

**THE JAG CORPS AND RULE OF LAW REFORM: AN
INTERVIEW WITH BRIGADIER GENERAL THOMAS AYRES***

Q: You were commissioned in the U.S. Army after graduating from West Point in 1984, and later received a JD from Penn Law and an LLM from the Judge Advocate General's School. You've served in both Iraq and Afghanistan. For those who may not be familiar with the JAG Corps, can you give some background on the Corps and your role?

We like to think of the JAG Corps as the oldest, largest law firm in the country. We number over 9,400 people, including about 4,400 attorneys, half of whom are active duty. We have Judge Advocates embedded at every level of command in the Army.

The head of our "law firm" is the Judge Advocate General who works at the Pentagon and is the principal legal advisor to the senior Army leadership. I work under him meeting a lot of the needs for legal advice that the Army staff has. I also interact with our Judge Advocates throughout the world.

Q: What has traditionally been the JAG Corps' role?

We've always said that we've done six core things: criminal law; legal assistance for Soldiers; claims work; administrative law; contract and fiscal law; and international and operational law, which includes being experts on the Geneva and Hague conventions.

We've done these six operations for years and years and years. And until 9/11 that's really all we did.

* This interview was originally conducted, condensed, and published by Steven Barnes, Associate Director of Communications at the University of Pennsylvania Law School. It was made available on the University of Pennsylvania's website on September 21, 2010. The interview is republished here for this Special Issue. The interviewee, Brigadier General Ayres, spoke at the conference, *The Rule of Law Reform in Iraq and Afghanistan: Challenges for the Coming Decade*, which was co-sponsored by the University of Pennsylvania Law School and the National Constitution Center on September 23 and 24, 2010. Here, he answers questions about his career as a Judge Advocate General and how the Corps has changed since the September 11, 2001 attacks.

Q: What changed for the JAG Corps after 9/11?

For years, the Army's mission was to fight and win the nation's wars. We thought in terms of short duration wars, and we had two basic doctrinal templates: offense and defense. But because of what's happened over the last seven or eight years, we've gone back to something that was true during Vietnam – that there are times of extended conflict when you have to engage in stability operations. That takes a level of planning and involvement that you just wouldn't have in traditional wartime.

Doctrinally, if we say we are going to do stability operations, we have to do not only do things like build schools and pick up trash but also rule of law. We still do each of the six core functions, but we also have this new function now.

Q: How did the realization that the JAG Corps needed to add a new "rule of law" function come about?

As we got into Iraq and Afghanistan, we realized that we needed to assist the governments to stand back up. That had always been something that Civil Affairs did, but both countries are so big that Civil Affairs couldn't do it on their own this time; there weren't enough people to get the courts stood up, prosecutors and defense attorneys in place, correctional facilities functioning, and so on.

Commanders heard "rule of law" and turned to in-house counsel embedded with them, and so Judge Advocates started to become involved in rule of law operations. For instance, when I was in Iraq in 2003 and 2004, I would go down to the Ramadi courthouse to meet with the judges one to three times a week. We weren't trying to tell them what their laws should be, but to figure out what they needed to get their courts working again.

Q: What did the governments need in terms of rule of law support?

The thing that an immature government is not good at is seeing what's happening out in the provinces. So our major task was to help them see themselves. We would help get reports to the central people in Iraq; we could help them see if they need a courthouse, if they need judges.

They were used to a system under Saddam Hussein – he would keep power by closely managing judges. He'd send them to

2011] JAG CORPS AND RULE OF LAW REFORM 1303

different places around the country, but he'd never send them home. A lot of them wanted to get back to where they were from. At the same time, we were working with the transitional government to try to figure out if the judges had been involved in past abuses and whether they should be allowed to continue. I was there more recently and we've made great strides here.

Q: You said that the JAG Corps didn't try to impose particular laws on the Iraq and Afghan governments. But are there universal norms that a country might need to adopt as part of their rule of law reform?

It's a fine line. We do have a culturally centric, ethnocentric view of things sometimes. For example, under Saddam the police were corrupt. They didn't enforce the law; the secret police and the Iraqi military did. So we were trying to stand up a police force that didn't have a history of law enforcement under the old regime, and to create a clear line between police and army. But the idea that military doesn't do law enforcement isn't true everywhere, even in some western countries. But it is one that people are now embracing in Iraq.

Another example is that under Sharia law, the best evidence is the statement of two witnesses. We're not going to fight that, but at the same time we have forensics labs and technicians. So we teach the judges and the police, and train forensics experts. It's a tremendous effort and it's really starting to bear fruit. Early on we'd bring an American forensics person in, and a lot of judges would say, that's American mumbo jumbo. But if you train an Iraqi forensics expert, the judge is more likely to accept it.

There are also some bright lines. For example, the standard under Saddam for 40 years was that you physically beat someone until they confess. But that can't be the standard anymore. So we are trying to help them see themselves against a universal, international standard.

Q: Can you give an example of how the JAG Corps is adapting to meet the new rule of law function?

What you find in Iraqi society, and many societies throughout the world, is that judges respect gray hair. But our attorneys tend to be young. In a fairly large area, you'll have a major - maybe 30 to 32 years old - and a couple of captains who are right out of law school. They aren't only doing the six core functions, but also

running down to the courthouse, and so on. And it's hard for the judges to listen to them because they're so young.

One of the ways we're dealing with this is to use our reservists. We have reservists who are lifetime prosecutors and judges in small towns throughout the country, and when we've used them for this sort of function in the past we've been very successful. We're looking at ways to make this more of a doctrinal approach.

Q: What are some of the major obstacles you see in supporting rule of law reform in Iraq and Afghanistan?

One of our biggest obstacles is the limited number of people we have to do this work. When I was in Ramadi, Iraq - a town of roughly 500,000 people - we'd usually have three or four attorneys interacting with a courthouse, with judges, lawyers, cops, correctional facilities. You really can't do everything.

In the early days, we were trying to do it all as a military. In Ramadi, we had one State Department representative for 18,000 troops. That changed; we learned we need things called provisional reconstruction teams - teams of seven or eight people headed by the State Department, including one rule of law person from the Department of Justice. The PRTs started coming online in about 2007-2008. They were really helpful, but they also brought this new challenge of people being out of sync. You'd have people working on laudable goals - like fixing the commercial law, or having more women lawyers and judges - but in the military, we were focusing on basic stability. Something that helped was that General Petraeus and the Ambassador (the chief of mission) were completely in sync, and that was really important to see. That's the kind of thing they're trying to do in Afghanistan now.

Q: Among other awards, you've received the Canadian Parachutist Badge and the Master Parachutist Badge. What is a Judge Advocate General doing parachuting?

I was part of the 82nd Airborne Division, and all members need to parachute. The way you get into battle is to jump. The problem with jumping is, the parachutes are not designed to be in the air very long. It's not a soft landing.

My mother would often say about my jumping, "Tell me again why you need to do that." Then when I went to Afghanistan, she'd say, "Tell me again why we need lawyers in Afghanistan."