

REPORT OF THE CITIZENS' HEARING ON THE LEGALITY OF U.S. ACTIONS IN IRAQ: THE CASE OF LT. EHREN WATADA

DARRELL ANDERSON

STACY BANNERMAN

FRANCIS BOYLE

JOHN BURROUGHS

MARJORIE COHN

BENJAMIN G. DAVIS

DANIEL ELLSBERG

RICHARD FALK



DENIS HALLIDAY

ANTONIA JUHASZ

EMAN KHAMMAS

DENNIS KYNE

GEOFFREY MILLARD

CHANAN SUAREZ-DIAZ

HARVEY THARP

ANN WRIGHT

**JANUARY 20-21, 2007
TACOMA, WASHINGTON
www.WarTribunal.org**

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."

**CONSTITUTION OF THE UNITED STATES
(Article Six, Section Two)**

CONTENTS

I. BACKGROUND

Introduction 2

Tribunal Panel 3

Our Responsibility as Citizens 4

David Krieger, Panel Chair 6

Reflections on the Tribunal 8

A CALL TO CONSCIENCE, by the Panel 9

II. EXPERIENCES OF THE IRAQ WAR

GEOFFREY MILLARD 13
8 years in Army National Guard;
13 medals from Ground Zero & Iraq

HARVEY THARP 16
Former U.S. Navy Lieutenant
and JAG stationed in Iraq

DARRELL ANDERSON 18
Army 1st Armored Division in
Baghdad & Najaf; Purple Heart

CHANAN SUAREZ-DIAZ 20
Former Navy hospital corpsman;
Purple Heart, Commendation with Valor

STACY BANNERMAN 22
Military Families Speak Out
advisory board; husband served in Iraq

EMAN KHAMMAS 24
Iraqi human rights advocate (*video*)

III. CONDITIONS IN IRAQ

ANN WRIGHT 26
Retired Army Colonel and
State Department official

DENIS HALLIDAY 30
Former UN Assistant Secretary-General,
coordinated Iraq humanitarian aid

ANTONIA JUHASZ 33
Policy-analyst and author on
U.S. economic policies in Iraq

DENNIS KYNE 36
15 years as Army medic & drill sergeant;
Gulf War veteran; trained in NBC warfare

JOHN BURROUGHS 38
Lawyers' Committee on
Nuclear Policy Executive Director

IV. INTERNATIONAL LAW AND RESPONSIBILITY OF MILITARY PERSONNEL

RICHARD FALK 41
Professor Emeritus of
International Law at Princeton University

BENJAMIN G. DAVIS 44
Associate Professor of Law
University of Toledo; expert on law of war

DANIEL ELLSBERG 47
Military analyst who released the
Pentagon Papers in the Vietnam War

FRANCIS BOYLE 50
Professor of International Law
at University of Illinois (*video*)

MARJORIE COHN 52
National Lawyers' Guild President;
Thomas Jefferson School of Law (*video*)

V. DOCUMENTS

Nuremberg Principles & Army Oaths 56

U.S. Army Field Manual 57

Bremer Orders 59

Lt. Ehren Watada case 62

Relevant Links 63

Acknowledgments 64

INTRODUCTION TO THE TRIBUNAL

The Citizens' Hearing on the Legality of U.S. Actions in Iraq: The Case of Lt. Ehren Watada was held on January 20-21, 2007, at The Evergreen State College Tacoma campus, two weeks before the February 5 court martial of Lt. Ehren Watada at Fort Lewis. Organizing Committee member Rob Crawford, Associate Professor at the University of Washington-Tacoma says that the event "will put the Iraq War on trial, in response to the Army's trial of Lt. Watada, the first U.S. military officer to refuse deployment to Iraq."

Organizers announced the tribunal on December 11, 2006, the 60th anniversary of the U.N. General Assembly's affirmation of the Nuremberg Principles, which—in the aftermath of World War II—disallowed soldiers from following unlawful orders that could lead to war crimes. Nuremberg prosecutor Benjamin Ferencz, 86, said "The enduring lessons and principles of the Nuremberg trials were that aggressive war is 'the supreme international crime' since it incorporates all of the other crimes. In addition, Nuremberg held that those responsible for crimes against humanity and major war crimes will have to answer before the bar of justice."

Iraq War veterans, experts in international law and war crimes, and human rights advocates offered testimony to the tribunal. According to Dr. Lawrence Mosqueda, member of the Organizing Committee and Professor at The Evergreen State College: "We invited testimony by Iraq War veterans and experts to inform military personnel and other citizens to reflect deeply on their roles and responsibilities in this war."

The hearing presented the case that Lt. Watada would, if allowed, would make at his court martial. He maintains that the war on Iraq is illegal under international treaties and under Article Six of the U.S. Constitution. Further, he argues that the Nuremberg Principles and U.S. military regulations require soldiers to follow only "lawful orders." Lt. Watada's attorney requested that evidence on the war's legality be admitted into the court martial (as it was in the Navy trial of war refuser Pablo Paredes two years ago). But on January 16, Judge Lt. Col. John Head issued a ruling "to prevent the defense from presenting evidence on the legality of the war," or from using the Nuremberg defense at the trial.

Citizens' Hearing Panel Chair David Krieger responded, "Since Lt. Watada cannot get a full hearing about the

war's legality in a military trial, then his case should at least be aired in the court of public opinion."

The format of the Citizens' Hearing resembled that of a congressional hearing. A Panel heard the testimony, examine witnesses, and issued this fact-finding report. Panelists focused on the legality of the war, whether the invasion constituted a "crime against peace," whether the occupation and economic restructuring of Iraq constitutes a "crime against humanity," and whether individual soldiers have an obligation or duty to refuse unlawful orders that may result in "war crimes."

Half of the 12-member Citizens' Hearing Panel are veterans of World War II, Korea, or Vietnam, as well as more recent veterans. It includes a military family member, Gold Star family member, and high school student (representing youth of military age). The Panel also includes a government leader, religious leader, labor union member, and health care worker.

Panel Chair David Krieger was a U.S. Army 2nd Lieutenant stationed in Hawaii during the Vietnam War, and is currently the President of the Nuclear Age Peace Foundation. Krieger, who was also a member of the Jury of Conscience at the 2005 World Tribunal on Iraq (in Istanbul), observes, "The Citizens' Hearing will place the legality of the Iraq War on trial. U.S. soldiers have always had the duty to disobey unlawful orders. That obligation was strengthened at the Nuremberg Tribunals following World War II. Following superior orders to commit unlawful acts is not a defense."

Lietta Ruger of Military Families Speak Out (MFSO), Washington state chapter, says: "this hearing focuses attention on the role of the U.S. government—rather than that of individual soldiers—in perpetrating crimes of the Iraq War." She added: "I do hope my brothers and sisters in military families will take an interest in this hearing as relevant to their immediate lives and concerns."

Nuremberg Trials prosecutor Benjamin Ferencz concludes, "The best way to protect the lives of courageous young people who serve in the military is to avoid war-making itself. One cannot kill an idea with a gun, but only with a better idea. If people believe that law is better than war, they must do all they can to enhance the power of law and stop glorifying war."

CITIZENS' HEARING PANEL

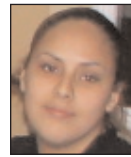
PANEL CHAIR



DAVID KRIEGER

President of Nuclear Age Peace Foundation, Former Army 2nd Lieutenant; in Hawaii during Vietnam War; Juror of Conscience in the World Tribunal on Iraq (in Istanbul).

HIGH SCHOOL STUDENTS



ESTELLA VILLARREAL

Ida B. Wells School at University of Washington in Seattle

GOLD STAR FAMILIES



ELIZABETH FALZONE

From Seattle; cousin David was killed in action in Tikrit, Iraq

GOVERNMENT LEADERS



LYLE QUASIM

Former Secretary of Washington Department of Social and Health Services; Vietnam veteran from Tacoma

MILITARY FAMILIES



RICH MONIAK

From Juneau, Alaska; son served in Iraq and Afghanistan

RELIGIOUS ORGANIZATIONS



REV. ELAINE STANOVSKY

United Methodist Church; Superintendent of the Seattle-Tacoma District; Former President-Director, Church Council of Greater Seattle.

VETERANS OF FORMER WARS



RUSSELL W. MCNUTT

From Centralia WA; Marine Corps veteran of WWII; enlisted 1945, commissioned 1950 served in Korea; served 3 years in Allied Air Forces Naples; 2nd Marine Aircraft Wing Vietnam, HQ MACV, 1968-69

ACADEMIA



STAUGHTON LYND

Historian, attorney and activist from Youngstown OH; Ph.D from Columbia; taught at Yale; outspoken objector to Vietnam War.

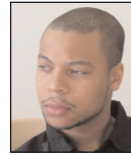
VETERANS OF FORMER WARS



BURK KETCHAM

World War II veteran; former Naval Reserve officer, Tacoma

LABOR UNION MEMBERS



ZEEK GREEN

International Longshore Workers Union (ILWU) member, Tacoma

NEW VETERANS



MARICELA GUZMAN

From Los Angeles; Navy veteran in Diego Garcia and Italy



EMILY LUTZ

Army Reserve medic, Los Angeles; in Individual Ready Reserves

Thanks to Jim Robbins for photos; groups for identification purposes only.

OUR RESPONSIBILITY AS CITIZENS

Dr. Zoltán Grossman is a member of the Organizing Committee. He is a member of the faculty at The Evergreen State College Olympia campus, and has a Ph.D. in Geography from the University of Wisconsin.

I'm speaking to represent the committee that has organized the Citizens' Hearing on the Legality of U.S. Actions in Iraq, to present the case of Lt. Ehren Watada. On February 5, 2007, Lt. Watada faces a court martial at Fort Lewis as the first commissioned officer to refuse to deploy to the Iraq War. In response, we, citizens of the United States of America, are putting the Iraq War itself on trial.

TRIBUNAL ORGANIZING COMMITTEE

BRIANNA COPLEY	JUDY LINEHAN
ROB CRAWFORD	LARRY MOSQUEDA
SASHA CROW	STEVE NEBEL
CINDY DOMINGO	LIZ RIVERA-GOLDSTEIN
MACGREGOR EDDY	LIETTA RUGER
ELLEN FINKELSTEIN	BERT SACKS
LINDA FRANK	SALLIE SHAWL
MOLLY GIBBS	RON SMITH
ZOLTÁN GROSSMAN	CINDY SOUSA
GERRI HAYNES	COLLEEN WATERHOUSE
MICHAEL HONEY	ALICE WOLDT

Since shortly after Lt. Watada announced his refusal to deploy last June, we have been organizing this tribunal to air his case to the country and the world. Much of the testimony you will hear is what Lt. Watada would have preferred to present at his court martial, about the central facts underpinning his case—that the war in Iraq is illegal. This Citizens' Hearing will be the only organized venue where the public will get a chance to listen to and ponder Lt. Watada's rationale.

Profound thanks to Dr. Joye Hardiman and the staff at Evergreen Tacoma for hosting this event. We should all thank the individuals and groups that donated their time or money to help make this event possible. A big thank you to all the panelists, and to all the testifiers, who came from around the country to present their knowledge, without any personal compensation. We should also thank the Organizing Committee for their hard work, their perseverance, and the respect they have shown toward each other. No one was paid for this work. Committee members overcame power outages,

back injuries, and job demands to simply fulfill their responsibility as citizens, in a difficult period of our nation's history.

Why a *Citizens'* Hearing? It should be the role of the *government* to investigate violations of the Constitution, to grapple with basic questions of war and peace, and to look beyond immediate political considerations to the interest of the country as a whole. Yet it seems that in Washington DC, the discussion around Iraq has focused on *how* to fight the war, not *why* it is being fought. Even under the new Congress, we do not see any hearings addressing the underpinnings of the Iraq War, just different methods of waging the war. We see little discussion in the media, and hear very little from presidential candidates about the basic legality of the occupation. The election in November raised some hopes that a withdrawal would soon begin from Iraq, but those hopes have been dashed by the surge of 20,000 more troops headed toward the battlefield in Baghdad, and ultimately the Sunni towns of Anbar and Diyala, and the Shi'ite slums of Sadr City and Najaf—where we are now fighting Saddam's worst enemies.

Under these circumstances, citizens have the responsibility to start asking tough questions about the underlying premises of the war, to start asking *why* instead of *how*. This "surge" in questioning the war has already begun—among ordinary citizens, veterans, military families, and the soldiers themselves. The people lead, and the leaders follow. It is part of our responsibility as citizens to not simply let our government set the agenda, but to take the affairs of state into our own hands. Just as military personnel follow their duty, we follow ours, as members of civil society. The rest of the world is watching the American people, and seeing what we do to extend democratic institutions in our own country.

The Citizens' Hearing will focus critical attention on the underlying premises of the Iraq War at a critical time in our history. A key aim of the tribunal is to heighten discussion of the Iraq invasion and occupation in the public—and within the military itself—as similar tribunals did during the Vietnam War. We should remember that military personnel and veterans played a crucial role in bringing that war to an end, partly by staging tribunals (such as the Winter Soldier Investigation) that finally brought the abuses of that war into public view. We should also remember that President Nixon's so-called

“withdrawal” from Vietnam took years, and was marked by a dramatic escalation in the violence and bombing. President Bush (who was sworn in exactly six years ago to the hour), likewise claims that more war is a precondition to bringing our troops home. In 2007, like in 1970, we are being told that the path to peace lies through the graveyards of more intensified war.

It is right now that the future of this war is being decided. U.S. military actions in Iraq have now stretched through three administrations, in the form of bombings, sanctions, invasion and now occupation. Will our involvement last 16 more months, or another 16 years? Are we engaged in an endless cycle of violence that will metastasize to neighboring countries, and swallow our grandchildren and theirs? These are the implications of the questions that our Citizens’ Hearing Panel will be grappling with this weekend.

This Citizens’ Hearing will have the format of a congressional or legislative committee hearing, but instead of only elected officials being on the committee, we have citizens from different walks of life. If politicians cannot figure out these complex issues, it is the role of ordinary citizens to take on the task. As the West Indian scholar C.L.R. James once said, “every cook can govern.” This process is not based on audience participation, since we have so many speakers and limited time. It is an effort to (for one weekend) set up a parallel citizens’ government, with individuals from different constituencies of society taking on a semi-formal role as our people’s representatives.

The fact that half of the panel members have direct military experience makes this Citizens’ Hearing unique, and somewhat different from previous international tribunals on war and human rights. At this juncture in our history, it is crucially important to listen to the voices of Americans in the military community, who have experienced war, or have seen it directly impact their lives. We welcome any past or present military personnel in the audience (whether active-duty, Reserves, Individual Ready Reserve or veteran), as well as their families.

While the Iraq War affects everyone in our society—through budget cuts, an increased atmosphere of militarization, and restrictions on immigrants—there is still a disproportionate burden on the military community. At a June 2 ceremony marking the Stryker deployment, Fort Lewis Commander Lt. Gen. James Dubik observed that “Less than 1 percent of the nation is carrying 100 percent of the burden of this war.” As Lt. Watada agreed five days later, “Soldiers who come back from Iraq say

they get the impression many people don’t know a war is going on; they say even friends and family seem more involved in popular culture and American Idol. People are not interested in the hundreds of Iraqis and the dozens of Americans dying each week.”

For the military community, war and peace are not merely academic questions. The rest of us can watch the war on TV, and turn it off. But for soldiers, their families and friends, the TV is always on, the reality is always present. We owe it to them, and to the millions of Iraqi civilians suffering because of the war, to examine the role of our country in Iraq.

Precisely because they bear much of the burden of war, military personnel also have had a unique historic role in bringing wars to an end. As the German playwright Bertolt Brecht once wrote:

*General, your tank is a powerful vehicle.
It smashes down forests and crushes men.
But it has one defect:
It needs a driver*

*General, your bomber is powerful.
It flies faster than a storm
and carries more than an elephant.
But it has one defect:
It needs a mechanic.*

*General, man is very useful.
He can fly and he can kill.
But he has one defect:
He can think.*

As Brecht’s poem says, the most important decision that anyone inside or outside the military can make is whether to *think*.

Lt. Watada is thinking, but he is not the only one. Other military personnel are beginning to think deeply about their role and responsibilities in the Iraq War. The 1,200 troops who signed the Appeals for Redress are thinking. The 72% of troops based in Iraq who favored a withdrawal in the Zogby poll are *thinking*. Military families and veterans are thinking, and speaking their minds. The thousands of high school youth deciding whether to sign up for the military during this war—they’re thinking.

Whether we agree with Lt. Watada, or disagree with him, his stand has forced us all to think about this war. As American military personnel, or as civilians, we all have a responsibility and a duty to think, and to *act*.

DAVID KRIEGER, PANEL CHAIR



Photo by Jim Robbins

Dr. David Krieger is Citizens' Hearing Panel Chair. He was an Army 2nd Lieutenant in Hawaii during the Vietnam War, and is currently the President of the Nuclear Age Peace Foundation. He was also a member of the Jury of Conscience at the 2005 World Tribunal on Iraq in Istanbul, Turkey.

This Citizens' Hearing was convened to examine the legality of U.S. actions in Iraq. We were prompted and inspired in this effort by the actions of Lt. Ehren Watada, who refused orders to deploy to Iraq on the grounds that the war is illegal, a "crime against peace" as defined in the Nuremberg Principles. Lt. Watada has stated, "The war in Iraq is in fact illegal. It is my obligation and my duty to refuse any orders to participate in this war. An order to take part in an illegal war is unlawful in itself. So my obligation is not to follow the order to go to Iraq."

We believe that Lt. Watada's contentions about the illegality of the war deserve a full and fair hearing. Unfortunately, this has been made impossible at his court martial, since the military judge has already ruled that the issue of the legality of the war may not be raised in the defense of Lt. Watada. This ruling cuts out the heart of Lt. Watada's defense, and denies him the opportunity to make his case before the military court.

In addition to challenging the legality of the war, Lt. Watada has challenged the manner in which the war and occupation have been conducted. He has stated, "This administration used us for rampant violations of time-tested laws banning torture and degradation of prisoners of war. Though the American soldier wants to do right, the illegitimacy of the occupation itself, the policies of this administration and the rules of engagement of desperate field commanders will ultimately force them to be party to war crimes."

It is Lt. Watada's deeply held conviction that as an officer in the United States Army, who has sworn to uphold the Constitution of the United States, he cannot follow orders to participate in the Iraq War, nor lead the men

and women assigned to his command to do what he believes is illegal. "How," he has asked, "could I order other men to die for something I believe is wrong?"

The implications of Lt. Watada being correct in his assessment of the war are extremely significant. Such a finding would mean that all officers and soldiers have an obligation under the Nuremberg Charter and Principles, the United States Constitution and U.S. military regulations to refuse orders to participate in this war. Further, this finding would have repercussions that could implicate individuals at the highest levels of the U.S. government in the same crimes tried at Nuremberg after World War II: crimes against the peace; war crimes and crimes against humanity.

The fourth of the Nuremberg Principles says that superior orders are not a defense to the commission of an illegal act. This is echoed in U.S. Army Field Manual 27-10. The military court, however, intends to focus only on whether or not the order was obeyed, rather than upon the legality of the order. By narrowing the scope of the inquiry, the military tramples upon international law and the Nuremberg Principle of individual accountability.

In a second ruling, on issues of permissible speech, the military judge found that Lt. Watada's criticism of the war was not shielded by his First Amendment right to free speech. This means, in essence, that though officers in the Armed Forces may be asked to give their lives for their country, the truth of their assertions regarding the illegality of U.S. actions is not even a matter to be considered in charges of "conduct unbecoming of an officer."

The combination of the military judge's rulings in the Watada case makes it virtually impossible for Lt. Watada to obtain legal relief in a military court. These rulings also make a mockery of the Nuremberg Charter and the Nuremberg Principles established by the United Nations International Law Commission following the Nuremberg Tribunals. The military judge's ruling would certainly be repugnant to U.S. Supreme Court Justice Robert Jackson, who was the chief prosecutor for the United States at the Nuremberg Tribunal. Jackson believed strongly that history would judge the United States by how it applied the Nuremberg standards to its own leaders in the future. "We must never forget,"

Jackson said, “that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well.”

What makes this Citizens’ Hearing critically important is that it provides a forum for testimony relevant to Lt. Watada’s refusal to deploy and his statements on the illegality of the Iraq War. It is our intention, as citizens of a democracy, to give a full and fair hearing to Lt. Watada’s claims about the illegality of the war. We cannot rectify the denial of Lt. Watada’s rights in the military courts, but we can examine the truth of his claims in a public hearing.

I would like to explain what this Hearing is and is not. I will start with what it is not. First, and most obviously, this is not a court of law, and no one is on trial here. Second, we are not engaged in a mock trial of any person. Third, we make no claim to impartiality, only to truth. Fourth, this is not an official hearing or commission of the United States government. No government agency has convened or authorized this Hearing.

The authority for this Hearing stems from the power vested in citizens in a democracy to become informed, speak out and play a role in the process of determining national policy. This is a Citizens’ Hearing; one organized and composed of citizens – those in whom the foundational power of the state vests in a democracy. The impetus for the Citizens’ Hearing evolved from three principal concerns.

First, that Lt. Watada will not receive a full and fair trial at his court martial, inasmuch as Lt. Watada will not be able to raise a Nuremberg-based defense to his contention regarding the illegality of the war and his speech will not be protected by First Amendment rights.

Second, that the war in Iraq may be illegal, and this issue deserves close scrutiny, expert testimony and the full engagement of the public.

Third, that it is both a right and responsibility of citizens in a democracy to oversee the actions of their government, and this holds particularly true with regard to government conduct on issues of war and peace.

This Citizens’ Hearing will be conducted in the manner of a hearing held before a committee of the Congress. It will be a hearing that seeks to elicit evidence, reach conclusions, and make these conclusions known to a broader public. Over the next two days the Panel of this

Citizens’ Hearing will receive testimony related to the legality of U.S. actions in Iraq. Specifically, this Hearing will focus on the following questions:

1. Is the war in Iraq an illegal war of aggression, causing the invasion of Iraq by the United States and the “coalition of the willing” to constitute a crime against peace?
2. Have U.S. actions in the hostilities in Iraq been such as to constitute a pattern of war crimes?
3. Does the ongoing occupation of Iraq constitute a crime against humanity?
4. Does a member of the United States Armed Forces have a duty under the Nuremberg Principles, the U.S. Constitution and U.S. military regulations to refuse to follow an order to participate in an illegal war?

This Hearing will seek to answer these questions based upon the testimony provided by eyewitness and expert witnesses. At the end of the Hearing, the Panel will prepare and release a Final Statement containing its findings. The Final Statement will be sent to every member of the United States Congress. We hope that the findings will also be widely distributed by the media throughout the country, and will cause our fellow citizens to give greater consideration to the challenge that Lt. Watada’s refusal to deploy to Iraq on grounds of illegality presents to each of us as Americans.

We act here at this Citizens’ Hearing in the belief that the testimony and Final Statement that will be produced will provide important information and conclusions relevant not only to the court martial of Lt. Watada, but additionally to all members of the Armed Forces and to every American citizen. If the war and occupation are found to be illegal and in violation of the United States Constitution, then each of us as a citizen bears some portion of responsibility. If this is, in fact, the finding and citizens choose to accept this responsibility, then the leaders who initiated and directed this war, far more than a lone Lieutenant, should be held to account for their actions under international law and the United States Constitution.

I declare this Citizens’ Hearing open. We on the Panel pledge to seek the truth and to act with justice.

REFLECTIONS ON THE TRIBUNAL

In an unprecedented two-day Citizens' Hearing held on January 20-21, more than 600 citizens joined a distinguished tribunal panel in listening to testimony about the legality of the U.S. invasion of Iraq. Many of those who testified, most of whom would have been called to testify at the court martial if the judge had allowed that evidence, agreed that Lt. Ehren Watada had not only the right to refuse to deploy to Iraq in an illegal war, but had a duty to do so. This report reads much as the court martial transcript would have read had Lt. Watada's evidence been admitted. Whether violations of the Nuremberg Principles or the U.S. Constitution, some testifiers asserted that Lt. Watada should be recognized for his courage rather than undergoing a Court Martial. Panelist Rich Moniak from Juneau, Alaska, whose son served in Iraq and Afghanistan, said during the deliberation: "The testimony presented to me highlighted how this war has failed the Iraqi people and placed our soldiers at risk of being accessories to war crimes."

Law professors Benjamin G. Davis and Richard Falk agreed that there are clear legal grounds on which the war is illegal. Falk, citing the sections of the U.S. Army Field Manual, emphasized that international law is applicable to the behavior of U.S. soldiers in a times of war and that soldiers have the duty to refuse unlawful commands. Davis sharply criticized the decision of the military judge to not hear Watada's full defense, stating that Americans have a right to have their defense heard.

The most compelling testimony came from former members of the U.S. military, including five veterans of Iraq. According to Ann Wright, a former Army Colonel and U.S. diplomat who served three and a half decades for the U.S. government Bush, Cheney, Rumsfeld and Powell created the preconditions that led to torture. She added: "We must ensure that members of the U.S. military are not put in the position of being ordered to carry out crimes against humanity."

Darrell Anderson, who received a Purple Heart for his service in Iraq, talked about a situation he was involved in where orders were issued to "shoot everyone" regardless of whether they were civilians, including children. He stated that they used, what he called, "excessive force." He said: "I realize it was my duty as a soldier to refuse this illegal war." According to Chanan Suarez-Diaz, who also received a Purple Heart for his service in Iraq, the psyched-up emotions among some troops

resulted in U.S. soldiers taking "trophies" of brain matter from Iraqis they killed and putting such in their refrigerators on base.

Immediately following the closing statements, the panel retired to discuss the testimony, consulting the U.S. Army Field Manual and the Nuremberg Principles. They discussed the testimony until well into the night. Panelist Staughton Lynd, an attorney who holds a Ph.D. in history from Columbia University, said: "The overpowering testimony from Iraq veterans highlighted the conditions that soldiers on the ground are facing."

Russell McNutt, a veteran of three wars: World War II, Korea, and Vietnam, stated: "I was exposed to a lot of knowledge. The soldiers who served in Iraq that we heard from were facing the dirty end of war. In urban warfare there are no definite boundaries, in different instances the enemy can be in front of you or behind your back. There is a lot of tension about who is a civilian and who is an insurgent. Under those circumstances, instantaneous decisions must be made in responding to threats. Time to exercise discretion is limited, but every effort should be made to ensure innocent bystanders are not injured through the use of deadly force."

Tribunal organizer Zoltan Grossman commented: "It is the command structure, rather than individual soldiers, that puts enlisted personnel in the position where they feel they have to violate civilians' rights. The command structure is ultimately responsible for war crimes or crimes against humanity. For example, testimony indicated that the dehumanization of Arabs through the use of racial slurs comes from a systematic training process, not only from individual soldiers' prejudices or fears."

Elizabeth Falzone, whose cousin was killed while serving in Iraq, reflected: "The Citizens' Hearing provided a real venue for citizens to hear from soldiers who are returning from Iraq. Hearing from them and more from family members is especially important with the "surge," and the repeat deployments that we're seeing."

**Video, audio and more complete written testimony (and this report) are available at www.wartribunal.org. Information about Lt. Watada's case is at www.thankyoult.org.
Part 1: youtube.com/watch?v=6lW0tqddxKg
Part 2: youtube.com/watch?v=YSkunDAWQZ0**

A CALL TO CONSCIENCE

REPORT FROM THE CITIZENS' HEARING ON THE LEGALITY OF U.S. ACTIONS IN IRAQ

A Citizens' Hearing on the Legality of U.S. Actions in Iraq was held in Tacoma, Washington, on January 20-21, 2007. The Citizens' Hearing was prompted by the refusal of U.S. Army Lt. Ehren Watada to obey what he believes to be an unlawful order to deploy to Iraq. Lt. Watada based his refusal on the grounds that he is fulfilling his oath as a military officer to support and defend the Constitution of the United States by refusing orders to participate in an illegal war of aggression. Testimony on Lt. Watada's assertions about the illegality of the war is not being allowed into evidence by the military judge in Lt. Watada's court martial.

The Citizens' Hearing was convened because of the failure of all branches of the United States government to investigate and assess the serious issues raised by the assertions of illegality of the Iraq War by Lt. Watada and many other U.S. citizens. We believe that in a democracy the ultimate responsibility to make such a determination falls to citizens. This is particularly true when their government fails to act in accord with its Constitution and the supreme Laws of the Land.

We are the 12 members of the Panel of the Citizens' Hearing. We are a diverse group of U.S. citizens with grave concerns about the legality of the U.S. role in Iraq. Half our group are military veterans of World War II, the Korean War, the Vietnam War, and more recent conflicts. Several of us belong to military families,

including a woman whose cousin was killed in Iraq, the father of a soldier who served in Iraq, and a high school student with two brothers who served in Iraq. Panel members come from all regions of the United States.

We heard two types of testimony: eyewitness accounts of veterans of the Iraq War and military families, and expert testimony on issues of international law, military law, constitutional law, and foreign policy. We heard from several Iraq War veterans, a family member of a National Guard soldier who served in Iraq, experts on international law, former diplomats, a former Assistant Secretary General of the United Nations, an Iraqi human rights worker, and others.

The focus of the testimony was on the legality of the Iraq War. The Panel heard testimony regarding crimes against peace, war crimes, crimes against humanity, and the duty of military personnel to refuse orders that they believe to be unlawful. Witnesses at the Citizens' Hearing included individuals who will not be allowed to testify at Lt. Watada's court martial.

PREAMBLE

We, the Citizens' Hearing Panel, place primary responsibility for initiating crimes against peace, war crimes and crimes against humanity on the civilian leadership of our nation. We cannot stand idly by when civilian leadership of our military neglects its oversight responsibility to soldiers during wartime. We, the citizens, must hold these officials accountable, rather than let individ-



Photo by Zoltan Grossman

ual military members take the fall for the illegal actions of their leaders. Military personnel are defending their lives – this is the situation in which the government has put our men and women in uniform. It is our responsibility as citizens to support them by speaking out and by holding the responsible civilian leaders accountable.

TESTIMONY AND FINDINGS

The Panel heard testimony related to the following:

Crimes Against Peace

1. According to the Nuremberg Principles “planning, preparation, initiation or waging a war of aggression or a war in violation of international treaties” is a crime against peace. Under international law, codified in the United Nations Charter, the use of force is only legal if authorized by the United Nations Security Council or used in self-defense and then only for a limited time until the United Nations can act to restore peace and security. Under Article 6, Section 2 of the U.S. Constitution, all duly ratified international treaties (including the United Nations Charter) are “the supreme Law of the Land.”

2. Though misrepresented to the American people as a defensive response to the September 11th attacks, there is no evidence linking Iraq to the terrorist attacks. The U.S. attack and invasion of Iraq was neither authorized by the United Nations nor undertaken in self-defense. And to date the U.S. government has failed to present evidence to validate the invasion and occupation of Iraq.

3. The war in Iraq is a war of aggression, in violation of the United Nations Charter. The initiation of this war constitutes a “crime against peace,” under the terms of the Nuremberg Principles.

4. The enduring lesson of the Nuremberg trials is that aggressive war is the supreme international crime since it incorporates all of the other crimes listed below.

War Crimes

1. War Crimes are defined by the Nuremberg Charter, the Nuremberg Tribunal, the Nuremberg Principles, and U.S. Army Field Manual 27-10 to include:

- a) Murder or ill-treatment or deportation...of civilian population;
- b) Murder or ill-treatment of prisoners of war;
- c) Killing of hostages;

- d) Plunder of public or private property;
- e) Wanton destruction of cities, towns, or villages;
- f) Devastation not justified by military necessity.

2. The Panel heard evidence that a pattern of war crimes has emerged from the U.S. conduct of the invasion and occupation of Iraq. An atmosphere conducive to war crimes has been fostered through callous disregard for the lives of Iraqi civilians that originates at the top of the civilian leadership of our military. We heard the following testimony regarding the aggressive rules of engagement that have been passed down through the chain of command from the highest levels:

- a) orders include “free fire zones” in which soldiers are ordered to shoot at all living targets;
- b) soldiers have been ordered to run over anyone on the road, including children, if necessary rather than impede progress of a convoy;
- c) soldiers were ordered to conduct “sweeps” of civilian homes to round up men of military age for detention, and nighttime transport to unknown destinations;
- d) detainees in U.S.-run prisons such as Abu Ghraib are subject to systematic degradation and torture.

3. Soldiers reported that during deployment the rules of engagement changed without adequate training in how to implement new rules of engagement in a legal and humane way. For example, when ordered to shoot a warning shot if a car failed to stop while approaching a checkpoint, no instruction was given whether the warning shot should be into the air, into the grill of the car, or into the windshield of the car.

4. Soldiers reported receiving minimal or no training to aid them in recognizing orders that might be illegal, or conduct of war that might be illegal. They also reported that the military conditioning supported only unquestioning obedience to orders.

5. The Panel heard testimony that institutional racism is pervasive in military training and conditioning. Soldiers reported systematic dehumanization of civilians in military training and conditioning that creates a climate in which the commission of war crimes occurs. Derogatory terms for Iraqis (and Arabs in general), such as “Hajis,” were used routinely by persons of all rank. The enemy was talked about as if they were sub-human, and deserving of ill treatment and death.

6. Soldiers reported that soldiers on the ground are often placed in situations that call upon them to engage in acts that could result in war crimes. Current rules of engage-

ment fail to adequately distinguish between civilians and combatants – a hallmark of counterinsurgency wars such as Iraq.

Crimes Against Humanity

1. Crimes against Humanity are defined by the Nuremberg Principles as “murder, extermination, enslavement, deportation, and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or persecutions are carried on in execution of or in connection with any crime against peace or any war crime.”

2. The U.S. has not fulfilled its responsibilities as an occupying power under the 1907 Hague Convention and 1950 Geneva Conventions.

3. In the invasion, the civilian leadership of the U.S. military ordered the intentional bombing of Iraqi civilian infrastructure such as water systems, roads, bridges, sewage systems, and electrical systems and was negligent in planning for security and reconstruction following such bombing.

4. The U.S. has not met its responsibility as an occupying force to secure and rebuild the civilian infrastructure that was destroyed in the war.

5. The U.S. has violated the terms of the Geneva Conventions, which do not allow an occupying force to fundamentally change the laws or economy of the occupied nation. Beginning with the Coalition Provisional Authority in 2003, the U.S. gutted the existing government by throwing out civil servants and military personnel, and by issuing orders for the structural adjustment and privatization of the Iraqi economy and the non-competitive award of contracts to U.S. firms.

6. The use of indiscriminate weapons (such as cluster bombs and white phosphorus) is common, and the use of uranium-hardened munitions raises health concerns for U.S. veterans and Iraqi civilians alike.

7. The failure of the U.S. military to properly treat its own personnel for Post-Traumatic Stress Disorder (PTSD), and the return of mentally ill personnel to combat, has led to psychological trauma and suicide. Soldiers testified that untreated PTSD may be a contributing factor to abuses against civilians and that it also constitutes abuse against U.S. soldiers and their families.

Disobeying Illegal Orders

1. Officers in the U. S. Army take an oath of allegiance to the Constitution – not an oath to follow orders blindly regardless of their legality. According to U.S. Army Field Manual 27-10 (Section 509b), members of the armed forces are bound to obey only legal orders.

2. The fact that military personnel must follow only lawful orders places upon them the responsibility to exercise judgment in evaluating the legality of orders and the conduct of war. Whereas enlisted personnel take an oath to support and defend the Constitution and to follow the orders of superior officers, officers take an oath only to support and defend the Constitution.

3. The Panel heard testimony that soldiers receive minimal or no training to aid them in recognizing potentially illegal orders. Instead they are consistently taught to follow orders without question.

4. The oath to support and defend the Constitution implies that if in conscience a person believes an order to be illegal, he or she has an obligation to refuse the order.

5. Based on the testimony we heard, we find that the Iraq War is an illegal war. We, therefore, support the right of military personnel, who believe the war to be illegal, to follow their conscience in refusing orders to deploy to Iraq. We believe that a person of conscience, in accord with the Nuremberg Principles, should not be punished, but rather supported, for refusal to follow orders to deploy to an illegal war.

BASED UPON THE FINDINGS, WE ISSUE THE FOLLOWING CALL TO CONSCIENCE

1. **We call upon the presiding officer** in Lt. Watada’s court martial, to consider all evidence and witnesses related to the grounds of his refusal to deploy, specifically that the Iraq War itself is illegal. Further, we call upon every officer of every court martial to allow military personnel who are facing court martial for refusing orders based on their conscientious conviction of the illegality of orders or of the war to present testimony in support of their beliefs.

2. **We call upon all Americans – particularly younger Americans** who are most potentially involved in wars – to fulfill their responsibility as citizens, to examine all the evidence, to seek the truth, to listen to their conscience, and to act accordingly. Further, we call upon all

citizens to support those military personnel who act upon their conscience by either refusing to deploy to Iraq or refusing to return to Iraq.

3. We call upon citizens of the United States to

a) hold hearings throughout the country to raise public awareness of the illegality of the Iraq War among all U.S. citizens and residents, including members of the armed forces.

b) uphold, whether military or civilian, the Constitution of the United States by peacefully resisting policies and actions of our government that do not comply with international law and that threaten the peace.

4. We call upon the Congress of the United States to

a) execute their constitutional responsibilities by holding hearings on the legality of the war in Iraq, including war crimes and crimes against humanity. In particular, we urge Congress, indeed all Americans, to listen to the compelling testimony of enlisted men and women about the atrocity-producing situations of the war and the systematic conditioning that leads to dehumanization of Iraqis.

b) abide by the Nuremberg Charter, the Nuremberg Tribunals, and the Nuremberg Principles by holding to account all national leaders who deceived the American people, led the U.S. into an illegal war of aggression, and are responsible for the crimes against humanity and the pattern of war crimes committed in the conduct of the invasion and occupation of Iraq.

c) authorize payment of reparations to the people of Iraq to rebuild their infrastructure and repair the damage caused by the invasion and occupation of Iraq.

d) fully fund the costs of restoring soldiers and their families to health, as well as to fully compensate the families of those innocent Iraqi civilians who have been wrongly killed.

5. We call upon the President and the Congress to

a) take action to begin withdrawing troops, bases, and contractors from Iraq, and to take the path of international diplomacy and peacekeeping to stabilize Iraq.

b) use our military personnel only in defensive conflicts and not in aggressive conflicts that constitute crimes against peace.

6. We call upon the civilian leadership and command of the U.S. military to

a) institute mandatory training of all members to recognize their responsibility not to follow illegal orders that violate international law, and to cease training that may condition soldiers to view civilians as the enemy.

b) examine, redefine, and train soldiers in rules of engagement in order to provide maximum protection to civilian populations and to reverse the current pattern of high civilian casualties.

c) train all combat soldiers to wage war only by means that are legal according to international law.

d) ban the use of dehumanizing racial slurs to describe any persons, whether friend or foe, and to initiate a strict practice of disciplining violations of this ban throughout the chain of command.

e) uphold our existing obligations under international law to refrain from using weapons that are indiscriminate or cause unnecessary suffering.

7. **We call on the U.S. media** to investigate the roots of war crimes in Iraq and follow the investigation up the chain of command.

8. **We call upon every officer** in the Armed Forces of the United States of America to follow the example of Lt. Ehren Watada, fulfilling their oath of allegiance to the Constitution, by evaluating the legality of the war and acting on their conscience.

CITIZENS' HEARING PANEL

DAVID KRIEGER (Panel Chair)

ELIZABETH FALZONE (Gold Star Families)

ZEK GREEN (Labor Union Members)

MARICELA GUZMAN (New Veterans)

BURK KETCHAM (Veterans of Former Wars)

EMILY LUTZ (Health Care Community)

STAUGHTON LYND (Academia)

RUSSELL W. McNUTT (Veterans of Former Wars)

RICH MONIAK (Military Families)

LYLE QUASIM (Government Leaders)

REV. ELAINE STANOVSKY (Religious Organizations)

ESTELLA VILLARREAL (High School Students)

GEOFFREY MILLARD, IRAQ WAR VETERAN



Geoffrey Millard served eight years in the New York Army National Guard, including service at Ground Zero after the September 11th attacks, in Kuwait, and 13 months in Iraq. He was awarded 13 medals during his service. He is now a member of the Iraq Veterans Against the War (IVAW).

Photo by Mosen Mirghanbari

I have served actually more than eight years in the military in the New York Army National Guard. In July of this year, I told my unit that I would not be coming back and that I resigned from the U.S. military. And I just wanted to say that if I had a Lt. Watada three years ago, perhaps my sign here wouldn't say "Iraqi war veteran." It would say "Iraqi war refuser." The same could also be said for a number of others who have done the same, including those who have chosen to go into Canada, those who have chosen to live in exile here in the United States.

But as to my testimony, I don't claim to be a legal professor and I don't think I'll be any use in answering whether or not the war in Iraq is illegal. However, I do claim to have been a soldier for many years and to have been a non commissioned officer. And it's in that vein that I came here to testify to you.

The fact of the matter is, is that I've heard people talk about a soldier's right to refuse an illegal order. And I traced my memory of all the training that I went through to include basic training, advanced infantry training, advanced individual training as a combat engineer, Primary Leadership Development Course (PLDC), to become a non commissioned officer, and I could not recall once ever being told that I had the right to refuse an illegal order. I checked into every law that I could find, and never once did I find a right to refuse an illegal order. However, as I recall sitting a room in late 1998 in Fort Leonard Wood, Missouri with about a hundred other basic trainees, we were told that we have an obligation to refuse illegal orders. We were given a

briefing that didn't say that we had any rights. It was not a right. It was an obligation. It was an obligation to international law. And it was an obligation to our duty as professional soldiers.

I went on to go to Primary Leadership Development Course to become a Non-Commissioned Officer when I was promoted to the rank of E5 sergeant. And there we had conversations about how to prevent war crimes amongst our soldiers. We talked about following international law. We talked about what constituted a legal and illegal order and what we did when an order was deemed to be illegal. And nowhere, once again, did we come across any right to deny an illegal order. It was an obligation to deny illegal orders....But in all my training, I never once came across a right to follow an illegal order. We were always instructed that if we deemed an order to be illegal, that it was our duty as professional soldiers to not follow that order. And the first line of the non commissioned officer's creed states that "No one is more professional than I." And I believe that as a professional soldier, it is our obligation to refuse all illegal orders.

I personally failed in that. I spent 13 months in Iraq. I did not do the typical jobs that you see on TV. I never kicked down a door. I never zip-tied anyone. I didn't escort trucks. I worked for a brigadier general putting together classified briefings. But much like Eichmann, I sat and did my job following orders, filing paperwork, and watched hundreds of thousands of people around me die with the paperwork that I filed.

Now, to some, it may be upsetting that a U.S. service member compares themselves to a Nazi war criminal. But the defense of Eichmann was, he was simply following orders. He never shot anyone. He didn't kill anyone. He was simply following orders in the paperwork and what he did. And in the same vein, I followed an illegal order to go to Iraq and did very much the same thing: Putting together briefings for a general. Now, I personally don't believe in the death penalty, and that's not just because Eichmann was hung for what he did, but in that I think that the responsibility lies much higher than that.

In the military we were always taught to follow leaders. And I think that naturally when a leader steps forward, we follow them. And I don't find it coincidental that it

was after I found out about Lt. Watada that I decided to refuse to return to my unit. And I think that with the leadership that a simple lieutenant can show, can guide our nation. And I just wish that our government would have that kind of leadership in a time that we desperately need it.

Is there a pattern that would substantiate war crimes? Again, I would like to offer this testimony as someone who in the military sense of things was a (REMF) a rear-echelon mother fucker. I don't deny this at all. I was -- my unit was the rear operation center. If there was a REMF in the world, it was me and my unit. And yet, because of my status, I got to see a much greater picture of the war than most people who are in line units and kicking down doors and zip tying Iraqis. I got to see a picture of the war that the generals see, at least a one-star brigadier general. And I even on occasion briefed General Casey, the supreme commander in Iraq, the highest ranking service member on the ground in Iraq, well, until he disagreed with Bush and got himself fired. That's another story.

\But I was privy to mostly classified information, and so I will attempt not to release secrets; although, with Daniel Ellsberg in the room, it kind of seems like I should. That being said, I will tell a story that I think goes directly to the point of there being a pattern to the crimes in Iraq, and that's something that refers to what we refer to in-country as a TCP or a Traffic Control Point. Traffic control points are set up throughout the country to impose our will upon people. We dictate the terms of traffic movement in an area. If we want to stop every fifth car, we'll stop every fifth car. If we want to stop every car with a male driver, we will.

And oftentimes people died at these Traffic Control Points because what you have is young soldiers very scared, very nervous with 50-caliber machine guns, with saws, with M60's, with M249's, 240 bravos, a number of heavy machine guns pointed at civilian vehicles who are on their roads and drive in a manner which is very different than that which we drive in the United States. They're not accustomed to sudden road blocks. They drive very quickly. They stop very quickly.

And on one particular day we had -- a unit had a Traffic Control Point set up. And as the vehicle sped towards this traffic control point, an 18-year-old kid fresh in the military, he was a Private First Class, so he was probably in the military for a matter of months, and this car sped at it, at the traffic control point, and this Private made the split-second decision that that vehicle was a

threat. He pressed the butterfly trigger on his 50-caliber machine gun and put more than 200 rounds into that vehicle. He then stood there and watched as the results of his decision were dragged from that vehicle: A mother, a father, and two children; boy age 4, girl age 3.

I sat in a room that evening when that was briefed to a general. I was lucky enough not to be on the scene. But when that was briefed to the general, it was briefed in much more gruesome detail than I gave you. They had pictures and they showed them of what would happen at a TCP killing. The general, I'm pretty sure, had a clear understanding of what happened.

For those of who are not military, if you've ever met a full-bird colonel, you've probably met someone who's trying to reach general and looking for that star. This colonel turned to an entire division level staff and made the following statement, "If these fucking hajis learn to drive, this shit wouldn't happen." Now, he didn't simply whisper this under his breath. I was two rows up from him and across the room. He stopped the briefing, turned in his chair and told an entire division level staff, of which I was probably the lowest-ranking person in the room, "If these fucking hajis learn to drive, this shit wouldn't happen."

That was a very big turning point for me in the war. I started to recall some of my other experiences like when I got off the plane initially in Kuwait. The temperature seemed unbearable. It was hot. I have a rucksack on, my M249 saw strapped across my chest, my IBA. And I got down off the plane and was hurried onto another bus while all my gear was loaded onto another truck. And it was in the middle of the night and we moved to a base. I later learned it was Camp Arifjan in Kuwait. We got into in big bay and we got briefing from the E7.

And the gist of this briefing was that "All these fucking hajis are out to kill you. You can't trust any of these fucking hajis." He used the term "haji" probably a dozen times at least. Most of the times the word "fuck" preceded it.

And then he asked us a simple question at the end of the briefing. He said, "What do you do if one of these fucking haji kids is in the middle of the road and your convoy is going straight at this fucking kid?" And somebody yelled "Stop." And he says, "No. You just fucking killed your entire unit because they ambushed you with this little fucking haji kid." And so he says, "What do you do when you've got this little haji kid in the middle of the road and your convoy is speeding at him?" And

someone else says, "Turn down another road." And he says, "Wrong. No fucking time."

So someone else begrudgingly says, "Run him over." And he says, "Exactly." "One of these little fucking haji kids is in your way, you don't put your entire unit's life on the line. You run the little fucking haji over." He yelled, "Hoo-ah." We responded with a "Hoo-ah." The briefing was over. That's what we were left with.

And when we moved in-country, you could hear it said all the time, the word haji. And the word haji traditionally is someone who has completed the *Hajj*, the pilgrimage to Mecca, one of the Five Pillars of Islam. It's meant as a term of respect and endearment for the elderly in society. And yet, continuously it's used by the American service member to racially dehumanize the Iraqi people. Because no one can possibly see a little kid in the road and run them over. No one can possibly look through their sight post and see a human being and still pull the trigger. So we're forced to dehumanize. And at this point it's being used as racial dehumanization.

And until I heard that colonel say that, I thought it was something that was done by grunts. You know, the guys on the ground just trying to make it through every day. What I realized at that moment is, it's not. It's something that goes directly to this pattern because it comes from the top and works its way down. That was a division level staff, the second-highest level of command in Iraq. That's the level of staff that it came from, and it was pushed down directly to our units through that.

And so I think that that speaks very clearly to your level of pattern. I wasn't in a line company that was off somewhere. I was in a division command. And granted, it was the rear operation command, but it was still a division level command with a general hearing this briefing every day.

And these are definitely the stories that someone like Lt. Watada would hear coming back in Fort Lewis. So I would ask that you take a look at things like this in your consideration and compare the things that I've told you that I know the general heard because I sat there, and I know that other generals heard it too, including General Casey, because I was there when he was briefed too; that these things are not something that happened on low level.

And when you hear from some of the other Iraq veterans, realize that they go all the way up the chain of the command. And while I have never heard a briefing to

the Secretary of Defense nor to the President, I'm willing to bet that if a Brigadier General gets this piece of information, so does the Secretary of Defense and so does the President....

I feel actually that a number of the oaths that I took -- enlisting in the military when you raise your right hand, you take an oath to defend the Constitution of the United States from all enemies foreign and domestic. And when I went to Iraq, I feel as though I put our Constitution in jeopardy. I did not honor that oath whatsoever, and therefore, I failed in that regard. And I also failed to disobey unlawful orders when I went to a war that at that time I disagreed with and realized is an illegal order to even deploy to Iraq....

For me, the biggest most glaring thing that I thought was illegal about the war was Article Three of the Geneva Conventions, which states that the most egregious of war crimes is that of a war of aggression.

And I looked at it from a military standpoint in Iraq and I thought to myself, well, if they have weapons of mass destruction and Saddam Hussein is a threat to the United States and we go to war with them, is that not still a war of aggression, even if everything that President Bush says is true, which I doubted at that time. Because, if I was a brutal dictator and I had weapons and there was a country in the world that was killing off the children of my country with sanctions and bombings in the north and the south of my country, I think I would use those weapons in defense. However, he did not use those weapons.

And so the weapons of mass destruction call for war did not seem very pertinent to me. But I decided to give the president the benefit of the doubt. And I said, if everything he says is true, would this still not be a case of a war of aggression? Because, there are countries on this planet where that is very true. They have nuclear weapons. They have weapons of mass destruction. They have brutal dictators, and they are not on friendly terms with the United States of America. And therefore, the things that he said about Iraq would be true about other countries in the world. And yet, at the same time if we invaded there, the whole world, as did with Iraq but more so in this country, would stand up and say that that is a war of aggression.

And it came to be very obvious that we attacked Iraq not because they had weapons of mass destruction but precisely because they did not.

HARVEY THARP, NAVY JAG & IRAQ VETERAN



Harvey J. Tharp III is a former U.S. Navy Lieutenant and Judge Adjutant General (JAG) stationed in Iraq. He was the first commissioned officer to resign due to the Iraq War, and is now a member of Iraq Veterans Against the War (IVAW).

Photo by Mosen Mirghanbari

I began my military career when I enlisted in the Air Force in 1993, and was trained to be an Arabic Linguist at the Defense Language Institute. After six months of supplemental training in Cryptology and Air Force Aircrew Survival School I was stationed at Offutt AFB, Nebraska. From there I deployed to Saudi Arabia five times in support of Operation Southern Watch, as an RC-135 aircrewman enforcing the No-Fly Zone against Iraq. I was awarded the Air Force Commendation Medal, two Aerial Achievement Medals, and numerous other awards.

Having completed my undergraduate degree while at Offutt AFB, when my enlistment ended I transferred to the Air Force Reserve and began Law School at Ohio State. Upon graduating in 2000 I accepted a commission in the Navy Judge Advocate (JAG) Corps. I was stationed in Hawaii at the time of my call up. And I was a judge advocate for the National Security Agency regional base in Hawaii and SGA Kaneohe. And immediately prior to my deployment there was an excess of judge advocates in the navy. And about 50 U.S. lieutenant's had to redesignate into other career fields or leave the navy. And because I was working for signals intelligence cryptology, I had the inside track to redesignate into cryptology, and so I did so. And then immediately thereafter, the orders came down to deploy to Iraq.

Although it had nothing to do with cryptology, we were, myself and six other navy staff officers, were deployed to Iraq to work as foreign service area experts in the provinces of Iraq, and it was just because we knew Arabic. I had studied Arabic in college and most of the other staff officers had studied Arabic, had known Arabic because they had grown up in Lebanon and left Lebanon as teenagers when the civil war broke out. And so we arrived in Baghdad, and we weren't foreign area experts by any stretch of the imagination. The only

thing we knew about Iraq was what we read in the media. And also the plan was to have diplomats, reconstruction workers, political advisors, etc., in each of Iraq's 19 provinces to aide in the reconstruction of Iraq. But the diplomats and all these other people, there was no security for them, no secure communications. They hadn't arrived yet. So we were basically pressed into service to serve in these roles. For example, there was a Navy dentist who became the political officer for the Tikrit government. I became the project's officer for the city of Kirkuk. I served in that role for three months until I was relieved by the person who was supposed to be the province officer in Kirkuk summoned from the British department of the director for international development. And then I became the office manager for the Kirkuk Coalition Provisional Authority office.

And as far as a pattern of war crimes goes, during the transfer of the hand-over between the Coalition forces between the 173rd Brigade out of Italy and the 2nd Brigade of the 20th Infantry Division, there was just a rash of incidents of deaths of civilians, I believe four or five of them, and I detailed a couple of them in my written testimony. One that stuck out pretty clearly was, there was a convoy going from Kirkuk to the town of Haweejah. And there was an IED explosion; an Improvised Explosive Device went off. And it didn't injure anyone in the convoy. But the members of the convoy saw a woman and her two daughters in a bean field working, hoeing the beanfield. And they must have suspected her of being a lookout or a spotter or a trigger person for the IED, and so they ran after her. And this Iraqi woman, seeing Coalition forces running after her with weapons, understandably ran away. And so the coalition members started firing at her. And the result was that the mother lost her leg, and one of her daughters was shot in the head and killed.

And there was no action taken...I was investigating this as director of the office for the Coalition Provisional Authority of Kirkuk. And it's my business to investigate this and bring it to the attention of the government coordinator, who is a very senior British diplomat. There was no action taken against the people who had shot the mother and the daughter because they were considered to be evading capture under the Rules of Engagement. And so no action was taken. And so there was suddenly incidents like this that formed a pattern with the new brigade that had come in, in that they

essentially hadn't learned that our sector we were essentially working on peacekeeping operations and trying to keep the various ethnic groups in Kirkuk from fighting each other more than we were fighting an insurgency of the Baath Party. And so I took that to my boss, who is a very senior diplomat in the British foreign office, and had to ask him to please go to the new commander of the American forces from the 20th Infantry Division and tell them that just not only from the humanitarian standpoint but also from a counterinsurgency standpoint, that we just couldn't -- that it was just unacceptable to have all of these incidents in a row that could alienate the local population and could create a full-blown insurgency where none had existed before.

Additionally, as far as my own decision to resign, one of the things that really stuck with me and it sort of piggy-backs on Mr. Millard's testimony, was, when I left, I had had 24 Iraqis working for me in the project's offices. Because I had had to create from scratch a municipal contracting system with engineers, clerks, drivers, and other people to create engineering assessments to create to post bids, to evaluate bid tenders, evaluate the work and make payments.

Because I was not a member of the military unit, these 24 Iraqis became essentially my psychological support structure and my friends to the point where even the Muslim members of these teams were giving me Christmas presents. And when I left, the different offices were competing to throw me the better banquet and throw the better going-away party. And so I formed very deep bonds with this very diverse group of Iraqis.

And after I left, there was an article in a British newspaper where some very senior unnamed British officers were quoted as saying that the number one problem with the Americans in their approach to the Iraq war was that they treated the Iraqis as subhuman and devalued the lives of Iraqis; and that that was one of the problems that this -- essentially that was the number one problem with why we're losing the war is because we devalued the lives of our Iraqis.

And that really stuck with me and it seemed -- it definitely rang true with me as far as what I had seen in Kirkuk and what I had read about in other areas of the so-called Sunni Triangle and what was going on in Iraq. And then, of course, the Abu Ghraib pictures came out, and I simply could not have faced my engineers and my other staff when those pictures came out. And so I was glad that I was back in the states because I could not have faced -- it would have been a great shame for me

to have faced the Iraqis I was working with with them knowing what went down in Abu Ghraib.

Anyway, over the course of the next several months I had the opportunity to reflect on the Iraq War and came to believe that, one, of course, there was no threat from Iraq to the United States at the time we invaded Iraq; that the case for war was essentially false, even deliberately falsified; and that our presence was not benefitting the Iraqi people; that internal polling that showed that support for the Coalition Provisional Authority was at two to five percent, and the vast majority of Iraqis wanted us to leave. It was just a question of what timetable they wanted us to leave in, but they all wanted us gone. And I came to believe that nothing the Coalition could do would materially help the Iraqi people and that the occupation itself was part of the problem.

I had transferred, like I said, to Signals Intelligence cryptology and I had been transferred to the National Security Agency; and I would have been forced to take part in the Iraq war as a combatant. And for example, in an unclassified conversation in November 2004, when I approached my executive officer about my opposition to the Iraq war, this was during the destruction of the city of Fallujah, which I consider to be a war crime, he stated to me that even inside the National Security Agency headquarters, 5,000 or however many miles away from the city of Fallujah, that he had several of his cryptology officers working 16-hour days on the Fallujah mission. And so I knew that if I agreed to work in cryptology, I could essentially be part of war crimes.

So that essentially crystallized the situation for me and I put in my resignation the next day. I called them out on the issue of war crimes. And I said that some of the missions that I could be assigned to if I remain in cryptology would constitute war crimes and I would have to refuse to participate in them. And also, like I said, I mentioned that the Iraq War -- that if the Iraqis were no threat to us, that our presence was not benefitting them at all and that our presence there was, therefore, immoral and unjustified. My resignation was accepted, and I was honorably discharged in March 2005....

In the case of Lt. Watada, he was claiming that the entire war was illegal in his resignation letter, I assume. And as far as resignation goes, it's entirely up to the discretion of the service whether or not to accept a resignation. And so if my resignation had not been accepted by the Navy, I would have been in Lt. Watada's shoes and I would have been the first person to be court martialed for refusing orders to deploy to Iraq.

DARRELL ANDERSON, IRAQ WAR VETERAN

Darrell Anderson served in the First Armored Division in Baghdad and Najaf in 2004, and was awarded a Purple Heart for injuries sustained in combat. He went AWOL in Canada in 2005-06, and was discharged after his return to the U.S.. He is now a member of Iraq Veterans Against the War (IVAW).



Photo by Elliot Scoller

I joined the military in 2003 and I spent a year in military training. I was part of 2/3 Field Artillery 1st Armored Division out of Giessen, Germany. When I arrived in Germany they had already been deployed to Iraq for seven months. And so I was going to wait there in Germany for a month and then fly into Baghdad.

The first hint I got of the war was, I was sitting there drinking with three other soldiers who were on leave from Iraq and they were schooling me to the process as to what was going on. But at the same time, they told me a story of how they had captured a mortarman who had killed a few of the fellow soldiers. They described to me graphically how the man had a bag on his head and was zip-tied with his hands behind his back and all three of them proceeded to beat him one on each side and one in front and until they said the last time they all hit him at once and he keeled over and died.

And they said that was one of the last times because they said, the unit began to start to watch out for this. And that they kind of investigated a little bit and then dismissed it and that was when they say, you know, we really stopped beating the prisoners. And then they saw the look on my face and they were like, whoa, you know, are you like -- thinking I was going to squeal or something like that. And I said wow, well, he would have just killed more of us, so it was good you killed him. But, obviously, that's a war crime.

A month later, I arrived in downtown Baghdad and we were stationed in Adhamiyah, Baghdad. I got there and I asked the soldiers about weapons of mass destruction and what we were doing, and they said there's no weapons of mass destruction and Iraqis hate us. But at the same time, as Geoffrey Millard pointed out, every single soldier there said, "I can't wait to kill another haji" or a "towelhead" or "sand nigger."

Whatever was the mentality of the soldiers even though we were against it, they'd been in combat seven months; they've lost enough and you start to switch over. Now, in April of '04, we lost 135 soldiers mostly in Baghdad and al-Anbar province. Until last December it was the month that the most soldiers died in Iraq. And the more soldiers we lost in April, the more drastic our procedures came (as other testified yesterday). Our procedures went if you're fired upon, you hunker down and you wait for orders to fire back. But in April the more soldiers that died, they said, if you're fired upon in a public place, shoot everybody that is there. And this is the procedures that came from directly from the top and every time we're in the market and one bullet would fly at us, we would open fire and bodies would drop. And this is a direct war crime. But you can't blame the soldiers because we're just following orders.

And they used to send soldiers from my unit to prisons to do prison guard and they would come back and they would say we were there at this prison for a month and they fed us good and everything was nice but we had to go in there and yell and scream and point our weapons at these prisoners and just try to get in their head as much as we could and then we would come out and then the people would come back in and interrogate them, you know, bad cop, good cop. He said there was this one time they were all yelling and screaming and clicking their triggers at this guy that he got up on the table jumped off the table and hit his head on the ground and was knocked unconscious because of their interrogation that they were ordered to do on this guy.

So I start to think of all these procedures but they haven't affected me yet until April when I started to see combat. First incident that I experienced firsthand was: we were under attack guarding Iraqi police station in Adhamiyah, Baghdad, and we lost a few soldiers that night so we were all pretty jumped and amped for battle. But as the night went on and the quieter it got, we were

dealing with people trying to escape Baghdad. And we had thrown out chem lights and said, this is our safety perimeter, if anybody comes through this perimeter, it is our procedure to open fire. Now cars were coming and we had about 15 guys pointing weapons and 50-caliber machine guns and everything and we turned them away. We turned away three cars. The fourth car comes and doesn't stop. It goes through our safety perimeter and comes to a stop in front of my position and sparks fly from the brakes. But in my mind I'm thinking of the first three cars and this car doesn't look like it poses a threat. And I hear my superiors yelling at me, what am I doing. And I'm screaming "don't shoot don't shoot don't shoot." And the windows roll down and I'm looking at two kids in the back seat of this car and the mother and the father in the front. And my superior comes to me and says, what are you doing. You know our procedure. And I said, "Well, as a family I did the right thing. And he said, "No, you didn't next time you'll be fire or you'll be punished."

And it's in this thing that you cannot refuse these orders. You will kill innocent people. And as high and mighty as I felt that day, the very next day I was in battle again. But this time one of my good friends got hit by an RPG (Rocket-Propelled Grenade) and he fell up me and was spitting up blood and was asking if he was going to die. And I felt this flip over and I took his place and what's my procedure open fire on anybody I see. That's my rules of engagement that I've been given. So I take my weapon, I aim, and I pull the trigger but my weapon is on safe because, I mean, I think I'm hard core, but I've never been in combat. I'm 19, 20 years old. I switched my weapon to fire and I'm aiming at a kid running from the incident. And if I were to have followed procedure, I would have shot that kid down that day. But in the same incident, I look to my left, and this man is telling me "don't shoot don't shoot." But all I'm doing is telling him "die" and cussing at him.

It was then that I realized that no matter what we're doing there or what we're trying, it is inevitable that you participate in occupation you will commitment war crimes. It is impossible to go to war and not commitment war crimes, even in World War II or any of the just wars we speak of, we killed innocent people. We committed war crimes. All this happens in Baghdad and we go down in Najaf. And I'm an artillery man, but the whole time in Baghdad, I was a door kicker, raids, traffic stops, patrols—all the dirty grunt work. But when we got out of Baghdad, we were finally given the opportunity do artillery. And we come under mortar attack by three or four mortarmen attacking our base.

And we have six howitzers lined up and we start returning fire. Now, if an artillery round hits in this room, pretty much a good portion of you are going to be dead. It's big kill radius, 155-mm highly explosive rounds. And we're under attack by three or four different guys with mortars. And we shot 60 to 80 rounds in downtown Najaf that night. The next day reports came back of 100 dead. We're fighting four men. We're using excessive force.

And that's also what I want to talk about. On top of our Humvees we have 50-caliber machine guns and Mark 19's (automatic grenade launchers). And these weapons are only supposed to be used on heavily armored vehicles. It's in the Geneva Conventions that these are supposed to be used at armored vehicles. But when someone shoots an AK at us in a public place, we unleash the automatic grenade launchers, the automatic 50-caliber machine guns. In the United States, if someone pulse a knife on you, you can't shoot them with a gun because it's excessive. It's not fair. They have a knife; you have a gun. You'll be brought up on the charges. We have all these machineries and they just have these AK's.

So all this happens in Iraq. And I come back. It's obvious we committed war crimes. It's obvious we did a lot of wrong things. But still I'm a soldier. And I start to think about if I'm presented war crimes, it is my duty to refuse. And from my experience in Iraq, I believe that there was no way I could go back to Iraq, follow procedures without killing innocent people, committing war crimes and eventually myself getting to the point to where I commit massacres because enough of my friends have died. And I realize it is my duty as a soldier to refuse this illegal war. And it was my right as a human being to choose not to kill innocent people.

I went AWOL from the military, and I spent two years in exile. And I came back and I turned myself in at Fort Knox in October 2006, and I said, "Court martial me. Put me on trial. I'll put my uniform on, and I'll tell you about the war crimes you committed." Because I'm not politically anti-war. I didn't go to Canada to talk about politics. I went to talk about war crimes. I wasn't anti-war. We committed war crimes. It doesn't matter. And so the military at Fort Knox did not court martial me and let me go, which just validates even more that I witnessed war crimes and we committed war crimes and that I was not wrong for going AWOL. And that's pretty much the war is illegal. There's no way you can go to war and not commit war crimes. It's obvious Ehren Watada is right. He's making the stands a lieutenant should make. And that's pretty much all I have to say.

CHANAN SUAREZ-DIAZ, IRAQ WAR VETERAN

Chanan Suarez-Diaz is a former Navy hospital corpsman from Miami. He was awarded the Purple Heart and Navy Commendation with Valor for his service in Iraq. He is now chapter president of the Seattle chapter of Iraq Veterans Against the War (IVAW).



Photo by Lori Hurlbaas

I was in the Navy for five years, and I was stationed with 2nd Battalion 5th Marines, which is the most decorated battalion in the Marine Corps. It's an infantry unit. I was attached to a weapons company, which is basically the company that has the Humvees and the 50-cals [automatic machine guns] and Mark-19's [automatic grenade launchers] and stuff like that on top.

I went to in Iraq September 1 of '04, and I was stationed in ar-Ramadi, which is a part of the al-Anbar province. And uniquely, as a corpsman, I was there with my Marines doing the same things that they did. You know, we used to go and do routine sweeps of Ramadi and bust down people's doors and stuff like that. And in the course of time when I was there, which is six and a half months before I got wounded, which is February 26 of '05, we lost ten people in the company.

One of the war crimes that I knew of was there is this platoon, Whiskey II, which it was very notorious in the company, they lost two of their Marines from IEDs (Improvised Explosive Devices). And this platoon went crazy in the sense that they lost two of their buddies and they wanted revenge.

And that's one thing you have to understand in the military, now, there is a lot of ingrained racism towards Arabs. And they indoctrinate that while you're going in, you know, going through boot camp through, you know,

whatever training that you're doing. And you don't refer to them as Arabs or whatever nationality. You call them *haji*. And this platoon basically they would go out—their lieutenant they used to call themselves the MM's (Mauler Murderers). Their lieutenant, he was around 25, he authorized them to basically unleash hell whenever. Because when you're in war, you can basically justify anything, especially if you have your friends there and everyone complies.

So, basically, I remember doing a night sweep, and when I got back from the base, I was stationed at a place called Hurricane Point. And this platoon that we linked up with and we were doing ops at the night, I knew there was some engagement during the night and we didn't receive any contact that night but we got back really late and we went into the town hall and the guys in that platoon were bragging and talking about how they just shot that night innocent people. It was kind of like a joke. They said oh, look at that guy and I shot him in the stomach and he was running and stuff like that. And I was so sickened by it.

I made it a point within my platoon — I was against the war when I went over there, but I saw it as my duty because I'm a Corpsman to take care — we're the life-line of Marines when we're in combat. And I was able to save two lives and a couple of Iraqis out there. And this platoon used to have brain matter from people that they've killed from 50-cals. They used to do grab brain matter and they'd bring it back onto the base and put it in the refrigerator and stuff like that. And they were literally, you know, they went crazy.

And I know this isn't an isolated incident. I mean, this happens every day in Iraq. The thing is that, you know, the news doesn't catch it because it's really dangerous over there. And you know, no one is going to confess to these things unless they're caught. And yeah, the rules of engagement basically got so bad in Iraq that if you did get engaged, AK [-47 rifle] or anything, a shot from a direction, you just opened up on the city.

The day that I got wounded we went in reaction to this same platoon they were in the market place, the *souk*, and they just had one or two pop-offs from an AK and they just completely opened up on the whole market. And I remember driving, because we were in the Humvees, driving through and the post in the position

just checking out the area and I remember just seeing bodies on the sidewalks and broken glass and blood everywhere.

And you know, at that—it's difficult when you see things like that. I mean, I saw this it was a really beautiful Iraqi family they were caught up in the middle of an engagement. The *mujahadin* went in and attacked a convoy. And they were—you know Iraqis trying to live a normal life because they can't over there just walking down the street and a Marine just completely mowed down one family, the complete family, all of them. And there was a family right next to them and this 13-year-old girl was shot in the stomach, and her mother was shot two times in the leg. And this is from 50-cal. And I don't know if you've seen it, but it's a really long, it's a big bullet and the exit wound is huge. That was in an everyday thing over there in Iraq.

And the other thing, looking at it in a medical perspective was, the Iraqi people have been suffering way longer than his current war. A lot of people don't remember, but more than 1.5 million Iraqi kids have died since the sanctions placed in Iraq due to the Clinton administration. And a lot of those people are still suffering from it. I mean, I met a lot of families that would show me their kids that were dying of leukemia because they didn't have the medicine to help them out.

The thing about this war is that it forces people—I mean, I made it a point in my platoon, I don't know if

people in my platoon killed innocent people just to do it. But I made it a point, you know, I used to debate my platoon all the time, we're very political. And I just every time we'd go out, I'd always tell them "Don't you kill innocent people." And at least I don't know in my platoon from what I know—I don't think we did it. But I know in the other platoons within my company, they did it a lot.

And because of this war, these guys are—they get screwed up in the head when they lose a buddy that they've known since boot camp. And there's so much camaraderie within the military that when you lose a best friend, something clicks in their mind that, you know, it's just blood and revenge and all that training and dehumanization of the Iraqis in the military goes full force and there's no feeling.

There comes a point in war where you see so much death and destruction that you just feel numb and you can't feel anything anymore. Somebody dies, you're like, well...and you don't feel anything.

So from a medical perspective, we're definitely—I would say there's a lot of violations of human rights over there, medically and also due to the occupation, because it's the occupation that's causing these things. Iraqis want us to leave, but this government just keeps on sending in more troops. And how can you see a government as legitimate when you have an occupation controlling everything. That's all I have to say.



World War II veterans Russell W. McNutt and Burk Ketcham of the Citizens' Hearing Panel applaud Iraq veterans Dennis Kyne, Chanan Suarez-Diaz, Darrell Anderson, and Geoffrey Millard. Photo by Zoltan Grossman

STACY BANNERMAN, MILITARY FAMILIES SPEAK OUT



Photo by Lori Hurlebaus

Stacy Bannerman is a member of Military Families Speak Out (MFSO) and on the group's advisory board. She is also the author of When the War Came Home; about her husband's service in the Army National Guard.

I appreciate, first of all, the invitation and what is happening here today. I regret only that it didn't happen when it should have, which is before the invasion began. I regret also that the Constitution no longer seems to be a living document for this nation, and it is the very constitutionality of the war in Iraq, particularly as it pertains to the deployment of active National Guard and Reservists.

There's active duty forces in the war in Iraq that I wish to address today. My husband, Sgt. 1st Class Loren Bannerman, has already served one tour of duty in Iraq. That was a year-long tour at Camp Anaconda, which they called Mortaritaville. At the time of his deployment, it was the most attacked base in Iraq.

This is the medal that is given to the family members who have Guard and Reservists who have served in Iraq. The 43rd president of the United States of America has a quote on this. This is the Freedom Medal. George W. Bush says "Peace and Freedom Will Prevail."

The Army National Guard and Army Reserves are two of the three components that along with the active duty Army make up the U.S. Army. The biggest military group serving in Iraq is Army and Army Reserve and Army Guard. The Guard is a state force of civilians federalized only in a time of war or national emergency declared by Congress. Approximately 400,000 National Guard and Reserve soldiers have already served at least one tour of duty in Iraq. The National Guard Act of 1934 provides for the conditions under which the National Guard can be mobilized and deployed into overseas combat.

The Guard has been deployed before. The National Guard was originally a state militia and under state con-

trol. Under the Constitutional Convention of 1787 the national government had the power to federalize the state forces. The passage of the Dick Act by Rep. Charles Dick of Ohio in 1903 initiated the federalization of state militias for domestic use and introduced their new name the National Guard five years later. The Act was amended to give Congress the power to authorize Guard mobilization for overseas action when it was essential to contain rebellions, to resist invasions, or to enforce the laws of the United States of America. Those are the three conditions under which it is legitimate for the Guard and Reserve to be deployed. And in 1952, Congress passed an act that allowed the President to call out the state Guard for 15 days. But it also gave state governors the right to refuse their deployment.

The authorization for use of military force was a joint resolution passed by both the House and the Senate. Senate Joint Resolution 23 authorized the President to use all necessary and appropriate force against those nations organizations or persons determined, planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 or harbored such organizations or such persons in order to prevent any future act of international terrorism against the United States by such nations, organizations or persons.

The two main premises that were presented for the mobilization and deployment of the Guard were that it was a national emergency and that the attacks of 9/11 were somehow connected to Saddam Hussein. Former Chief U.N. Weapons Inspector Hans Blix, who in the beginning of March 2004 himself declared that the war in Iraq was illegal, the United States should have gotten from the U.N. a resolution explicitly authorizing the use of force in the invasion of Iraq in order for that to be legal, and that did not happen. Furthermore, the United States did not allow the weapons inspectors to do their job or to complete their job in Iraq. They did not perform the due diligence in tracking down the validity of claims of purchases of yellowcake uranium. And there was never a connection between Saddam Hussein and the September 11 attacks on America.

In October 2002, the United States Congress adopted a joint resolution to authorize the use of the United States Armed Forces against Iraq. And that resolution either because of faulty and inaccurate intelligence or other reasons relied on and repeated statements that were

unsupported or untrue. For example, that Iraq posed a continuing threat to the national security of the United States of America; that it possessed a significant chemical and biological weapons capability; that it actively sought a nuclear weapons capability; and that in the period before the war, it supported and harbored international terrorist organizations.

Apart from the untrue assertions underlying this Congressional resolution and starting the war, the President did not meet the conditions imposed by Congress in adopting it. The President was required to exhaust all means and chances for diplomatic or other peaceful resolution first. He was required to keep Iraq from threatening the national security of the United States; and second, to compel Iraq to comply with the resolutions of the U.N. Security Council. The President was also required to prove that Iraq played a role in the attacks of September 11 before he was authorized to begin a war, and he never met any of those pre-conditions before starting a war.

The use of the state National Guard as a backbone for a war in continuing occupation that did not involve either a threat to the United States or an insurrection and which was not initiated by a declaration of war, violates the very spirit if not the letter of the Constitution. And the costs of the call-up, the National Guard and Reservists for deployment in Iraq has been significant in terms of lost lives, combat injuries, psychiatric traumas, disruption of families, marriages and family lives; financial hardship for individuals, families and businesses; the interruption of careers and damage to the very fabric of this nation and this civic life upon which we so depend and rely and profess to value.

And those costs would be suffered willingly were there a threat to our nation, were there any evidence of weapons of mass destruction, were there any ties whatsoever between Saddam Hussein and the attacks in America and 9/11. It has been shown by U.N.'s weapons inspectors, which Saddam Hussein allowed to come into his country to do their investigation, looking for the weapons of mass destruction, that investigation was already underway, Saddam Hussein did not block that. That investigation should have been allowed to come to its conclusions, which we now know, the conclusion is that there are not or never were weapons of mass destruction being built, developed or stored in Iraq.

When the men and women of the United States of America joined the National Guard, they understand that they are the only militia or branch of the armed services

that is tasked with the do for all. They know that and they signed that contract knowing that. And that contract made some guarantees to them as does the Constitution. When our men and women put on those uniforms, when they move from being a citizen to a soldier, they do so leaving behind their jobs and their families. And they do that believing that they are being sent into harm's way only as a last case necessity. They do that believing that this nation's leaders are upholding not just the spirit but the letter of the law in the Constitution.

The impacts of the deployments of National Guard and Reservists include much higher rates of post-combat stress disorder in National Guard and Reservists two and three times of active duty. The families who are left behind-- at least one quarter of them struggle to get by with an income that is significantly lower than it was when their primary provider was here at home. And although the government guarantees they'll have their jobs when they come back, many of our Guards and Reservists are being informed that they will no longer be employed while they're still in Iraq.

But, if in fact, this war in Iraq is -- one of the reasons we were told was it was about defending our homeland and national security. Let's take a look at the facts. Our first line of defense in the United States of America, particularly for the border states is our National Guard. Many of the National Guard units are now operating with perhaps a 40-percent capacity because their equipment has been damaged or destroyed or left behind in Iraq. It is going to take tens of billions of dollars to replace that money which has not been allocated.

If this war, in fact, is at all about national security, then one must ask one's self, has security been achieved? How do we define security? Are we truly more secure? Are we? Because the Constitution is at issue, but I think it's also about the fundamental values out of which the Constitution was born that need to be reviewed. The United States is about nothing if not freedom. And freedom rests upon the trinity of truth and justice and democracy. And our men and women in uniform, they take an oath to uphold those values and principles that are embedded in the Constitution.

In closing, I have to ask, what freedom has been won? What security has been achieved? And what democracy has been engaged on the very premise and guidelines that rule the deployment of our Guard and Reservists appear not to have been met in the war in Iraq.

Thank you.

EMAN KHAMMAS, IRAQI JOURNALIST



Eman Khammas is an Iraqi journalist, translator and human rights advocate. She was Director of Occupation Watch in Baghdad and a member of "Women's Will." She testified at Iraq tribunals in Brussels and Istanbul, and is in exile in Spain. Her interview with Cole Miller was shown at the Citizens' Hearing.

My daughters are 21 and 19, and they are college students. I was coming back when the Palestine Hotel was attacked [in Baghdad]. There were three car bombs. And it was very, very big -- I don't know thousands of kilos of explosive, I don't know. But I live across the street and our flat is like -- we have two sides of the flat all of them are glass. Big windows. So all the windows all the glass was broken and going inside the house. And the doors and the walls, you know, the plaster was out.

It was fast breaking time around 5:30 p.m. and they were preparing the food the only meal and fasting when the explosion happened. One of my daughters and her father were in the kitchen. They were preparing the food and the food was full of dust and glass. And my older daughter was sleeping in her bed and the bed was covered with the glass. And there were very long -- you know, the glass was, like, thick and so there were, like, very long pieces of glass, you know, like, and they were broken in a way -- they were like swords, like long swords. And they were in her pillow and in her room. ...There was one of them that was just lying there while she sleeping there. And of course, she wake up and explosions were not one. They were three; one after one. So it was, like, very horrible moments. And she was crying. She collapsed actually. She was crying and shouting and she was hysterical. She was terrified. She's very sensitive actually.

I mean, this is not the first time that she had this kind of experience because another experience was, she was in college and there were demonstrations. The students had demonstrations for a student who was killed, his friends and his organization. And the demonstration turned into a riot and they were attacking the professors. They attack the dean. And they were shooting inside the college and again she was very terrified.

And a third occasion, she heard that a professor was killed in front of his student. She did not see that. She heard about it. It was a high school teacher. And the people who killed the teacher, they gathered all the students and they killed the teacher in front of the students. Again, she went into hysterical when she heard this story. So she is living, and as I said she's very sensitive and she's not the kind of young careless person. She writes and she reads. She's rather serious. Too serious for her age really. She told me to that she had enough and she can't take anymore and she wants to leave.

And after the killings in the last month since the Samarra Shrine was bombed, the militias are unleashed. The killings are everywhere and they're hearing these stories, horrible stories. For example, one of the stories, a journalist she was covering a story in a part of Baghdad and she was arrested with a camera man and I think with the driver, the crew. And they were beaten by iron pipes, you know, water pipes, iron, and they were beaten to death. They were not shot. They were beaten by iron pipes to death. And when she heard of this, again, she was very mad about it because this is a journalist and she's a young woman and she has nothing. She's just a journalist covering what's happening. And she was killed in this very brutal and cruel way.

So my daughter said, I cannot live here anymore. She hates Iraq. She was born in the middle of the '80s, the war with Iran. Her father was in the front. Her father is professor, but at that time all the men were taken to the front, doctors, professors, engineers, soldiers officers, everyone was on the front. And then the 1991 war, which destroyed everything in Iraq. Everything. And then we had 15 years of sanctions where even pencils were not allowed. Even children's bicycle even medicine were not allowed, chlorine for the water. So they were very, very difficult times. And then we had this occupation in 2003. And for the last three years everything she hears is killing arrests, detainees, and living in constant fear and stress all the time. So she is 21 now. But she had an experience of 18 years.

They didn't have childhood. They didn't have youth. So under many Iraq young people 18 ages and her age -- because they don't understand why they are living in this. Us, for example, we lived this 70's, was the best and in the '80, but we were grown-ups but they were children, just babies. So she didn't live one single day in

her life like a normal human being like any other nation in the world, you know, in normal situation whether it's bad or good. We're always living in this either war or sanctions or attack or bombing or killing or these kind of things. So they want to leave like thousands or millions of Iraqi people. They want to live normal life. They had enough. I really worry about them. When they go to college in the morning, I have to wait on my nerves until they come back because car bombs and shooting and deaths. They attack on the Iraq streets like many times a day. So it's only by miracle that we are sitting here. We are living with death.

Immediately after the war I had this Center. It was called International Occupation Watch Center, and we had a weekly paper, which was called *Under Occupation*. We had this article about the Center of about me personally attacking of course and accusing and these kind of things and saying this these mouths should be shot. So it was like a hidden threats. But the Center was closed for particular reasons. But I kept doing this, the same thing that is documenting what's going on in Iraq. And then I was involved like all my time was with refugees and families and trying to help them. Of course refugee camps are very dangerous places, places that are bombed. Where highways are closed. Where we would have to stay for hours. Where we have to go detour -- when the highways are closed we sometimes have to take a detour in the desert or in the orchards. We have to reach the place that we are going to because we have to be there as quickly as possible to get the medicines and the stuff to the people. So in this case as it was -- I face death many times.

Once, for example, I was going to Abu Ghraib prison. A professor who was in our building was arrested. And his wife came to me and she asked me to go with her to Abu Ghraib. She was afraid. And I went with her. And the way to Abu Ghraib prison I found myself driving alone on the street and there was no other car. And there was actually a convoy going to Fallujah. It was immediately before that attack on Fallujah in November 2004. And all of the sudden, the Americans stopped and the American soldiers went out very quickly like in a second and they took, you know, shooting positions in the street and they were pointing at me and the light the laser was on my head. So, of course, I freeze. I didn't know what to do. Actually, I didn't know what was going on. I was driving. And so I just freeze. And I think they saw that we were just women in the car. And I just wait for I didn't know how long. It was ages for me. Then they approached slowly and they looked in the car and, of course, they were pointing their guns. And

then one of them said "Go." So I didn't know what to do. To turn the car. To go ahead to the street. I didn't know what to do. So then I decided to go slowly back and I did very slowly. And then when I was a distance away of them, I turned again, very slowly again turned and I went back

I'm not putting in danger anybody's life. I'm not attacking any person. I'm just helping the people with medicines and with the stuff. But the situation in Iraq is so confused so chaotic that you cannot tell what was going on was this person doing what that person is doing. Many people know me, of course. Almost all the people I work with, they know me very well. They know what I'm doing. But you cannot guarantee that all the people that you meet know you and all the people that you meet agree with what you are doing. So it is extremely dangerous. And I'm afraid. I'm afraid. But my fear is not as much for myself as it is for my daughters. Because, if anything happens to them because of what I am doing, I think it would be worst day in my life. I could not take anything like that. So I am afraid. I am worried.

And I don't think I am just me like that. I think all Iraqis, all Iraq mothers feel the same way, that afraid for their children for their sons and daughters....I have this really strange feeling, maybe because I'm living with death every day. And I'm seeing people you know, people who live with me every day, friends, neighbors, relatives, and then every day you hear that someone has fallen. So I have this very strong feeling that, no, I'm not surviving. Yes, I have this feeling.

The American media covers political process mainly. They talk about the car bombs. They talk about the killings. They don't talk about what's going on as far as the American troops are concerned...They simply don't know that these operations are going on for the last three years, because it was announced that May 1, 2003, the end of the military operations in Iraq; actually, it was the beginning.

I think that the American people know. I have seen them. They are wonderful people. They are peace loving people. They're kind and they hate aggression of injustice. And I think if they know what is exactly happening there, they see the human face of the war of the occupation, I feel, I'm sure I have this feeling that they are going to react accordingly. They are going to say no -- stronger than they are -- they are saying no, now. But I think is going to be stronger and I hope that they're going to be strong enough to put more pressure on the government to change this policy of aggression.

ANN WRIGHT, ARMY COLONEL RET. & DIPLOMAT

Mary Ann Wright is a Retired Army Colonel and State Department official. Col. Wright resigned from the foreign service to protest the Iraq invasion. She served 16 years in the Army and 13 years in the reserves. She is a member of the Board of Directors of the Iraq / Afghanistan Veterans of America.



Photo by Elliot Stoller

I am honored to be asked to speak at the Citizens' Hearing for 1LT Ehren Watada's act of conscience to refuse to deploy to Iraq because of his belief that the war on Iraq is an illegal war of aggression. Three and one-half years ago in March, 2003, after almost 35 years of military and diplomatic service representing our country in some of the most isolated and dangerous parts of the world, I resigned from the US government. I believed the Bush Administration's decision to go to war in Iraq without international consensus was illegal.

I resigned from my career as a US diplomat for the same reasons that Lieutenant Watada refuses to deploy to Iraq. LT Watada refused an order on June 22 to deploy with his unit to Iraq. He said he could not participate in an "illegal and immoral war against people who did nothing to deserve our aggression. My oath of office is to protect and defend America's laws and its people. By refusing unlawful orders for an illegal war, I fulfill that oath."

Watada's refusal to deploy to Iraq raises ethical, moral and legal questions for not only himself but for other military personnel, and for civilians as well. He believes the war on Iraq is a violation of international and domestic law and is therefore illegal. Watada says that as a military officer of honor and integrity he must refuse an order to participate in an illegal act.

Watada joins 15 other U.S. military who, as a matter of conscience, have refused to go initially, or to return to Iraq and who have been court-martialed for their actions. Two are currently in prison. Over 8,000 U.S. military are absent without leave (AWOL). Thousands who returned from AWOL have been given administrative discharges instead of courts-martial. The military has not provided information on whether those who have turned themselves in were AWOL due to opposition to the war. Over one hundred fifty U.S. military personnel reportedly have gone to Canada since the "surge" announcement on January 10 and join another two hundred who have been in Canada for up to two years. In an action not seen since the Vietnam war, 1300 active duty military personnel have signed an "appeal for redress" calling for the Bush administration to withdraw the US military from Iraq.

For Lieutenant Watada and those other military volunteers who have chosen to go public with their decisions to dissent from the war on Iraq, the path of conscience is not easy. By their actions they challenge an administration whose policy of aggressive, pre-emptive war on Iraq has placed those volunteers, the institution of the United States military and the nation itself in danger.

Ironically, these courageous men and women rely on a military tradition for their defense to refuse to deploy to Iraq. Refusing to obey an illegal order is a time-honored tradition in the U.S. military, but that refusal that carries incredible risk. If the order is found by a military board of inquiry to be lawful then the soldier is will be brought before a military court for trial.

LT Watada's public refusal to deploy to Iraq puts the military panel who will sit in judgment on his actions in a dilemma. The military has extraordinarily talented military lawyers who are well-versed in the law of land warfare, the Geneva and Hague conventions and the Nuremberg principles. Indeed military lawyers were the strongest opponents of Secretary of Defense Rumsfeld and Attorney General Alberto Gonzalez's decision to throw out internationally agreed to protections for prisoners of war and instead to create a new, illegal term called "enemy combatants" that provides no protections for those detained on the battlefield and that jeopardizes U.S. military that end up in the hands of opponents. Now these military officers must decide whether protection of an administration's illegal war of aggression is

more important to the national security of the United States than recognition that, by the Nuremberg principles, military and civilians have a responsibility to stop their governments from committing illegal acts.

Why Resignation and Refusal to Deploy?

Three and one-half years after my resignation, I continue to believe the administration's rationale of going to war in Iraq, an oil-rich, Arab, Muslim country was faulty and dangerous and had nothing to do with the events of September 11, 2001. I am firmly convinced the actions of the administration have put our nation's economy at risk. I feel the actions of the administration have placed our nation's security at even greater at risk than it was before. I know the administration's actions have lowered America's moral stature in the eyes of most of the citizens of the world.

I truly feel the decisions of the administration have made not only America, but the world, a more dangerous, not a safer place.

Analysis Based on My Military and Diplomatic Service Experience Indicated a Flawed Plan for Iraq

The administration's claim that America and the world was in imminent danger from Iraq's weapons of mass destruction did not ring true to me. There were no claims at that time that Iraq was a center for terrorists, particularly those terrorists connected with the September 11 tragedies.

The administration made the claim that the US must have a doctrine of preemptive strike. That doctrine would have made sense in Afghanistan with its Al Qaeda bases and the links of Al Qaeda to past bombings, but the doctrine rang dangerously hollow with Iraq and dangerously arrogant and aggressive to the Arab and Muslim world.

Preemptive strike is a concept that once used by any power, opens the door of its use to all comers—thereby jeopardizing and making the world more dangerous rather than safer.

Reopening the US Embassy in Kabul, Afghanistan, December, 2001

I was on the State Department team that opened our Embassy in Kabul, Afghanistan in December, 2001 and spent almost four months there as the first political officer and later as the Deputy Chief of Mission. Sitting in

the bunker of the US Embassy in Kabul in January 2002, I listened in disbelief when President Bush declared the US would be looking closely at the actions of today's so called "Axis of Evil", Iraq, Iran and North Korea—when the war in Afghanistan was far from over.

The Taliban had been routed from Kabul and other cities and the Al Qaeda bases had been blown apart, but we in Kabul knew that many more international military forces were needed all over the country to keep our new allies, the warlords, in check, while we and they continued to fight "remnants" of Al Qaeda and the Taliban--remnants that have proven to be much larger than had been anticipated.

We in the bunker at the Embassy in Kabul were astounded that the administration was threatening additional military campaigns when the operations in Afghanistan, operations that were a direct response to the perpetrators of September 11, were far from over.

One year later, as the drumbeat to war in Iraq reached a crescendo, when it was even more evident that we were a long way from defeating Al Qaeda and the Taliban and stabilizing Afghanistan, the rationale of why we would jeopardize our commitment to free the world of Al Qaeda and Afghanistan of the Taliban by undertaking operations in Iraq was a mystery to us in Kabul.

Military Plans for Invasion and Occupation of Iraq Flawed: Law and Order and Civil Reconstruction Obligations under International Law Not Met

I knew from personal experience in Somalia and Afghanistan, the US would be involved in an intricate and expensive civil reconstruction program if we decided to invade and occupy a country as large and as culturally complex as Iraq.

It seemed obvious that it would be particularly difficult and expensive in a country that had for ten years been under a US sponsored UN embargo and therefore unable to maintain its relatively sophisticated urban infrastructure of water, electrical and sewage systems, plus the extensive oil pipelines and oil storage facilities. There would be much more infrastructure to fix in Iraq than in Afghanistan, and we were already having trouble getting the funds to fix Afghanistan.

Knowing that the US Congress and the American people would blanch if they knew the number of soldiers required to provide a level of security and law and order to protect this infrastructure immediately after combat

operations, I strongly believe Department of Defense politicians risked the success of the military operation by gutting the original plans developed by the military component commanders for the Central Command and reduced the military personnel level to a dangerously low, but politically sellable level.

Former US Army Chief of Staff General Shinseki alerted the political leaders of the Department of Defense six months before the war began that the civilian-mandated operations plans for Iraq were woefully short on soldiers to do the missions required by the operations plan. Anyone who has ever been associated with combat operations knows that by the second day in those operations, many civil affairs and military police units are needed to handle the large number of civilians that the combat units find on the battlefield, battlefields that in this day are generally urban areas of a country. The numbers of civil affairs and military police units needed were not included in the plan.

Every military operation plan has a special annex that identifies cultural monuments and public infrastructure that by international law, the Law of Land Warfare, must be protected by an occupying power. And the plan identifies the numbers of soldiers that will be needed to protect the infrastructure and culturally important sites. UNESCO rosters of culturally important sites in Iraq have been known by US military planners for decades.

In fact in the early 1980s when I was a soldier at Ft Bragg, NC, I helped write an “on the shelf” operation plan for possible Middle East operations. Culturally sensitive locations and the number of soldiers needed to protect those areas were identified twenty years ago—and the numbers of soldiers required was a daunting number back then. Those same places we identified twenty years ago were not protected and subsequently looted in the wave of lawlessness that occurred when not enough soldiers were available to establish a secure environment and to guard key facilities. The looting of museums, libraries, schools and hospitals in Baghdad and other major cities should have been prevented.

I firmly believe Pentagon E-ring civilian “warriors” risked the lives of military personnel and the prestige of the United States on their war plan, a war plan that senior military officers were telling them was dangerously flawed.

In late 2003 US military commanders said more military forces were needed in Iraq. They were careful to say that they did not need more US forces as those com-

ments would have been career suicide. The administration continued to offer large financial incentives to countries to send troops to help fight the guerrilla war that developed in Iraq, a guerrilla war that was predictable and predicted by those who knew the Iraqi military.

With all due respect to U.S. military prowess, ten years after the rout of Iraqi forces in Gulf War I and the destruction of much of its military hardware, followed by a ten year embargo on replacement military equipment, the Iraqi military was not a military that posed a major challenge for the best equipped and best trained military on earth.

One could easily predict that much of a military looking down the barrels of such an overwhelming U.S. military force would take off their uniforms and disappear into the cities and countryside rather than stand, fight and be slaughtered. These “disappeared” Iraqi military, now apparently joined by international fighters some of whom are part of terrorist organizations, have exacted casualties a hundred times greater than those sustained during “initial combat” operations.

Economic Risks

Because of the administration’s decision to go to war in Iraq, we now are faced with tremendous economic risk. The huge amount of funding necessary to replenish, re-outfit and pay our military forces, plus the funding the administration feels is necessary for the US to provide for the reconstruction in Iraq are staggering. I believe that these expenditures have placed the nation at economic risk.

National economic risk becomes a national security risk when the nation’s expenditures outstrip our revenues. Huge expenditures for unnecessary wars and tax cuts for political purposes place our country at both security and economic risk.

Torture-The Link between Afghanistan and Iraq-Bagram and Kandahar, Guantanamo and Abu Ghraib

As a retired US Army Reserve Colonel and US diplomat who helped reopen the US Embassy in Kabul, Afghanistan in December, 2001, I am horrified at the violations of domestic and international law against prisoners in Afghanistan, Cuba and Iraq. I am disgusted at the incredible costs to our international standing as well as to our common humanity caused by the Bush administration’s policies on detention, interrogation and

torture. The names “Bagram, Guantanamo and Abu Ghraib” will now live in infamy in the annals of history.

To the world, the terms “Bagram, Guantanamo and Abu Ghraib” mean inhumane treatment at a best and torture as the norm. Plain and simple, no matter how the Bush administration tries to parse the definition of torture, we know it when we hear it: solitary confinement for months on end, extreme changes of temperature, waterboarding, beatings, deprivation of sleep, high intensity noise and light. They can tell us that “alternative” techniques are approved, but we know what they are-- techniques that if used on the President, he would call them torture.

“Bagram, Guantanamo and Abu Ghraib” stand for being outside the rule of law-- no hearings, no notice of evidence, no habeas corpus for fellow human beings. It means an administration that has attempted to be the law rather than follow the law.

“Bagram, Guantanamo and Abu Ghraib” stand for shielding from prosecution for their illegal criminal activities those who have been involved in illegal detention, torture and rendition.

“Bagram, Guantanamo and Abu Ghraib” stand for the sacrifice of our morality and humanity by allowing the prisons to stay open.

I firmly believe that to regain some respect in the international community, for the sake of our national spirit

and soul, the prisons in Bagram, Guantanamo and Abu Ghraib must be closed.

For the United States to ever hope to salvage some modicum of its stature in the area of human rights, the legal process for those accused of criminal, terrorist acts must be transparent and fair. The “Bagram, Guantanamo and Abu Ghraib processes” are neither.

As a retired US Army colonel with a background in the Law of Warfare, I believe deeply that our military is built on honor and integrity. Soldiers are well-trained and know their responsibilities. Those who break known rules jeopardize the honor and integrity of the others. Therefore it is incumbent upon senior leaders of the US military, for the protection of the majority of excellent soldiers, to honestly investigate these allegations.

1LT Ehren Watada refuses to deploy to Iraq because of his belief that the war in Iraq is illegal. The illegality of the war has muted into illegal actions by junior and senior members of the military and I believe, encouraged by the civilian leadership of the Bush administration. 1LT Watada has the responsibility to refuse to participate in these actions.

As a retired Colonel with 29 years in the U.S. Army and Army Reserves and as a U.S. diplomat for 16 years and who resigned in March, 2003 from the US Department of State in opposition to the war in Iraq, I strongly support Lieutenant Watada’s decision to publicly challenge the illegality of the war.



Photo by Zoltan Grossman

DENNIS HALLIDAY, U.N. ASST. SECRETARY-GENERAL

Denis Halliday is the former United Nations Assistant Secretary-General who coordinated Iraq humanitarian aid in 1997-98. He resigned (after 34 years in UN) to speak out against the sanction program as harmful to Iraqi civilians. An Irish citizen, Halliday was nominated for the Nobel Peace Prize in 2000.



Photo by Lori Hurlbeaus

The United Nations is made up of member states. The Security Council, which is responsible for peace and justice, is basically made up of five member states of which the United States is by far the biggest monster and has veto power in permanent seating.

So you have to understand that when the United Nations screws up, you can point the finger at the Secretary General, you can blame the little guys like me, but we actually don't have the power. The power resides with the shareholders, the owners of this institution, and that's you. You're the big member state.

My small part in this hearing, ladies and gentlemen, is to briefly set out how the United Nations has failed the people of Iraq.

I plan to speak as briefly as I can. And I'm going to read my testimony because, being Irish, I talk too much; and secondly, you need it for the record. Reading it into the record is sort of a bureaucratic principle.

As I proceed, I believe you'll get the feeling that the United Nations has also failed the people of the United States. That may surprise you. But I think we have failed you in terms of the obscene chaos wrought by the Gulf War. We failed to prevent the criminality of the current invasion and occupation of Iraq, to prevent the

human insecurity created throughout the region. We failed to protect the demise of American values.

The appalling damage to Iraq could have been avoided if only international law had been respected. Had the United States considered itself obliged as, indeed, the United States is, to abide by the U.N. Charter provisions, we wouldn't be here.

Human rights, the Geneva Conventions, the Charter itself and all those provisions, are signed, endorsed, ratified obligations on the part of the United States. When you go to war in violation of Chapter 7 Article 42 of the United Nations Charter, you are in trouble. You have just violated the fundamental international law that prevents that sort of violence.

The fact is, of course, we're here today thanks to that genuine American hero and patriot, Ehren Watada. He has uniquely raised his head within the military to draw attention to and hopefully end the current quagmire. That quagmire resulted from American war crimes in Iraq, starting with an illegal act of military aggression and an act of state terrorism. I refer, of course, to "shock and awe." Clearly there's no justification for an invasion or an act of terrorism.

Watada, by his action, has highlighted the possibility of ending further decline of American soft power, values, and humanitarian outreach, the benign potential that this great country has. Lt. Watada has reminded us of what this country could be rather than the rapacious neocolonial empire it has become.

Now, where do I begin with the United Nations failure? Well, I think we have to go back to San Francisco in 1945. That's when the new international body to replace the League of Nations was cooked, massaged, created. The United Nations is a machine for control, control of the world's natural resources, control of wealth, people, territories by the five victorious powers that survived World War II: Britain, Russia, France, China, and the United States.

They designed the United Nations without civilian oversight such as a Supreme Court-like entity which you have in this country. There's no even application of justice. We live on double standards in the Security Council. There's no semblance of equality and democra-

cy, except perhaps in the General Assembly, which has been somewhat sidelined over the years.

But most grievously, the Security Council was intended to dominate in perpetuity the global machinery of peace and security: peace and security that are manipulated to serve the political, military, economic interests of the five permanent members with veto powers. And the U.N. still functions that same way in 2007.

The General Assembly has expanded, of course, into 192 nation states, but without teeth. Its resolutions do not bind member states. After the unexpected strength of Dag Hammarskjöld, the second Secretary-General, the Secretary-General is now selected by the Security Council from the weak and the house-trained. The total absence of oversight and any role of public civil society are not just conspicuous; they are calamitous.

We now have a United Nations, in my view, so weak, so diminished, so without credibility that we're in a very dangerous moment. And the invasion of Iraq, I think, may have been the last nail in the United Nations' coffin. Let's hope you can turn that around.

Turning to Iraq specifically, the same Security Council failed to mediate and stop the Iran-Iraq War back in the 1980s. Instead, the five permanent members sold weapons to both sides, including weapons the United States later termed weapons of mass destruction.

The United States provided military intelligence to Iraq. Saddam Hussein was, after all, "one of the boys" to enhance the use of chemical weapons on Iranian troops. In the first Gulf War, the United Nations failed to mediate a withdrawal from Kuwait or was not allowed to do so because Washington wanted an excuse to invade and destroy the Baathist regime it had assisted to power in the 1960s. The United States' friend and ally had become too frightening.

But worse, the Council terminated any dialogue for peaceful withdrawal, just as Bush and Rice today reject the idea of talking to Syria and Iran.

A United Nations force was assembled under United States military leadership as per Chapter 7 Article 42 of the Charter, authorizing the use of force in the Gulf War. You know the rest of the story. The Pentagon determined to pursue the added value of destroying public infrastructure. Killing the children violates the Geneva Conventions and protocols intended to protect civilians.

The results were deemed by a high ranking mission three days after the United States-United Nations victory was complete to have returned modern urban Iraq to a pre-industrial stage. The United Nations participated in a massacre.

Within days of American destruction of electric power capabilities, water treatment and distribution facilities, and sewage disposal systems, deadly diarrhea, dysentery, and typhoid broke out. People without piped potable water, which they had become used to, drank from the Tigris and Euphrates rivers. Children and adults began dying within days. The United Nations failed to condemn U.S.-U.N. war crimes of the Gulf War.

The United Nations built, however, on that initial killing and disaster with an expanded regime of comprehensive sanctions, economic, cultural, and social, that lasted 12 very long years: until, in fact, the invasion of 2003.

To review the terrible consequences of comprehensive United Nations sanctions on the work of the remedial food program would take hours. In summary, the U.N. irreparably damaged the social and cultural life of Iraq. And before that, the U.N. had destroyed in the name of finding weapons of mass destruction every place of manufacture including food processing, cold storage, baby food plants and the basic pharmaceutical supply companies that Iraq had at that time.

Without regard to consequences, the U.N. basically cut the throat of Iraq, a country that imported 70 percent of its food supply, a country that had a health system which had been acknowledged by the World Health Organization.

U.N. sanctions created 70 percent unemployment. Frankly, it still is like that today. The school system had received awards from UNESCO for its quality, but it collapsed for lack of materials and loss of teachers, who could no longer be paid. The very real advances of Iraqi women and their equality under law was undermined, demolished by the demands of survival under sanctions.

The U.N. set in motion a brain drain: the flight of some 2 million professionals, doctors, engineers, scientists, architects, and other invaluable people, so they could have the capacity to support their families. And as you know the 2003 invasion, the occupation, and the chaos that has resulted has produced another 2 million refugees outside Iraq, and at one point 7 million Iraqis displaced within the country.

Did the U.N. condemn the war crimes of its very own Gulf War? Did the U.N. condemn the use of depleted uranium then and again in 2003, along with the cluster bombing of white phosphorous? Sadly, no. It took the Secretary General 18 months to mumble that the United States invasion of 2003 was illegal. The General Assembly has taken no action. And, the U.N.'s credibility is, I believe, irreparably damaged, certainly in the South, in the Third World.

The Security Council has yet to suspend or punish the United States or United Kingdom for violation of international laws and commitments. But let's hope that some day the reparations bill that you need to satisfy Iraqi infrastructure repair requirements will be paid. And I reckon maybe a trillion dollars from your taxes may just do that.

You do know that the U.N. forced Iraq to pay reparations to Kuwait and that Iraq has now paid over \$50 billion and we were taking that money while Iraqi children were dying for lack of proper medical care.

In 1991 the Council was tightly under control. Sanctions were good for business. What business is that? It's the arms industry. And you also know 85 percent of the weapons made and sold today in the world are made and sold by the five permanent member states of the Security Council. What a tragic reality that is; that those responsible for peace and justice are the very same that manufacture weapons. It's a squalid story. It's a story of corruption, and it seems to me, that most despicable of all industries, the arms trade.

In short, the U.N. has failed and has continued to fail the people of Iraq for decades. Have Iraqis had bad delusions? Yes. Made mistakes? Of course. Allowed themselves to be manipulated by foreign interests? Certainly. But where was the U.N., guardianship of peace and justice, of human security, of human rights? It was not there. Not available.

As for future U.N. sanctions, impositions on the weak and isolated member states continues to exist.

On to Chapter 7 Article 41, however. Perhaps there is a realization, albeit belatedly, that U.N. sanctions imposed and sustained on Iraq for 12 long years constitute a war crime committed by the member states of the Security Council itself. Many would say, including myself, that the Council acted in full knowledge of what was happening, and that the Council's conduct constitutes genocide.

Perhaps the Iraqi nightmare will prevent any similar sanctions regime being imposed again. It may be that peace groups around the world now recognize that sanctions are not an attractive alternative to warfare. Sanctions are a form of warfare. Sanctions kill, as we learn through our horror in Iraq.

But what about the selective use of force by the United Nations? Can that ever be justified? I'm not convinced it can. We can have no confidence in the five permanent member states when they're calling the shots. They act only when it serves their best interest. Quick to protect a strategic interest in oil, but slow to protect human beings in Rwanda or in Darfur. Military intervention and so-called humanitarian intervention cannot be entrusted to the United Nations.

As for the illegal military aggression the United States currently seems to prefer, preemptive strikes and so on, that obviously cannot continue to have a future. It is a cruel lesson that has been learned in this country with loss of life and an even higher price, of course, in Afghanistan and Iraq. That kind of intervention in violation of international law is unacceptable.

For the U.N. to serve equally well all the peoples, powerful nations such as the United States need to appreciate the added value of the whole, the international community. The U.N. cannot continue to serve the vested interests of the rich and the powerful. It must belong to all. It must serve all. And success requires that all member states respect and abide by international law and understand the advantage of all so doing. Without that, the U.N. is doomed.

So I would suggest: Reject Mr. Bush's fictional war on terror. Terminate our own terrorist methodologies. Let's communicate and try to understand each other. Dialogue is civilized behavior. Military aggression is not. And let's invest in people. Let's not invest in weapons. Let's invest instead in human well-being.

Now, Lt. Watada has taken a unique stand. And it's now up to the rest of us, perhaps Americans in particular, to support what he has done: to be there on the 5th of February, to stand at the gates of the military base and demand a presence when Watada stands up for the rest of his country and takes on the burden that should be shared by the top brass, I would say by the commander in chief. But he's doing it as a first lieutenant.

Thank you.

ANTONIA JUHASZ, ECONOMIC POLICY ANALYST

Antonia Juhasz is a policy-analyst on international trade and finance policy. She is a Visiting Scholar at the Institute for Policy Studies, and author of The Bush Agenda: Invading the World, One Economy at a Time.



Photo by Lori Hurlbaums

I will begin my testimony with a quote from Michael Scheuer, the CIA's senior expert on al-Qaeda until he quit in protest of the Iraq war: "The U.S. invasion of Iraq was not preemption; it was—like our war on Mexico in 1846—an avaricious, premeditated, unprovoked war against a foe who posed no immediate threat but whose defeat did offer economic advantages."

My testimony will specifically address the U.S. government's ongoing economic invasion of Iraq. All of my testimony is drawn from, and therefore provided in far greater detail (including foot notes not found here), in my book, *The Bush Agenda: Invading the World, One Economy at a Time*, and particularly in chapter 6, "The Economic Invasion of Iraq."

First, it is an absolute fallacy the Bush administration had no post-invasion plan for Iraq. It had a very clear plan, an economic plan. The plan was prepared prior to the invasion, implemented to the letter and in clear violation of both international and U.S. military law, continues to be enforced today. I believe that the Bush Administration's bull-headed intention to complete this plan is the reason why it refuses to end the Iraq War and why it is simultaneously pursuing a new war in Iran.

I'm going to start in December 2002 with the first meeting of the U.S. State Department's Future of Iraq Oil and Energy Working Group. While most of the State Department's Future of Iraq work was ultimately scrapped, the opposite is the case for the plans related to

Iraq's oil. The Oil and Energy Working Group prepared a post-invasion plan for Iraq's oil system that would transform Iraq's nationalized oil system into one that was all but privatized and opened to foreign corporate investment using contracts known as Production Sharing Agreements (PSAs).

Two months prior to the invasion of Iraq another set of plans was prepared, not just for Iraq's oil infrastructure, but for Iraq's entire economy. The actual writing of this plan was contracted out to a private company, Bearing Point, Inc. Bearing Point's plan entitled "Economic Recovery, Reform and Sustained Growth in Iraq" transforms Iraq from a state-controlled economy to one that would function in support of foreign multinational corporations. The Bearing Point contract explains, "It should be clearly understood that the efforts undertaken will be designed to establish the basic legal framework for a functioning market economy; taking appropriate advantage of the unique opportunity for rapid progress in this area presented by the current configuration of political circumstances . . . Reforms are envisioned in the areas of fiscal reform, financial sector reform, trade, legal and regulatory, and privatization." It specifically emphasizes the need for "private-sector involvement in strategic sectors, including privatization, asset sales, concessions, leases and management contracts, especially those in the oil and supporting industries."

Five days after President Bush declared "mission accomplished" in Iraq, he named L. Paul Bremer III presidential envoy to Iraq and administrator of the U.S.-led occupation government, the Coalition Provisional Authority (CPA).

The United States, on behalf of the Coalition forces, then laid out the framework for the occupation of Iraq, including the role of the CPA, in a letter submitted to the UN Security Council on May 8, 2003. The letter stipulated that the CPA was to "exercise powers of government temporarily, and as necessary" in Iraq. As the occupation government, it would provide security, allow the delivery of humanitarian aid, and eliminate weapons of mass destruction.

On May 22, the Security Council passed Resolution 1483, formally acknowledging the occupation of Iraq and identifying the CPA as the occupation government. However, the Council added its own specifications for

the CPA, including the promotion of the welfare of the Iraqi people through the effective administration of the country, and in particular the restoration of security and stability along with the conditions necessary to ensure that the Iraqi people can “freely determine their own political future.” The resolution calls on the Coalition to “comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907.”

Article 43 of the Hague Regulations (ratified by the U.S.) requires that an occupying power “take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” Provision #363 of the Army’s Law of Land Warfare repeats Article 43 word for word. These and related provisions require an to ensure that the lights are on, the water is flowing, the streets are safe, and the basic necessities of life are provided. The occupier is not permitted to make changes beyond those necessary to meet these obligations. Not only did the Administration fail to meet the conditions of Article 43 and Provision 363 in Iraq, it directly contradicted them by radically altering Iraq’s laws.

In June 2005, two years after the occupation of Iraq began, the transitional Iraqi government pleaded to the world from the opening page of its National Development Strategy: “we urgently need emergency/ humanitarian interventions to provide basic services such as water, electricity, hospitals and schools.” The Bush administration failed to provide these necessities because it did not focus its efforts on the immediate provision of needs, but rather on the opening of Iraq to U.S. corporations. The Administration’s failure to provide these basic necessities of life, therefore, was in violation of international law.

Paul Bremer was CPA administrator from May 6, 2003, to June 28, 2004. During his reign, Bremer promulgated exactly 100 Orders, the vast majority of which remain in place today. The Orders have the full effect of law and they have fundamentally transformed Iraq’s economic and political structure. Far from a blind mistake, the Bremer orders have set in place conditions for the ongoing inadequate provision of basic services, unemployment, underdevelopment, economic inequality, and violence for the foreseeable future. They constitute both war crimes and crimes against humanity. (*The Bremer Orders are attached at the back of this Report.*)

Let’s step back a bit in time for a moment to look at

Administration plans for Iraq’s oil. On his tenth day as vice president, Dick Cheney established the National Energy Policy Development Group, widely referred to as “Cheney’s Energy Task Force,” to draft a new energy strategy for the United States. Two years after they were drawn up, the Bush White House was forced to reveal a series of lists and maps prepared by the Task Force that included detailed descriptions of Iraq’s “super giant oil-fields,” oil pipelines, refineries, and tanker terminals. Two lists, entitled “Foreign Suitors for Iraqi Oilfield Contracts as of 5 March 2001,” name more than 60 companies from some 30 countries with contracts in various stages of discussion for oil and gas projects across Iraq. None of those contracts were with American firms. However, because sanctions were imposed at this time, none of the contracts could come into force.

But global public opinion had turned aggressively against the sanctions and the likelihood was increasing that they would be removed. If the sanctions were removed while Saddam Hussein remained in power, all of those oil contracts worth trillions of dollars would go to those foreign oil companies, while the U.S. oil industry would be shut out.

As the Bush administration stepped up its war planning, the State Department began planning for post-invasion Iraq. Meeting four times between December 2002 and April 2003, members of the State Department’s Oil and Energy Working Group mapped out Iraq’s oil future. They agreed that Iraq “should be opened to international oil companies as quickly as possible after the war” and that the best method for doing so was through Production Sharing Agreements (PSAs).

PSAs are considered “privatization lite” in the oil business. Ownership ultimately rests with the government, but the most profitable aspects of the industry, exploration and production, are in the hands of private companies. None of the top Middle East oil producers use PSAs because they favor private companies at the expense of the exporting governments. In fact, PSAs are only used in respect to about 12 % of world oil reserves. PSAs are favored by oil companies and represent the worst-case scenario for oil-rich states.

Two months after the invasion of Iraq, in May 2003, the U.S.-appointed senior adviser to the Iraqi Oil Ministry, Thamer al-Ghadban, announced that few, if any, of the dozens of contracts signed with foreign oil companies under the Hussein regime would be honored by the new Iraqi government. When Bremer left Iraq in June 2004, he bequeathed the Bush economic agenda to two men,

Ayad Allawi and Adel Abdul Mahdi, appointed by Bremer as interim Prime Minister and Finance Minister, respectively. At one time Allawi was on the CIA payroll.

Two months later, Allawi submitted guidelines for a new petroleum law to Iraq's Supreme Council for Oil Policy. The guidelines declared "an end to the centrally planned and state dominated Iraqi economy" and advised the "Iraqi government to disengage from running the oil sector, including management of the planned Iraq National Oil Company (INOC), and that the INOC be partly privatized in the future." Allawi's guidelines also turned all undeveloped oil and gas fields over to private international oil companies. Because just 17 of Iraq's 80 known oil fields have been developed, Allawi's proposal would put a full 64 percent of Iraq's oil into the hands of foreign firms. However, if a further 100 billion barrels are found, as is widely predicted, foreign companies could control 81 percent of Iraq's oil—or 87 percent if 200 billion are found, as the Oil Ministry predicts.

The plans for Iraq's new petroleum law were made public at a press conference in Washington, D.C., hosted by the U.S. government. On December 22, 2004, Mahdi joined U.S. Undersecretary of State Alan Larson at the National Press Club and announced Iraq's plans for a new petroleum law to open the oil sector to private foreign investment. The draft petroleum law adopted Allawi's recommendation that currently producing oil fields are to be developed by Iraq's National Oil Company, while all new fields are opened to private companies using PSAs. The draft has been hotly debated within successive Iraqi governments for years now. But on January 18, 2007, the Bush administration's dream came one step closer to reality when an Iraqi negotiating committee of "national and regional leaders" approved a new hydrocarbon (or oil) law. The good news is that the PSAs have apparently been removed. Unfortunately, the bad news still outweighs the good.

The committee has debated the new law in near total secrecy: almost no one – both outside or within the Iraqi government, including the Parliament – has seen it. It is clear, however, based on press reports, that the law allows foreign investment in Iraq's oil industry. It also grants foreign oil companies "national treatment," which means that the Iraqi government cannot give preference to Iraqi oil companies (whether public or privately owned) over foreign owned companies when it chooses whom to sign contracts with. This provision alone will severely cripple the government's ability to ensure that Iraqis gain as much economic benefit as possible from their oil.

The questions left to be answered are under what terms and to what extent will Iraq's currently nationalized oil industry be turned over to foreign multinationals, how much of the revenue will stay in Iraq, and how much control will Iraqis truly exercise over these decisions?

According to Reuters, the new law is vague as to what form of contract foreign oil companies will be able to sign in Iraq. In order to determine "the best model for its future contracts with international oil companies" the Iraqi government has arranged for fact-finding teams from the Iraqi Oil Ministry to visit the U.S., Britain, and Norway. "Why?" you may ask, are the Iraqis turning North for answers rather than, say, next door? Next door they would find that Kuwait, Iran, and Saudi Arabia all maintain nationalized oil systems and have outlawed foreign control over oil development. These countries hire foreign oil companies as contractors to provide specific services, for a limited duration, without giving the company direct interest in the oil produced.

Most Iraqis remain in the dark about the new oil law. Iraq's oil workers had to travel to Jordan to learn details of the law from the London-based research organization Platform. As a result, in September, Iraq's five trade union federations – representing hundreds of thousands of workers – released a public statement rejecting "the handing of control over oil to foreign companies, whose aim is to make big profits at the expense of the Iraqi people, and to rob the national wealth, according to long-term, unfair contracts, that undermine the sovereignty of the state and the dignity of the Iraqi people." They demanded a delay in consideration of any law until all Iraqis could be included in the discussion.

At the same time, the Bush administration and U.S. oil companies have been increasing public pressure on Iraqis to pass the law. The Bush administration and U.S. oil companies (among others) are quite simply (and obscenely) taking advantage of an occupied, war-ravaged, and internally divided nation to get control over as much oil as possible, and on the best possible terms. They are holding our troops – and the Iraqi people – hostage in order to get it.

Our elected officials must start talking about what's really happening to Iraq's oil; Existing contracts with U.S. companies must be immediately cancelled. All mis-spent funds must be returned. All this money, plus a lot more, should go to Iraqi companies and Iraqi workers for work in Iraq; The occupation of Iraq – both in its military and corporate form – must be brought to an immediate end.

DENNIS KYNE, GULF WAR VETERAN

Dennis Kyne served 15 years as Army medic and drill sergeant. He was deployed in the 1991 Gulf War, and was trained in Nuclear-Biological-Chemical warfare. He is an expert on Uranium Munitions, and is member of the Iraq Veterans Against the War (IVAW).



Photo by Lori Hurlbaas

I entered into the United States Army in 1987. I was trained as a medic at Fort Sam Houston and then I went to Airborne School at Fort Benning, Georgia. I was assigned to the 34th Medical Battalion there. I have an expert field medical badge. I graduated from drill sergeant school in 1993, so I'm totally aware of what's going on in the basic training institutions that the previous soldiers have talked about where the institutionalization of the racism, the patriarchy and my goodness, the gender discrimination, it's appalling. If you think Tailhook and the Air Force Academy scandals, that's just the tip. You can't even imagine what's going on down there with Suzanne Swift and the rest of the women.

So my history in this United States military system has been one of complete caution and complete criticism. I spent 15 years in the thing going, "You've all lost your minds." But I come from a whole family of combatants; my grandfathers were in World War II, both of them. My uncle, was a Vietnam infantry officer who served 20 years and birthed a baby that was a dwarf. My cousin was a dwarf, he died in his 20's, and my uncle would never admit that that was Agent Orange situation. So when I lean into this Depleted Uranium crisis we're in, I think it has some serious correlations.

My obligation is to my soldiers as a medic and as a drill sergeant I'm entrusted with the health and welfare of all the soldiers in my command. That's my job. Don't tell

me it's anything else. Don't tell me that I'm supposed to tell soldiers to go things that I wouldn't do. So I sit here in total solidarity in support of Lieutenant Ehren Watada because he is the next person in my chain of command I have to tell, like the soldiers who were explaining earlier, I'm not going on this mission, sir. And if he doesn't respect that, we're shit out of luck.

My contention is this: This is a slave army. This is not a volunteer military. You cannot put them on two and three tours and Stop-Loss them and tell them that they're volunteering. You can't. If you looked that up in the Webster's, that doesn't meet the definition. You can't tell the person, as our last testifier indicated, that you can have citizenship here if you fight in our wars. That's enslavement. It says so right in the definition of war crimes in this program. You cannot enslave people to fight in your wars. That's a war crime.

They're enslaving our own men and women to fight in an illegal war. When I was, in 1991, serving with the 24th Infantry Division, we were sent there as Operation Desert Shield, intended to defend Saudi Arabia from an invasion by Iraq. There was some false evidence issue that there were troops on the borders of Iraq. So on January 17, we started bombing southern Iraq and Kuwait and for 45 days we bombed using Depleted Uranium, with a 4.5 billion year half life.

On 2, August 1990, if you open up the Federal Book of Benefits for Veterans like myself, I'm a 20 percent disabled veteran. I'm a life member of the Disabled American Veteran Society. I open my book. It says the Gulf War started on 2 August 1990 and will end on a date to be determined by Congress. So what you have here is, you have one war and a multiple number of operations. You have Operation Desert Shield, Operation Desert Storm, Operation Provide Comfort, Operation Northern Watch, Operation Southern Watch, Operation Iraq Liberation -- no, I'm sorry. That spells oil. Operation Iraqi Freedom.

They're word-smithing us. And so we are in one war that's being going on for 17 years. And we were sent there to defend Saudi Arabia from an invasion. This guinea pig army was walked into the Depleted Uranium. Half of a million of us crossed over the line, basically, and breathed some version of this Depleted Uranium. I'm offering into evidence today a documentary called

Force. She never saw the battlefield. But she made this documentary because the vaccinations made her so sick that she couldn't go anywhere. See that's what we're loaded up with. We're loaded up with vaccinations. Perestig and bromine tablets. Herbicides and pesticides are all around us because we can't handle the roaches and the viruses and the vectors and the things biting us. So we're breathing in all this stuff and then we walk into Depleted Uranium.

I remember the ionizing radiation study group at the Veterans' Administration. My stepbrother and my brother-in-law are members of the Depleted Uranium Gulf War Syndrome study group. There's two different ones. So what this means is that I am studied for ionizing radiation, which is gamma radiation, emits kind of like if you walk into an x-ray lab and you didn't have your led on. My brothers are studied because they inhaled the particulate effect, the nuclear fallout, the radioactive particles of the uranium bombs.

My brother-in-law was further forward than I was. He was a Sergeant First Class. He came home, my sister since has had an ectopic pregnancy. He's a 100 percent disabled veteran. My stepbrother was a security patrol officer with the Air Force; never saw the battlefield. He was in Dhahran, which is the port where all of our equipment came in at, which is the port our equipment would have left at if it wasn't contaminated. My stepbrother clanked on the bottom of vehicles repeatedly testing for bombs. There weren't any bombs but there was the uranium particles falling in his face day after day. He became a recruiter in the Air Force after that and couldn't even perform his duties as a recruiter. Now he lives in California. His children are sick more than not. He's not very healthy. He's a 70 percent disabled veteran. So my brother-in-law is 100 percent. My stepbrother is 70 percent and I'm 20 percent. All of us from three different parts of the battlefield, all exhibiting the same signs and symptoms.

These soldiers are coming home now currently with the rates of cancer going through the roof. Malignancies and cancerous tumors in every part of his body. Soldiers are birthing babies that resemble babies born after Hiroshima and Nagasaki. So basically what you have here is you have a government that continually perpetuates this myth that Depleted Uranium is okay. Since 1991, by 1995 11,000 Desert Storm veterans were dead. A quarter of a million of us get a check, like myself and my two brothers, and half of a million of us have filed a claim. There's been 20,000 soldiers incarcerated for rape or violent crime; and two of the most profound vet-

erans from Operation Desert Storm are Timothy McVeigh and John Allen Muhammad.

So for the specifics, 340 tons of Depleted Uranium dropped on southern Iraq and Kuwait. 2000 tons on record this time used. The Highway of Death, which runs from Basra to Baghdad, it's the only way into Baghdad. The only way in. This is what we witnessed in 1991: 340 tons of Depleted Uranium leveled during the 45-day period. They're going to tell us that it was the most victorious ground war in all of history. Bullshit. We were so incompetent we couldn't get to our intended target, which was Baghdad. The 24th Infantry Division had no intentions of making a right hook into Kuwait. We couldn't get to Baghdad because of Wadi, W-a-d-i. In the *Webster's Dictionary*, it's defined as a free-flowing river of Arabia, meaning our vehicles were sinking in quicksand. So we hung a right to go to the highway. That's how we ran into the Highway of Death. The highway where the United States Military bombed a retreating convoy of civilians and military people with depleted Uranium. The soldiers became so sick, so sick and so toxic that we had to get the hell out of the area. We were returning through King Khalid Military Center and soldiers were staring off into space.

Now, as a medic I can't tell you that I was everywhere on the front line. I wasn't. I was with my particular unit. But I saw these guys coming through King Khalid Military Center that were just staring off into space. Now, as a medic, one of the things you're trained to look at is the thousand-yard stare. You Vietnam veterans know what I'm talking about; that thousand-yard stare where they're just looking off onto planet Mars. I'm thinking as a medic these guys must have been in some battle that was so horrendous. That's the only thing I can isolate it's my job to conserve the health and welfare of the troops. What's wrong with this guy. I didn't know. It took me years to figure it out.

Since that time soldiers have died from multiple things. They've said they've died from skin eating viruses. They've said they've died from smoking too many cigarettes and all kinds other variables. All of the research that has been concluded by Iraqi doctors in the field, by doctors from Germany is that Depleted Uranium in low level radiation abborates the chromosomes, alters the genetic makeup, alters the gene pool, contaminates the blood donor system meaning these soldiers who get the uranium in the body. With this in mind, Lt. Watada shouldn't go anywhere and no other soldier in the United States military should go anywhere. Period.

JOHN BURROUGHS, NUCLEAR POLICY ANALYST



Photo by Elliot Stoller

John Burroughs is Executive Director of the Lawyers' Committee on Nuclear Policy. He is an internationally known specialist on treaties and international law relating to arms control and nuclear weaponry.

My theme today is the hypocrisy of U.S. nuclear weapons policy as demonstrated in relation to Iraq. Prior to the war, the United States accused Iraq of retaining stocks of chemical and biological weapons and materials and of reconstituting the Nuclear, Biological and Chemical (NBC) weapons and missile programs that were terminated or at least severely disrupted by the post-Gulf War inspections. However, no definitive evidence was presented to establish Iraq's possession of such weapons or missiles, or their current use to threaten the United States or other states. Indeed, as the reports of the UN inspectors made clear, there was no basis for the U.S. claims.

The UN Monitoring, Verification and Inspection Commission (UNMOVIC) made it very clear that only uncertainty existed as to such matters as whether Iraq had fully destroyed stocks of chemical and biological weapons and materials. Given UNMOVIC's stance, especially in view of the fact that states were requested to provide relevant information to UNMOVIC, any plea that U.S. and other intelligence agencies reasonably believed Iraq retained such weapons is unpersuasive.

Hans Blix, head of UNMOVIC, has many times stated that in 2002 he thought it likely that Iraq had WMD programs. However, he knew that his job was to be a professional inspector, not to go on gut instinct. By early 2003, he started to believe that Iraq had no programs. One important reason: around two dozen leads provided by U.S. intelligence led nowhere. Similarly but more robustly, the International Atomic Energy Agency (IAEA) publicly and emphatically confirmed what was common knowledge among specialists, namely that the Iraqi nuclear weapons program had been successfully dismantled under IAEA monitoring in the early 1990s and had not been reconstituted.

I want to underline that possession of NBC weapons or NBC weapons programs, are not, in and of themselves, sufficient to justify going to war as a matter of international law. But in any case prior to the war, there was no established case that Iraq had prohibited weapons, materials or programs. The information from the UN inspectors tended to show their absence in the case of chemical and biological weapons and programs and missiles; and the absence was clear in the case of nuclear weapons and a nuclear weapons program.

At an American University Research Symposium held on November 28, 2006, a public event, Charles Lutes, chief of the Combating WMD Division for the Deputy Directorate for the War on Terrorism, Pentagon's Joint Staff, made two observations. First, prior to the war, he did believe that the United States had made the case for WMD in Iraq. Second, if there had been WMD in Iraq, the United States did not have the ability to secure them.

The lack of U.S. planning regarding WMD in Iraq was demonstrated by events at the al-Tuwaitha nuclear facility. It is a complex of more than 100 buildings on a 35 square mile site located 12 miles south of Baghdad. Until 1991 it was the center of Iraq's nuclear weapons program. By the mid-1990s, the International Atomic Energy Agency (IAEA) had confirmed dismantlement of the weapons program and removal from Iraq of stocks of nuclear material that could be used in weapons. Other nuclear materials remained on site, including 500 tons of "yellowcake" uranium, processed uranium ore containing 80% uranium oxide, and a reported 400 radioactive sources, for example, X-ray machines. Some of the sources contained materials suitable for use in radiological weapons, conventional bombs that disperse radioactive materials.

U.S. troops arrived at al-Tuwaitha in early April 2003, but failed to prevent ongoing looting or to accomplish thorough cleanup of surrounded populated areas. This became evident to the world when Greenpeace arrived for an investigation carried out June 16 - July 4.

Some 500 barrels of yellowcake uranium disappeared. Local Iraqis emptied the barrels and used them to hold drinking water and other items. The United States recovered most of the barrels through a buyback program, later supplemented by Greenpeace which exchanged clean barrels for the uranium barrels.

In June, the United States permitted the IAEA to survey previously declared nuclear material at al-Tuwaitha at one part of the complex, but denied the IAEA permission to survey radioactive sources or to investigate contamination and health effects in the area.

The Greenpeace team found a huge yellowcake mixing canister, with approximately 4-5 kilos of radioactive uranium inside, abandoned on open ground near a village. The canister had several holes, one of which was large enough for children to climb through. Although yellowcake uranium does not produce high dose rates of radiation, inhalation of the powder is toxic and carcinogenic.

The Greenpeace team also found radioactivity in a series of houses, including one industrial source registering 10,000 times above normal background radiation levels. In that house, the occupants had been living with the source for more than six weeks. The maximum annual recommended dose of the International Commission on Radiation Protection (ICRP) could be exceeded in one half hour. Greenpeace report, Tuwaitha Iraq Investigation.

A Greenpeace radiation specialist commented in July 2003, "If this happened in Europe or anywhere in the West, they would have shut down whole villages, closed streets, tested people and the environment for contamination, and done a big cleanup."

Here are the conclusions I reached in my presentation to the New York session of the World Tribunal on Iraq, May 2004 (www.newyork.worldtribunal.org):

- The U.S. failure to prevent looting of portions of the al-Tuwaitha facility, which lasted for weeks after the first arrival of U.S. forces, is a violation of the 1907 Hague Regulations which requires the Occupying Power to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety" (Article 43).
- The U.S. failure to conduct thorough medical assessment and cleanup in the al-Tuwaitha area is a violation of Article 56 of the Fourth Geneva Convention, which charges the Occupying Power with the "duty of ensuring and maintaining ...public health and hygiene."
- The U.S. refusal to allow the IAEA to undertake a thorough investigation of conditions in and around al-Tuwaitha, and throughout Iraq, is unconscionable. The IAEA has the appropriate expertise, and far more

credibility than the United States.

- The U.S. failure to completely secure the al-Tuwaitha facility at the earliest possible time is shocking in view of the rationale for the invasion of Iraq as aimed at disarming nuclear, chemical, and biological weapons programs and preventing the acquisition of such weapons by terrorists.

By the mid-1990s, Iraq had come into compliance with its international obligations regarding NBC weapons, admittedly after a war and under coercion by the Security Council. What was U.S. policy at that time and since? Presidential Decision Directive-60 (PDD-60), signed by Bill Clinton in late 1997, recommitted the U.S. to nuclear weapons as the "cornerstone" of its national security and reaffirmed the U.S. policies of threatened first use and threatened massive retaliation. PDD-60 also further institutionalized a policy shift that had been underway for some time: nuclear weapons would now be used to "deter" a range of threats including not only nuclear, but also chemical and biological weapons. Indeed, the United States threatened to use nuclear weapons against Iraq in the 1990-91 Gulf War. The U.S. made ambiguous threats to use nuclear weapons against Iraq again in early 1998, in response to allegations by UNSCOM Chief Inspector Richard Butler that Iraq possessed biological weapons.

The December 2001 Department of Defense Nuclear Posture Review (NPR) contained plans to target, with U.S. nuclear weapons, countries that do not have nuclear weapons themselves, among them Iraq and Iran. Also newsworthy were the plans for the military to develop nuclear weapons with new capabilities to be used for a wide variety of missions far beyond deterrence of nuclear attack. Nuclear weapons "'could be employed against targets able to withstand nonnuclear attack,' or in retaliation for the use of nuclear, biological, or chemical weapons, or against biological and chemical weapon capabilities (prior to use), or 'in the event of surprising military developments.'" The White House-approved December 2002 National Strategy to Combat Weapons of Mass Destruction outlined the U.S. Government's plan for protection against and response to chemical, biological and nuclear weapons. Described as an integral component of the National Security Strategy of the United States, published a few months prior, the strategy states that the U.S. "reserves the right to respond with overwhelming force – including through resort to all of our options – to the use of WMD against the United States, our forces abroad, and friends and allies."

Then, in late 2002, George W. Bush stated regarding Iraq: “America must not ignore the threats gathering against us. Facing clear evidence of peril, we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud.” President Bush didn’t tell us that the mushroom cloud was more likely to emanate from the United States. In the run-up to the March 2003 U.S. invasion, a “Theater Nuclear Planning Document” was drawn up for Iraq. This plan was disclosed by military affairs analyst William Arkin in the Los Angeles Times, as part of a larger story describing how Strategic Command’s (STRATCOM’s) portfolio had been expanded, consistent with provisions of the Nuclear Posture Review. Previously limited to nuclear weapons, STRATCOM’s role now encompassed all aspects of assessing and responding to nuclear, biological and chemical weapons worldwide.

Again, in the spring and summer of 2006, there were credible reports from Seymour Hersh that, until the Joint Chiefs of Staff insisted on their removal, U.S. civilian officials at the highest level wanted to keep nuclear use options in plans for counter-proliferation strikes on Iran.

So is the United States in compliance with its international obligations? The answer is no. In 1996, the International Court of Justice held that the threat or use of nuclear weapons is generally illegal. The Nuclear Non-Proliferation Treaty requires the good-faith negotiation of the elimination of nuclear arsenals. The 2000 NPT Review Conference agreed – with the approval of the United States – on measures to implement this obligation, including: verified and irreversible reduction of nuclear weapons; a diminishing role of nuclear weapons

in security policies; and ratification of the Comprehensive Test Ban Treaty. The expansion of doctrine regarding use of nuclear weapons outlined above violates the Court’s holding and the commitment to a reduced role for nuclear weapons in security policies made in 2000. The United States is not engaged in verified, irreversible reduction of its arsenal in negotiations with Russia. The United States refuses to ratify the CTBT.

The hypocrisy of the U.S. invasion of Iraq on the basis that it might acquire NBC weapons while the United States maintains large nuclear forces and aggressive doctrines of use in defiance of its obligations regarding nuclear disarmament is absolutely staggering. One way to think about it is to consider the Bangor Trident submarine base, about 20 miles from here. Nine submarines are based there. Each carries 24 missiles; each missile can deliver at least six warheads. So each submarine carries about 144 warheads. Most of the warheads have a 100 kiloton yield, about seven times the size of the atomic bomb with which the United States devastated Hiroshima. Some of the warheads have a yield of about 450 kilotons, about 30 times the size of the Hiroshima bomb.

I have written about the illegality of the U.S. invasion of Iraq in violation of the UN Charter. It is important that this hearing examine that and other illegal and criminal aspects of the U.S. invasion and occupation of Iraq. It is also important that we understand the monumental U.S. hypocrisy regarding nuclear weapons that is part of the larger context for the U.S. actions in Iraq.



Photos by Elliot Stoller

RICHARD FALK, PRINCETON UNIVERSITY

Richard Falk is Professor Emeritus of International Law at Princeton University. He is a Visiting Professor in Global Studies at the University of California-Santa Barbara. Since the Vietnam War, he has been a key expert on international relations, the law of war, military policy and global institutions.

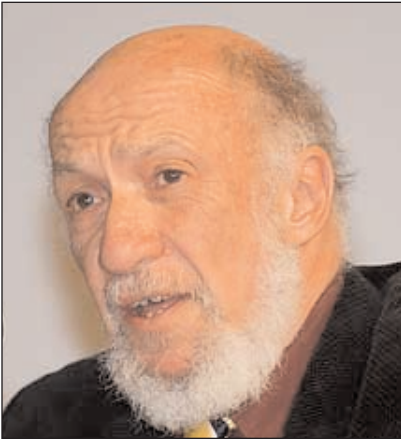


Photo by Elliot Stoller

I think this is probably the most patriotic event I have ever participated in....

From the perspective of international law, it's extremely important that when governmental institutions...whether they are within our country or at the international level, fail to uphold the rule of law, it is the right and even the responsibility of citizens in a constitutional democracy to act...to fill the void created by governmental failure. This is especially true in relation to this war of such flagrant illegality--a war that kills fellow citizens and inflicts death and destruction on a foreign society.

Whenever the citizenry of a democracy displays its own indifference to the mandates of the Constitution and to the obligations it has under international treaties, then the leadership of that society is encouraged to persist in its lawlessness and we endanger our own democratic future.

It is very important, in my view, to keep in mind that the case of Lt. Watada arises within the confines of the professional military. Lt. Watada is a professional soldier, a person who chose the military career voluntarily. Does such a person waive his rights to act on the basis of legality when confronted by orders to take part in a war that he has strong reason to believe is illegal and criminal under international law, under the U.N. Charter and under the U.S. Constitution? It is a very sad comment on the quality of military justice that the presiding mili-

tary officer at the court martial proceeding has made a preliminary ruling that arguments as to the illegality of the war cannot be introduced in defense of Lt. Watada in refusing an order for shipment to the Iraq war zone.

Such rulings reinforce very powerfully the case for civil society initiatives that do insist that those who serve in the military are not obliged to engage in a war of aggression; that it is our role as citizens to protect those who are brave enough in the military to refuse to participate in an illegal war. We must make clear the gap between what appears to be real justice and military justice as it is emerging in this case.

I want to frame my remarks by reference to the *Army Field Manual 27-10* that sets forth the rules governing the behavior of a soldier in time of war and makes two central points that are of a great relevance. The first is that international law is applicable to the behavior of an American soldier in time of war. And second, that such a soldier has the right, if not the duty, to refuse unlawful commands, and may be potentially held legally accountable for carrying out such commands that violate international legal obligations.

I would call the attention of the panel to two sections of this *Manual of Law of Land Warfare*. One, which is Section 498, that says, and I quote, "Any person whether a member of the armed forces or a civilian who commits an act which constitutes a crime under international law is responsible, therefore, and liable to punishment. Such offenses in connection with war comprise (a) crimes against peace; (b) crimes against humanity; and (c) war crimes."

And then it goes on to say something I think is quite significant. Although the manual recognizes the criminal responsibility of individuals for those offenses which may comprise any of the foregoing types of crimes, members of the armed forces will normally be concerned only with those offenses constituting war crimes. What is significant in that language is that it only says "will normally be concerned" and that would suggest that it would be entirely reasonable to say that a crime against the peace, when it is being committed in such a flagrant form, is something that any member of the armed forces should be concerned about and should act in opposition to.

There is another article that I would call to your attention, which is Article 509, which talks about crimes under a section called Defense of Superior Orders. And in Section B, it indicates the normal understanding that superior orders are not a valid defense in a charge involving war crimes. But then it has a very relevant final sentence which says that, "Although a soldier is normally expected to follow orders," and here's the language that I would like to emphasize to the panel, "at the same time it must be borne in mind that members of the armed forces are bound to obey only lawful orders." And it refers further to Article 92 of the Uniform Code of Military Justice.

So it seems to me beyond all reasonable doubt that this judge, this military officer acting as a judge, has put Lt. Watada in a totally intolerable situation where he has been given an unlawful order because it is tantamount to an instruction to participate in the Iraq war. There is no other sensible understanding of that deployment order. Therefore, he is being ordered to do something that he has every reason to believe--a belief that is endorsed by an overwhelming consensus--is implicating him in the gravest crime against peace imaginable. And if he has no chance to even raise that issue before this military tribunal, then it's such a blatant denial of justice as to itself constitute a kind of crime because he's being criminally disallowed from obeying the law. Franz Kafka didn't have such a macabre imagination.

I've heard it said that, most recently by Dan Ellsberg, that the Article 6 paragraph 2 of the U.S. Constitution establishes international law as the supreme law of the land, any duly ratified treaty. And the U.N. Charter is such a treaty.

And the Nuremberg Principles have the highest possible status in international law. They are considered what are called technically *Jus Cogens*, or peremptory norms, which mean no government can alter those norms even if it enters into a subsequent treaty. In other words, they're beyond reform and beyond revision.

As has been said previously and doesn't need much elaboration, what the Iraq war presents for us is one of the most flagrant and sustained violations of the U.N. Charter in modern history. There was no occasion for self-defense. The claim of self-defense, despite the American attempt to gain a Security Council authorization for the use of force, was withheld.

In other words, there is no foundation in international law for resorting to war against Iraq. And beyond that--

an illegality of this sort--the United States Government is violating the U.N. Charter and is violating customary international law by engaging in this war. What the Nuremberg Principles and the Nuremberg judgment add to this conclusion is that this kind of violation is also an international crime and that those responsible for guiding the country into such a war are personally responsible as war criminals. And if the rule of law was being upheld on a global basis, our president, our vice-president and many of our leaders should be indicted as war criminals.

But what Lt. Watada's case does is to move one step further in that direction because it's saying that not only are these leaders responsible legally and criminally, but that all those that have an opportunity to prevent the continuation of this crime have a Nuremberg obligation to act within their specific circumstances, to prevent the continuation of what they called at Nuremberg the supreme crime that embraces all the other lesser included crimes.

So it seems to me that this situation, which draws our attention to an ongoing war of aggression that is daily killing Americans and many Iraqis, is a situation of such urgency that exercising this Nuremberg obligation is not only something that is an appeal to the conscience and the law-mindedness of Lt. Watada, it is an appeal to the conscience of all citizens, indeed, all persons to take what action they can to stop the continuation of this aggressive criminal war.

Selected responses to questions:

Can the U.N. Security Council authorize a war of aggression? International lawyers have not properly addressed that question. I've been on record as saying it cannot; that there is -- that the norms of the Charter take precedence over the procedures of the Security Council. The geopolitical manipulation that is possible in the Security Council is something that could undermine the integrity of the Charter if that was the final voice on whether war was lawful or not. The United States came awfully close to twisting enough arms prior to the Iraq war. And it took some rather courageous moves by the German and French governments to prevent the Security Council from acquiescing in what would have been a blatant war of aggression. And the Security Council failed to stop Israel's aggression against Lebanon last summer. So we can't look to the U.N. as an unconditional guarantor of the legality and the legitimacy of governmental action.

...

The U.N. Charter has a built-in contradiction. On the

one side, it imposes this unconditional prohibition on recourse war except in self-defense. At the same time, it gives the five permanent members of the Security Council a veto right over the decisions of the Security Council. So, in effect, the U.N. is saying, these five countries can exempt themselves from the authority of the U.N., but they cannot exempt themselves from the authority of international law. And the U.N. Charter did not exist, for instance, when the leaders of Germany and Japan were prosecuted for war crimes after World War II.

From the Iraqi perspective, the U.N. failed the people and the country of Iraq by not protecting them against a war of aggression. Part of the obligation of the Charter is that countries that are victimized by aggressive war should be protected by the community of nations. And it is a sign of the primacy of geopolitics that victims of aggression, if they are not in accordance with the power structure of the world, will not be protected. Lebanon was not protected. Iraq was not protected. And so again, as important as the United Nations is in many respects, one needs to recognize its limitations and the degree to which the structure of power in the world really restricts its capacity to live up to its own Charter. . . .

Krieger: You mentioned Section 509, which you refer to as Defense of Superior Orders in the Army Field Manual. Is it your testimony that that section of the Army Field Manual would obligate an officer in the United States Army to resist orders to participate in an illegal war?

Falk: Yes. You don't have to be a rocket scientist to understand the words "It must be borne in mind that members of the armed forces are only bound to obey lawful orders." That's a very clear directive that this court martial has so far completely repudiated.

Krieger: So would it be your opinion on that basis that Lt. Watada acted in conformity with regulations or with that section of the U.S. Army Regulations?

Falk: Yes. Lt. Watada, in my view, was doing just as he should be doing as a loyal, observant, obedient member of the U.S. Army.

Krieger: Would you say that other officers who have an understanding that this war is or may be illegal are in violation of that section of the U.S. Army Field Manual?

Falk: I think it is unavoidable that, if they are aware that the war itself is unlawful, any order to participate and engage in that war would also be unlawful.

Krieger: And would you then see an obligation on the part of citizens to educate each other and members of the military with regard to the issue of the illegality of the war?

Falk: Yes, I think it is imperative that citizens fill this institutional void that has been created by the failure of Congress and the failure of the courts to uphold the principles of legality in the society, for citizens to regard themselves as politically legally and morally responsible for maintaining a constitutional form of government.

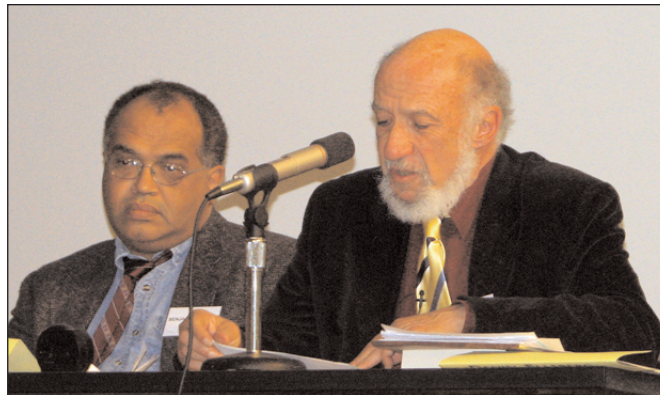


Photo by Lori Hurlbaas

BENJAMIN G. DAVIS, UNIVERSITY OF TOLEDO

benjamin G. Davis is an Associate Professor of Law at the University of Toledo, and an expert on the law of war. He is a former Articles Editor of the Harvard International Law Journal.



Photo by Elliot Stoller

My name is Ben Davis. I'm from Toledo, Ohio. I'm deeply honored to be here today to have this opportunity to present testimony to the panel.

My testimony will be in four parts. One is with regards to Lt. Watada; second is in response to the question presented regarding crimes against humanity; third with regards to war crimes; and fourth is a question about what to do.

With regard to Lt. Watada, in coming to Tacoma/Seattle, I must admit that I was brought back to my studies of World War II and to individual citizens in Seattle who at the time at the Japanese internment said that this was not possible. They went to see their mayor. They talked to whomever they could in their position of little power to object to the treatment of Japanese Americans at that time.

And I find speaking of Lt. Watada at this time, it echoes back to those times. And I am willing to say that I feel that we are at a *Korematsu* moment: I think it's very important to remember the *Korematsu* moment that we are in. It's a terribly difficult one and I assume everybody who is a citizen is willing to address that.

With regards to Lt. Watada, who he is as a lieutenant, I want to speak to the military people here. There are two phrases I want to know if you're aware of. One is FUBAR (Fowled Up Beyond All Recognition), which I

think is an accurate presentation of the war in Iraq. And the other one, I turned it into Latin for an article, but in military terms, one of my JAG students said it's SHIT ROLLS DOWNHILL. And I wonder if any of the military people are aware of these phrases, phrases created by people doing that experience. Because when you look at officers the people who have the highest percentage of the court martials are lieutenants.

And there is an issue between lieutenants and generals. There is a line at the general level that is quite troubling: Generals get to resign. So that's an issue that is present also with regards to Mr. Watada.

The next thing is with regards to the decision that was made by the Lieutenant Colonel asserting the Political Question Doctrine. The Political Question Doctrine along with the State Secrets Doctrine along with the Federal Officer Immunity Doctrine are three doctrines that are created in U.S. law that allow cases to be dismissed when they're brought against the government or with regards to government action, basically issues in law of what is judicable, what courts can do or not.

These are doctrines of domestic U. S. law created in domestic courts of the United States. But as a matter of international law, and I want to emphasize that, issues such as these have been and are judicable by international tribunals like the Nuremberg.

So this is a particular distinction that's important. What is domestic U.S. law under our Constitution and what is the international law obligation of the United States; and secondly, whether our courts are willing to comply with that international obligation. Same issues for the president of the United states and the Executive. Same issues for the legislature. You have to keep that in the background.

I say that, why? Because I do believe that Lt. Watada should seek to the extent he can to have this matter reheard before the same Lieutenant Colonel, who certainly should consider whether this part of Lt. Watada's defense can be presented. People are allowed to present their defenses. Judges decide whether a defense is admissible or not. But a defendant is allowed to present a defense. And I want to encourage all the people working with Watada to do as much as they can to assist and support him. I think he has support in international law.

And I include going up to the Supreme Court and I think that someday we may have a Watada decision by the Supreme Court of the United States, but I'm just not confident the Supreme Court is willing to take the step of addressing political questions.

The second thing is on crimes against humanity. We do have the Nuremberg Principles that you have in your folder. I also want to cite to you the statute of the International Criminal Court where crimes against humanity are detailed at Article 7. You should take a look at them. There you will find an updated version as of 2000 of types of crimes that could be committed in Iraq. And with regards to crimes against humanity, certainly you see issues of torture, rape, murder. My answer on the question of crimes against humanity is, yes, probably in Iraq. You have to bring forward the evidence. People need to present evidence like evidence we've heard this morning from people who have been in the area: to bring forward information with regards to the types of crimes that have been done and whether they rise to the level of crimes against humanity.

I've also been asked about war crimes. My answer on that is, definitely yes. We've already seen that with the prosecutions of the low level people at Abu Ghraib and some of the other cases that have happened. Now, whether there are a greater numbers of war crimes and higher up in the government, I would say, yes, probably. Again, we have to bring forward the evidence of those things.

I think that in thinking about the war in Iraq, it's important to keep in mind 9/11. I happen to have a friend who died in the tower, and my sister lived in New York at the time. In fact, I was teaching a class when 9/11 happened.

And as a result of that, on September 12 there was a resolution in the U.N. Security Council about an attack and there was a certain argument to go into Afghanistan in self-defense. But there is also a rule in international law with regards to proportionality, proportionality of response in any given setting.

So I think there is a significant issue in addition to the issues of self-defense: the proportionality of the response to 9/11, to the hitting of the Trade Center and the Pentagon. I actually asked a legal advisor of the State Department recently, What's the argument of proportionality with regard to Afghanistan and Iraq?

So I think there are a number of different levels we can

look at to see that there is a great problem with the war in Iraq.

With regards to the fourth issue, which is what we can do, my particular area of interest is with regards to how you prosecute high level civilian and military officials for violations of international criminal law in U.S. domestic courts. And I would say to you that the short answer is that it's very hard.

The way that the solution is being sought right now is, there is a criminal case that has been filed a second time in Germany to have the Germans bring people like Rumsfeld into court with regards to detainee treatment.

There is also an effort going on in Italy right now with regard to extraordinary renditions which happened on Italian soil that is before an Italian judge. So asking a foreign court to deal with the issue is a typical situation. Why? Because the foreign court takes the international law rule, that is not a domestic internal rule, and applies it. And one of the key international law rules is that no state can take advantage of its own internal law to extract itself from its obligations.

So the foreign court is looking at the foreign state, the United States, and saying, Well, that's an internal rule here. What is the United States' international obligation?

Inside the United States you have three choices: one is the court martial; second is a federal court; third is the state court.

With regards to court martials, the practice has been not to prosecute high level officers. And some earlier decisions made it clear that civilians would not be prosecuted under the Uniform Code of Military Justice. There is some new legislation, some recent law changes, but whether civilians can be subject to court martial may be challenged constitutionally. That's the first issue.

So what happens is, you have generals who are retired. In fact, you have to go back, I think, to the Spanish-American war to the case of a General Smith, who was a brigadier general, and was court martialled for violations of laws of war. He made an order at the time which said to kill all the insurgents in a particular area of the Philippines.

And one of the soldiers there asked, "Well, who's an insurgent?" And he said, "It's everybody over ten -- every man over ten years of age." And Lt. Waller refused that order and actually was honored for his



Photo by Zoltan Grossman

refusal of that order from his general.

I would like to think that Lt. Watada has basically done the same thing as Lt. Waller did in 1902 and should have the same kind of respect that happened in 1902.

The second road that you have is through federal courts. And, obviously, you can see that Scooter Libby, a civilian, is being prosecuted for something. Civilian members of the government can be prosecuted. The issues that arise on the criminal side are, you'll have Federal Officer Immunity Doctrines argued and you'll have State Secrets Doctrines.

The alternative on the civil side is people bringing cases who've been rendered or outright tortured, like Maher Arar, the guy who was picked up at JFK and was sent off to Syria.

But again, the government will assert the State Secrets Doctrine and the courts have shown a willingness to abide very closely by this doctrine. Terribly difficult for the judge, but the judges seem to do that as a matter of domestic law.

A third possibility is actually finding some kind of state crime on which a person could be prosecuted. But you run into Federal Officer Immunity Doctrine issues there.

There's also an issue between military and non-military persons because once a person leaves the military, whether they can be prosecuted in federal court or not may be an issue. And for non-military, which would be military contractors and civilians, for example, CIA types, there are some complications that have arisen because of acts that are done overseas. There's a military Extraterritorial Jurisdiction Act that has some problems.

One way has actually been found to prosecute a CIA person, Mr. Pasarow, ironically under an aspect of the U.S. Patriot Act, for some actions he did in Afghanistan recently.

But I'm just trying to just emphasize that in all this system, don't look for the courts to provide a great deal of help. And that it ends up coming back to individual citizens, I think, working through the Congress and working through pressure on the Executive, and actually the bureaucracy of the Executive, to do something that would help to stop this.

And so the burden remains with you, I'm sorry to say, at least from what I can see so far, and remains with all of us. But we should maybe take some hope or courage from Lt. Watada. Thank you very much.

DANIEL ELLSBERG, FORMER PENTAGON ANALYST



Photo by Mosen Mirghanbari

Daniel Ellsberg is a former military analyst with the Rand Corporation. He released the Pentagon Papers in 1971, which documented the illegal U.S. actions in Vietnam War. He has since been a peace activist and lecturer, who has called on whistleblowers within the government to expose illegal military actions.

I'm here because of the Americans that I'm proud of and that we should all be proud of...people like Ehren Watada. Also, friends and heroes of mine in the audience like Ann Wright and Geoffrey Millard. They remind me very much of a person who changed my life in 1969, a guy name Randy Keeler, who chose to risk prison and actually go to prison, as Ehren is risking and probably will serve today. It took that to wake me up to what I should be willing to risk and what I should be willing to do.

Someone paraphrased Brecht this morning by saying that the greatest decision that a soldier has to face is whether and when to think....It's certainly a precursor to what has to be done--thinking that what you've been asked to do might be wrong; thinking that what the country is doing might be wrong...It is a very important part of being a democratic citizen, including a democratic soldier.

The constitutional and legal issues [in Iraq] are almost unique in modern times....We haven't had the occasion of such a clear-cut challenge for us as democratic citizens of what to do when our country is engaging in clear-cut aggression....[Although] something rather new to me in the last few years was to discover that this is not our first war of aggression. In fact, now others will think Vietnam. But that wasn't clear in legal terms or constitutional terms, and so put that aside. Obviously World War I, World War II, Korea, the Gulf War, none of those looked like wars of aggression. So when?

I don't think many people here know much about the Mexican War. I'll just very quickly quote the personal memoirs ...of Ulysses S. Grant, who, of course, was later head of the union army during the Civil War and then President of the United States.... The memoirs are very good. And what I came across...[concerns] his understanding when he was a 1st Lieutenant, like Ehren Watada. His president, James Polk, gave orders to do what he clearly recognized was an effort to provoke Mexico into attacking an American unit in disputed territory, so that Polk could announce falsely that Americans had been killed on American territory . . . and say a state of war exists and dare Congress to do something about it....

The provocations [Grant] described were as concrete as I believe are going on today, tomorrow, and next week against Iran—to try to provoke Iran to attack an American warship in the Arabian Sea or in the Persian Gulf so as to justify our full-scale attack.

Why would I infer such a thing? I lived through such an administration in 1964, when Americans were put in harm's way by Lyndon Johnson in order to provoke an attack on a destroyer which would enable us to justify pre-laid plans for attacking North Vietnam, exactly as impeachable, exactly as illegal, as unconstitutional, as anything George Bush has done; but the public didn't learn of it until years later after he was out of office. I knew of it, and I didn't tell Congress and I didn't do anything about it and I thought it was a bad idea, the whole bombing campaign, but I did my job.

The bottom line is that, as Grant says as a 1st Lieutenant who went through the whole Mexican War, "I was bitterly opposed to the measures to this day regarding the war which resulted in one of the most unjust ever waged by a stronger against a weaker nation."...Later in his letters, Grant said, "I have never altogether forgiven myself for going into that war. I do not think there was ever a more wicked war than that waged by the United States on Mexico. I thought so at the time when I was a youngster only I had not the moral courage to resign." We haven't heard a statement like that from many generals...

My life changed when some people, like Ehren Watada, were following the example set and the principles set down by Henry David Thoreau who spent only one

night in jail because his aunt, to his displeasure, paid his fine for his poll tax. His hope had been to go to court and to raise the issues of the Mexican war and slavery as something that could not be participated in. ... He said that if a government is only committing certain small oppressions like the friction in machinery, let it go. Every machine has its friction. But when it is a tremendous oppression, he said, then it is time to rebel....When a country is unjustly overrun and conquered by a foreign army and especially when ours is the invading army, then he says, it is not too early to rebel. He said obedience to leaders is the wrong choice in that case.....Resist.

Like Peter Schrag said in 1971 [about the Vietnam War]the majority of the public is against the Iraq War right now. To oppose it poses no risk. That's true of the Democrats right now in their resolution. The only risk is in taking steps to stop it....

Going back to 1846, Thoreau [was critical of] the thousands who were *in opinion*, his italics, opposed to slavery and to the war and yet, in effect, did nothing to put an end to them (they hesitate and they regret and sometimes they petition, but they do nothing in earnest or with effect and wait, well disposed, for others to remedy the evil. [So, too, today]...the vote is not irrelevant. The votes that put Democratic chairmen in and give whistleblowers a chance to testify for the first time and. if we press them to hold those hearings and to call those witnesses, that does make a difference. So those votes were worthwhile. But Thoreau did go beyond that in words that Gandhi took very seriously, "cast your whole vote, not a strip of paper merely, but your whole influence." A minority is powerless while it conforms to the majority. It is not even a minority then. But it is irresistible when it is clogs by its whole weight.

What I think we see in Ehren Watada is what I saw in Randy Keeler who put the idea in my head, the question, what could I do if I didn't try to keep my clearance, if I gave up my job, my career with all its promises not just of prestige and interests which actually didn't matter that much to me, but my inside dope which did matter to me, my access to information, my ability to influence and write memos to people high up what if I gave that all up? What if I was willing to go to prison like these people, like Ehren Watada, which remember, I have to say with all respect to demonstrators goes beyond demonstrations.... (I'm not putting those down either anymore than I put down lobbying or electioneering or campaigning. I think it's all essential....But I do know that my life was changed by people who cast their

whole vote to change society, to change what was happening.

There are people in this audience who, once they left the establishment, if they were in it, like Ann Wright, who loses no opportunity, who is doing everything...and Cindy Sheehan and Ehren Watada, who is going all the way nonviolently and truthfully. We do need that. That's essential. And with that, we do have a chance to change this country and to avert these disasters.

Responses to questions:

[Regarding Lt. Watada's case and the ruling excluding Watada's defense that the war is illegal]

I have thought about this from a certain angle. I'm not a lawyer....I do know that the Supreme Court has said over and over we won't deal with this in particular because it's a political question. I only can say it's for Congress and the President to fight this one out. And indeed, Article 1 Section 8 [of the Constitution], which gives responsibility for war to the Congress [are the grounds over which] the Congress will have to struggle with the President over who controls the war.

But when the question is not just simply should we have a war in practical terms but is this war legal in domestic and international law terms, I have to say, as a layman, I can't make any sense out of that. Who is supposed to decide that other than the courts and other than the Supreme Court? At [Lt. Watada's] Article 32 hearing, I think when [the legality of the war] was raised and when [the prosecution] asked whether any court had dealt with this, an appropriate answer would have been to say, "you, sir, are presiding over a court that is addressing this, that is faced with this question."

I think that lawyers have a responsibility not to be silent on this issue when the judges sheer off the blame, sheer



Photo by Jim Robbins

off the responsibility and shy away from addressing this issue. And as I've said, I don't think they've ever actually been confronted with an issue as clear-cut as this....

Ehren Watada did not have to go to law school to figure out that we've got an illegal war. You have to be virtually totally ignorant, like most of his colleagues, of the whole context of the thing to have any question about that in your mind. So I would say not just this court martial but most courts, civilian and military, from top to bottom, have been irresponsibly ignoring that question now for generations. This is the time to try to hold them to it.

Watada is challenging them directly: you, like me, should be facing up to what your oath to the Constitution means and what it compels you to do. You should be thinking about that. I am certain they have not done so. But maybe we can stimulate that....

I can give a fairly short [definition of an illegal war]: The U.N. Charter, which is a ratified treaty and the highest law of our land here, makes it very clear that war in general is not acceptable as a means of settling disputes; but there are two exceptions that make it possible. One is if the U.N. Security Council, without a veto, directs that military operations can be justified for a variety of reasons. Or in the case of self-defense of a country or its allies in the immediate repulsion of an attack until the U.N. can seize itself of the problem and deal with it. That's legal. Anything else is illegal. So preemptive, anticipatory self-defense, including humanitarian interventions that are not covered by this, are simply illegal.

There are distinctions between your right to refuse an illegal order and what Geoffery Millard was pointing out—your obligation to resist an illegal order or to obstruct it. For example, Michael Burnhardt was a hero of mine. He was the sergeant who turned his M-16 to the ground at My Lai and refused direct orders to shoot babies and other people which [Lt.] Calley then did on his own. ... Another man, Hugh Thompson, an officer, saw what was happening from his helicopter, actually saw they had been machine-gunning children in a ditch and were advancing on some others. He landed his helicopter and went toward the children who were being threatened and he told his gunner, "If they [American soldiers] resist what I'm doing, shoot them."

Now, I don't know how many stories you've heard of an American warrant officer giving orders to a subordinate or a colleague to shoot other American soldiers if they

were committing obvious war crimes. Is this clearly wrong? Would it have been wrong to conduct some kind of arrest of Calley, or even saying "you do that and I'll shoot you?" Is that totally wrong? The effect of Thompson's doing that was that he gathered a 16-year-old girl and some babies and got them aboard his little helicopter and he flew off with them. That seems to have been a very legal thing for him to do and appropriate under the circumstances.

The question I think we're addressing is this. Everyone knows that even though people do obey orders to torture, to rape, kill, as happened at Haditha [Iraq]—a Marine sergeant gave the order—that won't probably excuse the people who followed that order. The court will say that's a blatantly illegal order, that they should have at least refused it. I would say they should have done more than that and make sure others didn't do it.

But the question I raise now, which I think is not an easy question, is the order to take part in this war or attack Iran less blatantly illegal than the order to shoot babies? Now, only sergeants and privates and people like that get that order to shoot babies. The people who devise the torture and the free-fire zones at the higher level don't carry it out. But they do carry out the overall operation, the free-fire zone, which is a clear violation of Geneva Conventions as you can get.

And that's what John Kerry admitted in the "winter soldier" hearings, which are not unlike these, when he said, "I committed atrocities." What was he talking about? He said, after all, he was a lieutenant on a PT boat, what atrocities had he done, and he said, "I took part in free-fire zone operations. Anybody who moves is a fair target." He's absolutely right. That's a war crime. The people who ordered that, I would say, were as blatantly criminal. And, therefore, the obligations arise not only to not do it, but as Geoffery Millard pointed out, you're told that your obligation is to prevent that as in any crime.

I don't think these issues have been addressed by this country and that has put us in the position not only as a society of being a society that condones torture and war crimes, but condones a war of aggression and is about to commit another one. That is an intolerable situation. It should be an intolerable dilemma of conscience right now. And what it challenges us to do is not to hold people accountable but to stop this and to stop it with our bodies. Stop it with our whole vote.

FRANCIS BOYLE, UNIVERSITY OF ILLINOIS

Francis Boyle is a Professor of International Law at University of Illinois College of Law. He earned a Ph.D. in political science from Harvard, and is a pioneer scholar in the fields of international law, human rights and war crimes. This presentation was at a Tacoma press conference on August 17, 2006, after his testimony to Lt. Ehren Watada's Article 32 hearing at Fort Lewis.



Photo by Jeff Paterson

Since the U.S. Supreme Court's installation of George W. Bush as President in January of 2001, the peoples of the world have witnessed a government in the United States of America that demonstrates little if any respect for fundamental considerations of international law, international organizations, and human rights, let alone appreciation of the requirements for maintaining international peace and security. What the world has watched instead is a comprehensive and malicious assault upon the integrity of the international legal order by a group of men and women who are thoroughly Machiavellian in their perception of international relations and in their conduct of both foreign policy and domestic affairs.

This is not simply a question of giving or withholding the benefit of the doubt when it comes to complicated matters of foreign affairs and defense policies to a U.S. government charged with the security of both its own citizens and those of its allies in Europe, the Western Hemisphere, and the Pacific. Rather, the Bush Jr. administration's foreign policies represent a gross deviation from those basic rules of international deportment and civilized behavior that the United States government had traditionally played the pioneer role in promoting for the entire world community.

Even more seriously, in many instances specific components of the Bush Jr. administration's foreign policies

constitute ongoing criminal activity under well-recognized principles of both international law and U.S. domestic law, and in particular the Nuremberg Charter, the Nuremberg Judgment, and the Nuremberg Principles.

Depending upon the substantive issues involved, those international crimes typically include but are not limited to the Nuremberg offenses of crimes against peace, crimes against humanity and war crimes, as well as grave breaches of the Four Geneva Conventions of 1949 and the 1907 Hague Regulations on land warfare, torture, disappearances, and assassinations.

In addition, various members of the Bush Jr. administration committed numerous inchoate crimes incidental to these substantive offenses that under the Nuremberg Charter, Judgment, and Principles were international crimes in their own right: viz., planning, preparation, solicitation, incitement, conspiracy, complicity, attempt, aiding and abetting, etc. Of course the great irony of today's situation is that six decades ago at Nuremberg, representatives of the U.S. government participated in the prosecution, punishment and execution of Nazi government officials for committing some of the same types of heinous international crimes that members of the Bush Jr. administration currently inflict upon people all around the world.

To be sure, I personally oppose the imposition of capital punishment upon any person for any reason no matter how monstrous their crimes: Bush Jr., Tony Blair, Saddam Hussein, Slobodan Milosevic, Vladimir Putin, Ariel Sharon, etc.

Furthermore, according to basic principles of international criminal law, all high-level civilian officials and military officers in the U.S. government who either knew or should have known that soldiers or civilians under their control committed or were about to commit international crimes, and failed to take the measures necessary to stop them, or to punish them, or both, are likewise personally responsible for the commission of international crimes. This category of officialdom who actually knew or at least should have known of the commission of such substantive or inchoate international crimes under their jurisdiction and failed to do anything about it typically includes the Secretary of Defense, Secretary of State, Director of Central Intelligence, the National

Security Adviser, the Attorney General, the Pentagon's Joint Chiefs of Staff and regional CINCs, and the President and Vice President. These U.S. government officials and their immediate subordinates, among others, were personally responsible for the commission or at least complicity in the commission of crimes against peace, crimes against humanity, and war crimes as specified by the Nuremberg Charter, Judgment, and Principles - at a minimum.

One generation ago the peoples of the world asked themselves: Where were the "good" Germans? Well, there were some good Germans. The Lutheran theologian and pastor Dietrich Bonhoeffer was the foremost exemplar of someone who led a life of principled opposition to the Nazi-terror state even unto death.

Today the peoples of the world are likewise asking themselves: Where are the "good" Americans? Well, there are some good Americans. They are getting prosecuted for protesting against illegal U.S. military interventions and war crimes around the world.

First Lieutenant Ehren Watada is America's equivalent to Dietrich Bonhoeffer, Vaclav Havel, Andrei Sakharov, Wei Jingsheng, Aung San Suu Kyi, and others. He is the archetypal American Hero whom we should be bringing

into our schools and teaching our children to emulate, not those wholesale purveyors of gratuitous violence and bloodshed adulated by the U.S. government, America's power elite, the mainstream corporate news media, and its interlocked entertainment industry.

In international legal terms, the Bush Jr. administration itself should now be viewed as constituting an ongoing criminal conspiracy under international criminal law in violation of the Nuremberg Charter, the Nuremberg Judgment, and the Nuremberg Principles, because of its formulation and undertaking of wars of aggression, crimes against peace, crimes against humanity, and war crimes that are legally akin to those perpetrated by the former Nazi regime in Germany.

As a consequence, American citizens and soldiers such as Lieutenant Watada possess the basic right under international law and the United States domestic law, including the U.S. Constitution, to engage in acts of civil resistance in order to prevent, impede, thwart, or terminate ongoing criminal activities perpetrated by U.S. government officials in their conduct of foreign affairs policies and military operations purported to relate to defense and counter-terrorism. If not so restrained, the Bush Jr. administration could very well precipitate a Third World War.



Photo by Zoltan Grossman

MARJORIE COHN, NATIONAL LAWYERS' GUILD



Marjorie Cohn is President of the National Lawyers' Guild, and an Associate Professor of Law at the Thomas Jefferson School of Law in San Diego. She delivered this speech to the Veterans for Peace Convention in Seattle on August 12, 2006; the video was shown at the tribunal.

From 1964 to 1973, the United States government assaulted the small country of Vietnam to preserve a corrupt South Vietnamese regime. US warplanes dropped seven million tons of bombs on Vietnam, and used 400,000 tons of napalm and vast quantities of Agent Orange. Between two and three million Indochinese died in the War. 58,000 American soldiers were killed and 300,000 were wounded. Many still suffer the effects of Agent Orange and Post-Traumatic Stress Disorder. More Vietnam veterans have committed suicide since the war than the number of soldiers who died during the war.

GIs established underground newspapers and set up coffeehouses, where they met and discussed politics and strategies for resistance. Mass protests were held. In Vietnam, frustrated, angry enlisted men killed their officers at the rate of at least once a week in incidents known as fraggings. Many GIs were prosecuted. Soldiers felt betrayed by their government. More than 500,000 deserted. An estimated 200,000 were conscientious objectors. Fifty thousand fled to Canada to avoid the draft.

The revelation of massive war crimes by U.S. troops during the 1968 My Lai Massacre turned GIs against the war. They realized that U.S. policy created My Lai. There were "free-fire zones" in Vietnam, in which civilians were fair targets. Today, the Marines operate in "weapons-free zones," which means they can shoot whatever they see. This policy is set at the top. Just as American soldiers were trained to think of the North Vietnamese as "gooks," U.S. troops are now taught to kill the "hajis" in Iraq. The objectification of the non-white enemy makes it more palatable to kill and abuse them. The torture documented at Abu Ghraib, as well as in Afghanistan and Guantánamo Bay, and the killing of civilians at Haditha, Iraq, have created opposition to the

war within the military. The many soldiers who feel Bush lied to them about why they went to war are a microcosm of the American public, a majority of which opposes the war.

The U.S. government tried to justify the Vietnam War with its domino theory: if Vietnam fell to the Communists, so would other countries in Southeast Asia. That, of course, never happened. Once Bush's weapons-of-mass destruction rationale was exposed, he began using a similar myth to rationalize his invasion of Iraq: a democratic Iraq would inspire other countries in the Middle East to jump on board.

But democracy is not Bush's goal in Iraq. Nor was finding Osama bin Laden his aim when he invaded Afghanistan. The U.S. is constructing 6-14 permanent military bases in Iraq, and a natural gas pipeline deal was concluded shortly after the U.S. conquered Afghanistan. In search of new sites for military bases to dominate the region, Bush will probably invade other sovereign nations, such as Iran, Syria, and North Korea.

Grievances against the war in Iraq, like opposition to the Vietnam War, go beyond disapproval of the war itself. Many GIs object to the oppressive, authoritarian culture promoted in the military. That atmosphere was exacerbated by the racism in the Armed Forces during Vietnam. Blacks were drafted, and therefore dying, in disproportionate numbers. They held the grunt positions. They didn't just work in the boiler room; they were the "niggers" in the boiler room. They were the cannon fodder, on the front lines, with the highest rate of casualties.

Besides racism, sexism and homophobia were, and still are, actively fostered by the military establishment. They, in turn, contribute to the brutalization mentality that prepares GIs for war. Unable to muster enough troops to fight in the war because they believe in it, the military exploits sex, masculinity, and sexual violence to motivate the future killers.

The brutal tone is set at the top; the brutalized become the brutalizers. The torture inflicted by many U.S. servicemen and women in the prisons of Iraq, Afghanistan, and Guantánamo Bay is the product of dehumanizing, brutal conditioning and policies that begin at the top of the chain of command. As in the Vietnam era, large numbers of soldiers are returning from Iraq with severe

mental problems, many with Post Traumatic Stress Disorder.

There are many forms of resistance to military service. Some protest the war while still serving in the Armed Forces. Others seek to get out, often actively organizing others to oppose the war when once they succeed. Some speak out peacefully; others engage in militant action. Many file for conscientious objector status, claiming opposition not just to the Iraq war, but to all war.

Not all resisters display the same level of militancy. A silent form of opposition was part of a tidal wave of resistance that developed throughout the course of the Vietnam War. Some GIs quietly complained in churches about what the military was teaching them. In Vietnam, one soldier stopped taking his malaria medicine, contracted malaria, and was shipped home; his was a quiet but effective form of individual resistance to the war.

Many GIs began to salute trash cans, or mail dead fish to particularly loathsome officers. Others joined together in rebellions such as the one on the San Diego based USS Constellation in 1972. Racism was rampant throughout the military. Trained to objectify the North Vietnamese as "gooks," many black GIs began to realize that a "gook" was the same thing as a "nigger." Black crew members on the Constellation formed an organization to defend against discrimination in promotion and the administration of military justice. The command retaliated by singling out several of the leaders and giving them less-than-honorable and administrative discharges.

More than one hundred sailors, black and white, staged a sit-in and demanded the ship's commander hear their grievances. 130 men refused to board the ship. They held a militant dockside strike, often called the largest act of mass disobedience in naval history. None of the men were arrested, some received early discharges, others were reassigned to shore duty.

The Constellation rebellion captured the attention of the United States military brass. Chief of Naval Operations Admiral Elmo Zumwalt met with eighty top admirals and Marine Corps generals. The House Armed Services Committee appointed a special subcommittee to investigate the discipline problems in the Navy. The Constellation incident was evidence of both a new awareness of racism, in the Navy and resistance to the war itself.

Since the war is unlawful, orders to deploy to Iraq are

unlawful orders. Torture and inhuman treatment constitute grave breaches of the Geneva Conventions. Such breaches are considered war crimes under the U.S. War Crimes Act, which can be punished by life in prison or by the death penalty if the victim dies.

There is a burgeoning support network among the high-profile resisters to the Iraq War. Pablo Paredes, Camilo Mejia, Jeremy Hinzman, Kevin Benderman, and Ehren Watada, have refused orders to fight in Iraq, claiming the war to be illegal. As soldiers and sailors follow them in increasing numbers and refuse to obey similar orders, military resistance to the war will grow.

Camilo Mejia, a former Army infantryman who spent nine months in the brig for refusing to return to Iraq after a military leave, was charged with desertion with intent to avoid hazardous duty. His case achieved notoriety because he was the first Iraq veteran to see combat, return on furlough, and then publicly refuse to return to Iraq. Camilo denounced the war as illegal.

Aidan Delgado, who received conscientious objector status and an honorable discharge after spending nine months in Iraq, worked at battalion headquarters at the notorious Abu Ghraib prison. He saw prisoners beaten to within an inch of their life by guards; five were shot dead for throwing stones during a demonstration. Although Abu Ghraib was routinely shelled with mortars and rockets from the insurgency, Aidan was denied protective armor after he declared himself to be a conscientious objector.

Jeremy Hinzman also maintained the Iraq War was illegal. He left the Army and went to Canada after his conscientious objector application was denied. During the Vietnam War, fifty thousand draft-age Americans went to Canada to avoid serving in what many characterized as an illegal and immoral war. Many were granted refugee status. Canadian immigration rules are tighter now. Nevertheless, many who are AWOL from the Iraq War are thought to be laying low in Canada.

Kevin Benderman was sentenced to fifteen months for refusing to return to Iraq. Kevin's company commander in Iraq ordered his outfit to shoot children if they threw small rocks at the soldiers. When he received orders to return to Iraq for a second tour of duty, Kevin refused deployment and applied for conscientious objector status. The Army rewarded him with a charge of desertion. Kevin's case has become a cause celebre, inspiring others to resist what they say is an illegal war.

The first commissioned officer to publicly refuse an order to deploy to Iraq was Army First Lieutenant Ehren Watada, a Honolulu man who signed up for a three-year stint in the Army "because of patriotism." Although he questioned the war early on, Ehren gave President Bush the benefit of the doubt. The turning point for him came when he "saw the pain and suffering of so many soldiers and their families, and innocent Iraqis." Not a publicity seeker, Ehren tried twice to privately resign his commission in early 2006. But the Army refused to let him go quietly. So Ehren held a news conference where he announced the Iraq War is illegal and his participation would make him party to war crimes. Ehren asked me to speak about the illegality of the war. It was an honor to be there with him and his supporters.

I was also lucky to be asked by Pablo Paredes to participate in his case. Pablo refused to facilitate the transportation of more troops to participate in the Iraq war. When he refused orders to deploy with that ship, Pablo took a tremendous risk. He had no way of knowing whether he would be charged with desertion, which carries a possible death sentence although no executions for desertion had been carried out since World War II.

He could receive a dishonorable discharge that would haunt him the rest of his life. Pablo faced possible incarceration, forfeiture of all salary and benefits, and a criminal record that might affect his future job opportunities. And he could also become the subject of harassment, ridicule, humiliation, and even physical abuse from many who could not understand his protest. Pablo was ordered to board the Bonhomme Richard and deliver Marines to fight in Iraq. Had he gone, Pablo would have remained on the ship, far from harm's way. Rather, he said, "It came down to begin a part of a system that could hurt people."

Pablo agonized about what he should do. He considered hurting himself, breaking a bone, an arm or a leg, or asking a friend to do it for him. He could show up drunk or on drugs (even though he had never done drugs). He was desperate to avoid becoming part of the war machine. Finally, Pablo decided he would simply refuse to go. Mindful of the potential to inspire the peace movement, Pablo contacted the media. He donned his T-shirt and appeared on the Navy pier on December 6, 2004. Not knowing what fate was in store for him, Pablo refused orders to board the ship bound for the Persian Gulf.

Pablo was charged with unauthorized absence and missing movement by design. He was court-martialed and

faced 2 years in custody. At one point during the trial, both participants and spectators were standing outside. A car drove up and a sailor leaped out and ran up to Pablo. "Are you Paredes?" he asked. He appeared hostile. It looked like he would assault Pablo. The crowd cringed. "Yes," Pablo said. The sailor thrust out his hand and said, "I just want to shake your hand."

Lt. Comm. Judge Klant dismissed the charge of unauthorized absence but convicted Pablo of missing his ship's movement by design. Before sentencing, Pablo told the judge, "In all I read, I came to an overwhelming conclusion supported by countless examples that any soldier who knowingly participates in an illegal war can find no haven in the fact that they were following orders, in the eyes of international law."

And he followed by stating: "If there is anything I could be guilty of, it is my belief. I am guilty of believing war in all forms is immoral and useless, and I am guilty of believing that, as a service member, I have a duty to refuse to participate in this war because it is illegal." These statements provided both the basis for conscientious objector status, opposition to all war, and his belief that the Iraq War in particular is illegal.

"I am convinced that the current war on Iraq is illegal," Pablo went on. "I am also convinced that the true causality for it lacked any high ground in the topography of morality. I believe, as a member of the armed forces, beyond having a duty to my chain of command and my president, I have a higher duty to my conscience and to the supreme law of the land." Thus he concluded, "Both of these higher duties dictate that I must not participate in any way, hands-on or indirect, in the current aggression that has been unleashed on Iraq."

To corroborate the reasonableness of Pablo's antiwar beliefs, I testified as an expert witness for the defense on the illegality of the Iraq War and on the commission of war crimes by U.S. forces. I told the judge that the war in Iraq violates the United Nations Charter, which forbids a country from attacking another country unless it is acting in self-defense or has the approval of the Security Council.

There was no link between 9-11 and Saddam Hussein's regime, or al-Qaeda and Saddam Hussein's regime. There was no imminent threat of any attack against the United States or any other member of the United Nations. And, therefore," I said, "it was not carried out in self-defense under Article 51 of the United Nations Charter." Furthermore, I told the judge the Security

Council did not sanction the United States's use of force in Iraq.

I explained that Pablo had a reasonable belief that transporting Marines to Iraq would put them in the position of committing war crimes. The U.S. War Crimes Statute defines grave breaches of the Geneva Conventions as war crimes. Torture, inhuman treatment, willful killing, and the denial of a right to a fair trial constitute grave breaches. The torture and abuse of prisoners at Abu Ghraib prison in Iraq by U.S. forces constitute war crimes, I claimed. "Beginning with the 'shock and awe,' the first dropping of 2,000 pound bombs on civilian areas constituted willful killing and a war crime under the Geneva Conventions." "The forced deportation of 200,000 citizens of Fallujah and the retaliatory attack on Fallujah and the destruction of a hospital" also amounted to war crimes.

Both the Nuremberg Principles and the Uniform Code of Military Justice establish a duty to obey lawful orders, but also a duty to disobey unlawful orders. In the UCMJ, I told the judge, "It's not just the commission of war crimes, or crimes against the peace, or crimes against humanity that is punishable, but also complicity in the commission of those crimes." In criminal law," I added, "we call it 'aiding and abetting.' So even if someone were not personally to go to Iraq and commit war crimes, if that person were transporting someone over to Iraq to commit war crimes, he would be liable for the war crimes just the same as the person who actually committed the war crimes." Because orders to board that ship and transport Marines to fight in an illegal war and possibly commit war crimes were unlawful, I told the judge, Pablo thus had a duty to refuse those unlawful orders to embark on the Bonhomme Richard on December 6, 2004.

At the conclusion of my testimony and after an inept cross-examination by Navy prosecutor Lt. J.S. Freeman, Judge Klant made a statement that astonished the spectators: "I believe," he said, "the government has successfully demonstrated a reasonable belief for every service member to decide that the wars in Yugoslavia, Afghanistan, and Iraq were illegal to fight in."

Rick Rogers, the military reporter for the conservative *San Diego Union-Tribune* characterized the judge's surprising statement as a "flip comment." Lieutenant Commanders presiding at Navy courts-martial don't make flip comments. Nevertheless, apparently at the suggestion of this reporter, the media representatives covering the trial agreed among themselves not to report

the judge's statement. Only the *San Francisco Chronicle*, a few small newspapers, and the electronic media published the quote.

But Navy prosecutor Lt. B.T. Hale asked the judge to sentence Pablo to nine months in the brig, forfeiture of pay and benefits, and a bad conduct discharge. Pablo could have "slinked away with his private-held beliefs quietly," Hale argued. According to Hale, the public nature of Pablo's protest made it more serious.

Judge Klant gave Pablo Paredes no jail time or bad conduct discharge for missing his ship's movement to the Persian Gulf. He was sentenced to two months' restriction, three months of hard labor without confinement, and a reduction in rank to seaman recruit. The spectators on both sides of the aisle were stunned. They checked with each other to make sure they heard the judge right.

The judge didn't buy the prosecutor's argument that Pablo should be treated differently because his actions stemmed from political and moral beliefs. He must have felt tremendous pressure to incarcerate Pablo for his public defiance. But Judge Klant followed his own conscience, and the law. He displayed remarkable courage.

"This is a huge victory," declared Pablo's lawyer, Jeremy Warren. "A sailor can show up on a Navy base, refuse in good conscience to board a ship bound for Iraq, and receive no time in jail." Not every judge can be expected to be as reasonable as Judge Klant.

The refusers, resisters, and deserters will increasingly put the Iraq War on trial in the media and on the Internet. Soldiers, sailors, and parents of those killed, wounded, and still serving in Iraq have joined a growing movement of resistance to the war in Iraq. Some, who oppose all war, are conscientious objectors.

As the war continues with no end in sight and casualties mount, the new GI Movement will play a critical role in ending this war and in swelling the numbers of conscientious objectors. For all of them, unlike for many of us in America, the war is not an abstraction....

It is up to us to continue to speak truth to power - that the war in Iraq has made us more vulnerable to terror. As the tragedy Bush has created in Iraq continues to worsen, resistance to service will continue to grow. The best way to support our troops is to bring them home from Iraq - now.

THE NUREMBERG PRINCIPLES

Adopted by the U.N. International Law Commission, 1950.

Principle I Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.

Principle II The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV 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.

Principle V Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI The crimes hereinafter set out are punishable as crimes under international law:

a. Crimes against peace:

- i. Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- ii. Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

b. War crimes: Violations of the laws or customs of war which include, but are not limited to murder, ill-treatment or deportation to slave-labor or for any other purpose of civilian population of or in occupied territory, murder or ill treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

c. Crimes against humanity: Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Principle VII Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principles VI is a crime under international law.

U.S. ARMY OATHS

Whereas enlisted personnel take an oath to “obey the orders” of the President and superior officers, the officers themselves take an oath only to the Constitution.

OATH FOR ENLISTED PERSONNEL

I, (NAME), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.

OATH FOR OFFICERS

I, (insert name), having been appointed a (insert rank) in the U.S. Army under the conditions indicated in this document, do accept such appointment and do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

U.S. ARMY FIELD MANUAL

U.S. ARMY FIELD MANUAL 27-10: THE LAW OF LAND WARFARE

Section II. Crimes Under International Law

498. Crimes Under International Law Any person, whether a member of the armed forces or a civilian, who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment. Such offenses in connection with war comprise:

- a. Crimes against peace.
- b. Crimes against humanity.
- c. War crimes.

Although this manual recognizes the criminal responsibility of individuals for those offenses which may comprise any of the foregoing types of crimes, members of the armed forces will normally be concerned, only with those offenses constituting "war crimes."

499. War Crimes The term "war crime" is the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime.

500. Conspiracy, Incitement, Attempts, and Complicity Conspiracy, direct incitement, and attempts to commit, as well as complicity in the commission of, crimes against peace, crimes against humanity, and war crimes are punishable.

501. Responsibility for Acts of Subordinates In some cases, military commanders may be responsible for war crimes committed by subordinate members of the armed forces, or other persons subject to their control. Thus, for instance, when troops commit massacres and atrocities against the civilian population of occupied territory or against prisoners of war, the responsibility may rest not only with the actual perpetrators but also with the commander. Such a responsibility arises directly when the acts in question have been committed in pursuance of an order of the commander concerned. The commander is also responsible if he has actual knowledge, or should have knowledge, through reports received by him or through other means, that troops or other persons subject to his control are about to commit

or have committed a war crime and he fails to take the necessary and reasonable steps to insure compliance with the law of war or to punish violators thereof.

502. Grave Breaches of the Geneva Conventions of 1949 as War Crimes The Geneva Conventions of 1949 define the following acts as "grave breaches," if committed against persons or property protected by the Conventions:

a. GWS and GWS Sea. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. (GWS, art. 50; GWS Sea, art. 51.)

b. GPW. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or willfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention. (GPW, art. 130.)

c. GC. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military

necessity and carried out unlawfully and wantonly. (GC, art. 147.)

503. Responsibilities of the Contracting Parties No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article. (GWS, art. 51; GWS Sea, art. 52; GPW, art. 131; GC, art. 148.)

504. Other Types of War Crimes In addition to the "grave breaches" of the Geneva Conventions of 1949, the following acts are representative of violations of the law of war ("war crimes"):

- a. Making use of poisoned or otherwise forbidden arms or ammunition.
- b. Treacherous request for quarter.

- c. Maltreatment of dead bodies.
- d. Firing on localities which are undefended and without military significance.
- e. Abuse of or firing on the flag of truce.
- f. Misuse of the Red Cross emblem.
- g. Use of civilian clothing by troops to conceal their military character during battle.
- h. Improper use of privileged buildings for military purposes.
- i. Poisoning of wells or streams.
- j. Pillage or purposeless destruction.
- k. Compelling prisoners of war to perform prohibited labor.
- l. Killing without trial spies or other persons who have committed hostile acts.
- m. Compelling civilians to perform prohibited labor.
- n. Violation of surrender terms.



Photo by Zoltan Grossman

How to Contribute

TO DONATE ONLINE

The Church Council of Greater Seattle is the 501(c)3 fiscal agent for the Citizens' Hearing. To donate online, go to the Church Council of Greater Seattle: www.churchcouncilseattle.org Go to 'give' then click on "Donate Now Through Network for Good" button to reach the secure site. Then choose "Designate a Fund" and put "Citizens' Hearing."

TO DONATE BY MAIL

Checks can be made payable to CCGS, but be sure to put "CITIZENS' HEARING" in the subject line. The CCGS will receive and disburse the funds (which meet IRS criteria as a tax-deductible charitable contribution). Checks should be mailed to: Church Council of Greater Seattle, Attn.: Citizens' Hearing, 4 Nickerson, Suite 300, Seattle WA 98109.

THE BREMER ORDERS, BY ANTONIA JUHASZ

Order #1 (May 16, 2003) provided for the “De-Ba’athification of Iraqi Society.” All Ba’ath party members holding any position “in the top three layers of management in every national government ministry, affiliated corporations and other government institutions (e.g., universities and hospitals)” were removed from their jobs. With this Order, 120,000 of Iraq’s most experienced and highest ranking civil servants, including engineers, scientists, university professors, doctors, skilled laborers, and government administrators from every ministry, were fired. The apparent goal of the Order was to eliminate any remnants of Hussein’s regime, using Ba’ath party membership as an indicator of loyalty to Hussein and participation, or at least complicity, in his crimes. Under Hussein, however, Ba’ath party membership was a prerequisite for employment in the civil service. For many Iraqis, membership was simply the only route to a good job in the field of their choosing. It was in no way a direct indicator of support for the regime or criminal activity.

These were the Iraqis with the most knowledge of the country’s water, electricity, sewage, transportation, finance, healthcare, and education services, among others. And, in the first days of the U.S. occupation of Iraq, they were no longer allowed to work. David Phillips, author of *Losing Iraq: Inside the Postwar Reconstruction Fiasco* and a former senior U.S. State Department Iraq expert who worked on post-invasion reconstruction planning for almost two years, argued that Order #1 served to remove the “opponents to the liberalization of Iraq’s national economy.” By eliminating those few Iraqis who would be in a position to know about the Orders, understand their impact, and interfere with their implementation, Bremer locked in the economic fate of the nation.

More than five months later, after government services had slid to a state of total disarray and the failure of Order #1 had grown painfully apparent, Bremer was forced to amend it with CPA Memorandum #8, authorizing a case-by-case review of individuals seeking to return to work. While this amendment was welcome, much of the damage had already been done, and the review process itself was slow and tarnished by political favoritism.

Order #2 (May 23, 2003) dissolved Iraqi “entities,” including the Iraqi army and intelligence services. This

order threw the entire Iraqi army—half a million men—out of work at a time when unemployment in Iraq was estimated at between 50 and 70 percent. With no jobs waiting for them and no way to provide for their families, many were believed to have taken their arms and joined the ranks of the insurgency.

The U.S. military had a very different plan for the Iraqis. As early as 2002, U.S. military planners spoke of removing the nine thousand military officers and members of Hussein’s various Special Forces, while retaining the four hundred thousand rank-and-file soldiers, the vast majority of whom were originally drafted under fear of death, unless they were charged with a crime and found guilty in public hearings. The Iraqi soldiers were to provide police and rebuilding services. In addition, all would continue to receive their pay, whether or not they were put to work.

Instead, Bremer disbanded the military and refused to continue to pay their salaries. He handed security and reconstruction work to private U.S. contractors and the U.S. military. Phillips estimated that when one includes the families of the fired soldiers, Order #2 turned some 2.4 million Iraqis, roughly ten percent of the entire population, against the United States in the first month of the occupation.

Order #12 (June 7, 2003; replaced with Order #54, February 24, 2004) outlined the “Trade Liberalization Policy” for Iraq. Among other things, it suspended “all tariffs, customs duties, import taxes, licensing fees and similar surcharges for goods entering or leaving Iraq.” Where existing Iraqi law sought to protect the local economy from foreign competition, the trade liberalization law eliminated all protective barriers in one fell swoop—leaving the market suddenly fully exposed. This led to an immediate inflow of cheap foreign consumer products, which, in turn, devastated local producers and sellers who were not prepared to meet the challenge of their global competitors.

Before the invasion, the Iraqi government heavily subsidized the farming sector. Farming “inputs” such as seeds, fertilizer, pesticides, sprinklers, and tractors were subsidized often at a third or even a fourth of the market price. The government leased land for one cent per *donam*, about six-tenths of an acre, a year. It bought the country’s main crops, wheat and barley, at a fixed price,

whether they were usable or not. And it ground up the grain and provided it free as flour to the people each month as part of the guaranteed food program in which every family received a basket of flour, sugar, tea, and other necessities.

Bremer began changing these policies shortly after the occupation began. Trevor Flugge, the CPA's senior civil administrator for agriculture, described the CPA's changes by explaining that subsidizing farming supplies is "all wrong"; instead, the new government would provide assistance in the form of technology and education and "the market will take care of the rest."

Iraq has not been self-sufficient in food production since the 1950s and has always relied on imports, much of these from the United States. The problem emerging today, however, is that without farming and price supports, Iraqis will no longer be able to compete with the imports and contribute their share to the Iraqi farming sector. In addition, Iraqis may no longer be able to afford the import of American products.

Abu Ahmed Al-Hadithi, an Iraqi vegetable seller at the Al-Adhamiyah market, described the impacts already being experienced in Iraq to Dahr Jamail, one of the only independent American journalists who remained in Iraq throughout the invasion and occupation: "The economic situation is so bad now. The costs of gas and food are going up so high; so even if we make more now, everything is costing more. . . . In Saddam's days we grew all our own vegetables to sell . . . but now so many are coming from outside of Iraq and it is causing us to sell them for less. So I make less profit now, and I have nine people to take care of, and it has made my life very difficult."

Order #14 (June 10, 2003) defined "prohibited media activity" as that which, among other things, "incites violence against Coalition Forces or CPA personnel," "advocates alternatives in Iraq's borders by violent means," or "advocates the return to power of the Iraqi Ba'ath party or makes statements that purport to be on behalf of the Iraqi Ba'ath party."

Order #17 (revised on June 27, 2004) granted full immunity from Iraqi laws and the Iraqi legal system to Coalition military forces and all foreign contractors, including private security firms. Non-Iraqi members of the military, corporations, corporate subcontractors and their employees cannot be held subject to Iraq's laws to this day. Thus, if in the course of his or her duties, a soldier or contractor commits murder, torture, rape, dumps

toxic chemicals, poisons drinking water, starts an oil spill, rips off an Iraqi subcontractor, abuses an Iraqi employee, or the like, the injured Iraqi has no legal recourse other than to try to bring charges in foreign courts under foreign laws.

As Adam Price, a member of the British Parliament, commented, "How is anyone in Iraq expected to bring a case in the British courts? It is taking the idea of diplomatic immunity and applying it to 130,000 troops. There is a danger that you are actually going from immunity to being able to act with impunity."

Order #37 (September 19, 2003; amended with Order #49, February 19, 2004) replaced Iraq's progressive tax strategy (by which the more you earned, the more you paid in taxes) with a flat tax—that long-desired but never-achieved dream of the American right wing. The law dropped the existing tax rate on corporations from a high of 40 percent to the flat rate of 15 percent, which is now in effect for both individuals and corporations.

Order #39 (September 19, 2003) is the foreign investment Order. It includes the following provisions: (1) privatization of Iraq's state-owned enterprises; (2) 100 percent foreign ownership of Iraqi businesses; (3) "national treatment"—which means no preferences for local over foreign businesses; (4) unrestricted, tax-free remittance of all profits and other funds; (5) forty-year ownership licenses; and (6) the right to take legal disputes out of Iraq's courts and into international tribunals.

Order #40 (September 19, 2003; replaced with Order #94, June 6, 2004), the "Bank Law," opens the Iraqi banking sector to foreign ownership. Under Order #40, foreign banks were allowed to enter this previously closed sector and purchase up to 50 percent of an Iraqi bank. The total number of licenses for banks controlled by foreign companies was limited to six through December 31, 2008. One year later, Bremer expanded the Bank Law with Order #94, allowing foreign banks to purchase 100 percent of Iraqi banks and to open subsidiaries and branches without restriction. In addition, banks owned by Iraqis are not to be granted any legal preferences over foreign-owned banks (although the opposite is possible). The HSBC Bank of London was one of the first foreign banks authorized to operate in Iraq and to purchase majority ownership (70 percent) of a private Iraqi bank, the Dar Elsalam Investment Bank, with fourteen branches across Iraq. America's JPMorgan Chase received an early contract to run the Trade Bank of Iraq, a consortium of thirteen banks.

Order #62 (February 26, 2004) enabled Bremer to determine which Iraqis could run for or hold public offices. “When determined necessary for security and public order within Iraq, the Administrator of the CPA may disqualify an individual from participating in an election as a candidate, and for accepting a nomination to, or holding public office, at any level, ”if that individual has, among other things, “publicly espoused political philosophies or legal doctrines contrary to the democratic order and rule of law being established in Iraq.”

Order #57 and **Order #77** placed American representatives in key decision-making positions within each government ministry for terms that last five years—well after the permanent elected government of Iraq took office in 2006. Order #57 (February 5, 2004) established an Inspector General—handpicked by Bremer—with five-year terms within every Iraqi Ministry. The Inspector Generals can, among other things, perform audits and investigations, promulgate policies and pro-

cedures, and have full access to all offices, employees, contracts, and all other materials of the Ministries. Order #77 (April 18, 2004) established the Board of Supreme Audit. Bremer appointed the board president and his two deputies, who are to serve five-year terms. The auditors can be removed only with a two-thirds vote of Iraq’s parliament. To date, no such vote has occurred. This Board oversees inspectors in every Ministry, with wide-ranging authority to review government contracts, audit classified programs, and prescribe regulations and procedures.

Order #80 (April 26, 2004), Order #81 (April 26, 2004), and Order #83 (May 1, 2004) rewrote Iraq’s patent, trademark, and copyright laws, just two months before the handover of authority from the CPA to the interim Iraqi government, to ensure guaranteed access and protections to the Iraqi market for foreign products and producers.

STATEMENT BY LIEUTENANT WATADA



I just want to take a moment to thank — I understand that there was a lot of hard work and dedication in putting all of this together.

And one of the main premises for why I’m here today, and that’s to raise awareness and knowledge among the

American people and to bring the truth out so that, indeed, the government — by the people, the country by the people can formulate the decisions and destiny of this country.

As you know, and from what I understand, when we join the military, we all swear an oath to protect the integrity of the Constitution and the safety and the welfare of American people. Sometimes that duty comes with a price. And I am just proud to say that I am more than willing to honor that sacrifice and that promise that I made to this country.

It’s very unfortunate that the judge has ruled that we will not be allowed in my defense to bring the arguments that you are going to hear today and tomorrow, in a court of law. From what I understand, that under mili-

tary law, those in the military are allowed to refuse, in fact, have the right to refuse unlawful orders — a duty to refuse. And in a court of law they should be given the opportunity to bring evidence of witnesses to their defense on how that order was unlawful.

In this case, I will not be, and I believe that that is a travesty of justice and that is a violation of our most sacred premises of due process and, indeed, is un-American. We will fight it. I will always fight. We will try to appeal to the highest court.

And I just, again, I want to thank everybody for being here, and I hope the truth can be brought out to the American people. Thank you..



Daniel Ellsberg with Lt. Watada at the tribunal. Photos by Jim Robbins.

“DECEPTION OVER WAR SHOULD NEVER BE ALLOWED IN A FREE SOCIETY.”

**Lt. Ehren Watada,
January 31, 2007**

THE CASE OF LT. EHREN WATADA

BACKGROUND FROM THANKYOU.LT.ORG

1st Lieutenant. Ehren K. Watada, 28, was born and raised in Honolulu. He was an exemplary Eagle Scout by age 15. Lt. Watada worked while attending Hawai'i Pacific University, where he earned a degree in Finance and graduated magna cum laude in 2003. He received no financial assistance from the Army for his education.

Friends and family were not surprised by his determination to pursue a military career immediately upon graduation in a post-9/11 era. He enlisted in the Army as an officer candidate and was stationed in Korea in 2004-05, where his superior officers evaluated and described him as "Exemplary," with "Unlimited Potential" and "Likes challenges and moves toward the fight."



Dennis Kyne, Lt. Ehren Watada, and Darrell Anderson at the tribunal. Photo by Lori Hurlbaeus.

In early 2005, Lt. Watada was re-assigned from Korea to Fort Lewis, Washington. Knowing that he would be expected to lead his soldiers into Iraq, he undertook to learn all that he could about the war and what he and those he commanded would likely face. Lt. Watada read widely and researched how and why the Iraq War began and the evidence that was presented to convince the U.S. Congress to approve the war. After a year of study and reflection, Lt. Watada came to the courageous decision to refuse deployment to Iraq.

In June 2006, Lt. Watada stepped forward as the first commissioned officer to publicly refuse deployment to the Iraq War and occupation. He faced a court martial and up to 4 years imprisonment for his refusal to deploy and for speaking out against a war that he believes is illegal. In support of his courageous action, the Lt. Ehren Watada Campaign is working to educate and broaden

the dialog on constitutional rights while mobilizing grassroots action to ensure that our government upholds Lt. Watada's right to speak out and refuse to participate in illegal military action in Iraq. Lt. Watada's parents in Hawai'i (Bob Watada and Carolyn Ho) have traveled the country to speak on his behalf.

June 7, 2006 At a press conference held in a church near Fort Lewis, Watada announces he will not comply with deployment orders to Iraq.

June 22, 2006 Watada fails to board the plane for Iraq with the 3rd Stryker Brigade of the Army's 2nd Infantry Division. He is confined temporarily to base quarters, officially counseled, and notified of a pending investigation. The following day he is transferred to I Corps HQ.

July 5, 2006 Army files charges Lt. Watada for refusing to deploy and statements made in June interviews:
Missing Movement - 1 Count, Article 87
Contempt Toward Officials - 2 counts, Article 88
Conduct Unbecoming an Officer - 3 counts, Article 133

Aug. 2006 Article 32 hearing held to determine if reasonable grounds exist for the charges against Lt. Watada and to gather information to determine the appropriate disposition of the case. Investigating officer recommends a General Court Martial on all charges.

Sept. 15, 2006 Army files additional charge against Lt. Watada for comments made in August at a Veterans for Peace Convention in Seattle: Conduct Unbecoming an Officer and a Gentleman - 1 count, Article 133

Nov. 9, 2006 Lt. General Dubik announces his decision to drop charges of "Contempt Toward Officials."

Jan. 15, 2007 Pre-trial hearing (Jan. 4) decisions are announced by Judge Lt. Col. John Head:.

- * Denies the defense motion to allow Lt Watada to testify that he refused to go to Iraq because he would be participating in an illegal war and crime against peace.

- * Denies the defense motion to dismiss charges of conduct unbecoming an officer based on Lt. Watada's right to free speech, in his public criticism of the war.

Jan. 29, 2007 Two charges of unbecoming are dropped.

Feb. 5-7, 2007 First court martial ends in mistrial.

RELATED LINKS

LEGAL ISSUES

Citizens' Hearing on the Legality of U.S. Actions in Iraq www.wartribunal.org

Thank You, Lt. Watada www.ThankYouLT.org

Amnesty International www.amnesty.org

Association of Humanitarian Lawyers

www.humanlaw.org

Benjamin Ferencz Nuremberg trials prosecutor

www.benferencz.org

Center for Constitutional Rights

www.ccr-ny.org/v2/home.asp

Department of Defense Directives on G.I. Rights

1326.5 on dissent & protest: www.dtic.mil/whs/directives/corres/pdf/132506_100196/132506p.pdf

1344.10 on political activities: www.dtic.mil/whs/directives/corres/pdf/134410_080204/134410p.pdf

7050.6 on whistleblowing: www.dtic.mil/whs/directives/corres/pdf/705006_062300/705006p.pdf

Electronic Iraq

<http://electroniciraq.net/news/internationallaw.shtm>

Global Policy Forum www.globalpolicy.org/

security/issues/iraq/attack/lawindex.html

Institute for Policy Studies www.ips-dc.org

National Lawyers Guild www.nlg.org

World Tribunal on Iraq (2005)

www.worldtribunal.org

MILITARY COMMUNITY

An Appeal for Redress www.appealforredress.org

Army of None www.activ8media.org/armypage.html

A Matter of Conscience: GI Resistance during the Vietnam War <http://amatterofconscience.com>

Bring Them Home Now

www.BringThemHomeNow.org

Center on Conscience and War

www.centeronconscience.org

Central Committee for Conscientious Objectors

www.objector.org

Citizen Soldier www.citizen-soldier.org

Courage To Resist www.couragetoresist.org

GI Rights Hotline 1-800-394-9544

<http://girights.objector.org>

Gold Star Families Speak Out www.GSFSO.org

Iraq Veterans Against the War www.IVAW.net

Kevin Benderman Defense Committee

www.topia.net/kevinbenderman.html

Know All You Can Know: Student privacy & alternatives to militarism www.knowallyoucanknow.com

Military Families Speak Out www.MFSO.org

Military Families Speak Out (WA chapter)

<http://coastalrain.tripod.com/wmfso>

Military Law Task Force (National Lawyers Guild)

www.nlg.org/mltf

Mission Rejected: U.S. Soldiers Who Say No to Iraq

www.chelseagreen.com/2006/items/missionrejectedpa

National Gulf War Resource Center

www.NGWRC.org

Not in Our Name www.notinourname.net/troops

Not Your Soldier www.notyoursoldier.org

Operation Truth www.OpTruth.org

Seattle Draft & Military Counseling Center

www.SDMCC.org

"Sir! No Sir!" Film and Library www.sirnosir.com

Soldiers for the Truth www.SFTT.org

Suzanne Swift support www.suzanneswift.org

U.S. Heros of the Iraq War

www.tomjoad.org/WarHeroes.htm

Veterans for Common Sense

www.VeteransForCommonSense.org

Veterans for Peace www.VeteransForPeace.org

Veterans for Peace (Rachel Corrie chapter)

www.criticalconcern.com/vfp.html

Vietnam Veterans Against the War www.VVAW.org

When the War Came Home stacybannerman.com

HUMAN RIGHTS AND WAR

Brussels Tribunal www.brusselstribunal.org

The Bush Agenda (by Antonia Juhasz)

www.thebushagenda.net

Campaign for Innocent Victims In Conflict

(CIVIC) www.civicworldwide.org

History of Military Resistance [www.zmag.org/](http://www.zmag.org/content/showarticle.cfm?ItemID=10489)

content/showarticle.cfm?ItemID=10489

Human Rights Watch www.hrw.org

Lawyers' Committee on Nuclear Policy

www.lcnp.org

Nuclear Age Peace Foundation

www.wagingpeace.org

Olympia Movement for Justice and Peace

www.OMJP.org

Poll of troops in Iraq: 72% for withdrawal

www.zogby.com/news/ReadNews.dbm?ID=1075

U.S. Military Interventions [academic.evergreen.edu/](http://academic.evergreen.edu/g/grossmaz/interventions.html)

g/grossmaz/interventions.html

U.S. Military Base Network Expansion

www.counterpunch.org/zoltanbases.html

ALL LINKS ON WEBSITE www.wartribunal.org

ACKNOWLEDGMENTS

THANKS AND INSPIRATION

1st Lt. Ehren K. Watada

SPECIAL THANKS TO TESTIFIERS AND PANELISTS

MANY THANKS TO TESC TACOMA

Joye Hardiman
Laurie Arnold
Marla German
Norma Jean Lopez
Wanda McCormack
Luversa Sullivan

ORGANIZING COMMITTEE

Brianna Copley
Rob Crawford
Sasha Crow
Cindy Domingo
Macgregor Eddy
Ellen Finkelstein
Linda Frank
Molly Gibbs
Zoltán Grossman
Gerri Haynes
Michael Honey
Judy Linehan
Larry Mosqueda
Steve Nebel
Liz Rivera-Goldstein
Lietta Ruger
Bert Sacks
Sallie Shawl
Ron Smith
Cindy Sousa
Colleen Waterhouse
Alice Woldt

ADVISORY BOARD

Blase Bonpane
Jeremy Brecher
Daniel Ellsberg
Richard Falk
Thomas Gumbleton
David Krieger
Nadia McCaffrey

OTHER GROUPS AND INDIVIDUALS MAKING THIS EVENT POSSIBLE

Abe Keller Peace
Education Fund
AFSC-Pacific Northwest
Associated Ministries
Brookhart Trust
Church Council of
Greater Seattle
ECCOR
Fellowship of Reconciliation
(Olympia, Seattle, Western
Washington chapters)
First Congregational Church
Ground Zero
Iraq Veterans Against the War
Military Families Speak Out
Northwest Signworks
Olympia Unitarian
Universalist Congregation
People for Peace,
Justice and Healing
RG Flygare (J. McCloud)
St. Leo's Parish, Tacoma
Social Justice Fund NW
Sound Non-Violent
Opponents of War
South Sound Peace
& Justice Center
South Sound Project for
Military Resistance & Justice
Thurston Union of Low
Income People
United for Peace Pierce Co.
United Methodist Church
Univ. of Washington-Tacoma
Veterans for Peace
(Chapters 72, 92, 109, 134)
Mark Ambler
Anonymous
Carl A. Anderson
Muhammad Ayub
Mark Backus
Alex Bacon
Alicia Batten
Louisa Beal
Acar & Kazuko Bill
Richard Blakney
Peter Bohmer
Marc Bordelon
Mary J. Bradford
Reid Branson
Dorothy Burkhart
Katie Cameron
Chris Carson
Geoffrey H. Cole
Brenda Collier
Cheryl Crist
Corinne Cruver
Wally Cuddeford
Marie DeBenedictis
Shulamit Decktor
Felicity Devlin
Dave Dittmore
Deborah Duggan
Josh Elliot
Benjamin Ferencz
Mackenzie Fleming
Diana Forman
Marian Gee
Mary Gleysteen
Barbara Gorzinski
Rob & Carol Gramenz
Barbara Gregory
George & Suzi Grossman
Kathryn Hahn
Glenda Hammond
Christine Hartman
Nancy Hartsock
Carrie Hathorn
Karen Havnaer
Todd Hayes
Robert Haynes
Debbie Hill
Carolyn Ho
Mary Hogan
Patricia Hoppa
Kate Hunter
Lori Hurlebaus
Jim James
Cindy Jatul
Karen Jones
Warren Jones
Erica Kay
Marilyn Kimmerling
Heather Kindem
Duane King
Leilani King
Ellen Kohjima
Tish Korbly
Nina Laboy

David / Marti Lambert
David P. Langford
Louise Lansberry
John Lear
Marisela Fleites-Lear
Rebecca Liebman
Paul Lovelady
Sharon Maeda
Josh Malle
Chris Martin
Tillie & Dale Maupin
Debi McNutt
Dona McPhillips
Bernie Meyer
Cole Miller
Mosen Mirghanbari
Chris Mohamid
Karen Moore
Shirley Morrison
Patty Mosqueda
Marcia Mullins
Kristi Nebel
Veta Nebel
Mark Nelson
Jeff Paterson
Ovidio Penalver
Benjamin Peters
Aaron / Leona Pointer
Harvey Posert
Jim Robbins
Melissa Roberts
Gail Ross
Tery Rothwell
Sigrid Salo
Sam / Suzanne Scharff
Ken Schwilk
Judith Shattuck
Grace Shimizu
Marian J. Snyder
Charlie Stevens
Christine Stevens
Signe & Joseph Stuart
David Swanson
Nancy Thompson
Anne Tsuneishi
Mary Van Elk
Theo Waddell
Robert Watada
Wilbur Wilson
Kevin Zeese
and many others...

FOR MORE INFORMATION on the Citizens' Hearing

**Video, audio, more complete written
testimony, and this report:
www.wartribunal.org**

**Information about Lt. Watada's case:
www.thankyoult.org**

Video highlights of testimony

Part 1 (*Millard, Tharp, Ellsberg, Falk, Davis, Wright, Halliday*):
www.youtube.com/watch?v=6lW0tqddxKg

Part 2 (*Cohn, Anderson, Suarez-Diaz, Juhasz, Kyne, Burroughs*):
www.youtube.com/watch?v=YSkunDAWQZ0