

A Forward-Deployed Military Attorney with Special Operations Forces

By Stephen P. Dunn



“Hey, Law Dog, take a look at this and tell me what you think,” the Skipper boomed, smiling broadly at me.

Except for some training in Germany, I had never deployed outside of the United States in my eight-year Army Reserve career. That changed quickly. Within days of receiving written orders, I was no longer commuting from my cozy suburban home to my comfortable Royal Oak law office, practicing business litigation at locally competitive hourly rates. Forward deployed in the Middle East with the Special Operations Forces, enemies of our country—not opposing counsel—became my primary target.

In a 2008 *Michigan Bar Journal* article,¹ I described some of my experiences during a year-long active duty tour as a trial counsel (prosecutor) and military magistrate with the Army’s XVIII Airborne Corps at Fort Bragg, North Carolina. After that tour ended in December 2008, my wife Elizabeth and I returned home to Michigan, and I resumed practicing at Howard & Howard Attorneys PLLC. We accessed some of the Veterans Administration benefits available to me, including the zero-down-payment home

mortgage loan, and bought our first home in August 2009. We then went about filling it, adding three beautiful children to our family, for a total of four. The firm made me partner in January 2011.

With my firm’s support, I also continued serving in the Army Reserve. In 2013, I was selected for promotion to major and assigned to serve a three-year tour as the group judge advocate with the Green Berets, an active special operations unit of the Army’s 5th Special Forces Group (Airborne), at Fort Campbell, Kentucky. Instead of participating in Army duty with a reserve unit one weekend a month for several weeks during the year, I am assigned to the Special Forces Group and serve with them at Fort Campbell for several consecutive weeks during the year as needed. I also have been able to resume airborne status, jumping with the Green Berets out of Air Force C-130 aircraft when I’m back on active duty.

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the world. Unlike other elite special operations forces, the Green Berets are required to maintain proficiency in languages commonly spoken in their geographic areas of operation. The Special Forces Group operates within the United States Central Command, which includes countries in the Middle East, North Africa, and Central Asia. Many of our operators are fluent in Arabic.

In late April of this year, the Army Special Forces Command at Fort Bragg told me I would deploy very soon. I received written orders on May 13. I did my best to notify clients and arrange for colleagues to cover matters for me. My father, Troy attorney Stephen J. Dunn, revised our estate planning documents. By May 18, I was at Fort Campbell, where I was issued combat equipment and poked with numerous shots and vaccinations, and updated my military life insurance policy. On May 22, I arrived in the Middle East.

I serve as the command judge advocate to a naval special warfare unit, the Joint Special Operations Task Force. We are a joint command in that we have both Army and Navy special operations forces—special warfare operators. We are commanded by a Navy captain, a battle-tested U.S. Naval Academy graduate with more than 20 years of active special warfare service and one of the few people to have completed both Navy BUD/S training (qualified SEAL) and the Army Special Forces Qualification course (qualified Green Beret). We call him “Skipper.” I am his lawyer, also referred to fondly as “Law Dog,” “Judge,” and “JAG,” among other assorted monikers.

Those unfamiliar with military law often ask what work military attorneys perform. The duties and responsibilities of a forward-deployed military attorney in a joint special operations command are wide ranging. We work long hours seven days a week. Each day begins at 7 a.m. with physical training, in temperatures often approaching 90 degrees. Training with Army Green Berets and Navy SEALs is challenging, to put it mildly. Unfortunately for me, CrossFit is popular. This often involves AMRAP—as many rounds as possible—of certain rotations of multiple painful

exercises within a certain period. For example, for 30 minutes we might do AMRAP consisting of 10 box jumps (jumping up with both feet from the ground onto a 36-inch-tall box) followed by 10 “burpees” (a push-up extended up into a jumping jack, basically) followed by a 400-meter sprint. We then proceed to the indoor gym for multiple sets of various weightlifting exercises such as squats, pull-ups, and deadlifts. CrossFit rotations can generate substantial and lasting discomfort for even the most physically fit people. After some of the worst sessions, a few of us, relieved the workout is over, jump into the warm, salty ocean.

My practice here primarily includes operational law, military justice, employment law, and some limited general legal assistance. Practicing operational law requires, for example, that I review for legal sufficiency the written concepts describing proposed operations—every one of which must have proper legal authorities, permissions, and mission capabilities to conduct. For example, what type of mission is proposed, i.e., what is its primary purpose? Does the proposed operation have international and domestic legal authorities to proceed? Specifically, which legal authorities apply? Do the planners need to modify the proposed operation so it does not violate any applicable legal authorities? Does the proposed operation comply with all applicable United States statutes? Is the proposed operation consistent with applicable international laws? Is the proposed operation authorized by pertinent orders and agreements with our partner nations? Is the unit capable of doing what it proposes to do? How does the unit suggest it will fund the proposed operation? I also review and advise on the applicable rules of engagement and argue with higher authorities concerning ways in which my commander wishes to have the rules modified. This practice is generally called operational law, and it dominates my time.

Even in an intensive operational environment, forward-deployed military lawyers handle military justice matters. For example, we have a curfew here. Sailors and soldiers sometimes

A few quotes posted in the gym

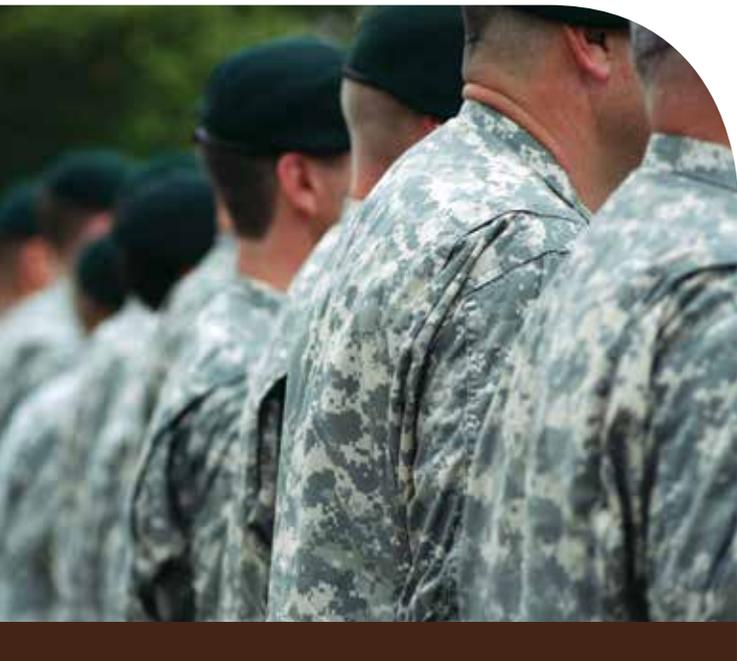
“The only easy day was yesterday.”

“The more you sweat in peace,
the less you bleed in war.”

“You deserve what you settle for.”

“I do not advertise the nature of my
work, nor seek recognition for my actions.”





violate it. Sometimes they fail to report timely for duty or they test positive for banned substances. In these cases, we investigate the relevant facts and conduct hearings, and the commander issues punishments for infractions, informed by my legal advice. If a service member violates any provision of the Uniform Code of Military Justice, we forward the matter to the general court martial convening authority for preferral of appropriate charges.

I handle some matters similar to employment law. For example, an enlisted sailor with 18 years' Navy service complained to the Skipper that his supervisor, a Navy lieutenant, created and perpetuated a hostile work environment by routinely degrading and disrespecting him in front of the junior enlisted sailors. The Skipper and I discussed the facts and our options for handling the complaint. In that case, we held a hearing, heard unsworn statements from all involved, and considered and discussed the facts. I advised the Skipper, who ordered that the complaining sailor be reassigned internally and the offending sailor receive additional training.

Legal assistance includes preparation of general and special powers of attorney. However, I do not prepare estate planning documents—I want to avoid the appearance of creating an attorney-client relationship with any soldiers and sailors other than the commander. If any of the soldiers and sailors I've assisted later violates a provision of the Uniform Code of Military Justice, for example, I would be adverse to him or her in my representation of the command.

Some elected officials recently have attempted to raise public awareness about the alleged mishandling of certain military

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sexual assault cases. A sailor reported a sexual assault allegation here. As the attorney for the command, the issue came to me to advise the commander. Per our training, among other things, we immediately offered medical care to and obtained counseling for the victim, alerted military criminal investigators, reported the matter in writing to higher authority, and initiated an investigation.

Practicing military law while forward deployed requires both knowledge of the law and the tact to explain it to your client clearly and diplomatically. For example, consider that the client did not choose you to represent him (although he can fire you), does not pay you, significantly outranks you, has many more years of military service than you, and will write your fitness evaluation, which will significantly impact your future promotion potential. Depending on the commander's past experience with other JAG attorneys, he may be distrustful of you from the outset.

In summary, practicing law in a deployed joint special operations command is dynamic. Lives are affected by the advice we give clients and the decisions clients make based on that advice. ■



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ENDNOTE

1. Dunn, *SBM attorney on active duty in the Army*, 87 Mich B J 22 (August 2008), available at <<http://www.michbar.org/journal/pdf/pdf4article1393.pdf>> (accessed July 23, 2014).