A Service Chief Should Have Spoken Up

John H. Cushman, Lieutenant General, U.S. Army, Retired[1]
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The framers of Goldwater-Nichols 1986 wisely gave the Service chiefs direct access if they so chose to the President. In 2002-03, they should twice have availed themselves of this opportunity.

The Goldwater-Nichols Department of Defense Reorganization Act of 1986 confirmed the existing command authority of the Secretary of Defense over the several combatant commanders (U.S. Atlantic Command, U.S. Strategic Command, and so on). It greatly enhanced the position of the Chairman, Joint Chiefs of Staff, who – still without command authority but with a new Vice Chairman and direct authority over the Joint Staff – was named the defense secretary's and the President's principal military advisor.

Goldwater-Nichols also considerably broadened the combatant commanders' powers, giving them "authoritative direction over all aspects of military operations…, employing forces as… necessary to carry out missions assigned…, coordinating and approving… training…, discipline necessary to carry out missions assigned…, convening courts-martial…" and the like.

The 1986 law confirmed that the four Services (Army, Navy, Marine Corps, Air Force) would simply provide the forces to the combatant commands as directed by the Secretary of Defense, and nothing more. Indeed, their "communications" with those respective forces could be regulated by the same combatant commanders.

However, the Services do recruit their Service members, swear them in, put them in a distinctive uniform, train them, indoctrinate them in Service traditions, assign them, promote them, authenticate their awards and decorations, and (when their time comes) issue their certificates of discharge or retirement. The Service chiefs are the custodians of long-standing institutions, with their own separate histories and experi-

[1]General Cushman has served three Vietnam tours and has commanded the 101st Airborne Division, the U.S. Army Combined Arms Center, and the Korean-American field army on Korea's DMZ. Since retiring in 1978, he has been an author and consultant. James R. Locher III, author of the definitive Victory on the Potomac; The Goldwater-Nichols Act Unifies the Pentagon, has written "In the 1980s General Cushman published two books for Harvard University's Program on Information Resources Policy that had great influence over the formulation of the Goldwater-Nichols Act. His work was central to congressional thinking about the authority of combatant commanders.

ence. They are responsible for the quality control of their Services' forces and they are by law military advisers to the Secretary of Defense and the President.

Two circumstances since the attacks of September 11, 2001, illustrate the importance of the Service chiefs' availing themselves of their direct access to the President when appropriate.

One of these was in the post-hostilities planning for Iraq, 2002-03, when the Secretary of Defense lost sight of the Army's experience in the 1945–46 occupations of Germany and Japan and in civil-military action in Vietnam. He grievously misjudged the Iraq war's post-hostilities requirements and, with the cooperation of the Commander U.S. Central Command, he developed a plan for the overthrow of Saddam Hussein's regime that assigned the immediate post-hostilities responsibility to a civilian agency.

Yet evidently no member of the Joint Chiefs of Staff said to the Secretary, "Sir, immediate post-hostilities has to be the theater commander's responsibility; only he has the required means. We learned that in World War II." The situation at that very moment called for them to go to the President if necessary.

To be sure, the scene inhibited such action. Key parts of the Iraq plan were developed in discussions between the Secretary of Defense and General Tommy Franks commanding CENTCOM, and the JCS Chairman. The Service Chiefs, disdained by Franks as "Title 10 (obscenities)," were not privy to much of them. The Joint Staff, working directly for the Chairman, was the master of information; the Service staffs were on-lookers with only indirect influence through their CENTCOM Service components.

It was thus difficult for a Service Chief to exercise his right to protest to the President or Secretary of Defense. Mr. Rumsfeld's imperious and fast-paced management style made it especially hard to draw a line.

So, at the moment when retired general Jay Garner was handed the post-hostilities mission, no Chief drew a line, and the consequences were disastrous. As operations began, the troops were not told what to do when the Iraqi Army was defeated. Foreseeable looting destroyed any basis for post-hostilities governance; indeed none was laid out. Provisions ensuring that there would be an Iraqi army and police force did not exist. Even a rudimentary psychological operations plan was lacking. Chaos reigned; impetus stalled. Recovery has taken years of war.

Immediate post-hostilities planning and operations should have been assigned to the theater commander. This would surely have meant that CENTCOM's subordinate U.S. Army force headquarters, which had done some reasonable post-hostilities planning, would remain in charge in Iraq after May 2003, rather than the ill-prepared headquarters of Lieutenant General Ricardo Sanchez's V Corps. Decisions on Baathists and the Iraqi Army would probably not have been made the way they were. A priceless opportunity was lost.

The other circumstance was in the treatment of detainees taken in battle.

The Service chiefs prescribe the tactical, and basic, doctrine for their members and units. In 1958, having absorbed the lessons of the Korean War, the Army Chief of Staff published Field Manual 27-10, The Law of Land Warfare. With its changes to 1976, its Chapter 3, Prisoners of War, laid out how Army members and units were to apply the provisions of the Geneva Convention. The other Services adopted the same manual.

Outraged by the attacks of 9/11, on September 14, 2001, Congress authorized the president to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks."

Late October saw the first air strikes guided by US special forces detachments operating with Northern Alliance Afghans. Supported by these air strikes, by November 9 the Northern Alliance had broken through Taliban positions; the Taliban collapsed in the north. Taliban and al Qaeda prisoners were taken and interrogations began.

By December 7, U.S. Marines and Army rangers had landed in Kandahar and Taliban forces there had surrendered. On January 11, 2002, the first Afghanistan detainees arrived at Guantanamo. Lawyers at the White House and the Justice Department were developing positions on detainee treatment.

On January 19, Secretary of Defense Donald Rumsfeld published a memorandum stating that "The United States has determined that al-Qaeda and Taliban individuals under the control of the Department of Defense are not entitled to prisoner of war status for purposes of the Geneva Convention of 1949." Detainees were to be treated "to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."

Two days later, General Richard Myers, JCS Chairman, restated Mr. Rumsfeld's memorandum to the combatant commanders, including the commanders of Central

Command, responsible for Iraq and Afghanistan, and of Southern Command, responsible for Guantanamo. He added, "The combatant commanders shall transmit this order to subordinate commanders."

Only forces assigned to the U.S. Central Command (CENTCOM) were then fighting, in Afghanistan. There the Army special forces teams and ranger companies were members of Army units provided by a Stateside Army command. In-theater these units were organized for combat into various joint task forces (whose commanders often wore both an Army and joint "hat") in a joint chain of command under the Commander CENTCOM. The Marines there were part of a Marine Corps command under CENTCOM. Nonetheless, these Army and Marine commands reported administratively back to Service headquarters in the United States.

On receiving the Secretary of Defense order in January 2002, the Service chiefs, especially the Army Chief of Staff and the Commandant of the Marine Corps, had a problem: Was the order lawful? If lawful, was it the right thing to do?

Notwithstanding that the enemy in Vietnam was often not in uniform and could often be considered "partisans" or "guerrillas," the U.S. command's policy in Vietnam was to deal with all captured enemy as prisoners of war under the provisions of Field Manual 27-10.

In January 2002, these Service chiefs should have consulted their Judge Advocates General.

These Judge Advocates General would soon read a February 7 executive order in which the President of the United States stated: "I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al-Qaida in Afghanistan or elsewhere throughout the world. ... I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al-Qaida or Taliban detainees... I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that…al-Qaida detainees also do not qualify as prisoners of war."

In a press conference Mr. Rumsfeld expressed reluctance to provide to presumptive terrorists privileges like canteens, pay, educational and recreational pursuits, musical instruments and sports equipment and clothing. That was not the issue; the real issue was the detainees' interrogation and their associated treatment.

From the later testimony of these Service lawyers, their counsel would probably have been that the President had received bad legal advice and that the instructions of the Secretary of Defense were contrary to the Geneva Convention as heretofore observed.

What should these Service chiefs have done? They should have told the Secretary of Defense that they did not intend to rewrite the Law of Land Warfare for their Services' forces, and that they would so inform their forces. They would tell the troops:

You will behave properly. The CIA might have different rules, but that is their business, not ours. We will abide by Field Manual 27-10, The Law of Land Warfare.

They did nothing of the kind. The January 2002 orders of the Secretary of Defense governed down through the chain of command. "Military necessity" prevailed. The gloves came off. A stain permeated the forces, leading among many other disastrous consequences to the abominable behavior of military policemen and intelligence personnel at Abu Ghraib in 2003.

In both these instances the Service chiefs of the time seem to have misjudged the situation. Or, if any one of them judged it rightly, he evidently allowed unwise action to go forward without taking the matter forthrightly and directly to the Secretary of Defense or the President.

The President and the Congress of the United States have a right to expect that , when a matter of such significance next arises, the chiefs of the Services will act with both wisdom and moral strength.

The current Service leadership must indoctrinate and develop its rising leaders toward insuring that they so act when the occasion requires.