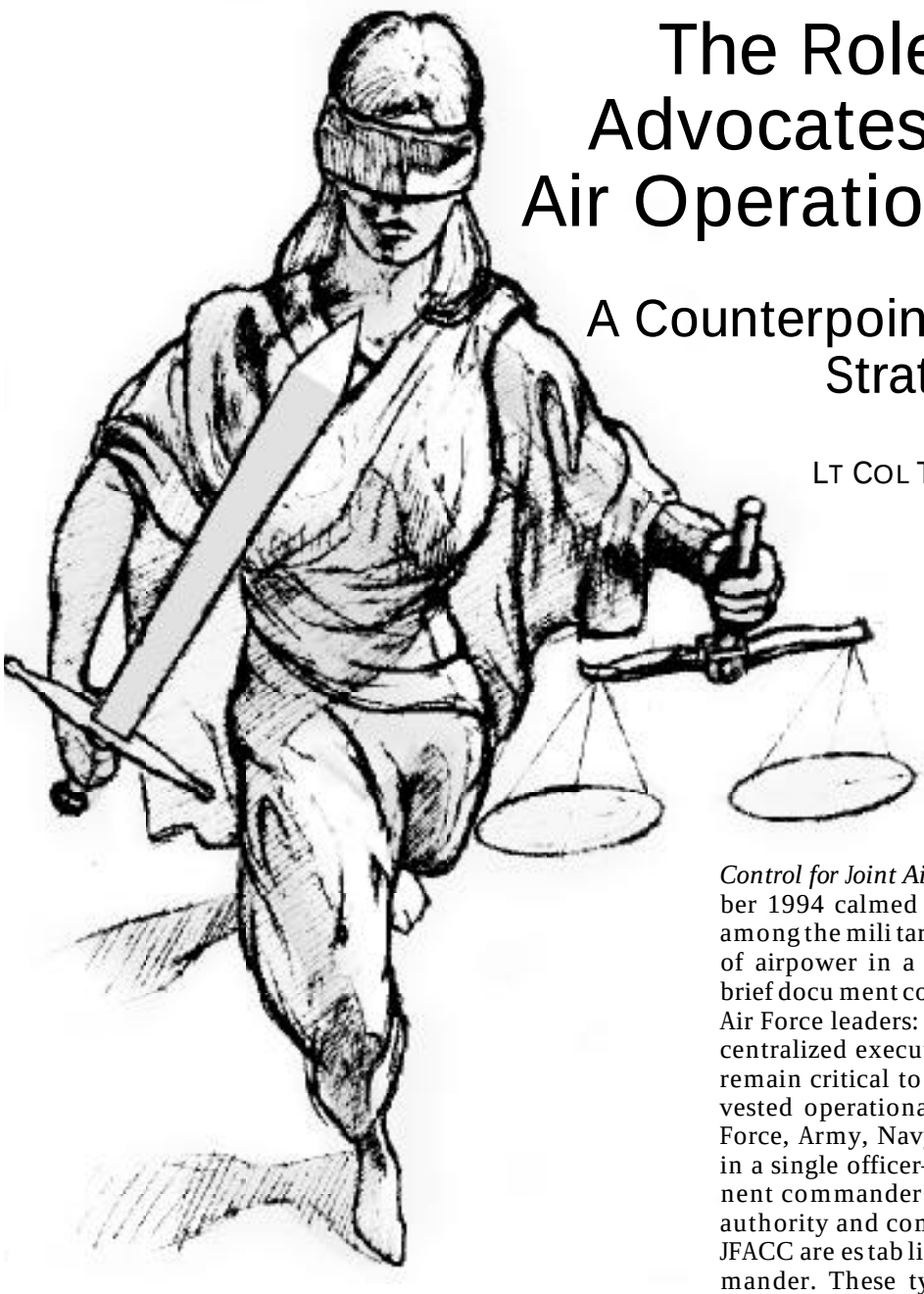
DISTRIBUTION A:
Approved for public release; distribution is unlimited.



The Role of Judge Advocates in a Joint Air Operations Center

A Counterpoint of Doctrine, Strategy, and Law

LT COL TERRIE M. GENT, USAF*

THE APPEARANCE of Joint Publication (Pub) 3-56.1, *Command and Control for Joint Air Operations*, on 14 November 1994 calmed 50 years of fervent debate among the military services about the control of airpower in a joint-operations area. This brief document codified a verity long held by Air Force leaders: centralized control and decentralized execution of air and space forces remain critical to force effectiveness.[1] It also vested operational or tactical control of Air Force, Army, Navy, and Marine air missions in a single officer—the joint force air component commander (JFACC),[2] stating that "the authority and command relationships of the JFACC are established by the joint force commander. These typically include exercising

*I would like to thank Brig Gen Edward F. Rodriquez, USAFR, president of the Air Force Judge Advocates Vietnam Veterans Association, for giving me invaluable information about the matters involving Lt Gen John D. Lavelle. I also owe a great debt of gratitude to Col Henry G. Green, USAF, Retired, president of the Air Force Retired Judge Advocates Association, for his assistance in locating several retired judge advocates and for sharing important insights about the relationship between commanders in Vietnam and their judge advocates.

operational control over assigned and attached forces and tactical control over other military capabilities/forces made available for tasking."[3] In addition, Joint Pub 3-56.1 established the organization headed by the JFACC—a joint air operations center (JAOC).[4]

In this publication, the "wiring diagram" for the JAOC made it clear that a staff judge advocate advises the JFACC, his staff, and the JAOC's two core divisions—Combat Plans and Combat Operations.[5] The staff judge advocate, as well as the JAOC's entire staff of attorneys and paralegals, must therefore be well versed in the joint and service doctrine that guides the activities of a JAOC. This article examines the judge advocate's duties during operations planning and during each stage of what some commanders refer to as the battle rhythm of the JAOC. It does not explain the law but illustrates the judge advocate's role in ensuring that the JFACC receives operational recommendations consistent with rules of engagement promulgated by the National Command Authorities (NCA), domestic and international law, and restraints and constraints specified by superior commanders.[6] However, since the structure of the JAOC evolved from tactical air control centers used by Seventh Air Force during the war in Vietnam, this article also examines the evolution of the JAOC as well as the role of Air Force judge advocates in operations during and since the Vietnam era.

Tactical Air Control Centers during the Vietnam War

Every major war involving America's air arm has tested the concept of centralized control of airpower.[7] During World War II—particularly in 1942 and 1943—the Army Air Forces insisted that only air officers control air forces. Earlier, aviation units had been assigned to and took orders from Army and Navy organizations. Although air leaders did not question their obligation to perform cooperative missions, they understood that decentralized control only undermined airpower's most significant contributions to the operational effort—mass and speed.[8] Before the Air Force became a separate service, air leaders insisted that they take direction only from a commander of a theater of operations or a large task force.[9] Even then, they accepted only missions required by the strategic plan.[10]

The lessons of history led airmen to conclude that the most effective scheme of control of air and space assets involved a single JFACC responsible for integrating the employment of all aerospace forces within a theater of operations.[11] During the Korean War and the early years of the Vietnam War, makeshift efforts resulted in some level of coordination of air activity.[12] As the war progressed in Vietnam, however, air operations in-theater became divided both geographically and organizationally, reflecting a divided command structure.

Although Gen William F. Momyer, commander of Seventh Air Force, had responsibility for coordinating all tactical air operations of US aviation units in South Vietnam in 1962, three separate tactical air control centers eventually directed operations, each planning missions and controlling air assets to meet the needs of disparate parts of operations.[13] In the south, for example, the air mission primarily involved supporting daily ground operations. The Seventh Air Force tactical air control center at Tan Son Nhut Air Base near Saigon focused on "today's war," close air support, and targets requested by the Army. Yet another center at Tan Son Nhut—the Seventh Air Force Command Center—planned operations with a focus on "tomorrow's war," including intelligence analysis, targeting, and battle damage assessment. A third tactical air control center, established in Thailand in 1965 to control air strikes in Laos, later became the alternate Air Force command center.[14] This cumbersome system, described by Henry Kissinger as "institutionalized schizophrenia," made it difficult for leaders to exert effective command and control over air operations. Although many people, including President Richard Nixon, recognized the folly of this tripartite method of controlling air operations, the structure

During the Vietnam War, the divided and cumbersome system of command and control recognized the responsibility for conducting air operations in accordance with the Law of War but did not include support from judge advocates.

had become too difficult to repair before the conclusion of the war.[15]

The Role of Air Force Judge Advocates in Vietnam

Did judge advocates have any role in advising commanders about the function of the tactical air control centers or the lawfulness of their operations? Despite the vigorous tempo of air operations during some periods, Air Force judge advocates assigned to units in Vietnam had almost no contact with the people who planned or executed air operations. According to Col Michael R. Emerson, permanent professor and head of the Law Department of the United States Air Force Academy, Air Force judge advocates in Vietnam had no discussions about the Law of War or the rules of engagement with people who worked in the centers. Assigned as a captain to the 377th Combat Support Group Office of the Staff Judge Advocate at Tan Son Nhut Air Base during 1970 and 1971, Emerson recalled that "no one in our office gave briefings to the guys in the TACC. I remember it was in the Seventh Air Force Headquarters building, a gray-green building surrounded by concertina wire and guarded by lots of cops. You had to have a [high-level] clearance to get in there, and none of us had one."[16]

If airmen who planned and executed air operations received no advice about the Law of War and rules of engagement from judge advocates at the group or base level, did they get it from judge advocates at Headquarters Seventh Air Force? Col Richard F. Rothenburg, assigned as a captain to the Seventh Air Force's Office of the Staff Judge Advocate in 1969, remembered making only one brief visit to the tactical air control center to meet with officers investigating a claim alleging that Air Force members had defoliated parts of a rubber plantation.[17] Col Philip J. Williamson, Seventh Air Force staff judge advocate, attended Headquarters Seventh Air Force staff meetings that reviewed the prior week's operations, but no one consulted him about future operations, the lawfulness of striking selected targets, or compliance with the rules of engagement.[18]

In short, no Air Force judge advocate in Vietnam offered what lawyers today call "operations law" advice to Air Force commanders and their staffs who led air operations in or from South Vietnam.

If neither base-level nor Seventh Air Force judge advocates provided personnel at the tactical air control center with operational legal advice, did they get it from judge advocates at the unified command—Military Assistance Command/Vietnam (MACV)? Apparently not. Brig Gen Gordon Ginsburg, assigned as a lieutenant colonel to the Office of the Staff Judge Advocate for MACV from January 1969 until January 1970, said that Air Force judge advocates at MACV routinely focused on a large variety of legal issues, none of them requiring explication of the Law of War or the rules of engagement. Although MACV was located in a compound immediately adjacent to Tan Son Nhut Air Base, Lieutenant Colonel Ginsburg and his legal brethren simply had no reason to visit the tactical air control centers.[19] In short, no Air Force judge advocate in Vietnam offered what lawyers today call "operations law" advice to Air Force commanders and their staffs who led air operations in or from South Vietnam.

An Air Force judge advocate assigned as an exchange officer to the embassy in Thailand, however, gave operations law advice to some of the airmen operating in North Vietnam and Thailand. From July 1967 to July 1969, Walter Reed, then a major but later a major general and the judge advocate general of the Air Force, reviewed target lists to ensure that US forces did not attack targets restricted by the Law of War or by the NCA. He also made sure no bombing occurred that would offend the

sensitivities of the Thailand government. No bombing mission could launch from Thailand without approval from an authority located in Thailand. Apparently, Major Reed was the only Air Force judge advocate in-theater who scrutinized some of the "frag orders," just as a judge advocate supporting a JAOC would review the lawfulness of attacking targets today.[20]

Many of today's military leaders who served in Vietnam remember the allegations against General Lavelle and expect their legal counsel to fully advise them on the rules of engagement.

The Lavelle Case and Development of Standing Rules of Engagement

Prior to 1972, judge advocates outside the highest levels of leadership had no occasion to read the rules of engagement for air operations.[21] Both judge advocates in the field and commanders viewed these rules as an operational matter, something solely within the purview of the NCA and higher levels of command.[22] Prepared on an ad hoc basis and transmitted by message, letter, radio, and telephone calls, the rules of engagement, along with the Hague and Geneva Conventions, formed the "operating authorities" that governed the manner in which American forces could operate.[23] In 1972 the Air Force was embarrassed by allegations that Gen John D. Lavelle, commander of Seventh Air Force, ordered attacks on North Vietnamese positions in violation of the rules of engagement and instructed aircrews to falsify their after-action reports about the raids.[24] In hearings before both houses of Congress, the general asserted that the extant rules of engagement permitted the missions and that his superiors both knew of and encouraged the attacks he had authorized.[25] Nevertheless, the Air Force relieved him of command and retired him in the permanent grade of major general.[26] A week later, the Air Force changed the rules of engagement to allow the kinds of attacks he had ordered.[27]

Although the rules of engagement for the Vietnam War received closer scrutiny as the conflict drew to a close, not until five years later did anyone take steps to codify the general principles governing any of the services' operations. In 1979 Adm Thomas B. Hayward, chief of naval operations, directed a study to standardize the Worldwide Peacetime Maritime Rules of Engagement.[28] The study consolidated various references and provided supplemental measures that commanders could request when they needed to clarify their authority beyond basic self-defense.[29] In 1981 after coordination among the four services and the Office of the Secretary of Defense, the Department of State, and the National Security Council, the Joint Chiefs of Staff (JCS) approved the Worldwide Peacetime Rules of Engagement for Seaborne Forces.[30] These rules represented a clear statement of national views on self-defense in peacetime, and commanders could use them in many stages of a belligerency, thereby smoothing the transition from peace to hostilities and back to peacetime.[31] On 26 June 1986, the JCS Peacetime Rules of Engagement superseded the 1981 rules, and on 1 October 1994, they were renamed the Standing Rules of Engagement in Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01.

Although the JCS publishes the Standing Rules of Engagement and commanders have ultimate responsibility for complying with them and any approved supplemental measures, judge advocates can play a significant role as interpreters of the rules and as drafters of supplemental measures. Moreover, many of today's military leaders who served in Vietnam remember the allegations against Gen-

eral Lavelle and expect their legal counsel to fully advise them on the rules of engagement. Joint doctrine emphasizes that "joint forces operate in accordance with applicable [rules of engagement], conduct warfare in compliance with international laws, and fight within restraints and constraints specified by superior commanders. Objectives are justified by military necessity and attained through appropriate and disciplined use of force."[32]

Evolution of the Role of Air Force Operations Law Judge Advocates

Air Force judge advocates also had little contact with operators and issues concerning the rules of engagement prior to 1972 because nothing required them to do so. The US government and Department of Defense (DOD) had long recognized the necessity of complying with the Law of War (now also referred to as the Law of Armed Conflict). But not until the case of 1st Lt William L. Calley[33] shocked the conscience of the entire nation did a directive (DOD Directive 5100.77, *DOD Law of War Program*, 5 November 1974) mandate, among other things, that the services implement a program to prevent violations of the Law of War. Later regulations that implemented this directive cast Air Force judge advocates, as well as those from other services, in the role of trainers.

Beginning in 1980, Ninth and Twelfth Air Forces began exercises that, to a greater or lesser degree, trained personnel on their duties in a tactical air control center.[34] Air Force members, including judge advocates, also participated in joint and combined exercises. For guidance, they relied on DOD Directive 5100.77, Air Force Pamphlet (AFP) 110-31, *International Law—The Conduct of Armed Conflict and Air Operations* (1976), Air Force Regulation (AFR) 110-32, *Training and Reporting to Insure Compliance with the Law of Armed Conflict* (1976), and AFP 110-34, *Commander's Handbook on the Law of Armed Conflict* (25 July 1980). The exercises quickly improved in sophistication and realism, but the operational role of the judge advocate remained unclear. To remedy this, on 4 August 1988, the JCS sent a memorandum—MJCS 0124-88—to all combatant commanders, expressly requiring the immediate availability of legal advisors to provide advice on rules of engagement, the Law of Armed Conflict, and related matters during planning and execution of joint and combined exercises and operations.

In 1989 United States Southern Command (USSOUTHCOM) followed this guidance by involving judge advocates in planning for Operation Just Cause in Panama. Relations between the United States and Manuel Noriega, the Panamanian dictator, had been deteriorating for some time before Noriega annulled his country's elections on 10 May 1989 and sanctioned violence against his opponents, who had won the election. As the United States increased its pressure on Noriega to step aside, he responded with anti-American rhetoric and conduct. At Noriega's behest, on 15 December 1989, the National Assembly of Panama passed a resolution stating that "owing to U.S. aggression," a state of war existed with the United States. Noriega said that someday the "bodies of our enemies would float down the Panama Canal and the people of Panama would win complete control over the waterway." The next day, Panamanian Defense Forces personnel killed one US officer and wounded two others. Within days, President George Bush authorized the execution of Operation Just Cause to safeguard the lives of nearly 30,000 US citizens; to protect the integrity of the Panama Canal and 142 defense sites; to help the Panamanian opposition establish genuine democracy; to neutralize the Panamanian Defense Forces; and to bring to justice Manuel Noriega, who had been indicted on drug-related charges in the United States.[35]

On 10 October 1989, Gen Maxwell Thurman, commander of USSOUTHCOM, designated Lt Gen Carl W. Stiner, commander of XVIII Airborne Corps, as the commander of Joint Task Force South and the war planner and war fighter for the operation.[36] Over

22,000 soldiers, thirty-four hundred airmen, nine hundred marines, and seven hundred sailors were part of the task force.[37] Headquarters Twelfth Air Force, the Air Force component of USSOUTHCOM, joined in the planning efforts. Its commander, Lt Gen Peter T. Kempf, exercised operational control over all in-place and deploying Air Force forces.[38] Over two hundred aircraft participated in the deployment to Panama.[39] C-141s, C-130s, and C-5s, together with the requisite refueling support, carried out the bulk of the sorties; F-15s and F-16s flew combat patrols from Key West over the Caribbean from Cuba to the Yucatán Peninsula to deter attacks from the Cubans; Air Force E-3 airborne warning and control system (AWACS) aircraft provided aerial surveillance, threat warning, fighter control, and air-situation updates;[40] AC-130 gunships and UH-60 helicopters supported teams who assaulted ground positions;[41] and F-117s dropped bombs near the Panamanian Defense Forces barracks to persuade the troops to surrender.[42]

Colonel Moorman's staff provided in-depth legal advice on such varied issues as the lawfulness of proposed targets, prisoners of war, refugees and detainees, overflight of other nations, the capture of war trophies, claims for damage by Air Force forces, and the prosecution of Air Force members for misconduct, such as looting.

The massive airlift and complex operation gave rise to novel legal issues and, for the first time, Air Force judge advocates assigned to war-fighting units became deeply involved in planning a major operation and providing "real-time" legal advice during its execution. Col William A. Moorman, staff judge advocate for Twelfth Air Force, established a close liaison not only with his counterparts at Headquarters Tactical Air Command and USSOUTHCOM but also with Col John R. Bozeman, staff judge advocate for XVIII Airborne Corps, and Col Michael Nye, an Air Force judge advocate assigned to the CJCS legal staff.[43] To ensure that the command had continuous access to legal counsel, Colonel Moorman joined the battle staff, put four operations lawyers on 12-hour shifts, and assigned Maj Mary Boone to review all applicable "off-the-shelf" war plans. She earned the gratitude of operations planners when she found some disconnects that would have undermined the mission. Twelfth Air Force judge advocates who attended planning sessions also spotted synchronization errors missed by the planners. For example, they noticed that one group of forces contemplated dropping flares in an area where pilots would be using night-vision goggles.[44] They thereby established that they could contribute more to the planning effort than purely legal advice.

Because of the small airspace and proximity of civilians to military targets and objectives, the legal issues raised by Just Cause proved thorny; thus, clear rules of engagement were essential but difficult to write. Fortunately, Colonel Moorman had a secure telephone unit with which to make encrypted telephone calls, using it several times a day to talk with Colonel Bozeman and Colonel Nye about the language of the rules of engagement to ensure that they complied with NCA guidance and took into account the mix of aircraft in the operation. Colonel Moorman's staff provided in-depth legal advice on such varied issues as the lawfulness of proposed targets, prisoners of war, refugees and detainees, overflight of other nations, the capture of war trophies, claims for damage by Air Force forces, and the prosecution of Air Force members for misconduct, such as looting.[45] Although Just Cause lasted only 19 days, the participation of Twelfth Air Force's judge advocates in both its planning and execution became a turning point in the role of Air Force lawyers

in air operations. The Twelfth Air Force commander and his staff not only sought the advice of judge advocates on legal matters but also viewed them as full members of the war-planning and war-fighting team.[46]

At the annual Air Force General Court-Martial Conference at Homestead Air Force Base, Florida, in January 1990, Colonel Nye and Colonel Moorman shared their experiences with Air Force judge advocates for all the general-court-martial convening authorities, including Ninth Air Force.[47] Not many months later, when the judge advocates at Ninth Air Force—the air component to United States Central Command—participated in Internal Look, a Central Command exercise, they benefited from the experience of Twelfth Air Force's judge advocates.[48] Some of Ninth Air Force's judge advocates who participated in that exercise immediately became involved in Desert Shield, helping to plan operations to expel the Iraqis from Kuwait.[49] During both Desert Shield and Desert Storm, Ninth Air Force's Maj Harry Heintzelmann, for example, provided legal counsel to the now-famous Black Hole planners.[50] The Ninth Air Force staff judge advocate himself, Col Dennis Kansala, assisted in the refinement of the proposed rules of engagement and reviewed all the target lists after his staff had given them a careful "scrub."[51]

The unflagging and split-second issue spotting displayed by the judge advocates of all services during the Persian Gulf War solidified the confidence of commanders. Hays Parks, special assistant for the Law of War in the Office of the Judge Advocate General of the Army, remarked, "I have heard General Schwarzkopf, General Powell, and just about any other officer I run into, say that they consider the lawyer to be absolutely indispensable to military operations."[52] Air Force leaders shared this view. On 11 December 1991, Lt Gen Michael A. Nelson—Air Force deputy chief of staff for plans and operations—and Maj Gen David C. Morehouse—Air Force judge advocate general—jointly signed a letter stating that "we cannot afford to wait for war to bring judge advocates into the operations and planning environment. We need to work together all the time so that we all understand how and why [the Law of Armed Conflict] must be an essential element of our mission." Their letter announced the creation of a new legal discipline called operations law.[53] Marine leaders also shared this view. At an operations law seminar held at Camp Pendleton, California, in 1995, Lt Gen Anthony C. Zinni, commanding general of I Marine Expeditionary Force, said that "operational law is going to become as significant to a commander as maneuver, as fire support, and as logistics. It will be a principal battlefield activity. The senior [staff judge advocates] may be as close to the commander as his operations officer or his chief of staff. . . . [Staff judge advocates] will find themselves more and more part of the operational aspects of the business. They will be the right hand of the commander, and he will come to them for advice."[54]

Role of the Judge Advocate in a JAOC

As airmen of the Vietnam era rose to positions of influence, the tactical air control center continued as the doctrinally approved element for the Air Force's control of conventional air and space forces.[55] By the time Desert Shield began, however, the functions of each of the three tactical air control centers employed in Vietnam had been combined and streamlined but still retained a "today's-war" and "tomorrow's-war" approach.[56] In 1991 the tactical air control center officially became the *air operations center,* a term first used during World War II.[57] Joint Pub 3-56.1 relied heavily on the Air Force model but included adjustments based on the practical experience from Desert Shield and Desert Storm, as well as improvements validated during joint exercises in the years that followed the Gulf War.[58]

Although Joint Pub 3-56.1 encourages the tailoring of a JAOC's organization, Combat Plans and Combat Operations should remain common to all JAOCs.[59] Further, the Air Force has published doctrine that adds the Strategy

and Air Mobility Divisions.[60] The Combat Plans Division has the primary responsibility of planning near-term, joint air-and-space operations and building the daily joint air tasking orders,[61] while the Combat Operations Division executes the air tasking orders.[62] The Strategy Division develops, refines, disseminates, and assesses the progress of the JFACC's long-range air and space strategy,[63] while the Air Mobility Division plans, coordinates, tasks, and executes the air-mobility mission.[64]

After Desert Storm, some criticism of the JAOC centered around its "functional rigidity"—its inability to respond immediately to tactical threats or targets of opportunity such as the Iraqi Scud missiles.[65] Headquarters Air Combat Command responded to this commentary on 8 July 1997 by publishing *Combat Air Forces Concept of Operations for Command and Control against Time Critical Targets,* which described the JFACC's processes for planning, tasking, and executing offensive and defensive missions against time critical targets. It also suggested inclusion of a multidisciplinary time critical target cell in the Combat Operations Division.[66] Air Force doctrine relies upon the integrated team concept in other areas as well.[67] Although a JAOC patterned after the Air Force model may have four divisions and many subordinate teams, they remain fully integrated, and individuals will draw assignments to divisions and multidisciplinary teams rather than isolated functional cells. Therefore, judge advocates should expect to participate in the activities of all the divisions and several teams as well.[68]

Role of the Judge Advocate in Crisis Action Planning

Peacetime requires deliberate-planning procedures to prepare for future situations to which the United States must respond militarily.[69] The product of such planning includes operation plans, functional plans, or concept-of-operation plans. Judge advocates review deliberate plans and draft their "legal" portions. Situations arise, however, for which no plans exist. Instead, crisis action planning procedures come into play before activation of a JAOC or before initiating other military operations. These procedures include six phases, all subject to acceleration, combination, or omission, if circumstances warrant.[70] In phase one—situation development—national authorities receive reports about an event with possible national-security implications. Judge advocates for the JCS, geographic combatant commander in chief (CINC), and component levels of command begin to assess the legal issues that attend the change in circumstances and advise their commanders accordingly. They also begin to review the deliberate plans, which may be executed in whole or part in response to the new operational environment. They join planners in considering viable courses of action in anticipation of a call to do so by the NCA. They also carefully review the rules of engagement to determine whether to request supplemental measures.

In phase two—crisis assessment—the CINC assesses the event and informs the NCA. While this takes place, judge advocates continue to counsel the planners, who are considering courses of action. If national leaders opt for military action, in phase three—courses-of-action development—the National Command Authorities publish a warning order and direct the CINC to develop multiple courses of action in response to the situation. Along with the courses of action, the CINC may include a commander's estimate of the situation, which usually contains a mission analysis and statement, a situation analysis, an evaluation of enemy and friendly courses of action, and operational objectives.[71] If time permits, the CINC may issue a commander's evaluation request to subordinate and supporting commanders. They reply with a component's course-of-action-evaluation response message, which outlines the component's best guess on the time, in hours or days, required to execute each course of action and the planning factors used to make that estimate.

Judge advocates at the component level participate in course-of-action development to

The "highway of death." Even lawful combat operations can endanger the potentially fragile nature of consensus for military action.

ensure that the military may execute each proposal without violating the Standing Rules of Engagement, the law, and international agreements. If the course of action requires supplemental rules of engagement, a judge advocate at either the component or CINC level should begin the effort to get those measures drafted and later approved by the NCA. After the NCA receives the CINC's courses of action, the CJCS may issue a planning order to begin execution planning even before formal selection of a course of action. After selection of a course of action in phase four—course of action selection—an alert order is issued, advising the CINC of the chosen course of action.[72] Although this may be possible to do beforehand—after issuing a planning or alert order—the judge advocates at the component, joint task force, and CINC levels should begin to consider targets for inclusion in a "no hit" or "restricted" target list. They must also advocate approval of supplemental measures to the rules of engagement necessary to execute a mission based upon the approved course of action.

In phase five—execution planning—the CINC transforms the NCA-selected course of action into an operation order, a lengthy document that explains the mission in detail. Most importantly, it explains our nation's objectives, the role of military units in accomplishing these objectives, and the political or practical constraints for the mission. Furthermore, it sets out the "big picture"—that is, it explains the concept of operations, task assignments for subordinate units, and the functions of administration and logistics. It also gives pertinent information about command and control networks, electronic emissions, and code words and names. Since joint operations also may have complex command relationships, the order explains them and designates alternate command posts. Separate appendices of the operation order set out the rules of engagement and specific guidance on legal matters. The CINC's legal staff drafts these in consultation with CJCS attorneys

and, when time permits, the components' legal staffs as well, but the NCA remains the final approval authority for all rules of engagement.[73]

The components may augment the CINC's staff with liaison officers and convene their own battle staffs both to assist the CINC and begin their own planning to support the CINC. Judge advocates will become part of both the CINC's and components' battle staffs and will provide legal counsel on numerous legal issues, rules of engagement, and the Law of Armed Conflict. All the components' legal staffs must alert the CINC's legal staff to the issues they foresee arising from an operation. Similarly, in legal discussions with superiors, the judge advocates who advise commanders of air forces must advocate an airman's view of operations. They should ensure, for example, that commanders fashion rules governing identification of aircraft beyond "visual" range, penetration of neutral airspace, and ways to respond when aircraft display a "lame duck" profile indicating a willingness to surrender.

Role of the Judge Advocate in Air Operations Planning

The numbered air force is the senior warfighting echelon of the US Air Force.[74] If time and circumstances permit, when a CINC begins crisis action planning, liaison officers from the supporting numbered air force join the CINC's staff.[75] A judge advocate from the numbered air force may join the liaison team to ensure that legal aspects of the air portion of the operation receive a legal "scrub" as quickly as possible. The CINC may establish a joint task force whose commander[76] integrates the actions of assigned, attached, and supporting forces into a unified campaign. In order to avoid duplication of effort, the joint force commander synchronizes the actions of assigned, attached, and supporting capabilities/forces in time, space, and purpose.[77] When air missions require special supervision, the joint force commander may appoint a JFACC, whose responsibilities include planning, coordinating, allocating, and tasking joint air operations based upon the joint force commander's decisions about how to apportion air resources to a variety of competing missions.[78]

The JFACC may come from any service. Normally, the joint force commander will assign JFACC responsibilities to the component commander having the preponderance of air assets and the capability to plan, task, and control joint air operations.[79] An Air Force JFACC for a large operation is likely to be the commander of a numbered air force. Therefore, a staff judge advocate from a numbered air force and his or her subordinates should anticipate acting as legal counsel to a JFACC and his or her supporting JAOC. Even if a commander below the numbered-air-force level acts as the JFACC, the staff judge advocate from a numbered air force may advise or perhaps assign augmentees to the JFACC's legal team.

Role of the Judge Advocate in the Strategy and Combat Plans Divisions of a JAOC

Joint Pub 3-56.1 gives general guidance on the air operations planning process. After consulting with component liaisons and experts from several communities, such as special and information operations, planners examine the operational environment. They assess the available forces, rules of engagement, logistics, and intelligence.[80] In consultation with the CINC's legal staff and those of the other components, judge advocates in the JAOC advise the JFACC on legal implications of the unfolding situation. Judge advocates should also assist planners in evaluating legal issues raised by the operational environment. As planners consider the desired end state and identify objectives based upon guidance from the joint force commander, a judge advocate must evaluate these in view of the rules of engagement and NCA guidance relayed in orders from higher

headquarters. A rules of engagement cell exists within the Operations Division (Strategy Division in the Air Force) to determine whether to request supplemental rules of engagement, and a judge advocate serves as an essential member of the team.[81] In addition, judge advocates begin to assess the legal issues that could arise as a result of the operations. They also set up special training programs or briefings to familiarize the JFACC and JAOC staffs with the rules of engagement and the application of the Law of Armed Conflict to each phase and aspect of the operation.

After the choosing of objectives, planners develop a phased strategy to achieve them by exploiting joint aerospace capabilities. The strategy depends, in part, upon identifying "centers of gravity"—characteristics, capabilities, or localities from which a military force, nation, or alliance derives its freedom of action, physical strength, or will to fight.[82] The final product of the planning effort is the joint air-and-space operations plan, which integrates the joint air-and-space capabilities and forces in achieving the joint force commander's objectives, identifies objectives and targets by priority order, accounts for current and potential adversary threats, brings about target development and analysis, and outlines the phasing of joint air operations.[83] The judge advocate assigned to the Strategy Division must ensure consonance of the strategy with domestic as well as international law, with a focus on the Law of Armed Conflict. He or she must always evaluate the rules of engagement for each phase of the strategy to ensure they bring about the NCA's and joint-task-force commander's objectives and desired end state, while complying with the law. For example, the rules on identification of aircraft beyond visual range become much more restrictive during peacetime, when the threat to military aircraft is lower, than during combat, when the threat is high.

Judge advocates, however, need not restrict themselves only to discussing legal matters. They should bring to the planning effort the judgment of a military officer and the generic strategic and tactical skills of an experienced lawyer. Trained to think logically and to develop alternative methods of achieving goals within the boundaries of the law, attorneys have skills coveted by war planners. Judge advocates should not hesitate to offer opinions on matters outside the law to both the JFACC and his or her planners. In addition, judge advocates are adept at interpreting and drafting language to concisely communicate important ideas; therefore, they may become writers or briefers for important documents, such as demarches and presentations, especially when they involve the media.

The air-and-space operations plan remains the "big picture" but needs further refinement to determine specific targets and air missions. Many airmen use the terms *battle rhythm* or *air-tasking-order cycle* to refer to the schedule and timing of events that bring about near-term operations. The process begins when the joint force commander consults with component commanders to prepare for operations or assess the results of previous efforts. The joint force commander sets priorities and considers recommendations put forward by the components. Just as importantly, the joint force commander makes an "apportionment" or determination and assignment of the total expected effort by percentage and/or priority that the various air operations and/or geographic areas should receive for a given period of time.[84] A joint guidance-and-apportionment team meets to develop a recommendation on apportionment for the joint force commander. A judge advocate attends this meeting to lend both legal and general military expertise. Similarly, a judge advocate also attends the briefing that presents the recommendation to the JFACC and joint force commander. The latter's final apportionment may require adjustments in the rules of engagement or attention to new legal issues.

After the joint force commander makes the apportionment decision, planners turn their focus to target development. The joint force commander may designate either a commander or staff officer to lead a joint target-control board,[85] which reviews target infor-

mation, develops targeting guidance and priorities, and maintains a list of restricted targets and areas where special operations forces are operating.[86] Since military forces cannot strike all targets at once, it becomes necessary to prioritize them in a joint, integrated, prioritized target list. The joint force commander's apportionment, applied to this list, determines the percentage of various targets to attack in a given air-tasking-order cycle.[87] Weaponeers then enter the process and help determine which weapon systems to use against the targets. The weapons chosen should permit the application of necessary combat power to ensure victory against combatants, but they must also limit disproportionate collateral damage.[88] Judge advocates must become part of this process to ensure that weaponeers comply with the Law of Armed Conflict. To do so, they must closely scrutinize the information contained in "target folders" or databases maintained by intelligence personnel.

The final weaponeered target list becomes the basis for the master air attack plan.[89] Judge advocates attend meetings in which the joint, integrated, prioritized target list and master air attack plan are developed, and the latter is presented to the JFACC for approval. Once again, judge advocates focus on compliance with rules of engagement, the Law of Armed Conflict, and consistency with guidance from higher headquarters. After targets become prioritized and weaponeered, data about all air missions is entered into the air tasking order—which may comprise a database of several hundred pages—that is transmitted electronically to most of its users. Air missions are set out in a matrix, but a narrative portion gives special instructions about a number of topics, including the rules of engagement. Judge advocates ensure that the rules of engagement section of the special instructions gives an accurate, plain-English explanation of the rules governing that air tasking order. They also give rules of engagement briefings to the JFACC and JAOC staffs, often with the help of others when the rules of engagement mention the technical capabilities of weapon systems. Since an air-tasking-order cycle may take several hours—perhaps even a few days—to complete, it is necessary to work multiple air tasking orders simultaneously to ensure that each is ready when needed.[90] Joint Pub 3-56.1 illustrates this process with a "notional" 48-hour air-tasking-order cycle, but the cycle time may be modified to fit any tactical situation.[91]

Role of the Judge Advocate in the Combat Operations Division of a JAOC

The Combat Operations Division oversees the execution of air tasking orders. As air forces attempt to carry out the taskings assigned in an air tasking order, the fog and friction of operations set in. Because aircraft break, targets change, and the weather inhibits operations, it is necessary to reweaponeer targets. Judge advocates must provide legal counsel to the Combat Operations Division to ensure that changes in the weapon systems used to attack a target will not violate the Law of Armed Conflict. In addition, information about alleged violations of this law, by either enemy or friendly forces, may reach the JAOC. The judge advocate must report this information to the JFACC and to the chain of command in accordance with Department of Defense and Air Force instructions.[92] Myriad other legal issues arise, many of them anticipated during the planning phase of the operation. But some issues will be novel. Because the JAOC staff may not recognize a serious legal problem, the judge advocate must stay attuned to the ebb and flow of events in all the divisions and teams of the JAOC to report and deal with legal issues as quickly as necessary.

One of the most important areas of the Combat Operations Division is the time critical target cell. The enemy responds to our operations and presents opportunities and challenges in the form of targets not apparent before. To respond to these, Twelfth Air Force, for example, added to its Combat Operations Division a time critical target cell, a multidis-

ciplinary group that compiles and evaluates a great deal of information very quickly and offers the JFACC options in responding to evanescent targets. Team members include, at a minimum, the chiefs of the Offensive and Defensive Operations Branches; representatives from weather, intelligence, and special operations; fighter duty officers; and liaison officers from each of the services.[93] A judge advocate assigned to the cell participates as the other members consider the target location, intelligence, enemy defensive measures, risk to friendly forces, weapons options, weather, likelihood of disproportionate collateral damage, and other factors. The judge advocate applies rules of engagement and the Law of Armed Conflict (and a lot of common sense) while assisting the officer leading the time critical target cell in evaluating the lawfulness of each of the options considered for recommendation to the JFACC.

The advice of a judge advocate can prove indispensable for many other JAOC activities—for example, the information operations team. Some information operations (even those simulated during exercises) involve special technical operations and Air Force special programs that require a very high-level security clearance that some judge advocates may not possess. Nevertheless, judge advocates must offer advice, especially on rules of engagement, the Law of Armed Conflict, restricted target lists, and other matters as their access to information allows. When their access is restricted, they must report this fact to higher headquarters so that superior officers will ensure that attorneys with the appropriate security clearance conduct a legal review.

Conclusion

Although current command-and-control doctrine had its foundations in World War II, today's JAOC traces its lineage to the tactical air control centers used during the Vietnam War. Judge advocates assigned to units in Vietnam were not involved in operations, but the case of 1st Lt William L. Calley and the publication of the Peacetime Rules of Engagement highlighted the necessity of ensuring compliance with the Law of Armed Conflict and the rules of engagement. Lawyers were well suited to carry out both tasks. Consequently, Twelfth Air Force's judge advocates became very involved in the planning and execution of Operation Just Cause in 1989. Their experience helped prepare Air Force judge advocates who later served during Operations Desert Shield and Desert Storm. Commanders who led American forces during Desert Shield and Desert Storm were well aware of the alleged violations of the Law of Armed Conflict and rules of engagement during the Vietnam War and vowed not to let such misconduct recur. The judge advocates' aggressiveness in ensuring compliance with the law and rules of engagement pleased the commanders.

Now, more than ever, military leaders recognize the importance of operations law and seek the analytical perspective offered by judge advocates. Today, in an effort to further refine the concept of the air and space expeditionary task force, the Air Force is experimenting with "distributed" or "split" operations in which technology, such as video teleconferencing, may make the collocation of all the divisions or teams of a JAOC unnecessary. But split operations will do little to alter the judge advocate's fundamental responsibilities. It is not enough that a judge advocate has mastered an operation order, the Law of Armed Conflict, and the Standing Rules of Engagement. It is equally important that the operations law practitioner learn the details of crisis action planning, strategy development, and air operations planning and execution, as well as become very familiar with the JAOC's processes, procedures, and technology. □

Notes

1. Air Force Doctrine Document (AFDD) 1, *Air Force Basic Doctrine*, 27 September 1997, 23.

2. If a JFACC is not designated, forces are controlled by the joint force commander's staff. See Joint Pub 3-56.1, *Command and Control for Joint Air Operations*, 14 November 1994, v.

3. Ibid., vii.

4. Ibid., II-6.

5. Ibid.

6. Joint Pub 3-0, *Doctrine for Joint Operations*, 1 February 1995, III-28.

7. Air Force Manual (AFM) 1-1, *Basic Aerospace Doctrine of the United States Air Force*, vol. 2, March 1992, 113–14.

8. Ibid.; and Max Hastings, *Overlord: D-Day and the Battle for Normandy, 1944* (New York City: Simon and Schuster, 1984), 271.

9. According to Field Manual (FM) 100-20, *Command and Control of Air Power*, 1943, "Control of available air power must be centralized and command must be exercised through the Air Force commander if [its] inherent flexibility and ability to deliver a decisive blow are to be fully exploited." See also AFDD 2, "Organization and Employment of Aerospace Power," draft, June 1998, 39.

10. Kent R. Greenfield, *American Strategy in World War II: A Reconsideration* (Malabar, Fla.: Kreiger Publishing Company, 1963), 97–98.

11. AFM 1-1, 114; for an explanation of centralized control of tactical air units of the Northwest African Tactical Air Force by Air Marshal Sir Arthur Coningham, see George F. Howe, *Northwest Africa: Seizing the Initiative in the West*, United States Army in World War II (Washington, D.C.: Office of the Chief of Military History, Department of the Army, 1957), 493.

12. AFM 1-1, 114.

13. Maj Gen George S. Eckhardt, *Command and Control, 1950–1969*, Vietnam Studies (Washington, D.C.: Department of the Army, 1974), 38; and Lt Col J. Taylor Sink, *Rethinking the Air Operations Center: Air Force Command and Control in Conventional War* (Maxwell AFB, Ala.: Air University, September 1994), 18.

14. Sink, 18–19.

15. Henry Kissinger, *White House Years* (London: Weidenfeld and Nicolson and Michael Joseph, 1979), 1112. Secretary Kissinger observed that as soon as aircraft left targets in Route Package One, Gen Creighton Abrams had no further control over them. He could not tell whether the air campaign in the north was easing pressures on forces in the south or diverting resources.

16. Col Michael R. Emerson, interviewed by author, 26 February 1998.

17. Col Richard F. Rothenburg, interviewed by author, 25 February 1998.

18. Col Philip J. Williamson, USAF, Retired, interviewed by author, 15 July 1998.

19. Brig Gen Gordon Ginsburg, USAF, Retired, interviewed by author, 26 February 1998.

20. Maj Gen Walter Reed, USAF, Retired, interviewed by author, 21 February 1998 and 15 July 1998.

21. Col Donald Brewer, USAF, Retired, interviewed by author, 3 March 1998. In 1972 Colonel Brewer served as the deputy staff judge advocate of Headquarters Seventh Air Force. He was later detailed to assist General Lavelle during congressional hearings that investigated whether he violated the rules of engagement and asked subordinates to falsify reports. Colonel Brewer also served during World War II and the Korean War.

22. Ibid.

23. House, *Unauthorized Bombing of Military Targets in North Vietnam: Report of the Armed Services Investigating Subcommittee of the Committee on Armed Services*, 92d Cong., 2d sess., under the authority of House Resolution 201, 15 December 1972, 31. See also Mark S. Martins, "Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering," *Military Law Review* 143 (1994): 35, which discusses the development of air rules of engagement.

24. Maj Lee E. DeRemer, "Leadership between a Rock and a Hard Place," *Airpower Journal* 10, no. 3 (Fall 1996): 87.

25. Ibid., 4–7; and Senate, *Nomination of John D. Lavelle, General Creighton W. Abrams, and Admiral John S. McCain, Hearings before the Committee on Armed Services, United States Senate, on John D. Lavelle for Appointment as Lieutenant General on Retired List of U. S. Air Force and Matters Relating to Authority for Certain Bombing Missions in North Vietnam between November 1971 and March 1972*, 92d Cong., 2d sess., 11–15, 18, 21, and 28 September 1972, 95–99.

26. Harry G. Summers Jr., *Vietnam War Almanac* (New York City: Facts on File, 1985), 227.

27. House, *Unauthorized Bombing*, 9.

28. W. Hays Parks, "Righting the Rules of Engagement," US Naval Institute *Proceedings*, May 1989, 84.

29. Ibid.

30. Ibid.

31. Ibid., 84–85.

32. Joint Pub 3-0, II-28.

33. *United States v. Calley*, 22 US Court of Military Appeals 534 (1973).

34. Lt Col David Tillotson III, *Restructuring the Air Operations Center: A Defense of Orthodoxy* (Maxwell AFB, Ala.: Air University Press, 1993), 47–48.

35. Ronald H. Cole, *Operation Just Cause: The Planning and Execution of Joint Operations in Panama, February 1988–January 1990* (Washington, D.C.: Joint History Office, Office of the Chairman of the Joint Chiefs of Staff, 1995), 27–29.

36. Ibid., 17.

37. Ibid., 2.

38. COMUSSOUTHAF After Action Report: Operation Just Cause, 20 December 1989–8 January 1990, n.d.

39. Ibid., 33.

40. Ibid.

41. Ibid., 35.

42. Ibid., 38.

43. Brig Gen William A. Moorman, interviewed by author, 28 May 1998 and 5 June 1998.

44. Ibid.

45. Ibid.

46. Ibid.

47. Ibid.

48. Randy Witt, ed., *Air Force Tactical Communications in War: The Desert Storm/Desert Shield Comm Story* (Riyadh, Saudi Arabia: Headquarters US Central Command Air Forces, March 1991), 2.

49. Col Dennis E. Kansala, interviewed by author, 23 February 1998. Colonel Kansala served as the Ninth Air Force staff judge advocate during Desert Shield/Desert Storm.

50. Ibid.; see also Harry L. Heintzelman IV and Edmund S. Bloom, "A Planning Primer: How to Provide Effective Legal Input into the War Planning and Combat Execution Process," *Air Force Law Review* 37 (1994): 5; and Col Edward C. Mann III, *Thunder and Lightning: Desert Storm and the Airpower Debates* (Maxwell AFB, Ala.: Air University Press, 1995), 74–81 (for an explanation of the role of the Black Hole planners).

51. Kansala interview.

52. Steven Keeva, "Lawyers in the War Room," *ABA [American Bar Association] Journal*, December 1991, 59.

53. Headquarters USAF/XO and JA, letter, subject: Operations Law, 11 December 1991.

54. Anthony C. Zinni, "The SJA in Future Operations," *Marine Corps Gazette*, February 1996, 17.

55. Sink, 20.

56. Tillotson, 20; and Thomas A. Keaney and Eliot A. Cohen, *Gulf War Air Power Survey Summary Report* (Washington, D.C.: Government Printing Office, 1993), 147.

57. Tillotson, 20–21.
58. Col Maris J. "Buster" McCrabb, USAF, Retired, interviewed by author, March 1998. Colonel McCrabb was one of the several drafters of Joint Pub 3-56.1. He also led the planning effort for Joint Task Force Proven Force as it designed air operations for the northern portion of Iraq during Desert Storm from 2 January 1991 to 16 March 1991.
59. Joint Pub 3-56.1, viii.
60. AFDD 2, 58.
61. Joint Pub 3-56.1, II-7.
62. Ibid.
63. AFDD 2, 58–59.
64. Ibid., 61.
65. Sink, 27–29; see Tillotson, 30, for commentary arguing that the basic structure of the air operations center is sound.
66. The office of primary responsibility for this document is Headquarters Air Combat Command/DRAW, Langley AFB, Va. 23665-2777. See pages 14 and 25–26.
67. AFDD 2, 58–59.
68. Air Force Instruction (AFI) 13-1AOC, "Operational Procedures—Air Operations Center," draft, vol. 3, June 1998, par. 9.6.
69. Joint Pub 5-03.1, *Joint Operation Planning and Execution System*, vol. 1, 4 August 1993, V-1.
70. Ibid., V-2 and III-12.
71. Joint Pub 3-0, appendix B.
72. Joint Pub 5-03.1, V-8.
73. CJCSI 3121.01, *Standing Rules of Engagement*, 1 October 1994, 1.
74. AFDD 1, 67.
75. Joint Pub 3-0, II-17.
76. Ibid., II-13.
77. Joint Pub 3-56.1, v.
78. Ibid., vii.
79. Ibid., II-2.
80. Ibid., III-4.
81. AFI 13-1AOC, par. 5.3.9.
82. Ibid., III-5.
83. Ibid., III-6, 7.
84. Joint Pub 3-56.1, IV-7.
85. Joint Pub 3-0, III-26.
86. Ibid.
87. Joint Pub 3-56.1, V-7, 8.
88. Joint Pub 3-0, III-28.
89. Ibid., IV-7, 8.
90. Ibid., IV-5.
91. Ibid., figs. IV-4 and IV-5.
92. Department of Defense Directive (DODD) 5100.77, *DOD Law of War Program*, 5 November 1974; and AFI 51-401, *Training and Reporting to Ensure Compliance with the Law of Armed Conflict*, 19 July 1994.
93. Twelfth Air Force, Air Force Forces, Air Operations Center Standing Operating Procedures, 173; Office of Primary Responsibility: Headquarters Twelfth Air Force/DOYI, 5340 East Gifford Way, Suite 223, Davis-Monthan AFB, Ariz. 85707-4224.