

Federal suit charges Rumsfeld authorized detainee torture

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Four Afghans and four Iraqis have sued US Defense Secretary Donald Rumsfeld in federal court in Chicago, the city of his principal residence, for implementing interrogation policies that resulted in their torture at the hands of US military forces. The case was filed on behalf of these plaintiffs on March 1 by the American Civil Liberties Union and Human Rights First, until recently known as Lawyers for Human Rights.

According to the complaint, all the plaintiffs "are and were non-combatant civilians who pose no threat to the United States." They were not engaged in hostilities against the US, were never prosecuted for criminal violations and were released by the military after being brutally tortured. The suit charges that this torture came as a result of a "policy, pattern or practice of torture or other cruel, inhuman and degrading treatment" authorized at the highest levels of the US military.

The eight plaintiffs have provided detailed accounts of their abuse by US torturers, which form the cornerstone of the lawsuit against Rumsfeld. [See accompanying article "Afghan and Iraqi prisoners detail abuse by US torturers"] They are seeking monetary damages to compensate them for their physical, psychological and emotional injuries.

The New York-based Center for Constitutional Rights and the four Iraqis recently sought to initiate criminal prosecution of Rumsfeld and former CIA Director George Tenet in Germany, for many of the same acts alleged in the lawsuit, but the German government rejected that request on February 10. [See "US group files war crimes complaint in Germany against Rumsfeld"]

The complaint initiating the civil lawsuit against Rumsfeld pieces together in considerable detail the train of events that led to widespread torture of detainees in Afghanistan, Iraq and Guantanamo, Cuba, and reads like pages from the annals of the Nazis' techniques. The full written complaint can be viewed at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=17572&c=206> by clicking on "Rumsfeld complaint" under the "Legal Papers" heading.

International law and US law prohibits, without exception, torture and cruel treatment of prisoners. By 2002, illegal interrogation techniques were already widespread in Afghanistan. In January 2002, Amnesty International wrote letters to Rumsfeld complaining of mistreatment of Afghanistan detainees, including sensory deprivation by means such as hooding, restraint in painful positions, death threats, prolonged sleep deprivation, violent shaking, and use of cold air to chill the detainee. Amnesty International wrote a lengthy memorandum to Rumsfeld in April 2002 complaining of abuses both in Afghanistan and at Guantanamo.

Rumsfeld failed to investigate or punish such acts. Instead, on December 2, 2002, he approved the use of a number of illegal interrogation techniques at Guantanamo. Those techniques included the use of "stress positions," clothing removal, 20-hour interrogations, isolation for up to 30 days, sensory deprivation, deceptions, such as pretending the interrogator was from a country known for torture ("false flag"), and inducing stress by playing upon detainee phobias (such as fear of dogs).

Following reports by the Federal Bureau of Investigation of abuses at

Guantanamo, Rumsfeld on January 15, 2003, purported to rescind some of the illegal techniques. But in an order to the commander of the US Southern Command, Rumsfeld said he could personally continue to authorize such techniques, and wanted to be involved in formulating a plan to employ them.

On January 15, 2003, Rumsfeld also directed William J. Haynes II, the general counsel for the Defense Department, its highest lawyer, to put together a "Working Group" on interrogation techniques. The group reviewed and did not object to illegal techniques already in wide use in Afghanistan. On April 4, 2003, the group recommended to Rumsfeld that he approve 35 such techniques at Guantanamo.

On April 16, 2003, Rumsfeld approved use of 25 of those techniques, including extended isolation, dietary and environmental manipulation, "sleep adjustment" and "false flag" deception. He also retained the power to personally authorize additional abuses. By the summer of 2003, Rumsfeld was well aware that torture and abuse of detainees in Afghanistan and Guantanamo continued on a broad scale.

In May and July 2003, the International Committee of the Red Cross sent the US government reports of widespread torture and other abuse of Iraqi prisoners by US forces. According to the complaint, Rumsfeld's response was to take measures "to increase the pressure on interrogators that he knew was highly likely to result in further torture, or cruel, inhuman and degrading punishment."

Rumsfeld and Stephen Cambone, undersecretary of defence for intelligence, sent General Geoffrey Miller, US military commander at Guantanamo, to Iraq to "Gitmo-ize" detention facilities, thereby implementing Guantanamo tactics on a widespread basis. Miller used the techniques approved by Rumsfeld in April 2003 as a baseline for recommending even harsher techniques at the Abu Ghraib facility in Iraq.

In July 2003, Captain Carolyn Wood and her 519th Military Intelligence Battalion were assigned to Abu Ghraib. The catalogue of that battalion's previous abuse of detainees in Afghanistan reads like a medieval torture manual, including slamming prisoners into walls, twisting shackles to induce pain, forcing detainees into painful contorted positions, kneeling them, shackling arms to the ceiling, and forcing water into the mouth until the prisoner could not breathe. Two Afghan detainees were murdered by battalion members in December 2002 at the US Air Force base at Bagram. The detainees were shackled with their arms over their shoulders for prolonged periods and were beaten by several soldiers on the legs.

Rumsfeld personally visited Abu Ghraib with General Miller in early September 2003. On September 14, 2003, Lt. Gen. Ricardo S. Sanchez authorized 29 techniques on a generalized basis at Abu Ghraib, 12 of which were illegal, and 5 of which went beyond those Rumsfeld had authorized at Guantanamo, including the use of dogs. General Miller had recommended the use of dogs in Iraq because of a belief that Arabs have a culturally based fear of dogs.

On November 19, 2003, Sanchez appointed Colonel Thomas Pappas of the 205th Military Intelligence Brigade head of Abu Ghraib. While in

command at Abu Ghraib, Colonel Pappas authorized sensory deprivation, shackling, and forced stripping of detainees. He instituted use of dogs to instill fear to set “the atmosphere for which, you know, you could get information.” From Rumsfeld down the chain to Sanchez and Pappas, intense pressure was applied for interrogation results. Pappas, in turn, pressured his charges.

Contrary to command structure rules, Pappas was made responsible for Brig. Gen. Janis Karpinski’s military police soldiers, who were untrained in interrogation techniques. This contributed to an atmosphere permissive of torture and other cruel, inhuman and degrading treatment of prisoners. These soldiers were told to “make sure” a detainee “has a bad night” or “make sure he gets the treatment.” Pappas specifically told MP’s to “soften up” detainees, which they took to mean physical and mental abuse.

In October 2003, the International Committee of the Red Cross visited Abu Ghraib. It reported “physical and psychological coercion,” in some cases “tantamount to torture,” including threats, sleep deprivation, tight cuffing to cause lesions, and holding detainees in bare concrete cells devoid of light while naked. It observed psychological symptoms such as suicidal tendencies, memory loss and acute anxiety reactions. In response, Colonel Pappas revoked the Red Cross’s access to the interrogation areas and denied its requests to interview specific detainees. General Sanchez approved these denials of access.

In November 2003, army criminal investigators in Georgia took a soldier’s statement that detainees in Iraq were forced to stay outdoors in extremely hot weather for up to 12 hours “with their hands bound so tightly behind their backs that their hands turned purple.” The soldier also reported driving a Bradley armored vehicle towards detainees to “spook them.” Nothing came of these statements.

In December 2003, a report was made to General Sanchez and his military intelligence commander about a joint CIA-military taskforce beating Iraqi detainees and taking detainee family members hostage. In fact, as in Afghanistan, abuse of prisoners in Iraq spread beyond Abu Ghraib—to “Camp Cropper” near the Baghdad airport, Camp Bucca in the city of Umm Qasr, to Mosul and Tikrit, and to numerous locations in and around Baghdad.

It is now documented that in Iraq US soldiers tore out toenails, administered electrical shocks, beat detainees with hard objects such as rifles, beat them with knees and feet, pressed their faces into the ground by stepping on heads, forced stress positions for hours on end, hooded and otherwise kept detainees in darkness for prolonged periods, paraded them naked in public and kept them naked in isolation for days on end, aimed at them with rifles, sometimes directly to the head, and threatened them with death, family reprisals, imminent execution and transfer to Guantanamo.

In January 2004, a US soldier assigned to Abu Ghraib provided Army criminal investigators with a CD containing the now-famous photos of soldiers sexually abusing detainees at Abu Ghraib. In February 2004, the Red Cross issued its exhaustive report on torture and abuse at US detention facilities in Iraq. It was only following the public outcry that Rumsfeld made some statements critical of the abuse, and measures were taken against some of the soldiers at the bottom of the chain of command.

Rumsfeld and General Sanchez ordered investigations into torture in Iraq but then intentionally limited the investigations to preclude finding wrongdoing by higher-level civilian and military commanders, including themselves. Army reports by Generals Fay, Jones and Taguba thus limited their criticism to General Karpinski and Colonel Pappas, for their “failure of leadership.” No senior officers were charged, only the low-level officers and soldiers who followed the orders of their superiors, such as convicted Spc. Charles Graner.

The legal framework for the lawsuit is not complex. Contrary to US legal officials such as Alberto Gonzalez and John Yoo, who conspired to provide a legal fig leaf for US torturers by claiming that the US president

can allow it in time of war, the prohibition on torture is universally recognized and is binding on all persons. It brooks no exceptions. As US courts have recognized, the torturer “like the pirate and slave trader before him,” is “an enemy of all mankind.”

Articles 17 and 32 of the Third Geneva Convention, incorporated into the US Army Field Manual, ban torture of prisoners of war and civilians, respectively. Article 3 common to all four Geneva Conventions prohibits torture, as does the International Covenant on Civil and Political Rights. The 1984 United Nations Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment and Punishment, ratified as US law in 1994, confirms that there are no exceptions to the rule against torture. In fact, the US recognized in its 1999 report to the U.N. Committee on Torture that no governmental official, civilian or military, can authorize, instruct another to commit, condone, or tolerate torture or cruel, inhuman or degrading treatment in any form. The Fifth and Eighth Amendments to the US Constitution also effectively ban torture.

Rumsfeld can be held liable for authorizing torture and other cruel, inhuman and degrading acts by his subordinates. Rumsfeld is also liable for failing to stop those acts of his subordinates, of which he was on notice, and thereby ratifying their conduct. This command responsibility theory harks back to the Nuremberg prosecutions and was recognized by the United States Supreme Court in 1946 in upholding prosecution of high Japanese military figures.

The plaintiffs also allege that Rumsfeld has not reversed his policies, such that the plaintiffs are in continued danger of mistreatment. They seek a declaration from the court that the policies and acts of Rumsfeld and his subordinates that they complain of violate US and international laws against torture and cruel, inhuman and degrading treatment of detainees.

The four Iraqi plaintiffs also filed separate lawsuits last week against General Sanchez, General Karpinski and Colonel Pappas in the federal courts where they reside, in Texas, South Carolina and Connecticut, respectively, seeking to hold them liable for their own actions in promoting or permitting torture.



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