

Justice must survive the fury of war.

By Ian McPhedran (Courier Mail 26 October 2010)

Only one person knows exactly what is contained in prosecutor Brigadier Lyn McDade's brief of evidence against three Australian commandos involved in the death of six civilians, including five children, in Afghanistan – the brigadier herself.

Despite the lack of facts in the public domain about this tragedy, McDade has been subjected to a disgraceful campaign of abuse by numerous "armchair generals" who reckon she is not qualified to prosecute our brave boys because she is a woman and has not seen any frontline action herself.

On that basis, no public prosecutor would be qualified to pursue a murderer or a bank robber unless they had served time on the criminal frontline.

Charging soldiers with serious crimes, including manslaughter, which carries a possible 20-year jail term, is an explosive and emotive matter. Such a move would not be taken lightly by a legal practitioner whose personal reputation – and the reputation of the service she has sworn to serve – will be on the line in full public view.

Much of the commentary on this sensitive subject has focused on the impact that the charges might have on the soldiers still serving in Afghanistan who, some will argue, will in future operate with one hand tied behind their back. This is almost as spurious as the arguments about McDade's gender and operational experience.

As was made crystal clear during the ongoing parliamentary debate on Afghanistan, Australian troops operate under strict rules of law with specific guidelines contained in what are known as the rules of engagement.

These rules vary from mission to mission, but the bottom line is that they provide troops with the specific rules about when and how they can employ "maximum force", that is, kill people in a conflict situation.

Unlike troops from other coalition countries, Australian soldiers are drilled to use maximum force only as a last resort.

In addition to the rules of engagement, our soldiers are subject to military law and the Defence Force Discipline Act, which covers issues such as lawful orders, dangerous conduct and conduct unbecoming. Penalties under these laws range from jail time to administrative punishment such as loss of rank or pay.

Defence Chief Angus Houston made it clear at Senate hearings that the men would receive whatever legal support they needed, regardless of the cost to taxpayers.

Houston also emphasized that McDade's brief would be tested "vigorously" but he reminded the critics it was imperative that there was no command interference, real or perceived, in the process.

"We have been at pains to ensure that we do not interfere," he said.

In some quarters this completely proper approach is seen as weakness or hanging the accused Diggers out to dry.

It is imperative in a robust democracy such as ours that the rule of law is applied and defended at all costs and in all circumstances, even war.

The case of the three soldiers is a test of a system that 21 of our soldiers have died to defend, a system that is completely alien to the insurgent killers that the commandos were targeting on that dark night in February 2009.

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