

# *On Watch*



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Military Law Task Force of  
the National Lawyers Guild

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## **ARMY OFFICER WATADA TAKES A STAND**

### **AGAINST AN UNJUST WAR IN IRAQ**

*By Eric Seitz*— The pending prosecution of Lt. Ehren Watada is an important case for those of us who advocate freedom of speech for members of the United States military.

During the Vietnam War, soldiers and officers were prosecuted on similar charges to those now faced by Lt. Watada. By August 1972 the war was extremely unpopular. Vietnam Veterans Against the War (“VVAW”) already was a significant force, and the GI resistance movement was spreading like wildfire. In Vietnam the ground troops were so rebellious that the Marines were removed altogether, and it had become official policy to separate departing soldiers from the new recruits in a vain effort to prevent the former from “contaminating” the latter. In desperation, the Pentagon had shifted its emphasis from ground operations to an air war prosecuted by aircraft carriers stationed off the coast of Vietnam and planes based in Thailand, Guam, and elsewhere.

In August, 1972, rumors surfaced that the scheduled deployment of a carrier bound for Vietnam had been postponed because of damages that had been sustained to one of its engines. According to those rumors, at least one heavy paint scraper and another item had been thrown into the gears **NEXT**

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Read *On Watch* online at [www.NLGMLTF.org](http://www.NLGMLTF.org)



of the USS Ranger, based in Alameda, California, and a sailor had been arrested and was facing charges of sabotage.

Immediately the GI support movement put out the word to the vast network of GI counseling agencies and centers to inquire of their contacts with the USS Ranger and provide any information about the incident. Within just a few days two Ranger seamen walked into a Berkeley counseling office looking for an attorney to check on the status of their shipmate, Patrick Chenoweth, who was in the brig at Treasure Island, a windblown islet in the middle of San Francisco Bay. The very next day I met and was retained by a young, frightened Navy Fireman (E-3) Patrick Chenoweth who was charged with "sabotage in time of war," a potentially capital offense, and who until then had been represented by two young Navy lawyers, neither of whom had ever tried a major case before.

Approximately one month later Patrick Chenoweth appeared before a military judge for an initial hearing that was covered by the national and international media. Earlier the same day, the New York Times had published an article by Seymour Hersh in which he characterized the damage to the Ranger's engine as just one of some thirty-four incidents aboard that ship and part of a sweeping tide of rebellious acts throughout the Navy and all of the other military services.

From that day until his acquittal more than three decades later, Patrick Chenoweth became a household

name and a folk hero in the antiwar and GI resistance movements against the Vietnam War. Every hearing at Treasure Island was packed to overflowing with the media and Patrick's friends, shipmates, and supporters. At the same time, thousands of supporters turned out at a rally at the UC Berkeley campus hosted by Jane Fonda who unveiled her movie "FTA," depicting her tour of Asia with other anti-war entertainers. Meanwhile, on the USS Ranger literally hundreds of documented incidents occurred in which members of the crew – officers and enlisted alike – claimed that they actually had thrown the items into the gears to keep the Ranger from sailing to Vietnam. Indeed, when the case went to trial, it was those gleeful statements of Patrick's shipmates that provided the crux of his defense!

From a historical perspective, the case of Patrick Chenoweth provided an enormous impetus to the already powerful GI movement and delivered a crushing blow to the feeble efforts of military leaders to win back the loyalty and commitment of their troops. It is no exaggeration to say that the case of Patrick Chenoweth, by virtue of its content and its timing, inspired the opposition and materially hastened the end of the U.S. war in Vietnam.

The case of Ehren Watada, an Army officer who refused to deploy to Iraq, presents a direct parallel to that of Chenoweth. Ehren was an Eagle Scout who in March, 2003, patriotically heeded his president's call to

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enlist in the Army to support and participate in the “war on terror.” After completing his basic training, Ehren attended officer candidate school and was commissioned as a second lieutenant with a minimum three-year active duty commitment. He was then sent to Korea where he served with distinction for one year.

Upon being reassigned to a Stryker Brigade at Ft. Lewis, Washington, in June 2005, Ehren was informed that his unit was designated for deployment to Iraq no later than June 2006, and he was encouraged to read up on the war so that he could answer any questions from his troops and effectively lead them into battle. He did “read up,” and the more he learned, the more questions he had. For example, why did the United States invade Iraq without prior authorization from the United Nations? After the government of Saddam Hussein had been overthrown why were the Iraqi people so opposed to U.S. troops bringing order and stability to their country? Why was the U.S. detaining “suspects” in various locations without trials, and on whose authority were those detainees being tortured? Was the U.S., as an occupying power, providing the basic necessities of life to the civilian population in Iraq in the discharge of its obligations under the Geneva Conventions, and if not, why not?

Ehren took his questions to his superiors, to a military chaplain, and a military lawyer, but their responses were unsatisfactory. He became more and more upset and depressed about the prospect of participating in a

war that he could not understand or justify. Once he determined that there never were any weapons of mass destruction, that Saddam had no known connection with the events of September 11, 2001, and that the Bush administration literally had lied about those matters to rally support for a war of aggression, Ehren concluded that he had to act, as a matter of his own conscience, to declare his unwillingness to participate in the war in Iraq and lead troops into a military operation that he concluded was illegal and immoral.

So, Ehren wrote a letter to his commanders asking for permission to resign his commission. Over a period of approximately five months Ehren made repeated efforts to avoid a public confrontation with the Army over his views about the war in Iraq and to fulfill the remaining obligations under his enlistment contract. He asked to be reassigned to other duties not involving the war in Iraq, and he volunteered to transfer to a unit that was headed, instead, for Afghanistan. All of his offers were rejected, so on June 7, 2006, Ehren announced publicly that he was refusing to deploy to Iraq. On June 22, 2006, he failed to board a bus with his unit on the first leg of their trip to Iraq. Shortly thereafter he was charged formally with “missing movement,” or failure to deploy, and other offenses which implicate First Amendment interests.

The missing movement charge carries a maximum penalty of two years in a military prison. However, Ehren also was charged with “conduct unbecoming of an officer” and making “disloyal,” “disrespectful,” and



“contemptuous” statements about the President and the Secretary of Defense arising from his public statements on June 7th. Together with these additional charges, Ehren faced up to eight years behind bars. Although the “contemptuous” speech charges eventually were dropped, probably because their use so clearly offends the First Amendment, Ehren is still charged with several counts of “conduct unbecoming of an officer” that derive entirely from political speech and commentary – as opposed to any actions or conduct.

Thus, the Army, to successfully prosecute the “conduct unbecoming” charges, will have to provide evidence of the remarks they attribute to Ehren, and for that purpose they will need to subpoena the journalists who reported them. Moreover, the Army will have to deal with a 1974 decision of the U.S. Supreme Court which upheld the constitutionality of a “conduct unbecoming” conviction only because, in that case, the defendant – Captain Howard Levy – had engaged in conduct, as opposed to pure speech, by advising his medical corpsmen to refuse to serve in Vietnam. Parker v. Levy 417 U.S. 733 (1974).

On a political level, the Army has little choice but to elevate the charges against Ehren and use those charges as means to stifle the obviously growing dissent and resistance to the war in Iraq in both the civilian and in the military community. The Army recognizes that Ehren’s refusal to deploy with his unit to Iraq sent out shock waves well beyond Ft. Lewis, that the national

and international media have reported the story widely, and that other officers and enlisted persons – many of them – already have been inspired by Ehren’s stand to speak out similarly for themselves. On and off base, Ehren is a hero to many people.

And so, like Patrick Chenoweth some thirty years earlier, Ehren Watada has stepped up at a historic moment and taken it upon himself to become a role model and an inspiration for a growing movement that demands an end to another atrocious war. His trial is set for February 5, 2007.

(For more information please go to [www.thankyouult.org](http://www.thankyouult.org) or the MLTF website at [www.nlgmtf.org](http://www.nlgmtf.org).)

*This article was written by Eric Seitz, a long-time military law practitioner and MLTF member in Hawaii, and counsel for Ehren Watada.*

## **NEWS: APPEAL FOR REDRESS**

Active-duty sailors and other servicemembers have organized a powerful campaign asking Congress to end the war in Iraq. Through their website and individual discussion, they have gathered over a thousand signatures on requests for redress addressed to Members of Congress.

These initial requests will be presented to Congress with press conferences in Norfolk, Virginia, on January 15, and Washington, DC, on January 16. For more information or to help, check out their website at

**[www.AppealForRedress.org](http://www.AppealForRedress.org)**



## Army Seeks Journalist Testimony in Political Speech Prosecution

FOR IMMEDIATE RELEASE  
January 2, 2007

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San Francisco, CA – In a move that threatens the First Amendment rights of journalists, the U.S. Army has subpoenaed journalist Sarah Olson to testify at the January 4 pre-trial hearing in the court-martial of Lt. Ehren Watada. The Army placed another journalist, Dahr Jamail, on the prosecution witness list.

Both journalists say the Army's attempt to compel their participation in the court-martial threatens press freedom and chills free speech.

U.S. Army 1st Lt. Ehren Watada became the first commissioned officer to refuse his orders to deploy to Iraq on June 22, 2006. In his upcoming February court-martial Lt. Watada faces one charge of missing troop movement, and four counts of conduct unbecoming an officer. Each of the later four charges relates to Lt. Watada's public explanations of his refusal to deploy to Iraq. If convicted of all charges Lt. Watada faces six years in prison, four of which would be for speaking to the press.

Independent journalist Sarah Olson interviewed Lt. Watada last May. The Army says statements Watada

made during Olson's interview constitute one charge of conduct unbecoming an officer, and wants Olson to verify those statements in a military court. Olson says: "It's my job to report the news, not to participate in a government prosecution. Testifying against my source would turn the press into an investigative tool of the government and chill dissenting voices in the United States."

Independent journalist Dahr Jamail reported on Lt. Watada's address to the Veterans for Peace convention last August. The Army says it wants him to authenticate his reporting of the event. Jamail says: "I don't believe that reporters should be put in the position of having to participate in a prosecution. This is particularly poignant in this case, where journalists would be used to build a case against free speech for military personnel."

The journalists say once the press is seen as the eyes and ears of the government, dissenting voices are less likely to express themselves publicly. A free and open exchange of ideas is the life-blood of democracy, and it is in the public interest to have a free debate on disparate views of current political issues.

**Support Lt. Watada**  
**[www.ThankYouLT.org](http://www.ThankYouLT.org)**

## MILITARY LAW SEMINARS

Would you like to arrange a seminar on military law and counseling or conscientious objection in your area? The MLTF can provide speakers and resources for day-long or half-day seminars on these issues: an overview of military law, with emphasis on discharges, handling AWOL cases, and dissent, or habeas corpus petitions in conscientious objection cases. Both sessions can be geared for law students and counselors as well as attorneys. For more information, contact Marti Hiken at 415-566-3732.



# MLTF ANNOUNCEMENTS

## VOLUNTEERS NEEDED

The Task Force has established several priorities for its work in 2007. If you can help with research, writing, speaking, organizing, counseling or litigating in any of these areas, please contact the MLTF. The priorities are:

- Supporting the rights of those resisting the military, including individual resistance and other dissent, such as petitions, coffeehouses, etc. We welcome the addition of more coffeehouses located at bases stateside.
- Creating programs to address the medical and psychiatric damage of the wars, including assisting the development of a veterans movement as well as challenging the system that hides this damage.
- Supporting our women's military rights project, which will challenge sexual harassment and sexual assault in the military.
- Supporting counter-recruitment and anti-militarism work in schools and communities.

Please call Marti Hiken at 415-566-3732 or Kathleen Gilbert at 619-234-1883 to help.

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## ***On Watch* IS BACK**

With this issue, the Military Law Task Force resumes publication of its newsletter, On Watch.

The newsletter was first published in July, 1977, carrying articles on military law and commentary on military policy. It continued as a monthly, bi-monthly and occasionally annual publication through November, 1996, when it went into a hiatus until the beginning of the war in Iraq. Three issues were published in 2003 and 2004. Publishing the newsletter in its old style meant uneven intervals between issues and a cumbersome format difficult for on-line readers.

***On Watch*** now resumes as an electronic newsletter. It will be published monthly, with one major article and miscellaneous notes and announcements in each issue. As in the past, it will offer both political and legal analysis of military law and policy. The newsletter will also be available on our website, [www.nlgmltf.org](http://www.nlgmltf.org), where it will soon be joined by an archive of all prior issues.



### NEW WEBSITE LAUNCHED

The Military Law Task Force is in the middle of a revamp of its existing website at [www.nlgmltf.org](http://www.nlgmltf.org). The new website will have a simplified navigational outline with lots of new content, including information for military servicemembers and families and an military law and counseling library. If you have any suggestions for improvements on the website, please contact James Branum at [jmb@jmbzine.com](mailto:jmb@jmbzine.com).

## About the Military Law Task Force

The National Lawyers Guild's Military Law Task Force includes attorneys, legal workers, law students and "barracks lawyers" interested in draft, military and veterans issues. The Task Force publishes *On Watch* as well as a range of legal memoranda and other educational material; maintains a listserv for discussion among its members and a website for members, others in the legal community and the public; sponsors seminars and workshops on military law; and provides support for members on individual cases and projects..

The MLTF defends the rights of servicemembers in the United States and overseas. It supports dissent, anti-war efforts and resistance within the military, offering legal and political assistance to those who challenge oppressive military policies. Like its parent organization, the NLG, it is committed to the precept that human rights are more valuable than property rights.

The Task Force encourages comments, criticism, assistance, subscriptions and membership from Guild members and others interested in military, draft or veterans law. To join, or for more information, please contact the Task Force at:

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