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Suit Says Rumsfeld Knew About Abuse of Detainees

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Two human rights groups personally targeted Secretary of Defense Donald H. Rumsfeld and three military officers in a federal lawsuit yesterday alleging that each knew in 2003 of widespread torture of Iraqi and Afghan detainees and violated their constitutional obligations to stop it.

The civil lawsuit for the first time seeks penalties against Rumsfeld and against officials the military has so far not disciplined for detainee abuse. It is the second lawsuit filed in U.S. courts that asserts the abuse was deliberate administration policy instead of aberrant misconduct, as the Bush administration contends.

"Torture is wrong; torture was widespread," yet there has been no accountability for it from inside the administration, said Steven R. Shapiro, a lawyer at the American Civil Liberties Union, which filed the suit with Human Rights First in the Northern District of Illinois.

Rumsfeld's permanent residence is in Illinois, and the filing there was meant to emphasize his personal as well as professional liability under a legal doctrine known as "command responsibility," attorneys involved in the case said. The theory, which also has stature in international law, underpins many of the cases brought by the West against alleged war criminals from the former Yugoslavia at a tribunal in the Hague.

Defense Department spokesman Bryan Whitman issued a written statement saying that "we vigorously dispute any assertion or implication that the Department of Defense approved of, sanctioned or condoned as a matter of policy detainee abuse." No policies or procedures approved by Rumsfeld "were intended as, or could conceivably have been interpreted as, a policy of abuse, or as condoning abuse," he added.

At the heart of the 76-page court filing are allegations by four Iraqis and four Afghans that they were tortured and subjected to inhuman or degrading treatment by U.S. military forces between June 2003 and June 2004, including having medical treatment or food and water withheld, being placed in painful restraints, threatened by dogs, questioned and photographed while naked, and forced to endure temperature extremes or sensory deprivation.

Rumsfeld secretly approved some of these techniques in 2002 for use at a military prison in Guantanamo Bay, Cuba, and then modified them in 2003. Internal Defense Department reviews have documented how they wound up being applied during interrogations by military personnel in Iraq.

The suit also names three commanders of those personnel: Army Lt. Gen. Ricardo S. Sanchez, commander of U.S. forces in Iraq in 2003 and 2004; Brig. Gen. Janis L. Karpinski, then head of the 800th Military Police Brigade; and Col. Thomas M. Pappas, then chief military intelligence officer at the Abu Ghraib prison outside Baghdad.

The brief draws heavily on past complaints by rights groups and the International Committee of the Red Cross, official government reports and declassified documents obtained through a separate lawsuit to allege that each of the four officials was informed about torture and abuse while it was under way.

It cited in particular the claim in a Pentagon report, prepared by former defense secretary James R. Schlesinger, that Karpinski and Pappas "knew, or should have known, abuses were taking place and taken measures to prevent them." Sanchez, the brief states, was informed in December 2003 that Special Forces teams were committing abuse in Iraq; Rumsfeld was informed the same year about complaints by Amnesty International about abuse in Iraq and in 2002 by the FBI about abuse in Guantanamo Bay, the lawsuit claims.

None did anything to prevent them, the lawsuit alleges. Pappas responded to the Red Cross complaints by restricting the organization's access to detainees, according to a Defense Department report cited in the complaint. Karpinski failed to block abusive interrogations at Abu Ghraib, and Rumsfeld "established command structures that were contrary to military doctrine, in a manner highly likely or calculated to cause torture," the lawsuit says.

Karpinski's attorney Neal A. Puckett said she will not comment on the lawsuit; Pappas, who is a military intelligence brigade commander based in Germany, did not return a phone call and an e-mail message seeking comment; a spokesman for Sanchez, who now commands the Army's 5th Corps in Europe, referred questions to the Army in Washington, where a spokesman declined to comment on the ground that officials had not seen the lawsuit.

The case hinges on Supreme Court decisions in 1971 and 2004, according to Bill Lann Lee, an assistant attorney general for civil rights during the Clinton administration, who helped prepare it. The first allowed private individuals to sue government officials for violations of the Constitution and obtain financial damages; the second held that foreign citizens could sue in U.S. courts for violations of international law.

Whitman, the Pentagon spokesman, said none of the eight internal reviews conducted so far have found a policy of abuse, and "more than 100 individuals have undergone, or are undergoing, disciplinary proceedings." He also pointed to a policy set by President Bush that the Geneva Conventions protecting prisoners apply uniformly in Iraq and, "to the extent appropriate and consistent with military necessity," to the conflict in Afghanistan.