

## Lawyers Argue Over Harm in Military WikiLeaks Case

An Army private charged in the biggest leak of classified information in U.S. history wants to be able to defend himself at trial by arguing in part that the leaks didn't do much harm.

Military prosecutors say the consequences of the leaks — big or small — aren't relevant. A leak is a leak, they say, and 24-year-old Bradley Manning is guilty of sending hundreds of thousands of documents to the anti-secrecy website WikiLeaks. Prosecutors say they aren't required to prove the leaks caused harm. And they don't want jurors improperly confused or distracted by the suggestion the leaked material didn't significantly affect national security.

On Wednesday, prosecutors and defense attorneys attempted to persuade a judge overseeing the case to rule in their favor. Prosecutors want to keep any discussion of the leak's harm out of Manning's trial, scheduled for September. The judge's ruling has the potential to significantly affect any sentence Manning might receive if convicted, according to military experts interviewed by The Associated Press.

Elizabeth Hillman, who studies and teaches military law, said Manning's attorneys have an uphill battle to clear him of the charges he faces. As a result, being able to question witnesses about the harm the leaks caused is crucial.

"This is a key piece. Will Manning be able to introduce evidence that he didn't hurt anybody with what he did?" said Hillman, who teaches at the University of California Hastings College of the Law.

Manning, an intelligence analyst in Baghdad in 2009 and 2010, is accused of providing to WikiLeaks documents including Iraq and Afghanistan war logs and more than 250,000 diplomatic cables. As a result, he's facing serious charges, including aiding al-Qaida in the Arabian Peninsula. That charge carries a possible life sentence.

Manning's lead lawyer, David Coombs, told the judge, Col. Denise Lind, on Wednesday that the defense would be "cut off at the knees" if lawyers can't talk about harm at trial, and experts agreed it will be a tougher road at trial without the information.

Coombs has consistently argued not for his client's innocence but that the material he's accused of leaking wasn't particularly detrimental. If he gets to bring that argument up at trial, it could encourage leniency from the jury.

But whether that will work is unclear. Both sides agreed in arguments Wednesday that the case is unique, and there are no similar circumstances for Lind to consider when making a decision.

The damage done by the leaks is disputed.

More than two dozen so-called "damage assessments" were conducted by the departments of State, Defense, Homeland Security and other agencies, according to Manning's lawyers.

Those assessments aren't public, but Coombs said the damage is minimal or "speculative at best."

"Life has not ended as we know it because of these leaks," he said.

Speaking about the leak in 2010, then Defense Secretary Robert Gates seemed to agree, saying: "Is this embarrassing? Yes. Is it awkward? Yes. Consequences for U.S. foreign policy? I think fairly modest."

Other officials have been more wary. They say the information's release caused turbulent relations with some countries and caused others to pull back from dealings with the United States. They cautioned that the fallout may last for years.

If Manning is convicted, as many observers expect, his attorneys will get to talk about the effect of the leaks during the trial's penalty phase. That's when the jury would get to decide how much time Manning should spend in prison for any misdeeds. But Manning's attorney said Wednesday that would be too late. And experts agreed Manning stands to benefit if his attorneys are allowed to downplay the damage of the leaks during the trial itself, when a jury will decide his guilt or innocence on each of the 22 charges he faces.

Experts said that if a jury hears early on that the leaks caused little or no harm, it is possible they would give Manning a pass on some of the charges or possibly convict him of only less serious ones. A more plausible effect is that the more defense attorneys can repeat their no harm theory, the better chance Manning has for a light sentence, experts said.

Jon Shelburne, who has frequently been a defense attorney in military cases, said it would be a large leap for a military jury to let Manning off the hook simply because no harm resulted from his actions. Greg Rinckey, a former Army lawyer now in private practice, agreed but said military juries can be unpredictable, smiling one minute and delivering a shocking verdict the next.

"You never know how a jury is going to act," he said.

Victor Hansen, an Army lawyer for more than a decade, said the judge's ruling on the issue is ultimately important for both sides. Excluding evidence of harm makes the prosecution's already complex case more straightforward, said Hansen, who now teaches at New England Law in Boston. On the defense side, it would prevent Manning's lawyers from introducing their major theme, essentially: "No harm, no foul."

Hansen, who had worked with Manning's defense attorney when the two were in the Army, said it is a common defense tactic to talk about sympathetic evidence early if it is clear your client is guilty. Manning's defense team's no harm theory fits that pattern, Hansen said.

"What they're trying to do is start a theme early in the case they're going to return to over and over and over again."

The judge did not say when she would rule. Also on Wednesday she declined for a second time to dismiss two charges against Manning, as his defense attorneys had asked.