

Former Military Lawyers Join Lawsuit Against Rumsfeld

by Edward Spannaus

“Mr. Rumsfeld’s policies have stained our military. . . . We want to remove that stain,” said retired Army General James Cullen, one of two retired military lawyers who are part of the legal team in a newly filed lawsuit against Defense Secretary Donald Rumsfeld. The action was filed on March 1 by the American Civil Liberties Union (ACLU) and Human Rights First, on behalf of eight former prisoners, four Afghan and four Iraqi citizens, who were tortured and abused at the hands of U.S. military personnel acting under Rumsfeld’s direction.

Retired Rear Admiral John Hutson, who is also part of the legal team, acknowledged to a packed press conference in Washington on March 1 that, after 28 years in the United States Navy, “this is not an easy thing for me to do.” But, Hutson explained, this lawsuit “is about our national defense, now and in the future; it’s about the role that the United States has traditionally played on the world stage; it’s about our self-respect and self-image; and it’s largely about protecting our own soldiers, sailors, airmen, and Marines who are already in harm’s way, and who will continue to be so in the future.”

Both Cullen, who was Chief Judge of the U.S. Army Court of Military Appeals, and Hutson, who was the Judge Advocate General of the U.S. Navy, told *EIR* that they have received many expressions of support from both active-duty and retired military personnel for what they are doing —on this and on their earlier public statements on prisoner abuse and torture.

“I have been called by many on active and reserve duty,” Cullen said, “and have been thanked privately for doing what they cannot do.” Hutson said that he has been gratified to receive many e-mails and phone calls from former colleagues and other people, who have encouraged and supported him; this includes both active-duty and retired military personnel, who are appalled by the events of the past

couple of years, and who don’t want the United States to continue down this path.

Indeed, there is a wide recognition that those retired military flag officers, such as General Joseph Hoar (see *EIR* interviews, April 9, 2004, and Jan. 14, 2005) and General Anthony Zinni (see *EIR* interview, May 14, 2004), who have spoken out against the Administration’s policies, are speaking on behalf of many active-duty officers who themselves cannot speak publicly.

As background to the March 1 filing, it is essential to recall that in September 2004, eight retired Generals and Admirals signed an open letter to President Bush calling for the creation of an independent commission to investigate prisoner abuse and torture in Afghanistan, Iraq, and Guantanamo. The signers, in addition to Hutson and Cullen, were former CENTCOM commander, Gen. Joseph Hoar; former Army Judge Advocate General, Gen. John Fugh; Army Gen. Robert Gard; former Navy Inspector General, Adm. Lee Gunn; Army Gen. Richard O’Meara; and former Marine Corps Senior Legal Advisor Gen. David Brahms.

Then in early January, 12 retired flag officers signed a letter to the Senate Judiciary Committee, expressing their concern about the nomination of White House Counsel Alberto Gonzales. At a Jan. 4 press conference, again sponsored by Human Rights First, Generals Cullen and Hoar called for the Senate to reject the Gonzales nomination. Signers included many of those who had called for the independent commission, plus former Chairman of the Joint Chiefs of Staff, Gen. John Shalikashvili, retired Army Generals Evelyn Foote, Robert Gard, and Claudia Kennedy, Navy Admiral Don Guter, Air Force Gen. Merrill McPeak, and USAF National Guard Gen. Melvyn Montano.

One well-placed intelligence source told *EIR* that there



Bestial treatment of prisoners by the U.S. military, as shown in this picture released under FOIA, was the result of policies coming from the top, a new lawsuit charges.

was an entire generation of military officers who had stayed in the military after the debacle of the Vietnam War, to put things back together again, and to ensure that this never happened again. (Colin Powell had been part of this grouping.) They now see all their efforts going down the drain under the Bush-Cheney Administration, and are determined to do everything they can to stop it.

All of this, however, went completely over the heads of the news media. Despite the fact that Admiral Hutson addressed the March 1 press conference, none of the “establishment” East Coast news media even so much as mentioned the military participation in the lawsuit. The only exception found, was the Knight-Ritter news service, which has a better overall record in this regard.

Rumsfeld and Cambone in Charge

The 77-page complaint in the case documents, in detail, the chain of command through which Rumsfeld directed and controlled the torture policy, in most cases operating through his intelligence deputy Stephen Cambone, to Maj. Gen. Geoffrey Miller, the commander at Guantanamo. Miller was sent to Iraq in August-September 2003 by Rumsfeld and Cambone, so that he could bring the interrogation methods used at Guantanamo into Iraq, including the use of dogs, the removal of clothing, the use of “stress positions,” and sensory deprivation and isolation. The complaint shows how Miller gave his orders and directives to the top U.S. commander in Iraq, Lt. Gen. Ricardo Sanchez, and to two commanders at Abu Ghraib, Brig. Gen. Janis Karpinski and Col. Thomas Pappas.

Cambone, as *EIR* has reported, played a particularly key role. The complaint charges that as of the summer of 2003, Rumsfeld and Cambone “knew of widespread torture and other abuses of detainees in Iraq and Guantanamo, but that “they took no steps to prevent or punish these abuses.” Rather, “Rumsfeld took measures to increase the pressure on interrogators in a manner that he knew was likely to result in further torture or other cruel, inhuman, or degrading treatment.”

The references to the CIA are particularly important, in light of constant reporting by the *Washington Post* and others which treats the CIA as an independent operator, rather than an agency which is operating under the direction and supervision of the Secretary of Defense and the Pentagon in the so-called Global War on Terrorism. In regard to the CIA, the complaint states: “Cambone supervised, and Rumsfeld approved, the activities of a clandestine program composed jointly of U.S.

military and CIA personnel. This program began operations in Iraq in or around the summer of 2003 . . . members of this program were authorized to use unlawful techniques, including physical and sexual humiliation, against Iraqi detainees.”

The torture and abuse against the eight plaintiffs, which are described in the complaint, include severe beatings, cutting with knives, mock executions, death threats to the prisoners and their families, sexual abuse and humiliation, use of dogs to threaten and intimidate, restraint and confinement in excruciatingly painful positions, and severe sensory deprivation. This all took place in U.S. military detention facilities in Afghanistan and Iraq between June 2003, and June 2004. These dates were after extensive reports and complaints about prisoner abuse had already been given to Rumsfeld and others. For example, Rumsfeld was on notice about torture and abuse being conducted at Guantanamo, as a result of complaints by FBI personnel made in December 2002.

Losing Our Soul

At the March 1 press conference, speakers from the ACLU and Human Rights First (formerly known as the Lawyers Committee for Human Rights) stressed that the lawsuit was not aimed at the military or the Department of Defense as a whole, or at the troops in Iraq and Afghanistan, but that it focusses on the official at the top of the military command structure who is responsible and accountable for the conduct of troops under him. Michael Posner, the Executive Director of Human Rights First, said that throughout the preparation of the suit, they had consulted with military leaders.

Elaborating on his prepared statement (see Documenta-

tion), Hutson said that the United States had always been a role model with respect to the treatment of captives during wartime, “but I don’t think we are now.”

“We’ve been the country that has given hope to the oppressed and the afflicted around the world, which has made us stronger and the world safer,” Hutson continued. “Unfortunately, we’ve now taken a dramatic step down a slippery slope.”

If this continues, we will have lost more than we have gained, Hutson said. “We will take generations to recover from this, unless we stand up on behalf of these plaintiffs who have been abused under our control and authority, and say, ‘Enough, Mr. Secretary! We want the old United States back.’”

“This lawsuit,” Hutson concluded, “is an attempt to get this country back on the course that our forefathers charted for us.”

In his statement, Hutson noted that the drafters of the Constitution had ensured civilian control of the military, but, he said, civilian leadership “is not a guarantee of success . . . civilian leaders bear a grave responsibility.” Defense Secretary Rumsfeld, Hutson charged, “has failed to uphold that duty,” and “has permitted, and indeed encouraged, military personnel to fall far short of the aspirational standards that Americans deserve and expect in our armed forces.”

Hutson pointed out that not only do direct orders go down the chain of command, but so do attitudes: “In dealing with detainees, the attitude at the top was that they are all just terrorists, beneath contempt and outside the law, so they could be treated inhumanely. Our effort to gain information vitiated 200 years of history. International obligations didn’t matter, nor did morality or humanity. It was okay to lose our soul as long as we got information, no matter how unreliable.

“That attitude dropped like a rock down the chain of command, and we had Abu Ghraib and its progeny. The self-respect of the military and the country was diminished. Our international reputation will be tarnished for generations. In the end, Secretary Rumsfeld’s nonfeasance and malfeasance has imperilled the war effort and endangered troops.”

In a response to questions from *EIR* following the press conference (see Documentation), General Cullen charged that Rumsfeld’s policies have “undermined core principles on which the military’s values and training have been based,” and he said that Rumsfeld’s “short-sighted and arrogant leadership” has put at risk the protections on which the U.S. military depends, when its personnel are made prisoners of war.

Cullen pointed out that, after World War II, the U.S. insisted that leaders be held to account for breaches of international law committed by forces under their command, and that the U.S. today cannot declare itself exempt from this same standard. He showed how the Commission investigating the My Lai massacre in Vietnam applied the same standard, specifically, that “the culture created by the then-Secretary of Defense, Robert McNamara,” that is, the “body count syn-

drome” as the measure of success, played a significant role in the circumstances leading to the My Lai massacre. The My Lai Commission also cited the dehumanization of the enemy, which Cullen compared to the dehumanization and humiliation of detainees under Rumsfeld’s policies today.

Documentation

Brig. Gen. James Cullen and Rear Admiral John D. Hutson (ret.) made statements on the law suit being brought against Donald Rumsfeld, reported below. Part of the lawsuit follows their statements.

Retired Officers Hold Rumsfeld to Account

Gen. James Cullen is a retired Brigadier General in the United States Army Reserve Judge Advocate General’s Corps, and last served as the Chief Judge (IMA) of the U.S. Army Court of Criminal Appeals. He currently practices law in New York City.

EIR asked General Cullen to briefly explain why he is participating in the lawsuit against Defense Secretary Rumsfeld, what he hopes to accomplish through this, and what has been the reaction of his military colleagues to his involvement in these matters, including his earlier call for an independent commission, and his opposition to the Alberto Gonzales nomination.

Here is General Cullen’s statement in response to EIR’s questions. Subheads have been added.

The decision to bring this action against Mr. Rumsfeld was taken out of a sense of deep frustration.

Mr. Rumsfeld’s policies have undermined core principles on which the military’s values and training have been based. His policies cast aside decades of military experience in employment of proper detention interrogation techniques. His policies also had us ignore Geneva Convention requirements to classify and treat properly individuals detained by our forces. Detainees are treated as though they are criminals before there has been any minimally satisfactory determination of their status in accord with the Geneva Conventions.

Mr. Rumsfeld authorized techniques that have led directly to acts constituting grave breaches of the Geneva Conventions. The Geneva Conventions have served as protection for our military in conventional wars and guerrilla wars. We rightly invoked their protections even when our adversaries



Brig. Gen. James Cullen (ret.) last served as the Chief Judge (IMA) of the U.S. Army Court of Criminal Appeals: "Command and leadership bear distinct responsibilities. . . . Mr. Rumsfeld put in place policies that facilitated the disgraceful acts about which we read with numbing regularity.

were guerrillas or a non-functioning government. Mr. Rumsfeld's short-sighted and arrogant leadership has put at serious risk those protections on which our prisoners of war and civilians caught in war zones have relied.

We sought appointment of an independent commission outside of the Department of Defense to investigate patterns of torture, inhumane treatment, and other abuse of detainees in facilities under the control of Mr. Rumsfeld. Those patterns of abuse bear striking similarities that defy suggestions of coincidence. There has been no effort to investigate these patterns independent of Mr. Rumsfeld's control. Earlier litigation and leaks by those outraged by Mr. Rumsfeld's directions revealed memoranda he issued authorizing interrogation techniques not previously permitted by the military. He refused to recognize some basic rights of detainees until the Supreme Court felt his notions of executive power; i.e., his power to detain indefinitely, violated fundamental constitutional principles.

Command and leadership bear distinct responsibilities. If there were any doubts about the range of these leadership responsibilities, those doubts were put to rest in cases decided by the courts after World War II. It is no longer sufficient for a leader to claim "I did not do the criminal act," or "I did not personally order it." Mr. Rumsfeld put in place policies that facilitated the disgraceful acts about which we read with numbing regularity. A leader has clear responsibility to take meaningful measures to stop grave violations of international law in facilities and areas under his control, especially grave violations spawned by his policies. A few public utterances issued for damage control purposes are not sufficient.

We called General Yamashita to account after World War II for grave breaches of international law committed by his forces, even though circumstances cast some doubt about his actual control of and communications with those forces. The courts felt he had failed to take sufficiently strong measures to insure his forces did not carry out grave breaches of interna-

tional law, and for these failures he was held to account. Our country argued that this standard of leadership responsibility should apply, and no one can persuasively argue we should exempt ourselves from the same standard.

The Lessons of the My Lai Massacre

The Peers Commission findings after the My Lai massacre reinforced these lessons. Among those lessons was the culture created by policies of the then Secretary of Defense, Robert McNamara, to measure success in war. The "body count syndrome" that evolved from the focus on quantitative "success" played a significant role in the circumstances leading to My Lai. Dehumanizing the enemy was also prominently mentioned by General Peers among factors bearing on war crimes' predictability.

The dehumanization and humiliation of detainees under Mr. Rumsfeld's policies should cause us to amplify the warnings that General Peers sounded three decades ago. Mr. Rumsfeld has made clear that he does not intend to accept responsibility for the patterns of misconduct emerging in the wake of his policy decisions. We feel the honor of our military is at stake. We owe it to those who still wear the uniform and continue to serve their country honorably to bring this suit. Mr. Rumsfeld's policies have stained our military's record for adherence to the rule of law and observance of human rights. We want to remove that stain.

I have been called by many on active and reserve duty, who serve proudly, and have been thanked privately for doing what they cannot do. They want the American people to look with pride on their sacrifices. They do not want to risk loss of that pride or support by imposition of policies in stark violation of core national values and military culture.

'Regaining the Moral High Ground'

Rear Admiral John D. Hutson (Ret., USN) is "of counsel" to Human Rights First in the litigation against Defense Secretary Rumsfeld. Admiral Hutson served as the Navy's Judge Advocate General from 1997 to 2000. He currently serves as the President and Dean of Franklin Pierce Law Center in Concord, N.H.

Here is Admiral Hutson's prepared statement on the Rumsfeld lawsuit. The subhead is added.

It is the mission of the United States Armed Forces to fight and win our nation's wars. Whatever contributes positively to that mission is good. Whatever degrades it or undermines it is bad.



Rear Admiral John D. Hutson (Ret., USN):
“There is no reason to fight this war if we lose our soul in the process.”

Our military should reflect our American culture and values. We want the military to be representative of what it is fighting to preserve. It ultimately weakens our national defense if we permit the Armed Forces to become foreign to the rest of society or to take on values that are inimical to Americans.

That’s why the drafters of the Constitution were so wise in ensuring civilian leadership of the military rather than a general staff, and why we have historically encouraged the participation of citizen soldiers.

Civilian leadership, however, is not a guarantee of success. The civilian leaders bear a grave responsibility. In recent years, Secretary Rumsfeld has failed to uphold that duty. He has permitted, and indeed encouraged, military personnel to fall far short of the aspirational standards that Americans deserve and expect in our armed forces. His leadership has been found wanting in the most fundamental and important ways.

During my career in the Navy, I learned the value and strength of the chain of command. Not only direct orders go down the chain of command, but also attitudes.

Vitiating 200 Years of History

In dealing with detainees, the attitude at the top was that they are all just terrorists, beneath contempt and outside the law so they could be treated inhumanely. Our effort to gain information vitiating 200 years of history. International obligations didn’t matter, nor did morality or humanity. It was okay to lose our soul as long as we got information, no matter how unreliable.

That attitude dropped like a rock down the chain of command, and we had Abu Ghraib and its progeny. The self-respect of the military and the country was diminished. Our international reputation will be tarnished for generations. In the end, Secretary Rumsfeld’s nonfeasance and malfeasance has imperilled the war effort and endangered troops.

The military becomes chaotic without accountability. Only by enforcing the concept of accountability can we begin

healing, redeeming our respect, and repairing our international reputation. I believe the buck stops at the desk of the Secretary of Defense.

For generations the United States was respected for adherence to the rule of law and for holding human rights first. That empowered our military prowess. Now we risk becoming just another country that countenances torture for short-term gain. That is beneath us and makes us weaker in the long run.

There is no reason to fight this war if we lose our soul in the process. That permits our enemies to win every bit as much as if we just surrendered. It doesn’t come from strength, but from weakness. It is the cowardly way out. Now we need to take a first step toward regaining the moral high ground.

Lawsuit Against Donald Rumsfeld

In the United States District Court for the Northern District of Illinois

Arkan Mohammed ALI, Thahe Mohammed SABBAR, Sherzad Kamal KHALID, Ali H., Mehboob AHMAD, Said Nabi SIDDIQI, Mohammed Karim SHIRULLAH, and Haji ABDUL RAHMAN, Plaintiffs,

v.

Donald H. RUMSFELD, Secretary of Defense of the United States of America, Defendant.

Complaint for Declaratory Relief and Damages

1. Plaintiffs are individuals who were incarcerated in U.S. detention facilities in Iraq or Afghanistan where they were subjected to torture or other cruel, inhuman, or degrading treatment or punishment, including severe and repeated beatings, cutting with knives, sexual humiliation and assault, confinement in a wooden box, forcible sleep and sensory deprivation, mock executions, death threats, and restraint in contorted and excruciating positions.

2. The Plaintiffs, Arkan Mohammed Ali, Thahe Mohammed Sabbar, Sherzad Kamal Khalid, Ali H., Mehboob Ahmad, Said Nabi Siddiqi, Mohammed Karim Shirullah, and Haji Abdul Rahman, are among the unknown number of U.S. detainees in Iraq and Afghanistan who have suffered torture or other cruel, inhuman, or degrading treatment.

3. Plaintiffs bring this action against Defendant Donald H. Rumsfeld, the U.S. Secretary of Defense, whose policies, patterns, practices, derelictions of duty, and command failures caused Plaintiffs’ abuse. Defendant Rumsfeld bears the ultimate responsibility for the physical and psychological injuries that Plaintiffs have suffered.

4. Official government reports have documented, and military officials have acknowledged, many of the horrific abuses

inflicted on detainees in U.S. custody. Such torture or other cruel, inhuman, or degrading treatment or punishment of detainees in U.S. custody violates the United States Constitution, U.S.-ratified treaties including the Geneva Conventions, military rules and guidelines, the law of nations, and our fundamental moral values as a nation.

5. For generations, U.S. civilian and military leaders have sought to ensure that U.S. soldiers complied with legal mandates prohibiting torture and abuse under all circumstances and at all times regardless of whether our enemies respect the same principles. U.S. Army Field Manual 34-52, which describes the legal standards governing interrogations by U.S. military personnel, unequivocally states that binding international treaties and U.S. policy “expressly prohibit acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation. Such illegal acts are not authorized and will not be condoned by the U.S. Army.” The Manual specifically defines “physical torture” to include “infliction of pain through chemicals or bondage,” “forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of time,” “food deprivation,” and “any form of beating.” The Manual, moreover, admonishes that “[r]evelation of use of torture by U.S. personnel will bring discredit upon the U.S. and its armed forces while undermining domestic and international support for the war effort. It also may place U.S. and allied personnel in enemy hands at a greater risk of abuse by their captors. Conversely, knowing the enemy has abused U.S. and allied [prisoners of war] does not justify using methods of interrogation specifically prohibited by [international law] and U.S. policy.”

6. In stark contrast to these mandates and our traditions, the public record shows that detainees in U.S. custody in Iraq and Afghanistan were subjected to unlawful torture and abuse. Those abuses, which pervaded multiple U.S. detention centers in two separate countries, did not spring from the spontaneous acts of individual soldiers. As the report of former Defense Secretary James Schlesinger concluded, the abuses of detainees were “widespread,” and “were not just the failure of some individuals to follow known standards, and they are more than the failure of a few leaders to enforce proper discipline. There is both institutional and personal responsibility at higher levels.”

7. The abuses occurred on a “widespread” basis because of orders and derelictions by Defendant Rumsfeld. Most critically, Defendant Rumsfeld authorized an abandonment of our nation’s inviolable and deep-rooted prohibition against torture or other cruel, inhuman, or degrading treatment or punishment of detainees in U.S. military custody. These acts precipitated further violations of law and directly led to the abuse of Plaintiffs and other detainees in Afghanistan and Iraq. Among other consequences of Defendant Rumsfeld’s actions, high-ranking commanders permitted and implemented an unlawful policy, pattern, or practice of torture and other cruel, inhuman, or degrading treatment of detainees.

8. In addition, and independent of his orders, authorizations and actions causing subordinates to commit torture and other cruel, inhuman, or degrading treatment, Defendant Rumsfeld also violated his legal duty by failing to stop torture or other cruel, inhuman, or degrading treatment when he learned of it. Despite many credible and reliable reports of torture from governmental and non-governmental sources beginning in January 2002 and continuing throughout 2003 and 2004, Defendant Rumsfeld failed to take reasonable, necessary, timely, and meaningful measures to prohibit and prevent abuses and to punish perpetrators. In doing so, Defendant Rumsfeld violated his obligations as a commander and acted with deliberate indifference and conscious disregard of the high risk of injuries inflicted on detainees and the violations of law committed by his subordinates. These actions and omissions caused the torture and abuses to continue and to spread. Plaintiffs, among many others, were injured as a proximate result of Defendant Rumsfeld’s conduct.

9. Defendant Rumsfeld cannot defend or rationalize the torture or other cruel, inhuman, or degrading treatment of Plaintiffs and other detainees on the grounds that such techniques were deployed against carefully selected individuals who possessed critical intelligence information, or occurred only during the heat of battle, or were ordered under exigent circumstances. Most fundamentally, the prohibitions against torture or other cruel, inhuman, or degrading treatment are absolute, non-discretionary, and subject to no exception. They are designed not only to safeguard the security and dignity of every human being in times of armed conflict but also to ensure the humane treatment of U.S. soldiers when they are captured on the battlefield by enemy forces. Moreover and significantly, the International Committee of the Red Cross cited estimates by military intelligence that 70-90% of persons detained in Iraq had “been arrested by mistake.” Similarly, the Army Inspector General estimated that 80% of detainees “might be eligible for release” if their cases had been properly reviewed, and an internal military report cited estimates from the field that 85-90% of detainees at Abu Ghraib “were of no intelligence value.” Finally and critically, the unlawful orders, policies, and practices did not issue under exigent circumstances or on the battlefield. Rather, the abuses had their genesis in and were continually reinforced by policies, patterns, or practices deliberately formulated and adopted in the United States over long periods of time, were inflicted in numerous places over lengthy periods, and injured an unknown number of innocent civilian detainees, including Plaintiffs, who posed no threat to U.S. forces.

10. Defendant Rumsfeld has not been held accountable for his acts, omissions, and failures of command. To this day, Plaintiff victims of Defendant Rumsfeld’s policies, practices, patterns, and actions have received no redress for their injuries. Accordingly, Plaintiffs seek a declaration that determines the responsibility of Defendant Rumsfeld for the violations of law that caused Plaintiffs’ injuries and seek monetary compensation for the injuries the Plaintiffs suffered.