

DRAFT

UNITED STATES COURT OF APPEALS FOR THE 4TH CIRCUIT

COMPLAINT OF JUDICIAL MISCONDUCT

COMPLAINANT

Charles B. GITTINGS Jr, *pro se*

CASES COMPLAINED

No. 02-7338 HAMDI v. RUMSFELD (I-IV)

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert G. Doumar, Senior District Judge. (CA-02-439-2)

- a. Hamdi v. Rumsfeld ("Hamdi I"), 294 F.3d 598 (4th Cir. 2002).
- b. Hamdi v. Rumsfeld ("Hamdi II"), 296 F.3d 278 (4th Cir. 2002).
- c. Hamdi v. Rumsfeld ("Hamdi III"), 316 F.3d 450 (4th Cir. 2003).
- d. Hamdi v. Rumsfeld ("Hamdi IV"), 337 F.3d 335 (4th Cir. 2003).

COMPLAINNEES

WILKINS, Chief Judge, and WIDENER, WILKINSON, NIEMEYER, WILLIAMS, MICHAEL, TRAXLER, and SHEDD, Circuit Judges; panel in Hamdi I-IV (Wilkins, Wilkinson, and Traxler), and circuit majority in Hamdi IV poll (all).

WILKINSON was Chief Judge for Hamdi I-III; WILKINS is current Chief Judge.

JURISDICTION

Jurisdiction is in the US Court of Appeals for the 4th Circuit pursuant to 28 USC § 351(a) on a complaint of judicial misconduct.

SUMMARY OF COMPLAINT

The evidence before the court showed the government had committed acts against Hamdi and others at Guantanamo Bay and elsewhere which are variously grave breaches of the 1949 Geneva Conventions, violations of 1907 Hague IV Annex (HR), art. 23, or violations of 1949 Geneva Common Article (CA) 3. Said acts are criminal offenses pursuant to 18 USC § 2441(c)(1-3).

The opinions of the court displayed prejudice, fraud, gross negligence, or incompetence with respect to matters of fact and law. Said opinions were egregiously false in some particulars and in violation of 18 USC § 2441.

STATEMENT OF FACTS

- 1) The basic facts are given in Hamdi v. Rumsfeld, 316 F.3d 450 (4th Cir. 2003).
- 2) The government's detention of Yaser Hamdi is plainly illegal under US law. They have designated Hamdi and other detainees as "combatants", yet they have denied them POW status as required by the 1949 Geneva Conventions.
- 3) The court ruled that the Geneva conventions were inoperative, which was a direct violation of 18 USC § 2441(c)(2)(h) and aided violations of 18 USC § 2441(c)(1).
- 4) Complainee Wilkinson, concurring in Hamdi IV, states:

"Hamdi is being held according to the time-honored laws and customs of war. There is nothing illegal about that." **CITE**

In truth, the manner in which Hamdi is being held is a direct violation of the "time-honored laws and customs of war", which are codified by the 1907 Hague IV Convention and the 1949 Geneva Conventions (GPW & GC in particular). Wilkinson continues:

"The option to detain those captured in a zone of armed combat for the duration of hostilities belongs indisputably to the Commander in Chief. Art. II, Sec. II. And the question is essentially whether the United States can capture and detain prisoners of war without subjecting the factual circumstances surrounding foreign battlefield seizures to extensive in-court review." Id.

In fact, there is probable cause to believe that the treatment of prisoners at Guantanamo Bay and elsewhere by the government violates 18 USC § 2441, IMT, GPW, GC, Hague, ICAT, and ICCPR.

- 5) Concerning the Geneva Conventions, complainees assert:

"Hamdi and amici also contend that Article 5 of the Geneva Convention applies to Hamdi's case and requires an initial formal determination of his status as an enemy belligerent "by a competent tribunal." Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 5, 6 U.S.T. 3316, 75 U.N.T.S. 135.

"This argument falters also because the Geneva Convention is not self- executing." Hamdi v. Rumsfeld, 316 F.3d 450 (4th Cir. 2003), at 468.

In fact, there is reason to believe the Geneva Conventions are self-executing; see US v. Noriega, 808 F.Supp. 791 (USDC S. FL, 1992). However, the question is also moot in this instance.

Chief Justice Marshall defined the basic doctrine which complainees falsely applied to Geneva in the Hamdi case quite clearly:

"A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument.

"In the United States a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the Court." Marshall, *per curiam*, *Foster v. Neilson*, 27 U.S. 253 (1829).

Complainees seized on this doctrine to declare "Geneva is not self-executing" and pretend the Geneva Conventions are mere window dressing, but they betray their prejudice because by asserting falsehoods and half-truths about matters of law that should have been known to them, they have made obvious the dishonesty of their deliberations: their ruling can only be the result of fraud or negligence.

In truth, the legislative and executive branches have explicitly executed the Geneva Conventions by enacting the War Crimes Act of 1996 and the Expanded War Crimes Act of 1997 into law as specified by GPW art. 129 and GC art. 146. Far from being inoperable, it is a crime for any US citizen to commit a grave breach of the Geneva Conventions, a fact which the most cursory legal search should have revealed.

How many US statutes mention the Geneva Conventions by name? How many articles of the Geneva Convention require legislation to execute the conventions?

What the conventions actually require is legislation to impose effective penal sanctions; GPW art. 127 and GC art. 146. 18 USC § 2441 clearly meets that requirement explicitly, necessary or not. Whether Geneva is self-executing or not is beside the point: 18 USC § 2441 executes the Geneva fully in domestic US law.

6) Complainees state:

"Courts will only find a treaty to be self-executing if the document, as a whole, evidences an intent to provide a private right of action." *Goldstar (Panama) v. United States*, 967 F.2d 965, 968 (4th Cir. 1992). The Geneva Convention evinces no such intent. Certainly there is no explicit provision for enforcement by any form of private petition. And what discussion there is of enforcement focuses entirely on the vindication by diplomatic means of treaty rights inhering in sovereign nations.

In fact, the Geneva Conventions require all parties to respect and ensure respect for the conventions, CA 1, while GPW 129-131, GC art. 146-148 require parties to enact and enforce effective penal sanctions for violations.

It would be utterly absurd to suggest that a criminal statute of the United States can only be vindicated "by diplomatic means", or that a convention which requires such a statute exhibits any such intent: the executive branch "shall take care that the laws be faithfully executed", Const. Art. II, Sec. 3, 1. The true intent of the Geneva conventions is that they should be respected and

enforced by every legitimate means available, and their true purpose is to ameliorate human suffering.

- 7) 18 USC § 2441 executes the Geneva conventions per GPW art 129 and GC art 146, each appearing in chapters titled "Execution of the Convention".

The Geneva Conventions apply to ALL prisoners and detainees in an armed conflict, and to deny that is a violation of HR art. 23, which states:

"In addition to the prohibitions provided by special Conventions, it is especially forbidden * * * [t]o declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party."

The right of a prisoner to the protection of the Geneva Conventions in an armed conflict is absolute, and to deny that right is a grave breach.

The ruling of the court did exactly that and 18 USC § 2441(c)(2)(h) makes any violation of HR art. 23 an offense.

- 8) Complainees state:

As we have emphasized throughout these appeals, we cannot set aside executive decisions to detain enemy combatants "without the clear conviction that they are in conflict with the Constitution or laws of Congress constitutionally enacted." *Quirin*, 317 U.S. at 25.

Yet they ignored the existence of 18 USC § 2441 and turned a blind eye to the positive requirements of the Geneva Conventions in order to "defer" to a criminal conspiracy, and by so doing they violated the statute themselves.

- 9) Complainees continue:

We cannot stress too often the constitutional implications presented on the face of Hamdi's petition. The constitutional allocation of war powers affords the President extraordinarily broad authority as Commander in Chief and compels courts to assume a deferential posture in reviewing exercises of this authority. And, while the Constitution assigns courts the duty generally to review executive detentions that are alleged to be illegal, the Constitution does not specifically contemplate any role for courts in the conduct of war, or in foreign policy generally. *Id.*

But there are no constitutional issues here. There is no question of the court conducting war or foreign policy, this is strictly a matter of administering the law. The laws in question were specifically intended to govern the actions of US political and military officials in time of war. The treatment of prisoners in an armed conflict is strictly and comprehensively regulated by the Geneva Conventions, and any grave breach of those conventions is a war crime pursuant to 18 USC 2441. It is not the place of this or any other court to defer to criminal activities; rather, it is the place of the executive branch to execute the laws faithfully.

- 10) Complainees violated Canons 1-3 of the Code of Conduct for United States Judges:

- A judge should uphold the integrity and independence of the judiciary.

- A judge should avoid impropriety and the appearance of impropriety in all activities.
- A judge should perform the duties of the office impartially and diligently.

Complainees extended "deference" to executive branch crimes under 18 USC § 2441(c)(1-3) and other statutes.

Complainees committed direct violations of 18 USC § 2441 etc.

Complainees made a number of statements which carry a strong implicitation of prejudice, and their opinions displayed an obvious contempt for the laws of the United States.

- 11) THIS COMPLIANT IS NOT RELATED TO THE MERITS OF THE CASE: the acts complained of are violations of 18 USC § 2441 and Canons 1-3 of the Code of Conduct for United States Judges. Such violations cannot have any relation to the merits in a civil case.
- 12) THIS COMPLAINT IS NOT FRIVOLOUS: the government's violations of the Geneva Conventions have been extensively reported by AI, HRW, the ICRC, and 18 USC 2441 ia valid law of the United States which executes one of the most widely respected treaties in existence. [SEE APPENDIX ***CITE*** Paust, Wallach, Rona, Fidell, Steyn]
- 13) Complainees ignored the law and acted to subordinate the interests of justice and the business of the court to a criminal conspiracy.
- 14) The facts before complainees in the Hamdi case showed evidence that the USG is operating a criminal conspiracy in violation of 18 USC § 2441 involving both the leadership and legal establishments of the White House, DoD, DOJ, and State Department carrying forward the crimes as official policy under a false color of authority. See list ATTACHMENT X.
- 15) The only purpose of this complaint is to uphold the laws of the United States. I state under penalty of perjury that the foregoing is true and correct.

Executed on _____

Signed,

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