

# WE HAVE MET THE ENEMY AND HE IS US

The stated intent of the Wikileaks.org Web site is to expose unethical practices, illegal behavior, and wrongdoing within corrupt corporations and oppressive regimes ...

[snip]

The developers believe that the disclosure of sensitive or classified information involving a foreign government or corporation will eventually result in the increased accountability of a democratic, oppressive, or corrupt the [sic] government to its citizens.

– Army Counterintelligence Report on WikiLeaks, allegedly leaked by Bradley Manning between February 15 and March 15, 2010

I quipped in my last post that the new charges filed against Bradley Manning teach us that we are the enemy—or at least are considered to be the enemy by the federal government. I was referring to the charge that Manning “knowingly gave intelligence to the enemy.” After all, we’re the ones Manning allegedly gave this information to.

Via Glenzilla, Kevin Jon Heller provides more detail about what this charge entails. He summarizes his understanding of how the military might be intending to prove their case against Manning this way:

[1] Manning is guilty of “giving intelligence to the enemy,” because he gave intelligence to WikiLeaks that he knew would be made available on the internet, and an enemy of the United States did, in fact, access that

information.

[2] Manning is guilty of “commun[i]cating with the enemy” because he gave information to WikiLeaks intending that an enemy of the United States would receive it. (The “intent required” view.)

[3] Manning is guilty of “communicating with the enemy” because he gave information to WikiLeaks knowing that it would be published on the internet, where any enemy could access it. (The intent not required view.)

Heller dislikes examples 1 and 3 because they threaten Manning with life imprisonment for something that newspapers do, but he doubts the government is relying on example 2 because, he argues, it would require making the argument that Manning intended al-Qaeda to get the information. Yet, as Glenn points out, we don't have to guess at Manning's intent (at least if we believe the chat logs are authentic); Manning described his own goal for leaking information this way:

Manning: well, it was forwarded to [WikiLeaks] – and god knows what happens now – hopefully worldwide discussion, debates, and reforms – if not, than [sic] we're doomed – as a species – i will officially give up on the society we have if nothing happens – the reaction to the video gave me immense hope; CNN's iReport was overwhelmed; Twitter exploded – people who saw, knew there was something wrong . . . Washington Post sat on the video... David Finkel acquired a copy while embedded out here. . . . – i want people to see the truth . . . regardless of who they are . . . because without information, you cannot make informed decisions as a public. [emphasis Glenn's]

Glenn suggests another possible way the government might be thinking of “enemy” here—one Heller dismisses.

In light of the implicit allegation that Manning transmitted this material to WikiLeaks, it is quite possible that WikiLeaks is the “enemy” referenced by Article 104, i.e., that the U.S. military now openly declares (as opposed to secretly declaring) that the whistle-blowing group is an “enemy” of the U.S.

I’d like to look at that possibility more directly, because I think it is one the government might actually have the proof for.

As I noted earlier, Charge II, Specification 15 alleges that Manning:

between on or about 15 February 2010 and on or about 15 March 2010, having unauthorized possession of information relating to the national defense, to wit: a classified record produced by a United States Army intelligence organization, dated 18 March 2008, with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit ... the said information, to a person not entitled to receive it ...

This is one of the new charges from yesterday.

We know from the date and the description that this charge refers to the counterintelligence report the NGIC did on WikiLeaks. WikiLeaks published that report on March 15, 2010.

That’s significant because, in addition to treating WikiLeaks as a counterintelligence threat, the report reviews several leaks of DOD information previously released by WikiLeaks, then describes the threat presented by it this

way.

(S//NF) It must be presumed that Wikileaks.org has or will receive sensitive or classified DoD documents in the future. This information will be published and analyzed over time by a variety of personnel and organizations with the goal of influencing US policy. In addition, it must also be presumed that foreign adversaries will review and assess any DoD sensitive or classified information posted to the Wikileaks.org Web site. Web sites similar to Wikileaks.org will continue to proliferate and will continue to represent a potential force protection, counterintelligence, OPSEC, and INFOSEC threat to the US Army for the foreseeable future. Sensitive or classified information posted to Wikileaks.org could potentially reveal the capabilities and vulnerabilities of US forces, whether stationed in CONUS or deployed overseas.

(S//NF) The proliferation of access to Internet, computer, and information technology technical skills, software, tools, and databases will allow the rapid development, merging, integration, and manipulation of diverse documents, spreadsheets, multiple databases, and other publicly available or leaked information. Possible enhancements could increase the risk to US forces and could potentially provide potential attackers with sufficient information to plan conventional or terrorist attacks in locations such as Iraq or Afghanistan.

In other words, the government is newly charging Manning with leaking a document that clearly identifies WikiLeaks as a threat to US forces. And while the charging document makes no mention of WikiLeaks, we know WikiLeaks received the document, because they published it.

But that's not the only example of a new charge like this.

Charge II, Specification 3 alleges that Manning:

between on or about 22 March 2010 and on or about 26 March 2010, having unauthorized possession of information relating to the national defense, to wit: more than one classified memorandum produced by a United States government intelligence agency, with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate ... the said information, to a person not entitled to receive it ...

As I noted earlier, on March 23, 2010, the WikiLeaks twitter feed reported,

We know our possession of the decrypted airstrike video is now being discussed at the highest levels of US command.

In his chats with Lamo, Manning described trying to figure out who was tracking Julian Assange and specifically mentions internal discussions about the Garani video.

(2:05:58 PM) Manning: it took me four months to confirm that the person i was communicating was in fact assange

(2:10:01 PM) Lamo: how'd you do that?

(2:12:45 PM) Manning: I gathered more info when i questioned him whenever he was being tailed in Sweden by State Department officials... i was trying to figure out who was following him... and why... and he was telling me stories of other times he's been followed... and they matched up with the ones he's said publicly

(2:14:28 PM) Lamo: did that bear out?

the surveillance?

(2:14:46 PM) Manning: based on the description he gave me, I assessed it was the Northern Europe Diplomatic Security Team... trying to figure out how he got the Reykjavik cable...

(2:15:57 PM) Manning: they also caught wind that he had a video... of the Gharani airstrike in afghanistan, which he has, but hasn't decrypted yet... the production team was actually working on the Baghdad strike though, which was never really encrypted [my emphasis]

While we can't be sure, I suspect the reference in Charge II, Specification 3 is to this information about the surveillance of Assange.

If I'm right about that, then it means the government is charging Manning with providing WikiLeaks with information about the surveillance being conducted, in real time, on WikiLeaks. And it would make it easy to prove both that "the enemy" got the information and that Manning intended the "enemy" to get it.

So if the government maintains that, by virtue of being an intelligence target, WikLeaks qualifies as an "enemy," then they can also argue that Manning intentionally gave WikiLeaks information about how the government was targeting the organization. Which would make their aiding the enemy charge easy to prove.

But I also think that opens up the government to charges that it is criminalizing democracy.

As I noted above, the government's own report on WikiLeaks describes its purpose to be increasing the accountability of democratic or corrupt governments. The government, by its own acknowledgment, knows that WikiLeaks' intent is to support democracy. Furthermore, while the intelligence report reviews the debate about whether WikiLeaks constitutes protected free speech or criminal behavior (without taking a

side in that debate), in a discussion of WikiLeaks' efforts to verify an NGIC report on the battle of Fallujah, the report acknowledges that WikiLeaks did the kind of thing journalists do.

Wikileaks.org and some other news organizations did attempt to contact the NGIC personnel by e-mail or telephone to verify the information.

[snip]

Given the high visibility and publicity associated with publishing this classified report by Wikileaks.org, however, attempts to verify the information were prudent and show journalist responsibility to the newsworthiness or fair use of the classified document if they are investigated or challenged in court.

So while the military, according to its own report, describes WikiLeaks as a threat to the armed forces, it also acknowledges that WikiLeaks has behaved, at times, as a journalistic organization.

Mind you, all of this is simply a wildarsed guess about what the government may mean with its invocation of the "enemy." But if I'm right, it would mean the government was threatening Manning with life in prison because he leaked information about the government's surveillance of what it admits is an entity that engages in journalistic behavior.