

# TRAINING ARMY JUDGE ADVOCATES TO ADVISE COMMANDERS AS OPERATIONAL LAW ATTORNEYS

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**Abstract:** Today, U.S. Army commanders and the military lawyers assigned to advise them—Army Judge Advocates—find themselves operating in areas of extreme legal complexity, where nuanced political and strategic implications are often at the forefront, and where “black letter law” is rarely sufficient to render competent advice. Through formal training at The Judge Advocate General’s Legal Center and School, observance of the lessons learned by other Judge Advocates collected by the Center for Law and Military Operations, and hands-on training at Combat Training Centers, Army Judge Advocates are prepared to address the ever-increasing operational demands of the commanders who rely on their advice.

## INTRODUCTION

Imagine you are an Army lawyer—a Judge Advocate—who recently deployed to a Forward Operating Base (“FOB”)<sup>1</sup> in a remote corner of the Earth embroiled in conflict. You are assigned as a Brigade Judge Advocate, and your unit, an Army Brigade Combat Team—approximately 3500 Army personnel capable of conducting unified land operations<sup>2</sup>—

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<sup>1</sup> A FOB is a secure area with an infrastructure to support a unit that “can be used to create a 360-degree defense” for units in the field. See U.S. DEP’T OF THE ARMY, FIELD MANUAL 3-90.6, BRIGADE COMBAT TEAM para. 5-59 (2010) [hereinafter FM 3-90.6].

<sup>2</sup> Unified Land Operations is the current doctrinal term used to describe “how the Army seizes, retains, and exploits the initiative to gain and maintain a position of relative advantage in sustained land operations through simultaneous offensive, defensive, and stability operations in order to prevent or deter conflict, prevail in war, and create the conditions for favorable conflict resolution.” U.S. DEP’T OF THE ARMY, ARMY DOCTRINE PUBLICATION 3-0, UNIFIED LAND OPERATIONS 1 (2011).

just assumed tactical<sup>3</sup> control of the area from the outgoing unit. Your Brigade Commander, a seasoned Colonel in command of the entire unit, now bears upon his shoulders the daunting responsibility of accomplishing the mission in an environment laden with legal complexity.

Late at night, you receive notification that one of the Battalion Commanders in the Brigade, located at a nearby FOB, wants to talk to you about a potential target for attack. After you pick up the phone, the Battalion Commander tells you that his tactical operations center currently has an unmanned aerial vehicle (“UAV”) flying a reconnaissance mission. His operators are presently observing three individuals, dressed in local attire, digging with shovels on the side of a road, several kilometers away from the FOB. The Battalion Commander notes that from time to time, there are also civilian vehicles driving by the site. Some vehicles have stopped; others just drive by.

The Battalion Commander reminds you that local insurgents sometimes dig holes on the side of the road in the middle of the night to plant improvised explosive devices (“IEDs”). The objective of these efforts is clear: attack U.S. convoys as they pass by in the future. You are very familiar with IEDs. In fact, in the short time you have been in the country, IEDs have wounded a few soldiers in your unit. You also know, however, that local villagers sometimes dig irrigation ditches, which often parallel the roads, in the middle of the night to avoid insurgent harassment. Further, you are keenly aware of the high volume of local civilian traffic on this road, such that a kinetic strike at that site could injure innocent civilians driving by or damage the road, impeding transportation and the movement of daily supplies to some local villages.

The Battalion Commander does not have ground forces close enough to the diggers to provide additional verification of what he is seeing on the UAV monitors, but he tells you that he is reasonably certain<sup>4</sup> about what the images on the screen are showing. He states he

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<sup>3</sup> Army doctrine encompasses three levels of war—tactical, operational, and strategic. See U.S. DEP’T OF THE ARMY, FIELD MANUAL 1-02, OPERATIONAL TERMS AND GRAPHICS 1-139, 1-177, 1-182 (Change 1, 2010) [hereinafter FM 1-02]. The tactical level of war is the level “at which battles and engagements are planned and executed to accomplish military objectives assigned to tactical units or task forces. Activities at this level focus on the ordered arrangement and maneuver of combat elements in relation to each other and to the enemy to achieve combat objectives.” *Id.* at 1-182.

<sup>4</sup> There is no consensus on the level of certainty required for a targeting judgment to be reasonable. See generally Geoffrey S. Corn, *Targeting, Command Judgment, and a Proposed Quantum of Information Component: A Fourth Amendment Lesson in Contextual Reasonableness*, 77 BROOK. L. REV. 437 (2012) (discussing the complexity of reviewing targeting decisions under the military objective test).

can lethally target the individuals with the artillery from his FOB. The Battalion Commander stresses that the three individuals will likely depart the area within a few minutes, so the issue is time sensitive, and he must decide now. As a result, he needs your immediate advice, based on the Rules of Engagement (“ROE”), whether attacking these individuals is a lawful option.<sup>5</sup> Although he understands that he ultimately makes the decision, he wants your guidance. What do you say?<sup>2</sup> Are you prepared to advise the Battalion Commander on these issues?<sup>6</sup>

Analysis of this hypothetical is complex. The answer cannot be found by simply consulting a legal treatise, or even an Army publication. Advising a commander on such a question, like almost all questions related to the planning and execution of military operations, involves much more than just a basic understanding of public international law or the Law of Armed Conflict (“LOAC”).<sup>7</sup> These situations implicate myriad factors, including a nuanced grasp of the LOAC, an appreciation of the political and operational considerations embodied in the ROE, an understanding of the intelligence and targeting capabilities of the military, and prior integration into the staff processes.<sup>8</sup> Moreover, analy-

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<sup>5</sup> The ROE are “[Department of Defense] Directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered.” FM 1-02, *supra* note 3, at 1-165. Although Judge Advocates play a significant role in “the preparation, dissemination, and training of [the] ROE,” the ROE are the commanders’ tool to regulate force in military operations. INT’L & OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S LEGAL CTR. & SCH., U.S. ARMY, OPERATIONAL LAW HANDBOOK 75 (2012) [hereinafter OPERATIONAL LAW HANDBOOK]. “ROE ultimately are the commander’s rules that must be implemented by the Soldier, Sailor, Airman, or Marine who executes the mission.” *Id.* The *Operational Law Handbook* provides an overview of ROE and the commanders’ and Judge Advocates’ roles in the ROE process. *See id.* at 75–104.

<sup>6</sup> Although the term “advise” is often used in this type of situation, the reader should note that outside of the discrete times that a Judge Advocate is assigned as a legal assistance attorney or as counsel to represent an individual who faces pending disciplinary action or an administrative proceeding, the loyalty and duty of an Army Judge Advocate is to the Department of the Army as the client, not to a particular commander. *See* U.S. DEP’T OF THE ARMY, REGULATION 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS R. 1.13(a) (1992) (“Except when representing an individual client [as a legal assistance attorney or a defense attorney], an Army lawyer represents the Department of the Army acting through its authorized officials.”). The professional and ethical obligations of a Judge Advocate require delivering candid and independent counsel to commanders. *See id.* R. 2.1.

<sup>7</sup> The “Law of Armed Conflict,” or “LOAC,” is also referred to as the “Law of War” or as “International Humanitarian Law.” The LOAC encompasses the “customary and treaty law applicable to the conduct of warfare on land and to relationships between belligerents and neutral States.” U.S. DEP’T OF THE ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE 3 (Change 1, 1976).

<sup>8</sup> A Judge Advocate’s integration into the commander’s staff is a critical element that is often underappreciated. A Judge Advocate cannot advise commanders and staffs and help

sis of a situation like this is fluid, often depending upon the location, date, and time of the incident. Today, commanders and the military lawyers assigned to advise them—Judge Advocates—find themselves operating in areas of extreme legal complexity, where political and strategic implications are often at the forefront, and where black letter law is rarely sufficient to render competent advice.<sup>9</sup> It is a complex situation, but one that Army Judge Advocates in deployed operations routinely face and competently handle.<sup>10</sup>

How does the Army and its Judge Advocate General's Corps (JAG Corps) prepare its Judge Advocates to succeed as operational law attorneys in these complex legal environments?<sup>11</sup> How does the JAG Corps

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provide answers if he or she is not situationally aware of the unit's mission and challenges. An operational attorney must be in tune with the unit's operations and be an active participant during the staff's military decision-making process and not simply an "after-the-fact" reviewer of plans. Legal questions and issues do not always simply present themselves—they often need to be uncovered first by an involved and informed Judge Advocate.

<sup>9</sup> "Non-International Armed Conflicts" ("NIACs"), also referred to as "Internal Armed Conflicts," comprise the majority of armed conflict situations today, yet lack the more robust legal structure provided in the Geneva Conventions for State-on-State "International Armed Conflicts" ("IACs"). Jelena Pejic, *The Protective Scope of Common Article 3: More Than Meets the Eye*, 93 INT'L REV. RED CROSS 189, 189 (2011) ("Non-international armed conflicts are not only prevalent today, but are also evolving in terms of the types that have been observed in practice."). According to the Center for Systemic Peace, "[i]n late 2011, there were twenty-one countries experiencing major armed conflicts within their territory." MONTY G. MARSHALL & BENJAMIN R. COLE, CTR. FOR SYSTEMIC PEACE, GLOBAL REPORT 2011: CONFLICT, GOVERNANCE, AND STATE FRAGILITY 5 (2011), <http://www.systemicpeace.org/GlobalReport2011.pdf>; see also INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CTR. & SCH., U.S. ARMY, LAW OF ARMED CONFLICT DESKBOOK 24–28 (2012) [hereinafter DESKBOOK] (comparing the legal structures of a NIAC and an IAC).

<sup>10</sup> In this hypothetical, with the limited facts provided, the Judge Advocate could reasonably advise the Commander either to attack or not to attack the target. In a real situation, further information about provisions in the ROE or tactical directives, and additional knowledge about local conditions, enemy tactics, techniques and procedures, and recent events would factor into any advice and could provide some clarity. The Judge Advocate will often discuss all of these nuances with the Commander, providing independent and candid advice to assist the Commander with making an informed decision. Regardless, when dealing with questions and issues of this sort, it is a decision that everyone involved in the process, including the Commander and Judge Advocate, take very seriously.

<sup>11</sup> The U.S. Department of the Army defines operational law as the following:

Operational law encompasses the law of war but goes beyond the traditional international law concerns to incorporate all relevant aspects of military law that affect the conduct of operations. Judge Advocates provide operational law support in all military operations. The operational law Judge Advocate supports the military decisionmaking process (MDMP) by preparing legal estimates, designing the operational legal support architecture, writing legal annexes, assisting in the development and training of rules of engagement (ROE), and reviewing plans and orders. The operational law Judge Advocate

develop officers who will enhance the legitimacy of military operations in environments where evolving rules and a fluid situation require them not only to understand the underlying law and policy, but also to be innovative and nuanced in their legal analysis? Although a Judge Advocate conducts much of his preparation informally, both at duty stations prior to deployment and in the field once deployed, this Article highlights how the Army JAG Corps utilizes classroom instruction, a lessons-learned process, and exercises at Combat Training Centers (“CTCs”) to equip these lawyers with a foundation of skills and knowledge to ensure their success.<sup>12</sup>

Part I reviews the Department of Defense (DoD) requirements mandating LOAC training and discusses how Army Regulations implement this general mandate.<sup>13</sup> Part II provides an overview of The Judge Advocate General’s Legal Center and School (“TJAGLCS”).<sup>14</sup> Parts III, IV, and V examine the formal operational law training offered to Judge Advocates by the International and Operational Law Department at TJAGLCS.<sup>15</sup> Part VI discusses the Center for Law and Military Operations’ (“CLAMO”) role in collecting and disseminating lessons learned.<sup>16</sup> Part VII concludes by highlighting the training and mentoring responsibilities of the Judge Advocates assigned as Observer/ Controller Trainers at the CTCs.<sup>17</sup>

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supports the conduct of operations by maintaining situational awareness as well as advising and assisting with lethal and nonlethal targeting, with particular emphasis on ROE implementation, and detainee operations. In stability operations, Judge Advocates perform activities to establish civil security, civil control, essential services, economic and infrastructure development, and governance. Operational law also involves the provision of the core legal services that sustain the force.

U.S. DEP’T OF THE ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY para. 5-20 (2012) [hereinafter FM 1-04].

<sup>12</sup> Although the focus of this Article is on the formal training provided to Army Judge Advocates at the Army JAG School and at the Army’s Combat Training Centers, the author acknowledges the critical importance of the training conducted at installations by the resident Office of the Staff Judge Advocate (“OSJA”) and through unit-level exercises, as well as the “hands-on” training that Judge Advocates receive upon entry into an operational environment.

<sup>13</sup> See *infra* notes 18–31 and accompanying text.

<sup>14</sup> See *infra* notes 32–50 and accompanying text.

<sup>15</sup> See *infra* notes 51–89 and accompanying text.

<sup>16</sup> See *infra* notes 90–99 and accompanying text.

<sup>17</sup> See *infra* notes 100–115 and accompanying text.

## I. DEPARTMENT OF DEFENSE (DoD) REQUIREMENTS

Before a Judge Advocate becomes a legal adviser to a commander in situations like the one discussed above, he or she receives extensive training in the LOAC in accordance with DoD Directive 2311.01E.<sup>18</sup> The Directive mandates that “[m]embers of the DoD Components comply with the law of war during all armed conflicts, however such conflicts are characterized, and in all other military operations.”<sup>19</sup> The Directive further requires that “[a]n effective program to prevent violations of the law of war [must be] implemented by the DoD Components.”<sup>20</sup> Each military department, including the Army, is specifically required to provide “law of war training and dissemination,”<sup>21</sup> and to ensure that there are “qualified legal advisers at all levels of command

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<sup>18</sup> See generally U.S. DEP’T OF DEF., DIRECTIVE 2311.01E, DO D LAW OF WAR PROGRAM (Change 1, 2010) [hereinafter DoD DIRECTIVE 2311.01E] (establishing the requirement of LOAC and operational training).

<sup>19</sup> *Id.* para. 4.1; see CHAIRMAN, JOINT CHIEFS OF STAFF INSTRUCTION 5810.01D, IMPLEMENTATION OF THE DoD LAW OF WAR PROGRAM para. 4(a) (Apr. 30, 2010) (using the same language). Note that saying that the law of war will apply in “all armed conflicts” is not meant to imply that each and every article of the Geneva Conventions or the Additional Protocols necessarily applies in all situations. See Geneva Conventions of 12 August 1949, 75 U.N.T.S. 5; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), *adopted* June 8, 1977, 1125 U.N.T.S. 3 [hereinafter API]; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), *adopted* June 8, 1977, 1125 U.N.T.S. 609; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III), *adopted* Dec. 8 2005, 2404 U.N.T.S. 261. Many argue, however, that international armed conflict standards should be applied as a matter of policy, at least initially, in any armed conflict or other military operations. See Major John T. Rawcliffe, *Changes to the Department of Defense Law of War Program*, ARMY LAW., Aug. 2006, at 23, 31–32 (discussing the confusion about what part of the law of war to apply and noting that “the safest, or most risk-averse, approach will be to assume that [international armed conflict] triggers have been satisfied, to apply the law of war broadly, and to seek active involvement and consent from higher echelons of command when appropriate” (footnote omitted)); see also Dick Jackson et al., *The Law of War After the DTA, Hamdan and the MCA*, ARMY LAW., Sept. 2007, at 19, 26 n.60 (endorsing Major Rawcliffe’s risk-averse approach).

<sup>20</sup> DoD DIRECTIVE 2311.01E, *supra* note 18, para. 4.3. Although the U.S. military has a long history of compliance with the LOAC, the military significantly revised its LOAC program in the aftermath of the Vietnam War. See W. Hays Parks, *Teaching the Law of War*, ARMY LAW., June 1987, at 4, 5 (noting that the LOAC training that Judge Advocates offered in the Vietnam era suffered because, in the words of the deputy commander of the Military Assistance Command-Vietnam, it “tended to be abstract and academic, rather than concrete and practical”).

<sup>21</sup> DoD DIRECTIVE 2311.01E, *supra* note 18, para. 5.7.2.

available to provide advice about law of war compliance during planning and execution of exercises and operations.”<sup>22</sup>

Army Regulation 350-1 takes this general DoD guidance requiring LOAC training and provides additional specificity. The regulation requires all Army soldiers, both officers and enlisted personnel, to receive “Level A” LOAC training during their initial military training upon entering the Army.<sup>23</sup> This training is tailored to a soldier’s future duties and responsibilities, but is general enough to provide guidance applicable across the conflict spectrum.<sup>24</sup>

In addition to the training received upon entering the Army, soldiers assigned to units more likely to deploy receive “Level B” LOAC training both annually and prior to a deployment, as directed by deployment orders or the appropriate authority.<sup>25</sup> This training, which by regulation must be conducted by a Judge Advocate or a paralegal non-commissioned officer, consists of a reinforcement of the initial military training, along with detention training and mission-specific LOAC training.<sup>26</sup> For example, a medical unit would receive more extensive

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<sup>22</sup> *Id.* para. 5.7.3. Article 82 of Additional Protocol I to the Geneva Conventions of 1949 also mandates that legal advisors be available to advise commanders:

The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, shall ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject.

API, *supra* note 19. The United States has signed, but not ratified, Protocol I. *See id.*

<sup>23</sup> U.S. DEP’T OF THE ARMY, REGULATION 350-1, ARMY TRAINING AND LEADER DEVELOPMENT app. G-21 (Rapid Action Revision 2011) [hereinafter AR 350-1].

<sup>24</sup> *See id.* “Level A” Training consists of “The Soldier’s Rules,” which stress the importance of compliance with the LOAC. *Id.* The Soldier’s Rules include:

- (1) Soldiers fight only enemy combatants.
- (2) Soldiers do not harm enemies who surrender. They disarm them and turn them over to their superior.
- (3) Soldiers do not kill or torture any personnel in their custody.
- (4) Soldiers collect and care for the wounded, whether friend or foe.
- (5) Soldiers do not attack medical personnel, facilities, or equipment.
- (6) Soldiers destroy no more than the mission requires.
- (7) Soldiers treat civilians humanely.
- (8) Soldiers do not steal. Soldiers respect private property and possessions.
- (9) Soldiers should do their best to prevent violations of the law of war.
- (10) Soldiers report all violations of the law of war to their superior.

*Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* Paralegal noncommissioned officers are “enlisted leaders and subject matter experts . . . [who] train, mentor, and develop junior paralegal Soldiers to the required level

training on the obligations to care for the wounded and sick, whereas training for a military police unit would focus on establishing and managing a prisoner of war facility.<sup>27</sup> Training is provided through lectures, performance-oriented training (lane training or situational training exercises<sup>28</sup>), and small unit training on specific vignettes (hypothetical LOAC problems injected into the training scenario). This training is constantly updated, tailored toward anticipated geographic and operational needs, and reinforced during deployments.<sup>29</sup>

Lastly, Army Regulation 350-1 requires Army schools to “tailor law of war training to the tasks taught in those schools.”<sup>30</sup> This “Level C training . . . emphasize[s] officer, [warrant officer], and [noncommissioned officer] responsibilities” for performance of their duties in accordance with the LOAC and the United States’ obligations; the training also addresses issues in planning and executing military operations, and “[m]easures for the reporting of suspected or alleged war crimes committed by or against U.S. or allied personnel.”<sup>31</sup>

## II. AN OVERVIEW OF THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER AND SCHOOL

The regimental home of the U.S. Army JAG Corps, and the leading institution dedicated to training and developing military legal officers and noncommissioned officers, is The Judge Advocate General’s Legal Center and School (“TJAGLCS”), which encompasses both the JAG School and the JAG Legal Center.<sup>32</sup> TJAGLCS is located on the grounds

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of expertise necessary to effectively contribute to mission success within their respective divisions or sections.” FM 1-04, *supra* note 11, para. 4-31.

<sup>27</sup> See AR 350-1, *supra* note 23, at app. G-21.

<sup>28</sup> Lane training is “[a] process for training company-size and smaller units on collective tasks (and prerequisite soldier and leader individual tasks and battle drills) supporting a unit’s [mission essential task list].” U.S. DEP’T OF THE ARMY, TRAINING CIRCULAR 25-10, A LEADER’S GUIDE TO LANE TRAINING para. 1-3 (1996). A situational training exercise is “[a] short, scenario-driven, mission-oriented, limited exercise designed to train one collective task, or a group of related tasks or battle drills, through practice.” *Id.* An example of this type of training is the “Gauntlet” exercise in the Judge Advocate Officer Basic Course. See *infra* notes 55–68 and accompanying text.

<sup>29</sup> AR 350-1, *supra* note 23, at app. G-21.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> A Brigadier General commands TJAGLCS. See THE JUDGE ADVOCATE GENERAL’S LEGAL CTR. & SCH., 2012–2013 ANNUAL BULLETIN 8–13 (2012) [hereinafter LCS BULLETIN] (on file with author). A Director (in the rank of Colonel) leads the Legal Center component, and a Dean (also in the rank of Colonel) leads the School component. See *id.* Although this Article principally focuses upon the role of the School and the education of Judge Advocates, the role of the Legal Center is also significant to the operational development of Judge Ad-



of the University of Virginia in Charlottesville.<sup>33</sup> The thirty-six professors<sup>34</sup> who teach at the JAG School educate over 5000 military and government civilian attorneys in residence each year, and over 18,000 more each year through both distributive learning programs and courses taught in locations around the world.<sup>35</sup> The student population includes legal professionals from all military services, as well as many federal agencies, and often includes students from foreign nations.<sup>36</sup>

The two primary resident courses at the JAG School for training Judge Advocates are the Officer Basic Course and the Graduate Course.<sup>37</sup> The Officer Basic Course is a twelve-and-a-half-week initial training program, offered three times per year, for attorneys who are entering the JAG Corps.<sup>38</sup> Each Officer Basic Course consists of approximately 115 students who are U.S. Army active duty, reserve, and National Guard Judge Advocates.<sup>39</sup> Additionally, there are often a

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vocates. The Legal Center is comprised of four directorates: the Combat Developments Directorate (“CDD”) (the “proponent for Army legal force structure” and responsible for JAG Corps Strategic Communications and Planning), the Future Concepts Directorate (“FCD”) (responsible for “developing, writing and staffing” JAG Corps doctrine), the Training Developments Directorate (“TDD”) (responsible for working with the School in “analyz[ing] training needs, design[ing] training strategies,” and managing the distributed learning curriculum for the JAG Corps), and the Center for Law and Military Operations (“CLAMO”) (responsible for examining “legal issues arising” from military operations and devising resourcing strategies to address those issues). *See id.* at 10–11. CLAMO’s role is discussed later in this Article. *See infra* notes 90–99 and accompanying text.

<sup>33</sup> The University of Virginia and Charlottesville have served as the regimental home of the Army JAG Corps since 1951. Interview with Colonel (Retired) Fred Borch, Regimental Historian, U.S. Army Judge Advocate Gen. Corps, in Charlottesville, Va. (Aug. 5, 2012).

<sup>34</sup> As of July 2012, the thirty-six professors at TJAGLCS consisted of twenty-eight Army officers, three Marine officers, two Navy officers, two Air Force officers, and one civilian professor. Interview with Colonel David N. Diner, Dean, The Judge Advocate General’s Sch., in Charlottesville, Va. (July 19, 2012). Additionally, TJAGLCS has twenty-one reserve component Judge Advocates who teach part time in the departments as Drilling Individual Mobilization Augmentees (“DIMAs”). *Id.* Thirty other individuals (eight officers, four noncommissioned officers, and eighteen civilians) provide support for the School. *Id.*

<sup>35</sup> LCS BULLETIN, *supra* note 32, at 14.

<sup>36</sup> *See id.*

<sup>37</sup> *See id.* at 22–28.

<sup>38</sup> *Id.* at 26. The first two weeks of the Officer Basic Course (Phase One) are currently conducted at Fort Lee, Virginia. *Id.* During Phase One, students receive an overview of military and officer responsibilities and receive training on basic soldier skills. *Id.* The ten-and-a-half-week long Phase Two takes place at TJAGLCS in Charlottesville, where students receive instruction in all substantive areas of military law, with an emphasis on those issues a new Judge Advocate is most likely to encounter in an initial JAG Corps assignment. *Id.* Immediately following these phases, students attend the Direct Commissioned Course (“DCC”) at Fort Benning, Georgia for four weeks for additional military training before reporting to their unit. *Id.*

<sup>39</sup> *See id.* at 26–28.

number of foreign officer attorneys in each Officer Basic Course.<sup>40</sup> Although the average student in the Officer Basic Course is a newly licensed attorney, recently graduated from law school and possessing no or minimal prior military experience, such as having participated in a Reserve Officer Training Corps (“ROTC”) program as an undergraduate student, some students arrive at the course with significant prior military service.<sup>41</sup>

The Graduate Course, in comparison, is a ten-month program for Judge Advocates who have served in the military for approximately five to eight years.<sup>42</sup> The nearly 125 Judge Advocates who attend each Graduate Course possess a wide range of operational and deployment experiences.<sup>43</sup> Students who successfully complete the Graduate Course are awarded an LL.M. degree in Military Law.<sup>44</sup>

In addition to the two primary resident courses for Judge Advocates discussed above, the JAG School hosts more than sixty specialized short courses annually, tailored to a variety of legal topics that an attorney or legal professional practicing in the government could face.<sup>45</sup> These courses, certified to provide Continuing Legal Education (“CLE”) credit for attorneys in every state, are attended predominantly by military and civil service government attorneys from posts and installations around

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<sup>40</sup> *See id.*

<sup>41</sup> *See* LCS BULLETIN, *supra* note 32, at 26–28. Although the Officer Basic Course represents the initial military training experience for the average active-duty Judge Advocate, some Judge Advocates were members of other branches of the Army, attended other schools, and had other military experiences prior to transferring to the JAG Corps. *See id.* Additionally, Army Reserve and National Guard component Judge Advocates often serve as Judge Advocates for a short period of time with their units, prior to attending the Officer Basic Course. *See id.*

<sup>42</sup> *See* LCS BULLETIN, *supra* note 32, at 22.

<sup>43</sup> *See id.* The 122 students in the 2012–2013 Graduate Course are broken down as follows: eighty-five Army active duty, four U.S. Army Reserve, three Army National Guard, five U.S. Air Force, four U.S. Navy, fifteen U.S. Marine Corps, two U.S. Coast Guard, and four international officers (from Bosnia, Egypt, Korea, and Turkey). Interview with Colonel David N. Diner, *supra* note 34.

<sup>44</sup> LCS BULLETIN, *supra* note 32, at 22. TJAGLCS is the federal government’s only degree-granting, American Bar Association-accredited legal institution. The American Bar Association’s Section on Legal Education and Admissions to the Bar has approved the award of an LL.M. in Military Law. *See* THE JUDGE ADVOCATE GENERAL’S SCH., U.S. ARMY, CIRCULAR 351-6, JUDGE ADVOCATE OFFICER GRADUATE COURSE 1 (2012) [hereinafter CIRCULAR 351-6]. In 1987, Congress permitted the school to grant the LL.M. degree. National Defense Authorization Act for the Fiscal Years 1988 and 1989, Pub. L. No. 100-180, § 504, 101 Stat. 1019, 1086 (1987) (codified at 10 U.S.C. § 4315 (2006)).

<sup>45</sup> *See* LCS BULLETIN, *supra* note 32, at 29–30.

the world.<sup>46</sup> Several thousand students attend these courses annually, which range in length from a few days to a few weeks.<sup>47</sup>

To accomplish all these instructional requirements, the JAG School is organized into five academic departments, including the International and Operational Law Department (“ADI”).<sup>48</sup> ADI’s specific mission is to provide relevant and rigorous education and training in international and operational law.<sup>49</sup> It seeks to develop legal professionals who are adaptive and situationally aware, and who are prepared to support commanders and units in the conduct of military operations. In short, ADI trains Judge Advocates to respond competently to situations like the one introduced in the opening hypothetical.<sup>50</sup>

### III. INTERNATIONAL AND OPERATIONAL LAW INSTRUCTION IN THE OFFICER BASIC COURSE

Each student who attends the Officer Basic Course receives fifty hours of international and operational law instruction.<sup>51</sup> The ADI fac-

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<sup>46</sup> See *id.*

<sup>47</sup> See *id.* (listing the short courses offered at the JAG School).

<sup>48</sup> *Id.* at 16–18. The four other academic departments at the JAG School are: Administrative and Civil Law (“ADA”), Contract and Fiscal Law (“ADK”), Criminal Law (“ADC”), and Legal Administrator and Paralegal Studies (“ADL”). *Id.*

<sup>49</sup> See LIEUTENANT COLONEL RICH DI MEGLIO, INT’L & OPERATIONAL LAW DEP’T, BRIEF TO BRAZILIAN DELEGATION: INTERNATIONAL AND OPERATIONAL LAW DEPARTMENT (ADI) 3, 13 (2012) (on file with author).

<sup>50</sup> To assist with its instruction, ADI publishes three books annually: the *Law of Armed Conflict Deskbook*, the *Operational Law Handbook*, and the *Law of Armed Conflict Documentary Supplement*. See *Military Legal Resources*, LIB. CONGRESS, [http://www.loc.gov/rr/frd/Military\\_Law/LCS-International-and-Operational-Law-Dept.html](http://www.loc.gov/rr/frd/Military_Law/LCS-International-and-Operational-Law-Dept.html) (last visited Feb. 21, 2013). Prior to 2012, the *Law of Armed Conflict Deskbook* was entitled the *Law of War Deskbook*, and the *Law of Armed Conflict Documentary Supplement* was entitled the *Law of War Documentary Supplement*. See *id.* ADI provides these publications in hard copy to students attending courses, and posts them electronically on various online sites. See, e.g., *id.*

The *Law of Armed Conflict Deskbook* is, in essence, ADI’s textbook, and is “a collection of teaching outlines . . . intended only to introduce students to the law and point them to primary sources of that law.” DESKBOOK, *supra* note 9, at ii. The *Deskbook* is not intended “to espouse an ‘official’ position of the U.S. Army, Department of Defense, or U.S. Government.” *Id.* The *Operational Law Handbook* is a “guide for Judge Advocates practicing operational law. It provides references and describes tactics and techniques for the practice of operational law.” OPERATIONAL LAW HANDBOOK, *supra* note 5, at ii. The *Operational Law Handbook* is organized along topical areas, ranging from Rules of Engagement to Fiscal Law to Foreign and Deployment Claims. See *id.* at iii–iv. The *Law of Armed Conflict Documentary Supplement* is a “ready reference of collected materials relevant to the study and practice of international and operational law.” INT’L & OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S LEGAL CTR. & SCH., U.S. ARMY, LAW OF ARMED CONFLICT DOCUMENTARY SUPPLEMENT, at i (2012).

<sup>51</sup> DI MEGLIO, *supra* note 49, at 4.

ulty<sup>52</sup> introduces fundamental legal concepts to the students in plenary sessions and then explores these concepts in greater depth through small group seminar settings, often applying them to both real world and fictional scenarios.<sup>53</sup> ADI provides these new Judge Advocates with extensive instruction on the 1949 Geneva Conventions, law related to the conduct of hostilities, U.S. practice regarding the 1977 Additional Protocols to the Geneva Conventions, and operational topics, including the ROE, Intelligence Law, Detention Operations, and Cyber Operations.<sup>54</sup>

A one-day, interactive experience dubbed the “Gauntlet” is ADI’s capstone event in the Officer Basic Course.<sup>55</sup> It is designed to reinforce concepts learned in the classroom through experiential training.<sup>56</sup> The ADI faculty create scenario-based vignettes for the Gauntlet using lessons learned that are collected by CLAMO from Judge Advocates’ real-world deployment experiences.<sup>57</sup> The Gauntlet’s challenges cover an assortment of topics, including ROE, the Geneva Conventions, Means and Methods of Warfare, Fiscal Law, and Administrative Investigations.<sup>58</sup> Students are thus challenged to identify numerous legal issues and advise commanders accordingly.<sup>59</sup> To negotiate the various Gauntlet lanes, students are organized into small groups of fifteen to twenty students.<sup>60</sup>

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<sup>52</sup> As of the 2012–2013 academic year, the ADI faculty is comprised of eight full-time, active duty faculty members, three DIMAs, and one Academic Department Coordinator. See LCS BULLETIN, *supra* note 32, at 18, 21. All faculty members, with the exception of the Academic Department Coordinator, are Judge Advocates. See *id.* Among the eight full-time faculty members are four Army officers, two Air Force officers, one Navy officer, and one Marine officer. See *id.* All members of the ADI faculty have extensive operational and deployment experience. See *id.*

<sup>53</sup> See DiMEGLIO, *supra* note 49, at 4. The plenary sessions are taught to the entire class, whereas the seminars consist of smaller groups of fifteen to twenty students. See *id.*

<sup>54</sup> *Id.* Collectively, this training more than satisfies the Army’s Level A and Level C training requirements. See THE JUDGE ADVOCATE GENERAL’S SCH., U.S. ARMY, CIRCULAR 351-1, BASIC COURSE 1 (2012); AR 350-1, *supra* note 23, at app. G-21; see also *supra* notes 23–31 and accompanying text (discussing the training levels). ADI constantly adjusts the exact nature and content of its classes and instruction to the Basic Course, and to all other audiences, based on developments in the law and on assessments of what current Judge Advocates need to know to provide competent international and operational law advice. The faculty’s recent operational experience and CLAMO’s lessons learned collection process often inform the precise mix of classes and instruction.

<sup>55</sup> DiMEGLIO, *supra* note 49, at 5.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

The Gauntlet includes a ninety-minute outdoor training lane.<sup>61</sup> At the beginning of this lane, an ADI faculty member gives a small group of students a briefing on a fictional scenario and the applicable ROE.<sup>62</sup> After preparing to execute the lane and discussing their plans with a senior mentor—generally a Graduate Course Judge Advocate—the students form into a patrol, walk, and begin to negotiate the lane.<sup>63</sup> In the lane, the students confront scenarios involving claims, negotiations, rule of law, hostile act or intent, public affairs, investigations, wounded and sick, triage, and detention and interrogation.<sup>64</sup> Other TJAGLCS faculty and staff members role-play to replicate an operational environment and raise various legal issues that the students must address.<sup>65</sup> Once students have navigated the lane, they participate in an informal After Action Review (“AAR”) with their observer/controller—a faculty member from ADI—and with the role players and senior mentors.<sup>66</sup>

The Gauntlet also requires students to demonstrate their ability to formally brief a commander at a staff meeting by answering questions and providing advice on a myriad of legal issues.<sup>67</sup> This forty-minute “Commander’s Brief” requires students to think on their feet and to distill legal advice in a manner that is clear, correct, and useful to a commander.<sup>68</sup>

A Judge Advocate’s first assignment after completing the Officer Basic Course will not normally center on providing operational legal advice to a commander.<sup>69</sup> ADI’s classroom and vignette-based training, however, provides new Judge Advocates with a general understanding of international and operational law and the nuanced issues involved in

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<sup>61</sup> DiMEGLIO, *supra* note 49, at 5.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See DiMEGLIO, *supra* note 49, at 5.

<sup>68</sup> Although it is critical for a Judge Advocate to understand all aspects of a legal issue, a Judge Advocate who provides a commander with an overly complex and “legalistic” law school response to a question often does not add value to the commander. A commander looks to the Judge Advocate to distill the requisite legal information and to provide a defined recommended course of action. In this regard, a Judge Advocate, like any member on the commander’s staff, is asked to apply training and knowledge in a specified area, and to provide input and recommendations succinctly to the commander and staff. Because today’s operational Judge Advocate must have a firm grasp of many legal issues, the Commander’s Brief requires students to address diverse topics such as the LOAC, military justice, claims, fiscal law, administrative investigations, and diplomatic considerations.

<sup>69</sup> DiMEGLIO, *supra* note 49, at 5.

contemporary military operations.<sup>70</sup> This knowledge base is further developed through training and operational experiences at assigned posts, on deployments, and in exercises over the next five to eight years before students return to Charlottesville to attend the Graduate Course.<sup>71</sup>

#### IV. INTERNATIONAL AND OPERATIONAL LAW INSTRUCTION IN THE GRADUATE COURSE

The Graduate Course at the JAG School “challenges experienced attorneys to refine their strategic critical thinking, reasoning, and judgment skills to prepare for positions of increased responsibility at the highest levels of the military service.”<sup>72</sup> The ten-month program of instruction includes plenary, seminar, and elective courses, and offers students the opportunity to specialize in several areas, including International and Operational Law.<sup>73</sup>

ADI provides Graduate Course students with seventy-four hours of detailed instruction on the LOAC and operational topics.<sup>74</sup> Similar to the Basic Course model, ADI uses both plenary and seminar formats in the Graduate Course.<sup>75</sup> Plenary classes include a focus on the Hague

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> LCS BULLETIN, *supra* note 32, at 22.

<sup>73</sup> See DiMEGLIO, *supra* note 49, at 4; LCS BULLETIN, *supra* note 32, at 22. Students must take ten elective credits during the Graduate Course. LCS BULLETIN, *supra* note 32, at 22; DiMEGLIO, *supra* note 49, at 4. A student who successfully completes at least nine of those credits in one military law discipline receives a specialization in that discipline. See LCS BULLETIN, *supra* note 32, at 22.

The Graduate Course is attended primarily by active-duty Judge Advocates. See *id.* Most Reserve and National Guard component Judge Advocates attend the Judge Advocate Officer Advanced Course (“JAOAC”) in lieu of attending the ten-month Graduate Course. See *id.* at 38. JAOAC is a two-week resident course provided annually. See *id.* Prior to attending the resident course, students must complete courses distributed online through the Judge Advocate General’s University (“JAGU”) Distributed Learning Program. See *id.* ADI divides the International and Operational Law topics between the “Phase 1” online training and the “Phase 2” resident course. See *id.* The topics are similar to those offered in the resident Graduate Course. See *id.*

Additionally, ADI provides instruction to Judge Advocates in the Reserve and National Guard components at several forums, including Legal “On-Sites.” See generally DiMEGLIO, *supra* note 49 (noting that these Legal “On-Sites,” which are Reserve and National Guard component legal conferences held at various locations around the country, generally run for two days).

<sup>74</sup> See DiMEGLIO, *supra* note 49, at 4. The Graduate Course is a thirty-credit course conducted over two semesters. See CIRCULAR 351-6, *supra* note 44, at 2. One course credit equates to approximately sixteen hours of classroom instruction. *Id.* Students are also required to write a major scholarly paper during the course. LCS BULLETIN, *supra* note 32, at 22.

<sup>75</sup> DiMEGLIO, *supra* note 49, at 4.

Regulations and Geneva Conventions; National Security Law; ROE; Rules for the Use of Force; Means and Methods of Warfare; War Crimes; International Human Rights Law; Comparative Law; Rule of Law; Intelligence Law; Interrogation Operations; Domestic Support Operations; Cyber Operations; and Sea, Air and Space Law.<sup>76</sup> Additionally, ADI offers thirteen electives in the Graduate Course on various international and operational law topics.<sup>77</sup> Along with standard written examinations, ADI assesses learning through “Response Memos,” which require students to analyze an operational question from a notional “commander” and provide a succinct written response in a time-constrained setting.<sup>78</sup>

Although some Graduate Course students arrive with prior experience as operational legal advisers, many will begin their duties in operational billets upon completing the Graduate Course—often as a Brigade Judge Advocate for a Brigade Combat Team.<sup>79</sup> The instruction that Graduate Course students receive at the JAG School prepares them

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<sup>76</sup> See LCS BULLETIN, *supra* note 32, at 22–23.

<sup>77</sup> DiMEGLIO, *supra* note 49, at 4. During the 2012–2013 academic year, ADI offered the following electives: Information Operations and Cyber Operations; War Crimes; Law of Sea, Air and Space; Military Operations; Intelligence Law; Advanced Topics in the Law of Armed Conflict; Human Rights; National Security Law; Rule of Law; International Agreements; and Current Topics in the Law of Armed Conflict. *See id.* The Regimental Historian also offers an elective in the History of Warfare. *See id.*

<sup>78</sup> *See id.* at 12.

<sup>79</sup> *See* FM 1-04, *supra* note 11, para. 3-5; LCS BULLETIN, *supra* note 32, at 22.

Under the modular force design, the brigade combat team (BCT) is the building block of land combat power. The BCT is designed to operate as an autonomous unit independent of the standard mission command relationship between a division and an organic brigade. There are three types of BCTs: infantry BCTs, Stryker BCTs, and [armored] BCTs. In addition, there are five types of support brigades: battlefield surveillance brigades, fires brigades, combat aviation brigades, maneuver enhancement brigades, and sustainment brigades.

FM 1-04, *supra* note 11, para. 3-5. *See generally* FM 3-90.6, *supra* note 1 (describing Brigade Combat Teams).

The Brigade Legal Section in a Brigade Combat Team is doctrinally comprised of two Judge Advocates—a Brigade Judge Advocate, usually a post-Graduate Course Major, and a Trial Counsel, usually a pre-Graduate Course Captain—one senior paralegal noncommissioned officer, and one paralegal soldier assigned to each subordinate battalion (usually six total paralegal soldiers). *See* FM 1-04, *supra* note 11, para. 4-7. “The brigade judge advocate is the primary legal advisor to the brigade commander.” *Id.* para 4-9. As such, the Brigade Judge Advocate is responsible for “the delivery of legal services to the brigade across the core legal disciplines,” including operational law. *Id.* para. 4-12. Upon deployment, due to operational and mission requirements, many Brigade Legal Sections receive an additional Judge Advocate Captain as augmentation. *Id.* para. 4-8.

for these future challenges, like the one introduced in the opening hypothetical.

## V. INTERNATIONAL AND OPERATIONAL LAW INSTRUCTION THROUGH SHORT COURSES

The JAG Corps recognizes that a Judge Advocate's need for training and development cannot necessarily wait until he or she is able to attend a resident course. Accordingly, in addition to the Officer Basic Course and the Graduate Course, the JAG School offers more than sixty specialized short courses annually.<sup>80</sup> ADI's short course offerings, generally attended by Judge Advocates either currently occupying or about to enter into an operational law billet, include a two-week Operational Law of Armed Conflict Course,<sup>81</sup> and one-week courses in Intelligence Law,<sup>82</sup> Domestic Operational Law,<sup>83</sup> and Rule of Law.<sup>84</sup> Each of

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<sup>80</sup> See LCS BULLETIN, *supra* note 32, at 29–30.

<sup>81</sup> The Operational Law of Armed Conflict Course “is offered twice a year and focuses on the role of law and lawyers in joint and multinational military operations.” *International and Operational Law Managed Courses*, THE JUDGE ADVOCATE GENERAL'S LEGAL CTR. & SCH., <https://www.jagcnet.army.mil/8525736A005BC8F9/0/84843E08984787C18525735500653845?opendocument&enoly=1> (last visited Feb. 21, 2013). The current format is the result of a merger in 2007 of two separate courses: the Law of War Course (initiated in 1972) and the Operational Law Course (initiated in 1990). Lectures and seminar topics change often to reflect the contemporary operational needs of the students, but generally include: Introduction to Public International Law; History of the LOAC; Framework of the LOAC; Legal Basis for the Use of Force; Prisoners of War; LOAC Protections for Civilians; Wounded and Sick in the Field; Means and Methods of Warfare; Rules of Engagement and Rules for the Use of Force; Targeting and the Air Operations Center; Collateral Damage Estimation; War Crimes and Command Responsibility; Defense Support of Civil Authorities; Interrogation Operations and Intelligence Law; Identity Intelligence Analysis; International Human Rights; International Committee of the Red Cross (“ICRC”) Overview; Introduction to Fiscal Law; Operational Funding; Deployment Claims; Rule of Law; International Agreements; Information and Cyber Operations; Administrative Investigations; Comparative Law; and Sea, Air, and Space Law. *See id.* Additionally, students receive real-time briefings from Judge Advocates currently deployed in operations around the world and threat briefings by intelligence analysts from the National Ground Intelligence Center (“NGIC”), which is also located in Charlottesville, Virginia.

<sup>82</sup> The Intelligence Law Course, which the U.S. Army Intelligence and Security Command (“INSCOM”) co-sponsors, originated in 2004. The course introduces practitioners to the field of intelligence law by offering an overview of the existing laws, regulations, and policies, as well as an overview of the functions and roles of the intelligence community. *See id.* Lecture topics change often to reflect changes in the law or policy, but generally include: Sources of Intelligence Law and Policy, Executive Order 12,333 (U.S. Intelligence Activities), Special Collection Procedures, Human Intelligence and Military Source Operations, Foreign Disclosure Procedures, Security Compromises, Counterintelligence Procedures, Signals Intelligence, and Cyber Law. *See id.*

<sup>83</sup> The Domestic Operational Law Course began in 2001 and is co-administered with CLAMO. *See id.* It provides attendees with an understanding of the role of the DoD in



these courses mixes a study of substantive law with a nuanced appreciation for current policy and practical considerations.<sup>85</sup> Students receive instruction from ADI faculty and guest lecturers with specialized backgrounds, as well as from personnel who are currently deployed or who have recently returned from deployment.

In addition to the training presented directly to Judge Advocates, ADI also provides short-course instruction to many individuals and organizations that interact with Judge Advocates. Senior Army officers preparing to assume either battalion or brigade command receive instruction in Senior Officer Legal Orientation courses,<sup>86</sup> and General Officers attend individualized General Officer Legal Orientations.<sup>87</sup> ADI

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homeland security. *Id.* The course “focuses on the military’s support to civilian operations, such as domestic emergencies, civil disturbances, disaster relief, and law enforcement.” *Id.* Lecture topics change often to reflect changes in law and policy, but generally include: Federal Emergency Management (FEMA) Overview, National Guard Overview, Posse Comitatus Act and DoD Response Authority, U.S. Northern Command and North American Aerospace Defense Command (NORAD) Overview, Federal Aviation Administration Overview, Standing Rules for the Use of Force, Counterdrug Mission and DoD Support to Law Enforcement, Defense Logistics Agency Overview, and Fiscal Issues in Domestic Operations. *See id.*

<sup>84</sup> The Rule of Law Course, initiated in 2008, addresses the role that Judge Advocates and other governmental attorneys play in the conduct of Rule of Law operations. *See id.* Lecture topics change often to reflect changes in law and policy, but generally include: Post-Conflict Governance, Criminal Prosecutions, Comparative Law and Analysis of Legal Traditions in countries with current military operations, the Role of Civil Affairs, Combatant Command Approaches to Rule of Law, Department of State Overview, U.S. Agency for International Development Overview, Department of Justice Overview, ICRC Overview, U.S. Institute of Peace Overview, and intelligence briefings on future potential conflict zones. *See id.* Beginning in the fall of 2013, a two-day course offered twice a year, entitled “Emergent Topics in International and Operational Law,” will replace the Rule of Law course. The focus of each Emergent Topics course will vary depending upon the current operational requirements of the JAG Corps.

<sup>85</sup> *See supra* notes 81–84 and accompanying text (summarizing the curriculum for each course).

<sup>86</sup> The JAG School conducts five Senior Officer Legal Orientations (“SOLOs”) annually. *See* LCS BULLETIN, *supra* note 32, at 29. The four-and-a-half-day course “acquaints senior Army officers [officers in the rank of Colonel or Lieutenant Colonel] with the legal responsibilities and issues commonly faced by installation, brigade combat team, and battalion commanders, and by those commanders assuming special court-martial convening authority.” *Senior Officers Legal Orientation Course*, THE JUDGE ADVOCATE GENERAL’S LEGAL CTR. & SCH., <https://www.jagcnet.army.mil/8525736A005BC8F9/0/05F92EA4F7C4472185257355005D0405?opendocument&noly=1> (last visited Feb. 21, 2013). International and Operational Law topics include: Law of Armed Conflict, Rules of Engagement and Rules for the Use of Force, Intelligence Law, Interrogation Law, Domestic Support Operations, and Cyber Operations. *Id.* In 2013, the JAG School initiated a similar program for senior enlisted Command Sergeants Major.

<sup>87</sup> The General Officer Legal Orientation (“GOLO”) course is a one-day individualized course of instruction specially tailored to the needs of a senior officer, typically in the rank

also provides an overview of current international and operational law issues to Congressional staffers as a part of the Congressional Staff Legal Orientation, offered annually by TJAGLCS.<sup>88</sup> Finally, ADI routinely provides instruction at schools and agencies at various off-site locations.<sup>89</sup>

## VI. THE CENTER FOR LAW AND MILITARY OPERATIONS

In 1988, the Secretary of the Army directed the Army Judge Advocate General to establish a Center for Law and Military Operations, or CLAMO.<sup>90</sup> The stated purpose for establishing CLAMO was to provide an organization dedicated to an “ongoing examination of legal issues associated with the preparation for, deployment to, and conduct of military operations.”<sup>91</sup> CLAMO initially fell under the International Law Division at the JAG School, but it became an independent organization under the International and Operational Law Department of the Office of the Judge Advocate General in July 1995.<sup>92</sup> Today, CLAMO is a directorate of the Legal Center and is a joint, interagency, multinational entity comprised of seven attorneys from the U.S. Army, Marine Corps, Navy, and Coast Guard, as well as the Army Legal Services branch of the British Army.<sup>93</sup>

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of Brigadier General or Major General. *General Officer Legal Orientation Course*, THE JUDGE ADVOCATE GENERAL'S LEGAL CTR. & SCH., <https://www.jagcnet.army.mil/8525736A005BC8F9/0/6F822179EA30228385257355005F4271?opendocument&noly=1> (last visited Feb. 21, 2013). International and Operational Law topics include: International Agreements, Rules of Engagement, Domestic Support Operations, Cyber Operations, and International Human Rights Law. *See id.*

<sup>88</sup> DiMEGLIO, *supra* note 49, at 12.

<sup>89</sup> *See id.* For example, during the 2011–2012 academic year, ADI taught the following external audiences: international students at the International Institute of Humanitarian Law in San Remo, Italy; law students and faculty at courses co-sponsored with law schools and the ICRC in Santa Clara, California, Edmonton, Ontario, and Charlottesville, Virginia; and agency training for attorneys and analysts at the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), and the Office of the Director of National Intelligence (“ODNI”).

<sup>90</sup> *See* Memorandum from the Sec’y of the Army to the Judge Advocate Gen. (Dec. 21, 1988), *in* ARMY LAW., Apr. 1989, at 3.

<sup>91</sup> *Id.*

<sup>92</sup> *See* Major Mark S. Martins, *Responding to the Challenge of an Enhanced OPLAW Mission: CLAMO Moves Forward with a Full-Time Staff*, ARMY LAW., Aug. 1995, at 3, 3. Major Martins notes that the “International Law Division” at The JAG School had been renamed the “International and Operational Law Department” by 1995. *Id.* at 3 & n.5. The JAG School was redesignated “The Judge Advocate General’s Legal Center and School” on October 1, 2004. *See* Headquarters, U.S. Dep’t of the Army, General Orders No. 10 (Sept. 22, 2004) (on file with author).

<sup>93</sup> LCS BULLETIN, *supra* note 32, at 10; Interview with Major Jesse Greene, Deputy Dir., Ctr. for Law & Military Operations, in Charlottesville, Va. (Aug. 30, 2012). Historically,

CLAMO “collects and synthesizes data relating to legal issues arising in military operations, manages a central repository of information relating to such issues, and disseminates resources addressing these issues.”<sup>94</sup> The Center employs a three-step functional process. First, CLAMO collects information by conducting interviews with attorneys and paralegals returning from deployments and manages a repository of questions and responses from deployed legal professionals.<sup>95</sup> Second, CLAMO synthesizes the information collected into searchable repositories and publications,<sup>96</sup> which may be referenced by Judge Advocates and others.<sup>97</sup> Third, CLAMO disseminates this information, ensuring lessons learned are integrated into JAG Corps doctrine and are incorporated into instruction and training provided at TJAGLCS<sup>98</sup> and the JAG Corps’ Pre-Deployment Training (“JPT”) program conducted at the Pentagon.<sup>99</sup>

CLAMO’s information gathering and dissemination capability provides the JAG Corps with the ability to adapt quickly to emerging legal challenges and to train Judge Advocates properly for today’s complex legal environment. CLAMO also provides an important function

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attorneys from several foreign countries have served in CLAMO, including the United Kingdom, Canada, Germany, and Australia. Interview with Major Jesse Greene, *supra*.

<sup>94</sup> FM 1-04, *supra* note 11, para. 4-49.

<sup>95</sup> See *id.* para. 4-50. All Judge Advocate personnel must “complete an after action review (AAR) . . . with CLAMO upon redeployment. This AAR may either be conducted with a member of CLAMO in person, electronically, or by telephone.” *Id.*

<sup>96</sup> CLAMO’s publications are numerous, and include: *Domestic Operations Handbook, Rule of Law Handbook, Forged in Fire: Legal Lessons Learned During Military Operations, 1994–2008*, and specific *Lessons Learned* books for operations conducted in the Balkans, Haiti, Iraq, Afghanistan, and during the recovery from Hurricane Mitch. See CLAMO, <https://www.jagcnet.army.mil/CLAMO> (last visited Feb. 21, 2013).

<sup>97</sup> Interview with Major Jesse Greene, *supra* note 93. Every AAR that CLAMO conducts captures operational law issues. *Id.* CLAMO also dissects every AAR and places the legal issues addressed into topical knowledge capture folders. *Id.* Judge Advocates who wish to research a specific issue in preparation for deployment or training at a Combat Training Center (“CTC”) can thus review, by date and unit, every issue captured from recently deployed Judge Advocates. *Id.*

<sup>98</sup> For example, if CLAMO identifies a consistent deficiency in a legal discipline that deployed legal professionals have reported, CLAMO will notify the pertinent academic department at the JAG School, and this department will modify its program of instruction to provide the necessary coverage of the topic.

<sup>99</sup> JPT, which prior to July 2012 was called the Brigade Judge Advocate Mission Primer (“BJAMP”), is a weeklong course offered three times per year at the Pentagon. See *The Judge Advocate General’s Corps’ Pre-Deployment Training (JPT)*, 38 TJAG SENDS, no. 7, July 2012. The course, created in 2009, is designed to complement instruction that the JAG School provides and prepare deploying legal personnel for the legal challenges they may encounter in a specific deployment location. See *id.*

by overseeing the Judge Advocates assigned to the Army's Combat Training Centers ("CTCs"), discussed below.

## VII. TRAINING JUDGE ADVOCATES AT THE COMBAT TRAINING CENTERS

Through the CTC Program, the Army trains soldiers and units by replicating combat operations and providing a realistic tactical experience prior to engaging in real missions.<sup>100</sup> There are four primary training centers, consisting of one mobile CTC<sup>101</sup> and three static maneuver CTCs.<sup>102</sup> Units rotate through one of the three maneuver CTCs for approximately four weeks, with the unit interacting with civilian role players and fighting the "enemy" for about two weeks.<sup>103</sup>

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<sup>100</sup> DiMEGLIO, *supra* note 49, at 6. The mission of the CTC Program is to "provide realistic joint and combined arms training, according to Army and joint doctrine, approximating actual combat." U.S. DEP'T OF THE ARMY, REGULATION 350-50, COMBAT TRAINING CENTER PROGRAM para. 1-5 (2003) [hereinafter AR 350-50]. Toward this end, the CTC Program:

- (1) Provides commanders, staffs, and soldiers an operational experience focused on leader development.
- (2) Produces bold, innovative leaders through stressful tactical and operational exercises.
- (3) Increases unit readiness for deployment and warfighting.
- (4) Embeds doctrine throughout the Army.
- (5) Provides feedback to the Army and joint participants to improve warfighting.
- (6) Provides a data source for lessons learned to improve doctrine, training, leader development, organizations, materiel and soldiers (DTLOMS) to win in combat.

*Id.*

<sup>101</sup> See DiMEGLIO, *supra* note 49, at 6 (noting that this mobile CTC, the Mission Command Training Program ("MCTP") at Fort Leavenworth, Kansas, sends personnel to units to train brigade-level and more senior commanders and staffs).

<sup>102</sup> See *id.* (noting that the three static maneuver CTCs are: (1) the Joint Multinational Readiness Center ("JMRC") in Hohenfels, Germany, (2) the Joint Readiness Training Center ("JRTC") at Fort Polk, Louisiana, and (3) the National Training Center ("NTC") at Fort Irwin, California); see also AR 350-50, *supra* note 100, para. 1-5 (describing these CTCs). The MCTP was formerly called the Battle Command Training Program ("BCTP"), and the JMRC was formerly called the Combat Maneuver Training Center ("CMTC"). See *Mission Command Training Program*, U.S. ARMY COMBINED ARMS CENTER, <http://usacac.army.mil/cac2/MCTP> (last visited Feb. 21, 2013).

<sup>103</sup> DiMEGLIO, *supra* note 49, at 6. For more information on rotations at and capabilities of the four CTCs, see generally *Joint Multinational Training Command*, U.S. ARMY, <http://www.eur.army.mil/jmtc/Organization/JMRC/JMRC.html> (last visited Feb. 21, 2013); *Joint Readiness Training Center*, U.S. ARMY, <http://www.jrtc-polk.army.mil/OPS/index.html> (last visited Feb. 21, 2013); *National Training Center*, U.S. ARMY, <http://www.irwin.army.mil/Pages/default.aspx> (last visited Feb. 21, 2013); *Mission Command Training Program*, *supra* note 102.

Trainers assigned to the CTCs are organized into Operations Groups to oversee the performance of rotational training units and to provide comprehensive feedback and assessment.<sup>104</sup> Experienced Judge Advocates are assigned as Observer Controller Trainers (“OC/T”) by the Army JAG Corps to train units at the CTCs in legal operations.<sup>105</sup> A former OC/T at the National Training Center (“NTC”) and the current Deputy Director of CLAMO notes that legal OC/Ts “engage not only the legal professionals in the units, but also the soldiers, leaders, and commanders to gauge familiarity with contemporary legal issues as they arise, ensuring the unit’s legal professionals can then focus advice and training where most needed.”<sup>106</sup> OC/Ts provide Judge Advocates with ROE training in one-on-one sessions at the Leader Training Program and two-hour overview classes for commanders.<sup>107</sup> They also conduct “man-on-the-street” interviews and quiz soldiers from the rotating unit on ROE vignettes to assist in evaluating the readiness of the units.<sup>108</sup> The OC/Ts can then graphically display the results to Judge Advocates and commanders to identify where more training is needed.<sup>109</sup> Once units enter the training area, OC/Ts give Judge Advocates “over-the-shoulder coaching” to ensure that Judge Advocates understand both offensive and defensive ROE.<sup>110</sup> OC/Ts also ensure Judge Advocates recognize the need to proactively engage in targeting decisions and raise ROE issues.<sup>111</sup> Finally, after each ROE event, OC/Ts discuss with the Judge Advocates they are evaluating how the Judge Advocates’ advice on the ROE affected the operation.<sup>112</sup>

The realistic training and the OC/T mentoring at the CTCs supplement the formal training provided to Judge Advocates at TJAGLCS.<sup>113</sup> The resources provided by the OC/Ts augment the assets

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<sup>104</sup> See AR 350-50, *supra* note 100, para. 1-6.

<sup>105</sup> DiMEGLIO, *supra* note 49, at 6. The JAG Corps currently assigns four Judge Advocates to MCTP, two Judge Advocates to JMRC, three Judge Advocates and one paralegal to JRTC, and two Judge Advocates and one paralegal to NTC. Interview with Major Jesse Greene, *supra* note 93.

<sup>106</sup> Interview with Major Jesse Greene, *supra* note 93; see also FM 1-04, *supra* note 11, paras. 4-51–4-52 (providing more information on the roles and responsibilities of the Judge Advocates and paralegals assigned to the CTCs).

<sup>107</sup> Interview with Major Jesse Greene, *supra* note 93.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> DiMEGLIO, *supra* note 49, at 6.

available through CLAMO.<sup>114</sup> Judge Advocates participating in the training at the CTCs exercise their operational law skills in a realistic setting with guidance from mentors, preparing them to operate successfully in complex legal environments as operational law attorneys.<sup>115</sup>

#### CONCLUSION

The Army JAG Corps provides a comprehensive program to prepare its Judge Advocates to advise commanders in today's challenging operational environment. Advising commanders through situations such as the one introduced in the opening hypothetical incorporates a multitude of factors, including a nuanced grasp of the LOAC, an appreciation of the political and operational considerations embodied in the ROE, an understanding of the intelligence and targeting capabilities of the military, and prior integration into the staff processes. Building on a foundation of formal training at the Army's JAG School, the collection and dissemination of legal lessons learned by CLAMO, and the hard work of the JAG OC/Ts, Army Judge Advocates are well prepared to advise commanders functioning in complex operational realities.

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*