US War Theories Target Dissenters

Exclusive: In the Orwellian world of Official Washington, the U.S. government is now wedded to the theory of "information warfare," meaning that Americans who challenge national security policy may be treated as "unprivileged belligerents" under the new Law of War doctrine, retired JAG Major Todd E. Pierce writes.

By Todd E. Pierce

When the U.S. Department of Defense published a new Law of War Manual (LOW) this past summer, editorialists at the New York Times sat up and took notice. Their concern was that the manual stated that journalists could be deemed "unprivileged belligerents." The editorial explained that as a legal term "that applies to fighters that are afforded fewer protections than the declared combatants in a war." In fact, it is far more insidious than that innocuous description.

Here is the manual's definition: "'Unlawful combatants' or 'unprivileged belligerents' are persons who, by engaging in hostilities, have incurred one or more of the corresponding liabilities of combatant status (e.g., being made the object of attack and subject to detention), but who are not entitled to any of the distinct privileges of combatant status (e.g., combatant immunity and POW status)."

The key phrase here is "being made the object of attack." For slow-witted New York Times editorialists, that means journalists can be killed as can any enemy soldier in wartime. "Subject to detention" means a journalist deemed an unprivileged belligerent will be put into military detention if captured. As with any enemy belligerent, however, if "capture is not feasible," they would be killed if possible, by drone perhaps if in a foreign country.

Currently, most U.S. captives deemed "unprivileged belligerents" are imprisoned in Guantanamo although some may be held in Afghanistan. It must be noted that the United States deems as an "unprivileged belligerent" anyone they target for capture or choose to kill.

That the New York Times' concern only arose with publication of the new LOW manual suggests they may have been in a deep sleep since 9/11 as the Department of Defense (DOD) has openly worked to impose limitations on information sharing and news gathering since that event gave them a pretext. It is now a well-established pattern of the U.S. government to suppress rights guaranteed by the First Amendment whenever they can get by with it, as was seen with the New York Times own James Risen.

But the New York Times colluded with the CIA in censoring Risen's reporting. Furthermore, they seemed to have ignored the U.S. government's momentous argument of the unlimited power of the President to target journalists and activists for "expressive activities," as the Department of Justice stated in the case of *Hedges v. Obama*, as described below.

It has frequently been noted there's been an ongoing "war" against journalists since 9/11. The new DOD Law of War manual makes that official and potentially takes it to the highest level of conflict. While expressing concern, the Times' editorialist does not seem to realize or care how ominous it is that the DOD now openly declares that journalists may be deemed "unprivileged belligerents," unlawful combatants, as the DOD manual provides, instead of hiding the fact in coded language as done since 2001. Inherent to those classifications is that they represent the "enemy" and can be killed by U.S. officials.

That will come as no surprise to those acquainted with the foreign journalists who have been targeted and killed by drones in places such as Pakistan. Nor will it surprise Sami al-Hajj, the Al Jazeera journalist who was held in Guantanamo for years. But now it is clear that the same fate could be in store for U.S. journalists.

That coded language is embedded in the claim by Military Commissions prosecutors and the Justice Department that there is a "U.S. domestic common law of war." What they claim is entirely based upon martial law orders of the Civil War and the military's orders to remove Japanese-Americans from the their homes on the West Coast in World War II. All the cases they rely on for a "domestic law of war" today were judicially condemned during or almost immediately after the wars in which they were a part of.

U.S. Domestic Common Law of War

U.S. Military Commissions Chief Prosecutor Brig. General Mark Martins and his staff invented what they call the "U.S. domestic common law of war" in filings to the D.C. Circuit Court of Appeals. That invention consists only of the martial law precedents of the U.S. Civil War and the removal of the Japanese-Americans from the West Coast at the direction of General DeWitt. Both were later seen as examples of military despotism.

The American people have been inured by a deliberate effort of the U.S. military to accept invocation of the law of war as a talisman to permit any act by officials which would have been known as illegal before 9/11. But as the manual states: "Although the law of war is generally viewed as 'prohibitive law,' in some respects, especially in the *context of domestic law*, the law of war may be viewed as permissive or even as a source of authority. For example, the

principle of military necessity in the customary law of war may be viewed as justifying or permitting certain acts." (Emphasis added.)

"Military necessity" was the law of war basis for removal of the Japanese-Americans. Military necessity though indisputably a part of the law of war is a totalitarian precept when applied to a civilian population.

The LOW manual explains the object of war by quoting George H. Aldrich, Deputy Legal Adviser to the U.S. Department of State during the Vietnam War. He wrote of "a general acceptance of the view that modern war is aimed not merely at the enemy's military forces but at the enemy's willingness and ability to pursue its war aims. . . . In Viet-Nam political, rather than military, objectives were even more dominant. Both sides had as their goal not the destruction of the other's military forces but the destruction of the will to continue the struggle."

The "destruction of the will" of the adversary is always the object of war, according to Clausewitz and adopted by the U.S. military. But this has a totalitarian element to it; the adversary's reciprocal object is to destroy our will. Consequently, "our" will must be protected by suppressing any dissent which could harm morale and the population's willingness to "continue the struggle."

That was the foundational belief underlying martial law during the Civil War. The Constitution was an obstacle again to suppressing dissent to a degree after the Civil War, but with the invention of a U.S. domestic common law of war and legalistic word play, this obstacle has once again been removed as the Justice Department argued in *Hedges v. Obama*.

The claim of being at war with internal and external enemies is always made by totalitarian states to justify their suppression of speech and a free press through repression. For a brief period in U.S. history, the Civil War, the U.S. military adopted military repression through martial law to suppress any dissent to its war practices.

Martial law was declared throughout the Union States, the North, on Aug. 8, 1862, by Secretary of War Edwin M. Stanton, at the request of President Abraham Lincoln. Orders were published to "arrest and imprison" any persons "discouraging volunteer enlistments" or "giving aid and comfort to the enemy" or for "any other disloyal practice." A military commission would try the prisoners, and a second order "suspended" the writ of habeas corpus in their cases.

Martial law was more formally declared on Sept. 24, 1862, by President Lincoln

himself in addition to suspending the writ of habeas corpus. Lieber's Code was then prepared as the order giving effect to martial law. Contrary to how it is presented by the U.S. Army and credulous human rights commentators, Lieber's Code was primarily a harsh martial law order with Prussian militarist law of war concepts introduced to the U.S. to criminalize any expressions of dissent as "war treason."

Thus, Col. William Winthrop explained that among the greater number of individuals who were brought to trial before the military commissions during the Civil War, the offenses included "hostile or disloyal acts, or publications or declarations calculated to excite opposition to the federal government or sympathy with the enemy, etc."

Whiting's Guidance

Solicitor of the Department of War during the Civil War, William Whiting, gave legal guidance to the Union Commanders for enforcement of martial law. The "guidebook" was his own *War Powers of the President*. This book could have been used by any militaristic and totalitarian regime, which in fact it was as it was derived from authoritarian principles of martial law from Prussia. Those authoritarian principles remained in force under Prussia's successor state, Germany, during two world wars, and were the legal basis of the infamous People's Court which tried "war treason" cases; cases of "disloyal" expressive acts in most cases without more.

The guidance of Whiting was: "No person in loyal States can rightfully be captured or detained unless he has engaged, or there is reasonable cause to believe he intends to engage, in acts of hostility to the United States, that is to say, in acts which may tend to impede or embarrass the United States in such military proceedings as the commander-in-chief may see fit to institute." This is the same argument that the U.S. government made in *Hedges v. Obama*.

What constituted an act of hostility? Whiting defines that to include a sentiment of hostility to the government "to undermine confidence in its capacity or its integrity, to diminish, demoralize . . . its armies, to break down confidence in those who are intrusted with its military operations in the field."

An example of how martial law was to be carried out was in an order to a subordinate commander by the Army Department of the Pacific Commander in response to complaints from the Citizens of Solano County, California, of disloyal "utterances" they were hearing from fellow citizens.

The order read: "The department commander desires you to let the people

understand generally that the order of the President suspending the writ of habeas corpus and directing the arrest of all persons guilty of disloyal practices will be rigidly enforced. . . . Practices injurious to the government or offensive to the loyal sentiment of the people will under no circumstances be permitted."

Immediately after the Civil War, when it was freshest in their minds, the Supreme Court had this to say about martial law in *Ex Parte Milligan*: "What is ordinarily called martial law is no law at all. Wellington, in one of his despatches from Portugal, in 1810, in his speech on the Ceylon affair, so describes it. Let us call the thing by its right name; it is not martial law, but martial rule. And when we speak of it, let us speak of it as abolishing all law, and substituting the will of the military commander, and we shall give a true idea of the thing, and be able to reason about it with a clear sense of what we are doing."

Martial law is a subpart of the Law of War and since it is for application to a domestic population as with the Northern States during the Civil War by the Union Army, it is "moderated" ordinarily from the even harsher provisions of the Law of War which are now invoked in the Law of War manual. Yet precepts of both are being introduced domestically with Section 1021 of the 2012 National Defense Authorization Act and domestically and globally by the "U.S. domestic common law of war" precedents trumpeted by Chief Military Commissions Prosecutor, Brig. Gen. Mark Martins.

It must be noted that this is not to compare the Union unfavorably with the Confederacy. The Confederacy had the highest form of martial law: slavery. But the Defense Department only uses one legal precedent from the Confederacy today, which is "outlawry."

Lieber's Code addressed "outlawry" in Art. 148, which provided, in pertinent part: "The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen, or a subject of the hostile government, an outlaw, who may be slain without trial by any captor, . . . on the contrary, it abhors such outrage."

This was adopted in the Hague Regulations and as interpreted in earlier Army Law of Land Warfare manuals, prohibited assassinations as well as any declarations that an individual or group is outside the protection of the law of war, which is what designation as an unprivileged belligerent does. The prohibition of assassination has also been put aside with the routine practice of assassination with drones today by the U.S. military.

The Confederacy committed the offense of outlawry when its leaders declared all

captured African-Americans fighting for the Union were outside the protection of the law of war (which did preexist Lieber's Code) and would be placed into the indefinite detention of slavery. After 9/11, the U.S. government did the same with the invention of the unlawful combatant/unprivileged belligerent category and indefinite detention at Guantanamo Bay and any other location U.S. officials chose to place "unprivileged belligerents."

Treason of the Professors and the Media

Ironically, shortly after the New York Times expressed its concern for journalists in early August, the Guardian reported in an article written by William C. Bradford, a recently hired assistant professor in the law department at the U.S. Military Academy at West Point. The article, entitled "*Trahison des Professeurs: The Critical Law of Armed Conflict Academy as an Islamist Fifth Column,"* was published in the *National Security Law Journal* of George Mason University Law School.

Bradford argued that the U.S. should be more aggressive in attacking Muslims to include attacks which are war crimes under the law of war. But it was his advocacy that the U.S. military attack other "lawful targets" in its war on terrorism, which include "law school facilities, scholars' home offices and media outlets where they give interviews" that caught the most attention. These civilian areas were all places where a "causal connection between the content disseminated and Islamist crimes incited" exist, according to Bradford.

Furthermore, Bradford wrote, "Shocking and extreme as this option might seem, [dissenting] scholars, and the law schools that employ them, are at least in theory targetable so long as attacks are proportional, distinguish noncombatants from combatants, employ nonprohibited weapons, and contribute to the defeat of Islamism." In other words, dissenting scholars are unprivileged belligerents and subject to attack, just as journalists are according to the Law of War manual.

Not to defend him but Bradford was articulating the underlying logic of the new Law of War manual's position that dissenting journalists can be targeted as unprivileged belligerents. This, as stated above, is consistent with oppressive extra-constitutional martial law practices which Chief Prosecutor Mark Martins boasts of as "U.S. domestic common law of war."

One has to ask: where are the supposed watchdogs of the press when military officers can so easily slide historical falsehoods past them in destroying freedom of the press? Further, Bradford argued that law professors who criticized the failure of the U.S. to abide by the Geneva Conventions and the Law of War represented a "treasonous" fifth column that could be attacked as enemy combatants.

If there is treason being committed in the United States, it must be seen in the acts of those reconstituting the extra-constitutional martial law cases of the Civil War period. That is, Brig. Gen. Mark Martins and associated government attorneys who, in effect, are engaged in an indirect coup d'etat of the U.S. Constitutional order. In fact, Bradford was alleged to have written in favor of a direct military coup d'etat as well.

As it turned out, Bradford had other ethical issues than just his incitement to commit war crimes and target law professors. A combination of factors led to his resigning his position at the Military Academy and this individual crisis would seem to have passed.

The home page o*f the National Security Law Journal* in which his essay had been published carried a repudiation of it by the incoming editorial board. They summarized his article as follows: "Mr. Bradford's contention that some scholars in legal academia could be considered as constituting a fifth column in the war against terror; his interpretation is that those scholars could be targeted as unlawful combatants."

But substitute "journalists" for "scholars" and you have the position on journalists of the DOD's new Law of War manual.

An insightful article in The Atlantic asks "how a scholar pushing these ideas seems not to have raised red flags any earlier." That's an excellent question. The article was entitled "The Unusual Opinions of William C. Bradford." But here's the point; these opinions are not unusual among some members of the military and right-wing law professors such as Adrian Vermeule of Harvard and Eric Posner of the University of Chicago.

Posner and Vermeule have carved out a niche in American legal discourse in advocating that the U.S. needs to turn to the legal "wisdom" of the German Nazi lawyer, Carl Schmitt. In *Terror in the Balance*, they suggest that the U.S. may need to adopt censorship for, among other reasons, "antigovernment speech may demoralize soldiers and civilians." For precedent, they point out that "Martial law during the Civil War permitted the military to try and punish people who criticized the Lincoln administration's conduct of the war."

The Attack on 'Lawfare'

Other prominent advocates of authoritarian legal practices present themselves as protecting against disloyal attorney who practice "lawfare," which is defined as a form of "asymmetric warfare" that misuses domestic or international law to damage an opponent through legal actions in a courtroom. For instance, Ben Wittes of lawfareblog.com would seem to espouse this type of animosity toward

public-interest lawyers who use the courts to defend First Amendment liberties.

A fallacious argument, made by Wittes in a paper which calls for "balancing" liberty and security, is his idiosyncratic belief that "in American constitutional law, for example, free speech does not exist as a general right of the public to communicate as much or as widely as it desires but as an individual right not to have government restrict one's speech."

This is contrary to the understanding of the Supreme Court which held in *First Nat. Bank of Boston v. Bellotti*, that: "[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." In other words, the First Amendment guarantees the public's "right to know."

Why does this matter? The Constitution's Framers understood that an informed population was crucial for a Republic. As James Madison put it: "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."

This understanding of the criticality of the free flow of information for wise democratic decision-making is particularly important for national security where ignorance comes with the highest cost. This understanding formed Clausewitz's belief in a broad-based civilian decision-making process in matters of national security strategic policy, and not one driven by military leaders with their one-dimensional thinking process.

The Vietnam War is Exhibit A as proof of this. If it had been left to the Generals to decide, the war would have continued "perpetually" even though wiser heads realized from the beginning that it was unwinnable by U.S. terms of maintaining an unpopular government in South Vietnam. The antiwar movement, whatever the motives of some, proved to be more strategically astute than General William Westmoreland who would have continued the war until the U.S. bankrupted itself in the manner that the Soviet Union would years later in Afghanistan. It was the American antiwar movement which gave effect to Clausewitz's strategy that when a war's costs exceed its "benefits," a way must be found to end it.

Curiously, Wittes accurately notes in *Law and the Long War* that to claim "the President has all the powers of a normal war yet few of its restraints, that the whole world is his battlefield, and that this state of affairs goes on in perpetuity is really akin to claiming a kind of worldwide martial law." In fact,

that’s exactly what the Justice Department argued in *Hedges v. Obama* without the admission as to martial law.

Dissent as Treason

Since the Vietnam War, the belief that the media and other critics of government policies act as fifth columnists has become commonplace in military-oriented journals and with the American authoritarian-oriented political class, expressed in articles such as William Bradford’s attack on “treasonous professors.”

To the question “how a scholar pushing these ideas” did not raise a red flag, that might best be asked of the *National Security Law Journal’s* previous editorial board. It is worth noting however that the editors who chose to publish Bradford’s article are not neophytes in national security issues or strangers to the military or government.

As described on the NSLJ website, the Editor-in-Chief from 2014-2015 has broad experience in homeland and national security programs from work at both the Department of Justice and the Department of Homeland Security and currently serves (at the time of publication of Bradford’s article) as the Deputy Director for the Office of Preparedness Integration and Coordination at FEMA. A U.S. government official in other words.

The “Articles Selection Editor” is described as “a family physician with thirty years of experience in the foreign affairs and intelligence communities.” Websites online suggest his experience may have been acquired as a CIA employee. The executive editor appears to be a serving Marine Corps officer who attended law school as a military-funded student.

Significantly; Bradford was articulating precepts of the “U.S. common law of war” promoted by Chief Prosecutor Mark Martins because nothing Bradford advocated was inconsistent with William Whiting’s guidance to Union Generals. Except Whiting went even further and advised that judges in the Union states who “impeded” the military in any way by challenging their detentions were even greater “public enemies” than Confederate soldiers were.

This “U.S. common law of war” is a prosecution fabrication created by legal expediency in the absence of legitimate legal precedent for what the United States was doing with prisoners captured globally after 9/11. This legal invention came about when military commission prosecutors failed to prove that the offense of Material Support for Terrorism was an international law of war crime. So prosecutors dreamed up a “domestic common law of war.” This in fact is simply following the pattern of totalitarian states of the Twentieth Century.

Government-Media-Academic-Complex

The logic of Bradford's argument is the same as that of the Defense Department in declaring that journalists may be deemed "unprivileged belligerents." As quoted above, George H. Aldrich had observed that in Vietnam, both sides had as their goal "the destruction of the will to continue the struggle."

Bradford argued that Islamists must overcome Americans' support for the current war to prevail, and "it is the 'informational dimension' which is their main combat effort because it is U.S. political will which must be destroyed for them to win." But he says Islamists lack skill "to navigate the information battlespace, employ PSYOPs, and beguile Americans into hostile judgments regarding the legitimacy of their cause."

Therefore, according to Bradford, Islamists have identified "force multipliers with cultural knowledge of, social proximity to, and institutional capacity to attrit American political will. These critical nodes form an interconnected 'government-media-academic complex' ('GMAC') of public officials, media, and academics who mould mass opinion on legal and security issues . . . ."

Consequently, Bradford argues, within this triumvirate, "it is the wielders of combat power within these nodes, journalists, officials, and law professors, who possess the ideological power to defend or destroy American political will."

While Bradford reserves special vituperation for his one-time fellow law professors, he states the "most transparent example of this power to shape popular opinion as to the legitimacy of U.S. participation in wars is the media."

As proof, Bradford explained how this "disloyalty" of the media worked during the Vietnam War. He wrote: "During the Vietnam War, despite an unbroken series of U.S. battlefield victories, the media first surrendered itself over to a foreign enemy for use as a psychological weapon against Americans, not only expressing criticism of U.S. purpose and conduct but adopting an 'antagonistic attitude toward everything America was and represented' and 'spinning' U.S. military success to convince Americans that they were losing, and should quit, the war. Journalistic alchemists converted victory into defeat simply by pronouncing it."

Space does not permit showing in how many ways this "stab in the back" myth is false. But this belief in the disloyalty of the media in Bradford's view remains today. He wrote: "Defeatism, instinctive antipathy to war, and empathy for American adversaries persist within media."

Targeting Journalists

The right-wing militarist Jewish Institute for National Security Affairs

(JINSA), with mostly retired U.S. military officers serving as advisers, has advocated targeting journalists with military attacks. Writing in The Journal of International Security Affairs in 2009, retired U.S. Army Lt. Col. Ralph Peters wrote:

"Today, the United States and its allies will never face a lone enemy on the battlefield. There will always be a hostile third party in the fight, but one which we not only refrain from attacking but are hesitant to annoy: the media . . . . Future wars may require censorship, news blackouts and, ultimately, *military attacks on the partisan media*." (Emphasis in original.)

The rationale for that deranged thinking was first propounded by Admiral Ulysses S. Grant Sharp and other authoritarian-minded officers after the Vietnam War. Sharp explained, our "will" was eroded because "we were subjected to a skillfully waged subversive propaganda campaign, aided and abetted by the media's bombardment of sensationalism, rumors and half-truths about the Vietnam affair – a campaign that destroyed our national unity." William C. Bradford apparently adopted and internalized this belief, as have many other military officers.

That "stab in the back" myth was propagated by a number of U.S. military officers as well as President Richard Nixon (as explained here). It was more comfortable to believe that than that the military architects of the war did not understand what they were doing. So they shifted blame onto members of the media who were astute enough to recognize and report on the military's failure and war crimes, such as My Lai.

But those "critical" journalists, along with critics at home, were only recognizing what smarter Generals such as General Frederick Weyand recognized from the beginning. That is, the war was unwinnable by the U.S. because it was maintaining in power its despotic corrupt ally, the South Vietnamese government, against its own people. Whether or not what came later was worse for the Vietnamese people was unforeseeable by the majority of the people. What was in front of their eyes was the military oppression of American and South Vietnamese forces and secret police.

Information Warfare Today

In 1999, the Rand Corporation published a collection of articles in *Strategic Appraisal: The Changing Role of Information in Warfare*. The volume was edited by Zalmay Khalilzad, the alleged author of the Defense Department's 1992 Defense Planning Guidance, which was drafted when Dick Cheney was Defense Secretary and Paul Wolfowitz was Under Secretary of Defense and promulgated a theory of permanent U.S. global dominance.

One chapter of Rand's *Strategic Appraisal* was written by Jeremy Shapiro, now a special adviser at the U.S. State Department, according to Wikipedia. Shapiro wrote that the inability to control information flows was widely cited as playing an essential role in the downfall of the communist regimes of Eastern Europe and the Soviet Union.

He stated that perception management was "the vogue term for psychological operations or propaganda directed at the public." As he expressed it, many observers worried that potential foes could use techniques of perception management with asymmetric strategies with their effect on public opinion to "destroy the will of the United States to wage war."

Consequently, "Warfare in this new political environment consists largely of the battle to shape the political context of the war and the meaning of victory."

Another chapter on *Ethics and Information Warfare* by John Arquilla makes clear that information warfare must be understood as "a true form of war." The range of information warfare operations, according to Arquilla, extends "from the battlefield to the enemy home front." Information warfare is designed "to strike directly at the will and logistical support of an opponent."

This notion of information warfare, that it can be pursued without a need to defeat an adversary's armed forces, is an area of particular interest, according to Arquilla. What he means is that it necessitates counter measures when it is seen as directed at the U.S. as now provided for in the new LOW Manual.

Important to note, according to Arquilla, is that there is an inherent blurriness with defining "combatants" and "acts of war." Equating information warfare to guerrilla warfare in which civilians often engage in the fighting, Arquilla states "in information warfare, almost anyone can engage in the fighting."

Consequently, the ability to engage in this form of conflict is now in the hands of small groups and individuals, offering up "the prospect of potentially quite large numbers of information warfare-capable combatants emerging, often pursuing their own, as opposed to some state's policies," Arquilla wrote.

Therefore, a "concern" for information warfare at the time of the Rand study in 1999 was the problem of maintaining "noncombatant immunity." That's because the "civilian-oriented target set is huge and likely to be more vulnerable than the related set of military infrastructures . . . . Since a significant aspect of information warfare is aimed at civilian and civilian-oriented targets, despite its negligible lethality, it nonetheless violates the principle of noncombatant immunity, given that civilian economic or other assets are deliberately

targeted.”

What Arquillo is saying is that civilians who are alleged to engage in information warfare, such as professors and journalists, lose their “noncombatant immunity” and can be attacked. The “blurriness” of defining “combatants” and “acts of war” was removed after 9/11 with the invention of the “unlawful combatant” designation, later renamed “unprivileged belligerent” to mimic language in the Geneva Conventions.

Then it was just a matter of adding the similarly invented “U.S. domestic common law of war” with its martial law precedents and a framework has been built for seeing critical journalists and law professors as “unprivileged belligerents,” as Bradford indiscreetly wrote.

Arquilla claims that information warfare operations extend to the “home front” and are designed “to strike directly at the will and logistical support of an opponent.” That is to equate what is deemed information warfare to sabotage of the population’s psychological will to fight a war, and dissidents to saboteurs.

Perpetual War

But this is a perpetual war driven by U.S. operations, according to a chapter written by Stephen T. Hosmer on psychological effects of information warfare. Here, it is stated that “the expanding options for reaching audiences in countries and groups that could become future U.S. adversaries make it important that the United States begin its psychological conditioning in peacetime.” Thus, it is necessary “to begin to soften the fighting will of the potential adversary’s armed forces in the event conflict does occur.”

As information warfare is held to be “true war,” this means that the U.S. is perpetually committing acts of war against those deemed “potential” adversaries. Little wonder that Vladimir Putin sees Russia as under assault by the United States and attempts to counter U.S. information warfare.

This same logic is applied to counter-insurgency. The 2014 COIN Manual, FM 3-24, defines “Information Operations” as information-related capabilities “to influence, disrupt, corrupt, or usurp the decisionmaking of adversaries and potential adversaries while protecting our own.”

Those we “protect ourselves from” can logically be seen as the internal enemy, as William Bradford saw it, such as critical law professors and journalists, just as Augusto Pinochet did in Chile with dissidents.

With the totalitarian logic of information-warfare theorists, internalized now throughout much of the U.S. government counter-terrorism community, it should be

apparent to all but the most obtuse why the DOD deems a journalist who writes critically of U.S. government war policy an “unprivileged belligerent,” an enemy, as in the Law of War manual. William C. Bradford obviously absorbed this doctrine but was indiscreet enough to articulate it fully.

It Has Happened Here!

That’s the only conclusion one can draw from reading the transcript of the *Hedges v. Obama* lawsuit. In that lawsuit, plaintiffs, including journalists and political activists, challenged the authority provided under Sec. 1021 of the 2012 National Defense Authorization for removal out from under the protection of the Constitution of those deemed unprivileged belligerents. That is, civilians suspected of lending any “support” to anyone whom the U.S. government might deem as having something to do with terrorism.

“Support” can be as William Whiting described it in 1862 and as what is seen as “information warfare” by the U.S. military today: a sentiment of hostility to the government “to undermine confidence in its capacity or its integrity, to diminish, demoralize . . . its armies, to break down confidence in those who are intrusted with its military operations in the field.”

Reminiscent of the Sinclair Lewis novel *It Can’t Happen Here* where those accused of crimes against the government are tried by military judges as in the U.S. Military Commissions, a Justice Department attorney arguing on behalf of the United States epitomized the legal reasoning that one would see in a totalitarian state in arguing why the draconian “Law of War” is a substitute for the Constitution.

The Court asked Assistant U.S. Attorney Benjamin Torrance if he would agree, “as a principled matter, that the President can’t, in the name of the national security of the United States, just decide to detain whomever he believes it is important to detain or necessary to detain to prevent a terrorist act within the United States?”

Rather than giving a straight affirmative answer to a fundamental principle of the U.S. Constitution, Torrance dissembled, only agreeing that that description would seem “quite broad,” especially if citizens. But he added disingenuously that it was the practice of the government “not to keep people apprehended in the U.S.”

Which is true, it is known that people detained by the U.S. military and CIA have been placed everywhere but in the U.S. so that Constitutional rights could not attach. Under Section 1021, that “inconvenience” to the government would not be necessary.

When asked by the Court if he, the Justice Department attorney, would agree that a different administration could change its mind with respect to whether or not Sec. 1021 would be applied in any way to American citizens, he dissembled again, answering: “Is that possible? Yes, but it is speculative and conjecture and that cannot be the basis for an injury in fact.”

So U.S. citizens or anyone else are left to understand that they have no rights remaining under the Constitution. If a supposed “right” is contingent upon who is President, it is not a right and the U.S. is no longer under the rule of law.

In discussing whether activist and journalist Birgitta JÃ³nsdÃ³ttir, a citizen of Iceland, could be subject to U.S. military detention or trial by military commission, Assistant U.S. Attorney Torrance would only disingenuously answer that “her activities as she alleges them, do not implicate this.” Disingenuous because he knew based upon the answer he previously gave that the law of war is arbitrary and its interpretation contingent upon a military commander, whoever that may be, at present or in the future.

What could happen to Ms. JÃ³nsdÃ³ttir would be completely out of her control should the U.S. government decide to deem her an “unprivileged belligerent,” regardless of whether her expressive activities changed positively or negatively, or remained the same. Her risk of detention per the Justice Department is entirely at the sufferance of whatever administration may be in place at any given moment.

Any doubt that the Authorization for the Use of Military Force, along with Section 1021 of the National Defense Authorization Act of 2012, is believed by the U.S. Executive Branch to give it the untrammeled power that Article 48 of the Weimar Germany constitution gave to the German President in 1933 was settled by the arguments made by the Justice Department attorney in *Hedges v. Obama*.

Setting First Amendment Aside

One does not need to speculate that the U.S. government no longer sees First Amendment activities as protected. Government arguments, which were made in the *Hedges v. Obama* lawsuit, revealed that the Justice Department, speaking for the Executive Branch, considers protection of the Bill of Rights subordinate to the claim of “war powers” by the Executive. One can only be willfully blind to fail to see this.

By the Justice Department’s court arguments and filings, the protections afforded by the U.S. Bill of Rights are no more secure today than they were to Japanese-Americans when Western District military commander General DeWitt decided to remove them from their homes on the West Coast and intern them in

what were initially called, “concentration camps.”

The American Bar Association Journal reported in 2014 that Justice Antonin Scalia told students in Hawaii that “the Supreme Court’s *Korematsu* decision upholding the internment of Japanese Americans was wrong, but it could happen again in war time.” But contrary to Scalia stating that *Korematsu* had been repudiated, *Korematsu* has never been overruled.

The court could get a chance to do so, the ABA article stated, in the *Hedges v. Obama* case “involving the military detention without trial of people accused of aiding terrorism.” But that opportunity has passed.

A U.S. District Court issued a permanent injunction blocking the law’s indefinite detention powers but that ruling was overturned by the Second Circuit Court of Appeals. A petition to the U.S. Supreme Court asked the justices to overturn Sec. 1021, the federal law authorizing such detentions and stated the justices should consider overruling *Korematsu*. But the Supreme Court declined to hear the case in 2014, leaving the Appeals Court’s ruling intact.

The Supreme Court’s decision to not overturn *Korematsu* allows General DeWitt’s World War II decision to intern Japanese-Americans in concentration camps to stand as a shining example of what Brig. General Marks Martins proudly holds up to the world as the “U.S. domestic common law of war.”

Todd E. Pierce retired as a Major in the U.S. Army Judge Advocate General (JAG) Corps in November 2012. His most recent assignment was defense counsel in the Office of Chief Defense Counsel, Office of Military Commissions. In the course of that assignment, he researched and reviewed the complete records of military commissions held during the Civil War and stored at the National Archives in Washington, D.C.

Ellsberg Seeks Justice for Vanunu

Famed Defense Department whistleblower Daniel Ellsberg says Israel should cease its nearly three-decade-old persecution of Mordechai Vanunu, the former nuclear technician who exposed the existence of Israel’s clandestine nuclear program in 1986 and was jailed for 18 years.

Former U.S. Defense Department official Daniel Ellsberg, who leaked the secret

Pentagon Papers history of the Vietnam War, says Israel should finally recognize that former nuclear technician Mordechai Vanunu did the right thing when he disclosed the existence of Israel's nuclear weapons program in 1986, which led Israeli agents to kidnap him from Italy and spirit him back to Israel.

In an interview with RT, Ellsberg, who himself was branded a "traitor" to the United States for revealing the Pentagon Papers history of the Vietnam War in 1971, added that the Israeli government should finally lift restrictions on Vanunu's civil rights. Further, Ellsberg said, Israel should come clean about the existence of its nuclear weapons program and admit that it violated its promise not to be the first to introduce nuclear weapons into the Middle East.

RT: Ten years since his release, Vanunu is still under constant government pressure, is in constant fear of arrest. Why is that happening, do you think?

Daniel Ellsberg: I think it's essentially what they want to be a life-time punishment, in effect, for embarrassing them, actually, in a policy that really can't be defended in the nuclear era. Is it really legitimate for a country to develop nuclear weapons in secret and continue to maintain the secrecy, then, indefinitely from the world, or pretend to keep that secret? I think not.

I think Vanunu did exactly the right thing by telling his fellow citizens, and the rest of the world, that Israel had a large nuclear program. And for that, he served 18 years in prison: 10 and a half in a very small cell of isolation a 6 by 9 foot cell what Amnesty called "torture," essentially, for that long period.

The idea that he's restricted after serving the full sentence nothing off for good behavior or any pardon of any sort after serving the full sentence of 18 the idea that he should be subject to further restrictions about who he can talk to, and whether he can leave the country, is actually a relic of the British colonial policies, when they ruled Israel entirely and they were just incorporated into Israeli law that's not regarded under human rights legislation anywhere else in the world, actually, as a fair thing to do.

He wasn't let out a day early. He served the entire sentence, and was then he was given, as I say, these further restrictions as the British occupation regulations had allowed and Israeli law simply continued those into its own law in clear violation of the UN Charter on Human Rights.

RT: For some people Vanunu is a hero, for others, he is the exact opposite. They say he should be put in prison for life. What impact do you think his revelations have had?

DE: Well, I can't say that his revelations affected Israeli policy, though they should have, I think. Many Israelis feel that they should have been honest and

open about their nuclear policy many years ago, and right now are still saying that. He's called a traitor. I was called a traitor, though not charged with that under the American Constitution.

Virtually everyone, I think, who gives out truth that the officials, the government doesn't want revealed, gets that terrible name. If you're not willing to be called names, you really can't tell the truth, I would say, about wrongful things your government is doing. And I'm speaking here not so much about the Israeli nuclear program, as about the fact that they have lied about it ever since.

RT: Has it been effective in the sense that he was the first to publicly speak out about the alleged existence of the Israeli nuclear program? Has it been effective in that it's inspired others to follow his lead?

DE: I'm glad that it has. Actually, there were those who felt at the time that he had improved Israeli security by making it clear to their neighbors that they were confronting a nuclear state something I think they were, on the whole, even the government, was happy to have out. But they wanted to "A" punish the person who had taken it on himself, the initiative to reveal that, and discourage other whistleblowers. And, on the other hand, they wanted to continue their policy of the so-called "ambiguity," which is just a policy of lying to the public to their own public and to the world.

By the way, they've said forever they would not be the first to introduce nuclear weapons into the Middle East they've said that over and over. That's simply a flat government lie. No better, no worse than lies by my own government, or any other government.

RT: Now, Vanunu is not even allowed to leave the country. The government says he could still reveal more secrets. You can speak from a position of experience here, how you feel about that. Is it legally acceptable, though?

DE: I can't go on my own judgment on that, but every nuclear expert which I'm not, I've worked on nuclear war plans, but not on design or having to do with nuclear weapons everyone says that what he knew as a technician in Dimona in 1986, more than 20 years ago, could [not] possibly have any security relevance today. And that that's just a threadbare excuse for continuing his punishment indefinitely, beyond what even a military type court assigned to him so many years ago.

RT: What's the stance of other countries when it comes to Israel's refusal to admit any program of nuclear weapons or any possession? Where do the stand on this? How do they view Israel?

DE: Well, apparently, the fact that Vanunu was given permission to give this interview at all was taken by various media, major media, as indicating a real shift in Israeli policy, and coming very close, at last, to coming clean about what their status is.

By the way, what Vanunu indicated was, is that their nuclear stockpile was far larger than even our American Central Intelligence Agency (CIA) had estimated. He's described these stories, saying that it was at least 100 weapons. People who'd guessed earlier, thought it was much lower.

Actually, Vanunu was saying at that time that he thought the material was far larger than that, enough for some 300 or more weapons, and I wouldn't be surprised if, to this day, the Israeli stockpile is being very underestimated. That might indicate, for example, that they actually have the third-largest stockpile in the world, after the U.S. and Russia, rather than lagging behind France, for example.

RT: How do you think things have changed over the decades that have past? Do you see governments now putting in more controls and more protections to prevent whistleblowers? Is it becoming harder?

DE: Well there are people who can't be deterred by the threat even of very heavy, indefinite or lifetime sentences. Ed Snowden, obviously, living in exile now and probably in danger of his life indefinitely, is willing to take on that risk. Chelsea Manning, who is in prison right now, for revealing this. I think all of those, including Vanunu. Let me just say they are my personal heroes. I admire them.

I regard Vanunu as a friend, having met him several times and corresponded with him. I went to Israel to intercede for him in an appellate hearing. I think he is the preeminent prophet of the nuclear era. Someone who not only risked life in jail or death, but actually served a tremendous long time as I say, 10 and a half years in solitary confinement in 18 years.

So, I think he deserves to be honored, really, throughout the world, and he is in much of the world. And to be allowed, certainly, to join his new wife I'm very happy for her, that they've gotten together to join his wife in Norway and live his life.

But he's clearly not willing to be entirely muffled on his views about nuclear weapons and his belief, actually, that the nuclear policy of Israel is shortsighted, and dangerous to the state itself, in promoting proliferation to which Israel is very subject and vulnerable. So, I think he should be allowed, not because he's suffered enough, but because he did exactly the right thing,

and it’s time to recognize that.

[This interview is being republished at the suggestion of Daniel Ellsberg.]