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(USA)

17 May 2008

Al Faw Palace, Victory Base Camp, Baghdad

by (b)(3), (b)(6)

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## Abstract

b 3, b 6 has an impressive professional, military, and educational background. During his career, he has come to appreciate that the law is about process, and a just society depends on setting up and abiding by a good process. He worked for then-BG Craddock in Kosovo in 1999. In 2003, he came to Baghdad with 1AD and left in June. From June to November 2004, he helped Petraeus with MNSTC-I. The Iraqis want security guarantees from SFA/SOFA; (b)(3), (b)(6) is confident in the negotiations. We have detainee issues we have to resolve. The MeK situation is working itself out. Funding is difficult and vital to everything we do. He has been very honored to serve.

My notes are pretty complete, but you'll need to listen to the recording for some sections that don't make sense, including that on MNSTC-I.

## Interview

I arrived in Iraq at the end of May 2006, just after the formation of the government, many months after the elections, and after the Samarra mosque bombing of February 2003. Zarqawi [had just been killed?], and violence was spiking.

### *1) What is your professional and educational background?*

I am a 1983 graduate of the United States Military Academy. I am a Rhodes scholar and went to Oxford's Balliol College, receiving an M.A. that became an M.A. over time. I spent two years in the infantry with the 82nd Airborne Division as a platoon leader and staff officer. I went into the Army's legal education program and graduated from Harvard Law School in 1990 and later studied at the University of Virginia in Charlottesville. I was in CGSC in '97 and '98 and at the National War College in '05-'06. I've served with the 82nd Airborne Division and the 101st Airborne Division as an administrative lawyer and a trial counsel. After SJA-JAG school in '94-95, I was at the Center for Law and Military Operations and took part in writing doctrine. After CGSC I served with 11D in Wurtzberg. In 1999, I was in Macedonia with BG Craddock and went into Kosovo in June after the signing of the Military Technical Agreement. I served as his (b)(3), (b)(6) as a major for awhile.

We learned a lot in the Balkans. We learned that not every lesson works because we are always dealing with so many intangible factors of people, war, and politics. We learned about logistics and support and marshalling long-term resources. The Balkans exposed a lot of leaders to something more than REFORGER.

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In 1999 I went to Ft. Bragg and was promoted to LTC. In 2003, I came here with 1AD as the Deputy SJA.

In May 2004, I was involved with the NSDP that created MNSTCI. They did not have a staff, and General Myers lent me out to LTG Petraeus' MNSTCI staff from June to November 2004. I then went to the war college.

***2) How has your conception of the law changed since you first entered law school?***

When I went to law school, I think like most people I went in thinking I was going to learn specific rules, like it was against the law to do this or that. I thought it was going to be the technical details of the law, the hard substance. Over time, I've learned the richer lesson is one of process and the impact of process on societies and institutions. Good process can turn emotional, biased, self-interested human endeavors to rational, logical paths.

16:41.

There are a three things from the COIN manual that have particular salience here, things worth identifying and isolating. 1) A government's respect for enduring, impersonal, and pre-existing laws gives it widespread societal support. People want to exploit systems for personal gain, but when they realize a just government will protect them from others' depredations, they'll sign up for their second best, which is everybody's common security. 2) Commanders transfer security responsibilities to law enforcements as quickly as feasible, not as quickly as possible. Doing this transforms so-called insurgents into thuggish criminals, and makes the law responsible for pursuing them. It delegitimizes insurgent acts. I saw as soon as feasible because commanders have a responsibility to protect the population. If you transfer security responsibilities too early, before law enforcement is ready, then the system will collapse, leaving the population without security. If commanders retain security responsibilities too long, depriving the population of proper law enforcement when the security situation permits it, then you'll have tyranny.

3) Finally, there are two paths to illegitimacy. Illegitimacy is the use of power without authority. It follows Weber's recognition that the state wields a monopoly over the use of force. This comes into play in a) how we conduct ourselves and what we teach our soldiers, and b) ensuring that our actions are governed by law. This is the anecdote to the talk of 'occupation.' The law governs our presence in Iraq. We are under UN writ. We anchor everything to the law.

***3) What individuals, events, or institutions would you point to as having strongly influenced your career?***

Institutions have had the greatest impact on me. Certainly my four years at the Academy were important. My time at Oxford taught me that if you step into others' shoes honestly, willing to see things from their perspective, you will change. Harvard Law gave me a greater appreciation for laqw in the US being empirical and based on common law. All my Army assignments have been very influential to me. General Petraeus has had a huge

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influence on me. At Oxford, (b)(6) taught me to think self-critically, within reason.

***Can you tell me more about 1AD coming to Baghdad in 2003?***

We did extensive training for deployment and started doing mission rehearsals in September 2002. I made my lawyers do drivers training and first aid, and they did not understand it and why I kept keeping them late for it. At the same time, we had all the deployment preparation the division needed. We were holding people accountable, like in their failures to get the family care plan done, and we handled all the issues related to people trying to dodge deployment for one legal reason or another. Operationally, we were getting ready for integration. The SJA was valued in all the decision-making.

1AD's movement from Germany was the largest in years, at least since 1990-1991. We had great difficulty transiting countries. From Kuwait, I was a convoy commander getting up to Baghdad, and we set a record for movement. It was really hard because I'd been up for 24 hours straight before we left, and my convoy was not one unit, it was a hodgepodge of disparate elements. We had some small arms fire around Hillah, and we had one breakdown, which held us up for 30 minutes. It was hot as heck driving up Tampa. We made it in 18 hours. People wanted me to take longer, but I knew we'd be better off if we just knocked it all out and got up here quickly.

Up at BIAP, we were burning our shit, and I did not have a shower for a long time. We set up the 1AD headquarters on the east side of BIAP, in an Iraqi Airlines Repair shop. 1AD had 20,000, but in Baghdad it got plussed up to 35,000. It was a small corps.

The CPA was completely incapable. They didn't have the people or communications needed for what they were undertaking. The military support was not worked out, and they were very naïve. We had not thought through Phase IV; you have to have the ability to contract.

I left in June, a few weeks after arriving. The way we did leadership turnover in June 2003 was disastrous, and I was just one more part of that.

***What was MNSTCI like in 2004?***

I was with MNSTCI from June to November 2004. Over those few months they formed CMATT and CPATT. Otherwise, there were no TTs, no MiTTs, and no MNCI integration. We had the Iraqi Reconstruction (IRRF) funding and were using it, but we hadn't worked out the procurement issues. All things were starting from scratch. We had resources and great leadership. Over time, we got the training and the equipment processes going. We had to start somewhere, and we did. It was a mess and a tough situation. This was a wrecked country--psychologically and emotionally--and then there was the violence. It was very hard, but we had to put together the indispensable building blocks.

General Petraeus said, and he was right, that you have to find good leaders and empower them. This was true of finding Iraqis to work with and among the CF. It was very interesting to link . . .

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I helped draft the IRRF law, and we needed that. Police training for Army. I served as a Deputy J5 for Police Training for awhile. 48:11. We did training for high end tasks. For example, forensic evidence is inherently non-sectarian, and the court system respects and will accept proper crime scene photographs, evidence, proper chain of custody, etc., and all that gives you a non-sectarian rule of law.

***Where do we stand on SFA/SOFA negotiations?***

That is really Secret/Limited Distribution. The Iraqis want the current UNSCR that governs our presence under chapter 7 to be the last one. We need a bilateral agreement for military operations. Iraqis insist on their sovereignty. There are concerns about our status and immunities. We want the authority to detain. The Iraqis want a binding security commitment. This is a major diplomatic effort, and I'm cautiously optimistic.

***What issues are we facing with regard to detainees, and many other groups' complicated legal situations, and how are we working through them?***

We have 22,000 detainees. We are holding them in according with the 4th Geneva Convention (1949), to which the US is a signatory. This is the Law of Armed Conflict, and Article 78 includes an authority to detain civilians as for imperative reasons of security. That language is lifted specifically from the Law of Armed Conflict and was incorporated in UNSCR resolutions 1637, 1723, and 1790. By December, we have to transfer, release, or transform the status of the 22,000 Iraqis now in detention.

In 2003, the MEK was one of the first groups to lay down its arms. (b)(3), (b)(6) a battalion commander, and was involved in the negotiations concerning them. In exchange for laying down their arms, they gained status as 'protected persons.' The Iraqis hate the MEK. They are now in Ashraf, and their situation is very complex. In one way, the problem is slowly going away because they don't reproduce. They rely on new recruits, and there aren't many of those. Numbers of them are gradually defecting to one place or another. The can read the handwriting on the wall. 1.4b, 1.4d

1.4b, 1.4d

Other groups that may be of concern, like Palestinians, are issues because of other issues, like property claims, which is about resources. There are conflicting legal issues involved.

***3) How would you explain CERP, I-CERP, other possible CERP, DDR, Iraqi funds, and the litany of other funding sources, their impact on operations, and the wickets the CG has to navigate?***

Funds are part of every debate about Iraq. It is a budget debate. We spend funds for the purposes for which Congress appropriated the funds, and no other way. We have auditors inspect all the accounts, and commanders respect the auditing process. CERP is an authority. It began in 2003 with found money, \$700 million American troops collected from regime stashes. Normally, such funds would have to go in a Miscellaneous Receipts account that Congress would then have to authorize us to spend. In June 2003, the CPA worked out this novelty of CERP. By November 2003, it was

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clear we needed more authority. There was an Emergency Supplemental Spending Bill, Bill 108106. Section 11110 of the bill gave us authority over \$100 million. This allowed us to spend O & M funds for Iraqi projects through the CERP. The most important thing here was it created a funding stream to get things done. This is a vital tool, and we're using the same process now with the \$300 million the GoI agreed to provide at the end of March 2008. It is designated for urgent humanitarian projects.

For DDR, we had a small appropriation from 2007. (b)(3), (b)(6) STRATEFF ECON, is the best source on this. Public contracting is hard. It is very hard to establish the processes for public contracting. We are using our processes to help the Iraqis get things done through the Foreign Assistance Act and Foreign Military Sales. Iraq can purchase Serbian arms for less, but they don't come with maintenance, they don't come with guarantees, and they don't come with accountability, which means immense corruption. On the other hand, Iraqis don't like the expense of FMS. It has expensive overhead with all the checks and balances built in. We sell quality, expensive gear. We eliminate the risks of corruption and side deals. FMS brings discipline and enforces it. The sticker shot on FMS seems unbelievable to Iraqis. Lack of discipline and accountability feeds accusations of corruption and immaturity. The Iraqis lack the bureaucracies and professional discipline needed to do this.

***Assume you're addressing an NDU seminar full of future brigade or division commanders who will be leading troops in Iraq. What are the top legal issues they need to deal with and what do they need to know and study up on?***

I would just tell them to rely on their SJAs and involve them fully in the decision making process.

***What impressions will you leave Iraq with?***

We have an impressive and potent force. Soldiers and sergeants do the right thing, and they impress me to know and with the potency of that.

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