

# US Army court martial against war resister lieutenant ends in mistrial

Naomi Spencer  
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Court martial proceedings against US Army Lieutenant Ehren Watada were declared a mistrial by the presiding military judge February 7, following a dispute with the defense over the implications of a document signed by the defendant in a pre-trial plea bargain agreement.

Watada, 28, faced one count of “missing movement” after he refused to deploy to Iraq with his Stryker Brigade last June on the grounds that the war was illegal and unauthorized. He also faced two counts of conduct unbecoming an officer for publicly explaining his antiwar position. While admitting that he refused to deploy, Watada pled not guilty to the charges.

The Nuremburg Principles formed the basis for his position, which was ruled by military judge Lieutenant Colonel John Head as inadmissible and irrelevant to the case in a January pre-trial decision.

Watada’s attorney, Eric Seitz, had hoped to introduce the fact that under international law, soldiers have the duty to disobey unlawful orders. For Watada to willingly participate in the unauthorized, illegal, preemptive war against Iraq would be a violation of both the Nuremburg Principles and the US Constitution, making him a party to war crimes.

The defense maintains that Watada’s public remarks represent constitutionally protected speech. The Army insists that military personnel do not have the same freedom of political expression when their beliefs include opposition to war or superior officers, including the president.

Following the pre-trial ruling, two charges of unbecoming conduct were dropped by the Army after Watada agreed to sign a statement, or stipulation of fact, admitting that he had given interviews in which he questioned the legal basis for the war and that he had refused to board the plane with his troops. At the time,

the defense had attempted to settle the remaining charges by proposing a six-month prison term, but the prosecution rejected the offer in order to seek a harsher sentence.

The case of Watada, who is the first commissioned officer to be court-martialed for resisting the Iraq war, is clearly seen by Army brass as a threat. Morale is understandably low in the military. Facing widespread popular opposition to the war and growing dissent among the troops, the Army is making an effort to set an example with Watada.

The army lieutenant was scheduled to testify on Wednesday, but a dispute arose between Seitz and Head over what the judge insisted were inconsistencies related to the stipulation of fact Watada signed last month. Head said that Watada did not fully understand the stipulation of fact.

While the jury was out of the courtroom, *Seattle Post-Intelligencer* writer Mike Barber reports that Head asked Watada, “What did you understand that [signed stipulation of fact] to mean? What does that mean to you?”

Watada answered, “To me it means to not participate in a war I believed to be illegal.” By signing the stipulations, he said, “What I was saying was that I intentionally missed the [troop] movement because I felt like participating in that movement would make me a participant in war crimes and an illegal war.... I have always believed that I had a legal and moral defense,” Watada told Head. “I realize that what the government is arguing is contrary, but that does not negate that belief.”

Prosecutors had argued that the stipulation was effectively a signed confession that he was guilty of refusing orders, and that Watada’s reasons for doing so, by Head’s prior decision, were irrelevant. The

defense maintained that while Watada has admitted to deliberately missing his flight, he did so out of principles that could not be avoided at the trial.

Head said that if Watada did not concede that he was admitting guilt, or if the prosecution threw out the stipulation, then the court martial could not proceed. The prosecution then moved for a mistrial.

According to *Post-Intelligencer* reports, Seitz insisted that the stipulation should have included Watada's reasons for refusing deployment. "It has always been his position that not only would he miss movement but he would not participate in a war he considered illegal," he said. "There is no way around talking about why he didn't get on that plane, and that is the government's continuing dilemma in this case."

In rejecting the stipulation of fact and declaring a mistrial, the court has also voided the pre-trial agreement to drop the number of unbecoming conduct charges from four to two. Watada once again faces six years in prison.

A new trial date was set for mid-March, although defense attorney Eric Seitz has questioned the constitutionality of a second trial as a form of double jeopardy. Seitz told the press outside the courtroom Wednesday that if the Army presses ahead with a second trial, he would take the case to an appeals court.

Throughout the military prosecution, the defense has been subjected to numerous limitations. On February 5, the first day of Watada's court martial, Head restricted the scope of the trial by ruling that most of the proposed defense witnesses were irrelevant. Aside from Watada, the defense was left with only one witness, a fellow Fort Lewis officer in the same brigade.

Attempting to keep antiwar sentiment from bleeding into the courtroom, Head also imposed a dress code that included a prohibition against antiwar buttons or other apparel that might be construed as a support for Watada. Head told Seitz, who is a civilian attorney with a long record of defending war resisters, to "leave the dramatics at the door." Outside the Fort Lewis base, activists staged antiwar rallies during the court martial.

The right to refuse military orders for reasons of conscience, thought or religious convictions is an international standard of human rights protected by the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, both of which have been ratified by the US. If Watada is

convicted, Amnesty International has already announced that he will be named a prisoner of conscience held by the US in violation of international law.



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