

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

ECF CASE

Plaintiffs,

No. 04 Civ. 4151 (AKH)

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.
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SECOND AMENDED DECLARATION OF RICHARD B. MYERS

Richard B. Myers, pursuant to 28 U.S.C. sec. 1746, declares as follows:

1. I am the Chairman of the Joint Chiefs of Staff. I serve as the senior military advisor to the President of the United States, the Secretary of Defense, and the National Security Council. I am the highest ranking uniformed officer in the United States Armed Forces. In performing my duties, I routinely confer with and obtain advice from combatant commanders regarding the operational requirements of their commands; I evaluate and synthesize this information; I advise and make recommendations to the Secretary of Defense with respect to these requirements; and, as appropriate, I

communicate the combatant commands' requirements to other elements of the Department of Defense.

2. Through the exercise of my official duties and as a result of my personal knowledge, I am familiar with this civil action and with Plaintiffs' requests for information under the Freedom of Information Act. Further, I have reviewed the 87 photographic and video images that are identified in paragraph 6 of the Third Declaration of Philip J. McGuire (collectively referred to as the "responsive Darby Photos"). For the reasons set forth in this declaration, I have concluded that the official release of the images further identified below, even if redacted to obscure identifying information and, where applicable, the genitalia of those depicted, could reasonably be expected to:

- a. Endanger the lives and physical safety of the Soldiers, Sailors, Airmen, and Marines in the United States Armed Forces presently serving in Iraq and Afghanistan, as well as other U.S. officials, Coalition Forces allied with the United States, and contractors serving with these forces;
- b. Endanger the lives and physical safety of Iraqi civilians at large, and police and military personnel of the democratic Iraqi Transitional Government working in coordination with the United States and Coalition Forces in support of Operation IRAQI FREEDOM;
- c. Endanger the lives and physical safety of Afghan civilians at large, and police and military personnel of the Government of Afghanistan working in coordination with the United States and Coalition Forces operating in support of Operation ENDURING FREEDOM, NATO-led operations, and contractors serving with these forces;

- d. Aid the recruitment efforts and other activities of insurgent elements, weaken the new democratic governments of Iraq and Afghanistan, and add radical pressures on several of our regional allies and friends; and
- e. Increase the likelihood of violence against United States interests, personnel, and citizens worldwide.

THE BASES FOR MY CONCLUSIONS

3. My conclusions are based upon my years of service and experience in the United States military; the assessments and evaluations of the U.S. Central Commander, General John P. Abizaid, and his immediate subordinate commander of the Multi-National Forces-Iraq, General George Casey; and intelligence reports and the assessments of Department of Defense subject-matter experts on the Middle-Eastern region, Arab culture, and the tenets of the Islamic religion. In formulating the advice I provide to the President, the Secretary of Defense, and the National Security Council in the ordinary course of my duties, I routinely rely on the views of our combat commanders, intelligence synthesis and reports, and the assessments of subject matter experts. In formulating my conclusions concerning the Darby Photos, I have used the same approach, types of resources, information, and experts. In particular:

- a. I have served in the United States Armed Forces for 40 years at various levels of command and staff. I have served as the Chairman of the Joint Chiefs of Staff since October 1, 2001. I served as the Vice Chairman from March 2000 through September 2001. I have been the President's principal military advisor since shortly after the attacks on the World Trade Center and the Pentagon, including throughout the inception, planning, and execution of Operation ENDURING

FREEDOM and Operation IRAQI FREEDOM. I have intimate, extensive knowledge of our military forces and their capabilities, as well as of the conventional and unconventional forces and capabilities of the enemies arrayed against us. I daily receive and review intelligence analyses of current regional conditions, acute situations, and trends in operations and conditions relating to Operation ENDURING FREEDOM and Operation IRAQI FREEDOM from the Joint Staff, the Department of Defense, as well as from other intelligence sources within the Executive Branch. I routinely travel to the countries within the U.S. Central Command critical to these ongoing missions. I meet, receive information from, and provide information to, the senior political, civilian, and military leaders of Iraq, Afghanistan, and our other regional allies. Our senior field commanders brief me, and I routinely inspect the environment, conditions, and equipment of our Soldiers, Sailors, Airmen, and Marines in the combat theaters of operation.

c. With respect to this matter, I solicited the assessments and recommendations of the U.S. Central Commander, General John P. Abizaid, and the Multi-National Forces-Iraq Commander, General George Casey, concerning their views of the military implications of release of the responsive Darby Photos. Both of them, by dint of their positions and responsibilities, have highly informed opinions that I have considered in this matter. General Abizaid is constantly engaged with senior political and civic leaders in the region. Moreover, General Abizaid has specialized knowledge of the Middle East: he is fluent in the Arabic language; he holds a Masters Degree in Middle Eastern Studies from Harvard University; he

was a Hoover Institution, Stanford University Fellow studying Middle Eastern affairs; and he was an Olmsted Scholar at the University of Jordan at Amman. Before his service as the Commander, U.S. Central Command, General Abizaid served under General Tommy Franks as his Deputy Commander (Forward) during Operation IRAQI FREEDOM. After the first Gulf War, he served in the Kurdish region of northern Iraq in Operation NORTHERN WATCH. During the course of his military career, he has served in other positions in the Middle East as well as in positions involving ethnic Muslim minorities in the Balkans. His staff assignments have included tours with the United Nations as operations officer for the Observer Group Lebanon, and he has also served on the Joint Staff as the Director of Strategic Plans and Policy.

d. As the Commander of Multi-National Forces -- Iraq, General George Casey is constantly engaged with the senior political and civic leaders in Iraq. He travels extensively throughout the country, and regularly confers with commanders and service personnel at all levels of command and operations. In addition to his numerous Army command assignments, General Casey most recently served as the Vice Chief of Staff of the Army; immediately before that he served under me, first as the Director of Strategic Plans and Policy, and then as the Director of the Joint Staff. His graduate and post-graduate degrees are in International Relations. General Casey has also served as a Senior Fellow on The Atlantic Council.

e. Both General Abizaid and General Casey agree with and support my conclusions.

f. As I indicated above, I have also considered and relied upon the analysis and assessments of DOD resident subject-matter experts on the Middle-Eastern region, the Arab culture, and the tenets of the Islamic religion.

**THE STATUS OF OPERATION ENDURING FREEDOM AND
OPERATION IRAQI FREEDOM**

4. Following the attacks on the United States of September 11, 2001, the United States military, with the support of a worldwide coalition, launched Operation ENDURING FREEDOM to drive the oppressive Taliban regime – which provided comfort and support to al-Qaeda terrorists – from Afghanistan. As a result of that successful effort, the Taliban was removed from power, and on October 9, 2004, the Afghan people for the first time ever selected their head of state, the president of Afghanistan, by democratic vote. Similarly, Operation IRAQI FREEDOM was launched, again with the support of a worldwide coalition, to remove the dictatorial and murderous regime of Saddam Hussein from power, and succeeded in toppling that dictator and bringing freedom to Iraq. Following a brief period when Iraq was led by a Coalition Provisional Authority, sovereignty of Iraq was transferred to an interim government, and democratically elected representatives of the Iraqi people are in the process of completing work on a national constitution. There is, however, more work to do. Insurgent elements in both Afghanistan and Iraq continue to attack the process of democratic transition in those countries by mounting violent and deadly assaults against the multinational forces that remain posted in the region in order to protect and defend those countries as they take their steps toward freedom. As part of the multinational commitment to strengthening and defending these emerging democracies, more than 19,000 U.S. troops

remain on the ground in Afghanistan and over 140,000 U.S. troops are part of the ongoing mission in Iraq.

5. The situation on the ground in Iraq is dynamic and dangerous, in Baghdad and several other parts of the country. It changes from day to day, and it varies from region to region. With that in mind (and the caveat that numbers alone do not tell the complete story), I offer the following observations to provide the Court with some in-country context for the conclusion that official disclosure of the responsive Darby Photos described further below reasonably can be expected to endanger, in wartime, the lives and physical safety of U.S. military and other personnel, as well as the general public in Iraq and Afghanistan and elsewhere.

6. As General Abizaid testified to the Senate Armed Services Committee on June 23, 2005, the overall strength of the insurgency is about the same as it was six months ago, although he noted his belief that "there are more foreign fighters coming into Iraq than there were six months ago." Current estimates of the number of insurgents are in the range of 16,000 with perhaps 1,000 of that number being foreign fighters.

7. The number of insurgent attacks per day is approximately 70. As I have publicly stated, our assessments indicate that the lethality of the attacks is on average increasing.

8. Among the goals of the insurgency are to use violence against innocent civilians to undercut the mission of the U.S. and Coalition forces, as well as the Iraqi Transitional Government, and to stop the transition to democracy in that country. The insurgents will use any means necessary to incite violence and, specifically, will focus on perceived U.S. or Coalition mistreatment of Iraqi civilians and detainees as a propaganda and recruiting tool to aid their cause.

- a. Thus, for example, we have documented situations in which insurgents have falsely claimed that U.S. actions in Iraq, rather than their own terrorist attacks, have caused death and suffering. One organization, the Global Islamic Media Front, specializes in producing flash videos which typically feature dozens of images of women and children whose suffering is attributed to U.S. actions in Iraq as opposed to the acts of sabotage and violence perpetrated by the insurgents.
- b. Similarly, the insurgents rely on doctored photos and images to support their calls to violence. Last year DOD experts noted doctored images and videos that purported to document the rape of Iraqi women by U.S. soldiers – but which actually originated on a Hungarian pornography site – and that were distributed and presented on pro-Islamic and Arabic news web sites as actual examples of U.S. “barbarism.” In conducting Internet discussions regarding these images/videos on her websites, Iraq Patrol and Iraq Tunnel, Iraqi novelist and Middle East expert, Buthaina Al-Nasiri, noted, “You cannot imagine the kind of angry messages I receive every day from young Arab men vowing to avenge the Iraqi girls. . . .”
- c. Specific references to the so-called rape photos surfaced in subsequent Muslim sermons throughout the Middle East along with calls for retaliatory violence. For example, in response to similarly doctored rape images, purporting to depict the alleged rape of three Iraqi women at British-run prisons in Iraq, Sheik Abdul-Sattar al-Bahadli of Basra called for Jihad and offered \$350 for anyone capturing a British soldier, \$150 for killing one, and stated that “Any Iraqi who takes a female soldier (foreign) can keep her as a slave or gift to himself.”

d. We have noted other instances of insurgent attacks after the disclosure of images depicting alleged abuse of detainees. On January 21, 2005, three days after 22 photos of detainees in British custody were made public, an Iraqi insurgent suicide car bomber drove his vehicle toward the gate of a British base in southern Iraq. His vehicle detonated just as it was intercepted before reaching the gate, but the explosion still resulted in numerous, very serious British injuries. Al Qaeda leader Abu Musab al-Zarqawi described the attack as a "response to the harm inflicted by British occupation forces on our brothers in prison."

9. There have been near-term increases in the assassination of Iraqi government officials (52 in the three-month period ending June 27, 2005), as well as a recent uptick in insurgent attacks on senior diplomatic officials from regional neighbors of Iraq: the Egyptian envoy was abducted on July 4, 2005, and murdered; and, in separate incidents, the Bahrainian and Pakistani ambassadors' vehicle convoys were attacked on July 6, 2005 (the Bahrainian ambassador was wounded in the hand by automatic weapons fire; the Pakistani ambassador was uninjured, but has been ordered by his government out of the country as a temporary security measure).

10. While I believe that the overall trends in Iraq indicate improvement, attacks on the economic infrastructure in Iraq remain a constant problem, are significantly difficult to defend against (because of generally decrepit conditions and the nature of defending large facilities in diverse geographical locations), and present acute hardships, particularly to Baghdad residents during the summer season. Water, electrical, and oil infrastructure are the main insurgent targets.

11. The situation on the ground in Afghanistan also remains volatile, particularly as the Taliban-led insurgency attempts to derail the political process by increasing attacks in the run-up to the September 18th National Assembly elections. Violence has steadily risen since May, and levels of Taliban, al-Qaida, and Hezb-e Islami Gulbuddin (HIG) attacks against our military forces in June were the second highest in a single month since the Taliban fell in late 2001.

12. In addition to increasing the quantity of attacks, insurgents are shifting their tactics. Bomb attacks in June were the highest on record, including a rise in suicide bombings: there have been eight suicide attacks thus far this year compared to four for all of 2004. The Taliban is now targeting candidates and electoral workers for the National Assembly elections (there have been at least 16 attacks recently), as well as pro-central government clerics (four have been assassinated since June 1, 2005). The incidents of the Taliban intimidating reform-minded Muslim clerics have also increased. There are, on average, approximately 40-45 insurgent-initiated attacks per week.

13. Insurgents in Afghanistan have a relatively sophisticated and aggressive information operations campaign. Taliban spokesmen respond quickly to claim credit when insurgents conduct successful attacks against Coalition or Afghan forces, and even claim tactical successes for incidents not related to the insurgency. The Taliban are also quick to spread disinformation about culturally sensitive issues such as the Coalition treatment of Afghan women as a means of turning public opinion against the United States and other Western countries.

14. While the Taliban is struggling to maintain popular support among Afghans, there are indications that their aggressive information operations campaign, combined

with growing discontent with the Afghan government, could be fueling localized dissatisfaction with the continuing presence of Coalition and NATO forces. For example, the Taliban were quick to capitalize on the May 11-14 protests against the alleged desecration of the Koran at Guantanamo Bay (discussed in more detail below) and described the protests as "a firm reaction of the people of Afghanistan against the presence of U.S. forces ... and inhumane treatment with prisoners at detention centers ... showing disrespect to the Muslims' faith" in a 13 May press statement. Protests, some of which turned violent and deadly, occurred in 14 of the 34 provinces.

RIOTING AND VIOLENCE FOLLOWING THE NEWSWEEK REPORT OF ALLEGED U.S. DESECRATION OF THE KORAN AT GUANTANAMO BAY

15. On April 30, 2005, Newsweek reported that an unnamed U.S. official had seen a government report documenting desecration of the Koran at the U.S. facility at Guantanamo Bay, Cuba. On May 16, 2005, Newsweek retracted the statement in an article that the abuse had been uncovered in an "internal military investigation" after its source was unable to confirm where he had seen the purported information. Newsweek also offered further qualifications on the story in its May 23, 2005, issue.

16. The Koran's alleged desecration, as reported by Newsweek, was perceived as such an affront to the Islamic faith that massive anti-U.S. demonstrations quickly erupted in the Palestinian territories, Egypt, Sudan, Bangladesh, Pakistan, and Indonesia. Our intelligence assessments indicate that the volatile public sentiments in these Muslim countries were exploited by organized, anti-American extremists who succeeded in fomenting violent and deadly demonstrations.

17. In Afghanistan, in particular, where over 19,000 U.S. troops are currently serving in Operation ENDURING FREEDOM, violence erupted as a result of the Newsweek

report. Demonstrations began in the eastern provinces and spread to the capital, Kabul. The United Nations, as a precautionary measure, withdrew its entire foreign staff from Jalalabad, where two of its guesthouses were attacked, government buildings and shops were targeted, and the offices of two international aid groups were destroyed. At least 17 deaths in Afghanistan were attributed to the reaction to the Koran story.

18. Despite Newsweek's published retraction, many Muslims still believe that U.S. personnel continue to desecrate the Koran in an effort to humiliate Muslims. For example, one Sunni website asserts that desecration of the Koran is a daily occurrence in Iraq under U.S. occupation and posted numerous photos of another such alleged incident. According to the website: "To humiliate the Koran in Iraq is a well-known tactic of the occupation and allied forces. The Koran has been desecrated by the Crusaders and the Jews. The latest incident of this happened when American soldiers raided the Al-Quds Mosque in . . . Al-Ramadi. . . The soldiers searched the entire mosque, tore the Koran, and beat the worshippers during the morning prayers."

19. The riots and violence that followed the Newsweek story had a significant impact on U.S. Central Command operations and intelligence assessments of conditions throughout both combat theaters, as well as regionally and beyond. Our intelligence and operations analysts evaluated the Koran incident in order to provide assessments and "lessons-learned" both to the combatant commanders and the Department of Defense. While I received and reviewed these assessments, my attention was first brought fully to bear in the context of this case on June 17, 2005. On that day I was informed that disclosure of the Darby Photos could occur as early as June 30, 2005. In light of the nature of the photos, and the riots and violence that occurred after the Newsweek article,

I contacted General Abizaid (who in turn contacted General Casey), apprised him of the situation, and asked for General Abizaid's military assessment of the implications of the release of the Darby Photos. General Abizaid and General Casey provided their assessments to me on June 20, 2005. They agreed with my determination that disclosure of the Darby Photos created the significant risks discussed in this declaration.

**THE REDACTED RESPONSIVE DARBY PHOTOS GRAPHICALLY DEPICT
DETAINEE ABUSE AND MISTREATMENT**

20. I have personally reviewed the 87 responsive photographic and 4 video images that are identified in paragraph 6 of the Third Declaration of Philip J. McGuire.

[REDACTED] Testimony Under Seal

21. [SEALED]

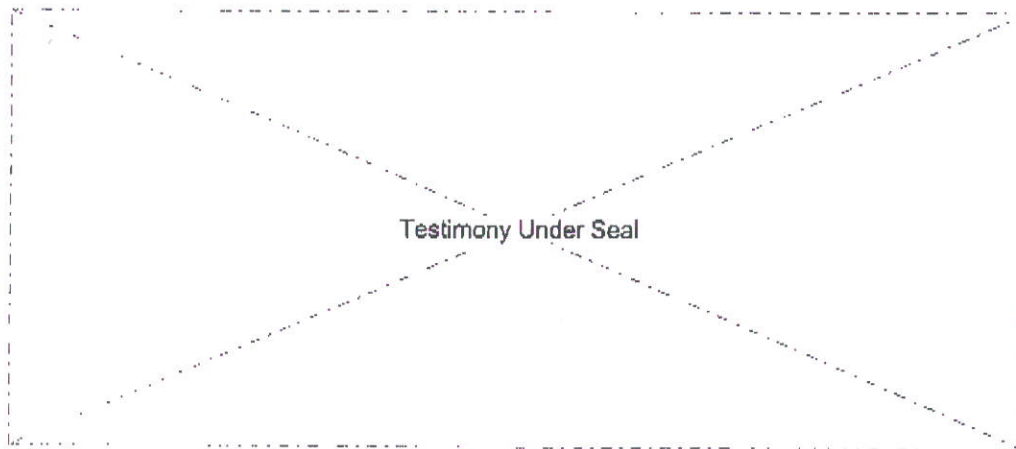
[REDACTED] Testimony Under Seal

22. [SEALED]

[REDACTED] Testimony Under Seal

23. [SEALED]

[REDACTED] Testimony Under Seal



CONCLUSIONS AFTER REVIEWING THE RESPONSIVE DARBY PHOTOS

24. While I have said this previously in countless forums, I condemn in the strongest terms the misconduct and abuse depicted in these images. It was illegal, immoral, and contrary to American values and character. The Department of Defense has spared no effort and will continue to press the investigation of, and full accountability for, these criminal acts. Based on my review, I believe that official release of the responsive Darby Photos described in paragraphs 21-23 will pose a clear and grave risk of inciting violence and riots against American troops and coalition forces. I also believe that release of the responsive Darby Photos will expose innocent Iraqi, Afghan, and American civilians to harm as a result of the insurgency's reaction, which will likely involve violence and rioting. It is probable that Al-Qaeda and other groups will seize upon these images and videos as grist for their propaganda mill, which will result in, besides violent attacks, increased terrorist recruitment, continued financial support, and exacerbation of tensions between the Iraqi and Afghan populaces and U.S. and Coalition Forces.

25. The recent vitriolic and violent reaction to Newsweek's Koran report described above – even following its retraction – made it clear that U.S. and allied troops and