

Freedom for Clint Lorance on Independence Day Serves Public Confidence in the Military Justice System – by Kevin J. Mikolashek

Presidential Action Setting Aside the Findings and Sentence in Clint Lorance's Case will Reassure our Servicemembers that their Country will Back them when They Make the Split-Second, Life-or-Death Decisions

“Absent evidence of innocence or injustice the wholesale pardon of US servicemembers accused of war crimes signals our troops and allies that we don't take the Law of Armed Conflict seriously. Bad precedent. Abdication of moral responsibility. Risk to us. – GEN (Ret.) Martin Dempsey, May 21, 2019 (emphasis supplied)

General Dempsey's comments are well-taken, but the exceptions he cites to the “wholesale pardon” of servicemembers accused of war crimes – “evidence of innocence or injustice” – are both applicable in Clint Lorance's case. He is both innocent, and the victim of injustice; he deserves to have the President set aside his convictions and sentence.

- **Clint is innocent: he made the right decision.**
 - Clint operated in the most dangerous Taliban stronghold in Afghanistan, attacks happening almost daily -- sometimes twice or three times a day.
 - Dozens of US Servicemen had been killed or wounded leading up to the engagement on July 2, 2012.
 - July 2, 2012, was Clint's first patrol as a platoon leader; his predecessor had been medically evacuated after receiving shrapnel to his eyes, face, and abdomen from a Taliban attack.
 - Three Taliban ARMED WITH AK-47s AND RADIOS were dismounted and shadowing the platoon.
 - Taliban had been known to use motorcycles to attack American troops; the previous platoon leader said would never let a motorcycle close to his platoon.
 - Clint's platoon observed three fighting-aged males on a single motorcycle bearing down on his platoon's single file route of march through a minefield.
 - Clint ordered his troops to open fire; his intent was to protect his platoon.

Clint's prosecution was an injustice.

- Clint's case is different than other war crimes prosecutions in that Clint has been tried, convicted, and his appeals have been exhausted, yet we now after-the-fact that the prosecution was ill-conceived, the investigation shoddy, and resulted in the jury not knowing important facts that would have led to Clint's acquittal
 - The prosecution manufactured a narrative to send a message to Afghans and the American public that the U.S. took seriously "civilian casualties."
 - The prosecution threatened eight of Clint's platoon members with murder charges if they did not testify against him.
 - They painted a picture of Clint as a "bad apple," who unilaterally changed the rules of engagement to kill.
 - **The prosecution misled the jury in multiple ways. Here is what we know now, that the jury did not:**
 - **The prosecution led the jury to believe the dead and wounded were "civilian casualties," where DNA and fingerprint "biometric" evidence has established that they were known bomb-makers.**
 - **A military intelligence analyst operating an "aerostat" (i.e., a blimp) conducting overwatch reported a motorcycle "scouting" Clint's platoon the morning of the attack.**
 - **"Wolfhound" radio intercepts the morning of the battle indicated radio Taliban radio communications reporting on the movements of Clint's platoon.**
 - **Clint's predecessor as platoon leader wrote in a sworn statement that he would never let a motorcycle get near his platoon, but this single sentence was lined out before Clint's trial.**
- How can an injustice like this occur?
 - In July 2012, the administration and senior leaders were concerned about sending a message to the American public that civilian casualties were unacceptable.
 - There was an effort to enforce Obama-era rules of engagement that favored the enemy.

- Prosecutors created a narrative before investigating the case, and sought facts to fit their theory of the case. This is backwards: they should investigate, and develop a theory based on the facts. It is the most dangerous mistake a prosecutor can make.
- Army officials overseeing the prosecutors, themselves taught to support junior officers and their decision-making, allowed the false narrative to continue.
- The Army Court of Criminal Appeals judges, themselves Army officers, failed to conduct the type of objective inquiry that one would see in civilian courts. Their decision cherry-picked the facts that would support the prosecution's narrative, and left out the important facts the jury did not see.
- Senior Army leaders continued to endorse the prosecutors' narrative, misleading the public and Congress by stating that Clint unilaterally changed the rules of engagement, though Clint was acquitted of this offense.
- Recent facts show that blind trust in prosecutors is dangerous.
 - We recently learned that SOC Eddie Gallagher's is the most recent example of why the notion that the assumption that prosecutors don't do anything unethical is dangerous and flat wrong.
 - Prosecutors may have (illegally) surveilled communications of defense attorneys and reporters using tracking software embedded in emails sent to defense attorneys.
 - The public is taught that our military attorneys and investigators should be given greater latitude and deference than their civilian counterparts; in fact the Eddie Gallagher case underscores that their should be greater public, judicial, and Congressional scrutiny over military prosecutors and investigators.
- Summary.
 - The prosecution abdicated its role as neutral fact-finder, whose sole role is to seek justice.
 - Instead, the prosecution created a narrative to fit the political winds blowing at the time, and left Clint, and principles of justice in its wake.

- Setting aside the findings and sentence in Clint Lorance's case would:
 - Send a strong message that when our young men and women don the uniform, they do not give up their rights to be treated fairly, and their right to a competent justice system;
 - Send a strong message to our young combat leaders that if they make split-second decisions to save the lives of their troops, their nation will trust their judgment, and not bend to the political whims.



GEN(R) Marty Dempsey  @Martin_Dempsey · May 21



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