



September 28, 2020

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*Via Electronic Mail to doug@californiasunday.com, raha@californiasunday.com,
kim@californiasunday.com, kit@californiasunday.com, joy@californiasunday.com*

Re: Nathaniel Penn's September 27, 2020, Article *The Last Patrol*

Dear Mr. McGray, Ms. Naddaf, Ms. Gooden, Ms. Rachlis, and Ms. Shan:

I write in response to Mr. Penn's article in yesterday's California Sunday Magazine in my capacity as lead appellate counsel for former U.S. Army First Lieutenant Clint A. Lorange. On behalf of Mr. Lorange, now a law student, and his appellate defense team, we commend you for taking on reporting of this complicated case involving many aspects of society, not the least of which is social justice, preventing prosecutorial misconduct, and checking governmental overreaching.

As you may know, my team and I spent hours over the course of several months providing Mr. Penn with firsthand accounts of our efforts, offering fulsome responses to his questions, readily responding to numbers of follow up calls and emails, and providing source materials to Mr. Penn. Throughout, he was a gentleman and a professional, assuring us that his work was to be a "360 degree" treatment of the case with a focus on correcting what appeared to Mr. Penn to be inaccurate reporting by what he characterized as conservative media while our efforts in court, with the Congress, and with the President were underway, not to further partisan agendas, but to insist on social justice.

To be sure, Mr. Penn repeatedly expressed concern that members of Fox News and other "right-leaning" media made inaccurate public statements to engender support for Mr. Lorange's struggle. On this professional representation, that Mr. Penn would provide a "360 degree" treatment of the case in his article, we fully cooperated and understood that one of his main

intentions was to correct what may have been inaccurately reported in the past as the case was unfolding and details were being confirmed, given that we began representation after trial.

Upon reading the article that you published, however, the article Mr. Penn wrote appears to have done precisely what he ridiculed previous media outlets for doing – that is, not presenting an accurate picture of the salient events of the case, but rather including only those points that support his storyline, instead of offering an objective reporting of the facts. Mr. Penn's article, again in fairness, is a more deliberate injury to the truth because unlike the media outlets he was quick to chastise as unprofessional, they were receiving unconfirmed information as it unfolded. By contrast, Mr. Penn was provided undisputed evidence that somebody chose not to include, which strikes as deliberate rather than unmindful.

Indeed, in an email to Mr. Penn Sunday morning, September 27, 2020, we brought at least 10 material and substantial points of evidence to his attention that he or California Sunday Magazine declined to include in the article. For ease of reference, we have reproduced our email to Mr. Penn here:

Thanks Nate for sending the article, which is quite an accomplishment if I may say so.

To be sure, you and I spent considerable time discussing the following incredibly important legal and public aspects of the case, but they apparently were not germane to your or your editors' storyline:

- (1) SIGACT report [the Army recognized that Lorance's platoon was being scouted for an impending attack or ambush and at least one enemy was killed in action].
- (2) Latino's lining out his statement. [Platoon leader wounded in action whom Lorance replaced stated that he would never let a motorcycle near his unit for fear of its deadly threat].
- (3) Aerostat [three fighting aged males armed with AK-47 assault rifles and using Icom radios shadowing Lorance's platoon].
- (4) CSM Gustafson. [Senior enlisted non-commissioned officer who walked the same battlefield and testified after the fact that Lorance's order was lawful and the right thing to do].
- (5) Murder charges hung over the platoon's head. [Platoon made to provide sworn statements without *Miranda* warnings that they were going down for murder].
- (6) Nine Orders to testify [Soldiers did not voluntarily testify against Lorance, there were ordered to do so by the Commanding General].
- (7) Nine Grants of immunity. [The Army contrived murder charges against these nine paratroopers, hung that over their head for one year, then provided immunity and an order to testify against Lorance].



(8) Thomas's statement that the ANA fired first [Paratrooper who saw the Afghan National Army fire on the motorcycle, believing it was a threat].

(9) Leon's statement that the ANA fired first [Paratrooper who saw the Afghan National Army fire on the motorcycle, believing it was a threat].

Factor out the biometrics, which the defense should have been presented with, with the benefit of the accuracy of classified materials to remove any doubt as to inaccuracies, and the case is still unconstitutional because none of this information made it to the inside of the courtroom.

If you were truly doing a 360 treatment, as represented to me and which the article ostensibly tries to do, your readers would have been informed of the other nine material evidences the prosecution suppressed.

In any event, I wanted to share my surprise with you, given the amount of time we spent discussing these important issues to American justice and social justice and government overreaching.

Albeit unsolicited, my view is that it is an excellent article, but an incomplete article when you had this information at your fingertips and somebody at California Sunday chose not to use it, for undisclosed reasons.

Sincerely,

John

Mr. Penn was kind enough to respond, but merely stated “Mr. Maher, Thank you for this note. I appreciate both your kind words and your criticism. With respect to the evidence you cite, it may be that we’ll have to agree to disagree on it. best regards, Nate.”

Ordinarily, we would leave well enough alone, but we find it disconcerting that Mr. Penn represented to us that his main efforts were to correct inaccurate reporting by presenting a “360 degree” treatment, neither of which, occurred.

Additionally, Mr. Penn attacked our legal reasoning without including what we discussed repeatedly over the course of several months: *i.e.*, that the biometric evidence was relevant because the prosecution claimed Lorange killed civilians, which “opens the door” for the defense to rebut that representation, that the prosecution was dutybound under the Fifth Amendment to disclose accurate biometric evidence before trial and did not, and that the evidence of rules of engagement compliance, coupled with biometric evidence from classified databases, stood to



exonerate Lorance, or at the very least, serve as extenuation and mitigation evidence during any sentencing.

And, with the above evidence rightly disclosed to the defense, Lorance would have been entitled to a jury instruction pursuant to Rule for Courts-Martial 916 that killing an enemy combatant in battle is justified.

Yet, none of this appears in Mr. Penn's article, but instead, in fairness, his concealing these known points exposes the truth that the intent of the article all along was to question the President for, as Mr. Penn intimates, abdicating swaths of his constitutional and statutory powers to Fox News, the non-profit organization United American Patriots, and Lorance's defense team. Were that the case, Mr. Penn ought to have informed us that he was doing an opinion piece, rather than his stated but unfulfilled intention to present objective reporting.

In sum, this letter is not designed to advocate for Mr. Lorance, but it is designed to encourage the leadership of California Sunday Magazine to be more discerning before engaging a reporter who misrepresents his intent to sources.

Sincerely,

A handwritten signature in blue ink that reads "John R. Malin". The signature is written in a cursive style with a large, looped initial "J".

cc: Mr. Nathaniel Penn at nathaniel.penn@gmail.com

