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# A day in court with anti-Guantanamo protesters

Tom Roberts | Jun. 15, 2010 NCR Today

It is difficult to tell if the acquittal of those arrested in January [1]for protesting the prison at Guantanamo was a victory for free speech or just a lousy job of charging the demonstrators.

In the end, D.C. Superior Court Judge Russell Canan announced: ?In my opinion, the defendants were not properly charged in this case? and dropped the charges of disorderly conduct and unlawful assembly. Perhaps it is a bit of both, at least partially an acknowledgement that it is difficult to charge a group gathered, as one of their attorney advisors put it, ?at the seat of government to express their grievances? with unlawful assembly.

At several points in the brief proceedings, Canan questioned the prosecutors about their understanding of the statute under which the group was charged and their understanding of what it meant to engage in conduct that threatened a breach of the peace.

The prosecutors repeated their contention that the protesters had blocked areas outside and inside the Capitol Rotunda and that they were loud and boisterous in their chanting of prayers and songs and the names of men imprisoned at Guantanamo. It seemed a police officer involved in the arrest had a different impression. In testimony, he said the group had used ?elevated voices? but they had not been screaming.

Nor did it seem the prosecution presented any convincing evidence that the group, mostly older Catholic peace activists, had threatened the peace or verged on inciting violence. In fact, apart from the testimony, looking at the group that included non-violence advocate Kathy Kelly and a host of Catholic workers and anti-war activists, that image was difficult to conjure.

But trials are the business, in part, of judges and prosecutors who are otherwise (and necessarily) dispassionate, even ignorant, about such details. So in this instance, the decision seemed to come down to a judge?s sense that the charge didn?t fit the circumstance without disclosing whether he thought a statute existed that might fit.

It was a small-bore escape hatch, if you will, to a large-bore issue: Guantanamo, where the U.S. has held some prisoners for eight years without due process, legal representation or a system that could fairly judge the culpability of a given suspect.

Atty. Bill Quigley of the Center for Constitutional Rights and a professor at Loyola University School of Law, rather compellingly sketched the big picture (for a judge who appeared to this observer engaged to the point of interrupting with interested questions) at the start of the proceedings.
He argued that the court should consider three defenses:

?tA First Amendment Defense in which Quigley asserted that all of the activities the protesters acknowledged they engaged in ? chanting, carrying signs, calling attention to their opposition to the prison at Guantanamo, all in public spaces ? were ?deeply protected? under the clauses guaranteeing free speech and the rights to assemble and to address grievances to the government.

?tAn international law defense that would take into consideration such provisions as the Geneva Conventions and the rules established post-World War II at the Nuremberg Trials which state that citizens have an obligation to call government to account when the government is committing crimes. The protestors, organized under the umbrella group, Witness Against Torture, hold that prisoners were tortured, some to the point of death, at Guantanamo. They also pointed to the findings of U.S. courts and other international bodies that have condemned, along with international human rights groups, the existence of Guantanamo and the mistreatment of prisoners there.

?tA necessity defense, which holds that the group resorted to demonstration because it had exhausted all other means of expressing its grievances. Quigley, who described the group as among the most hopeful people he knew for their collective conviction that ?the gap between law and justice could be narrowed,? said the demonstrators had previously petitioned the government and met with legislators. Some even had flown to Cuba and walked to the border of the prison, attempting to talk to U.S. personnel there on behalf of the prisoners.

The judge listened and then ruled that he could not agree with the rationale for the international law or necessity defense.

The ruling notwithstanding, it was an eloquent and interesting argument that Quigley was able to enter into the trial record.

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