

Testimony of
Major General Jack Rives

August 2, 2006

TESTIMONY OF
MAJOR GENERAL JACK L. RIVES
THE JUDGE ADVOCATE GENERAL
UNITED STATES AIR FORCE
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
CONCERNING THE AUTHORITY TO PROSECUTE TERRORISTS
UNDER THE WAR CRIMES PROVISIONS OF TITLE 18
August 2, 2006

Thank you Chairman Specter, Senator Leahy, and members of the Committee. I appreciate the opportunity to appear before you today as this Committee carefully considers the authority of the United States to prosecute suspected terrorists consistent with the Supreme Court's decision in *Hamdan v. Rumsfeld*.

Prior to enactment of the War Crimes Act, suspected war criminals were prosecuted domestically by the United States for the underlying common law offense -- such as murder, rape, or assault. Consistent with our treaty obligations, Congress enacted the War Crimes Act to proscribe misconduct internationally recognized as constituting violations of the Laws of Nations.

Prosecutions under the War Crimes Act, like all prosecutions under Title 18, include the due process rights afforded in our Federal Court system. While these rights are necessary and appropriate for suspected terrorists investigated and apprehended through normal domestic law enforcement methods, some -- such as the aggressive discovery rules and strict chain of custody requirements -- are incompatible with the realities and unpredictability of the battlefield. The full discovery rights of our Federal Court system may reveal sensitive intelligence sources and methods that would harm our overall national security. Similarly, the chain of custody requirements of our Federal system are simply unworkable given the uncertain and ever changing nature of the battlefield and the need for our military personnel to be free from the technical rules more applicable to domestic law enforcement officers operating in American neighborhoods.

In light of these difficulties, our laws offer alternative means to prosecute suspected terrorists seized on the battlefields of the Global War on Terrorism. These alternative methods were the subject of *Hamdan v. Rumsfeld*, and are the focus of ongoing discussions outside of Title 18. However, Congressional action to amend the War Crimes Act can prove helpful on a related matter.

The War Crimes Act currently characterizes all violations of Common Article 3 of the Geneva Conventions as felonies. Violations of Common Article 3 include, among other things, "outrages upon personal dignity, in particular humiliating and degrading treatment." Under our military justice system, less serious breaches can be handled through administrative or nonjudicial means. However, the War Crimes Act treats all violations of Common Article 3 as felonies. We welcome Congressional efforts to better define which "outrages upon personal dignity, in particular humiliating and degrading treatment" amount to serious breaches worthy of classification as felonies. Such efforts would serve our men and women fighting the Global War on Terrorism by providing clearly delineated limits.

As recognized and reaffirmed in last year's Detainee Treatment Act, we cannot and will not condone US military personnel engaging in outrageous, humiliating and degrading conduct as US law defines such misconduct. Congressional efforts to better define these terms for Common Article 3 purposes will provide needed clarity to the rules of conduct for our military forces.

I look forward to discussing these issues with the Committee this morning.

Thank you, Mr. Chairman.