

UNCONVENTIONAL WARFARE NEEDS A JAG OF ALL TRADES

BY LT. COL. MARILYN S. CHIAFULLO

AS RECENT CONFLICTS HAVE DEMONSTRATED, THE DAYS OF CONVENTIONAL WARFARE APPEAR TO BE OVER. INTERNAL CONFLICTS OCCURRING IN WEAK AND FAILING STATES AROUND THE WORLD HAVE BECOME INCREASINGLY VIOLENT AND COMPLEX, REQUIRING SPECIALIZED RESOURCES AND SKILLS NOT NORMALLY ASSOCIATED WITH PREPARATION FOR CONVENTIONAL WARFARE. THE CORE BUSINESS OF THE U.S. ARMY HAS BEEN FIRMLY ESTABLISHED AS EXCELLENCE IN BOTH OFFENSIVE AND DEFENSIVE COMBAT OPERATIONS. HOWEVER, THE FRAGILE GLOBAL SECURITY ENVIRONMENT AND THE WILLINGNESS OF VIOLENT EXTREMISTS TO EXPLOIT THIS ENVIRONMENT DICTATE THAT THE ARMY ADOPT AN ADDITIONAL AND EQUALLY IMPORTANT CORE FUNCTION, WHICH THE DEPARTMENT OF DEFENSE DESCRIBES AS STABILITY OPERATIONS: “THE ARMY’S OPERATIONAL CONCEPT IS FULL SPECTRUM OPERATIONS. ARMY FORCES COMBINE OFFENSIVE, DEFENSIVE, AND STABILITY OR CIVIL SUPPORT OPERATIONS SIMULTANEOUSLY AS PART OF AN INTERDEPENDENT JOINT FORCE TO SEIZE, RETAIN AND EXPLOIT THE INITIATIVE, ACCEPTING PRUDENT RISK TO CREATE OPPORTUNITIES TO ACHIEVE DECISIVE RESULTS.”¹

Deployed judge advocates find themselves at the forefront of one of the most critical tasks of stability operations—their mission to ensure the rule of law. As emphasized in the *Rule of Law Handbook: A Practitioner’s Guide for Judge Advocates*, the U.S. National Security Strategy of 2002, stated the following: “America must stand firmly for the nonnegotiable demands of human dignity: the rule of law; limits on the absolute power of the state; free speech; freedom of worship; equal justice; respect for women; religious and ethnic tolerance; and respect for private property.”² The application of this laudable declaration is appropriately entrusted to judge advocates as part of the stability operations mission.

Now more than ever, deployed judge advocates must draw on the skills they honed in law school. The study of law improves powers of reasoning, clarity of thought, and the ability to analyze and express complicated ideas. Army Field Manual (FM) 27-100, *Legal Support to Operations*, emphasizes that—

Judge advocates must be trained and prepared to operate independently across the spectrum of core legal disciplines and the spectrum of conflict, standing by the commander’s side. To succeed in today’s operational environment, judge advocates must be master general practitioners; effective in their roles as lawyer, ethical advisor, and counselor; increasingly knowledgeable as soldiers and lawyers; constantly aware of the operational situation; and proactively working to promote the mission, serve Army personnel and their families, and enhance the legitimacy of Army operations.³

The examples discussed in this article illustrate the necessity for the deployed judge advocate to be competent in many endeavors across a broad spectrum of legal disciplines, thus earning the moniker “JAG of all trades.”

Claims Adjuster, Appraiser, and Examiner

Private sector adjusters, appraisers, and examiners work primarily for property and casualty insurance companies. The main role of these professionals, who handle a wide variety of claims that allege property damage, liability, or bodily injury, is to investigate claims, negotiate settlements, and authorize payments to claimants.

As one of the six core legal disciplines set forth in Field Manual 27-100, the deployed judge advocate who handles claims that arise in a military setting is often required to master these same skills. The Department of the Army is responsible for adjudicating similar claims arising in Afghanistan and Iraq.⁴ The Foreign Claims Act dictates that in deciding on an appropriate award, the Army must follow the law and custom of the country in which the incident occurred in order to determine which elements of damages are payable and which individuals are entitled to compensation.⁵ The



Lieutenant Colonel Patrick Leduc (Iraq)

judge advocate, acting in the capacity of a representative of the Foreign Claims Commission, must exercise his or her legal experience and training in determining liability.⁶

For example, Lt. Col. Patrick Leduc, staff judge advocate (forward) in the 143rd Transportation Command, concluded an emotional meeting with the father of an injured Iraqi girl who had lost her eye and suffered other wounds caused by shrapnel as a result of a roadside mine explosion. After carefully reviewing the evidence, Lt. Col. Leduc granted the father's claim against the United States in the amount of \$8,000. Lt. Col. Leduc, acting in a way that was consistent with the Federal Claims Act and FM 27-20, views the claims mission as a significant instrument of diplomacy. "I granted the claim for \$8,000 and we got with our G-9 to get her medical care in Kuwait," he says. "More importantly, we won a lot of hearts and minds that day. If the investment saved one soldier then it was a great investment. I believe that, in the end, claims judge advocates across Iraq were force multipliers."⁷ The U.S. Department of Defense's *Dictionary of Military and Associated Terms* defines "force multiplier" as a capability that, when added to and employed by a combat force, significantly increases the combat potential of that force and thus enhances the probability of accomplishing the mission successfully.

Commercial and Fiscal Practitioner

The commercial attorney is often charged with the supervision of a broad range of business and consumer transactions as well as other fiduciary responsibilities. Mastering the fundamentals of this extensive body of law is a must for the deployed judge advocate who is responsible for the oversight of the Commanders' Emergency Response Program (CERP). The CERP is "designed to enable local commanders in Iraq and Afghanistan to respond to urgent humanitarian relief and reconstruction requirements within the areas of responsibility by carrying out programs that will immediately assist the indigenous population."⁸ Similar to their civilian counterparts—city or municipal attorneys—judge advocates administering the CERP must represent the government's interest by ensuring compliance with applicable laws governing the execution, management, and reporting of all expenditures under the program.

Maj. Dana Venneman, deputy and acting staff judge advocate for combined Joint Task Force-Phoenix, was required to use an extensive array of his legal expertise during his deployment to Afghanistan. Vital to his successful deployment was his ability to adapt his legal training to the nontraditional role of commercial attorney in administering the CERP. According to Maj. Venneman, "This area is an untraditional one for most judge advocates. However, dur-



Major Dana Venneman (Afghanistan)

ing our tenure, our office performed legal reviews on 135 project nominations, and ultimately, the Task Force spent over \$40 million on projects such as wells, schools, and medical treatment facilities. A simple part of our job, this successful program yielded a disproportionate share of the job satisfaction that comes with being a deployed judge advocate in the combat zone."⁹ Although job satisfaction is unique to each individual, the CERP mission can yield an immediate and positive impact on the local population and provide those involved in administering the program a tremendous sense of personal and professional fulfillment.

Detention Operations Adviser

The Army is committed to ensuring that all soldiers live up to the Army's values and adhere firmly to the laws of war. Because the stress of combat does not justify inhumane treatment of detainees, for example, such actions are punishable under both military and international

law. In an article published in the *Military Review* in 2005, the author wrote that "[t]he naked, stark images from Abu Ghraib prison fade from the news only to be displayed again as the next U.S. Soldier is called forward to answer formal charges of what happened there."¹⁰

The deployed judge advocate serving as the legal adviser for detainee operations is entrusted with the essential role of establishing basic conditions of human security as part of an overall rule of law strategy. Detention operations have the greatest impact on the freedoms and rights of individuals. Joint Publication 3-63 issued by the Joint Chiefs of Staff,¹¹ explicitly outlines the numerous duties of the judge advocate who assumes this vital mission:

- serves as the legal advisor for the commander of detainee operations, Joint Forces Command;
- advises the commander and other personnel responsible for detention operations on all matters pertaining to compliance with applicable law and policy;
- provides legal advice to the commander on all matters relating to detainee misconduct;
- advises the appropriate commander regarding investigation of suspected maltreatment or abuse of detainees, or other violations of applicable law or policy;
- normally serves as the commander of detainee operation's liaison to the International Committee of the Red Cross;
- in coordination with the joint force surgeon, advises the joint force commander on legal issues pertaining to detainee medical support;
- reviews interrogation approaches and techniques and advises the commander and intelligence personnel on compliance with applicable law and policy;
- advises appropriate commanders on evidentiary collec-



Captain Raymond Negron (Afghanistan)

tion procedures necessary to prosecute detainees locally for criminal offenses.

Capt. Raymond Negron, legal adviser, Detainee Operations Detachment, Combined Forces Command-Afghanistan, operated out of Camp Eggers in Kabul when he was not on the road. Capt. Negron traveled to the detention facility that was approximately 20 miles from his home base three times a week. Once a week he traveled to the Afghan National Army's training center, where the first Afghan Military Police Corps trained for prison operations. Capt. Negron's legal training and civilian experience as a prosecutor, civil litigator, and drafter of legislation prepared him this important mission. He regularly advised his detachment on constitutional issues involved in specific cases. Capt. Negron also created the investigative procedure that became the Afghan government's standard for accepting, documenting, and investigating allegations of prisoner abuse against Afghan National Army soldiers. Capt. Negron speaks fondly of his deployment to Afghanistan: "My [immersion in] and familiarity with the culture was indescribable." Unfortunately for Capt. Negron, the positive memories of his deployment will forever be overshadowed by the sad realities of war. As he explains, "While returning from the prison one day, a suicide bomber detonated himself at my two-vehicle convoy injuring all four of us." Less than a month later, Capt. Negron returned home only to receive the sad news of a similar attack on another convoy, which killed two of his friends and wounded one. Capt. Raymond Negron was awarded the Purple Heart for injuries sustained in the suicide bomber attack in Afghanistan.¹²

Conclusion

Training that takes place before deployment can never contemplate every contingency that a judge advocate is likely to encounter. As the Army continues to perfect stability operations as its additional core competency, the mission of the deployed judge advocate is likely to grow in scope and complexity. Current and future operations will

continue to further refine the role of the military attorney. By all indications, however, it appears the JAG of all trades is here to stay. **TFL**

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Endnotes

¹U.S. Department of the Army, *Operations*, Field Manual 3-0, at 3-1 (Washington, D.C.: U.S. Department of the Army, Feb. 27, 2008).

²Cliff Aims et al., *RULE OF LAW HANDBOOK: A PRACTITIONER'S GUIDE FOR JUDGE ADVOCATES I* (Center for Law and Military Operations, The Judge Advocate General's Legal Center and School, 2007); see also Office of the President, *The National Security Strategy of the United States 3* (September 2002), available at www.lib.umich.edu/govdocs/pdf/nss02.pdf.

³U.S. Department of the Army, *Legal Support to Operations*, Field Manual 27-100, at ix (Washington, D.C.: U.S. Department of the Army, March 1, 2000).

⁴See U.S. Department of Defense, Instruction 5515.08, Assignment of Claims Responsibility ¶ E1.1.1. (Nov. 11, 2006).

⁵U.S. Department of the Army, *Claims*, Army Regulation 27-20, ¶ 10-1a and ¶ 10-5a (Feb. 8, 2008).

⁶*Id.* at ¶ 10-6.

⁷Lt. Col. Patrick Leduc, electronic interview with author (Jan. 14, 2009).

⁸U.S. Department of Defense, *Financial Management Regulation Vol. 1-15*, DoD Regulation 7000.14-R, vol. 12, ¶ 270102 (Washington, D.C.: Office of the Under Secretary of Defense (Comptroller), January 2009), available at www.defenselink.mil/comptroller/fmr/.

⁹Maj. Walter D. Venneman, electronic interview with author (Jan. 14, 2009).

¹⁰James F. Gebhardt, *The Road to Abu Ghraib: U.S. Army Detainee Doctrine and Experience*, *MILITARY REVIEW* 44 (January-February 2005).

¹¹U.S. Department of Defense, *Detainee Operations*, Joint Publication 3-63, at II-10 (Washington, D.C.: Office of the Chairman of the Joint Chiefs of Staff, May 30, 2008).

¹²Capt. Raymond Negron, electronic interview with author (Jan. 17, 2009).