

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION,
CENTER FOR CONSTITUTIONAL RIGHTS,
PHYSICIANS FOR HUMAN RIGHTS,
VETERANS FOR COMMON SENSE AND
VETERANS FOR PEACE,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, AND ITS
COMPONENTS DEPARTMENT OF ARMY,
DEPARTMENT OF NAVY, DEPARTMENT
OF AIR FORCE, DEFENSE INTELLIGENCE
AGENCY; DEPARTMENT OF HOMELAND
SECURITY; DEPARTMENT OF JUSTICE,
AND ITS COMPONENTS CIVIL RIGHTS
DIVISION, CRIMINAL DIVISION, OFFICE OF
INFORMATION AND PRIVACY, OFFICE OF
INTELLIGENCE POLICY AND REVIEW,
FEDERAL BUREAU OF INVESTIGATION;
DEPARTMENT OF STATE; AND CENTRAL
INTELLIGENCE AGENCY,

Defendants.

ECF CASE

04 Civ. 4151 (AKH)

DECLARATION OF

RONALD SCHLICHER

Ronald Schlicher, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am Ronald Schlicher. Until July 15, 2005, I served as Deputy Assistant Secretary and Coordinator for Iraq in the Bureau of Near Eastern Affairs (NEA) within the United States Department of State. In this capacity, I was responsible for supervising several offices in the Near Eastern Bureau that track and review Iraqi political, economic, and security issues. In addition, I was a principal point of contact in the State Department through which all United States government agencies coordinate policy and decisions with respect to Iraq.

2. I currently have the rank of Minister-Counselor in the Senior Foreign Service. I have been a member of the Foreign Service for 23 years. I have spent the majority of that career in positions that have given me significant expertise in the Middle East region. From 1982 to 1984, I was Vice-Consul at the U.S. Consulate General in Dhahran, Saudi Arabia. From 1984 to 1986, I was Consul at the U.S. Embassy in Damascus, Syria. From 1987 to 1989, I served as Deputy Principal Officer in Alexandria, Egypt. I transferred to Cairo, Egypt to become the First Secretary in the Political section of the Embassy from 1989 to 1991, specializing in internal Egyptian politics and Islamic movements. From 1991 to 1992, I was the Chief Civilian Observer in the Multinational Forces and Observers, the international organization created to monitor the security provisions of the Israeli-Egyptian peace treaty. In 1992, I returned to the Department to serve as a Deputy Director for Regional Affairs in the Office of the Coordinator for Counter-terrorism. From 1994 to 1997, I went back to the region to serve as the Deputy Chief of Mission at our Embassy in Beirut, Lebanon. From 1997 to 2000, I was the Director of the Office of Egyptian and North African Affairs within NEA. In 2000, I was the Chief of Mission and Consul-General at the U.S. Consulate in Jerusalem.

3. With respect to my Iraq-specific experience, I served as the Director of the Iraq Task Force within the Department of State during the 2003 war. Following the initial conflict, I served in Baghdad, Iraq for six months with the Coalition Provisional Authority, first as Regional Coordinator for the North and then as Director of the Office of Provincial Outreach. As Deputy Assistant Secretary for Near Eastern Affairs and Coordinator for Iraq, I oversaw the work of several offices within NEA that are responsible for Iraq issues. I provided advice to senior State Department and U.S.

government officials on the subject of U.S. policy regarding Iraq. I participated in several weekly senior-level interagency meetings, the purpose of which is to decide and monitor implementation of U.S. government policy on Iraq. I also participated in frequent meetings with Iraqi and other foreign government officials and private individuals regarding Iraq. Finally, I maintained daily contact with the U.S. Embassy Baghdad, Iraq through telephone conversations, email, video conferences and diplomatic cable traffic.

4. In these capacities, I have gained significant personal and professional experience regarding Iraq, the reactions of the Iraqi people and an understanding of the Muslim world more generally. I have worked intensively on both an analytical and practical basis on issues related to the dangers currently faced by both the U.S. military and civilians serving in Iraq, and as well as those faced by the Iraqi citizens on a daily basis. Finally, I consulted, on a regular basis, with the United States Embassy in Baghdad, Iraq regarding the situation on the ground.

5. By virtue of this experience, I have become one of the leading policy experts in the United States government on the political and security situation in Iraq. The statements contained in this declaration are based on my personal knowledge and expertise, on information made available to me in my official capacity as Coordinator for Iraq in the Bureau of Near Eastern Affairs and previous positions, through consultations with Embassy Baghdad and policy experts within the Department of State who report to me, and on determinations that I have made in accordance therewith.

6. In my capacity as Deputy Assistant Secretary and Coordinator for Iraq, I have been informed that, under the Freedom of Information Act (FOIA), the plaintiffs

seek the release of photographic and digital video records relating to the alleged physical or mental abuse or mistreatment of detainees held by the United States in, *inter alia*, Iraq, Afghanistan and Guantanamo Bay. Further, my staff has explained to me that the plaintiffs have specifically requested photographs of detainees abuse or mistreatment taken or provided by Joseph Darby, a military policeman assigned to the Abu Ghraib detention facility in Iraq.

7. I have personally viewed all of the responsive still photographs, both in their original state and redacted versions, as well as the four responsive video clips identified in the addendum to the Third Declaration of Phillip J. McGuire. I condemn the activities that led to the existence of the responsive photographs. It is not my desire to prevent the use of the information contained in the responsive photographs in law enforcement proceedings. The purpose of this declaration is to set forth my professional opinion that the public release of the responsive photographs could reasonably be expected to endanger the lives and physical safety of American and other international personnel, civilian and military, in Iraq; Iraqi officials who work with or are perceived to work with American and other international personnel; and Iraqi civilians. Public release would also pose a threat to U.S. national security interests by inflaming Iraqi and regional public opinion against the United States military at a time when our forces are engaged in military operations to bring democracy and stability in Iraq and elsewhere.

Testimony stricken by court

8. One must be cautious about making generalizations about any culture, as differences between individuals in other cultures are as varied as our own. Nevertheless, I

believe it is possible to draw conclusions about the opinions and reactions of a majority of Iraqi men and women to the release of photographs such as these.

PRESENT SECURITY SITUATION IN IRAQ

9. Insurgents and terrorists continue to wage a violent campaign to disrupt the democratization process in Iraq. Deadly attacks continue against U.S. and other international military, diplomatic and civilian personnel. As of July 15, 2005, 64 personnel under Chief of Mission authority have been killed in Iraq since U.S. Embassy Baghdad opened on June 28, 2004. Attacks are increasingly targeted at Iraqi police and security forces, government personnel, and civilians. Indeed, recent attacks reveal that insurgents frequently target Iraqi civilians indiscriminately and cause high death tolls. These attacks are conducted with the aim of terrorizing the Iraqi population and preventing the establishment of the rule of law. The insurgents claim that these attacks are justified by the accusations 1) that U.S.-led international military forces seek to dominate Iraq; 2) that the Iraqi government is complicit in this effort; and/or 3) that international forces have impugned the dignity and honor of Iraqis at the personal, familial and/or national scale. Lessening the danger to U.S., Iraqi, and international persons will require effectively countering these claims.

10. In the spring of 2004, photos detailing abuse at Abu Ghraib were widely circulated in the Arabic press, both print and electronic, throughout the region. These images were used to buttress a wide range of extremist and hostile commentary promoting the idea that torture and abuse of Arab prisoners is a widespread and common occurrence by US military forces. Furthermore, the photographs were used to argue that Americans

are hypocritical in their alleged support for human rights around the world and that they deserved harsh treatment by Islamist insurgent forces as retribution. Sadly, beheadings of foreign captives have now become commonplace in Iraq. I am concerned that the release of the materials requested by the plaintiffs, even those photographs which have been previously published, will endanger lives based upon previous reactions by the population in Iraq as well as terrorist and insurgent groups in the region.

ALLEGED KORAN ABUSE REPORT INCITES VIOLENCE

11. While certain populations of South Asia have recently demonstrated a stronger propensity to violent rioting than counterparts in the Middle East, I believe that recent events described below, following the report by *Newsweek* of alleged U.S. desecrations of the Koran at detention facilities in Guantanamo Bay, Cuba, provide an example of the strong emotional response such culturally offensive reports invoke. The release, and frankly, the volume of photographs considered here for release should be considered in the context of a population that has perceived numerous previous incidents of degradation of the Muslim culture. The compounding nature of this release would certainly be viewed as another event in a continuing line of offenses.

12. In early May, 2005, *Newsweek* reported that a U.S. official had seen a government report documenting desecration of copies of the Koran at Guantanamo Bay. *Newsweek* issued a partial retraction on May 16, 2005, after its source was unable to confirm where he had seen the alleged government report. On May 23, 2005, *Newsweek* offered a further qualification of its original report. Regardless, the erroneous and retracted reports resulted in anti-U.S. demonstrations in Muslim communities throughout

the Middle East and South Asia. There were strong anti-American demonstrations in the West Bank and Gaza as well as Egypt. Similar demonstrations were reported to have taken place in Afghanistan, Sudan, Bangladesh, Pakistan, and Indonesia. In particular, protests in Afghanistan resulted in significant violence and the deaths of several demonstrators. As a precautionary measure, the United Nations relocated its entire foreign staff from Jalalabad, Afghanistan where two of its guesthouses were attacked. In addition, Afghan government buildings were targeted as well as the offices of two international aid groups. Reports attribute approximately 17 deaths in Afghanistan to the public reaction to the Koran story.

SPECIFIC OPINIONS REGARDING SUBJECT PHOTOGRAPHS

13. With respect to the responsive photographs identified in the addendum to the McGuire Declaration, I have the following opinions regarding the potential threat to physical safety created in Iraq by their public release:

(A)

Testimony stricken by court

(1)

Testimony stricken by court

Testimony stricken by court

(2)

Testimony stricken by court

(3)

Testimony stricken by court

After the Abu Ghraib scandal in April 2004, attacks
- including improvised explosive devices, rocket and mortar fire, suicide
bombings, shootings and kidnapping - against US and other Coalition
forces and civilian personnel serving in Iraq rose significantly.

Testimony stricken by court

(4)

Testimony stricken by court

Testimony stricken by court

(S)

Testimony stricken by court

Testimony stricken by court

(B) Testimony Under Seal

Testimony Under Seal

(1) Religion and sexual conduct play a central role in Islamic society and identity: being forced to masturbate or engage in homosexual acts is particularly humiliating. The stigma associated with masturbation or public nudity can limit a man's prospects for marriage, limit his prospects for employment, diminish his role in the community and lead to him being cast out of the family. There have been and continue to be cases in Iraq of men being killed (including by Islamic militia which continue to operate in Iraq) for failure to observe strict Islamic codes of conduct (e.g. homosexual behavior, selling alcohol, distribution of pornographic material). The same

principle I discussed before applies here: the stigmatization of the victim due to his being dishonored can reasonably be expected to endanger his life or personal safety.

(2) Similarly, these digital images would provide another example of humiliation and degradation perpetrated by the soldiers of a foreign power. In the wake of the Abu Ghraib scandal of April 2004, Iraqi public opinion viewed the degrading nature of this type of material not simply as an attack against the individual detainees portrayed in the photographs, but as an attack by the United States against the wider cultural identity of Muslim society – an identity which some Islamic commentators regard as directly in opposition to "western" values. In other words, release of these digital videos would be regarded by Iraqi public opinion, and opinion in the wider region, as an attack by the United States on Arab (Muslim) society as a whole. This would provide terrorist organizations such as al-Qaeda and insurgent groups in Iraq with a justification for attacks on Coalition personnel serving in Iraq or for attacks on United States interests elsewhere in the world. It would also provide propaganda and fertile recruiting grounds for terrorist and insurgent organizations seeking to enlist young men who are disenchanted with the U.S. presence in Iraq or with U.S. aims to bring democracy and stability to the Middle East.

(C) Offensive Photographs previously viewed in the public domain and those similar in character but not widely published.

(1) Further release to the public of additional photographs similar to those already released in conjunction with those previously released could, in my judgment, lead to acts of violence against the victims, or against American soldiers or civilians. It could also lead to deaths of Iraqi civilians in riots or other disturbances where, as the experience in Afghanistan showed, authorities needed to use deadly force to restore order.

(2) The news appetite for sensationalist photographs showing abuses like those alleged at Abu Ghraib prison is stronger in Iraq and the Middle East than it is here in the United States. Anti-American television stations in the region can be counted on to make the most of any new photographs showing abuses of Iraqi prisoners, male or female, naked or clothed. These anti-American television stations would portray all available photographs in the worst possible light, adding to the sense of shame and humiliation caused to the Iraqi detainees and their families. Such irresponsible behavior would lead to the same danger described above to the lives of the Iraqis shown in any new released photographs, and would similarly endanger the lives and safety of American soldiers and civilians in Iraq, and of Iraqi citizens as well.

(3) Regional media response to Abu Ghraib gives one a sense of the Arab perspective on the issue. For instance, the Riyadh, Saudi Arabia, English-language newspaper *Al-Jazirah* stated on May 2, 2004, "Those photos [of abuse at Abu Ghraib] will strengthen resistance and make

many people around the world understand why the Iraqi people are fighting the occupation." The Bahraini English-language *Daily Tribune* wrote on May 5, 2004, "The blood-boiling pictures will make more people inside and outside Iraq determined to carry out attacks against the Americans and British." The Qatari Arabic-language *Al-Watan* predicted on May 3, 2004 that because of the images, "The Iraqis now feel very angry and that will cause revenge to restore the humiliated dignity...."

(4) The sheer volume of the photographs, including those previously published, would have an impact on the population and create a threat to the physical safety and endanger lives. Individually, each photograph may upset the viewer but the collective effect of a full page of images is far more powerful. The Arabic press, in my opinion, will show these pictures repeatedly and relentlessly. False photographs could be generated (as has occurred in the past) detailing further abuses that never occurred. However, the volume of credible photographs would overwhelm any assertion that the USG or even the Iraqi government might make. The threat to physical safety is certainly presented by the release (or re-publishing) of these photographs and moreover, the diplomatic damage at such a critical time would be immeasurable.

REDACTION OF IDENTIFYING INFORMATION IS INSUFFICIENT TO MITIGATE
THE THREAT POSED BY THE RELEASE OF THE PHOTOGRAPHS

14. The redaction of identifying information (facial characteristics) or parts of the images considered by Iraqis obscene (e.g. genitals of the detainees depicted) will not protect the lives and personal safety of the soldiers involved in these acts, or their families in the United States, and would particularly put in danger American personnel, civilian and military, who serve in Iraq.

(A) While redaction may obscure the identity of specific detainees, it cannot conceal the Arab and Muslim identity of the victims. Many Arabs and Muslims will conclude that it is the religious and cultural identity and honor of Arabic and Muslim society that have been impugned, not just the personal honor of the victims. The photographs will be seen not simply as evidence of attacks by individual Americans against individual Iraqis, but evidence of attacks by the United States against Arab and Muslim society as a whole. Redaction will therefore not prevent acts of violence against US personnel and US interests, nor will it prevent attacks against Iraqis and Coalition allies working with us in Iraq.

(B) Testimony stricken by court

Testimony stricken by court

Testimony stricken by court

CONCLUSION

15. Iraq is a violent and dangerous place, attempting to transition to a peaceful and stable democracy. In this environment, it is my opinion that the nature and character of the responsive photographs are particularly harmful due to the gender and dignity issues raised and that the public release of the responsive photographs could reasonably be expected to endanger the lives and physical safety of the American personnel, civilian and military, in Iraq as well as pose a significant threat to our diplomatic efforts to bring democracy and stability to Iraq and the Middle East.

16. In addition, the release of these images will lead to irrevocable harm to US interests at a highly sensitive time for Iraq and the region as a whole. Based on my experience with Iraqi public opinion, I can confidently predict that public release of these photographs would turn Iraqi public opinion strongly against the United States. Many Iraqis—not just terrorists—would view the disclosure of these images as evidence of US immorality and hypocrisy at a time when the US Government is seeking to move the Arab world toward principles of democracy, peace and stability that will be in the national interests of the United States and the region itself. Terrorists will use these images as a pretext to derail our operations in Iraq and our efforts in the broader Middle East Peace Process. The resulting backlash would endanger our strategic objective of supporting democracy and bringing stability to Iraq and to the Middle East.