Maher Legal Services PC

May 23, 2019

Sent vie E-mail to letters@economist.com

Re: Response to Commentary in May 21, 2019, article, "Is Donald Trump preparing pardons for troops accused of war crimes?"

Dear Sir/Madam:

As counsel for US Army First Lieutenant Clint A. Lorance, we write to respectfully offer insight in response to the sweeping statements by observers quoted in your May 21, 2019, that Presidential action undermines the military justice system and disserves military good order and discipline. Painting broad speculative strokes about general principles is one thing, but having a command of the facts, and first-hand knowledge of exonerating evidence, hidden by prosecutors, is altogether another.

Article II of the Constitution authorizes the President to act in military cases. What your article did not include was an assessment of the appropriateness of a President's post-conviction "disapproval of the findings and the sentence" where the prosecution repeatedly failed to disclose exonerating evidence, the military appellate court did not apply prevailing constitutional standards to the prosecutor's conduct or defense counsel's performance, and senior uniformed legal officers publicly misrepresented the jury's findings, including to at least one Member of the United States Congress.

Put simply, military prosecutors in the Lorance case hid crucial evidence on multiple occasions, highly exonerating evidence, which defense counsel never learned of, and the military jury never heard.

For example, prosecutors suppressed fingerprint and DNA evidence of terrorist bombmaking and withheld a military report that concluded the Platoon was being scouted for an impending attack or ambush, all while urging the jury to convict for killing "civilians." The military appellate court found the information, "irrelevant," even though relevance is one of the lowest evidentiary thresholds in the law.

By way of background, Lorance is confined at the United State Disciplinary Barracks on Fort Leavenworth, Kansas, in the sixth year of a 19-year sentence to confinement for ordering fire on three Afghans riding on a single motorcycle towards his Platoon's single file route of march through minefield on July 2, 2012 in Kandahar, Afghanistan, immediately after the Platoon lost four paratroopers to fires and bombs, to include the previous Platoon leader Clint replaced.

The prosecution urged the jury to convict Lorance for double murder and attempted murder for ordering fire on the three riders, whom the prosecution portrayed as farmers and civilians. What went undisclosed, however, were Army records that two of the three riders left their fingerprints and DNA on improvised explosive devices, making them anything but innocent

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civilians, and that a material eyewitness and another material witness also left their fingerprints and DNA on bombs.

The evidence hidden by prosecutors was critical so that Lorance could defend himself. He gave the order to fire after one paratrooper called out the threat, testified that it was a threat, and that he fired his rifle pursuant to the rules of engagement. Lorance's order was based on that paratrooper's threat assessment, and was given not to murder, but to protect his Platoon. Thus, rules of engagement compliance is not double murder or attempted murder (both of which Lorance stands convicted and sentenced).

Now, add in that rules of engagement compliance ended up killing terrorist bombmakers, and that strengthens Lorance's case, proves that both his paratrooper's and his own instincts to fire were correct, and that they did their duty in unforgiving circumstances by meeting the enemy and defeating him while bringing the Platoon home safely.

A Federal habeas corpus lawsuit is pending in Kansas, attached, which sets forth in greater detail the absence of the Constitution in Lorance's case, and, the following newly-discovered evidence drives home that Lorance did not receive a fair trial, that is, one that complied with the Fifth and Sixth Amendments.

(1) The United States, pursuant to a Freedom of Information Act lawsuit in Washington DC, released records confirming that two Afghans on the battlefield that morning were indeed, bombmakers. The case continues.

(2) Prosecutors withheld a Significant Activity Report (SIGACT) in which the Army concluded that Lorance's Platoon was being scouted for an impending ambush or attack and that at least one insurgent was killed-in-action.

(3) The aerostat (blimp, or "eye-in-the-sky") operator stated that he observed three fighting-aged-males armed with AK-47 assault rifles and ICOM radios shadowing Lorance's Platoon on the morning in question. He made a written report and preserved video footage; neither of which prosecutors disclosed.

(4) The previous Platoon leader, who was wounded-in-action and medically evacuated days before Lorance replaced him, wrote a three-page statement and noted that as Platoon leader, he would never have let a motorcycle near his Platoon because of the dangerous threat it posed. However, that single sentence is lined out, that is, struck through in penmanship, without explanation. That sentence is helpful to Lorance and damaging to the prosecution's case.

(5) Lieutenant General Charles Pede, the Judge Advocate General of the Army, misrepresented the jury's findings to at least one Member of the United States House of Representatives during a phone call, and discouraged that Congressman from being associated with Lorance or the legal issues in the case.

(6) Brigadier General Joseph Berger III, the Chief Judge of the US Army Court of Criminal Appeals, misrepresented to the public the jury's findings, portrayed Lorance as a "bad

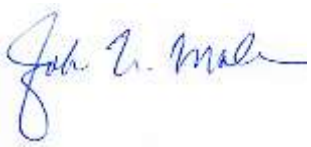
apple," "off the rails," who lied to his Platoon by telling them the rules of engagement changed to authorize fire on any motorcycle on sight. However, the jury found Clint not guilty of that Charge.

This suppressed evidence and senior officer misrepresentations shows that Lorance did not receive a fair military trial or appeal. It is therefore altogether fitting and proper that, pursuant to separation of powers, the President take action to "disapprove the findings and the sentence with prejudice," powers within his Article II and statutory authorities.

Nor did your article assess trial defense counsel's admitted failure to interview American witnesses, an Afghan attempted murder victim (KARIMULLAH), a material Afghan eyewitness (RAHIM), a material Afghan witness (AHAD), or, expose to the jury that paratroopers who testified against Lorance did so only after they were accused of murder, had those contrived charges hung over their heads for months, then in exchange for immunity, were ordered to cooperate in the case against Lorance.

The drafters of the Constitution foresaw the need for a President to apply pardon authority as part of separation of powers and check and balances, especially where the Constitution was largely absent without leave in combat murder courts-martial.

Sincerely,



John N. Maher
Civilian Appellate Counsel

cc: Kevin Mikolashek, Esquire
David Bolgiano, Esquire
Don Brown, Esquire

Encl. Habeas Corpus Lawsuit