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Legal Services Support To Operational Commanders

A Summary of Observations and Lessons from OEF/OIF
Judge Advocates and Infantry Commanders

“Operational law is going to become as significant to a commander as maneuver, as fire support, and as logistics. It will be a principal battlefield activity.”

LtGen Anthony C. Zinni, 1996

3 May 2006

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Prologue

The observations, analyses and assessments summarized in this document are based on the candid comments and reports of the men and women who participated in Operation ENDURING FREEDOM (OEF)/Operation IRAQI FREEDOM (OIF) by supporting our forces and leading our Marines. The high level of professionalism and military aptitude demonstrated by individual and unit performances during OEF/OIF are a hallmark of these conflicts. Just as the enemy changes their tactics, techniques and procedures (TTPs), we too must quickly change and adapt to the fight at hand. The Marine Corps has an enviable reputation for innovation and adaptation, and maintains the highest standards of excellence in the art of warfare. It is with a conscious intent to maintain this reputation that the Marine Corps Center for Lessons Learned offers the observations and commentary within this report. Please take the information provided, build on it, and report back on its applicability. Comments and feedback are welcomed and encouraged.

This is one of many documents and briefings covering a wide variety of topics that have been put together by the Marine Corps Center for Lessons Learned (MCCLL). The MCCLL library of lessons and observations are not sole source or authoritative, but are intended as a means of informing the decision making process and effecting needed changes in our institution. It is of the utmost importance that individuals and units continue to provide their lessons and observations so we can ensure the next unit to deploy has the benefit of hard-earned experience prior to crossing the line of departure. Getting your observations and lessons into the Lesson Management System early enough to impact pre-deployment training is crucial to increasing the effectiveness of follow on units and saving the lives of our Marines.



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Executive Summary

Marine Corps Judge Advocates have been providing wartime legal support to operational commanders since the Vietnam War. Judge Advocates who deployed to Operation DESERT STORM reported an increased need for operational law support and a diminished need for traditional military justice (court-martial) support. Observations by Judge Advocates and infantry commanders who served in OEF/OIF between 2003 and 2006 show that the need for operational law support of ground commanders has continued to expand and is now required on a consistent basis at the infantry battalion level.

- Marine Corps Legal Services Support doctrine, which was last updated during the Cold War in 1984, does not match the needs of Marine warfighters and the reality of wartime legal practice today. The Marine Corps is the only armed service that does not have a stand-alone doctrinal publication devoted to legal services. Marine Corps Legal Services Support doctrine requires immediate revision to better establish the training, sourcing and organization of Marine Judge Advocates for deployment in support of the current “Long War” environment of world-wide conflict.
- The tactical considerations of OEF/OIF counter-insurgency operations require that legal services be provided as far forward as possible. Widely dispersed battalion commanders indicate that as long as they are operating in a counter-insurgency environment, timely legal service support is an essential element of mission accomplishment. A deployed battalion commander’s time-sensitive legal needs must be supported quickly or they might as well not be supported at all. The innovative practice of assigning a Judge Advocate to each infantry battalion in OIF has been a proven force multiplier that should continue in the future.
- The selection of Judge Advocates to fill deployment billets requires careful screening to ensure that the Judge Advocate who is *best qualified* in operational law by training and experience is the one who is selected to deploy, rather than the Judge Advocate who is *most available*.
- Judge Advocates need operational law training that provides the right mix of fundamental legal principles and real world practices. Judge Advocate training, while currently very good, must be coordinated to ensure that every Judge Advocate who deploys has received refresher training in operational law prior to their deployment.
- The excellent efforts by Marine Corps schools such as The Basic School (TBS) and the Expeditionary Warfare School (EWS) to provide Law of War and operational law follow-on training to all Marine Officers should continue.
- A Marine Corps Order specifically mandates that all commanders *will receive* specialized Law of War training, but only 25 percent of the commanders surveyed had received it. A greater effort needs to be made to see that commanders get all such training that is available to them. The better a commander understands the role of operational law on the battlefields of today, the more effective that commander will be as a warfighter.

Background

Throughout the Vietnam War legal support to operational commanders consisted almost exclusively of military justice (court martial) support.¹ In response to incidents such as My Lai, the Department of Defense in 1974 issued a directive which required each service to implement a program to prevent violations of the Law of War.² The Marine Corps approach was to establish a Law of War Detachment which used reserve Judge Advocates to train active duty Judge Advocates and commanders in the Geneva and Hague Conventions at a week-long course.³ During the 1980s the applicability of “Rules of Engagement” (ROE), which originated with naval forces, expanded to include ground force commanders as well.⁴ Throughout Operation DESERT STORM, the in-theater need for military justice support was much less than had been anticipated, whereas “operational law” (claims, detainees, contracting and fiscal, in addition to the Law of War and ROE) emerged as an increasingly important consideration for MEF and major subordinate command (MSC) commanders.⁵

During the 1990s military justice remained a primary concern in garrison, along with a growing garrison need for legal assistance and installation law (areas such as procurement, land use, environmental, and labor). The 1990s were also a time of significant changes at the tactical level of warfare, to include: (1) a complex and diverse tactical environment; (2) the increased importance and strategic impact of decisions made in the field by widely dispersed small-unit leaders; and, (3) the emergence of additional legal responsibilities beyond the Law of War and ROE for ground commanders. Infantry commanders in Operations OEF and OIF indicate the need for operational law support has continued to expand and now exists at the regimental and battalion levels.⁶

Training Overview

Judge Advocate Training

Marine Corps Judge Advocates (JAs) complete nine weeks of MOS training at the Naval Justice School (NJS) to become certified as Judge Advocates under the Uniform Code of Military Justice (UCMJ). The NJS curriculum covers the “garrison law” subjects of military justice, legal assistance, administrative law, and some installation law. Prior to the mid-1980’s, new JAs often stayed at NJS for an additional week to attend the USMC Law of War course—which was taught by the USMCR Law of War Detachment—but the practice was discontinued. In July 2002, the one week Basic Operational Law Training (BOLT) course was added by HQMC Judge Advocate Division to the nine week NJS curriculum to provide all newly certified Marine JAs with basic training in operational law and the Law of War. JAs have the opportunity to complete the three day USMC Law of War Course at several locations. JAs who are selected for deployment are provided an opportunity to attend “Pre-deployment” BOLT, a refresher course in operational law and the Law of War, which is given by a mobile training team at Camp Lejeune and Camp Pendleton. In addition, Marine JAs sometimes have the opportunity to attend the Army JAG School’s Law of War, Operational Law, and Fiscal Law courses. Unlike the curriculum of the USMC Law of War Course, which is structured to educate commanding officers and their staffs as well as lawyers, the Army JAG School courses are designed for lawyers only. The Naval War College also provides military lawyers operational law training with an emphasis on naval operational law subjects at the two week Law of Military Operations (LOMO) course.

Marine Officer Law of War/Operational Law Training

Marine Officers receive grade-appropriate training in the Law of War and ROE at both TBS and EWS. TBS currently provides each lieutenant a one hour Law of War/Code of Conduct class and an hour and a half ROE class for a total of 2.5 hours of instruction, with plans underway to add an additional hour for seminar discussion of ROE.⁷ EWS presently provides a one hour class on the Law of War followed by a one hour Law of War seminar, and in 2006 added two and a half hours of Operational Law taught by a JA who recently returned from OIF, for a total of 4.5 hours of Law of War/Op Law instruction.⁸ The Command and Staff College previously devoted 19 hours to the study of Just War theory, the Law of War, and ROE, but the area of study was dropped for the 2005-2006 school year to make room in the curriculum for courses in cultural awareness, interagency operations, and Arabic language training.⁹ A Judge Advocate was assigned to the Marine Corps University (MCU) staff in 2006 to enhance and coordinate the operational law curriculum at each of the various MCU schools and colleges.¹⁰

Commanding Officer Law of War/Operational Law Training

The Marine Corps Law of War Program requires that “all personnel responsible for *directing* or *planning* combat operations will receive law of war training”, and further directs that commanders (battalion/squadron and higher), operations officers, intelligence officers, and plans officers, among others, shall receive “specialized” law of war training.¹¹ The primary means to provide mandated Law of War training to Marine commanders is the USMC Law of War Course, which has been presented by the Marine Reserve Law of War Detachment since 1980. The fact that only 25 percent of CO survey respondents had taken the course, and 53 percent of those who did not attend had not heard of the course, illustrates a problem that has plagued the course since its inception: getting the officers who are required to take and most need the course to actually attend it. In an effort to make the course more attractive to commanders it was shortened from five to three days. Detachment members currently provide the course as a mobile training team once a year at Camp Lejeune, Camp Pendleton, Hawaii, Japan, and to as many “pop-up” targets—such as deploying units—as they can accommodate.¹² Judge Advocate Division HQMC provides a two hour block of military justice instruction for new battalion commanders at the twice a year Commander’s Course, but the content is exclusively “garrison law”, while operational law is mentioned only in passing.¹³ The Naval Justice School’s “Senior Officer Course” in military justice and civil law does not provide any operational law instruction in its mobile training team version.¹⁴

Analysis

The following is based on survey results detailed in Attachment 2.

Judge Advocate Training

The challenge in providing operational law training for JAs is to determine the right mix of fundamental legal principles and “real world” practices. While the desire for training with an emphasis on real world practical advice is understandable, especially among more junior JAs, a core understanding of the basics of international law remains essential. One former MEF SJA put it in the following words:

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“...unless you understand the baseline rules, there is no way you’re going to be able to figure out a problem that is going to be outside the box. If I tell you the top 100 rules, your first problem that you’re going to have to deal with is going to [be] ...rule 101.”¹⁵

The JA survey data on “recommendations for future training” confirms that the current level of training on the Geneva and Hague Conventions is sufficient and should continue as currently presented.

The top areas where the survey indicates a need for “additional/more” training are subjects not normally considered “legal”, such as civil affairs, tactical procedures, and Marine Corps staff planning. However, the *number one subject* in which respondents point out a need for “additional/more” training is **detainee operations**. When asked to compare the time spent among all areas of practice by ranking them, JA survey respondents “ranked” detainee operations the number two most time consuming area (just behind investigations). However, a subsequent question asked respondents to select only the most time consuming area of practice, and detainee operations was selected the *number one most “time consuming”* area of practice by 36 percent of respondents. Detainee operations were also selected as the *number one “most challenging”* in-theater legal issue (26 percent of respondents). The survey consensus on the significance of detainee operations, along with the potential operational and strategic implications for any misstep in this area, suggest enhanced JA training in detainee operations are in order.

“National Security Structure”, a topic more appropriately covered at a career-level school, was the BOLT subject with the highest number of responses for “less/delete” among the 23 areas surveyed. Given that 44 percent of respondents indicated having encountered a “serious ethical issue” while deployed, replacing “National Security Structure” with an entire period of instruction on ethics should be considered, as “ethics” is currently covered only briefly in the NJS BOLT “MAGTF Operational Lawyer” class.

One solution to the fundamental vs. real world operational law training challenge might be to emphasize the *process* by which senior JAs applied the fundamentals to solve real world problems, perhaps by greater use of case studies during training. Eighty-two percent of JAs who received pre-deployment operational law training reported they “could immediately perform” their duties in theater. The bottom line is that while basic JA training is very good, room for improvement remains.

In addition to the challenge of determining the right mix of training for deploying JAs, getting the JA to the training that exists requires continued attention. Since JA Division HQMC established the NJS BOLT course for all new JAs in 2002 -- which closed a more than fifteen year gap in providing consistent entry level law of war and operational law training to new JAs -- the few who indicated that they had no operational law training prior to deployment should decrease over time as the post-2002 JA accessions comprise an increasingly large share of the JA community.

While NJS BOLT provides excellent baseline training to new JAs, there remains a lack of consistency in providing advanced/refresher training to deploying JAs. While over one-third had attended the USMC Law of War (45%) or “Pre-Deployment” BOLT (39%) courses, only 27 percent reported they had attended the highly-regarded two week Army JAG School Operational

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Law Course. When asked “Should the USMC create an “Advanced Operational Law Training” (AOLT) course for deploying JAs?” (“advanced training” question), those expressing an opinion responded as follows:

“Yes, the USMC should create an ‘AOLT’ course”	69%
“No, send Marine JAs to the Army Op Law course”	20%
“No, Pre-Deployment BOLT at Lejeune/Pendleton is sufficient”	11%

The responses to the advanced training question are even more significant when considered in light of responses to the survey’s “resource” questions. The Army Operational Law Handbook/CLAMO CDs were ranked the number three resource (after JA superiors and JA peers) to which deployed JAs turned when confronted with new or difficult deployment legal issues. JAs also ranked the Army Operational Law Handbook/CLAMO CDs the most “responsive” resource among the six resource choices they were presented. JA survey results overwhelmingly indicate the preferred solution to the need for training beyond NJS BOLT is to create either a USMC “AOLT” course, or find a way to send more deploying JAs to the Army Operational Law Course. To the extent that Pre-deployment BOLT remains the vehicle to provide operational law refresher training to deploying JAs, every effort must be made to: 1) find instructors with recent in theater experience, and 2) enhance instruction in those areas ranking highest in the survey, namely detainee operations, investigations, and ROE. Military Justice, which scored high in the survey, likely did so more due to logistical and administrative reasons relating to the difficulty of in theater travel than for purely legal reasons. The bottom line is that the advanced JA operational law training that exists is very good, but deploying JAs need to receive more of it.

Judge Advocate Resources

The survey statistics covering resources on page 17 are for the most part self-explanatory; however, the interview results provided one recurring observation: the need for reliable “state-of-the-art”, high-capacity scanners, which were deemed absolutely essential to the practice of law in Iraq given the travel restrictions and logistical limitations encountered there.

Commanding Officer Experience with Battalion Judge Advocates

When asked if they were able to “obtain the legal support they needed” during their most recent OEF/OIF deployment, 91 percent of commanding officers who had an opinion answered in the affirmative. The same percentage, 91 percent of those who expressed an opinion, responded that they agreed with the statement that the “assignment of JAs to infantry battalions was a force multiplier that enhanced the ability of the battalion to accomplish its mission.” The segment of the commanders who actually had a JA assigned to their battalion during their deployment (“Bn commanders with JAs”) was 43 percent, and among that group, the percentage who agreed that Bn JAs were a battalion “force multiplier” was 100 percent. The Bn commanders with JAs were also in 100 percent agreement with the statement “I feel that a JA should be assigned full time to infantry battalions during [stability and support operations] SASO.”

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Most telling were the responses of the Bn commanders with JAs to the following question: “If given a choice among the overstaff options below, which would you choose for your battalion in a future SASO deployment?”

Senior Captain or Major (0302/0202): selected by 13% of commanders who had a battalion JA
Civil Affairs Officer: selected by 13% of commanders who had a battalion JA
Battalion JA: selected by 74% of commanders who had a battalion JA

Comments collected from OIF battalion commanders uniformly mirrored the survey results. One of those battalion commanders did not have a Bn JA assigned during his deployment to OIF I in 2003, but did have a Bn JA assigned for OIF II in 2004. He gave the following response when asked to comment on the Bn JA concept:

“We were moving so fast and furious in OIF I that [not having a Bn JA] ... We...handled what we had [although] I would have liked to have had somebody other than my Executive Officer conduct a couple of preliminary inquiries...without having to take him out of the fight for 24 hours...you really can’t afford to do that in combat operations....For OIF II, absolutely indispensable...It [a Bn JA] wasn’t a luxury, it was a necessity in that environment...the SJA and Civil Affairs were key supporting arms...having all the lawyers up at regiment and division is purely reactionary....”¹⁶

Another CO during the November 2004 battle for Fallujah had a JA assigned to his battalion from the time the Battalion first arrived in theater during June of 2004. His Bn JA was subsequently wounded during the fight for Fallujah:

“I went without [a JA] after he was wounded...nearly one month...it was an absolute immediate impact on operations....Assigning a Judge Advocate to an infantry battalion, especially for deployed combat...was one of the very best things that I have seen in 24 years of service in the Marine Corps.”¹⁷

Despite the consensus among battalion commanders on the need to assign JAs to infantry battalions, there is resistance to the concept among a portion of the JA community, usually based upon a perception that Bn JAs spend a significant portion of their time “as line officers” performing non-legal duties.¹⁸ However, the data collected by the JA Survey shows that the time spent by Bn JAs on “non-legal” duties (defined on the survey as duties “any officer of any MOS could perform”) is not much more than the time dedicated to “non-legal” duties by JAs serving in non-battalion JA legal billets:

Average amount of time spent on legal duties by Bn JAs: 74%
Average amount of time spent on legal duties by non-Bn JAs: 85%

Despite the many non-legal demands of serving with an infantry battalion in a combat environment, the OIF Bn JA on average spent three quarters of his time performing legal duties.

Legal Services Doctrine

The existing doctrine for the organizational structure of legal services dedicated to the operating forces was established in 1984 by Operational Handbook 4-10 (OH 4-10), *Legal Services Support*. In 1993 FMFM 4, *Combat Service Support*, was signed and marked the beginning of the practice to avoid a stand-alone Marine Corps doctrinal publication devoted solely to legal services. MCWP 4-11.8, *Services in an Expeditionary Environment*, which contains one paragraph in the first chapter and ten pages in the third chapter dedicated to legal services doctrine, was signed in 2001. The portions of *Services in an Expeditionary Environment* that pertain to legal services are merely a summation of OH 4-10 from 1984, and the deployed organizational structure described in OH 4-10 continues to this day, virtually unchanged, since 1984.

Existing doctrine places the majority of MEF JA assets within the Legal Services Support Section (LSSS) of the MLG (Marine Logistics Group) to provide military justice and administrative law support. However, the practice by MEF SJAs during OIF has been to place the bulk of legal assets under the control of either the MEF SJA or MSC SJAs to better provide operational law support. The Bn JA concept, which does not exist in current doctrine, arose to provide timely legal support to widely dispersed OIF battalion commanders. The success of the non-doctrinal approaches used by various OIF MEF SJAs is borne out by the 91 percent approval rating commanding officers gave when asked about their ability to obtain legal support during their most recent deployment. On the issue of which organizational structure best supported the delivery of legal services in the deployed environment, 63 percent of JAs preferred having the MEF SJA allocate JA resources among the MEF/MSCs as needed, while only 25 percent supported the 1984 doctrine's LSSS concept and just 13 percent favored a "Consolidated Law Center" concept.

Many deployed JA billets are filled as individual augments with a JA who is *most available*. The command tasked to provide an individual augment for OIF usually sends "the new guy", rather than the JA who by training and experience is *best qualified* for an operational law billet.¹⁹ When a replacement for a deployed JA is needed, current doctrine has contributed to avoidable delays. For example, 3/1 had to wait nearly one month to get a replacement for the Bn JA they lost WIA during the battle for Fallujah, due primarily to a disagreement between MSC SJAs over who would give up a JA to replace 3/1's combat loss.²⁰ Under current doctrine the MEF SJA had no authority to direct one of the MSC SJAs to provide a replacement.

The Marine Corps is the only armed service that does not have a stand-alone doctrinal publication devoted to legal services.²¹ By comparison, the legal services doctrines for each of the other armed forces are updated and operationally focused. Each is lengthy, providing detailed descriptions and explanations. The Marine Corps is the only armed service that, by doctrine, does not fulfill the operational law requirements of infantry commanders with legal services managed primarily through the Staff Judge Advocates to commanders.

Despite proposed changes to legal services doctrine being analyzed, discussed, and studied, no significant movement toward doctrinal change has occurred during the past three years.

Recommendations

Organization

- **Screen JAs for selection to deployment billets:** Ensure the JA who is *best qualified* by training and experience in operational law is the one who is selected to deploy, rather than the JA who is *most available*.
- **Institutionalize the practice of assigning Bn JAs in doctrine.** DoD policy requires that qualified legal advisors be *immediately available* at *all* levels of command to provide advice about law of war compliance during planning and execution of exercises and operations.²² To push legal services as far forward as possible to meet the needs of widely dispersed battalion commanders, the concept of placing JAs at the battalion level during SASO/counter-insurgency operations should be reflected in doctrine. Sourcing and staffing of Bn JAs must be institutionalized, and not left to the current “ad hoc” practice. The Bn JA should be assigned to a battalion early in the pre-deployment work up phase, and should have the benefit of a comprehensive billet description.

Judge Advocate Training

- Make the completion of NJS BOLT a requirement for Judge Advocate MOS certification. JAs should be trained to be ready to practice both garrison and operational law. JA operational law training must incorporate the right mix of fundamental legal principles and real world practices-especially in regard to detainees and investigations - with an emphasis on the process by which JAs in the field resolve issues.
- Training of JAs must be monitored to ensure that deploying JAs receive updated operational law training, perhaps through better coordination between JAO, NJS, the Army JAG School, and the USMC Law of War Detachment.
- The Marine JA assigned to CLAMO (at the Army JAG School) could be assigned the additional duty of LNO to the Marine Corps Center for Lessons Learned. The CLAMO JA should encourage and coordinate the timely collection of deployed JA observations, lessons, and AARs for eventual dissemination of the best legal practices back to the Marine JA community.

Commanding Officer Training

- Commanders need the training provided by the Marine Corps Law of War Detachment, and MCO 3300.4 requires they receive it. Consideration should be given to adding the capability provided by the Law of War Detachment to the curriculum at *Exercise Mojave Viper*, the Expeditionary Warfare School, and the Command and Staff College.
- The Commander’s Course should add operational law instruction, at least for ground commanders. The *USN/USMC Commander’s Quick Reference Manual For Legal Issues*, which is currently produced by the Naval Justice School, should add a chapter on operational law and be provided as a hard copy take away to Commander’s Course attendees.

Doctrine

- Marine Corps Legal Service Support doctrine, which was last updated during the Cold War in 1984, does not match the needs of Marine warfighters and the reality of wartime legal practice. Marine Corps Legal Services Support doctrine requires immediate revision to better establish the organization, training, and sourcing of Marine Judge Advocates for deployment in support of the current “Long War” environment of world-wide conflict. Recommend this topic be an agenda item at the next annual Staff Judge Advocate Conference, that a lead and supporting proponent for update of legal service support doctrine be assigned, and a timeline for production of a doctrinal revision draft be established.

Area for Further Study

MEF SJA control over MEF JA assets: Current doctrine, which places the bulk of the MEF’s legal resources under the control of the Officer in Charge of the Legal Services Support Section of the Marine Logistics Group (a Lieutenant Colonel) is military justice-centric and garrison-focused, hence it is inadequate to support the warfighting needs of the MEF in the current operational environment. Placing all MEF non-SJA JAs under the control of the MEF SJA (a Colonel) will provide the MEF greater responsiveness to the legal needs of regimental and battalion commanders. This topic should be addressed in the above recommended review and update of doctrine by the Judge Advocate community.

The Way Ahead

It is important that lessons and observations from the JA community’s involvement in current operations in Iraq and Afghanistan are captured by incorporating them into doctrine and training where appropriate. The lessons of OEF/OIF will not be learned until change takes place.

Attachment 1: Methodology

The observations contained in this report are the result of research directed by Colonel Ray Ruhlmann, MCCLL Judge Advocate Liaison, who deployed to Iraq during the period November 2005 through February 2006. During February and March 2006 MCCLL sent an e-mail survey to every OEF/OIF Judge Advocate and every OEF/OIF infantry battalion commander, a total of 471 individuals. Of 330 Judge Advocates contacted, 160 (48%) responded to the survey: of 141 battalion commanders contacted, 60 (43%) responded. In addition, MCCLL conducted eight digitally recorded and transcribed oral interviews and eleven written interviews to supplement the survey data. Although the respondents were self-selected and are not a random sample, the demographic data of the respondents is remarkably close to that of the population as a whole.²³ In addition, the response rate is high and follow up phone calls to selected non-responders disclosed no pattern of bias. Based on the conclusion that these samples are sufficiently representative to be considered random, the findings contained in this report about the views held by OEF/OIF Judge Advocates and battalion commanders are generally statistically significant at a 95% confidence level.²⁴ Some columns may not total exactly 100 percent, as percentages were rounded to the nearest whole number for presentation purposes.

JA and CO Respondents

Deployment	JAs	COs
OEF	10%	5%
OIF I (2003)	20%	30%
OIF II (2004)	36%	33%
OIF III (2005)	35%	32%

Rank	JAs	COs
Captain	34%	0%
Major	29%	0%
LtCol	27%	55%
Colonel	10%	42%
General	0%	3%

JA Respondents

Billet	Percent
SJA/DSJA	24%
Bn/Regt JA	18%
Other JA	13%
Non-JA	13%
OpLaw JA	10%
TC/DC	10%
Non-USMC JA	8%
MEU SJA	3%
Non-USMC/non-JA	2%

Active Duty	Reserve
69%	31%

Attachment 2: Survey Results

*Sources of Judge Advocate Training: Courses Attended*²⁵

Course:	USMC LoW	Pre. Dep. BOLT	NJS BOLT	Army LoW	Army Op Law	LOMO	Army Fiscal
Percent JA attended:	45%	39%	33%	29%	27%	19%	18%

The typical JA deploying into an OEF/OIF theater has attended two of the above courses.

Sufficiency of Judge Advocate Training

In response to being asked “how well” the legal training they received matched the operational law issues they encountered during OEF/OIF, 85% were satisfied, 15% unsatisfied. However when asked whether “most of” the issues they encountered were covered, there was a drop in those answering affirmatively to 58% in agreement, 42% in disagreement.

Adequacy of Training by Subject:

Subject	ROE	Investigations	Targeting	Claims	Detainees	Staff Plan	Fiscal	IO	CA
Adequate	90%	71%	62%	59%	56%	40%	38%	34%	33%

Eighty two percent of those who received operational law training (and expressed an opinion on the matter) indicated they “could immediately perform” their duties in theater.

Judge Advocate Recommendations for Future Training

Using the twenty three subjects of the 2005 NJS BOLT curriculum as a guide, JAs were asked what *amount* of pre-deployment training they felt they should receive. At least three quarters (75%) recommended more instruction should be provided in the following four subjects:

- #1 Detainee Operations (79%)
- #2 Civil Affairs (77%)
- #3 Tactical Procedures (comm/convoy/fires/GPS) (76%)
- #4 Civilian Contractor Issues (75%)

Over one half (50%) indicated there should be more instruction in the following five topics:

- #5 Fiscal Law (72%)
- #6 Targeting (68%)
- #7 Information Operations (67%)
- #8 Marine Corps Staff Planning (60%)
- #9 Claims (58%)

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The JA responses suggest the amount of training in the remaining subjects of the BOLT curriculum is sufficient, with the exception of three topics which the respondents indicate require less instruction, namely “National Security Structure”, “Non-combatant Evacuation Operations (NEOs)” and “Military Justice”.

Judge Advocate OEF/OIF Experience: Areas of Practice

The JAs responded as follows when asked to *rank* the areas in which they spent their time:

- | | |
|----------------------|---------------------------------|
| #1 Investigations | #7 Claims |
| #2 Detainee Issues | #8 Targeting |
| #3 ROE | #9 Fiscal Issues |
| #4 Military Justice | #10 Civil Affairs |
| #5 Non-legal duties | #11 Legal Assistance |
| #6 International Law | #12 Marine Corps Staff Planning |

When asked to pick both the *one issue* that took up the *most time* and the one issue that was *most challenging*, the JAs responses of six percent or more are displayed below:

Most Time		
Rank	Issue	Percent
#1	Detainees	36%
#2 (tie)	Investigations	14%
#2 (tie)	Military Justice	14%
#4	Civil Affairs	11%
#5	ROE	9%
#6	Fiscal/Contracts	6%

Most Challenging		
Rank	Issue	Percent
#1	No one issue was more “challenging”	31%
#2	Detainees	26%
#3	Fiscal	11%
#4	Investigations	9%
#5 (tie)	Military Justice	7%
#5 (tie)	Claims	7%

When new or difficult legal issues arose during deployment, JAs ranked the following as the resources they used. They also provided a percentage to indicate both to which resource they first turned and whether they were able to get the answer they were seeking from a particular resource (responsiveness):

Rank	Resource	Percent selecting first	Percent indicating resource was responsive
#1	JA superiors	31%	92%
#2	JA peers	29%	n/a
#3	Army Op Law Handbook/CDs	22%	97%
#4	other service JAs	11%	n/a
#5	BOLT/Law of War materials	4%	91%
#6	CLAMO	3%	85%
#7	Judge Advocate Division	1%	85%
#8	Counsel for the Commandant	1%	71%

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Ninety nine percent of the JAs who expressed an opinion were “confident that the advice [they were] providing in theater was the correct advice” and 94% indicated they were fully integrated into the staff on which they served.

Judge Advocate OEF/OIF Experience: Resources

When asked whether the equipment and staffing they encountered in theater was sufficient to accomplish their duties and tasks, they responded as follows:

	Hard Copy Pubs	Office Equip/Supp	Staffing	Radio	Computer/Scanner	Phones/Fax
Yes	91%	80%	79%	76%	74%	60%
No	9%	20%	21%	24%	26%	40%

When asked “Did you encounter any serious ethical issues while deployed?”:

44% answered “Yes”
56% answered “No”

When asked “Did you fire a weapon ‘in the line of duty’ (not including training)?”:

11% answered “Yes”
89% answered “No”

Organizational Change Opinions

The JAs were asked “Which organizational structure best supports the delivery of legal services in the deployed environment?” and responded as follows:

MEF SJA allocates JAs among MEF/MSCs: 63%
LSSS (status quo): 25%
Consolidated Law Center concept: 13%

Commanding Officer Law of War/Operational Law Training

The commanders were asked what formal career and legal training they had received prior to their most recent OEF/OIF deployment, and their responses (as a percentage indicating they had completed a particular course of instruction) are portrayed below:

AWS/EWS	Command & Staff	USMC Law of War Course
87%	90%	25%

Forty percent of the commanding officers were not even aware that the Marine Corps has a “Law of War” Course.

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The commanders were asked what forum would be best to provide Law of War/operational law training to all commanders and they answered as follows:

AWS/EWS	Command & Staff	USMC Law of War	MCI
35%	32%	22%	12%

When given a choice between a three and a five day USMC Law of War course of instruction, the commanders preferred a three day course (72%) over a five day course (28%). The commanders preferred the Camp Lejeune/Camp Pendleton “road show” option (70%) for Law of War training over the other two options of “some other military location” (25%) or a civilian location (5%).

Commanding Officer OEF/OIF Experience with Legal Support

Commanders and Judge Advocates were given a list of seven legal issues and asked “Which in theater legal issue presented the biggest legal challenge to mission accomplishment?”. They responded as follows:

COs		
Rank	Issue	Percent
#1	Investigations	32%
#2	Detainees	25%
#3	Civil Affairs	17%
#4	ROE	13%
#5(tie)	Military Justice	6%
#5(tie)	Fiscal/Contracts	6%
#7	Claims	4%

JAs (for comparison)		
Rank	Issue	Percent
#1	No one issue was most “challenging”	31%
#2	Detainees	26%
#3	Fiscal	11%
#4	Investigations	9%
#5(tie)	Military Justice	7%
#5(tie)	Claims	7%
#7	International Law	6%

Ninety one percent of commanding officers who expressed an opinion were in agreement that they were “able to obtain the legal support [they] needed during [their] most recent OEF/OIF deployment.” Further, 96% of those expressing an opinion were “confident that the legal advice [they] received during [their] most recent OEF/OIF deployment was the correct advice.”

Endnotes

¹ Solis, LtCol Gary D., USMC, *Marines and Military Law in Vietnam: Trial by Fire*, History and Museums Division (HQMC, Washington, DC), 1989.

² DOD Directive 5100.77, *Law of War Program*.

³ MCO 3300.4, *Marine Corps Law of War Program*.

⁴ Parks, Col W. Hays, USMCR, *Righting the Rules of Engagement*, Proceedings/Naval Review 1989.

⁵ Walls, Col Richard G., USMC, SJA 2nd Marine Division, *Lessons Learned in Operations Desert Shield and Desert Sword*, 1991.

⁶ MCCLL OEF/OIF Legal Services Commanding Officer Survey, March 2006. Unless otherwise noted, all Commanding Officer statistics cited in the remainder of this report are from the same March 2006 Commanding Officer Survey.

⁷ Brostek, Maj Derek J., USMC, TBS JA, e-mail April 2006.

⁸ Adkinson, LtCol Jason G., EWS Division Head, e-mail April 2006.

⁹ Rohler, Civ Linda G., C&S Operations Manager, e-mail April 2006

¹⁰ This action ensures compliance with the training and education requirements contained in MCO 3300.4, *Marine Corps Law of War Program* dated 20 October 2003. Cited hereafter as MCO 3300.4.

¹¹ MCO 3300.4.

¹² Reheuser, Col Michael E., USMCR, OIC Law of War Det, e-mail April 2006.

¹³ Greatsinger, Maj Paul D., USMC, Director of the Commander's Course, April 2006 e-mail.

¹⁴ Woodard, Maj K. Scott, Military Justice Department Head, NJS, personal interview conducted April 2006 by Col Ruhlmann, USMCR, MCCLL.

¹⁵ Anderson, Col Keith R., SJA II MEF, personal interview conducted November 2005 by Col Ruhlmann, USMCR, MCCLL.

¹⁶ McCoy, LtCol Brian P., USMC, CO 3/4, personal interview conducted November 2005 by Col Ruhlmann, USMCR, MCCLL.

¹⁷ Buhl, LtCol Willard A., USMC, CO 3/1, personal interview conducted November 2005 by Col Ruhlmann, USMCR, MCCLL.

¹⁸ Sokoloski, Col Robert G., USMC, Chief of Staff II MEF, telephone interview conducted September 2005 by Col Ruhlmann, USMCR.

¹⁹ Sanchez, Maj Philip, USMC, Operational Law Attorney, personal interview conducted December 2005 by Col Ruhlmann, USMCR.

²⁰ Forkin, Maj Keith A., USMC, SJA RCT 1, After Action Report, February 2005.

²¹ Other service publications include the Army's FM 27-100, *Legal Support to Operations* dated 1 March 2000; Air Force Doctrine Document 2-4.5, *Legal Support* dated 15 May 2003; and the Navy's COMNAVLEGSVCCOM Instruction 5450.1E, *Mission and Functions of Naval Legal Service Offices and Trial Service Offices* dated 18 June 1997.

²² DoD Directive 5100.77, DoD Law of War Program, 9 December 1998.

²³ In addition to the demographic data shown in the tables in Attachment 1, training and deployment history reported by the respondents is close to that of the relevant populations.

²⁴ The margin of error (MOE) for this data is smaller than would be estimated using the usual MOE formula based on sample size alone. In each case, the samples included almost half of the total population of interest and the more precise formulas for MOE that include provision for small populations and, when appropriate, for very low or high percentages apply.

²⁵ MCCLL OEF/OIF Legal Services Judge Advocate Survey, March 2006. Unless otherwise noted, all Judge Advocate statistics cited in this report are from the same March 2006 Judge Advocate Survey.