command.

RECOMMENDATION: JAs need to be prepared to deal with a host of ancillary legal issues arising from base closures.[39]

II.D. Ethics/Joint Ethics Regulation (JER)

Gifts

ISSUE: Gifts

DISCUSSION: Due to the multinational nature of CJSOTF-A, foreign gifts were numerous.

RECOMMENDATION: In a multinational setting, expect the issue of foreign gifts to arise often. Familiarity with theater policies and then streamlining that knowledge for a broader audience will minimize impact on operations.[40]

ISSUE: Review of gifts

DISCUSSION: Each time the BCT received a gift, the legal office included a photo of the gift with the legal review. They also sought out the contracted cultural experts for advice on valuation.

RECOMMENDATION: Sustain.[41]

ISSUE: Gifts of alcohol

DISCUSSION: This issue comes up regularly in Kosovo. It is important in the culture to give gifts. The recipient could receive a gift of alcohol, but General Order #1 required dumping, rather than shipping out or consuming the alcohol.

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[38] Sea Air Land (SEAL) Team 7, Special Operations Task Force – West (SOTF-W), Detachment Judge Advocate OIF After Action Report, 14 April 2010, Deployed March 2009 - September 2009, Al Asad Airbase and Ramadi, Iraq (hereinafter "SOTF-W OIF AAR, MAR 09 - SEP 09"; on file at CLAMO).
[39] *Id*.
[40] 3rd Special Forces Group (Airborne), Group Judge Advocate OEF After Action Report, 22 July 2010, Deployed January 2010 – May 2010, Bagram, Afghanistan (hereinafter "3rd SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).
[41] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 17 September 2009, Deployed October 2008 – June 2009, Camp Liberty, Iraq (hereinafter "2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09"; on file at CLAMO).

RECOMMENDATION: It is helpful to work closely with USAREUR attorneys on gift issues, though most issues were routine.[42]

ISSUE: Foreign gifts to commanders

DISCUSSION: The brigade legal section was proactive in briefing commanders on the applicable policies regarding receipt of gifts from Iraqi officials. The BJA continually briefed the rules to commanders during the deployment and attached MNC-I's information paper regarding gifts to the brigade's legal web portal.

RECOMMENDATION: Sustain. Educating commanders early and often prevented any gift issues.[43]

ISSUE: "War trophies" as gifts

DISCUSSION: Units are well aware there are restrictions on war trophies. However, judge advocates should be alert for individuals to receiving a "war trophy" or some other prohibited item as a gift. In order to clear up any confusion on this matter, the contingency contracting attorney assisted the 2d MEB SJA office in publishing a policy letter regarding gifts. This policy letter clearly defined what gifts were acceptable and what to do when receiving a gift.

RECOMMENDATION: Sustain. It is important to be on the lookout for prohibited items, to include war trophies, coming in to a commander under the guise of a gift. JAs should familiarize themselves with the Joint Ethics Regulation (JER) and other applicable policies, orders, and regulations governing gifts and publish information papers to inform the unit.[44]

ISSUE: Gifts from foreign governments

DISCUSSION: During deployment, it is common for host-nation leaders to present gifts to commanders. Ethics rules are different for foreign gifts. The SJA office had to ensure it distinguished between foreign gifts and regular gifts before providing commanders with legal advice.

RECOMMENDATION: JAs should be on the lookout for foreign gifts. Remember, a different set of rules apply to gifts from foreign governments. JAs should familiarize themselves with these rules and include guidance on foreign gifts in any published information papers addressing gifts.[45]

ISSUE: Gifts from Iraqi Army (IA)

DISCUSSION: Two officers accepted gifts from an IA general officer (civilian business suits, Kurdish military uniforms, lodging, food, and commercial flights to a conference and local festival). The command approved the trip and mode of transportation but was unaware of the

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[42] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.
[43] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[44] 2d Marine Expeditionary Brigade, Contingency Contracting Attorney, OEF After Action Report, 18 February 2010, Deployed July 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09"; on file at CLAMO).
[45] *Id*.

clothes/uniform issues. U.S. Central Command (CENTCOM) regulations prohibited travel by commercial air throughout Iraq. The officers failed to ask for legal advice before accepting the gifts. It was decided the gifts could be treated as gifts to the U.S. Government since they came from an Iraqi general, and the recipients turned over the gifts to the property system in accordance with applicable regulations. The MNC-I chief of staff issued letters of concern to the two officers for violating the restriction on air travel and on accepting the gifts.

RECOMMENDATION: The giving of gifts is important in Iraqi culture. This can often violate U.S. Government ethics policy if not handled correctly. Ensure all personnel know the rules Duty personnel live with travel restrictions on a daily basis. Reserve Component personnel do not. While you might not expect someone from your unit to get on an Iraqi commercial airline in a civilian suit on official business, it can happen given the gift-giving aspect of Iraqi culture and the team building and other interactions occurring with Iraqi officials. Subsequent to this incident, the command adopted a policy for unit personnel traveling off the installation that would have covered the travel issue in this case and led to a legal review of the mode of transportation. [46]

ISSUE: Preparation for gifts toward the end of the deployment

DISCUSSION: Near the end of the deployment, one of the BCT paralegals did research on the different gift categories (i.e., gifts based on personal friendships, gifts from prohibited sources, and gifts from foreign governments). The BJA disseminated information about the gift rules to the BCT commander during several nightly updates.

RECOMMENDATION: Sustain. Educate the battalion commanders as to the gift rules, also.[47]

ISSUE: Valuation of gifts

DISCUSSION: The BJA took digital photos of the gifts the BCT commander received and found similar items at the local bazaar, gift shops, and AAFES to determine the value. He also got estimates from local shop owners.

RECOMMENDATION: Sustain.[48]

ISSUE: Gifts from foreign governments

DISCUSSION: Iraqis love to give gifts. In MNSTC-I, the same GoI officials typically gave gifts to their MSNTC-I advisors on more than one occasion. The OSJA disseminated gift guidelines through ethics briefings, including the advisability of getting a legal review on every gift from a foreign government. Gifts to individuals from a foreign government are subject to a $335 cap. In order to determine the fair market value (FMV) of the gift in the U.S. for purposes of the $335 limit, the AdLaw attorney consulted a number of sources, including the OSJA's bilingual bicultural advisor, the internet, and local shops. When the gift's appraised value exceeded $335, the AdLaw attorney advised the recipient to return the gift, pay the FMV for the gift, or turn it in to the Army Gift Program.

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[46] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 5.
[47] 1st Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 3 February 2010 & 29 March 2010, Deployed February 2009 – January 2010, Joint Security Station War Eagle, Baghdad, Iraq (hereinafter "1-1 CAV BCT OIF AAR, FEB 09 - JAN 10"; on file at CLAMO).
[48] *Id*.

RECOMMENDATION: In a security transition command, there is potential for advisors at all levels to receive gifts from their host nation counterparts. It is therefore important to make even junior ranking advisors aware of the rules governing gifts from foreign governments. When valuing gifts, the bilingual bicultural advisor can be an invaluable resource. Take photographs of the gift and attach them to the legal review. Train generals' aides to keep a log of all gifts including the date received, presenter, and disposition.[49]

ISSUE: Coordination with the service gift programs

DISCUSSION: For any gift from a foreign government exceeding the $335 threshold, the recipient had four options: (1) return it to the giver; (2) purchase the gift at FMV through the Government Accountability Office (GAO); (3) accept the gift as a gift to the United States and retain it on display at the command; or (4) send the gift to the appropriate service's gift program for disposition. For Army recipients, the latter three options require coordination with the Army Gift Program. Ordinarily, the recipient must send the gift, along with the circumstances surrounding the receipt of the gift and its estimated U.S. FMV, to the Office of the Administrative Assistant (OAA), Attention: Army Gift Program, Army Pentagon 3E585, Washington, DC 20310-0105, within 60 days of receipt of the gift. The AdLaw attorney typically advised the recipient to return the gift to the giver. However, there were some cases where the command requested approval to keep the gift on display in the command area.

RECOMMENDATION: Sustain. The point of contact for the Army Gift Program is Natalie Abt at (703) 697-3048.[50]

ISSUE: Donation of a gifted AK-47 to a museum

DISCUSSION: A MNSTC-I GO received a nickel-plated, fully functional AK-47 as a gift from a ministry level official on his departure from theater. The legal review recommended returning the weapon because it was well over the $355 threshold and because it was a functional weapon. However, the GO wanted the weapon sent back to a unit museum. The AdLaw attorney contacted the museum coordinator and got a letter stating the museum was willing to accept the weapon. The most difficult part of the process proved to be getting the weapon demilitarized so it could travel through customs. Under CENTCOM policy, a certified armament technician had to certify the weapon was completely and irreversibly altered so it could not fire a projectile. However, there was no definitive guidance in theater as to what this entailed. It was also difficult to find someone capable of performing the appropriate actions on the weapon and certifying it. Once they demilitarized the weapon, the command sent the weapon with all documentation to the Army Gift Program.

RECOMMENDATION: Improve. This is hardly an isolated case, but even five years after the creation of the command, it required a reinvention of the wheel. There should be definitive guidance in theater as to standard steps for demilitarizing gifted weapons. Also, there should be a single point of contact in theater to perform the demilitarization process and certify the weapon. Figuring out the process took the AdLaw attorney away from his normal legal duties for a considerable amount of time. This is something with which a paralegal could have assisted.[51]

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[49] Multi-National Security Transition Command – Iraq (MNSTC-I), Staff Judge Advocate OIF After Action Report, 28 December 2009, Deployed June 2009 – July 2010, Phoenix Base, Baghdad, Iraq (hereinafter "MNSTC-I OIF AAR, JUN 09 - JUL 10"; on file at CLAMO).
[50] *Id*.
[51] *Id*.

ISSUE: Gifts from contractors

DISCUSSION: When MNSTC-I flag officers redeployed, many contractors working for the command wanted to present them with departure gifts. Contractors are prohibited sources under the JER. Therefore, gifts from contractors are subject to the monetary limits on gifts from prohibited sources (FMV of $20 or less per gift, not to exceed $50 in aggregate per calendar year). For at least one such gift (from the CG's interpreter), the AdLaw attorney also considered (but ultimately rejected) the exception for gifts based on a personal relationship.

RECOMMENDATION: Advise senior leaders to preempt attempts to give them gifts by stating before their departure they cannot accept gifts from contractors.[52]

ISSUE: Redeployment gifts from subordinates

DISCUSSION: The redeployment of MNSTC-I flag officers prompted the various directorates to form donating groups for the purpose of redeployment gifts. One directorate wanted to put together a photo collage of its efforts during the deployment using frames acquired from the Public Affairs Office (PAO). The AdLaw attorney advised them they could not use government resources as part of a gift.

RECOMMENDATION: Sustain. Ensure donating groups abide by the other rules applicable to gifts between employees.[53]

ISSUE: Gifts

DISCUSSION: JAs need to be aware of the gift rules contained in the Joint Ethics Regulation (JER) and be prepared to provide legal guidance regarding gifts.

RECOMMENDATION: Sustain.[54]

ISSUE: Gifts from local nationals

DISCUSSION: The JA distributed the policy for accepting gifts from local nationals to all members of the SOTF. The onus was then on the individual to accept or deny the gift.

RECOMMENDATION: Sustain. There were a lot more pressing matters demanding the JA's immediate attention.[55]

ISSUE: Division gift review policy

DISCUSSION: The OSJA performed an ethics review of every gift the Division commander received, regardless of value. While this policy provided the best protection for the commander, it required exceptional coordination with Secretary of the General Staff (SGS).

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[52] *Id*.
[53] *Id*.
[54] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 20.
[55] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 38.

RECOMMENDATION: Before deploying, develop a Standard Operating Procedure (SOP) outlining in detail what information the OSJA requires to conduct a comprehensive ethics review. At a minimum, address who is responsible for determining the value of the gift, the importance of including pictures and descriptive detail when describing the gift, and the significance of proper record keeping to avoid potential aggregation issues. While deployed, foster the relationship with the SGS and ensure you are tracking each gift. A copy of the 25 ID gift review information sheet is on file at CLAMO.[56]

ISSUE: Brigade gift review policy

DISCUSSION: Brigade judge advocates (BJAs) performed the legal review of all gifts received by their commanders. Any gifts above $335 required additional Division-level review, as did all gifted enemy weapons and equipment.

RECOMMENDATION: Sustain.[57]

ISSUE: Foreign gift disposition options

DISCUSSION: Commanders must refuse to accept foreign gifts that exceed $335 except in those occasions where refusal would likely cause offense or embarrassment or adversely affect foreign relations. In those cases, it is possible for commanders to accept the gift on behalf of the United States.

RECOMMENDATION: If a commander desires to accept the gift on behalf of the government, ensure you report it within 60 days of acceptance to: Office of the Administrative Assistant to the Secretary of the Army, ATTN: Ms. Natalie Abt, Army Gift Program Coordinator, 105 Army Pentagon, Washington D.C. 20310-0105; telephone: 703-614-7563. Generally, units must deposit gifts accepted on behalf of the government with this office. If your commander desires to keep the gift for official use (e.g., in a headquarters office or a unit museum), early coordination with Ms. Abt is critical.[58]

ISSUE: Gifts

DISCUSSION: The SOTF legal advisor knew the applicable rules and regulations regarding Soldiers' acceptance of gifts in a deployed environment. The SOTF legal advisor briefed the Soldiers on these rules before deploying.

RECOMMENDATION: Sustain. Soldiers need to know their left and right limits for accepting gifts before deploying.[59]

ISSUE: Charitable gifts

DISCUSSION: Numerous individuals and organizations back in the continental United States (CONUS) desire to donate charitable gifts for units to distribute to the local population.

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[56] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[57] *Id*.
[58] *Id*.
[59] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 33.

RECOMMENDATION: Be familiar with the Joint Ethics Regulation (JER). Specifically, know the gift rules and lookout for potential ethical traps (i.e., soccer balls with crosses on them, etc.).[60]

ISSUE: Use of Iraqi attorney or cultural advisor on staff when doing gift reviews

DISCUSSION: An Iraqi attorney employed by the U.S. Government worked in the legal office and assisted MND-B attorneys. He performed legal, cultural advisor, translation, and other duties as assigned by JAs. A local attorney can be of great assistance when conducting ethics reviews related to acceptance of gifts with helping to value obscure items and determining an individual's position relative to the official government.

RECOMMENDATION: Sustain. The office should continue the employment of an Iraqi attorney or cultural advisor on staff. The Iraqi attorney is a force multiplier due to his mobility, language and cultural skills, and local connections to the community and the OSJA.[61]

ISSUE: Review of gifts from foreign officials

DISCUSSION: Service members (typically the GOs and senior staff) received gifts from foreign officials. The staff brought the gift to the AdLaw section for legal review. A JA reviewed gifts from foreign officials to U.S. service members in accordance with the Joint Ethics Regulation (JER) section 2-300b and 5 U.S.C. section 7342. The purpose of the review was to determine the item's value and whether it qualified under the gift acceptance rules.

RECOMMENDATION: Improve. Gift valuation and donor status are legal issues commonly encountered in the legal analysis. Tasks included trying to value items not in the retail market for sale and determining whether the donor is a qualifying foreign official. Some religious leaders were not always readily apparent as qualifying foreign officials for purposes of the review. The Division should create a "gift database" to provide historical information. A web-based computer file that describes the gift, its value, the name of the donor/recipient, the legal review, and a picture would be helpful.[62]

ISSUE: Review of gifted weapons

DISCUSSION: MNC-I policy allowed one "gifted weapon" per brigade. AdLaw reviewed the gifted weapons packet received from the brigade judge advocates. It conducted a second legal review before sending the final packet of information to the PMO. The final approval authority rested with MNC-I.

RECOMMENDATION: Sustain. Judge advocate involvement in the gift review process is critical to identifying and addressing issues. Information in the application included certificates verifying the weapon is demilitarized, a letter (translated) from the foreign official presenting the weapon to the unit, and a memorandum from an O-5 (or above) detailing from whom the weapon came. The O-5 letter had to contain a statement the weapon is "demilitarized," not for retention by any person, and for addition to the unit's property book once approved. A recurring issue

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[60] 2d Marine Expeditionary Brigade, Deputy Staff Judge Advocate, OEF After Action Report, 22 March 2010, Deployed April 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB DSJA, OEF AAR, APR 09 - NOV 09"; on file at CLAMO).
[61] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.
[62] *Id.*

encountered by judge advocates was a request for an exception to policy to allow the unit to retain multiple gifted weapons. Exceptions to the policy were very rare.[63]

ISSUE: Informing units and Soldiers about gift rules

DISCUSSION: Often, units or Soldiers would come to get a legal review for a gift after they had already received it. This was problematic when individuals or organizations in the continental United States (CONUS) offered a gift to the Soldiers and they accepted. There was a need to educate the units on gift rules, and the AdLaw section had battle update assessment (BUA) slides published to the units explaining the rules.

RECOMMENDATION: Sustain. Educate units on gift rules and the need to get a legal review before accepting a gift.[64]

ISSUE: Gifts from local nationals

DISCUSSION: The Legal Advisor hung an information paper, along with controlling gift guidance, on the legal portal. The Legal Advisor also briefed these restrictions before deploying.

RECOMMENDATION: Sustain.[65]

ISSUE: Gifts from foreign officials

DISCUSSION: JAs must be prepared to deal with this issue in a joint environment. The chief of administrative law established a close working relationship with the aide to CJTF-82 Commander. This working relationship proved beneficial in keeping the chief of administrative law in the loop and protecting the command.

RECOMMENDATION: Sustain. JAs operating in a joint environment must be familiar with the Joint Ethics Regulation (JER) and the Code of Federal Regulations (CFR). JAs would be wise to foster a working relationship with the commander's aide.[66]

ISSUE: Gifts to foreign officials

DISCUSSION: JAs operating in a joint environment must anticipate their command will want to give gifts to foreign officials. JAs must know which funding sources (pots of money) are available for these gifts. The chief of administrative law attended all planning event interim progress reviews (IPRs) to spot this issue and make recommendations as to the legal way to make these gifts happen.

RECOMMENDATION: Sustain. JAs must be prepared to deal with this issue and should attend all event planning IPRs for situational awareness.[67]

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[63] *Id.*
[64] *Id.*
[65] 10th Special Forces Group (Airborne), Group Judge Advocate OIF After Action Report, 19 May 2010, Deployed July 2009 – February 2010, Joint Base Balad, Iraq (hereinafter "10th SFG OIF AAR, JUL 09 - FEB 10"; on file at CLAMO).
[66] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[67] *Id.*

Fundraising

ISSUE: Unit fundraising

DISCUSSION: Many battalions sought to raise money for activities by having unit fundraisers. In particular, battalions attempted to operate unit stores. The BJA determined such fundraisers were not permissible and recommended other fundraising sources, namely the Family Readiness Groups (FRGs).

RECOMMENDATION: Sustain. The use of FRGs to sell products units themselves wanted to sell is the preferred course of action. One must recognize the results of fundraisers were good for overall troop morale. Consequently, legally "getting to yes" is important.[68]

ISSUE: Fundraising

DISCUSSION: Even in a deployed environment, there are many requests to conduct fundraising.

RECOMMENDATION: JAs should familiarize themselves with the JER and other applicable policies, orders and regulations governing fundraising. Assist the commander in establishing one policy regarding fundraising and publish an information paper to inform the unit.[69]

ISSUE: Fundraising and private organizations

DISCUSSION: Fundraising is common on VBC. Fundraising initiatives can occur in a variety of contexts. These include everything from the ubiquitous fun runs to sing-alongs in the coffee shop. Similarly, there are private organizations. They include poker and cigar clubs, the Masons, and the Toastmasters. These examples give some sense of the variety of private organizations.

RECOMMENDATION: There are regulations that cover fundraising and you must know them. In particular, understand the approval process and be aware of the problems that may arise in handling the money that is collected. Once again, you will need to know the regulations covering private organizations. Make sure the participants in private organizations are aware of the Army's regulatory framework. This occurred on VBC by means of general announcements.[70]

ISSUE: Fundraising

DISCUSSION: AdLaw reviewed fundraising ideas in accordance with AR 600-29. These fundraisers primarily involved AR 600-20 Informal Funds. Fundraising in most cases was very limited.

RECOMMENDATION: Improve. Soldiers submitted many fundraising requests not in accord with the JER. There must be expectations set early in the deployment cycle. Adlaw should develop a plan to provide guidance to BJAs before deployment. The BJAs should educate their Soldiers with respect to allowable fundraising activities.[71]

ISSUE: Unit fundraising for private organizations

[68] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[69] 2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09, *supra* note 44.
[70] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 5.
[71] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.

DISCUSSION: Many units wanted to conduct a fundraiser for a private organization. While their intent was commendable, this sort of activity is generally unauthorized due to Soldiers rarely being in an off-duty status, continuously dressing in an authorized uniform (not civilian clothes), and the strong likelihood of rank influencing the fundraising efforts.

RECOMMENDATION: Improve. Work with and educate unit commanders and first sergeants on the ethics issues raised by this activity before deployment.[72]

Training

ISSUE: Ethics training

DISCUSSION: Ethics training for deploying units is currently still too generic in nature and focused too much on domestic issues (e.g. employment issues). Training should include the ethics issue of fundraising while deployed (to raise money for unit functions, helping local schools, building memorials, etc).

RECOMMENDATION: Improve. Lean forward and try to tailor ethics training for those issues encountered on deployments.[73]

ISSUE: Pay agent training

DISCUSSION: The BCT JAs provided quarterly training to pay agents on the illegalities of accepting bribes, stealing, and embezzlement.

RECOMMENDATION: Previous pay agents had a proclivity for theft. This led the commander to emphasis the importance of conducting this mission free of nefarious activity.[74]

ISSUE: Mandatory ethics training for select officers

DISCUSSION: Select officers must complete annual ethics training. This training is web-based. The administrative law section worked closely with these officers, their aides and the rear-detachment to ensure all training was completed on time.

RECOMMENDATION: Sustain. Alert these officers as soon as practicable of the training obligations and work with the rear-detachment administrative law section to ensure these officers complete the training.[75]

Financial disclosure

ISSUE: Filing of Standard Form (SF) 450

[72] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[73] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 12.
[74] 2d Brigade Combat Team, 1st Armored Division, Brigade Judge Advocate OIF After Action Report 25 September 2009, Deployed July 2008-June 2009, Forward Operating Base (FOB) Hammer/Camp Stryker, Iraq (hereinafter "2BCT, 1AD OIF AAR, JUL 08 - JUN 09"; on file at CLAMO).
[75] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.

DISCUSSION: The brigade commander took an active role in the program. His emphasis helped the BJA to meet unit filing and training deadlines.

RECOMMENDATION: Sustain. Support from the commander is necessary element of a successful ethics program. If problems occur during data collection, seek assistance from the chain of command.[76]

ISSUE: Filing the Confidential Financial Disclosure Report (CFDR/OGE-450)

DISCUSSION: U.S. Central Command (CENTCOM) requires brigade commanders to file an OGE-450. While filing extensions are possible, commanders can easily submit them electronically while in theater.

RECOMMENDATION: Be cognizant your commander will need to file an OGE-450 or request a filing extension. Know the process and be ready to assist in either case.[77]

ISSUE: Filing of OGE Form 450

DISCUSSION: MND-B wanted everyone who touched money to complete an OGE 450. The brigade had a different interpretation of applicable guidelines and discussed the issue with MND-B. In the end, only the brigade commander filed the OGE 450 downrange.

RECOMMENDATION: Sustain. Not everyone who deals with money overseas need file an OGE 450. Identify those individuals who may need to file an OGE 450 and obtain a war zone extension for these individuals from the DoD Standards of Conduct Office (SOCO) before deploying.[78]

ISSUE: Financial disclosure management database

DISCUSSION: As the ethics advisor, you do not directly control the Web-based financial disclosure management database. However, any automated emails it generates to your advisees that raise questions will prompt them to call you.

RECOMMENDATION: Know who is in your profile. Ensure the database accurately reflects who is a required filer of the OGE Form 450. The list of required filers is sometimes overly inclusive.[79]

ISSUE: OGE Form 450 filing

DISCUSSION: Among the criteria for determining who must complete a financial disclosure using Office of Government Ethics (OGE) Form 450 are positions classified at GS-15 or below (or the equivalent in other pay systems) and uniformed service officers below O-7, where the agency has determined that the employee participates personally and substantially through decision or the exercise of significant judgment in contracting or procurement or other duties directly and substantially affecting non-Federal entities. During the previous fiscal year, MNSTC-I was very conservative in determining who within the command needed to file the OGE

[76] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 35.
[77] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 74.
[78] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[79] *Id.*

Form 450, resulting in numerous first-time filers. For the current fiscal year, the AdLaw attorney assisted the command in determining which duty positions truly met the filing criteria, and eliminated the filing requirement where appropriate.

RECOMMENDATION: Sustain. AdLaw attorneys should maintain a tracker of required filers within the command and monitor deadlines and extensions. Because there are many individuals who became new filers by virtue of their deployed position with a security transition command, the AdLaw attorney should coordinate with the J1 to track incoming personnel to these positions to ensure they meet the deadline for new filers. Consult the OGE's *OGE Form 450: A Review Guide*, available at http://www.usoge.gov.[80]

ISSUE: Standard Form (SF) 278 filers

DISCUSSION: Within MNSTC-I, all flag officers (O-7 and above), all SES employees, and all DoD and DA civilians in the pay grade of GS-15 or above were required to file the SF 278, with a deadline of 15 May for the previous calendar year.

RECOMMENDATION: Notify the appropriate personnel well in advance of the requirement to file the SF 278. For flag officers, use their aides to help ensure compliance. Consult the OGE's *Public Financial Disclosure: A Reviewer's Reference*, available at http://www.usoge.gov.[81]

ISSUE: Combat zone extensions for financial disclosure filings

DISCUSSION: An individual serving with or in support of the armed forces automatically qualifies for an extension for length of the deployment, plus a 180-day extension for filing the SF 278 if serving in a combat zone on the applicable due date. When applicable, this extension replaces all other extensions and runs from the last day of the individual's service in the combat zone. However, the AdLaw attorney elected not to widely publicize this extension to the command, but rather address the need for extensions on a case-by-case basis.

RECOMMENDATION: Sustain. Because the purpose of the financial disclosure forms is to prevent both actual and apparent conflicts of interest, the best practice is to ensure a deployed individual files while they remain in the deployed position. Moreover, extensions resulting in filing after redeployment make it more difficult to track compliance.[82]

ISSUE: Financial Disclosure Management (FDM)

DISCUSSION: The annual filing of Standard Form (SF) 278 is routine for Title 10 general officers (GOs). Reserve Component GOs must file no later than the 15th day following the 61st day of entry onto active duty. If the GO is in a combat zone on the 61st day, the deadline extends to 180 days following the return from the combat zone.

All filers must use the Army's secure, web-based FMDM program at https://www.fdm.army.mil. As this matter is not routine for RC GOs, the information for the 34ID's GOs was not already present in the FDM system, nor was their reviewing chain (ethics counselor, supervisor, and Designated Agency Ethics Official (DAEO)). The OSJA worked directly with the FDM program director, Mr. George Hancock, via email to set this up. The OSJA advised against taking

[80] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.
[81] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.
[82] *Id.*

advantage of the 180-day combat zone extension. The OSJA felt once off Title 10 status, it would be difficult to ensure the GOs completed the filing on time.

RECOMMENDATION: Familiarize yourself with FDM as early as possible. Prepare a memorandum for the GOs informing them of this requirement. Encourage GOs to file their SF 278 in theater rather than taking advantage of the combat zone extension. Coordinate with the FDM director early to ensure entry of all appropriate parties and their review chains into the system. Use aides-de-camp as Filing Assistants.[83]

ISSUE: Financial Disclosure Management (FDM) system

DISCUSSION: Office of Government Ethics (OGE) Form 450 and Standard Form (SF) 278 filers for the Division were identified before the deployment. However, once deployed, the Division had command over some non-organic brigade combat teams (BCTs). The office was proactive and spent a significant amount of time on the phone with each BJA gathering the required information. Once identified, the names of the filers were added into the Financial Disclosure Management (FDM) system.

RECOMMENDATION: Spend time becoming familiar with the FDM before deployment and preparing a plan for dealing with non-organic units. Track organic units attached to other Divisions to ensure they meet reporting requirements. The programmers of FDM should consider modifying the software to allow flexibility for deploying units. For example, tracking reserve units and adding non-organic units and individuals to the Division database are all necessary.[84]

ISSUE: Extension to filing financial disclosure forms

DISCUSSION: Filing extensions were granted to all OGE 450 filers. The SF 278 filers had an automatic post deployment filing extension of 180 days. Persons wishing to file during the deployment submitted the information per normal procedures. The AdLaw point of contact (POC) reviewed the documents and sent the information to the filer's senior supervisor for review. Once reviewed, the AdLaw POC sent the documents back to the SJA for final review and certification. After the deployment, the AdLaw POC contacted all persons who did not file to ensure they completed documents and filings on time.

RECOMMENDATION: Improve. AdLaw should ensure organic units attached to other Divisions meet reporting requirements. Work with the BJAs of units going to other Divisions to ensure accountability and filing requirements.[85]

ISSUE: Financial disclosure deadline

DISCUSSION: The deadline for filing the Office of Government Ethics (OGE) 450 financial disclosure form is mid-February. With the rush to deploy, 3d ESC could not meet the deadline, and the command sought the SJA's help in getting an extension. The SJA determined the U.S. Army Forces Command (FORSCOM) SJA had authority to grant an extension in the case of 3d ESC.

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[83] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 22.
[84] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.
[85] *Id.*

RECOMMENDATION: Any JAs involved in hasty deployments in the months of January and February must be aware of the deadline for filing form OGE 450s and how to obtain extensions from the applicable command.[86]

ISSUE: Filing OGE 450s

DISCUSSION: Most persons required to file OGE 450s did so in theater.

RECOMMENDATION: Sustain. Legal Advisors should exercise their authority as ethics counselors to grant extensions for those who are not able to file online while deployed. [87]

ISSUE: Financial disclosure reporting

DISCUSSION: Due to MNC-I's March to March deployment cycle, there was no financial disclosure reporting system in place. This changed with the merger into USF-I, as the deployment cycles of individuals varied.

RECOMMENDATION: Before deploying, figure out your system and how you will manage it in theater. Determine who needs to file the Office of Government Ethics (OGE) Form 450 and consider the deployment extension for filing.[88]

ISSUE: Confidential and Public Financial Disclosure Reports (OGE 450 and SF 278)

DISCUSSION: Yearly, officers whose grade is O-7 or above and other high ranking civilian employees are required to complete the SF 278. Persons in covered positions are required to complete the OGE 450 (or 450A in certain years) in a web-based system called Financial Disclosure Management (https://www.fdm.army.mil). The chief of administrative law had the authority to grant theater combat zone extension and this was the preferred course of action for covered personnel. She ensured all personnel in covered positions were entered into the FDM system and were identified as having the combat zone extension. When necessary, she would rely on the automatic combat zone extension for SF 278 filers which extends the filing date to 180 days after redeployment. For OGE 450 filers, she would grant a combat zone extension which extended the filing deadline up to 90 days after redeployment. In either case, she would alert the rear detachment administrative law section so it could track the timeliness of the reports for follow-up after redeployment.

RECOMMENDATION: Sustain. Coordinate closely with the rear detachment administrative law section and encourage all necessary filers to handle these matters in theater.[89]

Miscellaneous

ISSUE: Managing the Ethics Counselor program

[86] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 32.
[87] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 65.
[88] I Corps & 2d Legal Support Organization, Combined Staff Judge Advocate OIF After Action Report, 16 May 2010, Deployed March 2009 – March 2010, Reserve Mobilization February 2009 – February 2010, Camp Victory, Iraq & Fort Lewis, Washington (hereinafter "I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10"; on file at CLAMO).
[89] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.

DISCUSSION: CJTF-101 appointed the BJA and TC as ethics counselor for the BCT.

RECOMMENDATION: Sustain.[90]

ISSUE: Misuse of government computers

DISCUSSION: Government computers were sometimes misused. Subordinate units had not received categorical policy guidance on what constituted inappropriate material for downloading to shared drives. The unit tried to ensure policy guidance on inappropriate use was clearly drafted and widely disseminated.

RECOMMENDATION: The CJA should work closely with the G6 to draft and disseminate clear policies describing the misuse of government computers.[91]

ISSUE: BJA as ethics advisor

DISCUSSION: The CJTF-101 and CJTF-82 commanders appointed the TF Thunder BJA an ethics advisor.

RECOMMENDATION: Sustain. The BJA was in a position to draft timely ethics reviews for her commander. This proved especially important in a joint operating environment where coalition allies presented her commander with small gifts.[92]

ISSUE: Flying interpreters by military air (MILAIR)

DISCUSSION: Interpreters frequently utilized MILAIR for their own personal needs ahead of mission requirements.

RECOMMENDATION: Improve. Implement and enforce local policy regarding interpreter use of MILAIR.[93]

ISSUE: Endorsement solicitations from prohibited sources

DISCUSSION: Companies will often donate items, such as sunglasses, to individuals, or units for use during deployment. Sometimes these items will come with a solicitation for an endorsement of the item or an opinion on how "well" the item worked.

RECOMMENDATION: JAs need to be on the lookout for endorsement requests and be prepared to provide legal guidance. Typically, accepting the items is permissible so long as it falls within the gift guidelines. However, sending a company an endorsement in any way that would appear to be in official capacity is impermissible.[94]

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[90] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[91] 11th Military Police Brigade, United States Army Reserve (USAR), OIF After Action Report, 17 September 2009, Deployed August 2008 – June 2009, Camp Cropper, Iraq (hereinafter "11th MP BDE OIF AAR, AUG 08 - JUN 09"; on file at CLAMO).
[92] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.
[93] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[94] 2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09, *supra* note 44.

ISSUE: Ethics issues in a rank-heavy organization

DISCUSSION: MNSTC-I had 15 general officers (GOs) and senior executive service (SES) personnel. In addition, many MNSTC-I personnel were involved with procurement and contracting.

RECOMMENDATION: Administrative law (AdLaw) attorneys in security transition commands should be prepared to deal with the array of ethics issues typically associated with senior officials. In addition to having expertise in the Joint Ethics Regulation (JER), provide the *Ethics Guide for Senior Officials* (published by the Army Ethics, Legislation, and Government Information Practices Branch of the Office of The Judge Advocate General (OTJAG)) to GO aides in order to train them on the requirements. Leverage the aides to assist in keeping their GOs in compliance and to bring potential ethics issues, such as gifts, to the attention of the OSJA.[95]

ISSUE: Business class upgrades during official travel

DISCUSSION: The Joint Travel Regulation (JTR) contains a medical exception permitting travelers to upgrade to premium class accommodations during official travel only if competent medical authority certifies a disability or other special medical need exists and that the medical condition necessitates (for a specific time period) the accommodations upgrade. This issue arose when some MNSTC-I officers had to travel commercial air back to the United States for official purposes. So long as a doctor certified the condition, the AdLaw attorney would find the upgrade legally permissible.

RECOMMENDATION: These requests can be delicate. Reviewing attorneys should go with the doctor's professional opinion unless they have a compelling reason to question it.[96]

ISSUE: Per diem for foreign military officers during official travel

DISCUSSION: MNSTC-I needed to send one of its British officers from ITAM-Navy to Bahrain for a conference. The question arose whether the officer could fly on U.S. military aircraft and whether he could receive per diem for the trip. The AdLaw attorney determined the officer was authorized to fly on U.S. military aircraft under DoD 4515.13-R (Air Transport Eligibility) because he was performing a mission on behalf of and as part of combined operations with MNSTC-I. With respect to the per diem, Chapter 7 of the Joint Federal Travel Regulation authorized per diem for foreign officers under these circumstances.

RECOMMENDATION: When a security transition command includes foreign military personnel, the AdLaw attorney should be prepared to answer questions about travel on military aircraft and reimbursement for expenses incurred during travel that advances the U.S. mission.[97]

ISSUE: College wanting to donate a generator for Iraqi use through an ODA

DISCUSSION: A college in the U.S. wanted to donate a generator to an Iraqi orphanage through an ODA. The ODA alerted the battalion legal section to see whether such a donation was acceptable. The battalion legal advisor relied on U.S. Forces – Iraq (USF-I) fragmentary orders (FRAGOS) and the OPLAW Handbook, recommending against this donation.

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[95] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.
[96] *Id.*
[97] *Id.*

RECOMMENDATION: There are many organizations wanting to support ODAs. SF battalion JAs should expect to deal with these types of issues. In addition to an Operational Law Course, recommend a JA attend a Fiscal Law course.[98]

ISSUE: Overlap between ethics and fiscal law

DISCUSSION: The interplay between fiscal law and ethics cannot be overstated. For example, many ethics questions begin with a determination of whether the commander can use appropriated funds for a certain purpose.

RECOMMENDATION: Close coordination with the fiscal law attorney is vital to success when answering ethics questions at the Division level.[99]

ISSUE: Posting advertisements for deployment memorabilia

DISCUSSION: A company marketed deployment memorabilia such as surfboards, replica weapons, and humidors emblazoned with the 25 ID crest. Soldiers posted advertisements for this merchandise around the FOB.

RECOMMENDATION: The OSJA issued an opinion permitting the Soldiers to continue posting the advertisements as long they met three conditions: 1) they did not try to influence anyone to purchase anything; 2) they limited their actions to posting the materials and did not actively solicit their fellow Soldiers; 3) they did not stand to profit from the enterprise. Finally they added a disclaimer that stated at a minimum that the purchase of these items is voluntary and not endorsed by DoD.[100]

ISSUE: Using the Joint Ethics Regulation (JER)

DISCUSSION: Ethics issues, especially issues dealing with gifts, will arise in the operational environment.

RECOMMENDATION: JAs need to ensure the JER is part of their electronic packing list and use it on a regular basis.[101]

ISSUE: Requests to fly foreign officials on military aircraft (MILAIR)

DISCUSSION: AdLaw reviewed requests to fly foreign officials on U.S. military aircraft. This usually occurred when a local Iraqi government official needed to travel to different locations within MND-B AO. In order to fly the foreign official, the unit had to meet the following requirements: (1) the person flying must be a qualifying foreign official accompanied by a U.S. official; (2) the flight could not be something that bumped previous planned missions; and, (3) the

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[98] 1st Battalion, 5th Special Forces Group (Airborne), Battalion Judge Advocate OIF After Action Report, 11 March 2010, Deployed 25 July 2009 – 25 January 2010, Contingency Operating Base Speicher, Tikrit, Iraq (hereinafter "1/5 SFG OIF AAR, JUL 09 - JAN 10"; on file at CLAMO).
[99] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[100] *Id.*
[101] Regimental Combat Team – 3, 2d Marine Expeditionary Brigade, Regimental Judge Advocate, OEF After Action Report, 14-15 April 2010, Deployed April 2009 – October 2009, Camp Dwyer, Helmand Province, Afghanistan (hereinafter "RCT-3, OEF AAR, APR 09 - OCT 09"; on file at CLAMO).

travel was on a space available basis for an already planned mission. After the legal review, AdLaw sent the request to the G3 Air Operations Officer. The final approval rested with the Deputy Commanding General for Maneuver DCG(M).

RECOMMENDATION: Sustain. AdLaw must coordinate with G3 Air Operations to obtain all the required information before recommending approval of the request. Early in the deployment cycle, work with G3 Air Operations Officer to set up a system to "staff" requests. An established system will ensure the request will flow smoothly throughout the deployment.[102]

ISSUE: Need for policy letter regarding coins

DISCUSSION: The administrative law section set out the left and right parameters regarding the purchase and issuance of commander's coins early in the deployment. The chief of administrative law drafted an information paper based on U.S. Forces Command (FORSCOM) guidance and distributed it throughout CJTF-82.

RECOMMENDATION: Improve. The information paper was helpful; however, a signed policy letter from the Commander, CJTF-82 would have been better.[103]

II.E. Freedom of Information Act (FOIA)/Privacy Act (PA)

ISSUE: J6 function

DISCUSSION: At CJSOTF-A, the "system of records" should be managed by the J6 custodian of records. Their subject matter expertise in the technology that manages the various "systems of records" makes them the ideal lead in FOIA requests. The legal advisor should be in a supporting role to ensure compliance.

RECOMMENDATION: In preparation for FOIA requests, work closely with J6 and fully integrate the J6 shop in order to leverage existing technology in managing the "system of records" to avoid adverse impact on operations when complying with FOIA requests.[104]

ISSUE: FOIA processing is not a JA function

DISCUSSION: FOIA personnel should understand the JA function is to provide advice, not to do the work of FOIA personnel for them.

RECOMMENDATION: Note.[105]

ISSUE: Educating medical providers on privacy issues

DISCUSSION: While great care providers, medical personnel were not always familiar with legal rules such as the Health Insurance Portability and Accountability Act (HIPAA). This led to some potential unknowing violations. For example, medical personnel provided a "fit for duty"

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[102] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.
[103] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[104] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 40.
[105] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 3.

slide containing information regarding servicemember pregnancies or other medical issues. While it might be acceptable for commanders to know these things, the display of the slide in a public forum or sending it via a mass email causes issues.

RECOMMENDATION: Get in early as JAs and educate medical personnel on the rules. There are specific Army regulations on medical information disclosure. Resources are available on JAGCNET.[106]

ISSUE: FOIA retention policy

DISCUSSION: The brigade legal section expected FOIA requests and implemented policies to deal with them. Specifically, the brigade legal section attempted to keep the classification of all investigations "unclassified." The brigade legal section also implemented an investigations retention policy whereby it would save both hard copies and digital copies of all investigations.

RECOMMENDATION: Sustain. The brigade legal section found scanning the investigations to disk eliminated a lot of work and ensured immediate access to the investigations upon returning to home station instead of having to wait for its connex to arrive.[107]

ISSUE: FOIA requests

DISCUSSION: The BCT received two FOIA requests. One was from the subject of an AR 15-6 investigation who was not otherwise entitled to a copy of the investigation, since no adverse action had ensued. The other was from the press, asking for a unit "security briefing" from a previous deployment. On both occasions, the BJA forwarded the requests to division.

RECOMMENDATION: Sustain. Notify the FOIA representative at division immediately upon receipt of requests.[108]

ISSUE: Releasability of deployed Soldiers' personally identifying information

DISCUSSION: The command received a Congressional inquiry concerning a Soldier's alleged nonsupport of his alleged wife and child. The AdLaw attorney advised under DoD Directive 5400.11-R (Department of Defense Privacy Program), paragraph C4.2.2.6., when military personnel are assigned to an overseas unit, a sensitive unit, or to a routinely deployable unit, information about such personnel may only be disclosed as authorized by 10 U.S.C. § 130b. This statute in turn authorizes nondisclosure of the Soldier's name, rank, duty address, official title, and information regarding his or her pay. While the statute does not authorize the withholding of such information from Congress, the response to the Congressional had to make clear what information could not go to the requester by law.

RECOMMENDATION: Sustain.[109]

ISSUE: Preserving information for potential FOIA requests

DISCUSSION: The battalion legal section maintained all records in a personal storage table

[106] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.
[107] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[108] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 47.
[109] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.

(.pst) file. This allowed the battalion legal advisor to easily search through old e-mails and records and respond to any requests.

RECOMMENDATION: Sustain. Adequate preparation and information exchange between the incoming and outgoing JAs is critical to a smooth transition.[110]

ISSUE: FOIA

DISCUSSION: Ensuring compliance with FOIA is a difficult process, especially in an operational environment.

RECOMMENDATION: JAs need to be familiar with FOIA and seek guidance from higher headquarters when confronted with FOIA issues.[111]

ISSUE: Requests after redeployment for investigations conducted in theater

DISCUSSION: The Office of the Judge Advocate General (OTJAG) Administrative Law (AdLaw) Division is the initial denial authority for all investigations conducted in theater after a unit redeploys.

RECOMMENDATION: Forward all such requests to OTJAG AdLaw for release determination.[112]

ISSUE: System to respond to FOIA requests

DISCUSSION: Subordinate commands routed all FOIA requests in theater to AdLaw, which in turn routed the requests to MNF-I. AdLaw was not required to draft responses to FOIA requests. Instead, it provided information and data to MNF-I for further processing and final response. MND-B maintained a shared drive containing electronic files dating back several rotations. The availability of this information greatly assisted with finding information and processing FOIA requests.

RECOMMENDATION: Sustain. The MNF-I FOIA procedure greatly streamlined processing requests for information. Early communication with AdLaw ensures information flow to the right place for correct processing. AdLaw must maintain all files on a shared drive and properly label attorney work product.[113]

ISSUE: Redaction of investigations

DISCUSSION: Initially, AdLaw redacted information from casualty investigations for FOIA requests before forwarding to MNC-I. This was primarily because there was a disconnect between the Division and MNC-I as to who was responsible for redaction and a lack of guidance provided on this issue by the unit 1CD replaced. However, with no clear guidance as to who should redact and what to redact, 1CD would often find that MNC-I put things back in and took other things out. Eventually, AdLaw decided to just let MNC-I, which later merged into United

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[110] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 98.
[111] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 20.
[112] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[113] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.

States Forces – Iraq (USF-I), do all the redactions. AdLaw made sure to include in its standard operating procedure (SOP) guidance how to handle redactions for FOIA requests.

RECOMMENDATION: Communicate with higher headquarters early on in the deployment to determine how to handle redactions. Also, ensure you have a good SOP for incoming units to follow. If you are required to do redactions, REDAX™ is a great computer program. Attorneys and paralegals should become familiar with the program before the deployment.[114]

ISSUE: FOIA responsibilities while deployed

DISCUSSION: FOIA programs in garrison are important enough to warrant full-time civilian positions. However, those personnel do not deploy. Deployed units have FOIA requirements. Hostile fire death investigation went straight to Human Resources Command, bypassing several command layers. It is not clear which staff section has responsibility for this function. (Who does the redaction, who sends the response, who tracks the action?) The G/S-6 does not usually accept that they have a role in the FOIA process. Neither the G/S-6 nor the legal office has a plan for handling this requirement.

RECOMMENDATION: Improve. There is a need to establish doctrinally who is responsible for the FOIA process in the deployed environment. There needs to be some authoritative statement that states directly, "You are responsible for doing this."[115]

ISSUE: Processing of death investigations for release to families

DISCUSSION: For all accidental deaths, including suicides, the Casualty Affairs Office assigned a case manager, who turned over a copy of the AR 15-6 investigation and/or line of duty investigation to the next-of-kin (NOK) immediately. For hostile deaths, family members had to request a case manager or submit a FOIA request for the investigation. When I Corps assumed command of MNC-I from XVIIIth ABC, the AdLaw section thought they had approximately 30-40 investigations to redact for release to family members. However, daily demands from the Pentagon for death investigations soon revealed there were far more investigations outstanding. The AdLaw section made the location and processing of these investigations its highest priority. Within the first four months of the deployment, it processed approximately 200 death investigations for release. Also, the XVIIIth ABC OSJA was forced to reduce its personnel numbers mid-deployment, and, as a result lost two backfill reservists scheduled to deploy, which impacted its ability to adequately staff the AdLaw section. One of those backfill reservists was a senior NCO whom I Corps immediately placed into the AdLaw section when she arrived.

RECOMMENDATION: Improve. This is one of the most important missions for the Corps-level AdLaw section. It is critical for the OSJA to have adequate resources to devote to this mission and to have a good battle handoff of outstanding FOIA requests during the relief-in-place/transfer-of-authority (RIP/TOA) process.[116]

ISSUE: Responsibility for redaction of investigations

DISCUSSION: The C6 has the FOIA mission and the corresponding personnel authorizations on the joint manning document (JMD). However, when the MNC-I C6 section downsized, they did

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[114] *Id.*
[115] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 88.
[116] *Id.*

not replace the FOIA staff and simply stopped performing this mission. The backlog in processing of death investigations prompted the OSJA to step into this role. The AdLaw paralegals redacted the investigations using REDAX™ software, and the attorneys reviewed the redactions. There was no pre-existing guidance for redactions. The paralegals performed redactions based on their self-study of the FOIA exceptions and exemptions.

RECOMMENDATION: Improve. AdLaw should plan to be heavily involved in the redaction of investigations for FOIA requests and assign appropriate personnel. Paralegals are more than capable of handling the redactions. Assign an attorney the overall responsibility for the review process, but the volume of reviews will likely necessitate distributing the responsibility for conducting individual reviews among all of the AdLaw attorneys. If the expectation is for the OSJA to handle this mission, the FOIA staff on the JMD should fall under the control of the OSJA. The OSJA sent a recommendation to Joint Forces Command (JFCOM) to this end. [117]

ISSUE: Freedom of Information Act (FOIA) personnel

DISCUSSION: The C-6 had two officers assigned to answer all FOIA requests submitted to the Corps. The OSJA admin law section also prepared answers for FOIA requests. This caused some confusion about who was the lead for answering FOIA requests.

RECOMMENDATION: Improve. The OSJA and C-6 need to establish some guidelines outlining which section is responsible for answering FOIA requests.[118]

ISSUE: Different redactions for the same investigation

DISCUSSION: Redactions differ depending on who the requestor is. The NOK is entitled to certain information that the news media does not get. Therefore, it is not uncommon for the same investigation to undergo several redactions.

RECOMMENDATION: Attorneys and paralegals performing/reviewing redactions should receive training on FOIA and the Privacy Act. Redactions should occur at the Corps or higher level legal office to ensure consistency.[119]

ISSUE: Mandatory declassification reviews (MDRs) of investigations

DISCUSSION: When the OSJA processed FOIA requests for investigations containing classified material, they redacted the classified portions under Exemption 1. In one case, the family of a deceased Soldier thought the Army was covering up information pertaining to the death of their son. They requested a declassification of the investigation. The declassification review should have been a J2 function, but operational matters occupied the J2 and it did not have the personnel to perform the declassification review. Consequently, the OSJA stepped up to do this function. Unlike the original FOIA requests, where they simply redacted anything marked classified, they had to go line by line for the MDR process to determine what information actually should remain classified. Although they were not qualified to actually declassify the material, they made recommendations to DoD as to what they believed could be declassified. Even when they determined certain information was unclassified, they used their experience to recommend continued redaction under Exemption 2 (High) for internal matters, such as tactics, techniques,

[117] *Id.*
[118] *Id.*
[119] *Id.*

and procedures (TTPs), standard operating procedures (SOPs), and route names. Once one family received additional information following the MDR, other families began submitting similar requests.

RECOMMENDATION: Improve. This should be a J2 function. JAs are not qualified to declassify documents. Nonetheless, it was beneficial for two JAs and one paralegal to have received training as Foreign Disclosure Officers (FDOs). In some cases, it would have been beneficial to release classified information to the families to alleviate their concerns. Nonetheless, there is no authority to release classified information to the families.[120]

ISSUE: Staff coordination on hostile death investigations

DISCUSSION: CJTF-82 had two FOIA officers who received, staffed and responded to all FOIA requests. The FOIA OIC was a civilian CENTCOM employee, assisted by an Air Force IA. Due to the continuous FOIA requests for hostile death investigations the administrative law section created a shared folder the FOIA officers could access. This shared folder contained all hostile death investigations and was restricted to legal personnel and the FOIA officers.

RECOMMENDATION: Sustain. JAs must expect FOIA requests for all hostile death investigations and find ways to make the process easier. Here the shared folder proved extremely helpful.[121]

ISSUE: Review of FOIA responses

DISCUSSION: The chief of administrative law reviewed all FOIA responses. While the FOIA officers were responsible for redacting the responses the chief would use a common sense approach and discuss any issues with the subject matter experts, i.e. the CJ-3 or CJ-2.

RECOMMENDATION: Sustain. JAs should review all FOIA responses and spot potential issues even when not responsible for the redactions.[122]

II.F. Inspections

ISSUE: Border inspections

DISCUSSION: U.S. forces did not have any issues getting logistics and supplies across the border into Iraq (or reverse). Iraqi and Kuwaiti security forces controlled the border into and out of Kuwait. However, the crossing is essentially a U.S.-led effort.

RECOMMENDATION: Sustain. Although the border guards did not present any problems transporting material, do not expect that trend to continue forever. Before coming to the area of operations, understand the procedures for the movement of goods across the international border. As operations in Iraq begin to wind-down, expect changes to occur at the border without much notice.[123]

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[120] *Id.*
[121] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[122] *Id.*
[123] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 35.

ISSUE: Misuse of health and welfare inspections

DISCUSSION: Commanders misusing health and welfare inspections to get around the requirement for probable cause is a perennial problem.

RECOMMENDATION: Ensure you continually educate your commanders as to the limitations on searches, the need for warrants, and the procedural requirements for getting warrants.[124]

ISSUE: Use of battalion paralegals to ensure proper health and welfare inspections

DISCUSSION: Use battalion paralegals as a source of information. Proactive battalion paralegals raised concerns to the BJA before any health and welfare inspections.

RECOMMENDATION: Sustain.[125]

ISSUE: Inspection of Soldiers' living quarters

DISCUSSION: The brigade legal section prepared a "cheat sheet" for commanders setting forth the left and right limits on inspections versus searches.

RECOMMENDATION: Sustain.[126]

ISSUE: Administrative inspections; health & welfare vs. force protection compliance

DISCUSSION: Understand the differing authorizations and procedures for health and welfare inspections, as opposed to force protection compliance inspections. Both have their place, but require different triggers. Inspections are not covered thoroughly enough in pre-deployment training.

RECOMMENDATION: Reinforce the distinctions. Train commanders and legal staffs in inspection procedures.[127]

ISSUE: Educating commanders about health and welfare inspections

DISCUSSION: Do not assume that commanders will know how to do inspections properly.

RECOMMENDATION: Ascertain whether commanders know how to perform legally sufficient health and welfare inspections. Fill any training gaps you discover.[128]

ISSUE: Maintaining unit morale when conducting inspections

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[124] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 3.
[125] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.
[126] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[127] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 5.
[128] 168th Engineer Brigade, Mississippi Army National Guard, Brigade Judge Advocate OEF After Action Report, 30 March 2010, Deployed December 2008 – November 2009, Regional Command – East, Bagram Air Field, Afghanistan (hereinafter "168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09"; on file at CLAMO).

DISCUSSION: The JA advised the command on the left and right limits regarding inspections and cautioned on the potential detriment to unit morale of possible violations.

RECOMMENDATION: Sustain. Inspections are necessary to ensure the health and welfare of Sailors. Units can conduct them in a way so as to not negatively impact unit morale.[129]

ISSUE: Effective use of inspections to control contraband and drug use

DISCUSSION: National Guard and Reserve commanders need better education on how to use health and welfare inspections as an effective way to control contraband and drugs. Commanders could have reduced the presence of contraband if they used these inspections with more frequency. A Soldier died (negligent homicide) because Soldiers had been drinking alcohol. It is possible that the commands could have prevented such events had they conducted more routine inspections.

RECOMMENDATION: Improve. As legal advisors, make sure your commanders are well aware of how to use inspections effectively. Do not assume they are experts in this area.[130]

ISSUE: Utilizing same inspection system as in garrison

DISCUSSION: The SOTF legal advisor came from a military justice background. As such, he worked with his command to set forth the details of the command's inspection policy in writing in a way similar to the one used back in garrison.

RECOMMENDATION: Sustain.[131]

ISSUE: Health and welfare inspections

DISCUSSION: The SOTF had a health and welfare inspection following an alcohol-related incident on BAF. The legal advisor worked with the HSC commander to draft a memorandum for record (MFR) setting forth the purpose and intent behind the inspection. The unit read the memo aloud at an accountability formation before the health and welfare inspection.

RECOMMENDATION: Sustain. Work with commanders to ensure inspections occur correctly.[132]

ISSUE: Health and welfare inspections of contractor areas

DISCUSSION: The garrison command on Camp Victory conducted health and welfare inspections of contractor areas. Some contractors objected to this, saying the command had no authority to do so.

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[129] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 38.
[130] 33d BCT (ILARNG), OEF AAR, DEC 08 - AUG 09, *supra* note 8.
[131] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 33.
[132] 3rd Battalion, 3rd Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 03 June 2010, Deployed January 2010 – May 2010, Bagram Airfield, Afghanistan (hereinafter "3/3 SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).

RECOMMENDATION: Contracts should state explicitly contractors are subject to health and welfare inspections.[133]

II.G. Internet Use

ISSUE: Internet blackouts

DISCUSSION: Whenever the unit suffered a personnel casualty, the S-6 instituted an internet blackout. The BCT JAs requested an exception to policy and maintained connectivity through the blackout.

RECOMMENDATION: Early interaction with the S-6 was invaluable in explaining the need for JAs to have connectivity during this critical period.[134]

ISSUE: Monitoring of brigade internet café

DISCUSSION: The brigade operated an internet café. Civilians and Soldiers used this internet café. Soldiers reported some civilians were accessing content of a questionable nature at the café. The brigade legal office worked with the brigade S-6 to impose firewalls to prevent individuals from accessing unauthorized internet sites.

RECOMMENDATION: Improve. Expect individuals to access unauthorized internet sites and content and have systems in place to prevent it.[135]

ISSUE: Password protected web portal

DISCUSSION: Password protected web portals prevented the brigade legal section from accessing certain coalition web portals.

RECOMMENDATION: Improve. SIPR web portals should not be password protected. It greatly stifles the flow of information. There is no need for this if everyone is adhering to the overall classification limitation of the system.[136]

ISSUE: Blogging on the unit intranet website

DISCUSSION: The MNSTC-I chaplain requested to post a blog site on the command's nonpublic intranet website for MNSTC-I personnel to communicate internally about worship-related issues. Although the DoD blogging policy did not apply to this site because it was a non-public website, the AdLaw attorney advised the use of a disclaimer stating the views posted on the blog do not represent the views of and are not endorsed by DoD, and that operations security (OPSEC) rules applied. There were also terms of use prohibiting sexual content, profanity, or offensive material.

RECOMMENDATION: Sustain.[137]

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[133] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 88.
[134] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 74.
[135] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[136] *Id.*
[137] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.

ISSUE: Internet policy and casualty next-of-kin notification

DISCUSSION: In Kuwait, many Soldiers have cell phones and wireless internet access in their quarters. When a Soldier died, the unit shut down internet access in the tactical operations center (TOC) to prevent soldiers from communicating the news to the next of kin before official notification through casualty affairs. The lack of internet degraded the operational effectiveness of the TOC. The intent of the policy was sound, but the execution was not effective because it did not affect access to the internet and cell phones outside the TOC.

RECOMMENDATION: Improve. Revise the internet policy and casualty next-of-kin policy to reflect realities in the current operational environment.[138]

ISSUE: Internet blackouts during casualty notification

DISCUSSION: FOB Falcon had internet available to Soldiers for their personal use. However, the 30th HBCT Commander viewed internet use as a privilege, not a right. As a result, the commander published a policy memorandum informing the unit that whenever the unit suffered a personnel casualty, he would order the internet shut down temporarily on FOB Falcon.

RECOMMENDATION: Sustain.[139]

ISSUE: Establishing a wireless fidelity (Wi-Fi) network

DISCUSSION: During the deployment, the Commanding General (CG) wanted to set up a Wi-Fi network for everyone to use.

RECOMMENDATION: When confronted with the issue of establishing Wi-Fi or other internet networks, JAs need to be mindful of the potential security and contracting issues involved, and advise their commander accordingly.[140]

ISSUE: Leverage available technology

DISCUSSION: As the sole legal advisor at CJSOTF-A (operational level), the lack of depth in staffing precluded full time presence in the JOC. In order to maintain situational awareness (SA) when in his office in the command suite, the legal advisor had the J6 provide him with the equipment necessary to view unmanned aerial vehicle (UAV) feeds and to monitor operational communications via mIRC. Use of the web portal also facilitated the push of large electronic files up and down command and technical channels, as well as moving electronic files from coalition systems to U.S. systems.

RECOMMENDATION: Sustain. Legal advisors should work with the J6 early in the rotation to leverage all available technologies in performance of their duties.[141]

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[138] 29th Infantry Brigade Combat Team, Hawaii Army National Guard, Command Judge Advocate OIF After Action Report, 7 March 2010, Deployed October 2008 – August 2009, Camp Arifjan, Kuwait (hereinafter "29th IBCT (HIARNG), OIF AAR, OCT 08 - AUG 09"; on file at CLAMO).
[139] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 20.
[140] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 60.

ISSUE: Soldiers' blogs

DISCUSSION: CJTF-82's General Order 1 limited the content about which its Soldiers could blog. CJTF-82 also set out these limitations in a policy letter.

RECOMMENDATION: Sustain. Soldiers should know there left and right limits and JAs need to be the ones educating them.[142]

II.H. Investigations

General

ISSUE: Determining central repository

DISCUSSION: CJSOTF-A maintained the central repository for all CJSOTF-A investigations. The legal advisor determined this to be the best course of action since classification authority remained with the forces in theater and not with the force provider.

RECOMMENDATION: Based on existing circumstances, a clear plan for the storage of investigations will alleviate challenges during relief in place / transition of authority (RIP/TOA) of multiple units.[143]

ISSUE: Selection of investigating officers (IOs)

DISCUSSION: CJSOTF-A did not maintain a running list of available IOs. Instead, the CJSOTF-A commander appointed IOs based on matching subject matter expertise as well as experience level to the facts and circumstances of the investigation's subject matter.

RECOMMENDATION: Sustain. Quality of the IO is more important than expediency in the long term.[144]

ISSUE: Use of reservists' civilian skill database for investigations

DISCUSSION: The SBCT legal office was uniquely able to use its reservists' skill sets for investigative purposes. When it came to investigations, the SBCT could utilize the unit's civilian skills database to match arson investigators, accident reconstructionists, engineers, and detectives with cases of Stryker fires, fatal vehicle crashes, and incidents of misconduct. If there was an issue needing a particular area of expertise, there was usually an expert available in the unit to consult.

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[141] 7th Special Forces Group (Airborne), CJSOTF-A Legal Advisor OEF After Action Report, 26 May 2010, Deployed 22 July 2009 – 02 February 2010, Bagram, Afghanistan (hereinafter "7th SFG OEF AAR, JUL 09 - FEB 10"; on file at CLAMO).
[142] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[143] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 40.
[144] *Id.*

RECOMMENDATION: Sustain. This unique aspect of National Guard units provides them with the advantage of being able to seek out special civilian talents within the unit.[145]

ISSUE: Lack of Criminal Investigation Division (CID) support

DISCUSSION: It was very difficult to get CID investigative services due to their busy work schedule, lack of personnel, and location in another province. In one case, the brigade requested their services to investigate an allegation of child pornography, something clearly within their scope of investigative responsibilities; however, they had difficulty with sending agents to FOB Warhorse due to insufficient resources and personnel.

RECOMMENDATION: Improve. Without proper CID investigative services for serious offenses, the chain of command may be running the risk of compromising investigations, which in turn, may affect the preferral of charges and prospects for convictions.[146]

ISSUE: Investigating improper use of intelligence equipment or methods

DISCUSSION: There are intelligence oversight mechanisms to prevent the improper gathering, storing, or using of intelligence. You have to know who the oversight individuals are. The Inspector General (IG) also has intelligence oversight responsibilities. The IG will perform any required Procedure 15 action. These actions are a requirement for alleged misuse of intelligence funds or equipment.

RECOMMENDATION: Ensure commanders understand they cannot handle allegations of intelligence improprieties "in house." These must go to the IG and CID. The licensing agency (almost anyone in the intelligence field or in Military Intelligence is a licensed intelligence officer) also has a role.[147]

ISSUE: Rotation of personnel involved in ongoing investigations

DISCUSSION: Rotating personnel delayed completion of investigations.

RECOMMENDATION: Establish a written policy that all persons involved in an investigation (i.e., subject, witness, investigating officer) remain in theater until the completion of the investigation.[148]

ISSUE: Required investigations matrix

DISCUSSION: The RCT-8 RJA office found investigation requirements to be confusing. The only investigation matrix in theater was the MNC-I investigation matrix. Additionally, MNC-I's investigation matrix had not been updated since 2008, was Army centric, and was, at times, in

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[145] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 1.
[146] 1st Stryker Brigade Combat Team (SBCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 13 November 2009, Deployed September 2008 – September 2009, Multi-National Division – North (MND-N), FOB Warhorse, Diyala Province, Iraq (hereinafter "1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09"; on file at CLAMO).
[147] Chief of Intelligence Law, Multinational Forces – Iraq (MNF-I), OIF After Action Report, 27 October 2009, Deployed June 2008 – May 2009, Combined Joint Staff – 2 (CJ2), Camp Slayer, Iraq (hereinafter "MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09"; on file at CLAMO).
[148] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.

conflict with the Manual of the Judge Advocate General (JAGMAN). For instance, an investigation required by the JAGMAN may not be required by MNC-I and vice versa. Consequently, the unit was sometimes confused as to when an investigation was required, what type of investigation was required (a command investigation or a preliminary inquiry), to whom it was required to be reported, and what the time requirements were.

RECOMMENDATION: Improve. MNF-W should publish an investigation matrix that incorporates both MNC-I and JAGMAN investigation requirements.[149]

ISSUE: Appointing authority for all investigations

DISCUSSION: The BJA drafted a policy making the brigade commander the appointing authority for all investigations, with the exception of commander's inquiries.

RECOMMENDATION: Sustain. This prevents the brigade from being surprised by something going on down at the battalion level or below.[150]

ISSUE: Use of an alpha roster for appointing investigating officers

DISCUSSION: The brigade did not use an alpha roster when selecting its investigative officers.

RECOMMENDATION: Sustain. The brigade commander and/or the brigade executive officer (XO) were able to select the best officer for the specific facts of each investigation.[151]

ISSUE: Investigations matrix

DISCUSSION: The division published a matrix listing all required investigations, including who was the appointing and approving authorities. The BCT adjusted its own matrix to be consistent.

RECOMMENDATION: Sustain/Improve. The investigations matrix was very helpful. However, there were a couple of items requiring clarification. Initially, the investigation matrix was unclear as to whether subordinate units were required to investigate UAV crashes (e.g., Ravens). A later update of the matrix provided guidance concerning UAVs. However, the matrix should define the term "sensitive items."[152]

ISSUE: Withholding appointing authority

DISCUSSION: Some of the battalions appointed investigations for which the battalion commander was not the proper appointing authority. They also failed to report some of these investigations. This practice frequently resulted in mistakes, such as the appointment of an investigating officer (IO) who was junior to the subject of the investigation. The BCT commander eventually withheld appointing authority over investigations involving weapons and illegal drugs.

RECOMMENDATION: Improve. The brigade legal section should push the investigations matrix to all subordinate units and re-emphasize it periodically. The BJA should be a regular

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[149] RCT-8, OIF AAR, JAN 09 - OCT 09, *supra* note 17.
[150] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[151] *Id.*
[152] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 47.

participant in the XO Breeze chat sessions to identify triggering events and track the status of investigations.[153]

ISSUE: Use of a DA 6 form to appoint investigating officers (IOs)

DISCUSSION: The battalion adjutant maintained a DA 6 for the appointment of investigating officers.

RECOMMENDATION: Sustain. This proved to be the most equitable way of appointing IOs.[154]

ISSUE: Submission of investigation files to Division

DISCUSSION: The investigations matrix required subordinate brigades to submit many investigations to Division. Submission of large investigations via email was not possible due to network restrictions, and shipment through the military postal service was slow and unreliable.

RECOMMENDATION: Set up an electronic drop box in SharePoint for brigades to upload their investigations.[155]

ISSUE: Lack of investigation matrix

DISCUSSION: There was no theater-wide investigation matrix setting forth what type of investigation certain events triggered. There was such a matrix in Iraq.

RECOMMENDATION: Improve. Higher headquarters should create an investigations matrix and distribute it to all units.[156]

ISSUE: Need for an investigation matrix

DISCUSSION: There was no theater wide investigation matrix like there was in Iraq. As a result, it was sometimes confusing as to when there was a requirement for an investigation and whether it should be a command investigation or a preliminary inquiry. For instance, the Manual of the Judge Advocate General (JAGMAN) may require only a preliminary inquiry in a certain situation, while higher headquarters would require a full-blown command investigation.

RECOMMENDATION: Higher headquarters should produce and publish an investigation matrix setting forth what the investigation requirements are in theater.[157]

ISSUE: Investigations workload

DISCUSSION: This was a huge workload area for the office, consisting mostly of AR 15-6 investigations and FLIPLs. Every JA reviewed these investigations, regardless of their role in the brigade legal office.

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[153] *Id.*
[154] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 98.
[155] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 22.
[156] 2d Battalion, 3rd Marines, Battalion Judge Advocate OEF After Action Report, 14 April 2010, Deployed May 2009 – November 2009, Forward Operating Base Delaram, Nimruz Province, Afghanistan (hereinafter "2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09"; on file at CLAMO).
[157] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 101.

RECOMMENDATION: Be prepared to review investigations and provide legal advice, regardless of your official role.[158]

ISSUE: Escalation of force (EOF) investigation and commander's comments

DISCUSSION: During the deployment, there was an EOF involving a non-lethal round after a Military Police (MP) officer saw a Haitian individual trying to penetrate the security perimeter to steal property. The MP was part of a MP platoon providing support to the 7th Sustainment BDE. An investigation began, but one of the General Officers (GOs) in Haiti spoke to the MP and gave a supportive speech the next day at the morning briefing. The SJA had to speak to the GO about the sensitivities associated with an ongoing investigation into an incident and that such pre-judgmental comments may be not be consistent with the eventual findings of the 15-6 investigation.

RECOMMENDATION: Sustain. Commanders have to remain at arm's length to investigations and refrain from making comments other than the matter is under investigation.[159]

ISSUE: Investigation matrix

DISCUSSION: Any JAs with Operation Iraqi Freedom (OIF) or Operation Enduring Freedom (OEF) deployment experience are familiar with command issued investigation matrices to sort out investigation assignments, triggers, unit responsibilities, etc. For Haiti, the JTF did not issue an investigation matrix. This led to confusion at 3d ESC when incidents occurred. It was not clear if investigations were required and who would appoint investigative officers (IOs).

RECOMMENDATION: Improve. One of the things units will need from a JTF headquarters shortly after arriving into a new theater of operations is an investigation matrix. This will simplify the management of investigations and cut down on unnecessary phone calls between commanders, G3, and JA staffs at the different levels of command. Another recommendation along these lines is to create a garrison investigation matrix as the starting point for the deployment. After the JTF and COCOM start establishing policies, amendments to the matrix are possible.[160]

ISSUE: Number of investigations

DISCUSSION: The volume of investigations took up a significant portion of the legal advisor's time.

RECOMMENDATION: Improve. Pre-deployment exercises should incorporate more scenarios requiring investigations to better prepare a legal advisor and staff for the number of investigations encountered on a deployment.[161]

ISSUE: Understanding other services' investigations

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[158] 33d BCT (ILARNG), OEF AAR, DEC 08 - AUG 09, *supra* note 8.
[159] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 32.
[160] *Id.*
[161] 3rd Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 27 May 2010, Deployed July 2009 – December 2009, Herat, Afghanistan (hereinafter "3/7 SFG(A) OEF AAR, JUL 09 - DEC 09"; on file at CLAMO).

DISCUSSION: A legal advisor in a joint command should have a working understanding and knowledge of sister services' investigations.

RECOMMENDATION: Sustain. JAs must have a working understanding and knowledge of sister services' investigations, especially in a joint operating environment.[162]

ISSUE: Battle drill matrix

DISCUSSION: During pre-mission training (PMT), the S-3, in coordination with the legal advisor and other staff sections, created a battle drill matrix. This matrix listed different types of incidents and the required investigations each necessitated. The S-3 then hung a large copy of the matrix in the operations center. It detailed each staff section's required action per event.

RECOMMENDATION: Sustain.[163]

ISSUE: Investigation workload

DISCUSSION: The SOTF legal advisor spent a significant portion of his time dealing with various types of investigations.

RECOMMENDATION: Be prepared to handle a high number of investigations and be sure potential IOs complete training before deploying.[164]

ISSUE: Determining central repository

DISCUSSION: CJSOTF-A maintained the central repository for all CJSOTF-A investigations. The legal advisor determined this to be the best course of action as classification authority remained with the forces in theater and not with the force provider.

RECOMMENDATION: Based on existing circumstances, a clear plan for the storage of investigations will alleviate challenges during relief in place / transition of authority (RIP/TOA) of multiple units.[165]

ISSUE: Selection of investigating officers (IOs)

DISCUSSION: CJSOTF-A did not maintain a running list of available IOs. Instead, the CJSOTF-A Commander appointed IOs based on matching subject matter expertise as well as experience level to the facts and circumstances of the investigation.

RECOMMENDATION: Sustain. Having the quality of the IO to match the investigation is more important than convenience in the long term. [166]

ISSUE: IO support

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[162] *Id.*
[163] *Id.*
[164] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 33.
[165] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 141.
[166] *Id.*

DISCUSSION: The legal advisor streamlined the process of preparing IOs for investigations by placing common instructions, guidance, and forms with examples on the legal section's web portal.

RECOMMENDATION: Sustain.[167]

ISSUE: Maintaining fair and independent investigations

DISCUSSION: The legal advisor observed a member of the staff potentially influencing the conduct of an investigation and generally overstepping his bounds in terms of AR 15-6 investigations. The legal advisor attempted to talk with this higher-ranking staff officer before going to the SOTF Commander. The staff officer continued his actions, which required the legal advisor to go directly to the SOTF Commander, who immediately stopped the perceived interference.

RECOMMENDATION: Legal advisors must look out for any perceived or real influence on the conduct of an investigation and go directly to the commander with concerns when necessary. Legal advisors must be the "honest broker" at all times.[168]

ISSUE: Maintaining copies of investigations

DISCUSSION: The legal advisor created digital copies of all investigations before sending the hard copy to CJSOTF-A. The digital copy remains at the SOTF in a continuity folder for the legal advisor's replacement.

RECOMMENDATION: Sustain.[169]

ISSUE: Volume of investigations

DISCUSSION: The Legal Advisor estimated investigations took up 40% of his time.

RECOMMENDATION: JAs should expect to handle large volumes of investigations and plan accordingly to track and streamline this process through available technology. Coordinate early and closely with all relevant staff sections and members of the command.[170]

ISSUE: Advising investigating officers (IOs)

DISCUSSION: The Legal Advisor assigned his Deputy to advise the IOs. This allowed the Legal Advisor to give an unbiased legal review of these investigations and avoid conflicts.

RECOMMENDATION: Sustain.[171]

ISSUE: Selecting IOs

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[167] *Id.*
[168] 3/3 SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 132.
[169] *Id.*
[170] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 65.
[171] *Id.*

DISCUSSION: CJSOTF-AP did not use a DA-6 to select IOs. The CJSOTF-AP Commander selected individuals best suited to investigate the incident at hand based on subject matter expertise and experience.

RECOMMENDATION: Sustain.[172]

ISSUE: Central repository for all investigations

DISCUSSION: CJSOTF-AP would collect all the SOTF investigations and submit a copy of all completed investigations to USF-I.

RECOMMENDATION: Sustain. USF-I's creation of a central repository for all theater investigations was overdue.[173]

ISSUE: Administrative Law Case System (ALCS)

DISCUSSION: The Office of the Judge Advocate General (OTJAG) and the United States Army Legal Services Agency (USALSA) uses ALCS to track and store investigations. This program has the ability to store digital copies of investigations and make them easily accessible.

RECOMMENDATION: Improve. The Information Technology Division (ITD) should release this product to the field in both the secure and unclassified networks to help deployed offices manage the flow of administrative law documents.[174]

ISSUE: Investigative fatigue

DISCUSSION: Operation Iraqi Freedom (OIF) units associated with numerous installation closures experienced what they referred to as "investigative fatigue." In addition to all the 15-6 investigations required for negligent discharges, escalations of force, lines of duty, accidents, the usual Financial Liability Investigations of Property Loss (FLIPLs) and other matters, they also had to deal with investigations associated with closing down installations and the determination of how to dispose of forward operating base (FOB) U.S. property. The legal review of these investigations drained JA resources and was not a chore that many enjoyed.

RECOMMENDATION: BJAs deployed during drawdowns can anticipate assuming a heavy workload reviewing investigations.[175]

ISSUE: Declassification of investigations

DISCUSSION: The CJTF had no efficient means by which to declassify investigations for release. This caused a lot of wasted time.

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[172] *Id.*
[173] *Id.*
[174] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 88.
[175] 2010 Brigade Judge Advocate (BJA) Symposium, 10-12 May, 2010, The Judge Advocate General Legal Center and School (TJAGLCS), Charlottesville, VA (hereinafter "BJA Seminar, combined AAR, 10-12 MAY 2010"; on file at CLAMO).

RECOMMENDATION: Improve. Prior to deployment, JAs need to sit down with the J-2 personnel and FOIA officers to discuss the system for declassification of documents. This will facilitate quick responses to FOIA requests from grieving families.[176]

ISSUE: Primary next of kin (PNOK) briefings by Human Resources Command (HRC) for combat deaths

DISCUSSION: HRC's family briefings are relatively unprofessional compared to those conducted by the Marines, and they do a disservice to the family. Even for a high profile death, HRC's procedure for conducting the brief was very weak.

RECOMMENDATION: Improve. HRC needs to treat each briefing as important. It needs to select appropriate personnel with sufficient preparation time and training. Consider also running through a combat death battle drill during predeployment training to identify weaknesses.[177]

II.H.1. Army Regulation (AR) 15-6 Investigations

Investigative Officers (IO's)

ISSUE: Selection of investigating officers (IOs)

DISCUSSION: The SOTF-C Commander selected IOs based upon their personal experiences and areas of expertise.

RECOMMENDATION: Sustain. Legal advisors should caution their commanders against using a DA Form 6 to select IOs.[178]

ISSUE: Helping investigative officers (IOs)

DISCUSSION: Legal staff often have to hold the hand of IOs conducting their first 15-6 investigation. One means to ease the reliance on JAs is to have a webpage of useful references and precedents so IOs have an idea how to navigate the process and how to draft the final product. Assigning a paralegal to assist the IO on a part time basis is an alternative means to keep the 15-6 on track.

RECOMMENDATION: Preparing a web portal of helpful materials can ease the anxiety and confusion experienced by new IOs and, by implication, eases the amount of work the legal staff has to devote to 15-6 management and oversight.[179]

ISSUE: Appointing investigation officers (IOs)

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[176] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[177] *Id.*
[178] 2d Battalion, 10th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OIF After Action Report, 15 June 2010, Deployed July 2009 – March 2010, Victory Base Complex, Baghdad, Iraq (hereinafter "2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10"; on file at CLAMO).
[179] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 175.

DISCUSSION: The BJA maintained a list of all BCT majors and all BCT captains on the FOB with their dates of ranks. This allowed him to show the brigade executive officer (XO) the field of qualified IOs for selection on any particular investigation.

RECOMMENDATION: Sustain.[180]

ISSUE: Advising IOs

DISCUSSION: The TC created a form e-mail containing all pertinent guidance to the IOs along with examples of required forms. This, along with a phone call from the IO, allowed the TC to advise numerous IOs without having to travel.

RECOMMENDATION: Sustain.[181]

ISSUE: Pre-deployment training on investigations

DISCUSSION: The BJA provided a block of instruction on how to conduct investigations to all lieutenants before deploying.

RECOMMENDATION: Sustain.[182]

ISSUE: Paralegal support to IOs

DISCUSSION: Paralegals can assist IOs in preparing and packaging investigations. Paralegals can also "remind" IOs of the investigation's suspense.

RECOMMENDATION: Sustain.[183]

ISSUE: In-briefs to investigating officers (IOs)

DISCUSSION: The BJA reinforced the requirement for IOs to get a legal briefing before beginning their investigation. The BCT JAs ensured they were available to provide advice to the IOs during the course of the investigation. In addition, they posted the required documents online.

RECOMMENDATION: Sustain.[184]

ISSUE: Preparation of investigating officers (IOs)

DISCUSSION: The BCT legal office provided IOs with sample investigations so they would know how to prepare their own investigations. They sometimes put specific questions in the appointment memo for the IOs to answer.

RECOMMENDATION: Sustain.[185]

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[180] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[181] *Id.*
[182] *Id.*
[183] *Id.*
[184] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 41.
[185] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 36.

ISSUE: Training for investigating officers (IOs)

DISCUSSION: The unit completed 140 investigations. Initially, the investigations were of questionable quality. Instead of placing blame on the IOs, the BCT JAs developed a simple consolidated training pamphlet covering the regulations and providing sample statements and blank forms for IOs to use. Additionally, the BCT JAs completed an after action review on each investigation gleaning lessons learned that helped them advise the next IO. They briefed highlights from each investigation to the command every other week and included them in a daily fragmentary order (FRAGO).

RECOMMENDATION: Sustain. In this situation, investing a little extra training time resulted in markedly improved investigations.[186]

ISSUE: Inexperienced investigating officers (IOs)

DISCUSSION: IOs could have used better training. Investigations would have been better if the IOs had received proper training.

RECOMMENDATION: Improve. Training your officers will produce better investigation reports and will avoid the delay caused by having to correct legally insufficient investigations. Such training should occur, if possible at the mobilization site, or shortly after arriving in theater.[187]

ISSUE: Dissemination of investigation results

DISCUSSION: The brigade strove to disseminate rapidly any new tactics, techniques, and procedures (TTPs) resulting from the recommendations of investigating officers (IOs). In addition, the brigade's investigation into fires occurring in Stryker vehicles formed the basis, in part, of a newly designed Stryker engine.

RECOMMENDATION: Sustain. Ensure the unit has a mechanism for implementing the recommendations resulting from investigations.[188]

ISSUE: Training for investigating officers (IOs)

DISCUSSION: The Trial Defense Services (TDS) office advised countless individuals who were the subjects of Army Regulation (AR) 15-6 investigations. Most counseling concerned the individual suspect's rights, and the potential outcomes of choosing to respond or not respond. During these advisements, it became apparent on occasion that a small number of IOs failed to read a suspect his rights before questioning. Consequently, this would call into question the admissibility of any statement provided by the suspect at that time.

RECOMMENDATION: Improve. Legal advisors should spend more preparation time training new AR 15-6 IOs and provide more standardized reference materials to IOs. This would decrease

[186] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 74.
[187] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 91.
[188] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 1.

the likelihood that IOs would make procedural errors like neglecting to read a suspect his rights.[189]

ISSUE: Investigating officer (IO) guide

DISCUSSION: BJA created an IO guide with relevant forms and examples needed for successful completion of investigations. The BJA e-mailed the IO the guide and discussed the specifics of the investigation telephonically when the IO was not on BAF.

RECOMMENDATION: Sustain.[190]

ISSUE: Appointing IOs

DISCUSSION: TF Thunder did not use a DA-6 to appoint its IOs. Rather, the TF commander appointed the officer with the most experience and expertise on a particular subject to conduct the investigation.

RECOMMENDATION: Sustain. TF Thunder ensured timely and well-written investigations by appointing the best officer suited to the specific investigation.[191]

ISSUE: IO appointment memorandums

DISCUSSION: TF Thunder BJA drafted incident-specific appointment memorandums. The appointment memorandums addressed all issues the TF Thunder commander wanted the IO to answer.

RECOMMENDATION: Sustain. Discourage the use of form appointment memorandums. Detailed appointment memorandums ensured complete and legally sufficient investigations.[192]

ISSUE: Guide for investigating officers (IOs)

DISCUSSION: The brigade legal section created a "how to" guide for IOs that included step-by-step instructions and all applicable forms and regulations. The BJA hung these materials on the brigade legal web portal.

RECOMMENDATION: Sustain.[193]

ISSUE: Poor investigation quality

DISCUSSION: There were a few occasions where investigating officers (IOs) did not put in the requisite effort to accomplish their investigation and reports in an appropriate or satisfactory manner. The BCT XO personally had to intervene in these instances and made sure the IOs devoted their full energies to conducting and completing the reports.

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[189] Trial Defense Services, Multi-National Corps – Iraq, Individual Augmentee Attorney, OIF After Action Report, 27 October 2009, Deployed May 2008-May 2009, Camp Liberty, Victory Base Complex, Baghdad, Iraq (hereinafter "MNC-I TDS OIF AAR, MAY 08-MAY 09"; on file at CLAMO).
[190] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.
[191] *Id.*
[192] *Id.*
[193] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.

RECOMMENDATION: Improve. Some IOs are not enthusiastic about having this additional investigative duty on top of all their other responsibilities. Not surprisingly, their reports were usually incomplete and legally insufficient. Having the BCT leadership emphasize the importance of the duty to the IO and detail their expectations helped to resolve any motivation issues up front.[194]

ISSUE: Training non-Army IOs

DISCUSSION: Due to the joint nature of MNSTC-I, officers from other services sometimes received appointment as AR 15-6 IOs. The MNSTC-I AdLaw attorney briefed the IOs using an investigating officer's guide. In addition, he encouraged the IOs to call him throughout the investigation with any questions.

RECOMMENDATION: Sustain.[195]

ISSUE: Communicating with investigating officers

DISCUSSION: TF Storm carried out a large number of 15-6s. Units frequently damaged equipment during route clearance missions, triggering the requirement for investigation.

RECOMMENDATION: Talk to your investigating officers as soon as they are appointed. Explain the investigation process to them and warn them of commonly made mistakes. Encourage them to share their draft reports with you before they finalize them. These simple steps will do much to reduce later problems.[196]

ISSUE: Advising IOs

DISCUSSION: The battalion legal advisor created standard packets to distribute to all IOs. This packet contained all relevant information along with samples of the requisite forms.

RECOMMENDATION: Sustain. In addition to providing IOs a standard packet, the battalion legal advisor sat down with each IO and broke down the process. The brief served to establish rapport with the IO, which led IOs to seek out the JA for follow up advice.[197]

ISSUE: Sample investigations

DISCUSSION: Investigations are the bulk of a JA's workload during deployment because the requirements triggering investigations are so numerous. The last thing you want is to have an investigation sent back from higher headquarters because it does not meet their standard. Each commander tends to have his own idiosyncrasies regarding investigations.

RECOMMENDATION: At the start of his deployment, the BJA requested from higher headquarters a copy of what they considered a great investigation. Throughout the deployment,

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[194] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 6.
[195] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.
[196] 168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09, *supra* note 128.
[197] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 98.

the brigade legal section used this investigation as the standard for all investigations conducted by 30th HBCT.[198]

ISSUE: Educating NG units on investigation requirements

DISCUSSION: NG units rarely get the opportunity to deal with investigations while serving in a state capacity. As a result, most NG units are not familiar with investigation requirements or the circumstances triggering a need for an investigation.

RECOMMENDATION: NG JAs need to make an extra effort to educate the commander and his staff on investigation requirements. Additionally, it is imperative to spend extra time ensuring investigating officers (IOs) have adequate training before beginning an investigation.[199]

ISSUE: Err on the side of investigating

DISCUSSION: In today's operational environment, there is an investigation requirement for almost anything that happens. JAs should ensure they have a good relationship with their commanders and get involved early on matters that may potentially need investigation. Sometimes, a failure to investigate may give higher headquarters an impression your unit is not capable of policing itself.

RECOMMENDATION: The BJA made a policy of having the brigade investigate anytime there was a question of whether there was a requirement for an investigation. It was better to err on the side of investigating than to have division send down its own investigating officer because it lost confidence in the brigade.[200]

ISSUE: Working with investigating officers (IOs) to improve investigation quality

DISCUSSION: The Division OSJA noticed a wide disparity in the quality of investigations between units. Death investigations, including those for suicides, tended to be poor and lacking in evidence. A common attitude among IOs seemed to be "minimally sufficient is legally sufficient."

RECOMMENDATION: Improve. The OSJA should set the standards for investigations early Work with IOs to ensure they conduct thorough investigations by refusing to find the investigation "legally sufficient" until the IO answers all information requirements. For recurring types like death investigations, establish a standard list of required findings. Any death investigation should have an IO in the minimum rank of Major—the AR 15-6 investigation may be the only official report the family members get on the deceased Soldier.[201]

ISSUE: Training investigating officers (IOs)

DISCUSSION: The first step to receiving a properly completed investigation is training the IO.

RECOMMENDATION: The OSJA provided each IO with one-on-one training, a copy of the applicable regulations, and an "IO Guide" which served as a quick response resource if the IO

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[198] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 20.
[199] *Id.*
[200] *Id.*
[201] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 22.

had questions during the investigation. Legal advisors should also review the IO's memo before submission.[202]

ISSUE: Advising investigative officers (IOs)

DISCUSSION: The SJA created a folder containing all pertinent documents an IO would need to conduct an investigation. The SJA would brief the IO telephonically and send him the folder as an e-mail attachment.

RECOMMENDATION: Sustain. JAs should strive to make the IOs job easy. This, in turn, makes for a better investigation.[203]

ISSUE: Providing IO with a well-written sample hostile fire death investigation

DISCUSSION: The SOTF legal advisor provided all IOs conducting hostile fire death investigations with a sample well-written investigation along with all necessary forms, regulations, and sample memoranda typically required for such investigations. The SOTF legal advisor also stressed to the IO the fact the deceased Soldier's family would most likely read the investigation.

RECOMMENDATION: Sustain. Hostile fire death investigations must be well written and sensitive to the potential audience.[204]

Management of Investigations

ISSUE: Withholding all AR 15-6 authority to the BCT commander

DISCUSSION: One technique used by some BJAs to keep a close handle on 15-6 investigations is to recommend the BCT commander withhold AR 15-6 investigation appointing authority. While it does relieve BN commanders of some previously held responsibility, it enables a centralization of the process in the office of the BCT commander and allows the BJA and legal staff to have visibility on all 15-6s from start to finish. A further advantage is that there is more uniformity of procedures and results. This approach cuts down on "surprise investigations" and lack of BCT level awareness of some ongoing BN investigations.

RECOMMENDATION: Consider recommending to the BCT commander to withhold appointing authority for all 15-6s to his level in order to benefit from the advantages listed above.[205]

ISSUE: Redaction of 15-6 investigations of Soldiers killed in action (KIA)

DISCUSSION: Family members of KIA Soldiers often make Freedom of Information Act (FOIA) requests to see the 15-6 reports. Redaction software is readily available to make the edits, but some families will push the chain of command to see an unredacted version. There are procedures that allow the family to have a briefing and to see, but not copy, an unredacted copy

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[202] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[203] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 31.
[204] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 33.
[205] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 175.

of the report. It is advisable for the senior or general officer conducting the review with the family to consult a JA beforehand.

RECOMMENDATION: Allowing grieving families to see unredacted copies of 15-6 investigations is possible, but requires compliance with FOIA and Army guidance.[206]

ISSUE: Electronic copies of 15-6 reports

DISCUSSION: Given the massive volume of 15-6 investigations, it is a good practice to electronically scan and store all competed reports since they can go missing after redeployment. There seems to be a growing perception in the Army that the legal staff will always be able to assist the chain of command with finding or producing a copy of a missing 15-6 investigation.

RECOMMENDATION: Sustain.[207]

ISSUE: Employment of an investigations tracker

DISCUSSION: Due to the high volume of investigations, the brigade legal office made and used a "homemade" system to track investigations.

RECOMMENDATION: Improve. Expect a high volume of investigations upon arrival in theater. Have a good tracking system in-place before you arrive. Any system must be easy to access, use, and read. There is a requirement for a standard "investigations tracker." Many times during the deployment, the commander will request updates. Information must be available in a simple format where relevant facts are obtainable at a glance.[208]

ISSUE: Results of 15-6 investigations

DISCUSSION: The brigade legal office informally published the results of 15-6 investigations to persons involved in the investigation. Soldiers were not always aware of what actions stemmed from an investigation.

RECOMMENDATION: Improve. Create transparency in the reporting process. Make results available up and down the chain of command. For leaders, report findings in executive summaries (EXSUMs). For others in the chain of command, consider publishing a sanitized version of the findings and actions.[209]

ISSUE: High volume of 15-6 investigations

DISCUSSION: A high volume of investigations stemmed from the commander's desire to "root out" problems, thus preventing accidents and increasing safety of flight. For example, the command placed airfield restrictions to reduce the number of UAV incidents.

RECOMMENDATION: Sustain. By monitoring suspicious or unsafe activity, the unit logged more than 100,000 hours of flight time during the deployment. The commander's proactive stance resulted in no deaths or loss of sensitive items. AR 15-6 investigations are a tool to

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[206] *Id.*
[207] *Id.*
[208] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 35.
[209] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 10.

document the success and/or failure, not necessarily to hold an individual responsible, but rather to document for historical purposes.[210]

ISSUE: Preparing Soldiers for investigations

DISCUSSION: Due to the number of investigations the brigade conducted during its deployment (approximately 300), it is highly likely every Soldier knew of someone involved in an investigation.

RECOMMENDATION: Improve. The BJA should explain to all Soldiers and commanders during pre-deployment training the nature and purpose of investigations. Educated Soldiers will not fear investigations.[211]

ISSUE: Tracking investigations and implementing recommendations

DISCUSSION: The brigade legal office maintained an investigations tracker. The investigations tracker was color coded so the BJA and commander could easily determine the status of any given investigation.

RECOMMENDATION: Improve. The investigations tracker should have also contained a column that listed the BCT commander's decisions and recommendations and a column for staff and subordinate command compliance with resulting directives. This would have allowed the BJA to identify when the subordinate units completed the commander's directives.[212]

ISSUE: Investigations repository

DISCUSSION: The brigade legal team maintained electronic copies of all investigations. The brigade left these electronic copies in theater so subsequent units could access them. The follow-on brigade legal team has found them useful on multiple occasions. The brigade legal team also kept its own electronic copies to bring home with them.

RECOMMENDATION: Improve. If the investigations are stored on SIPR, the legal section must coordinate with the S2 and S6 to ensure the investigations remain readily accessible back at home station.[213]

ISSUE: Disseminating results of investigations

DISCUSSION: The TC sent e-mails to the battalion XOs informing them of the results and recommendations from a particular investigation.

RECOMMENDATION: Sustain.[214]

ISSUE: Findings and recommendations

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[210] *Id.*
[211] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[212] *Id.*
[213] *Id.*
[214] *Id.*

DISCUSSION: The brigade legal shop should track the approved findings and recommendations in an investigation to ensure the battalions implement and enforce any disciplinary or safety matters the BCT commander orders.

RECOMMENDATION: Utilize the paralegals, especially at the battalion level, to track such issues.[215]

ISSUE: Incorporating Financial Liability Investigations of Property Loss (FLIPLs)

DISCUSSION: The BJA incorporated all FLIPL issues into the 15-6 process. IOs sometimes had difficulty completing timely investigations for this reason. However, it avoided redundant investigations and saved time in the end.

RECOMMENDATION: Sustain.[216]

ISSUE: Attorney roles with regard to investigations

DISCUSSION: The same attorney (the trial counsel) advised IOs and reviewed the completed investigations. The trial counsel would be thus be the same attorney who would draft charges resulting from the investigation.

RECOMMENDATION: If practical, consider separating these duties.[217]

ISSUE: Required investigations

DISCUSSION: The BCT commander required AR 15-6 investigations on a wide variety of incidents. This created an excessive amount of investigations and pulled officers away from other missions.

RECOMMENDATION: Improve. Some incidents do not warrant an AR 15-6 investigation. An informal commander's inquiry, for example, could adequately dispose of a negligent discharge into a clearing barrel not resulting in injury or property damage.[218]

ISSUE: Use of classified annexes

DISCUSSION: Separating classified information in segregable annexes makes primary next of kin (PNOK) briefings easier.

RECOMMENDATION: Sustain.[219]

ISSUE: Eliminating Social Security Numbers (SSNs) from statements

DISCUSSION: The unit eliminated the requirement to write SSNs on witness statements. This practice led to reduced redactions when responding to a request for the investigation.

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[215] *Id.*
[216] *Id.*
[217] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 41.
[218] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 36.
[219] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 74.

RECOMMENDATION: Sustain.[220]

ISSUE: Investigations matrix

DISCUSSION: Investigations will demand approximately 40-50% of a BCT JA's time. Administrative law sections can significantly reduce the burden on the BCT JA by producing an investigations matrix. This document summarizes the type of incident, the relevant references (e.g., ARs and FRAGOs), the mandated minimum type of investigation, and the required level of appointing authority.

RECOMMENDATION: The guidance for investigations will change through the deployment. It is important to ensure JA staffs have access to the most recent version of the MNF-I Investigation Matrix.[221]

ISSUE: Legal advisors to AR 15-6 investigations

DISCUSSION: The TDS office noticed that having the brigade judge advocate (BJA) serve as legal advisor on a 15-6 investigation in his or her brigade was not ideal. The BJA is often concerned with protecting the chain of command, which is his client. Additionally, it is common for the BJA and the brigade's trial counsel (TC) to share an office. Having the BJA (and potentially the TC) advising the IO on the conduct of the investigation resulted, at times, in investigations that were not entirely factually accurate. Specifically, some IOs conducted investigations more as a means of gathering evidence than as a tool to discover the facts.

RECOMMENDATION: Improve. Have a neutral JA from outside the brigade serve as legal advisor.[222]

ISSUE: Purpose and scope of investigations

DISCUSSION: You should clearly define the purpose and scope for 15-6 investigations. Good clear instructions will produce a good investigation.

RECOMMENDATION: Note.[223]

ISSUE: Tracking investigations

DISCUSSION: The BJA worked with her TF commander to create an investigations tracker. The BJA constantly updated and briefed the tracker to her commander.

RECOMMENDATION: Sustain. An investigations tracker is essential given the volume of investigations. A reader-friendly version your commander is familiar with and likes works best.[224]

ISSUE: Dissemination of investigation findings

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[220] *Id.*
[221] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 91.
[222] MNC-I TDS OIF AAR, MAY 08-MAY 09, *supra* note 189.
[223] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 3.
[224] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.

DISCUSSION: The BJA gave the completed finding and recommendations of investigations into helicopter crashes to all interested parties. This allowed Soldiers and Brigade Standardization Officers to learn from investigations and adopt training accordingly. In addition, this practice ensured that the commander's directives (loss of pilot-in-command orders, loss of air mission commander orders, etc.) were tracked by the relevant persons in the Brigade.

RECOMMENDATION: Sustain.[225]

ISSUE: Incorporating required FLIPL findings into AR 15-6 appointment memorandums

DISCUSSION: The BJA drafted appointment memorandums to deal with any potential financial liability issues arising from a particular investigation.

RECOMMENDATION: Sustain. Resolving financial liability issues during the 15-6 investigation saved time in completing subsequent FLIPL investigations.[226]

ISSUE: Requirement for legal office involvement in investigations

DISCUSSION: Investigations were a constant source of business. A CG policy letter required all 15-6 investigations go through the legal office. Investigating officers also had a requirement to meet with legal personnel before starting their investigation.

RECOMMENDATION: Sustain. Not all subordinate commanders will want to involve legal personnel from the start, but doing so is instrumental in having a proper investigation and ensuring legal personnel have situational awareness of potential issues.[227]

ISSUE: Use of a paralegal to track investigations

DISCUSSION: The BJA tasked a paralegal to track and assist on all investigations. The paralegal performed exceptionally well and ensured completion of all investigations in a timely manner. Of course, the BJA supervised and monitored the paralegal's activities and continually educated the paralegal on her role.

RECOMMENDATION: Sustain. This system worked well for this brigade, in no small part due to the professionalism of the paralegal.[228]

ISSUE: Investigations tracker

DISCUSSION: With all of the reporting requirements and massive amounts of investigations and Article 15s, it was absolutely critical to create trackers to track where all of the actions were in the process. The brigade legal section's investigations tracker allowed the BJA to know the status of each and every investigation and to report same to the brigade commander.

RECOMMENDATION: Sustain.[229]

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[225] *Id.*
[226] *Id.*
[227] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.
[228] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[229] *Id.*

ISSUE: Sensitive investigations—allegation of detainee abuse

DISCUSSION: There was a report of detainee abuse included in a broader complaint to the Criminal Investigation Division (CID) against an officer assigned to the BCT but whose unit was task organized under another BCT within MND-N. This report triggered an immediate notification, and the BCT initiated an AR 15-6 investigation. The command investigated the allegation in close coordination with higher headquarters, and took appropriate disciplinary action against the wrongdoer after the completion of the investigation.

RECOMMENDATION: Sustain. The system worked. Continue to emphasize the independent requirement to report all suspected Law of War violations.[230]

ISSUE: Use of battalion paralegals to assist in investigations

DISCUSSION: The BCT had two paralegals forward-deployed with their battalions. These paralegals spotted issues and helped track and push investigations. In addition, they were able to accompany some investigating officers (IOs) during the investigation, helping the IOs with the procedures and advising them as to when to call the BJA. Finally, these paralegals did a preliminary screening of investigation reports to identify problem areas before the IO turned in a final draft for legal review.

RECOMMENDATION: Sustain. Paralegals are force multipliers at the battalions.[231]

ISSUE: Investigations FRAGO

DISCUSSION: The BJA drafted a fragmentary order (FRAGO) mandating IOs contact the BJA for a legal briefing before beginning their investigation.

RECOMMENDATION: Sustain.[232]

ISSUE: Briefing investigation status at battle update assessments (BUAs)

DISCUSSION: The BCT Commander required the battalion commanders to brief the status of AR 15-6 investigations as part of the daily BUA.

RECOMMENDATION: Sustain. This placed command emphasis on the investigations, resulting in more timely completion.[233]

ISSUE: "Ownership" of the investigations process

DISCUSSION: The MNSTC-I CG delegated AR 15-6 appointing authority to the Chief of Staff (COS). In practice, the deputy CofS was the gatekeeper for the process. The MNSTC-I AdLaw attorney let the deputy CofS know what grade/rank the investigating officer (IO) needed to be, as

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[230] 2d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 4 & 9 February 2010, Deployed January 2009 – December 2009, Forward Operating Base Warrior, Kirkuk, Iraq (hereinafter "2-1 CAV, OIF AAR, JAN 09 - DEC 09"; on file at CLAMO).
[231] *Id.*
[232] *Id.*
[233] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 47.

well as any other special criteria or expertise. He also provided the deputy CofS with the appointment memoranda. Although the OSJA leadership, at times, had to engage the deputy COS and the COS, respectively, to ensure the timely processing of investigations, this centralization enabled the OSJA to track all investigations.

RECOMMENDATION: Although a security assistance command, by virtue of both its higher ranking personnel and its mission, may tend to have fewer investigations than a combat unit (MNSTC-I had approximately twelve AR 15-6 investigations over a six-month period), the OSJA should nonetheless emphasize the function of investigations and the importance of their timeliness in answering the commander's information requirements.[234]

ISSUE: Separation of legal advisor and legal review functions

DISCUSSION: The SJA decided the AdLaw attorney would be the legal advisor to the IO for all AR 15-6 investigations and another officer in the OSJA (generally the chief, operational law and military justice) would perform the legal review of the completed investigation.

RECOMMENDATION: Sustain this separation if personnel resources permit.[235]

ISSUE: Withholding AR 15-6 investigation appointing authority

DISCUSSION: Before deployment, the BCT commander withheld authority to himself to appoint and approve all AR 15-6 investigations. This empowered the BCT commander and JAs with ability to control the investigations. BN commanders agreed with the decision since it removed the administrative burden from their level (although BNs still had to provide the investigating officer). BCT JAs prepared all appointment orders, briefed the investigating officers, ensured all reports were legally sufficient, and secured commander approval. They then sent an electronic copy of the approved investigation to the BN for implementation of the approved recommendations. The BCT legal team maintained a copy of the investigations, and upon redeployment, took a hard copy of every investigation back to home station.

RECOMMENDATION: While many BCT and BN commanders may be reluctant, there are significant command and control advantages for the BCT commander and JAs when the BCT commander withholds authority to initiate AR 15-6 investigations.[236]

ISSUE: Tracking and maintaining investigations conducted in theater

DISCUSSION: There is no central system of records management for investigations conducted in theater. Not only does this make it difficult to maintain continuity with the unit you are replacing, but it also makes it difficult to track investigations done by your subordinate commands. Further, some units only maintained electronic copies while others maintained paper copies. Most units kept their investigations on the Secure Internet Protocol Router (SIPR) network, which then requires proper packaging and control to maintain the investigations upon redeployment.

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[234] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.
[235] *Id.*
[236] 4th Brigade Combat Team (Airborne), 25th Infantry Division, Brigade Judge Advocate OEF After Action Report, 27 March 2010, Deployed February 2009 – February 2010, Forward Operating Base Salerno, Khowst Province, Afghanistan (hereinafter "4BCT, 25ID OEF AAR, FEB 09 - FEB 10"; on file at CLAMO).

RECOMMENDATION: Improve. On the macro-level, the Army should develop a central database for all investigations conducted in theater. All units would then be required to deposit an electronic copy of their investigations in the repository upon final action. On the micro-level, develop a SOP that clearly establishes the reporting requirements and record-keeping responsibilities of your subordinate units. Additionally, if possible, maintain investigations on the Nonsecure Internet Protocol Router (NIPR) network to facilitate further transfer upon redeployment. Maintain a spreadsheet outlining all investigations, especially those for hostile deaths, so that you have an easily accessible database to search for investigations in case of future FOIA requests.[237]

ISSUE: Division of duties with investigations

DISCUSSION: The AdLaw attorneys served as legal advisors for all Division and brigade-level IOs. The OSJA policy was that the legal advisor to an IO could not act as the legal reviewer for the investigation.

RECOMMENDATION: Sustain. Ensure you have enough attorneys to execute this policy adequately.[238]

ISSUE: Sensitive media investigations

DISCUSSION: After arrival in Haiti, 2-82 ABN had to deal with a media frenzy. The news media swamped them with embedding requests and sought footage of Paratroopers in action. One reporter with a 2-82 ABN unit left her bag, containing her personal items and credit cards, in the unit's perimeter. She did not notify any Paratroopers of the bag when she went to the get footage for the evening news. Upon her return, the bag was gone, and she suspected one of the Paratroopers stole the bag and credit cards. The BCT commander wanted to commence an investigation immediately given the concern this incident could make it into the news and reflect badly on 2-82 ABN. Fortunately, the JAs had all the necessary AR 15-6 investigation forms and guidance materials with them to facilitate the immediate investigation. The next day, a local national handed over the bag and some contents to the 2-82 ABN and the reporter.

RECOMMENDATION: JAs have to be prepared to assist investigating officers closely in all aspects of the investigation, especially in those circumstances where the unit may not be fully prepared to get to these due to pressing operational circumstances.[239]

ISSUE: Processing AR 15-6 investigations

DISCUSSION: AdLaw published an investigation matrix to subordinate units setting forth investigation requirements and procedures. It updated the investigations matrix and republished it as necessary. For example, towards the very end of the deployment, MNC-I required all original 15-6 investigations with potential FOIA triggers scanned and the original forwarded to Corps. MNC-I added the scanned document to a database and sent the original investigation to a repository maintained in the United States.

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[237] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[238] *Id.*
[239] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 27.

RECOMMENDATION: Sustain. The SJA should continue to use an investigation matrix and ensure all subordinate units are tracking requirements. AdLaw should acquire the matrix of the unit they are replacing at least one month before the Mission Rehearsal Exercise (MRX). [240]

ISSUE: Use of password protected web portal for investigations

DISCUSSION: The MND-B and MNC-I AdLaw sections used password protected secure internet portal router (SIPR) network portals to "hang" investigations. This practice made forwarding investigations to higher headquarters a much smoother process. Whenever 1CD had an investigation ready to forward, it would "hang" it on the MND-B portal, and MNC-I would pull it off to review and vice versa when MNC-I had an investigation to send back to MND-B. Whenever the portals went down or if an investigation was too large to "hang," the unit would have to burn it to a digital video disc (DVD), pack it for shipping, mark it appropriately, and forward it, a process far more time consuming than using the web portal.

RECOMMENDATION: Sustain. Using web portals as a means to forward investigations is a force multiplier.[241]

ISSUE: Tracking investigations

DISCUSSION: When the Division arrived in theater, the system in place for tracking investigations was broken. The previous unit tracked investigations by the name of the investigating officer (IO) and the date the investigation opened. This proved to be an ineffective means of tracking investigations. AdLaw completely revamped the old tracking and filing system. The tracking system 1CD put in place enabled them to track investigations by date of incident, unit, Soldiers involved, type of investigation, etc. and sort data from those categories as well.

RECOMMENDATION: Sustain. It is critical to have an effective tracking system in place.[242]

ISSUE: Communication with BCTs for investigations

DISCUSSION: When serving in AdLaw at the Division level, it is important to have accurate statistics and accounting of investigations still pending at subordinate units. This is necessary in order to keep the SJA and CG accurately informed. In order to have this information, AdLaw must have a good relationship with the BCTs and maintain good lines of communication with them.

RECOMMENDATION: AdLaw tried to foster a good working relationship with the BCTs. AdLaw also ensured all email correspondence with the BCTs regarding investigations went to both the BJA and brigade paralegal.[243]

ISSUE: Classified investigations

DISCUSSION: Due to the nature of the unit, it was common for AR 15-6 investigations to have

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[240] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.
[241] *Id.*
[242] *Id.*
[243] *Id.*

classified sections. This caused difficulties in processing the investigations. The only training at TJAGLCS on handling classified material relates to its use in a court-martial.

RECOMMENDATION: Improve training on how to process 15-6 investigations containing classified information.[244]

ISSUE: Institutional reluctance of active component to initiate AR 15-6 investigations related to National Guard misconduct during pre-mobilization

DISCUSSION: A pattern of misconduct (harassment) began before arrival at the mobilization training center (MTC) and continued during the mobilization period. The issue arose early at the MTC, but there was reluctance on the part of the active component to get involved with pre-mobilization issues. The mobilized unit could not get an appointing authority to initiate the investigation. In the end, the BCT commander appointed an investigating officer and the legal office provided advice.

RECOMMENDATION: Early intervention by the active duty commander to initiate investigations would help sort out issues within the compressed timeframe between mobilization and deployment.[245]

ISSUE: Reviewing subordinate commands' investigations

DISCUSSION: The SJA reviewed all investigations from CJSOTF-A and the SOTFs. These investigations gave the SJA situational awareness and allowed him to talk to his commanding general about the status and facts of all investigations.

RECOMMENDATION: Sustain.[246]

ISSUE: Legally insufficient investigations

DISCUSSION: The SJA, on occasion, found some investigations to be legally insufficient. IOs can put a lot of pressure on a JA to find an investigation legally sufficient. JAs must resist the temptation to appease an IO.

RECOMMENDATION: JAs must stick to their legal principles and make tough calls. JAs must always be the command's honest broker.[247]

ISSUE: Number of investigations

DISCUSSION: The volume of investigations took up a significant portion of the SJA's time.

RECOMMENDATION: Improve. Pre-deployment training should incorporate more scenarios requiring investigations to better prepare a JA for the number of investigations expected on a deployment.[248]

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[244] 504th Battlefield Surveillance Brigade, Brigade Judge Advocate OIF After Action Report, 3 May 2010, Deployed November 2008 – November 2009, Contingency Operating Base Sykes, Tal Afar, Iraq (hereinafter "504th BfSB, OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).
[245] 33d BCT (ILARNG), OEF AAR, DEC 08 - AUG 09, *supra* note 8.
[246] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 31.
[247] *Id.*

ISSUE: Thorough review of investigations

DISCUSSION: The SJA thoroughly reviewed all aspects of each investigation. While reviewing a video exhibit to one particular investigation, the SJA observed an issue central to the investigation the IO had overlooked. This resulted in a better-prepared and legally sufficient investigation.

RECOMMENDATION: JAs must review every aspect of an investigation. While time consuming, your commander expects it. Additionally, failure to do so opens a JA and his/her command to unwanted scrutiny.[249]

ISSUE: Briefing replacement JA on pending investigations

DISCUSSION: The SJA kept all pertinent and unclassified portions of an investigation on his desk. This allowed him to easily gain the status of an investigation and brief his replacement on the facts and circumstances surrounding an investigation and the investigation's status.

RECOMMENDATION: Sustain.[250]

ISSUE: Understanding other services' investigations

DISCUSSION: A JA in a joint command should have a working understanding and knowledge of sister services' investigations.

RECOMMENDATION: Sustain. JAs must have a working understanding and knowledge of sister services' investigations.[251]

ISSUE: Avoiding duplicative investigations

DISCUSSION: The Legal Advisor avoided duplicative investigations by rolling FLIPLs and LODs into 15-6s when necessary.

RECOMMENDATION: Sustain.[252]

ISSUE: Archiving historically significant investigations—"Operation Hugo"

DISCUSSION: Family members of a deceased Soldier sent an email to MNC-I describing their two-year ordeal trying to get a copy of the investigation into the Soldier's death. The MNC-I Chief of AdLaw made it his personal mission to locate this investigation. He physically searched the former location of the Soldier's unit and found the investigation. In response to this travesty, MNC-I issued an operations order for "Operation Hugo," which directed units to forward copies of all historically significant investigations in theater to the MNC-I (later USF-I) OSJA in both electronic and hardcopy form. The OSJA obtained a building to house the investigations and employed three personnel from other staff sections to assist in inventorying and cataloguing the

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[248] *Id.*
[249] *Id.*
[250] *Id.*
[251] *Id.*
[252] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 65.

investigations. The Chief of AdLaw coordinated with the National Archives to receive and maintain the hard copies in the United States. In addition, the OSJA created a searchable computer database for the electronic files. They matched the investigations with the list of deceased Soldiers from Human Resources Command (HRC).

RECOMMENDATION: Sustain. This is a full-time job for at least one E-6 paralegal in AdLaw. There is no need, however, to archive all investigations. The requirement should apply to all historically significant cases—death investigations and other investigations in which the public might foreseeably have an interest. The requirement should apply to specific categories of investigations in addition to any others determined to be historically significant by the local command judge advocate. Without a central archive of investigations, the investigations will be very difficult to locate later in response to FOIA requests and other inquiries, as units move around the battlefield, redeploy, deactivate, etc. Now that there is a repository for investigations at the National Archives, U.S. Forces – Afghanistan should implement a similar requirement.[253]

ISSUE: High profile investigations

DISCUSSION: The Chief of AdLaw was the legal advisor to a high profile investigation stemming from an incident in which a Soldier apparently shot five other Soldiers in a combat stress clinic. The investigating officer (IO) was an O-7 Navy Rear Admiral. This duty occupied the legal advisor for two full weeks. The AR 15-6 investigation was examining whether there was a larger issue in theater as to how commanders are getting the proper mental health assistance for Soldiers with combat-related stress, or other mental health issues. However, there was a demand for immediate information concerning this particular incident. The legal advisor had to ensure the 15-6 did not interfere with the ongoing Criminal Investigation Division (CID) investigation.

RECOMMENDATION: High profile investigations could arise on any given day. The AdLaw section should have a plan for dealing with these issues when they arise. At the Corps and Force level, IOs are commonly O-6s and above. Advising flag officers can be vastly different than advising O-6s and below. Incidents resulting in high profile investigations will often be the subject of CID investigations, so legal advisors need to advise the IO carefully so as not to damage a potential criminal case. Moreover, expect high profile investigations to garner immediate media inquiries and FOIA requests.[254]

ISSUE: Joint investigations

DISCUSSION: Throughout the CJTF's battlespace, units operated jointly with sister services. When incidents caused casualties from Army and sister services, the CJTF attempted to bring in an officer from the sister service as a co-investigating officer. This prevented the sister service from coming back and saying the Army hid evidence or otherwise conducted the investigation improperly.

RECOMMENDATION: Sustain. Particularly with high profile 15-6s involving joint personnel, it is advisable to involve the sister service in the investigation as much as feasible.[255]

ISSUE: Central repository for division level investigations

[253] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 88.
[254] *Id.*
[255] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.

DISCUSSION: CJTF-82 maintains the central repository for all division level investigations for 8 years. This repository does not include brigade level investigations. Brigade level investigations are maintained by individual brigades.

RECOMMENDATION: Improve. Make the regional commands the central repository for all investigations conducted within their battles space. Until then the regional commands should direct the brigades to provide copies of potentially newsworthy or otherwise sensitive investigations.[256]

ISSUE: Maintaining operational awareness

DISCUSSION: The administrative law section maintained constant communication with the operational law section. This allowed the administrative law JAs to have operational awareness and ensure the command completed required investigations. It also allowed the administrative law JAs to quickly and accurately decipher sometimes tricky command and control situations.

RECOMMENDATION: Sustain. Utilize operational law section to maintain constant operational awareness of the battlefield.[257]

ISSUE: Classification of hostile death investigations

DISCUSSION: JAs should expect FOIA requests on all hostile death investigations. As such, JAs should work with the investigating officers (IOs) to keep hostile death investigations unclassified to the greatest extent.

RECOMMENDATION: Sustain. Work with IOs to inform them of the nature and likelihood of the audience of hostile death investigations. When necessary, create a classified annex thereby keeping the majority of the investigation unclassified.[258]

ISSUE: J-1's hostile death reporting requirements

DISCUSSION: The J-1 section has different reporting requirement deadlines than the IOs. As the J-1 answers directly to Human Resources Command (HRC) on all hostile death investigations, JAs should keep them informed of the investigations' progress as much as possible.

RECOMMENDATION: Sustain.[259]

ISSUE: Correcting potential issues before investigation deadline

DISCUSSION: The administrative law section was proactive in working with IOs. It requested IOs provide them the investigation before the command's deadline to spot issues and resolve them.

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[256] *Id.*
[257] *Id.*
[258] *Id.*
[259] *Id.*

RECOMMENDATION: Sustain. JAs must be aware of investigation timelines and work with IOs to have legally sufficient and well-written investigations.[260]

ISSUE: Sample investigation packet

DISCUSSION: The administrative law section created an electronic folder which contained examples of all forms and memoranda an IO would have to complete. They would e-mail this folder to the IO during the initial legal brief to the IO.

RECOMMENDATION: Sustain. Look for ways to make the IOs' jobs easier. This helps create better written and legally sufficient investigations.[261]

Miscellaneous

ISSUE: Proactive approach

DISCUSSION: Prior to an official inquiry from higher, CJSOTF-A attempted to be proactive by conducting a commander's inquiry as early as possible into the matter in question. This proactive approach quickly assessed credibility and set conditions for an effective investigation if determined necessary.

RECOMMENDATION: Sustain. Potential bad news does not get better over time. Gaining early situational awareness of a potential adverse event will mitigate future consequences.[262]

ISSUE: Hostile death investigations

DISCUSSION: Legal advisors must be prepared to deal with hostile death investigations. The legal advisor did not have an effective battle drill in place before deploying.

RECOMMENDATION: Improve. Legal advisors should be familiar with the applicable rules and regulations relating to hostile fire deaths. Legal advisors should prepare a battle drill in conjunction with their S1/G1/J1 diretorate before deploying and simulate a real world casualty during pre-mission training.[263]

ISSUE: Utilize paralegals on minor investigations

DISCUSSION: The legal advisor utilized his paralegal to brief IOs conducting minor investigations. The paralegal also utilized a pre-made investigation checklist before submitting the investigations to the legal advisor for his review.

RECOMMENDATION: Sustain. Create an investigations checklist and allow paralegals to perform initial scrub of investigations.[264]

ISSUE: Consultation between BJA and SJA on high profile investigations

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[260] *Id.*
[261] *Id.*
[262] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 40.
[263] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 178.
[264] *Id.*

DISCUSSION: Where there are investigations that will be of interest to the division or higher headquarters (i.e. high profile investigations), it is important the BJA and SJA discuss the matter outside command channels in order to smooth over any legal questions or differences that might exist. Having these side bar discussions ensures the BCT investigation will fulfill the higher headquarters' legal requirements.

RECOMMENDATION: BJAs and SJAs need to discuss high profile investigations as they progress to keep situational awareness and to consolidate legal positions.[265]

ISSUE: Escalation of Force (EOF) 15-6 investigation in Afghanistan

DISCUSSION: EOF incidences are high visibility issues in Afghanistan due to the elevated concerns regarding civilian property damage, injuries, and death. The Commander of ISAF is personally engaged in a deliberate campaign to reduce the number of civilian casualties caused by ISAF forces. Accordingly, DIV and BCT commanders closely monitor EOF incidences and take an active interest in unit EOF 15-6 investigations. Depending on the nature of the EOF, some of these 15-6 investigations will be high visibility and will likely attract extra scrutiny up the chain of command.

RECOMMENDATION: BCT EOF 15-6 investigations in Afghanistan are usually high visibility, thereby requiring close scrutiny and oversight by the BJA.[266]

ISSUE: Investigations involving special operations forces (SOF)

DISCUSSION: SOF caused a few civilian deaths during raids in the BCT AO. Even though MND-B required investigations into these incidents, the SOF personnel initially refused. They did not conduct an investigation until the BJA requested the division SJA to contact the SOF SJA. Even then, the quality of the investigations was noticeably lacking. For example, in one investigation, the statements of SOF individuals used obviously false names (e.g., "Joe Hollywood") and did not match the evidence the BCT collected on the ground.

RECOMMENDATION: Improve. MNF-I should clarify the relationships when SOF operate within the battle space of conventional forces. There needs to be a forcing mechanism to ensure SOF units comply with investigation requirements. In these cases, the BCT had to explain the incidents to the local populace and to try to determine whether the situation warranted condolence payments.[267]

ISSUE: Use of aerial photography/satellite imagery in investigations.

DISCUSSION: Unmanned Aerial Surveillance (UAS) and satellite imagery is often available for incidents requiring an AR 15-6 investigation (e.g., Soldier Killed-In-Action). Utilize imagery to place units and personnel involved in the context of the surrounding environment. For example, when viewed on a map indicating buildings and other cover, where a Soldier died in relation to the shooter quickly eliminates friendly fire as a cause of death.

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[265] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 175.
[266] *Id.*
[267] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 41.

RECOMMENDATION: Sustain.[268]

ISSUE: Investigation of lost blood chits

DISCUSSION: Blood chits are notices aircraft personnel carry that contain messages aimed at the civilian population asking for assistance in case they are shot down. Blood chits are a sensitive item. Applicable regulations require investigating the loss of sensitive items; however, most units forget the losses need to be investigated. The BJA received serious incident reports (SIRs) on lost blood chits and then contacted the unit to make sure the unit conducted the investigations.

RECOMMENDATION: Aviators should sign out blood chits before the mission and sign them back in upon mission completion. The BJA needs to be proactive and ensure the unit conducts the investigations.[269]

ISSUE: Investigations involving serious criminal misconduct

DISCUSSION: There were two separate investigations in which a MNSTC-I servicemember pointed a loaded weapon at another MNSTC-I servicemember. In one of the cases, the accused servicemember was an Air Force Office of Special Investigations (OSI) agent. In the other case, the accused servicemember had given a statement without a rights warning, thus requiring a cleansing statement. Both situations had the potential for the IOs to get in over their head.

RECOMMENDATION: Attempt to get the Criminal Investigation Division (CID) to investigate cases involving serious criminal misconduct.[270]

ISSUE: Incident reporting

DISCUSSION: On more than one occasion, a servicemember committed misconduct, but the head of the accused's directorate covered up the incident and merely counseled the accused servicemember. The incidents came to light informally through rumor, with the command group receiving notice months after the fact. The MNSTC-I CG then ordered an immediate investigation.

RECOMMENDATION: Improve. In a command comprised primarily of senior officers and NCOs, general officers and SES directorate heads often presume they have the authority to dispose of minor misconduct without further action. The OSJA should assist the CG by drafting a policy memorandum covering mandatory reporting of serious incidents both through the chain of command and to the OSJA. Some examples of potential categories for mandatory reporting include negligent discharges, violations of general orders, and officer misconduct.[271]

ISSUE: Sensitive investigation involving a captured Soldier

DISCUSSION: On June 30, 2009, the Taliban captured a 4-25 ID Soldier in Paktika province. At the time of writing (April 2010), he was still captive, and his current status is Duty Status Whereabouts Unknown (DUSTWUN). Following his disappearance, the BCT immediately

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[268] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 74.
[269] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.
[270] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.
[271] *Id.*

conducted massive search operations; searches continued for months and received support from many ISAF and U.S. units. From a legal perspective, BCT JAs assisted with an extremely sensitive and high profile Army Regulation (AR) 15-6 investigation having both senior and general officer involvement. The investigation resulted in an exceptional amount of work and collaboration with higher echelon JAs to ensure uniform legal advice and guidance. The investigation ended up being over 1000 pages long and circulated amongst the highest levels in the Department of Defense (DoD).

RECOMMENDATION: DUSTWUN Soldiers will result in sensitive investigations conducted by senior ranking field grade officers with oversight from higher headquarters. JAs at different levels must coordinate efforts and advice to ensure consistency and keep clients focused on objectives of investigation.[272]

ISSUE: Volume of AR 15-6 investigations

DISCUSSION: 4-25 ID conducted over 230 AR 15-6 investigations during the yearlong deployment. They observed no major trends, and no BN had a disproportionate number. Most of the investigations dealt with combat injuries, civilian casualties, escalation of force (EOF), negligent discharges, and other issues, including a "green on blue" shooting (an Afghan Soldier shot a U.S. Airman attached to 4-25 ID).

RECOMMENDATION: JAs and paralegals must be prepared to assist the chain of command and individual investigating officers with 15-6 investigations.[273]

ISSUE: Use of Afghan officer to assist in investigations

DISCUSSION: In certain circumstances, the command determined it was beneficial to have an Afghan assist and/or submit independent facts and findings. While the Afghans did not always accept the offer, the SJA would note whether the Afghans submitted any facts and findings in the legal review.

RECOMMENDATION: Sustain. In sensitive instances, it would be appropriate to have an Afghan assist and/or submit facts and findings for an investigation. This promotes legitimacy when conducting Security Force Assistance (SFA) missions and builds capacity within the host-nation security apparatus.[274]

ISSUE: U.S. on Afghan Army casualty investigations

DISCUSSION: During training, an ODA Soldier was forced to shoot and kill an Afghan National Army (ANA) soldier who threatened U.S. personnel with his assigned M16 weapon. The SOTF immediately initiated an investigation and appointed its Executive Officer (XO) as the investigating officer (IO). The Government of the Islamic Republic of Afghanistan (GIRoA) also initiated an investigation and sent an investigative team, including an investigative lawyer (CID equivalent) and a corps-level chief prosecutor (equivalent to a corps level command Staff Judge Advocate), to interview the Soldiers involved.

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[272] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 236.
[273] *Id.*
[274] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 31.

RECOMMENDATION: SOTF legal advisors should accompany the IO on such sensitive investigations, especially when the host nation sends its own investigative team.[275]

ISSUE: Hostile fire death investigations

DISCUSSION: SOTF legal advisors should be prepared to deal with hostile fire death investigations. The SOTF legal advisor created an easily accessible folder with applicable regulations, forms, and sample formats.

RECOMMENDATION: Improve. SOTF legal advisors should create a hostile fire death investigation SOP before deploying.[276]

ISSUE: Use of Afghan witness statements in investigations

DISCUSSION: JAs should foster relationships with law enforcement professionals (LEPs) and with National Directorate of Security (NDS) prosecutors to help IOs obtain Afghan witness statements to be included in investigations. This was a developing trend towards the end of CJTF-82's deployment.

RECOMMENDATION: Sustain. Utilize brigade contacts and other legal channels to foster working relationships with LEPs and NDS prosecutors in your battle space. This will allow you to direct IOs to individuals able to assist in obtaining Afghan witness statements, which helps legitimize an investigation in the eyes of the Government of the Islamic Republic of Afghanistan (GIRoA).[277]

II.H.2. Line of Duty (LOD) Investigations

ISSUE: Responsibility for initiating line of duty investigations

DISCUSSION: Line of duty investigations are essential. Treating physicians are sometimes unaware it is their responsibility to initiate the form for line of duty reports. Some mistakenly believe there is a requirement for legal input.

RECOMMENDATION: Ensure the medical staff receives education about their specific responsibilities for line of duty investigations. [278]

ISSUE: Filing completed LOD determinations

DISCUSSION: The BJA had to ensure the S-1 was properly filing the determinations of all LOD investigations.

RECOMMENDATION: Improve. LOD determinations are important for documenting Soldiers' injuries, especially when it comes to their later disability ratings. Coordinate with the S-1 before

[275] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 33.
[276] *Id.*
[277] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[278] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 3.

deploying to ensure Soldiers working in the S-1 shop are aware of and understand their requirements in the LOD investigation process.[279]

ISSUE: LOD and 15-6 investigations

DISCUSSION: The BJA ensured, when necessary, the investigator rolled the LOD investigation up with the 15-6 investigation.

RECOMMENDATION: Sustain. This cut down on the number of investigations and made the process more efficient than if there were two separate investigations.[280]

ISSUE: Autopsy results for LODs

DISCUSSION: MND-N was willing to sign off on LOD investigations pending autopsy results if the cause of death was clear and they did not expect the autopsy to show anything relevant.

RECOMMENDATION: Sustain. This was helpful, especially given the BCT waited up to six months for some autopsy results.[281]

ISSUE: Undertrained S1 in LODs

DISCUSSION: Despite clear guidance and regulations, the BCT S1 personnel lacked training on LOD related matters. They often required an inordinate amount of legal assistance, support, and direction on LOD issues.

RECOMMENDATION: Improve. S1 personnel should make sure they understand LOD guidance before deploying.[282]

ISSUE: Triggering events for LODs

DISCUSSION: Although the BJA disseminated information as to when the regulation required LOD investigations, he perceived there were not as many LODs appointed as there should have been.

RECOMMENDATION: Improve. Brief XOs, S1s, and medical personnel early and often as to what situations require LOD investigation.[283]

ISSUE: Obstacles for finding "not in the line of duty due to own misconduct"

DISCUSSION: Formal LOD investigations are typically difficult to complete accurately and in a timely manner in a deployed environment. They become even more difficult if there is a finding that the Soldier sustained the injuries not in the line of duty and due to his or her own misconduct. Whenever there is a finding of not in the line of duty and due to own misconduct, the command must give the Soldier an opportunity to respond before the unit can close the investigation. This can be especially taxing in a combat zone because it is often difficult to locate the injured Soldier.

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[279] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[280] *Id.*
[281] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 230.
[282] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 6.
[283] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 47.

Often, either the unit evacuates the injured Soldier out of theater to get treatment for injuries, or the injured Soldier belongs to a subordinate unit that redeploys before investigation closure.

RECOMMENDATION: The brigade legal section had to be patient when dealing with LOD investigations and made a concerted effort to try to locate the injured Soldier as soon as the requirement to investigate arose.[284]

ISSUE: Duplicative investigations in a death case

DISCUSSION: A Sailor assigned to SOTF-W was killed in action while on patrol with the Marines. SOTF-W was eager to conduct a preliminary inquiry per the JAGMAN in order to ease the pain on the Soldier's Family by providing a timely "in the line of duty determination." However, the Marines wanted to conduct a full command investigation because it was their operation. Conflicts between guidance in the JAGMAN and the standard practice of the two organizations made it unclear whether SOTF-W was able to conduct the preliminary inquiry or whether the USMC command investigation superseded the preliminary inquiry.

RECOMMENDATION: Be prepared to deal with competing interests and know the requirements for certain investigations. Here, applicable regulations clearly stated the Marines should conduct the command investigation.[285]

ISSUE: LODs in suicide cases

DISCUSSION: AR 600-8-4 requires a formal LOD investigation in cases of possible suicide and requires a determination of whether the Soldier was mentally sound at the time of the incident. The presumption is a mentally sound person will not commit suicide. However, the regulation states a deliberately self-inflicted injury by a Soldier who is mentally sound is not in the line of duty. Units commonly confused the presumption regarding a sound mind and incorrectly concluded suicides were due to the Soldier's own misconduct.

RECOMMENDATION: Improve. Legal advisors need to explain exactly what the presumptions in the regulation mean.[286]

ISSUE: Mental evaluation for suicides and attempted suicides

DISCUSSION: Per regulations, LOD investigations require mental health evaluations be obtained for suicide cases. AdLaw engaged the Division mental health officer, who assisted him to obtain adequate and timely mental health evaluations when they were difficult to obtain. Casualty Operations personnel processed the final approved investigation.

RECOMMENDATION: Improve. Citing privacy concerns, mental health officers were reluctant to provide metal health evaluations. In some other cases, the mental evaluations provided were not specific enough or did not address the subject's mental soundness at the time of the incident. AdLaw must work with the unit's mental health officer to identify requirements regarding mental health evaluations for the purpose of LOD investigations. He or she should communicate mental health requirements to BJAs early in the deployment to ensure they advise investigating officers when mental health is an issue. He or she should communicate with Casualty Operations

[284] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 20.
[285] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 38.
[286] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 22.

personnel on a routine basis to ensure information flow from the subordinate units and to keep apprised of the status of investigations.[287]

ISSUE: Line of duty (LOD) and casualty investigations

DISCUSSION: LOD and casualty investigations are much more sensitive than the standard AR 15-6 investigation and require critical information that is sometimes difficult to obtain within the time constraints. AdLaw found Casualty Operations in G-1 often was a great source to obtain critical information needed to complete an investigation.

RECOMMENDATION: JAs, AdLaw attorneys in particular, should develop a good working relationship with the G-1 or S-1 shop—they can be a valuable resource and make your life much easier.[288]

ISSUE: Suicide Prevention Review Board

DISCUSSION: The command was concerned about not only the number of suicides in theater (there were at least two to three per month), but also about the circumstances surrounding some of the suicides. The Suicide Prevention Review Board met quarterly, with JA representation on the board. The command sought input as to what trends the OSJA was seeing from suicide investigations (i.e., issues with immediate supervisors and other members of the chain of command, personal relationship issues, family problems, etc.). The AdLaw section developed a suicide risk probability chart by assigning numbers to different factors (age, number of times deployed, etc.) and tested it against forty suicide investigations. Commanders could use this to input their Soldiers' information and determine which Soldiers had an increased risk of suicide.

RECOMMENDATION: Sustain. JAs are in the unique position to spot trends and warning signs pertaining to suicide by virtue of their review of the investigations.[289]

II.H.3. Mishap and Safety Investigations

ISSUE: Candor in reporting safety mishaps

DISCUSSION: Remember the intent of safety investigations is to prevent a reoccurrence. Candor and speculation are essential in producing an honest report.

RECOMMENDATION: Note. [290]

ISSUE: Priority of investigations

DISCUSSION: Safety investigations take priority over other investigations. Much of the information in safety investigations is relevant in collateral investigations; however, only the factual information may be shared.

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[287] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.
[288] *Id.*
[289] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 88.
[290] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 3.

RECOMMENDATION: IOs conducting collateral investigations should contact the safety investigator to obtain available information.[291]

ISSUE: Importance of safety investigations

DISCUSSION: Safety investigations must take precedence over Financial Liability Investigations of Property Loss (FLIPLs).

RECOMMENDATION: Sustain.[292]

ISSUE: Appointment of safety investigation IOs

DISCUSSION: Safety investigation IOs cannot also conduct a collateral AR 15-6 investigation for the same incident.

RECOMMENDATION: JAs should know that you cannot have the same IO for a safety investigation and a corresponding AR 15-6 and make sure this information gets to commands before they nominate an IO.[293]

II.H.4. Financial Liability Investigations of Property Loss (FLIPLs)

ISSUE: Challenges in a joint environment

DISCUSSION: Sister services have different standards and processes in property accountability. This can be challenging in a joint environment.

RECOMMENDATION: Familiarity with sister services' legal guidance regarding property accountability would be useful when operating in a joint environment. Sharing this familiarity with your J4 and property book officer is also a good idea.[294]

ISSUE: Volume of FLIPLs

DISCUSSION: There was a large volume of FLIPLs especially towards the end of the deployment.

RECOMMENDATION: Legal advisors must be prepared to deal with large volumes of FLIPLs especially towards the end of the deployment. Legal advisors would be prudent to provide FLIPL training to potential IOs before deploying.[295]

ISSUE: Returning legally insufficient investigations to IOs

DISCUSSION: The legal advisor returned several FLIPLs to IOs for being legally insufficient. Legal advisors need to remain the honest broker and send investigations back to the IO when necessary.

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[291] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.
[292] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 161.
[293] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[294] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 40.
[295] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 178.

RECOMMENDATION: Sustain. Legal advisors must not cave to IO pressure to approve an investigation. Legal advisors must be prepared to make hard calls and stand by them.[296]

ISSUE: FLIPL pre-deployment training

DISCUSSION: The BJA dealt with a high volume of financial liability investigations. She became very familiar with the instructions and procedures during the course of the deployment.

RECOMMENDATION: Improve. Read, understand and know AR 735-5. Ensure you build a good relationship with the S4. Expect to train S4 personnel. The most difficult part of a FLIPL investigation is the proximate cause determination.[297]

ISSUE: Investigation of loss of sensitive and controlled items

DISCUSSION: Due to their very nature, more than half of FLIPL investigations related to sensitive items. Supply clerks often classified items as sensitive when they need not be. For example, the carrying case of a hand radio may not have the same "sensitive item" classification as the radio itself.

RECOMMENDATION: Improve. Proper classification of controlled items will reduce your FLIPL workload. Also, understand the level of competency within the supply section is not always the best. Once you arrive in the operational area, have a training checklist for developing expertise within the supply section.[298]

ISSUE: Investigation of sensitive and controlled items

DISCUSSION: Many FLIPL investigations related to sensitive items. Supply clerks often misclassified items as sensitive when not required.

RECOMMENDATION: Improve. Proper classification of sensitive items will reduce the number of FLIPLs requiring General Officer approval or requiring an AR 15-6 investigation. Ensure the legal section understands how to look up FEDLOG identifications by Controlled Item Inventory Codes (CIIC). Judge advocates should reach out to S4 personnel and explain the difficulties of misclassification.[299]

ISSUE: FLIPL update meeting

DISCUSSION: The S-4 held a weekly FLIPL update meeting. A member of the brigade legal team would attend. This afforded the legal shop with crucial situational awareness of the ongoing FLIPLs while fostering a positive relationship with the S-4.

RECOMMENDATION: Sustain.[300]

ISSUE: Avoidance of multiple IOs

[296] *Id.*
[297] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 35.
[298] *Id.*
[299] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 10.
[300] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.

DISCUSSION: In cases where the loss of a controlled item required an AR 15-6 investigation, some units still appointed a separate FLIPL officer. In this situations, the FLIPL officer typically ratified the 15-6 IO's finding of liability without making their own determination as to whether the four elements of financial liability were met.

RECOMMENDATION: Improve. Coordinate with the S4 to ensure they do not seek appointment of FLIPL officers where the loss already requires appointment of a 15-6 IO. Ensure the appointment memorandum for the AR 15-6 investigation includes a requirement to make a finding as to each of the elements for financial liability (responsibility, culpability, proximate cause, and loss).[301]

ISSUE: Follow the procedural requirements for FLIPLs

DISCUSSION: Apply FLIPL timelines stringently. They are there for the Soldier's protection.

RECOMMENDATION: Sustain.[302]

ISSUE: Commander pre-judging FLIPL findings

DISCUSSION: Unfortunately, on some occasions commanders predetermined a Soldier's fault/liability for property loss and passed the presumptions on to the investigating officers (IOs). They then felt compelled to reach the preconceived decision. These instances result in the legal staff having to do extra work to unravel the presumptions and get the investigation back on track. Dealing with stubborn commanders can be demanding, and their resistance to giving up their predeterminations appears to stem from a lack of understanding of the concepts of responsibility negligence, and proximate cause, which are essential to findings of liability.

RECOMMENDATION: Improve. While most commanders are objective and await the IO's findings, there are occasional "rush to judgments" a JA has to remedy. Accordingly, legal staffs may have to educate strong-minded commanders on the finer points of the FLIPL process and liability fundamentals.[303]

ISSUE: Volume of FLIPLs

DISCUSSION: The brigade had over 50 FLIPLs in its year rotation. This was in large part due to the composition of the different task forces, which consisted of different aviation units, i.e. attack and lift. In order to improve accountability practices, the TF Thunder commander mandated quarterly 100% inventories.

RECOMMENDATION: Be prepared to deal with FLIPLs. While 100% inventories may help improve accountability practices and alleviate FLIPLs, property accountability remains a personal responsibility.[304]

ISSUE: S-4 interaction on FLIPLs

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[301] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 36.
[302] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 3.
[303] 1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09, *supra* note 146.
[304] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.

DISCUSSION: A positive working relationship with the S-4 shop is crucial. The TF Thunder BJA met regularly with the brigade S-4 and executive officer (XO) relating to FLIPLs. Having visibility on issues allowed the BJA to provide the TF Thunder commander with relevant advice on ongoing FLIPLs.

RECOMMENDATION: Sustain.[305]

ISSUE: Legal review of FLIPLs

DISCUSSION: The CG required the legal office to look at all FLIPLs, regardless of whether there was a recommendation of liability.

RECOMMENDATION: This may have been overkill. While the legal office will do what the command directs, imposing a legal review requirement where none previously existed comes with a time cost for the legal office. Ensure the trade-off is worth it to the command.[306]

ISSUE: Understanding proximate cause

DISCUSSION: Many IOs were unable to grasp the concept of proximate cause. This led to the BJA making recommendations to the command in conflict with the IO's findings.

RECOMMENDATION: Continue trying to explain proximate cause to IOs and ensure the in-brief to the IO adequately covers this point.[307]

ISSUE: Potential conflicts of interest in reviewing FLIPLs

DISCUSSION: The TC conducted all legal reviews of FLIPLs. This allowed the BJA to advise the command without creating a conflict.

RECOMMENDATION: Sustain.[308]

ISSUE: TC conducting legal reviews of FLIPLs

DISCUSSION: While having the TC conduct FLIPL legal reviews allowed the BJA to advise the command, it also caused some friction between battalion commanders and the TC. The TC often had to tell the command they could not do what they wanted to do in this area.

RECOMMENDATION: The fact the brigade had nine battalions made this situation inevitable. JAs should be prepared for competing interests and attempt to educate commanders at all levels before deployment.[309]

ISSUE: S-4 tracking of FLIPLs

DISCUSSION: The S-4 was responsible for tracking of all FLIPLs.

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[305] *Id.*
[306] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.
[307] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[308] *Id.*
[309] *Id.*

RECOMMENDATION: Sustain. However, JAs should monitor FLIPLs closely to rebut any erroneous comments from the S-4 that the FLIPL is "with legal."[310]

ISSUE: FLIPLs requiring AR 15-6 investigations

DISCUSSION: When the loss of property triggered both an AR 15-6 investigation and a FLIPL, the BCT practice was to appoint a single IO to handle both the 15-6 and all FLIPL requirements. This included making specific findings on the elements of liability under AR 735-5, as well as notifying the respondents of financial liability.

RECOMMENDATION: Sustain. Coordinate with the S4 to ensure they know when a FLIPL requires an AR 15-6 investigation. Ensure the BCT has a standard procedure for handling such situations.[311]

ISSUE: FLIPL approval authority

DISCUSSION: For lost sensitive items, the FLIPL approval authority was a two-star command, the 1st Theater Support Command. The appointing authority was the brigade commander. Many of the sensitive items were organic National Guard property. The redundancy in the process caused delay and reduced the amount of time for correction of minor errors by the investigating officer. The multiple levels of review adversely affected the timely completion of many routine FLIPLs.

RECOMMENDATION: Improve. One possible solution might be to consolidate approval authority and appointing authority at the brigade level for low value sensitive items or National Guard property. However, this would require a regulatory change. Another option might be to limit legal reviews to only the approval authority.[312]

ISSUE: Treatment of night vision devices (NVDs) as sensitive items

DISCUSSION: NVDs comprised the majority of lost sensitive items. Historically, NVDs were expensive items with limited distribution, mainly to leadership. In the current operational environment, individual riflemen received NVDs, and the loss or destruction of NVDs was commonplace. Treating each set of NVDs as a sensitive item requires a disproportionate amount of resources to process the FLIPL. Removing NVDs from the sensitive items list would greatly reduce the amount of resources devoted to FLIPLs.

RECOMMENDATION: Improve. Remove NVDs from the U.S. Army Central Command (ARCENT) sensitive items list.[313]

ISSUE: FLIPL training for investigating officers

DISCUSSION: The destruction and loss of property in convoy operations is a certainty. The FLIPL investigation process can be complex, particularly for an inexperienced investigating officer. In the deployed environment, the commander needs a cadre of personnel trained to

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[310] *Id.*
[311] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 47.
[312] 29th IBCT (HIARNG), OIF AAR, OCT 08 - AUG 09, *supra* note 138.
[313] *Id.*

conduct FLIPLs. There are excellent training programs available in theater. Additionally, FLIPL training at the mobilization training center (MTC) would be beneficial.

RECOMMENDATION: Improve. Establish FLIPL training for investigating officers at MTCs or leverage the training units in theater have developed.[314]

ISSUE: Staying on top of FLIPLs

DISCUSSION: A predecessor unit fell badly behind on their FLIPLs. It was still processing them until just before leaving theater.

RECOMMENDATION: TF Storm did not make the same mistake. The brigade commander stated the efficient processing of FLIPLs was important to him. This helpful command direction ensured the brigade kept the battalions up to the mark. Commanders will make things happen.[315]

ISSUE: Interaction with the S-4 and Property Book Officer (PBO) on FLIPLs

DISCUSSION: The S-4 and PBO are uniquely qualified in their respective areas. The battalion legal advisor worked closely with the PBO and S-4 on all FLIPLs to ensure the accuracy and timeliness of the investigations.

RECOMMENDATION: Sustain. In order to stay abreast of potential issues within the battalion, be prepared to synchronize and work with other staff sections on a variety of issues even when some of those duties are not traditionally performed by a judge advocate.[316]

ISSUE: Initiating FLIPLs in a timely manner

DISCUSSION: Commonly during a deployment, equipment will turn up missing, broken, or destroyed. When this happens, there is a requirement for a FLIPL. A problem many units encounter towards the end of their deployments is the hassle of conducting FLIPLs.

RECOMMENDATION: Do not put off conducting FLIPLs until the end of the deployment. Start them early. When equipment turns up missing, make a good faith effort to find it and then start the FLIPL right away.[317]

ISSUE: Navy's unfamiliarity with FLIPLs

DISCUSSION: Although the Navy uses DD 200s for conducting property loss investigations, its procedures are substantially different from the Army's. SOTF-W falls under CJSOTF-AP, which is an Army command. Therefore, when SOTF-W sent its FLIPLs to CJSOTF-AP, it was required to present them in the Army format. The JA utilized AR 735-5 and drafted appointment letters to help the investigating officers (IOs) answer all relevant questions needed for a legally sufficient investigation.

RECOMMENDATION: JAs need to be aware of the different investigations used in other branches of service and adapt practices to familiarize people with Army Regulations.[318]

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[314] *Id.*
[315] 168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09, *supra* note 128.
[316] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 98.
[317] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 20.

ISSUE: Processing FLIPLs resulting from combat loss

DISCUSSION: Some units had the misconception they could write off damage or loss of government property as a "combat loss." However, the Division OSJA ensured units generated FLIPLs in cases of destruction due to combat and improvised explosive devices (IEDs). They also ensured units understood they might be liable for loss of government property due to failure to secure high cost or sensitive items.

RECOMMENDATION: Administrative law attorneys should understand Chapter 13 of Army Regulation (AR) 735-5 and prepare a checklist for reviewing FLIPLs. The Division OSJA should consider a policy of not requiring a legal review where the loss clearly appears to be the result of combat and there are no indications of negligence.[319]

ISSUE: Delays in completing FLIPLs

DISCUSSION: Army Regulation (AR) 735-5 requires IOs to complete FLIPLs within 75 days. If a FLIPL took longer than 75 days to complete, AR 735-5 requires an exhibit detailing the delay. Almost all FLIPLs took longer than 75 days to complete; almost none of them contained the exhibit.

RECOMMENDATION: Improve. Detailed training coupled with a reminder that the investigation is now his/her primary duty was still not enough to ensure the IO timely provided a properly conducted FLIPL. Enforce repercussions for missing suspenses.[320]

ISSUE: Marine's unfamiliarity with FLIPLs

DISCUSSION: Marines do not commonly conduct FLIPLs except when serving under Army commands in an operational environment.

RECOMMENDATION: Marine JAs need to learn early on in the deployment how to do FLIPLs. JAs should get with the S-4 or supply shop to get an example of a good FLIPL. This will help not only in understanding the format, but also with knowing the FLIPL jargon/lingo.[321]

ISSUE: FLIPL review process

DISCUSSION: AdLaw completed a second FLIPL review of sensitive items or items valued more than $100,000. After the legal review, he returned the FLIPL to the G4 for final processing and approval with the Deputy Commanding General-Support (DCG-S). AdLaw reviewed all FLIPLs for the Division Special Troops-Battalion (DSTB).

RECOMMENDATION: Sustain. AdLaw should get to know players in the G4 before the deployment and communicate with them on a regular basis. AdLaw should communicate with the BJAs and keep them informed as the FLIPL goes through the approval process. The key is constant communication between the G4 Sergeant Major (SGM) and AdLaw section.[322]

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[318] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 38.
[319] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 22.
[320] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[321] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 101.
[322] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.

ISSUE: Importance of educating subject matter experts

DISCUSSION: The legal advisor worked closely with the S-4 and property book officer (PBO) to educate them in theater on AR 735-5.

RECOMMENDATION: Improve. Legal advisors and JAs must educate the S-4, PBO, and all potential FLIPL investigating officers on AR 735-5 before deployment.[323]

ISSUE: FLIPLs and 15-6 investigations

DISCUSSION: The SOTF legal advisor would combine these investigations, drafting the appointment orders in such a way the 15-6 IO would also make the findings required for a FLIPL. This process reduced work load for the SOTF, as it previously conducted two separate investigations for sensitive item FLIPLs.

RECOMMENDATION: Sustain.[324]

ISSUE: Educate the S-4 on FLIPL investigation procedures

DISCUSSION: The SOTF legal advisor worked closely with the S-4 on FLIPLs. Educating the S-4 on AR 735-5 proved helpful.

RECOMMENDATION: Sustain.[325]

ISSUE: FLIPLs and 15-6 investigations

DISCUSSION: The battalion legal advisor would combine these investigations, drafting the appointment orders in such a way the 15-6 investigating officer (IO) would also make the findings and recommendations required for a FLIPL.

RECOMMENDATION: Sustain.[326]

ISSUE: Training potential FLIPL investigating officers

DISCUSSION: The legal advisor provided a training brief to potential FLIPL investigating officers before deploying.

RECOMMENDATION: Sustain.[327]

ISSUE: J-4 responsibility

DISCUSSION: CJTF-82's J-4 tracked all FLIPL investigations. The J-4 also provided investigation resources to IOs and kept the administrative law section in the loop.

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[323] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 161.
[324] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 33.
[325] *Id.*
[326] 3/3 SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 132.
[327] *Id.*

RECOMMENDATION: When the J-4 is capable, allow that section to drive the processing of FLIPLs to the fullest extent.[328]

II.I. Labor/Employment Law

ISSUE: Use of labor law reach-back in Germany

DISCUSSION: The USAREUR labor law attorney in Heidelberg was invaluable. Lacking any expertise in labor law, the unit referred all labor law issues back to the USAREUR attorney.

RECOMMENDATION: The USAREUR JA office contains expertise in just about every legal discipline. Use this resource if you lack sufficient in-house knowledge in an area of the law.[329]

ISSUE: Contractor personnel disputes

DISCUSSION: The OCJA received constant requests for assistance on disputes between contractors and contractor employees. Contractor employees especially believed, mistakenly, the OCJA was some form of contractual ombudsman for contractor employee disputes. Minor disputes between contractors and their employees are surprisingly common. Disputes can include issues like emergency leave for employees, pay, living conditions, interpretation of personnel contracts, and "jumpers" and "squatters" ("Jumpers" are individual employees who have transferred from the employment of the contractor who deployed them to Iraq to a new in-country contractor, while "squatters" are employees who no longer have a contract but have not gone home).

RECOMMENDATION: It is sometimes possible to resolve these disputes by being an honest broker for both parties, but there is an obvious risk of being drawn into a dispute that is no business of the U.S. Army or that could have implications for performance of the contract with the U.S. It would be helpful if there was a formal ombudsman or mediator within the garrison command or Corps level who could resolve these disputes. A contract clause through the Federal Acquisition Regulation (FAR) or otherwise addressing the authority for a mediator/ombudsman of this type might be necessary.[330]

ISSUE: Hiring of highly qualified experts

DISCUSSION: The command wanted to hire a particular recently-retired general officer to head a directorate. Under 5 U.S.C. § 9903, DoD may hire a "highly qualified expert" (HQE), which is an individual possessing expert knowledge or skills not available within DoD but are needed to satisfy an emerging and relatively short-term, non-permanent requirements. HQEs are excepted service employees, and as such do not go through the competitive service hiring process.

RECOMMENDATION: Exercise caution when hiring a recently retired military member as an HQE. The fact that the individual recently worked in the military may be an indicator his or her particular expertise is available elsewhere in DoD. Also, AdLaw attorneys need to verify whether

[328] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[329] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.
[330] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 5.

the authority to hire HQEs will still exist with the repeal of the National Security Personnel System (NSPS) under the FY2010 National Defense Authorization Act (NDAA).[331]

ISSUE: Need for employment law at NG unit

DISCUSSION: One of the concerns NG Soldiers face when serving a long deployment is the potential of losing their employment back home. Fortunately, one of the four JAs that deployed with 30th HBCT specialized in employment law in his civilian practice. The BJA found having an employment law attorney to be indispensable.

RECOMMENDATION: Sustain. JAs in NG or Army Reserve units need to be familiar with employment law.[332]

II.J. Law of Military Installations

ISSUE: Administrative bar letters for contractors

DISCUSSION: Occasionally, a civilian contractor will engage in inappropriate conduct that violates a provision of the general orders. While such misconduct does not usually warrant criminal charges, a commander will want the offender removed from the property. The most expedient way to do this is to have the commander sign an administrative bar letter. Typically, commanders request the JAs to write a draft of the letter for their signature.

RECOMMENDATION: Sustain. Administrative bar letters are an effective means to get rid of troublesome contractors on deployments.[333]

ISSUE: Authority to use airfield to deploy unmanned aerial vehicles (UAV)

DISCUSSION: The CAB commander is responsible for airfield operations; however, the commander is not the owner of the aircraft. UAVs did not operate from the airfield (take-off or land) in conditions outside of established parameters. Units operating UAVs required higher authority to operate the aircraft outside of "pre-established" operational thresholds. The Army considers UAVs aircraft, rather than merely "unmanned" weapon systems.

RECOMMENDATION: Sustain. Closely monitor UAV operations. Strict adherence to operations requirements will reduce the number of incidents requiring safely or other legal investigation.[334]

ISSUE: Mayor's Cell asserting command authority

DISCUSSION: The "Mayor's Cell" acted at times as a garrison commander and asserted command authority over Soldiers assigned to the base. The purpose of the Mayor's Cell is the operation of the forward operating base (FOB). Its only authority is over its own organic Soldiers, unless delegated authority from the higher commander, such as MND-B or MNC-I.

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[331] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.
[332] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 20.
[333] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 175.
[334] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 10.

RECOMMENDATION: Improve. A good relationship with the Mayor's Cell is critical, but do not assume the authority it asserts is necessarily correct. Ensure the military police understand that Mayor Cells do not have command authority for probable cause searches and seizures.[335]

ISSUE: Barring individuals from Camp Bondsteel in Kosovo

DISCUSSION: The Camp Bondsteel Chief of Staff (CoS) could deny entry to Camp Bondsteel for anyone. This was a very powerful stick.

RECOMMENDATION: Because of the severe nature of this sanction, the unit determined it was best to reserve this power for use in cases where there was no other alternative. For example, it was better for a contractor to simply fire misbehaving contractor personnel than it was to bar the personnel from the camp for the misconduct.[336]

ISSUE: Need for JAs to provide installation legal advice

DISCUSSION: The Air Force ran the garrison mission at FOB Warrior, and an Air Force officer was the installation commander. However, their legal support was at Balad. The command sometimes contacted the BCT JAs for assistance with their legal issues, such as advising on criminal investigations.

RECOMMENDATION: Improve. Sister service installation commanders need to have their own attorneys present to advise on installation legal issues.[337]

ISSUE: Third country nationals (TCNs) residing on the FOB

DISCUSSION: Certain TCN vendors and contractors had authorization to reside on FOB Warrior. However, a situation arose in which some TCNs were residing in an old Iraqi gymnasium on the FOB and continuously adding plywood "apartments" in and around the building. In addition to questions of the legality of this practice, there were concerns about security and safety. The installation commander eventually placed a moratorium on new local national (LN) and TCN vendors on the FOB. Because the installation commander's legal staff resided at Balad, the brigade legal section was not heavily involved in the legal issues with this practice, which remained unresolved at the time of redeployment.

RECOMMENDATION: Improve. Installation commanders need to have their own attorneys present to advise on installation legal and policy issues.[338]

ISSUE: Debarment program

DISCUSSION: A debarment program provides a process for excluding individual contractors and, arguably, entire companies from the territory of U.S. bases. The fragmentary order (FRAGO) delegating authority to the garrison command specifically referenced debarring companies, while the MNC-I documents on debarment referred to barring "persons." It is a powerful tool for ensuring good behavior amongst contractors because if the contractor or

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[335] *Id.*
[336] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.
[337] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 230.
[338] *Id.*

contractor personnel is barred from one base in theater, they are barred from all bases in theater, and they invariably lose their jobs. Thankfully, most of the offenses contractors commit are relatively trivial. Breaches of GO#1, particularly possession of contraband, make up the majority of cases of contractor misconduct. During the deployment, the command debarred almost 300 contractor personnel.

RECOMMENDATION: Sustain. Be aware reasonable lawyers disagree as to whether one can or should debar an entire company. Those who think it incorrect might reflect on how they would deal with a company that exhibits a flagrant and institutional disregard for required standards of conduct. However, debarring a company can have widespread and undesirable consequences, so ensure that you know the second and third order effects of a debarment and whether some lesser action could equally address the institutional disregard of standards of conduct.

Accurate and complete information on existing contracts is particularly difficult to pin down, affecting the ability to assess the full effect of a debarment. In one instance, the command was told there was only one existing contract for a company which was due to expire in a matter of weeks, which was true for the garrison, but there were other significant contracts on installations throughout the theater. If you feel you have no other option than to exercise this action with a company, issue a show cause order to the company initially (not the debarment letter) and make them come in to address the institutional disregard issues and to show the full extent of their contracts. Also consult closely with your higher headquarters and the contract administrator (the administrator will need to find a new contractor).[339]

ISSUE: Land use permits

DISCUSSION: Land use is a complex issue on a large, long-term base with a large number of very different users. Standard land use permits will help to simplify and clarify the situation. The U.S. "owns" the land on a base—not as a property right but in the sense of controlling who has the ultimate permission to use the land as necessary. Accordingly, permits for land use do not create any property interest or enforceable contractual entitlement, but they are essential in creating a shared understanding for how the land will be used. The type of rights and privileges to be granted must be considered. Potentially, the land use authorization might be a revocable license, a lease, or some other form of agreement; however, the limits on the interest the U.S. holds in the land make leases or true contract agreements problematic. A land use authorization to a military unit allows for greater flexibility in terms of rights granted under the authorization.

RECOMMENDATION: Wherever possible, standardize land use permits across the theater. Use the right nomenclature and be careful that your land use document does not grant a property interest beyond what you intend. With non-military or non-U.S. users, avoid creating enforceable rights in the user. The authorization you grant should consider the rights the U.S. has in the land under agreements with the host country, the proposed uses of the property (who will be on the property doing what), and the potential impact the use will have on surrounding uses and those on the premises.

The suggested contents of a permit include the following: period of grant; permitted uses; restricted uses; improvements; the validation and justification for the grant; termination; responsibility for providing life support; conditions not directly related to land use (e.g. living conditions; responsibility for employees; liability for employee misconduct; regime for

[339] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 5.

compliance inspections, etc.); environmental compliance; reassignment and reallocation of space procedure; right of U.S. entry; abandonment; and evictions.

If you need a precedent for billeting/living conditions, look to the Occupational Safety and Health Administration (OSHA) federal regulations on the standards required for labor camps. The OSHA regulations were more comprehensive than the equivalent CENTCOM published Sandbook standards and were drafted specifically for personnel camps of an "expeditionary" nature. They were also more convenient because contractors were familiar with them from their work in the U.S.[340]

(ISSUE: Evictions from land and notices to vacate

DISCUSSION: It may be necessary to evict a land user from the installation. The grounds for eviction might include violation of land use permit conditions, hold-overs from expired permits, and simple squatters. There is an arguable point as to whether different users in violation should be treated differently for purposes of the eviction process.

RECOMMENDATION: It is best practice to establish and follow a standard procedure as far as possible. A model procedure will include issuing notices, providing a process for the land user to discuss the eviction, what circumstances might allow a right to cure, the U.S. Government's right to remove, and the disposition of property on eviction. The notice to vacate should include a statement that failure to vacate and presence on the property constitutes a trespass under applicable federal statute and the UCMJ and such a notice should also be posted on the property.[341]

ISSUE: Lost and abandoned property

DISCUSSION: When land users vacate, they may leave behind items of personal property. Items can vary from the personal possessions of an individual to large industrial structures. For example, there were two large cranes left on VBC. You will need to have a procedure for dealing with lost and abandoned property.

RECOMMENDATION: Your procedure will need to consider the following points: the definition of lost and abandoned property; the process for determining the owner; a method for resolving cases of disputed ownership; when to claim a U.S. interest in the property (and determining who amongst competing U.S. interests gets the property); and the proper disposition and disposal of the property. Once again, ensure you know the regulations for the correct disposal of lost property. [342]

ISSUE: The taking or reverse condemnation of contractor's property

DISCUSSION: The following situation illustrates what may happen when a contractor vacates a piece of land. In this situation, the U.S. ordered a contractor to vacate land it was occupying, but to leave on the premises a building the contractor had built. U.S. forces, or those working on their behalf, needed the building. The construction of the building then became highly relevant. If the building was permanent, it would become U.S. property when the contractor vacated the land. However, if the building was merely a temporary structure, it would remain the contractor's

[340] *Id.*
[341] *Id.*
[342] *Id.*

property, and the company would be entitled to remove it when they vacated the land. There was disagreement about whether the building was a permanent structure. In the end, resolution occurred through a complicated ratification process that involved reaching back to U.S. Army Central Command (ARCENT) for prior year funds. This highlights the type of very complicated commercial disagreements that can occur during a drawdown.

RECOMMENDATION: Cover this issue with your terrain management section and commander before deploying. Impress on them that this is not the type of decision that should be made at the mayor's cell level or made without legal review and approval. Acquisition of personal property or characterization of buildings as permanent or temporary should be coordinated with the appropriate contracting agency and property acquisition agency (U.S. Army Corps of Engineers (USACE), or other acquisition authority). It is better to handle this situation as an equitable adjustment under an ongoing contract than as an unauthorized commitment, particularly when the person/unit making the unauthorized commitment has redeployed two years before the ratification process is begun.[343]

ISSUE: Third party disputes on U.S. installations

DISCUSSION: Never underestimate the appetite for third parties to seek to draw you into their disputes. The "tempest in a teapot" (so called because both the companies in dispute had 'Al Dalla' (Arabic for teapot) in their names) was one of these episodes. Two Iraqi companies were in dispute about the ownership of some Containerized Housing Units (CHUs) and other personal property in their personnel camp and work area on VBC. They did not want to go to the Iraqi courts to resolve the situation. They wanted the OCJA to make a determination on the ownership question. The OCJA, quite understandably, refused to become involved in the dispute. However, the problem needed resolution—the owner of the CHUs had to move them, and the land was needed. Consequently, OCJA did find itself acting as a mediator between the parties. In the end, the dispute was resolved, and both companies signed waivers with release and hold harmless clauses in favor of the U.S. Government.

RECOMMENDATION: Be prepared to act as a mediator, but ensure you do not do so without the necessary waivers and protections. Do not try to act as judge and take every opportunity to encourage the parties to use the local courts to resolve their dispute.[344]

ISSUE: Bringing Iraqi banks and businesses onto VBC

DISCUSSION: The most important program during the deployment was bringing Iraqi businesses onto VBC, including the establishment of an Iraqi bank. This issue will assume increasing importance as we drawdown U.S. forces in Iraq. The program is called "I-BIZ" (short for "Iraqi Businesses"). I-BIZ is explained in detail in the I-BIZ tab of MNC-I OPORD 09-01. There are a number of purposes to the scheme. The primary purpose is that economic development from sustainable businesses is an important enabler for promoting a stable environment. I-BIZ will also build human capital by teaching Iraqis modern business practices and skills. I-BIZ firms have the advantage of a good secure location within VBC. The location gives them improved access to U.S. contracts. The scheme is best suited to small-scale single businesses.

[343] *Id.*
[344] *Id.*

RECOMMENDATION: Sustain. The I-BIZ program supplements the "Iraqi First" program provides an excellent method to transfer services into Iraqi hands. Further details on the I-BIZ program are on file with CLAMO.[345]

ISSUE: Command policy letters

DISCUSSION: The OSJA did not have the opportunity to review the CG's command policy letters before they took effect. Although the authors may have intended some of the policies letters to be punitive, such as those concerning off limits areas and uniform policies, the authors of the letters did not make this clear. In addition, there were some types of policies which MNC-I had, but which MNSTC-I did not have initially (such as the policy on weapons status). MNSTC-I did not publish the latter until after there was a weapons incident.

RECOMMENDATION: Improve. The command group should staff all command policy letters through the OSJA to ensure the language accomplishes the commander's intent.[346]

ISSUE: Administrative bar letters for contractors

DISCUSSION: Some civilian contractors engaged in inappropriate conduct and activities that violated general orders (e.g. consuming alcohol). The misconduct did not warrant criminal charges, but the BCT commander wanted to remove them from the 4-25 AO. JAs drafted administrative bar letters, which were an immediate solution to dealing with such problems.

RECOMMENDATION: Sustain. JAs must coordinate with higher headquarters to ensure BCT-level bar letters are expanded into theater bar letters, which ban the contractor from working in theater.[347]

II.K. Medical Issues

Medical Treatment of Non-Military Personnel

ISSUE: Medical care to contractors

DISCUSSION: The command provided medical care to contractors, keeping in mind ethics regulations and fiscal limitations.

RECOMMENDATION: Sustain. The contractor was responsible for caring for its employees and their medical concerns. Even though only limited medical care is legally available to contract employees, knowing they had a place to turn if necessary increased contractor morale and productivity. Have a JA with a contract law background review contracts to determine if medical care is permissible under the contract.[348]

ISSUE: Civilian medical treatment

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[345] *Id.*
[346] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.
[347] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 236.
[348] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 10.

DISCUSSION: An Afghan civilian received medical treatment at a U.S. facility for a non-combat related incident. The unit wanted to fly the individual home after treatment. Providing non-emergency return transportation would have violated fiscal law.

RECOMMENDATION: JAs should anticipate such matters and need to be aware of controlling medical ROE. An established relationship with United Nations High Commissioner for Refugees (UNHCR) personnel assigned to the area can provide access to transport resources. In the alternative, work with a non-governmental organization (NGO) or similar organization to provide transportation.[349]

ISSUE: Preparation for potential H1N1 virus outbreak

DISCUSSION: Due to the potential for late deployers and Soldiers returning from rest and recuperation (R&R) leave to carry the H1N1 ("swine flu") virus into theater, the BCT came up with a plan to deal with the possibility of an outbreak. The BJA advised military necessity justified quarantine of such Soldiers.

RECOMMENDATION: Sustain. Keep abreast of health issues worldwide that could affect operations.[350]

ISSUE: Determining who can receive medical services

DISCUSSION: Kosovo is moving towards insurance-based medicine. The unit cannot simply provide services to everyone. Doing so is no longer appropriate. Knowing up front whom the unit can treat is important. It is also important information for the medical personal and the G-3 staff, not just the legal staff.

RECOMMENDATION: The briefing on this subject (sometimes called the "medical ROE") at Camp Atterbury is very important. Ensure more than just the legal personnel attend.[351]

ISSUE: Doctors' reluctance to release Soldiers' medical records

DISCUSSION: Doctors were reluctant to release Soldiers' medical records for fear of violating the Health Information Portability and Accountability Act (HIPAA). The mobilized reservist JA drafted a point paper with supporting documentation to alleviate the doctors' concerns. These concerns were prevalent throughout the Division area.

RECOMMENDATION: Sustain. JAs should be prepared to deal with HIPAA and have a plan in effect before deployment. This is a matter of great importance to the medical community.[352]

ISSUE: Narcotics accountability

DISCUSSION: Distributing narcotics is a SOTF medical section function. However, inadequate or lax accountability of narcotics will undoubtedly bleed over into the legal section.

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[349] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[350] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 36.
[351] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.
[352] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.

RECOMMENDATION: Work with the medical section before deployment to ensure adequate accountability measures are in place for all narcotic drugs distributed to medical personnel in theater.[353]

ISSUE: Medical treatment of local nationals (LNs)

DISCUSSION: Historically, MNF-I had been approving exceptions to policy to provide medical care to LNs for other than life, limb, and eyesight emergencies. The staff and command wanted to provide this treatment in the best interest of the U.S. Requests went through the MNC-I command group, and the MNC-I AdLaw office reviewed them prior to forwarding for approval to MNF-I. However, when I Corps took over, the CENTCOM OSJA questioned the legal authority for providing non-emergency medical care to LNs. The basis MNC-I had been citing was a provision in the medical chapter of MNF-I Regulation 11-1 allowing exceptions to policy to provide medical care for LNs. The MNF-I OSJA could not explain from where this authority came. Ultimately, both MNC-I and MNF-I agreed there was no in-theater authority to approve non-emergency LN medical care. The only options were to seek Secretarial Designee status for the LNs or to obtain a delegation to approve care for "special foreign nationals" under Army Regulation (AR) 40-400, paragraph 3-20. The Secretarial Designee process was time-consuming and not responsive to the command's desire to approve immediate treatment when providing care would further U.S. interests. The AdLaw section forwarded command requests for delegations of authority to approve medical treatment of "special foreign nationals" under AR 40-400. However, the regulation was unclear as to who could designate "special foreign nationals." Central Command (CENTCOM) said Army Central Command (ARCENT) could do so, but ARCENT said CENTCOM had to do it. CENTCOM's position was that MNC-I should continue to submit requests for Secretary of the Army Designee status. AdLaw drafted criteria for submission of Secretarial Designee status requests, which the Corps Surgeon disseminated to the theater. AdLaw also engaged U.S. Army Medical Command (MEDCOM) on the need to clarify AR 40-400. This resulted in a rapid revision to the regulation (dated 27 January 2010) that made some changes to paragraph 3-20f to make it clearer that ARCENT, as an Army Service Component Command, could designate special foreign nationals and could delegate this authority. The Rapid Action Revision was later withdrawn, and the legal authority to provide treatment to special foreign nationals has, once again, become unclear.

RECOMMENDATION: Improve. There needs to be clear guidance on medical treatment of LNs (e.g., approval authorities, criteria, fiscal implications, follow-up care, request procedures) when going into a combat theater. The command and staff need to understand the limits of authority to provide medical care to LNs and ensure they provide clear guidance to subordinate units. AR 40-400 should be further revised to provide better guidance on this issue.[354]

ISSUE: Medical ROE

DISCUSSION: The SOTF-C surgeon was responsible for drafting and complying with the medical ROE. The legal advisor would review and offer assistance when the SOTF-C surgeon requested.

RECOMMENDATION: Legal advisors should be aware of the medical ROE and assist the SOTF surgeon when necessary.[355]

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[353] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 33.
[354] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 88.
[355] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 178.

ISSUE: Medical ROE

DISCUSSION: Several investigations raised issues regarding the medical ROE. The chief of administrative law was familiar with the medical ROE and sought additional information regarding the medical ROE when necessary from the CJTF-82 Surgeon cell.

RECOMMENDATION: Sustain. JAs should know a medical ROE exists and have at least a cursory understanding of it.[356]

II.L. Military Personnel Law

ISSUE: Timeliness of rank reductions for Soldiers in Kosovo

DISCUSSION: Rank reductions did not occur in a timely manner. The KFOR legal office routed rank reductions through the State SJA to the state G-1. There were disconnects that resulted in significant delays in reductions for some Soldiers.

RECOMMENDATION: The deployed legal office should have direct access to reduction resources.[357]

ISSUE: Tattooing

DISCUSSION: AdLaw discovered Soldiers were performing amateur tattooing at Camp Liberty. When they discovered this, they immediately informed those involved that tattooing was not an advisable activity for not only legal reasons, but medical as well.

RECOMMENDATION: JAs need to be on the lookout for the crazy things Soldiers will try to do in a deployed environment. Ensure that you are approachable, but also a voice of reason.[358]

II.L.1. Administrative Separations

ISSUE: Inconsistent medical screening for separations

DISCUSSION: The medical staff was reluctant to conduct mental evaluations as part of the separation process. Some CONUS transition points would not accept the separation paperwork if the unit completed the mental evaluation in the area of operations.

RECOMMENDATION: Improve. Provide additional mental health care providers downrange. Be sensitive to the requirement of home station civilians. Before going downrange, develop relationships with the garrison mental health care providers.[359]

ISSUE: Separating National Guard (NG) members

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[356] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[357] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.
[358] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.
[359] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 35.

DISCUSSION: The unit had very little problem separating active duty soldiers. However, the separation authority for the National Guard (NG) members is their state's Adjutant General. The deployed brigade commander only had the authority to separate the Soldier from active duty. On several occasions, some of the problem soldiers reappeared in the area of operations with another unit.

RECOMMENDATION: Improve. Streamline the medical separation procedure to provide consistent results among the many state NG units.[360]

ISSUE: Release-from-theater letter for administrative separations

DISCUSSION: A release-from-theater letter allowed administrative separation processing to continue. Until the unit obtained such a letter, the Soldiers remained on the deployed unit's manning document.

RECOMMENDATION: Improve. Closely monitor the status of personnel in the process of administrative separation. Soldiers will remain on the "forward deployed books" until properly released from theater.[361]

ISSUE: Administrative separation and mental health screening

DISCUSSION: Medical staff prepared mental health evaluations as part of the separation process. The screening occurred as quickly as 72 hours.

RECOMMENDATION: Sustain. Prepositioned medical staff was extremely helpful in ruling out metal health issues, allowing separation processing of individuals where the basis was misconduct.[362]

ISSUE: Pre-deployment administrative separations

DISCUSSION: The BJA decided to clear all pending separations before deploying. While time consuming, this course of action paid off by reducing the number of problem Soldiers in theater.

RECOMMENDATION: Sustain.[363]

ISSUE: In-theater separations

DISCUSSION: The brigade legal team coordinated with units to ensure Soldiers pending separation completed most of the requisite paperwork and medical screenings before the brigade sent the Soldiers home.

RECOMMENDATION: Sustain.[364]

ISSUE: Release from theater of separated Soldiers

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[360] *Id.*
[361] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 10.
[362] *Id.*
[363] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[364] *Id.*

DISCUSSION: The battalion (BN) commanders received authority to approve certain administrative separations. However, the MND-B commanding general (CG) retained the authority to release Soldiers from theater. Numerous situations arose where BN commanders approved separation packets, but the BCT commander did not want to send them to the CG because the CG did not routinely release personnel from theater.

RECOMMENDATION: If division has such a policy, JAs need to include this in their advice to the separation authority. Ask the division OSJA to clarify the application of the policy to administratively separated Soldiers.[365]

ISSUE: Processing administrative separations for National Guard Soldiers

DISCUSSION: National Guardsmen administratively separated in theater were not completing the demobilization process.

RECOMMENDATION: Ensure the deployed chain of command maintains accountability for a separating Soldier until the Soldier receives his DD214. CJA personnel should attempt to establish contact with National Guard SJA personnel in higher headquarters (either in theater or in the Soldier's home state) to further coordinate processing of these actions.[366]

ISSUE: Timing of administrative separation processing

DISCUSSION: The TDS office advised a number of Soldiers who were to receive Article 15 punishment and then processing for administrative separation or "chaptering." It was quite common for a unit to send a Soldier to the TDS office to receive Article 15 and "chaptering" counseling, but then try to keep the Soldier in country several more months until the end of the deployment.

RECOMMENDATION: Improve. Units should decide either to hold off on "chaptering" a Soldier until it is time to redeploy, or else the unit should redeploy the Soldier early once it advises the Soldier he is being "chaptered."[367]

ISSUE: Arranging medical and mental examinations for administrative separations

DISCUSSION: Not all units or locations can perform the separation medical exam and mental evaluation for a variety of reasons, most often being remoteness from a main base. Units have to be able to make travel arrangements to complete the medical and mental examinations.

RECOMMENDATION: Sustain. Units should ensure they can perform all the necessary separation procedures while deployed in theater, and legal staffs have to be prepared to assist in the process to ensure compliance with procedures.[368]

ISSUE: Administrative separations during deployment

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[365] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 41.
[366] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 91.
[367] Trial Defense Services, Combined Joint Task Force – 101, Individual Augmentee Attorney, OEF After Action Report, 5 November 2009, Deployed July 2008-July 2009, Bagram Airfield, Bagram, Afghanistan (hereinafter "CJTF-101 TDS OEF AAR, MAY 08-MAY 09"; on file at CLAMO).
[368] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 12.

DISCUSSION: It is difficult to complete administrative separations when deployed, particularly with Soldiers from the National Guard or Reserves. Army mental health providers will not carry out a mental health assessment in theater. This sometimes causes pressure to deal with cases punitively that the command may more appropriately handle using a mental health chapter.

RECOMMENDATION: Improve. Test the medical community's resistance to disciplinary action against soldiers through administrative or UCMJ procedures. Formal procedures have their place and should not be displaced on medical grounds with good reason. Be aware that the failure to deal with National Guard and Reserves is often self-inflicted. The commands should not wait until the end of a deployment to work on discipline procedures.[369]

ISSUE: HRC mandated processing

DISCUSSION: Human Resources Command (HRC) sent two administrative separation packets for TF Thunder Soldiers to Fort Campbell. The Fort Campbell SJA Office forwarded those packets to TF Thunder Legal for action. TF Thunder worked the packets through CJTF-82.

RECOMMENDATION: Be prepared to deal with separation packets sent from the rear.[370]

ISSUE: Pre-deployment separations

DISCUSSION: TF Thunder's sister unit at Ft. Campbell had approximately 80 separation packets pending at the time it deployed. This resulted in this unit's trial counsel (TC) remaining in the rear for a few months to complete these actions. TF Thunder's commander was proactive and directed the formation of a working group of interested sections, to include, legal, chaplain, and the brigade surgeon to deal with potential issues relating to separations. The working group started preparations a year before its deployment date.

RECOMMENDATION: Sustain. The working group was able to identify Soldiers and issues early on and complete requisite separation packets before TF Thunder's deployment.[371]

ISSUE: In-theater separations

DISCUSSION: Most separations in theater were drug-related. TF Thunder handled these in theater and sent the Soldier back with an escort. TF Thunder's rear detachment ensured completion of the actions.

RECOMMENDATION: Be prepared to deal with positive urinalysis results and have a system in place before deployment.[372]

ISSUE: Separation of National Guard Soldiers

DISCUSSION: TF Thunder had a mobilized National Guard Soldier test positive for methamphetamines before deployment. The unit received notification of the positive urinalysis after arriving in theater. A subsequent search of the Soldier's living area turned up additional

[369] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 3.
[370] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.
[371] *Id.*
[372] *Id.*

controlled substances. Despite the evidence, the Soldier's National Guard chain of command wanted to retain the Soldier.

RECOMMENDATION: Be prepared to deal with conflicting interests. Also, realize separation of a National Guard Soldier is a two-step process. First, the Soldier is separated from Title 10 service. The state is then responsible for separating the Soldier from Title 32 service.[373]

ISSUE: Resolution of separations before release from active duty

DISCUSSION: All outstanding separation issues require resolution before the Soldier concerned receives a release from active duty. If the discharge is to be less than honorable, there must be coordination with both the demobilization site and the state headquarters of the Soldier. Without the appropriate evidence, the state headquarters may not be able to complete required actions for the Soldier in his or her Title 32 status.

RECOMMENDATION: The unit must ensure it forwards all of the evidence to the appropriate persons. Ensure you know the person who will be completing the paperwork at the demobilization site and the action officer at the state headquarters concerned.[374]

ISSUE: Pre-deployment administrative separations

DISCUSSION: The brigade commander wanted all administrative separations completed before deployment. The brigade legal section created a detailed tracker to monitor the process.

RECOMMENDATION: Sustain. At about two months out from deployment, the brigade commander knew the separating Soldiers by name.[375]

ISSUE: Coordinating administrative separations

DISCUSSION: For chapters and administrative separations, it is important to form good working relationships with the other players, such as the transition point, finance, and medical sections. Failure to do so will delay the process.

RECOMMENDATION: Sustain. Form these relationships, especially with the battalion physicians' assistants (PAs). They can greatly help expedite the medical portions of the process.[376]

ISSUE: Escort checklists for administrative separations

DISCUSSION: The brigade legal team drafted a step-by-step guide for escorts to use when accompanying Soldiers undergoing administrative separations.

RECOMMENDATION: Sustain.[377]

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[373] *Id.*
[374] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.
[375] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[376] *Id.*
[377] *Id.*

ISSUE: Additional requirements for administrative separations at the transition point

DISCUSSION: The civilians at the transition point in garrison were turning packets away for being insufficient. The civilians attempted to impose additional requirements not contained in the applicable regulation. The SJA had to intervene and end this practice.

RECOMMENDATION: Sustain. The regulatory requirements are sufficient. Additional procedures for the sake of bureaucratic ease on the part of the processors are not acceptable.[378]

ISSUE: Need for capability to complete administrative separations in theater

DISCUSSION: Units could not complete certain requirements for administrative separations, such as the traumatic brain injury (TBI) screening. Moreover, units had to fly their Soldiers (with escorts) to FOB Speicher for the physical exam.

RECOMMENDATION: Improve. With the number of troops in Iraq and Afghanistan, there needs to be a better capability to complete all requirements for administrative separation in theater. Commanders are reluctant to separate Soldiers during deployment because they are wary of having to send them back for additional processing in the rear.[379]

ISSUE: Late processing of administrative separations

DISCUSSION: There was a significant problem in the BCT with failures to process mandatory initiations of administrative separations, mainly those for drug use. Numerous Soldiers had even received promotions since first testing positive for drugs. Some commanders thought they could merely draft a memorandum indicating their desire to retain these Soldiers for the deployment, rather than initiating the chapter. The brigade legal section was aware of this problem before deployment, but it took a directive from the BCT commander about six weeks before redeployment before subordinate units actually corrected it.

RECOMMENDATION: Improve. Identify required initiations of separations as early as possible in the pre-deployment process and provide regular updates to the BCT commander/command sergeant major (CSM) during in-progress reviews (IPRs). Conduct training with battalion commanders, CSMs, company commanders, and first sergeants (1SGs) concerning requirements for mandatory initiation of separation.[380]

ISSUE: Separation authority for NG administrative separations

DISCUSSION: Administratively separating a NG Soldier is a much different process than the one for active duty Soldiers. While the separation authority for active duty Soldiers is often the in theater commander, the separation authority for NG Soldiers is back in the U.S. As a result, units can begin the process of administratively processing a NG Soldier while in theater, but must send the Soldier back to the U.S. to complete the process. Once sent back to the U.S., the in theater commander has no control over the process or the ultimate outcome.

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[378] *Id.*
[379] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 230.
[380] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 47.

RECOMMENDATION: JAs need to understand the complexities of administratively separating NG Soldiers and manage their commander's expectations.[381]

ISSUE: Separations and medical evaluations

DISCUSSION: Physical examinations, as opposed to a more limited post-deployment health assessment, are not required for routine administrative separations under Army Regulation (AR) 635-200, Active Duty Enlisted Administrative Separations, or U.S. Army Medical Command policy. Although it would be preferable to get a full physical examination, it is not mandatory. This bodes well for deployed operations where the austere operational environment makes it difficult to get medical appointments accomplished. Soldiers that are involuntary separated must return to home-station for issuance of their discharge certificate, and receive a post-deployment health assessment at that location before being discharged. After discharge, if they choose to do so, Soldiers may obtain a full physical examination at a transitional healthcare provider.

RECOMMENDATION: Although it would be preferable to accomplish, it is not mandatory to obtain a full physical examination for a Soldier undergoing administrative separation. Completion of a health assessment is required and should be completed at home station, so the Soldier is not delayed in leaving theater.[382]

ISSUE: Administrative separations

DISCUSSION: Due to the operational tempo, processing administrative separations while in theater was a drain on valuable resources.

RECOMMENDATION: The unit elected to handle all administrative separations in the rear.[383]

ISSUE: Legal support to administrative separation boards

DISCUSSION: For all administrative separation boards, an administrative law attorney traveled to the location of the board to provide advice and guidance.

RECOMMENDATION: Sustain. AdLaw should be prepared to travel so there should be sufficient staffing in the section. While an AdLaw JA is out in the field advising on a separation board, the section continues to operate.[384]

ISSUE: Flight separations

DISCUSSION: AdLaw had to assist a flight chief with a flight separation when the chief's unit wanted to separate him because they believed he was no longer capable of performing his duties as a flight chief. AdLaw discovered there was a different process for flight separations than the typical administrative separation and had to reach back to Fort Rucker for guidance.

RECOMMENDATION: JAs need to be aware that there are different processes for different types of separations. JAs should familiarize themselves with the regulations and should seek assistance from others when appropriate.[385]

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[381] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 20.
[382] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 236.
[383] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 60.
[384] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.

ISSUE: Rear detachment responsibility

DISCUSSION: Due to the high OPTEMPO CJSOTF-AP sent all Soldiers facing administrative separations back home.

RECOMMENDATION: Sustain.[386]

ISSUE: Theater officer show cause boards

DISCUSSION: CJTF-82 conducted only a few officer show cause boards in theater for misconduct that occurred pre-deployment. These boards pulled numerous resources and personnel away from war fighting priorities.

RECOMMENDATION: Improve. When possible handle such matters before deploying.[387]

II.L.2. Conscientious Objectors

ISSUE: Soldiers seeking status

DISCUSSION: Two Soldiers sought conscientious objector status before the deployment. The BCT brought both Soldiers into theater and evaluated the cases there.

RECOMMENDATION: Sustain.[388]

ISSUE: Length of time for decision on conscientious objector packets

DISCUSSION: There can be considerable delay in getting conscientious objector packets approved. In one case, the brigade and division approved the packet, but Human Resources Command (HRC) rejected it after several months. The packet began its upward review process in February 2009, but the final denial occurred only after the unit had re-deployed back to home station.

RECOMMENDATION: Improve. Despite the best efforts of the JAs and command staffs, resolution of conscientious objector applications may not occur in a timely manner.[389]

ISSUE: Conscientious objectors (CO)

DISCUSSION: There were two CO applications in theater during the deployment. Both were deemed non-meritorious, but one exceeded the 90 day deadline for processing and required a CG letter detailing the reasons for the delay. There had been a delay of weeks between the time the applicant indicated the intent to request CO status and the time the unit completed the DA Form 4187 needed to trigger the application process. In the case of the other application, the applicant

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[385] *Id.*
[386] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 65.
[387] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 9.
[388] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[389] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 12.

was administratively discharged on other grounds prior to the completion of the CO application processing.

RECOMMENDATION: Improve. Ensure that unit personnel understand CO applications are time sensitive and inform them that if they receive what appears to be a CO application they should contact the legal office immediately.[390]

ISSUE: Timeliness for conscientious objector requests

DISCUSSION: AdLaw closely reviewed the date on which a conscientious objector submitted his or her request for conscientious objector status.

RECOMMENDATION: Sustain. The key to a successful processing of conscientious objector applications is communication with the subordinate unit. AdLaw must ensure the packet is timely and complete. He or she should pay close attention to the suspense dates.[391]

II.L.3. Evaluation Reports

II.L.3.a. Enlisted

No AAR comments.

II.L.3.b. Officer

ISSUE: Request for a commander's inquiry regarding evaluations

DISCUSSION: Upon receipt of a request for a commander's inquiry into an Officer Evaluation Report (OER) or Noncommissioned Officer Evaluation Report (NCOER), AdLaw reviewed the Soldier's request. After the review, he drafted the CG's memorandum of appointment and provided the investigating officer (IO) advice and any requested assistance. AdLaw reviewed the IO's report, prepared an endorsement for the CG's signature, and forwarded the signed report to the next review authority for final processing.

RECOMMENDATION: Sustain. AdLaw should have a solid working knowledge of AR 623-3, both in a garrison and while deployed.[392]

ISSUE: Evaluation reports during high tempo changeovers

DISCUSSION: It is difficult to keep evaluation reports in order during periods of high personnel turbulence, sometimes with as many as five separate evolutions.

RECOMMENDATION: Note. Be aware this is likely to be a problem. Apply common sense and follow the policy.[393]

ISSUE: OER Appeals

[390] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 47.
[391] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.
[392] *Id.*
[393] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 3.

DISCUSSION: AdLaw had to assist officers on occasion who wanted to appeal an OER.

RECOMMENDATION: JAs need to know the regulations regarding OERs and OER appeals. It is imperative to know what needs to be included in an appeal and where to route an appeal.[394]

II.L.4. Females in Combat

ISSUE: Forward support companies (FSCs)

DISCUSSION: The BCT commander wanted to put the FSCs under the command of the maneuver battalions. The BJA conducted a legal review, making sure the task organization did not make them "assigned" within the meaning of the statute prohibiting females in combat. Using the definitions in Field Manual (FM) 3-0, the orders excepted out a few aspects of Administrative Control (ADCON), resulting in a task organization they called "Operational Control (OPCON) plus." In additional to having operational control, the maneuver battalion commanders had UCMJ authority over the Soldiers in the FSC. However, they could not create rating chains within the FSC or make other routine personnel decisions. The brigade support battalion (BSB) maintained these administrative responsibilities.

RECOMMENDATION: Sustain. Ensure assignment of female personnel does not violate the law or DOD policy.[395]

ISSUE: Females in male coded positions

DISCUSSION: As a result of an investigation into a harassment incident during the deployment, the unit discovered that a female Soldier occupied a male coded position. After a review of the rest of the BCT's manning, other similar female-filled, male-coded slots turned up. The unit corrected these inadvertent fills.

RECOMMENDATION: Improve. Units should ensure that they do not inadvertently run afoul of the DoD policy on women in combat.[396]

ISSUE: Attachment of Forward Support Companies (FSCs), female Soldiers

DISCUSSION: 4-25 ID attached its FSCs to its maneuver battalions before deployment. Previously, the FSCs were a part of the Brigade Support Battalion (BSB), not the battalion they supported. Female Soldiers serve in logistical positions and are assigned to FSCs, but by statute cannot be assigned to a unit with combat as its primary mission (e.g., an infantry battalion). After researching the issue and after consulting with the JAG School, 4-25 determined it was legal to attach an FSC to a maneuver battalion without violating the prohibition against assigning females to a combat arms battalion. Attachment of an entire company, which is a temporary administrative action and is different from the permanent assignment of individual Soldiers, honored the prohibition while accomplishing the BCT commander's intent of placing the FSC under the command and control of its supported battalion. Female Soldiers continued to serve in logistical positions and did not participate in offensive combat operations.

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[394] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 28.
[395] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 41.
[396] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 12.

RECOMMENDATION: There is no clear guidance concerning attachment of female Soldiers to a combat arms unit. The Army should issue clear guidance that it is acceptable, especially in a COIN environment where all Soldiers are on the battlefield. The concept of a linear battlefield with a front and a rear, with females in the rear, does not exist in Afghanistan.[397]

ISSUE: Personal safety of females on the FOB

DISCUSSION: With the vast number of people from various countries and cultures present on a FOB, females should remember to travel in pairs, especially at night.

RECOMMENDATION: Improve.[398]

ISSUE: Female engagement teams (FETs)

DISCUSSION: Since the Marine Corps does not allow maneuver units to attach females to the unit, 2d MEB provided the battalion with FETs made up of approximately 8 female servicemembers. 2/3 Marines used FETs to engage with the local females in the AO.

RECOMMENDATION: Continue the use of FETs. JAs need to be mindful of the restrictions on females in combat and ensure FETs operate in accordance with the policy.[399]

ISSUE: Females attached to maneuver units

DISCUSSION: The Marine Corps policy regarding females in combat is commanders cannot attach females to maneuver units. Maneuver units are considered to be the regiment level and below. During the deployment, one of RCT-3's subordinate battalions arrived with females attached. Specifically, one of the platoon commanders was a female officer. The RCT-3 RJA provided a memorandum to his commander stating that having the female as a platoon commander at the battalion level was in violation of policy and law. The RCT-3 Commander discussed the issue with the commanding general and the battalion commander.

RECOMMENDATION: Sustain. JAs need to know the policy and law regarding females in combat, and be on the lookout for females attached to maneuver units.[400]

ISSUE: Female engagement teams (FETs)

DISCUSSION: The policy regarding females in combat is commanders cannot attach females to maneuver units. However, commanders create FETs and effectively use them to interact with local females. Due to the nature of their mission, FETs often end up operating at the maneuver unit level, such as participating in security checkpoints where they can search females in lieu of male Marines doing so. The use of FETs at the maneuver unit level makes the females in combat policy appear vague.

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[397] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 236.
[398] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[399] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 156.
[400] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 101.

RECOMMENDATION: Until the Department of Defense (DoD) and Marine Corps reevaluate and/or clarify their policies on females in combat, JAs should assist their units in hammering out the proper way to employ FETs.[401]

ISSUE: Female searches

DISCUSSION: Due to cultural sensitivities, the searching of host nation females mandated the use of female Soldiers. This presented a challenge during actions on the objective where host nation females were present and posed a risk to force protection while U.S. policy dictated limitations on employing females in combat.

RECOMMENDATION: Sustain. Thorough understanding of the concept of operational and contingency planning will allow possible mitigation of this challenge.[402]

II.L.5. Hazing

ISSUE: Policy letter on hazing

DISCUSSION: During the mobilization and training phase at Camp Shelby, the SBCT issued a "no smoking" policy letter in response to numerous instances of older NCOs using "smoking" sessions of intense physical training to punish Soldiers for minor infractions.

RECOMMENDATION: Sustain. Realize National Guard units often contain "old school" NCOs whose practices do not comport with what is acceptable in today's Army.[403]

ISSUE: Suicide prevention in hazing cases

DISCUSSION: During the deployment, the unit had an incident of hazing where a squad of Soldiers picked on one of the Soldiers in the squad. In the process of the investigation, the unit discovered that the victim was suicidal. The unit responded quickly and ensured the victim received help.

RECOMMENDATION: In hazing cases especially, units need to be on the lookout for and sensitive to suicide. Ensure Soldiers who are having suicidal thoughts get proper counseling through the chaplain and mental health services.[404]

II.L.6. Homosexuality

No AAR comments.

II.L.7. Lautenberg Amendment

ISSUE: Lautenberg screening during the Soldier Readiness Program (SRP)

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[401] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 60.
[402] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 141.
[403] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 1.
[404] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 20.

DISCUSSION: The brigade legal section included Lautenberg Amendment screening on the brigade's SRP checklist. This allowed the brigade to identify and deal with those Soldiers with a qualifying conviction.

RECOMMENDATION: Sustain.[405]

ISSUE: Mobilized Soldiers with qualifying convictions under the Lautenberg Amendment

DISCUSSION: In general, Lautenberg screening is difficult administratively because the law places the burden on the commander to determine whether a Soldier has a qualifying conviction. The commander has to rely heavily on the statements of individual Solider. In three instances, Soldiers had conviction sheets, the face of which indicated they were Lautenberg offenses. However, in each case, the judge wrote by hand on the conviction sheet indicating the individual could carry a firearm as a condition of employment. There is no clear guidance on how to treat these Soldiers. The decision in each case was to deploy the Soldiers forward into theater.

RECOMMENDATION: Improve. Have the JAG Corps determine the proper treatment of Soldiers with Lautenberg convictions where the judge provides a hand written exception on conviction sheet.[406]

II.L.8. Letters of Reprimand

ISSUE: Use of non-punitive administrative letters of reprimand

DISCUSSION: The brigade routinely used non-punitive administrative letters of reprimand instead of non-judicial punishment, as a part of the stair-step method of dealing with misconduct or disciplinary issues.

RECOMMENDATION: Sustain. Non-punitive letters of reprimand generally provided a wake-up call to soldiers with minor discipline problems.[407]

ISSUE: Letters of concern

DISCUSSION: A letter of concern is a great motivational tool for commanders. When used appropriately, it can influence improvement in a marginal Soldier.

RECOMMENDATION: Ensure your commanders are familiar with this option.[408]

ISSUE: Utility of letters of reprimand

DISCUSSION: Commands do not use letters of reprimand enough. They are a useful alternative to more formal disciplinary action. There is no requirement to file them in a Soldier's permanent record. Bars to reenlistment can be ever more effective.

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[405] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 19.
[406] 29th IBCT (HIARNG), OIF AAR, OCT 08 - AUG 09, *supra* note 138.
[407] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 35.
[408] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 74.

RECOMMENDATION: Note. [409]

ISSUE: Use of letters of reprimand

DISCUSSION: Letters of reprimand are a beneficial tool for the commander. However, the Kuwait TDS office noticed some commanders occasionally using letters of reprimand in unwarranted circumstances in the deployed environment. These commanders were ruining the careers of otherwise good officers by issuing letters of reprimand based on little to no evidence for inconsequential circumstances. Specifically, the TDS office frequently observed officers receive letters of reprimand based on evidence that would not even support an Article 15 conviction.

RECOMMENDATION: Improve. Commanders should be cognizant of the potential ramifications associated with issuing letters of reprimand. Consequently, commanders should ensure they are not issuing letters of reprimand based on "flimsy" evidence for inconsequential circumstances.[410]

ISSUE: Official filing of letters of reprimand

DISCUSSION: The TF Thunder Commander recommended Commander, CJTF-82 file two letters of reprimand in Soldiers' Official Military Personnel File (OMPF). CJTF-82 refused to file them in the Soldiers' OMPF without discussing the matter with the TF Commander.

RECOMMENDATION: Personal communication is necessary for the approving official to have all of the facts associated with a particular matter. Filing authority should discuss such matters with the recommending authority.[411]

ISSUE: Authority to issue letters of concern

DISCUSSION: The authority to issue letters of reprimand aligned with the commanding general's withholding of jurisdiction over misconduct involving certain ranks (E-8 and above). However, commanders used letters of concern for situations that did not rise to the level of "misconduct," such as command climate problems.

RECOMMENDATION: Sustain.[412]

ISSUE: Authority to impose letters of reprimand

DISCUSSION: In accordance with AR 600-37, non-commander GOs and other non-commander officers in the rating chain had the authority to issue letters of reprimand. However, they had to ensure the basis for the reprimand did not fall within the UCMJ matters the CG withheld to his level.

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[409] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 3.
[410] Trial Defense Services, Kuwait, Senior Defense Counsel After Action Report ,13 October 2009, Deployed June 2008-August 2009, Camp Arifjan, Kuwait (hereinafter "SDC Kuwait TDS AAR, JUN 08-AUG 09"; on file at CLAMO).
[411] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.
[412] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 47.

RECOMMENDATION: Improve. Include in the CG's withholding policy a requirement to send such letters through the OSJA for review before imposing them.[413]

ISSUE: "In-theater" letters of reprimand

DISCUSSION: The unit used "local" letters of reprimand, which do not appear in a Soldier's permanent record, for minor infractions.

RECOMMENDATION: This is often a pragmatic solution to minor shortcomings.[414]

ISSUE: Delegation of GOMOR authority

DISCUSSION: In accordance with AR 600-37, paragraph 3-4a(1), the Commanding General (CG) delegated the authority to issue and file General Officer Memoranda of Reprimand (GOMORs) to the Deputy Commanding General (DCG).

RECOMMENDATION: Sustain. Delegate this authority before deployment.[415]

ISSUE: Example reprimand templates

DISCUSSION: The OSJA created numerous reprimand templates for use with GOMORs and written reprimands issued as punishment under Article 15s. The most common types of misconduct resulting in reprimands were violations of General Order Number One (GO#1), the visitation policy, inappropriate relationships, disrespect, dereliction of duty, and negligent discharges. The Division OSJA furnished these templates to its subordinate units for use in drafting brigade and battalion level reprimands.

RECOMMENDATION: Sustain. These templates substantially reduced the time it took to draft reprimands and ensured subordinate units included required verbiage.[416]

ISSUE: General officer memorandum of reprimand (GOMOR)

DISCUSSION: CJSOTF-AP utilized Combined Forces Special Operations Component Command – Arabian Peninsula (CFSOCC-AP) for its GOMORs.

RECOMMENDATION: Sustain.[417]

II.L.9. Relief for Cause

ISSUE: JA role in reliefs for cause

DISCUSSION: Relieving a Soldier for cause is usually a function performed by the commander with the assistance of the S-1. However, the regulations involved in relieving a Soldier for cause are hard to understand and it typically requires a significant amount of paperwork.

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[413] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.
[414] 168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09, *supra* note 128.
[415] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 22.
[416] *Id.*
[417] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 65.

RECOMMENDATION: At a NG unit, JAs should take the lead on reliefs for cause or, at a minimum, assist the S-1.[418]

ISSUE: No BJA consultation on a relief for cause

DISCUSSION: One of the problems with having a brigade widely dispersed over a large AO is some issues may escape the attention of the legal staff when they occur at outlying bases. In one case, a battalion commander initiated a relief for cause of a company commander without legal review. The relieved officer had left the country when the BJA reviewed the file and discovered the relief was improper since the Corps Commanding General (CG) had not personally approved it. The BDE had to re-staff the matter up to Corps to affirm the decision. Corps upheld the relief, but it was embarrassing for the BDE command to explain the oversight.

RECOMMENDATION: Improve. Even with a great deal of the legal staff forward deployed and working with the battalions, it is always possible for a BJA to not be aware of all the leadership issues that might be swirling in the brigade. The BDE leadership has to ensure it engages the legal staff on critical decisions that have a legal aspect.[419]

II.M. Morale, Welfare, & Recreation (MWR)

ISSUE: Use of BCT crest on MWR shirts

DISCUSSION: There was a shadow run of a local Fort Hood race in which there was an issue of whether the brigade's logo could be on the race t-shirts.

RECOMMENDATION: JAs should get to know MWR representatives at the beginning of the deployment, indentify race organizers, and educate the organizers about sponsorship issues to avoid ethical violations or disappointments.[420]

ISSUE: Use of "hold harmless" agreements for MWR programs

DISCUSSION: The MWR office had previously required Soldiers to sign blanket "hold harmless" agreements before taking part in MWR activities such as travel. These agreements seemed overly broad and not in the best interest of the Soldier.

RECOMMENDATION: The unit shifted from these types of agreements to simple notification of the command to ensure the Soldier was actually clear to take part in the activity.[421]

ISSUE: Oversight of MWR staff

DISCUSSION: Local national contractor employees ran the MWR tent on Phoenix Base. These

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[418] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 20.
[419] 172d Infantry Brigade, Brigade Judge Advocate OIF After Action Report, 5 February 2010, Deployed November 2008 – December 2009, Forward Operating Base Kalsu, Iskandariyah, Iraq (hereinafter "172d IN BDE, OIF AAR, NOV 08 - DEC 09"; on file at CLAMO).
[420] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 11.
[421] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 4.

employees often viewed pornography on the MWR computers and saved bookmarks to pornographic websites (often written in Arabic). Eventually, MWR fired these employees.

RECOMMENDATION: Improve. MWR needs to provide better oversight of its employees to ensure proper use of MWR computers. Furthermore, they should restrict computer use to authorized users.[422]

ISSUE: Planning MWR events in compliance with Army Regulation (AR) 215-1

DISCUSSION: After the tempo of operations began to slow down, the command wanted to reward the Paratroopers and other U.S. military units in the AO by having a massive Super Bowl party. The BCT needed approximately $250K to rent screens and projection equipment. The JAs had to work closely with the command staff to put together a packet satisfying the requirements of AR 215-1, "Military Morale, Welfare, and Recreation Programs and Non-appropriated Fund Instrumentalities." The proposal received approval, and the event was a tremendous success and morale booster.

RECOMMENDATION: Sustain. Succeeding in such a proposal requires significant time and persuasive justification. The key is to start early and build support.[423]

ISSUE: Unfair MWR proposal

DISCUSSION: One of the MWR proposals was to set up a partial internet café by providing computer drops for those Soldiers with laptops to hook up to the internet. While the proposal was well intentioned, the SJA pointed out that MWR funds for this proposal would only benefit those few Soldiers that brought laptops. After discussing the problem with the SJA, the S4 amended the proposal to purchase computers for the internet café so any Soldier could use the service.

RECOMMENDATION: Improve. MWR funds and amenities should include and benefit the widest amount of Soldiers possible.[424]

II.N. Miscellaneous Administrative Law Topics

ISSUE: Prior administrative law experience

DISCUSSION: The legal advisor had prior administrative law experience. Due to the large volume and different investigations SOTF-C conducted, the legal advisor's prior administrative law experience was helpful.

RECOMMENDATION: Sustain. Legal advisors should have prior administrative law experience.[425]

ISSUE: Flying Evaluation Board (FEB)

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[422] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.
[423] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 27.
[424] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 32.
[425] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 178.

DISCUSSION: The FEB process evaluates the professional qualifications of aviators. A FEB is comprised of aviation professionals, with the senior board member being "at least or more senior" to the respondent. Pilots appearing before a FEB have legal counsel assigned by the Trial Defense Service (TDS). There are four practical FEB outcomes: (1) no action; (2) disqualification with the potential for re-qualification with subsequent FEB; (3) permanent disqualification; and (4) permanent disqualification and no longer authorized to wear the aviator badge. Look to AR 600-105 for qualifications and procedures.

RECOMMENDATION: Sustain. Ensure the FEB recorder is an experienced pilot rather than a JA. For complicated FEBs, a JA should sit second-chair. The BJA provides procedural assistance. The convening authority is the CAB commander. The FEB approval authority is the first general courts-martial convening authority (GCMCA) in the chain of command.[426]

ISSUE: Air movement of civilians, foreign nationals, and NGOs

DISCUSSION: TF Thunder served as the primary air movement platform in RC-E. TF Thunder transported Afghans, non-government organization workers and visiting VIPs. Ground unit BJAs were responsible for obtaining approval before air movements.

RECOMMENDATION: Sustain. Ground force BJAs should continue to submit all required paperwork before air movements. BJAs should use the Afghan Aviation Procedure Guide to ensure proper authorization levels.[427]

ISSUE: Application of joint and individual service regulations in a joint command

DISCUSSION: MNSTC-I was a joint command with an Army CG and primarily Army leadership, with joint "plug-ins" from the other services. The MNSTC-I OSJA determined different regulations applied depending on the subject matter. For example, where joint or DoD regulations governed a particular area, such as travel, those regulations applied. However, with respect to fiscal law regulations and authorities, the MNSTC-I OSJA applied Army regulations. The OSJA did so because funding for MNSTC-I's everyday operations came from Operations & Maintenance, Army (OMA) funds. In areas for which there are no joint regulations, such as investigations, the OSJA applied Army regulations by default because the CG and most of the command were Army personnel.

RECOMMENDATION: When standing up any joint command or task force, part of the legal mission analysis must include who is commanding, what funding source the command will use for everyday operations, and what regulations apply to different situations. Where there are no applicable joint regulations, the commander is likely to want to default to the regulations of his or her own service.[428]

ISSUE: Legal advisor's background in administrative law

DISCUSSION: The legal advisor had a background in administrative law. This helped him deal with the number and variety of investigations encountered on the deployment.

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[426] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 10.
[427] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 14.
[428] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 49.

RECOMMENDATION: Sustain.[429]

ISSUE: Staffing the Corps administrative law (AdLaw) section

DISCUSSION: The Corps AdLaw section needs at least three attorneys and two paralegals (preferably E-6 or higher). I Corps never met this standard, but was able to be successful by having two strong O-5's providing support. Under normal circumstances, a minimum of three officers would have been required to perform this mission.

RECOMMENDATION: Do not assume drawdowns of forces will result in a need for fewer legal personnel. On the contrary, there tend to be more AdLaw issues when forces withdraw. Additionally, sufficient paralegal support is critical in a deployed environment, as paralegals perform numerous AdLaw functions (e.g. FOIA redactions, investigation support) they do not routine perform in a garrison environment.[430]

ISSUE: Most common administrative law issues on rear detachment

DISCUSSION: The most common administrative law issues for the rear detachment were legal review of FLIPLs, AR 15-6 investigations, summary court-martial reviews, and private organizations. The office also conducted reviews of administrative separations, but over time, the brigade judge advocates took these over. Although they did not have prior training in administrative law, the Reserve JAs were never taxed for time and easily had time to research issues. Having a civilian attorney in the section allowed them to take advantage of institutional knowledge when researching issues.

RECOMMENDATION: Sustain. Be prepared to research a large scope of issues in the administrative law arena. These are all issues Reserve JAs can learn on the job, though it would be helpful to become familiar with AR 15-6 investigations and FLIPLs during home station training.[431]

ISSUE: Training for rear detachment administrative law attorneys

DISCUSSION: The Reserve attorneys in the rear detachment administrative law section recommend taking the Administrative Law for Military Installations and Operations (ALMIO) course at The Judge Advocate General's Legal Center and School (TJAGLCS). They did not personally take the course, but another attorney took the course and highly recommended it. They did use all of the materials from the course. They also took a Navy course covering the Freedom of Information Act (FOIA) at the Navy Yard in Bremerton, Washington. Although not essential, they found the one-day course useful.

RECOMMENDATION: Sustain. New judge advocates working in the administrative law section should take the ALMIO course and a FOIA course.[432]

ISSUE: Need for administrative law shared drive for rear detachment

DISCUSSION: The I Corps rear detachment administrative law section benefited from having a

[429] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 161.
[430] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 88.
[431] *Id.*
[432] *Id.*

shared drive with examples of prior letters and legal opinions. This allowed new attorneys to keep the messages consistent with previous opinions and decisions to prevent reinventing the wheel. This hard drive was a separate hard drive that was attached via a USB port to one of the machines in Ad Law, and then shared only to specific users. It had to be approved through multiple levels in order to put it on the network. Having this shared and separate hard drive kept the information secure, and accessible to all who needed access to investigations and other extremely large documents or folders that would have taken valuable room on the network drives.

RECOMMENDATION: Sustain. The practice of having a shared drive in the administrative law section helps keep opinions consistent and avoids the need to do repetitive research.[433]

[433] *Id.*

III. CONTRACT & FISCAL LAW

III.A. Contract Law

Contract & Fiscal Law Training

ISSUE: Fiscal and contract law preparations and training

DISCUSSION: Panelist BJAs and paralegals generally agreed the amount and complexity of fiscal and contract law issues encountered on deployments exceeded their expectations. They unanimously agreed it was the core area of law for which they were most unprepared. Many felt they were not ready for the volume and difficulty of the matters that arrived on their desks. Garrison work in fiscal and contracting does not prepare one for the magnitude of work on deployment. The only likely means to prepare is to take any JAG fiscal/contracting courses and, once in theater, to review the records of predecessors in the AO to get a sense of how they dealt with issues.

RECOMMENDATION: Improve. In order to improve fiscal and contract law skills, take JAG School courses and learn from your predecessors.[1]

ISSUE: Pre-deployment training contract and fiscal law training

DISCUSSION: In addition to contract and fiscal law instruction received during the Judge Advocate Officer Basic Course (JAOBC), the BJA attended the TJAGLCS Fiscal Law Course (1 week) and a two-day deployed contracting course.

RECOMMENDATION: Improve. During training, focus more on contract execution versus contract formation. In addition to basic instruction, require BJAs to attend contract and fiscal law training before deployment. At a minimum, require the two-day deployed contracting course.[2]

ISSUE: Contract law training and reach back

DISCUSSION: The BJA took advantage of reach back to CJTF-101 to augment competence.

RECOMMENDATION: Sustain.[3]

ISSUE: Contract and fiscal law training

DISCUSSION: The third BCT JA attended the Contract Attorney's Course and the Fiscal Law Course at The Judge Advocate General's Legal Center & School (TJAGLCS). The BJA did not

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[1] 2010 Brigade Judge Advocate (BJA) Symposium, 10-12 May, 2010, The Judge Advocate General Legal Center and School (TJAGLCS), Charlottesville, VA (hereinafter "BJA Seminar, combined AAR, 10-12 MAY 2010"; on file at CLAMO).

[2] 4th Sustainment Brigade, OIF After Action Report, 28 August 2009, Deployed March 2008 – June 2009, Army Central Command (ARCENT), Camp Arifjan, Camp Beuhring, Camp Virginia, & Ali Al Saleem Air Base, Kuwait (hereinafter "4th SUST BDE (OIF) MAR 08 - JUN 09"; on file at CLAMO).

[3]. 3d Brigade Combat Team, 1st Infantry Division, OEF After Action Report, 29 August 2009, Regional Command (RC) – East, Forward Operating Base (FOB) Fenty, Jalalabad, Afghanistan, Deployed July 2008 – June 2009 (hereinafter "3BCT, 1ID OEF AAR, JUL 08 - JUN 09"; on file at CLAMO).

attend these courses but studied the *Money as a Weapons System* (MAAWS) handbook in depth and educated the rest of the staff during the unit's rotation at the National Training Center (NTC).

RECOMMENDATION: At a minimum, at least one attorney needs to attend contract and fiscal law training at TJAGLCS, and all deploying attorneys at the BCT need to read and understand the MAAWS.[4]

ISSUE: Lack of contract and fiscal law training at the brigade

DISCUSSION: The BJA and TC did not have the training to deal with the myriad of contract and fiscal law issues they faced.

RECOMMENDATION: The JAG Corps should create a deployed contracting course incorporating subject matter experts from the Air Force.[5]

ISSUE: Need for more practical focus in TJAGLCS contract and fiscal law courses

DISCUSSION: The various courses at TJAGLCS addressing contract law and fiscal law were more theoretical in nature.

RECOMMENDATION: Improve. Include blocks of instruction having a more practical focus in these courses. Have a day devoted to theater-specific issues, such as the MNC-I *Money as a Weapons System* (MAAWS) book. Include practical exercises, such as the review of Commander's Emergency Response Program (CERP) projects or military construction projects.[6]

ISSUE: Contract law training

DISCUSSION: The OSJA designated its contract and fiscal law attorney approximately seven months before the deployment. This allowed this JA to conduct extensive pre-deployment training in contract and fiscal law. She attended the Contract Attorney's Course and Fiscal Law Course at TJAGLCS, as well the Contracting Officer's Representative (COR) Course training through Management Concepts in San Francisco and Performance-Based Work Statement training through the Department of Agriculture's Graduate School in Washington, DC. Finally, the contract and fiscal law attorney performed on-the-job (OJT) training twice a week for three months at the Regional Contracting Office (RCO) in Hawaii.

RECOMMENDATION: Sustain. Consult http://www.managementconcepts.com and www.graduateschool.edu/ for additional contract law training opportunities.[7]

ISSUE: Training for the fiscal law attorney

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[4] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 17 September 2009, Deployed October 2008 – June 2009, Camp Liberty, Iraq (hereinafter "2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09"; on file at CLAMO).
[5] 159th Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate OEF After Action Report, 5 November 2009, Deployed December 2008 – December 2009, Bagram Airfield, Afghanistan (hereinafter "159th CAB, OEF AAR, DEC 08 - DEC 09"; on file at CLAMO).
[6] 25th Infantry Division, Staff Judge Advocate OIF After Action Report, 11 March 2010, Deployed November 2008 – November 2009, Multi-National Division – North, Contingency Operating Base Speicher, Iraq (hereinafter "25 ID OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).
[7] *Id.*

DISCUSSION: Due to the timing of the deployment, the I Corps fiscal law attorney was unable to attend the Fiscal Law Course at The Judge Advocate General's Legal Center and School (TJAGLCS). Instead, he attended the four-day Air Force Deployed Fiscal Law and Contingency Contracting (DFLCC) Course. This course was adequate, but the fiscal law attorney felt the better course was the Deployed Operational Resource Manager's Course at Fort Jackson. It gave him an appreciation of how the financial aspect of the funding process operates in theater. In addition, the fiscal law attorney watched the TJAGLCS Fiscal Law Course on DVD.

RECOMMENDATION: Sustain. One of the most critical relationships in fiscal law is between the fiscal law attorney and the resource manager. The Resource Manager's course gave the fiscal law attorney instant credibility with the Corps C8 because he was able to talk intelligently with C8 personnel in terms they understood. JAs who are unable to attend the TJAGLCS Fiscal Law Course should obtain a copy of the course on DVD.[8]

ISSUE: Contract law training

DISCUSSION: The I Corps fiscal law attorney would have liked to attend the TJAGLCS Contract Attorneys Course. In reality, however, there is very little pure contract law work in the Corps OSJA. Whenever contract law questions arose, the MNC-I contract and fiscal law section conferred with the Joint Contracting Command – Iraq/Afghanistan (JCC-IA).

RECOMMENDATION: Corps level contract and fiscal law attorneys should attend the Contract Attorneys Course if possible, but the priority should be on fiscal law training.[9]

Contract & Fiscal Law Resources

ISSUE: Reachback

DISCUSSION: CJSOTF-A needed to build a new forward operating base during this deployment to facilitate a "surge" SOTF. This endeavor was broad and time consuming. The legal advisor was able to reach back to Special Operations Command (SOCOM) and tap into their subject matter expertise in addressing many of the contract and fiscal law issues arising from this extensive project. CJSOTF-A's contracting officer (KO) was warranted through SOCOM and not Joint Contracting Command—Iraq Afghanistan (JCC-IA). This allowed for CJSOTF-A operate with other pots of money not available to GPFs. This allows flexibility to use JCC-IA KOs for normal sustainment functions.

RECOMMENDATION: Sustain. Seek out subject matter experts and leverage those available assets to assist and avoid "reinventing the wheel." [10]

ISSUE: Relationship with higher contracting office

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[8] I Corps & 2d Legal Support Organization, Combined Staff Judge Advocate OIF After Action Report, 16 May 2010, Deployed March 2009 – March 2010, Reserve Mobilization February 2009 – February 2010, Camp Victory, Iraq & Fort Lewis, Washington (hereinafter "I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10"; on file at CLAMO).

[9] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.

[10] 3rd Special Forces Group (Airborne), Group Judge Advocate OEF After Action Report, 22 July 2010, Deployed January 2010 – May 2010, Bagram, Afghanistan (hereinafter "3rd SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).

DISCUSSION: The brigade legal section's efforts in catching simple errors, such as typos and incorrect math calculations, before sending the contract to higher made the process smoother.

RECOMMENDATION: Sustain. Use personal relationships to front load contracts so they pass initial inspection at higher.[11]

ISSUE: Reserve component unfamiliarity with government contracting procedures

DISCUSSION: Reserve units do not possess knowledge of the federal contracting process or experience in the drafting and award of contracts, particularly with the public infrastructure and garrison-types services contracts the garrison command was responsible for. There were numerous issues in the contracting arena arising from frustration, lack of understanding, and reluctance to follow contracting procedures at all stages of the contracting process.

RECOMMENDATION: Ensure that you have a judge advocate with extensive knowledge of government contracting. Send this individual to the contracting and contingency contracting course, if possible. Attend these courses as the CJA, as well, so you have a better understanding of contract and fiscal law. Have all personnel from the unit who will be working with contracts attend the 40-hour contractor officer representative course before deployment. Have the command adopt procedures requiring legal input from the beginning of the contract process and not just at the end when routing the proposed contract through the staff level before going to MNC-I for funding approval. If possible, co-locate your contract attorney with the DPW contracting section to provide legal support with drafting specifications, to advise and ensure competition requirements are met and enforced, and to identify potential project splitting and fiscal law issues early in the process so they don't cause delays later when the command is in a hurry to get the contract to MNC-I for spend plan approval.[12]

ISSUE: JAGCNet contract & fiscal law website

DISCUSSION: Many of the resources on the contract and fiscal law website on JAGCNET were outdated. The fiscal law attorney was able to find the current *Money As a Weapons System* (MAAWS) book on the Center for Law and Military Operations (CLAMO) website prior to his deploying.

RECOMMENDATION: The JAG Corps should establish a single repository for current fiscal law resources for deploying JAs. It should be clear what authorities are currently in effect and which are historical documents.[13]

ISSUE: Transfer of U.S. property

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[11] 3d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate OIF After Action Report, 4 February 2010, Deployed December 2008 – November 2009, Joint Security Station Loyalty and Forward Operating Base Hammer, Baghdad, Iraq (hereinafter "3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09"; on file at CLAMO).

[12] 326th Area Support Group, Task Force Jayhawk, Staff Judge Advocate OIF After Action Report, 3 March 2010, Deployed November 2008 – October 2009, Victory Base Complex, Iraq (hereinafter "326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09"; on file at CLAMO).

[13] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.

DISCUSSION: Under AR 735-5, the Army may not transfer or otherwise dispose of U.S. government property unless specifically authorized by law. This was an important issue for units in Iraq after the Security Agreement deadline to move out of urban areas. MNF-I established particular procedures for transferring the Foreign Excess Personal Property (FEPP). BJAs need to be familiar with these procedures, as the drawdown in Iraq will continue.

RECOMMENDATION: JAs deploying to Iraq have to be familiar with the FEPP disposal process and who has the authority to make disposal decisions.[14]

Workload

ISSUE: Contract and fiscal law challenges

DISCUSSION: The BJA's encounters with contract and fiscal law matters were the most legally challenging area of the deployment. The complexity associated with the BCT's contract and contract/fiscal issues required a great deal of analysis and extra work. Regrettably, the first time most JAs encounter contract/fiscal problems is during their first deployment. While the JA Officer Basic Course (JAOBC) provides a base level of contract/fiscal law knowledge, it did not sufficiently prepare the BJA for the type and complexity of contract/fiscal issues faced on this deployment.

RECOMMENDATION: Improve. Many JAs do not have much exposure to contract/fiscal law before deploying. JAs are highly encouraged take any supplemental contract/fiscal law training before deploying in order to enhance their knowledge of this challenging area of the law.[15]

ISSUE: Contract and fiscal law duties

DISCUSSION: The BJA handled contract issues at the beginning of the deployment before transitioning them to the reserve JA. This allowed the BJA to better supervise and mentor the junior JA.

RECOMMENDATION: Sustain.[16]

ISSUE: Heavy contract and fiscal law workload

DISCUSSION: The BCT JAs reviewed over 500 purchase requests totaling millions of dollars.

RECOMMENDATION: Be prepared. Take as many contract and fiscal law classes as possible. Ensure your junior JAs attend as well. Understand the Money as a Weapons System (MAAWS) book and be able to write a "justification and approval" (J&A) memorandum before arriving in theater.[17]

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[14] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 1.
[15] 3d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate (BJA) OIF After Action Report, 16 September 2009, Deployed December 2008 – July 2009, Ninewah Province, Iraq (hereinafter "3-1 CAV OIF AAR (1st Half), DEC 08 - JUL 09"; on file at CLAMO).
[16] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 3.
[17] 2d Brigade Combat Team, 1st Armored Division, Brigade Judge Advocate OIF After Action Report 25 September 2009, Deployed July 2008-June 2009, Forward Operating Base (FOB) Hammer/Camp Stryker, Iraq (hereinafter "2BCT, 1AD OIF AAR, JUL 08 - JUN 09"; on file at CLAMO).

ISSUE: Contract and fiscal law workload

DISCUSSION: The majority of work during the deployment dealt with contract and fiscal law. At times the complex fiscal and contract issues swamped the JAs. They relied heavily on the *Money as a Weapons System* (MAAWS) manual and other related guidance but still had difficulty in resolving the unique issues that could only occur on deployments. They wished they had more training on MAAWS.

RECOMMENDATION: Improve. JAs must ensure they have adequate preparation for dealing with contract and fiscal law issues. They should not rely on their Judge Advocate Officer Basic Course or Judge Advocate Graduate Course fiscal and contract law courses, since deployments generate very unique problems of far reaching complexity.[18]

ISSUE: Contract law workload and support in Kosovo

DISCUSSION: There was very little contract law support available at Camp Bondsteel. There are about 100 or so major military contracts in Kosovo. Fortunately, the DCJA had a great deal of contracting expertise developed during his civilian employment. He spent approximately half of his time dealing with contracting issues that had developed over a long period. The fact contracting officers (KOs) spent only 4-6 months on station exacerbated the problem. The system was struggling to function.

RECOMMENDATION: Be prepared to reach back to reach back to the 409th Contracting Support Brigade in Germany if your unit in Kosovo does not have internal contracting expertise. It would help to have an active duty contracting lawyer in Kosovo, even if it is someone who only periodically flies in from USAREUR to clean up issues that accumulate between visits.[19]

ISSUE: Oversight of contractors

DISCUSSION: A long-term lack of sufficient contract oversight had greatly empowered the contractors and many required pushing to ensure they delivered as required. As we use contractors more and more to perform indispensable functions, more people must have an understanding of how to provide oversight of these contractors. Contracting often seems to be a niche function within the JAG Corps.

RECOMMENDATION: The education level within the JAG Corps at large requires boosting in the realm of general oversight of the execution phase of contracts.[20]

ISSUE: Posting requirements

DISCUSSION: The Federal Acquisition Regulation (FAR) requires U.S. government agencies to publicize contract actions before entering into a contract. This is to ensure DoD gives businesses

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[18] 3d Brigade Combat Team (BCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 3 November 2009, Deployed October 2008 – October 2009, Multi-National Division – North (MND-N), COB Speicher, Tikrit, Iraq (hereinafter "3BCT, 25ID OIF AAR, OCT 08 - OCT 09"; on file at CLAMO).
[19] Task Force Falcon, 40th Infantry Division, California National Guard, Command Judge Advocate, Kosovo Forces 11 After Action Report, 9 January 2010, Deployed February 2009 – November 2009, Camp Bondsteel, Kosovo (hereinafter "KFOR-11 AAR, FEB 09 - NOV 09"; on file at CLAMO).
[20] *Id.*

notice of the potential to gain a U.S. government contract, which in turn ensures increased competition.

RECOMMENDATION: Contract attorneys must ensure contract officers comply with FAR part 5. Also, ensure contract officers comply with Trade Agreement Acts applied to both evaluating proposal submissions and posting properly within the exception at FAR 5.202(a)12. Carefully review contracts before submission.[21]

ISSUE: Deploying early to get experience in contract law

DISCUSSION: The unit did not normally practice contract law. Accordingly, the contract attorney deployed two weeks earlier than the main body to mitigate his lack of experience. This meant the contracting attorney had, in effect, almost one month to learn on the job with his predecessor.

RECOMMENDATION: Consider doing something similar. Note that early deployment slots are competitive. In this case, the command was prepared to support the early deployment of the contract attorney in view of the alternative: a risk of later contractual embarrassment.[22]

ISSUE: Need for a full-time contract and fiscal law JA at the brigade

DISCUSSION: There is a significant amount of work dealing with contract and fiscal law at the brigade level. The BJA tasked one of his JAs with doing contract and fiscal law full-time.

RECOMMENDATION: Sustain. In a deployed environment, a BCT should have at least one JA dedicated to contract and fiscal law full-time.[23]

Miscellaneous

ISSUE: Project "splitting"

DISCUSSION: Watch out for the use of project splitting (artificially dividing a transaction into separate smaller transactions) in order to improperly evade the mandated maximum limits.

RECOMMENDATION: Look out for improper uses and follow good accounting practices.[24]

ISSUE: Resisting the call to fund the Afghan National Security Forces (ANSF)

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[21] 2d Marine Expeditionary Brigade, Contingency Contracting Attorney, OEF After Action Report, 18 February 2010, Deployed July 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09"; on file at CLAMO).

[22] 168th Engineer Brigade, Mississippi Army National Guard, Brigade Judge Advocate OEF After Action Report, 30 March 2010, Deployed December 2008 – November 2009, Regional Command – East, Bagram Air Field, Afghanistan (hereinafter "168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09"; on file at CLAMO).

[23] 30th Heavy Brigade Combat Team, Brigade Judge Advocate OIF After Action Report, 16-17 March 2010, Deployed April 2009 – January 2010, Forward Operating Base Falcon, Baghdad, Iraq (hereinafter "30th HBCT (NG) OIF AAR, APR 09 - JAN 10"; on file at CLAMO).

[24] 1st Combat Support Brigade (Maneuver Enhancement), Task Force Warrior, OEF After Action Report, 20 October, 2009, Deployed June 2008 – September 2009, Bagram Airfield, Afghanistan (hereinafter "1 CSB (ME) OEF AAR, JUN 08 - SEP 09"; on file at CLAMO).

DISCUSSION: The ANSF in many parts of Afghanistan are poorly funded and usually without adequate water, gas, pay, food, etc. The situation is so bad in some places they are virtually combat ineffective due to shortages. Well-intentioned U.S. Army commanders and staffers will ask (prod) the J8 and JAs to come up with some "creative way" to find funds to pay for the above items for the ANSF. There is currently no lawful means to pay ANSF Soldiers their salaries or to buy them gas, water, food and other necessary supplies using O&M funds.

RECOMMENDATION: If co-located with an impoverished ANSF unit, be prepared to deal with requests to fund its logistical support.[25]

ISSUE: How to get to yes

DISCUSSION: Staff will often want to please the commander by accomplishing everything directed, but the JAs will sometimes have to modify the "path to yes" by ensuring the way ahead is legal and supportable by higher echelon headquarters. Despite the longer path and added paperwork that may entail, commanders and command staff will generally agree to the changes if the JA explains to them the chances of higher headquarters approval increase because of the changes.

RECOMMENDATION: Sustain. Commanders are usually quite willing to amend plans and proposals to conform with the JA's legal advice if it increases the odds of approval by higher headquarter.[26]

ISSUE: Long-standing personal services contracts

DISCUSSION: The unit fell in on several contracts that had been in place for many years that were improper personal services contracts. One such position was that of the Political Advisor to the commander. While a very important and necessary position, there had been no re-solicitation of this contract for years. Those reviewing the re-solicitation had begun correctly concluding in recent years that the contract was improper because it was a personal services contract.

RECOMMENDATION: The unit had to re-do the solicitation as a hiring action while under intense time pressure. Do not assume just because a contract is long-standing, it must be proper. Especially in a rotational context, units can push problems down the road for a very long time in some cases.[27]

ISSUE: Limited need for contract law expertise at the BCT level

DISCUSSION: There was a Joint Contracting Command – Iraq (JCC-I) office on the BCT's FOB. Although the BJA performed fiscal law reviews of BCT projects, he ran contract law questions through the fiscal law attorney at MND-N.

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[25] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 1.
[26] *Id.*
[27] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 19.

RECOMMENDATION: Sustain. It is beneficial for BJAs to have a general understanding of contract law, but it is likely any significant or large project will receive a second legal review at Division (and Corps) depending on dollar value.[28]

ISSUE: Avoid "personal services" contracts

DISCUSSION: The 2d MEB contingency contracting attorney observed contracts not making it past the requirement evaluation board because they appeared to be "personal services" contracts. For example, a requirement evaluation board would reject a contract detailing that a requesting unit needs to hire "Joe" as an assistant. This is not a valid requirement for a contract. The contingency contracting attorney educated requesting units on the proper way to draft requirements for a contract. Specifically, requirements need to have clearly defined tasks. For example, a contract for a personal assistant must have requirements detailing what the qualifications for the assistant are necessary and what the assistant is to do. Contracts submitted by requesting units only to get "Joe" the job as the assistant are not valid. Requesting units must leave contracts open to determine who will fill the needed position.

RECOMMENDATION: Contract attorneys must carefully review contracts before submission and avoid "personal services" contracts.[29]

ISSUE: Properly documenting requirements

DISCUSSION: Often validation boards hold up contracts because they are lacking in documentation. The customer/requesting unit must define and properly document the requirements for the contract. In other words, fully explain what it is you are trying to do and what the total system cost will be. If you do not do this, what you get may not meet your needs.

RECOMMENDATION: Contract attorneys must carefully review contracts before submission. Ensure requirements are properly defined and documented. If contracts appear to be lacking, talk with the requesting unit and assist them.[30]

ISSUE: "Brand name or equal" solicitations

DISCUSSION: Requesting units often have difficulty identifying the salient characteristics of items they need. The contingency contracting attorney observed units sometimes just list the characteristics listed on a brand name of the product they desire. This is too overly restrictive and may cause a protest from other companies, which will cause the process to be put on hold until the resolution of the problem. This is not helpful, especially in a deployed environment.

RECOMMENDATION: Contract attorneys should be on the lookout for "brand name or equal" solicitations and educate requesting units who appear to submit them.[31]

ISSUE: Proper communications with vendors/offerors

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[28] 2d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 4 & 9 February 2010, Deployed January 2009 – December 2009, Forward Operating Base Warrior, Kirkuk, Iraq (hereinafter "2-1 CAV, OIF AAR, JAN 09 - DEC 09"; on file at CLAMO).
[29] *Id.*
[30] *Id.*
[31] *Id.*

DISCUSSION: Vendors want U.S. military units to pick their products. Requesting units must ensure they maintain proper communications with offerors to ensure they do not give vendors/offerors a false impression about the contracting process.

RECOMMENDATION: Contract attorneys should educate units on proper communications with offerors.[32]

ISSUE: Use of discussions

DISCUSSION: Sometimes opening discussions with a business before awarding a contract may result in the requesting unit obtaining a better price or item.

RECOMMENDATION: Do not always award contracts based on initial proposal submissions. Contracting attorneys should encourage use of discussions before awarding contracts.[33]

ISSUE: Fiscal year close out

DISCUSSION: It is always a crunch to get contracts closed out before the end of the fiscal year. Being at Camp Leatherneck enabled the 2d MEB contingency contracting attorney to get 2d MEB closed out early. He was then able to assist units at Bagram Airfield with their close out.

RECOMMENDATION: Sustain. Contracting attorneys should be prepared for fiscal year close out and try to close out early if possible. Co-location of the contingency contracting attorney with the primary supported unit enabled the end of fiscal year closeout to go much smoother.[34]

ISSUE: Extension on fund availability due to bid protest

DISCUSSION: Due to the nature of the particular equipment MNSTC-I wanted to purchase near the end of the fiscal year, the contracting officer (KO) wanted to do a sole source contract. A prospective bidder filed an agency protest, which extended the availability of the funds by 100 days from the date of final ruling on the protest, per Federal Acquisition Regulation (FAR) part 33.102(c). By the time the KO published the new solicitation, however, it was within a few weeks of the expiration of the 100-day extension. The same bidder ultimately filed a protest with the GAO, claiming the solicitation was too restrictive. This resulted in a stay under the Competition in Contracting Act (CICA). This occurred approximately 14 days before the 100-day extension was to expire.

Due to the urgent and compelling need for the equipment, the command sought a CICA override. The question arose whether, if the CICA override was successful, the contracting agency had to award the contract by the end of the initial extension period or whether they would get an additional extension. The MNSTC-I fiscal law attorney opined they would not be entitled to an additional 100-day extension until the GAO made a final ruling on the second protest. Instead, the CICA stay tolled the clock on the first extension, such that the contracting agency would have whatever time remained on the initial extension at the time of the CICA stay to award the contract.

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[32] *Id.*
[33] *Id.*
[34] *Id.*

RECOMMENDATION: Seek clarification from TJAGLCS and the Contract and Fiscal Law Division (KFLD) on the effect of a CICA override on the extension period from a previous bid protest.[35]

ISSUE: Applicability of 10 U.S.C. § 2410a to severable services contracts funded with multi-year funds

DISCUSSION: Under the bona fide needs (BFN) rule, severable services are a BFN of the fiscal year when performed. An exception under 10 U.S.C. § 2410a allows an agency to obligate current fiscal year funds for a severable services contract crossing fiscal years, so long as the contract period does not exceed one year. The appropriations for the Iraqi Security Forces Fund (ISFF) typically occurred via mid-year supplemental appropriations, such that their period of availability was for more than one fiscal year but less than two years. The MNSTC-I OSJA had consistently interpreted § 2410a as applying to ISFF, and thus had limited severable services contracts funded by ISFF to one year.

In December 2009, the MNSTC-I OSJA became aware of GAO Opinion B-317636, which states § 2410a does not restrict to one year the contract periods of severable services contracts funded by no-year appropriations or multiple year appropriations. However, in rendering this opinion, the GAO also stated § 2410a only applies to annual appropriations. Therefore, using ISFF appropriations available for more than one year, MNSTC-I could enter into severable services contracts exceeding one year in length as long as they were confined to the period of availability. However, MNSTC-I could not take advantage of § 2410a to enter into severable services contracts which cross fiscal years when a portion of the contract would be performed outside of the ISFF appropriation's period of availability.

MNSTC-I interpreted the language of § 2410a to be unambiguous and not limited to annual appropriations. This determination could have a significant impact on MNSTC-I's severable services contracts, which included contracts for life support to the ISF, force protection, and advisory services. Although the GAO opinion appears to allow greater flexibility as to the length of severable services contracts for multiple year appropriations, ISFF is more of a hybrid appropriation than a multiple year appropriation—while its period of availability generally crosses fiscal years, this period has historically varied depending on the timing of supplemental appropriations. Moreover, the status of future ISFF appropriations is uncertain. Therefore, the ability to obligate current funds for severable service contracts which extend beyond the fund's period of availability (as with § 2410a), is more important to MNSTC-I than the flexibility to award longer severable service contracts whose length exceeds one year but is completed within the period of availability.

RECOMMENDATION: Fiscal law attorneys should keep abreast of GAO opinions to determine their impact on operations. KFLD should push out the relevant GAO opinions to deployed OSJAs and explain their interpretation and the impact on deployed contracting.[36]

ISSUE: Contracts over $100K and General Officer (GO) endorsement

DISCUSSION: Unbeknownst to the SJA, there is a Secretary of the Army memo dated 10 July

[35] Multi-National Security Transition Command – Iraq (MNSTC-I), Staff Judge Advocate OIF After Action Report, 28 December 2009, Deployed June 2009 – July 2010, Phoenix Base, Baghdad, Iraq (hereinafter "MNSTC-I OIF AAR, JUN 09 - JUL 10"; on file at CLAMO).
[36] *Id.*

2009 requiring a GO to endorse all service contracts over $100K. The JTF-H SJA advised him of the memo. The SJA was unaware of the requirement that contracts be broken down into supply and service to determine if the service portion was over $100K.

RECOMMENDATION: Improve. There has to be a better way to distribute such directives to all JAs since this directive also applies for in garrison activities.[37]

ISSUE: Land leasing

DISCUSSION: As the theater matures and host nation sovereignty grows, the ability to facilitate timely land leasing directly affects operations. Close coordination with the J4, J8 and CFSOCC-A mitigated this challenge.

RECOMMENDATION: Sustain. Understand the theater policy and procedures as well as identify the executive agent for land leasing.[38]

III.B. Deployed Contracting

ISSUE: Contract ratification

DISCUSSION: After numerous rotations with multiple individuals sourcing the joint manning document there will be contracts that have exhausted their options yet are crucial to maintaining the operational tempo.

RECOMMENDATION: Seek out the J4, J8, resource manager, and contracting officer and review existing contracts that are soon to expire. Once identified, seek a determination of criticality in order to develop a future course of action as to that contract.[39]

ISSUE: Brigade commander site visits to project sites

DISCUSSION: Junior officers and senior enlisted personnel within the brigade served as contract officer representatives (KOR). The brigade commander often visited project sites. During these visits, his first reaction was to provide direction to contractors. However, he never actually made unauthorized commitments.

RECOMMENDATION: Improve. Having commanders involved in the process can be very beneficial because they bring their expertise to the situation. To facilitate the relationship between KORs, contractors, and leadership, commanders should take time to mentor KORs and explain to them their standards and vision. At the TJAGLCS senior officer leadership courses, place more emphasis on how to effectively communicate improvements working within the confines of the contract. Additionally, the contracting officers and their affiliates should

[37] 3d Sustainment Command (Expeditionary), Operation Unified Response, Staff Judge Advocate After Action Report, 23 April 2010, Deployed February 2010 – March 2010, Toussaint L'Ouverture Airport, Port-au-Prince, Haiti (hereinafter "3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10"; on file at CLAMO).
[38] 7th Special Forces Group (Airborne), CJSOTF-A Legal Advisor OEF After Action Report, 26 May 2010 Deployed 22 July 2009 – 02 February 2010, Bagram, Afghanistan (hereinafter "7th SFG OEF AAR, JUL 09 - FEB 10"; on file at CLAMO).
[39] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 10.

understand that they are dealing with an Army chain of command and should not try to circumvent the commanders.[40]

ISSUE: Minimal qualifications for contractors

DISCUSSION: The contract's statement of work (SOW) usually states the minimum qualification of contractors. Many times the job description does not accurately reflect the level of experience needed to effectively and efficiently perform the job. Consequently, employees with lesser qualifications end up costing the government more money. The reality of the combat environment requires workers to possess increasingly more technical abilities.

RECOMMENDATION: Improve. A technical expert or a commander with experience in that particular field should be consulted when JAs are developing a statement of work. Avoid using boilerplate language during contract development for the sake of expediency. Ensure job qualifications contained within a contract are accurate and enforced.[41]

ISSUE: Number of contractors within the area of operations

DISCUSSION: Many contractors performed poorly. The government would be better served by having U.S. Army personnel fulfill duties performed by contractors.

RECOMMENDATION: Improve. As the operation in Iraq winds down, consider reducing the contractor footprint. Contracting authorities should review requirements on annual basis to determine if they are still valid.[42]

ISSUE: Analysis of deployed contracts

DISCUSSION: The assistant BJA analyzed contracts and monitored all terms and provisions in the contract.

RECOMMENDATION: Sustain. Review active contracts while in the deployed environment. Doing so ensures the Government will receive the goods and services for which it paid. Equally important, reviewing the contract and understanding its terms provides the commander the latitude to make informed decisions with respect to civilian personnel on his operating base. For example, it can inform him of the extent of medical services he can provide to personnel occupying or visiting his FOB.[43]

ISSUE: Relocatable buildings

DISCUSSION: The deployed contracting rules can sometimes produce perverse outcomes. For instance, the rules mandate the use of relocatable buildings. These are more expensive than permanent structures and, significantly given the threat from indirect fire, they offer the occupants much less protection from hostile fire.

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[40] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 2.
[41] *Id.*
[42] *Id.*
[43] 4th Combat Aviation Brigade (4th CAB), 4th Infantry Division (Mechanized), OIF After Action Report, 28 August 2009, Deployed June 2008 – June 2009, Multi-National Division – Baghdad (MND-B), Camp Taji, Iraq (hereinafter "4th CAB OIF AAR, JUN 08 - JUN 09"; on file at CLAMO).

RECOMMENDATION: Review counterproductive deployed contracting rules.[44]

ISSUE: Training for contracting officer representatives

DISCUSSION: The unit-provided contracting officer representatives (CORs) did not have the expertise or training to function effectively initially. Because the actual contracting officers (KOs) for the contracts were in Germany, not having immediately effective CORs was especially problematic.

RECOMMENDATION: It is critical the unit assign and train the CORs before deployment so they can hit the ground running. While not specifically a JAG function, a lack of COR training will result in contracting problems finding their way eventually to the deployed legal office for resolution. Preventive law is much better than a reactive approach.[45]

ISSUE: Contract handover

DISCUSSION: The incoming unit has to have visibility of all the active contracts before they arrive. This will allow them to assign and train the necessary CORs.

RECOMMENDATION: The outgoing unit should provide a list of all the contracts, to include the subject matter experts the unit used for each particular contract. If the incoming unit does not have this list at least 30 days before arrival, they should ask for it.[46]

ISSUE: Joint acquisition review board (JARB)

DISCUSSION: The JARB process was a very inefficient acquisition process.

RECOMMENDATION: This is a systemic issue larger than just the JAG Corps. The process needs tightening up to be more efficient. This is simply not something the Army does well.[47]

ISSUE: Contract specificity and contractor savvy

DISCUSSION: The unit had a large work service contract that did not function at all. However, enforcing the contract was impossible due to the lack of an enforcement mechanism in the contract and the large loopholes as to required performance. The contractor was savvy enough to hire a law firm from DC to help ensure the payments kept flowing even though the contract was not having the desired outcome.

RECOMMENDATION: Draft contracts to ensure performance. The standards do not change in a deployed environment. Do not assume the contractor is unsophisticated. Many of these large contracts are lucrative enough to warrant the contractor hiring outside representation to ensure any slipshod drafting works in the contractor's favor.[48]

ISSUE: Extending services contracts

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[44] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 24.
[45] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 19.
[46] *Id.*
[47] *Id.*
[48] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 11.

DISCUSSION: Often, especially in an environment like Afghanistan, there is a need for continued performance of services by contractors. The option to extend services is often misunderstood and misused. FAR 52.217-8 addresses the option to extend services.

RECOMMENDATION: Before deploying, contracting attorneys should understand the rules for extending services located in FAR 52.217-8.[49]

ISSUE: Use local products and services to maximum extent possible

DISCUSSION: Whenever U.S. forces operate in a foreign nation for any extended period, there is a need for the U.S. government to contract with private businesses to provide products and services to support the force. Often, strengthening the host nation's economy is an essential element of mission accomplishment. 2d MEB dedicated itself to using products and services from local Afghan businesses to the maximum extent possible.

RECOMMENDATION: Sustain. Using local products and services will help bolster the local economy and will help with winning the hearts and minds of the people.[50]

ISSUE: Increasing local vendor base

DISCUSSION: Initially, the Afghan vendor base was very small. In order to increase the number of Afghan vendors and thereby stimulate the Afghan economy, 2d MEB put on an Afghan Contractors Conference at Lashkar Gah, the capital of Helmand Province. The purpose of the conference was to teach Afghan businesses in Helmand Province how to obtain contracts with the U.S. government and to show them 2d MEB was dedicated to using products and services from Afghanistan to the maximum extent possible. 2d MEB presented the entire conference, to include slide presentations, in English, Pashtu, and Dari. Within a few days of the conference, new contracts from local businesses started arriving.

RECOMMENDATION: Sustain. Continue to educate local Afghan vendors on how to obtain contracts with the U.S. government. Holding conferences similar to the Afghan Contractors Conference are very beneficial, especially when held out in town instead of at a FOB.[51]

ISSUE: Increasing competition

DISCUSSION: Competition among vendors benefits the U.S. government when it comes to contracting. The more vendors submitting bids, the better value the government will get for its money. Additionally, increasing the number of vendors helps contracting officers fill their requirements. 2d MEB was able to increase its vendor base and competition by getting to know local businesses through the Afghan Contractors Conference.

RECOMMENDATION: Sustain. Get to know local businesses so you have a larger vendor base. This increases competition and gives the U.S. government better value for its money.[52]

ISSUE: Ensuring English proficiency of contractors

[49] 2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09, *supra* note 21.
[50] *Id.*
[51] *Id.*
[52] *Id.*

DISCUSSION: 2d MEB made a concerted effort to seek out contracts with local vendors before going to international or U.S. vendors. However, if the vendor did not have an employee who spoke English, it was extremely problematic to carry on a contractual relationship. In order to get the word out to Afghan vendors/contractors of the need to employ someone who speaks English, 2d MEB educated local Afghan vendors on this and other matters when it hosted the Afghan Contractors Conference in Lashkar Gah.

RECOMMENDATION: Ensure vendors/contractors employ someone who is proficient with the English language before entering into contracts with them. Educate local vendors of the need to have at least some employees who speak English.[53]

ISSUE: Use of interpreters in deployed contracting

DISCUSSION: Using interpreters for deployed contracting is a force multiplier, especially when trying to use local products and services to the maximum extent possible. The 2d MEB contingency contracting attorney did not have an interpreter, but it would have been extremely helpful to have one. The attorney had to borrow an interpreter from another section every time he needed one.

RECOMMENDATION: Contracting attorneys and offices should have their own interpreter. When using an interpreter for contracting purposes, it is critical that it be the right type of interpreter. The 2d MEB contingency contracting attorney ensured he had the right category of interpreter before he used the interpreter. The contracting office provides opportunities for companies to make a substantial amount of money. Using an interpreter who has ties to the local community or local tribes is problematic. If ties exist, those ties will subject the interpreter to external pressure and potentially bribes to pass on information.[54]

ISSUE: Knowing the rules applicable to field ordering officers (FOO)

DISCUSSION: Army Federal Acquisition Regulation Supplement (AFARS) 5153.9002 authorizes contracting officers to appoint FOOs and delegate authority to obligate the government for micro-purchases for supplies and limited services. Often FOOs have little to no experience with contracting before their appointment.

RECOMMENDATION: Battalion JAs should ensure they understand the rules that apply to FOOs and assist him in spending his money. This would help the FOO tremendously.[55]

ISSUE: Lack of coordination in contracting

DISCUSSION: There is no single point of contact for contracts. A number of different agencies administered garrison contracts, each with their own attorneys and contract specialists. This made it difficult to identify who held particular contracts when there were issues arising with a contract, as well as to identify who made decisions that your contract actions or non-contract policies might affect. In an ideal world, there would be a single point of contact for all contacts. There is no easy solution to this problem. A partial work around was to hold a social meeting for all the identifiable contracting personnel. This was an opportunity to make introductions with

[53] *Id.*
[54] *Id.*
[55] *Id.*

contracting officers and gain situational awareness, but it was not a complete solution to the problem.

RECOMMENDATION: Try to identify all the contracting personnel in your operational area. Develop personal relations with all the attorneys and engage them frequently on common issues to arrive at a consensus on the proper handling of an issue. This was especially true on fiscal issues of proper funding. It is better to have an agreement on the legal issues before the matter goes to the decision making level than to submit something and have it rejected because the attorney at the decision making level had a different legal view of the issue.[56]

ISSUE: Terminating contracts for security reasons

DISCUSSION: Occasionally, it may be necessary to terminate contracts with local firms because of security/intelligence concerns with the company or those associated with it. Resolving these cases will invariably require contact with the contracting agency (if even identifiable) and a degree of flexibility in approach in dealing with completing performance under the contract. Information provided to the contractor on the reason for the termination is very limited. If the contract is a garrison contract, the contractor may wish to come to the garrison command to question what is going on.

RECOMMENDATION: The biggest concern is making your commander and other contract management personnel understand the limits on the information they can release about a termination for security reasons. The basis for the termination should be limited internally—do not disseminate the grounds to the contracting officer representatives who have day-to-day and personal contact with the contractors. Ensure that you know about meeting with a contractor terminated for this reason and brief everyone before the meeting of what they can and cannot say. Discourage meetings between your command and these contractors if possible, referring them to the appropriate contracting agency.[57]

ISSUE: Responsibility for returning contract employees to their country of origin

DISCUSSION: Contractors enter into employment contracts with the TCNs they employ. A common clause provides that the contractor-employer will pay for the TCNs return home at the end of employment if the employee works for the contractor-employer for a specified period of time (e.g., two years). Either before the time is up or afterwards, the TCN "jumps" to another contractor, but the employment contract with the new employer, if a written one even exists, says nothing about responsibility for returning the TCN to the home country. As contracts end and contractors depart, both contractors who have employed the "jumper" refuse to pay for the return trip. These abandoned persons often become squatters on the installation while they attempt to find other employment. The jumper issue has significant implications for a drawdown when contractors leave en masse, with the potential for abandoning large numbers of TCNs no one claims responsibility for returning.

RECOMMENDATION: It is the responsibility of the contractors to return TCNs to their home when their employment ends. The garrison command referred contractors to a clause in their contract covering their responsibility to provide transportation and transit to and within the country, the implication being that if the contractor was responsible for bringing the person to the country, it was also responsible for seeing they returned to their country of origin. To clarify

[56] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 12.
[57] *Id.*

and/or enforce this requirement, the garrison command took the position that the jumper issue had both terrain management and security implications and included a clause in the land use authorizations granted contractors. This provided that as a condition to grant of the permission to use land on VBC, contractors would not abandon employees on the installation or in Iraq (there were a few instances where the contractors delivered the TCN to the BIAP terminal without tickets and left them there). It also provided that the last contractor-employer who employed a TCN when it came time to return the person to the home country was responsible for seeing to the actual return of the individual. It is also recommended that the contract clause on this issue be amended to clarify the responsibility since some of the contractors who first employed the person in country and did not bring the individual into the country argued the clause did not apply to them in their situation.[58]

ISSUE: Classified documents in bid proposal

DISCUSSION: An Iraqi contractor submitted a bid proposal with a document stamped "Secret." U.S. forces provided the document to the contractor during the bid proposal process. The BJA determined the document was marked with a classification. Iraqi contractors may not possess this type of information. The BJA immediately contacted a Foreign Disclosure Officer (FDO) upon becoming aware of the security violation.

RECOMMENDATION: Improve. Iraqi contractors are not persons authorized to receive classified material. Engineers must be vigilant to ensure documents provided to persons involved in the bidding process are not marked with a classification. Items such as maps of bases, now in the possession of Iraqi forces, does not excuse following security procedures.[59]

ISSUE: Misuse of shipping contracts

DISCUSSION: Several Soldiers from the BCT, including the authorized unit representatives, misused a DHL contract to ship personal belongings on several occasions. These charges exceeded the funds remaining under the blanket purchasing agreement (BPA). The contractor essentially extended the government credit when it agreed to take the shipments. The BCT refused to pay for these shipments. The command cannot ratify fraud. The contractor must show a benefit to the government in order to receive payment.

RECOMMENDATION: Improve. Ensure there are proper procedures in place to prevent misuses, such as oversight or shipping records checks. Ensure the contractor understands it cannot accept shipments if no funds are available in the shipping account.[60]

ISSUE: Requirement-Coordination and Authorization Routing Tool (R-CART) reviews

DISCUSSION: The MNSTC- J8 created a web-based automated system called R-CART for

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[58] *Id.*

[59] 225th Engineer Brigade, Louisiana Army National Guard, Brigade Judge Advocate OIF After Action Report, 7 March 2010, Deployed January 2009 – November 2009, Multi-National Division-Baghdad, Camp Liberty, Iraq (hereinafter "225th EN BDE (LAARNG) OIF AAR, JAN 09-NOV 09"; on file at CLAMO).

[60] 1st Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 3 February 2010 & 29 March 2010, Deployed February 2009 – January 2010, Joint Security Station War Eagle, Baghdad, Iraq (hereinafter "1-1 CAV BCT OIF AAR, FEB 09 - JAN 10"; on file at CLAMO).

routing purchase requests and projects through the appropriate staff sections. The system sent out a notification email to these staff sections. Each R-CART request included the funding source and budget activity, a letter of justification, supporting documents (including the statement of work), and point of contact.

The MNSTC-I fiscal law attorneys reviewed R-CART requests primarily for fiscal law issues, but also noted any obvious contract law issues, alerting the attorneys at Joint Contracting Command – Iraq (JCC-I) as necessary. At first, the fiscal reviews used stock language for each type of funding source, which they pasted into R-CART. However, the chief of fiscal law shifted to using full legal reviews, uploaded to R-CART as a separate document.

RECOMMENDATION: Sustain. The R-CART system was an efficient way to manage purchase requests and allowed for simultaneous review by multiple staff sections. While having a menu of stock language for each funding source is helpful, legal reviews should also cite specific rules and exceptions when applicable in order to spell out the legal authority for the project more clearly.[61]

ISSUE: Coordination with JCC-I for potential contract law issues

DISCUSSION: The legal section at JCC-I typically only performed legal reviews if the contract itself or a funds increase request on an existing contract exceeded a certain dollar threshold, or if the contracting officer (KO) requested a legal review. In any case, however, the JCC-I legal section would not do a legal review unless the J8 had already certified the funds. Although the MNSTC-I fiscal law attorney's review was primarily for fiscal law issues, when he spotted potential contract law issues, he would informally contact the JCC-I legal section before the J8 certified the funds.

RECOMMENDATION: Sustain. Fiscal law attorneys need to have a good working relationship with the contracting agency's legal counsel (i.e., JCC-I), since the two offices are looking at different legal issues (fiscal law vs. contract law). Also, the fiscal law attorney should manage expectations with the command, making clear his approval of the project means only for fiscal issues, not contract issues, as JCC-I has the expertise and the final say on contract issues. MNSTC-I's practice of informally screening potential contract issues with JCC-I prevented the MNSTC-I requestor from trying to fight JCC-I by saying, "our lawyer said it was okay."[62]

ISSUE: Coordination with JCC-I for contracts at the end of the fiscal year

DISCUSSION: MNSTC-I approved a series of projects in July 2009. However, due to a backlog at JCC-I in processing end-of-year contract requests, the contracting officers (KOs) did not receive these projects to begin the bid solicitation until late September. At that point, some KOs claimed there were "time" issues in using current fiscal year funds on a contract whose performance would not begin until the following fiscal year. The KO and MNSTC-I fiscal law attorneys had to argue their respective positions to the JCC-I legal section. The fiscal law attorney argued the requirement was a bona fide need of the current fiscal year, and one of the exceptions, such as the lead-time exception, applied.

RECOMMENDATION: Improve. Particularly for end-of-year requirements, it is necessary for fiscal law attorneys to work closely with the JCC-I attorneys. Send JCC-I a courtesy copy of the legal opinion so they can identify any issues as far in advance as possible. Offer to assist JCC-I

[61] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 35.
[62] *Id.*

by working with the project requestor at MNSTC-I to resolve any issues, such as modifying the statement of work (SOW) or gathering the facts to justify a sole source contract. Noting the normal backlog at the end of the fiscal year, however, the fiscal law attorney should ensure the legal review notes any applicable "time" exceptions to the bona fide need rule.[63]

ISSUE: Managing command expectations for end of fiscal year expenditures

DISCUSSION: As in many commands, there was a push in MNSTC-I to spend money before the end of the fiscal year. Once projects went through MNSTC-I's approval process, and the J8 committed and certified the funds, the comptroller briefed the acquisition as "green," meaning all steps at MNSTC-I were complete. However, this gave the command no indication as to the status of the award of the contract. One solution, which the comptroller rejected, was for a JCC-I representative to conduct a portion of the briefing to the CG. The comptroller instead added a "status of award" column to his briefing chart.

RECOMMENDATION: Improve. Plan requirements early and manage the command's expectations with respect to expenditures at the end of the fiscal year, explaining the implications of the bona fide need rule. The letters of justification in the R-CART system need to state clearly the requirement is a bona fide need of the current fiscal year, and the fiscal law review should reflect the applicable time exception. This will demonstrate to an auditor the command is not simply trying to use up current fiscal year money to meet requirements of the next fiscal year.[64]

ISSUE: Forum shopping by contracting officers in characterizing funds increase requests

DISCUSSION: When a contract modification on a firm fixed price (FFP) contract resulted in an increased cost, the KO had to determine whether the modification was in the scope of the contract. If it was an in-scope change, they had to use funds available in the fiscal year when the contract award occurred. If it was an out-of-scope change, they had to use funds currently available. This distinction had added significance when the current year's funds were subject to additional restrictions that did not apply to the funds available when the contract award occurred (e.g., the limitation on funding facilities with the "ISSF 5" appropriation). In questionable situations, some KOs sought advice from the MNSTC-I OSJA rather than going through the JCC-I legal section. In such cases, the MNSTC-I attorneys made clear that they were not the KO's legal advisors.

RECOMMENDATION: Sustain. The contracting authority's legal section provides legal advice to KOs. Thus, fiscal law attorneys should not provide legal advice to KOs. However, this does not preclude the requesting command's fiscal law attorney from advocating a particular position to the contracting authority.[65]

ISSUE: Assisting the command with justification to override a CICA stay

DISCUSSION: Under CICA, an agency may not award a contract once the GAO has notified the agency of a timely-filed bid protest. However, the agency can apply to the head of the contracting agency (HCA) to override the stay upon a written finding that urgent and compelling circumstances which significantly affect the interest of the United States will not permit waiting

[63] *Id.*
[64] *Id.*
[65] *Id.*

for a decision by the Comptroller General, and that the agency is likely to award the contract within 30 days of the override determination. When a bidder made a pre-award protest on one MNSTC-I contract, JCC-I was unable to push for the override without the underlying data and information needed for the justification. The MNSTC-I OSJA was able to assist the requestor in developing the justification of "urgent and compelling circumstances." This involved gathering data to prove the importance of the unique technology in question and the implications of not getting the equipment in time.

RECOMMENDATION: Sustain. Even though the contracting agency normally handles the contract law aspects of procurements, the requesting command's OSJA should look for opportunities to assist the command in working with JCC-I.[66]

ISSUE: Legal advice to the KO

DISCUSSION: In connection with a bid protest, the KO indicated to MNSTC-I attorneys that he would like to have more time to improve the second solicitation. The KO attempted to seek contract law advice from MNSTC-I, but the fiscal law attorneys made clear the KO needed to go through the JCC-I legal section for such advice. Nonetheless, the KO copied the MNSTC-I fiscal law attorneys and a junior attorney at JCC-I on an email message to the bidder's legal counsel which the MNSTC-I fiscal law attorneys interpreted as having the potential to invite a bid protest. The bidder did in fact file a protest with GAO. MNSTC-I notified the JCC-I legal section so they could look into the matter.

RECOMMENDATION: Sustain. The contracting agency's legal section is the only office that should be advising KOs. Nonetheless, since the contracting agency has expertise in contract law and the command's fiscal law attorney has expertise in fiscal law, the attorneys need to communicate well in order to coordinate contract law issues and fiscal law issues.[67]

(ISSUE: Bridging contracts

DISCUSSION: JCC-I contracted for some of the security within the IZ via task orders on an Indefinite Delivery/Indefinite Quantity (ID/IQ) contract. A bid protest alleged the winning bidder was not a responsible contractor. Since JCC-I could not award the task order due to the protest, nor could they allow a lapse in security, JCC-I used a bridging contract with the incumbent contractor until the protest could be resolved.

RECOMMENDATION: Be aware of the use of bridging contracts for these situations.[68]

ISSUE: Purchasing uniforms for Sons of Iraq (SOI)

DISCUSSION: A unit wanted to purchase uniforms as a line item under the SOI contract. The contract and fiscal law attorney explained they cannot use CERP to purchase uniforms, but they could require the SOI to have uniforms, and the SOI could factor this into the contract price.

RECOMMENDATION: Sustain.[69]

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[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.

ISSUE: Review of performance work statements (PWSs)

DISCUSSION: The Division contract and fiscal law attorney often reviewed PWSs for the BCTs before the execution of contracts.

RECOMMENDATION: Sustain. This helped catch issues up front.[70]

ISSUE: Termination of contracts with locals

DISCUSSION: 172d BDE's predecessor executed many contracts with Iraqi vendors for services and material. Several of these vendors could not fulfill their contractual obligations, and 172d BDE had to terminate these contracts for default. While the terminating these contracts took time and effort for the JAs, the guidance available on terminating contracts is clear and readily available. On some defaults involving high dollar values, briefings to Division were necessary.

RECOMMENDATION: Sustain. Termination of contracts with local suppliers for default is sometimes necessary. The guidance on how to proceed with termination is clear and comprehensive.[71]

ISSUE: Double reviews of expedited contracts

DISCUSSION: Since U.S. forces had to negotiate numerous new contracts for the mission, the BCT JAs were able to have JAs from the 3d Sustainment Command (Expeditionary) take a second look at them. While not mandatory, this second look helped ensure the substance and form of the contracts were acceptable and no major issues or omissions were apparent.

RECOMMENDATION: Sustain. Having a sober second look for many expedited contracts is well worth the effort since no-notice deployments come with the challenge of implementing many contracts.[72]

ISSUE: Need for contracting attorneys

DISCUSSION: Initially, 2d MEB did not deploy with a contracting attorney. However, in today's operational environment, units face countless contracting legal issues. Approximately three months into the deployment, a contingency contracting attorney augmented the 2d MEB OSJA.

RECOMMENDATION: At a minimum, units at the division level or higher should deploy with contracting attorneys.[73]

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[70] *Id.*

[71] 172d Infantry Brigade, Brigade Judge Advocate OIF After Action Report, 5 February 2010, Deployed November 2008 – December 2009, Forward Operating Base Kalsu, Iskandariyah, Iraq (hereinafter "172d IN BDE, OIF AAR, NOV 08 - DEC 09"; on file at CLAMO).

[72] 2d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate Haiti After Action Report, 23 April 2010, Deployed January 2010 – March 2010, Operation Unified Response, Port-au-Prince, Haiti (hereinafter "2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10"; on file at CLAMO).

[73] 2d Marine Expeditionary Brigade, Deputy Staff Judge Advocate, OEF After Action Report, 22 March 2010, Deployed April 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB DSJA, OEF AAR, APR 09 - NOV 09"; on file at CLAMO).

ISSUE: Poor handover of contracts

DISCUSSION: Poor handover of contracts between units led to investigations. Overpayments, once made, are nearly impossible to get back. The legal office recommended holding the pay agents and purchasing officers for both the departing unit and gaining unit accountable for any financial loss due to poor transition, as each had responsibility for proper payments and the transfer of the contract action.

RECOMMENDATION: The rush to redeploy is not excuse for not conducting a proper transfer of contracts. Ensure those responsible do not have too many open actions, which can preclude sufficient individual oversight of each contract.[74]

ISSUE: Communication with your contracting office

DISCUSSION: Problems with contractors may be trickier than they first appear.

RECOMMENDATION: Talk to your servicing contracting office early if you are asked to advise on an issue with a contractor. The contracting office will give you good situational advice and alert you to any unforeseen second or third order difficulties.[75]

ISSUE: Difficulty in administering contracts when contracting officers were in CONUS

DISCUSSION: Not knowing the scope of the contracts seemed to be an ongoing issue in theater. There were numerous contractors on the ground operating within the BCT's AO, yet they reported to contracting officers back in the Continental United States (CONUS). At times, it was unbelievably difficult to get some contractors to cooperate with the military personnel. Dealing with this took a lot of time and energy. For example, Dyn Corp contractors were providing training to some Afghans. When issues arose, it was difficult to understand under what type of contact they were operating.

RECOMMENDATION: Before entering theater, the command group should get a briefing of the existing contracts in effect within the AO.[76]

ISSUE: Multiple reviews of contracts

DISCUSSION: Within three weeks of the Haiti humanitarian mission, there were more than 15,000 U.S. military personnel in the country. 3d ESC executed numerous contracts to commence and sustain operations. The SJA was part of the contract management cell that reviewed all contracts before they went up to the Joint Acquisition Review Board (JARB) for approval. The contracts would also get another review by the JTF-H OSJA when they got to the

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[74] 1st Cavalry Division, Staff Judge Advocate OIF After Action Report, 1 April 2010, Deployed January 2009 – January 2010, Multi-National Division – Baghdad, Camp Liberty, Baghdad, Iraq (hereinafter "1CD OIF AAR, JAN 09 - JAN 10"; on file at CLAMO).

[75] 504th Battlefield Surveillance Brigade, Brigade Judge Advocate OIF After Action Report, 3 May 2010 Deployed November 2008 – November 2009, Contingency Operating Base Sykes, Tal Afar, Iraq (hereinafter "504th BfSB, OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).

[76] 33d Brigade Combat Team, Illinois Army National Guard, Brigade Judge Advocate OIF After Action Report, 20 March 2010, Deployed December 2008 – August 2009, Camp Phoenix, Afghanistan (hereinafter "33d BCT (ILARNG), OEF AAR, DEC 08 - AUG 09"; on file at CLAMO).

JARB. In many instances, a JA at another organization had legally reviewed the contracts up for review. Having a sober second look at many of these expedited contracts was well worth the effort, but there was still a lot of unnecessary duplication of legal reviews.

RECOMMENDATION: Improve. Where possible, avoid the needless duplication of contract legal reviews since current practices slow down the procurement process.[77]

III.C. Fiscal Law

General

ISSUE: Legal reviews

DISCUSSION: Normally the CJSTOF-A legal advisor conducted and drafted all legal reviews for contracts and other fiscal law matters because a majority of these reviews are part of the joint requisition review board process. The SOTF-East Commander however wanted the legal advisor to conduct a legal review on all fiscal projects before the commander endorsed expenditure of funds.

RECOMMENDATION: Be prepared to deal with a host of fiscal law issues.[78]

ISSUE: Fiscal Law Deskbook

DISCUSSION: The Legal Advisor carried a hard copy of the Fiscal Law Deskbook with him. The Deskbook proved invaluable and helped focus the Legal Advisor's research on Fiscal Law issues.

RECOMMENDATION: Sustain.[79]

ISSUE: Protecting the command

DISCUSSION: Fiscal Law issues could get the commander "in trouble real quick." The Legal Advisor limited the potential for Fiscal Law violations by talking with the subject matter experts on staff, i.e. the J8, and with the Fiscal Law personnel in theater.

RECOMMENDATION: Sustain. To protect their command, JAs must constantly search for potential Fiscal Law issues.[80]

ISSUE: Detecting project splitting

DISCUSSION: The BCT legal office saved every fiscal law legal review and used detailed descriptions of the project. This helped them later identify potential project splitting when similar projects would come up for legal review.

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[77] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 37.
[78] 3/3 SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 132.
[79] 10th Special Forces Group (Airborne), Group Judge Advocate OIF After Action Report, 19 May 2010, Deployed July 2009 – February 2010, Joint Base Balad, Iraq (hereinafter "10th SFG OIF AAR, JUL 09 - FEB 10"; on file at CLAMO).
[80] *Id.*

RECOMMENDATION: Sustain.[81]

ISSUE: Fiscal law workload at the brigade level

DISCUSSION: The brigade processed nearly 600 fiscal law packets, totaling over $73 million in expenditures. The top categories for packets by volume were micro grants (169), purchase requests and commitments (PR&Cs) (53), and Commanders' Emergency Response Program (CERP) projects (52).

RECOMMENDATION: Deploying units must have at least one attorney trained in fiscal law.[82]

ISSUE: No central MAAWS and FRAGOs repository

DISCUSSION: There are a number of FRAGOs to the MAAWS in theater, but there is not one central accessible repository for these amendments. A great deal of extra effort went into searching for or confirming the currency of FRAGOs.

RECOMMENDATION: Improve. The lack of a central repository hampers the efforts of JAs to give advice in this demanding area of law.[83]

ISSUE: Fiscal law workload

DISCUSSION: Fiscal law comprised approximately 50% of the brigade legal workload.

RECOMMENDATION: Be prepared to deal with a heavy fiscal law workload. The brigade legal section stayed out in front of fiscal law issues and regularly briefed what pots of money were available, identified issues the legal team saw with packets, and helped ensure all documentation was included with each packet.[84]

ISSUE: Changing fiscal requirements

DISCUSSION: Later in the deployment, the rules for the use of CERP funds kept changing. This caused some frustration on the part of the command. It is difficult for units to understand the need for frequent changes in signature requirements.

RECOMMENDATION: Maintain a good relationship with your higher headquarters to ensure they inform you of changes as soon as they know about them. The higher headquarters also

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[81] 2d Brigade Combat Team, 4th Infantry Division, OIF After Action Report, 15 September 2009, Deployed September 2008 – August 2009, Forward Operating Base (FOB) Echo, Diwaniyah, Qadisiyah Province, Iraq, Contingency Operating Base (COB) Basra, Basra Province, Iraq (hereinafter "2BCT, 4ID OIF AAR, SEP 08 - AUG 09"; on file at CLAMO).
[82] 56th Stryker Brigade Combat Team, 28th Infantry Division (Mechanized), Pennsylvania Army National Guard, Brigade Judge Advocate OIF After Action Report, 24 September 2009, Deployed January 2009 – September 2009, Camp Taji, Iraq (hereinafter "56th SBCT (PA NG) OIF AAR, JAN - SEP 09"; on file at CLAMO).
[83] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 18.
[84] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 11.

sometimes gets late-breaking requirements. However, the less time it takes the information to make it down the chain, the more time the unit has to react to the change.[85]

ISSUE: Use of a paralegal in fiscal law

DISCUSSION: The BJA made the most technically competent paralegal the brigade's fiscal law NCOIC. This Soldier reviewed the *Money as a Weapons System* (MAAWS) and stayed current on all fiscal law changes. This Soldier ended up being the only paralegal in the Army exclusively handling fiscal law issues and drafting legal reviews for the attorneys.

RECOMMENDATION: Sustain. The use of a paralegal can save the BJA a tremendous amount of time and effort. However, a paralegal is not a substitute for a JA. The BJA supervised, reviewed, and signed off on all documents with a dollar sign.[86]

ISSUE: Unauthorized commitments

DISCUSSION: The BJA received trends of unauthorized commitments from MND-B and then briefed commanders regularly. These real world examples proved helpful to the commanders in the field.

RECOMMENDATION: Sustain.[87]

ISSUE: Legal review of fiscal law items

DISCUSSION: The brigade commander required his BJA to review all contracts and proposals that contained a dollar amount. The BJA stated. "If it dealt with money, my commander would not sign it until I saw it."

RECOMMENDATION: Sustain.[88]

ISSUE: Fiscal Law Deskbook

DISCUSSION: The BJA benefitted from having the Fiscal Law Deskbook on hand. The BJA was adept at spotting fiscal issues, but often consulted the deskbook for more detailed information for resolving the issue.

RECOMMENDATION: Sustain. The Contract and Fiscal Law Department at The Judge Advocate General's Legal Center and School (TJAGLCS) should regularly post updated versions of the deskbook online. Updates should highlight changes and include a summary of major changes.[89]

ISSUE: Use of paralegals in fiscal law

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[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] 3rd Heavy Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 2 February 2010, Deployed December 2008 – December 2009, Forward Operating Base Marez, Ninewah Province, Iraq (hereinafter "3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09"; on file at CLAMO).

DISCUSSION: The first time the BCT paralegals were exposed to the MAAWS was in Kuwait. They did some limited reviews of fiscal law packets in Iraq, but did not feel trained enough to do much more than checking calculations to ensure the project fell within the applicable thresholds.

RECOMMENDATION: Improve. Introduce the MAAWS to paralegals before deployment. At a minimum, orient them to what types of projects fall under which type of funds, as well as what types of expenditures are prohibited. TJAGLCS should develop fiscal law instruction geared toward what paralegals need to know or perhaps open up the Fiscal Law Course to paralegals.[90]

ISSUE: Duplication of fiscal law reviews

DISCUSSION: There was a duplication of effort in doing fiscal law reviews. MNC-I would often review the same files as the garrison legal office when the contract or expenditure of funds needed approval by the Corps-level funding board (in excess of $100,000).

RECOMMENDATION: Streamline the system for fiscal law reviews as much as practicable. Either have all the fiscal reviews that go before the Corps-level funding board be reviewed only by the Corps OSJA contract and fiscal law section or establish a ceiling on projects (e.g., $1,000,000) for which the garrison's fiscal review can serve as the fiscal review for the project.[91]

ISSUE: Project splitting

DISCUSSION: The G8 recommended splitting a project to build a TOC for the ISF into two projects in order to avoid funding limitations. The BJA reviewed project for and rejected the splitting approach.

RECOMMENDATION: Sustain. The BJA must closely watch funding limits. The need for expediency does not justify bypassing the law. The department tasked with planning the design should be aware of the law and work within the parameters.[92]

ISSUE: Managing brigade commander's expectations with spending

DISCUSSION: Even though the *Money as a Weapons System* (MAAWS) book says the BCT commander has the authority to spend money in certain circumstances, the Division owns the money and controls the money. Ultimately, the Division G-8 must buy off on any expenditure because the G-8 has the funding codes.

RECOMMENDATION: BJAs should prepare their brigade commanders for the fact that he is going to have to go to Division for money.[93]

ISSUE: Preparation for handling fiscal law issues

DISCUSSION: The OSJA designated one JA in the administrative & civil law section to serve as the fiscal law attorney. The most prevalent fiscal law issues included the Commander's

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[90] *Id.*
[91] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 12.
[92] 225th EN BDE (LAARNG) OIF AAR, JAN 09-NOV 09, *supra* note 59.
[93] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 23.

Emergency Response Program (CERP), military construction, the Logistics Civil Augmentation Program (LOGCAP), and competitive bidding.

RECOMMENDATION: Improve. Have at least one dedicated fiscal law attorney at the Division level, as fiscal issues permeated all operations. The fiscal law attorney should establish a good working relationship with both the Division G8 and the servicing contract office. It would have helped to have a recommended fiscal law resources list before deployment, as well as examples of various fiscal law scenarios with discussions of the appropriate legal courses of action.[94]

ISSUE: Number of fiscal law attorneys needed at the Division level

DISCUSSION: The Division OSJA designated only one JA as the contract and fiscal law attorney before deployment. During the deployment, another administrative law attorney, as well as the night shift operational law attorney, assisted with fiscal law. In all, the OSJA conducted thousands of fiscal law reviews, totaling $1.6 billion.

RECOMMENDATION: Improve. The sheer volume of fiscal work in the deployed environment has the potential to overwhelm an office having only one designated contract and fiscal law attorney. There should be at least two full-time fiscal law attorneys at the Division level. Moreover, other administrative law attorneys need to be familiar with fiscal law in order to cover down in the absence of the primary.[95]

ISSUE: Pre-deployment contact with predecessors

DISCUSSION: The fiscal law attorney began contacting her predecessor approximately seven months before the deployment. By establishing this relationship early, she was able to receive relevant information papers, FRAGOs, and other resources to help her prepare to perform the fiscal law mission.

RECOMMENDATION: Sustain. In addition to contacting your predecessor, become an expert in the MAAWS. This will answer a lot of questions as to the procedures for using different funds.[96]

ISSUE: Alleged inflexibility of fiscal law restrictions

DISCUSSION: Current training very much emphasizes you cannot expend funds without a specific authorization to do so. While this is correct, many restrictions on otherwise valid expenditures are policy-based. Policies can change and one can always request an exception to a policy if you submit the request early enough.

RECOMMENDATION: Emphasize in fiscal law training the possible existence of ways to get to yes when the restrictions are policy-based. Sometimes be willing to submit a well-written request to your higher headquarters in support of your client even though you anticipate denial of the request.[97]

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[94] 34th Infantry Division, Minnesota Army National Guard, Staff Judge Advocate OIF After Action Report, 23 February 2010, Deployed April 2009 – February 2010, Multi-National Division – South, Basra, Iraq (hereinafter "34ID, OIF AAR, APR 09 - FEB 10"; on file at CLAMO).
[95] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[96] *Id.*
[97] *Id.*

ISSUE: Level of fiscal law preparation at the brigade level

DISCUSSION: Fiscal reviews revealed a general lack of understanding of fiscal law at the brigade level, in terms of both the fiscal law basics (purpose, time, and amount) and the different types of available funds. Some brigades also seemed unprepared for the volume of fiscal law work.

RECOMMENDATION: Improve. Before deployment, brigade combat teams (BCTs) should designate a JA as the fiscal law attorney and send this JA to the Fiscal Law Course.[98]

ISSUE: Fiscal law resources

DISCUSSION: The fiscal law attorney consulted the MAAWS, Federal Acquisition Regulation (FAR), Defense Federal Acquisition Supplement (DFARS) and the Army Federal Acquisition Supplement (AFARS), the Library of Congress THOMAS website (http://www.thomas.gov) for the most recent authorization and appropriation acts, the Defense Acquisition University website (http://www.dau.mil), and the Where In Federal Contracting (WIFCON) website (http://www.wifcon.com).

RECOMMENDATION: Sustain. Fiscal law attorneys should familiarize themselves with these resources before deployment. Once in theater, maintain a good relationship with higher headquarters fiscal law attorneys for assistance with particular fact patterns.[99]

ISSUE: Reachback capability for fiscal law issues

DISCUSSION: The fiscal law attorney used the fiscal law reachback link on JAGCNET. Though this reachback capability was sometimes helpful, the fiscal law attorney could not rely on it because it took several days to get a response. Moreover, the website did not provide answers to specific fact patterns.

RECOMMENDATION: Use this resource but recognize its limitations.[100]

ISSUE: Need for continuity in fiscal law

DISCUSSION: The fiscal law attorney did not rotate to other duty positions during the deployment.[101]

RECOMMENDATION: Sustain. There is a need for continuity and expertise in fiscal law.[102]

ISSUE: Division fiscal legal reviews of brigade projects

DISCUSSION: The previous unit wrote some legal reviews of brigade projects that merely adopted the BJA's legal review. This unit opted to do a *de novo* fiscal review of all projects.

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[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.

RECOMMENDATION: Sustain. It is important for each staff level to conduct an independent legal review. Often, the Division fiscal attorney was able to provide more detailed analysis and different grounds for approval of a project.[103]

ISSUE: Interaction of the fiscal law attorney with the Division staff

DISCUSSION: The fiscal law attorney interacted extensively with the G7, G8, G6, and G4, as well as the local regional contracting command (RCC-Tikrit).

RECOMMENDATION: Sustain. Establish a working relationship with the members of these staff sections before deployment.[104]

ISSUE: Pre-deployment contact with outgoing unit

DISCUSSION: The fiscal law attorney contacted her counterpart from the outgoing unit before deployment. She received the current copy of the MAAWS and other pertinent documents.

RECOMMENDATION: Keep in contact with the unit you are replacing as much as possible. Get access to the outgoing unit's portal on the Secure Internet Protocol Router Network (SIPRNet) to be able to download current documents without overburdening the outgoing unit. Know the volume of packets the outgoing unit has reviewed to get a sense of the fluctuations in the fiscal law workload throughout the year.[105]

ISSUE: Working relationship with the G8 section

DISCUSSION: The Division fiscal law attorney interacted with the Division G8 section on a daily basis. By virtue of their working relationship, the G8 section came to the fiscal law attorney when they thought some brigade-level projects did not comply with the law. The G8 refused to approve funds when brigade legal reviews were inconsistent with Division reviews.

RECOMMENDATION: Sustain. If possible, develop this working relationship before deployment. When the G8 refuses to approve funds, it gives the Division fiscal law attorney more leverage when dealing with the brigades.[106]

ISSUE: Need for additional fiscal law attorneys at the Division level

DISCUSSION: Only one JA in the Division OSJA had attended the Fiscal Law Course. Consequently, there was no one with the same training to back up the fiscal law attorney when the workload increased or when she went on leave. The OSJA trained a secondary JA who was ultimately retasked due to a need to support a couple BCTs. The lone fiscal law attorney was supplemented by several JAs who were able to cover in the incumbent's absence due to environmental morale leave (EML) and to assist in transition with the incoming Division.

RECOMMENDATION: Improve. At least two JAs from the Division OSJA should attend both the Contract Attorney's Course and the Fiscal Law Course. Both the contract attorney and the

[103] *Id.*
[104] *Id.*
[105] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 74.
[106] *Id.*

fiscal law attorney should participate in the other's right seat/left seat ride during the relief-in-place/transfer of authority (RIP/TOA) process.[107]

ISSUE: Interaction of the fiscal law attorney with brigade judge advocates (BJAs)

DISCUSSION: After the Division G8 noted problems with a significant number of brigade level projects, the Division fiscal law attorney began reviewing brigade packets after a brigade JA had already done a legal review. Some of the BJAs were fine with Division reviewing their packets, while other BJAs were not. The fiscal law attorney sometimes went straight to the brigade S9s without going through the BJA when there were problems with the packet. This caused tension between the brigade and Division legal offices. In some cases, the DSJA had to emphasize Division policies and the reasons for the additional legal reviews during the weekly Adobe Breeze chat sessions with the BJAs.

RECOMMENDATION: Improve. Make a point of meeting with the JAs at the BCTs face to face. It is amazing how far putting a face with a name can go toward avoiding the inherent tensions associated with more impersonal forms of contact, such as phone or email. Within the OSJA, establish to whom the Division fiscal law attorney should go if there are problems with the BCTs, and conversely, to whom the BJAs can talk if they have problems with the support they are receiving. Inform BJAs what the Division OSJA is reviewing and why they are reviewing it.[108]

ISSUE: Avoiding multiple legal reviews of projects

DISCUSSION: When reviewing brigade projects for which the BJA had already done a fiscal review, the Division fiscal law attorney did not do another written legal review. Instead, she gave the project a GO/NO GO and noted her concerns with the project, along with suggestions as to a legally better way to accomplish the same intent.

RECOMMENDATION: Sustain. Avoid conflicting written legal reviews. As Division JAs develop a good relationship with the BJAs, the BJAs will start running fiscal questions by the division fiscal law attorney before they complete their own legal review. [109]

ISSUE: Volume of fiscal law issues

DISCUSSION: The SJA knew fiscal law was going to be a big part of his job and tried to get smart on the matter before deployment. When he spotted an issue, he would research it before contacting the fiscal law SMEs at USFOR-A. The SMEs at USFOR-A fiscal law appreciated the SJA's efforts and were, therefore, more inclined to provide assistance.

RECOMMENDATION: JAs preparing to deploy should get smart on fiscal law issues. While deployed, JAs should research issues on their own before seeking outside help. Building strong professional relationships with fellow JAs pays huge dividends when in need of SME.[110]

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[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] Combined Forces Special Operations Component Command – Afghanistan, Staff Judge Advocate OEF After Action Report, 2 May 2010, Deployed August 2009 – November 2009, Kabul, Afghanistan (hereinafter "CFSOCC-A OEF AAR, AUG 09 - NOV 09"; on file at CLAMO).

ISSUE: Fiscal law and establishing basic services in a new theater

DISCUSSION: As one of the first units into Haiti, the SJA had to research many fiscal issues for initiating the operation, life support functions, and quarters. Throughout the deployment, there were numerous fiscal law issues unique for units entering a brand new AO.

RECOMMENDATION: Any JAs accompanying a unit into a new theater of operations will have to deal with numerous fiscal issues to get the operations underway.[111]

ISSUE: Requests for assistances and fiscal law reviews

DISCUSSION: 3d ESC received many requests for assistance, not only from military units, but also from non-governmental organizations (NGOs), volunteers, and the Haitian government. When requests for transportation, materiel and other services came in, the JAs had to double check applicable fiscal law regulations to determine whether they could legally respond to the request and supply the service/materiel. Many of the NGOs, volunteers, and the Haitian government needed 3d ESC units to move their goods from the Port-au-Prince airfield and port to transport locations. The key was making sure the requests went through proper channels. The JTF-H J9 had a system in place for effectively processing requests from NGOs.

RECOMMENDATION: JAs must do their due diligence on checking the application and reach of fiscal law guidance to all requests for assistance (services and materiel), especially when dealing with diverse array of NGOs and other civilian organizations.[112]

ISSUE: Lack of fiscal law expertise at the MNF-I level

DISCUSSION: There was extreme pressure on the MNF-I staff to "get to yes" on initiatives the MNF-I commander pushed. However, MNF-I did not have dedicated fiscal law attorneys on its staff. Consequently, the command lacked trained eyes to spot fiscal law issues with various projects the MNF-I staff supported. When MNF-I tasked MNC-I to execute the project, fiscal attorneys at MNC-I often spotted legal issues that would derail the project.

RECOMMENDATION: Improve. There is a need for fiscal expertise at any level of command with the authority to approve or direct project execution. In theory, the merger of the MNF-I and MNC-I staffs into USF-I should eliminate this shortcoming.[113]

ISSUE: Command pressure on young fiscal law attorneys

DISCUSSION: Division fiscal law attorneys are typically first term captains. Even when they are well-trained for performing fiscal law duties, these young attorneys experience a great deal of pressure from their command and staff, as fiscal impediments to projects often leave the fiscal law attorney looking like the "toad in the road." Some of these junior attorneys have trouble sticking to their legal opinions under this sort of pressure, while others endure negative treatment by the command and staff for refusing to adjust their legal opinions to get around the fiscal issues. One Division fiscal law attorney lamented, "There were days I wanted to hide under my desk."

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[111] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 37.
[112] *Id.*
[113] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.

RECOMMENDATION: The JAG Corps must be cognizant of the difficult positions we are putting our junior attorneys into. The Corps OSJA can lessen the pressure on Division fiscal law attorneys by publishing information papers or legal opinions to clarify interpretations of fiscal authorities, thereby taking away the opportunity for "creative" legal opinions. Continuous coordination and technical channel support are required and should continue to be emphasized to SJAs and to emerging Fiscal Law experts.[114]

ISSUE: Audits by the Corps resource manager

DISCUSSION: The MNC-I C8 conducted quarterly audits of the Divisions. The MNC-I fiscal law attorneys did not accompany the C8 on these audits.

RECOMMENDATION: Improve. The presence of a Corps fiscal law attorney would have been helpful, particularly to validate and provide support to Division fiscal law attorneys who were "under fire" by their commands for sticking to their legal opinions. These audits could also serve as an opportunity to discuss issues and trends the MNC-I fiscal law section has observed throughout theater and to query the Division attorneys as to how MNC-I can help them.[115]

ISSUE: Fiscal law and establishing basic services in a new theater

DISCUSSION: As the first unit on a deployment to a new AO, the 2-82 ABN JAs had to research many fiscal issues for initiating life support functions such as haircuts, laundry services, and waste removal. Many JAs take for this for granted in other established AOs. Other first time challenges were how to fund a shower/ablutions system and the installation of wood flooring (due to heavy rains). Throughout the deployment, there were numerous fiscal law issues unique for the first unit into an AO.

RECOMMENDATION: Any JAs accompanying a unit into a new theater of operations will have to deal with numerous fiscal issues to get the operations underway. Even the most basic of services will require a fiscal law review.[116]

ISSUE: Changes to "Money As A Weapons System" (MAAWS)

DISCUSSION: When MNC-I issued "Change 1" to the MAAWS dated 26 January 2009, they did not incorporate the changes themselves into the text of the MAAWS. This made it difficult to determine the current rules.

RECOMMENDATION: Improve. MNC-I should incorporate changes directly into the text of the MAAWS and include a "Summary of Changes" similar to Army Regulation updates. [Note: More recent updates to the MAAWS included a detailed list of changes].[117]

ISSUE: Status of the MAAWS as legal authority

DISCUSSION: The USF-I MAAWS book is a standard operating procedure (SOP) which USF-I (and previously MNC-I) promulgated via fragmentary order (FRAGO). Although it has no independent legal significance, JAs, contracting officers, commanders, and resource managers

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[114] *Id.*
[115] *Id.*
[116] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 72.
[117] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.

continually cite the MAAWS as "law." For example, the DoD Financial Management Regulation (FMR) does not address CERP microgrants in any detail; it is the MAAWS that fleshes out the policy on how units may use microgrants.

RECOMMENDATION: JAs and other parties need to understand the MAAWS is not itself the "law," but rather is the SOP as to how we implement the law. You cannot possibly write all of fiscal law into the MAAWS. Each section of the MAAWS lists who can approve exceptions.[118]

ISSUE: Staffing the Corps fiscal law section

DISCUSSION: There were three authorizations for fiscal law attorneys on the joint manning document (JMD). Individual augmentees (an Army Reserve lieutenant colonel and an Air Force major) filled two of the JMD billets. Both XVIII ABC and I Corps assigned two additional JAs to the fiscal law section. Following the merger into USF-I, the fiscal law section essentially maintained the same level of staffing.

RECOMMENDATION: While the fiscal law duties at the Corps level are too much for three JAs, there was sometimes not enough work for four full-time fiscal law attorneys. SJAs should consider staffing the Corps fiscal law section with three full-time attorneys, and using an additional JA on a part-time basis. The varying deployment cycles of the individual augmentees was helpful for maintaining continuity in the fiscal law section from one Corps OSJA to the next. This promoted consistency in the interpretations of fiscal law for the theater.[119]

ISSUE: MNSTC-I "common law"

DISCUSSION: Since the creation of MNSTC-I, the OSJA has developed, through its formal and informal legal opinions, a sort of MNSTC-I "common law," particularly in the fiscal law realm. Thus, the current OSJA personnel found themselves bound by the actions of their predecessors. Some examples of this are the interpretations of the meaning of "security forces of Iraq" for the purposes of ISFF and the interpretation of the exception for severable services contract of less than one year duration to cross fiscal years. Archives replete with unsigned digital opinions complicated the process, particularly where unsigned opinions left a successor attorney wondering if the opinion was merely a working draft or a final copy.

RECOMMENDATION: New rotations at a security transition command must figure out what formal and informal legal opinions their predecessors issued. Particularly within a staff manned almost entirely by individual augmentees, if every rotation of OSJA personnel changes these interpretations, they could jeopardize the credibility of the OSJA's legal advice. Recordkeeping and proper archiving is essential for successor attorneys to understand which opinions were signed, issued, and binding. Develop a JAGC-wide standard for digital signature and recordkeeping.[120]

General - Training

ISSUE: Fiscal law competency

[118] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.
[119] *Id.*
[120] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 35.

DISCUSSION: Money drives all our operations, and everyone has a good idea on how to spend money. JAs are the unit's sanity check when it comes to spending money.

RECOMMENDATION: JAs should be well versed in fiscal law before deploying and be prepared to talk fiscal law with the staff.[121]

ISSUE: Fiscal Law Course

DISCUSSION: The fiscal law attorney attended the Fiscal Law Course at TJAGLCS a few months before the deployment. This course adequately prepared her for her deployed duties. Moreover, because a large number of the attendees were resource managers, as opposed to JAs, she gained insight into how a G8 section functions.

RECOMMENDATION: Sustain/Improve. Attendance at the Fiscal Law Course is essential for a deploying fiscal law attorney. However, the course should include more of a practical/ deployment focus, incorporating the MNC-I *Money As a Weapons System* (MAAWS) standard operating procedure (SOP). For example, the course could devote more than one day to funding U.S. military operations (FUSMO). In addition, the course should include practical exercises such as a fiscal law review of a proposed project. Finally, the course should provide instruction on the general process of getting a project approved, including who controls each pot of money.[122]

ISSUE: Need for additional fiscal law training at the Judge Advocate Officer Basic Course (JAOBC)

DISCUSSION: Fiscal issues pervade all aspects of military operations. Consequently, JAs need not be serving in a fiscal law billet to encounter fiscal issues. Although JAOBC includes instruction on fiscal law, it does not go into depth on fiscal issues JAs are likely to encounter in a deployed environment, such as CERP.

RECOMMENDATION: Improve. Cover CERP in JAOBC, as it is likely we will have similar funds in future military operations.[123]

ISSUE: Training for paying agents (PAs) & project procurement officers (PPOs)

DISCUSSION: In the wake of significant cases of fraud by PAs and PPOs (including cases where the same individual was serving as both the PA and PPO), the MNC-I commander tasked the staff with developing improved training for PAs/PPOs. The OSJA, C8, Contracting Office, and Finance collaborated to create a two-day training program involving PowerPoint presentations, three exercises, and a large capstone exercise. They then received guidance to reduce the training to one full day. The MNC-I team conducted this training in three different locations before passing the program to the Multi-National Divisions (MNDs), with the intent they carry out the training for all new PAs and PPOs.

RECOMMENDATION: Proper training and oversight is critical to prevention of fraud and improper procedures by PAs and PPOs. Units should identify PAs and PPOs and begin their

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[121] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 73.
[122] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 74.
[123] *Id.*

training at home station. Divisions should then provide training and certification to these PAs and PPOs as new units arrive in Kuwait. Ideally, this training should be longer than one day.[124]

ISSUE: Fiscal law training for the Division staff

DISCUSSION: Some members of the Division staff had trouble understanding and/or accepting the fiscal law constraints on what they wanted to accomplish.

RECOMMENDATION: Improve. Conduct fiscal law training with the Division staff before deployment.[125]

ISSUE: Educating staff on fiscal law constraints

DISCUSSION: The SJA constantly reminded fellow staff officers fiscal law requires language explicitly authorizing the spending of money for a certain reason. Staff officers constantly asked the SJA, "Where does it say that I can't spend this pot of money on that?"

RECOMMENDATION: Sustain. Constantly remind staff officers of fiscal law constraints. Ideally, this training should start before deployment.[126]

ISSUE: Educating the Division staff as to the role of attorneys in project review

DISCUSSION: National Guard units have less experience with fiscal law matters, and therefore tend to be less likely to appreciate the role of the judge advocate in project review. It took time for the rest of the Division staff to recognize the role and value of JAs in this process.

RECOMMENDATION: Improve. Provide the Division staff and leadership a "Fiscal 101" class at the mobilization station so they understand the concept of different pots of money and have a better idea as to what they can and cannot do legally.[127]

ISSUE: Fiscal law training for deployed JAs

DISCUSSION: Fiscal law is a complex area of law, particularly in a deployed environment. It is often an area of law where reserve component JAs have little exposure. Specific fiscal law questions arise early in the deployment and throughout the deployment cycle. Developing fiscal law training "on the job" can set up the JAs and commanders for failure. In the current operational environment, commanders need at least one JA with specialized fiscal law training.

RECOMMENDATION: Improve. Establish a requirement for deployed brigades to have at least one JA with theater-specific fiscal law training.[128]

ISSUE: Fiscal law training for Marine Corps JAs

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[124] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.
[125] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[126] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 110.
[127] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 94.
[128] 29th Infantry Brigade Combat Team, Hawaii Army National Guard, Command Judge Advocate OIF After Action Report, 7 March 2010, Deployed October 2008 – August 2009, Camp Arifjan, Kuwait (hereinafter "29th IBCT (HIARNG), OIF AAR, OCT 08 - AUG 09"; on file at CLAMO).

DISCUSSION: The RCT-3 JAs had no training or experience in fiscal law before deployment.

RECOMMENDATION: Naval Justice School (NJS) should make basic fiscal law part of the initial training for all Navy and Marine Corps judge advocates. Additionally, the Marine Corps should send more JAs to the fiscal law course at The Judge Advocate General's Legal Center and School (TJAGLCS) before deployment.[129]

ISSUE: Fiscal law training for Marine JAs

DISCUSSION: Marine JAs do not receive any fiscal law training while attending the basic legal course at the Naval Justice School (NJS). Before deploying with 2/3 Marines, the BN JA's only exposure to fiscal law was the very little amount discussed during the Operational Law course at The Judge Advocate General's Legal Center and School (TJAGLCS) and briefly during a humanitarian assistance mission to Burma. However, as a battalion judge advocate, you must constantly be on the lookout for fiscal law issues.

RECOMMENDATION: NJS should teach fiscal law as part of the basic legal course. Additionally, units should send BN JAs to a fiscal law course.[130]

ISSUE: Training of project purchasing officers (PPOs) and field ordering officers (FOOs)

DISCUSSION: Before deployment, the BJA successfully coordinated training from finance contingency contracting personnel on Fort Hood for the BCT's PPOs and FOOs. He persisted despite receiving answers stating the BCT would receive such training in theater. Once in theater, the BJA found the training to be insufficient.

RECOMMENDATION: Sustain. It is helpful to designate and train PPOs and FOOs before deployment. Realize, however, their appointments are not valid until they undergo the required training in theater.[131]

ISSUE: Fiscal law brief before next deployment

DISCUSSION: Commanders know that there is money to burn out there but do not understand the requirements that the money come from certain pots and the ramifications of using the wrong appropriated funds for the wrong purpose.

RECOMMENDATION: Before the next deployment the BJA, the contracting officer, and the S-9 will give a fiscal law brief to all commanders and XOs who will deal with money.[132]

ISSUE: Need for additional fiscal law training

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[129] Regimental Combat Team – 3, 2d Marine Expeditionary Brigade, Regimental Judge Advocate, OEF After Action Report, 14-15 April 2010, Deployed April 2009 – October 2009, Camp Dwyer, Helmand Province, Afghanistan (hereinafter "RCT-3, OEF AAR, APR 09 - OCT 09"; on file at CLAMO).
[130] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 156.
[131] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 28.
[132] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 11.

DISCUSSION: There needs to be a fiscal law theater specific short course designed for JAs preparing to deploy.

RECOMMENDATION: Improve.[133]

ISSUE: SF fiscal law training

DISCUSSION: SF units have different funding authorities (or "pots of money") than conventional forces. Legal advisors must know about these different "pots of money" before deploying.

RECOMMENDATION: USASFC(A) should hold annual fiscal law training for all SF battalion legal advisors.[134]

ISSUE: NCOIC Fiscal Law training

DISCUSSION: CJSOTF-AP's NCOIC did not attend the Fiscal Law Course at the Judge Advocate General's Legal Center and School (TJAGLCS) before deploying.

RECOMMENDATION: Improve. NCOICs should attend the Fiscal Law course at TJAGLCS before deploying.[135]

ISSUE: Application of the bona fide needs rule to mixed supply/services contracts

DISCUSSION: One of MNSTC-I's projects involved the purchase of police investigation kits along with training on how to use the kit. Although MNSTC-I committed and certified the funds for the project in July, JCC-I did not begin the contract solicitation until late September. This resulted in a "time" issue under fiscal law, since the funds were only available until 30 September. There is no clear fiscal rule for mixed supply/service contracts. In this case, the delivery lead time exception to the bona fide needs rule applied to the supply component of the contract (the investigation kits), but no exception applied to the service component of the contract (the training). Moreover, the fact the training would not be available immediately in turn affected the project requestor's need for the goods.

RECOMMENDATION: Improve. Plan project requirements with the end of the fiscal year in mind. Train requestors to justify why the requirement is a bona fide need of the current fiscal year. Seek clarification from KFLD, Office of The Judge Advocate General (OTJAG) if necessary.[136]

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[133] 2d Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 25 May 2010, Deployed July 2009 – January 2010, Camp Brown, Kandahar, Afghanistan (hereinafter "2/7 SFG(A), OEF AAR, JUL 09 - JAN 10"; on file at CLAMO).
[134] 3rd Battalion, 3rd Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 03 June 2010, Deployed January 2010 – May 2010, Bagram Airfield, Afghanistan (hereinafter "3/3 SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).
[135] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 79.
[136] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 35.

III.C.1. Acquisition & Cross-Servicing Agreements (ACSAs)

ISSUE: Logistic support to coalition partners

DISCUSSION: At times, attached coalition forces to CJSOTF-A requested logistical support. The ability to facilitate timely support directly impacts operations and rapport which affects building and maintaining partnerships in a coalition setting.

RECOMMENDATION: Understand the connection between existing ACSAs and present coalition partners and identify the executive agent in theater for ACSA requests. Sustain.[137]

ISSUE: Need for a U.S.-Iraq ACSA

DISCUSSION: There are a number of instances and situations where an ACSA would be helpful to both nations' military/security forces.

RECOMMENDATION: Improve. An ACSA would be beneficial on a number of levels, but entering one requires national level authorization.[138]

ISSUE: Need for training on ACSAs

DISCUSSION: Most JAs have never heard of an ACSA. When you deploy and find that you 'own' a foreign unit you will suddenly wish you knew a lot more about ACSAs.

RECOMMENDATION: JAs need to be educated about ACSAs as part of their pre-deployment training if they are going into an environment that has any foreign military.[139]

ISSUE: ACSA activity in Kosovo

DISCUSSION: There is a great deal of ACSA activity in Kosovo, and you have to understand the process. The command constantly wanted to provide goods and services to partner nations. People routinely asked how this process worked. This process was straightforward and the unit was largely self-taught on this issue. Of note, there is no ACSA with Kosovo itself.

RECOMMENDATION: Determine early what ACSAs are in place for the partner nations in Kosovo. The USAREUR G-8 Agreements section can provide this information. The people to go to with ACSA issues are the Multi-national Support Cell and the Resource Management Officer.[140]

ISSUE: Need for an ACSA with Iraq

DISCUSSION: U.S. forces transferred HMMWVs to the Iraqis, but there were no procedures for transferring fuel, parts, etc. to use and maintain these vehicles.

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[137] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 10.
[138] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 18.
[139] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 24.
[140] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 19.

RECOMMENDATION: Improve. An ACSA would facilitate full partnership with Iraqi forces.[141]

ISSUE: Need for an ACSA with Iraq

DISCUSSION: There were many instances where the lack of an ACSA with Iraq hindered mission accomplishment. One example in which an ACSA would be helpful is providing fuel for ISF to escort U.S. forces within Iraqi cities. The ISF refused to provide escorts, something they viewed as being outside of their mission, unless the U.S. provided them fuel.

RECOMMENDATION: Improve. The Iraqis could provide escort sources as an in-kind payment for the fuel under an ACSA.[142]

ISSUE: Need for an ACSA with Iraq

DISCUSSION: There are many instances in which an ACSA with Iraq would streamline the ability of U.S. forces to partner with ISF units. The Combat Service Support to Iraqi Security Forces (CSS to ISF) program under the Quick Reaction Funds (QRF) subset of Iraqi Security Forces Funds (ISFF) is difficult to monitor. Although there are dollar limits on transfers under this program and a requirement for the transfer to be for life, health, and safety, units commonly transfer non-emergency support, such as oil for vehicles.

RECOMMENDATION: An ACSA with Iraq would eliminate the need for the CSS to ISF program and allow transfer of logistics support on a reimbursable basis.[143]

ISSUE: Logistic support to coalition partners

DISCUSSION: At times, coalition forces attached to CJSOTF-A requested logistical support. Facilitating timely support directly affects operations and future rapport, which directly impacts building and maintaining partnerships in a coalition setting.

RECOMMENDATION: Sustain. Understand the connection between existing ACSAs and present coalition partners as well as identify the executive agent in theater for ACSA requests.[144]

ISSUE: Valuation of equipment transferred by coalition partners under the ACSA

DISCUSSION: When the United Kingdom (UK) handed over Contingency Operating Base (COB) Basra to U.S. forces, there was a lot of equipment they wanted to transfer under the ACSA because it would cost more to ship back to the UK than the equipment was worth. The UK suggested they could deduct the transportation costs from the value of the property, and when this resulted in a negative number, pay the U.S. to take the property or subtract the amount from the value of other equipment. There was considerable consternation about doing this. Ultimately, the OSJA determined the U.S. should let the UK value the property and limit the legal review of the transaction to determining whether the items were eligible for transfer under the ACSA.

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[141] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 89.
[142] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 35.
[143] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 74.
[144] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 38.

RECOMMENDATION: Sustain. It is preferable to let coalition partners determine the value of equipment they want to transfer under the ACSA, particularly when they desire to give the U.S. a substantial discount due to the cost of shipping the equipment back to their own country.[145]

ISSUE: Need for an ACSA with Iraq

DISCUSSION: Although Iraq is ACSA-eligible, the Government of Iraq (GoI) has not yet agreed to an ACSA with the U.S. It is possible the GoI believes the U.S. Government will continue to provide non-reimbursable equipment and logistical support in the absence of an ACSA. However, the lack of an ACSA complicates the ability of U.S. forces to partner with Iraqi Security Forces (ISF) and causes units to look for creative ways to provide the ISF with support under existing authorities. The MNC-I OSJA suspected units were likely transferring equipment and supplies to the ISF "under the table."

RECOMMENDATION: Improve. The U.S. Government should push the GoI to sign an ACSA for future logistical support. In the absence of an ACSA, ensure subordinate units are clear as to what equipment and logistical support they can provide to the ISF under current fiscal authorities.[146]

III.C.2. General Fiscal Law Issues

ISSUE: Keeping an eye on pay agents and contracting officers

DISCUSSION: BJAs should consider closely monitoring the procedures and practices of pay agents, purchasing officers, and contracting officers early in the deployment. Their experience levels can vary greatly, so early monitoring can pay dividends if procedures or practices are faulty. In this regard, paralegals can carry out this task effectively and keep the legal team informed of any issues.

RECOMMENDATION: Sustain. Monitor these staff early in the deployment to ensure proper adherence to fiscal regulations and practices.[147]

ISSUE: Unauthorized commitment

DISCUSSION: Despite legal advice from the BJA to not proceed with a project on fiscal grounds (i.e. an unauthorized commitment), one BCT commander insisted on committing funds to a project in Iraq. The funding packet went up to the DIV G3 without the usual legally supportive opinion. The DIV SJA agreed with the BJA legal position and the DIV halted the proposal. The BJA advised the SJA of the problems before the packet arrived at the DIV.

RECOMMENDATION: Some commanders will elect to disregard their JAs' advice and proceed on a course of action without legal support in hand. It is important for JAs at different echelons to keep one another informed and to keep memorandums for record (MFRs) when contentious issues with commanders arise.[148]

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[145] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.
[146] *Id.*
[147] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 1.
[148] *Id.*

ISSUE: Ever changing fiscal law guidance

DISCUSSION: JAs and paralegals have to be vigilant in ensuring commanders and those involved in fiscal matters on deployments are aware of the latest fiscal limits and procedures when they deploy. Too many veteran operators of past deployments rely on old fiscal procedures to guide them in current deployments. This is especially true of CERP, where limits and procedural requirements have changed. As well, CERP procedures in Iraq differ from those used in Afghanistan.

RECOMMENDATION: Educate commanders and fiscal stakeholders in the latest guidance for the relevant AO and ensure they discard old practices. Another recommendation is to give them a cheat sheet to serve as a quick reference guide.[149]

ISSUE: Air Force experts in fiscal law

DISCUSSION: U.S. Army JAs reported they have had good fiscal law support and guidance offered by Air Force JAs who possess specialized knowledge and experience in this field. They are a good source of information due to their unique fiscal law training and background.

RECOMMENDATION: A good source of fiscal law expertise is Air Force JAs who have specialized training and experience in that field of law.[150]

ISSUE: Layers of fiscal law reviews for projects

DISCUSSION: The number and complexity of fiscal law reviews/opinions deployed BJAs must provide can be overwhelming. These legal reviews merely may be the first of several legal reviews depending upon the amounts involved and other factors. A project proposal can go to division (DIV), corps, and then perhaps to the Joint Contracting Command. This does not mean the BJAs can take it easy, as their preliminary review is often the most difficult of the bunch. New BJAs should not simply adopt boilerplate answers to original problems – take time to study the facts and the applicable fiscal law regimes. In Afghanistan, BJAs must write a full legal opinion and not just indicate they have no legal objection. One of the biggest problems is trying to determine the correct funding source for a project, because it is possible to "write checks from the wrong checkbook."

RECOMMENDATION: BJAs often provide the most complex legal advice since they are the ones looking at a proposal for the first time and have to survey the fiscal law landscape to find the correct legal solution to move a project forward to higher levels.[151]

ISSUE: Using Commander's Emergency Response (CERP) funds for RoL construction

DISCUSSION: CERP expenditure was an issue throughout the deployment plagued by inconsistent guidance. While early on USFOR-A cracked down on CERP use, it returned later to ask why the CJTF had not spent more robustly. The reason was that USFOR-A had lowered the thresholds requiring higher headquarters approval, so it was cumbersome to gain approval for major projects. This problem was endemic in RoL where courthouse / police station / jail

[149] *Id.*
[150] *Id.*
[151] *Id.*

construction projects routinely exceeded the brigade approval thresholds. Moreover, USFOR-A resource managers and attorneys interpreted the CERP guidelines very narrowly.

RECOMMENDATION: Improve. CERP is an important tool to rebuild Afghanistan's infrastructure. RoL depends on ample funding for success.[152]

ISSUE: Narrow reading of CERP guidelines

DISCUSSION: USFOR-A would not allow the CJTF to use CERP to pay for shuras with key leaders to foster support for the Afghan government, reintegration of released detainees, NDS embed support, or judicial pay supplements. This was due to an unnecessarily narrow reading of the CERP guidelines. In spite of differing interpretations of the guidelines by the CJTF fiscal law attorneys, USFOR-A would not allow it.

RECOMMENDATION: Improve. USFOR-A fiscal law attorneys and resource managers need to support subordinate commands with proper interpretation of the CERP guidelines.[153]

ISSUE: Funding for NDS Embeds

DISCUSSION: The CJTF looked at using Afghan Security Forces Funds (ASFF) controlled by Combined Security Transition Command—Afghanistan (CSTC-A); however, CSTC-A refused to use the funds for this purpose as it did not have a training mission below the Corps level. Additionally, it did not see NDS prosecutors as part of the national security forces which further complicated efforts. This forced the CJTF to rely on CERP funds; however, again USFOR-A did not see this as a proper purpose for CERP. Bottom line is that there is a systemic disconnect between the RoL mission related fiscal requirements at the tactical level and the guidelines for the use of funds at the strategic level. At the strategic level, CSTC-A and USFOR-A are not thinking outside the box to use their funds to support the RoL mission.

RECOMMENDATION: Improve. The CJTF did its best to convince higher headquarters to use funds in support of the RoL mission. The Regional Commands must pressure the headquarters controlling the funds to use them in creative ways within the bounds of the law to support the RoL mission. Subordinate commands should convince the USFOR-A and CSTC-A commanders to pressure their resource managers to support the tactical missions.[154]

ISSUE: Lack of control over the Afghan Security Forces Funds (ASFF)

DISCUSSION: CSTC-A controlled ASFF and did not necessarily agree with the CJTF on potential uses to support the security forces. This hampered mission accomplishment with partnered forces.

RECOMMENDATION: Improve. As CSTC-A is not the unit partnered with Afghan forces, it should not control the funds supporting their operations.[155]

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[152] 82d Airborne Division, Staff Judge Advocate OEF After Action Report, 23 June 2010, Deployed June 2009 – June 2010, Regional Command—East, Bagram Airfield, Afghanistan (hereinafter "82D ABN OEF AAR, JUN 09 - JUN 10"; on file at CLAMO).
[153] *Id.*
[154] *Id.*
[155] *Id.*

III.C.3. Operations & Maintenance (O&M) Funds

ISSUE: Joint Project Management Office (JPMO)

DISCUSSION: The BCT established the JPMO as a dedicated working group to oversee and manage all BCT projects and nonlethal targets. The BCT Deputy Commanding Officer (DCO) chaired the JPMO, which consisted of the BCT's air defense/air movement (ADAM) cell officers, as well as the third BCT attorney.

RECOMMENDATION: Sustain. Membership in the JPMO kept the BCT legal office in the loop on all expenditures and allowed them to have input before the planning process went too far.[156]

ISSUE: Operational Needs Statement (ONS)

DISCUSSION: The required fire extinguishing system in some trucks was deficient. The system (TRIMAX) did not always operate properly and lead to damaged equipment. In support of an alternative fire suppression system, the unit submitted an ONS. AR 71-9 is the governing regulation. Appendix B of the regulation contains the ONS format.

RECOMMENDATION: Improve. Judge advocates should at least be familiar with the concept of a ONS. To assist in drafting the request, consult experts in the area of operations and look for completed 15-6 investigations.[157]

ISSUE: Availability of only Operations and Maintenance (O&M) funding in Kosovo

DISCUSSION: TFF in Kosovo generally has only O&M funding. There is no Commander's Emergency Response Program (CERP) in Kosovo. Consequently, if you are comfortable with advising on the use of O&M at home station, it is no different in Kosovo.

RECOMMENDATION: Ensure the command understands that spending O&M overseas confers no additional authorities. If you cannot buy it with O&M at home station, you cannot buy it with O&M in Kosovo.[158]

ISSUE: Proper use of funds for different undertakings

DISCUSSION: Commanders and units were not always careful or knowledgeable regarding the proper use of funds. There were three distinct lines of operation, each of which required a different source of funding. Commanders needed construction for U.S. forces. That construction had to be funded with Operations & Maintenance, Army (OMA) funds (below $750,000). Second, as partnership efforts increased, units sought to build and provide materials for the Iraqi Security Forces (ISF). That undertaking had to be funded with Iraqi Security Forces Funds (ISFF). Third, Commander's Emergency Response Program (CERP) projects were for the benefit of the Iraqi people or public and could not benefit the ISF or U.S. forces. Units blurred

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[156] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 4.
[157] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 2.
[158] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 19.

the distinctions. If a commander needed to build a tactical operations center (TOC) for the ISF, he would attempt to use OMA funds by asserting that the building was for the benefit of U.S. forces. Commanders wanted to use CERP funds for projects which were really for the benefit of the ISF. The lines between the three were sometimes difficult to draw, as projects would have multiple benefits. For instance, solar lighting benefited the local population and encouraged commerce while at the same time reduced the threat of attacks which also, at least indirectly, benefited the ISF and U.S. forces. Funding was determined by the true nature of the project being undertaken.

RECOMMENDATION: Sustain. Ensure units are aware of and do not violate the limits on sources of funding.[159]

ISSUE: Combat Service Support to Iraqi Security Forces (CSS to ISF) program

DISCUSSION: Many units working in the area of operations requested construction material from the construction materials yard maintained by the engineer brigade. The BJA trained the brigade S3 personnel to require the requesting unit to identify the use to be made of the materials. Many times, the materials were to be used for construction for the ISF without proper approvals. In response to a request for an approval packet, the units stated that the materials were being requested under the Combat Service Support to Iraqi Security Forces (CSS to ISF) rules which allowed a unit to provide up to $30,000 of materials to the ISF as a last resort in support of kinetic operations. The BJA determined that the use of CSS to ISF for construction materials was inappropriate and disallowed the requests for materials without an approved ISF funding packet. The BJA thus served as a final check or backstop to prevent the unauthorized use of materials for the ISF without proper approval.

RECOMMENDATION: Sustain. The BJA required units to provide the proper documentation and follow the procurement rules.[160]

ISSUE: Funding OSC personnel

DISCUSSION: The 3.8% administrative fee DCSA charges for FMS cases or Foreign Military Financing (FMF) cases funds the OSC's personnel and equipment. The combatant commander (i.e., CENTCOM commander) may choose to augment the OSC staff with DoD O&M funds. In addition, the host nation may choose to provide "assistance in kind" to fund host nation OSC personnel. Personnel requirements above the aforementioned have to receive funding from another source/authorization, such as excess administrative fees from other embassy OSCs.

RECOMMENDATION: OSJA personnel should ensure the planners developing the OSC concept are aware of funding sources and limitations for OSC personnel and equipment.[161]

III.C.4. Commander's Emergency Response Program (CERP)

ISSUE: CERP spending

[159] 225th EN BDE (LAARNG) OIF AAR, JAN 09-NOV 09, *supra* note 59.
[160] *Id.*
[161] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 35.

DISCUSSION: After the implementation of the Security Agreement (SA), the BCT focused its efforts on CERP projects. All CERP requests went through the Civil Affairs staff using the targeting process. The BCT commander's intent was to spend as much money as possible. Projects ranged from as small as book bags of school supplies for Iraqi schoolchildren to as large as a water treatment facility to service Basra.

RECOMMENDATION: Improve. Units should focus on spending CERP where it will have the greatest immediate impact on improving Iraqi government capacity to provide basic services to its people. As U.S. forces look to withdraw from Iraq within the next two years, the approval level should increase (i.e., reduce the dollar value which lower level commanders may approve—from $500K to $250K for BCT commanders).[162]

ISSUE: Money As A Weapons System (MAAWS) handbook

DISCUSSION: One resource that proved very helpful in navigating contract and fiscal issues was the MAAWS Handbook. The MAAWS is an excellent guide for issues like Commander's Emergency Response Program (CERP), Iraqi Security Forces Funds (ISFF), and rewards programs.

RECOMMENDATION: Sustain. The MAAWS handbook is readily available on the internet and is an invaluable source of information for JAs, commanders, and Soldiers. However, JAs should ensure they have the most up-to-date version, as Multi-National Corps – Iraq (MNC-I) publishes an updated version approximately every six months.[163]

ISSUE: Bulk CERP funds

DISCUSSION: The BJA reviewed every Commanders Emergency Response Program (CERP) packet and approved bulk CERP funds in some cases. However, the BJA required the recipient of the bulk CERP (i.e., the PRT) to email information back to the BJA as they obligated the funds.

RECOMMENDATION: Sustain.[164]

ISSUE: CERP condolence payments

DISCUSSION: Even though everyone knew the monetary caps on CERP condolence payments ($2500 at the BCT commander approval level), the cultural advisors said they should pay the culturally accepted amount of $10,000 per death. In a couple of egregious cases, the BCT sent requests to division to approval the $10,000 payments.

RECOMMENDATION: Do not limit yourself to the normal $2500 cap in situations warranting a greater payment. However, be careful about setting a new standard for condolence payments in your AO, as the local populace could begin to expect the larger amount routinely.[165]

ISSUE: Funding for support to police investigators

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[162] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 81.
[163] 3-1 CAV OIF AAR (1st Half), DEC 08 - JUL 09, *supra* note 15.
[164] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 3.
[165] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 4.

DISCUSSION: The Iraqi Police (IP) would not assign a car to the police investigator to travel back and forth to Camp Liberty. This especially became a hindrance after 30 June 2009, when the "out of the cities" provision of the Security Agreement took effect, limiting the ability of the brigade to travel to the police investigator. The BCT could use CERP to purchase a car for the IJs, but could not use it for a car for the police investigator even though he was acting in a quasi-judicial capacity in working for the IJ. The IJs, however, refused to take responsibility for a car for the police investigator, for fear the High Judicial Council would take it.

RECOMMENDATION: Improve. The CERP guidance should take into account the function of police investigators in the Iraqi judicial system and allow CERP expenditures to support them despite the general ban on using CERP to support the police.[166]

ISSUE: CERP micro-grants

DISCUSSION: The most common projects under the Commander's Emergency Response Program (CERP) involved micro-grants. There was some disagreement between the BCT and MND-N as to what types of businesses qualified for micro-grants. For example, it was clear CERP micro-grants could not fund entertainment centers, such as arcades. However, it was unclear whether they could fund things like internet cafes.

RECOMMENDATION: Improve. Train units on the standards for micro-grants, including instruction at the Senior Officers Legal Orientation (SOLO) course at TJAGLCS. There should also be a two-hour block of instruction at the Graduate Course and the Fiscal Law Course covering the *Money As A Weapons System* (MAAWS) guidance on CERP, including both the rules and the policy behind the rules. Finally, BJAs should seek guidance from the division OSJA on questionable micro-grant projects to ensure both top-cover and consistency.[167]

ISSUE: Project splitting with CERP

DISCUSSION: The BJA spotted some CERP projects having the appearance of project splitting because they were related to earlier projects, but where the earlier projects had not necessarily contemplated future requirements. For example, there was a request for additional "cherry-picker" trucks for electrical maintenance where there had been a previous project for a smaller number of different types of trucks used for the same purpose, i.e. maintenance of the electrical grid. This issue arose primarily with respect to sewer and water projects. The question was whether all the sewer lines for a particular city should be treated as one project, or whether there could be separate projects for each neighborhood within the city. The BJA, in coordination with engineer assessments, resolved to define sewer projects in terms of neighborhood, while defining water projects in terms of water treatment plant distribution stations.

RECOMMENDATION: Sustain. Be vigilant as to attempts to split projects to stay under approval thresholds. Track the amounts spent in each area to assess whether new projects are related to previous projects, and turn over project files to the incoming unit so they can avoid accidentally violating this requirement. However, also be flexible and practical in defining project requirements and what constitutes a "complete and usable facility" in different scenarios. Use engineer assessments to support the argument it is not project splitting.[168]

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[166] *Id.*
[167] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 89.
[168] *Id.*

ISSUE: CERP micro grants

DISCUSSION: One of the BCT's biggest initiatives was their use of the CERP micro grant program. The use of micro grants was highly effective and could move from the identification phase to the execution phase very quickly. The BCT's goal was to process micro grant requests to completion within 36 hours. Battalions typically submitted micro grant requests in bundles of eight to ten at a time when they went into a town. The S9 created a storyboard in the support of each project using a template. The S2 vetted each applicant. The legal reviews consisted of ensuring the micro grants were for a proper purpose and checking for compliance with administrative guidelines.

RECOMMENDATION: Sustain. Follow-up is essential with the micro grants. The BCT conducted a 30-day review of all such projects to ensure the recipients were using the micro grant for the approved purpose.[169]

ISSUE: Understanding CERP

DISCUSSION: CERP is a popular tool used by commanders in the deployed environment. However, units often misunderstand the purpose and authorized uses of CERP.

RECOMMENDATION: If involved in CERP at all, JAs should constantly refer to MAAWS-A, especially Appendix B, and the CERP SOP. JAs should understand the authorized purposes of CERP and check their projects against unauthorized CERP uses.[170]

ISSUE: Using CERP for information operations (IO)

DISCUSSION: Sometimes CERP projects will begin to cross into IO. The MAAWS-A does not authorize CERP for IO or psychological operations.

RECOMMENDATION: JAs need to be cognizant of the various CERP projects and be familiar with the MAAWS-A in order to provide the necessary guidance to ensure units use CERP appropriately. Know the purpose of CERP and its restrictions.[171]

ISSUE: Conducting legal reviews of CERP projects

DISCUSSION: JAs should review CERP projects before submission.

RECOMMENDATION: When conducting a legal review of a CERP project, JAs should look for sustainability of the project. Additionally, JAs should ensure the unit submitting the project has done coordination with other relief agencies to ensure they are not working on a similar project or more suited to do the project better.[172]

ISSUE: Distinguishing between CERP and Foreign Claims Act (FCA)

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[169] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 28.
[170] 2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09, *supra* note 21.
[171] *Id.*
[172] *Id.*.

DISCUSSION: In a deployed environment, units are sometimes confused between what damages they can pay with CERP and what they can pay through FCA.

RECOMMENDATION: JAs need to know the difference between CERP and FCA so they can properly advise units on which funds to use to compensate local nationals for damages. Additionally, JAs cannot provide an adequate legal review for CERP without understanding FCA.[173]

ISSUE: CERP surge

DISCUSSION: In the last quarter of FY 2009, MND-B engaged in a CERP spending surge, which led to units submitting funding requests for non-traditional CERP projects. For example, CERP funded the purchase of heavy equipment items such as bulldozers and graders for use at Iraqi landfills. The BJA analyzed a number of unusual requests. He found the use proper, as the expenditure filled an immediate, urgent, and humanitarian or reconciliation need and there was not a direct benefit to U.S. forces.

RECOMMENDATION: Improve. The unit using CERP to purchase heavy construction equipment considered the project to be within the proper limits of use of the appropriation. Purchase of civic and community vehicles was a specifically authorized use of CERP. BJAs must be aware of fiscal restraints and expiration of the funding appropriation.[174]

ISSUE: Use of CERP to build a memorial to Sons of Iraq

DISCUSSION: While backfilling as the contract and fiscal law attorney for MND-B, the BJA was requested to approve a CERP request to build a memorial to the Sons of Iraq (SOI). The BCT commander insisted the project was the most important project for reconciliation in his area of operations (AO). After initially being told that the project did not qualify for CERP, the commander insisted that the project be approved. The project was rewritten as an arts and humanitarian project. The BCT BJA (not the engineer brigade BJA) approved the request. The engineer brigade BJA serving as the contract and fiscal law attorney for MND-B concurred. The BJA wrote a memorandum for the record advising the commander that others may disagree with the project and that the project carried risk. Nevertheless, because the commander insisted that the project was the most important project in his AO to support reconciliation and because CERP is ultimately a commander's program, the BJA concurred allowing the project to proceed.

RECOMMENDATION: When using CERP, ensure it is for the proper purpose (i.e., to fill an immediate, urgent, and humanitarian or reconciliation need where there is no direct benefit to U.S. forces.[175]

ISSUE: Legal review of all CERP projects

DISCUSSION: 4-25 ID JAs legally reviewed all BCT CERP proposals and completed over 2,500 reviews for contracting actions, emergency funding, and financial liability investigations. They undertook this comprehensive review approach to ensure legal sufficiency of contracts and correct any problems early in the process. During the yearlong deployment of 4-25 ID, they

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[173] *Id.*
[174] 225th EN BDE (LAARNG) OIF AAR, JAN 09-NOV 09, *supra* note 59.
[175] *Id.*

reviewed more than 550 CERP projects totaling over $200 million for roads, government facilities, power and water initiatives, vocational education programs, and agricultural development programs.

RECOMMENDATION: While there are thresholds for when CERP legal sufficiency reviews are required, JAs should consider reviewing all projects regardless of amounts to ensure compliance and to determine if any corrective actions are necessary. The downside of 100% review is the time required to do so. Having an additional JA CPT eases the burden and facilitates 100% review.[176]

ISSUE: CERP funding and RoL projects

DISCUSSION: RoL projects do not precisely fit into a CERP category, and are subject to different funding procedures than other CERP projects. Normally, the Division level can approve CERP projects $2 million and below. For RoL projects, the Division level can only approve projects $500K and below. The net result is large RoL projects must go to the theater commander for approval. The added bureaucracy, and the resulting time lag, is undesirable since governance is one of the main lines of effort in Afghanistan. 4-25 ID struggled for more than six months to receive CERP funding for a provincial court facility and a provincial prison in Paktika province. Both projects were over $500K and required ISAF approval. When 4-25 redeployed, both projects were still at ISAF pending approval.

RECOMMENDATION: CERP funded RoL projects should follow the same authorization process as ordinary CERP projects.[177]

ISSUE: Timeliness of CERP processing

DISCUSSION: The 25 ID Commanding General (CG) imposed a 24-hour review of all CERP projects at the Division level. This meant CERP packets could not sit in the OSJA longer than a few hours. Consequently, the night shift operational law attorney conducted fiscal reviews of some CERP projects.

RECOMMENDATION: Sustain. Ensure multiple attorneys at the Division level are able to perform fiscal law reviews.[178]

ISSUE: Prevention of project splitting with CERP

DISCUSSION: Division fiscal law attorneys had to monitor brigade CERP projects to prevent project splitting. With projects involving water and sewer systems, there were different ways to define what constituted a single project. In some cases, it made sense to define such projects by neighborhood, while in other cases in made sense to define the projects by distribution point. In some cases, incoming BCTs fell in on unfinished projects and were unaware of how much previous units had already spent on particular systems.

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[176] 4th Brigade Combat Team (Airborne), 25th Infantry Division, Brigade Judge Advocate OEF After Action Report, 27 March 2010, Deployed February 2009 – February 2010, Forward Operating Base Salerno, Khowst Province, Afghanistan (hereinafter "4BCT, 25ID OEF AAR, FEB 09 - FEB 10"; on file at CLAMO).
[177] *Id.*
[178] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.

RECOMMENDATION: Maintain a database of CERP projects to enable fiscal law attorneys to determine whether new expenditures are really part of prior projects.[179]

ISSUE: Requesting exceptions for Iraqi-CERP (I-CERP)

DISCUSSION: There authorized categories for the use of I-CERP were more limited than for CERP. However, units could apply for an exception through the Iraqi Supreme Reconstruction Council (I-SRC). The Division did so on two occasions when their desired project exceeded MNC-I's approval threshold for CERP. In both cases, the I-SRC disapproved the requests after approximately six months.

RECOMMENDATION: Exhaust all possible funding sources for projects having command emphasis.[180]

ISSUE: Fiscal law "battlefield circulation" training

DISCUSSION: The 25 ID fiscal law attorney conducted fiscal law training for one of the subordinate BCTs and the PRT. The training covered the authorized uses of ISFF, CERP, I-CERP, and other funds.

RECOMMENDATION: Sustain. The Division should send the fiscal law attorney along with the G7 CERP Manager and the G8 out to each subordinate BCT to provide this training, particularly when new BCTs arrive in the AO.[181]

ISSUE: Phase-out of Sons of Iraq (SOI) contracts

DISCUSSION: A FRAGO issued early in the Division's deployment prohibited the use of CERP for SOI contracts after a certain date. The Division oversaw the transfer of approximately 28,000 SOI to the administration of the GoI.

RECOMMENDATION: Ensure commanders understand CERP is no longer available to fund SOI contracts.[182]

ISSUE: Fiscal law interaction with the Provincial Reconstruction Team (PRT)

DISCUSSION: The PRT JA invited the Division fiscal law attorney to the PRT to see CERP projects firsthand.

RECOMMENDATION: Sustain. Take every opportunity to see how units plan and execute CERP projects.[183]

ISSUE: Understanding the Commander's Emergency Response Program (CERP) in Afghanistan

DISCUSSION: Marines are familiar with CERP. However, some Marines have a hard time

[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.*

understanding CERP funds are different in Afghanistan than they were in the earlier stages of Operation Iraqi Freedom (OIF), when the funds were not appropriated funds. Specifically, the CERP funds used in Afghanistan now are appropriated funds, which require a purpose, time, and use analysis before using.[184]

RECOMMENDATION: JAs need to understand CERP and the rules regarding its use.

ISSUE: Increase in the fiscal law workload due to review of brigade CERP projects

DISCUSSION: The Division fiscal law attorney initially reviewed only those CERP projects requiring Division-level approval (i.e., those exceeding $250K). However, when the G8 noticed problems with brigade-level projects, the fiscal law attorney began reviewing brigade packets as well. When this happened, she went from reviewing 60 packets per month to 150-180 packets per month. In all, she reviewed approximately 835 CERP packets over the course of the deployment, totaling $95 million in projects.

RECOMMENDATION: Improve. There is a need for multiple fiscal law attorneys at the Division level.[185]

ISSUE: Use of multiple Division staff sections to engage brigades on fiscal law issues

DISCUSSION: Sometimes the Division staff would find problems with CERP packets after the BCT commander had already approved the project. The Division G8 would not fund the projects in these cases. It was helpful for multiple staff sections, including the G8 and G9, to engage their counterparts at the BCT to determine a fiscally sound way to accomplish the BCT commander's intent.

RECOMMENDATION: Sustain. This type of practice is important for minimizing view of the fiscal law attorney as a roadblock.[186]

ISSUE: Staying within the CERP guidelines

DISCUSSION: Commanders and staffs in general have a hard time understanding the fiscal law requirement to have specific statutory authority to spend money. They are accustomed to other areas of law in which they are free to act unless a law specifically prohibits the action. This notion was prevalent with CERP projects, where commanders and S9s wanted to force their desired projects into the authorized CERP categories. The fiscal law attorney had to explain if the CERP guidelines in the Department of Defense Financial Management Regulation (DoD FMR) and the MAAWS SOP do not say you can "build" something, you cannot build it.

RECOMMENDATION: Conduct CERP training with commanders, S9s, and civil affairs (CA) teams as they arrive in the division AO.[187]

ISSUE: Educating Provincial Reconstruction Teams (PRTs) on the use of CERP

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[184] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 129.
[185] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 74.
[186] *Id.*
[187] *Id.*

DISCUSSION: PRTs wanted to spend CERP in the same way they were accustomed to spending Title 22 funds. They did not understand they could not use CERP for training programs or to pay stipends.

RECOMMENDATION: Improve. Educate the PRTs on the proper and improper uses of CERP. Fiscal attorneys must be able to stand up to the PRT, particularly given the PRT often has the commander's ear.[188]

ISSUE: Need for evidence standards for CERP battle damage and condolence payments

DISCUSSION: When the Division fiscal law attorney began reviewing brigade CERP packets, she discovered some BCTs had been approving battle damage and condolence payments with little to no evidence in the packet.

RECOMMENDATION: Improve. Update the MAAWS to require a standard list of evidence to substantiate CERP battle damage and condolence payments.[189]

ISSUE: Follow-up of CERP projects

DISCUSSION: During battlefield circulation, one BCT found the previous unit had been paying Iraqis for trash pickup under a CERP contract when, in fact, no such work had occurred.

RECOMMENDATION: Improve. Follow up on CERP projects to ensure they follow guidelines. Ensure project managers make payments to individual employees rather than a sheik or other broker.[190]

ISSUE: Limits on CERP battle damage payments

DISCUSSION: Under the MAAWS, Division commanders could only approve up to $10K in for CERP battle damage payments. Anything over $10K had to go to the MNC-I commander for approval. However, the MAAWS did not specify a maximum amount the MNC-I commander could approve. The OSJA opined the far limit for battle damage payments would be the maximum allowable project amount for CERP under the MAAWS.

RECOMMENDATION: This is one example of how the MAAWS is merely policy, but also indicates some flexibility within the CERP appropriation that likely was not intended. The end result is that lawyers may have to determine the intent of Congress to ensure that their command does not unintentionally cause further limits to be placed upon CERP.[191]

ISSUE: Inadequacy of the DoD FMR provisions for CERP

DISCUSSION: Volume 12, Chapter 27 of the DoD FMR covers CERP. It is a patchwork of poorly written documents rife with ambiguities and inconsistencies. In some cases (i.e., rule of law), the general rules for the category conflict with the illustrative examples.

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[188] *Id.*
[189] *Id.*
[190] *Id.*
[191] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.

RECOMMENDATION: Improve. The FMR provisions on CERP require a complete overhaul.[192]

ISSUE: Under Secretary of Defense (Comptroller) (USD(C)) memoranda

DISCUSSION: Many JAs do not understand USD(C) memoranda regarding CERP are authoritative only until the publication of the new DoD FMR. The MNC-I fiscal law attorney encountered numerous legal reviews by JAs citing older USD(C) memoranda as legal authority.

RECOMMENDATION: Improve. JAs should verify the current status of legal authority before citing it, and it would also be helpful if the USD-C memoranda stated that it should no longer be cited as legal authority after certain critical events, such as a change in the legislation, or a change in the DoD FMR.[193]

ISSUE: "National" CERP

DISCUSSION: There was a change in philosophy as to the use of CERP when I Corps replaced XVIII ABC as MNC-I. The I Corps commander wanted to implement a change in direction from the XVIII ABC and asked CDRs to reassess where CERP could be used more and if possible on larger projects which he would push up to the Secretary of Defense (SECDEF) or Congress for approval if necessary. MNC-I solicited subordinate units for project ideas, with a focus on projects either crossing battle spaces or otherwise having a national impact. Of approximately 680 "dream" projects, 117 projects had letters of justification drafted, but only three projects made it to the execution phase. MNC-I could approve projects up to $1 million. However, CENTCOM did not favor forwarding higher value projects to SECDEF.

RECOMMENDATION: The purpose of CERP is to enable commanders to respond to "urgent" humanitarian relief and reconstruction requirements in their area of responsibility (AOR) by carrying out projects which will "immediately assist" the indigenous population. Congress' understanding of the purpose may have morphed over time. Nonetheless, JAs must ensure CERP projects fall within CERP guidelines. With respect to large scale "national" CERP projects, realize there may be resistance from CENTCOM and SECDEF to approving projects over $1 million due to the past criticisms of the CERP program in DoD Inspector General audits.[194]

ISSUE: Shift of personnel from operational law to fiscal law

DISCUSSION: In order to process the nearly 700 "CERP" project submissions, the OSJA assigned the night operations JA from the joint operations center (JOC) to serve as an additional fiscal law attorney. The MNC-I Chief of Staff approved the move, because he had an appreciation for fiscal law and realized the emphasis the MNC-I Commander placed on CERP. This JA performed the initial scrub of the projects to eliminate those not falling within authorized uses of CERP.

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[192] *Id.*
[193] *Id.*
[194] *Id.*

RECOMMENDATION: Sustain. Be prepared to shift personnel assets as the commander's priorities and the operational environment change, and ensure that personnel are cross-trained and prepared for this to occur.[195]

ISSUE: Corruption in the use of "national" CERP funds

DISCUSSION: During the deployment, a national Commander's Emergency Response Program (CERP) stood up. These projects were large in scope. There was a significant amount of suspected corruption associated with these projects. Host nation elements associated with the projects were forceful and eager to engage in profiteering. There was a strong need for skilled and experienced negotiators and facilitators to interface with host nation commercial interests. Many of the Army officers designated to engage directly and indirectly in this process lacked the required skills and experience.

RECOMMENDATION: Improve. The use of CERP funds on large-scale projects requires a strong understanding and background in commercial ventures that is generally lacking in many mid-level and senior Army officers. Greater training and access to expertise will help combat corruption.[196]

III.C.5. Security Forces Funds

Iraqi Security Forces Fund (ISFF)

ISSUE: Quick Response Fund (QRF)

DISCUSSION: QRF, a formal subdivision of Iraqi Security Forces Funds (ISFF), provides a means of responding to short-notice, emergent needs without which the mission of Iraqi Security Forces (ISF) will fail. The BCT processed many such requests, including those for IA, Iraqi Police (IP), and river ring forces ("swamp police"), many of which came directly from the ISF leaders. The BCT commander could approve QRF expenditures up to $50,000. The biggest issue for the BJA was ensuring requests fit into the definition of an emergent (vice "emergency") need and were not recurrent or foreseeable. One example of a QRF request was infrared patches for ISF so U.S. forces could identify them during combined operations. Another was a paved staging area for ISF vehicles, since their vehicles were sinking in the mud.

RECOMMENDATION: Improve. Because the language of the *Money As A Weapons System* (MAAWS) book is very strict as to the use of QRF, JAs sometimes need to interpret the QRF authorization broadly in order to meet the need of the ISF. At the same time, MNC-I should consider reducing the approval authority of BCTs to ensure they are using QRF for truly unexpected, "emergent" needs.[197]

ISSUE: Use of ISFF to pay for refurbishment and transportation of EDA

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[195] *Id.*
[196] 492d Civil Affairs Battalion, 364th Civil Affairs Brigade, Brigade Judge Advocate OIF After Action Report, 17 April 2010, Deployed January 2009 – February 2010, Camp Victory, Iraq (hereinafter "492d CA BN OIF AAR JAN 09 - FEB 10"; on file at CLAMO).
[197] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 81.

DISCUSSION: Under the EDA, funds "available to the DoD" may not be expended for the refurbishment, packaging, crating, handling, and transportation costs associated with the transfer of excess defense articles. In colloquial terms, this provision of the EDA mandates that excess defense articles will be transferred to the receiving nation "as is, where is." As a part of the larger USETTI plan, the GoI is to receive a large number of military vehicles located at various depots in the U.S. The decision was that the GoI would bear the expense for their refurbishment and transportation to Iraq.

Notwithstanding the "as is, where is" provision of the EDA, the MNSTC-I OSJA determined it was legally permissible to use ISFF, a fund "available to the DoD," for the purpose of refurbishing and transporting this equipment. The statutory purpose of the ISFF is to provide assistance to the security forces for Iraq, "notwithstanding any other provision of law." A number of federal circuit courts have interpreted this phrase, "notwithstanding any other provision of law," to mean Congress intended it to supersede any preexisting or subsequently enacted legislation. The EDA of the Foreign Assistance Act became law in 1961. Consequently, the ISFF appropriation, which was first authorized in 2005, coupled with its unique purpose to assist the security forces of Iraq, renders the "as is, where is" provision of the EDA inapplicable.

RECOMMENDATION: Sustain. A legal analysis should occur in the earliest planning stages and at various decision points when different authorities intersect. Relying on outside sources, JAs must be prepared to advance a legally defensible position that supports the command's strategic policy decisions. Moreover, JAs should coordinate issues of statutory interpretation on behalf of the DoD through technical channels to the appropriate division of Office of General the Counsel (OGC) and/or OTJAG, as appropriate.[198]

ISSUE: Coordination of legal advice on ISFF across commands

DISCUSSION: By statute, MNSTC-I administered the ISFF. The MNSTC-I OSJA therefore provided the legal advice concerning who qualified for ISFF and what were the proper purposes. However, MNSTC-I allocated a certain amount of ISFF to MNC-I as a formal subdivision for use as "Quick Response Funds" (QRF), for the purpose of meeting short notice and emergent requirements of the ISF. The MNC-I OSJA rendered its own legal opinions regarding the use of QRF.

RECOMMENDATION: It is critical for the custodian of the fund to coordinate with sister commands as to the interpretation of the statutory language of the appropriation. The MNSTC-I OSJA in particular ensured MNC-I understood its interpretation of eligible "security forces of Iraq," the facilities prohibition, and other issues.[199]

ISSUE: Facilities prohibition under ISFF

DISCUSSION: Under the FY09 NDAA, Congress prohibited the use of funds available after 1 October 2009, including ISFF (which appropriation MNSTC-I labeled "ISFF 5"), "for the acquisition, conversion, rehabilitation, or installation of facilities in Iraq for the use of the Government of Iraq . . . ." Under 10 U.S.C. § 2801(c)(2), the term "facility" includes a "building, structure, or other improvement to real property." Given the huge impact this prohibition would have on the use of ISFF, it was a challenge for the MNSTC-I OSJA to educate the command, particularly given the significant personnel transitions that occurred in both the OSJA and the

[198] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 35.
[199] *Id.*

spending directorates three months before the restriction's implementation. The OSJA published a FRAGO and information paper and coordinated with MNC-I and OSD.

Once this prohibition went into effect, some permitted actions with respect to facilities included: (1) providing "technical assistance" to ISF facilities projects; (2) purchasing personal property not permanently installed or affixed to the facility, such as furniture and computer equipment, so long as the equipment as a whole did not amount to a facility itself; and (3) funding facilities related projects solely intended to benefit ISFF funded contractors, such as installing a water tank into the life support area of the contractors. In addition, within the definition of a facility as a "building, structure, or other improvement to real property," the MNSTC-I OSJA interpreted "improvements to real property" as having an element of permanence in common usage, thus providing some degree of flexibility for non-permanent, non-affixed improvements.

RECOMMENDATION: Upon learning of a significant new appropriation restriction, coordinate immediately through technical channels to develop simple, clear guidance for publication to the implementing agencies. Publicize these restrictions repeatedly as a front-loaded restriction during program review boards and other planning meetings, as well as an information paper prominently linked on the front page of the OSJA web portal. Due to the significant lead-time involved in budget processes, DoD legislative affairs should communicate any significant funding limitation proposal to the security transition command OSJA upon identification of such limitations in the House report, permitting the command to gather data assessing the impact and to prepare for counterproposals or, in the alternative, prepare for the next budget cycle.[200]

ISSUE: Effect of facilities prohibition on contracts funded by previous ISFF appropriation

DISCUSSION: The "ISFF 4" appropriation, to which the facilities prohibition did not apply, had funded the purchase of a set of large shelves for an IP warehouse. Because the installation cost was too high, the proponent removed installation from the scope of the contract. However, when the facilities prohibition took effect in the next ISFF appropriation ("ISFF 5"), they were unable to fund the installation of the shelving units.

RECOMMENDATION: Improve. Security transition commands must anticipate potential future restrictions upon appropriations, developing a "one year at a time" outlook uncommon in standard military construction (MILCON) & procurement acquisition. With proper planning, the unit could have ordered the equipment early enough to receive it before the fiscal year ended and then contracted for the installation using ISFF 4. In this case, the command could still use ISFF to provide "technical assistance" to a GoI-funded installation of the shelving.[201]

ISSUE: Use of ISFF for election security

DISCUSSION: In planning the force protection for election sites, MNC-I published a FRAGO interpreting ISFF 5 for the purpose of defining what type of barrier material they could purchase. Although the initial inclination of the MNSTC-I OSJA was for the units to use Commander's Emergency Response Program (CERP) funds, MNC-I argued election security was a mission of the ISF, and the ISF needed barrier material to implement their security plan. The MNSTC-I OSJA reviewed the FRAGO before publication and made changes consistent with its interpretation of the facilities prohibition, which would prohibit temporary barrier material from

[200] *Id.*
[201] *Id.*

becoming an improvement to real property. The MNSTC-I OSJA, therefore, required there be a formal request from the ISF stating they needed the barrier material to secure various election sites and outlining their plan to remove the barrier material after the elections.

In order to ensure all legal personnel were providing consistent legal advice to their respective commands, the MNSTC-I OSJA participated in a video tele-conference (VTC) with the MNC-I OSJA and the Multi-National Divisions' OSJAs. MNSTC-I used this opportunity to clarify that while some equipment requested by units for election security were not "improvements to real property" due to their mobility, they were nonetheless "buildings or structures," and hence barred by the ISFF facilities prohibition. In the absence of detailed federal case law or regulations relevant to real property, MNSTC-I and MNC-I resorted to common state principles of real property law to distinguished between security improvements which amounted to facilities and those which could reasonably be classified as equipment. To be sure, some units decried the remaining restrictions, claiming the lawyers "didn't understand the big picture." Nonetheless, the two commands arrived at a workable, consistent framework that met many tactical requirements while preserving Congress' intent behind the facilities prohibition.

RECOMMENDATION: Sustain. This was a successful example of coordinating legal advice concerning ISFF across the commands. This situation, however, also underscores the importance of determining the intent of the project. Although one could view barrier materials as temporary and movable in nature, they can become an improvement to real property if the project intends for them to remain at the election sites permanently. Likewise, mobile guard towers, though movable, constituted a "structure" for the purposes of the facilities prohibition.[202]

ISSUE: Evaluation of "mobile" hospital under ISFF facilities prohibition

DISCUSSION: One directorate wanted to buy X-ray and other equipment for an Iraqi military hospital. This project was impermissible under the ISFF facilities prohibition. They resubmitted it as a project to place the equipment in a mobile home-like vehicle so it would be movable. However, the fiscal law attorneys examined the intent of the project and disapproved it because the plan was to park the mobile unit at the hospital. There were no other hospitals able to accommodate this vehicle.

RECOMMENDATION: Sustain. In evaluating projects under the ISFF facilities prohibition, consider whether the intent of the project is to create a facility for the Iraqis.[203]

ISSUE: Developing the ISFF budget

DISCUSSION: In requesting additional ISFF funds from Congress, the MNSTC-I J8 forwarded its proposed budget activity groups and sub-activity groups through the Office of the Secretary of Defense (OSD). Once Congress appropriated the funds, MNSTC-I sent up its spend plan through OSD for DoS concurrence, which the ISFF appropriation required. OSD then made the funds available via the Funding Authorization Document (FAD), which broke the ISFF budget down by budget activity group and sub-activity group. If MNSTC-I's spending deviated from these amounts, it could result in an Anti-deficiency Act (ADA) violation. However, the MNSTC-I commander had authority to reprogram up to $15 million, and could notify Congress requesting to reprogram amounts in excess of $15 million.

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[202] *Id.*
[203] *Id.*

RECOMMENDATION: Fiscal law attorneys need to coordinate with the J8 to review the ISFF spend plan to ensure it comports with the purpose of the appropriation.[204]

ISSUE: Legal framework for ISFF eligibility

DISCUSSION: The statutory purpose of the ISFF is to enable the "Commander, Multi-National Security Transition Command – Iraq, to provide assistance . . . to the security forces of Iraq." However, the ISFF appropriation does not statutorily define the phrase "security forces of Iraq," nor does Iraqi law define the term. In the past, the MNSTC-I OSJA had not developed a legal framework to interpret this term. Instead, they considered each request to fund particular security forces on a case-by-case basis. Over time, this "common law" approach resulted in some incongruous determinations. In September 2009, the MNSTC-I OSJA re-looked at the language of the ISFF appropriation to develop a systemic legal framework for determining whether particular organizations were "security forces of Iraq" and therefore eligible to receive ISFF.

Coalition Provisional Authority (CPA) Order Number 3, dated 31 December 2003, defined Iraqi Security Forces (ISF) to "include any and all Iraqi personnel from the Iraqi Police Service, Iraqi Civil Defense Corps, Facilities Protection Service, Iraqi Border and Customs Police or any organization whose mission includes physical security that may be established by the CPA or under Iraqi law subsequent to the signing of this Order." Similarly, CPA Order No. 91 expressly associated the security forces of Iraq with those established "pursuant to Iraqi federal law." While not exhaustive, Order 91 identified forces operating under the Ministries of Defense and Interior as emblematic of the intended definition of security forces.

In the FY 2005 National Defense Authorization Act (NDAA), § 1202 defined "military and security forces of Iraq" as "national armies, national guard forces, border security forces, civil defense forces, infrastructure protection forces, and police." More recently, § 1234 of the FY 2010 NDAA refined this definition so it includes "national armies, national air forces, national navies, national guard forces, police forces, and border security forces, but does not include non-governmental or irregular forces (such as private militias)." In the absence of any commentary, legislative history, or other interpretive guidance, it is unclear whether Congress intended these definitions to apply to the term "security forces of Iraq" found in the ISFF appropriation.

Drawing from these sources and from selected international law authorities regarding the legitimacy of armed groups and permissible support to Iraq, MNSTC-I OSJA developed a legal framework to evaluate whether a particular unit or organization qualified as a component of the "security forces of Iraq" by virtue of the organization's relationship with the GoI. For purposes of ISFF funding, this framework considered a unit or organization to be a part of the security forces of Iraq if it met the following factors: (1) the security force is located within the national boundaries of Iraq; (2) the security force is organized, having effective command and control over all members and responsive to disciplinary mechanisms; (3) the security force is, or is responsive to, a legitimately constituted governmental entity of the GoI; (4) the security force is recognized as individually or jointly responsible for the internal security within its area of operations; and (5) the security force in fact lawfully exercises that authority. These criteria were developed in order to ensure the organization could and would be held accountable for its activities under international and domestic laws, any assistance complied with U.S. arms control laws including the Foreign Assistance Act and the Arms Export Control Act, and the recipient force represented the legitimate authority of a sovereign state.

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[204] *Id.*

RECOMMENDATION: Due to the potential for inconsistency inherent in a "common law" style approach, it is useful for a security transition command to develop a legal framework up front for determining eligibility for specialized appropriations like ISFF. In developing such a framework, it is sometimes necessary to look to other areas of law to define terms that are central to the interpretation of a particular appropriation. In practice, MNSTC-I provided Congressional notice of its intent to fund various security forces through ISFF budget justifications. Consequently, even if the command determines a particular organization to be a "security force" under the above legal framework, the command should expressly include any newly designated "security forces" (i.e., security forces other than those in MoD and MoI) in future MNSTC-I budget justifications before funding with ISFF.[205]

ISSUE: Application of ISFF facilities prohibition to information technology (IT) projects

DISCUSSION: A proposed ISFF project involved the emplacement of mobile antennas to allow communication between two MoI facilities. The OSJA determined the project was permissible under the facilities prohibition because no equipment would be "permanently affixed" to become an "improvement to real property."

RECOMMENDATION: Ensure the proponents of the requirement understand the facilities prohibition. Require them to sign a memorandum for record (MFR) stating they understand the facilities prohibition and describing the equipment and why it will not be a permanent fixture. This helps clarify the nature of the project for the fiscal law attorney, as some IT projects use terminology normally associated with improvements to real property, such as "switches" and "panels." Nonetheless, there is a disconnect between the facilities prohibition and the continuing authority to "equip" the ISF under ISFF. Where Congressional guidance is unclear, this reinforces the responsibility of the end-user OSJA to clarify an interpretive framework through technical channels to arrive at a common viewpoint.[206]

ISSUE: Statutory interpretation regarding Title 10 funding for ICITAP advisors for Iraqi corrections officers

DISCUSSION: The DoS Bureau of International Narcotics and Law Enforcement Affairs (INL), using Title 22 funds, had been funding International Criminal Investigative Training Assistance Program (ICITAP) advisers from the Department of Justice (DoJ) to work with Iraqi corrections officers (ICOs) in various Ministry of Justice (MoJ) prisons. When DoS cut back on its Title 22 funding of these advisers, the question arose whether MNSTC-I could use ISFF, a Title 10 appropriation for the purpose of "provid[ing] assistance . . . to the security forces of Iraq," to fund the advisors.

The MNSTC-I OSJA identified two potential issues with using ISFF for this purpose. First, did the ICOs, who fell under the MoJ vice the MoD or the MoI, qualify as "security forces of Iraq?" Although MNSTC-I had taken a conservative approach in the past in declining to interpret ICOs as falling within the definition of "security forces of Iraq," the particular ICOs in question were working at camps that housed high-threat security detainees. Given the nexus of these detainees to the security of Iraq, they could properly include these ICOs as being "security forces of Iraq." Therefore, funding the ICITAP advisors to assists these ICOs would fall within the purpose of ISFF.

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[205] *Id.*
[206] *Id.*

The second potential issue with using ISFF for this purpose was the election doctrine established by GAO opinions. Under this doctrine, when two appropriations are equally available (in this case, a Title 22 fund and ISFF), an agency may choose either, but once it has made its election, the agency must continue to use the selected appropriation to the exclusion of any other during the current fiscal year, even if the chosen appropriation is exhausted. Although the election doctrine posed a potential impediment to using ISFF in this case, the ISFF appropriation was explicitly provided "notwithstanding any other provision of law," and "in addition to any other authority to provide assistance to foreign nations." This stance found support in a GAO opinion indicating if Congress specifically authorizes the use of two accounts for the same purpose, the agency is not required to make an election. Moreover, in this case, there were two different agencies involved; DoD had never made an election to use one fund over the other.

RECOMMENDATION: Carefully consider whether a proposed expenditure falls within the purpose of a particular appropriation. In the case of ISFF, the expenditure must benefit the "security forces of Iraq." As an initial matter, fiscal law attorneys must be able to distinguish between which groups fall within this definition and which do not. More importantly, fiscal attorneys must understand advanced principles of statutory interpretation. Upon receiving a new appropriation and authorization text, analyze each phrase for other uses under existing federal case law. For example, the MNSTC-I OSJA developed a stock brief of case cites for the power and limits of the phrases "notwithstanding any other provision of law," and "in addition to any other authority…" maintaining them in shared files for consultation in future gray-area initiatives.

Moreover, it is important to consider the policy implications of any fiscal decision. For example, MNSTC-I needed to consider the possibility INL may try to get MNSTC-I to pay for all advisors to ICOs, rather than just those that guard security detainees. In addition, the OSJA had to look to the future to the possibility that Congress may not renew the ISFF appropriation.[207]

ISSUE: Export authority independent of the Foreign Military Sales (FMS) program

DISCUSSION: In accordance with the Arms Export Control Act (AECA), there are two standard methods of exporting defense articles and services to foreign governments for security assistance: the Foreign Military Sales (FMS) (including "pseudo-FMS") program, in which a foreign government makes purchases from the U.S. government, and Direct Commercial Sales (DCS), in which the foreign government makes purchases from U.S. vendors directly. The latter generally requires the vendor to acquire an export license under the International Trafficking in Arms Regulations (ITARs). Unable to use either process for many years, MNSTC-I equipped the Iraqi government directly, funding purchases with ISFF in many cases.

In 2004, both the Iraqi acquisition infrastructure and MNF-I's capabilities were unable to execute under either of these established processes. Moreover, the security situation required building the security capability of the national government on an unparalleled scale, far beyond the scope of the most robust FMS and DCS programs. As the mission matured and the security environment eventually stabilized, MNSTC-I phased in a growing FMS capability. Nevertheless, some acquisition programs continued to employ the "direct ISFF buy" process. By 2009, the U.S.-Iraq partnership was sufficiently strong and Iraqi capabilities increased enough that MNSTC-I directorates were identifying more advanced equipment for purchase. At this point, non-FMS

[207] *Id.*

vendors raised concerns about AECA/ITAR compliance. OSJA records and discussions with past SJAs revealed no detailed analysis of export legal requirements since MNSTC-I's creation.

Under AECA § 38(b)(2) (codified at 22 U.S.C. § 2778(b)(2)), one of the exceptions to the licensing requirement is for exports "made by or for an agency of the United States Government . . . (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means." The OSJA determined MNSTC-I was a "foreign assistance or sales program" and therefore qualified for this exception.

MNSTC-I justified this independent export authority based on National Security Presidential Directive (NSPD) 36 and the order creating MNSTC-I, and confirmed by Congress in the text of the ISFF authorization. NSPD 36, dated 11 May 2004, delegated authority to direct and execute security assistance for Iraq to the military (CENTCOM), under the general direction of DoS. Through a FRAGO later that year, CENTCOM created MNSTC-I as the lead agency within Iraq to execute this mission. Congress endorsed this transfer of responsibility by specifically empowering the MNSTC-I Commander in the first ISFF appropriation in May 2005 and in successive ISFF appropriations. A key aspect of Congress' endorsement is that assistance provided under the appropriation is subject to Secretary of State concurrence.

RECOMMENDATION: It is vital for a security transition command OSJA to have an understanding of all legal authorities for their operations. Upon creation of a security assistance office not under direct Chief of Mission control, the founding documents must clearly lay out the office's authorities, limitations, and requirements. The OSJA and the general counsel's office must maintain these documents to ensure the commander/director is always within his or her authority. In particular, it is necessary to examine the extent to which the AECA, FAA, ITARs, and other relevant Title 22 laws bind the command with respect to the military's enhanced logistic capabilities and military requirements. For example, it was a military imperative to rapidly train and equip thousands of Iraqi security forces during the worst years of the fighting from 2004-2008. If the command does not qualify for the exception under AECA § 38(b)(2)(B), it will have to rely on the FMS program, which is insufficiently agile for the extreme demands faced by the warfighting commander. The export authority exception allows a great deal of flexibility in managing the program, which is crucial given the scale and scope of the security assistance program in Iraq.

Nonetheless, it is imperative that if the command employs alternate security assistance processes, it considers and incorporates the policy bases behind the FMS program where possible. The military necessity behind rapidly training and equipping a large force currently engaged in combat does not obviate the United States' strategic concerns over the transfer of any particular technology or capability to a partner nation, or the potential end-use and/or retransfer of that equipment or technology thereafter. In short, a security transition command OSJA should seek to identify whether DoD officials have considered and addressed these concerns in a train and equip process employed outside FMS/DSCA.[208]

ISSUE: Transfer of security assistance authority to USF-I

DISCUSSION: The planning for the transition to USF-I spurred the MNSTC-I OSJA to research MNSTC-I's current authority to conduct foreign assistance. The authorities included NSPD 36, the order creating MNSTC-I, and the text of the ISFF appropriation. They refined their understanding of this authority in resolving the arms export authorities, discussed above. Based

[208] *Id.*

on this research, the OSJA recommended the CENTCOM FRAGO designating USF-I as a command and dissolving MNSTC-I explicitly state USF-I will be a "foreign assistance activity of the United States."

RECOMMENDATION: Sustain. The transfer of authority to conduct foreign assistance from MNSTC-I to USF-I will preserve the ability of the new command to continue direct ISFF buys consistent with the AECA. As an independent foreign assistance activity, USF-I will not need to get the input of the Embassy on every transfer. Rather, the USF-I commander may direct what type of assistance DoD provides.[209]

ISSUE: Transfer of ISFF custodianship to USF-I

DISCUSSION: Congress gave responsibility for administering the ISFF appropriation to the MNSTC-I commander or other SECDEF designee. The command realized early on SECDEF would need to name a new designee once MNSTC-I ceased to exist as a command. The OSJA initially considered recommending the Deputy Commanding General, Advising and Training (DCG, A&T) (the duty position the current MNSTC-I commander would assume under USF-I) to be the new designee, but ultimately concluded this would violate the principle of unity of command. They next considered recommending the USF-I commander be the designee and delegate the custodianship to the DCG, A&T. Due to concerns over whether this authority was delegable, the OSJA finally recommended the USF-I commander be the SECDEF designee for administering ISFF, but have the DCG, A&T oversee its execution on a day-to-day basis.

RECOMMENDATION: Sustain.[210]

ISSUE: Deciding whether to use pseudo-FMS cases or independent export authority

DISCUSSION: Even though MNSTC-I asserted its independent export authority under AECA § 38(b)(2)(B), it continued to utilize pseudo-FMS cases (FMS cases in which the funding source was ISFF, not the GoI). While there was no set criteria for determining when to use a pseudo-FMS case rather than a direct ISFF purchase, MNSTC-I generally went through FMS if the item qualified as a defense article or service, unless there was a compelling reason to use the more expedited process. Thus, MNSTC-I used FMS for significant military equipment, such as helicopters, tanks, and armored personnel carriers, as well as accountable equipment such as night vision goggles (NVGs) and small arms. In situations where the need for the item was time-critical, MNSTC-I used its § 38(b)(2)(B) authority to make direct purchases from U.S. vendors with ISFF. In making these determinations, MNSTC-I staffed the request through the OSJA, the J4 procurement section, the Comptroller, and ISAM.

RECOMMENDATION: As capability develops, direct all security assistance activity into the FMS program. This is critical in order to set conditions for the end state, which will be the return of all security assistance functions to an office under Chief of Mission authority. Where necessary, assert § 38(b)(2)(B) authority and protect it through responsible management and accountability.[211]

ISSUE: Accountability and end use monitoring (EUM)

[209] *Id.*
[210] *Id.*
[211] *Id.*

DISCUSSION: Since 2004, two separate investigations by the GAO and the DoD Inspector General addressed accountability and end-use monitoring (EUM) deficiencies with regard to the train-and-equip program in Iraq. While these reports acknowledged MNSTC-I's program as a security assistance program, albeit a nontraditional one, they also reported the very flexibility required to meet the scale and scope of the requirements in Iraq contributed to the loss of accountability.

Congress responded to the GAO audit with legislation in § 1228 of the 2008 National Defense Authorization Act (NDAA), which required tracking and monitoring of defense articles provided to the GoI. DoD implemented these requirements in Directive-Type Memorandum (DTM) 08-041. The DTM required MNSTC-I to collaborate with the Director, Defense Security Cooperation Agency (DSCA) and to develop compliance plans and procedures to ensure serial number registration of all small arms, EUM of all lethal defense articles, and maintenance of origin and distribution records of all defense articles transferred. In accordance with these requirements, the MNSTC-I J4 began provided ITAM directorates with end-use certificates and maintained an accountability listing of all equipment transferred by ISFF purchase.

RECOMMENDATION: Even as MNSTC-I moves more to FMS with the transition to USF-I and the transition of ISAM to the Office of Security Cooperation (OSC), there will still be a need for rapid action for which the command will need to go outside the FMS program. It is therefore critical to protect and maintain the § 38(b)(2)(B) authority through responsible management and EUM. Furthermore, the requirement of § 1228 to ensure EUM of all lethal defense articles has the potential to overwhelm the eventual OSC under the U.S. Embassy – Baghdad (USEMB-B) due to the sheer volume of material transferred.[212]

ISSUE: Combat Service Support to Iraqi Security Forces (CSS to ISF) program

DISCUSSION: MNC-I had a program whereby subordinate units could provide the ISF with on-hand supplies and equipment (purchased with OMA) necessary to remedy life, health, and safety deficiencies directly related to, and with the potential to significantly impact, near-term kinetic operations. MNC-I would then seek reimbursement with ISFF from MNSTC-I. Although established by the MNSTC-I commander and MNC-I commander preceding the current MNSTC-I attorneys, the program existed via a Memorandum of Agreement (MOA) between the commanders without a legal review. Subsequent investigation into the program raised questions as to its fiscal legality, particularly as the written standards to invoke CSS to ISF were stringent: they required an emergent situation in which forces faced combat operations with little time to prepare. Nevertheless, the program grew in practice to include non-emergent circumstances.

RECOMMENDATION: See the *Money As A Weapons System* (MAAWS) guide for more information on the CSS to ISF program. Review all questionable fiscal programs and seek the source legal review. If none exists, the program should halt immediately for legal review.[213]

ISSUE: Paying for fuel for Iraqi escorts

DISCUSSION: Division policy required U.S. forces to have Iraqi escorts when traveling into the cities. The ISF did not want to use their own fuel to conduct what they saw as a U.S. mission. The Division fiscal law attorney sought guidance on the correct source of funds. MNC-I said

[212] *Id.*
[213] *Id.*

ISFF was the proper fund because the fuel was for ISF. However, the Multi-National Security Transition Command – Iraq (MNSTC-I), which controlled ISFF, stated the unit should use its own Operations & Maintenance, Army (OMA) funds because it was a U.S. mission with the benefit accruing to U.S. forces. The unit ended up using OMA.

RECOMMENDATION: Seek guidance from higher headquarters whenever it is unclear what funding source to use.[214]

ISSUE: ISFF priorities

DISCUSSION: Multi-National Security Transition Command – Iraq (MNSTC-I) was the statutory custodian of the Iraqi Security Forces Funds (ISFF). Some members of the MNC-I staff felt MNSTC-I's use of ISFF was not providing adequate support to the day-to-day operations of the ISF. Conversely, the MNSTC-I commander saw MNC-I's requests for ISFF as detracting from the MNSTC-I mission of developing the institutional capacity of the ISF.

RECOMMENDATION: This is ultimately an issue for the USF-I commander to resolve. Even after the merger of MNC-I and MNSTC-I into USF-I, the former MNSTC-I commander managed ISFF in his capacity as Deputy Commanding General for Advising and Training (DCG, A&T). Unless the structure of the USF-I OSJA changes, the ISFF fiscal law attorney will be co-located with the DCG, A&T.[215]

ISSUE: Combat Service Support to Iraqi Security Forces (CSS to ISF) program

DISCUSSION: The CSS to ISF program, a subset of the ISFF program, allows USF-I units to provide the ISF with up to $30,000 worth of on-hand supplies and equipment necessary to remedy life, health, and safety deficiencies directly related to, and with the potential to significantly impact, near-term kinetic operations. The program prohibited such support if the ISF requirement existed more than two weeks before the kinetic operation. Units frequently abused the CSS to ISF program. For example, Multi-National Force – West (MNF-W) sought to use this program to build guard towers for the ISF.

RECOMMENDATION: Ensure units understand the limits of the CSS to ISF program. This is one of the most abused authorities for transferring equipment and supplies to the ISF. Require units to provide more justification than simply, "the ISF mission will fail without this."[216]

ISSUE: Fiscal law review responsibilities after the USF-I merger

DISCUSSION: Following the merger of MNC-I, MNSTC-I, and MNF-I into USF-I, the OSJA split the fiscal law duties between two branches of the office, largely based on the legacy structure and responsibilities of the previous commands. The traditional fiscal law section, consisting of former MNC-I and MNF-I personnel, fell under the DSJA for Military Law and handled fiscal reviews for all funds with the exception of the ISFF family of funds. The former MNSTC-I fiscal law attorney served under the DSJA for Rule of Law and Iraqi Training and handled ISFF fiscal reviews. He was physically located at FOB Union III in the International Zone (IZ), along with the former MNSTC-I commander and much of the former MNSTC-I staff.

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[214] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[215] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.
[216] *Id.*

RECOMMENDATION: Sustain. Although the USF-I commander's guidance was to not have any "shadow staffs" following the merger, the reality is you cannot completely dismantle the functions these staffs provided. It was preferable to have the fiscal law attorneys work near the resource managers and other personnel involved in the particular funds for which they had review responsibility.[217]

ISSUE: Security support to Iraqi elections

DISCUSSION: Under the FY09 NDAA, Congress prohibited the use of funds available after 1 October 2009, including ISFF, "for the acquisition, conversion, rehabilitation, or installation of facilities in Iraq for the use of the Government of Iraq . . . ." Under 10 U.S.C. § 2801(c)(2), the term "facility" includes a "building, structure, or other improvement to real property." MNC-I units wanted to use ISFF to provide T-walls and other barrier material to assist with election security. However, MNSTC-I interpreted the broad definition of facility to include barrier materials functioning as the equivalent of a permanent wall. Moreover, it opined ISFF was not appropriate for protecting polling places, because ISFF was limited to use for the ISF.

Consequently, MNC-I had to use CERP for T-walls around polling stations. In order to effectuate this consistent with CERP guidelines, the MNC-I commander issued a FRAGO designating the polling places "critical infrastructure," such that units could use CERP to provide barrier material to protect this sites. MNC-I could use ISFF for barrier material at temporary checkpoints and metal detection wands for the ISF to protect polling sites. The MNSTC-I OSJA, however, required there be a formal request from the ISF stating they needed the barrier material to secure various election sites and outlining their plan to remove the barrier material after the elections.

RECOMMENDATION: It is up to JAs to explain to commanders the nuances of fiscal appropriations that may appear to create disparate or illogical results and requirements depending on the fund.[218]

ISSUE: Funding the training of Iraqi Security Forces (ISF)

DISCUSSION: The brigade developed a training program for ISF that was a model for the rest of MND-B. However, fiscal law constraints made this practice legally untenable. The BJA had to tell the command this training was an unauthorized commitment, despite its effectiveness and contribution to the mission. In this case, there was someone outside the unit who could properly approve the expenditure.

RECOMMENDATION: Sustain. JAs should be prepared to tell the command "no." Failure to have the moral courage to do so could cause the command serious trouble.[219]

ISSUE: Using OMA to build a facility for U.S. forces on an ISF base

DISCUSSION: The unit used OMA funds to build a TOC for U.S. Soldiers located in an ISF building on an ISF base. The BJA allowed the project with the knowledge the building would eventually (at some uncertain date) turn over to the ISF for its use upon receiving justification that the TOC was primarily for U.S. forces' benefit for the foreseeable future.

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[217] *Id.*
[218] *Id.*
[219] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 11.

RECOMMENDATION: Improve. The test for use of OMA involves an analysis to determine if expenditure of the funds has a direct benefit to U.S. forces. This request presented two problems for the "direct benefit" test. First, was the request for the benefit of U.S. forces or ISF? The unit provided assurances the project was needed for U.S. forces to work on the ISF base and was not an attempt to build a facility for the ISF. Second, with the upcoming drawdown, the issue was whether U.S. forces could construct a facility which they would not be using into the future. The BJA determined using OMA to construct an addition to a building occupied by U.S. forces on an ISF base is no different from constructing a new building on a U.S. base that will be turned over to Iraq in the future. The crux of the analysis turned on the time frame of when the requirement was submitted and approved, not when funded. Since the need was immediate and open ended into the future, the BJA found the funding to be proper as a "direct benefit" for U.S. forces.[220]

ISSUE: Interim Iraqi Government (IIG) funds

DISCUSSION: IIG was a CERP-affiliated fund that the Interim Iraqi Government contributed to the CERP program in 2004 (a similar yet distinct contribution from the GoI in 2008 from surplus oil revenues funded the later Iraqi-CERP (I-CERP) program). The guidelines were similar to those for CERP but were more flexible. MNC-I used IIG for small-scale rule of law projects they could not fund with CERP, such as flying Iraqi judges to the United States for training.

RECOMMENDATION: Sustain. Look to host nation funding for projects for which the unit cannot use appropriated funds. However, realize the IIG funds are no longer available.[221]

Afghan Security Forces Funds (ASFF)

ISSUE: Proper use of Afghan Security Forces Funds (ASFF)

DISCUSSION: Units are often unclear as to what funds to use for training or providing items to Afghan Security Forces (ASF).

RECOMMENDATION: JAs need to be aware of ASFF and its proper use. The MAAWS-A provides clear guidance. When providing training or items to ASF, make sure you review the MAAWS-A and consult with someone who knows contract and fiscal law.[222]

ISSUE: Possible inapplicability of Arms Export Control Act (AECA) export authority exceptions in Afghanistan

DISCUSSION: During a visit from the Commander, Combined Security Transition Command – Afghanistan (CSTC-A) to MNSTC-I, the question arose as to why AECA did not bind MNSTC-I to use the FMS program. The policy in Afghanistan requires every transaction to go through FMS.

RECOMMENDATION: CSTC-A attorneys should be cautious in applying the AECA § 38(b)(2)(B) exception to Afghanistan. They must ensure parallel authorities and statutory language exist in Afghanistan to qualify CSTC-A as a "foreign assistance or sales program."[223]

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[220] 225th EN BDE (LAARNG) OIF AAR, JAN 09-NOV 09, *supra* note 59.
[221] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.
[222] 2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09, *supra* note 21.
[223] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 35.

III.C.6. Construction Funding

ISSUE: Construction projects

DISCUSSION: There is a great deal of good will and enthusiasm to undertake construction projects to benefit the local population. However, some projects start hastily before the identification of the proper funding sources. JAs and finance staff cannot attend every possible meeting where many of these "good ideas" hatch.

RECOMMENDATION: Improve. JAs have to be alert to the dangers of well-intentioned staff and commanders embarking on a project that may not be fiscally sound or proper. Good communication with key BCT players is necessary to ensure no one is unaware of projects with fiscal implications.[224]

ISSUE: Project splitting

DISCUSSION: Sometimes units attempt to submit construction projects piecemeal in order to get it in under the expense threshold. This is unauthorized project splitting.

RECOMMENDATION: JAs need to be aware of all projects going on in their unit's battle space to ensure newly submitted projects are not actually a subpart of a previous project.[225]

ISSUE: Blanket Purchasing Agreement (BPA) funding thresholds

DISCUSSION: Commanders placed orders against a BPA for construction materials used in unspecified minor military construction (UMMC). The commander in charge of the project used OMA funds to pay for materials. By law, the project's cost could not exceed $750,000. An exception to the rule exists to correct a deficiency that threatens life, health, or safety (LHS). In these cases, the funding threshold is $1.5 million. The BJA certified all projects approaching the $750,000 or $1.5 million threshold.

RECOMMENDATION: Sustain. Project cost estimates for UMMC were usually far less than $750,000. The proponent of a project approaching the funding threshold should include with the material request a memorandum explaining the project. In the memorandum, the proponent of the project should include sufficient detail to describe the thought process behind the project's submission. The memorandum does not need to be a detailed "justification and approval" (J&A).[226]

ISSUE: Proper funds for Joint Coordination Centers (JCCs)

DISCUSSION: With projects involving the construction or improvement of JCCs, the fiscal law attorney had to determine who was running the facility. If the Iraqi Police (IP) operated the JCC,

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[224] 1st Stryker Brigade Combat Team (SBCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 13 November 2009, Deployed September 2008 – September 2009, Multi-National Division – North (MND-N), FOB Warhorse, Diyala Province, Iraq (hereinafter "1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09"; on file at CLAMO).
[225] 2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09, *supra* note 21.
[226] 225th EN BDE (LAARNG) OIF AAR, JAN 09-NOV 09, *supra* note 59.

such projects would require funding with Iraqi Security Forces Funds (ISFF). If the JCC was a community center, CERP was the proper fund to use.

RECOMMENDATION: In determining the proper funding source, it is important to know the use to which the Iraqis will put the facility.[227]

III.C.7. Other Funding Sources

ISSUE: Rewards Program

DISCUSSION: The RCT-8 RJA office noticed when it arrived in theater the previous unit was not using the Department of Defense (DoD) Rewards Program. RCT-8 attempted to make use of this program during its deployment. However, it soon became evident why the previous unit had abandoned using it. The technical aspects of the program were tedious. The ground-level troops had a difficult time using the money and filling out the appropriate paperwork correctly. Consequently, RCT-8 did not effectively use the DoD Rewards Program while in theater.

RECOMMENDATION: Improve. Units should place more emphasis and training on learning how to use the DoD Rewards Program before deployment. It is a good program to use in conjunction with Money as a Weapon System (MAAWS).[228]

ISSUE: Emergency and extraordinary expense (EEE) funds

DISCUSSION: Commanders often get their hopes up during deployment that they can use EEE funds to buy food from local vendors or for various other authorized uses during deployment. However, in most situations, EEE funds will not be available for commanders during deployment. The higher echelons of the chain of command manage EEE funds, making it nearly impossible for battalion commanders to access them.

RECOMMENDATION: JAs need to manage the expectations of their commanders regarding use of EEE funds.[229]

ISSUE: Access to Title 22 funds

DISCUSSION: The Provincial Reconstruction Team (PRT) wanted to do some projects that did not necessarily fall within the authorized uses of CERP, but which might have been good candidates for the Title 22 Quick Response Fund (QRF). However, the PRT did not know how to access these funds.

RECOMMENDATION: Improve. Send the Division fiscal law attorney to the DoS course in Baghdad covering how to use QRF. This will help the Division OSJA facilitate the PRT's use of this Title 22 fund.[230]

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[227] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[228] Regimental Combat Team 8 (RCT-8), Multi-National Force – West (MNF-W), Deputy Regimental Judge Advocate, OIF After Action Report, 18 December 2009, Deployed January 2009 - October 2009, Al Asad, Iraq (hereinafter "RCT-8, OIF AAR, JAN 09 - OCT 09"; on file at CLAMO).
[229] 2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09, *supra* note 21.
[230] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.

ISSUE: Resourcing hospitals and ad hoc medical facilities

DISCUSSION: The JAs had a number of fiscal law questions about providing resources to Haitian hospitals and ad hoc medical facilities. 2-82 ABN initially provided medical resources on a "life, limb, and eyesight" basis. Once the approval for OHDACA funds came, the BCT commenced a full resourcing of much needed supplies.

RECOMMENDATION: OHDACA funding is a tremendous enabling resource JAs must review before a HA/DR mission.[231]

ISSUE: Official representation funds (ORF) for gifts

DISCUSSION: A number of organizations invited 2-82 ABN to official functions as a gesture of thanks. In one case, the Nepalese Army contingent of MINUSTAH hosted the command staff and gave a gift of a prized bottle of whiskey. The issue arising with these functions was the desire to reciprocate with gifts from 2-82 ABN. Absent specific statutory authority, units cannot buy gifts with appropriated funds. 2-82 ABN was able to locate a vendor to sell them ten tin falcon statutes for $120. The BJA tried to get an exception to the Army Regulation (AR) 37-47 for the purchase of these items. Higher command denied the request. The BCT commander ended up using his own money to purchase the statutes and presented them as gifts.

RECOMMENDATION: JAs should be familiar with limits and approvals in AR 37-47 for those occasions where commanders wish to seek ORF for gifts.[232]

ISSUE: Overseas Humanitarian, Disaster and Civic Aid (OHDACA) funds

DISCUSSION: For humanitarian aid/disaster response situations, OHDACA funds offer a multifaceted and comprehensive means to provide aid and support. Many Army commanders are unfamiliar with OHDACA, so JAs will need to educate them on the limits and permissible activities. The SJA and the 3d ESC G8 worked closely on all OHDACA funded activities to ensure compliance with OHDACA provisions and targeted activities. The SJA also disseminated the guidance from the JTF-H on what allocations are permissible from OHDACA and Operations and Maintenance, Army (OMA) funds.

RECOMMENDATION: Sustain.[233]

ISSUE: The gift/memento distinction for Official Representation Funds (ORF)

DISCUSSION: Army Regulation (AR) 37-47, Representation Funds of the Secretary of the Army, distinguishes "gifts" and "mementos" with respect to the dollar limits for use of ORF. "Mementos," which could exist solely to display the unit emblem, could not exceed $40. "Gifts," on the other hand, could display the unit emblem but were otherwise functional. The limit for gifts was $335. After the merger into USF-I, the commander wanted to purchase boxes and coin holders with the USF-I emblem, which cost $80-$100 apiece. Historical legal reviews for similar purchases did not mention the gift/memento distinction, causing confusion for the USF-I Commander's Protocol staff. The MNC-I fiscal attorneys wrote the opinion to ensure it reflected

[231] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 72.
[232] *Id.*
[233] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 37.

the facts which made the items gifts rather than mementos (e.g., the unit was presenting them to high-level GoI officials).

RECOMMENDATION: Improve. Clarify the distinction between gifts and mementos in the ORF chapter of the USF-I MAAWS book.[234]

ISSUE: Official Representation Funds (ORF)

DISCUSSION: MNC-I controlled ORF. Army Regulation (AR) 37-47 regulates the use of ORF. When BCTs requested ORF, the Division fiscal law attorney needed to know the specifics of the event in order to determine the applicable dollar limits. For example, there were different dollar limits for breakfast, lunch, and dinner events. Similarly, the regulation specified different dollar limits if an item the unit presented to an authorized guest was more of a "gift" ($335 limit) or a "memento" ($40 limit).

RECOMMENDATION: Improve. The MAAWS should include a list of information requirements units must provide with their ORF requests so reviewing attorneys can properly assess compliance with AR 37-47.[235]

ISSUE: Funding intelligence operations with Intelligence Contingency Funds (ICF)

DISCUSSION: Even Brigade Judge Advocates may have to advise on this. Both the ICF regulation and local policies cover the use of these funds. The regulation covering these funds is not widely available and may be classified. Their use is limited. It is a very small pot of money. It is also highly regulated and audited.

RECOMMENDATION: Ensure you and your command are aware of the limitations on these funds.[236]

ISSUE: ICF in relation to other laws

DISCUSSION: Use of ICF comes with the same restrictions as other funds. They are not special in that regard. If an item is controlled on the International Traffic in Arms Regulation (ITARs) list, you cannot use ICF funds to buy it and then turn it over to a source. The ITARs contains an extensive list of items that you must have a license to provide to non-US person. For example, you may be able to use ICF funds to buy body armor, but that does not mean you can then give that body armor to a source.

RECOMMENDATION: Ensure units understand items bought with ICF are still subject to the limitations imposed by other laws.[237]

ISSUE: Funding ROL operations

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[234] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.
[235] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 74.
[236] Chief of Intelligence Law, Multinational Forces – Iraq (MNF-I), OIF After Action Report, 27 October 2009, Deployed June 2008 – May 2009, Combined Joint Staff – 2 (CJ2), Camp Slayer, Iraq (hereinafter "MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09"; on file at CLAMO).
[237] *Id.*

DISCUSSION: Funding is needed for local bar engagements, the retention of local attorneys, training, copies for court cases, obtaining Iraqi "stamps" necessary to certify documents, and other prosecution related expenses. The BJA paid for these expenses out of pocket. Copying fees of $20 to $25 for court case files numbering into the several hundred pages were common.

RECOMMENDATION: Improve. It would be helpful if the JAG Corps would develop a "fiscal law playbook" addressing these expenses so BJAs are prepared to address these issues with commanders and comptrollers at the various levels of command before they deploy. Specifically, BJAs should have a modest budget of a few thousand dollars of Operations and Maintenance (O&M) funds to conduct meetings in local venues where the costs of meals or refreshments are incidental to the training or conference gathering. Building personal relationships is critical. Food goes a very long way in this culture. Judges are increasingly unwilling to meet at the FOB (if at all). Preferred meeting places to discuss cases, conduct training and conduct business in other areas of mutual interest are now local venues such as court houses, law libraries, and restaurants. The JA must be prepared to host and fund these periodic meetings, gatherings, or conferences. Rule of law is an important enough line of effort to warrant funding such business related expenses at the BCT level. There is a way to do this; higher headquarters should anticipate this requirement and provide for it.[238]

ISSUE: Purchasing clothing or equipment for interpreters

DISCUSSION: During the deployment, some units wanted to purchase uniforms for their interpreters. However, there are fiscal law concerns with purchasing uniforms or equipment for non-military personnel.

RECOMMENDATION: JAs need to be familiar with fiscal law so they can identify these issues, work through them, and find legally permissible solutions.[239]

ISSUE: Food purchases

DISCUSSION: Units like to purchase food for their troops from local vendors. This is an effective way to help stimulate the economy and win over the hearts and minds of the locals. However, units are often confused on which funds to use when making food purchases and it is rarely a proper use of O&M or CERP funds. The 2d MEB SJA office had to stay on top of these issues and educate units on the relatively few exceptions that allow them to purchase food, such as $500 worth of light refreshments in conjunction with a CERP planning meeting or completion ceremony.
RECOMMENDATION: Sustain. JAs need to stay on top units trying to use CERP money to buy food. Know what funds are permissible for food purchases and educate units.[240]

ISSUE: DoD report to Congress under § 1234 of the FY2010 NDAA

DISCUSSION: The MNSTC-I OSJA participated in the drafting of the report to Congress required by § 1234 of the NDAA outlining DoD's plan to transfer equipment to Iraq. The report laid out the legal authorities for equipment transfer, including EDA, §1234 of the NDAA, and FMS. However, the initial drafts of the report failed to tie specific equipment to each type of authority.

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[238] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 28.
[239] 2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09, *supra* note 21.
[240] *Id.*

The equipment transfer plan included two major components: (1) equipment in currently in Iraq and Kuwait and (2) equipment in the U.S. With respect to the former, the plan focused on truly "excess" equipment, but allowed the expenditure of U.S. funds to pay refurbishment and transportation costs. With respect to the latter, this equipment will follow the normal EDA process, with the GoI responsible for refurbishment and transportation costs. An early draft stated EDA expenses would fall under a "cost sharing agreement," without citing any authority for sharing costs.

RECOMMENDATION: Do not assume a report to Congress received an in-depth legal review. The legal advisor to the proponent of the report must share his interpretation of the relevant legal authorities with the JA technical chain executing the transfer to ensure there is a common understanding of those authorities and to ensure the authorities line up with the equipment DoD is transferring.[241]

ISSUE: Use of Official Representation Funds (ORF)

DISCUSSION: The Division OSJA received numerous requests from the brigades for ORF. They routed these requests through the Secretary of the General Staff (SGS) to MNC-I. Some of the requests were questionable in terms of the status of the Iraqis for whom the unit was holding the function.

RECOMMENDATION: Consult AR 37-47 and Appendix I of the MAAWS, but also examine the issue from the perspective of the person's status in Iraqi society. For example, an Iraqi plumber might qualify as an "authorized guest" under the regulation by virtue of the importance of his occupation in Iraqi society.[242]

ISSUE: Changes in the National Defense Authorization Act (NDAA)

DISCUSSION: The 2009 NDAA implemented a change to prohibit the use of appropriated funds to acquire, convert, rehabilitate or install facilities in Iraq for the use of the GoI, political subdivisions of Iraq, or agencies, departments, or forces of the GoI. Higher echelon legal opinions considered the setting up of T-walls, etc. to support checkpoints around the perimeter of Baghdad to provide better security against vehicle-borne improvised explosive devices (VBIEDs) to be an improvement to real property by establishing a free-standing wall and, therefore, a violation of the statute. Consequently, any plans to set up a checkpoint now required a retrieval provision for the T-walls to keep them from being a permanent improvement.

RECOMMENDATION: Changes in funding law can have a huge operational impact. Be aware local interpretation can greatly affect the scope of that impact.[243]

ISSUE: Purchase of coins

DISCUSSION: Per CENTCOM policy, coin purchases were subject to both monetary and quantity limits. In the latter cases, the number of coins could not exceed a certain percentage of the unit's end strength. It was unclear whether that end strength included nonorganic units.

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[241] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 35.
[242] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[243] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 74.

RECOMMENDATION: Expectation management is critical when it comes to the purchase of unit coins. The CENTCOM policy should establish clearer guidelines on authorized quantities for the purchase of coins and allow appropriate exceptions to policy.[244]

III.C.8. Donation & Disposal of Property

ISSUE: Abandonment of military property for the benefit of disaster victims

DISCUSSION: One of the items 2-82 ABN wanted to abandon after the deployment was tents. There was a huge need for tents in Haiti, and the tents that they want to leave were filthy from the rain and mud. However, humanitarian concerns are not part of the equation in determining the circumstances permitting removal of tents from property books. Without the legal authority to leave them, the unit could violate the Anti-Deficiency Act.

RECOMMENDATION: The regulations on abandonment of property do not factor in the humanitarian conditions and need prevailing in the AO.[245]

ISSUE: Foreign Excess Personal Property (FEPP)

DISCUSSION: The BCT JAs, primarily the third JA, attended the meetings with the Iraqi ministries concerning the closure of U.S. bases. This allowed them to see the property under consideration for transfer to the Iraqis and ensure commanders did not make promises in violation of the FEPP policy.

RECOMMENDATION: Sustain.[246]

ISSUE: Fiscal law and base closures in Iraq

DISCUSSION: An emerging issue in Iraq that JAs will have to devote much more effort to is retrograde operations. The unit JAs participated in base closure and its associated fiscal and contracting law issues. The JAs found the undertaking extremely challenging and further complicated by the scarcity of exhaustive guidance on how to retrograde and dispose of materials. Under the Foreign Excess Personal Property (FEPP) policy, approval authorities cannot exceed imposed FEPP financial limits for transfers.

RECOMMENDATION: Improve. JAs deploying on OIF must prepare themselves for retrograde issues given the draw-down timetable over the next two years.[247]

ISSUE: Disposition of Foreign Excess Personal Property (FEPP)

DISCUSSION: The FEPP process did not involve a lot of legal work for the BJA, as the policy largely centered on permissions for different types of property. The Division G4 had the lead, and the BCT S4 sent a list of proposed FEPP property to the G4 for approval.

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[244] *Id.*
[245] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 72.
[246] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 4.
[247] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 18.

RECOMMENDATION: Improve. BJAs often get the question, "How do I give X to the Iraqis?" They should therefore be aware of the FEPP policies and process to assist the S4 in identifying the types of equipment for which they may need to request an exception. It may be helpful to incorporate the most current procedures into Graduate Course instruction.[248]

ISSUE: Foreign Excess Personal Property (FEPP)

DISCUSSION: With the significant number of base closures in Iraq, to include large bases, the issue of whether or not commanders could give excess property to the Iraqis frequently arose. Quite often, commanders wanted to give everything to the Iraqis, including fuel. The RJA office had to become very familiar with all the applicable statutes, regulations, and orders regarding the transfer of property, to include foreign excess personal property, over to the Iraqis. Depending on with which funds the unit purchased the property, it might be illegal for commanders to give away property. Specifically, it was usually illegal to give fuel away.

RECOMMENDATION: Sustain. Understand FEPP and be sure to provide commanders with accurate advice on whether or not they can give away property.[249]

ISSUE: Need for a streamlined process for property transfer to the Iraqis

DISCUSSION: While closing bases, units had property (i.e., furniture) they wanted to give the Iraqis that they would otherwise had thrown out. Some units simply took the items to the dumpster and informed the Iraqis where they could find it.

RECOMMENDATION: Improve. There needs to be a more streamlined process for transferring Foreign Excess Personal Property (FEPP) to the Iraqis.[250]

ISSUE: U.S. Equipment Transfer to Iraq (USETTI)

DISCUSSION: USETTI (formerly called Stay Behind Equipment (SBE)) is an umbrella term encompassing a range of authorities in a program to turn equipment over the Iraqis, in support of two complementary goals. The first goal is to conduct retrograde operations of U.S. equipment from Iraq, much of which is not cost-effective to ship back to the U.S. The second goal is to help the ISF close the gap between their current status and the minimum essential capabilities (MEC) they need to achieve by the time U.S. forces leave Iraq in December 2011. The authorities under the umbrella of USETTI include: (1) Foreign Military Sales (FMS); (2) Excess Defense Articles (EDA) under § 516 of the Foreign Assistance Act (FAA) (22 U.S.C. §2321); (3) §1234 of the NDAA; and (4) Foreign Excess Personal Property (FEPP).

RECOMMENDATION: Judge advocates (JAs) must identify the legal authorities for transferring different types of equipment to the Iraqis and ensure the J4 and other players in the process understand the limitations of each authority.[251]

ISSUE: Authority to transfer non-excess equipment

DISCUSSION: Section 1234 of the FY 2010 NDAA gave DoD the authority to transfer both

[248] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 89.
[249] RCT-8, OIF AAR, JAN 09 - OCT 09, *supra* note 228.
[250] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 60.
[251] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 35.

excess and non-excess equipment in Iraq and Kuwait, up to $750 million, to Iraq and Afghanistan. Unlike the EDA authority under § 516 of the FAA (22 U.S.C. §2321), which is governed by the "as is, where is" principle, the § 1234 authority allows DoD to refurbish and transport this equipment using Title 10 funds. Moreover, the equipment does not even have to be "excess." The limitation for this authority, however, is it only applies to equipment already in Iraq or Kuwait.

Along with the transfer authority, §1234 included a reporting requirement to Congress detailing DoD's plan to transfer equipment, as well as a notification requirement to Congress to provide a line-by-line listing of equipment 30 days before transfer. The intent of the latter is to ensure Congress does not object to the transfer of equipment that U.S. units, including Reserve Component units, may need.

RECOMMENDATION: Although § 1234 provides important authority to use DoD funds to refurbish and transfer equipment, it will be a policy decision as to whether to transfer non-excess equipment using this authority. Security assistance attorneys need to be prepared to support the command's argument as to why the ISF need various pieces of equipment to achieve MEC.[252]

ISSUE: Foreign Excess Personal Property (FEPP)

DISCUSSION: The Division did not deal with FEPP issues until the end of the deployment.

RECOMMENDATION: As preparation for the relief in place/transfer of authority (RIP/TOA) process, draft information papers to highlight emerging legal issues with which the next unit will have to deal.[253]

ISSUE: Foreign Excess Personal Property (FEPP)

DISCUSSION: The Division G4 had the lead for FEPP. The MNC-I guidance was clear as to the required documentation.

RECOMMENDATION: Fiscal law attorneys should be familiar with FEPP procedures and be prepared to answer questions.[254]

ISSUE: Determining to whom to turn over facilities

DISCUSSION: As U.S. bases closed and outposts closed, it was sometimes difficult to determine the proper GoI agency to which to transfer the facility. The Iraqis created a Reconciliation Cell to act as an intermediary between units and different ministries within the GoI and to determine to which ministry the facility would be transferred.

RECOMMENDATION: Sustain. This prevented U.S. forces from becoming embroiled in intra-government squabbles.[255]

ISSUE: Limited ability to transfer turnkey facilities under the Foreign Excess Personal Property (FEPP) authorities

[252] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 35.
[253] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 7.
[254] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 74.
[255] *Id.*

DISCUSSION: The USF-I commander wanted to transfer a fully functional, turnkey hospital facility in Baghdad to the GoI. MNC-I transferred as much property as it could under the FEPP authority, but there was still approximately $400K worth of used equipment it could not transfer as FEPP. The command looked at using Commander's Emergency Response Program (CERP) funds to transfer the rest of the equipment, but determined this would be the equivalent of purchasing our own Title 10 property with other Title 10 funds. It could find no other authority to transfer the remaining equipment. Ultimately, U.S. forces simply had to remove this equipment from the hospital before transferring the facility to the GoI. Removing the property and buying new equipment with CERP would have far exceeded the authorized limits on CERP.

RECOMMENDATION: Improve. Understand the limits of FEPP authority. Units cannot declare, on the one hand, property to be excess in one location and then, on the other hand, say they need to purchase similar equipment in another location.[256]

ISSUE: Presidential drawdown authority

DISCUSSION: MNC-I requested (through MNF-I) Presidential drawdown authority under § 506 of the Foreign Assistance Act. Under this provision, the President can direct the drawdown of defense articles and services having an aggregate value of up to $100 million per fiscal year for unforeseen military emergencies requiring immediate military assistance to a foreign country. The advantages of Presidential drawdown authority over the FEPP program are that it does not require finding the items to be "excess," and it is not limited to "white" (non-military) property. Moreover, it allows transfer of equipment worldwide.

RECOMMENDATION: This is ultimately a political decision. In practical terms, Presidential drawdown authority would greatly assist U.S. forces in withdrawing from Iraq. Future USF-I staffs should continue to seek this authority.[257]

ISSUE: Congressional drawdown authority under § 1234 of the 2010 NDAA

DISCUSSION: Section 1234 of the 2010 National Defense Authorization Act (NDAA) gave the Department of Defense (DoD) the authority to transfer both excess and non-excess equipment in Iraq and Kuwait, up to $750 million, to Iraq and Afghanistan. The § 1234 authority allowed DoD to refurbish and transport this equipment using Title 10 funds. Moreover, the equipment did not even have to be "excess." The limitation for this authority, however, is it only applied to equipment already in Iraq or Kuwait. Along with the transfer authority, § 1234 included a reporting requirement to Congress detailing DoD's plan to transfer equipment, as well as a notification requirement to Congress to provide a line-by-line listing of equipment 30 days before transfer. The intent of the latter is to ensure Congress does not object to the transfer of equipment that U.S. units, including Reserve Component units, may need.

RECOMMENDATION: This is another complement to the FEPP program to facilitate the withdrawal of U.S. forces from Iraq. At the time of I Corps' redeployment, it was unclear how and to what extent USF-I would implement this authority. [258]

ISSUE: Disposal of expired medications and excess equipment

[256] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 8.
[257] *Id.*
[258] *Id.*

DISCUSSION: During the deployment, one of MND-B's subordinate BCTs decided to dispose of expired medications and excess equipment the unit did not need by having Explosive Ordinance Disposal (EOD) blow it up. This was not approved by any leader in the Division or the Division surgeon section.

RECOMMENDATION: Units should seek legal advice before disposing of excess or expired equipment, especially if blowing it up is a recommended solution.[259]

III.D. Logistics Civil Augmentation Program (LOGCAP) Contracting

ISSUE: Providing life support to ISF on U.S. bases

DISCUSSION: The Iraqi Air Force (IqAF) was scheduled to take over the "zoo area" of VBC, with the eventual aim of establishing the IqAF's Air Operations Center (AOC) there. Transfer of land and facilities took approximately 180 days. During this transition period, a mentoring team from the U.S. Air Force (USAF) would be training and supporting the Iraqis, being co-located with the IqAF in the facilities and buildings in this area. This raised a dilemma. Support to the buildings and facilities were provided under LOGCAP, funded with Operations and Maintenance (O&M) funds, but the unit could not use O&M for ISF life support. Withdrawing LOGCAP life support and leaving its provision to the Iraqis would condemn their USAF mentoring team to a squalid existence at best.

RECOMMENDATION: The decision was that it was permissible to provide LOGCAP support with O&M funding because (1) the land use Memorandum of Agreement (MOA) for the area was between the VBC garrison command and the USAF and covered only the transition period; (2) the life support was supporting the USAF mentors; (3) the USAF members were co-located with IqAF personnel; (4) it was impossible to segregate the two from one another or to provide the support (electricity, water, sewage) separately; and (5) restrictions were put in place to keep life support from being provided to IqAF living quarters or solely IqAF areas (if any were established during the transition period). This meant ISF personnel would indirectly benefit from the life support provided for their mentors. The MOA regulated the use of the land. Issues like this will become increasingly common as the drawdown continues. Higher headquarters will need to develop policy for shared facilities transitioning towards ISF ownership.[260]

ISSUE: Use of prior year funds & identifying the right type of money

DISCUSSION: You must be clear about the correct source of money for projects. This is particularly true for complex, long-term projects. For example, the command inherited a wastewater treatment plant (WWTP) contract that was nearing completion of construction. The command wanted to put operation and maintenance of the facility on the LOGCAP contract. The firm performing the LOGCAP contract would not accept the water treatment facility as built and insisted on improvements to their standards. The problem was then to identify how to fund the upgrade of the facility to get it up to the LOGCAP specifications. Construction of the WWTP had been a military construction (MILCON) project; the LOGCAP upgrade, however, was

[259] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 74.
[260] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 12.

proposed to be funded with Operations and Maintenance, Army (OMA) because line items for "repair" were referenced under the LOGCAP contractor's proposal. It was hard to claim the work was repair because the plant had never been in operation and it could operate as built. There were other instances of construction, some funded with OMA as minor construction, which also required the LOGCAP "upgrade" before being accepted for operation and maintenance under LOGCAP. All these projects involved potential project splitting and exceeding minor military construction thresholds.

RECOMMENDATION: Require these projects to meet LOGCAP standards in the beginning, if possible. The funding authority (in this instance, MNC-I) needs to work out a policy on this through the contract and fiscal law section of the OSJA. Educate the garrison command on this issue and develop a thick skin when they complain about how you are holding up the completion of an already over-delayed project. Know the processes for getting prior year funds and develop relationships not only with the contract and fiscal law attorneys but with the personnel in the Corps C-8 section.[261]

ISSUE: Use of LOGCAP contractor

DISCUSSION: Initially, the relationship between the LOGCAP contractor and commander was problematic. LOGCAP contractors did not understand that the contracting officer's representatives (KORs) reported to the commander. In training, the LOGCAP contractor informed the KORs they did not have to follow the commander's direction if the contract specifications stated something differently. With time, the issues became less prevalent.

RECOMMENDATION: Improve. Understand the interdependent relationship between the commander, the KOR, and the contractor.[262]

ISSUE: Determining extent of goods and services provided by LOGCAP

DISCUSSION: Analysis of the LOGCAP contract revealed the contractor was not performing as required.

RECOMMENDATION: Sustain. Read and understand the limits of the LOGCAP contract. Do not assume the contractor is performing all required aspects of the contract. "Deconstruct" the contract to determine limits and work with the contracting officer (KO) and contracting officer representatives (KORs) to enforce its terms.[263]

ISSUE: Payment of LOGCAP contracts

DISCUSSION: With units moving into and out of FOBs, the outgoing units failed to ensure several LOGCAP contractors received payment.

RECOMMENDATION: Improve. Both outgoing and incoming units should review all payments due to ensure contractors are paid on time.[264]

ISSUE: Funding LOGCAP contracts

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[261] *Id.*
[262] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 2.
[263] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 43.
[264] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 81.

DISCUSSION: Sometimes units will submit contracts to the LOGCAP contracting officer they could not fund with Operations and Maintenance (O&M) funds.

RECOMMENDATION: Sustain. You cannot do everything with O&M funds. Contracting attorneys need to review contracts before units submit them to LOGCAP and work through any funding issues.[265]

ISSUE: Review of LOGCAP contracts at the BCT

DISCUSSION: The LOGCAP contracts the BCT requested came through the BJA for review. In certain cases, it seemed as if LOGCAP was treating as "construction" things which the BJA tended to classify as re-locatable buildings. Knowing contract attorneys would be performing further legal reviews on the contracts, the BJA would highlight her concerns in her legal review and forward the action to Division for final approval and additional review.

RECOMMENDATION: Ensure the requirement meets the standard for LOGCAP contracts under the MAAWS. Consult with the engineers to ensure proper classification of the items. The BJA should document any concerns in the legal review to ensure higher headquarters addresses them.[266]

ISSUE: ISF personnel access to the dining facility (DFAC)

DISCUSSION: The SA did not restrict ISF personnel from using the DFAC. However, there were fiscal law concerns with providing this type of life support to ISF. It was possible for the garrison commander to sign an exception to policy for individual Iraqis to eat in the DFACs, but these grew in number from three to over 300 during the unit's time in theater, and the requests were often for unlimited and unaccompanied access for 30-90 days. The DFACs were a LOGCAP operation, normally funded through Operations and Maintenance, Army (OMA) funds. Units cannot use OMA money ca to feed ISF personnel, but might look to Iraqi Security Forces Funds (ISFF). The command explored alternatives, such as building an ISF cantina or finding a mechanism to use ISFF to pay the contractor (KBR) under the LOGCAP contract. Discussions with Army Materiel Command (AMC) determined ISFF could fund the LOGCAP contract through existing accounting procedures.

RECOMMENDATION: Maintain fiscal integrity, but also explore all funding alternatives before saying no. Garrison did not have control over ISFF, but it did have control over the exceptions to policy for access. The solution adopted was for the garrison command to agree to issue 300 exceptions to policy when arrangements were finalized for ISFF in an amount sufficient to feed this number on a recurring basis. Either MNC-I or MNF-I would identify the 300 persons who would receive exceptions to policy, and the garrison commander could then sign an exception to policy for individual Iraqis to eat in the DFAC up to the cap of 300 exceptions. In addition, and consistent with fiscal law principles, the garrison command adopted a policy for approving ISF access to DFACs under the limited joint training conference/activity exception allowing use of OMA.[267]

ISSUE: Need for additional training on LOGCAP

[265] 2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09, *supra* note 21.
[266] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 89.
[267] 326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09, *supra* note 12.

DISCUSSION: The Division fiscal law attorney received a basic legal review for LOGCAP contracts from her predecessor. She found the legal reviews involved more than simply purpose, time, and amount. For example, the purchase of goods as part of a LOGCAP service contract could implicate the expense/investment threshold.

RECOMMENDATION: The Fiscal Law Course at TJAGLCS should cover the legal issues that may arise with LOGCAP contracts.[268]

ISSUE: Time constraints on LOGCAP

DISCUSSION: SOTF rotations are frequently shorter than those of conventional forces. As such, LOGCAP may not always be the best way forward.

RECOMMENDATION: SOTF legal advisors need to be creative in finding legal solutions to support pressing operational requirements within existing theater-specific regulations.[269]

ISSUE: Exceptions to LOGCAP

DISCUSSION: Due to unique operational requirements and geographical limitations compounded by a non-permissive / semi-permissive operating environment, exceptions to LOGCAP were sometimes the best COA.

RECOMMENDATION: Legal advisors should coordinate closely with J4, J8, and J3 to identify when LOGCAP will not adequately support the mission. Understand the rules and procedures for requesting exceptions to LOGCAP.[270]

[268] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 74.
[269] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 133.
[270] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 38.

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IV. CLAIMS

IV.A. Foreign Claims

ISSUE: Claims versus CERP approach

DISCUSSION: One unit in Afghanistan deliberately did not use claims to deal with property damage issues in its AO, but rather responded with CERP payments. The BJA regarded all of the BCT's patrols and operations as combat related and deemed any unintended property damage consequences of those activities to fall within CERP. One of the main benefits of using the CERP approach over claims is same day payment to property owners, whereas a claim can take weeks/months to complete. This approach supports the "hearts and minds" campaign critical to success in Afghanistan.

RECOMMENDATION: As an alternative to claims, a CERP approach to rectifying property damage is another means available to ease the burden of military operations on local nationals.[1]

ISSUE: Pre-deployment claims training

DISCUSSION: The BJA organized a block of instruction on claims before deploying. The Chief of Claims at Fort Hood provided this training, which was especially helpful due to her experiences handling claims in a deployed environment.

RECOMMENDATION: Sustain.[2]

ISSUE: Claims pay agents

DISCUSSION: The BJA utilized his paralegals as pay agents at the brigade level.

RECOMMENDATION: Sustain.[3]

ISSUE: Establishing a claims SOP

DISCUSSION: Paralegal NCOs developed a brigade-level claims SOP to increase efficiency in processing claims. A battalion paralegal in turn developed a battalion-level claims SOP. The intent of this SOP was to prevent Afghan nationals from abusing the system. The paralegal learned quickly that having set standards and procedures weeded out those seeking to file frivolous claims.

RECOMMENDATION: Sustain.[4]

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[1] 2010 Brigade Judge Advocate (BJA) Symposium, 10-12 May, 2010, The Judge Advocate General Legal Center and School (TJAGLCS), Charlottesville, VA (hereinafter "BJA Seminar, combined AAR, 10-12 MAY 2010"; on file at CLAMO).
[2] 3d Brigade Combat Team, 1st Infantry Division, OEF After Action Report, 29 August 2009, Regional Command (RC) – East, Forward Operating Base (FOB) Fenty, Jalalabad, Afghanistan, Deployed July 2008 – June 2009 (hereinafter "3BCT, 1ID OEF AAR, JUL 08 - JUN 09"; on file at CLAMO).
[3] *Id.*
[4] *Id.*

ISSUE: Impact of the "out of the cities" provision on claims

DISCUSSION: The BCT fell in on a good claims system with established intake locations. However, the "out of the cities" provision, which took effect on 30 June 2009, made intake and payment of claims at the Civil Military Operations Center (CMOC) difficult. The BCT had to find a new location to pay claims and publicize it.

RECOMMENDATION: Improve. The BCT could have planned for this earlier and put the new location into operation while they still had free access to the previous location.[5]

ISSUE: Interpreters for claims

DISCUSSION: The BCT had two dedicated interpreters for the claims mission. They became de facto claims paralegals and were very helpful in getting claimants to bring the right evidence.

RECOMMENDATION: Sustain.[6]

ISSUE: Role of paralegals in claims mission

DISCUSSION: The BJA dedicated two paralegals to the claims mission. These paralegals investigated the claims, researched the database of significant activities (SIGACTs), and prepared claims memoranda.

RECOMMENDATION: Sustain. Having two paralegals on claims allowed for coverage during days off and during environmental morale leave (EML).[7]

ISSUE: USARCS guidance on claims payable

DISCUSSION: About midway through the deployment, the United States Army Claims Service (USARCS) held a claims conference in Baghdad, during which they informed units they were erroneously paying claims prohibited by the combat exclusion. One such category was controlled detonations.

RECOMMENDATION: Improve. For a mature theater such as Iraq, USARCS should publish guidance on claims arising from common scenarios.[8]

ISSUE: Appointment as foreign claims commissions (FCCs)

DISCUSSION: The three BCT JAs received appointments as individual one-member FCCs, and together received an appointment as a three-member FCC.

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[5] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 17 September 2009, Deployed October 2008 – June 2009, Camp Liberty, Iraq (hereinafter "2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09"; on file at CLAMO).
[6] *Id.*
[7] *Id.*
[8] *Id.*

RECOMMENDATION: Sustain. Apply for appointment as FCCs as early as possible before deployment. Having both one-member and three-member FCCs at the BCT allowed consideration of claims up to $50,000.[9]

ISSUE: Establishing a claims program

DISCUSSION: The BCT initially took over the battlespace of a Polish unit at FOB Echo. Because Polish unit did not have any kind of foreign claims program whatsoever, the BCT had to create one from scratch. They designated two days per month to intake and pay claims and disseminated this information through the Joint Security Stations (JSSs). For approved claims, the TC contacted the claimant via cell phone to inform them when to return for payment. For claims the BCT denied, they put the onus on the claimant to return to seek information on the claim. Overall, the BCT paid approximately 10% of all claims submitted.

RECOMMENDATION: Before deployment, units should determine whether they will be falling in on an existing claims program or will have to start their own. In cases where the unit is taking over for a coalition partner, the unit should assume it will have to start a claims program from the ground up.[10]

ISSUE: Claims waiting area

DISCUSSION: While at FOB Echo, the claims location had seating areas for claimants. Noting this caused claimants to hang around the area to continue to haggle their claims, the BCT decided not to include a sitting area where they paid claims once they moved to COB Basra. This cut down on claimants lingering around.

RECOMMENDATION: Sustain.[11]

ISSUE: Takeover of a coalition partner's claims program

DISCUSSION: When the BCT moved to COB Basra, they fell in on the British Army's well-established claims program. However, the British refused to turn over any of their claims records, such that the BCT had no knowledge of which claims the British paid and which they denied. Consequently, the BCT decided they would only accept claims that arose after their arrival date to Basra.

RECOMMENDATION: Improve. Although the decision to pay only claims arising after their arrival was sound given the lack of prior records, it is important to get a good claims tracker from the outgoing unit.[12]

ISSUE: Unit reporting of incidents giving rise to claims

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[9] *Id.*
[10] 2d Brigade Combat Team, 4th Infantry Division, OIF After Action Report, 15 September 2009, Deployed September 2008 – August 2009, Forward Operating Base (FOB) Echo, Diwaniyah, Qadisiyah Province, Iraq, Contingency Operating Base (COB) Basra, Basra Province, Iraq (hereinafter "2BCT, 4ID OIF AAR, SEP 08 - AUG 09"; on file at CLAMO).
[11] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 10.
[12] *Id.*

DISCUSSION: The BCT noted the Polish unit they replaced did not maintain a significant activity (SIGACT) log they could use to verify claims. The BJA talked to all of the battalion commanders and explained the importance of reporting vehicle accidents for verifying claims. Once units understood the reports were not for punishing them for having an accident, they reported them regularly.

RECOMMENDATION: Sustain.[13]

ISSUE: Use of national identification number to prevent fraudulent claims

DISCUSSION: The BCT recorded the national identification number of every claimant from his or her Iraqi national identification card. Using this number helped to track duplicate claims and avoided the problems arising from multiple names/spellings of claimants.

RECOMMENDATION: Sustain.[14]

ISSUE: Forum shopping

DISCUSSION: Many local nationals went from claims center to claims center attempting to get multiple payments on the same claim. There is no centralized mechanism to control this problem, leading to a system rife with fraud.

RECOMMENDATION: Train users on the existing system and use biometrics to help curb incidents of fraud. Develop a database using claims cards linked to an incident—not to an individual.[15]

ISSUE: Three-member foreign claims commission (FCC)

DISCUSSION: In addition to their respective appointments as one-member FCCs, the three JAs at the brigade also received appointment as a three-member FCC. This allowed them to adjudicate and pay claims up to $50,000.

RECOMMENDATION: Sustain. It was helpful to be able to adjudicate additional claims at the brigade level rather than sending them up to division.[16]

ISSUE: Use of biometric information to verify claims

DISCUSSION: Early in the deployment, the unit required claimants to submit to biometric collections. Collecting this information from claimants required paralegals to become proficient with the Handheld Interagency Identity Detection Equipment System (HIIDES). The effect on fraudulent claims was dramatic—within two weeks of implementing this TTP, the number of fraudulent claims was lower than the number of claims paid while the overall number of claims

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[13] *Id.*
[14] *Id.*
[15] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 17.
[16] 56th Stryker Brigade Combat Team, 28th Infantry Division (Mechanized), Pennsylvania Army National Guard, Brigade Judge Advocate OIF After Action Report, 24 September 2009, Deployed January 2009 – September 2009, Camp Taji, Iraq (hereinafter "56th SBCT (PA NG) OIF AAR, JAN - SEP 09"; on file at CLAMO).

received trended downward. In total, of the 495 claims received, the claims staff rejected 210, many because of fraud. The unit paid out less than 20% of the amounts sought.

RECOMMENDATION: Sustain. Biometric equipment is a significant way to reduce fraudulent claims.[17]

ISSUE: Claims processing

DISCUSSION: The brigade did not run a Civil Military Operations Center (CMOC). Instead, the legal section received claims at the government information center (GIC) near Camp Taji. They received claims on Monday, adjudicated them during the week, and paid them on Saturday.

RECOMMENDATION: Sustain. This process worked efficiently, as the brigade legal section could adjudicate and pay most claims within a week.[18]

ISSUE: Lack of a centralized claims database

DISCUSSION: Claims record keeping is a unit responsibility. While units tend to hand off copies of their databases to follow on units, there is no one central repository of claims files. JAs and paralegals cannot cross reference claims in other AO's to verify or eliminate fraudulent claims.

RECOMMENDATION: Improve. A centralized tracking database of claims would greatly enhance claims handling, allow legal staff to more easily manage claims from predecessor units, and permit better scrutiny of potentially fraudulent claims.[19]

ISSUE: Definition of "combat activity"

DISCUSSION: The JAs became aware that there were inconsistencies in the interpretation of "combat activity" by other units in Iraq. Accordingly, these units resolved claims differently from AO to AO. The definition of combat related damage was the subject of a conference in Baghdad, but there was no consensus of a commonly accepted and applied interpretation.

RECOMMENDATION: Improve. While there has to be some flexibility in the definition, there should not be glaring disparities in the administration and finalization of claims between neighboring units.[20]

ISSUE: Handover of claims files between brigades

DISCUSSION: The incoming JA staff found they did not get a good handover of the outgoing brigade's unresolved claims. A number of files did not capture critical information (i.e., statements and reports) before the unit redeployed. As a result, the BCT legal staff spent a great deal of time trying to reach back for information.

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[17] *Id.*
[18] *Id.*
[19] 3d Brigade Combat Team (BCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 3 November 2009, Deployed October 2008 – October 2009, Multi-National Division – North (MND-N), COB Speicher, Tikrit, Iraq (hereinafter "3BCT, 25ID OIF AAR, OCT 08 - OCT 09"; on file at CLAMO).
[20] *Id.*

RECOMMENDATION: Improve. Legal staffs must set up their replacements for success by handing over claims files that are as complete as possible.[21]

ISSUE: Claims database program

DISCUSSION: One of the 1-25ID paralegals created a Microsoft Access database that proved to be easy to use and quite effective in the field, not only for tracking claims but also for cross-referencing claims using data fields such as names, property locations, dates, materials involved, etc. This feature enabled the staff to screen for duplicate and/or fraudulent claims.

RECOMMENDATION: Sustain. Innovative efforts such as these are commendable and are encouraged.[22]

ISSUE: Project Purchasing Officer (PPO) and Pay Agent (PA) certification

DISCUSSION: For claims and Commander's Emergency Response Program (CERP) condolence payments, 1-25ID deployed with two staff sergeants (SSGs) appointed by the SBCT commander as PPO/PAs. The two SSG's took the requisite PPO/PA finance classes before deploying. The minimum rank for the PPO/PA roles is E-7 (or E-6 with the commander's approval/waiver). As a result of taking the finance training, they had a better understanding of their financial responsibilities, duties, and liability for the funds they disbursed.

RECOMMENDATION: Sustain. Where possible, it makes sense to have paralegals fulfill the PPO/PA roles to expedite the claims/CERP payment processes.[23]

ISSUE: Fraudulent claims by Iraqi attorneys

DISCUSSION: There were some Iraqi attorneys caught submitting fraudulent claims at different FOBs and other locations. In these cases, the Iraqi attorney provided photos of their clients, but the claimants themselves never appeared in person. An interpreter discovered these attorneys were using photos purchased at a bazaar. In addition, they submitted different claims using identical photos but different names. The JAs warned off these unscrupulous attorneys from making any more false claims.

RECOMMENDATION: Legal staffs have to be on the constant lookout for those individuals seeking to defraud the U.S. government with fraudulent claims.[24]

ISSUE: Lack of a centralized claims database

DISCUSSION: There is a need for a centralized OIF claims database in order to eliminate duplicate and fraudulent claims.

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[21] 1st Stryker Brigade Combat Team (SBCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 13 November 2009, Deployed September 2008 – September 2009, Multi-National Division – North (MND-N), FOB Warhorse, Diyala Province, Iraq (hereinafter "1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09"; on file at CLAMO).
[22] *Id.*
[23] *Id.*.
[24] *Id.*

RECOMMENDATION: Improve. A centralized database would greatly enhance claims management and permit better scrutiny of potentially fraudulent claims.[25]

ISSUE: Changing nature of the claims mission

DISCUSSION: At the beginning of the deployment, the claims mission largely involved handling combat related matters from the previous BCT. As the deployment continued, the bulk of the claims stemmed from non-combat related matters (e.g. property damage, traffic accidents, and livestock claims). The JAs attributed the change to the implementation of the Security Agreement where the Iraqi Security Forces (ISF) took over lead for security.

RECOMMENDATION: Future OIF missions will likely consist of more claims issues of a routine nature, as opposed to combat related ones.[26]

ISSUE: Use of local national contractors for claims processing

DISCUSSION: The BCT inherited the services of two very talented Iraqi contractors who worked claims issues outside the gate five days a week. They were well acquainted with the mechanics of how to intake claims information from claimants and they were both fluent in English. They capably fulfilled their duties and were very responsive to directions on following up on informational needs. As a result, this freed the legal staff of some of the "heavy lifting" associated with the intake of claims information and dealing with claimants.

RECOMMENDATION: Sustain. The use of Iraqi contractors in this capacity was a tremendous enabler that allowed JAs to devote more time to other priorities.[27]

ISSUE: Paralegal support

DISCUSSION: 2HBCT was very fortunate to have some very competent paralegals working claims files and related issues. When JAs received the claims packets from the paralegals, the packets required very little in the way of additional work. The paralegals had gathered the relevant facts, determined if further information was necessary, and had thoroughly analyzed the issues.

RECOMMENDATION: Sustain. Paralegals can capably process claim files and can greatly assist the JAs in the finalization of these matters.[28]

ISSUE: Appointing Foreign Claims Commissions (FCCs)

DISCUSSION: It took a long time to get the United States Army Claims Service (USARCS) to appoint FCCs. Whenever a new battalion JA came into theater, the RCT-8 JAs would have to cover for the battalion JA in paying claims until the battalion JA would receive his official appointment. This was extremely difficult considering the significant size of RCT-8's AO.

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[25] *Id.*
[26] *Id.*
[27] 2HBCT, 1ID, OIF AAR (2d Half), OCT 08-SEP 09, *supra* note 27.
[28] *Id.*

RECOMMENDATION: Improve. All JAs (or others whom USARCS will be appoint as FCCs) should begin the appointment process at least one to two months before deployment so their appointment will be complete before, or coinciding with, their deployment.[29]

ISSUE: USARCS website

DISCUSSION: The USARCS website for FCC was almost impossible for Marine JAs to access and use. Marine JAs were almost all unsuccessful with logging onto the Judge Advocate General's Corps Network (JAGCNET) and Army Knowledge Online (AKO) websites. It was nearly impossible for non-Army personnel to set up an AKO account while in theater. Consequently, most Marine JAs did not use the USARCS FCC database.

RECOMMENDATION: Improve. All non-Army JAs should figure out how to set up an AKO account and figure out how to use the USARCS database before deploying.[30]

ISSUE: Use of Iraqi claims experts

DISCUSSION: Two Iraqi clerks in the Kirkuk governance building had been working with claims for three years. They knew how to assemble packets, conduct investigations, and get estimates. They prepared the translated claims packets for the claims paralegal to pick up and provided their opinions as to the validity of the claims. It was common knowledge in Kirkuk where to file claims.

RECOMMENDATION: Sustain. Capitalize on the institutional knowledge of local national contractors wherever possible.[31]

ISSUE: Appointment as foreign claims commissions (FCCs)

DISCUSSION: The brigade legal section did not have anyone appointed as FCCs before deployment. The Division OSJA was very proactive about getting attorneys at the BCTs appointed once in theater.

RECOMMENDATION: Improve. Seek FCC appointments before deployment. [32]

ISSUE: Delay in starting the claims mission

DISCUSSION: Despite the arrival of the BCT in the AO in December 2008, the claims mission did not start in earnest until March 2009 due to the lack of a finance office.

RECOMMENDATION: Improve. The late standing up of a finance unit has a ripple effect on other missions, especially the claims effort. Commanders should be aware local Afghans might become frustrated if unsettled claims drag on because of unit shortfalls like finance.[33]

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[29] Regimental Combat Team 8 (RCT-8), Multi-National Force – West (MNF-W), Deputy Regimental Judge Advocate, OIF After Action Report, 18 December 2009, Deployed January 2009 - October 2009, Al Asad, Iraq (hereinafter "RCT-8, OIF AAR, JAN 09 - OCT 09"; on file at CLAMO).
[30] *Id.*
[31] 2d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 4 & 9 February 2010, Deployed January 2009 – December 2009, Forward Operating Base Warrior, Kirkuk, Iraq (hereinafter "2-1 CAV, OIF AAR, JAN 09 - DEC 09"; on file at CLAMO).
[32] *Id.*

ISSUE: Use of biometrics for claims

DISCUSSION: The claims staff began using biometrics to help with the identification and tracking of claimants. This helped eliminate false claimants and allowed processing claims in a timelier manner. The claims staff picked up the biometrics training in the field.

RECOMMENDATION: Sustain. While photos are often sufficient for the purposes of claims, the use of biometrics data offers higher accuracy and allows for transfer of unresolved claims files to successive units much more easily.[34]

ISSUE: Determining an appropriate claims settlement

DISCUSSION: The brigade used the services of a trusted local Afghan to help assist with determining the appropriate value of property, livestock, and other items damaged by BCT troops and equipment. This helped significantly with processing claims in a fair and equitable manner.

RECOMMENDATION: Sustain.[35]

ISSUE: Need for a central claims database

DISCUSSION: Many claimants were savvy enough to resubmit the same claim whenever a new unit arrived in the AO. The BCT maintained an internal claims database and did their best to identify duplicate claims.

RECOMMENDATION: Improve. A centralized claims database, tracking claimants by Gensia (national identification card) number would standardize the way units track foreign claims and help reduce fraudulent/duplicate claims throughout Iraq. Tracking by name is not practical given the variation in spelling of Iraqi names.[36]

ISSUE: Impact of single-service claims authority on assignment of claims attorneys

DISCUSSION: The Army has single-service claims authority for Iraq. Although MNSTC-I did not have a claims mission, as part of the merger of the MNF-I, MNC-I, and MNSTC-I OSJAs into USF-I, one of MNSTC-I's Air Force attorney billets became a claims attorney under USF-I. It is clear Army Regulation (AR) 27-20 (Claims) would apply to the adjudication of all claims in theater. However, under paragraphs 10-7 and 10-8, the command must receive the approval of both the U.S. Army Claims Service (USARCS) and the appropriate authority from the other service in order to appoint personnel from another service as a foreign claims commission (FCC).

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[33] 3rd Brigade Combat Team, 10th Mountain Division, Brigade Judge Advocate OEF After Action Report, 29 January 2010, Deployed November 2008 – January 2010, Forward Operating Base Shank, Logar Province, Afghanistan (hereinafter "3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10"; on file at CLAMO).
[34] *Id.*
[35] *Id.*
[36] 1st Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 3 February 2010 & 29 March 2010, Deployed February 2009 – January 2010, Joint Security Station War Eagle, Baghdad, Iraq (hereinafter "1-1 CAV BCT OIF AAR, FEB 09 - JAN 10"; on file at CLAMO).

RECOMMENDATION: USF-I should make the appropriate coordination to appoint the incoming Air Force judge advocate as a FCC.[37]

ISSUE: Need for on-the-job training (OJT) and sufficient turnover in claims

DISCUSSION: The client services attorneys could have benefitted from OJT either before or early on in the deployment. The outgoing unit treated claims as a secondary issue during the relief in place/transfer of authority (RIP/TOA) process, largely because a co-located brigade combat team (BCT) had been handling claims at COB Basra. Consequently, the client services attorneys were unprepared for the time they would have to devote to handling claims.

RECOMMENDATION: Ensure all JAs communicate with their counterparts before deployment. Every OSJA member should attend training at The Judge Advocate General's Legal Center and School (TJAGLCS) to prepare for his/her job. Every JA must have a sufficient left seat/right seat turnover with their counterpart. Even if the Division OSJA does not intend to handle the intake and processing of claims, client services personnel should be familiar with the claims process in case they need to take over these responsibilities from a brigade.[38]

ISSUE: Preparation for the Division claims mission

DISCUSSION: The Division client services section assumed the claims mission at COB Basra from a co-located BCT. They therefore had to do all of the claims intake and processing, which turned out to be more time consuming than expected for the amount of staff they had. They had to learn the best practices "on the fly."

RECOMMENDATION: Seek appointment of one-member and three-member foreign claims commissions (FCCs) from the U.S. Army Claims Service (USARCS) before deployment. If the subordinate BCTs have three JAs, seek appointment for them as a three-member FCC so claims over $15,000 do not automatically have to come to Division. Train personnel on claims before deployment, and devote sufficient time to claims during deployment. Assign file assembly and preparation to the claims paralegals. It is also very helpful to have a full-time interpreter who can accept the claims with the paralegals and translate all the documents claimants bring in.[39]

ISSUE: Claims versus CERP approach

DISCUSSION: 4-25 ID did not use foreign claims to deal with civilian property damage, but responded with CERP instead. 4-25 ID regarded all patrols and operations as combat related, and any unintended consequences of conducting those activities fell within the authority to pay with CERP battle damage payments. One of the main benefits of using CERP over claims was same day payment to property owners, whereas a claim could take weeks/months to complete. This approach supported the "hearts and minds" campaign critical to COIN operations in Afghanistan.

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[37] Multi-National Security Transition Command – Iraq (MNSTC-I), Staff Judge Advocate OIF After Action Report, 28 December 2009, Deployed June 2009 – July 2010, Phoenix Base, Baghdad, Iraq (hereinafter "MNSTC-I OIF AAR, JUN 09 - JUL 10"; on file at CLAMO).
[38] 34th Infantry Division, Minnesota Army National Guard, Staff Judge Advocate OIF After Action Report, 23 February 2010, Deployed April 2009 – February 2010, Multi-National Division – South, Basra, Iraq (hereinafter "34ID, OIF AAR, APR 09 - FEB 10"; on file at CLAMO).
[39] *Id.*

RECOMMENDATION: Sustain. As an alternative to foreign claims, a CERP approach to compensating civilian property damage is another means available to ease the burden of military operations on local nationals.[40]

ISSUE: Appointment of foreign claims commissions (FCCs)

DISCUSSION: The Division OSJA applied for appointment of one-member and three-member FCCs before deployment. The designated client services judge advocates completed the requests during the Mission Rehearsal Exercise (MRX) approximately two months before deployment. The Deputy SJA (DSJA) and two captains comprised a three-member FCC, while several captains received appointment as one-member FCCs.

RECOMMENDATION: Sustain. Ensure the Division OSJA establishes a three-member FCC, as subordinate units do not always have the personnel to have one at their level. Having the DSJA serve on the three-member FCC gave him visibility over the claims mission.[41]

ISSUE: Appointment of FCCs for the BCTs

DISCUSSION: BCTs arriving in the MND-N AO generally had not requested appointment as FCCs. The Division claims JA drafted their appointment orders, but it sometimes took months for the U.S. Army Claims Service (USARCS) to approve them. When the claims JA sent them to a different civilian employee at USARCS, he was very responsive.

RECOMMENDATION: Improve. BCTs should get in contact with their Division OSJA to seek appointment of at least one FCC before deployment.[42]

ISSUE: Foreign claims accounts

DISCUSSION: The Division claims JA collected the requests for foreign claims funds from the BCTs and forwarded them to USARCS. The account manager at USARCS was very responsive and updated the accounts weekly.

RECOMMENDATION: Sustain.[43]

ISSUE: Legal administrator oversight of claims payments

DISCUSSION: The NCOIC of claims was the pay agent. The claims OIC was the approving authority. The legal administrator assisted the pay agent with ensuring all the necessary documents were in order before reconciling the account with G8/Finance.

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[40] 4th Brigade Combat Team (Airborne), 25th Infantry Division, Brigade Judge Advocate OEF After Action Report, 27 March 2010, Deployed February 2009 – February 2010, Forward Operating Base Salerno, Khowst Province, Afghanistan (hereinafter "4BCT, 25ID OEF AAR, FEB 09 - FEB 10"; on file at CLAMO).
[41] 25th Infantry Division, Staff Judge Advocate OIF After Action Report, 11 March 2010, Deployed November 2008 – November 2009, Multi-National Division – North, Contingency Operating Base Speicher, Iraq (hereinafter "25 ID OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).
[42] *Id.*
[43] *Id.*

RECOMMENDATION: Sustain. Long established relationships with the resource manager (G8) made it much easier for the legal administrator to get assistance with any questions to facilitate the reconciliation of the account.[44]

ISSUE: Use of biometrics in claims processing

DISCUSSION: 172d BDE used biometrics to improve identification of claimants and as a means to reduce fraudulent claims.

RECOMMENDATION: Sustain. Biometrics has an advantage of being superior to photographic records. Moreover, the biometric database is searchable in a variety of ways beyond claims purposes.[45]

ISSUE: Army wide foreign claims database

DISCUSSION: With so many Army units deploying in and out of Iraq, it would very helpful to have a foreign claims database with all the file information of claims, especially those that already have been paid or denied. As it is now, almost every unit going into an AO has to spend countless hours trying to review files for duplicate claims.

RECOMMENDATION: Improve. Until the Army creates a foreign claims database that can function in a deployed environment, it is important for deployed units to obtain their predecessor's claims files and trackers to make the process of eliminating fraudulent claims easier.[46]

ISSUE: Inheriting claims from a coalition partner

DISCUSSION: Claims were a mess upon arrival in the AO. 172d BDE took over an AO from a coalition partner, and they did not have any useful claims settlement records. 172d BDE had to completely re-do claims from 2007 onwards for two provinces. This proved to be a full time job for about 4 months. The "out of the cities" decree under the SA made the task even more complicated.

RECOMMENDATION: Operating in coalitions can bring some unique problems to the forefront. Some coalition partners do not view claims in the same manner as the U.S. From a claims perspective, be prepared for any contingency when taking over an AO from a coalition partner. [47]

ISSUE: Consolidated claims location

DISCUSSION: In order to cut down on duplication of effort, the 3d ESC SJA and the 7th Sustainment BDE JA agreed to implement a consolidated claims location process whereby they would split the claims intake and processing in order to keep claims processing less laborious.

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[44] *Id.*
[45] 172d Infantry Brigade, Brigade Judge Advocate OIF After Action Report, 5 February 2010, Deployed November 2008 – December 2009, Forward Operating Base Kalsu, Iskandariyah, Iraq (hereinafter "172d IN BDE, OIF AAR, NOV 08 - DEC 09"; on file at CLAMO).
[46] *Id.*
[47] *Id.*

RECOMMENDATION: Sustain. By merging JA forces, claims day assignments can be simpler, freeing up time for the JAs.[48]

ISSUE: Difficulty with U.S. Army Claims Service (USARCS)

DISCUSSION: When the SJA spoke to USARCS for an appointment as a one person Foreign Claims Commission (FCC), USARCS told him that there were already "too many one person FCCs running around Haiti." Despite the SJA's continued requests, USARCS would not budge. The SJA called U.S. Army South (USARSO) with the request and they immediately facilitated the FCC approval for him and the JA at the 7th Sustainment BDE.

RECOMMENDATION: Improve. If there is a reasonable case to provide a JA with FCC authority, USARCS should not deny the request. This is especially important if the JA is deploying to an austere environment that lacks high-speed internet to communicate with USARCS.[49]

ISSUE: Claims guidance

DISCUSSION: Upon arriving in the AO, the SJA found there was little claims guidance from the JTF-H headquarters. To fill in the void, the SJA provided his unit with claims guidance that developed into standard operating procedures (SOP).

RECOMMENDATION: Given the sudden nature of a deployment, JAs may have to issue interim guidance until higher headquarters can issue it.[50]

ISSUE: Appointment as a foreign claims commission (FCC)

DISCUSSION: Although the 22d MEU SJA received an appointment as a FCC to pay claims in the Central Command (CENTCOM) AO on the deployment from which he had just returned, the United States Army Claims Service (USARCS) required him to take the multiple-choice test to obtain an appointment as FCC in Haiti. The SJA did not plan for this inconvenience, and coordinating the testing was an unnecessary distraction given the unit's operational tempo.

RECOMMENDATION: JAs need to be mindful that although it seems redundant, USARCS may require them to reapply for an FCC appointment, to include retaking the test, before USARCS will authorize them to pay claims in a different AO.[51]

ISSUE: Paying claims on site

DISCUSSION: If the MEU SJA had not received appointment as FCC, the MEU could have taken claims from local Haitian claimants and submitted them to JTF-Haiti for payment. Instead,

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[48] 3d Sustainment Command (Expeditionary), Operation Unified Response, Staff Judge Advocate After Action Report, 23 April 2010, Deployed February 2010 – March 2010, Toussaint L'Ouverture Airport, Port-au-Prince, Haiti (hereinafter "3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10"; on file at CLAMO).
[49] *Id.*
[50] *Id.*
[51] 22d Marine Expeditionary Unit, Staff Judge Advocate After Action Report, 13 May 2010, Deployed 17 January 2010 – 1 April 2010, Operation Unified Response, Haiti Earthquake Relief (hereinafter "22d MEU (Haiti OUR) JAN 2010"; on file at CLAMO).

the SJA felt it made more sense to pay the claims on site. This enabled the 22d MEU to make an immediate impact and win support from the local populace.

RECOMMENDATION: Sustain. When possible, JAs should pay claims on site to ensure the unit makes an immediate impact in the AO.[52]

ISSUE: Ensuring claimant confidentiality

DISCUSSION: In order to protect claimants, the SJA took all claimants to a private place to process their claim. The SJA informed claimants no one needed to know how much the U.S. had paid the claimant.

RECOMMENDATION: Sustain. In operational environments similar to Haiti, it is important to advise claimants of the need for confidentiality in order protect the claimant from robbing or mugging.[53]

ISSUE: Shared claims database for Iraq

DISCUSSION: MNC-I sponsored the use of the United States Army Claims Service (USARCS) shared claims database program (the Tort and Special Claims Application (TSCA)), which enabled units across Iraq to search for possible duplicate and previously settled claims. The database information included names (and variations of spelling), locations, dates, settlement information, quantum, and other information. However, it did not have a biometrics component. The TSCA has been available for several years, but the difficulties in Iraq have been the lack of consistent use by claims personnel and the requirement for an internet connection. The latter reason was why the Divisions and BCTs had to use spreadsheets in the field.

RECOMMENDATION: The use of a shared database was long overdue and is another tool available to the legal staff to research claims related information. Claims JAs must use this tool, as well as any detailed internal tracking system at the Division level.[54]

ISSUE: Claims conference

DISCUSSION: The MNC-I claims section hosted the first Claims Conference in Iraq. In attendance were trainers from USARCS, as well as claims teams throughout Iraq, many of whom had never performed the claims mission. Many had also inherited hundreds of old claims. They learned the essential "how-to's" of claims and went back to their respective bases to tackle the outstanding claims.

RECOMMENDATION: Sustain. Having a conference of claims counterparts allows for exchanges of ideas and the passing along of new guidance and standards. Holding a conference every six months educates claims personnel at the most effective points in their rotations.[55]

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[52] *Id.*
[53] *Id.*
[54] I Corps & 2d Legal Support Organization, Combined Staff Judge Advocate OIF After Action Report, 16 May 2010, Deployed March 2009 – March 2010, Reserve Mobilization February 2009 – February 2010, Camp Victory, Iraq & Fort Lewis, Washington (hereinafter "I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10"; on file at CLAMO).
[55] *Id.*

ISSUE: Participation of Government of Iraq (GoI) representative in claims mission

DISCUSSION: Many units benefitted from working claims issues with a member of the GoI. This increased the legitimacy of the GoI and its representatives in the eyes of the ordinary Iraqis. As a result, even the claims mission helped contribute to the successful establishment and functioning of the GoI.

RECOMMENDATION: Where possible, integrate government representatives, preferably at the more reliable federal level, into mission sets so they can eventually take responsibility for the role and thereby become legitimate in the eyes of the local population.[56]

ISSUE: Inconsistent claims standards

DISCUSSION: The MNC-I claims JA found Division and BCT JAs' handling and settlement of claims varied widely throughout Iraq. Similar fact patterns would result in paid claims in some areas of operations (AOs) and denials in others. The Corps SJA implemented a standard operating procedure (SOP) to limit this variability into a more defined standard.

RECOMMENDATION: Improve. All JAs have to adhere to claims guidance and standards in order to reduce the dissatisfaction of claimants and the possible misuse of funds.[57]

ISSUE: Confusion on claims days

DISCUSSION: The GoI broadcasted the locations, dates, and timings for U.S. military claims days. Often they gave out the wrong information, leading to many frustrated Iraqi claimants at the gates. MNC-I legal staff determined one of the contributing factors to the confusion was the random nature of Division and BCT claims day rotations and locations. Moreover, no one consolidated the information for the GoI. MNC-I instituted a coordinated claims day plan and a consolidated report for the GoI to broadcast.

RECOMMENDATION: Sustain. Corps level legal staffs have to take ownership of claims coordination with local government counterparts to ensure an orderly and predictable forum for local national claimants to present their cases. Review of GoI information by the Corps level staff prior to its dissemination would improve accuracy.[58]

ISSUE: Need for training on land lease claims

DISCUSSION: The Division OSJA processed hundreds of real estate claims, most of which were from prior years. However, the claims JAs did not have training on processing these claims.

RECOMMENDATION: Improve. USARCS and TJAGLCS training should include instruction on processing real estate claims.[59]

ISSUE: Tort and Special Claims Application (TSCA)

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[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 41.

DISCUSSION: The Division claims section uploaded all of the claims they processed to the TSCA.

RECOMMENDATION: Sustain/Improve. Although using the TSCA precluded the need to keep paper copies of the claims, the database would not allow them to search claims from other units.[60]

ISSUE: Long-standing land use issues

DISCUSSION: The Legal Advisor gathered facts for Gulf Regional District (GRD) regarding CJSOTF-AP's and its SOTFs' use of land.

RECOMMENDATION: JAs deploying post SA must be ready to deal with long-standing land use issues and gather necessary facts for GRD.[61]

ISSUE: Foreign Claims Act (FCA) pay agent

DISCUSSION: The legal administrator was the claims pay agent for the OSJA. The legal administrator received training early and was able to draw cash from finance to pay claims directed by the claims officer.

RECOMMENDATION: Sustain.[62]

IV.A.1. Individual and Corporate Claims Against the United States

ISSUE: Notarizing claims documents

DISCUSSION: One unit in Afghanistan routinely notarized claimants' documents in order to prevent use of the materials in any possible subsequent fraudulent claim when a new BCT arrived in the AO.

RECOMMENDATION: Sustain.[63]

ISSUE: Claims expertise in Kosovo

DISCUSSION: Kosovo has a long-serving civilian claims examiner. This foreign national is very, very expert in claims and runs the entire process very well. There is no need to reinvent the wheel in this area as long as this person remains in the claims position.

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[60] 1st Cavalry Division, Staff Judge Advocate OIF After Action Report, 1 April 2010, Deployed January 2009 – January 2010, Multi-National Division – Baghdad, Camp Liberty, Baghdad, Iraq (hereinafter "1CD OIF AAR, JAN 09 - JAN 10"; on file at CLAMO).
[61] 10th Special Forces Group (Airborne), Group Judge Advocate OIF After Action Report, 19 May 2010, Deployed July 2009 – February 2010, Joint Base Balad, Iraq (hereinafter "10th SFG OIF AAR, JUL 09 - FEB 10"; on file at CLAMO).
[62] 82d Airborne Division, Staff Judge Advocate OEF After Action Report, 23 June 2010, Deployed June 2009 – June 2010, Regional Command—East, Bagram Airfield, Afghanistan (hereinafter "82D ABN OEF AAR, JUN 09 - JUN 10"; on file at CLAMO).
[63] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 1.

RECOMMENDATION: Rely on the expertise already present on the ground.[64]

ISSUE: Appointment as foreign claims commissions (FCCs)

DISCUSSION: The MND-N OSJA (25th Infantry Division) had proactively sought appointment of its JAs, as well as the brigade-level JAs, as FCCs. When the new BJA arrived midway through the deployment, she applied to the U.S. Army Claims Service (USARCS) via MND-N for appointment as an FCC, but did not receive approval until the very end of the deployment. She had not pushed the issue with USARCS separately from MND-N because the brigade's other two JAs were already FCCs. However, when the reserve JA serving as the brigade's claims attorney redeployed almost two months earlier than the rest of the brigade, this left the TC as the only FCC for the brigade. This nearly resulted in the TC having to stay beyond her projected redeployment date, since there was one particularly large claim the BCT commander wanted to resolve before the BCT redeployed.

RECOMMENDATION: Improve. Apply to USARCS for appointment as FCCs as soon as possible, preferably before deployment. Also consider applying for appointment as a three-member FCC at the brigade level.[65]

ISSUE: Intake of claims by GoI after the "out of the cities" provision

DISCUSSION: After the 30 June 2009 "out of the cities" provision of the Security Agreement took effect, the claims attorney could no longer intake claims at the Provincial Joint Coordination Center (PJCC) in Mosul. They established an intake station at the pedestrian gate at FOB Marez, sharing an office with civil affairs (CA) personnel. Several months later, the brigade received a request from the provincial governor via the MND-N Deputy Commanding General (DCG) for the GoI to intake foreign claims at the governor's office. The BCT commander, who was the landowner, agreed. The brigade legal section prepared a packet of translated forms and a checklist of requirements. They made clear the GoI had to submit all claims to U.S. forces for investigation, and any promises or adjudications by Iraqi officials or courts would not be binding. Moreover, the claims were not "filed" for the purposes of the two-year statute of limitations until delivered to U.S. forces.

RECOMMENDATION: Improve. Although the FCA allows the filing of a claim either with U.S. forces or with the government where the claim took place, claims attorneys should be cautious about this practice. If allowing intake of claims by the GoI, do not pay the claims through the GoI or provide the GoI with a list of claims paid or amounts, even if the GoI claims to only be using such information to identify repeat claims. If possible, maintain claims intake only at the FOBs (since the claimant will have to come to the FOB for payment).[66]

ISSUE: Battalion paralegal role in claims

DISCUSSION: One of the paralegals located with his battalion established a claim programs at

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[64] Task Force Falcon, 40th Infantry Division, California National Guard, Command Judge Advocate, Kosovo Forces 11 After Action Report, 9 January 2010, Deployed February 2009 – November 2009, Camp Bondsteel, Kosovo (hereinafter "KFOR-11 AAR, FEB 09 - NOV 09"; on file at CLAMO).
[65] 3d Heavy Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate (BJA) OIF After Action Report, 16 September 2009, Deployed December 2008 – July 2009, Ninewah Province, Iraq (hereinafter "3HBCT, 1 CD Part II OIF AAR Dec 08-Dec 09"; on file at CLAMO).
[66] *Id.*

the FOB Sykes, including establishing an intake area and making a claims card. He occasionally traveled off the FOB to investigate claims.

RECOMMENDATION: Sustain. Paralegals forward-deployed with their battalions should be prepared to run the claims mission for their FOB.[67]

ISSUE: Resolving legacy claims left by previous units

DISCUSSION: Despite receiving assurances there were no unresolved claims in their AO, the BCT discovered over 700 unadjudicated claims, dating back as far as 2003, at the District Advisory Council (DAC) and the National Advisory Center (NAC). It was unclear who originally accepted the claims, but the packets were in various stages of processing. The brigade legal section processed as best they could those claims that were payable under the Foreign Claims Act (FCA), adjudicating them de novo based on the evidence in the packet. A large number of claims, however, were for battle damage resulting from an offensive into Sadr City in April 2008, and thus were non-payable under the FCA. When examining battle damage claims for potential condolence payments under the Commander's Emergency Response Program (CERP), the BCT commander established a rule by which he would not pay condolence payments for claims older than 2006.

RECOMMENDATION: Sustain/Improve. There must be a better handoff of claims from unit to unit within a given AO. In a situation where efficient transition between BCTs cannot occur, the Division OSJA should become the caretaker of the claims until they can transfer them to the incoming BCT. Ideally, the outgoing unit should strive to leave no FCA claims or CERP condolence payments unresolved at the time they transfer authority to the incoming unit. This BCT handed off only 19 claims to the incoming BCT, all of which they had fully adjudicated but just had not had an opportunity to pay. When a unit does fall in on a large number of legacy claims, it may be necessary to establish a somewhat arbitrary cutoff date for condolence payments.[68]

ISSUE: Friction between CA and legal section over claims and condolence payments

DISCUSSION: The CA detachment assigned to the BCT fell under the brigade S9 section. The OIC of the CA detachment did not understand the claims process, particularly the requirement in the *Money as a Weapons System* (MAAWS) handbook to verify a claim is not payable under the FCA before making a CERP condolence payment. This created friction with the BJA when this OIC attempted to use CERP condolence payments as a primary means of paying claims without going through the legal section. Moreover, the CA detachment began assigning its own tracking number to their claims, making it confusing for the legal section to track.

RECOMMENDATION: Improve. Every claim must go through the brigade legal section for evaluation under FCA before paying CERP condolence payments. This way the claims paralegal can assign a single tracking number to a particular claim. Having a claims standard operating procedure (SOP) would assist in giving everyone the same understanding of the process.[69]

ISSUE: Valuation of claims

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[67] *Id.*
[68] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 36.
[69] *Id.*

DISCUSSION: Claimants typically overestimated the value of their claims, particularly with regard to vehicle damage. They therefore required estimates from repair shops or had their interpreter determine the cost of the item on the local economy. The claims attorney and paralegal also gauged the reactions of the claimants when they paid less than the stated amount. Over time, they developed a good idea of what was reasonable for different types of damage.

RECOMMENDATION: Sustain/Improve. It is not only important to get a permanently assigned interpreter for the claims mission, but also to get one with a strong personality who does not put up with haggling from claimants. If available, a specialist in valuing claims would be a tremendous asset.[70]

ISSUE: Forum shopping

DISCUSSION: 30th HBCT processed approximately 300 to 500 claims during its deployment. Some claims were legitimate and some were not. Often, when a unit deemed a local national's claim invalid, the local national would take the claim to another unit to try to get it paid. The brigade legal sectoin reviewed carefully each claim submitted and checked with the prior units' files to ensure claimants were not forum shopping.

RECOMMENDATION: Sustain.[71]

ISSUE: Claims intake and payment

DISCUSSION: Claims intake occurred at the Civil-Military Operations Center (CMOC) outside COB Speicher. The claims paralegal received and paid claims for four hours on Tuesdays and Saturdays. Occasionally, the claims paying agent traveled off the COB to pay claims.

RECOMMENDATION: Sustain. If possible, receive and pay claims at the same location and time as your predecessors did. Send claimants to the battle space owner where the claim occurred.[72]

ISSUE: "Street-side" claims intake

DISCUSSION: BCT personnel would sometimes receive claims from local nationals while out on other missions. They accepted the claims and turned them over to the brigade legal section, who then tried to set up a meeting with the claimant at the CMOC for submission of additional documents or evidence they needed to process the claim.

RECOMMENDATION: Sustain. Balance the need to establish good will with safety and the need to receive sufficient evidence to process the claim.[73]

ISSUE: Unit claims officers

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[70] *Id.*
[71] 30th Heavy Brigade Combat Team, Brigade Judge Advocate OIF After Action Report, 16-17 March 2010, Deployed April 2009 – January 2010, Forward Operating Base Falcon, Baghdad, Iraq (hereinafter "30th HBCT (NG) OIF AAR, APR 09 - JAN 10"; on file at CLAMO).
[72] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 41.
[73] *Id.*

DISCUSSION: One BCT under this Division trained a unit claims officer (UCO) in each battalion to intake claims.

RECOMMENDATION: Sustain. Having trained UCOs reduces the need for legal personnel to travel off the FOB to investigate claims.[74]

ISSUE: Claims tracking

DISCUSSION: The USARCS Tort and Special Claims Application (TSCA) did not work in Iraq. The Division OSJA used its own claims tracker and received weekly claims reports from the BCTs. They also had the claims files from the previous two units.

RECOMMENDATION: Be prepared to develop your own claims tracker.[75]

ISSUE: Use of biometrics to prevent fraudulent claims

DISCUSSION: The Division OSJA used the Biometric Automated Toolset System (BATS) to screen claimants for insurgent ties and to track whether the claimant previously submitted the same claim.

RECOMMENDATION: Sustain.[76]

ISSUE: Multiple accident claims for the same amount

DISCUSSION: For reasons unknown, there were several vehicle accident claims that always estimated $600 worth of repairs. In order to investigate these estimates, the BCT had a few Paratroopers of Haitian descent speak with local repair shops to verify repair estimates.

RECOMMENDATION: Having Soldiers with ties to the AO can greatly assist in the claims process by investigating repair estimates in the local language.[77]

ISSUE: Pay agents and drawing funds for claims

DISCUSSION: One of the main issues facing the JAs with claims was how to pay claimants. A number of 2-82 ABN units did not draw any money before departing, and there were no pay agents. It took time to appoint pay agents, have finance set up an office, and make money available. It was not a quick process. In one case, it took three days to draw $300. The importance of getting pay agents in place and money drawn was not initially apparent to the units, but it became clear when claims began to arise and when they needed funds to purchase items off the local market.

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[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] 2d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate Haiti After Action Report, 23 April 2010, Deployed January 2010 – March 2010, Operation Unified Response, Port-au-Prince, Haiti (hereinafter "2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10; on file at CLAMO).

RECOMMENDATION: Given the sudden nature of some deployments, it is important to remind units to appoint pay agents and draw funds or to have these individuals appointed and trained in anticipation of deployment.[78]

ISSUE: Paying claimants in high crime areas

DISCUSSION: Crime in Haiti is rampant, so it is important to pay claimants out of sight of the public eye in a secure fashion. Otherwise, criminals could easily target claimants.

RECOMMENDATION: Sustain.[79]

ISSUE: Disabled USB ports and claims photos

DISCUSSION: One of the problems the brigade legal section discovered during the deployment was some of the cameras supplied for the mission could only download photos by way of a universal serial bus (USB) cord. With USB ports disabled, it was impossible to download the photos of claims related accidents and damages. The solution was to use cellular phone cameras and then email the photos to email accounts.

RECOMMENDATION: Sustain. This is another example of how the disabling of USB ports can affect military operations.[80]

ISSUE: Fraudulent claims cards

DISCUSSION: Fraudulent claims cards were prevalent.

RECOMMENDATION: Take measures to distinguish legitimate claims cards from fraudulent ones. Some possibilities include issuing a block of serial numbered claims card to each unit, stamping claims cards with a notary seal, or using a perforated or carbon paper two-part card where the unit keeps a copy of the claims cards they issue. [81]

ISSUE: Division role in processing old claims

DISCUSSION: One of the BCTs discovered hundreds of old claims a previous unit had left behind when there was a gap in ownership of the battle space.

RECOMMENDATION: The Division OSJA should play the role of temporary custodian when one subordinate unit leaves its battle space before another unit occupies it. The outgoing BCT must inform the OSJA of all unresolved claims. If they are unable to scan these claims into the TSCA, the BCT should turn over a spreadsheet of all open claims and let the OSJA know the location of the claims files. The OSJA should send a claims attorney down to the incoming BCT to assist in processing the claims. [82]

ISSUE: Electronic funds transfer (EFT) for paying claims

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[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 60.
[82] *Id.*

DISCUSSION: The MNC-I legal team completed an EFT claims payment to an Iraqi citizen for a $27,000 claim. The claimant's bank was in Jordan, so a number of verification steps preceded the transfer. Afterwards, other EFTs took place as they were a safer means for transferring large payment amounts.

RECOMMENDATION: Sustain. The banking situation in Iraq has recovered to the point that EFTs are possible and offer more protections for both parties than the hand to hand cash transfers routinely done in the past.[83]

ISSUE: Valuation of claims based on the local economy

DISCUSSION: Valuation of losses in Iraq differs greatly from the valuation of analogous losses with which the JA may have been familiar in the U.S. One of the surprises the MNC-I legal team learned from discussing claims issues with Iraqi attorneys is that the value of cars appreciated after the war due to the greater scarcity of vehicles in Iraq. Vehicle imports dropped off substantially during the first few years of Operation Iraqi Freedom (OIF), so undamaged cars began to increase in value. Cars are the best example, but it also included things like groves and livestock. The Corps pushed this information out to Division and BCT JAs.

RECOMMENDATION: Iraqi law includes some basic guidance on the valuation of damages. In addition, both GoI and Iraqi attorneys were able to provide assistance in determining the fair value for losses.[84]

IV.A.2. Claims of Foreign Governments

ISSUE: Claims by the GoI

DISCUSSION: The Security Agreement (SA) bars inter-government claims between Iraq and the U.S. The BCT had to deny at least once such claim.

RECOMMENDATION: Sustain. Be aware of whether the claim arose before or after the implementation of the SA. For those arising before the SA, also be cognizant of the two-year statute of limitations.[85]

ISSUE: Claim against U.S. at Iraqi base

DISCUSSION: The ISF made a claim against the U.S. when a coalition vehicle damaged the entrance gate to one of its security compounds. The damaged item occurred at an operating base originally belonging to U.S. forces. The BJA denied the claim.

RECOMMENDATION: Sustain. Under the U.S.-Iraq Security Agreement (SA), Iraq waived all claims against the U.S. Although the SA does not preclude the Government of Iraq (GoI) from submitting a claim it does not allow payment of a claim.[86]

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[83] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 54.
[84] *Id.*
[85] 3HBCT, 1 CD Part II OIF AAR Dec 08-Dec 09, *supra* note 65.
[86] 225th Engineer Brigade, Louisiana Army National Guard, Brigade Judge Advocate OIF After Action Report, 7 March 2010, Deployed January 2009 – November 2009, Multi-National Division-Baghdad,

IV.A.3. Claims Within the HN that Could Affect U.S. Interests or Operations

ISSUE: Resolving lease issues following base closure

DISCUSSION: As the BCT closed U.S. facilities, it had to deal with a wide variety of lease issues. In some cases, there were unpaid leases, while in other cases U.S. forces had been occupying the property without a lease. Moreover, some of the land belonged to the Government of Iraq (GoI), while other land was private property. Figuring out how to deal with these issues required extensive coordination with the Gulf Regional Division (GRD) of the U.S. Army Corps of Engineers (USACE).

RECOMMENDATION: It is important to develop a good relationship with GRD, as they have the expertise for dealing with lease issues.[87]

ISSUE: Reporting and stamped claims cards

DISCUSSION: In an attempt to stop fraudulent claims, the brigade legal section drafted a FRAGO setting forth the brigade's reporting requirements for vehicle accidents and similar incidents. In addition, the brigade legal section created claims cards bearing a notary stamp to ensure their authenticity. The brigade legal section only gave the cards to units and not to the Iraqi Government Information Center (GIC) personnel. The brigade legal section created Standard Operating Procedures (SOP) informing units about how the claims process worked, directing them to take sworn statements from U.S. forces involved in any incident, and to issue the controlled claims card. They were also to immediately enter the incident as a spot report.

RECOMMENDATION: Sustain. These procedures made it easy for the paralegal handling claims to identify legitimate claims and deny the fraudulent ones. It also had a significant impact on the number of claims the brigade was receiving. At the beginning of the deployment the brigade received 30-40 claims per week. After the brigade implemented the above procedures, the number of claims fell to 20 per month.[88]

ISSUE: Distributing claims cards

DISCUSSION: The brigade legal section created a claims packet consisting of the notary-stamped claims card and an information paper. Each vehicle in the convoy had a claims packet, and Soldiers were accountable for the claims card in the packet.

RECOMMENDATION: Sustain. The use of notarized claims card made it instantly obvious the claimant actually received the card from a Soldier. There was almost a presumption the claim was valid.[89]

Camp Liberty, Iraq (hereinafter "225th EN BDE (LAARNG) OIF AAR, JAN 09-NOV 09"; on file at CLAMO).

[87] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 5.

[88] 3d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate OIF After Action Report, 4 February 2010, Deployed December 2008 – November 2009, Joint Security Station Loyalty and Forward Operating Base Hammer, Baghdad, Iraq (hereinafter "3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09"; on file at CLAMO).

[89] *Id.*

ISSUE: Continuity of claims database

DISCUSSION: When the brigade arrived there was a large backlog of unadjudicated claims from the previous unit. There was also little documentation of which claimants the previous unit had paid.

RECOMMENDATION: Improve. Complete and close out as many claims as possible before redeploying. If there are open claims, ensure there are clear and concise records for the new unit to use.[90]

ISSUE: Use of electronic resources to confirm claims

DISCUSSION: The paralegal in charge of the claims mission used the Combined Information Data Network Exchange (CIDNE), spot reports, significant activity (SIGACT) reports, and other electronic media to assist in the decision to approve a claim.

RECOMMENDATION: Sustain. Ensure paralegals are trained on the latest computer systems in theater before deployment.[91]

ISSUE: Theater claims tracking system

DISCUSSION: The internet-based Tort and Special Claims Application (TCSA) program, which U.S. Army Claims Service (USARCS) mandates, did not work in theater.

RECOMMENDATION: Improve. Even a mature theater like Iraq lacks the non-classified bandwidth necessary to run some "mandatory" systems.[92]

ISSUE: Use of local national employees to intake claims

DISCUSSION: The claims NCO supervised three local national employees who worked in the Government Information Center. They essentially served as claims intake personnel. They brought the claims in to the legal office on the FOB once a week.

RECOMMENDATION: Sustain. This allowed claimants easy access to the process, as intake occurred off the FOB and through Iraqi nationals. It also contributed to force protection by precluding groups of people from having to congregate at the FOB entrance on regularly scheduled days and times.[93]

ISSUE: Time required for appointing a Foreign Claims Commission (FCC)

DISCUSSION: The unit's request for FCC appointments took five months to process. The unit's timing ran afoul of the end of year holiday period, planning for a retirement ceremony, and other delays that are irrelevant in a deployed setting. USARCS did not move on the brigade's request until the Division Chief of Staff threatened to call USARCS personally.

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[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.*

RECOMMENDATION: Improve. There ought to be some understanding that deployed or deploying personnel need priority service when requesting this type of operationally necessary paperwork. BJAs should ensure as early as possible before deployment they provide USARCS the names of the brigade's FCCs and pay agent.[94]

ISSUE: Retroactive land leases

DISCUSSION: Judge advocates are generally not prepared to process retroactive land leases. Although the Gulf Regional Division (GRD) of the U.S. Army Corps of Engineers has the lead in drafting the leases, the brigade legal section has a role in this in getting signatures and POAs. Further, it is important for BJAs to identify situations that might give rise to the need to execute a retroactive land lease.

RECOMMENDATION: Improve. GRD leads this process. However, BJAs have a role in the process. There is a requirement for flowcharts or other materials explaining this process. BJAs must be able to identify circumstances giving rise to these situations properly and know what steps are necessary to support the application. BJAs need to ensure early identification of these cases, as the GRD uses Operations and Maintenance (O&M) funds to pay back payments. These funds expire, which leads to fiscal law problems.[95]

ISSUE: Proof of identity and ownership for real estate claims

DISCUSSION: The Gulf Regional Division (GRD) of the U.S. Army Corps of Engineers (USACE) handles all real estate claims in Iraq. GRD required four different forms of identification for all claimants: Gensia card (national ID card); nationality card; ration card; and residency card. GRD made exceptions in certain cases, particularly when women were unable to obtain one of these forms of identification. For proof of ownership, GRD required a deed and a recent letter from the local registry. For inherited property, they also required a copy of a will and death certificate.

RECOMMENDATION: Sustain. Claims attorneys should be familiar with the requirements in the GRD Real Estate Standard Operating Procedure for Processing Real Estate Claims, dated 12 October 2009 (on file at CLAMO).[96]

ISSUE: Real estate claims with multiple landowners

DISCUSSION: GRD performed the title searches and other actions to determine the ownership of land that was the subject of real estate claims. This frequently resulted in a determination of multiple landowners. In such cases, GRD policy required the claimant to obtain powers of attorney (POAs) from all landowners giving him the right to represent, negotiate, sign, and collect funds on the other landowners' behalf. In one particular case involving a claim arising out of the use of private land by U.S. forces to construct a bridge, there were three landowners, only one of which was still alive. The deceased landowners, in turn, had multiple heirs. The claimant had to obtain POAs from 15-20 landowners. Because certain heirs refused to give the initial claimant a POA but agreed to execute a POA for another one of the heirs, GRD agreed to execute a lease with two claimant signatures.

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[94] *Id.*
[95] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 31.
[96] 3HBCT, 1 CD Part II OIF AAR Dec 08-Dec 09, *supra* note 65.

RECOMMENDATION: Sustain/Improve. Establish a good relationship with GRD. This can facilitate the resolution of claims with multiple landowners, which might otherwise delay projects and generate ill will against the U.S. In addition, a statutory change may be necessary to allow the split payment of a claim to one landowner when other landowners are not available.[97]

ISSUE: Past real estate claims of unknown duration

DISCUSSION: One claim in the brigade AO involved the land located between FOBs Marez and Diamondback, which contained buildings and other businesses whose owners had to vacate due to construction of the FOBs. There was no documentation as to when these claims arose. USARCS recommended the claims attorney to use his best guess as to the length of the past use of the land by U.S. forces.

RECOMMENDATION: Improve. When establishing a new base, U.S. forces should document all ownership interests in the property. In addition, outgoing units must pass on all records of claims already paid to the incoming unit.[98]

ISSUE: Partitioning of jointly-owned land for purposes of real estate leases

DISCUSSION: JSS War Eagle sat on land partly owned by the Government of Iraq (GoI) and partly owned by a local sheik and his family, who had not received any payment for the use of the land since 2007. The BCT did not become aware of this problem until three months into the deployment. The Gulf Regional Division (GRD) of the U.S. Army Corps of Engineers (USACE), which is the exclusive authority for creating real estate leases in Iraq, would not enter into a lease in which the GoI was a party, nor would it enter into a lease with more than one party without waivers from the remaining co-owners. Therefore, the landowner had to seek a partitioning of the land. GRD also required the sheik to get a power of attorney (POA) from all family members who had an ownership interest in the property. This claim was unresolved at the time the BCT redeployed.

RECOMMENDATION: Improve. When establishing new operating bases, U.S. forces should document the ownership interests in the land. Successive units occupying the base should document all payments to the landowners. With significant real estate claims, the outgoing unit should conduct a joint engagement with the sheik or other interested party and the incoming unit to ensure continuity of efforts to establish a forward-looking lease.[99]

ISSUE: Working with the Gulf Regional Division (GRD) on land lease claims

DISCUSSION: A significant number of the claims the brigade legal section reviewed were land claims, regarding rent or payment for damages). Specifically, the claims U.S. forces possessed the rightful owner's land or destroyed the land (to include fixtures and structures) while conducting combat operations. The U.S. Army Corps of Engineers (USACE) GRD is the civilian entity that now assists with paying land claims.

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[97] *Id.*
[98] *Id.*
[99] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 36.

RECOMMENDATION: Sustain. When paying land claims, JAs should utilize GRD. The brigade legal section made sure it contacted GRD and established a good working relationship with them in order to ensure success in getting land claims paid.[100]

ISSUE: Lack of record keeping concerning real estate claims

DISCUSSION: The biggest issue the OSJA encountered with respect to real estate claims was a lack of record keeping. Some forward operating bases (FOBs), combat outposts (COPs), and patrol bases (PBs) had been in place for years without addressing who owned the underlying land. The Division received claims for land use dating back to 2003. The Division Engineer section and the OSJA were key players in resolving these claims. The OSJA routed the paperwork through the Engineer section to the C7, who submitted it to the U.S. Army Corps of Engineers (USACE) Gulf Regional Division (GRD), which drafted the land leases.

RECOMMENDATION: The OSJA and Division Engineers should each designate a representative to be the subject matter expert on real estate claims. Coordinate with the outgoing unit to identify outstanding real estate claims. Use approved claims to establish records as to land ownership for future units.[101]

ISSUE: Funding the payment of old real estate claims

DISCUSSION: The Division fell in on numerous real estate claims, some of which dated back over five years. After processing the paperwork and having the Gulf Regional Division (GRD) of the U.S. Army Corps of Engineers (USACE) draft the retroactive lease, the Division G8 had to submit a request through MNC-I to U.S. Army Central Command (ARCENT) in Georgia for approval to use expired Operations and Maintenance, Army (OMA) funds from prior fiscal years to fund the leases. In some cases, by the time the approval came back, the Division G8 said the purchase request and commitment (PR&C) forms were void because the individuals on the form were no longer in theater. Moreover, for claims older than five years, no funds were available because those fiscal year funds had closed.

RECOMMENDATION: Improve. Congress should establish a special pot of money to pay for older real estate claims. The current process is too long and results in significant frustration for the claims JAs and claimants alike.[102]

ISSUE: Title surveys for land leases

DISCUSSION: For COB Speicher, the GRD already had a spreadsheet depicting who owned the property. However, for some other areas, the unit had to pay GRD to conduct title searches.

RECOMMENDATION: Realize the ground-owning unit will have to fund GRD to perform the land surveys for some real estate claims. This generally costs a minimum of $10K.[103]

ISSUE: Initial land leases

DISCUSSION: As the first unit into a new area of operations, the BJA had to accompany the

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[100] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 71.
[101] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 38.
[102] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 41.
[103] *Id.*

BCT and BN commanders to various areas around Port-au-Prince to recon potential FOB sites and then to negotiate leases with land owners. Afterwards, a Navy Contingency Real Estate Team (CREST) took over the duty of negotiating and closing leases for the units comprising JTF-Haiti.

RECOMMENDATION: BCT JAs going into a new AO will likely have several lease obligations to initiate. Having a solid grasp of this core legal concept is necessary.[104]

ISSUE: Compensating landowners for land use

DISCUSSION: When RCT-3 moved to Camp Dwyer, it fell in on a battle space ISAF had not occupied previously. As a result, RCT-3 had to set up an initial footprint in the AO. This entailed using land to establish its headquarters and various combat outposts. In an effort to secure compensation for the local landowners, the RJA contacted the U.S. Army Corps of Engineers (USACE). USACE explained the Government of the Islamic Republic of Afghan (GIRoA) was responsible for compensating landowners for ISAF use of land.

RECOMMENDATION: When going to a new AO, units need to have a plan in place for land use and compensating landowners.[105]

ISSUE: Land use claims

DISCUSSION: During COIN operations, it is important to win over the hearts and minds of the local populace. Ensuring landowners receive compensation when ISAF forces take control of their land to use for operations is key in winning the hearts and minds of the people. Unlike Iraq, the Government of the Islamic Republic of Afghan (GIRoA) Ministry of Defense (MoD) has pledged to pay Afghan citizens for the land ISAF sits on. As a result, it is often very difficult to ensure the locals paid for their land.

RECOMMENDATION: JAs need should assist locals in obtaining compensation. Submitting grid coordinates and photographs of the land is a good starting point in ensuring the GIRoA honors the land use claim.[106]

ISSUE: Difficulty in getting approval of prior year funds to pay retroactive real estate leases

DISCUSSION: Requests for prior year Operations and Maintenance, Army (OMA) funds to pay retroactive real estate claims had to go to U.S. Army Central Command (ARCENT) for processing. This process took excessively long and was extremely frustrating for the claimants and claims personnel alike.

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[104] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 77.
[105] Regimental Combat Team – 3, 2d Marine Expeditionary Brigade, Regimental Judge Advocate, OEF After Action Report, 14-15 April 2010, Deployed April 2009 – October 2009, Camp Dwyer, Helmand Province, Afghanistan (hereinafter "RCT-3, OEF AAR, APR 09 - OCT 09"; on file at CLAMO).
[106] 2d Marine Expeditionary Brigade, Deputy Staff Judge Advocate, OEF After Action Report, 22 March 2010, Deployed April 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB DSJA, OEF AAR, APR 09 - NOV 09"; on file at CLAMO).

RECOMMENDATION: ARCENT should designate one person whose sole duties are to track and process requests for prior year funds for real estate claims in operational theaters. A mobilized reservist may be able to fill this role.[107]

ISSUE: Confusing Iraqi land ownership tracking system

DISCUSSION: In order to investigate the title and ownership of certain Iraqi property claimants, the engineers working with the Corps staff contacted the GoI equivalent of land titles office. However, the Iraqi means of tracking ownership is not entirely reliable, as records are not precise, conflicting ownership claims can arise, and there are different classes of ownership on same properties. In some instances, the GoI land records only further complicated the determination of ownership.

RECOMMENDATION: The Iraqi system of land titles is not reliable. JAs must be cautious in using it to determine ownership issues for compensating claimants. Coordination with real estate experts employed by U.S. Army Corps of Engineers (USACE) Gulf Regional Division (GRD) can clarify these issues.[108]

ISSUE: Retroactive leases

DISCUSSION: With the withdrawal of U.S. forces from Iraqi urban areas, a number of Iraqi property owners came forward to MNC-I seeking reimbursement for their occupied lands. Many of these property occupations continued despite the lack of a lease or rental agreement. Some of the occupied properties began with the commencement of OIF. The MNC-I JAs could not find a means to implement a retroactive lease for these occupations. These leases, prior to 2007, were paid as any other Foreign Claims Act claim. The process changed in 2007 with the MNC-I FRAGO. The problem is that many of the claimants have been used to expedient payment as a claim and not a lease, and do not understand the delays involved in the new process. Further education as to the requirements of the FRAGO will help claims JAs understand the new process.

RECOMMENDATION: Improve. DoD guidance and the MNC-I FRAGO provide for retroactive leases, but there is no clear guidance as to who is responsible for the retroactive lease process or what precisely the process requires. This results in a lack of coordination and uniformity in the adjudication of the retroactive lease process.[109]

ISSUE: Tribal land claims

DISCUSSION: A nomadic tribe outside a BSO's combat outpost (COP) had an extensive village that was not only in danger of being hit with indirect fire due to its proximity to the COP but also could be used by the enemy for cover and concealment. Therefore, the BSO wanted to relocate the tribe. Years ago, a unit had offered $500 per family to relocate them. As the COP was primarily an ANSF COP, the CJTF wanted to use ASFF to pay for the relocation. CSTC-A found that it was inappropriate to use ASFF for two reasons: 1. the U.S. forces working with the ANSF received a benefit in security from moving the tribesmen, and 2. the nomadic tribesmen had no legal right to the land which we could purchase. CSTC-A opined that CERP was the appropriate pot of funds to compensate the tribesmen.

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[107] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 60.
[108] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 54.
[109] *Id.*

RECOMMENDATION: Improve. This is another example of how BSOs need control over ASFF, so they may use it to meet the command's intent. CSTC-A's overly narrow reading of the ASFF guidance delayed mission accomplishment by forcing the CJTF to seek approval to use CERP from USFOR-A for the relocation.[110]

IV.A.4. Foreign Claims Act (FCA)

ISSUE: Pre-deployment training on Foreign Claims Act (FCA) procedures

DISCUSSION: There was not enough pre-deployment training on FCA procedures.

RECOMMENDATION: Improve. The U.S. Army Claims Service (USARCS) should send training teams to prepare JAs for FCA processing, investigation, and payment. III Corps cannot necessarily support this requirement because they are often deployed. Consider having USARCS offer regular training via video teleconference (VTC) for those preparing to deploy. This would ensure JAs throughout theater interpret the FCA in the same way.[111]

ISSUE: Appointment as a Foreign Claims Commission (FCC)

DISCUSSION: It is extremely difficult for Marines to obtain an appointment as FCC from the United States Army Claims Service (USARCS) while in theater. This is primarily because the process is computer-based through Army Knowledge Online (AKO) and the bandwidth in theater is extremely low with limited connectivity.

RECOMMENDATION: Marine JAs should receive training on the Foreign Claims Act (FCA) and obtain appointments as FCCs before deployment.[112]

ISSUE: Appointment as Foreign Claims Commission (FCC)

DISCUSSION: The process for getting the United States Army Claims Service (USARCS) to appoint FCCs is predominately computer-based through Army Knowledge Online (AKO). However, the bandwidth in theater is extremely low and connectivity was very limited. This made it virtually impossible for Marines to obtain appointments from USARCS as FCCs while in theater.

RECOMMENDATION: JAs, especially Marines, who may potentially pay claims should obtain their appointments as FCCs before deploying.[113]

ISSUE: Three-member foreign claims commissions (FCCs) at the BCTs

DISCUSSION: The previous Division OSJA sought appointment of three-member FCCs at each of the subordinate BCTs. The 1CD continued this practice. Because the BCTs could process claims up to the $50,000 limit for three-member FCCs, the Division OSJA only processed approximately 27 claims during the entire deployment.

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[110] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 62.
[111] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 31.
[112] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 105.
[113] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 106.

RECOMMENDATION: Sustain. Landowning BCTs should adjudicate claims arising in their AO whenever possible. Unlike the Division, BCTs have access to CERP to pay condolence payments should they deny the claim under the Foreign Claims Act (FCA).[114]

ISSUE: Appointment of FCCs

DISCUSSION: It took several months for the United States Army Claims Service (USARCS) to appoint the 1CD's nominees as FCCs.

RECOMMENDATION: Do the online training and take the required test before deployment. Ensure incoming BCTs also do this before deploying. Have the appointment memorandum ready so the SJA can sign it as soon as the BCTs arrive in the AO.[115]

ISSUE: Legal admistrator as member of the three-member FCC

DISCUSSION: The legal administrator served on the Division's three-member FCC. The FCC met every month or as often as necessary to preclude having a large number of claims waiting.

RECOMMENDATION: Sustain.[116]

ISSUE: Funding for Foreign Claims Act (FCA) payments

DISCUSSION: The Army, as the single service claims authority, did not have a line of accounting set up until several weeks into the mission. As a result, the first claims had to be paid using unit Operations and Maintenance (O&M) funds on the promise that the United States Marine Corps/United States Navy would receive reimbursement.

RECOMMENDATION: A line of accounting should be available at the outset of the mission to avoid confusion of disbursing officers and allow for the expeditious processing of all foreign claims.[117]

ISSUE: Claims documentation

DISCUSSION: Given the nature of the operation, providing HA after a devastating earthquake, it was vital to ensure all FCA claims clearly documented how U.S. forces, not the earthquake, caused the damage.

RECOMMENDATION: The SJA ensured claims packages included photographs of the damage and sworn statements from Marines and Sailors on the ground.[118]

ISSUE: Compensating Iraqi property owners

DISCUSSION: The brigade inherited a number of longstanding, unsettled property issues with the unpaid Iraqi owners, which they had to resolve before the pull-out deadline from urban areas on 30 June 2009. One form of compensation was to try to create a lease, but the regulations and

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[114] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 60.
[115] *Id.*
[116] *Id.*
[117] 22d MEU (Haiti OUR) JAN 2010, *supra* note 51.
[118] *Id.*

restrictions do not contemplate retroactive leases. The second and preferred approach was through the utilization of the Foreign Claims Act (FCA). The FCA approach proved to be expeditious in resolving the compensation issues and it readily satisfied both parties' needs.

RECOMMENDATION: Sustain.[119]

ISSUE: Real property leases

DISCUSSION: 2HBCT inherited a number of unresolved property matters stemming from the U.S. military's occupation of homes and other properties during the early phase of the war. Naturally, there were no leases or other agreements in place to compensate the owners. With hostilities over and the need to pull out, a number of displaced Iraqi owners sought compensation. Lease regulations are very complicated and not amenable to creating retro-actives leases. Consequently, trying to find a way to compensate them was challenging. As a result, the unit elevated property lease issues higher (division and MNC-I) for consideration and resolution. Consultations with United States Army Claims Service (USARCS) did not produce a solution. These issues were still open by the time 2HBCT redeployed.

RECOMMENDATION: Improve. Lease regulations should contemplate the creation of retroactive leases arising in combat settings. Some units have used the Foreign Claims Act (FCA) to compensate owners, but this may involve some stretching of the provisions.[120]

ISSUE: Foreign claims versus CERP condolence payments

DISCUSSION: The unit routed denied FCA claims to the CERP process, as appropriate. However, the civil affairs personnel worked the CERP process. This was not part of the claims process.

RECOMMENDATION: Work closely with the S-9 to ensure integration of your CERP and claims processes.[121]

ISSUE: Splitting lease and damage claims for real estate

DISCUSSION: Real estate claims in Iraq can be very complex. For past use of land for which no lease existed, GRD still completed an appraisal and executed a "reverse lease," which the claims attorney then paid under the Foreign Claims Act (FCA). The claims attorney also paid for any damage to the property under the FCA. For future use of land, GRD executed forward-looking leases, which the units funded using Operations and Maintenance (O&M) funds.

RECOMMENDATION: Sustain. Understand the procedures and funding sources for resolving all components of a real estate claim.[122]

ISSUE: Leases versus FCA

DISCUSSION: One issue the unit faced was how to compensate landowners for property occupied by U.S. forces. JTF-Haiti had a Navy Facilities Engineering Command (NAVFAC)

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[119] 1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09, *supra* note 21.
[120] 2HBCT, 1ID, OIF AAR (2d Half), OCT 08-SEP 09, *supra* note 27.
[121] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 88.
[122] 3HBCT, 1 CD Part II OIF AAR Dec 08-Dec 09, *supra* note 65.

collocated with the JTF SJA office, which could issue leases. The NAVFAC advised the MEU SJA to use FCA to compensate landowners for any property occupied under 30-days. For property occupied over 30-days, NAVFAC would handle it and provide the landowner with a lease.

RECOMMENDATION: JAs should immediately inquire who provides leases and find out when a lease is appropriate versus some other means of compensation, such as the FCA. [123]

IV.B. Personnel Claims

ISSUE: Personnel claims

DISCUSSION: The brigade legal office sent claims for damage and/or loss of personal property to the stateside garrison claims office.

RECOMMENDATION: Sustain.[124]

ISSUE: Lack of certified mail service for sending personnel claims packets to the rear

DISCUSSION: U.S. forces based in Wardak and Logar provinces did not have access to any certified mail services. On some occasions, Fort Drum, where the installations claims office processed the claims, never received some personnel claims packets containing original information and signatures sent in the ordinary mail. Fortunately, the legal staff made sure they had electronically scanned all claims packets materials as a backup.

RECOMMENDATION: Sustain. Be sure to scan everything that can be lost in the ordinary mail system. The lack of certified mail service makes the routine of scanning documents even more important.[125]

ISSUE: Personnel claims

DISCUSSION: During the deployment, Soldiers had property lost, stolen, or destroyed. However, NG Soldiers are typically unfamiliar with dealing with personnel claims.

RECOMMENDATION: NG JAs need to understand the rules and regulations governing personnel claims and educate their Soldiers on the process. JAs should seek guidance from the Division claims section as well.[126]

ISSUE: Personnel claims

DISCUSSION: The Division claims section took in personnel claims, ensured the packets were

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[123] 22d MEU (Haiti OUR) JAN 2010, *supra* note 51.
[124] 4th Combat Aviation Brigade (4th CAB), 4th Infantry Division (Mechanized), OIF After Action Report, 28 August 2009, Deployed June 2008 – June 2009, Multi-National Division – Baghdad (MND-B), Camp Taji, Iraq (hereinafter "4th CAB OIF AAR, JUN 08 - JUN 09"; on file at CLAMO).
[125] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 33.
[126] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 71.

complete, and forwarded them to Fort Stewart for adjudication and payment. Other units had to send their personnel claims back to their own home station claims office for processing.

RECOMMENDATION: Sustain.[127]

ISSUE: Processing personnel claims

DISCUSSION: The 25 ID OSJA sent personnel claims back to the 8th Theater Sustainment Command (TSC) for processing. It took a long time for 8th TSC to complete these claims.

RECOMMENDATION: Improve. Coordinate with the garrison claims office before deploying to work out the details of how they will process personnel claims.[128]

ISSUE: Locating CONUS claims offices to process personnel claims

DISCUSSION: One of the claims attorneys had adjudication authority for personnel claims from Fort Hood personnel. For non-Fort Hood claims, the paralegals had to search for the address and point of contact (POC) for the appropriate installation claims office and mail the claims.

RECOMMENDATION: USARCS should publish a directory of installation claims offices.[129]

ISSUE: Personnel Claims Army Information Management System (PCLAIMS)

DISCUSSION: USARCS recently fielded the new PCLAIMS application, which allows a claimant to file personnel claims through JAGCNET.

RECOMMENDATION: Disseminate this information at pre-deployment legal briefings and make the PCLAIMS information paper available to Soldiers wishing to file claims.[130]

ISSUE: Embedded reporter's stolen property

DISCUSSION: 3d ESC had an embedded reporter whose camera and other items were stolen from his work tent along with items belonging to several Soldiers.. Although the reporter had signed the usual "hold harmless" agreement, the SJA explored whether there were any means by which the Army could compensate him for the stolen items. Since there was no negligence on the part of the Army, and the Foreign Claims Act did not apply, the reporter had no other legal recourse to pursue.

RECOMMENDATION: Embedded reporters run the risk of bearing the costs for their losses while on operations.[131]

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[127] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 38.
[128] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 41.
[129] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 60.
[130] *Id.*
[131] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 48.

IV.C. Solatia

ISSUE: CERP condolence payments

DISCUSSION: CERP condolence payments have an immediate impact and are therefore the best to use.

RECOMMENDATION: Sustain.[132]

ISSUE: CERP condolence payments

DISCUSSION: All requests for CERP condolence payments went through the legal office to verify they were not cognizable as Foreign Claims Act (FCA) claims.

RECOMMENDATION: Sustain.[133]

ISSUE: Distinction between Solatia and CERP condolence payments

DISCUSSION: CERP condolence payments are not Solatia payments and should not be referred to as such. Solatia payments must be tied directly to a combat action and are given because it is local custom to do so. Solatia payments are paid with Operation and Maintenance funds. In contrast, CERP funds have their own limitations under the current MAAWS and DA Claims regulation.

RECOMMENDATION: JAs need to be aware of these distinctions and seek clarifying guidance from higher when necessary.[134]

ISSUE: Solatia and CERP condolence payments

DISCUSSION: There was confusion between when units could use solatia versus CERP condolence payments in theater and their relationship to foreign claims. This confusion can have a negative impact on maintaining rapport with the foreign internal defense (FID) partnered forces when inconsistent payments create the perception of arbitrariness and favoritism.

RECOMMENDATION: Coordinate closely with higher command and seek a consistent application of these payments.[135]

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[132] 1st Combat Support Brigade (Maneuver Enhancement), Task Force Warrior, OEF After Action Report, 20 October, 2009, Deployed June 2008 – September 2009, Bagram Airfield, Afghanistan (hereinafter "1 CSB (ME) OEF AAR, JUN 08 - SEP 09"; on file at CLAMO).
[133] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 41.
[134] 2d Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 25 May 2010, Deployed July 2009 – January 2010, Camp Brown, Kandahar, Afghanistan (hereinafter "2/7 SFG(A), OEF AAR, JUL 09 - JAN 10"; on file at CLAMO).
[135] 7th Special Forces Group (Airborne), CJSOTF-A Legal Advisor OEF After Action Report, 26 May 2010, Deployed 22 July 2009 – 02 February 2010, Bagram, Afghanistan (hereinafter "7th SFG OEF AAR, JUL 09 - FEB 10"; on file at CLAMO).

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V. LEGAL ASSISTANCE

V.A. Children

V.A.1. Adoption

ISSUE: Federal reimbursement for adoption legal fees

DISCUSSION: Although the deployed legal assistance office was limited in what they could do to assist in adoption cases, one of the attorneys assisted his client by informing him of a federal program to reimburse $2000-$5000 in legal fees if the client met certain criteria.

RECOMMENDATION: Sustain. Always seek out ways to help your client.[1]

V.A.2. Custody

ISSUE: Frequency of child custody issues

DISCUSSION: Child custody issues were a frequent source of legal assistance work. Deployed Soldiers routinely had trouble in this area.

RECOMMENDATION: Do what you can to ensure Soldiers address these issues before deployment, but expect they will nonetheless arise.[2]

ISSUE: Facilitating emergency leave to deal with child custody issues

DISCUSSION: One Soldier-client, who was a custodial parent, left her child in the care of a relative. During the deployment, her ex-husband tried to take the child from the relative. The legal assistance attorney facilitated an emergency leave request for the client to go home to handle the child custody issue.

RECOMMENDATION: Be prepared to work with your client's chain of command in cases like this.[3]

ISSUE: De-conflicting family care plans (FCPs) with custody orders

DISCUSSION: One Soldier's FCP contradicted the court order for child custody. The court order stated the father would have custody when the Solider-mother was deployed. However, the Soldier's FCP gave guardianship to her mother, who lived in another country. The father

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[1] 1st Cavalry Division, Staff Judge Advocate OIF After Action Report, 1 April 2010, Deployed January 2009 – January 2010, Multi-National Division – Baghdad, Camp Liberty, Baghdad, Iraq (hereinafter "1CD OIF AAR, JAN 09 - JAN 10"; on file at CLAMO).
[2] Task Force Falcon, 40th Infantry Division, California National Guard, Command Judge Advocate, Kosovo Forces 11 After Action Report, 9 January 2010, Deployed February 2009 – November 2009, Camp Bondsteel, Kosovo (hereinafter "KFOR-11 AAR, FEB 09 - NOV 09"; on file at CLAMO).
[3] 25th Infantry Division, Staff Judge Advocate OIF After Action Report, 11 March 2010, Deployed November 2008 – November 2009, Multi-National Division – North, Contingency Operating Base Speicher, Iraq (hereinafter "25 ID OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).

threatened her with parental kidnapping. This situation necessitated a rush visa for the Soldier to travel to the foreign country to retrieve the child and bring the child to stay with the father.

RECOMMENDATION: Soldiers and commands need to understand FCPs do not trump a court order for child custody. The OSJA should include this in their pre-deployment legal briefings.[4]

ISSUE: Failure of state courts to recognize Servicmembers Civil Relief Act (SCRA) stays in child custody cases

DISCUSSION: The deployed legal assistance office encountered numerous cases in which state courts made child support and custody decrees despite receiving requests from the Soldier for the 90-day stay under the SCRA. The courts reasoned the best interests of the child trumped the 90-day stay.

RECOMMENDATION: Legal assistance attorneys should call the clerk of court in addition to sending a stay request. Courts seemed much more willing to grant stays when the Soldier could specify their leave dates during which they would be able to appear in court.[5]

V.A.3. Paternity

ISSUE: Conducting DNA tests in theater to disprove paternity

DISCUSSION: The legal assistance office had some clients who wanted to take paternity tests to disprove paternity in order to combat claims for child support. One of the legal assistance attorneys worked with the medical brigade trial counsel for the medical unit to take DNA samples (mouth swab) for the clients and mail them to the state lab. He encountered some push back from the medical unit on the grounds these tests were not "mission essential," but ultimately he convinced them to help the Soldier.

RECOMMENDATION: Sustain. The legal assistance attorney was successful in this instance because he convinced the medical unit if they sent the DNA sample, the attorney could fix this problem for the Soldier and get the Soldier's focus back in the fight.[6]

ISSUE: Certification of paternity

DISCUSSION: Texas has a program by which the state can certify individuals to verify paternity when it is not in dispute. One of the legal assistance paralegals took a 1-day course through the local attorney general's office. She was able to sign on clients' paternity forms to verify paternity.

RECOMMENDATION: Sustain. This was helpful for advancing clients' interests when they desired to establish paternity (e.g., to be eligible for Basic Allowance for Housing at the "with dependents" rate, to qualify the child for healthcare, or to reduce mandatory child support payments due to having additional dependents). [7]

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[4] *Id.*
[5] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[6] *Id.*
[7] *Id.*

V.A.4. Child Support

ISSUE: Volume of child support matters

DISCUSSION: The tremendous volume of child support related matters during the deployment was much greater than anticipated. Obviously, many of these involve a great deal of emotion and others created a pressing need to send Soldiers home to attend to the matters. All of these matters resulted in difficult decisions for commanders since they had to balance mission requirements against the loss of a redeployed Soldier.

RECOMMENDATION: Units and commanders will often face difficult child support matters during deployments. JAs can best assist commanders with such distressing decisions by analyzing the facts in light of the applicable regulations so the commander then can weigh the matter against the needs of the mission.[8]

ISSUE: Impact of child support issues on Soldier morale

DISCUSSION: The MNC-I client services office found family law issues dominated its practice, including child support issues. Immediately being able to assist Soldiers with their child support problems often resulted in relief and alleviated a lot of stress for the Soldiers. Getting the legal advice and solution to problems has the second order effect of making Soldiers more effective and productive on deployments.

RECOMMENDATION: Sustain. Legal advice for family issues, like child support, demonstrates the difference JAs and paralegals can make in the combat effectiveness and morale of troops.[9]

V.B. Citizenship

ISSUE: Paralegal support for citizenship packets

DISCUSSION: The BJA tasked a paralegal with handling all citizenship packets. The paralegal proved very capable at this task and exceeded the expectations of the BJA.

RECOMMENDATION: Sustain. Empower 27Ds to handle these matters.[10]

ISSUE: Naturalization applications

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[8] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 17 September 2009, Deployed October 2008 – June 2009, Camp Liberty, Iraq (hereinafter "2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09"; on file at CLAMO).

[9] I Corps & 2d Legal Support Organization, Combined Staff Judge Advocate OIF After Action Report, 16 May 2010, Deployed March 2009 – March 2010, Reserve Mobilization February 2009 – February 2010, Camp Victory, Iraq & Fort Lewis, Washington (hereinafter "I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10"; on file at CLAMO).

[10] 3d Brigade Combat Team, 1st Infantry Division, OEF After Action Report, 29 August 2009, Regional Command (RC) – East, Forward Operating Base (FOB) Fenty, Jalalabad, Afghanistan, Deployed July 2008 – June 2009 (hereinafter "3BCT, 1ID OEF AAR, JUL 08 - JUN 09"; on file at CLAMO).

DISCUSSION: During deployment, Soldiers have limited access to U.S. Citizenship and Immigration Services (USCIS), so they rely on JAs and S1 personnel for information and assistance in completing applications. One of the JA's previous experiences with USCIS helped with assisting Soldiers at various stages of the process.

RECOMMENDATION: Sustain. JAs should be encouraged to obtain the contact information of USCIS agents near their deploying duty station, to ensure Soldiers otbain the correct information in a timely manner. Morale of the applicants greatly improved as a result of the quickly processed and completed applications.[11]

ISSUE: Citizenship processing as an S-1 responsibility

DISCUSSION: The brigade's S-1 was responsible for assisting Soldiers obtain citizenship.

RECOMMENDATION: Sustain. This is a responsibility of the S-1 section. In many units, it defaults to the legal section. Ensure the S-1 understands the Army places this responsibility in Personnel channels.[12]

ISSUE: Immigration requests

DISCUSSION: The III Corps legal assistance office gave the BCT paralegals a class before the deployment on citizenship applications by deployed Soldiers. This enabled the paralegals to assist Soldiers with their packets.

RECOMMENDATION: Sustain.[13]

ISSUE: Assisting the S-1 in processing citizenship applications

DISCUSSION: One battalion in the 29th IBCT is from the islands of American Samoa. Hundreds of the deployed Soldiers from this battalion were eligible to become U. S. citizens. Processing citizenship applications is an S-1 function. However, in this case, the S-1 was overwhelmed. The command decided the legal office, particularly the 27Ds, would assist the S-1 in processing the applications. This dramatically improved the procedures for completing the large number of applications. The commander viewed it as a significant contribution by the JAs.

RECOMMENDATION: Sustain. Determine appropriate ways to leverage skills of JAs and 27Ds to assist in meeting the command's priorities without degrading the legal mission.[14]

ISSUE: Citizenship

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[11] *Id.*
[12] 3d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate OIF After Action Report, 4 February 2010, Deployed December 2008 – November 2009, Joint Security Station Loyalty and Forward Operating Base Hammer, Baghdad, Iraq (hereinafter "3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09"; on file at CLAMO).
[13] 1st Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 3 February 2010 & 29 March 2010, Deployed February 2009 – January 2010, Joint Security Station War Eagle, Baghdad, Iraq (hereinafter "1-1 CAV BCT OIF AAR, FEB 09 - JAN 10"; on file at CLAMO).
[14] 29th Infantry Brigade Combat Team, Hawaii Army National Guard, Command Judge Advocate OIF After Action Report, 7 March 2010, Deployed October 2008 – August 2009, Camp Arifjan, Kuwait (hereinafter "29th IBCT (HIARNG) OIF AAR, OCT 08 - AUG 09"; on file at CLAMO).

DISCUSSION: The brigade S-1 had the lead on citizenship at the BCT. However, the brigade legal section was available to provide legal guidance as needed.

RECOMMENDATION: Sustain.[15]

ISSUE: Immigration and naturalization

DISCUSSION: Immigration and naturalization are frequent issues for deployed legal assistance attorneys. Soldiers and Family members who are seeking citizenship have many questions regarding where their application is, what they can do to get it done more quickly, and general information about the process.

RECOMMENDATION: Human Resources Command (HRC) publishes "The Soldier's Guide to Citizenship Application," which is helpful in answering these questions. It is available at https://www.hrc.army.mil/site/Active/TAGD/A_soldiers_guide_to_citizenship.htm. Legal assistance attorneys should attend a course on citizenship so they understand the process. If possible, establish a working relationship with the immigration and naturalization office at home station to facilitate answering these questions.[16]

ISSUE: Training on citizenship issues

DISCUSSION: The local U.S. Citizenship and Immigration Services (CIS) office provided a monthly training program for JAs covering the paperwork requirements, waivable items for Soldiers, and helpful hints. Several Division JAs attended this training.

RECOMMENDATION: Sustain. It is helpful to have a point of contact for citizenship questions. Include the helpful hints in pre-deployment legal briefings. For example, Soldiers seeking a name change should do so before or while applying for citizenship, not after.[17]

ISSUE: Lead staff section for citizenship

DISCUSSION: The S1/G1 had the lead on citizenship packets at the brigade/division levels. However, the S1/G1 personnel were not knowledgeable about the packets and often requested help from the JAs. Moreover, they did not do an adequate job of tracking the status of the packets, and in some cases sent Soldiers to Baghdad for the citizenship ceremony when their packets were not ready.

RECOMMENDATION: Improve. S1/G1 should maintain the lead on citizenship packets, but should receive training in processing them. Alternatively the legal assistance office needs to work closely with the appointed S1 personnel to ensure accuracy of information and speedy processing of applications.[18]

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[15] 30th Heavy Brigade Combat Team, Brigade Judge Advocate OIF After Action Report, 16-17 March 2010, Deployed April 2009 – January 2010, Forward Operating Base Falcon, Baghdad, Iraq (hereinafter "30th HBCT (NG) OIF AAR, APR 09 - JAN 10"; on file at CLAMO).
[16] 34th Infantry Division, Minnesota Army National Guard, Staff Judge Advocate OIF After Action Report, 23 February 2010, Deployed April 2009 – February 2010, Multi-National Division – South, Basra, Iraq (hereinafter "34ID, OIF AAR, APR 09 - FEB 10"; on file at CLAMO).
[17] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 3.
[18] *Id.*

ISSUE: Soldiers with Haitian relatives

DISCUSSION: Several Paratroopers with Haitian relatives wanted to get the relatives back to the U.S. The JAs directed them to contact the U.S. Embassy to start the process.

RECOMMENDATION: Sustain. The BCT legal staff can only do so much with respect to immigration before a referral to an embassy is necessary.[19]

ISSUE: Expedited citizenship program

DISCUSSION: The legal assistance office assisted non-citizen clients in filling out their applications for expedited citizenship. The S1 had one individual certified to verify the applicant's good health and good standing in the Army. They mailed the packets to the U.S. Citizenship and Immigration Services (USCIS) Nebraska Service Center, and USCIS officials from Rome, Italy came to Iraq twice a year to conduct citizenship interviews.

RECOMMENDATION: Disseminate information about the expedited citizenship program during pre-deployment legal briefings. Encourage non-citizen Soldiers to initiate their applications before deployment. They will need a copy of their birth certificate, fingerprints, and four passport photos. While Camp Liberty had the ability to assist with these requirements, outlying bases did not. Legal assistance attorneys can send their questions about the process to Rome.Natz@dhs.gov.[20]

ISSUE: Immigration and citizenship issues

DISCUSSION: Most JAs are not accustomed to dealing with immigration and citizenship issues other than steering client Soldiers to Embassy representatives or to online resources. One of the Reserve JAs in MNC-I brought a wealth of immigration law experiences from his private practice, so he was able to provide more than the usual referral service. By reviewing the facts of the Soldiers' or their dependents' cases, the JA was able to expedite cases, rapidly cut through procedural requirements, and make calls to get around bureaucracy. This greatly improved Soldier morale and satisfaction with the client services branch.

RECOMMENDATION: Sustain. Reserve Component JAs bring many unique talents to the fight overseas that can greatly improve the effectiveness of legal teams.[21]

ISSUE: Naturalization assistance

DISCUSSION: The CJTF was responsible for providing naturalization assistance for the entire theater. The process was clear-cut, and the CJTF had great relationships with the key personnel at the embassy. The CG was supportive of the effort, and it helped morale.

RECOMMENDATION: Sustain.[22]

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[19] 2d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate Haiti After Action Report, 23 April 2010, Deployed January 2010 – March 2010, Operation Unified Response, Port-au-Prince, Haiti (hereinafter "2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10"; on file at CLAMO).
[20] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[21] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.

ISSUE: Legal review of Special Immigrant Visa (SIV) applications

DISCUSSION: Many brigades submitted SIVs for their interpreters. The SIV program allows units to submit a special visa application in support of their interpreters. CJTF-82 J-1 was the proponent for these packets. The chief of administrative law would perform a legal review to ensure it complied with applicable guidance before the J-1 staffed it.

RECOMMENDATION: Sustain. JAs should be aware of this program but allow the J-1 to continue being the action section through general officer signature and final recommendation. Note that the approval occurs outside the command with another federal agency after the GO makes his or her recommendation.[23]

V.C. Debtor/Creditor Issues

ISSUE: Debt and Soldier effectiveness

DISCUSSION: There were two cases of Soldiers deployed with considerable debt problems back in the U.S. Dealing with these issues became an administrative drain on the Soldier, his leadership, and the legal staff. The efforts expended on the debt problems seriously outweighed what the Soldier contributed to the mission.

RECOMMENDATION: Improve. Any units deploying to Afghanistan should think twice about deploying any Soldiers with substantial debt issues.[24]

ISSUE: Working with banks to waive fee charges

DISCUSSION: Some Soldiers who lived paycheck to paycheck received overdraft charges when fraudulent transactions exceeded the amount of money in their accounts. The legal assistance attorney worked with their banks to eliminate these fees.

RECOMMENDATION: Sustain. Persistence paid off in these cases—the banks were initially reluctant to waive the fees.[25]

ISSUE: Impact of debts on security clearance

DISCUSSION: The legal assistance office had some clients whose received notification of security clearance revocation due to indebtedness. This in turn could affect the client's career, as many Military Occupational Specialties (MOSs) require a security clearance.

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[22] 82d Airborne Division, Staff Judge Advocate OEF After Action Report, 23 June 2010, Deployed June 2009 – June 2010, Regional Command—East, Bagram Airfield, Afghanistan (hereinafter "82D ABN OEF AAR, JUN 09 - JUN 10"; on file at CLAMO).
[23] *Id.*
[24] 3rd Brigade Combat Team, 10th Mountain Division, Brigade Judge Advocate OEF After Action Report, 29 January 2010, Deployed November 2008 – January 2010, Forward Operating Base Shank, Logar Province, Afghanistan (hereinafter "3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10"; on file at CLAMO).
[25] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 3.

RECOMMENDATION: Work with the Central Clearance Facility (CCF) at Fort Meade and show a good faith effort by the Soldier to pay their creditors. It is incumbent on the Soldier to get the documents to prove their repayment history.[26]

ISSUE: Ensuring commands understand they cannot order Soldiers to pay debts

DISCUSSION: One client was the subject of a congressional inquiry a hospital had submitted, claiming the Soldier owed the hospital money. The command tried to force the Soldier to pay the debt. The legal assistance attorney worked with the command to explain the Soldier disputed the debt, and there was no court judgment to establish the debt.

RECOMMENDATION: Ensure commanders are familiar with AR 600-15 and understand they cannot order a Soldier to pay a debt. Also, ensure they understand if the Soldier disputes the debt, the creditor must get a court judgment. [27]

ISSUE: Debt issues

DISCUSSION: Many Soldiers are not aware of the debt relief means available to them under the Servicemembers Civil Relief Act (SCRA). They often arrive in the legal assistance office thinking bankruptcy is inevitable. With counseling and introduction to the advantages of the SCRA, Soldiers are able to take action to avoid bankruptcy. It appears the military has not done a good enough job of making deploying Soldiers aware of SCRA advantages.

RECOMMENDATION: Soldier Readiness Programs (SRPs) and deployment centers should try to advise Soldiers with debt issues of the assistance available under the SCRA while deployed. This advice should also include guidance as to the connection between debt and security clearances.[28]

V.D. Divorce

ISSUE: Providing information as opposed to legal advice

DISCUSSION: Many Soldiers sought legal advice on divorce issues. The legal advisor informed the Soldiers of the process and the role civilian attorneys play in divorce proceedings. The legal office would then provide the names and contact information of reputable divorce attorneys in Colorado Springs.

RECOMMENDATION: Sustain. Legal advisors and paralegals should provide information on divorce issues without offering legal advice. This fact should be clearly stated to any Soldier seeking such "advice."[29]

ISSUE: Double proxy marriage

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[26] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[27] *Id.*
[28] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.
[29] 2d Battalion, 10th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OIF After Action Report, 15 June 2010, Deployed July 2009 – March 2010, Victory Base Complex, Baghdad, Iraq (hereinafter "2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10"; on file at CLAMO).

DISCUSSION: The legal assistance attorney assisted a Soldier with a "double proxy" marriage, and then assisted him with a subsequent divorce.

RECOMMENDATION: Improve. Counsel Soldiers desiring to enter into complex marriage contracts while in a deployed environment. Soldiers must understand the legal impact of marriage and the cost of a subsequent dissolution.[30]

ISSUE: Online resources for divorce

DISCUSSION: The BCT had limited ability from a deployed environment to assist clients with divorces. The legal assistance attorney referred clients to state websites where they could get information and forms and would assist the clients in filling out the forms once the clients made the effort on their own.

RECOMMENDATION: Sustain. In a deployed environment, where there is a limited ability to do legal assistance, it is necessary to empower your clients to help themselves whenever possible.[31]

ISSUE: Divorce cases

DISCUSSION: The most frequent legal assistance issues were family law: divorce, child support, and custody. Many Soldiers came to the Division legal assistance office seeking to file and complete divorces while in theater, not realizing the only way this was possible would be if the divorce was uncontested. In the case of uncontested divorces, the legal assistance office could provide forms and assist their clients with filling them out. The best way to proceed, however, was to have the spouse back in the United States consult with a legal assistance attorney at the nearest military installation and fill out the forms.

RECOMMENDATION: State law varies as to availability of and procedures for uncontested divorce. Prepare a briefing sheet on divorce for Soldiers.[32]

ISSUE: Divorce assistance

DISCUSSION: Divorce clients made up about 75% of the workload for the Division legal assistance office. Since Hawaii has no-fault divorce and allowed proceedings by affidavit in uncontested cases, the legal assistance office could assist clients with the pro se forms. For contested cases, the legal assistance attorneys discussed the legal issues and assisted their clients in contacting civilian attorneys.

RECOMMENDATION: Be prepared for the large volume of divorce cases. Also utilize the military pro-bono program to secure attorneys for Soldiers who could not afford them in various areas of the country.[33]

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[30] 4th Combat Aviation Brigade (4th CAB), 4th Infantry Division (Mechanized), OIF After Action Report, 28 August 2009, Deployed June 2008 – June 2009, Multi-National Division – Baghdad (MND-B), Camp Taji, Iraq (hereinafter "4th CAB OIF AAR, JUN 08 - JUN 09"; on file at CLAMO).
[31] 2d Brigade Combat Team, 4th Infantry Division, OIF After Action Report, 15 September 2009, Deployed September 2008 – August 2009, Forward Operating Base (FOB) Echo, Diwaniyah, Qadisiyah Province, Iraq, Contingency Operating Base (COB) Basra, Basra Province, Iraq (hereinafter "2BCT, 4ID OIF AAR, SEP 08 - AUG 09"; on file at CLAMO).
[32] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 16.

ISSUE: Assistance with pro se divorces

DISCUSSION: For Texas pro se divorce cases, the legal assistance attorneys could draft the petition and decree for their clients, and the clients would only have to pay the filing fee. For other states, the attorneys contacted the clerk of court to get information on pro se divorce.

RECOMMENDATION: Familiarize yourself with the pro se divorce procedures for the states from which your subordinate units hail.[34]

ISSUE: Need for a repository on JAGCNET of divorce forms and templates

DISCUSSION: Both the 1CD and its predecessor (4ID) identified the need for a central state-by-state listing of pro se divorce requirements, including sample forms and templates. Requesting information and forms from individual courts was tedious and time consuming.

RECOMMENDATION: The Legal Assistance Policy Division of the Office of the Judge Advocate General (OTJAG) should establish such a repository. Perhaps National Guard units from each state could provide the required information for their state.[35]

ISSUE: Separation agreements

DISCUSSION: Pop up deployments just after a unit returns from a lengthy scheduled deployment place a strain on family relationships. As a result, the SJA had to assist several Marines with separation agreements during the deployment to Haiti.

RECOMMENDATION: JAs should be mindful of the strain deployments place on spousal relationships. Be prepared to provide Marines with advice on divorce and draft separation agreements.[36]

ISSUE: Pro se divorces

DISCUSSION: Soldiers can often fall into the trap of wanting to save money by engaging in a pro se divorce, which may lead to problems further down the road when circumstances change or the Soldier overlooks a critical detail (e.g., pension).

RECOMMENDATION: Soldiers tempted to use pro se divorce packages to keep costs down can incur future problems. The best advice JAs can offer is such packages may neither contemplate their circumstances nor prevent a more expensive future issue from cropping up. The JA should strongly encourage Soldiers to seek civilian counsel.[37]

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[33] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 3.
[34] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[35] *Id.*
[36] 22d Marine Expeditionary Unit, Staff Judge Advocate After Action Report, 13 May 2010, Deployed 17 January 2010 – 1 April 2010, Operation Unified Response, Haiti Earthquake Relief (hereinafter "22d MEU (Haiti OUR) JAN 2010"; on file at CLAMO).
[37] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.

V.E. Powers of Attorney

ISSUE: Use of paralegals to draft POAs

DISCUSSION: The BJA sought and received approval from division for the brigade's paralegals to draft powers of attorneys and to be able to serve as notaries.

RECOMMENDATION: Sustain.[38]

ISSUE: POA templates

DISCUSSION: One of the most common services Soldiers requested from the legal assistance office was POAs. In addition to general POAs, Soldiers sought POAs covering a variety of powers, including: buying or selling real estate or other property; registering vehicles; managing bank accounts and cashing checks; filing taxes; enrolling in DEERS and TRICARE; guardianship of minor children; clearing housing; receiving household goods; representation in court proceedings; and obtaining copies of vital records. Soldiers also commonly sought revocations of previous POAs.

RECOMMENDATION: Develop a template for every type of POA imaginable before deploying. If possible, obtain the Hot Docs or DL Wills software so your section Information Management Officer (IMO) can install it as soon as you arrive in theater.[39]

ISSUE: Volume of POAs

DISCUSSION: Even though the OSJA drafted thousands of POAs during SRP before deployment, the deployed legal assistance office also did over one thousand POAs. These included special POAs for things like buying a house, as well as some POA revocations.

RECOMMENDATION: Be prepared to handle a large volume of POAs when deployed. Ensure paralegals receive training on drafting and notarizing POAs.[40]

ISSUE: POAs for privatized housing

DISCUSSION: The generic POA templates for housing the legal assistance office had on its shared drive were inadequate for privatized housing. Each installation's privatized housing company had its own required language.

RECOMMENDATION: Coordinate with the privatized housing company before deployment to find out what language they require in a POA.[41]

ISSUE: Powers of attorney

DISCUSSION: Given the unit received only 48 hours notice to deploy to Haiti just after

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[38] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 10.
[39] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 16.
[40] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 3.
[41] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.

returning from a 7-month deployment, nearly all 2,200 Marines of the 22d MEU were in need of powers of attorney.

RECOMMENDATION: The SJA recognized this as a need of the Marines and worked long hours on the float down to Haiti to complete all the powers of attorney.[42]

V.F. Voting

ISSUE: Voting is a S1 function

DISCUSSION: JAs have enough work to do and should avoid this additional collateral duty.

RECOMMENDATION: Resist the temptation to take on work that others should be doing.[43]

V.G. Servicemembers Civil Relief Act (SCRA)

ISSUE: SCRA letters

DISCUSSION: The BCT trial counsel received samples letters for all of the common SCRA issues from the Fort Carson legal assistance office before deploying. The BCT did not have the "Hot Docs" program.

RECOMMENDATION: Improve. BCTs should have all necessary software to perform legal assistance services.[44]

ISSUE: Creditor acquiescence to protections

DISCUSSION: Creditors are beginning to push back on the protections under the law. They are not as willing to give the Soldier any benefit automatically. They are testing the limits of what the law allows. As the number of deployed Soldiers has increased over the years and the economy has worsened, there is a different level of aggressiveness from creditors.

RECOMMENDATION: Be aware the current environment makes for a very heavy legal assistance caseload.[45]

ISSUE: Common SCRA issues

DISCUSSION: The most common SCRA issues with which the legal assistance office dealt were reductions of interest rates, stays of proceedings, and default judgments.

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[42] 22d MEU (Haiti OUR) JAN 2010, *supra* note 36.
[43] 1st Combat Support Brigade (Maneuver Enhancement), Task Force Warrior, OEF After Action Report, 20 October, 2009, Deployed June 2008 – September 2009, Bagram Airfield, Afghanistan (hereinafter "1 CSB (ME) OEF AAR, JUN 08 - SEP 09"; on file at CLAMO).
[44] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 31.
[45] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 2.

RECOMMENDATION: Be familiar with the protections of the SCRA. Make templates for requests pertaining to the SCRA for issues such as reducing interest rates on pre-service debt to 6% and terminating leases. Brief these issues during Soldier Readiness Processing (SRP) and make these templates available to Soldiers. This will allow them to resolve these issues before deployment.[46]

ISSUE: Lack of understanding of the 6% interest cap

DISCUSSION: Soldiers typically did not understand the 6% cap on interest rates under the SCRA applies only to pre-service debt. Therefore, they could not purchase something while on leave during the deployment and then invoke the 6% cap. Moreover, the SCRA protection only applies if the Soldier's military service had a material effect on their ability to pay the higher interest rate.

RECOMMENDATION: Include information on key SCRA protections during pre-deployment legal briefings. Realize creditors are less likely to be sympathetic to deployed Soldiers than they were in the early years of the war and may require proof of a material effect.[47]

ISSUE: Child support motions and a SCRA stay of proceedings

DISCUSSION: A number of Soldiers received motions to increase child support during the deployment. They arrived in the legal assistance office quite stressed about the motions and their predicaments. JAs were often able to get a stay of proceedings under the SCRA. This relief proved effective at freezing the clock on the proceedings.

RECOMMENDATION: Improve. Soldiers with child support situations need a briefing before the deployment on the assistance available under the SCRA with respect to motions to change child support.[48]

V.H. Uniformed Services Employment and Reemployment Rights Act (USERRA)

ISSUE: Timing of USERRA questions and concerns

DISCUSSION: There are a great deal more questions about these protections than there used to be. Employers are beginning to feel the pinch as Soldiers repeatedly deploying becomes more common. One does not know if there is really an issue until after the unit returns.

RECOMMENDATION: Be prepared to answer questions about this upon redeployment. Arming Soldiers with knowledge so they can discuss it with their employer before they leave is also helpful.[49]

ISSUE: Coordination with Employer Support of the Guard and Reserve (ESGR)

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[46] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 16.
[47] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[48] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.
[49] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 2.

DISCUSSION: For issues, work with the state ombudsman representing the ESGR.

RECOMMENDATION: Soldiers need to ensure they give notice (preferably written) to their employers before mobilizing. Soldiers should deploy with an electronic copy of their orders in case they need to begin to initiate contact with ESGR before they redeploy. Consult http://esgr.org/site/ for more information.[50]

V.I. Wills

ISSUE: Pre-deployment push of will forms

DISCUSSION: JAs and paralegals should push will forms out to BNs early in the pre-deployment phase to help ensure all BCT Soldiers needing a will receive one well in advance of the deployment. This helps avoid long line-ups at the door when the pre-deployment phase is nearing completion.

RECOMMENDATION: Sustain.[51]

ISSUE: DL Wills program

DISCUSSION: Although there was not a high demand for wills in theater, the BCT did not have the DL Wills program while deployed. Because units must wipe ("image") any computers brought into theater before hooking them up to the network, the BCT could not have preloaded it on a computer.

RECOMMENDATION: Improve. Have a copy of DL Wills mailed from CONUS for installation on the theater computers.[52]

ISSUE: Absence of DL Wills software

DISCUSSION: The brigade did not have access to DL Wills while deployed. Attempts to obtain it proved difficult.

RECOMMENDATION: Improve. The JAG Corps should prioritize requests for legal software, with first priority going to deployed units.[53]

ISSUE: Legal assistance designation and wills database

DISCUSSION: One of the administrative issues that cropped up after deploying was the oversight of having one of the JAs designated as the BCT legal assistance attorney. Without this designation, it was not possible for any of the JAs to access the JAGCNET database on wills. Getting authorization from the Office of the Judge Advocate General (OTJAG) was slow.

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[50] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[51] 2010 Brigade Judge Advocate (BJA) Symposium, 10-12 May, 2010, The Judge Advocate General Legal Center and School (TJAGLCS), Charlottesville, VA (hereinafter "BJA Seminar, combined AAR, 10-12 MAY 2010"; on file at CLAMO).
[52] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 31.
[53] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 12.

RECOMMENDATION: Before BCTs depart, make sure to designate a JA as the legal assistance attorney so database access is not a problem.[54]

ISSUE: Lack of DL Wills program

DISCUSSION: The MNSTC-I legal assistance attorney did not have access to the DL Wills program. He coordinated with The Judge Advocate General's Legal Center and School (TJAGLCS) to get the permissions necessary to download and install the software. However, the software did not load properly, even with the assistance of the J6. Consequently, the legal assistance attorney had to send personnel requesting wills to the legal assistance office at VBC.

RECOMMENDATION: Improve. Although MNSTC-I offered only limited legal assistance services, it would be helpful to have the capability to draft wills.[55]

ISSUE: SRP review of Soldiers who need wills

DISCUSSION: There continues to be a problem with the sheer volume of Soldiers pushed through SRPs. The process rushes through as many Soldiers as possible to complete the administration. There is often insufficient time to assess whether or not Soldiers require a will or other legal assistance (e.g., debt, child support, power of attorney). Many Soldiers are not properly "triaged" at the front end of the SRP to determine if a will is proper for their circumstances. Legal staff met with many who did not need wills and others whose circumstances were too complex for military wills. Many showed up because the "First Sergeant told us to get one." This wasted time and shortened the time available to deal with those whose circumstances were appropriate for military wills.

RECOMMENDATION: Improve. The front end of the SRP intake should triage Soldiers to determine who truly needs to get wills.[56]

ISSUE: Wills software

DISCUSSION: The client services JA found the DL Wills software to be less than ideal. Time and effort was always required to "clean up" the finished product for errors after the entering the client's data. For example, the software will not apply input information uniformly throughout the output document. The output document contained comments in brackets or it left gaps in the text where the client did not need to insert answers. This feature ate up precious time and introduced needless errors into the wills.

RECOMMENDATION: Improve. The DL Wills software needs improvement to correct the recurring output errors.[57]

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[54] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 24.
[55] Multi-National Security Transition Command – Iraq (MNSTC-I), Staff Judge Advocate OIF After Action Report, 28 December 2009, Deployed June 2009 – July 2010, Phoenix Base, Baghdad, Iraq (hereinafter "MNSTC-I OIF AAR, JUN 09 - JUL 10"; on file at CLAMO).
[56] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.
[57] *Id.*

V.J. Tax Preparation

ISSUE: Providing tax assistance while deployed

DISCUSSION: The Division OSJA did not run a dedicated tax program at the legal assistance office due to personnel constraints. However, the unit did set up three computer terminals where Soldiers could do their own taxes and request assistance as needed. Additionally, the unit had shortcuts to internet tax sites placed upon the desktops of the base's Morale, Welfare, and Recreation (MWR) computer terminals across the operating base.

RECOMMENDATION: While it may not be possible to do Soldiers' taxes for them, make it easy for them to help themselves. They often have such simple returns that this meets their requirement.[58]

ISSUE: Income tax deadline

DISCUSSION: One of the timing issues of the deployment was that the deadline for income tax filing was fast approaching (April 15). Many were not thinking about it when the call for the deployment came in late January. Servicemembers deployed to a combat zone (CZ) or qualified hazardous duty area (QHDA) automatically receive an extension to file their taxes. Haiti was initially not a declared CZ/QHDA, so this automatic extension did not apply. The SJA advised the unit of the application process for filing extensions which the government granted.

RECOMMENDATION: Hasty deployments in January and February have to take the income tax filing deadline into consideration. Start the process to seek an extension early.[59]

V.K. Miscellaneous Legal Assistance Topics

Training

ISSUE: JAG School's Legal Assistance course

DISCUSSION: The JA in charge of client services believed it would have been very beneficial to attend a legal assistance course at the JAG School before taking over the position. This would have likely cut down on the extensive amount of "self-teaching" on the various issues when trying to cope with the overwhelming amount of cases walking into the office. However, prior deployment experience, combined with a general knowledge of military related issues, permits any JA or paralegal to get over the learning curve.

RECOMMENDATION: Where possible, take advantage of the JAG School Legal Assistance course before a deployment.[60]

ISSUE: Paralegals with notary power

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[58] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[59] 3d Sustainment Command (Expeditionary), Operation Unified Response, Staff Judge Advocate After Action Report, 23 April 2010, Deployed February 2010 – March 2010, Toussaint L'Ouverture Airport, Port-au-Prince, Haiti (hereinafter "3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10"; on file at CLAMO).
[60] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.

DISCUSSION: Having paralegals on the deployment who could notarize documents kept that type of work off the desk of the JAs. Moreover, Soldiers requiring notary services at outlying forward operating bases (FOBs) could get their documents notarized much quicker than having to wait for a JA to do it on a trip or after a mail run.

RECOMMENDATION: Have paralegals trained and authorized as notaries.[61]

ISSUE: Training for legal assistance at the Division level

DISCUSSION: The current Division structure has no capacity for legal assistance. However, the garrison or theater sustainment command (TSC) with the legal assistance responsibility does not deploy to provide this service. The Division must provide legal assistance while deployed, but has no attorneys experienced in the provision of this service.

RECOMMENDATION: Identify early on those attorneys who will provide this service while deployed. Send them to work at the garrison legal assistance office on a recurring basis to develop the skills they will need to be effective in a deployed environment.[62]

ISSUE: Training for Reservists mobilizing to serve in the rear detachment

DISCUSSION: The Reserve JAs serving in the rear detachment legal assistance office did their Annual Training (AT) with the I Corps OSJA, but most did not work in the legal assistance office during AT.

RECOMMENDATION: Improve. When circumstances allow, assign specific duties with as much lead time as possible and stick to the plan. The ideal scenario when mobilizing is knowing what job a JA or paralegal will actually be doing in the rear detachment, allowing them to perform their AT with that section. This also builds teamwork as you know the various staff personnel you will be working with and the predominant legal issues that will be frequently addressed.[63]

ISSUE: Training for Reserve legal assistance attorneys on the rear detachment

DISCUSSION: Once a month, one of the civilian attorneys conducted an Officer Professional Development (OPD) class for one hour covering a common legal assistance issue. This training was very helpful, but did not occur often enough.

RECOMMENDATION: Improve. It would be better to devote one or two days to training Reserve JAs mobilizing to serve in the rear detachment legal assistance office. This training could occur during Sergeant's Time Training for the first several weeks after the Reservists' arrival. The topics Reserve JAs need to know up front include AR 608-99, state divorce and child custody law, landlord/tenant law, reprimand rebuttals, FLIPLs, wills (including the DL Wills program), the Uniform Transfers to Minors Act/Uniform Gifts to Minors Act (UTMA/UGMA).[64]

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[61] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 51.
[62] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 3.
[63] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.
[64] *Id.*

Immigation

ISSUE: Immigration for servicemember families

DISCUSSION: The unit brought a large number of native Creole speaker servicemembers to assist with translating during the mission. Many of these servicemember interpreters had family directly affected by the earthquake and desired to obtain visas for their families, or find other ways for them to gain lawful entry into the United States.

RECOMMENDATION: When conducting HA operations in neighboring nations where many servicemembers have family, units should immediately coordinate with the Department of State (DoS) and the United States Citizenship and Immigration Services (USCIS) to determine what the U.S. policy will be regarding immigration issues (i.e., visas and Humanitarian Parole issues) for service members' families. Disseminate the policy to all U.S. personnel at the beginning of the mission to eliminate confusion and/or unrealistic expectations.[65]

ISSUE: Use of the Humanitarian Parole process

DISCUSSION: One Marine of the 22d MEU, a Haitian interpreter and American citizen, had a Haitian wife and two-year-old son who were both Haitian citizens, residing in Carrefour, Haiti until the earthquake destroyed their home. When the unit arrived in theater, the Marine's family was without food, shelter, and money. The wife and child travelled to Petit Goave, Haiti on foot to re-unite with the Marine. Recognizing the need to assist the families of its Marines, the 22d MEU made vast efforts in conjunction with DoS personnel assigned to the U.S. Embassy to secure an expedited immigration process for displaced family members of servicemembers so they could legally gain access into the United States. After several days of legal research and coordination with JTF-Haiti, MARFORSOUTH, DoS, and USCIS, they obtained the approved Humanitarian Parole for this Marine's family, the first of only three Humanitarian Parole packages approved by USCIS in Haiti during the first month of the HA operations.

RECOMMENDATION: Sustain. JAs should familiarize themselves with and make use of all available resources, to include the Humanitarian Parole process, to assist displaced family members of U.S. servicemembers.[66]

ISSUE: Humanitarian Parole packages

DISCUSSION: The 22d MEU attributed their success with Humanitarian Parole to the organized presentation of the Humanitarian Parole package to the U.S. Embassy. Specifically, the SJA ensured they submitted a myriad of legal documents to include birth and marriage certificates, Haitian passports, USCIS criminal background checks, command endorsements, identification cards, follow-on U.S. care plans, and advocated to substantiate blood relationships. Additionally, the SJA represented the Marine's family during U.S. consular's office interviews in efforts to validate the urgency of honoring that particular Humanitarian Parole case.

RECOMMENDATION: Sustain. The presentation of a tightly organized Humanitarian Parole package to the U.S. Embassy is the key to getting the package approved.[67]

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[65] 22d MEU (Haiti OUR) JAN 2010, *supra* note 36.
[66] *Id.*
[67] *Id.*

ISSUE: Securing a U.S. flight for Humanitarian Parole recipients

DISCUSSION: Assuring Marine's family would be successfully manifested on a U.S. flight at the chaotic Port-Au-Prince airport was a major challenge. The SJA overcame this hurdle with coordination from Immigration Customs Enforcement officials, who authorized the Marine's wife to serve as an adult escort for fifty Haitian orphans en route to the United States.

RECOMMENDATION: Sustain.[68]

Conflict of Interests

ISSUE: Conflict of interest and limited resources

DISCUSSION: CJSOTF-A only had one legal advisor which created a challenge in providing legal assistance while avoiding conflicts of interest as the command's legal advisor.

RECOMMENDATION: Carefully screen legal assistance clients to avoid potential conflicts of interest and identify additional legal assistance support from forces in close proximity. Ensure proper training and certification so that your paralegal can handle powers of attorney and notarization requirements.[69]

ISSUE: Conflict situations in legal assistance

DISCUSSION: The possibility of a conflicts situation arising during a legal assistance interview always looms. Even with a third JA handling legal assistance, it is not always possible to avoid a conflict of interest. One method that addressed this was having a reciprocal legal assistance arrangement where Soldiers can telephonically contact a JA from another unit to obtain legal assistance advice. Other units used the legal assistance services from home base garrisons in the U.S., but the telephone calls had to be pre-coordinated due to the time zone differences. Finally, one unit trained up paralegals to screen legal assistance cases to determine if there was any potential for a conflict situation. A paralegal cannot form a lawyer-client privilege relation, so this tactic offers the advantage of completely avoiding any potential conflict pitfalls during the JA-Soldier interview.

RECOMMENDATION: There are varieties of ways to avoid conflict of interest situations and the best one for a deployed unit will depend on the circumstances of the unit and the composition of the legal office and other unit legal offices nearby.[70]

ISSUE: Dedicated Judge Advocate to provide legal assistance

DISCUSSION: During the deployment, the brigade legal office consisted of three judge advocates (JAs) and six paralegals. One JA provided only legal assistance. This JA serviced more than 2300 Soldiers from in and outside the command.

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[68] *Id.*
[69] 3rd Special Forces Group (Airborne), Group Judge Advocate OEF After Action Report, 22 July 2010, Deployed January 2010 – May 2010, Bagram, Afghanistan (hereinafter "3rd SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).
[70] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 51.

RECOMMENDATION: Improve. Soldiers seeking legal assistance sometimes have issues that are in conflict with Army policy and regulations. Judge advocates advising such clients may potentially create a conflict of interest, particularly if the commander seeks their advice on the same issue. A JA dedicated solely to these duties could perform his job without jeopardizing his ethical duties to the client and/or commander. A better solution is providing a regional legal assistance/trial defense legal center on the FOB to serve all personnel. The ideal locations for such centers are FOBs with large troop concentrations.[71]

ISSUE: Conflict cases

DISCUSSION: Although the TC handled most of the BCT's legal assistance at FOB Echo, the BJA handled conflict cases. These generally arose when the TC had processed military justice actions on a potential legal assistance client. Conversely, the TC maintained a client list, which he used when military justice actions arose to ensure he had no conflict in advising the command on the disciplinary action. Once the BCT got to COB Basra, the MND-N OSJA (34th Infantry Division) took over the legal assistance mission for the BCT.

RECOMMENDATION: If possible, have a separate attorney perform legal assistance and military justice duties. The JAG Corps should develop a searchable electronic client card database that is functional in a deployed environment.[72]

ISSUE: Coordination with other units for legal assistance support

DISCUSSION: Once their third attorney redeployed, the BCT lost their legal assistance attorney for the last part of their deployment. The BJA worked with the two JAs at a co-located brigade for legal assistance support. Although these JAs were more than willing to provide assistance, they were only able to take conflict clients. This was likely due to their brigade commander's desire for his JAs to do only his brigade's legal work. Due to other demands, the BJA reduced legal assistance services to FLIPL rebuttals and other bona fide emergencies.

RECOMMENDATION: Continue to work one-on-one with JAs from co-located units to assist each other with legal assistance. As long as any agreements for legal assistance cross-support are transparent to the brigade, the command should be fine with it.[73]

ISSUE: Coordinating legal assistance coverage for SF battalion personnel

DISCUSSION: The battalion legal section referred legal assistance clients to MND-N's client services to avoid any conflict issues. The battalion legal advisor also used his relationship with MND-N to track brigade judge advocates able to assist ODA team members in outlying areas of MND-N.

RECOMMENDATION: Sustain. Building relationships among the larger JAG community makes finding ways to assist Soldiers much easier.[74]

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[71] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 30.
[72] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 31.
[73] 3d Heavy Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate (BJA) OIF After Action Report, 16 September 2009, Deployed December 2008 – July 2009, Ninewah Province, Iraq (hereinafter "3HBCT, 1 CD Part II OIF AAR Dec 08-Dec 09"; on file at CLAMO).

ISSUE: Conflict avoidance

DISCUSSION: The Division military justice personnel participated in providing legal assistance. However, conflicts would occasionally arise when they had processed military justice actions on a potential legal assistance client. Whenever this situation arose, the JA or paralegal would hand the client off before ever meeting with him or her.

RECOMMENDATION: Sustain. Be aware of potential conflicts, especially when JAs and paralegals are working in multiple areas of law.[75]

ISSUE: Using JAs from co-located units to avoid conflicts

DISCUSSION: The engineer brigade attorney on Camp Liberty volunteered to see conflict clients. The engineer brigade was the garrison command for Camp Liberty.

RECOMMENDATION: Sustain. Identify an attorney on the installation who can see conflict clients to preclude having to send a client to another installation.[76]

ISSUE: Creating conflicts within legal office structure

DISCUSSION: In the spirit of trying to help out, the DSJA inadvertently created an internal conflict by providing legal advice without checking to see if there was indeed a conflict within the office. There were no standard operating procedures (SOPs) in place for legal assistance in theater, and the lack of experience did not help to foresee potential conflicts. In the end, the SJA put out an email delineating procedures to follow if Soldiers sought legal advice outside of the normal duty assignments. JAs were to bring any conflicts to the SJA's attention.

RECOMMENDATION: Develop an SOP for each section within the legal office.[77]

ISSUE: Conflict of interest

DISCUSSION: CJSOTF-A only had one legal advisor. This created a challenge in providing legal assistance while avoiding conflicts of interest as the command's legal advisor.

RECOMMENDATION: Carefully screen legal assistance clients to avoid potential conflicts of interest and identify additional legal assistance support from forces in close proximity.[78]

ISSUE: Avoiding conflicts

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[74] 1st Battalion, 5th Special Forces Group (Airborne), Battalion Judge Advocate OIF After Action Report, 11 March 2010, Deployed 25 July 2009 – 25 January 2010, Contingency Operating Base Speicher, Tikrit, Iraq (hereinafter "1/5 SFG OIF AAR, JUL 09 - JAN 10"; on file at CLAMO).
[75] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[76] *Id.*
[77] 33d Brigade Combat Team, Illinois Army National Guard, Brigade Judge Advocate OIF After Action Report, 20 March 2010, Deployed December 2008 – August 2009, Camp Phoenix, Afghanistan (hereinafter "33d BCT (ILARNG), OEF AAR, DEC 08 - AUG 09"; on file at CLAMO).
[78] 7th Special Forces Group (Airborne), CJSOTF-A Legal Advisor OEF After Action Report, 26 May 2010, Deployed 22 July 2009 – 02 February 2010, Bagram, Afghanistan (hereinafter "7th SFG OEF AAR, JUL 09 - FEB 10"; on file at CLAMO).

DISCUSSION: The Legal Advisor coordinated with JBB Legal Assistance Office to provide service to CJSOTF-AP's personnel to avoid any potential conflicts of interest.

RECOMMENDATION: Sustain. Leverage conventional forces' assets to help avoid potential conflicts.[79]

ISSUE: Conflicts of interest and reserve attorneys

DISCUSSION: Some reserve attorneys were apprehensive about assisting clients with investigation rebuttals, as they were technically part of the command. This was due to their reading of their state rules for professional conduct conflict of interest provisions. The CJTF SJA and DSJA requested an opine from OTJAG which gave an informal legal opinion that no conflict of interest was present. However, the informal opinion was not enough to satisfy the reserve attorney. The SJA and DSJA opined that this was not a conflict of interest under the rules for professional conduct.

RECOMMENDATION: Improve. OTJAG needs to address this issue and provide clear guidance to the reserve attorneys. A formal, written opinion from OTJAG on the subject is preferable.[80]

Confidentiality

ISSUE: Maintaining client confidentiality

DISCUSSION: The legal advisor requested a separate office in the command center to avoid any potential for violating client confidentiality. The SOTF-C commander recognized the importance of this function and provided the legal advisor with his own office in the command center.

RECOMMENDATION: Legal advisors should request a separate office before deploying.[81]

ISSUE: Office space for legal assistance at the brigade

DISCUSSION: The brigade legal section was fortunate to have two office spaces at the brigade headquarters, one of which had a private outside entrance. The brigade dedicated this private office for the legal assistance attorney. In addition, one of the brigade paralegals had his workspace in the entrance to this office, and served as the paralegal for client services.

RECOMMENDATION: Sustain. The BJA and NCOIC should make known the need for a separate space to conduct legal assistance at the brigade. A private legal assistance office ensures client confidentiality and encourages prospective clients to seek out legal advice.[82]

ISSUE: Location of the legal assistance office

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[79] 10th Special Forces Group (Airborne), Group Judge Advocate OIF After Action Report, 19 May 2010, Deployed July 2009 – February 2010, Joint Base Balad, Iraq (hereinafter "10th SFG OIF AAR, JUL 09 - FEB 10"; on file at CLAMO).
[80] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 22.
[81] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 29.
[82] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 73.

DISCUSSION: The Division legal assistance office was in a separate building from the rest of the OSJA. Soldiers did not need a security badge to enter this building. Within the legal assistance office, the legal assistance attorney had a separate office constructed of plywood. However, to ensure client confidentiality for Soldiers meeting with the attorney, the paralegals had to turn up the volume on the television in the main part of the office.

RECOMMENDATION: Sustain/Improve. It is preferable to have the legal assistance office separate from the Division headquarters. However, it is important to ensure client confidentiality even within the legal assistance office when the paralegals are servicing other clients in the main area. Ideally, the attorney should have a soundproof office for client counseling.[83]

ISSUE: Client confidentiality

DISCUSSION: Practicing legal assistance on a forward operating base (FOB) is like practicing law in a small town. Attorneys often bump into their clients in the gym, dining facility, etc., and some clients want to talk about their legal issues in places where the attorney cannot protect their confidentiality. Conversely, some senior leaders are hesitant to come to the legal assistance office at all because they do not want others to know they have legal problems.

RECOMMENDATION: Legal assistance attorneys should be flexible to meet the needs of a variety of different clients.[84]

ISSUE: Confidentiality concerns

DISCUSSION: The legal advisor had to be creative in finding locations to speak with legal assistance clients to ensure confidentiality.

RECOMMENDATION: Legal advisors must be prepared to deal with limited private space and find creative ways to ensure a client's confidentiality.[85]

ISSUE: Confidentiality at SRC legal station

DISCUSSION: The legal station at the Fort Lewis SRC site had three "offices" separated by partitions. It was difficult to preserve client confidentiality under these conditions. The office posted signs alerting Soldiers there was a reduced expectation of privacy due to the nature of the facility. Attorneys attempted to preserve confidentiality by letting clients know up front to speak in a lower voice and be careful not to share too much information. If a Soldier did not feel comfortable sharing information, the Soldier could set up an appointment with the legal assistance office on a different day.

RECOMMENDATION: Improve. The SRC sites should provide their legal sections with confidential consultation areas. Also, attorneys should take every precaution to preserve client confidentiality at the SRC site.[86]

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[83] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 3.
[84] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[85] 3rd Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 27 May 2010, Deployed July 2009 – December 2009, Herat, Afghanistan (hereinafter "3/7 SFG(A) OEF AAR, JUL 09 - DEC 09"; on file at CLAMO).
[86] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.

Soldier Readiness Program (SRP)

ISSUE: Soldier Readiness Program (SRP)

DISCUSSION: For one BCT, the comprehensive SRP in garrison was critical to eliminating several potential legal assistance issues that could have cropped up on a short notice deployment to Haiti. By keeping records up to date, the units that deployed to Haiti with less than 48 hours notice avoided a rush for legal assistance.

RECOMMENDATION: Sustain. A diligent SRP in garrison can ease work on a short notice deployment.[87]

ISSUE: Solving legal problems before deployment

DISCUSSION: The brigade had a month-long SRP. During this time, the brigade legal section dealt with Soldiers' legal issues. The brigade legal section received a lot of support from Division during this time.

RECOMMENDATION: Sustain.[88]

ISSUE: Soldier Readiness Processing (SRP)

DISCUSSION: Schofield Barracks has a consolidated SRP site. As units adapt to the modular organizational structure, there are occasions when a cooperative approach is required between the garrison and deploying unit, regardless of where doctrine may fix responsibility for a task.

RECOMMENDATION: Improve. SRPs should be a garrison mission.[89]

ISSUE: Soldier Readiness Program (SRP)

DISCUSSION: The comprehensive SRP in garrison likely eliminated a number of potential legal assistance issues that could have cropped up on the short notice deployment. Units constantly kept records up to date before the deployment, thereby avoiding a rush for legal assistance issues when the warning order came in.

RECOMMENDATION: Sustain. A diligent SRP in garrison can ease work on a short notice deployment.[90]

Family Law Issues

ISSUE: Serving Soldiers with family law issues from several different states

DISCUSSION: A National Guard deployed unit often has Soldiers from several different state jurisdictions. Family law is largely a state matter and the rules vary.

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[87] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 51.
[88] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 12.
[89] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 3.
[90] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 19.

RECOMMENDATION: The JAG Corps needs to develop a list of contacts who are subject matter experts on family law in the various states.[91]

ISSUE: Most prevalent legal assistance issues

DISCUSSION: Family law, including divorce and child custody, accounted for approximately 75% of the legal assistance case load.

RECOMMENDATION: Be prepared to deal with these issues.[92]

ISSUE: Know the state family law pertinent to the unit you are deploying with

DISCUSSION: In addition to performing TC duties, the RC JA provided legal assistance for a co-located brigade which was also from Fort Hood. Approximately 80% of the cases he dealt with involved family law, including divorce and child custody. As a court-appointed child advocate in his civilian capacity, this JA was comfortable with the general issues, but had to learn the state law in Texas, where the majority of his clients were stationed. For example, Texas had a statutory child custody order with standard provisions based on the distance from the child the noncustodial parent lived.

RECOMMENDATION: When deploying as a RC JA to do legal assistance, become familiar with the state family law for your unit's home station.[93]

ISSUE: Marriage by proxy

DISCUSSION: There were a few requests for marriage by proxy. The MNC-I legal assistance office found Soldiers in these cases wanted to have the ceremony as fast as possible, but the rationale for the speedy union was never entirely clear or compelling. Legal assistance attorneys made it a practice of checking the applicable state law. The JA even called continental U.S. (CONUS) based JAs as another means to determine the applicable state laws.

RECOMMENDATION: Soldiers should not rush into marriage by proxy due to peculiarities associated with state legal aspects of the decision. While JAs can provide the necessary legal advice, they may want to encourage the Soldier to consider a more patient approach.[94]

Client Information System (CIS)

ISSUE: Use of the Client Information System (CIS)

DISCUSSION: CIS was not in use when the unit arrived in Kosovo, but they stood up and used the system. There were some technical challenges, but the unit was able to overcome them.

RECOMMENDATION: There is some pain associated with standing up any new system, but having the capability is worth overcoming the initial hurdles.[95]

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[91] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 2.
[92] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 73.
[93] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 13.
[94] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.
[95] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 2.

ISSUE: Tracking conflicts without the Client Information System

DISCUSSION: The brigade did not have access to the JAG Corps' Client Information System (CIS) to track conflicts. The bandwidth was not sufficient to allow them to run the online application. Consequently, the unit had to create its own conflicts tracker. The brigade legal section never did gain access to the Legal Assistance Client tracker program through JAGCNET despite numerous requests for help.

RECOMMENDATION: Be prepared to track potential conflicts of interest without the use of CIS.[96]

ISSUE: Client Information System (CIS)

DISCUSSION: CIS is very helpful when used properly. It helps to keep track of progress made on cases, tracks monthly statistics, and allows screening for conflicts. If the legal assistance staff does not keep CIS current, it makes it challenging to determine what they saw a repeat client for and what they did for him/her previously.[97]

RECOMMENDATION: Enter all clients into CIS immediately and keep the system up to date.

ISSUE: Use of the Client Information System (CIS)

DISCUSSION: When the unit arrived in theater, it began using CIS. It was slow getting started on CIS. The forward unit did not have a separate CIS from the rear detachment, but it proved to be an efficient and effective means of identifying conflicts and tracking cases.

RECOMMENDATION: Sustain. Even though there is some pain associated with using CIS in theater, it is still a valuable tool for identifying conflicts and tracking cases.[98]

Reachback and Rear Detachments

ISSUE: Reachback for legal assistance

DISCUSSION: The BN JA provided limited legal assistance to include drafting powers of attorney and providing notarizations. For more complicated and/or time-consuming matters, the BN JA would refer the Marine to a legal assistance attorney in the rear.

RECOMMENDATION: Sustain. Remember there are attorneys in the rear to provide assistance.[99]

ISSUE: Reach back when necessary

DISCUSSION: RCT-3 provided legal assistance to its Marines. However, if an issue appeared

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[96] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 12.
[97] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 16.
[98] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[99] 2d Battalion, 3rd Marines, Battalion Judge Advocate OEF After Action Report, 14 April 2010, Deployed May 2009 – November 2009, Forward Operating Base Delaram, Nimruz Province, Afghanistan (hereinafter "2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09"; on file at CLAMO).

to be complicated and time consuming, it would reach back to the legal assistance attorneys in the rear.

RECOMMENDATION: Sustain. JAs should not hesitate to contact legal assistance attorneys in the rear for assistance.[100]

ISSUE: Use of the rear detachment for legal assistance reachback

DISCUSSION: One of the biggest frustrations in deployed legal assistance was trying to contact people or agencies back in the United States. Aside from the time difference, it is difficult to get through to civilian agencies without a commercial phone line.

RECOMMENDATION: Whenever you get a case requiring contact with people in the United States, email the case to the rear detachment and let them make contact on your behalf. It is much more efficient.[101]

ISSUE: Rear detachment legal assistance staffing

DISCUSSION: The OSJA needs to prioritize staffing of the legal assistance office (LAO) with a full complement of attorneys due to the high volume of clientele created by large deployments. This includes servicemembers from joint bases, deploying servicemembers, dependents, retirees, and others eligible. The OSJA rotated numerous attorneys through the legal assistance office for several weeks or months at a time. The chief of legal assistance had difficulty planning support to legal assistance missions, because he never knew how many personnel he would have. The office during the height of the deployments did not have enough attorneys at times to support Soldier Readiness Checks (SRCs), mobilization and demobilization briefings, and Family Readiness Group briefings, in addition to seeing normal legal assistance clients. The SRC took priority. At times 300 to 500 deploying servicemembers were going through the SRC; many needed wills, powers of attorneys and other legal work. This required shifting the limited attorney resources to the SRC, leaving two or fewer attorneys to man the LAO. The LAO quite often had to "borrow" JAGs from other sections to complete its mission. Moreover, the Fort Lewis Tax Center fell under the legal assistance umbrella of responsibility, though it had its own volunteer and borrowed military manpower (BMM) staffing.

RECOMMENDATION: Improve. Having adequate staffing is essential to support the robust rear detachment legal assistance mission. The SRC and pre-deployment issues are priorities to the deploying units, as such, staffing of the LAO should also take priority. Planning for more legal assistance attorney slots instead of having a revolving door of attorneys in the office is preferable. The Garrison Commander and the SRC staff said the legal station was the number one mission of the SRC. Large installations like Fort Lewis should have at least two attorneys and two paralegals to run the SRC site full time. The main legal assistance office should have five attorneys and two to three paralegals. The office also needs to have civilian legal assistance attorneys for institutional knowledge to serve clients with state specific issues such as divorce and child custody. Also, the Brigade Judge Advocates (BJAs) should complete as much legal work

[100] Regimental Combat Team – 3, 2d Marine Expeditionary Brigade, Regimental Judge Advocate, OEF After Action Report, 14-15 April 2010, Deployed April 2009 – October 2009, Camp Dwyer, Helmand Province, Afghanistan (hereinafter "RCT-3, OEF AAR, APR 09 - OCT 09"; on file at CLAMO).
[101] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 16.

for their brigades as possible. Continue to staff the tax center separately from the main legal assistance office.[102]

ISSUE: Redundant requests for deployment/redeployment legal assistance support on the rear detachment

DISCUSSION: The rear detachment legal assistance office received many redundant requests for legal assistance support. Some brigades and battalions requested legal assistance support for their deployment and redeployment fairs, deployment/redeployment legal briefings, and FRG briefings, in addition to their SRCs. It seemed like many Soldiers were getting the same briefings in several different forums.

RECOMMENDATION: Improve. The OSJA needs to establish a vision for the expectations of the rear detachment legal assistance office. Commanders should consolidate redundant requests for legal assistance support or increase the rear detachment legal assistance staff to meet these missions. Brigade judge advocates (BJAs) should handle and brigade/battalion requests for support beyond the SRCs and FRG briefings.[103]

ISSUE: Need for civilian attorneys in the garrison legal assistance office

DISCUSSION: The rear detachment legal assistance office started out with only one civilian attorney. A request for an additional civilian attorney to work at the SRC site was in progress. The chief of legal assistance worked with the DSJA to request up to four additional civilian attorneys. Eventually, the legal assistance office had five civilian attorneys on staff.

RECOMMENDATION: Improve. The OSJA should staff the legal assistance office with as many civilian attorneys as possible. These attorneys should hold bar licenses in the state where the installation is located. Many of the issues arising in legal assistance require knowledge of state-specific law, such as divorce, child custody, landlord-tenant, etc. It is difficult for Reserve JAs to develop expertise in another state's law when they are only working in the legal assistance office temporarily. In addition, the civilian attorneys should be required to attend and complete the Judge Advocate General's Legal Assistance Course at Charlottesville, Virginia, in order to familiarize attorneys with no prior military experience with military regulations and policies. The experienced civilian attorneys should also conduct monthly or bi-monthly continuing legal education for the non-state attorneys to familiarize them with the host state laws and procedures.[104]

ISSUE: Client appointment system for rear detachment legal assistance office

DISCUSSION: The rear detachment legal assistance office started out taking walk-in clients using a number system as done in the past. There were no set lengths for appointments, and many clients had to wait for extended periods. The office later switched to a system of 45-minute block appointments, scheduled on a same-day basis. After screening the client for conflicts, the paralegal would give the client a set time to return. The office kept certain time slots open for emergency walk-ins. The only issues for which it typically scheduled advance appointments were wills and reprimand rebuttals. In order to provide quality and accurate legal advice, some

[102] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.
[103] *Id.*
[104] *Id.*

clients may require a follow up appointment. This appointment system balanced the requirements to provide this quality service and to assist as many if not all clients requesting counsel.

RECOMMENDATION: Sustain. Having same-day appointments seemed to be the best system for appointments. Advance appointments often result in a high rate of no-shows.[105]

Miscellaneous

ISSUE: Bathroom stalls advertising

DISCUSSION: One legal staff experimented with advertising garrison wills and legal assistance services by placing single page "mini-posters" in bathroom stalls. At some point during the pre-deployment or even during the deployment phase, Soldiers will read it to "pass time." The experiment worked well as an innovative way to reach out to Soldiers.

RECOMMENDATION: Bars and restaurants often use this washroom-advertising tactic, so why not try it to get wills and legal assistance messaging out.[106]

ISSUE: Lack of privacy during legal assistance interviews

DISCUSSION: There are austere locations in Afghanistan where Soldiers lack privacy when making phone calls for legal assistance back to the main base. Some Soldiers are reluctant to speak candidly in such open circumstances and they may not be forthcoming with all the information. Without candid disclosure, the JA's may not have all the facts to give proper legal advice.

RECOMMENDATION: Improve. JAs and paralegals should look out for a lack of privacy. If there is an issue, stop the interview until an NCO or First Sergeant at the austere location can secure more a more private area.[107]

ISSUE: Review of civil law documents

DISCUSSION: The legal assistance attorney reviewed and explained to Soldiers the meaning of civil documents.

RECOMMENDATION: Sustain. Many times Soldiers seeking legal assistance only required an explanation of the meaning of a document. Simple review of a document did not necessarily trigger the attorney-client privilege. A legal assistance attorney can provide explanation, saving the Soldier the unnecessary expense and wait time associated with hiring a civilian attorney.[108]

ISSUE: Legal assistance circuit riding

DISCUSSION: Every other week, the legal assistance attorney and paralegal would travel to outlying units to meet with clients and attend to their needs.

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[105] *Id.*
[106] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 51.
[107] *Id.*
[108] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 30.

RECOMMENDATION: With an operating area totaling 3000 square miles, this type of cycle ensured full coverage of the unit's legal assistance issues.[109]

ISSUE: Diversity of legal assistance cases

DISCUSSION: The SBCT legal team assisted nearly 700 Soldiers and civilians with legal assistance matters during the deployment. The issues included domestic relations, wills, taxes, civil suits, name changes, powers of attorney, nonsupport, indebtedness, landlord-tenant issues, consumer law issues, FLIPL rebuttals, Servicemembers Civil Relief Act (SCRA) issues, and Uniformed Services Employment and Reemployment Rights Act (USERRA) issues.

RECOMMENDATION: A deployed BCT must be prepared to handle all types of legal assistance issues. This unit's workload would be difficult to handle without three JAs.[110]

ISSUE: Third attorney for legal assistance

DISCUSSION: One JA was dedicated to performing legal assistance. The legal assistance attorney conducted a battlefield rotation to ensure Soldiers across the area of operations had access to assistance when necessary.

RECOMMENDATION: Sustain. This guarded against potential conflicts and provided Soldiers with convenient access to assistance without taking away from mission requirements.[111]

ISSUE: Need for private area to conduct legal assistance

DISCUSSION: Soldiers seeking legal assistance were much more likely to discuss sensitive issues when they were away from ear shot of anyone else. Having a separate room or private area permitted them to be much more frank and open with details. Some Soldiers are too uncomfortable to discuss private matters in a room with other people present, even if it was other legal staff.

RECOMMENDATION: Sustain. Where possible, try to have a separate room or private area available to speak with Soldiers regarding legal assistance issues they may not wish to divulge in an office where others might overhear.[112]

ISSUE: Assistance with FLIPL rebuttals

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[109] 2d Brigade Combat Team, 1st Armored Division, Brigade Judge Advocate OIF After Action Report, 25 September 2009, Deployed July 2008-June 2009, Forward Operating Base (FOB) Hammer/Camp Stryker, Iraq (hereinafter "2BCT, 1AD OIF AAR, JUL 08 - JUN 09"; on file at CLAMO).

[110] 56th Stryker Brigade Combat Team, 28th Infantry Division (Mechanized), Pennsylvania Army National Guard, Brigade Judge Advocate OIF After Action Report, 24 September 2009, Deployed January 2009 – September 2009, Camp Taji, Iraq (hereinafter "56th SBCT (PA NG) OIF AAR, JAN - SEP 09"; on file at CLAMO).

[111] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 10.

[112] 1st Stryker Brigade Combat Team (SBCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 13 November 2009, Deployed September 2008 – September 2009, Multi-National Division – North (MND-N), FOB Warhorse, Diyala Province, Iraq (hereinafter "1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09"; on file at CLAMO).

DISCUSSION: The SBCT had three JAs, so the third attorney was available to provide legal assistance to Solders in preparing their rebuttals. This helped speed up the process and enabled Soldiers to prepare their responses with confidence.

RECOMMENDATION: Sustain. This is another example of why deployments necessitate a third attorney.[113]

ISSUE: Drafting of POAs by battalion level paralegals

DISCUSSION: Paralegals drafted powers of attorney for Soldiers at the battalion level and had the Battalion S-1 act as notary, pursuant to AR 27-55, paragraph 2-2.

RECOMMENDATION: Sustain.[114]

ISSUE: Legal assistance digital library

DISCUSSION: Providing legal assistance is critical in the deployed environment. RCT-8 had a legal assistance digital library in order to have quick access to template power of attorneys, wills, and other legal assistance documents.

RECOMMENDATION: Sustain. Each JA should deploy with a legal assistance digital library.[115]

ISSUE: Use of brigade legal web portal to distribute legal assistance information

DISCUSSION: The BJA hung legal assistance related information papers on the brigade legal web portal. This afforded Soldiers the necessary information. If the Soldier still needed to speak with an attorney, they would be able to make an appointment with a legal assistance attorney.

RECOMMENDATION: Sustain. This worked well, especially when the brigade only had two JAs.[116]

ISSUE: Necessity of a third JA to do legal assistance

DISCUSSION: Until the arrival of the third JA, the brigade legal section did not do legal assistance. Rather, it would refer Soldiers to MND-B.

RECOMMENDATION: Improve. A third JA is a must for a deployed brigade.[117]

ISSUE: Ensuring attorney-client privilege in a deployed environment

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[113] *Id.*
[114] 159th Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate OEF After Action Report, 5 November 2009, Deployed December 2008 – December 2009, Bagram Airfield, Afghanistan (hereinafter "159th CAB, OEF AAR, DEC 08 - DEC 09"; on file at CLAMO).
[115] Regimental Combat Team 8 (RCT-8), Multi-National Force – West (MNF-W), Deputy Regimental Judge Advocate, OIF After Action Report, 18 December 2009, Deployed January 2009 - October 2009, Al Asad, Iraq (hereinafter "RCT-8, OIF AAR, JAN 09 - OCT 09"; on file at CLAMO).
[116] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 12.
[117] *Id.*

DISCUSSION: The BJA and the JA handling legal assistance matters had separate offices. This helped to preserve the attorney-client privilege.

RECOMMENDATION: Sustain. Be sure to consider the need to maintain the privilege when laying out office space plans. It may be helpful to explain to the command they may have to give up the legal assistance function at the brigade level if they cannot adequately support it with the required space.[118]

ISSUE: Proper staffing to support the legal assistance mission at the brigade

DISCUSSION: It is not possible to support the legal assistance mission adequately with only two JAs assigned to a BCT. Not only are there potential conflicts of interest, but there is also too great a demand for legal assistance services. The 2-1 CAV met this mission by leveraging a very sophisticated paralegal and benefiting from a NG JA from the collocated PRT, who volunteered to support the BCT with its legal assistance operation. This JA worked as a chief of legal assistance in his civilian capacity.

RECOMMENDATION: Improve. BCTs should deploy with at least three JAs. One of the roles of the third attorney should be legal assistance. Another is fiscal law.[119]

ISSUE: Legal Assistance for Military Personnel (LAMP)

DISCUSSION: Many legal assistance clients needed help with problems back home. Often, these legal issues were beyond the scope of services the 2d MEB SJA office could provide. As a result, the SJA office made a practice of referring financially eligible servicemember clients to the American Bar Association (ABA) LAMP Military Pro Bono Project. The project then made every effort to place the servicemember with a volunteer pro bono attorney qualified to assist the client with the legal issue.[120]

RECOMMENDATION: Sustain. JAs need to be aware and make use of LAMP.

ISSUE: Appointment of paralegals as notaries

DISCUSSION: All paralegals in the BCT received appointment as notaries.

RECOMMENDATION: Sustain. This is especially important when paralegals are forward-deployed with their battalions. Get paralegals appointed by the Division SJA before deployment.[121]

ISSUE: Providing legal assistance at the brigade level

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[118] *Id.*

[119] 2d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 4 & 9 February 2010, Deployed January 2009 – December 2009, Forward Operating Base Warrior, Kirkuk, Iraq (hereinafter "2-1 CAV, OIF AAR, JAN 09 - DEC 09"; on file at CLAMO).

[120] 2d Marine Expeditionary Brigade, Contingency Contracting Attorney, OEF After Action Report, 18 February 2010, Deployed July 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB Contingency Contracting Attorney AAR, JUL 09 – NOV 09"; on file at CLAMO).

[121] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 73.

DISCUSSION: The BCT did not have a plan before deploying for providing legal assistance. During the early part of the deployment, MND-B offered legal assistance services at Camp Liberty. Because this was not easily accessible to some Soldiers, MND-B later worked out a support scheme whereby the BCTs each designated a JA to provide legal assistance to another BCT for four hours per week. The RC JA, who was performing the TC duties for this BCT, provided legal assistance for an aviation brigade at Camp Taji. That brigade provided similar services to this BCT.

RECOMMENDATION: Improve. The plan for providing legal assistance needs to be part of the legal mission analysis. While it is helpful to coordinate with other nearby units for mutual legal assistance support, this scheme is insufficient if some Soldiers do not have ready access to legal assistance services. It may be necessary to supplement this scheme with internal by-appointment provision of legal assistance within the BCT.[122]

ISSUE: Limited access to legal assistance following OSJA merger

DISCUSSION: Before the merger of the OSJAs from MNF-I, MNC-I, and MNSTC-I, the MNSTC-I OSJA provided limited legal assistance services to its personnel in the International Zone (IZ). MNC-I was the only OSJA with a robust client services division, which would remain at Victory Base Complex (VBC) after the merger. Once the former MNSTC-I OSJA personnel moved to the New Embassy Complex (NEC), their office would no longer be easily accessible to their former client base working in the IZ.

RECOMMENDATION: Improve. Whenever OSJAs merge or split, they need to conduct a full mission analysis and plan for the provision of legal services across the spectrum.[123]

ISSUE: National Guard attorneys and legal assistance

DISCUSSION: National Guard attorneys are good at providing legal assistance advice. In most cases, they are doing what they normally do when working in their civilian capacities. Nevertheless, the time zone difference does make legal assistance slightly more difficult, as does having Soldiers from more than one state. One must accept the time difference.

RECOMMENDATION: Note. State bars are often very helpful in providing advice about provisions in their home states with which you may be unfamiliar.[124]

ISSUE: Notarizing documents

DISCUSSION: Legal assistance attorneys often must notarize documents. Sometimes there are difficulties in persuading recipients back in the U.S. that an attorney, in fact, notarized the document properly.

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[122] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 13.
[123] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 55.
[124] 168th Engineer Brigade, Mississippi Army National Guard, Brigade Judge Advocate OEF After Action Report, 30 March 2010, Deployed December 2008 – November 2009, Regional Command – East, Bagram Air Field, Afghanistan (hereinafter "168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09"; on file at CLAMO).

RECOMMENDATION: Try to obtain a notary seal. Although this is not a legal requirement, it will discourage pedantic and misplaced objections to otherwise properly notarized documents. Ideally, the mark of the seal will show prominently on scanned copies of documents. In this way, the client can email a scanned copy document and post the original to the recipient.[125]

ISSUE: Sharing the legal assistance workload at the BCT

DISCUSSION: During its deployment, 30th HBCT did not have a dedicated legal assistance attorney. Instead, the BJA chose to allocate the legal assistance workload among all the BCT JAs.

RECOMMENDATION: Sustain. This allowed the JAs the opportunity to focus in the more important functional areas so that whoever was least busy at the time would provide legal assistance.[126]

ISSUE: Using the trial counsel (TC) for legal assistance

DISCUSSION: The BCT TC also participated to a very limited extent in providing legal assistance. However, the BJA implemented precautions and severely limited the TCs involvement in order to avoid any potential conflicts.

RECOMMENDATION: Sustain. The BCT used its paralegals to screen legal assistance clients. However the BCT JAs handled a lot of the legal assistance. This plan was unique to the 30th HBCT JAs, due to the lack of experience of most of their paralegals.[127]

ISSUE: Preventing abuse of legal assistance services

DISCUSSION: Some of the Soldiers of 30th HBCT had a tendency to take advantage of the free legal assistance provided by the brigade legal section. For example, during the deployment, the brigade legal section noticed some Soldiers came in on four or five different occasions, each time seeking a power of attorney for the sale of a vehicle. When the BJA observed this, he decided to put his foot down and turn Soldiers away if they were abusing the system.

RECOMMENDATION: Sustain.[128]

ISSUE: Privacy concerns surrounding attorney-client privilege

DISCUSSION: The JA shared an office with a non-legal Sailor. This presented the JA with some privacy concerns, which he raised to his command.

RECOMMENDATION: While the JA shared an office for most of the deployment, it is an issue JAs should raise at the beginning of the deployment. The JA helped keep the unit's morale high by providing legal assistance services.[129]

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[125] *Id.*
[126] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 15.
[127] *Id.*
[128] *Id.*
[129] Sea Air Land (SEAL) Team 7, Special Operations Task Force – West (SOTF-W), Detachment Judge Advocate OIF After Action Report, 14 April 2010, Deployed March 2009 - September 2009, Al Asad Airbase and Ramadi, Iraq (hereinafter "SOTF-W OIF AAR, MAR 09 - SEP 09"; on file at CLAMO).

ISSUE: Legal assistance to contractors

DISCUSSION: In a deployed environment, there is a mix of Soldiers, Department of Defense (DoD) and Department of State (DoS) civilians, and contractors. Soldiers, DoD civilians, and DoS civilians are entitled to legal assistance. Contractors, on the other hand, are not entitled to legal assistance unless their contract so provides. In many cases, the contract does not specify this entitlement. Assisting contractors who do not have such authorization may cause liability issues for legal assistance attorneys, who would lack liability protection when providing legal services to unauthorized clients.

RECOMMENDATION: The fiscal law section should review all contracts for contractors operating on the FOB and determine who is eligible for legal assistance so that legal assistance attorneys and paralegals are aware. The legal assistance office should keep a roster of eligible contractor companies and consider posting it outside the legal assistance office. Legal assistance personnel should be aware of potential liability issues from providing services to unauthorized clients.[130]

ISSUE: Legal assistance hours of operation

DISCUSSION: It is sometimes difficult for servicemembers to come in for legal assistance during normal duty hours. Some individuals work on the night shift, and many Soldiers who do not have legal assistance services available on their FOBs seek out these services at the Division legal assistance office when they are temporarily on the Division base.

RECOMMENDATION: Offer extended legal assistance hours seven days a week. Do not just stay open for "banker's hours." It works well to take shifts and have some personnel in the morning who will get done earlier and some who come in later and work into the evening. Because some Soldiers only get Sundays off, it is important to have Sunday hours as well. Legal assistance attorneys can take turns taking different days of the week off.[131]

ISSUE: Division responsibility for legal assistance

DISCUSSION: The older 27 series regulations make the provision of legal assistance services a Division responsibility. However, the Division legal office no longer has the staffing to provide this service.

RECOMMENDATION: Update the regulations to reflect who is actually responsible for providing legal assistance services. A robust consideration of this question will reveal whether our current structure properly enables the provision of this service as required and implemented, rather than as envisioned.[132]

ISSUE: Availability of HotDocs

DISCUSSION: The deployed legal assistance office did not use the HotDocs program. They had trouble downloading it from JAGCNET, and none of them had training on how to use it. Instead,

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[130] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 16.
[131] *Id.*
[132] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 3.

they drafted powers of attorney (POAs) using an electronic library of Microsoft Word files of different types of POAs.

RECOMMENDATION: The Judge Advocate Officer Basic Course (JAOBC) should include practical exercises to familiarize JAs with HotDocs. This software should be available on compact disc for deploying JAs, as units frequently have trouble downloading software from JAGCNET.[133]

ISSUE: Protecting Tenants of Foreclosure Act of 2009

DISCUSSION: Some Soldiers faced loss of their rented homes when their landlords underwent foreclosure.

RECOMMENDATION: This was an emerging legal issue during the deployment. Legal assistance attorneys should familiarize themselves with the protections afforded to military members under the Protecting Tenants Foreclosure Act of 2009. Among these are protection from eviction for at least 90 days and financial benefits for local moves. The OTJAG Legal Assistance Policy Division should consider publishing information about this statute to the field.[134]

ISSUE: Legal assistance to remote areas

DISCUSSION: One of the Division client services JAs, who also served as the third JA for a BCT, conducted regular battlefield circulation to provide legal assistance to outlying battalions. A paralegal coordinated with the brigade air movement cell for the transportation. The JA contacted the battalion S1s ahead of time to see if there was also need to go out to individual patrol bases.

RECOMMENDATION: Sustain. This was a huge success. It decreased the need for telephonic legal assistance and seemed to encourage Soldiers to seek legal assistance rather than put their legal problems on the back burner. The brigade legal section reasoned the trips were worth it if the third JA could help even one Soldier, because the brigade was co-located with the Division legal assistance office.[135]

ISSUE: Delegating legal assistance when appropriate

DISCUSSION: Due to the operational tempo, there was not much time to do legal assistance.

RECOMMENDATION: In order to work around this, the DSJA identified legal assistance work that did not require a lawyer (i.e., notarizing a power of attorney) and got the Adjutant to assist with those duties.[136]

ISSUE: Appointments vs. walk-ins for legal assistance

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[133] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 3.
[134] *Id.*
[135] *Id.*
[136] 2d Marine Expeditionary Brigade, Deputy Staff Judge Advocate, OEF After Action Report, 22 March 2010, Deployed April 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB DSJA, OEF AAR, APR 09 - NOV 09"; on file at CLAMO).

DISCUSSION: The Division legal assistance office saw clients on a walk-in basis for the first half of the deployment. This could result in feast or famine—sometimes the volume of clients overwhelmed the office, while at other times the attorneys were not busy at all. The chief of client services then switched their practice to an appointment system, leaving a block of time each day for clients with emergency legal issues.

RECOMMENDATION: Sustain. Appointments worked better to balance the legal assistance workload.[137]

ISSUE: Use of business cards for legal assistance attorneys

DISCUSSION: The chief of client services created business cards with his office location and contact information. He gave stacks of his cards to the OSJA, chaplain, sergeants major, etc.

RECOMMENDATION: Sustain. This helped Soldiers get the legal assistance they needed.[138]

ISSUE: Need for centralized lawyer referral list

DISCUSSION: The deployed legal assistance office had the lawyer referral list from Fort Hood, but had a hard time assisting clients from other units with lawyer referrals.

RECOMMENDATION: There should be a centralized referral list on JAGCNET, which installation legal assistance offices could continually update with areas of practice and other information.[139]

ISSUE: American Bar Association (ABA) Military Pro Bono Project

DISCUSSION: The ABA Military Pro Bono Project assists Soldiers with their legal issues if they meet certain criteria.

RECOMMENDATION: Consult http://www.militaryprobono.org/ for more information.[140]

ISSUE: Legal assistance to contractors

DISCUSSION: AR 27-3 does not allow the provision of legal assistance services to contractors without a letter of authorization (LOA). The legal assistance attorneys were concerned even providing notarial services or powers of attorney (POAs) could expose paralegals and attorneys to personal liability under the Federal Tort Claims Act (FTCA) for acting outside the scope of their duties. The chief of client services ultimately determined they would provide ministerial services (notarization) to all contractors.

RECOMMENDATION: If a contractor does not have a LOA authorizing them military legal assistance services, do not see them. It may help to post a sign to this effect on the door to the

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[137] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 1.
[138] *Id.*
[139] *Id.*
[140] *Id.*.

legal assistance office, but realize some contractors may nonetheless react with hostility if turned away.[141]

ISSUE: Rebuttals to reprimands

DISCUSSION: The legal assistance office assisted approximately 40 clients with rebuttals to General Officer Memoranda of Reprimand (GOMORs).

RECOMMENDATION: It would be helpful to make rebuttal templates available on JAGCNET.[142]

ISSUE: FLIPL rebuttals

DISCUSSION: FLIPL rebuttals constituted a significant percentage of the legal assistance workload.

RECOMMENDATION: Legal assistance attorneys must be familiar with AR 735-5.

ISSUE: Legal Assistance is difficult for a sole attorney

DISCUSSION: It is difficult for a sole attorney to provide legal assistance; conflicts of interest are common.

RECOMMENDATION: Seek help from your higher headquarters Office of the Staff Judge Advocate to ensure Soldiers receive legal assistance.[143]

ISSUE: Networking with legal assistance JAs

DISCUSSION: Due to the operational tempo at CFSOCC-A and the fact he was the sole legal officer at CFSOCC-A, the SJA networked with other JAs. This allowed him to contact the legal assistance attorneys and send a Soldier over to see them.

RECOMMENDATION: Sustain. Where operational or logistical issues do not allow a JA to handle legal assistance clients, the JA must find other JAs to fill that role.[144]

ISSUE: Prescreening of clients by paralegals

DISCUSSION: Having a good NCOIC or certified civilian paralegal to prescreen potential legal assistance clients helps provide quality service to clients. Many times, the NCOIC is able to determine whether the legal assistance office is the appropriate agency to assist the client and whether there are informational materials available to assist to resolve the client without the need to see an attorney. The NCOIC or civilian paralegal can also make a big difference if he or she

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[141] *Id.*
[142] *Id.*
[143] 504th Battlefield Surveillance Brigade, Brigade Judge Advocate OIF After Action Report, 3 May 2010, Deployed November 2008 – November 2009, Contingency Operating Base Sykes, Tal Afar, Iraq (hereinafter "504th BfSB, OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).
[144] Combined Forces Special Operations Component Command – Afghanistan, Staff Judge Advocate OEF After Action Report, 2 May 2010, Deployed August 2009 – November 2009, Kabul, Afghanistan (hereinafter "CFSOCC-A OEF AAR, AUG 09 - NOV 09"; on file at CLAMO).

knows the strengths and limitations of the attorneys. Hence, matching the need of the client with the capabilities of the attorney makes for a better experience for the client.

RECOMMENDATION: Sustain. Prescreening of clients by paralegals adds to the quality of the service. Additionally, publication of the LAO's available services is advisable.[145]

ISSUE: Shadowing experienced attorneys

DISCUSSION: If the tempo of the office permitted, new legal assistance JAs would shadow experienced attorneys until they felt comfortable taking on their own clients. This usually happened for one week following the initial assignment to the legal assistance office.

RECOMMENDATION: Sustain. The practice of shadowing experienced attorneys helps the younger or less experienced attorney become familiar with common issues and examples to follow. Ensure the client consents to this practice. It may also be helpful for paralegals to sit in on certain client interviews so they become familiar with issues that may help them to screen clients during the initial client intake.[146]

ISSUE: Unauthorized practice of law by paralegals during SRC

DISCUSSION: Paralegals who provide deployment and redeployment briefings during SRCs often become very knowledgeable about common legal issues. When dealing with large volumes of clients looking for advice during SRCs on wills, POAs, or family law in general, having good paralegals to do the initial screening is very helpful. However, JAs need to ensure paralegals do not engage in the unauthorized practice of law. Some of the work done in the legal assistance office can be repetitive, and a paralegal may have good intentions, but he or she can easily cross the line between his or her role and that of an attorney.

RECOMMENDATION: Improve. Take appropriate precautions to ensure both attorneys and paralegals understand the paralegal role versus the attorney role. Attorneys can accomplish this by giving periodic briefings and consults with the non-lawyer staff.[147]

ISSUE: Adequate time for deployment and redeployment legal briefings

DISCUSSION: The SRC staff only allocated fifteen minutes to the JA to provide legal briefings at deployment or redeployment briefings. This was insufficient to go into appropriate detail on common legal issues. This stood in contrast with the garrison commander prioritizing legal readiness as the main mission.

RECOMMENDATION: Improve. Provide more time to legal briefings to cover the most common legal assistance questions adequately. This can help alleviate the need for each Soldier to ask the same questions. These briefings are sometimes the only opportunity for preventative law.[148]

ISSUE: Contractors receiving legal assistance

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[145] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 9.
[146] *Id.*
[147] *Id.*
[148] *Id.*

DISCUSSION: AR 27-3, para. 2-5.*a*.(7) allows for very limited legal assistance services for contractor personnel accompanying the force overseas only if it is provided for in the contract. However, DoD was not obligated under the contracts to perform legal assistance for the contractors working with the CJTF. The CJTF therefore requested permission from OTJAG to perform ministerial services (e.g. notaries and POAs) and financial liability investigation into property loss (FLIPL) rebuttal assistance for contractors on a space available basis. OTJAG granted permission.

RECOMMENDATION: Sustain. Performing these services does not tax client services resources too badly, and it is fair to the contractors to assist them in these matters.[149]

[149] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 22.

VI. MILITARY JUSTICE

VI.A. General Orders

ISSUE: Education on applicable General Orders

DISCUSSION: JAs should educate BCT Soldiers on all controlling General Orders.

RECOMMENDATION: Sustain.[1]

ISSUE: Conflicting general orders (GOs)

DISCUSSION: The TDS office noticed there were multiple GOs applicable to personnel at Camp Liberty. Specifically, MNC-I and MND-B each had its own GO, with the MNC-I GO being less restrictive in regards to curfew and co-habitation. This became problematic at times when MNC-I headquarters (HQ) personnel resided in the same area as MND-B personnel. In order to provide adequate advice to service members, TDS JAs had to remain cognizant of the differences between the GOs and to whom they applied.

RECOMMENDATION: Sustain. However, commands who share billeting space with higher HQ's personnel could resolve this issue by ensuring their GO mirrors their higher HQ's GO.[2]

ISSUE: Conflicting general orders (GOs) and policies

DISCUSSION: The TDS office noticed that there were multiple GOs, as well as unit level policies applicable to personnel on BAF. For instance, one policy would permit co-habitation while another unit's policy required the door to be open when someone of the opposite sex was present. This was especially confusing when new units came into theater and issued new policies. In order to provide adequate advice to service members, TDS JAs had to remain cognizant of the differences between and changes to the GOs and unit level policies, as well as to whom they applied.

RECOMMENDATION: Improve. Units should make a greater effort to clarify and deconflict their respective policies.[3]

ISSUE: Alcohol at the U.S. Embassy

DISCUSSION: At the behest of U.S. Department of State (DoS) personnel, Soldiers would often go to Embassy functions where alcohol was prevalent. State Department personnel would sign in Soldiers to the Embassy so they could partake in the "partying." This was especially the case

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[1] 3d Brigade Combat Team, 1st Infantry Division, OEF After Action Report, 29 August 2009, Regional Command (RC) – East, Forward Operating Base (FOB) Fenty, Jalalabad, Afghanistan, Deployed July 2008 – June 2009 (hereinafter "3BCT, 1ID OEF AAR, JUL 08 - JUN 09"; on file at CLAMO).
[2] Trial Defense Services, Multi-National Corps – Iraq, Individual Augmentee Attorney, OIF After Action Report, 27 October 2009, Deployed May 2008-May 2009, Camp Liberty, Victory Base Complex, Baghdad, Iraq (hereinafter "MNC-I TDS OIF AAR, MAY 08-MAY 09"; on file at CLAMO).
[3] Trial Defense Services, Combined Joint Task Force – 101, Individual Augmentee Attorney, OEF After Action Report, 5 November 2009, Deployed July 2008-July 2009, Bagram Airfield, Bagram, Afghanistan (hereinafter "CJTF-101 TDS OEF AAR, MAY 08-MAY 09"; on file at CLAMO).

with female Soldiers and officers. The Soldiers and officers who attended, if caught, faced some type of administrative or disciplinary action later for violating General Order Number 1 (GO#1). TDS JAs should be aware of the lure of the embassy and be prepared to deal with cases involving consumption of alcohol at the Embassy.

RECOMMENDATION: Sustain.[4]

ISSUE: Differing general orders (GOs)

DISCUSSION: There were two sets of general orders at Camp Liberty. One GO applied to one group of units, and the other GO to the remaining group. The GOs were not identical and contained subtle but important differences. One such difference dealt with language restricting male-female visitations. This came to light after a case of a male-female visitation that violated the female Soldier's applicable GO but not the male Soldier's GO. Had the command preferred charges, the awkward outcome could have been a conviction against one Soldier but not the other.

RECOMMENDATION: In some circumstances, variations in GOs may lead to uneven disciplinary outcomes. JAs should survey other applicable GOs in the AO so they can warn commanders of the possible implications.[5]

ISSUE: Frequency of alcohol-related incidents in Kosovo

DISCUSSION: The command had an abnormally high number of General Order #1 (GO1) alcohol violations.

RECOMMENDATION: Brief it and train it, but recognize Soldiers will ultimately make their own choices. Be prepared to mete out the appropriate consequences.[6]

ISSUE: Lack of CG discretion concerning consumption of alcohol in Kosovo

DISCUSSION: The European Command GO1 provides no discretion to the TFF commander to allow Soldiers to drink on special occasions.

RECOMMENDATION: There has to be consistency across the command as to how to treat Soldiers when it comes to matters in this regard.[7]

ISSUE: Visitation with the opposite sex

DISCUSSION: The brigade commander prohibited visitation with the opposite sex throughout

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[4] Trial Defense Services, Kuwait, Senior Defense Counsel After Action Report ,13 October 2009, Deployed June 2008-August 2009, Camp Arifjan, Kuwait (hereinafter "SDC Kuwait TDS AAR, JUN 08-AUG 09"; on file at CLAMO).
[5] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 17 September 2009, Deployed October 2008 – June 2009, Camp Liberty, Iraq (hereinafter "2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09"; on file at CLAMO).
[6] Task Force Falcon, 40th Infantry Division, California National Guard, Command Judge Advocate, Kosovo Forces 11 After Action Report, 9 January 2010, Deployed February 2009 – November 2009, Camp Bondsteel, Kosovo (hereinafter "KFOR-11 AAR, FEB 09 - NOV 09"; on file at CLAMO).
[7] *Id.*

the deployment. The brigade commander also made it well known the unit would not tolerate sexual assaults and/or harassment.

RECOMMENDATION: Sustain. Education is essential in this area. Ensure everyone is well-briefed on the policy and the reasons behind it.[8]

ISSUE: Continually briefing General Order Number One (GO #1)

DISCUSSION: The BJA continually briefed commanders on GO #1 violations. In addition, the BJA utilized his paralegals to drill same down to the battalions.

RECOMMENDATION: Sustain.[9]

ISSUE: Dissemination of changes to general orders

DISCUSSION: The MND-B General Order Number One (GO#1) changed while the BCT was moving into its AO. The policy on opposite sex visitation in the living quarters changed from acceptable during certain hours to not allowed at all. Some leaders in the BCT erroneously disseminated the old policy.

RECOMMENDATION: Improve. Higher headquarters should disseminate changes to GO#1, particularly when the changes occur when subordinate units are in their movement window.[10]

ISSUE: Multiple general orders and policy memos

DISCUSSION: In addition to being subject to both CENTCOM General Order 1B and MNF-I policies, MNSTC-I personnel had to comply with the MNSTC-I commander's policy memorandum on prohibited activities. This memorandum covered topics which were peculiar to operations in Baghdad's International Zone (IZ) (also known as the "Green Zone"), such as prohibitions on entering contractor villages except for official purposes, traveling to restaurants and markets outside military bases, and riding motorcycles. Moreover, military personnel were subject to the policies issued by their respective component commands of CENTCOM (Army Central Command (ARCENT), Air Force Central Command (AFCENT), Navy Central Command (NAVCENT), and Marine Corps Central Command (MARCNET)).

RECOMMENDATION: Be aware of all general orders and policy memos governing the conduct of the various services represented in the joint command, and disseminate key provisions to ensure compliance. However, the service component commands should consider eliminating their service specific policies to the extent they duplicate the other general orders.[11]

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[8] 3d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate OIF After Action Report, 4 February 2010, Deployed December 2008 – November 2009, Joint Security Station Loyalty and Forward Operating Base Hammer, Baghdad, Iraq (hereinafter "3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09"; on file at CLAMO).
[9] *Id.*
[10] 1st Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 3 February 2010 & 29 March 2010, Deployed February 2009 – January 2010, Joint Security Station War Eagle, Baghdad, Iraq (hereinafter "1-1 CAV BCT OIF AAR, FEB 09 - JAN 10"; on file at CLAMO).
[11] Multi-National Security Transition Command – Iraq (MNSTC-I), Staff Judge Advocate OIF After Action Report, 28 December 2009, Deployed June 2009 – July 2010, Phoenix Base, Baghdad, Iraq (hereinafter "MNSTC-I OIF AAR, JUN 09 - JUL 10"; on file at CLAMO).

ISSUE: Deploying soldiers mailing alcohol to themselves

DISCUSSION: In Kuwait, all of the incoming mail is subject to sophisticated screening. After learning what their address would be in theater, some Soldiers mailed large quantities of alcohol to themselves in footlockers. The mail screening process detected the alcohol. Upon arrival in Kuwait, these Soldiers were already facing disciplinary action. These incidents were probably avoidable had the Soldiers understood there was equipment in place to detect alcohol and contraband. Mailing alcohol to Kuwait is simply a non-starter, and Soldiers need to realize this fact before arrival.

RECOMMENDATION: Provide pre-deployment briefings to Soldiers making them aware of sophisticated x-ray and detection equipment in Kuwait. This will reduce alcohol-related UCMJ actions upon arrival in theater.[12]

ISSUE: Command policy letter covering huffing and inhalants

DISCUSSION: Huffing has become a major issue for commanders. Many commanders are not aware of huffing and inhalant abuse before deployment. The commander needs to issue a punitive policy letter limiting access, use, and storage of dangerous inhalants such as air can dusters, paints etc.

RECOMMENDATION: Ensure your command has huffing policy. Consider carefully whether to require a specific intent to achieve an altered state, as that adds an element to prove.[13]

ISSUE: Ensure general order (GO) and policy letters are current

DISCUSSION: When 30th HBCT mobilized, the BJA obtained copies of all applicable GOs and policy letters. During their mobilization, the applicable GO Number One (GO#1) prohibited drinking alcohol. However, GO#1 did not address possession of alcohol. Instead, the Division prohibited the possession of alcohol through a policy letter, which the BJA office discovered had expired.

RECOMMENDATION: When drafting GO#1, if a commander is going to prohibit drinking, he should also use that order to prohibit possession. JAs should review all GOs and policy letters as soon as they arrive in theater and ensure they are current.[14]

ISSUE: First Army General Order Number One (GO#1)

DISCUSSION: The First Army GO#1 prohibited alcohol and civilian clothing at the mobilization station.

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[12]. 29th Infantry Brigade Combat Team, Hawaii Army National Guard, Command Judge Advocate OIF After Action Report, 7 March 2010, Deployed October 2008 – August 2009, Camp Arifjan, Kuwait (hereinafter "29th IBCT (HIARNG) OIF AAR, OCT 08 - AUG 09"; on file at CLAMO).
[13] *Id.*
[14] 30th Heavy Brigade Combat Team, Brigade Judge Advocate OIF After Action Report, 16-17 March 2010, Deployed April 2009 – January 2010, Forward Operating Base Falcon, Baghdad, Iraq (hereinafter "30th HBCT (NG) OIF AAR, APR 09 - JAN 10"; on file at CLAMO).

RECOMMENDATION: Improve. Continue to push for reconsideration of this GO#1. Mobilizing units are at the mobilization station for two to six months. Active duty forces preparing for deployment are not subject to these restrictions.[15]

ISSUE: Drafting GO#1 and other command policies

DISCUSSION: The Division did not finish drafting its GO#1 or other command policies until after the transfer of authority (TOA). Once operations began, it was more difficult to disseminate these policies to subordinate units. Most Soldiers knew about the "no alcohol" provision, but were unfamiliar with other portions of GO#1.

RECOMMENDATION: Finalize all policy memoranda before deployment. Obtain the higher headquarters GO#1 and train Soldiers on the prohibitions during pre-deployment training. Draft prohibitions so Soldiers can easily understand them.[16]

ISSUE: Bagram TDS services

DISCUSSION: 4-25 ID was pleased with TDS support provided by the Bagram Field Office. All advice was telephonic with the exception of one administrative separation board when the defense counsel traveled to FOB Salerno. BN paralegals at FOB Salerno and outlying FOBs arranged the time and place of the telephone call. Commanders ensured Soldiers were present. Soldiers reported satisfaction with the level and quality of TDS support.

RECOMMENDATION: Sustain. TDS should continue to provide telephonic services in remote areas where travel is impractical.[17]

ISSUE: Multiple general orders on the same subject

DISCUSSION: Initially, both the OSJA and the SGS drafted general orders (GOs) independently of each other. This resulted in two GO #1s which were signed by the CG. When the OSJA discovered there were two GO#1s, it reviewed them both and chose to use one drafted later in time, although it was less comprehensive, to avoid confusing the troops.

RECOMMENDATION: Before deploying, coordinate with the SGS to determine who has the responsibility to draft general orders. If the SGS is responsible, ensure the OSJA has an opportunity to review them.[18]

ISSUE: Reviewing previously published GOs

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[15] 34th Infantry Division, Minnesota Army National Guard, Staff Judge Advocate OIF After Action Report, 23 February 2010, Deployed April 2009 – February 2010, Multi-National Division – South, Basra, Iraq (hereinafter "34ID, OIF AAR, APR 09 - FEB 10"; on file at CLAMO).
[16] *Id.*
[17] 4th Brigade Combat Team (Airborne), 25th Infantry Division, Brigade Judge Advocate OEF After Action Report, 27 March 2010, Deployed February 2009 – February 2010, Forward Operating Base Salerno, Khowst Province, Afghanistan (hereinafter "4BCT, 25ID OEF AAR, FEB 09 - FEB 10"; on file at CLAMO).
[18] 25th Infantry Division, Staff Judge Advocate OIF After Action Report, 11 March 2010, Deployed November 2008 – November 2009, Multi-National Division – North, Contingency Operating Base Speicher, Iraq (hereinafter "25 ID OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).

DISCUSSION: Before drafting a GO, review corps- and combatant command-level GOs to ensure your GO is in line with those. Multiple conflicting GOs cause confusion.

RECOMMENDATION: Improve.[19]

ISSUE: Knowledge of brigade policy letters

DISCUSSION: The Division commander gave the brigades autonomy in drafting their policy letters. This resulted in some conduct being permissible in one brigade but prohibited in another. The OSJA was unaware of the differing policy directives until there was an alleged orders violation in one of the brigades. This lack of awareness made it difficult to provide prompt and accurate military justice advice to the BJA.

RECOMMENDATION: Division should require BJAs to submit copies of all policy directives that could lead to orders violations.[20]

ISSUE: Adding "extreme cruelty to animals" as a prohibition in GO#1

DISCUSSION: There were a handful of cases where Soldiers acted in reckless disregard to the safety and welfare of animals. Charging these cases is difficult, as it relies on Article 134 and creating a specification from what is primarily state-regulated criminal activity.

RECOMMENDATION: Find a state animal abuse law that is comprehensive, yet easily applied, and adopt the same or similar language in GO#1. Then charge violations under Article 92.[21]

ISSUE: Prohibiting "legal marijuana"

DISCUSSION: One of the surprises of the deployment was the discovery of the use of mail order "legal marijuana" by Soldiers. Although these products do not contain marijuana, cocaine or heroin, these incense-like products can produce hallucinogenic effects similar to that of marijuana. Some other names associated with these products are "Spice," "Foxy Methoxy," and "Zohai." Many of these products are still legal in most U.S. states, but are now illegal in some countries like Germany. In the case of the 172d BDE, eight Soldiers in one company were using "Spice." Accordingly, the JAs drafted a command policy letter making the use of such products a violation punishable under Article 92 of the Uniform Code of Military Justice (UCMJ).

RECOMMENDATION: Sustain. This is a new and emerging disciplinary issue. It has already required action by JAs in other branches of the military at overseas bases.[22]

ISSUE: General Orders (GOs) issued after deployment

DISCUSSION: The GOs for the deployment took some time to generate due to the other pressing priorities in the mission. The first GO appeared after two weeks of the deployment. The

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[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] 172d Infantry Brigade, Brigade Judge Advocate OIF After Action Report, 5 February 2010, Deployed November 2008 – December 2009, Forward Operating Base Kalsu, Iskandariyah, Iraq (hereinafter "172d IN BDE, OIF AAR, NOV 08 - DEC 09"; on file at CLAMO).

BCT had GO-like interim orders in place shortly after arrival in order to deal with a number of issues until the first GO went into effect.

RECOMMENDATION: Sustain. Units deploying on a HA/DR operation should issue a temporary order to fill in for the time it takes for higher command to publish the GO.[23]

ISSUE: Conflicting general orders (GOs)

DISCUSSION: Throughout Iraq there were conflicting GOs. For example, the MND-B General Order Number 1 (GO#1) was more restrictive than the MNC-I/USF-I GO#1 in regards to co-habitation and visitation by the opposite sex. Specifically, MND-B's order expressly forbid visitation by the opposite sex in the containerized house units (CHUs), while MNC-I's order permitted visitation. Additionally, many of the other multi-national divisions (MNDs) had different GO#1s that were more restrictive than MNC-I/USF-I's, but less restrictive than MND-B's. All the conflicting GO#1s generated a great deal of confusion and disparity in enforcement. As a result, at the end of the deployment, upon its inception USF-I restricted modification of GO#1. Any Division desiring to alter GO#1 had to request specific permission from the CG, USF-I in order to do so. MND-B did so regarding visitation.

RECOMMENDATION: Sustain. USF-I should continue to prohibit units from altering GO#1 without its express approval. A single, standard GO#1 makes it easier for service members to understand what is required of them and what the command is prohibiting them from doing.[24]

ISSUE: Enforcing conflicting GOs

DISCUSSION: Throughout its deployment, MND-B's GO#1 continued to be more restrictive than MNC-I/USF-I and all other MNDs regarding co-habitation and visitation by the opposite sex. This became problematic at times when MNC-I headquarters (HQ) personnel resided in the same area as MND-B personnel or when personnel from other MNDs visited Camp Liberty. MND-B would not be able to exercise jurisdiction over Soldiers from other commands that violated its GO#1. MND-B handled these situations by holding its own Soldiers accountable and informing the parent command of those Soldiers from outside MND-B's jurisdiction.

RECOMMENDATION: Sustain. Even though this seemed unfair to MND-B Soldiers, absent jurisdiction or a modification of MND-B's GO#1, the only viable option is to report misconduct by non-MND-B personnel to their parent command. However, with the implementation of USF-I's GO#1 that limits modification to its terms by subordinate commanders only with approval by the CG, USF-I, this issue has essentially been resolved except for those approved exceptions.[25]

ISSUE: Effect of prohibitions on visitation

DISCUSSION: The principal reasons for MND-B prohibiting opposite sex visitation in the CHUs was to prevent sexual assault and maintain good order and discipline. There were only

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[23] 2d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate Haiti After Action Report, 23 April 2010, Deployed January 2010 – March 2010, Operation Unified Response, Port-au-Prince, Haiti (hereinafter "2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10"; on file at CLAMO).
[24] 1st Cavalry Division, Staff Judge Advocate OIF After Action Report, 1 April 2010, Deployed January 2009 – January 2010, Multi-National Division – Baghdad, Camp Liberty, Baghdad, Iraq (hereinafter "1CD OIF AAR, JAN 09 - JAN 10"; on file at CLAMO).
[25] *Id.*

three or four reported occurrences of sexual assault during the course of 1st CAV's deployment as MND-B. Though there was no evidence to suggest it, the military justice section was uncertain whether this relatively low number was due to the success of GO#1 deterring potential predators or rather due to a higher frequency of non-reporting due to fear of getting in trouble for violating GO#1. Additionally, having a prohibition against visitation resulted in a significant number of GOMORs, especially for officers.

RECOMMENDATION: If a unit chooses to restrict or prohibit visitation, it should utilize methods to ensure victims of sexual assault are not dissuaded from reporting out of fear of punishment for a relatively minor GO#1 violation. Such methods could include increased training on sexual assault reporting and possible immunity for credible allegations of sexual assault. At a minimum, units should conduct anonymous surveys to test whether victims of sexual assault are not reporting incidents and whether the lack of reporting is due to the visitation prohibition.[26]

ISSUE: General Orders (GOs) and tobacco products

DISCUSSION: Haitian tobacco products vary widely in quality, and some products can produce "highs" for users. Writing a GO permitting tobacco use but forbidding use of intoxicating substances is fraught with problems, because Soldiers may not know the cigarettes they are purchasing may contain prohibited substances. Therefore, it is difficult to prove the requisite intent in such cases. The JTF-H GO #1, as written, did not prohibit obtaining Haitian tobacco unless you could argue that the intent was to produce a high. There were obviously health concerns with Haitian tobacco. GO #1 did prohibit eating local food without prior approval, and it should have done the same for tobacco, regardless of whether a Soldier intended to get high from the tobacco or not.

RECOMMENDATION: Apart from an outright prohibition on smoking or the purchase of Haitian cigarettes or other tobacco products, JAs should be aware of the legal challenge of writing a robust GO #1 regarding the use of intoxicating substances by Soldiers who smoke. An outright prohibition, unless approved by a commander, may be the best option.[27]

ISSUE: Use of non-judicial punishment (NJP) and summary courts-martial

DISCUSSION: Similar to CENTCOM's AO, the General Order (GO) applicable to OUR prohibited consumption of alcohol. However, there was a lot of alcohol, especially rum, available. As a result, there were instances where the command caught servicemembers consuming alcohol. The unit chose to discipline servicemembers who violated the GO by use of NJP or summary court-martial. This proved to be an effective disciplinary tool that did not drain unit resources.

RECOMMENDATION: Sustain.[28]

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[26] *Id.*
[27] 3d Sustainment Command (Expeditionary), Operation Unified Response, Staff Judge Advocate After Action Report, 23 April 2010, Deployed February 2010 – March 2010, Toussaint L'Ouverture Airport, Port-au-Prince, Haiti (hereinafter "3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10"; on file at CLAMO).
[28] 22d Marine Expeditionary Unit, Staff Judge Advocate After Action Report, 13 May 2010, Deployed 17 January 2010 – 1 April 2010, Operation Unified Response, Haiti Earthquake Relief (hereinafter "22d MEU (Haiti OUR) JAN 2010"; on file at CLAMO).

ISSUE: Various general orders

DISCUSSION: Soldiers and Airmen assigned to SOTF-S followed CENTCOM's General Order 1B. Airmen attached to SOTF-S also followed a more stringent Air Force General Order.

RECOMMENDATION: Ensure all personnel assigned in a joint environment understand their applicable general orders.[29]

ISSUE: Applicability of general orders

DISCUSSION: CJSOTF-A was not OPCON or TACON to CJTF-82 and, therefore, only the Central Command General Order applied to CJSOTF-A. Additionally, as a JMD organization with U.S. Air Force personnel assigned, the AFCENT General Order applied to those individuals within CJSOTF-A. These general orders were not identical and contained significant differences.

RECOMMENDATION: A clear understanding of the command relationships will mitigate confusion regarding general order applicability in a coalition and joint setting. Legal advisors should brief all personnel on their controlling general orders to avoid confusion.[30]

ISSUE: Applicability of different general orders in a joint environment

DISCUSSION: Air Force Special Operations Command (AFSOC) issued a general order applicable to all Airmen assigned to CJSOTF-AP. This general order was more stringent on visitation than Central Command's (CENTCOM) General Order 1B, which was applicable to the Soldiers of CJSOTF-AP. The Legal Advisor advised all CJSOTF-AP personnel of the varying general orders and applicability of the same.

RECOMMENDATION: Sustain. JAs in a joint environment must be aware of the differing general orders and their applicability. Ensure all personnel are familiar with and understand the subtleties of each.[31]

ISSUE: Need to reconsider General Order Number One (GO#1) prohibitions

DISCUSSION: In military operations since the Gulf War, the tendency has been to issue the same or similar GO#1 for every operation. This has been the "safe route" with regard to prohibited conduct, but there appears to be very little reconsideration of the need for particular prohibitions. For example, the prohibition against consuming alcohol in GO#1 stemmed from the Gulf War, where there were concerns that drinking would offend the sensibilities of the Saudis. This policy made sense for that operation, but may not make as much sense currently in Operation Iraqi Freedom (OIF), where many Iraqis sell and consume alcohol freely.

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[29] 2d Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 25 May 2010, Deployed July 2009 – January 2010, Camp Brown, Kandahar, Afghanistan (hereinafter "2/7 SFG(A), OEF AAR, JUL 09 - JAN 10"; on file at CLAMO).

[30] 7th Special Forces Group (Airborne), CJSOTF-A Legal Advisor OEF After Action Report, 26 May 2010 Deployed 22 July 2009 – 02 February 2010, Bagram, Afghanistan (hereinafter "7th SFG OEF AAR, JUL 09 - FEB 10"; on file at CLAMO).

[31] 10th Special Forces Group (Airborne), Group Judge Advocate OIF After Action Report, 19 May 2010, Deployed July 2009 – February 2010, Joint Base Balad, Iraq (hereinafter "10th SFG OIF AAR, JUL 09 - FEB 10"; on file at CLAMO).

RECOMMENDATION: It is time for fresh reconsideration of the rationale for GO#1 prohibitions. The current prohibitions are simply a reflexive repetition of past GO#1s without review of the underlying rationale. It is time to review this policy and determine if the rationale remains viable and whether and on what basis the command should carve out exceptions. The two-beer limit during the Super Bowl was an example of careful review under specific circumstances.[32]

ISSUE: Multiple general orders

DISCUSSION: There were multiple versions of GO#1 operating in Iraq, both from various levels of command (Central Command (CENTCOM), MNC-I, Multi-National Divisions) and the service component commands (U.S. Army Central Command (ARCENT), etc.). The lack of uniformity is confusing to service members and can generate perceptions of disparities between the services.

RECOMMENDATION: CENTCOM should coordinate with its component commands and issue a standardized general order applicable to joint forces in theater. While there may be a need to supplement GO#1 with service-specific rules in some cases, in general there is no need for different rules to apply to service members from different services at joint bases like VBC.[33]

ISSUE: In-theater pregnancy policy

DISCUSSION: One of the MND commanders sought to prohibit pregnancies within the Division area of responsibility (AOR) by issuing a policy making female Soldiers who got pregnant and male Soldiers who impregnated them subject to UCMJ action. The commander and staff considered the effects of pregnancies on their warfighting capabilities and the legality of such a prohibition. After deliberations of the advantage and disadvantages, the MND commander decided to adopt the policy. This policy soon made national headlines, resulting in substantial inquiries and scrutiny from both the media and the chain of command up to and including the President. Consequently, the command had to devote significant attention and resources to explaining and defending the policy. Ultimately, the policy itself diverted more of the Division's resources away from warfighting than the pregnancies the policy sought to prevent.

RECOMMENDATION: Review of technical legal considerations is insufficient when a policy the command is adopting has implications beyond the Division AOR. The Division needs to consider the broader audience when recommending adoption of a strategically significant Division level policy. The Division SJA needs to coordinate policy review with the Corps SJA before adoption at Division level. An issue like pregnancy may not be appropriate for placement in a punitive general order. Commanders may be able to address the issue better through a public statement to their Soldiers of the impact pregnancies can have on the unit mission. Commanders can make clear there are other career consequences for male and female Soldiers who affect the mission by engaging in sexual activity resulting in pregnancy.[34]

ISSUE: Revocation of Division general orders

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[32] I Corps & 2d Legal Support Organization, Combined Staff Judge Advocate OIF After Action Report, 16 May 2010, Deployed March 2009 – March 2010, Reserve Mobilization February 2009 – February 2010, Camp Victory, Iraq & Fort Lewis, Washington (hereinafter "I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10"; on file at CLAMO).
[33] *Id.*
[34] *Id.*

DISCUSSION: Upon the merger of commands into USF-I, the USF-I commander issued a new GO#1 for USF-I revoking all previous Corps and Division level general orders. The new order prohibited subordinate units from issuing their own versions of GO#1, but allowed Divisions to request exceptions to policy to implement their own visitation policies and policies for carrying concealed weapons.

RECOMMENDATION: Mergers of commands are an optimum time to revisit theater-level policies and general orders. The issuance of USF-I GO#1 one allowed the USF-I commander to revoke a Division commander's general order without directly overruling the specific controversial policy on pregnancy. This process effectively revoked Division policy while allowing the Division commander to save face.[35]

ISSUE: Applicability of GO#1 to CONUS Soldiers

DISCUSSION: The joint mobilization brigade (JMB) processes incoming and outgoing reservists. The JMB took the position that the prohibitions articulated in the GO#1 applicable to deployed Soldiers also applied to the JMB Soldiers. The I Corps military justice section did not support UCMJ action based on violations of GO#1 in the continental United States (CONUS).

RECOMMENDATION: Recognize units may not understand the limited applicability of GO#1 to CONUS reserve Soldiers.[36]

ISSUE: Joint Justice

DISCUSSION: Due to the joint setting there were a number of servicemembers under the command of individuals from a different service. Despite the language in UFOSR-A's GCMCA document, there was a significant difference amongst the various services on how that document was interpreted. This lead to a lack of clarity with regard to the authority of commanders to impose punishment, especially NJP, on members of different services.

RECOMMENDATION: In a joint setting develop a plan to ensure a clear understanding of the authority of commanders over servicemembers for whom they are responsible.[37]

VI.B. Judiciary

ISSUE: Rotation of judges

DISCUSSION: Due to the rotation of judges into theater, the TC often had to send court-martial documents to multiple judges, particularly when one judge performed the arraignment and a different judge presided over the trial.

RECOMMENDATION: Improve. Assign either a permanent (12-month deployment) judge or judge's clerk to Iraq.[38]

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[35] *Id.*
[36] *Id.*
[37] 82d Airborne Division, Staff Judge Advocate OEF After Action Report, 23 June 2010, Deployed June 2009 – June 2010, Regional Command—East, Bagram Airfield, Afghanistan (hereinafter "82D ABN OEF AAR, JUN 09 - JUN 10"; on file at CLAMO).

ISSUE: Judicial support

DISCUSSION: The judiciary provided excellent support to the MNC-I/MND-B area of operations (AO). The judges deployed on a two-month rotating basis. This seemed very effective, as the units were never without a military judge and were able to move cases through the system quickly. The judges were available, flexible, and understood the challenges associated with conducting cases in a deployed environment.

RECOMMENDATION: Sustain.[39]

ISSUE: Judicial support and docketing

DISCUSSION: The judges deployed on a rotating basis and covered Iraq, Kuwait, and Afghanistan. The judiciary provided adequate support to Afghanistan, although they seemed to spend the majority of their time in Iraq. Judges would usually attempt to docket all Afghanistan cases together, for a single visit to Bagram during their rotation in theater. Because of this, it was important for the TDS JAs to coordinate with each other on the docketing of cases, as the first case to be docketed typically dictated when any subsequent cases would be docketed during that judge's rotation to theater.

RECOMMENDATION: Sustain. Ensure the TDS JAs coordinate when docketing cases, and are in contact with judges early and often in order to stay apprised of when the current judge will be in Afghanistan.[40]

ISSUE: Insufficient number of judges

DISCUSSION: There is no military judge in theater. This makes it very difficult to convene a court-martial in theater. The argument that there is insufficient work in theater to justify a full-time judge is a self-fulfilling prophecy. Units divert cases from court-martial because there is no judge in theater. This gives the impression there is not enough court-martial work in theater to justify the presence of a judge.

RECOMMENDATION: BAF should have a full-time military judge.[41]

ISSUE: Judicial support

DISCUSSION: The judiciary provided more than adequate support. The judges deployed on a 90-day rotating basis and covered Iraq, Kuwait, and Afghanistan. Consequently, there was always a military judge in the Central Command (CENTCOM) area of operations (AO).

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[38] 2d Brigade Combat Team, 4th Infantry Division, OIF After Action Report, 15 September 2009, Deployed September 2008 – August 2009, Forward Operating Base (FOB) Echo, Diwaniyah, Qadisiyah Province, Iraq, Contingency Operating Base (COB) Basra, Basra Province, Iraq (hereinafter "2BCT, 4ID OIF AAR, SEP 08 - AUG 09"; on file at CLAMO).
[39] MNC-I TDS OIF AAR, MAY 08-MAY 09, *supra* note 2.
[40] CJTF-101 TDS OEF AAR, MAY 08-MAY 09, *supra* note 3.
[41] 1st Combat Support Brigade (Maneuver Enhancement), Task Force Warrior, OEF After Action Report, 20 October, 2009, Deployed June 2008 – September 2009, Bagram Airfield, Afghanistan (hereinafter "1 CSB (ME) OEF AAR, JUN 08 - SEP 09"; on file at CLAMO).

RECOMMENDATION: Sustain.[42]

ISSUE: Trial terms

DISCUSSION: The lack of fixed trial terms made it difficult for the TC to coordinate military justice actions.

RECOMMENDATION: Establish fixed trial terms.[43]

ISSUE: No permanent judge assigned to Afghanistan

DISCUSSION: Without a permanent judge, all Afghanistan based units with courts-martial matters have to wait until judges arrive on temporary duty (TDY). The timings and locations of the judges time in Afghanistan is not always conducive for units stationed furthest away from Bagram.

RECOMMENDATION: Improve. Scheduling of courts-martial in Afghanistan is entirely dependent on the judge's travel plans, so trial counsels have to make sure they keep on top of opportunities to advance matters.[44]

ISSUE: Choice of trial location

DISCUSSION: The Division tried two courts-martial in theater. One trial solely involved witnesses from COB Speicher. The other involved witnesses from outlying FOBs. The military judge did not want to hold the second trial on COB Speicher, a decision which was not based on operational considerations. This decision (had the trial been fully contested) would have resulted in the movement of witnesses, counsel, and the accused to the FOB where the judge was located.

RECOMMENDATION: Improve. Unless there are compelling reasons, judges should hold trials in theater where it causes the least amount of disruption for the participants.[45]

ISSUE: Lack of military judges in theater

DISCUSSION: Due to a lack of military judges and the unit's operational tempo, the battalion sent all military justice matters back to the rear, with the exception of those it handled with non-judicial punishment (NJP).

RECOMMENDATION: Sustain.[46]

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[42] SDC Kuwait TDS AAR, JUN 08-AUG 09, *supra* note 4.
[43] 159th Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate OEF After Action Report, 5 November 2009, Deployed December 2008 – December 2009, Bagram Airfield, Afghanistan (hereinafter "159th CAB, OEF AAR, DEC 08 - DEC 09"; on file at CLAMO).
[44] 3rd Brigade Combat Team, 10th Mountain Division, Brigade Judge Advocate OEF After Action Report, 29 January 2010, Deployed November 2008 – January 2010, Forward Operating Base Shank, Logar Province, Afghanistan (hereinafter "3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10"; on file at CLAMO).
[45] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 18.
[46] 2d Battalion, 3rd Marines, Battalion Judge Advocate OEF After Action Report, 14 April 2010, Deployed May 2009 – November 2009, Forward Operating Base Delaram, Nimruz Province, Afghanistan (hereinafter "2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09"; on file at CLAMO).

ISSUE: Judicial support

DISCUSSION: Through most of the deployment, there was a permanent judicial seat in MND-B's area of operations (AO). Military Judges would rotate in and out of theater to fill the seat, ensuring there was always a judge available in the MND-B AO. As a result, the judiciary provided excellent support to the MND-B AO. Towards the end of the deployment, the judiciary changed to a traveling circuit judge who was only in the AO for a one or two-week period to hear cases docketed for those weeks. While this did not adversely affect 1CD directly, the lack of presence of a full time judge gave trial defense services (TDS) a huge bargaining chip.

RECOMMENDATION: Have a permanent judicial presence in MND-B. It is understood that as of Spring 2010 a permanent judge will be assigned to theater on a yearly rotational basis.[47]

ISSUE: Military judge rotation in theater

DISCUSSION: During the deployment, military judges typically rotated into theater for four weeks at a time. Case development requirements and travel logistics made a four-week rotation too short. During one week, the military judge had to schedule seven courts-martial over a five-day period. As of the spring of 2010, a military judge was to deploy to Iraq for a 12-month rotation.

RECOMMENDATION: Improve. While four weeks is too short, a 12-month deployment is not necessary. Ideally, military judges should have a theater rotation schedule lasting sixty to ninety days. This would provide adequate flexibility for travel between Iraq and Kuwait and to schedule cases comfortably on the docket.[48]

ISSUE: Training by military judges

DISCUSSION: Many trial counsels in theater are new to military justice and may be getting their initial military trial experience in theater. When military judges have longer deployment rotations, they can provide training for trial and defense counsel in theater.

RECOMMENDATION: Sustain. Continue to make military judge advocacy training available to trial counsel and defense counsel in theater.[49]

ISSUE: Sentencing disparity in military justice system

DISCUSSION: The RC JAs mobilizing to support the Corps rear detachment were career civilian prosecutors with many years of civilian criminal trial experience. Generally, in civilian criminal practice, judges apply sentencing guidelines. In the court-martial setting, military judges have broad discretion to determine the appropriate sentencing. This results in significant differences in the sentences received for the same offense.

RECOMMENDATION: The Office of the Judge Advocate General (OTJAG) should consider whether to evaluate the disparity in sentencing and what authority would be required to establish uniform guidance.[50]

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[47] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 24.
[48] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[49] *Id.*

VI.C. Jurisdiction

ISSUE: Serious incidents sent back to home unit

DISCUSSION: The CJSOTF-A commander referred all serious incidents of misconduct back to group headquarters at Fort Bragg or to the force provider.

RECOMMENDATION: Sustain. The interests of the Soldiers involved in these incidents were better served by resources in the rear.[51]

ISSUE: Multiple SPCMCAs

DISCUSSION: ARCENT withheld the 1st Theater Sustainment Command (TSC)'s General Court-Martial Convening Authority (GCMCA). This resulted in two Special Courts-Martial Convening Authorities (SPCMCAs) for the brigade. Many times, the brigade received conflicting direction.

RECOMMENDATION: Improve. Look at relationship between ARCENT and the TSC. Either the OSJAs of the TSC and ARCENT should be combined, or the TSC should retain its authority as GCMCA.[52]

ISSUE: Changes to jurisdictional alignment

DISCUSSION: The military justice jurisdictional laydown continually changes as units undergo reassignment and have their command status changed. The authority for investigating and disposing of misconduct allegations did not always follow the rating chain. For instance, the MNC-I Commander was responsible for determining officer misconduct but was not in the Brigade's rating chain. Conversely, the Commander, TF 134, was in the rating chain but had no legal oversight or authority. This procedure changed with the change of Corps headquarters from XVIIIth Airborne Corps to I Corps. It is important to keep the jurisdictional scheme accurate and up to date.

RECOMMENDATION: Joint justice is particularly problematic. Meet with the Chief of Justice, MNC-I, early in the deployment to confirm or determine UCMJ jurisdiction.[53]

ISSUE: Jurisdictional alignment

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[50] *Id.*

[51] 3rd Special Forces Group (Airborne), Group Judge Advocate OEF After Action Report, 22 July 2010, Deployed January 2010 – May 2010, Bagram, Afghanistan (hereinafter "3rd SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).

[52] 4th Sustainment Brigade, OIF After Action Report, 28 August 2009, Deployed March 2008 – June 2009, Army Central Command (ARCENT), Camp Arifjan, Camp Beuhring, Camp Virginia, & Ali Al Saleem Air Base, Kuwait (hereinafter "4th SUST BDE (OIF) MAR 08 - JUN 09"; on file at CLAMO).

[53] 11th Military Police Brigade, United States Army Reserve (USAR), OIF After Action Report, 17 September 2009, Deployed August 2008 – June 2009, Camp Cropper, Iraq (hereinafter "11th MP BDE OIF AAR, AUG 08 - JUN 09"; on file at CLAMO).

DISCUSSION: Because of the nature of the Afghan area of operations (AO), many units have personnel spread out over multiple forward operating bases (FOBs). Additionally, there are often personnel from multiple different units on any given FOB. On occasion, the TDS office would have servicemembers come in for counseling because a commander from another unit would be trying to enforce Article 15 punishment on a service member that did not belong to his unit but committed misconduct on his FOB. It became necessary, on occasion, for the TDS office to check with the brigade trial counsel (TC) to ensure the commander actually had jurisdiction over the service member.

RECOMMENDATION: Sustain.[54]

ISSUE: Lack of "jointness" in the exercise of discipline

DISCUSSION: Although we live in an era of joint operations this does not extend to the realm of military justice. The services need to give up their parochial view of discipline and apply the UCMJ as it is written. Commanders need to maintain discipline in their joint units without having to confer with a single service commander who may be hundreds of miles away.

RECOMMENDATION: Improve.[55]

ISSUE: Area jurisdiction in Kosovo

DISCUSSION: Area jurisdiction is a strange animal to those unfamiliar with it. Additionally, there was no jurisdiction by TFF over U.S. Soldiers assigned to NATO billets.

RECOMMENDATION: Know the jurisdictional alignment. Do not assume that because someone wears a U.S. uniform, jurisdiction is a straightforward issue.[56]

ISSUE: Recognizing the different command relationships with your non-organic units

DISCUSSION: The BJA worked with MND-B to clarify his brigade commander's UCMJ authority over non-organic units. This resulted in MND-B granting UCMJ authority over all matters to the brigade commanders. There was a gentlemen's agreement struck between the brigade commanders that the decision whether to separate a Soldier, however, would rest with the parent unit commander.

RECOMMENDATION: Be prepared to deal with such jurisdictional issues and continually monitor and update the command authority lines as the unit's task organization changes.[57]

ISSUE: Knowledge of the task organization

DISCUSSION: The BCT S3 determines the BCT's task organization, including the operational control (OPCON) and administrative control (ADCON) relationships. The latter was important to the brigade legal section, as UCMJ authority follows the ADCON channels. It was unclear

[54] CJTF-101 TDS OEF AAR, MAY 08-MAY 09, *supra* note 3.
[55] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 41.
[56] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 6.
[57] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 8.

who had UCMJ jurisdiction over a number of smaller units (e.g., a finance company, civil affairs detachments) on the BCT's FOB.

RECOMMENDATION: Improve. JAs and paralegals need to understand the terms like "OPCON," "ADCON," "assigned," and "attached" and what they mean in terms of UCMJ authority and jurisdiction. TJAGLCS courses covering military justice (particularly deployed military justice) should address the practical implications of these relationships.[58]

ISSUE: Understanding of OPCON, ADCON, & TACON relationships

DISCUSSION: Under a CENTCOM FRAGO, MNSTC-I had tactical control (TACON) of its military personnel from all services, but the respective service component commands (ARCENT, AFCENT, NAVCENT, and MARCNET) retained administrative control (ADCON) over personnel from their respective services. Along with ADCON came authority to administer disciplinary action under the Uniform Code of Military Justice (UCMJ). Consequently, there was a separate UCMJ chain of command for each of the services, and each service in turn had its own servicing OSJA for military justice matters. The MNSTC-I commander, an Army lieutenant general, only had UCMJ authority over Army personnel. The MNSTC-I OSJA coordinated military justice matters with the appropriate servicing OSJA and referred them accordingly for proper disposition. Lastly, under the ITAM–Air Force division of MNSTC-I, there was an Expeditionary Air Force wing with its own commander that handled its own UCMJ matters. Thus, some Air Force personnel would fall under the expeditionary wing for UCMJ, while others fell under the AFCENT chain.

RECOMMENDATION: Sustain/Improve. Understand and appreciate the diverse UCMJ authorities for each of the services represented in a joint command. Since the cultures of each service are different, the respective services will handle various types of misconduct according their service's expectations of justice. While having different UCMJ chains may result in misperceptions of unfairness or inequality, the legal office should mitigate these misperceptions. If there is concern that the service commander exercising UCMJ authority from outside the joint command may not fully appreciate the impact of the misconduct, the legal office should ensure the service commander receives this information for appropriate disposition of the matter. The joint commander must be clear on what authorities he has over personnel from other services and engage the legal office early when there are concerns regarding misconduct, morale, and/or discipline. Follow the example of the Expeditionary Air Force wing as much as possible. Having local commanders on the ground with the ability to enforce military justice at the lowest level quickly and appropriately in accordance with their service's rules and customs would prevent most misunderstandings and misperceptions.[59]

ISSUE: Nonjudicial punishment (NJP) authority

DISCUSSION: The MNSTC-I CG, an Army lieutenant general, was the only "commander" within MNSTC-I who could exercise NJP authority over Army personnel. Therefore, all Article 15 packets for Army personnel had to go to the MNSTC-I commander for disposition. Although the MNSTC-I OSJA did not process a substantial number of Article 15s, this arrangement made it more difficult and time consuming to do so. Moreover, there was a chance leaders within the

[58] 2d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 4 & 9 February 2010, Deployed January 2009 – December 2009, Forward Operating Base Warrior, Kirkuk, Iraq (hereinafter "2-1 CAV, OIF AAR, JAN 09 - DEC 09"; on file at CLAMO).
[59] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 11.

various MNSTC-I staff sections and directorates were hesitant to submit NJP requests to the CG for relatively minor misconduct that would normally be the basis of a summarized or company grade Article 15.

RECOMMENDATION: Improve. At a minimum, organizations like MNSTC-I should have a headquarters company to, among other things, handle minor misconduct. Before sister-service misconduct is an issue, identify accessible component commands to which you can easily attach personnel.[60]

ISSUE: UCMJ jurisdiction over National Guard Soldiers testing positive on urinalysis

DISCUSSION: DoD policy limits Reserve Component mobilizations to twelve months. The 29th IBCT brought Soldiers on Title 32 orders two to three months in advance of Title 10 mobilization orders to conduct unit and individual training. Within 12 hours of arriving at NFH/MTC, the 29th IBCT was subject to a urinalysis. Thirty-four Soldiers tested positive. The commander sought to discipline the Soldiers under the UCMJ. However, because the Soldiers had only been on active duty for a short time, it was not possible to establish UMCJ jurisdiction over the offense.

Alternatively, the commander sought to release the Soldiers from active duty (REFRAD). The garrison command took the position that the commander could only release the Soldiers as "mission nonessential." This meant the unit would not get replacements. For this reason, the commander did not REFRAD the Soldiers. Instead, the commander issued letters of reprimand and deployed the Soldiers. The commander viewed the situation as leading to degraded unit morale and demonstrating a lack of support from the garrison.

RECOMMENDATION: Delay the urinalysis for a sufficient length on time after arrival at the MTC to establish UCMJ jurisdiction over National Guard Soldiers.[61]

ISSUE: UCMJ jurisdiction over Army Reserve Soldiers testing positive on urinalysis

DISCUSSION: The 29th IBCT deployed with some attached United States Army Reserve (USAR) Soldiers. In contrast with the National Guard Soldiers who conducted pre-mobilization training in Title 32 status, the USAR soldiers received pre-mobilization training in Title 10 status. Like the National Guard Soldiers, the USAR soldiers were subject to a urinalysis within 12 hours of arriving at the NFH/MTC. The USAR Soldiers who tested positive were subject to the UCMJ because they were on Title 10 orders for a sufficient amount of time to establish jurisdiction over the offense.

RECOMMENDATION: Sustain. Test Soldiers as soon as their time on Title 10 status allows the establishment of jurisdiction.[62]

ISSUE: Coordinating with attached units' parent commanders

DISCUSSION: The SOTF-N commander coordinated with the commander of the attached unit,

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[60] *Id.*
[61] 29th IBCT (HIARNG) OIF AAR, OCT 08 - AUG 09, *supra* note 12.
[62] *Id.*

who is OPCON to the battalion, on all disciplinary matters concerning Soldiers attached to the unit. A SF company from another Group was attached to SOTF-N and CJSOTF-AP. All interested parties were involved in the discussions with CJSOTF-AP Commander making the final decision in theater.

RECOMMENDATION: Sustain. Regardless of the jurisdictional structure, forward units should receive input from and keep a Soldier's parent organization informed prior to exercising UCMJ/Administrative authority.[63]

ISSUE: Reporting senior leadership misconduct to higher headquarters

DISCUSSION: The MND-B military justice section published a memorandum requiring commanders of all units falling under MND-B to inform the Commander, MND-B anytime there was an allegation about an E-8 or above committing misconduct. This requirement ensured the Commander, MND-B was aware of senior leadership misconduct and could exercise jurisdiction if he chose.

RECOMMENDATION: Rather than report every unsubstantiated rumor whispered amongst the Soldiers, the BJA opined that alleged offenses needed some competent evidence (i.e., sworn statement, eyewitness, caught in the act, etc.) to trigger the reporting requirement.[64]

ISSUE: Rear detachment jurisdiction

DISCUSSION: 30th HBCT established a rear detachment command before deploying. During the deployment, it attempted to establish Uniform Code of Military Justice (UCMJ) jurisdiction for the rear detachment commander. This proved to be near impossible to do while in theater and, as a result, 30th HBCT was unable to establish jurisdiction for the rear detachment command.

RECOMMENDATION: If your unit intends to have UCMJ jurisdiction for both the forward and rear detachment commander, look to establish it before deploying.[65]

ISSUE: Determining jurisdiction

DISCUSSION: The presence of a Soldier on your unit's FOB does not always mean he or she is a member of your unit.

RECOMMENDATION: Before seeking prosecution, JAs must ensure they are aware of the Soldier's parent unit in order to determine if there is jurisdiction.[66]

ISSUE: Prosecuting NG Soldiers

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[63] 1st Battalion, 5th Special Forces Group (Airborne), Battalion Judge Advocate OIF After Action Report, 11 March 2010, Deployed 25 July 2009 – 25 January 2010, Contingency Operating Base Speicher, Tikrit, Iraq (hereinafter "1/5 SFG OIF AAR, JUL 09 - JAN 10"; on file at CLAMO).
[64] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 14.
[65] *Id.*
[66] *Id.*

DISCUSSION: When a NG Soldier commits misconduct while on deployment, the unit must complete the prosecution of the Soldier while in theater. If not, the unit will lose jurisdiction over the Soldier upon return to the U.S.

RECOMMENDATION: JAs must manage the expectations of their commander when it comes to prosecuting NG Soldiers. Realize that in order to ensure your unit can fully prosecute a Soldier for misconduct, your unit may need to hand the Soldier over to another unit to ensure the Soldier remains in theater and on active duty.[67]

ISSUE: Jurisdictional alignment

DISCUSSION: The Division arrived in theater without a jurisdictional alignment chart. This made certain military justice decisions difficult.

RECOMMENDATION: Create a jurisdictional alignment chart as soon as possible.[68]

ISSUE: Using orders to determine jurisdiction

DISCUSSION: When Soldiers are temporarily under the administrative control (ADCON) or operational control (OPCON) of the Division or a brigade, it is sometimes difficult to determine who has jurisdiction over them for military justice purposes.

RECOMMENDATION: The Division asked for a copy of the Soldier's orders. If the orders dictated to whom the Soldier belonged for military justice matters, the Division would defer to that command. If the orders were silent, jurisdiction would impute to the Division or brigade, as appropriate.[69]

ISSUE: Investigation of senior leader misconduct

DISCUSSION: AdLaw was either the legal advisor or reviewer for all investigations involving senior leader misconduct. Its role in the process depended on where the misconduct originated (i.e. what unit). After the investigation into the misconduct, AdLaw forwarded the report to the SJA. The SJA then directed the next action. This might include preparing a GOMOR or relief for cause based on the CG's decision.

RECOMMENDATION: Sustain. AdLaw should coordinate with the BJAs regarding the authority of the commander to take action on senior leader misconduct matters. Where the CG has reserved jurisdiction over senior leader misconduct, the brigade commander should not take any action until the CG releases jurisdiction.[70]

ISSUE: Jurisdiction over National Guard (NG) Soldiers

DISCUSSION: During its deployment, the 1CD had a NG brigade as one of its subordinate units. The Division military justice section realized sending a NG Soldier back to the rear for court-martial when the unit was redeploying was logistically more complicated than it is with active duty Soldiers. The military justice section had to determine what unit could take

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[67] *Id.*
[68] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 18.
[69] *Id.*
[70] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 24.

responsibility for the case and exercise jurisdiction. The military justice section engaged First Army (East) for guidance and eventually discovered that they should send the case to First Army instead of sending it back with the Soldier's NG unit.

RECOMMENDATION: Be mindful of NG units and the complications involved with exercising jurisdiction over NG Soldiers. Prior to the redeployment of NG units, engage the appropriate active duty command they fall under in CONUS as early as possible to allow sufficient time to process transfers of jurisdiction. It is much easier to keep these Soldiers mobilized than it is to bring them back on Title 10 status to deal with any alleged misconduct.[71]

ISSUE: Jurisdiction over civilians

DISCUSSION: USF-I withheld jurisdiction over civilians in theater. Whenever civilian misconduct occurred in MND-B's AO, MND-B immediately reported it to USF-I. Divisions were free to handle minor misconduct issues by civilians and were expected to initiate bar letters as deemed appropriate.

RECOMMENDATION: Sustain.[72]

ISSUE: Jurisdictional issues on short notice deployments

DISCUSSION: 3d ESC is a modular headquarters unit the command can tailor with different subordinate units to match the mission. Sustainment units are "plug and play" right down to the detachment level. In Haiti, 3d ESC consisted of units from Forts Eustis, Lee, Hood, Stewart and Lewis among others. This made it hard for one JA office to coordinate the rear detachment jurisdictional issues. Some commanders placed their rear detachment officer in charge (OIC) on assumption of command orders for the duration of the deployment without understanding that this transferred disciplinary authority to that OIC. As a result, the unit's legal commanders were back in the US while the deployed unit commanders could not conduct any Article 15s or UCMJ matters. This was, by far, the biggest issue the 3d ESC SJA took away from this deployment. Full spectrum operations present the opportunity for short-notice deployments where you will not have the ability to set-up a provisional unit. Paralegals and JAs need to be able to brief their commanders on the options available to deal with this issue. While short notice deployments result in some unavoidable jurisdictional issues, early command consultation with the legal staff will mitigate them and allow for properly tailored disciplinary authority in theater and in garrison.

RECOMMENDATION: Improve. Units preparing for full spectrum operations need to be aware of this issue. Modular units on short notice deployments can face jurisdictional and military justice problems due to the lack of time to set up provisional unit structures. As an alternative, the command can transfer Soldier in the rear to another unit for administration of UCMJ. It is not preferable to keep the UCMJ authority at home station requiring the command to transfer all deployed disciplinary actions through the mail. Units need to be aware of the military justice implications of putting the rear detachment OIC on assumption of command orders.[73]

ISSUE: Serious incidents sent back to home unit

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[71] *Id.*
[72] *Id.*
[73] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 27.

DISCUSSION: The CJSOTF-A commander referred all serious incidents of misconduct back to group headquarters at Fort Bragg or to the force provider.

RECOMMENDATION: Sustain. Resources in the rear better served the interests of the Soldiers involved.[74]

ISSUE: Delegation of authority over senior leader misconduct

DISCUSSION: The MNC-I commander allowed his subordinate Division commanders to handle their own senior leader misconduct. General officers commanded some of MNC-I's subordinate support brigades (BDEs). Initially, the MNC-I commander delegated to these commanders jurisdiction over their officer and senior enlisted misconduct matters. With respect to these misconduct cases, the MNC-I commander assigned these senior BDE commanders a MNC-I General Officer (GO) mentor, either the Corps Chief of Staff, the Deputy Commanding General – Support (DCG-S) or the Deputy Commanding General – Operations (DCG-O). Eventually the MNC-I commander revoked this delegation. The basis for revocation was to maintain greater oversight and visibility over the disposition of senior misconduct cases.

RECOMMENDATION: Sustain. Continue senior GO mentorship related to exercising UCMJ authority over officers and senior enlisted personnel. While it is important to allow GO-level subordinate commanders to exercise jurisdiction over their senior leader misconduct, the issue becomes visibility and notification, particularly when the cases have the potential to have strategic impact. It is important for the Corps OSJA to ensure subordinate commands, particularly RC units, are considering all the relevant issues with regard to disposing of senior leader misconduct.[75]

ISSUE: Need for a dedicated MEJA attorney

DISCUSSION: MEJA is a specialized area of law that trial counsels generally do not practice in a garrison environment. MNC-I was responsible for all coordination with DoJ for MEJA. There was a steady follow of potential MEJA cases due to civilian misconduct. MNC-I made approximately 15 to 20 MEJA referrals to DoJ, and units barred approximately 400 civilians per year from theater. The MNC-I military justice section designated one of the RC JAs who had extensive civilian prosecutorial experience as the MEJA attorney. This JA developed strong subject matter expertise in MEJA.

RECOMMENDATION: Sustain. As U.S. forces draw down, the number and proportion of contractors in theater is increasing. There is a need for a dedicated MEJA attorney at the Corps/USF-I level. Developing expertise requires proper resourcing and formal training with a focus on motions practice.[76]

ISSUE: Court-martialing civilians

DISCUSSION: There were two prevailing opinions with regard to court-martialing civilians accompanying the force. One view was to push DoJ to deal with civilian misconduct using

[74] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 30.
[75] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[76] *Id.*

MEJA and let deployed JA assets focus on military justice issues. The other view espoused the desire to find a strong case for civilian court-martial and get an appellate review of the process.

RECOMMENDATION: The MNC-I military justice section was not resourced to try a civilian court-martial. If the Corps is committed to court-martialing civilians, the deployed military justice section needs more resources and training, as such courts-martial are likely to include significant motions practice.[77]

ISSUE: Coordination with DOJ in MEJA cases

DISCUSSION: Initially, the MNC-I MEJA attorney coordinated directly with DoJ on potential MEJA cases. Subsequently, MNF-I and CENTCOM insisted on reviewing potential MEJA cases and coordinating with DoJ. This resulted in lengthy delays in the process, with the accused civilian sitting in limbo long after removal from his or her contractor duties.

RECOMMENDATION: Improve. Allow direct communication between the MNC-I trial counsel and DoJ trial attorneys. The process of MEJA prosecution needs to be rapid. The most effective method is for direct communication between the trial counsel and the DoJ attorney to dialogue about the relevant facts in order for DoJ to make a rapid determination regarding prosecution. If DoJ declines to take a MEJA case, the Corps military justice section needs to prepare to prosecute the case before the evidence gets stale. Direct communication also allows the MNC-I MEJA attorney to develop a working relationship with DoJ, which can help him or her anticipate whether DoJ will be inclined to take a particular case. Moreover, if DoJ takes the case, its trial attorneys will want to work with a trial counsel in theater to develop the case.[78]

ISSUE: Splitting General Court-Martial Convening Authority (GCMCA)

DISCUSSION: On Fort Lewis, the I Corps commander has GCMCA as a corps commander and separately as a post commander. In garrison, the GCMCA is united in one individual. However, when the Corps deployed to Iraq, the I Corps commander went forward as a three-star GCMCA and the garrison commander assumed duties as GCMCA authority in the Corps commander's absence on Fort Lewis.

RECOMMENDATION: Sustain. The “two-flag” concept allowed for the effective exercise of military justice in the Corps commander's absence.[79]

ISSUE: Oversight of smaller separate units

DISCUSSION: MNC-I experienced a significant amount of misconduct from separate battalions and companies. Often, these units shifted around the battlefield and fell under different commanders throughout their deployment cycle. One Military Police company, for example, had four or five different battalion commanders. The result was a lack of oversight and consistency in discipline.

RECOMMENDATION: Improve. The focus on modularity and the need to build flexibility creates many small separate units isolated in theater. Determine where continuity of command has broken down and look for way to maintain and enhance command structure over small

[77] *Id.*
[78] *Id.*
[79] *Id.*

separate units operating in theater. The Corps and Division military justice sections need to reach out to these units to ensure oversight of discipline issues.[80]

ISSUE: Jurisdiction over joint personnel

DISCUSSION: The CJTF decided to allow sister services to discipline their personnel assigned to the task force. However, the CJTF also thought that it technically had jurisdiction over those personnel should it choose to exercise it.

RECOMMENDATION: Sustain. Allowing the sister services to exercise UCMJ authority over their personnel worked well, and it probably avoided a political battle. Note that this may become more complicated now that the JTF-435 and CSTC-A commanders have requested GCMCA.[81]

ISSUE: Jurisdiction over conventional Army personnel

DISCUSSION: At the CJTF's request, USFOR-A attached all units in theater to the CJTF for military justice purposes only. This was to ensure that it really had the jurisdiction it was supposed to have as the national support element.

RECOMMENDATION: Sustain. If there are doubts about whether or not your headquarters has the jurisdiction it needs to maintain good order and discipline, remedy those issues before cases get dismissed. This is especially critical in Afghanistan where the C2 relationships are complicated and dynamic.[82]

ISSUE: DoJ attempting to exercise jurisdiction over Soldiers for misconduct committed in theater

DISCUSSION: Soldiers conspired to sell government contracted fuel. The CJTF wanted to court-martial the Soldiers in theater. DoJ wanted the CJTF to redeploy the Soldiers and the witnesses so it could try the case in the U.S. DoJ pointed to a MOA between DoJ and DoD giving DoJ primacy in fraud cases; however, this MoA does not apply in theater. The CJTF eventually agreed to allow DoJ to take the case, but DoJ made unrealistic demands to redeploy the Soldiers immediately to the U.S. This was unworkable as the Soldiers were stationed in Germany, and their families lived there. As of the CJTF's redeployment, DoJ and DoD had not resolved the issue.

RECOMMENDATION: Improve. In hindsight, the CJTF should have retained jurisdiction on the case and court-martialed the Soldiers in theater. This would have been faster, and it would have sent a message to the rest of the force.[83]

ISSUE: General Court-Martial Convening Authority (GCMCA) confusion

DISCUSSION: USFOR-A delegated GCMCA to CJTF-82. This delegation caused confusion among lateral organizations whose commanders outranked the CJTF-82 commanding general.

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[80] *Id.*
[81] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 37.
[82] *Id.*
[83] *Id.*

RECOMMENDATION: In circumstances where GCMCA is delegated to a commander that is outranked by commanders of lateral organizations, the delegation should address this so as to eliminate any confusion.[84]

VI.D. Magistrates

ISSUE: Availability of magistrates in Kuwait

DISCUSSION: The BCT had misconduct at Camp Buehring, Kuwait that justified pretrial confinement. However, the only available magistrate in Kuwait was at Camp Arifjan. This magistrate required the Soldier, counsel, and witnesses to travel to Camp Arifjan for the pretrial confinement hearing.

RECOMMENDATION: Improve. Magistrates should conduct telephonic pretrial confinement hearings once they have received all paperwork electronically. Nothing in the Rules for Court-Martial (RCM) requires an in-person hearing.[85]

ISSUE: Lack of 24-hour magistrate cover

DISCUSSION: BAF had two military magistrates, but they were not on 24-hour call. This caused delay in getting authorizations signed.

RECOMMENDATION: Improve, or let commanders exercise this function as allowed by the UCMJ.[86]

ISSUE: Appearance of impartiality of part-time military magistrates

DISCUSSION: It was quite common at Camp Arifjan for the command to appoint one of the administrative law (AdLaw) JAs as the magistrate or as the legal advisor to the investigating officer of an Article 32 hearing. In spite of its convenience, this practice was problematic. At Camp Arifjan, the AdLaw JAs appeared to be almost indistinguishable from the TCs to anyone outside the Judge Advocate General's Corps (JAG Corps) community. Specifically, the AdLaw JAs and the TCs worked in the same building with offices right next to each other. They ate meals together and did physical training (PT) together every day. They also both worked for and answered to the Staff Judge Advocate (SJA). This gave the appearance to outside observers, especially an accused, that they were on the same team and lacking impartiality. The Kuwait TDS office took advantage of this situation and was successful on several occasions in getting the military judge to award Article 13 credit for pre-trial confinement (PTC).

RECOMMENDATION: Improve. Appoint as magistrates and legal advisors officers who are not closely associated with the TCs or who are from another command. TDS JAs should be cognizant of this issue and make Article 13 motions when appropriate.[87]

ISSUE: Confinement jurisdiction and procedures

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[84] *Id.*
[85] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 38.
[86] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 41.
[87] SDC Kuwait TDS AAR, JUN 08-AUG 09, *supra* note 4.

DISCUSSION: It may be necessary to confine both service personnel and civilian contractors.

RECOMMENDATION: Ensure that you understand the correct jurisdiction, authorizations and procedures for both types of confinement.[88]

ISSUE: Use of magistrate issued search authorizations

DISCUSSION: A search authorization issued by a magistrate is typically much more difficult for a defense counsel to get a military judge to throw out of court than a command authorization. Due to the availability of magistrates during the deployment, the TC found it was almost as easy to obtain a search authorization from a magistrate as obtaining one from the command.

RECOMMENDATION: Magistrate-issued search authorizations are better for prosecution than command-issued authorizations. When possible, have the unit freeze the scene and obtain a search authorization from a magistrate.[89]

ISSUE: Keeping current on magistrate training

DISCUSSION: The OSJA had three magistrates from the administrative law section who served as magistrates during deployment. None of them had military justice experience. They received significant training before deploying. However, once in theater it is easy for this knowledge to atrophy.

RECOMMENDATION: Ensure magistrates receive regular training in theater to keep their knowledge current.[90]

ISSUE: Lack of magistrates

DISCUSSION: Camp Dwyer was a new contingency operating base (COB). As a result, there were no magistrates at Camp Dwyer during RCT-3's deployment. In order to correct this, the RJA and S-4 wrote base regulations for Camp Dwyer, which allowed for the set up of magistrates in the future if needed.

RECOMMENDATION: Sustain.[91]

ISSUE: Appointment of multiple Part-Time Military Magistrates (PTMMs)

DISCUSSION: 1CD utilized up to five JAs to serve as PTMMs. These magistrates were both from the active duty and mobilized reserve ranks. The majority of the magistrates' work involved the rendering of decisions on authorizations to search, but they also conducted several pre-trial confinement reviews. Since there were multiple magistrates, there was always a magistrate

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[88] 326th Area Support Group, Task Force Jayhawk, Staff Judge Advocate OIF After Action Report, 3 March 2010, Deployed November 2008 – October 2009, Victory Base Complex, Iraq (hereinafter "326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09"; on file at CLAMO).
[89] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 14.
[90] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 18.
[91] Regimental Combat Team – 3, 2d Marine Expeditionary Brigade, Regimental Judge Advocate, OEF After Action Report, 14-15 April 2010, Deployed April 2009 – October 2009, Camp Dwyer, Helmand Province, Afghanistan (hereinafter "RCT-3, OEF AAR, APR 09 - OCT 09"; on file at CLAMO).

available at all hours to hear matters. Having multiple PTMMs also came in handy when one of the primary PTMMs was conflicted out of a case due to his duty as a legal advisor to an ongoing investigation.

RECOMMENDATION: Division OSJAs should appoint an adequate number of PTMMs. Reserve JAs are a solid choice if they have previous criminal law experience.[92]

ISSUE: Part-time military magistrates (PTMMs)

DISCUSSION: MNC-I appointed two PTMMs at the Corps level. One of them had prior military justice experience, but the other did not. Inexperienced CPTs operating as magistrates in theater often will need guidance. The normal OSJA technical chain cannot provide this guidance due to conflicts of interest. The magistrate must seek guidance from the supervising military judge. However, pre-trial confinement and searches are generally time sensitive, and the military judge is often not in theater. Access to military judges in Germany is difficult at times.

RECOMMENDATION: There needs to be at least two magistrates, and one needs to be a major (MAJ) with trial and magistrate experience. The other can be a CPT. In this way, the MAJ will have the necessary experience and can mentor the CPT.[93]

VI.E. Provisional Units

ISSUE: Standing up provisional units

DISCUSSION: BCTs deploying to Afghanistan or Iraq generally have enough time to stand up any provisional units that they need, but BJAs have to make sure that commanders clearly understand who has control over which personnel when the provisional unit is officially up. Also, it is important to educate commanders on what authority the provisional unit will have under the UCMJ and to know how the provisional units/rear detachment are going to wind down after redeployment. One recommendation is to wait until the end of block leave to stand down the provisional unit.

RECOMMENDATION: BJAs and SJAs have to start the education process early on standing up provisional units. Commanders are generally completely reliant upon their legal advisors in such matters and may not appreciate the subtle points associated with how UCMJ will operate between the main body and the provisional units or rear detachment.[94]

ISSUE: Provisional status for the battalion rear detachment

DISCUSSION: Before the headquarters element deployed, the rear detachment obtained provisional status. The status took three months to achieve. With the headquarters and other elements of the brigade deployed to different areas of operations, the rear detachment had to deal with many different echelons and commands.

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[92] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 24.
[93] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[94] 2010 Brigade Judge Advocate (BJA) Symposium, 10-12 May, 2010, The Judge Advocate General Legal Center and School (TJAGLCS), Charlottesville, VA (hereinafter "BJA Seminar, combined AAR, 10-12 MAY 2010"; on file at CLAMO).

RECOMMENDATION: Sustain. With provisional status, the forward deployed headquarters did not have to deal with routine rear detachment issues. Provisional status allowed the rear to take independent action. Before deployment, take a close look at the justification for the provisional unit. Without provisional status, the responsibility would probably fall to the next higher in the chain of command.[95]

ISSUE: Establishing provisional units that go forward with the unit

DISCUSSION: Establishing provisional units presents a host of issues. It is not common for units to establish provisional units that deploy with the unit. No one had done this before and it raised questions about where the personnel and equipment were coming from. There was also the question of UCMJ authority, as the units were created before the orders were finalized by FORSCOM, and they were made up of personnel from multiple companies.

RECOMMENDATION: The JAG Corps should create and post an information paper on JAGCNET with the requisite steps to establish provisional units along with sample requests.[96]

ISSUE: Confusion surrounding the procedure for creating provisional units

DISCUSSION: The OSJA created three provisional units before deployment. The JAs used the OTJAG Criminal Law Division's "Deploying Justice" handbook as a guide. They found the guide helpful for its examples but thought it lacked requisite information on the procedure.

RECOMMENDATION: Revise the handbook and/or add a one-hour block of instruction on provisional units at the Military Justice Managers course at TJAGLCS. Reach back to subject matter experts before deployment.[97]

ISSUE: No time to set up provisional units

DISCUSSION: Military units deploying to Iraq and Afghanistan know about the deployment well in advance and can set up provisional units to deal with military justice and jurisdiction issues. The Haiti deployment exposed the danger of being unable to set up provisional units when units have to be "out the door" in less than 48 hours. There was simply no time to set up provisional units.

RECOMMENDATION: Modular units on short notice deployments can face jurisdictional and military justice problems due to inability to set up provisional unit structures.[98]

ISSUE: Provisional units

DISCUSSION: I Corps stood up "Task Force Stryker" as a provisional brigade-level unit to oversee the provisional battalion-level rear detachment units.

RECOMENDATION: Sustain. Given the number of rear detachment personnel on Fort Lewis, it was helpful to have an O-6 SJA. Start this process six months in advance, as the establishment of provisional units requires approval by Forces Command (FORSCOM).[99]

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[95] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 52.
[96] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 43.
[97] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 18.
[98] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 27.

VI.F. Searches

ISSUE: Searches conducted by military police (MPs)

DISCUSSION: Without direct supervision, MPs rarely conducted legally sufficient searches. Many military police (MPs) are not competent to conduct independent searches.

RECOMMENDATION: Improve. Understand and prepare for unique search and seizure issues. Do not assume your MPs will know how to conduct a proper search. Develop a training plan to teach MPs the basics of search and seizure.[100]

ISSUE: Searches of computers

DISCUSSION: In addition to requirements listed in a "welcome banner," Multi-National Corps - Iraq (MNC-I) issued a policy memorandum specifically stating Soldiers or civilians had no "standing" to object to a search of military-owned computers and that the use of a government-owned computer for e-mail did not create a reasonable expectation to privacy within it.

RECOMMENDATION: Sustain. The MNC-I policy memorandum is clear. There was no doubt in theater whether commands could inspect a Soldier's NIPR email.[101] [Note from TJAGLCS Criminal Law Department: Additionally, the best practice is to ensure that such banners explicitly notify the user that monitoring and searches of government computers, networks, and e-mail may be conducted for "law enforcement purposes".]

ISSUE: Improper use of health & welfare inspections

DISCUSSION: Commanders must not use health and welfare inspections as a subterfuge for searches for contraband. Commanders continue to be concerned about the presence of contraband (alcohol, pornography, and drugs) in living areas. There is a temptation for them to misuse health and welfare inspections as cover to search for contraband.

RECOMMENDATION: The CJA should educate commanders as to the proper use of health and welfare inspections, as well as review and revise, where appropriate, the inspection policies.[102]

ISSUE: Search & seizure

DISCUSSION: Correct documentation must support probable cause searches of Soldiers and their living areas. Identify FOB commanders and military magistrates and ensure they are easy to contact so units can obtain the correct search documentation when needed.

RECOMMENDATION: Review the process for obtaining search authorizations from FOB commanders and military magistrates.[103]

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[99] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[100] 4th SUST BDE (OIF) MAR 08 - JUN 09, *supra* note 52.
[101] 4th Combat Aviation Brigade (4th CAB), 4th Infantry Division (Mechanized), OIF After Action Report, 28 August 2009, Deployed June 2008 – June 2009, Multi-National Division – Baghdad (MND-B), Camp Taji, Iraq (hereinafter "4th CAB OIF AAR, JUN 08 - JUN 09"; on file at CLAMO).
[102] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 53.

ISSUE: Authority to authorize searches

DISCUSSION: Billeting, much like everything else in a deployed environment, is fluid and evolving. The TDS office realized it was important for JAs to determine early on in the deployment who could authorize searches. This was critical for advising servicemembers, as well as for spotting issues in cases.

RECOMMENDATION: Sustain.[104]

ISSUE: Expectation of privacy

DISCUSSION: A large percentage of enlisted service members on BAF reside in either "B" huts, which are plywood buildings with cordoned off cubicle like sections, or in large open tents. These communal type living conditions raised the issue of the service members' expectation of privacy with regard to searches. It is critical for defense counsels (DCs) to study up on expectation of privacy and think early on about how to argue it if it comes up in a case.

RECOMMENDATION: Sustain.[105]

ISSUE: Reasonable expectation of privacy

DISCUSSION: Living conditions in the deployed environment are much different from those in continental United States (CONUS). Sometimes servicemembers lived in multiple-person dwellings, such as large tents. The RCT-8 JAs made sure they were well versed in search and seizure law and always took into consideration what might constitute a reasonable expectation of privacy in the deployed environment.

RECOMMENDATION: Sustain.[106]

ISSUE: Coordination for probable cause searches

DISCUSSION: There were no Army military police or Criminal Investigatoin Division (CID) personnel on the FOB. The BCT legal NCOIC established a good working relationship with the Air Force security force, which had responsibility for the FOB security mission as well as military police investigations. The NCOIC coordinated with the security force to conduct probable cause searches rather than have commanders conduct the searches. The BJA, in turn, assisted the security force by providing legal advice on investigations.

RECOMMENDATION: Sustain. Use trained investigators to conduct searches when possible.[107]

ISSUE: Authority to conduct searches

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[103] *Id.*
[104] MNC-I TDS OIF AAR, MAY 08-MAY 09, *supra* note 2.
[105] CJTF-101 TDS OEF AAR, MAY 08-MAY 09, *supra* note 3.
[106] Regimental Combat Team 8 (RCT-8), Multi-National Force – West (MNF-W), Deputy Regimental Judge Advocate, OIF After Action Report, 18 December 2009, Deployed January 2009 - October 2009, Al Asad, Iraq (hereinafter "RCT-8, OIF AAR, JAN 09 - OCT 09"; on file at CLAMO).
[107] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 58.

DISCUSSION: Some units owned barracks space that also housed Soldiers from other units. When the owning commander wanted to conduct a search (e.g., because of suspected drug or other black market activity), the BJA told them to inform the commander of the Soldier first.

RECOMMENDATION: Sustain. Ensure commanders are clear on search authorities.[108]

ISSUE: Using inspections as a subterfuge to a search

DISCUSSION: Young commanders, especially in the NG, often try to use inspections as means of gathering evidence when they have probable cause (PC). Conducting an inspection as a quest for evidence when you have PC can lead to evidence being inadmissible in court.

RECOMMENDATION: The brigade legal section made sure it educated 30th HBCT's young commanders early on and reminded them periodically throughout the deployment of the need to obtain a search authorization when they have PC.[109]

ISSUE: Searches of civilians and contractors

DISCUSSION: When units suspected civilian misconduct on FOBs, they immediately wanted to conduct a search. This raised the issue as to whether non-U.S. citizen civilian contractors (e.g. interpreters) were entitled to Fourth Amendment rights in regards to search and seizure. Some commanders did not want to obtain a valid search authorization and wanted to be able to search for and seize contraband from civilians whenever they had suspicion of misconduct. The law appears to be unclear as to whether non-U.S. citizen civilian contractors are entitled to Fourth Amendment rights on U.S. military bases. The BJA chose to err on the side of caution and advised commanders to treat civilians just as they would a Soldier in these situations. They made sure they had probable cause and obtained a valid search warrant.

RECOMMENDATION: Sustain. It is a good idea to err on the side of caution when it comes to searches and seizures, especially with non-U.S. citizen civilians. Failure to do so just adds fuel to any potential claim of mistreatment.[110]

ISSUE: Difficulty in advising another service's personnel on searches

DISCUSSION: The Air Force had responsibility for security on COB Speicher. Often times they would conduct health and welfare inspections that appeared to be subterfuges for searches. There was no Air Force judge advocate advising the security personnel. When the Division trial counsel tried to explain the law surrounding searches, the security personnel ignored the advice.

RECOMMENDATION: Assign a "regional judge advocate" for each service responsible for providing legal advice to their personnel, especially those who perform security and military police duties.[111]

ISSUE: Use of affidavits in support of search authorizations

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[108] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 10.
[109] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 14.
[110] *Id.*
[111] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 18.

DISCUSSION: RCT-3 would obtain affidavits, if possible, before obtaining a search authorization in order to ensure there was unquestionable probable cause.

RECOMMENDATION: Sustain.[112]

ISSUE: Computer searches

DISCUSSION: With the publication of the warning banner on government computers, it is generally not necessary to obtain a search warrant before searching a government computer.

RECOMMENDATION: In an abundance of caution, 1CD still obtained search warrants from a magistrate anytime they wanted to search a government computer.[113]

VI.G. Trial Defense Service (TDS)

ISSUE: Availability of Trial Defense Service (TDS)

DISCUSSION: Insufficient TDS services in theater led to delays in processing courts-martial and other administrative actions.

RECOMMENDATION: Improve. Generally, delays in the court-martial process related to the availability of TDS attorneys. Increase the number of TDS attorneys in theater. Do not deploy TDS attorneys for any time less than 12 months. Unless critical, TDS attorneys should not leave the area of operations for training. Finally, assign TDS attorneys to a geographical region. There are delays for TDS attorneys traveling between the Iraq and Afghan theaters, thus creating delays in the trial process.[114]

ISSUE: Deploying with pending cases

DISCUSSION: Some TDS JAs deployed into theater with several cases still pending at their home duty station. This resulted in some of the JAs traveling multiple times back to the United States or Germany to resolve matters in those cases. This tended to be a waste of resources and left the TDS office short staffed at times.

RECOMMENDATION: Improve. Units should better manage when they will bring TDS JAs into theater and notify them as soon as possible. TDS JAs in turn must make a greater effort to dispose of cases before deployment.[115]

ISSUE: Need for a deputy regional defense counsel

DISCUSSION: The regional defense counsel (RDC) covered the entire Central Command (CENTCOM) area of operations (AO). Although based out of Camp Victory, the RDC often

[112] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 91.
[113] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 24.
[114] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 101.
[115] MNC-I TDS OIF AAR, MAY 08-MAY 09, *supra* note 2.

traveled to Kuwait and Afghanistan. The occasional absence of the RDC made it difficult to get timely advice and assistance from the RDC office.

RECOMMENDATION: Improve. Appointing a field grade officer as deputy RDC to handle issues such as assigning cases and advising when to go to the media would be very beneficial. The RDC could fill this position by giving collateral duties to the senior defense counsel (SDC), as long as the SDC is a field grade officer.[116]

ISSUE: TDS Coverage

DISCUSSION: The TDS office in Bagram did not have enough attorneys. This presented many issues and led the brigade to contact TDS in Iraq to arrange consultations for its Soldiers.

RECOMMENDATION: JAs should prepare commanders for extended periods of time (often up to two to three weeks) without TDS support while OEF is still an economy of force mission.[117]

ISSUE: Civilian attorneys

DISCUSSION: The TC did not know the procedures for bringing a civilian attorney into theater and had to contact division.

RECOMMENDATION: Improve. Get information before deployment on the process for bringing civilian witnesses and attorneys into theater. Start the process at least 45-60 days before trial.[118]

ISSUE: Senior defense counsel (SDC)

DISCUSSION: During the 12-month deployment, the SDC rotated out. The first half of the deployment, the SDC heading up the CJTF TDS office was a reserve lieutenant colonel. Midway through the deployment, a senior captain replaced the lieutenant colonel as SDC. While the TDS office was still able to receive significant support, where issues did arise the TDS office was without sufficient rank or authority to adequately pursue an appropriate remedy or compromise. Specifically, while the field grade officer was able to obtain funding and approval for an additional TDS waiting area, the subsequent TDS office has been unsuccessful, to date, in obtaining adequate support to set up an additional, and necessary, TDS office outside of Bagram.

RECOMMENDATION: Improve. Have a major or higher fill the SDC position.[119]

ISSUE: Additional attorney and paralegal

DISCUSSION: The CTJF TDS office at BAF consisted of three JAs and one paralegal. The TDS office provided services to all of Afghanistan. Towards the end of the deployment, they were looking into opening an additional TDS office in Kandahar, Afghanistan, which one of the three TDS JAs located at BAF would be responsible for running. Additionally, the TDS office was short JAs at times, when conflict cases arose, or one of the three attorneys were on temporary duty (TDY) or leave. Whenever large conflict cases occurred, JAs from Iraq and Kuwait had to

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[116] *Id.*
[117] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 1.
[118] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 38.
[119] CJTF-101 TDS OEF AAR, MAY 08-MAY 09, *supra* note 3.

fly into Afghanistan. Furthermore, the TDS paralegal was out of the office at times taking care of experts, civilian defense counsel, witnesses, and other logistical and administrative tasks. Providing an additional JA and an additional paralegal, especially should TDS be successful in opening an additional office outside of Bagram, would likely minimize these problems.

RECOMMENDATION: Improve. Provide an additional JA and an additional paralegal to the CJTF TDS office.[120]

ISSUE: Accountability of TDS personnel

DISCUSSION: Typically, in a combat zone, when a unit sustains an attack, it will take accountability of all personnel in order to determine if there are any casualties. During the first portion of the deployment, the TDS office discovered that the CJTF headquarters (HQ) was not taking accounting for the TDS JAs after an attack on BAF. The TDS office worked with the CJTF Office of the Staff Judge Advocate (OSJA) to ensure the CJTF was accounting for the TDS personnel after each attack.

RECOMMENDATION: Sustain.[121]

ISSUE: Travel of TDS personnel

DISCUSSION: Travel in Afghanistan is extremely difficult. Most travel by the TDS office was through use of air assets, as ground travel was impractical. Rotary wing aircraft is often the most convenient method of travel for FOBs close to Bagram, but it is critical for the TDS office to establish a good relationship with the Air Officer early on in the deployment, or "piggy back" off of the OSJA if they have established a good relationship with the Air Officer in order to arrange for rotary transport. To many locations, fixed wing aircraft is the only means of travel available, which requires TDS personnel to have an understanding of the process for properly reserving a seat on fixed-wing flights.

RECOMMENDATION: Sustain.[122]

ISSUE: Client and witness access

DISCUSSION: Travel in Afghanistan is challenging. Consequently, the TDS office had to improvise in order to have access to their clients and witnesses. Often, the TDS office would work with the brigade TC to arrange for an accused to remain at BAF until the date of trial. In regards to witnesses, the TDS office effectively worked with units either to have them all available for the DC to interview when he visited the FOB, or to get the unit to send witnesses in a group to BAF for the DC to interview.

RECOMMENDATION: Sustain.[123]

ISSUE: Use of Article 32 hearing

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[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*

DISCUSSION: The DC should treat Article 32 hearings as a discovery tool. This is especially the case in a deployed environment such as Afghanistan, where the Article 32 may be your only opportunity to get all the witnesses together in one place before trial. The DCs in the CJTF TDS office ensured they requested all potential witnesses and examined all evidence for the Article 32 hearing.

RECOMMENDATION: Sustain.[124]

ISSUE: Pre-trial negotiations

DISCUSSION: Commanders do not like the logistical burden brought on by trials (or the loss of Soldiers available for the fight). When strategizing cases, the TDS office always considered the environment. Contesting a case in theater is much more difficult on the unit than in a garrison environment and places significant limitations on the government. TDS JAs should therefore strongly consider contesting cases. However, the TDS office was able, in many cases where they sought a pre-trial agreement, to get much more favorable pre-trial agreements for their clients.

RECOMMENDATION: Sustain.[125]

ISSUE: Advising civilians and contractors

DISCUSSION: During the 12-month deployment, CJTF-101, under the Military Extraterritorial Jurisdiction Act (MEJA), arrested a civilian contractor for allegedly executing a detainee who had set another civilian contractor on fire. Initially, a TDS DC represented the civilian contractor. The DC then represented the civilian contractor at the pre-trial confinement hearing and telephonically in a preliminary hearing held in federal court in Virginia. In order to provide adequate representation, the DC conducted hours of research on MEJA, the status of contractors, and concurrent jurisdiction. The DC found several articles discussing the military JA's role in representing a civilian contractor in these situations. Additionally, there were other instances during the deployment where TDS JAs had to advise civilian contractors regarding their suspect rights.

RECOMMENDATION: Sustain. Studying up on MEJA, status of contractors, and concurrent jurisdiction early on in the deployment will pay dividends in understanding the military DC's role in representing civilian contractors.[126]

ISSUE: Suicide prevention

DISCUSSION: TDS JAs and paralegals must be cognizant of client depression. Often, clients will be severely depressed by the time they visit the TDS office for the first time. JAs and paralegals must be sensitive to this. The TDS personnel may be the only ones who listen. The CJTF TDS office noticed signs of depression in several clients. The TDS office, while sensitive to not disclose privileged information, made a practice of informing the client's chain of command when a client appeared to be suicidal. It is critical that the chain of command have the opportunity to ensure the service member gets help before something bad happens.

RECOMMENDATION: Sustain.[127]

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[124] *Id.*
[125] *Id.*
[126] *Id.*

ISSUE: TDS counsel and paralegals

DISCUSSION: It was readily apparent that having only two TDS counsel was not sufficient for the demand. Adding a third TDS attorney would be highly desirable. In addition, the work associated with courts-martial required more dedicated paralegal support for TDS.

RECOMMENDATION: Improve. The number of TDS counsel and paralegal support should correspond to the workload in theater. The importance of maintaining discipline through timely proceedings may suffer otherwise.[128]

ISSUE: Working with TDS

DISCUSSION: TDS does good work in representing the interests of their clients. There is no need for any combativeness in dealing with them. Communicating with them early and keeping them in the loop will smooth cases along.

RECOMMENDATION: Maintain.[129]

ISSUE: Lack of TDS support

DISCUSSION: The only TDS support available the Soldiers of 1-25ID was outside of their AO at COB Speicher. Moreover, there were only two TDS attorneys, making it nearly impossible to see them (it is a one hour helicopter ride to COB Speicher). Telephone calls were usually futile since the TDS office was sometimes unmanned (due to the travel demands on those attorneys). The BJA had to endure numerous complaints from both the chain of command and Soldiers about this unsatisfactory situation.

RECOMMENDATION: Improve. MND-N requires more than two TDS attorneys. There has to be enough to address the needs of justice and discipline. Failing to properly deal with a Soldier's legal issues will erode their morale and unit effectiveness.[130]

ISSUE: TDS headquarters (HQ)

DISCUSSION: The TDS headquarters offered outstanding support to the Kuwait TDS office. The Kuwait TDS office received everything it needed, including three new computers. At one point during the deployment, TDS HQ hosted a TDS conference in Kuwait and paid for CID personnel and others to fly to Kuwait and conduct training.

RECOMMENDATION: Sustain.[131]

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[127] *Id.*

[128] 3d Brigade Combat Team (BCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 3 November 2009, Deployed October 2008 – October 2009, Multi-National Division – North (MND-N), COB Speicher, Tikrit, Iraq (hereinafter "3BCT, 25ID OIF AAR, OCT 08 - OCT 09"; on file at CLAMO).

[129] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 41.

[130] 1st Stryker Brigade Combat Team (SBCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 13 November 2009, Deployed September 2008 – September 2009, Multi-National Division – North (MND-N), FOB Warhorse, Diyala Province, Iraq (hereinafter "1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09"; on file at CLAMO).

ISSUE: Provision of legal assistance services by TDS office

DISCUSSION: At Camp Arifjan, Soldiers frequently came into the TDS office looking for the legal assistance office in order to get advice regarding a divorce or other legal assistance matter. The SDC established a policy within the Kuwait TDS office to turn no one away. Specifically, instead of TDS JAs quickly sending a Soldier away to the legal assistance office, the TDS JAs would invite the Soldier in to discuss the matters and provide any assistance they could before sending the Soldier away. This proved to be a force multiplier for the TDS office. Not only did it strengthen the TDS office's reputation amongst the Soldiers at Camp Arifjan, it also proved to be a valuable source of information concerning what was occurring on the installation. Furthermore, just sending a Soldier away would often result in the Soldier later returning to the office as an accused. By turning no one away, the TDS office was able to identify potential cases and conduct damage control well before a command brought charges.

RECOMMENDATION: Sustain.[132]

ISSUE: "Use of force" cases

DISCUSSION: The TDS office saw a number of cases in southern Iraq where units would pursue Article 15 punishment as a means of second-guessing a Soldier's actions in potentially hostile situations. Specifically, units would sometimes pursue an Article 15 when Soldiers used "excessive" non-lethal force, such as firing too many flares or pointing flares at people when initiating escalation of force (EOF) procedures. The TDS office usually advised Soldiers to refuse Article 15s in these situations because prosecuting these types of cases would be too burdensome on the government.

RECOMMENDATION: Sustain.[133]

ISSUE: Defending human trafficking charges

DISCUSSION: The TDS office represented Soldiers who were facing court-martial for frequenting a local brothel in downtown Kuwait City that had Chinese women on the staff who were potential victims of human trafficking. In these cases, trial counsel (TC) commonly tacked on a charge for human trafficking. It was critical for the TDS JAs to be cognizant of human trafficking laws. The TDS office also strategized in order to make it disadvantageous to the TC to prosecute for human trafficking. Specifically, requesting the government to produce the victims of human trafficking as witnesses would be extremely problematic for the government.

RECOMMENDATION: Sustain.[134]

ISSUE: Travel of TDS personnel

DISCUSSION: Travel in the CENTCOM AO is difficult. Most travel by the TDS office was through the use of air assets. Travel is also very time consuming. For example, a simple trip to Egypt to conduct two days of witness interviews could potentially keep a JA out of the office for

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[131] SDC Kuwait TDS AAR, JUN 08-AUG 09, *supra* note 4.
[132] *Id.*
[133] *Id.*
[134] *Id.*

roughly 10 days. Consequently, it was critical to schedule all travel well in advance of the anticipated day of travel.

RECOMMENDATION: Sustain.[135]

ISSUE: TDS paralegal

DISCUSSION: The Kuwait TDS office did not have permanent paralegal support. The Camp Arifjan Area Support Group (ASG) provided the sole paralegal that worked in the Kuwait TDS office. Typically, the ASG would provide an E-4 or E-5 reservist to fill the paralegal position until the end of his or her deployment. However, every six months the TDS office had to "beg, borrow, and steal" to persuade the ASG to provide a new paralegal when the previously provided paralegal redeployed. The Kuwait TDS office also looked into getting the Army National Guard to extend the paralegal's length of deployment, but getting orders extensions from the National Guard was a very lengthy and difficult process. The paralegal would need to work on getting an orders extension at least two months before time for redeployment.

RECOMMENDATION: Improve. Deploy an individual augmentee on a one-year rotation as the TDS paralegal.[136]

ISSUE: TDS staffing

DISCUSSION: The Kuwait TDS office consisted of four attorneys (one SDC and three additional JAs), all located at Camp Arifjan. Although four JAs seemed to be the ideal size, even when things were slow, having all the JA located at Camp Arifjan was not. An additional satellite office in Basra, Iraq would be ideal.

RECOMMENDATION: Improve. Send one of the four JAs to Basra, Iraq to operate a satellite TDS office.[137]

ISSUE: Lack of TDS attorneys

DISCUSSION: Three TDS attorneys were located on BAF. The workload, combined with difficulty traveling in Afghanistan, created problems for Soldiers seeking TDS support.

RECOMMENDATION: The JAG Corps should send additional TDS attorneys to Afghanistan.[138]

ISSUE: TDS advice on Article 15s

DISCUSSION: TDS distributed its Article 15 DVDs down to TF Thunder's battalion paralegals. The battalion paralegals played the DVD for Soldiers receiving Article 15s. Soldiers still had the opportunity to make appointments with TDS if they so desired after watching the video.

RECOMMENDATION: While not a perfect solution, it seemed to work.[139]

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[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 43.
[139] *Id.*

ISSUE: Experience level of the Kosovo TDS attorney

DISCUSSION: The U.S. Army Reserve typically sends a TDS attorney to Kosovo. However, a National Guard unit may sometimes supply the attorney. It is helpful if the attorney has some experience in military justice. Sending an officer just out of the Basic Course is problematic. There is a steep learning curve, and the position is isolated enough to not be a good fit for a first assignment.

RECOMMENDATION: Ensure the TDS attorney in Kosovo has sufficient military justice experience to be effective in the stand-alone position.[140]

ISSUE: Zealous advocacy by TDS

DISCUSSION: TDS attorneys zealously advocated on behalf of their clients knowing full well the hurdles the TC would have to overcome in a deployed environment. Whether it was the need for expert witnesses, the command's reluctance to hold courts-martial while deployed, or the requests for transportation assets, etc., the attorneys at TDS fought to get their clients the best possible deal.

RECOMMENDATION: Be prepared to deal with demands of TDS. While they may appear unrealistic, the standards for what the unit must provide do not change in a deployed environment. Brief the command on the need to have decreased expectations when it comes to deployed military justice outcomes due to the advantages TDS has in that environment.[141]

ISSUE: Remote TDS support to the brigade

DISCUSSION: There was no local TDS support at Kirkuk. The BCT legal NCOIC received permission from TDS to show the TDS video three days per week at the BCT legal office to Soldiers receiving Article 15s. The brigade legal section digitally sent all Article 15 packets to TDS to support follow on counseling with TDS counsel. The brigade legal section set aside a private office Soldiers could use to conduct telephonic appointments with their TDS counsel.

RECOMMENDATION: Sustain/Improve. TDS should provide attorney coverage physically at these locations. However, BCTs need to be prepared to facilitate remote access to TDS.[142]

ISSUE: In-person TDS appointments for summary court-martial clients

DISCUSSION: The only courts-martial the BCT had were summary courts-martial. The TDS support for FOB Marez was located at FOB Speicher in Tikrit. One accused requested an in-person appointment with a TDS attorney. The BJA did research to determine the entitlement to face-to-face appointments with counsel for summary courts-martial. In an abundance of caution, the BJA ended up sending the accused to FOB Speicher.

RECOMMENDATION: Sustain.[143]

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[140] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 6.
[141] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 8.
[142] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 58.
[143] 3rd Heavy Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 2 February 2010, Deployed December 2008 – December 2009, Forward Operating Base Marez,

ISSUE: Lack of TDS availability

DISCUSSION: One TDS office was insufficient to cover the MND-N AO. There were several Iraq-wide TDS conferences, which took TDS attorneys out of the office for an extended period of time. Likewise, some of the TDS attorneys had to travel out of Iraq for courts-martial. During these prolonged absences, military justice ground to a halt. This lack of resources was frustrating to the BCT leadership seeking to impose timely military justice and discipline.

RECOMMENDATION: Improve. TDS should have at least one attorney available at all times.[144]

ISSUE: Availability of TDS counsel

DISCUSSION: Although approximately two and a half brigades resided at Camp Taji, the TDS office there had only a paralegal. The TDS attorney assigned to Camp Taji remained at Camp Liberty.

RECOMMENDATION: Improve. Larger bases should have a dedicated TDS attorney on site. When only a TDS paralegal is present, there is a danger of this paralegal providing legal advice.[145]

ISSUE: Service-specific TDS support

DISCUSSION: The Air Force had its own TDS support based at Al-Udeid Air Base, Qatar.

RECOMMENDATION: Sustain. As long as there are separate UCMJ chains for the different services, there should be service-specific TDS support available in theater.[146]

ISSUE: Relationship with TDS

DISCUSSION: The 30th HBCT BJA made an effort early on in the deployment to build a good relationship with TDS. Then, when the BCT faced the need to have TDS conduct telephonic counseling, the BJA made the recommendation to TDS and they willingly complied. Additionally, because of the good relationship, TDS was even willing to take on some of the BCT's legal assistance clients.

RECOMMENDATION: Sustain. It is important to have a good working relationship with TDS, especially in an operational environment.[147]

ISSUE: Posting contact information for TDS

DISCUSSION: The chain of command and JA had contact information for TDS and were ready to provide it to any member of the command. However, this situation was not ideal because it

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Ninewah Province, Iraq (hereinafter "3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09"; on file at CLAMO).

[144] *Id.*

[145] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 10.

[146] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 11.

[147] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 14.

would either require someone interested in speaking with TDS to seek out the information from the command or JA, or the command or JA would have to provide the information to someone who, in their opinion, would benefit from it.

RECOMMENDATION: Improve. While the command and JA should be prepared to provide TDS' information to anyone who asks for it, they should also post this information in a public area.[148]

ISSUE: Information sharing between the OSJA and TDS

DISCUSSION: The OSJA would brief TDS counsel bi-weekly to provide relevant case information. At the same meeting, the TDS counsel would provide their travel schedule, which Division would pass to brigades.

RECOMMENDATION: Sustain. These meetings improved collegiality between the offices and facilitated justice matters across the AO.[149]

ISSUE: TDS paralegal support

DISCUSSION: The way in which TDS gets paralegal support in the deployed environment is very ad hoc. TDS will still look to the Division to provide that support, but the Division no longer has the dedicated staffing to provide it.

RECOMMENDATION: Recognize this is an issue. Be prepared to provide the support in the absence of a systemic solution.[150]

ISSUE: Lack of defense counsel (DC) in theater

DISCUSSION: Due to a lack of DCs and the high operational tempo, the battalion sent all military justice matters back to the rear, with the exception of NJP.

RECOMMENDATION: Sustain.[151]

ISSUE: Telephonic counseling sessions for NJP

DISCUSSION: Due to a lack of DCs in theater and the high operational tempo, Marines discussed pending NJP matters with DCs in the rear via telephone.

RECOMMENDATION: Sustain.[152]

ISSUE: Mandatory TDS appointments

DISCUSSION: TDS insisted they speak with every Soldier who received an Article 15. Many

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[148] Sea Air Land (SEAL) Team 7, Special Operations Task Force – West (SOTF-W), Detachment Judge Advocate OIF After Action Report, 14 April 2010, Deployed March 2009 - September 2009, Al Asad Airbase and Ramadi, Iraq (hereinafter "SOTF-W OIF AAR, MAR 09 - SEP 09"; on file at CLAMO).
[149] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 18.
[150] *Id.*
[151] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 46.
[152] *Id.*

felt this was unnecessary and ended up delaying the process. A number of Soldiers understood their situations and wished to proceed with a simple Article 15, but TDS demanded they interview the Soldier. As a result, Soldiers had to make appointments to speak with TDS, and it took time to arrange a mutually acceptable occasion.

RECOMMENDATION: No one disputes TDS is providing a valuable service, but if Soldiers do not want to talk to TDS, they should not have to do so. The insistence that all Soldiers speak to TDS is well intentioned, but it is questionable whether it has to be mandatory in all cases. Soldiers should be able to waive counsel, if that is their wish.[153]

ISSUE: Lack of TDS in Haiti

DISCUSSION: As a rush deployment, there was no TDS set up in Haiti. The work around was to use the Fort Bragg TDS, even though 2-82 ABN fell under U.S. Army South and should have used the Fort Sam Houston TDS. By agreement, Fort Bragg offered to provide the TDS services due to good relations between them and 2-82 ABN trial counsel (TC). This was a great service to the Soldiers.

RECOMMENDATION: Sustain. Good relations between TC and TDS can often result in arrangements that are in the best interests of Soldiers.[154]

ISSUE: Staffing TDS while deployed

DISCUSSION: TDS staffing on the enlisted side is always a problem in a deployed environment. It is difficult to get the people into the positions when there is no regional joint manning document (JMD). There is a garrison requirement for the OSJA to support the TDS office with a 27D. The sustainment brigade may have the slots, but they may be on a different deployment cycle, deployed to a different location, or the slot may be unfilled or filled with a non-deployable Soldier. Some units plan for this issue and some do not.

RECOMMENDATION: Solving this often requires the mobilization of Reserve personnel. There can be a delay in doing this. SJAs should have some type of responsibility for supporting TDS if there is no other means of providing it.[155]

ISSUE: TDS support

DISCUSSION: Often, TDS JAs would complain to the military justice section about not being able to see their clients. This was primarily because TDS expected units to bring the accused to the TDS office in order to meet with their clients. Whenever a client came to visit the TDS office, the military justice section had to arrange travel, housing, and transportation for the client on the FOB, which could be quite burdensome. The TDS JAs rarely travelled to remote FOBs to visit their clients and preferred in person counseling as opposed to telephonic counseling.

RECOMMENDATION: TDS JAs need to be more flexible. Specifically, they need to do more traveling to see their clients, even those located at remote FOBs, and do more telephonic

[153] 172d IN BDE, OIF AAR, NOV 08 - DEC 09, *supra* note 22.
[154] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 23.
[155] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 24.

counseling. There is no reason that TDS counsel could not travel; moreover, they should expect to travel since most Soldiers were not co-located on installations with TDS support.[156]

ISSUE: Using Rule for Court-Martial (RCM) 706 as a weapon

DISCUSSION: TDS JAs sometimes made RCM 706 requests for PTSD. TDS seemed to use this as a tactic and a tool to work out a better deal for their clients.

RECOMMENDATION: Since TDS was usually only asking for a RCM 706 inquiry for PTSD in order to get in mitigation testimony about an accused's PTSD without the accused testifying, the Chief of Justice began offering to give the accused psychiatric evaluations to be used for mitigation purposes.[157]

ISSUE: Sister services' unique requirements

DISCUSSION: The legal advisor learned Sailors and Marines receiving non-judicial punishment must have the opportunity to discuss the matter with defense counsel from either the Navy or Marine Corps.

RECOMMENDATION: Legal advisors in a joint environment need to be prepared to deal with sister service unique military justice requirements and find solutions to deal with them.[158]

ISSUE: Soldier access to TDS

DISCUSSION: The weather and operational constraints made it impossible for all Soldiers facing non-judicial punishment to meet with a TDS attorney in person. The SOTF legal advisor ensured all Soldiers had access to secure telephonic communications with a TDS attorney.

RECOMMENDATION: Sustain.[159]

ISSUE: Need for TDS office at Kandahar

DISCUSSION: TDS's only office in Afghanistan was located at Bagram Airfield (BAF).

RECOMMENDATION: Improve. TDS should establish a satellite office at Kandahar Airfield (KAF).[160]

ISSUE: TDS on Kandahar Airfield (KAF)

DISCUSSION: TDS wanted to establish a field office at KAF during the deployment; however, the FOB mayor at KAF would not cooperate. TDS at KAF would benefit military justice administration in RC-South.

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[156] *Id.*
[157] *Id.*
[158] 3rd Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 27 May 2010, Deployed July 2009 – December 2009, Herat, Afghanistan (hereinafter "3/7 SFG(A) OEF AAR, JUL 09 - DEC 09"; on file at CLAMO).
[159] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 29.
[160] *Id.*

RECOMMENDATION: Improve. TDS should have a field office at KAF.[161]

H. Trial Logistics

ISSUE: Trial logistics an issue

DISCUSSION: Because of the geography and consequently high demand on aviation assets, it proved difficult to move judges, witnesses, and other court personnel to Bagram for courts-martial. Because a witness could not get air transportation to Bagram in time for a court-martial, the government had to dismiss a charge in one case. In order to rectify these issues, the OSJA drafted and the CG signed a policy memorandum prioritizing logistical support to the court-martial process, to include TDS.

RECOMMENDATION: Sustain. The CG policy memorandum adequately addressed the logistical challenges.[162]

VI.H. Trial Logistics

ISSUE: Pre-deployment cut-off date for MJ

DISCUSSION: A number of BJA panelists suggested the use of a MJ cut-off date during the pre-deployment phase in order to close out existing MJ matters. Any MJ matters arising after the cut-off day would be the responsibility of the rear detachment. The cut-off date varied from 30 to 60 days.

RECOMMENDATION: Using a MJ cut-off date helps manage a BCT's MJ issues and organize them into two discrete jurisdictions. However, the BJA has to ensure the rear detachment is set up for success to manage the transfer of post cut-off matters.[163]

ISSUE: Pre-trial confinement

DISCUSSION: There will be occasions where emotions may get the better of an angry BCT commander who wants an accused Soldier confined pending trial. The commander may wish to use pre-trial confinement as a means to punish the Soldier. BJAs have to reason with and persuade their commanders about whether pre-trial confinement is objectively justifiable under the circumstances. It is important that the BJA link up with the DIV SJA to discuss pre-trial confinement matters so the lawyers speak with one voice to their respective commanders regarding pre-confinement.

RECOMMENDATION: Sustain. Review the grounds for pretrial confinement (i.e. RCM 305(h)(2)(B) factors) with the irritated BCT commander with a view to explaining the complex considerations for depriving liberty, as well as the legal implications for putting a Soldier in pre-trial confinement.[164]

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[161] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 37.
[162] *Id.*
[163] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 94.
[164] *Id.*

ISSUE: Difficulty of doing courts-martial in Afghanistan

DISCUSSION: There are significant logistical challenges to conducting courts-martial in Afghanistan. The main method of transport around the country is by helicopters, which are scarce at times and dependent on favorable weather. Ground convoys are extremely dangerous due to the high threat of improvised explosive devices (IED). Moreover, commanders are reluctant to pull Soldiers from combat to serve as witnesses or otherwise support a court-martial.

RECOMMENDATION: While entirely possible, the challenges of doing a court-martial in more remote areas of Afghanistan are significant. It may require significant efforts and coordination with commanders and the S-3.[165]

ISSUE: Lack of a confinement facility in Afghanistan

DISCUSSION: There is no confinement facility in Afghanistan, so the Kuwait facility is the only place available in the CENTCOM AOR. Flying a prisoner and escorts to Kuwait takes Soldiers away from the BCT and is a logistical challenge that some commanders are not keen to undertake.

RECOMMENDATION: Improve.[166]

ISSUE: Civilian attorneys and logistical challenges on deployment

DISCUSSION: One BJA recounted how a Soldier chose a civilian attorney to represent him before a general court-martial conducted in Iraq. Getting the attorney to the forward operating base (FOB) involved issues with military transport, getting an Iraqi visa, a CENTCOM theater clearance, security, rations, quarters and medical coverage. The JAs and paralegals had to resolve numerous logistical issues to make the appearance happen.

RECOMMENDATION: Should a Soldier insist on civilian legal representation, the legal staff must be prepared to work numerous logistical issues to facilitate the appearance in theater.[167]

ISSUE: Witness travel

DISCUSSION: Coordinate with the division chief of justice and understand the fragmentary order (FRAGO) process to facilitate witness travel.

RECOMMENDATION: BJAs must understand the complex logistics involved in moving witnesses in theater.[168]

ISSUE: Logistical planning for courts-martial

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[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] 2d Brigade Combat Team, 1st Armored Division, Brigade Judge Advocate OIF After Action Report, 25 September 2009, Deployed July 2008-June 2009, Forward Operating Base (FOB) Hammer/Camp Stryker, Iraq (hereinafter "2BCT, 1AD OIF AAR, JUL 08 - JUN 09"; on file at CLAMO).

DISCUSSION: It is difficult, albeit possible, to try a case while deployed. Logistics planning is essential to making a court-martial practicable. It is necessary to start coordinating with the MNC-I OSJA as soon as you are aware of misconduct that may lead to a court-martial.

RECOMMENDATION: Summary Courts-Martial (SCMs) are an excellent tool in the deployed environment; however, make sure you understand the process of transferring a Soldier sentenced to confinement at SCM to the confinement facility in Kuwait. Regarding General and Special Courts-Martial, consider the logistical planning for bringing civilian witnesses, or Soldiers who have redeployed, into theater. Making arrangements for witnesses spread out over different provinces and synchronizing their movements with the military judge's schedule is a very big challenge.[169]

ISSUE: Priority travel for court-martial personnel

DISCUSSION: Air travel in theater is challenging. TDS JAs, witnesses, and judges often had difficulty traveling. As a result, JAs and witnesses wasted a lot of time in airports waiting to get on a flight. During the first half of the deployment, MNC-I published a letter prioritizing travel for witnesses for courts-martial cases. This "priority letter" was a force multiplier and saved a substantial amount of time and resources in comparison to operating without the letter.

RECOMMENDATION: Sustain. Having a "priority letter" granting witnesses, judges and counsel priority in travel will save a substantial amount of valuable time and resources.[170]

ISSUE: Expeditionary courtrooms

DISCUSSION: MND-B set up courtrooms throughout its AO, making it much easier logistically to try cases. For example, a courtroom was set up on Forward Operating Base (FOB) Rustamiyah when the unit operating from that FOB convened a court-martial. As a result, only counsel, the military judge, and the court reporter needed to travel, as opposed to the unit having to fly all the witnesses and the accused to Camp Liberty. Having these expeditionary courtrooms saved a substantial amount of valuable time and resources.

RECOMMENDATION: Sustain.[171]

ISSUE: Federal agents as witnesses

DISCUSSION: Typically, federal agents from the Federal Bureau of Investigation (FBI) or Drug Enforcement Administration (DEA) were involved in investigating high profile misconduct occurring in theater. This practice became problematic in cases that went to trial because most federal agents deployed only for approximately 90 days. If the federal agent interviewed witnesses or collected evidence, his or her presence was necessary at trial regardless of whether or not they had redeployed. On one occasion, the FBI had to pull several agents from the President's inauguration detail in order to fly them to Iraq to testify at a court-martial.

RECOMMENDATION: Improve. Units should try to have permanent personnel more involved in the investigation if the case is likely to go trial. Try to avoid having federal agents interview the accused or directly collect evidence when they will soon be redeploying.[172]

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[169] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 53.
[170] MNC-I TDS OIF AAR, MAY 08-MAY 09, *supra* note 2.
[171] *Id.*

ISSUE: Lack of a dedicated courtroom

DISCUSSION: During the 12-month deployment, there was not a dedicated courtroom on BAF. The unit had to make use of either a "B" hut or a conference room whenever a court-martial was to take place. Consequently, there was no guarantee that computers, phones, or audiovisual equipment would be available for use during a court-martial. On one occasion when a court-martial was taking place in a conference room, the court-martial had to recess and move to a different location when the Commanding General (CG) needed to use the conference room.

RECOMMENDATION: Improve. BAF needs a dedicated courtroom.[173]

ISSUE: Panel composition

DISCUSSION: The CJTF TDS office noticed that panels made up of members residing off BAF were much more favorable towards an accused. BAF is more akin to living in a garrison environment compared to the harsh conditions of many of the Combat Outposts (COPs) and Forward Operating Bases FOBs. Consequently, panel members whose deployment experience was restricted to BAF did not seem to give an accused as much credit for combat experience as those panels consisting of members who see combat on a regular basis. Consequently, the TDS office ensured it was cognizant of and strategized the presentation of evidence in accordance with the panel composition.

RECOMMENDATION: Sustain.[174]

ISSUE: Court-martial panels

DISCUSSION: It was difficult to assemble panels in theater. In this unit's case, it took several months due to the movement of units in and out of Iraq, the demands of operations, and the widespread size of the AO.

RECOMMENDATION: Improve. A more orderly empanelling process will improve the timeliness of court martial completions.[175]

ISSUE: Transporting Iraqi witnesses for CONUS Courts-martial

DISCUSSION: The BCT had to deal with its predecessor unit's court-martial witness transportation issue (i.e., a court martial convened at Fort Campbell needed the attendance of some Iraqi witnesses). The JAs and paralegals had to work extremely hard with both the Department of State and the Department of Homeland Security to make the travel arrangements and get the necessary approvals.

RECOMMENDATION: Improve. Where possible, the outgoing unit should coordinate with higher headquarters before redeploying to have the appropriate level staff deal with outside agencies to ensure witness movement. The witnesses need Soldier escorts to assist in their travel.

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[172] *Id.*
[173] CJTF-101 TDS OEF AAR, MAY 08-MAY 09, *supra* note 3.
[174] *Id.*
[175] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 128.

Ideally, these should be Soldiers who are already familiar with the witnesses and who had work in the AO.[176]

ISSUE: Trial logistics

DISCUSSION: Trial logistics are a nightmare. Courts-martial occurred once every four months when judges visited. The Brigade needed to rely on support from CJTF-101 to make trial logistics work. Brigade organic assets could not manage this alone. The risk of a trial being 'too hard' is that there will be a "deployment discount" on disposition of charges that will badly skew the application of the UCMJ. This is the same as earlier comments that discipline is not a nuisance. Discipline is what commanders do.[177]

RECOMMENDATION: Note. The SJA's support will be critical here.

ISSUE: Lodging for civilian defense counsel

DISCUSSION: Frequently, in the more serious cases, an accused will hire civilian defense counsel. An accused is responsible for paying for travel, food, and lodging for his or her civilian counsel. The command at Camp Arifjan did not permit civilian counsel to obtain billeting at Camp Arifjan. Instead, civilian counsel had to obtain lodging in downtown Kuwait city, where they would reside in an unsecure location. However, the command did allow civilian counsel to eat at the Camp Arifjan Dining Facility (DFAC) so long as they compensated the government for the cost of each meal. Having the civilian counsel lodged off base was problematic at times due to it being unsecure in Kuwait City, which sometimes resulted in untimely delays getting civilian counsel to Camp Arifjan.

RECOMMENDATION: Improve. Allow civilian counsel to obtain billeting at Camp Arifjan similarly to how they obtain meals from the DFAC. Civilian counsel can compensate the government for the cost of billeting. Allowing civilian counsel to stay at Camp Arifjan will ensure safety remains paramount, the accused has access to his counsel, and protect the government's interest at the same time.[178]

ISSUE: Movement of courts-martial to CONUS to accommodate civilian witnesses

DISCUSSION: It was extremely challenging to get civilian witnesses into theater. Consequently, in some cases where calling civilian witnesses was unavoidable, the court-martial would move to Atlanta, where the judge was always available. The government would then be responsible for flying the accused, counsel, military judge, court reporter, panel members, witnesses and all evidence to Atlanta for trial. This allowed for maximum participation of civilian witnesses during the court-martial.[179]

ISSUE: Lack of a courthouse

DISCUSSION: BAF did not have a dedicated courthouse, which presented logistical issues.

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[176] *Id.*
[177] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 41.
[178] SDC Kuwait TDS AAR, JUN 08-AUG 09, *supra* note 4.
[179] *Id.*

RECOMMENDATION: Establish a dedicated courthouse.[180]

ISSUE: Forum for courts-martial arising in Kosovo

DISCUSSION: The unit contemplated doing a court-martial in Kosovo. However, it ultimately decided the correct forum was Germany because of the associated logistics.

RECOMMENDATION: There has to be some overwhelming reason to try a special or general court-martial in Kosovo. It is simply better to do it in Germany, where the system is very mature.[181]

ISSUE: Logistics of confinement from Kosovo

DISCUSSION: If confinement arises from a summary court in Kosovo, the nearest confinement facility is in Mannheim, Germany.

RECOMMENDATION: The logistical difficulty of getting someone into confinement for 30 days or less in Mannheim is not worth it for units in Kosovo.[182]

ISSUE: Disposition of Soldiers on suicide watch

DISCUSSION: It was a ping-pong game determining the appropriate place for a Soldier on suicide watch awaiting court-martial. Mental health professionals in Germany kept sending the Soldier back to Kosovo. The unit in Kosovo had an operational mission and there was ready access to all manner of firearms.

RECOMMENDATION: Eventually the proper determination was for the Soldier to await court-martial at the medical center in Landstuhl, Germany.[183]

ISSUE: Arranging transportation

DISCUSSION: Arranging transportation of necessary witnesses, panel members, etc. requires close coordination with the S-3. The brigade legal section made all such requests for individuals or transportation assets through operational channels using FRAGOs.

RECOMMENDATION: Sustain. You have to use a very precise FRAGO to ensure units understand what you expect of them.[184]

ISSUE: Use of summary courts-martial (SCMs)

DISCUSSION: Commanders wanted to have the option to conduct SCMs with the possibility of confinement. The brigade legal NCOIC made contact with the U.S. Navy confinement facility at Camp Arifjan, which indicated it would support the program. As a result, the BCT did 11 SCMs, leading to 7-8 sentences of confinement.

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[180] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 43.
[181] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 6.
[182] *Id.*
[183] *Id.*
[184] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 8.

RECOMMENDATION: Sustain. BCTs can lean forward by making contact with the confinement facility in Kuwait and keeping the Division OSJA informed of the activity.[185]

ISSUE: Challenging trial logistics

DISCUSSION: The BCT had to operate over an extremely large area. Consequently, units deploying to Afghanistan have to be aware that trying to conduct a trial or pre-trial matters with units and witnesses spread all over, sometimes in combat settings, is especially challenging from a logistics perspective. Given all the logistical demands, other adverse administrative actions like reprimands, separations, and reliefs for cause are sometimes more attractive to commanders than pursuing a court-martial.

RECOMMENDATION: The realities encountered on some deployments make court-martial proceedings less appealing to commanders, given the detrimental effects it might have on brigade effectiveness in terms of staffing and resources.

ISSUE: Lack of a confinement facility in Afghanistan

DISCUSSION: There is no confinement facility in Afghanistan. The Kuwait facility is still the only place available. Trying to fly the prisoner and escorts there is a real problem for any BCT.

RECOMMENDATION: Improve.[186]

ISSUE: Responsibility for trial logistics

DISCUSSION: The BCT had one contested court-martial during the deployment. The trial occurred at Camp Liberty. The Division OSJA, which was on Camp Liberty, had responsibility for providing the court reporter and setting up the courtroom, while the BCT handled the witness travel. The Division OSJA had responsibility for the post-trial process.

RECOMMENDATION: Sustain. This was a good division of responsibility.[187]

ISSUE: Confusion between Division and brigades regarding court-martial responsibilities

DISCUSSION: Title 10 military justice is challenging for National Guard judge advocates who have not practiced in this area on active duty before. Accordingly, the OSJA had a steep learning curve when it came to courts-martial. The fact the subordinate brigades were not accustomed to working with a geographically remote Division OSJA complicated this further. Some brigades assumed the Division OSJA would handle things their home-station OSJA would normally handle. The Division, on the other hand, assumed the brigades would handle most trial logistics. This resulted in both delays and last-minute efforts to arrange for trials. In addition, many incoming brigades were unfamiliar with military justice processing procedures in theater, as opposed to home station.

RECOMMENDATION: Improve. Obtain the outgoing Division's military justice standard operating procedures (SOP) before deployment and use it to develop your own. Include sample

[185] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 58.
[186] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 43.
[187] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 10.

documents, such as convening orders, docket request forms, and CG actions. Also include reporting timelines and procedures for pre- and post-trial confinement in Kuwait. Finally, ensure the SOP specifies Division and brigade responsibilities for trial logistics.[188]

ISSUE: Limited "punitive effect" of confinement in Kuwait

DISCUSSION: Soldiers serving pre-trial confinement and those serving less than thirty days of post-trial confinement (usually as a result of summary courts-martial) went to the confinement facility in Kuwait. Some units, particularly those at remote forward operating bases (FOBs) were concerned a sentence of confinement from a summary court-martial would result in the convicted Soldier living in better conditions because Kuwait had hardstand buildings, as opposed to the tents in which some units still resided.

RECOMMENDATION: Realize commanders will consider the limited punitive effect of confinement facility in Kuwait in making decisions concerning pre-trial confinement and referral to summary courts-martial. Be prepared to advise them accordingly.[189]

ISSUE: Panel selection

DISCUSSION: The Division selected a court-martial panel after arriving in theater. The panel consisted mostly of personnel who were co-located with the Division headquarters.

RECOMMENDATION: Begin the panel selection process as early as possible. It was helpful to select most panel members from COB Basra because it minimized the amount of travel and impact on units for courts-martial. Use additional alternates to supplement the panel to allow all brigades to have representation without having to pick an entirely new panel. Select a new panel only when unit rotations result in a significant number of panel members departing theater.[190]

ISSUE: Difficulty of doing courts-martial in Afghanistan

DISCUSSION: There are significant logistical challenges to conducting courts-martial in Afghanistan. Helicopters, which are scarce and subject to weather, are the primary means of travel. 4-25's AO was spread over a very large mountainous area where flights were often grounded due to bad weather in the passes. FOB Salerno could house a court-martial, but the facilities would be modest at best and would require significant travel and logistical effort for all personnel. Moreover, units and Soldiers were constantly in the field and engaged in operations.

RECOMMENDATION: While possible, the challenges of conducting a court-martial in the remote areas of Afghanistan are significant. It would require significant effort and a great deal of coordination. The better course of action is to return Soldiers accused of serious misconduct to home station. At home station, the Soldier can be prosecuted by the garrison legal office, or wait for the BCT to redeploy. In addition, Afghanistan does not have a pre-trial confinement facility, so Soldiers who may commit additional serious misconduct, or are a flight risk, must be removed from theater anyway.[191]

ISSUE: Complexity of coordinating a court-martial

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[188] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 15.
[189] *Id.*
[190] *Id.*
[191] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 17.

DISCUSSION: There are a number of moving parts when holding a court-martial in a deployed environment. For example, it is significantly more difficult to coordinate travel when you are not in garrison.

RECOMMENDATION: Prepare an SOP before you deploy. "Learning as you go," while possible, is not the preferred approach.[192]

ISSUE: Getting local national witnesses to the United States

DISCUSSION: Courts-martial in the United States for misconduct committed in theater may require bringing local nationals to the United States as witnesses. In order to get these witnesses on government aircraft, you must submit two memoranda. The Division commander signs the first memorandum. The second memorandum is approved at the Corps-level. Additionally, these witnesses will require passports and escorts throughout their travel.

RECOMMENDATION: Start early. As soon as you are aware local nationals may be required to testify in the United States, begin the process of getting them passports and authorization to travel. OTJAG should draft an information paper or develop a guide that standardizes this process. Each new unit in theater should not have to rediscover how to do this.[193]

ISSUE: Escort duties for witnesses

DISCUSSION: 172d BDE had to send back two NCO witnesses during the deployment to courts-martial in Texas and Germany. In accordance with guidance, an escort had to accompany the NCO witness to the proceeding. This effectively robbed the brigade of two bodies for the matters. In these two cases, the legal staff provided the escort to ease the strain on brigade units.

RECOMMENDATION: Providing an escort for NCO witnesses is one of those obligations that can degrade the effectiveness of units. While the legal staff helped in these cases, commanders should understand it is the unit's obligation to provide the escort, not the legal staff.[194]

ISSUE: Importance of the left/right seat ride process for learning trial logistics

DISCUSSION: The unit did not cover trial logistics in detail during its transition period with its predecessor unit. This resulted in a steep learning curve.

RECOMMENDATION: Do not force yourself into re-inventing the wheel. Ensure you discuss this very procedurally based area during the transition.[195]

ISSUE: Using paralegals for trial logistics

DISCUSSION: The military justice section made full use of its paralegals when it came to arranging trial logistics. The paralegals, under the direction of the military justice non-commissioned officer-in-charge (NCOIC), were responsible for arranging travel, housing, and even local transportation for witnesses and panel members.

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[192] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 18.
[193] *Id.*
[194] 172d IN BDE, OIF AAR, NOV 08 - DEC 09, *supra* note 22.
[195] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 24.

RECOMMENDATION: Sustain. The paralegals did a stand out job, which freed up the TC to handle all the legal concerns associated with trial.[196]

ISSUE: Developing a good relationship with other staff sections for trial logistics

DISCUSSION: The military justice section was extremely successful in getting support from the other Division staff sections when it came to trial logistics. This success was due to the NCOIC making a concerted effort early on in the deployment to get to know the NCOICs from all the different staff sections. As a result, the entire military justice shop had a very good working relationship with the other staff sections. When the military justice section had a request, the other sections were more than willing to assist.

RECOMMENDATION: Sustain. Build a good relationship with the other staff sections—this will be key in getting access to the resources you need when it comes time to conduct a trial.[197]

ISSUE: Use of Intra-Theater Airlift Request System (ITARS) to transport court-martial personnel as "cargo"

DISCUSSION: Arranging air travel in theater, especially out of Baghdad International Airport (BIAP), can be very difficult. The Air Force runs the flights out of BIAP. When 1CD arrived in theater, it replaced the 4th Infantry Division, who had published a priority memorandum giving courts-martial personnel priority for air travel. When 1CD tried to utilize this memo, it discovered that the Air Force did not accept the memo as binding on them. As a result, MND-B personnel would often be stuck in BIAP for days when trying to travel back from participating in a court-martial. In order to remedy this problem, the military justice NCOIC contacted the Air Force to find a solution. The NCOIC discovered that if MND-B submitted a request through the Intra-Theater Airlift Request System (ITARS) for each individual, those individuals would get priority for flights. ITARS is the system typically used by units to request transport of cargo. The Air Force personnel informed the MND-B military justice section that it could use ITARS to request transport of personnel for courts-martial. MND-B submitted requests via ITARS for all courts-martial. The Air Force always accepted the personnel listed on the ITARS request and never bumped them from a flight.

RECOMMENDATION: Sustain. Continue to use Air Force ITARS to arrange travel for courts-martial personnel out of BIAP.[198]

ISSUE: Arranging post-trial confinement

DISCUSSION: In Iraq, unlike in garrison, the Division (not the brigade) was responsible for arranging confinement. Prior coordination by the unit was key to arranging confinement. Typically, arranging confinement in theater required a minimum 72-hour notice. This was primarily because the closest confinement facility was located at Camp Arifjan in Kuwait, and units had to submit air transportation requests at least 72 hours in advance.

RECOMMENDATION: Sustain. Units need to be cognizant of logistical time requirements accompanied with arranging confinement. JAs should notify higher headquarters at least 72

[196] *Id.*
[197] *Id.*
[198] *Id.*

hours in advance of the requirement to place a Soldier in confinement. This is especially important in the case of conducting summary courts-martial.[199]

ISSUE: Use of OPORDs and FRAGOs in military justice

DISCUSSION: The Division OSJA realized getting everyone to comply with all the logistical requirements of conducting a court-martial or arranging post-trial confinement was, at times, near impossible. Units were busy conducting operations and often did not think to arrange confinement or travel for witnesses in advance. This was especially burdensome when it came to post-trial confinement after summary courts-martial. As a result, the Chief of Justice specifically spelled out requirements and published guidelines on how to use ITARS in the legal annex to MND-B's updated OPORD.

RECOMMENDATION: Sustain. When it comes to trial logistics, do not hesitate to use FRAGOs and OPORDs if necessary.[200]

ISSUE: Civilian witnesses

DISCUSSION: With the implementation of the Security Agreement, getting civilian witnesses into theater became increasingly difficult. Under the SA, Iraq required visas of all civilians entering country, which was normally a six-month process. During its deployment, 1CD had two cases that would have required civilian witnesses if taken to trial. The Division sent one case back to the rear and the other it handled by administratively separating (chaptering) the accused instead of conducting a court-martial. MNC-I/USF-I, on the other hand, resolved its civilian witness issues by conducting all courts-martial that required civilian witnesses in Kuwait, since it was much easier to get a visa from the Kuwaiti government.

RECOMMENDATION: Getting civilian witnesses into Iraq can be a hassle. The military justice section should have a plan in place for handling cases that may require civilian witnesses.[201]

ISSUE: Travel orders for witnesses

DISCUSSION: The military justice NCOIC coordinated all travel orders with the Division G-8. Three witnesses returned to country for a court-martial.

RECOMMENDATION: Sustain.[202]

ISSUE: Affect of the Security Agreement on military justice

DISCUSSION: The Security Agreement raises a great number of questions about access to the country. How does the return to sovereignty affect the ability of civilian defense counsel to get in and out of the country? What about family members? While these questions did not prevent courts-martial, they are open questions that need resolution. The SA requirement for visas was not enforced, as entry into Iraq on military air from Kuwait was the primary means for bringing everyone in, including contractors. Besides this violation of the SA regarding the ingress of individuals, the lack of an entry visa by the particular individual places them in a risky position if

[199] *Id.*
[200] *Id.*
[201] *Id.*
[202] *Id.*

they are ever stopped by an Iraqi authority. Moreover, these individuals are not protected from Iraqi criminal prosecution and processes under the terms of the SA.

RECOMMENDATION: Recognize the general terms of the Security Agreement do not answer many long-term, specific questions that affect military justice.[203]

ISSUE: Travel priority for court martial personnel

DISCUSSION: Air travel assets are limited in theater. Most of the travel logistics for courts-martial require air travel. Movement of judges and court personnel by Air Force assets seemed to be rank dependent (i.e., a COL would have little difficulty receiving flight priority as opposed to LTCs and MAJs). A letter signed by the Corps commander did not have an impact regarding the movement of judges and other court-martial personnel on Air Force assets, but did create a priority on Army aircraft.

RECOMMENDATION: Recognize theater travel constraints and plan time for delays in transporting personnel to courts-martial.[204]

ISSUE: Prisoner travel

DISCUSSION: There was no priority for transferring prisoners. Travel priority was generally rank dependent, and the CPTs and paralegals in the military justice section had difficulty making dependable arrangements for transporting prisoners. Transportation arrangements required extensive coordination with the MNC-I Operations section to issue a FRAGO.

RECOMMENDATION: Coordinate with MNC-I Operations personnel to execute FRAGOs to effectuate prisoner travel.[205]

ISSUE: Coordination with J-3 for trial logistics

DISCUSSION: Coordination for travel was difficult and, with a drawdown of forces, there will be greater constraints. Establish personal relationships with J-3 Air for transportation and J-3 Admin for country clearance issues.

RECOMMENDATION: Have a dedicated senior paralegal to coordinate travel logistics and develop the necessary points of contact within the J-3.[206]

ISSUE: Travel for civilian defense counsel

DISCUSSION: Travel for civilian defense counsel into theater was a constant issue. There is a lack of clear guidance regarding what support the command should/must provide, who pays and for what, whether invitational travel orders are necessary, what are the country clearance requirements, etc.

RECOMMENDATION: OTJAG should consider guidance describing what is required, what is permissible, and what is not authorized, and seek to make necessary amendments to the joint

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[203] *Id.*
[204] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[205] *Id.*
[206] *Id.*

travel regulations. While this issue will eventually become lessened by the availability of international flights into the civilian side of BIAP, the issue will remain for other theaters and for movement within theater where MILAIR is the sole method for travel.[207]

ISSUE: Travel for family members into theater for courts-martial

DISCUSSION: As with travel for civilian defense counsel, there is a lack of clear guidance regarding the travel of the victim's and the accused's families into theater (i.e., what is required, what is permissible and what is not authorized). However, while general guidance can be helpful in this area, specific guidance may hinder flexibility.

RECOMMENDATION: OTJAG should consider the appropriate parameters for guidance and maintain sufficient flexibility for commanders in theater.[208]

ISSUE: Expert witnesses and contracting officers

DISCUSSION: The legal administrator was the point of contact for the OSJA for expert witnesses. The legal administrator worked with the contracting office, normally Air Force personnel on a six-month rotation, to get the contract for expert witnesses approved and paid. Getting in touch with the same contracting officer was difficult because of the short deployment.

RECOMMENDATION: Improve. To maintain some continuity and accountability, the contracting office should not deploy anyone into the section for less than one year.[209]

ISSUE: Military justice burden increased as deployment wore on

DISCUSSION: As troop numbers increased and units became stabilized in their areas of operation, the amount of misconduct increased dramatically. Officer and senior NCO misconduct rose proportionally. This taxed the military justice resources that the OSJA had also tasked to coordinate and track the Afghan prosecutions. As the military justice burden increased, this other mission suffered.

RECOMMENDATION: Be prepared for misconduct to increase as the deployment wears on. Resource personnel to the military justice section accordingly, understanding that another section will likely be the bill payer if you want to add a body due to tight controls on troop strength levels.[210]

ISSUE: Panel selection in Afghanistan

DISCUSSION: During the deployment, the CJTF was the sole GCMCA in theater. During the panel selection process, the CG wanted to use distance as a selection criteria under art. 25(d)(2), UCMJ. The reasoning behind this was the danger associated with air and ground movements in theater. The SJA opined that this was appropriate under the caselaw. The case turned into a guilty plea making the issue moot.

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[207] *Id.*
[208] *Id.*
[209] *Id.*
[210] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 37.

RECOMMENDATION: Improve. It is recommended that OTJAG Criminal Law Division provide guidance to the field on the subject.[211]

VI.I. Urinalysis Program

ISSUE: Challenges in conducting urinalyses on Afghanistan deployments

DISCUSSION: It is difficult to conduct urinalysis testing in Afghanistan due to remote operating locations and the lack of transport means apart from helicopters. Even after the unit collects the samples, the registered mail process back to the U.S. is slow and may even exceed the time limit for testing.

RECOMMENDATION: Improve. JAs deploying to Afghanistan should consider these past problems in assisting the commander to maintain an adequate urinalysis program for the unit.[212]

ISSUE: Lead role for legal staff in conducting unit urinalysis program

DISCUSSION: The BCT commander in one unit felt the legal staff was in the best position to take the lead in running the unit urinalysis program during the deployment. Moreover, he wanted to exceed the Army testing standards by 200%. Despite objections regarding possible conflicts and diversion of legal staff from the ample workload, the BCT commander insisted on the additional tasking for the BJA and legal staff. The BJA followed the BCT commander's order but made his objections known in the event a future conflict arose.

RECOMMENDATION: Where BCT commanders wish to put legal staff in a role that may conflict with legal duties, the BJA has to make his objections known. As well, the BJA should bring the SJA into the situation for direction and oversight.[213]

ISSUE: Supplies for urinalysis

DISCUSSION: The requisite supplies for the urinalysis program are hard to find in theater.

RECOMMENDATION: Units should bring enough urinalysis supplies to last throughout the deployment or make prior arrangements for re-supply. Units may need to help supply unprepared units collocated with them, such as PRTs or Agri-business Development Teams (ADTs).[214]

ISSUE: Certification

DISCUSSION: Units should have at least two Soldiers certified to perform urinalysis duties. This is especially true in a kinetic environment with remote outposts like Afghanistan.

RECOMMENDATION: Have at least two alternate Soldiers able to perform urinalysis duties so the program can continue in spite of rest and recuperation (R&R) leave and casualties.[215]

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[211] *Id.*
[212] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 94.
[213] *Id.*
[214] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 1.
[215] *Id.*

ISSUE: Urinalysis program at Camp Shelby

DISCUSSION: The staff at Camp Shelby did not provide adequate support for the unit to conduct urinalysis and process the results. Moreover, the dispersion of the paralegals was problematic to uniform resolution of positive urinalysis cases. The unit had to send all positive urinalysis packets, Article 15s, and reduction actions to the Pennsylvania National Guard and finance for processing. Since there was no TDS at Camp Shelby, the unit had to rely on TDS at Fort Benning. There was also no Army Substance Abuse Program (ASAP) location at Camp Shelby. The unit had to send its Soldiers to Fort Rucker—an entire day's trip, which Camp Shelby did not support with transportation assets.

RECOMMENDATION: Improve. Urinalysis is a big part of mobilization. Camp Shelby should have better staffing and resources to deal with this recurring problem.[216]

ISSUE: Conducting urinalysis at remote Forward Operating Bases (FOBs)

DISCUSSION: Units at remote FOBs had difficulties maintaining a proper chain of custody for urinalysis samples.

RECOMMENDATION: Be prepared to deal with this issue.[217]

ISSUE: Urinalysis results

DISCUSSION: Initially, the unit deployed without an appointed Substance Abuse Control Officer (SACO). As a result, it would take several weeks to a couple of months to receive urinalysis results back from CONUS. Eventually, the command identified and trained a SACO. This allowed the command, through the SACO, to access the results from the Naval Drug Screening Lab (NDSL) website over the internet.

RECOMMENDATION: Sustain. Ensure each unit has a trained and certified SACO to conduct the urinalysis program and, equally important, access the results via the internet from the NDSL website.[218]

ISSUE: Establishing a urinalysis program in a National Guard unit

DISCUSSION: Although most NG units are familiar with the urinalysis program, some of the units may be inexperienced in the execution of the program while on active duty status.

RECOMMENDATION: JAs must understand the urinalysis program and provide their units with thorough training before deployment. Additionally, JAs must understand current case law regarding chain of custody and hearsay issues involved in admissibility of urine samples and lab reports.[219]

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[216] 56th Stryker Brigade Combat Team, 28th Infantry Division (Mechanized), Pennsylvania Army National Guard, Brigade Judge Advocate OIF After Action Report, 24 September 2009, Deployed January 2009 – September 2009, Camp Taji, Iraq (hereinafter "56th SBCT (PA NG) OIF AAR, JAN - SEP 09"; on file at CLAMO).
[217] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 43.
[218] RCT-8, OIF AAR, JAN 09 - OCT 09, *supra* note 108.
[219] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 14.

ISSUE: Aggressive urinalysis program

DISCUSSION: The BCT commander mandated an aggressive urinalysis program due to his previous experiences in eastern Afghanistan where hashish is plentiful and easy to obtain. The commander issued a fragmentary order (FRAGO) at the beginning of the deployment requiring BNs to exceed U.S. Army urinalysis testing standards. Any urinalysis program conducted in Afghanistan is logistically challenging due to the need to collect the samples over a large, hostile AO and then send them by registered mail to Hawaii for processing. Registered mail is slow, especially from remote areas in the AO, so there were a couple of instances where the 30-day period for the sample expired before arriving in Hawaii. 4-25 ID's replacements copied and implemented the FRAGO due to its deterrent effect.

RECOMMENDATION: Sustain. Before the deployment, Soldiers were well aware of the FRAGO on stepped-up urinalysis. It likely prevented misconduct by those who might otherwise have been tempted by the enormous availability of the illicit plants.[220]

ISSUE: Lack of urinalysis program

DISCUSSION: Given the short notice of the deployment, the unit did not have time to establish a urinalysis program in the AO. With more time, they would have set one up.

RECOMMENDATION: The lack of a deployment urinalysis program may compromise, in certain situations, potential criminal cases. This is important because Haiti is a major transshipment point for international drug trafficking.[221]

ISSUE: Testing for steroids

DISCUSSION: The normal DoD drug testing centers do not test for steroids. During the deployment, one of the BCTs under 1CD had a problem with steroid use. As a result, the military justice section had to research how to test for steroids. After completing the research, the military justice section decided to handle it by obtaining search warrant based upon probable cause, and then forward the sample to the University of California Los Angeles (UCLA) for testing. The military justice section then recorded this knowledge on testing for steroids in a memorandum they included in their standard operating procedure (SOP).

RECOMMENDATION: When testing for drugs for which the DoD does not normally test, ensure you do the necessary research to find out where to send samples. Recording that information in an SOP is a good idea so you can save incoming units the hassle of having to reinvent the wheel.[222]

ISSUE: Lack of urinalysis program

DISCUSSION: Given the short notice of the deployment, the unit did not have time to establish a urinalysis program in the AO. With more time, it would have set one up.

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[220] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 17.
[221] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 23.
[222] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 24.

RECOMMENDATION: The lack of a deployment urinalysis program may compromise, in certain situations, potential criminal cases.[223]

ISSUE: Training Unit Prevention Leaders (UPL) and coordinators

DISCUSSION: The unit trained one person to perform the role of UPL. This individual was unable to deploy, which left the downrange program broken.

RECOMMENDATION: Improve. Train more than one person to perform the required tasks to be able to run an effective program downrange.[224]

VI.J. Victim Witness Liaison Program

ISSUE: Selecting the Sexual Assault Response Coordinator (SARC) and/or Equal Opportunity (EO) representative

DISCUSSION: The command should take into consideration the "whole person" approach when tasking a Soldier to fill these roles. The Soldier selected should have the required demeanor and ability to maintain confidentiality.

RECOMMENDATION: Improve. Consider the sensitivity of the issues with which these personnel deal when making the selection.[225]

ISSUE: Appointing military victim witness liaisons prior to deployment

DISCUSSION: In garrison, civilian victim witness liaisons support the Division. In preparation for deployment, the Division appointed and trained two officers and a non-commissioned officer to perform this role in theater.

RECOMMENDATION: Sustain.[226]

ISSUE: Legal administrator as the victim/witness liaison

DISCUSSION: The legal administrator served as the victim/witness liaison for the Division. There were two cases requiring a victim witness liaison.

RECOMMENDATION: Sustain. The legal administrator served well as the victim/witness liaison.[227]

ISSUE: Selecting Sexual Assault Response Coordinator (SARC)

DISCUSSION: 10th Special Forces Group (Airborne) selected experienced, mature and well-

[223] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 27.
[224] 3rd Battalion, 3rd Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 03 June 2010, Deployed January 2010 – May 2010, Bagram Airfield, Afghanistan (hereinafter "3/3 SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).
[225] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 8.
[226] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 18.
[227] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 24.

respected noncommissioned officers (NCOs), including an 18D (SF medical sergeant) to act as SARCs.

RECOMMENDATION: Sustain. Selecting mature and well-respected Soldiers to serve as SARCs should be the standard.[228]

ISSUE: Victim Witness Liaison (VWL) program

DISCUSSION: Two civilians at Fort Lewis served as VWLs. They were tremendous assets. The Corps OSJA did not deploy with any VWL capacity. This became a critical function in the deployed environment, particularly due to one serious case in which a Soldier shot five other Soldiers. The SJA designated an E-6 paralegal from the administrative law section to serve as VWL.

RECOMMENDATION: Improve. Anticipate the need for a deployed VWL and train at least one individual to perform VWL duties. There should be a slot on the joint manning document (JMD) for this position as a primary duty. Another alternative is to designated the civilian VWL as an emergency essential civilian and deploy him or her with the Corps OSJA.[229]

ISSUE: Continuity of office leadership during and after deployment.

DISCUSSION: The Reservist mobilized as the rear detachment legal administrator served as the victim witness liaison in the office in her civilian status. The legal administrator performed those liaison duties for a couple of months even after her mobilization until the OSJA hired a part time employee to fill that position.

RECOMMENDATION: Sustain. The legal administrator was able to provide continuity in the office as the victim witness liaison.[230]

VI.K. Miscellaneous Military Justice Topics

General

ISSUE: Where should the Trial Counsel (TC) reside

DISCUSSION: One area of friction between BJAs and SJAs involves the question of where the TC should call "home" in garrison. TJAG policy and SJAs support the TC working out of the DIV OSJA in garrison, whereas the BJAs want the TC to be a BCT-based resource in order to integrate with the commanders and staff. TCs can get more trial experience and better military justice (MJ) training and oversight at the DIV level in many circumstances. However, at the BCT level on deployments, the TC works in a variety of areas beyond MJ that are critical to the BCT mission. One suggestion to address this tension is to have the TC reside at the DIV, but have a work space at the BCT where the TC works a couple days per week to interact with the staff and BCT commanders on a regular basis.

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[228] 10th SFG OIF AAR, JUL 09 - FEB 10, *supra* note 31.
[229] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[230] *Id.*

RECOMMENDATION: Balancing compliance with TJAG's policy with the BJA's needs is an issue for which SJAs and BJAs must find a solution.[231]

ISSUE: Military justice (MJ) dichotomy between deployment and garrison

DISCUSSION: Panelists to the 2010 BJA symposium all agreed that MJ was the core doctrinal mission while in garrison. However, on deployment it dropped to around third or fourth on the list after areas such as operational law (OPLAW), claims, administrative, and fiscal law. Deployments appear to focus Soldiers' energies and minds on the mission and it seems to remove opportunities for mischief. Additionally, commands are less willing to devote the significant time and resources courts-martial demand in a deployed environment.

RECOMMENDATION: Assuming this trend continues, BJAs should expect to see drops in MJ related issues during deployments and train accordingly.[232]

ISSUE: Unlawful command influence

DISCUSSION: Commanders will usually be very objective in the handling of military justice (MJ) cases; however, some may unintentionally take a course of action that might resemble unlawful command influence. An example of this is commanders wanting to have a say in the justice decisions the rear detachment is making. A side bar with the commander is all that is usually required to avoid the issue. Another good tip is to hand out the ten commandments of unlawful command influence.

RECOMMENDATION: Sustain. JAs have to keep on the lookout for those infrequent instances of potential unlawful command influence in MJ cases.[233]

ISSUE: Soldiers with last minute pre-deployment military justice (MJ) issues

DISCUSSION: The last few weeks of the pre-deployment phase always seem to generate a few MJ issues that generally involve the use of alcohol and/or domestic issues. While many unit commanders are tempted to leave these Soldiers back in the rear to undergo MJ proceedings, other commanders elect to bring the Soldier on the deployment to discourage the notion that committing misconduct before a deployment is a ticket out of the deployment. Moreover, taking a Soldier on the deployment with the MJ "dark cloud" over his/her head encourages the Soldier to redeem himself over the course of the deployment with good behavior. Taking the Soldier means one more set of boots on the ground during the mission. With good behavior and contrition, commanders would often consider foregoing any MJ or administrative action against the Soldier.

RECOMMENDATION: Consider taking Soldiers with last minute pre-deployment MJ offences on the deployment to allow them to redeem themselves and make a positive contribution to the unit and mission.[234]

ISSUE: Court-martial decision making process in light of Article 15 refusal

[231] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 94.
[232] *Id.*
[233] *Id.*.
[234] *Id.*

DISCUSSION: Some Soldiers requested trial by court-martial instead of accepting an Article 15. Commanders found themselves in an awkward position, i.e. prefer charges or administratively separate the Soldier.

RECOMMENDATION: Improve. Commanders often want to impose punishment before processing a Soldier for administrative separation. Judge advocates must consider good order and discipline, as well as general and specific deterrence, when analyzing these types of issues. Handle each situation on a case-by-case basis, as there is not necessarily an easy solution to this dilemma. Judge advocates should keep in mind the mission versus the imposition of punishment, or apparent lack thereof, when making their recommendation.[235]

ISSUE: Soldiers facing serious disciplinary issues during predeployment phase

DISCUSSION: Units often separated Soldiers facing serious disciplinary issues during the deployment, thus causing a "man-power" deficiency until replacements arrived on station.

RECOMMENDATION: Improve. Do not deploy Soldiers facing serious disciplinary issues. Leave these Soldiers with the rear detachment rather than trying to solve the issue in the deployed environment. The best course of action is to chapter these Soldiers out of the Army before the deployment. Create an artificial cut-off that forces commanders to take action while in garrison. Otherwise, Soldiers with disciplinary problems will drain critical resources from the unit's primary mission.[236]

ISSUE: Processing National Guard adverse administrative/UCMJ actions

DISCUSSION: Adverse administrative and UCMJ actions may not become part of the permanent record for National Guard officers and enlisted personnel unless there is coordination with the home state. This is because the individual states separately manage National Guard officer and enlisted personnel records. There is a risk that if the unit does not alert the Soldier's home state, sanctions may not take effect (e.g., rank reduction does not occur, a reprimand is not permanently filed in the Soldier's official file).

RECOMMENDATION: Sustain. Ensure the CJA section has a G1 contact with access to personnel records for all units under the command. Ensure the CJA section has a G1 contact in the sending states for all National Guard personnel under its command. The CJA section should also attempt to establish contact with National Guard SJA personnel in higher headquarters (either in theater or in the Soldier's home state) to further coordinate these actions.[237]

ISSUE: Processing National Guard forfeitures from UCMJ actions

DISCUSSION: It is difficult to complete Article 15 forfeiture reconciliations for National Guardsmen because their pay management does not occur in theater.

RECOMMENDATION: Ensure the CJA section has a National Guard contact in the Soldier's home state who will process the forfeiture and send proof back to theater when the forfeiture is complete.[238]

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[235] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 101.
[236] *Id.*
[237] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 53.
[238] *Id.*

ISSUE: Military justice workload at the brigade

DISCUSSION: The brigade had three summary courts-martial and one general court-martial. In addition, the brigade legal section processed 129 Article 15s. The top offenses were failure to obey a lawful order, dereliction of duty, disrespect, drugs, and failure to repair/absent without leave (AWOL).

RECOMMENDATION: Deploying units should be prepared to process adverse actions up to and including courts-martial.[239]

ISSUE: Military Justice Online

DISCUSSION: The limited bandwidth available in Iraq severely limited the ability to use Military Justice Online.

RECOMMENDATION: Improve. The technological limitations experienced on deployments can limit what are otherwise commonly available and useful programs and tools. Deploying legal staffs should have contingency plans in the event of such possibilities.[240]

ISSUE: Military Justice Online

DISCUSSION: The limited bandwidth available in Iraq limited the ability of the legal staff to use Military Justice Online.

RECOMMENDATION: Improve. The technological limitations experienced on deployments can diminish what are otherwise commonly available and useful programs and tools. Deploying legal staffs should have contingency plans in the event of such possibilities.[241]

ISSUE: Derogatory information concerning individuals with a security clearance

DISCUSSION: IAW AR 380-67, it is mandatory when a commander learns of credible derogatory information pertaining to a member of his or her command for the commander to ensure that such information is immediately reported to the U.S. Army Central Personnel Security Facility (CCF). Concurrently, commanders must determine, based on the nature and severity of the derogatory information, whether or not suspension of the employee's access to classified information is warranted. This requirement is especially important when there is evidence of any derogatory information concerning individuals with a Top Secret clearance. This does not apply to only persons in the intelligence field.

RECOMMENDATION: Units should make this check and reporting requirement a part of your military justice checklist.[242]

ISSUE: Spousal privilege and NIPR/SIPRNet communications

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[239] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 216.
[240] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 128.
[241] 1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09, *supra* note 130.
[242] Chief of Intelligence Law, Multinational Forces – Iraq (MNF-I), OIF After Action Report, 27 October 2009, Deployed June 2008 – May 2009, Combined Joint Staff – 2 (CJ2), Camp Slayer, Iraq (hereinafter "MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09"; on file at CLAMO).

DISCUSSION: During the deployment, the JAs became aware of NIPR/SIPRNet email communications possibly containing evidence of criminal/disciplinary activity. The emails, however, were between a deployed married couple. It was not clear how spousal privilege would apply to these communications over government owned and actively monitored network. The search for leading case law and applicable legal papers did not yield much to help address the question.

RECOMMENDATION: Balancing spousal privileged communications and the lack of privacy over the government NIPR/SIPRNet is a challenging legal question requiring further guidance and consideration.[243]

ISSUE: Uncooperative contractor witness

DISCUSSION: A contract supervisor discovered a married Soldier and a married contractor in bed together in violation of General Order 1B. The contract supervisor refused to cooperate with the investigation.

RECOMMENDATION: BJAs should be prepared to deal with uncooperative civilian witnesses.[244]

ISSUE: Monthly military justice rollup

DISCUSSION: TF Thunder published a monthly rollup of all UCMJ actions and provided it to all levels of command. The command posted the rollup and ensured its Soldiers were aware of the outcome of actions.

RECOMMENDATION: Sustain.[245]

ISSUE: Justice relationship between Kosovo and 21st Theater Support Command (TSC)

DISCUSSION: This relationship is very important, as the 21st TSC will handle the court-martial duties arising in Kosovo. Consequently, it is important for the task force in Kosovo to understand the level of importance 21st TSC places on certain misconduct.

RECOMMENDATION: 21st TSC has a weekly trial video teleconference (VTC). The Task Force Falcon trial counsel must participate.[246]

ISSUE: Non-judicial punishment (NJP)

DISCUSSION: RCT-8 did not conduct courts-martial while deployed. RCT-8 handled all military justice matters through NJP, or sent the accused back to the rear. This saved RCT-8 a substantial amount of time and resources that it otherwise would have spent conducting courts-martial. RCT-8 JAs ensured they were well versed in the NJP process and they clearly understood what the commander's end state was for each case.

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[243] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 5.
[244] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 43.
[245] *Id.*
[246] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 6.

RECOMMENDATION: Sustain.[247]

ISSUE: Utilization of hard labor without confinement

DISCUSSION: In lieu of sending a Soldier to Kuwait to serve out confinement for a summary court-martial, it was better to have the Soldier serve hard labor without confinement. Battalion commanders and sergeants major seemed to get greater, more immediate effects from having a Soldier move sandbags around all day in visibility of his friends.

RECOMMENDATION: Sustain.[248]

ISSUE: Unnecessary reviews of charge sheets by Division OSJA

DISCUSSION: The Division OSJA required the BCT to forward all charge sheets for review by the chief of military justice. This included charge sheets for summary courts-martial.

RECOMMENDATION: Improve. Summary courts-martial are within the purview of the brigade and are a tool commanders seek for swift justice. In this case, the BJA had previously served as a chief of justice, and the TC was a senior captain with extensive military justice experience. Review of the charge sheets by less experienced JAs at the Division OSJA was unnecessary and slowed down the process.[249]

ISSUE: Lack of military justice files in theater

DISCUSSION: When the BCT arrived in theater, it came to the brigade legal section's attention some forfeitures and reductions of Soldiers adjudged in nonjudicial punishment before deployment had not been processed properly. In addition, there was a need for records of previous Article 15s to support administrative separation packets. The paralegals had to communicate extensively with the rear detachment and wait on them to scan military justice records, resulting in substantial processing delays.

RECOMMENDATION: Improve. Consider scanning all military justice files before deployment and bringing them forward.[250]

ISSUE: Lack of courts-martial

DISCUSSION: The brigade commander did not convene any court-martials.

RECOMMENDATION: Improve. The use of Field Grade Article 15s seemed to maintain appropriate discipline. More serious offenses did not seem to rate an appropriately serious sentence though.[251]

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[247] RCT-8, OIF AAR, JAN 09 - OCT 09, *supra* note 108.
[248] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 8.
[249] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 58.
[250] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 143.
[251] 225th Engineer Brigade, Louisiana Army National Guard, Brigade Judge Advocate OIF After Action Report, 7 March 2010, Deployed January 2009 – November 2009, Multi-National Division-Baghdad, Camp Liberty, Iraq (hereinafter "225th EN BDE (LAARNG) OIF AAR, JAN 09-NOV 09"; on file at CLAMO).

ISSUE: Timely processing of Article 15s

DISCUSSION: In response to a lack of timely processing of Article 15s at the unit level, the brigade legal section placed a TDS schedule in Article 15 packets when sending them to the units. They later began tracking the processing times, particularly to ensure units completed all UCMJ action before redeployment.

RECOMMENDATION: Improve. Establish a suspense date for completion of Article 15s and track when Soldiers have gone to TDS. Under normal circumstances, two weeks is enough time to complete an Article 15.[252]

ISSUE: Battlefield circulation of the trial counsel

DISCUSSION: Due to the assignment of the BCT's trial counsel (TC) as the OIC of the PTF, the Reserve Component (RC) individual augmentee became the new TC upon his arrival at the BCT. Although the new TC was able to meet with two of the battalion commanders in person early on, much of his contact with the rest of the commanders occurred via phone and email. He sensed some initial trepidation from some of the commanders about him being a reservist, but once he gave sound advice on military justice issues, these commanders seemed comfortable with him.

RECOMMENDATION: RC JAs arriving at the BCT as the third attorney should be prepared to establish good rapport with their commanders. This is especially critical when assuming the role of the TC, since commanders are used to working with their TC in garrison. Get around as much as possible to meet commanders face to face. Lean heavily on the battalion paralegals, as they have experience working with particular commanders and will be supporting military justice functions on a daily basis.[253]

ISSUE: Serious incidents sent back to home unit

DISCUSSION: The SOTF-N commander referred all serious incidents of misconduct back to group headquarters at Fort Campbell.

RECOMMENDATION: Sustain. The interests of the Soldiers involved in these incidents were better served by resources in the rear.[254]

ISSUE: Navy specific disciplinary actions

DISCUSSION: The Navy uses a Captain's Mast to execute non-judicial punishment. While similar to an Article 15, the Captain's Mast is less JA intensive.

RECOMMENDATION: Army JAs serving with a Navy unit should be familiar with Navy-specific disciplinary measures.[255]

ISSUE: Navy JAG assistance for military justice matters

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[252] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 10.
[253] *Id.*
[254] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 63.
[255] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 148.

DISCUSSION: The JA was in constant communication with NSW's legal officers back in San Diego. This allowed the JA to seek Navy specific advice on military justice and other matters.

RECOMMENDATION: Sustain.[256]

ISSUE: Pre-mobilization on-the-job training

DISCUSSION: The OSJA sent a military justice team, including court reporters, to Fort Lewis Washington before mobilization to conduct on-the-job training (OJT) with the I Corps OSJA.

RECOMMENDATION: Sustain. Coordinate with active duty OSJAs to send staff to those offices to conduct OJT during pre-mobilization. Place strong emphasis on military justice training, since National Guard personnel in Title 32 status have limited opportunities to develop skills and experience in that area.[257]

ISSUE: Delegation of Article 15 authority

DISCUSSION: In accordance with AR 27-10, paragraph 3-7c, the CG delegated the authority to impose General Officer Article 15s to the DCG. He also delegated GOMOR authority under AR 600-37, paragraph 3-4a.

RECOMMENDATION: Sustain. Delegate this authority before deployment. It allows for expedient execution of nonjudicial punishment with minimal travel by the Soldier or CG. For remote bases, use the authority under AR 27-10, paragraph 3-18g to delegate the notification portion of the proceedings.[258]

ISSUE: Need for military justice experience in a National Guard Division

DISCUSSION: Most National Guard judge advocates lack experience with Title 10 military justice, while judge advocates at active duty brigades typically have extensive military justice experience. Title 10 military justice has the most vagaries and unwritten "local practice rules," of any core discipline, and it is difficult for National Guard JAs to learn this on the fly. Brigade judge advocates (BJAs) and their commanders had little patience for the lack of military justice experience at the Division level.

RECOMMENDATION: The Personnel, Plans, and Training Office (PP&TO) should strongly consider providing an active duty augmentee to serve as the chief of military justice for deploying National Guard divisions. If this is not possible, the SJA should assign judge advocates having Title 10 military justice experience into the military justice billets rather than seeking to give them experience in other legal disciplines.[259]

ISSUE: Errata

DISCUSSION: Because counsel and the military judge are typically not co-located with the Division at the time the court reporters complete the record of trial (ROT), it is sometimes

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[256] *Id.*
[257] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 15.
[258] *Id.*
[259] *Id.*

impractical to provide them a hard copy of the transcript for preparing errata. The OSJA therefore established the practice of emailing the transcript to counsel and the military judge.

RECOMMENDATION: Sustain. This speeds up the errata process and provides a means of tracking the date counsel receive the transcript. Ensure you have a Secure Internet Protocol Router Network (SIPRNet) email address for both counsel and the military judge in case there are classified materials in the ROT.[260]

ISSUE: Post-trial processing

DISCUSSION: The timelines for post-trial processing do not change in a deployed environment, yet the process can be challenging with counsel located on different FOBs and having different redeployment schedules. It is very important to have good contact information with the trial counsel and defense counsel in case questions arise and to serve the authenticated record and SJA recommendation in a timely manner.

RECOMMENDATION: Keep a good tracker of where post-trial actions are, as well as their due dates. Maintain up-to-date mailing addresses, email addresses, and phone numbers for counsel and the military judge, as well as their redeployment timelines.[261]

ISSUE: Lack of misconduct issues

DISCUSSION: 4-25 ID had no serious misconduct while deployed and conducted only one summary court-martial. The BCT commander emphasized discipline before deployment, which set the tone. There were many minor issues resulting in non-judicial punishment and adverse administrative action, but no serious misconduct warranting general or special courts-martial. Notably, the BCT conducted a determined push to complete all administrative separations before deployment. 4-25 ID completed over 100 separations in the months leading up to deployment, and deployed with only a handful of Soldiers left behind on the rear detachment.

RECOMMENDATION: Sustain. Emphasis on discipline before deployment conditions all personnel for the rigors of the overseas mission and reduces misconduct.[262]

ISSUE: The "expeditionary" nature of the military justice system

DISCUSSION: The unit did only two courts-martial during its yearlong deployment. Deployed commands are seeking ways to sideline military justice actions to concentrate on the mission at hand. Commanders and units view the court-martial process as too significant a drain on unit resources to be a feasible means of disposing of misconduct while deployed. Consequently, they routinely dispose of egregious misconduct that would clearly warrant a court-martial in garrison by using non-judicial punishment or administrative means.

RECOMMENDATION: The JAG Corps must internalize and emphasize the expeditionary nature of military justice as an institution, and remind commanders at all levels that the system exists in large measure because of its ability to enforce good order and discipline in any environment. Senior leaders should be reminded of this at the General Officer Legal Orientation (GOLO) course, Senior Officer Legal Orientation (SOLO) course, and Article 6 engagements.

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[260] *Id.*
[261] *Id.*
[262] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 17.

Judge advocates should be taught and trained from the beginning to expect and be able to conduct this core function in the deployed environment. A wide array of misconduct—some of it quite serious—was addressed by battalion and BCT commanders with non-judicial punishment rather than courts-martial because it easier, not because it was just. Manage expectations regarding military justice outcomes while deployed. Recognize the legal office will return to garrison with severely atrophied military justice skills.[263]

ISSUE: Cyclical nature of the military justice workload while deployed

DISCUSSION: There is often a spike in military justice actions at the mid-deployment period. It is ethically allowable to have legal personnel perform more than one function, as long as those duties do not give rise to ethical conflicts.

RECOMMENDATION: Have a plan to make use of your military justice personnel for other functions and or/training before the spike. During the spike, be prepared to have others assist with military justice.[264]

ISSUE: Diminished typical level of military justice experience

DISCUSSION: Even if a judge advocate has had all of the typical justice jobs, he or she may report as a Chief of Justice with very little actual experience. For example, if a significant part of their trial counsel duties were in a deployed environment, they probably did not try very many cases.

RECOMMENDATION: The SJA must have the flexibility to put the right people in the right jobs. Additionally, the military justice positions have to remain filled to ensure we are building enough military justice experience into the JAG Corps. Encourage the Chief of Justice to contact the clerk of court's office with questions regarding post-trial processing and promulgating orders. SJAs, DSJAs, Legal Administrators, and Command Paralegals must also carefully review even routine military justice actions.[265]

ISSUE: Maintaining competency in military justice while deployed

DISCUSSION: The complexities of military justice are difficult to replicate in the deployed environment. It is a challenge to maintain proficiency in this core competency when you go for so long without doing it. The Division has no civilian subject matter experts to maintain a level of knowledge in complex things, such a post-trial processing.

RECOMMENDATION: Deploy understanding you will have to maintain a professional development program to keep Soldiers and attorneys proficient in these actions.[266]

ISSUE: Relationship between the Chief of Military Justice and the BJAs

DISCUSSION: The Chief of Military Justice was a captain (CPT) who had another CPT on staff. The BJAs were majors. Frequently, some BJAs would go directly to the DSJA/SJA with military justice issues instead of consulting the Chief. In some instances, BJAs would ignore submitting

[263] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 18.
[264] *Id.*
[265] *Id.*
[266] *Id.*

summary court-martial (SCM) packets to the Division for review even though the Division's Supplement to Army Regulation (AR) 27-10 required it. The Division OSJA required weekly reports from the brigades. Some brigades did not comply and others consistently needed reminders to submit their reports. Overall, some BJAs and their trial counsels were more interested in looking out for the interests of their brigades than following protocols set by Division/General Court-Martial Convening Authority (GCMCA).

RECOMMENDATION: Improve. Communicate the requirements to the brigades as they enter your AO. Hold non-compliant BJAs accountable even when the JAs requesting the information are junior in rank.[267]

ISSUE: Relationship between Division trial counsel and the brigades

DISCUSSION: Division policy required the Division trial counsel (a CPT) to sit second chair on any brigade case. The thought behind this policy was to help keep the brigades grounded and to assist them in moving issues along. BJAs (and their trial counsels) resisted this policy and rarely engaged the Division trial counsel. Because of this tension, the Division trial counsel was relegated to merely reining in cases that became overly problematic for the brigades to handle.

RECOMMENDATION: Improve. Work with the brigades to determine what types of assistance they require and develop a Division policy that best serves those needs.[268]

ISSUE: Increased number of senior leader misconduct cases

DISCUSSION: The Division handled seventy-nine senior leader misconduct cases. It defined senior leader as any officer and any non-commissioned officer E-8 and above. The misconduct ranged from fraternization and sexual harassment to false official statements. The Division OSJA attributed the relatively high number of cases to three things: the large number (24,000) of Soldiers assigned to MND−N; a less kinetic environment that led to more down time; and the geographic positioning of the brigades in remote, outlying locations far away from the Division headquarters.

RECOMMENDATION: Improve. Even though the Division commander personally addressed this issue with the brigades, it had little effect. Commanders must find ways to keep their personnel engaged with the mission, reducing the time they have to commit misconduct.[269]

ISSUE: Military Justice Online (MJO)

DISCUSSION: The MJO application does not work properly from a deployed environment. The limited bandwidth is a problem for all online applications based in CONUS.

RECOMMENDATION: Improve. Develop and deploy an offline client that allows for a daily synch with the online application.[270]

ISSUE: Lack of Criminal Investigation Division (CID) services

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[267] *Id.*
[268] *Id.*
[269] *Id.*
[270] *Id.*

DISCUSSION: There were no CID criminal investigative agents in Haiti to investigate an allegation of a serious criminal offense (prostitution and drug use). A CID agent eventually arrived, but only after a lengthy lapse of time that may have hurt the opportunity for investigation. In addition, there was no urinalysis capability in the AO at the time to gather evidence of drug use.

RECOMMENDATION: JAs at all levels on a no notice deployment have to be aware of the implications of the absence of CID services and a lack of a urinalysis program.[271]

ISSUE: No-notice deployment and ongoing military justice matters

DISCUSSION: With the sudden deployment, the JAs had little time to transition ongoing military justice cases. The JAs transferred pending cases to the rear detachment of the Division Office of the Staff Judge Advocate (OSJA). Several delays of cases happened since a number of Soldier witnesses were on the Haiti deployment.

RECOMMENDATION: Having good relations with the Division OSJA and Trial Defense Service (TDS) lawyers can greatly assist with a sudden deployment of a unit and the subsequent juggling of the trial schedules.[272]

ISSUE: Handling military justice in the rear

DISCUSSION: Because of the high operational tempo and the fact that there were no Marine military judges or defense counsel in theater, RCT-3 sent all of its military justice matters back to the rear.

RECOMMENDATION: Sustain.[273]

ISSUE: Use of non-judicial punishment (NJP)

DISCUSSION: Due to the unit's operational tempo and lack of court-martial assets (i.e., defense counsel and military judge), 2d MEB and its subordinate units did not conduct courts-martial while in theater. Doing so would have been too burdensome on the unit. As a result, commanders used NJP to deal with most misconduct. They sent to the rear those matters for which NJP was not appropriate.

RECOMMENDATION: Sustain.[274]

ISSUE: Weekly military justice teleconference

DISCUSSION: During the deployment, the Division Chief of Justice held a weekly military justice meeting/teleconference with all the trial counsels (TCs) in MND-B. Since most of the TCs were remotely located throughout the AO with their brigade combat teams (BCTs) at

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[271] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 23.
[272] *Id.*
[273] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 91.
[274] 2d Marine Expeditionary Brigade, Deputy Staff Judge Advocate, OEF After Action Report, 22 March 2010, Deployed April 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB DSJA, OEF AAR, APR 09 - NOV 09"; on file at CLAMO).

different FOBs, the Chief of Justice conducted the meeting on the secure internet protocol router (SIPR) network using Adobe SharePoint.

RECOMMENDATION: Sustain. The Chief of Justice used the weekly teleconference for two purposes: 1) as a means of keeping the Chief of Justice and MND-B SJA informed of military justice issues, and 2) as a way for TCs to assist each other on their cases.[275]

ISSUE: Tracking military justice actions

DISCUSSION: Issues arose during the deployment regarding certain units choosing not to report serious misconduct to Division level in order to keep certain matters "in-house." The Chief of Justice resolved this issue by defining exactly what the BCTs needed to report and placed the requirement to report it each week in the legal annex of MND-B's updated operational order (OPORD).

RECOMMENDATION: Sustain. It is critical for the Chief of Justice at the Division level to track pending military justice cases and statistics in order to keep the SJA and Commanding General informed. If subordinate units give push back, do not hesitate to publish the requirement in the OPORD or a fragmentary order (FRAGO).[276]

ISSUE: Military Justice Online (MJO)

DISCUSSION: In spite of limited bandwidth in Iraq, which limited the ability of previous units to use MJO, the Chief of Justice implemented the mandatory use of it for all of MND-B and its subordinate units. The low bandwidth issue did slow down MJO at times, but all the units were able to eventually get it up and running.

RECOMMENDATION: Sustain. Although slow at times, MJO proved to be a force multiplier. Continue to use MJO.[277]

ISSUE: Active X add-on for MJO

DISCUSSION: The use of MJO required an Active X installation on the computers. The G-6 was able to install the additional software to allow MJO to work properly

RECOMMENDATION: Sustain. Be aware installation of Active X components may require administrator rights.[278]

ISSUE: Trial Counsel Assistance Program (TCAP) training

DISCUSSION: During 1CD's deployment, TCAP came into theater and hosted training for all TCs in theater. This valuable training proved to be a great boost for the deployed TCs.

RECOMMENDATION: Sustain.[279]

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[275] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 24.
[276] *Id.*
[277] *Id.*
[278] *Id.*
[279] *Id.*

ISSUE: Summary court-martial (SCM) reviews

DISCUSSION: The AdLaw section was responsible for conducting legal reviews of all SCMs conducted in MND-B.

RECOMMENDATION: JAs should be familiar with the Manual for Courts-Martial (MCM), Rules for Courts-Martial (RCM), and other applicable regulations so you can provide legal reviews of courts-martial. Military justice is one of the Judge Advocate General (JAG) Corps core competencies.[280]

ISSUE: Review of records of trial by the legal administrator

DISCUSSION: The legal administrator reviewed one record of trial.

RECOMMENDATION: Sustain. The SJA found it beneficial to exercise the legal administrator in a post-trial role.[281]

ISSUE: Post-trial expert at the Division

DISCUSSION: In the absence of any civilian continuity in the Division structure, someone has to carry the expectation of expertise in the post-trial processing.

RECOMMENDATION: The Chief of Justice should manage post-trial processing and the legal administrator (warrant officer) should be an integral part of it. It would be perfectly acceptable for the legal administrator community to retake the role as experts in post-trial processing. Having them do so is a matter of providing the training and allowing them to learn.[282]

ISSUE: Consolidation of brigade trial counsels at the Division

DISCUSSION: There was no pushback from the brigades with doing this. Consolidating the trial counsel under the Chief of Justice in garrison makes sense. It provides the trial counsels greater practical experience when they are around each other to discuss issues, facilitates an advocacy training program, and provides better and more immediate oversight. While in garrison, TCs are likely used in cases across jurisdictions, which provides support to other TCs while providing more educational and practice opportunities.

RECOMMENDATION: Maintain the expectation trial counsel will consolidate and serve under the direct supervision of the Chief of Justice in garrison. Understand, however, that TCs will need to cover for the absences of the BJA or otherwise attend meetings and training that may pull them away from the consolidated office temporarily.[283]

ISSUE: Military justice atrophy while deployed

DISCUSSION: Military justice suffers while deployed because other duties pull the trial counsels in a variety of directions. The attention and focus needed for trial preparation is distracted by other operational issues. As a result, the trial preparation suffers. Having said that,

[280] *Id.*
[281] *Id.*
[282] *Id.*
[283] *Id.*

military justice business with respect to prosecution of cases is simply not that great in volume. The type, timing, and complexity of cases all have an impact on whether a case goes to trial. The units are often not on the same deployment timeline as the General Court-Martial Convening Authority (GCMCA), so perhaps there is a decision to delay while in theater. It is difficult to get civilian witnesses into theater (e.g., forensic experts for drug cases and child pornography cases), more so now with the SA, such that delaying until redeployment or returning the case to the rear is preferable. Post-Traumatic Stress Disorder (PTSD) affects nearly every deployment case, and psych experts in theater are limited. The Division had a reluctance to forward accuseds to Germany for evaluation because of a potential loss of the Soldier permanently from theater for medical reasons and at least a temporary loss of jurisdiction. All of these things make it a choice of holding the action until you return or using non-trial options. There are not many trials, but there are many issues. Trial business was booming at home station, however.

RECOMMENDATION: It would be helpful to develop the Modification Table of Organization and Equipment (MTOE) for the third JA in the brigade to allow the trial counsel to focus more on military justice. Prepare for a burgeoning trial business in the rear detachment. Not only will they have jurisdiction over those left behind, but could very well inherit any sent back from theater for disposition.[284]

ISSUE: Serious issues sent back to the rear

DISCUSSION: SOTF-S Commander sent all military justice issues more serious than non-judicial punishment to the rear due to the high operational tempo.

RECOMMENDATION: Sustain. Resources in the rear best served the Soldiers' interests.[285]

ISSUE: Corps chief of military justice staffing

DISCUSSION: Consideration of the composition of the rear detachment staff and forward deployed staff led to the decision to bring both the SJA and DSJA forward. The SJA therefore decided to leave the O-5 chief of military justice at Fort Lewis in order to have a senior active duty presence on the rear detachment. This consequently left a captain (CPT) to fill the role of the MNC-I chief of military justice.

RECOMMENDATION: Consider the rank issue carefully when filling the deployed Corps chief of justice billet. Although this particular CPT performed admirably in the role, a field grade officer is preferable in this position in order to carry the authority necessary to deal with BJAs, who are typically majors, as well as Division SJAs and Corps staff. The O3 Chief of Criminal Law at a Corps may be more experienced than many Field Grade officers, but, lacks credibility with senior officers that often impacts case preparation unnecessarily.[286]

ISSUE: Staffing the deployed Corps military justice section

DISCUSSION: During the course of the deployment, the MNC-I military justice section included two to three CPTs and six paralegals, one of which was the court reporter. With fourteen separate brigades reporting to the MNC-I, however, the workload was overwhelming at

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[284] *Id.*
[285] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 29.
[286] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.

times. Moreover, many of these separate brigades were Reserve Component (RC) units with limited experience in military justice.

RECOMMENDATION: Improve. Ideally, the deployed Corps-level military justice section should have four attorneys and six or seven paralegals. This would allow the section to manage the Divisions and separate brigades, as well as coordinate with the Department of Justice (DoJ) for Military Extraterritorial Jurisdiction Act (MEJA) actions.[287]

ISSUE: Anticipated deployed military justice caseload

DISCUSSION: The caseload for military justice was greater than anticipated before deployment. The large volume of misconduct cases placed a significant strain on the military justice personnel. During the deployment, a Soldier walked in to the combat stress clinic and shot five people. This catastrophic incident was unanticipated and resulted in a substantial shift of military justice assets and strained the Corps' military justice resources.

RECOMMENDATION: The SJA needs to anticipate at least one catastrophic event resulting in a complex court-martial. Although the deployed caseload may not be as great as during normal operations at home station, there will be an increased number of misconduct investigations for the deployed Corps military justice section to manage.[288]

ISSUE: Rear detachment military justice caseload

DISCUSSION: The I Corps rear detachment military justice workload was significant. Commanders preferred court-martial charges for Special and General Courts-Martial in 95 cases, 41 of which were disposed of as discharges in lieu of court-martial under AR 635-200, Chapter 10. The rear detachment military justice section also processed 492 adverse administrative separations under Chapter 14, 85 post-trial actions, and 70 senior leader misconduct actions.

RECOMMENDATION: Anticipate a robust military justice practice on the rear detachment and staff the military justice section accordingly.[289]

ISSUE: Workload generated by AWOL returnees and Soldiers in civilian confinement

DISCUSSION: The rear detachment received a strong influx of Soldiers returning to Fort Lewis that had previously gone absent without leave (AWOL). The OSJA believed two factors drove the large volume of returnees: (1) the fact most maneuver brigades on Fort Lewis were currently deployed and not anticipated to redeploy soon; and (2) the general drawdown of forces in Iraq. The command generally did not seek courts-martial in these situations and sought administrative separation. The process of separating the AWOL returnees was resource intensive and time consuming.

The rear detachment also dealt with an unanticipated number of Soldiers in civilian confinement. If an officer is in civilian confinement in excess of 12 months, the unit may drop the officer from the rolls. Conversely, the unit must administratively separate enlisted Soldiers in civilian confinement, which can require significant resources and time. There is a host of possible

[287] *Id.*
[288] *Id.*
[289] *Id.*

concerns, such as medical and psychiatric evaluations and due process requirements. The Soldier's confinement complicates these.

RECOMMENDATION: In planning for staffing levels, there are unforeseen issues that will strain projected staffing levels. With the I Corps rear detachment, Soldiers in civilian confinement and AWOL returnees were largely unanticipated drains on existing resources. There needs to be sufficient flexibility in the staffing decision to allow the rear detachment to surge in response to unforeseen circumstances.[290]

ISSUE: Mobilization of civilian prosecutors for rear detachment military justice

DISCUSSION: Before deployment, I Corps and the 2d LSO coordinated the mobilization of JAs with substantial criminal prosecution experience. These mobilized JAs were generally more experienced in criminal prosecution than the defense counsel and the military judge. The civilian prosecution experience translated into credible, confident, and effective trial presentation.

RECOMMENDATION: Sustain. Military judges will recognize the civilian criminal trial practice and experience as an asset that enhances the trial counsel's credibility with the military judge.[291]

ISSUE: Rear detachment court-martial procedures training for reservists

DISCUSSION: In civilian courts, there are no responsibilities for the prosecutor regarding prisoners, bailiffs, panels, setting up the courtroom, closing the courtroom, etc. In the military justice system, the trial counsel and paralegals are responsible for setting up the courts-martial and operation of the courtroom.

RECOMMENDATION: Provide training to incoming reserve component paralegals who will be responsible for supporting courts-martial.[292]

ISSUE: Court reporters

DISCUSSION: The OSJA considered whether to have one or two court reporters at the Corps level and ultimately settled on one. In addition to the Corps court reporter at Victory Base Complex (VBC), there were three other court reporters in theater (one at Camp Liberty, one at Contingency Operating Base (COB) Basra, and one at COB Speicher). Court reporters were responsible for the judge's entire docket, the travel schedule, and logistics. The MNC-I court reporter was the senior court reporter assignment in theater, but the individual in the position was an E-5. Some of the court reporters in theater outranked the Corps court reporter. It required a MNC-I FRAGO for the court reporter on Camp Liberty to cover for the MNC-I court reporter when absent.

RECOMMENDATION: Two court reporters at Corps level is optimal. One of the MNC-I court reporters needs to be an E-7 so the Corps will have a senior NCO. The senior court reporter could mentor the junior court reporters in theater. One or both of the court reporters could assist in the military justice section when not performing court reporter duties.[293]

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[290] *Id.*
[291] *Id.*
[292] *Id.*
[293] *Id.*

ISSUE: Use of court reporters to do post-trial

DISCUSSION: During deployment, the MNC-I court reporter was able to expand and develop professionally as a paralegal by assisting the military justice section with post-trial matters.

RECOMMENDATION: Sustain. Provide cross-training for court reporters to assist in post-trial processing.[294]

ISSUE: Trial counsel training

DISCUSSION: In today's highly deployed JAG Corps, young CPT JAs often arrive in theater with little or no trial experience. This is the case with both the active component and reserve component CPTs. These CPTs will begin trying their first case in a very difficult environment.

RECOMMENDATION: Improve. BJAs need to actively mentor and train inexperienced trial counsel.[295]

ISSUE: Trial Counsel Advocacy Program (TCAP)

DISCUSSION: TCAP sent a training team to VBC to conduct sexual assault advocacy training to deployed trial counsels. This specialized training was relevant, appropriate, and timely. Trial counsels throughout over Iraq attended the training.

RECOMMENDATION: Sustain. Continue to deploy TCAP into theater to provide specialized training support.[296]

ISSUE: Military justice training for reserve JAs

DISCUSSION: Reserve JAs do not practice military justice in their civilian capacity. Military justice is often remote and unfamiliar to Reserve JAs. Often there will be a significant time lapse between the last time the reservist received military justice training and deployment. The lack of training can lead to serious disruptions in the deployed environment where a single isolated CPT can miss important issues due to lack of training. During the deployment, a significant case involving command influence required the Corps military justice section to become heavily involved in matter at the brigade level. There are several ways to improve and enhance the reserve JA training, such as pre-deployment on-the-job training at an active duty installation, military justice training at the mobilization center, and strong mentorship during deployment by the BJA and senior trial counsel. Significant lead-time between deployment notification and mobilization can enhance training opportunities for reserve JAs.

RECOMMENDATION: It is up to the BJA of a RC brigade to get his or her JAs the proper training. Some solutions are early warning and notification of duty assignment to allow reserve JAs to take advantage of training opportunities, such as on-the-job training with active duty military justice during annual training or during pre-deployment. In addition, First Army should develop a training checklist for JAs during mobilization training. During Mission Rehearsal

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[294] *Id.*
[295] *Id.*
[296] *Id.*

Exercises (MRXs) and other staff training, continue to push military justice actions in front of the commander as you would in theater.[297]

ISSUE: Lack of military justice exposure in the Reserve Component

DISCUSSION: The vast majority of Reserve legal professionals receive little exposure to military justice. It is simply not something that comes up very often. However, upon mobilization, military justice becomes a significant part of the workload.

RECOMMENDATION: Consider very carefully the need for the Active Component unit to leave behind someone experienced in military justice. Failure to do so risks having a critical shortfall in the military justice area.[298]

ISSUE: Military justice training for company and battalion commanders

DISCUSSION: Eight straight years of conflict has created rapid promotion of company and battalion commanders. These officers have not had many opportunities to focus on military justice and will not have assigned legal counsel until they reach brigade command. Modularity and deployment cycles have disrupted continuity of military justice training for these commanders. With young company commanders in particular, there was a lack of understanding of basic military justice issues, including command authority, Article 15s, and pretrial confinement.

RECOMMENDATION: SJAs and BJAs need to find the appropriate touch points to provide military justice training to lower-level commanders in both the active and reserve components. Seek every opportunity to provide military justice training during pre-command courses and officer professional development sessions so commanders understand the military justice system, their roles and responsibilities in that system, and their authorities and options for dealing with misconduct.[299]

ISSUE: Military Justice Online (MJO)

DISCUSSION: The unit did not establish an MJO account while deployed. Other units in theater had established one, but could not properly use it because the level of bandwidth available was too low.

RECOMMENDATION: Improve. MJO needs to be more accessible in hostile areas if the intent is to use the program while deployed.[300]

ISSUE: Moving subordinate units in MJO

DISCUSSION: A unit subordinate to the Corps in garrison deployed and fell under another General Court Martial Convening Authority (GCMCA). It was an ordeal trying to figure out how to move it from one command to another.

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[297] *Id.*
[298] *Id.*
[299] *Id.*
[300] *Id.*

RECOMMENDATION: Improve. MJO needs to make things easier for a unit moving from one GCMCA to another.[301]

ISSUE: Two Military Justice Online (MJO) accounts

DISCUSSION: The rear detachment was using MJO and the deployed office was using MJO before its redeployment. There were some problems integrating the two MJO accounts into one upon redeployment.

RECOMMENDATION: Improve. The Information Technology Division (ITD) office managed to integrate the two accounts, but there needs to be a mechanism in place to prevent the problems or a better way to integrate the two accounts.[302]

ISSUE: Military judge's bench book

DISCUSSION: Getting the electronic military judge's bench book was easy and so was the installation. The problem arose when we had to install the Active X add-on to run the program. The C-6 had to approve the use of the add-on and that took some time.

RECOMMENDATION: Improve. All JAGC specific software should be on the C-6 list of authorized programs, along with the add-ons required to make them run.[303]

ISSUE: Timeliness of post trial actions

DISCUSSION: The legal administrator took the initiative to help the military justice section push actions through trial defense services (TDS). Specifically, TDS was taking a long time with the errata, and the legal administrator worked with TDS to establish a suspense date. The legal administrator became aware of the problem because of the administrator's oversight of all CG actions coming out of the military justice section.

RECOMMENDATION: Improve. TDS should not be the reason an action is late getting the CG.[304]

ISSUE: Military justice training for Reserve JAs

DISCUSSION: BJAs deploying in the reserve component may not have a lot of experience with military justice before deployment. Once in theater, the expectation is the BJA take over pending matters and address issues as they arise. There is no time to receive training in theater, and the result is learning the substantive laws as the issues arise.

RECOMMENDATION: Improve. Provide theater-specific military justice training before deployment into theater.[305]

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[301] *Id.*
[302] *Id.*
[303] *Id.*
[304] *Id.*
[305] 492d Civil Affairs Battalion, 364th Civil Affairs Brigade, Brigade Judge Advocate OIF After Action Report, 17 April 2010, Deployed January 2009 – February 2010, Camp Victory, Iraq (hereinafter "492d CA BN OIF AAR JAN 09 - FEB 10"; on file at CLAMO).

ISSUE: Military Justice Online

DISCUSSION: MJO is not a useful tool in theater. The limited bandwidth causes the system to time out when trying to complete an action. The jurisdiction build for the CJTF was not accurate and was difficult to correct because of the connection problems.

RECOMMENDATION: Improve. The system works and would be great in a deployed environment if it could be a standalone system that synchronizes periodically or if it had a low bandwidth version.[306]

ISSUE: Military justice training for National Guard (NG) attorneys

DISCUSSION: One of the subordinate BSOs was a NG unit. The attorneys assigned to the brigade were not proficient in military justice. Errors in pre-trial procedures by these units caused the military judge to dismiss two of their cases. Making matters worse, these cases were both for relatively serious misconduct, and the brigade did not attempt to retry the cases in theater.

RECOMMENDATION: Improve. If there are NG units assigned to your headquarters, ensure that their attorneys have the requisite experience to process courts-martial.[307]

[306] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 37.
[307] *Id.*

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VII. MULTINATIONAL OPERATIONS

General Comments

ISSUE: National caveats

DISCUSSION: CJSOTF-A served as the higher headquarters with numerous coalition special operations forces. The issue of national caveats had a direct impact on operations. Sometimes the national caveats were driven by specific mission-sets, *e.g.* detention operations, while other national caveats were driven by geographic location, *e.g.* defined battle-space. It is important to understand these underlying "drivers" in order to mitigate adverse impacts on operations during planning.

RECOMMENDATION: Sustain. CJSOTF-A compiled the national caveats applicable to the present coalition special operations forces and used this information to screen concepts of operations to ensure compliance.[1]

ISSUE: Taking over the battlespace of coalition partners

DISCUSSION: The BCT took over the battlespace of the Polish at FOB Echo, and later the British at COB Basra. The Polish did not have a claims program, nor did they do a good turnover of SIGACTs. The British, on the other hand, refused to turn over any records on claims and detainees for political reasons.

RECOMMENDATION: Know ahead of time whether you are replacing a coalition partner. Expect to have to start over from scratch in many areas, such as claims, detention operations, and rule of law.[2]

ISSUE: Working with other nations' forces

DISCUSSION: Be cautious when working with other nations' forces. Members of a certain nation's armed forces would use traffic control points to "shakedown" and steal from local nationals. You must be vigilant and prevent them from destroying the good will you have worked so hard to develop.

RECOMMENDATION: Report these types of violations through your chain of command.[3]

ISSUE: National caveats

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[1] 3rd Special Forces Group (Airborne), Group Judge Advocate OEF After Action Report, 22 July 2010, Deployed January 2010 – May 2010, Bagram, Afghanistan (hereinafter "3rd SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).

[2] 2d Brigade Combat Team, 4th Infantry Division, OIF After Action Report, 15 September 2009, Deployed September 2008 – August 2009, Forward Operating Base (FOB) Echo, Diwaniyah, Qadisiyah Province, Iraq, Contingency Operating Base (COB) Basra, Basra Province, Iraq (hereinafter "2BCT, 4ID OIF AAR, SEP 08 - AUG 09"; on file at CLAMO).

[3] 2d Brigade Combat Team, 1st Armored Division, Brigade Judge Advocate OIF After Action Report 25 September 2009, Deployed July 2008-June 2009, Forward Operating Base (FOB) Hammer/Camp Stryker, Iraq (hereinafter "2BCT, 1AD OIF AAR, JUL 08 - JUN 09"; on file at CLAMO).

DISCUSSION: It took two weeks to receive confirmation of the national caveats of a certain nation's forces. This is not efficient. Moreover, the commander of these forces made the decision not to follow his nation's caveats.

RECOMMENDATION: There should be a central repository of national caveats. Be cognizant of and inform your commanders when other nations appear to be disregarding their caveats. Protect the brigade commander by including the national caveats as a limitation in the military decision making process (MDMP).[4]

ISSUE: National caveats

DISCUSSION: You must recognize and understand the national caveats of coalition partners.

RECOMMENDATION: Note.[5]

ISSUE: Lack of training in multinational operations

DISCUSSION: There are 32 nations participating in the Kosovo mission. Despite this, the subject of international relationships received short shrift during training at Camp Atterbury.

RECOMMENDATION: It may be difficult to train this, but it is exceptionally important. Units deploying to Kosovo need to be aware of the multinational nature of the mission.[6]

ISSUE: Avoiding the "ugly American" stereotype

DISCUSSION: The U.S. contingent is only about 10% of the overall force. However, the U.S. wields an influence well beyond its numbers.

RECOMMENDATION: Do not act like act like a jerk. Multinational operations are consensus-based. Understand it is not your place to dictate to your partners, even if the U.S. is an acknowledged major player.[7]

ISSUE: Establishing contacts with partner nation legal advisors

DISCUSSION: It is extremely important to know whom to contact when issues arise. KFOR headquarters and each Multi-National Task Force (MNTF) have their own Legal Advisor (LEGAD). Interaction and collaboration with each of them is essential to smooth JAG operations. The mission in Kosovo is all about relationships. Having met the right point of contact for an issue face to face greatly facilitates resolution of the issues.

RECOMMENDATION: The TFF legal section should work closely with the KFOR LEGAD to ensure monthly LEGAD conferences occur. Additionally, the outgoing unit hosted a LEGAD

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[4] *Id.*
[5] 1st Combat Support Brigade (Maneuver Enhancement), Task Force Warrior, OEF After Action Report, 20 October, 2009, Deployed June 2008 – September 2009, Bagram Airfield, Afghanistan (hereinafter "1 CSB (ME) OEF AAR, JUN 08 - SEP 09"; on file at CLAMO).
[6] Task Force Falcon, 40th Infantry Division, California National Guard, Command Judge Advocate, Kosovo Forces 11 After Action Report, 9 January 2010, Deployed February 2009 – November 2009, Camp Bondsteel, Kosovo (hereinafter "KFOR-11 AAR, FEB 09 - NOV 09"; on file at CLAMO).
[7] *Id.*

conference at Camp Bondsteel during the transition period with the incoming unit. There were about forty participants. They included LEGADs from various countries, USAID, Organization for Security and Cooperation in Europe (OSCE), and EULEX. Through this means, the incoming unit was able to meet everyone at once and begin building relationships. Though it is a big effort for an outgoing unit, it is well worth it to set the incoming unit up for success.[8]

ISSUE: Sensitivity of country status issues in the Balkans

DISCUSSION: Greece does not recognize the Former Yugoslav Republic of Macedonia (FYROM) as the independent country of Macedonia. Greece considers the area of Macedonia part of Greece. The Macedonians, of course, have a very different view. This is a very sensitive matter. Failing to refer to Macedonia as "FYROM" in front of Greek officials will evoke a visceral reaction in those officials. Similarly, use of "FYROM" is not neutral to Macedonians, who consider it an affront to their sovereignty.

RECOMMENDATION: Understand the sensitivities that are part of multi-national operations in this part of the world. You may have individuals falling on either side of issues such as these working in your office.[9]

ISSUE: Cultural differences

DISCUSSION: The cultures of our multinational partners are very different. They are, however, no less important to them than our own are to us. You may think the Danes salute strangely or the Italians spend much too long over dinner. These, though, are their customs. Do not inadvertently insult them by not appreciating these differences.

RECOMMENDATION: Understand some of your Soldiers may not have had much contact with non-American cultures. Prepare them for these differences and ensure they understand different does not mean wrong.[10]

ISSUE: Working for NATO

DISCUSSION: When working for a NATO mission, you have an obligation to keep your NATO headquarters informed of what you are doing. This includes both legally and operationally.

RECOMMENDATION: Do not concentrate solely on passing information through U.S. channels. Ensure you keep your NATO headquarters informed.[11]

ISSUE: Communicating in a NATO environment

DISCUSSION: There are definite communications issues within NATO. Although English is the international language of NATO operations in Kosovo, the terms are simply different.

RECOMMENDATION: Be prepared to adjust your phrasing to the norm. For example, it may be necessary to answer the phone, "Task Force Falcon LEGAD," rather than, "Task Force Falcon JAG."[12]

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[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*

ISSUE: Reintegration of the United Kingdom (UK) into the coalition

DISCUSSION: UK forces departed Iraq by 30 June 2009 due to the expiration of their security agreement with Iraq. MNSTC-I temporarily picked up the mission for training the Iraqi Navy, which had been a UK mission. With the new UK-Iraq agreement signed in October 2009, UK forces rejoined the coalition. Consistent with the arrangement existing prior to 30 June, MNSTC-I assumed command and control of the UK forces resuming the ITAM-Navy mission. However, no formal mechanism existed to reintegrate those forces back into a coalition structure. The command relationship was by the consent of the UK. There was a separate UK naval force operating offshore which was the higher national chain of command for the UK forces in ITAM-Navy.

RECOMMENDATION: Although the command relationship existed merely by consent, there did not appear to be a pressing operational need for a government-to-government agreement defining this relationship. However, in the absence of such an agreement, questions of transportation, funding, and logistic support quickly arose. The mission of ITAM-Navy was very specific, and there was clear direction with which both MNSTC-I and ITAM-Navy agreed. At a minimum, the COCOM must identify which mutual support agreements and other arrangements they should activate in order to ensure continuity of support across a reborn coalition.[13]

ISSUE: Legal advice to the NATO Training Mission – Iraq (NTM-I)

DISCUSSION: The Senate confirmed the MNSTC-I CG's nomination as both the MNSTC-I commander and the commander of NTM-I. This made the MNSTC-I SJA the de facto legal advisor to NTM-I. However, since NATO legal advice generally flows through the NATO chain, the SJA coordinated often with the NATO legal advisors at Joint Forces Command (JFC) – Naples. Although the SJA's advice to the CG in his capacity as NTM-I commander was minimal, some issues did arise which called for quick action. For example, an allegation of sexual harassment among the NTM-I team required quick action over holidays.

RECOMMENDATION: Sustain. NATO legal advisors are better equipped to handle legal issues arising from NATO missions. Where there is a request for the forward SJA to provide service, he or she must coordinate with the NATO Legal Adviser (LEGAD) to ensure quality service and respect the NATO LEGAD's primacy of representation out of U.S. professional responsibility obligations.[14]

ISSUE: Transfer of command authority over NTM-I

DISCUSSION: The MNSTC-I Commander had received Senate confirmation as the NTM-I commander as well. The question arose how command authority over NTM-I would transfer once the transition to USF-I occurred. Since the NATO legal annex required legal advice to go through JFC – Naples unless the issue is specific to a contributing nation, the MNSTC-I OSJA attempted to contact that command. Unable to get reach anyone, the DSJA contacted the Supreme Headquarters, Allied Powers Europe (SHAPE) and spoke to a UK attorney concerning

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[12] *Id.*
[13] Multi-National Security Transition Command – Iraq (MNSTC-I), Staff Judge Advocate OIF After Action Report, 28 December 2009, Deployed June 2009 – July 2010, Phoenix Base, Baghdad, Iraq (hereinafter "MNSTC-I OIF AAR, JUN 09 - JUL 10"; on file at CLAMO).
[14] *Id.*

the designation of a commander over a NATO element. The UK attorney indicated there was nothing in writing. Rather, the contributing nations bid for the position, and the winning bidder nominates a commander. "Unless the bloke they put forth is a total muppet," he explained, "the North Atlantic Council (NAC) will be fine with it." Thus, it appeared the sole authority for designating a commander for NTM-I was nomination by the SECDEF and confirmation by the Senate.

RECOMMENDATION: Attempt to get the process for NATO command authority in writing, at least via a legal opinion from the appropriate NATO legal advisor.[15]

ISSUE: Host nation military

DISCUSSION: MND-N was not actually a "multinational" unit, but rather a joint unit, having some U.S. Navy personnel. Nonetheless, MND-N had to coordinate with the Iraqi Air Force as they began plans to occupy the COB. Loss of building space towards the end of the deployment when the Iraqi Air Force moved onto the COB also became a potential problem.

RECOMMENDATION: Improve. Make everyone aware of the potential for interaction with host nation military members on the COB.[16]

ISSUE: Befriending multinational lawyers

DISCUSSION: Operation Enduring Freedom (OEF) is a multinational operation. While in Kandahar, the RCT-3 RJA had dinner once a week with the lawyers from other nations (i.e., Belgium, the Netherlands, etc.). During these dinners, they would discuss things such as the differences in interpretation of various ROE and similar matters.

RECOMMENDATION: Sustain. This proved to be a great opportunity to gain understanding of how other nations think and to bond with our international allies.[17]

ISSUE: Working with multinational Provincial Reconstruction Teams (PRTs)

DISCUSSION: The PRT in the 2d LAR AO was a multinational organization. Working with the PRT was a high visibility job.

RECOMMENDATION: JAs must be cognizant that Afghanistan is a highly multinational environment. JAs must be careful of what they say and do when working with multinational PRTs. Sometimes, perception is reality.[18]

ISSUE: Presence of a UK officer as the Division Chief of Operations (CHOPS)

DISCUSSION: The United Kingdom (UK) did not have a bilateral agreement with the Iraqi

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[15] *Id.*
[16] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 18.
[17] Regimental Combat Team – 3, 2d Marine Expeditionary Brigade, Regimental Judge Advocate, OEF After Action Report, 14-15 April 2010, Deployed April 2009 – October 2009, Camp Dwyer, Helmand Province, Afghanistan (hereinafter "RCT-3, OEF AAR, APR 09 - OCT 09"; on file at CLAMO).
[18] 2d Marine Expeditionary Brigade, Deputy Staff Judge Advocate, OEF After Action Report, 22 March 2010, Deployed April 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB DSJA, OEF AAR, APR 09 - NOV 09"; on file at CLAMO).

government. Consequently, the UK officer serving as the Division CHOPS had to leave. The unit missed him tremendously as an asset. He worked very well with the legal section and brought a different perspective to the table. His was inclined culturally and systemically to operate in an environment like that of the Security Agreement.

RECOMMENDATION: Allied officers are exceptionally valuable for the different perspective they bring. Often used to operating under heavier legal constraints, they can be great friends of the legal section in forcing operators to adhere to requirements.[19]

ISSUE: Iraqi attorney in operations cell

DISCUSSION: The OSJA had an Iraqi attorney assigned to the operations cell. Having an Iraqi attorney was useful in translating the Security Agreement and Iraqi law. He played a role in almost every section of the OSJA.

RECOMMENDATION: Sustain. Recommend every brigade have an Iraqi attorney or at least one in their AO.[20]

ISSUE: Knowledge of national caveats

DISCUSSION: In a joint and multi-national environment, the JA must know the national caveats of coalition forces.

RECOMMENDATION: JAs deploying to a command with international partners should research and know the national caveats for each country. At the very least, JAs must be aware national caveats exist in a multi-national setting and be prepared to research them.[21]

ISSUE: National caveats

DISCUSSION: CJSOTF-A served as the higher headquarters with numerous coalition special operations forces. The issue of national caveats had a direct impact on detainee operations.

RECOMMENDATION: CJSOTF-A compiled all the national caveats applicable to the coalition special operations forces present and used this information to screen concepts of operations to ensure compliance.[22]

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[19] 1st Cavalry Division, Staff Judge Advocate OIF After Action Report, 1 April 2010, Deployed January 2009 – January 2010, Multi-National Division – Baghdad, Camp Liberty, Baghdad, Iraq (hereinafter "1CD OIF AAR, JAN 09 - JAN 10"; on file at CLAMO).
[20] *Id.*
[21] Combined Forces Special Operations Component Command – Afghanistan, Staff Judge Advocate OEF After Action Report, 2 May 2010, Deployed August 2009 – November 2009, Kabul, Afghanistan (hereinafter "CFSOCC-A OEF AAR, AUG 09 - NOV 09"; on file at CLAMO).
[22] 7th Special Forces Group (Airborne), CJSOTF-A Legal Advisor OEF After Action Report, 26 May 2010, Deployed 22 July 2009 – 02 February 2010, Bagram, Afghanistan (hereinafter "7th SFG OEF AAR, JUL 09 - FEB 10"; on file at CLAMO).

VIII. INTERAGENCY OPERATIONS

VIII.A. Interagency Coordination

ISSUE: Working with civilian agencies

DISCUSSION: The situation in Iraq has now matured to the point civilian agencies like Department of State (DoS), United States Agency for International Development (USAID), and non-governmental organizations (NGOs) are now operating throughout the country. Areas of operation (AOs) have all transitioned away from being kinetic in nature and more into the rebuilding phases. Civilian agencies are partners in many facets and are routinely in contact with PRTs and BCTs to synchronize efforts. The 3BCT JAs attended a weekly meeting with the Rule of Law team at the PRT, which also had civilian organizations represented.

RECOMMENDATION: Sustain. Developing positive and productive relationships with civilian counterparts in Iraq will help speed up and improve the unity of effort to rebuild and improve the quality of life and security in Iraq.[1]

ISSUE: Interagency relationships

DISCUSSION: The brigade legal NCOIC coordinated monthly RoL interagency working groups. This forum allowed all key personnel and organizations, including but not limited to, the Department of State (DoS), PMO, and other law enforcement personnel to synchronize their RoL efforts. It also had the secondary effect of creating and developing personal relationships, which facilitated cooperation and coordination among the various agencies working in the RoL.

RECOMMENDATION: Sustain. Interact with all persons and organizations that could increase the effectiveness of the RoL mission.[2]

ISSUE: Embedded Provincial Reconstruction Team (ePRT)

DISCUSSION: The BCT's ePRT did not have a rule of law (RoL) section. Consequently, the BCT's Prosecution Task Force was the BCT's primary RoL effort. However, a representative from the United States Agency for International Development (USAID) serving with the ePRT helped the BCT shift from reliance on CERP to Department of State (DoS) funds.

RECOMMENDATION: Work with the ePRT Chief to dedicate a person or request an additional ePRT member to focus on RoL efforts.[3]

ISSUE: Unity of effort

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[1] 3d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate (BJA) OIF After Action Report, 16 September 2009, Deployed December 2008 – July 2009, Ninewah Province, Iraq (hereinafter "3-1 CAV OIF AAR (1st Half), DEC 08 - JUL 09"; on file at CLAMO).
[2] 3d Brigade Combat Team, 1st Infantry Division, OEF After Action Report, 29 August 2009, Regional Command (RC) – East, Forward Operating Base (FOB) Fenty, Jalalabad, Afghanistan, Deployed July 2008 – June 2009 (hereinafter "3BCT, 1ID OEF AAR, JUL 08 - JUN 09"; on file at CLAMO).
[3] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 17 September 2009, Deployed October 2008 – June 2009, Camp Liberty, Iraq (hereinafter "2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09"; on file at CLAMO).

DISCUSSION: There is seldom a common goal when working with other agencies. You must understand each agency has a separate and often distinct agenda when working on a particular issue.

RECOMMENDATION: Understand this difficult dynamic and learn to work together.[4]

ISSUE: Clarity of relationships is essential to success

DISCUSSION: Interagency coordination was mostly good (albeit less successful with the U.S. Agency for International Development (USAID)).

RECOMMENDATION: You need to work to make interagency coordination successful. The key point is to define clear roles and to move forward as a team based on shared understanding. [5]

ISSUE: Rule of law coordinators in provincial reconstruction teams (PRTs)

DISCUSSION: PRTs need rule of law coordinators. These can very well be Department of State attorneys or, indeed, a paralegal.

RECOMMENDATION: Note.[6]

ISSUE: Relationship with embedded Provisional Reconstruction Team

DISCUSSION: The brigade commander really wanted the ePRT integrated into brigade operations. Consequently, the unit had a great relationship with their ePRT. This was not the case in every brigade.

RECOMMENDATION: You cannot have a model relationship with your ePRT absent appropriate emphasis from the commander. If the commander wants and expects something to occur, the unit will make it happen.[7]

ISSUE: Relationship with PRT

DISCUSSION: The PRTs have the lead role in RoL efforts. However, their strategic focus does not always further the local commander's operational and tactical goals. JAs must take a finessed approach to forging this relationship and maintain constant and open lines of communication with them. BJAs can expect pushback at times, and may need to work independently of the PRT in order to meet the local commander's objectives.

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[4] 2d Brigade Combat Team, 1st Armored Division, Brigade Judge Advocate OIF After Action Report 25 September 2009, Deployed July 2008-June 2009, Forward Operating Base (FOB) Hammer/Camp Stryker, Iraq (hereinafter "2BCT, 1AD OIF AAR, JUL 08 - JUN 09"; on file at CLAMO).
[5] 1st Combat Support Brigade (Maneuver Enhancement), Task Force Warrior, OEF After Action Report, 20 October, 2009, Deployed June 2008 – September 2009, Bagram Airfield, Afghanistan (hereinafter "1 CSB (ME) OEF AAR, JUN 08 - SEP 09"; on file at CLAMO).
[6] *Id.*
[7] 3d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate OIF After Action Report, 4 February 2010, Deployed December 2008 – November 2009, Joint Security Station Loyalty and Forward Operating Base Hammer, Baghdad, Iraq (hereinafter "3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09"; on file at CLAMO).

RECOMMENDATION: Improve. This relationship needs improvement, with the assistance of higher levels of command.[8]

ISSUE: Maintain relationships with other agencies

DISCUSSION: The U.S. Agency for International Development (USAID) has large projects and funding in the AO to support RoL activities. They are a potential source of funding for large RoL projects.

RECOMMENDATION: Sustain. Maintain connectivity with USAID through the PRT.[9]

ISSUE: Interagency Coordination of RoL

DISCUSSION: Synchronizing the RoL effort was very important. Coordination meetings occurred on a weekly basis with the PRT and other RoL players. It was very effective at translating concepts to action. This also allowed for a forum to compare missions, objectives, and budgets to maximize the effectiveness of RoL work.

RECOMMENDATION: Sustain.[10]

ISSUE: Military Police authority to arrest at State Department request

DISCUSSION: There was one incident during the deployment where the DoS asked the Military Police (MPs) to arrest a fugitive from justice who they expected to travel through BIAP from outside Iraq. There was no military jurisdiction in this case, and the Iraqis would not agree to detain the individual under their authority and hand him over to the DoS for return to the U.S. The Iraqi Police were the lawful authority for this arrest. The MPs went to BIAP to meet the plane but did not take custody of the individual or engage in any kind of restraint that constituted custody. The MPs were also instructed not to participate in any questioning of the individual by the DoS, although they could be present in the room providing security for the DoS person. The Iraqis refused entry for the individual and held him at the airport until he could be put on a plane leaving Iraq.

RECOMMENDATION: There is considerable interaction with other federal law enforcement agencies on the installation and this was just one example. Ensure that the law enforcement personnel assigned to the garrison understand their limitations on authority and the need to coordinate with the legal office when they receive requests to be involved with interagency law enforcement activities. Ensure other agencies understand the correct legal authorities. Review

[8] 2d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 4 & 9 February 2010, Deployed January 2009 – December 2009, Forward Operating Base Warrior, Kirkuk, Iraq (hereinafter "2-1 CAV, OIF AAR, JAN 09 - DEC 09"; on file at CLAMO).
[9] *Id.*
[10] 3rd Heavy Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 2 February 2010, Deployed December 2008 – December 2009, Forward Operating Base Marez, Ninewah Province, Iraq (hereinafter "3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09"; on file at CLAMO).

your law enforcement unit's involvement with other agencies and determine what interagency agreements exist or need to exist to lawfully provide assistance.[11]

ISSUE: Strategic legal planning for the future U.S.-Iraq security partnership

DISCUSSION: MNSTC-I established the Partnership Strategy Group – Iraq (PSG-I) for developing concepts for a long-term U.S.-Iraq security partnership that will promote U.S. strategic interests in the region beyond the end of the military mission in 2011. As PSG-I shaped concepts for what this partnership should look like, the MNSTC-I OSJA advised on the legal authorities needed to implement those concepts. PSG-I, in turn, provided guidance on current ISFF and USETTI initiatives needed now to reach the goals for the partnership beyond 2011. PSG-I briefed those concepts to the MNF-I Commander, who in turn directed his staff to plan the execution of the concepts. Eventually, the MNF-I Commander briefed these plans to Congress for the purpose of shaping future legislation. For example, PSG-I used its concepts to justify additional ISFF in Fiscal Years (FY) 10-11 for force generation of ISF in MoI and MoD, and to envision how a peaceful partnership would operate within the broader diplomatic relationship upon end of mission, in an Office of Security Cooperation or otherwise. The OSJA provided legal support to this planning cell, identifying authorities and constraints entirely unlike those applicable to the existing force. The law circumscribes security cooperation authorities in comparison to the USF-I existing train & equip missions. See 22 USC § 2321i. Furthermore, the transition to a post-USF-I security cooperation mission will require a new range of international, inter- and intra-agency agreements to replace the existing authorities inherent in a UN-sanctioned or similar stability operation pursuant to a security agreement.

RECOMMENDATION: Sustain. Security transition commands need to plan strategically for the long-term security relationship and determine the legal authorities they will need to implement their vision under Chief of Mission authority.[12]

ISSUE: Transfer of responsibility for foreign assistance to DoS

DISCUSSION: After 2011, all defense articles and services transferred to Iraq will become the responsibility of the OSC, USEMB-B, once the responsibility for foreign assistance returns to DoS.

RECOMMENDATION: USF-I must share records of all equipment and training provided to ISF with USEMB-B OSC so they understand what defense articles and training the ISF have already received.[13]

ISSUE: Establishing connections and trust with Provincial Reconstruction Teams (PRTs)

DISCUSSION: The battalion legal advisor established a relationship with the PRT. SOTF-N commander also invited the PRT over for barbeques and briefed them on SF and its mission.

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[11] 326th Area Support Group, Task Force Jayhawk, Staff Judge Advocate OIF After Action Report, 3 March 2010, Deployed November 2008 – October 2009, Victory Base Complex, Iraq (hereinafter "326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09"; on file at CLAMO).
[12] Multi-National Security Transition Command – Iraq (MNSTC-I), Staff Judge Advocate OIF After Action Report, 28 December 2009, Deployed June 2009 – July 2010, Phoenix Base, Baghdad, Iraq (hereinafter "MNSTC-I OIF AAR, JUN 09 - JUL 10"; on file at CLAMO).
[13] *Id.*

RECOMMENDATION: Sustain. PRTs oftentimes have greater access to Iraqi officials, which SF can leverage. The barbeques also allowed all parties to get together and dispel rumors associated with SF. The barbeques also afforded the battalion legal advisor with critical information regarding issues both real and perceived facing his unit.[14]

ISSUE: Relationship with ePRT

DISCUSSION: The ePRT is a valuable asset. They can definitely be a force multiplier. JAs should work closely with them, especially when it comes to RoL.

RECOMMENDATION: The BJA found the key to having a good working relationship with the ePRT was at the top—start by developing a good relationship with the head ePRT in the AO.[15]

ISSUE: Coordination with Provincial Reconstruction Teams (PRTs) and landowning brigades

DISCUSSION: The Division's RoL efforts with the PRTs got off to a rocky start, in part due to the Division's failure to work through the landowning brigade in the PRT's AO.

RECOMMENDATION: Improve. Although it is important to have the Division RoL attorney meet with the PRT RoL Advisor (RoLA) as soon as possible, they should do this in coordination with the BJA of the landowning unit. This is a professional courtesy to the BJA, who has to work with the PRT RoLA on a day-to-day basis. Also, be careful about making any promises to the PRTs—you may be writing checks the landowning brigade is unwilling or unable to cash.[16]

ISSUE: Support to Department of State (DoS) RoL advisor

DISCUSSION: DoS has the lead on the governance LOE with support from other agencies. DoS, however, is limited by lack of personnel, resources, and logistical reach. By combining efforts with the BCT, the DoS RoL advisor is empowered with greater capabilities and can advance RoL programs much further. 4-25 ID received and supported the first DoS RoL advisor in eastern Afghanistan; he worked in the same headquarters and had daily meetings with the BCT leadership and the BCT legal team. With support from the legal team, the DoS RoL advisor conducted the first regional RoL conference at FOB Salerno. This conference was attended by representatives from the U.S. Embassy, ISAF, United States Forces – Afghanistan (USFOR-A), Combined Joint Task Force-82 (CJTF-82), the Justice Sector Support Program (JSSP), the Corrections Sector Support Program (CSSP), UNAMA, all three PRTs in the BCT AO, and other agencies. Topics of discussion included programs and initiatives to advance RoL throughout the area, as well as coordination of RoL strategy to improve access to justice.

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[14] 1st Battalion, 5th Special Forces Group (Airborne), Battalion Judge Advocate OIF After Action Report, 11 March 2010, Deployed 25 July 2009 – 25 January 2010, Contingency Operating Base Speicher, Tikrit, Iraq (hereinafter "1/5 SFG OIF AAR, JUL 09 - JAN 10"; on file at CLAMO).

[15] 30th Heavy Brigade Combat Team, Brigade Judge Advocate OIF After Action Report, 16-17 March 2010, Deployed April 2009 – January 2010, Forward Operating Base Falcon, Baghdad, Iraq (hereinafter "30th HBCT (NG) OIF AAR, APR 09 - JAN 10"; on file at CLAMO).

[16] 34th Infantry Division, Minnesota Army National Guard, Staff Judge Advocate OIF After Action Report, 23 February 2010, Deployed April 2009 – February 2010, Multi-National Division – South, Basra, Iraq (hereinafter "34ID, OIF AAR, APR 09 - FEB 10"; on file at CLAMO).

RECOMMENDATION: Sustain. An interagency approach to RoL is essential. Other agencies like DoS bring talented capabilities to the mission. Harmonizing their efforts with the BCT can significantly increase effectiveness of RoL endeavors.[17]

ISSUE: Establishing good rapport with interagency partners

DISCUSSION: The BN JA had a close working relationship with the Provincial Reconstruction Team (PRT) and with individuals from the Unites States Agency for International Development (USAID). He leveraged these relationships to meet local Afghan officials, including prosecutors and judges.

RECOMMENDATION: Sustain. The nature of the battlefield requires close coordination and cooperation with civilian counterparts.[18]

ISSUE: Using the PRT to help solve land dispute issues

DISCUSSION: Marines would occupy positions without knowing who owned the land. The BN JA would work with the PRT to determine whose land it was and compensate the individual accordingly.

RECOMMENDATION: Sustain. Due to the lack of local governance, land records were non-existent in the battalion's AO. Battalion JAs need to be prepared to deal with this matter and work closely with the PRT to find a working solution.[19]

ISSUE: United States Agency for International Development (USAID)

DISCUSSION: USAID's mission was to support the GIRoA in its efforts to ensure economic growth, establish a democratic state governed by the rule of law, and provide basic services for its people. USAID was a force multiplier for mission accomplishment to the Marines in RC-South.

RECOMMENDATION: JAs should get to know the USAID folks in their AO and work closely with them.[20]

ISSUE: Interagency de-confliction

DISCUSSION: When considering an issue involving (or possibly involving) other agencies, stop to ask yourself: "Who does this?" You may discover other agencies are involved in a problem and you are unaware of them, or lines of responsibility may need clarification.

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[17] 4th Brigade Combat Team (Airborne), 25th Infantry Division, Brigade Judge Advocate OEF After Action Report, 27 March 2010, Deployed February 2009 – February 2010, Forward Operating Base Salerno, Khowst Province, Afghanistan (hereinafter "4BCT, 25ID OEF AAR, FEB 09 - FEB 10"; on file at CLAMO).

[18] 2d Battalion, 3rd Marines, Battalion Judge Advocate OEF After Action Report, 14 April 2010, Deployed May 2009 – November 2009, Forward Operating Base Delaram, Nimruz Province, Afghanistan (hereinafter "2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09"; on file at CLAMO).

[19] *Id.*

[20] 2d Marine Expeditionary Brigade, Deputy Staff Judge Advocate, OEF After Action Report, 22 March 2010, Deployed April 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB DSJA, OEF AAR, APR 09 - NOV 09"; on file at CLAMO).

RECOMMENDATION: Know which agencies are working in your area and understand who does what.[21]

ISSUE: The PRT as a force multiplier

DISCUSSION: Provincial Reconstruction Teams (PRTs) are an excellent source of leverage when dealing with local civilians.

RECOMMENDATION: Talk to your PRT if you need to have an effect in the local community. Your PRT is the best way to maximize your leverage with the locals.[22]

ISSUE: Defining interests in an operation that is not solely U.S.-oriented

DISCUSSION: Various three-letter agencies did not seem to have any appreciation for KFOR's role as part of a NATO operation. They did not seem to understand KFOR, and thus Task Force Falcon, was not oriented solely upon U.S. interests.

RECOMMENDATION: Understand participation in a multinational operation sometimes means subordinating national interests to some degree in pursuit of the overall multinational mission. This may cause some friction with organizations oriented solely on national interests.[23]

ISSUE: Nexus targets with the Drug Enforcement Agency (DEA)

DISCUSSION: CJSOTF-A integrated DEA nexus targets into its concept of operations. The DEA contracted its air support, which limited its air assets' weapons systems to self-defense during infiltration and exfiltration. To mitigate this challenge, CJSOTF-A coordinated for military CAS when actioning these nexus targets.

RECOMMENDATION: Sustain. Clear understanding of non-military caveats in an interagency setting is imperative.[24]

ISSUE: FBI training at PMT

DISCUSSION: FBI personnel participated in the unit's PMT. FBI personnel helped train ODA members on proper sensitive site exploitation (SSE) techniques.

RECOMMENDATION: Sustain.[25]

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[21] 504th Battlefield Surveillance Brigade, Brigade Judge Advocate OIF After Action Report, 3 May 2010, Deployed November 2008 – November 2009, Contingency Operating Base Sykes, Tal Afar, Iraq (hereinafter "504th BfSB, OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).
[22] *Id.*
[23] Task Force Falcon, 40th Infantry Division, California National Guard, Command Judge Advocate, Kosovo Forces 11 After Action Report, 9 January 2010, Deployed February 2009 – November 2009, Camp Bondsteel, Kosovo (hereinafter "KFOR-11 AAR, FEB 09 - NOV 09"; on file at CLAMO).
[24] 7th Special Forces Group (Airborne), CJSOTF-A Legal Advisor OEF After Action Report, 26 May 2010 Deployed 22 July 2009 – 02 February 2010, Bagram, Afghanistan (hereinafter "7th SFG OEF AAR, JUL 09 - FEB 10"; on file at CLAMO).
[25] 3rd Battalion, 3rd Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 03 June 2010, Deployed January 2010 – May 2010, Bagram Airfield, Afghanistan (hereinafter "3/3 SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).

ISSUE: Unified action with the Department of State (DoS)

DISCUSSION: A major CJTF initiative was "unified action" with the DoS and other interagency assets in theater in order to leverage their unique capabilities, particularly in RoL. At the CJTF, a DoS SES (3-star equivalent) was on par with the DCGs, and she had over 50 personnel from the interagency under her. She was responsible for the stability line of operation (LOO) which encompassed RoL. Every brigade also had a civilian RoL coordinator from the DoS. The key relationship for RoL success was that between the BJA and the RoL coordinator. If the two were not on the same page, the RoL effort was less effective. When the relationship was positive, the RoL program was much more successful as they could provide a unified plan to the commander.

RECOMMENDATION: Sustain. Unified action was a big success. Working with the interagency at the CJTF and at the brigades will be value added.[26]

VIII.B. Points of Contact

ISSUE: Lack of interagency partners in Iraq and Afghanistan

DISCUSSION: One issue BJAs will find in Iraq and Afghanistan is a lack of interagency partners with which to collaborate in such areas as Rule of Law (RoL). Most notably, the Department of State (DoS) and United States Agency for International Development (USAID) have few representatives in both countries, and they often try to fill the void by bringing in contractors to perform roles. Both agencies seem to have trouble with putting boots on the ground due to security concerns and personnel issues.

RECOMMENDATION: Do not always expect to have full time DoS and USAID interagency partners on operations in Iraq and Afghanistan until the security situation improves.[27]

[26] 82d Airborne Division, Staff Judge Advocate OEF After Action Report, 23 June 2010, Deployed June 2009 – June 2010, Regional Command—East, Bagram Airfield, Afghanistan (hereinafter "82D ABN OEF AAR, JUN 09 - JUN 10"; on file at CLAMO).
[27] 2010 Brigade Judge Advocate (BJA) Symposium, 10-12 May, 2010, The Judge Advocate General Legal Center and School (TJAGLCS), Charlottesville, VA (hereinafter "BJA Seminar, combined AAR, 10-12 MAY 2010"; on file at CLAMO).

IX. HOMELAND SECURITY OPERATIONS

IX.A. Homeland Defense

IX.A.1. Defense Support to Civilian Authorities

No AAR comments.

IX.A.1.a. Military Support to Civilian Law Enforcement & Posse Comitatus Act

ISSUE: Defining the appropriate level of military support to civilian law enforcement

DISCUSSION: Broadly speaking, the intent of the Posse Comitatus Act (PCA) (18 U.S.C. §1385) is to limit direct military involvement with civilian law enforcement, absent Congressional or Constitutional authorization, in the enforcement of the laws of the United States. In addition, 10 U.S.C. §375 prohibits the "direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law." While the prevailing DoD legal opinion is that the PCA and the restrictions in 10 U.S.C. §371-381 do not apply to the Armed Forces abroad, DoD Instruction 5525.5 applies the restrictions of the PCA to members of Armed Forces regardless of location. Two key authorities permit JIATFS to support civilian law enforcement and the counterdrug mission. 10 U.S.C. §124 designates DoD as the lead agency for the detection and monitoring of aerial and maritime transit of illegal drugs in the United States. Further, Section 1004 of the 1991 National Defense Authorization Act (as amended) specifically permits the Secretary of Defense to provide support for the counterdrug activities of any federal, state, local, or foreign law enforcement agencies subject to certain procedural requirements. Specifically, Section 1004 permits DoD to do the following: establish and operate bases and training facilities for the purpose of facilitating counterdrug activities within or outside the United States; detect and monitor and communicate about the movement of air and sea traffic within 25 miles of, and outside the geographic boundaries of the United States; establish command, control, communication, and computer networks to integrate law enforcement and military activities; and provide certain types of aerial and ground surveillance. Although DoD now has expanded authority to execute the counterdrug mission, prohibitions still prevent DoD from interdicting vessels or aircraft, searching, seizing or arresting, and using its personnel for surveillance or as informants. CJCSI 3710.01B, DoD Counterdrug Support, provides guidance for the implementation of counterdrug support that JIATFS provides under Section 1004. Most importantly, this instruction shows to which level command is delegated which type of counterdrug support. This instruction specifically does not cover counterdrug support provided under 10 U.S.C §124. Guidance for the 10 U.S.C. §124 D & M mission is provided in separate CJCS and SOUTHCOM CDEXORDs.

RECOMMENDATION: Although there are expansive exceptions to the PCA while conducting counterdrug operations, some of the more significant restrictions remain. DoD assets must recognize and adhere to the left and right limits in their support of civilian law enforcement. (See

Counterdrug Operations below for a more detailed account of how JIATFS operates in this context).[1]

IX.A.1.b. Special Events

No AAR comments.

IX.A.1.c. Civil Disturbances

No AAR comments.

IX.A.2. Port Security & Customs

No AAR comments.

IX.B. Consequence Management

ISSUE: OSJA preparedness for installation-level consequence management

DISCUSSION: The SJA detailed legal advisors to both the Emergency Operations Center/Installation Operations Center (EOC/IOC) and the Crisis Action Team/Crisis Management Team (CAT/CMT). These JAs attended preparatory meetings of those organizations. The JA detailed to the EOC/IOC responded with the Augmentation Force to the protests at the main gate on Day Two and provided legal advice to the force commander. When the augmentation force assembled, the JA detailed to the EOC/IOC was present and provided the Rules for Use of Force (RUF) briefing. In addition, the OSJA reviewed and rehearsed the base antiterrorism plan and revised both the legal annex and the RUF annex. The OSJA staff reacted promptly and appropriately to the change in exercise Threatcon level (lock down).

RECOMMENDATION: Sustain. The OSJA must prepare itself for installation-level consequence management. The onset of a crisis should not be the first time the OSJA is seeing the relevant plans and annexes and meeting the installation's consequence management players.[2]

ISSUE: Activation and utilization of the installation "Augmentation Force"

DISCUSSION: The decision to alert and activate the Augmentation Force in response to the dual protests at the gate and possible threats to the installation arising there from was the correct decision. Indeed, the Augmentation Force responded very appropriately. The JA assigned to the

[1] Joint Interagency Task Force – South, Caribbean, Central American, and South American Counterdrug Operations, Staff Judge Advocate After Action Report, February 2010, Key West, Florida (hereinafter "JIATFS, Counterdrug AAR, FEB 10"; on file at CLAMO).
[2] Fort Lee Anti-Terrorism Exercise, 1-3 September 2009, OSJA, Combined Arms Support Command (CASCOM) & Fort Lee, Fort Lee, VA 23801, AAR Date 8 September 2009 (hereinafter "Fort Lee OSJA Anti-Terrorism Exercise, 8 SEP 09"; on file at CLAMO).

IOC was alerted to the situation and responded to the scene, providing on-scene legal advice and guidance.

RECOMMENDATION: Improve. While the Augmentation Force responded quickly and appropriately (for example, they arrayed themselves in such as way as to keep those armed with weapons to the rear of the formation and in the second echelon, thereby reducing and/or eliminating the potential for protestors to secure firearms from the force) there is room for improvement in the training to the individual Soldiers who may respond. During the installation-wide AAR on the exercise, for example, it was revealed that the Augmentation Force is comprised of personnel from all tenant units on post. Due to deployments and regular personnel rotations, we learned that there are no measures currently in place to ensure that leaders trained in RUF are constantly in charge of the force. Thus, the Fort Lee OSJA will increase the number and regularity of "train-the-trainer" and Augmentation Force training sessions to ensure that such trained leadership is always in place. The OSJA will also produce RUF cards to ensure that they are available for training and use at all times. The FORSCOM units on post should also create a system of rotating assignment for command of the Augmentation Force. This will ensure that a trained officer is always available to respond to situations that threaten post security, as opposed to the current system which relies on who is available at a given moment.

ISSUE: Activation and utilization of emergency response plans and organizations

DISCUSSION: During the antiterrorism exercise, the installation activated the EOC/IOC, but did not properly utilize it. Similarly, the CAT/CMT did not go into action, and, therefore, the installation's senior leadership never became involved in the simulated hostage incident that forced the installation to Threatcon D and lock down. The JAs assigned to advise these organizations were well prepared and conversant with relevant plans and legal annexes. However, because the consequence management organizations failed to activate properly, the JAs could not make any meaningful contribution in the exercise.

RECOMMENDATION: Improve. While EOC/IOC and CAT/CMT activations are not within the control of JAs, the OSJA staff was fully prepared to participate and contribute.[3]

ISSUE: Individual responses to terrorist threats on the installation

DISCUSSION: During the simulated hostage situation in the courtroom, the OSJA Chief Paralegal NCO and Legal Administrator acted appropriately in response to the terrorism threat. They locked doors, checked the perimeters of the buildings, and accounted for all personnel.

RECOMMENDATION: Sustain. All OSJA members need to be familiar with these drills for responding to a terrorism threat on the installation.[4]

ISSUE: Designation of an acting commander

DISCUSSION: During the antiterrorism exercise, the Commanding General (CG) was away, resulting in some uncertainty as to who was in command of Fort Lee. Many on the staff believed the CG's deputy, a Senior Executive Service (SES) civilian employee, was in command, but this was incorrect since he failed to meet the requirements of a "senior commander."

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[3] *Id.*
[4] *Id.*

RECOMMENDATION: Improve. Ensure the installation makes it standard practice to appoint an acting commander whenever the CG is away.[5]

ISSUE: Participation of commanders in installation antiterrorism exercises

DISCUSSION: During the antiterrorism exercise, a number of commanders did not participate due to daily workload and other commitments. As a result, none of the appropriate emergency response mechanisms went into effect, which then created confusion in terms of command and control.

RECOMMENDATION: Improve. Encourage participation of commanders in these exercises since they play pivotal roles in emergency response actions.[6]

IX.B.1. Disaster Relief

No AAR comments.

IX.B.2. Weapons of Mass Destruction (WMD)

No AAR comments.

IX.C. Counter Drug Operations

ISSUE: JIATFS follows a strict Detection and Monitoring (D&M)/Intercept and Apprehension (I&A) Continuum

DISCUSSION: As a DoD task force, JIATFS may perform D&M missions consistent with applicable statutes and regulations. Conversely, it does not conduct activities considered part of an I &A operation. While 10 U.S.C. §124 permits DoD assets to identify and communicate with suspect vessels or aircraft; and direct such suspect vessel or aircraft to go to a location designated by appropriate civilian officials, JIATFS remains cognizant at all times where the line between D&M and I&A exists. JIATFS follows a "find and fix" operating baseline for D&M activities. Under the "find" mission, JIATFS uses law enforcement human intelligence (HUMINT), national intelligence, tactical intelligence, international partners, and open source information, fusing those pieces of data together in a process known as "cueing." Once an event is "cued," assets are directed to "fix" or detect the target. These assets include re-locatable over-the-horizon radars (ROTHR), long range and short range tracking technology, helicopters, maritime patrol and airborne early warning aircraft, vessels, national intelligence, and tactical intelligence. Once a target is "fixed," is it monitored until an agency with authority can take the "hand-off" in order to intercept the target and arrest the suspects (as appropriate). Agencies with such authority include the Drug Enforcement Agency, Federal Bureau of Investigation, Customs and Border Patrol, the Immigration and Customs Enforcement Agency, and the U.S. Coast Guard. Under most circumstances, the hand off will be to a U.S. Coast Guard asset (aircraft, vessel, or law enforcement detachment (LEDET) assigned to a DoD or international asset) operating in the

[5] *Id.*
[6] *Id.*

JIATFS JOA. While the D&M mission is taking place, these assets are under the tactical control (TACON) of JIATFS. However before executing an I&A mission, a formal shift in TACON must occur. When Coast Guard assets are involved, TACON shifts from JIATFS to the cognizant Coast Guard District Commander, who then takes command of the operation utilizing the Coast Guard's authority under Title 14 and other federal laws and directs the Coast Guard assets to intercept the vessel and apprehend the suspects (as appropriate).

RECOMMENDATION: Many variables are taken into account before executing a shift in tactical control. While the conservative approach from the DoD perspective is to seek a TACON shift as soon as possible in order to avoid possible PCA implications, the Coast Guard is equally conservative when it ensures it has all the information it requires before it executes its law enforcement authorities on the high seas. Close coordination and a comprehensive common operating picture are critical to ensure TACON shifts appropriately and at the correct time in any counterdrug mission.[7]

ISSUE: The U.S. Coast Guard (USCG) role in counterdrug efforts outside and within JIATFS

DISCUSSION: As the primary enforcer of U.S. maritime law, the USCG plays a critical role in the international counternarcotics efforts. The USCG has the lead role in maritime drug interdiction, and shares the lead role in air interdiction with the U.S. Customs Service. The USCG conducts extensive maritime counterdrug operations. These range from enforcing drug possession and use laws during recreational vessel boardings, to conducting sustained multi-unit operations targeting major drug traffickers far from U.S. shores. Since the PCA does not apply to the USCG, the PCA restrictions on arrest, search, seizure, and the interdiction of vessels and aircraft are inapplicable to USCG operations and personnel. The primary federal statute the USCG uses in counterdrug operations is the Maritime Drug Law Enforcement Act (MDLEA). The MDLEA prohibits any person on board an U.S. vessel, or a vessel subject to the jurisdiction of the U.S., from knowingly or intentionally manufacturing or distributing, or possessing with the intent to manufacture or distribute, a controlled substance. Notwithstanding the Coast Guard's own counterdrug operations, the Coast Guard provides multiple air and surface assets to JIATFS. In fact, historically the Coast Guard has provided more "ship on-station" days under JIATFS's TACON than the DoD and allied nations combined. While operating in the JIATFS JOA, JIATFS tasks Coast Guard cutters to conduct D&M operations. When performing I &A operations, the cutters shift tactical control as discussed above. In addition to cutters and aircraft, 10 U.S.C. §379 requires the Secretary of Homeland Security and Secretary of Defense to assign Coast Guard law enforcement detachment teams (LEDETs) to every appropriate naval surface vessel operating at sea in a drug interdiction area. Practically, the Coast Guard assigns LEDETs to JIATFS, which in turn, deploys them to DoD and allied vessels.

RECOMMENDATION: Sustain.[8]

ISSUE: International partnerships within JIATFS

DISCUSSION: JIATFS embraces its directive to integrate with the international counter narcotics community. The seventeen country liaison officers from thirteen nations assigned to JIATFS are critical to the synchronization of regional operations. For example, when releasable cueing information comes into JIATFS, it passes to U.S. Country teams and JIATFS Tactical

[7] JIATFS, Counterdrug AAR, FEB 10, *supra* note 1.
[8] *Id.*

Analysis Teams (TATs), the Country Liaison Officers, and via the Cooperative National Exchange System (CNIES) to the partner nation operations centers who share the CNIES common operating picture and the Participating Nations Network (PNN). PNN hosts unclassified email and an unclassified encrypted internet chat room that enables text translation from English to Spanish, Portuguese or French and back to English. Information passed could include target description and/or track data (position, course, and speed). CNIES and PNN connect JIATFS to their international partners, they connect the country liaison officers to their home country, and they connect each of the participating nations to each other so that countries that want to be involved in the fight against illicit trafficking are able. This rapid transfer of information allows operation center (OPCEN) connectivity, enables force integration and collaboration, and the development of common domain awareness.

RECOMMENDATION: Sustain. Only through the sustained efforts of dedicated partners will the international law enforcement community stem the flow of illegal narcotics.[9]

ISSUE: Importance of international agreements to successful interdiction and apprehension operations

DISCUSSION: The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (commonly referred to as the "Vienna Convention") encouraged its signatories to enter into bilateral (or multilateral) agreements to combat the international drug trade. The U.S. Government has entered into comprehensive bilateral maritime counterdrug agreements with the governments of most Caribbean and Central American nations, as well as many South American nations. Frequent U.S. Government success in exercising these agreements had led to enhanced counterdrug program effectiveness in the Caribbean and other regions. Although individual agreements are tailored specifically for each county, each generally contains all or some of seven basic provisions. Additionally, while some of the agreements are reciprocal, others only refer to U.S. action in foreign waters or aboard foreign flag vessels. The seven basic provisions available for inclusion in the bilateral agreements are: (1) Ship Boarding; (2) Boarding Policy; (3) Shiprider; (4) Pursuit and Entry to Investigate; (5) Overflight; (6) Order to Land; and (7) International Maritime Interdiction Support (IMIS). A Ship Boarding provision provides standing authority or procedures for the Coast Guard to stop, board, and search vessels registered in that flag State which are reasonably suspected of drug trafficking and located seaward of any nation's territorial sea. If the search uncovers drugs, a U.S. law enforcement asset will detain the vessel, cargo, and crew, preserving the flag State's option to exercise or waive jurisdiction to prosecute the vessel and crew. Unless the agreement provides otherwise, the use of force up to and including warning shots and disabling fire to compel compliance with an order to stop is implied in the authorization to stop and board the vessel. The Boarding Policy provision would have effect in cases where the vessel's flag State is a party to a counterdrug bilateral/multilateral agreement that includes a Ship Boarding provision. If reasonable grounds exist to suspect the vessel is engaged in illicit drug trafficking, the boarding must occur under the auspices of that agreement. In accordance with the U.S. Coast Guard Maritime Law Enforcement Manual (MLEM (COMDTINST M16247.1 (series)), in cases where the vessel's flag State is party to a CD bilateral/multilateral agreement with a boarding provision, consensual boardings (i.e., where the Master of the vessel grants permission for the law enforcement team to board) are not authorized and the boarding shall be conducted under the auspices of the agreement. This is a matter of USCG policy. In addition, a Commandant (CG-3) Statement of No Objection (SNO) is required pursuant to MLEM, Appendix D prior to any such consensual boarding. A Shiprider provision provides standing authority or procedures to embark foreign law enforcement personnel

[9] *Id.*

on Coast Guard cutters, U.S. Navy vessels with embarked LEDETs, and/or foreign naval vessels with embarked LEDETs. The agreement empowers the shiprider to authorize the law enforcement vessel in which he/she is embarked to board vessels registered in the same State as the shiprider, to take law enforcement action within that State's waters, or to otherwise provide U.S. assistance to the shiprider in the exercise of his/her full authority. A Pursuit and Entry to Investigate provision authorizes U.S. law enforcement vessels (including embarked aircraft), under very limited circumstances, to enter coastal State waters and airspace to take appropriate action against suspect vessels and aircraft. These provisions do not permit routine or random patrol operations in coastal State waters or airspace. Rather, they permit entry, boarding, and search of suspect vessels in two specific situations as authorized by the coastal State under the terms of the agreement. These conditions are: (1) To pursue suspect vessels or aircraft fleeing from international waters or airspace into coastal State waters or airspace when no coastal State asset or other unit with an embarked shiprider is available to respond immediately; and (2) To investigate suspect vessels or aircraft, located within the coastal State's waters or airspace when no coastal State asset or other unit with an embarked shiprider is available to respond immediately. An Overflight provision permits U.S. law enforcement aircraft to enter coastal State airspace, with appropriate notice to coastal State authorities, while conducting, or in support of, operations to suppress illicit drug traffic. An Order to Land provision provides standing authority and procedures for U.S. law enforcement assets to relay an order to land from the host nation to a suspect aircraft. Use of force by U.S. aircraft is not authorized to enforce such an order. IMIS provisions generally concentrate on partner nation logistical (vice operational) support. Varied in nature and content, two representative samples of IMIS provisions are: (1) an agreement to allow the transfer of third-party national detainees and a sample of contraband to an awaiting U.S. aircraft in the coastal State's territory for further transfer to the U.S.; and (2) an agreement for expedited access to a dockside facility in the coastal State for law enforcement activities, including intrusive searches of suspect vessels. The Agreement Concerning Co-Operation In Suppressing Illicit Maritime And Air Trafficking In Narcotic Drugs And Psychotropic Substances In The Caribbean Area, or, Caribbean Regional Agreement (CRA), is a 2003 multilateral counterdrug agreement. The United States has indicated its consent to be bound. The agreement will go into effect 30 days after the fifth nation to sign has either ratified or indicated their consent to be bound. Although the United States indicated its consent to be bound by the agreement, to date, the United States has not received notice that four other nations have either ratified or indicated their acquiescence to the agreement. The CRA contains many of the provisions indicated above.

RECOMMENDATION: Vessels operating in the JIATFS JOA must be familiar with the various bilateral agreements and what they do and do not permit vis-à-vis each country. The U.S. Coast Guard District 7 and JIATFS as well as vessels operating in the JIATFS JOA will need to become familiar with the CRA and its effects.[10]

ISSUE: Counter drug operations

DISCUSSION: Afghanistan is one of the world's largest producers of opium and produces significant quantities of hashish. As a result, counter drug operations are part of the ISAF mission.

RECOMMENDATION: Before conducting counter drug operations, it is important to know higher headquarters' desired end state for counter drug operations. Specifically, you need to know whether the policy is complete eradication of the supply (i.e., burning down the poppies) or

[10] *Id.*

intercepting the drugs once the farmers sell the drugs to the dealers so the dealers do not make money.[11]

ISSUE: Working with Drug Enforcement Agency (DEA)

DISCUSSION: The DEA and other similar drug enforcement agencies operate in Afghanistan conducting counter drug operations.

RECOMMENDATION: If drug enforcement agents like DEA agents are operating in your AO, seek them out and let them know who you are. Assist them and help them understand the counter drug framework in which your unit is operating (i.e., trying to prosecute drug dealers rather than merely seize drugs).[12]

IX.D. Counter Terrorism

No AAR comments.

IX.E. Intelligence Law & Policy Considerations

No AAR comments.

IX.F. Rules for the Use of Force

ISSUE: Rules for the Use of Force (RUF) briefing

DISCUSSION: The legal annex and RUF appendix to the installation antiterrorism plan were germane and highly relevant to the exercise. They addressed all of the critical issues and provided the correct guidance. The RUF briefing would have given the law enforcement authorities what they needed to conduct their responses to the exercise scenario. The JA assigned to the EOC/IOC volunteered to provide RUF briefings to the DACP. Although the responding DACP indicated in their AAR they did not know the RUF, no one ever called on the EOC/IOC JA.

RECOMMENDATION: Sustain the documents, but improve on the execution. After participating in this exercise, it is evident the OSJA should schedule periodic RUF briefings to installation law enforcement personnel. Copies of the relevant annexes are available from the CLAMO website: https://www.jagcnet.army.mil/clamo.[13]

ISSUE: Role of the Maritime Operational Threat Response (MOTR) Plan

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[11] Regimental Combat Team – 3, 2d Marine Expeditionary Brigade, Regimental Judge Advocate, OEF After Action Report, 14-15 April 2010, Deployed April 2009 – October 2009, Camp Dwyer, Helmand Province, Afghanistan (hereinafter "RCT-3, OEF AAR, APR 09 - OCT 09"; on file at CLAMO).
[12] *Id.*
[13] Fort Lee OSJA Anti-Terrorism Exercise, 8 SEP 09, *supra* note 2.

DISCUSSION: As directed by National Security Presidential Directive 41/Homeland Security Presidential Directive 13 (dated 21 Dec 2004), Maritime Security Policy, the President tasked the newly created Maritime Security Policy Coordination Committee to develop a National Strategy for Maritime Security. In doing so, the Maritime Security Policy Coordination Committee crafted eight supporting implementing plans, including: the MOTR Plan, National Plan to Achieve Maritime Doman Awareness, Maritime Infrastructure Recovery Plan, Global Maritime Intelligence Integration Plan, and four others. Together, the overall strategy and supporting plans work together to provide the framework for enhancing security in the maritime domain.

The purpose of the MOTR Plan is to achieve coordinated U.S. Government response to threats against the United States and its interests in the Maritime Domain. The Plan directs MOTR agencies to notify and coordinate with interested agencies at the earliest possible opportunity when it is determined that:

(a) any specific terrorist or foreign state threat exists, and U.S. agency response is or could be imminent;
(b) more than one Federal department or agency has become substantially involved in responding to the threat;
(c) the agency or department lacks capability, capacity, or jurisdiction to address the threat;
(d) upon resolving the threat, the initial responding Federal department or agency cannot execute the disposition of cargo, people, or vessels acting under its own authority; or
(e) the threat poses a potential adverse effect on the foreign affairs of the United States.

At its heart, the MOTR plan serves as a requirement for agencies that may have a role in responding to threats in the Maritime Domain to coordinate within the Federal government. It directs those agencies to staff 24x7x365 operations centers where personnel with decision-making authority may be reached to speak on behalf of their agencies interests, and it implements a dispute resolution process in which disagreements may be addressed without slowing down the real-time response to a threat. The MOTR Plan applies in JIATFS operations as several of the triggers are generally met upon the detection of a suspected drug smuggling vessel due to the need to shift TACON, since most JIATFS operations involve interaction with foreign flag state vessels or entry/overflight into the sovereign territory of another nation, and due to the need for interagency concurrence on disposition of seized vessels and/or detained personnel. Furthermore, MOTR is related to the bilateral international agreements mentioned above, as these agreements are binding upon the whole of the Federal government, MOTR concurrence is assumed (and consultation is not required) to take an action authorized by an agreement. However, in the absence of such an agreement, MOTR consultation would be required prior to taking action. (For example, if JIATFS desired to have an aircraft under its TACON conduct overflight of a country with no international agreement, the U.S. would need to approach that country for "ad hoc" approval to conduct the overflight. Prior to that approach, MOTR consultation would be required. Overall, this would probably slow the speed of response so much that not appropriate action could be taken in a timely manner). However, the MOTR Plan is flexible enough to permit such "standing concurrences" and permit actions authorized within a bilateral agreement to be taken without prior interagency consultation.

RECOMMENDATION: Personnel assigned to JIATFS must understand the MOTR Plan and how JIATFS operations are interconnected with larger U.S. foreign policy.[14]

[14] JIATFS, Counterdrug AAR, FEB 10, *supra* note 1.

ISSUE: Understanding the rules under which Allied/Partner nations operates

DISCUSSION: Like with the UK, the Royal Netherlands Navy has a MOU with the U.S. Coast Guard which permits USCG LEDETs to operate on Dutch naval vessels. However, unlike the UK, the Dutch Navy will not permit detainees to be brought aboard its ships. Therefore, if there is an I & A event involving the LEDET aboard the Dutch ship, then the LEDET must be prepared to serve as a prize crew to sail the detained vessel to either the nearest port or nearest U.S./Allied vessel which can accept the detainees.

RECOMMENDATION: JIATFS and U.S. Coast Guard District Command must understand the limitations that Allied/Partner Nations have imposed when providing assets to the JIATFS mission. Knowing these limitations is key to proper tactical placement for both D &M and subsequent I & A.[15]

ISSUE: Changes to the rules for the use of force when TACON shifts

DISCUSSION: While performing the D&M mission under JIATFS TACON, assets will follow their service's or their country's Rules of Engagement (ROE). However, when the mission becomes I &A and TACON shifts to the Coast Guard, the Coast Guard rules for the use of force (RUF) apply to all non-Coast Guard personnel onboard a Coast Guard unit and to all non-Coast Guard units or personnel operating under Coast Guard TACON including U.S. Navy vessels. However, on a foreign law enforcement boarding involving Coast Guard assistance, foreign officials may apply their own use of force policy. Coast Guard personnel will continue to apply their service's use of force policy.

RECOMMENDATION: Know which use of force policies apply based on the situation. Be cognizant of the Coast Guard's RUF when conducting a law enforcement mission.[16]

IX.G. Status & Relationships of Different Agencies and Sub-Agencies Participating in Homeland Security Operations

ISSUE: Assumption of responsibility of functions during temporary absence of the Director and Deputy Director

DISCUSSION: JIATFS is a Joint Command in DoD. Command is exercised by virtue of office and special assignment of members of the United States Armed Forces holding military grade who are eligible to exercise command. A commander is, therefore, a commissioned or warrant officer who, by virtue of grade and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command." A civilian, other than the President as Command-in-Chief (or National Command Authority) may not exercise command. When different commanders of the Army, Navy, Air Force, Marine Corps, and Coast Guard join or serve together, the officer highest in grade, who is otherwise eligible to command, will command all of those forces, unless otherwise directed by the President (see AR 600-20). Therefore, the Director JIATFS as the senior commissioned officer eligible to command, exercises primary command authority over JIATFS. For the military chain of command, the chain of succession then follows as the Deputy

[15] *Id.*
[16] *Id.*

Director, Chief of Staff, and senior regularly assigned officer servicing in the Armed Forces of the U.S. respectively. However, JIATFS is also a National Task Force identified in the National Interdiction Command & Control Plan (latest version being dated 17 March 2010), an interagency agreement signed by the Office of National Drug Control Policy (ONCDP); the United States Interdiction Coordinator; DoD; DHS; and The Interdiction Committee (TIC). As a National Task Force, the Director, JIATFS conducts planning and coordination functions that are not *per se* tied to military command. The Vice Director of JIATFS is a Customs and Border Protection officer who by virtue of his position cannot exercise command. However, in the absence of the Director and Deputy Director, a U.S. Navy Admiral, the Vice Director has been delegated the power to exercise the Director's coordination and planning functions under the NICCP as the Acting Director while the regularly assigned military officer will assume Acting Command over the military members at JIATFS. This satisfies the military requirements of command while ensuring that everyone understands the role of the Vice Director in the absence of the Director and Deputy Director. JIATFS has published a command policy memorandum to make clear roles and responsibilities in the absence of either the Director or Deputy Director.

RECOMMENDATION: Sustain.[17]

ISSUE: Military aircraft (MILAIR) transportation requests from U.S. and partner nation law enforcement agencies

DISCUSSION: JIATFS receives numerous requests to use MILAIR to transport both U.S. and partner nation law enforcement agents. Under Section 1004 of the 1991 NDAA, DoD is authorized to transport personnel, supplies, and equipment of federal, state, local, or foreign law enforcement agencies on a non-reimbursable basis for the purpose of facilitating counterdrug activities within or outside the United States. The Air Transportation Eligibility Regulation (DoD 4515.13-R) contains implementing guidance. Commander, SOUTHCOM has delegated authority to approve these requests to JIATFS for flights within the SOUTHCOM AOR.

RECOMMENDATION: Sustain.[18]

ISSUE: MILAIR transportation of contractors involved in the counterdrug mission

DISCUSSION: Contractors pose another issue for JIATFS regarding MILAIR. JIATFS has interpreted DoD 4515.13-R to allow MILAIR transport of contractors only when the contract explicitly permits such transportation.

RECOMMENDATION: When negotiating or reviewing contracts with contractors, if there is a perceived need that they will need to use MILAIR, then ensure contract specifically addresses that issue.[19]

ISSUE: Avoiding the commingling of law enforcement intelligence and military intelligence

DISCUSSION: Because JIATFS is at all times part of both the DoD intelligence community and the law enforcement information community, it must go to great lengths to separate the two streams of information. JIATFS employs a rigorous structure to ensure military intelligence is

[17] *Id.*
[18] *Id.*
[19] *Id.*

not discoverable in the law enforcement arena. Conversely, while military intelligence is subject to strict classification levels and restrictions on releasability, case-agents often control law enforcement information, thereby making its release to partner nations and other agencies for interdiction and apprehension purposes much less complicated.

RECOMMENDATION: Sustain. Ensure separation of these two streams of information to avoid serious consequences.[20]

ISSUE: Applying DoD ethics regulations to Coast Guard personnel

DISCUSSION: A Coast Guard Rear Admiral (O-8) is the Director of JIATFS. Normally, Coast Guard personnel are not subject to the DoD regulations that have not been specifically implemented by the Coast Guard. However, in the interest of comity and caution, the Staff Judge Advocate provides ethics advice based on a comparison of the Joint Ethics Regulation (which does not apply to the Coast Guard), the applicable Code of Federal Regulations, and the Coast Guard Commandant Instruction on Standards of Conduct (Ethics)—with the recommendation rooted in whichever provides the most restrictive course of action given the circumstances.

RECOMMENDATION: Sustain.[21]

ISSUE: Applying Army regulations and directives to members of the other services

DISCUSSION: As the executive agent for JIATFS, the Army is responsible for command-level administrative functions (e.g., urinalysis programs and property accountability). As such, it has made a determination to apply Army regulations and directives to members of all five services. While the services share many similar policies, there is one area of the law where the Army is more aggressive than the other DoD services or the Coast Guard. When property is missing or damaged, the Army must conduct a Financial Liability Investigation of Property Loss (FLIPL). Members from all five services are eligible to conduct these investigations. After legal review, if the command determines the member was culpable (typically involves simple negligence) - and the member's culpable conduct was the proximate cause of the loss, damage, or destruction (LDD) - the Army can (and will) hold the service member financially liable for the LDD (subject to certain financial limitations).

RECOMMENDATION: The Office of the Staff Judge Advocate (OSJA) specifically briefs Army property accountability process to include FLIPLs and their repercussions to all incoming personnel. Members of the other four armed forces must heed this information. While the FLIPL process is non-punitive by its definition, it can be the impetus for a large financial recoupment. Members of sister services assigned to JIATFS must be especially vigilant not to lose or damage property for which they are accountable.[22]

ISSUE: Military justice issues in a joint environment

DISCUSSION: JIATFS typically uses Army Regulation 15-6 to conduct its military justice investigations, but bases its disposition determinations on service-specific regulations and policies. This practice allows for consistency in formatting and structure while providing needed flexibility for service-specific offenses. In cases where there is a potential military justice action

[20] *Id.*
[21] *Id.*
[22] *Id.*

pending on a non-Army service member, the OSJA will notify the senior representative at JIATFS (the "element commander") from the affected service and the affected service's designated legal office to ensure they take the proper actions on the case. Element commanders are appointed pursuant to service specific regulations (e.g. AR 27-10, para. 3-7b) for multi-service commanders as well as SOUTHCOM Regulation 27-10. If there is the potential for a court-martial, often times JIATFS will forward the matter to the appropriate SOUTHCOM service component commander for action or arrange for the member's parent service to assign the member to a unit under the cognizance of his/her parent service, which will then take the lead on the final disposition of the case. However, under SOUTHCOMC Regulation 27-10, the Director, JIATFS, wearing his joint commander hat, is a Special Courts-Martial Convening Authority with authority to impose NJP, and convene SPCMs and SCMs over all U.S. military personnel assigned or attached to JIATFS including members of the reserve component and National Guard. This authority can and will be used in appropriate cases.

RECOMMENDATION: Sustain.[23]

ISSUE: Administrative separations in JIATFS

DISCUSSION: JIATFS follows service regulations when processing administrative separations. The element commander from the affected service will initiate the administrative separation. Depending on service regulation, the Special Court-Martial Convening Authority (SPCMCA) is the separation authority. In which case, the Director of JIATFS serving in his command/SPCMCA function is the approval authority. If a separation board is required, defense counsel from his or her own service will assist the member. Again, JIATFS will contact the designated OSJA for appropriate service to ensure that service specific regulations are followed and when appropriate a service component commander takes final action. For instance, in Navy physical fitness assessment failures, the Navy (PERS-832) has ability to act as the separation authority.

RECOMMENDATION: Sustain.[24]

ISSUE: Administrative counseling and the need for updated doctrine

DISCUSSION: JIATFS follows service regulations when issuing administrative counseling paperwork to members. When issuing reprimands for filing in the Army Soldier's permanent record, JIATFS follows the guidance in AR 600-37. Unfortunately, AR 600-37 does not take into account the joint nature of today's forces. It refers only to the authority of "General Officers" to issue reprimands. Since the Director/Commander is a Coast Guard Rear Admiral, the OSJA has made the determination to interpret "General Officers" to include "Flag Officers," as well

RECOMMENDATION: The Army should review and update the current version of AR 600-37 to reflect the reality that Army personnel will sometimes report to senior officers of the sea services. AR 600-37 was last updated in 1986.[25]

ISSUE: Separation of Morale, Welfare, and Recreation (MWR) funding

DISCUSSION: JIATFS receives MWR funding from its host command—Naval Air Station Key

[23] *Id.*
[24] *Id.*
[25] *Id.*

West. Under DoD regulations, MWR funding may only be used for the benefit of military members and their families. To ensure their large contingent of civilian employees can participate in command morale functions, JIATFS has two morale committees. Military members comprise one committee and manage the official MWR funds. The second committee is open to both military members and civilian employees. Each committee raises funds independently, and there is no commingling of the funds. Contract employees are ineligible for membership in either committee, but may attend command morale events by paying full price. In addition, contract employees are not permitted to bill the government for time spent at a command morale function.

RECOMMENDATION: Sustain. Finding novel ways to ensure all of your workforce can partake of the same morale functions improves the sense of unity JIATFS needs as a large joint, interagency command.[26]

ISSUE: United Kingdom support to JIATFS

DISCUSSION: The principal Royal Navy (RN) support to JIATFS operations is called the Allied Patrol Task North (APTN). This will either be a frigate (FFG) or a destroyer (DD) supported by a Royal Fleet Auxiliary (RFA) replenishment ship. Most recently APTN consisted of HMS IRON DUKE (a Type 23 FFG) and the RFA FORT GEORGE. This operation is called Op ATLANTICA. It is an unfunded discretionary operation, which means the UK Treasury does not fund Op ATLANTICA. Thus, the RN must find money from within their ordinary operating budget to pay for it. Budgetary constraints forced the withdrawal of the APTN from October 2009 to May 2010. [Note: Although after the collection of this information, the RFA LARGS BAY deployed to Haiti with relief supplies, following the devastating earthquake there, this was not part of Op ATLANTICA]. Further UK support to JIATFS comes from the Serious Organised Crime Agency (the UK equivalent to the FBI). The SOCA representatives have a particular focus on developing intelligence for interdiction operations.

RECOMMENDATION: Sustain.[27]

ISSUE: UK/U.S. memorandum of understanding (MOU)

DISCUSSION: The operational agreement that underpins UK support for JIATFS is a bilateral UK-U.S. MOU dated 29 July 2005. This MOU was clarified by an exchange of notes dated 9 May 2008, which precisely defined the operating area as contiguous with the JIATFS JOA in place of the ambiguous phrase "waters of the Caribbean and Bermuda" used in the earlier MOU. In brief, the purpose of the MOU is to promote cooperation and coordination between the U.S. and the UK by enabling the operation of U.S. Coast Guard LEDETs from RN and RFA ships and aircraft. RN/RFA units will operate under the TACON of the LEDETs when dealing with counter narcotics targets. The USCG is responsible for the overall authorization of these missions, use of force, boarding, arrest, and evidentiary chain of custody. U.S. law applies to all law enforcement actions undertaken by the CG LEDETs.

RECOMMENDATION: Sustain. [28]

ISSUE: UK/U.S. method of operation

[26] *Id.*
[27] *Id.*
[28] *Id.*

DISCUSSION: RN and RFA vessels serve as platforms to facilitate CG LEDET law enforcement action. Before the APTN deploys, it is tested and accredited as "fit for operations" by both the RN (before deploying) and the USCG (upon arrival in the JIATFS JOA).

RECOMMENDATION: Sustain.[29]

IX.H. Funding

No AAR comments.

[29] *Id.*

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X. DOCTRINE, ORGANIZATION, TRAINING, MATERIAL, LEADERSHIP, PERSONNEL, & FACILITIES (DOTMLPF), AND COUNTRY MATERIALS

X.A. Doctrine

Third JA on Deployments

ISSUE: Third attorney at the BCT

DISCUSSION: Battle space owning BCTs absolutely need a third JA.

RECOMMENDATION: Sustain. It was particularly helpful for the third JA to come from division before deployment because the BJA was already familiar with this attorney and his capabilities. Moreover, an active duty attorney can more easily train with the BCT before deployment and deploy for the entire time.[1]

ISSUE: Third attorney at the BCT

DISCUSSION: The BCT did not have a third attorney during the deployment. The BJA had initially asked his division OSJA for an active duty JA augmentee. The SJA denied the request, despite having several volunteers. The BJA then pursued the possibility of getting a Reserve Component (RC) JA mobilized. However, the BCT would have had to provide a paragraph and line number from the Modification Table of Organization and Equipment (MTOE) of the officer they would be willing to give up to get an additional attorney. The BCT Deputy Commanding Officer (DCO) ultimately decided not to pursue getting a third attorney.

RECOMMENDATION: Improve. Advocate to the BCT leadership what a third attorney could bring to the fight. The BJA would have used a third JA for rule of law and detention operations.[2]

ISSUE: Requirement for third brigade JA

DISCUSSION: There was absolutely no way the brigade legal section could have provided full spectrum legal support to the BCT without a third attorney. The BJA requested a third JA approximately three months before the deployment. While the JAG Corps eventually filled this request, the third JA did not arrive in theater until three months into the deployment. Without this third JA, the brigade legal section would not have been able to provide legal assistance and/or run a RoL program. At one point the BCT had OPCON and ADCON of 7 maneuver battalions and 2 support battalions. Had the Division and Corps SJAs not offered an attorney out of hide, the

[1] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 17 September 2009, Deployed October 2008 – June 2009, Camp Liberty, Iraq (hereinafter "2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09"; on file at CLAMO).
[2] 2d Brigade Combat Team, 4th Infantry Division, OIF After Action Report, 15 September 2009, Deployed September 2008 – August 2009, Forward Operating Base (FOB) Echo, Diwaniyah, Qadisiyah Province, Iraq, Contingency Operating Base (COB) Basra, Basra Province, Iraq (hereinafter "2BCT, 4ID OIF AAR, SEP 08 - AUG 09"; on file at CLAMO).

brigade legal section would have struggled to fulfill any of its core legal functions with just two attorneys.

RECOMMENDATION: Improve. The JAG Corps needs to ensure a third JA is available to the brigade legal team throughout its deployment.[3]

ISSUE: Number of attorneys at the BCT level

DISCUSSION: Two attorneys at a BCT are not enough. Before deployment, the Division OSJA coordinated for augmentation from the Reserve Component (RC), but when this BCT received a change of mission that put them under another division headquarters, it left them without a third attorney. Legal assistance, contract/fiscal law, and claims would be a full time job for an attorney. Furthermore, adequate support to RoL and support to prosecutions in Iraqi courts should be a full time job as well. Although this BCT only did one court-martial in theater, they could have done more courts-martial with a dedicated trial counsel. Finally, had the BCT done more kinetic operations, there would be a greater need for operational law support.

RECOMMENDATION: Improve. Deploy at least three attorneys to the BCT. The BCT commander even advocated for four attorneys. This BCT could not have performed its legal assistance mission without the assistance of a volunteer from the PRT, who was a NG JA. You cannot assume away operational law, military justice, etc.[4]

ISSUE: Need for three attorneys at the BCT level

DISCUSSION: The brigade deployed with only their organic attorneys. Several months into the deployment, the brigade received a reserve individual augmentee (IA) who had been working at the MND-N OSJA. This attorney took over primary responsibility for contract and fiscal law, as well as client services until he redeployed approximately six weeks before the brigade.

RECOMMENDATION: Sustain/Improve. A third attorney is essential at a landowning BCT having a claims and RoL mission. Given the TC spent approximately 90% of her time on RoL, she would have been unable to cover down on some of the other legal disciplines, especially if the military justice workload had been greater. Having a third attorney also preserved independence in legal assistance and ensured coverage during the other JAs' leave. It would have been more helpful, however, to have had the third attorney during the entire deployment. If the BJA has to choose whether to have the third attorney at the beginning or the end of the deployment, it is better to have this attorney at the end in order to assist with wrapping up outstanding legal issues.[5]

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[3] 3d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate OIF After Action Report, 4 February 2010, Deployed December 2008 – November 2009, Joint Security Station Loyalty and Forward Operating Base Hammer, Baghdad, Iraq (hereinafter "3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09"; on file at CLAMO).

[4] 2d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 4 & 9 February 2010, Deployed January 2009 – December 2009, Forward Operating Base Warrior, Kirkuk, Iraq (hereinafter "2-1 CAV, OIF AAR, JAN 09 - DEC 09"; on file at CLAMO).

[5] 3rd Heavy Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 2 February 2010, Deployed December 2008 – December 2009, Forward Operating Base Marez, Ninewah Province, Iraq (hereinafter "3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09"; on file at CLAMO).

ISSUE: Third JA at the BCT level

DISCUSSION: It was absolutely necessary to have a third JA for the mission.

RECOMMENDATION: Sustain.[6]

ISSUE: Third attorney at the BCT level

DISCUSSION: During deployment planning, the BJA did not see the need for a third attorney. However, when the unit got to Kuwait, the BCT commander decided the TC would be the OIC of the BCT's Prosecution Task Force (PTF). This prompted the BJA to request and receive an additional attorney from division to perform the TC functions.

RECOMMENDATION: Improve. The nature of the mission and the legal services the command expects the brigade legal section to provide should be part of the pre-deployment mission analysis and planning. With emerging legal tasks like the PTF, it is advisable for the BJA to contact units currently in theater to gain an understanding of what this role entails.[7]

ISSUE: Need for at least three JAs at the BCT

DISCUSSION: The 30th HBCT brigade legal section had four JAs. The BJA divided the workload between all four JAs, and all four were very busy throughout the entire deployment. Having less than three JAs at the BCT would have extremely limited what the brigade legal section would have been able to accomplish during the deployment.

RECOMMENDATION: Sustain. All BCTs should deploy with a minimum of three JAs.[8]

ISSUE: Third JA at the BCT

DISCUSSION: It is absolutely essential to have a third attorney on deployment. The demands on the BCT legal office required at least three JAs. U.S. Army Alaska (USARAK) headquarters loaned the third JA to the BCT for the deployment, as they realized the overwhelming need for the added JA.

RECOMMENDATION: Sustain. A third attorney for deployed BCTs is necessary.[9]

ISSUE: Number of JA captains in a brigade

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[6] 3rd Brigade Combat Team, 10th Mountain Division, Brigade Judge Advocate OEF After Action Report, 29 January 2010, Deployed November 2008 – January 2010, Forward Operating Base Shank, Logar Province, Afghanistan (hereinafter "3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10"; on file at CLAMO).

[7] 1st Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 3 February 2010 & 29 March 2010, Deployed February 2009 – January 2010, Joint Security Station War Eagle, Baghdad, Iraq (hereinafter "1-1 CAV BCT OIF AAR, FEB 09 - JAN 10"; on file at CLAMO).

[8] 30th Heavy Brigade Combat Team, Brigade Judge Advocate OIF After Action Report, 16-17 March 2010, Deployed April 2009 – January 2010, Forward Operating Base Falcon, Baghdad, Iraq (hereinafter "30th HBCT (NG) OIF AAR, APR 09 - JAN 10"; on file at CLAMO).

[9] 4th Brigade Combat Team (Airborne), 25th Infantry Division, Brigade Judge Advocate OEF After Action Report, 27 March 2010, Deployed February 2009 – February 2010, Forward Operating Base Salerno, Khowst Province, Afghanistan (hereinafter "4BCT, 25ID OEF AAR, FEB 09 - FEB 10"; on file at CLAMO).

DISCUSSION: The current single authorized captain at a brigade is insufficient during deployed operations. Having a third JA at the brigade is necessary. This attorney can fill the legal assistance need. As the unit had smaller and smaller outposts, there was a need for an attorney who could travel and bring the assistance to the Soldier. It was very problematic to get individual Soldiers back to a centralized location for assistance.

RECOMMENDATION: Plan ahead and request a second captain. Identify the unencumbered slot the command will give up to get the captain. The new "advise and assist" brigades (AABs) need an additional captain on top of even this third JA. They need a major and three captains.[10]

ISSUE: Division attorney as the third JA at the BCT

DISCUSSION: One of the Division client services JAs served as the third attorney at a BCT for the majority of the deployment. She described it as "the best job a first term attorney could have, ever" due to the exposure to the Army and the other staff sections she got at the brigade. She appreciated the direct mentorship from a JA major who did not have ten other attorneys under her and liked the sense of responsibility from working directly for the BCT commander on some issues (such as fiscal reviews). "At the Division, you are so far removed from the Commanding General (CG), the troops, and the rest of the staff."

RECOMMENDATION: Sustain. This was a better way to learn about the Army and the way the staff works than the Judge Advocate Staff Officers Course (JATSOC).[11]

ISSUE: Need for a third JA at the brigade level

DISCUSSION: One brigade commander selected his trial counsel to lead a Prosecution Task Force. He made this decision without any input from the legal personnel. This decision was also made on short notice without prior planning while in Kuwait pending movement into Iraq. This effectively removed the JA from the legal section both for duty responsibilities and location. This forced the Division to send a JA to augment the brigade. A BCT soon to deploy had already submitted a request for a third JA, giving up an assistant fire support officer (the electronic warfare integrator) to do so.

RECOMMENDATION: Recognize the need for a third JA at the brigade level for maneuver brigades.[12]

ISSUE: Minimum number of JAs required at the BCT level

DISCUSSION: Even with three experienced JAs, there was more than ample work across the core legal disciplines to keep them busy. Moreover, the SBCT needed three JAs to form a three-member foreign claims commission (FCC).

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[10] 25th Infantry Division, Staff Judge Advocate OIF After Action Report, 11 March 2010, Deployed November 2008 – November 2009, Multi-National Division – North, Contingency Operating Base Speicher, Iraq (hereinafter "25 ID OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).
[11] *Id.*
[12] 1st Cavalry Division, Staff Judge Advocate OIF After Action Report, 1 April 2010, Deployed January 2009 – January 2010, Multi-National Division – Baghdad, Camp Liberty, Baghdad, Iraq (hereinafter "1CD OIF AAR, JAN 09 - JAN 10"; on file at CLAMO).

RECOMMENDATION: Sustain.[13]

ISSUE: Three attorneys at the BCT

DISCUSSION: Having three attorneys during the deployment was necessary. The brigade filled the third attorney using an intelligence officer position out of the Modified Table of Organization & Equipment (MTOE). The brigade commander supported the third JA.

RECOMMENDATION: Sustain.[14]

ISSUE: Number of JAs at the BCT

DISCUSSION: The BJA requested a third JA from the Army Reserve about three to four months before deploying. This third JA was invaluable.

RECOMMENDATION: A deploying BCT needs at least three JAs. The BJA should request a third JA as soon as possible.[15]

ISSUE: Three judge advocates at a brigade

DISCUSSION: There was more than enough work to keep the three JAs in the brigade fully engaged. If a brigade deploys with only two attorneys, it will severely degrade service to the command.

RECOMMENDATION: Ensure brigade legal teams have at least three JAs.[16]

ISSUE: Three attorneys at the brigade level

DISCUSSION: Three JAs at the Brigade were a necessity because of the high volume of work found in theater.

RECOMMENDATION: Sustain.[17]

ISSUE: Minimum number of BCT JAs and 27Ds

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[13] 56th Stryker Brigade Combat Team, 28th Infantry Division (Mechanized), Pennsylvania Army National Guard, Brigade Judge Advocate OIF After Action Report, 24 September 2009, Deployed January 2009 – September 2009, Camp Taji, Iraq (hereinafter "56th SBCT (PA NG) OIF AAR, JAN - SEP 09"; on file at CLAMO).

[14] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 24 November 2009, Deployed October 2008 – September 2009, Camp Liberty, Baghdad, Iraq (hereinafter "2HBCT, 1ID (2nd Half) OIF AAR, OCT 08 - SEP 09"; on file at CLAMO).

[15] 3d Brigade Combat Team, 1st Infantry Division, OEF After Action Report, 29 August 2009, Regional Command (RC) – East, Forward Operating Base (FOB) Fenty, Jalalabad, Afghanistan, Deployed July 2008 – June 2009 (hereinafter "3BCT, 1ID OEF AAR, JUL 08 - JUN 09"; on file at CLAMO).

[16]. 2d Brigade Combat Team, 1st Armored Division, Brigade Judge Advocate OIF After Action Report, 25 September 2009, Deployed July 2008-June 2009, Forward Operating Base (FOB) Hammer/Camp Stryker, Iraq (hereinafter "2BCT, 1AD OIF AAR, JUL 08 - JUN 09"; on file at CLAMO).

[17] 11th Military Police Brigade, United States Army Reserve (USAR), OIF After Action Report, 17 September 2009, Deployed August 2008 – June 2009, Camp Cropper, Iraq (hereinafter "11th MP BDE OIF AAR, AUG 08 - JUN 09"; on file at CLAMO).

DISCUSSION: A BCT needs three JAs and two 27Ds, with a further 27D at each battalion, to provide an effective legal service.

RECOMMENDATION: Sustain.[18]

ISSUE: Getting a third JA for a deployment

DISCUSSION: The proper procedure for getting a third JA on a deployment is to have the BCT commander provide a position on the MTOE for the third JA to occupy. Once the BCT commander assigns a slot for that third JA, PP&TO can find a reservist or active component JA to send. The key to getting the third JA is to start the process early by convincing the BCT commander of the need and the benefits of the third JA. The sooner the third JA arrives, the sooner that JA can participate in training and getting to know BCT players.

RECOMMENDATION: Start the process discussed above early in the pre-deployment phase.[19]

ISSUE: Backfill of attorneys at the BCT by division

DISCUSSION: MND-N sent an attorney to augment the BCT when the third attorney went on leave, but not when the TC went on leave.

RECOMMENDATION: Sustain. Certain areas, such as RoL, are not amenable to short-term replacements due to the need for habitual relationships.[20]

NCO's

ISSUE: Authority over the placement of paralegals

DISCUSSION: The Army regulation is very vague about the authority to place paralegal assets in a consolidated location. The USAREUR regulation is much more specific. Not having the specific authority to consolidate the paralegals meant some remained down in their units when it was not beneficial for them to be there. They could have received an entire year's worth of focused legal training. Instead, they received little to none.

RECOMMENDATION: Reword the Army regulation and doctrine to reflect the wording of the USAREUR regulation more closely. Make it clear that the SJA should determine how best to employ legal assets. Paragraph 3-2 of AR 27-1 requires amendment to reflect units should assign only legal duties to both attorneys and paralegals.[21]

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[18] 1st Combat Support Brigade (Maneuver Enhancement), Task Force Warrior, OEF After Action Report, 20 October, 2009, Deployed June 2008 – September 2009, Bagram Airfield, Afghanistan (hereinafter "1 CSB (ME) OEF AAR, JUN 08 - SEP 09"; on file at CLAMO).

[19] 2010 Brigade Judge Advocate (BJA) Symposium, 10-12 May, 2010, The Judge Advocate General Legal Center and School (TJAGLCS), Charlottesville, VA (hereinafter "BJA Seminar, combined AAR, 10-12 MAY 2010"; on file at CLAMO).

[20] 3rd Heavy Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate OIF After Action Report, 2 February 2010, Deployed December 2008 – December 2009, Forward Operating Base Marez, Ninewah Province, Iraq (hereinafter "3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09"; on file at CLAMO).

[21] Task Force Falcon, 40th Infantry Division, California National Guard, Command Judge Advocate, Kosovo Forces 11 After Action Report, 9 January 2010, Deployed February 2009 – November 2009, Camp Bondsteel, Kosovo (hereinafter "KFOR-11 AAR, FEB 09 - NOV 09"; on file at CLAMO).

ISSUE: Need for an E8 paralegal at the BCT

DISCUSSION: The BCT NCOIC received promotion to E8 while in the E7 NCOIC position. Every other staff section in the BCT had an E8 NCOIC. Having an E8 chief paralegal gave the brigade legal section increased credibility with the rest of the staff.

RECOMMENDATION: Make the senior paralegal at the BCT an E8 slot. If the NCOIC slot remains an E7 position, it would help to have an additional E6 paralegal assigned to the BCT headquarters to help run the legal office in the absence of the NCOIC, or perhaps serve as the rear detachment NCOIC. The additional E6 could also assist in training junior paralegals, as BCTs often receive paralegals straight from Advance Individual Training (AIT).[22]

ISSUE: Defining the roles of the legal administrator and chief paralegal NCO (CPNCO)

DISCUSSION: The responsibilities of the legal administrator and CPNCO overlap to the extent they involve office administration and management, broadly defined.

RECOMMENDATION: Read FM 1-04, Legal Support to the Operational Army, and clearly define and communicate the respective roles of the legal administrator and CPNCO.[23]

ISSUE: Role of the Chief Paralegal Noncommissioned Officer (CPNCO)

DISCUSSION: The Division now has a Sergeant Major (SGM) as the Command Paralegal and a Master Sergeant (MSG) as the CPNCO. The doctrine needs to better delineate the respective roles of these individuals, as they are not both fully occupied trying to supervise eleven 27D Soldiers.

RECOMMENDATION: The best use of the SGM is working on behalf of the legal shop with external entities. In other words, the SGM should look to external matters that affect the OSJA. For example, he or she meets with the Division Command Sergeant Major (CSM). The CPNCO should focus on internal matters. These include paralegal training, Soldier skills, physical training, and administrative issues.[24]

ISSUE: Assignment of 27Ds to non-legal duties

DISCUSSION: Judge advocates have some regulatory protection from assignment to non-legal duties. Enlisted legal professionals have no such protection. This is especially problematic when commands wish to assign court reporters to non-legal duties. It also can be a problem in the deployed environment when inexperienced paralegals work decentralized operations within their battalions without direct JA supervision.

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[22] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.
[23] 34th Infantry Division, Minnesota Army National Guard, Staff Judge Advocate OIF After Action Report, 23 February 2010, Deployed April 2009 – February 2010, Multi-National Division – South, Basra, Iraq (hereinafter "34ID, OIF AAR, APR 09 - FEB 10"; on file at CLAMO).
[24] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.

RECOMMENDATION: Place in the appropriate regulation protection for enlisted personnel similar to that of officers. Make approval by the first JA in the paralegal's technical chain a requirement for assigning paralegals to non-legal duties.[25]

ISSUE: Role of the E-8 in the Division OSJA

DISCUSSION: It is unrealistic to place this master sergeant (MSG) in the criminal law section focusing solely on criminal law. The Division OSJA sergeant major (SGM) cannot effectively mentor this individual to become a SGM if he or she is acting as a specialized expert in criminal law. The SJA and command paralegal must have the flexibility to move the MSG into a broader leadership role within the OSJA. Not only would this move enable the OSJA SGM to visit outlying brigade paralegals more frequently, it would provide greater opportunities for qualified sergeants first class (SFCs) to serve as non-commissioned officers-in-charge (NCOICs) of the military justice section.

RECOMMENDATION: Improve. Revising the doctrine will benefit everyone involved.[26]

ISSUE: Role of the legal administrator warrant officer (WO)

DISCUSSION: It is valuable for the WO to know both information technology and post-trial processing. The WO can interface with both G-6 and the Director of Information Management (DOIM). It is helpful to have someone in the office with administrator rights who can take care of minor issues. The WO also maintains trackers, interfaces on budget issues, and can plan special projects, such as monthly newsletters, monthly morale gatherings, and deployed Law Day activities.

RECOMMENDATION: Legal administrators can do a variety of tasks, both in garrison and while deployed.[27]

Rule of Law

ISSUE: "Ownership" of the rule of law mission

DISCUSSION: Before the deployment, the OSJA was not aware of the doctrinal role of Civil Affairs (CA) in the rule of law arena. The OSJA was aware of the significant investment the JAG Corps had made in its RoL efforts, but by doctrine CA should have the lead. During the Division's training, including command post exercises (CPXs) and the mission rehearsal exercise (MRX), there were parallel and uncoordinated RoL efforts between the G9 and the OSJA. This caused significant confusion between the two staff sections after TOA. The OSJA RoL section and G9 were unsure of their respective roles in the RoL effort. The Division eventually solved this by co-locating the G9 and OSJA RoL section and agreeing to their supervision by a JA O-5.

RECOMMENDATION: The SJA, G9, and Division Chief of Staff (CoS) need to understand the doctrinal roles of each entity in the RoL effort and agree on who will take the lead. RoL staff from each section should work in a coordinated fashion and be physically located together to minimize turf battles and unsynchronized efforts.[28]

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[25] *Id.*
[26] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[27] *Id.*
[28] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.

ISSUE: Need for a dedicated RoL attorney at the brigade level

DISCUSSION: The most successful provinces, in terms of RoL efforts, were those in which the landowning brigade had a dedicated RoL attorney. For example, both Wasit and Basra had a dedicated RoL attorney responsible for only one province. This resulted in excellent working relationships with the PRT RoLA, the best reports/executive summaries (EXSUMs), and the most contact with the main players for RoL (judges, prosecutors, prison officials, and police).

RECOMMENDATION: Assign a dedicated RoL attorney at the brigade level. "Advise and Assist" Brigades (AABs) have a heavier RoL workload and should have four assigned JAs.[29]

ISSUE: RoL doctrine and who needs to lead RoL

DISCUSSION: Although U.S. Army doctrine pinpoints Civil Affairs (CA) with the primary responsibility for RoL, the practices in Iraq suggest the best champion for RoL success is the commander. Unless commanders make RoL a main effort by devoting personnel, materiel, and funding, the efforts of CA teams and JAs to advance RoL are limited. CA leaders and JAs are dependent upon all levels of commanders to execute RoL operations and provide the necessary support and resources to achieve real success.

RECOMMENDATION: The practical experiences in Iraq suggest there should be a re-evaluation of the doctrinal home for RoL. RoL is now a multifaceted and complex array of activities that is crucial to the commander responsible for the AO.[30]

ISSUE: Who "owns" RoL

DISCUSSION: No one person, directorate, or unit can deal with all RoL activities and functions. It involves a multidisciplinary allocation of personnel and resources. There needs to be a "fusing" of the activities with perhaps the commanding officer or the S3 as the overall director of RoL operations. Putting commanders or S3s in charge of RoL will likely heighten leadership buy-in and backing.

RECOMMENDATION: Based on experiences in Iraq, it may be time for a reassessment of the command and execution of RoL. RoL efforts must be coordinated. Staff sections and subordinate units cannot conduct RoL efforts in a vacuum and independently pursue differing objectives. The limited time and resources found in a COIN environment require a unified, focused effort to maximize utilization of available resources on the identified task/operation/issue.[31]

ISSUE: Placement of Rule of Law (RoL) within doctrine

DISCUSSION: Many RoL efforts are falling to the legal community. JAs, in conjunction with the Departments of State and Justice, can make a big difference predominantly in key leader engagements with judicial officials. However, issues such as getting gun permits for judges, building facilities, etc. are command-induced, major operations. If you place these missions with the legal staff (special staff), you take them out of the primary staff. This means there is a

[29] *Id.*
[30] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[31] *Id.*

tendency for the effort to become unsynchronized, as it is doctrinally the primary staff's responsibility to conduct this kind of planning and coordination.

RECOMMENDATION: Everyone adds value, but RoL really needs to be the primary responsibility of the G-9 in order to ensure command buy-in for the effort. If the legal community is going to take on the wider RoL mission, it needs sufficiently robust doctrine to support the addition of resources and personnel to the MTOE.[32]

ISSUE: RoL section relationship with OSJA

DISCUSSION: The RoL section was separate from the main CSTC-A OSJA. The RoL section felt this was helpful as it allowed them to focus on our RoL task without distraction.

RECOMMENDATION: Sustain if practicable.[33]

Military Justice

ISSUE: Employment and support of Trial Defense Service (TDS) personnel

DISCUSSION: The current force structure places TDS assets in the sustainment brigades. There is a lack of authoritative doctrine on how to employ these assets. The force requires guidance on how units are to employ these assets, what their rating chain will be, for whom they will work, and what they can and cannot do.

RECOMMENDATION: Write some of these fixes into doctrine. It is obvious evaluations should run through TDS channels. However, doctrine should spell this out, along with who provides their support and funding (including automation and travel) and where the TDS paralegals will work.[34]

ISSUE: Lack of knowledge in the sustainment community concerning TDS employment

DISCUSSION: While force structure places TDS assets in the sustainment community, there has been no concentrated effort to educate that community upon its responsibilities concerning these assets.

RECOMMENDATION: The Chief of TDS should make appearances at the various sustainment conferences to lay out the expectations. The support requirements and responsibilities should be a part of the education every sustainment commander gets at the Senior Officer Legal Orientation course.[35]

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[32] I Corps & 2d Legal Support Organization, Combined Staff Judge Advocate OIF After Action Report, 16 May 2010, Deployed March 2009 – March 2010, Reserve Mobilization February 2009 – February 2010, Camp Victory, Iraq & Fort Lewis, Washington (hereinafter "I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10"; on file at CLAMO).
[33] Afghan National Police Legal Mentor, Combined Security Transition Command – Afghanistan, OEF After Action Report, 16 December 09, Deployed November 2008 – November 2009, Location: Camp Eggers, Kabul, Afghanistan (hereinafter "CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09"; on file at CLAMO).
[34] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[35] *Id.*

ISSUE: Consistent support structure for Trial Defense Service (TDS)

DISCUSSION: TDS wanted the best of both worlds by attaching TDS personnel to the deployed organization. Sometimes, they adamantly claimed unit independence; other times they wanted full support from the Division. The decision rested on which avenue would best suit TDS on any given issue.

RECOMMENDATION: Clearly define the responsibility to support deployed TDS. It should be an "all or nothing" type approach. In other words, one command should provide paralegal personnel to support, but should also be the command doing their personnel actions such as environmental morale or emergency leave.[36]

ISSUE: Military justice NCOIC

DISCUSSION: Because the senior paralegal at most brigades is a SFC, it is imperative that the Division military justice NCOIC be at least a SFC with the leadership ability and experience to lead them. The SGM should act as the conduit between the SFC (NCOIC, Military Justice) and the brigade senior paralegal NCOs.

RECOMMENDATION: Ensure you assign a strong senior SFC to this role.[37]

ISSUE: Use of an E-8 as military justice NCOIC

DISCUSSION: It is not necessary to have an E-8 in the Division military justice structure.

RECOMMENDATION: Leave the decision on where to utilize the E-8 to the individual SJA. Depending on the mission and the predominant staff interaction, whether with BCTs or internally to the Division, flexibility in the employment of the E-8 is important. The E-8 can work fine in the OpLaw section, and the mission may be more heavily focused in that area than any other such that their senior leadership and knowledge is necessary.[38]

General

ISSUE: Army Special Operations Forces (ARSOF) legal primer

DISCUSSION: Due to the unique mission sets, authorities, and force structure, the JAG Corps should develop an ARSOF legal primer to assist incoming ARSOF legal advisors in identifying focus areas for familiarity and competence.

RECOMMENDATION: Improve. Strongly recommend the JAG Corps develop an ARSOF legal primer.[39]

ISSUE: Technical net consultation

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[36] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[37] *Id.*
[38] *Id.*
[39] 3rd Special Forces Group (Airborne), Group Judge Advocate OEF After Action Report, 22 July 2010, Deployed January 2010 – May 2010, Bagram, Afghanistan (hereinafter "3rd SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).

DISCUSSION: In many respects, a BJA in a deployed modular environment occupies a position that is like a "mini-Staff Judge Advocate (SJA)." However, there is a need to continue to consult with higher echelon JAs so there is unity of legal advice as well as sharing of interpretations and perspectives. Getting into the habit of routine consultation helps avoid conflicting legal advice to commanders at the BDE, division (DIV) and Corps levels. There will be occasions where differing legal advice will occur, but at least a phone call ahead on the technical net can prepare JAs for carrying out their respective duties. The goal is to ensure legal issues from other echelons do not surprise the SJA or BJA.

RECOMMENDATION: BJA and higher echelon JAs should speak on a regular basis to share views, discuss merits of advice and to keep commanders aware of emerging legal issues at different levels.[40]

ISSUE: Feeding information higher

DISCUSSION: One of the irritating realities of a BJA's job on deployment is providing responses to requests for information (RFIs) or updating tracker information for the DIV and Corps SJAs. Despite the flow of responses and answers going up, the higher echelon SJAs never seems to share the results of the RFIs or trackers downwards. This lack of downward information does not help motivate BJAs to provide updates.

RECOMMENDATION: Where possible, SJAs should provide feedback to BJAs when BJA's provide information in response to taskers or RFIs.[41]

ISSUE: Endless meetings

DISCUSSION: While BJAs usually feel they are working long hours in garrison, the amount of work they will have to deal with on a deployment is several times larger. The bane of the existence of many deployed BJAs is the countless meetings that they are expected to attend. One good rule of thumb to follow is if the commander is at the meeting, so is the BJA. Some of the other meetings are important, but the other JAs or even the senior NCOIC paralegal can attend these, thereby reducing the burden on the BJA. If a BJA adopts the "shared meeting workload" approach, it is important he/she properly briefs the delegated JA or NCOIC on his/her guidance and expectations.

RECOMMENDATION: A BJA has to gauge which meetings are necessary to attend personally versus those that he or she may delegate. Take advantage of the talent on the legal team to deal with the bulk of meeting requirements.[42]

ISSUE: Reset period workload and staff reductions

DISCUSSION: It seems to be a common theme during the reset period after a deployment that the legal team will be busy with heavy workloads while, at the same time, having to cope with staff reductions (due to permanent change of station (PCS) moves, school attendance, etc.). Meanwhile, the other staff sections will not see a corresponding workload increase and will be able to do the things the reset period should address. Not surprisingly, legal staff can expect to

[40] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[41] *Id.*
[42] *Id.*

see a spike in military justice and legal assistance issues after Soldiers return home and are faced with stressful family, money, and/or personal problems.

RECOMMENDATION: BJAs and NCOICs should prepare themselves for the prospect of challenging work during the post deployment reset period with the possibility of less staff.[43]

ISSUE: Rear detachment shut down

DISCUSSION: Most rear detachments close down operations two to three weeks after the redeployment of the unit. BJAs and NCOICs should make contact with the rear detachment a month or two prior to redeployment to ensure there will not be any lingering legal matters handed off from the rear detachment to the legal staff upon returning. Some BJAs even sent back a talented paralegal early to join the rear party to ensure that MJ matters (courts-martial, chapters, Article 15s) and other legal issues were winding down in an orderly manner (as far as possible).

RECOMMENDATION: To avoid surprises, contact and monitor the rear party in the closing weeks of the deployment to ascertain the handling and winding down of legal issues and matters.[44]

ISSUE: Commander's personal staff versus special staff

DISCUSSION: The BJA is now a personal staff officer for the commander, not special staff.

RECOMMENDATION: Sustain. Although personality and the situation will drive the relationship between the commander and the BJA, ensure integration into the personal staff of the commander.[45]

ISSUE: Intermediate-level education (ILE)

DISCUSSION: BJAs do not receive the same staff officer training as other brigade staff members (e.g., the S-3, S-4, and Executive Officer (XO)). The instruction at ILE covers—in a non-threatening classroom environment—many of the staff-related issues BJAs encounter when deployed. Learning how to interact with other staff officers is critical to success.

RECOMMENDATION: Append ILE to the end of Judge Advocate Officer Graduate Course. In the alternative, send BJAs to ILE en route to their brigades. (Note: This BJA was attending ILE at the time of the after action review).[46]

ISSUE: Rating chain for BJAs

DISCUSSION: It is not always in the best interest of the BJA to be rated by the division SJA. This particular BJA served with five separate division SJAs. None of them were in a good position to adequately rate this BJA. The brigade commander and executive officer had a much better perspective on this officer's performance during the rating period.

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[43] *Id.*
[44] *Id.*
[45] 4th Combat Aviation Brigade (4th CAB), 4th Infantry Division (Mechanized), OIF After Action Report, 28 August 2009, Deployed June 2008 – June 2009, Multi-National Division – Baghdad (MND-B), Camp Taji, Iraq (hereinafter "4th CAB OIF AAR, JUN 08 - JUN 09"; on file at CLAMO).
[46] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 16.

RECOMMENDATION: This BJA benefitted from a senior rating by the brigade commander. While this might not always be the case, the officers involved require flexibility to make the decision that is in the best interest of the rated officer.[47]

ISSUE: The role of the JA

DISCUSSION: The JAG Corps has successfully injected itself into nearly every aspect of military operations in the last 20 years. In consequence, many officers have, in effect, abdicated their decision-making functions to JAs. It is not a JA's function to make decisions. JA's are advisors, counselors and reviewers. A JA must not seek to substitute his judgment for that of a decision-maker.

RECOMMENDATION: JAs must resist overstepping their bounds and must let decision makers do their jobs.[48]

ISSUE: "COINcentric" approach

DISCUSSION: JAs need to understand counterinsurgency (COIN) doctrine. Legal issues can affect COIN. JAs will best be able to 'issue spot' potential problems if they have an awareness and understanding of COIN. JAs also need to make sure that their commanders understand COIN doctrine. In particular, JAs need to keep commanders aware of when subordinate units are failing to follow the doctrine so that the commander can refocus.

RECOMMENDATION: Note.[49]

ISSUE: Need for more experienced JAs at the division OSJA

DISCUSSION: The captains serving at the division OSJA were inexperienced. Although they were the BCT's "higher headquarters," they did not have the expertise to respond effectively to the BCT's RFIs. Consequently, the division OSJA merely became a conduit for forwarding RFIs from the BCT to Multi-National Corps – Iraq (MNC-I). In many ways, it is an empty headquarters.

RECOMMENDATION: Improve. There is a need for JA majors to serve as division chiefs. Inexperienced captains are of limited utility at the division and corps level. The division OSJA should send those captains to augment the BCT.[50]

ISSUE: Role of JAs in modern U.S. Army operations

DISCUSSION: The decentralized nature of modular forces and counterinsurgency (COIN) operations means lower level Army commanders have much greater power and latitude to conduct activities in their AO. Combined with the effects of the SA in Iraq, brigade and battalion level commanders engaged in RoL activities are much more reliant on JAs to help them understand and navigate their operations within the legal limits of the SA and nature of Iraqi law. Commanders at all levels are empowered to make important decisions and operational decisions

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[47] *Id.*
[48] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 18.
[49] *Id.*
[50] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.

that attract important legal considerations. It was, in part, the elimination of some of the commander's options under the SA—especially kinetic—that resulted in a relatively greater emphasis on and recognition of RoL as a tool to influence the operating environment.

RECOMMENDATION: JAs must be ready to assist these commanders and advise them promptly in the field in a variety of legal disciplines.[51]

ISSUE: Use of separate command posts by the Division

DISCUSSION: The Division sent out two separate command posts for long-term operations away from the Division main command post. Both general officers heading these command posts wanted their own legal advisor. While the doctrine and staffing envisions the placement of one JA major in one tactical command post, it in no way accounts for having two majors outside the main headquarters. The OSJA structure design contemplates providing legal advice to the Division, not breaking the office up into component pieces.

RECOMMENDATION: Build some type of Table of Distributions and Allowances (TDA) against which deploying units can mobilize legal personnel. This TDA can reside at OTJAG or elsewhere and remain unfilled until there is a mobilization need. The mission support element (MSE) slots the Divisions once held for this purpose now belong to the garrisons and theater sustainment commands (TSCs).[52]

ISSUE: Standardization across the JAG Corps

DISCUSSION: In the past, there was very little standardization across the JAG Corps in terms of UCMJ and administrative actions. Often, the justification for this was the need for "flexibility" for the division OSJA. With modularity, however, it is no longer beneficial to have this flexibility, as brigades will rarely work for their legacy Division. Accordingly, standardization is essential in a "plug and play" Army.

RECOMMENDATION: Continue the trend towards standardization.[53]

ISSUE: Lack of defined role of the battalion JA in Marine Corps doctrine

DISCUSSION: The BN JA is not part of Marine Corps doctrine and is a relatively new role that the Marine Corps has implemented since 11 September 2001. As a result, many commanders are unsure of the BN JA's role and what the BN JA brings to the fight.

RECOMMENDATION: Marine Corps legal doctrine should clearly define the role of the BN JA.[54]

ISSUE: Need for Marine Corps legal doctrine update

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[51] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[52] *Id.*
[53] *Id.*
[54] 2d Battalion, 3rd Marines, Battalion Judge Advocate OEF After Action Report, 14 April 2010, Deployed May 2009 – November 2009, Forward Operating Base Delaram, Nimruz Province, Afghanistan (hereinafter "2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09"; on file at CLAMO).

DISCUSSION: Marine Corps legal doctrine is out of date and does not appear to be widely published, read, or followed.

RECOMMENDATION: The Marine Corps needs to better define and update its legal doctrine in order to let commanders know how to use their JAs.[55]

ISSUE: Marine Corps legal doctrine

DISCUSSION: Marine Corps legal doctrine is remarkably out of date, especially in regard to how JAs are doctrinally used in today's operational environment. In Iraq, the Marine Corps used a sort of "plug and play" model. Specifically, depending upon mission requirements, JAs were often placed at the battalion level to support battalion operations.

RECOMMENDATION: Marine Corps legal doctrine should be updated to include clearly specifying what legal assets should be placed where in an operational environment.[56]

ISSUE: Doctrine regarding tenant units and rear detachments is unrealistic

DISCUSSION: Because 1CD is a tenant unit of III Corps, which is a GCMCA, doctrine does not envision its need to have a rear detachment. However, the garrison GCMCA has to pick up all of the legal assistance for the deploying unit's family members and non-deploying personnel, as well as its military justice. This policy is unrealistic in today's force structure. By not accounting for a Division's rear detachment in staffing documents, it effectively mandates that any reserve augmentees must deploy. There are simply no garrison slots against which to mobilize them and have them stay behind for the Division.

RECOMMENDATION: Improve. With today's operational tempo, an installation commander must be able to focus on its garrison duties and prepare for its next deployment. A tenant Division will need to leave behind a rear detachment. The doctrine must catch up with this reality.[57]

ISSUE: Army Special Operations Forces (ARSOF) legal primer

DISCUSSION: Due to the unique mission sets, authorities, and force structure, the JAG Corps should develop an ARSOF legal primer to assist incoming ARSOF legal advisors in identifying focus areas for familiarity and competence.

RECOMMENDATION: Strongly recommend the JAG Corps develop an ARSOF legal primer.[58]

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[55] Regimental Combat Team – 3, 2d Marine Expeditionary Brigade, Regimental Judge Advocate, OEF After Action Report, 14-15 April 2010, Deployed April 2009 – October 2009, Camp Dwyer, Helmand Province, Afghanistan (hereinafter "RCT-3, OEF AAR, APR 09 - OCT 09"; on file at CLAMO).
[56] 2d Marine Expeditionary Brigade, Deputy Staff Judge Advocate, OEF After Action Report, 22 March 2010, Deployed April 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB DSJA, OEF AAR, APR 09 - NOV 09"; on file at CLAMO).
[57] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[58] 7th Special Forces Group (Airborne), CJSOTF-A Legal Advisor OEF After Action Report, 26 May 2010 Deployed 22 July 2009 – 02 February 2010, Bagram, Afghanistan (hereinafter "7th SFG OEF AAR, JUL 09 - FEB 10"; on file at CLAMO).

ISSUE: RIP overlaps too long

DISCUSSION: The RIPs between units are too long causing difficulties on the backend of the deployment with the 365 day "boots on ground" cutoff. Toward the end of the deployment, the incoming division was running the office while the outgoing SJA was still advising the outgoing CJTF CG. This was an inefficient way to run the office, but it was driven by the long overlap.

RECOMMENDATION: Improve. Aside from key legal personnel (SJA, DSJA, and section chiefs), no need exists to bring everyone forward too early.[59]

ISSUE: Reliance on FRAGOs

DISCUSSION: Units will not commit precious time or resources unless there is a FRAGO directing them to do so. Further, units will not read things that are not in FRAGOs. The Division OpLaw JAs made it a practice of creating info papers or SOPs to clarify guidance reference subjects on which they received more than one question. They then hung these white papers and SOPs on their portal. However, no one was reading the documents. Approximately three months into the deployment, the OpLaw JAs realized that in order for Division personnel to start utilizing these resources, the JAs had to attach them to a Division FRAGO. Working with the J-3, they began drafting their own FRAGOs with great success.

RECOMMENDATION: Sustain. Utilize the doctrinal FRAGO process to disseminate guidance to the Division staff and subordinate units. Understand how to draft the FRAGO by utilizing the J-3's template.[60]

ISSUE: Required doctrinal publications for OpLaw attorneys

DISCUSSION: The OpLaw section knew and kept handy copies of FM 5-0, The Operations Process, and FM 1-02, Operational Terms and Graphics.

RECOMMENDATION: Sustain. In order to understand CONOPS and FRAGOs, and OpLaw attorney must understand the underlying concepts and terminology.[61]

ISSUE: FM 1-04 knowledge

DISCUSSION: The Division OpLaw attorneys read FM 1-04 toward the end of the deployment. They found this reference helpful as it described the deployed functions of JAs and wish they had read it earlier as part of predeployment training.

RECOMMENDATION: Improve. Every JA prior to deployment should read FM 1-04. It is a useful training tool for young JAs with no prior deployment experience. Therefore, the JAG Corps must incorporate this into training at the Judge Advocate Officer Basic Course (JAOBC) and short courses.[62]

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[59] 82d Airborne Division, Staff Judge Advocate OEF After Action Report, 23 June 2010, Deployed June 2009 – June 2010, Regional Command—East, Bagram Airfield, Afghanistan (hereinafter "82D ABN OEF AAR, JUN 09 - JUN 10"; on file at CLAMO).
[60] *Id.*
[61] *Id.*
[62] *Id.*

X.B. Organization (Force Structure)

ISSUE: Sister service cross-training

DISCUSSION: Due to the enduring nature of CJSOTF-A's mission, the SOTFs' force providers are active component and reserve component Army Special Forces units or from sister service commands, *e.g.* Navel Special Warfare and Marine Special Operations Command. It is critical that as these assets are identified for rotation every effort is made to link-up the legal advisors in order to cross-level knowledge and training for their respective organizations during pre-mission training. The CJSOTF-A legal advisor joined the 2/1st SFG(A) legal advisor during their mission rehearsal exercise at JRTC. The MARSOTF legal advisor was invited to participate in the 3rd SFG(A) STAFFEX at Fort Bragg, and the 3rd SFG(A) legal advisor met with the MARSOTF legal advisor during their Battalion Mission Rehearsal. The MARSOC SJA and 3SFG(A) legal advisor conducted numerous legal OPDs to ensure all personnel were kept current on changes in Afghanistan ROE, Directives, Policies, etc. The same should be done when augmentation occurs at lower levels, *e.g.* SEAL augmentation of a SF BN.

RECOMMENDATION: Sustain. One team, one fight. Create linkages to attached units and augmentees as soon as possible in order to develop a common operating picture as to the applicable legal authorities.[63]

ISSUE: Second judge advocate at group level

DISCUSSION: Based on the operational tempo experienced by Special Forces groups, often the group headquarters will deploy for extended periods of time while a majority of the group's battalions will remain garrisoned. This is especially true for the enduring groups (3rd and 5th supporting CJSOTF-A and CJSOTF-AP, respectively). Current practice is to pull a battalion judge advocate to support the group rear or push a battalion judge advocate forward to support the CJSOTF. In the former practice, potential conflicts of interest exist when a battalion judge advocate in this position has two commanders to support, the battalion commander and group rear commander, especially in issues dealing with military justice that originate at the battalion level. In the latter practice, placing a pre-graduate course judge advocate as the senior legal advisor to a CJSOTF is risky.

RECOMMENDATION: Develop contingency plan for placing a second judge advocate at the group level during deployments.[64]

ISSUE: Centralized office

DISCUSSION: While in garrison, consider consolidating the judge advocates at group to ensure continued professional development should the JAGC continue to place junior judge advocates at BNs.

RECOMMENDATION: Strongly recommend the JAGC consider allowing the consolidation of the judge advocates at group or select more senior captains for BN judge advocates.[65]

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[63] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 39.
[64] *Id.*
[65] *Id.*

ISSUE: Experienced paralegal

DISCUSSION: The SOTF paralegal was an E-6 with prior special operations experience. This fact helped ease the legal advisor's integration into the unit.

RECOMMENDATION: The SOTF paralegal should be an E-6. The JAG Corps should seek to pair new legal advisors with experienced paralegals.[66]

ISSUE: Possible switch from JMD to MTOE

DISCUSSION: With every Regional Command becoming a 2-star division headquarters, it is possible that CENTCOM will get rid of the JMD in favor of using the Division MTOEs. This will have a significant impact on the division legal offices as they are not structured in garrison to support the overseas mission. The JMD allowed flexibility where the MTOE does not. Furthermore, non-installation OSJAs will be further crippled as they have neither the installation TDA to augment their forces nor the ability to draw from a legal support organization (LSO) to backfill their offices. This means that upon deployment, there would be no one to man the rear detachment. As divisions do not necessarily deploy with their subordinate BCTs, this means that there could be several BCTs in the rear with no legal office to support them.

RECOMMENDATION: Sustain. It is beneficial to keep the JMD as it allows flexibility in the assignment of personnel to tailor your resources to your requirements. If however CENTCOM decides to rely on the unit MTOEs, the OSJA must identify shortfalls well before deployment and work with the G-3 to draft RFFs.[67]

ISSUE: JTF-435

DISCUSSION: During the deployment, CENTCOM created JTF-435, giving it oversight not only of DetOps but also RoL. As a new command with new missions, it had significant growing pains. A major source of friction was that it was a higher headquarters that was even one more step removed from both RoL and DetOps than the CJTF. It therefore was further removed from the BSO's intent and tactical requirements which made it hard for the JTF to relate.

RECOMMENDATION: Improve. Presumably, JTF-435 will operate more efficiently and support the subordinate commands better as it gets more experience. It does need to support and enable the BSOs rather than work against them. This most likely can be accomplished by working through the CJTF as the BSOs are operationally controlled by the CJTF.[68]

ISSUE: Legal support to DoS / J-9 section

DISCUSSION: Initially, the SJA assigned two JAs to the J-9 although it asked for more support initially. By the end of the deployment, the SJA determined that one attorney was enough to support their mission. This allowed the OSJA to maintain a presence in the section while not dedicating too many resources to a staff section that produces very little in the way of critical

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[66] 2d Battalion, 10th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OIF After Action Report, 15 June 2010, Deployed July 2009 – March 2010, Victory Base Complex, Baghdad, Iraq (hereinafter "2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10"; on file at CLAMO).
[67] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 59.
[68] *Id.*

products. The J-9 was focused more on creating extensive PowerPoint briefings for the command instead of taking decisive action to assist the command in its COIN strategy.

RECOMMENDATION: Sustain. Carefully consider whether the costs outweigh the benefits when assigning personnel full-time to the J-9.[69]

ISSUE: Legal support to FIRES

DISCUSSION: The OSJA detached one JA to the FIRES section. This gave the OSJA a presence in the section that worked targeting with the J-3 and J-2.

RECOMMENDATION: Sustain. If an extra JA is available, assigning him or her to the FIRES section is value added. Not only does that give a constant presence in that section which is important to monitor the targeting process, but it also assisted in building important relationships with the primary staff sections.[70]

ISSUE: Legal support to DetOps

DISCUSSION: The CJTF assigned one attorney to do Det Ops. This allowed the attorney to dedicate her time to building relationships with the key players in the process. Additionally, it gave the CJTF the ability to track detainees from point of capture to transfer to the Afghans or long-term detention at the DFIP.

RECOMMENDATION: Sustain. Having a dedicated DetOps attorney is worth it. The process has a lot of moving pieces. Additionally, now that JTF-435 is active, the DetOps attorney can be the buffer between it and the subordinate brigades, representing their interests when necessary. The DetOps attorney can either come from the OpLaw or AdLaw sections and work with them when DetOps is not busy.[71]

ISSUE: Legal support to contracting and fiscal law

DISCUSSION: The CJTF had three slots on the JMD for contract and fiscal law attorneys. These were filled by Air Force individual augmentees. The Air Force attorneys had great attitudes and were hard workers. Importantly, they were command and mission focused. They always looked for legal ways to meet the commander's intent. The Air Force attorneys were not necessarily contract or fiscal law experts, but they learned quickly.

RECOMMENDATION: Sustain. The Air Force support to this mission was outstanding.[72]

ISSUE: Taking Deputy Staff Judge Advocate (DSJA) forward

DISCUSSION: The SJA decided to deploy the DSJA which proved to be critical. This allowed for a senior JA to cover down on two missions at once when necessary. Further, it allowed for a second officer to interact with senior staff members and the commanders.

RECOMMENDATION: Sustain. Taking the DSJA forward was essential.[73]

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[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*

ISSUE: Establishment of Tactical Command Posts (TAC CPs)

DISCUSSION: The CJTF established two TAC CPs to support combined operations with ANSF. They had not planned to do this, and therefore the personnel to support the TAC CPs came out of hide. This was a huge draw on the staff's resources. Luckily, both ANA Corps headquarters had U.S. JAs advising them as part of the CSTC-A training teams. The CJTF told CSTC-A that those JAs would now also be advising the ADCs commanding the TAC CPs. CSTC-A was not necessarily happy with this. One of the CSTC-A JAs advising the TAC CP was an O-6 and unresponsive to the CJTF OSJA; however, the other CSTC-A JA was very helpful. For its part, the CJTF supported both of these JAs as much as possible and considered them a part of the CJTF team.

RECOMMENDATION: Improve/Sustain. If possible, anticipate the need to attach a legal advisor to a TAC CP and man the office accordingly. However, if you are able to use JAs from another command, make them a part of the team and support them adequately.[74]

ISSUE: RoL JA at BCT

DISCUSSION: The BCT is where the "rubber meets the road" for ROLOPS. Current brigade legal section manning is insufficient in most cases to conduct ROLOPS across the full spectrum of "courts, cops & corrections" throughout the assigned battlespace.

RECOMMENDATION: Add a third or fourth JA to deploying BCTs for ROLOPS.[75]

ISSUE: Manning of the Division OpLaw section

DISCUSSION: The Division OpLaw section consisted of two CPT JAs and one SFC paralegal. This manning was sufficient to run 24 hour operations and cover any contingencies which required two personnel to be present at any one time.

RECOMMENDATION: Sustain.[76]

ISSUE: Command and Control (C2) in Afghanistan

DISCUSSION: The complicated command relationship in Afghanistan complicates efforts to ascertain administrative responsibilities for units across the battlespace. Although the alignment of ISAF and USFOR-A under the same flag has streamlined the C2 some, the relationships are still complicated. To complicate matters, daily FRAGOs would realign formations as small as a company on a regular basis. Because the C2 relationships were complicated, many subordinate units and staff sections relied upon the Division OpLaw JAs to provide the answers. OpLaw JAs dedicated a significant amount of their workload to deciphering the C2 relationships for units throughout RC-East.

RECOMMENDATION: Sustain. In a coalition environment under NATO command, complicated C2 relationships will be the norm. The Division JAs must be prepared to answer

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[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*

these questions from other staff sections and subordinate units. While studying this when you get into theater is critical, staying current by reading daily FRAGOs is also imperative.[77]

ISSUE: Ensuring legal services are provided only to members of your command

DISCUSSION: A byproduct of this complicated C2 structure at the Division level was the influx of personnel from varying units on Bagram Airfield (BAF) requesting a myriad of legal services. Oftentimes, the units which owned these personnel were not ADCON, TACON, or OPCON to RC-East. Therefore, the JAs had to first figure out who owned these personnel from a legal standpoint, and then figure out to whom they should be referred.

RECOMMENDATION: Improve. If you are at a Division office on a large installation such as BAF, ensure that your prospective client is from your headquarters or a subordinate unit. Giving advice to units that are not under your headquarters' control can cause conflicts between legal offices and commands.[78]

ISSUE: Incoming and outgoing units

DISCUSSION: The CJTF OSJA did not know when some units arrived into theater. Some units did not replace units but instead went into a new location as part of the troop surge. This made tracking JAs and paralegals difficult.

RECOMMENDATION: Improve. All incoming units should contact the CJTF OSJA to let the leadership know they are in the area of operations.[79]

ISSUE: Joint manning document

DISCUSSION: The JMD did not line up with the unit MTOE, and a couple of individual augmentees were in place at the CJTF when the unit arrived. The Navy, Air Force, and Marine Corps sent individual augmentees to fill certain slots on the JMD, and the CJTF did not place them in the planned positions. This caused the position to go unfilled when the individual departed, because he/she was not doing the job assigned on the JMD.

RECOMMENDATION: Improve. The JMD is a working document and is always changing. All efforts should be taken to ensure the positions are filled correctly.[80]

X.C. Training, Military Decision-Making Process (MDMP), & Readiness

General Comments – Training & Education

ISSUE: Training seminar for new Special Forces legal advisors

[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*

DISCUSSION: United States Army Special Forces Command (USASFC) should hold training for newly assigned Special Forces legal advisors.

RECOMMENDATION: Improve. USASFC should hold training for newly assigned legal advisors and paralegals.[81]

ISSUE: Pre-mobilization staffing and use of paralegals

DISCUSSION: Paralegals were not a priority for the brigade during pre-mobilization. Battalions are concerned with leadership, integrating enablers, new equipment, coordinating collective training, etc. Often, the BN paralegals had to work for the S1, performing personnel issues rather than using their paralegal skill sets for legal purposes. Additionally, late deployment notifications were another issue. One of the most valued paralegals during the deployment did not receive notification until very late in the pre-deployment phase, resulting in extraordinary hardship (she was a teacher with a child and whose husband was deployed). The BCT commander and executive officer had to intervene in getting legal resources and personnel.

RECOMMENDATION: Improve. All brigade legal staff should receive deployment notices as early as possible and work in their intended capacities during the pre-deployment phase.[82]

ISSUE: Need for a trained security assistance attorney

DISCUSSION: There is a dearth of expertise in security assistance law in the JAG Corps, chiefly because it is a unique mission normally within the purview of DoS. Because of the unfamiliarity of JAs with this complex area of law, there was not a large archive of material on which to draw. When the question of arms export authority unexpectedly arose, one attorney became the subject matter expert on security assistance by default, tackling the nuances of the complex security assistance framework. In the absence of those efforts, the MNSTC-I OSJA would have had to defer all such legal issues to the legal advisors at the Joint Chiefs of Staff (JCS) or the Office of the Secretary of Defense (OSD). The expertise for handling these issues did not exist at either MNF-I or CENTCOM.

RECOMMENDATION: Improve. While security assistance law is a niche practice not easily supported by the JAGC training programs, predeployment training is available. The Defense Institute of Security Assistance Management (DISAM) offers security cooperation courses to provide a framework. In addition, outreaches to general counsel offices at the Defense Security Cooperation Agency, U.S. Army Security Assistance Command, or similar service security assistance commands would better prepare deploying JAs for the range of issues and resources necessary to address such questions.[83]

ISSUE: Handling real-world legal issues during training exercises

DISCUSSION: The legal office took part in two training operations before deployment. These operations usually began at 0500 would last until at least 1800 each day. Meanwhile, real-world

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[81] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 66.
[82] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.
[83] Multi-National Security Transition Command – Iraq (MNSTC-I), Staff Judge Advocate OIF After Action Report, 28 December 2009, Deployed June 2009 – July 2010, Phoenix Base, Baghdad, Iraq (hereinafter "MNSTC-I OIF AAR, JUN 09 - JUL 10"; on file at CLAMO).

legal issues still existed. The legal professionals would have to address these issues after a long day of training, leading to an environment that was not conducive to good legal counsel or good training.

RECOMMENDATION: Improve. It is advisable for some legal personnel remain behind to perform the real-world legal work and allow those who are going through training concentrate solely on that mission.[84]

ISSUE: Predeployment training

DISCUSSION: BCT JAs handle every type of legal problem and need to be trained accordingly. Ideally, all BCT JAs should attend courses on deployed contracts and fiscal law. The Leader Development and Education for Sustained Peace program (LDESP http://www.ldesp.org/public/home.cfm) in Monterey CA offers useful cultural awareness training which JAGs should try to complete before deploying. The pre-deployment training offered by the Center for Law and Military Operations (CLAMO) was also very helpful.

RECOMMENDATION: Sustain.[85]

ISSUE: Training on how to be a staff officer

DISCUSSION: JAs need more training in how to operate in a staff. Training needs to be scenario based in order to give practical experience and a framework to develop legal battle drills. In general, JAs poorly understand what staff work is. This is particularly true in the transformed Army with JAs at division and at brigade level. There is no such thing as positional omnipotence. There is a risk that a brand new JA CPT at division might think that his position somehow makes him better than the MAJ at brigade. The staffing system exists to mitigate this risk. If the JA at division wants the JA at brigade to do something then it needs to go through a formal tasking just like any other task from a higher HQ to a lower HQ. Furthermore, remember that the job of the staff is not to arrive at a consensus decision and present it to the commander. T he commander is paid to make the hard decisions. The staff officers have done their commander a disservice if they fail to present competing views of a complex and difficult situation. The commander will make the best decision if the staff have explained the competing views to him.

RECOMMENDATION: Improve.[86]

ISSUE: Training for intelligence law attorneys

DISCUSSION: The need for training in this area is growing.

RECOMMENDATION: The Intelligence Law Course at the Legal Center and School is a good first step. The Intelligence Law block at the Brigade Judge Advocate Mission Primer (BJAMP) is also very valuable to introduce people to the concepts and allow issue spotting. The Deputy SJA at the Intelligence and Security Command (INSCOM) is a great source for training materials in this area.[87]

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[84] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.
[85] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 18.
[86] *Id.*
[87] Chief of Intelligence Law, Multinational Forces – Iraq (MNF-I), OIF After Action Report, 27 October 2009, Deployed June 2008 – May 2009, Combined Joint Staff – 2 (CJ2), Camp Slayer, Iraq (hereinafter "MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09"; on file at CLAMO).

ISSUE: CONUS Replacement Center (CRC) training

DISCUSSION: The CRC pre-deployment training is minimal.

RECOMMENDATION: Improve. Do not rely on CRC as a single source of training for a deployment.[88]

ISSUE: Lack of training on how to be a member of a staff

DISCUSSION: The JAG Corps needs to better train JAs, especially young captains, on how to effectively operate as a member of a staff. Nothing in the Graduate Course prepares BJAs on how to plan using the MDMP process. The first time to get experience is at Intermediate Level Education (ILE) after the fact.

RECOMMENDATION: Improve. Provide a block of instruction during the Judge Advocate Officer Basic Course (JAOBC) and the Grad Course or a separate course geared specifically to staff functions and responsibilities.[89]

ISSUE: Lack of training opportunities for paralegals

DISCUSSION: While in garrison before deployment, most of the paralegals were preoccupied with their primary duties. They had only enough time to conduct the minimum level of training needed to satisfy deployment requirements. The intense work pace in garrison before the deployment prevented them from taking extra legal training that would have been beneficial to their skill sets as paralegals and as Soldiers.

RECOMMENDATION: Improve. Achieving the minimum standard before deployment should not be the norm. Leaders have to evaluate garrison work demands versus training, opportunities, and exercises with brigade units that enhance career opportunities and Soldier skills.[90]

ISSUE: Need for First Army training certification requirements for JAs

DISCUSSION: First Army mobilization procedures required several staff sections, or personnel within the sections, to receive specific functional training in order to validate mobilization requirements. In the pre-mobilization training phase of operations, the JAs were busy supporting the commander. The commander had some staff shortages because of mandatory First Army training requirements. However, the JAs had specific deployment training needs that were unmet during pre-deployment training. If there were specific, mandatory training requirements for the JAs to meet, the commander would have committed resources necessary to meet the requirements. In sum, the issue was that "nice to have" training opportunities were not allowed. The only training the commander allowed was the "must have" trainings, of which the JAs had none.

RECOMMENDATION: Improve. Make theater specific judge advocate training a mandatory certification requirement for deploying commanders.[91]

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[88] CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09, *supra* note 33.
[89] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[90] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 6.

ISSUE: Pre-deployment training for JAs at the North Fort Hood Mobilization Training Center

DISCUSSION: The 29th IBCT has deployed twice to the CENTCOM area of operations. For the first deployment, the brigade had a training rotation at the Joint Readiness Training Center (JRTC). The JRTC rotation included very valuable theater-specific training for the JAs. For the second deployment, the brigade did not have a JRTC rotation, nor did the NFH/MTC provide JA-specific training. Other reserve component units deploying through the MTC at Fort Hood have coordinated with III Corps to imbed some of their JAs in the III Corps OSJA to receive on the job training.

RECOMMENDATION: If a deploying brigade does not have a pre-mobilization JRTC rotation, JAs should coordinate for imbedded training with III Corps OSJA.[92]

ISSUE: JAG School courses

DISCUSSION: The JAG School offers good courses, particularly in areas with which you may be unfamiliar, like deployed contracting.

RECOMMENDATION: Try to attend courses at the JAG School if you can. If required, try to get an exemption from less relevant pre-deployment training to attend task specific training at the JAG School.[93]

ISSUE: Value of professional reading

DISCUSSION: The battalion paralegal read "Masters of Chaos" before arriving at the unit. This helped him understand the mandate and workings of SF.

RECOMMENDATION: Sustain. JAs joining an SF unit must understand its mandate. Professional reading helps ease the transition.[94]

ISSUE: Brigade Judge Advocate course

DISCUSSION: The JAG Corps, with the exception of the yearlong Graduate Course, currently does not offer a course to prepare JAs for the job of being a BJA. As a result, some JAs, especially NG JAs, become a BJA with little to no preparation.

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[91] 29th Infantry Brigade Combat Team, Hawaii Army National Guard, Command Judge Advocate OIF After Action Report, 7 March 2010, Deployed October 2008 – August 2009, Camp Arifjan, Kuwait (hereinafter "29th IBCT (HIARNG) OIF AAR, OCT 08 - AUG 09"; on file at CLAMO).
[92] *Id.*
[93] 168th Engineer Brigade, Mississippi Army National Guard, Brigade Judge Advocate OEF After Action Report, 30 March 2010, Deployed December 2008 – November 2009, Regional Command – East, Bagram Air Field, Afghanistan (hereinafter "168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09"; on file at CLAMO).
[94] 1st Battalion, 5th Special Forces Group (Airborne), Battalion Judge Advocate OIF After Action Report, 11 March 2010, Deployed 25 July 2009 – 25 January 2010, Contingency Operating Base Speicher, Tikrit, Iraq (hereinafter "1/5 SFG OIF AAR, JUL 09 - JAN 10"; on file at CLAMO).

RECOMMENDATION: The Judge Advocate General's Legal Center and School (TJAGLCS) should offer a weeklong BJA course to help JAs learn more about the role of and the resources available to a BJA. [Note: The International and Operational Law Division, Office of the Staff Judge Advocate (OTJAG) conducts the Brigade Judge Advocate Mission Primer (BJAMP) several times a year as part of the Pre-Deployment Preparation (PDP) Program. Contact the PDP Synchronization Cell at PDP@conus.army.mil or (703) 588-8459 for more information].[95]

ISSUE: Training for NG paralegals

DISCUSSION: Most NG paralegals get initial training at 27D (paralegal) school and then receive little to no training or experience from that point on, especially regarding legal assistance. As a result, the JAs at NG units have to do more during a deployment.

RECOMMENDATION: Reserve paralegals need the opportunity to receive additional training post-27D school. JAs having NG paralegals working for them should spend extra time training so they can get the most out of their deployment.[96]

ISSUE: Training for Reserve Component JAs

DISCUSSION: Because the 30th HBCT TC was a reserve component JA, he did not have much training or experience in military justice before deploying as a TC.

RECOMMENDATION: Reserve component JAs should take every opportunity available to take courses and training offered at TJAGLCS before deploying.[97]

ISSUE: Value of personal reading in preparing to join a SOF unit

DISCUSSION: The JA had always had an interest in the SOF community. Any JA preparing to deploy with a SOF unit should read up on the history and mission set of the unit he is about to join. The JA should also seek out others who served with the unit.

RECOMMENDATION: Common sense and an interest in the organization its history and mission set will help a JA build rapport and establish trust with his command.[98]

ISSUE: Individual Readiness Training (IRT)

DISCUSSION: While the JA would have preferred to attend the gaining unit's train up, IRT proved to be effective. IRT afforded the JA sufficient time and resources to study and improve his Soldier skills.

RECOMMENDATION: Sustain.[99]

ISSUE: Pre-deployment Training and Evaluation (PTAE)

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[95] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 8.
[96] *Id.*
[97] *Id.*
[98] Sea Air Land (SEAL) Team 7, Special Operations Task Force – West (SOTF-W), Detachment Judge Advocate OIF After Action Report, 14 April 2010, Deployed March 2009 - September 2009, Al Asad Airbase and Ramadi, Iraq (hereinafter "SOTF-W OIF AAR, MAR 09 - SEP 09"; on file at CLAMO).
[99] *Id.*

DISCUSSION: There are extensive PTAE requirements for deploying Reserve Component (RC) Soldiers. Whereas mobilizing units commonly had lengthy post-mobilization/pre-deployment phases of up to six months earlier this decade, recently RC units, including this Division, have conducted more of these PTAE requirements at home station before mobilization.

RECOMMENDATION: Continue to explore the right balance between pre-mobilization and mobilization station training time, as there are pros and cons to both models. Conducting more pre-mobilization training at home station allowed Soldiers to have more time at home with their families. However, the training demands at times caused some first time deployers, families, and employers to question whether it might have been better or easier to mobilize earlier and longer rather than train in a "half-mobilized" state at home station.[100]

ISSUE: Knowledge of COIN operations

DISCUSSION: JAs must receive training on counterinsurgency (COIN) strategy and operations. COIN has been and will be the focus of deployed operations for some time, yet there is scarcely any focused training for JAG officers in the Graduate Course or in other JAG specialty courses. If the focus of Army operations is COIN overseas, then the JAG Corps should take steps to educate its officers so they can competently speak to commanders and understand how COIN doctrine shapes operations and affects the legal aspects of those operations.

RECOMMENDATION: The JAG Corps should conduct COIN training either within the Graduate Course or by some other means.[101]

ISSUE: Use of outside funding for higher level training of legal personnel

DISCUSSION: It benefits clients, both internal and external, to have knowledgeable legal advisors. Consequently, it is possible to leverage them to pay for training. For example, the G8 has an interest in the timely processing of fiscal reviews. They may be willing to fund additional training for fiscal law attorneys. Internally in operational channels, the fires community benefits from having attorneys schooled in the CDE methodology. Similarly, the G-2 may be willing to pay for attorneys to attend courses in intelligence law. Even external clients, such as higher headquarters, may have access to funding for training of benefit to legal professionals.

RECOMMENDATION: Seek out both internal and external clients who may be willing to pay for training opportunities. Do not self-limit your opportunities to only those things you can pay for directly with your own funding.[102]

ISSUE: Training out of theater

DISCUSSION: The OSJA was able to send personnel to out-of-theater training events at TJAGLCS. The United States Army Legal Services Agency (USALSA) and MNC-I funded some of this training.

RECOMMENDATION: Sustain. Training events in the U.S. revitalize the person attending the training, and he/she brings back the most recent and accurate material on the topic.[103]

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[100] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.
[101] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 9.
[102] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.

ISSUE: Lack of regulatory authority to direct legal training

DISCUSSION: The SJA lacks any regulatory authority to force a brigade commander to release legal personnel for low-density legal training.

RECOMMENDATION: Revise/update the 27-series regulations and/or FM 1-04 to make it clear the first SJA and 27D SGM in the technical chain have the authority and responsibility to direct legal training for 27 series officers and Soldiers.[104]

ISSUE: Supervision of Sergeant's Time training

DISCUSSION: Sergeant's Time is emphatically just what its label indicates—a time for non-commissioned officers (NCOs) to train their Soldiers. However, this does not mean this training occurs unsupervised by officers. The officer leadership must be aware of what is occurring during Sergeant's Time in case adjustments are necessary.

RECOMMENDATION: Allow NCOs to plan, lead, and conduct Sergeant's Time training. However, check in on the training periodically, with both announced and unannounced visits.[105]

ISSUE: Training on flexibility

DISCUSSION: Inexperienced JAs want someone to tell them the rules and their exact job descriptions. They often do not realize the fight and the rules can change significantly in a very short period. You often do not know what will apply until you get on the ground. For example, when the commander imposed a requirement to process CERP requests within 24 hours, several non-fiscal attorneys had to conduct fiscal law reviews, to include the night shift OpLaw attorney.

RECOMMENDATION: Things change, and what the command may call upon you to do will change with the environment. This should be a lesson emphasized at the Basic Course.[106]

ISSUE: Need for more OpLaw training at Judge Advocate Officer Basic Course (JAOBC)

DISCUSSION: Judge advocates are graduating from the Basic Course and finding themselves in a deployed environment only weeks later. The international and operational law instruction at the Basic Course should expand to reflect this reality.

RECOMMENDATION: Expand the international and operational law instruction beyond the current week. One week, an entire day of which is the very useful situational training lanes, is not enough in the current operational environment.[107]

ISSUE: JAOBC AdLaw preparation

DISCUSSION: The AdLaw attorney felt JAOBC addressed most of what the attorney

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[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*

encountered in theater. The JA would have benefited from more instruction on ethics issues, responding to Congressional inquiries, and conducting summary court-martial reviews.

RECOMMENDATION: If possible, add these discrete areas of emphasis into the JAOBC AdLaw curriculum.[108]

ISSUE: Global Response Force (GRF) training in disaster response

DISCUSSION: Any BCT assigned as Army's GRF must remain on 24/7 standby and be ready to deploy anywhere in the world within 18 hours. At a minimum, the GRF must be able to forcibly enter and seize a defended airfield, then build up combat power to support follow-on military operations. 2-82 ABN trained for that type of mission, but it also conducted training in the fall of 2009 for a generic HA/DR exercise as well. That exercise proved to be invaluable for the JAs and paralegals, since a great deal of the exercise scenarios turned out to mirror conditions and tasks found in Haiti.

RECOMMENDATION: JAs on GRF BCTs should be ready for not only possible combat operations, but also the HA/DR tasking. Participating in all forms of GRF exercises is the best way to keep legal staff prepared and proficient in both their legal and Soldier skill sets.[109]

ISSUE: Need for more focus on training versus office demands

DISCUSSION: Following the Haiti deployment, the BJA was of the view that the entire legal section should have participated on the BCT's Joint Forcible Entry Exercises (JFEXs) instead of keeping some staff back in the office to deal with the ongoing demands of legal work. From time to time, legal staff can fall into the trap of holding back some staff from exercises to keep the inbox from overflowing. However, the cost is that these JAs and/or paralegals lose an opportunity to work closely with their clients in an exercise setting that helps build relationships and trust.

RECOMMENDATION: Although it generally leads to more work later on, BJAs should have all legal staff take advantage of exercise opportunities so they can benefit from the client interaction and the challenges faced on the exercise.[110]

ISSUE: Continuing legal training

DISCUSSION: Outside of initial training received at the basic legal course at Naval Justice School (NJS), Marine JAs usually just get continuing legal training for their current billet. This does not necessarily adequately prepare JAs for future billets.

RECOMMENDATION: Marine JAs should have more opportunities to receive continuing training (i.e., fiscal and contract law courses) to prepare them for future billets.[111]

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[108] *Id.*
[109] 2d Brigade Combat Team, 82d Airborne Division, Brigade Judge Advocate Haiti After Action Report, 23 April 2010, Deployed January 2010 – March 2010, Operation Unified Response, Port-au-Prince, Haiti (hereinafter "2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10"; on file at CLAMO).
[110] *Id.*
[111] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 55.

ISSUE: Courses at The Judge Advocate General's Legal Center and School (TJAGLCS)

DISCUSSION: TJAGLCS courses were plentiful and provided tremendous preparation for each of the legal disciplines. The only course the attorneys could not attend was the Criminal Law Advocacy Course (CLAC) because of conflicting schedules. The National District Attorneys Association offers a similarly focused course, which is also a recognized substitute for Additional Skill Identifier (ASI) 1 purposes.

RECOMMENDATION: Sustain.[112]

ISSUE: Field Ordering Officer (FOO) training

DISCUSSION: The legal administrator attended the necessary FOO training as soon as the advance party arrived in theater. The Division limited the number of FOOs and did not allow the OSJA to have a FOO. The training was beneficial, but not used.

RECOMMENDATION: Improve. Understand the Division policies before attending training you will not use.[113]

ISSUE: Weapons training

DISCUSSION: The SJA made it a point to train on all weapons he might have to use in combat. This provided the SJA with the confidence to conduct battlefield-circulation.

RECOMMENDATION: Sustain. JAs must familiarize themselves with the weapons systems they may employ in combat. JAs should not be embarrassed to ask SMEs for help in learning how to use, clean, or clear a weapon.[114]

ISSUE: Readiness and access to latest directives

DISCUSSION: The SJA was not aware that the Secretary of the Army (SECARMY) had issued a directive memo requiring all service contracts over $100K to have the approval of a general officer (GO) until the JTF-H SJA told him about it. The SECARMY directive is not widely distributed, and many JAs may not be aware of it.

RECOMMENDATION: The JAG Corps must do a better job of collecting and promulgating legal documents and directives bearing on international operations (as well as garrison activities). In particular, electronic portals like JAGCNet should advertise these materials in a central repository.[115]

ISSUE: Lack of weapons training before deployment

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[112] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[113] *Id.*
[114] Combined Forces Special Operations Component Command – Afghanistan, Staff Judge Advocate OEF After Action Report, 2 May 2010, Deployed August 2009 – November 2009, Kabul, Afghanistan (hereinafter "CFSOCC-A OEF AAR, AUG 09 - NOV 09"; on file at CLAMO).
[115] 3d Sustainment Command (Expeditionary), Operation Unified Response, Staff Judge Advocate After Action Report, 23 April 2010, Deployed February 2010 – March 2010, Toussaint L'Ouverture Airport, Port-au-Prince, Haiti (hereinafter "3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10"; on file at CLAMO).

DISCUSSION: The legal advisor did not have sufficient weapons training before deploying. This was due to the fact he arrived at the unit two weeks before deploying. Fortunately, the SOTF command recognized this and enacted a training plan downrange to familiarize the legal advisor on the weapons systems he may need to operate.

RECOMMENDATION: Improve. Assign judge advocates to units well in advance of deployment to allow time for proper training.[116]

ISSUE: Weekly OSJA training

DISCUSSION: The noncommissioned officers (NCOs) conducted weekly sergeant's time for all enlisted personnel that consisted of military occupational specialty (MOS) topics, Soldier Skills training and general army operations. MNC-I also hosted a Paralegal of the Year Competition focused on Soldier Skills.

RECOMMENDATION: Sustain. Having a weekly training opportunity can help focus attention to areas needing more emphasis or correct any problems in processing actions or the execution of systems.[117]

ISSUE: Temporary Duty (TDY) for training courses outside of theater

DISCUSSION: The first TDY orders were a challenge since there was no SOP. Most importantly, though, there were no POCs to call for assistance. There was no way to know who drafted the orders and what the levels of approval were.

RECOMMENDATION: Improve. There needs to be a SOP for creating and completing TDY orders to send personnel out of theater.[118]

ISSUE: Duplication of pre-deployment training

DISCUSSION: Training at the Regional Training Center (RTC) in California focused on Soldier skills. There was no legal training. Much of this training occurred again at the Fort Benning CRC, but was not as good as the training received at the RTC.

RECOMMENDATION: Training should be de-conflicted between the RTC and the CRC to avoid duplication.[119]

ISSUE: Stress on Reserve Component (RC) caused by long pre-deployment training

DISCUSSION: Long pre-deployment training can be difficult for the Reserve Component (RC). A 12-month deployment can easily become 15 months when pre-

[116] 3rd Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 27 May 2010, Deployed July 2009 – December 2009, Herat, Afghanistan (hereinafter "3/7 SFG(A) OEF AAR, JUL 09 - DEC 09"; on file at CLAMO).
[117] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[118] *Id.*
[119] *Id.*

deployment training courses are included. This can be difficult for RC Soldiers, as it starts to clash excessively with civilian careers.

RECOMMENDATION: Manage pre-deployment training so as not to make excessive demands upon RC Soldiers.[120]

ISSUE: Pre-deployment training--understanding the Corps level

DISCUSSION: RC Soldiers may not have a full understanding of how a Corps-level headquarters is organized and works.

RECOMMENDATION: Train Soldiers to understand the makeup and functions of the headquarters in which they will work. In particular, all staff must have a good understanding of the various staff sections.[121]

ISSUE: Early deployment of advance party negatively affected training

DISCUSSION: Some individuals deployed early as an advance party. This prevented them from attending training courses, as there was no time.

RECOMMENDATION: Improve. Wherever possible, train Soldiers appropriately before they deploy. No good comes from throwing unprepared Soldiers into the Joint Operations Center.[122]

ISSUE: Overly narrow training

DISCUSSION: Pre-deployment training focuses narrowly on basic Soldier skills. There was nothing equivalent to a Mission Rehearsal Exercise (MRX). This narrow training fails to give Soldiers sufficient breadth of understanding of their deployed role. We accept this can be difficult to achieve. For instance, the Corps headquarters has to shut down approximately 90 days before deployment to allow equipment to be moved, and joint personnel are not available to attend MRXs.

RECOMMENDATION: As far as possible, training should simulate the environment down range.[123]

ISSUE: Education versus training

DISCUSSION: Generic education in the law of armed conflict (LOAC) is of limited value just before a deployment. By this late stage, reading the daily FRAGOs is more useful as preparation.

RECOMMENDATION: Improve. Concentrate more on the specifics of your role as your deployment date draws near.[124]

ISSUE: Training in military justice

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[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*

DISCUSSION: Attorneys and paralegals arriving from the formal courses at TJAGLCS are hitting the mark. They are arriving fully capable of doing what they need to do when it comes to military justice.

RECOMMENDATION: Sustain.[125]

ISSUE: Level of military justice competency in the Reserve Component

DISCUSSION: On the Reserve side, there is a training shortfall in the area of courts-martial. This is simply an aspect of legal military practice to which they get very little exposure.

RECOMMENDATION: There is no better training than hands-on training. LSO training should include things such as mock trials. Additionally, when an LSO mobilizes under circumstances making it likely the unit will have a significant military justice mission, consider augmenting that unit with an experienced Active Component military justice practitioner. Everyone understands the right Reservist can be of tremendous benefit to an active unit, and the reverse is equally true.[126]

ISSUE: Benefits of courses outside the JAGC

DISCUSSION: Courses such as Joint Fires, Collateral Damage Estimation, Deployed Resource Manager, and others provide great benefits for legal practitioners. Beyond the practical knowledge gained, these courses expose legal professionals to their clients and provide an understanding of their clients' professional competence. It engenders great credibility with their staff section clients when legal professionals attend these courses.

RECOMMENDATION: There is a need to encourage and resource people to attend courses outside of those offered by the JAGC.[127]

ISSUE: Conducting Reserve Component annual training at the supported installation

DISCUSSION: When the LSO learned it would be supporting the Corps deploying from Fort Lewis, it immediately mandated all annual training would occur at there. While everyone knew some jobs and personnel would shift as the time for mobilization drew closer, this still had a huge positive impact. Personnel knew the post, where they would work, and the stay-behind people with whom they would work.

RECOMMENDATION: Sustain. By doing this, the unit eliminated a great deal of the uncertainty that goes with mobilization. While these are not major issues, they are things that weigh on the mind of mobilizing personnel.[128]

ISSUE: Prior coordination with the Joint Mobilization Brigade (JMB)

DISCUSSION: The JMB is responsible for in-processing mobilized units and preparing them for

[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*

onward movement. The JMB typically handles large units. An LSO is a small, mobilized unit that will not go forward from the installation. This makes it highly unusual from the JMB's perspective. Many of the things the JMB usually needed, they did not need from the LSO. The JMB was not even initially aware the LSO was arriving.

RECOMMENDATION: Make early contact with the individuals at the JMB. Meet the people working in the JMB S-1 and S-4 shops. Establishing a relationship early in the process will go a long way towards smoothing over any rough patches that may exist because of unfamiliarity with an LSO mobilization.[129]

ISSUE: Obtaining training resources based upon an informal warning order (WARNO)

DISCUSSION: The JAG culture handles notifications about personnel issues very informally, often initially via email or phone call. In this case, the mobilizing LSO received a verbal WARNO about a year out from mobilization. While it was helpful to know this, no major muscle movements occur without orders. With nothing in writing, there was nothing triggering training funding or the placement of the unit into the training mix. To the rest of the Army, it appears our mobilizing units are asking for the significant commitment of resources based upon nothing more than a rumor. Army trainers and resource managers want to see the unit on orders before they make large commitments of training dollars and slots.

RECOMMENDATION: The activation of the Legal Command should assist with this. This LSO had to appeal to a higher commander and "go around" the system to get its training accomplished. Had the unit waited until it had actual orders, it would have been unable to get the training it did receive. Written orders must appear earlier in the process.[130]

ISSUE: Lack of pre-mobilization training for LSO paralegals

DISCUSSION: The Legal Center and School (LCS) offers no instruction specifically for mobilizing Reserve paralegals. It was often just the dumb luck of timing as to whether the unit could get anyone to an LCS course. The LSO has to rely upon on the job training (OJT) to prepare its paralegals.

RECOMMENDATION: If there are a significant numbers of Reserve paralegals doing OJT on a post at the same time, consider having training teams go out to that location to provide institutional training.[131]

ISSUE: LSO training to fill in for a Corps or Division OSJA

DISCUSSION: It is the responsibility of the LSO to backfill the Active Component Corps or Division. However, there is nothing in the LSO's peacetime organization or mission set that institutionally prepares it for this. From a training perspective, the LSO is untrained for this mission. There is no guidance indicating, "You are going to command an LSO, but you need to prepare to be a SJA upon mobilization."

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[129] *Id.*
[130] *Id.*
[131] *Id.*

RECOMMENDATION: If LSOs performing as OSJAs is going to be the model for the future, the Legal Command needs to develop some type of LSO Army Force Generating (ARFORGEN) cycle to support this. That would at least provide some degree of predictability to allow preparation. Additionally, we need to give LSO personnel an opportunity to attend "invitation only" courses such as the SJA and Senior Paralegal Courses if we expect them to fill these roles.[132]

ISSUE: Utilization of Reserve LSO personnel on annual training (AT)

DISCUSSION: You do not get a lot of benefit from having Reserve LSO personnel do on AT what they typically do at drill. Having a Reserve paralegal work a Soldier Readiness Processing mission is a waste of an opportunity. They are already proficient at that task. What they really lack is military justice experience.

RECOMMENDATION: Have LSO personnel on AT work in military justice. Push them down to brigades to work a multitude of non-judicial punishment issues or keep them at Division or Corps to work court-martial issues. The Reserve commanders need to assist their Active Component partners with this. People should not just "show up" unexpectedly. The LSO leadership should call the gaining OSJA well ahead of time and say, "Here's what this particular legal professional needs in terms of exposure."[133]

ISSUE: Redundant pre-deployment training

DISCUSSION: Before mobilization, members of the 492d CA BN were placed on 29-day Active Duty for Training (ADFT) orders and sent to the Fort Hunter Liggett/Regional Training Center (FHL/RTC). The training received at the FHL/RTC was similar to the training offered at the Fort Dix/Mobilization Training Center (FD/MTC). At the FD/MTC, the members of the 492d certified they had completed the required pre-deployment training at FHL/RTC. Because they had just completed pre-deployment training at the FHL/RTC, there was a lot of wasted time at FD/MTC. Of the seven weeks spent at the FD/MTC, personnel spent only five or six days training. There was no JA training in the pre-deployment phase.

RECOMMENDATION: Improve. Remove the redundant training from the deployment cycle. The pre-deployment training received in ADFT status was necessary, but it was redundant of training provided at the MTC. Provide ADFT orders for training that is not available at the MTC, such as JA training required in theater.[134]

General Comments – Personnel, Staff and Organization

ISSUE: Rank of the BJA

DISCUSSION: The BJA must be a major. All the principal staff officers are field grade officers. Placing a captain in that position does a disservice to that officer and the commander.

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[132] *Id.*
[133] *Id.*
[134] 492d Civil Affairs Battalion, 364th Civil Affairs Brigade, Brigade Judge Advocate OIF After Action Report, 17 April 2010, Deployed January 2009 – February 2010, Camp Victory, Iraq (hereinafter "492d CA BN OIF AAR JAN 09 - FEB 10"; on file at CLAMO).

RECOMMENDATION: Discontinue the practice of assigning captains as brigade judge advocates.[135]

ISSUE: Timing the assignment of the BJA

DISCUSSION: This BJA replaced his predecessor mid-deployment. The previous officer trained with the brigade, established relationships with other staff officers, and earned the trust and confidence of the commander. It takes significant time and energy to foster the relationships needed as a BJA and earn the faith of your commander. Attempting to do this mid-deployment is inefficient and places both the BJA and the commander in a difficult situation.

RECOMMENDATION: Time assignments appropriately, allowing BJAs to train and complete a full deployment with their brigades.[136]

ISSUE: JA manning at Stryker BCTs

DISCUSSION: Three JAs are a must for Stryker BCTs, which tend to be bigger than standard BCTs.

RECOMMENDATION: Sustain.[137]

ISSUE: Consolidated legal office

DISCUSSION: The BJA learned early on during the deployment a few battalions intended to utilize their paralegals for duties non-legal in nature. The BJA presented a decision brief on the merits of a consolidated legal office to the BCT commander. The commander agreed a consolidated legal office was the best course of action. The BJA then drafted a daily tasking FRAGO (DTF) outlining paralegals would be consolidated and task organized under the brigade headquarters.

RECOMMENDATION: Sustain.[138]

ISSUE: Assignment of an E-6 as the operational law non-commissioned officer (NCO)

DISCUSSION: The brigade's legal non-commissioned officer in charge (NCOIC) worked the brigade's claims office and assisted in operational law matters. This detracted from his ability to mentor his younger Soldiers and prepare them to be NCOs.

RECOMMENDATION: Improve. Recommend sending an E-6 to the Operational Law of War (OPLOW) Course and assigning him to the brigade legal section so he can assist in operational law matters. This would free the NCOIC to better mentor and support the younger Soldiers.[139]

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[135] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 16.
[136] *Id.*
[137] 1st Stryker Brigade Combat Team (SBCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 13 November 2009, Deployed September 2008 – September 2009, Multi-National Division – North (MND-N), FOB Warhorse, Diyala Province, Iraq (hereinafter "1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09"; on file at CLAMO).
[138] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[139] *Id.*

ISSUE: Task organization

DISCUSSION: Two of the 1-1 CAV BCT's organic battalions (a cavalry battalion and field artillery battalion) were detailed to another BCT, while 1-1 CAV received OPCON of a non-organic cavalry battalion. In defining the relationships between the BCTs and their non-organic units, MND-B requested input from the BCT commanders. The BCTs decided to give the receiving command both OPCON and UCMJ authority over the detailed units, while the sending commands retained all other administrative control (ADCON), including responsibility for awards, evaluations, and administrative separations. After obtaining a consensus, MND-B published the task organization in a fragmentary order (FRAGO). However, the BJA observed not all commanders were clear as to what authorities and responsibilities they had over non-organic units.

RECOMMENDATION: Sustain/Improve. Although this task organization worked out well overall, units should avoid developing the task organization "on the fly" if possible. The BJA should disseminate and remind commanders of the chains of authority and where to find the designations (e.g., the BCT online portal).[140]

ISSUE: Need for more experienced JAs at the division level

DISCUSSION: The lack of experience of JAs at the division level frustrated the BJA. It is hard to request guidance from higher headquarters where junior captains with limited experience and expertise staff the OSJA.

RECOMMENDATION: Improve. There is a need for JA majors to serve as section chiefs at the division OSJA. It is hard for division JAs to serve their client units properly when they do not understand how those BCTs operate.[141]

ISSUE: Need for at least three different senior legal officers in the security transition command

DISCUSSION: The MNSTC-I SJA essentially wore three distinct hats. The first was the traditional role as legal advisor to the MNSTC-I commander. The second was the senior mentor/advisor to the General Counsel for MoD. The third was the RoL coordinator for MNSTC-I.

RECOMMENDATION: These three distinct roles are each a full time duty and require three separate individuals to fill them. At a minimum, the SJA as personal staff officer should be a distinct billet from the other two roles as operational advisors with legal skill sets.[142]

ISSUE: Varying tour lengths in a joint OSJA

DISCUSSION: The MNSTC-I OSJA consisted of both Army JAs (SJA, DSJA, and two fiscal law attorneys) and Air Force JAs (administrative law and operational law/military justice). The Army personnel were on 365-day tours, calculated from the date they arrived in Kuwait. The Air Force personnel had 179-day tours, calculated from the date they began performing duties in their

[140] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 7.
[141] *Id.*
[142] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.

assigned duty position in Iraq. In addition, the orders for the Air Force personnel included a provision requiring three to five days of mandatory overlap with their successor. This requirement posed an interesting question given the merger of the MNSTC-I OSJA into USF-I, because the Air Force billets will switch to new positions (claims attorney and detainee operations attorney, respectively), making any overlap with the MNSTC-I Air Force attorneys of marginal utility.

RECOMMENDATION: Improve. Everyone assigned to a joint OSJA should have the same tour length. This would improve continuity and team formation. The shorter deployment tours for Air Force personnel limit their ability to master their jobs (and also limit the type of award they can reasonably receive).[143]

ISSUE: OSJA transformation into USF-I

DISCUSSION: The MSTC-I, MNF-I, and MNC-I OSJAs merged into a single USF-I OSJA on or about 1 January 2010. Some of the considerations playing into the structure of the USF-I OSJA were the size of the incoming corps (III Corps) and what they can resource, the different legal functions including nontraditional legal functions (RoL, Law and Order Task Force (LAOTF), Task Force (TF) 134, etc.), and the desire to balance "jointness" across the divisions by having representatives from other services working in each legal discipline. The structure also had to take into account the rank and professional development needs of the three O-6 SJAs, as well as O-5 DJSAs and various division chiefs, who had positions under the old structure.

The MNF-I SJA became the USF-I SJA. The MNC-I SJA became the DSJA for military law and SJA for Army Forces (ARFOR). Under this deputy were client services, administrative law, contract and fiscal law, operational law, detainee operations, military justice, and intelligence law. The MNSTC-I SJA became the DSJA for rule of law (RoL) and Iraqi training. Under this deputy were the Security Agreement Secretariat legal advisor, foreign assistance, and RoL, as well as oversight for LAOTF and TF Legal/TF 134.

RECOMMENDATION: When merging OSJAs, the primary considerations should be the meeting the legal needs of the new command and the ability of the services to resource these JA positions in the future. Future units staffing USF-I may need to modify the structure and duty positions once the legacy elements from the former headquarters have departed.[144]

ISSUE: Functions transfer when merging multiple OSJAs

DISCUSSION: During the planning stages for the merger of three separate headquarters into USF-I, every other staff section collaborated with their counterparts from the other headquarters to plan how and when their current functions would transfer to the new headquarters. The OSJAs performed a cursory analysis of functions transfer, viewing their mission generically as "provide legal advice to the command" rather than breaking down each legal discipline into mission essential tasks. As a result, there was no set date for transfer of functions from the individual OSJAs to the combined OSJA, some missions, such as legal assistance, were overlooked entirely.

RECOMMENDATION: Improve. Use JP 1-04 and FM 1-04 functional templates to identify the functions of an OSJA and plan deliberate transitions to support the command merger.[145]

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[143] *Id.*
[144] *Id.*
[145] *Id.*

ISSUE: Division of responsibilities between chief of fiscal law and chief of foreign assistance

DISCUSSION: The merger of the three OSJAs resulted in a contract and fiscal law section under one DSJA comprising fiscal law attorneys from MNF-I and MNC-I, and a chief of foreign assistance under the other DSJA. The latter would have a fiscal law attorney and an Iraqi and international law attorney. There was potential for overlap of responsibilities and friction between the chief of contract and fiscal law, and the chief of foreign assistance. As of the date of this report, the SJA had not yet delineated their respective lanes.

RECOMMENDATION: The chief of foreign assistance should handle all matters dealing with ISFF and should be the primary liaison to the DoS for purpose of planning the transfer of security assistance responsibility to the Embassy's OSC. The chief of contract and fiscal law should service U.S. commanders.[146]

ISSUE: Chief of foreign assistance as an enduring billet

DISCUSSION: The chief of foreign assistance billet under USF-I, which the MNSTC-I DSJA filled after the merger, fell under the Iraqi Security Assistance Mission (ISAM) on the Joint Manning Document (JMD). It is the only military legal billet enduring after the projected withdrawal of U.S. forces in December 2011 because it will be part of the eventual Office of Security Cooperation (OSC) under the USEMB-B.

RECOMMENDATION: The Personnel, Plans, and Training Office (PP&TO) must continue to fill this position with an Army contract and fiscal law attorney. This position is part of the justification for the large size of the eventual OSC, due to the substantial amount of end-use monitoring Congress has required. In addition, there may still be substantial ISFF appropriations available after U.S. forces leave Iraq. Because this is a Title 10 fund, DoD personnel must administer it.[147]

ISSUE: Importance of the paralegal in the SF battalion

DISCUSSION: The paralegal position is a sensitive one that affords the paralegal a great deal of autonomy. This, combined with the fact the paralegal is the continuity in the legal section, demands that a staff sergeant fill the position.

RECOMMENDATION: Improve. Make SF battalion paralegals a staff sergeant position.[148]

ISSUE: Modification Table of Organization and Equipment (MTOE) deployment gap

DISCUSSION: 25 ID is unique in that it does not have any MTOE positions for JAs and paralegals in TDS or for legal assistance/claims/client services. At its home base in Schofield Barracks, the garrison's 8th Theater Sustainment Command (8th TSC) controls the positions and provide services. Accordingly, when the Division deployed, it did not have any MTOE assigned

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[146] *Id.*
[147] *Id.*
[148] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 94.

JAs/paralegals for these functions. 25 ID had to generate the services from its existing MTOE staff. In essence, they had to provide these services "out of hide." Luckily, reservist augmentation helped ease the MTOE gap.

RECOMMENDATION: Improve. The Army should amend 25 ID's deployment MTOE to account for TDS and legal assistance/claims/client services positions required while deployed. The Division no longer has the core competencies it once had.[149]

ISSUE: Misalignment of mission MTOE

DISCUSSION: It is obvious BCTs need more than the single captain authorized by the modification table of equipment and organization (MTOE) while deployed. The Division had to send six captains at various times down to brigades to enable them to perform their required mission. The Division does not have mission support slots to fill to meet this need.

RECOMMENDATION: Brigades have to identify an unencumbered O-3 or O-2 slot to allow a Reservist to serve as the needed second captain attorney. There needs to be a way to institutionalize this requirement, perhaps by building a mission support structure for fill upon deployment. BJAs require education on the mobilization process. They must consider it before deployment and begin the process at least six months out.[150]

ISSUE: Inadequate responsiveness of Army Force Generation (ARFORGEN)

DISCUSSION: ARFORGEN is not providing the necessary personnel in a timely manner. First term captains are arriving at units too late in the cycle to properly train and integrate before deployment. Additionally, when there is only a year between deployments, dropping to 50%-60% staffing upon return leaves the legal organization hard-pressed to perform its garrison mission.

RECOMMENDATION: Recognize one size does not fit all. Those staff sections with a significant garrison mission cannot simply decrease services to "wait out" the ARFORGEN cycle. The legal section has significant continuing mission requirements, especially in the field of military justice, immediately upon redeployment.[151]

ISSUE: Lack of a Division rear detachment

DISCUSSION: The garrison or theater sustainment command picked up all of the legal functions back at home station. The Division OSJA left back no personnel at all. This has some unintended consequences. Receiving mail (e.g., records of trial) and supervising an ongoing office renovation are two examples of tasks that continue and were not effectively managed from afar.

RECOMMENDATION: Recognize the lean nature of the Division structure may preclude the use of a rear detachment. Have a plan for the re-initiation of functions upon return that includes re-establishing the office from the ground up, if necessary.[152]

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[149] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[150] *Id.*
[151] *Id.*
[152] *Id.*

ISSUE: Need for a rear detachment Mission Support Element (MSE)

DISCUSSION: Because 25 ID did not have responsibility for the garrison mission at Schofield Barracks, the OSJA deployed with all of its assigned personnel. That meant there was no reach-back capability for Division while deployed. The Division as a whole sought to leave no more than two percent of the assigned forces, and they were attached to 8th TSC.

RECOMMENDATION: Improve. This Division is one of few that do not have a MSE Table of Distributions and Allowances (TDA) to provide support in the rear when the Division deploys. Recommend establishing a MSE TDA for the Division to maintain a reach-back capability and to provide legal services specific to the Division.[153]

ISSUE: Need for more lawyers in the Marine Corps

DISCUSSION: The Marine Corps is short on JAs. Although the Marine Corps is growing, it is operating with the same number of JAs (just over 400) it had in the early 1980s. Furthermore, since the onset of the Global War on Terrorism, JAs have deployed more than ever before, while at the same time misconduct in the rear has been spiking and the amount of post-trial review work is on the rise.

RECOMMENDATION: The Marine Corps should update the force structure of the legal community and increase the number of JAs out in the fleet to meet the needs of today's operational tempo.[154]

ISSUE: Rank structure within a deployed Division

DISCUSSION: Having an O-4 head the rear detachment is sufficient. Having your E-9 forward to interact with the Division command sergeant major (CSM) is great. Having an O-5 as the SJA on the Division staff also works fine. The SJA already is a member of the special staff and the staff understands the SJA has the ear of the commander. The bulk of the other Division staff primaries are O5s as well. It is helpful to have an O-5 as a deputy. The Division had no O-4s to deploy. While this was not typically problematic, it may have been difficult for the O-3 chief of justice working with O-4 brigade judge advocates. An O-4 might have been helpful in operational law, but the Division's O-3 was experienced enough to be listened to as a valuable member.

RECOMMENDATION: The rank structure fluctuating by a grade is not as important as having the right people in the job.[155]

ISSUE: Organization of the contract and fiscal law attorneys under administrative law

DISCUSSION: Both the contract law attorney and the fiscal law attorney at the Division OSJA worked under the chief of administrative law. Because the chief of administrative law did not have fiscal law training, the fiscal law attorney routinely worked directly with the SJA on many issues.

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[153] *Id.*
[154] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 55.
[155] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.

RECOMMENDATION: Improve. Ensure the supervisor of the fiscal and contract law attorneys has sufficient familiarity with the subject matter to provided advice and guidance.[156]

ISSUE: Rank of the fiscal law attorney

DISCUSSION: The Division fiscal law attorney was a first-term captain (CPT). While qualified for the position and capable of performing the duties, she routinely dealt with BJAs who were typically O-4s, the G9 (an O-5), the CERP Cell officer in charge (OIC) (an O-5), and battalion S9s (O-4s and O-5s). The disparity in rank at times made interaction difficult. Higher ranking officers may perceive the advice of a CPT to have less authority even when that person is a subject matter expert. The rank disparity also places the junior subject matter expert officer at a disadvantage when required to disagree with the opinion of a higher ranking officer, even where the junior officer's advice is correct, at times leading to dismissal by the higher ranking officer of the sound legal advice.

RECOMMENDATION: The junior officer should remember to maintain professionalism and proper respect when dealing with other staff officers who may be overbearing due to seniority in rank. Engage in the DSJA/SJA when issues reach an impasse or when pressured to alter legal opinions. Having an O-4 as either the fiscal law attorney or as chief of contract and fiscal law may ease the stress created in such situations. If an O-4 is unavailable, the SJA/Deputy SJA (or other similarly situated senior officer) should welcome appeals of that legal advice to their level, but make clear their general support for the junior officer's expertise.[157]

ISSUE: Individual mobilization opportunities

DISCUSSION: The Division OSJA had several mobilized reservists as individual augmentees. When the Personnel, Plans, and Training Office (PP&TO) announced individual mobilization opportunities, they included specific unit assignments and duty positions (for example, one billet was for operational law at 1st Cavalry Division). It was not until after selection for his desired position that one JA had to sign a form stating he understood his assignment could change. This JA ended up serving in another duty position with 1CD once deployed. Although he personally had a great deployment experience, he acknowledged some mobilized reservists see this practice as a "bait and switch."

RECOMMENDATION: Improve. Expectation management is critical when PP&TO seeks mobilization volunteers. PP&TO should make clear up front to prospective volunteers their specific duty position could change upon arrival in theater. Moreover, their civilian legal experience may or may not have any bearing on their placement within the deployed OSJA. Once they identify a particular individual augmentee, PP&TO should work more closely with the augmented active duty unit to determine where that individual will work so the augmentee can better prepare for his or her deployed duties. Mobilized reservists should understand even though they may be the best civilian prosecutor in the world, they may end up doing legal assistance.[158]

ISSUE: Requesting reserve augmentation

DISCUSSION: The OSJA requested several reserve augmentees to deploy with the Division. However, once the augmentees JAs arrived in theater, the OSJA placed them in different jobs

[156] *Id.*
[157] *Id.*
[158] *Id.*

than what PP&TO had marketed to them. One of the reserve JAs was told, "We don't know where we can put you."

RECOMMENDATION: Deploying OSJAs should not request reserve augmentation unless they have a troops-to-task plan as to how they will utilize these JAs. In this case, the JA ended up going to augment a BCT after a few months because there was not enough work for him at Division.[159]

ISSUE: Reserve augmentee request

DISCUSSION: The unit submitted the reserve augmentee request six months before the deployment. The reserve augmentees arrived in stages, with the judge advocates arriving first and some enlisted augmentees arrived six month into the deployment.

RECOMMENDATION: Improve. The reserve augmentee process should be much smoother since it has been in use for eight years now. The reserve command needs to fix the problem with mobilizing enlisted reserves.[160]

ISSUE: Reserve integration

DISCUSSION: The Reserve judge advocates quickly integrated when they arrived. The office separated the paralegals on their arrival. One SSG went to Taji to fill in with a brigade legal team, one SGT went to the local TDS office, and the other SGT went to the Division OSJA. The SGM explained to the reserve paralegals that they would need to fill the gaps.

RECOMMENDATION: Sustain. Quickly place reservists into positions to improve integration with the OSJA and other sections of the Division.[161]

ISSUE: Modeling the Foundation of Four after the operational Army

DISCUSSION: It is helpful to overlay the Foundation of Four onto a battalion leadership scheme. As an analogy, the SJA fills the role of the battalion commander and the SGM fills the role of the CSM. The deputy compares to a battalion executive officer (XO) with responsibilities to manage the officers within the OSJA, to advise and assist brigade judge advocates (BJAs), and to fulfill reporting and information dissemination requirements up and down the technical chain. The legal administrator is functionally equivalent to the battalion S-1, S-4, S-6, and S-8.

RECOMMENDATION: Whatever model you adopt, ensure the members of the leadership team understand their roles and their responsibilities to each other and their Soldiers.[162]

ISSUE: Number of attorneys required in a BfSB

DISCUSSION: The BfSB having only one attorney was a significant constraint. A single attorney cannot provide all the legal services required within the BfSB. For instance, conflicts of interest will happen. This requires legal support from the outside. You can also argue, as a rule, two lawyers working together provide better legal advice than two lawyers working alone do.

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[159] *Id.*
[160] *Id.*
[161] *Id.*
[162] *Id.*

This is because the team can bounce ideas off each other, as well as challenge, critique, and provide a "sanity check" for each other's assessments and advice. However, the singleton lawyer, no matter how talented, has no sounding board with which to work.

RECOMMENDATION: A BfSB needs two attorneys.[163]

ISSUE: Length of deployment

DISCUSSION: The SJA deployed for three months. The CFSOCC-A SJA should deploy for 6 months to one year. This would provide greater continuity of effort and place him in a deployment cycle similar to other SJAs at USFOR-A and ISAF.

RECOMMENDATION: Extend CFSOCC-A SJA deployment to between six months and one year.[164]

ISSUE: Second JA at CFSOCC-A

DISCUSSION: The job pulled the SJA in too many directions. This prevented him from attending meetings he would have liked to attend.

RECOMMENDATION: Improve. The JAG Corps should send a second JA to CFSOCC-A to help the SJA.[165]

ISSUE: Lack of JAs

DISCUSSION: The Modification Table of Organization & Equipment (MTOE) for 3d ESC has three JAs (one MAJ and two CPTs). 3d ESC was short one CPT JA at the time of the deployment, and the other CPT had an ongoing, complex court-martial. The plan was to fly the TC out to Haiti after the court martial, but the mission ended before the trial.

RECOMMENDATION: Improve. Short notice deployments can place units with MTOE shortfall issues in challenging situations.[166]

ISSUE: Importance of selecting personnel to fill SOTF legal office

DISCUSSION: The SOTF legal office consisted of an experienced NCO and a junior captain. The NCO was familiar with the unit and its mission. This eased the legal advisor's transition into the unit.

RECOMMENDATION: Sustain. There should not be a time when both members of the SOTF legal office are "junior" and/or unfamiliar with the unit.[167]

ISSUE: Importance of the paralegal in the SF battalion

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[163] 504th Battlefield Surveillance Brigade, Brigade Judge Advocate OIF After Action Report, 3 May 2010, Deployed November 2008 – November 2009, Contingency Operating Base Sykes, Tal Afar, Iraq (hereinafter "504th BfSB, OIF AAR, NOV 08 - NOV 09"; on file at CLAMO).
[164] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 114.
[165] *Id.*
[166] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 115.
[167] 3/7 SFG(A) OEF AAR, JUL 09 - DEC 09, *supra* note 116.

DISCUSSION: Given SF's mission set the paralegal has a great deal of autonomy. This, combined with the fact the paralegal is the continuity in the legal section, demands a staff sergeant fill the position.

RECOMMENDATION: Improve. Make the SF battalion paralegal a staff sergeant position.[168]

ISSUE: JAs in Group Support Battalion (GSB)

DISCUSSION: There are currently no JAs assigned to SF GSBs.

RECOMMENDATION: Improve. Assign JAs to GSB to alleviate the burden on the Group JA and groom these GSB JAs for future assignment at the line battalion.[169]

ISSUE: Second judge advocate at group level

DISCUSSION: Based on the operational tempo experienced by Special Forces groups, often the group headquarters will deploy for extended periods while a majority of the group's battalions will remain garrisoned. Current practice is to pull a battalion judge advocate to support the group rear detachment commander. Potential conflicts of loyalty exist when a battalion judge advocate in this position has two commanders to support, the battalion commander and group rear commander. This is especially true in issues dealing with military justice that originate at the battalion level.

RECOMMENDATION: Develop contingency plan for placing a second judge advocate at the group level during deployments.[170]

ISSUE: Need for country-specific JA prosecution teams

DISCUSSION: There is a need for country-specific prosecution teams, which receive special training on the host nations' legal system and its day-to-day operations. These specially trained JAs would embed with host-nation prosecutors and work cases through the host nation's system offering advice, guidance, and support when necessary. The teams perform work in ways similar to the Special Victim Prosecutor (SVP) program or Trial Counsel Assistance Program (TCAP). These teams would allow for specialization in comparative and civil law systems, as well as enabling continuity of effort in the ongoing COIN fight.

RECOMMENDATION: Improve. The JAG Corps needs to look at implementing such teams.[171]

ISSUE: Assigning JAs to SF battalions

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[168] 2d Battalion, 7th Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 25 May 2010, Deployed July 2009 – January 2010, Camp Brown, Kandahar, Afghanistan (hereinafter "2/7 SFG(A), OEF AAR, JUL 09 - JAN 10"; on file at CLAMO).
[169] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 168.
[170] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 58.
[171] Asymmetric Warfare Group, Group Judge Advocate OEF After Action Report, 8 June 2010, Deployed October 2009 – April 2010, Bagram Airfield, Afghanistan (hereinafter "AWG, OEF AAR, OCT 09 - APR 10"; on file at CLAMO).

DISCUSSION: 10th Special Forces Group (Airborne) JA had a limited role in the selection of captains to serve as SF battalion JAs.

RECOMMENDATION: Improve. SF Group JAs should be more involved in the selection of captains to serve as SF battalion JAs.[172]

ISSUE: Need for JA at Group Support Battalions (GSB)

DISCUSSION: GSBs do not currently have JAs assigned to them.

RECOMMENDATION: Improve. There is a need for a JA at each SF Group's GSB.[173]

ISSUE: Need for E-6 at SF battalion legal office

DISCUSSION: SF battalions are unique because many NCOs spend a significant part of their career in their respective sections. This fact, combined with the significant responsibility of supporting a SF battalion, requires the SF battalion 27D be an E-6.

RECOMMENDATION: Improve. Make the SF battalion's 27D slot an E-6 position.[174]

ISSUE: The challenges of merging headquarters

DISCUSSION: During the deployment, the two senior headquarters in Iraq merged. The headquarters were MNF-I and MNC-I. MNF-I was the strategic headquarters, while MNC-I concentrated on the operational and tactical levels. The merger was difficult. MNF-I had a different, and somewhat counterintuitive, focus compared to MNC-I. It was said that MNF-I looked at things through a microscope, while MNC-I looked at things through a telescope. This observation was nothing more than recognition of the existence of the "strategic corporal." The "strategic corporal" is a creation of modern communications technology. The media can report a low-level tactical incident live around the world. This means small incidents can have an immediate strategic effect requiring a rapid high-level response. Thus, MNF-I sometimes found itself peering through its microscope over the shoulder of MNC-I. There were also cultural differences between the headquarters. MNF-I was more joint than MNC-I. Roughly 90% of MNC-I personnel were Army, while the proportion in MNF-I was lower. Anecdotally it seemed non-Army personnel were not comfortable talking to the Divisions. Similarly, some MNF-I personnel had never worked in a joint operations center (JOC) setting. Furthermore, there were some perceptions of unnecessary duplication and overlap after the merger, which left some personnel underemployed.

RECOMMENDATION: The merger of headquarters is a difficult, emotional task. Carefully assess the different roles of the two headquarters and ensure the new structure will deliver the capabilities required without unnecessary duplication. Work hard to establish trust and rapport before the merger.[175]

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[172] 10th Special Forces Group (Airborne), Group Judge Advocate OIF After Action Report, 19 May 2010, Deployed July 2009 – February 2010, Joint Base Balad, Iraq (hereinafter "10th SFG OIF AAR, JUL 09 - FEB 10"; on file at CLAMO).
[173] *Id.*
[174] *Id.*
[175] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.

ISSUE: Elimination of approval levels when merging headquarters

DISCUSSION: The units had to re-visit all approvals levels when two levels of the headquarters merged. The disappearance of one level of headquarters took that level's approval authorities with it. It is not clear how one determines if the successor position carries that same authority.

RECOMMENDATION: You must consider the specific approval authority consequences when a level of command disappears.[176]

ISSUE: Sustainment units deploying without their assigned TDS personnel

DISCUSSION: Sustainment units are deploying without bringing their assigned TDS personnel. In some instances, the TDS slots in the sustainment brigades are going unfilled in order to fill TDS slots elsewhere. The expectation seems to be the deployed OSJA has the resources to cover the deployed TDS mission. This is not the case.

RECOMMENDATION: It would solve many problems if those units with TDS assets within their structure had their authorized personnel and deployed those TDS assets when the rest of the unit deployed.[177]

ISSUE: Modified Table of Organization and Equipment (MTOE) and Joint Manning Document (JMD) conflict

DISCUSSION: The I Corps MTOE did not meet the authorizations of the JMD. For example, the Corps military justice office was one attorney short of meeting the JMD slots. The LSO mobilized to support the Corps, filling the empty position as well as required positions that had no authorization. A lack of flexibility within the JMD allows the SJA to surge from one section to another internally, but, as legal issues arise in one area, they normally simultaneously impact other areas.

RECOMMENDATION: Improve. The Corps MTOE should be a starting point for filling the JMD while deployed, and continuous scrutiny of the JMD has to occur in order to support emerging requirements during the course of military operations. A mechanism for exceeding the JMD or identifying short-term support options could greatly assist.[178]

ISSUE: Master sergeant in the OSJA

DISCUSSION: The office used the additional master sergeant position in the OSJA to augment the administrative/operations section of the OSJA. The master sergeant worked directly for the sergeant major and had tasking authority over the Soldiers in the administrative/operations section. That arrangement made things difficult early in the deployment when the administrative/operations section received tasks from both the legal administrator and the master sergeant with no guidance for prioritizing.

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[176] *Id.*
[177] *Id.*
[178] *Id.*

RECOMMENDATION: Improve. The master sergeant should fill the intended position in the military justice section and not in the administrative/operations section of the OSJA.[179]

ISSUE: The organization and employment of the LSO in peacetime vs. mobilized

DISCUSSION: The day-to-day mission of the Legal Support Organization (LSO) is to perform Soldier Readiness Processing (SRP) for other Reserve units. The LSO is also a stand-alone unit that has all of the "housekeeping" requirements of any other unit. That said, however, the LSO does not typically mobilize as a full unit. Its requirements are usually to send X number of personnel to do Y. This raises questions for the LSO commander. Should he or she deploy the absolute best people for the job, or should whether a person volunteers matter? Additionally, because doing Y is rarely "conduct an SRP," the unit must train its personnel to do Y.

RECOMMENDATION: If a standard LSO mission will be to backfill a deployed Corps or Division, consider whether the current LSO organization and employment truly supports high-level readiness for that particular mission.[180]

ISSUE: Establishing a habitual relationships between closely located LSOs and OSJAs

DISCUSSION: There are possible benefits to having a particular LSO know that if a Corps or Division at Post X deploys, that LSO will backfill that OSJA. The local LSO Soldiers know the area and can easily perform annual training and drill at and with that active office, enhancing integration. However, such a tie-in could diminish recruiting, as some Soldiers like the possibility of mobilizing outside their home area.

RECOMMENDATION: Consider carefully the advantages and disadvantages to such a plan. There are definitely second and third order effects warranting consideration.[181]

ISSUE: Speaking with the deployed incumbent legal staff

DISCUSSION: One of the most important things a BJA and NCOIC can do to prepare in advance of a deployment is to speak with the legal team they will be replacing in theater. Finding out the current issues and challenges will shed light on the areas the legal staff should focus scarce training time and resources. Moreover, the discussions between the two sides will generally pass along the current "ground truth" for the deployed legal staff. This sharing of information can prove vital to successful pre-deployment training and preparations.

RECOMMENDATION: Contact the current legal staff in your AO and draw out the information that will help with pre-deployment training.[182]

ISSUE: Paralegal attendance at JAG School courses

DISCUSSION: A number of JAs and paralegals expressed their pleasure with having paralegals attend courses at the JAG school that ordinarily are open to just JAs such as the Rule of Law, OPLOW, fiscal law, contracting, and the BJA Mission Primer (BJAMP) (which is held in

[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.

Rosslyn, VA). While some aspects of the above courses are not directly applicable to the paralegal's tasks and duties, the exposure to key concepts, references and presentations greatly enhances their understanding and ability to contribute on deployments.

RECOMMENDATION: Where possible and space is available, allow paralegals to attend deployment oriented courses offered by the JAG School.[183]

ISSUE: Is the second JA ready to take over

DISCUSSION: Although the panelists to the 2010 BJA Symposium did not personally experience this, it was mentioned that the second JA should be prepared for the contingency of having to step into the BJA's shoes should the something happen that affects the BJA's availability to the unit, such as R&R leave. In such circumstances, most would expect the division (DIV) SJA to send JA reinforcements as necessary, but it might not be a JA superior in rank and/or experience to the BCT second JA. Legal staffs do not have a deep stable of JAs to reach into, so the second JA should be as ready as training and experience levels permit to occupy the BJA position.

RECOMMENDATION: A BJA has to take steps to prepare the second JA to step in as the acting BJA should something happen that takes the BJA out of the fight (either temporarily or for the rest of the deployment).[184]

ISSUE: Staff integration

DISCUSSION: You cannot be an effective staff officer without integrating with the rest of the BCT staff. The BJA found that attending meetings and working groups helped in the process, but the most beneficial approach was doing stuff with the staff outside of the office. Grabbing staff officers for chow was great, playing football on Saturday nights proved to be great fun and very beneficial and most importantly you learn about what they do, which makes you a more effective Soldier/lawyer.

RECOMMENDATION: Sustain. Encourage the paralegals to integrate with non paralegals as well. Failure to do so could damage their relationships with their battalions and with non paralegal paratroopers.[185]

General Comments - Miscellaneous

ISSUE: Modular battalions (BNs) and units that need legal support

DISCUSSION: From time to time, higher headquarters will attach a non-organic BN to a deploying BCT to accomplish a specific task in the area of operation. For example, BCT's deploying to Afghanistan can expect to have provincial reconstruction teams (PRTs) or have an agricultural development BN added to their span of control in order to assist with development and reconstruction. These attached units generally do not come with any organic legal personnel on their staffs. Therefore, they become another client in the field that requires the services of the BCT legal staff.

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[183] *Id.*
[184] *Id.*
[185] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.

RECOMMENDATION: BJAs, JAs, and paralegals must make contingency plans for providing extra legal support to modular units attached to the BCT for the deployment. This can be very challenging in circumstances where the BCT is widely dispersed over a large area.[186]

ISSUE: Pre-mobilization of brigade legal staff

DISCUSSION: There is a need to improve how the National Guard fills brigade JA positions during the pre-mobilization phase. The intent of the division SJA was to have new JAs become "seasoned" at division before going to the brigade. This included deploying new JAs who had not even completed or scheduled the JA Officer Basic Course (OBC). Given the complexity of the mission, modularity, transformation, and the legal challenges faced in theater, brigades need at least two experienced JAs and should have three JAs. Even though one of the JAs started drilling in January 2009 with the unit, his formal assignment occurred only in July 2009 and thus resulted in pay issues.

RECOMMENDATION: Improve. Division SJAs should emphasize being a JA resource provider and training coordinator with a predictable schedule of rotations to brigades.[187]

ISSUE: ARCENT acts as garrison command and pulls brigade JAs to higher headquarters

DISCUSSION: The 29th IBCT has deployed twice to the ARCENT area of operations. In both cases, ARCENT reassigned JAs from the brigade to support higher headquarters. Reserve Component BCT commanders are aware of this tendency, and it affects the staffing decisions they make in the pre-deployment phase. Commanders are likely to deploy with staff over which they will retain control during the deployment. They have the tendency to reduce to the minimum the number JAs they deploy because they believe, once deployed, the JAs will receive a reassignment to higher headquarters. There is a belief that active components also plan to pull brigade JAs up to headquarters and leave some of their JAs in the rear at home station.

RECOMMENDATION: CENTCOM should determine whether it is appropriate for ARCENT to reassign reserve component brigade JAs deploying to Kuwait.[188]

ISSUE: Resources to provide legal assistance

DISCUSSION: The Corps structure did add some personnel to the operational law section. However, there is no structure for legal assistance. In the rear, this is a management issue, as you can bring in personnel for the mission support element, installation command, etc. However, this is a resource issue when deployed because none of those legal assistance providers deploy with you.

RECOMMENDATION: There has to be some thought given to how we expect a Corps to perform the legal assistance function while deployed.[189]

ISSUE: Resources available to the deploying Corps

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[186] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[187] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.
[188] 29th IBCT (HIARNG) OIF AAR, OCT 08 - AUG 09, *supra* note 91.
[189] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.

DISCUSSION: When I Corps leaves Fort Lewis, there is no command structure remaining at the installation. There was a requirement to stand up a Fort Lewis flag. Many assets the deployed Corps needed had to remain at Fort Lewis to support Joint Base Lewis-McChord. All of the personnel in the joint base consolidated legal office cannot deploy because they support the joint mission. This raises challenges concerning how to function as a deployable Corps.

RECOMMENDATION: It is probably impossible to deploy a Corps without robust Reserve support. That is acceptable, though, because it allows you to draw from a large pool of personnel to find the talents the deployed legal office needs.[190]

ISSUE: Setting the mobilized duty position slate for the Reserve personnel

DISCUSSION: It is extremely important for a deploying headquarters to identify whom they are taking forward and, consequently, what slots the supporting Reserve unit will have to fill. Because of timing, the Reserve unit may be attempting to serve multiple masters – the Corps already forward that the deploying Corps will replace, the deploying Corps once it goes forward, the deploying Corps at its home station, and possibly even the follow-on Corps forward.

RECOMMENDATION: It is difficult to organize and train around so many moving pieces. The goal should be to minimize surprises for the mobilizing judge advocates and paralegals. They should not arrive anticipating doing one job and having to do another. There is a requirement for some flexibility, but plan ahead and try to minimize the changes.[191]

ISSUE: Tasking by FRAGOs

DISCUSSION: Legal staff must become accustomed to tasking other units/personnel by using FRAGOs and not by email. In particular, if the BJA needs official assistance of a BCT unit, then the best means to accomplish that is by incorporating the needs into a FRAGO and have it approved/signed by the S3 or commander as required. As an official BCT tasking, the unit must respond and provide a remit back to the S3, who will then turn it over to the BJA. An added benefit is that the S3 staff will monitor for compliance and deadlines.

RECOMMENDATION: All legal staff must understand and be able to use FRAGOs to get things accomplished at the BCT and DIV levels.[192]

ISSUE: Warfighter exercise (WFX)

DISCUSSION: The unit conducted a three-week WFX. The brigade legal section used the WFX to demonstrate its operational relevance and integrate with the rest of the staff. In addition, the exercise validated their need for an increased legal staff and increased workspace within the brigade headquarters.

RECOMMENDATION: Sustain.[193]

ISSUE: Attending targeting meetings

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[190] *Id.*
[191] *Id.*
[192] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[193] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.

DISCUSSION: The BJA attended all targeting meetings. This allowed him to spot issues and ask the appropriate follow-up questions.

RECOMMENDATION: Sustain. Intra-staff relationships are crucial. Working with the other staff officers and finding creative solutions to problems made the BJA an effective and trusted staff member.[194]

ISSUE: Using operations channels for requirements

DISCUSSION: The BJA used FRAGOs through operational channels to ensure the brigade met its requirements.

RECOMMENDATION: Sustain. JAs need to utilize operational channels to ensure higher headquarters' requirements are met. Similarly, higher headquarters should send requirements via FRAGOs, not through an email JA to JA. Emailed requests are favors; FRAGOs are orders and help JAs get the operations chain to allocate the necessary resources.[195]

ISSUE: Establish a relationship with your predecessor

DISCUSSION: One of the best things you can do to prepare yourself is to establish a relationship with your predecessor as early as possible and communicate frequently.

RECOMMENDATION: Sustain. Try to get Secure Internet Protocol Router (SIPR) access so you can receive classified material from theater.[196]

ISSUE: Expect the unexpected

DISCUSSION: You can never fully prepare for your deployment. Something unexpected will always happen. This can range from taking detainees, something your predecessor unit might never have done, all the way down to the novel family problems your legal assistance clients will confront.

RECOMMENDATION: Do not let yourself be unbalanced by the unexpected. The unexpected is normal in the deployed environment. Talk and read as widely as you can. Get out of your office and on patrols, if you can, so you have a feel for the ground truth. Personal relationships and contacts are of the first importance. It is unlikely you will be the very first person to confront an unusual situation: speak to people about a new problem before you jump in with your own improvised solution.[197]

ISSUE: Importance of pre-deployment site survey (PDSS)

DISCUSSION: The battalion legal advisor used the PDSS to network with other JAs in theater.

RECOMMENDATION: Sustain. Early contact and the willingness to work with other JAs proved invaluable. PDSS was a great opportunity to meet the other JAs located in the SOTF's

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[194] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[195] *Id.*.
[196] 168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09, *supra* note 93.
[197] *Id.*

area of operation, establish connections, and ensure a smooth transition before arriving in theater.[198]

ISSUE: Deployed leader development programs

DISCUSSION: There is time to have a leader development program while deployed. In fact, it is crucial to avoiding the atrophying of core skills.

RECOMMENDATION: It would be helpful if TJAGLCS or OTJAG developed a recommended leader development program for deployed judge advocates. It could include 18 or so modules to get the office through six months, including the slides, handouts, scenarios, etc. Modules could include ethics, post-trial processing, equal opportunity, investigations, etc. Having this would increase the chances training would occur. The instruction should be at the Graduate Course level, and noncommissioned officers should also participate in the program.[199]

X.C.1. Army

ISSUE: Weapons training

DISCUSSION: JAs going "outside the wire" on RoL or other duties must be confident in their weapons handling skills and ability to properly react to any attack.

RECOMMENDATION: Sustain. JAs should take advantage of any weapons training and exercise opportunities to hone those skills.[200]

ISSUE: Warrior skills

DISCUSSION: The OSJA did not conduct many "warrior skills" training sessions as an entire office. The NCOs had a good mix of military occupational specialty (MOS) and warrior skills training.

RECOMMENDATION: Sustain. The amount of training received was sufficient based on the limited number of tactical situations encountered.[201]

ISSUE: Command Post of the Future (CPOF) training

DISCUSSION: The OSJA gave CPOF training to its attorneys and paralegals. It tailored the standard training so the participants could ask questions and seek clarifications during the course. CPOF training allowed personnel without prior experience to fill new roles during deployment. Without CPOF training, you lose flexibility as to whom you can assign to work in the command center. CPOF products find their way into investigations, operational law, and military justice actions. Even if you cannot fully operate CPOF, it helps to know what products available from it you may need to seek out.

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[198] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 94.
[199] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[200] *Id.*
[201] *Id.*

RECOMMENDATION: Sustain. Understanding CPOF's capabilities and products facilitates addressing many issues across a number of legal disciplines.[202]

ISSUE: Value of CPOF training for paralegals

DISCUSSION: CPOF training is valuable in both the Advanced and Senior Leaders' Courses. Everyone in the headquarters, paralegals included, has to have a basic understanding of CPOF. Paralegals would often use it to plot potential detainee release locations to determine within whose operational boundary the release would occur.

RECOMMENDATION: Train paralegals to at least a basic level of proficiency with CPOF.[203]

ISSUE: Mobilization training at the CONUS Replacement Center (CRC)

DISCUSSION: One of the OSJA's individual augmentees mobilized through the Fort Benning CRC. He found this weeklong process preferable to the several-month mobilization process reserve component units sometimes undergo.

RECOMMENDATION: Do the online training before arrival at CRC. Do not expect the CRC training to prepare you for all Soldier tasks. Seek out the warrior skills training at Camp Buehring, Kuwait.[204]

ISSUE: Demobilization at CRC

DISCUSSION: The reserve individual augmentees demobilized through the Fort Benning CRC. This was a five-day process (Sunday through Thursday). The cadre were not customer-service oriented and were not knowledgeable about the demobilization process.

RECOMMENDATION: Improve. Reservists should expect to encounter frustrations during the CRC demobilization process.[205]

ISSUE: Working with sister services

DISCUSSION: It is extremely helpful for sister services to learn how the Army operates. The reverse is also true. It definitely helps effectiveness for everyone to speak each other's language.

RECOMMENDATION: Make it a point to invite sister service personnel to spend a day or two at the Division level. Meeting the people with whom they are working and seeing what occurs at subordinate levels can pay huge dividends.[206]

ISSUE: Sister service attorneys lacked an understanding of how the Army operates

DISCUSSION: Judge advocates from other services should be required to understand the Army JA culture and Army terminology before deploying. If this is not feasible, then Army JAs should take it upon themselves to educate our brethren.

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[202] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] *Id.*

RECOMMENDATION: It is much easier to work together when everyone is speaking the same language.[207]

ISSUE: Soldier skills

DISCUSSION: Before deployment, the OSJA participated in the training it felt would best prepare its personnel for deployment. After arriving in Kuwait, all personnel attended all the required training.

RECOMMENDATION: Consider competing interests before deployment before requiring Soldiers to attend every training session. Some things can wait until you arrive in Kuwait.[208]

ISSUE: Continuing training in theater

DISCUSSION: The OSJA and Division staff continued training while deployed. Combat Lifesaver classes, driving and vehicle familiarization training, combatives classes, and Phase I of the Basic Noncommissioned Officers Course (BNCOC) were all available to Soldiers at Camp Liberty.

RECOMMENDATION: Sustain. If operational tempo permits, continue training in theater to prevent atrophy of important skills.[209]

ISSUE: Required training

DISCUSSION: The OSJA conducted quarterly unit required training. The NCOs conducted Sergeant's Time Training every other week, alternating warrior skills training, and JAG specific training.

RECOMMENDATION: Improve. Officer professional development training should occur with a focus on cross training and leadership.[210]

ISSUE: Basic Soldier skills training for mobilizing Reserve personnel

DISCUSSION: For those Reserve Soldiers who had deployed previously, the area in which they most desired training was basic Soldier skills. This includes training in weapons, convoy operations, combat lifesaver, etc. The training base told the LSO not to worry about these things, as they would get the training at the Fort Benning CONUS Replacement Center (CRC) during the mobilization process. The LSO pushed for and received the training at Fort Hunter-Liggett (FHL). The regional training center at FHL is a one-stop training facility that provides basic weapons training, combat lifesaver training, and warrior skills training for RC Soldiers that is timely, relevant, and theater specific. The training the LSO received in these areas was the most valuable in terms of building individual confidence for the deployment.

RECOMMENDATION: Sustain. Do not overlook the importance of training in Soldier skills. Every Soldier needs these skills. Training in them helps remove a great deal of the stress that

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[207] *Id.*
[208] *Id.*.
[209] *Id.*
[210] *Id.*

surrounds deployment. Additionally, do not rely upon the training conducted at the Ft. Benning CRC and instead look for other training opportunities such as those at FHL.[211]

ISSUE: Warrior training at the RTC

DISCUSSION: Civil Affairs and JAs operate "outside the wire." It is necessary for CA Soldiers and JAs to have strong warrior skills prior to deployment to Iraq. The basic refresher training on warrior skills such as weapons training and theater-specific training such as convoy training is essential for deploying reserve Soldiers. The pre-deployment training provided at the RTC was excellent, relevant, and timely.

RECOMMENDATION: Sustain.[212]

ISSUE: Judge Advocate Staff Officers Course (JATSOC)

DISCUSSION: The OpLaw attorneys found the JATSOC to be mediocre in providing training on basic staff functions to include the orders process and MDMP. This is largely because the JAs completed the training merely to fulfill a requirement. Additionally, the training focused on some areas that were irrelevant. Further instruction on MDMP and operational terms and graphics in the course would have been more helpful.

RECOMMENDATION: Improve. Young JAs should complete this training in advance of deployment in order to familiarize themselves with how to function effectively on a staff at the Brigade or Division level. Actually spend some time on the training rather than flying through the materials to check the block.[213]

ISSUE: Operational Law of War (OPLOW) course training on how to train ROE

DISCUSSION: Effective ROE training is not as easy as many inexperienced JAs may think. Throughout the deployment, it became clear to the Division OpLaw attorneys that training ROE was a skillset not possessed by all JAs. Some JAs with prior teaching and / or deployment experience were more effective trainers of ROE to their units, whereas some young JAs were poor trainers which was a disservice to their units.

RECOMMENDATION: Improve. Recommend that the OPLOW course contain a block of instruction on how to train ROE with practical exercises to test students' ability. This will give all JAs a foundation of knowledge prior to training their units on ROE.[214]

ISSUE: Practical exercise training during the Judge Advocate Officer Basic Course (JAOBC)

DISCUSSION: The majority of the program of instruction (POI) at the JAOBC focused on the law and regulation upon which we base our practice as military attorneys. Instructors spent only a small fraction of the course on practical application of the law in realistic situations. The Division OpLaw attorneys felt unprepared to apply their knowledge of the law and regulations to real world situations in a practical manner.

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[211] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[212] 492d CA BN OIF AAR JAN 09 - FEB 10, *supra* note 134.
[213] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 59.
[214] *Id.*

RECOMMENDATION: Improve. In an era of persistent conflict, JAs must be trained on basic staff interaction in routine matters such as detention operations or the planning process. Additionally, JAs should receive training on how to craft a concise legal opinion for a commander and how to brief a commander on that legal opinion. Just as vignette based training is effective for ROE, vignette based training for JAs in the JAOBC would be of great benefit. This training will make JAs more effective advocates on behalf of their command.[215]

ISSUE: Security Force Assistance (SFA)

DISCUSSION: SFA requires a thorough understanding of the "by, with and through" concept. This concept seeks initiatives that incorporate host-nation counterparts in order to build future capacity. An example was the embedding of a National Directorate of Security (NDS) prosecutor at the FOB Salerno FDS.

RECOMMENDATION: Improve. Incorporate SFA as part of a training curriculum for judge advocates and paralegals.[216]

ISSUE: Advanced Security Force Assistance (SFA) training

DISCUSSION: SFA requires a thorough understanding of the "by, with and through" concept. This concept in its infancy often requires "backstopping" and monitoring (together = accountability) of host-nation counterparts to ensure genuine capacity building. An example would be the use of U.S. intelligence to confirm host-nation targeting then observing host-nation counterparts in the post-capture process.

RECOMMENDATION: Develop SFA training institutionally and during PMT.[217]

ISSUE: RoL predeployment primer

DISCUSSION: There is a total lack of training for this mission set and the numerous intricacies of building capacity "by, with and through" host-nation counterparts. For example, one must possess cultural awareness but avoid cultural deference, *e.g.* bowing to a requirement for new Toyota trucks to ensure local prosecutors have freedom of movement, when reality would dictate a more discrete means of enabling freedom of movement.

RECOMMENDATION: Improve. Develop training and education from a practitioners' standpoint not from a paradigm standpoint.[218]

X.C.1.a. Annexes

ISSUE: Drafting a legal annex

[215] *Id.*
[216] *Id.*
[217] *Id.*
[218] *Id.*

DISCUSSION: The BJA published a legal annex to the BCT operations order (OPORD) before transfer of authority (TOA). The Judge Advocate Graduate Course did not cover preparation of a legal annex or MDMP.

RECOMMENDATION: Improve. BJAs should prepare robust legal annexes before deployment and refine them as necessary once on the ground. The JAG Corps should increase institutional awareness of the importance and usefulness of these products, identify high quality examples, and disseminate them to the field.[219]

X.C.1.b. Field Standing Operating Procedures

ISSUE: Prevention of negligent discharges

DISCUSSION: During initial mobilization training, Soldiers carried their weapons loaded with blank ammunition as familiarization. However, commanders stopped this practice because of the number of blank-firing negligent discharges. Since troops no longer had the familiarization training, they brought their bad habits into theater. Almost all of the negligent discharges occurred at clearing barrels. The Brigade imposed mandatory training on clearing barrel procedures. After the training occurred, the command warned Soldiers any subsequent negligent discharges might result in an Article 15. Imposing Article 15s for negligent discharges dramatically reduced their frequency.

RECOMMENDATION: Sustain. Initiate weapons-clearing training before the first negligent discharge.[220]

ISSUE: Lack of a formal relief-in-place/transfer of authority (RIP/TOA) process

DISCUSSION: The 1-1 CAV BCT assumed the battle space 3d BCT, 4th Infantry Division (3/4 ID) previously occupied. However, 3/4 ID had departed before 1-1 CAV arrived in country, and thus there was no formal RIP/TOA process. 3d BCT, 82d Airborne Division assumed responsibility for this AO in the interim period, but had not established any headquarters at JSS War Eagle.

RECOMMENDATION: Improve. If the outgoing unit must depart an AO before the arrival of the incoming unit, the division headquarters should step in as a conduit for all of the information normally passed during the RIP/TOA process.[221]

ISSUE: Handling of classified material

DISCUSSION: Classified or otherwise sensitive papers ended up in the wrong garbage receptacle despite clear direction as to proper disposal.

RECOMMENDATION: Improve. Implement specific procedures for the handling and disposal of classified and sensitive material and monitor adherence. Conduct retraining as necessary.[222]

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[219] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.
[220] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 17.
[221] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 7.
[222] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.

ISSUE: Reacting to enemy attack

DISCUSSION: Each building had a battle drill for an enemy attack, and accountability was the top priority during and after the exercise.

RECOMMENDATION: Sustain. The OSJA only had one battle drill exercise.[223]

ISSUE: JA presence in the Combat Operations Center (COC)

DISCUSSION: Under the Tactical Directive, many times JAs had to give a "legal thumbs up" before the unit would engage certain targets, even in a troops in contact (TIC) situation. As a result, the RJA spent a huge part of the day in the COC and made sure there was someone from the RCT-3 JAs office in the COC at least 20-hours per day. At all times a JA had to be available to the commander and operations officer.

RECOMMENDATION: Sustain.[224]

ISSUE: Transfer of knowledge outside the SOPs

DISCUSSION: The finer details of the operations that were not in the SOPs or desk guides require face to face relaying. To assist with the transition, the incoming unit needs to know the little details known and taken for granted by the outgoing unit.

RECOMMENDATION: Improve. The time the two units have together is important because you can pass along all the nuances of the mission/operation and how the unit does things that are not in the SOPs.[225]

X.C.1.c. MDMP

ISSUE: Brigade judge advocate (BJA) in the MDMP process

DISCUSSION: The location of the BJA's office next to the operations officer (S3) in the brigade headquarters played a critical role during the MDMP process. The legal assistance attorney, trial counsel, and paralegals were located in another building (the administration/logistics operation center (ALOC)).

RECOMMENDATION: Improve. At times, the BJA's involvement in the MDMP process almost seemed accidental. However, the location of his office played a critical role and increased his presence. If possible, before predeployment site survey (PDSS) visits, suggest to the operations officers (and others) to collocate the BJA near the operations cell.[226]

ISSUE: Shortage of personnel to cover working groups

[223] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[224] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 55.
[225] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[226] 4th CAB OIF AAR, JUN 08 - JUN 09, *supra* note 45.

DISCUSSION: The BCT JAs aspired to attend as many working groups as possible early in the process to establish relationships. As there were more demands than resources available, however, JAs focused on covering key meetings and key working groups.

RECOMMENDATION: Sustain.[227]

ISSUE: Know the MDMP

DISCUSSION: Writing operation orders (OPORDs) and FRAGOs will consume large amounts of your time. Everything that matters in theater comes out via OPORD or FRAGO. Commanders expect you to know how to read and write these orders.

RECOMMENDATION: Complete the Judge Advocate Staff Officers Course (JATSOC) before deploying. Liaise early and often with the brigade S-3. Proficiency in the MDMP affords you instant credibility with other staff officers and your commander.[228]

ISSUE: Training in MDMP

DISCUSSION: JAs need training in MDMP. Understanding the process is critical when working at the brigade level.

RECOMMENDATION: Note.[229]

ISSUE: Familiarization with MDMP

DISCUSSION: Staff officers must have an understanding of MDMP.

RECOMMENDATION: The JAG Corps must incorporate MDMP into its Officer Basic Course (OBC) curriculum. The non-commissioned officer's academy should also teach MDMP.[230]

ISSUE: Authorities Operational Planning Team (OPT)

DISCUSSION: In preparation for the transition to USF-I, MNF-I initiated an Operational Planning Team (OPT) in July 2009. A sub-OPT first addressed the legal and command authorities the new command would have, for these would, in turn, drive planning for logistics and command and control relationships. The Authorities OPT, headed by a Coast Guard O-4 JA, consisted of all JAs, with the exception of one infantry O-6. Operating under the MNF-I commander's guidance to not have any "shadow staffs" as legacies of the previous organizational structure, the OPT considered such issues as UCMJ authority, whether there would be an Army Forces (ARFOR) commander, awards authority, etc. The questions the OPT posed to the MNSTC-I OSJA were ISFF authority, security assistance authority, and NATO command authority.

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[227] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 15.
[228] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 16.
[229] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 18.
[230] 159th Combat Aviation Brigade, 101st Airborne Division (Air Assault), Brigade Judge Advocate OEF After Action Report, 5 November 2009, Deployed December 2008 – December 2009, Bagram Airfield, Afghanistan (hereinafter "159th CAB, OEF AAR, DEC 08 - DEC 09"; on file at CLAMO).

RECOMMENDATION: Sustain/Improve. The Authorities OPT was very successful. In retrospect, however, the MNSTC-I OSJA would have used the OPT as a forum to voice its opinion as to how to deal with authorities the MNSTC-I commander might lose in becoming the Deputy Commanding General for Advising and Training (DCG, A&T), such as nonjudicial punishment, awards, coins, and Official Representation Funds (ORF). The OSJA has expended significant person-hours trying to resolve these issues since the OPT. See Sections III (Contract & Fiscal Law) and VIII (Multinational Operations) for discussions of the transition of security assistance authority and ISFF authority, and NATO command authority, respectively.[231]

ISSUE: Review of OPORDs and FRAGOs

DISCUSSION: Both MNF-I and MNSTC-I staffed and disseminated new operations order (OPORDs) and fragmentary orders (FRAGOs) via the Task Management Tool (TMT). The TMT system sent notifications to the chief of operational law (OpLaw) when there were new FRAGOs for review. The OpLaw JA notified the DSJA whenever there were legal tasks and when he had legal concerns with a particular order.

RECOMMENDATION: Sustain. However, do not rely on a system like TMT to notify you by email of the existence of new FRAGOs. Rather, log in to TMT daily.[232]

ISSUE: Searching FRAGOs

DISCUSSION: Although prior MNSTC-I JAs downloaded pertinent OPORDs and FRAGOs and saved them on the OSJA shared drive, it was sometimes difficult to determine which FRAGOs were still current and which were superseded. When searching for FRAGOs, it was difficult to determine how many FRAGOs existed pertaining to a particular subject. When he was unsure as to the current state of the "law," the OpLaw attorney contacted MNF-I or MNC-I as appropriate.

RECOMMENDATION: Improve. Each headquarters should improve its document management by having a one-stop location where it posts all FRAGOs relevant to a particular subject. Databases cataloging FRAGOs should be searchable by term.[233]

ISSUE: Integration of the OpLaw JA into the planning cells

DISCUSSION: MNSTC-I essentially had three separate planning cells. In addition to the traditional plans cell of the J3/5 section, there was a Commanding General's Initiatives Group (CIG), which focused on the commander's initiatives which involved multiple MNSTC-I directorates, and the Partnership Strategy Group – Iraq (PSG-I), which focused on strategic, long term planning for the U.S.-Iraq security partnership for 2012 and beyond. The OpLaw JA was not tied in strongly with the J3/5 plans cell, and did not deal with the CIG or PSG-I at all.

RECOMMENDATION: Improve. The OpLaw JA must effectively integrate into all pertinent plans cells. The OpLaw JA should attend every Battle Update Assessment (BUA) for situational awareness, and establish a regular presence on the joint operations center (JOC) floor. In addition, the OpLaw JA should attend enough working group meetings to spot legal issues at

[231] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.
[232] *Id.*
[233] *Id.*

early stages of the planning process and so the planners know who he is and are comfortable with his legal advice.[234]

ISSUE: Operations order (OPORD) briefing

DISCUSSION: The SJA gave a briefing of the Division OPORD to JAs prior to deployment. At the briefing, he identified responsibilities and requirements for the OSJA and also laid out expectations for the office while deployed.

RECOMMENDATION: Sustain. That briefing set the tone for the arrival of the OSJA in theater and operations throughout the deployment.[235]

ISSUE: Training on MDMP, operational planning, and FRAGOs

DISCUSSION: Since the Division had several CPT JAs and paralegals with no previous operational experience, the SJA conducted operational planning and Military Decision Making Process (MDMP) training. Operational planning is complex and requires repeated exposure. On the job training and exercises with mentors is the best means to grasp operational planning steps and products. JAs and paralegals may have to assist or take the lead in writing FRAGOs for operational law, military justice, or even RoL tasks. Commanders and G3 operations staff value a legal staff that writes FRAGOs and contributes knowledgably in MDMP.

RECOMMENDATION: Improve. JAs should take advantage of any training opportunities on operational planning and FRAGO preparation during the pre-deployment phase. It makes it easier for you to get the command's attention when you speak the command's language.[236]

ISSUE: Working group demands for legal support

DISCUSSION: The 25 ID G3 created working groups to deal with main lines of effort. The three working groups created dealt with economics, governance, and security. The G3 wanted dedicated and full time legal staff support for all of these working groups. The MTOE did not have the JA/paralegal positions to accommodate such allocations. At best, the OSJA could only provide JAs/paralegals on a part time basis to the working groups. There was no question that the working groups were important and helped focus Division planning objectives. The demand for an attorney in the governance working group was so great that the CA unit lent its attorney (a reservist that did not work for the SJA) to assist on a full time basis.

RECOMMENDATION: Splitting off JAs and paralegals was the best possible solution given the MTOE shortfalls. This allowed the legal staff to make meaningful contributions, maintain situational awareness on the working groups and also influence and help shape plans. In the current decentralized environment, the Army will devise solutions that will tax JAG personnel beyond what they typically do.[237]

ISSUE: Maintaining a 24-hour legal presence in the Division Operations Center (DOC)

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[234] *Id.*
[235] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[236] *Id.*
[237] *Id.*

DISCUSSION: Although there is not always a lot of work, there is always something to do.

RECOMMENDATION: Sustain. Having a JA assigned to the DOC floor plays two important roles: 1) it obviates the delay inherent in trying to back-brief a JA who has not seen the issue come together; and 2) it provides the OSJA instant credibility with other staff sections that provide a 24-hour watch as well.[238]

ISSUE: Understanding the roles of the personnel on the DOC floor

DISCUSSION: If assigned to the DOC floor, take time to understand who the key players are and how their roles intersect. Understand your role in the decision making process.

RECOMMENDATION: It is easier to review a mission when you understand the perspectives of the people who put it together.[239]

ISSUE: Staff interaction in the Division Operations Center (DOC)

DISCUSSION: Some staff sections actively sought out legal input. They would bring issues to the OSJA long before the OSJA would hear of it through other means. Attorneys actually sat in the G5 section, greatly increasing coordination. Some sections, though, seemed to shut themselves off from the rest of the staff. This meant the OSJA would hear of problems almost too late to fix them.

RECOMMENDATION: Integrate yourself with all the staff sections as much as you can. Early issue spotting is essential to smooth staff operations.[240]

ISSUE: The use of fragmentary orders (FRAGOs)

DISCUSSION: While the relationship between the brigades and Division was amicable, when something needed accomplishment without fail, Division issued a FRAGO. FRAGOs serve multiple purposes to include providing a documented and tracked order to the brigades and providing "top cover" to junior captain section chiefs when tasking brigades with unpopular requirements. It can also help brigade legal sections in gaining compliance on matters requiring actions by other sections within the brigade.

RECOMMENDATION: Understand the times and places to issue a FRAGO.[241]

ISSUE: MDMP training

DISCUSSION: It is difficult for an attorney untrained in the Military Decision-Making Process (MDMP) to participate effectively in brigade-level staff work.

RECOMMENDATION: All attorneys who are going to work in a brigade headquarters should receive training in the MDMP process.[242]

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[238] *Id.*
[239] *Id.*
[240] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[241] *Id.*
[242] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 163.

ISSUE: Working knowledge of MDMP

DISCUSSION: The Army's Intermediate-Level Education (ILE) program helped familiarize the SJA with MDMP.

RECOMMENDATION: Sustain. SJAs are critical staff officers who must have a working knowledge of MDMP.[243]

ISSUE: Establishing a relationship with the J3 (operations) and J5 (planning)

DISCUSSION: The SJA established a close working relationship with the J3 and J5. This allowed the SJA to be involved early in the decision making process and resolve any potential legal issues before they became a problem.

RECOMMENDATION: Sustain. In an operational environment, it is critical for the SJA to have a close working relationship with the J3 and J5. It is also important for reserve JAs to have a chance to work with and learn from the J3 and J5 before deploying.[244]

ISSUE: Learn the MDMP process

DISCUSSION: The legal advisor educated himself on the MDMP and took a proactive role in all discussions. This helped boost his credibility with other members of the staff and allowed him to communicate legal issues in an operational language.

RECOMMENDATION: Sustain. The JAG Corps should develop training that will expose junior judge advocates to MDMP.[245]

ISSUE: Lack of training in staff processes

DISCUSSION: At the Corps level, even junior judge advocates will work with officers educated at the Command and General Staff College level and above. They will interact directly in the unit's boards, cells, and working groups. Very senior members of the command participate in these meetings. We are asking our young attorneys to function in this environment well before they get to a similar level of education and training in their own career.

RECOMMENDATION: There needs to be some training or familiarization, perhaps through Joint Forces Command or elsewhere, on how a staff works. The focus should be, "You are going to a Corps, and here's what you need to know about how the staff works at that level." Generic training on simplified staff processes do not convey the interconnectedness and complexity of how all the pieces fit together.[246]

ISSUE: Predeployment training on MDMP

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[243] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 114.
[244] *Id.*
[245] 3rd Battalion, 3rd Special Forces Group (Airborne), Special Operations Task Force Legal Advisor OEF After Action Report, 03 June 2010, Deployed January 2010 – May 2010, Bagram Airfield, Afghanistan (hereinafter "3/3 SFG(A), OEF AAR, JAN 10 - MAY 10"; on file at CLAMO).
[246] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.

DISCUSSION: Prior to deploying, one of the OpLaw attorneys trained on MDMP. This knowledge was critical for the attorneys to function as members of the Division planning cell. During the deployment, the planning cell did not conduct MDMP precisely according to doctrine, instead using an abbreviated process. However, it was still important for the OpLaw attorneys to know the basic steps of MDMP, the products required for staff input such as quad charts, as well as the attorney's roll in the planning process. The importance of this knowledge became clear when the fiscal law attorneys had to participate in MDMP and were lost due to their lack of training on the process.

RECOMMENDATION: Sustain. Attorneys operating at Division level must understand the basics of MDMP. Studying FM 5-0, The Operations Process, and FM 1-02, Operational Terms and Graphics, prior to deployment is critical. Knowing the doctrine will build attorneys' credibility as part of the staff and make the attorneys value added to the command.[247]

ISSUE: Learning the MDMP process adds credibility

DISCUSSION: Understanding the military operational process is imperative for it allows the legal advisor to build trust and rapport with fellow staff officers facilitating battlestaff integration.

RECOMMENDATION: As a legal advisor, view yourself more as battlestaff rather than special staff or personal staff.[248]

ISSUE: Metrics

DISCUSSION: It is critical to understand the difference between metrics that appear subjective but are crucial to building capacity and metrics that appear objective but are secondary in nature. For example, a critical metric in ROLOPS that would appear subjective would be assessing case load with processing time, with verdicts and sentences while a secondary metric that would appear objective would be building a courthouse structure or buying computer systems.

RECOMMENDATION: Improve. Get beyond the "metric culture" that objective metrics are more important/realistic than subjective metrics. In COIN, subjective metrics are much more important than the objective metrics.[249]

ISSUE: System of systems

DISCUSSION: When RoL focuses on "courts, cops and corrections," it is important to understand and envision all the requisite parts to the system to develop a concept and derivative initiative, *e.g.* entire picture approach = design. For example, when increasing investigatory capacity, one must envision the requirement for freedom of movement and freedom of action. Just having investigatory training without the means of conducting a criminal investigation in a non-permissive / semi-permissive operating environment is doomed to repeated challenges.

RECOMMENDATION: During PMT, seek out mission command materials in order to understand the concept of design. Couple this understanding with a "soup to nuts" approach during planning phases to set conditions for success during operationalization.[250]

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[247] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 59.
[248] *Id.*
[249] *Id.*

X.C.1.d. Office Mission Essential Task List

ISSUE: Brigade legal section mission statement

DISCUSSION: The brigade legal section's stated mission was as follows: "Provide legal advice and services to commanders and staffs at all levels across the full spectrum of operations, including international and operational law, rule of law, intelligence law, contract and fiscal law, claims, military justice, administrative law, investigations, legal assistance, Security Agreement and implementation, detainees, warrant based targeting, lethal targeting, information operations, PSYOP, contractor issues, and create and OIC the prosecution task force. Ensure all actions are properly tracked and analysis relevant to operations is provided and disseminated."

RECOMMENDATION: Sustain. It was important to have the mission statement from the beginning because it oriented and focused the legal section on what it had to be prepared to do. It also ensured the legal section would be operationally relevant within the brigade.[251]

ISSUE: Use of METL

DISCUSSION: Checklists and spreadsheets provide an invaluable framework for legal advice at BCT level.

RECOMMENDATION: Sustain.[252]

ISSUE: Unfamiliar mission set

DISCUSSION: The unit was comfortable immediately with core JAG competencies—military justice, legal assistance, etc. However, the unit was not as comfortable with other things, such as the RoL mission.

RECOMMENDATION: Contact your predecessor by email as early as you can. You have to be proactive in determining exactly what your mission set will include so you can train in those areas that may not be as familiar.[253]

ISSUE: Drafting fragmentary orders (FRAGOs)

DISCUSSION: The RoL team drafted numerous FRAGOs regarding training and reporting requirements. JAs must be able to draft FRAGOs in a timely and professional manner.

RECOMMENDATION: The Judge Advocate Officer Basic Course (JAOBC) should provide a block of instruction on drafting FRAGOs. JAs without such experience should seek assistance in learning how to draft FRAGOs before deploying.[254]

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[250] *Id.*
[251] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.
[252] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 18.
[253] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 21.
[254] Rule of Law Section, Combined Joint Task Force – 82, Individual Augmentee OEF After Action Report, 18 February 2010, Deployed October 2009 – January 2010, Bagram Airfield, Afghanistan

ISSUE: Weekly enlisted training on the rear detachment

DISCUSSION: The noncommissioned officers (NCOs) conducted Sergeant's Time training weekly. The topics focused on cross training personnel to cover other sections when someone was out. They also trained on warrior skills.

RECOMMENDATION: Sustain. The training proved valuable when Soldiers had to move from one section to another during the mobilization.[255]

ISSUE: Officer professional development (OPD) on the rear detachment

DISCUSSION: The officers conducted a monthly OPD focused on cross training personnel and on leadership. The entire office also conducted training on West Law and courtroom software.

RECOMMENDATION: Sustain. All officers benefit from learning other jobs within the OSJA.[256]

X.C.2. Combat Training Centers

ISSUE: Take everyone to the Combat Training Center (CTC)

DISCUSSION: Some BJAs and NCOIC paralegals may be tempted to leave one or more staff back in garrison to deal with ongoing issues when the BCT travels to the CTC for training. BJAs and NCOIC should resist this temptation since the ones left back will lose a valuable training opportunity and miss building relations with operators. The opportunities for dedicated and uninterrupted training are rare, so the legal team should take full advantage of it.

RECOMMENDATION: Take the entire legal staff on CTC training rotations.[257]

ISSUE: Too much focus on garrison related legal tasks at the CTC

DISCUSSION: One critique of the CTC training was that it contained too many scenarios encountered while in garrison, such as 15-6 investigations and FLIPLs. Additionally, there was a complete absence of rule of law (RoL) training. One of the CTC instructors pointed out that the BJA should call the CTC in advance and let them know what sort of training they are interested in receiving. As well, there are planning conferences in advance where the BCT training team tables those type of legal inject scenarios with the CTCs. CTCs can amend training to fit the needs of the deploying unit.

RECOMMENDATION: BJAs have the option of contacting CTCs in advance of their scheduled dates to amend and shape training requirements. The CTC staff will try to accommodate those inputs as much as is possible.[258]

(hereinafter "Individual Augmentee, CJTF-82 RoL Section, OEF AAR, OCT09-JAN10"; on file at CLAMO).

[255] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.

[256] *Id.*

[257] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.

[258] *Id.*

ISSUE: Limitations on CTC training

DISCUSSION: Training at the CTC is sometimes compressed and artificial due to the lack of time and the ability to simulate conditions in the field. Accordingly, some of the training scenarios are not truly reflective of reality and can be hard to complete from start to finish. The staff at the CTC does the best job it can in the circumstances. One CTC representative remarked that BJAs and NCOICs are more than welcome to attend CTC pre-planning conferences or to make training wishes known in advance, so changes to the CTC proposed training Master Scenario Events List (MSELs) injects are possible. It is easy to amend the MSELs to include more or less training on legal issues such as rule of law (RoL), claims operations, or kinetic targeting. Let the planning conference attendee from the BCT know of training desires so the legal CTC staff can develop plans to accommodate.

RECOMMENDATION: CTC training is only as good as the BCT's planning staff coordinates ahead of time. BJAs and senior NCOICs should link up with planning conference representatives to develop training plan requests for CTC to incorporate.[259]

ISSUE: Mission rehearsal exercises (MRXs)

DISCUSSION: The BCT participated in a field problem at Pinion Canyon, Fort Carson ranges, and a rotation at the National Training Center (NTC). All of these exercises were kinetic in focus.

RECOMMENDATION: Improve. Increase civil affairs and nation-building tasks in MRXs.[260]

ISSUE: Legal observer/controllers (O/Cs) for staff exercise (STAFFEX) and mission rehearsal exercise (MRX)

DISCUSSION: There were no JAs with DetOps experience available to serve as O/Cs for the 75th Division to provide guidance to the CJA section during the training exercises. The absence of O/Cs with DetOps experience limited the effectiveness of the training.

RECOMMENDATION: JA O/Cs must have access to relevant experience if pre-deployment training is to be relevant and effective.[261]

ISSUE: STAFFEX and MRX legal scenarios

DISCUSSION: The legal scenarios provided by 75th Division did not capture the broad spectrum of legal issues confronting the 11th MP BDE CJA office in theater. The 75th Division scenarios only covered discipline and investigations. The failure to present the full range of legal issues limited the value of the training.

RECOMMENDATION: Experienced JAs should prepare scenarios and supervise the play of scenarios to ensure the O/Cs respond appropriately to the CJA section's handling of scenarios. Scenarios should include fiscal law.[262]

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[259] *Id.*
[260] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 2.
[261] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 17.
[262] *Id.*

ISSUE: Training RoL attorneys to have an in depth understanding of the Iraqi Criminal Procedure Code (ICPC)

DISCUSSION: In the post Security Agreement environment, Iraqi courts are beginning to apply their procedures strictly. Further, branch offices of the Central Criminal Court of Iraq (CCCI) are closing, requiring bringing cases into local Iraqi courts. As a result, BCT JAs need better pre-deployment training related to the procedures used by the Iraqi courts. Although the substantive criminal law is similar to the United States, the procedural code is alien to most American attorneys, to include those assigned to the PRTs. This lack of understanding of procedural rules has an impact on the ability of the BCT to support Iraqi prosecutions in cases of interest to U.S. commanders.

RECOMMENDATION: Improve. Although time for additional pre-deployment training is at a premium, the Combat Training Centers (CTCs) could do two things that could help better prepare JAs deploying to Iraq whom the unit may call upon to support these activities. First, the training injects need to be realistic and accurately replicate the procedures used by Iraqi courts. Second, JA observer/controllers (O/Cs) assigned to the CTCs should be trained in Iraqi procedures so JAs could attend a block of classroom-type instruction on Iraqi criminal procedures led by the O/C.[263]

ISSUE: Cross-training during mission rehearsal exercises (MRXs)

DISCUSSION: The division OSJA conducted two command post exercises (CPXs) and its MRX at Fort Lewis. However, because the JAs and paralegals were still learning their individual jobs and responsibilities, they were not prepared to cover down on other subject areas during these exercises when necessary due to absences of other personnel. For example, operational law (OpLaw) personnel needed to spot fiscal issues and incidents requiring investigations during the normal course of operations. Administrative law attorneys need to be able to be able to answer OpLaw questions in the Division Operations Center (DOC).

RECOMMENDATION: Improve. Cross-train your personnel in all of the core legal disciplines. Conduct Officer Professional Development (OPD) before the MRX, and continue it throughout the deployment.[264]

ISSUE: Mission Rehearsal Exercise (MRX)

DISCUSSION: The unit was not able to fully realize the goals for the JAs and paralegals for the MRX due to compressed nature of Master Event Scenario List (MESL) injects and the limited realism of the Tactical Operations Center (TOC) setting.

RECOMMENDATION: Improve. MRX exercises are one predeployment training opportunity. Supplemental, internal training of JAs and paralegals is necessary to fill in the staff and process gaps missed during MRX.[265]

ISSUE: Fiscal law injects during the MRX

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[263] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.
[264] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.
[265] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.

DISCUSSION: The Division OSJA participated in a two-week MRX. During this exercise, there were only three or four fiscal law injects.

RECOMMENDATION: Improve. In order to replicate better the sheer volume of fiscal issues in the deployed environment, MRXs should include more fiscal law injects. These should go beyond the basics and into issues that are more complex.[266]

ISSUE: Military justice injects at the MRX

DISCUSSION: There was one "civilian misconduct" inject at the MRX. It was valuable but it was not enough.

RECOMMENDATION: Adding scenarios on trial logistics, determining jurisdiction, and creating provisional units would provide valuable training to deploying military justice practitioners.[267]

ISSUE: Lack of CTC training opportunities

DISCUSSION: The SJA deployed three times in two years and never attended a combat training center (CTC).

RECOMMENDATION: Improve. The JAG Corps must do a better job of identifying people who are deploying and providing them with training opportunities.[268]

X.C.2.a. Battle Command Training Program (BCTP)

ISSUE: Need to integrate new personnel before training exercises

DISCUSSION: The BCTP training was fine. However, the operational law attorney took over the job the day the exercise started. It does not inspire the staff's confidence in your abilities to see you in that environment on your very first day.

RECOMMENDATION: Improve. Move personnel to their deployed jobs in time for them to get some experience and familiarity with the staff before going into a major training exercise.[269]

ISSUE: Integration before and during the Mission Rehearsal Exercise (MRX)

DISCUSSION: The OSJA made it a point to integrate with key staff elements before and during the MRX. This decision developed trust and synergy between the OSJA and the other sections. This integration resulted in mutual support and timely communication during deployment.

RECOMMENDATION: Take the time to identify key players early in the pre-deployment stages. Liaison with them and develop a rapport. This will pay dividends in theater.[270]

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[266] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[267] *Id.*
[268] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 114.
[269] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[270] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.

ISSUE: Setting the team before the MRX

DISCUSSION: The MRX was not a realistic event. The military justice section did not participate in the exercise. The OSJA was not set up for the MRX as it was for the deployment.

RECOMMENDATION: Train as a complete team to get everyone a look at the operational battle rhythm and to cross train. Clearly defining assignments to legal sections before the MRX allows paralegals to prepare and train with their attorneys and focus on learning their mission set. Increase the number of MRX injects that focus on paralegal skills and responsibilities.[271]

ISSUE: Lack of paralegal issues in the mission rehearsal exercise (MRX)

DISCUSSION: The MRX focused very much on the attorneys. There was very little play for the paralegals.

RECOMMENDATION: Place more paralegal injects into the exercise.[272]

ISSUE: Decrease in MRX usefulness during the second week

DISCUSSION: The first week of the MRX was a moderately effective exercise for the Division attorneys. By the second week, however, the attention was almost exclusively on the Corps level. Consequently, the Division level hardly received any injects the second week.

RECOMMENDATION: Keep the exercise injects at a moderate level throughout for all levels, rather than focusing on one level or another.[273]

ISSUE: Lack of detainee operations training at the MRX

DISCUSSION: The MRX does not have an adequate structure in which to train detention operations.

RECOMMENDATION: None. Be prepared to learn the details in theater.[274]

ISSUE: Mission Rehearsal Exercise (MRX) legal training

DISCUSSION: Unfortunately, there were no specific legal scenarios (for training JAs specifically) during the MRX. All legal scenarios were secondary to other injects for brigade training purposes. Furthermore, there was no specific Battle Command Training Program (BCTP) legal advisor on site to help JA. Nonetheless, the BfSB JA was able to rectify this shortcoming to some extent by meeting with attorneys from MNC-I who visited the exercise.

RECOMMENDATION: Whenever possible, MRXs should contain legal scenarios. These will exercise the legal component of the brigade and familiarize the remainder of the brigade

[271] *Id.*
[272] *Id.*
[273] *Id.*
[274] *Id.*

headquarters with the role of the legal team. Use any opportunities available to make personal contacts, which will help you down range.[275]

ISSUE: BCTP and Joint Forces Command (JFCOM) MRX

DISCUSSION: BCTP did a great job conducting the MRX. They were knowledgeable and responsive. The JFCOM representatives were less mission-focused.

RECOMMENDATION: Improve. BCTP did a great job, but if JFCOM wants to assist in the conduct of MRXs, its personnel should be more knowledgeable.[276]

ISSUE: Detainee transfer request (DTR) training during the MRX

DISCUSSION: The Battle Command Training Program (BCTP) mission rehearsal exercise (MRX) was good in explaining the detainee operations process but lacked the details of explaining the practical day-to-day processes which would assist in staff integration.

RECOMMENDATION: Improve. The BCTP MRX should incorporate more detailed training / explanation of detention operations across staff sections for the specific theater.[277]

ISSUE: Predeployment training on RoL

DISCUSSION: The division staff did not train on the RoL mission prior to deployment. Therefore, it relied upon lessons learned by the outgoing unit and institutional experience.

RECOMMENDATION: Improve. The Army needs to develop a predeployment training program for RoL. This training program must cover all affected personnel, from the small unit leaders to the relevant division staff sections. Lack of a training plan causes inconsistency in approaches overseas and wasted time.[278]

X.C.2.b. Joint Multinational Readiness Center (JMRC)

ISSUE: Presence of the JMRC observer/controller (O/C) at Camp Atterbury

DISCUSSION: The training provided on the legal basis for operations, notes of understanding, and standard Geneva Conventions was very good. The JMRC O/C seems to be the active component's expert on training for the Kosovo mission. She reached out early to the unit and it paid great dividends.

RECOMMENDATION: Sustain this effort. While the non-active components have largely assumed the Kosovo mission, it remains important to have someone on the active side providing the continuing training expertise for this ongoing mission.[279]

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[275] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 163.
[276] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 59.
[277] *Id.*
[278] *Id.*
[279] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 253.

X.C.2.c. Joint Readiness Training Center (JRTC)

ISSUE: Helpful in understanding CONOP approval process

DISCUSSION: The legal advisor did not have any previous deployment experience. As such, the unit's time at JRTC helped him understand the CONOP approval process.

RECOMMENDATION: Sustain. Legal advisors should utilize JRTC to get comfortable with the processes and procedures they will utilize downrange.[280]

ISSUE: Absence of observer controller (OC) at JRTC

DISCUSSION: No OC came to see the SOTF legal advisor at JRTC.

RECOMMENDATION: Improve. OCs should visit SOTF legal advisors participating in JRTC exercises.[281]

ISSUE: Establishing connections with replacing unit

DISCUSSION: The BJA spent two days at JRTC during the replacing unit's rotation. The observer controllers (O/Cs) appreciated the timely information, while the replacing unit's legal section appreciated the opportunity to ask questions during its exercise.

RECOMMENDATION: Sustain. If possible, the BJA should take TDY in conjunction with his R&R leave to attend the incoming unit's rotation.[282]

ISSUE: Connectivity at JRTC

DISCUSSION: During its JRTC rotation, the brigade legal section had only one NIPR and one SIPR computer system. In addition, the legal office had little phone connectivity with the paralegals at outlying battalions. This made it difficult to communicate and perform routine functions, such as processing Article 15s and appointing investigating officers (IOs).

RECOMMENDATION: Improve. In order to get the most out of the training, units should ensure they bring sufficient NIPR and SIPR computers to JRTC. However, it was beneficial to determine during the JRTC rotation what would be the minimum equipment requirements in theater.[283]

ISSUE: Quality of training

DISCUSSION: JRTC provided great training. The legal serials were sound and informed by downrange experience. The exercise tempo was unrealistically high, but this was good for training.

RECOMMENDATION: Sustain.[284]

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[280] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 66.
[281] *Id.*
[282] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 15.
[283] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.
[284] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 18.

ISSUE: Shortened time to complete investigations at JRTC

DISCUSSION: The limited time the brigade spent in the box made it nearly impossible for IOs to complete investigations or the unit to fully train other systems.

RECOMMENDATION: Improve. Extend the brigade's time in the box to allow more things to come to fruition. At the very least, limit the number of investigations required so IOs can complete the investigations they do have.[285]

X.C.2.d. National Training Center (NTC)

ISSUE: Training opportunity

DISCUSSION: NTC gave the unit a chance to train together in an operational environment, away from the garrison mission. In addition, it provided an opportunity for the staff to gel.

RECOMMENDATION: Sustain.[286]

ISSUE: Article 5 tribunal training at NTC

DISCUSSION: Although the BCT did not conduct any Article 5 tribunals in theater, the training at NTC gave the paralegals good practice for setting up as recorders for commanders' conferences and for the BCT's "judge runs."

RECOMMENDATION: Improve. Perhaps replace the Article 5 tribunals with "judge runs" or an Iraqi trial exercise.[287]

ISSUE: Lack of training on project procedures

DISCUSSION: There was no mechanism in the NTC scenario to force the BCT to go through the correct procedures for approving projects. In order to make the process work at NTC, the BJA had to perform many steps he would not personally conduct in theater.

RECOMMENDATION: Improve. The training centers should place emphasis on the process rather than simply on spending money. The BCT needs to realize early the importance of establishing a JPMO or at least identifying PPOs and PAs, so that the BCT JA is not the only staff officer concerned and responsible for those duties.[288]

ISSUE: Training on detainee releases

DISCUSSION: The unit's rotation at NTC did not include training on how to conduct detainee releases.

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[285] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[286] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 1.
[287] *Id.*
[288] *Id.*

RECOMMENDATION: Improve. The CTCs should train units on how to coordinate with the local government to facilitate detainee releases. In general, the CTCs need to focus less on kinetic operations and more on stability operations.[289]

ISSUE: Lack of rule of law training

DISCUSSION: NTC did not provide any interaction with the PRT for rule of law projects.

RECOMMENDATION: Improve. Deploying units need to get used to with whom they will be working at the PRT.[290]

ISSUE: Simulated Central Criminal Court of Iraq (CCCI) trial

DISCUSSION: The BCT legal personnel attended a simulated CCCI trial during NTC.

RECOMMENDATION: While the training was informative, NTC should adjust the training event to focus more on training the BCT and its law enforcement professionals (LEPs) to get evidence for trial.[291]

ISSUE: CERP and claims training at NTC

DISCUSSION: The paralegals found NTC's training on CERP and claims did not exactly reflect what is going on in Iraq. Claims training needs to reflect practices in Iraq. The MND-N G8 staff intervened and clarified claims and CERP practices.

RECOMMENDATION: Improve. The dynamic nature of OIF operations can often outpace training operations. NTC should attempt to verify if claims and CERP training matches the practices in theater.[292]

ISSUE: Inadequate paralegal training at NTC

DISCUSSION: While at NTC, a number of the paralegals had to perform non-paralegal duties (e.g., guard duty and security). This greatly reduced the amount of time that they could actually devote to formal, dedicated paralegal training activities.

RECOMMENDATION: Improve. While pulling non-paralegal duties is a reality in OIF, the formal training opportunities at NTC for paralegals are quite limited and must be the priority.[293]

ISSUE: Cultural and sensitivity training at NTC

DISCUSSION: The cultural awareness training provided at NTC proved helpful in face-to-face discussions with Iraqis (primarily claims discussions).

RECOMMENDATION: Sustain.[294]

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[289] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 2.
[290] *Id.*
[291] *Id.*
[292] 1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09, *supra* note 137.
[293] *Id.*
[294] *Id.*

ISSUE: Core training at NTC

DISCUSSION: It is important for NTC to continue concentrating on the core legal themes encountered during deployment by unit legal staff. There are not enough instructors, time, or resources at NTC for them to cover every possible issue encountered on each deployment. While tailored training would be great, it cannot be at the expense of the core legal concepts and themes.

RECOMMENDATION: Sustain. There is a practical limit to how much NTC can prepare deploying legal staffs for their deployments.[295]

ISSUE: Lack of JAG oversight at NTC

DISCUSSION: There was a lack of JAG-specific oversight at NTC.

RECOMMENDATION: JAG observer/controllers (O/Cs) should be more involved in NTC.[296]

ISSUE: Lack of current scenarios at NTC

DISCUSSION: The legal training scenarios during the BCT's NTC rotation were not consistent with current operations in Iraq. The focus on Article V tribunals were unnecessary given no units are conducting them in theater. Moreover, the mock Iraqi court did not replicate actual procedures. Finally, there were no claims injects.

RECOMMENDATION: Improve. Training center legal planners should align training scenarios with current operations.[297]

ISSUE: Quality of NTC training

DISCUSSION: The training scenarios for JAs at NTC were not useful and were out of date for a mature theater such as Iraq. The NTC training was a useful tool to get to know your team.

RECOMMENDATION: NTC should tailor its training towards the theater to which a particular unit is deploying to (i.e., Iraq or Afghanistan) and provide training that is current with what is going on in that theater.[298]

ISSUE: PMT at Fort Irwin

DISCUSSION: The scenario run at the NTC, Fort Irwin California, was a 2004 OIF scenario and not an OEF scenario.

RECOMMENDATION: Improve. NTC should tailor its training for the unit's deployment. This issue will be resolved for the next PMT. SOTF-East will conduct its PMT at Fort Bliss. Fort Bliss is OEF specific. The SOTF JAG should reach out to the JA Observer controller at Fort

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[295] 2d Heavy Brigade Combat Team, 1st Infantry Division, Brigade Judge Advocate OIF After Action Report, 24 November 2009, Deployed October 2008 – September 2009, Camp Liberty, Baghdad, Iraq (hereinafter "2HBCT, 1ID, OIF AAR (2d Half), OCT 08-SEP 09"; on file at CLAMO).
[296] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 230.
[297] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 20.
[298] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 8.

Bliss, to ensure the legal issues unique to the SOTF-East AO in Afghanistan are implemented into the PMT training scenarios.[299]

X.C.3. Predeployment Training Material

ISSUE: Leader Development & Education for Sustained Peace (LDESP)

DISCUSSION: LDESP provided TF Thunder personnel a two-day course on the culture and history of Afghanistan before its deployment.

RECOMMENDATION: Sustain. The training was invaluable and all Soldiers should attend if possible. See the LDESP website, https://www.ldesp.org/public/home.cfm, for more information.[300]

ISSUE: Access to theatre-specific material

DISCUSSION: The BJA had difficulty tracking down "secret" theatre-specific information.

RECOMMENDATION: CLAMO should better publicize its secret database.[301]

ISSUE: Predeployment training for Reserve and National Guard units

DISCUSSION: Training provided by 1st Army at Fort Hood did not always reflect the situation in the area of operations. Soldiers retrained in country to meet actual conditions.

RECOMMENDATION: Improve. Soldier training is not always up to date. Commanders should consider using the contractor-lead training in Kuwait. Contractors need to keep apprised of issues such as changes to the ROE.[302]

ISSUE: Theater-specific ROE training

DISCUSSION: The JAG Corps should offer separate, theater-specific ROE instruction, during which instructors should provide the deploying JAs with classified briefings on the controlling ROE. The Operational Law of War Course did not present applicable ISAF ROE. The new Brigade Judge Advocate Mission Primer (BJAMP) course attempts to address this shortcoming.

RECOMMENDATION: Improve.[303]

ISSUE: Brigade Judge Advocate Mission Primer (BJAMP)

DISCUSSION: Although the BCT JAs did not have the opportunity to attend similar training before deployment, both JAs presented training material at the BJAMP after their deployment.

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[299] 3/3 SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 245.
[300] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 230.
[301] *Id.*
[302] 4th Sustainment Brigade, OIF After Action Report, 28 August 2009, Deployed March 2008 – June 2009, Army Central Command (ARCENT), Camp Arifjan, Camp Beuhring, Camp Virginia, & Ali Al Saleem Air Base, Kuwait (hereinafter "4th SUST BDE (OIF) MAR 08 - JUN 09"; on file at CLAMO).
[303] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 15.

RECOMMENDATION: BJAMP is very practical. Deploying BCTs should send as many personnel as possible.[304]

ISSUE: Realistic predeployment training

DISCUSSION: BCT JAs should focus on FRAGO writing, contract and fiscal law education, and identifying theater-specific issues before deploying.

RECOMMENDATION: Try to inject legal training into unit training missions as much as possible so you and your staff are ready when they arise in reality.[305]

ISSUE: Pre-deployment training

DISCUSSION: The JAGC does not mandate pre-deployment training. The Brigade had to seek training for the legal section without guidance from the JAGC. The Operational Law and Fiscal Law courses would have been good preparation for deployment, but it is difficult for Reserve JAs to find the time to attend courses like this. There was also no legal training post-mobilization at the mob station at Fort Bliss.

RECOMMENDATION: A short pre-deployment course for Reserve JAs and paralegals would be helpful. This could be similar to the two-day course currently offered by The Judge Advocate General's Legal Center and School (TJAGLCS), but it should be at least one day longer. First Army ought to coordinate with the CJA to determine the requirement for pre-deployment and mobilization training.[306]

ISSUE: Appropriateness of pre-deployment training at the Fort Dix Regional Training Center (RTC)

DISCUSSION: Some training given by the drill sergeant cadre included hard rock music, which suggested to the Soldiers they were going to enter a high-intensity conflict. The tone was wrong.

RECOMMENDATION: The RTC should give more emphasis to COIN principles in the way it presents its training.[307]

ISSUE: Utilizing other training opportunities

DISCUSSION: Deploying JAs and paralegals should get information on other training opportunities (e.g., CLAMO visiting deploying units). Office of the Provost Marshal General (OMPG) training is crucial for JAs conducting detention operations. CLAMO training is a must; their lessons learned briefing alone makes their training worth attending.

RECOMMENDATION: Ensure JAs and paralegals in alerted units receive immediate notice of training opportunities.[308]

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[304] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 2.
[305] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 16.
[306] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 17.
[307] *Id.*
[308] *Id.*

ISSUE: Early introduction to the complexity of fiscal law

DISCUSSION: It is vitally important for the unit to receive training in the pre-deployment phase concerning what might be coming in the area of fiscal law. Not all money is the same. This basic principle of fiscal law is not intuitively obvious to those unaccustomed to handling multiple funding sources.

RECOMMENDATION: Ensure pre-deployment training contains some familiarization with fiscal law for leaders. In addition, exercises should include at least a scenario or two where the fiscal law answer is simply "No." The first time commanders realize fiscal law can thwart a planned action should not be in an operational setting.[309]

ISSUE: Pre-deployment training at the Legal Center and School (LCS)

DISCUSSION: The March Reserve pre-deployment seminar at the LCS was very helpful. Reserve personnel cannot readily attend a two-week course. However, they can easily do a day and a half or so. Understandably, this focused primarily on OIF and OEF.

RECOMMENDATION: Continue to offer a short seminar. A breakout session on Kosovo would be of value to those deploying to that theater.[310]

ISSUE: Wait-listing in ATTRS for deploying personnel

DISCUSSION: One deploying attorney was wait-listed for the Operational Law course. When he finally received confirmation of a slot, it was less than two weeks to the course. Having made commitments to his civilian employer by that time, he was unable to attend.

RECOMMENDATION: Identify deploying course applicants so they have assured course quotas and can plan with the certainty that comes with a confirmed slot.[311]

ISSUE: Kosovo pre-deployment visit to the USAREUR OSJA

DISCUSSION: The USAREUR OSJA provides all external legal support for the Kosovo legal office. This reach-back capability is extremely robust and very important.

RECOMMENDATION: It is definitely worth it to send as many rotational legal personnel as you can to check in personally with the legal staff at USAREUR. This face-to-face coordination pays huge dividends during the deployment.[312]

ISSUE: Attendance for Kosovo legal professionals at USAREUR courses

DISCUSSION: When in Kosovo, legal professionals fall directly under the USAREUR legal technical chain. Additionally, USAREUR has yearly courses to keep its legal personnel current on legal issues and to discuss how USAREUR policy affects commanders in USAREUR. However, there is little to no discretion for the senior JAs rotating into Kosovo to send personnel

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[309] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 253.
[310] *Id.*
[311] *Id.*
[312] *Id.*.

to these courses. Even when the state was willing to pay for the course, the National Guard Bureau rejected the training because CONUS attorneys cannot attend overseas training.

RECOMMENDATION: Give the senior JA deploying to Kosovo the discretion to send his personnel to the USAREUR short courses if they need the training. Ensure Title 10 funding is available for training for this Title 10 mission. Remove the restriction for OCONUS training for deploying personnel. Additionally, ensure quota managers are aware of the unusual circumstances of deploying personnel. The TFF training schedule should include JAG and paralegal attendance at the USAREUR legal courses and conferences.[313]

ISSUE: JAG-specific training priorities for mobilizing legal professionals

DISCUSSION: The unit could not secure funding for the Income Tax Course in either Charlottesville or USAREUR. Title 32 funds were not available for Title 10 training. When Title 10 funds were available after mobilization, First Army would not support course attendance because of mandatory training at the mobilization site. At the mobilization site, there were many "late mobilization" personnel who received the necessary training after the main body.

RECOMMENDATION: Identify mission critical JAG-specific training and ensure incorporation of the requirement into the First Army schedule. If there is a conflict, the JAG training should take priority and the legal personnel should get the mandatory deployment training with those mobilizing late.[314]

ISSUE: Sparking command appreciation for legal training requirements

DISCUSSION: The deploying command does not appreciate the value of legal training until they get in country. We must help the leadership understand what it is that we do. It would be helpful if at the pre-deployment assessment phase the JAGC said, "Here are the courses you should have for this particular deployment."

RECOMMENDATION: There ought to be some type of JAGC validation for deployment. If it consisted of certain legal training requirements, the senior JA could approach the unit leadership with the list in hand in order to get training funding and priorities.[315]

ISSUE: Paralegal training for mobilizing personnel

DISCUSSION: Paralegal training is just as important as attorney training. Resources for, and the efforts supporting, paralegal training were not sufficient. There was little urgency in ensuring the paralegals assigned at the battalion level received legal training. Unit S-3s do not understand why junior paralegals need training away from home station. There were military justice courses critical to paralegals. They must understand what it means when they are filling out various documents. Expertise in the Army correspondence standards is also important.

RECOMMENDATION: There should be a deploying paralegal course at the LCS covering legal assistance and military justice, at a minimum.[316]

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[313] *Id.*
[314] *Id.*
[315] *Id.*
[316] *Id.*

ISSUE: JAG School courses

DISCUSSION: The courses offered by The Judge Advocate General's Legal Center and School (TJAGLCS) were good, particularly the RoL course.

RECOMMENDATION: Sustain.[317]

ISSUE: Naval Justice School (NJS) Basic Operational Law Training (BOLT)

DISCUSSION: All Marine JAs receive a weeklong BOLT course as part of their initial legal training while a student at NJS before going into the fleet. The BOLT course includes LOAC, ROE, detainee operations, and even Law of the Sea. This training was not sufficient to prepare Marine JAs for the issues they will face in today's deployed environment. The Army provides much better training on operational law at the Judge Advocate General's Legal Center and School (TJAGLCS) than Marines receive at NJS.

RECOMMENDATION: Improve. NJS should be change the BOLT course to better prepare JAs for current and future military operations.[318]

ISSUE: Need for early contact with predecessor unit

DISCUSSION: The SECRET information the unit received via SIPR from its predecessor was extremely valuable. It allowed them to tailor training to conditions on the ground. The first time the unit heard from its successor was when the successor unit arrived in Kuwait.

RECOMMENDATION: The best practice is to make contact with and get information months ahead of time. If you are not briefing your command ahead of time, you are setting them up for failure. They have to be ready to go on the first day on the ground.[319]

ISSUE: Proficiency in PowerPoint

DISCUSSION: JAs must be familiar with PowerPoint. Members of the RoL team spent hours perfecting the appearance (not the content) of slides. While one can question the effectiveness of the briefing technique, it is a certainty the expectation is all staff officers are proficient in slide production.

RECOMMENDATION: All deploying JAs should receive PowerPoint training. The JAOBC should provide a block of instruction on this program.[320]

ISSUE: Predeployment BJA training

DISCUSSION: Someone should develop a pre-deployment course for new BJAs. Because of the shortage of training time available, this could occur at the CTCs during the unit's rotation.

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[317] CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09, *supra* note 33.
[318] Regimental Combat Team 8 (RCT-8), Multi-National Force – West (MNF-W), Deputy Regimental Judge Advocate, OIF After Action Report, 18 December 2009, Deployed January 2009 - October 2009, Al Asad, Iraq (hereinafter "RCT-8, OIF AAR, JAN 09 - OCT 09"; on file at CLAMO).
[319] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[320] Individual Augmentee, CJTF-82 RoL Section, OEF AAR, OCT09-JAN10, *supra* note 254.

RECOMMENDATION: Improve.[321]

ISSUE: Use of the AAR process to plan for the next deployment

DISCUSSION: When the brigade legal NCOIC arrived at the BCT, he had the benefit of observing the outgoing BJA's AAR for the previous deployment. That AAR discussed the need to sustain the training and testing program the BJA and TC had used to determine which of the paralegals they should assign to geographically separate battalions. The NCOIC used this AAR comment to implement a similar program in preparation for the upcoming deployment.

RECOMMENDATION: Sustain. This demonstrates the value of the AAR process. Deploying brigade legal sections should consult AARs from previous deployments to see what worked well and what did not.[322]

ISSUE: Determining paralegal utilization via pre-deployment training and testing

DISCUSSION: Based on the experiences from the prior deployment and the projected layout of the BCT within the AO for the upcoming deployment, the brigade legal section developed a training and testing program to determine which paralegals they would assign to outlying battalions. The program included classes on claims, investigations, MAAWS, military justice, and detainee operations, and continued into Kuwait. Based on the results of the testing, the NCOIC shifted one of the paralegals from the consolidated legal office to a vacant slot at one of the battalions.

RECOMMENDATION: Sustain. Ensure the NCOIC keeps the BCT CSM abreast of the process and gets the CSM's support for any plans to move paralegals.[323]

ISSUE: Pre-deployment training opportunities

DISCUSSION: Twenty-two out of twenty-seven personnel who deployed with the Division OSJA attended at least one course, conference, or training opportunity away from home station. These locations included The Judge Advocate General's Legal Center and School (TJAGLCS) and the Air Force JAG School. The courses included the SJA Course, Rule of Law, Senior Paralegal Course, Contract Attorney Course, Operational Law, Court Reporter Course, Military Justice Manager's Course, Criminal Law Advocacy Course, Battle Staff, Criminal Law New Developments, and Contingency Fiscal Law. The schools included the Judge Advocate Warrant Officer Basic Course (JAWOBC), Judge Advocate Officer Basic Course (JAOBC), Advanced Individual Training (AIT), Basic Noncommissioned Officers Course (BNCOC), the Advanced Noncommissioned Officers Course (ANCOC), and Warrior Leaders Course (WLC). The conferences included the First Army Pre-deployment Conference and the I Corps Pre-deployment Conference. Finally, the OSJA invited personnel from the Center for Law and Military Operations (CLAMO) and First Army to weekend seminars during inactive duty training (IDT) during the pre-mobilization phase.

RECOMMENDATION: Sustain. Send as many personnel to training at TJAGLCS courses as possible. Invite CLAMO and First Army personnel to home station during pre-mobilization drill

[321] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.
[322] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 20.
[323] *Id.*

weekends. Ensure section NCOs have the necessary knowledge to send Soldiers and JAs to military schools.[324]

ISSUE: Training at the Legal Center and School

DISCUSSION: The training the deploying captains received at the TJAGLCS was very good and significant value added.

RECOMMENDATION: Sustain. The captains who were able to receive this training felt better prepared because of it.[325]

ISSUE: Utility of the Rule of Law Handbook

DISCUSSION: The Rule of Law Handbook published by the Center for Law and Military Operations (CLAMO) was definitely value added and provided terrific context. The unit used this resource more than any other single resource, with the exception of AR 15-6.

RECOMMENDATION: Continue to publish and update this valuable resource. Include a section or chapter on judicial reconstruction. This is an area in which judge advocates add unique value.[326]

ISSUE: Value of the GOLO/SOLO courses

DISCUSSION: These courses are achieving the objective of commanders viewing lawyers as combat multipliers.

RECOMMENDATION: Sustain this effort. It is earning huge dividends for both the JAG Corps and the commands.[327]

ISSUE: Additional training requirements at the Criminal Law Advocacy Course (CLAC)

DISCUSSION: The Division trial counsel felt underprepared to draft Article 15 documents and General Officer Memoranda of Reprimand (GOMORs). Additionally, the trial counsel would have benefited from more training on how to brief commanders on disposition options.

RECOMMENDATION: Add more exercises to CLAC that allow students to practice the tasks they will perform the most in theater. (Note: This trial counsel completed CLAC in February 2008).[328]

ISSUE: Add training on creating provisional units at the Military Justice Managers (MJM) course

DISCUSSION: Creating provisional units is difficult for chiefs of military justice and the OSJA.

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[324] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.
[325] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[326] *Id.*
[327] *Id.*
[328] *Id.*

RECOMMENDATION: Spend an hour at the MJM course instructing and practicing the creation of provisional units.[329]

ISSUE: Lack of online courses in military justice

DISCUSSION: There are limited options for military justice practitioners to get additional training outside of TJAGLCS. There are not enough online courses.

RECOMMENDATION: Improve. Increase options for practitioners to hone their skills on their schedule.[330]

ISSUE: Judge Advocate Tactical Staff Officers Course (JATSOC)

DISCUSSION: One of the JA captains who worked at a BCT during most of the deployment took the JATSOC course after redeploying. This attorney did not find JATSOC to be an effective way to learn the skills needed at a BCT.

RECOMMENDATION: Improve. The JAG Corps should integrate this training into JAOBC, including a practical exercise to train staff integration.[331]

ISSUE: Utility of the JATSOC

DISCUSSION: Going through this course is useful if you do it right after JAOBC. Waiting until after you have deployed lessens its utility tremendously. The MDMP portion of the JATSOC was not what the deployed judge advocate needed. He or she actually needed to understand how to lead an operational planning team. Additionally, the course seemed incredibly inconsistent in how it conveyed information. At one point, nothing on the test was actually in the information presented. The information was in the outside reading.

RECOMMENDATION: Many staff officers carry around commercially available "smartbooks" of the planning process. Some type of planning "smartbook" for legal personnel would be very helpful. Judge advocates need to know the products expected at each phase of MDMP.[332]

ISSUE: Value of the Brigade Judge Advocate Mission Primer (BJAMP)

DISCUSSION: BJAMP is a good training event. Especially valuable is the panel discussion by former SJAs. It is very valuable to have people speaking about the benefits of having open communication between the SJA and the BJA.

RECOMMENDATION: Spend the money necessary to have this type of training and get people to it.[333]

ISSUE: Value of short courses at TJAGLCS

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[329] *Id.*
[330] *Id.*
[331] *Id.*
[332] *Id.*
[333] *Id.*

DISCUSSION: The substance of the short courses in areas such as fiscal law and operational law is on target. Judge advocates receive the necessary training on the legal issues.

RECOMMENDATION: SJAs must fight for the training money to send people to these types of courses. If money is tight, SJAs should also make use of distance learning such as the week long fiscal law course offered by TJAGLCS. If you host such distance learning at your Division by setting up the video tele-conference (VTC), make sure you invite JAs from nearby organizations and brigades.[334]

ISSUE: Training in collateral damage estimation

DISCUSSION: The office sent two attorneys to attend the 40-hourse course in CDE. While the full 40-hour course was probably a little overkill, it was well worth the time to enable them to train others and to participate with great credibility in the process.

RECOMMENDATION: Invest the effort in having JAs receive CDE training.[335]

ISSUE: Operational Law of War (OPLOW) Course

DISCUSSION: One of the Division operational law paralegals attended the OPLOW course and found it to be very helpful. It covers numerous topics and provides guidance in areas in which OpLaw paralegals operate during deployment.

RECOMMENDATION: Although space is limited for paralegals, the OPLOW course is highly beneficial for deploying OpLaw paralegals.[336]

ISSUE: Paralegal attendance at TJAGLCS short courses

DISCUSSION: It would have been advantageous for paralegals to attend the fiscal law and the RoL courses if the plan is for them to work in those areas during the deployment.

RECOMMENDATION: Senior legal staff should try to expose paralegals to JAG School short courses in core specialties where possible.[337]

ISSUE: JAG school RoL course

DISCUSSION: The JAG School RoL course was not at the practical level.

RECOMMENDATION: Change the focus from strategic level issues to lower level ones encountered by the BCT JAs, PRT attorneys, and other RoL stakeholders. Additionally, add a class on fiscal aspects associated with funding RoL activities, projects and events.[338]

ISSUE: Use of PowerPoint

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[334] *Id.*
[335] *Id.*
[336] *Id.*
[337] *Id.*
[338] *Id.*

DISCUSSION: Putting together a professional product in a deployed environment is extremely important. PowerPoint is how our Army conveys information, and knowing how to use it is extremely important.

RECOMMENDATION: JAOBC should consider including a briefing requirement during the international and operational law week in order to familiarize OBC students with how to use power point (i.e., how to build a slide master, how to manipulate data, and build an effective informational presentation). The importance of PowerPoint presentations in military operations is significant and much can turn on the effectiveness of such a briefing.[339]

ISSUE: Predeployment communications with the outgoing unit

DISCUSSION: Each person in the OSJA made contact with his/her counterpart to get pertinent information for their duty position. It was very important to get the layout of the office in theater so they could plan where to place people. Having access to NIPR and SIPR systems was imperative in getting sensitive information.

RECOMMENDATION: Sustain/Improve. While the OSJA's experience coming into theater was good, the unit replacing them did not have reasonable access to SIPR systems.[340]

ISSUE: Deployment resources

DISCUSSION: The OSJA requested CLAMO publications for the operational law section and received a briefing from the Center for Army Lessons Learned (CALL) on lessons learned in their area of operations. The publications were very helpful.

RECOMMENDATION: Improve. CLAMO should automatically send a small number of its publications to every office when updated, similarly, to how The Army Lawyer goes out to each officer upon publication.[341]

ISSUE: Preparing for deployment on extremely short notice

DISCUSSION: The 2-82 ABN deployed to Haiti with less than 48 hours between the warning order (13 January) and the first departure flights (15 January). This gave the legal staff minimal time to collect applicable materials, orient themselves to the legal missions, and prepare for departure. One of the main sources of information available on Haiti was the Center for Law and Military Operations (CLAMO) website. The CLAMO staff electronically sent 2-82 ABN all the material it had on its repository. Although the material on Haiti dated from 1995, it was still very helpful and relevant to the response.

RECOMMENDATION: Hasty deployments are very challenging. Gathering the necessary legal materials and references in time limited situations can be chaotic. Look for assistance from other JAG units like CLAMO and from JAs at Division and neighboring BCTs.[342]

ISSUE: Predeployment fiscal law training

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[339] *Id.*
[340] *Id.*
[341] *Id.*
[342] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 109.

DISCUSSION: During the basic officer course at Naval Justice School (NJS), Marine JAs get no fiscal law training whatsoever. However, JAs are the unit's sanity check in an operational environment driven by money.

RECOMMENDATION: All Marine JAs should go to a fiscal law course or, at a minimum, an operational law course before deploying in order to get a basic understanding of fiscal law and be able to spot issues. Units will rely on their JAs to be the subject matter expert on fiscal law.[343]

ISSUE: Center for Law and Military Operations (CLAMO) publications

DISCUSSION: CLAMO publications such as the Operational Law Handbook, Rule of Law Handbook, and the Law of War Documentary Supplement are valuable resources for the deployed JA. The DSJA ensured he took his CLAMO publications with him on deployment.

RECOMMENDATION: Sustain.[344]

ISSUE: Limited opportunities for individual augmentees to train with the receiving unit

DISCUSSION: Reservists typically mobilize with 365-day orders. This allows them few, if any, training opportunities with the receiving unit, particularly when their deployment cycles are staggered.

RECOMMENDATION: Although pre-deployment training with the receiving unit might be helpful, there is plenty of time to integrate with the OSJA team in theater. Reservists therefore may be better off spending their time with their families before deploying.[345]

ISSUE: Pre-deployment preparation for detainee operations

DISCUSSION: The DetOps attorney coordinated early with the attorney's counterpart in theater and followed significant activities (SIGACTs) on SIPRNet. Additionally, the attorney attended classes and briefings at Fort Huachuca to learn about the role military intelligence plays in detention operations. Finally, before deploying, the attorney regularly engaged the G-2X, Provost Marshal's Office, and the targeting community to understand the interplay between the key partners in DetOps.

RECOMMENDATION: Sustain. Liaison early and often with the JA you are replacing in theater. There are two full-time JAs at Fort Huachuca—request seats for the G-2X course through them.[346]

ISSUE: Officer professional development (OPD) training for warrant-based operations

DISCUSSION: At this point in the maturity of the Security Agreement, targeting is really more

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[343] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 56.
[344] *Id.*
[345] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[346] *Id.*

like combating organized crime than it is actual combat. While there were some kinetic operations, there was very little of it.

RECOMMENDATION: Commanders and other leaders should seek out training that is appropriate for counterinsurgency (COIN) environments.[347]

ISSUE: Contact with deployed counterpart

DISCUSSION: Before deploying, many of the 1CD AdLaw personnel did not have contact with their deployed counterparts who they would soon be replacing. Upon arrival in theater, they realized that even a little bit of contact would have paid dividends for building situational awareness.

RECOMMENDATION: Find out whom you are replacing and make contact with them before you deploy.[348]

ISSUE: Contact with deployed unit

DISCUSSION: Contact the unit you will replace three to four months in advance and continue making contact until departure. The information will help with planning and preparing equipment and supplies for the first couple of months.

RECOMMENDATION: Sustain.[349]

ISSUE: Prepare the incoming unit

DISCUSSION: Make contact with the incoming unit three to four months in advance. Push as much information as possible to assist with planning.

RECOMMENDATION: Establish a continuity book to assist for the first 90 days of deployment.[350]

ISSUE: Transition with replacement

DISCUSSION: There was no overlap with the legal administrator when the Division arrived. Before redeployment, the legal administrator conducted a 14-day transition with the incoming legal administrator.

RECOMMENDATION: Improve. If possible, plan for a ten-day transition period with your replacement to go over every potential issue.[351]

ISSUE: Value of after action reviews

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[347] *Id.*
[348] *Id.*
[349] *Id.*
[350] *Id.*
[351] *Id.*

DISCUSSION: The office did a cursory after action review (AAR) to help prepare their minds for their official AAR and to help a subordinate unit preparing to deploy soon.

RECOMMENDATION: Recognize the value of the AAR process and conduct the review.[352]

ISSUE: Value of already established training

DISCUSSION: The Brigade Judge Advocate Mission Primer (BJAMP) is a good training program. The TJAGLCS short courses on fiscal law, ethics, and operational law are also good preparation. The courses in intelligence at Fort Huachuca are also useful.

RECOMMENDATION: Take advantage of the available training opportunities.[353]

ISSUE: Need for practical predeployment training

DISCUSSION: The usual TJAGLCS syllabus is not very valuable for training on actual issues. It does not address what people are seeing while deployed and how they are resolving the issues. For example, there is no instruction on the actual rules of engagement in place in the various theaters. The environment changes constantly. Using what you used last year to teach a course guarantees the instruction is not current. As another example, current training on the Security Agreement in Iraq could now be a lot better if you are keeping abreast of what is happening in theater.

RECOMMENDATION: There should be continuing legal education courses that address actual issues currently arising in the deployed environment.[354]

ISSUE: Attending relevant legal training

DISCUSSION: The SJA attended five courses offered at TJAGLCS and NJS before deploying.

RECOMMENDATION: Sustain. JAs, especially reserve JAs, should seek out all training opportunities before deploying.[355]

ISSUE: Preparation for a diversity of legal practice in a deployed environment

DISCUSSION: The SJA's unclassified practice areas during the deployment included, but were not limited to, fiscal/funding; administrative law; Article 15/Military Justice; CERP; contracting; Humanitarian and Civic Assistance; immigration/visas; memoranda of agreement and understanding (MOAs and MOUs); interaction with NGOs; and rule of law.

RECOMMENDATION: JAs must be prepared to deal with a wide range of legal areas.[356]

ISSUE: Short notice of deployment

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[352] *Id.*
[353] *Id.*
[354] *Id.*
[355] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 114.
[356] *Id.*

DISCUSSION: 3d ESC was still in its operational reset phase from OIF when the WARNO came to prepare for the Haiti mission. It was not clear how much of 3d ESC would have to deploy to Haiti and exactly what units were necessary to execute the logistical support mission. When the magnitude of the disaster became clear, the bulk of 3d ESC readied for the deployment. While waiting for the flight out, the SJA had time to collect information on the Haiti mission from various sources such as the Center for Law and Military Operations (CLAMO) website, SOUTHCOM, and XVIIIth Airborne Corps. As a result, the SJA was able to push out guidance and rules of engagement (ROE).

RECOMMENDATION: Hasty deployments are very challenging. Gathering the necessary legal materials and guidance in time-limited situations can be hectic, but other Army units and higher headquarters can be of assistance.[357]

ISSUE: Communicating with unit in theater

DISCUSSION: There were some gaps in communication with the unit in theatre based on training requirements for the incoming unit. Having only one secure computer for the OSJA in garrison further hindered communication.

RECOMMENDATION: Improve. The lack of communication should have re-focused the need for a standard operating procedure (SOP) and/or desk guide for specific tasks or mission sets. Having more than one secure computer for classified communications is essential in garrison.[358]

X.C.4. Service Academies

No AAR comments.

X.D. Material

X.D.1. Automation & Communications Equipment

ISSUE: Utilizing software to maintain operational awareness

DISCUSSION: The legal advisor used Internet Relay Chat (IRC) software to monitor radio transmissions at his desk when not in the operations center. This allowed the legal advisor to move to the operations center when necessary.

RECOMMENDATION: Sustain. Utilize all available technologies to maintain operational awareness.[359]

ISSUE: Scanners

DISCUSSION: Scanners can prove to be invaluable for electronically backing up important

[357] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 115.
[358] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[359] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 66.

documents that always seem to go missing in the mail. They are also great for building claims files for handing over to replacements or to other units in the AO.

RECOMMENDATION: Legal staffs should endeavor to bring scanners with them on deployment since there may not be any on arrival or the ones there may be ready for the scrap heap due to high use. Ideally, the BJA should bring two high-speed scanners such as HP Digital Senders to allow for scanners on both the secure and non-secure networks.[360]

ISSUE: Electronic Judge Advocate Warfighting System (e-JAWS)

DISCUSSION: One of the BJAs that deployed into Haiti after the 12 January 2010 earthquake recounted how the BCT Soldiers were limited to a rucksack and two duffel bags for the hasty deployment. The JAs were able to get permission to take an extra tough box for their legal material consisting of the e-JAWS kit (e-JAWS disks, a laptop computer, printer, scanner, and camera). Although the equipment was very basic, it performed well during the mission.

RECOMMENDATION: In a hasty deployment situation, the e-JAWS kit can be quite an asset since it has all the core materials and functionality for virtually any sort of mission.[361]

ISSUE: High speed scanners

DISCUSSION: The decision to bring high speed/high capacity scanners for both the NIPR and SIPR systems was well worth the effort and expense. The electronic retention of all legal documents meant that the BCT's JAs could easily retrieve or send documents as required on either system. In addition, the legal office built a repository of all their materials, making subsequent efforts simpler since they had precedents and files easily available.

RECOMMENDATION: Sustain. The benefits associated with scanning and building a library of information is worth the expense and has additional benefits for any follow on BCT legal offices to access and use.[362]

ISSUE: Lack of current information on the Secure Internet Protocol Router Network (SIPRNET)

DISCUSSION: There is a dearth of centralized legal resources on the SIPRNET.

RECOMMENDATION: Improve. At a minimum put the Electronic Judge Advocate War-Fighting System Resource Digital Library (e-JAWS) on the SIPRNET.[363]

ISSUE: Availability of Secure Internet Protocol Router Network (SIPRNet)

DISCUSSION: Availability of SIPRNet computers and printers for TDS was very limited. The TDS office found this to be extremely burdensome, since SIPRNet was the only available means

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[360] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[361] *Id.*
[362] 3d Brigade Combat Team, 1st Cavalry Division, Brigade Judge Advocate (BJA) OIF After Action Report, 16 September 2009, Deployed December 2008 – July 2009, Ninewah Province, Iraq (hereinafter "3-1 CAV OIF AAR (1st Half), DEC 08 - JUL 09"; on file at CLAMO).
[363] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 16.

of sending documents for some units. Additionally, in a deployed environment, it is common for a significant amount of evidence in a case to reside on classified systems.

RECOMMENDATION: Improve. Provide TDS offices with at least one SIPRNet computer, printer, and phone.[364]

ISSUE: Required connectivity for practicing in intelligence law

DISCUSSION: Attorneys doing intelligence law work have to have a Secure Internet Protocol Router (SIPR) capable computer.

RECOMMENDATION: You have to have the ability to conduct Google-like searches using Intelink or some equivalent.[365]

ISSUE: Utility of early SIPR access before deployment

DISCUSSION: The brigade's legal office in garrison did not have its own SIPR line. This required the JAs to use the SIPR computer located in the S-3 shop, which was almost always in use.

RECOMMENDATION: Improve. The brigade legal office should have its own SIPR line. This will allow easier communications between JAs getting ready to deploy and those they will be replacing.[366]

ISSUE: Use of the unit's information portal

DISCUSSION: The unit's SharePoint portal was instrumental in keeping the unit informed and up to date. The BJA established virtual "kit bags" for various subjects. For example, there were training presentations and briefings for investigating officers. Rather than sending things out to individuals, the legal section could simply point them to the right place on the portal.

RECOMMENDATION: Actively manage your virtual space. It can pay big dividends in the dissemination of information and in arming Soldiers with the knowledge they need to be successful. A knowledge portal only works as an information-sharing space if heightened levels of required authentication do not prevent people from using it.[367]

ISSUE: Personal electronic library

DISCUSSION: The contingency contracting attorney worked in a tent. Connectivity was an issue, although it got better over time. When connectivity was down, it was very difficult to get work done because the lack of internet access made research impossible.

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[364] Trial Defense Services, Multi-National Corps – Iraq, Individual Augmentee Attorney, OIF After Action Report, 27 October 2009, Deployed May 2008-May 2009, Camp Liberty, Victory Base Complex, Baghdad, Iraq (hereinafter "MNC-I TDS OIF AAR, MAY 08-MAY 09"; on file at CLAMO).
[365] MNF-I Chief Intel Law OIF AAR, JUN 08 – MAY 09, *supra* note 87.
[366] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[367] *Id.*

RECOMMENDATION: Improve. Build an electronic library consisting of all the recent electronic publications and references before deployment and take it with you.[368]

ISSUE: Need for a NIPR digital sender

DISCUSSION: Due to spillage of classified information, the division G2 banned the use of non-secure internet protocol router (NIPR) scanners and digital senders. The BJA obtained an exception to policy for the legal office. However, G2 required them to sign a document for every scan certifying all documents as Unclassified. Moreover, the digital sender could only transmit documents to a CENTCOM email address, which presented a complication because the BJA was on another network.

RECOMMENDATION: Division G2 must continue to grant such exceptions liberally to legal offices. Otherwise there would be a huge impact on the ability to transmit investigations and military justice files.[369]

ISSUE: Lack of a photocopier

DISCUSSION: The MNSTC-I OSJA did not have a photocopier. The only means they had for making copies was to scan the documents and print them out on the printer.

RECOMMENDATION: Improve. Every legal office should have ready access to a copy machine.[370]

ISSUE: Using available resources

DISCUSSION: There are numerous available resources, such as those available at the Center for Law and Military Operations (CLAMO) (i.e., the Operational Law Handbook), that are valuable resources for JAs.

RECOMMENDATION: Reserve JAs should obtain these available resources before deploying and use them as a resource while on deployment.[371]

ISSUE: Maintaining information for follow-on efforts

DISCUSSION: Failure to capture data leaves a gap in trends analysis and causes each subsequent unit to have to re-learn the operational area. Division and lower units tend to take their servers down upon re-deployment, making any stored information unavailable to the incoming unit.

RECOMMENDATION: Using the Combined Information Data Network Exchange (CIDNE) is a means to overcome this. This information database remains for the follow-on units. Finding the time to input the information is the single biggest hurdle to the system working as intended.

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[368] 2d Marine Expeditionary Brigade, Contingency Contracting Attorney, OEF After Action Report, 18 February 2010, Deployed July 2009 – November 2009, Camp Leatherneck, Helmand Province, Afghanistan (hereinafter "2d MEB Contingency Contracting Attorney AAR JUL 09 - NOV 09"; on file at CLAMO).
[369] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 20.
[370] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.
[371] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 8.

Having a single person dedicated to the input of the information is a best practice because it gives you some level of consistency as to how the data appears.[372]

ISSUE: Obtaining materiel support

DISCUSSION: What you get depends heavily upon your relationship with your unit.

RECOMMENDATION: Ensure you have the necessary contacts and goodwill with your supporting headquarters.[373]

ISSUE: Use of SharePoint as a data storage and information sharing method

DISCUSSION: The command placed a great deal of emphasis upon using SharePoint for knowledge management. Legal professionals must consider access and privacy issues when using SharePoint. For example, who will have access to military justice, ethics, or investigation files? Even if you limit access to the legal office, the portal administrators may still have access. Additionally, some of the administrator's automated tools for maintaining the portal may inadvertently pull or delete legally significant data. For example, .wav or movie files may be attachments to an investigation or part of military justice transcription files. Automatic deletion of such files can inadvertently destroy necessary information.

RECOMMENDATION: Coordinate closely with the command's information manager to ensure you know who has access to the information and how any automated maintenance tools will work.[374]

ISSUE: Necessity to deploy with hardcopy resources

DISCUSSION: Expect to comply with Army standards of completeness and professionalism. Do not rely solely on electronic copies of regulations and documents. A lack of internet connectivity is not an excuse for failing to meet staff officer standards.

RECOMMENDATION: Bring as many hardcopy regulations and documents as you can.[375]

ISSUE: Military Justice Online (MJO)

DISCUSSION: The lack of bandwidth prevented the Division from using MJO. The benefit of using MJO did not justify the time and effort wasted on trying to submit the information.

RECOMMENDATION: Increase bandwidth downrange or waive the requirement for deployed units to use web-based applications such as MJO.[376]

ISSUE: Need for commercial calling capability for legal assistance

DISCUSSION: Deployed legal assistance attorneys have a daily need to call civilian agencies on behalf of their clients. In order to do this through the Defense Switched Network (DSN) system,

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[372] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[373] *Id.*
[374] *Id.*
[375] *Id.*
[376] *Id.*

they had to look up a DSN number in the local calling area of the civilian agency or call the DSN Worldwide Switch. In the latter case, the calls were sometimes limited in duration. If no one was available at the civilian agency, the attorneys had no callback number to leave. Consequently, several attorneys opted to use personal calling cards for their legal assistance duties.

RECOMMENDATION: Improve. Deployed legal assistance offices need a commercial line to conduct business with civilian agencies in the United States. If a commercial line is not practicable, the OSJA should purchase calling cards for official use.[377]

ISSUE: Need for a commercial fax machine for legal assistance

DISCUSSION: The legal assistance office frequently had to send documents to courts on short notice (e.g., when Soldiers received notice to appear in court in two days). In such cases, the legal assistance attorneys had to wait until the court was open to call them, and then obtain an email address to which they could send a scanned copy of the request for a stay under the SCRA.

RECOMMENDATION: Deployed legal assistance offices need access to a fax machine connected to a commercial phone line.[378]

ISSUE: Scanners/digital senders

DISCUSSION: Having more scanners to electronically store files would have been beneficial on the deployment. As usual, a number of boxes storing hard copies of documents, including killed in action (KIA) investigations, disappeared on redeployment.

RECOMMENDATION: There are several benefits to storing or backing up data electronically. Moreover, having the data in electronic form makes it easier to transfer, share, and ship.[379]

ISSUE: Compromise of sensitive computer files

DISCUSSION: The Division had several sensitive investigations on SharePoint on the Division server. This made it easier for JAs to review and share the files internally. The G6 assured the JAs of the security of the data and that only those with the passwords and permissions could access it. However, there were a few occasions where the permissions measures disappeared and the JAs received calls that the files were openly accessible by anyone. In response, the JAs removed the files and had the G6 fix the permissions. This happened on a few occasions.

RECOMMENDATION: Improve.[380]

ISSUE: Redaction software

DISCUSSION: Although MNC-I took over the redaction role, it was helpful to have redaction software at the Division level during the deployment.

RECOMMENDATION: Sustain. Redaction software comes in handy even if it is not a primary unit responsibility.[381]

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[377] *Id.*
[378] *Id.*
[379] *Id.*
[380] *Id.*

ISSUE: Ordering publications and mission materials

DISCUSSION: There is a wealth of materials and publications concerning deployments to Iraq available from U.S. military sources. However, getting them mailed out in time is always a challenge.

RECOMMENDATION: Ordering publications early allows JAs/paralegals to circulate them during the pre-deployment phase.[382]

ISSUE: Organizational vehicles

DISCUSSION: The legal administrator coordinated with the outgoing unit before deployment to find out if the OSJA would have any vehicles to use on the COB.

RECOMMENDATION: Sustain. Contact the unit on the ground early.[383]

ISSUE: Coordinating air travel for the OSJA

DISCUSSION: One of the operational law NCOs served as the primary point of contact (POC) with G-3 Air. He was tasked with arranging all air travel for all the OSJA staff. This was also useful for maintaining accountability. The OJSA also had an alternate air movement POC for coverage during R&R, illness, etc.

RECOMMENDATION: Sustain.[384]

ISSUE: Global War on Terror (GWOT) funding

DISCUSSION: Deploying units receive GWOT funding (now called Overseas Contingency Funding) to prepare for the deployment and for the reset on redeployment. This money funds the purchase of equipment and pre-deployment training for personnel.

RECOMMENDATION: Improve. Include this subject during the fiscal law portion of the Legal Administrator Basic Course.[385]

ISSUE: Spillage of classified information

DISCUSSION: Everyone received briefings about the importance of securing sensitive and classified information, as well as the consequences for spillage. The inability to use Universal Serial Bus (USB) drives and external hard-drives reduced the amount of potential spillage but, did not completely eliminate it. At the end of the deployment the Division OSJA discovered that a BCT trial counsel had added Top Secret documents to a record of trial but never had the record itself properly classified. The error was discovered at OTJAG, which then triggered the spillage report.

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[381] *Id.*
[382] *Id.*
[383] *Id.*
[384] *Id.*
[385] *Id.*

RECOMMENDATION: Sustain. Ensure the information security brief is given early and as often as necessary.[386]

ISSUE: Security clearance badges

DISCUSSION: Security clearance badges are sensitive items and need to be accounted for at all times. The S-2/G-2 issues the badges. Personnel need to report losses to the S-2/G-2 and unit commander immediately.

RECOMMENDATION: Improve. Ensure all OSJA personnel understand the requirements for maintaining security clearance badges.[387]

ISSUE: Storing OSJA information on network drives

DISCUSSION: The OSJA network drives were compromised on a regular basis by the G-6. The G-6 ran network system scans and reset the permissions to the network drive allowing all users on the network access. This was also a problem with the SharePoint portal, which was the main repository for Division investigations.

RECOMMENDATION: Improve. Establish a relationship early with the G-6 and impress the sensitivity of the content data on the network drives and SharePoint portals.[388]

ISSUE: Non-secure video tele-conference (VTC) capability

DISCUSSION: MND-N did not have VTC capability on the NIPR network. All VTCs occurred on the SIPR network.

RECOMMENDATION: Improve. MNC-I will need to establish a NIPR VTC bridge but due to the limitation on bandwidth in theater it may not happen soon.[389]

ISSUE: Voice Over Internet Protocol (VoIP)

DISCUSSION: VoIP and Secure VoIP (S-VoIP) phones were readily available; this is the method of communication used in the Iraq theater. There was limited availability of DSN phones. Commercial lines were available in other sections, but stateside reach back via phone was limited.

RECOMMENDATION: Improve. Train your personnel on the use of VoIP and S-VoIP before deployment and explain the communication problems between these systems and the DSN. The SJA offices should have at least one commercial line (for legal assistance or leadership team use).[390]

ISSUE: JAGC Software

DISCUSSION: The OSJA deployed with some E-JAWS DVDs, and all the software was loaded

[386] *Id.*
[387] *Id.*
[388] *Id.*
[389] *Id.*
[390] *Id.*

on the discs. The limited bandwidth in theater would not allow the download of large files. The domain in theater did not authenticate the certificates of the JAGCNET site and forced the download to take much longer.

RECOMMENDATION: Improve. ITD should work through the RCIO/G6, NETCOM to encourage local DOIMs to include all software needed to run JAGCNET applications on their image build list (swing integrator, etc.). Additionally, it would be helpful for ITD to understand the requirements of sister service signal elements. A portion of 25 ID's network was controlled by the Air Force, and its Certificates of Net-worthiness (CN) meant nothing to them. This was also an issue with establishing trusts between networks. Connectivity remains an issue with web based applications (MJO, Tort and Special Claims Application (TSCA), Client Information System (CIS), etc.).[391]

ISSUE: Electronic Judge Advocate Warfighting System (e-JAWS)

DISCUSSION: 2-82 ABN personnel were limited to a rucksack and two duffel bags for the deployment. The JAs had permission to take an extra tough box for their legal material. They took the e-JAWS kit, which consisted of e-JAWS disks, a laptop computer, printer, scanner, and camera. Although the equipment was basic, it performed well during the mission. The BJA was not initially a fan of the e-JAWS kit before the deployment. The BJA is now a "believer" after using it in Haiti.

RECOMMENDATION: In a hasty deployment situation, the e-JAWS kit can be quite an asset since it has all the core materials and functionality for virtually any sort of mission.[392]

ISSUE: Multi-user Internet Relay Chat (MIRC)

DISCUSSION: The RJA and Deputy RJA working spaces were not collocated in the same facility. In order to ensure the constant flow of information and good communication, they communicated with each other on the secure internet protocol router network (SIPRNet) using MIRC. The RJA and Deputy RJA also used MIRC to communicate with the battalion JAs on a daily basis. MIRC proved to be a very useful tool.

RECOMMENDATION: Sustain.[393]

ISSUE: Army Knowledge Online (AKO) account

DISCUSSION: An AKO account is required to process FCC claims. It is extremely difficult and very time consuming for Marines to attempt to set up an AKO account while in theater.

RECOMMENDATION: Marine JAs need to get an AKO account set up before deploying.[394]

ISSUE: Army Knowledge Online (AKO)

DISCUSSION: An AKO account is necessary to process FCC claims in theater, as well as gain access to numerous valuable resources. Most Marines do not have an AKO account. The Marine

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[391] *Id.*
[392] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 109.
[393] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 55.
[394] *Id.*

JAs with 2d MEB who did not possess an AKO account before deployment were unsuccessful in setting up an AKO account in theater.

RECOMMENDATION: Marine JAs should set up AKO accounts before deploying.[395]

ISSUE: Access restrictions on web portals

DISCUSSION: Restricting access to an entire headquarters portal prevents people from researching questions. Orders would list references the subordinate units could not view.

RECOMMENDATION: Do not make restricted access the default. There should always be a timely way for subordinate units to get access to the information they need without having to play phone tag with anyone.[396]

ISSUE: Lack of Manual for Courts-Martial (MCMs) in theater

DISCUSSION: Some TCs did not bring a copy of the MCM on deployment with them, thinking that they could just use one in theater. Unfortunately, there were not extra MCMs available in theater. As a result, those TCs who did not bring an MCM had to use an electronic version until they could have one shipped to them.

RECOMMENDATION: Improve. If you are deploying in a billet requiring the use of the MCM, ensure that you bring a copy with you.[397]

ISSUE: Hard copy of judge's bench book

DISCUSSION: The judge wanted to have a hard copy of the bench book to review while in the courtroom. The military justice paralegal was able to get a hard copy of the bench book, but it did not have the recent updates.

RECOMMENDATION: Improve. The judge did have access to the electronic version and was able to do without the hard copy. The military justice section should have a hard copy of the most recent bench book in the courtroom.[398]

ISSUE: Legal assistance attorneys need a dedicated DSN line

DISCUSSION: One of the two legal assistance attorneys lacked a Defense Switch Network (DSN) line in the office. Fortunately, one of his clients worked in the G6 section and was able to get him a DSN line.

RECOMMENDATION: Legal assistance attorneys each need a dedicated DSN line for making phone calls to CONUS on behalf of their clients.[399]

ISSUE: Need for government calling cards for legal assistance

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[395] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 56.
[396] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[397] *Id.*
[398] *Id.*
[399] *Id.*

DISCUSSION: The legal assistance office did not have access to a commercial phone line. When legal assistance attorneys needed to call courts, creditors, and other agencies on behalf of their clients, one option they had was to call the DSN number of military installation within the local area of the person they were trying to reach and have the installation operator connect the call. However, some installations limited the time for these calls. The attorneys therefore more frequently used their personal calling cards to make calls for their clients.

RECOMMENDATION: Improve. The OSJA should purchase calling cards for legal assistance. In the alternative, coordinate with the G6 section for a commercial line. At least one other staff section (G8) had such a line.[400]

ISSUE: Need for dedicated legal assistance automation

DISCUSSION: The legal assistance office shared its printer, copier, and scanner with the military justice shop. Occasionally the legal assistance attorneys would mistakenly pick up charge sheets and other military justice documents pertaining to their clients. Likewise, there was a chance military justice personnel could accidentally pick up confidential legal assistance documents.

RECOMMENDATION: The legal assistance office needs dedicated automation equipment in order to ensure client confidentiality.[401]

ISSUE: Non-secure internet protocol router (NIPR) network bandwidth

DISCUSSION: During the deployment, NIPR bandwidth was very low and, at times, the NIPR network would become inoperable. The inability to utilize the NIPR network significantly hampered the AdLaw section's ability to do legal research. The AdLaw section had to exercise patience and work with the S-6 section to try to improve bandwidth.

RECOMMENDATION: Until bandwidth in theater improves, JAs and paralegals alike need to ensure they deploy with electronic references so they can conduct research even when the NIPR network is down.[402]

ISSUE: Enlisted Data Automated System (EDAS)

DISCUSSION: Often, especially for LOD investigations, the need arises to track down where individual Soldiers are. EDAS is a handy tool that the OSJA can use to track down Soldiers and units.

RECOMMENDATION: AdLaw sections should coordinate with G-1, which has access to and regularly uses EDAS.[403]

ISSUE: Knowledge management

DISCUSSION: The OSJA maintained an internal shared drive accessible only to its personnel.

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[400] *Id.*
[401] *Id.*
[402] *Id.*
[403] *Id.*

Additionally, it contributed to the Division SharePoint portal. It would update materials regularly and update its welcome packet every two weeks. Additionally, the SJA would host regular Adobe Connect sessions with rule of law attorneys and BJAs.

RECOMMENDATION: Information sharing is critical in theater. Use the tools at your disposal to ease the burden on your remote units.[404]

ISSUE: Military Justice Online (MJO)

DISCUSSION: Use of MJO is mandatory both in garrison and while deployed. Although connectivity is not optimal, you must use MJO. Division would assist brigades as necessary in submitting their required reports. However, if a brigade continually failed to use MJO, the Division paralegal SGM required it to submit a Memorandum For Record (MFR) documenting the reasons why. After this edict, the SGM did not receive any MFRs, and the use of MJO increased.

RECOMMENDATION: Deployed environments present bandwidth problems; however, this does not excuse Soldiers from blatantly disregarding JAGC policy.[405]

ISSUE: REDAX™ software

DISCUSSION: REDAX™ is a valuable program for the administrative law section as it professionally redacts lines of text. However, it is not standard issue software.

RECOMMENDATION: Preload your computers with REDAX™ before deploying or be prepared to convince the theater G-6 you have authorization to install it on your systems.[406]

ISSUE: Training on contractor payment program

DISCUSSION: The legal administrator attended training on the new contractor payment program, Wide Area Workflow (WAWF). This program paid witnesses who were typically paid using a DD Form 250.

RECOMMENDATION: Sustain.[407]

ISSUE: Air and ground transportation

DISCUSSION: The operational law NCOIC coordinated all transportation with the G-3. The operational law NCOIC was the primary liaison with G-3 on all transportation requests for the OSJA.

RECOMMENDATION: Sustain. Having one person coordinate all travel made accountability easier.[408]

ISSUE: Computer equipment

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[404] *Id.*
[405] *Id.*
[406] *Id.*
[407] *Id.*
[408] *Id.*

DISCUSSION: The division G-6 ordered life-cycle replacement computers and had them delivered in theater. MNC-I also gave the Division an additional 25 Theater Provided Equipment (TPE) computers for claims missions. Most brigades did not bring enough computers to operate on NIPR and SIPR networks.

RECOMMENDATION: Sustain. Having extra computers on hand worked well to fill any computer requests for the brigades.[409]

ISSUE: Copier contract

DISCUSSION: The OSJA had a contract for a printer used by the military justice and legal assistance offices. The other copiers in the Division were under a contract controlled by the G-6. The Division copiers took a long time for service and repair.

RECOMMENDATION: Having a separate contract resulted in better support for services and repairs.[410]

ISSUE: Network printers

DISCUSSION: Most sections of the OSJA shared network printers. The NCOIC of military justice had a standalone printer in order to maintain an active printer if the network went down. The unit replaced some printers during the deployment.

RECOMMENDATION: Sustain. Most network printers worked well.[411]

ISSUE: Compromised network drive

DISCUSSION: A routine scan compromised the TDS network drive. The access permissions reset to the default and left the data open to all users.

RECOMMENDATION: Improve. Coordinate with the G-6 and get a schedule of planed scans to ensure the settings do not change and to correct any problems immediately.[412]

ISSUE: Secure video teleconference (SVTC) capabilities

DISCUSSION: The Division courtroom had SVTC capabilities and it saw occasional use. There was no NIPR VTC capability outside the G-6 office.

RECOMMENDATION: Sustain. There was not need to have a NIPR VTC.[413]

ISSUE: Availability of phone lines

DISCUSSION: The G-6 issued phone lines to the Division based on personnel ratios; the more

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[409] *Id.*
[410] *Id.*
[411] *Id.*
[412] *Id.*
[413] *Id.*

personnel, the more phone lines. Most sections of the OSJA shared phone lines. The OSJA had access to three phone networks (NIPR, SIPR, and DSN).

RECOMMENDATION: Improve. Recommend dedicated phone lines for busy sections since there is no voice-mail option for missed calls.[414]

ISSUE: Non-Tactical Vehicles (NTVs)

DISCUSSION: The OSJA had 7 NTVs to support approximately 50 people. The coordination of NTV requests got to be complex when there were many simultaneous missions. The NTVs were instrumental during the relief-in-place (RIP) and the transfer of authority (TOA).

RECOMMENDATION: Improve. Establish a policy from the SJA early in the deployment setting priorities for the use of NTVs.[415]

ISSUE: Coordinating Air Travel

DISCUSSION: The OSJA had three points of contact (POCs) who worked with J-3 Air to coordinate travel for OSJA personnel. The senior court reporter managed all Air Mobility Requests (AMRs) for the military judge and the traveling court reporter. Establishing good relationships with the J-3 Air section made getting AMRs approved easier when they understood the mission requirement.

RECOMMENDATION: Sustain. Having three POCs gave the flexibility to take leave. Knowing more than one person could assist and communicate with J-3Air was helpful.[416]

ISSUE: Monitoring of network drives

DISCUSSION: Shortly after our arrival and before the outgoing unit left, the office noticed all users on the network had access to the military justice network drive. As the OSJA does not manage the network drives, it had to submit a request to the C-6 to remove the permissions and to allow access only to the list of people the OSJA provided. After fixing the problem, we continued to monitor the access levels of the OSJA network drives.

RECOMMENDATION: Improve. The OSJA, in coordination with the C-6, should manage the OSJA network drives. C-6 should announce all network scans to ensure the access levels do not change. If they do, they can be fixed immediately.[417]

ISSUE: Digital senders on network

DISCUSSION: The OSJA lost the use of the digital senders it had because the C-6 disabled all digital senders to minimize the unauthorized transfer of classified material to the unsecure network. The legal administrator contacted the C-6 for an exception to policy (ETP) for the use of the digital sender and C-6 re-activated the equipment.

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[414] *Id.*
[415] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[416] *Id.*
[417] *Id.*

RECOMMENDATION: Sustain. Having digital senders is imperative for capturing all the investigations that pass through the OSJA on both the secure and unsecure networks. The good relationships with the C-6 enabled minimizing the outage.[418]

ISSUE: Redacting software

DISCUSSION: When the unit arrived in theater, it was able to use the Adobe redacting software, Redax, to redact documents. After a couple of months, the C-6 initiated a new policy stating they would no longer support Redax and they would disable all copies until each system had its own software license. This made it very difficult to redact documents. The OSJA was able to get software licenses and the mission continued.

RECOMMENDATION: Improve. The C-6 policy created a backlog of documents requiring redacting. This slowed answers to Freedom of Information Act (FOIA) requests.[419]

ISSUE: Need for standardized electronic filing system for historical legal files

DISCUSSION: The MNC-I OSJA had a shared drive. Following the merger into USF-I, they also inherited the MNF-I shared drive. However, there was no consistency regarding the folder systems or filenames. Consequently, it was difficult to locate and consolidate files.

RECOMMENDATION: Improve. The JAG Corps should develop a standardized electronic filing system and file naming convention, including the document title and date. This would facilitate the transfer of data from one rotation to the next, as well as the merger of files from different OSJAs.[420]

ISSUE: Life cycle replacement program for automation

DISCUSSION: The legal administrator was developing the OSJA life cycle replacement program at the end of her mobilization. The legal administrator solicited input from other legal administrators who had a program in place.

RECOMMENDATION: Sustain. Every OSJA should have a life cycle replacement program in place for automation.[421]

ISSUE: Closing access to knowledge portals

DISCUSSION: Bandwidth constraints will always drive system managers to default to limiting access to their knowledge management portals. However, at some point, the lack of outside user access to information defeats the purpose of having the portal in the first place.

RECOMMENDATION: Improve. Systems managers must consciously balance the need to ensure the system remains stable with allowing the broadest possible access to necessary information. JAs need to make the case to the G-6 staff to preserve access on required nets.[422]

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[418] *Id.*.
[419] *Id.*
[420] *Id.*
[421] *Id.*
[422] *Id.*

ISSUE: Location of OSJA data

DISCUSSION: The majority of the OSJA data was on the network drives. The network drives were broken down into OSJA sections and specific personnel had permissions to each folder. Some information was on the SharePoint portal, but it was not the primary source for collection or collaboration.

RECOMMENDATION: Improve. The OSJA could have used the SharePoint portal more and more effectively than the network drives. A mandatory SharePoint class would have helped the users understand the uses of the system.[423]

ISSUE: Use of SharePoint

DISCUSSION: The SharePoint portal was a very useful tool the command emphasized. The OSJA could have better utilized it for easy access as a repository for all investigations due to the search function.

RECOMMENDATION: Sustain. The JAG Corps should move towards using the same systems the Army is using while deployed and in garrison.[424]

ISSUE: External data storage devices

DISCUSSION: The OSJA received an exception to policy (ETP) to use external storage devices to maintain OSJA files. It used two external hard drives, one for the secure network and one for the unclassified network.

RECOMMENDATION: Sustain. The ETP should pass from the departing unit to the incoming unit to ensure continuity of support.[425]

ISSUE: Establishing network accounts

DISCUSSION: Each person in the Corps OSJA completed all the necessary paperwork and sent it forward to the departing unit to submit and create user accounts. The outgoing unit was able to create accounts for the majority of the incoming unit so the new users could log in immediately.

RECOMMENDATION: Sustain. This process allowed the incoming unit to integrate into the mission set almost immediately.[426]

ISSUE: Network admin rights

DISCUSSION: All IMOs had to attend a weeklong course and pass a test before receiving administrator rights on the network. The same training and testing occurred in garrison before the deployment.

RECOMMENDATION: Improve. The training and tests that occur in garrison should be transferable to get the same level of access while deployed.[427]

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[423] *Id.*
[424] *Id.*
[425] *Id.*
[426] *Id.*

ISSUE: Commercial network connection

DISCUSSION: Both military justice (MJ) and trial defense services (TDS) requested access to social media sites on the unclassified network for viewing potential evidence in cases. This became an issue after a criminal investigation division (CID) agent brought in some information he saw on Facebook about an accused.

RECOMMENDATION: Sustain. There is no need for an ETP as both sections can gain access through the public affairs office (PAO) or the CID office.[428]

ISSUE: Secure and unsecure video teleconference (VTC)

DISCUSSION: The office initially heard there was no capability to run an unsecure VTC. However, the office eventually did get that capability. Secure VTCs were common and very easy to set up with the C-6. Some award and promotion ceremonies occurred in the secure VTC rooms in theater so the family members at home station could be a part of the ceremony.

RECOMMENDATION: Sustain.[429]

ISSUE: Voice communications

DISCUSSION: Power outages occasionally caused all the voice communications to go down, since they tied into the servers. These outages did not last long and were very infrequent.

RECOMMENDATION: Sustain. Be prepared to work off-line.[430]

ISSUE: Communications interoperability

DISCUSSION: During the deployment, RC-East became more reliant on the Combined Enterprise Regional Information Exchange (CENTRIX) network as it was the only reliable means to communicate with ISAF coalition partners. Coalition partners did not have access to the Secure Internet Protocol Router (SIPR) network.

RECOMMENDATION: Improve. It is critical for the Division OpLaw attorneys to have a CENTRIX workstation.[431]

ISSUE: Network protection

DISCUSSION: The CJTF had three networks to use, and two were secure networks. Working in an open storage area with three networks raises the risk of secure information spillage. The OSJA instructed all users to maintain awareness of secure information on the proper network. Some OSJA users received e-mail and e-mail attachments that contained classified information. The OSJA reported these instances and took corrective action with the help of the J-6.

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[427] *Id.*
[428] *Id.*
[429] *Id.*
[430] *Id.*
[431] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 59.

RECOMMENDATION: Sustain. Ensure all personnel know the reporting process when classified information is received on the unclassified network and also how to minimize the impact on the network.[432]

ISSUE: Network access

DISCUSSION: The OSJA forwarded all the necessary paperwork and signatures to the departing unit to establish accounts to the networks. Having accounts already set up on arrival allowed OSJA personnel to start working without having to wait for accounts to be established; a process that can take up to five days.

RECOMMENDATION: Sustain. This will help with the transfer of authority (TOA).[433]

ISSUE: Location of information

DISCUSSION: The majority of CJTF OSJA data was stored on a J-6 server and the legal administrator managed the rights. Only certain personnel could access certain folders of data. The J-6 could run the required scans on the servers but did not access the server for the data.

RECOMMENDATION: Sustain. The J-6 was very supportive with the OSJA information management.[434]

ISSUE: Access of information

DISCUSSION: Some OSJA personnel had offices outside the J-6 network and therefore could not access the files on the J-6 server. The network administrators tried to give access and allow certain computers access, but it was considered a security risk. The J-6 established a file transfer protocol (FTP) server to assist with transferring information.

RECOMMENDATION: Sustain. The OSJA used the FTP server often and with great success.[435]

ISSUE: OSJA SharePoint portal

DISCUSSION: The OSJA used a SharePoint portal. The portal required a naming convention and had a limitation on file sizes, this restricted the practical use of the portal.

RECOMMENDATION: Improve. The OSJA could have better used this tool if the limitations were not so strict.[436]

X.D.2. Information Management

ISSUE: Computer access for mobilizing units

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[432] *Id.*
[433] *Id.*
[434] *Id.*
[435] *Id.*
[436] *Id.*

DISCUSSION: This system does not currently work. Because each installation Department of Information Management (DOIM) has its own requirements, the unit cannot maintain connectivity as it moves from station to station. By the time the unit met all the local requirements to hook up, it was time to move again.

RECOMMENDATION: Standardize the requirements for access. The disparate DOIMs must allow accreditation at one station to carry over to the next. Also, ensure units can carry the same laptop throughout the process.[437]

ISSUE: Automation

DISCUSSION: Automation, including NIPR/SIPR computers, phones, and digital senders, is critical to the success of the legal mission. All too often, however, the OSJA is not equipped with the proper resources. The legal administrator worked diligently and proactively months before mobilization with the Division G6, the Office of the Judge Advocate General (OTJAG), and the MNC-I legal administrator to acquire adequate laptops for the OSJA. The mission analysis determined all JAs required a NIPR and SIPR system. The G6's computer orders arrived in batches over the first several weeks of the deployment. By acquiring other laptops in advance, the OSJA had computers for everyone much earlier than other staff sections.

RECOMMENDATION: Do not rely exclusively on your G6 to supply the OSJA with adequate resources. Establish a dialogue with the outgoing legal administrator as early as possible. The incoming and outgoing legal administrators should develop a plan to secure automation equipment for the entire office. At a minimum, submit the System Authorization Request (DD Form 2875) for the leadership team before entering theater. Send the DSJA, legal administrator, and Information Management Officer (IMO) on the advance party in order to secure resources and prepare for the arrival of the main body and determine office space.[438]

ISSUE: Information management

DISCUSSION: The information the OSJA kept on the network shared drives and SharePoint portals used in theater could not go on the network at home station. The local Director of Information Management (DOIM) wanted to image the drives before the OSJA put them on the network, causing a loss of all the data.

RECOMMENDATION: Improve. Coordinate with the G-6 and the local DOIM to establish a trust after performing the proper scans and network evaluations so the data is not lost and easily accessible at home station. Due to current operations, USB ports were disabled and the Division NIPR file share was not allowed on the Army Pacific domain.[439]

ISSUE: Information management and security

DISCUSSION: The Division G-6 controlled all the network servers and SharePoint portal servers. The G-6 gave administrator rights to the OSJA SharePoint portal and the network shared drives to the legal administrator. The routine scans and checks occurred without incident.

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[437] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 253.
[438] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.
[439] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.

RECOMMENDATION: Sustain.[440]

ISSUE: Basic automation troubleshooting training

DISCUSSION: The OSJA Information Management Officer (IMO) created a basic troubleshooting checklist with directions for all users in the OSJA. A class was available to all OSJA personnel multiple times to assist in the number of work order requests to fix problems at each terminal.

RECOMMENDATION: Sustain. This checklist and class was very helpful in the execution of the IMO responsibilities since he/she knew the basic steps had already occurred.[441]

ISSUE: Information Management Officer (IMO) for the OSJA

DISCUSSION: There is a need for an IMO in the OSJA. The IMO can resolve issues at the lowest level by soliciting training and learning troubleshooting techniques from the Division IMO staff. The IMO will ensure all OSJA personnel are adhering to appropriate regulations, policies, and procedures, including information assurance policies.

RECOMMENDATION: Assign a full-time IMO in the rank of E4/E5 to conduct initial troubleshooting and problem verification and to perform Information Assurance Security Officer (IASO) duties. The OSJA IMO should also be the subject matter expert for the NIPR/SIPR file shares, the SharePoint portal, and all Microsoft applications. The legal administrator should supervise and manage the IMO program.[442]

ISSUE: Paralegal support for Information Management Officer (IMO) positions

DISCUSSION: The chief paralegal often tried to pull the Soldier who was the IMO out of the position to backfill another position. The expectation is paralegals in the administrative/ operations section of the OSJA should serve as IMOs to support the OSJA. The daily troubleshooting of automation related issues is a full time job while deployed.

RECOMMENDATION: Improve. The importance of having a full time IMO needs emphasizing to the chief paralegals.[443]

ISSUE: Garrison information management officer for the OSJA

DISCUSSION: The I Corps OSJA has a full time civilian employee as the information management officer (IMO), responsible for all automation equipment and network protection for the OSJA.

RECOMMENDATION: Sustain. Having a civilian IMO should be the standard for all installation OSJAs.[444]

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[440] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[441] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[442] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.
[443] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[444] *Id.*

X.D.3. Supplies & Equipment

ISSUE: Acquiring supplies for the OSJA

DISCUSSION: The OSJA did not have any problems with supplies. The outgoing unit left plenty of supplies, including digital senders and a Judge Advocate Warfighting System (JAWS) computer. The OSJA was able to order supplies through the Division Special Troops Battalion (STB) S-4 and the Division G-4.

RECOMMENDATION: Sustain. Make sure that you leave enough supplies for the new unit to operate for at least 30 days or until their supplies arrive.[445]

ISSUE: Pack out requirements for office supplies

DISCUSSION: The OSJA deployed with ninety days worth of supplies. It found it to be just enough. Part of the problem it experienced was with the very long response time from the field ordering officer (FOO). The OSJA had to work with a company supply representative who had five or six other sections under his responsibility. It appeared some of these sections had more money than requirements, while the OSJA had more requirements than money at times. The OSJA was not permitted to have its own FOO.

RECOMMENDATION: Pack at least a sixty to ninety day supply. Identify who the FOO representative for your office is before deploying and train with that person. Keep credit cards open for thirty days after you deploy to ease the purchasing process in theater.[446]

ISSUE: Self Service Supply Center (SSSC)

DISCUSSION: SSSC was the primary location for obtaining supplies for the OSJA. The OSJA has an account for supplies, and all purchases were deducted from that account. The account had a monthly renewal and the office picked up supplies twice a month.

RECOMMENDATION: Sustain. The SSSC stocked all the necessary office supplies.[447]

ISSUE: Field Ordering Officer (FOO)

DISCUSSION: The legal administrator served as the FOO for the OSJA. There were at least two pay agents at any one time working with the FOO to have supplies on hand.

RECOMMENDATION: Sustain. Having the FOO and pay agent in the section made getting supplies quicker and easier.[448]

ISSUE: Automation equipment

DISCUSSION: The OSJA had plenty of excess computers on hand and turned in many during the deployment. There was a need for more color printers, but the office was able to get by with the few on hand. Initially, the office needed more digital senders and was able to get a couple

[445] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[446] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[447] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[448] *Id.*

more during the deployment. All the equipment was theater provided equipment (TPE) and on one hand receipt.

RECOMMENDATION: Improve. Better communication with the outgoing unit about all the TPE and the shortages should occur before packing the unit containers.[449]

ISSUE: Hand receipt for theater provided equipment (TPE)

DISCUSSION: The departing unit had a reserve judge advocate sign for all the MNC-I TPE to avoid doing a walk through inventory of the hand receipt. This was good for the departing unit but became a problem when the reserve judge advocate had to demobilize and our unit had to take over the hand receipt. The NCO that was going to sign for all the TPE had to conduct an inventory before signing the hand receipt. There were many discrepancies, which required initiation of a Financial Liability Investigation of Property Loss (FLIPL).

RECOMMENDATION: Improve. Ensure a well-trained individual signs for all TPE to ensure proper accountability. If that is not possible, ensure the hand receipt holder receives the proper classes.[450]

ISSUE: Life cycle replacement plan

DISCUSSION: MNC-I did not have a life cycle replacement plan in place when the office arrived. As we started to draft the life cycle replacement plan for the OSJA, the C-6 halted all purchases for automation equipment in theater. This halt was to help facilitate the drawdown of forces.

RECOMMENDATION: Improve. Create a life cycle replacement plan for the deployed OSJA and be aware of any possible changes to the level of support based on the force posture.[451]

ISSUE: DVD burners

DISCUSSION: Most DVD burners in the computers the office had went bad at some point during the deployment. The environment is not good for automation equipment. The legal administrator set aside two systems with DVD burners (one on the secure network and one on the unclassified network) to which only a few people had access. This helped preserve the life of the DVD burners.

RECOMMENDATION: Improve. The legal administrator was able to get an ETP for the use of external DVD burners.[452]

ISSUE: Standards for facilities

DISCUSSION: There are two problems with legal facilities. First, there are no set standards for what is sufficient. Second, there are no consequences for not meeting whatever the standard might be. The inadequacy of a courtroom or client services area is not visible to a commander on a day-to-day basis. Yet, only the commander at the local installation can affect any changes.

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[449] *Id.*
[450] *Id.*
[451] *Id.*
[452] *Id.*

RECOMMENDATION: There should be a published list detailing the standard equipment set-up for a courtroom (computers, recorders, video teleconference equipment, physical layout, etc.). Likewise, there should be the same for client services areas. These two areas are the public face of the JAG Corps. As an Army, we seem to spend more money on updating command conference rooms every two years than we do on client services areas. Having a set standard would allow a legal office to credibly state, "Our current facilities do not meet the standard."[453]

ISSUE: Austere working conditions

DISCUSSION: The initial work setting of the legal team was in a crowded tent with a table as a desk and no internet connection. Trying to get a better set up was slow due to the austere conditions of operations start up in Haiti. There was limited space and resources, and the legal team was not the priority in the early phases. They simply had to make do until some time passed when the buildup permitted them to get better facilities and improved computer/phone connectivity.

RECOMMENDATION: Legal staffs have to be patient with facilities and equipment on short notice deployments, but keep pressing for improvements. Legal personnel must stay involved in unit efforts to review TOC/JOC layouts and make the case for the space and connectivity they need.[454]

ISSUE: Equipment for administrative separation boards

DISCUSSION: The CJA did not have the dedicated recording equipment needed to conduct administrative separation boards. The section had to borrow a video camera from the PAO and convert camcorder tapes into a separate format to make them usable.

RECOMMENDATION: The CJA should bring transcribing equipment with at least a case of tapes into theater from CONUS on deployment.[455]

ISSUE: Availability of notary seals

DISCUSSION: A notary seal is very useful for notarizing documents for use in the U.S. even though federal law exempts many documents from this requirement. A notary seal is also helpful on documents for use in Iraq—stamps and seals have great cultural significance in Iraq and the use of a seal on documents created a positive impression with Iraqi lawyers and contractors.

RECOMMENDATION: A deploying legal section should bring at least three notary stamps: two of the embossing type and one ink stamp for documents you will scan.[456]

ISSUE: Field equipment needed for dangerous and austere living conditions

DISCUSSION: Do not allow yourself to be lulled into a false confidence that you will always be on a relatively safe area such as a Forward Operating Base (FOB) in Kabul. These installations sometimes come under attack by suicide bombers, and you will sometimes find yourself living in

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[453] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[454] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 115.
[455] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 17.
[456] *Id.*

austere and dangerous conditions when visiting outlying ANP units. Convoys are always dangerous, and you should be prepared to carry out competent convoy operations.

RECOMMENDATION: When getting your materials ready for deployment, ensure you have the right field equipment to be able to live as comfortably as possible in very basic conditions for some weeks if necessary. There are extremes of temperature in Afghanistan, and it is better to haul a little additional thermal clothing than to freeze for a few days.[457]

ISSUE: Materials/equipment to take to theater

DISCUSSION: The JAG Corps products are very helpful in theater. These include both hard copy Graduate Course materials as well as the various digital products. Brigade legal sections must also take digital scanners and digital cameras, and have access to both SIPR and NIPR domains.

RECOMMENDATION: Sustain. Know what theater-provided equipment (TPE) the brigade legal section will fall in on, and plan your office packing list accordingly.[458]

ISSUE: Army issued equipment in a Navy unit

DISCUSSION: The JA received his standard issue Army gear from the Central Issue Facility (CIF). The Army Combat Uniform (ACU) pattern of his ballistic vest made him stand out when convoying with the SEALs.

RECOMMENDATION: IAs should receive their equipment draw from the gaining unit to ensure uniformity.[459]

ISSUE: Notary stamps and seals

DISCUSSION: The Division OSJA ran short on notary stamps and seals. It is very difficult to obtain new notary seals or ink for notary stamps in theater.

RECOMMENDATION: Obtain a notary seal for every member of the legal assistance at home station, as well as a few extras. Ink stamps are good to have as well because they show up better on copies or scans.[460]

ISSUE: Equipment on standby

DISCUSSION: The OSJA always had three to five notebook computers on hand to supplement a BCT or to replace a broken system. The standby systems were JAWS notebooks they ordered from Information Technology Division (ITD). The legal administrator imaged them before putting them on the network. This practice reduced the amount of down time for JAs and paralegals when their systems went down.

RECOMMENDATION: Sustain.[461]

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[457] CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09, *supra* note 33.
[458] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.
[459] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 98.
[460] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.
[461] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.

ISSUE: Theater-provided equipment (TPE)

DISCUSSION: Understand the TPE process and coordinate with the unit on the ground to identify any shortfalls. The outgoing unit left digital senders and some JAWS notebooks. The S-4 later added to the TPE hand receipt.

RECOMMENDATION: Sustain. Do what you can to set up the incoming unit for success with equipment.[462]

ISSUE: Equipment in non-secure buildings

DISCUSSION: The OSJA shared a building with other organizations that was not very secure. All the automation equipment had to be accounted for daily.

RECOMMENDATION: Sustain. The office locked the computers in the military justice and legal assistance building to each desk. The laptops had a lock with a cable that tethered them to the desk. The unit locked the building at night to give added security.[463]

ISSUE: Publication requests

DISCUSSION: The CJTF had problems ordering and receiving Manuals for Courts-Martial (MCM) and the JAG directory. Many people like to use the paper versions, and it was difficult to get copies delivered.

RECOMMENDATION: Improve. The JAG Corps should have a stock of MCMs and JAG Pub 1-1 to send to deployed units.[464]

ISSUE: Supply process

DISCUSSION: The CJTF OSJA had a Field Ordering Officer (FOO) and approving official for purchasing office supplies that were not immediately available from the supply room. The unit supply office would order supplies, if they were not in stock, that the OSJA did not immediately need since it took three to six months before the supplies arrived.

RECOMMENDATION: Sustain. Having a FOO and approving official ensured the OSJA had supplies and could always purchase what it needed.[465]

X.E. Leadership

ISSUE: Leadership advice

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[462] *Id.*
[463] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[464] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 59.
[465] *Id.*

DISCUSSION: The key point with deployments is to monitor your people. Many issues are going to happen and there will be hard times. You have to be able to talk with your people about their problems.

RECOMMENDATION: Note.[466]

ISSUE: Access to the BCT commander

DISCUSSION: The BJA was lucky to have a BCT commander who valued his JAs. Moreover, the JAs proved their value very early in the fight, increasing their commander's confidence in the brigade legal section.

RECOMMENDATION: Sustain. Once you have your BCT commander's confidence, he will come to you for everything, even non-legal issues. The commander will want you around wherever he goes.[467]

ISSUE: Division SJA visits

DISCUSSION: This a must do—it should be like a mini-Article 6. This needs to occur so the SJAs have good situational awareness. The Division SJA met with the BJA often, and this provided him with greater situational awareness of BCT activities.

RECOMMENDATION: Sustain.[468]

ISSUE: BJA job satisfaction

DISCUSSION: The BJA was happier in this job than he had been in any previous assignment. The autonomy, range of legal issues, and ability to contribute to the fight are unparalleled.

RECOMMENDATION: Sustain.[469]

ISSUE: Building the team

DISCUSSION: The brigade legal section had all of its personnel approximately five to six months before the deployment, with the exception of one vacancy. The consolidation of the paralegals at the BCT headquarters helped greatly in building the team and establishing subject-matter expertise.

RECOMMENDATION: Sustain. Push to have personnel vacancies filled as far in advance as possible.[470]

ISSUE: Mid-tour AAR

DISCUSSION: Approximately half way through the deployment, the BJA conducted an AAR

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[466] 1 CSB (ME) OEF AAR, JUN 08 - SEP 09, *supra* note 18.
[467] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.
[468] *Id.*
[469] *Id.*
[470] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 20.

with the brigade legal section to determine what was working well and what they needed to improve.

RECOMMENDATION: Sustain. Seek opportunities to reassess and improve your procedures. Subordinates generally appreciate the chance to voice their views.[471]

ISSUE: Leadership opportunities

DISCUSSION: Under the Army's modular concept, the role of a BJA is now much more challenging and involves a greater degree of leadership opportunities than in the past. JAs at the MAJ rank must be able to advise brigade (BDE) and battalion (BN) commanders in all core legal disciplines. Moreover, they will have to mentor and lead junior level JAs, as well as paralegals. Accordingly, the BJA must not only be proficient at providing legal advice, but also become skilled at managing and leading a legal staff.

RECOMMENDATION: The job of a BJA is more than knowing the law, so any future BJAs must be conversant with leadership duties and requirements.[472]

ISSUE: Dealing with an angry BCT commander

DISCUSSION: Panelists to the 2010 BJA Symposium shared their experiences with the audience on how to deal with BCT commanders upset with legal advice. Some BCT commanders do not handle legal advice contrary to their wishes very well. There is no magic way to get through a commander's emotional response, but some suggestions are to use a trusted agent to help with the news, ride out the emotion, deliver the advice in a controlled setting, use others (Deputy, J3, and CSM) to prep the commander for the "legal no," and develop a thick skin. Ultimately, the key to getting through these episodes is developing a respectful and professional relationship with the commander.

RECOMMENDATION: Ensure the commander understands the reason for the contrary legal advice and stick to your guns if emotional levels begin to rise.[473]

ISSUE: Soldier skills

DISCUSSION: Paralegals should enhance their Soldier skills at every opportunity.

RECOMMENDATION: Paralegals should seek opportunities both in garrison and in theater to enhance their Soldier skills. They should then pass this information along to their JAs.[474]

ISSUE: Staff integration

DISCUSSION: The BCT legal team looked at themselves as more than a legal shop, integrating themselves into the staff and headquarters.

RECOMMENDATION: Sustain. Get out of your comfort zone. Do non-legal things so the other staff sees your value. You cannot succeed at the BCT if you are not a good staff officer.[475]

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[471] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 7.
[472] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[473] *Id.*
[474] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 15.

ISSUE: Team building during pre-deployment phase

DISCUSSION: The unit has armories (company, detachment, and battalion level) throughout Pennsylvania. The SBCT paralegals did not know or interact with one another on a regular basis. They had little interaction with their SBCT JAs or with the division SJA.

RECOMMENDATION: Improve. BN paralegals should meet at the brigade once a year for professional development and team building. Moreover, all paralegals and JAs should meet once annually with the division OSJA for professional development and team building.[476]

ISSUE: Morale

DISCUSSION: Do not forget to concentrate on the morale of your people. This unit had a weekly movie night and organized parties and invited other legal offices and brigade staff sections to attend.

RECOMMENDATION: Providing these much-needed outlets allowed personnel to relax a bit and integrate with fellow Soldiers outside the office.[477]

ISSUE: Article 6 visits by the senior Judge Advocate General Corps (JAGC) leadership

DISCUSSION: Article 6 visits are extremely beneficial. They are a great morale builder for junior Soldiers. Most importantly, though, they absolutely break open any unintentional roadblocks to communication and can provide the "big picture" expectations of the JAGC concerning the mission.

RECOMMENDATION: Do not pass up the opportunity to engage the senior JAG leadership provided by an Article 6 visit. The benefits far outweigh any inconveniences that go with any senior official's visit.[478]

ISSUE: Battlefield circulation

DISCUSSION: The BJA made a practice to conduct battlefield circulations with commanders to assess the battalions' legal needs. This practice had other benefits. First, the commander liked having his BJA around. Second, the BJA got to know the staff primaries very well. Third, it helped put things in perspective and allowed the BJA to see the impact his office was having on the overall mission.

RECOMMENDATION: Sustain.[479]

ISSUE: Interaction of the BJA with division OSJA

DISCUSSION: The BJA enjoyed a great working relationship with the officers in the division

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[475] 2HBCT, 1ID (1st Half) OIF AAR, OCT 08 - JUN 09, *supra* note 1.
[476] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.
[477] *Id.*
[478] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 253.
[479] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.

Office of the Staff Judge Advocate (OSJA). These officers were extremely helpful and assisted in heading off problems before they began. The BJA had no qualms picking up the phone and asking the deputy SJA or one of the officers in charge (OICs) for advice or help on an issue.

RECOMMENDATION: Sustain. Establish a close working relationship with your higher headquarters OSJA.[480]

ISSUE: Regular office call with BCT commander

DISCUSSION: The BJA had a weekly office call with the BCT commander, which allowed the BJA constant access and helped ensure all suspenses were met.

RECOMMENDATION: Sustain. Without a designated time to sit down with him, it is easy to miss suspenses, and the BJA constantly has to resort to conducting "drive-bys," which is no way to do business. The regular 1700 office call on Fridays worked out well throughout the deployment and gave the BJA constant access the commander.[481]

ISSUE: Inadequate continuity in the MNSTC-I OSJA

DISCUSSION: The single biggest challenge and mission inhibitor in the MNSTC-I OSJA was the lack of continuity. There was an inadequate record as to what legal issues previous OSJAs dealt with. Moreover, the current OSJA rendered opinions that, in some cases, were completely the opposite of what their predecessors advised in the past. The lack of continuity was also a problem across the other directorates within MNSTC-I.

RECOMMENDATION: Improve. Much of the continuity problems are a function of the fact MNSTC-I was made up of individual augmentees with different rotation cycles and deployment lengths, making a comprehensive relief-in-place/transfer of authority (RIP/TOA) process impractical. It would have been helpful to have a pre-deployment site survey (PDSS). More comprehensive continuity books would also have been helpful, but even these are inadequate to fully explain the evolution of legal advice concerning some legal issues. A clear archiving and recordkeeping system is essential in order to identify opinions issued, and the contours of legal guidance given to the command.[482]

ISSUE: Establishing trust with AOB from different Special Forces Group

DISCUSSION: It was difficult to earn the trust of an AOB from another Special Forces Group. The battalion legal advisor had to work hard to form a close working relationship.

RECOMMENDATION: Improve. Battalion legal advisors should travel to the provisional unit before deployment to meet with its leaders and teams to provide briefs and meet the Soldiers.[483]

ISSUE: Managing commander & staff expectations

DISCUSSION: The battalion legal advisor had to manage the expectations of his commander, XO, and S-3. This proved complicated in many situations.

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[480] *Id.*
[481] *Id.*
[482] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.
[483] 1/5 SFG OIF AAR, JUL 09 - JAN 10, *supra* note 94.

RECOMMENDATION: Sustain. Be prepared to deal with competing staff interests and think of ways to manage these expectations before deploying. The battalion legal advisor always knew the Battalion Commander's intent and stayed in his lane when handling non-legal staff assignments. The battalion legal advisor also sought the advice of the enlisted Soldiers in the unit and especially the Command Sergeant Major (CSM) as they knew how the unit should operate.[484]

ISSUE: Loss of training opportunity with gaining command

DISCUSSION: SEAL Team Seven invited the JA to their train up in San Diego. The JA's command did not release him for this training. This prevented the JA from meeting and establishing rapport with his gaining command before deploying.

RECOMMENDATION: Improve. IAs should be made available by their parent command for training with their gaining command. For units with specialized training requirements, the length of the IA's assignment should be at the discretion of the gaining commander. This would allow the IA to participate in important aspects of the unit train-up, AAR, and other valuable activities.[485]

ISSUE: Interservice relationships

DISCUSSION: At times, it became clear that certain matters were affected by the historical relationship between the unit and other branches of service.

RECOMMENDATION: Army JAs augmenting a sister service should be aware of their host unit's relationships with other organizations and services in their area of responsibility (AOR). As legal officers and representatives of another branch of service, Army JAs are in the position to work to build common understanding between the parties.[486]

ISSUE: Building relationships increases communication and productivity

DISCUSSION: Throughout the deployment, there were communications glitches both with some subordinate units and with higher headquarters, which had a direct negative impact on the ability to investigate and prosecute cases. Conversely, where the Division had built good relationships, it allowed for better information flow and increased productivity.

RECOMMENDATION: The SJA should make contact with incoming subordinate units before their arrival to establish the Division's expectations and to begin to build the future relationship. Building relationships with all subordinate units, setting expectations for subordinates, and actively maintaining these relationships will promote information flow and higher work productivity.[487]

ISSUE: Communication

DISCUSSION: The deployed environment is a fluid one in which information is time sensitive. Establishing a proper flow of communication will result in smoother operations and more timely

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[484] *Id.*
[485] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 98.
[486] *Id.*
[487] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.

actions. There will be times when the most junior person in the section will have to answer questions pertaining to your operations. Proper information is a key to mission success.

RECOMMENDATION: Practice briefing information up and down the chain. Keep your superiors and subordinates informed on all actions pertaining to your section. Do not let the message end with you. Ask yourself, "Who else needs to know?"[488]

ISSUE: Supervision of BJAs

DISCUSSION: The rise of the modular BCT and concomitant independence of the BJA creates a challenge for the Division OSJA. BJAs are some of the best and brightest members of the JAG Corps. As such, they sometimes bristle at taking direction or answering RFIs from CPT JAs at the Division, let alone National Guard officers. There is also a strong and constant tension between their loyalties to their brigades/command/rating chain and the JAG Corps technical chain. BJAs sometimes met visits by Division CPTs to the BCTs with indifference, annoyance, or outright hostility. At the same time, these BJAs still seemed to want attention, communication, and acknowledgement from the Division SJA. Though much of the SJA's authority over the BJA has diminished, the SJA's statutory, regulatory, and doctrinal supervisory responsibilities remain. Therefore, good, open communication between the SJA and BJAs is not only critical, but takes constant work to maintain. In the small world of the JAG Corps, many of the active component JAs know each other. They sometimes, therefore, have no problem cutting Division out of the conversation between BCT and Corps.

RECOMMENDATION: Develop effective regular methods to communicate with BJAs. The SJA and DSJA should conduct battlefield circulation as often as possible. Be prepared for BJAs to go around the Division and straight to Corps, taking advantage of previous working relationships they may have had. War-game in advance how you will handle an uncooperative BJA. How do you get the SJA inserted as intermediate rater when BJA and SJA deployments overlap in staggered fashion?[489]

ISSUE: Communications between Division and the brigades

DISCUSSION: BJAs often do not prioritize very highly the answering of questions from CPTs and NCOs at Division.

RECOMMENDATION: Send the BJAs something from the SJA/leadership stating, "These people send out RFIs on my behalf, and I expect you to answer them." An initial face-to-face meeting with each BJA is helpful. Prepare this introduction in advance so you can deliver it as soon as practical after TOA. It may also be a good idea for other members of the Division OSJA to meet incoming brigade legal sections face-to-face. Even if you cannot meet in person, talk to the brigade legal staff on the phone. It is better to call than email for everyday things as well. Do not overly involve yourself in their business—a phone call comes off a lot better.[490]

ISSUE: Pre-deployment site survey (PDSS)

DISCUSSION: The BCT commander conducted three PDSS visits to Afghanistan. On one of those visits, the BCT commander intentionally brought the BJA to see the FOB/AO and to get a

[488] *Id.*.
[489] *Id.*
[490] *Id.*

better appreciation of the mission. This PDSS proved to be immensely helpful for the BJA to comprehending the nature of the operations and the lay of the land in which the legal section would soon operate. The PDSS also allowed the BJA to meet face to face with his in-country counterpart, the BCT Afghan attorney-advisor, and get a firsthand look at issues, facilities, equipment, trends, and a variety of other things not possible through other means.

RECOMMENDATION: BJAs should go on a PDSS to better acquaint themselves with the mission and starting baselines, and to identify areas of focus for pre-deployment training.[491]

ISSUE: Lack of middle management at the Division level

DISCUSSION: The Division deployed without either of its two authorized majors. This effectively eliminated all middle management from the office structure. This gave the DSJA and SJA (both LTCs) a span of direct control over more than a dozen captains and associated paralegals. This lack of a screen or filter at a lower level can quickly overwhelm the ability of the DSJA and SJA to effectively mentor and provide an optimum level of personal attention to office personnel.

RECOMMENDATION: The very small number of field grade officers present in the Division structure makes it even more important to fill the positions with the authorized grades.[492]

ISSUE: Visibility of corrective measures

DISCUSSION: It is a well-known adage it is best to praise in public and correct in private. However, doing so can have the unintended effect of appearing as though one is unaware of a problem, or worse, condones unacceptable behavior.

RECOMMENDATION: Be aware corrective measures are not always visible to the members of the organization. If the situation is one directly affecting them, you may need to find ways to assure them you are addressing the problem.[493]

ISSUE: Leading the newest generation of judge advocate

DISCUSSION: Today's newest generation of Judge Advocates has a different perspective. The way in which they grew up empowers them. They are every bit as capable as past cohorts, but are motivated by different things and have different expectations when it comes to their work environment and professional life. They do not respond well to abrupt, directive leadership. Rather than being simply directed, they have a need to feel vested, enfranchised, heard, and mentored. This does not mean they are unmotivated or lazy. They simply do not respond well to the same things that motivated judge advocates in the past. Because of the various incentives offered to judge advocates today, it is very likely they will have a longer-term contractual service commitment at earlier points in their careers than in the past. They are thus the future of the Corps, and they are not going away. It is incumbent upon the leader to adjust his or her behavior to what is effective with this group, as it is simply impossible to change an entire generational cohort.

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[491] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 9.
[492] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[493] *Id.*

RECOMMENDATION: You have to focus on maintaining a positive, constructive command climate. Ask yourself if what you are doing is constructive.[494]

ISSUE: Visits to outlying legal professionals

DISCUSSION: Visits from the SJA and the Command Paralegal are important. They provide a means for assessing personnel at outlying stations and provide a concrete means of demonstrating concern for their well-being and a willingness to share hardship, real or perceived. Additionally, these trips allow you to build equities with the brigade leadership. One brigade commander remarked the SJA was the sole member of the Division staff to visit and ask what help the Division level could provide.

RECOMMENDATION: Empower your NCOs to do this also. The senior NCOs should travel to outlying areas at least once a quarter. The SJA may realistically be able to only make the trip every six weeks or so, but the results are always well worth effort.[495]

ISSUE: BJA/SJA relationship

DISCUSSION: The BJA and SJA need to reach out to each other. The BJA cannot look upon the SJA as the enemy. The brigade has to be synched with the GCMCA, and the GCMCA has to be synched with the brigade. There has to be communication between the two. The SJA can be the "bad guy" and provide top cover for the brigade. The SJA can say "No" if there is a need for it to come from outside the brigade. The Division can assist by ghostwriting to help the brigade get a point across to the brigade leadership.

RECOMMENDATION: The BJA and Division OSJA are part of a technical team that must communicate openly, early, and often for any issue. Doing so benefits the commanders at each echelon involved.[496]

ISSUE: Completing the "Foundation of Four" before unit training begins

DISCUSSION: The legal administrator arrived to the Division just before the MRX. There was a gap of a few months between the departure of the last legal administrator and the newly arrived legal administrator. With the myriad of pre-deployment tasks and the Individual Readiness Training (IRT) required, there was little time between arrival and deployment for the leadership team to develop relationships, create internal controls, and establish long term planning.

RECOMMENDATION: Improve. Ensure the leadership team is assigned to the unit at least six months before deployment and minimize or eliminate mid-deployment departures of leadership personnel. Do not let a large gap of time elapse between legal administrators, especially just before deployment.[497]

ISSUE: Legal administrator visits to BCTs

DISCUSSION: Battlefield circulation proves worthwhile in assessing the needs and work conditions of the legal professionals in your area of operation. The leadership team traveled to

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[494] *Id.*
[495] *Id.*
[496] *Id.*
[497] *Id.*

other FOBs to visit with BCTs and assess their needs and requirements. This allowed the legal administrator to enhance mission capabilities to the BCT's by providing much needed automation equipment and was an opportunity to meet with NCOs who expressed interest in becoming legal administrators. It also allowed face to face interaction with higher headquarters legal administrators, which enhanced the relationship and facilitation of actions between these elements.

RECOMMENDATION: Sustain. Visits to BCTs resulted in two NCOs from non-organic brigades submitting packets for accession as a legal administrator.[498]

ISSUE: Role of the legal administrator as mentor to officers and NCOs

DISCUSSION: The legal administrator played an essential role as mentor to everyone in the office. Particularly, with the lack of majors at the division level, the CPTs approached the legal administrator for assistance on handling a myriad of professional and personal issues. While having a major to mentor the CPTs may have been ideal, especially for legal issues, the legal administrator received positive feedback and had almost daily interaction with all of the CPTs. The next direct person available to mentor the CPTs was the DSJA, and several issues may not have received the attention they needed but for a mentor within the leadership team. The key to success in mentoring was ensuring that, as a member of the leadership team, all issues are freely discussed within the team and that the appropriate leader take action or interject when necessary.

RECOMMENDATION: Sustain. If possible, ensure that MTOE positions with major authorizations are filled with majors as this provides an additional growth opportunity for them and captains.[499]

ISSUE: Internal professional development sessions

DISCUSSION: The Division OSJA established officer professional development (OPD) sessions on a weekly basis, and the NCOs conducted Sergeant's Time training. The OPDs primarily focused on leadership and basic military operations, due to the high number of first term CPTs.

RECOMMENDATION: Sustain. OPDs should target the young officers and NCOs.[500]

ISSUE: Length of left seat/right seat ride

DISCUSSION: Some personnel had too much overlap with the person they replaced (up to 21 days). This occurred when 25 ID first arrived and again at the end of the Division's tour. This causes some problems when other sections did not know the POC for an action. While the unit in place is still responsible to the command, the newly arrived personnel want to take over as soon as possible.

RECOMMENDATION: Improve. Properly manage the amount of overlap time. Recommend at least seven days but not more than ten days of overlap.[501]

ISSUE: Division support to brigades

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[498] *Id.*
[499] *Id.*
[500] *Id.*.
[501] *Id.*

DISCUSSION: The Division CG's philosophy was that the "Division exists to support the brigades." This attitude permeated the Division staff, including the OSJA. For example, whenever a brigade attached to the Division, the Division OSJA SGM would travel to visit the new unit offering them administrative and materiel assistance.

RECOMMENDATION: When the Division commander makes a strong statement of this nature, it can really affect how the entire staff views its role. This was a very positive thing and provided insight into how Division attorneys should approach their relationships with the brigades.[502]

ISSUE: Division support to brigades—phraseology matters

DISCUSSION: To reinforce the mindset that the Division was there to support the brigades, the deputy educated his JAs that "things don't go *down* to the brigades; they go *forward* to the brigades."

RECOMMENDATION: Sustain. Understanding that the brigades are the forward-deployed battle elements and that Divisions exist to support them puts junior captains in section chief positions in the correct frame of mind.[503]

ISSUE: Allowing CPTs to sit in on the commander's daily update

DISCUSSION: CPTs found it valuable to be able to sit in during the commander's daily update. It allowed them to see how commanders think and the type and amount of information they require.

RECOMMENDATION: Sustain. Do not take for granted your junior officers are aware of how senior leaders approach issues.[504]

ISSUE: Mentoring future leaders

DISCUSSION: We do not do a good job of identifying future leaders and mentoring/bringing them along to be leaders. No one really knows who the captains are in today's JAG Corps.

RECOMMENDATION: Figure out what makes the current generation of captains tick and what it is they value. For example, those who came in before the latest economic downturn had other options, but they chose public service.[505]

ISSUE: Building the military justice team

DISCUSSION: Most of the Division military justice section did not get the opportunity to train together before deploying. For example, the NCOIC did not check in to the unit until just before deployment. This caused a delay in unit cohesion, but the unit eventually developed into a strong team.

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[502] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[503] *Id.*
[504] *Id.*
[505] *Id.*

RECOMMENDATION: Improve. When possible, conduct pre-deployment training as a section. This helps build a stronger team and prepares the section to hit the ground running.[506]

ISSUE: Relationship with other staff sections

DISCUSSION: The AdLaw section established a good working relationship with the other staff sections in the Division.

RECOMMENDATION: Sustain. Mission accomplishment is much easier to achieve if you can work well with the other staff sections in your unit.[507]

ISSUE: Leadership provided top cover

DISCUSSION: The paralegals in the AdLaw section attributed much of their success to the fact that they knew the Chief of AdLaw and the AdLaw NCOIC "had their backs." This paid dividends and led to them successfully accomplishing the mission, while at the same time giving the paralegals an opportunity to grow.

RECOMMENDATION: Sustain.[508]

ISSUE: Relationship between the Division and the brigades

DISCUSSION: There was no discernible tension between the Division and the brigades. The Division relied upon the brigade to be the first line reviewer. The Division made it known they were there to help if the brigade wanted and needed it. The brigades were very good about responding and communicating. There were occasions of conflict on particular issues, but these did not affect the general good relationships between the Division and brigades. It is understood that brigade legal cells are supporting their brigade commander and advocating in that capacity. Be mindful, however, of the commanders co-opting the legal cell such that the legal advice loses its independence or actions run counter to Division requirements and expectations.

RECOMMENDATION: You will always have to work through issues where the brigade and Division levels do not agree, but that does not indicate the relationship is adversarial or even tense.[509]

ISSUE: The relationship between most captains at Division and the majors serving as BJAs

DISCUSSION: While there is potential for natural tension between Division captains and brigade majors, this tension often diffuses when your captains have made themselves subject matter experts.

RECOMMENDATION: Encourage and challenge your JAs to be the best attorneys they can be. Not only will it serve them well, it will add value to the brigades they are charged with assisting.[510]

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[506] *Id.*
[507] *Id.*
[508] *Id.*
[509] *Id.*
[510] *Id.*

ISSUE: The relationship between the chief of military justice and the BJAs

DISCUSSION: General courts-martial charges place brigade trial counsels in difficult positions. They still owe allegiance to their BJA, yet are responsible to the Division chief of military justice for matters relating to the Commanding General.

RECOMMENDATION: Recognize this issue before deployment. Deputy SJAs are in a great position to act as conduits between Division and brigades. Organized weekly meetings via Adobe Breeze and daily informal contact between the BJAs and the DSJA were vital to facilitating difficult issues in both directions.[511]

ISSUE: The relationship between the Division paralegals and the brigade paralegals

DISCUSSION: Division paralegals faced some challenges in getting the required information from some of their counterparts at the brigades. Visits by the Division paralegal SGM to the brigades allowed the brigades to explain their difficulties, while reinforcing the role Division played in the technical chain.

RECOMMENDATION: Sustain. Often times, matters that appear to be insurmountable are easily resolved with proper communication.[512]

ISSUE: SJA visits to brigades

DISCUSSION: Visiting the brigades pays tremendous dividends. The SJA can do a morale check and talk to the BJA and trial counsel face to face. It gives the BJA an opportunity to use the SJA as a sounding board in person.

RECOMMENDATION: Go out and visit the brigades as often as you can. It is better to plan it and have to postpone than it is never to plan it at all.[513]

ISSUE: SJA interaction with the brigade commander

DISCUSSION: Infrequently, a BJA may have a tough time with the leadership of his or her brigade. In these cases, if the SJA intercedes to speak with the brigade commander, it may place the BJA in a difficult position.

RECOMMENDATION: The SJA may base whether to intercede upon his or her previously established relationship with the brigade commander. For this reason, it is important to meet with the brigade commanders in person early on.[514]

ISSUE: Having JAs and paralegals in separate buildings requires more leaders

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[511] *Id.*
[512] *Id.*
[513] *Id.*
[514] *Id.*

DISCUSSION: The OSJA staff was located in two buildings separated by miles. Even in the Division headquarters building, the SJA had legal professionals in two separate wings.

RECOMMENDATION: When your staff is not centrally located, it is imperative you have good leadership in each "detached" office.[515]

ISSUE: The importance of the Division NCOICs

DISCUSSION: NCOICs can greatly influence brigade and battalion level paralegals by taking time to explain why something is needed a certain way and providing them suggestions on how to improve their products. NCOICs should visit brigades in person, which should result in better communication between the brigades and the OSJA.

RECOMMENDATION: Most Soldiers want to do a good job. A little one-on-one interaction can go a long way.[516]

ISSUE: Importance of networking

DISCUSSION: You cannot underestimate the importance of networking whether at the SJA level, the SGM level, or the NCOIC level. Relationships developed before deployment and cultivated during deployment paid remarkable dividends for the OSJA.

RECOMMENDATION: Know the key players in the Division and on the deployed base. NCOs should engage with people at the Mayor's Cell and Troop Motor Pool as early as possible. Informal relationships often facilitate resolution of issues such as billeting and transportation.[517]

ISSUE: Weekly online meetings

DISCUSSION: Weekly SJA Adobe Connect (Breeze) meetings with the BJAs were valuable. The same was true of the chief of justice's weekly meeting with the trial counsels. This form of meeting allows consistent contact without being too disruptive to everyone's battle rhythm.

RECOMMENDATION: Conduct these meetings/sessions, but keep them to an hour or less.[518]

ISSUE: Legal administrator as mentor to first term JA captains

DISCUSSION: The Division OSJA had 80% first term captains with little experience. Most captains were receptive to mentorship and guidance from the legal administrator.

RECOMMENDATION: Sustain. Support from DSJA and SJA is critical when mentoring, coaching, and guiding.[519]

ISSUE: Officership

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[515] *Id.*
[516] *Id.*
[517] *Id.*
[518] *Id.*
[519] *Id.*

DISCUSSION: Some judge advocates may need additional mentoring on the expectations that come with being an officer. How they react and respond professionally by their posture and tone may be too relaxed at time. This is sometimes personality driven, or stress can also be a factor.

RECOMMENDATION: The standards of professional behavior are important. An introductory or refresher discussion about this aspect of the profession is sometimes necessary.[520]

ISSUE: Completing an action versus leaving for the day

DISCUSSION: "Close of business" no longer seems to differ functionally from the end of office hours. Even in the deployed environment, the expectation to stay beyond the end of the established office hours to complete an action if it is near completion may be unknown to some. The Division supports the brigades—if a brigade is awaiting a response from Division, where possible we should focus on getting that done before leaving for the night versus reengaging the next day.

RECOMMENDATION: If you expect action officers to work past the end of the day if it means the client does not have to wait until the next day for the product, ensure you clearly communicate the expectation.[521]

ISSUE: Tasking subordinate commands

DISCUSSION: The SJA realized the CJSOTF-A JA was equally busy, if not more so. As such, he would only send taskings down when absolutely necessary.

RECOMMENDATION: Sustain. Constant communication is positive for both parties. However, only task subordinates when absolutely necessary.[522]

ISSUE: Visit with mobilized unit early

DISCUSSION: The I Corps legal team traveled to the 2d LSO headquarters to visit with the command and mobilizing Soldiers. The purpose of the visit was to create an atmosphere of trust and unit camaraderie. The 2d LSO also made a visit to the I Corps legal office with as many mobilizing Soldiers as possible before mobilization. This visit gave everyone the opportunity to interact with the office and observe the jobs they would fill.

RECOMMENDATION: Sustain. This practice had a very good impact on the mobilized reservists and the unit with which they deployed.[523]

ISSUE: Motivations of today's junior judge advocates

DISCUSSION: Judge advocates entering the Corps today are doing so with the expectation they will deploy. They want to do so, and that is what motivates them. They expect to do things that make sense functionally. If it is cold outside, they will put their hands in their pockets. They also expect to be able to understand why they have to do something. If the why does not make sense,

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[520] *Id.*
[521] *Id.*
[522] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 114.
[523] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.

they will point that out. They ultimately understand, though, they sometimes may have to do things that do not seem to make much sense.

RECOMMENDATION: You have to protect your people. When they make a bad call, you have to back them up and provide top cover. Such actions resonate very strongly with this cohort. They expect you to consider the stressors under which they are operating. There are standards everyone has to meet, but the expectation has to be meeting the standard – not necessarily exceeding it. That said, most seek to exceed the standard.[524]

ISSUE: Impressing upon subordinates the need for communication

DISCUSSION: The leadership of an organization does not know what it does not know. You have to communicate very clearly your desire for people to tell you about things they feel are wrong. If you do not do this, people may assume you are consciously tolerant of something of which you have no knowledge.

RECOMMENDATION: Very early and often, impress upon your subordinates that you have the ability to correct a great many things with a minimal level of turbulence if you can catch it early enough. Something may go on outside of your awareness for some time. If so, once it comes to your attention, you may have unintentionally forfeited certain courses of action you could have taken to correct the problem.[525]

ISSUE: Leadership team

DISCUSSION: The SJA ensured the legal administrator was involved in all aspects of the office. The legal administrator had an invitation to all meetings the SJA and chief paralegal attended.

RECOMMENDATION: Sustain. The SJA sets the legal administrator's involvement in the OSJA and it should be all-inclusive.[526]

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[524] *Id.*
[525] *Id.*
[526] *Id.*
[527] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.

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[528] *Id.*
[529] *Id.*
[530] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 114.
[531] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.

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RECOMMENDATION: Sustain. The SJA sets the legal administrator's involvement in the OSJA and it should be all-inclusive.[534]

ISSUE: Legal administrator as coach and guide

DISCUSSION: Attorneys and enlisted in the office of the staff judge advocate (OSJA) used the legal administrator as a sounding board for many different issues/problems before talking to the staff judge advocate (SJA), deputy staff judge advocate (DSJA), or the chief paralegal. The legal administrator was candid with advice and guidance.

RECOMMENDATION: Sustain. The legal administrator needs to be approachable to all members of the OSJA in assisting with the resolution of issues/problems, both professional and personal.[535]

ISSUE: Legal administrator as recruiter

DISCUSSION: Many enlisted Soldiers took the opportunity to talk with the legal administrator about the possibilities and prospects of becoming a legal administrator. The legal administrator was open and honest about the roles and responsibilities of legal administrators. The legal administrator would encourage Soldiers to complete the requirements necessary to submit their packets.

RECOMMENDATION: Sustain. The enlisted Soldiers benefit from the encouragement and challenges the legal administrator gives. One Soldier did earn acceptance to Warrant Officer Candidate School.[536]

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[532] *Id.*
[533] *Id.*
[534] *Id.*
[535] *Id.*

ISSUE: Mentor other legal administrator

DISCUSSION: The senior legal administrator in Iraq took the opportunity to reach out and talk with all the junior legal administrators in theater. The senior legal administrator would often get calls asking to share some information or guidance on how to handle a situation.

RECOMMENDATION: Sustain. Helping other legal administrators is one of the best aspects of the position.[537]

ISSUE: Monthly OSJA ceremonies

DISCUSSION: The OSJA held monthly ceremonies to bring the team together, celebrate achievements, and make announcements. The administrative operations section put the ceremonies together by and coordinated with the dining facility to have food at the event.

RECOMMENDATION: Sustain. Ceremonies are a good way to check on the level of morale of the OSJA and provide a break in the daily routine.[538]

ISSUE: SJA participation in first pre-deployment site survey (PDSS)

DISCUSSION: The SJA accompanied the CG on the first PDSS. Upon return, the SJA then had sufficient time to plan for the OSJA's deployed operations.

RECOMMENDATION: Sustain. The SJA must participate as early as possible on the PDSS to allow for sufficient time to plan for the deployment.[539]

ISSUE: RIP/TOA with incoming division

DISCUSSION: The handoff of the core legal missions was very straightforward. Generally, it consisted of getting the incoming team up to speed on pending issues, whether they be administrative law, military justice or otherwise. The CJTF OSJA therefore spent much of the time (approximately 70%) explaining its RoL philosophy and operations as this was a more nuanced and complicated issue.

RECOMMENDATION: Sustain. Dedicate the limited time available during the RIP/TOA with the incoming unit to the areas where it needs the most familiarization. This will go a long way toward ensuring the incoming unit does not drop pending initiatives after the transition.[540]

ISSUE: Developing non-organic personnel

DISCUSSION: It was a challenge in a joint operating environment spread over difficult terrain to develop subordinate legal personnel, particularly those whom were non-organic to the Division. Battlefield circulation is critical to let subordinates know that you care about them; however, it comes at a price. Due to weather and the availability of air assets, you can get stuck at a location

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[536] *Id.*
[537] *Id.*
[538] *Id.*
[539] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 59.
[540] *Id.*

for long periods of time. The SJA gave PP&TO assignment preference sheets for every field grade officer and captain in RC-East whether or not they were organic to the Division. Additionally, during the WWCLE, the SJA talked about every one of the field grades and captains to PP&TO. With the non-organic officers, this ensured that PP&TO had the most current information that their rear SJA might not have known.

RECOMMENDATION: Sustain. Taking care of people is essential for mission success. Additionally, giving a wealth of information to PP&TO will assist them in assigning the correct officer to the correct position in the future.[541]

ISSUE: Positive OpLaw section relationship with BJAs

DISCUSSION: The Division OpLaw section had a positive relationship with BJAs. They attributed this to being very proactive in pushing resources and guidance to the BJAs. They viewed themselves as existing to support the Brigades.

RECOMMENDATION: Sustain. The Division legal office sections should view their mission as supporting the Brigade mission. This will foster a positive working relationship.[542]

ISSUE: Complete leadership team

DISCUSSION: The legal administrator arrived to the unit 30 days before the deployment. The unit conducted training and team building events before the legal administrator arrived.

RECOMMENDATION: Improve. While the legal administrator did not have problems integrating with the unit and the office, the arrival of one of the foundation of four should be much earlier if possible.[543]

X.F. Personnel

X.F.1. Staffing

Deployment, Staffing, Rotation and Backfill of Personnel

ISSUE: Division sending attorneys to backfill during BJA absence

DISCUSSION: Although a conscientious decision and one that provides for professional development, sending attorneys from division to backfill the BJA position during leave periods does little to help the brigade. The division JAs did not have a grasp on the issues at the brigade and commanders did not have the requisite confidence in their ability—primarily because of a lack of familiarity with them.

RECOMMENDATION: BCT JAs are better candidates to move up to the BJA position during extended absences. These JAs have already built relationships the commander and other senior

[541] *Id.*
[542] *Id.*
[543] *Id.*

staff members. If division sends a JA to a brigade, it should be as a supporting attorney, not as the acting BJA.[544]

ISSUE: Sequencing the deployment of personnel

DISCUSSION: The office deployed the DSJA first, along with those who had deployed before. Next, the command paralegal NCO deployed with the more inexperienced personnel. Finally, the SJA deployed last in order to move forward when the commanding general did.

RECOMMENDATION: Grouping the inexperienced individuals together consolidates them for additional training during the inevitable delays and downtime they will have as they move into theater. Ensure, however, you have a clearly identified leader of sufficient rank to accompany the cohort.[545]

ISSUE: Redeployment shortfall in personnel

DISCUSSION: The JAG Corps does not align well with the ARFORGEN cycle. Upon redeployment, the Division lost a number of personnel to changes of station and went down to 65% staffing in accordance with Human Resources Command (HRC) practice. However, the legal workload, especially in military justice, did not go down. Rather, it spiked after returning to Schofield Barracks. After redeployment, all the military justice paralegals left on permanent change of station (PCS). With fewer JAs and paralegals, the remaining staff had to cope with increased workloads to meet the demands. This extra workload also prevented or curtailed training and course opportunities for the remaining staff.

RECOMMENDATION: JAs should have a plan to cope with extra workloads due to the usual attrition in JAs and paralegals after a deployment ends. Avoid moving OSJA personnel (officer or enlisted) during the Division stabilization period.[546]

ISSUE: Late personnel assignments to the brigade

DISCUSSION: Besides the BJA, the only other person with deployment and operational law experience on the legal staff was one of the paralegals. The brigade legal NCOIC, military justice paralegal, and Deputy BJA arrived one month before deploying. Due to Graduate Course commitments, the Deputy BJA had to swap out half way through the deployment.

RECOMMENDATION: Improve. It should not be necessary for the BJA to fight to get legal staff before the deployment. Legal staffs that arrive shortly before the deployment have missed substantial training and degrade the overall effectiveness of the legal mission.[547]

ISSUE: Determining which personnel deploy

DISCUSSION: Due to the limited number of JAs in the Marine Corps, often personnel decisions

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[544] 2BCT, 1AD OIF AAR, JUL 08 - JUN 09, *supra* note 16.
[545] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[546] *Id.*
[547] 172d Infantry Brigade, Brigade Judge Advocate OIF After Action Report, 5 February 2010, Deployed November 2008 – December 2009, Forward Operating Base Kalsu, Iskandariyah, Iraq (hereinafter "172d IN BDE, OIF AAR, NOV 08 - DEC 09"; on file at CLAMO).

regarding who should deploy in what capacity are based more on numbers than capabilities. As a result, sometimes units and JAs are not set up for success during deployment.

RECOMMENDATION: Units should put more thought into what JA deploys in what capacity. Units should match people's capabilities as much as possible with mission requirements.[548]

ISSUE: Staff integration

DISCUSSION: The RCT-3 RJA checked into the unit when they were already in Kandahar. This did not allow him to have any staff integration. Fortunately, the RJA already had a good working relationship with the Commanding Officer (CO) because he had been his trial counsel in the rear.

RECOMMENDATION: JAs should check into the units they are deploying with early enough to participate in pre-deployment training with them. Training with the unit is the key to staff integration and building a relationship of trust with the entire staff. It is vital for lawyers to integrate with the staff as soon as possible.[549]

ISSUE: Importance of having people in place before deployment

DISCUSSION: The military justice NCOIC arrived less than six weeks before the Division deployed. Arriving this late in the pre-deployment preparation is difficult. The leadership is unaware of what skills the new Soldier can provide during deployment and the new Soldier must quickly learn the dynamics of the OSJA.

RECOMMENDATION: Where possible, set your deployment team as early as possible. Quickly assess and integrate late arrivals.[550]

ISSUE: Decisions on whether to leave someone back

DISCUSSION: The senior trial counsel (STC) did not initially deploy with the Division for two reasons: to wrap up cases and to provide the STC with a full twelve months of dwell time. While this decision resulted in a personal benefit to the officer, it placed the deployed chief of military justice in a challenging position.

RECOMMENDATION: Take into account all competing interests when deciding whether to leave a critical member of the team behind.[551]

ISSUE: Rotation of personnel within theater

DISCUSSION: The rotation of judge advocates to other sections is difficult because you must ensure you have the requisite seniority in each of the section chief assignments. As such, the OSJA did not rotate their people through various sections during deployment, though a few JAs were able to augment BCTs. Conversely, all paralegals E-4 and below switched jobs during the deployment, which allowed for twice as much professional development.

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[548] RCT-3, OEF AAR, APR 09 - OCT 09, *supra* note 55.
[549] *Id.*
[550] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[551] *Id.*

RECOMMENDATION: When constrained by circumstances, find alternate methods to cross train and further develop your legal professionals. For example, one JA spent a total of four months in a brigade legal section.[552]

ISSUE: Use of non-organic personnel

DISCUSSION: The Division had an engineer brigade co-located on its operating base. This brigade had two judge advocates and two paralegals. There was not enough legal work in the brigade to occupy two attorneys, so one attorney worked in the Division military justice section and one of the paralegals worked in the Legal Center. When the Division DSJA went on leave, the senior engineer brigade JA, a LTC, stepped in as deputy. When the NCOIC of the Legal Center went on leave, the brigade NCO stepped up as the NCOIC.

RECOMMENDATION: Do not overlook the possibility of finding additional staffing within co-located units. This may become more prevalent as the mission in Iraq consolidates more and more units at single locations.[553]

ISSUE: Determining how many personnel to deploy

DISCUSSION: The workload is definitely down in Iraq at the division level. Contact the unit you are replacing to determine what you truly need.

RECOMMENDATION: Err on the side of bringing fewer, rather than more, as the Iraqis are not likely to allow U.S. force to reverse the downward trend in what they can do.[554]

ISSUE: Billet flexibility

DISCUSSION: Several of the Division AdLaw personnel were initially told they would deploy into operational law billets. Upon arrival in theater, the OSJA discovered there was a greater need for personnel in AdLaw. As a result, these Soldiers switched over to AdLaw.

RECOMMENDATION: Soldiers need to be flexible. Things are always changing in an operational environment and operational needs always come first.[555]

ISSUE: SJA reassigned mid deployment

DISCUSSION: The SJA was promoted to COL and was reassigned mid-deployment. The Division Chief of Staff and CG was aware of this anticipated transition in advance. This did not mean, however, that they agreed with or supported it. In fact they were strongly against it and it contradicted the CG's imposed policy against releasing anybody early. There are distinct advantages to the Division command and OSJA in retaining the SJA that trained and deployed with the division in theater for the entire tour. The new SJA arrives at a disadvantage. The new SJA has to learn the personality of the CG and prove himself to the Division staff. This transition had its growing pains before the OSJA got back on a good battle rhythm.

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[552] *Id.*
[553] *Id.*
[554] *Id.*
[555] *Id.*

RECOMMENDATION: Improve. Do not reassign any member of the Foundation of Four during the deployment except for emergencies or being relieved without due deliberation. It affects more than that one position (i.e., the commander, OSJA, and Division staff), and can be disruptive to operations. If the decision is made to reassign during a deployment, provide that information as soon as possible to facilitate expectation management. PP&TO may want to solicit communication between The Judge Advocate General (TJAG) or Deputy Judge Advocate General (DJAG) and the Division commander in advance.[556]

ISSUE: Rotating personnel out of theater

DISCUSSION: The OSJA had a plan to rotate some judge advocates back to home station with the arrival of the reserve augmentees. The office briefed this plan to everyone involved. However, neither the Division Chief of Staff nor CG was aware of the plan before deployment. When the rotation plan was to start, the CG told the SJA no personnel would leave theater for a rotation.

RECOMMENDATION: Improve. Any plan for rotation needs briefing to the Division Chief of Staff and approval before briefing OSJA personnel. If not, it can cause a detriment to office morale.[557]

ISSUE: Need for a clear personnel accountability plan within the OSJA

DISCUSSION: The FOB received indirect fire and the OSJA had no clear accountability plan. Having two separate building for OSJA personnel made things difficult for accurate accountability.

RECOMMENDATION: Improve. Develop a reaction/accountability plan early and pass it along to all OSJA personnel.[558]

ISSUE: Filling CFSOCC-A SJA billet

DISCUSSION: A JA with prior SOF experience should fill the CFSOCC-A SJA billet. The SJA had served at SOCCENT for a couple years before this deployment and, therefore, was familiar with SOF and its mission set.

RECOMMENDATION: Improve. Fill CFSOCC-A SJA slot with JAs with SOF experience.[559]

ISSUE: General Officer override of dwell time

DISCUSSION: Since 3d ESC had returned in August 2009 from a 15-month Iraq deployment, its Soldiers were entitled to a dwell time of 15 months. Accordingly, they were not deployable during that timeframe unless they voluntarily waived the dwell time, or a General Officer overrode the dwell period. In the case of 3d ESC, the Commanding General (CG) was a COL (P). She elected to override the dwell time and to order the deployment of all Soldiers despite the lack of General Officer substantive rank. The JA warned the CG that she exposed herself to an Inspector General investigation or a Congressional inquiry.

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[556] *Id.*
[557] *Id.*
[558] *Id.*
[559] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 114.

RECOMMENDATION: JAs, with a CG at the COL (P) rank level, must be aware of the dangers the commander runs in taking action requiring General Officer approval without having confirmation of their substantive General Officer promotion or without specific regulatory guidance authorizing the action by an O-6(P) in an O-7 billet.[560]

ISSUE: Personnel accountability plan

DISCUSSION: Creation of the OSJA personnel accountability plan occurred almost immediately upon arrival on Camp Victory. The installation received a lot of indirect fire. After each event, the office put the plan into action.

RECOMMENDATION: Sustain. Accountability is very important on a large installation and the plan worked very well.[561]

ISSUE: Lack of legal personnel in non-maneuver brigades

DISCUSSION: Some brigades, such a sustainment brigades, are very large organizations. They generate a great deal of legal business. However, they apparently are not the priority for filling with authorized legal personnel.

RECOMMENDATION: You have to identify these brigades before they appear in your operational area and ascertain whether they are deploying with their authorized legal assets. If they are not, their expectation may be they will receive legal support from the deployed higher headquarters OSJA. However, that headquarters may already be functioning at or beyond its capacity.[562]

ISSUE: Strategic diversion of authorized personnel

DISCUSSION: There are instances where unit manning documents have requirements for legal personnel that are rarely, if ever, filled. There may be little to no expectations within JAG channels that the JAG Corps will ever fill these slots as authorized. For example, there is an authorization for a legal administrator in a military police brigade. However, if this slot is on a manning document, it creates an expectation in command channels that someone will fill the slot. Having the slot vacant affects the unit's Unit Status Report and other reporting. Commanders are expecting SJAs to fix what they view as their legal personnel shortfalls.

RECOMMENDATION: Understand where all the legal authorizations within your footprint are. For those that will likely remain permanently unfilled, ensure you have an honest discussion with the command concerning why that is.[563]

ISSUE: Information from the installation concerning a lack of deploying legal personnel

DISCUSSION: Units will sometimes deploy without their assigned legal support. This should

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[560] 3d ESC (OUR) Haiti AAR, FEB 10 - MAR 10, *supra* note 115.
[561] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[562] *Id.*
[563] *Id.*

never occur in a vacuum. The unit will expect that missing support to come out of the higher headquarters once they deploy. Every commander will expect some SJA to support him or her.

RECOMMENDATION: The installation OSJA must take responsibility for ensuring those affected know a unit is deploying without its assigned legal support. The commander must receive an honest assessment as to the capability of the downrange SJA to support that unit if it elects not to deploy its legal personnel.[564]

ISSUE: Distribution of labor among attorneys at the brigade

DISCUSSION: The SBCT had three JAs, two majors and a captain. In addition to being the primary advisor to the SBCT commander, the BJA had primary responsibility for international and operational law, rule of law, intelligence law, and advice on the implementation of the U.S.-Iraq Security Agreement. Moreover, the BJA headed the brigade's Prosecution Task Force (PTF). The second major had primary responsibility for contract and fiscal law, claims, and legal assistance. The captain handled administrative law (including investigations and FLIPL reviews), military justice, and detainee release issues.

RECOMMENDATION: Sustain. There is no set way of dividing the labor at the BCT level. Use the training and relevant civilian and military experience of your JAs to come up with an appropriate division of labor for your team.[565]

ISSUE: Location of brigade TC

DISCUSSION: Unlike in a garrison environment, brigade TCs would work out of their respective brigade legal offices and would have little to no interaction with each other. The TDS office, on the other hand, was centrally located, and TDS JAs all worked closely together. Consequently, the brigade TCs seemed to be at a slight disadvantage to the TDS JAs because they did not interact with each other on a regular basis.

RECOMMENDATION: Improve. On larger bases, having a centrally run military justice office similar to a garrison environment where the TCs can split time between the brigade and the military justice office, would minimize the advantage that TDS has in this area.[566]

ISSUE: Assignment of brigade legal staff

DISCUSSION: It is highly desirable to have all JAs and paralegals in place as early as possible before the deployment to create a cohesive team and to establish working relationships with the brigade's leadership and each of its units. Filling legal positions just before deploying or during the deployment detract from this effectiveness and involve extra time/effort to bring the replacements up to speed.

RECOMMENDATION: Improve. Late position fills and staffing shortfalls will likely continue for the foreseeable future due to the current high level of operational tempo. All legal staff leaders have to be proactive in minimizing belated positions fills.[567]

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[564] *Id.*
[565] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.
[566] MNC-I TDS OIF AAR, MAY 08-MAY 09, *supra* note 364.
[567] 2HBCT, 1ID, OIF AAR (2d Half), OCT 08-SEP 09, *supra* note 295.

ISSUE: Placement of the TC at Division in the garrison environment

DISCUSSION: The policy of placing the TC at the Division level, to be rated by the Chief of Justice, is a matter of concern to commanders. Company and battalion commanders will not call him or her if they never see the TC, especially if the TC is new to the brigade. Instead, they will call the BJA – the person they know and see in the brigade area, which defeats the purpose of having a TC at the brigade. It is also difficult to maintain the devotion of brigade resources, such as office space, to the TC if the TC is not present in the brigade.

RECOMMENDATION: Improve. Although there are good reasons for the TC to be at the Division level, removing all discretion from the local level is problematic.[568]

ISSUE: Playing to personnel strengths

DISCUSSION: You have the team you have. Given that most of the judge advocates will be first-term captains, you have to be strength-based in your assignment determinations. Look at each individual, determine where their strengths lie, and use them in that capacity. Focusing on what they do not do well will only frustrate them.

RECOMMENDATION: Leaders should work to marry professional interests and talent with operational necessity, and when impractical to do so should actively prepare junior officers for the jobs they will have.[569]

ISSUE: Use of Division JAs to backfill BCT JAs

DISCUSSION: The Division fiscal law attorney worked at one of the BCTs for four to five weeks while the trial counsel was on environmental morale leave (EML). She primarily performed fiscal law duties for the BCT, but assisted in other areas as well.

RECOMMENDATION: Sustain. It is critical for Division attorneys to be able to see things from their "customer's" perspective. These visits are also an invaluable professional development experience.[570]

ISSUE: Role of the legal administrator

DISCUSSION: Typically, how the SJA saw the warrant officer (WO) used when the SJA was a CPT will shape how the SJA uses the WO as a COL. In this instance, the WO was someone with whom the captains and NCOs were comfortable talking. Consequently, the WO did a great job filtering what the SJA should know versus what was simple complaining/venting. Administratively, the WO delivered automation to the brigades and trained them on its use or coordinated with the S-6 to do so. The WO was heavily involved in personnel issues and served as a sounding board for the SJA. The WO also did informal training with the captains and made corrections (which the captains received better than if they had come from the SJA). The WO also facilitated morale events, did quality control for actions, and tracked evaluations.

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[568] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[569] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[570] *Id.*

RECOMMENDATION: Most JA WOs can serve exceptionally well in a variety of roles. Be very expansive when you consider how to employ them. However, make sure that the WO has some "down time" as "being all things to all people" can be exhausting.[571]

ISSUE: Joining your unit during deployment

DISCUSSION: One of the junior JAs joined the OSJA eight months into the deployment. JAs faced with similar circumstances must realize they are joining a well-oiled, yet tiring, machine where relationships are firmly established.

RECOMMENDATION: Appreciate this dynamic and understand it will be difficult to gain acceptance immediately. Do your best and add value where you can—the rest will come in time.[572]

ISSUE: Request for forces (RFF) for JAs to support RoL at the brigades

DISCUSSION: Identifying the need for additional JAs to support the brigade RoL efforts, the CJTF OSJA sent up a RFF in May 2009. JFCOM approved the RFF in December 2009, and personnel began coming into theater in March 2010. The final approved package was for ten Judge Advocates and no enlisted personnel. USFOR-A ended up taking four of the personnel to support its RoL mission, and the CJTF cut one Soldier to a brigade level task force in RC-South. This allowed the CJTF to push the rest of the personnel to the brigades in RC-East to work directly with the Department of State representatives on their RoL programs. Once brigades saw the benefits associated with the additional personnel, they requested even more to support their RoL missions.

RECOMMENDATION: Sustain. Identify early on in the deployment personnel shortfalls, particularly in the non-doctrinal RoL mission set, so you can get a RFF approved in a timely manner. Expect that in return for the RFF's approval some requested personnel will be chopped to other headquarters outside the CJTF.[573]

ISSUE: Personnel rotation plan

DISCUSSION: The OSJA rotated personnel to CONUS midway through the deployment. In order to gain approval for this plan, the SJA had to convince the Division Chief of Staff (COS). The COS was concerned about the fairness of the plan relative to other staff sections. The SJA argued that officers who flowed in and out of theater regularly augmented other staff sections and that the professional development of JAGC captains required it.

RECOMMENDATION: Sustain. This was critical for morale and ensured that personnel were able to give 100% without burning out. Brief the COS several months out on the plan. Additionally, the plan should be detailed, with a by name matrix of who was leaving and coming in on which dates.[574]

ISSUE: Projecting losses and gains

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[571] *Id.*
[572] *Id.*
[573] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 59.
[574] *Id.*

DISCUSSION: The individual augmentees assigned to the CJTF were on orders, and everyone knew their rotation dates. The Air Force identified a replacement four months out; the Navy and Marine Corps identified replacements two months out; but the Army was very slow to identify replacements.

RECOMMENDATION: Sustain. The legal administrator and command paralegal need to manage the replacements of projected losses very closely to ensure there is no gap in filling positions.[575]

ISSUE: Reaction and accountability plan

DISCUSSION: The CJTF OSJA established a plan early to ensure accountability after an attack on the installation. The leadership briefed all personnel on the plan who then knew the rally points and how to make contact when it was not possible to reach the rally point.

RECOMMENDATION: Sustain. Some personnel had official cell phones that made accountability much easier.[576]

Judge Advocate Training, Selection and Qualifications

ISSUE: Qualifications for JA billets on the joint manning document (JMD)

DISCUSSION: The JMD for the MNSTC-I OSJA listed JA billets by rank and service, but did not require particular qualifications or skill sets.

RECOMMENDATION: Improve. Consider adding a column to the JMD delineating suggested and/or required skill sets of the JAs from the service to which the billet is assigned. This ensures choosing competent attorneys or allows chosen attorneys the opportunity to become competent in a particular practice before deployment. Sample requirements for a security transition command could include attendance at the contract attorney's course, fiscal law course, or DISAM's overseas security cooperation officer course.[577]

ISSUE: Group and battalion judge advocate selection

DISCUSSION: Legal advisors to Special Forces units must be competent due to the strategic implications of the mission-sets. The nature of unconventional warfare will test the boundaries of legal authorities. Primary emphasis of selection should be experience in core competencies and maturity (not necessarily in age, but in demeanor). Competency and maturity will allow "getting to yes" within the rules and being an "honest broker" when required. Soldier skills and physical attributes facilitate integration among "operators" but do not serve as a substitute for being a legal advisor. Individuals seeking to be quasi "operators" at the expense of competency should be vetted and avoided for selection.

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[575] *Id.*
[576] *Id.*
[577] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.

RECOMMENDATION: Improve. The JAGC needs a more standardized vetting/selection process for legal advisors to Special Forces units.[578]

ISSUE: BJAs and CPT level DIV chief JAs

DISCUSSION: With the shortage of O-4s in the JAG Corps, many CPTs are now filling division chief positions in the SJA office. BJAs should strive to build a positive relationship with these DIV chiefs in order to foster collaborative approaches to resolving problems. These new JAs, usually on their first deployment, are often enthusiastic and keen on finding solutions. SJAs have to spend more time mentoring CPT DIV chiefs so any problems encountered with the BJA will soon find their way to the SJA.

RECOMMENDATION: Despite their lack of experience and inferior rank, BJAs should work closely with CPT level DIV chiefs in the SJA office to build relations and to develop results oriented interactions.[579]

ISSUE: Required seniority of BJAs

DISCUSSION: Captains serving as BJAs get run over on a large staff comprised of field grade officers present in a BCT. They lack the seniority and experience to truly hold their own in a very challenging environment.

RECOMMENDATION: Assign majors to these positions.[580]

ISSUE: Administrative law background

DISCUSSION: The SOTF-W JA billet is much like that of a brigade judge advocate. It is helpful to have a background in a variety of areas, including military justice, legal assistance, and administrative law. The JA's administrative law background helped him advise on Navy JAGMAN investigations.

RECOMMENDATION: Prospective IA candidates for the SOTF-W slot should be ready to advise on administrative investigations.[581]

ISSUE: Required rank for Brigade Judge Advocates

DISCUSSION: Ground-owning brigades require a post-graduate course major. Other brigades, such as aviation brigades or sustainment brigades, function perfectly well a senior captain (if you select the right captain).

RECOMMENDATION: Not all captains are fungible. Ensure you match capabilities to positions.[582]

ISSUE: Rank of Division Chief of Justice and military justice NCOIC

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[578] 3rd SFG(A), OEF AAR, JAN 10 - MAY 10, *supra* note 39.
[579] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[580] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[581] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 98.
[582] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.

DISCUSSION: The Chief of Justice was a first tour captain and the NCOIC was an E-7. Although they were both outstanding at fulfilling their assignments, it was challenging at times dealing with BJAs who were typically majors and brigade NCOICs who were typically E-7s. The BJAs often did not want to hear from a captain about Division requirements. The Chief of Justice and NCOIC worked through these issues by force of personality and making use of FRAGOs and the legal annex of the OPORD.

RECOMMENDATION: Improve. If possible, place a major with criminal law experience in the Chief of Justice slot and an E-8 in the military justice NCOIC slot.[583]

ISSUE: Group judge advocate selection

DISCUSSION: The CJSOTF-A legal advisor was able to quickly understand targeting and decision making cycles as well as integrate with key staff members based on experience as an observer/controller at JRTC.

RECOMMENDATION: The JAG Corps should give strong consideration to JAs with past combat training center (CTC) (observer/controller/trainer assignments) experience when selecting group judge advocates.[584]

Leave

ISSUE: Emergency leave

DISCUSSION: Some OSJA personnel had to travel on emergency leave. The process sends personnel out of Kuwait, and they must travel in civilian clothes, which the OSJA learned after the fact. The legal administrator provides a briefing on the emergency leave procedures to all OSJA personnel.

RECOMMENDATION: Sustain. Ensure you know the rules and procedures so you can assist all OSJA personnel.[585]

ISSUE: R&R leave

DISCUSSION: There were no issues with getting slots from the J-1 for all personnel, to include the mobilized reservists. The only concerns were over the designated times for available leave dates.

RECOMMENDATION: Sustain. A good relationship with the J-1 made negotiating for alternate leave dates easier. All negotiations for alternate leave dates occurred through the administrative operations section of the OSJA.[586]

ISSUE: Emergency leave

[583] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[584] 7th SFG OEF AAR, JUL 09 - FEB 10, *supra* note 58.
[585] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[586] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.

DISCUSSION: The emergency leave process was very smooth. It took less than 24 hours to get someone to Kuwait to start emergency leave.

RECOMMENDATION: Sustain. The J-1 has all the necessary SOPs for getting emergency leave orders and the steps to get people out of theater.[587]

Security Clearances

ISSUE: Security clearances

DISCUSSION: The BJA and TC each obtained a top secret clearance. Although the top secret clearance was not needed on this deployment, the brigade legal section was prepared to advise the command even if a top secret clearance were required and even if the BJA were unavailable.

RECOMMENDATION: Sustain. BJAs should begin filing their top secret clearance applications long before the deployment. The BJA and at least one other JA assigned to the brigade should have a top secret clearance.[588]

ISSUE: Need for JAs to have top secret (TS) clearances

DISCUSSION: The MNSTC-I OSJA dealt with several issues involving the transfer of classified equipment/technology to the GoI. In a maturing partnership, some capability transfers may be classified Sensitive Compartmented Information (SCI). Because the fiscal law attorneys, who would otherwise have been the action officers, did not have the requisite security clearance, the DSJA and SJA would have to handle these issues individually.

RECOMMENDATION: Improve. Security transition commands require contract and fiscal law attorneys with TS-SCI security clearances.[589]

ISSUE: Security clearances

DISCUSSION: The SJA, DSJA, and OpLaw attorneys require a Top Secret (TS) clearance to attend certain meetings and assist in targeting meetings and detainee operations. However, they rarely had need for their clearances during the deployment.

RECOMMENDATION: Submit security clearance applications early and track them to ensure G2 processes them in a timely manner. Having two or three personnel with TS clearances is sufficient. The additional investigation is not worth it simply to have additional personnel with TS clearances.[590]

ISSUE: Periodic reviews of security clearances

DISCUSSION: Starting any type of security clearance investigation while in theater is not ideal. It is difficult to get the S-2/G-2 to focus on completing these actions and their ability to submit digital information to the states is reduced.

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[587] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[588] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 15.
[589] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.
[590] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.

RECOMMENDATION: Improve. Initiate all periodic reviews and requests for Top Secret (TS) clearance prior to deployment. TS requests are critical to start early so you can at least have an Interim TS when you arrive in theater.[591]

ISSUE: Periodic security clearance review

DISCUSSION: The SJA was able to initiate a periodic review while deployed without issue. The G-2 had all the resources to initiate and track the status of the periodic review.

RECOMMENDATION: Sustain. Coordinate with the G-2 prior to deployment to ensure periodic security clearance reviews can be done in theater.[592]

ISSUE: Initial security clearance request

DISCUSSION: The OSJA gained a full time military interpreter to assist in the claims mission. The Soldier was a Somali-born U.S. citizen and the OSJA helped process his paperwork with the C-2 Security Officer. The C-2 Security Officer informed us the Soldier's parent unit needed to process the paperwork. Once the paperwork went to the parent unit, the OSJA lost oversight. The interim clearance eventually came through, but it was much later in the deployment.

RECOMMENDATION: Improve. The status of every person working in the OSJA should be available early, and no one should work in the OSJA without a security clearance.[593]

ISSUE: Security of personal information

DISCUSSION: The unit Family Readiness Group regularly requests personal information from the unit to post on their website or for their records. The information included names, phone numbers, and addresses in many instances.

RECOMMENDATION: Improve. Ensure encryption of all data transmitted to FRGs.[594]

NCO and Paralegal Staff Related Issues

ISSUE: Shortage of and under-ranking of paralegals on deployment

DISCUSSION: Lately, one of the issues on deployments has been the shortage of paralegals and the under-ranking of paralegal positions. Personnel, Plans, and Training Office (PP&TO) attempts to fill all positions to 100%, but they have to assign too junior Soldiers into certain paralegal positions to fulfill needs. With either case, a shortage or under-ranking, the BJA and NCOIC paralegals can expect to have to mentor more and be more judicious in allocation of personnel to tasks and duties. Complicating this situation is the possibility of having BNs widely dispersed over the AO. In some circumstances, it was not possible to deploy a junior paralegal forward with a BN due to inexperience.

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[591] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[592] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[593] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[594] *Id.*

RECOMMENDATION: BJAs and NCOIC paralegals must evaluate the implications of any paralegal shortages or under-ranking of position fills.[595]

ISSUE: Consolidate or disperse paralegals

DISCUSSION: BCT deployments to Iraq and Afghanistan often involve large AOs and BCT commanders have to disperse BNs over wide areas that are reachable only by helicopter. Most of the BJA and NCOIC panelist agreed that paralegals have to disperse with larger BNs to provide adequate legal services. However, some BJAs concentrated most of the paralegals at the main FOB and used regular visits to the outlying BNs to provide legal services. There are advantages and disadvantages to both approaches. The individual strengths and weaknesses of the paralegals may be a consideration in planning whether to send them down to the BN. Other considerations are the sheer size of the AO, transportation options to outlying BNs, history of units' legal needs, and the communications situation. In any case, it is important to seek the BCT commander's views on possible positioning plans.

RECOMMENDATION: In consultation with the BCT commander, BJAs and NCOICs have to weigh the advantages and disadvantages of whether to allocate paralegals to outlying FOBs or to consolidate them at the main operating base (MOB).[596]

ISSUE: Counseling by JAs

DISCUSSION: A number of NCO paralegals discussed JAs' varying counseling skills. While many are very good at it, other JAs lack adequate counseling abilities. Counseling is a skill set that can be improved with either training or supervisor assistance. The JAG Corps has to come up with a better system of training a standardized counseling approach for JAs. SJAs should take an active interest in sitting in a few BJA counseling sessions to offer advice and feedback.

RECOMMENDATION: Where possible, SJAs should monitor and improve the counseling skills of their JAs.[597]

ISSUE: Using the paralegal supervisory chain

DISCUSSION: Several NCOIC paralegals would prefer if the JAs would use the paralegal supervisory chain to communicate information down to junior paralegals. It is perfectly understandable a JA may need to speak directly to members of the legal staff but many NCOICs would prefer to follow the chain so that information travels down via the next supervisor. Allowing NCOIC to communicate as much as possible with paralegals also builds their relationships and facilitates upward communications as well. Junior paralegals are less willing to speak candidly or openly with a commissioned officer as they are with the senior paralegal.

RECOMMENDATION: BJAs and JAs should strive to utilize the paralegal supervisory chain to communicate to and gather information from the paralegal staff.[598]

ISSUE: Paralegals as an early warning sensor

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[595] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[596] *Id.*
[597] *Id.*
[598] *Id.*

DISCUSSION: While some might call it "spying," paralegals at BN locations should actively look out for any percolating legal issues that need to reach the notice of the NCOIC paralegal and the BJA. This "heads up" about a potential legal issue coming out of a BN can help the legal team leadership position themselves for solving the problem and even help shape the outcome if the warning comes in early enough.

RECOMMENDATION: Ultimately, it is the responsibility of BN commanders to bring issues forward to the BCT requiring legal attention. However, a paralegal at the BN can keep the BN honest in this regard by monitoring what is going on and keeping the BJA aware of potential issues.[599]

ISSUE: Paralegal training and supervision

DISCUSSION: One of the most important roles of the senior NCOIC is to train paralegals to perform their roles. Personnel plans often change early in a deployment due to a variety of factors. The NCOIC must be able to determine the level of supervision required for each paralegal and which ones would be able to work at a remote location with little direct supervision, if necessary. There will not be time to train the paralegal during the deployment for such assignments since operational demands will likely force the decision with little or no warning. The NCOIC must also be able to actively supervise and assist those remotely situated paralegals by phone and email. This is not optimal, but it is how overseas operations with modular units affect the apportionment of legal staff. Sometimes the NCOIC can rely on the BN CSM or other senior NCO to provide feedback on the paralegal's performance. The success of the deployed paralegals can largely depend on the NCOIC's pre-deployment training and mentoring.

RECOMMENDATION: Senior NCOIC paralegals have to ensure their paralegals have the requisite training and skills to work at a remote location without direct supervision.[600]

ISSUE: Use of legal clerk

DISCUSSION: The MEU SJA had a 4421 corporal as his legal clerk. The SJA kept the legal clerk involved and included him in everything as an extra set of eyes. The corporal proved to be a great asset.

RECOMMENDATION: Sustain.[601]

ISSUE: Consolidation of battalion (BN) paralegals at the BCT level

DISCUSSION: Grouping the BN paralegals at the brigade was instrumental to the success of the SBCT legal office. As a result of the central location, there was constant cross talk, information sharing, and assistance. Having everyone together benefitted both the brigade and its BNs. The work across the brigade was cross-leveled among the available legal staff, and battalions always had direct access to JAs. The BN paralegals gained more experience and expertise in more subject areas, making them even better assets for their battalions and the brigade. This probably

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[599] *Id.*
[600] *Id.*
[601] 22d Marine Expeditionary Unit, Staff Judge Advocate After Action Report, 13 May 2010, Deployed 17 January 2010 – 1 April 2010, Operation Unified Response, Haiti Earthquake Relief (hereinafter "22d MEU (Haiti OUR) JAN 2010"; on file at CLAMO).

would not have been the result if they dispersed. There was a genuine team effort and a synergistic effect.

RECOMMENDATION: Sustain. While decentralized/dispersed staff options have their own merits, the advantages of centralizing BCT paralegals are evident in the comments above.[602]

ISSUE: Developing subject matter expertise among paralegals

DISCUSSION: In addition to handling their BN's military justice actions, each BN paralegal handled assigned areas of responsibility for which they developed subject matter expertise, thus freeing the JAs to do substantive legal work. The NCOIC was a pay agent for claims and coordinated all logistics and transportation for the legal section. One E-6 paralegal was the primary pay agent for claims and handled information management. The other E-6 paralegal assisted with processing investigations and developed a working knowledge of fiscal law. One of the E-5 paralegals helped manage the guarantor release program for detainees, assisted in developing cases for prosecution, and provided backup support to legal assistance. The other E-5 paralegal assisted in processing contract and fiscal law packets. Of the two E-4s, one was the primary paralegal for legal assistance, while the other supported the foreign claims mission.

RECOMMENDATION: Sustain. Empower your paralegals. Properly trained, they can take much of the workload off the attorney's shoulders.[603]

ISSUE: Late arrival and experience levels of paralegal staff

DISCUSSION: Of the six paralegals at the BCT, three arrived two weeks before the unit's NTC rotation and block leave. Moreover, five of the paralegals either were new to the military or had just reclassified to the 27D military occupational specialty (MOS), so the overall experience level was low. As a result, the BCT legal NCOIC had to devote considerable time during the deployment to training and mentoring the staff.

RECOMMENDATION: Improve. Last minute arrivals and lack of experience place additional burdens on the leadership during a deployment. It would be preferable to have new paralegals garner some experience at a unit before deploying.[604]

ISSUE: Paralegal staff undermanned

DISCUSSION: The SBCT was short three paralegals going out the door. Trying to get these positions filled during the deployment was a constant battle, and on one occasion received the following sarcastic HRC comment, "…you're deployed now, so you are not the priority anymore."

RECOMMENDATION: Improve. Sending units out the door undermanned is a great burden on those having to pick up the extra workload. Fill all the positions in the Modification Table of Organization & Equipment (MTOE) before deploying.[605]

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[602] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.
[603] *Id.*
[604] 3d Brigade Combat Team (BCT), 25th Infantry Division, Brigade Judge Advocate OIF After Action Report, 3 November 2009, Deployed October 2008 – October 2009, Multi-National Division – North (MND-N), COB Speicher, Tikrit, Iraq (hereinafter "3BCT, 25ID OIF AAR, OCT 08 - OCT 09"; on file at CLAMO).

ISSUE: Control of paralegals

DISCUSSION: Battalion paralegals fell under the control of their respective battalions during the deployment. This prevented TF Thunder's BJA and NCOIC from shifting paralegals to where they would best serve the overall legal effort of TF Thunder.

RECOMMENDATION: Change the brigade's Modification Table of Organization and Equipment (MTOE) so that all paralegals are assigned to the Headquarters and Headquarters Company (HHC), Brigade. This would allow the NCOIC and BJA to avoid conflicts with battalion (BN) and brigade (BDE) command sergeants major (CSMs), while ensuring that paralegals are properly trained on legal skills and not used as S1 clerks. Until the MTOE is changed, the best option is for the paralegals to be assigned to a BN with duty at the BDE legal office; however, this requires the support of BN and BDE CSMs.[606]

ISSUE: Assigning of "specialties" to paralegals

DISCUSSION: The unit assigned its paralegals certain specialties. Each battalion paralegal was responsive to his or her battalion, but also developed expertise in a certain area of the law. Examples included claims, contract and fiscal, military justice, and operational law.

RECOMMENDATION: Sustain. This worked out exceptionally well. The paralegals were able to serve as true force multipliers for the attorneys because of their developed expertise. Preparation for this should begin long before deployment.[607]

ISSUE: Enabling your NCOIC

DISCUSSION: It can be easy to want to micromanage the paralegals to the point you crush their morale and render the NCOIC combat ineffective. The BJA started the deployment giving the paralegals direct guidance until he noticed the NCOIC got better effects.

RECOMMENDATION: Enable your NCOIC. Doing so will increase morale and achieve better effects.[608]

ISSUE: Consolidation of paralegals

DISCUSSION: With the exception of the paralegal who accompanied the battalion tasked organized to another BCT, the brigade legal section consolidated its paralegals.

RECOMMENDATION: Sustain. Get the BCT commander and command sergeant major (CSM) to support this plan.[609]

ISSUE: Battle Staff training for brigade legal NCOICs

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[605] 1SBCT, 25 ID OIF AAR, SEP 08 - SEP 09, *supra* note 137.
[606] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 230.
[607] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[608] *Id.*
[609] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.

DISCUSSION: The brigade legal NCOIC slot is coded 2S, requiring battle staff qualification. The NCOIC repeatedly engaged the BCT CSM to get a slot at the course. There is no forcing function, however, so leaders need to make sure NCOs go to this training when eligible.

RECOMMENDATION: Sustain. Not everyone sees the value of paralegals attending the Battle Staff course.[610]

ISSUE: Assignment of junior paralegals close to deployment

DISCUSSION: A brand new paralegal arrived at the BCT one month before the deployment. Unfortunately, the paralegal was marginally talented and turned out to be a tremendous drain on the other paralegals and JAs. It was a real disservice to the Soldier and the BCT to put this young and unready Soldier into a deployment after just becoming qualified (barely) in the paralegal trade. There has to be some time for young paralegals to "season" in garrison before sending them to a deploying unit.

RECOMMENDATION: Improve. Staffing issues sometimes require late arrivals to deploy immediately. Where possible, units should not deploy weak basic-level graduates.[611]

ISSUE: Forward deploying of paralegals

DISCUSSION: Paralegals whom the unit will forward deploy away from the JAs and the BCT legal office should be the ones who have demonstrated above average skill and ability to work independently. Sending someone weak can have detrimental effects on the legal work and the units with which the paralegal works.

RECOMMENDATION: Sustain. Put the best people in the most demanding situations where possible.[612]

ISSUE: Location of battalion paralegals

DISCUSSION: The battalions detached to other BCTs took their paralegals with them. Several of the other battalions remaining with the BCT also expressed a desire to have their paralegals at the battalion level. The BJA gave the BCT commander/CSM two courses of action (COAs), but emphasized the brigade legal section could provide better service with a consolidated legal office. Ultimately, the BCT consolidated the remaining paralegals at Camp Taji, but paralegal NCOs made periodic trips to remote locations to provide legal services. The battalions eventually relented.

RECOMMENDATION: Sustain. Detached battalions need their paralegal. However, for co-located units, the consolidation of paralegals is generally the preferable COA. Consolidation promotes efficiency and cross-training, and enables paralegals, rather than S1 personnel, to supervise other paralegals.[613]

ISSUE: Need for a paralegal at MNSTC-I

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[610] *Id.*
[611] 3BCT, 10th MTN DIV OEF AAR, NOV 08 - JAN 10, *supra* note 6.
[612] *Id.*
[613] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 7.

DISCUSSION: Although the OSJA was authorized paralegals on the JMD, MNSTC-I was not resourced with any assigned paralegals. Consequently, the attorneys had to accomplish all of the office management tasks paralegals and legal administrators normally perform. These duties included information management and automation, supply, mail clerk duties, legal inprocessing tasks, travel arrangements, conference planning, staff coordination, video teleconference (VTC) set up, and file management.

RECOMMENDATION: Improve. MNSTC-I and similar security transition commands require paralegals to perform office management and various other paralegal duties. These paralegals must have automation training.[614]

ISSUE: Lack of paralegal support

DISCUSSION: The JA was the only legal person at SOTF-W. All other SOTF JAs in Iraq had a 27D paralegal specialist.

RECOMMENDATION: Improve. The JAG Corps should assign a 27D to deploy with the JA for the year.[615]

ISSUE: Using paralegals to the fullest extent

DISCUSSION: There are many areas in legal operations that paralegals could cover. With proper training and guidance, they could be solely responsible for certain areas in operational law, administrative law, and detention operations. This would allow more time for JAs to focus on issues requiring an attorney.

RECOMMENDATION: The Judge Advocate General (TJAG) issued guidance in the December 2005 issue of TJAG Sends charging all members of the JAG Corps to enhance paralegal involvement in legal operations. It is critical to do so during deployment. The leadership must continually work to ensure involvement and maximum use of paralegals in all areas.[616]

ISSUE: Paralegal support

DISCUSSION: In addition to needing further JA support, some BCTs face shortages with paralegal support. BNs dispersed over a large AO require dedicated paralegal support. In the case of 4-25 ID, the need to staff these BNs led to a shortage of paralegals at FOB Salerno. The resulting workload put a strain on the paralegal staff. Furthermore, PRTs/ADTs lack legal staff, so they relied on BCT legal team.

RECOMMENDATION: BCTs deploying to large Afghan AOs have to consider taking along extra paralegals to meet the challenges of dispersed units. PRTs/ADTs should have an assigned paralegal to work with the PRT Afghan attorney-advisor on RoL initiatives and to support commanders at that level.[617]

ISSUE: Lack of legal clerk

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[614] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.
[615] SOTF-W OIF AAR, MAR 09 - SEP 09, *supra* note 98.
[616] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.
[617] 4BCT, 25ID OEF AAR, FEB 09 - FEB 10, *supra* note 9.

DISCUSSION: The BN JA lacked a legal clerk. Although he was able to accomplish the mission without a legal clerk, it would have been better to have one.

RECOMMENDATION: Improve. Battalions should have a dedicated legal clerk.[618]

ISSUE: Late arrival of key JA and paralegal leaders

DISCUSSION: There were a number of late fills of key JA and paralegal leaders. This is not conducive to deployment success since these leaders have to know and establish working relations with their staff and client commanders before deploying. The learning curve is highly compressed, and it limits the opportunities to do anything other than the bare minimum preparations for the deployment.

RECOMMENDATION: Improve. The goal should be to fill key JA and paralegal leader positions months in advance, not weeks.[619]

ISSUE: Underuse of paralegals

DISCUSSION: The unit underused some paralegals. This was not due to attorneys attempting to do too much, however. It is a fact some things simply require an attorney. Additionally, a lot of the previous work for paralegals was no longer there under the new conditions.

RECOMMENDATION: Consider carefully the level of paralegal support you will need.[620]

ISSUE: Need for TDS paralegal

DISCUSSION: At the beginning of the deployment, the TDS office did not have paralegal support. As a result, the military justice section had to temporarily provide one of its paralegals to TDS until a reservist arrived midway through the deployment.

RECOMMENDATION: Improve. TDS should be permanently be staffed with its own paralegal.[621]

ISSUE: The value of paralegals

DISCUSSION: The BfSB paralegals were worth their weight in gold. The 27Ds in the battalions dealt with the vast majority of low-level legal queries at their level. If the sole attorney had to deal with these queries, it would have compromised the attorney's ability to focus on brigade and higher legal issues.

RECOMMENDATION: Your paralegals are invaluable. You must look after them.[622]

ISSUE: Battalions deploying without paralegals

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[618] 2d BN, 3d Marines, OEF AAR, MAY 09 - NOV 09, *supra* note 54.
[619] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[620] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[621] *Id.*
[622] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 163.

DISCUSSION: Some battalions deploy without their 27D paralegal. They have a very mistaken impression a 42A Soldier can fill in for a 27D and perform the functions of a paralegal.

RECOMMENDATION: Disabuse commands of this notion as soon as possible. Having untrained personnel preparing legal actions for a command always results in additional work in correcting the improper actions. Every battalion will have a need for legal actions, consequently, every battalion needs to deploy with their paralegal.[623]

ISSUE: Paralegals used in non-legal roles

DISCUSSION: The higher headquarters legal office must closely monitor how subordinate units are employing their paralegals. If allowed, some units will use their 27D in a non-legal role, such as a command driver. This forces the unit to pass all of its legal work (Article 15s, for example) up to the higher headquarters because the individual assigned to do it is performing other tasks.

RECOMMENDATION: Paralegals must function as paralegals. No headquarters is overstaffed to enable it to do its own work and that of its subordinate commands.[624]

General Comments

ISSUE: Satisfying both the BCT Commander and the DIV SJA

DISCUSSION: On occasion, a BJA may feel like he has two masters to satisfy – the BCT commander and the SJA. BCT commanders expect BJAs to work exclusively for them, but the SJA may also want to exercise considerable control over the legal staff at the BCTs in a variety of ways. Some BCT commanders may consider the BJA disloyal for communicating with the SJA on BCT legal issues. The BJA has to engage the BCT commander on legal issues, but at the same time has to uphold the integrity of the legal advice. Likewise, SJAs cannot regard BJAs as mere extensions of their office and must avoid providing legal advice directly to BCT commanders since it diminishes the credibility of the BJA.

RECOMMENDATION: A BJA has to walk a fine line in satisfying the interests of the BCT commander and the SJA. Sometimes this may require the BJA to assert professional obligations and responsibilities to the Army.[625]

ISSUE: School opportunities at the BCT

DISCUSSION: The BCT legal personnel did not get to attend courses before or during deployment.

RECOMMENDATION: Judge advocates and paralegals at the BCT should understand the operational tempo or their commander's philosophy might limit their opportunities to attend courses required for professional development and promotion (i.e., Intermediate Level Education (ILE), Basic Noncommissioned Officers Course (BNCOC), etc.) before or during deployment. If possible, complete these courses before assignment to a BCT.[626]

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[623] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[624] *Id.*
[625] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[626] 2BCT, 4ID OIF AAR, SEP 08 - AUG 09, *supra* note 2.

ISSUE: Overall job satisfaction of the BJA position

DISCUSSION: Being a BJA was the most rewarding job. The BJA learned a little bit about every area of the law and a ton about working on a staff. More importantly, the job prepared the BJA to be a better SJA . It provided him insights that no other job in the JAG Corps would have provided him as a Major.

RECOMMENDATION: Majors looking for the most challenging and rewarding job should be BJAs.[627]

ISSUE: Assigned interpreter

DISCUSSION: The BCT assigned an interpreter to the brigade legal section. This interpreter was essential in both claims and RoL.

RECOMMENDATION: Sustain. It is particularly helpful to get a permanent interpreter assigned to the legal office, as this person can become adept at processing claims and can essentially function as an additional paralegal. In the RoL arena, having the same interpreter on engagements can assist in solidifying relationships with your Iraqi counterparts and in making observations from engagement to engagement.[628]

ISSUE: Job assignments within a joint OSJA

DISCUSSION: With the exception of one fiscal law attorney (an Army Reserve captain), all members of the MNSTC-I OSJA arrived in June/July of 2009. Although one Army major had to serve in the chief of fiscal law billet due to a follow-on utilization tour with the Contract and Fiscal Law Division (KFLD), the SJA and DSJA assigned the remaining personnel according to the Joint Manning Document (JMD). The active Air Force and Air Force Reserve majors worked as the chief of operational law and military justice, and the chief of administrative law, respectively. One Air Force JA did not have the same level of operational experience as his Army counterparts. With respect to administrative law, the Air Force JAs are well prepared for routine functions, such as investigations and ethics, but less trained to handle unusual legal issues. Moreover, the Air Force attorneys were reluctant to release legal opinions, preferring to prepare opinions for the SJA or DJSA to sign.

RECOMMENDATION: Improve. Leadership of joint OSJAs needs to be cognizant of the skill sets and cultural differences of the respective services, as well as those of all individually arriving personnel. Pre-deployment outreach and introduction would have enabled the office to better align personnel with their skill sets.[629]

ISSUE: Lack of a Navy JA

DISCUSSION: Despite having Navy personnel assigned to the command, the MSNTC-I OSJA did not have any Navy JAs. MNSTC-I had naval missions with strategic import: the opening of the port at Umm Qasr, security of two key oil platforms, and security of Iraq's territorial waters. Although these missions did not require in-depth legal advice during the current iteration of the

[627] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[628] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 20.
[629] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.

MNSTC-I OSJA, legal support for building the capacity of the Iraqi Navy was farmed out to NAVCENT/5th Fleet (an organization outside even MNF-I) by default. When Navy-specific administrative issues arose, MNSTC-I consulted with the Navy attorneys at MNF-I. As a result, the SJA was not resourced to advise the commander on the law of the sea, cooperative maritime security, maritime ROE, or other legal issues which would affect the acquisition and development of maritime capabilities

RECOMMENDATION: Improve. Although the lack of a Navy or Coast Guard JA did not present significant issues for the MNSTC-I OSJA, joint commands with significant numbers of Navy personnel and a naval mission should have a maritime service JA on the JMD.[630]

ISSUE: Job specialization

DISCUSSION: Deployed attorneys will work best if they specialize. Identify your lanes in advance and prepare for them.

RECOMMENDATION: Sustain. Notwithstanding the general rule, it may help to keep people fresh if you swap jobs for short periods to cover things like environmental morale leave (EML).[631]

ISSUE: Preventing burnout

DISCUSSION: The only way to stay sharp throughout an entire deployment is to have appropriate down time. The leadership must encourage personnel to leave the office during times of inactivity rather than sitting around just to be seen. This will give personnel the capability to work at a higher tempo when the mission requires.

RECOMMENDATION: Institute and strictly enforce a day off policy early in the deployment. Do not think because you just arrived in theater you do not need down time to relax and decompress. Quash any attitudes that "seat time" equals productivity or merit in and of itself. Insist on and protect daily physical training (PT) times just like any other battle rhythm event. Do not view passes to Qatar as just a perquisite, but rather as an important opportunity to recharge.[632]

ISSUE: Personnel support to the brigades

DISCUSSION: The Division OSJA routinely pushed out personnel to cover shortages at the brigades due to leave or unexpected losses. This practice gave Division JAs and paralegals a better sense of BCT operations. Additionally, the experience resulted in invaluable growth and professional development, which could help these individuals step into brigade roles in the future. Finally, sometimes a change of scenery is good for personnel.

RECOMMENDATION: Sustain.[633]

ISSUE: Care for Army Families

DISCUSSION: The Army Family Covenant is working very well. This garrison has the Blue

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[630] *Id.*
[631] 168th EN BDE (MSARNG), OEF AAR, DEC 08 - NOV 09, *supra* note 93.
[632] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.
[633] *Id.*

Star Card for Families of deployed Soldiers. It entitles the Family to free and reduced child care and other amenities. This Army appears to be getting this right and it is having a very positive effect.

RECOMMENDATION: While not really a legal issue, these efforts are well worth supporting. Recognize the legal office, unlike many staff sections, has a workload that actually increases in some aspects (such as military justice) in the garrison environment. Ensure redeployed legal personnel also have the opportunity to reconnect effectively with their families.[634]

ISSUE: Need to staff the Global Response Force (GRF) at 100%

DISCUSSION: The BCT was short an E-7 paralegal NCOIC. This meant the two JAs had to devote much more time to overseeing the paralegals working with the BNs during the deployment. Any BCT assigned as the designated GRF should be manned as close as possible to 100%. That way, when a no-notice deployment occurs, they can deploy without having to worry about personnel shortfalls and extra work.

RECOMMENDATION: Improve. Any BJA of a BCT assigned as the GRF has to ensure there are no manning problems that could hamper the legal team on a deployment.[635]

ISSUE: Maintaining mission focus among personnel

DISCUSSION: The unit brought a large number of native servicemembers to assist with translating during the mission. The fact that many of the servicemembers had family directly affected by the earthquake created an enormous challenge when several of these key personnel focused on finding their loved ones, trying to obtain visas for their families, or finding other ways for them to gain lawful entry into the United States. One Marine in particular was not capable of fulfilling his duties and the unit decided to send him back to the rear.

RECOMMENDATION: When conducting HA operations, units must be cognizant of servicemembers who potentially have family in the AO. Have a plan in place to keep those servicemembers focused on the mission, while also assisting them with helping their families.[636]

ISSUE: Duplication of reporting requirements

DISCUSSION: Various higher-level reporting requirements were duplicative. For example, both military justice and administrative law reports required the status of AR 15-6 investigations.

RECOMMENDATION: Improve. Consolidate legal reporting requirements so the same set of facts or the same incident does not trigger multiple reporting requirements.[637]

ISSUE: Oversight of contractor attorneys

DISCUSSION: MNSTC-I had a contractor attorney in its Counter-Terrorism Service (CTS) advisory team, one in the Partnership-Strategy Group-Iraq (PSG-I), and two in the ITAM-MoI directorate. Over time, these attorneys occasionally strayed from their contracted purpose of

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[634] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[635] 2-82 BCT, OUR (Haiti) AAR, JAN 10 - MAR 10, *supra* note 109.
[636] 22d MEU (Haiti OUR) JAN 2010, *supra* note 601.
[637] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.

providing legal mentorship to their Iraqi counterparts, instead providing command advice to their directorate chiefs without SJA supervision.

In one instance, a directorate hired a contractor with a view towards providing legal counsel to a planning group, independent of the OSJA. At first blush, this raised the question as to whether providing command legal advice was an inherently governmental function (see DoDI 1100.22, June 2009 CRS report, and DA General Counsel opinion dated 5 May 2003), and whether the OSJA held a monopoly on the authority to do so. These questions were further complicated because, as a joint command, Service rules and opinions were informative but did not strictly apply. Nevertheless, the SJA published a legal annex stating all legal advice to MNSTC-I would come from the OSJA. The SJA also instituted meetings with the certain contract attorneys to facilitate oversight.

RECOMMENDATION: Sustain/Improve. In a joint command with rule of law functions and many reservists, it is inevitable that officers (and Soldiers) with civilian-world legal skills will end up in jobs unsupervised by SJAs, and supervisors will view them as personal counsel. As a doctrinal matter, the military legal community should address the desirability of permitting or prohibiting contracting for legal advice and services. Publication of a legal annex asserting the SJA as the sole source of command legal advice and service is essential. Furthermore, statements of work for contract rule of law advisors should clearly define the operational mission as distinct from the staff function.[638]

ISSUE: Social events

DISCUSSION: The OSJA had monthly social events, but the events were not mandatory. Not everyone welcomes mandatory events or extra time hanging around co-workers who they already see 7 days a week, 12+ hours a day. Many value private time or want to secure their little non-duty time for pursuing personal interests.

RECOMMENDATION: How you run these is personality driven. It is important to maintain morale building events, especially if it is a light-hearted opportunity to gather at the same time. It is also an optimal time to gauge/assess individuals' "state of mind" and how they are coping.[639]

ISSUE: Law Day events

DISCUSSION: The Division OSJA sponsored a Law Day conference on Camp Liberty. The focus of the conference was legal training. The event also had an OSJA fun run, volleyball game, and barbeque. Most of the MND-B brigades attended the conference.

RECOMMENDATION: Sustain. This was a good event to meet the brigade legal teams.[640]

ISSUE: Evaluations

DISCUSSION: The CJTF rating scheme had to contain not only the officers within the division headquarters, but also the subordinate brigade judge advocates (BJAs) and task force judge advocates (TFJAs). The staff judge advocate (SJA) added all of the JAs at the subordinate units to his rating scheme. The constant flow of subordinate units in and out of RC-East's area of

[638] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.
[639] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[640] *Id.*

operations (AO) with little to no communication with the OSJA made tracking the JAs more difficult.

RECOMMENDATION: Sustain. Using the same type of tracking system used at home station made things easier to manage.[641]

ISSUE: Drafting awards

DISCUSSION: Drafting awards was not difficult but very different from a garrison environment. Being in a joint unit authorized joint awards. All joint awards require a narrative and citation.

RECOMMENDATION: Sustain. Learning the awards process and requirements early is critical to ensuring all awards are done in a timely manner.[642]

ISSUE: Weekly gatherings

DISCUSSION: The OSJA conducted a weekly breakfast for all legal personnel on Bagram Airfield (BAF). The gathering was used to present awards/recognitions, to hail and farewell, and to play trivia.

RECOMMENDATION: Sustain. The weekly gatherings were a good team-building tool.[643]

ISSUE: Air travel

DISCUSSION: On first arrival, the OSJA SGM was submitting air movement requests (AMR) for everyone that needed to travel by air. The requests became too complicated for one Soldier to manage with changing times and schedules for each request. The OSJA leadership decided to make every individual responsible for his/her own AMR. The individual Soldier submitted a "Trip Ticket" to the OSJA leadership for SJA approval before the Soldier submitted the AMR to the appropriate staff section.

RECOMMENDATION: Sustain. The "Trip Ticket" assisted with accountability and reduced the amount of "combat tourism."[644]

ISSUE: Ground travel

DISCUSSION: The OSJA did not do much travel by ground. The rule of law team traveled out with other sections and did not have to request ground transportation.

RECOMMENDATION: Sustain.[645]

ISSUE: Bi monthly roll-up

DISCUSSION: The OSJA conducted a CJTF roll-up every other week online using Adobe

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[641] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 59.
[642] *Id.*
[643] *Id.*
[644] *Id.*
[645] *Id.*

Connect. This online meeting was used to put out information to subordinate units and receive feedback on how the CJTF could help with any issues.

RECOMMENDATION: Sustain. This is a good opportunity to hear what legal issues are at the subordinate units.[646]

ISSUE: Security clearance management

DISCUSSION: The process to initiate and submit periodical reviews is the same as in garrison. The legal administrator should check all personnel security clearances to ensure they are current and will not expire during the deployment. Ensure that all personnel have "U.S. Access" checked off on the (JPAS). Having the block checked will facilitate a smooth process for getting access badges and network access.

RECOMMENDATION: Sustain. The legal administrator should ensure that all clearances are current and will not expire.[647]

ISSUE: Awards review board

DISCUSSION: The legal administrator was a member of the CJTF headquarters awards review board. This experience helped the office when it came to submitting and processing awards since the legal administrator reviewed all awards.

RECOMMENDATION: Sustain. The legal administrator gained useful knowledge of the awards process and the requirements for having awards approved by the awards review board.[648]

ISSUE: Pay agent for office supplies

DISCUSSION: The legal administrator was the pay agent for the OSJA. The legal administrator received training early and was able to draw cash from the finance office to purchase any supplies needed by the OSJA.

RECOMMENDATION: Sustain. The OSJA was able to maintain proper amounts of office supplies to avoid any shortages.[649]

X.F.2. Work Schedules

ISSUE: The loneliness of the sole attorney

DISCUSSION: You should not underestimate the difficulties of being a sole lawyer at a unit. Being alone can be difficult. However, balanced against the loneliness, there is a terrific sense of responsibility in being the only lawyer.

RECOMMENDATION: Accept and embrace the challenge of being alone. The sense of responsibility will carry you through the difficult patches.[650]

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[646] *Id.*
[647] *Id.*
[648] *Id.*
[649] *Id.*

ISSUE: Sergeants' time

DISCUSSION: The 27D corps is comprised of much younger and less experienced Soldiers than twenty years ago, so it is important the NCOIC have time to mentor, train, and develop paralegals by way of regularly scheduled Sergeants' time during the deployment. JA support for the regular Sergeants' time is crucial, especially when there are numerous demands and pressures on the legal team to do work other than legal in nature.

RECOMMENDATION: JAs must support the NCOIC's mission to mentor, train and develop paralegal staff by allocating regular Sergeants' times during the deployment.[651]

ISSUE: Operational tempo (OPTEMPO) and burn out

DISCUSSION: Each deployment is different in terms of battle rhythm, challenges, activities, and results. The OPTEMPO on Iraqi deployments is beginning to lessen as the strategic withdrawal process continues, and conversely it is increasing in Afghanistan with the surge of troops and expansion of Army operations in the south and east of the country. A BCT's OPTEMPO largely dictates the battle rhythms of its legal team. The BJA and senior NCOIC has to monitor the staff for burn out, stress and fatigue. It is possible to adjust schedules and provide outlets (e.g. time for PT, afternoon off, surprise breaks, down time) for staffs to recharge their energy levels and make it through the deployment without completely being exhausted and mentally drained.

RECOMMENDATION: BJAs and NCOIC paralegals have to monitor battle rhythms and look for signs of burn out. Make changes where possible so that the team can make it through the entire deployment without collapsing at the end.[652]

ISSUE: Day-off policy

DISCUSSION: Soldiers will burn out in the current operational tempo without proper rest. Institute a 'day-off' policy for all JA and paralegal assets in theater.

RECOMMENDATION: Sustain. Remember, a deployment is a marathon, not a sprint.[653]

ISSUE: Paralegal utilization

DISCUSSION: There is a temptation for commanders to misuse paralegals in non-paralegal tasks when paralegals go down to units.

RECOMMENDATION: Paralegals should stay in geographic proximity to CJA offices to ensure their units use them appropriately. The CJA section should educate commanders of paralegals located at unit level concerning the role of the paralegal and the paralegal's relationship with the CJA office.[654]

ISSUE: Work shifts and rest

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[650] 504th BfSB, OIF AAR, NOV 08 - NOV 09, *supra* note 163.
[651] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[652] *Id.*
[653] 11th MP BDE OIF AAR, AUG 08 - JUN 09, *supra* note 17.
[654] *Id.*

DISCUSSION: The SBCT legal office incorporated staggered work shifts to ensure office coverage from 0800 to 2200. In addition, giving everyone some down time was essential for personnel to remain fresh and prevent burn out. All enlisted personnel had one day off per week and a late start on Sundays, as well as one four-day pass over the course of the deployment. The three JAs were able to coordinate down time as needed among the attorneys.

RECOMMENDATION: Sustain. Deployments can be very demanding. Including some down time in schedules can greatly decrease burn out.[655]

ISSUE: Use of a paralegal for TOC night shift

DISCUSSION: The BJA elected to have a paralegal on the night shift. Although the paralegal NCO who filled this role had no operational law experience, her role was primarily to track down one of the attorneys if legal questions arose. This rarely happened, as the BCT was not running large-scale, sustained kinetic operations. However, this paralegal updated the battle book with significant activities (SIGACTs), new detainees, etc. In addition, she performed administrative tasks for the brigade legal section, including scanning packets and creating shells for legal reviews of investigations, projects, etc.

RECOMMENDATION: Sustain. Although having a paralegal on the night shift was not necessary from an operational perspective given the lack of sustained kinetic operations, the brigade legal section maximized the utility of this arrangement by having the paralegal spot issues and work on other legal actions.[656]

ISSUE: 24-hour coverage in the Division Operations Center (DOC)

DISCUSSION: The 34ID OSJA began the deployment with 24/7 legal coverage on the DOC floor. Even though stability operations rarely, if ever, required immediate legal input at the Division level, the tasking to have a legal person on the DOC floor remained. This staffing requirement stretched the OSJA's resources thin at times and required them to use other legal staff not trained in operational law or DOC operations. The Chief of Operations (CHOPS) allowed this "warm body" approach because he assumed all legal personnel are interchangeable, but this requirement was burdensome and unnecessary.

RECOMMENDATION: Improve. Avoid staffing the DOC 24/7.[657]

ISSUE: Using night shift personnel

DISCUSSION: Personnel on the night shift are often underutilized. Often they are there to fill a presence requirement, rather than a performance requirement. Consequently, there is tremendous opportunity for them to do value-added tasks. For example, if an issue comes in during the evening update, the night shift can begin to work it and hand it off to the operational law section in the morning. The operational law section can then polish it and pass it for review to the SJA, who can then have it to the Chief of Staff for the morning update.

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[655] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.
[656] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.
[657] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.

RECOMMENDATION: Use the night shift to do initial drafts of white papers, conduct legal research, process CERP packets, etc. They can make valuable contributions to the team effort during periods that might otherwise not have a significant number of issues for them to address.[658]

ISSUE: Effect of the environment in Iraq on workload for paralegals

DISCUSSION: There are not a lot of ROE targeting questions in the current environment. That, coupled with a lack of detainee packets for review, took a huge workload away from the paralegals.

RECOMMENDATION: Consider carefully the changed environment as you perform your troops-to-task analysis.[659]

ISSUE: Need for 24-hour attorney support in the Division Operations Center (DOC)

DISCUSSION: The unit could count on one hand the number of times there was a need for an attorney in the middle of the night. However, the operations staff often spoke of requiring an attorney on the DOC floor 24 hours a day.

RECOMMENDATION: Resist the pressure to have an attorney constantly in the DOC. Paralegals are more than capable of answering routine questions and will know how to get an attorney on very short notice if DOC personnel really need one.[660]

ISSUE: Required enlisted personnel in the DOC

DISCUSSION: A sergeant and a staff sergeant could have covered the required work in the DOC. A sergeant first class or master sergeant may need to be somewhere other than the DOC floor for professional development.

RECOMMENDATION: Do not overinflate the rank requirements for the paralegals working in the DOC.[661]

ISSUE: OSJA physical training (PT) program

DISCUSSION: The OSJA did not have an organized PT program. The OSJA took two PT tests while in theater.

RECOMMENDATION: Sustain. The work hours were not conducive to organized PT and personnel set their own schedules for PT.[662]

ISSUE: Keeping paralegals gainfully employed

DISCUSSION: The paralegals working in operational law did the daily battle update slides for

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[658] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[659] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[660] *Id.*
[661] *Id.*
[662] *Id.*

the SJA. They also did the operational Executive Summary and some CPOF tasks, as well as air travel requests. The DOC required 24-hour legal representation, so the paralegals maintained an 8-hour shift. When things were not busy, they did complete on-line college courses.

RECOMMENDATION: You will have to maintain a legal presence in the DOC, so ensure your personnel there have a way to use the time beneficially. Encourage attorneys to provide projects upon which the paralegals can work.[663]

X.F.3. Personnel Actions (Awards, Evaluations, Adverse Actions)

ISSUE: Processing evaluations

DISCUSSION: The processing of evaluations normally occurred via e-mail. All the digital signatures occurred by sending the evaluation on e-mail and forwarding it to the C-1 on e-mail. The C-1 would use the Army Knowledge Online (AKO) portal to send completed evaluations to the Human Resources Command (HRC).

RECOMMENDATION: Sustain. This method worked well. Even if interruption of the internet connection occurred, the files would move forward to HRC when connectivity was available.[664]

ISSUE: Award presentations

DISCUSSION: Most end of tour award presentations occurred in theater although some personnel returned early to demobilize. Demobilized personnel received their award when at home station. The Corps SJA ensured most members of the OSJA received an impact award during the deployment.

RECOMMENDATION: Sustain. Impact awards are rare in a deployed environment and are good for morale when awarded.[665]

ISSUE: Evaluations tracker

DISCUSSION: The OSJA used the garrison evaluation tracker during the deployment.

RECOMMENDATION: Sustain. Weekly meetings with the DSJA are helpful in tracking additional brigade-level evaluations.[666]

ISSUE: Maintaining accurate rating schemes

DISCUSSION: Update all basic administrative information before deployment. Understand TJAG's policy when it comes to SJAs senior rating trial counsel and work with BJAs and commanders in your area of operation. It does not always work in theater and is more difficult with brigades who are not organic but it is important to ensuring a consolidated focus. Also, shells can be created at any time (with the exception of a THRU date).

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[663] *Id.*
[664] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[665] *Id.*
[666] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.

RECOMMENDATION: Sustain. Keeping an accurate rating scheme helps in preparing the shell for evaluations to ensure all administrative data is correct and on time.[667]

ISSUE: Officer Evaluation Report (OER) rating scheme

DISCUSSION: The legal advisor spent approximately 75% of his time in support of the SOTF-C S-3 during deployment and at PMT. Current policy dictates the rater for the legal advisor be the SOTF executive officer.

RECOMMENDATION: Depending on the length of deployment over the rating period, policy should allow for S-3 to rate the legal advisor or consider having the S-3 provide the executive officer a letter of input.[668]

ISSUE: Individual Augmentee deployment orders

DISCUSSION: The IA did not receive deployment orders until about two weeks before his reporting date to the CONUS Replacement Center (CRC). This made it difficult for the IA to get a deployment rent decrease, suspend his cell phone coverage, and handle other administrative needs.

RECOMMENDATION: Improve. Deploying JAs should have their deployment orders in place well before their CRC dates.[669]

ISSUE: Monthly recognition ceremonies

DISCUSSION: The OSJA held a monthly recognition ceremony.

RECOMMENDATION: Sustain. This was an opportunity to put out information to the group and was a teambuilding event.[670]

ISSUE: Rating chain for BJAs

DISCUSSION: Had the brigade followed the rating policy for BJAs, this particular BJA would have had five OERs during a two year period. Short, choppy OERs in a deployed environment are problematic.

RECOMMENDATION: The policy provides for exceptions when operational considerations dictate. Make use of this available exception to ensure you are doing what makes sense in the situation.[671]

ISSUE: Rating chain for Air Force attorneys

DISCUSSION: In accordance with policy of the Air Force Office of the Judge Advocate General, the MNSTC-I OSJA provided only letters of evaluation (LOE) for Air Force personnel

[667] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[668] 2d BN 10th SFG(A), OIF AAR, JUL 09 - MAR 10, *supra* note 66.
[669] Individual Augmentee, CJTF-82 RoL Section, OEF AAR, OCT09-JAN10, *supra* note 254.
[670] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[671] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.

using Air Force Form 77. The individual attorneys' home station OSJAs wrote their Officer Performance Reports (OPRs). After consultation with other Air Force JAs, the OSJA leadership discovered LOEs have very little substantive value in the Air Force, and typically the deployed Air Force JA has more input to his or her OPR upon return to home station. This arrangement appears to be unique to the Air Force JAG Corps, as other Army supervisors within MNSTC-I completed OPRs for their Air Force subordinates. The OSJA leadership contacted the home station SJAs for each of the Air Force JAs in order to ensure those SJAs received an accurate representation of the duties and performance of the attorneys.

RECOMMENDATION: Improve. All JAs assigned to a joint command should receive evaluations from their deployed rating chain. Given a deployment is one of the most significant duty assignments in a JA's career, it is critical for the SJA to have the ability to reflect their performance, both good and bad, accurately. The current Air Force policy significantly limits the ability of the deployed SJA and DSJA to manage their personnel. A better policy would be for the MNSTC-I OSJA to write the OPR with a technical review from the attorney's home station SJA or from the AFCENT SJA.[672]

ISSUE: Formalization of TJAG's policy concerning brigade-level rating chains

DISCUSSION: The Judge Advocate General's (TJAG's) policy concerning the rating of JAs in garrison is over two years old. While it maintains some value as persuasive authority, commanders will not consider it binding until it appears in a regulation.

RECOMMENDATION: Write the policy into a rapid reaction change to the officer evaluation report (OER) regulation.[673]

ISSUE: Tracking evaluations in the modular force

DISCUSSION: It is very difficult to stay abreast of evaluations when brigades are constantly moving in and out of the OSJA's span of control.

RECOMMENDATION: Have a system in place for tracking and make determining evaluation statuses a priority when a new unit arrives in the operational area. Make sure that the SJA and/or the DSJA make physical contact with everyone within the rating chain. Always make time to "turn around" OERs or answer OER questions from the line officers who are rating your judge advocates.[674]

ISSUE: NCOER rating chain

DISCUSSION: NCOER rating chains for the BCT paralegals did not always include a judge advocate or paralegal NCO.

RECOMMENDATION: Improve. Discussions with the III Corps OSJA SGM post-deployment identified a shortcoming in some rating schemes and recommended that rating schemes of 27Ds always include at least one JA or senior paralegal.[675]

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[672] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.
[673] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[674] *Id.*
[675] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 15.

ISSUE: Rating chain for paralegals

DISCUSSION: Some battalions wanted to keep the rating chain for their paralegal within the battalion. This, of course, leaves no room for judge advocates within the chain.

RECOMMENDATION: Explain early on to the battalions why it is advantageous to the Soldier to have a judge advocate in his or her rating chain. Once they understand the reasoning, most battalions accept it.[676]

X.F.4. Rear Detachment Staffing & Reserve Augmentation

ISSUE: Managing the 365 day limit for reservists

DISCUSSION: The legislative 365-day limit for activation of reservists limits how much pre-deployment and collective training time the reservist can spend with the unit. Some BJAs felt that it was better to have the reservist JA or paralegal on the deployment for as much time as possible. This limits the pre-deployment training time, but that is an acceptable trade off for them.

RECOMMENDATION: BJAs and NCOICs should weigh the pros and cons of when to bring a reservist on board the legal staff for a deployment given the 365-day limit for activation.[677]

ISSUE: Effect of mobilization on employers

DISCUSSION: The impact on the employer is much greater when it is a one-year deployment plus six to nine months of aggravation ahead of that. It would be better to cut the cord completely than to have to be gone repeatedly for training.

RECOMMENDATION: Have 30 days of Title 32 time directly ahead of actual mobilization to take care of the pre-mobilization tasks. This allows employers to actually hire short-term help rather than have an employee who is "present," but not with any regularity.[678]

ISSUE: Potential conflict issues with non-military employer

DISCUSSION: Non-active component Soldiers have potential ethical conflict issues if they work in a civilian capacity for an employer who does business with the government.

RECOMMENDATION: Be aware of this potential and discuss it with any Soldiers whose civilian employment might raise an issue.[679]

ISSUE: Rear detachment staffing

DISCUSSION: In accordance with a division directive, the BCT left one paralegal at Fort Hood to process rear detachment legal actions. Although this initially seemed adequate to process the

[676] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[677] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[678] KFOR-11 AAR, FEB 09 - NOV 09, *supra* note 253.
[679] *Id.*

administrative separations and to support the four or five courts-martial the BCT left behind, the rear detachment soon became overwhelmed. With only five rear detachment cadre per battalion, a lack of supervision of Soldiers undergoing separation led to additional misconduct, resulting in twenty-eight courts-martial. The BCT commander stated, in retrospect, he would have left another paralegal on the rear detachment.

RECOMMENDATION: Improve. Understaffing of the rear detachment is a recurring issue, affecting this BCT on its previous deployment as well. Staffing the rear detachment requires a delicate balance. Increasing the number of personnel on the rear detachment generally means the deployed mission will suffer. Nonetheless, there must be an adequate number of cadre to properly supervise Soldiers undergoing separation or courts-martial. This is where mobilized reservists could be of great assistance.[680]

ISSUE: Need for additional rear detachment trial counsel

DISCUSSION: The division and three of its four BCTs deployed simultaneously. The division OSJA left only one trial counsel in the rear to handle three BCTs' courts-martial. One BCT began with four or five courts-martial alone, but ended with twenty-eight courts-martial by the time the BCT redeployed due to frequent misconduct of Soldiers undergoing administrative separations.

RECOMMENDATION: Improve. One trial counsel is grossly inadequate to cover this many actions. The division OSJA should request backfill by mobilized reservists. In addition, since there may be fewer courts-martial in the deployed environment compared to the rear detachment, the division OSJA should consider leaving additional active duty trial counsels behind.[681]

ISSUE: Managing pre-deployment training for reservists

DISCUSSION: One SJA placed a reservist on individual travel orders (ITO) for various pre-deployment training in order to avoid cutting into the 365-day limit for activation.

RECOMMENDATION: Sustain. The use of ITOs is another way to work around the pre-deployment training of reservists without starting the 365-day activation clock.[682]

ISSUE: By name request for a reservist to deploy with unit

DISCUSSION: There are occasions where a particular reservist JA (or paralegal) is available to deploy and wishes to go with a certain unit. That unit can make a by name request and chances are the request will usually receive approval. This is normally a win-win for the unit, reservist, and the Army since it cuts down on personnel searches and compatibility issues.

RECOMMENDATION: Sustain.[683]

ISSUE: After action review (AAR) use to determine rear detachment requirements

DISCUSSION: The OSJA SGM sat down with the Division CSM and went over the unit's

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[680] 1-1 CAV BCT OIF AAR, FEB 09 - JAN 10, *supra* note 7.
[681] *Id.*
[682] BJA Seminar, combined AAR, 10-12 MAY 2010, *supra* note 19.
[683] *Id.*

previous AAR to determine the scope of the rear detachment legal mission the unit could expect. This led to the determination each brigade would have to leave back one paralegal to support this mission. The brigade CSMs were in the room during this discussion so they understand the need for the requirement.

RECOMMENDATION: AARs are a valuable tool for allowing informed decisions. When making decisions affecting the staffing of subordinate units, it pays to get buy-in from those units during the decision process.[684]

ISSUE: Mobilization of Reserve assets

DISCUSSION: Mobilization of Reserve assets allowed the Division to fill gaps in manning and improved the flexibility to augment brigades as they sent personnel on EML.

RECOMMENDATION: Plan for the mobilization of Reserve assets.[685]

ISSUE: Need for a Division rear detachment

DISCUSSION: Division has to have a rear detachment. In this particular Division, they were "busier in the rear detachment than they had been for 20 years." There was no way the Corps or installation could have picked up the workload. While the Division left behind three attorneys, they could not send anyone additional back to assist because the Division policy was not to release people from theater to return.

RECOMMENDATION: Plan for a rear detachment and realize it may be easier to leave personnel back initially than return them from theater.[686]

ISSUE: Timing of the arrival of Reserve augmentation

DISCUSSION: The OSJA requested Reserve augmentation about six months out from deployment. The two officers arrived and met the OSJA while it was at Camp Buehring in Kuwait. This was perfect timing. On the enlisted side, the two paralegals arrived four months and six months into the deployment. This was a disconnect, as it would have been preferable to have these Soldiers at transfer of authority.

RECOMMENDATION: Time your requests for simultaneous arrival in theater. Failing to do so will leave you without coverage on either the front or back end of the deployment window.[687]

ISSUE: Military justice staffing for the rear detachment

DISCUSSION: 1CD deployed with the Chief of Justice and two TCs. Only one TC remained behind with the rear detachment. During its one-year deployment, 1CD conducted 8 courts-martial in Iraq and 40 courts-martial back at Fort Hood. As a result, the rear detachment military justice section was completely overwhelmed with work.

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[684] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[685] *Id.*
[686] *Id.*
[687] *Id.*

RECOMMENDATION: Improve. Units must ensure they adequately staff their rear detachment military justice sections. Often, units are sending the complicated cases back to the rear for adjudication. If possible, units should try to bring in reserve JAs to fill TC slots for the rear detachment.[688]

ISSUE: Lack of recognition of the legal work units leave behind

DISCUSSION: Six brigades deployed from the installation. These units took all of their legal assets with them, but left behind a significant amount of legal work. The plan was that these units would mobilize someone to fall in on their work. However, PP&TO initially indicated the Corps rear detachment OSJA had all the personnel they were getting. Only when broken down in terms of "37 paralegals just departed this installation and we have all of their legal work," did anyone recognize the issue. There were seven paralegals doing the legal work for six brigades. Even when approved to request additional personnel against the slots on the mobilized TDA, the personnel never arrived. Fortunately, the unit had 13 paralegals arrive from Advanced Individual Training over the course of 40 days. This was as unplanned and unanticipated as it was fortuitous.

RECOMMENDATION: Recognize this is an issue. Because of the move to "power down" the legal support for units to the Brigade level, the Division, Corps, and installation OSJAs have lost some of the ability to support rear detachment units. Deploying units must internally plan for who will cover the legal work they leave behind. You cannot rely on sheer luck to make it work.[689]

ISSUE: Processing evaluations on the rear detachment

DISCUSSION: The office used the evaluations tracking system already in place, and all the civilian points of contact were the same. The legal administrator mobilized from her civilian position within the I Corps garrison office. Being a member of the civilian staff and mobilizing to the same office in the legal administrator role gave her a distinct advantage. She had already established relationships with people in the organization and other sections in the Corps headquarters. The established relationships made the processing of evaluations and other actions easy.

RECOMMENDATION: Sustain. While it is very rare to mobilize a reservist from his or her civilian position into the same office, it is very beneficial to have someone who knows the office personnel and how the office interacts with other sections on the installation.[690]

ISSUE: Integrating Reserve personnel into an Active Component unit

DISCUSSION: How you initially bring Reserve personnel into the unit and how you send them off afterwards are critically important to setting the tone for their integration.

RECOMMENDATION: Give careful thought to how you will do this. It is not something you should make up as you go along. Making everyone truly feel a part of the same team provides benefits far beyond any cost you might pay in time and effort doing these things.[691]

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[688] *Id.*
[689] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[690] *Id.*
[691] *Id.*

ISSUE: Seamless integration of reservists into the OSJA

DISCUSSION: The I Corps SJA and DSJA were extremely "reserve friendly." They set the tone early for the reservist augmentees to integrate fully into the OSJA. Within each section, it was indistinguishable who was active duty and who was a reservist.

RECOMMENDATION: Sustain. It is vital for the leadership to set the tone for "one team" in the OSJA. The absence of this tone will be noticeable both within and outside the OSJA and damages both morale and the credibility of the office.[692]

ISSUE: What Active Component leadership to leave back when deploying

DISCUSSION: In this case, the entire Corps-level Foundation of Four deployed and the supporting LSO completely filled those positions. However, this particular transition was able to draw upon uncommon circumstances. The Reserve legal administrator worked in the office full-time as a victim-witness liaison. Additionally, the Corps left behind its Active Component NCOIC of military justice. These two individuals had a wealth of knowledge concerning how the garrison typically did things.

RECOMMENDATION: This is a very personality-driven issue. Absent the significant advantages this particular LSO enjoyed, there is a need to leave either the Deputy SJA or the Chief of Justice at home station. Additionally, give serious thought to having the Chief of Administrative Law stay behind. Any Reserve Component SJA stepping in will rely heavily on these people.[693]

ISSUE: Meeting the new leadership before mobilization

DISCUSSION: The legal administrator was from a different reserve unit and traveled to the incoming legal support organization (LSO) to meet with the incoming staff judge advocate (SJA), deputy staff judge advocate (DSJA), and command paralegal.

RECOMMENDATION: Sustain. Meeting the new office of the staff judge advocate (OSJA) team was a big success for all members of the team.[694]

ISSUE: Proper rear detachment staffing

DISCUSSION: The brigade legal NCOIC wanted to take his best people forward. Consequently, he left a paralegal on the rear detachment who would be out-processing midway through the deployment. The BCT ended up having numerous cases when they redeployed that the rear detachment should have resolved. In retrospect, the NCOIC would have left his best paralegal on the rear detachment.

RECOMMENDATION: Improve. Rear detachment understaffing is a chronic problem. The Division OSJA should seek Reserve augmentation. BCTs should leave a highly proficient paralegal NCO to work legal issues left behind. In addition, a theater out-processing facility for

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[692] *Id.*.
[693] *Id.*
[694] *Id.*

those being chaptered would help relieve pressure on the rear detachment. Bring back the old Personnel Control Facilities (PCFs) to manage Absent Without Leave (AWOL) returnees.[695]

ISSUE: Expectation management for reserve individual augmentees (IAs)

DISCUSSION: The BCT's third attorney was a reserve individual augmentee who originally deployed with the 25th Infantry Division to work operational law and RoL. However, when division sent him down to the BCT, he worked fiscal law, claims, and legal assistance. He had little training in these areas and had to learn on the job.

RECOMMENDATION: Improve. There should be better coordination between the Personnel, Plan, and Training Office (PP&TO) and the requesting unit as to what duties IAs will perform. Some IAs volunteer for deployment based on what information they receive as to their deployed duty position, only to be assigned elsewhere once in country. Earlier decisions as to where IAs will serve will promote expectation management for the IAs, as well as allow them a better opportunity to seek out the appropriate pre-deployment legal training.[696]

ISSUE: Rear detachment manning & its effect on deployed manning

DISCUSSION: Division required each BCT to leave one paralegal behind to work with the rear detachment. This left two vacancies in the deployed legal section (the BCT was already short one paralegal), forcing two paralegals to each cover down on two battalions.

RECOMMENDATION: Improve. Deploying BCTs must receive all their authorized paralegals. The rear detachment should receive personnel augmentation from reserve units.[697]

ISSUE: Reserve Component mobilization notice

DISCUSSION: One of the MNSTC-I fiscal law attorneys was a mobilized reservist. On the Monday following his January drill weekend, he received his initial deployment notification via a voicemail at his civilian job from the Regional Readiness Command (RRC). The voicemail instructed him to report for Soldier Readiness Processing (SRP) the following week. He did not receive any personal notification from his unit or otherwise, nor did he receive any explanation as to the extremely short notice. Complicating things was the fact he did not receive his actual orders until one week before reporting to Fort Benning.

The impact on this JA's civilian practice was significant. The short notice affected his ability to transfer his caseload properly, and the lack of orders hindered his deployment preparation, particularly with regard to employment related matters.

RECOMMENDATION: Improve. Reserve Component JAs should receive at least six months notice for mobilization and deployment and should receive their orders at least 60 days from their mobilization date. This would give them sufficient time to close out or transfer cases in their civilian law practice, as well as schedule any specialized legal training they may need for their deployment.[698]

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[695] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.
[696] 3HBCT, 1 CD Part II OIF AAR, DEC 08 - DEC 09, *supra* note 20.
[697] *Id.*
[698] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.

ISSUE: Matching civilian legal skill set to deployed positions

DISCUSSION: The Army Reserve Component (RC) fiscal law attorney at MNSTC-I, like his predecessor, had no contract or fiscal law experience before the deployment. Given the short notice of his deployment, he did not have sufficient time either to request a different deployed position or to attend training courses at TJAGLCS to develop the appropriate legal skill set. In fact, the only reason he even knew he would be deploying as a fiscal law attorney was that an Active Guard and Reserve (AGR) JA was able to track down this information. There were two other JAs in the unit who wanted to deploy and whose private practice touched on contract law, but they had been turned down repeatedly. Moreover, once deployed, this JA met another RC JA who was working detainee operations even though he did contract law in his civilian job.

RECOMMENDATION: Improve. There should be some effort to match the legal skill sets of RC JAs with the appropriate deployed billets, or to send them to the relevant courses at TJAGLCS. In addition, PP&TO should contact deploying RC JAs to address any concerns and facilitate assignment changes when possible. Contract and fiscal law is one area that is not conducive to on-the-job training, especially given some of the complex legal issues the MNSTC-I OSJA faced. Finally, early identification of individual augmentee deployers enables the SJA and DSJA to make contact pre-deployment and match capabilities and personal development goals to tasks.[699]

ISSUE: Cross-leveling of RC JAs for deployment

DISCUSSION: In preparation for deployment, the RC fiscal law attorney cross-leveled from his reserve unit into an individual augmentee unit at Fort Benning. He did not know anyone in this unit, making the mobilization process more difficult.

RECOMMENDATION: Improve. This practice is contrary to the way in which the United States Army Reserve recruits personnel by emphasizing they will train and deploy with members of their unit. Whenever possible, individual deployers should come from the same reserve unit.[700]

ISSUE: Confusing mobilization notification process

DISCUSSION: The 29th IBCT has mobilized and deployed to Kuwait twice. On both occasions, there was confusion surrounding the mobilization announcement. In the most recent case, there were several communications from the National Guard Bureau to the full-time staff. However, many Soldiers learned of the deployment when there was an announcement from the National Guard Bureau in the news media.

RECOMMENDATION: Develop and maintain a process allowing for uniform notification from National Guard Bureau down to the unit level.[701]

ISSUE: Reserve augmentation

DISCUSSION: The OSJA requested seven Reserve augmentees for the deployment. They

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[699] *Id.*
[700] *Id.*
[701] 29th IBCT (HIARNG) OIF AAR, OCT 08 - AUG 09, *supra* note 91.

proved to be outstanding assets. They came with the same capabilities as active component officers.

RECOMMENDATION: You have to do a very good "troop to task" analysis very early in the pre-deployment cycle to have a realistic idea of what you will need while deployed.[702]

ISSUE: Timing of augmentation requests

DISCUSSION: The unit resisted the urge to time its Reserve augmentation request to bring the personnel aboard ahead of the deployment to train. The "boots on the ground" limits would then limit these personnel to only two thirds of the deployment. A bit of a delay worked out well. There is no shortage of JAs on the ground during the left/right seat ride period. Additionally, about a month into the deployment, you have a much better idea of where you will need to place personnel.

RECOMMENDATION: Consider the benefits of timing your augmentation request to have the personnel arrive after you are already in theater. The process for requesting reserve augmentees takes time. Submit the request at least six months in advance.[703]

ISSUE: The twelve-month cap on Individual Mobilized Augmentees (IMAs)

DISCUSSION: IMAs can only spend twelve months on active duty. However, since deployments are generally twelve months, these officers are either missing pre-deployment training/bonding opportunities or the satisfaction of completing the mission with their active duty JA teammates.

RECOMMENDATION: Improve. Permitting IMAs additional time with their receiving units before deployment would allow them to better integrate and become accepted members of the team, before arriving in theater.[704]

ISSUE: Non-doctrinal command requirements for legal support

DISCUSSION: The Division sent each of its deputy commanders to head a tactical operations cell away from the Division Main. Each general officer wanted dedicated legal support. This consumed two judge advocates. Initially, there was a fear these officers would become too customer-oriented away from the supervision of more senior JAs. It actually turned out to be beneficial, as these JAs reported frequently to provide the SJA situational awareness of what was occurring in these elements and the ability to influence the actions and decisions of the deputy commanders.

RECOMMENDATION: Good communication with legal advisors supporting dispersed elements is essential.[705]

ISSUE: Integration of joint and Reserve personnel

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[702] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[703] *Id.*
[704] *Id.*
[705] *Id.*

DISCUSSION: It takes effort to ensure augmentee personnel feel they are a part of the team. The benefits that come from having "one team" make the effort well worth it.

RECOMMENDATION: Go out of your way to integrate non-traditional members of the team. Treat them exactly as you would Army legal personnel. They are every bit as capable and in some cases more so. However, be aware that active component Soldiers can become resentful if they perceive the leadership team to be showing favoritism towards the augmentees.[706]

ISSUE: Date of rank may drive placement of reserve augmentees

DISCUSSION: Although one of 1CD's reserve augmentees was originally supposed to work in the operational law section, he was senior to the chief of operational law in date of rank. The DSJA therefore assigned him to work as the chief of client services.

RECOMMENDATION: Mobilized reservists need to understand their active duty counterparts had career checkpoints that may give them priority for certain jobs within the OSJA.[707]

ISSUE: Deployment of reserve JA lieutenants

DISCUSSION: One the subordinate BCTs had a reserve JA lieutenant. The reservists in the Division OSJA noticed the unit treated this JA shabbily by virtue of his rank, even though he was an experienced civilian practitioner.

RECOMMENDATION: Do not deploy JA lieutenants to BCTs.[708]

ISSUE: Post Deployment/Mobilization Respite Absence (PDMRA)

DISCUSSION: PDMRA is a new category of administrative absence available to reservists who have deployed or mobilized with a frequency beyond established policy goals. The personnel at the Fort Benning Soldier Readiness Processing (SRP) station were not knowledgeable about this program. They were supposed to calculate demobilizing reservists' PDMRA days and send this to Human Resources Command (HRC) in St. Louis, which would generate a letter authorizing this duty status. However, they said it would take ten days to get the PDMRA approved, which was untenable because many of the reservists' orders would expire before they could take their PDMRA days. The JA called HRC directly and was able to get the letter for several individuals the next day.

RECOMMENDATION: Improve. Any installation responsible for demobilizing reservists should be aware of the PDMRA program, inform Soldiers of the program, and take appropriate action to ensure the processing of these requests in a timely manner.[709]

ISSUE: Presentation of awards

DISCUSSION: Deployment award presentations for Division reserve augmentees occurred in

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[706] *Id.*
[707] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[708] *Id.*
[709] *Id.*

theater before they returned to their reserve unit. The rest of the OSJA awards presentations occurred at Fort Hood so family members could attend.

RECOMMENDATION: Sustain.[710]

ISSUE: Advance notice of duty position in theater for RC JAs and paralegals

DISCUSSION: Before deployment, some of the JAs and paralegals were notified they would be in particular duty positions in theater. However, there were later adjustments to the reserve personnel's assignments for various reasons. This disrupted efforts to train for deployment duty assignments.

RECOMMENDATION: Improve. Critical to reserve deployment success is maximizing training opportunities in pre-mobilization. Early and accurate notice allows JAs and paralegals to focus on the appropriate training opportunities, including on-the-job training with the active duty OSJA and contacting their deployed counterparts.[711]

ISSUE: Tracking WIAS and reserve personnel

DISCUSSION: The chief paralegal and legal administrator tracked arrival and departure dates for all worldwide individual augmentees (WIAS) and reserve personnel. They submitted requests for replacements early and monitored it until arrival of the replacements.

RECOMMENDATION: Sustain. The constant monitoring of these mission essential positions made the transitions easier.[712]

ISSUE: Duration of mobilization orders

DISCUSSION: Reserve Component Soldiers deploying overseas get 400-day orders. However, those mobilizing to fill jobs in CONUS receive orders for only 365 days. When one considers the need to cover block leave or train-up periods, this can cause gaps in coverage.

RECOMMENDATION: Be aware of and manage the challenges of this timing issue.[713]

ISSUE: Need for and difficulty of extending Reserve Soldiers on active duty

DISCUSSION: There was a large time gap between when the LSO personnel had to depart and when the Corps they were backfilling actually returned. While Reserve personnel deploying overseas can get 400-day orders, those remaining CONUS only get 365-day orders. They had to be gone at the expiration of the orders and, of course, they needed time ahead of that to out-process. The unit managed to get orders allowing more time on active duty only two days before the out-processing was to begin. This was despite initiating the process four months earlier. The unit had to initiate the Contingency Active Duty for Operational Support (COADOS) orders process because the Army was unwilling to extend the original orders, which were involuntary orders. The process to get COADOS orders to continue on active duty precipitates all the same paperwork requirements as bringing on someone onto active duty in the first place (PT test, health

[710] *Id.*
[711] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[712] *Id.*
[713] *Id.*

assessment, etc.). However, in these cases, these were all issues the active Army already owned because the Soldier was already on active duty.

RECOMMENDATION: It really does require 14-15 months to backfill properly a yearlong deployment by an active unit. There needs to be a simple system for keeping mobilized personnel on active duty if they volunteer to do so. Making even CONUS mobilizations 400-day mobilizations would be a good start. If nothing changes, you at least have to consider carefully whether you want your gap in coverage to occur on the front end or the back end of the deployment. Recognize that deciding late in the mobilization to have someone stay on active duty beyond the originally anticipated date causes great upheaval for that person's civilian employer.[714]

ISSUE: Time required for replacements for Reserve personnel

DISCUSSION: It took four to five months to get replacements for Reserve personnel pushed forward into theater from the Reserve unit mobilized to support the home installation. If you are trying to pull Reserve personnel up to replace those you sent forward, you have to go through the entire mobilization checklist and get the required approvals. The replacement orders constantly pushed to the right. This inability to lock down a date cost the Reserves a Soldier who left the organization due to the constant whipsawing of mobilization dates.

RECOMMENDATION: This process has to be more efficient and certain. Five months is too long to wait, and Reserve Soldiers coming on to active duty need more predictability. They have to place their civilian lives back in order every time a set of orders changes.[715]

ISSUE: Mobilization orders

DISCUSSION: Most mobilized reservists were from the 2d Legal Support Organization (LSO) and they drove from their home of record to Fort Lewis. The mobilization orders only authorized one day of travel to and from the duty location. Some Soldiers were traveling to the duty location before their orders took effect so they could be there on time. Payment for those travel days (mileage, meals, and lodging) had to come out of the Soldier's pocket.

RECOMMENDATION: Improve. The mobilization orders should use the same table of time and distance the rest of the Army uses to allow for travel days, unless the Soldier plans to travel by air.[716]

ISSUE: Replacing mobilized personnel due to medical issues

DISCUSSION: During the mobilization process, the mobilizing unit had to replace an officer and enlisted Soldier for medical reasons. The LSO identified replacements quickly, and they mobilized within 30 days.

RECOMMENDATION: Improve. All mobilizing Soldiers should undergo medical screening before receiving mobilization orders to ensure maximum time of mobilization. Even though the LSO was able to find replacements, it caused a gap in support.[717]

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[714] *Id.*
[715] *Id.*
[716] *Id.*
[717] *Id.*

ISSUE: Turning off an individual mobilization based upon a temporary lack of need

DISCUSSION: While modularity is great in concept, it is indisputable no two headquarters deploy with exactly the same personnel in exactly the same categories. In some cases, a unit may find it does not need a Soldier needed by a previous unit. Turning off a planned mobilization has a huge impact on the Reserve Soldier concerned. It affects them tremendously in their civilian capacity. It is not overstating the issue to say it can potentially ruin their entire year, whether they are corporate counsel or running their own firm.

RECOMMENDATION: Think very carefully before turning off an anticipated mobilization. Just because your unit does not need someone in that position, the next unit may. There is likely a reason someone originally programmed that mobilization.[718]

ISSUE: Difficulties in bringing people forward

DISCUSSION: The process for bringing people forward appears to lack an established methodology. It would take at least a month to push someone forward. These difficulties began with the lengthy timeline for getting orders in hand and extended to a lack of coordination throughout the process. For example, when the CONUS Replacement Center turned one officer away for a medical issue, this did not trigger any kind of notification to the anticipated gaining office.

RECOMMENDATION: If the JAGC will continue to run its own personnel shop, it may be time to examine the possibility of actually staffing it with at least some Soldiers whose career field provides training in the mechanics of the personnel management process.[719]

ISSUE: Consolidating legal personnel

DISCUSSION: The rear detachment legal office had seven paralegals doing the legal work of six deployed brigades, in addition to its regular workload. This required the OSJA to consolidate these assets to provide for oversight and training.

RECOMMENDATION: When attempting to cover a great number of requirements with limited resources, it may be necessary to centralize resources.[720]

ISSUE: Security officer for the garrison OSJA

DISCUSSION: The I Corps OSJA has a full time civilian employee working in the administration and operations section. This employee is also the OSJA security officer, processing all security clearance documents through the S-2.

RECOMMENDATION: Sustain. Having a civilian in the administrative and operations section should be the standard for all installation OSJAs.[721]

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[718] *Id.*
[719] *Id.*
[720] *Id.*
[721] *Id.*

ISSUE: Twenty-nine day Active Duty for Training orders before mobilization orders

DISCUSSION: Before receiving mobilization orders, the members of the 492d CA BN were placed on 29-day ADFT orders so they could receive pre-deployment training. After completing pre-deployment training, the members of the 492d briefly returned home to pack for deployment and received mobilization orders bringing them onto active duty. During the 29-day ADFT period, the Soldiers already left their civilian employment, but were not entitled to a housing allowance or Tricare benefits.

RECOMMENDATION: Improve. Time the planned deployment to allow the Soldiers to receive adequate pre-deployment training and to start drawing a housing allowance and Tricare benefits seamlessly upon their exit from civilian employment.[722]

ISSUE: Rear detachment leadership

DISCUSSION: Initially, the OSJA intended to keep a captain as the rear detachment officer-in-charge (OIC). Because of circumstances beyond its control, a non-deployable major joined the OSJA. This major became the rear detachment OIC.

RECOMMENDATION: It is good to have a Major as the rear detachment OIC to manage the office and its workload.[723]

ISSUE: Small legal team in the rear

DISCUSSION: The Division decided to leave three experienced judge advocates (an O4, a senior O3, and an experienced O3 TC) and three paralegals in the rear. The SGM asked all the brigades to leave one paralegal to support the legal mission in the rear. The focus of the legal team was military justice. The legal team was smaller in number of TCs than ideally needed to handle the number of military justice cases. The III Corps OSJA assisted by assigning its TCs to cases as well, but the bulk were still handled by 1CD.

RECOMMENDATION: Sustain. 1CD needs to maintain a legal team in the rear detachment. Assess the need based upon the number of non-deployable Soldiers the BCTs leave behind (the expected business), the deployment schedule of the BCTs and III Corps (their ability to assist when necessary), and the experience level of the OSJA personnel staying behind (troop to task).[724]

ISSUE: Too few paralegals to leave any on rear detachment

DISCUSSION: Upon deployment, the brigade was short two paralegals so they were not able to leave one on rear detachment for the entire deployment. Since the division deployed as well, it would have been very helpful to have a strong paralegal at rear detachment.

RECOMMENDATION: Whenever possible, staff a BCT with a paralegal to remain on rear detachment.[725]

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[722] 492d CA BN OIF AAR JAN 09 - FEB 10, *supra* note 134.
[723] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[724] *Id.*
[725] 3BCT, 25ID OIF AAR, OCT 08 - OCT 09, *supra* note 604.

X.G. Facilities

ISSUE: Facilities during mobilization at Fort Dix

DISCUSSION: The facilities at Fort Dix were woefully inadequate. There was little office space or information technology (IT) support. The unit had to use the dayroom and laundry room in their quarters as office space. Moreover, Fort Dix did not offer shuttle buses for the unit—field grade officers had to walk over a mile to get to the tactical operations center (TOC).

RECOMMENDATION: Improve. Fort Dix should have facilities for rotational units to use for office space, since these units have significant administrative actions to process.[726]

ISSUE: TDS office and living quarters

DISCUSSION: The TDS office at Camp Arifjan, Kuwait was very nice. The office was located in a hardstand building next to the courtroom. The JAs had spacious offices and the TDS office had its own vehicle. Additionally, TDS personnel lived in hardstand buildings. These living and working conditions at Camp Arifjan made for a good working environment in the TDS office.

RECOMMENDATION: Sustain.[727]

ISSUE: SIPR access

DISCUSSION: The BJA had to compete with the S-3 shop for SIPR access before deploying.

RECOMMENDATION: The JAG Corps should work to ensure all BJAs have SIPR connectivity before deployment.[728]

ISSUE: Internet speed

DISCUSSION: Internet connectivity in the Afghan theatre of operations is slow. TF Thunder paralegals and attorneys had to use their personal computers to conduct legal research after duty hours. The JAG Corps' Military Justice Online was especially slow.

RECOMMENDATION: The JAG Corps should adopt a lower bandwidth internet site to accommodate slow service in Afghanistan. A version similar to AKO-Lite would be best suited for Afghanistan.[729]

ISSUE: Location of BJA's office

DISCUSSION: The BJA had an office in the same building as the BCT commander. This allowed the BCT commander easy access to his BJA and the opportunity for them to have

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[726] 56th SBCT (PA NG) OIF AAR, JAN - SEP 09, *supra* note 13.
[727] Trial Defense Services, Kuwait, Senior Defense Counsel After Action Report ,13 October 2009, Deployed June 2008-August 2009, Camp Arifjan, Kuwait (hereinafter "SDC Kuwait TDS AAR, JUN 08-AUG 09"; on file at CLAMO).
[728] 159th CAB, OEF AAR, DEC 08 - DEC 09, *supra* note 230.
[729] *Id.*

informal conversations both of which increased the commander's confidence and familiarity with his BJA.

RECOMMENDATION: Sustain.[730]

ISSUE: Pre-Deployment Site Survey (PDSS)

DISCUSSION: The BJA tried unsuccessfully to go on the BCT's PDSS.

RECOMMENDATION: Improve. Although there are generally very limited seats on the PDSS, the BJA should fight to go. It would have been helpful to see the facilities, TPE, etc. the brigade legal section would fall in on. In this case, it did not matter as much because the BCT received a change of mission in Kuwait moving them from MND-B to MND-N.[731]

ISSUE: Confinement facility standards

DISCUSSION: A new seven-person confinement facility for pre-trial confinement was built on VBC. Unfortunately, no one thought to build the facility to the mandated standard. This necessitated getting a waiver to allow use of the facility.

RECOMMENDATION: The lesson learned is that if you are going to build a confinement facility, ensure you build it to the mandated standard.[732]

ISSUE: Location of BJA in relation to the Division headquarters

DISCUSSION: The BJA's office was near the Division headquarters. The close proximity to headquarters allowed the BJA to have face-to-face interaction with judge advocates in the technical chain. The location allowed the BJA to have open and frank discussions, thus preventing misunderstandings between the offices.

RECOMMENDATION: Sustain.[733]

ISSUE: Location of BJA office

DISCUSSION: The 30th HBCT BJA office was less than 50 feet from the brigade Tactical Operations Center (TOC). This was great for ensuring the BJA was available to provide legal guidance on all operations.

RECOMMENDATION: Sustain.[734]

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[730] 3BCT, 82D ABN OIF AAR, DEC 08 - NOV 09, *supra* note 3.
[731] 2-1 CAV, OIF AAR, JAN 09 - DEC 09, *supra* note 4.
[732] 326th Area Support Group, Task Force Jayhawk, Staff Judge Advocate OIF After Action Report, 3 March 2010, Deployed November 2008 – October 2009, Victory Base Complex, Iraq (hereinafter "326th ASG (TF JAYHAWK) OIF AAR, NOV 08 - OCT 09"; on file at CLAMO).
[733] 225th Engineer Brigade, Louisiana Army National Guard, Brigade Judge Advocate OIF After Action Report, 7 March 2010, Deployed January 2009 – November 2009, Multi-National Division-Baghdad, Camp Liberty, Iraq (hereinafter "225th EN BDE (LAARNG) OIF AAR, JAN 09-NOV 09"; on file at CLAMO).
[734] 30th HBCT (NG) OIF AAR, APR 09 - JAN 10, *supra* note 8.

ISSUE: Need for separate legal assistance offices

DISCUSSION: Legal assistance needs a separate office sufficient for affording privacy and protecting client confidentiality. When the Division first arrived, the entire OSJA was inside the Division headquarters. There were no suitable areas to meet with clients and no way to ensure client confidentiality. When the OSJA moved into a separate trailer, there were separate offices where JAs could provide legal assistance.

RECOMMENDATION: Ensure the Division staff is aware of the need for a separate legal assistance office before deployment. In addition, legal issues arise during mobilization as well—it is equally important to have an adequate office to provide these services at the mobilization station.[735]

ISSUE: Deployed facilities

DISCUSSION: The overall facilities while deployed were great at the Division level. The BCT commands also appeared to take good care of the brigade legal sections. There was some small amount of compromise in the realm of client services due to a lack of truly private space for legal counseling, but it was workable.

RECOMMENDATION: Ensure the command understands the privacy requirements that go with client services. While space constraints sometimes make less than optimal solutions a necessity, the command cannot fill a requirement of which they are unaware.[736]

ISSUE: Lack of adequate office space

DISCUSSION: Both 2d MEB and 2d LAR lacked adequate workspace for the legal office. At 2d MEB, the unit office spaces were tents with a very limited number of computers and secure internet protocol router network (SIPRNet) drops. This resulted in tight working spaces and many officers literally stepping on each other's toes. At 2d LAR, there was virtually no military presence in the AO before 2d LAR took control of its battle space. As a result, the DSJA had no workspace until the unit seized an enemy position that was later converted into his office.

RECOMMENDATION: Although there is utility in not appearing to establish a permanent presence in the AO, units should ensure they have adequate working spaces and resources.[737]

ISSUE: Value of sending personnel on the advance party

DISCUSSION: Sending legal personnel out early was of value. They were able to get the billeting arranged and view how the unit they would replace was working. Clearly define what is expected of individuals identified to be part of the advance party.

RECOMMENDATION: If you have the opportunity, it is worthwhile to send personnel on the advance party.[738]

ISSUE: Legal administrator on advance party

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[735] 34ID, OIF AAR, APR 09 - FEB 10, *supra* note 23.
[736] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[737] 2d MEB DSJA, OEF AAR, APR 09 - NOV 09, *supra* note 56.
[738] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.

DISCUSSION: The legal administrator can prepare for the OSJA arrival by activating computer accounts and preparing the billeting. Any necessary training can be complete before the main body arrives.

RECOMMENDATION: It is critical for the legal administrator to be on the advance party.[739]

ISSUE: Courtroom maintenance

DISCUSSION: The courtroom at Camp Liberty was not under any maintenance contract. As a result, whenever the lights, power, or air conditioning went out, it was a hassle and would sometimes take days to try to get it fixed. This would cause unnecessary delays when it occurred during a court-martial. The military justice section worked with the Camp Liberty Mayor's Cell to try to get the courtroom under a maintenance contract. However, they were unsuccessful in ensuring it occurred before the end of the deployment.

RECOMMENDATION: Improve. The courtroom is essential to the execution of military justice. Units should ensure that they have a courtroom and there is a means of maintaining it.[740]

ISSUE: Legal assistance facilities

DISCUSSION: The Division legal assistance office was in the West Liberty Mayor's Cell, separate from the OSJA. The office consisted of a waiting area and two attorney offices.

RECOMMENDATION: Sustain. Legal assistance offices must have private, soundproof offices to protect client confidentiality.[741]

ISSUE: Security of sensitive materials

DISCUSSION: The MND-B AdLaw section was located in open cubicles with many other Division staff sections. As a result, people could come and go or, worse yet, take things from the AdLaw office spaces as they pleased.

RECOMMENDATION: JAs are typically involved in sensitive matters. Legal offices should be located in a secured area away from observance by other people. Legal personnel should have a means of safely securing sensitive items in either a safe or a locked filing cabinet.[742]

ISSUE: Space while deployed

DISCUSSION: The OSJA had sufficient office space while deployed. There was, however, a great deal of shared space. Multiple people in an office can make it difficult to concentrate as people move in and out and carry on conversations. Legal assistance attorneys and trial counsel had individual offices.

RECOMMENDATION: Private space will be at a premium while deployed. Fight for those spaces necessary for confidentiality requirements.[743]

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[739] *Id.*
[740] *Id.*
[741] *Id.*
[742] *Id.*

ISSUE: Lack of seat on the joint operating center (JOC) floor

DISCUSSION: The SOTF legal advisor's office was located next to the commander's. The SOTF legal advisor tracked on-going operations via radio from his desk.

RECOMMENDATION: Improve. SOTF legal advisors should also have a work area within the JOC.[744]

ISSUE: Video teleconference (VTC) capability for courtroom

DISCUSSION: Travel logistics in theater for court-martial personnel are difficult to coordinate and are unpredictable. There are significant advances in VTC technology that can eliminate or substitute the need for travel.

RECOMMENDATION: Implement strategies to maximize the use of VTC and Tandberg capability.[745]

ISSUE: SIPR drops in garrison OSJA

DISCUSSION: The SJA requested to have a secure internet protocol router (SIPR) line installed in the offices of the SJA, DSJA, chief paralegal, legal administrator and the chief of operational law. At the time of the request, there was only one SIPR line in the operational law vault. The legal administrator started the request but demobilized before approval of the request.

RECOMMENDATION: Sustain. The SJA should have a dedicated SIPR line in his/her office. Submitting the request is the beginning of a long process before the work begins. Ensure that all necessary sections have been briefed and understand the requirements to push the request through to approval.[746]

ISSUE: Inability to lock down lodging arrangements for mobilizing personnel

DISCUSSION: No one could tell the mobilizing unit their housing arrangements until they showed up at the supported installation. This made planning very difficult. The housing plan was ultimately to lodge unit personnel in a hotel for a year. Some people opted to rent an apartment and pay out of pocket. Some mobilized personnel chose to bring their families and others did not.

RECOMMENDATION: It is beneficial to settle the question of housing early. When the mobilization is for an entire year, people need to plan. They have to know what they must or can bring with them.[747]

ISSUE: Private office space for judge advocates

DISCUSSION: Space at MNC-I was very tight. There are many senior officers within the C-9

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[743] *Id.*
[744] 2/7 SFG(A), OEF AAR, JUL 09 - JAN 10, *supra* note 168.
[745] I CORPS 2d LSO OIF AAR, MAR 09 - MAR 10, *supra* note 32.
[746] *Id.*
[747] *Id.*

section seeking private office space, but there was not enough to go around. Several senior officers sought to take the private office space designated for the BJA. Some senior officers suggested that the BJA only needed a private office at the time when a privileged conversation occurred. The MNC-I SJA intervened, and the BJA maintained private office space.

RECOMMENDATION: Improve. Before deployment into theater, it is necessary to ensure the commander understands the necessity of providing the BJA private office space.[748]

ISSUE: Location of administrative law section

DISCUSSION: The chief of administrative law's desk was located right next to the chief of military justice's desk. This sometimes presented an issue when IOs would brief the administrative law section as to the progress of the investigation. IOs should feel free to communicate with the administrative law section without having to worry about potential military justice issues. Those issues should be dealt with if and when necessary following the investigation.

RECOMMENDATION: Improve. Separate the administrative law section from the military justice section.[749]

X.H. Country Materials

ISSUE: Afghan culture

DISCUSSION: The BCT S-7 contracted with a subject matter expert to prepare and produce a detailed cultural and historical pamphlet for each of the four provinces in which the BCT would be operating. This company later added pamphlets for Kandahar and Helmand provinces, the two provinces in which one of the BCT's battalions was operating while attached to Regional Command-South (RC-South). In addition, the brigade had numerous discussions and educational opportunities regarding Afghan culture before deployment.

RECOMMENDATION: Sustain. BJAs should ensure all members of the brigade legal team take advantage of these opportunities and promote independent study.[750]

ISSUE: Language training material

DISCUSSION: Language training material is invaluable for pre-deployment training. Rosetta Stone is useful and available through the Army. The Pimsleur Farsi series is also worth considering (you may be able to get this at your local library). It is better suited for in-car learning.

RECOMMENDATION: Sustain.[751]

ISSUE: Understanding of the security transition command and mission

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[748] 492d CA BN OIF AAR JAN 09 - FEB 10, *supra* note 134.
[749] 82D ABN OEF AAR, JUN 09 - JUN 10, *supra* note 59.
[750] 3BCT, 1ID OEF AAR, JUL 08 - JUN 09, *supra* note 15.
[751] CSTC-A ANP Mentor OEF AAR, NOV 08-NOV 09, *supra* note 33.

DISCUSSION: MNSTC-I had a complex organizational structure and mission. It would have been helpful for the individual augmentee JAs who made up the MNSTC-I OSJA to have an understanding of the organization and its mission before arriving in theater. The OSJA held an Officer Professional Development (OPD) session to ensure all members of the OSJA understood MNSTC-I's organization, as well as the GoI ministry structure.

RECOMMENDATION: Improve. It would be helpful to cover this information in depth in either a continuity book or an initial command orientation briefing.[752]

ISSUE: Need for knowledge of Iraqi law

DISCUSSION: Even the Iraqis would ask JAs to interpret Iraqi law for them. Knowledge of Iraqi law is essential to allow you to provide this type of advice to Iraqis and our own commanders.

RECOMMENDATION: Learn as much as you can about Iraqi law before deployment.[753]

ISSUE: Lack of cultural awareness training at TJAGLCS

DISCUSSION: Judge advocates would benefit from at least an hour of basic Arab culture training (e.g., the difference between the Sunnis and Shias) at JAOBC. Currently, JAs must seek this training on their own.

RECOMMENDATION: With the possibility of operations in Arabic countries for years to come, TJAGLCS should add this training to its curriculum.[754]

ISSUE: Use of cultural advisor

DISCUSSION: The SJA established a close working relationship with CFSOCC-A's cultural advisor. This helped the SJA learn and put things in the proper context the way a book could not.

RECOMMENDATION: Sustain. Utilize cultural advisors to assist you in understanding the big picture. Remember, people are people and we are in their country. A simple thing as saying "thank you" in their language goes a long way.[755]

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[752] MNSTC-I OIF AAR, JUN 09 - JUL 10, *supra* note 83.
[753] 25 ID OIF AAR, NOV 08 - NOV 09, *supra* note 10.
[754] 1CD OIF AAR, JAN 09 - JAN 10, *supra* note 12.
[755] CFSOCC-A OEF AAR, AUG 09 - NOV 09, *supra* note 114.

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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

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

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

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

1st Brigade Combat Team, 1st Cavalry Division deployed to Baghdad, Iraq from February 2009 through January 2010. The BCT fell under the command of Multi-National Division – Baghdad (MND-B) (and for the final month of the deployment, its successor command, United States Division – Center (USD-C)), staffed by the 1st Cavalry Division. The BCT headquarters was split between Joint Security Station (JSS) War Eagle, JSS Rashid (also known as the "Old Ministry of Defense" ("Old MoD"), and Camp Taji. The mission of 1-1 CAV was to partner with the 11th Iraqi Army (IA) Division and other IA and Iraqi Police (IP) units to establish security in their sector of Baghdad.

1st Cavalry Division deployed to Iraq in support of Operation Iraqi Freedom in January 2009 and assumed command of Multi-National Division – Baghdad (MND-B) from the 4th Infantry Division on 10 February 2009. The Division established its headquarters at Camp Liberty at Victory Base Complex (VBC). Its area of operations (AO) consisted of the Iraqi capital city of Baghdad as well as the surrounding province of Baghdad. In January 2010, MND-B was redesignated as United States Division – Center (USD-C). The 1st Armored Division assumed responsibility of USD-C from 1CD on 13 January 2010. Approximately 15 days after TOA, 1AD (USD-C) assumed responsibility for Anbar Province, which formerly fell under the command of Multi-National Force – West (MNF-W). The 1CD arrived in Baghdad soon after the U.S.-Iraq Security Agreement (SA) took effect and witnessed Iraq's first provincial council elections since 2005. Later, it presided over the implementation of the "out of the cities" provision on 30 June 2009 and the formal transition from a multinational force effort to a United States-centric one on 1 January 2010. When it assumed command, 1CD had six brigades under its control: a Stryker brigade, an armor brigade, a cavalry brigade, an engineer brigade, a military police brigade, and a combat aviation brigade.

1st Stryker Brigade Combat Team, 25th Infantry Division deployed to Iraq in September 2008. The brigade established its headquarters at Forward Operating Base (FOB) Warhorse, near Baquba, in Diyala Province. The primary mission of the 1-25ID was to combat insurgents, restore security, and transfer that responsibility to the Iraqi Security Forces (ISF) in accordance with the U.S.-Iraq Security Agreement (SA). In addition to security operations, the 5,600 Soldiers of 1-25ID participated in humanitarian operations, civil affairs projects, and election support. All the JAs in this deployment served less than a year in Iraq due to the rotation of the U.S. Army Alaska (USARAK) garrison personnel in Iraq and permanent change of station (PCS) orders.

1st Battalion, 5th Special Forces Group (Airborne) assumed command of Special Operations Task Force-North (SOTF-N) from 3rd Battalion, 5th Special Forces Group (Airborne) in July 2009. SOTF-N's area of responsibility covered all of Northern Iraq. SOTF-N operated throughout Multi-National Division-North's (MND-N) battle space. In addition to its headquarters element located at Contingency Operating Base (COB) Speicher, SOTF-N had three Advanced Operating Bases (AOBs), which are company sized elements, near each of the

following cities: Baqubah, Kirkuk, and Mosul. Each AOB has command and control over five to six Operational Detachment Alphas (ODAs), respectively. The bulk of these ODAs operated in populated areas throughout northern Iraq. SOTF-N's higher headquarters, Combined Joint Special Operations Task Force-Arabian Peninsula (CJSOTF-AP), was in Balad.

2d Brigade Combat Team, 4th Infantry Division deployed to Iraq from September 2008 through August 2009, under the command of Multi-National Division – Center (MND-C), which later became Multi-National Division – South (MND-S), staffed by the 10th Mountain Division (LI) and later the 34th Infantry Division (Minnesota National Guard). Upon arrival in Iraq, 2/4 BCT made its headquarters at Forward Operating Base (FOB) Echo, near Diwaniyah in Qadisiyah Province. The BCT's area of operations (AO) initially consisted of the provinces of Qadisiyah and Najaf, in central and southwestern Iraq, respectively. In addition, one of the BCT's maneuver battalions fell under the operational control (OPCON) of Multi-National Division – North (MND-N) at Kirkuk, while another of its battalions supported the 41st Fires Brigade in Wasit Province. In April 2009, 2/4 BCT moved to Contingency Operating Base (COB) Basra and assumed responsibility for the city of Basra, as well as Basra Province. During its deployment, 2/4 BCT dealt with the transition to the U.S.-Iraq Security Agreement on 1 January 2009, including the "out of the cities" provision, which took effect on 30 June 2009.

2d Brigade Combat Team, 1st Cavalry Division deployed to Iraq from January 2009 through December 2009. The original mission was to deploy under the command of Multi-National Division – Baghdad (MND-B) to Baghdad (Sadr City), but 2-1 CAV received a change of mission while in Kuwait. The BCT's new area of operations (AO) consisted of Kirkuk Province, with tactical overwatch of the Kurdistan Regional Government (KRG) area consisting of Dahuk, Erbil, and Sulaymaniyah provinces. Because of this sudden change of responsibility, there was no relief-in-place/transfer of authority (RIP-TOA) process. The BCT established its headquarters at Forward Operating Base (FOB) Warrior, located on an air base near the city of Kirkuk. The BCT also maintained a small patrol base at the Erbil airport. The BCT conducted its operations in the post-Security Agreement (SA) environment. Consequently, the Iraqi Security Forces (ISF) had the lead in most operations. The Provincial Reconstruction Team (PRT) was collocated with the BCT. 2-1 CAV served under Multi-National Division – North (MND-N). All BCT legal personnel worked at FOB Warrior.

2d Brigade Combat Team, 1st Armored Division deployed to Iraq from April 2008 through May 2009. The 2-1 BCT area of operations (AO) initially consisted of the Mada'in Qadaa in Baghdad province headquartered at FOB Hammer. In November 2008, the brigade assumed additional responsibility for the Mahmudiyah province from 3d BCT, 101st Airborne division and established its headquarters at Camp Stryker. In April 2009, the BCT assumed responsibility for the Rasheeds in Baghdad and relinquished responsibility of the Mada'in Qadaa to 3d BCT, 82d Airborne Division and established its headquarters at FOB Falcon. Each Qadaa had an embedded Provincial Reconstruction Team (ePRT) with civilian attorneys responsible for the Department of State (DoS) rule of law mission. The ePRT for Mada'in worked out of FOB Hammer and the ePRT for Mahmudiyah worked out of FOB Mahmudiyah. The BCT fell under the command and control of five different division headquarters during its deployment: 3d Infantry Division, 10th Mountain Division, 1st Armored Division, 4th Infantry Division, and 1st Cavalry Division.

2d Heavy Brigade Combat Team, 1st Infantry Division deployed to Camp Liberty, Iraq in October 2008, falling under the command of Multi-National Division – Baghdad (MND-B). The brigade's area of operations (AO) consisted of northwest Baghdad. In February 2009, this AO expanded to include the Abu Ghraib qadaa. One of 2HBCT's organic battalions was initially attached to 2BCT, 1st Armored Division, while 2HBCT received operational control (OPCON) of

two additional maneuver battalions. The outgoing BJA provided an AAR covering the first half of the deployment. The incoming BJA and the remainder of the brigade legal section provided this AAR after the completion of the deployment.

3rd Brigade Combat Team, 1st Cavalry Division deployed to Ninewah Province under the command of the Multi-National Division – North (MND-N) in December 2008 as part of Operation Iraqi Freedom (OIF) 09-11. 3BCT's mission set was to conduct full spectrum operations in Ninewah Province and its provincial capital Mosul in order to maintain security and continue development of Iraqi civil capacity. Mosul continued to experience higher incidences of insurgent activities into 2009 when compared to the rest of Iraq. 3BCT worked extensively with the Iraq Security Forces (ISF), who maintained a large presence in the city and the province. The Brigade Judge Advocate (BJA) who provided this AAR redeployed in July 2009 to attend the Judge Advocate Graduate Course. The remainder of the BCT (under the new BJA) is due to redeploy in December 2009. The second half AAR reflects the comments of the entire 3-1 CAV brigade legal section.

3rd Brigade Combat Team, 25th Infantry Division deployed from October 2008 to its area of operations (AO) of Salah ad Din Province. 3/25ID was comprised of approximately 4,000 Soldiers amongst two infantry battalions, a cavalry regiment, a field artillery battalion, a support battalion, and a special troops battalion. Their mission focused on nation building and supporting the Iraqi government and security forces in the AO. The province has a population of over 1 million Iraqis, and the Iraqi Police (IP) presence numbered approximately 17,000. The IP were completely in the lead for maintaining security and conducting law enforcement operations. The security situation in Salah ad Din Province was well under control, and 3/25ID was not involved in major combat operations against insurgents. 3/25ID redeployed to Schofield Barracks, Hawaii in October 2009.

3rd Brigade Combat Team, 82d Airborne Division deployed to Iraq from December 2008 through November 2009. The 3/82 ABN area of operations (AO) consisted of eastern Baghdad, which briefly included Sadr City. The BCT established its headquarters at Joint Security Station (JSS) Loyalty in southeast Baghdad for the first nine months of its deployment. For the last three months of its deployment, the BCT's headquarters moved to Forward Operating Base (FOB) Hammer, approximately thirty kilometers outside of Baghdad. This move was done in accordance with the Security Agreement's "out of cities" mandate, which became effective 30 June 2009. 3/82 ABN served under Multi-National Division-Baghdad (MND-B) throughout its deployment. 4th Infantry Division made up the core of MND-B headquarters initially, until replaced by 1st Cavalry Division.

4th Combat Aviation Brigade, the "Iron Eagles," deployed to Iraq from June 2008 to June 2009. During its deployment, the brigade assumed responsibility of aviation support operations for Multi-National Division – Baghdad (MND-B). The primary mission included combat aviation support, transportation, and medical evacuation for thousands of Soldiers operating in and around the Iraqi capital. The brigade legal team supported more than 2,300 Soldiers in two Apache attack battalions, one Blackhawk assault battalion, one general support aviation battalion (with CH-47F Chinook and HH-60 MEDEVAC helicopters), and an aviation support battalion. This was the second time 4th CAB deployed under the new modular configuration.

4th Sustainment Brigade deployed to Kuwait under the command of Army Central Command (ARCENT) from March 2008 to June 2009. The brigade was responsible for planning, coordinating and synchronizing combat service support within its assigned area of responsibility. It continually executed "theater-wide" distribution of military supplies and equipment from

Kuwait throughout Iraq in support of Operation Iraqi Freedom. The brigade ran convoy support teams (CSTs) in Kuwait and Iraq, providing maintenance and logistical support to its organic units. To deliver cargo to its final destination, large trucks (heavy equipment transports (M915s)), along with civilian contractors, convoyed to their final destination. In addition, Army watercraft moved cargo from Kuwait to countries along the Persian Gulf in furtherance of the mission. The brigade was also responsible for highway regulation in and out of the theater of operations. The brigade's legal mission operated primarily out of Camp Arifjan, Kuwait. Although based in Kuwait, the legal staff was responsible for brigade legal issues arising throughout the operating environment.

10th Special Forces Group (Airborne) deployed to Iraq from July 2009 through February 2010. 10th Special Forces Group (Airborne) assumed command of Combined Joint Special Operations Task Force – Arabian Peninsula (CJSOTF-AP) from 5th Special Forces Group (Airborne) in July 2009. CJSOTF-AP had responsibility for three Special Operations Task Forces (SOTFs) that operated by, with, and through their Iraqi partner forces throughout Iraq. The CJSOTF-AP headquarters was at Joint Base Balad (JBB), Iraq. The CJSOTF-AP Legal Advisor immediately had to deal with the 30 June 2009 troops out of the cities provision contained in the Security Agreement. There were conflicting interpretations of this provision, which required the Legal Advisor to provide opinion and analysis. This provision was particularly important given Special Forces' (SF) mission to advise and assist its Iraqi partners.

11th Military Police Brigade, a United States Army Reserve (USAR) unit, deployed from June 2008 to June 2009. The Brigade assumed command and control over Task Force (TF) MP North, which included five battalion-level units in four separate locations. The Brigade's mission was to conduct internment and resettlement (IR) operations and counterinsurgency (COIN) operations with respect to over 4,000 detainees, as well as to coordinate the release and transfer of thousands of additional detainees. The command also provided administrative and logistical support for operations in Ashraf, Iraq. On assuming command and control of TF MP North, the Brigade became responsible for detainee operations at Remembrance II (REM II) Theater Internment Facility (TIF) at Camp Cropper, the Compound V (CV) TIF at Camp Cropper, and the House of Wisdom Juvenile Day School at Forward Operating Base (FOB) Future (sometimes referred to as FOB Constitution).

25th Infantry Division deployed to Iraq from November 2008 through November 2009, assuming command of Multi-National Division – North (MND-N) from the 1st Armored Division. The MND-N area of operations (AO) consisted of four provinces in northern Iraq: Diyala, Salah Ad Din, Kirkuk, and Ninewah. In addition, MND-N had responsibility for oversight of the Kurdistan region. The Division established its headquarters at Contingency Operating Base (COB) Speicher, near Tikrit in Salah Ad Din Province, but also established two forward command posts (CPs). The 3rd Infantry Division assumed authority from 25 ID in November 2009. During its deployment, 25 ID presided over both the implementation of the U.S.-Iraqi Security Agreement (SA) and the withdrawal of U.S. forces from Iraqi cities on 30 June 2009.

29th Infantry Brigade Combat Team of the Hawaii Army National Guard (HIARNG) deployed to Camp Arifjan, Kuwait from October 2008 through August 2009 in support of Operation Iraqi Freedom. Before deploying to Kuwait, the 29th IBCT spent approximately ten weeks at the North Fort Hood Mobilization Training Center (NFH/MTC). Before arriving at the NFH/MTC, the personnel of the 29th IBCT spent between two and three months in Title 32 status undergoing pre-deployment training. The mission of the 29th IBCT was to provide convoy security for

logistics convoys traveling from Kuwait to Iraq. The 29th IBCT had three maneuver battalions, a brigade support battalion, and a special troops battalion.

30th Heavy Brigade Combat Team, a National Guard (NG) unit, deployed from Fort Bragg, North Carolina to Baghdad, Iraq from April 2009 through January 2010. 30th HBCT's higher headquarters was Multi-National Division – Baghdad (MND-B). Its area of operations (AO) covered the southern districts and southern belts of Baghdad, where it conducted the full spectrum of counterinsurgency (COIN) operations. The 30th HBCT brigade legal section was located at Forward Operating Base (FOB) Falcon and included a major as the brigade judge advocate (BJA), three captains, and nine 27D paralegals. Five paralegals were co-located with the BJA at FOB Falcon, with the other paralegals disbursed to the remaining major FOBs/Combat Outposts (COPS) in the AO.

34th Infantry Division of the Minnesota Army National Guard (MNARNG) mobilized through Fort Lewis, Washington in February 2009. The division deployed in late April 2009, and assumed command of Multi-National Division – South (MND-S) from the 10th Mountain Division on 20 May 2009. Headquartered at Contingency Operating Base (COB) Basra, the Division was responsible for an area of operations (AO) consisting of nine provinces and comprising approximately one third of the land area of Iraq. The Division's AO bordered Iran to the east, and Kuwait and Saudi Arabia to the south. The 1st Infantry Division relieved 34 ID in February 2010.

56th Stryker Brigade Combat Team of the Pennsylvania Army National Guard, the only reserve component SBCT in the Army, deployed January 2009 to Camp Taji, Iraq under the command of Multi-National Division – Baghdad (MND-B) during Operation Iraqi Freedom 09-11. The 56 SBCT redeployed in September 2009. The SBCT's mission was to conduct full spectrum operations with its Iraqi partners in the Tarmiya and Taji Qadaas of Baghdad Province in order to secure the populace and ensure the continued development of Iraqi civil capacity. The area of operations (AO) was a rural region of almost 900 square miles, which was home to just under one million Iraqis. The 56 SBCT conducted over 800 combined combat missions, including six air assaults operations. They contributed to numerous projects such as health clinics, roads, irrigation, water treatment, electricity generation, and job creation.

172d Infantry Brigade deployed to Iraq from November 2008 to December 2009. 172d BDE served under Multi-National Division – South (MND-S). The brigade's area of operations (AO) covered more than 24,700 square miles and consisted of five provinces to the south and east of Baghdad: Diyala, Babil, Karbala, Qadisiyah, and Najaf. 172d BDE established its headquarters in Babil Province at Forward Operating Base (FOB) Kalsu, located outside Iskandariyah, Iraq. The focus of their deployment was supporting and mentoring the Iraqi Army (IA) and Iraqi Police (IP) to improve the security conditions. Along with security, other priorities included efforts to improve the civil capacity and essential services of the local provincial authorities. 172d BDE also worked extensively with the civilian experts of the Provincial Reconstruction Teams (PRTs) to help improve governance and economic conditions.

225th Engineer Brigade of the Louisiana Army National Guard (LAARNG) deployed to Iraq in support of Operation Iraqi Freedom (OIF). The 225th EN BDE provided engineering support to Baghdad and its surrounding provinces. The brigade established its headquarters at Camp Liberty in central Baghdad and served under Multi-National Division – Baghdad (MND-B). Initially, the unit's primary mission was route clearance and troop construction. A few months into the deployment, the route clearance battalion diverted to Afghanistan. The unit's primary mission shifted to troop construction and training/partnership with the Iraqi Security Forces (ISF).

326th Area Support Group, a Reserve Component unit, deployed to Iraq as Task Force (TF) Jayhawk from November 2008 through October 2009. TF Jayhawk was the garrison command unit for the Victory Base Complex (VBC) in Baghdad. Their mission included operation of the Department of Public Works, terrain management, base defense, military installation management, and direct responsibility for five mayoral cells. The primary areas of focus for the legal office were contract and fiscal law, administrative law, and military justice. At the start of the deployment, the TF Jayhawk Office of the Command Judge Advocate (OCJA) consisted of three attorneys (one O-5 as the CJA and two O-3s) and one paralegal (E7). Later on, due to a declining workload and to provide the O-3s with broader experience, the two O-3s went on loan to the Multi-National Corps – Iraq (MNC-I) Office of the Staff Judge Advocate (OSJA).

504th Battlefield Surveillance Brigade fulfilled the traditional MI brigade functions by providing commanders with counterintelligence, human intelligence (HUMINT), signals intelligence (SIGINT), and unmanned aerial systems capability. However, the BfSB can also conduct independent Intelligence, Surveillance, and Reconnaissance (ISR) operations with its organic Long Range Surveillance (LRS) troops. The BfSB headquarters was on Contingency Operating Base (COB) Sykes, near Tal Afar, Iraq, but elements of the brigade were widely scattered on approximately 50 separate forward operating bases (FOBs) across Iraq. In addition, the brigade had a small element deployed in Afghanistan. 504th BfSB's principal mission was to conduct ISR for the Multi-National Divisions (MNDs) and directly for Multi-National Corps – Iraq (MNC-I).

Multinational Forces-Iraq, Chief of Intelligence Law originally deployed as an Investigative Team Chief for the Law and Order Task Force (LAOTF). After approximately three months performing those duties, LAOTF downsized its investigatory role and the interviewee transitioned to become the Chief of Intelligence Law for MNF-I. While there, he worked directly with the CJ2 from a physical location within the CJ2X. During his time in LAOTF, the interviewee worked extensively within the Iraqi justice system. One of the missions of the CJ2 at the time was providing intelligence to TF 134 personnel that could be used as evidence or lead to evidence that could be provided to law enforcement in support of criminal investigations and proceedings. There was a significant foreign national component in the C2X.

Multinational Corps-Iraq, Trial Defense Services attorney deployed as an individual augment to the Multi-National Corps – Iraq (MNC-I) Trial Defense Services (TDS) office. He deployed to Iraq from May 2008 through May 2009. The MNC-I TDS offices consisted of approximately 10 JAs and four paralegals. They provided services for all personnel in MNC-I headquarters and Multi-National Division – Baghdad (MND-B). Although the main MNC-I TDS office was located at Camp Liberty, the TDS JAs, at various times, worked out of six different locations throughout MND-B in order to accomplish their mission. During the 12-month deployment, the MNC-I TDS JA who provided this AAR conducted 10 courts-martial (7 guilty pleas and 3 contested trials), 3 flight evaluation boards, and 6 non-commissioned officer reduction boards. Additionally, this TDS JA provided legal advice concerning 500 Article 15s, summary courts-martial, administrative separations ("chapters"), and suspect rights advisements.

Multinational Security Transition Command-Iraq developed, in partnership with the Government of Iraq (GoI), professional Iraqi security ministries, institutions, and forces capable of maintaining internal security and defending against external threats. In furtherance of this mission, MNSTC-I trained and advised its Iraqi partners across the country at key points of influence, including Iraqi security ministries, national command and control centers, security forces and joint headquarters, and institutional training and support bases, with the goal of

developing "minimum essential capabilities" (MEC) within each of these organizations by 31 December 2011. Headquartered at Phoenix Base in the International Zone (IZ), MNSTC-I consisted of 5,475 personnel located at over 80 operating sites throughout Iraq, including Iraqi and U.S. FOBs, institutional training centers, and schools. Although initially one of two major sub-commands (along with Multi-National Corps – Iraq (MNC-I)) falling under Multi-National Force – Iraq (MNF-I), the three commands merged into United States Forces – Iraq (USF-I) on 1 January 2010.

Regimental Combat Team-3 deployed to western Al Anbar province from January 2009 to October 2009. RCT-8's higher headquarters was Multi-National Force – West (MNF-W). RCT-8 consisted of a headquarters company, two infantry battalions, and other independent companies. The total number of personnel within RCT-8 was approximately 3,000 servicemembers. RCT-8's area of operations (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. Additionally, RCT-8 took over Temporary Area of Operations (TAO) Tripoli, the western part of Ninewah Province, from Mult-National Division – North (MND-N) in order to allow MND-N the ability to focus on operations in Mosul. The RCT-8 JA's office consisted of a major as the Regimental Judge Advocate (RJA), a senior captain as the Deputy RJA, and one paralegal.

Senior Defense Counsel, Kuwait deployed to Kuwait from June 2008 through August 2009. The Kuwait TDS office consisted of four judge advocates (JAs) and one paralegal. It provided services for Kuwait, Bahrain, Qatar, the Horn of Africa, and the southern portion of Iraq. On occasion, the Kuwait TDS office also covered conflict cases in Iraq and Afghanistan. The Kuwait TDS office was located at Camp Arifjan, Kuwait. During the 14-month deployment, the Kuwait TDS office conducted approximately 30 courts-martial. Additionally, the TDS office conducted over 1300 Article 15s, summary courts-martial counselings, administrative separations ("chapters"), and suspect rights advisements. The individual providing this AAR served as the Senior Defense Counsel (SDC) for the Kuwait TDS office.

Special Operations Task Force-West is the Naval Special Warfare (NSW) element of Combined Joint Special Operations Task Force – Arabian Peninsula (CJSOTF-AP). SOTF-W is based and primarily conducts joint operations in Al Anbar Province in Western Iraq. While the composition and footprint of SOTF-W changes, the headquarters element consists of the leadership of a west coast SEAL Team (odd numbered team). SOTF-W made its headquarters at Al Asad Airbase from March until August 2009 and then moved to Ramadi. SOTF-W had a Task Unit (TU)—similar to a U.S. Army Special Forces Advanced Operating Base (AOB)—and a detachment—similar to a U.S. Army Special Forces Operational Detachment Alpha (ODA)—at Ramadi, as well as detachments throughout Western Iraq including Haditha, Hit, Rawah, Rutbah, Baharia (Fallujah), and a team at Al Qaim. SOTF-W also had a TU in Basrah, which fell under Special Operations Task Force – Central (SOTF-C).

492d Civil Affairs Battalion mobilized to augment the 364th CA BDE, including the judge advocate (JA) who provided this AAR. Before mobilization, the members of the 492d CA BN were placed on 29-day active duty for training (ADFT) orders and deployed to the Regional Training Center at Fort Hunter Liggett (FHL/RTC). The members of the 492d received 400-day mobilization orders. Once mobilized, the members of the 492d CA BN reported to the 364th CA BDE's home station in Portland, Oregon and then to the Mobilization Training Center at Fort Dix, New Jersey (FD/MTC). The 364th CA BDE spent seven weeks at the MTC and deployed to Camp Victory in April 2009.

I Corps (backfilled by 2d Legal Support Organization) deployed to Iraq from March 2009 through March 2010, taking over from XVIIIth Airborne Corps shortly after the Iraqi Security Agreement took effect. It became Multi-National Corps – Iraq (MNC-I) and was the combat command headquarters for all military operations in Iraq. The MNC-I headquarters was located on the Victory Base Complex (VBC). MNC-I exercised command and control over Multi-National Division North (MND-N), Multi-National Division – Central (MND-C), Multi National Division - South (MND-S) and 19 separate brigades throughout the area of operations (AO). During the deployment, the Iraqi Security Agreement (SA) caused many units to start pulling out of the cities and moving into the large operating bases like VBC. A key operational milestone was the withdrawal of U.S. combat forces from the cities on 30 June 2009. Consequently, the I Corps legal office took an active role in the base closure effort across the battlespace. This effort supported the overall strategic goal of transferring increased responsibility to the Government of Iraq (GoI) while reducing the number of U.S. servicemembers in theater. Responsibly handing over control to Iraqi military units entailed a myriad of issues not normally encountered by a Corps OSJA. I Corps was witnessed the merger of Multi-National Force-Iraq (MNF-I), Multi-National Security Transition Command – Iraq (MNSTC-I), and MNC-I, creating United States Forces – Iraq (USF-I). The unification of the strategic, training, and operational commands created unique legal challenges as three OSJAs consolidated into a single office. The **2d LSO** mobilized to Fort Lewis, WA from February 2009 to February 2010 to backfill the I Corps, OSJA's deployment to Iraq. The 2d LSO personnel integrated into the various Fort Lewis legal divisions providing full spectrum legal support to almost 38,000 Soldiers and Airmen and the rear detachment, which consisted of seven brigades. A consolidated legal office consisting of one judge advocate and seven enlisted paralegals covered down on the legal actions of the rear detachments of these seven deployed brigades.

Afghanistan

1st Combat Support Brigade (Maneuver Enhancement) deployed HQ elements of the brigade to assume command and control of the task force (TF) that was already in theater. The TF was ad hoc and it changed throughout the deployment. The TF consisted of a US divisional special troops battalion DSTB, a French infantry battalion, two U.S. Air Force (USAF) Provincial Reconstruction Teams (PRTs); one New Zealand PRT; one U.S. Army National Guard (ARNG) agriculture development team; one US ARNG chemical company serving as security force in a Forward Operating Base (FOB); and one US Army signal company. The TF also served as administrative command (ADCON) headquarters to a USAR Civil Affairs battalion; a USAR Psychological Operations battalion; a USAF engineering team; and a host of small disparate units. This diversity of units, and their missions complicated the nature of legal issues exponentially. The Brigade's mission was to act as a ground-holding TF, known as "TF Warrior". TF Warrior was responsible for four provinces of Afghanistan: Bamyan; Parwan; Kapisa; and Panjshir. These provinces lie to the north and northwest of Kabul and compose a total area of roughly 25,000 km of mostly mountainous terrain. During TF Warrior's tour their higher command transitioned from Combined Joint Task Force 101 (CJTF-101: based on the divisional headquarters of the 101st Airborne Division) to CJTF-82 (based on the divisional headquarters of the 82nd Airborne Division). TF Warrior also provided base operations support to Bagram Air Force Base (BAF) and other FOBs. This was a large part of the mission notwithstanding its secondary status.

4th Brigade Combat Team, 25th Infantry Division deployed from Fort Richardson, Alaska to Afghanistan from February 2009 through February 2010. 4-25 ID's area of operations (AO) consisted of three provinces in Regional Command – East (RC-E): Khowst, Paktya, and Paktika.

The BCT was headquartered at Forward Operating Base (FOB) Salerno in Khowst Province and was under operational control (OPCON) of the North Atlantic Treaty Organization (NATO) International Security Assistance Force (ISAF). 4-25 ID's mission was to conduct counterinsurgency (COIN) operations in its AO. The BCT strategy had four lines of effort (LOE): security, governance, development, and information operations.

33rd Brigade Combat Team of the Illinois Army National Guard (ILARNG) deployed to Afghanistan from December 2008 through August 2009 as the 8th rotation of Combined Joint Task Force Phoenix. The brigade did not operate as a BCT. The mission of CJTF Phoenix was to train the Afghan National Army (ANA). Its area of operations (AO) was the entire country of Afghanistan, which they divided into six areas called Afghanistan Regional Security Integration Commands (ARSICs): North, South, East, West, Central and Kabul. Each ARSIC consisted of Army and/or Air Force Reservist Component (RC) personnel. Each ARSIC had one judge advocate assigned to it. The BCT established its headquarters at Camp Phoenix, located near Kabul.

168th Engineer Brigade deployed to Afghanistan in support of Operation Enduring Freedom (OEF) in December 2008 and returned to the United States in November 2009. The brigade is a National Guard (NG) unit from Mississippi. The brigade deployed as a headquarters; it did not bring any of its organic units with it. Instead, it assumed command of two engineer battalions already in theater. TF Storm was the engineering element for Combined Joint Task Force of the 101st Airborne Division and, after transfer of authority, the 82d Airborne Division ("CJTF-101" and "CJTF-82," respectively). CJTF-101/82 was the headquarters commanding Regional Command (East) ("RC(E)"), consisting of the eastern part of Afghanistan surrounding Kabul. TF Storm units were split primarily between Bagram Air Field (BAF) and Forward Operating Base (FOB) Sharana. The TF's headquarters command cell (40 Soldiers) was at BAF, but the majority of the TF's headquarters personnel were on FOB Sharana (95 out of 135 soldiers). Small groups of Soldiers were also scattered throughout the RC(E) area due to the road clearance mission of the TF.

Combined Security Transition Command-Afghanistan Afghan National Police Mentor deployed as an individual replacement to work in the Afghan National Police (ANP) legal mentoring team, under the Combined Security Transition Command – Afghanistan (CSTC-A). Although the ANP legal mentoring team fell under the CSTC-A Office of the Staff Judge Advocate (OSJA), its office was physically separate from the rest of the OSJA, allowing it to concentrate on its mission. The mission of the ANP legal mentoring team was to develop the Rule of Law (RoL) within the Ministry of the Interior (MoI) and the ANP. Initially, this officer's mission nested within the Focused District Development (FDD) program to train and mentor the ANP. The program's goals involved developing the police into a professional, well-disciplined force. Later during the tour, the mission of the ANP legal mentoring team changed after the transition of FDD to the NATO Training Mission. The focus moved to providing the police legal training in regional training centers. Afghan attorneys provided this training in close coordination with U.S. government agencies.

2d Battalion, 3rd Marine Regiment deployed to Afghanistan from May 2009 through November 2009. The total number of personnel within 2/3 Marines was approximately 950 servicemembers. The battalion's area of operations (AO) initially covered parts of Farah and Helmand Provinces and later encompassed parts of Nimruz Province and part of Helmand. This area was roughly the size of the state of Vermont. 2/3 Marines established its headquarters at Forward Operating Base (FOB) Delaram in an old concrete compound located in Delaram, Afghanistan. The battalion served directly under 2d Marine Expeditionary Brigade (2d MEB) for

most of its deployment, but fell under Regimental Combat Team – 3 (RCT-3), a subordinate unit of 2d MEB, for a small portion of the deployment. 2d MEB was responsible for Regional Command – South (RC-South). The 2/3 Marines Battalion Judge Advocate (BN JA) was a captain and the only attorney at the battalion, with no paralegal support.

2d Marine Expeditionary Brigade (Contingency Contracting Attorney AAR) deployed to Afghanistan in May 2009 and is scheduled to remain in Afghanistan until May 2010. The 2d MEB contingency contracting attorney deployed to Afghanistan as an individual augmentee to 2d MEB from July 2009 through November 2009. The 2d MEB area of operations (AO), Regional Command-South (RC-South), consisted of six provinces in Southern Afghanistan: Nimruz, Helmand, Kandahar, Zabol, Urozgan and Day Kundi. RC-South spans roughly 78,000 square miles, making it slightly larger than Nebraska, and shares a 550-mile border with Pakistan. 2d MEB established its headquarters at Camp Leatherneck, located in Helmand province.

2d Marine Expeditionary Brigade (Deptuy Staff Judge Advocate AAR) deployed to Afghanistan in May 2009 and is scheduled to remain in Afghanistan until May 2010. The 2d MEB deputy staff judge advocate (DSJA) deployed to Afghanistan as part of 2d MEB's advanced party from April 2009 through November 2009. The contingency contracting attorney who conducted this AAR reported directly to the 2d MEB Staff Judge Advocate (SJA), but worked out of the Regional Contracting Center, also located at Camp Leatherneck. The 2d MEB area of operations (AO), Regional Command – South (RC-South), consisted of six provinces in Southern Afghanistan: Nimruz, Helmand, Kandahar, Zabol, Oruzgan and Day Kundi. RC-South spans roughly 78,000 square miles, making it slightly larger than Nebraska, and shares a 550-mile border with Pakistan. 2d MEB established its headquarters at what was originally known as Bastion Tombstone, but was later turned into Camp Leatherneck, located in Helmand province. The 2d MEB Office of the Staff Judge Advocate (OSJA) included a lieutenant colonel as the Staff Judge Advocate (SJA), a senior captain as the DSJA, two first tour captains, a gunnery sergeant as the legal chief, and two legal clerks.

3rd Brigade Combat Team, 1st Infantry Division deployed in support of Operation Enduring Freedom (OEF) as a member of the International Security Assistance Force (ISAF). The BCT fell under the operational control of Combined Joint Task Force 101 (CJTF-101), in its capacity as the command element for Regional Command-East (RC-East). RC-East consisted of 14 provinces, including much of the volatile border region between Afghanistan and Pakistan, as well as the Hindu Kush and Afghan Control Highlands. The BCT area of operations (AO) consisted of Nangarhar, Nuristan, Kunar, and Laghman Provinces, with its headquarters was located at Jalalabad Airfield (JAF) (FOB Fenty).

3rd Brigade Combat Team, 10th Mountain Division deployed from its home station at Fort Drum, New York to Afghanistan from November 2008 through January 2010. The 3-10 MTN was originally slated to deploy to Iraq in 2009, but received a change of mission to deploy to Afghanistan after the brigade had already completed a significant portion of its pre-deployment training, including its training rotation at the Joint Readiness Training Center (JRTC). 3-10 MTN served under Combined Joint Task Force 101 (CJTF-101) and later CJTF-82, which were dual-hatted as the headquarters for Regional Command – East (RC-East) under NATO's International Security Assistance Force (ISAF) mandate. The BCT's area of operations (AO) included Wardak and Logar provinces. The 3-10 MTN was the first significant ISAF force to deploy into the two provinces. The BCT also conducted patrols and set up out-posts in Ghazni and Kunar provinces. The BCT made its headquarters (HQ) at Forward Operating Base (FOB) Shank. The focus of the brigade was to improve security in Wardak and Logar provinces and to help strengthen governance and infrastructure.

3rd Special Forces Group (Airborne) deployed to Afghanistan from January 2010 through May 2010. 3rd Special Forces Group (Airborne) assumed command of Combined Joint Special Operations Task Force—Afghanistan (CJSOTF-A) from 7th Special Forces Group (Airborne) in January 2010. CJSOTF-A's area of responsibility covered all of Afghanistan. CJSOTF-A operated throughout every regional commands' battle space. In addition to its headquarters element located at Bagram, CJSOTF-A had three Special Operations Task Forces (SOTFs), which are battalion sized elements, near each of the following cities: Bagram, Khandahar, and Herat, respectively. CJSOTF-A's higher headquarters, Combined Forces Special Operations Component Command—Afghanistan (CFSOCC-A), was in Kabul. One primary focus area for CJSOTF-A at the beginning of its deployment was the operationalization of the tactical directive issued by US Forces—Afghanistan (USFOR-A) (dual hatted as the International Security Assistance Force (ISAF)). Specifically, the issue of civilian casualties was raised during the concept of operations (CONOP) approval process between CJSOTF-A and the ISAF Joint Command (IJC). Another area of emphasis for CJSOTF-A during this deployment was the project approval process between CJSOTF-A and the Joint Acquisition Review Board (JARB). In both instances the legal advisors to the IJC and the JARB had fundamental misunderstandings of how special operations forces conduct foreign internal defense (FID) and security force assistance (SFA) missions, leading to legal interpretations that went beyond existing law and policy.

3rd Battalion, 3rd Special Forces Group (Airborne) deployed to Afghanistan from January 2010 through May 2010 with the rest of the headquarters element and three advanced operating bases (AOBs) from 3rd Battalion. 3rd Battalion, 3rd Special Forces Group (Airborne) assumed command of Special Operations Task Force-East (SOTF-E) from 2nd Battalion, 20th Special Forces Group (Airborne) in January 2010. SOTF-E's area of responsibility covered the eastern half of Afghanistan along its border with Pakistan. SOTF-E operated throughout Regional Command-East's (RC-E) battle space, which Combined Joint Task Force-82d (CJTF-82) controlled. In addition to its headquarters element located at Bagram Airfield (BAF), SOTF-E had three AOBs, which are company-sized elements, operating throughout RC-E. Each AOB has command and control over five to six Operational Detachment Alphas (ODAs). SOTF-E's higher headquarters, Combined Joint Special Operations Task Force-Afghanistan (CJSOTF-A), was also located at BAF.

7th Special Forces Group (Airborne) deployed to Afghanistan from July 2009 through February 2010. 7th Special Forces Group (Airborne) assumed command of Combined Joint Special Operations Task Force - Afghanistan (CJSOTF-A) from 3rd Special Forces Group (Airborne) in July 2009. CJSOTF-A's area of responsibility covered all of Afghanistan. CJSOTF-A operated throughout every regional command's battle space. In addition to its headquarters element located at Bagram, CJSOTF-A had three Special Operations Task Forces (SOTFs), which are battalion-sized elements, near each of the following cities: Bagram, Khandahar, and Herat. CJSOTF-A's higher headquarters, Combined Forces Special Operations Component Command – Afghanistan (CFSOCC-A), was in Kabul. The primary focus area for CJSOTF-A at the beginning of its deployment was the operationalization of the tactical directive issued by U.S. Forces – Afghanistan (USFOR-A) and the realignment of Combined Joint Task Force-82 (CJTF-82) from Operation Enduring Freedom (OEF) to International Security Assistance Force (ISAF). The realignment had implications for authorities regarding rules of engagement (ROE), Commander's Emergency Response Program (CERP), and detention operations for CJSOTF-A.

2d Battalion, 7th Special Forces Group (Airborne) deployed to Afghanistan from July 2009 through January 2010. 2d Battalion, 7th Special Forces Group (Airborne) assumed command of Special Operations Task Force-South (SOTF-S) in July 2009. SOTF-S's area of responsibility covered southern Afghanistan to include the following provinces; Kandahar, Helmand, Oruzgan, Zabul and Dai Kundi. SOTF-S operated throughout Regional Command-South's (RC-S) battle space. In addition to its headquarters element located at Kandahar, SOTF-S had four Advanced Operating Bases (AOBs), which are company-sized elements, in each of the following provinces: Kandahar, Helmand Oruzgan and Zabul. One AOB was a Sea Air and Land (SEAL) Task Unit (TU). Each AOB had command and control of five to nine Operational Detachment Alphas (ODAs) or SEAL Detachments (DETs), respectively. These ODAs and DETs operated throughout southern Afghanistan. SOTF-S's higher headquarters, Combined Joint Special Operations Task Force-Afghanistan (CJSOTF-A), was in Bagram. One of SOTF-S's primary missions focused on securing the Afghan national elections. SOTF-S's ODAs and DETs advised and assisted their respective Afghan counterparts and focused on putting an "Afghan face" on the elections. In the run up to the elections, all SOTF-S kinetic targets were linked to ensuring fair, free, and safe elections.

3rd Battalion, 7th Special Forces Group (Airborne) deployed to Afghanistan from July 2009 through December 2009. 3rd Battalion, 7th Special Forces Group (Airborne) was tasked to establish a new Special Operations Task Force-West (SOTF-W). Its headquarters element was located in Herat. In addition to its headquarters element, SOTF-W established three Advanced Operating Bases (AOBs), which are company-sized elements, in Regional Command-North (RC-N) and in Regional Command-West (RC-W). Each AOB had command and control over five to six Operational Detachment Alphas (ODAs), respectively. The SOTF's higher headquarters, Combined Joint Special Operations Task Force-Afghanistan (CJSOTF-A), was located at Bagram Airfield (BAF), Afghanistan. CJSOTF-A tasked 3rd Battalion, 7th Special Forces Group (Airborne) to establish the new SOTF-W to curb Taliban advances in RC-W and RC-N. This process consumed the majority of the legal team's time initially. Key challenges were establishing Special Operations Forces (SOF) locations where SOF had not existed before and then developing the operational processes to support these new locations.

159th Combat Aviation Brigade deployed to Afghanistan from December 2008 through December 2009 in support of Operation Enduring Freedom (OEF). The 159th CAB (hereinafter referred to as "TF Thunder") replaced 101st CAB, TF Destiny. TF Thunder conducted full spectrum aviation operations in RC-East. TF Thunder consisted of several task forces and had non-organic units assigned to it as well, including National Guard aviation elements, and military intelligence units. Regional Command – East is approximately the size of Pennsylvania, and is composed of 14 provinces, including much of the volatile border region between Afghanistan and Pakistan, as well as the Hindu Kush and Afghan Central Highlands. TF Thunder served under the command of CJTF-101 and CJTF-82.

Combined Forces Special Operations Component Command – Afghanistan had a Reserve judge advocate (JA) officer, deployed to Afghanistan in August 2009 from Special Operations Command Central (SOCCENT) to serve as the Staff Judge Advocate (SJA) for the Combined Forces Special Operations Component Command – Afghanistan (CFSOCC-A). The JA served as the senior legal advisor for Special Operations Forces (SOF) in Afghanistan. CFSOCC-A was headquartered in Kabul, Afghanistan. The CFSOCC-A mandate is to serve as a single organization to provide continuity of effort and coordinate all strategic and operational effects of SOF in theater. The CFSOCC-A SJA was also responsible for providing oversight to the legal advisor at Combined Joint Special Operations Task Force – Afghanistan (CJSOTF-A) and its subordinate Special Operations Task Forces (SOTFs).

Combined Joint Task Force – 101 Trial Defense Services consisted of three judge advocates (JAs) and one paralegal and provided services for all Afghanistan. On occasion, the CJTF office also covered conflict cases in Iraq and Kuwait. The CJTF TDS office was located at Bagram Airfield (BAF). During the 12-month deployment, the TDS JA who provided this AAR conducted 3 courts-martial, with alternative disposition in an additional 6 preferred or referred cases. Additionally, the TDS JA provided legal advice for over 600 Article 15s, summary courts-martial, administrative separations ("chapters"), and suspect rights advisements.

Combined Joint Task Force – 82 Rule of Law Section's strategy consisted of building infrastructure in an attempt to ensure Afghan legal institutions had adequate buildings, equipment, supplies, and transportation. CJTF-82 also sought to build the Afghan legal community's human capacity and educate Afghans on their legal rights and protections. The end state was a system on which the Afghan people could rely. CJTF-82 was responsible for an area of operations the size of Pennsylvania, designated as Regional Command – East (RC-East). RC-East consisted of 14 provinces, including much of the volatile border region between Afghanistan and Pakistan, as well as the Hindu Kush and Afghan Central Highlands. The CJTF-82 RoL team included three U.S. military attorneys and one Afghan attorney. This team worked closely with the RoL team.

Regimental Combat Team – 3 deployed to Afghanistan from April 2009 through October 2009. Initially, RCT-3 deployed to Kandahar, Afghanistan as the Special Purpose Marine Ground Task Force – Afghanistan (SPMAGTF-A), replacing the 24th Marine Expeditionary Unit (MEU). The SPMAGTF-A Command Element (CE) consisted of approximately 250 personnel. In June 2009, after the arrival of 2d Marine Expeditionary Brigade (2d MEB), the CE for SPMAGTF-A became RCT-3, the Ground Combat Element (GCE) for 2d MEB. Upon transitioning to RCT-3, approximately 125 additional personnel augmented the unit. As part of the transition, RCT-3 moved to Camp Leatherneck and then ultimately to Camp Dwyer, both in Helmand province. The RCT-3 area of operations (AO) was Operational Box (OP Box) Montezuma, located in Regional Command – South (RC-South). The RCT-3 Judge Advocate's office consisted of a major as the Regimental Judge Advocate (RJA), a junior captain as the Deputy RJA, and one legal clerk.

82d Airborne Division deployed to Afghanistan from June 2009 through June 2010. Upon arrival in theater, the headquarters conducted a Relief in Place/Transfer of Authority (RIP/TOA) with CJTF 101. It became Combined Joint Task Force (CJTF)-82 and assumed the area of operations (AO) known as Regional Command-East (RC-E). The CJTF-82 AO consisted of 14 of Afghanistan's 34 provinces: Nuristan, Konar, Nangarhar, Paktya, Khowst, and Paktika which all share eastern borders with Pakistan; Laghman; Panjshir; Kapisa, Parwan, Wardak, and Logar which surround the capital area of Kabul; and Ghazni and Bamyan further to the west. The CJTF established its headquarters at Bagram Airfield (BAF) in Parwan Province. RC-E owned 450 miles of border with Pakistan. CJTF-82 had six major subordinate commands (MSCs): 3-101 BCT (AASLT) (TF Rakassan) which owned Paktya, Paktika, and Khowst provinces; 4-4 BCT (M) (TF Mountain Warrior) which owned Nuristan, Konar, Nangarhar, and Laghman provinces; 173rd ABCT (TF Bayonet) which owned Logar and Wardak provinces; 86th IBCT (VTARNG) (TF Wolverine) which owned Bamyan, Parwan, and Panjshir provinces; 3rd CAB (TF Falcon); and 372d ENG BDE (TF Timberwolf). In May 2010, TF Mountain Warrior conducted a RIP/TOA with 1-101 BCT (AASLT) (TF Bastogne). CJTF-82 additionally had two attached coalition brigades operating in RC-E: TF Lafayette (French Army) which owned Kapisa province and TF White Eagle (Polish Army) which owned Ghazni province.

Asymmetric Warfare Group's Judge Advocate (JA) along with two AWG operational specialists deployed to Afghanistan in October 2009. Their primary mission was to investigate, analyze, and provide a rapid solution for the number one complaint identified by AWG's field teams from maneuver units, namely the perceived "catch and release" policy of detention operations in Afghanistan. The AWG immediately set about talking to the key U.S. and Afghan stakeholders and institutions in the detention operations process. The team discovered many detainees transferred from U.S. custody to Afghan custody for prosecution received light sentences and/or sentences of "time served" due to a failure to comply with Afghan criminal law and procedures. The AWG looked for a solution commands could rapidly implement. This interim solution consisted of embedding a National Directorate of Security (NDS) prosecutor with a U.S. brigade. This embedded individual facilitated compliance with Afghan criminal law and procedures and allowed the AWG to track a detainee's case from start to finish in the Afghan system. This program is of first impression and is still in its formative phase.

BJA Seminar, combined AAR lessons learned – The Judge Advocate General's Legal Center & School (TJAGLCS) hosted the Brigade Judge Advocate Symposium (BJAS) on 10-12 May 10. The International and Operational Law Department (ADI) of TJAGLCS organized the event. Its purpose was to obtain feedback for the Center and School to improve support to Judge Advocate General Corps (JAGC) personnel, as well as to provide information to those proceeding to BCT JA and paralegal positions. The BJAS enables the JAGC to provide continued effective and up to date legal support to the Army's modular force. Recently deployed brigade judge advocates (BJAs) and paralegals conducted panel discussions. The BJA and paralegal panelists returned from deployments to Haiti, Afghanistan and Iraq. As well, there was representation from mechanized, light, and airborne infantry BCTs, as well as the Reserve Components (RCs) and the special operations community. The attendees to the Symposium included members of the 58th Judge Advocate Graduate Course pending assignment to BCTs, paralegal students attending the BCT NCOIC Course, and observer controllers from the Combat Training Centers (CTCs). TJAGLCS staff and faculty facilitated numerous discussions with the Brigade JAs. Panel discussions covered the following topical areas: Force Structure, Center for Law and Military Operations (CLAMO)/CTC Issues and Trends, BJA/NCOIC Relationship, Legal Assistance, Claims, PPT&O, Fiscal Law, Contract Law, Military Justice, Investigations, Rules of Engagement, Detention Operations (DETOPS), Interrogations, Rule of Law (RoL). Additionally, breakout sessions discussed operations in Afghanistan, Iraq, and special operations units.

Haiti – Operation Unified Response

2d Brigade Combat Team, 82d Airborne Division deployed to Haiti in support of Operation Unified Response (OUR) from 15 January 2010 through March 2010. On 12 January 2010, a magnitude 7.0 earthquake struck the island nation of Haiti. The devastating quake destroyed hospitals, schools, and houses. In the capital city of Port-au-Prince, an estimated 100,000 people died, and many became homeless. President Obama directed a swift, coordinated U.S. response on the same day. He designated the U.S. Agency for International Development (USAID) as the lead U.S. agency. U.S. Southern Command (SOUTHCOM) coordinated the military response with the Department of State (DoS) and USAID. The U.S. response was codenamed "Operation Unified Response." As the assigned Global Response Force (GRF), the 2d Brigade Combat Team, 82d Airborne Division (2-82 ABN) at Fort Bragg had been on 24/7 standby, ready to deploy anywhere in the world. They received their warning order for deployment on 13 January. On 15 January, the 2-82 ABN command and control element, about 800 Soldiers, deployed to Port-au-Prince. 2-82 ABN fell under the command of Joint Task Force – Haiti (JTF-Haiti), which was staffed by personnel from both SOUTHCOM and XVIII Airborne Corps. Their

mission was to provide humanitarian aid, disaster response, and stability. In addition to 2-82 ABN, other military elements involved were the Navy, Marine Corps, Air Force, and United Nations Stabilization Mission in Haiti (MINUSTAH). 2-82 ABN deployed all six of its battalions (BNs), totaling approximately 3,000 Paratroopers, in and around key locations in Port-au-Prince. For the first two weeks, the humanitarian mission focused on providing for basic human needs such as food, shelter, and medical aid. At the end of January 2010, 2-82 ABN began working with USAID, the World Food Program (WFP), and the Haitian government for a 14-day "food surge," distributing more than 1 million pounds of food each day at 14 different sites. The mission of JIATFS is to conduct interagency operations against illicit trafficking by highly mobile asymmetric threats originating or transiting its JOA by detection and monitoring of illicit air and maritime targets, intelligence fusion, information sharing, and multi-sensor correlation to facilitate interdiction and apprehension. It does so with partner nations in support of national security and regional stability.

22d Marine Expeditionary Unit deployed to Haiti in support of Operation Unified Response (OUR) from 17 January 2010 through 1 April 2010. The 22d MEU consisted of a Command Element (CE), a Battalion Landing Team (BLT), an Air Combat Element (ACE), and a Combat Logistics Battalion (CLB) fully trained to conduct amphibious assaults, non-combatant evacuation operations (NEOs), and humanitarian assistance (HA). The total number of personnel comprising 22d MEU was approximately 2,200 Marines. Just before deploying to Haiti, 22d MEU returned from a seven-month deployment to the Arabian Sea from May 2009 through December 2009. Almost immediately after the Haiti earthquake of 12 January 2010, the 22d MEU received orders to deploy within 48 hours. By 17 January 2010, 22d MEU arrived in Haiti, and by 19 January, boots were on the ground providing relief. 22d MEU fell under Joint Task Force – Haiti (JTF-Haiti). The 22d MEU's area of operation (AO) was Leogane, which is the southern part of Haiti. The MEU's Staff Judge Advocate (SJA) office consisted of a major as the SJA and a non-commissioned officer 4421 as legal clerk.

Kosovo

Kosovo Force – 11 – Approximately 1200 Soldiers from the 40th Infantry Division of the California National Guard (CA NG), along with a few hundred others, deployed as a brigade-sized element to Kosovo to serve as Task Force Falcon (TFF) from February 2009 through November 2009. The unit's personnel entered active duty in a Title 10 status on 8 December 2008. The unit spent the month of December 2008 and into January 2009 training at Camp Atterbury, Indiana. From Indiana, the unit traveled to the Joint Multinational Readiness Center (JMRC) at Hohenfels, Germany for their mission rehearsal exercise (MRX). At the conclusion of the MRX, the unit deployed to Kosovo to begin the Kosovo Forces (KFOR) 11 rotation. While in Kosovo, the unit operated as TFF in support of the NATO mission. TFF was the U.S. contingent of Multi-National Task Force – East (MNTF-E), commanded by a U.S. brigadier general from the CA NG. MNTF-E consisted of two U.S. maneuver battalions, a U.S. Special Troops Battalion, a U.S aviation detachment, and Polish, Ukrainian, and Greek maneuver battalions. As part of the NATO structure, MNTF-E was one of five MNTFs reporting to the NATO 3-star command in the city of Pristina. The Legal Advisor (LEGAD) to the deputy commander at Pristina (always a U.S. officer) was also a member of the CA NG, though not assigned to TFF. While TFF's operational chain of command went through NATO channels to Pristina, it had substantial interoperation with U.S. Army Europe (USAREUR). All of the unit's support, to include its legal technical chain, flowed through USAREUR channels.

Joint Interagency Task Force – South

Joint Interagency Task Force – South – The 1989 National Defense Authorization Act (NDAA) designated the Department of Defense (DoD) as the lead federal agency for detection and monitoring of aerial and maritime illicit drug shipments to the United States. In response to its new mission, the DoD established three national Joint Task Forces (JTFs). The JTFs were located in Key West, Florida (JTF-4); Alameda, California (JTF-5); and El Paso, Texas (JTF-6). They were responsible for detection and monitoring (D&M) activities within their geographic regions. In 1994, the first National Interdiction Command and Control Program (NICCP) took effect, incorporating law enforcement agencies into the national counternarcotics mission. This facilitated the integration of intelligence and analysis information from law enforcement channels with military capabilities under the DoD. Additionally, the NICCP re-designated the three JTFs as national joint interagency task forces: Joint Interagency Task Force (JIATF)–East (Key West), JIATF–West (Alameda), and JIATF–South (Panama). In 1997, U.S. Southern Command (SOUTHCOM) took command of JIATF-East, and in 1999, JIATF-East merged with JIATF-South (JIATFS). By 2003, the creation of a Joint Operating Area (JOA) placed the D&M mission for all of Central and South America and the Caribbean in the hands of the Director of JIATFS, under the command and control of SOUTHCOM.

Anti-Terrorism Exercise

Fort Lee OSJA Anti-Terrorism Exercise – The local antiterrorism and counterterrorism officials near Fort Lee VA approached the Office of the Staff Judge Advocate (OSJA), Combined Arms Support Command (CASCOM) and Fort Lee, to request their participation in an antiterrorism exercise designed to test the installation and local law enforcement's ability to respond to a terrorist incident. The OSJA and these agencies jointly designed an exercise scenario built around a fictitious court-martial of a Fort Lee Soldier for the racially motivated beating of a black Soldier off post. They designed the scenario based on the potential real-world threat posed by white supremacist and Aryan Brotherhood-type activities in the local area. The exercise progressed over a three day period. Day One featured the issuance of general bulletins by antiterrorism (AT) officials on Fort Lee warning of increased activity by the groups described above. By the end of day one, AT officials reported demonstrations by both the hate groups and those opposing them might occur near Fort Lee and alerted personnel to be watchful. Late on Day One, the Force Protection Level/Threatcon rose to Bravo. Day Two featured what was billed as a peaceful protest outside one of Fort Lee's main gates by one of the hate groups. Countering these protests were protests from groups opposing the hate groups. In response to these protests, the installation's Augmentation Force, a QRF-type force assembled from various units on post, responded and did a very admirable job in maintaining order and closing access to the installation. By the end of Day Two, the Force Protection/ Threatcon level rose to Charlie. Day Three featured the seminal event: the trial and hostage situation. During the simulated trial of the Soldier by military judge alone, heavily-armed radical white supremacists associated with the Soldier stormed the Fort Lee courtroom, taking the military judge (played by the SJA) and six others hostage. The terrorists also had a large explosive device. The "military judge" activated the actual panic alarm from the judge's bench, triggering the law enforcement response.

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	Afghan attorney advisor
AAA	Army Audit Agency
AAB	Advise & Assist Brigades
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
ACOB	Armed Contractor Oversight Branch
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
AFSOC	Air Force Special Operations Command
AIBA	Afghan Independent Bar Association
AIT	Advanced Individual Training
AKO	Army Knowledge Online
ALCS	Administrative Law Case System
ALMAR	All Marine Corps Activities message
ALOC	Administration/Logistics Operation Center
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
ARFORGEN	Army Force Generation
ARoLP	Afghanistan Rule of Law Project
ARSIC	Army Regional Security Integration Command
ARSOF	Army Special Operations Forces
ASFF	Afghan Security Forces Funds
ASG	Afghan Security Guards
ASPA	American Servicemember's Protection Act
AT	Annual Training
ATF	Alcohol, Tobacco, and Firearms
ATO	Air Tasking Order
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
BfSB	Battlefield Surveillance 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
BSB	Brigade Support Battalion
BSO	Battlespace Owner
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
CAT	Civil Affairs Team
CAT	Crisis Action Team
CAG	Civil Affairs Group
CAS	Close Air Support
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
CG	Commanding General
CHOPS	Chief of Operations
CHU	Containerized Housing Unit
CI	Counter-Intelligence
CIA	Central Intelligence Agency
CID	Criminal Investigation Division
CIDNE	Combined Information Data Network Exchange
CIL	Customary International Law
CIS	U.S. Citizenship and Immigration Services
CIS	Client Information System
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
CLAC	Criminal Law Advocacy Course
CLAMO	Center for Law and Military Operations
CLE	Continuing Legal Education
CLP	Combat Logistics Patrol
CMO	Civil Military Operations
CMOC	Civil Military Operations Center

CMT	Crisis Management Team
CMTC	Combined Maneuver Training Center
CNJTF	Counter-Narcotics Justice Task Force
COB	Contigency Operating Base
COC	Command Operations Center; Combat Operations Center
COCOM	Combatant Command
COG	Commander, Operations Group
COIN	Counterinsurgency
COINSOC	Counterinsurgency and Security Operations Center
COJ	Chief of Justice
CONOC	Contractor Operations Center
CONUS	Continental United States
COR	Contracting Officer Representative
CoR	Council of Representatives
COS	Chief of Staff
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
CRD	Chemical Reconnaissance Detachment
CREST	Contingency Real Estate Support Team
CS	0-chlorobenzalmalononitrile
CSM	Command Sergeant Major
CSSP	Corrections Systems Support Program (Afghanistan)
CSTC-A	Combined Security Transition Command – Afghanistan
CTC	Combat Training Center
CTC	Combined Targeting Cell
CWO	Chief Warrant Officer
DA	Department of the Army
DAPS	Defense Automated Printing Service
DC	Defence
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
DFARS	Defense Federal Acquisition Regulation Supplement

DFR	Dropped From Rolls
DHA	Detainee Holding Area
DHS	Department of Homeland Security
DISCOM	Division Support Command
DLA	Defence Logistics Agency
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
DPST	District Prosecution Support Teams
DRA	Detention Review Authority
DRB	Detention Review Board
DSCA	Defense Security Cooperation Agency
DSJA	Deputy Staff Judge Advocate
DSN	Defense Switched Network
DSTB	Division Special Troops Battalion
DTR	Detainee Transfer Request
DUSTWUN	Duty Status Whereabouts Unknown
EACO	Eastern Area Counsel Office
ECP	Entry Control Point
e-JAWS	Electronic Judge Advocate Warfighting System
EML	Environmental Morale Leave
EO	Executive Order; Equal Opportunity
EOC	Emergency Operations Center
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
FDO	Foreign Disclosure Officer
FDM	Financial Disclosure Management
FDS	Field Detention Site

FECC	Fires and Effects Coordination Cell
FEDLOG	Federal Logistics Data
FEPP	Foreign Excess Personal Property
FET	Female Engagement Team
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
FOO	Field Ordering Officer
FORSCOM	U.S. Army Forces Command
FRAGO	Fragmentary order
FRG	Family Readiness Group
FSC	Forward Support Company
FSCORD	Fire Support Coordinator
FSEC	Force Strategic Engagement Cell
FTCA	Federal Tort Claims Act
FTF	Focus Targeting Force
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
GoH	Government of Haiti
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
GRF	Global Response Force
GSA	General Services Administration
GWOT	Global War on Terror
HA/DR	Humanitarian Assistance/Disaster Response
HAZMART	Hazardous Material Pharmacy
HCA	Humanitarian and Civic Assistance
HCT	HUMINT Collection Team
HET	Human Exploitation 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
HSC	Headquarters Support Company
HTT	human Terrain Team
HUMINT	Human Intelligence
HVI	High-Value Individual
HWMP	Hazardous Waste Management Plan
IA	Iraqi Army
IA	Individual Augmentee
IBA	Interceptor Body Armor
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)
ILE	Intermediate Level Education
IMA	Individual Mobilization Augmentee
IMCOM	Installation Management Command
IMO	Information Management Officer
INL	Bureau of International Narcotics and Law Enforcement Affairs (DoS)
INSCOM	U.S. Army Intelligence and Security Command
IO	Investigating Officer; Information Operations
IOC	Installation Operations Center
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
ITARS	Intra-Theater Airlift Request System
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)
JAOBC	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
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
JFEC	Joint Fires Effects Cell
JFHQ	Joint Force Headquarters
JI	Judicial Investigator (Iraq)
JIC	Joint Investigative Committee
JIDC	Joint Interrogation Debriefing Center
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
JSOAC	Joint Special Operation Aviation Command
JSS	Joint Security Station

JSSP	Justice Sector Support Program (Afghanistan)
JTAC	Joint Terminal Attack Controller
KBR	Kellogg, Brown, & Root (contractor)
KFLD	Contract and Fiscal Law Division
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
LDTT	Legal Development Training Team
LEDET	Law Enforcement Detachment
LEGAD	Legal Advisor (NATO)
LEP	Law Enforcement Professional
LHS	Life, Health, and Safety
LIMDIS	Limited Distribution
LITREP	Litigation Report
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
LRAD	Long Range Acoustic Device
LRSC	Long-Range Surveillance Company
LSA	Life Support Areas
LSO	Legal Support Organization
LSSS	Legal Service Support Section (USMC)
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 Acquistion 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)
MCCUU	Marine Corps combat utility uniform
MCI-East	Marine Corps Installations-East
MCLLL	Marine Corps Center for Lessons Learned
MCM	Manual for Courts-Martial
MCPP	Marine Corps Planning Process
MDMP	Military Decision Making Process
MDR	Mandatory Declassification Review
MEDCAP	Medical Civil Action Program
MEF	Marine Expeditionary Force
MEJA	Military Extraterritorial Jurisdiction Act
MeK	Mujahadeen-e-Khalq
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
MIRC	Multi-user Internet Relay Chat
MiTT	Military Transition Team
MJO	Military Justice Online
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
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
NG	National Guard
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
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-Tactial Vehicle
NVD	Night Vision Device
O&M	Operations and Maintenance
O/C	Observers/Controller
OBC	Officer Basic Course
O/C	Observer/Controller
OCLL	Office of the Congressional Legislative Liaison
ODA	Operational Detachment Alpha
OE	Operating Environment
OEF	Operation Enduring Freedom
OER	Officer Evaluation Report
OGA	Other Government Agencies
OGC	Office of the General Counsel
OHDACA	Overseas Humanitarian, Disaster, and Civic Aid
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
OPD	Officer Professional Development
OpLaw	Operational Law
OPLOW	Operation Law of War
OPORD	Operation Order
OPSEC	Operations Security
OPSUM	Operational Summary
OPT	Operational Planning Team
OPTEMPO	Operational Tempo
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)
OUR	Operation Unified Response
PA	Privacy Act
PA	Public Affairs
PA	Paying Agent

PAO	Public Affairs Officer
PBO	Property Book Officer
PCA	Personnel Claims Act
PCS	Permanent Change of Station
PDF	Portable Document Format
PDLT	Pre-Deployment Legal Training (USMC)
PDMRA	Post Deployment/Mobilization Respite Absence
PDoP	Provincial Director of Police (Iraq)
PDP	Pre-Deployment Preparation Program
PDSS	Pre-Deployment Site Survey
PI	Preliminary Inquiry
PID	Positive Identification
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
PPTT	Provincial Police Transition Teams
PR&C	Purchase Request & Commitment
PRT	Provincial Reconstruction Team
PSD	Personal Security Detail
PSP	Prosecution Support Packet
PSYOP	Psychological Operations
PT	Physical Training
PTC	Pretrial Confinement
PTF	Prosecution Task Force
PTMM	Part Time Military Magistrates
PTT	Police Transition Team
PWS	Performance Work Statements
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

RCM	Rules for Court Martial
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
RIAB	Radio in a Box
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
ROLTEP	Rule of Law Training and Evaluation Program
ROT	Record of Trial
RSO	Regional Security Officer (DoS)
SA	Security Agreement
SACO	Substance Abuse Control Officer
SARC	Sexual Assault Response Coordinator
SBCT	Stryker Brigade Combat Team
SCRA	Servicemembers Civil Relief Act
SDC	Senior Defense Counsel
SECARMY	Secretary of the Army
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
SIV	Special Immigrant Visa
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
SPINS	Special Instructions
SROE	Standing Rules of Engagement
SRP	Soldier Readiness Processing
SSE	Sensitive Site Exploitation
SSSC	Self Service Supply Center
STAFFEX	Staff Exercise
STAR	Subject-Matter Threat Assessment Review (Board)
STB	Special Troops Battalion
STC	Senior Trial Counsel
STP	Standard Training Package
STX	Situational Training Exercise
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
TCP	Traffic Control Point
TCS	Temporary Change of Station
TDA	Table of Distribution and Allowances
TDS	Trial Defense Service
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
UPL	Unit Prevention Leader
USACE	U.S. Army Corps of Engineers
USAID	United States Agency for International Development
USALSA	United States Army Legal Services Agency
USAR	United States Army Reserve
USARCS	United States Army Claims Service
USAREUR	United States Army Europe
USASFC	United States Army Special Forces Command
USB	Universal Serial Bus
USCG	United States Coast Guard
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
UXO	Unexploded Ordnance
VA	Veterans Affairs
VBC	Victory Base Complex
VITA	Voluntary Income Tax Assistance
VTC	Video Teleconference
VOIP	Voice Over Internet Protocol
VWL	Victim Witness Liaison

WACO	Western Area Counsel Office
WARNO	Warning Order
WFX	Warfighter Exercise
WIAS	Worldwide Individual Augmentation System (USN)
WIFI	Wireless Fidelity
WMD	Weapons of Mass Destruction
WP	White Phosphorous
WRAMC	Walter Reed Army Medical Center
WTU	Warrior Transition Unit
XO	Executive Officer

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