



Written by [Joe Wolverton, II, J.D.](#) on May 30, 2012

Petitioners Challenge “Outrageous Secrecy” of Bradley Manning Trial

If one were to judge the potential for harm to the United States government by the amount of openness at a suspect’s trial, then Washington has much more to fear from Bradley Manning than from alleged 9/11 mastermind, [Khalid Sheikh Mohammed](#).

As [we have reported previously](#), the federal government has published a complete and verbatim transcript of the hearings recently conducted in the case of Mohammed and the so-called “Gitmo 5.” There isn’t a single insult or inquiry that was part of that proceeding that isn’t obtainable by anyone — reporter or citizen.



The same cannot be said, however, of the court martial hearing the case against PFC Bradley Manning. To date, the Department of Defense has kept all documents relating to the Manning prosecution [under lock and key and has refused to allow anyone to access those files](#).

Nevertheless, a few intrepid organizations have tried (so far in vain) to penetrate the thick veil of secrecy shrouding the Manning trial. The [Center for Constitutional Rights](#) (CCR) is one of the handful of media and civil rights groups (including Salon’s Glenn Greenwald, who has followed this story since the beginning) that have petitioned the Pentagon for a peek at the Manning dossier.

In its request submitted to the U.S. Army Court of Criminal Appeals, the CCR and its fellow petitioners made the following point of a potential violation of constitutional freedom being perpetrated by the federal government should the secrecy continue:

Although the public may attend portions of Pfc. Manning’s court-martial proceedings (notably excluding Rule 802 conferences), public access to documents has been inexplicably denied in what is arguably one of the most controversial, high profile court-martials since the trial of LT William Calley for the My Lai Massacre in Vietnam, and the most important case involving the alleged disclosure of classified information since the Pentagon Papers. Indeed, the restrictions on access to these basic documents in the case have made it exceedingly difficult for credentialed reporters to cover the proceedings consistent with their journalistic standards and obligations.

And:

These restrictions not only plainly violate the First Amendment and the common law, they undermine the very legitimacy of this important proceeding.

In defense of their claim of First Amendment abridgement on the part of the Army, the petitioners present the following analysis of First Amendment legal requirements.

The First Amendment requires public access unless the government demonstrates that closure is necessary to further a compelling government interest and narrowly tailored to serve that interest,



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and the Court makes specific findings that closure is warranted. The government bears a similarly high burden in attempting to limit public access to documents filed in connection with criminal proceedings....

In *United States v. Manning*, the press and public have not had access to any of the government's motions, responses to defense briefs, or filings in the case beyond the initial charges - even in redacted form. No transcripts of any proceedings in the case have been published - even for proceedings that occurred in open court. Nor have any orders of the Court been published. The government has not provided - and cannot provide - any legal basis for withholding these documents from the public. Nor does it appear that the Court made any of the requisite findings that could support closing these proceedings or denying access to the documents at issue, or provided notice of such envisioned closures and opportunity to object to the press and public.

For what purpose, then, is the Obama Administration stonewalling the media and denying access to the official record of the military tribunal trying Bradley Manning?

[According to one report](#), the White House insists that the documents allegedly released by Manning pose a serious threat to American national security and thus the trial transcripts must be protected in order to prevent increasing the threat. Whether such an assertion is true or not, however, is impossible to discern given the paucity of proof provided by the President.

The events that led to this secret trial are by now well known to many.

In what is described as "the biggest leak of classified information in U.S. history," Manning is accused of passing over 700,000 documents and video clips to WikiLeaks, the widely known website devoted to exposing government corruption throughout the world.

Wikileaks founder Julian Assange is a co-petitioner with CCR seeking access to the file being compiled in the Manning case.

If convicted of the charge of giving aid to the enemy, Manning could face life imprisonment. The maximum penalty for the other charges he faces is 150 years combined.

Manning's defense team avers that their client was "troubled" and that he was not competent to have been allowed access to classified information.

Private Manning, 24, from Crescent, Oklahoma, has been detained since he was arrested on May 29, 2010 while on deployment with the 10th Mountain Division in Iraq. While on duty near Baghdad, Manning had access to the Secret Internet Protocol Router Network (SIPRNet) and the Joint Worldwide Intelligence Communications System. SIPRNET is the network used by the United States government to transmit classified information.

Manning's arrest came as the result of information provided to the FBI by a computer hacker named Adrian Lamo. Lamo told agents that during an online chat in May 2010, Manning claimed to have downloaded classified information from SIPRNet and sent it to WikiLeaks.

According to published reports, the material Manning is accused of unlawfully appropriating includes a large cache of U.S. diplomatic cables (approximately 250,000), as well as videos of an American airstrike on Baghdad conducted in July 2007 and a similar attack in May 2009 on a site near Granai, Afghanistan (an event sometimes known as the Granai Massacre).

In his defense, Manning's lawyers argued that Manning was not the only one in his unit with access to the computers from which the information in controversy was obtained. As reported by the Associated



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Press:

They say he was in emotional turmoil, partly because he was a gay soldier while U.S. armed forces still barred gays from serving openly. The defense also claims Manning's apparent disregard for security rules during stateside training and his increasingly violent outbursts after deployment were red flags that should have prevented him from having access to classified material.

In fairness, Manning's military prosecutors have disclosed printed copies of excerpts of Internet chats found on Manning's personal computer. According to the Army, these transcripts prove Manning's collaboration with the founder of WikiLeaks, Julian Assange. Beyond these ostensibly inculcating internet chat records, the flow of information has been stanchd by the federal government.

Manning's defense lawyer David Coombs punctured the dam slightly and [published a trickle of documents related to the trial on his blog](#).

According to Coombs it isn't only the media that has been affected by the government blackout. Coombs claims that Private Manning was prohibited from reviewing some 7,000 documents provided to the defense team by the military. This cache of critical documents may only be viewed in Rhode Island and Maryland, while Manning is incarcerated at the military prison in Fort Leavenworth, Kansas. Coombs insists that providing a way for his client to peruse the documents was impossible given the logistical obstacles.

Manning's next appearance before the military judge will be at a pre-trial hearing scheduled for June 6.

Photo: Army Pfc. Bradley Manning, center, is escorted out of a courthouse in Fort Meade, Md., Dec. 21, 2011: AP Images



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