



News
(/category/news-story/)

Events
(/events/)

Opinions
(/opinions/)

Verdicts &
Settlements
(/verdicts-settlements/)

Classifieds
(https://masslawyersweekly.com/classifieds/)

Press Releases
(https://masslawyersweekly.com/business-connect/) Search...

Home(/) > Practice Areas(https://Masslawyersweekly.Com/Category/Practice-Areas/) > Criminal(https://Masslawyersweekly.Com/Category/Practice-Areas/Criminal/) > Judge's family emergency triggers double jeopardy dismissal

Judge's family emergency triggers double jeopardy dismissal

Pat Murphy (https://masslawyersweekly.com/author/pat-murphy/) 17, 2026 // 5 Minute Read

dismisses-wiretap-bank-02/Kenneth-E.-Notter-20jeopardy%20dismissal)

Dismissal&body=Wiretap and bank fraud charges against a criminal defendant have been dismissed after the judge presiding in the case ordered a mistrial due to personal reasons. U.S. District Court Judge... You can read the content in details following link https%3A%2F%2Fmasslawyersweekly.com%2F2026%2F02%2F17%2Fjudge-dismisses-wiretap-bank-fraud-double-jeopardy%2F)

▶ Listen to this article

In brief

- Mistrial declared mid-trial after [Judge William G. Young](https://masslawyersweekly.com/tag/judge-william-g-young/?taxo-tag-body) (https://masslawyersweekly.com/tag/judge-william-g-young/?taxo-tag-body) cited a family emergency
- Defendant argued retrial violated the Fifth Amendment's Double Jeopardy Clause
- Judge Allison Burroughs found no "manifest necessity" for the mistrial
- Charges dismissed after court ruled alternatives were not adequately explored

Wiretap and bank fraud charges against a criminal defendant have been dismissed after the judge presiding in the case ordered a mistrial due to personal reasons.

U.S. District Court (https://masslawyersweekly.com/tag/u-s-district-court/?taxo-tag-body) Judge William G. Young halted Mohammed "Moe" Diab's jury trial last fall after five half days and ordered a mistrial a few days later, citing a "family emergency." There was no further elaboration, and counsel was not consulted.

According to pleadings filed in the case, the lawyers later learned that Young's wife had become seriously ill. She subsequently passed away.

Diab immediately [moved for dismissal of the indictment](https://masslawyersweekly.com/files/2026/02/U.S.-v.-Diab-mtn-dismiss-II.pdf) (https://masslawyersweekly.com/files/2026/02/U.S.-v.-Diab-mtn-dismiss-II.pdf) against him under the Fifth Amendment's Double Jeopardy Clause, leaning on the fact that Young had only



(https://j630.masslawyersweekly.com/s/ profileid=fcb9519a-ee99-42e7-95e5-ec5a6f5c5822)

NEW: Interactive Case Digests (https://masslawyersweekly.com/case-digests/)

Real property – Settlement – Release...

Employment – Wage Act – Bonus...

Contract – Indemnification – NOAA...

Criminal – Double jeopardy...

[See More >](#)

Polls

Do you expect U.S. Supreme Court Justice Samuel A. Alito to retire in time for President Trump to appoint his replacement before the midterm elections, as has been speculated?

Yes No

VOTE

[View Results](#)

Verdicts & Settlements (https://masslawyersweekly.com/verdicts-settlements/)

been assigned to the case last April, despite the fact that the grand jury indicted him in 2021.

“Before trial, Judge Young resolved no substantive motions and had no substantive interactions with the case,” Washington, D.C., attorney Kenneth E. Notter III wrote in a brief in support of his client’s motion to dismiss. “Trial began and was unfolding as Mr. Diab hoped. He believed the selected jury would find him not guilty. He wanted *that* jury to decide his fate on *that* record — as was his constitutional right.”

In the government’s [brief in opposition to the motion to dismiss](#)

(<https://masslawyersweekly.com/files/2026/02/U.S.-v.-Diab-govt-opp-mtn-dismiss.pdf>), Assistant U.S. Attorney Seth B. Kosto argued that Young had made every effort within reason to avoid a mistrial.

“After exhausting his efforts to continue the trial until he could return, Judge Young also considered whether the trial could be taken over and completed by another judge,” Kosto wrote. “Although he did not consult with the Chief Judge or anyone else on this matter, his forty years of judicial experience left him convinced that taking over a trial having ‘heard neither the openings nor the first four days of trial’ would be a ‘disaster.’”

U.S. District Court [Judge Allison D. Burroughs](#) (<https://masslawyersweekly.com/tag/judge-allison-d-burroughs/?taxo-tag-body>) took on the matter after Young recused himself. Burroughs granted the defendant’s motion to dismiss in a [Feb. 4 order](#) (<https://masslawyersweekly.com/files/2026/02/U.S.-v.-Diab.pdf>), concluding that the government failed to meet the high bar of showing that the mistrial was a “manifest necessity.”



Burroughs wrote that one factor weighing against a manifest necessity finding was the fact that Young did not consult with the parties before declaring the mistrial.

“As the government concedes, this is ‘an important factor in the manifest necessity analysis,’” Burroughs wrote.

Another factor was that nothing in the record suggested Young sufficiently explored alternatives to a mistrial, she found.

“Here, whatever alternatives the Court considered and ruled out, it did not do so on the record,” she wrote. “Moreover, based on the trial record, and without the benefit of further explanation from the Court at the time, it is not obvious that it would have been infeasible to have another judge step in to try the case to completion or hear the parties on the mistrial question. It is true that, as the government puts it, ‘[t]his was no simple “buy-bust” drug trial,’ and it might well have been challenging for another judge to step in mid-trial. On the other hand, as Diab puts it, this was a relatively short ‘one-count, one-defendant conspiracy case,’ and it might have been feasible for another judge to complete the trial.”

With regard to the latter point, Burroughs noted that, at the time Young declared the mistrial, the jury was expected to sit for another seven days, with only two or three half-days of trial remaining.

“[T]here was at least some time for a new judge to review the docket and trial transcript to come up to speed,” Burroughs wrote. “Thus, the Court finds that, on balance, this factor also weighs against a finding of manifest necessity.”

Burroughs acknowledged that whether to grant the defendant a dismissal was a “close call”

“Judge Young is a circumspect and committed jurist,” Burroughs wrote. “There is no doubt that even amid a personal crisis he reflected carefully on the decision to declare a mistrial. And it is very difficult to fault him for not taking the time to reconvene the parties or even to reach out to colleagues for assistance under the circumstances. But despite his understandable and very human response, the Court concludes that, based on the record currently before it, it would violate Diab’s Fifth Amendment right to allow the government to retry him.”

settlements/)

Plaintiff: baby born dead due to mishandle...

Providers accused of inadequate care for...

Amputation blamed on improperly placed...

Stairwell collapses; injuries result in...

Delayed post-surgery treatment blamed fo...

Veteran suffers recurrence of PTSD in wak...

Plaintiff: tow operator let vehicle on flatbe...

Bathroom exhaust fan causes fire,...

[See All Verdicts & Settlements >](#)

Editor’s Picks (<https://masslawyersweekly.com/picks/>)



Boston attorney, curler heads to Paralympics

Anderson & Kreiger attorney Sean O’Neill will comp wheelchair curling for Team USA at the 20[...]

Opinion Digests (<https://masslawyersweekly.com/digests/>)

Immigration – Nexus – Waiver...

Search and seizure – Emergency – ...

Immigration – Credibility – Death threats...

Constitutional – Immunity – 11th...

Civil practice – Impoundment...

Commercial – Trade secrets...

Search and seizure – Storage unit...

[See All Digests >](#)

Defense attorney Notter maintains that his client's case for dismissal was clear cut.

"Once the mistrial was declared without consulting the parties or a finding of manifest necessity, double jeopardy was triggered, preventing a retrial," Notter says. "It was certainly an unusual circumstance, and we all feel for Judge Young. Our motion is in no way a criticism of him or a lack of understanding of what he is going through."

Boston attorney Martin G. Weinberg represents Ahmad Andy Khawaja, one of four defendants in the indictment charging Diab.

Weinberg says the dismissal of the criminal charges against Diab was a straightforward application of double jeopardy principles based on Burroughs' findings that Young ordered a mistrial without consulting counsel and without determining whether any of his colleagues could take over once he determined that his obligations to his family would result in a delay of more than just a few days.

But Weinberg also says the judge deserves the bar's compassion.

"I don't think it's fair to criticize Judge Young, because he's the last person to walk away from a defendant's right to a jury trial," Weinberg says. "He's the last judge who in any way would diminish the centrality of the right to a jury trial and the right to a verdict by the jury that you chose."

Professor D. Christopher Dearborn, director of Suffolk University Law School's defenders program, says Burroughs made the right call.

"Judge Burroughs conducted a thoughtful analysis in balancing the equities and came to the right conclusion," Dearborn says. "This was not manifest necessity."

Dearborn says he detects some "tension" in Burroughs' decision.

"She didn't want to speak ill of a colleague who she likes and respects and who obviously was facing serious personal issues," Dearborn says. "But as she recognized in her analysis, there are three non-exclusive factors to consider [in determining manifest necessity, and with regard] to two of them, it wasn't even close."

Both Weinberg and Dearborn emphasize that Young is a highly esteemed judge with a sterling reputation.

"His wife died; that's no secret," Weinberg says. "The most compelling personal and medical grounds drove him off the bench – probably for the first time in four decades of being a state and federal trial judge."

The U.S. Attorney's Office did not respond to a request for comment prior to deadline. Clerk of Court Robert M. Farrell declined to comment on the procedures for substituting judges in the district when a presiding judge must withdraw from a case in the middle of a trial because of a medical issue or family emergency.

- [Burroughs, Allison D.](https://masslawyersweekly.com/judicial-profiles/?p=2481) (https://masslawyersweekly.com/judicial-profiles/?p=2481)
- [YOUNG, WILLIAM G.](https://masslawyersweekly.com/judicial-profiles/?p=91) (https://masslawyersweekly.com/judicial-profiles/?p=91)

Lawyers Weekly No. 02-057-26

Massachusetts Lawyers Weekly

- [Criminal – Double jeopardy](https://masslawyersweekly.com/?p=550086) (https://masslawyersweekly.com/?p=550086)
Tags: Judge William G. Young (https://masslawyersweekly.com/tag/judge-william-g-young/?taxo-tag), U.S. District Court (https://masslawyersweekly.com/tag/u-s-district-court/?taxo-tag), Judge Allison D. Burroughs (https://masslawyersweekly.com/tag/judge-allison-d-burroughs/?taxo-tag), Criminal Law (https://masslawyersweekly.com/tag/criminal-law/?taxo-tag)

Related Articles