

Watada: What's a (thoughtful) lieutenant to do?

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Catch 22 for the 21st Century

OCT 5 2007 -- Let's assume Lt. Col. John Head, the Army judge who presided over the first court-martial of Lt. Ehren Watada last February, used impeccable legal reasoning when he denied Watada the right to insist that the war in Iraq is illegal -- which, the young soldier says, makes it his sworn duty to protect the Constitution by refusing to fight in such a war.



Lt. Watada

The same judge is expected to preside over Watada's second court-martial, which is scheduled to begin Tuesday at Fort Lewis. (Editor's note: Late Friday afternoon, a federal judge in Tacoma postponed the trial until at least Oct. 26.) If he continues to deem this key element of Watada's defense procedurally irrelevant, reducing a significant political case to one-dimensional issues of discipline and obeying orders, it begs a responsible nation to face some larger, more urgent issues:

How, then, can a soldier say no to an illegal war? What would be the correct and legal procedure for an officer in the Army to say, "Sir, the tenets of international law say it's my constitutional duty not to fight in Iraq?" And what does it say about the character of a nation when it refuses to consider the possibility that its men and women in uniform are being ordered to fight an illegal war?

These aren't rhetorical questions designed to prompt more black-and-white argument; they go to the core of our national identity and our ability to discuss, out loud, complex issues of America's integrity and our resistance to talking about controversial issues thoughtfully.

Watada was the first commissioned Army officer to refuse orders for deployment to Iraq. He is charged with one count of missing movement (his failure to deploy) and conduct unbecoming an officer, in part for saying President Bush "deceived" Americans, including Congress, in order to make war against Iraq. Watada's first court-martial ended in mistrial. This time around, if convicted on all counts, the 29-year-old could spend six years in military prison and be dishonorably discharged.

Col. Daniel Baggio, the Army's chief media relations officer, says the answer is clear: "We can't have people saying, 'Well, I'll fight in this campaign but not in that campaign.' That is not your call," he says passionately. "Those are political-type decisions" outside the military's purview.

For Watada, his answer is just as clear: In Korea, he served under a commander who told his junior officers that if they did not learn everything about their mission, they would be mediocre leaders -- and fail those serving under them. Watada took this to heart.

When he returned to Fort Lewis, he began researching Iraq. The exposé at Abu Ghraib prison fueled his doubts about the war. He read the report of the Iraq Survey Group, a team formed after the 2003 invasion to see if weapons of mass destruction existed. It found they didn't. He studied the United Nations Charter, the Nuremberg Principles, and the Uniform Code of Military Justice.

After concluding that Saddam Hussein had no ties to al-Qaida, as the president had claimed, Watada became disillusioned: "And I said, 'Wow -- it's not bad intelligence; it's manipulative intelligence.' When you put it all together, I became convinced that what we're doing is illegal and immoral. I went into a short period of deep depression. I was so shocked. I felt betrayed."

Watada realized that from the moment he swore to "protect and defend the Constitution of the United States against all enemies, foreign or domestic," and to "bear true faith and allegiance to the same," his solemn oath required him to refuse orders to fight an illegal war. For this former Eagle Scout, spending six years behind bars and sleeping well at night was preferable to taking actions he believes would make him a war criminal.

Baggio says Watada is, in effect, thinking too big. This duty of a soldier to refuse illegal orders -- "that refers to the battlefield," he says. "You know, if soldiers were to say, 'Hey, we're too busy (fighting). We can't take these prisoners. Let's shoot 'em.' That's what the law refers to."

In such circumstances, Baggio says, an officer must refuse orders that violate international law. However, "Once your president has made a decision to go to war, has committed you to war and the military is in theater, an officer has no choice but to follow lawful orders." For this former Airborne Ranger, it is impossible to imagine a situation in which an officer could refuse to fight because a war itself might be illegal.

Some would say, of course, that America is a sovereign nation over which international laws should hold no sway. Yet as Richard Falk, likely this nation's leading expert on international laws of warfare, points out, Article 6, Section II of the Constitution says any international law to which the United States becomes a signatory immediately becomes U.S. law as well. Because the U.S. signed the United Nations Charter, which prohibits aggressive war, it is automatically against the laws of the United States to wage such a war.

On that point Watada wanted to base his case. Precisely what Head, the Army judge, refused to let happen.

Falk, now Distinguished Professor of Global Studies at the University of California at Santa Barbara, was modest enough to point out that at least four other scholars in the country should be counted among America's leading thinkers on the international laws of warfare, and he offered their collective opinion of Watada's central assertion:

"All five of us were in agreement that the war in Iraq is illegal," he said. "And so if Lt. Watada is upholding the Constitution, and he reasonably believes that the war is illegal, then it certainly would seem plausible for him to refuse to participate." (Lest anyone think this quintet of experts is a squad of knee-jerk, one-note liberals, Falk said all five also agreed that the war in Afghanistan indeed met the criteria for a "legal war," even if some isolated actions might have later violated the laws of peace and warfare.)

So Baggio and the Pentagon insist there is no legal way for an officer to refuse to fight any war the president declares. Yet when a war is a non-defensive war of aggression -- as the country's leading legal experts say the war in Iraq is -- then it creates a 21st century Catch-22, an infuriating predicament in which thoughtful military leaders such as Watada will lose, whichever course they choose: If they fight, they risk becoming war criminals (either in Nuremberg-style tribunals after hostilities cease, or in their consciences); and if they refuse to fight, they go to prison and are disgraced in the eyes of millions.

It is a moral conundrum much too important for a lieutenant colonel at Fort Lewis to presume authoritative answers. There's no doubt. Watada's refusal to deploy created problems for his 3rd Stryker Brigade. As Baggio says, it harmed the "good order and discipline" so essential to military effectiveness.

Yet when the rest of us let any part of government pretend issues of legality and morality are not relevant, mere "politics" in the words of Head, we endorse a head-in-the-mud approach that prevents us, officially at least, from engaging in healthy debates about our national character, the purpose of our laws and the integrity of our leaders. Watada is willing to spend years in jail over these issues. Once the Army ships him off to prison, will the rest of us take up the debate he inspired? Or will we think this is out of order as well?

Dean Paton is Seattle correspondent for the Christian Science Monitor, where he first wrote about Watada.

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