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Modern warfare in an ancient city has presented difficulties for a fighting force that is second to none in training and armament. And at least some of those dilemmas have been legal.

Confronting those challenges are highly trained military lawyers. Two of the leaders among those attorneys are Arizona lawyers. From the ranks of the Arizona bar were drawn two men who would serve in Iraq as senior lawyers in both the Marine Corps and the U.S. Army. They were kind enough to share some of their thoughts and stories.

We begin with the words of John Weil. Until recently, he was the senior Marine Corps lawyer in Iraq. His accomplishments earned him the Bronze Star, which he was awarded this past April.

The second piece is by Jay Morse, an Army Major who is the Senior Defense Counsel in Baghdad. He and his staff provide defense services for the approximately 15,000 soldiers assigned or attached to the Third Infantry Division.

The Battle for Fallujah

ONE SOLDIER'S MEMOIR

BY JOHN A. WEIL
PHOTOGRAPH BY JEFF STANTON

On November 8, 2004, the First Marine Expeditionary Force under the command of Lt. Gen. John F. Sattler, and reinforced by nine Iraqi battalions and two Army brigades, launched an attack on Fallujah, a city of 325,000 people and the center of terrorism in Iraq. The battle for Fallujah resulted in the most intense urban fighting since the battle of Hue City, Vietnam, in 1968. It also required the resolution of numerous legal issues. In fact, one of the lessons learned from modern military engagement is the dramatic expansion of the role of military lawyers.

The origin of the battle was an incident in April 2003 when U.S. troops opened fire on angry protesters in Fallujah, killing 13 and injuring 75. Violence came to a head when four U.S. security contractors were ambushed and killed while driving through the city and

their burnt remains hung from a bridge by a cheering mob.

The Marine Commander wanted to negotiate but was ordered to secure the city immediately. Without time to plan, the Marines launched an offensive, which resulted in intense fighting and political repercussions within the Interim Iraqi Government. The fighting ended when an agreement was made to turn over control of the city to a local Iraqi militia force and to exclude U.S. forces from the city.

Within a short time, terrorists had intimidated or assassinated the leaders of the militia and local police force, and the city was taken over by terrorists.

Marine Corps units are task organized. The largest unit is a Marine Expeditionary Force, which includes a Marine Corps Wing with fixed and rotary wing aircraft, a Marine Corps Division with tanks, amphibious tractors and infantry and a Marine Corps Force

Service Support Group with logistics troops. An expeditionary force also includes military lawyers who provide military justice support (judges, prosecutors and defense counsel), legal assistance attorneys (advice and assistance on civil

John A. Weil has practiced law in Yuma for the past 25 years, concentrating in commercial litigation and bankruptcy. He stayed in Arizona after serving as a Judge Advocate at the Marine Corps Air Station, Yuma, Arizona. He also remained in the Marine Corps Reserve for almost 30 years. He was ordered to active duty in June 2004, and served as the Staff Judge Advocate for the First Marine Expeditionary Force—the senior Marine Corps lawyer in Iraq. He is now retired from the Marine Corps and has resumed his practice in Yuma. The observations and opinions in this article are his own and do not represent the official position of the United States Marine Corps.

matters) and a small number of staff judge advocates who provide direct advice to the senior commanders.

The Marine Corps planners realized that operations in Iraq would require extraordinary legal support and attached more military lawyers than normal, either by temporary assignment of active-duty Marine Corps judge advocates or mobilizing reservists. The Marine Corps lawyers were selected based on their training and experience, and some were assigned to small-unit commanders.

By November 2004, Fallujah had become the most heavily fortified and dangerous place on earth. There were more than 5,000 terrorists, 500 weapons caches, 27 factories building improvised explosive devices and two factories constructing vehicle-borne improvised explosive devices. Terrorist leaders such as Abu Musab Zarqawi moved in and out of Fallujah.

From time to time, it was possible to pinpoint the exact location of terrorist leaders. To kill or capture the terrorists, Marine Commanders were required to comply with an extensive set of directives known as rules of engagement. The specifics are classified, for the obvious reason that if terrorists know the rules, they will manipulate them against U.S. forces. For example, believing that U.S. forces could not under any circumstances engage enemy forces within a mosque, the terrorists occupied more than half of the mosques in Fallujah and used them for weapons storage and command and control centers.

It is not a secret that a central purpose of the rules of engagement is to avoid friendly casualties. U.S. Forces go to extreme lengths to avoid harming civilians. For each attack, the risk to noncombatants is extensively analyzed (collateral damage estimates), and the authority to approve the mission changes depending on the perceived risk.

By November 2004, the Marines at Fallujah were subject to a complicated and extensive set of rules of engagement

issued by higher headquarters to include the Secretary of Defense, Joint Chiefs of Staff, Central Command, Multi-National Forces Iraq and Multi-National Corps Iraq. Not surprisingly, commanders required the assistance of military lawyers to identify, interpret and apply these rules. In particular, military lawyers were required to resolve internal contradictions and seek modification of the rules from higher headquarters.

Through history, the United States has entered into many international treaties regarding the conduct of warfare, with the most well known being the

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Geneva Conventions. Today, there is an extensive body of law surrounding the treaties commonly referred to as the law of armed conflict, and there are military lawyers who specialize in this area. The law of armed conflict contemplates conventional war between nations, with combatants wearing uniforms and both sides following the rules. The terrorists in Fallujah utterly disregarded the Geneva Conventions and international law and intentionally targeted civilians and committed assassinations and torture. Although legal experts agree that the international treaties were not intended to apply in a conflict such as the one in Iraq, nevertheless, as a matter of national policy, Marines were instructed to afford

the terrorists all of the protections and benefits under international law, including the Geneva Conventions. Marine lawyers were assigned the difficult task of applying the international treaties in situations that were never intended to be governed by the treaty provisions.

Fallujah is bordered on the west by the Euphrates River and on the north by the Ramadi-Baghdad railroad sitting on a 100-foot high embankment. The terrorists logically assumed that the only avenue of attack would be from the southeast. The Marines reinforced the terrorists' assumption by conducting small-scale attacks and feints from the southeast. The result was that the terrorists' bunkers, barriers and fighting positions were oriented for an attack from that direction.

What the terrorists did not know was that the Marine plan of attack was from the north, and that the Marines had devised a method to breach the railroad embankment with explosives. Thus, the attack caught the terrorists by surprise, and U.S. forces were able to move quickly through the city.

Before launching the attack, a huge problem was how to deal with the 325,000 civilians. Because terrorists do not wear uniforms and have no respect for human life, an attack with the civilian population

present would undoubtedly have resulted in hundreds of casualties. The solution was a carefully orchestrated information operation to warn the citizens of Fallujah of the impending attack and to assist them in relocating to other areas. The Marines used television, radio, newspapers and leaflet drops to warn the Iraqis living in Fallujah of the danger of staying during an attack. As a result, by the time the attack occurred, almost the entire population had relocated to relatives' homes or surrounding camps. For an operation of its size, the civilian casualties were extremely small (it is estimated that 14 noncombatants were killed).

A large number of terrorists surrendered during the first days of the battle

and were transported to a detention facility, under the charge of a Marine reservist lawyer. Within days, a Marine lawyer acting as a magistrate had reviewed every detainee's case. All detainees were given medical examinations and, in any case in which a detainee had bruises or there was otherwise any evidence of abuse, a military lawyer immediately investigated the case and completed a written report.

The offensive operations were followed

by reconstruction and humanitarian assistance. Navy SeaBees rebuilt and/or constructed for the first time water plants, sewer plants and electrical systems. Marine lawyers drafted and negotiated letters of understanding with the Interim Iraqi Government and oversaw the acquisition of materials and local contractors to perform the work.

In addition, because assistance from the Interim Iraqi Government was delayed and

recognizing the situation of the residents of Fallujah, the Marines devised a plan to distribute humanitarian assistance payments to 32,500 heads of household. Military lawyers assisted in locating a source for these funds—the Commander's Emergency Response Program (CERP)—and oversaw the distribution process.

Marine Corps lawyers also provided valuable assistance in implementing a new military justice system for the Iraqi soldiers. For the first time, Iraqi soldiers were afforded due process, such as the right to meet with military counsel. The punishments awarded by Iraqi commanders were limited and were subject to review by higher authority.

As a result of the Battle of Fallujah, the city changed from being the most dangerous place in Iraq to the safest. With additional time, the Interim Iraqi Government developed its own reconstruction projects, not only to fully repair all battle damage but to greatly improve the sewer, water, electricity and road systems within the city.

The Marines provided advice and logistical assistance to the Interim Iraqi government in the conduct of the first Iraqi elections. Most people expected the worst from the terrorists, and military lawyers assisted the Interim Iraqi Government in preparing special emergency laws that, because of the threat from vehicle-borne improvised explosive devices, prohibited operating private vehicles on the election day.

No one fully anticipated the determination of the Iraqi people to vote in free elections. Iraqis walked for miles and stood in lines for hours to cast their ballots. When polling sites were attacked by terrorists, the Iraqis would scatter for protection only to get back in line after the terrorists' attacks were repelled.

The global war on terrorism has dramatically changed the role of military lawyers. No longer are judge advocates restricted to administering the military justice system. Instead, military lawyers now perform many essential tasks to assist commanders in complying with rules of engagement, international treaties and governing statutes. **AA**



From the citation:

For meritorious achievement in connection with combat operations involving conflict with an opposing force while serving as Staff Judge Advocate, I Marine Expeditionary Force from August 2004 to March 2005, in support of Operation Iraqi Freedom II. He displayed outstanding knowledge, excellence and leadership in advising the Commanding General and the battle staff. Colonel Weil displayed superior discretion and foresight in overseeing the investigation of several widely reported Law of Armed Conflict incidents, thereby minimizing any collateral impact on ongoing operations. He also ensured that the major subordinate commands understood



and implemented the comprehensive Rules of Engagement, to include garnering high headquarters approval of an enhanced application of hostile intent for the Battle of Al Fallujah, Iraq. Both of these accomplishments were evident by the absence of any fratricide incidents and the small number of non-combatant casualties. He took a proactive role with higher headquarters and ensured the continued ability to provide condolence payments to Iraqis who suffered battle damage, which dollars resulted in an unprecedented payment of more than 15 million dollars directly supporting I Marine Expeditionary Force's civil military operations. Colonel Weil's total effectiveness, forceful leadership, and loyal devotion to duty reflected great credit upon him and upheld the highest traditions of the Marine Corps and the United States Naval Service.

For the President,
John F. Sattler,

Lieutenant General, U.S. Marine Corps Commanding General, I Marine Expeditionary Force