

Bradley Manning Trial Secrecy

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More than 30 news outlets and media organizations lodged an official protest Tuesday against secrecy in the court-martial of Pvt Bradley Manning, the Army intelligence analyst accusing of leaking hundreds of thousands of military reports and diplomatic cables to WikiLeaks.

The amicus brief filed with the military's highest court, the Court of Appeals of the Armed Forces, supports a request from the Center for Constitutional Rights to allow public access to motions, briefs, written rulings and the docket in Manning's court-martial.

While hearings in Manning's case have been in large part public, the motions and briefs the prosecution and defense are arguing about are not available from the court. So, those watching the arguments often have trouble understanding precisely what the lawyers are arguing about.

"This Court should find that such an arrangement is unconstitutional," lawyers Gregg Leslie and Kristen Rasmussen wrote in the brief, which was joined by POLITICO and parent company Allbritton Communications Co. "The inability to view court documents filed in connection with a particular judicial proceeding burdens the news media's constitutionally protected right to collect and disseminate the news and severely curtails journalists' ability to do their jobs effectively."

The brief (posted [here](#)) also notes that in a tough economic environment, documents may be essential to journalists' ability to report on the case, particularly one as drawn out as that of Manning, who was arrested in May 2010 and currently has a trial date in next January.

"Public court records, namely the various legal arguments and requests by parties and their counsel contained in the documents, enable journalists to tell the full story, despite the fact that deadline pressures or shrinking news staffs may drastically limit their ability to attend a lengthy judicial proceeding in its entirety," the media brief says.

Others signing onto the brief included The Associated Press, Atlantic Media, Dow Jones, Gannett, Hearst, CNN, McClatchy, The New York Times, The New York Daily News, Reuters, the Washington Post, The Tribune Co. and The Washington Post.

Military prosecutors have urged the court to reject the request for direct access to the court-martial filings. Prosecutors say the public can seek to access the records through the Freedom of Information Act, although that process is almost always untimely and the military has flatly rejected past request for Manning related records.

Manning's defense counsel David Coombs has published some filings on his blog, but the

prosecution and the judge have forced him to delete the substance of the prosecution's argument along with the names of virtually all individuals other than Manning mentioned in the documents.

The brief also points out an odd irony: while legal filings in the military commissions trying alleged Al Qaeda members are — after significant lobbying by the media — published on a military-run website, filings in the highly newsworthy court martial of an American soldier are unavailable to the press and public through official channels.

Court filings in federal civilian court cases are almost always immediately and directly available to the public and press through an electronic docketing system. The Supreme Court has found a common-law right of access to court records and many courts have found a First Amendment right to such records in most circumstances.

Military courts have recognized a defendant's constitutional right to a public court-martial since at least the 1980s, the media brief says. And the Army Court of Criminal Appeals found a "qualified" First Amendment right of access to court-martial exhibits in 1998.

In March, media groups sent Defense Department General Counsel Jeh Johnson a letter seeking access to the Manning court-martial filings. Johnson, who was instrumental in setting up online access to the Guantanamo military commission filings, has not responded to the letter.

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