

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.

CIVIL ACTION
DOCKET NO. 04-CV-4151 (AKH)

DECLARATION OF
KHALED FAHMY

Khaled Fahmy, pursuant to 28 U.S.C. sec. 1746, declares as follows:

1. I am an Associate Professor of Middle Eastern Studies at New York University. My research to date has focused on the social history of the modern Middle East, with a particular focus on the relationship between modernity and religion. In addition, my extensive experience in the Egyptian National Archives has enabled me to engage with the new scholarship within Middle Eastern studies on nationalism and state building, social history and gender studies, as well as medical and legal history. Among my articles on these subjects are: "The military and politics in Egypt: An historical overview", "Towards a social history of modern Alexandria", "Prostitution in Nineteenth-Century Egypt"; "The Police and the People in Nineteenth-Century Egypt"; "The Anatomy of Justice: Forensic Medicine and Criminal law in Nineteenth-Century Egypt"; and "Women, Medicine and Power in Nineteenth-Century Egypt." During my twelve years of teaching first at Princeton University and then at NYU, I offered courses on the modern history of the Middle East, including: "Emergence of the Modern Middle East", "Modern Egypt", "Colonialism, Imperialism and Nationalism in the Middle East", "Women in Islam", "History of the Middle East from 1750 to the present", and "Problems and Methods in Middle Eastern Studies".

2. I am a native speaker of Arabic. I spend nearly five months each year living in Cairo conducting research in the Egyptian National Archives. I am also intimately familiar with the Egyptian cultural and intellectual scene. Furthermore, I have traveled extensively in the Middle East and am familiar with the various societies and cultures of the region.

3. As a result of my scholarship I have received the following honors and fellowships: Fulbright Scholar-in-Residence (1993-94); Malcolm Kerr Awards of the Middle East Studies Association for best humanities dissertation: honorable mention (1993); Faculty Fellow in the Project on Cities and Urban Knowledges, International Center for Advanced Studies, New York University (2000-2001). I am affiliated with: the Middle East Studies Association, the Egyptian Historical Association, and the American Historical Association.

4. At the request of the plaintiffs, I have reviewed the redacted versions of the Declarations of Richard B. Myers and Ronald Schlicher, pertaining to the official release to the plaintiffs of 87 photographs and four tapes of Abu Ghraib prisoners under the Freedom of Information Act. I have had access only to public versions of these Declarations, which contain significant redactions regarding descriptions of the material in question.

5. In their Declarations, General Myers and Mr. Schlicher express the view that the release of the material in question could reasonably be expected to endanger U.S. Coalition forces, as well as Iraqi and Afghani civilians. In support of this view they cite the action of Muslims allegedly in response to the first release of Abu Ghraib photographs, as well as the Newsweek report of alleged desecration of the Koran in Guantanamo. It is my view that the assertions of General Myers and Mr. Schlicher are based on generalizations and assumptions about Muslim and Arab culture that are unfounded.

6. First, I have not come across any evidence that violence in Iraq resulted from the release of the Abu Ghraib photographs, and I have no reason to think these photographs would result directly in violence. The violence in Iraq erupted soon after the fall of Baghdad and the beginning of the US-UK occupation in April 2003. While estimates of the number of insurgency incidents vary from one source to the other, it is impossible to find a clear correlation between the public release of the photos in Spring of 2004 and the insurgency incidents. The increase in the number of insurgency incidents could be seen to be connected to the first anniversary of the occupation in April 2004, to the Battle of Falluja in November 2004, and to the Iraqi general elections in January 2005. But there is no evidence that the release of the photos of prison abuse from Abu Ghraib in spring 2004 had any direct result on the number of insurgency incidents against US troops or personnel in Iraq.

7. In addition, there is no parallel between alleged desecration of the Koran and the photographs of prison abuse. General Myers and Mr. Schlicher compare the release of photographs depicting abuse to the alleged desecration of the Koran as reported in Newsweek. But the two are not analogous. There is nothing that approaches the holiness of the Koran in Islam. The Koran is believed by Muslims to be the literal word of God. They believe that it contains the eternal and unchanging message from God to humanity. There is nothing in Islam that approaches the Koran's sanctity, not even the position of the Prophet Muhammad who is believed to have been only the messenger through whom God chose to reveal this eternal and

unchanging message. To compare Muslims' feelings about reports of alleged desecration of the Koran to their feelings about abuse of Iraqi prisoners by US troops is to misunderstand a fundamental tenet of Islam, namely, the sanctity of the Word of God. This comparison also confuses feelings of anger, frustration and/or hostility that some Iraqis may have towards what they consider a foreign occupation of their country with a basic religious feeling that millions of Muslims around the world have regarding what they consider their Holy Book.

8. It is my opinion that there is nothing peculiar about Muslim culture in Iraq or elsewhere that would make people react to these pictures in a way different from other people's reactions elsewhere in the world. In other words, there is nothing specifically "Islamic" about the feelings conjured in people's minds when these pictures became available in the region. For example, *Al-Hayat*, the Saudi-funded, London-based newspaper, and arguably one of the most respected and most widely read Arabic daily newspaper, recently ran a story about Al-Hajj Ali al-Qaysi, the man photographed in Abu Ghraib standing on a wooden box with a hood over his head and wires attached to his fingers (30 July 2005). In recounting the story of how he had been subjected to this torture, he spoke about his fear, his anger and his humiliation. But he mentioned nothing about how his religious sensibilities might have been injured by this inhuman behavior. The perpetrators who abused the prisoners in Abu Ghraib might have conjured this link between what they assumed the religion of their captors to have been and the humiliation that they wanted to subject them to. However, there is no evidence whatsoever to support the allegation that Iraqi Christians, for example, would have felt any less insulted by this treatment than their fellow Muslim countrymen.

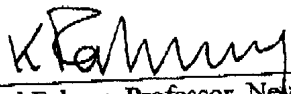
9. The insurgents in Afghanistan and Iraq defend their actions on multiple and sometimes shifting grounds. At various times, they have stated that they are fighting American occupation, that they oppose the stationing of United States troops in the Middle East, and that they are fighting for the overthrow of corrupt governments backed by the United States. While it is possible that insurgents may point to the abuse of prisoners by United States personnel as further justification for their actions, it is highly unlikely that such abuse would be the real justification. Photographs might conceivably be used as propaganda, but violence is likely to persist whether or not the photographs are released.

10. Even as propaganda, the photographs are likely to be of marginal value. As General Myers notes, insurgents have the ability to produce and disseminate fabricated images of U.S. troops abusing prisoners. The insurgents do not need accurate photographs in order to propagandize. The insurgents will have propaganda whether or not the true photographs are released. I do not know of any incident in which a photograph – real or doctored – was the actual cause of violence.

11. Moreover, while it is possible that the photographs might be used to recruit insurgents, as General Myers suggests, the official release will also win the support of those Muslims who seek some measure of public accountability. Indeed, in the Muslim world, much of the anger surrounding the photographs stems from the perception that the U.S. endorses torture, and that it has failed to hold officials accountable for abuses that took place on their watch and that they may even have authorized. The government's concealment of evidence that torture has occurred only feeds that anger. Refusing to release these photographs may be viewed

as a further effort to cover up the scandal, which in my opinion would be just as harmful, if not more so, as releasing the photographs. An official release of the photographs, and official action to hold perpetrators accountable, will be seen by many Muslims, as by many Americans, as significant progress.

12. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.


Khaled Fahmy, Professor, New York University

Date: August 4, 2005