

GENERAL COURT-MARTIAL  
NAVY-MARINE CORPS TRIAL JUDICIARY  
WESTERN JUDICIAL CIRCUIT

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UNITED STATES	)	GENERAL COURT-MARTIAL
	)	
v.	)	GOVERNMENT REQUEST FOR
	)	JUDICIAL NOTICE
FRANK D. WUTERICH	)	
XXX XX 3221	)	
Sergeant	)	19 July 2010
U.S. Marine Corps	)	

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1. **Nature of Judicial Notice.** Military Rule of Evidence (MRE) 201 provides for the judicial notice of adjudicative facts that are not subject to reasonable dispute, and MRE 201A authorizes judicial notice of law. The term “domestic law” includes treaties of the United States, regulations of the armed forces, and international law including the laws of war. See Drafter’s analysis MRE 201A and United States v. Ayers, 54 M.J. 85, 90 (C.A.A.F. 2000)(military judge judicially noticed several paragraphs of a general regulation prohibiting personal relationships between instructors and students at a training command).

The Government requests the Court to take judicial notice of the following:

- a. On 19 November 2005, in Haditha, Iraq, sunrise occurred at 0646 local time and sunset occurred at 1705 local time. See enclosure (1).
- b. On 9 November 2004, Marine Corps Order (MCO) 3300.4 was in effect, and, per paragraph 3.a.1., it states that “Marines and all personnel accompanying Marine Corps forces will conduct all military operations in accordance with applicable laws, regulations and policies. In particular, they will comply with the law of war during all armed conflicts and the principles and spirit of the law of war during all other military operations.” See enclosure (2).
- c. The United States is a signatory to the Geneva Conventions of 12 August 1949. This includes the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 (Geneva Convention I); Geneva Convention for the Amelioration of the Condition of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea of

August 12, 1949 (Geneva Convention II); Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva Convention III); and, Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (Geneva Convention IV). Common Article 3 of the four Geneva Conventions of 1949 states:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

See enclosure (3).

2. **Evidence.** The following documents are enclosed in support of the request for judicial notice:

- 1) Sunrise/ Sunset Table 19 November 2005, Haditha, Iraq.
- 2) MCO 3300.4, Marine Corps Law of War Program.
- 3) Common Article 3 from the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 (Geneva Convention I); Geneva Convention for the Amelioration of the Condition of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea of August 12, 1949 (Geneva Convention II); Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva Convention III); and, Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (Geneva Convention IV).

 19 JUL 2010

N. L. GANNON  
Major, U.S. Marine Corps  
Trial Counsel

UNCLASSIFIED

Location: "H"

Start Date: 19 Nov 2005

Offset from Universal Time (UTC): +0300

Sunrise: 0646

Sunset: 1705

Hours of Daylight: 1019

Moonrise: 1942

Moonset: 1008

\* Illumination: 87

Begin Nautical Twilight: 0549

End Nautical Twilight: 1802

Hour	Lun ALT	Lun AZ	Lun LUX
0000	59.0	90.2	0.0855
0030	65.1	94.6	0.0911
0100	71.1	100.7	0.0960
0130	77.0	110.4	0.0987
0200	82.3	131.7	0.1015
0230	84.6	187.4	0.1008
0300	81.3	234.8	0.0998
0330	75.8	252.2	0.0960
0400	69.8	260.8	0.0913
0430	63.8	266.4	0.0858
0500	57.7	270.7	0.0788
0530	51.6	274.3	0.0702
0600	45.5	277.6	0.0609
0630	39.5	280.7	0.0519
0700	33.6	283.8	0.0425
0730	27.8	286.8	0.0330
0800	22.0	289.9	0.0240
0830	16.4	293.1	0.0161
0900	11.0	296.4	0.0094
0930	5.7	300.0	0.0042
1000	0.9	303.8	0.0009
1030	-4.4	307.8	0.0000
1100	-9.0	312.2	0.0000
1130	-13.3	317.0	0.0000
1200	-17.2	322.2	0.0000
1230	-20.6	327.8	0.0000
1300	-23.6	333.9	0.0000
1330	-25.9	340.3	0.0000
1400	-27.6	347.1	0.0000
1430	-28.6	354.2	0.0000
1500	-28.8	1.4	0.0000
1530	-28.3	8.6	0.0000
1600	-27.1	15.6	0.0000
1630	-25.2	22.3	0.0000
1700	-22.6	28.6	0.0000
1730	-19.5	34.5	0.0000
1800	-15.9	40.0	0.0000
1830	-11.8	45.1	0.0000
1900	-7.4	49.7	0.0000
1930	-2.7	54.0	0.0001

Enclosure (1)

2000	2.5	58.0	0.0016
2030	7.6	61.7	0.0051
2100	12.9	65.2	0.0101
2130	18.4	68.6	0.0161
2200	24.1	71.8	0.0230
2230	29.9	74.9	0.0305
2300	35.8	78.0	0.0381
2330	41.7	81.2	0.0450
0000	47.8	84.5	0.0519

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 Sol ALT = Solar Altitude  
 Lun ALT = Lunar Altitude

Sol AZ = Solar Azimuth  
 Lun AZ = Lunar Azimuth

Sol LUX = Solar Illuminance  
 Lun LUX = Lunar Illuminance

## Hur Capt Christian Patrick

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**From:** Brooks Capt Chad Christopher  
**Sent:** Wednesday, December 12, 2007 7:47 AM  
**To:** Hur Capt Christian Patrick  
**Subject:** FW: Astro Data for 19 Nov 2005  
**Signed By:** chad.c.brooks@usmc.mil

**Attachments:** 20051119 (CD).rtf; nov 11 obs (2).xls



20051119 (CD).rtf nov 11 obs (2).xls

-----Original Message-----

**From:** Sirotniak Maj John  
**Sent:** Tuesday, December 11, 2007 14:56  
**To:** Brooks Capt Chad Christopher  
**Subject:** FW: Astro Data for 19 Nov 2005

Capt Brooks:

Here's the rest of the Haditha METOC info you needed.

R/

Maj S.

-----Original Message-----

**From:** Julien GySgt Juan A  
**Sent:** Tuesday, December 11, 2007 13:41  
**To:** Sirotniak Maj John  
**Cc:** Reusse Capt James R; White Cpl Cheyne R  
**Subject:** FW: Astro Data for 19 Nov 2005

Good afternoon sir,

The attached information is being submitted to you per your request. Please feel free to contact us with any questions you may have regarding the information contained within the document.

Respectfully,

GySgt Juan A Julien  
MetOc Chief,  
G-2, IMEF  
760 725 9118

-----Original Message-----

**From:** Barton MSgt Vince B  
**Sent:** Monday, December 10, 2007 10:52  
**To:** Sirotniak Maj John  
**Cc:** Reusse Capt James R; Julien GySgt Juan A  
**Subject:** Astro Data for 19 Nov 2005

Sir,

Per your request the astronomical data requested is attached. I will send the other data once it's scrutinized and decoded.

v/r  
MSGT Barton, V.  
I MEF METOC Chief  
DSN: 312.365.9118  
Comm: 760.725.9118  
NIPR: vince.barton@usmc.mil  
SIPR: bartonvb@imef.usmc.smil.mil

<<...>>



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

MCO 3300.4  
JAO  
20 Oct 03

MARINE CORPS ORDER 3300.4

From: Commandant of the Marine Corps  
To: Distribution List

Subj: MARINE CORPS LAW OF WAR PROGRAM

Ref: (a) DOD Directive 5100.77 of 9 Dec 98  
(b) CJCSI 5810.01B  
(c) SECNAVINST 3300.1A  
(d) Geneva Conventions of 1949 for the Protection of War  
Victims  
(e) Hague Convention No. IV of 1907 Respecting the Law  
and Customs of War on Land  
(f) MCO 1510.89A  
(g) MCO 1510.90  
(h) MCO 1510.97.

Encl: (1) Definitions  
(2) Entry-Level Training Objectives  
(3) Follow-On Training Objectives  
(4) Specialized Training Objectives  
(5) Detailed Training Objectives  
(6) Report, Investigation, and Disposition of Alleged Law  
of War Violations ("Reportable Incidents")

1. Situation

a. Reference (a) directs the Armed Forces of the United States to comply with the law of war during the conduct of military operations, provides policy and guidance, and institutes and assigns responsibilities for implementing the Department of Defense (DOD) Law of War Program. Specifically, reference (a) requires that the Commandant of the Marine Corps (CMC):

(1) ensures that Marines comply with the law of war during all armed conflicts, however characterized, and with the principles and spirit of the law of war during all other operations;

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distribution is unlimited.

**Enclosure (2)**

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(2) implements effective programs to prevent violations of the law of war, including law of war training and dissemination;

(3) ensures that qualified legal advisers are immediately available at all levels of command to provide advice about law of war compliance during planning and execution of exercises and operations; and

(4) implements programs to report and investigate alleged law of war violations.

b. Reference (b) implements the DOD Law of War Program (reference (a)), establishing joint policy, assigning responsibilities, and providing guidance regarding United States law of war obligations, enabling the military services and combatant commands to effect common policy for coordinated actions.

c. Reference (c) implements the DOD Law of War Program (reference (a)), within the Department of the Navy (DON). In addition to the requirements established in reference (a), reference (c) requires that the CMC:

(1) implements programs providing accession (hereinafter referred to as entry level) and specialized law of war training for Marines, as required by their duties and responsibilities;

(2) identifies billets requiring special knowledge of aspects of the law of war, and assigns appropriately trained personnel to those billets;

(3) establishes policies, procedures, and directives to ensure compliance with the law of war; and

(4) implements internal policies and procedures for the prompt reporting of alleged violations of the law of war committed by or against members of the naval establishment.

## 2. Mission

a. To establish the Marine Corps Law of War Program which complies with DOD requirements, implements doctrine, and establishes appropriate training requirements to



ensure Marines and civilian members of Marine Corps activities conduct military operations in accordance with applicable laws, regulations, and policies.

b. This Order implements the requirements established in the references within the Marine Corps.

c. Enclosure (1) contains definitions applicable to this order.

### 3. Execution

#### a. Commander's Intent and Concept of Operations

##### (1) Commander's Intent

(a) Marines and all personnel accompanying Marine Corps forces will conduct all military operations in accordance with applicable laws, regulations, and policies. In particular, they will comply with the law of war during all armed conflicts and with the principles and spirit of the law of war during all other military operations.

(b) All plans, policies, directives, publications, and training programs will be consistent with applicable law, regulation, and policy.

##### (2) Concept of Operations

(a) All Marines will receive law of war or operational law training as outlined below. The training program established in this Order is derived from references (d) and (e), other international treaties and agreements to which the United States is a party, customary international law, United States domestic law, regulation, and policy; and various service and joint directives, publications, and instructions.

(1) Formal Law of War Training. In accordance with references (a) and (c), Marines will receive the following law of war training:

(a) Entry-Level Training. All entry-level Marines will receive law of war training as set forth in enclosure (2).

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(b) Follow-On Training. Marines attending Marine Corps formal or unit-run schools (not including entry-level formal schools), operational units prior to deployment, and Marines identified by billet in enclosure (3) will receive follow-on law of war training as set forth in enclosure (3).

(c) Specialized Training. Additional law of war training depends upon a Marine's billet or assigned duties and responsibilities. In particular, all personnel responsible for directing or planning combat operations will receive law of war training sufficient to enable them to comply with applicable law, regulation, and policy in all situations reasonably contemplated. Marines serving in functions specified by enclosure (4) will receive "specialized" law of war training as set forth in enclosure (4).

(d) Detailed Training. All Marine Corps judge advocates will receive "detailed" operational law training as set forth in enclosure (5).

(2) Follow-on Training Applications. Follow-on level law of war training will be incorporated into realistic training exercises at all operational levels through use of realistic mission-oriented scenarios derived from the training objectives outlined in enclosure (3).

b. Report, Investigation, and Disposition of Alleged Law of War Violations. All suspected law of war violations committed by or against Marines of personnel accompanying Marine Corps forces will be promptly reported and thoroughly investigated. If appropriate, disciplinary or administrative action will be taken. See enclosure (6) for specific guidance.

c. Evaluation. The effectiveness of the Marine Corps Law of War Program will be evaluated through the following:

- (1) the Marine Corps Common Skills (MCCS);
- (2) the Marine Air-Ground Task Force (MAGTF) Staff Training Program (MSTP);
- (3) the Marine Expeditionary Unit Special Operations Capable (MEU (SOC)) Certification process, although this

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training is not a prerequisite for a MEU to receive SOC certification; and

(4) the Naval Inspector General (Deputy Inspector General for Marine Corps Matters) (IGMC) inspections.

#### 4. Subordinate Element Tasks

a. Deputy Commandant for Plans, Policies, and Operations (DC PP&O) will:

(1) act as primary staff sponsor of the Marine Corps Law of War Program;

(2) ensure that all plans, orders, policies, directives, publications, and other documents concerning Marine Corps operational matters under his/her cognizance are reviewed by the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) for consistency with applicable laws, regulations, and policies, including the law of war; and

(3) coordinate with the SJA to CMC to provide overall coordination, approval, and promulgation of major Marine Corps policies, plans, and training involving the Marine Corps Law of War Program.

b. Commanding General, Marine Corps Combat Development Command (CG MCCDC) will:

(1) In coordination with SJA to CMC, ensure that formal law of war and operational law training required by this Order are incorporated into existing training programs under the cognizance of CG MCCDC, to include:

(a) entry-level law of war training to be provided in accordance with enclosure (2);

(b) follow-on law of war training to be provided in accordance with enclosure (3) at formal schools (other than entry-level formal schools), including The Basic School, Expeditionary Warfare School, Command and Control Systems School, MAGTF Intelligence Officers Course, Command and Staff College, Marine Corps War College, and the staff noncommissioned officer academies (including the sergeants courses); and

(c) "detailed" operational law training that meets the training objectives contained in enclosure (5) to be provided to newly accessing Marine Corps judge advocates in conjunction with the Basic Lawyer Course, Naval Justice School, Naval Education & Training Command, Newport, Rhode Island.

(2) In coordination with SJA to CMC, employ qualified legal instructors, if available, to conduct law of war training during all existing training programs under the cognizance of CG MCCDC, as required in this Order.

(3) In coordination with SJA to CMC, establish law of war evaluation standards to be incorporated into MCCS.

c. Marine Forces (MARFOR) Commanders, including Commander, Marine Forces Reserve (COMMARFORRES) will:

(1) as Service component commanders of unified commands, ensure that all plans, policies, directives, orders, letters of instruction, rules of engagement, and similar documents concerning operational matters, prepared by or subject to review by them, are reviewed by their judge advocates for consistency with applicable laws, regulations, and policies, including the law of war;

(2) include law of war issues in unit training and evaluation, including MSTP and MEU (SOC) Certification (this Order is not intended to add another requirement to attaining SOC certification);

(3) make available/provide qualified legal instructors for, and conduct:

(a) follow-on law of war training, in accordance with paragraphs 3a(2)(a)(1)(b) and 3a(2)(a)(2) of this Order;

(b) "specialized" law of war training in accordance with paragraph 3a(2)(a)(1)(c) of this Order;

(4) ensure qualified legal advisors are immediately available to operational commanders at all levels of command, in coordination with Deputy Commandant for Manpower & Reserve Affairs (DC M&RA), and SJA to CMC, to provide advice concerning law of war compliance; and

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(5) ensure that judge advocates assigned as staff judge advocates, deputy staff judge advocates, or legal advisors to operational commands are granted appropriate clearances and access to classified information and command spaces necessary to carry out their responsibilities under this Order.

d. SJA to CMC will:

(1) provide overall legal guidance for the Marine Corps Law of War Program, including:

(a) development, oversight, and review of all plans, policies, directives, orders, letters of instruction, and similar documents involving or related to operational matters; and

(b) coordination of operational law matters with other Federal departments and agencies, including the DOD General Counsel, and the DOD Law of War Working Group;

(2) conduct periodic reviews of the Marine Corps Law of War Program;

(3) oversee, approve, coordinate, and monitor Marine Corps plans and policies, curriculum, and instruction for training and education in the law of war and operational law for the "specialized" and "detailed" training levels;

(4) assist DC PP&O in developing and coordinating Marine Corps plans and policies involving operational law issues, and in reviewing international agreements, treaties, and other matters involving these issues;

(5) review Headquarters Marine Corps staff agency policies, procedures, plans, directives, publications, and similar documents pertaining to operational matters for conformity with applicable laws, regulations, and policies;

(6) In coordination with CG MCCDC, create and conduct detailed operational law training required for judge advocates, in accordance with enclosure (5);

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(7) Support CG MCCDC:

(a) Assist in the development and implementation of Marine Corps law of war and operational law training programs, to include providing qualified legal instructors, when available, to conduct Marine Corps follow-on law of war training during all existing training programs under the cognizance of CG MCCDC;

(b) monitor and review all entry-level and follow-on instruction and instructional materials related to law of war and operational law to ensure the instruction is relevant and consistent with current international law and domestic laws, regulations, and policies; and

(c) assist in the development and implementation of evaluation standards to be incorporated into MCCS;

(8) Support MARFOR Commanders:

(a) assist, approve, develop, and implement law of war training and evaluation programs, including those incorporated into the MSTP and MEU (SOC) Certification process (this Order is not intended to add another requirement to attaining SOC certification);

(b) review and approve all instruction and instructional materials related to law of war and operational law; and

(9) assist the Naval Inspector General (Deputy Inspector General for Marine Corps Matters) in developing and implementing inspection procedures to evaluate the Marine Corps Law of War Program.

e. The Naval Inspector General (Deputy Inspector General for Marine Corps Matters) will:

(1) ensure that the inspection program monitors the adequacy of law of war training and the review of Marine Corps plans for conformity with reference (c), and that Marine operations are executed consistent with reference(c);

(2) ensure that reportable incidents involving alleged violations of the law of war committed by or against Marines are investigated; and

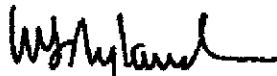
(3) provide a copy of all such investigations to the SJA to CMC.

5. Administration and Logistics. Violations of the law of war and failure to report and investigate possible law of war violations as required by this Order are punishable under the Uniform Code of Military Justice.

6. Command and Signal

a. Signal. This order is effective the date signed.

b. Command. This Order is applicable to the Marine Corps Total Force.



W. L. NYLAND  
Assistant Commandant  
of the Marine Corps

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Copy to: 7000260 (55)  
8145005 (2)  
7000099, 144/8145001 (1)

### Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

**Enclosure (3)**