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26 July 2005

Michael New wins a round!

FOR IMMEDIATE RELEASE 26 July 2005 Michael New wins a round! Contact: Herbert W. Titus, Attorney 757-421-4141 forecast22@pinn.net LTC Henry Hamilton, Attorney 803/779-0700 law@ratchfordandhamilton.com Daniel D. New, Project Manager 254-796-2173 ddnew@danielnew.com Michael New wins a round, case still alive -- Rumsfeld's motion to dismiss is denied (District of Columbia) - The US Court of Appeals has denied the government's motion that would have ended a soldier's legal battle to overturn his court-martial, and to defend his right and duty to disobey an illegal order. Specialist Michael New was court-martialed in 1996 for his refusal to wear a United Nations uniform, to deploy to Macedonia under United Nations command, and to serve under the command of a general officer from Finland. In a radical departure from constitutional requirements of criminal prosecution, the District Court of D.C. had agreed with the military courts that there was no fatal defect when the military judge in New's court-martial refused to allow any evidence before the jury (panel). Legally, the Jury is the "trier of fact" and not the judge. Upon appeal to the Court of Appeals for the Armed Forces (CAAF) in 2001, the court-martial was once more sustained, but only after a delay of 495 days. The Supreme Court declined to hear an appeal. Having "exhausted the military remedy," New took his case to the US District Court, challenging the court-martial conviction. The transcript of that hearing can be found here: www.mikenew.com/docs/111904.pdf At the heart of the issue is the question of whether an American soldier, having taken an oath to support and defend the Constitution of the United States, may be forced instead to serve under the military command of a foreign power, specifically the United Nations. The military courts ruled that this was a political question, outside the jurisdiction of their courts. Thus, New was denied his day in court in order to protect the Clinton administration from having to justify the deployment. In a surprising ruling, US District Court Judge Friedman conceded that Clinton may have broken the law, but that it is the duty of Congress to challenge the president, not a lowly soldier (www.mikenew.com/orlndsen.html) . This decision continues to astonish attorneys and Constitutional authorities when they hear about it. As one attorney recently said, "I have always been under the impression that the citizen possesses every right under the Constitution that exists. Perhaps that is no longer true." "It is now going on ten years, since this perversion of the Constitution began in Mike's case," says his father, Daniel New, Project Manager of the Legal Defense. "They thought he would go away. He was a nobody to the government, which lives by the argument that, 'You must obey orders, no matter what.' Even though we hung German officers who used that as a defense following World War II, it appears now that we have come full circle and we find the Pentagon making the same arguments that their opponents made half a century earlier. Having forgotten our history, we are now forced to repeat it." According to Lead Attorney Herbert W. Titus, of Virginia, who heads up the legal team representing Michael New and the Constitution, "We have here a case with serious implications for every American who ever wears a uniform. Michael New's stand is for them, and their right to defend their country exclusively, in accordance with the American soldiers Oath of Office." "The heart of the issue," says legal observer Joseph Dale Robertson, "is that New did not receive a fair trial in the beginning, and the merits of the case have never, to this day, been tried. Under our constitutional requirements set out in the sixth amendment right of a jury trial, the trier of facts in a criminal case must be by determined of a jury – not the judge. In the case of Michael New, it was the judge – not the jury, the military panel hearing the case - who unilaterally and wrongly determined that an essential element of the alleged crime of failure to obey an order – was the order, alleged to have been disobeyed, a lawful order? - was as a matter of fact a lawful order. In short, constitutional requirements make that the exclusive decision of the jury not the judge. "Every judicial circuit court of appeals in the federal system - except the District of Columbia - has ruled that in all criminal cases it is the jury, the trier of fact, that must exclusively determine each and every essential element of the alleged crime. Michael New was denied this fundamental right in his original court-martial! Every circuit court in the United States has said so with the singular exception of the United States Circuit Court of Appeals for the District of Columbia. It is now time for the DC circuit court of appeals to join with all other federal circuit court of appeal in the land and hold in the Michael New case that the constitution applies to criminal court martial trials as well. Further, that Michael New was denied a fair trial in that he was denied the fundamental right to have every element of the alleged crime determined by a jury and not a judge." And what does Michael New think of all this? "Right is right, and wrong is wrong. They can argue until the End of Time, but I will never serve the United Nations."

New continues is pursuing a degree in Information Management Systems in Texas. The case is expected to be heard late this year, or early in 2006. - 30 - For more information: www.mikenew.com/ Timeline: 10/10/1995 Order to wear UN uniform disobeyed 1/1996 US District Court refuses to hear case 1/1996 Court-martial - Bad Conduct Discharge 3/28/1998 Oral arguments, Army Court of Criminal Appeals 4/28/1999 ACCA upholds court martial decision 2/4/2001 Oral arguments, Court of Appeals of the Armed Forces 6/13/2002 CAAF upholds, after a stall of 495 days 5/8/2002 US District Court hears case 12/24/2004 US District Court dismisses case 7/19/2005 US Court of Appeals agrees to hear oral arguments

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