Freedom of the press under attack in Manning case

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Denise Lind, the judge hearing the case against Bradley Manning, said that she would decide on Thursday whether to dismiss seven of the charges which the defense claims have not been sufficiently proven by the prosecution. These include allegations that Manning aided "the enemy" when he released hundreds of thousands of classified documents to WikiLeaks in 2010.

At Monday's court session in Fort Meade, Maryland, where proceedings continue behind closed doors with little access given to the media, defense and prosecution attorneys began oral arguments on defense motions to acquit Manning on the seven most serious charges. Aiding the enemy is a crime that can result in the death penalty, but prosecutors have stated that they will seek life in a military prison for Manning if he is proven guilty. Defense attorney David Coombs has declared, "No case has ever been prosecuted under this type of theory."

The press and the public may be shut out of the sentencing phase, where the most crucial issues will be decided. Unlike a federal case, where the sentencing only commences after the completion of a pre-sentencing report, if Manning is convicted a sentencing hearing will begin immediately. A general convening authority will have the ability to reduce Manning's sentence and dismiss a guilty charge, but the authority would not be able to reverse a finding of not guilty or increase the sentence.

Much of the trial and the pretrial have been conducted in carefully managed obscurity. Both Judge Lind and the US Army have denied public access to over 30,000 pages of pretrial court documents over the 18 months preceding the trial, and only released 500 of those pages to the public on the third day of the actual trial. The authorities have even gone so far as to use aluminum foil wrap and carpeted posterboard to cover windows during certain closed sessions. Evidence has even been withheld from Manning himself, though he has a right to see any evidence used against him at a trial.

In all, there are 21 contested charges linked to the release of these documents during Manning's service as a junior intelligence analyst in Iraq in 2009 and 2010. Manning pleaded guilty to 10 additional reduced charges in February. The results of Manning's trial will set a precedent for future cases, such as the potential case facing whistle-blower Edward Snowden should he be turned over to US authorities.

While lawyers for the US government say that Manning, based on his training, knew that Al Qaeda and other groups would have access to these documents, the defense has argued that Manning had no "actual knowledge" that this would be the case. Manning's attorneys demonstrated this by providing a 2008 report published by the US Army Counterintelligence Center which questions whether WikiLeaks would serve as an online reference for terrorists. Defense attorneys claim that the government is seeking to use Manning, a junior analyst with far less capabilities or knowledge than WikiLeaks, in order to intimidate any future whistle-blowers .

There has been little attempt by the defense to show that the information was leaked to alert both American and world public opinion to the war crimes carried out by the US in both Iraq and Afghanistan. Instead, the attorneys have portrayed Manning as an "idealist" who was "troubled" and sought to provoke public discussion. They have also sought to demonstrate that some of the leaked information was already publicly available through other resources, including government web sites.

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However, Manning has stated publicly that there can be no democracy without an informed public, and that he had strong political reasons for his actions. The most infamous piece of leaked information was a video showing a 2007 attack by a US Apache helicopter that killed 11 people in Baghdad, including a Reuters news photographer and his driver. Manning has explained that his purpose in releasing this and other information was to expose wrongdoing.

Defense attorneys have also explained that the most serious charge, aiding the enemy, is an attack on First Amendment rights, including freedom of the press, and should also be dismissed on that ground. Much of the case presented by the defense last week concerned the nature of WikiLeaks as a media organization, rather than as the supposed terrorist resource it has been painted by the US government over the last three years.

Prosecuting attorneys maintain that Manning provided information to WikiLeaks knowing that Al Qaeda would have access to it. The aim is to demonstrate that Manning intentionally harmed national security. According to prosecution evidence, Al Qaeda and similar groups "reveled" in the leaked information, encouraging their membership to study the documents closely.

When asked by the judge whether Manning would face the same charges had he leaked this information to the *New York Times* rather than WikiLeaks, the prosecution replied that there would be no difference, provoking indignation from civil liberties organizations and advocates.

Professor Yochai Benkler, co-director of the Berkman Center for Internet and Society at Harvard Law School, said that finding Manning guilty on the aiding the enemy charge would impose too great a burden on others who sought to come forward in the future. Such an outcome "would severely undermine the way in which leak-based investigative journalism has worked in the tradition of [the] free press in the United States," said Benkler.

He continued, "[I]f handing materials over to an organization that can be read by anyone with an internet connection means that you are handing [it] over to the enemy, that essentially means that any leak to a media organization that can be read by any enemy anywhere in the world becomes automatically aiding the enemy." "[T]hat can't possibly be the claim," he added.

The real "enemy" of the American ruling elite on whose behalf Manning is being prosecuted is the American and international working class. The US government seeks as much as possible to hide a detailed picture of its wars of aggression, including the murders of civilians who have been ruthlessly targeted over the past decade in both the Middle East and South Asia. Manning is being used as an example in a desperate attempt to frighten future whistle-blowers who are outraged by these policies and seek to act on the basis of political principle.

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