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UNITED STATES ARMY TRIAL JUDICIARY
3d JUDICIAL CIRCUIT
FORT CARSON, COLORADO

UNITED STATES)	Filing of Interested Party
)	
v.)	In defense of TONY ANDERSON
)	
TONY ANDERSON)	Motion For A Dismissal
U.S. ARMY)	Due To Lack Of
FORT CARSON, COLORADO)	Subject-Matter Jurisdiction
)	
)	14 November 2008

MOTION FOR A DISMISSAL DUE TO LACK OF SUBJECT-MATTER JURISDICTION

COMES NOW this Interested Party as one of millions of parens patriae guardians of our military soldiers and motions to this Court to grant a DISMISSAL to the above captioned proceedings, **so motioned!** UCMJ art. 1(9) allows any person to direct the charges and thus any person may counter those charges in the interest of justice in the worst of times when the defense of the accused is against the President. The redress sought for the accused is the relief, “from amenability to trial by court-martial by reason of the termination of that status.” UCMJ art. 3(a).

ARGUMENTS FOR DISMISSAL OF CAPTIONED CASE

UCMJ determines that Military Courts are only to address plenary issues of the military as their powers are exclusively controlled by the President and the authorities reporting to him through his chain of command, “under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned,” UCMJ art. 15(a). Jurisdiction is required to be discernable in the Federal Courts while within a Military Court, jurisdiction is left with the wishes of the President “under such limitations as the President may prescribe,” UCMJ art. 18. UCMJ art. 18 is not a discernable jurisdictional code covering the raised constitutional dimensions of the captioned case and may not be perverted into eliminating

a soldier's Bill of Rights by "pretrial, trial and post trial procedures prescribed by the President", UCMJ art. 36(a). The President through his chain of command has exclusive control over military judges "subject to regulations of the Secretary concerned," UCMJ art. 26(a). "The military judge of a general court-martial shall be designated by the Judge Advocate General", UCMJ art. 26(c). The President has exclusive control over the defense and evidence of the accused "in accordance with such regulations as the President may prescribe", UCMJ art. 46. This exclusive presidential control brings forth a huge conflict of law and an unbearable self incriminating conflict of interest to the accused as his constitutional dimensional sixth amendment reasonable doubt defense is the President's alleged unconstitutional mismanagement of the 2003-2008(+) Iraq War.

UCMJ art. 18 does not allow the military courts to steal congressionally legislated discernable jurisdictional responsibilities of the Federal Courts to "originally" address the raised issues arising under the United States Constitution as 28 U.S.C. § 1331 states, "The (federal) district courts shall have "original" jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." The right of the federal courts to handle all cases arising under the Constitution is the basis of the Supreme Court's right to declare laws of Congress unconstitutional and to overrule unconstitutional abuse of Executive war powers, see *Youngstown Sheet & Tube Co., et al. v. Sawyer*, 343 U.S. 579 (1952). If such exclusive rights held by the Federal Courts are not ascertained from the captioned case, the lost civil rights of our soldiers will become a federal judicial blunder as these civil rights are secured under the jurisdictional responsibility of the Federal District Courts, "The (federal) district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person to recover damages or to secure equitable or other relief under any Act of Congress providing for the

protection of civil rights.” 28 U.S.C. § 1343 (a) (4). Acts of Congress of relevance comes directly from the Constitution our soldiers by oath are required to defend. “The Trial of all Crimes shall be by Jury”, U.S. Const. art. III, § 2, cl. 3. “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury² of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses³ in his favor, and to have the Assistance of Counsel for his defence.” U.S. Const. amend. VI.

Our soldiers are U.S. citizens with inalienable civil rights and when these civil rights are deprived under the color of military law, it gives rise to an action for injury, see (18 U.S.C. §§ 241, 242); (28 U.S.C. § 1443) & (42 U.S.C. §§ 1981, 1983, 1985). 42 U.S.C. § 1983 states, "Every person who, under color of any statute, ordinance, regulation, custom, or usage subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

² How may court-martial selected officers as jury (if so chosen) and a court-martial staff having drilled in allegiances to the President constitute an impartial judicial setting when the constitutional dimensional reasonable doubt defense of the accused is the President's unconstitutional abuse of his War Powers? *Duncan v. Louisiana*, 391 U.S. 145 (1968) "The guarantees of jury trial in the Federal and State Constitutions reflect a profound judgment about the way in which law should be enforced and justice administered. A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The Framers of the constitutions strove to create an independent judiciary, but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge." USSC Justice Byron White.

³ Rep. John Conyers (D – MI) 14th Congressional District of Michigan, Rep. Dennis Kucinich (D-OH) 10th Congressional District of Ohio, Rep. Jesse Jackson, Jr. (D-IL) 2nd Congressional District of Illinois, Rep. Sheila Jackson Lee (D-Texas) 18th Congressional District of Texas, Rep. Jim McDermott (D - WA) 7th Congressional District of Washington State, Rep. José E. Serrano (D-N.Y.) 16th Congressional District of New York, and **74 Concerned Law Professors**. Witnesses on judicial record warning the Third Branch that the 2003 Iraq War will be constitutionally ILLEGAL see *Doe v. Bush*, 323 F.3d 133 (1st Cir. 2003); a tremendous Reasonable Doubt on behalf of the accused!

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress!". A right to a trial by a fair and impartial public jury is the foundation of American Jurisprudence and thus it is requested that the proper authority to take immediate steps to determine what disposition should be made in the interest of justice pursuant to UCMJ art.

30(b). Disposition by law is the transfer to a proper jurisdictional authority pursuant to the mandated straightforward legislated federal jurisdiction as the care of a soldier's Bill of Rights clearly rests with a Jury of a Federal Court federally defined as a cross section of the community, without regard to race, gender, national origin, age or political affiliation. A military jury does not even come close; not even in the same ballpark and if the captioned case continues on in a mere military tribunal, it represents to all soldiers the complete lost of their civil rights; totally and constitutionally unacceptable!

If this court-martial proceeds without jurisdiction to address the raised constitutional dimensional defense, it becomes a compulsory self-incrimination of the accused, prohibited by UCMJ art. 31 as within a non-jurisdictional military court the charges by the accuser and the sixth amendment defense against those charges are out of the military court's jurisdiction that further collaborates United States witnesses to coerce, to unlawfully influence and to induce the CM judge and/or the jurist panel of selected officers to be a part of this UCMJ art. 31 prohibited self-incrimination, a bias judicial with chain-of-command obligations. The constitutional oath of the accused becomes a constitutional dimensional conflict of law rising under the Constitution and thus residual constitutional jurisdictional codes gives exclusive jurisdictional authority to the federal judiciary; by 28 U.S.C. § 1331 federal jurisdiction on the raised constitutional dimensions is mandated and thus the supplemental jurisdictional code 28 U.S.C. § 1367(a) establishes federal exclusive jurisdiction to all charges the accuser has alleged on behalf of the United States.

Overriding federal jurisdiction with a military court's lack of jurisdiction is a serious judicial error and thus by UCMJ art. 69(b) would require the Judge Advocate General to set aside any punishments and be responsible on behalf of the U.S. for all 42 U.S.C. § 1983 retributions.

It is imperative to determine which court has jurisdiction before an accuser raises charges and thus a thorough investigation of this jurisdictional matter is required by the convening authority in the interest of justice and jurisprudence discipline pursuant to UCMJ art. 32(a). On that investigation it will be found that UCMJ art. 32(b) will be violated if a non jurisdictional military court proceeding is allowed as it will be impossible for the accused to present his U.S. Const. amend. VI constitutional dimensional reasonable doubt defense violating the words of UCMJ art. 32(b) to the right of the accused to "present anything he may desire in his own behalf either in defense or mitigation". And if the investigation is prematurely completed without a thorough investigation of these raised jurisdictional concerns, then UCMJ art. 32(c) dictates a demand for further investigation to offer new evidence. The requirement for a thorough jurisdictional investigation is binding on the convening authority and all court officers pursuant to UCMJ art. 32(d). That jurisdictional investigation is explicit by UCMJ art. 34(a)(3) as it requires the convening authority to have in writing from the staff judge advocate that "a court-martial would have jurisdiction over the accused and the offense." Considering the constitutional dimensions as raised, the advice of the staff judge advocate to the convening authority is to take into consideration that these specifications are out of the jurisdictional realm of a military court and thus cannot conform to the substance of the evidence as constitutional dimensions and our soldiers' Bill of Rights are at stake requiring a prudent formal corrections pursuant to UCMJ art. 34(c). This jurisdictional concern is required to be communicated by the

convening authorities to the staff judge advocates, legal officers, Judge Advocate General pursuant to UCMJ art. 6(b).

USSC Substantive Due Process demands uniformed procedural rights to maintain the inalienable rights of a U.S. soldier's civil rights. In the captioned case a military court is unable to meet the requirements of UCMJ 36(b) uniformity as non jurisdictional authority over the raised constitutional dimensions requires a non jurisdictional military trial to force on the Defendant to accept probative hearsay evidence that forbids Defendant's review and prohibits Defendant's sixth amendment compulsory defense, that establishes grounds for non uniformity contrary to recent U.S. Supreme Court Case Law as confirmed by Justice John Paul Stevens' opinion for the Court in *Hamadan v. Rumsfeld*, 126 S.Ct. 2749 (June 29, 2006). This ruling has far reaching ramifications that reinforces the Geneva Convention, i.e. the Common Article 3⁴. And it solidifies the incorporation of other treaties, notably the UN Charter that was violated by the U.S. aggressive invasion of Iraq in 2003. The U.S. Army's Field Manual 27-10 states by Chapter 1, Section I(7)(b), "under the Constitution of the United States, treaties constitute part of the supreme Law of the Land by U.S. Const. art. VI, cl. 2. In consequence, treaties relating to the law of war have a force equal to that of laws enacted by the Congress. Their provisions must be observed by both military and civilian personnel with the same strict regard for both the letter and spirit of the law which is required with respect to the Constitution and statutes enacted in pursuance thereof." FM 27-10 and a soldier's oath to the U.S. Constitution determines a soldier is required to discern constitutional war power dimensions that only a jury of a Federal Court

⁴ Article Three of the Geneva Conventions states that the most egregious of war crimes is that of a war of aggression. "We must make clear to the Germans that the wrong for which their fallen leaders are on trial is not that they lost the war, but that they started it. And we must not allow ourselves to be drawn into a trial of the causes of the war, for our position is that no grievances or policies will justify resort to aggressive war. It is utterly renounced and condemned as an instrument of policy." U.S. Supreme Court Justice Robert L. Jackson, Chief U.S. Prosecutor at the Nuremberg Tribunals, August 12, 1945.

may jurisdictionally discern as punishable or not. When a soldier of conscience makes these constitutional dimensional war power discernments for upholding a soldier's constitutional oath, it becomes contrary to the Bill of Rights to allow arbitrary punishment by non jurisdictional military courts as the Bill of Rights is inclusive within the substantial rights of the accused and disregarding these substantial rights is an Error Of Law prohibited by UCMJ art. 59. An error left unchecked is stealing a soldier's substantial rights that are essential liberties. *Duncan v. Kahanamoku*, 327 U.S. 304, 335 (1946) (Murphy, J., concurring) (quoting *Ex parte Milligan*, 71 U.S. 2, 120-21 (1866)). As the Supreme Court noted in a different era, "'war power' cannot be invoked as a talismanic incantation . . . Even the war power does not remove constitutional limitations safeguarding essential liberties." *United States v. Robel*, 398 U.S. 258, 264 (1967).

The military judge by *sua sponte* and the lack of subject-matter jurisdiction over the accused is required to dismiss this case by employing UCMJ art. 39. If however the illegal non jurisdictional self-incriminating court-martial proceeds, the accused and/or trial counsel should use the entitled preemptory challenge to stop the unconstitutional, Bill of Rights breaking, kangaroo⁵ court proceedings, pursuant to UCMJ art. 41. The specific challenge is reasonable doubt linked to the alleged illegal 2003 Iraq War that is a USSC Federal Question as "In all Cases affecting Ambassadors, other public Ministers and Consuls, the supreme Court shall have original Jurisdiction." U.S. Const. art. III, § 2, cl. 2⁶. And until such time the United States Supreme Court on the merits addresses this reasonable doubt; the constitutional dimensional reasonable

⁵ The origins of the term, kangaroo court, are obscure, but first usage is found in the American West in the 1850's when courts without vested jurisdiction rose out of nowhere. A kangaroo court or kangaroo trial is a sham legal proceeding as the outcome is planned in advanced for a conviction by a manipulated procedure that does not allow the accused to jurisdictionally present its defense as alleged here.

⁶ If this Military Court continues this court-martial, it will be knocking on U.S. Supreme Court Original Jurisdiction by their judicial action of omission violating USSC Case Law, *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U. S. 50 (1982) (Congress may not give away Article III "judicial" power to an Article I judge). Continuing is violating the most important subject-matter jurisdiction of the Federal Courts, the Federal Question as confirmed by Title 28, Section 1331 of the United States Codes.

doubt exists; a reasonable doubt only discernable jurisdictionally in the Federal Courts!

According to UCMJ art. 51(c)(2) “if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted”. And by UCMJ art. 51(c)(4) “the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.”

WHEREFORE, this Interested Party on behalf of **We the People** of the U.S.

Constitution prays from this honored Court **1) Grant the motion to dismiss this captioned case, so motioned!** and **2) Such other and further relief as this Honored Court shall deem proper.**

Respectfully submitted.

Declaration Under Penalty Of Perjury And Proof Of Service

The undersigned declares under penalty of perjury under the laws of the United States of America that he is a natural born U.S. citizen, served honorably in the U.S. Army, Army Reserves & National Guard in the 1980s and is an Interested Party to the above captioned case and states that the information contained within this pleading is true and correct and that this constitutes the Original and all required copies as the universal easily read pdf file containing this motion has been emailed and entrusted with the Fort Carson Staff Judge Advocate, Colonel Michael W Meier on the 14th day of November 2008, see below and left:

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