

WikiLeaks in Court: What to Look for in Bradley Manning's Hearing

When WikiLeaks suspect Bradley Manning enters a military courtroom in Ft. Meade on Friday he'll face a military investigator bent on demonstrating that the young soldier committed grave violations of law by leaking hundreds of thousands of classified and sensitive U.S. government documents.

After more than 18 months in pre-trial confinement, the 23-year-old former Army intelligence analyst will get his day in court at the so-called Article 32

hearing, which will determine whether the evidence against him merits the case proceeding to a full court-martial

Likely included in the military's case are a series of chat logs between Manning and ex-hacker Adrian Lamo, in which Manning allegedly confesses that, as an act of conscience, he gave WikiLeaks a trove of U.S. diplomatic cables, two large databases containing war reports from Iraq and Afghanistan, a cache of reports on prisoners held at the Guantanamo Bay prison and a video of an Army attack that killed Iraqi civilians and two Reuters employees.

The logs

, first reported by Wired.com when we broke the news of Manning's arrest

last year, suggest that the emotionally troubled soldier lacked a support system in the Army or personal life, and reached out to Lamo in search of a kindred spirit. "I thought I'd reach out to someone who would possibly understand," he wrote, before confessing to being troubled by gender identity issues, and unloading details about a "mess I created that no-one knows about yet."

"I can't believe what I'm confessing to you :(," he wrote Lamo, as he described bringing a writable CD into the secure facility where he worked in Iraq and pretending to lip-sync to Lady Gaga music as he downloaded thousands of documents that he subsequently passed to WikiLeaks.

But instead of being the sympathetic ear Manning had hoped to find, Lamo turned the chat logs over to the authorities, saying later, "I wouldn't have done this if lives weren't in danger." Authorities arrested Manning at Forward Operating Base Hammer in Iraq in late May 2010.

Although the military has said it will not seek the death penalty — an option for the most serious accusation of "aiding the enemy" — Manning is now staring down a possible life sentence for 22 charges that include an Espionage Act violation, computer fraud and theft of public property and records. He's also charged with causing intelligence to be published on the internet knowing it would be accessible to the enemy.

The leaks allegedly provided by Manning put the then-struggling WikiLeaks on the map, beginning with the Collateral Murder video the site published on April 5, 2010 and continuing with subsequent publication of hundreds of thousands of U.S. government documents throughout 2010 and 2011. The documents became a focal point for the site's fundraising efforts, which allowed the organization to draw in more than \$1 million in donations before Visa, Paypal and other money service providers abruptly cut off processing donations for the organization.

The leaks launched a number of U.S. government investigations, examining the lax security and supervisory conditions that allowed Manning to maintain access to classified data despite reported disciplinary issues with him, and prompted changes in how the government monitors and controls access to classified networks. The leaks also launched a grand jury investigation into WikiLeaks and its founder Julian Assange in an effort to uncover evidence of criminal wrongdoing, though no charges are known to have been filed in relation to this investigation.

That's not the case for Manning, who will be turning 24 on Saturday — the age when many of his peers have just graduated college and are launching professional careers — as his legal proceedings get under way.

The Article 32

hearing, a cross between a grand jury hearing and preliminary hearing in civilian courts, will be the first time the prosecution and defense have an opportunity to present a skeleton case around the charges, allowing them both to call witnesses, cross-examine them and present arguments.

Such hearings typically last from a few hours to a day or two, but the military has indicated that Manning's hearing could run five days or more, including throughout the weekend and the Jewish Hanukkah holiday, depending on the number of witnesses called and motions raised — giving the proceedings an odd and sudden sense of urgency considering the lengthy time Manning has been confined.

The hearing's significance will rest largely on its strategic value to the prosecution and defense, who will each be looking for the other side to tip its hand and reveal glimpses of its action plan.

Manning's defense attorney will have an opportunity to hear some of the evidence against his client, while he potentially attempts to deflect the charges with mitigating evidence and testimony intended to get some of the charges dismissed. Evidence presented at the hearing may include the chat logs between Manning and Lamo as well as some of the forensic footprints that might have been left on Manning's computers tying him to documents that had been leaked.

The evidentiary bar for getting to a court-martial

is fairly low, says military justice expert Lisa Windsor, and the prosecution will want to limit the evidence it presents to the minimum needed to show reason to believe Manning committed the offenses, and nothing more. "That he had access, that he had the ability to do it, that he had the motive, and that he bragged about having committed the offense afterward" is all the prosecution will likely present at this point, she told Wired.com.

The prosecution just has to show that it has enough evidence "on each and every element of the offense" to warrant proceeding with the case, says Windsor, a retired Army colonel and former JAG officer now practicing military law with the New York law firm of Tully Rinckey

At least one element might give the government trouble, Windsor warned, referring to charges that Manning aided the enemy. WikiLeaks, as a private entity and not a government entity or

an agent of a government entity, “does not fit into the definition of the enemy under [the Uniform Code of Military Justice],” Windsor says.

“Did [Manning] have a reasonable belief that the information would fall into the hands of the enemy, was it damaging to the U.S.? Did it cause harm? Those are the things that the government is going to be challenged by the defense,” she says.

Defense attorney David E. Coombs has cautioned against making assumptions about his strategy based on court papers he’s made public so far. But a proposed witness list he published, and motions for evidence he filed, hint at some of the defenses he might bring up at the hearing, and suggest a more pragmatic approach than the pro-leaking position advocated by Manning supporters.

The latter, such as Pentagon Papers leaker Daniel Ellsberg, have largely defended Manning’s actions by arguing that he was a whistleblower of conscience, and that his alleged leaks were justified because they exposed government wrongdoing.

But court filings from Coombs have avoided that stance, seeming to argue instead that the data Manning allegedly leaked caused no substantial harm to U.S. national security, and that the military shares blame for the leaks since it failed to secure the data properly and didn’t revoke Manning’s access to classified networks despite warning signs about his emotional instability.

Manning’s attorney has requested permission to call 48 witnesses to the hearing, all of whose names have been redacted in public releases of court documents. The government has raised objections to 38 of them

, on grounds that some of them could provide written testimony instead of appearing in person and others would be providing repetitious testimony or testimony the government argues is irrelevant to the proceedings.

The government’s objections have not been made public, but according to the wording of a defense filing, it appears the government is opposed to the defense calling military mental health experts who worked with Manning, as well as other witnesses who can testify to Manning’s deteriorating emotional health before and during the time the alleged leaks occurred. Those witnesses would be able to testify, the defense hopes, to the failure of the Army to address these issues at the time. The defense’s focus on witnesses who will testify to Manning’s mental health is likely an effort to mitigate any punishment Manning will face if convicted.

Windsor says the government gets to weigh in on the witnesses called by the defense because Coombs is asking the government to ensure the witnesses will appear in court. Many of them, such as the psychiatric personnel who worked with Manning during his deployment in Iraq as well as supervising officers and fellow soldiers who served with him before and during his deployment, may be in remote locations at bases in Iraq and elsewhere and will need to travel to Ft. Meade.

Though Manning will have an opportunity to make a statement at the hearing, he’s unlikely to do so, says Windsor.

“Usually they elect not to make a statement,” she says. “The defense strategy is to sit back and just see what the government’s case is, or [they] put on a lot of evidence so the government knows this isn’t going to be easy on them.”

The hearing will be presided over by a senior officer, generally referred to as the investigating officer, who is presumed to be an impartial officer chosen by the convening authority — in this case the Military District of Washington, where the hearing will be held.

The investigating officer will listen to the evidence and arguments presented in court and

make a recommendation to the convening authority – generally the commanding general of the district. That officer then decides if the case should proceed to a court-martial and, if so, whether any of the charges should be dropped or modified.

A decision would likely come within a couple of months following the hearing, according to Windsor.