



Written by [Thomas R. Eddlem](#) on August 9, 2011

Court Advances U.S. Torture Victims' Case Against Donald Rumsfeld

The Seventh U.S. Court of Appeals ruled August 8 that two American citizens detained and tortured without trial or court hearing by the Bush-era Defense Department may sue former Defense Secretary Donald Rumsfeld.

U.S. Navy veteran Donald Vance (left) and fellow American Nathan Ertel were employed by the private U.S. government contractor Shield Group Security in 2006 outside the Baghdad green zone and witnessed the sale of U.S government munitions to Iraqi rebel groups for money and alcohol. After becoming FBI informants, the two were detained and tortured by federal officials for 97 days (Donald Vance) and six weeks (Nathan Ertel) at Camp Cropper in Iraq after contacting the FBI about corruption in the now-defunct federal contractor.



Judge David Hamilton wrote in a 2-1 appellate court decision that concluded, "The wrongdoing alleged here violates the most basic terms of the constitutional compact between our government and the citizens of this country." The district court had earlier ruled that the allegations are the kind that "shocks the conscience."

The court described their alleged treatment, which is [perfectly consistent with torture treatments approved by Rumsfeld's Defense Department](#):

- "The lights were kept on at all times in their cells."
- "Their cells were kept intolerably cold, except when the generators failed."
- "There were bugs and feces on the walls of the cells."
- "They spent most of their time in complete isolation."
- They "had a concrete slab for a bed."
- "Guards would wake them if they were ever caught sleeping."
- "Heavy metal and country music was pumped into their cells at 'intolerably-loud volumes.'"
- They "had only one shirt and a pair of overalls to wear during their confinement."
- They were "often deprived of food and water."
- They were "repeatedly deprived of necessary medical care"
- "They experienced 'hooding.'"
- They "were 'walled,' i.e., slammed into walls while being led blindfolded with towels placed over their heads to interrogation sessions."

"Even Saddam Hussein had more legal counsel than I ever had," Vance [told](#) the *New York Times* back



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in 2006 after his release. "While we were detained, we wrote a letter to the camp commandant stating that the same democratic ideals we are trying to instill in the fledgling democratic country of Iraq, from simple due process to the Magna Carta, we are absolutely, positively refusing to follow ourselves."

After his arrest, Vance was told point-blank that he had no right to an attorney, even though this is an explicit guarantee of the [Constitution's Sixth Amendment](#). "You do not have the right to legal counsel, but you may have a personal representative assist you at the hearing if the personal representative is reasonably available," he was told in legal documents handed to him during his detainment. The *New York Times* [noted](#) on December 18, 2006 that "Mr. Vance and Mr. Ertel had separate hearings. They said their requests to be each other's personal representative had been denied."

Vance and Ertel were largely kept from the outside, though after a few weeks Vance was allowed a phone call to his fiancée, Diana Schwarz, back in Illinois. Vance [told](#) her, "start talking, sending e-mail and letters and faxes to the alderman, mayor, governor, congressman, senators, Red Cross, Amnesty International, A.C.L.U., Vatican, and other Christian-based organizations. Everyone!" He [added](#): "I am missing you so much, and am so depressed it's a daily struggle here. My life is in your hands. Please don't get discouraged. Don't take 'No' for answers. Keep working. I have to tell myself these things every day, but I can't do anything from a cell."

Rumsfeld's attorneys sought dismissal of the lawsuit on the basis that as Secretary of Defense, he had immunity from criminal actions and was above the law. The court summarized Rumsfeld's argument: "The defendants contend that a [court] remedy should not be available to U.S. citizens for any constitutional wrong, including torture and even cold-blooded murder, if the wrong occurs in a war zone. The defendants' theory would apply to any soldier or federal official, from the very top of the chain of command to the very bottom." But the court explicitly rejected this astonishing claim of government officials being above the law:

We see no persuasive justification in ... case law or otherwise for [Rumsfeld's] most sweeping argument, which would deprive civilian U.S. citizens of a civil judicial remedy for torture or even cold-blooded murder by federal officials and soldiers, at any level, in a war zone. United States law provides a civil damages remedy for aliens who are tortured by their own governments. It would be startling and unprecedented to conclude that the United States would not provide such a remedy to its own citizens.

The court [cited](#) the 1976 Supreme Court case of *Brown v. Plata*, which concluded: "Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment. The basic concept underlying the Eighth Amendment is nothing less than the dignity of man." The Eighth Amendment [explicitly prohibits](#) the federal government from "cruel and unusual punishments" without exception, even in the case of national defense.

Vance became the 2007 recipient of The Ridenhour Truth-Telling Prize for his efforts at exposing the Bush-era torture policies. Keith Olbermann of the *Current TV* channel asked Vance in a [August 5 interview](#) if the government had "tried to pay you to keep quiet." Vance replied that his lawsuit was about the attack on the U.S. Constitution and his personal rights, and not about money: "Absolutely. My case and John Doe's case [have] nothing to do with money. We have had settlement conferences in the past, and in every single instance we have come to no agreement whatsoever. We are going forward to court. I have no interest in having any settlement conferences."



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A second lawsuit, *John Doe v. Rumsfeld*, involves a third anonymous military contractor who was detained and tortured for nine months beginning in November 2005. A District of Columbia district court allowed the John Doe case to proceed in an [August 2 ruling](#).

Photo: Donald Vance testifies at a Senate Democratic Policy Committee hearing, "Abuses in Private Security and Reconstruction Contracting in Iraq: Ensuring Accountability, Protecting Whistleblowers," Sept. 21, 2007: AP Images



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