



**DEPLOYED
MARINE
AIR-GROUND
TASK FORCE
(MAGTF)
JUDGE
ADVOCATE
HANDBOOK**



**Center for Law and Military Operations (CLAMO)
The Judge Advocate General's School
United States Army
Charlottesville, Virginia**

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(MAGTF) JUDGE ADVOCATE
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CENTER FOR LAW AND MILITARY OPERATIONS

15 JULY 2002

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CHAPTER 1

INTRODUCTION

Unique among all the military services, the United States Marine Corps has the capacity to deploy and fight as an expeditionary, self-sustaining, combined arms force. The Marine Corps does so through the use of a concept known as the Marine Air-Ground Task Force, or MAGTF. MAGTFs come in various sizes,¹ but all share the ability to rapidly deploy and execute missions drawing on their own organic service support, ground combat, aviation combat, and command elements.

With these unique capabilities come unique challenges. Three of these challenges are recurrent themes of this book: tempo, transience, and isolation. First, MAGTF operations are characterized by speed. Things move fast in the MAGTF world, from the ability to deploy at a moment's notice to the ability to execute missions within hours of receipt of a warning or execute order, and MAGTF staff planners must be able to act quickly and decisively with little time for contemplation and debate. Second, MAGTFs rarely stay in any one place for an extended period of time; whether it is the Marine Expeditionary Unit (MEU) floating from port to port on a routine deployment or the Marine Expeditionary Brigade (MEB) establishing a foothold in a hostile country for follow-on forces, MAGTF operations are marked by the uncertainties and fluidities of transience. Third, because of its abilities to sustain itself and fight as a combined arms package, the MAGTF often finds itself as the lone force in the early days of an operation or for entire operations, requiring staff planners to make critical decisions and take critical actions with little outside support or guidance.

One of the staff planners who must grapple with the challenges of tempo, transience, and isolation in MAGTF operations is the judge advocate

¹ The largest MAGTF is the Marine Expeditionary Force (MEF), which is comprised of less than one to multiple divisions (ground combat element), wings (aviation combat element), and groups (combat service support element). The intermediate-sized MAGTF is the Marine Expeditionary Brigade (MEB), normally composed of a reinforced infantry regiment, a composite air group, and a brigade service support element. The smallest MAGTF is the Marine Expeditionary Unit (MEU), composed of a reinforced infantry battalion, a composite air squadron, and a MEU service support group. In addition to the MEF, MEB, and MEU, a MAGTF can be task organized into essentially any size for specific missions, operations, or exercises; such a MAGTF is referred to as a Special Purpose MAGTF (SPMAGTF).

(JA).² A random snapshot might find the deployed MAGTF JA adjudicating a claim in a foreign country when the unit is set to sail the next day, developing rules of engagement (ROE) for Marines due to launch in harm's way in a matter of hours, or resolving thorny legal issues with top-level officials from nongovernmental organizations or foreign military forces as the only JA on the scene. Given these challenges, the purpose of this book is to help MAGTF JAs identify and resolve recurring legal issues in MAGTF operations.

Put another way, the purpose of this book is to help Marine Corps JAs become better MAGTF operational lawyers. "Operational law" is a term that can have different meanings for different persons. A common perception is that operational law deals exclusively with ROE and the law of war. Another view is that operational law encompasses every field of law that is practiced in a deployed environment. This book, borrowing from Army legal doctrine in the absence of similar Marine Corps doctrine, and guided by Marine experience, uses operational law as an umbrella term to describe those legal disciplines and functions that have a tangible impact on operations.³ Guided by this fundamental premise of operational law as a legal umbrella, the book divides operational law into discrete chapters discussing the legal disciplines and functions that comprise it.⁴

The first substantive chapter, number two in order, sets the stage by describing a MAGTF in more detail and the JA's role on a MAGTF staff. The chapter, as well as much of the book, focuses on a representative MAGTF, the MEU, by way of illustration. After describing the MEU's historical genesis, unit organization, and mission essential tasks, the chapter concludes with an analysis of the MEU staff judge advocate's (SJA)

² Depending upon the context, this book at times refers generically to MAGTF JAs and at other times more specifically to MEU Staff Judge Advocates (SJAs). For the most part, these terms are used interchangeably.

³ According to Army doctrine, "*Operational Law* is that body of domestic, foreign, and international law that directly affects the conduct of operations. The *practice* of *Operational Law* consists of legal services that *directly* affect the *command and control* and *sustainment* of an operation. Thus, Operational Law consists of the command and control and sustainment functions of legal support to operations." U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS at vii (1 Mar. 2000) (emphasis in original).

⁴ This book also borrows from Army legal doctrine in the selection of legal disciplines. "The six *core legal disciplines* are administrative law, civil law (including contract, fiscal, and environmental law), claims, international law, legal assistance, and military justice." *Id.* at viii (emphasis in original). Each of these disciplines is the subject of its own separate chapter in this book, save international law, which is more of a cross-cutting discipline that appears in many of the chapters, most prominently in the chapter on recurring ROE and law of war issues.

multifaceted roles and ethical responsibilities in relation to the commanders and Marines within the MEU.

Chapter three discusses crisis action planning during MAGTF operations, specifically, the Rapid Response Planning Process (R2P2). The MAGTF JA plays a pivotal role in R2P2, yet most JAs have had little or no R2P2 training. This chapter endeavors to fill the training gap by providing a detailed description of how the process works, defining the terminology used in it, and emphasizing the critical need for JA integration into MAGTF staff planning efforts.

Chapter four addresses recurring ROE and law of war issues that arise in MAGTF operations. Rather than duplicate material covered in other publications, such as the *Operational Law Handbook*⁵ or the *ROE Handbook*,⁶ this chapter strives to analyze ROE and law of war issues in greater detail and with more of a focus on Marine issues and problems than found in these other works.

Military justice is the subject of chapter five. Discussed here are topics such as the difficulties of conducting courts-martial in a deployed setting, foreign criminal jurisdiction, and nonjudicial punishment aboard a naval vessel. This chapter is not intended to be a military justice primer, but rather to augment the baseline military justice knowledge most JAs possess with a discussion of recurring criminal law issues unique to shipboard life and deployment to foreign countries.

Chapter six focuses on recurring administrative law concerns in MAGTF operations. In addition to discussions of government ethics and informal unit funds, the bulk of the chapter attempts to outline the interrelationships between the various administrative investigations likely to arise in a deployed environment, most notably aircraft and ground safety mishaps.

Broadly speaking, chapter seven deals with civil law. More specifically, the chapter highlights three areas of civil law that have proven difficult for MAGTF JAs to grasp: fiscal law, deployment contracting, and

⁵ INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK (2002).

⁶ CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, RULES OF ENGAGEMENT (ROE) HANDBOOK FOR JUDGE ADVOCATES (2000).

overseas environmental law. Somewhat of a departure from the other chapters, this chapter does not strive to take a baseline knowledge of civil law and develop finer points applicable to MAGTF operations. Put frankly, after action reports and anecdotal evidence suggest that Marine JAs have a less than adequate understanding of fiscal law, deployment contracting, and overseas environmental law. To help alleviate this deficiency, the chapter wades through the complexities of civil law in these three areas, capturing the essence of what a MAGTF JA should be prepared to address.

Chapter eight addresses foreign claims. The primary virtue of this chapter is the effort to tie together claims statutes, international agreements, and claims regulations into a comprehensible whole. For example, most JAs are familiar with statutes such as the Foreign Claims Act, but few understand how the Act interrelates with Status of Forces Agreements or the concept of single-service claims responsibility or the actual mechanics of paying a claim. This chapter attempts to provide a logical framework for the JA to follow in determining how to adjudicate and pay foreign claims.

Chapter nine's focus is legal assistance. The purpose is not to present an outline of substantive law, an undertaking that could fill an entire book. Once again, the purpose is to identify recurring legal assistance issues and practical concerns in MAGTF operations to better prepare the JA to provide sound counsel for Marines in need.

The final chapter sets forth guidance on conducting legal research and providing legal support in a deployed environment. This chapter discusses equipment, resources, and materials to bring on a deployment, and also provides a current listing of unclassified and classified web sites useful for the MAGTF JA.

The remainder of the book consists of appendices. Feedback from readers of other Center for Law and Military Operations (CLAMO) publications indicates that oftentimes the materials found in the appendices prove even more useful than the substantive chapters themselves. This book will likely continue the trend, with appendices ranging from fiscal law outlines to claims forms in foreign languages to a glossary of MEU/MAGTF terms to a MEU R2P2 standard operating procedure.

The resulting compilation of substantive chapters and appendices has been the product of a collective effort both internal and external to CLAMO.

The book draws on the experiences of former and current MAGTF JAs in the form of after action reports, source materials, and interviews. Numerous Marine JAs with operational law expertise provided comment and critique on drafts of the book. Most noteworthy, three former MEU SJAs and one current MEU SJA authored individual chapters.⁷ While this book is a CLAMO product in name, a more accurate description is that the book reflects in large measure the institutional operational law knowledge of the Marine Corps legal community.

It should be emphasized, however, that this book is neither a legal “cookbook” for MAGTF JAs, nor a collection of legal lessons learned, nor a substitute for other references such as the *Operational Law Handbook*. The book’s focus is on recurring legal issues faced by deployed MAGTF JAs and constitutes an ambitious attempt to offer legal insight, analysis, and, when possible, guidance. Accordingly, this book takes a hybrid form, written in the interstices between legal primer and recitation of past legal issues faced.

Even with this unique approach, the book falls squarely within CLAMO’s charter to examine legal issues that arise during all phases of military operations and to devise training and resource strategies to address those issues. To the extent that any MAGTF-specific legal issues do not appear, or that any of the examination falls short, CLAMO stands at the ready to provide additional legal support. Specific requests for information or materials can be addressed to CLAMO@hqda.army.mil. Additionally, CLAMO maintains vast databases of operational law materials at www.jagcnet.army.mil (unclassified) and www.us.army.smil.mil (classified).

⁷ Major Christopher N. Hamilton (former 31st MEU SJA), Major Philip E. Simmons (former 11th MEU SJA), LtCol Daniel J. Lecce (former 15th MEU SJA), and Major Ian D. Brasure (current 26th MEU SJA), authored chapters 2, 5, 6, and 9, respectively.

CHAPTER 2

THE MEU(SOC) PROGRAM AND THE ROLE OF THE MEU(SOC) STAFF JUDGE ADVOCATE

Major Christopher N. Hamilton¹

I. MEU(SOC) PROGRAM DEVELOPMENT

Following the failed Iranian hostage rescue mission in 1980, the need for the capability to respond to unconventional threats to the security and interests of the United States became increasingly apparent. In 1983, Deputy Secretary of Defense William H. Taft, IV directed each of the services to revitalize their capability to perform special operations. In 1984, the Commandant of the Marine Corps (CMC) directed the Commanding General, Fleet Marine Forces, Atlantic (CG, FMFLANT), to examine the Marine Corps' capability to conduct special operations and to make recommendations on the appropriate role of the Marine Air-Ground Task Forces (MAGTFs) in this area. The study revalidated that MAGTFs were inherently capable of conducting a broad spectrum of special operations in a maritime environment. There were some special operations, however, that would require additional training. Rather than establish new organizations that would unnecessarily duplicate the special purpose organizations of the other services, CMC decided that the Marine Corps would provide a capability that complemented the capability of other services' special operations forces (SOF) with the introduction of Marine forces from the sea. In 1985, CMC directed that a follow-on pilot program be initiated by the CG, FMFLANT, to enhance the Marine Corps' special operations capabilities utilizing the forward-deployed Marine Amphibious Unit (MAU).²

The 26th MAU became the test bed for developing and implementing a newly devised special operations training syllabus. The MAU's mission was to accomplish a finite number of distinct special operations, to develop

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² See General P.X. Kelley, *The Marine Corps and Special Operations*, MARINE CORPS GAZETTE, Oct. 1985, at 22-23.

an augmentation troop list to accomplish those unique special operations, and to identify necessary special equipment not normally carried by a deployed MAU. In December 1985, after four months of intensive training and evaluations, the 26th MAU became the first unit to be designated a MAU(SOC) (Special Operations Capable). In achieving this designation, the 26th MAU(SOC) utilized the AV-8B Harrier in its first ever integration into a MAU. Following its successful deployment in 1986, a second East Coast MAU rotated through the predeployment training cycle. Soon a third MAU was added to the East Coast deployment cycle and the predeployment training was extended to six months. With the MAU(SOC) deployment rotation cycle satisfactorily established for three MAU's on the East Coast, the MAU(SOC) program was extended to Fleet Marine Forces, Pacific, in January 1987. The first Western Pacific (WestPac) MAU(SOC) deployment began in June 1987.³

In 1988, under General Alfred M. Gray, the 29th Commandant of the Marine Corps, who had been the Commanding General of FMFLANT in 1984, MAUs were redesignated as Marine Expeditionary Units (MEUs). The following year, on 18 April 1989, the MEU(SOC) program was tested in combat for the first time. In response to the mining of the *USS Samuel B. Roberts* (FFG-58) by Iranian forces, the 22nd MEU(SOC) took part in Operation PREYING MANTIS against Iranian oil platforms that were being used as bases for attacks against tankers coming down the Persian Gulf. During the operation, the 22nd MEU(SOC) demonstrated its capabilities by taking down several oil platforms with coordinated sea and air support provided by Navy surface ships, including the *USS Enterprise* (CVN-65).⁴

Since this initial combat test, MEU(SOC)s have continued to provide the regional CINCs with a versatile and flexible sea-based force for rapid crisis response around the world. In 1990, the 13th MEU(SOC) was called on in the Persian Gulf to support maritime embargo operations and serve as a floating reserve for I MEF during DESERT SHIELD. In October 1990, elements of the 13th MEU(SOC) boarded two Iraqi tankers in the Persian Gulf to enforce United Nations sanctions imposed against Iraq. The 13th MEU(SOC) thereafter stayed on station in the Gulf and conducted a number of operations during DESERT STORM, including a helicopter raid on

³ See 26th Marine Expeditionary Unit, History, at <http://www.26meu.usmc.mil/History.htm> (last visited 27 Mar. 2002).

⁴ See TOM CLANCY, MARINE: A GUIDED TOUR OF A MARINE EXPEDITIONARY UNIT 211-12 (2000).

Maradim Island, Kuwait, and amphibious operations the day the ground war started.⁵

Following the Gulf War, the decision was made to maintain a continuous MEU(SOC) presence in the Indian Ocean or Persian Gulf area. Gaps in the WestPac deployment schedule led to the activation of the 31st MEU in Okinawa, Japan, in September 1992. The subordinate units comprising the 31st MEU(SOC) came from III MEF assets but sourcing was complicated by the Unit Deployment Program (UDP). HMM-262 deployed from MCAS Kaneohe Bay, Hawaii, en route to Okinawa aboard the *USS Belleau Wood* (LHA-3) as a UDP move, but HMM-262 took its own aircraft and equipment to become the permanently assigned Air Combat Element (ACE) upon completion of its UDP role. The Battalion Landing Team (BLT), however, continued to be sourced via the UDP, impacting the SOC training cycle, which was compressed to include SOC Certification Exercise (SOCEX) and a short deployment in a total of six months. The location of the Amphibious Ready Group (ARG) ships and Amphibious Squadron (PHIBRON) staff in Sasebo, Japan, adds further challenges that must be routinely overcome by the PHIBRON II/31st MEU(SOC) team.⁶

Since its inception, the MEU(SOC) has developed a reputation as the operational expert in conducting noncombatant evacuation operations (NEOs). MEU(SOC)s are regularly called on to conduct NEOs of American citizens when destabilizing nations can no longer guarantee the safety and security of U.S. embassies. The 22nd MEU(SOC) conducted such a NEO (with participation of the 26th MEU(SOC)) in Liberia in 1990 called Operation SHARP EDGE. In 1997, the 22nd MEU(SOC) evacuated more than 2,500 civilians from Sierra Leone in Operation NOBLE OBELISK. Later in 1997 in Operation SILVER WAKE, the 22nd MEU(SOC) evacuated American citizens and foreign nationals from Albania. In 1998, the 11th MEU conducted Operation SAFE DEPARTURE, the evacuation of 172 noncombatant civilians and third country nationals from Asmara, Eritrea.

With a total of seven MEUs worldwide, the MEU(SOC) has become the CINCs' force of choice for conducting a host of sea-based missions requiring rapid response and operational flexibility. MEU(SOC)s have

⁵ See *id.* See also 13th Marine Expeditionary Unit, MEU Guide, at <http://www.13meu.usmc.mil/elements/meuguide.pdf> (last visited 27 Mar. 2002).

⁶ See Marine Corps Gazette Staff, *31st MEU Activated in WestPac*, MARINE CORPS GAZETTE, Nov. 1992, at 7.

conducted operations ranging from rescuing Air Force Captain Scott O'Grady in Bosnia-Herzegovina in 1995, providing humanitarian assistance to earthquake victims in Turkey in 1999, and establishing a forward operating base in Afghanistan during Operation ENDURING FREEDOM in 2001.

The SJA in the MEU(SOC) program has been an evolving billet. The role of the SJA on the MEU(SOC) staff has emerged from a Command Element (CE) augmentee sent TAD to the MEU staff just prior to deployment to an integral member of the staff who is assigned at the beginning of the Predeployment Training Program. In 1999, the MEU(SOC) SJA became a PCS assignment; however, the billet is still not a formal part of the CE Table of Organization. With the PCS assignment of MEU(SOC) SJAs for two complete deployment cycles, the SJA is positioned to become an integral part of the MEU staff and to provide continuity of legal advice across the spectrum of operational law matters.

II. OVERVIEW OF MEU(SOC) CHARACTERISTICS AND CAPABILITIES

A. CHARACTERISTICS⁷

Today, MEU(SOC)s provide the regional CINCs a certified, versatile, and ready force that by doctrine are comprised of four major characteristics:

1. *Forward presence with operational flexibility.* The ability to provide continuous presence and credible, but nonprovocative, combat power, for rapid employment as the initial response to a crisis. MEU(SOC) forward presence signals U.S. commitment to the region and is a visible reminder to those who would threaten U.S. interests. Forward presence includes engagement activities that shape and promote regional stability.

2. *Rapid response.* The ability to plan and commence execution of a mission within six hours of receiving an alert, warning, or execute order. Rapid response includes the ability to enable the introduction of follow-on MAGTF (e.g., Maritime Prepositioned Force (MPF) operations, a Marine Expeditionary Brigade (MEB), Marine Expeditionary

⁷ This section is drawn almost directly from U.S. MARINE CORPS, ORDER 3120.9B, POLICY FOR MARINE EXPEDITIONARY UNIT (MEU(SOC)) para. (4)(a)(2)(b) (25 Sept. 2001) [hereinafter MCO 3120.9B].

Force (MEF), etc.) and joint and or combined forces by securing staging areas ashore, providing critical command, control, and communication, or conducting supporting operations.

3. *Task organized for multiple missions.* The ability to execute a full range of conventional operations, from amphibious assault to humanitarian assistance/disaster relief, as well as selected maritime special operations, across the entire spectrum of conflict, as an integral part of a joint and/or combined campaign, and transition between operational environments on a moment's notice.

4. *Sea-based, strategic reach with inherent force protection.* The ability to operate from ships (independent of established airfields, basing agreements, and over-flight rights) provides unimpeded and politically unencumbered access to potential trouble spots around the world. Includes the ability to remain on station, over the horizon of a potential adversary, without revealing exact destinations and/or intentions. Also includes the ability to withdraw rapidly at the conclusion of operations.

B. CORE CAPABILITIES⁸

The inherent significant capabilities of a forward-deployed MEU(SOC) are divided into four broad categories: Amphibious Operations, Maritime Special Operations, MOOTW, and Supporting Operations.

1. *Amphibious Operations.* An attack launched from the sea by U.S. Navy and landing forces, embarked in ships or craft involving a landing on a hostile or potentially hostile shore. Amphibious operations include the following phases: planning, embarkation, rehearsal, movement, and assault.

2. *Maritime Special Operations.* Selected direct action missions conducted by specially trained, equipped, and organized MEU(SOC) forces.

3. *MOOTW.* Operations encompassing the use of military capabilities across the range of military operations short of war. These military actions can be applied to complement any combination of the other instruments of national power and occur before, during, and after war.

⁸ This section is drawn almost directly from *id.* at para. (4)(a)(2)(c).

4. Supporting Operations. Operations encompassing the use of military capabilities that support the spectrum of potential joint/combined operations.

III. ORGANIZATION AND MISSIONS

The forward-deployed MEU(SOC) is uniquely organized, trained, and equipped to provide the naval or joint force commander with an expeditionary force that is balanced, sustainable, flexible, responsive, expandable, and credible. Normally embarked aboard three ships⁹ of an Amphibious Ready Group (ARG), the MEU(SOC) is task organized to accomplish a broad range of missions. The MEU is comprised of a command element (CE); a reinforced infantry battalion as the ground combat element (GCE); a composite squadron of helicopter and fixed wing assets as the aviation combat element (ACE); and a combat service support element (CSSE) designated the MEU Service Support Group (MSSG). Elements within the MEU(SOC) can be task organized into a Maritime Special Purpose Force which, though not part of the MEU's permanent structure, can be constituted as required by the MEU Commander to perform direct action missions.

A. ORGANIZATION OF THE MEU(SOC)¹⁰

1. The Command Element (CE) is the permanent headquarters element of the MEU comprised of a commanding officer, executive officer, and supporting staff, including the SJA. The CE provides the command, control, communications, computers, and intelligence (C4I) necessary for effective planning and execution of operations in a joint/combined environment. Also included in the CE are a number of detachments that bring special capabilities not inherent in the GCE. These are:

⁹ The ARG is typically comprised of three ships, an LHA/LHD, LSD, and LPD. The older landing helicopter assault ships, or LHAs, include *Tarawa* (LHA-1), *Saipan* (LHA-2), *Belleau Wood* (LHA-3), *Nassau* (LHA-4), and *Peleliu* (LHA-5). The LHAs, built in the 1970s with a well deck originally configured to hold four LCUs or seven LCM-8s, can carry one LCAC and 42 helicopters. The landing helicopter dock ships (LHDs), include *Wasp* (LHD-1), *Essex* (LHD-2), *Kearsarge* (LHD-3), *Boxer* (LHD-4), *Bataan* (LHD-5) and *Bonhomme Richard* (LHD-6). The LHD's have been in production since the late 1980's and can carry three LCACs and 45 helicopters. With the addition of the MV-22B Osprey, and utilizing the LCAC, CH53E, and AV-8B Harrier, the LHD will bring credible "standoff capability"—that is, the ability to support amphibious operations from over the horizon.

¹⁰ This section is drawn almost directly from MCO 3120.9B, *supra* note 7, at para. (6)(a).

a. Force Reconnaissance Company (FORECON) detachment. Provides direct action capability and ground reconnaissance within the MEU(SOC) commander's area of interest.

b. Radio Battalion (RadBn) detachment. Provides an enhanced capability for Signals Intelligence (SIGINT) collection, analysis, and electronic warfare (EW). A radio reconnaissance team (RRT) capability is included for advance force employment during selected operations.

c. Communications Battalion (CommBn) detachments. Provides command and control communications for all operations. The Mobile Command and Control Team (MCCT) provides JTF, SOF, or follow-on force enabling capability.

d. Intelligence Battalion Detachments. Provides intelligence support for all operations. It includes:

- i. Human Intelligence Exploitation Team (HET). Provides counterintelligence and interrogation/document translation support.
- ii. Force Imagery Interpretation Unit (FIIU). Provides limited imagery interpretation support.
- iii. Topographic (TOPO) Platoon. Provides limited cartography and terrain model building capability.
- iv. Sensor Control and Management Platoon (SCAMP). Plans the employment of, operates, maintains, and reports information generated from remote sensor systems.

e. Marine Liaison Element (MLE) Detachment. Provides fire control capabilities for joint, combined, and coalition forces working in concert with the MEU.

2. The Ground Combat Element (GCE), a Battalion Landing Team (BLT). The BLT is a reinforced infantry battalion of approximately 1,200 Marines. The GCE is structured as follows:

- a. Commanding Officer, Executive Officer, and staff.

b. Headquarters & Service (H&S) Company.

c. Scout Sniper Platoon.

d. Infantry Company (3).

e. Weapons Company.

f. Artillery Battery (configured with six 155mm howitzers).

The artillery battery includes its own truck platoon with a mix of one-ton and five-ton trucks for carrying ammunition and other supplies, and for towing artillery pieces.

g. Light Armored Reconnaissance (LAR) detachment (configured with seven to sixteen Light Armored Vehicles (LAVs)). Provides mobile reconnaissance, screening, and strike capability with its LAVs and organic scouts.

h. Assault Amphibian Vehicle (AAV) platoon (configured with fifteen AAVs). Provides amphibious assault, ship-to-shore movement, and ground mobility.

i. Combat Engineer platoon. Provides mobility enhancement, survivability, counter-mobility, and general engineer support.

j. Reconnaissance platoon. Provides ground reconnaissance and surveillance, and intelligence collection and reporting within the MEU(SOC) commander's area of influence.

k. Shore Fire Control Party (SFCP). Provides naval surface fire support.

l. Tank platoon (configured with four M1A1 main battle tanks). Provides a limited heavy armor capability to ground forces ashore.

3. *The Air Combat Element (ACE)*. The ACE is a reinforced helicopter squadron that includes AV-8B Harrier attack aircraft or other fixed-wing fighter/attack aircraft units, if required, and two CONUS-based KC-130 aircraft. The ACE is task organized to provide assault support,

fixed wing and rotary wing close air support, airborne command and control, and low-level, close-in air defense. The ACE is structured as follows:

- a. Commanding Officer, Executive Officer, and staff.
- b. Marine Medium Helicopter Squadron (HMM) detachment. Provides medium-lift assault support. (Configured with twelve CH-46E helicopters).
- c. Marine Heavy Helicopter Squadron (HMH) detachment (configured with four CH-53E helicopters). Provides extended-range, heavy-lift assault support.
- d. Marine Light Attack Squadron (HMLA) detachment (configured with four AH-1W attack helicopters and two/three UH-1N utility helicopters). Provides close air support, airborne command and control, and escort.
- e. Marine Attack Squadron (VMA) or Fighter/Attack Squadron (VMFA) detachment (configured with six AV-8B Harrier or F/A-18 aircraft). Provides organic close air support.
- f. Marine Aerial Refueler/Transport Squadron (VMGR) detachment (configured with two KC-130 aircraft). Provides refueling services for embarked helicopters, AV-8B aircraft, and performs other support tasks (e.g., parachute operations, flare drops, cargo transportation, etc.) as required. Maximum flexibility is maintained with an airborne command, control, and coordination capability. The detachment trains with the MEU throughout the PTP, and then is on CONUS standby, prepared to deploy within 96 hours.
- g. Marine Air Control Group (MACG). The MACG detachment includes the following:
 - i. Headquarters Element.
 - ii. Air Support Element. Provides a limited Direct Air Support Center (DASC) capable of providing tactical, procedural control of aircraft functions for enhanced integration of air support into the MEU(SOC) scheme of maneuver.

iii. Low Altitude Air Defense (LAAD) Section.
Provides low level, close-in air defense for MEU/ARG air defense priorities.

iv. Marine Air Traffic Control Team (ATC) Mobile Team. Provides expeditionary ATC services to austere/remote landing sites and to interface with host nation/joint ATC regarding MEU(SOC) operations.

h. Marine Wing Support Squadron (MWSS) detachment.
Provides aviation bulk fuel and limited food service support.

i. Marine Aviation Logistics Squadron (MALS) detachment.
Provides intermediate maintenance and aviation supply support.

4. The Marine Service Support Group (MSSG) provides a full range of combat service support necessary to accomplish all assigned missions. It is organized to provide supply, maintenance, transportation, deliberate engineering, medical and dental, automated information processing, utilities, landing support (port/airfield support operations), disbursing, and postal services to the entire MEU(SOC). The MSSG is structured as follows:

a. Commanding Officer, executive officer, and staff.

b. H&S Platoon

i. ISMO (ADP) detachment.

ii. Disbursing detachment.

iii. Postal detachment.

c. Supply detachment. Provides fifteen days sustainability in class I, II, IIIB, IV, V, VIII, IX supply support and secondary repairable support.

d. Communications detachment. Provides command and control communication support.

e. Engineer Support Battalion detachment. Provides deliberate engineering support, to include limited construction, bulk fuel storage, potable water production/storage, utilities and explosive ordnance disposal.

f. Transportation Battalion detachment. Provides beach/port support team and helicopter support team operations, general ground transportation for cargo, fuel, water, and personnel movements.

g. Maintenance Battalion detachment. Provides intermediate through limited depot level maintenance and Maintenance Support Team (MST) support.

h. Health Services detachment. Provides preventive medicine, casualty collection/evacuation, limited field surgical capabilities, dental care, and temporary hospitalization.

5. Maritime Special Purpose Force (MSPF). The MSPF is task organized from MEU(SOC) assets to provide a special operations capable force that can be quickly tailored to accomplish a specific mission, and employed either as a complement to conventional MAGTF operations or in the execution of a selected maritime special operations mission. Particular emphasis is placed on operations requiring precision skills that normally are not resident in traditional amphibious raid companies. Command and control of the MSPF will remain with the MEU(SOC) commander. The MSPF is not designed to duplicate existing capabilities of SOF, but is intended to focus on operations in a maritime environment. The MSPF is not capable of operating independently of its parent MEU; however, it is capable of conducting operations with, or in support of, SOF. The MSPF task organization can be enhanced with the addition of the ARG's Naval Special Warfare Task Unit (NSWTU) detachment. The MSPF normally is structured as follows:

a. Command Element. The commander of the MSPF will be designated by the MEU(SOC) commander. The command element is normally structured as follows:

- i. Commander, MSPF.
- ii. Team(s), Communication detachment.

- iii. Team(s), Human Exploitation Team (HET).
- iv. Team(s), Medical section.

b. Security Element. The security element is normally structured around a platoon provided by the BLT and may be augmented by the NSW TU embarked with the ARG. The security element will act as a reinforcing unit, a support unit, a diversionary unit, or an extraction unit. The security element may be structured as follows:

- i. Rifle Platoon (-) (REIN).
- ii. NSW TU, PHIBRON (as required).

c. Assault Element (AE). The AE is the main effort of the MSPF and is organized to perform assault, explosive breaching, internal security, and sniper functions. The assault function will normally be executed by the FORECON detachment. Mission-specific augmentation (e.g., additional sniper support, specialized demolitions, explosive ordnance disposal, SIGINT/EW, etc.) will be provided from other MEU(SOC) assets or from the NSW TU embarked with the ARG. The AE is normally structured as follows

- i. Force Recon detachment.
- ii. Team(s), Security.
- iii. Team(s), EOD detachment.
- iv. Team(s), Combat Photo detachment.

d. Support Element. The support element normally is composed of assets from the BLT Reconnaissance Platoon and Scout Sniper Platoon (R&S/sniper support) coupled with elements of the ACE, RADBN Det, COMM Det, and HET assets from the MEU(SOC) CE. Additional capability may be provided by the NSW TU embarked with the ARG. The support element is normally structured as follows:

- i. Team(s), Reconnaissance and Scout Sniper platoons.

- ii. Team(s), Communications detachment.
- iii. Team(s), RadBn detachment.
- iv. Team(s), HET detachment.
- v. NSWTU, PHIBRON (As required).

e. Aviation Support Element. Capable of precise night-vision flying and navigation, various insertion/extraction means and forward arming and refueling point operations. The specific structure of the aviation support element will vary depending on the lift requirements and distance to the crisis site.

B. MEU(SOC) MISSIONS¹¹

The following is the list of MEU(SOC) Mission Essential Tasks (METs), which run the gamut of MEU(SOC) core capabilities, including Amphibious Operations, designated Maritime Special Operations, MOOTW, and Supporting Operations to include enabling the introduction of follow-on forces.

1. *Amphibious Assault.* The principal type of amphibious operation that involves establishing a force on a hostile or potentially hostile shore.

2. *Amphibious Raid.* An amphibious operation involving swift incursion into or temporary occupation of an objective followed by a planned withdrawal.

3. *Amphibious Demonstration.* An amphibious operation conducted for the purpose of deceiving the enemy by a show of force with the expectation of deluding the enemy into a course of action unfavorable to him.

4. *Amphibious Withdrawal.* An amphibious operation involving the extraction of forces by sea in U.S. Navy ships or craft from a hostile or potentially hostile shore.

¹¹ This section is drawn almost directly from MCO 3120.9B, *supra* note 7, at para. (4)(a)(2)(d).

5. *Direct Action Operations.* Short duration strikes and other small-scale offensive action to seize, destroy, capture, recover, or inflict damage on designated personnel or material. In the conduct of these operations, units may employ raid, ambush, or direct assault tactics; emplace mines and other munitions; conduct standoff attacks by fire from air, ground or maritime platforms; provide terminal guidance for precision-guided munitions; conduct independent sabotage; and conduct anti-ship operations. A required sub-task is Visit, Board, Search, and Seizure (VBSS) Operations. VBSS is the conduct of vessel boarding/seizure in support of Maritime Interception Operations (MIO) on a cooperative or uncooperative vessel, whether it is pier-side, at anchor, or underway.

6. *Tactical Recovery of Aircraft and Personnel (TRAP).* Rescue or extraction, by surface or air, of downed aircraft and/or personnel, equipment, aircraft sanitization, and provide advanced trauma-life support in a benign or hostile environment.

7. *Security Operations.* Protect U.S. (or designated allied/friendly nation) personnel and property.

8. *Humanitarian Assistance/Disaster Relief (HA/DR).* Assistance to relieve or reduce the results of natural or man-made disasters or other endemic conditions such as human pain, disease, hunger, or privation that might present a serious threat to life or that can result in great damage to or loss of property. Normally these operations are limited in scope and duration. The assistance provided is designed to supplement or complement the efforts of the host nation, civil authorities, and/or agencies that may have the primary responsibility for providing humanitarian assistance.

9. *Noncombatant Evacuation Operations (NEO).* Operations directed by the Department of State whereby noncombatants are evacuated from foreign countries to safe havens or to the U.S., when their lives are endangered by war, civil unrest, or natural disaster.

10. *Peace Operations.* Encompasses peacekeeping and peace enforcement operations conducted in support of diplomatic efforts to establish and maintain peace.

11. Provide Command, Control, Communications, and Computers (C4). Provide an integrated system of doctrine, procedures, organizational structures, personnel, equipment, facilities, and communications designed to support a commander's exercise of command and control across the range of military operations. Includes providing initial C4 connectivity as the initial entry force of a larger MAGTF, joint, and/or combined operation.

12. Fire Support Planning, Coordination, and Control in a Joint/Combined Environment. Plan, control, and coordinate fires from naval, air, and ground assets in support of U.S. and/or designated allied/friendly forces.

13. Limited Expeditionary Airfield Operations. Tactical air operations from austere locations including short-field, unimproved runways.

14. Terminal Guidance Operations. The guidance applied to a guided missile between midcourse guidance and arrival in the vicinity of the target. Electronic, mechanical, visual, or other assistance given an aircraft pilot or surface waves to facilitate arrival at, operation within or over, landing upon, or departure from an air/beach landing or airdrop facility.

15. Enhanced Urban Operations. Encompasses advanced offensive close quarters battle techniques used on urban terrain conducted by units trained to a higher level than conventional infantry. Techniques include advanced breaching, selected target engagement, and dynamic assault techniques using organizational equipment and assets. This is primarily an offensive operation where noncombatants are or may be present and collateral damage must be kept to a minimum.

16. Enabling Operations. Operations designed to facilitate the smooth transition of follow-on forces into the area of operations. May include chemical/biological assessment, C4 for MAGTF or Joint Task Force higher headquarters, and offensive and security operations to seize and secure terrain and/or facilities.

17. Airfield/Port Seizure. Secure an airfield, port or other key facilities in order to support MAGTF missions, receive follow-on forces or enable the introduction of follow-on forces (e.g., MPF operations).

18. *Employ Nonlethal Weapons.* Operations planned with intent to minimize fatalities or permanent injuries and limit collateral damage by augmenting forces with nonlethal weapon systems.

19. *Tactical Deception Operations.* Actions executed to deliberately mislead adversary decision makers as to friendly capabilities, intentions, and operations, thereby causing the adversary to take specific actions (or inactions) that will contribute to the accomplishment of the friendly mission. Tactical military deception is planned and conducted to support battles, engagements, and MOOTW.

20. *Information Operations.* Actions taken to affect adversary information and information systems while defending one's own information and information systems. A required sub-task is Electronic Warfare (EW): any military action involving the use of electromagnetic and directed energy to control the electromagnetic spectrum and/or to attack the enemy.

21. *Intelligence, Surveillance, Reconnaissance (ISR).* Collect, process, integrate, analyze, evaluate, and interpret available information concerning foreign countries, areas, and/or adversaries relative to the mission and area of interest.

a. **Reconnaissance and Surveillance (R&S).** A mission undertaken to obtain, by visual observation or other detection methods, information about the activities and resources of an actual or potential enemy, or to secure data concerning the meteorological, hydrographical, or geographical characteristics of a particular area.

b. **Counterintelligence (CI).** Information gathered and activities conducted to protect against espionage, adversarial intelligence activities, sabotage, or assassination conducted by or on behalf of foreign powers, organizations, persons, or international terrorist activities, but not including personnel, physical, document, or communications security programs.

c. **Signals Intelligence (SIGINT).** Intelligence derived from communications, electronics, and foreign instrumentation signals.

d. Sensor Control and Management Platoon (SCAMP). Performs sensor implant operations, monitors sensors, and reports information generated by sensors.

22. *Anti-Terrorism.* Defensive measures used to reduce the vulnerability of individuals and property to terrorist acts, to include limited response and containment.

IV. MEU(SOC) PREDEPLOYMENT TRAINING PROGRAM¹²

The MEU(SOC) Predeployment Training Program (PTP) is the 26-week process by which the PHIBRON and MEU Commanders analyze, develop, and evaluate the integrated capabilities of the Amphibious Ready Group (ARG)/MEU. The purpose of the PTP is the systematic attainment of the operational capabilities required for SOC certification. The focus of much of the training is to enhance internal integration of the MEU staff and external interoperability between the MEU and PHIBRON, the Carrier Battle Group (CVBG), Joint Task Forces (JTF), Unified Combatant Commanders, and civilian agencies. Internally, PTP provides the MEU staff the opportunity to develop a cohesive capability to conduct the Rapid Response Planning Process (R2P2). It is important for the SJA to bring to the staff a solid fundamental understanding of R2P2 and the SJA role in it.¹³

The MEU(SOC) PTP is divided into three phases: initial, intermediate, and final training phases. The Initial Training Phase includes both staff training for the MEU CE and main subordinate elements (MSEs—the BLT, ACE, and MSSG) and individual skills training provided by the Special Operations Training Group (SOTG) for designated detachments in the MEU CE, MSEs, and MSPF.

The Intermediate Training Phase features collective MEU level training that assesses the strengths and weaknesses of the MSE's. Based on this assessment the MEU Commander will provide training guidance to improve and sustain the MSE's required capabilities. The Intermediate Training Phase includes an at-sea period to familiarize the Marines with

¹² Much of this section is drawn directly from U.S. MARINE CORPS, ORDER 3502.3A, MARINE EXPEDITIONARY UNIT (SPECIAL OPERATIONS CAPABLE) PREDEPLOYMENT TRAINING PROGRAM (MEU(SOC) PTP) (10 Jan. 2001).

¹³ See *supra* Chapter 3 (discussing the SJA role in R2P2).

ARG shipping and to exercise MEU and PHIBRON staff planning. The MSPF conducts Interoperability Training during this phase to integrate the Command and Control, Reconnaissance and Surveillance, Assault, Security, and Aviation Assault elements.

This Interoperability Training is an important precursor to the Training in an Urban Environment Exercise (TRUEX) that also occurs during this phase. Because of the unique issues related to operating among civilians and protected places, TRUEX may offer the most challenging and valuable predeployment training for the MEU SJA. In addition to the intensive rules of engagement (ROE) play, the MEU SJA will have to be prepared to handle real world claims issues that inevitably arise during TRUEX. For that reason, the MEU SJA should make liaison before TRUEX with both the SOTG operations officer and FBI special agent assigned under the Training Assistance to the Marine Corps Program (TAMACOR). The TAMACOR representative coordinates with state and local law enforcement officials and can be a valuable liaison when claims issues require interface with local authorities. In addition, SOTG may have a judge advocate assigned to the staff who can be a valuable resource.

The MEU Exercise (MEUEX) is the final opportunity in the Intermediate Training Phase for the MEU to evaluate its core capabilities. The entire MEU participates in MEUEX with a focus on refining unit SOPs and the MEU's R2P2.

The Final Training Phase completes all predeployment training activities and culminates with the Special Operations Certification Exercise (SOCEX), the final evaluation for certification of special operations capability. The Final Training Phase includes a pre-embarkation maintenance stand-down, advanced amphibious training at sea, a FLEETEX/Supporting Arms Coordination Exercise (SACEX), SOCEX, and finally Crisis Interaction Requirements Exercise (CIREX) which is conducted with a goal of creating interoperability between PHIBRON/MEU(SOC) personnel and their SOF counterparts.

V. THE ROLE OF THE MEU SJA

The SJA occupies a unique role on the MEU(SOC) staff. The SJA is relied upon to give clear, cogent advice at all levels of decision-making

within the MEU(SOC). The SJA serves as the MEU(SOC) commander's staff expert on the entire range of operational law matters. The SJA must be present in the mission planning cells during R2P2 to identify and address law of war and ROE issues to the mission planners. Finally, the SJA explains and clarifies the ROE to the "trigger pullers" who will be in harm's way executing the mission. The SJA fills all of these operational law roles while standing by to provide advice on a host of other legal and quasi-legal matters. The SJA advises the commanders and staff in areas such as military justice, foreign and domestic claims, fiscal law, contract law, ethics, and intelligence law. The SJA supervises/reviews the conduct of JAGMAN investigations when required and provides legal assistance to individual Marines from time to time. The SJA may also be called upon to serve in one of the various collateral duties that are dispersed among the CE officers.

The greatest asset that a judge advocate can bring to each of these roles is credibility. Credibility is earned by consistently providing well-informed, soundly reasoned advice. The SJA earns credibility with an approach that at once seeks to support the mission, but does not waiver in providing honest, objective legal advice even when the answer is "no." The SJA is neither the "yes-man" that blindly gives a thumbs-up to every proposed course of action without an honest application of the law, nor the "naysayer" who does not seek legally supportable options for the commander.

A. SJA AS JUDGE, ADVOCATE, AND COUNSELOR

The terms "judge," "advocate," and "counselor" capture the balanced nature of the SJA's special role on the MEU(SOC) staff.¹⁴ As "judge," the SJA is relied upon by the MEU(SOC), MSE, and mission commanders to identify legal issues and provide an objective opinion on whether a law or regulation is implicated by a proposed course of action. Having determined that a law or regulation does apply, the SJA must be able to advise whether a legal obligation exists to act or refrain from acting or limits a proposed action, depending upon the circumstances. Similarly, the applicable law may create a right that must be respected when planning and executing the mission. It is the responsibility of the MEU(SOC) SJA to determine when these obligations and rights may translate into a legal restraint or constraint and to so advise the commander and coordinate with higher commands to

¹⁴ The suggested paradigm of the judge advocate as a judge, advocate, and counselor is borrowed from Army doctrine. *See* U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS paras. 1.2.5 to 1.2.8 (1 Mar. 2000).

begin to resolve the issue. Here the SJA must exercise sound judgment and serve as the “honest broker” to the commander and the staff.

The role of the SJA does not stop there. If it does, the SJA is in danger of becoming the “no-man,” good at identifying legal obstacles, but failing to dig deeper and to offer analysis. That legal reasoning is provided in the SJA’s capacity as the “advocate.” Once a particular issue is recognized and legal right or obligation identified, the SJA must engage in a process of analyzing the issue from both sides as if preparing a memorandum of law. The SJA must internally advocate both sides of the issue. The SJA must bring a firm grasp of the law and facts to the extent that they are known to crafting this argument. The SJA advises the commander on whether a sound, honest, and reasonable position can be articulated to support a proposed course of action. The SJA serves in a special position of trust for the commander in making this determination. Along with that trust comes the responsibility to tell the commander if and when a proposed course of action is in fact legally or ethically objectionable. Here the commander must be able to rely on the SJA’s thorough research, sound judgment, and appropriate staff coordination to support a decision.

In fulfilling this need for a reliable advisor, the SJA takes on a special role as counselor to the MEU(SOC), MSE, and mission commanders. The term “counselor” is appropriate because it suggests that the SJA is providing more than just a legal analysis and a legal recommendation. As counselor, the SJA must be able to not only advise that a proposed course of action is legal and ethical, but also to be able to advise the commander whether the proposed course of action is a prudent one. This role requires the SJA to bring a perspective to problem solving that is broader than the confines of what is legal or not legal. As counselor, the SJA must at times consider the national and military policy implications of a given course of action that may weigh in favor of advising against it even though it may be technically legal.

B. THE DEPARTMENT OF THE NAVY AS THE CLIENT

Perhaps the most important issue in describing the role of the SJA is identifying the client to serve. The SJA must know whose interests to represent and to whom is owed the ethical responsibility of confidentiality. The client that the SJA represents is not the MEU or MSE commanders; rather, the client is a broader entity: the Department of the Navy (DON), as

acting through these commanders. The Rules of Professional Conduct governing Navy and Marine JAs state that a U.S. government attorney “represents the Department of the Navy . . . acting through its authorized officials.”¹⁵ “Authorized officials” include “the heads of organizational elements within the naval service, such as the commanders of fleets, divisions, ships and other heads of activities.”¹⁶ Clearly, the MEU and MSE commanders are authorized officials.

However, it must be emphasized that these commanders are not the clients. The Rules of Professional Conduct state:

When one of the officers, employees, or members of the DON communicates with the covered USG attorney [such as a MEU SJA] on a matter relating to the covered USG attorney’s representation of the organization on the organization’s official business, the communication is protected from disclosure to anyone outside the DON by Rule 1.6 [the rule governing confidentiality]. *This does not mean, however, that the officer, employee, or member is a client of the covered USG attorney. It is the DON, not the officer, employee, or member, that benefits from Rule 1.6 confidentiality.*¹⁷

Thus, when the MEU SJA advises commanders on issues such as ROE or the law of war, this advice may be disclosed to interested higher DON commanders but not disclosed outside the DON without DON consent.

Understanding that the DON is the client should also guide the type of advice that the SJA provides commanders. The SJA must balance the commanders’ goals against broader DON interests. Take the example of ROE advice. A commander may have very good reasons for wanting to

¹⁵ See U.S. DEP’T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL INSTR. 5803.1B, PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL encl. 1, para. 13 (11 Feb. 2000) [hereinafter JAGINST 5803.1B] (The Rules of Professional Conduct are contained in Enclosure 1; Rule 1.13 discusses the DON as the client). Of note, defense counsel and legal assistance attorneys form attorney-client relationships with their individual clients. *Id.* An interesting question is whether a MEU SJA can simultaneously represent the DON and provide legal assistance to Marines in the unit. For a discussion of this issue, see *infra* Chapter 9, Section V.

¹⁶ JAGINST 5803.1B, *supra* note 15, at para. 13.

¹⁷ *Id.* at para. (g)(1)(c) (comment to Rule 1.13) (emphasis added).

push the edge of the ROE envelope to accomplish the mission. However, the DON client may be better served by a more conservative ROE stance. In such an instance, the SJA should provide advice consistent with the DON position. On the other hand, a commander may desire a more restrictive ROE posture than the DON client deems appropriate; again, the SJA should tailor the advice in light of the DON position. Highlighting that DON interests are paramount, the Rules of Professional conduct state:

If a covered USG [U.S. government] attorney knows that an officer, employee, or other member associated with the organizational client is engaged in action, intends to act or refuses to act in a matter related to the representation that is either adverse to the legal interests or obligations of the Department of the Navy or a violation of law which reasonably might be imputed to the Department, the covered USG attorney shall proceed as is reasonably necessary in the best interest of the naval service.¹⁸

C. MEU SJA TRAINING

Each of these roles—judge, advocate, and counselor—requires the SJA to draw on the full range of professional training and experience. However, it is incumbent upon the SJA to seek out necessary additional training for the billet immediately upon being identified for assignment to a MEU. If possible the SJA should arrange TAD (funded through either MEU, MEF, or HQMC sources) to attend the Basic Operational Law Training (BOLT) at the Naval Justice School (NJS). If the SJA has not attended or cannot attend BOLT, the SJA should at least attend the Law of War Workshop (LOWW) offered at The Judge Advocate General's School, U.S. Army (TJAGSA). In addition to BOLT or LOWW, the SJA should attend either the Operational Law Seminar at TJAGSA or the Law of Military Operations Course at NJS. These latter courses provide a greater focus on the type of operational law issues that the MEU SJA can expect to encounter while deployed. Other courses which the MEU SJA should consider in preparation for a MEU(SOC) tour are the Intelligence Law Workshop, Fiscal Law Course, and Legal Assistance Course, all offered by TJAGSA.

¹⁸ *Id.* at para. 13(b) (comment to Rule 1.13).

CHAPTER 3

THE JUDGE ADVOCATE'S ROLE IN THE RAPID RESPONSE PLANNING PROCESS

I. INTRODUCTION

This chapter discusses the role of the judge advocate (JA) in staff planning during deployed Marine Air-Ground Task Force (MAGTF) operations. While the focus is on the Marine Expeditionary Unit (MEU) and the MEU Staff Judge Advocate (SJA) by way of illustration, the topics addressed have applicability no matter the size of the MAGTF.

II. THE SJA ROLE IN RAPID RESPONSE PLANNING AND RULES OF ENGAGEMENT DEVELOPMENT

One of the characteristics of a MEU(SOC) is the ability to plan and commence execution of a mission within six hours of receiving an alert, warning, or execute order.¹ The Rapid Response Planning Process, commonly referred to as R2P2, is the planning mechanism that enables the commander and his staff to conduct crisis action planning in keeping with the six steps of the Marine Corps Planning Process (MCP): 1) Mission Analysis; 2) Course of Action (COA) Development; 3) COA Wargame; 4) COA Comparison/Decision; 5) Orders Development; and 6) Transition to Begin Mission Execution (launch of forces).²

The SJA plays a critical role in R2P2. The purpose of this section is to describe in detail the various R2P2 steps and how the SJA can best support the commander in staff planning and ROE development. Walking through each step of the process and discussing the SJA's role in each will

¹ U.S. MARINE CORPS, ORDER 3120.9B, POLICY FOR MARINE EXPEDITIONARY UNIT (SPECIAL OPERATIONS CAPABLE) (MEU(SOC)) para. 4(a)(2)(b)(2) (25 Sept. 2001).

² *Id.* at (4)(a)(2)(d)(23). See also MARINE CORPS WARFIGHTING PUBLICATION 5-1, MARINE CORPS PLANNING PROCESS (5 Jan. 2001) (C1, 24 Sept. 2001) (Change 1 includes an additional appendix discussing how R2P2 fits within the broader Marine Corps Planning Process). Many times a MEU will use a slower version of its R2P2 Standing Operating Procedure even when rapid planning is not required, such as when conducting deliberate planning.

accomplish this. The overarching theme throughout the entire process is the vital necessity of complete SJA integration into the staff.

With slight differences, all of the MEUs follow the same basic R2P2 scheme. By way of illustration, this section will use the standing operating procedure of a representative MEU, the 26th. Relevant excerpts from the 26th MEU(SOC) R2P2 SOP are included in Appendix 3-1. A prospective MEU SJA should obtain a copy of the relevant MEU R2P2 SOP from the MEU S-3 and read it upon assuming the billet.

Following the general tenets of the six-step MCPP, R2P2 is broken down into a series of events that occur along the six-hour rapid response timeline: 1) Receipt of Mission/Warning Order (Time 00:00); 2) First Meeting of the Crisis Action Team (CAT)/Mission Analysis (Time 00:00–00:30); 3) COA Development (Time 00:30–01:00); 4) Second CAT Meeting/COA Presentation and Selection (Time 01:00–01:30); 5) Detailed Planning (Time 01:30–03:00); 6) Confirmation Brief (Time 03:00–04:00); 7) Command and Staff Supervision (Rehearsals) (Time 04:00–06:00); and 8) Mission Launch (Time 06:00).

A. RECEIPT OF MISSION/WARNING ORDER (00:00)

R2P2 begins with the receipt of some type of initiating order from higher, although it can begin in the absence of an order, such as when the MEU leans forward in anticipation of a potential mission. The order may appear as a formal warning or execute order via message traffic, or it even may be something as informal as a phone call or e-mail to the MEU commander. Regardless of the triggering event, this first R2P2 step involves a meeting of the Orders Group, typically comprised of the MEU and PHIBRON (Amphibious Squadron) COs and operations officers. The Orders Group conducts a quick mission analysis and makes a determination as to what action should be taken.

If the Orders Group decides that more extensive staff planning is warranted, the Crisis Action Team (CAT), discussed below, is called away. Words to the effect of "convene the crisis action team" will be announced over the ship's internal speaker system (the 1MC) or, if not on ship, passed by word of mouth. Absent some prior knowledge of the mission, this is the first point where the SJA, a member of the CAT, becomes involved. If the SJA is going to be located somewhere on the ship where the 1MC cannot be

heard clearly, the SJA should advise another CAT member of his location so that he can be notified.

B. CAT I: MISSION ANALYSIS (00:00–00:30)

The designated CAT meeting place invariably is a cramped space aboard the ship, usually near the Landing Force Operations Center (LFOC). CAT membership will vary, but at a minimum will include the MEU and PHIBRON primary staffs.³ Once called away, the MEU SJA should waste no time in gathering materials and proceeding directly to the CAT. For one, time is of the essence in crisis action planning. For another, seating is limited. Most importantly, the SJA must arrive early enough to obtain a copy of the limited number of warning orders that are reproduced to be able to ascertain the relevant ROE and to have enough time to prepare a briefing for the CAT.

The MEU S-3 (or S-3A) runs the CAT. The CAT is a regimented process that follows a set sequence of fill-in-the-blank, pre-formatted slides. Once roll call is taken, the S-3 briefs the general situation, the higher headquarters mission statement, and the friendly situation. The MEU S-2 and PHIBRON N-2 follow with an initial orientation and intelligence update. The MEU S-3 then leads a quick discussion of any key personnel that need to be cross-decked from the other ships in the Amphibious Ready Group (ARG) and a listing of MEU assets and shortages for the mission at hand.⁴ At this point roughly ten minutes have elapsed.

Now begins the actual mission analysis. All tasks specified by higher are listed. Any tasks unmentioned by higher that nonetheless must be completed to accomplish the mission (“implied” tasks) are listed. Any contingency missions that must be planned, such as mass casualty or tactical recovery of aircraft and personnel (TRAP), are listed.⁵ Any potential follow-on missions that might result from the current mission are identified. Any assumptions that must be made to fill information gaps that, if unanswered, would restrict or prevent further planning are identified. Any

³ A sample CAT roll call slide is included in Appendix 3-1.

⁴ Sample slides are included in Appendix 3-1.

⁵ Other contingency missions include Sparrowhawk (a reinforced platoon-sized standby contingency force); Bald Eagle (company-sized standby force); Direct Action (immediate assault); Maritime Interdiction Operation/Visit, Board, Search, and Seizure (MIO/VBSS); Casualty Evacuation (CASEVAC)/Medical Evacuation (MEDEVAC); Emergency Defense of the Amphibious Task Force (EDATF); and an air strike/destruction mission.

limitations, whether prohibitions on force activities (“restraints”) or activities that the force must accomplish (“constraints”), are identified. Some MEUs have the SJA brief the ROE at this point, considering the ROE a form of “restraint.” Other MEUs, such as the 26th, brief the ROE after limitations, recognizing that ROE many times can be enabling rather than just restricting. The ROE briefing is discussed below. The end product of mission analysis is a restatement of the MEU mission. A listing of any ambiguities in the warning order that need to be raised with the higher command to better clarify the mission follows the restated mission.⁶ Roughly twenty to twenty-five minutes have elapsed.

After the mission analysis is complete, the S-2 leads a discussion that produces a listing of pieces of information critical to the commander’s decision-making process (Commander’s Critical Information Requirements (CCIRs)).⁷ The S-3 then leads a discussion to determine whether Reconnaissance and Surveillance (R&S) is necessary. The MEU and PHIBRON COs then brief their initial planning guidance for the development of courses of action (COAs), which are broadly described schemes of maneuver for accomplishing the mission. Of note, the mission analysis may reveal that multiple missions need to be planned; for example, if R&S is deemed necessary, separate COAs for an R&S mission must be developed. After the initial planning guidance, cross-deck requirements are reviewed. Finally, those individuals necessary for COA development planning are identified. CAT I then breaks for COA development, ideally no more than thirty minutes after the CAT roll call.

One reason for describing CAT I in such detail is that it is a collaborative effort in which the SJA must play an engaged role. For instance, every member of the CAT is expected to assist the S-3 in poring through the warning order and identifying specified tasks or assisting in the process of determining CCIRs or limitations or making assumptions. While CAT members primarily should focus on their particular areas of expertise, everybody is expected to contribute to the overall mission analysis. The SJA is no exception.

⁶ A sample assumptions slide is included in Appendix 3-1.

⁷ CCIRs are further broken down into Priority Intelligence Requirements (PIRs), Intelligence Requirements (IRs), Friendly Forces Information Requirements (FFIRs), and Essential Elements of Friendly Information (EEFIs).

The other reason for discussing CAT I in such detail is to provide the contextual framework for understanding the MEU SJA's role, particularly the CAT I ROE brief. Taking a step back to the initial CAT call away, the SJA should have a pre-packaged binder or folder containing materials necessary for the CAT. Such materials include mundane items like an alcohol pen for slides and note taking material. It is also useful to have resource material handy; the *Operational Law Handbook*⁸ and copies of the *Standing Rules of Engagement for US Forces*⁹ and NATO MC 362¹⁰ are recommended. Most importantly, the SJA must have a pre-formatted slide(s) for the ROE brief.¹¹

For the purposes of CAT I, the ROE brief should not be a lengthy dissertation on all the relevant ROE. Rather, the brief should be a short—no more than one- to two-minute—explanation of how the applicable ROE will impact mission analysis and COA development. CAT I is not the time, for example, to go into a detailed discussion of hostile act and hostile intent. The SJA should speak with a sense of urgency yet clarity, speak loudly, and avoid legalese. The following briefing topics are suggested: 1) the ROE generally in effect (e.g., SROE, a NATO operations order ROE annex, or other ROE source); 2) any specific ROE in effect, such as weapons or ordnance restrictions or forces declared hostile; 3) any requests for supplemental ROE measures or clarifications that might be necessary in light of the mission; 4) any potential law of war concerns associated with the mission; and 5) any miscellaneous legal issues that might impact COA development.

The SJA will have little time to prepare this brief—essentially, the fifteen minutes or so between receipt of the warning order and the brief itself. That is why pre-formatted slides are so important. By having a standard, fill-in-the-blank form, the SJA in short order can simply write in or circle relevant information on the slide while still paying attention and

⁸ INT'L AND OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK (2002) [hereinafter OPLAW HANDBOOK].

⁹ CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01A, STANDING RULES OF ENGAGEMENT FOR U.S. FORCES (15 Jan. 2000) (partially classified document) [hereinafter SROE].

¹⁰ North Atlantic Military Committee, MC 362 encl. 1, NATO Rules of Engagement (9 Nov. 1999) [hereinafter NATO MC 362].

¹¹ Some West Coast MEUs do this differently, taking fifteen to thirty minutes after receipt of the warning order to prepare an overall PowerPoint presentation for CAT I, of which ROE is a slide that the SJA may or may not brief.

contributing to the ongoing CAT. Two sample MEU SJA CAT I ROE brief slides are included in Appendix 3-2.

This begs the question of where the SJA will find the relevant ROE information. As mentioned earlier, the triggering event for R2P2 may take the form of an e-mail or alert order and contain little to no information about ROE. Moreover, even formalized warning orders oftentimes contain scant ROE information, such as “CJCSI ROE in effect” with no further elaboration.¹² That said, the SJA nonetheless should first read the order in detail, paying particular attention to “coordinating instructions” (where ROE normally are found), but keeping in mind that ROE can appear anywhere in an order. For example, the higher commander’s intent may emphasize that minimizing collateral damage is a top priority.¹³ In broader terms, the SJA should analyze the entire mission and situation to craft the ROE brief.

To flesh this out in more detail, assume that the MEU has been ordered to prepare to conduct a noncombatant evacuation operation (NEO). Further assume that the triggering event was an e-mail from 6th Fleet to the MEU CO that made no mention of ROE. Following the five suggested ROE briefing topics listed above, the SJA does have enough information to fashion a brief. First, the SJA can look at the broader situation and make a reasoned assumption that the SROE are in effect (assuming no coalition forces are involved). Second, because of the inherently permissive nature of the SROE, the SJA can note that no specific weapons or ordnance restrictions are in effect other than the facts that RCA have not been authorized, that no forces have been declared hostile, and that collective self-defense has not been authorized.¹⁴ However, the SJA can mention the

¹² The scarcity of ROE information is particularly acute during predeployment training exercises conducted by the MEF Special Operations Training Group (SOTG) and/or the MEF G-7. Typically, neither SOTG nor the G-7 have judge advocates assigned as permanent advisors, although steps in this direction appear to be taking place on both coasts. The MEU SJA is then in the difficult position of not having a notional higher command well-versed in ROE, but nonetheless expected to route ROE requests through that command. This dilemma also arises in unit-run situational training exercises (STXs) when the SJA basically must serve as his own notional higher command.

¹³ A commander can place a greater premium on minimizing collateral damage than is necessary under the law of war. If this is the case, the SJA should highlight that the higher commander has placed a more demanding proportionality standard on the MEU. *See generally* CENTER FOR LAW AND MILITARY OPERATIONS, LAW AND MILITARY OPERATIONS IN KOSOVO, 1999-2001: LESSONS LEARNED FOR JUDGE ADVOCATES 50-51 (2001) [hereinafter KOSOVO LESSONS LEARNED].

¹⁴ Keep in mind that the SROE is not inherently permissive across the board. Some actions or weapons require specific prior approval from higher command. *See* SROE, *supra* note 9, at para. 6(c). To obviate the need to continually brief the CAT on those specific weapons and actions that require prior approval, the SJA already should have educated members of the CAT as part of the overall unit ROE training program. Even though by this logic it would seem unnecessary to brief that no forces are declared hostile and that

pertinent SROE measures that are specifically in effect for NEOs¹⁵ and can caution that any Marine Security Guard (MSG) Marines at the Embassy will be operating under different ROE.¹⁶ Third, the SJA can state, subject to the commander's approval, that a supplemental request for RCA and collective self-defense authorization will be submitted. Fourth, the SJA can mention pertinent law of war concerns,¹⁷ such as the proximity of any churches or historical landmarks that might impact COA development.¹⁸ Fifth, the SJA can briefly highlight the rules regarding searching foreign diplomats, a miscellaneous legal issue that might impact COA development.¹⁹ Thus, even with very little information imparted in a warning order, the SJA has the knowledge and resources to craft an ROE brief.

C. COA DEVELOPMENT (00:30–01:00)

Recall that CAT I concluded with a listing of those individuals required to assist in COA development. Most times the mission commander²⁰ will select the SJA as a required participant. Regardless, the SJA should be present during COA development to answer any ROE questions that might arise and to ensure that the COAs are in keeping with the ROE and the law of war. In the event that simultaneous COA development planning cells are necessary, such as for an R&S insertion to support the mission, the SJA will either need to rotate between cells or request the assistance of the PHIBRON JAG.²¹

RCA and collective self-defense are not authorized, these are three items that most MEU SJAs have concluded are worthy of emphasis.

¹⁵ See *id.* at encl. G (confidential).

¹⁶ For a discussion of these and other NEO legal issues, see *infra* Chapter 4, Section IV.B.

¹⁷ Some might resist the notion of incorporating the law of war into an ROE brief, arguing that the law of war is constant and needs no repeating. However, despite the best training efforts, operators will not be as attuned to the law of war as the SJA, and the SJA should point out any mission-specific law of war concerns. That is not to say that the SJA should regurgitate basic law of war principles or that ROE operations order annexes should be lengthy restatements of the law of war.

¹⁸ The SJA can obtain this information by doing a quick map study; the S-2 will often brief nearby schools, churches, and landmarks—another reason the SJA needs to be engaged in the overall CAT even while preparing the ROE brief.

¹⁹ See *infra* Chapter 4, Section IV.B.3 (discussing searching foreign diplomats).

²⁰ Depending on the mission, the mission commander typically is one of the Main Subordinate Element (MSE) COs, the Maritime Special Purpose Force (MSPF) commander, or the SEAL Detachment OIC.

²¹ The PHIBRON JAG is the Navy judge advocate assigned to the PHIBRON staff, typically a fairly junior lieutenant. The MEU SJA should develop a close working relationship with the PHIBRON JAG, if for no other reason than to help in the ROE development process. This is particularly important if the MEU SJA departs the ship as a member of the Forward Command Element (FCE) or if the ARG is conducting split operations, which typically requires one of the two lawyers to cross-deck to another ship. The SJA should take the time to ensure that the PHIBRON JAG is comfortable providing ROE guidance and staff support

The mission commander's operations officer typically conducts COA development, which will take place in a designated location outside the CAT room. A COA is a broadly described plan to accomplish the mission. During CAT I initial planning guidance the MEU or PHIBRON CO will specify how many COAs the staff should develop for consideration.²² Each COA is supposed to be distinct from the others, with one COA generally being an all-weather option (i.e., no helicopters or small boats).

COAs are painted in such broad brush strokes that it may be difficult for the SJA to identify any potential ROE or law of war issues. A typical COA might be described as thus: phase one, force departs ARG shipping via air; phase two, force moves to objective area; phase 3, actions on the objective; phase 4, movement from objective to extract; phase 5, withdrawal to ARG shipping. Nonetheless, the SJA should be present to identify any obvious issues that would make the COA unsupportable from a legal perspective.²³ If such issues exist, the SJA should raise them immediately during COA development rather than waiting for the staff estimates of supportability during CAT II, discussed below.

While the presence of the SJA during COA development is critical, it impacts the SJA's ability to begin the ROE development process. For instance, in the example ROE brief above, the SJA noted that a request for RCA approval would be submitted. But the SJA cannot submit the request if attending COA development, and COA development is followed by other R2P2 events that the SJA must attend. One solution is to get assistance from the PHIBRON JAG or the MEU SJA legal clerk. Another is to carry a laptop into COA development and begin drafting the request. Pre-formatted ROE supplemental request templates can save a great deal of time. Whatever the solution, the fact remains that if ROE supplementals or

for Marine operations. By the same token, the MEU SJA should be prepared to handle Navy-specific ROE and law of the sea issues.

²² Whether this guidance comes from the MEU CO or PHIBRON CO depends upon which is the supported versus the supporting commander. The supported commander essentially is the commander responsible for the execution of the mission, and it is this commander who will designate how many COAs are desired and eventually choose a COA. The supporting commander fulfills a support function. These terms have come to replace the traditional concepts of Commander Amphibious Task Force (CATF) and Commander Landing Force (CLF).

²³ Such issues are fairly rare at this point in the planning process. However, one example that occurs with some regularity in MEU training is when the ROE states that fixed- or rotary-wing assets may not be used for mission accomplishment, but yet, for example, the COA contemplates a Cobra strike on the objective prior to ground troops sweeping through, a tactic that would run afoul of the ROE.

clarifications are necessary, particularly in light of the compressed six-hour window, the SJA must begin the process as soon as CAT I adjourns.

In reality, the six-hour time window²⁴ affords neither the time to prepare message traffic ROE requests (and wait for a message traffic response)²⁵ nor the time and available personnel to convene an ROE planning cell. The more expedient means of submitting ROE requests that need a rapid response is via secure phone calls or e-mails to the higher SJA. Similarly, gathering all key personnel into an ROE planning cell is difficult if not impossible. The more feasible course is for the SJA to hold quick, informal discussions, as time allows, with the MEU and mission commanders and the MEU and mission operations officers to shape the ROE as a collaborative effort.²⁶

By the same token, COA development is not too early to begin drafting a mission-specific ROE card, if one is necessary.²⁷ If the ROE for the mission is settled, the process can and should begin immediately. If requests for ROE supplementals or clarification are necessary, the card cannot be finalized, although settled ROE provisions can be drafted. To facilitate the ROE card drafting process, the SJA should keep sample ROE cards on file, categorized by MEU(SOC) mission.²⁸ For example, if the mission is a NEO, many if not all of the ROE provisions will be very similar to prior NEO missions. Drafting the new NEO card thus becomes a matter of fine-tuning the ROE to the specifics of the current mission.

D. CAT II: COA PRESENTATION/SELECTION (01:00–01:30)

The COAs produced during COA development are presented during the second meeting of the CAT. The CAT reconvenes, and roll call is taken. The MEU S-3 provides an update to the general situation; the MEU and

²⁴ In the vast majority of real-world missions, the MEU will have more than six hours to plan the mission. However, the fact remains that six hours is the training standard, and MEU SJAs must condense ROE development into this window. In predeployment training exercises conducted by SOTG or the G-7, ROE development during the six-hour window tends to become somewhat artificial. As discussed earlier, SOTG and the G-7 typically are not ROE savvy, and sometimes the ROE dialogue with this notional higher command reflects this. In fact, particularly after SOTG and the G-7 have become comfortable with the MEU SJA, they will let the MEU SJA essentially act as his own higher command for ROE development purposes.

²⁵ For a discussion of ROE message formats, see SROE, *supra* note 9, at encl. J, app. F.

²⁶ See *infra* Chapter 4, Section II.A (discussing who is responsible for ROE development during staff planning).

²⁷ See *infra* Chapter 4, Section II.B (discussing ROE cards).

²⁸ Appendix 4-2 contains sample MEU mission-specific ROE cards.

PHIBRON S-2 and N-2 update the intelligence picture. This is an appropriate time for the SJA to provide any available updates to extant ROE issues.²⁹ Either the mission commander or mission S-3 then briefs the COAs. As mentioned above, COAs are briefed in broad brush strokes, describing the overall concept of operations (CONOPS), the task organization, major equipment, and estimated time to complete each phase of the mission.³⁰ Advantages and disadvantages of each COA are noted to aid in COA selection.

After the COAs are presented, each key member of the CAT will identify a preferred COA during a process called “staff estimates of supportability.” A matrix display records each staff member’s preferred COA.³¹ The SJA should take detailed notes during COA presentation to help articulate a cogent recommendation as the staff estimate. The MEU CO will expect a concise statement (no more than a sentence or two) supporting the preferred COA, not a lengthy discussion of the merits of each COA without a clear recommendation.³² Moreover, most MEU COs want an affirmative recommendation, not a generalized endorsement that all the COAs are legally supportable. Be prepared, however, to discuss legal sufficiency if asked.

It cannot be emphasized enough that the SJA’s staff estimate should be based on a legal analysis; in other words, this is the time for the SJA to stay in the legal “lane” or “box.” The MEU CO does not want to hear the SJA opine about tactics or logistics or communications when other staff members have that relevant expertise. The SJA should select a COA based on a legal rationale, even if the COA flies in the face of a basic tactical or logistical precept and probably will not be chosen by the supported commander. While it oftentimes is difficult to discern stark legal distinctions between the offered COAs—which many times are merely transportation variations on the same basic plan—a close analysis usually reveals some legal reason why one plan should be preferred. For example, if

²⁹ Because this step is not delineated in most MEU(SOC) R2P2 SOPs, the SJA should first clear this with the MEU S-3.

³⁰ Sample COA slides are included in Appendix 3-1.

³¹ A sample staff estimate of supportability slide is included in Appendix 3-1.

³² Different commanders may desire different types of recommendations. Most commanders will want the SJA to affirmatively pick one COA and to state the reason why. However, some commanders may want a more nuanced recommendation, such as, “COAs two or three, but not one, for the following reasons.” Additionally, some commanders will want the SJA to state whether or not all of the COA’s are supportable from a legal perspective prior to choosing a specific COA, although this practice seems to be falling out of favor.

three NEO COAs differ only in that two involve significant ground movement, the SJA might select the heliborne option because it minimizes the likelihood of ground forces facing ROE decision points when confronting hostile forces en route.³³

After considering the staff estimates, the MEU CO selects a COA and provides the commander's intent and additional planning guidance. Planners are identified to begin the process of detailed planning for the selected COA. Once again, the MEU SJA should be identified, and, if not, nonetheless should participate in detailed planning.

Keep in mind that back-to-back COA selections may take place if the staff is planning simultaneous missions, such as the actual mission plus its R&S. CAT II would then adjourn into two simultaneous detailed planning sessions, requiring the SJA to either bounce between planning sessions or enlist the aid of the PHIBRON JAG.

E. DETAILED PLANNING (01:30–03:00)

The purpose of detailed planning is to fully develop the COA into a mission-ready plan. The SJA's role, as during COA development, is to identify or answer pertinent legal issues that arise during the course of planning. Issues can arise from any corner, but the SJA should be particularly sensitive to the following recurring issues: 1) the fire support plan—are targets and ordnance consistent with the ROE and law of war? 2) actions on the objective—is the scheme of maneuver (in the event of a raid or deliberate attack) consistent with the ROE and law of war?³⁴ 3) ingress and egress routes—are forces paying heed to applicable international sovereignty issues? 4) weapons and ammunition—are all authorized under

³³ Some SJAs have found it useful to have handy a pre-prepared list of potential concerns that could translate into rationales for a legal staff estimate. Depending on the mission and the situation, examples might include: 1) choosing the COA that gets forces on the ground the fastest to help prevent an escalation of violence from a rapidly deteriorating situation; 2) choosing the COA with the smallest force composition to minimize the footprint ashore; 3) choosing the COA that will have the least impact on noncombatants; or 4) avoiding COAs that present law of war concerns, such as utilizing reconnaissance teams in civilian clothes (*see infra* Chapter 4, Section IV.A.3).

³⁴ Particularly when the raid force is a line infantry company, as opposed to the more specialized MSPF, company and platoon commanders have a tendency to fall back on tried and true tactics that may run afoul of the ROE, such as a support element indiscriminately initiating a base of fire and an assault element sweeping across the objective. If the ROE requires positive identification of targets or if no forces are declared hostile, such tactics would violate the ROE.

ROE and law of war?³⁵ and 5) the enemy prisoner of war (EPW)/detainee plan—is the plan consistent with the mission, ROE, and law of war, or does it recite the perhaps inapplicable rote mantra of “6 S’s and T”?³⁶

While participating in detailed planning, the SJA must also continue the ROE development process, facing again the dilemma of not being able to be in two places at the same time. The ROE request and authorization process may be ongoing, and ROE cards may require production. A recommended solution, in addition to utilizing the PHIBRON JAG or legal clerk or bringing a computer, is to proactively inquire into the recurring issues listed above (and any others that might be anticipated) and then, once satisfied, temporarily leave the detailed planning session to continue the ROE development process.

The ninety minutes allocated for detailed planning is the SJA’s best opportunity to finalize production of mission-specific ROE cards.³⁷ The MEU SJA legal clerk can and should play a pivotal role in this process.³⁸ First, some SJAs have used the clerk as a sounding board for the card, ensuring that it will be understood by all ranks.³⁹ Second, once the card is drafted and approved by the MEU CO,⁴⁰ the clerk then can take over the production and dissemination process.⁴¹

³⁵ For example, commanders might incorrectly assume that riot control agents require no authorization, or aviators might plan for ordnance that would inflict far too much collateral damage given the mission and situation.

³⁶ Search, secure, segregate, silence, safeguard, speed to the rear, and tag. While these concepts are generally applicable for handling enemy prisoners of war (EPW) in an armed conflict, handling detainees in operations other than war typically requires more thought and detail. For instance, there may be no “rear” to speed the detainees to, or the plan may call for an alternative method of handling detainees. *See infra* Chapter 4, Section IV.A.2 (discussing the tactic of flex-cuffing detainees and leaving them on the objective). Also, the SJA should be wary of operators loosely using the term “EPW” and should highlight the legal ramifications of using the term.

³⁷ Some SJAs do not draft the ROE card until after the confirmation brief.

³⁸ The importance of having a good Marine as a legal clerk cannot be overemphasized. To the extent possible, the SJA should play an active role in the clerk selection process. Typically, the MEF SJA will task the Legal Service Support Section (LSSS) to provide the clerk. Some MEU SJAs have gone so far as to speak directly to the MEF SJA and/or LSSS OIC to ensure that the clerk is a quality Marine. The MEU SJA should also seek out every opportunity to send the legal clerk to available courses for additional training.

³⁹ Some SJAs have found it useful to sample draft ROE cards on young Marines preparing to go downrange to ensure that the card is understandable and not too legalistic.

⁴⁰ Some MEU COs may not want to see the card. On the other hand, not only may the MEU CO want to see it, but so may the MEU S-3 or lower-level commanders. The SJA should have an early discussion with the MEU operators to clarify who wants to review the cards before they are disseminated.

⁴¹ One method of producing cards is to utilize the ship’s print shop. Another method is to simply have the legal clerk produce the cards. The latter method gives the SJA greater control over the process, although the cards may not be of the same quality as the print shop, particularly if the SJA wants the cards

F. CONFIRMATION BRIEF (03:00–04:00)

Detailed planning is conducted with an eye towards the confirmation brief, the next step in the R2P2 process. The confirmation brief essentially is an oral order, where all key mission planners brief their aspects of the mission. The overall purpose of the brief is to ensure that all facets of the plan have been coordinated and synchronized, ranging from the fire support plan to the communications plan to the detailed actions on the objective. Once complete, the confirmation brief serves as the operations order for the mission, an order that cannot be changed without the supported unit commander's approval. Confirmation briefs typically are held in the ship's wardroom and are attended by as many relevant personnel as space allows—at a minimum, the CAT members, the mission and sub-element commanders, and members of all planning cells involved in preparing the plan.

Each MEU has a list of required presenters and a set briefing order depending on the mission.⁴² The SJA is a required presenter. Generally speaking, the MEUs tend to place the SJA brief either early in the presentation or near the end. The SJA is expected to brief any relevant legal concerns for the mission, particularly the ROE. Some MEUs have the SJA prepare PowerPoint slides and submit them to the S-3 to be included in an overall presentation. Other MEUs have the SJA prepare overhead slides to be projected separately during the SJA brief. In terms of content, some MEU SJAs simply brief an enlarged version of the applicable mission-specific ROE card.⁴³ Others prepare a briefing of varied legal concerns, to include highlights from the ROE.

Similar to the ROE brief during CAT I, the SJA should brief with a sense of urgency, taking no more than a few minutes.⁴⁴ Know the

laminated. If the SJA decides to produce his own cards, the clerk should have multiple colors of card stock paper available, as well as a large paper cutter.

⁴² A sample list of a briefing order for a specific mission is included in Appendix 3-1.

⁴³ One decided advantage to having the ROE cards prepared prior to the confirmation brief is that the cards can be more easily cross-decked to the Marines on the other ships. Representatives from units on the other ARG ships involved in the mission will attend the confirmation brief. Assuming the ROE is finalized, these representatives can hand-carry the cards back to their respective ships upon completion of the confirmation brief. If the ROE is not finalized, one option is to e-mail the ROE card to the other ships for their own production and dissemination.

⁴⁴ On the one hand, the intended audience for the confirmation brief is the supported commander. On the other hand, the rest of the audience is in attendance to essentially receive the oral order and gather information to impart to their Marines. The SJA thus has to walk a fine line between briefing the larger

presentation order (usually posted for all to see) and be prepared to start briefing as soon as the prior presenter finishes. Do not waste time with any surplus language. Do not read the slides; talk to the critical points, perhaps discussing an ROE scenario anticipated to arise during the conduct of the mission. Upon completion, do not waste time asking if there are any questions; simply finish the brief and walk away for the next presenter.⁴⁵ The entire confirmation brief, sometimes including upwards of thirty presenters, is supposed to be completed within one hour. Nobody will appreciate an SJA who talks too much.

The SJA also should pay close attention to what the other presenters are briefing. Even though the SJA is an integral participant in COA development and detailed planning, there is always the possibility that the confirmation brief will reveal significant legal issues that slipped through the planning cracks. If so, the SJA must bring these issues to the commanders' attention. For instance, the SJA should pay close attention to the fine print of tables of equipment and weapons loads,⁴⁶ air weapons release postures,⁴⁷ and the latest intelligence on the enemy's uniforms and disposition.⁴⁸

legal issues relevant to the supported commander and briefing the finer legal points relevant to the forces going ashore.

⁴⁵ There is a more subtle reason for doing this. An SJA who opens the floor to discussion may invite fact-specific questions from the audience at-large. The confirmation brief is neither the time nor the place for a lengthy debate on the intricacies of the ROE. Such debates should have either taken place during detailed planning or can be discussed after the confirmation brief. This is not to say that the SJA should disregard questions if they arise during the brief, it is just that the SJA should be mindful of not inciting a flood of situational dependent ROE questions at the brief.

⁴⁶ The SJA should particularly watch for riot control agents (if not authorized), claymore mines in the stand-alone trip-wire mode (which has implications under land mine treaties), and other weapons or ordnance that might raise the potential for disproportionate collateral damage.

⁴⁷ The air defense community uses the terms "weapons hold," "weapons tight," and "weapons free." The SJA should ensure that the use of these terms does not conflict with the applicable ROE. The SJA will also find that these terms many times do not neatly translate into the applicable ROE. Weapons tight means that air defense weapons may only engage targets recognized as hostile, while weapons hold means that the weapons may only be fired in self-defense or in response to a formal order. It is easy to see how the two terms might get confused in the ROE context. Weapons free means that air defense weapons may be engage any target not positively identified as friendly; again, it is hard to imagine ROE that would support this weapons posture.

⁴⁸ The enemy uniform may be a major factor in hostile act/intent determinations, and may be a major factor in positively identifying forces declared hostile. See *infra* Chapter 4, Section IV.A.1 (discussing forces declared hostile). The SJA should pay close attention to changes in the intelligence picture because ROE cards already may have been issued in reliance on the older intelligence.

G. COMMAND AND STAFF SUPERVISION (REHEARSALS) (04:00–06:00)

Once the “table has been slapped”⁴⁹ after the confirmation brief, the forces finalize their mission preparation and the staff continues to provide support. This latter point is critical; it is a mistake for staff planners to view the confirmation brief as the final culmination of R2P2 and to stop supporting the forces going downrange. The SJA must continue an active role in the ROE development and dissemination process.

The ROE itself may not be in its final form, requiring authorizations from higher for supplemental ROE requests.⁵⁰ In this case, the SJA must aggressively push for resolution. Even if the ROE is finalized, the SJA still has a role to play in ROE dissemination. Issuing the ROE card is not enough. The SJA should make the effort to observe element leaders issuing orders and conducting rehearsals and, as necessary, give ROE briefs to the Marines.⁵¹ Indeed, the role of the SJA in post-confirmation brief mission preparation arguably is the most important function of the SJA during R2P2.

H. MISSION LAUNCH (06:00)

The SJA’s role continues after forces have launched. In missions that contemplate an extended period ashore, the SJA actually may be part of the force. The SJA, however, will remain on the ship during most MEU(SOC) missions. It is imperative that the SJA remains abreast of the status of the mission(s). The best way to do this is to spend as much time as possible in the Landing Force Operations Center (LFOC). The LFOC Watch Officer, typically a MEU staff member,⁵² will maintain an execution checklist that tracks the progress of the mission(s). This checklist contains a series of code

⁴⁹ A common term that MEU staffs use to capture the notion that the confirmation brief represents the issuance of an oral operations order that cannot be changed without the supported unit commander’s blessing.

⁵⁰ It is commonly understood that the ROE may not be finalized prior to the confirmation brief table slap.

⁵¹ By this time, the unit ROE training program should have educated all the Marines on basic SROE guidance on self-defense and mission accomplishment. *See infra* Chapter 4, Section VI (discussing ROE training). Hours prior to launch, when Marines are busy with weapons checks and rehearsals and communications checks, is not the time to be discussing basic self-defense vignettes. Rather, leaders should be making sure that the Marines understand mission-specific ROE provisions and relevant hostile act/intent factors given the situation and mission. The SJA can certainly play a role in this, although one would hope that, through training, unit leaders would have the ROE knowledge and confidence to brief the Marines themselves.

⁵² Some MEU SJAs stand LFOC watch.

words, or “prowords,” that reflect significant events during an operation, such as force insert complete, actions on objective commenced, or force ready for extract.⁵³ The SJA can maintain a good measure of situational awareness by monitoring the execution checklist.

Beyond monitoring the checklist, the SJA should be near to field any legal issues that arise during the operation. For example, what if a small MEU force has launched to reinforce an American embassy, one of the Marines shoots a host nation civilian in self-defense, and now the host nation government wants custody of the Marine for a murder prosecution? Or what if the ambassador is trying to impose different ROE on the MEU Marines?⁵⁴ The SJA must be readily available to address these and other time-sensitive legal issues.

⁵³ A sample execution checklist is included in Appendix 3-1.

⁵⁴ See *infra* Chapter 4, Section IV.B (discussing ROE in noncombatant evacuation operations (NEOs) and embassy reinforcements).

CHAPTER 4

RECURRING RULES OF ENGAGEMENT AND LAW OF WAR ISSUES IN MARINE AIR-GROUND TASK FORCE OPERATIONS

I. INTRODUCTION

This chapter discusses a number of rules of engagement (ROE) and law of war issues that frequently arise in Marine Air-Ground Task Force (MAGTF) operations. While the focus again is on the Marine Expeditionary Unit (MEU) by way of illustration, the topics addressed have applicability no matter the size of the MAGTF. The chapter is divided into four parts: 1) a proposed course of fundamental ROE self-instruction; 2) generally applicable ROE issues; 3) mission-specific ROE and law of war issues; and 4) a concluding note on ROE and law of war training.

It should be noted from the outset that many of the issues discussed in this chapter do not have clear answers. Rather than ignore these controversial topics, this chapter strives to at least outline the underlying debates so that the SJA will be better equipped to provide informed advice. Furthermore, sometimes just knowing that an issue is unsettled can be helpful in its own right.

II. LEARNING THE FUNDAMENTALS OF ROE

An understanding of ROE fundamentals is necessary before delving into more sophisticated ROE issues. Ideally, the prospective MEU SJA will have received accession training in operational law and have attended one or more operational law courses.¹ ROE basics, however, can be self-taught. Listed in sequential form below is a recommended course of ROE self-study. Setting aside a few days to follow this program will pay dividends when the inevitable ROE issues arise and will lay the foundation for the more detailed ROE discussions to follow.

¹ See *supra* Chapter 2, Section V.C.

1. Read the ROE chapter in the *Operational Law Handbook*.²
2. Read the textual portions of CLAMO's *Rules of Engagement (ROE) Handbook for Judge Advocates [ROE Handbook]*;³ skim the appendices.
3. Read Chairman of the Joint Chiefs of Staff Instruction 3121.01A, *Standing Rules of Engagement for U.S. Forces (SROE)*.⁴ This is a lengthy document, but well worth the time to read in its entirety.⁵
4. Read NATO MC 362, *NATO Rules of Engagement*.⁶
5. Read Department of Defense (DOD) Directive 5210.56, *Use of Deadly Force and the Carrying of Firearms by DOD Personnel Engaged in Law Enforcement and Security Duties*.⁷
6. Review ROE training presentations prepared by other operational law JAs.⁸

III. GENERAL ROE ISSUES

The purpose of this section is to build upon this basic foundation of ROE knowledge by discussing in more depth some of the general ROE issues that recur in MAGTF planning and operations.

² INT'L AND OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK 67-74 (2002) [hereinafter OPLAW HANDBOOK].

³ CENTER FOR LAW AND MILITARY OPERATIONS, RULES OF ENGAGEMENT (ROE) HANDBOOK FOR JUDGE ADVOCATES (2000) [hereinafter ROE HANDBOOK].

⁴ CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01A, STANDING RULES OF ENGAGEMENT FOR U.S. FORCES (15 Jan. 2000) (partially classified document) [hereinafter SROE].

⁵ Even though this program of self-instruction might seem basic and intuitive, surprisingly few judge advocates have actually read the entire SROE. In fact, out of nineteen field grade judge advocates, representing all branches of service, in the Military Operations class at The Judge Advocate General's School, U.S. Army, 2001-2002 graduate course, all save one having prior operational law experience, only five had read the entire SROE.

⁶ North Atlantic Military Committee, MC 362 encl. 1, NATO Rules of Engagement (9 Nov. 1999) [hereinafter NATO MC 362].

⁷ U.S. DEP'T OF DEFENSE, DIR. 5210.56, USE OF DEADLY FORCE AND THE CARRYING OF FIREARMS BY DOD PERSONNEL ENGAGED IN LAW ENFORCEMENT AND SECURITY DUTIES (1 Nov. 2001) (C1, 24 Jan. 2002) [hereinafter DOD DIR. 5210.56].

⁸ In addition to the *ROE Handbook*, ROE presentations can be found on the Center for Law and Military Operations (CLAMO) databases at <http://www.jagcnet.army.mil>. This site requires registration. Additionally, a sample MEU SJA ROE/Law of War brief is included in Appendix 4-5.

A. THE ROE DEVELOPMENT RESPONSIBILITY DEBATE

The precise role that the SJA should play in ROE development has been the subject of debate for some time. Both JAs and operators seem to hold views along a spectrum: at one extreme is the view that ROE is solely a JA function; at the other extreme is the view that operators, not JAs, should be responsible for ROE development. The SROE takes a middle view that ROE development is a J-3 (operations) function in consultation with the SJA, who performs an advisory role only.⁹ The SROE notwithstanding, SJAs often assume the leading role in ROE development during MEU(SOC) staff planning.¹⁰

In large measure, this reliance on the SJA seems to be a product of three factors. First, as discussed in detail above, MEU(SOC) mission planners, already engaged in rapid planning for complex missions, may rely on the SJA for ROE development. Second, the majority of operators have not received the level of ROE training that JAs have (or at least are perceived by operators to have had), making it seem natural to place ROE development in the hands of the subject matter experts. Third, a perception exists among many operators that ROE are objectively predetermined and preexisting rules known only to lawyers; in other words, that for any given mission the SJA simply looks up the ROE in a book and lets the operators know what they can and cannot do.

The other extreme view, that JAs should have no role whatsoever in ROE development, similarly seems to be a product of factors. One factor is the notion that ROE are rules for commanders and operators, not lawyers. Understanding that the commander's intent and the mission at hand must shape ROE, the ROE development process therefore should, so the argument goes, fall under the operator's exclusive purview. Another factor is the notion (sometimes well-founded) that JAs do not have the requisite knowledge of tactics and weapons systems to provide informed ROE advice.

⁹ See SROE, *supra* note 4, at encl. L.

¹⁰ See U.S. MARINE CORPS, ORDER 3300.3A, U.S. MARINE CORPS LAW OF WAR PROGRAM encl. 4, para. 1 (21 Feb. 2002) (draft) (on file with CLAMO) (“Although the [SROE] clearly contemplates a supporting role for judge advocates in ROE development, experience has clearly established that the operating forces have, in large measure, placed the principal responsibility for ROE development with their judge advocates.”).

Upon closer analysis, the arguments at the ends of the spectrum do not seem persuasive. The better view recognizes the reality of the entrenched view in most of the operational community that ROE belong to lawyers, but then strives toward a more mutually collaborative ROE development process. JAs must understand that, for better or worse, many operators view them as the subject matter ROE experts (and, in fact, JAs most times are the ROE experts) and that these operators may try to relieve their planning burdens by abdicating responsibility for ROE development. Operators must understand that ROE are not fixed rules to be pulled off a shelf, but rather flexible rules that require vital operator input and vital legal input. Just as JAs should seek to improve their knowledge of weapons and tactics, operators should seek to improve their knowledge of ROE. In the final equation, just as ROE are a blending of legal, political, and operational concerns,¹¹ ROE development should be a blending of operational and legal expertise.

Although the SROE largely reaches this same conclusion, the only way that ROE development will manifest itself as a truly collaborative operator/lawyer process in those units where either extreme view is held is if the SJA educates the operators on how the process should work in theory and then executes it in practice. In terms of theory, the SJA should explain to the operators the permissive and flexible nature of the SROE and the ROE supplemental request procedure. In terms of practice, during staff planning the SJA should actively solicit input from those operators who do not realize how they can shape the ROE.

B. ROE CARDS

Issuing ROE cards has become standard practice in most MEUs.¹² These cards generally take one of three forms: 1) a standing card that reflects basic SROE principles; 2) mission-specific cards that reflect ROE unique to a current mission; and 3) force protection cards that reflect rules for the use of force during port visits and operational exercises.

¹¹ See Major Mark S. Martins, *Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering*, 143 MIL. L. REV. 1, 24 (1994).

¹² Some MEUs use ROE cards less than other MEUs. The 11th and 13th MEUs, for example, tend to disseminate mission-specific ROE in “smart packs” prepared by the S-3 shop, which contain other information such as communications frequencies.

Standing MEU ROE cards are intended to convey basic SROE guidance on self-defense and mission accomplishment that will always be in effect.¹³ The cards also often contain guidance on basic law of war provisions. As a matter of practice, these cards are printed on white paper, and are typically referred to as the “White Card.” Sample MEU standing ROE cards are included in Appendix 4-1.

Mission-specific ROE cards are intended to supplement the standing card by conveying ROE particular to the mission. For example, a mission-specific card might include information on forces declared hostile, weapons restrictions, detainee handling, or collective self-defense. These cards typically are color-coded to contrast with the standing white card or other mission-specific cards. Sample MEU mission-specific ROE cards are included in Appendix 4-2.

Force protection cards are intended to provide guidance on the use of force, particularly deadly force, for security measures in situations that fall short of an actual operational mission, such as port calls or exercises.¹⁴ It is difficult to have a standing force protection card because the rules may be different depending on the threat level and the MEU’s location. Sample cards are included in Appendix 4-3.

The fact that ROE cards have become such standard practice, not only in the MEUs but also in most operational units, should not necessarily lead to the conclusion that ROE cards are essential. It is useful to take a step back and evaluate the significance and utility of ROE cards. Those who favor ROE cards generally use a combination of one or more of the following arguments. First, ROE cards are a commander’s “get out of jail

¹³ A problem arises if the MEU is operating under NATO ROE because NATO ROE generally have a restrictive vice permissive regime for mission accomplishment. In other words, under NATO ROE, force generally cannot be used to accomplish the mission without a specific supplemental authorizing the use of force. *See infra* text accompanying notes 76-89. Thus, if the standing MEU card contains general SROE guidance on mission accomplishment (words to the effect of force may be used to accomplish the mission unless restricted by higher), the standing card will not be compatible with NATO ROE. One solution to this problem is to issue a new NATO ROE card that replaces, rather than augments, the standing SROE card. Another solution is to keep the basic SROE guidance in the standing card, but to specifically list in a mission-specific card those measures that *have not* been authorized under the NATO ROE. In other words, the SJA can communicate the NATO ROE using the logic of the SROE: force may be used to accomplish the mission except for the tactics/weapons specifically restricted on the mission-specific NATO card. This assumes that the higher NATO command has not issued an ROE card, in which case that card must be used.

¹⁴ *See infra* text accompanying notes 62-67 (discussing rules for the use of force during port calls and exercises).

free” card, serving as tangible evidence that his Marines should have known the applicable ROE in the event of an alleged ROE violation. Second, cards are an expedient method to impart ROE to Marines. Third, having the ROE readily available on a card gives Marines the opportunity to study the rules and commit them to memory.¹⁵ Fourth, commanders may be able to use cards as an information operations tool—for instance, demonstrating to the media that every Marine understands that any use of force will be measured, or letting hostile factions know that they will be engaged with overwhelming force.¹⁶ Finally, there exists the argument, perhaps unsatisfying but nonetheless commonly voiced, that issuing cards is an ingrained, time-tested practice that has worked in the past and should not be changed.¹⁷

Those who oppose ROE cards, or at least question their utility, raise several concerns. One is the suspicion that issuing a card is form over substance—a mere “check in the box” that the Marines understand the ROE when in fact they may not even read the cards. Another concern is that condensing the ROE into easily understood language on a small card will over-simplify the ROE to the point that key provisions either are neglected or inadequately explained.¹⁸ Finally, some question why ROE are disseminated via a card when other equally important aspects of the mission are not; for example, why not issue a card reflecting the mission statement and commander’s intent, the fire support plan, or the communications plan?¹⁹

There is no doctrinal answer to the question of whether to use ROE cards. The decision must be made as a product of a dialogue between the SJA and the commanders and operators within the MEU. That said, when weighing the arguments for and against cards, the best view seems to be a middle position: ROE cards can be an effective tool when properly utilized. Cards should not be a substitute for training, nor should they be a substitute

¹⁵ The cynical argument that ROE cards are useless because it is ridiculous to expect Marines to consult their card when confronted with deadly force is really aimed at a strawman: ROE cards are drafted for Marines to review prior to encountering situations, not to review in the middle of situations.

¹⁶ Anecdotal evidence suggests that the presence of Somali technicals decreased once the Somalis became aware that the ROE had declared such vehicles hostile.

¹⁷ It is hard not to suspect that, when evaluating MEUs during the predeployment training cycle, SOTG and the G-7 view ROE cards as prima facie evidence that the Marines understand the ROE and that the MEU SJA has satisfactorily completed the ROE development process.

¹⁸ The ROE that appear in message traffic or orders from higher command typically are classified, while the ROE card itself, by necessity, remains unclassified. Weeding out classified material may render the ROE card somewhat incomplete.

¹⁹ Some MEUs issue smart packs that contain this information in addition to the ROE.

for thoroughly explaining the ROE as part of the mission order. Rather, cards should be used to reinforce training and orders by refreshing Marines' memories on the most important aspects of the ROE.²⁰

If the decision is made to use ROE cards, however, a difficult issue arises: Who is the intended audience for the card? The conventional wisdom seems to be that ROE cards are intended for the young Marines who will have to make individual ROE decisions on the ground. However, by focusing only on young, ground Marines and their individual decisions to use force, the card probably will contain little to no information on ROE for the most destructive weapons systems, such as air and naval weapons systems and indirect fire assets. Also, ROE cards tailored for individual ground Marines probably will ignore ROE applicable to higher echelons of command, such as air and sea restrictions and rules limiting the size of the force ashore.

Three approaches seem available to answer the “intended audience” question. First, a concession could be made that the card is indeed intended for the individual Marine on the ground, and that all other ROE measures will be communicated pursuant to the issuance of the operations order. Second, the card could be tailored to a wider audience, to include all significant ROE measures for all forces and weapons systems involved. Third, separate cards could be issued for separate roles and forces—such as an air ROE card,²¹ a ground ROE card, and a naval card.²² Whatever the

²⁰ It is also difficult to refute the argument that ROE are useful as “get out of jail free” cards, particularly when they are such an entrenched practice—imagine the JAGMAN after an alleged ROE violation in a unit that did not use ROE cards; one of the first findings of fact would probably be, “Unit did not have ROE cards.”

²¹ Several MEU SJAs have commented that oftentimes pilots show the most interest in ROE, pressing the SJA for specific answers to technical, jargon-heavy questions. Furthermore, the relevant air SPINs (Special Instructions) for an operation often contain detailed ROE provisions that do not appear in the SROE, ROE serial authorizations, or higher orders. All of this suggests that preparing a separate air ROE card may be worthwhile. It also should spur the SJA to seek out the SPINs from higher command or from the MEU Air Officer, ACE S-3, or TACRON (tactical air control squadron), who receive the SPINs through aviation channels. Early in the training cycle, it would be well worth the SJA's time to obtain some sample real-world SPINs and sit down with an aviator to discuss terminology, weapons systems, and acronyms. One MEU SJA involved in Operation Enduring Freedom commented that understanding the SPINs and the air ROE was one of his most difficult tasks. The secret Enduring Freedom SPINs can be found on CLAMO's Secret Internet Protocol (SIPNET) database at <http://www.us.army.smil.mil>. The site requires registration. The CLAMO database is accessed via a link on this site and also requires registration.

²² The PHIBRON JAG generally handles Navy ROE, whether for the ship itself or for landing craft heading ashore. The MEU SJA should, however, be prepared to do so in the PHIBRON JAG's absence. A related issue is handling ROE for EDATF (emergency defense of the amphibious task force). EDATF calls for combined Navy and Marine assets to defend ARG shipping when the ARG is under threat of attack. The MEU SJA and PHIBRON JAG must work closely together during predeployment training to ensure that

decision, the key point to emphasize is that the SJA must be cognizant of the audience when drafting ROE cards.

As a final point, an additional problem that the SJA will face in drafting an ROE card is how to accommodate a fluid situation where the ROE may change as the mission evolves, either as a result of the mission moving into a new phase or higher authority issuing new ROE. If the changes in ROE are known beforehand, the card can reflect the ROE applicable to the particular phase of the mission. For example, if forces are declared hostile during actions on the objective but not during exfiltration, the card can so state. However, if the ROE unexpectedly change while forces are downrange, the card is no longer accurate and may even mislead those Marines who erroneously continue to rely on it. The only viable solution in this case is to communicate the ROE change as best as possible under the circumstances, whether by radio, the issuance of a new card, or some other means. The key point here is that the SJA must remain vigilant over changes in the ROE and know how to best communicate these changes, particularly when an ROE card already has been issued.²³

C. FORCE CONTINUUMS, MNEMONIC DEVICES, AND UNCLEAR EXAMPLES OF HOSTILE ACT AND HOSTILE INTENT

The actual source ROE for real world missions invariably call for using “proportional,” “minimum,” or “graduated escalation of” force.²⁴ Many JAs communicate these concepts in cards or annexes as a continuum of force along a sliding scale, correlating the authorized level of force to the perceived threat. For example, if the perceived threat involves risk of serious bodily injury or death, then deadly force would be authorized in response. Conversely, if the perceived threat involves theft of certain property, then a level of force short of deadly force would be authorized, such as pushing or chasing the individual.²⁵

both Navy and Marine personnel have the same understanding of the relevant ROE and that all ROE issues are properly coordinated. Many MEUs and ARGs will draft an EDATF memorandum of understanding or SOP at some point in the training cycle. The MEU SJA and PHIBRON JAG should provide ROE input for this document. The judge advocates should also thoroughly review the SROE’s self-defense guidance for maritime operations. *See* SROE, *supra* note 4, at encl. B (secret).

²³ Many of the ROE card issues discussed in this section arose from debates occurring during the course of a 2001 XVIII Airborne Corps joint ROE conference held at Fort Bragg, North Carolina [hereinafter 2001 Bragg ROE Conference].

²⁴ *See, e.g.*, SROE, *supra* note 4, at encl. A, ¶ 8.

²⁵ *See infra* text accompanying notes 58-61 (discussing defense of property).

Many JAs use mnemonic devices to help Marines better understand the force continuum and what force levels might be appropriate in response to varying threat levels.²⁶ Examples include VEWPRIK (Verbal warning, Exhibit weapon, Warning shot, Pepper spray (if authorized), Rifle buttstroke, Injure with bayonet, Kill with fire);²⁷ the Five S's (Shout warnings, Show weapon, Shove using nonlethal physical force, Shoot a warning shot, Shoot to eliminate the threat);²⁸ and WETSNO (Warn/Withdraw, Exhibit weapon or otherwise display force, Touch with nonlethal physical force, Spray with water or RCA (when authorized), Nonlethal weapon employment (e.g., rubber bullets, batons), Open fire to eliminate threat).²⁹

Force continuums and mnemonic devices have been criticized on several fronts. One criticism is that force continuums require Marines, either explicitly or implicitly, to exhaust all nonlethal options before resorting to deadly force.³⁰ Another criticism is that some of the suggested steps along the continuum are not tactically sound, such as shooting to wound or firing warning shots.³¹ Finally, some argue that force continuum mnemonics are arbitrary lawyer creations that do not accurately reflect the applicable ROE; for example, VEWPRIK and WETSNO are not found in the SROE or NATO MC 362.

Those who favor mnemonic devices argue that they serve the very purpose of a mnemonic: they help Marines remember the applicable ROE and provide a trainable standard. But a deeper rationale seems to lie beneath

²⁶ Force continuum mnemonics should not be confused with mnemonics that serve other purposes. For example, RAMP is intended to communicate general SROE self-defense principles (Return fire with aimed fire; Anticipate attack; Measure the amount of force used if time and circumstances permit; Protect with deadly force only human life and property designated by the commander). Hand SALUTE is intended to communicate hostile intent indicators (what is in their Hands; Size of threat; Activity of threat; Location of threat; Uniform of threat; Time before threat will inflict harm; Equipment threat armed with). See ROE HANDBOOK, *supra* note 3, at 2-4 to 2-7.

²⁷ See *id.* at 2-6.

²⁸ See *id.*

²⁹ A 26th MEU SJA created this mnemonic, which the MEU uses to this date.

³⁰ See, e.g., Colonel (Ret.) W. Hays Parks, *Deadly Force Is Authorized*, U.S. NAVAL INST. PROC., Jan. 2001, at 32, 36 (“Applying VEWPRIK or the Five S’s, Indy [in the well-known sword-wielding assailant scene from *Raiders of the Lost Ark*] would have been required to close with his assailant, risking injury or death and giving the assailant an opportunity to take his firearm.”). However, this charge that ROE expressly require exhausting nondeadly means first is really a strawman in that virtually all ROE cards and annexes take great pains to clarify that each step along the continuum is not a prerequisite to immediately employing the most appropriate level of force in response to the threat, to include deadly force. On the other hand, the charge that Marines might wrongly infer from force continuums an obligation to exhaust nondeadly means may be true.

³¹ See *infra* text accompanying notes 33-45 (discussing warning shots and shooting to wound).

the prevalence of force continuums and mnemonic devices: Marines want to know what level of force they can use at what time, and ROE source authorities simply do not provide the level of detail that Marines desire. Every MEU SJA can relate examples of Marines posing fact-specific scenarios and asking for black and white answers to gray questions of what levels of force are appropriate in complicated situations. Using the SROE as an example, most times the best answer the SJA can provide involves a vague discussion of making reasoned evaluations of hostile act and hostile intent and proportionality based on all the facts known at the time. Put another way, the SROE does not specifically tell a Marine what to do if a small child tries to steal his sunglasses or if a civilian three blocks away is firing rounds into the air. Force continuums and mnemonic devices may thus help elaborate the SROE's generalities.

These rationale, however, do not squarely address the criticisms mentioned earlier. Even with an emphasis on the caveat that steps along a force continuum are not mandatory prerequisites of escalation, Marines subconsciously may feel restrained by the mere mention of a continuum. Furthermore, the effort to elaborate upon the SROE arguably concedes that the steps in the continuum indeed are arbitrary lawyer creations, providing further fodder for the criticism that the steps may be tactically unsound. Along the same lines, much can be said for the argument that terms like hostile act and proportionality provide Marines just enough guidance to make reasoned judgments based on the totality of the circumstances and that any further guidance would be unnecessarily limiting or even misleading.³²

All told, a MEU SJA should realize that the use of force continuums and mnemonic devices raises a host of arguments on both sides of the issue.

³² In *Righting the Rules of Engagement*, U.S. NAVAL INST. PROC., May 1989, at 83, 86, Colonel (Ret.) W. Hays Parks made a related observation:

The ROE never will draw a line that, once crossed, automatically authorizes the use of force—except that very clear line a protagonist crosses when he fires first. The line otherwise cannot be drawn because it does not exist. Herein lies the frustration. While there is a reluctance to be the first to shoot, there is an equal desire not to be the first to be shot, shot down, or sunk; the temptation by many is to endeavor to write ROE that go beyond the basic self-defense language in receiving a clearer picture of the potential threat. Yet no word picture can be drawn that offers an effective substitute for the discretion or judgment of the man on the scene. The problem is not unlike that with which police are confronted in questions regarding the use of deadly force.

The best solution undoubtedly will be a product of a lawyer/operator dialogue. The answer will not be found in doctrine or higher directive.

D. WARNING SHOTS AND SHOOTING TO WOUND

Two suggested steps in some ROE sources or force continuum mnemonics are firing warning shots and shooting to wound. Both measures are the subject of heated debate from both legal and tactical perspectives.

There is no per se authorization for or restriction on the use of warning shots.³³ Rather, warning shots may or may not be authorized depending on the applicable ROE for an operation.³⁴ As a matter of practice, the use of warning shots generally seems to be frowned upon in the Marine Corps.³⁵ The argument against warning shots typically points out that firing warning shots many times will escalate rather than de-escalate a situation, and that the rounds eventually will land somewhere, potentially endangering lives. On the other hand, those who support warning shots point out that warning shots have been used with effective result in some real-world operations,³⁶ and that taking away the option of firing warning shots might deny Marines a useful nonlethal option for mission accomplishment or self-defense (when a Marine is confronted with nondeadly force). The lesson for the SJA is to be aware of the terms of this debate and to ensure that any ROE issued to Marines specifically address warning shots.

Similarly, the SJA must address the issue of shooting to wound. Again, Marine Corps practice seems to counsel against shooting to wound,³⁷

³³ Compare SROE, *supra* note 4, at encl. A, app. A, para. (3)(a) (confidential), *with id.* at encl. B, app. C, para. (3)(c)(4) (confidential), *and id.* at encl. D, para. (7)(d)(5) (confidential).

³⁴ Compare ROE HANDBOOK, *supra* note 3, at C-13 app. (ROE card authorizing warning shots during Operation Joint Forge (Bosnia)), *and id.* at C-26 app. (ROE card authorizing warning shots during 1994 Haiti mission), *with id.* at C-34 app. (ROE card forbidding warning shots during 1992 Joint Task Force Los Angeles), *and id.* at C-39 app. (ROE card forbidding warning shots during Joint Task Force Prompt Return (1995 Wake Island hold on Chinese nationals intercepted attempting to enter U.S. illegally)).

³⁵ Based on author's discussions with several senior Marine operational law judge advocates. For further evidence, a current MEU has a no-warning-shot policy. However, at a December 2001 domestic operational law conference sponsored by CINCLANTFLT and MARFORLANT, many Marine judge advocates in attendance voiced the opinion that domestic rules for the use of force should authorize warning shots.

³⁶ See, e.g., Lieutenant Colonel Mark S. Martins, *Deadly Force is Authorized, but Also Trained*, ARMY LAW., Sept./Oct. 2001, at 1, 8 & n.51 (stating warning shots had been a useful option for soldiers in the Balkans on more than twenty occasions).

³⁷ Based on author's discussions with senior Marine operational law judge advocates and comments of Marine judge advocates at 2001 Bragg ROE Conference, *supra* note 23.

yet several ROE sources seem to implicitly, if not explicitly, endorse it (although no ROE source specifically *requires* shooting to wound).³⁸ Some ROE cards from real-world operations specifically encourage shooting to wound,³⁹ and many are simply silent on the subject.

From the tactical perspective, a persuasive argument is made that shooting to wound is “unrealistic and, because of high miss rates and poor stopping effectiveness, can prove dangerous for the [Marine] and others.”⁴⁰ On the other hand, if a Marine successfully wounds an individual in a situation where deadly force is authorized, it seems difficult to criticize the Marine for resolving the situation without killing the individual in that specific instance. Take the example of a Marine facing an individual threateningly wielding a knife several meters away (as in the well-known scene from the movie *Raiders of the Lost Ark*). Certainly the Marine is authorized to immediately kill the individual. However, the Marine may be in a position to neutralize the threat by shooting to wound rather than to kill, perhaps firing one shot into the leg and having the time to evaluate whether more shots are necessary. If one wounding shot proves successful, it is hard to disagree with the notion that wounding the individual was more humane than killing him, and the wounded individual now may be a valuable intelligence source.

The problem with this example is that it focuses on the *results* of a *specific* incident when the more pressing issue is what *general* guidance to provide Marines *prior* to such situations arising. If shooting to wound is encouraged under the ROE, Marines may feel obligated to unnecessarily place themselves or others at risk when shooting to kill otherwise is authorized.⁴¹ Furthermore, the very idea of shooting to wound presupposes

³⁸ The SROE seems to suggest shooting to wound when it states, “An attack *to disable* or destroy a hostile force is authorized when such action is the only prudent means by which a hostile act or demonstration of hostile intent can be prevented or terminated.” SROE, *supra* note 4, at encl. A, para. (8)(a)(3) (emphasis added). Similarly, the DOD Directive on the use of force for law enforcement and security personnel states, “When a firearm is discharged, it will be fired with the intent of rendering the person(s) at whom it is discharged incapable of continuing the activity or course of behavior prompting the individual to shoot.” DOD DIR. 5210.56, *supra* note 7, at para. E2.1.6.2. Furthermore, the ROE for the standing DOD civil disturbance plan state, “When firing ammunition, the marksman should, if possible, aim to wound rather than kill.” U.S. DEP’T OF ARMY, DEPARTMENT OF DEFENSE CIVIL DISTURBANCE PLAN (GARDEN PLOT) C-8-2 (15 Feb. 1991) (reflecting ROE revisions of 1996) [hereinafter GARDEN PLOT ROE].

³⁹ See, e.g., ROE HANDBOOK, *supra* note 3, at C-34 app. (1992 L.A. riots ROE card stating, “When firing, shots will be aimed to wound, if possible, rather than kill”).

⁴⁰ Martins, *supra* note 36, at 10 (quoting Department of Justice deadly force policy).

⁴¹ By definition, shooting to wound is deadly force. See DOD DIR. 5210.56, *supra* note 7, at para. 3.2 (defining deadly force as “[f]orce that a person uses causing, or that a person knows or should know would

that there exists *a priori* knowledge of how to shoot to wound. Assuming that a Marine had the marksmanship skills to shoot to wound under stress, where should the Marine aim—for a limb? If so, why? There is no guarantee that one shot center mass will kill; in fact, it probably will not, at least not immediately. Civilian law enforcement annals are replete with examples of criminals continuing to resist despite being riddled by bullets.⁴² Moreover, if the ROE encourage shooting to wound, and a Marine does not attempt to do so before shooting to kill, will the Marine face an additional hurdle at a subsequent court-martial?⁴³

Shoot to wound ROE place Marines in a difficult position that might be best illustrated by a football metaphor where a coach tells his players that they should fall on an onside kick and not try to advance the ball, but if they think they have a chance to pick up the ball and score, they should try, but they better not fumble. Similarly, Marines encouraged to shoot to wound better not miss and make the situation worse. And just as the coach may not want to completely forbid a player from attempting to return an onside kick for a touchdown, a commander may not want to completely forbid a Marine from shooting to wound in the right circumstances (such as when the threat of deadly force does not involve a gun). The shoot to wound ROE that emerge from this tension typically strike a compromise, using language such as, “when firing, shots will be aimed to wound, *if possible*, rather than kill.”⁴⁴ This compromise may not be the best approach, and the more reasoned view might be that the risks associated with encouraging shooting to wound (in the aggregate and before the fact) outweigh the possible advantages to be gained. In the final analysis, like so many other ROE issues, the shoot to wound issue is one best solved by commanders weighing the tactical alternatives in conjunction with an SJA’s legal advice.⁴⁵

create a substantial risk of causing, death or serious bodily harm”). Therefore, Marines may only shoot to wound in circumstances where they could use deadly force.

⁴² This information came from W. Hays Parks’ persuasive presentation on wound ballistics and the fallacies of shooting to wound at the 2001 Bragg ROE Conference, *supra* note 23.

⁴³ See Martins, *supra* note 36, at 10 & n.69 (discussing Department of Justice concern that requiring shooting to wound might cause judges to raise the bar for agents accused of excessive force in a 42 U.S.C. § 1983 complaint).

⁴⁴ See GARDEN PLOT ROE, *supra* note 38 (emphasis added).

⁴⁵ Keep in mind that the ROE from higher command may encourage shooting to wound.

E. THE DEBATE OVER THE COMMANDER'S ABILITY TO LIMIT THE RIGHT OF INDIVIDUAL SELF-DEFENSE

The SROE defines individual self-defense as “[t]he *inherent right* to use all necessary means available and to take all appropriate actions to defend oneself and US forces in one’s vicinity from a hostile act or demonstrated hostile intent”⁴⁶ Certainly the SJA can and should fulfill a vital role by ensuring that all Marines understand this fundamental axiom that they have the right to defend themselves. But the SJA should also caution Marines that the right is not absolute, and does have limitations: actions in self-defense must comport with the law of war, such as the principle of proportionality;⁴⁷ must comport with other SROE measures, such as the prohibition on using certain weapons systems in self-defense without prior authorization;⁴⁸ and must comport with the orders of their superiors.⁴⁹ For the junior Marine, the discussion need go no further.

When advising staffs and commanders, however, the “inherent right” of self-defense is a complex matter requiring further discussion. At issue is whether commanders can lawfully limit or dilute the right of self-defense through superior orders. In other words, beyond the basic law of war and SROE limitations discussed above, does a commander have the legal authority to derogate the right of self-defense? This is a topic of heated debate that has very real, practical implications. Reasonable minds reach different conclusions, but the growing consensus in the operational law community is that commanders can indeed derogate the right.⁵⁰ While perhaps open to interpretation, the SROE itself seems to support this position:

⁴⁶ See SROE, *supra* note 4, at encl. A, para. (5)(e) (emphasis added).

⁴⁷ See *id.* at encl. A, para. (5)(f)(2) (listing proportionality as an element of self-defense).

⁴⁸ The notion that certain weapons systems cannot be used in self-defense without prior authorization stems from the confidential definition of “all necessary means available,” a key phrase from the definition of individual self-defense. See *id.* at GL-6 (glossary definition of the phrase) (confidential).

⁴⁹ See *infra* note 51.

⁵⁰ For example, every member of the current faculty in the International and Operational Law Department at The Judge Advocate General’s School, U.S. Army, shares the view that commanders can limit the right of self-defense (the faculty has Marine, Navy, Army, and Air Force representation). The view is also held by the current staff in the International and Operational Law Branch, Judge Advocate Division, Headquarters Marine Corps. Additionally, at the 2002 VIII Airborne Corps joint ROE conference held at Fort Bragg, North Carolina, several instructors espoused this view, and all save a few of the over one hundred operational lawyers from the joint community in attendance agreed.

The individual’s inherent right of self-defense is an element of unit self-defense. . . . When individuals assigned to a unit respond to a hostile act or demonstrated hostile intent in the exercise of self-defense, *their use of force must remain consistent with lawful orders of their superiors, the rules contained in this document, and other applicable rules of engagement promulgated for the mission or AOR.*⁵¹

Reading this SROE passage sheds light on another oft-quoted SROE maxim that appears in eleven separate places in the document, in bold letters: “These rules do not limit a commander’s inherent authority and obligation to use *all necessary means available* and to take *all appropriate actions* in self-defense of the commander’s unit and other U.S. forces in the vicinity.”⁵² This language is often cited to support the proposition that the right of self-defense is absolute. The SROE definition of “all necessary means available,” however, places restrictions on the use of certain weapons systems.⁵³ Furthermore, the SROE’s inclusion of the phrase “all appropriate actions” suggests that a commander can limit those actions that he considers “inappropriate” in light of tactical, operational, or strategic concerns.

This is not just an academic debate. While the debate does raise profound philosophical questions about ROE and the law of war, the resolution of the debate has a direct, practical impact on the advice that an SJA may be called upon to provide a commander. An SJA who dogmatically recites the inviolability of the right of self-defense without critically analyzing its logical extensions will be ill-prepared to articulate responses to many difficult issues. Take the example of a NEO where an Ambassador does not want MEU Marines to fire when local civilians point weapons at them because the locals simply are trying to incite a response and have no intention of actually firing. Does the MEU SJA advise the commander that restricting the Marines from firing in such a situation would violate the inherent right of self-defense by substituting the Ambassador’s judgment of what constitutes hostile intent for the individual Marine’s judgment?⁵⁴ For another example, if a MEU is ordered to provide disaster relief in a foreign country but not allowed to take weapons ashore, does the

⁵¹ SROE, *supra* note 4, at GL-17 (glossary definition of individual self-defense) (emphasis in original).

⁵² See, e.g., *id.* at encl. A, ¶ (2)(a) (emphasis added).

⁵³ See *supra* note 48.

⁵⁴ This example is based on predeployment training experiences recounted by several MEU SJAs.

SJA advise the commander that such an order is unlawful because the Marines have a right to defend themselves?⁵⁵ Again, while reasonable minds may disagree on the answers to these specific examples and certainly do disagree on the more general question of whether a commander can limit the individual right of self-defense, the majority view in the operational law community is that commanders can limit the right and, in fact, do so all the time.

The individual Marine's right of self-defense is so ingrained in our military psyche that any thought of taking it away sounds blasphemous. However, upon closer inspection, an absolute right to self-defense can be carried to extremes. For example, ordering a platoon to seize an objective arguably violates the right by putting Marines' lives in danger, as would ordering a platoon to its sure death in order to save a company. The response might be that the Marines still have the ability to defend themselves with their weapons. But by that rationale, a commander could not order a Marine into a hostile fire zone to retrieve a piece of equipment that requires two hands to carry; nor could a commander order the most junior Marine to remove his gas mask to verify the absence of chemical agents; nor could a commander order Marines to hold fire in response to probing fire to prevent revealing the unit's position to the enemy.⁵⁶ If these orders are lawful, which they certainly seem to be, then it seems a commander can limit the right of individual self-defense.

Consider further an example from Bosnia. In a 1997 incident in the town of Brcko, U.S. soldiers faced an unruly crowd of civilians, some of whom wielded clubs and carried rocks and Molotov cocktails. Many of the soldiers faced individual situations where the use of deadly force would have been authorized had not the on-scene commander required that no shots be fired unless first cleared through him. Indeed, no shots were fired in self-

⁵⁵ Higher command did not allow the 26th MEU(SOC) to take weapons ashore during a 1999 earthquake relief mission in Turkey.

⁵⁶ Another classic example is an ambush or a commander's admonition to "not fire until you see the whites of their eyes." One can certainly understand why a commander would want his Marines to withhold their fire until the bulk of the enemy's forces are within a kill zone or fire sack. And one would not want an individual Marine on the flank of the ambush firing too early because the Marine feels threatened by the approaching force and is exercising an inherent right of individual self-defense. This would extend the right of self-defense to an impractical extreme. Some might argue, however, that the ambush example is really just a commander exercising self-defense for the unit as a whole, and that each Marine has a better chance of survival by holding fire until the enemy is in the kill zone. But this view essentially is just another way of saying that the commander can usurp the individual Marine's decision to defend himself when the Marine is fighting as part of a unit.

defense (even though they could have been under a pure absolute right of individual self-defense analysis), and the soldiers defused the situation through nonlethal means without a fatality on either side. Informed observers concluded that the restraint demonstrated by the soldiers prevented the Serbs from achieving their destabilizing goals and prevented the situation from escalating out of control.⁵⁷ Although this fortuitous result does not by itself validate limiting the inherent right of self-defense, it does suggest that commanders should have the discretion to do so.

An SJA who briefs this position that a commander can limit the right of self-defense may face a visceral reaction from a hostile audience. Such a reaction does not necessarily mean, however, that the individual right of self-defense is therefore absolute. Reaching this conclusion would ignore the tactical situations where commanders limit the right of self-defense, would ignore key provisions of the SROE, and would render large portions of the law of war meaningless. The better conclusion, and the more accepted view, seems to be that limiting the right to self-defense is a legal and tactical reality that may entail significant consequences for individual Marines in particular circumstances.

The SJA should constantly remind junior Marines that they have the right to defend themselves within the parameters of the law of war, the SROE, and the orders of their commanders. Raising the more complicated issue of whether a commander can limit the right of self-defense runs the risk of confusing young Marines. On the other hand, most staffs and commanders already realize that they may legitimately place individual Marines at great risk to increase the tactical odds of maximizing the effect of weapons on the enemy or to preserve the overall operational or strategic aims of the mission. Commanders are forced to make these difficult choices frequently, and take this responsibility on as an element of the oft-described burden of command. The SJA should not make these choices even more difficult by trumpeting the inviolability of the right of individual self-defense.

F. DEFENSE OF PROPERTY

ROE should clearly specify what level of force is authorized to defend property. Unfortunately, many ROE annexes and cards either fail to

⁵⁷ See Martins, *supra* note 36, at 13-14 (describing the incident).

discuss defense of property or only discuss it in vague terms—such as protect property with “designated special status” or that is “mission essential” or “vital” without listing what property meets the criteria. Marines need to know, for example, if they can kill a small child who is fleeing with a stolen (perhaps even unloaded) weapon; if they can kill to recover a stolen classified document (confidential? secret? top secret?); or what force is authorized in response to starving civilians stealing MREs.

The more precise issue is what property can be defended with deadly force and what property can be defended with force short of deadly force. Despite the fact that defense of property is a recurring ROE issue, the SJA will have difficulty finding any authoritative legal source that provides answers. The SJA who first looks to the SROE will be disappointed to find little to no substantive discussion of defense of property.⁵⁸ The SJA who looks to historical examples of ROE cards and annexes that do discuss defense of property in detail will find some common themes, discussed below, but will find no legal authority. Moreover, the SJA who looks to the one legal source that specifically addresses in detail defense of property by the U.S. military, DOD Directive 5210.56, *Use of Deadly Force and the Carrying of Firearms by DOD Personnel Engaged in Law Enforcement and Security Duties*, will find that the Directive does not apply to military operations subject to authorized rules of engagement (such as the SROE).⁵⁹ The ROE issued by higher command may spell out the rules governing defense of property for a specific operation, making the question of legal authority largely irrelevant for the MEU SJA. But, particularly in the fast-moving world of crisis action planning, the ROE from higher command often lacks detail, and the SJA somehow must divine the relevant property defense rules.

⁵⁸ See, e.g., SROE, *supra* note 4, at encl. A, para. (5)(g)-(h) (defining hostile act/intent as, *inter alia*, use of force against “property” and actions impeding recovery of “vital US Government property”). The SROE definition of “vital US Government property” is tucked away in an appendix discussing recovery of government property at sea. That section states:

[V]ital US Government or other specified property includes sensitive classified information or other property that is determined by the combatant commander or higher authority to be vital to the national security of the United States such as nuclear weapons, state of the art delivery or guidance systems, cryptographic equipment, space systems, and politically sensitive documents or equipment.

Id. at encl. B, ann. B, para. (3).

⁵⁹ DOD DIR. 5210.56, *supra* note 7, at para. 2.3.

Several options seem available. First, if time allows, the SJA simply could ask higher command for specific guidance. Second, the SJA could emphasize that many times property defense issues actually are best viewed as hostile act or hostile intent determinations. For example, a person attempting to steal property may be using deadly force to obtain it, in which case the Marine could respond with deadly force not so much to protect the property, but in self-defense. Or theft of a certain piece of property might be a hostile act so devastating to mission accomplishment that deadly force would be authorized to protect it. Third, the SJA could apply the property protection rules of DOD Directive 5210.56 by analogy.

This third option is worthy of further discussion. Of those ROE cards and annexes that discuss property defense in detail, the common themes mentioned above essentially mirror the guidance in the Directive: Marines can 1) use deadly force to defend assets involving national security and assets inherently dangerous to others; and 2) use force short of deadly force to defend all other property. The primary problem with analogizing to the Directive is that it is not intended to cover military operations governed by other ROE, such as the SROE. This problem becomes more apparent when looking at the Directive's examples of national security and inherently dangerous assets. Examples of national security assets include nuclear weapons and facilities and restricted areas containing strategic operational assets. These examples do not seem particularly applicable to a deployed MEU. Examples of inherently dangerous property include arms, ammunition, explosives, and chemical agents. While more applicable to a MEU, one can imagine scenarios where a commander would not want his Marines killing small children who steal weapons or ammunition out of mere curiosity. Put another way, the fact that the Directive is intended to cover law enforcement and security duties makes it an imperfect source from which to draw analogies for an operational setting. That said, many ROE cards and annexes have used the rationale underlying the Directive's property categories to help specify additional property that Marines can defend with deadly force. For example, some ROE have authorized deadly force to protect classified information or secure communications equipment that might endanger U.S. forces if stolen.⁶⁰ Other ROE have authorized deadly force to defend MEU aircraft and vehicles, considering such property vital to national security.⁶¹

⁶⁰ See, e.g., ROE HANDBOOK, *supra* note 3, at C-50 app. (generic forced entry ROE card).

⁶¹ See *id.* Additionally, in the immediate aftermath of the attack on the *USS Cole*, the 26th MEU SJA, informed by the higher SJA that the SROE would govern the rules for the use of force during the next port

As with other issues, the SJA will find it necessary to address this issue despite the lack of legal authority. Using one or more of the three options suggested above provides a good starting point for the SJA trying to ensure that Marines know what property they can defend with what force.

G. RULES GOVERNING FORCE PROTECTION WHILE DEPLOYED

A critical issue for deployed MEUs is what ROE or rules for the use of force (RUF) apply when a MEU is deployed but not engaged in a specific mission. Open to debate is what rules govern force protection when a MEU conducts port visits, participates in overseas training exercises, transits through foreign countries for exercise or administrative purposes, or is simply floating at sea. This issue is particularly visible in light of the recent attack on the *USS Cole* and the terrorist attacks of 11 September.

As of the writing of this publication, many higher commands have issued instructions to their subordinate units regarding the use of force for force protection. The guidance is not uniform, varying from command to command and theater to theater, most adopting some blending of the SROE and DOD Directive 5210.56. In today's unsettled force protection legal environment, a MEU SJA would be well advised to seek out this guidance before drafting MEU-specific rules.⁶² And to better advise the commander, particularly if seeking changes to the rules, it is also useful for an SJA to understand the underlying debate.

Many contend that the SROE is a relevant source for rules of force protection, arguing that the entire MEU deployment is an "operation," and that the SROE specifically applies "during all military operations . . . occurring outside the territorial jurisdiction of the United States."⁶³ However, the SROE must be reconciled with host nation sovereignty concerns. Absent the consent of the host nation, it does not seem that a

visit, used the national security rationale to authorize deadly force to defend MEU aircraft, vehicles, and ARG shipping. Higher directives have since clarified rules for the use of force in port visits. *See infra* note 62 and accompanying text.

⁶² As of the writing of this publication, CINCLANTFLT, CINCPACFLT, and CINCUSNAVEUR have issued guidance on rules for the use of force for anti-terrorism and force protection purposes. *See* Message, 241640Z Apr 01, CINCLANTFLT/CINCPACFLT, subject: Anti-Terrorism Force Protection (AT-FP) Policy Guidance (confidential); Message, 011251Z Oct 01, CINCUSNAVEUR, subject: Use of Force for AT-FP in NAVEUR AOR (confidential). Both messages are available on CLAMO's SIPRNET database. *See supra* note 21 (providing instructions for accessing the database).

⁶³ SROE, *supra* note 4, at para. (3).

MEU can apply the broad self-defense guidelines of the SROE and simply implement any force protection plan the commander deems appropriate. Many international agreements, such as SOFAs or exercise-specific agreements, will either specify that host nation military or law enforcement personnel are responsible for protecting visiting U.S. forces or otherwise place restrictions on a unit's ability to defend itself.⁶⁴ Interestingly, the SROE states that commanders retain the authority and obligation for unit self-defense despite what any international agreement might say.⁶⁵ Despite this apparent SROE discrepancy, certainly in practice all MEUs and ARGs are sensitive to international sovereignty, tailoring force protection plans through extensive coordination with host nation officials prior to port visits and training exercises.⁶⁶

Even if the SROE does apply, one might question if the SROE provides sufficiently detailed guidance. As discussed above, the SROE offers little discussion on rules for defending property and contains no discussion on appropriate levels of force or powers of apprehension or detention in response to individuals who commit minor crimes against U.S. forces. For example, other than the broad language of hostile act and intent and proportionality, a MEU SJA will find virtually nothing in the SROE discussing how to respond to a ship visitor caught vandalizing a helicopter on the flight deck. Some might dismiss this contention, arguing that the SROE's broad framework provides a commander the flexibility to craft appropriate rules for force protection.

But an SJA who advises a commander to follow the SROE's flexible approach for force protection may be placing the commander in a precarious legal position. For one, the relevant higher command may not subscribe, or wholly subscribe, to the SROE's applicability. For another, if the SROE does not apply, then there is a strong possibility that DOD Directive 5210.56 will, and the Directive contains specific rules that may be more restrictive than what a commander might deem appropriate under the SROE. And whichever document applies, or even if both documents apply, there still remains the question of host nation sovereignty. The crucial point is that the SJA should not adopt whole cloth either the SROE or the DOD Directive or,

⁶⁴ For example, article 17 of the 1988 Agreement on Defense Cooperation Between the USA and the Kingdom of Spain dictates that the U.S. commander's internal security measures be consistent with the Spanish base commander's.

⁶⁵ SROE, *supra* note 4, at encl. A, para. (1)(d).

⁶⁶ Indeed, the MEU SJA should play an involved role in such coordination, working closely with the MEU force protection officer and the PHIBRON Naval Criminal Investigative Service agent.

worse yet, draft completely new rules, without first coordinating with higher command.⁶⁷

H. COLLECTIVE AND NATIONAL SELF-DEFENSE

Collective self-defense is the “act of defending designated non-US forces, and/or designated foreign nationals and their property from a hostile act or demonstrated hostile intent.”⁶⁸ Marines may only exercise collective self-defense if authorized by the President or Secretary of Defense.⁶⁹ National self-defense is “[d]efense of the United States, US forces, and, in certain circumstances, US nationals and their property, and/or US commercial assets” against a hostile or demonstrated hostile intent.⁷⁰ Marines may only exercise national self-defense if authorized by a designated commander.⁷¹ It is critical that the SJA understands this concept; namely, that Marines may not exercise collective or national self-defense without prior authorization.

Without question, at some point during a MEU SJA’s tour, some variation on the following issue will arise: Marines will want to know how to respond when an individual faces death or serious bodily harm, and defense of that individual either is not authorized or the identity of the individual is unknown (U.S. national? Designated third-country national?) and it is unclear whether defense is authorized.⁷² If the individual clearly does not fit a designated category for protection, the ROE disallows the use of force for collective and national self-defense. Because Marines are troubled by the thought of standing idly by while an innocent civilian dies, the SJA must be able to articulate the rationale why this may be so in some operations. The answer lies in the very nature of ROE: whether out of concerns for mission creep, or usurping the authority of host nation law enforcement, or avoiding escalation of the overall conflict, higher command

⁶⁷ In general terms, when coordinating ROE/RUF issues with higher command, several MEU SJAs have commented on the benefits of affirmatively stating what the MEU intends to do, thereby placing the onus on the higher command to reject a plan or ROE language that the MEU has already analyzed. If the MEU does not provide a proposal, and merely asks for clarification or guidance, it may prove more difficult for the MEU to shape the ROE/RUF, and higher commands oftentimes take a more conservative approach than the MEU might desire.

⁶⁸ SROE, *supra* note 4, at encl. A, para. (5)(c).

⁶⁹ *See id.*

⁷⁰ *Id.* at encl. A, para. (5)(b). National self-defense also can be exercised by declaring a force hostile. *See id.*

⁷¹ *Id.* (level of authority is classified).

⁷² This is a common SOTG and G-7 predeployment training evaluation trick.

may have decided that, on balance, Marines should not be authorized to protect each and every person whose life is threatened.

If the individual's identity is unknown, the question is more difficult. Should the Marine stand idly by when the threatened individual may turn out to be in a protected class? The SROE provides no legal standard for the Marine's knowledge requirement; in other words, the SROE does not state how a trier of fact should evaluate the Marine's actions. Rather than advising Marines that they may not exercise authorized collective or national self-defense unless the threatened individual falls within a specific class of persons, a better answer can be found under the UCMJ. Imagine a Marine facing an orders violation charge for violating the ROE by defending an individual without authorization.⁷³ Assume that the Marine's commander issued the ROE as a specific order, making the crime a specific intent offense. The relevant defense would then be mistake of fact—if the circumstances were as the Marine honestly believed them, the Marine would not have violated the ROE.⁷⁴ The government would have the burden of proving beyond a reasonable doubt that the Marine knew that the individual could not be protected under the ROE.⁷⁵

It seems, then, that the best advice the SJA should give Marines when exercising collective or national self-defense is as follows: 1) if higher command does not authorize collective or national self-defense, Marines may only defend individuals whom they honestly believe to be U.S. forces; and 2) if higher command does authorize collective or national self-defense, Marines may only defend individuals whom they honestly believe can be protected under the ROE.

I. NATO AND MULTINATIONAL ROE AND THE DISTINCTION BETWEEN SELF-DEFENSE AND MISSION ACCOMPLISHMENT

The SROE states that U.S. forces under the tactical or operational control of a multinational force will follow the ROE of the multinational

⁷³ A murder charge would not be brought because it seems patently clear that the Marine would be acquitted on "defense of another" grounds. See MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 916(e)(5) (2000) [hereinafter MCM]. In the right circumstances, ROE violations can be prosecuted as orders violations. For a discussion of ROE prosecutions under the UCMJ, to include historical examples, see *Rules of Engagement for Land Forces*, *supra* note 11, at 61-65.

⁷⁴ See MCM, *supra* note 73, R.C.M. 916(j)(1).

⁷⁵ *Id.* R.C.M. 916(b).

force for mission accomplishment.⁷⁶ When operating in conjunction with multinational forces but under U.S. tactical or operational control, the SROE states that a common ROE should be sought, with the SROE applying absent consensus.⁷⁷ In all circumstances, the SROE emphasizes that U.S. forces will always follow SROE self-defense principles.⁷⁸ The issue then becomes what force constitutes self-defense and what force constitutes mission accomplishment.

The SROE defines self-defense, whether unit or individual, in terms of responses to hostile acts or demonstrations of hostile intent.⁷⁹ The problem, though, is that the SROE defines hostile act and hostile intent to include not only use of force or attack, but also “force used directly to preclude or impede the mission and/or duties of US forces.”⁸⁰ Self-defense, an inherent right under the SROE, thus seems to embrace defense of the mission, or mission accomplishment, as well as the traditional notion of self-defense against an attack. However, because the drafters of the SROE probably did not intend force to accomplish the mission to be an inherent right,⁸¹ as discussed below, the SJA then faces the difficult task of separating self-defense and mission accomplishment when the definitions of hostile act and intent seem to blend the two.⁸²

The best way to do this is to interpret the definitions of hostile act and intent in the context of the entire SROE, a document that in other sections takes great pains to draw a bright line between mission accomplishment and self-defense. The underlying self-defense concern under the SROE seems to be protection of U.S. forces. The definitions of unit and individual self-defense speak of “*defending* a particular US force element” and “*defend[ing]* oneself and US forces.”⁸³ When the SROE discusses the commander’s authority to exercise unit self-defense, it speaks of countering the hostile act or intent “to ensure the *continued protection* of US forces.”⁸⁴ Thus, when the drafters spoke of an inherent right to self-defense, it appears

⁷⁶ SROE, *supra* note 4, at encl. A, para. (1)(c)(1).

⁷⁷ *Id.* at encl. A, para. (1)(c)(2).

⁷⁸ *Id.* at encl. A, paras. (1)(c)(1)-(2).

⁷⁹ *Id.* at encl. A, paras. (5)(a)-(f).

⁸⁰ *Id.* at encl. A, paras. (5)(g)-(h).

⁸¹ *See, e.g.,* SROE, *supra* note 4, at para. (6)(b) (“ROE supplemental measures apply only to the use of force for mission accomplishment and do not limit a commander’s use of force in self-defense . . .”).

⁸² This apparent internal SROE contradiction is particularly highlighted in the context of multinational ROE, but also stands on its own as a problem worth addressing.

⁸³ SROE, *supra* note 4, at encl. A, paras. 5(d)-(e) (emphasis added).

⁸⁴ *Id.* at encl. A, para. (7)(c).

that they had the first prong of the hostile act/intent definition in mind, attack or other use of force against U.S. forces, and that they did not intend force to accomplish the mission to be immune from restriction by supplemental measures.

Adopting this view of the SROE facilitates separation of force used in the traditional notion of self-defense and force used to accomplish the mission, a key distinction when operating under multinational ROE. Take the example of NATO ROE. In general terms, NATO ROE uses the opposite logic of the SROE: while the SROE is fundamentally permissive, NATO ROE is fundamentally restrictive.⁸⁵ When it comes to mission accomplishment under NATO ROE, Marines may not use force unless a supplemental measure specifically authorizes the use of such force. When it comes to self-defense under NATO ROE, SROE self-defense principles apply. Thus, the SJA must determine what force is authorized to accomplish the mission under the relevant NATO ROE, and then turn back to the SROE for rules governing the traditional notion of self-defense.⁸⁶

Another recurring issue when dealing with NATO ROE is how to interpret weapons release authority matrices.⁸⁷ A typical matrix will list certain weapons systems, such as indirect fire assets or fixed-wing aviation or riot control agents, and then specify what level of command can authorize employment of the weapon. If the matrix is silent on the issue, the question becomes whether this authorization is required when employing the weapon in the traditional notion of self-defense.⁸⁸ For example, if only the

⁸⁵ See NATO MC 362, *supra* note 6. MC 362 is a compendium of possible supplemental ROE measures, not an affirmative statement of ROE in effect. NATO ROE typically appear in ROE annexes to operations orders or in separate message traffic.

⁸⁶ Briefing every authorized supplemental measure under NATO ROE can prove very unwieldy for the SJA and make for a very cluttered ROE card. A better methodology might be for the SJA to determine what tactics and weapons the commander would likely desire for the mission, and then to brief what tactics and weapons are not authorized. By doing this, the SJA can keep the operators immune from the intricate workings of NATO ROE, and in effect use the permissive logic of the SROE to reach the same result.

⁸⁷ The U.S. Army also seems to favor the use of such matrices.

⁸⁸ Some matrices specifically state that the release authorities do not apply to the use of force in self-defense. See, e.g., ROE HANDBOOK, *supra* note 3, at B-7-9. This seems to render the issue moot, but consider the situation where a weapons release matrix with a self-defense exception is part of the ROE for a peace operation. In such a mission, it is difficult to imagine the employment of any weapons in any mode other than self-defense, which would seem to render the matrix logically meaningless. In other words, if the only anticipated force is force used in self-defense, then what purpose would a release matrix serve? Because weapons release matrices seem to be popular among operators, particularly in NATO operations, the SJA should ensure that the matrix addresses the issue of whether it applies to self-defense, and even if it does, further analyze the matrix to determine if it is logical given the mission, or simply serves to confuse the ROE.

commander of the relevant NATO force can authorize use of rotary-wing munitions, must the U.S. commander ask for specific authorization prior to using the munitions in self-defense? The bottom line answer is that this issue is unsettled and the SJA must seek resolution with higher command before Marines go in harm's way.⁸⁹

IV. MEU(SOC) MISSION-SPECIFIC ROE ISSUES

The purpose of this section is to discuss several recurring ROE issues that arise in the context of certain MEU(SOC) Mission Essential Tasks (METs).⁹⁰ The section divides the selected METs into three general categories: 1) offensive operations; 2) NEOs and embassy reinforcements; and 3) rule of law operations.

A. OFFENSIVE OPERATIONS

This section considers the following METs “offensive operations”: amphibious assaults, amphibious raids, direct action operations, enhanced urban operations, and airfield/port seizures. Common to all is the employment of MEU(SOC) forces in an offensive mode against potentially hostile enemy forces.

1. *Declaring Forces Hostile*

Whether appropriate authority has declared any forces hostile is a critical issue when a MEU(SOC) is planning an offensive operation. The SROE states that “US units need not observe a hostile act or a demonstration of hostile intent before engaging [a declared hostile force].”⁹¹ Declaring forces hostile obviously is a powerful tool.⁹² The declaration is only the first

⁸⁹ Heated debate over this issue arose at the 2001 Bragg ROE Conference, *supra* note 23, with no resolution. The following year, when XVIII Airborne Corps hosted another joint ROE conference, the consensus among attendees seemed to be that matrices with weapons release authorities could limit the right of self-defense. The stance that the SJA takes on arguing whether self-defense can override weapons release authorities is directly related to the broader issue of whether commanders can limit the right of self-defense. See *supra* text accompanying notes 50-57. See also CENTER FOR LAW AND MILITARY OPERATIONS, LAW AND MILITARY OPERATIONS IN KOSOVO, 1999-2001: LESSONS LEARNED FOR JUDGE ADVOCATES 129-32 (2001) [hereinafter KOSOVO LESSONS LEARNED].

⁹⁰ See *supra* Chapter 2, Section III.B.

⁹¹ SROE, *supra* note 4, at encl. A, para. (6).

⁹² The Special Operations Training Group (SOTG) trains the Maritime Special Purpose Force (MSPF) Marines to look for weapons in the hands of enemy forces to determine whether or not to shoot—essentially, a hostile act/intent calculation. Because of this, MSPF Marines may not understand or

step, however; the more pressing issue is how Marines are supposed to identify the hostile force before engaging.

Consider the example of an amphibious raid or a direct action mission to destroy a terrorist command and control cell. Assume that appropriate authority has declared the terrorists hostile, but that the objective contains both terrorists and nonterrorists. The SJA must articulate how the declaration of hostility impacts the mission. The SJA first should emphasize that even though forces have been declared hostile, MEU forces cannot immediately engage any person on the objective. The SJA then should specify exactly how a Marine is to identify the declared hostile force. MEU SJAs generally have used some version of the following approach: 1) define what area constitutes the objective area, and 2) list criteria that an individual must meet to be considered a member of the hostile force. SJAs generally define the objective area either in terms of a set radius from the center of the objective or a terrain feature surrounding the objective. The hostile force criteria typically are some combination of carrying a weapon or wearing the uniform of the hostile force. Thus, the ROE might read: “any individual carrying a weapon or wearing [the terrorist uniform] within 500 meters of the center of the objective may be immediately engaged even if the individual has not committed a hostile act or displayed hostile intent.”⁹³ By phrasing the declaration of hostility in such specific terms, the SJA can add valuable precision beyond merely stating, “X forces have been declared hostile.”

Another advantage to precisely defining the objective as a limited area is that it clarifies whether the declaration of hostility applies during friendly forces’ ingress and egress. Marines need to know if they can immediately engage a terrorist force en route to the objective or during withdrawal from the objective. If the ROE does not want forces declared hostile during ingress and egress, narrowly defining the objective area provides the necessary guidance. However, the SJA should emphasize that, regardless of

implement a declaration of hostility, instead falling back on more restrictive ROE from their training. The SJA should be sensitive to this tendency, and emphasize to the MSPF Marines exactly what it means when a force is declared hostile. Along similar lines, the SJA should pay close attention to the sniper engagement plans that the MSPF develops during their SOTG training to ensure that such plans comport with the applicable ROE.

⁹³ See Appendix 4-2 for sample mission-specific ROE cards containing declared hostile language. Such specificity must be cleared with the higher command. As mentioned earlier, the SJA should present the higher command a specific proposal rather than asking for general guidance or clarification. See *supra* note 86.

location, Marines can always use proportional force in response to a hostile act or demonstration of hostile intent.

Two related issues merit discussion. First, despite the best training, it is easy for young Marines to get confused over the relationship between declaring forces hostile and the law of war. The ROE should emphasize that even if Marines identify a member of a declared hostile force, they may not shoot an individual who is wounded and no longer poses a threat or who has surrendered.⁹⁴ Second, SJAs have struggled with the issue of whether a supplemental ROE measure declaring forces hostile is required when the order from higher seems to imply that forces have been declared hostile. For example, if the mission is to destroy a terrorist command and control cell, one could argue that the higher command has granted the authority to kill all terrorists on the objective. One could also argue that only commanders at certain high levels can declare forces hostile and that therefore a supplemental ROE measure is required. Because reasonable minds disagree on the answer to this question, the most prudent course for an SJA to take is to notify the higher command of the SJA's interpretation.⁹⁵

2. "Flex Cuff Detainees and Leave on the Objective"

A common MEU(SOC) practice in offensive operations requiring rapid withdrawal is to flex cuff any detainees and then leave them behind on the objective. At first blush, this seems legally suspect. But an analysis of the relevant law suggests that this practice is legally supportable so long as certain fundamental protections are considered.

Whether in an international armed conflict or a military operation other than war (MOOTW), the SJA should look to fundamental law of war protections⁹⁶ and, depending on the permissive or nonpermissive nature of

⁹⁴ One SJA recounts a story of briefing Marines that forces had been declared hostile for a training mission, but then getting confused looks from the Marines when they were told they could not shoot an individual declared hostile who had surrendered or was wounded and no longer posed a threat. Once again, the SJA should not assume that every Marine has retained all the knowledge from law of war training. *See also supra* Chapter 3, note 17.

⁹⁵ This issue arises in other contexts, such as whether a supplemental measure authorizing entry into foreign territory is required when the order from higher specifically tells the commander to launch forces ashore. The more reasoned view seems to be that such ROE supplementals are unnecessary because they are implicit, if not explicit, in the execute order. However, because this issue is not completely settled, the SJA should coordinate with higher.

⁹⁶ As a legal matter, the law of war only applies to international armed conflicts. However, as a matter of policy, U.S. forces are to adhere to the principles and spirit of the law of war even in operations that fall

the mission, perhaps even host nation law. The Operational Law Handbook does an excellent job of synthesizing baseline detainee protections.⁹⁷ Looking through these protections, several stand out as particularly relevant: 1) no torture or other cruel, inhuman, or degrading treatment; 2) no prolonged arbitrary detention; 3) no violence to life or limb; 4) detain away from dangerous areas; and 5) provide to the greatest extent possible every health and hygiene safeguard.

These broad legal guidelines translate into tangible considerations. The SJA should advise the commander that the ROE should clearly articulate the grounds for detention. Every effort should be made to minimize the length of the detention, and that international law probably creates an affirmative duty for the MEU to notify as soon as practicable the appropriate host nation officials of the detainees' location.⁹⁸ Detainees should not be left on the objective if their lives will be endangered, whether by the elements or at the hands of other forces. Marines should not leave wounded detainees on the objective to die, and should provide medical care to the extent practicable. During actions on the objective, Marines should move detainees to a safe area. In short, if a commander determines that leaving detainees on the objective is the only feasible way to accomplish the mission, Marines should provide detainees every protection practicable under the circumstances.

The SJA should advise the commander that just because leaving detainees on the objective is a common MEU(SOC) training tactic does not mean that doing so absolves the commander of any legal responsibilities. Further, because this tactic is so susceptible to critique, the SJA should coordinate with higher command prior to launch.

3. Conducting Offensive Operations in Civilian Clothes

Many MEU(SOC)s contemplate employing forces in civilian clothes during missions, particularly R&S teams and counterintelligence personnel. Doing so raises serious law of war concerns, not only regarding the status of such personnel if captured, but also regarding potential law of war

short of international armed conflict. See U.S. DEP'T OF DEFENSE, DIR. 5100.77, DOD LAW OF WAR PROGRAM paras. 5.1, 5.3 (9 Dec. 1998).

⁹⁷ OPLAW HANDBOOK, *supra* note 2, at 39-44, 57-60.

⁹⁸ The SJA can play a critical role in this regard. During predeployment training, the SJA should take the training an extra step by ensuring that such host nation coordination actually takes place. Determining who the relevant host nation officials are many times is easier said than done.

violations. While it seems clear that the detaining power would be under no legal obligation to grant these personnel prisoner of war status, the more complicated issue is whether the wearing of civilian clothes constitutes a law of war violation. At present, this latter issue is unresolved.⁹⁹ The SJA should be aware that such tactics exist, that the tactics raise legal concerns, and that the SJA should coordinate with higher command before the tactics are ever employed.

B. NONCOMBATANT EVACUATION OPERATIONS AND EMBASSY REINFORCEMENTS¹⁰⁰

Many legal issues arise during NEOs and embassy reinforcements. Several recurring issues that remain the subject of debate are discussed below.

1. Department of State and Department of Defense Command Relationship

A 1998 memorandum of agreement (MOA) between the DOD and the Department of State (DOS) spells out the command relationship between the MEU commander and the Ambassador during the conduct of a NEO: “[T]he military commander is solely responsible for conducting the operations. However, except to the extent delays in communication would make it impossible to do so, the military commander shall conduct those operations in coordination with and under policies established by the Principal U.S. Diplomatic or Consular Representative.”¹⁰¹ In other words, the MEU commander is in charge of operations, but apparently has a duty to coordinate with the Ambassador. This arguably ambiguous language, coupled with the fact that many DOS representatives believe they should

⁹⁹ For an excellent discussion of the law of war implications of wearing civilian clothes in an international armed conflict, see Major William H. Ferrell, *No Shirt; No Shoes; No Status: Uniforms, Distinction, and Special Operations in International Armed Conflict* (28 Feb. 2002) (unpublished manuscript) (on file with CLAMO).

¹⁰⁰ Some NEO issues are confidential and cannot be discussed in this forum. The SJA should read the SROE NEO enclosure in detail. SROE, *supra* note 4, at encl. G (confidential).

¹⁰¹ Memorandum of Agreement Between the Departments of State and Defense on the Protection and Evacuation of U.S. Citizens and Nationals and Designated Other Persons From Threatened Areas Overseas para. (E)(2) (14 July 1998).

have a say in the conduct of military operations,¹⁰² raises practical command and control concerns for the commander.

These concerns can manifest themselves in several ways. For example, the Ambassador may try to dictate what constitutes a hostile act or demonstration of hostile intent, or may try to impose size of force limitations or weapons restrictions on the MEU, or may try to influence course of action development or selection.¹⁰³ An interesting historical example is Operation EASTERN EXIT, the January 1991 NEO from Mogadishu, Somalia. An after action report from the operation cites as commendable the command relationship between the Ambassador and the MEU(SOC) NEO force, a relationship that in past NEOs had been problematic.¹⁰⁴ The report seems to attribute the smooth relationship, however, to the strong role the Ambassador played and the willing obedience of the Marine commander on the ground.

Ambassador Bishop had clear guidance on what he expected from the security force. First, he wanted to evacuate the Embassy compound, not reinforce the Embassy's security Second, he gave specific direction on the use of deadly force—that it should be used only if people were coming over the walls with obvious hostile intent or if the situation deteriorated significantly. He also outlined several zones of defense He stated that if a choice had to be made, he preferred a withdrawal to the third zone before the use of deadly force. . . . With this guidance, [the on-scene Marine commander] set up the defense of the compound.¹⁰⁵

¹⁰² Several MEU SJAs and commanders have experienced command relationship disputes with real-world DOS officials during training exercises, not only with NEOs and embassy reinforcements, but also in other exercises where a notional Ambassador was involved.

¹⁰³ See *supra* Chapter 3, Section II.C (discussing course of action development and selection as part of the rapid response planning process).

¹⁰⁴ CENTER FOR NAVAL ANALYSES, EASTERN EXIT: THE NONCOMBATANT EVACUATION OPERATION (NEO) FROM MOGADISHU, SOMALIA, IN JANUARY 1991, at v (Oct. 1991) (“Unlike many other NEOs, the U.S. Ambassador had a clear understanding of his role. He had the Embassy organized for an evacuation, maintained a clear picture of the situation on the ground, and *clearly expressed his intentions and orders to the inserted evacuation force.*”) (emphasis added).

¹⁰⁵ *Id.* at 28.

This passage seems to run counter to the language in the subsequent 1998 MOA that “the military commander is solely responsible for conducting the operations.” Yet at the same time it seems to support the MOA guidance that “the military commander shall conduct those operations in coordination with and under policies established by the Principal U.S. Diplomatic or Consular Representative.” Viewed in isolation, this MOA language might seem ambiguous.

Viewed in a larger context, however, the language becomes clearer. Ultimate responsibility for the overall NEO mission rests with the Ambassador; the military commander has overall responsibility for the military operation in support of the Ambassador. The relevant Joint Publication on NEOs succinctly states this concept: “Subject to the overall authority of the Ambassador, responsibility for the conduct of military operations in support of an evacuation and security of personnel, equipment, and installations within the JOA [Joint Operations Area] rests with the JFC [Joint Forces Commander].”¹⁰⁶ Analyzed from this broader perspective, the command relationship makes more sense in theory: the military commander is ultimately responsible for the military operation as informed by the Ambassador’s guidance, who is ultimately responsible for the overall mission. Applying this standard after the fact to the EASTERN EXIT command relationship, the military commander could have objected to the Ambassador’s tactical guidance, but nothing prevented him from considering and implementing the Ambassador’s guidance.

Despite these attempts to clarify the command relationships, there still exists the possibility that practical command and control issues will arise. The NEO Joint Publication recognizes this point: “In those cases when

¹⁰⁶ JOINT CHIEFS OF STAFF, JOINT PUB. 3-07.5, JOINT TACTICS, TECHNIQUES, AND PROCEDURES FOR NONCOMBATANT EVACUATION OPERATIONS, at III-1 (30 Sept. 1997) [hereinafter JOINT PUB. 3-07.5]. The Publication further elaborates, “In the course of planning and executing NEOs, the Ambassador obtains and considers the opinions and professional judgment of the JFC. This requirement, however, in no way limits the Ambassador’s overall responsibility.” *Id.* The SROE contains similar guidance:

The DOS in general, and the Ambassador or COM [Chief of Mission] at a particular embassy or consulate, is charged with overall responsibility to protect and evacuate, if necessary, US nationals abroad. During the execution of a NEO, however, DOD is specifically responsible for the protection of US nationals and designated third-country nationals within the embassy grounds until the evacuation is complete. . . . DOD acts in a supporting role and is responsible to advise and assist the DOS in such evacuations.

SROE, *supra* note 4, at encl. G, para. (2)(b).

significant differences between the JFC and Ambassador become obstacles to the success of the operation, they are referred to their respective superiors for resolution.”¹⁰⁷ The SJA can serve a valuable role by understanding the nuances of the command relationships and anticipating potential problems. Oftentimes the command and control issue does not reveal itself until late in the planning or actual conduct of the mission when the Ambassador and MEU commander reach their first disagreement concerning the operation, making it even more difficult to effect an agreeable resolution. The SJA can help resolve these potential disagreements by raising typical points of contention as early as possible in the planning process. A savvy SJA will realize the potential confusion in the MOA and the reality of potentially competing DOD/DOS interests. To facilitate discussion, the SJA might even consider joining the Forward Command Element (FCE) at the embassy.¹⁰⁸ Given the time-sensitive nature of many NEOs and embassy reinforcements, the notion of letting higher commands and higher DOS officials resolve the issues may prove difficult in practice.¹⁰⁹

2. Coordinating Rules of Engagement Between Involved Agencies

Marines conducting NEOs or embassy reinforcements often will find other agencies on the scene providing security. Marine Security Guard (MSG) personnel may be present,¹¹⁰ as may host nation law enforcement or military personnel and embassy civilian security. It is crucial that attempts be made to draft a common ROE for all involved personnel, or, at a minimum, ensure that the MEU Marines understand that other forces may be operating under different ROE.

As always, the SJA should be sensitive to the overall intelligence picture and the mission when coordinating the ROE. Typically, the mission is not to defend the embassy itself, but to defend embassy personnel and evacuees. Acts that Marines might interpret as hostile were they defending a spot on the ground might not be hostile in the context of defending and

¹⁰⁷ JOINT PUB. 3-07.5, *supra* note 106, at III-1.

¹⁰⁸ The FCE is a small command cell sent into the embassy to conduct liaison with embassy and host nation officials. The FCE varies in size, but typically is comprised of the MEU executive officer, several selected staff members, and a few radio operators. Some MEUs include the SJA as a member of the FCE as an SOP.

¹⁰⁹ See *supra* note 106 (Joint Pub. 3-07.5 quote concerning referring disputes to “respective superiors for resolution”). See also SROE, *supra* note 4, at encl. G, para. (2)(b) (“[c]oordination between the COM and the combatant commander in developing the ROE is necessary”).

¹¹⁰ See SROE, *supra* note 4, at encl. A, app. A, para. (4)(e)(2) (confidential) (discussing MSG ROE).

evacuating personnel. Similarly, the intelligence picture—particularly insights from the embassy staff who have more extensive host nation knowledge—will help reveal what acts are truly hostile and what acts are merely attempts to incite a response and escalate the conflict.¹¹¹

The ultimate question, though, is what to do when the SJA or higher command cannot negotiate a common ROE and the Ambassador is set on dictating the MEU Marines' ROE. The answer in theory is that the ultimate approval authority for the MEU Marines' ROE rests with the DOD.¹¹² The practical answer is that an aggressive and engaged SJA can help avoid this difficult situation by stepping forward as the subject matter expert and identifying ROE issues early in the planning process. This is yet another reason why the SJA might lobby to become an FCE member.

3. *Searching Diplomats*¹¹³

The issue of searching diplomats frequently arises during the course of NEO planning and is the subject of myth and confusion. The most common misperception regarding searching diplomats is that the NEO force is under some legal obligation to treat diplomats differently. While it is true that diplomats receive certain protections under international law, these protections do not attach to diplomats being evacuated by Marines conducting a NEO. The purpose of this section is to provide guidance on searching diplomats from both a legal and practical perspective.

As codified in the Vienna Convention on Diplomatic Relations,¹¹⁴ privileges and immunities for diplomatic personnel¹¹⁵ have existed since

¹¹¹ The SJA should be prepared to field questions concerning how Marines should respond to locals firing rounds in the air, taking random potshots at the embassy building itself, and throwing bricks at the Marines on the perimeter. Through a dialogue with the MEU operators and the embassy staff, factoring in the intelligence picture, the mission, and the overall situation, the ROE may be able to provide more detailed guidance on these foreseeable situations. While deadly force may be an appropriate response, the facts and circumstances may dictate otherwise for specific missions.

¹¹² See SROE, *supra* note 4, at encl. G, para. (2)(b) (“ultimate approval authority for the DOD ROE will remain with the military chain of command”).

¹¹³ The legal and practical analysis contained in this section was coordinated in a Telephone Interview with the Office for Diplomatic Law and Litigation, Office of the Legal Adviser, U.S. Dep’t of State (26 Apr. 2002).

¹¹⁴ Vienna Convention on Diplomatic Relations and Optional Protocols, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95 [hereinafter Vienna Convention].

¹¹⁵ This section uses the terms “diplomat” and “diplomatic personnel” in a general sense to include all of the various individuals associated with an embassy. Under the Vienna Convention, however, more precise terms are used to describe certain positions and their commensurate privileges and immunities—for example, “head of mission,” “diplomatic staff,” and “administrative and technical staff.” See *id.* at art. 1.

ancient times, gaining the force of customary international law during the Middle Ages.¹¹⁶ Examples of these privileges and immunities include prohibitions on searching the person¹¹⁷ and property¹¹⁸ of diplomatic personnel, as well as the inviolability of the diplomatic bag.¹¹⁹ Contrary to popular belief, diplomatic privileges and immunities are not universal; only the nation that accepts an accredited diplomat is obligated to afford diplomatic privileges and immunities.¹²⁰ Thus, in the context of a NEO, diplomatic privileges and immunities do not attach between diplomats—whether foreign or American—and the Marine NEO force.

Under international law, therefore, the NEO force has no legal obligation to treat diplomats any differently than any other evacuee. As a matter of force protection, a commander can deny U.S. military transportation to any individual, including a diplomat, who does not consent to a search of their person.¹²¹ Similarly, a commander can refuse to transport baggage that is not searched. In other words, a commander can order searches as a prerequisite for evacuation—if the individual does not consent to a search, the commander may deny transportation for the person or the baggage, to include a diplomatic bag.

But the SJA should caution the commander about a nonlegal, practical concern: implementing such a search policy might be construed as a breach of diplomatic etiquette or protocol. It is not difficult to imagine the hue and cry should a commander refuse to evacuate a high-ranking diplomat for not consenting to a search. The SJA should advise a commander to weigh the

¹¹⁶ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, introductory note (1987).

¹¹⁷ Vienna Convention, *supra* note 114, at art. 29 (“The person of a diplomatic agent shall be inviolable.”)

¹¹⁸ *See, e.g., id.* at arts. 30, 36.

¹¹⁹ *Id.* at art. 27(3). A diplomatic bag, or pouch, is a container externally marked as containing only diplomatic documents or articles intended for official use. *Id.* at art. 27(4).

¹²⁰ “Accreditation” refers to the process by which a sending state (the foreign diplomat’s country of origin) proposes an individual to fill a diplomatic post subject to the receiving state’s (the nation hosting the diplomat) acceptance. *See, e.g.,* Vienna Convention, *supra* note 114, at art. 4. The only privileges and immunities that a third state—in other words, a state other than a receiving or sending state—need afford arise in the context of a diplomatic agent who is in the territory of the third state in transit “to take up or return to his post, or when returning to his own country.” *Id.* at art. 40.

¹²¹ The SROE states this quite forcefully:

Foreign diplomats will be accorded treatment consistent with international law and any other courtesies extended to them by the Ambassador, subject to inspection for weapons or other dangerous materials prior to boarding any vehicle, ship, or aircraft. Refusal to submit to inspection will result in the individual being barred from boarding.

SROE, *supra* note 4, at encl. G, para. (5)(d).

improbability that a diplomat or diplomat's family would be a threat to force protection against the possibility of adverse consequences should a commander order the searches as a prerequisite for evacuation. The better approach might be to order searches of diplomats only in specific situations where the commander, in consultation with the embassy, has reason to believe that evacuating the diplomat or the diplomat's baggage would pose a force protection threat.

C. RULE OF LAW OPERATIONS

This section uses the term "rule of law operations" to capture those METs where MEUs must enforce basic law and order as part of the mission, most notably when conducting peace operations. Over the last decade, the Marine Corps frequently has been tasked to bring a semblance of law and order to countries with law and order vacuums, such as in Somalia, Haiti, and Kosovo. These missions provide a rich source of legal lessons learned on the military's ability to fulfill a law enforcement function. The Center for Law and Military Operations (CLAMO) has published a compendium of legal lessons learned from the Kosovo peace operation, arguably the most extensive law and order mission that the U.S. military has faced since the post-World War II occupations of Germany and Japan.¹²² The lessons from Kosovo also reflect how U.S. forces implemented lessons learned from prior peace operations. Included in Appendix 4-4 is the rule of law excerpt from CLAMO's Kosovo book, discussing topics ranging from ROE to detention standards to criminal law.

V. CONCLUSION: TRAINING ROE AND THE LAW OF WAR

An SJA with the most erudite and sophisticated understanding of ROE and the law of war will be useless if unable to convey this information to Marines and integrate into the staff. Put another way, the SJA must be able to communicate in the language of the operators. The foundation of this communication and integration is ROE and law of war training. Marines should understand general law of war concepts and SROE principles of self-defense and mission accomplishment well before deploying in harm's way, and the staff should understand how the ROE development process works and the critical role that they play in it. For better or worse, the SJA is the

¹²² KOSOVO LESSONS LEARNED, *supra* note 89.

subject matter ROE and law of war expert and has an obligation to pass on this knowledge.

CLAMO's *ROE Handbook* has an extensive discussion of ROE and law of war training, including several sample teaching presentations and numerous situational training vignettes.¹²³ To augment the *ROE Handbook*, included in Appendix 4-5 is a current MEU SJA ROE and law of war presentation.

¹²³ ROE HANDBOOK, *supra* note 3, at 2-1 to 2-12, D-1 to D-66 app., E-1 to E-112 app.

CHAPTER 5

MILITARY JUSTICE

Major Philip E. Simmons¹

I. INTRODUCTION

This chapter examines military justice issues that typically arise in the context of a deployed Marine Expeditionary Unit (MEU).² In keeping with this book's purpose, this chapter identifies recurring military justice issues and concerns stressed during deployments and highlighted by the experiences of former MEU SJAs. Further, it is not a comprehensive military justice primer and MEU SJAs should, accordingly, cross-reference the publications listed below. Finally, the chapter will assume a basic knowledge of military justice, and then analyze specific, recurring issues.

From a practical standpoint, the MEU SJA is expected to be the command's military justice expert. The MEU SJA must have or be able to find the answers to all military justice questions from the command. Experience as a prosecutor or defense counsel will help, but is not necessary to advise the command on military justice issues. More important for a MEU SJA is a thorough understanding of, and ready access to, the Manual for Courts-Martial,³ the JAGMAN,⁴ and the Marine Corps Separations Manual.⁵

The chapter is divided into three parts. First, the chapter discusses military justice relationships; for example, the relationship between the SJA

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² Although this chapter will refer to the MEU, the advice will likely hold for any and all Marine Air-Ground Task Forces (MAGTFs). For example, the SJA to a Combined Task Force (CTF) will have subordinate elements that fill the roles of ground combat element, aviation combat element, and combat service support element. Further, the SJA undoubtedly will interact with other services, such as the Navy or Army. The examples here, while specifically addressing the relationship of the MEU and its subordinate commands with the Amphibious Squadron (PHIBRON), will thus translate to other CTF scenarios.

³ MANUAL FOR COURTS-MARTIAL, UNITED STATES (2001) [hereinafter MCM].

⁴ U.S. DEP'T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GEN. INSTR. 5800.7C, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) (C3, 27 July 1998) [hereinafter JAGMAN].

⁵ U.S. MARINE CORPS, ORDER P1900.16F, MARINE CORPS SEPARATION AND RETIREMENT MANUAL (31 May 2001) [hereinafter MARCORSEPSMAN].

and the various commanders within the MEU and the relationship between the SJA and the Amphibious Squadron (PHIBRON) judge advocate. Second, it analyzes the various methods for addressing misconduct during a deployment, both judicial and administrative. Third, the chapter discusses specific areas of misconduct highlighted in a deployed environment; namely, the overseas liberty risk program, foreign criminal jurisdiction, fraternization, and unauthorized computer use. The chapter concludes with a brief discussion of post-deployment concerns.

II. MILITARY JUSTICE RELATIONSHIPS

A MEU SJA involved in military justice will interact with all commanders, and often with platoon leaders and NCOs, as these leaders address misconduct and unit discipline. The SJA will also interact with Navy lawyers and investigators as military justice cases arise. Understanding the relationships and personnel involved is an important prerequisite for appropriately handling military justice matters.

The MEU SJA should create opportunities to brief legal issues to officers and NCOs on the staff and in the subordinate commands. For these briefs, the MEU SJA can focus on such topics as search and seizure law, Article 31b rights advisements, and other military justice topics of importance to leaders. Appendix 5-1 contains an example of “legal cards” that, when reduced and reproduced, make good handouts for discussion. Ensuring leaders have a common understanding of basic military justice concepts is an effective preventive law tool and can also dispel myths surrounding these topics. Finally, legal briefings are a good opportunity to cover “hot topics” such as fraternization and computer use (both discussed below).

A. COMMAND RELATIONSHIPS

The MEU commanding officer is typically a special court-martial convening authority. The commanders of several subordinate commands or “elements” will also possess special court-martial convening authority, and the MEU will have numerous commanders exercising company-level nonjudicial punishment (NJP) authority. All of these commanders will rely on the MEU SJA for advice on military justice matters. Potential problems may arise when a subordinate commander holds an opinion about the

appropriate handling of misconduct that differs from the senior commander, particularly the opinions of the MEU commander.

On its face, this situation may seem to be a potential conflict of interest for the MEU SJA. Is the MEU SJA's role to provide legal advice only to the MEU commander? Can the MEU SJA provide advice to subordinate commanders when the MEU SJA knows the MEU commander's view concerning appropriate disposition of a particular case? It is important to remember the previous discussion concerning the MEU SJA's client, the Department of the Navy (DON).⁶ Remembering that the DON is the SJA's client—not any one particular commander—helps resolve this potential conflict and allows the MEU SJA to advise all commanders within the disciplinary chain. Understanding this attorney-client relationship does not, however, solve all of the problems presented when commanders hold differing views as to appropriate disposition of military justice matters. MEU SJAs must also remain attuned to the possibility of unlawful command influence.⁷

The MEU SJA must anticipate the types of cases in which the MEU commander will be interested. If the MEU commander is interested in misconduct that involves members of one MEU main subordinate element (MSE) interacting with a member of another MSE (for example Marines from the aviation combat element (ACE) in a fight with members of the ground combat element (GCE)), or if the misconduct involves interaction with Sailors from the ships or the PHIBRON staff, or if the misconduct involves any interaction with civilians, civilian authorities or foreign nationals, the MEU SJA needs to know when these types of cases arise. The best method is for the MEU SJA to ask the subordinate commanders to report all of these types of cases to the MEU commander through the SJA.

⁶ See *supra* Chapter 2, Section V.B for a complete discussion on the MEU SJA's client.

⁷ Unlawful command influence can occur when a senior commander dictates the disposition of a military justice matter to a lower-level commander. The MEU SJA needs to understand the tools available for a commander to lawfully influence potential judicial matters. A commander may personally dispose of any case within that commander's authority or any subordinate commander's authority. In addition, a superior commander may withdraw a subordinate commander's authority on individual cases or types of cases. These provisions allow senior commanders to take actions they deem appropriate without directing subordinate commanders to take particular actions.

B. NAVY RELATIONSHIPS

Because the Navy will deploy a judge advocate and criminal investigators, it is important for the MEU SJA to form a relationship with the Navy personnel involved in military justice matters.

1. Amphibious Squadron Judge Advocate

The PHIBRON will typically rate and deploy a lawyer. The MEU SJA should work closely with the PHIBRON JAG on both operational and military justice issues. Having another JA available to discuss operational and military justice matters can make the MEU SJA's job easier. Further, the PHIBRON JAG can be of assistance by providing MEU Marines and Sailors counsel on such issues as NJP, competency review boards, administrative separations, or vacation hearings.⁸

2. Naval Criminal Investigative Service

There will be a Naval Criminal Investigative Service (NCIS) agent attached to the PHIBRON. NCIS duties are split between force protection and handling misconduct while underway or in liberty ports. For good reason, expect force protection to be NCIS's primary focus, potentially leaving little time for investigating misconduct.

The MEU SJA should take the extra effort to meet with the NCIS agent prior to an investigation. In addition to the agent assigned to the PHIBRON, there will often be agents on the ground for the various countries visited by the MEU. These agents can be a valuable resource to the MEU SJA as they will investigate alleged misconduct by Marines in port. Additionally, NCIS likely will have more sophisticated interrogation skills than the ships' Masters-at-Arms. Read NCIS into issues that you have and expect the same from them. If NCIS is in the habit of calling the MEU SJA first or at least a close second on an incident involving MEU Marines or Sailors, it can save the MEU SJA much time and trouble. Involving the

⁸ The JAGMAN allows advice on technical aspects of actions and the basic principles of military law without an attorney-client relationship forming. JAGMAN, *supra* note 4, at para. 0109 d(2). The JAGMAN cautions against establishing an attorney-client relationship unless detailed by proper authority to serve as defense counsel or personal representative of the accused. *Id.*

MEU SJA early can also save the MEU commander from being caught unaware during a call from his superior command on military justice issues.

3. Master-at-Arms

A Master-at-Arms (MAA) is located on every ship within the Amphibious Ready Group (ARG). The MAA will likely run the Navy's shore patrol at all liberty ports, and will take the lead on most of the Navy's military justice matters. The MAA will also be the point of contact on all investigations conducted by the Navy. Just like with NCIS, a good working relationship with the MAA on each ship ensures that the MEU is informed on all matters relating to its members. The MEU SJA will also want to get to know the senior members of the MAA force on the command ship. Again, a good relationship with the MAA members will make it more likely they will come to the SJA with an issue regarding a MEU Marine or Sailor. This will allow the SJA to keep the commander apprised and help resolve situations as soon as possible.

One method of gaining the MAA's confidence is to volunteer to provide Rules of Engagement (ROE)/Law of Armed Conflict (LOAC) training. Coordinate with the PHIBRON JAG and the MAA (who often doubles as the force protection officer for the ARG), and if there is a desire, the MEU SJA can give these classes to Sailors from each of the ships. Like the legal briefing to MEU leaders, this provides a good opportunity to meet members of other ships.

III. ADDRESSING MISCONDUCT

One of the MEU SJA's key roles is to track and report how misconduct is handled within the MEU. The MEU SJA should require subordinate commanders' legal officers to report legal statistics on a regular basis. As discussed above, this can also be an area of friction when interests of the subordinate commanders are not exactly the same. Bottom line—the MEU SJA needs to be able to account for how all the subordinate commanders are handling issues that impact the MEU. Appendix 5-2 contains an example of a report format the MEU SJA can use to facilitate this report. Certain misconduct, discussed below, requires reporting outside the MEU chain of command. The MEU SJA needs to be familiar with

standing operating procedures and reporting requirements of higher command headquarters.

A. PREDEPLOYMENT

The MEU SJA's main focus during the predeployment phase will be obtaining operational proficiency (for example, coordinating and providing ROE/LOAC training) and getting legal service support in order (for example, wills and powers of attorney). Nevertheless, there are some issues that relate to military justice that the MEU SJA should address prior to deployment.

When a commander receives notification of misconduct prior to deployment, a recurring issue is how to appropriately handle the misconduct. This is a common question you may receive: "Hey judge, I've got a guy who popped on a urinalysis last month, and we leave for deployment next week—how should I handle the case?"

There are several options available to commanders, depending on the nature of the allegations and the time available prior to deployment. One option (and often the only option, especially when the misconduct occurs just prior to deployment) is to simply bring the Marine or Sailor along and deal with the matter after the MEU is underway through NJP or other appropriate tools. If the case merits court-martial, it is possible (if the witnesses and evidence are available) to conduct a court-martial aboard the ship. See Section III.E below for more details.

Another possibility is to leave the member behind for disposition of the case. For serious offenses, particularly if the member is in pretrial confinement, this may be the only option. Another concern on leaving a Marine or Sailor behind is, "To what unit will they be transferred?" Typically the adjutant will work this out, by sending the member to the next echelon higher in the chain of command or back to the parent unit.

A final option is to bring the member along and wait until the deployment is completed to adjudicate the matter. For several reasons, this is the least desirable solution. For one, allowing a case to sit without

reasonably prompt action can create overall unit discipline problems.⁹ For another, the longer a case awaits disposition the more likely witnesses' memories will fade and evidence will become stale.

MEU SJAs should be attuned to commanders desiring to wait to take action on weak cases until after the ships are underway, whether for the deployment itself or during an underway period during the work-up cycle. Obviously, if the misconduct occurs the night before deployment, there is little choice but to hold NJP aboard ship. The tougher issues arise when the misconduct occurs one to two weeks prior to deployment or an underway training period during the work-up cycle. While there is no specific prohibition preventing the commander from waiting for an underway period to conduct NJP, doing so, particularly under circumstances where proof or logistical issues exist, raises a serious fundamental fairness concern when the actions are reviewed by senior SJAs and the commanders they advise. Senior commanders are often called to review these cases through NJP appeal, Inspector General complaints, congressional inquiries, Article 138 complaints, or other mechanisms allowing Marines to petition for redress. If circumstances dictate, MEU SJAs should advise that the matter be handled prior to an underway period and the Marine be afforded the opportunity to seek counsel and turn down the NJP.

1. Urinalyses

About forty-five days prior to deployment, all urinalyses (both the command element and MSEs) should be conducted by nondeploying personnel. This will ensure that a "last minute pop" who wants his "day in court" will have minimal impact on the unit (in other words, requiring the MEU to leave members behind to testify, or having to lose a Marine half-way through the deployment to testify at trial). Adjacent units in the area

⁹ A recent MEU case is illustrative. A member of the GCE tested positive for drug use several days prior to deployment and gave indications that he would refuse NJP and demand a court-martial. The GCE commander's jurisdictional trial counsel provided three courses of action: 1) leave the Marine behind and prosecute the case in the rear, flying witnesses back from the MEU for the court-martial; 2) bring the Marine on the deployment and try the case aboard ship; or 3) either bring the Marine on the deployment or leave him behind, but not to prefer charges until the MEU returned from deployment. The GCE commander chose the latter option and brought the Marine on the deployment. The Marine soon began to express dissatisfaction that he had charges pending with no disposition in sight and that he had been branded as a criminal without a trial. The Marine wrote his Congressman to this effect. Concerned with the outside interest and the negative impact that the pending case was having on the discipline and morale of the MEU, the MEU commander took the case over and preferred and referred charges. Trying the case in a deployed environment proved extremely difficult, questions regarding the conduct of the urinalysis arose, and ultimately the MEU commander dismissed the case.

can typically provide urinalysis assistance. The key is to ensure all members of the chain of custody are outside of the command or are not scheduled to deploy.

2. Depositions

Related to preserving testimony for urinalysis, depositions can be a valuable tool to preserve evidence of members of the command who are key witnesses in a pending contested special or general courts-martial.¹⁰ MEU SJAs should work with the jurisdictional trial and defense counsel early to identify such members. Predeployment planning can reduce or eliminate the possibility of members of the command being “pulled” for several days (or weeks) to participate in a trial stateside.¹¹

B. NONJUDICIAL PUNISHMENT

1. Administrative Matters

The MEU SJA should coordinate with the adjutant and the command sergeant major to ensure all NJPs, particularly within the command element, run smoothly. On some MEUs, the SJA will be responsible for generating the unit punishment book (UPB), preparing the acknowledgement of rights statement (including appeal rights and process) for the accused, and preparing the charge sheet and script for the commanding officer. On other MEUs, these responsibilities fall within the adjutant’s purview. When the adjutant is responsible, the SJA should ensure that the adjutant follows all JAGMAN procedural requirements as failure to do so may prevent the record of NJP from being entered at a subsequent court-martial. If not on ship, the SJA will ensure the accused has the opportunity to seek qualified counsel. At the conclusion of the NJP, the SJA will coordinate with the adjutant to prepare the appropriate service record book entry. Finally, if the Marine or Sailor receives a reduction in rank as a result of the NJP, the SJA

¹⁰ MCM, *supra* note 3, R.C.M. 702.

¹¹ MEU SJAs and trial and defense counsel must understand that the existence of a deposition does not necessarily mean that the deposition will automatically be allowed during trial in lieu of live testimony. Generally, there would have to be a determination that the service member who gave the deposition is unavailable pursuant to R.C.M. 804. Under UCMJ Article 49, a judge could determine that a service member deployed on a MEU float is unable to attend a court-martial because of military necessity. However, a judge is not required to make such a determination, and it is possible that a judge would require the presence of a Marine on a float. Factors such as the nature of the witness (percipient or character), the billet of the witness (MEU commander or rifleman) and current operational status (engaged in combat operations or enroute home via liberty ports) will all be relevant.

(or adjutant) must prepare a reduction order for the commanding officer's signature.

Forms for notifying a member of NJP proceedings and a script for conducting NJP can be found in the appendices to Chapter I of the JAGMAN. Appendix 5-3 to this Chapter contains a chart reflecting maximum punishment at NJP. The MEU SJA should look closely at Chapter 4 of the Marine Corps Manual for Legal Administration (LEGADMINMAN)¹² for guidance on handling officer misconduct. In accordance with the JAGMAN and the LEGADMINMAN, commands are required to report all incidents of officer misconduct to Headquarters, Marine Corps. Additionally, the SJA should coordinate with higher command prior to initiating disciplinary proceedings against an officer.

2. Nonjudicial Punishment Authority

a. Nonjudicial Punishment Authority While Aboard Ship

Section 0108 of the JAGMAN provides that as a matter of policy for units *attached to a ship*, nonjudicial punishment should be referred to the commanding officer of a ship for disposition. However, when a unit is *embarked for transportation only*, the commanding officer of the ship should only exercise nonjudicial punishment in unusual cases concerning incidents occurring on board the ship.¹³ Determining whether members of the MEU are embarked for transportation or attached to the ship has been a source of confusion for MEU SJAs and, as of the publishing of this book, neither the Marine Corps nor the Navy has issued an official determination.¹⁴

¹² U.S. MARINE CORPS, ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (31 Aug. 1999).

¹³ JAGMAN, *supra* note 4, at para. 0108. The key language is in paragraph 0108(a)(2):

When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit shall retain the authority possessed over such a unit prior to embarkation, including disciplinary authority. . . . In the case of units embarked for transportation only, however, the commanding officer of the ship should take disciplinary action under the UCMJ over members of such embarked units only in unusual circumstances concerning incidents occurring on board the ship.

¹⁴ The Center for Law and Military Operations (CLAMO) posed this question to Code 20 (Military Justice) of the Office of the Judge Advocate General and to the Military Justice Branch of the Office of the Staff Judge Advocate to the Commandant of the Marine Corps, and at the time of publication had not received a final response from either.

Despite the JAGMAN guidance, as a practical matter, the thought of putting members of the MEU before a Navy commander for NJP is a recurring source of friction between Marine and Navy commanders. It is wise to defuse this potential friction up front with a policy letter that spells out both the MEU and the PHIBRON position on this. The policy can quote the JAGMAN and, ideally, will contain the signatures of both the MEU and the PHIBRON commanding officers. The key is to preemptively address the matter before misconduct arises so that while deployed, if one of the ships' commanding officers attempts to take one of the MEU's Marines or Sailors to NJP, the policy in place will govern how the case is adjudicated.

b. Commanding Officer of Troops and Officer-in-Charge with Nonjudicial Punishment Authority

Because the MEU will be split between three to four ships, with MSEs and portions of MSEs also split between ships, it is advisable to designate a "Commander of Troops" (COT) for each ship. The COT assumes command responsibility over the disparate MEU elements aboard the respective ship, and represents these elements when coordinating with the ship's staff.

Designation as a COT should not be confused with designation as an "officer-in-charge (OIC) with NJP authority." Appointment as an OIC with NJP authority requires the specific approval of, *inter alia*, a general officer in command.¹⁵ Typically, the MEU will seek this NJP authority from the MEF commanding general prior to deployment.¹⁶ Included in Appendix 5-4 is a sample OIC with NJP authority appointment request letter. This OIC is oftentimes the COT and, without this appointment, the COT will not have NJP authority. Note that the maximum punishment the OIC can impose at NJP is the equivalent of company-level NJP.¹⁷ This fact is often overlooked, particularly when the OIC is a lieutenant colonel who understandably assumes that he will have the authority to impose battalion-level punishments.

¹⁵ JAGMAN, *supra* note 4, at para. 0106(b).

¹⁶ The SJA should consider obtaining this appointment early in the predeployment cycle so that the MEU will have OICs with NJP authority available as a disciplinary option during underway training periods.

¹⁷ See JAGMAN, *supra* note 4, at para. 0106(b).

The primary reason for appointing an OIC is that a swift NJP option will be available for members of the MEU whose commanders are located on another ship. This can be important during split-ARG operations when the ships are operating independently and are geographically distant. Further, the ability to expeditiously award NJP can be important when the MEU is concerned about the ships' commanding officers exercising NJP authority over members of the MEU. Not all MEUs decide, however, to exercise the option of having an OIC with NJP authority appointed, determining instead that there usually will be a reasonably available opportunity to cross-deck the Marine or the Marine's commander to hold office hours.

3. Rights to Counsel and NJP Refusal

While deployed, a Marine no longer has the option of refusing NJP. The MEU SJA must ensure that the service book entry reflects that the NJP was held "onboard USS ____." This may be important if the Marine is involved in later misconduct warranting court-martial because, without this entry, the NJP may not be admissible during the presentencing phase of a trial.

That Marines aboard ship do not have a right to advice from counsel prior to NJP frequently is a surprise to commanders. Many commanders nonetheless ask the SJA if the Marine can consult with an attorney. The MEU SJA can make this available by working with the PHIBRON JAG.¹⁸ It is important to remember that neither the MEU SJA nor the PHIBRON JAG are detailed defense counsel and cannot represent a member if they later wind up at a court-martial or administrative separation board.¹⁹ Still, both attorneys may be able to help individuals understand the process and can assist in referral to competent defense counsel if warranted.

4. Appeals

Appeals of NJP awarded by MSE commanders and company commanders will work the same way as prior to deployment. The appeal goes to the next higher echelon for review. The MEU commander is the appellate authority for MSE commanders; the battalion commander is the

¹⁸ See *supra* note 8 and accompanying text.

¹⁹ JAGMAN, *supra* note 4, at para. 0109(d)(2).

appellate authority for company commanders. Appeals of NJP awarded by the MEU commander are forwarded to the next higher commander in the *operational* chain of command.²⁰

C. ADMINISTRATIVE SEPARATIONS

Review the Marine Corps Separations Manual (MARCORSEPMAN) and the Navy Military Personnel Manual (MILPERSMAN)²¹ to ensure commanders properly process administrative separations. Examples of the appropriate notification and acknowledgement of rights forms are contained in the respective references. Errors in processing administrative separations can significantly delay or even derail the proceedings.

While the MEU's operational chain of command will likely change several times during deployment as it travels through various areas of operation, the MEU's administrative chain of command will not change while deployed. It is essential that all documents, including administrative separations, be routed through the appropriate channels.

The biggest challenge in processing an administrative separation is determining the proper separation authority. The MARCORSEPMAN states that the separation authority for enlisted Marines under Chapter 6 is the officer exercising general court-martial convening authority (GCMCA) over the respondent.²² A Marine respondent could have multiple GCMCAs depending upon the MEU's current location. For example, a respondent on a MEU deployed in the Mediterranean would fall under the GCMCA of 6th Fleet, II MEF, and, for Marines from the battalion landing team (BLT), 2d Marine Division. The best practice is to clarify the administrative chain and separation authority with the MEF SJA prior to deployment and certainly prior to initiating proceedings.²³

The MARCORSEPSMAN and the MILPERSMAN, as discussed above, will govern the administrative separations process while deployed. A major concern is that under certain types of administrative separations processing, the Marine will rate detailed defense counsel and have the right

²⁰ *Id.* at para. 0117(b). In other words, once the MEU "chops" to the relevant Naval Fleet command, the MEF is no longer in the operational chain and will not review NJPs.

²¹ U.S. DEP'T OF NAVY, DIR. 15560C, NAVAL MILITARY PERSONNEL MANUAL (12 Mar. 1999).

²² MARCORSEPSMAN, *supra* note 5, at para. 6307(1).

²³ East Coast MEUs have an SOP that states that the Marines will be separated by their parent administrative chain, the MEF.

to a separation board. Unless the Marine facing the administrative separation is willing to waive the right to an administrative separation board, the command will have to find a competent detailed defense counsel (see below for possible ideas on where to obtain one). Note that the command may be able to have the PHIBRON JAG give members general advice on administrative separations (as described above), and if after this general advice the member elects to waive the right to an administrative separation board, the command can proceed accordingly.

D. COMPETENCY REVIEW BOARD

A seldom used but important administrative tool for commanders is a nonpunitive reduction through a competency review board. Nonpunitive reductions are designed to increase the efficiency of the Marine Corps, to ensure the integrity of the Marine Corps grade structure, and ultimately to ensure the capability of the Marine Corps to perform its assigned missions.²⁴

Nonpunitive reductions are appropriate when Marines lack the technical or professional competence to perform in their current grade.²⁵ A competency review board is the mechanism for effecting a nonpunitive reduction. Marines in the rank of PFC or LCpl may be reduced by a competency review board held by their commanding officer.²⁶ Where practical, boards for Marines above the rank of LCpl will be comprised of an odd number of at least three members.²⁷

While respondents to a competency review board are entitled to procedural rights and protections,²⁸ one of which is the opportunity to consult with counsel, there is no right to have counsel present at the board hearing.²⁹ For this reason, the logistical burdens that often preclude holding an administrative separation board likely would not prevent holding a competency review board, making it a viable option for the command.

A key point here is that a competency review board cannot be used as a punitive measure. So for the Sergeant who continually arrives to work

²⁴ U.S. MARINE CORPS, ORDER P1400.32C, MARINE CORPS PROMOTION MANUAL, VOLUME 2, ENLISTED PROMOTIONS para. 6001(2) (30 Oct. 2000).

²⁵ *See id.* at para. 6001(1)(a) for definitions of incompetence.

²⁶ *Id.* at para. 6001(1)(b).

²⁷ *Id.* at para. 6001(4)(a).

²⁸ *Id.* at para. 6001(3).

²⁹ *Id.* at para. 6001(3)(b)(1)(d)(1).

late, the appropriate measure would be formal counseling or nonjudicial punishment, and likely not a competency review board.

E. ARTICLE 32 INVESTIGATIONS AND COURTS-MARTIAL

Conducting Article 32 investigations and courts-martial in a deployed setting presents difficult logistical challenges. An Article 32 hearing requires trial and defense counsel and, typically, a court reporter. A court-martial has an additional requirement for a judge. Depending on the area of operations (AO), military justice support may be available from a nearby installation, such as a Naval Legal Service Office (NLSO) or Trial Service Office (TSO). Before deploying, the SJA should coordinate with the Fleet JAs in the anticipated AOs to ascertain the availability of and the procedures for obtaining such support. By way of example, included in Appendix 5-5 is guidance for obtaining military justice support from the NLSO and TSO, Europe and Southwest Asia.

To conduct an Article 32 investigation, the SJA may be able to coordinate appointment of a suitable investigating officer (IO) from within the MEU. Pursuant to the MCM, the IO must be a commissioned officer.³⁰ The discussion to R.C.M. 405 indicates a preference for a field grade officer or an officer with legal training.³¹ The SJA may have to assist the trial counsel in the logistics of getting the witnesses to the investigation. The IO may consider witnesses not embarked unavailable.³² The IO could then consider alternatives to testimony, including telephonic sworn testimony.³³ These provisions make conducting an Article 32 hearing easier than conducting a court-martial.

Conducting a court-martial will be more difficult. Yet, if the command is near a major military installation, particularly a NLSO, it may be possible to conduct a court-martial while deployed, particularly if the facts surrounding the charges are not too complex and if all the evidence is available. One benefit of holding a court-martial while deployed is that all the members of the command are generally easy to locate (i.e., on the ship). Another (and often the most important) concern is funding. Costs for travel

³⁰ MCM, *supra* note 3, R.C.M. 405(d)(1).

³¹ The Discussion to R.C.M. 405(d)(1) states that the “investigating officer should be an officer in the grade of major or lieutenant commander or higher or one with legal training.”

³² MCM, *supra* note 3, R.C.M. 405(g)(1)(A), 405(g)(2)(B).

³³ *Id.* at R.C.M. 405(g)(4)(B)(ii).

and TAD will come from the MEU's operational budget. Fortunately, aside from the transportation costs to get the judge, counsel, and court reporter to the ship, the expenses should be minimal (no per-diem while embarked).

F. SEARCH AND SEIZURE

MEU SJAs should plan on hearing, "Hey Judge, what do I need to conduct a search of _____?" The MEU SJA must have a complete understanding of the rules of search and seizure and inspections and their implications in garrison, while embarked, and while in a foreign country. As discussed above, search authorizations are a good topic to cover with the MEU's officers and staff noncommissioned officers prior to deployment.

Commanders may authorize a probable cause search of Marines and Sailors under their command. Additionally, commanders may authorize a probable cause search of any property under their control. An issue that can arise is determining the breadth of the commander's "control." Without question, the MEU commander has control over and is able to authorize the search of any person in the MEU. Also without question is the authority of a ship captain to authorize the search of any property on the captain's ship. More problematic is the ability of the MEU commander to authorize searches of ship spaces. While a search of "green" berthing spaces would likely be proper, search of other spaces (such as work spaces) will likely require authorization from the ship's captain. As in most cases, if you have the time and ability, it is recommended that you get authorization from both.

Searches within a foreign country require special care. If the United States is a party to a treaty or agreement that governs a search in a foreign country, the search should be conducted in accordance with the treaty or agreement. If no treaty or agreement exists, obtain concurrence from an appropriate representative of the foreign country before conducting a search.

It is always wise to document probable cause searches, regardless of outcome. For example, the SJA can draft a memorandum for the record for the commander's signature, stating the facts known at the time of the authorization and the basis for authorizing the search. Another option is to use the sample Record of Authorization for Search contained in Appendix A-1-n to the JAGMAN.

G. BRIG

Some Naval ships are equipped with a certified brig. NJP for members attached to or embarked on a vessel can include confinement on bread and water for up to three days.³⁴ Further, depending on the circumstances surrounding the case, the commander may confine a Marine pending court-martial to the brig for pretrial confinement.³⁵

Confinement within the ship's brig will create logistical requirements on the MEU. Anytime a member is confined, there is a requirement for personnel to monitor that individual's condition. Monitoring personnel must receive appropriate training, which is not available while deployed. Thus, if the command wants to confine members, for any reason, it is in the command's interest to send Marines to the required training prior to deployment. The SJA should coordinate with the Navy and the MAA on the command ship to send a few Marines to the training prior to deployment so that the command may preserve this option.

While overseas, the command may be able to use a brig from a nearby military installation. This option, however, may entail more effort than it is worth; confined members still belong to the command and, thus, when the MEU leaves the AO, the command will either have to take them back, or send (and pay TAD and travel for) chasers to escort them back stateside.

IV. SPECIFIC AREAS OF MISCONDUCT: LIBERTY, FRATERNIZATION AND INAPPROPRIATE PERSONAL RELATIONSHIPS, AND UNAUTHORIZED COMPUTER USE

A. LIBERTY

1. Overseas Liberty Risk Program

The Overseas Liberty Risk Program is an important tool by which the commander may regulate MEU members' conduct during a deployment. The Program is designed to protect the United States' relations with foreign countries. As such, the program is not to be used as punishment, and

³⁴ This punishment is seldom used.

³⁵ MCM, *supra* note 3, R.C.M. 304.

deprivation of normal liberty as a punishment, except as specifically authorized by the UCMJ, is illegal. Lawful deprivation of normal liberty may result when such deprivation is “deemed essential for the protection of the foreign relations of the United States.”³⁶

Commanders have substantial discretion in deciding whether to place a Marine on liberty risk; however, the decision should generally be limited to those cases involving a potential serious breach of the peace or flagrant discredit to the armed forces. Examples of when it may be appropriate to place a Marine on liberty risk include: committing an offense under the UCMJ involving the use of force; committing misconduct involving drugs, alcohol, or weapons; and committing acts in violation of the law of host nations. This list is not all-inclusive. Other legitimate bases for administrative withholding of privileges exist outside the liberty risk program and the military justice system. These include safety and security of personnel, medical concerns, operational necessity, bona fide training, and properly conducted extra military instruction. An example of a policy for administrative curtailment of liberty overseas is included in Appendix 5-6.

Commanders should afford administrative due process protections when assigning Marines to a liberty risk status. At a minimum, the commander should review each liberty risk case individually, advise the Marine in writing of assignment to the liberty risk program and the underlying basis for assignment, and provide the Marine an opportunity to respond, typically by requesting mast. Commanders should consider using incremental degrees of liberty curtailment, assigning categories to specific types of curtailment. For example, “Class A” liberty risk might require accompaniment of a Marine senior in rank; “Class B” liberty expires at a certain early hour; and “Class C” involves no liberty. Variations of these classifications are frequently used. Also included in Appendix 5-6 are sample documents that can be used to satisfy these procedural requirements.

The SJA should also recognize that the ships may have their own liberty risk programs. While no requirement exists that the MEU and Navy follow the same policies and specific procedures, it is useful to coordinate the programs so that each service understands the other’s policies and liberty risk categories.

³⁶ JAGMAN, *supra* note 4, at para. 0104(b).

2. *Liberty Briefs*

Liberty briefs provide another good opportunity to interact with members of the MEU. The MEU SJA can put together information on the local culture of and legal concerns for a given liberty port. This is also an excellent opportunity to reemphasize any existing general orders³⁷ and to cover relevant terms of any applicable Status of Forces Agreement (SOFA) or Defense Cooperation Agreement (DCA) and how they may impact interaction with local law enforcement. Finally, this is a good time to advise the command about the SJA's location and role during liberty call. The SJA can accomplish this brief by sending an e-mail to subordinate command executive officers and adjutants prior to each liberty port (or even to a wider audience), or by personal participation in the liberty brief typically broadcast on the ships' internal television system.

3. *Liberty Ports*

The MEU SJA will be the focal point for all legal issues that arise during liberty port calls. The SJA must be "available" at all times while on liberty in foreign ports. Typically that means the SJA will have a cell phone and the commanders will know the number to the hotel where the SJA is staying. Most of the activity during liberty ports will center around Shore Patrol headquarters, especially in ports such as in Thailand that have a continuous Navy presence. Shore Patrol will have direct contact with the local law enforcement authorities, and any problems that Marines encounter will likely first be identified by the Shore Patrol. The SJA should make a habit of checking in with Shore Patrol at least once a day and making sure Shore Patrol knows how to contact the SJA.

4. *Criminal Jurisdiction in a Foreign Country*

The MEU SJA should read and understand the applicable SOFA or DCA prior to going ashore. SOFAs will often govern criminal jurisdiction when Marines commit crimes in a host country. Typically, criminal jurisdiction is categorized as either "exclusive" or "concurrent," with most offenses being concurrent - that is, an offense under the laws of both the

³⁷ See, e.g., Headquarters, U.S. Central Command, Gen. Order No. 1A (19 Dec. 2000) (containing required conduct standards for all members who serve in the AOR, including general regulations on what members can and cannot do while in theater). As a general order, its contents are punishable under the UCMJ.

sending state (US) and the receiving state (host nation).³⁸ Concurrent jurisdiction is typically further delineated to provide primary and secondary concurrent jurisdictional rights for either the U.S. or the host nation. Primary rights are often determined by factors such as the type of offense, whether the offense arose in the performance of official duty, and whether the victim was a fellow member of the force. The most important point to understand is that SOFAs rarely provide exclusive jurisdiction to the U.S. military.

SOFAs generally include a waiver procedure where the host nation may waive jurisdiction if the U.S. requests a waiver. In many countries, additional treaties, working agreements, and letters of understanding exist between the U. S. and the host country concerning the exercise and waiver of foreign criminal jurisdiction over U. S. personnel. These supplementary agreements implement the SOFA or other treaties by prescribing the procedures to be followed in a particular country. Because these agreements vary between countries and are subject to change, the importance of notifying the appropriate liaison in the MEU's higher headquarters and the U.S. country representative in cases that may result in the exercise of foreign criminal jurisdiction cannot be overemphasized. It is U.S. policy to request a waiver of jurisdiction and attempt to gain immediate custody in all cases involving U.S. military personnel. While aggressive actions by the MEU SJA may allow the MEU to regain custody, if the proper procedures are not followed, the waiver of jurisdiction may not be valid.

The exercise of foreign criminal jurisdiction creates many reporting requirements.³⁹ Often, these reports must go through the chain of command and to a Department of State representative.

In certain countries, such as Thailand, where no DCA or SOFA is in force, common sense applies. If a member of the command falls into the hands of civilian authorities, the MEU SJA should be aggressive, courteous, and humble in attempting to get the member released to the command's authority. The SJA may need to work through a translator. By explaining to the local authorities the SJA's rank and position, and that the member will be dealt with firmly when released to the command's control, the SJA can often get cooperation from local officials. While attempting to gain custody,

³⁸ INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK 289 (2002) contains a good overview of SOFAs and jurisdiction.

³⁹ See, e.g., JAGMAN *supra* note 4, at para. 1009(i).

the SJA should coordinate with country representatives in the U.S. Embassy. If the SJA cannot immediately gain release, further coordination with the embassy or consulate will be necessary to try to gain release prior to the command's departure.

B. FRATERNIZATION AND INAPPROPRIATE PERSONAL RELATIONSHIPS

The potential for fraternization and inappropriate personal relationships between service members is particularly acute in a deployed environment and within the confines of a ship. To address this concern, many MEUs issue a MEU order to regulate the conduct. Although fraternization is already criminalized under the UCMJ and various general orders,⁴⁰ a MEU order will allow the commander to emphasize the importance of the prohibition on fraternization and to provide more specific guidance for the deployed, shipboard setting. Furthermore, these orders also address inappropriate actions that do not constitute fraternization, such as sexual relations between same-rank MEU personnel. Included in Appendix 5-7 is an example of such a MEU order that can be used to regulate this conduct. It is important to stress the importance of disseminating this information. Unlike a general order, Marines must have actual knowledge of the existence of the order and its contents to be held accountable under the UCMJ.

C. UNAUTHORIZED COMPUTER USE

The improper use of government computers is another fertile area for misconduct. The Navy's local access network (LAN) policy and procedures aboard ship may be quite different from the MEU's policies in garrison. For example, most Marine Corps bases and stations have software to prevent Marines from visiting prohibited sites. However, naval ships may or may not use such devices. Expect that Marines and Sailors will have the ability to visit any web address they choose. The S-6 will monitor computer use and can track web pages MEU personnel visit while on board. They will likely flag instances where members visit prohibited sites.

An aggressive command policy on computer use can forestall problems. Included in Appendix 5-8 is an example of such a policy. Note

⁴⁰ See, e.g., U.S. DEP'T OF NAVY, OFFICE OF THE CHIEF OF NAVAL OPERATIONS INSTR. 5370.2B, NAVY FRATERNIZATION POLICY (27 May 1999).

also that the Joint Ethics Regulation⁴¹ can be used as a general order to regulate the same conduct. The MEU SJA should coordinate with the MEU commander and the S-6 when crafting such a document.

V. POST-DEPLOYMENT

Typically, there will be a short window after the deployment where the subordinate commands are still administratively attached to the MEU. This is the time to complete all pending military justice matters. A real concern for a returning MEU is that many members, especially the junior members, will reach the end of their obligated service and separate from the Marine Corps or Navy shortly after return. Other members will transfer to new duty stations after return. For these reasons, it is important to identify potential witnesses for courts-martial or administrative separations hearings early and determine their availability. The SJA should track all the military justice issues to the date of “chop” (the date when the subordinate commands re-attach to their parent units for operational and administrative purposes) and be able to “turn-over” with the appropriate authorities military justice issues that remain unresolved.

⁴¹ U.S. DEP'T OF DEFENSE, REG. 5500.7R, JOINT ETHICS REGULATION para. 2-301 (C4, 6 Aug. 1998).

CHAPTER 6

ADMINISTRATIVE LAW

Lieutenant Colonel Daniel J. Lecce¹

I. INTRODUCTION

This chapter discusses recurring administrative law issues in Marine Air-Ground Task Force (MAGTF) operations and, in particular, Marine Expeditionary Unit (MEU) operations. The chapter is divided into three parts: 1) Investigations—procedural guidance for and the interrelationship between preliminary inquiries, command investigations, line of duty/misconduct investigations, death investigations, field flight performance boards, aviation mishap safety boards, ground safety investigations, equal opportunity and sexual harassment investigations, inspector general investigations, and investigations into homosexual conduct; 2) Serious Incident Reports; and 3) Fund raising and gifts.

Given the subject matter of this chapter, numerous references are made to the Manual of the Judge Advocate General (JAGMAN).² All information contained herein is accurate and correct as of the time of publication of this book. The reader should be cautioned, however, that the Office of the Judge Advocate General of the Navy (Code 15) is currently editing the JAGMAN. It is expected that the edited version of the JAGMAN will be published during Summer/Fall 2002.

II. INVESTIGATIONS

The MEU Staff Judge Advocate (SJA) should be prepared to assist in the conduct and review of the varying preliminary inquiries and command investigations that a deployment may generate. The JA must be very familiar with Chapter II of the Manual of the Judge Advocate General (JAGMAN) to provide assistance to investigating officers (IOs) as required.

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² U.S. DEP'T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL INSTR. 5800.7C, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) (3 Oct. 1990) (C3, 27 July 1998) [hereinafter JAGMAN].

A. PRELIMINARY INQUIRY

A preliminary inquiry is advised for all incidents potentially warranting an investigation.³ It is an excellent tool for the commander to gather information. It provides a source document from which the commander can make decisions regarding individual responsibility, corrective action, and the requirement for further investigation. The preliminary inquiry may be done in any manner the commander decides is appropriate. A sample preliminary inquiry format is included in Appendix 6-1.

B. COMMAND INVESTIGATIONS

The commander will convene a command investigation to gather, analyze, and record relevant information on significant incidents within the command.⁴ The IO will collect evidence by personal interviews, telephonic inquiries, and written correspondence. Written investigations should follow an established format and include Privacy Act Statements and rights advisements as discussed below. Many IOs mistakenly presume that the reader has the same background and knowledge of the investigation's details as the IO. JAs should advise IOs to write their investigation by placing all facts in chronological order as if telling a story from beginning to end. A JAGMAN command investigation format and a listing of helpful hints for conducting the investigation are included in Appendix 6-2.

A Privacy Act statement is required any time the IO asks an individual to supply personal information which will be included in the investigation report.⁵ As a general rule, the IO should provide a Privacy Act statement to all civilian witnesses. A Privacy Act advisement format is included in Appendix 6-3.

An Article 31(b), UCMJ, rights advisement is required for any witness whom the IO suspects of an offense chargeable under the UCMJ. The JA should remind the IO that the Article 31(b) advisement threshold is relatively low. Nevertheless, IOs should understand that all witnesses do not require an Article 31b rights advisement. An Article 31(b) rights advisement form is included in Appendix 6-4.

Whenever possible, the IO should obtain a sworn statement from a suspect (after rights waiver) or essential witness. Obtaining a sworn statement adds

³ *Id.* at para. 0204(a).

⁴ *Id.* at para. 0209(a).

⁵ *See id.* at para. 0216.

credibility to the statement and allows the imposition of criminal sanctions for false statements. A sworn statement format is included in Appendix 6-5.

C. LINE OF DUTY/MISCONDUCT INVESTIGATIONS

Specific rules apply to Line of Duty/Misconduct (LOD/MIS) determinations. As a general rule, injuries or disease suffered by a Marine are presumed to be in the line of duty and not due to the Marine's misconduct.⁶ All line of duty determinations must begin with a preliminary inquiry.⁷ Command investigations are not required if the Marine's commander and the medical officer agree that the injuries occurred in the line of duty and not due to misconduct, and if an appropriate entry to this effect is made in the Marine's health or dental record.⁸ Of particular importance in the LOD/MIS inquiry is the requirement that the injured Marine be advised that he does not have to sign a statement regarding the origin or aggravation of the injury or disease.⁹ A sample advisement form is included in Appendix 6-6. JAGMAN section 0233 also provides a handy checklist for reviewing LOD/MIS investigations.

D. DEATH INVESTIGATIONS

The SJA must take a direct and active role in the preparation and review of death investigations, especially deaths that occur as a result of training accidents and operations or on board a naval vessel, aircraft, or military installation. If death occurs on a naval vessel, aircraft, or military installation, the Naval Criminal Investigative Service (NCIS) must be notified.¹⁰

All death investigations will begin with a preliminary inquiry. Subsequently, a command investigation is typically used to fully investigate the death of a military service member. However, a limited investigation is permitted if:

- (a) Death occurred in the United States;
- (b) In an area not under military control;

⁶ JAGMAN, *supra* note 2, at para. 0230(a).

⁷ *Id.*

⁸ *Id.* at para. 0230(c).

⁹ *Id.* at para. 0221(b).

¹⁰ *Id.* at para. 0234(b).

(c) Deceased service member was in an off-duty status at the time of death; and

(d) There is no connection between the death and the military service.¹¹

Limited investigations must contain the following:

(a) A statement detailing the reasons for a limited investigation;

(b) A civilian accident/police investigative report; and

(c) An autopsy report.¹²

Marine Administrative Message (MARADMIN) 82/02 requires that the commanding officer send a proposed condolence letter for the Commandant of the Marine Corps' signature within five days of the fatality.¹³

Further, as a policy matter, JAGMAN section 0234(d)(1) directs the release of the JAGMAN investigative report to the next of kin upon request. The report is releasable after review by the first general/flag officer in the chain of command. Before release, the investigative report must be reviewed and personal information redacted. A warning cover letter should be placed on the report if the investigation contains graphic photos, reports, or other details. Whenever possible, the command should hand-deliver the report to the next of kin.

MARADMIN 294/02, issued 29 May 2002, states that spouses, former spouses, and children of most active duty service members now are eligible for Survivors' Benefits if the service member dies on active duty.¹⁴ The law requires, however, that before benefits are paid, a determination be made that the active duty service member's death was in the line of duty.

This is a significant departure from paragraph 0237 of the JAGMAN, which specifically states that line of duty determinations shall not be made in death cases. It is currently unsettled as to the exact standard to apply when determining whether

¹¹ JAGMAN, *supra* note 2, at para. 0235(c).

¹² *Id.*

¹³ Marine Administrative Message, 110830Z Feb 02, Commandant of the Marine Corps, subject: Fatality Condolence Letter Submission Procedures.

¹⁴ Marine Administrative Message, 290900Z May 02, Commandant of the Marine Corps (Manpower Management Separation and Retirement), subject: Survivor Benefits for All Active Duty Marines.

a death was in the line of duty. For example, in the case of a suicide, should the mental competency of the decedent be taken into consideration, or are all suicides *de facto* not in the line of duty? In the absence of more specific guidance from the Office of the Judge Advocate General of the Navy, the standards and procedures detailed for line of duty determinations in injury cases (see JAGMAN paragraphs 0221-0233) should be applied. It is expected that the newly edited version of the JAGMAN, as noted in the Introduction to this chapter, will address line of duty determination in active duty death cases.

Once a line of duty determination is made, the finding must be forwarded, with endorsement, to the Commandant of the Marine Corps (Manpower Management Separation and Retirement) via the chain of command.

E. AIRCRAFT MISHAPS

Aircraft mishap investigations are governed by JAGMAN section 0242. A JAGMAN investigation is required when an aircraft mishap results in death or serious injury, extensive damage to government property, or when the possibility of a claim on behalf of or against the government exists.¹⁵ The purpose of the investigation is to determine the cause and responsibility for the mishap, nature and extent of any injuries, description of all damage to property, and any attendant circumstances. In most cases an aircraft accident investigation will take the form of a command investigation.

A JAGMAN investigation is not required for aircraft mishaps incident to direct enemy action. “Incident to direct enemy action” is defined as due to: (1) “hostile action” or (2) “an unknown cause in a hostile area.”¹⁶ JAs should advise commanders to narrowly interpret this language. This is especially true because mishaps that fall into this category usually involve the loss of life and significant property (aircraft) damage. Unless hostile fire (in other words, obvious enemy action) is the identified cause of the mishap, JAGMAN section 0242(a)(3) requires that a commander direct some form of inquiry (for example, a preliminary inquiry) to attempt to determine whether hostile action is involved. If this initial investigation fails to determine the cause of the mishap, the most prudent advice for the commander is to convene a formal JAGMAN command investigation to determine the cause of the mishap.

¹⁵ JAGMAN, *supra* note 2, at para. 0242(a)(2).

¹⁶ *Id.* at para. 0242(a)(3).

1. General Guidelines: JAGMAN/Aviation Mishap Safety Board/Field Flight Performance Board

An aircraft mishap that is categorized as “Class A” will require several types of investigations, discussed below. A “Class A” mishap is one that results in:

- (a) loss of life or permanent total disability that occurs with direct involvement of aircraft of the Department of the Navy;
- (b) damages to the aircraft, other property, or a combination of both, in an amount in excess of the amount specified by the Secretary of Defense (\$1 million per OPNAVINST 3750.6R, Naval Aviation Safety Program¹⁷); and/or
- (c) the destruction of the aircraft.¹⁸

“Class A” aircraft mishaps trigger three separate investigative bodies:

- (a) a field flight performance board (FFPB);
- (b) an aviation mishap safety board (AMSB); and
- (c) a JAGMAN investigation.

JAGMAN section 0242 governs JAGMAN aircraft investigations. OPNAVINST 3750.6R governs AMSB investigations.¹⁹ The Marine Corps Assignment, Classification, and Travel System Manual (ACTS Manual) governs the conduct of FFPB investigations.²⁰ Although the JA should only be directly involved with the JAGMAN investigation, the JA should stay informed on all three investigative bodies to ensure compliance with the applicable directives.

Safety investigations differ from legal investigations. They are not intended to find fault or establish culpability. Safety investigations determine causal factors and provide recommendations to prevent similar mishaps from recurring. Each investigative body has a separate purpose and governing rules. FFPBs focus on

¹⁷ U.S. DEP’T OF NAVY, CHIEF OF NAVAL OPERATIONS INSTR. 3750.6R, NAVAL AVIATION SAFETY PROGRAM (29 NOV. 2001) [hereinafter OPNAVINST 3750.6R].

¹⁸ JAGMAN, *supra* note 2, at para. 0242(c)(1).

¹⁹ OPNAVINST 3750.6R, *supra* note 17.

²⁰ U.S. MARINE CORPS, ORDER P1000.6G, ASSIGNMENT, CLASSIFICATION, AND TRAVEL SYSTEM MANUAL para. 1214 (6 May 1999) [hereinafter ACTS MANUAL].

safety and the qualifications of the pilot/air crew. The AMSB investigation focuses on aircraft mechanical functioning, flight procedures, environmental factors, and pilot/air crew error. Finally, the JAGMAN encompasses all areas of investigative action to include safety, command and criminal responsibility, and corrective action. JAGMAN section 0242(b) addresses the relationship among the separate investigations.²¹

WARNING: The JA should advise the IO for each investigation that they should not share information with each other during the course of their inquiries. Moreover, under no circumstances should they share conclusions, opinions, and recommendations. Exceptions may be made when the IOs desire to share common data (for example, the characteristics and specifications of the aircraft). IOs should not share witness statements unless the witness has specifically agreed, in writing, that the statement is not privileged and can be used in more than one investigation. Even under these circumstances, the JA should warn against such use because, for example, a witness who provides a statement to the AMSB may require certain rights advisements (for example, Article 31b, UCMJ) before providing a statement to a JAGMAN IO.

The JAGMAN IO must inform any witnesses appearing before more than one investigatory body the reasons for the duplication of effort between various investigations. JAGMAN section 0242(b)(5) lists the reasons to be explained: 1) the different objectives of the investigations; 2) the reasons the procedures vary; 3) the need to preserve the privileged nature of the safety investigation; and 4) the fact that no official source will provide a witness statement from the safety investigation to the JAGMAN IO.²²

2. The Field Flight Performance Board

The FFPB is an informal administrative board comprised of qualified naval aviators, navigation flight officers, officer navigators or naval aerial observers, and a naval flight surgeon.²³ The FFPB is a means by which to uphold established standards in flight performance and to prevent those aircrew caused mishaps that can be anticipated through early identification of substandard performance. The convening authority will order an FFPB for “respondents directly involved in a

²¹ JAGMAN, *supra* note 2, at para. 0242(b)(1) emphasizes that “[t]he relationship between the JAGMAN investigation and aircraft safety investigations should be thoroughly understood by all persons involved with investigating any aircraft accident or mishap.”

²² *Id.* at para. 0242(b)(5).

²³ ACTS MANUAL, *supra* note 20, at para. 1214.

flight or flight-related mishap when their standard of performance is in any suspect.”²⁴

Deployment FFPBs require additional consideration. If an FFPB is required during deployment, a dispute may arise over which command should conduct it. Because the squadron in which the mishap occurred cannot conduct the FFPB, the burden falls upon the MEU Command Element (CE). Due to the limited number of qualified aviators on the CE staff, a standing operating procedure should be established which requires that the Marine Aircraft Group (MAG) over the squadron conduct the FFPB. The MAG possesses skilled aviators and a wealth of resources not available to the deployed MEU.

3. The Aviation Mishap Safety Board

The Headquarters element for the Aviation Combat Element (ACE) should be very familiar with the conduct and procedures for an AMSB. OPNAVINST 3750.6R is the governing directive. Several guidepost follow.

Chapter 6 of OPNAVINST 3750.6R specifically states that naval aviation mishap safety investigations have but one purpose: to determine why the accident occurred. The mishap investigation looks for causes and undetected hazards. It tries to identify those factors that caused the mishap. It also looks to identify factors that caused any additional damage or injury during the course of the mishap.²⁵

Useful AMSB forms include:

- (1) Mishap Category Decision Tree (flight mishap, flight-related mishap, or aviation ground mishap) (included in Appendix 6-7);
- (2) Mishap Severity Decision Tree (Class A, B, or C) (included in Appendix 6-8);
- (3) Mishap Classification Matrix (by mishap category and severity) (included in Appendix 6-9);

²⁴ *Id.*

²⁵ OPNAVINST 3750.6R, *supra* note 17, at para. 602.

(4) Advice to witnesses with a promise of confidentiality (included in Appendix 6-10);

(5) Advice to witnesses without a promise of confidentiality (included in Appendix 6-11).

F. GROUND SAFETY INVESTIGATIONS

The MEU Safety Officer has primary responsibility for the conduct and submission of required ground safety investigations. These investigations are governed by the Marine Corps Ground Mishap Investigation and Reporting Manual (Ground Mishap Manual).²⁶ Most incidents require a Safety Investigation Report (SAFEREP) to the Commandant of the Marine Corps, Safety Division (CMC(SD)), which is submitted in naval message format. As discussed in detail below, a safety investigation board (SIB) is required for Class A or B mishaps that occur on duty, on or off duty on base, or on or off base while performing official duties, most incidents involving injury from ordnance or weapons, and all on-duty mishaps requiring in-patient hospitalization of three or more personnel.

Much like AMSBs, ground mishap safety investigations differ from JAGMAN investigations in that they are not intended to find fault or establish culpability. Safety investigations determine causal factors and provide recommendations to prevent similar mishaps from recurring. The specific purpose of ground mishap safety investigations is detailed in paragraph 4001 of the Ground Mishap Manual: Investigations are conducted to identify hazards and causal factors involved with mishaps. They also provide commanders information that may help to identify and combat emerging mishap trends and enhance mishap reduction. All mishap investigations are conducted solely for safety purposes. Trained safety investigators are available for consultation and investigative assistance.

The following mishaps require an SIB investigation:

(a) Class A and B mishaps (defined below) that occur on duty, on or off duty on base, or on or off base while performing official duties;

(b) A Marine Corps operational mishap involving explosives,

²⁶ U.S. MARINE CORPS, ORDER P5102.1A, MARINE CORPS GROUNDS MISHAP INVESTIGATION AND REPORTING MANUAL (29 Dec. 2000).

explosive devices, direct or indirect fire weapons (to include small arms), pyrotechnics, incendiary devices, or combat chemical agents that result in injury or Class D property damage. (Negligent discharges without injury or less than \$2,000 property damage are reported via a Hazard Report (HR). See Chapter 5 of the Ground Mishap Manual and HR message format included in Appendix 6-12); and

(c) All on-duty mishaps that require the in-patient hospitalization of three or more personnel, regardless of the extent of injuries or property damage.²⁷

All other mishaps require an investigation by trained personnel but do not require appointing an SIB. Commanders, however, may appoint an SIB at their discretion.²⁸

Per paragraph 2006 of the Ground Mishap Manual, mishaps are classified by severity. Classification may be changed at a later date based on more accurate information. The classifications are examined below.²⁹

(a) Class A. As detailed in MARADMIN 139/02, the Naval Safety Center is required to provide a mishap investigator for Marine Corps Class A mishaps.³⁰ Investigators are dispatched to provide investigative assistance to the senior member of the SIB, either serving as members of the board or as subject matter experts in occupational safety and health, tactical operations, motor vehicle mishaps, and mishap investigation processes. The following are Class A mishaps:

(1) Fatality/Fatal Injury. A mishap or complications of a mishap that results in an injury or occupational illness. When death occurs six months or more following initial mishap, contact Commandant of the Marine Corps, Safety Division (CMC (SD)), for investigative and reporting requirements.

(2) Permanent Total Disability. A non-fatal injury or occupational illness, which in the opinion of competent medical authority, permanently incapacitates someone. Loss of the following

²⁷ *Id.* at para. 4001(1).

²⁸ *Id.* at para. 4001(2).

²⁹ *Id.* at para. 2006.

³⁰ Message, 131530Z Mar 02, Commandant of the Marine Corps, subject: Safety Investigations.

body parts or the use thereof during a single mishap is a permanent total disability:

- (a) Both hands, both feet, both eyes, or
- (b) A combination of any two of these body parts.

(b) Class B. A mishap resulting in a permanent partial disability, inpatient hospitalization (admitted for reasons other than observation) of three or more personnel, or total reportable property damage of \$200,000 or more but less than \$1,000,000. A mishap that results in a person remaining in a coma in excess of twenty-four hours is also considered a Class B mishap for safety investigation purposes.

(1) Permanent Partial Disability. An injury or occupational illness that results in permanent impairment or loss of any part of the body (for example, loss of the great toe, thumb, or a nonrepairable inguinal hernia, traumatic acute hearing loss of 10 dB or greater documented by medical authority).

(2) Exceptions include the following:

- (a) Loss of teeth.
- (b) Loss of tips of fingers/toes without bone loss.
- (c) Repairable hernia.
- (d) Disfigurement.
- (e) Sprains or strains that do not cause permanent limitation of motion.

(c) Class C. A mishap resulting in a lost time case or where total reportable property damage is \$20,000 or more, but less than \$200,000.

(d) Class D. A mishap resulting in a no lost time or first aid case, or total reportable property damage of at least \$2,000 but less than \$20,000 and no lost time.

A Mishap Reporting Guide Matrix, included in Appendix 6-13, lists reporting requirements by mishap classification.

MARADMIN 161/00, provides specific guidance for investigations involving explosive ordnance. In pertinent part, this MARADMIN states: “The requirement to conduct a formal safety investigation for all mishaps involving explosive ordnance (all types), regardless of the extent of injuries or damage, remains valid.” The MARADMIN also emphasizes that formal safety investigations “require endorsements from commands identified by the Force Commander as members of the endorsing chain of command with applicable comments.”³¹

As discussed with aviation mishap safety boards, the SJA should strongly caution against the sharing of information. Paragraph 4005 of the Ground Mishap Manual contains specific guidance:

SHARING OF INVESTIGATIVE INFORMATION. To preserve the integrity of the mishap investigation process, safety mishap investigators may share only specific items with other investigators. These include but are not limited to technical evidence such as unaltered site photographs, limited technical inspection reports, engineering reports, cost sheets, hospitalization reports or similar items. Under no circumstances will safety mishap investigators share witness statements, photographs depicting mishaps reenactments, or photographs that contain safety personnel pointing to, identifying, or directing attention to any specific item or location. Similarly, photographs altered by safety personnel with pens or pencils shall not be provided to other investigators. Finally, under no circumstances will recorded findings and comments of the board, witness statements or subject matter expert statements be provided to any legal representatives.

The Headquarters, Marine Corps, Safety Division website contains a wealth of information and updates regarding the proper conduct of a ground safety investigation. It can be found at <http://www.hqmc.usmc.mil/safety.nsf>.

³¹ Message, 230926Z Mar 00, Commandant of the Marine Corps, subject: Formal Safety Investigation Report (FSIR) and Endorsing Chain Requirements.

G. EQUAL OPPORTUNITY AND SEXUAL HARASSMENT INVESTIGATIONS

The SJA must also be knowledgeable regarding the requirements for equal opportunity (EO) and sexual harassment investigations. All general officer commands are assigned an equal opportunity advisor (EOA).

The Marine Corps order on sexual harassment defines the term and directs commanders to take action when harassment is alleged.³² ALMAR 90/96 requires that discrimination and sexual harassment (DASH) reports be sent to the Commandant of the Marine Corps, Manpower Equal Opportunity (CMC(MPE)) in all cases where an allegation of sexual harassment has been made.³³ Normally, EOA issues the DASH report with SJA input as necessary. ALMAR 130/98 provides further detail regarding the timelines and procedures for DASH reports.³⁴ In extreme cases, a Serious Incident Report (SIR) may also be necessary, as discussed below.

Equal Opportunity, in general, is covered by the Marine Corps Equal Opportunity Manual.³⁵ Because an EOA is often not available in a deployed environment, the SJA must be familiar with Chapter 2, Commander's Responsibilities, and Chapter 4, Processing Complaints. An EO investigation guide is included in Appendix 6-14.

H. INSPECTOR GENERAL INQUIRIES AND INVESTIGATIONS

Inspector General (IG) investigations are most often directed by the Inspector General of the Marine Corps (IGMC) in response to a Congressional Inquiry, Hotline Complaint, or other formal complaint. A more detailed discussion of IG investigations is included in Appendix 6-15. Guidance and a format for drafting the IG investigation are also included in the Appendix. The complete IG Investigations Manual and other useful resources may be found on the IGMC website at www.hqmc.mil/ig/ig.nsf.

³² U.S. MARINE CORPS, ORDER 1000.9, SEXUAL HARASSMENT (8 June 1998).

³³ Message, 121500Z Mar 96, Commandant of the Marine Corps, Manpower Equal Opportunity, subject: Discrimination and Sexual Harassment Reporting Procedures.

³⁴ Message, 011645Z Apr 98, Commandant of the Marine Corps, Manpower, subject: Changes to Timelines and Procedures for Processing and Reporting Sexual Harassment Complaints.

³⁵ U.S. MARINE CORPS, ORDER P5354.1C, MARINE CORPS EQUAL OPPORTUNITY MANUAL (29 Feb. 1996) (C2, 29 May 1998) [hereinafter MCO P5354.1C].

I. INVESTIGATIONS INTO HOMOSEXUAL CONDUCT

The policy in the Department of the Defense is that a command may not inquire into the sexuality of a service member. Sexual orientation is a personal and private matter. However, per paragraph 6207 of the Marine Corps Separation Manual, a Marine may be separated if:

1. The member engaged in, attempted to engage in, or solicited another to engage in homosexual acts;
2. The member has made a credible statement that he/she is a homosexual, or words to that effect; or
3. The member has married or attempted to marry a person known to be of the same biological sex.³⁶

A commander is authorized to initiate a fact-finding inquiry into a member's homosexual conduct only when credible information exists that there is a basis for discharge. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that there is a basis for discharge. It requires a determination based on articulable facts, not just a belief or suspicion.

Per MARADMIN 014/00, JAs must consult with the SJA of the cognizant General Court-Martial Convening Authority (in the case of MEUs, the MEF SJA) before advising any commander regarding the initiation of an investigation into homosexual conduct.³⁷

As a general rule, when a service member states that he or she is a homosexual or bisexual and does not contest separation, little or no investigation is required. However, if a commander believes, from credible evidence, that a service member is making a statement of homosexuality or bisexuality to avoid required service, the commander may request authorization to conduct a substantial inquiry. Per MARADMIN 259/02, authorization to conduct a substantial inquiry must be granted by the Assistant Secretary of the Navy, Manpower and Reserve

³⁶ U.S. MARINE CORPS, ORDER P1900.16F, MARINE CORPS SEPARATION AND RETIREMENT MANUAL para. 6207 (31 May 2001).

³⁷ Message, 070800Z Jan 00, Commandant of the Marine Corps, Manpower, subject: Homosexual Conduct Policy.

Affairs (ASN, M&RA), via the Commandant of the Marine Corps (MPO) and the chain of command.³⁸

III. SERIOUS INCIDENT REPORTS

Marine Corps Order (MCO) 5740.2F details the requirements for release of an OPREP-3 Serious Incident Report (SIR).³⁹ OPREP-3SIR reportable events are detailed in enclosure (3) of MCO 5740.2F, and discussed below. The MEU adjutant, in conjunction with the MEU Executive Officer, should take the lead on the release of an OPREP-3SIR. The SJA, however, should provide advice regarding the requirement to collect as much evidence as possible before the release of an SIR. This is especially applicable in cases involving criminal misconduct. Initial reports to the command are not always the final facts of the case.

Per MCO 5740.2F, OPREP-3SIR reportable incidents include:

(a) Any incident of a military or political nature, domestic or foreign, that involves individual Marine Corps personnel, units or installations not previously reported by other OPREP-3 reporting requirements, that may result in local or national official reaction or civilian media coverage.

(b) An event/incident occurring on-duty resulting in death or disability of Marine Corps personnel or civilians; or resulting in \$200,000 or more in total property damage.

(c) Any incident arising from a Marine Corps operation (includes training exercises) involving explosives, live-fire, or a combat chemical agent on-base or off-base, that result in death(s) or the hospitalization of individuals resulting in lost time, injury, or reportable property damage.

(d) An aircraft mishap resulting in death or extensive damage to military or civilian property (any class A, B or C mishap).

(e) Any serious crime (felony arrest) or incident that may result in domestic or foreign criminal jurisdiction over Marine Corps personnel and their dependents; or may arouse public or congressional interest.

³⁸ Message, 081015Z May 02, Commandant of the Marine Corps, Manpower, subject: Homosexual Conduct Policy.

³⁹ U.S. MARINE CORPS, ORDER 5740.2F, OPREP-3SIR: SERIOUS INCIDENT REPORTS (6 Dec. 1996).

(f) Any incident of large-scale civil disorder involving Marine Corps personnel, units or installations.

(g) An event/incident arising from acts of nature (destructive weather conditions, fires, earthquakes, etc.) that severely delays or cancels an operation or training evolution, or poses a serious threat to life and property.

(h) Any incident resulting in loss or compromise of classified information that may compromise operational plans.

(i) An act/incident of actual or suspected covert action against any Marine Corps unit or installation.

(j) Any incident of an epidemic when:

(1) The presumptive diagnosis of any disease may require quarantine, or the diagnosis of a disease of potential epidemic significance, or

(2) The diagnosis of any disease is so widespread among Marine Corps personnel that it portends an outbreak extensive enough to degrade mission accomplishment.

(k) Racial/ethnic incidents resulting in:

(1) Death or personal injury requiring hospitalization;

(2) Property damages in excess of \$1,000;

(3) Alert of security/react force, riotous/rebellious acts, or overtly contemptuous acts by group toward military authority;

(4) Involvement of a racist organization is identified or perceived; or

(5) A potential event may escalate and affect command racial/ethnic climate. (See the Marine Corps Equal Opportunity

Manual⁴⁰ and MCO 5370.4B, Guidelines for Handling Protest and Dissident Activities⁴¹).

IV. FUND RAISING AND GIFTS

Fund raising may become an issue, particularly near Marine Corps Ball time. Fund raising activities must be conducted in accordance with the Joint Ethics Regulation⁴² and the Marine Corps Community Services Policy Manual.⁴³ Similarly, the acceptance of gifts may become an issue. Discussed below are four common problem areas in MAGTF and MEU operations: 1) Official Representation Funds; 2) Informal Unit Funds; 3) Ships' Morale, Welfare, and Recreation Funds; and 4) Gifts.

A. OFFICIAL REPRESENTATION FUNDS

The use of Official Representation Funds (ORF) is extremely limited. Per SECNAVINST 7042.7J,⁴⁴ ORF may only be used for functions that maintain the standing and prestige of the U.S. ORF may be used to host official functions and purchase command mementos for dignitaries. Use of ORF is limited to hosting presentations for distinguished citizens (medal of honor recipient, town mayor), high-ranking military officers (CINCs and above), governmental officials (Secretary of Navy, Defense), foreign military officers, and foreign dignitaries/officials.

There are two major practical hurdles regarding the use of ORF. First, the ORF budget for each MEU is very restricted (as little as \$250). Second, the general officer commander often will not release ORF funds greater than the MEU allowance until the expenditure is made. Thus, the MEU must first purchase the memento or host the event out of pocket, and then, if the expenditure is approved, be reimbursed by the MEF. This procedure is problematic because it requires the MEU to produce funds from informal sources (for example, collection, officers fund) to pay for ORF events. Other appropriated government funds (for example,

⁴⁰ MCO P5354.1C, *supra* note 35.

⁴¹ U.S. MARINE CORPS, ORDER 5370.4B, GUIDELINES FOR HANDLING PROTEST AND DISSIDENT ACTIVITIES (6 June 1997).

⁴² U.S. DEP'T OF DEFENSE, REG. 5500.7-R, JOINT ETHICS REGULATION (Aug. 1993) (C4, 6 Aug. 1998) [hereinafter JER].

⁴³ U.S. MARINE CORPS, ORDER P1700.27A, MARINE CORPS COMMUNITY SERVICES POLICY MANUAL (8 Nov. 1999) [hereinafter MCO P1700.27A].

⁴⁴ U.S. DEP'T OF NAVY, SEC'Y OF THE NAVY INSTR. 7042.7J, GUIDELINES FOR USE OF OFFICIAL REPRESENTATION FUNDS (5 Nov. 1998).

unit Operation and Maintenance funds) cannot be used to fund ORF events, as doing so would violate fiscal law “purpose” provisions.⁴⁵

B. INFORMAL UNIT FUNDS

Commands often desire to establish informal unit funds. The proceeds from these funds are generally used to subsidize morale and welfare events for the enlisted Marines and Sailors in the unit, such as the Marine Corps Ball. Money is often raised for the fund through the sale of unit logo gear (for example, t-shirts, sweatshirts, ball caps, coins, cups, etc). For example, MARADMIN 430/99, establishing an order on funding the Marine Corps Ball, clearly contemplates the establishment of an informal fund to subsidize the social portion of the Ball. In pertinent part, the MARADMIN states: "Social Event. The social portion of the Ball is the dinner, refreshments, favors, and mood/dance music. These functions shall be supported through (1) ticket sales, (2) unit fund raising events, and (3) Marine Corps Community Services (MCCS) NAF [nonappropriated funds], if available."⁴⁶

There are three issues the SJA must address regarding informal unit funds:

(1) Does the fund improperly compete with the local Marine Corps Community Service (MCCS) instrumentality? The fund must be specifically approved by MCCS per the MCCS Manual.⁴⁷ Paragraph 1405 of the MCCS Manual provides that individual units and commands on DOD installations may hold fund raising events to augment their own unit funds subject to installation regulations and authorization from the local MCCS.

(2) Understand that commands cannot raise funds. Therefore, the informal fund must be established as a private organization, with a separate, noninterest-bearing checking account. An accountable officer must administer the fund. The accountable officer is personally responsible and liable for the fund and for any contacts made by the private organization (for example, contacts to purchase unit logo gear). The total amount of money held by the fund should be capped to preclude accumulation of more funds than necessary for the express purpose of the fund. A specific request to establish the private organization, along with its charter and by-laws, should be forwarded to the officer exercising general court-martial convening

⁴⁵ For a further discussion of ORF and its fiscal law implications, see *infra* Chapter 7, Section II.B.6.

⁴⁶ Message, 291400Z Sept 99, Commandant of the Marine Corps, Director, Marine Corps Staff, subject: MCO 5100.31 Marine Corps Ball Funding.

⁴⁷ MCO P1700.27A, *supra* note 43.

authority over the unit per MCO 5760.4B, Private Organizations on DOD Installation.⁴⁸

(3) Ensure compliance with the Joint Ethics Regulation (JER).⁴⁹

C. SHIP'S MORALE, WELFARE, AND RECREATION FUND

During each deployment, the MEU enters into an agreement with the ships' commanding officers for division and expenditure of funds raised through the ships' Morale, Welfare, and Recreation (MWR) activities. These activities include: ships' store sales, vending machine sales, bingo, souvenir sales, and tour sales. *Each ship* divides these funds, not the entire Amphibious Ready Group. Therefore, the share per Marine may differ depending on the ship on which he or she is embarked. Of particular note, these funds *must be utilized before the MEU disembarks from Navy shipping*. Failure to utilize the funds before off-load may result in the funds being placed in a general account under the authority of higher (component level) command. Traditionally, the MEU has utilized its share of the MWR funds to defer the cost of a cruise book and to host a social event open to all members.

D. GIFTS

1. General Rule

Pursuant to the JER and Chapter 12 of the LEGADMINMAN,⁵⁰ the general rule is that no gift will be accepted by the Marine Corps, a Marine Corps unit, or by an individual Marine, regardless of value, if either presently or in the future it has the potential to embarrass the Marine Corps. The SJA must consider:

(a) Will the public believe the gift is given for ulterior motives; in other words, will the donor expect future favors in return?

(b) Does it create an actual or perceived conflict of interest between the donor and the Marine Corps?

(c) Is the donor a defense contractor (does business or is seeking to do business with any DOD component)?

⁴⁸ U.S. MARINE CORPS, ORDER 5760.4B, PRIVATE ORGANIZATIONS ON DOD INSTALLATION (28 Sept. 1988).

⁴⁹ JER, *supra* note 42.

⁵⁰ U.S. MARINE CORPS, ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION ch. 12 (31 Aug. 1999) (C1, 21 Mar. 2001).

(d) Does the gift come from a donor (individual, group, or association) with whom the Marine Corps should not be linked?

(e) If unduly burdensome conditions are associated with a gift, or if expenditure of funds or administrative efforts outweigh the value of the gift, it may be declined.

2. Acceptance of Unsolicited Gifts

Subject to the “general rule” above, the appropriate acceptance authority may accept unsolicited gifts of personal property to the Marine Corps. Per the LEGADMINMAN, Chapter 12:

(a) Officers exercising special court-martial jurisdiction may accept gifts of a value not exceeding \$1500.

(b) General officers in command, district directors, SJA to CMC, and Counsel for CMC may accept gifts of a value not to exceed \$10,000.

(c) CMC may accept gifts of personal property to the Marine Corps of a value less than \$50,000.

(d) In addition, any commander may accept unsolicited gifts of perishables or consumables such as food, nonalcoholic beverages, and flowers, regardless of donor or value. This acceptance is of items that will be consumed at one specific event; for example, unit picnic, command event, or the like.⁵¹

3. Marine Corps Community Services Command Recreational Fund

MCCS maintains a Command Recreational Fund (CRF) for the Command Element and each of the MEU’s main subordinate elements. It is not uncommon for outside sources to desire to donate money or gifts to the MEU. For example, during the 1999 predeployment phase, Headquarters, Marine Corps, selected the 15th MEU to work with the producers of the television show, "Pensacola: Wings of Gold." The producers desired to donate money to the unit. Acceptance of these donations by the MEU could have caused potential problems under the Joint Ethics Regulation (arguably viewing the television show as a source "doing business" with DOD). MCCS, however, could accept the donation and place it in the unit CRF.

⁵¹ *Id.* at para. 12003(2).

CHAPTER 7

CIVIL LAW

I. INTRODUCTION

“Civil law” is a broad term encompassing that body of law governing the rights and duties of military organizations with regard to civil authorities.¹ Under this definition, civil law is a cross-cutting discipline with applicability across a wide spectrum of legal support, from military justice to legal assistance to foreign claims. The purpose of this chapter, however, is to focus on three specific areas of civil law not addressed in other chapters. Namely, this chapter will discuss 1) fiscal law; 2) contract law; and 3) overseas environmental law, all from the perspective of a deployed Marine Air-Ground Task Force (MAGTF), with a focus on the Marine Expeditionary Unit (MEU).

This chapter is not intended to provide an exhaustive description of the complex assortment of statutes, directives, and regulations that comprises fiscal, contract, and environmental law. Rather, this chapter hopes to capture the essential knowledge that a deployed MAGTF judge advocate (JA) should possess in light of those fiscal, contract, and environmental issues likely to be encountered in a deployed setting. In other words, this chapter endeavors to help a MAGTF JA navigate through the civil law forest without getting lost in the trees.

II. DEPLOYMENT FISCAL LAW

Most JAs are familiar with the basic fiscal law mantra of “purpose, time, and amount.” Obligations (incurring a legal liability to pay) and expenditures (actual payment of funds to satisfy an obligation) must be for a proper “purpose,” must occur within a set “time,” and must be within a congressionally authorized “amount.” Disregarding any of these basic controls can be a violation of either the Purpose Statute (applying an appropriation to an improper purpose)² or the Antideficiency Act (essentially, authorizing expenditures or incurring obligations in excess of

¹ See U.S. DEP’T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS 3-9 (1 Mar. 2000).

² 31 U.S.C. § 1301(a) (2002).

available funds or in advance of appropriations).³ This fundamental fiscal framework applies to all military activities; there are very few “deployment” or contingency exceptions.

Applying this fundamental framework, however, can be a daunting task unless the JA has a holistic understanding of how fiscal law works and how the various statutes, directives, and regulations interrelate. The *Operational Law Handbook* is an excellent reference, yet even its efforts to provide a fiscal law overview fill thirty-six detailed pages⁴ and might be difficult for a JA to implement in practical terms in the context of a deployed MAGTF. What this section attempts to do is synthesize the guidance found in the *Operational Law Handbook* and various other reference sources⁵ into a narrative discussion of how fiscal law concerns might impact MAGTF operations.

A. OPERATION AND MAINTENANCE FUNDS AS A DEPLOYMENT FISCAL BASELINE

A MAGTF JA should approach deployment fiscal law from the following basic premise: unit Operation and Maintenance (O&M) funds pay for the daily costs of operating and maintaining a MAGTF during a deployment. Every year Congress provides the Department of Defense (DOD) the budgetary authority for these funds through statutes—known as appropriations acts and authorization acts—that set forth the parameters for what purposes the funds may be used, during what time period, and up to what amount. For example, the most recent Defense appropriations act provides the Marine Corps \$2,931,934,000 (amount) in O&M funds for fiscal year 2002 (time—1 October 2001 to 30 September 2002) “[f]or expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps” (purpose).⁶ The Marine Corps then parcels out these O&M funds to lower levels, formally subdividing the funds to major commands, which in turn informally subdivide these funds into “targets” or “allowances” for units such as a MAGTF.

³ 31 U.S.C. §§ 1341(a), 1517 (2002).

⁴ INT’L AND OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK at 221-38, 261-79 (2002) [hereinafter OPLAW HANDBOOK].

⁵ One such source, an Introduction to Fiscal Law outline prepared by the Contract and Fiscal Law Department, The Judge Advocate General’s School, U.S. Army, is included in Appendix 7-1.

⁶ Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act of 2002, Pub. L. No. 107-117, 115 Stat. 2230, 2233 (2002) [hereinafter 2002 DOD Appropriation].

Unit O&M allowances likely will pay for the vast majority of expenses that a deployed MAGTF will incur. The JA needs to step in, however, whenever an expense arises that might run afoul of the purpose, time, or amount of the generic O&M appropriation or the unit O&M allowance. So long as available funds are expended during the fiscal year for current needs,⁷ time and amount will not be a concern. The more common fiscal law concern is purpose. The JA must ensure that unit O&M funds are used only for the purpose Congress intended in the applicable appropriations act. The JA should use the following three-part test to analyze whether an obligation or expenditure fits a proper purpose:

- a. Obligations and expenditures must fit an appropriation or be *necessary and incident* to the general purpose of the appropriation;
- b. Obligations and expenditures must not be prohibited by law; and
- c. Obligations and expenditures must not be provided for otherwise in some other appropriation.⁸

Applying this test to O&M appropriations is easier said than done. Under the first prong, the JA must look to the purpose language in the O&M appropriation: “necessary for the operation and maintenance of the Marine Corps.”⁹ What emerges seems to be a tautology: the purpose of O&M funds is to fund operation and maintenance. The JA therefore needs to look outside the statute for an understanding of what constitutes “operation and maintenance.” The Marine Corps Financial Execution Standard Operating Procedure Manual states:

The [Operation and Maintenance, Marine Corps,] appropriation provides funds for: officer and troop training; civilian salaries; recruiting; administration; operation of the supply system; maintenance of equipment; TDY travel and miscellaneous costs; and medical and dental care. It also provides funds for

⁷ See 31 U.S.C. § 1502(a) (2002) (the “bona fide needs” rule).

⁸ Sec’y of the Interior, B-120676, 34 Comp. Gen. 195 (1954) (emphasis added).

⁹ See *supra* text accompanying note 6.

personnel support activities such as: dining facilities, barracks, BOQ's, service clubs, and commissaries; maintenance and repair of property; operation and purchase of utilities; minor construction; engineering support; and other base services, such as motor transport, communications, security, etc.¹⁰

Another method for understanding what constitutes operation and maintenance is to define it in the negative; in other words, to state what it is not. The existence of another appropriation for another purpose, as discussed below, is often a clue. For example, separate appropriations exist for purposes such as pay and allowances for military personnel,¹¹ procurement of investment end items (e.g., aircraft, missiles, ships),¹² and research, development, test, and evaluation.¹³

The remaining two prongs require the JA to know what obligations and expenditures are prohibited by law and which are provided for in other appropriations. It is at this point in the analysis that fiscal law can become particularly confusing as the sheer number of statutory and regulatory authorities for funding military operations quickly overwhelms the JA. To help alleviate this confusion, included in Appendix 7-2 is an outline on funding U.S. military operations prepared by the Deputy Legal Counsel to the Chairman, Joint Chiefs of Staff. But even this outline lacks the narrative thread that a MAGTF JA needs for a holistic understanding of fiscal law in MAGTF operations. A better approach for the JA is to have handy a checklist of purposes, such as activities, types of purchases, or specific missions, likely to arise in MAGTF operations that should not be satisfied out of unit O&M allowances—in other words, a checklist of recurring fiscal law red flags.

B. DEPARTING FROM THE OPERATION AND MAINTENANCE FUNDS BASELINE: FISCAL LAW RED FLAGS IN MAGTF OPERATIONS

Recall the basic premise: generally speaking, the MAGTF runs on O&M dollars. Generic O&M appropriations should not be used, however,

¹⁰ U.S. MARINE CORPS, ORDER P7300.21, MARINE CORPS FINANCIAL EXECUTION STANDARD OPERATING PROCEDURE MANUAL para. 2004(1)(c) (29 Mar. 2001).

¹¹ 2002 DOD Appropriation, *supra* note 6, at 115 Stat. 2230.

¹² *Id.* at 115 Stat. 2238.

¹³ *Id.* at 115 Stat. 2243.

for certain missions, activities, and purchases. What follows is a nonexhaustive listing of these recurring potential purposes, broken down into seven general categories: 1) Foreign Claims; 2) Humanitarian, Refugee, and Disaster Relief; 3) Logistical Support to Non-MAGTF Personnel; 4) Training and Exercises with Foreign Personnel; 5) Military Construction; 6) Gifts and Entertainment; and 7) Procurement Appropriations. Anytime the MAGTF contemplates the obligation or expenditure of funds for any of these purposes, the JA's senses should be heightened for a potential fiscal law issue, ensuring that the correct appropriation is matched up to its intended purpose.

1. Foreign Claims

Perhaps the most common example for the deployed MAGTF JA of a purpose that should not be paid out of unit O&M funds is foreign claims. This is not because the O&M appropriation is not intended for foreign claims payment—foreign claims actually are paid out of O&M dollars. But a separate O&M fund allocation exists for foreign claims, and the JAGMAN states that this allocation must be used to pay foreign claims.¹⁴ Thus, pursuant to regulation (rather than the Purpose Statute) foreign claims should not be paid out of the unit O&M allowance.

2. Humanitarian, Refugee, and Disaster Relief

The JA should closely scrutinize any mission, activity, project, or purchase that entails the provision of humanitarian, refugee, or disaster relief. In general terms, the more a purpose looks like a form of support to the local populace rather than a garden variety operational purpose, the greater the likelihood that generic O&M dollars should not be used. The underlying concern is that humanitarian, refugee, and disaster relief fall within the purview of the Department of State (DOS), not the DOD. Recognizing that the military can play a vital role in such missions, however, Congress has provided various legislative authorities and funding

¹⁴ See U.S. DEP'T OF NAVY, JUDGE ADVOCATE GENERAL INSTR. 5800.7C, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) para. 0821(c) (3 Oct. 1990) (C3, 27 July 1998) [hereinafter JAGMAN] (citing accounting data for foreign claims). Of note, the accounting data in JAGMAN 0821(c) is incorrect, but the cite still stands for the proposition that foreign claims are not paid with unit O&M dollars. The correct accounting data for foreign claims is disseminated each year in separate naval message traffic. An updated JAGMAN is forthcoming that will provide foreign claims accounting data with instructions on how to adjust the data to reflect the current fiscal year. For a more detailed discussion of foreign claims in general, see *infra* Chapter 8.

appropriations for DOD participation.¹⁵ The critical point for the MAGTF JA to understand is that, with one exception, unit O&M funds cannot be used to support humanitarian, refugee, or disaster relief activities. If a MAGTF has been assigned one of these missions, the JA should coordinate with the higher command to determine which is the appropriate “pot of money” to use.

The one exception where a MAGTF can use unit O&M funds for these missions is for the provision of *de minimis* humanitarian and civic assistance (HCA).¹⁶ In conjunction with an authorized military operation (to include training and exercises), a MAGTF may provide HCA, defined below, so long as expenditures are minimal. Keep in mind that an activity intended to support the overall military mission that happens to have an incidental benefit to the local population would not constitute HCA. For example, if the mission requires clearing land to establish a base camp, the fact that the local population might also benefit does not mean that the clearing constitutes HCA. If the primary purpose of the activity is to benefit the local population, however, the MAGTF must adhere to strict HCA guidelines. *De minimis* “HCA”¹⁷ includes only:

1. Medical, dental, and veterinary care provided in areas of a country that are rural or are underserved by medical, dental, and veterinary professionals, respectively.
2. Construction of rudimentary surface transportation systems.
3. Well drilling and construction of rudimentary sanitation facilities.

¹⁵ For a more detailed discussion, see the Chairman’s Legal Counsel outline on funding U.S. military operations included in Appendix 7-2.

¹⁶ 10 U.S.C. § 401(c)(4) (2002).

¹⁷ All of the HCA requirements and limitations discussed in this section apply to any form of HCA, not just *de minimis* HCA. HCA other than *de minimis* HCA has an additional requirement, *inter alia*, of obtaining specific Secretary of State approval. 10 U.S.C. § 401(b)(1). *See also* U.S. DEP’T OF DEFENSE, DIR. 2205.2, HUMANITARIAN AND CIVIC ASSISTANCE (HCA) PROVIDED IN CONJUNCTION WITH MILITARY OPERATIONS para. 4.6 (6 Oct. 1994) [hereinafter DOD Dir. 2205.2]. “*De minimis*” refers to the cost of the HCA and the possibility of funding the HCA with unit O&M dollars rather than HCA O&M dollars that the combatant command separately budgets for pre-planned HCA activities. *See* 2002 DOD Appropriation, *supra* note 6, at 115 Stat. 2249.

4. Rudimentary construction and repair of public facilities.¹⁸

Furthermore, DOD support for HCA is limited in scope. All *de minimis* HCA activities must:

1. Promote U.S. foreign policy.
2. Promote the specific operational readiness skills of participating Marines.
3. Promote the security interests of the U.S. and the host nation.
4. Complement, and not duplicate, other social or economic assistance from a non-DOD U.S. department or agency.
5. Not be provided to any individual, group, or organization engaged in military or paramilitary activity
6. Be conducted with the approval of the host country's national and local civilian authorities.¹⁹

If all of these requirements and restrictions are met, the MAGTF may provide HCA amounting to a minimal expenditure. “Minimal expenditure” does not have a statutory definition. DOD Directive 2205.2, an implementing regulation for HCA, however, dictates that unified combatant commanders shall determine what is “minimal,” balancing the cost directly resulting from and the time required for the HCA activity against the unit’s mission requirements.²⁰ HCA costs include incremental expenses for consumable materials, supplies, and services, if any, that are reasonably necessary to provide the HCA, but do not include costs likely to be incurred as a result of the overall military operation whether or not the HCA is provided (for example, personnel expenses, transportation, fuel, and

¹⁸ DOD DIR. 2205.2, *supra* note 17, at para. E1.1.2.

¹⁹ *Id.* at paras. 4.1 to 4.5.

²⁰ *Id.* at para. E.1.1.1.

equipment repair).²¹ The activity should not involve burdensome paperwork.²² A colloquial rule of thumb is “a few Marines, a few dollars, a few hours.”²³ The MAGTF JA should consult with the relevant combatant command to determine what guidelines, if any, exist for minimal HCA expenditures in the area of responsibility. DOD Directive 2205.2 lists two examples of appropriate *de minimis* HCA:

1. A unit doctor’s examination of villagers for a few hours, with the administration of several shots and the issuance of some medicine, but not the deployment of a medical team for the purposes of providing mass inoculations to the local populace.
2. The opening of an access road through the trees and underbrush for several hundred yards, but not the asphaltting of a roadway.²⁴

3. Logistical Support to Non-MAGTF Personnel and Entities

Another fiscal law red flag to be aware of is the provision of logistical support to non-MAGTF personnel or entities (in addition to support provided in the humanitarian relief context discussed above). As a general matter, whenever the MAGTF contemplates providing items or services to non-MAGTF personnel or entities, the JA should closely scrutinize the transaction for potential fiscal law issues. The best method for analyzing the relevant fiscal controls is to first categorize the support by the type of supported entity involved and then determine the relevant fiscal controls.

a. Support to Another U.S. Federal Agency

If the support is to another U.S. federal agency, to include another U.S. military department or Defense agency, the Economy Act²⁵ provides the authority for federal agencies to order goods and services from other federal agencies. Thus, the MAGTF can order goods and services from another federal agency, and another federal agency can order goods and

²¹ *Id.* at para. 4.9.

²² *Id.*

²³ Interview with Major Kevin M. Walker, U.S. Army, Fiscal Law Instructor, The Judge Advocate General’s School, U.S. Army, in Charlottesville, VA (10 May 2002).

²⁴ DOD DIR. 2502.2, *supra* note 17, at paras. E1.1.1.1-E1.1.1.2.

²⁵ 15 U.S.C. §§ 1535-36 (2002).

services from the MAGTF. The requesting agency must reimburse the providing agency. In addition, certain criteria must be met:

1. The requesting unit must have available funds;
2. The head of the requesting agency or unit must decide the order is in the best interest of the U.S. government;
3. The agency or unit to be asked to fill the order must be able to provide the ordered goods or services; and
4. The head of the requesting agency or unit must decide that the ordered goods or services cannot be provided as conveniently or economically by a commercial enterprise.²⁶

Chapter 3 (“Economy Act Orders”) of Volume 11A of the Department of Defense Financial Management Regulations²⁷ provides more detailed regulatory guidance. The takeaway for the MAGTF JA is that an Economy Act transaction is one area where the MAGTF may provide reimbursable support to non-MAGTF personnel without violating a legal fiscal control.

b. Support to Foreign Militaries, Foreign Governments, and International Organizations

With a few exceptions discussed below, the general rule for the MAGTF JA is that unit O&M funds and unit articles and services may not be used to provide foreign assistance. Foreign assistance takes one of two forms: security assistance or development assistance. Security assistance involves the provision of military supplies, training, or equipment to foreign entities (militaries, governments, international organizations). Development assistance involves the provision of education, nutrition, agriculture, family planning, health care, environment, and other like support to foreign entities. The underlying rationale for the prohibition against using unit O&M funds and unit articles and services to provide foreign assistance is that such

²⁶ U.S. DEP’T OF DEFENSE, REG. 7000.14-R, DEPARTMENT OF DEFENSE FINANCIAL MANAGEMENT REGULATIONS, vol. 11A, Reimbursable Operations, Policy and Procedures, para. 030103(A) (Apr. 2000).

²⁷ *Id.*

support falls within the purview of the DOS, not the DOD. The DOS provides foreign assistance under the broad authority of the Foreign Assistance Act of 1961 (FAA),²⁸ as amended. Generally speaking, DOS funds and programs are used to provide security and development assistance. There are, however, occasions when DOD funds and assets can be used.

This is the essence of the matter for the purposes of the MAGTF JA. Beyond this basic framework exists a complicated body of fiscal law that largely operates at levels well above the MAGTF. The critical question for the MAGTF JA is to determine when unit assets may be used to provide foreign assistance. If such support is not authorized, the MAGTF JA must advise either that the unit may not provide assistance or that a separate funding source or program, if available, must be used. The funding outline included in Appendix 7-2 provides a listing of potential funding sources and nonappropriated (i.e., no funds required) programs for foreign assistance.

One exception to the prohibition against using unit O&M funds to provide foreign assistance has already been discussed: *de minimis* HCA.²⁹ Here, Congress has specifically authorized the use of unit O&M dollars to provide a minimal level of foreign assistance within certain strict parameters.

Another exception arises when an arrangement exists providing for reimbursement to the DOD by the supported entity. One such arrangement is an order from another U.S. federal agency under the Economy Act, as discussed above.³⁰ For example, the MAGTF could satisfy a DOS order for services or articles on a reimbursable basis that the DOS could in turn use to provide foreign assistance.³¹ Similarly, section 607 of the FAA provides a mechanism to negotiate agreements authorizing the provision of military articles and services to friendly foreign countries and international organizations on an advance of funds or reimbursable basis. Section 607 agreements will not be negotiated at the MAGTF level; the role of the MAGTF JA is to inquire if a 607 agreement exists with the relevant foreign entity before advising that support can be provided.

²⁸ 22 U.S.C. §§ 2151-2349aa-9 (2002).

²⁹ See *supra* text accompanying notes 16-24.

³⁰ See *supra* text accompanying notes 25-27.

³¹ The DOS can also request DOD articles and services for the specific purpose of foreign assistance using the statutory authority of section 632 of the FAA. This reimbursable arrangement is very similar to an order under the Economy Act.

Perhaps the most common reimbursable arrangement that the MAGTF can use to provide security assistance involves the use of Acquisition and Cross-Servicing Agreements (ACSAs).³² An ACSA is an international agreement between the DOD and the relevant foreign country, foreign military, or international organization allowing for the acquisition and provision of reciprocal logistical support. Acquisitions and transfers can be on a cash reimbursement, replacement-in-kind, or exchange of value basis. ACSA agreements are typically accompanied by implementation agreements that provide more detailed guidance on the terms of the ACSA. Again, an ACSA will not be negotiated at the MAGTF level, and the role of the JA is to determine if an ACSA exists with the entity in question before advising that support can be received or provided.³³ Furthermore, the JA should closely analyze the terms of both the ACSA and the implementation agreement to ensure that the type of support contemplated is authorized and that no procedural requirements prohibit the transaction.

4. Training of Foreign Personnel

One aspect of security assistance that is particularly highlighted in the deployed MAGTF context is the general prohibition on using O&M funds to support the training of foreign military forces. MEUs frequently conduct training exercises with foreign militaries as part of their six-month deployments. The issue for the JA is to determine if the MAGTF actually contemplates “training” the foreign military force and, if so, under what authority and with what funding source the training can take place.

The typical MAGTF training exercise probably will not involve “training” of a foreign military force. This is primarily because the General Accounting Office opined in 1986 that interoperability, safety, and familiarization information does not constitute security assistance training.³⁴ Additionally, it is not considered security assistance training if the primary purpose of the exercise is for MAGTF training and the training benefit to the foreign military force is merely incidental to the exercise.³⁵ For example, consider the situation where MAGTF Marines provide weapons safety and interoperability training to a foreign military force in preparation for a

³² See 10 U.S.C. 2341-50 (2002).

³³ For a listing of current ACSAs, see the CLAMO databases at www.jagenet.army.mil.

³⁴ The Hon. Bill Alexander, House of Representatives, B-213137, Jan. 30, 1986 (unpublished GAO opinion).

³⁵ Gen. Fred F. Woerner, B-230214, Oct. 27, 1988.

combined live-fire exercise. This training probably would not rise to the level of security assistance training, and unit O&M dollars could be used to fund any costs associated with the instruction. On the other hand, suppose the foreign military force had recently purchased military equipment from the U.S. and desired extensive instruction on the equipment's use. This probably would rise to the level of security assistance training, and therefore the MAGTF would not be able to provide the training with O&M funds.

There are exceptions, however, to the general prohibition on using MAGTF assets to support activities that rise to the level of security assistance training. One exception is reciprocal training under 22 U.S.C. § 2770a. This statutory authority allows the MAGTF to use O&M funds to provide training support to a foreign military force if an international agreement with the relevant country authorizes the training and if the U.S. expects to receive reciprocal training from the country within one year. Another option is to use funds from a presidential emergency drawdown. Pursuant to section 506(a)(1) of the FAA, the President can “drawdown” from DOD resources to provide certain security assistance, to include training foreign forces, in an emergency situation when the assistance cannot otherwise be provided for under the FAA. If the President has authorized such a drawdown in conjunction with an operation involving the MAGTF, the MAGTF could request through the combatant command that drawdown funds be used for training foreign forces. Lastly, each combatant command maintains a CINC Initiative Fund (CIF) that can be used to support, among other activities, foreign military training.³⁶ The MAGTF JA could request CIF money from the combatant command to support the training.

5. Military Construction

Military construction is another fiscal law red flag that the MAGTF JA should consider. The complex array of laws and regulations governing construction funding makes it useful to synthesize the subject into the essential law most pertinent to MAGTF operations.³⁷ To that end, what follows is a brief outline attempting to synthesize critical concepts for the MAGTF JA, again starting the analysis from an O&M baseline.

³⁶ See 10 U.S.C. § 166a(b)(7) (2002).

³⁷ For an excellent outline on construction funding—too voluminous to include in this publication—see the JAGCNet databases at www.jagcnet.army.mil (enter the JAGCNet, then click on “Contract Law” to find the TJAGSA Fiscal Law Course Deskbook; military construction is Chapter 5).

I. Unit O&M funds can be used for construction projects up to \$750,000 (\$1.5 million if the project is intended solely to correct a deficiency that threatens life, health, or safety).³⁸ Any project that will exceed these amounts must be funded by a separate appropriation, and the JA should coordinate with higher command.

A. “Construction” includes 1) erection, installation, or assembly of a new facility; 2) addition, expansion, extension, alteration, conversion, or replacement of an existing facility; 3) relocation of a facility from one site to another; 4) installed equipment made part of the facility; and 5) site preparation, excavation, filling, landscaping, or other land improvements.³⁹

B. Construction does not include maintenance and repair.

1. “Maintenance” is daily, periodic, or scheduled work required to preserve or return a facility to use for its designated purpose.⁴⁰

2. “Repair” is overhaul, reconstruction, or replacement of constituent parts or materials of a real property facility to return the facility to use for its designated purpose.⁴¹

C. The \$750,000 threshold includes all funded costs associated with the project.

1. “Funded” costs are essentially expenses necessary to support the project (e.g., materials, civilian labor, fuel); “unfunded” costs are essentially costs that contribute to the overall value of the project but that are not expended out of unit

³⁸ 10 U.S.C. § 2805(c) (2002).

³⁹ See 10 U.S.C. § 2801(a); U.S. DEP’T OF NAVY, CHIEF OF NAVAL OPERATIONS INSTR. 11010.20F, FACILITIES PROJECTS MANUAL para. 6.1.1 (7 June 1996) (C1, 29 Jan. 2002) [hereinafter OPNAVINST 11010.20F].

⁴⁰ OPNAVINST 11010.20F, *supra* note 39, at para. 4.1.1.

⁴¹ *Id.* at para. 3.1.1.

O&M funds (e.g., salaries for military personnel, depreciation of government-owned equipment, gifts and donated materials).⁴²

2. Costs associated with the project include all work necessary to produce a complete and usable facility or improvement to a facility; in other words, a unit cannot split a related project into separate increments to avoid reaching the threshold.⁴³

II. O&M funds may not be used to construct permanent facilities during OCONUS CJCS exercises; exercise-related construction funds (ERC) must be used instead. O&M funds can be used, however, to construct temporary facilities during an exercise (e.g., tent platforms, range targets, shelters).⁴⁴

III. The Army has opined that O&M funds may be used for construction of facilities during combat or declared contingency operations to meet the temporary operational needs of the unit, even if the costs exceed the \$750,000 threshold.⁴⁵ The Marine Corps has not issued a policy on this matter. The JA should coordinate with higher command if this situation arises.

Keep in mind that this outline is only designed to capture the essential construction funding law that a MAGTF JA should know. This basic guidance should, however, help the JA identify potential construction issues and realize when coordination with and guidance from higher command is necessary.

6. Gifts and Entertainment

Unit O&M funds cannot be used to purchase gifts, no matter the recipient, nor can these funds be used for entertainment purposes, such as hosting official functions. Deployed MAGTF JAs frequently encounter

⁴² *Id.* at paras. 2.1.1.e-f.

⁴³ *Id.* at para. 6.1.1.f.

⁴⁴ 10 U.S.C. § 2805(c)(2) (2002). DOD must notify Congress if any exercise construction, to include temporary facilities, is contemplated for such an exercise.

⁴⁵ See Memorandum, Deputy General Counsel (Ethics and Fiscal), Office of the General Counsel, Department of the Army, subject: Construction of Contingency Facility Requirements (22 Feb. 2000).

situations where commanders want to present official mementos to, or host official functions for, foreign dignitaries or foreign military personnel. Using unit O&M funds for these activities would violate the purpose of the generic O&M appropriation. A specifically earmarked fund within the O&M appropriation, however, may be available to the MAGTF. The fund is the Emergency and Extraordinary Expenses (E&E) Fund,⁴⁶ which, among other purposes, can be used for “the hosting of official functions and the presentation of command mementos.”⁴⁷ E&E funds used for these purposes are known as “Official Representation Funds” (ORF). Prior to deployment, the MAGTF JA should inquire into the amount of ORF available to the MAGTF⁴⁸ and, during the deployment, ensure that only ORF dollars are used for ORF purposes.

7. Procurement Appropriations

As a final fiscal law red flag for MAGTF operations, the JA should recognize that unit O&M dollars cannot be used to purchase centrally managed items, discussed below, or items that cost \$100,000⁴⁹ or more. Such purchases are made using non-O&M “procurement” appropriations. The most recent Defense appropriations act lists the centrally managed items that the Marine Corps procurement appropriation is intended for:

[E]xpenses necessary for the procurement, manufacture, and modification of missiles, armament, military equipment, spare parts, and accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including the purchase of not to exceed 25 passenger motor vehicles for replacement

⁴⁶ 10 U.S.C. § 127 (2002).

⁴⁷ U.S. DEP’T OF NAVY, SEC’Y OF THE NAVY INSTR. 7042.7J, GUIDELINES FOR THE USE OF OFFICIAL REPRESENTATION FUNDS (ORF) para. 6 (5 Nov. 1998). ORF may only be used in narrow circumstances where the underlying purpose is to “maintain the standing and prestige of the United States.” *Id.* Accordingly, ORF cannot be used for strictly DOD functions. *See id.* at para.6(d) (listing activities not appropriate for ORF). For a discussion of unit informal funds and hosting exclusively DOD functions such as the Marine Corps Birthday ball, see *supra* Chapter 6, Section IV.B.

⁴⁸ As an example, the 11th MEU received \$225 in ORF dollars prior to a 2002 deployment. This money came from the MEF Commanding General’s ORF allotment.

⁴⁹ *See* 2002 DOD Appropriation, *supra* note 6, at 115 Stat. 2256.

only; and expansion of public and private plants,
including land necessary therefor⁵⁰

The MAGTF JA should ensure that unit O&M funds are not used for these procurement appropriation purposes.

C. CONCLUSION

It bears repeating that the foregoing discussion of fiscal law and fiscal law red flags was not intended to be an exhaustive fiscal law reference for the MAGTF JA. Rather, the goal was to help MAGTF JAs identify recurring fiscal law issues in MAGTF operations and provide guidance on seeking resolution. Very few Marine JAs receive fiscal law training, and anecdotal evidence suggests that, particularly at the MEU level, JAs often have limited visibility on fiscal matters, relying instead on disbursing and supply officers as the subject matter experts. This discussion should arm the JA with enough knowledge to become more engaged in the fiscal aspects of MAGTF operations. Fiscal law issues can and do arise in MAGTF operations, and the MAGTF JA who ignores fiscal matters does so at the commander's peril.

III. DEPLOYMENT CONTRACTING

The MAGTF JA should also become more involved in deployment contracting. Typically, particularly in the case of deployed MEUs, nonlawyer contracting officers (frequently staff noncommissioned officers) handle MAGTF contracting with little JA involvement. Unless the JA takes an active role, significant legal contracting issues may pass unnoticed.

The *Operational Law Handbook* does an excellent job of describing the law applicable to deployment contracting.⁵¹ A more detailed discussion of deployment contracting can be found in the Contract Attorneys Course Deskbook produced by the Contract and Fiscal Law Department of The Judge Advocate General's School, U.S. Army.⁵² The MAGTF JA should take the time to peruse these sources, especially with respect to the law

⁵⁰ *Id.* at 115 Stat. 2241.

⁵¹ OPLAW HANDBOOK, *supra* note 4, at 239-53.

⁵² Enter the JAGCNet at www.jagenet.army.mil, then click on "Contract Law" to find the Deskbook.

governing “simplified acquisition procedures,” the streamlined form of contracting applicable the vast majority of the time during a deployment.

Lessons learned from past Marine and Army operations indicate, however, that noncontracting officer JAs do not necessarily need to become experts in the fine details of military contracting and federal acquisitions.⁵³ Rather, these JAs can and should play a vital role in contract interpretation and drafting, skills that all JAs develop in law school and which some MAGTF contracting officers lack. In the words of one MEU SJA who participated in Operation ENDURING FREEDOM, “[MEU SJAs] need to get into the contracting phase a little better. We have staff sergeants and lieutenants making contracts for thousands of dollars and many [contracts] have less than spectacular breach provisions, limitations, etc. that a second-year law student ought to spot”⁵⁴ To facilitate greater contracting involvement, the JA should coordinate with the MAGTF contracting officer(s) well prior to deployment to ensure that the contracting officer knows what services the JA can provide.

IV. ENVIRONMENTAL LAW

This section will focus on specific environmental issues that a JA may face in the course of deployed Marine operations or in emergent circumstances when the Amphibious Squadron (PHIBRON) JAG may not be available. This section is not designed to capture the entire body of environmental law, much of which is only applicable domestically,⁵⁵ nor does the section include explanations of the application of environmental

⁵³ For example, three legal lessons learned compilations published by the Center for Law and Military Operations share a common contracting lesson: JAs should have an understanding of the terms of existing contracts in theater (such as the U.S. Navy’s Contingency Construction Capabilities (CONCAP) contracting program) to provide legal advice on contract interpretation and implementation. No mention is made of any pressing need for any specific military contracting or federal acquisitions knowledge. CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN KOSOVO, 1999-2001: LESSONS LEARNED FOR JUDGE ADVOCATES 150 (2001); CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN THE BALKANS, 1995-1998: LESSONS LEARNED FOR JUDGE ADVOCATES 149-50 (1998); CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN HAITI, 1994-1995: LESSONS LEARNED FOR JUDGE ADVOCATES 134-36 (1995).

⁵⁴ E-mail from Major Thomas A. Wagoner, USMC, Staff Judge Advocate, 15th Marine Expeditionary Unit, to Major Cody M. Weston, USMC, Marine Representative, Center for Law and Military Operations (CLAMO) (28 Dec. 2001) (on file with CLAMO).

⁵⁵ Two U.S. environmental laws are applicable worldwide—The Endangered Species Act, 16 U.S.C. §§ 1531-41 (2002) and the Marine Mammal Protection Act, 16 U.S.C. § 1371 (2002).

law to routine Navy operations. The PHIBRON JAG and Navy operators should be familiar with routine Naval operations and the applicable laws and policies addressing environmental protection.⁵⁶ Additionally, the numerous environmental laws and policies addressing the operation of installations, both within the U.S. and overseas, are not discussed because, by their very nature, Marine deployments typically will not involve installation operations.⁵⁷

What remains for the Marine JA is a discussion that attempts to strike a balance between the policies of the DOD and DON that on the one hand require Marines to be good environmental stewards⁵⁸—even during overseas operations—and on the other provide little practical guidance for deploying JAs.⁵⁹ This section begins with an overview of the Law of War and its relationship with the environment. The section continues on to discuss the effect of treaties, SOFAs, and host nation law on environmental protection; the application of U.S. domestic environmental law on operations; and closes with a discussion about remediation requirements in the event of environmental contamination.

⁵⁶ The Navy has an expansive set of regulations and policies addressing environmental protection. See U.S. DEP'T OF NAVY, CHIEF OF NAVAL OPERATIONS INSTR. 5090.1B, NAVY ENVIRONMENTAL AND NATURAL RESOURCES PROGRAM MANUAL (9 Sept. 1999) [hereinafter OPNAVINST 5090.1B]; U.S. DEP'T OF NAVY, CHIEF OF NAVAL OPERATIONS NAVAL WARFARE PUB. 4-11, ENVIRONMENTAL PROTECTION (Mar. 1999) [hereinafter NWP 4-11]; U.S. DEP'T OF NAVY, CHIEF OF NAVAL OPERATIONS NAVAL WARFARE PUBLICATION 1-14M, COMMANDER'S HANDBOOK ON LAW OF NAVAL OPERATIONS (1997) [hereinafter NWP 1-14M].

⁵⁷ In contrast to the little guidance available for overseas contingency operations, there is considerable guidance for overseas installation operations. The substantial majority of U.S. MARINE CORPS, ORDER P5090.2A, ENVIRONMENTAL COMPLIANCE AND PROTECTION MANUAL (10 July 1998) [hereinafter MCO P5090.2A] addresses installation operations. MCO P5090.2A, in part, implements U.S. DEP'T OF DEFENSE INSTR. 4715.5, MANAGEMENT OF ENVIRONMENTAL COMPLIANCE AT OVERSEAS INSTALLATIONS (22 Apr. 1996), which states that the requirements applicable to overseas installations are not applicable to “the operations of U.S. military vessels, to the operations of U.S. military aircraft, or to off-installation operational and training deployments.” *Id.* at para. 2.1.4.

⁵⁸ See e.g., NWP 4-11, *supra* note 56, at para. 1-1 (“The Navy and Marine Corps strive to lead in environmental protection while effectively carrying out national operations. . . . While carrying out assigned missions, operational commanders have an affirmation obligation to avoid unnecessary damage to the environment.”).

⁵⁹ As one author on environmental compliance during Military Operations Other Than War (MOOTW) wrote, “[existing guidance is] of little or no practical value to a combatant commander who is responsible for developing an environmental posture level in MOOTW theater of operations. A clear, concise legal basis for environmental doctrine during MOOTW does not presently exist.” Major Karen V. Fair, *Environmental Compliance in Contingency Operations: In Search of a Standard*, 157 MIL. L. REV. 112 (1998).

A. THE LAW OF WAR AND THE ENVIRONMENT

Most environmental law questions arising during international armed conflict can be answered using the same analysis JAs are taught to apply for all targeting decisions—namely, the concrete and direct military advantage gained by the military action must outweigh the anticipated damage to property, including damage to the environment.⁶⁰ Understanding and applying this traditional calculation, including the effects of military action on the environment in the equation, will solve most environmental issues faced by JAs during war. JAs must also consider that a handful of conventions contain environmental considerations. These conventions include the 1925 Gas Protocol,⁶¹ the 1993 Chemical Weapons Convention,⁶² and the 1980 Conventional Weapons Convention.⁶³

Protocol I Additional to the Geneva Conventions (GP I)⁶⁴ arguably contains the broadest environmental protections during war. Even though applicability of the environment-friendly sections of GP I is unclear, JAs must understand the effects of GP I on operations. Articles 35, 54, 55, and 56 of GP I all contain various prohibitions addressing damage to the environment.⁶⁵ Because the U.S. has not ratified GP I, only those provisions

⁶⁰ See generally Annex to Hague Convention No. IV Respecting the Laws and Customs of War on Land, art. 22, 23, 25, Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 277 [hereinafter Hague]; U.S. DEPT OF ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE para. 41 (18 July 1956).

⁶¹ The 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571, T.I.A.S. No. 8061 [hereinafter Gas Protocol]. The Gas Protocol bans the use of "asphyxiating, poisonous, or other gases, and all analogous liquids, materials, and devices" during war. The United States is a party to this treaty, but asserts that neither herbicides nor riot control agents (RCA) are chemicals, as defined by the Gas Protocol. See Exec. Order 11,850, 40 Fed. Reg. 16187 (1975) (stating U.S. policy on the use of chemical, herbicides, and riot control agents (RCAs) and setting out rules on the use of chemical weapons and herbicides).

⁶² Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Jan. 13, 1993, 32 I.L.M. 800 [hereinafter CWC]. The U.S. has not ratified this treaty. While the CWC regulates many of the same activities as the Gas Protocol, the CWC bans the use of chemical agents, including herbicides and RCAs, as a "method of warfare." *Id.* at art. II, 1(a).

⁶³ Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Excessively Injurious or Have Indiscriminate Effects, October 10, 1980, 19 I.L.M. 1525 (banning the indiscriminate use (defined as use which may be expected to cause incidental injury to the environment excessive to the military advantage gained) of landmines, booby traps and other devices).

⁶⁴ Protocol I Additional to the Geneva Conventions, Dec. 12, 1977, 16 I.L.M. 1391, 1125 U.N.T.S. 3 [hereinafter GP I].

⁶⁵ Article 35 states, in part, "It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment." *Id.* at art. 35. Article 54 prohibits, with stated exceptions, the attack of civilian crops, drinking water, and other foodstuffs. *Id.* at art. 54. Article 55 states:

that reflect customary international law are binding. While portions of GPI seem to restate Hague and Geneva Convention provisions, evincing their status as customary law, other portions are not considered customary. For example, Article 35 of GP I restates the Hague language with respect to means and methods of warfare, noting that the permissible means of injuring the enemy are not unlimited and that parties cannot use weapons that cause unnecessary suffering.⁶⁶ The same Article continues on to prohibit means or methods of warfare intended or expected to cause widespread, long-term and severe damage to the environment—language the U.S. considers “too broad and not a part of customary law.”⁶⁷ When faced with having to interpret GP I and its effect on Marine operations *vis a vis* the environment, JAs must seek guidance from higher headquarters about the status of the particular GP I article in question.

One final treaty of note is The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modifications Techniques (ENMOD).⁶⁸ The ENMOD prevents engaging in the “hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury” to another signatory of the convention.⁶⁹ The convention is designed to address actions that change the processes of nature in order to use nature as a weapon. For example, the ENMOD would prevent altering ocean currents to create tidal waves. This ban is often described as one prohibiting the use of “advanced technology” to manipulate the environment.⁷⁰ As the typical

Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

Attacks against the natural environment by way of reprisals are prohibited.

Id. at art. 55. Article 56 is designed to protect works and installations containing dangerous forces, such as dams, dykes, and nuclear generating stations and to prevent the release of dangerous forces from public works and the consequent severe loss to the civilian population. *Id.* at art. 56.

⁶⁶ *Id.* at art. 34.

⁶⁷ Michael J. Matheson, *Session One: The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions*, 2 AM. U. J. INT’L L. & POL’Y 419, 424 (1987).

⁶⁸ The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, May 18, 1977, 31 U.S.T. 333, 1108 U.N.T.S. 151 [hereinafter ENMOD].

⁶⁹ *Id.* at art. 1.

⁷⁰ See e.g., INT’L & OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK 215 (2002) (The ENMOD does not contain language discussing “advanced

MEU will not possess technology capable of altering environmental processes, JAs will not likely be faced with interpreting the ENMOD.

B. INTERNATIONAL AGREEMENTS, SOFAs, HOST NATION LAW, AND THE ENVIRONMENT

There are numerous international agreements that address the environment. A list of selected agreements is included in Appendix 7-3. It is impossible to predict which if any of these agreements will have an effect on Marine Corps operations. Some of the agreements are briefly discussed above in the section addressing the law of war and the environment. U.S. environmental treaty obligations are also addressed in existing Navy instructions⁷¹ and Marine Corps orders.⁷²

Status of Forces Agreements (SOFAs), a type of international agreement, and port visit clearances may contain provisions affecting U.S. obligations towards the environment in foreign countries.⁷³ JAs can seek guidance from the unified commands where Marines are operating to determine whether there is an applicable SOFA. Operators and JAs familiar with service directives, which may at times conflict with SOFA provisions, may be confused about which guidance to follow and be tempted to trump unfamiliar SOFA provisions with the more familiar DON or Marine Corps policies. Most DOD and service directives emphasize the importance of following applicable SOFAs.⁷⁴ Even when such cautionary language does

technology.” Article II defines the phrase “environmental modification technique” in a manner that allows for the conclusion that advanced technology would be necessary to manipulate natural processes.).

⁷¹ For example, OPNAVINST 5090.1B, *supra* note 56, at Ch. 21, incorporates the provisions of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Dec. 29, 1972, 26 U.S.T 2403, 1046 U.N.T.S. 120.

⁷² MCO P5090.2A, *supra* note 57.

⁷³ *See, e.g.*, Agreement to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces with Respect to Foreign Forces Stations in the Federal Republic of Germany, 29 Mar. 1998 [hereinafter Supplemental Agreement]. The Supplemental Agreement contains provisions requiring the U.S. to “recognize and acknowledge the importance of environmental protection in the context of all the activities of their forces within the Federal Republic.” *Id.* at Art. 54(A)(1). The agreement requires, *inter alia*, U.S. officials to examine as early as possible the environmental compatibility of all projects. The Supplemental Agreement further requires the U.S. to identify, analyze, and evaluate potential effects of environmentally significant projects on persons, animals, plants, soil, water, air, climate and landscape, cultural, and other property. The objective of the examination is to avoid environmental burdens, and, where detrimental effects are unavoidable, offset them by taking appropriate restorative or balancing measures. *Id.* at Art. 54(A)(2).

⁷⁴ *See, e.g.*, U.S. DEP’T OF DEFENSE, INSTR. 4715.8, ENVIRONMENTAL REMEDIATION FOR DOD ACTIVITIES OVERSEAS, para. 5.3.3 (2 Feb. 1998) (cautioning that international agreements may require environmental remediation beyond that required by DOD policy) [hereinafter DOD INSTR. 4715.8].

not exist, JAs must remember that the requirements of a SOFA are legally binding on the U.S.

In the absence of a SOFA or other applicable international agreement, U.S. forces may be obligated to follow the law of the host nation. Marines will be immune from host nation laws, including environmental laws, during combat operations⁷⁵ and when engaged in some United Nations security missions.⁷⁶ Absent immunity from host nation law, Marines will be expected to follow the laws of the host nation, including any applicable environmental laws. JAs should coordinate with their unified command to determine the DOD position on the applicability of host nation laws to Marine operations.

C. APPLICATION OF DOMESTIC ENVIRONMENTAL LAW TO OPERATIONS OUTSIDE THE UNITED STATES

Generally domestic environmental law does not have extraterritorial application. Thus the myriad of Congressional environmental enactments, including the National Environmental Protection Act (NEPA),⁷⁷ normally applicable to military operations within the U.S., will not apply to overseas military actions by operation of the statutes themselves. By operation of executive order⁷⁸ and DOD directive,⁷⁹ however, the military may be required to perform NEPA-like environmental documentation overseas under certain circumstances. But, as discussed further below, the typical MEU mission will not trigger these executive order requirements.

⁷⁵ This exception is based on a classical application of the Law of the Flag theory. This term is sometimes referred to as "extraterritoriality," and stands for the proposition that a foreign military force that enters a nation through force is immune from the laws of the receiving nation. WILLIAM W. BISHOP, JR., *INTERNATIONAL LAW CASES AND MATERIALS* 659-61 (3d ed. 1962).

⁷⁶ The status of United Nations or multilateral forces depends on the underlying authority allowing the military presence in the receiving state. If forces are present pursuant to a Chapter VII action, absolute immunity from receiving state authority exists. *See UN PEACE OPERATIONS: A COLLECTION OF PRIMARY DOCUMENTS AND READINGS GOVERNING THE CONDUCT OF MULTILATERAL PEACE OPERATIONS* 223 (Walter Gary Sharp, Sr. ed., 1995). Forces conducting consensual peace operations pursuant to Chapter VI are not absolutely immune from receiving state law. These forces are protected by those privileges and immunities afforded by international law, *ad hoc* arrangements, and specific basing agreements. These protections are not clearly established. *Id.* *See also* U.N. CHARTER art. 105; Convention on Privileges and Immunities of the United Nations, Feb. 13, 1946, 21 U.S.T.1418, 1 UN.T.S. 15 (entered into force for the U.S. on Apr. 29, 1970).

⁷⁷ 42 U.S.C. §§ 4321-70 (2002).

⁷⁸ Exec. Order 12,114, 44 Fed. Reg. 1,957 (Jan. 4, 1979) [hereinafter EO 12,114].

⁷⁹ U.S. DEP'T OF DEFENSE, DIR. 6050.7, ENVIRONMENTAL EFFECTS ABROAD OF MAJOR DEPARTMENT OF DEFENSE ACTIONS (31 Mar. 1979) [hereinafter DOD DIR. 6050.7].

Executive Order 12,114, *Environmental Effects Abroad of Major Federal Actions* (EO 12,114), furthers the spirit of NEPA with respect to the environment outside the U.S. by requiring the identification and analysis of potential environmental effects prior to certain proposed federal actions (including military actions). The analysis of the effects of military action on the environment is accomplished through preparation of lengthy documents that can cause significant delays in action. DOD Directive 6050.7 implements the Executive Order.⁸⁰ Included within these two framework documents are significant exemptions and exclusions that will relieve the military from having to prepare most environmental documentation. Furthermore, DOD Directive 6050.7 places the burden of preparing the appropriate environmental documentation on the commanders of the unified and specific commands.⁸¹ For this reason, the JA who believes a Marine operation triggers the requirements of EO 12,114 must notify the appropriate chain of command.

As discussed below, undertaking a “major federal action”⁸² which has a significant effect on a foreign nation⁸³ or on the global commons⁸⁴ triggers EO 12,114.⁸⁵

⁸⁰ MCO P5090.2A, *supra* note 57, incorporates the provisions of DOD DIR 6050.7 by reference and reprinting in Annex Q.

⁸¹ DOD DIR. 6050.7, *supra* note 79, at para. 5.4.1 (stating the responsibilities of the Secretaries of the Military Departments, Directors of the Defense Agencies, and Commanders of the Unified and Specified Commands).

⁸² A major action is defined as “an action of considerable importance involving substantial expenditures of time, money, and resources, that affects the environment on a large geographic scale or has substantial environmental effects on a more limited geographical area.” *Id.* at para. 3.5. Deployment of ships is not considered a major action. Moreover, previously approved actions that underwent an environmental analysis and that do not constitute a significant departure are not considered major actions. *Id.*

⁸³ A foreign nation means “any geographic area (land, water, airspace) that is under the jurisdiction of one or more foreign governments; any area under military occupation by the United States alone or jointly with any other foreign government; and any area that is the responsibility of an international organization of governments.” *Id.* at para. 3.3. A foreign nation also includes contiguous zones and fisheries zones of foreign nations. *Id.*

⁸⁴ Global commons are “geographical areas that are outside the jurisdiction of any nation, and include the oceans outside territorial limits and Antarctica. Global command do not include contiguous zones and fisheries zones of foreign nations.” *Id.* at para. 3.4.

⁸⁵ EO 12,114 states that the following categories of action will require some type of environmental documentation:

- (a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);
- (b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;
- (c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

1. *Application of Domestic Law to Operations in Foreign Nations*

The requirements of EO 12,114 and DOD Dir. 6050.7 are triggered when Marines undertake a major federal action that significantly harms the environment of a foreign nation that is not involved in the action.⁸⁶ A MEU operation that has a significant impact on a nation participating in the operation does not require documented environmental analysis. This is commonly known as the “participating nation exception.”⁸⁷ Because many MEU operations, such as multinational training exercises, are conducted in concert with the host nation, EO 12,114 and the implementing Directive are not applicable.⁸⁸ The practice within the military is to account for the exercise of the “participating nation exception” through documentation within the environmental appendix to the combatant commander-approved OPLAN. If there is no combatant commander-approved OPLAN, the MEU SJA should insure that the combatant commander is notified that the MEU is aware of the environmental policies but believes the policies to be inapplicable because of the “participating nation exception.”

Even if the MEU operation is not undertaken with a participating nation, other exceptions⁸⁹ will capture almost all of the circumstances in

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

EO 12,114, *supra* note 78, at para. 2-3.

⁸⁶ DOD DIR. 6050.7, *supra* note 79, at para. E2.2.1.

⁸⁷ The “participating nation exception” is not truly an exception. The environmental documentation requirements of EO 12,114 simply do not apply when the host nation is participating with the U.S. The list contained in note 89, *infra*, contains the exceptions to EO 12,114.

⁸⁸ JAs should remember that SOFAs or host nation law, further discussed *supra* at text accompanying notes 73-76 may require certain environmental documentation.

⁸⁹ The following actions are exempt from EO 12,114:

- (i) actions not having a significant effect on the environment outside the United States as determined by [DOD];
- (ii) actions taken by the President;

which a MEU operates. Operations involving national security, operations taken in the course of an armed conflict, or operations taken in response to a disaster or for emergency relief, allow for an exception to the policy requiring prior environmental documentation. These exceptions must be granted by SECDEF.⁹⁰

In the unlikely event that a MEU operation requires prior environmental documentation, it would typically be in the form of an environmental study (ES) or an environmental review (ER).⁹¹ MEU SJAs should not be responsible for the preparation of either of these documents⁹² but should be prepared to advise their commanders and chain of command should they believe environmental documentation is required, as preparation of the documents may preclude undertaking the mission.

2. Application of Domestic Law to Operations in the Global Commons

Operations undertaken by Marine forces within the global commons, most notably the high seas, are also addressed by EO 12,114 and DOD Directive 6050.7. There are no exemptions from preparing environmental impact statements for major federal actions causing significant harm to a global commons. JAs are reminded that the deployment of ships is not a

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

EO 12,114, *supra* note 78, at para. 2-5.

⁹⁰ Exemptions are granted after coordination with the Department of State. Coordination with the Department of State is conducted by the Assistant SECDEF (International Security Affairs). DOD DIR. 6050.7, *supra* note 79, at para. 4.4. Even though an exemption may exist, commanders still have an obligation to conduct sound analytic planning that considers environmental impacts. The level of detail will depend on available planning time, security, and site access. NWP 1-14, *supra* note 56, at para. 3.3.

⁹¹ There are three types of environmental documents discussed in DOD DIR. 6050.7, *supra* note 79. The environmental study and the environmental review are prepared for major federal actions that significantly harm the environment of a foreign nations. An environmental impact statement, the third type of environmental document, is prepared for major federal actions that significantly harm the global commons.

⁹² DOD DIR. 6050.7 places the burden of preparing environmental documents on the secretaries of the military departments, and Commanders of the Unified and Specified Commands. Moreover, the environmental documentation requires input from engineers and others with specialized knowledge about how the operation will affect the environment. *Id.* at para. 5.4.1.

major action under DOD Directive 6050.7.⁹³ Should a JA believe that a major Marine Corps action would cause significant harm to a global commons, the JA should notify the chain of command.

D. ADDRESSING ENVIRONMENTAL CONTAMINATION

As noted in the introduction to this section, most routine environmental matters emanating from shipboard operations are not discussed in this section, as the Navy's PHIBRON JAG will be available to address these matters. JAs, however, must be prepared to address environmental contamination, such as oil and hazardous material spills, as these emergency situations may arise when the PHIBRON JAG is unavailable, or they may arise while Marine units are ashore.

The general U.S. policy to "remedy known environmental contamination caused by DOD operations outside the U.S.,"⁹⁴ is not applicable to operations connected with "actual or threatened hostilities, security assistance programs, peacekeeping missions, or relief operations."⁹⁵ This means that the DOD policy applies during training exercises (not conducted under the foreign assistance program) and while generally afloat.

The DOD policy requires the Navy and Marine Corps to take action to remedy known environmental contamination that poses an "imminent and substantial endangerment to human health and safety."⁹⁶ The determination whether an environmental incident poses an imminent and substantial endangerment should be made by the "in-theater commander of the DOD Component" after consulting with medical officers and the DOD Environmental Executive Agent for the respective host nation.⁹⁷

The most important thing to remember is that the Navy and Marine Corps have internal reporting requirements whenever there is an oil or hazardous substance discharge.⁹⁸ Commanding officers must immediately report the facts surrounding the spill to their chain of command by voice and follow with an official message.⁹⁹ For Navy spills, a copy of the message

⁹³ See *supra* note 82.

⁹⁴ DOD INSTR. 4715.8, *supra* note 74, at para. 3.

⁹⁵ *Id.* at para. 2.1.3.

⁹⁶ *Id.* at para. 5.3.1.

⁹⁷ *Id.* at para. 5.4.1.

⁹⁸ See OPNAVINST 5090.1B, *supra* note 56, at para. 10-4.2.3.

⁹⁹ *Id.* at para. 10-4.2.3(a)(b).

must be sent to the Chief of Naval Operations (CNO)(N45) and the Naval Facilities Engineering Service Center.¹⁰⁰ For Marine Corps spills, the message must be sent to the Commandant of the Marine Corps (ATTN: IL) and copies must be sent to a variety of addressees. A format for Navy and Marine Corps messages addressing oil and hazardous material spills is included in Appendix 7-4. As additional information on the spill becomes available, the commanding officer must update the initial report with a SITREP message.¹⁰¹ Following message reporting, commanders should try to control the spread of the spill.¹⁰²

Marine Corps policy requires immediate reporting of oil spills which impact, or may impact, the waters or shoreline of any coastal nation to proper authorities in that nation.¹⁰³ JAs should also remember that international agreements with host nations may require remediation even when the environmental threat does not pose an imminent and substantial endangerment to human health and safety.¹⁰⁴

¹⁰⁰ *Id.* at para 10-4.2.3(d).

¹⁰¹ *Id.* at para. 10-4.2.3(c).

¹⁰² NWP 4-11, *supra* note 56, at para. 2.3.5.1.

¹⁰³ MCO P5090.2A, *supra* note 57, at para 7101(2).

¹⁰⁴ *See* DOD INSTR. 4715.8, *supra* note 74, at para. 5.3.3.

CHAPTER 8

FOREIGN CLAIMS¹

I. INTRODUCTION

Most judge advocates (JAs) have a basic understanding of the various claims statutes.² Few JAs understand, however, the relationships between these statutes, service implementing regulations, international agreements, and single-service claims responsibility. Fewer JAs understand the actual nuts-and-bolts procedures for adjudicating and paying foreign claims. The purpose of this chapter is to provide guidance on these issues in the specific context of foreign claims arising during Marine Air-Ground Task Force (MAGTF) operations.

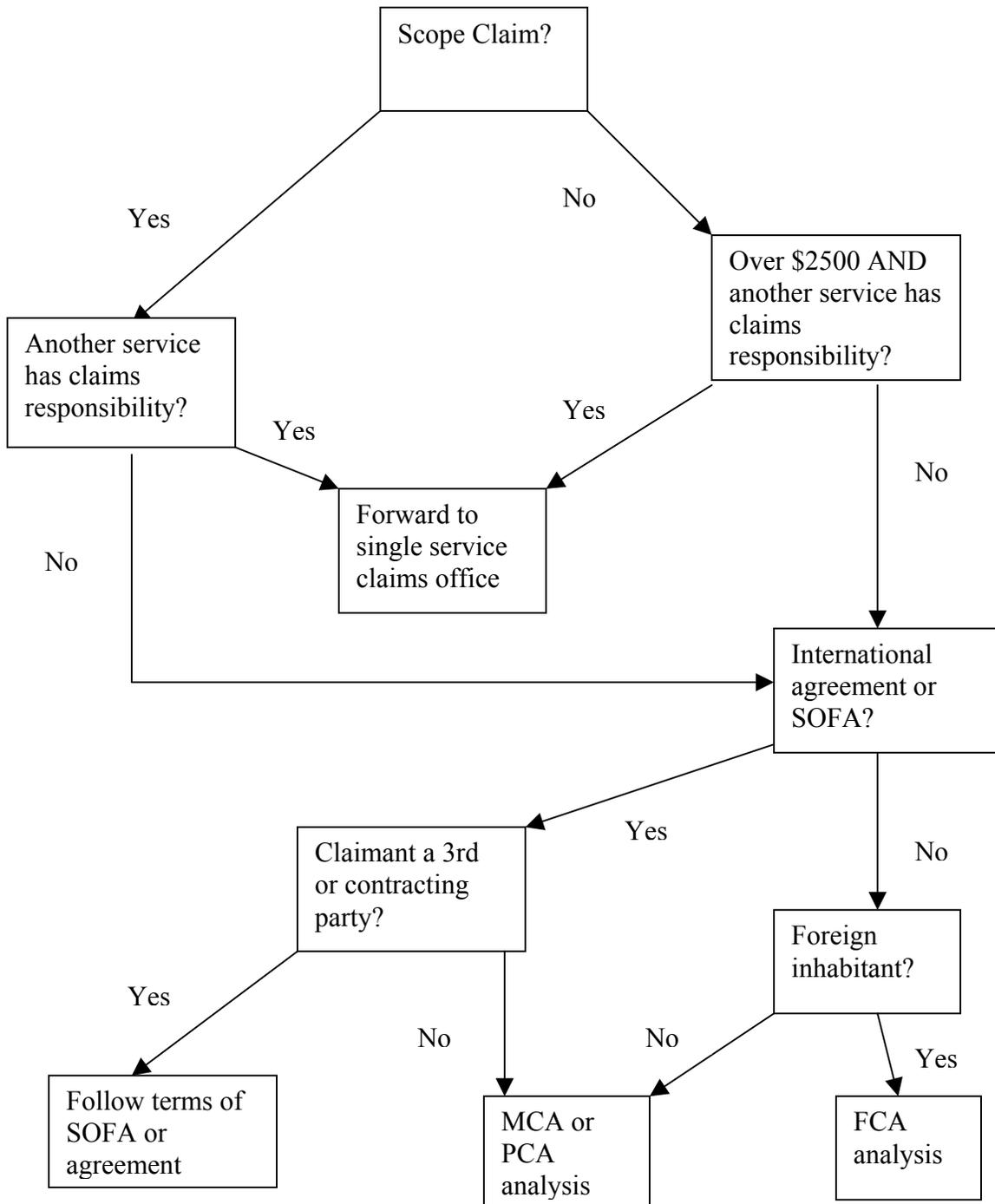
Deployed MAGTF JAs, particularly MEU SJAs, face a unique dilemma when confronted with foreign claims. Commanders want claims resolved quickly before the unit moves out of theater or on to the next port—and expect that their JAs have the legal authority and means to do so. Yet many times the governing claims scheme either disallows payment or calls for a time-consuming administrative process through higher or adjacent claims offices. The MAGTF JA's challenge is to meet the commander's intent for expeditious claims processing without running afoul of the law.

This chapter presents an analytical framework for determining the appropriate legal authority and procedural requirements for adjudicating and paying foreign claims. Figure 1 is a flow chart that attempts to synthesize the complexities of foreign claims statutes and regulations into an understandable step-by-step approach. Section II of this chapter explains the flow chart. Section III analyzes the relationships between private voluntary claims settlements, Article 139 claims, disciplinary proceedings, and solatia payments. Section IV provides general guidance on admiralty claims. Finally, Section V offers planning recommendations for processing foreign claims.

¹ CLAMO extends a special thanks to Major Brett B. Barkey, USMCR, for his assistance in preparing this chapter.

² An excellent overview of these claims statutes can be found in INTERNATIONAL AND OPERATIONAL LAW DEPARTMENT, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK at 145-53 (2002) [hereinafter OPLAW HANDBOOK].

FIGURE 1. FOREIGN CLAIMS FLOW CHART



II. PROCESSING A FOREIGN CLAIM

Following the logical flow of the chart in Figure 1, this section discusses the procedures for adjudicating and paying foreign claims.

A. SCOPE OR NONSCOPE OF DUTY

The first step is to determine whether the claim for damages is “scope” or “nonscope” in nature. A scope claim involves damages caused by a Marine while in the performance of official duty. Common examples are damage caused by helicopter rotor wash or a military vehicle during a training exercise or administrative movement. A nonscope claim involves damage caused by a Marine while not in the performance of official duty. The most common example is damage caused by a Marine while on liberty, such as damage to private property incident to a bar brawl.

1. Scope of Duty and Single-Service Claims Responsibility Determination

If the damages occurred during the scope of duty, the next step is to determine whether a specific service has responsibility for claims arising in the relevant country. Department of Defense (DOD) Directive 5515.8, Single-Service Assignment of Responsibility for Processing of Claims,³ assigns exclusive geographical claims adjudication responsibility for certain countries to either the Navy, Air Force, or Army.⁴ The DOD has not assigned every country a responsible service for claims. If a service has responsibility for the country where the claim in question arose, then the claim must be forwarded to the assigned single-service claims office for adjudication.⁵ The MEU SJA should, nonetheless, conduct the preliminary processing of the claim, preparing an investigation and assisting the claimant in completing the necessary claims forms.⁶ If DOD has not assigned single-service claims responsibility for the country in question, then the MEU may be able to adjudicate and pay the claim; the SJA should then proceed to the issue of whether any governing international agreement provides its own claims processing scheme, as discussed below in Section II.B.

³ U.S. DEP’T OF DEFENSE, DIR. 5515.8, SINGLE-SERVICE ASSIGNMENT OF RESPONSIBILITY FOR PROCESSING OF CLAIMS (9 June 1990) [hereinafter DOD DIR. 5515.8].

⁴ The most current listing of single-service claims responsibilities can be found in OPLAW HANDBOOK, *supra* note 2, at 154-55.

⁵ For a listing of addresses, see U.S. DEP’T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES 275-78 tbl.4 (1 Apr. 1998).

⁶ See *infra* text accompanying notes 24-28.

2. Nonscope of Duty and Single-Service Claims Responsibility Determination

If the damages occurred outside the performance of official duty, the SJA should still determine whether a single service has claims responsibility for the country in which the claim arose. A further consideration, however, is necessary for such a nonscope claim—the amount of damages claimed. Under DOD Directive 5515.8, claims under \$2,500 need not be adjudicated by the single service with claims responsibility.⁷ Thus, three situations are possible for nonscope claims: 1) single-service responsibility exists and the claim is \$2,500 or more—if so, forward the claim to the service claims office after conducting preliminary processing; 2) single-service responsibility exists and the claim is under \$2,500; and 3) no single-service responsibility exists. In the latter two situations, the MEU may be able to adjudicate the claim depending upon the existence and applicability of an international agreement, as discussed next.

B. CLAIMS PROVISIONS IN STATUS OF FORCES AGREEMENTS AND OTHER INTERNATIONAL AGREEMENTS

If the SJA determines that the MEU has the authority to adjudicate the claim, the next issue is whether any international agreement with claims provisions applies.⁸ Many status of forces agreements (SOFAs), defense cooperation agreements, and other international agreements contain guidance on processing claims arising from the conduct of the states' armed forces. If no such agreement exists, the SJA next determines which U.S. claims statute applies (typically the Foreign Claims Act), as discussed below in Section II.C. However, if an international agreement with claims provisions applies, the SJA must follow the claims guidelines contained therein.⁹

⁷ DOD DIR. 5515.8, *supra* note 3, at para. 4.3 (authorizing the Secretary of the Navy to settle nonscope claims under \$2,500 arising in foreign ports visited by U.S. forces afloat).

⁸ The Center for Law and Military Operations maintains a Secret Internet Protocol Router Network (SIPRNET) web site containing an extensive collection of SOFAs and international agreements (some of which are classified), as well as links to other SIPRNET international agreement databases. Link to the Center for Law and Military Operations, SIPRNET Database, at <http://www.us.army.smil.mil>. The site requires registration. A slightly smaller collection of only unclassified international agreements can be found at Center for Law and Military Operations, CLAMO Databases, at <http://www.jagcnet.army.mil>. This site also requires registration.

⁹ The U.S. domestic legal authority to pay claims under international agreements derives from 10 U.S.C. § 2734a (2002), commonly known as the International Agreement Claims Act. This Act has also been

An example of an international agreement with common claims provisions is the NATO SOFA.¹⁰ Keep in mind that a MEU SJA likely will not adjudicate any claims under the NATO SOFA because other services have claims responsibility for the NATO countries,¹¹ and because the NATO SOFA dictates that all nonscope claims (thus, even nonscope claims under \$2,500 that the MEU otherwise could handle under the single-service directive) should first be forwarded to the “office of the receiving state” (the NATO host nation claims office). However, if the claim arises in a country without single-service assignment, and an international agreement with claims provisions exists, it may be a useful illustration at this point to describe how the MEU SJA should process and adjudicate a claim under an international agreement with claims provisions similar to the NATO SOFA. This illustration is particularly relevant in today’s world where the negotiation of many new classified international agreements raises the possibility that claims may arise in countries without assigned single-service claims responsibility. Take the examples of two common claims against MEU forces: 1) helicopter rotor wash damage during a training exercise, and 2) damage to private property resulting from a liberty incident.

The NATO SOFA distinguishes between scope and nonscope claims. Helicopter damages arising during a training exercise are a scope claim. The NATO SOFA goes further to distinguish scope claims between types of claimants. Any scope claims involving damages to the military forces of a “Contracting Party” (a signatory to the SOFA) are waived.¹² Thus, if the helicopter damaged the military property of another NATO member, the claim is waived. Scope claims involving damages to nonmilitary property of a Contracting Party are settled by separate agreement or arbitration.¹³ Thus, if the helicopter damaged a government building of a Contracting Party, the MEU SJA should forward the claim to the office of the receiving state for resolution. Scope claims involving damages to a third party other than any

interpreted as providing the exclusive remedy for adjudicating a foreign claim when an applicable international agreement provides a claims scheme, even when another claims act might be applicable. A North Carolina district court upheld this interpretation when it ruled that Belgian claims arising out of the Cavalese aviation mishap should be handled under the NATO SOFA, *see infra* note 10 and accompanying text, rather than the Federal Tort Claims Act.

¹⁰ Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 15, 1951, 4 U.S.T. 1792 [hereinafter NATO SOFA].

¹¹ *See supra* note 4.

¹² NATO SOFA, *supra* note 10, at art. VIII, para. 1.

¹³ *Id.* at art. VIII, para. 2. This provision of the NATO SOFA waives claims under certain dollar amounts depending upon the claimant Party. There is also a cost-sharing arrangement.

of the Contracting Parties are also forwarded to the office of the receiving state, ultimately resulting in a cost-sharing arrangement between the involved Contracting Parties.¹⁴ Thus, if the helicopter damaged a NATO host nation civilian home, the MEU SJA should forward the claim to the office of the receiving state for adjudication.

Damage to private property from a liberty incident is a nonscope claim. The NATO SOFA dictates that such nonscope claims, regardless of claimant, are forwarded to the office of the receiving state for the preparation of a claims report. This report is then forwarded to the office of the sending state (the relevant U.S. claims office), which can decide whether to offer payment (known as an *ex gratia* payment).¹⁵

C. THE FOREIGN CLAIMS ACT IN THE ABSENCE OF BOTH AN INTERNATIONAL AGREEMENT AND SINGLE-SERVICE CLAIMS RESPONSIBILITY

If no service has single-service claims responsibility or if the claim is a nonscope claim under \$2,500, and if no international agreement with claims provisions applies, the MEU SJA may be able to adjudicate the claim at the MEU level under a separate statute. The most commonly applicable U.S. claims statute in the deployed environment is the Foreign Claims Act (FCA).¹⁶

The FCA only applies overseas. Its purpose is to promote and maintain friendly foreign relations by promptly settling meritorious claims. Proof of fault is not required; causation of the harm is the primary concern. The only covered claimants under the FCA are “foreign inhabitants.” Foreign inhabitants include persons, corporations, or other government or business entities whose normal place of abode or activity is in a foreign country; citizenship or legal domicile are immaterial. The typical foreign claimant during a MEU deployment will be a foreign inhabitant as contemplated by the statute. Examples of persons not considered foreign inhabitants under the FCA include U.S. service members and their

¹⁴ *Id.* at art. VIII, para. 5.

¹⁵ *Id.* at art. VIII, para. 6. It is important to note that such an *ex gratia* payment is not the same as a payment made under the Foreign Claims Act (FCA). While the mechanics of making an *ex gratia* payment may be very similar to the mechanics of making a payment under the FCA, the legal authority for the *ex gratia* payment is the terms of the relevant international agreement in conjunction with the International Agreement Claims Act, not the FCA.

¹⁶ 10 U.S.C. § 2734 (2002).

dependents, as well as U.S. government civilian employees and their dependents.¹⁷ Claims made by such noncovered claimants would fall under either the Personnel Claims Act or the Military Claims Act,¹⁸ and are beyond the scope of this chapter.

Generally speaking, the FCA does not distinguish between scope or nonscope claims. Claims resulting from combat activities are not payable under the FCA, with a limited exception for combat aircraft accidents.¹⁹ Contractual claims are not payable.²⁰ Perhaps most importantly for the MEU SJA, claims of foreign military personnel during the conduct of a joint military mission or training exercise are not payable under the FCA.²¹

One of the primary virtues of the FCA is that it allows for prompt payment of claims up to certain dollar amounts without resorting to higher levels of settlement authority or geographically distant claims offices. This is accomplished through the use of a Foreign Claims Commission (FCC). An FCC can be comprised of either one or three commissioned officers, and has the authority to investigate and pay²² meritorious claims in accordance with the following guidelines: a one-officer FCC can pay a claim up to \$5,000; a one-officer judge advocate FCC up to \$10,000; a three-officer FCC up to \$10,000; and a three-officer FCC including at least one judge advocate up to \$20,000.²³ The FCC should nonetheless investigate and

¹⁷ For a more detailed discussion of covered claimants, see U.S. DEP'T OF NAVY, JUDGE ADVOCATE GENERAL INSTR. 5800.7C, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) para. 0811(b) (3 Oct. 1990) (C3, 27 July 1998) [hereinafter JAGMAN].

¹⁸ For a detailed discussion of processing claims under these statutes, see U.S. DEP'T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL INSTR. 5890.1, ADMINISTRATIVE PROCESSING AND CONSIDERATION OF CLAIMS ON BEHALF OF AND AGAINST THE UNITED STATES (17 Jan. 1991).

¹⁹ See JAGMAN, *supra* note 17, at para. 0812(g).

²⁰ An issue that the SJA may face is that many invoices that the MEU receives for port services or other facility usage fees will contain charges that could be characterized as foreign claims. For example, an invoice may contain charges for equipment or property damaged by the MEU. While the SJA could arguably separate these charges out as foreign claims and go through the claims process, the more reasoned view is that such charges are contractual in nature, whether verbal or written, express or implied, and that they should be handled as a matter of contract, not as a foreign claim. Much will depend on the terms of the contract. The SJA should maintain a close relationship with the MEU contracting officer and S-4 to ensure that such charges receive proper legal scrutiny. See *supra* Chapter 7, Section III (discussing SJA proactive involvement in contracting).

²¹ This is a product of Navy regulation, not the FCA itself. See JAGMAN, *supra* note 17, at para. 0812(c). For a listing of other claims not payable under the FCA, see *id.* at paras. 0812(a)-(b), (d)-(n).

²² More precisely, the authority to pay or deny a claim rests with the FCC's appointing authority. See *id.* at para. 0818(a).

²³ *Id.* at para. 0814(f). Keep in mind that the single-service \$2,500 limitation for nonscope claims may be applicable.

make a payment recommendation for claims in excess of these amounts, forwarding the paperwork to the appropriate claims authority.²⁴

All Navy and Marine Corps commanding officers have the authority to appoint an FCC unless restricted by a superior commander.²⁵ Typically, the MEU commander will appoint the MEU SJA as an FCC, although nothing prevents the commander from appointing a non-judge advocate.²⁶ This appointment should be in writing. A sample FCC appointment letter is included in Appendix 8-1.

Whether or not the claim is within the FCC's adjudicating authority, the FCC should conduct a thorough investigation of the facts underlying the incident. One of the first steps in the investigation should be reducing the claim to writing. A Standard Form (SF) 95 may be used, although no specific format is required. The claim should be signed by the claimant or an authorized agent, and describe the incident in enough detail to provide adequate notice of the time, place, circumstances, and resulting harm.²⁷ Sample claims forms, to include forms in foreign languages, are included in Appendix 8-2. A sample foreign claims investigation report format is included in Appendix 8-3.²⁸ The FCC may need interpreter support to investigate the claim; interpreters oftentimes can be found within the MEU or through coordination with local officials. Additionally, the FCC should consider using a digital camera to document damages.

If the claim is within the FCC's adjudicating authority, the next issue is determining the appropriate payment. The laws, standards, and customs of the country where the incident occurred govern the damage computation.²⁹ However, regardless of local law, compensation shall not include punitive damages, interest, attorney's fees, bail, or similar charges.³⁰

²⁴ See *id.* at para. 0818(b) (listing higher adjudicating authorities).

²⁵ *Id.* at para. 0814(b)(1).

²⁶ In fact, the MEU SJA should recommend the appointment of an FCC from the other two ships in the Amphibious Ready Group (ARG) because the ships in the ARG frequently make liberty calls in separate ports. Having an FCC available—and trained ahead of time by the MEU SJA—in the absence of a judge advocate can prove useful. Additionally, because the appointing authority has the ultimate power to act on claims, the appointing authority should also be a commanding officer from the same ship.

²⁷ JAGMAN, *supra* note 17, at para. 0810(d).

²⁸ For a listing of information that the investigation must include, see *id.* at para. 0804(c).

²⁹ *Id.* at para. 0813(a). Finding these “laws, standards, and customs” may be easier said than done. The FCC may be able to do so by coordinating with local officials. Absent this, the Library of Congress maintains an excellent web site of national legal materials arranged by country. Law Library of Congress, Nations of the World, at <http://www.loc.gov/law/guide/nations.html> (last visited 9 Apr. 2002).

³⁰ JAGMAN, *supra* note 17, at para. 0813(b).

As appropriate under local law, the FCC may factor in the claimant's negligence when computing damages, either barring the claim entirely (contributory negligence) or reducing the claim proportionately (comparative negligence).³¹ Of note, denial of a claim within the adjudicating authority does not require forwarding to a higher appointing authority.³²

Once the FCC determines the damages and the FCC appointing authority approves the amount in whole or in part, the FCC offers the amount to the claimant as a settlement of the claim. The claimant must sign a release form, or settlement agreement, when payment is accepted.³³ Sample settlement agreements, to include agreements in foreign languages, are included in Appendix 8-2.

The claimant must be paid in the local currency of the country where the claim arose or, if the claimant resides in a different country at the time of payment, in that country's currency.³⁴ The SJA should present all the claims paperwork to the MEU disbursing officer³⁵ and obtain the required funds.³⁶ The disbursing officer will prepare a payment voucher.³⁷ The SJA should ensure that the disbursing officer uses the appropriate claims accounting data.³⁸

³¹ *Id.* at para. 0813(f).

³² *Id.* at para. 0817(a). Of course recommended denial of a claim that exceeds the adjudicating authority must be forwarded to a higher appointing authority. *Id.* at para. 0817(b).

³³ *Id.* at para. 0821(d).

³⁴ *Id.* at para. 0821(f).

³⁵ Several MEU SJAs have noted that many disbursing officers are unaware of the FCA and the procedures for paying foreign claims, and may resist the notion of providing funds. The SJA should take the time to educate the disbursing officer on claims adjudication and payment procedures well prior to any claims arising.

³⁶ MEU disbursing officers typically do not have foreign currency. The JAGMAN is silent on the issue of how best to convert U.S. currency to foreign currency and what exchange rate to use. A recommended course of action is for the SJA to first select an institution that exchanges currency and determine the U.S. dollar amount needed to meet the settled foreign currency damage award. The SJA can then take this dollar figure to the disbursing officer.

³⁷ Copies of paid vouchers must be forwarded in accordance with JAGMAN, *supra* note 17, at para. 0821(b). Of note, the new electronic accounting procedures used by the Defense Finance and Accounting Service (DFAS) no longer require forwarding vouchers to the Naval Regional Finance Center. The vouchers should be sent, however, to DFAS Kansas City.

³⁸ The accounting data cited in JAGMAN, *supra* note 17, at para. 0821(c) is incorrect. As of the publishing of this book, FCA accounting data for each fiscal year is disseminated in separate Naval message traffic. An updated JAGMAN is forthcoming that will cite new accounting data and provide instructions on how to adjust the data to reflect new fiscal years.

III. PRIVATE VOLUNTARY SETTLEMENTS OF NONSCOPE CLAIMS, NONJUDICIAL PUNISHMENT, ARTICLE 139 CLAIMS, AND SOLATIA PAYMENTS

When nonscope claims result from the negligent or wrongful acts of Marines, frequently the most expeditious means of resolving the claim is for the individual Marine to simply make a private settlement with the claimant. The SJA should make every effort to pursue this route before resorting to the formal claims process.³⁹ However, at no time can the SJA or the command coerce the Marine into paying the claim; a private settlement must be voluntary. Threatening nonjudicial punishment to compel settlement is clearly unlawful. That said, it is certainly lawful to foster a command atmosphere that encourages Marines to accept responsibility for their actions. To that end, a commander may consider whether the Marine voluntarily paid the claim as a matter of mitigation in determining whether to conduct office hours and what type of punishment, if any, to award. If the Marine did not voluntarily pay the claim and the government had to pay, the commander may consider awarding forfeitures as a method of recouping government funds.⁴⁰

Another alternative to formal claims processing is an Article 139, UCMJ, claim for redress of damage to property. Article 139 claims provide a mechanism for assessments against the pay of Marines for property damage caused under certain circumstances. First, the damaged property must be privately owned.⁴¹ Second, the damage must have been caused by riotous conduct, willful conduct, or acts showing wanton or reckless disregard for property rights; mere negligence is insufficient.⁴² The problem with Article 139 claims, particularly for transient MAGTFs like a MEU that float from port to port, is that procedural requirements make it extremely difficult to pay the claim expeditiously. An investigation must be conducted.⁴³ The alleged offender is allowed twenty days to respond to the

³⁹ If a private voluntary settlement is reached, the SJA should ensure that a settlement agreement is signed to release the government and the Marine from any future claims arising from the underlying act.

⁴⁰ The specific claims fund cite is not reimbursed, however.

⁴¹ JAGMAN, *supra* note 17, at para. 0401.

⁴² *Id.*

⁴³ *Id.* at para. 0405(c).

investigation.⁴⁴ Moreover, only a general court-martial convening authority can order a pay checkage, and only up to \$5,000.⁴⁵

As a final consideration, the SJA should understand that solatia payments are customary in certain parts of the Far East and Asia. Solatia payments are not claims payments, but rather compensation expressing sympathy or condolence. Solatia payments are drawn from unit operation and maintenance funds. These payments should not be made without prior coordination with the highest level of command in the deployment area.

IV. ADMIRALTY CLAIMS

The SJA should also be aware that admiralty incidents constitute an entirely separate claims regime that will necessitate coordination with higher and the likely involvement of admiralty attorneys. An admiralty incident is any tort arising, in whole or in part, from the operation of a vessel upon navigable waters, to include damage occurring ashore caused by a vessel or afloat object.⁴⁶ Every admiralty incident must be immediately reported to the Office of the Judge Advocate General to allow admiralty attorneys the opportunity to review the incident and provide necessary guidance.⁴⁷ The MEU SJA should not attempt to unilaterally adjudicate the claim by going through the claims analysis discussed in this chapter.

The following are reportable admiralty incidents:⁴⁸

- Collision—moving vessel strikes another moving vessel.
- Allision—moving vessel strikes stationary vessel or structure.
- Personal injury or death—death or personal injury to any person not a member of the Armed Forces occurring on board a vessel or arising in whole or in part incident to any aspect of operation of a vessel.

⁴⁴ *Id.* at para. 0406(a).

⁴⁵ *Id.* at paras. 0406(b)-(c). Amounts in excess of \$5,000 must be forwarded to higher authority. *See id.* at para. 0406(c).

⁴⁶ JAGMAN, *supra* note 17, at para. 1203(a).

⁴⁷ *Id.* at paras. 1204(a)-(c). While admiralty claims may be handled under the FCA in certain limited circumstances, most admiralty claims are cognizable under either the Suits in Admiralty Act, Public Vessels Act, or Admiralty Jurisdiction Extension Act.

⁴⁸ *Id.* at paras. 1203(b)-(m).

- Property damage—any loss, damage, or destruction of property arising in whole or in part incident to any aspect of operation of a vessel.
- Swell wash wake damage—civilian personal injury or property damage resulting from wake or swell of a vessel.
- Naval maritime target ranges—civilian personal injury or property damage resulting from use of naval maritime target range.
- Special services boats and marinas—civilian personal injury or property damage resulting from use of special services rental boats or damage to privately owned vessels moored at special services marinas.
- Naval aircraft—civilian personal injury or property damage caused by naval aircraft on or over navigable waters.
- Salvage—salvage of any naval property from navigable waters and salvage of civilian property by naval unit.
- Vessel seizures—naval unit’s seizure of any civilian vessel.
- Groundings—grounding of a naval vessel.
- Significant maritime incident—proximity of a naval vessel to any significant maritime incident.

V. FOREIGN CLAIMS PLANNING CONSIDERATIONS

A critical component of foreign claims processing is prior planning. Listed below are recommended planning considerations for the deployed JA.

A. PREPARE A CLAIMS BINDER

The SJA should consolidate all claims paperwork—claims forms, investigation forms, settlement agreements—into one binder. The binder should also include appropriate reference material, such as Chapters IV (Article 139 Claims), VIII (General Claims Provisions), and XII (Admiralty Claims) of the JAGMAN, and relevant SOFA claims provisions. Having a

binder readily available enables the SJA to reach the claimant quicker without spending time searching for relevant claims materials.

B. OBTAIN A DIGITAL CAMERA AND SCANNER

A digital camera and scanner can significantly expedite claims processing. A digital camera can document damages without film developing delays, and photographs are an important and effective part of an investigation. A scanner enables the SJA to convert documents and photographs to an electronic format that can be attached to e-mails, again expediting processing, particularly when the claims approval authority is geographically distant.

C. ENSURE THAT AN FCC IS ALWAYS AVAILABLE DURING PORT VISITS

Many foreign claims arise from liberty incidents during port visits. It is imperative that someone be available to process the claim as soon as possible after the incident occurs, not only because evidence quickly becomes stale and witnesses disappear, but because a rapid response to a claim generally results in faster resolution. If possible, a “duty” FCC should be designated to remain on ship during liberty. Alternatively, the FCC on liberty should carry a cell phone and be prepared to investigate and adjudicate claims on short notice. The MEU and ship duty officers, from all ships in the ARG, should be briefed on how to contact the SJA and the relevant ship FCC (if a person other than the SJA).

D. CONDUCT LIAISON WITH LOCAL OFFICIALS AND CLAIMS AUTHORITIES

The SJA should conduct liaison with local officials prior to port visits or training exercises. Such officials may be able to provide guidance on interpreter support, obtaining foreign currency, and local laws and customs. The SJA should also coordinate with any claims office exercising single-service claims responsibility or any cognizant receiving or sending state claims offices under an applicable international agreement.

E. PRE-BRIEF MARINES PRIOR TO LIBERTY CALL

The SJA should consider briefing Marines prior to the first liberty call in a foreign port. The brief should tell the Marines who to contact and how to do so in the event of a liberty incident giving rise to a claim. The SJA might also brief particularly relevant local laws and customs. The brief can be part of the overall ship liberty brief delivered over the ships' closed circuit television systems. The SJA can also include useful phone numbers and claims guidance on a liberty card to be carried by each Marine.

CHAPTER 9

LEGAL ASSISTANCE

Major Ian D. Brasure¹

I. INTRODUCTION

This chapter discusses the judge advocate's (JA) role in providing legal assistance services to the members of a deployed Marine Air-Ground Task Force (MAGTF). Legal assistance issues often prove to be legally challenging and unique due to the geographic constraints and isolation of the deployment and often comprise the preponderance of the JA's legal duties. Accordingly, the JA must have a firm grasp of common legal assistance issues and know how to quickly navigate through myriad publications, references, and military legal support networks to assist the client in making an informed decision concerning the proper course of action. This chapter is divided into two distinct parts. Part One provides helpful recommendations, suggestions, and tips that are applicable to the practice of legal assistance, regardless of the individual legal issue. Part Two discusses common legal assistance issues that MAGTF JAs frequently encounter. Comprehensive legal discussions of individual issues are left to the numerous publications and references cited throughout this chapter.

PART ONE

II. THE THEORY AND PRACTICE OF LEGAL ASSISTANCE—ART VERSUS SCIENCE

The advent of the Internet and other advanced information mediums has substantially increased the capability of deployed JAs to tap into issue-focused databases and legal resources. Once the JA has framed the legal issue, finding the law is typically the easy part. In light of the wealth of resources on legal assistance that are available, Part One of this chapter

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attempts to provide the deployed JA with an approach to the practice of legal assistance without regard to any specific legal issue. At first glance, readers who have not had extensive experience dealing with legal assistance issues may consider Part One somewhat ethereal; however, after some experience, the recommendations, tips, and suggestions provided below should begin sounding familiar and deserving of a second look.

Before approaching any individual legal assistance issue, JAs must first understand the theory and practice of legal assistance. While the JA must clearly be able to quickly apply the law to the facts of a specific case—the *science*—so too must the JA be able to craft common sense solutions beyond the legal aspects of the case as an experienced MAGTF officer—the *art*. As discussed below, pure legal technicians will soon find that the ability to adroitly apply the science to a given issue pales in comparison to the ability to practice the art of legal assistance to achieve positive results for Marines and Sailors.

A. LEGAL ASSISTANCE THEORY

The theory behind deployed JAs providing legal assistance services is that when deployed Marines and Sailors have their legal affairs in order, they are better able to focus on and accomplish their mission. Troublesome legal issues concerning child custody, divorce, civil lawsuits, debt collection, and other issues often have a negative impact on a Marine's or Sailor's performance of duty and morale, regardless of rank. When Marines and Sailors are "legally healthy" and understand that they have an available and experienced attorney that can assist them with their legal problems, mission accomplishment can truly be the focus of effort.

B. LEGAL ASSISTANCE PRACTICE: BALANCING THE ART AND SCIENCE

The practice of legal assistance is much more art than science. It is important to understand that by the time the typical Marine or Sailor actually seeks legal assistance, the right "legal" answer may not exist or any appreciable legal remedies that might be available may not be worth pursuing. This does not mean, however, that there is nothing the JA can do to achieve a positive result for the client. If a car has been repossessed, a debt has gone to a collection agency, or a Marine or Sailor has neglected some other obligation or responsibility, the JA may quite simply engage in damage control to prevent further harm, vice initiating a legal offensive

oriented toward the opposing party. The scientific approach to many of these legal assistance challenges frequently yields very little; however, in practicing the art of legal assistance, problem solving is broadened beyond mere legal remedies. Frequently, when faced with a legal issue that does not favor the client, the JA's ability to persuade the involved parties to resolve the issue without resorting to a painful and drawn out legal process may be just the solution the client is looking for. A few brief examples are in order:

Situation #1: A Staff Sergeant has come seeking urgent assistance concerning the potential eviction of his/her stateside family from their off-base residence.

Apparently, the property has gone into foreclosure and is soon to be sold. The stateside spouse is frantic and has been frequently contacted by several people advising him/her to vacate the residence by the end of the month. In light of the urgency of the Staff Sergeant's plea, what is the recommendation? A science-based approach, and rightfully where the JA should start, would be to contact the landlord, the owner, the nearest legal assistance office, review relevant documents, and research any applicable federal and state eviction protection laws, etc. At the end of this laborious fact-finding and research phase, which could quite possibly take weeks to complete depending on the JA's operational commitments, the assistance may be moot. Is the Staff Sergeant and his/her family really interested in staying in a home that will likely be at the center of a legal battle for the entire lease term or are they more interested in a harmonious place for the family to live? Combining an understanding of the law and reality with quick action on the part of the JA might likely result in the negotiation of the payment of moving expenses and return of security deposits to the stateside family, enabling them to move out of the residence embroiled in the events of foreclosure.

Situation #2: A Corporal seeking legal assistance adamantly states that his marriage is broken beyond repair and he wishes to get divorced as soon as possible. The Corporal has two young children. A purely

scientific approach to this case would be to apply the applicable state laws to the Corporal's marriage and dispense advice accordingly. The JA could draft a separation agreement and start the Corporal on his way. The more artful and successful approach, however, may be to avoid legal discussions at first and have a conversation with the Marine about the problems in his marriage. Was the couple experiencing problems before the deployment? Has the couple been able to talk frequently since the Corporal deployed? Has the Corporal discussed the issue with the unit chaplain or with concerned members of his chain of command? Exploring the root of the problem and nonlegal options may quickly reveal that the Corporal and his young spouse are merely experiencing the strains of the deployment and that initiating a separation process could do more harm than good.

Both of these examples exemplify the necessary balancing act between JA as legal technician, who can quickly dispense accurate and timely legal advice, and JA as counselor, who can see beyond the legal issues to what the client may really be seeking. In other words, clients are not always merely seeking legal advice. Frequently, Marines and Sailors want to discuss the social, moral, and spiritual issues that are typically intertwined with their legal problem. JAs who offer experienced counseling and common sense solutions, not merely nuts and bolts legal advice, will find themselves much more effective and relevant to the MAGTF.

III. LEVERAGE AND BARGAINING POWER

This section discusses the dynamics of persuasion as they relate to the legal and nonlegal factors that motivate businesses to resolve disputes in a client's favor. When the JA understands these business motivations, or pressure points, the JA can frequently attain quick and positive results for the client.

A. TELEPHONE CALLS, CORRESPONDENCE, AND BEING POLITE

When deployed Marines and Sailors experience legal problems with stateside businesses such as financial institutions, car dealerships, and landlords, clients frequently report little or no success when they personally attempt to resolve the dispute by phone or mail with the business directly. When speaking or corresponding with a young Marine or Sailor regarding a dispute, businesses frequently present a rather abrupt, one-sided, and unfavorable set of “options” to the Marine or Sailor that will resolve the dispute in favor of the business. However, upon initial contact with the business’s senior management by a JA, businesses often become rather receptive to other alternatives. The point here is that the JA should pick up the telephone and put the JA’s education, training, and title to work for the client. No matter how difficult or trying telephone communications may be while deployed, they can and should be utilized.

When telephone calls are impossible or fail to achieve the desired result, a letter to the opposing party can also achieve quick and favorable results. Frequently, telephone calls from a JA never reach the desired level of management of a business; however, letters addressed to recipients such as “supervisor,” “manager,” “owner,” or “legal department,” typically get prompt attention. Note that Chapter 14 of the Marine Corps Manual for Legal Administration (LEGADMINMAN) requires the inclusion of the following disclaimer in all legal assistance correspondence using a Marine Corps letterhead: “A LEGAL ASSISTANCE ATTORNEY IS A LICENSED ATTORNEY WHO ACTS SOLELY ON BEHALF OF AN INDIVIDUAL CLIENT AND NOT THE UNITED STATES GOVERNMENT.”² Finally, the JA should provide a deployed e-mail address and telephone number on all correspondence, as delays in mail due to the deployment may render moot any time-sensitive legal issues.

The legal assistance JA may have that unique case where the law is completely on the client’s side, or at least very close. An important point to emphasize is that the JA should never discard the polite qualities of a gentleman or lady and never become the bully. If the JA adopts the nasty

² U.S. MARINE CORPS, ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION para. 14005(1) (31 Aug. 1999) (C1, 21 Mar. 2001) [hereinafter LEGADMINMAN].

and brutish approach to legal negotiations, the opposing party may be offended to the point of requiring an assertion of the client's legal rights, understanding that this is not easily accomplished from over 3,000 miles away. Adopting the confrontational approach may trigger the innate emotions to fight, regardless of the strength or weakness of the business's or individual's legal footing. Legal superiority should never be thrown in the face of an opposing party. Cordial, assertive, and agonizingly polite communications will accomplish more than verbal sword fighting. Since the commencement of Operation ENDURING FREEDOM, the American public has certainly been positively reintroduced to the Marine Corps and its most commonly used MAGTF, the Marine Expeditionary Unit (MEU). When striking the proper tone in telephone conversations and demand letters, contact from a JA representing such a notable organization often resolves the dispute upon initial contact.

B. THE LAW AND ITS PRACTICAL APPLICATION

Obviously, having the law on the client's side can provide all the persuasive bargaining power needed to influence a favorable outcome for the client. However, bringing this law to bear against the offending business is often the most difficult aspect of practicing legal assistance while deployed. After legal research uncovers favorable law for the client, a telephone call to the offending business can often result in a quick resolution of the dispute. As mentioned above, while businesses frequently give the client the cold shoulder, the mere mention of the JA's status as a military attorney frequently jars managers and supervisors into reality and motivates them beyond their support staff's initial default response to the customer's complaint. If the JA's telephone call does not yield the results anticipated, it has likely established the business's position on the matter, which further refines what the next move on behalf of the client should be.

Sorting through the numerous federal and state laws on any given legal issue often presents a formidable undertaking for the multi-tasked MAGTF JA. Reliance upon the legal assistance offices at bases and stations is an excellent way to lessen the distance between the business and the deployed client's JA, as well as providing a wealth of knowledge concerning the nuances of local laws. Taking a few minutes before deployment to compile a simple list of various legal assistance office points of contact around the globe will yield tremendous results once deployed. A list of legal assistance office websites is included in Appendix 9-1.

Discovery of state and federal laws that favor the client's position is only the beginning. The JA should ask the following question whenever taking on a new client: If the law favors the client and the opposing party is unresponsive, is the client really going to sue? For 90% of legal assistance cases, the answer will usually be no. If the JA assumes this proposition as true, something more than favorable law is often needed. The following legal and nonlegal organizations or advocacy groups may provide additional leverage and bargaining power in cases where having the law on the client's side is not enough.

- Federal Trade Commission
- Armed Forces Disciplinary Control Board
- Better Business Bureau
- U.S. & State's Attorney General's Office
- Chamber of Commerce
- State Consumer Protection Office
- State Regulated Industries Office
- Action/Complaint Depts. of Local Print/Broadcast Media Organizations

C. MILITARY COMMUNITIES

A sign often displayed in the offices of many businesses reads: "If We Don't Take Care of Our Customers, Someone Else Will." There is no more simple expression of business motivation than the concept that this statement represents. Good businesses, and there are many, understand and practice this foundational business principle with regularity, even when the law may be in their favor in a dispute. Cities such as Jacksonville, North Carolina, San Diego, California, Quantico, Virginia, and Kaneohe, Hawaii, are predominantly military communities, and businesses in these and other military cities understand who "butters their bread," the military servicemember. This point reemphasizes the art and science of legal assistance practice discussed above in the numerous cases where the law will not be in the client's favor. It is not unethical or immoral to remind businesses that the client represents an important customer base in the community and that he or she should be treated fairly and with respect.

D. COMPASSION

A typical client, a young Lance Corporal, purchased a \$30,000 car just before deploying. The finance company really bent over backwards to get this Marine the car he needed: \$25,000 financed at 18% interest over 5 years. Two months into the deployment, the client cannot make the payments. A review of the credit sale contract, finance documents, and applicable state laws concerning the sale reveals nothing in the client's favor. As if all of this was not bad enough, this Lance Corporal is newly married with a four-month-old child. What does the JA do when a case seems so hopeless? First, the JA should realize that this event may likely shape this nineteen-year-old Marine's life and his family for years to come. This deceptively isolated incident may trigger a divorce, misconduct on the part of the Marine, and a significant loss of productivity to the MAGTF. Second, the JA should get involved. Contacting a business with nothing but a plea for compassion can yield surprisingly good results. Nor should the JA discount or underestimate the generosity and goodwill that resides within much of the business community. The JA should always remember that zealous advocacy extends beyond legal education and training.

IV. PREVENTIVE LAW

Benjamin Franklin said it best when he coined the phrase, "An ounce of prevention is worth a pound of cure." An aggressive preventive law program can significantly reduce the detrimental effects of the most common legal assistance pitfalls that deployed Marines and Sailors frequently encounter. Developing a preventive law program prior to deployment is a formidable task for any MAGTF JA, as the various elements of the MAGTF are typically geographically dispersed and extremely busy training for the deployment. However, any effort expended on preventive law, even while deployed, will help Marines and Sailors learn to avoid the common mistakes that seem to be repeated with each successive influx of new MAGTF personnel.

A. DEVELOPING A PREVENTIVE LAW PROGRAM

Because legal assistance is a part-time job for the MAGTF JA, it is unlikely that he or she will have a mastery of the nuances of state laws,

common scams, or businesses with a negative “track record” in the local economy. Additionally, JAs typically find themselves gainfully employed with the numerous operational demands of the MAGTF. The legal assistance office at the base or station often has a preventive law program already developed that can be oriented to the needs of the MAGTF. Arrangements can usually be made to offer the preventive law period of instruction at the legal assistance office on a recurring basis. If this is not feasible, a legal assistance attorney may be able to go directly to the units during block training periods and other times when significant portions of the MAGTF gathers together.

The best method for reaching the Marines and Sailors of the MAGTF’s many moving parts is the “teach the teacher” method. This method requires units to nominate a representative to receive a period of instruction and return to the unit to conduct further instruction. To lend credibility to this method, staff noncommissioned officers and/or company grade officers are preferred. The importance of getting the MAGTF commander and the major subordinate element commanders behind a preventive law program is key to the program’s success. Whether the base or station legal assistance office or the JA conducts this training is unimportant, so long as the information being presented is relevant and timely. Finally, a useful part of a preventive law program can also be the MAGTF’s web page. Coordination with the MAGTF’s S-6 and Public Affairs Officer (PAO) will quickly educate the JA on the process of establishing an SJA section on the web page where preventive law information can be accessed by the MAGTF’s Marines, Sailors, and family members.

B. PREVENTIVE LAW ISSUES

Preventive law topics should be oriented toward the legal challenges typically experienced by deployed Marines and Sailors. While issues such as financing an automobile purchase are certainly useful information, it is likely that such topics are more appropriate for an audience that is not rapidly preparing to deploy. The specific legal areas covered in Part Two of this chapter provide an excellent guide to issues that are appropriate for inclusion in any preventive law program. At a minimum, the following preventive law topics should be covered:

- The importance of a will and power of attorney
- What to do upon receiving notice of a lawsuit while deployed
- What to do upon receiving notice that a creditor is making a claim of nonpayment or late payment
- Traffic citations immediately prior to deployment
- Civil and criminal court obligations
- Self-storage facilities and the importance of timely payment
- Automobile issues
- Debt/financial management while deployed
- Divorce/separation
- Child/spousal support
- SSCRA protections: stay of proceeding; 6% interest cap; eviction protection; reopen default judgments; installment contracts
- Landlord-tenant issues: security deposits; early termination of a lease

V. DETERMINING THE CLIENT: CONFIDENTIALITY AND CONFLICTS OF INTEREST

Chapter Two of this book emphasized that the MAGTF JA's client is the Department of the Navy (DON).³ Given this fact, an important issue to consider is whether the JA is authorized to provide legal assistance to the Marines and Sailors of the MAGTF. Certainly as a matter of practice many deployed Marine and Navy command JAs are both advising commanders and simultaneously providing legal assistance to servicemembers. It is useful at this point, however, to discuss whether such a practice is prudent, let alone ethically sound.

Obviously, the pressing concern is conflicts of interest between the DON client and the legal assistance client. Because the MAGTF JA is not fenced off as a dedicated legal assistance attorney, it is easy to imagine situations where taking on a legal assistance client would conflict with the JA's duties as the commander's legal advisor. The Navy-Marine Corps Legal Assistance Program JAG Instruction notes this potential for conflict:

Attorneys who are assigned duties outside the Navy-Marine Corps Legal Assistance Program must be

³ See *supra* Chapter 2, Section V.B.

especially sensitive to the possibility that conflicts of interest may develop. For example, an SJA may need to advise his commander concerning allegations of indebtedness, nonsupport or paternity made against a member of the command; accordingly the SJA should refrain from advising and representing command members in such matters.⁴

In analyzing the potential for a conflict of interest, the MAGTF JA should look to the Rules of Professional Conduct governing Marine and Navy JAs, specifically, Rule 1.7.⁵ The rule contains two prohibitions. First, a JA shall not represent a client if doing so will be *directly adverse* to another client, unless: the JA reasonably believes the representation will not adversely affect the relationship to the other client, and *each* client consents after consultation.⁶ Second, a JA shall not represent a client if the representation will be *materially limited* by responsibilities to another client, unless: the JA reasonably believes the representation will not be adversely affected, and the client consents after consultation.⁷

Guided by Rule 1.7, the MAGTF JA should be very careful before deciding to offer legal assistance advice to Marines and Sailors. Certain conflicts stand out as clear, such as representing a member of the command in a disciplinary proceeding or providing advice to a servicemember facing an office hours proceeding under Article 15, UCMJ. In the realm of legal assistance, however, the conflicts can be less clear. On the one hand, providing counsel for the preparation of wills and powers of attorney seems appropriate. On the other hand, issues of nonsupport of dependents and indebtedness may raise potential conflict issues. The JA should closely scrutinize the facts of each case before undertaking representation. Furthermore, because the JA often will not know of a conflict until some point during the initial interview, the JA should consider advising the

⁴ U.S. DEP'T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL INSTR 5801.2, NAVY-MARINE CORPS LEGAL ASSISTANCE PROGRAM encl. 1, para. 5-1(e)(6) (11 Apr. 1997).

⁵ U.S. DEP'T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL INSTR. 5803.1B, PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL encl. 1, para. 7 (11 Feb. 2000) [hereinafter JAGINST 5803.1B] (The Rules of Professional Conduct are contained in Enclosure 1).

⁶ *Id.* at para. 7(a) (emphasis added).

⁷ *Id.* at para. 7(b) (emphasis added).

prospective client of the JA's preexisting duties to the DON as a first order of business before the client begins revealing any information.⁸

If the JA does decide to take on a legal assistance client, the next issue is whether an attorney-client relationship with its concomitant obligations of confidentiality forms. While it may be possible to provide legal assistance without forming an attorney-client relationship,⁹ the better practice is to assume that the relationship has been formed rather than trying to walk a fine line between representing the DON client and merely offering advice to the servicemember seeking legal assistance. Avoiding the technical formation of an attorney-client relationship should not be employed as a method for circumventing an actual or potential conflict of interest situation.

If the JA cannot provide legal assistance because of a conflict with the DON client, other options remain available. Improved shipboard technology makes telephonic or electronic communication with legal assistance offices in theater or back in CONUS a viable recourse. A Navy command JA may be available who may not have the same conflict issues as the Marine JA; for instance, each Amphibious Squadron that transports a MEU has a Navy JA on the staff. Additionally, as discussed above, many legal assistance matters can be resolved nonlegally, and the servicemember's chain of command can ably assist, perhaps with generic, non-fact-specific advice from the JA.

VI. KEY REFERENCES

A. JAGMAN AND LEGADMINMAN

There are numerous legal assistance references with which the deployed MAGTF JA must be familiar to ensure the effective and ethical practice of legal assistance while deployed. However, above all other references, the JA should specifically review the Manual of the Judge

⁸ See *infra* note 9 and accompanying text.

⁹ The LEGADMINMAN states that legal assistance "will *normally* involve entering into an attorney-client relationship," suggesting that perhaps there are situations where a JA can provide legal assistance without forming a relationship. LEGADMINMAN, *supra* note 2, at para. 14003 (emphasis added). One current MEU SJA uses a written consent and waiver form to clearly memorialize the fact that legal assistance is being provided without forming an attorney-client relationship. Such a waiver may be particularly useful for initial interviews with prospective clients as a method of putting the client on notice of the JA's responsibilities to the DON. The form is included in Appendix 9-2.

Advocate General (JAGMAN)¹⁰ and the LEGADMINMAN¹¹ chapters governing the practice of legal assistance before assisting clients. JAGMAN Chapter VII and LEGADMINMAN Chapter 14 provide mandatory and recommended guidance for all legal assistance practitioners, regardless of the JA's primary duties, and describe the scope of legal assistance practice in the Marine Corps. By beginning with the review of these two important chapters, the JA quickly has a roadmap of the legal assistance issues he or she will likely encounter. Further, both chapters provide indispensable information on the who, what, when, why, and how of legal assistance practice. These two references are frequently overlooked, as new JAs quickly jump into the multidisciplinary practice of being a MAGTF JA. Taking a few minutes to review these chapters prior to providing legal assistance services will result in a more comprehensive understanding and approach to the practice of legal assistance as a whole.

B. INDIVIDUAL TRAINING STANDARDS

One of the more elusive or unknown references pertaining to the practice of law in the Marine Corps is the Individual Training Standards (ITS) System for Legal Services, Occupational Field 44 (OCCFLD).¹² ITS are developed for all OCCFLDs to ensure standardized training, measure effectiveness, and to focus Marines on the essential core competencies of their respective MOSs. ITS for legal services provide a useful review of many of the basic competencies of military legal practice. While the legal services ITS include required competencies and standards for all legal MOSs, the sections that provide standards for JAs practicing legal assistance and other related areas of law are particularly helpful. The following is a partial list of relevant tasks included in the ITS that pertain to the practice of legal assistance: perform legal research; draft legal memorandum; provide instruction in legal matters; demonstrate negotiating and interviewing skills; prepare domestic relations documents; advise on consumer affairs; negotiate noncommercial contracts; advise on dependent support obligations; and advise on disputed indebtedness. ITS do not provide the JA with answers to legal assistance issues; however, when the JA reviews them prior to meeting with clients for the first time, ITS do provide an excellent overview of legal

¹⁰ U.S. DEP'T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL INSTR. 5800.7C, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) ch. VII (3 Oct. 1990) (C3, 27 July 1998) [hereinafter JAGMAN].

¹¹ LEGADMINMAN, *supra* note 2.

¹² U.S. MARINE CORPS, ORDER 1510.51B, INDIVIDUAL TRAINING STANDARDS (ITS) SYSTEM FOR LEGAL SERVICES, OCCUPATIONAL FIELD (OCCFLD) 44 (23 June 1999).

assistance issues and some of the many tasks with which the SJA must be competent.

PART TWO

VII. COMMON DEPLOYED MAGTF LEGAL ASSISTANCE ISSUES

While there are numerous excellent resources available on legal assistance issues, Part Two attempts to identify the more common issues encountered by deployed Marines and Sailors and provide some useful recommendations concerning how to effectively handle these issues. Where appropriate, recommended references and examples provided in the appendices to this chapter will be highlighted to focus the reader's research.

A. DEBT COLLECTION, FINANCIAL MANAGEMENT, AND CONSUMER RIGHTS

Debt collection, financial management, and consumer rights issues present some of the most common problems for deployed Marines and Sailors, and MAGTF JAs will likely encounter these issues frequently. Between Naval Justice School (NJS) and The Judge Advocate General's School, U.S. Army (TJAGSA) publications, there are well over 1,000 pages of relevant and focused research on these related topics. Without reproducing the content of these excellent resources, the intent of this section is to provide an overview of debt collection, financial management, and consumer rights issues and discuss some particularly useful insight into the artistic practice of legal assistance in these areas.

1. Debt Collection

Collecting debts is an interesting trade and certainly a trade with its fair share of smoke and mirrors. Understanding some basics about this profession and how to effectively navigate through the various collection agencies and businesses is an important first step.

A *debt collector* is a business or individual who is in the business of collecting debts. A *creditor* is the business or individual to whom the debt is originally owed. The distinctions between these two entities are important, as state and federal laws often establish different laws based on the status

and relationship with the debtor. For example, the Fair Debt Collection Practices Act (FDCPA)¹³ prohibits a *debt collector* from contacting an unrelated third party concerning the debt, i.e., commanding officer or sergeant major; however, laws pertaining to *creditor* contact with third parties may permit such contact.

A typical debt collection fact pattern may look like the following:

Lance Corporal Doe's company First Sergeant recently received a letter from Debts-R-Us Credit Agency. LCpl Doe was late on a few of his car loan payments and the account was sent from the lender to the collection agency two months ago. The First Sergeant contacts the JA asking for assistance. Upon review of the collections notice, the JA reads the following: "Mr. Doe, your credit account with Lemmon Loan Inc., has been sent to our agency for collection because you have failed to make timely payments. The remaining balance of \$5,000 on your loan is due to this company within 30 days of receipt of this letter. We will not accept partial payments. If you fail to pay this amount in full within 30 days, we will sue you in court and collect our attorney's fees and court costs. Additionally, your command will be notified and you will lose your rank and your career will be in serious jeopardy. We are very good at collecting debts! If you pay the full amount of your debt within 30 days, we will not report this debt to a collection reporting agency."

Upon reading this fact pattern, bells and whistles should be going off in the JA's head. Does the credit agency's contact with the command constitute an improper/illegal contact of a third party in an attempt to collect a debt? Is the language used in the collection agency's demand letter too strong, such that it constitutes a violation of collections laws? Will the collection agency really take the Lance Corporal to court if he does not pay the entire \$5,000 balance within 30 days? Research and common sense will lead the JA to the right answers. While this example combines many of the more blatant debt collection violations, JAs will likely encounter many similar violations during their tenure.

¹³ 15 U.S.C. §§ 1692-920 (2002).

Most debt collection cases that the JA will encounter are justified, in that the client has likely failed to meet his or her obligations with regard to credit. Despite the client's responsibility in the creation of what may have become a monumental debt emergency, permitting debt collection agencies to violate laws to collect what may be a valid debt is unacceptable. Where the debt is determined to be valid, the JA should make all efforts to use collection violations to the benefit of the client. Collection agencies frequently become very receptive to alternatives when violations are brought to their attention that may affect their ability to be in the business at all. Where the debt is not valid or is denied by the client, the course of action for the JA will be straightforward upon cursory review of the many references.

While most debt collection agencies are very reputable and follow the law to the letter, many agencies cross the line in their collection efforts with regularity. As illustrated in the fact pattern above, disreputable agencies often resort to half-truths or lies to coerce debtors into paying. Reviewing some commonly advertised debt collection myths is in order:

Myth: The collection agency will only accept full payment of the debt.

Myth dispelled: While it may sound peculiar for a business to buy debt, that is likely what the collection agency has done, i.e., purchased the debt from the original creditor, often for pennies on the dollar. If the collection agency collects any amount above the reduced amount they paid for the debt, the agency pockets the money. Agencies will typically give the gloom and doom pitch to the client regarding the absolute requirement of immediate full payment, or else. However, when the JA enters the picture, agencies frequently are willing to settle the account for 70%, 60%, 50%, or less, of the original amount of the debt. JA's may find that through persistence, a \$5,000 debt that has been properly sent to a collection agency might quickly be settled if the client was able to offer a \$2,000 to \$2,500 immediate payment. Finally, collection agencies frequently do accept monthly payments.

Practice pointer: If a settlement is selected by the client as the best course of action, the settlement amount is often closely correlated to the number and significance of any collections violations the JA can bring to the attention of the collection agency. While violations of collections laws can

be pursued through the courts and other means, violations are often more appropriate as negotiating tools.

Myth: If you pay in full now, we won't report to a credit reporting agency.

Myth dispelled: If a client's account has justifiably found its way to a debt collection agency, it has almost certainly been reported to one of the three major credit reporting agencies (Experian, Equifax, Trans Union). Further, the original creditor has also likely reported any payment delinquencies to a credit reporting agency prior to transferring the debt to a collection agency. Some disreputable collection agencies use this method as a manipulative incentive for the debtor to pay the debt promptly, and it is likely a violation of collections laws.

Practice pointer: When communicating with collection agencies, the JA should inform them that the JA understands the debt collection industry and of the consequences for substantiated violations of applicable laws. The JA should attempt to speak or correspond with the senior management of the collection agency, as the lower level employees often have been assigned a large number of accounts and have been instructed to collect the debts aggressively.

Myth: Once a debt is sent from the creditor to a collection agency, the original creditor has nothing more to do with the matter.

Myth Dispelled: Creditors and debt collectors alike often bring this perceived fact to the attention of the debtor since the debt collection agency is the preferred single point of contact for debt collection. However, if the debt rightfully should have never been sent to collections in the first place or the creditor is contacted shortly after the account has been sent to collections, debts can be transferred back to the original creditor.

Practice pointer: Lower-level employees of the creditor or debt collection agency may be sincere in believing that the creditor really cannot retrieve the debt that it has transferred to a collection agency. If the JA can communicate with more senior managers or supervisors, credit accounts can often be returned to the original creditor if properly negotiated and caught early enough in the chain of events. It is infinitely better for the client to have the account with the original creditor than with a collection agency. If

the account has recently been sent to the collection agency, the JA should speak first with the creditor, as the debt collection agency has likely purchased the debt and will not entertain attempts to return the debt to the creditor. The first response from the creditor is typically that they no longer have anything to do with the debt; however, if the JA can offer a substantial balloon payment on behalf of the client and the account has recently been sent to collection, they may be willing to pull it back. Detailing collection law violations is also a powerful incentive for the creditor to pull the account back. Finally, sincere and honest communications with the creditor regarding the situation of the young Marine or Sailor is always appropriate, and the ability to establish allotments or other assured means of payments frequently persuades the creditor to retrieve the account from the debt collection agency.

Debt collection cases for deployed Marines and Sailors are often very similar from case to case. The set of questions provided below may prove useful to the JA upon initial screening of debt collection cases.

- Does the state where the collection agency is attempting to collect a debt require collection agency registration before collection attempts commence? If the state has such a law, has the agency in question registered?
- Has there been any improper contact of third parties?
- Has the collection agency complied with the requirements of the FDCPA and other state and federal laws governing the collection of debts (unfair or deceptive acts and practices (UDAP) statutes)?
- Has the original creditor properly sent the account to the collection agency?
- Has the original creditor complied with laws such as: Fair Credit Billing Act (FCBA)¹⁴; Truth in Lending Act (TILA)¹⁵; UDAP?
- Will the original creditor entertain retrieval of the account from collection agency under any circumstances?

2. Financial Management

Financial management is truly the key to avoiding many of the pitfalls of credit accounts and other financial obligations for Marines and Sailors. In

¹⁴ 15 U.S.C. § 1666-66j (2002). Title 15, Chapter 41, addresses Consumer Credit Protection and includes the Fair Credit Billing Act and the Truth in Lending Act.

¹⁵ 15 U.S.C. § 1601-44, 1661-65 (2002).

a deployed status, half the battle simply rests with the ability of the servicemember to consistently pay just debts in a timely manner. While this topic is most appropriately addressed at the unit level by concerned and knowledgeable staff noncommissioned officers, preventive law programs and unit briefs should make mention of financial management. Base or station Family Service Centers (FSC) often have regularly scheduled classes on financial management. Legal assistance offices also may offer similar classes. With the advent of online banking and bill paying services being offered by most banks, there really is no excuse for Marines' and Sailors' inability to make payments in a timely fashion. Predeployment establishment of such services is simple, provided the servicemembers are aware of such options. It is important to remember that late payments often evolve into debt collection scenarios. Finally, late payment charges are frequently forgiven with a simple telephone call or letter from the client or JA. When requesting that late payment charges be removed, the JA should inform the business that the Marine or Sailor is deployed and use key words such as, "as a one-time courtesy on this account, could you please forgive the late payment charge?"

3. Consumer Rights: Scams

The authoritative reference on consumer rights issues is the TJAGSA Consumer Law Guide. Its nearly 500 pages are superbly organized and when viewed on CD ROM, bookmarks make navigation very simple. Consumer laws are numerous and run the gamut from product warranty issues to door-to-door sales transactions. Almost any time Marines or Sailors purchase a product, there is a consumer law that governs the transaction. For the purposes of this section, the discussion is restricted to the issue of consumer scams that frequently prey upon the young and inexperienced Marine or Sailor.

By way of illustration, a recent personal experience should be educational concerning scams. A few years ago while on duty as the command duty officer for Marine Corps Base Hawaii, military police gave the author, at the time serving in a legal assistance billet, a courtesy call that they had just detained two adults who were walking through base housing selling children's books. The author went to the Provost Marshal's office and engaged the men in conversation about their on-base activities. The advertised story was that they were both on vacation in Hawaii from the Bronx. Before coming on vacation, they thought that the military population

on Oahu might benefit from the children's books that they were offering. When asked to produce licensing verification to sell the obviously copyrighted material of their samples (Disney, etc.), which were in great disrepair, much wringing of hands ensued.

While many scams are a good deal more sophisticated than the example provided above, this story emphasizes the fact that Marines and Sailors are being targeted in the barracks, on-base housing, the parking lot of the commissary, and during their liberty hours off base. Being able to spot a scam is essential if the JA expects to effectively assist the client. Consumer scams involving military servicemembers often fall into one of the several categories detailed below.

- Film: Offers for several months' supply of camera film. Usually for \$500 to \$1,000, servicemembers can buy more film than they will ever need in a lifetime.
- Magazines: Offers of numerous magazines for subscriptions of up to 3 years. For instance, for only \$1,000, servicemembers can subscribe to three years of Guns & Ammo, Road and Track, Playboy, National Geographic, etc. See demand letter regarding magazine sales included in Appendix 9-3.
- Vacuums: Vacuums from \$3,000 to \$5,000 that will filter every known dust particle.
- Encyclopedia: Encyclopedia books. While many of these products have been rendered moot by inexpensive CD ROM products and the Internet, the scams still exist.

While most scams usually occur in CONUS, the Marines or Sailors who were "taken" generally do not become aware of this fact until they have deployed. Contacting the local legal assistance office, base inspector's office, state's attorney general's office on consumer protection, and the Federal Trade Commission are all excellent ways to discover whether the client has been the subject of a scam. These offices frequently track scam activity and can provide useful information on what steps the JA should take if they suspect their client has been scammed. All bases and stations have stringent solicitation rules pertaining to on-base sales activity that should be researched in cases where transactions were initiated or conducted on base.

B. SEPARATION AND DIVORCE

Separation and divorce issues are some of the most frequent legal issues that the JA will encounter while deployed. Marital discord is often very debilitating to deployed Marines and Sailors and thus the JA must be well-versed in common military separation and divorce scenarios and know where to look for answers. The typical deployed separation or divorce scenario often begins several months into the deployment. While there is no single cause for the marital discord, geographic separation of the husband and wife, often for long periods of time, is always a contributing factor and the cause for much frustration on the part of a deployed Marine or Sailor.

1. Counseling

Experienced and sincere counseling is one of the most important roles of the JA in separation and divorce cases. Clients are often blinded by anger or despair and the ability of the JA to provide some semblance of order to the situation is often the first important step in the right direction. As discussed in Part One of this chapter, clients are often seeking much more than a step-by-step review of the legal aspects of their case. JAs should view themselves as part of an integrated and concerned team of players who can help the Marine or Sailor sort through marital problems. The client often will not know what they want or their wants will change frequently from immediate divorce to reconciliation and back again. Where appropriate and after consent of the client, the JA may enlist the aid of the unit chaplain, select members of the client's chain of command, and the deployed Navy psychologist/psychiatrist.

These comments should not be confused for implying that the JA should wholly abandon the primary role as the duty expert on the law; rather, the JA should incorporate the client's education on the law and process as part of the JA's counseling. Base and station legal assistance offices are often the best resource for researching applicable state laws and procedural requirements. Finally, Appendix 9-1 to this chapter provides several excellent websites where the JA can download divorce laws for all fifty states to ensure that both the JA and the client can clearly see the road ahead.

2. Separation

Marital separation in a military context is somewhat simplistic and should not to be confused with court-ordered separations. Separation agreements are completely voluntary and instances where one party does not wish to enter into the separation agreement will stop the process in its tracks. Separations begin with the client's preparation of a separation agreement worksheet. A sample worksheet is included in Appendix 9-4. The separation agreement worksheet will often be a useful measure of whether the couple is really serious about becoming separated or divorced or whether the strains of the deployment are merely causing marital hardship. Additionally, the separation agreement worksheet will give the JA and client the important first indication of whether the husband and wife can agree on serious matters such as property and asset/debt distribution, child custody, and whether they are candidates for an uncontested divorce.

While the separation agreement is an enforceable contract, taking legal action against the non-servicemember spouse in response to violations of its provisions is usually unrealistic. Instead, where the non-servicemember spouse violates the terms of the agreement, the servicemember will likely determine that an uncontested divorce may no longer be possible and that divorce proceedings should be initiated. Ensuring that the servicemember spouse adheres to the terms of the agreement is much easier, since the command now has the authority to issue lawful orders to obey separation agreements under the LEGADMINMAN.¹⁶

Once the separation agreement worksheet is completed, the JA drafts the separation agreement and each party notarizes it. Difficulty and delay in mailing documents back and forth between husband and wife often frustrate the process. Many states require a separation period before the couple can be divorced. If the servicemember is seeking a rapid divorce, commencing any required state separation period while deployed can often facilitate an immediate divorce upon completion of the deployment.

3. Divorce

JAs will likely find that initiating a divorce while a servicemember is in a deployed status is unlikely. Retaining counsel, court appearances, and

¹⁶ LEGADMINMAN, *supra* note 2, at para. 15001.7.

other obstacles make meaningful progress difficult. However, with the JA's assistance, the client can effectively set the conditions for a divorce upon the client's return to CONUS. Reviewing applicable divorce laws pertaining to the anticipated divorce issues of the case should be discussed with the client to ensure the ability to take action on the divorce when time and location permit. If the divorce appears to be uncontested and relatively amicable between the parties, the nondeployed spouse can often effect the divorce by mailing required consent and waiver forms to the deployed spouse. Typically, however, the deployed Marine or Sailor must wait until return to the States to initiate divorce proceedings due to geographic constraints and the work demands of the MAGTF.

C. NONSUPPORT OF DEPENDENTS

Claims of nonsupport of dependents against a deployed Marine or Sailor will likely get the attention of the command very quickly. As the sole legal advisor to the MAGTF commander, nonsupport claims should get the attention of the JA as well. The nondeployed spouse typically initiates nonsupport claims by letters to the command, complaints to congressional representatives, or via a legal assistance attorney.

Nonsupport issues raise a precarious ethical question for the JA: Can the JA properly advise both the MAGTF commander and the Marine or Sailor that is the subject of the nonsupport claim? The essence of this dilemma is addressed at length in the conflicts of interest section in Part One to this chapter¹⁷ but is deserving of discussion in this section as well. Recalling that the MAGTF JA's client is the DON, representing a Marine or Sailor on a nonsupport claim presents a very likely conflict of interest: the command wants the matter settled and off the skyline, while the Marine or Sailor may want to contest the claim or provide minimal levels of support, and looming over all is the possibility of a disciplinary proceeding against the servicemember for failure to provide adequate support. The JA should tread very carefully before taking on such a legal assistance case. The more prudent course would be to obtain telephonic or electronic legal assistance for the Marine or Sailor from a dedicated legal assistance attorney. The JA may, however, be able to provide basic counseling on Marine support requirements, discussed below, without forming an attorney-client relationship.

¹⁷ See *supra* Section V.

Nonsupport of dependents is addressed at length in Chapter 15 of the LEGADMINMAN; however, a quick overview is useful here. Chapter 15 sets the stage for discussion by providing the following guidance: “The Marine Corps will not be a haven for personnel who disregard or evade their obligations to their families. All Marines are expected to provide adequate and continuous support for their lawful dependents and comply with the terms of separation agreements and court orders.”¹⁸ Chapter 15 establishes two general categories: situations where there is a separation agreement or court order, and situations where there are not. When there is a separation agreement or court order, the SJA should simply compare the facts of the case to the obligations established in the documents. In cases where no separation agreement or court order exists, the command should determine whether the individual is providing the required degree of support pursuant to the LEGADMINMAN. If adequate support is not being provided, the command should determine the proper degree of support after consulting with the JA.

D. SOLDIERS AND SAILORS CIVIL RELIEF ACT

The Soldiers and Sailors Civil Relief Act (SSCRA)¹⁹ is one of the more powerful and useful federal laws that can be brought to bear on behalf of military servicemembers, and knowledge of its many parts can reap significant rewards for your clients. While numerous in-depth references are available on the SSCRA from NJS and TJAGSA, two fact patterns typically arise in a deployed setting.

1. Stay of Proceedings

Once deployed, it is inevitable that some Marines and Sailors will receive notice that they are party to a lawsuit and the court requires their presence at a trial or hearing during the deployment. Barring extenuating circumstances, leave will likely not be granted. Section 201 of the SSCRA provides the following:

At any stage thereof any action or proceeding in any court in which a person in military service is involved,

¹⁸ LEGADMINMAN, *supra* note 2, at para. 15001.1.

¹⁹ 50 U.S.C. App. §§ 501-94 (2002).

either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not *materially affected by reason of his military service*.²⁰

The key to taking advantage of this beneficial provision of the SSCRA is the client's timely notification of the JA. Notice of lawsuits and civil court hearings are sent directly to the client or the client is notified by friends or family that have received court documents. The JA will likely not be aware of any court appearance issues for Marines or Sailors unless they bring the issue to the JA's attention. Raising this issue at preventive law briefs, predeployment briefs, and unit family nights is imperative, for many Marines and Sailors are not aware of the SSCRA's protection in this area.

Once a court appearance issue has been brought to the attention of the JA, the JA's actions are rather simple. With the counsel of the JA, the MAGTF commander should first determine if it is feasible to have the Marine or Sailor personally appear at the court hearing. In determining whether personal appearance is appropriate, commanders should consider several factors, including the location of the MAGTF, the role of the client in ongoing operations, and the nature of the court hearing. As an example, if the trial or hearing involves an egregious failure to provide child support on the part of a Marine or Sailor, commanders may determine that personal appearance is appropriate and that leave shall be granted. In most cases, however, it is likely that a deployed Marine or Sailor will be "materially affected" by virtue of their deployed status and will not be granted leave to personally appear at the trial or hearing. If leave is not granted to attend the trial or hearing, the JA should draft two letters.

The first letter is for the MAGTF commanding officer's signature. Commanders subordinate to the MAGTF commander may sign, but signatures from commanders who are not field grade officers may diminish the intended influence of the letter. The letter should be addressed to the

²⁰ 50 U.S.C. App. § 521 (2002) (emphasis added).

particular court requesting the Marine or Sailor's appearance. The purpose of the commander's letter to the court, vice a letter from the JA, is to ensure that the court does not construe the letter from an attorney as an appearance on behalf of the client. In the past, some courts have determined that a mere letter to that court by an attorney may constitute an appearance, as explained at length in the various publications on the SSCRA published by NJS and TJAGSA. A sample letter is included in Appendix 9-5.

The second letter should be from the JA to the attorney for the opposing party, or the opposing party directly if they are not represented by counsel. The content of the letter from the client's commander to the court and the JA's letter to the opposing party will be nearly identical, as the purpose of the letter is merely to notify the court and opposing party of the client's inability to appear as a result of military service. A sample letter is included in Appendix 9-6. It is imperative to follow-up on the status of the stay request to ensure that the court does not proceed in the matter to the detriment of the client. Courts frequently appoint an attorney to represent the absent servicemember. If so, the JA and client should contact the court-appointed attorney and provide relevant information to ensure that the attorney is capable of adequately representing the interests of the client. Finally, if for any reason the stay is not granted and the court grants a default judgment to the opposing party, be aware that the SSCRA may be used to reopen default judgments in certain instances.

2. Maximum Rate of Interest

A simple way to save Marines' and Sailors' money is by continually educating them about the SSCRA's benefits as they pertain to the maximum rate of interest. Section 206 of the SSCRA permits Marines and Sailors to reduce interest rates on debts that were incurred prior to entering active military service if military service has materially affected their ability to pay the obligation.²¹ If Marines or Sailors came on to active duty with a credit card, car loan, or almost any other type of financial obligation, it is likely that the JA will be able to reduce the interest rate of the obligation to 6%. To take advantage of this provision of the SSCRA, the JA should simply mail the creditor a letter requesting a reduction in the interest rate to 6%, accompanied by service record documents that verify the date of entry into active military service. This simple process potentially can save Marines

²¹ 50 U.S.C. App. § 526 (2002).

and Sailors hundreds of dollars per year, depending on the size of the debt. A sample letter is included in Appendix 9-7.

E. ESTATE PLANNING

In a deployed context, estate planning is essentially reduced to the preparation of two major estate planning documents: the will and the power of attorney. While most Marines and Sailors receive their wills and powers of attorney from the local legal assistance office prior to deployment, many will want to execute these documents while deployed. As an example, the 26th MEU(SOC) deployed within eight days of the attacks of 11 September 2001, and many Marines and Sailors requested the drafting and execution of these documents once deployed in anticipation of combat operations in Afghanistan. Additionally, the 26th MEU(SOC)'s deployment was extended for an additional month, which created numerous problems for Marines who had power of attorney expiration dates on or about the originally scheduled date of return.

1. Wills

The drafting and execution of a simple will is a relatively easy process. The process begins by educating the Marines and Sailors on simple estate planning information and identifying those who are the likely candidates for obtaining a will. At the completion of this class, the JA should provide a will worksheet to those interested in receiving a will. The JA should personally review the will worksheet with the client. This personal contact ensures the worksheet is filled out correctly, permits the client to ask questions, and satisfies the JA's professional responsibility requirements. A sample will worksheet is included in Appendix 9-8.

Once the worksheet is complete, the JA's legal clerk typically drafts the document using the DL Wills program. Upon completion of the will, thorough JA editing is required to ensure correctness and compliance with relevant state laws. The JA should meet with the client again to review the will and answer any further questions. Finally, the will is executed with the JA personally guiding the execution.

Wills that exceed the capabilities of the DL wills program and the experience of the JA should be avoided. Complex wills are not only a

potential hotbed for malpractice but are a disservice to the innocent client who relies upon the perceived experience of the JA.

References:²²

- Naval Justice School Legal Assistance Guide
- TJAGSA 47th Legal Assistance Course Deskbook
- TJAGSA Wills Guide

Software:

- DL Wills
- LAAWS

2. Powers of Attorney

Drafting and executing a power of attorney (POA) requires the same process as wills, including the personal interaction between JA and client. POAs are by far the most useful tool for deployed Marines and Sailors, and clients frequently request this document while deployed for many different reasons. A sample POA request worksheet is included in Appendix 9-9. The special POA is preferred and can be drafted to suit the individual needs of the client. Whether it may be the authority to register a car, purchase a house, or access bank accounts, special POAs present fewer problems than general POAs. It is a failure of the JA's fiduciary duties and likely an ethical violation to provide the client with a powerful general POA without first explaining the sizeable authority the client is extending to the designated attorney-in-fact. The Marine or Sailor must fully understand that the designated attorney-in-fact can truly conduct almost any business or execute any transaction in the client's name. Some useful suggestions are as follows:

- Ensure clients understand the purpose and effect of the special and general POA
- Ask the client whether special POA can accomplish the same goal
- Provide stark examples of ways in which the general POA can be abused
- Provide relevant sample special and general POAs for your clients to consider

²² All three of these publications are found on the Deployed Judge Advocate Resource Library (CLAMO CD-ROM, 3d edition, Oct. 2001).

- Ensure the client understands the process of revoking a POA (a sample POA revocation is included in Appendix 9-10)

3. Will and Power of Attorney Notarizations

The performance of notarial acts pursuant to 10 U.S.C. § 1044a does not require the use of a seal. Despite this federal exemption for the use of a seal, businesses occasionally may not recognize a POA unless it has a seal. While a seal provides no more legal efficacy to legal documents notarized by a military member, many businesses have become accustomed to seeing a seal on documents that purport to be “legal.” The lesson for the JA is to have and use a seal whenever practicable. Many legal assistance offices use a simple metal seal with an eagle, globe, and anchor design. The fact that there is a seal, regardless of what the seal is, usually ensures the POA is accepted without question.

F. AUTOMOBILES

Marines and Sailors are certainly not immune from the temptations of wanting to drive the finest automobiles that money or credit can offer. With the love of automobiles, however, comes the hardship of responsibility and ownership.

1. Repossession

JAs will likely encounter repossession issues while deployed. Typically, a repossession occurs due to the inability of the client to properly manage an automobile loan. With a few minor exceptions, once a car has been repossessed, neither the client nor the JA will likely have much success in getting the car back into the possession of the client, as repossessed cars are usually resold rather quickly. If a client’s car has been repossessed, the JA should determine whether the circumstances of the repossession were proper under the law. Section 301 of the SSCRA governs installment contracts and may be very useful in repossession cases, depending on when the servicemember entered into the installment contract for the automobile. If the installment contract for an automobile was entered into before the servicemember came on active duty, the repossessing agent must have first been granted repossession approval by a court.²³ However, as is often the

²³ 50 U.S.C. App. § 531 (2002).

case, any installment contract for a car loan is likely entered into after the servicemember has begun active military service.

Bases and stations often have stringent orders pertaining to the repossession of automobiles aboard the military installation. JAs should ensure that they discuss repossessions that occurred on base with the base inspector's office and the legal assistance office. At the very least, the JA should review repossession documents provided by the loan company to ensure that the repossession was legally proper. If the repossession was proper, the car will likely be sold at auction or at a significantly reduced price. Resale of a repossessed automobile must also be closely monitored. In one of the author's repossession cases, a car that was purchased in October for \$15,000 was repossessed in December for nonpayment and was sold in January for \$7,000. This means that the client is likely responsible for nearly \$10,000 by the time he or she is done paying for the remaining debt. While purchasing a car seems like a simple and fun event for a young Marine or Sailor, the consequences of such a purchase may quickly turn into a debt collection nightmare, cause marital discord, and lead to a significant disciplinary challenge for the client and the command.

2. Automobiles and Credit

"Will Finance E-1 and Up" is a sign strategically and prominently displayed in front of many car dealerships outside military bases. Credit sale contracts for automobiles are one of the most frequent causes for Marines and Sailors visiting the JA. It is not uncommon to find young Lance Corporals driving a \$20,000 car that has been financed at 18% interest over five years. There really is no more ripe preventive law issue than that of loans that are associated with automobiles. Dealerships big and small know that Marines and Sailors of all ranks can obtain financing for almost any car due to their guaranteed salaries.

In speaking with well over 1,000 Marines and Sailors over the years on the topic of car buying, the author frequently used the following illustration to drive home the insanity involved in buying a car for most young servicemembers. [To a young Marine selected from the audience] "As an officer of Marines, you should trust me. I'm very good at investing, and I've helped several Marines double their money within a short period of time." [After some further self-promotion] "Will you give me \$5,000 right here on the spot so I can double your money, too?" The young Marine

would usually smile, pause, and eventually provide the right answer—NO. The entire audience was then queried what they would require before providing a total stranger \$5,000. The answers were absolutely brilliant. Who are you? What documentation do you have to prove that you are a good investor? How do you invest our money? Where do you invest our money? What references can you provide us so that we can check your track record? At the completion of this set-up, the audience was then told that, statistically, many of the Marines who had just asked such intelligent questions would stop at a car dealership in the next year, be asked to invest over \$20,000 for a shiny new car, and never ask any questions similar to the ones they had just suggested. While this story does not provide any useful tips on how to deal with automobile problems that have already occurred, it should provide some incentive for inclusion of this topic in a preventive law program.

G. LANDLORD/TENANT

Landlord/tenant problems are another common issue that frequently arise several months into the deployment. While many deployed Marines and Sailors have spouses that can take care of landlord/tenant problems by visiting the local legal assistance office, many servicemembers are not represented by family members back home and must rely on the MAGTF JA for assistance. The typical landlord/tenant issues for the JA deal with security deposits and termination of leases due to the deployment.

1. Security Deposits

Depending on the amount of the security deposit, its loss can be either significant or inconsequential. Security deposits in many locations total well over \$1,000, and while a senior staff noncommissioned officer or officer might be able to financially absorb its loss, the loss of a security deposit for many young Marines and Sailors and their families spells disaster. All states have specific laws governing the proper amount and use of security deposits. Appendix 9-1 includes websites that provide state laws pertaining to landlord/tenant issues. In many states, upon proper termination of the lease, security deposits must be returned within a required amount of time, or a full accounting of security deposit deductions must be provided in writing to the tenant. If the landlord does not meet prescribed timelines, the entire amount of the security deposit may be returned to the tenant, regardless of whether the landlord may have justification to make certain deductions. As

discussed in Part One to this chapter, if the client has terminated the lease improperly, or the landlord is truly entitled to the security deposit, be polite, sincere, and request that the landlord consider its return. Included in Appendix 9-11 is one such compassionate plea that quickly resulted in the return of the full amount of the security deposit, despite the landlord's right to retain it.

2. Lease Termination

The proper termination of a lease can come in many different forms. Termination by expiration of the lease term is the most common means and one that generally does not present many legal problems. However, leases that are terminated early frequently present problems if they are not handled correctly. Preventive law programs should address early termination issues. The use of a military lease clause detailing the circumstances of when an early termination of the lease is permitted is essential to any military tenant. Military lease clauses are often addendums to the lease and are usually accepted by landlords when they are negotiated prior to the signing of the lease. Even if the lease has been signed, efforts to have the landlord sign such a clause will not be in vain. Typical military lease clause provisions permit early termination if the tenant receives order to PCS, deploy, etc. As with any contract, much of the content of a military lease clause can be negotiated. A sample military lease clause is included in Appendix 9-12. Many standard leases in areas where there are many military tenants have early termination provisions specifically oriented toward the military tenant. Finally, while leases may not address the subject of early termination by military tenants, many state laws permit early termination under certain circumstances for military tenants.

H. IMMIGRATION AND NATURALIZATION

In-depth immigration issues while deployed are uncommon, as the JA's pool of potential clients are almost exclusively U.S. citizens. However, when issues regarding citizenship do arise they usually concern the naturalization of what is termed a lawful permanent resident (LPR). Generally, LPRs must live continuously in the U.S. for five years before they become eligible for naturalization.²⁴ However, recent legislation provides the opportunity for naturalization upon active military service of at

²⁴ See U.S. DEP'T OF JUST., IMMIGR. AND NATURALIZATION SERVICE, A GUIDE TO NATURALIZATION 18 (Dec. 2000), available at <http://www.ins.usdoj.gov/graphics/services/natz/English.pdf>.

least three years or military service in a designated war or conflict. The most difficult obstacle for servicemembers interested in naturalization is the application process and processing timeline that often takes years before citizenship is granted. Relatively new laws provide expedited and consolidated processing for qualified servicemembers that significantly streamlines the entire process.

Marines and Sailors who approach the JA for advice on citizenship are likely inquiring about naturalization based upon residency or military service requirements of an LPR. The JA's role is to determine whether it is in the client's best interest to apply for naturalization based on five years of qualifying residency or to wait until the servicemember meets the three years of active military service requirement. If the servicemember is nearing three years of active military service, the consensus is that it is clearly better to wait until the servicemember meets the three-year requirement for expedited processing. However, if the servicemember will not meet the three-year military service requirement for naturalization for some time and the servicemember meets the five-year LPR residency requirements, it is advisable for the client to begin the lengthy application process. Several useful immigration and naturalization military guides are available online by visiting the immigration websites provided in Appendix 9-1 to this chapter.

CHAPTER 10

RESOURCES NECESSARY IN A DEPLOYED ENVIRONMENT

I. INTRODUCTION

Tempo, transience, and isolation, the trademarks of Marine operations, require judge advocates (JAs) to coordinate and plan for appropriate resources—truly an area where an ounce of prevention is worth a pound of cure. Taking the time to consider the equipment, technology, and research materials necessary to provide legal advice prior to deployment will prevent scrambling for necessary items once afloat. This chapter discusses resources, as identified by prior deployed JAs, which are necessary for providing appropriate support. No publication can foresee all of the possible required materials, but this chapter provides a baseline from which JAs can tailor their resources for specific missions. This chapter also provides useful websites, both unclassified and classified, to assist deployed JAs needing to perform research in a deployed environment.

II. EQUIPMENT

JAs need to have a laptop computer with sufficient processor and memory capabilities to interact with other computers and networks aboard ship, conduct efficient research from electronic databases, and store a large volume of required legal references. The computer should be equipped with a CD ROM reader and writer. JAs will also need to be able to handle and store classified material and have access to the Secret Internet Protocol Router Network (SIPRNET). This capability is vital to legal operations. The JA will need to have either a separate computer capable of processing classified information or a removable hard drive dedicated to classified materials. To properly advise commanders and staff, a JA must have a TOP SECRET clearance. The process for obtaining a TOP SECRET clearance is not onerous, but the paperwork should be completed early and an interim clearance obtained as the investigation required for final approval may take several months.

All computers used by the JA need to have word processing, spreadsheet, graphic presentation (PowerPoint) and form-filler software. The software needs to be compatible with both the computer operating system as well as with the computer systems being used by the other staff sections.

Additional peripheral equipment is also necessary for the Marine JA to operate while deployed. A digital camera is essential for investigations, including claims, potential war crimes and other JAGMAN investigations. A portable scanner is necessary to store documents electronically that have signatures. The portable scanner can also be used as a convenient copy and fax machine. A portable printer is necessary for onboard operations as well as when the JA is operating independently ashore, such as when investigating foreign claims. All of this equipment will need to operate on various electrical currents depending on the locations in which the JA will be operating. In addition, the equipment should all be capable of running on battery power.

These computer capabilities¹ are readily available off-the-shelf; however, the deploying Marine should not expect to fall into a set of this equipment when reporting to the unit. The JA will need to ensure the equipment will be available by coordinating with the unit S/G-6 or the higher headquarters SJA.

JAs should take care to practice prevent maintenance on all of the assigned computer equipment. This is particularly important when operating ashore in harsh environments. Compressed air “dusters” help to remove dusty buildup that degrades computer performance. Under extremely dusty conditions, JAs have found it necessary to use plastic covers on all of their computer equipment.

III. TECHNOLOGY

JAs are likely to have access to the Unclassified but Sensitive Internet Protocol Router Network (NIPRNET) when operating both on ship and in the field. The NIPRNET is the unclassified Internet system with which all

¹ The Army has incorporated this computer package into its doctrine, calling it the Rucksack Deployable Law Office and Library (RDL). See U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS at 4-27 (1 Mar. 2000).

Marines should already be familiar. Simply searching the NIPRNET will often allow Marines to find the information necessary to answer most questions. All Internet search engines are not equal, however, and many companies offering search engines base the findings of a search on advertising or on the number of times a particular word appears on a web page. One particular search engine, Google, is particularly useful as it bases its search findings on an algorithm that not only looks for keywords inside of Web pages, but also gauges the importance of a search result based on the number and popularity of other sites that link to the page. Google can be found at www.google.com.

Prior to deploying, JAs should build a list of commonly used Web pages into a favorites folder on their Web browser. There is a helpful list of web pages at the end of the chapter. Most Fleets and Commands maintain Web pages that have articles and documents of current interest. In addition, many International Organizations and Non-governmental organizations, with which Marines increasingly find themselves working, maintain Web pages of current operations. Some Web pages require prior registration and issue passwords for access. Make sure that you carry passwords for commonly used legal research sites, like Lexis and Westlaw, with you on deployment. Most importantly, take the time necessary to register and become familiar with the databases maintained by the Center for Law and Military Operations (CLAMO).

CLAMO has created over fifteen databases with more than 2,600 primary source documents, directives, regulations, country law studies, graphic presentations, photographs, and legal work product accessible via the Internet, for registered users, at www.jagcnet.army.mil/clamo.

To access the CLAMO databases:

- If you are a first time user (do not have or have lost your JAGCNet user name and/or password):
 - Go to *www.jagcnet.army.mil web site*.
 - Click the “Enter JAGCNet” button.
 - Click the “Register” button.
 - Follow the instructions.
- If you already have a JAGCNet user name and password:
 - Go to the CLAMO home page site directly at *www.jagcnet.army.mil/clamo* OR go to the *www.jagcnet.army.mil*

web site and click the “Center for Law and Military Operations” button.

- *Click the “CLAMO Databases” button.*

As previously mentioned, Marine JAs will need access to the SIPRNET. The SIPRNET is an entirely separate network using encryption at each access circuit and backbone trunk. The S/G-6 can assist you in obtaining a SIPRNET account and gaining SIPRNET access. Recent operations have seen an explosion in the use of the SIPRNET, which is often up more than the NIPRNET when deployed, and operational lawyers are increasingly using only SIPRNET for all e-mail traffic, whether classified or not. While like the NIPRNET in that it has Internet searching capability, SIPRNET search engines are not user friendly like on the NIPRNET. To successfully navigate the SIPRNET web, Marines will often need to know the actual web address rather than rely on searches. A list of useful SIPRNET Web pages is at the end of the chapter. Many of these sites require prior registration, so JAs may find it important to register prior to deployment.

It is important for the deployed JAs to recognize that many classified documents are simply not available online. Moreover, there are very few centralized repositories for Operational Law resources. In an attempt to fill this void, CLAMO has established a SIPRNET database. The database is controlled by the Army and requires two separate registration procedures that may take several days to finalize.

To access the classified databases:

- Go to www.us.army.smil.mil (*Army Knowledge On-line Secure (AKO-S)*). First-time users will have to register with AKO-S. This will require an Army sponsor. Contact CLAMO to obtain the name of an Army sponsor.
- Once granted access to AKO-S, follow the links through “special staff” and “legal” to get to the CLAMO page.

IV. RESEARCH MATERIALS

Prior to deployment, JAs must consider the research materials necessary to provide legal advice during a float. While many if not all of the resources are available in electronic format, JAs need to carry hard copies of frequently used materials in a mount-out box.

Two resources are critical for the Deployed Marine JA. The first is the Operational Law Handbook.² The Operational Law Handbook, published by the International and Operational Law Department, The Judge Advocate General's School, U.S. Army (TJAGSA), is a "how to" guide for JAs practicing operational law. It provides references and describes tactics and techniques for the practice of operational law. The second critical resource is the Deployed Judge Advocate Resource Library CD ROM, produced by CLAMO. This resource contains, among other items, all of the treaties, statutes, DOD Directives/Instructions/Manuals, CJCS Instructions, Joint Publications, Regulations, and Field Manuals referenced in the OPLAW Handbook.

CLAMO has also published other materials that will assist Deployed Marine JAs. These include the Rules of Engagement Handbook for Judge Advocates,³ the Domestic Operational Law Handbook,⁴ and four Lessons Learned books from operations in Haiti,⁵ Bosnia,⁶ Kosovo,⁷ and from relief efforts in Central America in response to Hurricane Mitch.⁸ All of the CLAMO materials can be requested by e-mailing CLAMO at CLAMO@hqda.army.mil, and all of CLAMO's materials are available on the JAGCNET and on the Deployed JA CD. The deployed JA can also use the

² INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK (2002).

³ CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, RULES OF ENGAGEMENT (ROE) HANDBOOK FOR JUDGE ADVOCATES (2000).

⁴ CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, DOMESTIC OPERATIONAL LAW HANDBOOK (2001).

⁵ CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN HAITI, 1994-1995: LESSONS LEARNED FOR JUDGE ADVOCATES (1995).

⁶ CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN THE BALKANS, 1995-1998: LESSONS LEARNED FOR JUDGE ADVOCATES (1998).

⁷ CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN KOSOVO, 1999-2001: LESSONS LEARNED FOR JUDGE ADVOCATES (2001).

⁸ CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN CENTRAL AMERICA: HURRICANE MITCH RELIEF EFFORTS, 1998-1999: LESSONS LEARNED FOR JUDGE ADVOCATES (2000).

Marine Representative at CLAMO as a resource. CLAMO's Marine Representative is located at TJAGSA giving him access to the faculty of the Army's JAG School. Moreover, the Marine Representative is in constant contact with the International and Operational Law Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps (JAO).

The Marine JA should also carry hard copies of the Manual for Courts-Martial, JAGMAN, SEPSMAN, and because the SJA may double as the unit legal officer in smaller MAGTFs, such as a MEU, the LEGADMINMAN. The deployed Marine JA will also need to print out copies of the CJCS SROE⁹ and NATO MC 362.¹⁰ These documents must be stored in a safe. Other documents and materials, not necessarily legal, may also be useful. These include customs forms, federal absentee ballots, and ROE card paper in various colors.

While preparing to deploy, the Marine JA should consider the anticipated port call and training exercise locations of the upcoming deployment. The JA will need to determine if SOFAs or other agreements governing status of forces or claims exist for these various locations and obtain copies of those agreements.

⁹ CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01A, STANDING RULES OF ENGAGEMENT FOR U.S. FORCES (15 Jan. 2000) (partially classified document).

¹⁰ North Atlantic Military Committee, MC 362 encl. 1, NATO Rules of Engagement (9 Nov. 1999).

V. INTERNET WEB SITES FOR OPERATIONAL LAWYERS

Acquisitions

Army Acquisition Website <http://acqnet.saalt.army.mil>

Army Single Fact to Industry (ASFI) Acquisition Business Web Site <http://acquisition.army.mil>

Acquisition Deskbook Homepage <http://www.deskbook.osd.mil> and
<http://deskbooktransition.dau.mil>

Acquisition Reform Network <http://www.arnet.gov>

Defense Federal Acquisition Regulations Supplement (DFARS)
<http://www.acq.osd.mil/dp/dars/dfars.html>

Defense Procurement <http://www.acq.osd.mil/dp/>

Federal Acquisition Regulations (FAR) <http://www.arnet.gov/far>

General Service Administration <http://www.gsa.gov>

Air Force

Air Force Homepage <http://www.af.mil>

Air Force Judge Advocate Homepage <http://hqja.jag.af.mil/>

Air Force Judge Advocate International and Operational Law Division <http://www.afjai.hq.af.mil/>

Air Force Judge Advocate General's School <http://www.au.af.mil/au/cpd/jagschool/jaghome.htm>

Air Force Materiel Command <https://www.afmc-mil.wpafb.af.mil>

Air Force Publications <http://afpubs.hq.af.mil/>

Air War College <http://www.au.af.mil/au/awc/awcgate/awc-law.htm#tri>

United States Air Force, Europe, International Law Division
<https://wwwmil.usafe.af.mil/direct/ja/indexjai.html>

United States Air Force, Europe, Operational Law Division
<https://wwwmil.usafe.af.mil/direct/ja/indexjao.html>

Army

Army Homepage <http://www.army.mil>

Army Judge Advocate General's Corps <http://www.jagcnet.army.mil/>

Army Knowledge Online https://www.us.army.mil/portal/portal_home.jhtml

Army Materiel Command <http://www.amc.army.mil>

Army Personnel Command <http://www.perscom.army.mil>

Army Regulations <http://www.usapa.army.mil>

Army Reserve Personnel Command <https://www.2xcitizen.usar.army.mil>

Army Training and Doctrine Digital Library <http://www.adtdl.army.mil/atdls.htm>

Center for Army Lessons Learned <http://call.army.mil>

Command and General Staff College <http://www-cgsc.army.mil>

Forces Command (FORSCOM) <http://www.forscom.army.mil>

Foreign Military Studies Office <http://fmso.leavenworth.army.mil>

Joint Readiness Training Center <http://www.jrtc-polk.army.mil>

TRADOC <http://www-tradoc.army.mil>

United States Army, Claims Service <http://www.jagcnet.army.mil/claims/index.nsf?open>

United States Army, Europe <http://www.hqusareur.army.mil/>

Coalition Countries

Australia Defence Force <http://www.defence.gov.au/index.html>

Canada National Defence <http://www.dnd.ca>

Europa, European Union Online <http://europa.eu.int>

Germany Info <http://www.germany-info.org/relaunch/index.html>

United Kingdom Ministry of Defense <http://www.mod.uk>

United States Department of State Country Studies <http://www.state.gov/www/regions.html>

Coast Guard <http://www.uscg.mil/uscg.shtm>

Current Operations

Bosnia <http://www.nato.int/sfor/index.htm>

Kosovo Forces <http://www.nato.int/kfor/welcome.html>

Kosovo, FAS Military Analysis Network – Target Kosovo

<http://www.fas.org/man/dod-101/ops/kosovo.htm>

NATO SFOR, Operation Joint Guard & Operation Joint Forge

<http://www.nato.int/sfor/index.htm>

UN Peacekeeping Operations http://www.un.org/Depts/dpko/dpko/home_bottom.htm

CENTER FOR LAW AND MILITARY OPERATIONS

Department of Defense

Defense Almanac <http://www.defenselink.mil/pubs/almanac>

Defense Finance and Accounting Service (DFAS) <http://www.dfas.mil>

Defense Intelligence Agency <http://www.dia.mil>

Defense Link (DOD Homepage) <http://www.defenselink.mil>

Directives and Instructions: <http://www.dtic.mil/whs/directives>

DSN On-Line Directory <http://dsnbbs.ncr.disa.mil/telephone.htm>

National Defense University <http://www.ndu.edu>

National War College <http://www.ndu.edu/nwc>

Pentagon Library <http://www.hqda.army.mil/library/>

Human Rights

Amnesty International <http://www.amnesty.org/>

Department of State Human Rights Reports <http://www.state.gov/g/drl/hr/>

European Court of Human Rights <http://www.echr.coe.int/Eng/Judgments.htm>

Human Rights Watch <http://www.hrw.org>

International Justice

Coalition for International Justice <http://www.cij.org>

International Criminal Court <http://www.un.org/law/icc/>

International Criminal Tribunal For the Former Yugoslavia <http://www.un.org/icty>

International Laws and Treaties

Fletcher School of Law and Diplomacy Library <http://www.fletcher.tufts.edu/library>

LOAC Treaties, University of Minnesota <http://www1.umn.edu/humanrts/instree/auoy.htm>

Public International Law <http://www.law.ecel.uwa.edu.au/intlaw>

United Nations Treaty Collection <http://untreaty.un.org/>

Joint

Joint Chiefs of Staff <http://www.dtic.mil/jcs>

Joint Doctrine Branch <http://www.dtic.mil/doctrine/doctrine.htm>

Joint Electronic Library (JEL) <http://www.dtic.mil/doctrine>

Joint Force Quarterly http://www.dtic.mil/doctrine/jel/jfq_pubs/index.htm

Joint Non-lethal Weapons Program <http://www.jnlwd.usmc.mil/>

Legal Research

Law Guru <http://www.lawguru.com/>

Code of Federal Regulations <http://www.law.cornell.edu/regs.html>

Combined Arms Research Library <http://www.cgsc.army.mil/carl>

Court of Appeals for the Armed Forces <http://www.armfor.uscourts.gov>

Defense Technical Information Web <http://www.dtic.mil/dtiw>

Emory Law Library Electronic Reference Desk <http://www.law.emory.edu/LAW/refdesk/toc.html>

European Codes <http://www.jura.uni-sb.de/english>

Federal Court Opinions <http://www.uscourts.gov>

FedWorld.gov <http://www.fedworld.gov>

Findlaw <http://www.findlaw.com>

Government Printing Office <http://www.access.gpo.gov>

International Court of Justice Opinions
http://www.lawschool.cornell.edu/library/International_Resources/icj.htm

Lexis www.lexis.com

Library of Congress <http://www.loc.gov>

National Archives and Records Administration <http://www.nara.gov>

Thomas - Legislative Information on the Internet <http://thomas.loc.gov>

United States Code

<http://www4.law.cornell.edu/uscode>

<http://uscode.house.gov/usc.htm>

Virtual Law Library <http://www.law.indiana.edu/v-lib>

Marine Corps

I MEF <http://www.cpp.usmc.mil/imef/>

II MEF <http://www.lejeune.usmc.mil/iimef/>

III MEF <http://www.iiimef.usmc.mil/>

CENTER FOR LAW AND MILITARY OPERATIONS

11th MEU <http://www.11meu.usmc.mil/>

11th MEU SJA <http://www.11meu.usmc.mil/sja/>

13th MEU <http://www.13meu.usmc.mil/>

15th MEU <http://www.15meu.usmc.mil/>

22d MEU <http://www.22meu.usmc.mil/>

24th MEU <http://www.24meu.usmc.mil/>

26th MEU <http://www.26meu.usmc.mil/>

31th MEU <http://www.31meu.usmc.mil/>

Camp Lejeune <http://www.lejeune.usmc.mil/>

Camp Pendleton <http://www.cpp.usmc.mil/>

Headquarters www.hqmc.usmc.mil/hqmcmain.nsf/frontpage

Homepage <http://www.usmc.mil>

International and Operational Law Branch, HQMC (JAO) <http://192.156.19.115/jao/default.htm>

MAGTF Staff Training Program <http://www.mstp.quantico.usmc.mil/>

MAGTF Training Command <http://www.29palms.usmc.mil/>

MARFORLANT <http://www.marforlant.usmc.mil/>

MARFORPAC <http://www.mfp.usmc.mil/title.html>

MARFORRES <http://www.marforres.usmc.mil/>

Marine Corps Combat Developments Command <http://www.mccdc.usmc.mil/>

Marine Corps Doctrine <http://www.doctrine.quantico.usmc.mil/>

Marine Corps Gazette <http://www.mca-marines.org/Gazette/gaz.html>

Marine Corps Office of Counsel <http://sja.hqmc.usmc.mil/clweb/Default.htm>

Marine Corps Organizations http://www.marinecorpsindex.com/usmc_commands.html

Marine Corps University <http://www.mcu.usmc.mil/>

Orders and Directives <http://www.usmc.mil/directiv.nsf/web+orders>

Staff Judge Advocate to the Commandant of the Marine Corps <http://192.156.19.115/>

NATO

NATO, North Atlantic Treaty Organisation <http://www.nato.int/home.htm>

Navy

Administrative Messages (ALNAV) <http://www.bupers.navy.mil/alnav/index.html>

Administrative Messages (NAVADMIN) <http://www.bupers.navy.mil/navadmin/index.html>

CINPACFLT <http://www.cpf.navy.mil/>

CINCLANTFLT <http://www.atlanticfleet.navy.mil/>

Directives <http://neds.nebt.daps.mil/Directives/dirindex.html>

Naval Justice School <http://www.jag.navy.mil/html/njs.htm>

Naval War College <http://www.nwc.navy.mil/>

Navy Judge Advocate General's Corps <http://www.jag.navy.mil/>

Navy Judge Advocate General's Corps Code 10 <http://www.jag.navy.mil/html/headquarters.htm>

Navy Judge Advocate General's Corps Instructions <http://neds.nebt.daps.mil/jag/jag1.htm>

Navy Office of General Counsel <http://ogc.navy.mil/>

Navy Office of Assistance General Counsel (Ethics) <http://ethics.navy.mil/>

Navy OnLine <http://www.ncts.navy.mil>

Naval Postgraduate School <http://www.nps.navy.mil>

SECNAV-CNO FOIA <http://foia.navy.mil/>

News

Associated Press <http://www.ap.org>

Cable News Network <http://www.cnn.com>

China News Digest <http://www.cnd.org>

Earlybird <http://ebird.dtic.mil/>

Jane's <http://www.janes.com>

Jane's IntelWeb <http://intelweb.janes.com>

Military Times <http://www.militarycity.com>

National Public Radio <http://www.npr.org>

New York Times

<http://www.nytimes.com>

<http://nytimesfax.com>

Stars and Stripes <http://www.estripes.com/>

Time Magazine <http://www.time.com/time>

U.S. News & World Report <http://www.usnews.com>

USA Today <http://www.usatoday.com>

Voice of America <http://www.voa.gov>

Washington Post <http://www.washingtonpost.com/>

World News Connection <http://wnc.fedworld.gov>

Nongovernmental and International Organizations

ACT-International <http://www.act-intl.org/>

Action Contre La Faim <http://www.acf-fr.org/>

CARE <http://www.care.org/>

Catholic Relief Services <http://www.catholicrelief.org/>

Doctors Without Borders <http://www.doctorswithoutborders.org/>

Directory of Humanitarian Organizations (Links)
<http://www.reliefweb.int/contacts/dirhomepage.html>

Disaster Relief Agencies (Links) <http://www.disasterrelief.org/Links/#agencies>

Interaction <http://www.interaction.org/>

International Medical Corps <http://www.imc-la.com/>

International Rescue Committee <http://www.theIRC.org>

Lutheran World Relief <http://www.lwr.org/>

Organization for Security and Cooperation in Europe <http://www.osce.org/>

Oxfam <http://www.oxfam.ca/>

Red Cross

American Red Cross <http://www.redcross.org/>

International Committee of the Red Cross <http://www.icrc.org>

International Federation of Red Cross and Red Crescent Societies <http://www.ifrc.org>

Save the Children <http://www.savethechildren.org/home.shtml>

United Nations Children’s Fund <http://www.unicef.org/>

United Nations High Commissioner for Refugees <http://www.unhcr.ch/cgi-bin/texis/vtx/home>

World Food Program <http://www.wfp.org/index2.html>

World Health Organization <http://www.who.int/home-page/>

World Vision Relief and Development <http://www.worldvision.org/worldvision/master.nsf/home>

Organization of American States <http://www.oas.org>

Search Engines

Altavista <http://www.altavista.com>

Excite <http://www.excite.com>

Go.com <http://www.go.com>

Google <http://www.google.com>

Lycos <http://www.lycos.com>

Webcrawler <http://webcrawler.com>

Yahoo <http://www.yahoo.com>

Think Tanks

Brookings Institution <http://www.brook.edu>

Center for Defense Information <http://www.cdi.org>

Center for Disaster Management & Humanitarian Assistance <http://www.cdmha.org>

Center for Nonproliferation Studies <http://cns.miis.edu>

Center for Strategic and International Studies (CSIS) <http://www.csis.org>

Center for Strategic Leadership <http://carlisle-www.army.mil/usacsl/index.asp>

Institute for National Strategic Studies <http://www.ndu.edu/inss/inssh.html>

Institute for the Advanced Study of Information Warfare <http://www.psycom.net/iwar.1.html>

International Institute for Strategic Studies <http://www.iiss.org/scripts/index.asp>

Marshall Center <http://www.marshallcenter.org>

RAND Corporation <http://www.rand.org>

Stockholm International Peace Research Institute (SIPRI) <http://www.sipri.se>

Terrorism Research Center <http://www.terrorism.com/index.shtml>

CENTER FOR LAW AND MILITARY OPERATIONS

United States Institute of Peace <http://www.usip.org>

United States Legislature and Agencies

Agency for International Development www.usaid.gov

Central Intelligence Agency <http://www.cia.gov>

Department of State <http://www.dos.gov>

Department of State International Information Programs <http://www.usinfo.state.gov>

Department of Veterans Affairs <http://www.va.gov>

Drug Enforcement Agency Major Operations <http://www.usdoj.gov/dea/major/major.htm>

Environmental Protection Agency <http://www.epa.gov>

Federal Bureau of Investigations <http://www.fbi.gov>

Federal Emergency Management Agency <http://www.fema.gov>

Firstgov <http://www.firstgov.gov>

House of Representatives <http://www.house.gov>

House of Representatives Armed Services Committee <http://www.house.gov/hasc>

Internal Revenue Service <http://www.irs.ustreas.gov>

National Security Agency <http://www.nsa.gov>

National Technical Information Service (Commerce) <http://www.ntis.gov>

Office of Homeland Security <http://www.whitehouse.gov/homeland>

Senate <http://www.senate.gov>

Senate Armed Services Committee http://www.senate.gov/~armed_services

Social Security Administration <http://www.ssa.gov>

White House <http://www.whitehouse.gov>

Unified Commands

CENTCOM <http://www.centcom.mil>

EUCOM <http://www.eucom.mil>

JFCOM <http://www.jfcom.mil>

PACOM <http://www.pacom.mil>

SOCOM <http://www.socom.mil>

SOUTHCOM <http://www.southcom.mil>

SPACECOM <http://www.spacecom.mil>

STRATCOM <http://www.stratcom.mil>

TRANSCOM <http://www.transcom.mil>

United Nations <http://www.un.org>

Weather

National Weather Service <http://www.nws.noaa.gov>

UM Weather <http://cirrus.sprl.umich.edu/wxnet>

Weather.com (The Weather Channel) <http://www.weather.com/index.html>

VI. SIPRNET WEB SITES FOR OPERATIONAL LAWYERS

Air Force

Air Force Judge Advocate Homepage <https://www.afja.pentagon.smil.mil/>

Air Force Targeting and Geospatial Information and Services <http://hq497iq.af.pentagon.smil.mil>

Army

Army IO Publications <http://www.liwa.army.smil.mil/udata/publications/army-pubs.html>

Army Knowledge On-Line <http://www.us.army.smil.mil>

CLAMO (Link from) <http://www.us.army.smil.mil>

Forces Command (FORSCOM) <http://www.force1.army.smil/>

USAREUR ODCOPS <http://www.ops.hqusareur.army.smil.mil>

Country Studies <http://www.mcia.uscm.smil.mil/products/handbook.html>

CINCS

CENTCOM CCJA <http://www.centcom.smil.mil/ccja/ccja.htm>

EUCOM <http://www.eucom.smil.mil>

JFCOM <http://157.224.120.250/staffs.nsf/HTML/frames?OpenDocument>

PACOM <http://www.hq.pacom.smil.mil>

SOUTHCOM <http://www.southcom.smil.mil/defaultnj.html>

CENTER FOR LAW AND MILITARY OPERATIONS

Early Bird <http://delphi-s.dia.smil.mil/admin/EARLYBIRD/eb.html>

Enduring Freedom

CENTCOM OEF SJA Site

http://recluse.centcom.smil.mil/crisis/catdesks/cat_jag.asp#RulesofEngagementReferences

CFLCC Enduring Freedom <http://www.swa.arcent.army.smil.mil>

SOPAC OEF PHILIPPINES <http://199.32.243.49/>

Intelligence

National Ground Intelligence Center http://www.ngic.army.smil.mil/script_homepage/index_ie.html

KFOR US National Intelligence Cell <http://www.k4usnic.jac.eucom.smil.mil/>

International Agreements

CENTCOM CCJA (Links to International Agreements) <http://www.centcom.smil.mil/ccja/ccja.htm>

PACOM SOFAS <http://www.hq.pacom.smil.mil/j0/jo6/sofa.htm>

Joint

Joint Electronic Library <http://nmc20a.nmcc.smil.mil/dj9j7ead/doctrine/index.html>

Marines

I MEF <http://www.imef.usmc.smil.mil>

II MEF <http://www.iimef.usmc.smil.mil/index.html>

III MEF <http://www.iiimef.usmc.smil.mil/>

11th MEU <http://www.11meu.usmc.smil.mil>

13th MEU <http://13meu.usmc.smil.mil/>

15th MEU <http://www.15meu.usmc.smil.mil>

22d MEU <http://www.22meu.usmc.smil.mil/22meu/homepage.nsf>

24th MEU <http://www.24meu.usmc.smil.mil/24meunewweb.nsf?open>

26th MEU <http://199.124.167.151/26meu/index.shtml>

31st MEU <http://www.essex.usmc.smil.mil/Index.htm>

Headquarters Marine Corps <http://www.hqmc.usmc.smil.mil>

International and Operational Law (JAO) http://www.hqmc.usmc.smil.mil/judge_advocate.htm

Marine Corps Forces, Atlantic <http://www.marforlant.usmc.smil.mil/>

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

Marine Corps Forces, Central Command <http://www.marcent.usmc.smil.mil>

Marine Corps Forces, Europe <http://www.mfe.usmc.smil.mil/>

Marine Corps Forces, Korea <http://www.marfork.usmc.smil.mil>

Marine Corps Forces, Pacific <http://www.mfp.usmc.smil.mil/>

Marine Corps Forces, Reserve <http://204.223.20.38/>

Navy

CINCLANTFLT JA

<http://www.clf.navy.smil.mil/headquarters/infomall/directorates/NO2L.nsf?opendatabase>

CINCPACFLT Knowledge Homeport <http://www.cpf.navy.smil.mil/scripts/ews/menu/index1.asp>

CNO Special Assistant for Legal Services (Navy OpLaw Site)

[http://clasext1.cno.navy.smil.mil/n09/webbas01.nsf/\(WWWebPage\)webbase.htm.Opendocument&Scope=N09J](http://clasext1.cno.navy.smil.mil/n09/webbas01.nsf/(WWWebPage)webbase.htm.Opendocument&Scope=N09J)

Seventh Fleet Legal <http://websrvr.blue-ridge.navy.smil.mil/013A/Lgindex.htm>

Sixth Fleet Judge Advocate <http://www.c6f.navy.smil.mil/specasst/012/index.html>

Search Engines

Alta Vista <http://altavist.ismc.sgov.gov/>

Webinator <http://webinator.ismc.sgov.gov/cgi-bin/texis/webinator/search>

Hydra <http://search.ismc.sgov.gov/hydra/>

Wer'zit <http://www2.ismc.sgov.gov/werzit/>

Metasearch <http://search.ismc.sgov.gov/cgi-bin/texis/meta/bin/metasearch>

White Pages http://ismc.sgov.gov/Search_tools/White_pages/

APPENDICES

**APPENDIX 3-1: EXCERPTS FROM 26TH MEU RAPID RESPONSE
PLANNING PROCESS SOP**

**26 MEU (SOC)
R2P2 SOP**



LF6F 1-02

SEPT 01 - MAR 02

RAPID RESPONSE PLANNING SEQUENCE

CENTER FOR LAW AND MILITARY OPERATIONS

<u>EVENT</u>	<u>TIME</u> (HR:MIN)
I - RECEIPT OF MISSION / WARNING ORDER - S3 disseminates warning order. - S3/N3 calls away Crisis Action Team (CAT). (After notification of MEU/PHIBRON Commanders) - Air /Assistant Air Officer / TACRON arranges flight quarters for cross deck.	(00:00)
II - FIRST CAT MEETING - MISSION ANALYSIS - CAT Roll Call - General Situation (S3) - Mission Statement/Precedence (S3) - Friendly Situation Update (N3/S3) - Initial Orientation/Intelligence Update (N2/S2) - Initial Cross Deck Requirements (S3) - ARG/MEU Assets Available and Shortages (N3/S3) - Mission Analysis (S3) A. Specified Tasks B. Implied Tasks C. Contingency Missions D. Follow-on Missions E. Assumptions F. Limitations (Constraints / Restraints) G. Rules of Engagement H. Restated Mission I. Mission Clarification - Commander's Critical Intelligence Requirements (N2/N3) & (S2/S3) - R&S Determination - Commodore's/ MEU Commander's Initial Planning Guidance - Review Cross Deck Requirements (S3) - ID of Mission Planners/Timeline	(00:00 – 00:30)
III - COURSE OF ACTION DEVELOPMENT	(00:30 – 01:00)
IV - SECOND CAT MEETING - COURSE OF ACTION PRESENTATION / SELECTION - Roll Call - Review Restated Mission (S3) - Situation Update (N2/S2 – N3/S3) - COA Presentation (Force Commander) - Staff Estimates of Supportability - COA Selection and Commander's Intent/Detailed Planning Guidance - ID of Mission Planners/Timeline	(01:00 – 01:30)
V - DETAILED PLANNING - Development of Detailed Plan/Prepare for Confirmation Brief - MEU S3 completes CONOPS (Sends to Higher HQ). - Orders Group reviews the Execution Checklist and conducts a War-game of the selected COA.	(01:30 – 03:00)
VI - CONFIRMATION BRIEF	(03:00 - 0400)
VII - COMMAND & STAFF SUPERVISION (REHEARSALS)	(04:00 –0 6:00)
VIII - MISSION LAUNCH	(06:00)

RAPID RESPONSE PLANNING PROCESS (R2P2)

I. **Receipt of Mission/Warning Order.** (00:00 – 00:00) The Rapid Response Planning Process typically begins with the receipt of a warning order or initiating order, though planning can be conducted in the absence of either. The Orders Group is composed of the COMPHIBRON, MEU Commanding Officer, PHIBRON N-3 and MEU S-3. Other personnel will meet with this group as required. The Orders Group meets to review the warning order and determine what action needs be taken. In most cases they will conduct a brief mission analysis and then call for the Crisis Action Team (CAT) over the 1MC. The CAT is assembled in a designated location and members are provided with copies of all pertinent orders. Figure 1 above depicts the sequence of the R2P2 process utilized by the PHIBRON/MEU from receipt of the warning order through the confirmation brief.

II. **First CAT Meeting** Mission Analysis. (00:00-00:30)

1. **CAT Roll Call.** Roll call is conducted to ensure all required CAT personnel are present. Figure 1 below depicts the standard composition and the seating arrangement of the CAT aboard the USS BATAAN.

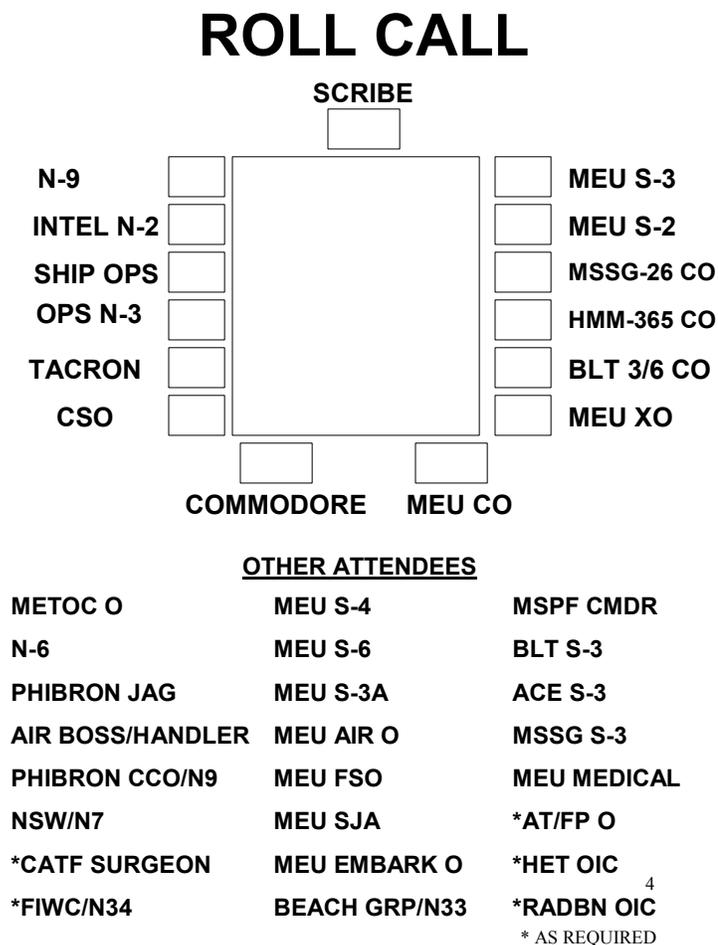


Figure 1

2. **General Situation.** The CAT is read into the mission's general situation. This should be a brief description of the task at hand i.e. the 26th MEU has been assigned the mission of evacuating embassy personnel from the Tirana, Albany embassy compound. Additionally, the CAT is updated on the alert

posture of any stand-by missions of the ARG/MEU, figure 2. A detailed explanation regarding all alert conditions is presented later in this R2P2 SOP.

Stand-By Mission STATUS

Mission	Unit	Location	Current Status	Directed Status
SPARROW HAWK			ALERT	
TRAP			ALERT	
BALD EAGLE			ALERT	
MASS CAS			ALERT	
				7

Figure 2

3. **Mission Statement/Precedence.** The Higher Headquarters (HHQ) mission statement is reviewed by the CAT and any clarification identified, figure 3a. Mission precedence is established in order to facilitate the allocation of limited assets and facilitate concurrent planning by the MEU Command Element and subordinate units, figure 3b

MISSION

(O/O) (W/D) (BPT) (NLT) (NET) _____
 conducts a (NEO) (RAID) (HA) (_____)
 vicinity of _____

 RECEIPT ACKNOWLEDGED
 CLARIFICATION NEEDED:

Figure 3a

Mission Precedence:

Planning

 Impacts Alert Status

 Immediate Execution

8

Figure 3b

4. **Friendly Situation.** The MEU S3 briefs the current friendly situation, figure 4, and provides a timeline depicting current operations as required.

Friendly Situation

- Higher-CJTF, C6F,
- Adjacent-SETAF MISSION; COMBINED FORCE MISSIONS (SAN MARCO, NL MARINES); ANOTHER MAGTF'S MISSION
- Supporting-CPR MISSION, CVBG MISSION/SUPPORT PROVIDED, ANY OTHER UNITS/AGENCIES TASKED TO SUPPORT IN HHQ ORDER
- Attachments-PSYOP OR CIVIL AFFAIRS UNITS TACON TO THE MEU; ANY OTHER UNITS ATTACHED FOR A SPECIFIC OPERATION (E.G., TUNISIAN CO)
- Detachments-MEU UNITS DETACHED FOR A SPECIFIC EXERCISE OR MISSION
- Forces Currently Ashore-CURRENT STATUS OF ANY MEU/ARG UNITS CURRENTLY ASHORE

Figure 4

- a. Additionally, mission capabilities matrixes, which depict the primary, alternate, and tertiary units, assigned to perform each SOC mission are reviewed (Figures 4a1, 4a2, and 4a3).

**26TH MEU LF6F
MISSION CAPABILITIES MATRIX (LHD/LPD/LSD)**

MISSION	PRIMARY	SECONDARY	TERTIARY
RAID (HELO)	I CO	L CO	N/A
RAID (BOAT)	L CO	N/A	N/A
RAID (MECH)	K CO	TF Sledgehammer (CAAT/LAR)	N/A
RAID (ARTY)	BATTERY	81'S	N/A
SPHAWK (HELO)	I CO PLT	L CO PLT	MIKE PLT
SPHAWK (SURF)	K CO PLT	TF Sledgehammer	N/A
BALD EAGLE (HELO)	I CO	L CO	N/A
BALD EAGLE (SURF)	K CO	N/A	N/A
TRAP (HELO)	81mm PLT	I CO PLT	N/A
TRAP (SURF)	TF Sledgehammer	K CO	N/A
SECURITY OPS W/ NLW Capability	L CO PLT	K BTRY PLT	K CO PLT
CONVOY ESCORT	TF Sledgehammer	CAAT ZULU	MSSG MPs
NEO ECC	MSSG Gold (LHD)	MSSG Scarlet (LPD)	H&S
MASS CAS MRT	MSSG	BLT	N/A
HA	MSSG	N/A	N/A
RAID FORCE R&S	FORCE RECON	RECON	SCT SNIPERS
MSPF PRECISION RAID	MSPF	N/A	N/A
EMBASSY REIN *W/NLW Capability	BTRY K	L CO	I CO
ENBC/NBC REACT	BLT	N/A	N/A
FCE	MEU CE	N/A	N/A

Figure 4a1

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

26TH MEU LF6F
MISSION CAPABILITIES MATRIX (LHD-LSD)

MISSION	PRIMARY	SECONDARY	TERTIARY
RAID (HELO)	I CO	K CO	N/A
RAID (BOAT)	N/A	N/A	N/A
RAID (MECH)	K CO	TF Sledgehammer (CAAT/LAR)	N/A
RAID (ARTY)	BATTERY	81 'S	N/A
SPHAWK (HELO)	I CO PLT	K CO PLT	MIKE PLT (IF EMBARKED)
SPHAWK (SURF)	K CO PLT	TF Sledgehammer	N/A
BALD EAGLE (HELO)	I CO	N/A	N/A
BALD EAGLE (SURF)	K CO	N/A	N/A
TRAP (HELO)	81mm PLT	I CO PLT	N/A
TRAP (SURF)	TF Sledgehammer	K CO	N/A
SECURITY OPS W/ NLW Capability	K BTRY PLT	K CO PLT	I CO PLT
CONVOY ESCORT	TF Sledgehammer	N/A	N/A
NEO ECC	MSSG Gold (LHD)	H&S	N/A
MASS CAS MRT	BLT	N/A	N/A
HA	MSSG	N/A	N/A
RAID FORCE R&S	FORCE RECON	RECON	SCT SNIPERS
MSPF PRECISION RAID	MSPF	N/A	N/A
EMBASSY REIN *W/NLW Capability	BTRY K	I CO	TF SLEDGEHAMMER
ENBC/NBC REACT	BLT	N/A	N/A
FCE	MEU CE	N/A	N/A

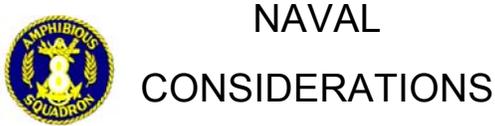
Figure 4a2

**26TH MEU LF6F
MISSION CAPABILITIES MATRIX (LPD)**

MISSION	PRIMARY	SECONDARY	TERTIARY
RAID (HELO)	L CO	N/A	N/A
RAID (BOAT)	L CO	N/A	N/A
RAID (MECH)	N/A	N/A	N/A
RAID (ARTY)	N/A	N/A	N/A
SPHAWK (HELO)	L CO PLT	MIKE PLT (If Embarked)	N/A
SPHAWK (SURF)	N/A	N/A	N/A
BALD EAGLE	L CO	N/A	N/A
TRAP (HELO)	N/A	N/A	N/A
TRAP (SURF)	N/A	N/A	N/A
SECURITY OPS W/ NLW Capability	L CO	N/A	N/A
CONVOY ESCORT	CAAT ZULU	MSSG MPs	N/A
NEO ECC	MSSG SCARLET (LPD)	N/A	N/A
MASS CAS MRT	MSSG	N/A	N/A
HA FORCE	MSSG	N/A	N/A
RAID FORCE R&S	DET SCT SNIPERS	N/A	N/A
MSPF PRECISION RAID	N/A	N/A	N/A
EMBASSY REIN *W/NLW Capability	L CO	N/A	N/A
ENBC/NBC REACT	N/A	N/A	N/A
FCE	MSSG	N/A	N/A

Figure 4a3

- b. The PHIBRON N-3 briefs friendly naval considerations such as location of ARG ships, ship limitations (if any), U.S. naval forces, distance and time to the objective area, cross deck requirements, and ARG/USN assets availability (Figure 4b1 through 4b4).



NAVIGATION:
 CURRENT LOCATION:
 ARG
 CVBG
 OTHER
 DISTANCE TO OBJECTIVE:
 ETA/SOA:
DIST B/W SHIPS: **DIST TO LAND:**
NSW (ITG/ HYDRO): **FLT LAUNCH**
FLIGHT DECK STATUS **QTRS**
 LHD (BAT) _____
 LPD (SHR) _____
 LSD (WBI) _____
WELL DECK STATUS
 LHD (BAT) _____
 LPD (SHR) _____
 LSD (WBI) _____
SEA STATE:
MODIFIED SURF INDEX

Figure 4b1



READINESS CONDITION: **IV III II I**
 THREAT WARNING WEAPONS STATUS
 SUW: **W Y R S T F**
 ASW: **W Y R S T F**
 AAW: **W Y R S T F**
 WEAPONS POSTURE: **1 2 3**
 EMCON: **A A1 B B1 C D**
 OPSECON: **NORMAL 3 2 1**
 MAJOR SHIP OPERATIONS:
 MAJOR SHIP DEGRADATIONS:
 CASUALTY RECEIVING SHIP: **BAT**
 (SECONDARY): **SHR/WBI**
 NSWTM LOCATIONS: **SHR BAT WBI**
 NSW LNO: **BAT**

Figure 4b2



CVBG ASSETS: AS REQ RCVD
 CVN
 CG
 DDG
 DD
 SSN
 PC
 FFG
 TAO
 TAE
 AIRCRAFT
 S-KS3
 F-14B
 F-18C
 E-2C
 EA-6B
 HH-60
 SH-60

Figure 4b3



ARG EQUIP OH MC MA
 LCU (SHR) 1
 LCAC (BAT) 3
 LCAC (WBI) 2
 PTM (WBI) 1
 HH-46 (BAT) 2
 RHIBS (11M) (SHR) 2
 LARC V (SHR) 2
 USN EOD (BAT)
 NSW (SHR)
 JTF COMBINED ASSETS: _____

Figure 4b4



LANDING CRAFT LIMITATIONS

<u>LANDING CRAFT</u> VEHICLE	WAVE HT (MAX/SWH)	MSI	S/S
LCAC	8 (SWH)	N/A	4
LCU	-	12	-
AAV	8(MAX)	6	4
CRRC	4(MAX)	N/A	3
RHIB	8(MAX)	N/A	4
LARC	-	6	-

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Figure 4b5

5. **Initial Orientation / Situation Update.**

a. The MEU S2, PHIBRON N-2 and METOC provide a situation brief pertinent to the assigned mission or anticipated future operations.

b. This brief will include, but is not limited to the following:

- (1) Weather effects /Astronomical data / Hydrography / Lunar Illumination
- (2) Ground threat
- (3) Surface to air threat
- (4) Air Threat
- (5) Naval threat
- (6) HLZ/DZ/LS and beach study
- (7) Center of Gravity and Critical Vulnerabilities
- (8) Enemy capabilities
- (8) Threat assessment
- (9) Collections Assets Synchronization Matrix

6. **Initial Cross-deck Requirements.** Planning personnel are identified for cross-deck based on assigned mission. The MEU Air Officer/Assistant Air Officer will begin arranging initial cross-deck of key personnel once identified. The CAT will review the initial cross-deck list to determine if additional planners are needed near the conclusion of the mission analysis brief. Aircraft must be allocated to move the planners for both the initial cross-deck and their return after the confirmation briefing (Figure 6).

KEY LEADERS LOCATIONS

BILLET	BAT	SH	WI	BILLET	BAT	SH	WI
1. CATF	x			24. BOAT CO CDR		x	
2. CLF	x			25. HELO CO CDR	x		
3. CSO	x			26. MECH CO CDR			x
4. MEU XO	x			27. LAR PLT CDR	x		
5. N-2	x			28. HMG PLT CDR	x		
6. MEU S-2	x			29. ARTY BTRY CDR			x
7. N-3	x			30. TRAP PLT CDR	x		
8. MEU S-3	x			31. FORECON CDR	x		
9. MEU AIR O	x			32. SEAL PLT CDR		x	
10. MEU S-4	x			33. R&S PLT CDR	x		
11. MEU EMBARK	x			34. RADBN OIC	x		
12. N-5	x			35. RRT TM LDR	x		
13. N-6	x			36. BMU REP	x		
14. MEU COMMO	x			37. TANK PLT CDR			x
15. MEU FSO	x			38. MACG CDR	x		
16. BLT CO	x			39. RHIB DET		x	
17. ACE CO	x			40. SHIP OPS	x	x	x
18. MSSG CO		x		41. SHIPS' CO	x	x	x
19. BLT S-3	x						
20. ACE S-3	x						
21. MSSG S-3	x						
22. SJA	x						
23. CCO	x	x	x				

CROSS DECK REQUIREMENTS MATRIX

FROM	TO	PAX	EQUIP	AIR	SURFACE	P/UP TIME	RTN TIME	MSG
BAT								
SH								
WI								

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Figure 6

7. **MEU Assets Available and Shortages.** The current operational status of MEU and its assets available to the mission planners is reviewed (Figure 7a1-7a6) and any shortages are identified (Figure 7a7). During the CAT process, the amount and status of equipment is critical information in the commander’s decision-making process. The selection of one COA over another will be dependant on several things. Equipment availability, that equipment that is non-mission capable or that is dedicated to another mission, will weigh heavily in the COA selection process.

CE ASSETS AVAILABLE

UNIT	EQUIP	O/H	M/C	AVAIL
S-4	M1123	4	—	—
	M-GATOR	1	—	—
S-6	PRC-117	3	—	—
	AN/PSC-5	16	—	—
	AN/MRC-138	2	—	—
	AN/MRC-145	2	—	—
	JTF-E (AN/TSC-93B)	1	—	—
MSPF	CRRC	6	—	—
	RHIB (7m)	2	—	—
RAD	MEWSS (AN/MLQ 36)	1	—	—
BN	ULQ	1	—	—
	M1123	1	—	—
	AN/MRC-138	1	—	—
	AN/MRC-145	1	—	—
MACG	AVENGER	2	—	—
	STINGER TM	3	—	—
	AN/MRC 138	2	—	—
MLE	AN/MRC-145	1	—	—
HET	M1123	1	—	—

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Figure 7a1

BLT ASSETS AVAILABLE

BLT	EQUIP	O/H	MC	AVAIL
	AAV-P7	13	—	—
	AAV-C7	1	—	—
	LAV-25	6	—	—
	LAV-L	1	—	—
	M1A1	4	—	—
	IFAV	8	—	—
	CRRC	20	—	—
	CRRC ENGINE	50	—	—
	M-198	6	—	—
	5 TON TRUCK	12	—	—
	M-149 WATER BULL	1	—	—
	AMBULANCE	2	—	—
	HMG M2/MK19 VEH	10	—	—
	TOW VEH	8	—	—
	SEE TRACTOR	1	—	—
	ACE M9	1	—	—
	SANATOR	3	—	—
	5 TON DUMP TRUCK	1	—	—

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Figure 7a3

R/S ASSETS AVAILABLE

UNIT TEAMS	O/H	M/C
AVAIL		
CE FORCE RECON	1/16/1	—
R & S PLT	1/21/1	—
RADIO BN DET		
CCT	0/5	—
RRT	0/6	—
MEWSS	0/5	—
MSPF HQ	1/5/0	—
BLT SCOUT SNIPERS	1/23	—
SCAMP	0/4	—

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Figure 7a2

ACE ASSETS AVAILABLE

SQDN	EQUIP	O/H	M/C	AVAIL
	CH-46	12	—	—
	CH-53E	4	—	—
	AH-1W	4	—	—
	UH-1N	2	—	—
	AV-8B	6	—	—
	KC-130	2*	—	—

*NOTE: KC-130'S LOCATION _____

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Figure 7a4

SPLIT ARG ACE ASSETS AVAILABLE

		<u>LHD</u>		
SQDN	EQUIP	O/H	M/C	AVAIL
	CH-46	8	—	—
	CH-53E	4	—	—
	AH-1W	4	—	—
	AV-8B	6	—	—
	KC-130	2*	—	—

*NOTE: KC-130'S ARE CONUS STANDBY

		<u>LPD</u>		
SQDN	EQUIP	O/H	M/C	AVAIL
	CH-46	4	—	—
	UH-1N	2	—	—

Figure 7a5

MSSG ASSETS

EQUIP	O/H	M/C	AVAIL
TRUCKS M813/923	16	—	—
M927/28/34	3	—	—
M997(AMB)	2	—	—
MK4814(FUEL)	3	—	—
MK4814(WTR)	1	—	—
MK4817	1	—	—
CONTACT TRK	1	—	—
WRECKER	2	—	—
R7 RETRIEVER	1	—	—
M88 RETRVR	1	—	—
M149 WTRBULL	4	—	—
TRAM	5	—	—
4K FORKLIFT	3	—	—
ROWPU	2	—	—
LMT	1	—	—
6 CONS(FUEL)	9	—	—
6 CONS(WTR)	3	—	—
PUMP	3	—	—
FLOODLIGHT	3	—	—
EOD TEAM	2	—	—

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Figure 7a6

SHORTAGES

- SUBJECT MATTER EXPERTS
 - _____
 - _____
- TRANSLATORS/LINGUISTS
 - _____
 - _____
 - _____
 - _____
- LIAISON OFFICERS (CA)
 - _____
 - _____
 - _____
- EQUIPMENT
 - _____
 - _____
 - _____
 - _____
 - _____

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Figure 7a7

- c. Contingency Missions. Potential missions that must be planned are identified. These missions are planned as a part of the assigned mission and are included in the confirmation brief. The most probable contingency missions are identified in figure 8c.

Contingency Missions

- TRAP
- SPARROWHAWK
- BALD EAGLE
- DA (IMMEDIATE ASSAULT)
- MASS CASUALTY
- MIO/VBSS
- CASEVAC/MEDEVAC
- EDATF
- ACE STRIKE/DEST MSN

Figure 8c

- d. Follow-On Missions. Missions that can be expected as a result of the mission currently being planned are identified (Figure 8d). Planning for these missions may or may not be conducted concurrently with the assigned mission. These missions are usually considered future operations. A separate planning cell will develop these missions until they are passed to current operations.

Follow-On Missions

- Raid
- Sec Rein
- Airfield Seizure
- Battle handover
- NEO
- HA
- NBC
- ENABLING OPS
- _____
- _____
- _____
- _____

Figure 8d

- e. Assumptions. (Figure 8e) Assumptions are made to fill any information voids, which will restrict or prevent further mission planning. These assumptions must be validated prior to mission execution. Any assumption remaining unconfirmed at the time of execution represents a risk to the force. The following five tests should be applied to every assumption before it is accepted for planning:

- Is it logical?
- Is it reasonable?
- Is it essential for planning to continue?
- Does it assume away an enemy capability?
- Does it assume away a friendly weakness?

ASSUMPTIONS/PLANNING FACTORS

- | | |
|--|---|
| <p>A. <u>ENVIRONMENT</u>
1. PERMISSIVE
2. UNCERTAIN
3. HOSTILE</p> <p>B. <u>HOST NATION</u>
1. SUPPORTIVE
2. NON-SUPPORTIVE
3. INCAPABLE OF SUPPORT</p> <p>C. <u>LOCAL GOVERNMENT</u>
1. SUPPORTIVE
2. NON-SUPPORTIVE
3. INCAPABLE OF SUPPORT</p> <p>D. <u>HOST NATION MILITARY</u>
1. SUPPORTIVE
2. NON-SUPPORTIVE
3. INCAPABLE OF SUPPORT</p> <p>E. <u>LOCAL POPULACE</u>
1. WILL INTERFERE
2. WILL NOT INTERFERE</p> <p>F. <u>RESISTANCE EXPECTED</u>
1. NONE
2. LIGHT
3. MEDIUM
4. HEAVY</p> <p>G. <u>OBJECTIVE</u>
1. CAN BE LOCATED
2. CAN NOT BE LOCATED</p> <p>H. <u>SPECIFIC BLS/HLZ/AF</u>
1. USEABLE
2. UNUSEABLE</p> | <p>I. <u>OVERFLIGHT RIGHTS</u>
1. GRANTED
2. PENDING
3. DENIED</p> <p>J. <u>MEDIA INTEREST</u>
1. EXPECTED
2. NOT EXPECTED</p> <p>K. <u>ORGANIC SUSTAINMENT</u>
1. SUFFICIENT
2. INSUFFICIENT</p> <p>L. <u>EXTERNAL SUPPORT</u>
1. INTEL
2. LOGISTICS
3. COMM
4. FIRE SUPPORT</p> <p>M. <u>WEATHER WILL PERMIT</u>
1. AIR
2. SURFACE</p> <p>O. <u>THREAT PRECLUDES</u>
1. AIR OPS
2. LAND OPS
3. SEA OPS</p> <p>N. <u>CONCURRENT TASKING(s)</u>
1. WILL IMPACT
2. NO IMPACT</p> <p>P. <u>FRIENDLY FORCES</u>
1. ARG/MEU UNILATERAL OP
2. JOINT/COMBINED FORCES AVAIL
3. CVBG IS AVAIL</p> |
|--|---|

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Figure 8e

f. Limitations. Limitations may be found in the basic order, within annexes or appendices to an order, or provided during verbal briefs. They are frequently found within coordinating instructions or rules of engagement. Limitations are identified as either restraints or constraints. Restraints are activities a force is prohibited from performing. Constraints are activities a force must accomplish. Figure 8f depicts baseline limitations.

LIMITATIONS

RESTRAINTS:

POLITICAL/RELIGIOUS

- | | |
|----------------------------|----|
| 1. RELIGIOUS BLDG / SITES | 4. |
| 2. HISTORICAL BLDG / SITES | 5. |
| 3. GOVT BLDG / SCHOOLS | 6. |

CONSTRAINTS: (TACTICAL)

OTHER CONSIDERATIONS:

WEATHER

T-STORM	HIGH WINDS	NO SIG WEATHER
RAIN	HIGH SEA STATE	_____
FOG	FREEZING RAIN	_____
SNOW		

TERRAIN

URBAN	RIVER	_____
RURAL	MOUNTAINS	_____

TIME AND SPACE

EXECUTE NLT	_____
COMPLETE NLT	_____

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Figure 8f

- g. Rules of Engagement. ROE Impacts
- What ROE is in effect? CJCSI, NATO, or other?
 - Are there any weapons/ordnance restrictions?
 - Are riot control agents authorized?
 - Are any forces declared hostile? If so, how are they identified?
 - What supplemental ROE, if any, needs to be requested?

h. Restated Mission. The end result of this process is a restated mission statement. The mission statement will include when, who, what, where, and why of the mission. Figure 8h.

RESTATED MISSION

(O/O) (W/D) (BPT) (NLT) (NET) W/D BY C6F. CTF 62
conducts a (NEO) (RAID) (HA) (NEO _____)
vicinity of AMERICAN EMBASSY TIRANA ALBANIA TO
ASSIST THE DEPT OF STATE. IN THE SAFE EVACUATION
OF AMERICAN CITIZENS AND DESIGNATED THIRD COUNTRY
NATIONALS TO A SAFE HAVEN AT BRINDISI, ITALY.
BPT PROVIDE SECURITY AND SUSTAINMENT FOR THE
AMERICAN EMBASSY FOR AS LONG AS REQUIRED.

CLARIFICATION NEEDED:

Figure 8h

i. . Mission Clarification. Any information in the warning order that is ambiguous or unclear is identified for the purpose of seeking clarification from the higher command. See figure 8h above.

9. **Commanders Critical Information Requirements (CCIRS)**. (Figure 9) Provide a means to identify information elements critical to the commander's decision making. Priority Intelligence Requirements (PIRs)- seek information relative to the threat or environment that is directly related to a decision point (DP). PIRs are fluid and change as missions evolve. Information requirements - less critical items of information that may affect the planning and execution of a mission are identified as (IRs). IRs are identified throughout the planning process and must be submitted to the appropriate staff member. Generic Information Requirements Handbook (GIRH) will be used to assist in determining IRs. Friendly Force Information Requirements (FFIRs) - seek information relative to the commander's own forces or supporting capabilities and are binding requirements upon appropriate staff members. While the planning staff may identify potential critical information requirements, the commander determines which of those to publish and receive priority handling. Essential Elements of Friendly Information (EEFIs) – items to be safeguarded from the enemy to prevent mission compromise.

CCIR'S

PRIORITY INTELLIGENCE REQUIREMENTS:

INTELLIGENCE REQUIREMENTS:

FRIENDLY INFO REQ (FFIR):

ESSENTIAL ELEMENTS FRIENDLY INFO TO SAFEGUARD (EEFI'S):

- TIME/METHOD OF INSERT COMP OF RAID FORCE
- LZ'S/BLS/CLZ
- INSERT OF FCE/R&S
- LOCATION OF ARG

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Figure 9

10. **R&S Determination**. Based on mission analysis, requirement for R&S will be determined. If R&S is required, then guidance and concurrent planning will begin. The R&S confirmation brief will normally be briefed prior to the mission confirmation brief.

R&S DETERMINATION

MISSION ESSENTIAL	YES	NO
FORCES AVAILABLE	YES	NO
TIME WILL PERMIT	YES	NO
PIR's REQUIRE R&S	YES	NO
ENEMY SITUATION PERMITS	YES	NO
HOST NATION PERMITS	YES	NO
OTHER MEANS AVAILABLE	YES	NO
R&S DECISION	YES	NO

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Figure 10

11. **Commanders' Initial Planning Guidance.** The Commodore/MEU Commander designates the force commander and provides initial planning guidance for the development of courses of action. The PHIBRON CO together with the MEU CO, will provide guidance that may include, but is not limited to the following items:

- Battle space Functions (Maneuver, C², Intelligence, Firepower, Logistics, and Force Protection).
- Courses of Action to be considered/ignored
- Timing and Phasing Instructions
- Organizational Issues
- Additional Limitations

12. **Review Cross Deck Requirements.** See page 14, figure 6.

13. **Identify Mission Planners and Develop Timeline.** After receiving the Commanders' planning guidance the force commander identifies whom he needs for course of action development (Figure 13a). Additionally, a timeline is developed which will identify when all major events in mission planning, confirmation and execution are to occur (Figure 13b).

Planning Cell	
<u>USMC</u>	<u>USN</u>
1. S-1	21. N-2
2. S-2	22. NCIS
3. HET	23. METOC
4. S-3	24. N-3
5. MEU AIR O	25. N-4
6. AT/FP O	26. N-6
7. S-4	27. TACRON
8. EMBARK O	28. C2W
9. S-6	29. AIR BOSS
10. SJA	30. SHIP OPS
11. PAO	31. NBG
12. MED	32. CCO
13. FSO	33. JAG
14. MLE	34. CATF SURGEON
15. MSPF	35. NSW
16. BLT	36. EOD
17. ACE	37. SBU
18. MSSG	38. SAC O / N-31
19. MACG	
20. RADBN	
21. CIVIL AFFAIRS	
LOCATION _____	41

Figure 13a

TIMELINE	
<u>WHEN</u>	<u>WHERE</u>
_____ RECEIPT OF WARNING ORDER	_____
_____ CAT 1 - MISSION ANALYSIS	_____
_____ EMERG/IMMED ASSLT BRIEF	_____
_____ FCE/R&S COA SELECTION	_____
_____ CAT 2 - COA SELECTION	_____
_____ CONOPS DUE	_____
_____ FCE/R&S CONFIRMATION BRIEF	_____
_____ MISSION CONFIRMATION BRIEF	_____
_____ BRIEF BACKS (ALL PRESENT)	_____
_____ EXECUTE	
<input type="checkbox"/> TIME HACK	
	42

Figure 13b

Course of Action (COA) Development. (00:30 – 01:00)

1. **COA Development.** The designated force commander and planners from all supporting agencies within the MEU and PHIBRON plan COA's based upon the commanders' initial planning guidance. A COA is a broadly stated plan to accomplish the assigned mission. COA's must be developed quickly and displayed graphically. COA's must be *suitable, acceptable, feasible, distinct, and complete.*

1 - Suitable: The COA will reasonably accomplish the identified objectives, mission, or task if carried out successfully and follows commanders guidance/intent.

2 - Acceptable: COA is worth the cost in manpower, material, and time involved; is consistent with the law of war, and militarily and politically supportable.

3 - Feasible: COA can be executed by using available resources in the available time frame.

4 - Distinct: COA is clearly unique from other COAs.

5 - Complete: COA answers what type of action is contemplated; when, where, and how it will be accomplished.

2. **Issuance of the Warning Order.** During course of action development, the MEU will issue a warning order to elements aboard the other ships in the ARG.

IV. **Second CAT meeting - COA presentation/selection.** (01:00 – 01:30)

1. **Situation Update.** A roll call is conducted and the MEU S3 presents a review of the mission and the MEU Commander's intent. Any assumptions, information requirements, or mission clarification requests that have been answered are presented. The PHIBRON N-2 and MEU S-2 provide a situation update as required.

2. **COA Presentation.**

- a. The CAT is reconvened to receive the force commander's proposed COA.

b. A recommended format for the COA brief is shown in figures IVa - IVc. Each COA will include a CONOPS, proposed task organization, major equipment, and estimated time to complete each phase. Advantages and disadvantages of each COA will be presented to aid in COA selection. The format shown should be used to maximize COA presentation clarity. Complex missions (NEO, MSPF) may require the use of five slides depicting all five phases in order to clearly present the COA. COA's must be numbered and named (COA #1 Medium Heliborne). **Remember clarity of presentation is the key.**

V. Detailed Planning (01:30 – 03:00)

1. All the required planning cells from the PHIBRON and MEU are involved in the development of detailed plans and the confirmation brief.
2. Orders Group. When required, the MEU S3/PHIBRON N3 are responsible for the development of a concept of operations (CONOPS) message that is sent to higher headquarters after review and approval by the PHIBRON and MEU Commanders. The CONOPS is reviewed by the Orders Group prior to its transmittal. It is essential that the information presented during the COA presentation be provided to the MEU S3 immediately upon completion of the CAT.

VI. Confirmation Brief (03:00 – 04:00)

1. Background. The PHIBRON and MEU commanders are formally briefed when the preparation of detailed planning is complete. This brief includes all aspects of the operation, as well as all contingency plans that are in effect.
2. Purpose. The purpose of the confirmation brief is to ensure that all parts of the plan have been coordinated and synchronized, and that the operation meets the commanders' intent. **The confirmation brief is the verbal issuance of the operations order, and is the final opportunity to make required changes.**
3. Required Attendees. Attendance at the confirmation brief should be limited only by the space in which the brief is being conducted. At a minimum, the attendees should include:
 - (A) Crisis Action Team members.
 - (B) Mission commander and Raid force commander with his element commanders.
 - (C) Members of all planning cells involved in the preparation of the plan.
4. Conduct of the Confirmation Brief. The confirmation briefs will be conducted using the sequence and format found in each of the specific mission sections. All key operational decisions have been made. Conflicting information presented during the confirmation brief will require coordination as it is identified.
 Good briefing techniques are critical to a confirmation brief that maximizes mission preparation time. Briefers should put all required information on slides and highlight pertinent items of key interest to the MEU/PHIBRON Commander. For example, the EDL can list all equipment, but the briefer should highlight specific mission performance enhancing items like a SOFLAM, optics or special weapons.
5. Operational Risk Management (ORM). ORM is another PIR. The commander must be aware of any hazards to forces that will be dedicated to an operation so that planners can take steps to minimize the effects of a hazardous situation. Figure VIa is the standard ORM slide that will be included in all confirmation briefs.



ORM

HAZARDS	CAUSES	CONTROLS	RISK ASSESSMENT
	•	•	
		•	
	•	•	
	•	•	
	•	•	

Figure VIa.

VII. Command and Staff Supervision.

1. The remaining time before mission launch is used for rehearsals and final preparation. Every effort must be made to ensure the maximum time possible is allotted to this stage of the planning process. Heavy reliance on SOPs and well rehearsed debark plans will maximize use of the limited time available for final preparations.
2. Additionally, the PHIBRON/MEU staffs must remain engaged to ensure the assistance /support required by the Mission Commander and his staff is continuous until the completion of the mission. The confirmation brief does not imply that the PHIBRON/MEU staff can disengage. Command and staff supervision is continuous.
3. Execution Checklists. The execution checklist is a listing of significant events within an operation that is used to aid in the command and control of the operation. Prowords are assigned to individual events that are used as radio brevity codes for reporting purposes. Execution checklist shell for standard MEU (SOC) missions are shown in this handbook and follow the confirmation brief sequence. A mission’s execution checklist will be delivered to the force commander for completion after the course of action selection. The completed checklist is required to be delivered to the MEU S3 NLT thirty minutes prior to the confirmation brief, to allow sufficient time for review and inclusion in war gaming and the brief. The execution checklist will be validated with the MEU Commander’s signature. Any execution checklist without the MEU CO’s signature is **Not Valid**. Figure VIIA is the standard 26 MEU Execution Checklist. This checklist represents all prowords the MEU will use across the spectrum of missions we will conduct. As missions progress through the CAT process, the mission commander will identify which elements of the below master checklist are applicable to his mission. The mission commander will then line-out line numbers that do not apply and forward to the watch officer. The watch officer will delete those line numbers that do not apply, have the CO sign the completed document and publish the execution checklist. M = MANDATORY CALL

	M/ X	EVENT/SITUATION	PROWORD	FM	EST EXECUTE TIME	EXECUTE TIME	COMM NET	REMARKS
1	M	FORCE LAUNCHED						
2		LAUNCH COMPLETE						
3	M	FEET DRY, ARRIVE, HLZ LZ,HA,L/U PT, CLZ, BLS						
4		LZ/BLS/CLZ SECURE						
5	M	FORCE INSERT COMPLETE						
6		COMMENCED MOVEMENT TO ORP/MASS CAS						

CENTER FOR LAW AND MILITARY OPERATIONS

		SITE					
7		SEARCH COMMENCED					
8		ARRIVED AT ORP					
9		FCE/IRT AT EMBASSY/HA SITE					
10		PB/SARC ESTABLISHED					
11		LINK UP POINT ESTABLISHED					
12		LINK UP COMPLETED W/					
13		FCE/IRT ESTABLISHED					
14		EYES ON TARGET					
15		DEPARTED ORP					
16		MOVING TO AP/LCC					
17		ARRIVED AP/LCC					
18	M	COMMENCED ACTIONS ON THE OBJECTIVE					
19		REQUEST REINFORCEMENTS					
20	M	OBJECTIVE SECURE					
21		ECC/CMOC/MAS CAS OPS COMMENCED					
22		EVACUEES/AIR CREW/ CASUALTIES READY FOR EXTRACT					
23		EVACUEE TRANSPORT TO ISB					

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		COMMENCED						
24		EVACUEES HANDED OFF TO DOS@ ISB						
25		TRANSPORT OF CAS/EVACUEES TO ISB COMPLETE						
26	M	ACTIONS ON OBJECTIVE COMPLETE						
27		HA/CMOC/MAS CAS OPS COMPLETE						
28		AMBASSADOR DECIDES NEO COMPLETE						
29		REQUEST COMPROMISE AUTHORITY						
30		FORCE MOVING TO EXTRACT POINT						
31		FORCE READY FOR EXTRACT						
32		ALL ACCOUNTED FOR						
33		EXTRACT COMPLETE						
34		ALL FORCES ABOARD ARG SHIPPING						
35		MISSION ACCOMPLISHED						
BY EXCEPTION CALLS								
36	X	INSERT TO ALTERNATE ZONE						
37	X	MISSION COMPROMISED						

CENTER FOR LAW AND MILITARY OPERATIONS

38	X	ABORT						
39	X	REQUEST EMERGENCY EXTRACT						
40	X	EXECUTING EMERGENCY EXTRACT						
41	X	EXTRACT FROM ALTERNATE ZONE						
		M = MANDATORY						
		X = BY EXCEPTION						

LEXICON

ITEM/ACTION	PROWORD	ITEM/ACTION	PROWORD
POW's		CEASE-PREP FIRES	
EPW's		DELAY-PREP FIRES	
MIA's		CANCEL-PREP FIRES	
WIA's		EXTEND-PREP FIRES	
KIA's		REPEAT-PREP FIRES	
AMERICAN CITIZENS		FIRE CAP	
THIRD COUNTRY NATIONALS		ROUNDS COMPLETE	
NON GOVERNMENTAL ORGANIZATIONS		FIRE FPF	
NON COMBATANTS		SEND OVER THE PRIZE CREW	
UNKNOWNNS		PILOT HOUSE SECURE	
HOSTAGES		ENGINE ROOM SECURE	
TERRORISTS		ALL AMMUNITION EXPENDED	
START-PREP FIRES		CHECK POINTS	
SHIFT-PREP FIRES		PILOT FOUND	
ENEMY CONTACT		VEHICLE/AIRCRAFT DOWN (MECH)	
PUSH TO ALTERNATE FREQUENCY		VEHICLE/AIRCRAFT DOWN (ENEMY)	
EXERCISE CASUALTY			
ADVANCE TIMELINE		DELAY TIMELINE	

FIGURE VIIA

AMPHIBIOUS RAIDS

1. Intelligence Requirements.

a. Priority Intelligence Requirements

- Security at the Target [Strength/Obstacles/Booby Traps/Alert Posture/SALUTE]
- Ability to Reinforce [Where, When, What Strength, Choke Points]
- Target Description [Available Imagery/Lines of Communications/Defenses]
- Anti-armor Capability
- AAA/SAM Capability
- Local Patrolling Activity?

b. Information Requirements

- Communications Capability at the Raid Site
- Avenues of Approach or Egress [Cover and Concealment]
- Vulnerability to Deception Operations
- If destruction is required, how will it be accomplished?
- If recovery is required, what special equipment does the raid force need?
- Threat Night Vision Capability

2. Confirmation Brief. The following sequence is a generic format that will be adapted to meet the circumstances of each raid. **All briefers must give the slide flipper (1) paper copy of their brief.** This paper copy **will not** be returned to the briefer.

Briefer	Briefing Items
MEU S3	Review Friendly Situation Restated Mission Commander's Intent Force Status
N-3	Naval Force Disposition ARG Concept of Operations Movement to AOA Navy C2W Pre-Landing Operations AOA Description
Meteorologist	Weather Tides; Sea State; Currents Weather Effects
S2/N-2	Astronomic Data Significant Events Ground Threat Surface to Air Threat Air Threat Naval Threat Threat Assessment

CENTER FOR LAW AND MILITARY OPERATIONS

MEU SJA/PHIBRON SJA
Mission Commander

ROE
Mission
Commander's Intent
Chain of Command
Task Organization
Concept of Operations
Time Line

Raid Force Commander

Mission
Task Organization T/O
Load/Bump Plan
EDL
Concept of Operations (each element by phase)
Time Line
Enroute Bump Plan
L/U Plan
Go/No-Go criteria
Lost Marine Plan
MACO procedures
EPW/detainee plan
Casualty Plan
Comm/No Comm Plan
Succession of Command
Risk Assessment

PHIBRON/MEU C2W Officers
N-33 SAC

C2W Plan
ATF Target List
NGFS

MEU Fire Support Officer

FSA Diagram
Assets Available
Fire Support Matrix
Attack Guidance Matrix
Fire Support Overlay/Target List
Fire Support Communications

Fire Support Coordinator

Assets Available
Fire Support Matrix
Attack Guidance Matrix
Fire Support Overlay
Fire Support Communications

Air Mission Commander

Mission
Commander's Intent
Specified/Implied Tasks
Mission Assets
ACE
CVBG
Key Personnel
Staging Area

Load Plan

Lift Capacity
 Special Equipment
 Spot Plan
 Launch/Rendezvous Sequence
 Time Line
 Routing In
 Primary LZ Diagram/Info
 Alternate LZ Diagram/Info
 Primary extract LZ Diagram/Info
 Alternate extract LZ Diagram/Info
 Contingency Extractions
 Immediate Re-embarkation
 Emergency Extract
 Airspace Management
 Routing Out
 Hasty TRAP
 FARP/RGR/AR
 FARP Diagram
 Delegation of Authority
 AMC Special Considerations
 Critical Vulnerabilities
 ORM
 Fire Support
 Type Escort
 Follow-on Missions
 Assets/Ordnance Load
 FW/RW
 Support Requirements
 Restrictions
 Threat Assessment
 Ingress
 Objective Area
 Supporting Arms
 Supporting Agencies
 Objective Area diagram
 Considerations
 Go/No-Go
 Limitations
 Air Assets Utilized
 IFF Procedures
 Ingress/Egress Routes
 Airspace Control Measures
 Lost Comm
 Return to Force

Escort Flight Leader

N-5 TACRON

CENTER FOR LAW AND MILITARY OPERATIONS

Air Boss	Lame Duck
NBG	Spot Plan/Priority
CCO	BMU/ACU Concept of Operations
	Load Plan
MEU S2	Debark/Re-Embark Plan
MEU S-4	E&R, Debrief Plan
	Concept of Support (Reception Plan / Reclamation Plan)
MSSG	CSS Operations
MEU Medical	Medical Plans/Assets Ashore
	Helicopter Evacuation Site
	Beach Evacuation Site
	Preventive Medicine
	Considerations
	Medical Regulating Net
CATF Surgeon	PCRTS: Beds, ORS, Blood
	SCRTS: Beds, ORS, Blood
Public Affairs Officer	PAO Plan
MEU S-6	Comm Plan
	Net Diagram
	Frequency Plan
	Call signs/Call words
N-6	ARG Comm Plan
MEU S3	Review Execution Checklist
	Issues
Commodore	Comments
MEU Commander	Comments
Standby Missions as required:	
TRAP Cmdr	Mission
	Task Organization
	Air Mission Commander
	Alert Status
Sparrow Hawk/Bald Eagle Cmdr	Mission
	Task Organization
	Air Mission Commander
	Concept of Operations
	Load Plan/Bump Plan
	Go/No Go Criteria
	Abort Authority/Criteria/Plan
	Alert Status
Mass Casualty	Mission
	Task Organization/EDL
	Concept of Operations
	Alert Status

APPENDIX 3-2: SAMPLE CAT I SJA ROE BRIEF SLIDES

26 MEU SJA CAT I ROE BRIEF

**_____ ROE in effect (26
MEU standing ROE white card always applies)**

**1) SELF-DEFENSE: Nothing in these rules limits
your duty to defend yourself, U.S. forces, and**

**2) MISSION ACCOMPLISHMENT: Use no more
force than is required to **DECISIVELY** accomplish
the mission without causing **UNNECESSARY
COLLATERAL DAMAGE**, unless otherwise
restricted.**

FORCES DECLARED HOSTILE? _____

WEAPONS/ORDNANCE RESTRICTIONS? _____

RIOT CONTROL AGENTS _____ AUTHORIZED

OTHER SUPPLEMENTAL ROE IN EFFECT:

**SUPPLEMENTAL ROE REQUESTS/ROE
CLARIFICATION:**

22 MEU SJA CAT I ROE BRIEF

RULES OF ENGAGEMENT	
ROE IN EFFECT:	CJCSI NATO _____
<u>SELF-DEFENSE</u>	
<i>YOU ALWAYS HAVE THE RIGHT AND DUTY TO DEFEND YOURSELF AND U.S. FORCES BY ALL NECESSARY MEANS AVAILABLE.</i>	
<u>MISSION ACCOMPLISHMENT</u>	
THESE DO NOT LIMIT RIGHT AND OBLIGATION OF SELF-DEFENSE.	
FORCES DECLARED HOSTILE:	_____

<ul style="list-style-type: none">• RCA ARE / ARE NOT AUTHORIZED• UNOBSERVED FIRES ARE/ARE NOT AUTHORIZED	
WEAPONS RESTRICTIONS IN EFFECT:	_____

SUPPLEMENTAL ROE IN EFFECT:	_____

1	

RULES OF ENGAGEMENT

ROE FOR MISSION ACCOMPLISHMENT
CONT.

REQUESTS AND CLARIFICATIONS:

2

RULES OF ENGAGEMENT

ROE FOR MISSION ACCOMPLISHMENT
CONT.

LAW OF WAR CONCERNS:

3

APPENDIX 4-1: SAMPLE MEU STANDING ROE “WHITE” CARDS

26th MEU STANDING RULES OF ENGAGEMENT

March 2001

You always have the right and duty to defend yourself and U.S. forces

You MUST take all APPROPRIATE ACTION in response to any HOSTILE ACT or display of HOSTILE INTENT.

HOSTILE ACT: attack or force used against you or U.S. forces, OR force used to directly interfere with mission/duties.

HOSTILE INTENT: imminent threat of attack or force against you or U.S. forces, OR threat of force to interfere with mission/duties.

APPROPRIATE ACTION: the minimum force necessary to DECISIVELY stop the hostile act/intent. WHEN POSSIBLE, use a gradual escalation of force. Use the acronym **WETSNO** as a GUIDE, not a mandatory checklist.

- a. **Warn** - do not use force unless you have to; warn the hostile force and give them a chance to withdraw; or, if the mission permits, simply withdraw yourself.
- b. **Exhibit Force** - display your weapon, walk towards the threat, and/or use a riot control formation.
- c. **Touch** - use a minimal level of physical contact to escort the threat from the scene or to stop the hostile act/intent; detain if necessary.
- d. **Spray** - use water, CS, or pepper spray. **[You may not use CS or pepper spray unless specifically told you can.]**
- e. **Nonlethal Weapons** - use rubber bullets, batons, stinger grenades, etc.
- f. **Open Fire** - shoot in response to deadly force or the threat of serious bodily harm, or to defend mission essential property (weapons, ammunition, aircraft, vehicles) against theft or serious damage.

[back of card]

Always apply the **USMC LAW OF WAR PRINCIPLES**

1. Marines fight only enemy combatants.
2. Marines do not harm enemies who surrender. Marines disarm them and turn them over to superiors.
3. Marines do not kill or torture detainees.
4. Marines collect and care for the wounded, whether they are friend or foe.
5. Marines do not attack medical personnel, facilities, or equipment.
6. Marines destroy no more than the mission requires.
7. Marines treat all civilians humanely.
8. Marines do not steal. Marines respect private property and possessions.
9. Marines prevent law of war violations and report all violations to their superiors, PMO, SJA, or chaplain.

15TH MEU ROE

STANDING ROE DO NOT CHANGE-MEMORIZE!!

A. Self-Defense-I must defend myself, my unit, or other US Forces against a **Hostile Act or Hostile Intent**. I will take all **Necessary & Appropriate Action** to defend myself, my unit or other US Forces against a **Hostile Act or Hostile Intent**.

B. Hostile Act-Attack or force used against myself, my unit or other US Forces, or force used directly to impede the mission/duties of my unit or other US Forces.

C. Hostile Intent-Threat of imminent use of force. Example-weapon pointed @ me, my unit or other US Forces.

D. Necessary & Appropriate Action.

1. I will try to control w/o force. I will give warning if time permits.

2. I will use only the force proportional in nature, duration & scope to counter hostile act/intent & ensure US Forces' safety.

3. I will use only the force necessary to stop the hostile act/intent. I will stop my attack when the threat stops.

4. I can chase & attack the enemy after a hostile act/intent if the enemy still poses a threat. I cannot chase the enemy into another country.

E. Minimize Collateral Damage to civilians & civ property consistent with mission accomplishment & force protection.

Supplemental ROE will be specifically briefed to me and are subj to change.

F. Forces Declared Hostile by higher military authority may be engaged w/o observing hostile act/intent.

[back of card]

LAW OF WAR 9 PRINCIPLES

1. Marines fight only enemy combatants.

2. Marines do not harm enemies who surrender.
They must disarm them & turn them over to their superior.

3. Marines do not kill or torture prisoners. Secure, search, silence, segregate, safeguard, speed to rear.

4. Marines collect & care for wounded, friend or foe.

5. Marines do not attack medical personnel, facilities or equipment.

6. Marines destroy no more than the mission requires.

7. Marines treat all civilians humanely.

8. Marines do not steal. Marines respect private property & possessions.

9. Marines do their best to prevent law of war violations & report violations to their superior.

22D MEU STANDING RULES OF ENGAGEMENT

You always have the right and duty to defend yourself and other U.S. military forces.

Take APPROPRIATE ACTION to engage an opposing force that commits a HOSTILE ACT, or displays HOSTILE INTENT.

APPROPRIATE ACTION means applying a **necessary** and **proportional** response to the threat.

A response is **necessary** when there is an immediate threat of serious harm to you or other U.S. forces.

A response is **proportional** when it decisively neutralizes the threat without causing excessive injury to noncombatants and damage to their property.

Formulate your response to meet the threat, according to these guidelines:

- 1) Try to **control the situation** without use of force. Use warnings if possible, however warning shots from small arms are not permitted.
- 2) If force must be used, use only the **minimum force required** to stop the hostile act/intent.
- 3) Use **deadly force** when that is the ONLY way to stop the hostile act/intent.
- 4) You may **pursue** and engage a force that has committed a hostile act/intent ONLY if the threat is **still imminent**.

If a force has been DECLARED HOSTILE, then you may engage it even without a hostile act/intent, though your response must always be proportional to the threat.

[back of card contains 9 USMC LOW principles, like previous two cards]

APPENDIX 4-2: SAMPLE MEU MISSION-SPECIFIC TRAINING ROE CARDS

DAVIS AIRFIELD SEIZURE SUPPLEMENTAL ROE [26 MEU]

NOTHING IN THESE RULES LIMITS YOUR RIGHT AND DUTY OF SELF-DEFENSE. THE 26 MEU STANDING ROE ALWAYS APPLY.

In addition to the standing ROE (white card), the following rules apply:

- 1. DURING ACTIONS ON THE OBJECTIVE, GROUND AND AIR FORCES MAY IMMEDIATELY ENGAGE WITH DEADLY FORCE 1) ANY SUSPECTED ENEMY VEHICLE, AND 2) ANY PERSON WEARING DESERT CAMMIES OR CARRYING A WEAPON.**
- 2. YOU MAY ALWAYS USE THE MINIMUM FORCE NECESSARY, UP TO AND INCLUDING DEADLY FORCE, AGAINST ANY PERSON OR VEHICLE DISPLAYING A HOSTILE ACT/INTENT, NO MATTER WHERE LOCATED.** Examples of hostile act/intent:
 - firing or preparing to fire weapon from outside objective area
 - activities indicating reinforcement
 - any action that directly impedes the mission
- 3. OFFENSIVE AIR SUPPORT MUST BE POSITIVELY CONTROLLED BY AIR OR GROUND FAC. INDIRECT FIRE MUST BE OBSERVED.**
- 4. REMEMBER: DO NOT SHOOT ANYBODY WHO SURRENDERS OR IS WOUNDED (OUT OF THE FIGHT).**
- 5. USE OF RCA IS NOT AUTHORIZED.**
- 6. USE EVERY EFFORT TO MINIMIZE COLLATERAL DAMAGE.** Keep in mind the nearby neighborhood and that the airfield is needed for follow-on missions.
- 7. ONCE ACTIONS ON THE OBJECTIVE ARE COMPLETE, FORCES ARE NO LONGER DECLARED HOSTILE.** In other words, once BOTH companies have consolidated and reorganized on the objective, you are now defending the airfield and may only use the minimum force necessary, up to and including deadly force, in RESPONSE to a hostile act/intent.

ROE IS SENSITIVE INFORMATION. DESTROY THIS CARD AFTER MISSION.

SATURDAY STX – MSPF RAID MISSION SPECIFIC ROE [22 MEU] 010915

NOTHING IN THESE RULES LIMITS YOUR RIGHT AND DUTY OF SELF-DEFENSE. THE 22 MEU STANDING ROE ALWAYS APPLY.

In addition to the standing ROE (white card), the following rules apply:

- 1. NLA W/IN 7 KM OF MOUT ARE DECLARED HOSTILE.**
 - Anyone carrying shoulder fired weapons or larger within limits of MOUT may be considered NLA
- 2. YOU MAY ALWAYS USE PROPORTIONAL FORCE, UP TO AND INCLUDING DEADLY FORCE, AGAINST ANY PERSON OR VEHICLE DISPLAYING A HOSTILE ACT/INTENT, NO MATTER WHERE LOCATED.** Examples of hostile act/intent:
 - firing or preparing to fire a weapon,
 - throwing or preparing to throw dangerous objects, which could cause death or grievous bodily harm
 - painting by target acquisition radar

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3. USE OF RCA (PEPPER SPRAY AND CS) **IS** AUTHORIZED, for egress/extract only
4. COLLATERAL DAMAGE IS TO BE KEPT TO AN **ABSOLUTE MINIMUM**.
 - religious and residential structures are in the immediate vicinity of the target, take particular care to avoid damaging the structures or injuring the occupants
 - UNLESS THE STRUCTURES ARE USED FOR MILITARY PURPOSES

ROE IS SENSITIVE INFORMATION. DESTROY THIS CARD AFTER MISSION.

TRUEX STX1 MSPF RAID – R & S INSERT MISSION SPECIFIC ROE [22 MEU]
000817 1400Z

NOTHING IN THESE RULES LIMITS YOUR RIGHT AND DUTY OF SELF-DEFENSE. THE 22 MEU STANDING ROE ALWAYS APPLY.

In addition to the standing ROE (white card), the following rules apply:

1. NO FORCES HAVE BEEN DECLARED HOSTILE.

2. YOU MAY ALWAYS USE THE MINIMUM FORCE NECESSARY, UP TO AND INCLUDING DEADLY FORCE, AGAINST ANY PERSON OR VEHICLE DISPLAYING A HOSTILE ACT/INTENT, **NO MATTER WHERE LOCATED**. Examples of hostile act/intent:

- firing or preparing to fire a weapon,
- throwing or preparing to throw dangerous objects
- painting by target acquisition radar

4. USE OF RCA (PEPPER SPRAY AND CS) **IS NOT** AUTHORIZED
5. FIXED AND ROTARY WING **OFFENSIVE** CAS IS PROHIBITED
6. OBSERVED AND UNOBSERVED INDIRECT FIRE IS PROHIBITED
7. WARNING SHOTS FOR MISSION ACCOMPLISHMENT ARE PROHIBITED
8. COLLATERAL DAMAGE IS TO BE KEPT TO AN **ABSOLUTE MINIMUM**.

ROE IS SENSITIVE INFORMATION. DESTROY THIS CARD AFTER MISSION.

BOAT RAID ROE: MEMORIZE, DO NOT CHANGE [15 MEU]

1. Use force in response to Hostile Act or Hostile Intent.
2. Use minimum force necessary for force protection/mission accomplishment.
3. Force utilized must be proportional to threat.
4. Detain any person who threatens safety or interferes with mission accomplishment.
5. Civilians are Non-combatants and are not to be engaged unless directly supporting hostilities or in Self-Defense.
6. MINIMIZE COLLATERAL DAMAGE.
7. Orange Forces & supporting forces are DECL HOSTILE and may be engaged offensively.

PERSONNEL HANDLING

EPWs - 5 S: secure, search, silence, segregate, safeguard
EPW-Fwd to CoC. Possible turn over to HET. Release or bind & secure before extract
CIVILIAN INTERNEES - release
CIV CASUALTIES - 1st aid if possible.

CONTRABAND/WEAPONS HANDLING

Safeguard and use chain of custody.
Turn over to, CoC, EOD, as appropriate.

15TH MEU NEO ER/ET ROE 990205

STANDING ROE - SROE DO NOT CHANGE - MEMORIZE THEM

- A. Self-Defense - Take all Necessary & Appropriate Action to defend yourself & other U.S. forces against a Hostile Act or Hostile Intent.
- B. Hostile Act - An attack or other use of force against U.S. Forces, or force used to impede the mission/duties of U.S. Forces.
- C. Hostile Intent - The threat of imminent use of force. Example - a weapon pointed at U.S. Forces.
- D. Necessary & Appropriate Actions in Self-Defense
 - 1. Try to control without force. Warn if time permits.
 - 2. Use force proportional in nature, duration & scope to counter hostile act/intent & ensure U.S. Forces' safety.
 - 3. Attack to disable or destroy only if necessary to stop hostile act/intent. Stop your attack when imminent threat stops.
 - 4. You may pursue & engage an attacker after a hostile act/intent if the threat is still imminent (but not into another/third country).
- E. Minimize Collateral Damage to civilians & civilian property consistent with force protection and mission accomplishment.

ADDITIONAL CJCS STANDING ROE FOR NEO MISSION

PROCEDURES

- A. TAKE DEFENSIVE ACTION ONLY AS NECESSARY TO SAFEGUARD U.S. LIVES, PROPERTY, AND EQUIPMENT.
- B. IF TASKED, PROTECT AND EVACUATE DESIGNATED THIRD COUNTRY NATIONALS IN SAME MANNER AS U.S. PERSONS.

ACTION

- A. DETAINEES - MAY TEMPORARILY DETAIN PERSONS WHO POSE A CLEAR THREAT TO LIVES OR SAFETY OF OTHERS, OR WHO THREATEN SUCCESS OF THE MISSION. AT EARLIEST OPPORTUNITY, TURN OVER TO HOST NATION OR RELEASE.
- B. RCA's - RIOT CONTROL AGENTS WILL ONLY BE EMPLOYED WHEN AUTHORIZED BY THE U.S. FORCES COMMANDER ON NCA APPROVAL.
- C. FOREIGN DIPLOMATS - OFFER COURTESIES EXTENDED BY AMBASSADOR, SUBJECT TO INSPECTION FOR WEAPONS OR OTHER DANGEROUS MATERIAL, PRIOR TO BOARDING ANY VEHICLE, SHIP OR AIRCRAFT. REFUSAL TO SUBMIT TO INSPECTION WILL RESULT IN THE INDIVIDUAL BEING BARRED FROM BOARDING.
- D. TEMPORARY REFUGE - U.S. COMMANDERS MAY NOT GRANT POLITICAL ASYLUM TO ANY FOREIGN NATIONAL. TEMPORARY REFUGE UNDER EMERGENCY CONDITIONS MAY BE OFFERED BY SENIOR OFFICER PRESENT IF THERE IS IMMINENT DANGER TO SAFETY, HEALTH, OR LIFE (JAGMAN 1005). ONCE GRANTED, ONLY SECNAV MAY TERMINATE TEMPORARY REFUGE.
- E. U.S. EMPLOYEES AND NON-EMPLOYEES - ALL U.S. PERSONS EMPLOYED BY THE U.S. GOVERNMENT WILL BE EVACUATED IF ORDERED BY AMBASSADOR. IF REFUSE, REFER TO EMBASSY. NON-EMPLOYEE U.S. PERSONS CANNOT BE FORCED TO EVACUATE; TRY TO GET SIGNED "WAIVER OF EVACUATION OPPORTUNITY" AND GIVE TO EMBASSY.

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HUMANITARIAN ASSISTANCE SUPPLEMENTAL ROE [26 MEU]

NOTHING IN THESE RULES LIMITS YOUR RIGHT AND DUTY OF SELF-DEFENSE. THE 26 MEU STANDING ROE ALWAYS APPLY.

In addition to the standing ROE (white card), the following rules apply:

1. NO FORCES ARE DECLARED HOSTILE. YOU MUST OBSERVE A HOSTILE ACT OR DEMONSTRATION OF HOSTILE INTENT BEFORE YOU MAY USE FORCE.
2. In addition to defending other U.S. forces, YOU HAVE A **DUTY** TO USE FORCE, UP TO AND INCLUDING DEADLY FORCE, TO **PROTECT ALL DISPLACED PERSONS. TREAT ALL DISPLACED PERSONS WITH DIGNITY AND RESPECT.**
3. YOU ARE ALWAYS AUTHORIZED TO DETAIN ANY PERSON TO ENSURE FORCE PROTECTION, OPERATIONAL SECURITY, AND MISSION ACCOMPLISHMENT. IF TIME ALLOWS, RELEASE DETAINEES TO HOST NATION OFFICIALS.
4. USE OF FORCE, UP TO AND INCLUDING DEADLY FORCE, IS AUTHORIZED TO **DISARM** INDIVIDUALS POSING A THREAT.
5. PEPPER SPRAY AND CS **ARE AUTHORIZED FOR USE AGAINST CIVILIANS/CROWD CONTROL. YOU MAY NOT USE RCA AGAINST EAAG FORCES.**
6. USE OF FORCE, UP TO AND INCLUDING DEADLY FORCE, IS AUTHORIZED TO PROTECT MISSION ESSENTIAL PROPERTY (AIRCRAFT, VEHICLES, ARMS, AMMUNITION, ENCRYPTED COMM ASSETS). USE OF FORCE, **BUT NOT DEADLY FORCE**, IS AUTHORIZED TO PROTECT ALL OTHER PROPERTY (Humanitarian Supplies, NVG'S, MRE'S, etc.).
7. IF YOU HAVE TO OPEN FIRE: FIRE ONLY AIMED SHOTS, FIRE NO MORE ROUNDS THAN NECESSARY, TAKE ALL REASONABLE EFFORTS TO MINIMIZE COLLATERAL DAMAGE, AND STOP FIRING AS SOON AS THE SITUATION PERMITS.
8. NO MEMBER OF THE U.S. MILITARY CAN GRANT POLITICAL ASYLUM. TEMPORARY REFUGE UNDER **EMERGENCY** CONDITIONS MAY BE OFFERED IF THERE IS **IMMINENT** DANGER TO LIFE. IF REFUGE IS GRANTED, YOU MAY NOT RELEASE WITHOUT SECNAV APPROVAL.

ROE IS SENSITIVE INFORMATION. DESTROY THIS CARD AFTER MISSION.

MECH RAID SUPPLEMENTAL ROE [26 MEU]

NOTHING IN THESE RULES LIMITS YOUR RIGHT AND DUTY OF SELF-DEFENSE. THE 26 MEU STANDING ROE ALWAYS APPLY.

In addition to the standing ROE (white card), the following rules apply:

1. **DURING ACTIONS ON THE OBJECTIVE, GROUND FORCES MAY IMMEDIATELY ENGAGE WITH DEADLY FORCE ANY PERSON WITHIN SMALL ARMS RANGE WHO IS EITHER 1) WEARING GREEN CAMMIE TOPS OR BOTTOMS, OR 2) CARRYING A WEAPON.**
2. YOU MAY ALWAYS USE THE MINIMUM FORCE NECESSARY, UP TO AND INCLUDING DEADLY FORCE, AGAINST ANY PERSON OR VEHICLE DISPLAYING A HOSTILE ACT/INTENT, **NO MATTER WHERE LOCATED.** Examples of hostile act/intent:
 - firing or preparing to fire weapon from outside objective area
 - activities indicating reinforcement
 - any action that directly impedes the mission
3. FIXED/ROTARY WING CAS AND INDIRECT FIRE **MAY ONLY BE USED TO DEFEND THE RAID FORCE AGAINST ATTACK OR IMMINENT ATTACK. THEY MAY NOT BE USED AS A FIRST-STRIKE WEAPON.**
4. REMEMBER: DO NOT SHOOT ANYBODY WHO SURRENDERS OR IS WOUNDED (EVEN IF DECLARED HOSTILE).
5. CS AND PEPPER SPRAY ARE **NOT** AUTHORIZED.

CENTER FOR LAW AND MILITARY OPERATIONS

6. USE EVERY EFFORT TO **MINIMIZE COLLATERAL DAMAGE AND INCIDENTAL INJURY TO CIVILIANS**. *KEEP IN MIND THAT THERE IS A MOSQUE AND OTHER CIVILIAN BUILDINGS ADJACENT TO THE OBJECTIVE.*

7. DETAINEES WILL BE FLEX-CUFFED AND LEFT ON OBJECTIVE. *ENSURE THAT DETAINEES ARE KEPT OUTSIDE THE ECR OF ANY DEMO USED TO DESTROY THE WEAPONS CACHE.* REPORT THE NUMBER OF DETAINEES AND THEIR LOCATION TO HIGHER AS SOON AS POSSIBLE.

ROE IS SENSITIVE INFORMATION. DESTROY THIS CARD AFTER MISSION.

NONCOMBATANT EVACUATION SUPPLEMENTAL ROE [26 MEU]

NOTHING IN THESE RULES LIMITS YOUR RIGHT AND DUTY OF SELF-DEFENSE. THE 26 MEU STANDING ROE ALWAYS APPLY.

In addition to the standing ROE (white card), the following rules apply:

1. In addition to defending other U.S. forces, YOU HAVE A **DUTY** TO USE FORCE, UP TO AND INCLUDING DEADLY FORCE, TO **PROTECT ALL EVACUEES. TREAT ALL EVACUEES WITH DIGNITY AND RESPECT.**
2. YOU ARE ALWAYS AUTHORIZED TO DETAIN ANY PERSON TO ENSURE FORCE PROTECTION, OPERATIONAL SECURITY, AND MISSION ACCOMPLISHMENT. IF TIME ALLOWS, RELEASE DETAINEES TO HOST NATION OFFICIALS. OTHERWISE, FLEX-CUFF AND LEAVE ON SITE.
3. USE OF FORCE, UP TO AND INCLUDING DEADLY FORCE, IS AUTHORIZED TO **DISARM** INDIVIDUALS POSING A THREAT.
4. PEPPER SPRAY AND CS **ARE AUTHORIZED FOR USE AGAINST CIVILIANS/CROWD CONTROL. YOU MAY NOT USE RCA AGAINST RUF FORCES.** IMMEDIATELY REPORT USE OF RCA TO HIGHER. OTHER NONLETHAL WEAPONS ARE ALWAYS AUTHORIZED.
5. USE OF FORCE, UP TO AND INCLUDING DEADLY FORCE, IS AUTHORIZED TO PROTECT MISSION ESSENTIAL PROPERTY (AIRCRAFT, VEHICLES, ARMS, AMMUNITION, ENCRYPTED COMM ASSETS). USE OF FORCE, **BUT NOT DEADLY FORCE**, IS AUTHORIZED TO PROTECT ALL OTHER PROPERTY (NVG'S, MRE'S, etc.).
6. IF YOU HAVE TO OPEN FIRE: FIRE ONLY AIMED SHOTS, FIRE NO MORE ROUNDS THAN NECESSARY, TAKE ALL REASONABLE EFFORTS TO MINIMIZE COLLATERAL DAMAGE, AND STOP FIRING AS SOON AS THE SITUATION PERMITS.
7. NO MEMBER OF THE U.S. MILITARY CAN GRANT POLITICAL ASYLUM. TEMPORARY REFUGE UNDER **EMERGENCY** CONDITIONS MAY BE OFFERED IF THERE IS **IMMINENT** DANGER TO LIFE. IF REFUGE IS GRANTED, YOU MAY NOT RELEASE WITHOUT SECNAV APPROVAL.
8. YOU CANNOT FORCE ANYBODY TO EVACUATE. IF A STATE AMCIT/TCN REFUSES EVACUATION, NOTIFY THE EMBASSY. ATTEMPT TO OBTAIN A SIGNATURE ON A "**WAIVER OF EVACUATION OPPORTUNITY**" FORM FOR ANYBODY WHO REFUSES TO EVACUATE.
9. DO NOT SEARCH THE PERSON OR LUGGAGE OF FOREIGN DIPLOMATS OR ANY PERSON DESIGNATED BY THE EMBASSY UNLESS YOU HAVE SERIOUS GROUNDS TO BELIEVE THAT THE PERSON/LUGGAGE IS A REAL RISK TO SECURITY.

ROE IS SENSITIVE INFORMATION. DESTROY THIS CARD AFTER MISSION.

APPENDIX 4-3: REAL-WORLD FORCE PROTECTION ROE **CARDS**

26th MEU Onload Rules of Force & Legal Guidance

- DOD policy prohibits USMC from executing the civil laws of the U.S. The Marine Corps cannot perform any of the following law enforcement activities when they are outside a military installation:
 - Search
 - Seizure
 - Arrest, apprehension, stop and frisk or similar activity
 - Interdiction of a vehicle
 - Traffic Control

- YOU ARE NOT A LAW ENFORCEMENT OFFICER! DO NOT ACT LIKE ONE!

- The primary security of the MEU onload is the responsibility of civilian law enforcement. In the event you come into contact with any civilian(s) that may create a security or safety concern, you MUST immediately contact civilian law enforcement to deal with the issue.

- Civilian law enforcement officers are assisting the MEU by providing convoy escorts, gate guards and port security. These activities are the SOLE responsibility of civilian law enforcement officers. If a law enforcement officer requests your assistance with searching, seizing, arresting, traffic control, etc., you are prohibited from assisting. In this event, immediately contact your senior SNCO or officer.

- When in doubt, contact civilian law enforcement!

Self Defense Rules: The rules discussed above do not limit your inherent right to self-defense.

- You always have the right to defend yourself with the minimum force necessary.

Minimum Force is Authorized:

- In self defense; and
- In defense of others

Minimum Force is:

- verbal warning
- show of force by increasing personnel
- physical restraint of individual

- USE OF DEADLY FORCE IS ONLY AUTHORIZED IF YOU OR ANOTHER MARINE IS THREATENED WITH DEATH OR SERIOUS BODILY INJURY, AND ONLY IF LESS THAN DEADLY FORCE WOULD NOT STOP THE INDIVIDUAL FROM KILLING OR SERIOUSLY INJURING YOU OR ANOTHER MARINE.
- In the event that a situation does not allow you sufficient time contact civilian law enforcement, you may stop individuals or apply an appropriate degree of force. Some examples are:
 - Person driving vehicle directly at you
 - Aiming a weapon at you
 - Any attempt to physically harm you or other Marines

* If similar events take place, ensure you and your Marines' safety first, then contact your SNCOs and officers to immediately contact civilian law enforcement.

Interior Guard Guidance: Interior guards will be established in certain staging and onload areas. The mission of the interior guard is to provide internal security for equipment. This is not a law enforcement function. The same rules of self defense discussed above are applicable to the guard force. Your first response should be to contact civilian law enforcement. In an emergency, you may defend yourself with an appropriate degree of force that is proportional to the threat.

FORCE PROTECTION RULES REGARDING USE OF FORCE IN KENYA [13 MEU]

I ALWAYS HAVE THE RIGHT AND OBLIGATION TO DEFEND MYSELF, UNIT AND OTHER US FORCES AGAINST ATTACKS THREATS OF IMMEDIATE ATTACK.

MISSION

THE UNITED STATES IS NOT AT WAR WITH KENYA.
THIS IS A HUMANITARIAN/CIVIC ASSISTANCE MISSION AND TRAINING EXERCISE.
NO FORCES HAVE BEEN DECLARED HOSTILE.

RIGHT OF SELF-DEFENSE

I WILL USE ONLY THAT AMOUNT OF FORCE TO PROPERLY DEFEND MY UNIT, OTHERS, OR MYSELF.
IF AN ATTACK OR THREAT OF ATTACK IS LIKELY TO RESULT IN DEATH OR SERIOUS BODILY HARM, I MAY USE DEADLY FORCE.

DEFENSE OF OTHERS

I MAY USE FORCE, TO INCLUDE DEADLY FORCE, TO PROTECT PERSONS WHO ARE SUBJECT TO SERIOUS BODILY HARM.
I MAY USE FORCE, TO INCLUDE DEADLY FORCE, TO THE FOLLOWING MISSION ESSENTIAL PROPERTY: US AIRCRAFT, VESSELS, COMPOUNDS AND PREMISES OCCUPIED BY US FORCES, US COMMUNICATIONS FACILITIES AND CRYPTOGRAPHIC EQUIPMENT US AND UN ARMING AND REFUELING POINTS
I MAY USE FORCE TO STOP THE COMMISSION OF A SERIOUS CRIME.
EVERY EFFORT WILL BE MADE TO RELY ON LOCAL CIVILIAN AUTHORITIES FOR LAW ENFORCEMENT ACTIVITIES.

DETENTION

I MAY TEMPORARILY DETAIN PEOPLE WHO:
POSE A THREAT TO MY SAFETY OR SAFETY OF OTHERS;
INTERFERE WITH MY MISSION;
ENTER OR ATTEMPT TO ENTER A CONTROLLED AREA; OR
COMMIT OR THREATEN TO COMMIT A SERIOUS CRIME IN MY PRESENCE.
FLEX CUFF AND TURN OVER TO LOCAL POLICE FORCES.

IF I HAVE TO OPEN FIRE, I WILL FIRE ONLY WELL-AIMED SHOTS.
FIRE NO MORE ROUNDS THAN NECESSARY, AND
STOP FIRING AS SOON AS THE THREAT IS ELIMINATED.
USE DEADLY FORCE AS A LAST RESORT.

KEY PHRASES

HALT	SHIMAMA	Sha-MA-ma
LIE DOWN	Lala chinil	LA-la CHI-ni
HANDS UP	Mikono juu	MI-ko-no JUU

RULES OF FORCE

(VIEQUES)

- THESE RULES DO NOT LIMIT A COMMANDER'S AUTHORITY AND OBLIGATION TO USE ALL NECESSARY MEANS AVAILABLE AND TAKE ALL APPROPRIATE ACTION IN SELF DEFENSE
- TRESPASSERS THAT MAY BE IN THE AREA OF OPERATIONS ARE AMERICAN CITIZENS. THEY MAY BE ENGAGED IN ILLEGAL ACTIVITIES BUT THEY RETAIN THEIR RIGHTS AS AMERICAN CITIZENS
- YOU ARE NOT A LAW ENFORCEMENT OFFICER. DO NOT TRY TO ACT LIKE ONE. IN THE EVENT OF COMPROMISE/CONTACT WITH CIVILIANS INTERFERING WITH YOUR MISSION, CONTACT HIGHER IMMEDIATELY

SELF DEFENSE GUIDANCE:

- WHEN CONFRONTED WITH A THREAT WHERE FORCE IS REQUIRED, ATTEMPT TO DEFUSE THE THREAT WITH THE LEAST AMOUNT OF FORCE POSSIBLE.
 - o IF THE SITUATION PERMITS, WITHDRAW TO A SAFER LOCATION
 - o USE VERBAL WARNINGS
 - o SHOW OF FORCE
 - o USE OF PHYSICAL FORCE
 - o DEADLY FORCE AS A LAST RESORT
- DEFENSE OF OTHERS: YOU MAY DEFEND NON U.S. FORCES WITH DEADLY FORCE IF IT REASONABLY APPEARS THEY ARE AT RISK OF DEATH/SERIOUS BODILY INJURY. OTHERWISE, USE MINIMUM FORCE NECESSARY.
- DEFENSE OF PROPERTY: PHYSICAL FORCE, INCLUDING DEADLY FORCE, IS AUTHORIZED TO DEFEND CERTAIN U.S. PROPERTY.
 - o DEADLY FORCE MAY BE AUTHORIZED TO DEFEND PROPERTY INVOLVING NATIONAL SECURITY (CLASSIFIED INFO, CRYPTOLOGICAL GEAR).
 - o DEADLY FORCE MAY BE AUTHORIZED TO DEFEND PROPERTY THAT DOES NOT INVOLVE NATIONAL SECURITY, BUT IS A SERIOUS THREAT TO OTHERS (WEAPONS/EXPLOSIVES, ETC.)

DEADLY FORCE IS NOT AUTHORIZED TO PROTECT PROPERTY THAT DOES NOT INVOLVE NATIONAL SECURITY OR IS NOT INHERENTLY DANGEROUS TO OTHERS (MREs, NON-CRYPTO RADIOS, FIELD GEAR)

JTF-160 ROE/RUF

9 Jan 02

THE PHYSICAL SECURITY OF U.S. FORCES & DETAINEES IN U.S. CARE IS PARAMOUNT. USE THE MINIMUM FORCE NECESSARY FOR MISSION ACCOMPLISHMENT & FORCE PROTECTION.

1. RIGHT OF SELF-DEFENSE. NOTHING LIMITS YOUR RIGHT TO USE ALL NECESSARY MEANS AVAILABLE & TAKE ALL APPROPRIATE ACTIONS IN DEFENSE OF YOURSELF & U.S. FORCES AGAINST A HOSTILE ACT OR HOSTILE INTENT.

- **Hostile Act.** An attack or other use of force against U.S. Forces, or force used directly to prevent or interfere with the mission and/or duties of U.S. Forces.

- **Hostile Intent.** The threat of imminent use of force against U.S. Forces, or the threat of force to prevent or interfere with the mission and/or duties of U.S. Forces.

2. DEFEND DETAINEES as you would yourself against a hostile act or hostile intent, death or serious bodily harm.

3. PRIORITIES OF FORCE. When force is necessary to protect or control detainees, follow these steps, if time and circumstances permit:

- (1) Use Verbal Persuasion.
- (2) Use Show of force.
- (3) Use Pepper Spray or CS Gas.
- (4) Use Physical Force, then Non-Lethal Weapons (NLW).
- (5) Present Deadly Force.
- (6) Use Deadly Force as authorized below.

4. DEADLY FORCE is force that can cause death or serious bodily harm. Deadly force may be used when: (1) lesser means are exhausted, unavailable, or cannot reasonably be used; (2) the risk of death or serious bodily harm to innocent persons is not significantly increased; and (3) the purpose is:

- **Self-defense,**
 - Defense of others in imminent danger of death or serious bodily harm,
 - To prevent theft or sabotage of things like weapons or ammo that present a substantial danger of death or serious bodily harm to others,
 - To prevent a violent offense against another person in imminent danger of death or serious bodily harm (i.e. murder, assault),
 - To apprehend a person who committed one of the serious offenses above, OR
 - To prevent escape of a detainee who is beyond the outside fence of the detainee camp. If a detainee attempts escape follow these steps:

- (1) Shout *HALT* three times.

- (2) Use the least amount of force necessary to stop escape.

- (3) If the detainee is escaping beyond the outside fence of the detainee camp, and there is no other effective means to prevent escape, deadly force is authorized.

If you have another justification to use deadly force (besides escape), you DO NOT have to wait until the detainee is beyond the outside fence!

5. NO warning shots.

6. Fire to make the person unable to continue the behavior that prompted you to shoot.

7. Fire with regard for the safety of innocent bystanders.

8. A holstered weapon should not be unholstered unless you expect to use it.

9. Report the use of force to your chain of command.

Ref: CJCSI 3121.01A ROE, DODD 5210.56 RUF, & USCINCSO SER ONE

APPENDIX 4-4: RULE OF LAW EXCERPT FROM CLAMO KOSOVO LESSONS LEARNED PUBLICATION CHAPTER 4

2. Rule of Law

The importance of the “rule of law” in the Task Force Falcon mission is impossible to overstate.¹ One of the missions of the Task Force was to “enforce basic law and order.”² Consequently, the emphasis placed by the Task Force on policing and detention, a mission with significant legal implications, became the largest single issue to face the deployed JAs in Kosovo during the first year. Subsequent Task Force Falcon rotations faced similar detention issues posed by the need to provide a safe and secure environment through the use of “operational detention.” As the international security presence in Kosovo and the force initially given responsibility for law and order, KFOR, and the subordinate brigades, had considerable interest in creating accountability for criminal action and in creating perceptions among all Kosovars that a new era had dawned in Kosovo where criminals would face consequences. Beyond criminal accountability, KFOR wanted to instill confidence that disputes were better handled through civil processes than self-help. These themes are most clearly seen in Task Force Falcon’s detention mission, support to the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the unique “property repatriation” program.

a. Arrest, Investigation, Detention, and Trial of Non-Members of the Force.

When Task Force Falcon entered the province of Kosovo in June 1999 as part of the larger Kosovo Force, it was confronted with a law and order mission not faced by U.S. forces since the post-World War II

¹ “Rule of law” as used in this publication parallels the definition in previous CLAMO publications. See THE CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN HAITI 1994-1995: LESSONS LEARNED FOR JUDGE ADVOCATES 1 n.2 (1995) [hereinafter HAITI]. “Rule of Law” will connote the notion of a ‘law-governed’ state or community, which in addition to institutional arrangements—such as judicial review of legislative acts or civilian control of the military—demands ‘a disposition to take law seriously, a concern with process and with following forms, as much as with substantive results.’ *Id.* (citing RUDOLPH B. SCHLESINGER, COMPARATIVE LAW: CASES, TEXT, MATERIALS 80 (Supp. 1994 to 5th ed.).

² See *supra* text accompanying notes 8 and 26 (discussing UNSCR 1244 and the Task Force Falcon mission).

occupations of Germany and Japan.³ KFOR and UNMIK, the international civil presence tasked with maintaining civil law and order, executed a law and order mission complicated by the absence of a functioning criminal justice system. KFOR's public security measures, intended to be short-term, continue, in one form or another, through the publishing of this Book.

The law and order mission was not a small task. The number of major crimes committed by the citizens of Kosovo during the first year of KFOR operations greatly exceeded that of the city of Los Angeles, California, an area with a population two times that of Kosovo.⁴

The KFOR mandate under UNSCR 1244 and the broad provisions of the MTA combined to provide the basis for the KFOR law and order mission. Contained within COMKFOR's order to all of the subordinate Multinational Brigades was the mission to "[i]nitially enforce basic law and order, transitioning this function to the to-be-formed designated agency as soon as possible."⁵ The "designated agency" became a combination of U.N. Police (UNMIK-P) and locally recruited and trained Kosovars, (Kosovo Police Service (KPS)). Despite the U.N.'s urgent call for more than 3,100 international police to assist with the UNMIK mission, the international community did not meet the U.N.'s request for almost a year. By that time, the U.N. had increased its request to 4,700.⁶

UNMIK's⁷ efforts to establish a judiciary were hampered significantly by the scarcity of professional and lay jurists. Because of the exodus of

³ U.S. forces have faced numerous peacekeeping deployments with difficult law and order missions. *See, e.g.*, Colonel F. M. Lorenz, *Law and Anarchy in Somalia*, PARAMETERS, Winter 1993-94, at 27; HAITI, *supra* note 35, at 63; BALKANS, *supra* note 13, at 109. Task Force Falcon legal section drew on all of these experiences when addressing the broad Kosovo law and order mission.

⁴ The Los Angeles Convention Bureau reports the city's population at 3.6 million. Los Angeles Convention Bureau On Line at <http://www.lacvb.com/mod115/release25.html> (last visited 1 Aug. 2001). UNMIK Police report Kosovo's population at 1.8 million. *See* UNMIK Police, "UNMIK Police Strength" at www.civpol.org/unmik/stats/2000/00ratiopopul.htm (last visited 24 Sept. 2001). In calendar year 1999, Los Angeles investigated 432 homicides and attempted homicides. *See* LAPD On Line, Crime Statistics, at http://www.lapdonline.org/general_information/crime_statistics/2000_crime_summary.htm (last visited 24 Sept. 2001). From just July to December 1999, 454 murders were reported in Kosovo. UNMIK Police Crime Statistics, at www.civpol.org/unmik/stats/1999/99whole.htm (last visited 8 Aug. 2001).

⁵ Martins Presentation, *supra* note 26, at briefing slide 5.

⁶ The build-up of international police can be traced by reviewing the archives of Kosovo News Archive, "UNMIK Latest Development 'News Archive,'" at <http://www.un.org/peace/kosovo/news/99/kosarc.htm> (last visited 5 Aug. 2001).

⁷ The responsibility to establish the judiciary fell to UNMIK's Judicial Affairs (UNMIK-JA) section. UNMIK-JA had branches in each administrative region of Kosovo. UNMIK-JA hired, paid, and supervised all judges and prosecutors in Kosovo. *See generally* Memorandum, MAJ Daniel W. Kelly, former Legal Advisor, Task Force Falcon, to CLAMO, subject: Comments on CLAMO Kosovo Lessons

Serbs from Kosovo, most of the Serbian-trained judiciary left the province. The few remaining Serb judges departed, ultimately, because of security concerns. The remaining legally trained Kosovar Albanian jurists were without judicial experience, because they had not been allowed to practice their profession since 1989.⁸ Because of the ethnic Serbian civilians' flight following KFOR's arrival, UNMIK also had a very small pool from which to select Serb lay judges, the rough equivalent of a jury member in U.S. criminal law.

Delays in the deployment of adequate police to the region slowed the establishment of permanent prison operations. Within the U.S. AOR, the lack of an existing large prison facility exacerbated the detention situation. Only small detention centers attached to local police stations were available in the Task Force Falcon area.

KFOR's guidance to subordinate brigades to enforce basic law and order, combined with UNMIK's inability to establish the criminal justice systems necessary to assume the law and order mission, required Task Force Falcon soldiers and Marines to police criminal misconduct, provide judicial review for those arrested, and establish and run prisons. The ability of Task Force Falcon to execute a stop-gap law enforcement mission, a role that soldiers and Marines are not trained to undertake, illustrates the military's ability to adapt traditional combat roles to peacekeeping missions.

1. Line units must be prepared to discharge the policing function in the event that a law enforcement vacuum exists.

Within the U.S. KFOR AOR, UNMIK-P was not prepared to accept a substantial portion of the policing mission until a year after the U.S. entered Kosovo. Even then, UNMIK-P had to rely on U.S. troops in some outlying areas and there was continuing pressure for U.S. troops to continue large-scale policing.⁹ On entry into Kosovo, Task Force Falcon Military Police

Learned ¶ 6 (5 Sept. 2001) [hereinafter Kelly Memo 2] (on file with CLAMO). The OSCE monitored judicial operations.

⁸ To address this issue, OSCE established the Kosovo Judicial Institute to "develop and facilitate the training of judges, public prosecutors and other relevant legal personnel." See OSCE, Kosovo, A Review of the Criminal Justice System, 1 September 2000 - 28 February 2001, 40 (2001), at http://www.osce.org/kosovo/documents/reports/justice/criminal_justice2.pdf [hereinafter OSCE 2001].

⁹ See Memorandum, MAJ Larrs Celtnieks, former Legal Advisor, Task Force Falcon, to CPT Alton L. Gwaltney, III, CLAMO, subject: KFOR AAR Comments, ¶ 8 (3 Aug. 2001) [hereinafter Celtnieks AAR] (noting increased pressure by KFOR, eight months after U.S. KFOR had transferred policing authority to

(MP) and Criminal Investigation Command (CID) investigators were able to respond to only the most serious crimes; therefore, soldiers and Marines assigned to combat units were called on to conduct basic criminal investigations in conjunction with detentions and arrests.¹⁰ These soldiers and Marines had little or no law enforcement or investigative training because the basic doctrine and mission essential tasks of combat units do not address law enforcement and criminal investigation.¹¹

To assist the troops with these unfamiliar investigation missions, the first Task Force Falcon legal section created situational vignettes for basic law enforcement training. The training vignettes covered the topics of arrest, search, use of force, probable cause, and basic investigative procedures. Soldiers were instructed to take statements and document evidence seized at crime scenes for further prosecution efforts. The 1AD legal section prepared detailed fact sheets describing the procedures necessary to properly account for seized items.¹² Even with these efforts, basic law enforcement was a difficult task for KFOR soldiers.¹³

UNMIK-P, for soldiers to perfect crime scenes, canvass witnesses, and testify at trial) (on file with CLAMO).

¹⁰ Policy Letter 4, Commanding General, Task Force Falcon, subject: Policy Letter #TFF-04 Detention Processing, ¶ 5(b) (3 Aug. 1999) [hereinafter Detention Policy] instructed soldiers responding to crimes to establish control of the scene, notify the MPs, take statements from the victims and witnesses (sworn statements when possible), prepare a sketch of the scene, render personal statements, account for all physical evidence on a DA Form 4137, and bring the suspect(s) and all documents to the nearest MP sub-station. A copy of Detention Policy, *supra*, is included in Appendix IV-8. See also Executive Summary, COL John W. Morgan, III, Investigation Pursuant to AR 15-6 into the Unit Climate and State of Discipline of 3-504 Parachute Infantry Regiment, 8 (2000) [hereinafter EXSUM] (on file with CLAMO) (“...in the Kosovo operation it is difficult to draw a distinction between Military Police (MP) duties and the infantry soldiers’ on the ground. . .”). The EXSUM is included in Appendix IV-9.

¹¹ “Mission essential tasks are collective tasks in which an organization must be proficient to accomplish some portion of its mission in a theater. . . . The Mission Essential Task List (METL) concept was conceived in recognition that units and organizations cannot achieve and sustain proficiency on every possible training task.” FM 27-100, *supra* note 29, ¶ 4.5.2. METL and METL development is fully discussed in U.S. DEP’T OF ARMY, FIELD MANUAL 25-101, BATTLE FOCUSED TRAINING (30 Sept. 1990) [hereinafter FM 25-101]. A typical infantry METL might include tasks such as perform tactical road march, occupy assembly area, defend, move tactically, attack/counterattack by fire, and assault. *Id.* at 2-5.

¹² A copy of the 1AD guidance for seizing property during cordons and sweeps, at checkpoints, or during other operations is included in Appendix IV-10. JAs in 1AD prepared this document after the Task Force had transferred most law enforcement roles, and the document was designed mainly to address property accountability.

¹³ As an example, U.S. soldiers conducted large-scale raids on command posts, staging areas, and arms caches on 15 March 2000. During the raids the soldiers seized twenty-two crates of ammunition, twenty-eight hand grenades, 2 mortars, various other arms, and stockpiles of food and medical supplies. The troops arrested nine Kosovar Albanians during the raids. See Roberto Suro, *GIs Raid Militias in Kosovo*, WASH. POST, Mar. 16, 2000, at A1. At the completion of the operation, the Task Force Battle Captain sent out photographs of the seized items and asked how to dispose of the seized items properly. The Task Force Legal Advisor immediately responded that items seized during the raid must be treated as evidence in the criminal cases against the detained civilians. As evidence, the seized items could not be destroyed without

Mission rehearsal exercises for units deploying to Kosovo stressed the law enforcement role and provided training on basic law enforcement.¹⁴ Soldiers were able to adopt existing forms and procedures from wartime roles to the peacekeeping mission.¹⁵ After the first year, the law enforcement role of MNB(E) was scaled back. Instructions to the Task Force were simply to secure crime scenes and contact UNMIK-P.¹⁶

2. Soldiers must have an arrest standard they can understand.

While KFOR recognized that the powers of arrest and detention were generally to conform to the FRY standards,¹⁷ the leadership also understood

the permission of the prosecutor and judge. See E-mail from MAJ Tracy Barnes, Legal Advisor, Task Force Falcon, to CPT Garth Case, Battle Captain, Task Force Falcon (16 Mar. 2000) (on file with CLAMO). While not unique, as presented in this context, the failure to recognize the need to perform basic law enforcement-like tasks with the seized items is noteworthy. At the time of this operation, IID had been responsible for the Kosovo mission for nine months. The soldiers involved in the operations had been in Kosovo for over three months and had performed numerous detentions. Task Force policy letters discussed the need to document evidence, and the mission rehearsal exercises stressed the need to understand basic law enforcement concepts. Despite these efforts, the immediate reaction by the task force was to destroy the weapons and ammunition and to give away the food and medical supplies. This reinforces the lesson that JAs need to be involved in planning. This operation, unlike most, was planned outside the normal operations planning cell. The perceived need for secrecy concerning this operation led to a select group of members of the planning cell conducting all planning. This group did not include a JA.

¹⁴ See, e.g., Legal Observer/Controller Report, 1-325 Airborne Infantry Regiment, Mission Rehearsal Exercise, 30 November – 7 December 2000, 2 (7 Dec. 2001) (on file with CLAMO) (noting “[g]enerally the legal tasks and subtasks were performed extremely well [during a cordon and search operation]. During one operation, an MP team followed the search teams to document all seized items. In addition to documenting serial numbers and descriptions of seized items, the team videotaped the search and was able to trace seized items back to detained persons.”) This training is in stark contrast to the finding of COL Morgan in his investigation into the activities of 3-504 PIR where he noted, “[T]he 3-504 soldiers were not adequately trained for the police mission that they were asked to execute.” EXSUM, *supra* note 44, at 8.

¹⁵ For example, the soldiers used U.S. Dep’t of Army, DA Form 2665-R, Capture Card for Prisoner of War (LRA) (May 1982) to account for detainees. A copy of DA Form 2665-R is included in Appendix IV-11. The soldiers used U.S. Dep’t of Army, DA Form 4137, Evidence/Property Custody Document (July 1976) to account for evidence seized during operations.

¹⁶ See Kelly Memo 2, *supra* note 41, ¶ 7(a).

¹⁷ Because the deployment of forces into Kosovo, a province of the sovereign Federal Republic of Yugoslavia, was technically permissive, the body of international law applicable in wartime did not apply. Under prevailing peacetime international law, the law of a sovereign nation applies within its sovereign territory. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS OF THE UNITED STATES § 206 cmt. b (1986). Although the KFOR mandate was not that of an occupier, had it been, the law of occupation also required the penal laws and tribunals of Kosovo to remain in force. See Geneva Convention Relative to the Protection of Civilians in Time of War, Aug. 12, 1949, art. 64, 6 U.S.T. 3518, 75 U.N.T.S. 290 U.S. The U.N. Secretary General reinforced this by stating, “UNMIK will respect the laws of the Federal Republic of Yugoslavia and of the Republic of Serbia insofar as they do not conflict with the internationally recognized human rights standards or with regulations issued by the Special Representative in the fulfillment of the mandate given to the United Nations by the Security Council.” UNMIK Report, *supra* note 10, ¶ 36. The

that KFOR was incapable of replicating the FRY legal infrastructure and criminal procedures for law and order. Copies of the FRY and Serbian legal codes were not available in English, and even if they had been, the task to replicate the civil-law based system of FRY would have been impossible to complete.¹⁸ As a result, KFOR determined that internationally respected standards of law enforcement and detention, as found in the TCNs' own relevant procedures, would provide adequate due process protections to the citizens of Kosovo.¹⁹

Based on the KFOR guidance, Task Force Falcon instructed U.S. soldiers and Marines to detain persons who committed criminal misconduct under a familiar standard, the Uniform Code of Military Justice (UCMJ). This was the standard to be applied during each of the 1,300 patrols that U.S. soldiers conducted per week in Kosovo. If soldiers or Marines witnessed an act that would be a crime under the UCMJ, they arrested the wrongdoer. COMKFOR and the SRSG augmented crimes under the military code with mission-specific unauthorized acts, such as weapons, uniform, and curfew violations.²⁰ Soldiers were also authorized to detain local citizens who were considered a threat to the military or to the overall mission.²¹

SRSG reinforced this standard with the promulgation of the first regulation. U.N. MISSION IN KOSOVO, REG. 1999/1, ON THE AUTHORITY OF THE INTERIM ADMINISTRATION IN KOSOVO § 3 (23 July 1999) [hereinafter UNMIK Reg. 99/1] (establishing the applicable law as that in force in the territory of Kosovo on 24 March 1999). This regulation was subsequently modified by U.N. MISSION IN KOSOVO, REG. 1999/24, ON THE APPLICABLE LAW IN KOSOVO § 1 (12 Dec. 1999) [hereinafter UNMIK Reg. 99/24] (mandating the applicable law in Kosovo as that which was in force on 22 March 1989).

¹⁸ Copies of the FRY Code were not available, even in its native language, during the entire MEU deployment, from June to July 1999, to Kosovo. *See* MEU AAR, *supra* note 6.

¹⁹ The KFOR law and order mission is fully documented in Annex Z to KFOR OPLAN 60507, Guidance on Law and Order in Kosovo, 10 June 1999 (classified NATO document) (on file with CLAMO).

²⁰ *See* Detention Policy, *supra* note 44, ¶¶ 2(c)(3) (weapons violations), 2(c)(4) (UCK uniform violation), 2(c)(7) (establishing an unauthorized checkpoint), 2(d)(1) (curfew violations); *see also* Undertaking, *supra* note 15, ¶¶ 22-23 (detailing the demilitarization of the UCK); MTA, *supra* note 3, at art. II (explaining the cessation of hostilities and phased withdrawal of FRY forces), app. B, ¶ 5 (authorizing KFOR to compel removal, withdrawal, or relocation of weapons).

²¹ Detention Policy, *supra* note 44, ¶ 2(a)(1); *see also* U.N. MISSION IN KOSOVO, REG. 1999/2, ON THE PREVENTION OF ACCESS BY INDIVIDUALS AND THEIR REMOVAL TO SECURE PUBLIC PEACE AND ORDER § 2 (12 Aug. 1999) [hereinafter UNMIK Reg. 99/2] (explaining right to detain civilians posing a threat to public peace and order); MTA, *supra* note 3, at app. B, ¶ 5 (allowing use of force to prevent acts that are considered a threat to KFOR or the KFOR mission); U.N. MISSION IN KOSOVO, REG. 2000/62, ON THE EXCLUSION OF PERSONS FOR A LIMITED DURATION TO SECURE PUBLIC PEACE, SAFETY AND ORDER § 2.1 (30 Nov. 2000) [hereinafter UNMIK REG. 00/62] (allowing authorities to issue an exclusion order requiring a person to leave and/or stay away from any area under their authority if there are grounds to suspect that such a person is or has been involved in the commission, preparation, or instigation of acts of violence which may affect public peace and order within or beyond the territory of Kosovo).

3. Prepare to operate a detention facility.

Prior to the deployment, Task Force Falcon pressed KFOR to take advantage of a centrally located and established Kosovo prison for use as a multinational KFOR detention facility. In a detailed memorandum drafted by JAs, the Commander, Task Force Falcon, recommended that COMKFOR “consider planning for and resourcing a multinational detention facility in the vicinity of Pristina for the first 60 to 90 days that KFOR [was] on the ground in Kosovo.”²² Despite the Task Force Falcon recommendation, KFOR did not address detention issues until after the signing of the MTA.

After the signing of the MTA, planners in Task Force Falcon continued to believe that a centrally run detention operation was in the best interest of the KFOR mission. The planners believed that a coalition detention facility would provide economies of scale that would free security assets for other missions. Additionally, the planners believed that one centrally run facility would be easier for UNMIK to take over once a sufficient number of officers were available.²³ In response, Task Force Falcon drafted a complete plan for a centralized detention facility for KFOR.²⁴ As with policing and pretrial detention review, however, KFOR made detention facilities a decentralized issue, to be handled by the TCNs.²⁵

In addition to the detention facility lessons discussed below, operating a detention facility will lead to a host of issues. Some of these issues are listed for consideration.

²² Letter from BG Bantz Craddock, Commander, Task Force Falcon, to LTG Michael Jackson, United Kingdom, Commander, Allied Rapid Reaction Corps (25 Mar. 1999), summarized in e-mail from LTC Mark Martins, former Legal Advisor, Task Force Falcon, to CPT Alton L. Gwaltney, III, CLAMO (11 Jan. 2001) [hereinafter Craddock Letter] (on file with CLAMO).

²³ See E-mail from Legal Advisor, Task Force Falcon, to Staff Judge Advocate, U.S. European Command, ¶ 3 (12 July 1999) (“Compared notes today with Lt Col Redden, 5th UK (Abn) Bde Legal Advisor and his PM on detention and related issues. He is keen, as are we, to turn the jailing and detention process over to UNMIK. We have to try to use one of the hardened jails in the Pristina area and set up the provisional judges nearby in an office.”) (on file with CLAMO).

²⁴ Task Force Falcon, Draft Detention Facility Plan (13 June 1999) (on file with CLAMO).

²⁵ After two years, KFOR opened a detention facility to address TCNs’ concerns about “operational detainees.” See UNMIK-KFOR-UNMIK Police Press-UNHCR Briefing, 21 May 2001, Temporary Detention Center at <http://www.reliefweb.int/w/rwb.nsf/3a81e21068ec1871c1256633003c1c6f/ab71c0105274f97b85256a560048290f?OpenDocument> (last visited 24 Sept. 2001). Operational detainees are discussed *infra* text accompanying notes 76-85.

- Care for detainees with medical conditions (including pregnancy)
- Care for detainees with mental conditions
- Handling juvenile detention
- Force-feeding hunger-striking detainees
- Detainee escape, recapture, and misconduct
- Press interviews with detainees
- Access to detainees by family, local medical personnel, and local court personnel
- Religious accommodation
- Detainee labor
- Use of force within the detention facility²⁶

4. Review conditions of the detention facility .

JAs regularly reviewed the detention facility to ensure detainees were being treated properly. The condition of the detainees was also reviewed by the International Committee of the Red Cross (ICRC), the OSCE, the United Nation’s Children’s Fund, Amnesty International, and other human rights organizations. JAs typically accompanied the representatives from these organizations during the visits. Organizations generally gave the Task Force high marks for the care provided detainees.²⁷

5. Judge Advocates should be familiar with detention facility doctrine.

The first detainee, taken four days into the Task Force Falcon mission, was housed initially in a small military tent surrounded by concertina wire. A HMMWV’s headlights provided security lighting. The Task Force, required to care for the detainee at a level no less than that accorded a Prisoner of War, pieced together personal use articles, such as a razor,

²⁶ See generally U.S. DEP’T OF ARMY, FIELD MANUAL 3-19.40, MILITARY POLICE INTERNMENT/RESETTLEMENT OPERATIONS, app. B (1 Aug. 2001) (containing rules for the use of force for Military Police in operating internment camps, including camps for EPWs).

²⁷ This does not mean that the detention operation did not have occasional critics. OSCE criticized the use of the “COMKFOR hold” to detain suspected criminals ordered released by the judiciary. See OSCE, Kosovo, A Review of the Criminal Justice System, 1 February 2000 – 31 July 2000, 25 (2000) [hereinafter OSCE 2000] available at http://www.osce.org/kosovo/documents/reports/justice/criminal_justice.pdf (last visited 16 Sept. 2001). OSCE also criticized the detention of juveniles by US KFOR on suspicions that they were members of an EAAG. See OSCE 2001, *supra* note 42, at 29. The International Committee of the Red Cross and Amnesty International criticized aspects of the facility (such as detainee exercise and bathing opportunities) at various times. Task Force Falcon considered and addressed the complaints. Telephone Interview with COL John Phelps, Legal Advisor, Allied Forces South (2 Oct. 2001).

shaving cream, and a toothbrush, for the detainee.²⁸ The detainee was fed MREs and was dressed in a PT uniform, spray-painted with a mark on the back of his shirt to distinguish him from soldiers in PT uniforms.

From this Spartan beginning, Task Force engineers constructed a detention facility based on existing doctrine.²⁹ Operating on the belief that UNMIK would quickly take over detention operations, the initial detention facility was small, holding approximately fifty detainees. Upon the realization of the Task Force that UNMIK would not be able to assume the detention mission, a larger detention facility was constructed. When completed, this facility consisted of six, tier-three, GP medium tents, three GP small tents, a shower facility, visitation area, and court tent. A fence, concertina wire, and lights surrounded the entire compound. A diagram of the detention facility is included in Appendix IV-12.

An MP platoon operated the detention facility based on modified existing MP doctrine.³⁰ As detainees were brought into the facility, the MPs entered information into a detainee database, to include the circumstances surrounding detention, basic background information, a photograph, and a listing of personal items confiscated from the detainee. MP and CID investigators, as well as counterintelligence personnel, were able to interview the detainees upon their arrival at the detention facility.

The ethnic background and sex of the detainees dictated tent assignments. Detainees slept on cots with sleeping bags. They were dressed in orange uniforms and athletic shoes. In the winter, the detainees received winter coats and boots. All detainee support came from the Army's logistics system. Detainees could smoke, write letters, and exercise, as well as receive visits from family members and attorneys. Doctors examined detainees upon entry, and the detention facility was capable of dispensing medication and providing any necessary medical attention.

²⁸ See generally Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; North Atlantic Treaty Organization Standardization Agreement 2044, Standard Procedures for Dealing with Prisoners of War (6 Mar. 1957).

²⁹ See U.S. DEP'T OF ARMY, FIELD MANUAL 19-40, ENEMY PRISONERS OF WAR, CIVILIAN INTERNEES, AND DETAINED PERSONS (27 Feb. 1976) [hereinafter FM 19-40]; see also U.S. DEP'T OF ARMY, FIELD MANUAL 19-4, MILITARY POLICE BATTLEFIELD CIRCULATION CONTROL, AREA SECURITY AND ENEMY PRISONERS OF WAR OPERATIONS (7 May 1993).

³⁰ See Lieutenant Colonel Richard W. Swengros, *Military Police Functions in Kosovo*, MIL. POLICE BULL., May 2000, at 8.

The detention facility at Camp Bondsteel processed approximately 1,800 detainees during the first year of operation. During the second year, the detention facility processed an additional 810. The largest population in the detention facility, at any one time during the first two years, was approximately 120 detainees.

6. Protect detainees' rights through a review process .

When patrols arrested local citizens for committing criminal offenses, the patrols delivered initial criminal packets and evidence, along with the detainees, to the U.S. detention facility at Camp Bondsteel. Guidance from COMKFOR concerning "continued pre-trial detention" enabled Task Force Falcon to apply standards similar to those found in the UCMJ.³¹ At Camp Bondsteel, a Task Force Falcon lawyer, called a "magistrate," reviewed each detainee's case within forty-eight hours. The magistrate would then recommend whether continued pretrial detention was warranted and ensure that the case file contained sufficient information to pass the cases to the civil prosecution system, once the system was established.³²

In considering whether further pretrial detention was warranted, the magistrate would review the case file to determine whether:

³¹ See MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 305(h)(2)(B) (2000) [hereinafter MCM]. These standards were similar to those used in detention hearings in Haiti. See HAITI, *supra* note 35, at 68-69. The standards also had a basis in the Criminal Code of the Federal Republic of Yugoslavia. See XV Criminal Code of the Federal Republic of Yugoslavia § 191(2) [hereinafter KZSRJ] (allows for continued pretrial detention if the following circumstances surround the grounds for custody:

1. If [the detainee] conceals himself or if his identity cannot be established or if other circumstances obtain which suggest the strong possibility of flight;
2. If there is a warranted fear that [the detainee] will destroy the clues to the crime or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, fellow defendants or accessories after the fact;
3. If particular circumstances justify a fear that the crime will be repeated or an attempted crime will be completed or a threatened crime will be committed;
4. If the crime is one for which a prison sentence of 10 years or more severe penalty may be pronounced under the law and if, because of the manner of execution, consequences or other circumstances of the crime, there has been or might be such disturbance of the citizenry that the ordering of custody is [urgently] necessary on behalf of the unhindered conduct of criminal proceedings or human safety).

A copy of the detention operation SOP published by the KFOR 1B rotation in May 2000 is included in Appendix IV-13.

³² See MCM, *supra* note 65, R.C.M. 305(h)(2)(A) (1998); *cf.* Riverside County v. McGlaughlin, 500 U.S. 44 (1991) (imposing a review within forty-eight hours of pretrial confinement); XV KZSRJ 192, 197, *supra* note 65 (requiring a review within twenty-four hours of pretrial confinement).

1. An offense had been committed that would be triable by court-martial if it had been committed by a person subject to the UCMJ or if a mission-specific crime had been committed;
2. The person detained committed the offense; and,
3. Continued detention was required by the circumstances.

To determine whether detention was “required by the circumstances,” the magistrate would first have to determine whether:

1. The individual was armed and if release would threaten civic order;
2. The individual posed a threat to KFOR, other protected persons, key facilities, or property designated mission-essential by COMKFOR;
3. The individual had committed serious criminal acts (defined as homicide, aggravated assault, rape, arson, robbery, burglary, or larceny); or
4. The individual had valuable information pertaining to individuals not yet detained to whom one or more of the above three stated grounds applied.³³

The magistrate would also consider whether the detainee posed a risk to flee Kosovo to escape prosecution and whether the detainee would attempt to intimidate witnesses or obstruct justice.

Before and during the hearing, another JA collected information and articulated the detainee’s argument against further detention. This JA, the “Command Representative for the Detainee,” would assist the detainee in rebutting the command’s grounds for continued detention. The JA did not

³³ The entire process was stated in an SOP. See Task Force Falcon Legal Advisor, MNB-E Detention Process SOP, Office of the Staff Judge Advocate 3 (n.d.). The fourth provision for determining whether pretrial detention was required under the circumstances is a great expansion of MCM, *supra* note 65, R.C.M. 305. The fourth provision does have some basis in U.S. federal law. See 18 U.S.C. § 3144 (2000) (allowing for arrest of material witness); *United States v. Guadian-Salazar*, 824 F.2d 344 (5th Cir. 1987) (discussing the relationship between 18 U.S.C. § 3144, which authorizes the arrest of material witnesses and 18 U.S.C. § 3142, which provides conditions for release of persons detained); *In re Class Application ex rel. Material Witnesses*, 612 F. Supp. 940 (W.D. Tex. 1985) (discussing the competing constitutional interests of the material witnesses and the government).

form an attorney-client relationship, but served to ensure that the detainees understood the process and articulated the best case for release. The detainee was also given the opportunity to address the magistrate through an interpreter and to explain why continued detention was not warranted.

If the magistrate believed that continued detention was warranted, he would recommend that the Task Force Falcon Commander order continued detention.³⁴ If the magistrate believed the standards for continued detention had not been met, he recommended that the Task Force Commander order release. The Task Force Falcon Commander personally reviewed all continued detention hearing recommendations during the first month of the mission.

After one month, UNMIK established an Emergency Judicial System (EJS) to review pre-trial confinement. As the EJS became established, the Task Force pretrial confinement procedures experienced subtle changes. While continuing to protect the rights of detainees, the changes recognized that local systems were coming into place that served to protect detainees' rights. The magistrate tasked with reviewing continued detention began conducting the initial hearings entirely on paper, because detainees would receive a hearing in front of a Kosovar Investigating Magistrate if the military magistrate considered further detention warranted.³⁵ The Commander's Representative for the Detainee was no longer necessary, as detainees had access to civilian defense attorneys. The Task Force Commander delegated his continued detention authority to the Chief of Staff and the Provost Marshal, depending upon the severity of the charges; however, the Commander maintained review authority over detainees suspected of war crimes and acts aimed at KFOR soldiers.³⁶ When it

³⁴ A copy of a magistrates' review memo is included in Appendix IV-14. The generic nature of the magistrate review memo was a product of necessity; however, as pointed out by JAs reviewing files six to twelve months after the magistrate review, the generic nature did not provide clear guidance into the rationale for continued detention or the basic circumstances surrounding arrests. See Berger Memo, *supra* note 34, ¶ g. For continuity, a more detailed review that is factually specific may provide a better product.

³⁵ A copy of a magistrates' review conducted after the establishment of the Emergency Judicial System is included in Appendix IV-15.

³⁶ Initially, the basic criminal charges were broken into four categories. Category I crimes were hostile acts or threats toward KFOR and war crimes. Category II crimes were murder, rape, kidnapping, arson, aggravated assault, any crime involving a suspect that had been previously detained by KFOR, and any crime in which a weapon was used in the commission of the crime. Category III crimes were burglary/housebreaking, larceny/looting, weapons violations, UCK uniform violations, driving under the influence of alcohol or drugs, prostitution, establishing an unauthorized checkpoint, destruction of property, black-marketing, simple assault, harassment, use or possession of illegal drugs, possession of stolen property, and auto theft/carjacking. Category IV crimes were curfew violations and drunk and disorderly conduct. See Detention Policy, *supra* note 44, ¶ 2. The appropriate level for determining the release of

became apparent that criminal trials were not going to be conducted until some time in the significant future, detainees suspected of minor crimes could be ordered released prior to the magistrate conducting a review of the detainee's case.³⁷

The EJS had to deliver all release orders to the U.S. magistrate for action. The magistrate reviewed all cases in which the EJS ordered release and made recommendations to the appropriate Task Force Falcon release authority. The U.S. military release authorities for EJS-ordered releases were the same authorities designated to review magistrate recommendations for release after initial detention hearings. In effect, once a detainee entered the Camp Bondsteel detention facility, Task Force approval was required for release.³⁸ In order to track the status of a detainee, both the detention facility and the magistrate maintained reports. The magistrate's report included the detainee's name and ethnicity, alleged offenses, the date detained, the date of the Kosovar Investigating Magistrate review, whether the detainee was indicted, whether the detainee was ordered to continued detention, and the date of the next hearing. A copy of a magistrate's report is included in Appendix IV-14.

detainees remains an area of debate. First identified in HAITI, *supra* note 35, at 71, the problems of access to the task force commander during operations weighs in favor of delegating all release authority to a lower level. The sensitivity of the decision to release or hold a detainee, understandably, has the task force commander's attention. As poignantly stated in HAITI, "Discomfort of commanders to delegate release authority may persist until the development of a comprehensive set of guidelines for establishing and operating a detention facility during operations other than war." *Id.*

³⁷ On-scene commanders had the authority to order the release of Category IV detainees to prevent transporting the detainee to Camp Bondsteel. Detention Policy, *supra* note 44, ¶ 3. This standard was changed to the Company Commander after approximately one year of operations. See Policy Letter 4, Commanding General, Task Force Falcon, subject: Detention Policy (24 July 2000) [hereinafter Detention Policy 2] (This detention policy substantially changed the detention procedures, recognizing that UNMIK-P had policing authority and removing JA review, relying instead solely on the Kosovo courts, and defining misconduct as either "unlawful" or "unauthorized." Unlawful conduct was criminal behavior defined by the laws of the Federal Republic of Yugoslavia, the Republic of Serbia, the province of Kosovo, or UNMIK regulation. These acts could be prosecuted in criminal court. Unauthorized conduct was defined by the MTA (threats to a safe and secure environment), the Undertaking (prohibited weapons), and KFOR directives (counter-barricades). Commanders and soldiers were authorized to enforce these rules, but Kosovar courts would not prosecute the misconduct unless there was an underlying criminal act. A copy of the Detention Policy 2, *supra*, is included in Appendix IV-16.). The Provost Marshal initially had the authority to release Category III or IV detainees prior to the case being sent to the military magistrate. See Detention Policy, *supra* note 44, ¶ 3. After the first year, the Provost Marshal no longer had the authority to order release. See Detention Policy 2, *supra*.

³⁸ A diagram of the initial Task Force Falcon release procedure is included in Appendix IV-17. CPT Alton L. Gwaltney, III, Multinational Brigade East Pre-trial Detention Process, PowerPoint presentation, briefing slide 2 (Jan. 2000). This procedure was applicable for the first year of Task Force operations. A diagram of the subsequent detention procedure is included in Appendix IV-18. Task Force Falcon Legal Section, Detention—General, PowerPoint presentation, briefing slide 1 (July 2000) (on file with CLAMO).

In February 2000, UNMIK appointed a permanent judiciary for Kosovo. For the first months of permanent judicial operations, the review process by the Task Force did not change. As the Rule of Law systems matured over the next seven months, the Task Force began to transfer some of the responsibilities to the appropriate UNMIK organizations. Soldiers handed detainees over to UNMIK-P, which was running detention facilities in Gnjilane, Prizren, and Pristina. After soldiers turned detainees over to UNMIK-P, the Task Force did not conduct an independent review of the detainee's case and criminal detainees were processed entirely within the Kosovo judicial system.

After the first year, JAs remained active in the civilian detention system by reviewing the cases of detainees remaining in the Camp Bondsteel detention facility and by attending high-profile trials in the local courts; however, JAs no longer conducted any pretrial detention reviews. By late October 2000, it looked as though the Task Force Falcon detention mission was nearing completion.

As the criminal detention mission waned,³⁹ a new detention mission based on operational necessity began to receive significant Task Force attention. As discussed further below, "operational detainees" were a subset of individuals who threatened the force and the safe and secure environment in Kosovo that KFOR was responsible for maintaining.

7. Units must be prepared to detain individuals believed to be a threat to the force.

In early planning for the Kosovo mission, members of the Task Force legal team recognized the need to be able to hold individuals who were threats to KFOR outside of whatever existing Kosovo legal system that was in place.⁴⁰ As the EJS took root, this issue presented itself when the Task Force Commander did not believe a detainee should be released prior to trial even though the EJS had so ordered.

³⁹ Planning began in late Fall 2000 to have all criminal detainees out of the Camp Bondsteel detention facility and into the Kosovo detention facilities by June 2001. *See* Letter from Commanding General, Multinational Brigade (East), to Special Representative of the UN Secretary General (1 Nov. 2000) (on file with CLAMO). By March 2001, all criminal detainees were transferred out of the Camp Bondsteel Detention facility. After March 2001, the Task Force held criminal detainees only at the request of COMKFOR. *See* Celtnieks AAR, *supra* note 43, ¶ 1.

⁴⁰ *See* Craddock Letter, *supra* note 56.

To address this situation, JAs at the Task Force drafted petitions from the Task Force Falcon Commander to the KFOR Commander requesting that the KFOR Commander order the detainees held until trial. This procedure, developed by Task Force Falcon JAs, became known as the “COMKFOR hold.” KFOR determined that UNSCR 1244 and the MTA contained the authority to continue to hold detainees ordered released by a Kosovar magistrate.⁴¹

Within the request to COMKFOR was the factual background of the case, the procedural background, and a justification for why the detainee should not be released. The reasons for continued detention varied from the fact that a detainee had attacked a soldier to claims that the detainee was ordered released based on his ethnic background.

In late summer 2000, Task Force Falcon stopped conducting independent reviews of detainee cases and began relying solely on the Kosovo judicial system for release action. At the same time, action by insurgent Albanian groups began to increase along the southern border of MNB(E).

The need to hold persons declared a threat to the force or the mission presented itself again upon the emergence of various Ethnic Armed Albanian Groups (EAAG), the generic name given to all insurgency groups operating in the GSZ and Kosovo. The security situation in Kosovo grew tense in late 2000 with the activities in the Presevo valley of one EAAG known by the initials of its Albanian name UCPMB, *Ushtria clirimtare e Presheves, Medvegjes dhe Bujanovcit*, which translates into English as the

⁴¹ See Memorandum, KFOR Legal Advisor to COMKFOR, subject: COMKFOR’s Authority to Overrule Judicial Release Order (30 July 1999) [hereinafter KFOR LEGAD MEMO] (on file with CLAMO). The KFOR legal advisor explicitly recognized that the law of the Federal Republic of Yugoslavia, as adopted by the SRS in UNMIK Reg. 99/1, was the applicable law in Kosovo. However, UNMIK Reg. 99/1 “did not limit KFOR’s authority granted under the MTA or the UNSCR.” This authority included the ability to take “all necessary action to establish and maintain a secure environment,” MTA, *supra* note 3, at art. 1, ¶ 2; “take such actions as are required including the use of necessary force to ensure protection of [KFOR] *Id.* ¶ 4; and “do all that [the commander] judges necessary and proper, including the use of military force, to protect KFOR” *Id.* at app. B. The first case sent to COMKFOR for review involved two Serbian males who initiated a firefight with U.S. Marines. The Serbs continued the attack until they were seriously wounded (with another accomplice being killed). The investigating judge ordered the detainees released pending trial. See KFOR LEGAD MEMO, *supra*.

Liberation Army of Presevo, Medvedjav, and Bujanovac.⁴² The UCPMB was involved in violence, military training, and arms smuggling in the GSZ. Some of the violence was directed at MNB(E) soldiers. To prevent Kosovo being used as a staging ground or sanctuary for EAAG, MNB(E) conducted operations to interdict and obstruct EAAG activities in and near the GSZ. The Task Force operations resulted in the extrajudicial detention of persons suspected of being EAAG members involved in violence, training, or smuggling.⁴³

Again faced with the need to provide procedural protections, this time for detainees held under suspicion of EAAG involvement, the Task Force legal section created a system to review continued “operational detention.”⁴⁴ The problem was that evidence rarely existed of EAAG members committing crimes in Kosovo. The violence and crimes were occurring in Serbia. Mindful of international detention norms, KFOR and MNB(E) used UNSCR 1244 as authority for operational detention.⁴⁵ They also drew on UNMIK Regulation 2000/62⁴⁶ and certain Kosovo judicial standards as the foundation for the system. SACEUR granted COMKFOR the authority to order detention outside the criminal justice system.⁴⁷ COMKFOR retained long-term detention authority.

The procedures established for continued operational detention required review by an informal board—including a JA, the Provost Marshal, and an intelligence officer. The board reviewed the facts and circumstances of every operational detention and made specific findings, based on a preponderance of the evidence, on three specific questions:

1. What is the degree of an individual’s association with other known EAAG members?

⁴² The UCPMB wanted to join the southwesternmost tip of Serbia to Kosovo. Ethnic Albanians make up the majority of the population in three municipalities known as the Presevo valley, part of Serbia proper. See Jane’s Intelligence Review, KFOR Contains Conflict in Presevo, Zoran Kusovac, 8 Jan. 2001 at http://www.janes.com/regional_news/europe/news/jir/jir010108_1_n.shtml (last visited on 5 Aug. 2001).

⁴³ UNMIK Report, *supra* note 10, at 3-4.

⁴⁴ These detainees may or may not have committed a crime in Kosovo. See Celtnieks AAR, *supra* note 43, ¶ 3.

⁴⁵ See Task Force Falcon Legal Section, MNB-E Detention Board Process SOP, 2 (n.d.) [hereinafter Detention Board] (on file with CLAMO).

⁴⁶ UNMIK REG. 00/62, *supra* note 55 (extending UNMIK’s authority to address acts committed beyond the territory of Kosovo that threatened the safe and secure environment of citizens in Kosovo).

⁴⁷ See FRAGO 997, 241615 MAR 01, KFOR, subject: Operation Consistent Effort (classified NATO document) (on file with CLAMO).

2. Does the individual pose a real and significant threat to KFOR's mission?

3. What are the relevant tactical and operational threats the individual poses?

Detainees were informed verbally that they were suspected of being an EAAG member involved in the violence. Although there was no formal hearing and the detainee had no right to counsel, detainees could present matters as to why continued detention was not warranted. The board used all available evidence in making its findings, including intelligence information and statements made or presented by the detainee.⁴⁸

The board was also tasked with making recommendations about the duration of continued detention.⁴⁹ Following an initial review within seventy-two hours of detention, the Task Force reviewed all cases every thirty days to determine whether detainees should continue to be held.⁵⁰ The cases of suspected EAAG members, who also were suspected of committing a criminal act in Kosovo, were transferred into the Kosovo criminal system for action. Recommendations of the board for suspected EAAG members who had not committed a criminal act were sent to the Task Force Commander for action. If the Commander believed continued detention was warranted, he forwarded a request for detention to COMKFOR.

If a detainee was determined not to be a threat on initial review or if a detainee was determined no longer to be a threat on subsequent review, the Task Force released him. If necessary, the Task Force Commander would issue an exclusion order under UNMIK Regulation 2000/62, ordering the detainee away from the GSZ. The Task Force transported the detainee to a place of his choosing, normally either his residence in Kosovo or the Kosovo/Serbia boundary, if he resided in Serbia. Minors were released to their parents, if the parents were available.

The welfare of detainees was monitored by various outside agencies, including the local courts, OSCE, ICRC, and UNICEF. The Task Force had

⁴⁸ The use of intelligence information poses potential problems. Some intelligence information is designated "U.S. only," and thus cannot be shared with allies within the coalition.

⁴⁹ Detention Board, *supra* note 79, at 5.

⁵⁰ Celtnieks AAR, *supra* note 43, ¶ 4.

an “open door policy” for monitoring agencies. Any international organization that wanted to tour the Bondsteel detention facility was allowed to do so. This policy helped clarify rumors of detainee mistreatment and mollify critics of the operational detention program.⁵¹

8. Independent evidence must be developed in addition to information gathered for intelligence purposes.

Intelligence operations often provided information of criminal activities by Kosovars. The nature of some of the intelligence required that the information contain a security classification. The Task Force could not turn classified intelligence information over to prosecutors or allow the information to be introduced in court. While the Task Force developed excellent intelligence related to several crimes, the inability to develop independent evidence hampered prosecution and strained the relationship between the International Prosecutor and the JAs.⁵²

9. The criminal justice system can be manipulated by citizens to further ethnic bias.

Competing ethnic groups may be able and willing to use the judicial process as a weapon for ethnic intimidation. Ethnic minorities can be subject to continued pretrial detention, exorbitant fines, or lengthy jail sentences while members of the ethnic majority can act with impunity, hiding behind court protection. Reviews of the OSCE quarterly reports of the Kosovo judicial system provide numerous examples of ethnic bias within the Kosovo courts.⁵³ JAs must be prepared to monitor decisions and sentences made by fledgling courts. JAs who perceive judicial bias should confront judges and consider options to combat perceived judicial misconduct. Task Force Falcon JAs monitoring court actions were able to forcefully argue that COMKFOR should be allowed to continue to exercise extrajudicial detention authority in countering opinions by NATO and the KFOR legal advisor that court action should be final.⁵⁴

⁵¹ *Id.* ¶ 5.

⁵² Memorandum, MAJ Daniel W. Kelly, former Legal Advisor, Task Force Falcon, to CLAMO, subject: Comments on CLAMO Kosovo Lessons Learned ¶ 6 (12 Sept. 2001) [hereinafter Kelly Memo 3] (on file with CLAMO); Celtnieks AAR, *supra* note 43, ¶ 8 (commenting that the international prosecutor wanted *carte blanche* to review intelligence).

⁵³ See OSCE, Development of the Kosovo Judicial System (10 June through 15 December 1999) (1999) at <http://www.osce.org/kosovo/documents/reports/justice/report2.htm> (last visited 16 Sept. 2001); OSCE 2000, *supra* note 61; OSCE 2001, *supra* note 42.

⁵⁴ Kelly Memo 2, *supra* note 41, ¶¶ 2, 4.

APPENDIX 4-5: 15TH MEU ROE/LOW BRIEF

The Law of War



“The Armed Forces of the United States will comply with the law of war during the conduct of all military operations and related activities in armed conflict, however such conflicts are characterized.”

CJCSI 5810.01,
12 August 1996

PURPOSES OF THE LAW OF WAR

- PREVENT UNNECESSARY SUFFERING
- SAFEGUARD FUNDAMENTAL RIGHTS
- FACILITATE RESTORATION OF PEACE
- RESIPROCITY

Why Follow the Law of War?

- Encourages reciprocal conduct by the enemy
- Decreases enemy resistance
- Promotes internal unit discipline
- Reduces waste and the cost of reconstruction
- Increases public support for the operation
- **It's the Law -- You will be held accountable if you don't**

FORBIDDEN TARGETS, TACTICS, AND TECHNIQUES

- Noncombatants
- Parachutist v. Paratrooper
- Protected symbols
- Protected property
- Weapons and Tactics
- EPW's

Noncombatants

- DIPLOMATS & EMBASSY PERSONNEL
- STAFF OF RELIEF SOCIETIES
- MEDICAL PERSONNEL & CHAPLAINS
- NONBELLIGERENT CIVILIANS
- SICK AND WOUNDED
- PWs

Parachutist v. Paratrooper

- Parachutists jumping from disabled aircraft are considered noncombatants
- Paratroopers jumping as a means to get to the fight are combatants

Protected Symbols

- Red Cross
- Red Crescent
- Red Star of David



Protected property

- Churches
- Schools
- Museums
- Hospitals
- Cultural



Weigh Collateral Damage Against the Threat

- “If we have to choose between famous buildings and our own men, the buildings go.” Gen Eisenhower, WWII, Italy

TARGETING CONSIDERATIONS SUMMARY

- VERIFY THE TARGET
- MINIMIZE UNNECESSARY SUFFERING AND COLLATERAL DAMAGE
- PROPORTIONALITY



“Legal” weapons

1. All weapon systems in the U.S. inventory are legal
2. Military advantage v. suffering caused
3. “Legal” weapons can be used illegally
4. Prohibited weapons M79?

MINES AND BOOBY TRAPS

- USE IS PERMITTED UNDER THE LAW OF WAR SUBJECT TO THE FOLLOWING LIMITATIONS:
 - INDISCRIMINATE USE PROHIBITED (MUST TARGET MILITARY)
 - CAN NOT BE USE IN A MANNER TO TAKE ADVANTAGE OF THE ENEMY'S COMPLIANCE WITH THE LAW OF WAR (CAN NOT BOOBY TRAP CORPSES, TOYS)
 - WITH MINES, MUST BE MARKED, A PLAN FOR RECOVERY, OR A MAP TO PERMIT RECOVERY, COVERED BY OBSERVATION OR FIELDS OF FIRE.

Chemical weapons

1. Prohibited
2. Riot Control Agents (RCA): Limited Use vs. Noncombatant Mobs



Treachery and Perfidy

Prohibited activities include:

- misuse of symbols
- feigning surrender
- killing EPWs
- misuse of protected places
- human shields



ENEMY CAPTIVES AND DETAINEES

- Allow surrender
- Humane treatment
- No coercion

Who is Entitled to POW Status?

- Members of the Armed Forces of a belligerent
- Members of a militia or volunteer corps (so long as they obey the LOW)
- Persons who accompany the Armed Forces without actually being a member, such as:
 - War Correspondents
 - Labor Units
 - USO-Type Personnel
 - Civilian Crews of Aircraft used in the conflict

POW Status -- Don't Lose it!

	Entitled to POW Status	Law of War Violation
• Fighting in enemy Uniform	No	Yes
• Fighting in civilian Clothing	No	Yes
• Escaping POW wearing enemy uniform/civilian clothing	Yes	No
• Spying	No	No

GENERAL RULE: EPW'S

- Turn all EPW's over to the Chain of Command.
- Apply 6 S's & T: Secure, Silence, Search, Segregate, Safeguard, Speed to the Rear & Tag.
- Uncertain: All captives treated as EPW's until determination made by higher.

CODE OF CONDUCT

- Six Articles
 - I am prepared to give my life for my country and fellow Marines;
 - I will never surrender as long as I have the means to resist or evade;
 - If captured, I will resist through all means available. I will never accept parole or special favors;
 - If captured, I will give no information harmful to my country or fellow Marines. If senior, I will take command;
 - I will resist questioning to the utmost of my ability. Give only name, rank, DOB and service number;
 - I am responsible for all my actions, or failure to act.

Treatment of Private Property

- Respect private property
- Do not take war trophies without command approval
- Do not seize private property to accomplish your mission without command approval

Scenario #1

- A machine gunner in a forward position reports to his platoon commander that he sees 10 enemy soldiers. They are wearing Red Crescent arm bands and the Red Crescent on their helmets while they are evacuating their dead and wounded. Response?

SOLUTION

- Hold fire and observe. The enemy soldiers are under protected symbol and are not displaying hostile act/intent.

SCENARIO #2

- You are approached by two armed enemy soldiers waiving pieces of white cloth. You order the enemy to throw down their weapons and lie flat on the ground. They do not comply, but continue to advance. Response?

SOLUTION

- If time allows, repeat the order. If enemy continues to advance with weapons, or exhibits hostile act/intent, you must engage.

SCENARIO #3

- Your platoon is moving through an area infested with enemy guerrillas. Upon entering a village, you come under withering small arms fire & take two casualties. Your platoon commander orders you to bring all the male villagers to a drainage ditch on the edge of the town. After interrogation, you are ordered to shoot the male villagers. Response?

SOLUTION

- This is an unlawful order. You must refuse AND take affirmative steps to stop the order from being carried out.

SCENARIO #4

- You have captured 10 enemy soldiers who refuse to give any information beyond name, rank, DOB and service number. You know they have vital information which will assist your unit. You want to beat the senior enemy soldier an e-tool in order to compel compliance. You also want to use the rest for mine field clearance. Lawful?

SOLUTION

- No. Both of these actions are unlawful. Torture of EPW's is a violation of the UCMJ and the Law of War. Compelling EPW's to engage in inherently dangerous labor, or labor directly aiding the war effort is a violation of the UCMJ and the Law of War.

SCENARIO #5

- An enemy artillery observation post has been located in the tower of a mosque. The mosque contains valuable historical treasures and is registered on the int'l register of historical landmarks. Can you engage?

SOLUTION

- Yes. The cultural structure loses its protected status if it used for a military purpose by the enemy. You must take reasonable steps to minimize collateral damage.

SCENARIO #6

- A patrol reports that a medical convoy displaying the Red Cross emblem suddenly opened fire. In addition to sick and wounded, the medical convoy appears to be carrying ammunition resupply. Response?

SOLUTION

- The patrol may engage. Protected symbols may lose their protected status if used for an improper purpose. This is an example of an illegal ruse or deception.

SCENARIO #7

- An enemy aircraft is shot down near your company perimeter. The two enemy crew members ejected from the aircraft and are descending on your position. They do not appear to be armed, but S-2 says that enemy air crews carry small arms. Response?

SOLUTION

- You may not engage aircrews descending from disabled aircraft. The aircrew may be captured upon reaching the ground. The air crew may be engaged if exhibiting hostile act/intent while descending.
- What is your response if you observe elements of the enemy airborne infantry parachuting from aircraft?

**Victory In Battle Is Not a
Matter of How Many, But
of Who They Are**





RULES OF ENGAGEMENT

15TH MARINE EXPEDITIONARY UNIT



JCS Standing ROE
Key Issues

- ◆ Self Defense
 - Individual
 - Unit
 - Collective
- ◆ Prerequisites to Self-Defense
 - Necessity
 - Proportionality
- ◆ Hostile
 - Act
 - Intent
 - Force designated hostile by higher authority.

Self Defense

These rules do not limit a commander's inherent **authority** and **obligation** to use all necessary means available and to take all appropriate action in **self-defense** of the commander's **unit and other us forces in the vicinity**.

Repeated 11 times in SROE

Self Defense

Types of Self Defense

- Individual
- Unit
- Collective [AmCits, TCN's, Innocent civilians subject to grievous injury]

Self Defense

Necessity and Proportionality

- Use of force as last resort, but . . .
- Decisively counter the threat
- Deadly force when the only prudent means

RAMP
A TRAINING SYSTEM FOR RULES OF ENGAGEMENT

RETURN FIRE
ANTICIPATE ATTACK.
MEASURE THE AMOUNT OF FORCE USED.
PROTECT WITH DEADLY FORCE ONLY HUMAN LIFE AND PROPERTY DESIGNATED BY YOUR COMMANDER.

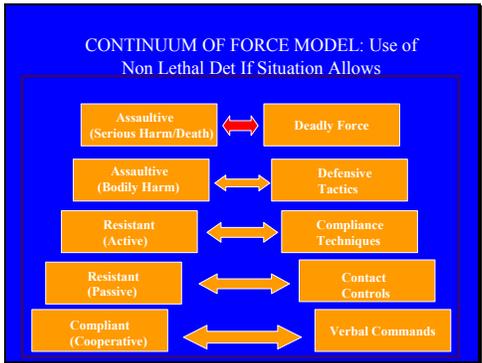
ANTICIPATE ATTACK

- YOU DON'T HAVE TO TAKE THE FIRST HIT.
- "HAND SALUTE" IF UNSURE
- HAND - WHAT IS HE HOLDING?
- S (ize) - HOW MANY?
- A (ctivity) - WHAT IS HE DOING?
- L (ocation) - HOW CLOSE? HOW NEAR OTHERS?
- U (niform) - IS HE IN UNIFORM/ORGANIZED?
- T (ime) - HOW SOON UNTIL HE'S ON YOU?
- E (quipment) - WHAT WEAPONS?

➤ **KEY POINT:** FORCES DESIGNATED HOSTILE CAN ALWAYS BE ENGAGED REGARDLESS OF SITUATION (UNIFORM, EQUIPMENT, ACTIVITY)

MEASURE THE AMOUNT OF FORCE YOU USE

- MEASURE IF YOU HAVE TIME TO DO SO.
- USE FORCE APPROPRIATE TO THE TARGET/SITUATION.
- FORCE CONTINUUM: AMOUNT OF FORCE USED WILL ALWAYS BE SITUATION DEPENDENT
- CONSIDER THE TYPE OF MISSION:
- HAO, NEO, DIRECT ACTION, MECH RAID, AMPHIB ASSAULT



15TH MEU STANDING ROE

- A. Self-Defense-I must defend myself, my unit, or other US Forces against a Hostile Act or Hostile Intent. I will take all Necessary & Appropriate Action to defend myself, my unit or other US Forces against a Hostile Act or Hostile Intent.
- B. Hostile Act-Attack or force used against myself, my unit or other US Forces, or force used directly to impede the mission/duties of my unit or other US Forces.
- C. Hostile Intent-Threat of imminent use of force. Example-weapon pointed @ me, my unit or other US Forces.
- D. Necessary & Appropriate Action.
- 1. I will try to control w/o force. I will give warning if time permits.
- 2. I will use only the force proportional in nature, duration & scope to counter hostile act/intent & ensure US Forces' safety.
- 3. I will use only the force necessary to stop the hostile act/intent. I will stop my attack when the threat stops.
- 4. I can chase & attack the enemy after a hostile act/intent if the enemy still poses a threat. I cannot chase the enemy into another country.
- E. Minimize Collateral Damage to civilians & civ property consistent with mission accomplishment & force protection.
- Supplemental ROE will be specifically briefed to me and are subj to change.
- Forces Declared Hostile by higher military authority may be engaged w/o observing hostile act/intent.

LAW OF WAR PRINCIPLES

- **LAW OF WAR 9 PRICIPLES**
- 1. Marines fight only enemy combatants.
- 2. Marines do not harm enemies who surrender. They must disarm them & turn them over to their superior.
- 3. Marines do not kill or torture prisoners. 6 Ss & T: Secure, search, silence, segregate, safeguard, speed to rear & tag.
- 4. Marines collect & care for wounded, friend or foe.
- 5. Marines do not attack medical personnel, facilities or equipment.
- 6. Marines destroy no more than the mission requires.
- 7. Marines treat all civilians humanely.
- 8. Marines do not steal. Marines respect private property & possessions.
- 9. Marines do their best to prevent law of war violations & report violations to their superior.

CONVOY SCENARIO #1

- BLT 1/1 is proceeding in a convoy of 10 vehicles from the American Embassy in Ethiopia towards the residential district to assist Americans who are trapped in their homes due to the fighting and cannot reach the embassy for evacuation. Five KM west of the downtown area, the convoy is halted by a rebel checkpoint. The roadblock consists of a sedan and truck blocking the road with 8-10 rebel forces. Through your interpreter, you learn the apparent leader of the group will not allow you passage. He is very forceful, however the other rebels are milling around with weapons at sling arms. REACTION?

SOLUTION

- Inform them that they must move their vehicles and allow the convoy to pass.

CONVOY SCENARIO #2

- Same situation as in No. 1, but now a verbal altercation erupts.

SOLUTION

- Maintain your professionalism. Inform them that they must comply. Report situation to HHQ.

CONVOY SCENARIO #3

- What if a rebel soldier begins to wave a pistol that he has been carrying, but he does not point it anyone?

SOLUTION

- This is a potentially threatening situation. If the situation permits, challenge and warn him to drop the weapon. Use less than deadly force if the situation permits. If he points the weapon at you or your Marines, this would be hostile intent, and you are authorized to engage him.

CONVOY SCENARIO #4

- What if the rebel soldier aims a pistol at one of your Marines?

SOLUTION

- There is no time to warn so you are authorized to use deadly force in self-defense, limited in degree, intensity and duration to accomplish the mission. Minimize collateral damage.

CONVOY SCENARIO #5

- What if one of the rebel soldiers throws a large rock at one of the HMMWV'S?

SOLUTION

- Challenge and warn. Order rebel soldier to withdraw. May use force to detain the individual as a force protection measure. Attempt to deescalate. Report to higher.

CONVOY SCENARIO #6

- What if the rebel troops rush the road at weapons ready?

SOLUTION

- This is hostile intent demonstrating imminent use of force, with no time to warn. Deadly force is authorized in self defense, limited to degree, intensity and duration to accomplish the mission. Minimize collateral damage.

SNIPER SCENARIO #1

- A Marine hears a single shot from an urban area. What is the best response?

SOLUTION

- Take cover. Assess the situation. Develop situational awareness.

SNIPER SCENARIO #2

- A Marine has a positive ID on the sniper who is atop a building in an urban area. The sniper is firing at civilians and one civilian is shot. Is there a basis for Marines returning fire?

SOLUTION

Any person who commits a hostile act against you, your Marines, evacuees or innocent bystanders may be engaged with deadly force. If possible report situation to higher before using force.

- **NOTE:** This ROE should be briefed before operation.

SNIPER SCENARIO #3

- What weapons may be used to disable the sniper?

SOLUTION

- Indirect fire weapons and area weapons are probably not reasonable in an urban environment. Use aimed direct fire to minimize collateral damage and reduce the chance of injury to civilians.
- If indirect fire is the only option, report to higher before engaging if time allows.

SNIPER SCENARIO #4

- Three sniper are located in a wooded area. You call for RWCAS, but the pilot has difficulty getting oriented. Can you employ a WP grenade to mark the position?



SOLUTION

- Yes. Incendiary munitions may be used for target marking or identification where the incendiary purpose is not intended.

MOB SCENARIO #1

- You are in a two-vehicle convoy traveling through traffic circle/market area. Your vehicle stops due to traffic and pedestrian congregation. A mob of unarmed individuals presses toward your vehicle. You have in your vehicle the following: tent pegs, pepper spray, your personal weapons (M16A2, M9), HE/DP grenades and a M240G machine gun. What means can be used (if any) against the mob?

SOLUTION

- Against unarmed mobs, use the minimum force necessary to repel the threat. Use shouted warnings, pepper spray (display canister to crowd, shout warning, and spray in 1-second bursts) RCA if approved. Deadly force is not authorized unless the lives of members of the convoy are threatened. Remember force continuum.

MOB SCENARIO #2

- Individuals begin to steal water bottles, a camera, tools and MRE's that are unsecured in the back of your vehicle. Are you authorized to use deadly force to recover these items?

SOLUTION

- No. Deadly force is only authorized to protect yourself, your Marines, evacuees, weapons and classified material. If possible, use a means of force less than deadly force to recover the property but do not endanger your life or the lives of others to recover the property.

MOB SCENARIO #3

- Same scenario as above, but you spot an armed individual in the mob pointing an AK47 rifle at your convoy. Are you authorized to use deadly force?

SOLUTION

- Yes, you are authorized to use deadly force against the threat of a hostile act. Use the form of deadly force that is least likely to cause collateral damage: the M9 or M16. Avoid the weapon that would cause heavy losses to unarmed civilians such as the grenade or crew-served weapon.

STEALING SCENARIO #1

- While riding as a passenger in a convoy, you notice that from the back of the HMMWV in front of you, a local boy steals a pair of NVG's and runs away from the vehicle. How do you respond?

SOLUTION

- Order him to stop, pursue and report. Deadly force cannot be used to regain possession of the NVG's. Any Marine who witnesses such an act should use all means of non-deadly force to get the NVG's back (i.e., verbal warnings, and pursuit on foot, apprehending the thief).

STEALING SCENARIO #2

- Same facts as above, but now the Marine witnessing the theft chases the boy. During the chase, the boy turns and points a pistol at the Marine. How can the Marine respond?

SOLUTION

- The Marine can use deadly force to defend himself. In this case, deadly force would be used to protect the life of the Marine, not to recover a pair of NVG's.

STEALING SCENARIO #3

- A Marine is manning a checkpoint. An aggressive local man comes up to the Marine and tries to take his M16 out of his hands. How can the Marine respond?

SOLUTION

- The Marine is faced with an imminent threat of death. Deadly force can be used to protect this Marine. Non-deadly force should be attempted if it will eliminate the threat and **DOES NOT INCREASE** the probability the Marine will be harmed.

Black Hawk Down #1

- During a heavily contested MOUT, a woman continually runs into the street pointing out your concealed position for targeting by the enemy. She is unarmed. Each time she marks your position, the volume enemy fire on your position increases. How do you respond?

Solution

- If it is possible to control the situation with less-than-lethal force, do so. **This is not a prerequisite to the use of Deadly Force.** Since the woman is directly assisting the enemy's combat effort, she may be engaged.

Black Hawk Down #2

- During a heavily contested MOUT, a woman carrying a baby crosses in front of your position. The woman abruptly turns, and raises a pistol toward your position with her free hand. Response?

SOLUTION

- Deadly force is authorized to protect yourself and your unit. You should use well-aimed fires to avoid collateral damage. Apply first-aid to noncombatant if possible.

FORCE PROTECTION #1

- You are on guard duty at the front gate of your compound. You see a civilian reach through the wire and grab a rifle from an unsuspecting Sailor. Response?

SOLUTION

- The theft of a weapon is a hostile threat. You may use force, up to and including deadly force, to recover the weapon. If possible without compromising force protection, use lesser means of force before resorting to deadly force.

FORCE PROTECTION #2

- You are on guard duty at the front gate of your compound. A large crowd gathers outside the gate. Women and children are at the front of the crowd. Suddenly, armed men in the back of crowd point weapons at you. Response?

SOLUTION

- You may use deadly force against the hostile threat. Target only those possessing weapons. If possible, disperse crowd using verbal commands or pepper spray (if authorized). However, if time does not allow crowd dispersion, engage the threat with well-aimed lethal force.

Questions?



APPENDIX 5-1: SAMPLE LEGAL CARD

Art 31b/Search “Legal Card”

Front

Article 31b

If you suspect a member of a crime, you must read this rights waiver prior to questioning.

You are suspected of _____ (list crime(s)).

You have right to remain silent. If you choose to make a statement, it could be used against you at a later court-martial.

You have the right to consult with a lawyer prior to further questioning, a military lawyer, and if you desire, a lawyer retained by you, at your own expense.

You have the right to have military counsel or your retained counsel present at any interview

You have the right to terminate the interview at any time. Further, if you decide to speak with me, you can give a statement and/or respond to questions. You can make a statement either orally, or in writing.

(Note: Ensure the suspect fully understands the above rights, and if possible, reduce their decision on the above to written form)

Back

Search and Seizure

Marines and Sailors have a “reasonable expectation of privacy” in their personal spaces (e.g. barracks, automobile, troop lockers, person). The following a types of searches that may apply:

Command Authorized: The Commanding Officer (Bn/Sqdn or equivalent) can authorize search of personal space if probable case that a crime has been committed and evidence of the crime exists in the place to be searched. Authorization can be verbal/written. “Acting” cannot grant. Reliability of person supplying information will be questioned.

Exigent Circumstances: if delay will result in removal, destruction or concealment and you have probable cause. Applies to motor vehicles.

Lawful Apprehension: You are authorized to search person and immediate vicinity for weapons if you take into custody.

Consent: If the suspect who “holds access” to the space authorizes, you can search. Important that you not “coerce” member to granting consent

Plain View: If you see it, you can seize it.

Inspections: Not a search, must be scheduled, cannot use to search for evidence of specific crime.

APPENDIX 5-2: SAMPLE LEGAL REPORT

Legal Report for UNITNAME of DATE

Military Justice

NJP

Pending

Name	Charge
LCpl L.M. Bonitz	Art 92
Cpl I.M. Gone	Art 86

Complete (Since last report)	Charge	Disposition
Pvt. C. U. Later	Art 121	45/45 Red to Pvt

Court-Martial	Name	Charge
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Article 32	Name	Charge
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Administrative Separations

Name	Basis	Status
B.Y. Bye	112a (meth)	Board requested

JAGMAN	Incident	Officer	Status
	Boat accident	Lt Schmuck	Due 14 Feb

APPENDIX 5-3: NONJUDICIAL PUNISHMENT LIMITATIONS

Imposed by	Imposed on	Confinement on B&W or DIMRATS (2)	Correctional Custody (3)	Arrest in Quarters (1)	Forfeiture (5) (6)	Reduction (6)(8)(9)	Extra Duties (4)	Restriction to Limits (4)	Admonition (6)	Reprimand (6)
General Officers in Command	Officers	No	No	30 days	½ one mon for 2 mos	No	No	60 days	Yes	Yes
	E-4 to E-9	No	No	No	½ one mon for 2 mos	1 grade	45 days	60 days	Yes	Yes
	E-1 to E-3	3 days	30 days	No	½ one mon for 2 mos	1 grade	45 days	60 days	Yes	Yes
O-4 to O-6 COs	Officers	No	No	No	No	No	No	30 days	Yes	Yes
	E-4 to E-9	No	No	No	½ one mon for 2 mos	1 grade	45 days	60 days	Yes	Yes
	E-1 to E-3	3 days	30 days	No	½ one mon for 2 mos	1 grade	45 days	60 days	Yes	Yes
O-3 & below COs and OICs (7)	Officers	No	No	No	No	No	No	15 days	Yes	Yes
	E-4 to E-9	No	No	No	7 days	1 grade	14 days	14 days	Yes	Yes
	E-1 to E-3	3 days	7 days	No	7 days	1 grade	14 days	14 days	Yes	Yes

- (1) May not be combined with restriction
- (2) May be awarded only if attached to/embarked in a vessel and may not be combined with any other restraint punishment or extra duties
- (3) May not be combined with restriction or extra duties
- (4) Restriction and extra duties may be combined to run concurrently but the combination may not exceed the maximum imposable for extra duties
- (5) Shall be expressed in whole dollar amounts only
- (6) May be imposed in addition to or in lieu of all other punishments
- (7) OICs have NJP authority over enlisted personnel only
- (8) CPOs (E-7 through E-9) may not be reduced at NJP in the Navy; Marine Corps NCOs (E-6 through E-9) may not be reduced at NJP. (O-3 Company Commanders in the Marine Corps general only have authority to reduce E-1 through E-3 because E-4 and E-5 are not within their promotion authority.)
- (9) OICs may not reduce personnel because they currently have no advancement authority.

APPENDIX 5-4: REQUEST FOR DESIGNATION AS OFFICER-IN-CHARGE WITH NONJUDICIAL PUNISHMENT AUTHORITY

LETTERHEAD

From: Commanding Officer

To: Commanding General, GCM COMMAND (SJA)

Subj: REQUEST FOR DESIGNATION AS COMMANDING OFFICER OF TROOPS (OFFICER IN CHARGE)

Ref: (a) JAGMAN 0106

(b) MCM, 2000 edition

1. Per the references, request the following officers be designated as Commanding Officers of Troops (Officer in Charge) for the indicated ships during deployment of the 11th Marine Expeditionary Unit.

Rank	Name	SSN/MOS	Ship
LtCol	Full Name	123 45 67989	USS Name (LHA-#)
LtCol	Full Name	222 33 4444	USS Name (LPD-#)
Capt	Full Name	444 55 6666	USS Name (LSD-#)

2. Point of contact for this is Name/Number

SIGNATURE BLOCK

APPENDIX 5-5: SAMPLE PROCEDURES FOR REQUESTING MILITARY JUSTICE SUPPORT—NAVAL LEGAL SERVICE OFFICE AND TRIAL SERVICE OFFICE EUROPE AND SOUTHWEST ASIA

NAVLEGSVCOFFEURSWANOTE 5800
01

NAVLEGSVCOFF EURSWA NOTICE 5800

Subj: LEGAL COUNSEL SERVICES AVAILABLE FROM NAVAL LEGAL SERVICE OFFICE, EUROPE AND SOUTHWEST ASIA

Encl: (1) NLSO EURSWA phone/e-mail directory
(2) Message format for request for military justice services

1. Purpose. This notice advises Navy and Marine Corps activities of the procedures for requesting legal counsel services from U.S. Naval Legal Service Office, Europe and Southwest Asia, and its detachments and branch offices (collectively referred to in this notice as NLSO EURSWA).

2. Areas served by NLSO EURSWA. NLSO EURSWA provides military justice, legal assistance, personal representation, and claims services to Navy and Marine Corps activities located or operating in the following areas: Europe (except Iceland), the Mediterranean, Africa, and southwest Asia (west of 60 degrees east longitude). Units and activities located or operating in those areas should direct requests for legal services to NLSO EURSWA as described in this notice. If necessary, NLSO EURSWA will readdress the request to, or coordinate with, other providers of military legal services that may be better situated to respond.

3. Defense Counsel and Personal Representation services. These services include:

a. Defense counsel assignment. NLSO EURSWA will assign counsel to the accused for Article 32 investigations and special and general courts martial. Likewise, NLSO EURSWA will assign counsel to the respondent for administrative discharge boards and Boards of Inquiry.

b. Consultations with defense counsel. NLSO EURSWA provides counsel services in a number of situations not involving representation at court-martial, pretrial investigation, or administrative discharge board. These services include

consultations concerning matters such as a service member's right when applicable, to refuse nonjudicial punishment or trial by summary court-martial; rights under Article 31, Uniform Code of Military Justice (UCMJ); and information about procedures and privileges available to military personnel in various administrative matters, such as Article 138, UCMJ, complaints, Article 1150 complaints, detachment for cause, withdrawal of an individual's security clearance and adverse privileging action (in the case of health care providers). Consultations may be conducted by telephone and do not normally result in the formation of an attorney-client relationship.

c. Other matters. NLSO EURSWA will provide counsel for any other military or administrative process that entitles the member to consult with or be represented by military counsel.

4. Requesting legal counsel services

a. Via Electronic mail (e-mail). NLSO EURSWA prefers requests for services be submitted via e-mail as it facilitates the expeditious assignment of counsel. Any such requests should be sent to the Senior Defense Counsel at Naples or to the OIC at Rota or Sigonella or to the Branch Head at Bahrain or London, as appropriate. E-mail addresses are contained in enclosure (1). All e-mail requests should info the Executive Officer and Administrative Department Head. E-mail requests should follow generally the format contained in enclosure (2), but should not include classified information, such as the operational schedule for afloat units. E-mail requests should also include appropriate information addresses as indicated in enclosure (2).

b. Via Naval message. If e-mail is unavailable, or if a naval message is otherwise preferred, the message should be addressed and submitted in the format of enclosure (2) as follows:

(1) Shore installations in Spain. Address message or NAVGRAM requests to NAVLEGSVCOFF DET ROTA SP//00//. In addition to other appropriate information addressees, include NAVLEGSVCOFF EURSWA NAPLES IT//00// as an information addressee for all requests.

(2) Shore installations in Sicily. Address message request to NAVLEGSVCOFF DET SIGONELLA IT//00//. In addition to other appropriate information addressees, include NAVLEGSVCOFF EURSWA NAPLES IT//00// as an information addressee for all requests.

(3) Shore installations in Bahrain and units operating in the COMFIFTHFLT AOR. Address message request to NAVLEGSVC BROFF BAHRAIN//00//. In addition to other appropriate information addresses, include NAVLEGSVCOFF EURSWA NAPLES IT//00// as an information addressee for all requests.

CENTER FOR LAW AND MILITARY OPERATIONS

(4) Shore installations in London. Address message request to NAVLEGSVCOFF EURSWA BROFF LONDON UK//00//. In addition to other appropriate information addresses, include NAVLEGSVCOFF EURSWA NAPLES IT//00// as an information addressee for all requests.

(5) Other units, activities, and installations. Address message request to NAVLEGSVCOFF EURSWA NAPLES IT//00//.

5. Other legal services. NLSO EURSWA attorneys who visit commands for military justice matters are usually available to provide legal assistance to eligible personnel. Upon request, NLSO EURSWA also makes attorneys available for dedicated legal assistance, claims, and general command support visits.

6. Funding for legal services. Travel, per diem, and miscellaneous expenses for counsel are funded by the command requesting the legal services.

7. Telephone points of contact. Contact the nearest NLSO EURSWA office for further information and guidance. All NLSO EURSWA offices have fax and e-mail capabilities (enclosure (1)).

Commanding Officer

Distribution:
NAVLEGSVCOFFEURSWAINST 5216.3P
(Lists: If, II, IV(a, b, c, d, e,
f, t, u, v, z, gg, oo, pp, qq,
rr, ss, tt)

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

NAVLEGSVCOFFEURSWANOTE 5800

NLSO EURSWA NAPLES OFFICE

Quarter Deck DSN: 626-4576 / COMM: 011-39-081-568-(ext.) / FAX: 626-4577
PSC 817 Box 8, FPO AE 09622-008

<u>NAME</u>	<u>TITLE</u>	<u>E-MAIL</u>
-------------	--------------	---------------

ADMINISTRATION DEPARTMENT (DSN: 626-4611/99)

DEFENSE SERVICES DEPARTMENT (DSN: 626-4576)

CIVIL LAW DEPARTMENT (DSN: 626-4600/4609/4500)

NLSO EURSWA ROTA DETACHMENT

Quarter Deck DSN: 727-2531/2/3/4/5/6 / COMM: 34-56-82-(ext.) / FAX: 727-2082
PSC 819 Box 46, FPO AE 09645-2200

NLSO EURSWA SIGONELLA DETACHMENT

Quarter Deck DSN: 624-5258/5580/1 / COMM: 39-95-86-(ext.) / FAX: 624-5259
PSC 812 Box 3320, FPO AE 09627-3320

NLSO EURSWA BAHRAIN BRANCH OFFICE

Quarter Deck DSN: 318-439-4172/3311 / COMM: 973-72-(ext.) / FAX: 318-439-4173
PSC 451 NLSO, FPO AE 09834-2800

NLSO EURSWA LONDON BRANCH OFFICE

Quarter Deck DSN: 235-6766 / COMM: 001-44-189-561-6766/ FAX: 235-6768
PSC 821, Box 126, FPO AE 09421-0126

Enclosure (1)

Message Format for Requesting
Military Justice Services

FM (requesting command)
 TO (see para 4)
 INFO CINCUSNAVEUR LONDON UK//013// (if applicable)
 COMUSNAVCENT (if applicable)
 COMSIXTHFLT (if applicable)
 COMFAIRMED NAPLES IT//011// (shore installations in
 Mediterranean)
 COMNAVACT LONDON UK//A05// (shore installations in U.K.)
 COMNAVACT ROTA SP//SJA// (shore installations in Spain)
 Type commander, as applicable
 Task force commander, as applicable
 Other appropriate seniors in chain of command
 NLSO/NLSO detachments (see para. 4)
 Navy-Marine Corps Trial Judiciary, if appropriate (see
 para. 4d)

BT

[UNCLAS] [CONFIDENTIAL] //NO5800//
 SUBJ: REQUEST FOR MILITARY JUSTICE SERVICES FOR [ART. 32
 PRETRIAL INVESTIGATION] [SPECIAL COURT-MARTIAL] [ADMINISTRATIVE
 DISCHARGE BOARD PROCEEDING] ICO (rate and name)//
 MSGID/GENADMIN/(requesting command)//
 RMKS/

1. (U) ACCUSED/RESPONDENT:

(Give full name, rate/rank, branch of service; if more than
 one, list each as separate subparagraph).

2. (U) CHARGES:

(Describe alleged offenses or basis for admin discharge
 processing. Reference to UCMJ articles not necessary. For
 example: UA 1JAN90-31DEC90 or ASSAULT ON COMMISSIONED
 OFFICER. If multiple accuseds/respondents, list
 charges/basis for processing for each in subparagraphs
 corresponding to those in para. 1.)

3. (U) PRETRIAL RESTRAINT:

(State type of restraint and when it was imposed. Include
 Class C liberty risk. If none, so state.)

4. (U) NOTIFICATION:

(State date when accused formally notified, IAW R.C.M. 308,
 of preferral of charges. If charges not preferred yet, so
 state. In admin discharge board case, state date when
 accused executed statement of awareness and exercise of
 rights.)

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

5. (U) (C) REMARKS:

(Note any factors which would preclude trial immediately, such as unavailability of service record, essential witnesses, laboratory reports, or evidence. If applicable, note any time when trial is not desired due to exercises or unusually demanding operational commitments. In this regard, NLSO personnel can usually meet afloat units and conduct proceedings at sea. Note any other factors that would affect scheduling, such as PCS or EAOS of accused or witnesses and availability of female berthing.)

6. (U) ACCOUNTING DATA:

SDN:
TANGO NO.:
CIC:
ACCT DATA:

(For Art. 32 pretrial investigations, provide accounting data for defense counsel.)

(For courts-martial, provide accounting data for defense counsel.)

(For admin discharge boards, provide accounting data for respondent's counsel.)

(Estimated expenses are not required in the request message. If no estimates are provided, NLSO EURSWA will estimate costs based on the least expensive transportation mode necessary, and will advise by message of estimates calculated.)

7. (C) OPSKED FOR NEXT 30 DAYS.

DECL (if applicable)//

2

Canc frp: MAR 03
TRISVCOFFEURSWANOTE 5800
N3

TRISVCOFF EURSWA NOTICE 5800

CENTER FOR LAW AND MILITARY OPERATIONS

Subj: LEGAL SERVICES AVAILABLE FROM U.S. TRIAL SERVICE
OFFICE, EUROPE AND SOUTHWEST ASIA

Encl: (1) TSO EURSWA's telephone directory
(2) Email/message format for request for military
justice services
(3) Email/message format for request for substitute
convening authority action

1. Purpose. This notice advises Navy and Marine Corps activities of the procedures for requesting legal services from U.S. Trial Service Office, Europe and Southwest Asia, and its detachments and branch office (collectively referred to in this notice as TSO EURSWA).

2. Areas served by TSO EURSWA. TSO EURSWA provides trial services, international law, and command legal services to Navy and Marine Corps activities located or operating in the following areas: Europe (except Iceland), the Mediterranean, Africa, and southwestern Asia west of 60 degrees east longitude. Units and activities located or operating in those areas should address requests for legal services to TSO EURSWA as described in this notice. If necessary, TSO EURSWA will readdress the request to, or coordinate with, other providers of military legal services that may be better situated at the time to respond.

3. Military justice services. Military justice services include:

a. Article 32 investigations. Trial Counsel. TSO EURSWA will assign a judge advocate to serve as trial counsel. Although a judge advocate investigating officer and a court reporter are not required, TSO EURSWA will arrange for an investigating officer and provide a court reporter if requested by the convening authority. Defense Counsel. TSO EURSWA will liaison with U.S. Naval Legal Service Office, Europe and Southwest Asia (NLSO EURSWA) for the assignment of a judge advocate to serve as defense counsel.

b. Special and general courts-martial. Trial counsel and court reporter: TSO EURSWA will assign a judge advocate to serve as trial counsel and will also assign a court reporter. Military Judge: TSO EURSWA will arrange for a military judge to be detailed by the Circuit Military Judge, Transatlantic Judicial Circuit, Navy-Marine Corps Trial Judiciary. Defense Counsel: TSO EURSWA will liaison with NLSO EURSWA for the assignment of a judge advocate to serve as defense counsel.

c. Administrative discharge boards. Defense Counsel: TSO EURSWA will liaison with NLSO EURSWA for the assignment of a judge advocate to serve as defense counsel. TSO EURSWA will review administrative discharge documentation as desired and provide assistance to the command to ensure prompt resolution. Although a judge advocate recorder is not required, TSO EURSWA

will provide a recorder upon request by the convening authority if a judge advocate is reasonably available.

d. Other military justice services

(1) Command services. Upon request, TSO EURSWA makes counsel available to provide military justice advice and assistance to commands, units, and activities that do not have a judge advocate or legal officer.

4. Requesting military justice services via electronic mail (e-mail). Request for military justice services may be sent directly to the Executive Officer, TSO EURSWA, via electronic mail, with copies to the Commanding Officer, TSO EURSWA; OIC, TSO EURSWA Detachment Sigonella, Italy; and Assistant OIC, TSO EURSWA Detachment Rota, Spain. Electronic mail addresses for the personnel listed above are contained in enclosure (1). Please include the same information in the e-mail request for military justice services that is required for message submission outlined in paragraph 5 below and enclosure (2). In the event there is a need to include classified information, i.e. ships schedule, message submission for military justice services is required. Requests for defense counsel for respondents should also be sent to TSO EURSWA. TSO EURSWA will liaison with NLSO EURSWA on such requests.

5. Requesting military justice services via message. Requests for military justice services via message should be in the general format of enclosure (2) and should be addressed and submitted as follows:

a. Shore installations in Spain. Address message or NAVGRAM requests to TRISVCOFF EURSWA DET ROTA SP//00//. In addition to other appropriate information addressees, include the following as information addressees for all requests:

TRISVCOFF EURSWA NAPLES IT//00//
 NAVLEGSVCOFF EURSWA NAPLES IT//00//
 NAVLEGSVCOFF DET ROTA SP//00//
 TRISVCOFF EURSWA DET SIGONELLA//00//
 NAVLEGSVCOFF DET SIGONELLA IT//00//
 TRISVCOFFEURSWANOTE 5800
 TRISVCOFF EURSWA BROFF BAHRAIN//00//
 NAVLEGSVC BROFF BAHRAIN//00//
 NAVLEGSVC BROFF LONDON UK//00//

b. Shore installations in Sicily. Address message request to TRISVCOFF EURSWA DET SIGONELLA IT//00//. In addition to other appropriate information addressees, include the following as information addressees for all requests:

TRISVCOFF EURSWA NAPLES IT//00//
 NAVLEGSVCOFF EURSWA NAPLES IT//00//
 NAVLEGSVCOFF DET SIGONELLA IT//00//

CENTER FOR LAW AND MILITARY OPERATIONS

TRISVCOFF EURSWA DET ROTA SP//00//
NAVLEGSVCOFF DET ROTA SP//00//
TRISVCOFF EURSWA BROFF BAHRAIN//00//
NAVLEGSVC BROFF BAHRAIN//00//
NAVLEGSVC BROFF LONDON UK//00//

c. Other units, activities, and installations. Address message request to TRISVCOFF EURSWA NAPLES IT//00//. In addition to other appropriate information addressees, include the following as information addressees for all requests:

NAVLEGSVCOFF EURSWA NAPLES IT//00//
TRISVCOFF EURSWA DET ROTA SP//00//
NAVLEGSVCOFF DET ROTA SP//00//
TRISVCOFF EURSWA DET SIGONELLA IT//00//
NAVLEGSVCOFF DET SIGONELLA IT//00//
TRISVCOFF EURSWA BROFF BAHRAIN//00//
NAVLEGSVC BROFF BAHRAIN//00//
NAVLEGSVC BROFF LONDON UK//00//

d. Navy-Marine Corps Trial Judiciary. In addition to the addressees listed above, the following Navy-Marine Corps Trial Judiciary should also be included as an information addressee when requesting services for a court-martial:

NAVMARTRIJUDCIR TRANSATLANTIC NAPLES IT//15//

6. Substitute convening authority for post-trial review. Afloat units frequently find it impractical to take the post-trial convening authority action in court-martial cases. Under such circumstances, especially when a unit is deployed, R.C.M. 1107 permits the convening authority to request another command assume the administrative burden of reviewing the record of trial and taking post-trial action on the findings and sentence. Enclosure (3) is a sample format for requesting substitute convening authority action in cases tried by TSO EURSWA. It should not be submitted until after the trial has been completed. If substitute convening authority action is requested, TSO EURSWA will forward the record of trial to Commanding Officer, U.S. Naval Support Activity, Naples, Italy, or Commander, U.S. Naval Activities, Spain. The substitute convening authority will then review the record of trial and take the convening authority's action.

7. Funding for legal services. Travel, per diem, and miscellaneous expenses for pretrial investigating officers, counsel, and court reporters are funded by the command requesting the legal services. Requests for services should include accounting data for, at least, the following individuals: two counsel (and the pretrial investigating officer and court reporter, if they have been requested) in Article 32 pretrial investigations; two counsel and a court reporter in courts-martial; one counsel in administrative discharge board cases (two counsel if a judge advocate recorder is requested). Requests

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

should not include accounting data for military judges, whose expenses are funded on a non-reimbursable basis by the Judge Advocate General of the Navy.

8. Other legal services. NLSO EURSWA judge advocates are primarily responsible for the provision of legal assistance and claims advice to eligible personnel. NLSO EURSWA judge advocates who visit commands for military justice matters are usually available to provide legal assistance and claims advice to eligible personnel, time permitting. Upon request, TSO EURSWA will liaison with NLSO EURSWA with regard to providing a judge advocate for a dedicated legal assistance or claims visit. Message requests should be submitted to TRISVCOFF EURSWA NAPLES IT//00//. The general nature of the legal services requested should be described and when and where the assistance is desired. Travel, per diem, and miscellaneous expenses for such legal services are funded by the command requesting the legal services. In addition to other appropriate addressees, include the following as information addressees:

NAVLEGSVCOFF EURSWA NAPLES IT//00//
TRISVCOFF DET ROTA SP//00//
NAVLEGSVCOFF DET ROTA SP//00//
TRISVCOFF DET SIGONELLA IT//00//
NAVLEGSVCOFF DET SIGONELLA IT//00//
TRISVC BROFF BAHRAIN//00//
NAVLEGSVC BROFF BAHRAIN//00//
NAVLEGSVC BROFF LONDON UK//00//

9. Telephone points of contact. Contact the nearest TSO EURSWA office for further information and guidance. All TSO EURSWA offices have fax capabilities. Telephone and fax numbers are listed in enclosure (1).

a. Naples, Italy. Command Services Officer, U.S. Trial Service Office, Europe and Southwest Asia; DSN 626-4499; commercial within Italy 081-568-4499; commercial outside Italy 011-39-081-568-4499. (If Command Services Officer is unavailable, ask for Executive Officer.)

b. Rota, Spain. Officer in Charge, U.S. Trial Service Office Detachment Rota; DSN 727-2531/2533; commercial within Spain 956-81-2050 (ext. 2531); commercial outside Spain 34-56-81-2050 (ext. 2531).

c. Sigonella, Italy. Officer in Charge, U.S. Trial Service Office Detachment Sigonella; DSN 624-5056/5580; commercial within Italy 095-86-5056/5580; commercial outside Italy 39-95-86-5056/5580.

d. Bahrain. U.S. Trial Service Branch Office Bahrain; DSN 318-439-4677/4114; commercial 00 973-72-4677/4114.

10. Cancellation. Upon the issuance of a subsequent notice on this subject.

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

NAME/PHONE/EMAIL

TITLE

LT TARA SCHORMAN
DSN: 626-4628
COM: 011-39-081-568-4628
schormat@nsa.naples.navy.mil
DEPARTMENT HEAD

COURT REPORTING

LN1 JACQUELINE STULL
DSN: 626-4568
COM: 011-39-081-568-4568
stullj@nsa.naples.navy.mil
SEN COURT REPORTER

LN1 (SW) BRIAN MINOCK
DSN: 626-3936
COM: 011-39-081-568-3936
minockb@nsa.naples.navy.mil
COURT REPORTER

LN3 RACHEL CHRISTOFFERSON
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COM: 011-39-081-568-3936
christor@nsa.naples.navy.mil
COURT REPORTER

TRIAL SERVICES DEPARTMENT

LCDR PETE VAN HARTESVELDT
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vanhartp@nsa.naples.navy.mil
NAPLES SENIOR TRIAL
COUNSEL

LT KEVIN YUSMAN
DSN: 626-4556
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yusmank@nsa.naples.navy.mil
TRIAL COUNSEL

LT PAUL EHRMAN
DSN: 626-5470
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ehrmanp@nsa.naples.navy.mil
TRIAL COUNSEL

LN3 CHRIS GUZMAN
DSN: 626-3936
COMM: 011-39-081-568-3936
guzmanc@nsa.naples.navy.mil
TRIAL PARALEGAL

FOREIGN CRIMINAL JURISDICTION

NAME/PHONE/EMAIL

TITLE

CENTER FOR LAW AND MILITARY OPERATIONS

DR. LUCIA LA ROSA FCJ
DSN: 626-4483
COM: 011-39-081-568-4483
larosal@nsa.naples.navy.mil

TSO NAPLES FAX: DSN 626-4497; COMM: 011-39-081-568-4497

ROTA DETACHMENT

CAPT ROBERT WARD, USMC OIC
DSN: 727-2531/2/3/4/5/6
COM: 0034-56-82-2531/2/3/4/5/6
wardrq@legal.rota.navy.mil

LT ROBERT DE TOLVE TRIAL COUNSEL
DSN: 727-2531/2/3/4/5/6/
COMM: 0034-56-2531/2/3/4/5/6
detolverc@legal.rota.navy.mil

LN1 KAREN RAMSEY LPO
DSN: 727-2531/2/3/4/5/6
COM: 0034-56-82-2531/2/3/4/5/6
ramseyk@legal.rota.navy.mil

TSO DET ROTA FAX: 727-1707

SIGONELLA DETACHMENT

LT GREG DIMLER OIC
DSN: 624-5189
COM: 0039-95-865189
gdimler@nassig.sicily.navy.mil

LN1(AW) DELBRAH AMARO LPO
DSN: 624-5580
COM: 0039-95-865056
amarod@nassig.sicily.navy.mil

LN2 CRAIG BALL COURT REPORTER
DSN: 624-5056
ballc@nassig.sicily.navy.mil

TSO DET SIGONELLA FAX: 624-6323

BAHRAIN BRANCH OFFICE

<u>NAME/PHONE/EMAIL</u>	<u>TITLE</u>
LT MICHAEL TURNER DSN: 318-439-4677 COMM: 00973-724-677 turnerma@nsa.bahrain.navy.mil	OIC

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

LN1 (SW) KIMBERLY MARTIN
DSN: 318-439-4144
COM: 00973-724-144
nsatso@nsa.bahrain.navy.mil

TRIAL PARALEGAL

TSO BROFF BAHRAIN FAX: 318-439-4173
TRISVCOFFEURSWANOTE 5800

TRANSATLANTIC JUDICIARY CIRCUIT

CAPT BRUCE MACKENZIE
DSN: 626-4482
COM: 011-39-081-568-4482
mackenzb@nsa.naples.navy.mil

CIRCUIT JUDGE

Message Format for Requesting
Military Justice Services

FM (requesting command)
 TO (see para 4)
 INFO CINCUSNAVEUR LONDON UK//013// (if applicable)
 COMUSNAVCENT/COMFIFTHFLT (if applicable)
 COMSIXTHFLT (if applicable)
 COMFAIRMED NAPLES IT//011// (shore installations in
 Mediterranean)
 COMNAVACT LONDON UK//A05// (shore installations in U.K.)
 COMNAVACT ROTA SP//SJA// (shore installations in Spain)
 Type commander, as applicable
 Task force commander, as applicable
 Other appropriate seniors in chain of command
 TSO/NLSO detachments (see para. 4)
 Navy-Marine Corps Trial Judiciary, if appropriate (see
 para. 4d)

BT
 [UNCLAS] [CONFIDENTIAL] //NO5800//
 SUBJ: REQUEST FOR MILITARY JUSTICE SERVICES FOR [ART. 32
 PRETRIAL INVESTIGATION] [SPECIAL COURT-MARTIAL] [ADMINISTRATIVE
 DISCHARGE BOARD PROCEEDING] ICO (rate and name)//
 MSGID/GENADMIN/(requesting command)//
 RMKS/

1. (U) ACCUSED/RESPONDENT:

(Give full name, rate/rank, branch of service; if more than
 one, list each as separate subparagraph).

2. (U) CHARGES:

(Describe alleged offenses or basis for admin discharge
 processing. Reference to UCMJ articles not necessary. For
 example: UA 1JAN90-31DEC90 or ASSAULT ON COMMISSIONED
 OFFICER. If multiple accuseds/respondents, list
 charges/basis for processing for each in subparagraphs
 corresponding to those in para. 1.)

3. (U) PRETRIAL RESTRAINT:

(State type of restraint and when it was imposed. Include
 Class C liberty risk. If none, so state.)

4. (U) NOTIFICATION:

(State date when accused formally notified, IAW R.C.M. 308,
 of preferral of charges. If charges not preferred yet, so
 state. In admin discharge board case, state date when
 accused executed statement of awareness and exercise of
 rights.)

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

TRISVCOFFEURSWANOTE 5800

5. (U) (C) REMARKS:

(Note any factors which would preclude trial immediately, such as unavailability of service record, essential witnesses, laboratory reports, or evidence. If applicable, note any time when trial is not desired due to exercises or unusually demanding operational commitments. In this regard, TSO/NLSO personnel can usually meet afloat units and conduct proceedings at sea. Note any other factors that would affect scheduling, such as PCS or EAOS of accused/respondent or witnesses.)

6. (U) ACCOUNTING DATA:

SDN:
TANGO NO.:
CIC:
ACCT DATA:

(For Art. 32 pretrial investigations, provide accounting data for investigating officer, government counsel, and defense counsel.)

(For courts-martial, provide accounting data for trial counsel, defense counsel, and court reporter.)

(For admin discharge boards, provide accounting data for respondent's counsel and for the recorder, if attorney recorder is desired.)

(Estimated expenses are not required in the request message. If no estimates are provided, TSO EURSWA will estimate costs based on the least expensive transportation mode necessary, and will advise by message of estimates calculated.)

7. (C) OPSKED FOR NEXT 30 DAYS.

DECL (if applicable)//

CENTER FOR LAW AND MILITARY OPERATIONS

TRISVCOFFEURSWANOTE 5800

Message Format for Request for
Substitute Convening Authority Action

FM (requesting command)
TO TRISVCOFF EURSWA NAPLES IT//00//
INFO NAVLEGSVCOFF EURSWA NAPLES IT//00//
NAVLEGSVCOFF DET ROTA SP//00//
TRISVCOFF DET ROTA SP//00//
NAVSUPPACT NAPLES IT//01L//
COMNAVACT ROTA SP//SJA//

BT

UNCLAS //NO5800//

SUBJ: REQUEST FOR SUBSTITUTE CONVENING AUTHORITY ACTION ICO US
V. (accused name)//

MSGID/GENADMIN/(requesting command)//

REF/A/DOC/MCM/1984/

AMPN/MANUAL FOR COURTS-MARTIAL//

RMKS/

1. IAW RCM 1107 REF A, REQ RECORD OF TRIAL IN SUBJ CASE BE FWD
TO GCM CONVENING AUTHORITY BEST SITUATED TO TAKE SUBSTITUTE
CONVENING AUTHORITY ACTION.

2. SUBJ CASE TRIED (date). ORIG PRECLUDED FROM TAKING TIMELY
ACTION DUE TO (OUTCHOP FROM THEATER BEFORE RECORD OF TRIAL
EXPECTED TO BE AUTHENTICATED) (SCHEDULED DEPLOYED STATUS WHEN
RECORD OF TRIAL EXPECTED) (OPERATIONAL COMMITMENTS UNDERWAY) (any
other reason why impractical to take convening authority's
action).

3. CO SENDS.//

Enclosure (3)

**APPENDIX 5-6: OVERSEAS LIBERTY RISK PROGRAM WITH
ENCLOSURES**

5812
SJA
14 July 00

From: Commanding Officer
To: Distribution List

Subj: 26th MEU OVERSEAS LIBERTY RISK PROGRAM

Ref: (a) Article 802, U.S. Navy Regulations, 1990
(b) MCO P1050.3H
(c) Section 0104, JAGMAN
(d) OPNAVINST 3120.32C
(e) COMSIXTHFLTINST 5000.1M

Encl: (1) Sample Liberty Risk List
(2) Sample Liberty Risk Class "A" Letter
(3) Sample Liberty Risk Class "B" Letter
(4) Sample Liberty Risk Class "C" Letter
(5) Sample Escort of Liberty Risk Letter

1. Purpose. To establish throughout the 26th MEU a flexible, lawful, commonly understood and implemented overseas liberty risk program in accordance with the references.

2. Basis. The underlying rationale of the liberty risk program is the essential protection of the foreign relations of the United States. A Marine or sailor whose conduct demonstrates a lack of ability to properly represent the United States ashore is a LIBERTY RISK. Commanders have substantial discretion in deciding to place a member on liberty risk; however, the decision should generally be limited to those cases involving a potential serious breach of the peace or flagrant discredit to the armed forces. This program ONLY applies overseas, either in a foreign country or in foreign territorial waters.

3. Due Process. Only Commanding Officers may assign an individual to a liberty risk status. This authority will not be delegated. The commander must afford adequate administrative due process safeguards. After reviewing each case individually, the commander should advise the member in writing of assignment to the program, the basis for the action, and of the opportunity to respond (e.g., request mast). The commander must review each assignment prior to each port visit in order to assess whether continued curtailment of liberty is justified. The commander should consider an incremental approach, determining whether less restrictive means will be effective in a given case before curtailing all liberty.

4. Liberty Risk Classes. Listed below are the standardized MEU liberty risk program limitations categories. These categories are guidelines only, and are intended only to facilitate reporting to higher those personnel on liberty risk.

Subj: 26th MEU OVERSEAS LIBERTY RISK PROGRAM

- a. Class "A" -- Personnel may be granted liberty that expires not later than 2200.
- b. Class "B" -- Personnel may be granted liberty that expires not later than 2000 and such personnel must have as an NCO or higher-ranking individual as his liberty buddy.
- c. Class "C" -- No liberty authorized.

5. Procedure. The overseas liberty risk program is administrative, NOT punitive. Thus, regardless of whether charges are pending at NJP or a court-martial, a service member may have his liberty curtailed. By the same token, members punished at NJP or a court-martial should not be automatically placed on liberty risk unless their offense and predilections otherwise justify that assignment. No service record entries are made. Members on liberty risk cannot be required to muster or work with members undergoing punitive restriction. To reemphasize, the program is an administrative limitation on liberty; it is not to be confused with pretrial restriction or restriction as the result of a disciplinary proceeding.

6. Other Lawful Limitations on Liberty. Other legitimate bases for liberty limitations exist outside the military justice system and outside the overseas liberty risk program. Such bases include: safety or security of personnel, medical reasons, operational necessity, command integrity, bona fide training, and properly conducted extra military instruction (EMI). Liberty may also be denied if a member's appearance is contentious, lewd, inflammatory, or unlawful.

7. Action

- a. Commanders will:

- (1) Ensure that they administer the overseas liberty risk program in accordance with the guidelines of this Policy Letter.

- (2) Review each liberty risk assignment prior to each port visit in order to assess whether continued curtailment of liberty is justified

- (3) Ensure that designation as liberty risk will be accompanied by appropriate collateral action designed to help solve the problem (e.g. alcohol rehab, counseling, medical treatment, etc.)

- b. The MEU CE and MSEs will maintain a current roster of liberty risk personnel and provide a copy to the Command Duty Officer, as well as each OOD and DNCO manning the Quarterdeck.

MEMORANDUM

From: Commanding Officer
To: Command Duty Officer

Subj: LIBERTY RISK LIST

Ref: CO Policy Letter dtd

1. The following personnel have been placed in the Liberty Risk program in accordance with reference (a):

<u>NAME</u>	<u>RANK</u>	<u>UNIT/SECT</u>	<u>LIBERTY RISK CLASSIFICATION</u>	<u>START DATE</u>
-------------	-------------	------------------	------------------------------------	-------------------

2. Personnel listed above have been advised of their status in accordance with the reference. The Officer of the Day is charged with the responsibility of monitoring the status of the personnel listed above and notifying the Command Duty Officer of any violation of the Liberty Risk Policy. Personnel listed, as Classification “B” must have an Approved Liberty Risk Escort chit with the name of a qualified escort.

<u>CLASS</u>	<u>DEFINITION</u>
Class A	Liberty to expire at 2200 hours
Class B	Liberty to expire at 2000 hours: With NCO or higher as Liberty Buddy
Class C	No Liberty

K. J. GLUECK JR.

Copy to:
Commander of Troops
Section OIC
SgtMaj
Quarterdeck

From: _____ Section OIC
To: Commanding Officer
Via: Commander of Troops

Subj: ESCORT OF LIBERTY RISK

1. It is requested that _____ be authorized to escort _____, who is currently in a class _____ liberty risk status. Assigned escort understands that class _____ liberty risk status is required to conform with instructions outlined in his/her Liberty Risk letter dated: _____.

2. Reason for request: _____
_____.

3. I, _____, fully understand the guidelines of the class _____ liberty risk policy. I will remain with the above named individual for the entire period of time he/she is authorized on shore. I understand that I am personally responsible for the member's conduct ashore and his/her timely return at 2000. I also understand that failure to adhere to this policy could result in disciplinary action.

SIGNATURE _____

4. Recommendation:

SNCOIC	Approved	Disapproved _____	INTLS
OIC	Approved	Disapproved _____	INTLS
SGTMAJ	Approved	Disapproved _____	INTLS

5. Departed:

Time _____ Date _____ DNCO _____

Returned:

Time _____ Date _____ DNCO _____

Approved/Disapproved: _____
Commanding Officer

1050
S-1

From: Commanding Officer
To:

Subj: ADMINISTRATIVE DEPRIVATION OF LIBERTY (LIBERTY RISK PROGRAM)

Ref: CO, 26th MEU ltr 1000 S-1 dtd

1. In accordance with the provisions of the reference, you are hereby placed in Liberty Risk Class "A" effective.
2. You have been placed in this status because of your conduct ashore.
3. As a Class "A" the following liberty will be granted to you during the below stated period.

LIBERTY WILL EXPIRE ON BOARD THE USS SAIPAN AT 2200 HOURS.

4. Your liberty status will be reevaluated in two weeks prior to arrival in the next liberty port, whichever comes first. If further deprivations of your liberty are recommended and approved by me, you will be informed by letter. A copy of all Liberty Risk Program letters will be retained in your service record for the duration of the 26th Marine Expeditionary Unit's deployment. Upon completion of this deployment, this letter(s), will be removed from your service record and destroyed.
5. You are encouraged to review your past conduct ashore in an effort to preclude further deprivations of liberty in the future.
6. Should you have any questions concerning this action you should follow the normal chain of command.
7. Failure to comply with this letter of acknowledgment could result in the further administrative action of violation of Article 92, UCMJ, "Failure to obey a lawful order or regulation."

Commanding
(or Acting)

1050
S-1

From: Commanding Officer
To:

Subj: ADMINISTRATIVE DEPRIVATION OF LIBERTY (LIBERTY RISK PROGRAM)

Ref: CO, 26th MEU ltr 1000 S-1 dtd

1. In accordance with the provisions of the reference, you are hereby placed in Liberty Risk Class "B" effective.
2. You have been placed in this status because of your conduct ashore.
3. As a Class "B" the following liberty will be granted to you during the below stated period.

LIBERTY WILL EXPIRE ON BOARD THE USS SAIPAN AT 2000 HOURS. Your liberty buddy must an NCO, SNCO or Officer. You are responsible for arranging for a liberty buddy of appropriate rank.

4. Your liberty status will be reevaluated in two weeks prior to arrival in the next liberty port, whichever comes first. If further deprivations of your liberty are recommended and approved by me, you will be informed by letter. A copy of all Liberty Risk Program letters will be retained in your service record for the duration of the 26th Marine Expeditionary Unit's deployment. Upon completion of this deployment, this letter(s), will be removed from your service record and destroyed.
5. You are encouraged to review your past conduct ashore in an effort to preclude further deprivations of liberty in the future.
6. Should you have any questions concerning this action you should follow the normal chain of command.
7. Failure to comply with this letter of acknowledgment could result in the further administrative action of violation of Article 92, UCMJ, "Failure to obey a lawful order or regulation."

Commanding
(or Acting)

1050
S-1

From: Commanding Officer
To:

Subj: ADMINISTRATIVE DEPRIVATION OF LIBERTY (LIBERTY RISK PROGRAM)

Ref: CO, 26th MEU ltr 1000 S-1 dtd

1. In accordance with the provisions of the reference, you are hereby placed in Liberty Risk Class "C" effective.
2. You have been placed in this status because of your conduct ashore.
3. As a Class "C" the following liberty will be granted to you during the below stated period.

NO LIBERTY

4. Your liberty status will be reevaluated in two weeks prior to arrival in the next liberty port, whichever comes first. If further deprivations of your liberty are recommended and approved by me, you will be informed by letter. A copy of all Liberty Risk Program letters will be retained in your service record for the duration of the 26th Marine Expeditionary Unit's deployment. Upon completion of this deployment, this letter(s), will be removed from your service record and destroyed.
5. You are encouraged to review your past conduct ashore in an effort to preclude further deprivations of liberty in the future.
6. Should you have any questions concerning this action you should follow the normal chain of command.
7. Failure to comply with this letter of acknowledgment could result in the further administrative action of violation of Article 92, UCMJ, "Failure to obey a lawful order or regulation."

Commanding
(or Acting)

**APPENDIX 5-7: SAMPLE FRATERNIZATION AND PERSONAL
RELATIONS POLICY**

To: Distribution List

Subj: POLICY ON FRATERNIZATION AND PERSONAL RELATIONS
BETWEEN SERVICE MEMBERS [11 MEU]

Ref: (a) U.S. Navy Regulations
(b) OPNAVINST 5370.2B, "Navy Fraternization Policy"
(c) MCO P5353.1C Marine Corps Equal Opportunity Manual

1. Purpose. To Promulgate the UNITNAME policy on fraternization and personal relations for the members of the UNITNAME.
2. Applicability. This policy applies to all UNITNAME personnel, to include all Marine and Navy personnel, all attachments and detachments, and all military ship riders supporting the UNITNAME.
3. Punitive Nature. This policy is punitive in nature. Failure to comply with the policy and guidance contained in this instruction will result in administrative and/or punitive action under the Uniform Code of Military Justice.
4. Policy
 - a. Fraternization
 - (1) Fraternization is an improper personal or business relationship among Marines and/or Sailors of different ranks and positions, which violates the customary bonds of acceptable senior-subordinate behavior. Such offenses undermine good order and discipline, weaken the chain of command, and bring discredit to the Naval Service.
 - (2) Although it has most commonly been applied to officer-enlisted relationship, fraternization also includes improper relationships and social interactions between officers as well as between enlisted members.
 - (3) Fraternization is a gender-neutral concept. Its focus is on the detriment to good order and discipline resulting from the erosion of respect for authority inherent in an unduly familiar senior-subordinate relationship.
 - (4) A relationship is considered unduly familiar and inappropriate, thus subjecting the member to disciplinary action, when the relationship is prejudicial to good order and discipline; or brings discredit to the Naval Service. The prohibition against unduly familiar and inappropriate relationships as detailed in references (a) and (b) are incorporated by reference into this policy.

b. Personal Relationships

- (1) UNITNAME personnel are prohibited from touching each other; any member of ships' crew, to include ships' company, attachments or detachments; any member of the Amphibious Squadron (PHIBRON) staff; and, any military or civilian ship rider, in any manner tending to show affection or undue familiarity, such as hand-holding, hugging, kissing, or fondling while on any ship, or pier or command-sponsored events or activities, while in uniform.
- (2) Personnel will not engage in sexual relations, under any circumstances, with any persons, to include spouses, fiancées, boyfriends or girlfriends, while on any ship, or pier, or during command-sponsored events or activities.
- (3) All personnel will conduct themselves professionally at all times, whether aboard ship or ashore. Relationships that violate paragraph 4(a) above, or that violate references (a) and (b) are prohibited (e.g. a Marine Sergeant "dating" a Navy Seaman or Marine Lance Corporal on liberty is prohibited).

c. Off-Limits Spaces. The following locations are OFF LIMITS as places for males and females to occupy concurrently:

- (1) Behind locked doors in an otherwise unmanned space, unless the door must be locked for duty reasons (e.g. classified spaces).
- (2) Berthing areas or lounge of members of the opposite sex. However, members of the opposite sex may enter berthing spaces on official business. Entrance is announced by stating: "MALE ON DECK" or "FEMALE ON DECK" as applicable. In addition, whenever feasible, service members conduction official business official business should be escorted by a member of the opposite sex.
- (3) After darkenship, in remote places such as sponsons, flight deck, catwalks, fo'c's'le, air conditioned rooms or fan rooms, ship's boats, hanger bay, vehicle stowage, well deck, etc.

d. Sexual Harassment. As defined in reference (c), sexual harassment is a form of discrimination that involves unwelcome sexual advances, requests for sexual favors, making offensive gestures, statements, and jokes, and discipline, and degrades mission readiness. I will not tolerate the sexual harassment of Marines, Sailors or civilians.

6. Action/Responsibility

- a. Leaders throughout the chain of command will:

CENTER FOR LAW AND MILITARY OPERATIONS

(1) Be especially attentive to their personal associations such that their actions and the actions of their subordinates are supportive of the military chain of command and good order and discipline. Since circumstances are important in determining whether personal relationships constitute fraternization, seniors must have provide guidance on appropriate relationships that build cohesion and morale.

(2) Ensure all members of the chain of command are aware of the policies and prohibitions set forth herein. Training must be conducted to specifically advise the members of your unit or section of the guidelines and prohibition contained in this policy.

(3) Address offending conduct by taking immediate and appropriate action, to include counseling, issuing punitive or non-punitive letters of caution, comments on fitness reports or performance evaluations, reassignment, and if necessary, appropriate disciplinary action.

(4) Compliance with this policy is the responsibility of all UNITNAME personnel. Leaders at all levels must set the proper example. All personnel will be held accountable for their conduct.

SIGNATURE BLOCK

APPENDIX 5-8: SAMPLE INTERNET AND LAN USAGE POLICY

From: Commanding Officer
To: Distribution

Subj: MEU INTERNET AND UNCLASSIFIED LAN USAGE POLICY

Ref: (a) MARADMIN 541/99, Information Assurance Bulletin 2-99
(b) MARADMIN 162/00, Information Assurance Bulletin 2-00

1. Per the references the MEU policy for worldwide web access and unclassified LAN usage is outlined below.
2. Punitive Nature. This instruction is punitive in nature. Failure to comply with the policy and guidance contained in this instruction can result in administrative and/or punitive action under the Uniform Code of Military Justice (UCMJ).
3. Official Use. Official Internet and unclassified LAN use is defined as that which is not prohibited by law, regulation, instruction, or command policy, to include:
 - a. Obtaining information to support the 11th MEU mission.
 - b. Obtaining information to enhance the professional skills of Marine Corps and Navy personnel.
4. Access Privileges. All personnel in the 11th MEU are permitted to have an official Marine Corps Enterprise Network (MCEN) e-mail account on the unclassified LAN. In garrison, all personnel will be permitted access to the Internet. Access to the Internet aboard ship may be limited due to bandwidth restrictions. If that is the case the MEU S-6 will recommend personnel authorized to get Internet access to the MEU Commander.
5. Prohibited Use. The following uses of the Internet and unclassified LAN are PROHIBITED:
 - a. Illegal, fraudulent, or malicious activities.
 - b. Introducing classified information into an unclassified system or environment.
 - c. Accessing, storing, processing, displaying, distributing, transmitting, or

viewing material that is pornographic, racist, promotes hate crimes, or is subversive in nature.

d. Storing, accessing, processing, or distributing classified, proprietary, sensitive, for official use only, or privacy act protected information in violation of established security and information release policies.

e. Obtaining, installing, copying, pasting, transferring, or using software or other materials obtained in violation of the appropriate vendor's patent, copyright, trade secret or license agreement.

f. Knowingly writing, coding, compiling, storing, transmitting or transferring malicious software code, to include but not limited to: viruses, logic bombs, worms, and macro viruses.

g. Partisan political activity, religious lobbying, or advocacy of activities on behalf of organizations having no affiliation with the Marine Corps, DON or DOD.

h. Disseminating religious materials outside an established command religious program.

i. Fund raising activities, either for profit or non-profit, unless the activity is specifically approved by the command (i.e., CFC and NMCRS).

j. Gambling, wagering, or placing of any bets.

k. Writing, forwarding, or participating in chain letters.

l. Posting personal home pages.

m. Participating in on-line video gaming.

n. Accessing and logging into commercial e-mail accounts, such as hotmail, AOL, or yahoo in garrison. Under no circumstances, whether in garrison or aboard ship, will official government correspondence or data files be sent, forwarded to, or created on commercial services of any kind.

6. Permitted Uses. The following uses of the Internet and unclassified LAN are permitted:

a. Exchange of email between MCEN and commercial e-mail accounts ashore.

b. Use of the Internet to view catalogs, purchase personal items, and access financial services on designated computer workstations.

c. Use of the Internet for surfing entertainment sites not in violation of paragraph 5 on designated computer workstations.

d. When embarked aboard ship and using shipboard networks, use of Internet chat rooms for morale purposes in accordance with paragraph 5 of this policy.

e. When embarked aboard ship and using shipboard networks, accessing and logging in to commercial e-mail accounts for morale purpose in accordance with paragraph 5 of this policy.

7. Software. All software requires licensing. All software and drivers will be held, inventoried, and loaded by S-6 personnel. Downloading and installing of software without a proper license is unauthorized and will not be performed by the S-6 or any individual.

8. Privacy. All users are reminded they have no expectation of privacy in their use of government information systems. As a general rule, S-6 personnel will not read personal email. However, use of the Internet and e-mail over the MCEN is subject to monitoring, interception, and recording by MEU S-6 personnel and/or any other government agent.

9. Action. Commanders will ensure all members of their command are aware of the policies and prohibitions set forth in this instruction. Any violation of the above will result in the immediate suspension of Internet privileges and/or e-mail accounts and may result in administrative and/or disciplinary action. Training must be conducted to specifically advise the members of your unit or section of the policies and prohibitions contained herein to preclude any misunderstanding of this policy.

10. Points of contact for this matter are the MEU S-6 and S-6A.

APPENDIX 6-1: PRELIMINARY INQUIRY GUIDE (NJS)

PRELIMINARY INQUIRY

The preliminary inquiry (PI) is a quick and informal investigative tool that can be used to determine initially whether a particular incident is serious enough to warrant some form of JAGMAN investigation. A PI is not necessarily required, however, it is "advised" for all incidents potentially warranting an investigation.

Method of inquiry. The convening authority (CA) may conduct a PI personally or appoint a member of the command to do so. There are no requirements nor restrictions governing how the inquiry is to be accomplished. The goal is to take a "quick look" at a particular incident (e.g., a minor fender-bender), and gather enough information so that an informed decision can be made regarding whether some sort of JAGMAN investigation is truly necessary. Generally, the PI should not take any longer than three (3) working days. If more time is required, it means that the inquiry officer is attempting to do too much or has not been sufficiently instructed as to what issue(s) is to be addressed (see page II-3 for a PI checklist). Upon completion of the PI, a report is tendered to the CA. The PI report need not be in writing, but some form of limited documentation is advisable (see page II-5 for a sample PI report). JAGMAN 0204.

Command options. Upon reviewing the results of the PI, the CA should take one of the following actions:

1. Take no further action. Where further investigation would serve no useful purpose, there is no need to convene a JAGMAN investigation. This is an appropriate course where the PI reveals that the incident is likely to be of little interest to anyone outside the immediate command or that the event will be adequately investigated under some other procedure (e.g., NCIS investigation, MLSR/survey procedure, etc.). JAGMAN 0205a(2)(a), 0207. As a matter of practice, documentation of the PI and the command decision is advisable.
2. Conduct a command investigation. JAGMAN 0205a(2)(b).
3. Convene a litigation-report investigation. *Consultation with the "cognizant judge advocate" is required.* JAGMAN 0205a(2)(c).
4. Convene a court or board of inquiry. If the CA is not a general court-martial convening authority (GCMCA) and therefore not empowered to convene a court or board of inquiry, the CA may request, via the chain-of-command, that an officer with such authority convene the investigation. JAGMAN 0205a(2)(d).

NOTE: It is always appropriate for the CA to consult with a judge advocate before deciding how to proceed. JAGMAN 0206.

Reporting the results of PIs. After deciding which of the command options to exercise, the CA is to report that decision to his/her immediate superior in the chain-of-command. This does **not** require a special, stand-alone report; command decisions on PIs are to be relayed in the context of existing situational reporting systems. JAGMAN 0204h(2). You should determine if your ISIC has issued guidance on what types of incidents should be or should not be reported.

Review of command decision. The initial determination of which option to exercise is a matter of command discretion. Superiors in the chain-of-command may direct that an option be reconsidered or that a particular course of action be taken. For example, a superior may feel that a litigation-report investigation may be the preferred method of investigating and documenting a particular incident and direct that a subordinate convene such an investigation rather than a command investigation. JAGMAN 0204i and 0205b.

PRELIMINARY INQUIRY CHECKLIST

- ___ CA appoints a preliminary inquiry officer.
- ___ Begin work on the inquiry immediately upon hearing that you are to be appointed, whether or not you have received an appointing order in writing.
- ___ Decide what the purpose and methodology of your inquiry will be.
 - ___ Can this preliminary inquiry be completed in three working days? If not, you may be trying to do too much. Further clarification from the CA may be necessary.
- ___ Has this incident involved a member of the command and/or occurred within the command? If not, are you the appropriate command to conduct the preliminary inquiry and/or any administrative investigation?
- ___ Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? (If yes, refer to JAGMAN 0204c).
- ___ Is this considered a "major" incident? (Refer to JAGMAN Appendix A-2-a for a definition of a "major" incident.)
 - ___ If believed to be a "major" incident, refer to JAGMAN 0204g, 0204h, 0205a(1), and 0211e(1).
- ___ Obtain any available documentation pertaining to the inquiry, i.e. copies of rules and regulations, instructions, correspondence and messages, logs, standard operating procedures, personnel records, medical records, official reports, vehicle accident report forms, etc.
- ___ Locate and preserve evidence, i.e. real objects (firearms, bullets, etc.) and note physical locations (accident sites, etc).
- ___ Draw up a list of possible witnesses.
 - ___ Conduct an interview of any witness you deem relevant to your inquiry, those that will provide you with enough information to understand what occurred and enable you to make an informed recommendation to the CA.
 - ___ If a witness is not physically available, an interview may be conducted via telephone or message.
 - ___ Advise any military witness who may be suspected of an offense, misconduct, or improper performance of duty, of his/her rights under Article 31, UCMJ. (Refer to page VIII-1 of this handbook for a sample form.)
 - ___ Advise each witness prior to signing any statement relating to the origin, incident, or aggravation of any disease or injury that he/she has suffered, of his/her right not to sign such a statement. (Refer to page VIII-2 of this handbook for a sample form). *See* JAGMAN 0221b.
 - ___ Is a Privacy Act statement required for any witness interviewed? JAGMAN 0216 requires that Privacy Act statements be obtained from each witness from whom personal information is taken. (Refer to page VIII-3 of this handbook for a sample form.)
- ___ Does the CA desire/require the outcome to be documented in writing? (If yes, refer to page II-5 of this handbook for sample format.)
- ___ The preliminary inquiry officer makes his/her report to the CA.

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___ Which of the command options does the CA choose in light of the preliminary inquiry?

___ No further action.

___ Command investigation.

___ Litigation-report investigation.

___ Recommend court/board of inquiry to GCMCA.

___ CA reports the result of the PI to the ISIC.

___ Preserve all evidence, witness statements, documentation gathered during the preliminary inquiry, for possible use in any administrative investigation that may be subsequently convened.

SAMPLE PRELIMINARY INQUIRY REPORT

(Date)

From: (Name and rank of individual conducting preliminary inquiry)

To: (Title of authority ordering preliminary inquiry)

Subj: PRELIMINARY INQUIRY INTO (DESCRIPTION OF INCIDENT)

Ref: (a) JAGMAN Section 0204

1. This reports completion of the preliminary inquiry conducted in accordance with reference (a) into (description of incident).

2. Personnel contacted: (List individuals with name, rank, title, unit, and telephone number).

3. Materials reviewed: (List documents, objects, materials, tangibles reviewed and, if of probable evidentiary value, where stored together with name of the custodian of such material and that person's phone number).

4. Summary of findings: (Summary should not extend beyond one paragraph and should summarize both what is known and unknown about the event in question).

5. Recommendation: (Choose one: consult a judge advocate; no further investigation warranted; command investigation; litigation-report investigation; board of inquiry; or court of inquiry).

Name, rank, unit, telephone

(Note: attachments may be added to the report as desired.)

APPENDIX 6-2: COMMAND INVESTIGATION TIPS AND FORMAT

Writing the Investigation: Helpful Hints. The key to writing a good CI is **organization**. As IO, you must take the time to reconstruct the incident in your mind, pulling together all the evidence. You must then document the incident in a **readable** fashion. Remember, the CA and reviewing authorities will want to understand the incident from a reading of the facts. Often a recitation of the facts in chronological, step-by-step form is easiest to follow. Keep your findings of fact as clear and concise as possible.

Witnesses. In handling witnesses, there are several things to keep in mind. You may obtain information by personal interview, correspondence, or telephone inquiry. If a witness is unable to review and/or sign a statement, you may simply make a summary of the conversation and certify it to be accurate. Before interviewing witnesses, ensure you understand when and what rights advisements may be required: if you suspect a military member has committed a criminal offense, Article 31, UCMJ, warnings are required; when interviewing a service member concerning the incurring of injury, warning under JAGMAN 0221b is required; if you are asking for personal information (as opposed to information related to performance of duty), Privacy Act advice is necessary.

Each witness should be interviewed separately. Let the witness tell what happened; don't ask questions that suggest answers. Ask for clarification if the witness is speaking in broad or vague terms (e.g., "He was drunk"; "What gave you that impression?"; "He had an odor of alcohol about him, his eyes were bloodshot, he was slurring his speech and unable to maintain his balance"). Try to obtain as much information during the interview as possible; the relevance of a particular fact may not become clear until later in the investigation.

In drafting opinions and recommendations, the IO should address responsibility and accountability. All areas which need corrective action must also be addressed.

CONDUCTING THE COMMAND INVESTIGATION CHECKLIST

I. GETTING STARTED

- CA appoints an investigating officer in writing.
- Begin work on the investigation immediately upon hearing that you are to be appointed, whether or not you have received a convening order in writing.
- Carefully examine the convening order to determine the scope of your investigation.
- Determine when the investigative report is due to the CA.
 - If you can not reach that deadline, request an extension.
- Review all relevant instructions on your investigation, i.e. JAGMAN Chapter 2, etc.
- Determine which checklists may apply to your investigation and review them carefully to determine what information is required.
- Decide what the purpose and methodology of your investigation will be.
 - Where is evidence likely to be located?
 - How can such evidence best be obtained and preserved?

- ___ Has this incident involved a member of the command and/or occurred within the command? If not, are you the appropriate command to conduct the investigation?
- ___ Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? (If yes, refer to JAGMAN 0204c).
- ___ Is this considered a "major" incident? (Refer to JAGMAN Appendix A-2-a for definition.)
 - ___ If believed to be a "major" incident, refer to JAGMAN 0204g, 0204h, 0205a(1), and 0211e(1).

II. HANDLING WITNESSES

(NOTE: You may wish to gather and review other types of evidence before interviewing any or all witnesses.)

- ___ Draw up a list, to be supplemented as the investigation progresses, of all possible witnesses.
- ___ Determine if witnesses are transferring, going on leave, hospitalized, etc., which might take them out of the area before review of the investigation is completed.
 - ___ Inform the CA, orally, with confirmation in writing, immediately upon learning that a material witness might leave the area before review of the investigation is completed.
- ___ Conduct an intensive interview of each witness, i.e. names, places, dates, and events that are relevant.
- ___ Witness statements should be as factual in content as possible. If a witness makes a vague statement ("he was drunk"), try to pin down the actual facts.
- ___ If a witness is not physically available for an interview, attempt to conduct it via telephone, mail or message.
- ___ Advise any military witness who may be suspected of an offense, misconduct, or improper performance of duty, of his/her rights under Article 31b. (Refer below for a sample form.)
- ___ Advise each witness prior to signing any statement relating to the origin, incident, or aggravation of any disease or injury that he/she has suffered, of his/her right not to sign such a statement. (Refer to page VIII-2 of this handbook for a sample form). See JAGMAN 0221b.
- ___ Is a Privacy Act statement required for the witness interviewed? JAGMAN 0216 requires that Privacy Act statements be obtained from each witness from whom personal information is taken. (Refer to page VIII-3 of this handbook for a sample form.)
- ___ Record the interview of each witness in detailed notes or by mechanical means.
- ___ Reduce each witness' statement to a complete and accurate narrative statement.
- ___ If possible, obtain the signature of each witness, under oath and witnessed, on the narrative statement of his/her interview. If not possible, indicate on the narrative statement that it represents either an accurate summary, or verbatim transcript, of oral statements made by the witness.

CENTER FOR LAW AND MILITARY OPERATIONS

___ Direct witnesses subject to naval authority not to discuss their statements. Witnesses not subject to naval authority may be requested not to discuss their statements.

___ Review your list of possible witnesses to ensure that you have interviewed all such witnesses.

III. DOCUMENTARY EVIDENCE

___ Make a list, to be supplemented as the investigation proceeds, of all possible documents, to include:

- ___ Copies of relevant rules, regulations, instructions, standard operating procedures;
- ___ relevant correspondence and messages;
- ___ personnel records;
- ___ medical records (clinical and hospital records, death certificates, autopsy reports, etc.);
- ___ official logs and reports; and
- ___ required forms (personnel injury forms, vehicle accident reports, etc.).

___ Examine your list of possible documents to ensure that you have obtained all such documents available to you.

___ If unable to obtain a certain document, attempt to obtain it via fax, message, telephone, or mail.

___ Obtain originals or certified true copies of all documents available to you.

IV. OTHER EVIDENCE

___ Make a list of any other information which may be of assistance to reviewing authorities in understanding the incident investigated (real objects, physical locations, maps, charts, photographs, your personal observations, etc.).

___ Examine your list of possible information to ensure that you have obtained all such information personally available to you.

___ If unable to obtain certain information, attempt to obtain if via fax, message, telephone, or mail.

___ Attempt to reduce such information to a form, such as photographs or sketches, which can be conveniently included in your investigative report.

___ Take all steps possible to insure that any evidence not an enclosure to the investigative report will be kept in an identified place, safe from tampering, loss, theft, and damage, pending review of the investigation.

DRAFTING THE CI REPORT

(NOTE: REFER BELOW SAMPLE FORMAT)

___ Classification of the report, (secret, confidential, etc.). Omit classified information unless absolutely essential (*see* JAGMAN 0217b).

PRELIMINARY STATEMENT

- ___ State that all reasonably available evidence was collected or is forthcoming and that each directive of the CA has been met.
- ___ Set forth the nature of the investigation.
- ___ Relate any delays or difficulties encountered, including non-availability of evidence or failure to interview relevant witnesses.
- ___ Explain any conflicts in evidence, which evidence is considered more reliable, and why.
- ___ Note any extensions requested and granted.
- ___ Note the limited participation by any member or advisor.
- ___ If social security numbers contained in the report were obtained from sources other than the individual (i.e., from service records), so state.
- ___ Indicate where original items of evidence are maintained, how they are being safeguarded, and the name and phone number of the responsible custodian.
- ___ Any other information necessary for a complete understanding of the case.

FINDINGS OF FACT. A fact is something that is or happens.

- ___ Distinguish in your own mind the differences between the terms "fact", "opinion", and "recommendation".
- ___ Conduct an evaluation of the evidence or lack of evidence.
- ___ Review any special fact-finding requirements pertaining to the specific incident in the JAGMAN checklists.
- ___ When drafting the findings of fact, be specific as to persons, times, places, and events.
- ___ Reference after each finding of fact, the enclosures to the report which support the finding of fact.
- ___ Identify by grade or rate, service number, organization, occupation or business, and residence person(s) connected with the incident.
- ___ Make appropriate findings of fact for all relevant facts, including information already stated in the preliminary statement. The preliminary statement is not a substitute for findings of fact.
- ___ Place findings of fact in chronological and/or logical order.
- ___ Is each fact a separate finding?
- ___ Is each finding of fact supported by an enclosure?
- ___ Are all enclosures used? (if not used, delete the enclosure.)

CENTER FOR LAW AND MILITARY OPERATIONS

___ Ensure that, when read together, the findings of fact tell the whole story of the incident without having to refer back to the enclosures.

___ Does the story flow? Is it readable?

OPINIONS are reasonable evaluations, inferences, or conclusions based on the facts found. Opinions are value judgements.

___ Ensure that each of your opinions are exactly that, not findings of fact or recommendations.

___ Ensure that each opinion references the finding(s) of fact that support it.

___ Ensure that you have rendered those opinions required by the convening order, as well as any others you feel are appropriate.

RECOMMENDATIONS are proposals made on the basis of the opinions.

___ Ensure that each of your recommendations are exactly that, not findings of fact or opinions.

___ Ensure that each recommendation is logical and consistent with the findings of fact and opinions.

___ Address those recommendations specifically required by the convening order and any others considered appropriate.

___ Recommend any appropriate corrective, disciplinary, or administrative action.

___ Enclose a draft of a punitive letter of reprimand if recommending such action.

___ Draft and send, under separate cover, a non-punitive letter of caution if recommending such action.

SIGNING

___ Sign your report.

ENCLOSURES

___ Convening order.

___ All evidence in logical order.

___ Is each statement, affidavit, transcript or summary of testimony, photograph, map, chart, document, or other exhibit, a separate enclosure?

___ Are any reproduced documents certified to be true copies?

___ Have you complied with the special marking requirements applicable to photographs? *See* JAGMAN, secs. 0215c, and 0217h(4).

___ Are enclosures listed in the order in which they are cited in the body of the investigation?

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

___ Ensure that you do not have inappropriate material in the investigation: NCIS reports of investigations; aircraft mishap reports; Inspector General reports; polygraph examinations; medical quality assurance investigations.

CONCLUDING ACTION

___ Have you stretched your imagination to the utmost in gathering and recording all possible information on the incident investigated?

___ Have you checked and double-checked to ensure that your findings of fact, opinions, recommendations, and enclosures are in proper order?

___ Have you carefully proofread your Investigative Report to guard against embarrassing clerical errors?

___ Have you signed your Investigative Report?

SAMPLE COMMAND INVESTIGATION REPORT

Ser Info
Date

From: Captain _____, USMC

To: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Pendleton, CA

Subj: SAME AS SUBJECT ON CONVENING ORDER

- Encl: (1) Convening order and modifications thereto (if any were issued)
(2) Summary (or verbatim) of sworn (or unsworn) testimony of _____ (a witness)
(3) Summary (or verbatim) of sworn (or unsworn) testimony of _____ (a witness)
(4) Statement of _____, signed by witness
(5) Description of _____ (evidence found at scene of the accident)
(6) Photograph of _____ depicting

NOTE: Testimony of each witness, observations of the investigator, photographs, diagrams, and suitable reproductions of tangible evidence should be listed and attached as enclosures to the investigative report. The location of all original evidence, such as logs, charts, tangible items, and so forth, and the name and phone number of the official responsible for its safekeeping must be stated in the report, either on each enclosure or in the preliminary statement.

Preliminary Statement

1. Paragraph 1 of an investigative report must contain information in the form of a "preliminary statement." Contents may require continuation in one or more additional paragraphs. In general, *see* JAGMAN   0217(c) for required contents. Where applicable, an investigating officer should indicate the name and organization of any judge advocate consulted. Extensions of time to complete the report should be noted here. Also state in appropriate cases that the matter was first referred to NCIS and NCIS expressed no objection to proceeding with the investigation.

Findings of Fact

CENTER FOR LAW AND MILITARY OPERATIONS

1. _____ [encls (), ()]
2. _____ [encls (), ()]
3. _____ [encls (), ()]

Note: Findings of fact constitute an investigating officer's description of details of events based on evidence. Findings must be as specific as possible about time, places, and persons involved. Each fact may be made a separate finding. An investigating officer may determine the most effective presentation for a particular case. Each fact must be supported by testimony of a witness, statement of the investigative officer, documentary evidence, or tangible (real) evidence attached to the investigative report as an enclosure. Each finding of fact must reference each enclosure that supports it.

Opinions

1. _____ [FF ()]
2. _____ [FF ()]
3. _____ [FF ()]

Note: An opinion is a reasonable evaluation, reference, or conclusion based on facts found. Each opinion must be supported by findings of fact. Determination of line of duty and misconduct is properly stated as an opinion.

Recommendations

- 1.
- 2.
- 3.

(SIGNATURE OF INVESTIGATING OFFICER)

APPENDIX 6-3: PRIVACY ACT STATEMENT FORM

PRIVACY ACT STATEMENT

Name: _____ Rank/Rate: _____ Activity: _____
 Unit: _____
 Telephone number: _____

Today, _____, 20__, I acknowledge that I have received the following advisement under the guidelines of the Privacy Act.

This statement is provided in compliance with the provisions of the Privacy Act of 1974 (Public Law 93-579) which requires that Federal agencies must inform individuals who are requested to furnish personal information about themselves as to certain facts regarding the information requested below.

1. AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 972, 1201-1221, 2733, 2734-2734b., 2737, 5013, 5031-5036, 5131-5150, 5947, 6148, 7205, 7622-7623; 28 U.S.C. 1346, 2671-2680; 31 U.S.C. 240-243, 3521-3531, 3701-3702, 3717-3718; 37 U.S.C. 802; 38 U.S.C. 105; 42 U.S.C. 2651-2653; 44 U.S.C. 3101; 49 U.S.C. 1901.

2. PRINCIPAL PURPOSES. The information which will be solicited is intended principally and may be used for the following purposes:

- a. Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, date of expiration of active obligated service, and accrual of annual leave.
- b. Determinations on disciplinary or punitive action.
- c. Determinations on liability of personnel for losses of, or damage to , public funds or property.
- d. Evaluation of petitions, grievances, and complaints.
- e. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.
- f. Other determinations, as required, in the course of naval administration.
- g. Public information releases.
- h. Evaluation of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

3. ROUTINE USES: In addition to being used within the Department of the Navy and Defense for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Department of Veterans Affairs for use in determinations concerning entitlement to veterans' and survivors' benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the

Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlements, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

4. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSING TO DISCLOSE:

a. Where an individual is a subject of an investigation for purpose 2a or 2b, above: Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determination] [disciplinary determinations] in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possible could prevent the investigation from obtaining evidence which may be needed to support a favorable determination.

b. Where an individual is a subject of an investigation for purpose 2c, above: Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held pecuniarily liable for repayment of the Government's loss would be based on the other evidence in the investigative record, which possibly might not support a favorable determination.

c. Where the individual is a claimant or potential claimant in an investigation for purpose 2e, above: Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have make or may make against the Government as a result of the incident under investigation.

d. Where the individual was treated at Government expense for injuries caused by third parties in connection with a matter being investigated for purpose 2e, above: Disclosure is voluntary, but refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims against third parties in connection with the incident, or authorize withholding of the records of your treatment in naval medical facilities.

e. In any other case: Disclosure is voluntary, and if you do not provide the requested information, and determinations or evaluations made as a result of the investigation will be made on the basis of the evidence that is contained in the investigative record.

(Signature and date)

APPENDIX 6-4: ARTICLE 31B RIGHTS ADVISEMENT FORM

ARTICLE 31 RIGHTS

Name: _____ Rank/Rate: _____ Activity: _____
Unit: _____
Telephone number: _____

I have been advised that I may be suspected of the offense(s) of:
and that:

- I have the right to remain silent.
- Any statements I do make may be used as evidence against me in trial by court-martial.
- I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expenses, a military lawyer appointed to act as my counsel without cost to me, or both.
- I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.
- I have the right to terminate this interview at any time.

WAIVER OF RIGHTS

- I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that:
 - I expressly desire to waive my right to remain silent.
 - I expressly desire to make a statement.
 - I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning.
 - I expressly do not desire to have such a lawyer present with me during this interview.
 - This acknowledgment and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

(Witness's signature and date)

(Member's signature and date)

Understanding my rights under U.C.M.J. Article 31, I wish to make the following statement:

APPENDIX 6-5: SWORN STATEMENT FORMAT

Start each statement with the following:

I, **[Rank/Title and name of witness/suspect]**, make the following voluntary statement to **[Rank/Title and name of IO]**, whom I know to be the investigating officer for **[brief description of incident being investigated]**. I make this statement of my own free will without any threats or promises extended to me. I do solemnly swear/affirm that:

CONTENTS OF THE STATEMENT HERE

End each statement with the following:

This statement was typed for me by **[Rank/Title of individual transcribing the statement]**. I have read its contents and made all corrections, deletions and additions. This statement is true and correct to the best of my knowledge and belief.

Signature
Name/Rank/Title
Date and Time

Sworn and Subscribed before me the ___ day of May, 2000, **[Military Installation/City/State where statement was made]**.

Signature of IO **[Must be a Commissioned Officer detailed as an IO]**
Name/Rank/Title
Date and Time

Authorized to Administer Oaths under the provisions of 10 U.S.C. Section 936, and JAG Manual Section 0902

APPENDIX 6-6: JAGMAN 0221 LOD/MIS ADVISEMENT FORM

**WARNING ADVISEMENT ABOUT STATEMENTS
REGARDING ORIGIN OF DISEASE OR INJURY**

COMPLIANCE WITH SECTION 0221 OF THE JAG MANUAL

I, _____ have been advised that:

- questions have arisen concerning whether or not my injury/disease, sustained or discovered on _____ 19__, was incurred in the line of duty or as a result of my own misconduct;
- in the event such injury/disease is determined to have been incurred not in the line of duty or as a result of my own misconduct, I will be required to serve for an additional period beyond my present enlistment to make up for the duty time lost;
- lost duty time will not count as creditable service for pay entitlement purposes;
- I may be required to forfeit some pay (where absence from duty in excess of one day immediately follows intemperate use of liquor or habit-forming drugs);
- if I am permanently disabled and that disability is determined to have been the result of misconduct or was incurred not in the line of duty, I may be barred from receiving disability pay or allowances, as well as veteran's benefits;
- I may *not* be required to give a statement relating to the origin, incidence, or aggravation of any disease/injury that I may have.

I do/do not desire to submit a statement.

Date

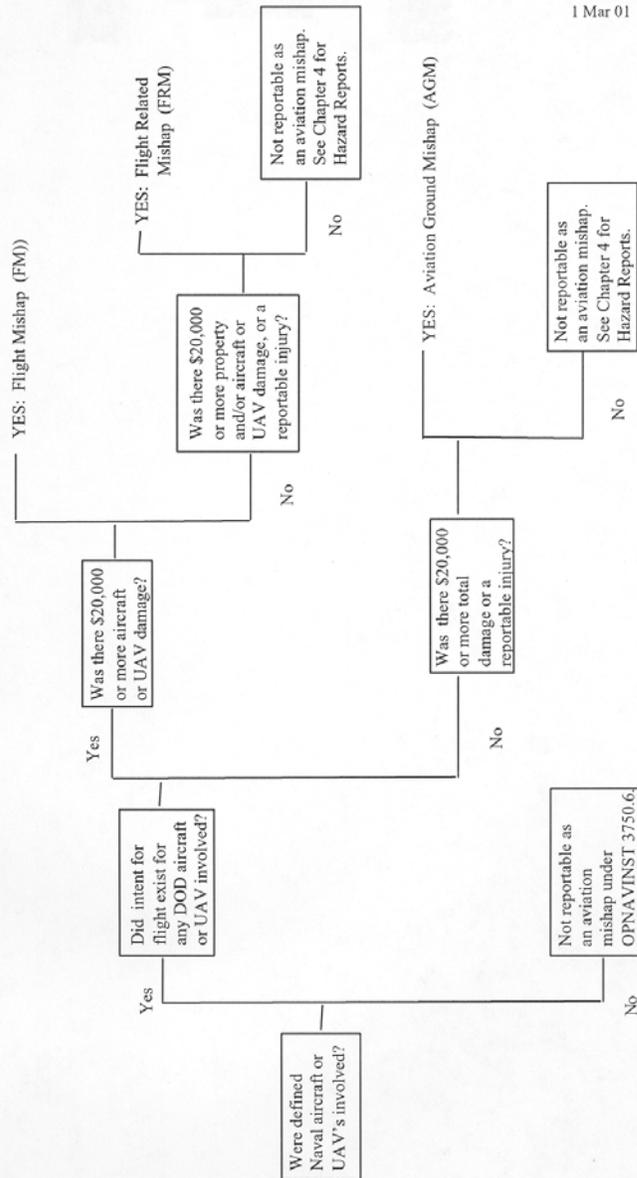
Signature

Witness Signature

Witness Name/Rate/Grade/Unit/Telephone Number

APPENDIX 6-7: MISHAP CATEGORY DECISION TREE

APPENDIX 3A MISHAP CATEGORY DECISION TREE

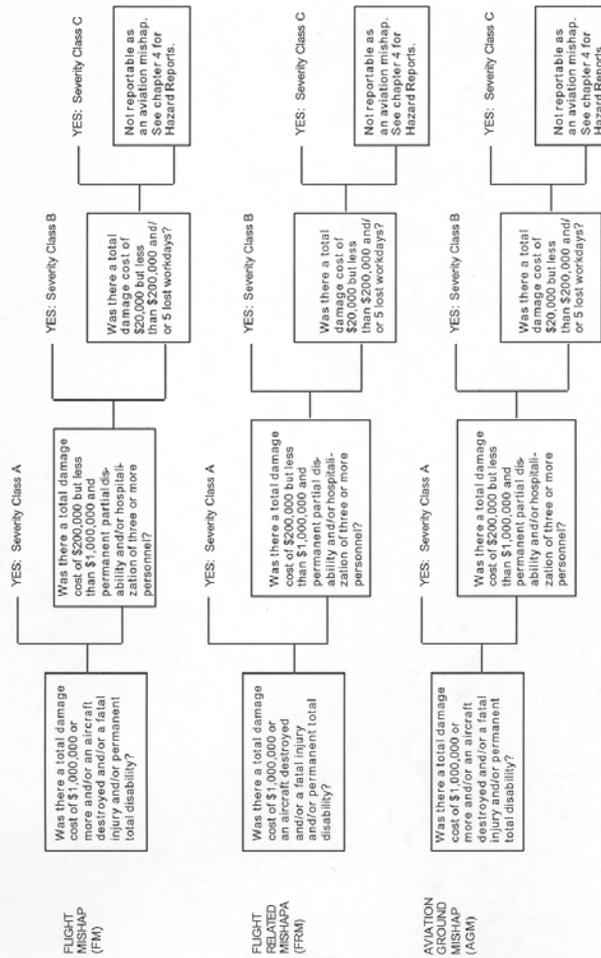


OPNAVINST 3750.6R
1 Mar 01

APPENDIX 6-8: MISHAP SEVERITY DECISION TREE

OPNAVINST 3750.6R
1 Mar 01

APPENDIX 3B MISHAP SEVERITY DECISION TREE



APPENDIX 6-9: MISHAP CLASSIFICATION MATRIX

APPENDIX 3C MISHAP CLASSIFICATION MATRIX

MISHAP CATEGORY	SEVERITY CLASS		
	A	B	C
FLIGHT MISHAP (FM) Intent for flight existed, and \$20,000 or more DOD aircraft/UAV damage occurred.	Total damage cost is \$1,000,000 or more and/or aircraft destroyed and/or fatal injury and or permanent disability	Total damage cost is \$200,000,000 but less than \$1,000,000 and/or permanent partial disability and/or hospitalization of three or more personnel.	Total damage cost is \$20,000 but less than \$200,000 and/or five lost workdays injury.
FLIGHT-RELATED MISHAP (FRM) Intent for flight existed with less than \$20,000 DOD aircraft or UAV damage	Total damage cost is \$1,000,000 or more and/or fatal injury and or permanent disability	Total damage cost is \$200,000 but less than \$1,000,000 and/or permanent partial disability and/or hospitalization of three or more personnel.	Total damage cost is \$20,000 but less than \$200,000 and/or five lost workdays injury.
AVIATION GROUND MISHAP (AGM) No intent for flight existed.	Total damage cost of \$1,000,000 or more and/or aircraft destroyed and/or fatal injury and/or permanent total disability.	Total damage cost is \$200,000 but less than \$1,000,000 and/or permanent partial disability and/or hospitalization of three or more personnel.	Total damage cost is \$20,000 but less than \$200,000 and/or five lost workdays injury.

OPNAVINST 3750.6R
1 Mar 01

APPENDIX 6-10: SAFETY INVESTIGATION ADVICE TO WITNESS
(WITH PROMISE OF CONFIDENTIALITY)

OPNAVINST 3750.6R
 1 Mar 01

Appendix 6A
 SAFETY INVESTIGATION REPORT ENCLOSURE
(PROMISE OF CONFIDENTIALITY) ADVICE TO WITNESS

THIS IS PART OF A LIMITED USE NAVAL AIRCRAFT SAFETY INVESTIGATION REPORT LIMITED DISTRIBUTED AND SPECIAL HANDLING REQUIRED BY OPNAVINST 3750.6R THIS STATEMENT IS PRIVILEGED AND IS EXEMPT FROM DISCLOSURE.			
PLEASE READ THIS STATEMENT CAREFULLY CERTIFY THAT YOU UNDERSTAND IT BY YOUR SIGNATURE AT THE BOTTOM			
I understand that: a. I have been requested to voluntarily provide information to a board conducting an investigation of a naval aircraft mishap. b. I AM NOT being requested to provide statement under oath or affirmation. c. Disclosure of personal information by me is voluntary, and that failure to provide such information will have no direct effect on me. d. The purpose of the information provided by me is to determine the cause of naval aircraft mishap and/or the damage and/or injury occurring in connection with that mishap. e. All information provided by me to the Aircraft Mishap Board will be used ONLY for safety purposes. f. The information provided by me shall NOT be used: (1) In any determination affecting my interests. (2) As evidence to obtain evidence in determining misconduct or line of duty status of killed or injured personnel. (3) As evidence to determine my responsibility or that other personnel from the standpoint of discipline. (4) As evidence to assert affirmative claims on behalf of the government. (5) As evidence to determine the liability of the government for property damage caused by the mishap. (6) As evidence before administrative bodies, such as Naval Aviator/Naval Flight Officer Evaluation Boards (USN) or Field Flight Performance Boards (USMC). (7) In any other punitive or administrative action taken by the Department of the Navy. (8) In any other investigation or report of the mishap about which I have been asked to provide information.			
1. STATEMENT (Continue on reverse and/or attach separate sheet(s) as necessary)			
2. PRINTED NAME (First, Middle, Last)			3. SIGNATURE
4. DATE	5. RANK/RATE	6. SERVICE	7. TELEPHONE NUMBER
8. ADDRESS WHERE YOU MAY BE LOCATED			

OPNAV 3750/16 (9-96)

APPENDIX 6-11: SAFETY INVESTIGATION ADVICE TO WITNESS
(NO CONFIDENTIALITY)

OPNAVINST 3750.6R CH-1
29 Nov 01

Appendix 6B
SAFETY INVESTIGATION REPORT ENCLOSURE
ADVICE TO WITNESSES

THIS IS PART OF A NAVAL AIRCRAFT SAFETY INVESTIGATION REPORT LIMITED DISTRIBUTED AND SPECIAL HANDLING REQUIRED BY OPNAVINST 3750.6R THIS STATEMENT IS NOT PRIVILEGED AND MAY BE DISCLOSED.			
PLEASE READ THIS STATEMENT CAREFULLY CERTIFY THAT YOU UNDERSTAND IT BY OUR SIGNATURE AT THE BOTTOM			
I understand that: a. I have been requested to voluntarily provide information to a board conducting an investigation of a naval aircraft mishap. b. I AM NOT being requested to provide statement under oath or affirmation. c. Disclosure of personal information by me is voluntary, and that failure to provide such information will have no direct effect on me. d. The purpose of the information provided by me is to determine the cause of naval aircraft mishap and/or the damage and/or injury occurring in connection with that mishap. All information provided by me to the Aircraft Mishap Board will be used ONLY for safety purposes.			
1. STATEMENT (Continue on reverse and/or attach separate sheet(s) as necessary)			
2. PRINTED NAME (First, Middle, Last)			3. SIGNATURE
4. DATE	5. RANK/RATE	6. SERVICE	7. TELEPHONE NUMBER
8. ADDRESS WHERE YOU MAY BE LOCATED			

OPNAV 3750/16 (9-01)

APPENDIX 6-12: GROUND HAZARD REPORT MESSAGE FORMATS

FM
TO
INFO
UNCLAS FOUO //NO5102//
SUBJ THIS IS A GROUND HAZARD REPORT (HR)
A/DOC/MCO P5102.1A//
B/(OTHER REFERENCES AS APPROPRIATE)
AMPN/ or NARR/References are identified, e.g., AMPN/REF A is
.... or NARR/REF A IS, REF B is, REF C IS...
POC/ List name, rank, title, telephone and FAX number of the
individual designated to answer inquiries about hazard report.
RMKS/1. THIS IS A GROUND HAZARD WITH A RAC OF (1,2, 3, ETC).
ENDORSEMENT REQUESTED IAW REF A. OR ENDORSEMENT NOT REQUIRED.
SUMMARY: (Summarize the report in three lines or less.)
2. DATA. (Provide the following where pertinent to the hazard)
A. EQUIPMENT/MATERIAL. Describe the equipment or material
 involved using item nomenclature, stock numbers, trade names,
 model, make, or other detailed and descriptive information to
 positively identify the equipment or material involved.
B. OPERATION/EVOLUTION/PROCEDURE. Describe concisely the
 task(s), operation(s), evolution(s), and/or procedure(s)
 involved at the time of the hazard identification.
C. ENVIRONMENT: (List if it applies and the items that apply)
 (1) Date of mishap/incident/discovery
 (2) Local time
 (3) Weather
 (4) Visibility
 (5) Temperature
 (6) Location.
3. CIRCUMSTANCES.
A. EVIDENCE AND ANALYSIS. Describe the hazard.
B. CONCLUSIONS. How the hazard could or has resulted in damage
 or injury.
C. ESTIMATE INJURY/DAMAGE/REPAIR COST(S)
4. CORRECTIVE ACTION(S). Describe corrective action(s) taken
 to abate the hazard. If the abatement action(s) or the
 formulation of recommended action(s) was beyond the capability
 of the originator, state the interim measure(s) taken to prevent
 injury or damage. Identify the agencies/ organizations that you
 recommend take corrective action(s); and/or identify the
 agencies/organizations from which you request assistance to
 develop corrective action(s).
5. REMARKS. Originator's comments.
6. COMMANDER'S COMMENTS. CG, CO or OIC endorsement of report.

CENTER FOR LAW AND MILITARY OPERATIONS

FM CG XXXXX MARDIV
TO CMC WASHINGTON DC//SD//
COMNAVSAFECEN NORFOLK VA//00/02/30/40A/42/47/60//
COMMARFORXXXXX//SAFETY//
CG XXXX MEF//G-4/SAFETY//

INFO
UNCLAS //N05102//
MSGID/GENADMIN/CG XXXX MARDIV//
SUBJ/ THIS IS A GROUND HAZARD REPORT-NEGLIGENT DISCHARGE//
REF/A/DOC/MCO P5102.1A//
REF/B/DOC/FMFM08/FMFM09//
POC/I. M. WRIGHT/CAPT (USMC)/GSO/XXXX MARDIV, DSN (751-XXXX)//
NARR/REF A IS MCO P5102.1A GROUND MISHAP INVESTIGATION AND
REPORTING. REF B IS BATTLE SKILLS TRAINING (BST) MANUAL
RMKS/1. THIS REPORT CONCERNS A GROUND SAFETY HAZARD RAC 1.
SUMMARY: NEGLIGENT DISCHARGE OF WEAPON BY GUARD. ENDORSEMENT NOT
REQUIRED.

2. DATA.

A. WEAPON: M16A2

B. DUTY STATUS: ON DUTY, WALKING POST AS BN ARMORY GUARD

C. ENVIRONMENT:

- (1) 16 APR XX,
- (2) 0230,
- (3) CLEAR,
- (4) NIGHT,
- (5) 48 DEGREES F,
- (6) BN ARMORY-BLDG# 1569

3. CIRCUMSTANCES.

A. EVIDENCE AND ANALYSIS. LCPL XXXX AND PFC YYY Y WERE TESTING EACH OTHER ON REACTION DRILLS IF THE ARMORY WERE TO COME UNDER FIRE. PFC INDICATED TO LCPL WHAT HE WOULD DO, BY UNSLINGING HIS WEAPON, CHAMBERING A ROUND, AND POINTING IT IN THE DIRECTION OF THE LCPL. PFC YYY Y PULLED THE TRIGGER NOT REALIZING THAT HIS WEAPON WAS NOT ON SAFE. THE WEAPON FUNCTIONED AS DESIGNED. LCPL XXXX HAD THE PRESENCE OF MIND TO DROP TO THE DECK AS PFC YYY Y POINTED HIS WEAPON IN HIS DIRECTION. THE WEAPON DISCHARGED AND THE ROUND IMPACTED THE WALL OF THE ARMORY.

B. CONCLUSION. THIS RESULTED IN A NEAR MISS THAT COULD RESULT IN DEATH OR SERIOUS INJURY TO MARINES OR PERSONNEL, AND PROPERTY OR EQUIPMENT DAMAGE.

C. ESTIMATE DAMAGE COST: \$25.00.

4. CORRECTIVE ACTION. FOR ALL XXXX MARDIV UNITS. CONDUCT WEAPONS HANDLING SAFETY STAND DOWN USING THIS MESSAGE AS AN EXAMPLE.

5. COMMANDING GENERALS COMMENTS. THE TRAINING BEGUN ON DAY ONE OF BOOT CAMP IS THAT ALL RIFLEMEN WILL HANDLE WEAPONS IN A PRESCRIBED METHOD. LEADERS, ENSURE THAT CONTINUING GUIDANCE IS PROVIDED TO OUR MARINES TO ENSURE ADHERENCE TO THESE STANDARDS. MAJGEN SENDS.//

APPENDIX 6-13: MISHAP REPORTING MATRIX

Mishap Type	Mishap Damage	Mishap Class	Reports Required	Report Deadline	Investigation By
1. On or Off Duty On Base	a. Fatality	A	SAFEREP Parts A and B	SAFEREP: 30 days	SIB (COMNAVSAFECEN Investigator will assist)
	b. Permanent Total Disability (PTD)				
OR	c. \$1,000,000 or more	B	SAFEREP Parts A and B	SAFEREP: 30 Days	SIB (COMNAVSAFECEN Investigator may assist)
	a. Permanent Partial Disability (PPD)				
2. On Duty	b. \$200,000 - \$999,999				
OR	c. Hospitalization of 3 or more personnel	C	Record in unit logbook	Logbook: 90 Days	Unit Safety Officer / SNCO/ NCO/Supervisor formally trained in mishap investigation
	d. Coma of more than 24 hours				
3. Arising from a USMC Operation On or Off Base	a. Lost Workday resulting from injury or illness				
	b. \$20,000 - \$199,999	D	Record in unit logbook	Logbook: 90 Days	Unit Safety Officer / SNCO/ NCO/Supervisor formally trained in mishap investigation
	a. Injury (No lost workday)	Per Damage	SAFEREP Parts A and B	SAFEREP: 30 Days	SIB
	b. Property damage \$2000 - \$19,999				
Off Base Off Duty	Fatality or Injury	A, B	SAFEREP Part A (Para 1-6, 9, 11-13)	SAFEREP: 30 Days	Mishap Investigation Trained Unit Safety Officer / SNCO/ NCO/Supervisor
	Injury	C, D	Record in unit logbook	Logbook: 90 Days	

APPENDIX 6-14: EQUAL OPPORTUNITY INVESTIGATION **GUIDANCE**

1. General. This chapter is meant to be a guide for the IO. It is not intended to be used as a checklist. Each complaint of discrimination is unique and the IO should tailor the investigation so that it can best determine the facts concerning the incident.

2. Purpose of the Investigation. The purpose of the investigation is to develop a written record of the facts surrounding the alleged incident. All statements should be sworn and documented and all pertinent evidence preserved. The IO's investigation product should serve as a decision-making tool and provide a reference point for justifying command action taken. The IO should foster trust in the investigative process by demonstrating command commitment and allowing affected personnel an opportunity to be heard. Establishing credibility and objectivity, providing a foundation for subsequent decision by the CO, and protecting the morale and productivity of both the recipient and accused are of paramount concern. Always be neutral and impartial. Develop opinions only after completion of fact-finding (communicate opinions only appropriate command authority; never to witnesses or parties).

3. Prior to the Investigation. Before beginning the investigation, ensure you understand all aspects of conducting an investigation. Familiarize yourself with policies, guidance, instructions, and supplemental material provided by your command. Contact the local SJA for further guidance and assistance throughout the entire investigation.

4. Know What Your Objectives Are

a. Understanding the policies and instructions will help you formulate the necessary frame of reference to pursue your primary objective of collecting all relevant facts and evidence.

b. Comply with any specific command requirements.

c. Your secondary objective is to develop logical and informed opinions and conclusions to assist the commander in making a qualified decision when disposing of the case.

5. Maintain Confidentiality To The Extent Practicable. During the investigation, do not identify the persons involved except as needed to obtain all necessary facts and evidence. Do not discuss the nature or progress of your inquiry with anyone without a "need to know."

6. Rights Advisement

a. Military personnel

(1) All forms of discrimination, including sexual harassment, constitute violations of the UCMJ. When a military member is suspected of having committed an offense, the offending person may only be questioned after: (a) they have been properly informed of

a11 applicable rights and, (b) knowingly and intelligently waive them. Military suspects must be advised of their rights even if they are not in "custody." The Suspect's Rights and Acknowledgment/Statement form (contained in Appendix F), should be used for this purpose. Other than advising the offending person of the rights as listed on the form, the IO should never give any other form of legal advice or promises to the offending person.

(2) If the offending person desires a lawyer, the IO should immediately terminate the interview and seek advice from the SJA or other legal counsel advising the command.

(3) After the offending person has properly waived all rights, the IO may begin questioning. After the offending person has made a statement, the IO may probe with pointed questions and ask the offending person about inconsistencies in the story or contradictions with other evidence. The IO should, with respect to their own behavior, keep in mind that the statement must be voluntary. A confession or admission which was obtained through the use of coercion, unlawful influence, deception, or unlawful inducement is not voluntary. Having an impartial witness present may initially appear as a way to prove the statement was voluntary, but this will have to be balanced on a case-by-case basis against the likelihood that the impartial witness may inhibit the interviewee's willingness to be interviewed.

(4) If the offending person initially waives all rights, but during the interview indicates a desire to consult with counsel or to stop the interview, immediately terminate the interview. The interview may not resume unless the offending person approaches the IO and indicates a desire to once again waive all rights and submit to questioning.

b. Civilian employees

(1) Civilian employees do not have the right to be informed of charges in an investigatory proceeding.

(2) An employee who is a member of a bargaining unit represented by a union has a right to be represented by that union if the employee reasonably believes that the interview may result in disciplinary action against him/her and the employee requests such representation. This right does not apply to a supervisor, nor to a non-supervisor who is not member of the bargaining unit.

(3) Civilian employees normally do not have the right to Government-provided counsel in an investigatory proceeding. The exception occurs during custodial interrogations where the employee is in custody, not free to leave, and has no resources to provide his/her own counsel. In this case, interrogations should only be conducted by appropriate law enforcement personnel.

(4) All U.S. citizens have the right to remain silent in an investigation, but only when there is a reasonable belief that statements taken will be used in criminal proceeding. A civilian employee may be disciplined for not replying to questions raised in an agency investigation if the employee is adequately informed both that he/she is subject to discipline for not answering and that the replies will not be used against him/her in a

criminal proceeding. However, many forms of discrimination and sexual harassment are also criminal violations. For example, the use of foul language may constitute "disorderly behavior" under local law. Unauthorized touching is a common law battery which can be prosecuted in criminal courts. New laws dealing with "stalking" may also apply to some sexual harassment cases. Where there is potential for criminal prosecution, simply telling the employee not to leave the room or escorting him/her to a confined area will result in a "custodial" interrogation triggering Miranda rights. Accordingly, even though a criminal offense may seem relatively minor, the employee may still be justified in refusing to answer questions.

(5) Employees filing a grievance have no statutory right to legal counsel, but only a right to representation. It is the employee's responsibility to secure legal counsel. The complainants are responsible for the actions of their representative.

(6) Prior coordination with the command's legal and/or labor relations advisors is essential.

7. Gather and Preserve All Evidence

a. Interview all persons who might possess relevant information.

(1) Interview the person initiating the allegations first in order to clarify the complaints.

(2) Interview any known witnesses followed by any other witnesses identified during these interviews.

(3) Next interview the offending person.

(4) Then interview any witnesses suggested by the offending person.

(5) Finally, re-interview as necessary.

(6) See paragraph 8 for general guidelines for conducting interviews.

b. Gather and preserve any documentary evidence. Documentary evidence, such as letters, notes, written or printed material, instructions, or watchbills, should be obtained and attached to the report. If unable to provide originals, explain why (and if possible attach copies).

c. Gather and preserve any real evidence. Real evidence is a physical object such as a picture, greeting card, token of affection, or phone records. Those items may be obtained from any source, including the recipient, offender, or witness. All evidence should be safeguarded until final disposition of the case. If the IO seeks to obtain evidence from an unwilling person, the IO should seek advice from the SJA or other legal counsel advising the command.

8. General Principles For Conducting Interviews

a. Treat everyone with dignity and respect.

b. Prepare your questions in advance. If possible, have someone take verbatim notes for you during the interview. If no one is available to take notes, consider taping each interview, but only for your future reference in the preparation of your report. If you tape the interview, you must inform the interviewee of the taping prior to the interview. Do not tape in secret. Inform the person that the tape will be used only for reference for the final report. Start the interview by stating on tape the date, time, and location, and have the interviewee acknowledge on tape that he/she understands the interview is being taped.

c. Tell each interviewee who you are, what you are doing, and why you are talking to them.

d. Maintain a reasonable tone of voice. Be careful not to use threatening mannerisms or body language.

e. Listen. Keep an open mind. Do not filter. Try to understand each person's point of view.

(1) Let each witness tell their story.

(2) List points to ensure that you elicit all necessary information.

(3) Interrupt for clarification.

(4) Interrupt or return later for details.

(5) Use written questions or phone interviews for absent witnesses.

(6) Ask short concise questions. Do not ask leading questions or questions requiring more than one answer.

f. Accord any person suspected of having engaged in discriminatory behavior all applicable rights.

g. Type your notes into statement, ensuring not to alter them. The IO may help the interviewee to express, accurately and effectively in a written form, relevant information. The substance of the statement must always be the actual thoughts, knowledge, or beliefs of the interviewee. Have the interviewee read, correct (pen and ink is preferable), initial any corrections, sign the statement and initial all pages other than the signature page. The interviewee should sign in the presence of a witness, and the witness should also sign the statement.

h. Oral statements, even though not reduced to writing, are also evidence. If an interviewee does not wish to reduce an oral statement to writing, the IO should note this in the report and attach a summary of the interview. Where the interviewee has made an incomplete written statement, the IO must add a summary of the matters made orally that were omitted from the written statement.

i. All statements should be sworn. Military personnel appointed to conduct an investigation are authorized to administer oaths in connection with the investigation. This

should be done both at the end of oral statements (on tape, if applicable) and when executing any subsequent written statements. See Appendix E for a sample Sworn Statement.

j. Before closing any interview

(1) Summarize key information.

(2) Solicit any additional information the interviewee wishes to provide.

(3) Ask the interviewee to identify other witnesses.

(4) Ask the interviewee to identify and/or provide any pertinent documents or other evidence.

(5) Schedule a follow-up meeting, if required (e.g., to obtain additional information, signature on written statement, etc.).

(6) Discuss how the interviewee can tell the IO any other information he/she might later obtain (or think of).

(7) Discuss the concept of reprisal and ensure the interviewee knows how and to whom to report any suspected instances of reprisal.

(8) Ensure the interviewee has a telephone number to contact you.

8. When Gathering the Facts the IO Should Find Out:

a. What exactly happened?

b. What was the stated intent behind the behavior? Apparent intent? What evidence supports this?

c. Where did the behavior occur?

d. Who was involved?

e. Were there any witnesses?

f. What was the impact on the recipient? How did the behavior affect the recipient or make the recipient feel?

g. Did the conflict disrupt the work environment? How? Did it affect the recipient's work performance, or relationship with co-workers?

h. Did the recipient discuss the situation with anyone at the time?

i. Has the objectionable behavior happened before? When? How many times?

j. Was the offending person told to stop? If so, when? How? What was the reaction? Any witnesses?

k. Was any of the foregoing documented? How? Is the documentation available? If not, why not? (If so, attach documentation (or true copy) to report.)

l. What type of example was set by supervisors?

m. Were supervisors aware of the offending behavior? Of the conflict? Should they have been? Why? Did they take action resolve the conflict? What action? Were the persons involved satisfied with any such action? Did the action have any effect? What effect? Did the supervisor follow-up and provide feedback?

n. Did all persons involved receive yearly training in Core Values? When? Was training documented? How? (Attach documentation to the report.)

o. If reprisal appears to be an issue, are there also legitimate reasons which would justify the treatment of the person(s) who made the report of discrimination or sexual harassment? What evidence supports these reasons? Were these reasons apparent and/or substantiated prior to the report of discrimination or sexual harassment? Is there evidence that legitimate reasons were, or were not, the controlling factors for the treatment?

p. Are the persons involved prepared to try to listen, understand, and resolve the conflict? To apologize? _To accept an apology? To accept responsibility?

q. What relief does the recipient desire? Will the recipient be completely satisfied with resolving the matter under the IRS? Does the recipient desire any further action? What are the recipient's feelings about the loss of confidentiality which may result in the event the command takes disciplinary action against the offender?

10. Related Issues. Sexual harassment is one type of discrimination. Just because conduct might not technically be sexual harassment doesn't necessarily mean it's OK. Other prohibited conduct may overlap with sexual harassment, or surface during a sexual harassment inquiry.

a. To constitute sexual harassment

(1) The behavior can be toward a person(s) of the same sex or opposite sex. It is generally not behavior which is addressed equally to both sexes (unless the impact is unequal).

(2) The behavior must be toward the recipient, except in situations where the inappropriate behavior is so severe or pervasive as to constitute a hostile environment.

(3) The behavior can be by a supervisor, coworker, senior, subordinate, or contractor.

(4) The behavior may be physical, verbal, or visual.

(5) The offer in "this for that" cases can be expressed or implied.

(6) The behavior does not have to involve actual monetary loss, or loss of job or benefits. The recipient does not have to suffer anxiety or debilitation or give evidence of psychological effect.

(7) The behavior must be of a sexual nature. Poor management practice or a personality conflict where there are no covert or overt sexual overtones is not sexual harassment.

(8) The behavior must be unwelcome.

(a) "Unwelcomeness" may be conveyed verbally or non-verbally.

(b) There does not have to be active resistance (especially in this for that situations).

d. To constitute a "hostile environment" the behavior must be severe or pervasive, not trivial or merely annoying. Whether this behavior creates a hostile environment must be viewed through the perspective of a reasonable person of the same race, gender, religion, national origin, age, or disability, under similar circumstances in a similar environment, looking at:

(1) Whether the behavior was verbal, physical or visual;

(2) How frequently the behavior was repeated;

(3) Whether the behavior was patently offensive;

(4) Whether the offending person was a coworker or a supervisor;

(5) Whether others joined in perpetrating the behavior; and

(6) Whether the behavior was directed at more than one individual.

e. The key point to prove a hostile environment is whether the behavior unreasonably interferes with an employee's work performance or creates an offensive work environment.

f. It is not necessary to establish "hostile environment" in "this for that" cases.

g. Just because behavior is not sexual harassment, doesn't necessarily mean it's "OK." Behavior that doesn't meet the definition of sexual harassment can still be inappropriate or even criminal.

11. When Reviewing the Facts and Formulating Your Opinion Evaluate:

a. What factually happened? It is your role to evaluate agendas and credibility, sort fact from fiction, and draw an objective picture of what happened.

b. Would the alleged behavior have offended a reasonable person from the recipient's perspective? Would a reasonable person of the same race, gender, religion, national origin, age, or disability, in a similar environment perceive the behavior in the same manner, given the circumstances that occurred?

- c. Was the alleged behavior zone Red, Yellow, or Green? What zone does the behavior fall into when considering whether it is unacceptable or acceptable?
- d. What were the responsibilities of the persons involved? Were these responsibilities met?
- e. Did the supervisor condone or ignore the action(s)?
- f. Should the supervisor have known or have reason to know of the specific behavior in question?
- g. Did the supervisor fail to take reasonable measures to establish and maintain an equal opportunity climate and to adequately educate and train subordinates?
- h. Did all subordinates receive the mandatory accession training? Annual training? If not, was it the supervisor's fault? Why or why not?
- i. If it appears the allegation of discrimination or sexual harassment was false, was it made honestly and in good faith, or did the person who made it know it was false when made? What is the evidence on this issue?
- j. What are the possible resolution options? Are there any that would be acceptable to all? What option(s) do you recommend? Why? How will the recommended option(s) resolve the conflict?

12. Complete Your Report

- a. Comply with any specific requirements of your command.
- b. In general, your report should usually contain the following:
 - (1) List of persons interviewed.
 - (2) Signed written statements of persons interviewed preferably sworn) using the form at Appendix E. Also include your written summaries of any oral statement. Unless otherwise directed by your command, do not include your notes or tapes, but do retain them until the matter is resolved and your command advises you that retention is no longer necessary.
 - (3) Completed suspect's rights acknowledgment forms (Appendix F) if applicable.
 - (4) Any other evidence.
 - (5) Your discussion including background, allegations, findings, opinions, recommendations, signature, and date.
 - (6) Ensure your findings, opinions, and recommendations are supported by the evidence and documentation.

**APPENDIX 6-15: INSPECTOR GENERAL INVESTIGATION
GUIDANCE AND REPORT FORMAT**

CHAPTER 5 - THE IG INVESTIGATION

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CHAPTER 5 - THE IG INQUIRY OR INVESTIGATION

0501 OVERVIEW. As a result of Step #2 of the IGAR process, the Directing Authority may determine the requirement for an IG investigation. This Chapter addresses the IG investigative effort, which is Step #5 of the IGAR process (See Chapter 4).

0502 INTRODUCTION. As stated in Chapter 3, an "IG investigation" is a detailed fact-finding examination into allegations, issues, or adverse conditions to provide the directing authority (decision-maker) a sound basis for decision or action. Such investigations involve the systematic collection and examination of testimony and documents, and result in a formal Report of Investigation.

a. An "IG inquiry" is a less formal fact-finding process followed by IGMC/Command Inspectors to gather information needed to respond to a requester seeking assistance, or to resolve allegations of misconduct or other issues when investigative techniques are appropriate but circumstances do not merit the conduct of an "IG investigation". As part of Step #2 of the IGAR process (Paragraph #0425 - Determine IG Appropriateness), a preliminary inquiry (PI) is often used to determine if an allegation(s) has/have investigative merit; if yes, what agency should have investigative control; and, if retained by the IG, whether the case will be conducted as an inquiry or investigation. The amount of detail in an "IG inquiry" is determined by the nature or complexity of the issue; it may be as simple as a couple of phone calls and a Memorandum for the Record.

b. "Investigation" and "inquiry" are two ends of a continuum; investigative efforts may fit anywhere along the spectrum. This chapter will provide guidance for conducting an investigation. If tasked with conducting an inquiry and the investigator determines that a less formal inquiry will suffice, he may omit some of the administrative and procedural steps. **The basic requirements, however, apply to any IG investigative effort: independence, accuracy and completeness, protection of the rights and privacy of those involved, and a determination of the facts to allow a decision-maker to act.**

0503 CHARACTERISTICS OF AN IG INQUIRY. The following are the main characteristics of an inquiry:

a. The amount of detail in an inquiry is determined by the nature and complexity of the issues. The inquiry may consist of a couple phone calls, or be a detailed collection of facts.

b. A formal directive from the directing authority is not required for an IG to initiate an inquiry.

c. The allegations generally involve less sensitive or less complex matters.

d. The IG inquiry is a flexible and fluid process which has no mandatory steps.

e. Inquiries will not normally include sworn testimony or recorded statements. As an exception, the complainant may be sworn as you may not know at the time you talk to the complainant whether you will

conduct an inquiry or an investigation. It may also be necessary, on occasion, to record statements to enable you to gain a thorough understanding of a system or process, or technical terminology.

0504 THE IG INVESTIGATION. The IG investigation is a formal process designed specifically to look into allegations of wrongdoing. It builds upon the preliminary analysis and any inquiry conducted and is used to respond to serious, sensitive, or complex allegations or other matters as deemed appropriate by the commander. All steps and procedures in the inquiry can be used in the IG investigation; conversely, any investigation step can be used during an inquiry. The following facts describe the IG investigation and highlight major differences between the investigation and inquiry:

- a. An IG investigation is a formal fact-finding process.
- b. Most of the interviews are sworn and may be recorded.
- c. IG investigations tend to be concerned with more serious, sensitive, or complex matters.
- d. The authority to conduct an IG investigation is a formal directive.
- e. There is a prescribed Report of Investigation (ROI) format.

0505 SPECIAL CATEGORY CASES. Generally, the special category cases listed below have special reporting and timeliness requirements:

a. **Senior Official Allegations.** See Chapter 11 Section 1127 of this Manual for further discussion. These allegations must be reported to the IGMC; they will be investigated by the IGMC or DODIG, as appropriate.

b. **Post-Employment Violations.** Allegations concerning 18 USC 207(a), (b), or (c), Post-Employment Violations, should be reported to the IGMC. If an investigation is required, usually the major command involved will be requested to conduct the investigation and will be furnished specific guidance by the IGMC.

c. **Whistleblower Reprisal Cases.** See Chapter 11 Sections 1102 through 1111 of this Manual for further discussion. Military complainants must be advised of their option to file such complaints with the DODIG; Command Inspectors and the IGMC are not authorized to investigate such complaints by appropriated civilian employees. The Office of Special Counsel will conduct these investigations.

0506 CONDUCT OF THE INVESTIGATION. The IG investigation is often preceded by an preliminary inquiry. If during the course of a preliminary inquiry the IG believes an investigation is the most appropriate way to proceed, he should seek a directive. In some cases, the IG may decide that an IG investigation is appropriate immediately upon receipt of an allegation. If the IG has not done a preliminary inquiry prior to deciding to conduct an IG investigation, he should go through the "analysis of the allegations" step to determine the allegations and issues in order to prepare the directive. Remember that evidence correctly gathered during the preliminary analysis and/or preliminary inquiry can be used for the investigation.

PART ONE - SEQUENCE OF THE INVESTIGATION

0507 OVERVIEW. The investigative process in this section is arranged in the sequence in which events normally would occur or be accomplished. Following the steps listed below will assist the investigator to organize his thoughts, keep the investigation on track, and ensure that a complete and thoroughly professional investigative product is presented to the directing authority:

- a. Obtain a formal directive.
- b. Notify commander and subject.
- c. Plan the investigation.
- d. Notify the witnesses.
- e. Gather and evaluate the evidence (interview witnesses, obtain documents).
- f. Obtain the Commander's Approval.
- g. Notify commander, subject, and complainant of the results of investigation.

STEP 1 - Obtain a formal directive

0508 PREPARE AN ACTION MEMORANDUM. After the IG determines that an investigation should be conducted, he should prepare an action memorandum which provides to the directing authority a brief background of how the allegations were received, who made the allegations, and whom they are against. It defines the scope and limits of what should be investigated and may even contain a summary of the IG inquiry. The action memorandum forwards a directive for signature. As a document prepared in conjunction with an IG investigation, it is protected from release under the FOIA. There is no specific format for an action memorandum, unless one is specified by the local commander.

0509 DIRECTIVE FOR INVESTIGATION. Normally, the IG prepares the directive for investigation which will be the authority to investigate the specific allegations outlined in the action memorandum. While the action memorandum is very specific, the directive is very general. In fact, the names of individuals involved and the precise nature of the allegations are not disclosed. The directive is prepared by the IG, signed by the directing authority, and addressed back to the directing authority's IG. If the initial directive is issued orally, write a memorandum for record (MFR) which outlines the specific instructions issued should be written. A sample directive for investigation is contained in Appendix G to this Manual.

0510 PURPOSE OF THE DIRECTIVE. While containing no specifics, the directive defines the scope and limits of investigation. This assures that there is a clear, mutual understanding between the IG and

directing authority concerning what should be investigated. It also provides the IG authority to require the presence of persons at interviews, and the authority to secure documents and other pertinent evidence. The directive also protects the IG against civil liability by providing a historical record of authority to investigate.

0511 DIRECTIVE AUTHORITY. At the command level, an IG investigation may be directed by any commander who is authorized a Command Inspector. A deputy commander may sign the directive over his own signature block when so authorized by the commander. However, it is not intended that an assistant division commander or chief of staff have the authority to direct an IG investigation, unless the commander is absent.

0512 AUTHORITY TO TERMINATE AN INVESTIGATION. Only the directing authority or higher authority can stop an IG investigation in progress. The most common reason for an IG investigation is terminated early because the decision is made, normally on the recommendation of the investigator, that the issues involved are more appropriate for a criminal investigation or other action; see Section 0575 for handling a complainant who wishes to withdraw his complaint. When an investigation is stopped prior to its completion, the IG should prepare an abbreviated report of investigation or memorandum for record which states the investigative effort to date and any findings, the reason for termination and who directed it. The IG should also notify the commander and the subject who were notified of the initiation of the investigation (see Section 0513-0517), telling them of the disposition of the case and any findings, if appropriate; as an alternate course of action, the IG may wait until completion of the follow-on action before making final notifications.

STEP 2 - Command Notifications

0513 GENERAL CONSIDERATIONS: After obtaining a formal directive for investigation, the investigator should notify appropriate persons of the investigation. Assuming that limited evidence has already been obtained through a preliminary inquiry, the notification process is intended to be accomplished prior to contacting any new witnesses or further gathering of evidence. Invasion of privacy, damage to reputation, and the risk of compromising an investigation are important factors to be weighed when deciding who should be notified of an investigation and when. The notification process may serve to minimize speculation, the likelihood of deliberate or inadvertent interference, or the concealment of evidence, and allows the investigator to set the ground rules for the conduct of the investigation. Notifications should be made in the following sequence:

0514 CHAIN OF COMMAND. Notification of involved organizational commanders helps to ensure their cooperation and understanding. Normally, at least the first commander/supervisor in the chain of command of the individual being investigated should be notified. Use the sample notifications at Appendix H to make these notifications. The IG, the directing authority, or someone designated by the directing authority may make these notifications. Unless there is a specific need to conceal the existence of the investigation from senior officials in the command, courtesy and professionalism dictate they be notified before the first witness in their organization is contacted.

a. Each investigation requires the assistance of one or more involved commands. If the initial notice is oral, the investigative file should

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document who was contacted. A personal courtesy visit early in the investigation is also helpful to establish good rapport. If there is an IG organization attached to the command, the investigator could choose to make the notification through that office.

b. During a courtesy visit, the investigator may choose to advise the command of only the general nature of the allegations; this protects the command as well as the integrity of the investigation. For the same reason, the command normally should not be apprised of the complainant's identity, unless the case file clearly shows the complainant has agreed to permit such action. **It is appropriate to remind command officials not to discuss the investigation with others, especially witnesses, and to be careful to avoid any action that might be construed as reprisal for initiating or cooperating with the investigation.**

c. The investigator may visit organizations or staff sections to obtain information and interview witnesses when there are no individuals in that organization who have allegations against them. The commanders of these organizations should be notified of the investigation. However, only the general information contained in the directive need be provided.

d. Higher commands are not routinely notified of IG investigations. The decision to notify higher commands of the investigation is based on the nature of the investigation; the rank, grade, or position of the persons being investigated; or the request of higher headquarters.

0515 COMPLAINANTS. Complainants should be notified as soon as the decision to conduct an investigation is made. This alleviates concerns that no one is looking into the matter, and reduces the likelihood of multiple investigations of the same issue. Complainants may be told they will be advised of the general results of the investigation upon its conclusion. If the notification is oral, the file should document how it was done. Complainants should also be informed if the IG office decides no investigation is appropriate. Complainants need not be provided status reports, but there is nothing wrong with advising them that an investigation is still in progress or of the expected time for its completion.

0516 SUBJECTS. Always notify the individuals against whom the allegations are made; failure to do so may jeopardize their due process rights. Notification of the subject allows for the opportunity to seek appropriate legal counsel. In most cases, subjects become aware they are being investigated during the course of an investigation, and notice may become necessary to prevent them from interfering with the investigation. Moreover, subjects against whom credible derogatory information is developed must be provided an opportunity to comment on that information, usually during the subject interview. Normally the subject is notified at the time the investigation is opened; see Chapter 9 Section 0926 for discussion of circumstances when other timing is appropriate.

a. **Who Makes the Notification.** Normally the investigator makes the notification; in some cases, depending on the rank of the person the allegations are against and on the nature of the allegations, it may be someone else. The advantage of the investigator making the notification

is that it gives the investigator the opportunity to begin to develop a rapport with the subject. The investigator may also be able to anticipate from this conversation whether the subject will be cooperative and to prepare himself accordingly. Experience has shown that telephone notification is best. Face-to-face notifications can be very difficult to control and needlessly disruptive to the organization at which the notification is made. When notifying a subject, the investigator should simply restate the allegations as given in the directive and avoid discussion concerning the facts surrounding the allegations. Notification memorandums should not be sent or given to the subject.

b. **What to Tell the Subject.** An IG investigation is not an adversarial proceeding. Therefore, the IG should not notify the subject of the specific allegations at the time of notification, but should inform him of the information contained in the directive. Under most circumstances, the investigator will inform the subject of the specific allegations at the time of interview. Subjects who are not officially informed of the existence and nature of an investigation involving them before they learn about it from unofficial sources may become upset, regard the investigation as unprofessional, exhibit resentment during the interview, or otherwise interfere with the investigation. Usually, subjects are interviewed near the end of the evidence gathering stage of an investigation, after the investigator has interviewed everyone else believed to have pertinent information about the case.

0517 USE OF IG CHANNELS. IG channels are frequently used to assist during an IG inquiry or investigation. Use judgment when discussing the investigation with another IG to reduce the possibility of breach of confidence. The rule usually followed for IG-to-IG information flow is "need-to-know". Some of the tasks typically asked of another IG are:

- a. Notify his commander of the investigation.
- b. Notify witnesses, schedule interviews, and arrange locations for interviews.
- c. Assist with lodging and transportation requirements and with administrative support.
- d. Assist in gathering documents and other physical evidence.
- e. Assist with interviews as part of the interview team. Assist by giving the oath and off-tape read-in/out to a witness or by conducting the interview.

STEP 3- The Investigative Plan

0518 PURPOSE OF THE INVESTIGATIVE PLAN. The investigative plan is simply the outline of how the investigator intends to carry out the investigation in order to obtain the facts necessary to enable responsible authorities to make appropriate decisions. It serves as a checklist to ensure all necessary points are covered in an efficient manner.

0519 REQUIREMENT FOR INVESTIGATIVE PLAN. Every investigation is conducted in accordance with some plan. Poor planning not only wastes resources, it diminishes the credibility of the investigator and the IG

organization. Therefore, every investigator should make a conscious effort to devise an effective, efficient investigative plan. The plan need not be elaborate or formal. In simple cases, it need be no more than a statement of the allegations and a list of the witnesses to be interviewed about each allegation.

0520 ELEMENTS OF A GOOD PLAN. More complicated investigations require more comprehensive and detailed investigative plans. Some of the items that may appear in a good investigative plan include: (1) a contact list, (2) a notification list, (3) background information, (4) an allegations list, (5) an outline of proof, including legal theory and evidence required for each allegation, (6) a list of witnesses and documents for each allegation, (7) an interview sequence plan, (8) a chronology of events, and (9) logistical information. A brief discussion of each follows.

0521 THE CONTACT LIST. This section of the plan identifies every person the investigator intends to contact in connection with each allegation to be investigated. The list should contain the name, title, rank or grade, address, phone number, and other pertinent information, including relationship to the investigation, of each person. The contact list usually grows as the investigation proceeds. In addition to complainants, subjects, and witnesses, the list should include cognizant commanders or other points of contact within the subject command, available legal assistance, and technical experts. The contact list facilitates contact efforts during the investigation, and makes it easy to prepare the list of "persons interviewed" when writing the report. It can also be used as a method to keep track of who has been notified of the existence of the investigation.

0522 NOTIFICATION LIST. Often a part of the contact list, the notification list should include the name of everyone who has been, or should be, told an IG investigation is taking place, and the dates of notification. Many of these people will be notified only at the time of their interview. It may also include a list of every person the complainant has identified as having knowledge of the allegations or the complainant's intent to contact to request an IG investigation. People who should be considered for notification include: (1) complainants, (2) responsible authorities and convening authorities, (3) commanders, (4) subjects, and (5) witnesses.

0523 BACKGROUND INFORMATION. This part of the plan may be used to explain how the allegations were received and to highlight information about the complainant's willingness to be identified with the allegations. It should contain any information about previous investigations of similar allegations requested by the complainant, and related previous investigations of the allegations, the subjects, or the subject command. In simple cases, information that would appear in other sections, such as applicable laws or regulations, may be included here.

0524 ALLEGATION LIST. Every allegation made by the complainant should be set forth in this section. Those allegations the investigator has decided not to investigate, or to refer elsewhere for action, should be included, with an explanation for that decision. Other allegations the investigator believes warrant investigation based on the facts presented by the complainant, or facts developed during the course of

the investigation, should also be included, with a statement as to whether they will be addressed in this investigation, deferred for later action, or referred to another organization.

0525 OUTLINE OF PROOF. An outline of proof necessary to substantiate each allegation should be prepared in more complex cases. Each outline should start with a statement of the allegation as framed by the investigator. It should also include a list of applicable standards and how they apply, the facts necessary to prove or disprove the allegation given the applicable legal theory, the likely sources of those facts (complainant/witness/subject interviews, documents), and the standard of proof (preponderance of the credible evidence) required to sustain the allegation.

0526 WITNESS AND DOCUMENT LIST. The sources of facts in the outline of proof will lead to the creation of a witness list and a document list for each allegation. These witness and document lists can then be reviewed to create the list of allegations and documents to be discussed with each witness. These lists may be used when making the outline for witness interviews and document collection.

0527 INTERVIEW SEQUENCE PLAN. The witness and document lists can be reviewed to determine which witnesses it will be necessary to interview, which allegations should be discussed with each, and the order in which they should be interviewed. **As a general rule, start with the complainant** and end with the subject. After the complainant, consider starting with collateral witnesses outside the command to minimize the embarrassment to the subject and disruption to the command should you make an early determination the allegations are unfounded. Remember to include those witnesses who may have information relevant to the allegations under investigation, whether they are likely to prove or disprove the allegations; the IG investigator is looking for the truth, not support for someone's position.

0528 CHRONOLOGY OF EVENTS. A timeline or chronology of what happened is useful in almost every case. It is most important to have a good understanding of the order in which events occurred, or are stated to have occurred, before interviewing subjects.

0529 LOGISTICS. The investigation may require that the investigator travel to another site for interviews, etc. Arrangements for travel, local transportation, lodging, access to secured spaces and classified documents, interview rooms, number of investigators required for interviews, office space, and equipment are some of the logistical considerations that may impact the efficiency and effectiveness of an investigation. The investigative plan should demonstrate how these matters will be addressed. An IG or other point of contact at the travel site can be invaluable here.

0530 UPDATING THE PLAN. The investigative plan should be updated as the investigation proceeds. Note whether, and how, the facts necessary for each allegation have been established during the course of the investigation. Make changes to the plan that may be necessary to reflect information obtained during the interview process. Add new allegations to be investigated as they are developed, indicating whether they will be explored as part of this case, or through a separate action.

A well thought-out investigative plan that is conscientiously updated becomes the outline of the investigative report.

STEP 4 - Notify the Witnesses

0531 OVERVIEW. Witnesses do not need to be notified of the existence of an investigation until it is time to interview them, or to make arrangements for their interview. Normally, the witness should be notified after the investigation plan is developed and as the case progresses, and more names become available to you. Notify and interview the minimum number of witnesses consistent with thoroughness.

0532 WITNESS NOTIFICATION. Normally, provide the witness only the information contained in the directive for investigation. Avoid revealing the details of the allegations. Occasionally, it will be necessary to provide a witness additional information so that he can prepare for the interview. Follow the notification format except for answering administrative questions (like location and direction to interview location). Normally, it is best to restrict the witnesses from providing information about the case during notification. Direct the witness not to discuss the investigation with anyone. A sample witness notification is contained at Appendix H to this Manual.

0533 WITNESS RIGHTS. Because witnesses may desire to consult with counsel before being interviewed, the investigator may wish to notify witnesses who were directly involved in the matter under investigation far enough in advance to permit them that opportunity. The investigator does not have to advise witnesses of their right to seek counsel, but may do so. In practice, witnesses are unlikely to seek counsel, especially when they provide only background information, such as descriptions of normal office procedures. In any event, the investigator should take all measures to protect the witnesses' confidentiality and the confidentiality of others. See Chapter 9 of this Manual for a complete discussion of witness rights and responsibilities.

STEP 5 - Gather and Evaluate the Evidence

0534 GENERAL. Since IG investigations usually concern sensitive allegations, it is imperative that the investigator thoroughly understand the standards by which he will evaluate the case before collecting testimonial evidence. This section provides a brief discussion of evidence and interviewing. Detailed discussions of these subjects are addressed in Chapters 7 and 8 of this Manual.

0535 EVIDENCE DISTINGUISHED FROM FACTS AND INFORMATION. During the course of an investigation, the investigator will obtain a great deal of information, including expressions of opinion and statements of facts, as well as materials, such as documents or physical objects. For the purposes of an IG investigation, evidence consists of information and materials that may be used to prove facts that tend to demonstrate whether or not the allegation is substantiated.

0536 REQUIRED STRENGTH OF THE EVIDENCE. Almost every investigation requires the exercise of judgment to determine the amount and quality of evidence that must be gathered to prove a fact. To a large extent, this depends on the action that will be taken based on those facts, a matter committed to the discretion of the responsible authority. One

measure of the strength of evidence is the number and type of sources for it. The number of sources necessary depends on the extent to which any particular fact is disputed. In general, the investigator should attempt to obtain two unbiased or disinterested sources to establish the existence of any fact. The statement of two witnesses who are willing to testify in a disciplinary action, or one witness and a credible document, would normally satisfy this requirement.

0537 CATEGORIES OF EVIDENCE. Evidence generally falls into one of three major categories: documentary, physical, and oral. While some investigations center around the testimony of witnesses, others require extensive use of documentary and physical evidence. See Chapter 7 of this Manual.

0538 PRESERVING ORAL EVIDENCE: Many of the facts developed in IG investigations are based on oral evidence obtained during an interview that is subsequently reduced to writing in some manner. Ensuring the accuracy of the writing is essential to a professional investigation. Techniques for converting oral to written evidence include (1) the investigator's notes, (2) an interview summary written by the investigator, (3) a written statement prepared by the investigator or the interviewee and signed by the interviewee, (4) the sworn statement of the interviewee, and (5) a tape or stenographic recording of the interview that is available for subsequent transcription. The main consideration is the investigator's ability to establish that the facts presented in the investigative report and supporting documents are accurate and complete. This becomes particularly important when the person from whom the evidence was obtained later denies that he provided the information presented in the ROI. See Chapter 7 of this Manual.

0539 DOCUMENTARY EVIDENCE: Documents are important sources of evidence in most cases. Issues relating to the use of documents as evidence are discussed in Chapter 7 of this Manual.

0540 STANDARD INTERVIEW PROCEDURES. Certain procedures should be adhered to in all interview situations. See Chapter 8 of this Manual for a full discussion. In summary, they include the following:

a. **The Opening.** This sets the tone of the investigative interview. It starts with the introduction of the investigators, the display of credentials (if issued), and the explanation of the purpose of an IG investigation. Investigators should never underestimate the effect of such ceremony during the investigation. Such actions make interviewees take the matter more seriously and provide information about how the testimony may be used, including the Privacy Act notice.

b. **The Oath.** It is not necessary to put all interviewees under oath for interview. It is more common to put complainants and subjects under oath than other witnesses. Whether the investigator decides to administer an oath, it is appropriate to remind interviewees that knowingly making a false statement to an investigator is a violation of federal law, under oath or not.

c. **Probe for Bias or Influence.** Ask interviewees what they have heard about the investigation, whether anyone has discussed it with them, and what, if anything, they have done to prepare for the interview. In particular, ask if any of the prior testimony has been related to them, and whether anyone has asked what they will say to the investigator, or

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has attempted to suggest what they should say. Ask if they have any special relationship to the subject, the complainant (if the complainant's identity may be revealed), other witnesses, any victims, etc. Ask if there is any reason why they cannot be fully objective in answering the questions during the interview or if they have any reason to fear reprisal for their testimony.

d. **The Closing.** Ask if they are willing to testify in any judicial or administrative proceedings that may result from the investigation. **Caution all interviewees not to discuss their testimony with anyone else, and to contact the investigator immediately if any attempts are made to discover what they discussed with the investigator or they believe action has been taken against them in reprisal for their cooperation with the investigation.**

0541 GETTING STARTED - INTERVIEW THE COMPLAINANT. If the investigator assigned to the case was not the one with whom the complainant made initial contact, the investigator should interview the complainant as close to the start of the investigation as possible. If the complainant can be interviewed at a site away from the subject command, the investigator may consider conducting that interview before meeting with command officials or the local point of contact. The investigator should go over any materials obtained from the initial contact with the complainant to ensure their accuracy and to update them if necessary. The investigator should also review confidentiality issues with the complainant.

0542 GETTING STARTED - BRIEF THE CHAIN OF COMMAND. If the investigative plan calls for a courtesy visit, it should be arranged as soon as the investigator checks in with the local point of contact. If the command has already been notified of the investigation, a courtesy visit is not necessary. Often, it is sufficient for the investigator to advise the point of contact that he is available for a courtesy call. The courtesy call can be used to inform the command what is expected from them in terms of cooperation and noninterference. A discussion of reprisal will address this serious matter up front. The command will want to know as much as possible about the allegations; the investigator's responses should be brief but address the issues unless there is a reason to believe such action would compromise the investigation.

0543 OBTAINING INFORMATION AND COLLECTING DOCUMENTS. See Chapter 8 of this Manual for a full discussion of interview procedures. Chapter 9 of this Manual discusses witness rights and responsibilities. Chapter 7 discusses methods to obtain evidence.

0544 THE INVESTIGATOR MUST DECIDE WHAT HAPPENED. When witnesses disagree over what happened, the investigator's job is to reconcile those differences if at all possible. This usually will require the investigator to interview more witnesses or search for other documents. It also may require the investigator to choose between conflicting versions of events. Although the investigative report should clearly indicate which facts are disputed, the report should also state which version is more credible, and why. In many cases, this will depend on the investigator's evaluation of witness credibility during the interview. See Chapter 8 of this Manual for a discussion of techniques that may assist in evaluating witness credibility.

0545 CONCLUDING THE ON-SITE INVESTIGATION. When the investigator has finished gathering evidence from the site, command officials should be notified, and the investigator should generally be available to attend an exit meeting if requested. The investigator should express appreciation for the support received, and indicate whether there were any significant problems that hindered the conduct of the investigation. The investigator should also advise whether the command climate suggested a concern over reprisal for cooperating with the investigators. The investigator should not comment on any findings, noting that the investigation is not considered complete until the investigative report is completed and approved by the investigator's superiors. The command may be advised of the general time frame in which to expect the report to be finalized, and who to contact for a status update.

0546 EVALUATING THE EVIDENCE. During or after the conduct of the interviews, it becomes necessary to evaluate the evidence and determine if the investigator has sufficient evidence to make a conclusion. He must decide whether the allegations are substantiated or not substantiated. See the Glossary at Appendix A of this Manual for definitions of findings. Remember that conclusions are based on a preponderance of the evidence and not on "proof beyond reasonable doubt". Understanding the types and categories of evidence will help in evaluating the evidence and determining whether the investigator has a preponderance of evidence. If the investigator has developed enough evidence for a finding of substantiated or not substantiated and no unanswered questions, he should stop. However, if the investigator cannot get a preponderance of credible evidence either way, more investigative work is required or a conclusion of unsubstantiated must be made.

0547 REPORTING THE EVIDENCE. One of the most important parts of the investigative process is the presentation of the evidence in the Report of Investigation (ROI). Therefore, it is important that the investigator give careful thought to its organization and content. See Chapter 6 of this Manual for a discussion on the organization and presentation of evidence in the ROI.

0548 INTERIM REPORTS. IG investigations often take several weeks or months to complete. In order to keep the directing authority apprised of the progress made, the investigator may provide an interim report. The investigator must be careful not to speculate on the results of the investigation before completion of the investigative process and approval of the ROI because subsequent evidence and legal reviews may alter early conclusions. When complainants request progress reports or the results of an investigation before it has been approved, the investigator should not provide any information other than to state that the complaint has been received and appropriate action is being taken. **The investigator should never lead anyone to believe that the allegations have been decided before they are approved by the directing authority.**

STEP 6 - Obtain the Commander's Approval

0549 GENERAL. Once all of the investigative actions noted in steps one through five have been completed, the investigative report (ROI) must be presented to the directing authority for approval. Prior to doing

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so, it may be beneficial to forward the ROI to the supporting SJA and/or CL for an opinion regarding its legal sufficiency. In addition, ROIs should also be reviewed within the IG to determine if the investigative standards have been met. If the report is complex or extraordinarily lengthy, it may be appropriate to brief the directing authority orally of any considerations the investigator deems appropriate.

0550 ACTIONS BY THE DIRECTING AUTHORITY. The directing authority and decision authority may not always be the same person, depending on the circumstances. The directing authority approves, modifies, or disapproves the recommendations, and directs any actions to be taken. On occasion, the directing authority may not agree with either the conclusions or the recommendations. While it would be improper for the directing authority to suggest that a particular conclusion or recommendation appear in the report or that a conclusion should be changed, it would not be incorrect for the directing authority to request that the investigator gather more evidence to support a conclusion. Remember, the directing authority, and/or decision authority, is not bound by the investigator's findings, conclusions, or recommendations and may act as he deems appropriate. The directing authority, and/or decision authority, will take action on the approved portions that are within his authority and responsibility. The IG should include a record of the action taken with the original report.

0551 ACTIONS BY HIGHER AUTHORITY. Do not transmit ROIs to higher authority unless the investigation is requested, is of interest to a higher headquarters, or the investigation involves other commands. If the investigation is requested by higher authority, that authority reviews the conclusions and recommendations, monitors action taken by the subordinate command, and determines if further action is required. If the case is referred to higher authority because other commands are involved, that headquarters takes the necessary action if the other commands are within its jurisdiction. If they are not, the case is referred to the next higher headquarters. When the investigation has been directed by the Commandant of the Marine Corps, and referred by the IGMC, the immediate commander of the IG who conducted the investigation will indicate concurrence/nonconcurrence in the investigation's conclusions and forward the report within 10 working days to the IGMC.

STEP 7 - Notify Commanders, Subject, and Complainant of the Results of Investigation

0552 GENERAL. No IG investigative process is complete until the parties to the investigation have been notified of its conclusion. Such notifications are written or oral. A copy of written notifications should be included in the case file. In the case of oral notifications, the investigator should make a memorandum for record (MFR) indicating the date of notification and the individual notified. Depending on the status of the involved party, certain rights and limits to disclosure will pertain.

0553 NOTIFICATION TO THE CHAIN OF COMMAND. Those commanders or supervisors who were notified at the beginning of the investigation should be notified at the completion of the case of the results which apply to members of their command. Remember, the IG is notifying the

position, not the individual. A departed commander has no right to know the results. A sample notification letter is contained in Appendix I of this Manual.

0554 NOTIFICATION TO THE SUBJECT. Inform the subject of the results of the investigation after it is completed and approved. Do not comment on any action the command may be taking. If the subject wants more information, he must request it under the provisions of the Freedom of Information Act (FOIA). However, if the investigation substantiated misconduct on the part of the subject, the commander or other decision authority may *de facto* inform the subject of the results in the process of taking corrective or disciplinary action. File a copy of the notification (eg, IG letter, MFR, commander's correspondence) with the ROI.

0555 NOTIFICATION TO THE COMPLAINANT. While (non-anonymous) complainants are provided a final response to all requests for IG action, they do not have the inherent right to know information about other people which is often the result of an investigation into alleged wrongdoing. As a general rule, complainants may be notified of the general outcome of the investigative effort (whether the allegation was substantiated) and an assurance that appropriate action will be or has been taken, if appropriate. If the complainant wishes more information, he may request it under the provisions of FOIA.

0556 NOTIFICATION OF REFERRAL. Notify subjects and commanders when the case has been turned over to a follow-on investigation or other action; see Section 0512. It is best that the investigator not reach a conclusion on whether the allegation was substantiated or not substantiated in cases turned over to a follow-on investigator. In those cases, the conclusion should be simply that sufficient evidence was found to warrant referring the case.

PART TWO - COMMON PROBLEMS AND OTHER ISSUES

0557 OVERVIEW. The majority of IG investigative efforts are conducted without notable incident or problem. The following presents some of the problems or distractions the IG investigator may confront during the course of his assignment. Each of the below can be quickly overcome if the investigator is prepared to handle it.

0558 UNCOOPERATIVE COMMAND. On occasion, a commander or supervisor may refuse to make witnesses available for interview, or may engage in other activity that impedes the investigation. In such cases, the investigator should immediately advise the senior member of the unit of the conduct in question and request that it be corrected. If the senior member fails to take appropriate action, the investigator should state that the senior member's superiors will be apprised of the situation, and report the problem back to the investigator's IG office for action. If the problem is not corrected after a telephone call to the appropriate superior, the matter shall be reported in writing to the responsible authority with a copy to the IGMC.

0559 REFUSAL TO TESTIFY. Military personnel and civilian federal employees have the duty and the right to answer all questions asked of them during an investigation. See Chapter 9 of this Manual for a discussion of rights and privileges and as follows.

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- a. Military members and Federal civilian employees are required to answer all questions related to an investigation except questions that may be self-incriminating (unless immunity has been properly granted) or those that concern privileged communications.
- b. Witnesses who refuse to answer questions may be ordered to answer by their commander or supervisor; IGs should not themselves order a witness to testify because by doing so they depart from their impartial investigative role. The witness should be allowed to explain why he should not testify before being required to do so. Additionally, IGs confronted with a witness who refuses to answer questions may consult with their SJA or legal advisor. Failure to cooperate is an offense punishable under applicable regulations. Possible punishments include dismissal from Federal service.
- c. A witness may properly delay answering if the answer may reveal classified information. If the IG involved does not have the proper clearance, he should obtain it or request assistance from an IG who does have the proper clearance. See Chapter 3 Section 0314 for a discussion of IG access and "need to know".
- d. The witness may not refuse to testify on the basis that the question is not material. The investigator alone determines the materiality of a question, and the witness should be so advised.
- e. If the investigator is confronted with a reluctant witness who may have information concerning a felony, a discussion of Title 18, United States Code, Section 4, may encourage the witness to reveal his knowledge of the issue. This law provides that any person who has knowledge of a felony and who does not make this known to civil or military authority is subject to a fine and/or imprisonment.
- f. Civilian witnesses who are not Federal employees may rightfully refuse to testify on the basis that you have no authority to make them do so. They have no legal obligation to submit to an IG interview.

0560 FALSE TESTIMONY BY A WITNESS. False testimony under oath by an individual subject to the Uniform Code of Military Justice (UCMJ) constitutes false swearing under Articles 107 or 134. False testimony knowingly given under oath by a civilian witness constitutes an offense under Title 18, US Code, Section 1001. Interviewees should also be advised they are subject to disciplinary action, which in many cases is a more effective warning. Remember that a false official statement made by someone subject to the UCMJ is a criminal offense. Appropriate advisement which should be read to individuals who provide false testimony or are suspected of providing false testimony is contained in applicable read-in scripts (Appendix J) and as follows.

- a. **Civilian Employees** - "I consider it my duty to advise you that under the provisions of Section 1001, Title 18, United States Code, whoever in any matter within the jurisdiction of any Department or Agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury in

accordance with Section 1621, Title 18, United States Code. Do you understand?"

b. **Military Personnel** - "I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of Article 107, UCMJ. Additionally, under the provisions of Article 134, UCMJ, any person subject to the UCMJ who makes a false statement, oral or written, under oath, not believing the statement to be true, may be punished as a court-martial may direct. Do you understand?"

0561 REFUSAL TO SWEAR OR AFFIRM TESTIMONY. Military and civilian personnel may be directed to provide testimony under oath or affirmation. Witnesses who object should be advised that they may be disciplined for giving false testimony even if they are not under oath. They should also be advised that since other witnesses are providing testimony under oath, their testimony is likely to be deemed less credible. If a witness refuses to swear, the investigator may continue with an unsworn interview, or may consult with legal counsel and then ask the witness's commander or supervisor to direct the witness to swear or affirm to his testimony. It is often sufficient to take unsworn testimony and note the refusal for the record. IGs cannot require individuals who are not subject to UCMJ or who are not DOD employees to testify under oath or affirmation.

0562 INTIMIDATION OF A WITNESS. Investigators who believe there may have been tampering or interference with a witness should immediately report the matter to the witness' commander and request action be taken to ensure this ceases immediately. If the commander does not cooperate, or if the commander is suspected of being a party to the action, the investigator should advise his IG office and request appropriate action. Investigators shall document all incidents of suspected tampering or interference, place the documentation in the case file, and **report the matter to the IGMC.**

0563 CLAIM OF REPRISAL. IGs who are told that a witness has been subjected to reprisal action for cooperating with the investigation shall conduct an interview of the witness with regard to this matter and forward it to their IG office for appropriate action. Because each category of witness has different rights and investigative bodies responsible for inquiring into such claims, see Chapter 12 of this Manual for further discussion. At the minimum, the IG office should **immediately notify the IGMC.**

0564 REQUEST TO HAVE OTHER PEOPLE ATTEND INTERVIEW. Generally, it is not appropriate to allow the witness to have friends or relatives present during the interview, because this tends to inhibit candor and full disclosure. The investigator may permit third parties to be present if it appears this would facilitate communications during the interview. The interview record should reflect the presence of third parties (including attorneys and union representatives). The investigator must clearly explain and enforce the "ground rules" for the interview, and ensure that the observer does not attempt to respond for the witness or otherwise interfere with the interview. Refer to Chapter 9 Sections 0918 through 0921 for further discussion of this subject.

0565 REQUEST FOR ADVICE. A witness may seek the investigator's advice. The IG must tell the witness that he cannot give any advice except as to rights, duties, and procedures regarding the interview.

0566 REQUEST BY WITNESS TO RECORD AN INTERVIEW. Persons providing testimony are normally not allowed to tape interviews, in order to preclude compromising testimony and other evidence. Follow the procedures outlined below when you receive a request to record an interview.

a. **Military or Civilian Employee Witness.** Inform the witness that IG investigative procedures prohibit the witness from recording the interview. Should this question continue to be a problem, offer him the opportunity to read the testimony in your office upon proper request. Also upon proper request, provide the witness a copy of his testimony after the ROI is approved. Both of these requests must be in writing. If the witness is uncooperative and refuses to testify because he has been denied permission to record the interview, have him ordered to testify.

b. **Non-DOD Civilian Witness.** If a civilian not affiliated with the DOD puts a condition on his cooperation such as refusing to testify unless he is allowed to record the session, you can persuade him otherwise, honor the request, or forgo receiving his testimony. A "pure" civilian witness cannot be required to testify. If you do permit a civilian witness to record an interview, attempt to retain the tape until the investigation is complete. This precludes compromising the investigation. Failing this, consider interviewing all other witnesses before letting a civilian witness record his testimony.

0567 OFF-THE-TAPE DISCUSSIONS. If the witness appears to be withholding information or is uneasy talking about a subject, considering turning off the recording devices and discussing the apparent problem. Although the tape recorders are off, the discussion is still on the record and official and the witness should be so informed. Discuss the witness' concerns, attempt to dispel them, and encourage the witness to allow the information to be taped. While an MFR may be made of off-the-tape discussions, the witness may later contend that you modified or misunderstood what he or she said. It is best to have the witness or the investigator put off-the-tape answers into the taped testimony; a simple method is for the investigator to summarize the off-the-tape conversation and have the witness confirm it.

0568 NEW ALLEGATIONS RECEIVED DURING AN INTERVIEW. It is not uncommon for the investigator to receive new allegations while interviewing a witness. If they are related to the investigation, the investigator should include them in the case and notify the IG. If the allegations are not related to the current case, the IG should take them through the seven step process (See Chapter 4), as they could result in separate inquiries.

0569 LOCATING CIVILIAN WITNESSES. If you have difficulty locating essential civilian witnesses, the first choice is to seek help through IG channels. When this is not practical, sources such as the local provost marshal, local CID or NCIS office, or designated liaison official for the local police or other law enforcement agency can be

helpful. Command Inspectors can also request assistance from IGMC.

0570 GIFTS AND SOCIAL ACTIVITIES. Don't accept gifts or be involved in any social activities which might give the appearance of conflict of interest with anyone involved in your investigation, or one being conducted by an IG in your office. Should you find yourself in a position where someone might question your impartiality in an investigation, disqualify yourself to the senior IG or directing authority. Even if you think you can be impartial, it matters what others think. If you are the senior IG, hand the matter off to an IG in a senior command or have the directing authority task someone else within the command. Seek legal advise prior to recusing yourself.

0571 LOSING IMPARTIALITY. IGs must be careful to avoid situations which may make it appear they are not impartial. IGs who believe they can remain impartial should still disqualify themselves if the appearance of impartiality will be lost. IGs who find that they actually are biased, favorably or negatively, for whatever reason, must disqualify themselves immediately.

0572 INADEQUATE INITIATING DIRECTIVES. Occasionally, initiating directives are found to be inadequate for the task at hand because the investigator either misinterpreted the original information or found new information outside the scope of the original directive. If this happens amend the directive, or prepare a new directive and an MFR explaining the circumstances. Do not confuse this situation with the discovery of new allegations or of matters not appropriate for IG investigation. Refer inappropriate matters to the appropriate agency.

0573 ANONYMOUS COMPLAINTS. Do not ignore anonymous complaints; the source of the complaint does not determine its validity or truth. The prudent IG will take action to resolve them and protect the interests of the government. When conducting an inquiry into anonymous complaints of wrongdoing, it is best not to try to identify the complainant. To do so often creates the appearance of trying to "get" complainants instead of determining the facts and circumstances related to an allegation. Remember: **investigate the complaint, not the complainant.**

0574 PEN (OR PHONE) PALS. Some complainants will repeatedly bring complaints to an IG. Some will be new complaints; others will be repeats. If the issue has been entertained before, you may choose not to reopen the case if no new information or evidence is presented. However, you must clearly document the rationale for not reopening the case. If there is new information, analyze the complaints individually, case by case. Do not automatically reject the correspondence or phone call because of the source without thoroughly analyzing each new complaint.

0575 WITHDRAWN COMPLAINTS. At any point after making a complaint, the complainant may ask to withdraw the complaint. However, since the complainant is not in charge of the investigation, he cannot control it. It is the decision of the IG whether to continue, based on the best interests of the Marine Corps and the command: any non-frivolous allegation of misconduct must be resolved, for the sake of the subject and of the institution. See Section 0512 on terminating an investigation prior to completion. If a decision is made to continue the case, permission of the complainant is not required. If the

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complaint is withdrawn, but you keep the case open, consider changing the "case name" from that of complainant to a generic title (no final reply is made to the complainant). If a complainant wishes to withdraw his complaint as erroneous, he must do so in writing.

CHAPTER 6 - REPORT WRITING

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CHAPTER 6 - REPORT WRITING

0601 INTRODUCTION. The purpose of the IG investigative report (ROI) is to thoroughly address all relevant aspects of the investigation in an accurate, clear, complete, concise, logically organized, timely, and objective manner. The ROI is a direct message; the style should reflect the purpose. The use of plain language facilitates conveying a clear meaning. ROIs must inform the reader (decision-maker) of the allegations, issues, standards, documents and testimony that describe the facts and circumstances, and the conclusions of what did or did not happen in the investigation conducted. The reader (decision-maker) must be able to understand the evidence found and the logic the investigator used to arrive at the conclusions.

0602 OVERVIEW. This chapter presents an overview of the characteristics of a good ROI. It discusses the different sections (or structure) that comprise the typical ROI, and notes the types of investigations that require specific formats. It also discusses specific problems that may occur in writing reports.

PART ONE - STRUCTURE OF THE REPORT OF INVESTIGATION

0603 ORGANIZATION. Details of the format of the ROI will vary with the nature of the investigation. Generally, however, ROIs conform to a

basic outline that may include the following sections: (1) Executive summary; (2) Introduction; (3) Background; (4) Scope; (5) Findings of Fact; (6) Conclusions, and; (7) Recommendations. See below and Appendix K for further discussion:

0604 EXECUTIVE SUMMARY. An IGMC ROI, like a JAGMAN investigative report, often has attachments or enclosures that must be read in conjunction with it. In complex cases, this means that discussions of findings in the ROI will be quite lengthy. An executive summary is useful in condensing, into a few pages, the salient issues addressed in the ROI. At a minimum, the executive summary should identify subjects or suspects, note the source of the tasking, list the allegations and conclusions, and provide a brief discussion of the findings for each allegation. When used, the executive summary should be structured as a stand-alone document that can be read and understood without referral to other material.

0605 INTRODUCTION. The introduction explains how the investigation was initiated (command request, hotline, DoD IG, etc.) and tasked to the investigating office. It should include information of an explanatory nature that will assist the responsible authority in understanding the remainder of the report. In cases with many allegations, the introduction may include a summary of the allegations in order to provide a general overview of the issues to the reader. In those cases where the investigator developed additional allegations during the course of the investigation that should be resolved at the same time as the original allegations, that fact should be identified here. In addition, other matters brought to the attention of the investigator and subsequently investigated, but not covered under any of the allegations, should be identified here.

0606 BACKGROUND. This section may be used to describe information about the case, or similar events, that would help the reader understand what led to the tasking. Background information on the subject command and personnel involved in the case may be included here. A brief recitation of prior complaints on the same or similar matter, earlier investigations or inquires, other proceedings, etc. may be included here. If several allegations share common facts, it is sometimes useful to set them out in the background. A chronology or timeline is an effective way to familiarize readers with such matters.

0607 SCOPE. This section explains the type of investigation to be conducted, the authority for such investigation, applicable directives any constraints placed on the investigator by the directing authority, and the allegations. In most cases, each allegation should be discussed separately. The order of presentation of the allegations should facilitate an overall understanding of the case. Sometimes this requires the allegations be discussed in chronological order of the facts pertinent to each allegation. In other cases, allegations that are conceptually linked, or share common facts, should be placed close together. When the order of presentation is not critical to an overall understanding of the case, then it is common to list the most important, in terms of seriousness or sensitivity, first. Also include allegations developed during the course of the investigation. See Chapter 4, Section 0421 - 0424 for further discussion.

0608 FINDINGS OF FACT. This section is the heart of the ROI. The basic

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foundation of an ROI is the description of facts. The ROI should completely and thoroughly describe the facts and circumstances surrounding the events or conduct at issue. Organization and content of the findings of fact are critical to a good report.

a. Organization should facilitate understanding by one unfamiliar with the case who is reading the ROI for the first time. A chronological statement of facts is most commonly used to achieve this objective. One approach is to set forth the standard, followed by a chronology, or vice-versa. The next step in promoting understanding by the reader to set forth information that tends to support the allegation, then information that tends to refute the allegation. Where there is substantial disagreement over the facts, it may be helpful to first set forth the complainant's story, followed by the subject's version. Facts provided by neutral parties should follow, ending with a discussion that reconciles or selects between conflicting facts. When it is necessary to present the investigator's opinions, they should be carefully separated from statements of fact.

b. Content determines whether the report will be perceived as objective, complete, and persuasive. To promote objectivity, the subject's response to the allegations should be set forth, to include the subject's interpretation of the rule or standard alleged to have been violated and the subject's motivation when those issues are pertinent. When it is necessary to present the investigator's opinions, they must be clearly identified as such. Completeness requires that all significant evidence, pro or con, be discussed. The pertinent standard must also be set out and, where necessary, explained. Persuasiveness requires that the logical chain between the statement of facts and the conclusions be clearly set forth in the ROI.

c. Not to confuse the reader, findings of facts in support of "other matters" should be clearly set apart from the other findings of facts which address allegations.

0609 CONCLUSIONS. Each allegation must have a specific conclusion which must be consistent with, and flow logically from the findings of fact.

a. IG investigations provided for four types of acceptable conclusions for allegations: Substantiated (S), Partially Substantiated (PS), Not Substantiated (NS), or Unfounded (UN). See Appendix A (Glossary) under "Allegation" for definitions of each.

b. Each allegation should be restated in the conclusion section of the ROI followed immediately by the finding: S, PS, NS, or UN.

c. Where facts are in dispute, the discussion should make reasons for the conclusions obvious. When an allegation is partially substantiated, the conclusion must clearly distinguish those portions that were substantiated from those that were not. Where the allegation is substantiated, but extenuating or mitigating circumstances are present, they should be presented in the conclusions (e.g., "... however, the facts indicate subject was motivated by concern for subordinates and not self-interest"). Conclusions may also reflect that the allegation, as framed in the ROI, was not substantiated, but that a related allegation would be (e.g., where the allegation of an actual conflict of interest is not substantiated, but the appearance of a conflict does

exist). Discussion should explain the weight the investigator assigned to the facts set forth in the findings of fact and how they fit together to substantiate or refute the allegations. The discussion should never include new facts or restate facts already set forth in the findings of fact. The investigator should sift through any facts in conflict and reconcile them if possible. If conflicting facts cannot be reconciled, the investigator must explain why one version of the facts is found to be more credible than another. In some cases, this may simply consist of comparing the number of witnesses who say an event happened to the number who say it did not and going with the majority vote. In most cases; however, questions of bias, self-interest, competence, and veracity must be addressed because it is the quality of evidence, not the quantity, that determines how most disputed issues should be resolved.

d. When "other matters" are addressed in the findings of fact, a conclusionary finding must be offered for each issue addressed.

0610 RECOMMENDATIONS. The recommendations section should contain constructive suggestions for action by the responsible authority. Every ROI should contain a recommendation as to the status of the investigation (e.g. that the directing authority approve the investigative report as written and the case be closed, or that further action along specific lines such as that raised in the other matters section be taken). Where the ROI has identified systemic problems or program weakness, a recommendation to consider corrective action to "fix the system" is appropriate. A general recommendation for remedial action may also be included, but specific recommendations for punitive, adverse administrative, or disciplinary action should not appear in the ROI. **IG investigators should never recommend a specific administrative or disciplinary action** be taken against the subject of an ROI; instead the investigator should refer the matter to the responsible authority for "action deemed appropriate."

PART TWO - REPORT WRITING TECHNIQUES

0611 CHARACTERISTICS OF A GOOD ROI. Clarity, completeness, and accuracy are the three principal characteristics of a good ROI. Clarity results from a ROI that contains a concise, systematic arrangement of facts and analysis stated in precise, neutral terms. Completeness dictates that all information a prudent commander would reasonably want to consider before reaching a decision should appear in the report. Accuracy requires there be no errors in reporting facts or identifying people, places, events, dates, documents, and other tangible matters.

0612 STYLE AND TONE. Style varies from one person to another, but a simple, direct approach, void of colorful language, is the most effective way to convey facts. The tone also should be neutral, not judgmental, convincing in its modesty of language, and not provocative in its descriptions. Style, tone, and clarity must complement one another; each handled well tends to support the others. Above all, the ROI must be written in a style that communicates clearly with the reader (decision-maker). Every sentence, phrase, and paragraph must be unblemished.

0613 ANALYSIS. In most investigations, more information is collected than is necessary to reach a conclusion. Some information is redundant; other information is not pertinent to a decision and sometimes the

information is conflicting. Deciding what information to treat as evidence and how to deal with it in the ROI is important because in cases where remedial or disciplinary action is a possibility, the decision to accept the conclusions in the ROI is likely to be made only after an examination of all the evidentiary material in the file. If the report does not appear to fairly address pertinent evidence, its conclusions may be rejected. Some common issues include:

a. Evidence considered, but not relied upon, should be discussed in the ROI if it is likely that others would want to consider it, or question the completeness of the report were it not mentioned. This is critical when there is conflicting evidence. The failure to discuss and explain why one version of events is relied upon in lieu of competing evidence will cause readers who are aware of the conflicts to question the objectivity of the writer.

b. Evidence that is redundant or repetitive can be summarized when it comes from various sources that present no unique information (e.g. stating that five people saw the subject in the office on a particular day is adequate in most cases).

c. Testimony may prove difficult to analyze in some cases. Often, only a few witnesses have the entire story. The investigator must piece together fragments of the story to present the entire picture. Summarizing the testimony of witnesses providing these fragments is one acceptable technique to make the sequence of events clear. In complex cases, or cases with many witnesses, it is helpful to use some system for identifying what each witness said about each allegation, such as a matrix, an outline, or file cards.

d. The evidentiary analysis must bring together all documentary, physical, and testimonial facts relating to the allegations to reach a conclusion. The facts relied upon to reach each conclusion should be apparent to the reader. When the applicable standards are themselves vague, or the testimony conflicts, the reasoning that leads to a conclusion is not always apparent. In that case, the analysis in the ROI must explain to the reader how the investigator reached the conclusion.

0614 SPECIFIC PROBLEMS. Most problems in ROIs occur because investigators know the case so well that they tend to assume things when writing that a reader not familiar with the case will not know. Other problems occur because of sloppy writing habits or the failure to organize and place information in the appropriate sections of the report. Some common examples include the following:

a. **Mixing up facts, opinions, and conclusions.** There are separate sections of the ROI for recording facts and conclusions. Too often, investigators give their opinions in the middle of a recitation of facts. Opinions may also creep in through the use of adjectives and adverbs in a sentence setting forth facts. Another common problem is the inclusion of facts, for the first time in the report, in the sections of the report reserved for conclusions. This often happens when the investigator realizes that a fact necessary to support the conclusion does not appear in the findings section. These problems can be avoided by carefully following the outline of the ROI described earlier (also see Appendix K).

b. **Unsupported conclusions.** This usually occurs for one of three reasons. First, because investigators are so familiar with the case, they may think they included a fact when they did not, or they may assume something will be apparent to the reader. In most cases, the evidence was gathered, and simply not reported. A second cause is the inclusion of conflicting statements of fact that are not resolved in the discussion of the findings. This requires the reader to attempt to resolve the conflicts, often without any information in the report that would provide a logical basis for doing so. A third cause is the failure to cite and, where necessary, discuss the standard that should be applied to the facts in order to reach a conclusion.

c. **Insupportable conclusions.** Misinterpreting testimony, misreading documents, and not wording allegations properly may result in erroneous conclusions. This discredits the ROI's recommendations and may bring into question the integrity of the IG investigative process. This problem may not be obvious from a simple reading of the ROI itself; it is most likely to be discovered when the command is reviewing the investigative file to determine whether or not it will support disciplinary action. To avoid this situation, the investigator should meticulously document the source of every fact in the report. Additionally, these errors are likely to be identified during the quality assurance review of the ROI by IG investigative personnel and/or legal personnel.

d. **Recommendations not consistent with conclusions.** Occasionally, conclusions are presented that merit a recommendation, but none appears in the ROI. In other cases, the conclusion does not support the recommendation. These errors are likely to be picked up when drafts are reviewed by other investigators not familiar with the case who are assigned to conduct a quality assurance review of the ROI.

PART THREE - OTHER ADMINISTRATIVE REQUIREMENTS

0615 INTERIM REPORTS. When an investigation will require more than 90 days to complete, an interim report may be required. The purpose of an interim report is to report the status of the investigation and point out any problems that have been encountered, particularly those that may delay the investigation or need to be addressed at a higher level. The interim report should not be used to indicate the likely outcome of the investigation. Similarly, complainants and subjects should not be provided information indicating the anticipated outcome of the investigation.

0616 PROTECTIVE MARKINGS. At a minimum, every ROI should be marked in accordance with the provisions of SECNAVINST 5720.42E. This requires that the words "FOR OFFICIAL USE ONLY" appear at the bottom center of each page of the report. The purpose of this marking is to alert DoN personnel that material so marked may contain information not appropriate for release to the general public. The marking, in itself, provides no protection. In addition, ROIs that contain classified information should be marked in accordance with DoD/DoN information security requirements. At a minimum, the outside front and back of the report must be marked with the highest classification of information contained in the report. In most reports, classified information can be confined to a few specific paragraphs. The report should clearly identify those paragraphs, to facilitate discussion and dissemination

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of unclassified information contained in the report. Since the first page of most ROIs will contain derogatory information, a cover sheet or neutrally worded cover letter should be used with every ROI.

0617 FORMATS AND/OR REPORTING REQUIREMENTS. There are two specific report formats that Inspectors General and their field organizations usually use in preparing ROIs. They are the DoD/Navy/Marine Corps Hotline Completion Report (See Chapter 4 Section 0411 and Appendix K) and the formal Investigation Report (See Chapter 5 Section 0547 and Appendix K). Military Whistleblower Reprisal investigative reports usually use the Formal Investigative Report format but require that specific questions be answered in a specific order, as set forth in IGDG 7050.6, Guide to Military Reprisal Investigations. See Chapter 11 for further discussion.

APPENDIX 7-1: TJAGSA INTRODUCTION TO FISCAL LAW
OUTLINE

CHAPTER 1

INTRODUCTION TO FISCAL LAW

I. INTRODUCTION.

A. The Appropriations Process.

1. U.S. Constitution, Art. I, § 8, grants to Congress the power to “. . . lay and collect Taxes, Duties, Imports, and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States”
2. U.S. Constitution, Art. I, § 9, provides that “[N]o Money shall be drawn from the Treasury but in Consequence of an Appropriation made by Law.”

B. Historical Perspective.

1. For many years after the adoption of the Constitution, executive departments exerted little fiscal control over the monies appropriated to them. During these years, departments commonly:
 - a. Obligated funds in advance of appropriations;
 - b. Commingled funds and used funds for purposes other than those for which they were appropriated; and
 - c. Obligated or expended funds early in the fiscal year and then sought deficiency appropriations to continue operations.
2. Congress passed the Antideficiency Act (ADA) to curb the fiscal abuses that frequently created “coercive deficiencies” that required supplemental appropriations. The Act consists of several statutes that mandate administrative and criminal sanctions for the unlawful use of appropriated funds. See 31 U.S.C. §§ 1341, 1342, 1350, 1351, and 1511-1519.

II. KEY TERMINOLOGY.

- A. Fiscal Year. The Federal Government's fiscal year begins on 1 October and ends on 30 September.
- B. Period of Availability. Most appropriations are available for obligation for a limited period of time, *e.g.*, one fiscal year for operation and maintenance appropriations. If activities do not obligate the funds during the period of availability, the funds expire and are generally unavailable for obligation thereafter.
- C. Obligation. An obligation is any act that legally binds the government to make payment. Obligations represent the amounts of orders placed, contracts awarded, services received, and similar transactions during an accounting period that will require payment during the same or a future period. DOD Financial Management Regulation 7000.14, Vol. 1, p. xxi [hereinafter DoD FMR].
- D. Budget Authority.
1. Congress finances federal programs and activities by granting budget authority. Budget authority is also called obligational authority.
 2. Budget authority means “. . . authority provided by law to enter into obligations which will result in immediate or future outlay involving Government funds” 2 U.S.C. § 622(2).
 - a. Examples of “budget authority” include appropriations, borrowing authority, contract authority, and spending authority from offsetting collections. OMB Cir. A-34, Instructions on Budget Execution (Nov. 2000), § 11.2 [hereinafter OMB Cir. A-34], available at <http://www.whitehouse.gov/omb/circulars/a034/toc00.htm>.
 - b. “Contract Authority,” as noted above, is a limited form of “budget authority.” Contract authority permits agencies to obligate funds in advance of appropriations but not to pay or disburse those funds absent some additional appropriations authority. See, e.g., 41 U.S.C. § 11 (Feed and Forage Act).
 3. Agencies do not receive cash from appropriated funds to pay for services or supplies. Instead they receive the authority to obligate a specified amount.
- E. Authorization Act. DFAS-IN Reg. 37-1, Finance and Accounting Policy Implementation (Jan. 2000), ch. 3, para. 0304 [hereinafter DFAS-IN 37-1], available at <http://dfas4dod.dfas.mil/centers/dfasin/library/ar37-1/index.htm>.

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1. An authorization act is a statute, passed annually by Congress, that authorizes the appropriation of funds for programs and activities.
2. An authorization act does not provide budget authority. That authority stems from the appropriations act.
3. Authorization acts frequently contain restrictions or limitations on the obligation of appropriated funds.

F. Appropriations Act.

1. An appropriations act is the most common form of budget authority.
2. An appropriation is a statutory authorization “to incur obligations and make payments out of the Treasury for specified purposes.” The Army receives the bulk of its funds from two annual appropriations acts: (1) the Department of Defense Appropriations Act; and (2) the Military Construction Appropriations Act. DFAS-IN Reg. 37-1, ch. 3, para. 030701.
3. The making of an appropriation must be stated expressly. An appropriation may not be inferred or made by implication. Principles of Fed. Appropriations Law, Vol. I, p. 2-13, GAO/OGC 91-5 (1991).

G. Comptroller General and General Accounting Office (GAO).

1. The Comptroller General of the United States heads the GAO, an investigative arm of Congress charged with examining all matters relating to the receipt and disbursement of public funds.
2. Established by the Budget and Accounting Act of 1921 (31 U.S.C. § 702) to audit government agencies.
3. Issues opinions and reports to federal agencies concerning the obligation and expenditure of appropriated funds.

III. ADMINISTRATIVE CONTROL OF APPROPRIATIONS.

A. Methods of Subdividing Funds.

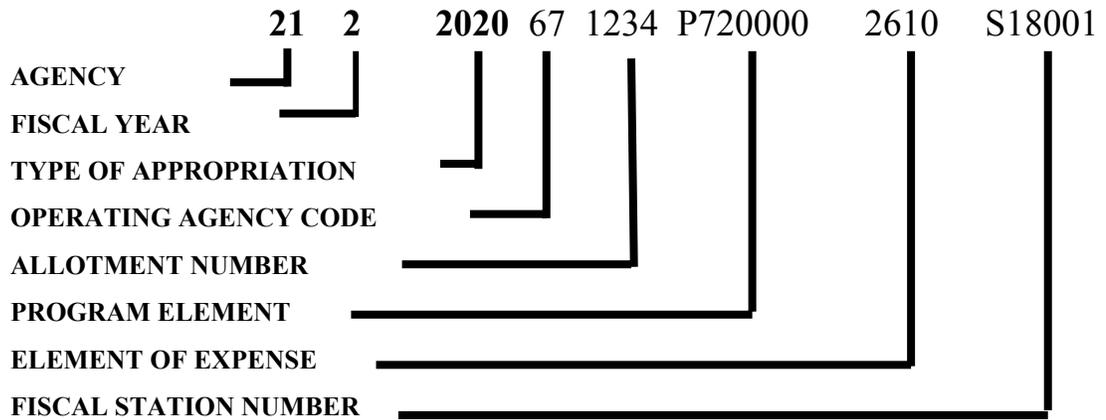
1. Formal subdivisions: Appropriations are subdivided by the executive branch departments and agencies.

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- a. These formal limits are referred to as apportionments, allocations, and allotments.
 - b. Exceeding a formal subdivision of funds violates the ADA. 31 U.S.C. § 1517(a)(2). See DFAS-IN Reg. 37-1, ch. 3, para. 031403.
2. Informal subdivisions: Agencies may subdivide funds at lower levels, *e.g.*, within an installation, without creating an absolute limitation on obligational authority. These subdivisions are considered funding targets. These limits are **not** formal subdivisions of funds.
- a. Targets are referred to as “allowances.”
 - b. Incurring obligations in excess of an allowance is not necessarily an ADA violation. If a formal subdivision is breached, however, an ADA violation may occur, and the person responsible for exceeding the target may be held liable for the violation. DFAS-IN Reg. 37-1, ch. 3, para. 031402. For this reason, Army policy requires reporting such overobligations. DFAS-IN Reg. 37-1, ch. 4, para. 040204.L.
- B. Accounting Classifications. See DFAS-IN Reg. 37-1, ch. 5, para. 050102.
1. Accounting classifications are codes used to manage appropriations. They are used to implement the administrative fund control system and to help ensure funds are used correctly.
 2. An accounting classification is commonly referred to as a **fund cite**. DFAS-IN Reg. 37-100-XX, The Army Mgmt. Structure, provides a detailed breakdown of Army accounting classifications. The XX, in DFAS-IN Reg. 37-100-XX, stands for the last two digits of the fiscal year, *e.g.*, DFAS-IN Reg. 37-100-02 is the source for accounting classification data for FY 2002 for the Department of the Army. DFAS-IN 37-100-XX is published annually. Go to <http://dfas4dod.dfas.mil/centers/dfasin/library/regs.htm>.

C. Understanding an Accounting Classification.

1. The following is a sample fund cite:



- a. The first two digits represent the military department. The “21” in the example shown denotes the Department of the Army.
- b. Other Department codes are:
 - (1) 17 - Navy
 - (2) 57 - Air Force
 - (3) 97 - Department of Defense

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- c. The third digit shows the Fiscal Year/Availability of the appropriation. The “2” in the example shown indicates Fiscal Year (FY) 2002 funds.
 - (1) Annual appropriations are used frequently in installation contracting.
 - (2) Other fiscal year designators encountered in installation contracting, less frequently, include:
 - (a) Third Digit = X = No Year appropriation, which is available for obligation indefinitely.
 - (b) Third Digit = 8/2 = Multi-Year appropriation, in this example, funds appropriated in FY 1998 and available for obligation until FY 2002.
- d. The next four digits reveal the type of the appropriation. The following designators are used within DOD fund citations:

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	<u>ARMY</u>	<u>NAVY/MC</u>	<u>AIR FORCE</u>	<u>OSD</u>
Military Personnel	2010	1453/1105	3500	N/A
Reserve Personnel	2070	1405/1108	3700	N/A
National Guard Personnel	2060	N/A	3850	N/A
O&M*	2020	1804/1106	3400	0100
O&M, Reserve	2080	1806/1107	3740	N/A
O&M, National Guard	2065	N/A	3840	N/A
Procurement (Aircraft)	2031	1506	3010	N/A
Procurement (Missiles)	2032	N/A	3020	N/A
Procurement (Weapons & Tracked Vehicles)	2033	1507	N/A	N/A
Procurement (Ammunition)	2034	1508	3011	N/A
Shipbuilding & Conversion	N/A	1611	N/A	N/A
Other Procurement	2035	1810/1109	3080	0300
Research, Development, Test & Evaluation (RDT&E)	2040	1319	3600	0400
Military Construction	2050	1205	3300	0500
Family Housing Constr.	0702	0703	7040	0706
Reserve Construction	2086	1235	3730	N/A
National Guard Constr.	2085	N/A	3830	N/A
Environmental Restoration	0810	0810	0810	0810
Wildlife Conservation	5095	5095	5095	N/A

*Operation and Maintenance: This appropriation provides funding for the operation and maintenance of most Army activities and facilities to include training and the purchase of supplies and some equipment as well as some limited amount of construction.

IV. LIMITATIONS ON THE USE OF APPROPRIATED FUNDS.

A. General Limitations on Authority.

1. The authority of executive agencies to spend appropriated funds is limited.
2. An agency may obligate and expend appropriations only for a proper **purpose**.
3. An agency may obligate only within the **time** limits applicable to the appropriation (*e.g.*, O&M funds are available for obligation for one fiscal year).
4. An agency must obligate funds within the **amounts** appropriated by Congress and formally distributed to or by the agency.

B. Limitations -- Purpose.

1. The "Purpose Statute" requires agencies to apply appropriations only to the objects for which the appropriations were made, except as otherwise provided by law. See 31 U.S.C. § 1301; see also DFAS-IN Reg. 37-1, ch. 8, para. 0803.
2. Three-Part Test for a Proper Purpose. Secretary of Interior, B-120676, 34 Comp. Gen. 195 (1954).
 - a. Expenditure of appropriations must be for a specified purpose, or **necessary and incident** to the proper execution of the general purpose of the appropriation;
 - b. The expenditure must not be prohibited by law; and
 - c. The expenditure must not be otherwise provided for, *i.e.*, it must not fall within the scope of another appropriation.
3. Appropriations Acts. DOD has nearly one hundred separate appropriations available to it for different purposes.
 - a. Appropriations are differentiated by service (Army, Navy, etc.) and component (Active, Reserve, etc.), as well as purpose (Procurement, Research and Development, etc.). The major DOD appropriations provided in the annual appropriations act are:

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- (1) Operation & Maintenance -- used for the day-to-day expenses of training exercises, deployments, operating and maintaining installations, etc.;
 - (2) Personnel -- used for military pay and allowances, permanent change of station travel, etc.;
 - (3) Research, Development, Test and Evaluation (RDT&E) -- used for expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance and operation of facilities and equipment; and
 - (4) Procurement -- used for production and modification of aircraft, missiles, weapons, tracked vehicles, ammunition, shipbuilding and conversion, and “other procurement.”
- b. DOD also receives smaller appropriations for other specific purposes (*e.g.*, Overseas Humanitarian, Disaster, and Civic Aid (OHDACA), Chemical Agents and Munitions Destruction, etc.).
 - c. Congress appropriates funds separately for military construction.
4. Authorization Acts.
- a. Annual authorization acts generally precede DOD’s appropriations acts.
 - b. The authorization act may clarify the intended purposes of a specific appropriation or contain restrictions on the use of the appropriated funds.
- C. Limitations -- Time.
1. Appropriations are available for limited periods. An agency must incur a legal obligation to pay money within an appropriation’s period of availability. If an agency fails to obligate funds before they expire, they are no longer available for new obligations.
 - a. Expired funds retain their “fiscal year identity” for five years after the end of the period of availability. During this time, the funds are available to adjust existing obligations or to liquidate prior valid obligations. Again, however, expired funds are not available for new obligations.

- c. If the preliminary report concludes a violation occurred, the MACOM commander will appoint an investigative team to determine the cause of the violation and the responsible parties. For the Army, investigations are conducted pursuant to AR 15-6, Procedure for Investigating Officers and Boards of Officers (30 Sep 1996).
 - d. The head of the agency (e.g., SECDEF, for the DOD) must report to the President and Congress whenever a violation of 31 U.S.C. §§ 1341(a), 1342, or 1517 is discovered. OMB Cir. A-34, para. 32.2; DOD Directive 7200.1, Administrative Control of Appropriations (4 May 1995), Encl. 5, para. R [hereinafter DODD 7200.1].
3. Individuals responsible for Antideficiency Act violations shall receive disciplinary action commensurate with the circumstances and the severity of the violation. DODD 7200.1, para. D.5. See 31 U.S.C. §§ 1349(a), .

V. FISCAL LAW RESEARCH MATERIALS.

A. Legislation.

1. Titles 10 and 31, United States Code.
2. Annual authorization and appropriations acts.

B. Legislative History.

1. Legislative history is the record of congressional deliberations that precede the passage of a statute. It is not legislation. See Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978).
2. The legislative history is not binding upon the Executive Branch. If Congress provides a lump sum appropriation without restricting what may be done with the funds, a clear inference is that it did not intend to impose legal restrictions. See SeaBeam Instruments, Inc., B-247853.2, July 20, 1992, 92-2 CPD ¶ 30; LTV Aerospace Corp., B-183851, Oct. 1, 1975, 75-2 CPD ¶ 203.

C. Decisions.

CENTER FOR LAW AND MILITARY OPERATIONS

1. The Comptroller General issues opinions concerning the propriety of appropriated fund obligations or expenditures, except for those described in paragraph 3, below. See 31 U.S.C. § 3529. Activities must request these opinions through finance officer channels in advance of an obligation or expenditure. See DOD FMR, vol. 5, ch. 1 para. 010403.B.2 (May 2001).
 2. The fiscal law decisions of the Comptroller General appear in the Decisions of the Comptroller General of the United States, published by the Government Printing Office. Comptroller General opinions also are available at the General Accounting Office (GAO) website (<http://www.gao.gov>), through commercial legal research services (*e.g.*, LEXIS, WESTLAW), and in the Comptroller General Procurement Decisions (CPD) reporter.
 3. Agency Advance Decisions. See DOD FMR, vol. 5, ch. 1, para. 010403.B.2 and vol. 5, app. E (May 2001). Per the General Accounting Office Act of 1996 (Pub. L. 104-316, § 204, 110 Stat. 3826 (1996) (codified at 31 U.S.C. § 3529)) and, as delegated by the Director, Office of Management and Budget (OMB), the following issue advance decisions for designated categories:
 - a. DOD: uniformed service member pay, allowances, travel, transportation, and survivor benefits.
 - b. Office of Personnel Management (OPM): civilian pay and leave.
 - c. General Services Administration Board of Contract Appeals (GSBCA): civilian employee travel, transportation, and relocation.
- D. Regulations.
1. DOD FMR 7000.14-R (15 Volumes). Go to <http://www.dtic.mil/comptroller/fmr>.
 2. Army: DFAS-IN 37-1, Finance and Accounting Policy Implementation. Go to <http://dfas4dod.dfas.mil/centers/dfasin/library/ar37-1/ar37-1/index.htm>.
 3. Navy: Navy Comptroller Manual.

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

4. Air Force: Interim Guidance on Procedures for Administrative Control of Appropriations and Funds Made Available to the Department of the Air Force (formerly DFAS-DE 7200.1-R and AFR 177-16); AFI 65-608, Antideficiency Act Violations (1 May 1998); Interim Guidance on Accounting for Obligations (formerly DFAS-DE 7000.4-R and AFR 170-8); Interim Guidance on Accounting for Commitments (formerly DFAS-DE 7000.5-R and AFR 170-13); DFAS-DE 7010.1-R General Accounting and Finance Systems at Base Level (15 Feb. 1991); DFAS-DE 7010.2-R Commercial Transactions at Base Level (31 Jan. 1996); DFAS - DE 7010.3-R, Travel Transactions at Base Level. Go to <http://dfas4dod.dfas.mil/library/publication/dfasdepubs.htm> and for AFI 65-608 go to <http://afpubs.hq.af.mil/pubfiles/af/65/afi65-608/afi65-608.pdf>.

E. Treatises.

1. General Accounting Office, Principles of Federal Appropriations Law, 2d ed., GAO/OGC 91-5 (July 1991) (commonly referred to as the “Red Book”), available at www.gao.gov/specialpubs.
2. General Accounting Office, Accounting Guide, GAO/AFMD--PPM-2.1 (September 1990); Policies and Procedures Manual For Guidance of Federal Agencies, Title 7 (February 1990).
3. General Accounting Office, A Glossary of Terms Used in the Budget Process, GAO/AFMD-2.1.1 (July 1993).

F. Internet Services.

1. Defense Finance and Accounting Service. <http://dfas4dod.dfas.mil>.
2. Other Government Agency Home Pages, e.g., <http://www.asafm.army.mil/>.

VI. CONCLUSION.

APPENDIX 7-2: TJAGSA (CHAIRMAN'S LEGAL) FUNDING
MILITARY OPERATIONS OUTLINE

FUNDING U.S. MILITARY OPERATIONS

I. INTRODUCTION.

II. CONSTITUTIONAL PREDICATE.

A. President's Power.

1. "The President shall be the Commander in Chief of the Army and Navy of the United States" U.S. Const. Art. II, § 2, cl. 1.
2. "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls" U.S. Const. Art. II, § 2, cl. 2.
3. "[H]e shall receive Ambassadors and other public Ministers" U.S. Const. Art. II, § 3.

B. Congress' Power.

1. "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by law" U.S. Const. Art. I, § 9, cl. 7.
2. "The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" U.S. Const. Art. IV, § 3, cl 2.

"An effective foreign policy requires more than ideas and pronouncements. It requires institutions, agencies, people and money, and Congress controls them all. Through the authorization and appropriation process, Congress sets the terms of commerce; it provides military forces and intelligence capabilities; and it establishes the conditions for development assistance, security support programs and U.S. participation in international organizations. . . . Hardly any important executive branch decision is taken without consideration of the reaction in Congress."

Trimble, *The President's Foreign Affairs Power*, 83 AM. J. INT'L. LAW 750 (1989)

III. THE NEED FOR EXPRESS LEGAL AUTHORITY.

A. General.

“The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.” *United States v. MacCollom*, 426 U.S. 317 (1976).

- B. **“Article II Operations”: Inherent Authority?** *See, e.g.*, R. Rosen, Funding Non-Traditional Military Operations: The Alluring Myth of a Presidential Power of the Purse, 155 MIL. L. REV. 1 (1998) and W. Banks & P. Raven-Hansen, NATIONAL SECURITY LAW & THE POWER OF THE PURSE 166 (1994).

Traditional vs. Non-Traditional Missions

IV. SUPPORTING MULTILATERAL PEACE & HUMANITARIAN OPERATIONS.

- A. **Policy.** Presidential Decision Directive (PDD) 25 (May 3, 1994).

1. **General.** PDD 25 addresses the following areas:

- a. Choosing which operations to support.
- b. Defining U.S. policy regarding command and control. *See also* H.R. 1530, § 1301, 104th Cong., 1st Sess. (1995); 31 Pres. Doc. 2234 (Dec. 28, 1995) (Presidential veto of Defense Authorization Bill prevented additional Congressional restrictions on C2 policy in UN operations.)
- c. Reducing U.S. costs for UN peace operations.
- d. Reforming/improving UN management of peace operations.
- e. Improving U.S. management and funding of peace operations.
- f. Creating better cooperation between the Executive & Legislative branches.

2. **Funding Provisions.**

- a. **Reimbursement.** U.S. will generally seek either direct reimbursement for provision of goods and services or credit against UN assessment. In rare circumstances, U.S. may contribute goods, services, and funds on a voluntary basis. *But see*, paragraph B.1.b., *infra*.
- b. **Oversight & Management.**
 - (1) Department of State has responsibility for oversight and management of Chapter VI peace operations in which U.S. combat units are not participating.
 - (2) Department of Defense has responsibility for oversight and management of Chapter VI operations in which U.S. forces are participating and for all Chapter VII operations.

- c. *UN Assessments.* No DoD funds may be expended, directly or indirectly, to make a financial contribution to the UN for the cost of a UN peacekeeping activity or for payment of U.S. arrearages to the UN.
10 U.S.C. § 405.

B. **Authorities.**

1. *UN Participation Act (UNPA) § 7, 22 U.S.C. § 287d-1.*

- a. *Scope.* Upon UN's request, President may authorize the following support specifically directed to the peaceful settlement of disputes and not involving employment of the armed forces under Chapter VII of the UN Charter --
 - (1) Details of Personnel. Up to 1,000 military personnel as observers, guards, or any non-combatant capacity.
 - (2) Supplies, Services, & Equipment. Furnishing of facilities, services, or other assistance, and the loan of the U.S.'s fair share of supplies and equipment.
- b. *Delegation of Authority.* The President has delegated authority to direct support to the Secretary of State (SecState). Executive Order 10206, ¶ 1, 16 Fed. Reg. 529 (1951). He has delegated the authority to waive (in national interest) reimbursement to SecState, in consultation with the Secretary of Defense (SecDef). *Id.* ¶ 2.
- c. *Reimbursement.* Section 723 of the FY 00-01 Foreign Relations Authorization Act (as enacted in Pub. L. No. 106-113) amended the UNPA to add a new Section 10. Section 10 requires the United States to obtain reimbursement from the UN for DoD assistance that is provided to or for an assessed UN peacekeeping operation, or to facilitate or assist the participation of another country in such an operation. The statute provides for several exemptions and grounds for waiver. **This requirement to receive reimbursement is not limited to assistance provided under the UNPA, but applies to any authority under which assistance may be provided to an assessed peacekeeping operation.**

2. *Drawdowns.*

- a. *Foreign Assistance Act (FAA) § 506(a)(1), 22 U.S.C. § 2318(a)(1)* - Authorizes the President to direct the drawdown of defense articles and services having an aggregate value of up to \$100,000,000 in any fiscal year for unforeseen emergencies requiring immediate military assistance to a foreign country or international organization. *See* Defense and Security Assistance Improvements Act, Pub. L. 104-164 (1996) (increase from \$75M to \$100M).

- b. *FAA § 506(a)(2), 22 U.S.C. § 2318(a)(2)* - Authorizes the President to direct the drawdown of articles and services having an aggregate value of up to \$200,000,000 from any agency of the U.S. in any fiscal year for (among other things) counterdrug activities, disaster relief, non-proliferation, anti-terrorism, and migrant and refugee assistance. Of that amount, not more than \$75M may come from DoD resources; not more than \$75M may be provided for counternarcotics; and not more than \$15M to Vietnam, Cambodia and Laos for POW accounting. Drawdowns supporting counternarcotics and refugee or migration assistance require 15 days notice to Congress. *See* Defense and Security Assistance Improvements Act, Pub. L. 104-164 (1996); FY 2001 Security Assistance Act, Pub. L. 106-280, 114 Stat. 850 (2000).
- c. *FAA § 552(c)(2), 22 U.S.C. § 2348a(c)(2)* - Authorizes the President to direct the drawdown of up to \$25,000,000 in any fiscal year of commodities and services from *any* federal agency for unforeseen emergencies related to peacekeeping operations and other programs in the interest of national security.

3. ***Details of Personnel.***

- a. *FAA § 627, 22 U.S.C. § 2387.* When the President determines it furthers the FAA's purposes, statute permits a federal agency head to detail officers or employees to foreign governments or foreign government agencies, where the detail does not entail an oath of allegiance to or compensation from the foreign countries. Details may be with or without reimbursement. *FAA § 630, 22 U.S.C. § 2390.*
- b. *FAA § 628, 22 U.S.C. § 2388.* When the President determines it furthers the FAA's purposes, statute permits federal agency heads to detail, assign, or otherwise make their officers and employees available to serve with international organizations, or serve as members of the international staff of such organizations, or to render any technical, scientific, or professional advice or service to the organizations. May be with or without reimbursement. *FAA § 630, 22 U.S.C. § 2390.*
- c. *22 U.S.C. § 1451.* Authorizes the Director, USIA, to assign U.S. employees to provide scientific, technical, or professional advice to other countries. Details may be on reimbursable or nonreimbursable basis. Does not authorize details related to the organization, training, operation, development, or combat equipment of a country's armed forces.
- d. *10 U.S.C. § 712.* Authorizes President to detail members of the armed forces to assist in military matters in any republic in North, Central, or South America; the Republics of Cuba, Haiti, or Santo Domingo; or -- during a war or a declared national

emergency -- in any other country. Details may be on a reimbursable or nonreimbursable basis.

4. ***Excess Defense Articles (EDA).*** Defense articles no longer needed by the U.S. may be made available on a grant basis.

- a. *FAA § 516, 22 U.S.C. § 2321j.* Authorizes both lethal and nonlethal EDA (including Coast Guard equipment) support to any country for which receipt was justified in the annual Congressional Presentation Document (CPD). It continues to accord priority of delivery to NATO and non-NATO Southern-flank allies, as well as continuing the 7:10 EDA grant split between Greece & Turkey. *See* Defense and Security Assistance Improvements Act, Pub. L. 104-164 (1996) (consolidation of EDA authorities into §516 and repeal of §§ 518- 520); Security Assistance Act of 1999, Pub. L. 106-113, § 1211(b) (1999)(extending legislation four years).
- b. Amount - An aggregate ceiling of \$350M per year. Cost is determined using the depreciated value of the article.
- c. *Transportation:* No-cost space available transportation is authorized for countries receiving less than \$10M FMF or IMET in any FY if a determination is made that it is in the national interest of the United States to do so.

5. ***Reimbursable Support.***

- a. *FAA § 607, 22 U.S.C. § 2357* - Authorizes any federal agency to furnish commodities and services to friendly countries and international organizations on an advance-of-funds or reimbursable basis.
- b. *FAA § 632, 22 U.S.C. 2392* - Authorizes the State Department to use its funds to obtain DoD's support under the FAA or Title 10 authorities.
- c. *Economy Act, 31 U.S.C. § 1535* - Authorizes the provision of defense articles and services *indirectly* to third countries, the UN, and international organizations on a *reimbursable* basis for another federal agency (*e.g.*, Department of State).
- d. *Foreign Military Sales (FMS) - Arms Export Control Act (AECA) §§ 21-22, 22 U.S.C. 2761-62* - Third countries and the UN may enter standard FMS contracts with DoD for the sale of defense articles and services.
- e. *Leases - AECA §§ 61-62, 22 U.S.C. § 2796-2796a* - Authorizes leases of Defense articles to foreign countries or international organizations, generally on a reimbursable basis.

- f. *Acquisition & Cross-Servicing Agreements (ACSA) - 10 U.S.C. §§ 2341-2350* - DoD authority to acquire logistic support without resort to commercial contracting procedures and to transfer support outside of the AECA. Under the statutes, after consulting with the State Department, DoD may enter into agreements with NATO countries, NATO subsidiary bodies, other eligible countries, the UN, and international regional organizations of which the U.S. is a member for the reciprocal provision of logistic support, supplies, and services. Acquisitions and transfers are on a cash reimbursement or replacement-in-kind or exchange of equal value basis.

V. **DOD HUMANITARIAN & DISASTER RELIEF OPERATIONS.**

A. **Appropriations.** \$49.7M in FY 2002 for Overseas Humanitarian, Disaster and Civic Aid (OHDACA) programs of the Department of Defense under §§401 [only for humanitarian demining], 402, 404, 2557, and 2561 of Title 10 (decrease of approx. \$5M from FY 2001).

B. **Humanitarian & Civic Assistance (HCA) - 10 U.S.C. § 401**

1. *Need for Express Authority.*

- a. *41 U.S.C. § 12: "No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.*
- b. *63 Comp. Gen. 422 (1984): "[I]t is our conclusion that DoD's use of O&M funds to finance civic/humanitarian activities during combined exercises in Honduras, in the absence of an interagency order or agreement under the Economy Act, was an improper use of funds, in violation of 31 U.S.C. § 1301(a)."*

2. *Scope of Authority.* Secretary concerned may carry out HCA in conjunction with authorized military operations of the armed forces in a country if the Secretary determines the activities will promote -

- a. the security interests of the U.S. and the country where the activities will be carried out; and
- b. the specific operational readiness skills of the servicemembers who will participate in the activities.

3. *Limits.*

- a. May not duplicate other forms of U.S. economic assistance.

- b. May not be provided (directly or indirectly) to any individual, group, or organization engaged in military or paramilitary activities.
 - c. SecState must specifically approve assistance.
 - d. Must be paid out of funds appropriated for HCA.
 - e. U.S. personnel may not engage in the physical detection, lifting, or destroying of landmines (except concurrent with U.S. military operation), or provide such assistance as part of a military operation not involving U.S. forces.
 - f. Expenses funded as HCA shall include the costs of consumable materials, supplies, and services reasonably necessary to provide the HCA. They shall not include costs associated with the military operation (e.g. transportation, personnel expenses, POL) that likely would have been incurred whether or not the HCA was provided. DoD Directive 2205.2, "Humanitarian and Civic Assistance (HCA) Provided in Conjunction with Military Operations" 6 October 1994, para. D.9.
4. **Definition.** HCA means --
- a. medical, dental, veterinary care in rural or underserved areas;
 - b. construction of rudimentary surface transportation systems;
 - c. well drilling and construction of rudimentary sanitation facilities;
 - d. rudimentary construction and repair of public facilities; and
 - e. detection and clearance of landmines, including education, training, and technical assistance.
5. **De minimis HCA. 10 U.S.C. § 401(c)(4) and DOD Dir. 2205.2, para. E1.1.1.**
- a. Provides authority for commanders to react to HCA "targets of opportunity" during the course of a military operation. Such activities must be modest in scope and involve only "minimal expenditures for incidental costs."
 - b. All costs incurred in executing a *De minimis* HCA action are funded from the unit's O&M account.
 - c. Rule of Thumb: A few soldiers, a few dollars, for a few hours. CINC's may have promulgated specific guidance regarding the level of effort/funding that falls under the definition of *De Minimus* HCA in their AORs.

- d. Examples:
 - 1. A unit's doctor's examination of villagers for a few hours, with the administration of several shots and the issuance of some medicine, but not the deployment of a medical team for the purposes of providing mass inoculations to the local populace.
 - 2. The opening of an access road through the trees and underbrush for several hundred yards, but not the asphaltting of a roadway.
- e. Appropriations. *De minimis* HCA is funded from the unit's O&M account.

6. ***Exercise-Related Construction (ERC) distinguished.***
10 U.S.C. § 2805(a)(2).

"[F]unds from this account may only support construction activities necessary for the conduct of U.S. military exercises. *The account is not a foreign assistance program.*"

-- S. Rep. 355, 102d Cong., 2d Sess. 10 (1992) (emphasis added).

- 7. ***Appropriations*** Specifically fenced O&M for HCA. Demining, however, uses OHDACA. *De minimis* HCA is funded from the unit's O&M account.

C. **Transportation of Humanitarian Relief Supplies for NGOs - 10 U.S.C. § 402.**

- 1. ***Scope of Authority.*** SecDef may transport to any country, *without charge*, supplies furnished by NGOs intended for humanitarian assistance. Transport permitted only on a *space-available* basis. Supplies may be distributed by U.S. agencies, foreign governments, international organizations, or non-profit relief organizations.
- 2. ***Preconditions.*** Before transporting supplies, SecDef must determine --
 - a. the transportation of the supplies is consistent with U.S. foreign policy;
 - b. the supplies to be transported are suitable for humanitarian purposes and are in usable condition;
 - c. a legitimate humanitarian need exists for the supplies by the people for whom the supplies are intended;
 - d. the supplies will, in fact, be used for humanitarian purposes; and

- e. adequate arrangements have been made for the distribution of the supplies in the destination country.
3. **Limits.** Supplies transported may not be distributed (directly or indirectly) to any individual, group, or organization engaged in military or paramilitary activities.

D. Foreign Disaster Assistance - 10 U.S.C. § 404.

1. **Scope of Authority.**
 - a. **General.** President may direct SecDef to provide disaster assistance outside the U.S. to respond to manmade or natural disasters when necessary to prevent the loss of life. Amounts appropriated to DoD for Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) are available for organizing general policies and programs for disaster relief programs.
 - b. **Delegation of Authority.** President delegated to SecDef authority to provide disaster relief with SecState's concurrence and in emergencies when insufficient time to seek SecState concurrence (provided SecDef seeks SecState concurrence as soon as practicable thereafter). Executive Order 12966, 60 Fed. Reg. 36949 (July 14, 1995).
2. **Types of Assistance.** Transportation, supplies, services, and equipment.
3. **Notice to Congress.** Within 48 hours of commencing relief activities, President must transmit a report to Congress.
4. **Appropriations.** Funded from the OHDACA appropriation.

E. Excess Nonlethal Supplies for Humanitarian Relief - 10 U.S.C. § 2557.

1. **Scope of Authority.** SecDef may make available for humanitarian relief purposes any DoD nonlethal excess supplies. Excess supplies furnished under statute transferred to DoS, which is responsible for the distribution of the supplies.
2. **Limits.** Statute does not constitute authority to conduct any activity that, if carried out as a DoD intelligence activity, would require notice to the intelligence committees under 50 U.S.C. §§ 413 et seq.
3. **Definition.** "Nonlethal excess supplies" means property that is excess under DoD regulations and is not a weapon, ammunition, or other equipment or material designed to inflict serious bodily harm or death.

F. Humanitarian Assistance - 10 U.S.C. § 2561.

1. **Scope.**
 - a. *General.* To the extent provided in authorization acts, funds appropriated to DoD for humanitarian assistance shall be used for providing transportation of humanitarian relief and **other humanitarian purposes worldwide.**
 - b. *Availability of Funds.* To the extent provided in the appropriations acts, funds appropriated for humanitarian assistance remain available until expended.
2. **Reports.** Statute contains detailed annual reporting requirements.
3. **Appropriations.** Funded from the OHDACA appropriation.
4. **§2561/401 Distinguished.** If it fits 401 in each and every particular, it's 401 HCA. If not (but humanitarian purpose) it's 2561 HA.

VI. CONTACTS AND EXERCISES WITH FOREIGN MILITARIES.

A. Bilateral & Multilateral Conferences, Seminars, & Meetings.

1. **The Need for Express Authority.**
 - a. 31 U.S.C. § 1345: "Except as specifically provided by law, an appropriation may not be used for travel, transportation, and subsistence expenses for a meeting."
 - b. 62 Comp. Gen. 531 (1983): "[T]here is a statutory prohibition against paying the travel, transportation, and subsistence expenses of non-Government attendees at a meeting. . . . By using the word 'specifically' Congress indicated that authority to pay travel and lodging expenses of non-Government employees should not be inferred but rather that there should be a definite indication in the enactment that the payment of such expenses was contemplated." *See also* B-251921 (April 14, 1993); 55 Comp. Gen. 750 (1976).
2. **Authorities.**
 - a. *U.S. Civilian Employees & Military Personnel.* *See, e.g.,* 5 U.S.C. §§ 4109-4110; 31 U.S.C. § 1345(1); 37 U.S.C. § 412.
 - b. *Individuals Performing Direct Services for the Government.* GAO, I Principals of Federal Appropriations Law 4-40 to 4-42 (2d ed. 1991); *see also* B-242880 (March 27, 1991); 8 Comp. Gen. 465 (1929); Joint Travel Regulations ¶ C.6000.3.
 - c. *Latin American Cooperation (LATAM COOP) - 10 U.S.C. § 1050.* Authorizes the service secretaries to pay the travel, subsistence,

and special compensation of officers and students of Latin American countries and other expenses the secretaries consider necessary for Latin American cooperation.

- d. *Bilateral or Regional Cooperation Programs - 10 U.S.C. § 1051.*
 - (1) Scope.
 - (a) *Travel Expenses.* SecDef may pay travel, subsistence, and similar personal expenses of defense personnel of developing countries in connection with attendance at bilateral or regional conferences, seminars, or similar meetings if SecDef deems attendance in U.S. national security interest.
 - (b) *Other Expenses.* SecDef may pay such other expenses in connection with the conference, seminar, or meeting as he considers in the national interest.
 - (c) *Additional Funding Authority.* The authority to pay expenses under section 1051 is in addition to the authority under LATAM COOP, 10 U.S.C. § 1050. *See* DoD Authorization Act for FY 97, Pub. L. 104-201 §1065 (1996) (10 U.S.C. § 113 note) for Marshall Center Participants.
 - (d) *Asia-Pacific Center for Security Studies.* SecDef may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of APC for foreign military officers and civilian officials if in US national security interest. *See* § 8081 of the DoD Appropriations Act for FY 2002, Pub. L. 107-117 (2001). *See* § 1306 of the FY 95 NDAA for similar authority to waive costs for participation of personnel from PFP and EAPC countries in activities of the George C. Marshall European Center for Security Studies.
 - (2) Limits. Payments under section 1051 are limited to travel within the combatant commander's AOR in which the developing country is located or in connection with travel to Canada or Mexico, but when the combatant command headquarters is in the U.S., expenses may be paid for travel to the U.S.

B. Bilateral & Multilateral Exercise Programs.

1. ***Developing Countries Combined Exercise Program (DCCEP) - 10 U.S.C. § 2010.***
 - a. *Scope.* After consulting with SecState, SecDef may pay the incremental expenses of a developing country incurred by the country's participation in a bilateral or multilateral exercise, if --
 - (1) the exercise is undertaken primarily to enhance U.S. security interests; and
 - (2) SecDef determines the participation of the participating country is necessary to achieve the "fundamental objectives of the exercise and those objectives cannot be achieved unless the U.S. pays the incremental expenses"
 - b. *Definition.* "Incremental expenses" are reasonable and proper cost of goods and services consumed by a developing country as a direct result of the country's participation in exercises, including rations, fuel, training, ammunition, and transportation. The term does *not* include pay, allowances, and other normal costs of the country's personnel.
 2. ***Special Operations Force (SOF) Training - 10 U.S.C. § 2011.***
 - a. *Scope.* CINCSOCOM and the commander of any other combatant command may pay any of the following expenses relating to the training of SOF of the combatant command --
 - (1) Expenses of training the SOF assigned to the command in conjunction with training with the armed forces and other security forces of a friendly foreign country.
 - (2) Expenses of deploying SOF for the training.
 - (3) The incremental expenses incurred by the friendly foreign country incurred as the result of the training.
 - b. *Definitions.*
 - (1) SOF. Includes civil affairs and psychological operations forces.
 - (2) Incremental Expenses. The reasonable and proper cost of goods and services consumed by a developing country as a direct result of the country's participation in a bilateral or multilateral exercise, including rations, fuel, training ammunition, and transportation. The term does *not* include pay, allowances, and other normal costs of the country's personnel.
- C. **Regional Cooperation Programs.**

1. **Partnership for Peace (PFP) - DoD Authorization Act for FY 1995, Pub. L. No. 103-337, § 1307, 108 Stat. 2893 (1994)** (See also H.R. Conf. Rep. No. 747, 103d Cong., 2d Sess. 63 (1994); S. Rep. No. 321, 103d Cong., 2d Sess. 42 (1994).) \$30 million appropriated in FY 1995 to Joint Staff to “use existing authorities to the greatest extent possible” to provide assistance to and cooperate with PFP countries. \$40 million in FY 96 and again in FY97. \$44 million appropriated in FY 1998, but to OSD, not Joint Staff.
 2. **Cooperative Threat Reduction (CTR) with States of Former Soviet Union (FSU) (“Nunn-Lugar”) - DoD Authorization Act for FY 2002, Pub. L. No. 107-107 §§ 1301-1309 (2001)**. (See also DoD Authorization Act for FY 1997, Pub. L. No. 104-201, 110 Stat. 2731(1996) (50 U.S.C. § 2362 note) (specifies activities that make up the CTR program). \$400 million of “no-year” money provided for FY 1994 and FY 1995 for various programs to dismantle FSU’s arsenal of weapons of mass destruction. \$300 million appropriated in FY 1996. \$327.9M appropriated in FY 97. \$440.4M for FY 1999, \$460.5M for FY 2000, \$443.4M for FY 2001, and \$403M for FY 2002; all “three-year” money. §§ 1303-1309 of the DoD Authorization Act for FY 2002 retain various limitations including reporting requirements and prohibitions against the use of the funds.
- D. **Military-to-Military Contact Program - 10 U.S.C. § 168**. Authorizes SecDef to conduct military-to-military contacts and comparable activities that are designed to encourage democratic orientation of defense establishments and military forces of other countries.
- E. **International Military Education & Training (IMET) - FAA §§ 541-545 (22 U.S.C. §§ 2347-2347d)**. Security assistance program to provide training to foreign militaries, including the proper role of the military in civilian-led democratic governments and human rights.

VII. SPECIAL AUTHORITIES.

- A. **CinC Initiative Funds (CIF) - 10 U.S.C. § 166a**. See DoD Appropriations Act for FY 2002, Pub. L. 107-117 (2000) (\$25M for CIF in FY 2002 in Defense-wide O&M); Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 7401.01A, “CINC Initiatives Fund,” 30 January 1999.
1. **Scope**. CJCS may provide to CinCs (including NORAD) sums appropriated for the following activities --
 - a. Force training.
 - b. Contingencies.
 - c. Selected operations.
 - d. Command and control.

- e. Joint exercises (including the participating expenses of foreign countries).
 - f. Humanitarian and Civil Assistance.
 - g. Military education and training to military and related civilian personnel of foreign countries (including transportation, translation, and administrative expenses).
 - h. Personnel expenses of defense personnel for bilateral or regional cooperation programs.
 - i. Force protection.
2. **Priorities.** CJCS should give priority consideration to requests for funds that would (1) enhance warfighting capability, readiness, and sustainability of forces assigned to the commander requesting the funds; (2) be used for activities in a CinC's AOR that would reduce threats to, or enhance, U.S. national security.
 3. **Relationship to Other Funding.** Any amount provided as CinC initiatives funds for an authorized activity are "in addition to amounts otherwise available for that activity during the fiscal year."
 4. **Limits.** Of funds made available --
 - a. No more than \$7 million may be used to buy end items with a cost greater than \$15,000;
 - b. No more than \$1 million may be used to pay the expenses of foreign countries participating in joint exercises;
 - c. No more than \$2 million may be used for education and training to military and related civilian personnel of foreign countries; and
 - d. No funds may be used for any activity for which Congress has denied authorization.

B. Emergency & Extraordinary (E&E) Expenses - 10 U.S.C. § 127.

1. **General.** Within appropriations made for this purpose, SecDef may pay for any emergency or extraordinary expenses that cannot be anticipated or classified. SecDef may spend the funds appropriated for such purposes as deemed proper; and such determination is final and conclusive upon the accounting officers of the U.S. This authority may be delegated (and redelegated).
2. **Congressional Notification.** DoD Authorization Act for FY 1996 revised § 127 to require that SecDef give congressional defense and appropriations committees 15 days advance notice before expending or obligating funds in excess of \$1 million and five days advance notice for

expenditures or obligations between \$500,000 and \$1 million. Pub. L. No. 104-106, § 915, 110 Stat. 413 (1996).

3. **Appropriations.** \$10.8M for Army; \$6M for Navy and Marine Corps; \$8M for Air Force; and \$33.5M for SecDef. DoD Appropriations Act for FY 2002, Pub. L. No. 107-117 (2001).

C. **Contingency Operations Funding Authority. 10 U.S.C. § 127a**
(amended by DoD Authorization Act for FY 1996, Pub. L. No. 104-106, § 1003, 110 Stat. 415 (1996))

1. **Applicability.** Deployments (other than for training) and humanitarian assistance, disaster relief, or support to law enforcement operations (including immigration control) for which funds have not been provided, which are expected to exceed \$50 million, or the incremental costs of which, when added to other operations currently ongoing, are expected to result in a cumulative incremental cost in excess of \$100 million. Does *not* apply to operations with incremental costs not expected to exceed \$10 million.
2. **Consequences.**
 - a. **Waiver of Working Capital Fund (WCF) Reimbursement.** Units participating in applicable operations receiving services from WCF activities may not be required to reimburse for the incremental costs incurred in providing such services. Statute restricts SecDef authority to reimburse WCF activities from O&M accounts. (In addition, if an activity director determines that absorbing these costs could cause an Anti-Deficiency Act violation, reimbursement is required.)
 - b. **Transfer Authority.** Authorizes SecDef to transfer up to \$200 million in any fiscal year to reimburse accounts used to fund operation for incremental expenses incurred.
3. **Congressional Notification & GAO Compliance Reviews.** Statute contains provisions for both.
4. **Overseas Contingency Operations Transfer Fund.** DoD Appropriations Act for FY 2002, Pub. L. No. 107-117 (2001). Appropriates \$50M of "no-year" funds "for expenses directly relating to Overseas Contingency Operations by United States military forces." None of the funds appropriated to this account may be obligated for DoD expenses not directly related to the conduct of overseas contingencies. The Conference Report accompanying the Appropriations Act (H.R. 107-353) states these funds are to provide the SecDef a central response fund from which the Secretary may address unknown and unexpected overseas contingency costs. This is significant change from previous appropriations to the OCOTF, which were limited to expenses for certain named contingencies.

VIII. **SECTION 8072 NOTIFICATION.** DoD Appropriations Act for FY 2002, Pub. L. No. 107-117, § 8072 (2001).

- A. **General.** Requires DoD to notify the congressional appropriations, defense, and international relations committees 15 days *before* transferring to another nation or international organization any defense articles or services (other than intelligence services) in connection with (a) peace operations under chapters VI or VII of the UN charter or (b) any other international peacekeeping, peace-enforcement, or humanitarian assistance operation. See also DoD Appropriations Act for FY 96, Pub. L. 104-61, § 8117 (1995).
- B. **Notice Requirement.** The notice required includes:
1. A description of the articles or services to be transferred;
 2. The value of the equipment, supplies, or services; and
 3. With respect to a proposed transfer of supplies and equipment, a statement of
 - a. whether the inventory requirements of all elements of the armed forces (including the Reserve Components) for the types of articles and supplies to be transferred have been met; and
 - b. whether the items to be provided will have to be replaced and how the President proposes to pay for such replacement.
- C. **Congress' Intent.** Section 8117 of the DoD Appropriations Act for FY 1996 was originally part of the House DoD Appropriations Bill (H.R. 2126), which was adopted in the first Conference without comment. The House Appropriations Committee expressed concern about *the diversion of DoD resources to non-traditional operations*, such as Haiti, Guantanamo, Rwanda, and the former Yugoslavia. The Committee stated that Congress must be kept fully aware of the use and involvement of defense assets in “essentially non-defense activities in support of foreign policy.” H.R. Rep. No. 208, 104th Cong., 1st Sess. 12 (1995).
- D. **President's Interpretation.** In “acquiescing” in Appropriations Act, President expressed concern about section 8117 and pledged to interpret it consistent with constitutional authority to conduct foreign relations and as Commander in Chief. Statement by the President (Nov. 30, 1995).
- E. **Scope.**
1. **Included Activities.** Section 8072 affects DoD's use of any statutory authority to furnish articles and services to other countries and international organizations during peace, humanitarian, and disaster relief operations. Examples include --
 - a. *Acquisition & cross-servicing agreements* during peace and humanitarian assistance operations (10 U.S.C. §§ 2341-2350).
 - b. *Drawdowns* for peace and humanitarian assistance operations (Foreign Assistance Act (FAA) §§ 506, 552).

- c. *Humanitarian & Civic Assistance* (HCA) (10 U.S.C. §§ 166a(b)(6), 401).
- d. *Humanitarian Assistance* to the extent the assistance is provided to another nation or an international organization (10 U.S.C. § 2561).
- e. *Excess nonlethal supplies* for humanitarian relief (10 U.S.C. § 2557).
- f. *Reimbursable support* to other nations and international organizations in connection with peace and humanitarian assistance operations (FAA § 607; UNPA § 7), and reimbursable support to other federal agencies for peace and humanitarian assistance operations to the extent that the transfer results in DoD transferring articles or services to another nation or international organization (31 U.S.C. § 1535; FAA § 632).
- g. Landmine clearance activities (FY 1995 DoD Authorization Act, Pub. L. 103-337, §1413 (1994)).

2. *Excluded Activities.* Section 8072 does not affect all DoD activities with other countries and international organizations. Examples of excluded activities include --

- a. *Exercises* in which the DoD pays the incremental expenses of participating developing countries -- including Partnership for Peace (PFP) exercises (10 U.S.C. § 2010).
- b. *SOF training* (10 U.S.C. § 2011).
- c. *Bilateral/regional conferences* and seminars unconnected with peace and humanitarian assistance operations (10 U.S.C. § 1051).
- d. *LATAM Coop* unconnected with peace and humanitarian assistance operations (10 U.S.C. § 1050).
- e. *Military-to-military contacts* (10 U.S.C. § 168).
- f. *EDA authorities* (FAA §§ 516), which already have congressional notice requirements equal to or in excess of 15 days.
- g. Support for other nations and international organizations in operations *unrelated* to peacekeeping, peace enforcement and humanitarian assistance (*e.g.*, coalition operations in time of war).

F. *Compliance.* DoD complies with section 8072 by --

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1. Notifying Congress before DoD transfers supplies or services in connection with peace or humanitarian assistance operations; or
2. Transferring supplies and services in such operations without congressional notification when --
 - a. Providing disaster relief;
 - b. Providing support *without* using funds appropriated to DoD (e.g., "advance-of-funds" basis); or
 - c. Providing support under an FMS case.

IX. DOMESTIC OPERATIONS.

A. **Stafford Disaster Relief & Emergency Assistance Act of 1974, 42 U.S.C. §§ 5121-5204c.**

1. Federal Emergency Management Agency (FEMA) has lead. Executive Order 12673, 54 Fed. Reg. 12573 (March 23, 1989).
2. State Governor must request assistance to trigger Act. 42 U.S.C. § 5191.
3. DoD *may* receive reimbursement for assistance provided. 42 U.S.C. §§ 5147-5192(a)(1).
4. DoD may give emergency aid to preserve life and property. 42 U.S.C. § 5170b(c).

B. **DoD Directive 3025.1.**

1. Currently, Secretary of the Army is SecDef's executive agent for managing and executing DoD's response. *Id.* ¶ D.3.a.
2. The Secretary of Defense must approve the deployment and employment of any combatant command forces. DoD Directive 3025.15, February 1997.
3. The Secretary of the Army, acting through the Directorate of Military Support (DOMS), manages responses. *Id.* ¶ E.7.b.
4. USJFCOM and PACOM are the "DoD Planning Agents." *Id.* ¶ D.3.c.(3).
5. Responsibilities are currently under review and modification.

X. CONCLUSION.

**APPENDIX 7-3: LIST OF SELECTED INTERNATIONAL
ENVIRONMENTAL AGREEMENTS**

Selected International Environmental Agreements

Air Pollution

see Convention on Long-Range Transboundary Air Pollution

Air Pollution-Nitrogen Oxides

see Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Nitrogen Oxides or Their Transboundary Fluxes

Air Pollution-Persistent Organic Pollutants

see Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants

Air Pollution-Sulphur 85

see Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at least 30%

Air Pollution-Sulphur 94

see Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions

Air Pollution-Volatile Organic Compounds

see Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or Their Transboundary Fluxes

Antarctic-Environmental Protocol

see Protocol on Environmental Protection to the Antarctic Treaty

Antarctic Treaty

opened for signature—1 December 1959

entered into force—23 June 1961

objective—to ensure that Antarctica is used for peaceful purposes, such as, for international cooperation in scientific research, and that it does not become the scene or object of international discord

parties—(43) Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Greece, Guatemala, Hungary, India, Italy, Japan, North Korea, South Korea, Netherlands, NZ, Norway, Papua New Guinea, Peru, Poland, Romania, Russia, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, UK, US, Uruguay

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

note—abbreviated as Hazardous Wastes

opened for signature—22 March 1989

entered into force—5 May 1992

objective—to reduce transboundary movements of wastes subject to the Convention to a minimum consistent with the environmentally sound and efficient management of such wastes; to minimize the amount and toxicity of wastes generated and ensure their environmentally sound management as closely as possible to the source of generation; and to assist LDCs in environmentally sound management of the hazardous and other wastes they generate

parties—(123) Antigua and Barbuda, Argentina, Australia, Austria, The Bahamas, Bahrain, Bangladesh,

Barbados, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burundi, Canada, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominica, Ecuador, Egypt, El Salvador, Estonia, EU, Finland, France, The Gambia, Germany, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Jordan, South Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Liechtenstein, Luxembourg, The Former Yugoslav Republic of Macedonia, Malawi, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syria, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, UAE, UK, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia

countries that have signed, but not yet ratified—(3) Afghanistan, Haiti, US

Biodiversity

see Convention on Biological Diversity

Convention on Biological Diversity

note—abbreviated as Biodiversity

opened for signature—5 June 1992

entered into force—29 December 1993

objective—to develop national strategies for the conservation and sustainable use of biological diversity

parties—(175) Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, EU, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, North Korea, South Korea, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Liechtenstein, Lithuania, Luxembourg, The Former Yugoslav Republic of Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tajikistan, Tanzania, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, UK, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe

countries that have signed, but not yet ratified—(12) Afghanistan, Azerbaijan, Kuwait, Liberia, Libya, Malta, Sao Tome and Principe, Thailand, Tuvalu, UAE, US, former Yugoslavia

Climate Change

see United Nations Framework Convention on Climate Change

Climate Change-Kyoto Protocol

see Kyoto Protocol to the United Nations Framework Convention on Climate Change

Convention on Fishing and Conservation of Living Resources of the High Seas

note—abbreviated as Marine Life Conservation

opened for signature—29 April 1958

entered into force—20 March 1966

objective—to solve through international cooperation the problems involved in the conservation of living

resources of the high seas, considering that because of the development of modern technology some of these resources are in danger of being overexploited

parties—(37) Australia, Belgium, Bosnia and Herzegovina, Burkina Faso, Cambodia, Colombia, Denmark, Dominican Republic, Fiji, Finland, France, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Malaysia, Mauritius, Mexico, Netherlands, Nigeria, Portugal, Senegal, Sierra Leone, Solomon Islands, South Africa, Spain, Switzerland, Thailand, Tonga, Trinidad and Tobago, Uganda, UK, US, Venezuela, former Yugoslavia

countries that have signed, but not yet ratified—(21) Afghanistan, Argentina, Bolivia, Canada, Costa Rica, Cuba, Ghana, Iceland, Indonesia, Iran, Ireland, Israel, Lebanon, Liberia, Nepal, NZ, Pakistan, Panama, Sri Lanka, Tunisia, Uruguay

Convention on Long-Range Transboundary Air Pollution

note—abbreviated as Air Pollution

opened for signature—13 November 1979

entered into force—16 March 1983

objective—to protect the human environment against air pollution and to gradually reduce and prevent air pollution, including long-range transboundary air pollution

parties—(44) Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, EU, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, The Former Yugoslav Republic of Macedonia, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, UK, US, former Yugoslavia

countries that have signed, but not yet ratified—(2) Holy See, San Marino

Convention on the International Trade in Endangered Species of Wild Flora and Fauna (CITES)

note—abbreviated as Endangered Species

opened for signature—3 March 1973

entered into force—1 July 1975

objective—to protect certain endangered species from overexploitation by means of a system of import/export permits

parties—(137) Afghanistan, Algeria, Antigua and Barbuda, Argentina, Australia, Austria, The Bahamas, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, The Gambia, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, India, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kenya, Kiribati, South Korea, Latvia, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, UAE, UK, US, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Zambia, Zimbabwe

countries that have signed, but not yet ratified—(3) Ireland, Kuwait, Lesotho

Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter (London Convention)

note—abbreviated as Marine Dumping

opened for signature—29 December 1972

entered into force—30 August 1975

objective—to control pollution of the sea by dumping and to encourage regional agreements supplementary to the Convention

parties—(75) Afghanistan, Antigua and Barbuda, Argentina, Australia, Barbados, Belarus, Belgium, Belize, Bosnia and Herzegovina, Brazil, Canada, Cape Verde, Chile, China, Democratic Republic of the

Congo, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Denmark, Dominican Republic, Egypt, Finland, France, Gabon, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, Libya, Luxembourg, Malta, Mexico, Monaco, Morocco, Nauru, Netherlands, NZ, Nigeria, Norway, Oman, Panama, Papua New Guinea, Philippines, Poland, Portugal, Russia, Saint Lucia, Seychelles, Slovenia, Solomon Islands, South Africa, Spain, Suriname, Sweden, Switzerland, Tonga, Tunisia, Tuvalu, Ukraine, UAE, UK, US, former Yugoslavia

Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques

note—abbreviated as Environmental Modification

opened for signature—10 December 1976

entered into force—5 October 1978

objective—to prohibit the military or other hostile use of environmental modification techniques in order to further world peace and trust among nations

parties—(64) Afghanistan, Algeria, Antigua and Barbuda, Argentina, Australia, Austria, Bangladesh, Belarus, Belgium, Benin, Brazil, Bulgaria, Canada, Cape Verde, Chile, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Dominica, Egypt, Finland, Germany, Ghana, Greece, Guatemala, Hungary, India, Ireland, Italy, Japan, North Korea, South Korea, Kuwait, Laos, Malawi, Mauritius, Mongolia, Netherlands, NZ, Niger, Norway, Pakistan, Papua New Guinea, Poland, Romania, Russia, Saint Lucia, Sao Tome and Principe, Slovakia, Solomon Islands, Spain, Sri Lanka, Sweden, Switzerland, Tunisia, Ukraine, UK, US, Uruguay, Uzbekistan, Vietnam, Yemen

countries that have signed, but not yet ratified—(17) Bolivia, Democratic Republic of the Congo, Ethiopia, Holy See, Iceland, Iran, Iraq, Lebanon, Liberia, Luxembourg, Morocco, Nicaragua, Portugal, Sierra Leone, Syria, Turkey, Uganda

Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar)

note—abbreviated as Wetlands

opened for signature—2 February 1971

entered into force—21 December 1975

objective—to stem the progressive encroachment on and loss of wetlands now and in the future, recognizing the fundamental ecological functions of wetlands and their economic, cultural, scientific, and recreational value

parties—(101) Albania, Algeria, Argentina, Armenia, Australia, Austria, The Bahamas, Bahrain, Bangladesh, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chad, Chile, China, Democratic Republic of the Congo, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, France, Gabon, The Gambia, Georgia, Germany, Greece, Guatemala, Guinea, Guinea-Bissau, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, South Korea, Latvia, Liechtenstein, Lithuania, Malawi, Mali, Malta, Mauritania, Mexico, Monaco, Mongolia, Morocco, Namibia, Netherlands, NZ, Nicaragua, Niger, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Senegal, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Togo, Trinidad and Tobago, Tunisia, Turkey, UK, US, Uruguay, Venezuela, Vietnam, former Yugoslavia, Zambia

Desertification

see United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa

Endangered Species

see Convention on the International Trade in Endangered Species of Wild Flora and Fauna (CITES)

Environmental Modification

see Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques

Hazardous Wastes

see Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

International Convention for the Regulation of Whaling

note—abbreviated as Whaling

opened for signature—2 December 1946

entered into force—10 November 1948

objective—to protect all species of whales from overhunting; to establish a system of international regulation for the whale fisheries to ensure proper conservation and development of whale stocks; and to safeguard for future generations the great natural resources represented by whale stocks

parties—(51) Antigua and Barbuda, Argentina, Australia, Austria, Belize, Brazil, Canada, Chile, China, Costa Rica, Denmark, Dominica, Ecuador, Egypt, Finland, France, Germany, Grenada, Iceland, India, Ireland, Italy, Jamaica, Japan, Kenya, South Korea, Mauritius, Mexico, Monaco, Netherlands, NZ, Norway, Oman, Panama, Peru, Philippines, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Seychelles, Solomon Islands, South Africa, Spain, Sweden, Switzerland, UK, US, Uruguay, Venezuela

International Tropical Timber Agreement, 1983

note—abbreviated as Tropical Timber 83

opened for signature—18 November 1983

entered into force—1 April 1985; this agreement expired when the International Tropical Timber Agreement, 1994, went into force

objective—to provide an effective framework for cooperation between tropical timber producers and consumers and to encourage the development of national policies aimed at sustainable utilization and conservation of tropical forests and their genetic resources

parties—(54) Australia, Austria, Belgium, Bolivia, Brazil, Burma, Cameroon, Canada, China, Colombia, Democratic Republic of the Congo, Republic of the Congo, Cote d'Ivoire, Denmark, Ecuador, Egypt, EU, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Ireland, Italy, Japan, South Korea, Liberia, Luxembourg, Malaysia, Nepal, Netherlands, NZ, Norway, Panama, Papua New Guinea, Peru, Philippines, Portugal, Russia, Spain, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, UK, US, Venezuela

International Tropical Timber Agreement, 1994

note—abbreviated as Tropical Timber 94

opened for signature—26 January 1994

entered into force—1 January 1997

objective—to ensure that by the year 2000 exports of tropical timber originate from sustainably managed sources; to establish a fund to assist tropical timber producers in obtaining the resources necessary to reach this objective

parties—(54) Australia, Austria, Belgium, Bolivia, Brazil, Burma, Cambodia, Cameroon, Canada, Central African Republic, China, Colombia, Democratic Republic of the Congo, Republic of the Congo, Cote d'Ivoire, Denmark, Ecuador, Egypt, EU, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Italy, Japan, South Korea, Liberia, Luxembourg, Malaysia, Nepal, Netherlands, NZ, Norway, Panama, Papua New Guinea, Peru, Philippines, Spain, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, UK, US, Venezuela
countries that have signed, but not yet ratified—(2) Ireland, Portugal

Kyoto Protocol to the United Nations Framework Convention on Climate Change

note—abbreviated as Climate Change-Kyoto Protocol

opened for signature—16 March 1998, but not yet in force

objective—to further reduce greenhouse gas emissions by enhancing the national programs of developed countries aimed at this goal and by establishing percentage reduction targets for the developed countries

parties—(7) Antigua and Barbuda, El Salvador, Fiji, Maldives, Panama, Trinidad and Tobago, Tuvalu
countries that have signed, but not yet ratified—(72) Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Cook Islands, Costa Rica, Croatia, Czech Republic, Denmark, Ecuador, Estonia, EU, Finland, France, Germany, Greece, Guatemala, Honduras, Indonesia, Ireland, Israel,

Italy, Japan, South Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Mali, Malta, Marshall Islands, Mexico, Federated States of Micronesia, Monaco, Netherlands, New Zealand, Nicaragua, Niger, Niue, Norway, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, Thailand, Turkmenistan, UK, US, Uruguay, Uzbekistan, Vietnam, Zambia

Law of the Sea

see United Nations Convention on the Law of the Sea (LOS)

Marine Dumping

see Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter (London Convention)

Marine Life Conservation

see Convention on Fishing and Conservation of Living Resources of the High Seas

Montreal Protocol on Substances That Deplete the Ozone Layer

note—abbreviated as Ozone Layer Protection

opened for signature—16 September 1987

entered into force—1 January 1989

objective—to protect the ozone layer by controlling emissions of substances that deplete it

parties—(168) Algeria, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burma, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, EU, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, North Korea, South Korea, Kuwait, Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, The Former Yugoslav Republic of Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal (Portugal has also extended the protocol to Macau), Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tajikistan, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, UAE, UK, US, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, former Yugoslavia, Zambia, Zimbabwe

Nuclear Test Ban

see Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water

Ozone Layer Protection

see Montreal Protocol on Substances That Deplete the Ozone Layer

Protocol of 1978 Relating to the International Convention for the Prevention of Pollution From Ships, 1973 (MARPOL)

note—abbreviated as Ship Pollution

opened for signature—17 February 1978

entered into force—2 October 1983

objective—to preserve the marine environment through the complete elimination of pollution by oil and other harmful substances and the minimization of accidental discharge of such substances

parties—(100) Algeria, Antigua and Barbuda, Argentina, Australia, Austria, The Bahamas, Barbados, Belgium, Belize, Brazil, Brunei, Bulgaria, Burma, Cambodia, Canada, Chile, China, Colombia, Cote

d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, Equatorial Guinea, Estonia, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, North Korea, South Korea, Latvia, Lebanon, Liberia, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Monaco, Morocco, Netherlands, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Poland, Portugal, Romania, Russia, Saint Vincent and the Grenadines, Senegal, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Syria, Togo, Tonga, Tunisia, Turkey, Tuvalu, Ukraine, UK, US, Uruguay, Vanuatu, Venezuela, Vietnam, former Yugoslavia

Protocol on Environmental Protection to the Antarctic Treaty

note—abbreviated as Antarctic-Environmental Protocol

opened for signature—4 October 1991

entered into force—14 January 1998

objective—to enhance the protection of the Antarctic environment and dependent and associated ecosystems

parties—(28) Argentina, Australia, Belgium, Brazil, Bulgaria, Chile, China, Ecuador, Finland, France, Germany, Greece, India, Italy, Japan, South Korea, Netherlands, NZ, Norway, Peru, Poland, Russia, South Africa, Spain, Sweden, UK, US, Uruguay

countries that have signed, but not yet ratified—(15) Austria, Canada, Colombia, Cuba, Czech Republic, Denmark, Guatemala, Hungary, North Korea, Papua New Guinea, Romania, Slovakia, Switzerland, Turkey, Ukraine

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Nitrogen Oxides or Their Transboundary Fluxes

note—abbreviated as Air Pollution-Nitrogen Oxides

opened for signature—31 October 1988

entered into force—14 February 1991

objective—to provide for the control or reduction of nitrogen oxides and their transboundary fluxes

parties—(26) Austria, Belarus, Bulgaria, Canada, Czech Republic, Denmark, EU, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Russia, Slovakia, Spain, Sweden, Switzerland, Ukraine, UK, US

countries that have signed, but not yet ratified—(2) Belgium, Poland

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or Their Transboundary Fluxes

note—abbreviated as Air Pollution-Volatile Organic Compounds

opened for signature—18 November 1991

entered into force—29 September 1997

objective—to provide for the control and reduction of emissions of volatile organic compounds in order to reduce their transboundary fluxes so as to protect human health and the environment from adverse effects

parties—(17) Austria, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland, UK

countries that have signed, but not yet ratified—(7) Belgium, Canada, EU, Greece, Portugal, Ukraine, US

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions

note—abbreviated as Air Pollution-Sulphur 94

opened for signature—14 June 1994

entered into force—5 August 1998

objective—to provide for a further reduction in sulfur emissions or transboundary fluxes

parties—(21) Austria, Canada, Czech Republic, Denmark, EU, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Slovakia, Slovenia, Spain, Sweden, Switzerland, UK

countries that have signed, but not yet ratified—(7) Belgium, Bulgaria, Croatia, Hungary, Poland, Russia, Ukraine

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants

note—abbreviated as Air Pollution-Persistent Organic Pollutants

opened for signature—24 June 1998, but not yet in force

objective—to provide for the control and reduction of emissions of persistent organic pollutants in order to reduce their transboundary fluxes so as to protect human health and the environment from adverse effects

partie—(1) Canada

countries that have signed, but not yet ratified—(35) Armenia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, EU, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, UK, US

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at Least 30%

note—abbreviated as Air Pollution-Sulphur 85

opened for signature—8 July 1985

entered into force—2 September 1987

objective—to provide for a 30% reduction in sulfur emissions or transboundary fluxes by 1993

parties—(21) Austria, Belarus, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Russia, Slovakia, Sweden, Switzerland, Ukraine

Ship Pollution

see Protocol of 1978 Relating to the International Convention for the Prevention of Pollution From Ships, 1973 (MARPOL)

Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water

note—abbreviated as Nuclear Test Ban

opened for signature—5 August 1963

entered into force—10 October 1963

objective—to obtain an agreement on general and complete disarmament under strict international control in accordance with the objectives of the United Nations; to put an end to the armaments race and eliminate incentives for the production and testing of all kinds of weapons, including nuclear weapons

parties—(122) Afghanistan, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, The Bahamas, Bangladesh, Belarus, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burma, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Democratic Republic of the Congo, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Finland, Gabon, The Gambia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, South Korea, Kuwait, Laos, Lebanon, Liberia, Libya, Luxembourg, Madagascar, Malawi, Malaysia, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Romania, Russia, Rwanda, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, UK, US, Uruguay, Venezuela, Yemen, former Yugoslavia, Zambia

countries that have signed, but not yet ratified—(12) Algeria, Burkina Faso, Burundi, Cameroon, China, Ethiopia, Haiti, Mali, Paraguay, Portugal, Somalia, Vietnam

Tropical Timber 83

see International Tropical Timber Agreement, 1983

Tropical Timber 94

see International Tropical Timber Agreement, 1994

United Nations Convention on the Law of the Sea (LOS)

note—abbreviated as Law of the Sea

opened for signature—10 December 1982

entered into force—16 November 1994

objective—to set up a comprehensive new legal regime for the sea and oceans; to include rules concerning environmental standards as well as enforcement provisions dealing with pollution of the marine environment

parties—(130) Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, The Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burma, Cameroon, Cape Verde, Chile, China, Comoros, Democratic Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Djibouti, Dominica, Egypt, Equatorial Guinea, EU, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Iceland, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, South Korea, Kuwait, Laos, Lebanon, The Former Yugoslav Republic of Macedonia, Malaysia, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Monaco, Mongolia, Mozambique, Namibia, Nauru, Nepal, Netherlands, NZ, Nigeria, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Tanzania, Togo, Tonga, Trinidad and Tobago, Tunisia, Uganda, UK, Uruguay, Vietnam, Yemen, former Yugoslavia, Zambia, Zimbabwe

countries that have signed, but not yet ratified—(40) Afghanistan, Bangladesh, Belarus, Bhutan, Burkina Faso, Burundi, Cambodia, Canada, Central African Republic, Chad, Colombia, Republic of the Congo, Denmark, Dominican Republic, El Salvador, Ethiopia, Hungary, Iran, North Korea, Lesotho, Liberia, Libya, Liechtenstein, Luxembourg, Madagascar, Malawi, Maldives, Morocco, Nicaragua, Niger, Niue, Qatar, Rwanda, Swaziland, Switzerland, Thailand, Tuvalu, Ukraine, UAE, Vanuatu

United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa

note—abbreviated as Desertification

opened for signature—14 October 1994

entered into force—26 December 1996

objective—to combat desertification and mitigate the effects of drought through national action programs that incorporate long-term strategies supported by international cooperation and partnership arrangements

parties—(148) Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Comoros, Democratic Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Cuba, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, EU, Fiji, Finland, France, Gabon, The Gambia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Laos, Lebanon, Lesotho, Liberia, Libya, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Portugal, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Syria, Tajikistan, Tanzania, Togo, Tonga, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, UK, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe

countries that have signed, but not yet ratified—(9) Australia, Colombia, Republic of the Congo, Croatia, Georgia, South Korea, Philippines, US, Vanuatu

United Nations Framework Convention on Climate Change

note—abbreviated as Climate Change

opened for signature—9 May 1992

entered into force—21 March 1994

objective—to achieve stabilization of greenhouse gas concentrations in the atmosphere at a low enough level to prevent dangerous anthropogenic interference with the climate system

parties—(177) Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, The Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Ethiopia, EU, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, North Korea, South Korea, Kuwait, Laos, Latvia, Lebanon, Lesotho, Liechtenstein, Lithuania, Luxembourg, The Former Yugoslav Republic of Macedonia, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tajikistan, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Tuvalu, Uganda, Ukraine, UAE, UK, US, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, former Yugoslavia, Zambia, Zimbabwe

countries that have signed, but not yet ratified—(7) Afghanistan, Angola, Belarus, Liberia, Libya, Madagascar, Sao Tome and Principe

Wetlands

see Convention on Wetlands of International Importance Especially As Waterfowl Habitat (Ramsar)

Whaling

see International Convention for the Regulation of Whaling

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**APPENDIX 7-4: NAVY AND MARINE CORPS OIL DISCHARGE
AND HAZARDOUS SUBSTANCE RELEASE REPORTS MESSAGE
FORMATS**

**NAVY OIL SPILL REPORT
(MESSAGE FORMAT)**

1. **Precedence (for messages only).** Provided that prior voice reports have been made both to the US Coast Guard National Response Center and the reporting command's Chain of Command, use "Routine" precedence for Oil Spill Report Messages. If either voice report has not been made, use "Priority" precedence.
2. **Classification or Special Handling Marks.** Oil Spill Report Messages are unclassified and do not warrant special handling marks unless classified or sensitive business information must be incorporated. Avoid inclusion of such information to the maximum extent possible to allow Oil Spill Report Messages to be handled on a solely unclassified basis.
3. **Spill Volume Classification:** To better advise the Navy On-Scene Coordinator and Navy leadership of the magnitude of each oil spill, the Subject line of an Oil Spill Report Message should bear a volume estimate of the spill, if known, in the following format:
 - OIL SPILL REPORT, X GALLONS, [ACTIVITY NAME] (MINIMIZE CONSIDERED); or
 - OIL SPILL REPORT, UNKNOWN VOLUME, [ACTIVITY NAME] (MINIMIZE CONSIDERED); or
 - OIL SPILL REPORT, SHEEN SIGHTING (MINIMIZE CONSIDERED).
4. **Updating Oil Spill Report Messages:** Oil Spill Report Messages should be updated with a follow-up SITREP message as soon as the reporting activity becomes aware of new information concerning the origin, quantity, type, operation under way or cause of the spill. Similarly, *if the final estimate of the amount spilled differs substantially from the amount initially reported*, the reporting activity must send a SITREP update message to all action and info addresses on the original spill message.

5. Action and Info Addressees:

FM: Navy Activity or Ship responsible for or discovering the spill

TO: Navy On-Scene Coordinator
Chain of Command

INFO: Area Environmental Coordinator

Host Activity

CNO WASHINGTON DC//N45//

CHINFO WASHINGTON DC//JJJ//

COMNAVSEASYS COM WASHINGTON DC//00C//

NFESC PORT HUENEME CA//424//

NAVPETOFF ALEXANDRIA VA//JJJ//

[Add the following Info Addressee for spills into or upon the navigable waters of the United States, its contiguous zone (generally within 12 nautical miles of US shores) and adjacent shorelines.]

COGARD NATIONAL RESPONSE CENTER WASHINGTON DC//JJJ//

6. Body of Report: Use the following format for the body of all Oil Spill Report Messages:

UNCLAS//NO5090//

SUBJ: OIL SPILL REPORT, X GALLONS, [ACTIVITY NAME] (MINIMIZE CONSIDERED) or

OIL SPILL REPORT, UNKNOWN VOLUME, [ACTIVITY NAME] (MINIMIZE CONSIDERED) or

OIL SPILL SHEEN SIGHTING, (MINIMIZE CONSIDERED)

MSGID/GENADMIN/ORIGINATOR//

RMKS/

1. LOCAL TIME AND DATE SPILL [OCCURRED/DISCOVERED].

2. [FACILITY/VESSEL] ORIGINATING SPILL:
 - For Navy ships, list ship name, hull number and unit identification code (UIC).
 - For Navy shore facilities, list facility name and UIC.
 - For non-Navy spills, list name of responsible party, if known.
 - For organizations under contract to Navy, list firm name and contracting Navy activity.
 - If source unknown at time of this report, list only “Unknown” until such time as definitively established.

3. SPILL LOCATION:
 - For spills at sea, list latitude, longitude and distance to nearest land.
 - For spills in port, list port name, host naval command (NAVSTA, Shipyard) and specific location (pier or mooring designation).
 - For spills ashore, list city, state, facility name and specific location (building designation).

4. VOLUME SPILLED IN GALLONS:
 - Estimates must be made by examining loss at source: i.e. sounding tank, calculating flow rate of spill.
 - If amount unknown at time of this report, list only “Unknown” until such time as definitively established.
 - Estimating volume by visual observation of oil on water can be very unreliable.
 - If volume estimate can only be made by visual observation of oil on water, do not report estimate here.
 - If oil/water mixture, indicate percent oil.

5. TYPE OF OIL SPILLED:
 - List whether diesel fuel marine (DFM); naval distillate; jet fuel (JP-4 or 5); aviation/automotive gasoline; automotive diesel; heating fuels (grade 1 or 2, kerosene); residual burner fuel (grade 4, 5 or 6); lubricating oil; hydraulic oil; oil/oil mixture (including slops and waste oil); oil/water mixture (including bilge waste).
 - If type unknown at time of this report, list only “Unknown” until such time as definitively established.

CENTER FOR LAW AND MILITARY OPERATIONS

6. OPERATION UNDER WAY WHEN SPILL [OCCURRED/DISCOVERED]:
 - If fueling/defueling, list whether underway or in port by pipeline, truck or barge.
 - Whether conducting internal fuel oil transfer operations (including movement from one storage tank to another); pumping bilges; conducting salvage operations; aircraft operations; or “Other” (specify).
 - If operation unknown at time of this report, list only “Unknown” until such time as definitively established.
7. SPILL CAUSE:
 - Classify the cause of the spill by citing one or more of the following categories and then provide a narrative description of specific spill cause: Structural; electrical; hose; valve/fitting; tank level indicator; oil/water separator/oil content monitor; other equipment (specify component that failed); collision, grounding, or sinking; valve misalignment; monitoring error; procedural/communications error; chronic/recurring; or weather related.
 - If cause unknown at time of this report, list only “Unknown” until such time as definitively established.
8. SLICK DESCRIPTION AND MOVEMENT:
 - Size: length and width (yards or nm) and percentage of that area covered.
 - Color: silver transparent, gray, rainbow, blue, dull brown, dark brown, black, brown-orange mousse.
 - Odor: noxious, light, undetectable.
 - Slick movement: set (degrees true toward) and drift (knots).
9. SPILL ENVIRONMENT:
 - Weather: clear, overcast, partly-cloudy, rain, snow, etc.
 - Prevailing wind at scene: direction (degrees true from), speed (knots), fetch (yards or nautical miles).
 - Air and water temperature: indicate ice cover.
 - Sea state: Beaufort Force number.
 - Tide: high, low, ebb, flood or slack / Current: set (degrees true toward) and drift (knots).
10. AREAS DAMAGED OR THREATENED:
 - Body of water, area or resources threatened or affected.
 - Nature and extent of damage to property, wildlife or other natural resources (if any).
11. TELEPHONIC REPORT TO NATIONAL RESPONSE CENTER [WAS/WAS NOT] MADE:
 - If not made, provide reason why: beyond 12 nm from US shores, no threat to navigable water, etc.
 - If made, list: DTG of telephonic report; NRC report/case number; name of NRC official taking report; and
 - Navy Command making telephonic report.

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

12. SAMPLES [WERE/WERE NOT] TAKEN:
 - If taken, identify location(s) from which taken: tanks, hoses, piping, slip, jetty, etc.
 - If taken, identify collecting officer by name, rank and agency.
13. CONTAINMENT METHOD [PLANNED/USED]:
 - If none, state reason.
 - Otherwise, indicate equipment utilized: boom; ship's hull; camel; water spray; chemical agent.
14. SPILL REMOVAL METHOD [PLANNED/USED]:
 - If none, state reason.
 - Equipment planned/used: used: Rapid Response Skimmer or Dip 3001 skimmer; portable skimmer, absorbent materials (oil absorbent pads, chips, etc.); dispersants; vacuum trucks/pumps; other (specify).
15. VOLUME OF PRODUCT RECOVERED IN GALLONS: (Decanted pure product.)
16. PARTIES PERFORMING SPILL REMOVAL:
 - Identify lead organization in charge: Navy Command; USCG; EPA.
 - Identify all other parties involved: commercial firms; supporting Navy activities; State or local agencies.
17. FEDERAL, STATE OR LOCAL REGULATORY ACTIVITY DURING THIS INCIDENT:
 - Identify by name and agency any official attending on-scene or making telephonic inquiry.
 - Note whether officials boarded vessel and include date, time and spaces inspected.
18. ASSISTANCE REQUIRED/ADDITIONAL COMMENTS:
19. LESSONS LEARNED: How could this spill have been avoided?
20. ACTIVITY CONTACT FOR ADDITIONAL INFORMATION: List name, rank/rate, command, code, DSN and/or commercial telephone numbers. //

**NAVY HAZARDOUS SUBSTANCE RELEASE REPORT
(MESSAGE FORMAT)**

1. Precedence (for messages only). Provided that prior voice reports have been made to the US Coast Guard National Response Center and the reporting command's Chain of Command, use "Routine Precedence" for Hazardous Substance (HS) Release Report Messages not classified as an "Extremely Hazardous Substance." If either voice report has not been made, use "Priority Precedence". If Extremely Hazardous Substance, always use "Priority Precedence."

2. Classification or Special Handling Marks. HS Release Report Messages are unclassified and do not warrant special handling marks unless classified or sensitive business information must be incorporated. Avoid inclusion of such information to the maximum extent possible to allow HS Release Report Messages to be handled on a solely unclassified basis.

3. Correcting HS Release Report Messages: HS Release Report Messages should be updated with a follow-up SITREP Message as soon as the reporting activity becomes aware of new information concerning the origin, amount, nature of substance, type of operation at source or cause of release. Similarly, *if the final estimate of the amount released differs substantially from the amount initially reported*, the reporting activity must send a SITREP update message to all action and info addresses on the original message.

4. Action and Info Addressees:

FM: Navy Activity or Ship responsible for or discovering the spill
TO: Navy On-Scene Coordinator
Chain of Command
INFO: Area Environmental Coordinator
Host Activity
CNO WASHINGTON DC//N45//
CHINFO WASHINGTON DC//JJJ//
COMNAVSEASYS COM WASHINGTON DC//00C//
NFESC PORT HUENEME CA//424//
LEGSVSSUPGRU OGC//ELO//

[Add the following Info Addressee for releases into or upon the navigable waters of the United States, its contiguous zone (generally within 12 nautical miles of US shores) and adjacent shorelines.]

COGARD NATIONAL RESPONSE CENTER WASHINGTON DC//JJJ//

5. Body of Report: Use the following format for the body of all HS Release Report Messages:

UNCLAS//N05090//
SUBJ: HAZARDOUS SUBSTANCE RELEASE REPORT (REPORT SYMBOL OPNAV 5090-3)
(MIN: CONSIDERED)
MSGID/GENADMIN/ORIGINATOR//
RMKS/

1. LOCAL TIME AND DATE RELEASE [OCCURRED/DISCOVERED]:

2. [FACILITY/VESSEL] ORIGINATING RELEASE :

- For Navy ships, list ship name, hull number and unit identification code (UIC).
- For Navy shore facilities, list facility name and UIC.
- For release occurring during transportation, list name of activity responsible for shipment.
- For non-Navy spills, list name of responsible party, if known.

- For organizations under contract to Navy, list firm name and contracting Navy activity.
 - If source unknown at time of this report, *list only “Unknown”* until such time as definitively established.
3. RELEASE LOCATION:
- For release at sea, list latitude, longitude and distance to nearest land.
 - For release in port, list port name, host naval command (NAVSTA, Shipyard) and specific location.
 - For release ashore, list city, state, facility name and specific location (building designation).
 - For release during transportation, give exact location (highway mile marker or street number and city).
4. AMOUNT RELEASED:
- Use convenient units of weight or volume (kg, lb., gallons, liters, etc.).
 - For continuous release, estimate rate of release and amount left in container.
 - Estimates should be made by examining loss at source: sounding tank, calculating flow rate of spill.
 - *Unreliable estimates of volume using visual observation of HS on water may not be reported here.*
 - If amount unknown at time of this report, *list only “Unknown”* until such time as definitively established.
5. HAZARDOUS SUBSTANCE RELEASED:
- If Extremely Hazardous Substance, headline this paragraph “EXTREMELY HAZARDOUS SUBSTANCE RELEASED:” See chapter 10, subsection 10-4.2 for additional notification requirements.
 - Consult container labels, user directions, reference books, expert advice.
 - Provide chemical/product names, formula, synonym, physical/chemical characteristics, and inherent hazards.
 - “Container label identifies substance as acrylonitrile. Synonyms: cyansethylene, vintleyanide. Characteristics/hazards: poisonous liquid and vapor, skin irritant, highly reactive/flammable.”
 - Describe appearance, physical/chemical characteristics, actual/potential hazards observed. For example:
 - “Substance released is colorless to light yellow unidentified liquid; highly irritating to eyes and nose; smells like kernels of peach pits; vaporizing quickly, posing ignition problem.”
6. TYPE OF OPERATION AT SOURCE: Plating shop, painting shop, hazardous waste (HW) facility, truck, ship, pipeline, ship rebuilding, entomology shop, etc.
7. CAUSE OF RELEASE:
- Provide narrative description of specific cause of release.
 - Account for personnel error, equipment failure, etc. directly contributing to release.
 - For example: “Railing supporting 55-gal drums on a flatbed truck gave way because it was not securely fastened, causing seven drums to fall and rupture.”
 - If cause unknown at time of this report, *list only “Unknown”* until such time as definitively established.
8. TYPE OF CONTAINER FROM WHICH SUBSTANCE ESCAPED:
- 55-gal drums, 5-lb. bags, tank truck, storage tank, can, etc.
 - Estimate number of containers damaged or dangerously exposed.
9. RELEASE ENVIRONMENT:
- Describe scene of release.
 - Include information on physical characteristics, size and complexity of release and weather conditions.

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- For Example: “Solvent released formed shallow pool covering area about 30 ft by 45 ft of bare concrete. Solvent slowly running into storm drain. Pool emitting highly toxic, flammable vapors. Dark clouds threatening rain. Light wind drifting vapors northbound to residential area about 30 ft above ground.”
10. AREAS DAMAGED OR THREATENED:
- Describe actual and potential danger or damage to surrounding environment,
 - Identify body of water, area or resources threatened or affected.
 - Nature and extent of damage to property, wildlife or other natural resources (if any).
11. NOTIFICATIONS MADE AND ASSISTANCE REQUESTED:
- List all organizations informed of release within and beyond Navy jurisdiction.
 - Include Navy, federal, state, and local authorities, response teams, fire departments, hospitals, etc.
 - Specify type of assistance requested from these organizations.
 - If telephonic report to National Response Center made, list: DTG of telephonic report; NRC report/case number; name of NRC official taking report; and Navy Command making telephonic report.
12. FIELD TESTING:
- Indicate findings and conclusions as to concentration, pH, etc.
13. CONTROL AND CONTAINMENT ACTIONS [PLANNED /TAKEN]:
- If none, explain why.
 - Specify method used to control and contain release.
 - For example: “Gas barriers used to control and contain vapor emissions. Runoff contained by excavating ditch circumscribing affected area.”
14. CLEAN-UP ACTIONS [PLANNED /TAKEN]:
- If none, explain why.
 - Identify on-site or off-site treatment, method used, parties involved in clean-up/removal and disposal area.
 - For example: “No clean-up action taken. Toxic vapors present, potential danger to clean-up crew. Contaminated soil will be excavated and shipped by NAS personnel to Class I HW disposal site in Portstown, CA when conditions allow.”
15. AMOUNT OF SUBSTANCE RECOVERED [VOLUME/WEIGHT] (Pure product.):
16. PARTIES PERFORMING [CONTAINMENT/CLEAN-UP] ACTIVITIES:
- Identify lead organization in charge: Navy Command; USCG; EPA.
 - Identify all other parties involved: commercial firms; supporting Navy activities; State or local agencies.
17. FEDERAL, STATE OR LOCAL REGULATORY ACTIVITY DURING THIS INCIDENT:
- Identify by name and agency any regulatory official attending on-scene or making telephonic inquiry.
 - Note whether officials boarded vessel and include date, time and spaces inspected.
18. ASSISTANCE REQUIRED/ADDITIONAL COMMENTS.
19. LESSONS LEARNED: How could this release have been avoided?
20. ACTIVITY CONTACT FOR ADDITIONAL INFORMATION: List name, rank/rate, command, code, DSN and/or commercial telephone numbers.//

**MARINE CORPS OIL AND HAZARDOUS SUBSTANCE RELEASE REPORT
(MESSAGE FORMAT)**

A. TRANSMITTAL PRECEDENCE. Send oil discharge and hazardous substance (HS) release report messages by routine precedence. Use priority precedence if the release is very large, threatens human health, requires evacuation of the local populace, is expected to result in significant environmental harm, or is expected to generate adverse publicity.

B. CLASSIFICATION OR SPECIAL HANDLING MARKING. Do not include classified or sensitive unclassified information in the report, unless necessary for operational reasons. Report symbol DD-5090-10 applies.

C. OUTSIDE THE CONTINENTAL UNITED STATES REPORTS. For releases occurring outside the United States, its territories, and its possessions, delete the Coast Guard District and the Environmental Protection Agency (EPA) region organizations from the addressee and information blocks in the message. Instead, add the appropriate higher headquarters to the list of addressees.

D. MESSAGE DATA ELEMENTS. The essential data elements for reporting oil spills and HS releases are provided below

FM: ACTIVITY/COMMAND//CODE//

TO: CMC WASHINGTON DC//I-L//
COMDT COGARD WASHINGTON DC (U.S. SPILLS ONLY)
COGARD MSO AREA COORDINATOR (MARINE U.S. SPILLS ONLY)
COAST GUARD DISTRICT COMMANDER (MARINE U.S. SPILLS ONLY)
EPA REGIONAL OFFICE (INLAND U.S. SPILLS ONLY)

INFO: HIGHER HEADQUARTERS (IF APPLICABLE)
COMNAVFACENCOM ALEXANDRIA VA
COGNIZANT ENGINEERING FIELD DIVISION
NFESC PORT HUENEME CA

UNCLAS //N06280//

PASS TO LFL

SUBJ: OIL SPILL REPORT, REPORT SYMBOL DD-5090-10

RMKS/1. DATE TIME GROUP IN WHICH SPILL OCCURRED

2. ACTIVITY ORIGINATING SPILL (INSTALLATION; UIC)

3. SOURCE (FUEL TANK, BARGE, PIPELINE, RAIL CAR, VEHICLE, AIRCRAFT, ETC.)

4. LOCATION (AREA, BUILDING DESIGNATION, PIER, ETC.)

5. AMOUNT (BARRELS, GALLONS, LITERS)

IF UNKNOWN, INDICATE DIMENSIONS OF CONTAMINATED AREA

6. TYPE (JP-5, GASOLINE, DIESEL, LUBE OIL, ETC.)

CENTER FOR LAW AND MILITARY OPERATIONS

7. CONTAINER FROM WHICH RELEASE OCCURRED (DRUM, STORAGE TANK, ETC.)
 8. SAMPLES TAKEN (YES/NO; SPECIFY ANALYSES REQUESTED/PERFORMED)
 9. CAUSE OF RELEASE (EQUIPMENT FAILURE, PERSONNEL ERROR, ACCIDENT, ETC.)
 10. RELEASE SCENE DESCRIPTION (OIL SLICK, CONTAMINATED AREA, ETC.)
 11. ACTION TAKEN/PLANNED:
 - A. CONTAINMENT EFFORTS (BOOM, ABSORBENT PADS, DRY SWEEP, ETC.)
 - B. RECOVERY EFFORTS (SUCTION TRUCK/PUMPS, SOIL EXCAVATION, ETC.)
 - C. RESIDUALS DISPOSAL (DRUMS TO DRMO, SOIL BIOREMEDIATION, ETC.)
 - D. RESPONSE/RECOVERY UNIT (TACTICAL UNIT, FIRE DEPT., ORSO, USGC, ETC.)
 12. ON-SCENE WEATHER/WIND (TEMPERATURE, HUMIDITY, WIND VELOCITY, VISIBILITY)
 13. AREAS THREATENED/DAMAGED (BEACH, WETLANDS, WATER INTAKE, AQUIFER, ETC.)
 14. POTENTIAL DANGERS (FIRE, EXPLOSION, OILED WILDLIFE, ETC.)
 15. NOTIFICATIONS MADE (NRC, COAST GUARD MSO, EPA REGION, STATE, LOCAL AGENCY, ETC.)
 16. TELEPHONIC REPORT TO NRC WAS/WAS NOT MADE (NRC POC/REPORT NUMBER)
 17. POC FOR REPORT (PERSON, ACTIVITY/CODE, TELEPHONE [DSN AND COMMERCIAL])
 18. ASSISTANCE REQUIRED/COMMENTS
- //BT

FM: ACTIVITY/COMMAND//CODE//

TO: CMC WASHINGTON DC//I-L//

COMDT COGARD WASHINGTON DC (U.S. SPILLS ONLY)
COGARD MSO AREA COORDINATOR (MARINE U.S. SPILLS ONLY)
COAST GUARD DISTRICT COMMANDER (MARINE U.S. SPILLS ONLY)
EPA REGIONAL OFFICE (INLAND U.S. SPILLS ONLY)

INFO: HIGHER HEADQUARTERS (IF APPLICABLE)
COMNAVFACENGCOM ALEXANDRIA VA
COGNIZANT ENGINEERING FIELD DIVISION
NFESC PORT HUENEME CA

UNCLAS //N06280//

PASS TO LFL

SUBJ: HAZARDOUS SUBSTANCE RELEASE REPORT, REPORT SYMBOL DD-5090-10

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

- RMKS/1. DATE TIME GROUP IN WHICH RELEASE OCCURRED
 2. ACTIVITY ORIGINATING RELEASE (INSTALLATION; UIC)
 3. SOURCE (STORAGE AREA, SHOP, VEHICLE, ETC.)
 4. LOCATION (BUILDING DESIGNATION, PIER, HIGHWAY, RANGE, ETC.)
 5. AMOUNT (GALLONS/LITERS, POUNDS/KILOGRAMS)
IF UNKNOWN, INDICATE DIMENSIONS OF CONTAMINATED AREA
 6. TYPE (PESTICIDES, CORROSIVE LIQUIDS, TOXIC SUBSTANCES, EXPLOSIVES, ETC.)
 7. CONTAINER INVOLVED (DRUM, BAG, STORAGE TANK, RAIL CAR, PLATING TANK, ETC.)
 8. SAMPLES TAKEN (YES/NO; SPECIFY ANALYSES REQUESTED/PERFORMED)
 9. CAUSE OF RELEASE (EQUIPMENT FAILURE, PERSONNEL ERROR, ACCIDENT, ETC.)
 10. RELEASE SCENE DESCRIPTION (CONTAMINATED AREA, PATH OF RELEASE, ETC.)
 11. ACTION TAKEN/PLANNED:
 - A. CONTAINMENT EFFORTS (BOOM, ABSORBENT PADS, DRY SWEEP, ETC.)
 - B. RECOVERY EFFORTS (SUCTION TRUCK/PUMPS, SOIL EXCAVATION, ETC.)
 - C. RESIDUALS DISPOSAL (DRUMS TO DRMO, SOIL BIOREMEDIATION, ETC.)
 - D. RESPONSE/RECOVERY UNIT (TACTICAL UNIT, FIRE DEPT., ORSO, USGC, ETC.)
 12. ON-SCENE WEATHER/WIND (TEMPERATURE, HUMIDITY, WIND VELOCITY, VISIBILITY)
 13. AREAS THREATENED/DAMAGED (BEACH, WETLANDS, WATER INTAKE, AAQUIFER, ETC.)
 14. POTENTIAL DANGERS (FIRE, EXPLOSION, TOXIC VAPOR, ETC.)
 15. NOTIFICATIONS MADE (NRC, COAST GUARD MSO, EPA REGION, STATE, LOCAL AGENCY, ETC.)
 16. TELEPHONIC REPORT TO NRC WAS/WAS NOT MADE (NRC POC/REPORT NUMBER)
 17. POC FOR REPORT (PERSON, ACTIVITY/CODE, TELEPHONE [DSN AND COMMERCIAL])
 18. ASSISTANCE REQUIRED/COMMENTS
- //BT

APPENDIX 8-1: SAMPLE FOREIGN CLAIMS COMMISSION
APPOINTMENT LETTER

5800
SJA
Date

From: Commanding Officer, 26th Marine Expeditionary Unit (SOC)
To: Staff Judge Advocate, 26th Marine Expeditionary Unit (SOC)

Subj: APPOINTMENT OF FOREIGN CLAIMS COMMISSION

Ref: (a) JAG MANUAL Ch VIII
(b) 10 USC 2734
(c) COMSIXTHFLTINST 5800.IF (LEGMAN)

1. Pursuant to reference (a), you are hereby appointed a Foreign Claims Commission. The Commanding Officer, 26th Marine Expeditionary Unit will convene this commission when required to consider claims submitted for adjudication under the provisions of reference (b).
2. The jurisdiction, scope, and duties of a Foreign Claims Commission are set forth in references (b) and (c) and the Commission shall act in conformity therewith. Forms employed by the Commission shall be in accordance with the Appendixes to paragraphs 701 through 709 of reference (c).
3. A brief, concise, and complete record of all proceedings conducted shall be maintained as prescribed in reference (a).

E. N. GARDNER

**APPENDIX 8-2: SAMPLE CLAIMS AND RELEASE FORMS IN
FOREIGN LANGUAGES**

COMSIXTHFLTINST 5800.1F

Claim Form in Arabic

_____ (البلده أو المدينة)

_____ (التاريخ)

إلى لجنة الدعاوى الخارجيه لقوات البحرية التابعه للولايات المتحده الأمريكيه

(إسم كبير أعضاء لجنة للدعاوى للخارجيه)

بموجب هذا الطلب أتقدم لإقامه دعوى تعويض ضد الحكومه الأمريكيه بسبب الأضرار التي تسبب فيها:

وتتبنى دعوتي على ما يلي: (إذا كان المدعى وكيلًا، أو ولي أمر، أو وصي، يتم إرفاق توكيلاً رسمياً أو أي إثبات توكيل آخر و يتم ملء النموذج التالي للطرف الذي تكبد الضرر أو الإصابات)

_____ ١. الأسم:

_____ ٢. العنوان:

_____ ٣. بيان أنا:

أ. مواطن و أحمل الجنسيه: _____

ب. مقيم بصفه دائمه في: _____

ج. أعمل في: _____

د. (غير) مؤمن: _____

هـ. لا أرفع هذه الدعوى بدلاً عن غيري: _____

التي لحق بها الضرر مملوكه لـ (إذا كان المالك نفس الشخص المذكور في البند رقم ١ ، إكتب نفس الشخص)

٥. يتم رفع دعوتي في:

_____ أ. في:

_____ (الدوله)

_____ (البلده أو المدينة)

٦. بيان مختصر عن الحادث أو الحدث الذي تنهني عليه دعوى التعويض عن الضرر الملحق بالمتلكات أو الإصابه الشخصيه كما يلي: (استخدم ورقه إضافيه إذا لزم الأمر)
٧. وقع (الضرر بالمتلكات) أو (الإصابه الشخصيه) التاليه نتيجة للحادث السابق ذكره: (مع وصف طبيعه أو مدى الضرر الملحق بالمتلكات أو الإصابه الشخصيه)
٨. وفيما يلي قائمه تفصيليه بقيمه الضرر الملحق بالمتلكات و التكاليف البنديه للنتاجه عن الإصابه الشخصيه: (إرفق للفواتير و الإيصالات، إذا وجدت)

القيمه

البند

الإجمالي: _____

٩. اسم وعضوان الشخص أو الهيئه التي سببت الأضرار أو الإصابه هما:

(العضوان)

(الشخص أو الهيئه)

١٠. مكان قدر التامين على ضد الضرر أو الإصابه التي تكبدتها هو: _____

١١. اسم وعضوان شركه التامين (إن وجدت): _____

١٢. أطلب بتعويض عن الأضرار و قدره: _____
(اكتب المبالغ بالدولار والمئه المحليه)

_____ (توقيع المدعى)

تم تحرير هذه الدعوى أمامي و بحضورى يوم _____ من شهر _____ من عام ١٩٩-

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

COMSIXTHFLTINST 5800.1F

Claim Form

(Town or City)

(Date)

To the United States Navy Foreign Claims Commission

(Name of Senior Member of Foreign Claims Commission)

I hereby make claim against the United States Government for damages caused by:

My claim is based on the following: (If claim is made as agent, parent or guardian, attach a power of attorney or other evidence of authority and fill in the form below for party sustaining the damage or injuries.)

1. Name: _____
2. Address: _____
3. That I am:
 - a. A citizen and national of: _____
 - b. A permanent resident of: _____
 - c. Employed by: _____
 - d. (Not) An insurer.
 - e. Not making this claim as subrogee.
4. The property damage is owned by (if same as 1., write "Same"):

5. My claim arose:

- a. At _____

(Town or City)

(Country)

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COMSIXTHFLTINST 5800.1F

6. A brief statement of the accident or incident on which claim for damages to property or for personal injury is based, as follows: (Use additional sheet if necessary.)

7. The following (property damage) or (personal injury) as a result of the above incident was sustained: (Describe nature and extent of property damage or personal injury.)

8. A detailed list of the amount of property damage and itemized expenses resulting from the personal injury is shown below: (Attach bills and receipts, if applicable.)

<u>Item</u>	<u>Amount</u>
	Total: _____

9. The name and address of the person or organization causing the damage or injury is:

(Person or Organization) (Address)

10. I was insured to the following extent against the damage or injuries I have sustained: _____

11. The name and address of my insurer (if any) is: _____

12. I claim as damages: _____
(Indicate amount in \$ and local currency)

(Signature of Claimant)

Subscribed and sworn before me this _____ day of _____,
199____.

(Signature)

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

COMSIXTHFLTINST 5800.1F

Claim Form in French
(Use also for Morocco and Tunisia)

(Lieu)

(Date)

A la Commission de la Marine américaine responsable
des déclarations de sinistre venant de l'étranger

(Nom d'un membre responsable de cette Commission)

Par la présente, je fais une déclaration de sinistre contre le
Gouvernement des Etats-Unis d'Amérique pour les dégâts causés
par :

Ma déclaration de sinistre est basée sur ce qui suit : (Si la
déclaration est faite en qualité d'agent, de parent ou de tuteur,
joindre une délégation des pouvoirs ou une autre preuve de
pouvoir et remplir ce formulaire pour la personne ayant souffert
dégâts ou blessures).

1. Nom : _____
2. Adresse : _____
3. Que je suis :
 - a) Ressortissant et citoyen de : _____
 - b) Résident permanent de : _____
 - c) Employé(e) par : _____
 - d) (Pas) un assureur.
 - e) Ne faisant cette déclaration en tant que subrogeur.
4. La propriété endommagée appartient à (s'il s'agit de la même
personne que sous 1., écrire "La même") : _____

CENTER FOR LAW AND MILITARY OPERATIONS

COMSIXTHFLTINST 5800.1F

5. Ma réclamation a son origine :

a. A : _____

(Lieu)

(Pays)

6. Une brève description de l'accident ou l'incident sur lequel est basée la réclamation des dégâts matériels ou la déclaration de sinistre relative à des blessures corporels : (Utiliser une feuille supplémentaire, si nécessaire).

7. Les dommages suivants ou les blessures suivantes ont été causés par l'incident mentionné ci-dessus : (Décrire la nature et la gravité des dégâts matériels ou des blessures).

8. Ci-dessous, une liste détaillée des dépenses relatives aux dégâts matériels et aux blessures : (Joindre factures et quittances, le cas échéant).

Poste

Montant

Total : _____

9. Le nom et l'adresse de la personne ou de l'organisme causant les dégâts ou blessures:

(Personne ou Organisme)

(Adresse)

10. Je suis couvert(e) de la manière suivante par mon assurance contre les dégâts ou blessures soufferts par moi :

11. Nom et adresse de mon assureur (le cas échéant) : _____

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

COMSIXTHFLTINST 5800.1F

12. Je réclame des dommages et intérêts d'un montant de :

(Montant en US-\$ et en monnaie locale)

(Signature du demandeur)

Signé sous serment devant moi ce _____ jour de _____
199__.

(Signature)

CENTER FOR LAW AND MILITARY OPERATIONS

COMSIXTHFLTINST 5800.1F

Claim Form in Greek

(Πολη)

(Ημερομηνια)

Προς Γραφείο Απαιτήσεων Εξωτερικού του Ναυτικού ΗΠΑ

(Ονοματεπώνυμο Προϊσταμένου Γραφείο Απαιτήσεων Εξωτερικού)

Με την παρούσα υποβάλλω αίτηση για αποζημίωση απο το Αμερικανικό Δημόσιο για ζημιές που προξενήθηκαν απο τον

Η παρούσα αίτηση μου για αποζημίωση βασίζεται στα κάτωθι (Αν η αίτηση για αποζημίωση υποβάλλεται με την ιδιότητα του αντιπροσώπου, γονέα η κηδεμόνα, να επισυναφθεί πληρεξούσιο ή άλλο αποδεικτικό της ιδιότητος του απούντος, και να συμπληρωθεί το παρακάτω έντυπο με τα στοιχεία του ατόμου που προξένησε τη ζημιά ή τραυματισμού).

1. Ονοματεπώνυμο _____

2. Διεύθυνση _____

3. Τυχάνω

α. Υπήκοος _____

β. Μόνιμος Κάτοικος _____

γ. Εργαζόμενος στο/ _____

δ. (οχι) Ασφαλιστής

ε. Δεν υποβάλλω την παρούσα αίτηση για αποζημίωση ως αντιπρόσωπος

4. Η ιδιότητα του αντικαμένου που υπέστη τη ζημιά (αν είναι ο ίδιος της παραγράφου "1", γράψτε ο "ίδιος").

5. Η απαίτηση μου προεκλήθη

α. Στην _____

(πολη)

(χώρα)

δ. Σύντομη δήλωση για τις συνθήκες του ατυχήματος ή επεισοδίου στο οποίο βασίζεται η αίτηση για αποζημίωση για ζημιές ή τραυματισμού, ως κάτωθι (Χρησιμοποιήστε και άλλο φύλλο χαρτί αν είναι απαραίτητο).

G - 8

APPENDIX G

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

COMSIXTHFLTINST 5300.1F

7. Υλικές ζημιές ή τραυματισμός ατόμων κατά το άνω ατύχημα/επασσόδιο (αναφέρατε λεπτομερώς τις συνθήκες και μέγεθος των ζημιών ή τραυματισμών που προξενήθηκαν).

8. Λεπτομερής κατάλογος των ποσών που κατεβλήθηκαν για αποκατάσταση των ζημιών/τραυματισμών (να επισυναφθούν αποδείξεις, λογαριασμοί νοσοκομείου, κλπ).

Είδος υπηρεσιών

Ποσό

Σύνολο _____

9. Το ονοματεπώνυμο και η διεύθυνση του ατόμου ή οργανισμού που προκάλεσε τη ζημιά ή τον τραυματισμό είναι _____

(Ιδιότης ή οργανισμός)

(Διεύθυνση)

10. Τυχόν ασφαλισμένος μέχρι του ποσού των _____
Δολ/Δρχ για τις ζημιές ή τον τραυματισμό που υπέστη.

11. Το ονοματεπώνυμο και η διεύθυνση του ασφαλιστή μου είναι _____

12. Ζητώ για αποζημίωση το ποσό των _____

(Αναφέρατε ποσό σε δολάρια και νόμισμα της χώρας)

(Υπογραφή αιτούντος)

Υπεγράφη ενόρκως ενώπιον μου, τη _____ του έτους _____

(Υπογραφή)

CENTER FOR LAW AND MILITARY OPERATIONS

COMSIXTHFLTINST 5800.1F

Claim Form in Italian

(Town or City / Localione)

(Date / Data)

To the United States Navy Foreign Claims Commission

(Name of Senior Member of Foreign Claims Commission)

I hereby make claim against the United States Government for damages caused by (Indica le circostanze del danno)

My claim is based on the following:

1. Name / Nome: _____

2. Address / Indirizzo: _____

3. That I am: _____

a. A citizen and national of / Il danneggiato e' un cittadino di quale paese? : _____

b. A permanent resident of / Il danneggiato e' un residente di quale paese?: _____

c. Employed by / Il danneggiato e' impiegato dove? Per chi?: _____

d. (Not) an insurer / Il danneggiato e' o non e' un assicuratore?: _____

e. Not making this claim as subrogee / Se non se il danneggiato indica sua relazione al danneggiato (parenta, guardino, o assicuratore, avvocato, etc.) Se siete un rappresentante del danneggiato, attacca una coppia del documento che vi autoriza di rappresentarlo.

4. The property damaged is owned by (if same as I, write "same")
Indica il nome e indirizzo del danneggiato: _____

5. My claim arose / Brevemente descrivi le circostanze che riguardo _____

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APPENDIX G

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

COMSIXTHFLTINST 5800.1F

l'incidente o il danno:

(Town or City / Locazione)

6. A brief statement of the accident or incident on which claim for damages to property or for personal injury is based, as follows / Fornisca una lista dettagliato dei danni e i costi di riparazione per il danno: _____

7. List property damaged or injury sustained / Fornisce una coppia delle fatture o preventive: _____

8. The name and address of the person or organization causing the damage or injury is / Il nome o l'organizzazione di chi ha causato il danno: _____

10. I was insured to the following extent against the damage or injuries I have sustained / Il danneggiato e' o non e' assicurato: _____

11. The name and address of my insurer (if any) is / Se il danneggiato e assicurato, indica il nome della compagnia di assicurazione: _____

12. I claim as damages / Indica la somma totale di questa reclama: _____

Signature of claimant / La Firma

Subscribed to and sworn to before me this _____ day of _____, 19__.

Signature / La Firma

CENTER FOR LAW AND MILITARY OPERATIONS

COMSIXTHFLTINST 5800.1F

Claim Form in Romanian

(Orasul sau localitatea)

(Data)

Catre Comisia pentru Reclamatii din Strainatate a Marinei Militare a Statelor Unite

(Numele membrului cu rang inalt al Comisiei pentru Reclamatii din Strainatate)

Prin prezenta depun o reclamatie impotriva Guvernului Statelor Unite prin care cer despagubiri pentru pagubele cauzate prin:

Reclamatia mea este bazata pe urmatoarele: (Daca reclamatia este inaintata in calitate de reprezentant, parinte, sau tutore, anexati o imputernicire sau o alta dovada a autorizarii, si completati formularul de mai jos pentru partea vatamata.)

1. Numele: _____
2. Adresa: _____
3. Sunt:
 - a. Cetatean al: _____
 - b. Rezident permanent al: _____
 - c. Angajat al: _____
 - d. (Nu) Sunt companie de asigurari _____
 - e. Nu inaintez aceasta reclamatie in calitate de inlocuitor in drepturi.
4. Proprietatea pagubita apartine lui (daca este aceeași persoana de la punctul 1, scrieti "acelasi")

5. Reclamatia mea isi are originea:
 - a. La _____

(Orasul sau localitatea)

(Tara)

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APPENDIX G

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

COMSIXTHFLTINST 5800.1F

6. O scurta declaratie asupra accidentului sau incidentului pe baza caruia a fost inaintata reclamatia pentru despagubiri pentru daune aduse proprietatii sau pentru ranirea persoanei, dupa cum urmeaza: (Folositi o coala de hartie suplimentara daca este necesar.)

7. Urmatoarele (daune aduse proprietatii) sau (ranirea persoanei) au fost inregistrate ca urmare a incidentului sus-mentionat: (Descrieti natura si dimensiunile daunelor aduse proprietatii sau persoanei.)

8. O lista detaliata a dimensiunilor daunelor aduse proprietatii si cheltuielilor rezultate ca urmare a rarii persoanei este anexata mai jos: (Anexati facturile si chitantele, daca este cazul.)

Articol

Suma

Total: _____

9. Numele si adresa persoanei sau organizatiei care a provocat daunele sau ranirea sunt:

(Persoana sau organizatia)

(Adresa)

10. Am fost asigurat in urmatoarele limite pentru daunele sau ranile suferite:

11. Numele si adresa companiei mele de asigurare (daca este cazul) sunt:

12. Cer ca daune: _____
(Indicati suma in dolari SUA si in moneda nationala)

(Semnatura reclamantului)

Inaintata si autentificata in fata mea astazi, ziua _____, luna, _____, anul _____.

(Semnatura)

CENTER FOR LAW AND MILITARY OPERATIONS

COMSIXTHFLTINST 5800.1F

Claim Form in Spanish

(Ciudad)

(Fecha)

A la Comisión de Reclamaciones Extranjeras de la Marina de los Estados Unidos:

Por la presente reclamo contra el Gobierno de los Estados Unidos por los daños causados por:

Formulo mi reclamación en base a lo siguiente: (Si se hace la reclamación en calidad de agente, padre/madre or tutor, adjunte un poder notarial u otro documento autorizándole y rellene Ud. el formulario siguiente para la parte perjudicada por los daños o lesiones.)

1. Nombre: _____

2. Dirección: _____

3. Que soy o estoy:

a. Nacionalidad: _____

b. Lugar de residencia permanente: _____

c. Empleado por: _____

d. Compañía aseguradora (Si) (No)

e. No estoy haciendo esta reclamación en calidad de subrogado.

4. Los bienes dañados pertenecen a (si es la misma persona que se indica en el apartado 1., escriba Ud. "el mismo):

5. Mi reclamación se originó:

a. En _____

(Ciudad)

(Pais)

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

COMSIXTHFLTINST 5800.1F

6. Breve descripción del accidente o incidente que da lugar a la reclamación por daños a bienes o por lesiones personales: (Use Ud. una hoja adicional si necesario.)

7. Como consecuencia del incidente anterior, se produjo el siguiente (daño a bienes) o (lesión personal): (Describa Ud. la naturaleza y alcance de los daños a bienes o lesión personal.)

8. Se relaciona a continuación una lista detallada de la cantidad por daños a bienes y gastos pormenorizados por lesión personal: (Adjunte facturas y recibos si procede.)

Concepto

Cantidad

Total: _____

9. Nombre y dirección de la persona u organización causante del daño o lesión:

(Persona u Organización)

(Dirección)

10. Estaba asegurado con la siguiente cobertura por los daños y lesiones que he sufrido: _____

11. Nombre y dirección de mi compañía aseguradora (si la tiene): _____

12. Reclamo en concepto de daños. _____

(Indique la cantidad en dólares y moneda local)

(Firma del Reclamante)

Suscrito y declarado bajo juramento ante mi el día _____ de _____ de 199 ____.

(Firma)

CENTER FOR LAW AND MILITARY OPERATIONS

COMSIXTHFLTINST 5800.1F

Claim Form in Turkish

KASABA VEYA SEHIR

TARİH

A B D LERİ DENİZ KUVVETLERİ YABANCILAR İÇİN ŞİKAYET KOMİSYONUNA

(YABANCILAR İÇİN ŞİKAYET KOMİSYONUNUN KİDEMLİ UYESİNİN ADI)

.....TARAFINDAN SEBEB OLUNAN HASARLAR İÇİN A.B.D'LERİ HÜKÜMETİNE
KARŞI ŞİKAYETİMİ BU VESİLE İLE YAPIYORUM.

ŞİKAYETİM AŞAĞIDAKİ NEDENLERDEN KAYNAKLANMAKTADEN: (ŞAYET ŞİKAYET VEKİLİ,
EBEVYİNİ VEYA KORUYUCUSU TARAFINDAN YAPILIYORSA BU DURUMU BELİRTEN SAVCILIK
BELGESİ VEYA DİĞER BELGELERİ EKLE VE YARALANNAYA VEYA HASARA MARUZ KALAN
TARAF OLARAK AŞAĞIDAKİ FORMU DOLDUR)

1. ADI: _____

2. ADRES: _____

3. BEN: _____

A.VATANDAŞI VE.....MİLLİYETİNDENİM _____

B.DEVAMLI İKAMET EDERİM _____

C.DA GÖREVLİYİM _____

D. SİGORTALIYIM (VEYA DEĞİLİM)

E. BU ŞİKAYETİ ALACAKLI YERİNE GECEREK YAPMIYORUM

4. HASAR GÖREN MAL, MÜLK..... MÜLKİYETİNDEDER (İ'INCI MADE İLE AYNI İSE
"AYNI" YAZ

5. ŞİKAYETİM ZUHUR ETTİ (MEYDANA GELDİ):

A. DA _____

(KASABA VEYA SEHIR)

(ÜLKE)

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APPENDIX G

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

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6. ŞİKAYETE ESAS OLAN MAL, MÜLK HASARI VEYA PERSONEL YARALANMASI İLE İLGİLİ OLARAK CERYAN EDEN KAZA VEYA OLAYIN KISA BİR İFADESİ (ANLATIMI) AŞAĞIDAKI GİBİDİR (LÜZÜMLÜ OLURSA İLAVE SAYFA KULLAN)

7. AŞAĞIDAKİ (MAL, MÜLK HASARI) VEYA (PERSONEL YARALANMASI) MARUZ KALINAN YUKARIDAKİ OLAYIN BİR NETİCESİDİR:.....(MAL MÜLK HASARININ VEYA PERSONEL YARALANMASININ DURUMUNU VE DERECESİNİ DETAYLI OLARAK AÇIKLA)

8. MAL MÜLK HASARININ MİKTARININ DETAYLI BİR LİSTESİ VE PERSONEL YARALANMASINDAN DOĞAN HARCAMALARI MADDELENDİRİLMİŞ HALİ AŞAĞIDA GÖRÜLDÜĞÜ GİBİDİR (ŞAYET MÜMKÜNSE FATURA VE ÖDEME MAKBUKLARINI EKLE

TOPLAM

9. YARALANMAYA VEYA HASARA SEBEB OLAN SAHİS VEYA ORGANİZASYONUN İSMİ.....DİR

(İSİM VEYA ORGANİZASYON)

(ADRES)

10. MARUZ KALDIĞIM YARALANMALAR VEYA HASARA KARŞI AŞAĞIBA BELİRTİLDİĞİ ŞEKİLDE SİGORTALIYIM.

11. BENİM SİGORTAMIN (ŞAYET VARSA) ADI VE ADRESİ:.....DİR

12. BEN HASAR OLARAK..... HAK İDDİA EDİYORUM (DOLAR VE MAHALİ PARA OLARAK GÖSTER

(ŞİKAYETÇİNİN İMZASI)

BENİM ÖNÜMDİ YEMİN EDİLEREK İMZALANDI _____ GÜN _____ AY _____ SENE.

(İMZA)

CENTER FOR LAW AND MILITARY OPERATIONS

COMSIXTHFLTINST 5800.1F

Release Form

KNOW ALL MEN BY THESE PRESENTS:

That _____, residing in _____ for and in consideration of the sum of _____ (_____) to him in hand paid by the United States of America, the receipt of which is hereby acknowledged, has remised, released and forever discharged, and by these presents does for himself, his heirs, executors, administrators, and assigns, and each of them remise, release and forever discharge the United States of America, its successors and assigns, _____ their heirs, executors, administrators, and assigns and all persons interested therein, from all demands, claims, actions, and/or suits of any nature whatsoever, in law or equity which the _____ ever had, now has, or may have, for upon or by reason of any matter or thing whatsoever, for all losses, claims, injuries, arising out of or in connection with _____ that occurred on the _____ day of _____, 199__ at _____.

And the said _____ does further;

- a) covenant that he is legally entitled to receive the said settlement and to give full and valid acquittance thereof;
- b) agree that the sum paid him, as specified above, is inclusive of registration expenses of this release, and therefore he will cause this release to be registered at his own expense in accordance with law;
- c) agree that the payment received by him is made without any admission of liability or responsibility on the part of the United States of America, its officers, or of any person in the United States Armed Forces.

IN WITNESS WHEREOF, the said _____, has hereunto signed his name this _____ day of _____, 199__.

(Signature)

Witness:

APPENDIX J

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

COMSIXTHFLTINST 5800.1F

Release Form in French
(Use also for Morocco and Tunisia)

IN THE MATTER OF _____
(KIND, DATE, AND PLACE OF INCIDENT)

KNOW ALL MEN BY THESE PRESENTS THAT:

I, the undersigned, hereby agree to accept the sum of \$ _____
(dollars) _____ (francs) in full satisfaction and final settle-
ment of all claims which I have or may have against _____
and the United States, its officers, agents, and
employees, for all damages and injuries, if any, incurred by me as the
result of the incident referred to above.

TRADUCTION

Je soussigne(e) declare accepter la somme de \$ _____ (dollars)
_____ (francs) en reglement total et pour solde de tout compte de
toutes reclamations que j'ai ou pourrais avoir a l'encontre de _____
et des Etats-Unis, ses representants, agents et
employes pour tous dommages et blessures que j'ai subis a la suite de
l'incident mentionne ci-dessus.

(WITNESS)

(SIGNATURE OF CLAIMANT)

(TITLE)

(TYPED NAME OF CLAIMANT)

(COMMAND)

(ADDRESS OF CLAIMANT)

(DATE OF SIGNATURE)

Release Form in Greek

ΔΗΛΩΣΙΣ ΑΠΑΛΛΑΓΗΣ

Ο κάτωθι υπογεγραμμένος -----
Διευθυντής -----
λαβών παρά της Κυβερνήσεως των ΗΠΑ τό ποσόν τῶν -----
----- (Δολларίων -----), λήψιν τοῦ ὅπου βεβαίω διὰ
τῆς παρουσίας, ΔΗΛΩ ὅτι οὐδεμίαν ἑτέραν ἀκαίτησιν ἔχω κατά τῆς Κυβερνήσεως
τῶν ΗΠΑ, τῶν ἐνόπλων δυνάμεων τῶν ΗΠΑ καὶ τοῦ -----

(Ἔκδομα ὑπαιτιοῦ)

----- ὁμοῦ ἢ κεχωρισμένως, στηριζομένην εἰς σωματικὸς βλάβας, περιουσιακὰς ζημίας, ψυχικὴν δούλῃαν, ἠθικὴν βλάβην, σόνηθες ἢ διαφυγόν κέρδος, ἀπώλειαν ἐργασίας, μισθῶν ἢ ἡμερομισθίων, ἔξοδα ἰατρικῆς περιθάλψεως καὶ νοσοκομειακῆς νύσθησεως, δικαστικὰ ἔξοδα καὶ οἰονδήποτε ἑτέραν ἀξιώσιν, ἀμέσως ἢ ἐμμέσως συνεισφερόμενην μετὰ -----

ὅπου ἔλαβε χώραν κατά τὴν ----- συνεκεῖτα τοῦ ὅπου ὑπεβύλον τὴν ἀπὸ ----- αἰτίας ἀποζημιώσεως.

Ὅτι παραιτοῦμαι πάσης δικαστικῆς ἢ ἐξωδίκου ἐνεργείας κατά τῆς Κυβερνήσεως τῶν ΗΠΑ, τῶν διαφόρων ὑπουργείων των ἢ οἰονδήποτε προσώπου νῦν ὑπηρετοῦντος εἰς τὰς ἐνόπλους δυνάμεις τῶν ΗΠΑ, σχέσιν ἐχούσης πρὸς τὰ πραγματικὰ γεγονότα, ἐφ' ὧν ἐστηρίχθη ἡ ἀκαίτησίς μου.

Ὅτι ἡ παρούσα δήλωσις ἀκαλλαγῆς καὶ ἀπόδειξις κληρικής ἀποτελεῖ πλήρην ἠπόδειξιν ἐνώπιον οἰονδήποτε δικαστηρίου ἢ ἀρχῆς καθ' οἰονδήποτε δικὴν ἢ δικαστικὴν ἐνεργείαν ἢ ἐγὼ ἢ οἰονδήποτε ἕτερον πρόσωπον ἐνεργόν ἐν ὀνόματι μου, ἠθέλωμεν ἐγείρει κατά τῆς Κυβερνήσεως τῶν ΗΠΑ, τῶν διαφόρων ὑπουργείων των ἢ οἰονδήποτε προσώπου νῦν ὑπηρετοῦντος εἰς τὰς ἐνόπλους δυνάμεις τῶν ΗΠΑ.

Ὅτι ἡ ὡς ἄνω ἀποζημίωσις δὲν συνεπάγεται τὴν ἐκ μέρους τῆς Κυβερνήσεως τῶν ΗΠΑ, τῶν διαφόρων ὑπουργείων των ἢ οἰονδήποτε προσώπου νῦν ὑπηρετοῦντος εἰς τὰς ἐνόπλους δυνάμεις τῶν ΗΠΑ ἀποδοχὴν ὑπαιτιοῦτος.

Ἡ παρούσα ὑπεγράφη ἐν ----- τῇ -----
(Pόλις καὶ Χώρα) (Ἡμερομηνία καὶ Ἔτος)

Οἱ Μάρτυρες:

Ὄνομα ----- Διευθυντής -----

----- (Ὁ Δικαιοῦχος)

Release Form in Hebrew

כתב קבלה ושחרור

וזאת לראיה כי אני החתום/חתומה מטה מסכים/מסכימה בזאת לקבל סך של (במילים) _____ שקלים חדשים (_____ ש"ח), ובזאת באתי על סיפוקי. ולראיה רואה אני בכתב קבלה ושחרור זה הסכם סופי של כל תביעה מסוג שהוא שיש לי או שתהיה לי בעתיד כנגד ארצות הברית של אמריקה, או כנגד נציגיה ו/או עובדיה, ואשר מקורה _____ שאירעה ב _____, ישראל.

הנני מסכים/מסכימה בזאת שעם קבלת הסכום הנקוב לעיל, תהיה ארצות הברית של אמריקה נציגה, ו/או עובדיה פטורים לעולמים מכל תביעה, דרישה, נזיקין, תובענה, או קובלנה מכל סוג שהוא אשר מקורם באירוע הנזכר לעיל.

ולראיה באתי על החתום ביום ה _____ לחודש _____ שנת 19 _____

חתימה

השם המלא

בפני העדים:

Release Form in Italian
 QUIETANZA LIBERATORIA

ATTO DI TRANSAZIONE E QUIETANZA

Il Sig. _____ nato a _____ il _____
 _____ residente a _____ e domiciliato alla
 via _____ N. _____ dichiara di ricevere, come in
 effetti riceve, la somma di Lire _____ (in lettere) pari a
 \$ _____ dal Governo degli Stati Uniti d'America. Accusandone
 ricevuta e rilascia ampia e liberatoria quietanza per se' stesso, i suoi eredi,
 esecutori, amministratori ed aventi causa dichiarando di non aver piu' null'altro
 a pretendere e di essere stato totalmente soddisfatto di ogni suo credito e di
 rinunciare espressamente a qualsivoglia azione per qualsiasi perdita, richiesta,
 lesione derivata a che potrebbe derivare dal _____ avvenuto il
 _____ 19 _____ in _____.

Il summenzionato Sig. _____ dichiara altresì:

A) di avere diritto a ricevere la somma di cui sopra a transazione del danno sub
 e delle lesioni sofferte e di rilasciare la presente ampia e liberatoria quietanza;

B) che la somma che gli viene corrisposta, così come sopra specificata, e'
 inclusiva delle spese di registrazione del presente atto di transazione e quietanza
 e che, pertanto, provvederà a sue spese alla registrazione in conformita; alle
 norme vigenti;

C) che il pagamento ricevuto non costituisce ammissione di qualsivoglia responsabilita'
 da parte del Governo degli Stati Uniti d'America, dei suoi Ufficiali o di qualsiasi
 altra persona che presti servizio nelle Forze Armate degli Stati Uniti. Firma
 del danneggiato _____ li' _____, 19 _____.

(Firma) _____

Teste: _____

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

COMSIXTHFLTINST 5800.1F

RENUNCIA
Release Form in Spanish

(Perjudicado) , mayor de edad, (Estado Civil)

domiciliado en (Ciudad) calle (Incluir número)

comparece ante el Oficial de Reclamaciones del buque (Denominación)

como consecuencia de las actuaciones judiciales/policiales (Número)

instruidas por el Juzgado/Comisaria (Distrito) por (Naturaleza hechos)

hechos ocurridos el (fecha) , respetuosamente comparece y DICE:

Que habiendo sido totalmente indemnizado por (Nombre del inculpado)

con destino en el buque (Denominación del buque) de cuantos daños y

perjuicios sufriera como consecuencia de los hechos en el encabezamiento
indicados y de conformidad con los art 106 y 108 de la Ley de Enjuiciamiento
Criminal o en los preceptos que procedan RENUNCIO expresamente al ejercicio
de toda acción penal o civil que me asistiese, toda vez que he sido
indemnizado a mi entera satisfacción con motivos de los

(Naturaleza hechos)
declarando libre asimismo de toda obligación actual como posterior de los
daños y perjuicios derivados de dicho suceso a (Nombre del inculpado)
y al Gobierno de los Estados Unidos.

Por lo expuesto SUPLICO tenga este escrito por presentado y acepte mi
conformidad teniendome por renunciado.

Abordo del _____ a _____ de _____, 19__

TESTIGO:	DEMANDATE:
_____ (FIRMA)	_____ (FIRMA)
_____ (NOMBRE)	_____ (D.N.I.)
_____ (TITULO)	
_____ (DIRECCIÓN)	

Release Form in Turkish

IN THE MATTER OF _____
(KIND, DATE, AND PLACE OF INCIDENT)

KNOW ALL MEN BY THESE PRESENTS THAT:

I, the undersigned, hereby agree to accept the sum of \$ _____
(dollars) _____ (Turkish Lira) in full satisfaction and
final settlement of all claims which I have or may have against _____
and the United States, its officers, agents, and
employees, for all damages and injuries, if any, incurred by me as the
result of the incident referred to above.

IBRANAME

{ Ben / Biz, yukarıda bahsi geçen hadise / kaza sebebiyle halen }
{ mevcut veya ileride doğabilecek, dışarı olduğum / olduğumuz }
{ bütün zarar ve ziyanlara ve , var ise, yaralanmalara karşılık }
{ olmak üzere verilecek _____ n }
{ yı tamamen tatminkar ve nihai ödeme olarak kabul edip Amerika }
{ Birleşik Devletleri'ni, onun subay, temsilci ve memurlarını }
{ ibra ettiğimi / ettiğimizi beyan ve tasdik ederim / ederiz. }

(WITNESS) (SIGNATURE OF CLAIMANT)

(TITLE) (TYPED NAME OF CLAIMANT)

(COMMAND) (ADDRESS OF CLAIMANT)

(DATE OF SIGNATURE)

**APPENDIX 8-3: SAMPLE FOREIGN CLAIMS INVESTIGATION
REPORT**

CLAIMS OFFICER'S INVESTIGATION REPORT

(Use additional sheets if necessary)

(Ship or unit) _____ (Date of investigation)

1. TYPE OF INCIDENT OR ACCIDENT

Brief description (include name(s) and address(es) of potential claimant(s))

2. TIME AND PLACE

Date, time, and location

3. PROPERTY AND PERSONNEL INVOLVED

a. Government property or personnel. Identify property. Personnel - name, grade, serial number. If motor vehicle or other equipment, name of operator.

b. Private property or persons. Identify property. Persons - names, addresses and relation to incident. (Include name and address of insurance company and coverage.)

CENTER FOR LAW AND MILITARY OPERATIONS

4. SCOPE OF EMPLOYMENT

Was the individual involved acting within scope of employment? Yes or no (State basic for answer.)

5. DAMAGE TO PROPERTY

a. Government property.

b. Private property.

6. PERSONS INJURED OR KILLED.

a. Government personnel.

b. Private persons.

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

7. WITNESSES (Attached signed statement(s))

NAMES	ADDRESSES
_____	_____
_____	_____
_____	_____
_____	_____

8. POLICE INVESTIGATION (Show arrests and attach copy of police report).

9. ADDITIONAL FACTS

a. Give in narrative form full details not otherwise covered herein.

b. The following inaccuracies in previous reports have been established as a result of this investigation:

10. EXHIBITS (List and attach exhibits)

A. _____	D. _____
B. _____	E. _____
C. _____	F. _____

11. ACTION RECOMMENDED

CENTER FOR LAW AND MILITARY OPERATIONS

12. DATE OF REPORT _____

13. SIGNATURE OF INVESTIGATING OFFICER

14. TITLE OF INVESTIGATING OFFICER

15. COMMENTS ON ACTION RECOMMENDED

APPENDIX 9-1: LEGAL ASSISTANCE WEBSITES

MILITARY WEBSITES

<http://192.156.19.115/> (SJA to CMC)

<http://192.156.19.115/Pubs/Pubs.htm> (Online Legal Publications: JAGMAN/LEGALADMINMAN, etc.)

<http://192.156.19.115/jal/JAL.htm> (HQMC, Judge Advocate Division, Legal Assistance Branch)

<http://www.usmc.mil/directiv.nsf/web+orders> (Individual Training Standards for Legal Services)

<http://www.jag.navy.mil/> (Naval Justice School)

<http://www.jagcnet.army.mil/tjagsa> (The Judge Advocate General's School, U.S. Army)

<http://www.maxwell.af.mil/au/cpd/jagschool/> (The Air Force JAG School)

AUTOMOBILES

<http://carpoint.com>

<http://www.edmunds.com/>

<http://www.kbb.com/>

<http://www.nada.com/> (National Automobile Dealers Associations)

<http://cartalk.cars.com/Got-A-Car/Lemon/> (All States Automobile Lemon Laws)

<http://www.ftc.gov/bcp/conline/edcams/automobiles/index.htm> (Federal Trade Commission, Automobile)

<http://www.usaa.com> (Bill Pay Services)

BANKING & DEBTS

<http://www.navyfcu.org/>

<http://www.marinefederal.org/>

<https://ww3.usaa.com>

ESTATE PLANNING

<http://www.estateplanninglinks.com/>

<http://www.netplanning.com/> (National Network of Estate Planning Attorneys)

<http://www.aaepa.com> (American Academy of Estate Planning Attorneys)
<http://www.nafep.com/> (National Association of Financial and Estate Planning)

IMMIGRATION

<http://www.ins.gov> (Immigration and Naturalization Service)
<http://192.156.19.115/jal/Practice%20Areas/Immigration/immigration.htm>
(HQMC, Legal Assistance Branch Immigration Information)

TAXES

<http://www.irs.gov/> (Internal Revenue Service)

CONSUMER PROTECTION

<http://www.ftc.gov/> (Federal Trade Commission)
<http://www.ftc.gov/ftc/consumer.htm> (Federal Trade Commission, Consumer Protection)
<http://www.ftc.gov/bcp/menu-credit.htm> (Federal Trade Commission, Credit Scams and Advice)
<http://www.bbb.org/> (Better Business Bureau)
<http://www.consumer.gov/idtheft/> (Identity Theft)
<http://www.consumerreports.org> (Consumer Reports on Many Products)

LANDLORD-TENANT

<http://www.tenant.net/> (Comprehensive Landlord-Tenant Website)
<http://www.nolo.com/lawcenter/ency/article.cfm/objectID/1682EC3F-6144-4D2B-9F5C6971C36F2928> (All States Landlord-Tenant Laws)
<http://www.rentlaw.com/statuerentlaw.htm> (All States Landlord-Tenant Laws)

DIVORCE/SEPARATION/CHILD CUSTODY

<http://www.divorcehelp.com/> (Divorce Help Online)
<http://www.divorcehelp.com/> (Divorce Help Online)
<http://www.divorcehelp.com/info/divorcelaws/states.shtml> (All States Divorce Laws)
<http://www.usmilitary.about.com/cs/divorce/> (Military Divorce Issues)

ADOPTION

<http://www.adopting.org/> (Adoption Information)

<http://www.adoption.com/index.php> (Adoption Information)

CREDIT BUREAUS

<http://www.experian.com/>

<http://www.transunion.com/>

<http://www.equifax.com/>

LEGAL RESEARCH AND ADVICE

<http://www.findlaw.com/> (Comprehensive Legal Information)

<http://www.freeadvice.com/> (Comprehensive Legal Information)

<http://www.nolo.com/> (Comprehensive Legal Information)

<http://law.freeadvice.com/resources/smallclaimscourts.htm> (All States Small Claims Court Information)

LEGAL ASSISTANCE OFFICES

[http://www.jagcnet.army.mil/JAGCNETInternet/Homepages/AC/TJAGSAWeb.nsf/8f7edfd448e0ec6c8525694b0064ba51/081679b25562921b852569ac006e5dfa/\\$FILE/JA%20267,%20Legal%20Assistance%20Worldwide%20Directory%20_Nov%2099_.pdf](http://www.jagcnet.army.mil/JAGCNETInternet/Homepages/AC/TJAGSAWeb.nsf/8f7edfd448e0ec6c8525694b0064ba51/081679b25562921b852569ac006e5dfa/$FILE/JA%20267,%20Legal%20Assistance%20Worldwide%20Directory%20_Nov%2099_.pdf) (Worldwide Directory for all services' legal assistance offices).

<http://192.156.19.115/jal/Locations/MCLB%20Albany.htm> (MCLB Albany)

<http://192.156.19.115/jal/Locations/MCLB%20Barstow.htm> (MCLB Barstow)

<http://192.156.19.115/jal/Locations/MCAS%20Beaufort.htm> (MCAS Beaufort)

<http://192.156.19.115/jal/Locations/MCB%20Camp%20Lejeune.htm> (MCB Camp Lejeune)

<http://192.156.19.115/jal/Locations/MCB%20Camp%20Pendleton.htm> (MCB Camp Pendleton)

<http://192.156.19.115/jal/Locations/MCB%20Camp%20SD%20Butler.htm> (MCB Camp Butler)

<http://192.156.19.115/jal/Locations/MCAS%20Cherry%20Point.htm>

(MCAS Cherry Point)

<http://192.156.19.115/jal/Locations/mcb%20hawaii.htm> (MCB Hawaii)

<http://192.156.19.115/jal/Locations/HQMC%20Henderson%20Hall.htm>

(HQMC Henderson Hall)

<http://192.156.19.115/jal/Locations/MCAS%20IWAKUNI.htm> (MCAS Iwakuni)

<http://192.156.19.115/jal/Locations/MCAS%20MIRAMAR.htm> (MCAS Miramar)

<http://192.156.19.115/jal/Locations/MCRD%20Parris%20Island.htm>

(MCRD Parris Island)

<http://192.156.19.115/jal/Locations/MCB%20QUANTICO.htm> (MCB Quantico)

<http://192.156.19.115/jal/Locations/MCAS%20NEW%20RIVER.htm>

(MCAS New River)

<http://192.156.19.115/jal/Locations/MCRD%20%20San%20Diego.htm>

(MCRD San Diego)

<http://192.156.19.115/jal/Locations/MCAGCC%20Twentynine%20Palms.htm> (MCAGCC Twentynine Palms)

<http://192.156.19.115/jal/Locations/MCAS%20Yuma.htm> (MCAS Yuma)

**APPENDIX 9-2: SAMPLE LEGAL ASSISTANCE WAIVER OF
CONFIDENTIALITY**

5800
SJA
22Feb 02

From: Staff Judge Advocate
To: [NAME OF MARINE/SAILOR SEEKING LEGAL ASSISTANCE SERVICES]
Subj: WAIVER OF CONFIDENTIALITY
Ref: (a) Manual of the Judge Advocate General (JAGMAN),
paragraph 0707
(b) MCO P5800.16A Marine Corps Manual for Legal
Administration (LEGADMINMAN), paragraphs 14003, 14007
(c) Judge Advocate General Instruction (JAGINST) 5803.1B
Professional Conduct of Attorneys Practicing Under
the Cognizance of the Judge Advocate General
(d) Military Rules of Evidence 502

1. You have requested legal assistance from the Staff Judge Advocate (SJA) for the 26th MEU. Before the SJA can begin discussing your individual legal concerns with you, you must read, understand, and sign this waiver of confidentiality. Your signature on this form is voluntary; however, if you choose not to sign this waiver the SJA will not be able to discuss your legal issue with you.

2. When a Marine or Sailor meets with a Legal Assistance Attorney or Defense Counsel at your base or station, communications made between the client and the attorney are typically confidential. This legal requirement of confidentiality is commonly referred to as the attorney-client privilege. Generally, the term "confidential" means that the attorney cannot reveal the content of the communications made by the client unless the client agrees. The SJA's client is the government. As such, your communications with the SJA are NOT confidential. In many cases, the fact that your communications to the SJA are not confidential may not be significant. In certain cases, however, you may not wish to discuss your case with the SJA because you may need to reveal misconduct on your part. As an example, if you informed the SJA that you had committed a minor offense under the UCMJ, your statement would not be confidential and the SJA may be required to report your offense.

3. If you do not understand the content of this letter, or you have further questions concerning the implications of waiving your confidentiality, you should discuss your questions with an attorney. You must understand that by signing this waiver, you are voluntarily giving up any claim to confidentiality in your discussions with the SJA.

(MARINE/SAILOR SIGNATURE)

(SJA SIGNATURE)

APPENDIX 9-3: SAMPLE DEMAND LETTER (MAGAZINE SALES CONTRACT)

5800
SJA
31 OCT 01

NAME AND ADDRESS OF BUSINESS

Subj: CREDIT SALE CONTRACT (ACCOUNT #123456) IN THE CASE OF LANCE
CORPORAL JOHN B. DOE

ATTN: OWNER/MANAGER & LEGAL DEPARTMENT

Lance Corporal John B. Doe has contacted me concerning the credit sale contract referenced above. I am the Staff Judge Advocate for the 26th Marine Expeditionary Unit currently deployed to the Mediterranean until April 2002. LCpl Doe and our command recently received notice of a delinquent payment by your company. As the attorney representing LCpl Doe in this matter, it is my legal opinion that your contract has violated several state and federal laws, as well as base regulations.

Base Order 5370.4G provides that all companies conducting business aboard Marine Corps Base Camp Le Jeune must have prior written permission from the base Personnel Officer. Further, the order prohibits personal solicitation, which occurred when you sent a representative to the enlisted Marine barracks where LCpl Doe resided. If you have written permission to conduct business aboard Camp Le Jeune, please forward it to me immediately. Additionally, if your violation of this base order is substantiated, I will recommend to the Armed Forces Disciplinary Control Board (AFDCB) that your business and all affiliates be barred from the base and prosecuted for criminal trespass by the local Special Assistant to the United State Attorney (SAUSA).

The Federal Trade Commission (FTC) Trade Regulation Rule [16 CFR 429] provides specific requirements for door-to-door sales. This rule requires the seller to give the buyer verbal and conspicuous written notice of a three-day right to cancel the transaction. This rule not only applies to door-to-door sales, but also to any sale of goods of \$25 or more wherein the seller made a personal solicitation and the "buyer's agreement or offer to purchase is made at a place other than the place of business of the seller." Your contract with LCpl Doe fails to make the required disclosures under the door-to-door sales rule of the FTC. The Truth in Lending Act (TILA) also requires particular disclosures in sales contract that appear to be missing from your contract with LCpl Doe. Finally, the Fair Debt Collection Practices Act (FDCPA) also prohibits contact with third parties under certain circumstances when attempting to collect a debt. Based upon your contact with the Commanding Officer of the 26th MEU, it is my legal opinion that you violated this federal law as well.

North Carolina law, at NCGS 75-1, declares unfair and deceptive acts and practices to be unlawful. This law may be enforced through action by the North Carolina Attorney General (NCGS 75-15), who may seek \$5,000 in civil penalties for knowing violation, restitution to the injured party, and contract rescission. Further, this law may also be enforced through private action wherein the prevailing plaintiff may recover treble (triple the amount awarded) damages and, in the discretion of the trial judge, attorney fees (NCGS 75-16 & 16.1). If an FTC violation is substantiated as discussed above, I will recommend to LCpl White that he pursue private suit.

Please rescind this contract immediately. LCpl Doe will immediately return all magazines that he may receive in the future. If you intend on enforcing the terms of this contract, please notify me immediately and provide the following documents and information: 1) Copy of your written permission to conduct business aboard Marine Corps Base Camp Le Jeune; 2) North Carolina State licensing documentation; 3) The name, address and phone number of your agent for service of process.

Thank you for your prompt attention to this matter. Please remember that the 26th MEU is deployed to the Mediterranean until April 2002 and mail may be significantly delayed. My mailing address is as follows: Major Ian D. Brasure, Command Element, SJA, 26th MEU Det A, Unit 74070, FPO AE 09502-4070. I recommend that you attempt to reach me by email in addition to mailing formal correspondence. My email address is brasureid@bataan.usmc.mil.

Sincerely,

I. D. BRASURE
Major, U.S. Marine Corps
Attorney at Law

Copy to:
Armed Forces Disciplinary Control Board
Federal Trade Commission
Attorney General, North Carolina
Base Inspector Office, Camp Le Jeune
Office of the Staff Judge Advocate,
Civil Law Section
Legal Assistance Office
Commanding Officer, 26th MEU
Lance Corporal Doe

This letter is written by a legal assistance attorney on behalf of an individual client, and does not represent an official position of the Marine Corps or the United States Government.

APPENDIX 9-4: SAMPLE SEPARATION AGREEMENT WORKSHEET

SEPARATION AGREEMENT WORKSHEET

FOR OFFICE USE ONLY	
Date:	Attorney:
Date Needed:	Reviewing Attorney:

PRIVACY ACT STATEMENT

AUTHORITY: 5 U.S.C. § 301; 44 U.S.C. § 3101 (E.O. 9397)

PRINCIPAL PURPOSE: Obtain personal information to prepare legal document(s).

ROUTINE USE(S): Information provided will be used by legal assistance personnel (attorneys, legalmen, paralegals and clerical staff) to prepare a Separation Agreement/Property Settlement Agreement or Dissolution pleadings requested by individual providing the information.

DISCLOSURE: Voluntary; however, failure to provide the requested information may prevent furnishing of requested legal assistance services.

**THIS FORM MUST BE COMPLETED IN ORDER FOR AN ATTORNEY TO PREPARE
A SEPARATION AGREEMENT OR DISSOLUTION DOCUMENTS**

The Legal Assistance Office will prepare separation agreements for (E- ___ and below or their spouse). This office will represent only one party. The other party is strongly encouraged to get the advice of another attorney before signing the agreement. **FREE LEGAL ADVICE IS AVAILABLE TO EACH PARTY AT DIFFERENT MILITARY LEGAL ASSISTANCE OFFICES.** The agreement will be binding and lasting. No party should agree to terms he or she does not understand. Please feel free to discuss any concerns with an attorney. If you have any questions arising from the worksheet, please call the Legal Assistance Office at () .

Please prepare the requested legal documents for me using the information provided below.

_____ Date: Day _____ Month _____ 2000
Client's Signature

PLEASE CHECK YOUR STATUS:

___ ACTIVE DUTY ___ RESERVE ___ DEPENDENT ___ RETIREE
___ USMC ___ USN ___ USA ___ USAF ___ USCG
OTHER (specify) _____

SPONSOR'S UNIT: _____

Pay Grade: _____

YOUR PHONE #: _____

THE LEGAL ASSISTANCE OFFICE CANNOT ASSIST YOU UNLESS BOTH PARTIES AGREE.

SEPARATION AGREEMENT WORKSHEET

This information will be used by a legal assistance attorney to draft a Separation Agreement and/or Property Settlement and other Dissolution documents. If you have questions arising from the worksheet call the Legal Assistance Office at _____. If a question does not apply, please indicate N/A for "not applicable." It is vital that this worksheet be completed accurately and that both spouses be in complete agreement as to all terms. Please type or print NEATLY. Use black ink and answer all sections. Any discrepancies will cause delays.

I. TYPE OF SERVICES SOUGHT:

___ DISSOLUTION
 ___ SEPARATION

A. Who will file? ___ Husband ___ Wife

B. County where Petition will be filed? _____

II. PERSONAL INFORMATION:

A. HUSBAND

1. Full name: _____
 (First) (Middle) (Last)

2. SSN: _____ Date of Birth: _____

3. Domicile is the place you consider your PERMANENT HOME. State of legal domicile:

4. Residence is where you are physically living now.

Residence: _____
 (Number, Street, Apt.)

 (City, State) (Zip Code)

5. Active duty military? Yes No

a. Unit name: _____

b. EAS: _____

c. Total service time: Years _____ Months _____

6. Occupation: _____

7. Gross monthly income: _____

8. Telephone: Home () _____ Work () _____

(Husband's initials) _____ (Wife's initials) _____

CENTER FOR LAW AND MILITARY OPERATIONS

B. WIFE

1. Full name: _____
(First) (Middle) (Last)

a. Maiden name: _____

2. SSN: _____ Date of Birth: _____

3. Domicile is the place you consider your PERMANENT HOME.
State of legal domicile: _____

4. Residence is where you are physically living now.

Residence: _____
(Number, Street, Apt.)

_____ (City, State) (Zip Code)

5. Active duty military? Yes No

a. Unit name: _____

b. EAS: _____

c. Total service time: Years _____ Months _____

6. Occupation: _____

7. Gross monthly income: _____

8. Telephone: Home () _____ Work () _____

9. Does Wife desire to have her former name restored? Yes No

If yes, enter full name: _____

10. Is wife pregnant now? Yes No

If yes, expected due date: _____

(Husband's initials) _____ (Wife's initials) _____

III. MARRIAGE:

A. Date of marriage: _____

B. Place of marriage: _____
(City) (County) (State)

C. Total time married: Years _____ Months _____

(Husband's initials) _____ (Wife's initials) _____

IV. SEPARATION:

A. This is the date the parties separated with the intent never to resume the marital relationship. This date has important implications regarding the accumulation of marital property and marital debt.

B. Date of separation: (MM/DD/YYYY) _____

The date of separation is the date you physically began living apart with the intent to separate.

(Husband's initials) _____ (Wife's initials) _____

V. CHILDREN:

A. Are there children born of this marriage? Yes No

IF YES, CONTINUE. IF NO, SKIP TO PARAGRAPH IX BELOW.

B. Complete this section for each natural child born of the marriage and/or adopted during the marriage.

Child's full name	DOB	AGE	City/State of Birth	Sex

C. Are any of the adopted children a natural child of either husband or wife? Yes No

If yes, _____ is the Husband's biological child.
 _____ is the Wife's biological child.

D. Provide the names of all step-children:

Step-children are the biological children of: ___Husband ___Wife

VI. CHILD CUSTODY:

A. Sole Custody. The "custodial parent" has full-time custody of the children. The "non-custodial parent" normally receives visitation rights.

SOLE CUSTODY	Husband and Wife must initial the agreed upon choice	
	Husband's Initials	Wife's Initials
To Husband		
To Wife		

B. Joint Legal Custody: One parent has primary physical custody, but both parents have an equal voice in major life decisions. Please indicate below the type of custody arrangement both parties desire:

1. Joint Legal Custody:

- provided children reside primarily with Wife
- provided children reside primarily with Husband
- with children not residing primarily with either Wife or Husband

JOINT LEGAL CUSTODY	Husband and Wife must initial the agreed upon choice	
	Husband's Initials	Wife's Initials
To Husband & Wife with children residing primarily with Wife		
To Husband & Wife with children residing primarily with Husband		
To Husband and Wife without either parent being a primary residential parent of the children		

C. Joint Physical (Shared) Custody: The child or children live with one parent for a specified period of time and then live with the other parent a specified period, e.g., weekly or monthly alternating custody periods.

1. Joint Physical Custody:

Wife and Husband both have custody with alternating schedules.

(Husband's initials) _____ (Wife's initials) _____

2. For joint physical custody, please fill in the following information.

Joint Physical Custody	Dates/Periods of Custody	Address (Street, City, State)	Distance between homes
Wife			
Husband			

D. Should the separation agreement recite that upon the death of the custodial parent, the non-custodial parent shall have custody:

Yes No

(Husband's initials) _____ (Wife's initials) _____

VII. CHILD SUPPORT:

Support payments, in most states, are controlled by State Child Support Standards or Guidelines. Support agreements below the minimum level may be invalidated by a court. A court may increase the obligation to the minimum level based on the income/salaries of the parties. Child support is normally paid by the non-custodial spouse. Every military member is required to support his or her lawful family members. A support obligation established in a divorce or legal separation is legal, binding, and enforceable. Any amount agreed upon by the parties in a signed separation agreement will be binding during the period of separation. Each party should talk to an attorney about how much support should be paid during the separation period.

A. Party to pay child support:

Husband
 Wife
 Neither

(Husband's initials) _____ (Wife's initials) _____

B. Party to receive child support:

Husband
 Wife
 Neither

(Husband's initials) _____ (Wife's initials) _____

CENTER FOR LAW AND MILITARY OPERATIONS

C. Monthly support per child:

The monthly child support to be paid by the non-custodial parent to the custodial parent each month for each child:

\$ _____ per month for each child.

(Husband's initials) _____ (Wife's initials) _____

D. Total monthly support for all children:

The total monthly child support payment for all children: \$ _____ per month for all children.

(Husband's initials) _____ (Wife's initials) _____

E. Schedule of child support payments:

Will begin on: (MM/DD/YYYY) _____

Payments will be: ___ Bi-weekly ___ Monthly

Payments are due: _____

(Husband's initials) _____ (Wife's initials) _____

F. Child support payments will be paid by:

- ___ wage assignment
- ___ check
- ___ military allotment
- ___ money order

(Husband's initials) _____ (Wife's initials) _____

G. Payments are to be paid:

- ___ Directly to the custodial parent
- ___ To the custodial parent through a state Child Support Enforcement Office

(Husband's initials) _____ (Wife's initials) _____

H. Termination of child support payments:

Normally child support obligations end when one of the following occurs: The child dies; the child reaches age 18 (or age 22 as long as the child enters and continues to attend college); the child marries; or the child is otherwise emancipated. Wife and Husband can agree to extend payments, for example, to cover college expenses.

___ Support will terminate upon a child's death, marriage, emancipation, or upon the attainment of the age of 18 years by the child.

___ Support will terminate upon a child's death, marriage, emancipation, or upon the attainment of the age of 18 years by the child or 22 years, if the child enters and continues to attend college.

___ Support will terminate upon a child's death, marriage, emancipation, or upon the attainment of the age of _____ years by the child.

(Husband's initials) _____ (Wife's initials) _____

I. Child support payment increases:

Are child support payments to increase with an escalator clause? ___Yes ___No

If yes, support payments are to increase with:

Consumer Price Index (CPI) escalator
 ___ Net or ___ Gross pay escalator
 Flat-rate escalator

(Husband's initials) _____ (Wife's initials) _____

J. Payments for college:

___ Neither party will be responsible for payments for college
 ___ Both Husband and Wife will share college expenses equally
 ___ Child support obligor to pay all or one-half of the college expenses

College expenses to include the following:

___ Books ___ Room and Board ___ Tuition ___ Fees

Length of obligation to pay college expenses:

Eight college semesters
 ___ Age: 22 (or) ___ Age:
 ___ Four years

(Husband's initials) _____ (Wife's initials) _____

K. Dependency exemptions:

In the absence of an agreement between the parties, the general rule is that the custodial parent gets the dependency exemptions. A noncustodial parent providing child support may be entitled to dependency exemptions if a decree of divorce or written separation agreement so provide.

___ Wife is to get the dependency exemptions
 ___ Husband is to get the dependency exemptions
 ___ Wife and Husband split the dependency exemptions

If the dependency exemptions are to be split:

___ Husband will get the dependency exemptions for each ___ even ___ odd year and the Wife will get the exemptions each ___ odd ___ even year

___ Husband will claim the following children as exemptions on his income tax return each year and the Wife will claim the following children as exemptions on her income tax return:

Husband: _____

Wife: _____

(Husband's initials) _____ (Wife's initials) _____

VIII. CHILD VISITATION:

A. Visitation rights to be given to:

Husband

Wife

Neither. Waived by _____

(Husband's initials) _____ (Wife's initials) _____

B. Schedule of Visitation:

According to a specific schedule

No specific schedule of visitation rights (reasonable visitation)

According to a specified schedule and as agreed to between Husband and Wife

(Husband's initials) _____ (Wife's initials) _____

C. Specific visitation schedule:

1. Daily visitation:

No

Yes. Until (time) ____:_____

Conditions: (Advance notice, site, etc.) _____

(Husband's initials) _____ (Wife's initials) _____

2. Weekend visitation:

Yes No

If weekend visitation, then:

Every weekend

Every other weekend (both Sat and Sun)

One (1) weekend per month

One day (Sat or Sun) per weekend

Weekend is from (time) ____:_____ on (day) _____ until
(time) ____:_____ on (day) _____

Conditions: (Advance notice, site, etc.) _____

(Husband's initials) _____ (Wife's initials) _____

3. Holiday Visitation:

No
 Yes. The noncustodial parent will have the following holiday visitation rights:

- Christmas even or odd years
- Thanksgiving even or odd years
- Spring vacation even or odd years
- Other Holidays (identify Holiday and indicate period of time with each parent): _____

(Husband's initials) _____ (Wife's initials) _____

4. Summer Visitation:

No Yes

If yes, number of days _____ weeks _____ months _____.

Describe any other conditions (advance notice required, etc.) of summer visitation: _____

(Husband's initials) _____ (Wife's initials) _____

D. Transportation costs for visitation:

- Wife will pay all transportation costs
- Husband will pay all transportation costs
- Shared between Husband and Wife equally
- Other Agreement.
Specify _____

(Husband's initials) _____ (Wife's initials) _____

E. Grandparent Visitation: This may be included in the agreement, if necessary, to set visitation for the grandparents of the visiting parent's side of the family.

- Agreement to include a provision on grandparent visitation rights
- Agreement to be silent on visitation rights for grandparents
- Other terms (describe) _____

(Husband's initials) _____ (Wife's initials) _____

F. Moving the children's residence:

- No restrictions on children leaving State of _____
- Visitation rights shall be modified if residence is changed
- Moving from the State of _____ is prohibited.

(Husband's initials) _____ (Wife's initials) _____

IX. SPOUSAL SUPPORT: Spousal support is an amount of money paid to one party for temporary support in his or her own right. It is not considered part of child support.

A. Maintenance Payments:

- Waived by both parties.
- To be paid by Husband to Wife.
- Husband to pay specific amounts to wife:

\$ _____ biweekly monthly other: _____

Date payment begins: _____

Monthly payment due on the _____ day(s).

To be paid by Wife to Husband

Wife to pay specific amounts to husband:

\$ _____ biweekly monthly other: _____

Date payment begins: (MM/DD/YYYY) _____

Monthly payment due on the _____ day(s).

(Husband's initials) _____ (Wife's initials) _____

B. Termination of maintenance payments:

- Support payments to terminate on remarriage of party receiving support or death of either party
- Support to terminate upon remarriage of party receiving support or death of either party or on (date MM/DD/YYYY) _____ whichever occurs first.
- Support payments to terminate: _____

(Husband's initials) _____ (Wife's initials) _____

X. REAL PROPERTY:

- A. Do you have a marital residence, land, buildings or other property affixed to land (time share)? Yes No

If no, move to next section. If yes, complete below and attach a copy of the most recently recorded deed.

1. Is the property rented owned?

2. Location: _____
(No) (street)

(City) (County) (State)

3. Provide a full legal description of the property taken from your recorded deed

4. Title held now:

Sole to Husband

Sole to Wife

Joint Tenants, Husband and Wife, with right of survivorship

Other (describe)

5. Date property acquired: (MM/DD/YYYY) _____

(Husband's initials) _____ (Wife's initials) _____

B. Financial obligations:

Paid in full Installment payments

1. Lender Name: _____

2. Account No.: _____

(Husband's initials) _____ (Wife's initials) _____

C. Possession:

Husband Wife Will have possession of the property located at

Husband Wife Agrees to Deed the property to the spouse.

Husband Wife Will have possession only until (MM/DD/YYYY) _____

or until the property is sold incident to this separation, whichever first occurs

Husband Wife Will be solely responsible for the mortgage payments:

for duration of the mortgage

until the parties sell the property incident to this separation

Note: If this is a joint mortgage obligation, the only way to be relieved from liability to the lender if the other party fails to pay is to have the mortgage company release you from the note.

(Husband's initials) _____ (Wife's initials) _____

D. Transfer of Legal Title:

To Husband and Wife as tenants in common

To Wife

To Husband

No transfer

If there is to be a transfer of title--

1. When will transfer of title be executed: (MM/DD/YYYY) _____

2. Will the transferee purchase the transferor's interest in property?

Yes No

CENTER FOR LAW AND MILITARY OPERATIONS

If yes, specify amount \$ _____

3. If title is transferred, will the transferor to continue to pay expenses of such property?

___ Yes ___ No

If yes, describe such expenses: _____

(Husband's initials) _____ (Wife's initials) _____

E. Sale of marital residence:

1. Present sale arrangement:

___ Listed with broker ___ Not placed for sale

2. Date when sale must be final: (MM/YYYY) _____

3. Residing on the premises prior to sale:

___ Husband ___ Wife

To terminate on: (MM/DD/YYYY) _____

4. Financial compensation for occupancy:

___ None

___ Rent to other party \$ _____

___ Monthly payment to lender \$ _____

5. Division of proceeds of sale (describe) _____

(Husband's initials) _____ (Wife's initials) _____

XI. DIVISION OF PROPERTY:

___ It is agreed between the parties that there is no property subject to disposition by this agreement [we have already divided all our personal property]

___ We have already divided all our personal property except the following and it will be divided as indicated below:

Note: Do not list all items; list only big ticket (\$100.00 and over) items.

A. Husband will receive:

1. Vehicles (include vehicle identification number)

a. Vehicle: _____

___ Husband ___ Wife will pay the remaining loan balance on this vehicle

The balance owed is: \$ _____

b. Vehicle: _____

___ Husband ___ Wife will pay the remaining loan balance on this vehicle

The balance owed is: \$ _____

2. Stocks, Bonds, Mutual funds

a. _____
(Name) (Series/Account number)

b. _____
(Name) (Series/Account number)

3. Bank Accounts, Credit Union Accounts, Certificates of Deposit

a. _____
(Institution Name) (Type of Account and No.)

b. _____
(Institution Name) (Type of Account and No.)

4. Personal property, other than personal clothing:

<u>BRANDNAME</u>	<u>ITEM</u>	<u>SERIAL #</u>
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
d. _____	_____	_____
e. _____	_____	_____

B. Wife will receive:

1. Vehicles (include vehicle identification number)

a. Vehicle: _____

___ Husband ___ Wife will pay the remaining loan balance on this vehicle

The balance owed is: \$ _____

b. Vehicle: _____

___ Husband ___ Wife will pay the remaining loan balance on this vehicle

The balance owed is: \$ _____

2. Stocks, Bonds, Mutual funds

a. _____
(Name) (Series/Account number)

b. _____
(Name) (Series/Account number)

3. Bank Accounts, Credit Union Accounts, Certificates of Deposit

a. _____
(Institution Name) (Type of Account and No.)

b. _____
(Institution Name) (Type of Account and No.)

4. Personal property, other than personal clothing:

	<u>BRAND</u>	<u>NAME</u>	<u>ITEM</u>	<u>SERIAL #</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____
d.	_____	_____	_____	_____
e.	_____	_____	_____	_____

(Husband's initials) _____ (Wife's initials) _____

XII. DIVISION OF DEBTS:

___ It is AGREED between the parties that there are no debts subject to disposition by this agreement

___ Debts will be distributed as follows:

A. Husband shall have and pay:

Creditor Type of Account and Number

1. _____

Balance owed: \$ _____

2. _____

Balance owed: \$ _____

3. _____

Balance owed: \$ _____

4. _____

Balance owed: \$ _____

B. Wife shall have and pay:

Creditor Type of Account and Number

1. _____

Balance owed: \$ _____

2. _____

Balance owed: \$ _____

3. _____

Balance owed: \$ _____

4. _____

Balance owed: \$ _____

C. Husband and Wife shall share:

Creditor Type of Account and Number

1. _____

Balance owed: \$ _____

2. _____

Balance owed: \$ _____

3. _____

Balance owed: \$ _____

4. _____

Balance owed: \$ _____

(Husband's initials) _____ (Wife's initials) _____

XIII. FILING TAXES:

A. If the dissolution is final before midnight 31 December, the parties are single and must file as such for the _____ tax year. Otherwise the parties will file as:

- | | | |
|-----|-----|---------------------------|
| H | W | |
| ___ | ___ | Single |
| ___ | ___ | Married filing jointly |
| ___ | ___ | Married filing separately |
| ___ | ___ | Head of Household |

For joint filing, do the parties agree to share equally ____/proportionally ____ in either a payment of _____ deficit or refund?

___Yes ___No

(Husband's initials)_____ (Wife's initials) _____

XIV. RETIREMENT BENEFITS:

Pensions (including military retired pay) are divisible as marital property or community property under state law. The portion of a pension earned during the marriage is property that may be divided and distributed between the parties under a Separation Agreement or by court order. For example, a service member who is married for all 10 years of active duty service has served one-half (1/2) the time necessary to receive a pension. The spouse would have gained an interest in one-half (1/2) that time, or one-quarter (1/4) of the service member's retired pay. Please consult your attorney for further explanation.

A. Military and Civilian Pension Rights:

Name of Plan Husband's or Wife's Account #

___Husband agrees to waive and give up all claims he may have for a part of Wife's military and/or civilian retirement income (to include IRAs)

___Wife agrees to waive and give up all claims she may have for a part of Husband's military and/or civilian retirement income (to include IRAs)

OR

___Husband will pay to the Wife ____ % of his retirement income

___Wife will pay to the Husband ____ % of her retirement income

The calculate the spouse's share based on the appropriate state formula, as set forth below.

Formula: _____

OR

___ Settled by payment from Husband to Wife Amount: \$ _____

___ Sum to be paid on or before: _____

___ Settled by payment from Wife to Husband Amount: \$ _____

___ Sum to be paid on or before: _____

(Husband's initials)_____ (Wife's initials) _____

XV. INSURANCE PROVISIONS:

A. Life insurance:

___ Each party is free to change life insurance policies as desired.

____ Life insurance in the amount of \$_____ shall be maintained on the life of the spouse providing child support. The children will be the irrevocable beneficiaries of said life insurance policy (a trust for the benefit of the children may be set up). If a life insurance policy is not maintained, the spouse's estate will be liable to the children for said amount.

____ Husband can determine who is the beneficiary on all, except as specified above, life insurance policies on his life.

____ Wife can determine who is the beneficiary on all, except as specified above, life insurance policies on her life.

____(Husband) ____ (Wife) is active duty military and will designate the minor child(ren) as the beneficiary of his/her SGLI insurance proceeds until the child(ren) reaches the age of majority and will name the other party as the Trustee for these proceeds to be held in trust for the benefit of the minor child(ren).

Other agreements on life insurance: _____

Husband's Policy

<u>INSURER</u>	<u>POLICY #</u>	<u>FACE VALUE</u>
_____	_____	_____
_____	_____	_____

Proposed agreement: _____

Wife's Policy

<u>INSURER</u>	<u>POLICY #</u>	<u>FACE VALUE</u>
_____	_____	_____
_____	_____	_____

Proposed agreement: _____

(Husband's initials) _____ (Wife's initials) _____

XVI. Medical insurance:

A. Medical Coverage for Wife or Husband:

- ____ Husband will maintain coverage on Wife until the divorce is final
- ____ Wife will maintain coverage on Husband until the divorce is final
- ____ If Husband leaves the military service, he will purchase independent medical coverage for Wife
- ____ If Wife leaves the military service, she will purchase independent medical coverage for Husband

(Husband's initials) _____ (Wife's initials) _____

B. Extraordinary medical expenses:

___ Wife's extraordinary medical expenses not covered by military or independent medical coverage will be paid ___ % by Husband and ___ % by Wife

___ Husband's extraordinary medical expenses not covered by military or independent medical coverage will be paid ___ % by Husband and ___ % by Wife

(Husband's initials) _____ (Wife's initials) _____

C. Medical coverage for children:

___ Husband will maintain medical coverage on the child(ren) until the child(ren) are no longer entitled to child support

___ Wife will maintain medical coverage on the child(ren) until the child(ren) are no longer entitled to child support

___ If Husband leaves the military service, he will purchase independent medical coverage for the children

___ If Wife leaves the military service, she will purchase independent medical coverage for the children

(Husband's initials) _____ (Wife's initials) _____

D. Children's extraordinary/uncovered medical expenses:

Children's extraordinary medical expenses not covered by military or independent medical coverage will be paid

___ % by Husband

___ % by Wife

(Husband's initials) _____ (Wife's initials) _____

E. Tricare/DEERS:

___ (Husband) ___ (Wife) is active duty military and will ensure that the minor children are enrolled in DEERS and that Tricare benefits are available for the children.

___ Both Husband and Wife will share equally the cost of Tricare or other medical deductible amounts for the children's medical expenses.

(Husband's initials) _____ (Wife's initials) _____

XVII. CLAIMS AGAINST THE ESTATE OF THE OTHER SPOUSE:

___ Husband agrees that the estate of Wife will pass to the heirs of the Wife as if the Husband had died before the Wife. Husband further agrees not to contest the will of Wife.

___ Wife agrees that the estate of Husband will pass to the heirs of the Husband as if the Wife had died before the Wife. Wife further agrees not to contest the will of Husband.

(Husband's initials) _____ (Wife's initials) _____

XVIII. BANKRUPTCY:

A. Has either party previously filed for bankruptcy.

___Yes ___No

If yes, explain when and where filed and type of bankruptcy:

(Husband's initials) _____ (Wife's initials) _____

XIX. OTHER

A. Please specify any other mutually agreed upon terms that were not covered by the above sections:

(Husband's initials) _____ (Wife's initials) _____

IF YOU DESIRE LEGAL ASSISTANCE TO HANDLE YOUR DISSOLUTION OR SEPARATION, PLEASE SIGN BELOW:

I. PARTIES CERTIFICATION OF UNDERSTANDING AND AGREEMENT:

A. **We, Husband and Wife, acknowledge and understand the following:**

1. This divorce is uncontested.
2. The Legal Assistance Office client is _____
3. The parties have made full disclosure regarding real and personal property in this agreement.
4. This worksheet agreement will become the Separation Agreement when typed by the Legal Assistance Office.
5. The Legal Assistance Office will not mediate disputes regarding the Separation Agreement. Disputes create contested divorces and require civilian counsel.

Husband's Signature

Wife's Signature

B. We, Husband and Wife, understand:

1. That all legal documents necessary to accomplish the separation agreement will be prepared by the Legal Assistance Office on behalf of the client spouse using legal assistance services.
2. That the legal documents prepared will require signatures of both parties in order to be binding.
3. That each has a right to hire an attorney to protect his or her interests.
4. That each is eligible to consult with a military attorney free-of-charge before signing this worksheet or the agreement that is to be prepared from this worksheet.

Husband's Signature

Wife's Signature

**APPENDIX 9-5: SAMPLE SSCRA COMMANDER'S LETTER FOR
STAY OF PROCEEDINGS**

5800
SJA
6 NOV 01

Secretary of State
Division of Business Services
312 Eighth Avenue North
6th Floor Wm. R. Snodgrass Tower
Nashville, Tennessee 37243

Re: REQUEST FOR STAY OF COURT PROCEEDINGS FOR [NAME OF CLIENT (DOCKET
NO. C-123456/CERTIFIED NO. 1234 4345 4455)]

Dear Sir or Madam,

I am writing as the Commanding Officer of [client] who has been summoned to appear/answer a complaint in your court. Due to military commitments, [client] is not able to appear and defend in this action because he is currently deployed to the Mediterranean with the 26th Marine Expeditionary Unit. He will not be granted leave or liberty to attend any scheduled proceedings until May 1, 2002. He should be able to appear in court after May 1, 2002 when we return from our deployment.

Pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. app. ' 521), I respectfully request that you grant a postponement in the proceedings until [client] can appear in court.

Thank you for your prompt attention to this matter. Please let my Staff Judge Advocate, Major I. M. Attorney, know of your decision at the following address: Command Element/SJA, 26th MEU, Det A, Unit 74070, FPO AE 09502-4070. Major Brasure can also be reached via email at: attorneyim@26meu.usmc.mil.

Sincerely,

COMMANDING OFFICER
Colonel
U.S. Marine Corps
Commanding Officer

Enclosure:
Summons

Copy to:
[client]
[Attorney for opposing party]

APPENDIX 9-6: SAMPLE SSCRA SJA LETTER FOR STAY OF PROCEEDINGS

IN REPLY
REFER TO: 5800
SJA
14

NOV 01

NAME AND ADDRESS OF OPPOSING COUNSEL/PARTY

Re: REQUEST FOR STAY OF COURT PROCEEDINGS FOR SERGEANT JOHN DOE (CASE NO. SBFL 123456)

Dear Mr. Attorney,

I am writing as the Staff Judge Advocate to the 26th Marine Expeditionary Unit, which is currently deployed to the Mediterranean until May 2002. Sergeant John Doe is a member of this command and has contacted me regarding the case mentioned above that is scheduled for hearing. While I am unable to represent Sergeant John Doe in court in this matter, I do represent him in my capacity as the attorney for this command.

Pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. app. ' 521), the commanding officer of this command has requested that the Court grant a postponement in the proceedings until Sergeant John Doe can appear and defend against this action. Sergeant John Doe will not be granted leave or liberty to attend any scheduled proceedings until May 1, 2002.

Thank you for your prompt attention to this matter. Please remember that the 26th MEU is deployed to the Mediterranean until May 2002 and mail may be significantly delayed. My mailing address is as follows: Major Ian D. Brasure, Command Element/SJA, 26th MEU Det A, Unit 74070, FPO AE 09502-4070. I recommend that you attempt to reach me by email in addition to mailing formal correspondence. My email address is brasureid@bataan.usmc.mil.

Sincerely,

I. D. BRASURE
Major, U.S. Marine Corps
Attorney at Law

Enclosure:
Request for stay of proceedings to court

**APPENDIX 9-7: SAMPLE SSCRA INTEREST RATE REDUCTION
REQUEST LETTER**

5801
SJA
22 Dec 01

NAME AND ADDRESS OF FINANCIAL INSTITUTION

Re: John Doe Acct# 1234567

Dear Sir or Madam:

John Doe has requested my assistance as a Legal Assistance Attorney concerning the above referenced debt.

Pursuant to 50 U.S.C. app. § 526 of the Soldiers' and Sailors' Civil Relief Act, hereinafter referred to as the SSCRA, John Doe requests that interest on the above referenced debt be reduced to 6%. John Doe entered active duty on January 20, 1998 and is presently on active duty assigned to 26th Marine Expeditionary Unit (SOC) which is presently deployed to Afghanistan in support of Operation Enduring Freedom.

I understand that John Doe incurred this debt prior to his entry into the Armed Forces, at a time when he was earning substantially more than he is now. John Doe's entry into military service has substantially affected his ability to meet this obligation at the original interest rate.

The SSCRA sets a 6% per annum ceiling on interest charges (including service charges, renewal charges and fees) during the period of a service member's military service for obligations made prior to the date of entry onto active duty when the active duty materially affects the ability to pay. Since entering active duty, John Doe has experienced a decrease in salary, adversely affecting his ability to pay. Thus, the balance of Ronald E. Carlson obligation may not have interest charged at a rate greater than 6% per annum. Interest above 6% must be forgiven and not accrued. Please ensure that your records reflect this statutory ceiling and that any excess charge is withdrawn.

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

Please be further advised that you may not repossess for nonpayment of an installment obligation without first complying with the provisions of 50 U.S.C app. § 531 of the SSCRA.

Thank you, in advance, for your cooperation in this matter.

Sincerely,

I. M. ATTORNEY
Major, U.S. Marine Corps
Attorney at Law

Copy to:
John Doe
File

This letter is written by a legal assistance attorney on behalf of an individual client, and does not represent an official position of the Navy or the United States Government

APPENDIX 9-8: SAMPLE WILL WORKSHEET

WILL WORKSHEET

DATE: _____
DATE DUE TO ROTATE/DEPLOY: _____ WORK PHONE: _____ HOME PHONE: _____

UNIT: _____
- - - - -
- - - - -

1. TESTATOR/TESTATRIX (YOUR FULL NAME - NO MIDDLE INITIALS)

NAME: _____ Male ____ Female ____
FIRST MIDDLE LAST (SR., JR., III, etc.)

LEGAL RESIDENCE: _____
CITY STATE

- a. Active Duty Dependent Retired Reservist
- b. Grade/Rate (or Sponsor's Grade/Rate) _____
- c. Are you now Single (Never Married) Married
Divorced Widow(er) Prior marriage? Yes No
- d. Do you own any real estate property? Yes No
Do you want real estate to go to primary beneficiary? Yes No

If no, please specify to who you want real estate to go
to: _____

Relationship, city, state:

2. NAME OF SPOUSE: _____
FIRST MIDDLE LAST

LEGAL RESIDENCE: _____
CITY STATE

- 3. DO YOU HAVE ANY CHILDREN?** Yes No
- a. Number of children.
 - b. Do you have any children from your present marriage? Yes No Number
 - c. Do you have any children from a former marriage? Yes No Number
 - d. Do you have any adopted children? Yes No Number
 - e. Do you have any step-children? Yes No Number
 - f. List **Full Name** **Age** **Relationship** of your children

(son, daughter, step/adopted-son)

Do you want step children or adopted children treated equally with your natural children? Yes
No

4. SPECIAL BEQUESTS : This is a specific piece of property that will go to someone other than your primary beneficiary. List the Specific Property & the Specific Person, relationship, city and state who is to receive the property, i.e., a gun collection, stamps, special piece of jewelry, etc, to my Aunt Minnie James of Wells, Maine.

5. PRIMARY EXECUTOR/EXECUTRIX (Individual that will administer your will and estate and take your will through the probate court system) (Normally your spouse if you are married).

a. Do you want your **SPOUSE** to be your Primary Executor? Yes No

b. If you are not married or do not want your spouse to be your Primary Executor who do you want to be your Primary Executor?

RELATIONSHIP TO YOU: _____ **CO-EXECUTOR** 5a or 5b **AND** 6

NAME: _____ **FIRST** 5a or 5b **THEN** 6
FIRST MIDDLE LAST

LEGAL RESIDENCE: _____
CITY STATE

6. ALTERNATE EXECUTOR/EXECUTRIX (If your Primary is unable or unwilling to perform designated duties).

RELATIONSHIP TO YOU: _____

NAME: _____
FIRST MIDDLE LAST

LEGAL RESIDENCE: _____
CITY STATE

7. ALTERNATE GUARDIAN OR GUARDIAN(S) (Note: First Guardian is nearly always the surviving natural parent - **DON'T NAME YOUR CHILD'S OTHER PARENT AS ALTERNATE GUARDIAN**).

a. RELATIONSHIP TO YOU: _____

NAME: _____ 2ND ALTERNATE: FIRST A THEN B
FIRST MIDDLE LAST

LEGAL RESIDENCE: _____
CITY STATE

b. RELATIONSHIP TO YOU: _____

NAME: _____
FIRST MIDDLE LAST

LEGAL RESIDENCE: _____
CITY STATE

8. PRIMARY BENEFICIARY (person you want to receive **all** of your estate, normally your spouse if married or your children if you are not married).

a. Do you want your **SPOUSE** to be you primary beneficiary? Yes No

b. Do you want your property to go to your **children** if your spouse predeceases you? Yes
No

c. For your **grandchildren**, (if your child(ren) predecease you) should your estate pass
Per STIRPES _____ (inherit parents estate) OR Per CAPITA _____ (your children &
grandchildren share equally).

GO TO #9 if you answered 8a, b, and c above.

d. If you are **not** married and have **no** children, **who do you want** to be your primary beneficiary?

RELATIONSHIP TO YOU: _____

NAME: _____
FIRST MIDDLE LAST

LEGAL RESIDENCE: _____
CITY STATE

9. ALTERNATE BENEFICIARY - If your primary beneficiary predecease you, then **indicate below who or what person or legal entity is to receive your estate**). Remember you can give to more than one person or legal entity (in shares). Use additional paper if you have more persons or legal entities to list. **DO NOT LIST SPOUSE OR CHILDREN HERE**

a. RELATIONSHIP TO YOU: _____ SHARE EQUALLY
SHARE UNEQUALLY
NAME: _____ LIST PERCENTAGE BY NAME
FIRST MIDDLE LAST FIRST A THEN B

LEGAL RESIDENCE: _____
CITY STATE

b. RELATIONSHIP TO YOU: _____

USE

SEPARATE SHEET IF

NAME: _____ MORE SPACE IS NEEDED.
FIRST MIDDLE LAST ADDITIONAL PAGE
_____ ATTACHED? YES NO

LEGAL RESIDENCE: _____
CITY STATE

10. DEPENDENTS ONLY, HAVE YOU EVER SERVED IN THE UNITED STATES ARMED FORCES?
Yes No

PLEASE CHECK YOUR CHOICE IN THE FOLLOWING QUESTIONS

11. DECLARATION OF NATURAL DEATH/LIVING WILL (THIS IS A DOCUMENT THAT IS NOT INCLUDED IN YOUR WILL) If you do **not** want to be kept alive on some type of life support, if you are considered terminally ill, then **you need** the Declaration of Natural Death/Living Will?

CHECK YES IF YOU WANT THE DOCUMENT. YES NO

12. BURIAL INSTRUCTIONS:

a. DO YOU WANT YOUR REMAINS DONATED TO SCIENCE? YES NO

b. ARE YOU AN ORGAN DONOR? YES NO

c. DO YOU WANT YOUR BODY TO BE CREMATED? YES NO

d. DO YOU WANT TO BE BURIED WITH YOUR SPOUSE? YES NO

e. DO YOU WANT A MILITARY BURIAL (CEREMONY)? YES NO

13. DO WANT TO DISINHERIT ANY ONE? YES NO

RELATIONSHIP TO YOU: _____

NAME: _____

FIRST

MIDDLE

LAST

LEGAL RESIDENCE: _____

CITY

STATE

APPENDIX 9-9: SAMPLE POWER OF ATTORNEY WORKSHEET

POWER OF ATTORNEY WORKSHEET

Please complete both sides of this form in order for us to prepare a power of attorney.

A power of attorney is a legal document that authorizes someone else to act in your name and as your agent. The actions of your agent using your power of attorney will be binding on you, so you should grant a power only to someone you trust and only to the extent that is absolutely necessary. If you have questions about the use or effect of a power of attorney, the legal assistance staff will be happy to assist you.

PRIVACY ACT STATEMENT

AUTHORITY: 5 U.S.C. §301; 44 U.S.C. §3101 (E.O. 9397)

PRINCIPAL PURPOSE: Obtain personal information to prepare legal document(s).

ROUTINE USE(S): Information provided will be used by legal assistance personnel (attorneys, legalmen, paralegals and clerical staff to prepare power(s) of attorney requested by the individual providing the information.

DISCLOSURE: Voluntary; however, failure to provide the requested information may prevent furnishing of requested legal assistance services.

Please prepare the requested legal document for me using the information provided below.

CHECK WHICH DOCUMENT YOU WANT:

GENERAL Power of Attorney authorizes your agent to act for you and in your name, in all matters, including such things as borrowing money, signing contracts, and accessing your bank accounts.

SPECIAL Power of Attorney authorizes your agent to act for you and in your name only for those matters you specify in the document. A menu of available Special Powers of Attorney is on the reverse.

REVOCATION cancels a power of attorney previously given to your agent. Check the type of power of attorney being cancelled and the date you signed it:

General Special Dated _____

Please PRINT CLEARLY the information requested below:

YOUR FULL NAME

(GRANTOR): _____

Current Address: _____ City: _____ State: _____ Zip Code: _____

PLEASE CHECK YOUR STATUS: DEPENDENT RETIREE ACTIVE DUTY

USMC USN USA USAF USCG

OTHER (specify) _____ PAYGRADE: _____ (Dependent enter sponsors paygrade)

Unit Address: _____

FULL NAME AND ADDRESS OF THE PERSON YOU ARE APPOINTING AS YOUR ATTORNEY AND RELATIONSHIP:

CENTER FOR LAW AND MILITARY OPERATIONS

(GRANTEE): _____ RELATIONSHIP: _____

FULL ADDRESS (STREET, CITY & STATE):

_____ City: _____ St: _____ Zip Code: _____

EXPIRATION DATE OF THIS POWER OF ATTORNEY(to enhance acceptance, we recommend no longer than 1 year): _____

_____/_____/_____ **Client's signature** **Today's Date:**

COMPLETE THE SECTION "ADDITIONAL INFORMATION" BELOW IF REQUESTING A SPECIAL POWER OF ATTORNEY.

Types of Special Powers Available. Other Special Powers not listed may be available - check with the legal assistance staff.

<p><u>REAL PROPERTY TRANSACTIONS</u> Purchase & obtain mortgage Purchase and obtain loan Sale of grantor's property Lease of grantor's property Lease quarters and settle claims Manage real property Refinance real property</p>	<p><u>HOUSEHOLD GOODS TRANSACTIONS</u> Ship Property Ship, hold baggage Ship car Claim for damages (listed property) Receive and claim for damages Claim for damages (all property)</p>	<p><u>CHILD CARE PROVISIONS</u> Emergency medical care Limited guardianship In loco parentis Full guardianship Medical and Dental care Evacuation Custody (from noncustodial parent)</p>
<p><u>BANKING TRANSACTIONS</u> Deposit funds only Withdraw funds only (limited) Deposit and withdraw funds Endorse negotiable instruments Obtain a loan for the grantor Obtain a Navy Relief loan for grantor Obtain credit card for the grantor Withdraw funds (unlimited) Safe deposit box access</p>	<p><u>PERSONAL PROPERTY TRANSACTIONS</u> Use and Maintain Maintain and sell (fixed price) Bargain and sell Purchase Household Items Register car Sell car Make claim for damages/loss/theft Mail receiving, forwarding, etc.</p>	<p><u>MOBILIZATION READINESS CHILD CARE SPECIAL POWER OF ATTORNEY</u> Family Care Plan <i>in loco parentis</i> - SPOA (no expiration date)</p> <p><u>MILITARY HOUSING TRANSACTIONS</u> Accept quarters Sign off quarters (vacate)</p> <p><u>INSURANCE TRANSACTIONS</u> Purchase Insurance for any item</p>

ADDITIONAL INFORMATION:

HOUSEHOLD GOODS/ Shipment of household goods Receive household goods
PERSONAL PROPERTY

CLAIMS/FINANCIAL TRANSACTIONS Cash Checks/Negotiate Instruments File Claims/Receive Payments

MOTOR VEHICLES Use, Register, Etc. Sell Specific vehicle Purchase Vehicle Ship specific vehicle Receive Specific Vehicle

 Year/ Make/Model Vehicle ID No/ Tag No/ State of Registration

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

GOVERNMENT QUARTERS *Sign for Government quarters* *Clear Government quarters*

REAL PROPERTY *Sell specific property* *Purchase specific property*

Street Address of Property-Legal Description required (as is on deed)

CARE OF CHILDREN *Medical Care of children only* *"in loco parentis" (temporary guardianship)*

List names & dates of birth of children

**APPENDIX 9-10: SAMPLE REVOCATION OF POWER OF
ATTORNEY**

REVOCATION OF POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, [CLIENT], Social Security Number 123-45-6789, currently residing in the state of North Carolina, do hereby absolutely revoke, cancel, countermand, annul and make void any and all General Powers Of Attorney heretofore executed by me, wherein and whereby I did appoint My Friend, John Doe, of 556 Milimeter Lane, Jacsonville, NC 28000 for the purpose in said power of attorney set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this day, 2 February 2002.

John B. Doe

**SERVING WITH THE ARMED FORCES OF THE UNITED STATES
ONBOARD U.S.S. BATAAN (LHD5)**

Before me personally appeared [Client], who, having produced a Uniformed Services Identification Card, is known to me to be the identical person who is described herein, and who signed and executed the foregoing instrument on this day, 2nd day of February, 2002, as a true, free, and voluntary act and deed, for uses, purposes, and considerations therein set forth. And I do further certify that I am a Commissioned Officer of the Armed Forces of the United States serving in the rank indicated below, that by Federal law I am authorized to exercise the powers of a notary without requirement of a seal, and that this document is executed by me in accordance with those powers and in that capacity.

SJA SIGNATURE, Major
Notary Public and Consul of the
United States
Authority: 10 U.S.C. § 1044a.
NO SEAL REQUIRED

**APPENDIX 9-11: SAMPLE REQUEST FOR RETURN OF SECURITY
DEPOSIT (LAW NOT IN FAVOR)**

IN REPLY REFER TO:

5800

SJA

28 NOV 01

NAME AND ADDRESS OF LANDLORD

Subj: TERMINATION OF LEASE FOR LANCE CORPORAL JOHN B. DOE

ATTN: OWNER/MANAGER

Dear Sir or Madam,

Lance Corporal Doe has contacted me concerning his apartment lease at your complex. I am the Staff Judge Advocate for the 26th Marine Expeditionary Unit currently deployed to the Northern Arabian Sea in support of Operation Enduring Freedom.

LCpl Doe recently expressed his concerns upon early termination of his lease due to his military commitments in support of Operation Enduring Freedom. Particularly, LCpl Doe's wife was informed that you would be keeping all of the security deposit and requiring them to pay an additional months rent under North Carolina General Statutes 42-45 because they occupied the premises less than 6 months of the lease term.

With the greatest sincerity, I ask that you waive this requirement in light of recent events. While it is clear that under North Carolina law that you may require the payment of one month's rent when a military tenant moves at least 50 miles away from the premises, etc., please understand the present hardship on this young family. Further, liquidated damages are designed to account for only those damages that you actually suffer. If a tenant rents the apartment within days of the Doe's termination of occupancy, the landlord may not receive a windfall and retain the liquidated damages. In the event that you cannot meet my request, please forward all documents to the address provided below.

Thank you for your prompt attention to this matter. Please remember that the 26th MEU is deployed in support of Operation Enduring Freedom until April 2002 and mail may be significantly delayed. My mailing address is as follows: Major I. M. Attorney, Command Element, SJA, 26th MEU Det A, Unit 74070, FPO AE 09502-4070. I recommend that you attempt to reach me by email in addition to mailing formal correspondence. My email address is attorneyim@bataan.usmc.mil.

Sincerely,

I. M. ATTORNEY
Major, U.S. Marine Corps
Attorney at Law

This letter is written by a legal assistance attorney on behalf of an individual client, and does not represent an official position of the Marine Corps or the United States Government.

APPENDIX 9-12: SAMPLE MILITARY LEASE CLAUSE

ADDENDUM

MILITARY LEASE CLAUSE

Landlord and Tenant agree to the following additional terms:

If Tenant is a member of the United States armed forces, and (i) receives orders for a permanent change of station to depart 35 miles or more (radius) from the Premises, or (ii) has received temporary duty orders in excess of 3 months' duration to depart 35 miles or more (radius) from the Premises, or (iii) is discharged or relieved from such active duty, full-time duty, or technician status, or (iv) is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters; then, in any such event, Tenant may terminate this Lease by serving on Landlord a written notice of termination. This notice must state the date when termination will be effective and that date shall not be less than 30 days after the date Landlord receives the notice. In addition, the termination date shall not be more than 60 days prior to the date of departure necessary for Tenant to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, Tenant shall furnish Landlord with a copy of the official notification of the orders, or a signed letter confirming the orders, from Tenant's commanding officer.

If Tenant exercises this right to terminate this Lease, Tenant shall be obligated for rent prorated to the date of termination, payable on the first day of the month.

This section shall not relieve Tenant of any other liabilities which have accrued as of the date of termination.

(LANDLORD SIGNATURE)

(TENANT SIGNATURE)

APPENDIX: LISTING OF COMMON MEU ACRONYMS (11TH MEU)

11th MEU Acronyms

Alpha Alpha	Callsign for officer in tactical command-----AA
Alpha Bravo	Callsign for composite warfare commander-----AB
AAC	Anti-Air Warfare (commander)-----AW
AAA	Anti Aircraft Artillery
AIMD	A/C Intermediate Maintenance Department
AAV	Amphibious Assault Vehicle
ACE	Aviation Combat Element (of the <MEU> MAGTF)
ACU	Assault Craft Unit (LCAC or LCU)
ADC (LW)	Air Defense Commander
ADAL	Authorized Dental Allowance List
AFL	Assault Flight Leader
AIG	Address Indicator Group
ALO	Air liaison officer
AMAL	Authorized Medical Allowance List
AMCIT	American Citizen
AMC	Air Mission Commander
AP	Attack Position
ARG	Amphibious Ready Group
ASC (A)	Assault Support Coordinator (Airborne)
AT/FP	Anti Terrorism/Force Protection (N-8)
ASE	Air Support Element (DASC Det.), Aircraft Survivability Equipment
ATO	Air Tasking Order
AUTODIN	Automated Digital Network
AWACS	Airborne Warning and Control System (USAF)
Bald Eagle	Company-sized Reserve/Reinforcement force
BAS	Battalion Aid Station
BDA	Battle Damage Assessment, Bomb Damage Assessment
BLS	Beach Landing Site
BLT	Battalion Landing Team
BLT RECON	Battalion Recon Det
BMU	Beach Master Unit
BMNT	Begin Morning Nautical Twilight
BP	Battle Position
Bump plan	The actions taken by the raid force to identify who goes/remains behind if a transport does not function
CAS	Close Air Support
CASVAC	Casualty Evacuation
CAT Brief	Crisis Action Team brief (CO, S-3, MSPF etc.)
CBU	Cluster Bomb Unit
CCIR	Commander's Critical Intelligence Requirements
CCO	Combat Cargo Officer (N-7)
CENTCOM	U.S. Central Command
CF	Covering Force
CI	Counter Intelligence
CIC	Combat Information Center
CLZ	Craft Landing Zone for LCA
CAN	Computer Network Attack
CND	Computer Network Defense

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COLT	Combat observation laser team
COM	Chief of Mission (ambassador/ranking us official; term associated in NEO Ops)
Compromise	Discovery of R&S and/or the assault force by indigenous personnel or OpFor. (passive/active) Compromise authority
COMSEC	Communications Security
CQ	Carrier Qualification
CQB	Close Quarters Battle
CRRC	Combat Rubber Raider Craft (inflatable/17 knots)
CRTF	Casualty Receiving and Treatment Facility
CRTS	Casualty Receiving and Treatment Ship
CSAR	Combat Search and Rescue
CSMO	Close Station March Order
CSSE	Combat Services Support Element
CUSMTM	Chief U.S. Military Training Mission
CWC	Composite Warfare Commander. A 2 letter designation. Amphib is designated as "L" with another letter. Battle Group is assigned a different first letter (Fifth Fleet uses "X"-----PB
C2W	Command and Control Warfare
DA	Direct Action
DAP	Direct Action Platoon
DASC	Direct Air Support Center
DATF	Defense of the Amphibious Task Force
DCS	Defense Communications System (DOD controlled)
DCT	Digital Communications Terminal (AN/PSC-2)
DESRON	Destroyer squadron
DLQ	Deck Landing Qualification
DNBI	Disease/Non-Battle Injuries
DSN	Defense Switching Network (formerly Autovon)
DTG	Date Time Group
EA	Emergency Action
EAP	Emergency action plan
EBFL	Extended Boom Fork Lift
ECC	Evacuation Control Center
ECM	Electronic Countermeasure
EDATF	Emergency Defense of the Amphibious Task Force
EEFI	Essential Elements of Friendly Information
EENT	End Evening Nautical Twilight
EFL	Escort Flight Leader
ELINT	Electronic Intelligence
EMCON	Emission Control
EA	Emergency aslt-Immediate/hasty offensive action to counter enemy action
EMI	Electromagnetic Interference
EOT	Eyes On Target
EPLRS	Enhanced Position Location Reporting System
E&R	Escape and Recovery plan
EUCE	End User Computing Equipment
EVAC	Evacuation
EW	Electronic Warfare
FAC	Forward Air Controller
FAC(A)	Forward Air Controller (airborne)
FARP	Forward Arming and Refueling Point
FAX	Facsimile
FLIR	Forward Looking-Infrared
FDC	Fire Direction Center

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FSCC	Fire Support Coordination Center
FCE	Forward Command Element (term assoc w/NEO)
FCT	Firepower control team
FFIR	Friendly Forces Information Requirements
FIWC	Fleet Information Warfare Commander
FLTBCST	Fleet Broadcast
FLTSATCOM	Fleet Satellite Communications
FMO	Fleet Marine Officer
FST	Fire support team
FST	Fleet Surgical Team
F77	List of AMCITS in country
GAIL	Glide Angle Indicator Light
GCE	Ground Combat Element (of the <MEU> MAGTF)
GCCS	Global Command and Control System
Golf Bravo	Commander CVBG -----CB
Go/No-Go	Criterion used to decide whether to abort the launch of the mission prior to launch
GOPLAT	Gas Oil Platform
GPS	Global Positioning System
GVS-5	Hand held laser range finder
Hard hit	Assault employing dynamic approach techniques (i.e. helicopter, fast rope, vehicles) against a target
HA	Holding area
HASE	Humanitarian Assistance Support Element
HARRIER	AV-8B
HEALT	Helicopter Employment and Assault Landing Table
HET	HUMINT Exploitation Team
HDC	Helicopter Direction Center
HLZ	Helicopter Landing Zone
HM	Hospital Corpsman
HMH	Marine Heavy Helicopter Squadron (CH-53)
HMLA	Marine Light/Attack Helicopter Squadron(AH-1W/UH-1N)
HMM	Marine Medium Helicopter Squadron (CH-46)
HMMWV	High Mobility, Multipurpose-Wheeled Vehicle
HOG	CH-53
Hotels	Hostages
HRST	Helicopter Rope Suspension Training
HST	Helicopter Support Team
HUC	Heliborne Unit Commander
HUEY	UH-1N
HUTS	Hostages, Unknowns, Terrorists, Shooters
IAS	Intelligence Analysis System
IBT	Initiative Based Tactics (used in CQB)
ICAO	International Civil Aviation Organization
Ice pack	Callsign for TACRON
IED	Improvised Explosive Device
IFAV	Interim Fast Attack Vehicle
ISB	Intermediate Staging Base-embassy may set up
IFR	Instrument Flight Rules
INFOCON	Information Condition
INMARSAT	International Maritime Satellite Organization (civ controlled)
IP	Initial Point
IR	Information Requirements
IRT	Initial Response Team
ITG	Initial Terminal Guidance
ITT	Interrogator Translator Team

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IW	Information Warfare
IWC	Information Warfare Commander
JDISS	Joint Deployable Intelligence Support System
JIC-A	Joint Intel Center-Afloat
JOTS	Joint Operational Tactical System
JTAR	Joint Tactical Air Request
LAAD	Low Altitude Air Defense
LAR	Light Armored Recon
LARC	Lighter Amphibious Resupply Cargo Vehicle
LAV-25	Light Armored Vehicle w/ 25 mm chain gun
LAV-M	Light Armored Vehicle w/ mortar
LAV-C2	Light Armored Vehicle - command and control variant
LAV-L	Light Armored Vehicle - logistics
LB	CWC designation for CPR-7
LC (ADC)	ADC designator for USS Cleveland
LCAC	Landing Craft Air Cushion
LCC	Last Covered/Concealed position
LCS	LCAC Control Ship
LCU	Landing Craft Utility (troop capacity-400)
LFOC	Landing Force Operations Center
LGB	Laser guided bomb
LJ	Designator for USS Cleveland as the MIO Coordinator
LOC	Line of Communication
LOS	Line-of-Sight
LQ (IWC)	IWC designator for CPR-7
LS (SCC)	SCC designator for USS Harpers Ferry (Alt SUWC)
LVS	Logistics Vehicle System
LV	CWC/OTC designator for USS Cleveland
LW	ADC designator for TACC
LX (SCC)	SCC designator for USS Cleveland (Alt SUWC)
LZ (SCC)	SCC designator for USS Boxer
LZ	Landing zone
MACG DET	Marine Air Control Group Detachment
MACO	Marshaling Area Control Officer
MAGTF	Marine Air-Ground Task Force
MANPAD	Man portable missile
MB	CWC designator for 11th MEU CO
MCA	Mission Coordination Airspace
MC&G	Mapping, Charting, and Geodesy
MEDEVAC	Medical Evacuation
MEU (SOC)	Marine Expeditionary Unit (Special Ops Capable)
MEWSS	Mobile Electronic Warfare Support System
MINIMIZE	Condition imposed to reduce communication traffic
MK 19	40mm automatic grenade launcher
MMART	Mobile Medical Augmentation Readiness Team
M2	50 caliber machine gun
MOUT	Military Operations in Urban Terrain
MRC	Medical Regulating Center
MRCO	Medical Regulating Control Officer
MRT	Medical Regulating Team
MS	Master Station (PLRS)
MSSG	MEU Service Support Group
MSPF	Maritime Special Purpose Force
NAVCENT	Navy Component of U.S. Central Command
NAVSTAR	Navigation System using timing and ranging
NGF	Naval gun fire
NLW	Non-Lethal Weapons

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NMIST	National Military Intel Support Team
NO COMM PLN	Visual signals if radio comm is down
NOE	Nap of the earth flying (Cobras/Hueys)
NOFORN	No foreign dissemination
NOTAL	Not to all
NSW	Naval Special Warfare (SEALS/SBU [RHIBs])
NTDS	Naval Tactical Data System (synonymous w/CDS and TDS)
NVG	Night vision goggle
NVG/NVD	Night Vision Goggle/Night Vision Device
OTH	Over-The-Horizon
OMC	Office of Military Cooperation (office in US Embassy)
OPCON	Operational Control
PCRTS	Primary Casualty Receiving and Treatment Ship
PCS	Primary Control Ship
PCVT	Pax, Cargo, vehicle, Time report
PHROG	CH-46
PIR	Priority Information Requirements
PLA	Plain Language Address
PLAD	Plain Language Address Directory
RADBN DET	Radio Battalion Detachment
RCA	Riot Control Agent
RF	Radio Frequency
RFI	Request For Intelligence/Information
RFC	Raid Force mission commander
RHIB	Rigid Hull Inflatable Boat
RGR	Rapid Ground Refueling
ROE	Rules of Engagement
ROWPU	Reverse Osmosis Water Purification Unit
RP	Rendezvous Point
RRT	Radio Recon Team
R&S	Recon and Surveillance
RUS	Reinforcement of Unarmed Ship
RWCAS	Rotary Wing Close Air Support
SACC	Supporting Arms Coordination Center
SALT	Supporting arms liaison team
SAR	Search and Rescue (at sea)
SARC	Surveillance and Reconnaissance Center
SATCOM	Satellite Communications
SAW	Squad Automatic Weapon
SBU	Special Boat Unit (SEAL Boat Det)
SCC	Sniper Control Center
SCC (LZ)	Sea Combat Commander
SCRTS	Secondary Casualty Receiving and Treatment Ship
SDLM	Scheduled Depot Level Maintenance
SEAL	Sea, Air, Land Special warfare unit
SFCP	Shore Fire Control Party
SHF QUICKSAT	Super High Frequency Satellite Terminal
SIGINT	Signal Intelligence
SKID	Huey and Cobra A/C
SMAW	Shoulder-Launched, Multipurpose Assault Weapon
SMEB	Significant Military Exercise Brief
Soft hit	Assault w/caution & stealth IOT achieve surprise
SOA	Speed of Advance
SPECAT	Special Category
SPIE	Special Purpose Insertion/Extraction
SOE	Schedule of Events (ARG training schedule at sea)
SOT	Sniper Observer Team

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Sparrow Hawk	Platoon size Reserve/Reinforcement force
SSES	Ship's Signal Exploitation Space
SSIC	Standard Subject Identification Code
Stack	Tactical formation used by the assault force
STEL	Secure Telephone (using STU III over SHF circuit)
STX	Situational Training Exercise
STW(C)	Strike Warfare (commander)-----AP
SUPSIT	Support Situation
SUW(C)	Surface Warfare (commander)-----AS
TAC(A)	Tactical Air Coordinator (airborne)
TACC	Tactical Air Control Center
TACON	Tactical Control
TACP	Tactical Air Control Party
TACRON	Tactical Aircraft Control Squadron Det
TAFDS	Tactical Air Fuel Dispensing System
TAFT	Technical Assistance Field Team (USMC Det Saudi Arabia)
Take down	Assault
Tangos	Terrorists
TAMPS	Tactical Aircrew Mission Planning System
TAO	Tactical Action Officer
TAOC	Tactical Air Operations Center
TARPS	Tactical Aerial Reconnaissance Photo System
TBFDS	Tactical Bulk Fuel Dispensing System
TDS	Tactical Data System
TERF	Terrain Flight
TIPS	Tactical Information Processing System
TOPO	Topographic support team
TOW	Wire-guided anti-tank weapon
TRAM	Tractor, Rubber-Tired, Articulated Steering, Multi Purpose
TRAP	Tactical Recovery of Aircraft, Personnel, Equipment
HeloTRAP	A/C Helo Team recovers down aircraft
HeloTRAP,pilot	Helo Team recovers down pilot
BoatTRAP,pilot	Boat Team recovers down pilot
AAV TRAP,pilot	AAV Team recovers down pilot
HeloTRAP,EQPT	Helo Team recovers down equipment
LAR TRAP	LAR Team recovers downed pilot or equipment
Boat TRAP,EQPT	Boat Team recovers down equipment
AAV TRAP,EQPT	AAV Team recovers down equipment
TRUE	Training in Urban Environment
USLO	United States Liaison Office (military office w/in US Embassy)
USW(C)	Undersea Warfare (commander)-----AX
Uniforms	Unknowns
UAV	Unmanned Aerial Vehicle
VBSS	Visit, Board, Search and Seizure
VFR	Visual flight Rules
VMA	Marine Attack Squadron (AV-8B)
VMGR	Fixed wing, Marine Air-Refuel/transp (KC-130's)
VSTOL	Vertical/Short Takeoff and Landing
WP	Weapon System Posture
WIA	Wounded In Action
WNINTEL	Warning: Intelligence material or sources involved
ZIPPO	Zone Inspection, Planning, Preparing, and Operation brief
ZULU	Time zone for Greenwich Mean Time or UTC
M-198	1-niner-eight (155 mm arty piece)
60's	60mm mortar
81's	81mm mortar

APPENDIX: GLOSSARY OF COMMON MEU TERMS (11TH MEU)**Definition of Terms**

Active defense - The employment of limited offensive action and counterattacks to deny a contested area or position to the enemy.

Advance force - A temporary organization within the Amphibious Task Force which precedes the main body to the objective area. Its function is to participate in preparing the objective for the main assault by conducting such operations as reconnaissance, seizure of supporting positions, mine sweeping, preliminary bombardment, underwater demolition's, and air support.

Air objective area - An amphibious term describing the air space over the objective area within which the commander, Amphibious Task Force/Commander, Landing Force employs restrictive measures to prevent or minimize interference between friendly forces.

Air threat levels - The conditions, which relate to the enemy's air defense capability against airborne friendly aircraft. There are three levels of air threat:

a. **Low** - An air threat environment which permits combat operations and support to proceed without prohibitive interference. Associated tactics and techniques do not normally require extraordinary measures for preplanned or immediate support.

b. **Medium** - An air threat environment in which the specific aircraft performance and weapons system capability allow acceptable exposure time to enemy air defenses. This air threat environment restricts the flexibility of tactics in the immediate target/objective area. It is an environment in which the enemy may have limited radar and/or electro-optical acquisition capability at medium ranges, but the air defense system is not supported by fully integrated fire control systems.

c. **High** - An air threat environment created by an opposing force possessing air defense combat power including integrated fire control systems and electronic warfare capabilities which would seriously diminish the ability of friendly forces to provide necessary air support. This air threat environment might preclude missions such as immediate CAS, as the requirement for effective radio communications and coordination might not be possible.

Alert Launch Procedures - Flight crews & personnel assigned to the following alert conditions shall be called away early enough to permit normal preflight inspection, start, warmup, and completion of the takeoff check by the time specified in the air plan for the alert condition to become effective. After the pilot declares the helicopter ready for flight, it shall be placed in the appropriate condition.

Alert Launch Authority. ADC (LW) and SCC (LZ) have authority to launch alert aircraft in any DATF alert condition.

Alert Conditions. Chapter of LHD NATOPS provides additional guidance for both rotary-wing and fixed-wing readiness conditions. Aviation alert packages will only launch as a section. Spare aircraft will be manned as necessary to ensure section integrity.

1. **Alert 5** - Aircraft directors, flight deck linemen, launch officers and aviation ordnance personnel shall be standing by for launch. Air department pre-launch checklist complete. Alert aircraft may be hot refueled as required. Aircraft will be turning and armed with checklist complete. Alert 5 helicopters may be airborne.

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2. **Alert 15** - Flight quarters will be set. Flight deck crews shall be at their aircraft or inside the island structure at flight deck level. Aircraft will either be ground turned and shut down, or chocked and turning.

3. **Alert 30** - Ordnance loading will commence immediately. Flight quarters may be set at this time, although it is not required. If flight quarters is not set, the flight deck shall be manned with minimum of two crash and rescue personnel, a corpsman, and Less for each AH-1W/UH-1N on alert. Alert aircrew will be briefed by ADC and SCC, and standing by in the ready room. Alert AH-1Ws/UH-1Ns will be spotted for launch.

a. Alert force is staged on the flight deck ramp, prepared to immediately move to flight deck and board aircraft. Plt Cdrs/Sgts doing last minute coordination, for any intelligence, or change of plans. All tests firing of weapons is complete. Alert Mission Commanders are in the LFOC.

4. **Alert 60** - Designated aircraft must be readily accessible to or on the flight deck with replacement ordnance loads built-up and placed in ready service lockers. Ordnance may be hung on aircraft, if necessary to ensure alert launch time requirement is met. Alert aircraft will complete flight briefs and aircraft will be preflighted. Aircraft re-spots and flight deck manning must occur in a manner that ensures a green deck time.

a. Alert force is staged in hangar deck. Ammunition, comm gear, and special equipment are staged on hangar deck and is being distributed. Issued ammo are in the magazines. Alert Mission Commanders are in the LFOC.

5. **Alert 120** - Aircrew and alert forces are identified. Briefs are given WRT the potential mission and Intel updates.

a. Alert forces are mustered in the berthing spaces, gathering all necessary gear for up coming mission. Ammo staged in Ready Service Locker.

Area of Influence - A geographical area wherein a commander is directly capable of influencing operations by maneuver or fire support systems normally under the commander's command or control. (Joint Pub 1-02)

Area of Interest (AI) - That area of concern to the commander, including the area of influence, areas adjacent thereto, and extending into enemy territory to the objectives of current or planned operations. This area also includes areas occupied by enemy forces who could jeopardize the accomplishment of the mission. (Joint Pub 1-02)

Area of Operations (AO) - An operational area defined by the joint force commander for land and naval forces. Areas of operation do not typically encompass the entire operational area of the joint force commander, but should be large enough for component commanders to accomplish their missions and protect their forces. (Joint Pub 1-02)

Assault position - That position between the line of departure and the objective in an attack from which forces assault the objective. Ideally, it is the last covered and concealed position before reaching the objective (primarily used by dismounted infantry).

Assumption - A supposition on the current situation or a presupposition on the future course of events, either or both assumed to be true in the absence of positive proof, necessary to enable the commander in the process of planning to complete an estimate of the situation and make a decision on the course of action. (Joint Pub 1-02)

Attack - An offensive action characterized by movement supported by fire with the objective of defeating or destroying the enemy.

Battle position (BP) - A defensive location oriented on the most likely enemy avenue of approach from which a unit may defend or attack. Such units can be as large as reinforced battalions and as small as platoons. The unit assigned to the battle position is located within the general outline of the battle position, but other forces may operate outside the battle position to provide early detection of enemy forces and all-round security.

Blocking position - A defensive position so sited as to deny the enemy access to a given area or to prevent his advance in a given direction.

Branch (ES) - A contingency plan or course of action (an option built into the basic plan or course of action) for changing the mission, disposition, orientation, or direction of movement of the force to aid success of the operation based on anticipated events, opportunities, or disruptions caused by enemy actions.

(MCRP 5-12C)

Course of Action (COA) - The possible way that the force can accomplish the mission. COA must conform with the following criteria: Suitability (COA accomplish the purpose and task as well as comply with the commander's guidance), Feasibility (COA accomplish the mission within the available time, space and resources), Acceptability (COA achieve an advantage that justified the cost in resources), Distinguishability (COA differ significantly from the other COAs), and Completeness (COA include all tasks to be accomplish-must describe the main and supporting efforts, reserve and associated risks).

Centers Of Gravity (COG) - Those characteristics, capabilities, or localities from which a military force derives its freedom of actions, physical strength, or its will to fight. (Joint Pub 1-02)

Clear enemy in zone - A requirement to eliminate organized resistance in an assigned zone by destroying, capturing, or forcing the withdrawal of enemy forces that could interfere with the unit's ability to accomplish its mission.

Commander Critical Information Requirements (CCIR) - Information regarding the enemy and friendly activities and the environment identified by the commander as critical to maintaining situational awareness, planning future activities, and facilitating timely decision making. CCIR's are normally divided into three primary subcategories: (PIR) priority intelligence requirements, (FFIR) friendly force information requirements, and (EEFI) essential elements of friendly information. (MCRP 5-12C) MCWP 5-1, H-6

Commander's intent - Commander's personal expression of why an operation is being conducted and what he hopes to achieve. It is a clear and concise statement of a mission's overall purpose, acceptable risk, and resulting end state (with respect to the relationship of the force, the enemy, and the terrain). It must be understood two echelons below the issuing commander because it provides an overall framework within which subordinate commanders may operate when a plan or concept of operation no longer applies, or circumstances require subordinates to make decisions that support the ultimate goal of the force.

Composite Warfare Commander - All CWC have two letter designations starting with "L" for Amphib and "X" for Battle Group in the Fifth Fleet.

LB - CWC designation for CPR-7

LQ - Information Warfare Commander, FIWC Det

LS - Sea Combat Commander, Surface (USS Boxer)

LW - Air Defense Commander, TACC

LX - Sea Combat Commander, Sub Surface (USS Boxer)

LZ - Sea Combat Commander

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Constraint - Requirement to do something by HHQ.

Contact patrols - Those combat patrols that establish and/or maintain contact to the front, flanks, or rear by: (a) contacting friendly forces at designated points; (b) establishing contact with a friendly or enemy force when the definite location of the force is unknown; and (c) maintaining contact with friendly or enemy forces.

Contact point - 1. In land warfare, a point on the terrain, easily identifiable, where two or more units are required to make contact. 2. In air operations, the positions at which a mission leader makes radio contact with an air control agency.

Converging axes attack - A type of tank-infantry attack where the tank-infantry team approaches a common objective on two different axes.

Cover - 1. The action by land, air, or sea forces to protect by offense, defense, or threat of either or both. 2. Those measures necessary to give protection to a person, plan, operation, formation, or installation from the enemy intelligence effort and leakage of information. 3. The act of maintaining a continuous receiver watch with transmitter calibrated and available, but not necessarily available for immediate use. 4. Shelter or protection (either natural or artificial) from enemy observation that reduces the effects of enemy direct and indirect fire. 5. Photographs or other recorded images which show a particular area of ground.

Covering force - 1. A force operating apart from the main force for the purpose of intercepting, engaging, delaying, disorganizing, and deceiving the enemy before he can attack the force covered. 2. Any body or detachment of troops which provides security for a larger force by observation, reconnaissance, attack, or defense, or by any combination of these methods.

Critical Vulnerability - An aspect of a center of gravity that, if exploited, will do the most significant damage to an adversary's ability to resist. (MCRP 5-12C)

Decision Point (DP) - An event, area, or point in the battle space where and when the friendly commander will make a critical decision. (MCRP 5-12C)

Defense in depth - The siting of mutually supporting defense positions designed to absorb and progressively weaken attack, prevent initial observations of the whole position by the enemy, and to allow the commander to maneuver his reserve.

Defensive operations - Operations conducted with the immediate purpose of causing an enemy attack to fail. Defensive operations also may achieve one or more of the following: gain time; concentrate forces elsewhere; wear down enemy forces as a prelude to offensive operations; and retain tactical, strategic, or political objectives.

Denial operation - An operation designed to deny the enemy occupation of or benefit from areas or objects having tactical or strategic value. It may include destruction, removal, contamination, construction of obstacles, or employment of fire support.

Deny - To hinder or prevent the enemy from using terrain, space, personnel, supplies, or facilities.

Destroyed - A condition of a target so damaged that it cannot function as intended nor be restored to a usable condition.

Destruction - A type of adjustment for destroying a given target. 1. When referring to the effects of field artillery fires, a target out of action permanently, or 30 percent casualties or material damage. Destruction requires a large expenditure of ammunition and is prohibitive unless using improved conventional munitions (ICM) or "smart weapons." 2. When used in an attack helicopter mission the

percentage of destroyed or disabled vehicles must be specified by the higher commander.

Diversion - The act of drawing the attention and forces of an enemy from the point of the principal operation: an attack, alarm, or feint that diverts attention.

Emission Control (EMCOM)

- a. A - Silence. No electromagnetic or acoustic emissions authorized.
- b. A1 - Limited electromagnetic or acoustic authorized. Provides for critical command and control links and safe navigation of ships and aircrafts.
- c. B - Employed to deny selected information to satellite reconnaissance and HFDF locating systems. All units silent with exception of essential EHF/SHF/UHF comms.
- d. B1 - Employ to deny selected information to third generation satellite reconnaissance and HFDF systems.
- e. B2 - Employed to deny selected information to satellite reconnaissance systems.
- f. C - Employed to prevent targeting against selected units.
- g. D - Employed to optimize passive sensor capabilities. All units restricted to essential emissions only.

Encircling force - A force employed in a pursuit to envelope an enemy force which has lost capability to defend or delay in an organized fashion. It seeks to cut off escape routes and, with direct pressure, forces, attacks, and destroys the enemy forces.

Enemy capabilities - Those courses of action of which the enemy is physically capable, and that, if adopted, will affect accomplishment of our mission. The term "capabilities" includes not only the general courses of action open to the enemy, such as attack, defense, or withdrawal, but also all the particular courses of action possible under each general course of action. "Enemy capabilities" are considered in the light of all known factors affecting military operations, including time, space, weather, terrain, and the strength and disposition of enemy forces.

Essential elements of friendly information (EEFI) - key questions likely to be asked by adversary officials and intelligence systems about specific friendly intentions, capabilities, and activities, so they can obtain answers.

Essential task - Tasks which must be executed to accomplish the mission.

Fact - Statements of known data concerning the situation, including the enemy and friendly disposition.

Feint - A limited objective attack involving contact with the enemy, varying in size from a raid to a supporting attack. Feints are used to cause the enemy to react in three predictable ways: to employ his reserves improperly, to shift his supporting fires, and to reveal his defensive fires.

Force protection - Security program designed to protect soldiers, civilian employees, family members, facilities, and equipment, in all locations and situations, accomplished through planned and integrated application of combating terrorism, physical security, operations security, personal protective services, and supported by intelligence, counterintelligence, and other security programs.

Friendly Force Information Requirements (FFIR) - Information the commander needs about friendly forces in order to develop plans and make effective decisions. Depending upon the circumstances, information on unit location, composition readiness, personnel status,

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and logistics status could become a friendly forces information requirement. (MCRP 5-12C) MCWP 5-1, H-10

Guard - A security element whose primary task is to protect the main force by fighting to gain time, while also observing and reporting information.

H-hour - Sea borne assault landing time or combined air/sea landing hour.

High-priority target (HPT) - Target whose loss to the threat will contribute to the success of the friendly COA. (MCRP 5-2A)

High-Value Target (HVT) - Assets that the threat commander requires for the successful completion of a specific COA. (MCRP 5-2A)

Hostile act - A hostile act is an attack or other use of force by a foreign force or terrorist unit (organization or individual) against the United States, U.S. forces, and in certain circumstances, U.S. citizens, their property, U.S. commercial assets, and other designated non-U.S. forces, foreign nationals and their property. It is also force used directly to preclude or impede the mission and/or duties of U.S. forces, including the recovery of U.S. personnel and vital U.S. government property. When a hostile act is in progress, the right exists to use proportional force, including armed force, in self-defense by all necessary means available to deter or neutralize the potential attacker or, if necessary, to destroy the threat.

Hostile intent - Hostile intent is the threat of imminent use of force by a foreign force or terrorist unit (organization or individual) against the United States, U.S. forces, and in certain circumstances, U.S. citizens, their property, U.S. commercial assets, or other designated non-U.S. forces, foreign nationals and their property. When hostile intent is present, the right exists to use proportional force, including armed force, in self-defense by all necessary means available to deter or neutralize the potential attacker or, if necessary, to destroy the threat.

Humanitarian assistance (HA) - Programs conducted to relieve or reduce the results of natural or man made disasters or other endemic conditions such as human pain, disease, hunger, or privation that might present a serious threat to life or that can result in great damage to or loss of property. Humanitarian assistance provided by us forces is limited in scope and duration. The assistance provided is designed to supplement or complement the efforts of the host nation civil authorities or agencies that may have the primary responsibility for providing humanitarian assistance.

Implied task - Tasks which must be performed to accomplish a specified task, but are not stated in the HHQ's order.

Information Condition (INFOCON)

- a. Normal - Normal activities; Routine day-to-day operations and no significant activity.
- b. Alpha - Increased Risk of Information Attack; Indications and warning indicate low activity and a general threat of information attack.
- c. Bravo - Specific Risk of Information Attack; Indications and warning indicate significant activity and targeting of specific systems, locations, units, or operations.
- d. Charlie - Limited Information Attacks; Intelligence assessments indicate serious activity and a limited attack; actual attack takes place with serious impact on operations.
- e. Delta - General Information Attacks; Critical activity and/or successful information system attack(s) detected which significantly impact DOD operations or readiness.

Information Security - Use of restrictive measures to prevent transmission of sensitive information which might disclose tactical or operational data.

Interdict - Using fire support or maneuver forces; 1. To seal off an area by any means; to deny use of a route or approach. 2. A tactical task which is oriented on the enemy to prevent, hinder, or delay the use of an area or route by enemy forces.

IW Weapons Status

- a. White
 - SLQ-32(V) 3/4/5: ESM on.
 - WLR-1: IWC assigned RF guard IRT threat.
 - MK-36 DLS: Loaded, off, reload team not manned.
- b. Yellow
 - SLQ-32(V): Hostile bias, set no alerts or sector inhibits unless directed.
 - WLR-1: IWC assigned guard.
 - MK-36 DLS: Loaded, on, reload teams not manned (fired by negation).
- c. Red
 - SLQ-32: Hostile bias, (V) 3/4/5 AECM manual mode, upon id of inbound threat shift to MSL auto mode, ASMD pre-planned responses apply.
 - WLR-1: Guard for expected threat.
 - MK-36 DLS: Loaded, on, reload teams manned (fired by negation).

L-hour - In amphibious operations, the time at which the first helicopter of the helicopter borne assault wave touches down in the landing zone.

Main effort - The most important task to be accomplished by the force. It is assigned by the commander to a specifically designated subordinate unit. The commander ensures success of the main effort (ME) by providing it the preponderance of support and by alerting reserves to rapidly reinforce the ME or, if necessary, to assume the ME.

Operational Control (OPCON) - Operational control may be delegated and is the authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks designating objectives, and giving authoritative direction necessary to accomplish the mission.

Passage point (pp) - A specifically designated place where units will pass through one another either in an advance or withdrawal. It is located where the commander desires subordinate units to physically execute a passage of lines.

Passive defense - Measures taken to reduce the probability of and to minimize the effects of damage caused by hostile action without the intention of taking the initiative.

Screen - A security element whose primary task is to observe, identify and report information, and which only fights in self protection.

Seize - To clear a designated area and obtain control of it.

Specified task - Task that are specifically assigned to a unit by its HHQ.

SUPSIT (Support Situation)

- a. Alpha - One OTC and one CWC.
- b. Bravo - One OTC and two (or more) CWCs.
- c. Charlie - Two (or more) OTCs and CWC for each OTC.

Release point (RP) - A well defined point on a route at which the elements composing a march column return under authority of their

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respective commanders, each one of these elements continuing its movement toward its own appropriate destination.

Tactical Control (TACON) - Command or authority over assigned or attached a force that is limited to the detailed and usually local direction and control of movements or maneuvers necessary to accomplish missions or tasks.

Threat Warning State

- a. White - Attack is not currently expected.
- b. Yellow - Attack is probable.
- c. Red - Attack is imminent or underway.

Weapon Control Status

- a. Hold/Safe - Do not engage. Force may be used only in self-defense or for a formal kill order. Warfare Commander controls all deliberate attacks. Safe is Navy only.
- b. Tight - Authorized to engage forces declared hostile.
- c. Authorized to engage any target not identified as friend.

Weapon System Posture (WP)

- a. WP3
 1. Keys in CO custody.
 2. Ordnance stowed (ready down-loaded)
 3. May require hrs to transition to WP2
"appropriate" for inport and steaming in CONUS
- b. WP2
 1. Keys in authorized watchstander custody.
 2. Ordnance in ready service lockers.
 3. May require mins to transition to WP1.
- c. WP1
 1. Keys in system.
 2. Ordnance loaded.
 3. Minimal watchstander in action fire.

C5F Guidance: Air Defense - WP 1 (no system in auto)

- SUW - WP 1 (Gun/SA Msl)
- WP 2 (Harpoon)
- ASW - WP 2 (no threat at sea)
- IW - WP 1

Ziplip

Alpha is a restrictive INFOCON which allows limited use of information systems only for operational necessity. This condition allows full use of SIPR net to all authorized persons. Actions: Secure POTS lines, Sailor Phones, NIPR net, and INMARSAT access to all personnel except ship's CO's and XO's, Commodore, Phibron CSO, MEU CO and XO, and designated logisticians and warfare planners.

Bravo is for more restrictive circumstances and will completely secure all information systems. Actions: Secure all POTS lines, Sailor Phones, NIPR net, INMARSAT, and SIPR net access.

Zippo Table

- a. Zippo 5 - Attack probable.
- b. Zippo 4 - Attack imminent.
- c. Zippo 3 - ASM launch > 25nm.
- d. Zippo 2 - SSM launch > 25nm.
- e. Zippo 1 - ASM/SSM < 25nm.

Zone reconnaissance - A directed effort to obtain detailed information concerning all routes, obstacles (to include chemical or radiological contamination), terrain, and enemy forces within a zone defined by boundaries. a zone reconnaissance normally is assigned when the enemy situation is vague or when information concerning cross-country traffic ability is desired.

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