

Bradley Manning's Legal Duty to Expose War Crimes

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Although whistleblower Bradley Manning pled guilty to 10 offenses that will garner him 20 years in custody, military prosecutors are pursuing further charges – aiding the enemy and violation of the Espionage Act – that carry life in prison.

The court-martial of Bradley Manning, the most significant whistleblower case since Daniel Ellsberg leaked the Pentagon Papers, has begun. Although Manning pled guilty earlier this year to 10 offenses that will garner him 20 years in custody, military prosecutors insist on pursuing charges of aiding the enemy and violation of the Espionage Act, carrying life in prison.

The Obama administration, which has prosecuted more whistleblowers under the Espionage Act than all prior presidencies combined, seeks to send a strong message to would-be whistleblowers to keep their mouths shut.

A legal duty to report war crimes

Manning is charged with crimes for sending hundreds of thousands of classified files, documents and videos, including the “Collateral Murder” video, the “Iraq War Logs,” the “Afghan War Logs” and State Department cables to Wikileaks. Many of the things he transmitted contain evidence of war crimes.

The “Collateral Murder” video depicts a US Apache attack helicopter killing 12 civilians and wounding two children on the ground in Baghdad in 2007. The helicopter then fired on and killed the people trying to rescue the wounded. Finally, a US tank drove over one of the bodies, cutting the man in half. These acts constitute three separate war crimes.

Manning fulfilled his legal duty to report war crimes. He complied with his legal duty to obey lawful orders but also his legal duty to disobey unlawful orders.

Section 499 of the Army Field Manual states, “Every violation of the law of war is a war crime.” The law of war is contained in the Geneva Conventions.

Article 85 of the First Protocol to the Geneva Conventions describes making the civilian population or individual civilians the object of attack as a grave breach. The firing on and killing of civilians shown in the “Collateral Murder” video violated this provision of Geneva.

Common Article 3 of the Geneva Conventions requires that the wounded be collected and cared for. Article 17 of the First Protocol states that the civilian population “shall be permitted, even on their own initiative, to collect and care for the wounded.” That article also says, “No one shall be harmed . . . for such humanitarian acts.” The firing on rescuers

portrayed in the “Collateral Murder” video violates these provisions of Geneva.

Finally, Section 27-10 of the Army Field Manual states that “maltreatment of dead bodies” is a war crime. When the Army jeep drove over the dead body, it violated this provision.

Enshrined in the US Army Subject Schedule No. 27-1 is “the obligation to report all violations of the law of war.” At his guilty plea hearing, Manning explained that he had gone to his chain of command and asked them to investigate the “Collateral Murder” video and other “war porn,” but his superiors refused. “I was disturbed by the response to injured children,” Manning stated. He was also bothered by the soldiers depicted in the video who “seemed to not value human life by referring to [their targets] as ‘dead bastards.’ ”

The Uniform Code of Military Justice sets forth the duty of a service member to obey lawful orders. But that duty includes the concomitant duty to disobey unlawful orders. An order not to reveal classified information that contains evidence of war crimes would be an unlawful order. Manning had a legal duty to reveal the commission of war crimes.



No reason to believe leak could harm US or aid foreign power

To prove Manning violated the Espionage Act, prosecutors must prove beyond a reasonable doubt that he had “reason to believe” the files could be used to harm the United States or aid a foreign power. When he pled guilty, Manning stated, “I believed if the public, particularly the American public, could see this, it could spark a debate on the military and our foreign policy in general as it applied to Iraq and Afghanistan.” He added, “It might cause society to reconsider the need to engage in counterterrorism while ignoring the situation of the people we engaged with every day.” These are hardly the words of a man who thought his actions could harm the United States or help a foreign power. To the contrary. Manning will be permitted to introduce evidence about his belief that certain documents would not cause harm to national security if publicly released. It was after Wikileaks published evidence of the commission of war crimes against the Iraqi people that Iraq refused to grant criminal and civil immunity to US troops if their stay in Iraq was prolonged, causing Obama to withdraw them from Iraq. This saved myriad American and Iraqi lives.

Making an example: cruel, inhuman and degrading treatment

Manning was 22 years old when he courageously committed the acts for which he stands criminally accused. For the first 11 months of his confinement, he was held in solitary confinement and subjected to humiliating forced nudity during inspection. In fact, Juan Mendez, UN special rapporteur on torture, characterized the treatment of Manning as cruel, inhuman and degrading. He said, “I conclude that the 11 months under conditions of solitary confinement (regardless of the name given to his regime by the prison authorities) constitutes, at a minimum, cruel, inhuman and degrading treatment in violation of article 16 of the Convention against Torture. If the effects in regards to pain and suffering inflicted on Manning were more severe, they could constitute torture.” Mendez could not conclusively say Manning’s treatment amounted to torture because he was denied permission to visit Manning under acceptable circumstances. Mendez also concluded that, “Imposing seriously punitive conditions of detention on someone who has not been found guilty of any crime is a violation of his right to physical and psychological integrity as well as of his presumption of

innocence.”

Obama himself has also violated Manning’s presumption of innocence, saying two years ago that Manning “broke the law.” But although the Constitution requires the President to enforce the laws, Obama refuses to allow the officials and lawyers from the Bush administration who sanctioned and carried out a regime of torture – which constitutes a war crime under Geneva – to be held legally accountable. Apparently if Bradley Manning had committed war crimes, instead of exposing them, he would be a free man, instead of facing life in prison for his heroic deeds.

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