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

(USN)

15 March 2008

Al Faw Palace, Victory Base Camp

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

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### **Abstract**

The Navy JAG surge in support of operations in Iraq has been significant. Morale among the Navy JAGs is high because they get invested in the mission, particularly so if they work with individual Iraqis. I've seen positive developments here. The Rule of Law process has been encouraging because the Rusafa Law Complex has been effective and the GoI has taken over funding of the complex because they recognize its importance. The Iraqi legal system is different from the US, not adversarial, but based on the investigating judge. The MNFRC Boards have been very effective, as has been the reintegration program. Iraqis claim sovereignty, but they face serious capacity problems. There have been bad and good days here.

Transcription priority: medium. I think my notes are fine, but you'd have to listen to the recording to catch points I missed.

### **Background**

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#### ***How has your understanding of the law changed over the course of your career?***

Like every young attorney, I first focused on getting trial experience. In my first tour in DC, I dealt with a lot more than courts martial. I was more engaged with policy development. In each subsequent tour, the 'aperture' of my understanding kept expanding. I was exposed to more issues, and gained greater insight into DOD and the joint world, and how other services handle legal issues.

#### ***How has the surge of forces into Iraq impacted the Navy?***

The Navy JAG corps had deployed 10% of its strength. We have five at MNF-W, and there are more Navy JAGs here than from any other service. This has been a great

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experience for our personnel. There is no whining or complaining. We do have manpower challenges, but we still have enough volunteers. We have agreed to extend JAG billets to a year, like the detainee operations. In terms of impact of the Navy, the surge means that some things slip. For our Rule of Law JAG, the guy coming in will do one year, because continuity there is vital, and it is built on relationships with the Iraqis, so you can not turn over that position every six months. We have (b)(3), (b)(6) coming in to do Operational Law, which involves targeting and ROE. Our previous ROE guy extended (or wanted to extend?) because he was invested in the mission. The people in this mission see the positive differences they can make, and that is why they want to be in it. That is the most true where you see people interacting with the Iraqis, that is where they get the boost from being here.

***What were things like here when you arrived in May '07?***

I have to compare to Good Morning Vietnam. It was an experience unlike any other. I did not know the command, its structure or how it interacted. I had to learn quickly. I arrived on 30 May. I had reached Kuwait on 21 May, and got to Udayir to fly up here, but then got weathered in until 30 May and finally came up on a C-130. The level of violence was brought home to me when I was over at the TF 1.4a island and I heard a couple of incoming rounds whistle overhead before exploding nearby.

Now, I see normalcy when I travel. There is commerce happening, and life, parents let their kids out, and people are out shopping. People wave.

***What is Rule of Law and how are we handling the issue?***

The Rule of Law is having a judiciary and a respect for holding people accountable. It is taking the sect out of how the judiciary operates. Since 2003, 35 judges have been assassinated or fled because of intimidation. The civil side of the law is up and running. the bleeding is happening in criminal law. As a solution to that, we have set up the Rusafa Law Complex to provide judges a safe place for their families and for the law. We have the Baghdad police college there as well, and a prison. The concept for this originated in February '07. We installed all the services, and it became operational by May '07. We have launched similar initiatives in Ramadi and Mosul. The Iraqi response has been great. Our funding for it ran out in July '07, and the GoI stepped in and started paying for it, because they knew it was vital. Iraqis paid for it through the Foreign Military Sales process, and they budgeted tens of millions for it because justice is not cheap. On 1 October '07, they introduced the Iraqi Military Justice Code. We're working all aspects of professionalization. We have attorneys training MiTT teams on military justice. The Iraqi system is distinctly different from ours. It is built on the Egyptian system, which came out of the French system. It is not adversarial. Their system relies on an investigative judge, a defense lawyer, and a couple of other judges, but it is not the prosecution versus the defense, it is about resolving what happened and what to do about it. We do not change their system, but we are introducing them to forensic evidence and chemical analysis, for improving their investigations.

***What about Detainee Operations?***

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We provide a legal advisor to TF-<sup>1.4a</sup> who works legal and policy issues, interrogation matters. We have an LNO to the ICRC. This is not a 'traditional' war, but we do have regular ICRC visits. General P has the ultimate responsibility for detentions. We use the Army FM on interrogations.

***What are the MNFRC Boards?***

These review boards started in May or June of '07. They give the detainees a chance to tell their stories. We have everybody sit in, from staff officers to line officers. It is a very useful part of the inside the wire COIN. We look at detainees' behavior inside the wire in considering their case. This gets the detainees invested in the system. The faucet is open to releases, and we're in a new phase of our operations. We needed a control measure to help with releases. The reintegration program also brings in education, skill development like brick making, and we meter the releases at a rate the divisions feel comfortable with.

***Why are we negotiating a SFA/SOFA?***

The UNSCR governing our operations ends on 31 December. We have got to have some authority to replace the legal authorities the UNSCR gives us. This is also a parallel effort for Iraqis to take responsibility. They currently lack the capacity. We are holding 600 to 700 Iraqis convicted in the Central Criminal Court of Iraq because they still lack bed space and guards to take these prisoners. There are some Iraqi facilities, and trained officers, but not enough. The Deputy Minister of Justice says they want to take the prisoners. The Khark courthouse is currently under construction, but there have been complaints and problems they have to fix before they occupy it.

The point of the SOFA/SFA is to find a common solution to detention operations, legal protections for coalition forces, to define jurisdiction over US troops and contractors, to figure out basing rights, leasing rights, and the conditions for the return of facilities, such as environmental issues that could arise.

***What challenges will your successor face?***

He will have to deal with the handling of detainees, and dealing with contractors. The recent OSD Memo on dealing with contractors concerns the Military Extraterritorial Justice Act, which subjects civilians to US law, but it is complicated. The DoJ has not been aggressive in applying it. Congress gave DoD jurisdiction over contractors. This will be unique and challenging due to a long-standing tradition that civilians are not subject to military law. This also involves JCC-I/A and figuring out accountability. I-BIZ is an issue because it involves US taxpayer money being spent on Iraqi projects. We have to figure out fiscal authorities, such as providing cars for officials or schools.

***How invested are we in this?***

Are we invested in it? Bear in mind we did not end the occupations of Germany and Japan for 10 years.

***As a final question, what have been your best and your worst days?***

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The worst days have been when I was frustrated by bureaucracy, with trying to get something done and not being able to. High casualty days are worst days. Good days are when I work with junior officers and see them develop. I take personal satisfaction in small victories, like getting some down with and through the GoI. For example, one of the divisions got involved in the case of a young man who was convicted of some offense involving insurgency, like carrying or firing an RPG. He was sentenced to 30 years. He was the son of a sheik, who gave a pledge on his behalf. The chain of command felt it could support the sheik for his pledge and lobbied the Presidency Council. We are near success in getting the young man released.

The idea underlying this seems to be the notion that the GoI might pardon and release the offender, accepting the pledge, and thereby enhance credibility between the tribe/sheik, the CF, and the GoI.

Approved for Release

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