

# DID THE PENTAGON MISINFORM OBAMA WHEN IT SAID BRADLEY MANNING'S TREATMENT MET OUR STANDARDS?

Back on March 11, in response to Jake Tapper's question whether he agreed with PJ Crowley's judgment that Bradley Manning's treatment was "ridiculous and counterproductive and stupid," President Obama said the Pentagon had assured him that the treatment met DOD standards.

**Tapper:** The State Department Spokesman PJ Crowley said the treatment of Bradley Manning by the Pentagon is "ridiculous and counterproductive and stupid," and I'm wondering if you agree with that. Thank you sir.

**Obama:** With respect to Private Manning, I have actually asked the Pentagon whether or not the procedures that have been taken in terms of his confinement are appropriate and are meeting our basic standards. They assure me that they are. I can't go into details about some of their concerns, but some of this has to do with Private Manning's safety as well.

**Tapper:** Do you disagree with PJ Crowley?

**Obama:** I think I gave you an answer to the substantive issue.

But yesterday's press conference appears to present problems for this story.

First of all, according to DOD General Counsel Jeh Johnson, the Pentagon review of whether Quantico was the appropriate facility for Manning began just a few weeks ago—so

presumably, it started sometime after Obama was asked about Manning's treatment over five weeks ago.

MR. JOHNSON: Well, again, it was a combination of reasons. We began to take a look at this a couple of weeks ago. You know, is there an alternative facility that might be better for him given the length of time he's been in pre-trial confinement, given the length of time – in the future it looks – it looks as if he'll be in pre-trial confinement. And we have this 706 interview of him coming up. And we decided, well, why don't we let that happen first and then he should be transferred, so that – so that the group that interviews him, who as I understand are in the Washington area, don't need to go out to Kansas. So we'll do that, and then we'll move him after that.

Q: You said – I think you said that that – I think a couple of weeks ago that (inaudible) –

MR. JOHNSON: Yes.

Q: – what triggered that?

MR. JOHNSON: Well, you know, this issue has been obviously in the media.

Under normal circumstances, I'd like to believe that we – if there were issues about whether another facility is more suitable for one of our pre-trial confinees, we would – we would take a look at that in a comprehensive joint fashion. Because this has been in the newspapers, people at our level have been involved in taking a look at that as well. And so that's the process that began several weeks ago.

Q: So it is fair to say that media criticism about his treatment did play some role in his transfer here.

MR. JOHNSON: I wouldn't characterize it that way. I think it is fair to say that because this case has been in the media, people at Dr. Westphal's level and my level have been involved in this process, and that's fair to say.

And while Johnson claims that Manning's Quantico treatment was legal, both he and Under Secretary of the Army Joseph Westphal admit that Quantico is not appropriate for long-term pre-trial detention.

Johnson: We remain satisfied that Private Manning's pre-trial confinement at Quantico was in compliance with legal and regulatory standards in all respects, and we salute the military personnel there for the job they did in difficult circumstances.

[snip]

MR. WESTPHAL: Let me just add to that.

I think the issue there is, we began discussing the fact that Private Manning had been at this facility now at Quantico for – at this time, over eight months, and that this is a facility really designed for – and the average stay for pre-trial is maybe two months. I don't have all the details, but it's a short stay. It's not designed for these long-term situations.

Indeed, Johnson even admits it is "rare if not unprecedented" that someone would be held there for nine or ten months.

Q: What was no longer suitable at Quantico?

MR. JOHNSON: As Dr. Westphal said, Quantico is a place where pre-trial confinees reside for one month, two months, three months. It is rare if not unprecedented that somebody is there for

as long as nine or 10 months.

When Obama was asked whether Manning's treatment was appropriate, Manning had been in Quantico for almost eight months, several times longer—according to Johnson and Westphal—than appropriate for someone to be held in pre-trial detention at Quantico.

So how is it that the President of the United States stated he had been assured by DOD that Manning's treatment was appropriate? Did the Pentagon misinform Obama? Or did the Pentagon not even review Manning's treatment until after Obama got asked such questions and answered as if such a review had already taken place?

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## MSNBC'S NEW SOURCES ON BRADLEY MANNING'S TREATMENT: PENTAGON OFFICIALS

Back in January, long-time Pentagon reporter Jim Miklaszewski caused a stir when he published a story with two big scoops. First, that investigators had been unable to tie Bradley Manning to Julian Assange. More importantly, Miklaszewski cited "military officials" saying that Brig Commander James Averhart had improperly put Manning on suicide watch on January 18.

On Monday, **U.S. military officials** also strongly denied allegations that Manning, being held in connection with the WikiLeaks' release of classified documents, has been "tortured" and held in "solitary confinement" without due process. The officials told NBC News, however, that a U.S. Marine commander

did violate procedure when he placed Manning on “suicide watch” last week.

**Military officials** said Brig Commander James Averhart did not have the authority to place Manning on suicide watch for two days last week, and that only medical personnel are allowed to make that call.

**The official** said that after Manning had allegedly failed to follow orders from his Marine guards. Averhart declared Manning a “suicide risk.” Manning was then placed on suicide watch, which meant he was confined to his cell, stripped of most of his clothing and deprived of his reading glasses – anything that Manning could use to harm himself. At the urging of U.S. Army lawyers, Averhart lifted the suicide watch. [my emphasis]

That’s interesting because his version of similar allegations yesterday includes new sources: Pentagon officials (though the claim that Manning was not tortured remains sourced exclusively to “military officials”).

**Military and Pentagon officials** insist the action was punishment for what the Marines considered disrespect from Manning. Such tactics for disciplinary reasons are against military regulations.

[snip]

This will make visits with his civilian attorney, family and some friends more difficult, but it’s the nearest such facility for pre-trial confinement the Army has. Manning will have to return to Fort Belvoir in Virginia for any court appearances. Putting him back into Quantico is “out of the question,” **according to Pentagon and military officials**, so the Army may make

arrangements with a civilian detention facility to hold him temporarily as needed.

**U.S. military officials**, who spoke to NBC News on condition of anonymity, deny Manning was tortured, but one said “the Marines blew it” in terms of how they treated him. [my emphasis]

In other words, unless Miklaszewski is playing fast and loose with sourcing conventions, sometime in the last three months, some civilian(s) at the Pentagon reviewed what happened back in January and came to the same conclusions that the anonymous military officials had: Manning’s forced nudity and suicide watch were punitive, not preventative.

And note what else his “Pentagon and military officials” have to say: “Putting [Manning] back into Quantico is ‘out of the question.’” Contrary to all DOD’s on-the-record claims that Manning’s treatment at Quantico was proper, these anonymous officials sure seem to believe that something went wrong there.

Particularly given Manning lawyer David Coombs’ revelation that he was not informed that Manning was about to be moved until 20 minutes before DOD announced it to the world, and given that Coombs was about to file a habeas complaint over Manning’s treatment...

Like many others, the defense first learned of PFC Manning’s move to Fort Leavenworth, Kansas by reading that a government official, speaking on the condition of anonymity, leaked the information to the Associated Press. The defense was not officially notified of PFC Manning’s pending move until twenty minutes before the Pentagon’s press briefing. This is despite the fact that the Pentagon has “been thinking about this for a while.” Although the news of the move came as a

surprise to the defense, the timing did not.

The defense recently received reliable reports of a private meeting held on 13 January 2011, involving high-level Quantico officials where it was ordered that PFC Manning would remain in maximum custody and under prevention of injury watch indefinitely. The order to keep PFC Manning under these unduly harsh conditions was issued by a senior Quantico official who stated he would not risk anything happening "on his watch." When challenged by a Brig psychiatrist present at the meeting that there was no mental health justification for the decision, the senior Quantico official issuing the order responded, "We will do whatever we want to do." Based upon these statements and others, the defense was in the process of filing a writ of habeas corpus seeking a court ruling that the Quantico Brig violated PFC Manning's constitutional right to due process. *See United States ex. rel. Accardi v. Shaughnessy*, 74 S.Ct. 499 (1954) (violation of due process where result of board proceeding was predetermined); *United States v. Anderson*, 49 M.J. 575 (N.M. Ct. Crim. App. 1998) (illegal punishment where Marine Corps had an unwritten policy automatically placing certain detainees in MAX custody). The facts surrounding PFC Manning's pretrial confinement at Quantico make it clear that his detention was not "in compliance with legal and regulatory standards in all respects" as maintained at the Pentagon press briefing.

It seems that those civilians in the Pentagon, having done a review of Manning's treatment, realized that they'd be in trouble if the reasons behind Manning's forced nudity came to

light.

Of course, if Coombs does carry through on his habeas complaint, they may come to light in any case.

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## PJ CROWLEY: “WILL MY WORDS BE CREDIBLE?”

✖ There’s something deeply ironic about the beltway’s most tawdry purveyor of the Village narrative, Politico (“Win the morning™”), treating former State Department Spokesperson PJ Crowley’s investment in a strategic narrative dismissively. Ben Smith seems like he has never heard of something called “a narrative” or, on a larger scale, “ideology” before.

Secretary of State Hillary Clinton brought Crowley, 59, to the State Department in part because he was viewed as someone who was virtually certain to make none of those mistakes. Crowley had always seemed the soul of discretion, a spokesman so wedded to the daily guidance during the Clinton White House years that reporters joked that he might go on background if asked what the next day’s weather forecast looked like.

But unbeknown to his new colleagues at State – and many of his old friends across Washington – Crowley arrived at State after an evolution of sorts. The career Air Force officer, who had entered a military establishment still scarred by the Vietnam War and still deeply hostile to the press, spent his years in civilian life at the Center for American Progress, thinking about strategy. There, some colleagues were



surprised to find that his politics seemed to have been shaped more, as one put it, by his native Massachusetts than the Air Force. He settled on the idea of “strategic narrative,” a concept that has made its way into national security jargon from business theory, and one he included in a report he wrote for CAP.

Which is, I think, why Smith misses the key reason why Crowley went off the handle—and why his ouster was inevitable.

Note the emphasis Crowley puts on matching words to deeds to values in his interview.

At the State Department podium, Crowley seemed to find his voice and to also realize that his voice could shape policy. “In the digital global age that we’re in, our actions and our words have greater impact. I knew that at the podium – that I would say something and within a few hours, the message would be received somewhere else – and a response,” he said. “That has impact, because on a regular basis, at the podium, **I would challenge the impact of other countries on the treatment of their own citizens, their treatment of prisoners, on their treatment of the media.**”

[snip]

“There were times when I thought it was important to push for the United States to take a public stand,” he said of his time at the podium. “**I thought it was important to make sure that what we were saying and what we were doing would be consistent with, not only our interest but our values.**”

[snip]

“I view myself as a strategic thinker and always tried to put what I was

saying at the podium in a broader context and trying to always assess, **will my words be credible?**" he said.

Crowley talks about his public statements criticizing other countries for the treatment of citizens, prisoners, and media. He reflects on the importance of "what we were saying" and "what we were doing" matching our values. And he describes reflecting—always assessing—"will my words be credible?"

As it happens, Smith looks at a series of statements Crowley made that were undiplomatic about individual people—mocking the nonsense Qaddafi was spewing, suggesting Egypt had to do more than "shuffle the deck." Smith also recalls Crowley's analogy between the Japanese tsunami and the wave of unrest across the Middle East.

But he doesn't look at what I consider, still, one of Crowley's most telling statements (as it happens, like his comments on Bradley Manning's ridiculous and counterproductive and stupid treatment, this also took place in a talk at a university), one which addresses all of the issues Crowley raised in his interview with Smith.

**No one is a greater advocate for a vibrant independent and responsible press, committed to the promotion of freedom of expression and development of a true global civil society, than the United States. Every day, we express concern about the plight of journalists (or bloggers) around the world who are intimidated, jailed or even killed by governments that are afraid of their people, and afraid of the empowerment that comes with the free flow of information within a civil society.**

Most recently, we did so in the context of Tunisia, which has hacked social media accounts while claiming to protect

their citizens from the incitement of violence. But in doing so, **we feel the government is unduly restricting the ability of its people to peacefully assemble and express their views** in order to influence government policies. These are universal principles that we continue to support. And we practice what we preach. Just look at our own country and cable television. **We don't silence dissidents.** We make them television news analysts.

**Some in the human rights community in this country, and around the world, are questioning our commitment to freedom of expression, freedom of the press and Internet freedom in the aftermath of WikiLeaks.** I am constrained in what I can say, both because individual cables remain classified, and the leak is under investigation by the Department of Justice. But let me briefly put this in context and then I will open things up for questions. WikiLeaks is about the unauthorized disclosure of classified information. It is not an exercise in Internet freedom. It is about the legitimate investigation of a crime. It is about the need to continue to protect sensitive information while enabling the free flow of public information. [my emphasis]

This is, at a key level, strategic narrative (or, what we used to call ideology back when it helped us win the Cold War) at work. The United States believes, Crowley said, in a vibrant independent press. The United States is committed to the promotion of freedom of expression. The United States considers social networking to be akin to freedom of assembly—and it defends such assembly. The United States doesn't silence dissidents.

Of course, those statements are all well and good—and they may well help win us support among

aspiring dissidents (or maybe not).

But they were not credible. Given that the US had, presumably, already done its own hacking of citizen speech when it took down Wikileaks in this country, given the government's presumed actions to cut off WikiLeaks' infrastructure in this country, and given the way DOD subjected Bradley Manning—an alleged leaker, yes, but also, clearly, a dissident—to forced nudity, the things Crowley was saying in support of the Arab spring uprising were not credible.

Now, frankly, I'm not sure whether Crowley believes what he said—that the US is the world's greatest advocate for freedom of expression. Or whether he believes the image that the United States *used to have* as the bastion of human rights serves an important strategic purpose in our diplomacy abroad.

Whichever it is, though, it's pretty clear our government—Republicans and Democrats—no longer remain committed to using the myth of America as a key tool of our diplomacy anymore (some nice speeches in and about Cairo notwithstanding). And for a guy who spent his lifetime serving that ideal, it was only a matter of time before the conflict between the ideal and the reality led to his departure.

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## THE UNITED STATES OF MONSANTO

Last night, I was on BlogTalkRadio with former Ambassador to Nigeria John Campbell talking about WikiLeaks, secrecy, and democracy. As a way to illustrate how the secrecy of diplomatic cables hides a great deal of undemocratic ideas, I raised the emphasis State Department Under Secretary for Management Patrick Kennedy placed in a hearing on WikiLeaks on State's role in

pitching US business.

This formal channel between Washington and our overseas posts provides the Department and other U.S. Government agencies crucial information about the context in which we collectively advance our national interests on a variety of issues. For example, these communications may contain information about promoting American export opportunities, protecting American citizens overseas, and supporting military operations.

I pointed out that WikiLeaks had revealed that our diplomats had proposed a “military-style trade war” to force Europeans to adopt Monsanto’s controversial products.

The US embassy in Paris advised Washington to start a military-style trade war against any European Union country which opposed genetically modified (GM) crops, newly released WikiLeaks cables show.

In response to moves by France to ban a Monsanto GM corn variety in late 2007, the ambassador, Craig Stapleton, a friend and business partner of former US president George Bush, asked Washington to penalise the EU and particularly countries which did not support the use of GM crops.

“Country team Paris recommends that we calibrate a target retaliation list that causes some pain across the EU since this is a collective responsibility, but that also focuses in part on the worst culprits.

“The list should be measured rather than vicious and must be sustainable over the long term, since we should not expect an early victory. Moving to retaliation will make clear that the current path

has real costs to EU interests and could help strengthen European pro-biotech voices," said Stapleton, who with Bush co-owned the St Louis-based Texas Rangers baseball team in the 1990s.

Here's another example of how our government bureaucracy has decided that Monsanto and highly subsidized American cotton growers are more important than things like funding heating oil for the poor or teachers. {h/t Raj Patel}

On February 18, Republicans in the House of Representatives defeated an obscure amendment to the House Appropriations bill by a 2-to-1 margin. The Kind Amendment would have eliminated \$147 million dollars that the federal government pays every year directly to Brazilian cotton farmers. In an era of nationwide belt tightening, with funding for things like education and the U.S. Farm Bill on the chopping block, defending payments to Brazilian farmers may seem curious.

These subsidies are the compromise the US and Brazil have concocted to resolve a trade dispute: Brazilian cotton growers won a case against US cotton subsidies. In response, Brazil proposed suspending its Intellectual Property obligations. Instead, our government effectively agreed to subsidize Brazilian growers to make sure we can continue to pay silly cotton subsidies here in the US without endangering Monsanto's royalties in Brazil.

In WTO language, Brazil was allowed to suspend its obligations to U.S. companies under the Trade-related Aspects of Intellectual Property Rights (TRIPS) agreement. This constituted a major threat to the profits of U.S. agribusiness giants Monsanto and Pioneer, since Brazil is the second largest grower of biotech crops in the

world. Fifty percent of Brazil's corn harvest is engineered to produce the pesticide Bt, and Monsanto's YieldGard VT Pro is a popular product among Brazilian corn farmers. By targeting the profits of major U.S. corporations, the Brazilian government put the U.S. in a tough spot: either let the subsidies stand and allow Brazilian farmers to plant Monsanto and Pioneer seeds without paying royalties, or substantially reform the cotton program. In essence, Brazil was pitting the interests of Big Agribusiness against those of Big Cotton, and the U.S. government was caught in the middle.

The two governments, however, managed to come up with a creative solution. In a 2009 WTO "framework agreement," the U.S. created the Commodity Conservation Corporation (CCC), and Brazil created the Brazilian Cotton Institute (BCI). Rather than eliminating or substantially reforming cotton subsidies, the CCC pays the BCI \$147 million dollars a year in "technical assistance," which happens to be the same amount the WTO authorized for trade retaliation specifically for cotton payments. In essence, then, the U.S. government pays a subsidy to Brazilian cotton farmers every year to protect the U.S. cotton program—and the profits of companies like Monsanto and Pioneer.

Now, how did our country decide this kind of insanity is really in the "national interest"? Who decided Monsanto was a more worthy American "citizen" than the poor and the children?

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# FORMER ARMY INTELLIGENCE ANALYST: “ARMY SECURITY IS LIKE A BAND-AID ON A SUNKEN CHEST WOUND”

Evan Knappenberger, a member of Iraq Veterans Against the War who served in roughly the same position Bradley Manning did (but several years earlier), was interviewed by his college newspaper about my latest obsession, DOD's network security. (h/t Asher\_Wolf)

**What kind of access did you have here and in Iraq?**

Army security is like a Band-Aid on a sunken [sic] chest wound. I remember when I was training, before I had my clearance even, they were talking about diplomatic cables. It was a big scandal at Fort Huachuca (Arizona), with all these kids from analyst school. Somebody said (in the cables) Sadaam wanted to negotiate and was willing to agree to peace terms before we invaded, and Bush said no. And this wasn't very widely known. Somehow it came across on a cable at Fort Huachuca, and everybody at the fort knew about it.

It's interesting the access we had. I did the briefing for a two-star general every morning for a year. So I had secret and top-secret information readily available. The funny thing is, Western's password system they have here on all these computers is better security than the Army had on their secret computers.

There are 2 million people, many of them not U.S. citizens, with access to SIPRNet (Secret Internet Protocol Router



Network, the Department of Defense's largest network for the exchange of classified information and messages). There are 1,400 government agencies with SIPR websites. It's not that secret.

[snip]

We basically gave (the Iraqi army) SIPRNet. It's not official, but if you've got a secret Internet computer sitting there with a wire running across from the American side of the base, with no guard, you're basically giving them access.

Then in every Iraqi division command post, you have a SIPRNet computer, with all the stuff Bradley Manning leaked and massive amounts more.

I could look up FBI files on the SIPRNet. In fact, I was reading Hunter Thompson's "Hell's Angels" book, and I was like "this sounds cool," and I looked up all the Hell's Angels.

Now, as I said, Knappenberger was in Iraq several years before Manning, before malware was introduced into DOD networks via a thumb drive and the limited response DOD made to that. So this can't necessarily be taken as a description of what the network was like when Manning allegedly downloaded three databases on a Lady Gaga CD, nor as a description of what it is now (though as Congressional testimony has made clear, DOD isn't in a big rush to fix its gaping security problems).

But Knappenberger's account backs up two points I've been making: first, the level of security tolerated in DOD is far worse than what you'd find on networks in the States that carry much less sensitive information (he refers to the network at Western Washington University).

Further, one of DOD's challenges is that we need to share information with our "coalition

partners” (in his account, the Iraqi army). No matter how trustworthy they seem, these coalition partners are going to have different motivations than American soldiers (think, for example, how close members of Nuri al-Maliki’s government are to Iran). They may be far more susceptible to approaches from other countries’ intelligence services than your average Army Specialist. And if there are data breaches to foreign government, we (both citizens and our government) may not be learning about them.

And there’s some indication our network security is weakest precisely at those points where we are sharing data. One of the reasons 12% of SIPRNet computers will remain accessible to removable media, after all, is to facilitate sharing of data with coalition partners. While DOD is finally implementing a buddy system to add a level of security at those sensitive computers, that still leaves them exposed to human sloppiness.

With security like this, the data Manning is alleged to have taken simply can’t be called secret. Limited access, maybe. But it’s not even clear we’re limiting access from the people who most seriously shouldn’t have it.

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## **WIKILEAKS REVEALS THAT CHINA ALREADY KNOWS WHAT WIKILEAKS REVEALS**

I’ve been bitching and bitching and bitching and bitching about DOD’s refusal to fix the gaping holes in its network security even while it cries that Bradley Manning allegedly downloaded a bunch of cables using those gaping holes. As I point out, if all it took Manning to get all

these databases was one Lady Gaga CD, then presumably our enemies can and do get what they want pretty easily, too.

As citizens, we just don't ever find out about those other data breaches.

Well, apparently someone leaked a set of previously unreported WikiLeaks cables to Reuters, which used them as one of many sources to report on how much data China is just hacking from our government networks, including the sieve-like DOD ones.

Secret U.S. State Department cables, obtained by WikiLeaks and made available to Reuters by a third party, trace systems breaches – colorfully code-named “Byzantine Hades” by U.S. investigators – to the Chinese military. An April 2009 cable even pinpoints the attacks to a specific unit of China's People's Liberation Army.

Privately, U.S. officials have long suspected that the Chinese government and in particular the military was behind the cyber-attacks. What was never disclosed publicly, until now, was evidence.

U.S. efforts to halt Byzantine Hades hacks are ongoing, according to four sources familiar with investigations. In the April 2009 cable, officials in the State Department's Cyber Threat Analysis Division noted that several Chinese-registered Web sites were “involved in Byzantine Hades intrusion activity in 2006.”

[snip]

What is known is the extent to which Chinese hackers use “spear-phishing” as their preferred tactic to get inside otherwise forbidden networks.

Compromised email accounts are the easiest way to launch spear-phish

because the hackers can send the messages to entire contact lists.

The tactic is so prevalent, and so successful, that **“we have given up on the idea we can keep our networks pristine,”** says Stewart Baker, a former senior cyber-security official at the U.S. Department of Homeland Security and National Security Agency. **It’s safer, government and private experts say, to assume the worst – that any network is vulnerable.** [my emphasis]

Oh, okay.

Our government has apparently conceded it can’t keep its networks secret from China.

I’m not surprised, mind you. While I assume the problems at DOD are a worst case scenario (because of its size and logistical issues stemming from all the wars we’re running), the size of the gaping holes at DOD (and the lackadaisical attitude DOD has about closing them) shows how low a priority network security is in our government generally.

Plus, Chinese hackers are that good.

But the confirmation that China can basically just take what it wants at will really raises new questions about our government’s treatment of Bradley Manning specifically and its hyper-secrecy more generally.

If we’re not keeping all these secrets from China, our biggest rival, who are we keeping them from? If our adversaries can just go and get whatever they want off our networks, then why has the government treated Bradley Manning’s allegedly doing the same a capital offense? And if our government has just conceded that China can take what it wants, then why won’t it let its own citizens know what China presumably already knows?

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# PJ CROWLEY'S ACTING REPLACEMENT CAN'T DIFFERENTIATE US FROM CHINA ON HUMAN RIGHTS AND TRANSPARENCY

Josh Gerstein provides the entirety of an exchange between former State Department spokesperson PJ Crowley's acting replacement, Mark Toner, AP reporter Matthew Lee, and Reuters reporter Arshad Mohammed. At issue is how State can still claim to be transparent when it won't explain why it refuses to allow the UN Special Rapporteur on Torture to have an unmonitored visit with Bradley Manning. It's not quite Baghdad Bob ... quite. But it would be pure comedy gold if it weren't about our hypocrisy on human rights.

At first, Toner responds to criticism on Manning's treatment by blaming DOD (as if State can't be held responsible, in the international community, for anything DOD does).

LEE: Can you explain why, if the United States is proud of its human rights record, that the UN special rapporteur has complained that you're not allowing him independent access to Bradley Manning?

TONER: We've been in contact with the UN special rapporteur. We've had conversations with you in terms of access to —

LEE: With me?

TONER: I'm sorry. We've had

conversations with the special rapporteur. We've discussed Bradley Manning's case with him. But in terms of visits to PFC Manning, that's something for the Department of Defense.

LEE: And the ICRC with the same problem? You are – the State Department is the direct contact with the ICRC. At least it was for the Guantanamo inmates. Have you had any contact with them?

TONER: I'm not aware. I don't know. I'd have to look into that. But in terms of the UN special rapporteur, we've had conversations with him. We have ongoing conversations with him. But in terms of access to Manning, that's something for the Department of Defense.

Then the discussion moves into Toner's difficulties with the meaning of the word "scrutiny."

MOHAMMED: If you welcome scrutiny, where's the harm?

TONER: I said we're having conversations with him. We're trying to work with him to meet his needs. But I don't understand the question.

MOHAMMED: Well, you said you welcome scrutiny from outsiders of the United States human rights record –

TONER: Right. We do.

QUESTION: – that you feel that it speaks to the strength of the U.S. system. So why does it take very lengthy conversations to agree to let a UN special rapporteur have access to an inmate?

So Toner retreats back to blaming DOD.

TONER: Well, again, for the specific

visitation requests, that's something that Department of Defense would best answer. But look, we've been very clear that there's a legal process underway. We've been forthright, I think, in talking about Private – PFC Manning's situation. We are in conversations, ongoing conversations with the special rapporteur. We have nothing to hide. But in terms of an actual visit to Manning, that's something that DOD would handle.

LEE: Well, but you have conveyed messages from DOD back to the UN on this?

TONER: Well, no. We're just – look, we're aware of his requests. We're working with him.

I would imagine Toner got very uncomfortable when Lee noted that PJ Crowley had been ousted after he spoke the truth about Manning's treatment.

LEE: Can – you said you've been forthright in your discussions of his treatment. It seems to me that the only person who was forthright in discussions of his treatment resigned several days after making those comments. What – can you explain what you mean by you've been forthright in terms of his treatment?

At which point Toner tries to equate an opaque legal process with forthrightness.

TONER: He is being held in legal detention. There's a legal process underway, so I'm not going to discuss in any more detail than what I – beyond what I've just said because there's a legal process underway.

LEE: So that's what you mean by forthright?

TONER: I can't discuss – I can't discuss

his treatment.

LEE: Being forthright is saying nothing because there's a legal process underway; is that correct?

So then Toner tries to claim that ongoing discussions with Special Rapporteur Juan Mendez—about which State will neither talk about directly or comment on Mendez' version of the discussions—equate to forthrightness.

TONER: That's not correct at all. And we've — we continue to talk to the special rapporteur about his case.

LEE: Well, okay. So if you've been — what do you talk to him about?

TONER: I'm not going to talk about —

LEE: He says, "I'd like to visit him and I need to do it privately," and you say, "No," and that's —

TONER: I'm not going to talk about the substance of those conversations. I'd just say we feel we've been —

LEE: Well, then I don't understand how you can say that you're being forthright about it if you refuse to talk about it. And if you don't talk about it, at least — forget about what the actual conditions of his treatment are, but if you're not prepared to talk about your conversations with the special rapporteur, that's being even less than not being forthright because you're not telling us what you told him.

Toner then retreats to the old canard the Bush Administration used when asked about the CIA leak investigation: "ongoing legal process."

TONER: But you understand the legal constraints that I'm operating under because this is an ongoing legal



process.

LEE: Right. But –

TONER: He is being held –

With Toner in complete retreat, Lee raises China.

LEE: I understand that you're put in a difficult position where you say that you're willing, as Arshad noted when the – that you're – you don't understand why China is so upset because the U.S. is willing to open up its human rights situation to all kinds of scrutiny –

TONER: And, Matt –

LEE: And then the first example that anyone raises, you're not.

All of which ends with this bizarre Toner comment.

TONER: And, Matt, I would raise with you the fact that much of China's report came from open source, which is what an independent media does, and would note that that kind of independent media does serve a function. And there are details about the Manning case and other human rights concerns out there, but I'm not going to talk about it here.

Toner seems to be saying, with his allusion to “details about the Manning case and other human rights concerns out there” that because dirty fucking hippies report on our abuses, it makes it okay for State to hedge in this unseemly fashion.

Is Toner then, like Crowley, confirming that Manning's treatment is “ridiculous and counterproductive and stupid”? I think not (after all, he has just been reminded of what happens to spokespeople who say such things).

But it sure seems like the State Department is might confused about what to do when the international community calls you on your human rights abuses.

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## US WILLING TO BOMB LIBYA TO MAINTAIN UN CREDIBILITY, BUT NOT ALLOW AN “OFFICIAL” VISIT TO BRADLEY MANNING

By my count, the OLC memo retroactively authorizing the bombing of Libya mentions the importance of UN or UN Security Council credibility nine times, including these two extended discussions.

In prior opinions, this Office has identified a variety of national interests that, alone or in combination, may justify use of military force by the President. In 2004, for example, we found adequate legal authority for the deployment of U.S. forces to Haiti based on national interests in protecting the lives and property of Americans in the country, preserving “regional stability,” and **maintaining the credibility of United Nations Security Council mandates**. Memorandum for Alberto R. Gonzales, Counsel to the President, from Jack L. Goldsmith III, Assistant Attorney General, Office of Legal Counsel, Re: Deployment of United States Armed Forces to Haiti at 3-4 (Mar. 17, 2004) (“2004 Haiti Opinion”), available at <http://www.justice.gov/olc/>

opinions.htm. In 1995, we similarly concluded that the President's authority to deploy approximately 20,000 ground troops to Bosnia, for purposes of enforcing a peace agreement ending the civil war there, rested on national interests in completing a "pattern of inter-allied cooperation and assistance" established by prior U.S. participation in NATO air and naval support for peacekeeping efforts, "preserving peace in the region and forestalling the threat of a wider conflict," and **maintaining the credibility of the UNSC.** Proposed Bosnia Deployment, 19 Op. O.L.C. at 332-33. And in 1992, we explained the President's authority to deploy troops in Somalia in terms of national interests in providing security for American civilians and military personnel involved in UNSC-supported humanitarian relief efforts and (once again) enforcing UNSC mandates. Military Forces in Somalia, 16 Op. O.L.C. at 10-12.2

[snip]

**The second important national interest implicated here, which reinforces the first, is the longstanding U.S. commitment to maintaining the credibility of the United Nations Security Council and the effectiveness of its actions to promote international peace and security.** Since at least the Korean War, the United States government has recognized that "[t]he continued existence of the United Nations as an effective international organization is a paramount United States interest." Military Forces in Somalia, 16 Op. O.L.C. at 11 (quoting Authority of the President to Repel the Attack in Korea, 23 Dep't St. Bull. 173, 177 (1950)). Accordingly, although of course the President is not required to direct the

use of military force simply because the UNSC has authorized it, this Office has recognized that **“‘maintaining the credibility of United Nations Security Council decisions, protecting the security of United Nations and related relief efforts, and ensuring the effectiveness of United Nations peacekeeping operations can be considered a vital national interest’”** on which the President may rely in determining that U.S. interests justify the use of military force. Proposed Bosnia Deployment, 19 Op. O.L.C. at 333 (quoting Military Forces in Somalia, 16 Op. O.L.C. at 11). Here, the UNSC’s credibility and effectiveness as an instrument of global peace and stability were at stake in Libya once the UNSC took action to impose a no-fly zone and ensure the safety of civilians—particularly after Qadhafi’s forces ignored the UNSC’s call for a cease fire and for the cessation of attacks on civilians. As President Obama noted, without military action to stop Qadhafi’s repression, “[t]he writ of the United Nations Security Council would have been shown to be little more than empty words, crippling that institution’s future credibility to uphold global peace and security.” Obama March 28, 2011 Address; see also Obama March 21, 2011 Report to Congress (“Qadhafi’s defiance of the Arab League, as well as the broader international community . . . represents a lawless challenge to the authority of the Security Council and its efforts to preserve stability in the region.”). We think the President could legitimately find that military action by the United States to assist the international coalition in giving effect to UNSC Resolution 1973 was needed to secure “a substantial national foreign policy

objective.” Military Forces in Somalia,  
16 Op. O.L.C. at 12. [my emphasis]

Never mind that the Administration felt no need to bomb Cote d’Ivoire to maintain the credibility of the resolutions regarding that country, the Obama Administration **just bombed another country in the name of “credibility” of the UN**. While the Administration’s stated concerns about credibility focus on the UNSC, it extends (according to this memo) to the UN’s effectiveness generally, the UN’s security, and its relief efforts.

That’s interesting, because the UNHCR explains that in order for its Special Rapporteur on Torture to retain credibility, he must have unmonitored access to detainees. (See the Guardian for more on this.)

“Since December 2010, I have been engaging the US Government on visiting Mr. Manning, at the invitation of his Counsel, to determine his current condition,” the human rights expert said. “Unfortunately, the US Government has not been receptive to a confidential meeting with Mr. Manning.”

The UN Special Rapporteur on Torture, as part of the methods of work for his mandate, requires unimpeded access to all places of detention, where he can hold private, confidential and unsupervised interviews with detainees. **The requirement of a private, confidential and unsupervised interview is a standard practice of the Rapporteur’s mandate and ensures the credibility of any interviews that an independent expert holds with detainees or persons who allege that they have been subjected to torture and ill-treatment.**

“I have since last year on several occasions raised serious concern about

the conditions of detention of Mr. Manning, who since his arrest in May 2010, has been confined to his cell for twenty-three hours a day at the Marine Corps Brig, Quantico, Virginia. I have also urged the authorities to ensure his physical and mental integrity," said Mr. Méndez.

[snip]

"Even though I have not received an official answer from the Brig Commander, Mr. Manning's counsel has learned that the request for an official visit has been denied," Mr. Méndez said.

"Presumably, the alternative is a 'private visit', the difference between the two is that the latter takes place in the presence of a guard, while an official visit may be unmonitored."

On Friday, April 8, the Special Rapporteur held a conversation with high authorities in the Departments of Defense and State. Those officials confirmed that Manning could ask to see the Special Rapporteur if he so wished and in that case the US Government would have no objection to a 'private visit,' meaning a visit that is monitored by prison officials.

"I am deeply disappointed and frustrated by the prevarication of the US Government with regard to my attempts to visit Mr. Manning. I understand that Pfc Manning does not wish to waive his right to an unmonitored conversation with me," the human rights expert said. **"My request for a private, confidential and unsupervised interview with Manning is not onerous: for my part, a monitored conversation would not comply with the practices that my mandate applies in every country and detention center visited.** In fact, such forms of interview have been used by the Special

Rapporteur in, at least, 18 countries  
over the last 6 years.” [my emphasis]

But the Obama Administration has given Special Rapporteur Juan Mendez the same kind of run-around they gave Dennis Kucinich, and then ultimately refused to comply with the standard practice.

Apparently, our “national interest” in the credibility of the UN extends only so far as it allows us to bomb other countries, but not so far as it might expose our own treatment of detainees to independent evaluation.

Update: Title changed to get the type of visit correct.

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## DEMOCRACY AND NOW CAPITALISM ARE FAILING IDEOLOGICALLY; BUT WHAT COMES NEXT?

As I was prepping for my panel on Saturday, I was thinking a lot about PJ Crowley. Crowley is, as you’ll recall, the State Department spokesperson who was ousted after he called the treatment of Bradley Manning “ridiculous and counterproductive and stupid.” In my panel, I quoted Crowley’s comments on American support for unrestricted media. And as I was reviewing all this, I was thinking about Crowley’s almost unremarked criticism last week of the Administration’s decision to move of Khalid Sheikh Mohammed’s trial to Gitmo.

The prosecution of #KhalidSheikhMohammed  
and others under untested military

tribunals undercuts our global promotion of the rule of law.

For all my disagreements with Crowley about Manning's incarceration (though note that Crowley is also one of the few in government who has criticized the embarrassing lack of security that made the alleged leak possible), I find his adherence to a now-outmoded approach to diplomacy charming. Almost quaint.

You see, Crowley still appears to believe that America's claim to exceptionalism—the conceit that it serves as a model of democracy and rule of law and liberty to others around the world—not only still exists but still forms a part of our international policy. He believes that this country would choose to follow the law out of consideration that doing so will allow us to exercise power through persuasion rather than force.

Crowley's ouster—the firing of a guy because he dared remind his bosses that American used to choose to do things the right way rather than the way of maximal power—seems symbolic that that approach is now dead.

Indeed, whether or not we've conceded it's dead, others now recognize it, as Glenn Greenwald points out today. (h/t harpie)

Aside from what conduct like [his endorsement of Manning's treatment and his persecution of whistleblowers] reveals about Obama, it also severely undermines the ability of the U.S. to exercise any shred of moral leadership in the world. Consider this series of events:

*Washington Post*, March 13, 2011:

**Obama signs executive order for indefinite detention at Guantanamo**

As

sociated Press, April 4, 2011:



## US deeply concerned over rising China detentions

AP Associated Press

— Mon Apr 4, 3:32 pm ET

WASHINGTON — The United States says it is “deeply concerned” about the rising trend of disappearances and detentions of human rights activists in China.

Reuters, yesterday:

### China tells U.S. to quit as human rights judge

The United States is beset by violence, racism and torture and **has no authority to condemn other governments’ human rights problems**, China said on Sunday, countering U.S. criticism of Beijing’s crackdown. . . . **“The United States ignores its own severe human rights problems**, ardently promoting its so-called ‘human rights diplomacy’, treating human rights as a political tool to vilify other countries and to advance its own strategic interests,” said a passage from the Chinese report.

China also “accused the U.S. . . . of pushing for Internet freedom around the world as a way to undermine other nations, while noting that **Washington’s campaign against secret-spilling website WikiLeaks showed its own sensitivity to the free flow of information**,” and further “lambasted the U.S. over issues ranging from homelessness and violent crime to the influence of money on politics and the **negative effects of its foreign policy on civilians**.” China’s human rights record is atrocious, but can anyone contest the validity of its objections to the U.S. and the Obama administration’s purporting to act as human rights arbiters for the world?

Now, all that simply shows that our ideological

claim to serve as a model of law and liberty is dead.

But this—this is an ideological collapse America may have a much more difficult time dealing with, because it's an ideological failure internally.

FAITH in the free market is at a low in the world's biggest free-market economy. In 2010, 59% of Americans asked by GlobeScan, a polling firm, agreed "strongly" or "somewhat" that the free market was the best system for the world's future. This has fallen sharply from 80% when the question was first asked in 2002. And **among poorer Americans under \$20,000, faith in capitalism fell from 76% to 44% in just one year.** [my emphasis]

Now, granted, capitalism still commands majority support in this country; it's just among the people paying the price of capitalism's failure where support has really tanked. (Update: In this Gallup poll from a few weeks ago, 67% of those polled said corporations and banksters have too much power.)

But consider this: by a count of 67% to 59%, **more people in China believe in the power of free markets right now than in the US.** The communists like capitalism better than the capitalists themselves! (Maybe that's because they've taken the jobs of the poorer Americans who lost theirs to globalization).

I wrote a fair bit about the collapse of capitalism as an ideology, internationally, back in January.

A corollary to the question, "after such a catastrophic failure in 2008, why aren't we reining in capitalism and expanding the safety net?" is "why isn't anyone declaring victory over capitalism in the same way capitalism once declared victory over communism?"

But who would declare victory? (Some humor: "Hu would declare victory.")

[snip]

But I also think something else is going on with ideology as it existed during the Cold War. With the failure of both communism and (thus far, in more limited fashion) capitalism, it becomes increasingly clear that ideology doesn't make for successful countries, governance does. Whether or not capitalism will experience a resurgence, our country has become corrupt and ineffective enough that it's not clear we'd go with it. Moreover, the bogeyman that has replaced the Evil Empire—terrorism—is as much about an increasingly viable challenge to the nation-state, at a time when a rising number of failed states offer a geographic beachhead for such challenges. One of the most important ways to combat "terrorism" is to prevent militarization and climate issues to create more failed states. And that means there will be less emphasis on ideology as it worked in the Cold War and a greater premium on governance.

Which is important because failing capitalism is having real repercussions on things like food supply. Which, as we saw in Tunisia and may well see across the globe, cuts through any debate about ideology quickly. When it comes to the point where governments can't feed their people, then they begin to fear the popular classes again, even if they've managed to insulate themselves from that for decades.

Which brings us full circle, I think. DeBoer suggests we need greater ideological diversity in the blogosphere, and he's right. But what we need just as badly is some way to

articulate and mobilize the needs of the working class before our failure to govern (which the narrowness of our discourse fosters) ends up in food riots.

With the end of the Cold War, the US has had the luxury, for now, of completely ignoring the ideological left because the threats to the country—as the governing class sees them—have everything to do with the market and nothing to do with workers. But ultimately, the combination of failed governance and the market will lead right back to the workers.

But capitalism as an ideology internationally works differently than it does domestically. Internationally, it provides ideological cover for policies that concentrate wealth and create instability. As uprisings in North Africa and the Middle East show, ultimately reality will intrude and make such policies harder to sustain.

But free market ideology in the US has allowed far more than just anti-worker policies. In the same way our exploitation of democracy as an ideology internationally allowed us to rule through persuasion, working class belief in capitalism paved the way for corporations to take over our government without a fight.

That said, it's unclear where this goes. Where ideology fails, force usually takes its place.

But it does seem like an opportunity. Now if only the left were prepared with a viable "something else" to offer.

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# OBAMA'S WOULD-BE "RULE OF LAW" COUNSELOR CALLS BRADLEY MANNING'S TREATMENT UNCONSTITUTIONAL

In Charlie Savage's story from last year on the sidelining of Laurence Tribe as head of an "Access to Justice" program at DOJ, he reported that Tribe originally believed he would serve as counselor for "rule of law" issues in Obama's Administration.

There was also concern over how his presence might play out internally, several administration officials said. Some officials feared that he might be unmanageable, intruding into all manner of policy areas and able to call on Mr. Obama as a trump card.

"He has an ego," said Charles Fried, a former solicitor general in the Reagan administration and a fellow Harvard law professor. "He's entitled to it. He's earned it."

Several friends and administration officials said Mr. Tribe had initially sought and believed he would be given a far broader title and assignment: counselor for "rule of law" issues, which would have come with a mandate to help shape matters of national security and foreign policy. That did not happen, but Mr. Tribe came to Washington anyway.

After less than a year in that position, Tribe left last December, citing medical issues.

Now, the guy Obama sidelined to make sure he didn't impose too much rule of law on his

Administration has strongly criticized Bradley Manning's treatment, not only signing a letter condemning Manning's treatment, but elaborating on why that treatment was unconstitutional.

[Tribe] told the Guardian he signed the letter because Manning appeared to have been treated in a way that "is not only shameful but unconstitutional" as he awaits court martial in Quantico marine base in Virginia.

The US soldier has been held in the military brig since last July, charged with multiple counts relating to the leaking of thousands of embassy cables and other secret documents to the WikiLeaks website.

Under the terms of his detention, he is kept in solitary confinement for 23 hours a day, checked every five minutes under a so-called "prevention of injury order" and stripped naked at night apart from a smock.

Tribe said the treatment was objectionable "in the way it violates his person and his liberty without due process of law and in the way it administers cruel and unusual punishment of a sort that cannot be constitutionally inflicted even upon someone convicted of terrible offences, not to mention someone merely accused of such offences".

A pity. Back when Tribe was celebrating candidate Obama, he called him the best student he ever taught at Harvard Law and promised he would defend civil liberties and would not appoint justices who put executive power above rule of law.

Tribe said Americans' civil liberties are hanging by a thread. "But it's better to have a thread than to have the thread cut," he said. "A Republican

president would be in a position to cut that thread.”

[snip]

Tribe said that if Obama were to be elected, he would appoint justices “who share his view that the Constitution is a living document that has to be interpreted in light of evolving values of decency.”

“They would not be justices who fool themselves into thinking they know what the Constitution’s original meaning was, and they can apply it as if nothing has happened in the last 200 years,” Tribe said. “They would be justices who have a serious record of support for human rights and constitutional values, rather than justices who simply have shown their loyalty to executive power.”

[snip]

On a more personal note, Tribe called Obama the “best student I ever had” and the “most exciting research assistant.”

As to Justices Obama would appoint, Tribe has proven himself badly wrong about who would and would not make a good Justice.

But it appears that his belief that Obama would support the rule of law was a far greater misjudgment.