White House Turns Tables on Former American POWs

Gulf War pilots tortured by Iraqis fight the Bush administration in trying to collect compensation.

By David G. Savage, Times Staff Writer

WASHINGTON — The latest chapter in the legal history of torture is being written by American pilots who were beaten and abused by Iraqis during the 1991 Persian Gulf War. And it has taken a strange twist.

The Bush administration is fighting the former prisoners of war in court, trying to prevent them from collecting nearly $1 billion from Iraq that a federal judge awarded them as compensation for their torture at the hands of Saddam Hussein's regime.

The rationale: Today's Iraqis are good guys, and they need the money.

The case abounds with ironies. It pits the U.S. government squarely against its own war heroes and the Geneva Convention.

Many of the pilots were tortured in the same Iraqi prison, Abu Ghraib, where American soldiers abused Iraqis 15 months ago. Those Iraqi victims, Defense Secretary Donald H. Rumsfeld has said, deserve compensation from the United States.

But the American victims of Iraqi torturers are not entitled to similar payments from Iraq, the U.S. government says.

"It seems so strange to have our own country fighting us on this," said retired Air Force Col. David W. Eberly, the senior officer among the former POWs.

The case, now being appealed to the U.S. Supreme Court, tests whether...
"state sponsors of terrorism" can be sued in the U.S. courts for torture, murder or hostage-taking. The court is expected to decide in the next two months whether to hear the appeal.

Congress opened the door to such claims in 1996, when it lifted the shield of sovereign immunity — which basically prohibits lawsuits against foreign governments — for any nation that supports terrorism. At that time, Iraq was one of seven nations identified by the State Department as sponsoring terrorist activity. The 17 Gulf War POWs looked to have a very strong case when they first filed suit in 2002. They had been undeniably tortured by a tyrannical regime, one that had $1.7 billion of its assets frozen by the U.S. government.

The picture changed, however, when the United States invaded Iraq and toppled Hussein from power nearly two years ago. On July 21, 2003, two weeks after the Gulf War POWs won their court case in U.S. District Court, the Bush administration intervened to argue that their claims should be dismissed.

"No amount of money can truly compensate these brave men and women for the suffering that they went through at the hands of this very brutal regime and at the hands of Saddam Hussein," White House Press Secretary Scott McClellan told reporters when asked about the case in November 2003.

Government lawyers have insisted, literally, on "no amount of money" going to the Gulf War POWs. "These resources are required for the urgent national security needs of rebuilding Iraq," McClellan said.

The case also tests a key provision of the Geneva Convention, the international law that governs the treatment of prisoners of war. The United States and other signers pledged never to "absolve" a state of "any liability" for the torture of POWs.

Former military lawyers and a bipartisan group of lawmakers have been among those who have urged the Supreme Court to take up the case and to strengthen the law against torturers and tyrannical regimes.

"Our government is on the wrong side of this issue," said Jeffrey F. Addicott, a former Army lawyer and director of the Center for Terrorism Law at St. Mary's University in San Antonio. "A lot of Americans would scratch their heads and ask why is our government taking the side of Iraq against our POWs."

The POWs' journey through the court system began with the events of Jan. 17, 1991 — the first day of the Gulf War. In response to Hussein's invasion of Kuwait five months earlier, the United States, as head of a United Nations coalition, launched an air attack on Iraq, determined to drive Iraqi forces from the oil-rich Gulf state. On the first day of the fighting, a jet piloted by Marine Corps Lt. Col. Clifford Acree was downed over Iraq by a surface-to-air missile. He suffered a neck injury ejecting from the plane and was soon taken prisoner by the Iraqis. Blindfolded and handcuffed, he was beaten until he lost consciousness. His nose was broken, his skull was fractured, and he was threatened with having his fingers cut off. He lost 30 pounds during his 47 days of captivity.

Eberly was shot down two days later and lost 45 pounds during his ordeal. He and several other U.S. service members were near starvation when they were freed. Other POWs had their
eardrums ruptured and were urinated on during their captivity at Abu Ghraib.

All the while, their families thought they were dead because the Iraqis did not notify the U.S. government of their capture.

In April 2002, the Washington law firm of Steptoe & Johnson filed suit on behalf of the 17 former POWs and 37 of their family members. The suit, Acree vs. Republic of Iraq, sought monetary damages for the "acts of torture committed against them and for pain, suffering and severe mental distress of their families."

Usually, foreign states have a sovereign immunity that shields them from being sued. But in the Anti-Terrorism Act of 1996, Congress authorized U.S. courts to award "money damages … against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage [or] hostage taking."

This provision was "designed to hold terrorist nations accountable for the torture of Americans and to deter rogue nations from engaging in such actions in the future," Sens. Susan Collins (R-Maine) and George Allen (R-Va.) said last year in a letter to Atty. Gen. John Ashcroft that urged him to support the POWs' claim.

The case came before U.S. District Judge Richard W. Roberts. There was no trial; Hussein's regime ignored the suit, and the U.S. State Department chose to take no part in the case.

On July 7, 2003, the judge handed down a long opinion that described the abuse suffered by the Gulf War POWs, and he awarded them $653 million in compensatory damages. He also assessed $306 million in punitive damages against Iraq. Lawyers for the POWs asked him to put a hold on some of Iraq's frozen assets.

No sooner had the POWs celebrated their victory than they came up against a new roadblock: Bush administration lawyers argued that the case should be thrown out of court on the grounds that Bush had voided any such claims against Iraq, which was now under U.S. occupation. The administration lawyers based their argument on language in an emergency bill, passed shortly after the U.S. invasion of Iraq, approving the expenditure of $80 billion for military operations and reconstruction efforts. One clause in the legislation authorized the president to suspend the sanctions against Iraq that had been imposed as punishment for the invasion of Kuwait more than a decade earlier.

The president's lawyers said this clause also allowed Bush to remove Iraq from the State Department's list of state sponsors of terrorism and to set aside pending monetary judgments against Iraq.

When the POWs' case went before the U.S. Court of Appeals for the District of Columbia Circuit, the three-judge panel ruled unanimously for the Bush administration and threw out the lawsuit.

"The United States possesses weighty foreign policy interests that are clearly threatened by the entry of judgment for [the POWs] in this case," the appeals court said.

The administration also succeeding in killing a congressional resolution supporting the POWs' suit. "U.S. courts no longer have jurisdiction to hear cases such as those filed by the Gulf War POWs," then-Deputy Secretary of State Richard L. Armitage said in a letter to lawmakers. "Moreover, the president has ordered the vesting of blocked Iraqi assets for use by the Iraqi people and for reconstruction."
Already frustrated by the turn of events, the former POWs were startled when Rumsfeld said he favored awarding compensation to the Iraqi prisoners who were abused by the U.S. military at Abu Ghraib.

"I am seeking a way to provide appropriate compensation to those detainees who suffered grievous and brutal abuse and cruelty at the hands of a few members of the U.S. military. It is the right thing to do," Rumsfeld told a Senate committee last year.

By contrast, the government's lawyers have refused to even discuss a settlement in the POWs' case, say lawyers for the Gulf War veterans. "They were willing to settle this for pennies on the dollar," said Addicott, the former Army lawyer.

The last hope for the POWs rests with the Supreme Court. Their lawyers petitioned the high court last month to hear the case. Significantly, it has been renamed Acree vs. Iraq and the United States.

The POWs say the justices should decide the "important and recurring question [of] whether U.S. citizens who are victims of state-sponsored terrorism [may] seek redress against terrorist states in federal court."

This week, Justice Department lawyers are expected to file a brief urging the court to turn away the appeal.

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