



# Exclusive: Charges Sought Against Rumsfeld Over Prison Abuse

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Friday, Nov. 10, 2006



U.S. Secretary of Defense Donald H. Rumsfeld, September 2006  
HARAZ N. GHANBARI / AP

Just days after his resignation, Defense Secretary Donald Rumsfeld is about to face more repercussions for his involvement in the troubled wars in Iraq and Afghanistan. New legal documents, to be filed next week with Germany's top prosecutor, will seek a criminal investigation and prosecution of Rumsfeld, along with Attorney General Alberto Gonzales, former CIA director George Tenet and other senior U.S. civilian and military officers, for their alleged roles in abuses committed at Iraq's Abu Ghraib prison and at the U.S. detention facility at Guantanamo Bay, Cuba.

The plaintiffs in the case include 11 Iraqis who were prisoners at Abu Ghraib, as well as Mohammad al-Qahtani, a Saudi held at Guantanamo, whom the U.S. has identified as the so-called "20th hijacker" and a would-be participant in the 9/11 hijackings. As TIME first reported in June 2005, Qahtani underwent a "special interrogation plan," personally approved by Rumsfeld, which the U.S. says produced valuable intelligence. But to obtain it, according to the log of his interrogation and government reports, Qahtani was subjected to forced nudity, sexual humiliation, religious humiliation, prolonged stress positions, sleep deprivation and other controversial interrogation techniques.

Lawyers for the plaintiffs say that one of the witnesses who will testify on their behalf is former Brig. Gen. Janis Karpinski, the one-time commander of all U.S. military prisons in Iraq. Karpinski — who the lawyers say will be in Germany next week to publicly address her accusations in the case — has issued a written statement to accompany the legal filing, which says, in part: "It was clear the knowledge and responsibility [for what

happened at Abu Ghraib] goes all the way to the top of the chain of command to the Secretary of Defense Donald Rumsfeld ."

A spokesperson for the Pentagon told TIME there would be no comment since the case has not yet been filed.

Along with Rumsfeld, Gonzales and Tenet, the other defendants in the case are Undersecretary of Defense for Intelligence Stephen Cambone; former assistant attorney general Jay Bybee; former deputy assistant attorney general John Yoo; General Counsel for the Department of Defense William James Haynes II; and David S. Addington, Vice President Dick Cheney's chief of staff. Senior military officers named in the filing are General Ricardo Sanchez, the former top Army official in Iraq; Gen. Geoffrey Miller, the former commander of Guantanamo; senior Iraq commander, Major General Walter Wojdakowski; and Col. Thomas Pappas, the one-time head of military intelligence at Abu Ghraib.

Germany was chosen for the court filing because German law provides "universal jurisdiction" allowing for the prosecution of war crimes and related offenses that take place anywhere in the world. Indeed, a similar, but narrower, legal action was brought in Germany in 2004, which also sought the prosecution of Rumsfeld. The case provoked an angry response from Pentagon, and Rumsfeld himself was reportedly upset. Rumsfeld's spokesman at the time, Lawrence DiRita, called the case a "a big, big problem." U.S. officials made clear the case could adversely impact U.S.-Germany relations, and Rumsfeld indicated he would not attend a major security conference in Munich, where he was scheduled to be the keynote speaker, unless Germany disposed of the case. The day before the conference, a German prosecutor announced he would not pursue the matter, saying there was no indication that U.S. authorities and courts would not deal with allegations in the complaint.

In bringing the new case, however, the plaintiffs argue that circumstances have changed in two important ways. Rumsfeld's resignation, they say, means that the former Defense Secretary will lose the legal immunity usually accorded high government officials. Moreover, the plaintiffs argue that the German prosecutor's reasoning for rejecting the previous case — that U.S. authorities were dealing with the issue — has been proven wrong.

"The utter and complete failure of U.S. authorities to take any action to investigate high-level involvement in the torture program could not be clearer," says Michael Ratner, president of the Center for Constitutional Rights, a U.S.-based non-profit helping to bring the legal action in Germany. He also notes that the Military Commissions Act, a law passed by Congress earlier this year, effectively blocks prosecution in the U.S. of those involved in detention and interrogation abuses of foreigners held abroad in American custody going back to Sept. 11, 2001. As a result, Ratner contends, the legal arguments underlying the German prosecutor's previous inaction no longer hold up.

Whatever the legal merits of the case, it is the latest example of efforts in Western Europe by critics of U.S. tactics in the war on terror to call those involved to account in court. In Germany, investigations are under way in parliament concerning cooperation between the CIA and German intelligence on rendition — the kidnapping of suspected terrorists and their removal to third countries for interrogation. Other legal inquiries involving rendition are under way in both Italy and Spain.

U.S. officials have long feared that legal proceedings against "war criminals" could be used to settle political scores. In 1998, for example, former Chilean dictator Augusto Pinochet — whose military coup was supported by the Nixon administration — was arrested in the U.K. and held for 16 months in an extradition battle led by a Spanish magistrate seeking to charge him with war crimes. He was ultimately released and returned to Chile. More recently, a Belgian court tried to bring charges against then Israeli Prime Minister Ariel Sharon for alleged crimes against Palestinians.

For its part, the Bush Administration has rejected adherence to the International Criminal Court (ICC) on grounds that it could be used to unjustly prosecute U.S. officials. The ICC is the first permanent tribunal established to prosecute war crimes, genocide and other crimes against humanity.