

Bradley Manning's motions to dismiss charges rejected

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A military judge rejected on June 8 a motion by the defense team of Army Private Bradley Manning calling for the dropping of some charges against the accused whistleblower. The judge also ordered further pre-trial hearings later this month. The military is pushing the full court martial trial from September back to November or even next January.

The 24-year-old soldier has already been held for more than two years, without being convicted of a crime, on charges under the Espionage Act that carry a maximum sentence of death. He was arrested May 26, 2010, while working as an intelligence analyst in Baghdad. Manning is accused of leaking hundreds of thousands of files to WikiLeaks, including evidence of US war crimes committed in Iraq.

The prosecution has said it is seeking a sentence of “only” life in prison. Manning has not yet entered a plea or decided whether to be tried by a judge or a jury.

Central to the Espionage Act charge of “aiding the enemy” are government claims that the material endangers US military personnel, because it can now be accessed by Al Qaeda on the Internet. A conviction on this charge would set a precedent for future prosecutions, including for WikiLeaks founder Julian Assange, whom the Obama administration is seeking to extradite to the US for military trial. It also carries ominous implications for other whistleblowers, journalists and the press, and all Internet users.

Colonel Denise Lind, the judge in the pre-trial hearing at Fort Meade, Maryland, denied the motion to dismiss 10 of the 22 counts against Manning. The charges all relate to access and disclosure of classified material, many of which are duplicative and so vaguely worded that they are unconstitutional, the defense has argued.

Each of the charges carries a 10-year sentence. Even if the defense had succeeded in having the charges reduced, Manning could still be sentenced to more than 100 years in prison.

David Coombs, Manning's civilian lawyer, noted that while stationed in Baghdad, Manning was authorized to access the classified computer network as part of his duties. The prosecution insists that the soldier “exceeded authorized access when he accessed those classified government computers for an unauthorized or expressly forbidden purpose.”

The ruling came after a brief session on the third and final day of proceedings largely centered on efforts by Manning's lawyers to acquire evidence withheld by the government's legal team that could help the defense.

Coombs noted, “The government has had over two years to cull through the charged information and review documents from the various named agencies. During this time, the government has been permitted to select which information it believes should be used for merits and which for sentencing. The defense has not had equal access to this same information, or the ability to factor this information into the defense’s theory on the merits or any possible sentencing case. The requested information is material to the preparation of the defense, and should be turned over immediately.”

Coombs added: “To allow the government to restrict the defense’s access to this information is to provide the government with an unfair tactical advantage that will likely prejudice PFC Manning’s right to a fair trial.”

Lead prosecutor Major Ashden Fein objected to the motion, saying, “This broad request is an effort to slow the prosecution.” The statement produced audible laughter from the benches, Bradley Manning Support Network blogger Nathan Fuller noted, “likely because Bradley has been in prison for 745 days.”

Partially granting Coombs’ motion, Lind ordered the Obama administration to disclose some damage assessments on the leaked information and the impact of WikiLeaks on US military operations and other interests. Rather than the full reports, however, the defense team was given redacted summaries of Defense Intelligence Agency (DIA) and WikiLeaks Task Force findings Tuesday evening.

A redacted summary, Lind insisted, “strikes a proper balance between the rights of the accused and national security interests.” That information, which has not been made public, is being held at the DIA headquarters.

The government’s prosecution of Manning has been highly secretive. The trial has included no public records or transcripts, and motions from the government have not been made publicly available. While reporters are permitted into the courtroom, they are not allowed to use any electronic devices. Media coverage, particularly from the US outlets, has been minimal.

The Center for Constitutional Rights—which is providing legal counsel to WikiLeaks and its founder, Julian Assange—filed a legal petition May 24 requesting greater public access to the courtroom, and for more access to the documents and records by the public, the media, and legal rights groups. Judge Lind rejected a similar statement entered into a pre-trial hearing in April, declaring that the proceedings “have been open and will remain open,” and that the right to an open trial “is not absolute.”

That decision, the CCR wrote in its petition, violated the public’s First Amendment right to access, constituting “irreparable harm”: “The trial court’s denial of the public’s First Amendment rights is clearly erroneous and amounts to an usurpation of authority.”

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