



### E3 Sailing in New Waters: A JAG Officer's Perspective on the Detention of John Walker Lindh

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The goal of this presentation is to inform forensic scientists and lawyers of the new legal issues confronting military and civilian Justice officials involved in the fight against terrorism.

As the Staff Judge Advocate, (JAG) assigned to the Commander Amphibious Squadron ONE (COMPHIBRON ONE), embarked aboard the USS PELEIU (LHA-5) during the 2001-2002 Western Pacific (WESTPAC) deployment it was the author's duty to advise the Task Force Commander on all applicable Rules of Engagement, Law of the Sea, Environmental and Operational Law issues. These are the primary duties of all deployed JAGs serving aboard U.S. Naval ships through out the world. The author's role in this arena was to be of special significance due to the immediate involvement in Operation Enduring Freedom, as a result of the terrorist attacks upon the U.S. on September 11, 2001.

Three Navy ships of the Amphibious Squadron, along with the 15th Marine Expeditionary Unit, comprised the Amphibious Ready Group. The Group was immediately ordered to the Northern Arabian Sea to conduct missions in Afghanistan in support of Operation Enduring Freedom. In late November it was determined that one of the captured Taliban fighters was American John Walker Lindh. Lindh was held at the Marine occupied Camp Rhino while higher command elements made a determination on what to do with him and the other enemy detainees. At some point in early December the decision was made to move Lindh and the other detainees to a holding facility on board the USS PELELIU. It was at this time that duties changed.

As the JAG, it was the author's duty to review and approve any plans the PELELIU had in its preparation for the housing of detainees. Initially the author was concerned with complying with the Geneva Convention prohibition against bringing enemy prisoners of war aboard ships unless for a temporary basis. As with many military plans, there often is a starting point, but the end or final solution is something that will come in time, or will be dealt with later. After much consternation and vividly worded emails it was decided that the detention of detainees would be in fact temporary.

The issue that surrounded these individuals from the beginning was to what official status they were to be entitled: prisoners of war or unlawful combatants (criminals). This distinction in status would have tremendous effect on the rights afforded to these individuals.

The raging debate in Washington on the status of these individuals did not cause a delay in their being processed to the PELELIU. As a result it was the author's duty to put together a hodgepodge of rights and privileges to be afforded these men. It was understood from the CNN feeds that no decision had been made in Washington as to their official status. Thus the author looked to the Geneva Convention and hand picked the rights that would be afforded these men. Often times decisions were rationalized to the commanders whose main concerns were not the comfort or well-being of the detainees.

In the history of the U.S., enemy prisoners of war have never been housed aboard Navy ships and from the moment he was brought onboard, the ship was "sailing in new waters." It was understood from the beginning that Lindh's case was destined for a courthouse...somewhere. Initial instructions were to begin interrogations without rights advisements or any type of Miranda. As a former prosecutor, the author found this very incredible. As is the norm, any attempt the author made for getting clearer guidance from higher command was contradictory - some wanted warnings given, others did not. The author's advice to the Commander was that no one should have access to Lindh until concrete answer of the approved policy was determined. Non-military criminal investigators were also now onboard the PELELIU waiting to debrief Lindh. The author had all investigators' access to the brig, where Lindh was being held, secured to ensure there would be no mistakes or slip-ups by law enforcement entities. These actions were not warmly received by either the Commander or the investigators, but were later passed as shipboard policy.

As stated earlier, the authors were blazing new trails. One thing was for sure: actions, *all actions*, would be scrutinized at a later date by a judicial body, if not the entire free world. It was because of that belief that the author chose to remain closely involved with all aspects of Lindh's and the other detainee's detention while they were aboard the PELELIU. This too was the author's reasoning for not having any conversations with Lindh or the others, direct or indirect, but daily visiting the brig to visually ensure they were in good physical condition and were treated properly. Instructions were to have the brig security personnel and only the brig security personnel converse with the detainees and then only to discuss their comfort and well-being.

The rudder found guiding the author through this period was the Geneva Convention. However, its provision regarding the prohibition against availing prisoners to public curiosity was one of the biggest fears. The U.S. follows the Geneva Convention for many reasons. One of them is the hope that other countries will also follow the treatment allocations it provides. Bringing enemy detainees onboard a Navy helicopter carrier with over 3000 young Sailors and Marines in a war zone during the digital age, one would not be



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prudent if he/she was not concerned with a photo of the detainees finding its way to the Internet. Several times the author found himself confronting a Sailor or Marine attempting to get that souvenir shot. The author recalls having to go out on the flight deck during flight operations to counsel a flight deck crewman on his inability to photograph the hooded detainees during their departure from the PELELIU.

The experience was that of a lifetime. At times the author was not the most popular person onboard. Often the Commander and/or the CO of the ship did not wish to hear that which the author was obligated to advise them about. However, the ends justified the means. During the preliminary legal investigation of U.S. vs. John Walker Lindh, many key figures who served aboard the USS PELELIU during this stressful time, including myself, were interviewed by both the defense and prosecution teams. The investigators were in "uncharted waters" but accounts from both sides of the case have acknowledged that the process, manner and professionalism in which the men and women of the USS PELELIU (LHA-5) performed their duties in the detention of the enemy detainees was "the way it should be done".

**Enemy Detainees, Geneva Convention, Combatants**