

# The Briefcase Battalion

IN THE EARLY days of the war in Iraq, Mohammed Odeh al Rehaief, an Iraqi lawyer, reportedly walked six miles from a hospital in Nasiriya to a U.S. Marine checkpoint to describe the location of captured U.S. Army private Jessica Lynch.

Lynch was rescued and the United States granted al Rehaief and his family asylum for humanitarian reasons because of the assistance he had provided to the military. As he recounted the story about a year later during a courtesy visit to Gov. Mitt Romney in the Massachusetts State House, al Rehaief described the strapping Marines as appearing unduly nervous in his presence. When asked, “Were they nervous because you were an Iraqi national?” al Rehaief smiled, shook his head, and said that the Marines were nervous because he was a lawyer. “You should have told them that lawyers and Marines both fight for freedom” came the reply from the governor’s legal staff, to which al Rehaief laughed and with which he agreed.

Even though what lawyers do can in no way be compared to the sacrifices our servicemen and servicewomen make, we lawyers often get so caught up in the day-to-day demands of our practice that we can forget the noble and larger purposes of our profession. Whether in Afghanistan or Albuquerque, Baghdad or Boston, lawyers are the guardians of the ideal of a government of laws and not of men. Our profession’s work is fundamental to a free society. In a world wracked by terrorists bent on destroying democratic liberties, lawyers have both an obligation and an opportunity to engage in the debate about how best to protect our freedom without sacrificing our ideals. From the hours immediately following the 9/11 attacks, lawyers worked in close coordination with political, military, law enforcement, and diplomatic leaders to shape American strategy to combat the terrorist threat. But there still is much work to be done and dangers lie ahead.

Rule of law is one of the most potent weapons against terrorism. This issue of *The Federal Lawyer* is devoted to a discussion of how the law has shaped and can shape the effort against Al Qaeda and others who would do us harm. The article by David Aufhauser—who, during his service as general counsel to the U.S. Treasury, developed the use of financial tools to track and disable terrorist financing—is a call to adopt new tactics and a new focus to anticipate and meet the changing strategies of the terrorist enemy. In his essay

that asks whether there is a legal distinction between—and justification for—torture and torment as a means of obtaining information from suspected terrorists, John Connors dives into the current provocative debate about advanced interrogation techniques. The articles by Matthew Shapanka, Lt. Col. Marilyn S. Chiafullo, and Michael J. Davidson explore whether terrorism is a crime, unconventional warfare, a combination of crime and warfare, or something entirely different when framing the appropriate legal consideration of how to prevent terrorist attacks and how to punish attacks that have occurred. My partner James Carbin’s discussion of piracy addresses the economic considerations brought about by terrorism and the impact on the insurance industry. Finally, the Second Amendment debate, as most recently addressed by the U.S. Supreme Court in *Heller*, is the focus of an article by Miguel Larios.

Whether you agree or disagree with the views expressed by these authors, it is important that these topics be freely and openly discussed on their merits. The best ideas are those that survive the crucible of considered debate. John Adams, who earned public scorn as a lawyer when he defended the British soldiers accused of firing the fatal shots that caused the Boston Massacre, described his place in history: “I must study politics and war that my sons may have liberty to study mathematics and philosophy ... to give their children a right to study painting, poetry, music, architecture, statuary, tapestry, and porcelain.” If it is our time again to study politics and war, let the work and ideas of lawyers ensure that our sons and daughters will be free to pursue the attributes of peace. **TFL**

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