

Opinion

Commentary

Lawyers, Tailhook and prospects for justice

Rear Adm. John E. "Ted" Gordon, former judge advocate general of the Navy, predicts that any sexual assault convictions obtained in Tailhook courts-martial will be overturned because the legal rights of the accused were not protected by Navy and Pentagon leaders.

The abuses Gordon says he saw from the inside should concern anyone who cares about guarding the constitutional right of due process of law for men and women in the Army, Navy, Air Force and Marine Corps.

His complaints about command influence and conflicts of interest come atop reports I have gotten from Navy and Marine officers about being asked such demeaning and irrelevant questions by Tailhook investigators as, "Do you masturbate?"

Gordon, a career naval officer not given to polemics, said he stands by the following statements he made to the Naval Reserve Association about the Tailhook investigations shortly after retiring in November: "I truly believe that the command influence

problem created by our political leadership is so severe that we will not see one successful court-martial come out of this process. I am told the defense lawyers are licking their chops. I really believe that our government has failed all of us in this event."

Examples of command influence and conflicts of interest which he protested while judge advocate general, Gordon said, include the warning letter Vice Adm. Richard M. Dunleavy, former assistant chief of Naval operations for air warfare, sent to Navy squadron commanders in 1991 and the memo former Navy Secretary H. Lawrence Garrett III wrote on how to proceed against squadron commanders.

Gordon, who denied the assertion by former Navy Secretary Sean O'Keefe that he retired because of the criticism by Derek J. Vander Schaaf, Pentagon deputy inspector general, leveled at the Navy Tailhook investigation, said he takes no joy from the reality that "any convictions obtained in Tailhook courts-martial almost certainly will be overturned on appeal."

Officers attacking Navy Lt. Paula Coughlin and other women at the 1991 convention in Las Vegas should be punished, Gordon said.

Although Gordon declined to cite chapter and verse on how defense lawyers can document command influence and conflicts of interest, the paper trail is there for anybody to put before a judge or jury. I have covered enough courts-martial to say with

some assurance that defense lawyers in Tailhook cases will make statements like these:

"Your honor, how can my client get a fair trial when Adm. Dunleavy has said — in writing — that anybody who misbehaved at Tailhook will be punished — and I quote — 'harshly?' The admiral served notice to military judges and juries that he wants people all but hung. This is blatant command influence.

"Even worse, your honor, is this memo dated 2 June 1992 from Navy Secretary Garrett to the chief of naval operations and the commandant of the Marine Corps. It orders the Navy secretary's own general counsel — his own personal representative — and I quote, 'personally to assist' fleet commanders in questioning squadron commanders about Tailhook and in recommending action. This amounted to the Navy secretary talking to himself because the actions recommended by his own counsel, including punishment, were to be decided by the Navy secretary. I submit this was a severe conflict of interest. Even though the Garrett plan was not implemented, the memo documents disregard for due process at the very top of the Navy."

More embarrassment, ugliness and male-female polarization will be generated in military court rooms if Coughlin takes the witness stand. Defense lawyers will try to discredit the gutsy helicopter pilot who blew the whistle on her attackers at Tailhook by asking questions about her own

sex life rather than the assaults in the hallway of the Las Vegas Hilton. Just as in a rape trial, the lawyers will try to blame the victim for what happened.

Garrett, Under Secretary Dan Howard, O'Keefe, former Navy Assistant Secretary Barbara Pope, Navy General Counsel Craig King, Vander Schaaf and others have so politicized and mangled the whole Tailhook affair that I see nothing but more poison going in the well if courts-martial proceed.

Given that bleak outlook, it is time for a defense executive with the class and courage of a former Navy secretary, Sen. John H. Chafee, R-R.I., to stop the pain. It was Chafee who in 1969 refused to go ahead with the recommended courts-martial of crew members who had surrendered the USS Pueblo to the North Koreans, declaring they had "suffered enough." Such an executive should name an impartial panel from some detached group, like the American Bar Association, to determine if the legal rights of the accused have been violated so violently that Tailhook courts-martial will be a waste of time, money and reputations.

If the outside panel does come to that conclusion, the next step is for Congress to legislate additional safeguards so that right of due process is guaranteed for all military people. One Tailhook travesty is enough.

George C. Wilson is former military correspondent of The Washington Post and author of several books on military affairs.



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