
Documentation

Adm. John Hutson (ret.): 'We Have a Serious Problem'

This is testimony given to the Senate Armed Services Subcommittee on Personnel, at its July 14 hearing, by retired U.S. Navy Adm. John D. Hutson, former Judge Advocate General of the Navy, and now the president and dean of the Franklin Pierce Law Center, Concord, N.H.

Admiral Hutson's more extensive prepared testimony is available on the Senate Armed Services Committee website.

I think we've got a serious problem, and you have the opportunity to fix it if you care to take it, and I would agree that it is incumbent upon Congress to take this opportunity in its oversight capacity.

If there's one thing that's come out clearly in the hearing today, the hearing yesterday, and in the lead-up to all of this, it is confusion. . . .

I will bet that if you ask the Attorney General of the United States, and Secretary Rumsfeld, and the chairman of the Joint Chiefs, and the Judge Advocates General, and all the senior people who have worked on this issue, to write down what their definition of a combatant is, what they think the rules are that apply, to whom they apply, where they apply, when they apply—you would come up with as many different an-

swers as you would ask the question.

And if those people can't write it down, if they don't understand it clearly, you surely can't expect the colonels, and the captains, and the staff sergeants to understand it, and if you can't expect the staff sergeants to understand it, you're going to have the kind of problems that we've seen.

Whatever it is we do, it has to be foolproof. We have to keep it simple. We are talking about these issues in terms of legal niceties, and that's fine for law school. That's fine for seasoned lawyers to try to do. It doesn't work on the battlefield.

The other thing about the legality issues here is, I think, that in many respects it misses the more important issues. I like to think of the United States as being above the law—above the law in a sense that the law provides the floor. And we are in the basement at this point, in many respects.

But the law provides the floor, and the United States should be above that. We should be considering these things not so much from a legal point of view as from a moral point of view, a diplomatic point of view, what's right militarily, what's right practically, what makes common sense, what's going to work not only in this war but in the next war and the war after that.

Because right now, we are looking at it in a very short-sighted way. We're trying to deal with the very narrow, immediate issue and not doing that very well, and we have completely lost sight of what's over the horizon.

And I think that's why the Judge Advocates General had a different point of view than the political appointees, because the policymakers were looking immediately.

The Judge Advocates General were looking over the horizon and trying to figure out what's going to be best for the United States. . . . We're the ones who are running the risks here. It protects U.S. troops now and in the future for us to come to some sort of understanding about what the rules are going to be. And parsing the Convention Against Torture and the Geneva Conventions—your points about how you identify the Taliban and al-Qaeda were right on the mark, Senator. It just doesn't work.

And it's absolute necessary that we straighten this out. You know, what we need to say is, they may be terrorists; they may be evildoers; but they're human beings, and we're Americans, and we will treat them with the dignity and respect that Americans should always treat human beings, simply by virtue of their humanity.

And then in doing that, we can fix the Military Commission process. I was an early and ardent and vocal supporter of Military Commissions. I think they can be fixed. We can fix the interrogation policy. We can enact the Army Field Manual [34-52] so that it applies to every person, every place, in every interrogation.

We can do the things that are necessary for history when they write the chapter, "Treatment of Detainees," in the book on the war on terror, the end of the chapter will be better than the beginning of the chapter.