

On the frontlines of due process in Afghanistan

Navy judge advocates and legalmen support Detainee Review Boards



LT Ross Ericson and LT Andrew Murray, both practiced as recorders before the detainee review boards.

*By LT Andrew Murray
Camp Sabalu-Harrison, Parwan, Afghanistan*

Several kilometers from Bagram Airfield, arguably the U.S. military's most important base in Afghanistan, stands the detention facility in Parwan, a state-of-the-art theater internment facility that houses more than 1,000 unlawful enemy combatants.

Within its walls, Navy judge advocates and legalmen assigned to the Legal Operations Directorate of Combined Joint Interagency Task Force-435 are doing their part to establish due process, transparency, and the rule of law in Afghanistan.

At the forefront of the task force's legal efforts is a small cadre of Navy judge advocates and legalmen supporting the work of detainee review boards, which convene periodically throughout an enemy combatant's detention -- 60 days after internment and then every six months thereafter. As of early 2011, more than 3,000 review boards had been held at the detention facility.

To date, dozens of Navy judge advocates have served before the boards as recorders and legal advisers. Legalmen have prepared evidence packets and served as reporters, creating accurate transcripts of the hearings.

Each time a board considers an enemy combatant's case, it does so *de novo*, determining his status and whether continued detention is necessary to mitigate his threat on the battlefield. The process is outlined in DoD policy and is guided by Supreme Court precedent and international humanitarian law, also known as the Law of Armed Conflict.

Fundamental due process rights are guaranteed before the detainee review boards. These rights include the right of the detainee to appear before the review boards and confront the information against him; the right to speak directly to the three neutral field-grade officers charged with adjudicating his status; the right to present written information and call witnesses before the review boards; and the right to the assistance of a U.S. military officer acting as a personal representative in the best interest of the detainee. The personal representative may also speak on the detainee's behalf, and review and challenge classified information the detainee himself is prevented from seeing under national security laws.

Information presented at a detainee review board in many ways looks like evidence presented in a traditional criminal court or administrative hearing. Forensic labs prepare reports admissible before the boards and analyze fingerprints, DNA, explosives, and explosive residues.

Witnesses provide sworn and unsworn testimony, or written statements. And, the detainee often calls witnesses who vouch for his good character, offer alibis or promise accountability for his conduct in the future.

The boards also hear information unique to an operational environment: the specialized world of military intelligence. Various forms of intelligence are presented before the boards in closed secret or top-secret sessions with the detainee's personal representative acting on the detainee's behalf to challenge the intelligence.

Many of those detained and brought before detainee review boards are responsible for killing U.S. soldiers and Marines, or more often, Afghan soldiers, police, and innocent civilians.

While many detainees are in fact dangerous, a few are found not to meet the legal standard for internment. The boards investigate and recommend the release of detainees who do not meet the criteria for internment, or whose threat can be mitigated by release, reintegration, or prosecution by the Afghan judicial system.

The boards convene in a harsh environment. Rocket attacks on Bagram Airfield are frequent. Convoys are often ambushed with improvised explosive devices and small arms fire. Local courts can be corrupt or unavailable in the vacuum left by years of war and Taliban rule. Thus, the Afghan judicial system, prior to the establishment of Afghanistan's new national security court and provincial justice centers, struggled to enforce the rule of law.

The future of detention operations in Afghanistan is one of transition from the law of armed conflict detention, with the detainee review boards process, toward Afghan criminal prosecution.

Until then, the judge advocates and legalmen of Combined Joint Interagency Task Force-435 will continue to stand watch on the front-lines of due process, doing their part to establish justice for Afghanistan. ✪

Deputy Judge Advocate General for Reserve Affairs and Operations

We are well on our way to creating a unified and vibrant Total Force, delivering first rate legal service to the Navy. I have been working in close coordination with JAG Corps leaders to ensure that our alignment and focus remain on point. We have now designated Reserve officers as Pillar I (Military Justice), Pillar II (Command Services/Legal Assistance) or Pillar III (subject-matter experts) counsel. Pillar III includes admiralty, environmental, and international/cyber law experts. To effectively manage these practice groups, we have detailed CAPT Tim Sceviour (Military Justice), CAPT Joe Velling (Command Services/Legal Assistance), and CAPT Michael Shaw (Subject-Matter Experts) as Assistant Force Judge Advocates, whose duty it is to provide mentorship and leadership for personnel within their respective pillars.

Our program remains robust. We continue to attract and retain outstanding personnel, which I attribute in large part to the successful cooperation between the Career Transition Office in Millington and CAPT Janet Donovan and her staff in Norfolk. We have seen a record number of JAG accessions joining the Reserves upon leaving active duty, and maintaining their continuum of service. In addition, we have worked hard to ensure that promotion opportunity remains healthy.

On the individual augmentee front, the Reserve JAG team continues to provide outstanding legal support. On any given day we have Reserve JAG Corps officers and legalmen deployed to Afghanistan, Iraq, Guantanamo, Djibouti, and Kuwait. We passed an important milestone this past year with over 300 Reserve judge advocates and legalmen deployed since the attacks on Sept. 11.

Last January, we had our Reserve Commanding Officer and Staff Judge Advocate Conference in New Orleans, La., where we trained new Reserve commanding officers and discussed the way ahead with the Reserve JAG leadership. We were joined in New Orleans by RDML Bryan "Clutch" Cutchen, deputy chief of Navy Reserve.

As 2011 progresses, I look forward to working with all of you to create a Total Force legal community that is second to none.



I can never close without thanking all of you, active and Reserve, for the hard work and sacrifices that you and your families make in order to serve our country. They are significant, and deeply appreciated. I look forward to seeing you in the fleet and throughout our "worldwide law firm." Until then, thank you so very much for all that you do to support our nation, our Sailors and their families. I couldn't be more proud of you.

A handwritten signature in black ink that reads "Steven M. Talson".

STEVEN M. TALSON
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