

US Army to retry war resister officer

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The US Army re-filed charges against Lieutenant Ehren Watada on February 23, setting the stage for another court martial in March. The first court martial ended February 7 after the presiding military judge declared a mistrial over the implications of a pre-trial plea bargain agreement.

Watada, who is stationed at the Seattle, Washington-area Fort Lewis base, again faces one count of “missing movement” stemming from his refusal to deploy with his Stryker Brigade to Iraq last summer. If convicted, Watada faces up to six years in prison.

His refusal was based on evidence that the war was illegal and unauthorized, and that therefore his participation in it would make him a party to war crimes under the Nuremberg Principles and the US Constitution.

In addition, Watada faces four counts of conduct unbecoming an officer, which were levied against him after making public statements explaining his reasons for resisting the war. Two of these charges had been dropped during the January pre-trial hearing, after Watada agreed to sign a statement admitting that he had refused to board the plane to Iraq, and that he had given interviews in which he questioned the legality of the war.

Military judge Lieutenant Colonel John Head moved for a mistrial over these documents on the day Watada was scheduled to testify before the court martial panel. Head insisted that in signing the statements, Watada had unwittingly signed admissions of guilt.

The defense has maintained that the signed statements represent only that Watada recognized the illegality of the war and the necessity of his actions, not that he committed offenses deserving punishment. Watada has consistently asserted that his duty under military oath was to disobey illegal orders. The Army has rejected any motions by the defense to introduce the question of the war’s legality.

The defense also asserts that Watada’s public statements were not technically unbecoming conduct because they did not fit the description in the Uniform Code of Military Justice: “dishonesty, unfair dealing, indecency, indecorum, lawlessness, injustice, or cruelty.” Rather, the defense argues, Watada’s criticisms of the war and the Bush administration were protected speech under the First Amendment.

Watada is the first commissioned officer to be court-martialed for resisting the war in Iraq, and the case against him is of extreme importance to the military. The Army brass recognizes that Watada’s resistance represents the growth of opposition to the war within both the civilian population and the troops, and his case must serve as an example.

In fact, Watada attempted to resign from his post in January 2006 but was denied. The Army then presented Watada the ultimatum of deployment or court martial. In response, Watada submitted a letter explaining his reasons for choosing to resist deployment, irrespective of the punitive consequences. “I believe so strongly in this cause that I would sit in prison or die for that belief,” he wrote. “I would accept any punishment and take solace in a clean and clear conscience when the easier path, the safer path would have been to serve my year in Iraq.”

Watada’s public statements in the year since have evoked a powerful response in the public and from veterans groups. The Fort Lewis Public Affairs Office released a redacted charge sheet enumerating the statements pertinent to his case available here in PDF.

Among the statements for which he faces prison time is the following public comment from last June, characterized as dishonorable and “disgraceful” by Watada’s superiors: “It is my conclusion as an officer of the Armed Forces that the war in Iraq is not only morally wrong but a horrible breach of American law.... As the order to take part in an illegal act is ultimately

unlawful as well, I must as an officer of honor and integrity refuse that order.... The wholesale slaughter and mistreatment of Iraqis is not only a terrible and moral injustice, but it's a contradiction to the Army's own law of land warfare. My participation would make me party to war crimes."

Since the mistrial, the defense has questioned the constitutionality of the new court martial proceedings. Watada's attorney, Eric Seitz, has told the press that the re-trial was a violation of the double jeopardy clause, a protection against being tried for the same charge twice.

Fort Lewis spokesperson Leslie Kaye, quoted in the *Olympian* newspaper, announced the new trial by way of dismissing concerns over double jeopardy. The clause didn't apply because the first court martial didn't reach a "point of finality," she said. "We're back to square one.... The Army, or the government, has the authority to bring the case anew, which it did today."

Military officials are pressing to hold the new court martial within a month's time, although neither the defense nor the prosecution lawyers are available until this summer. Clearly, the Army is making efforts to ram through the stiffest conviction possible, as quickly as possible.

Seitz told the press that he had not been informed of the Army's decision until it was publicly announced. "When it's not going well for you, you can't just call a mistrial and start over again," he told the Associated Press. "No matter how much lip service they give to wanting to protect my client's rights, that just doesn't exist in the military courts."

The defense plans to seek a hearing at Fort Lewis to make a case for the double jeopardy clause. If this fails, Seitz told the *Seattle Times* that it would be appealed first in military courts and then in federal courts.

Military personnel have the right to refuse orders for reasons of conscience and convictions under international human rights protections. As a war of aggression, the war in Iraq is a violation of the Nuremberg Principles, which state: "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him."

The Universal Declaration of Human Rights (UDHR)

and the International Covenant on Civil and Political Rights further elaborate on the right of citizens—civilians or soldiers—to refuse to follow illegal and immoral orders or laws.

If Watada is convicted, he will be classified by Amnesty International as a prisoner of conscience held by the US in violation of international law. The *World Socialist Web Site* opposes his prosecution and encourages the American and international public to extend to him their support.



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