Case of Dr. Samuel A. Mudd: A Mandamus Action

James O. Hall
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Richard D. Mudd, M.D. v. Togo D. West, Jr., Secretary of the Army. In 1865 Dr. Samuel A. Mudd was convicted by a military commission of aiding/abetting John Wilkes Booth in the assassination of President Lincoln. He was sentenced to life in prison. President Andrew Johnson gave Dr. Mudd a full and absolute pardon on February 8, 1869. The Supreme Court has ruled in Ex parte Garland 1866 that such a pardon reaches both the punishment and the guilt.

In 1990 Dr. Samuel A. Mudd’s grandson, Dr. Richard D. Mudd, filed a petition with the Army Board for Correction of Military Records to “correct” -- that is, reverse -- Dr. Samuel A. Mudd’s conviction and expunge this conviction from the official records held in the National Archives. A hearing was held in the Pentagon on January 22, 1992, before the ABCMR. Only witnesses favorable to the Mudd position were allowed to testify. Subsequently the ABCMR recommended that the military commission lacked jurisdiction to try Dr. Mudd. The Secretary twice refused in written explanatory orders to adopt and carry out the ABCMR recommendation in this case.

Now Dr. Richard D. Mudd, under color of his family relationship, has filed suit against the Secretary of the Army in the Federal District court of Washington to compel the Secretary to adopt and carry out the ABCMR recommendations. The suit advances the novel legal theory that the Secretary has no choice but to agree with the position of the ABCMR, and that the Secretary’s continued refusal to do so is arbitrary and capricious. Thus the suit is “...in the nature of mandamus to compel performance of duty.”

To understand the background of this matter requires a review of the statute which authorized creation of the Army Board for Correction of Military Records (ABCMR), Title 10, Sec. 1552, together with the operating procedures set up pursuant to this statute, Army Regulations 15-185. The gut question to be answered is simple: Is the Secretary bound by the statute or the regulations to adopt and carry out a particular recommendation of the ABCMR? Put another way, is the ABCMR an autonomous agency within the Department of the Army, with power to act independent of the views of the Secretary?

The wording of the enabling statute, Title 10, Sec 1552, is in point. Paragraph (a)(1) reads in part:

“...The Secretary of a military department may correct any military record of the Secretary’s department when the Secretary considers it necessary to correct an error or remove an injustice...”

This paragraph goes on to state that such corrections shall be made by the Secretary acting through boards of civilians set up in his department.
All this boils down to statutory authority for the Secretary to correct departmental records to fix errors or erase some injustice. The Secretary is not required by law to take any specific actions; what he decides to do is left to his discretion. To help him reach decisions, and for that purpose only, the statute provides for this board of civilians within his executive office.

Title 10, Sec. 1552, paragraph (a)(3) provides that the Secretary shall issue regulations, approved by the Secretary of Defense, for the purposes of the statute. Accordingly, Army Regulations 15-185 were published, effective April 1, 1997. These regulations created the Army Board for Correction of Military Records, set out the board’s powers and operating procedures, and defined how the board’s recommendations are to be treated by the Secretary in his official capacity.

It should be noted in AR 15-185, Sec. IV, paragraph 19(e)(1), that the Secretary delegated certain limited authority to the ABCMR. This delegation concerns primarily what might be called housekeeping problems such as leave, promotions, grades, awards, years of service, and the like. In any case where the ABCMR acts under this limited delegation from the Secretary, such action is deemed to be final.

In all other cases the proceedings of the ABCMR are to be forwarded to the Secretary, as provided in AR 15-185, Sec. VI, paragraph 20, who will then “...direct such action as he/she determines to be appropriate.” In short, the Secretary has the discretionary power to adopt the ABCMR recommendation, adopt it in part, or deny it outright. Nowhere in the statute or the regulation is there any requirement that the Secretary adopt a particular ABCMR recommendation. It is clear throughout that the board is the Secretary’s creature, having only the powers he delegated to it and none other. The Samuel A. Mudd case does not fall into any category of delegated powers.

Pursuant to AR 15-185 the Secretary has exercised his discretionary powers in the Mudd case and twice rejected an ABCMR recommendation for cause. The Secretary followed his own regulations with precision, and issued adequate and persuasive written explanations of his action in each instance.

Dr. Richard D. Mudd takes the novel legal position in his suit that the ABCMR is in effect operationally independent of the Secretary. And, where the Secretary refuses to carry out an ABCMR recommendation, a petition "...in the nature of mandamus" is a remedy which can be invoked in court to require the Secretary to conform to the Mudd version of what is right and proper. Anything other than the "correct" Mudd version must, according to the petition, be arbitrary and capricious.

Essentially, Dr. Richard D. Mudd has petitioned the court to issue a writ of mandamus to compel the Secretary to act when in fact the Secretary has already acted. It is just that Dr. Mudd does not like the way the Secretary has acted and he wants the court to order that changed to conform to his own views. In this, the petition completely ignores the fact that the law and the regulations in no way limit the Secretary’s discretionary powers. The Secretary is required by the regulations to “...direct such action in each case as he/she determines to be appropriate.” The Mudd petition would render these plain words meaningless.
This suit should not survive a motion to dismiss.

James O. Hall
for the Surratt Courier