



Lawful Orders

In the wake of last month's mistrial, the court martial of Army First Lieutenant Ehren K. Watada has been rescheduled for July 2007. The young officer stands accused of multiple violations of the Uniform Code of Military Justice or UCMJ, stemming from his refusal to deploy to Iraq with his unit in June of 2006. He also faces charges for interviews that he gave before and after his unit deployed without him.

Watada has stated in numerous public appearances that the war in Iraq is illegal, and that any order to participate in a criminal act is — by its very nature — a violation of the law. Members of the U.S. military are required by law and by duty to refuse illegal orders, a fact that 1st Lt. Watada refers to frequently. He claims that he had no other option as a faithful Army officer; he had to disobey the order to deploy.

Watada's critics call him a coward, a deserter, and a disgrace to his uniform. On the other side of the fence, antiwar activists have labeled him a hero and a steadfast American patriot. The growing controversy over his case and the war itself have made him a poster child of the antiwar movement.

Strictly speaking, I'm not sure that either side's opinion of the man is entirely correct. It doesn't seem likely to me that Lt. Watada is a coward. He has offered to deploy to Afghanistan, because he evidently believes that there are legitimate links between Al-Quieda, the Taliban, and the 9/11 attacks on the World Trade Center and the Pentagon. He is apparently satisfied that the evidence, before and after the invasion of Afghanistan, was compelling enough to support U.S. military action in that country.

Where Iraq is concerned, his opinion is quite different. In a recent video statement posted at YouTube.com, he explained that he was initially persuaded that the threat of Weapons of Mass Destruction in Iraq was valid. But later, as intensive searches failed to locate the much-publicized WMDs, Watada became increasingly convinced that President Bush lied to the American public in order to justify his plans for invading Iraq.

About Jeff Edwards:



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Watada's defense attorney has pointed out that his client is not a conscientious objector. Watada does not object to any and all war, just to a specific conflict: the war in Iraq. In a different country with a different set of provocations, Watada would be willing to go into combat and fight. If true, this would appear to eliminate cowardice as the source of the man's motivation. It also makes Watada a lousy example for the peace movement. He's not a peace-at-all-costs kind of guy. He's expressed his willingness to pick up a weapon and fight. He just doesn't want to do it in this particular country, under these particular circumstances.

I've read a number of editorials and blogs suggesting that Watada is a plant of the antiwar movement. A significant number of people appear to be convinced that he joined the Army under false pretenses. They claim that he never intended to go into combat, and that he's been positioning himself to make just this sort of antiwar stand since the day he raised his right hand and took his oath of service.

As a career military man, I almost find this line of thought comforting. It would mean that one of our own did not turn against us. It would mean that an imposter crept into our midst under false colors, and carried out a pre-existing plan that had nothing to do with the men and women who have stepped forward with the genuine desire to serve.

But as reassuring as that thought might be, I have no way of knowing if it's true. Only Ehren K. Watada knows what was in his heart when he made the decision to join the service. I cannot look into the man's soul and examine his motivations. Neither can anyone else. No one can do that but him. Given no evidence to the contrary, I'm inclined to take the man at his word. No matter how far astray he's allowed himself to be led since accepting his commission in the Army, I think his initial desire to serve was genuine.

I utterly disagree with Mr. Watada's opinions on the legality of the U.S. presence in Iraq. I take serious issue with some of his claims regarding the conduct of American Soldiers in the Middle East, and I'm frankly appalled by many of his public statements. Even so, I'm willing to concede the possibility that his stance on Iraq is sincere, no matter how misguided I think it is.

Those of us who are staunchly pro-defense have a tendency to demonize any service member who refuses an order. When that order involves an assignment to combat duty, we really get spun up. We become awfully quick to invoke cowardice, or lack of patriotism, or even a personal agenda. And often, the root cause of the disobedience may include one or more of those factors. But "often" does not mean "always." History is replete with examples of people who violated the law of the land for what they considered to be the most noble of reasons.

As a formal ideology, civil disobedience goes back at least as far as Henry David Thoreau's 1849 essay *Resistance to Civil Government*. In that essay and in subsequent writings, Thoreau expressed the belief that no person should ever allow any government or law to overrule his or her own conscience. Laws can be wrong, he reasoned, and governments can inflict tremendous harm, whether through outright malice or simple lack of wisdom. Thoreau maintained that all people have a duty to avoid becoming accomplices to acts of injustice, no matter how much pressure their governments or laws bring to bear. He believed that it's better to violate an unjust law and suffer the consequences than to obey that law and sacrifice your moral and ethical beliefs.



Although Thoreau seems to have given civil disobedience its formal basis, human beings have been putting the concept into practice since the stone masons of Mesopotamia carved Hammurabi's first code of laws into the pylons of ancient Babylon. The idea did not begin with Thoreau, and it certainly didn't end with him.

When Rosa Parks refused to surrender her bus seat to a white man in December of 1955, she was practicing civil disobedience. She was breaking a law that she believed to be wrong, and she did so knowing that her act of defiance would land her in jail. The Montgomery bus boycott that followed was another example of civil disobedience. The boycotters knew that they were facing jail or worse, but they believed that doing the right thing was more important than doing the legal thing.

Mahatma Gandhi made civil disobedience a cornerstone of his non-violent Indian independence movement. Gandhi and many thousands of his fellow Indians were imprisoned for violating British law. They felt that the reward for their disobedience would ultimately outweigh any punishment or consequences that the British government could subject them to. They believed that justice was more important than law.

The examples I've tossed out here were all civilian in nature, and they all occurred under conditions other than combat. Do the same principles apply to a service member on active duty? More specifically, does a Soldier have the right to practice civil disobedience? Does he or she have the right to refuse an order?

For many military personnel, the knee-jerk response to that last question is no. A Soldier follows orders. Period. That's the nature of military discipline. You don't discuss it; you don't vote on it; and you don't call home to mom to see if it's okay. You square your shoulders, suck in your gut, and carry out your orders.

But when we get past the automatic reaction, military personnel know that there's another layer to the onion. The real answer is that Soldiers are required to follow *lawful* orders. In point of fact, they are required to refuse unlawful (illegal) orders. The sticky part lies in telling the difference. Although all service members receive regular training on military rights, responsibilities, and the Uniform Code of Military Justice, the average Marine or Soldier or Airman is not an expert on military law.

When in doubt as to the legality of a particular order, the official solution is to consult the chain of command. Basically, the service member presents the issue to the officer or non-commissioned officer above his or her superior, who is then required to take the matter further up the chain of command until a formal determination of legality can be made. If the service member's chain of command happens to be the source of the problem, the UCMJ specifies the procedure for taking such disagreements outside and above the member's immediate chain of command.

Unfortunately, the procedures for redress require hours, days, or even months to work, depending on how far up the chain the problem has to go. Under conditions of combat, even seconds can be critical. Five seconds spent pondering the legality of an order may cost human lives, or tip the balance of success in a crucial battle. This puts military personnel in the



unenviable position of having to make life-altering moral and ethical decisions in mere fractions of a second. I'm proud to say that I think our troops accomplish this nearly-impossible task with extraordinary skill and grace. With a handful of notable exceptions, our guys get it right most of the time, and they manage to do it under conditions that the rest of us can scarcely imagine.

When he made the decision to disobey his orders, 1st Lt. Ehren Watada wasn't operating under a split-second life-or-death clock, and he wasn't struggling with the pressures of combat. He had ample time to consider the probable results of his chosen course of action, and plenty of opportunity to decide if he was willing to pay the penalty for his decision to disobey orders.

He would have us believe that his motivations were ethical and legal. Although I haven't yet heard him utter the words, he appears to regard his violation of military law as an act of civil disobedience. Maybe it is. But one of the core tenets of civil disobedience is the willingness to face the repercussions of violating the law. Anything less is just posturing for the television cameras.

If Watada truly believes he's doing the right thing, that he's making a personal sacrifice for what is right, he should face his punishment with his head held high. He should wear his incarceration as a badge of honor, as have so many activists who came before him. Instead, he's jumping through every legal hoop imaginable to avoid the penalties for his actions.

When you break the law, you pay the price, even if the law itself is wrong. Rosa Parks knew that and accepted it. Mahatma Gandhi knew it, and he accepted it. So did Susan B. Anthony, Martin Luther King Jr., and a few hundred thousand other protesters and social activists, most of whom we'll never know by name.

I'm beginning to get the impression that Mr. Watada hopes to shortcut the process. It seems to me that his plan is to break the law and then skip right past the ramifications to his victory speech. I'm fairly certain that real life doesn't work that way.

First lieutenant Watada made the conscious decision to let his troops go into battle without him. If he's going to make a personal sacrifice, it can't just be a token gesture. It has to be the real thing. Because the men and women of his unit aren't facing a token threat. They're putting their lives on the line, and — unless they log on to YouTube or the antiwar blog sites — the officer who was sworn to protect and lead them is nowhere to be found.

For more columns by Jeff Edwards, visit NavyThriller.Com.