

MILITARY JUSTICE: The Bradley Manning “Article 32 Hearing”

By [Philip Fornaci](#) and [Susan Alfano](#)

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Last month, at the massive Fort Meade army installation, Private First Class Bradley Manning, who grew in Crescent, OK, finally had his “day in court” – actually, seven days of a military “Article 32 hearing.”

The outcome of those hearings is that Manning will stand trial for “aiding the enemy,” among other charges, which could put him in prison for the rest of his life, and possibly result in a death sentence.

Any resemblance to actual justice or due process in Manning’s Article 32 hearing was purely coincidental.

As most of the world now knows, Manning has been accused of making thousands of allegedly “secret” military videos, diplomatic cables, and other documents available to the media outlet, Wikileaks.

Before any evidence had even been presented to a court, Manning had already been punished beyond the bounds of the U.S. Constitution. He’d been subjected to months of torturous conditions of confinement, including sleep deprivation, complete isolation from human contact and forced nudity, before being transferred to reportedly more humane conditions in the wake of global outrage.

The evidence we saw presented at the Article 32 hearing does not justify keeping Private Manning in custody, much less continuing these proceedings for a formal trial.

The Article 32 hearing is roughly analogous to a “probable cause hearing” afforded to criminal defendants in civilian courts, but with significant differences. It is actually an “investigative process,” where the government is permitted to unveil its purported evidence in the presence of an Investigative Officer [IO], rather than a judge.

Motions to suppress potentially illegally-seized and questionable evidence were not heard [unlike civilian cases], essentially allowing the government to present its version of the case against Manning undeterred by due process considerations.

The most serious charge against Manning is violation of Article 104 of the Uniform Code of Military Justice, “Aiding the Enemy,” claiming that Manning did “knowingly give intelligence to the enemy, through indirect means.”

The identity of the “enemy” was revealed on the last day of the hearing to be “Al Qaeda, Al Qaeda in the Arabian Peninsula, and ‘classified’ enemies.”

Although there are allegations that Manning made secret documents available to Wikileaks, no one claims that he had any contact whatsoever with the shadowy “Al Qaeda” bogeymen.

His alleged crime is merely that he made information that is embarrassing to the U.S. government available to anyone with Internet access, including the American people and its enemies.

For this very questionable “crime,” the best the government has been able to produce is circumstantial evidence, secured via an array of seemingly illegal tactics, including the use of a highly dubious government informant, presented before an investigating officer with blatant conflicts of interest.

The IO presiding over the Article 32, and the man who recommended a full trial for Manning, is Lt. Col. Paul Almanza, a civilian reservist and senior prosecutor in the Department of Justice [DOJ].

Citing the obvious conflict of interest in light of the DOJ’s ongoing investigation of Manning and Wikileaks, and Almanza’s pre-hearing decisions to exclude nearly all defense witnesses, Manning’s attorney, Daniel Coombs, made an impassioned motion for his recusal. Almanza refused the invitation to step down.

Almanza also refused to allow the defense access to the evidence in the prosecution’s possession, including evidence that could exonerate Manning, despite longstanding Constitutional requirements to do so.

The testimony actually provided during the Article 32 hearings suggests more a house of cards built by the government, rather than a convincing display of any credible evidence that any harm was done, that any of the warrants utilized were valid and that evidence was handled properly, or that the information relied upon is credible.

Some glaring problems with the government’s case include:

- Special Agent Alfred Williamson testified that he forensically examined Manning’s computer account and that it was last accessed on May 28, 2010. Manning was in custody on May 27, 2010.
- Adrian Lamo - the government informant who provided information about online chats he allegedly had with Manning, leading to the original arrest warrant - is a convicted felon with a history of drug abuse and mental illness. Lamo had been discharged from a psychiatric hospital on May 7, 2010, just weeks before he became the lynchpin for the government in this case, contacting military officials after chatting just one day online with someone named “BradAss87.” In perhaps his most egregious act, Lamo told “BradAss87” that he was a journalist and a minister, assuring his new friend that their discussions would remain private, and that he could treat their conversation as a confession, coaxing further discussion.
- The investigator who obtained the original search warrant for Manning’s belongings in Iraq admitted that she secured the warrant based on information from a “confidential informant” [Lamo] and from Stars and Stripes magazine. Riddled with inaccuracies and unfounded assumptions, this investigator also stated that Manning had been accessing secret government files for a year,

when he had only been in Iraq for six months.

- Several witnesses testified that the computers associated with Manning and the alleged leaks were not password-protected, and were accessible by many other soldiers, and therefore computer activity could not be definitively linked to anyone. One of the machines used to implicate Manning was in fact a computer he did not commonly use.
- Without a warrant, the military took possession of various computer files stored on various devices found in Manning's aunt's home, months after Manning's arrest. These computer files became the key evidence against Manning, yet for months they allegedly lay scattered in the basement of his aunt's home. At this point, Manning had already been subjected to inhumane conditions of confinement.

The stakes in the Manning affair are enormous for all Americans. Even if found guilty of releasing information, there is no evidence that any of the information allegedly sent to Wikileaks affected the national security of the United States.

To the contrary, the Wikileaks information has been credited with significant roles in, among other successes, the Tunisian revolution and the withdrawal of U.S. combat troops from Iraq.

Yet it is far from clear that Manning even released the information, and it is increasingly evident that there is no way to definitively prove that he did. Meanwhile, this young soldier has been subjected to unspeakable torture at the hands of the military, serving as a reminder to all Americans of what will happen if you decide to speak the truth, or are merely accused of doing so.

Manning should be freed immediately.

The authors are Washington attorneys with experience in civilian criminal prosecution and prisoner's rights issues, but little exposure to the military justice system. They sat through much of Manning's Article 32 hearing and filed this report for The Observer.

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Articles by: [Philip Fornaci](#)
and [Susan Alfano](#)

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