

The Court Martial Mistrial of Lt. Watada

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On 16 January 2007 the military judge assigned to preside at Lt. Watada's general court-martial Lt. Col. John Head ruled in relevant part that his attorney Mr. Seitz could not question the legality of the Bush Jr. administration's war against Iraq at the trial. It became obvious that the Pentagon was planning to railroad Lt. Watada by means of kangaroo court proceedings. The primary obstacle to doing this was that the Pentagon had brought charges against Lt. Watada that made it impossible to exclude arguments about the legality of the war at his general court-martial. It was a self-inflicted Catch-22 for the Pentagon.

When the court-martial opened on February 5, the Judge Advocate General (JAG) lawyers put on evidence before the military jury that directly raised the issue of the legality of the war and in a manner favorable to the defense of Lt. Watada. In addition, Mr. Seitz did a brilliant job at cross-examination of the witnesses produced by the JAG lawyers in order to bring out before the military jury the relevance of the legal arguments to Lt. Watada's defense and in a manner favorable to Lt. Watada. After the JAG lawyers had closed their case for the prosecution, the Judge then engaged in improper questioning of Lt. Watada as to his position on the legality of the war before he took the witness stand. Lt. Watada made it perfectly clear that in his forthcoming testimony before the military jury he was going to state that the reason he did not deploy for Iraq was that he believed the war was illegal. When after repeated such badgering Judge Head could not shake Lt. Watada from his determination to so testify, the Judge then declared a mistrial. Lt. Watada walked out of the courtroom a free man. The Judge realized that he had lost control of the railroad; that these legal arguments had already gotten to the jury in a posture favorable to Lt. Watada; and that Lt. Watada would forcefully and credibly explain to the military jury that the Iraq war was illegal and why. Consequently, there was a good chance that the military jury would acquit Lt. Watada on one or more or all of the charges remaining in the case. The Judge pulled the plug on the JAG prosecution because he realized that if Lt. Watada was acquitted on any of these charges, which was quite likely, it would be a great blow to the Pentagon, to the Bush Jr. administration, and to the continuation of the Iraq war.

To avoid this donnybrook, the Judge invoked a pretrial factual stipulation as a pretext to declare the mistrial. Judge Head quite disingenuously argued that Lt. Watada had somehow stipulated to his own guilt before the opening of the trial. In other words, that Lt. Watada and Mr. Seitz did not understand the nature of the pretrial stipulation that they had signed. Of course this argument was preposterous. Lt. Watada, Mr. Seitz, the JAG lawyers, and Judge Head knew exactly that he was stipulating to facts only, and not to criminal intent, which remained to be determined by the military jury.

Despite the Pentagon's public protestations to the contrary, under no circumstances was Judge Head motivated to protect the due process rights of Lt. Watada when he declared the

mistrial, which he had already grievously violated by means of his ruling on 16 January excluding all arguments as to the legality of the war. But at that point in the court-martial, the main problem with the Judge declaring a mistrial was that since the JAG case was closed and Lt. Watada was about to testify on behalf of his own defense, criminal jeopardy had already attached and thus a second prosecution of Lt. Watada would be barred by the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution: "...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb..." Judge Head was fully aware of these constitutional consequences of declaring a mistrial. But as the Judge undoubtedly saw it, the non re-prosecution of Lt. Watada would be a lot better for the Army, the Pentagon, the Bush Jr. administration, and the continuance of the Iraq war than a defeat for them all by the military jury acquitting Lt. Watada on any of the charges. In any event, Judge Head decided to kick JAG's can of worms down the road.

The mistrial of Lt. Watada was a great tribute to his personal courage, integrity, and principles. It was also a great triumph for the courtroom skills of Eric Seitz. And it further demonstrated the power of International law, the United States Constitution, the Laws of War, and U.S. Army Field Manual 27-10 (1956) for opposing the Bush Jr. administration's ongoing and threatened wars of aggression against Iraq, Afghanistan, Somalia, Iran, Lebanon, Syria, Palestine, and elsewhere around the world.

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