

Drones on trial, and a judge listens

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Drones have raised to a new level the detachment with which modern warfare can be conducted. Operated remotely from great distances away, drones are lifeless, indiscriminate killing machines. They've been responsible for countless civilian deaths and a concomitant rising tide of anger against the United States in Pakistan. What follows is an intriguing account of the recent trial of 14 activists who trespassed at an Air Force Base in Nevada protesting the use of drones.

By Jerica Arents
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I received an education yesterday.

I wasn't in a classroom. I wasn't laboring over a paper, strategizing in a small group, poring over a textbook or hustling across campus. I was sitting as a spectator in the front row of Judge Jansen's courtroom in Clark County, Nevada.

Fourteen peace activists were on trial for trying to hand-deliver a letter to the base commander at Creech Air Force Base in April of 2009. Their letter laid out concerns about usage of Unmanned Aerial Vehicles, or drones, for surveillance and combat purposes in Afghanistan. The Creech 14 believe that the usage of remote aerial vehicles to hunt down and kill people in other lands amounts to targeted assassination and is prohibited by international and U.S. law. Soldiers carrying M16s stopped them after they had walked past the guardhouse at the base entrance and a few hours later Nevada state troopers handcuffed the Creech 14 and took them into custody.

The next day, they were charged with trespass to a military facility and released. The charges were later dropped, then reinstated. Defendants, upon learning of a September 14, 2010 court date, had ten months to plan for their trial. They decided to represent themselves pro se and to call, as expert witnesses, former U.S. Attorney General Ramsey Clark, Colonel Ann Wright and Professor Bill Quigley, the Legal Director of the Center for Constitutional Rights. What were the chances that a Las Vegas court that normally handles traffic violations and minor offenses would admit three expert witnesses to testify on behalf of defendants charged with a simple trespass? Slim to zero in the view of most observers.

In an opening statement, Kathy Kelly summarized what defendants would prove regarding their obligations under international law and their exercise of rights protected by the U.S. constitution. The judge told her, quite firmly, that any testimony unrelated to the charge of trespass would be disallowed.

Yet, much to our surprise, Judge Jansen decided that all three expert witnesses would be allowed to testify. Rev. Steve Kelly, SJ rose and called on former U.S. Attorney General Ramsey Clark as his first witness. After Clark was sworn in, he slowly sat down and scanned the room.

About fifty supporters filled the court. The defendants were seated in the jury box. To me, they represented a

choir of my finest teachers. Steve Kelly remained standing, and then, with great care, questioned Ramsey Clark, first to establish his credibility as a witness and then to elicit his testimony regarding the issue of trespass. Steve asked Ramsey Clark about his history as a deputy attorney general during the civil rights era. Ramsey Clark spoke of lunch-counter sit-ins with his soft-spoken charm, emphasizing how important it was for people to violate the "No Trespass" rules that forbade blacks and whites to drink coffee together. Later, he relied on the age-old necessity defense to advocate on behalf of people who protested indiscriminate killing in Viet Nam. Bringing us up to date, Ramsey asked a question. "When indiscriminate killing is occurring, are you just supposed to stand by the gate [of Creech Air Force Base] and hide your face?"

Despite Judge Jansen's insistence that the defense could only discuss matters related to a misdemeanor trespass charge, each of the expert witnesses were able to knit together the Nuremberg principles, international law, and the justification of necessity to establish not only the right but sometimes the duty of people to engage in acts that violate trespass laws. Ann Wright spoke about how isolated military members were from public opinion and of how likely it was that, if informed they would respond to any great debate taking place in the public forum.

Bill Quigley, the last defense witness to take the stand, testified that when he taught law students about trespass statutes, he always raised with them the possibility of a necessity defense. Helping demonstrate "the space between law and justice," he held his hands in front of him, about a foot apart. "I encourage my students to work, every day, to narrow the gap between law and justice," said Bill Quigley. "I ask them to adopt a "Hundred Year Vision," and remember that 100 years ago, Jim Crow laws were permitted, domestic violence was allowed, and discrimination against women, and the disabled were all considered legal acts.

The prosecution clearly hoped to discredit all three expert witnesses. "And do you know any of the defendants?" barked the prosecutor when cross-examining Ramsey Clark. "Of course?", answered Ramsey Clark, maintaining eye contact with the prosecutor. "I love them."

Following the prosecutor's cross-examination of Bill Quigley, Judge Jansen asked him several questions, the last of which pertained to Quigley's advice to law students who might contemplate crossing a line for idealistic reasons. "Now if some of your students informed you of their intention to cross onto an Air Force Base clearly marked with a No Trespass sign," Judge Jansen wondered, "What would you say to them?"

"I would tell them to weigh the consequences carefully?", answered Bill Quigley, noting that their convictions would come at a steep price.

With the possible exception of the prosecution, all assembled seemed in agreement that they had witnessed an extraordinarily rich education about our collective duties to uphold basic human rights. But, so far, the word "drone" had been mentioned only in the opening statement. Brian Terrell rose to deliver a closing statement. Brian referred to a metaphor already employed by two of our witnesses, that of a baby trapped inside a house on fire. "We fourteen are people who saw the smoke," said Brian, "We've seen the babies dying in Afghanistan and Pakistan, and no trespass sign can keep us from trying to reach the children."

Judge Jansen then addressed all of us. He said that he had just celebrated his 25th anniversary as a judge, but in all those years every trespass case that came before him was settled with a plea. This was the first time that defendants took a trespass case to trial. Given that this was his first time trying such a case and considering the many important issues raised, Judge Jansen stated that he would need time to study the issues and write his decision. He said he'd need at least three months and then invited the defendants to quickly examine their calendars and propose a date for their next court appearance. All agreed to return on January 27th 2011.

It's one thing for me to announce that I've received an exceptional education over the course of an unusual day. It's quite another for a U.S. judge who has been on the bench for 25 years to voice appreciation for what he has

learned from defendants and witnesses, and then promise his continued attentiveness to the issues that were raised.

His delayed decision gained him entry into the choir of teachers. "Go in peace," he said, as he left the courtroom.

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