

President Obama Makes a Fair Trial of Bradley Manning Impossible

By Declaring Him Guilty

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The “Bradley Manning Exception to the Bill of Rights” Devastates the Credibility of the Military Justice System

The credibility of the military justice system is being undermined by the prosecution of Bradley Manning. His abusive punishment without trial violates his due process rights; his harsh treatment in solitary confinement-torture conditions violates the prohibition against cruel and unusual punishment; and now the commander-in-chief has announced his guilt before trial making a fair trial impossible. A Bradley Manning exception to the Bill of Rights is developing as the Obama administration seeks Manning’s punished no matter what constitutional protections they violate.

On Thursday April 21, 2011 in San Francisco a group of Bradley Manning supporters protested the prosecution of Manning at a Barack Obama fundraising event. One of Manning’s supporters was able to question the president directly afterwards and during the conversation, Obama said on [videotape](#) that Manning was guilty.

Can you imagine if the Supreme Leader of Iran, Ayatollah Khamene’i, pronounced an Iranian military whistle blower “guilty” before any trial was held? Khamene’i is the commander-in-chief of all armed forces in Iran, just as President Obama is the commander-in-chief of the U.S. armed services. Would anyone in the United States think that a trial before Iranian military officers that followed such a pronouncement could be fair? The U.S. government would use the situation to make propaganda points about the phony justice system in Iran.

President Obama’s pronouncement about Manning, “He broke the law,” amounts to unlawful command influence – something prohibited in military trials because it is devastating to the military justice system. Manning will be judged by a jury of military officers in a military court where everyone involved follows the orders of the commander-in-chief. How are these officers going to rule against their commander-in-chief, especially after Manning has been tortured in solitary confinement for almost a year? Any officer who finds Manning “not guilty” will have no chance of advancing his career after doing so.

Article 37 of the Uniform Code of Military Justice makes [undo command influence unlawful](#). Unlawful Command Influence has been called “the [carcinoma of the military justice system](#)” and is often described as “[the mortal enemy of military justice](#).” The importance of the command structure in the military makes command influence a threat to fair trials, i.e. “[because the inherent power and influence of command are necessary and omnipresent](#)”

facets of military life, everyone involved in both unit command and in military justice must exercise constant vigilance to protect against command influence becoming unlawful.”

[Accordingly](#), “Unlawful Command Influence occurs when senior personnel, wittingly or unwittingly, have acted to influence court members, witnesses, or others participating in military justice cases. Such unlawful influence not only jeopardizes the validity of the judicial process, it undermines the morale of military members, their respect for the chain of command, and public confidence in the military.” [Further, even](#): “The ‘appearance of unlawful command influence is as devastating to the military justice system as the actual manipulation of any given trial.’” The commander-in-chief announcing guilt before trial is an unprecedented case of unlawful command influence.

When unlawful command influence occurs a heavy [burden is put on the prosecution to “prove beyond a reasonable doubt](#) that: (1) the facts upon which the unlawful command influence is based are untrue; (2) those facts do not constitute unlawful command influence; or (3) the unlawful command influence will not affect the proceedings.” Since President [Obama is on videotape](#) announcing the finding of guilt it will be impossible to prove either of the first two points. To prove the third point will require the court to enter into a charade where officers claim they are not influenced by the commander-in-chief. In reality, the president announcing the guilt of Manning before he is tried will influence every officer who wants to continue to advance in his or her career. And, since Manning has already been punished severely before trial officers will be even less likely to find Manning not guilty because that would raise questions about his abusive treatment.

Military case law indicates that “[pretrial publicity itself may constitute unlawful command influence](#).” When the president speaks it results in national media attention (see a [google search fo “Obama Manning guilty” produced 1.5 million stories](#) by April 24th). Of course, the president’s statement of Manning’s guilt was not the only pre-trial publicity in Manning’s case. In addition, the brutal treatment Manning has received during pre-trial detention has also received widespread media attention. The combination of this mistreatment and the president’s statements shows that the military from the Quantico command to the commander-in-chief saw Manning as guilty and wanted him punished harshly.

Military courts have held over and over that if unlawful command influence is proven then dismissal of the case is appropriate. (See [United States v. Douglas, 68 M.J. 349 \(2010\)](#) and the cases cited therein.) “[D]ismissal of charges is appropriate when an accused would be prejudiced or no useful purpose would be served by continuing the proceedings.” There is no question Manning has been prejudiced and it is hard to imagine how the proceedings can be cleansed of this unlawful command influence so there is no useful purpose in continuing.

The White House made an inept attempt to try and change the obvious meaning of the president’s statement. Politico reports: “White House spokesman [Tommy Vietor said Obama was in fact making a general statement](#) that did not go specifically to the charges against Manning. ‘The president was emphasizing that, in general, the unauthorized release of classified information is not a lawful act,’ he said Friday night. ‘He was not expressing a view as to the guilt or innocence of Pfc. Manning specifically.’” This clarification is inept because Obama was quite specific in his comments saying: “He broke the law.”

Unlawful command influence causes [“exceptional harm . . . to the fairness and public perception of military justice when it does arise”](#) This harm is magnified in the case of

Bradley Manning because of the severe mistreatment he has received in Quantico before even being tried. This is a case where punishment in Quantico and a finding of guilt by the commander-in-chief both came before trial. The sooner this prosecution ends the less damage that will be done to the reputation of the military justice system.

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