

# Military judge rejects motions to reduce charges against Bradley Manning

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An Army judge on Thursday refused to dismiss a charge of “aiding the enemy” in the government’s prosecution of accused whistleblower Bradley Manning, who faces military court martial this fall.

The 24-year-old Army private has been held for nearly two years, without being convicted of a crime, on charges under the Espionage Act that carry a maximum sentence of death. Manning’s defense team had filed a motion late last month to dismiss the most serious charge of aiding the enemy, called an Article 104 under the Uniform Code of Military Justice.

Manning is accused of leaking hundreds of thousands of files to whistleblower organization WikiLeaks, including evidence of US war crimes committed in Iraq, while he was working as an intelligence analyst in Baghdad. Central to the US government’s prosecution of the young soldier is the claim that the leaks endangered US military personnel because sensitive information could be seen by al Qaeda. The government has said it is pursuing “only” a penalty of life imprisonment.

Among the material Manning allegedly supplied to WikiLeaks was a 2007 cockpit video published in April 2010 under the title “Collateral Murder.” The footage featured US Apache helicopter pilots mowing down Iraqi civilians and journalists. Government prosecutors acknowledged in court Wednesday that the video was not classified information when Manning would have accessed it, but insisted that because he would have been on a Defense Department network intended for classified material, he could still be charged with “having unauthorized possession” of the video.

On Wednesday, Colonel Denise Lind, the judge hearing the case at Fort Meade, Maryland, also rejected three other motions to combine some of the 22 charges against Manning. The defense team has pursued its case

largely along procedural rather than political lines, focusing on reducing the charges down to three. Even if all the “duplicative charge” motions had been granted, however, Manning could still have been sentenced to more than 100 years in prison based on the remaining counts.

Lind denied that the government had inflated the number of charges by counting separately such crimes as the alleged theft and transmission of material from a military database. An Associated Press account of the decision said Lind argued that “a theft can be complete whether or not the stolen material is transmitted.” The judge pointed to “voluminous records” as another reason not to consolidate charges. Each charge carries a 10-year sentence.

The content of the motions, the prosecution’s responses to them, and other court documents including orders issued by Lind, have not been released to the public. No transcripts of the court proceedings have been made available. Manning’s civilian lawyer, David Coombs, has partially summarized the motions filed by the defense on his blog.

The hearings are taking place largely outside of public view. The case has been almost entirely absent from the US media, aside from brief wire reports. Reporters have not been allowed to record the proceedings or use electronic devices in the courtroom. The fullest accountings of the hearings have been published in blog format by Manning supporters, rather than the press.

Col. Lind flatly denied a motion submitted by the Center for Constitutional Rights, which is providing legal counsel to WikiLeaks and its founder, Julian Assange, for greater public access to the courtroom. The CCR and Reporters Committee for the Freedom of the Press have called for more access to the documents

and records for the public, the media, and legal rights groups. “These proceedings have been open and will remain open,” Lind declared, adding that the right to an open trial “is not absolute.”

Coombs states that in addition to calling for reduced charges, the defense had also requested March 15 that the court dismiss all charges “with prejudice due to discovery violations by the Government.” On Wednesday, Lind reportedly agreed that prosecutors had “wrongly assumed the discovery rules didn’t pertain to classified information” but ruled that there was no evidence of prosecutorial misconduct.

Coombs argued that a conviction for aiding the enemy must prove that Manning supplied WikiLeaks with material with a “genuine evil intent” that members of al Qaeda would view it. Without such intent, the defense argued, sending information to WikiLeaks was not substantively different than supplying it to newspapers like the *Washington Post* or the *New York Times*.

Lead prosecutor Captain Joe Morrow stated that the government needs merely to show that Manning knew al Qaeda would be able to view the material. “I could have the purest motives in the world. But if I do something knowingly and without proper authority in terms of interacting with the enemy, that’s a violation.”

The prosecution’s argument has grave implications for speech and press freedoms. “What the government’s really trying to say is, ‘He should have known better,’” Coombs said, adding that even if al Qaeda saw the material, it did not matter to the case. “Anyone can find anything if it’s posted on the Internet. Everyone knows that.”

An account by Nathan Fuller, a member of the Bradley Manning Support Network who was present in the courtroom, noted that during this exchange, Lind asked Coombs to explain his objection. “What if a soldier posted something on his blog?” he asked. Because the “enemy” has access to the Internet, could anything the soldier posted about his Army unit be considered aiding the enemy?

“He got more specific with the hypothetical,” Fuller wrote. If “a soldier’s unit had no body armor and was going into battle, and that soldier publicized that information via his blog, or WikiLeaks, or the *New York Times*, did he aid the enemy simply because he wanted the information to get out in the public? What if

he told a reporter that a high percentage of soldiers in his unit suffered from PTSD and/or had low morale?”

“If accepted, 104 would be alarming in its scope,” Coombs told the court. Judge Lind reportedly told Coombs to refrain from employing hypothetical examples that “distract from the focus of the argument at hand.”

Beyond the efforts to use Manning’s prosecution to punish the accused whistleblower, the proceedings are being used to obscure the real crimes that were revealed in the leaked material. Both the treatment of Manning and the revelations contained in the leaks make clear the reactionary and criminal character of the US state.

The persecution of Manning and WikiLeaks are part of a broad attack on basic democratic rights. The Obama administration has aggressively persecuted whistleblowers within the military and its civilian agencies, while classifying a record amount of data. The White House is determined to extradite Julian Assange to US soil where he can be subjected to the horrors of a drumhead trial and indefinite detention.

Lind also ruled on Wednesday that Army prosecutors do not have to provide transcripts of federal grand jury testimony before the Congressional “WikiLeaks Task Force” to the defense team. The defense was seeking information related to federal efforts to prosecute Assange in relation to the Manning case. Coombs noted that while the “Task Force” was established to work “around the clock” to study the harm supposedly caused by WikiLeaks releases, the group had produced 12 documents showing no harm.

Manning’s court martial is scheduled to run from September 21 through October 12. The soldier has yet to enter a plea, or decided whether to be tried by a judge or a jury. The next pre-trial hearing is scheduled for June 6.



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