



# THE TRIAL OF CHELSEA MANNING

Reflections on the Court-Martial of a WikiLeaks Source

*By Alexa O'Brien*

In February 2010, during a mid-tour leave, a 22-year-old United States Army private named Bradley Manning walked into a Barnes & Noble bookstore in Rockville, Maryland. The junior military intelligence analyst began uploading hundreds of thousands of classified U.S. government documents to WikiLeaks, the online publisher. In collaboration with WikiLeaks, the *New York Times*, *Guardian* and *Der Spiegel* later published extensive reports based on the documents.

Manning was initially arrested in May 2010 on suspicion of having disclosed what military prosecutors then believed was a classified video of a July 2007 U.S. air strike in Baghdad. The helicopter attack had injured two children and killed at least twelve civilians, including two Reuters journalists. A month before Manning's arrest, WikiLeaks had published the video, which it entitled *Collateral Murder*. Despite a U.S. Central Command classification review later determining that the video was in fact unclassified, military prosecutors nevertheless charged Manning with espionage for its unauthorized disclosure.

Military prosecutors later accused Manning of disclosing four datasets containing 483,562 army field reports from Iraq and Afghanistan, 251,287 diplomatic cables, and approximately 765 detainee profiles of the men and children imprisoned at Guantanamo Bay. Manning was tried by court-martial at Fort Meade, Maryland, on twenty-two charges, including aiding the enemy, espionage, exceeding authorized access, stealing U.S. government property and wanton publication.

Manning spent a year and a half in pretrial confinement, apparently longer than any accused awaiting court-martial in U.S. military law. The presiding military judge, Colonel Denise Lind, nevertheless ruled that the government had not violated the defendant's

◁ Chelsea Manning arrives for sentencing hearing, U.S. Army Trial Judiciary, Fort Meade, Maryland, Aug. 21, 2013. *Larry Downing/Reuters/Corbis*

right to a speedy trial. The legal proceedings began in December 2011 and continued for the next twenty months, ending in August 2013.

While Lind eventually acquitted Manning of aiding the enemy (the most serious charge, which carried a life sentence), she found Manning guilty of twenty other crimes and handed down a sentence of thirty-five years in prison. Though Lind had ruled that a portion of Manning's confinement had been excessively harsh and unlawful, she granted Manning only 112 days credit on the long sentence.

The day after sentencing, Manning issued a statement through her defense counsel declaring her gender to be female, and asking that she be called Chelsea and referred to with feminine pronouns.

### **Significant Activity**

"In Iraq death always has its way." So begins a poem by Manning's commanding officer, Master Sergeant Paul Adkins. A Secretary of the Army investigation into Manning's command found that Adkins, a published poet and the highest-ranking non-commissioned officer in the intelligence shop where Manning worked, had been derelict in his duties. He was subsequently demoted to Sergeant First Class. According to the investigation, Adkins failed to inform higher command of an April 2010 email that Manning had sent to him in which she described her gender identity struggles. Manning had attached to the email a photo, which she had taken of herself during her leave in February 2010, dressed in a feminine wig and cosmetics. Adkins testified at Manning's court-martial that he failed to inform his command of Manning's email because he was short on intelligence analysts like Manning who specialized in the Shiite militias. Gender dysphoria can be grounds for administrative separation from the U.S. Army.

Before deploying to Iraq, Manning had worked on worldwide intelligence briefs for the commander of the Second Brigade Combat Team at Fort Drum in Upstate New York, home of the 10th Mountain Division of the U.S. Army. The 2nd Brigade formed part of the army's global response force, on call in case troop surges were needed anywhere in the world. In the garrison's intelligence shop, Adkins also tasked Manning with rebuilding the "incident tracker." This required Manning to back up hundreds of thousands of military field reports called Significant Activities, or SIGACTS, from the war in Afghanistan, where the 2nd Brigade was expected to deploy.

After Manning's unit was reassigned to Forward Operating Base Hammer, a few miles east of Baghdad, she followed suit and created another backup of SIGACTS from the war in Iraq. The backups were made on read-writable CDs and stored in the intelligence shop's shared conference room at FOB Hammer. Analysts could access the backups during periodic interruptions to network connectivity that occurred during deployment.

SIGACTS are normally housed in a U.S. Central Command database called the Combined Information Data Network Exchange (CIDNE), which was accessible on a Department of Defense classified network called SIPRNet. SIPRNet contained information classified up to the level of “secret.” Almost all the information the military presents to the White House and Congress about the wars in Iraq and Afghanistan originates in the CIDNE database. Thousands of military personnel, government employees and contractors have access to CIDNE’s various types of reports, including human intelligence reports, or HUMINT, as well as the SIGACTS.

Manning disclosed 483,562 SIGACTS from the CIDNE-Iraq and the CIDNE-Afghanistan databases. WikiLeaks later published the material as the Iraq War Logs and the Afghan War Diary. Manning did not, however, disclose the other kinds of reporting from the CIDNE database, like HUMINT, which contained intelligence sources and methods. The SIGACTS that Manning disclosed, military prosecutors admitted at trial, only represent 24 percent of CIDNE. Manning told Lind that she believed that the classification determination of the SIGACTS (most of which were marked “secret”) was based primarily on their being housed on SIPRNet. While she knew the reports were “sensitive at the time of their creation,” she told the court that she believed that their sensitivity decreased “within forty-eight to seventy-two hours, as the information [was] either publicly released, or the unit involved [was] no longer in the area and not in danger.”

### **Our Foreign Policy**

“Death could not just visit my house anytime it felt like filling its black palms,” reads another line of Adkins’ poem. The SIGACTS that Manning uploaded to WikiLeaks are filled with references to the ubiquity and seeming triviality of death in wartime Iraq. Manning regularly researched and reviewed the ground-level accounts of events in Iraq and Afghanistan during her long shifts at FOB Hammer and became deeply troubled by them. At her trial, Manning said she released the SIGACTS because she believed that a “detailed analysis of the data over a long period of time by different sectors of society might cause society to reevaluate the need or even the desire to engage in counterterrorism and counterinsurgency operations that ignore the complex dynamics of the people living in the affected environment each day.”

She further testified:

In attempting to conduct counter-terrorism or CT and counter-insurgency COIN operations, we became obsessed with capturing and killing human targets on lists and not being suspicious of and avoiding cooperation with our host nation partners, and ignoring the second and third order effects of accomplishing short-term goals and missions.

I believe that if the general public, especially the American public, had access to the information contained within the CIDNE-I [Iraq] and CIDNE-A [Afghanistan] tables this could spark a domestic debate on the role of the military and our foreign policy in general as it related to Iraq and Afghanistan.

Manning removed the read-writable CD backups from the conference room. In her containerized housing unit, she transferred the files to an SD card, and transported them home on her mid-tour leave. Prior to uploading the material to WikiLeaks, she called the *Washington Post*. She spoke with a reporter, who expressed skepticism about Manning's claims and said that she would check with the *Post's* senior editors. Manning then called the telephone number for the public editor at the *New York Times* and left a voicemail message, but received no response. In all, Manning downloaded documents between February and April in 2010, and uploaded them to WikiLeaks at various times in the same period both during her mid-tour leave and while at FOB Hammer in Iraq.

### **“Dead Bastards”**

Cynicism and a lack of critical thought defined the ethos of the intelligence shop at FOB Hammer where Manning worked. A sign hung over the desks of the targeting analysts there: “The individuals that own this office are in the business of catching shit bags. If you think for one second you can come in here and bug us with sissy shit you might want to rethink your pathetic life.” A Central Intelligence Agency Red Cell memo that Manning disclosed to WikiLeaks in March 2010 was unapologetically entitled, “Afghanistan: Sustaining West European Support for the NATO-led Mission—Why Counting on Apathy Might Not Be Enough.” Manning told Lind that after discovering the CIA memo, she “had difficulty believing what this section was doing.” Manning was also alarmed by the “seemingly delightful bloodlust” of the aerial weapons team that she viewed in the video of the 2007 U.S. airstrike in Baghdad. Manning uploaded the video to WikiLeaks in February 2010, along with information on the rules of engagement in Iraq for the years 2006 and 2007.

Manning said that the helicopter pilots in the video “dehumanized the individuals they were engaging and seemed to not value human life by referring to them as ‘dead bastards’ and congratulating each other on the ability to kill in large numbers.” She compared the pilots’ behavior “to a child torturing ants with a magnifying glass.” Manning’s co-worker, a targeting analyst named Specialist Jihreah Showman, had originally found the video within the targeting section’s folder on the brigade’s shared drive. Showman testified that neither she nor her commanding officers ever discussed the rules of engagement while viewing the video in the intelligence shop.

Defense counsel David Coombs said in his closing arguments that Manning realized she could “no longer just ignore the fact that these are real lives being lost and real people dying.” In a letter to the *Guardian* published on October 9, 2013, Manning described herself as a transparency advocate. “I feel that the public cannot decide what actions and policies are or are not justified if they don’t even know the most rudimentary details about them and their effects,” she wrote.

### **Iraqi Partners**

The 2nd Brigade’s mission in Iraq was to train the Iraqi Federal Police. The partnership included intelligence sharing. The 2nd Brigade also shared intelligence with the Iraqi presidential brigade and the National Iraqi Intelligence Agency. Classified computers in the 2nd Brigade’s intelligence shop were equipped with CD burners to distribute intelligence to their Iraqi partners.

Iraq’s intelligence and law enforcement agencies were divided along sectarian and political lines since the restructuring of the Iraqi state after the U.S.-led invasion toppled Saddam Hussein’s regime in 2003. The Bush administration authorized the creation of the Iraqi National Intelligence Service (INIS) and Congress earmarked \$3 billion for its operations between 2003 and 2007. Some of the money wound up supporting paramilitary units that effectively became Shiite-dominated militias and death squads carrying out personal and political vendettas in their search for Sunni insurgents who supported Saddam Hussein. The template for the U.S.-backed counter-insurgency is what journalist Peter Maass has called the “Salvadorization” of Iraq, a reference to the U.S. proxy wars in El Salvador and Nicaragua in the 1980s. U.S. military counter-insurgency experts had reportedly advised the newly formed Iraqi Special Police Commandos. The *Guardian* reported in March 2013 that the Iraqi Special Police Commandos “conducted some of the worst acts of torture during the U.S. occupation and accelerated the country’s descent into full-scale civil war.”

When Prime Minister Nouri Al-Maliki of the Shiite Islamic Dawa party came to power in 2006, he mistrusted the CIA-funded INIS, which was headed by a Sunni who led a failed CIA-backed coup against Hussein in 1996. A decade later, four INIS agents were suspected of being involved in the kidnapping of an Iranian diplomat suspected of ties to Shiite insurgents. The diplomat later alleged that the CIA had tortured him. Al-Maliki subsequently established his own intelligence agency headed by a Shiite under the Ministry of State for National Security Affairs (MSNS). Fueled by the competing spheres of influence between the U.S. and Iran, Sunni and Shiite factions within both the INIS and the MSNS conducted systematic campaigns to eliminate rivals in an escalating battle for influence and control over the intelligence and security apparatus in Iraq.

### “Everything Started Slipping”

Three weeks after her trip to Barnes & Noble, now back in Iraq, Manning was ordered to investigate the arrest of fifteen individuals at a printing press in the Karada district of Baghdad. The detentions had been a joint operation between subordinate commands of the 2nd Brigade Combat Team and the Iraqi Federal Police (IFP). The IFP accused the detainees of publishing “anti-Iraqi” literature; she was told to find out who the “bad guys” were.

Manning established that none of the detainees had any ties to suspected terrorists or militia groups; nor were they carrying out “anti-Iraqi” activities. Pictures from the scene of the arrest included images of the fifteen suspects, pallets of unprinted paper, and high-resolution copies of the printed material they had supposedly sought to publish. When Manning had the “anti-Iraqi” literature translated, it turned out to be a benign treatise on public corruption in Al-Maliki’s government entitled, “Where Did the Money Go?” Upon discovering the discrepancy, Manning informed her command that the detainees were dissidents, not militants. Manning said her superiors “told me to quote ‘drop it’ unquote and to just assist them and the Federal Police in finding out where more of these print shops creating quote ‘anti-Iraqi literature’ unquote were.”

In May 2010, Manning initiated contact with Adrian Lamo, a former computer hacker. Lamo decided to contact U.S. law enforcement and become a government informant when Manning initially asked him: “[I]f you had unprecedented access to classified networks fourteen hours a day, seven days a week, for eight plus months, what would you do?” Recounting events around the arrest of the fifteen Iraqis at the printing press, Manning told Lamo that her command told her to “shut up” and explain how to assist the IFP in making more arrests. “Everything started slipping after that,” she told Lamo in the online chat. “I was actively involved in something that I was completely against.”

When Manning spoke about the fifteen detainees to other analysts in the intelligence shop as well as to her non-commissioned officer in charge, “some were sympathetic,” she said in court, “but no one wanted to do anything about it.” Manning’s co-worker, Sergeant David Sadtler, said in a sworn statement for the Secretary of the Army’s investigation that Manning thought, “no one cared about the mission.”

In court, Manning told Lind, “I knew that if I continued to assist the Baghdad Federal Police in identifying the political opponents of Prime Minister Al-Maliki, those people would be arrested and in the custody of the Special Unit of the Baghdad Federal Police and very likely tortured and not seen again for a very long time—if ever.”

Manning also said in court that she decided to give the information to WikiLeaks in hopes of generating media attention preventing further IFP crackdowns on Al-Maliki’s political opponents in the run-up to the Iraqi elections. After uploading the information to

WikiLeaks via its secure transfer protocol, Manning said that someone from the WikiLeaks organization requested more information in order to verify the story. WikiLeaks has never published any information about the arrest of the fifteen detainees.

Around the time that Manning was tasked to investigate the detainment of the fifteen Iraqis, brigade commanders began feeling that their soldiers were too “focused on the ground” and “they needed a bigger picture,” according to the highest-ranking intelligence officer in the brigade, Captain Steven Lim. Headquarters directed Lim to send his intelligence analysts a link to the State Department’s Net-Centric Diplomacy database, which housed diplomatic cables from across the world. Most of the cables were unclassified or confidential. Cables housed in the NCD database were intended for wide distribution among at least one million U.S. government employees and federal contractors. Lim emailed the analysts a link to the NCD, no password required, and encouraged them to incorporate the cables into their work product.

The day after the arrest of the fifteen detainees, the U.S. Embassy in Baghdad sent a diplomatic cable to the CIA, National Security Council and other U.S. agencies reporting that Al-Maliki had fired 376 officers from the Iraqi security and intelligence services and replaced them “with inexperienced political officers loyal to his Shiite Dawa party.” The embassy said that Al-Maliki was positioning “his own people within the intelligence agencies to eliminate internal opposition in the run-up to the elections.” Iraqi and American observers, said the cable, found the development “troubling.”

After WikiLeaks published the Iraq War Logs, Amnesty International and the United Nations Special Rapporteur on Torture urged President Barack Obama to order an investigation into the complicity of U.S. forces in handing detainees over to the Iraqi security forces, who then tortured them. “U.S. authorities failed to investigate hundreds of reports of abuse, torture, rape and even murder by Iraqi police and soldiers whose conduct appears to be systematic and normally unpunished,” the *Guardian* reported in October 2010.

According to another *Guardian* report published in January 2012, Iraqi security officers were “systematically arresting people on trumped-up charges, torturing them and extorting bribes from their families for their release.” Likewise in a McClatchy-Tribune report published in June 2012, Al-Maliki’s security services were found to have detained more than a thousand members from opposing political parties, “many of them in secret locations with no access to legal counsel, using ‘brutal torture’ to extract confessions.”

## Public’s Right

The lack of transparency in the Manning court-martial raises serious questions about the justice of her conviction. The trial record totals about 45,000 pages, believed to be

the longest in U.S. military law. Yet eighteen months into the proceeding, the public was still forbidden access to more than 30,000 pages of court filings and rulings. The failure to allow contemporaneous access to court documents caused irrevocable harm to the public's right to understand and scrutinize the conduct, case law, arguments, and opinions of both trial and defense counsel and the presiding military judge. The charge of aiding the enemy is one of only two punitive articles under the Uniform Code of Military Justice that applies to "any person" and not solely military personnel. This fact is all the more reason that the public had a right to access the court record.

### **Obama's Inquisition**

Manning's conviction and sentencing reflects President Obama's unprecedented campaign against whistleblowers by employing the Espionage Act, a 1917 statute intended for spies. In January 2011, Obama's Justice Department brought an espionage case against Jeffrey Sterling, a former CIA employee accused of leaking classified information to a reporter at the *New York Times*. In documents related to the case, Department of Justice prosecutors argued that leaks to the press are a "greater threat to society" than when spies provide classified information to a foreign government because "every foreign adversary stands to benefit" from the leaks.

The defense argued that Manning acted with good intentions to inform the public, and that his disclosures did not lead to actual damage. Colonel Lind, however, ruled that Manning's motive for the disclosures was not relevant at trial. Such evidence, then, could not be used to mitigate the accusation, drawn from the language in the Espionage Act and in the Computer Fraud and Abuse Act (CFAA) charges, that Manning had "reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation."

### **Crime of Espionage**

Manning was convicted on six Espionage Act offenses and one CFAA offense. For the Espionage Act and the CFAA charges, most of the evidence critical at trial remained hidden under black-ink redactions or within at least 229 sealed unreleased court exhibits. The secrecy reached an almost surreal quality, given that the charged documents are publicly available on the Internet. The fact that most of the charged documents were legally classified, despite a defense request to declassify them for trial, prevented Manning's lawyers from citing them openly in court. It also limited the defense's ability to call witnesses, since any potential witnesses were required to have security clearances to handle the classified but publicly available material.

Military prosecutors then selectively declassified two sets of documents for use in their case against Manning for "aiding the enemy" and "wanton publication." One

set of declassified documents was material obtained during the May 2011 U.S. raid on Osama Bin Laden's compound in Abbottabad, Pakistan. The documents included a letter from Bin Laden to a member of Al-Qaeda requesting Department of Defense information, and a response to Bin Laden attached to which were the Afghan War Logs and Department of State "information." Yet, a video exists of Bin Laden recommending a book by author and *Washington Post* reporter Bob Woodward. Journalist Glenn Greenwald has asked why Woodward and his high-level sources have not been similarly charged with "aiding the enemy." "This question is even more compelling," Greenwald wrote in the *Guardian* in January 2013, "given that Woodward has repeatedly published some of the nation's most sensitive secrets, including information designated Top Secret—unlike WikiLeaks and Manning, which never did."

The other documents declassified at trial by military prosecutors for use in their case against Manning for "aiding the enemy" and "wanton publication" was a 2008 U.S. Army Counterintelligence Center (USACIC) memo on WikiLeaks, which was primarily sourced from public information. Manning was eventually convicted under the Espionage Act for disclosing the USACIC memo to WikiLeaks.

### Classification Questions

Manning was convicted on the Espionage Act and CFAA offenses for probable, not actual, harm. Military prosecutors were required to prove that the information charged under the Espionage Act was related to national defense and closely held, meaning it was not already lawfully in the public realm prior to Manning's disclosure. A defense witness testified at trial, for example, that sixty-two of the 102 SIGACTS charged against Manning under the Espionage Act contained content that was also found in public reporting prior to Manning's disclosure.

Evidence about the lack of actual damage was excluded at trial. Military prosecutors called Original Classification Authority (OCA) witnesses from each of the victimized agencies to testify. The OCA testified that charged information was properly classified at the time of its release and that its disclosure "could" cause damage. The OCA's classification reviews weighed heavily in Lind's determination to convict Manning on six Espionage Act offenses.

Coombs argued that the OCA failed to cite specific instances of information within the charged material that could cause damage. Instead, he said, they used generalities and buzzwords. During closing arguments, Coombs cited the classification review for the charged documents concerning the May 2009 U.S. bombing in the Farah Province of Afghanistan, which was widely reported on by the press. The OCA, said Coombs, testified that the classification review "didn't consider open-source material or unclassified publications like various army regulations or field manuals."

Much of the information disclosed by Manning was in fact already public, unclassified, improperly classified, or marked at the lowest levels of classification and widely circulated among government and military employees and contractors. The *Washington Post* reported that “nearly half a million government employees and contractors with security clearances” had access to the diplomatic cables disclosed by Manning. Some 4.2 million government and military personnel and contractors have security clearances for the highest level of charged information classified at the “secret” level.

### **Damage Assessment**

President Obama himself has said the information revealed in the WikiLeaks publication of the Afghan War Diary was already known. Then-Secretary of Defense Robert Gates wrote a letter to the chair of the Senate Armed Services Committee explaining that a Department of Defense review of the leaked SIGACTS had “not revealed any sensitive intelligence source and methods.” Professor Derek Shearer of Occidental College, who served as ambassador to Finland during the Clinton administration, has argued that the diplomatic cables published by WikiLeaks did not contain secrets:

These are not really secrets that are in these cables... Most of the State Department reporting is done by younger junior officials ... who were assigned to go to events or to meet people. In some cases the reporting is required by acts of Congress. And, it is not quite “make-work” but it is kind of one of the lower level forms of communications.

At a symposium on Wikileaks held at the University of Southern California in 2011, Shearer cited the Tunisian revolution as a positive outcome from the publication of the diplomatic cables. The revelation of the U.S. government’s negative view of dictator Zine El-Abidine Ben Ali is believed to have fueled anger against the Tunisian regime:

Some of this frank speaking, of not secrets, but just frank description of a country, had a positive outcome.... But, these cables are not the secret level in which the U.S. government operates. We have a whole separate system of much more secret reporting that comes through the intelligence officers in the embassies. And then we have a whole other channel, the defense intelligence operations—defense attaches’ reporting. So, the notion that some vital secrets of America were compromised by WikiLeaks, I think is not the case.

## Foreign Advantage

The OCA and other government witnesses also testified that enemies and foreign adversaries could use the large datasets to conduct “pattern analysis.” Yet, technically, Manning was charged under the “reason to believe” language found in the Espionage Act and the CFAA in relation to only 223 of the 735,614 documents contained within the four larger datasets she disclosed to WikiLeaks: specifically 116 diplomatic cables; 102 SIGACTS from the wars in Iraq and Afghanistan; and five Guantanamo Bay Detainee Assessment briefs. Military prosecutors failed to argue how the 223 charged documents could be used in any potential “pattern analysis” conducted by foreign adversaries or enemies. If military prosecutors wanted to use that argument in court, they should have charged Manning under the Espionage Act or the CFAA for more than 223 documents.

A similar problem arises when military prosecutors and their witnesses argued at trial and during the sentencing phase that the information Manning disclosed could potentially be used in future propaganda efforts by the enemies of the U.S. Elizabeth Goitein of the Brennan Center for Justice at New York University Law School has written that the absence of a “limiting principle” to the U.S. government’s expanding justifications for classification and its prosecutions of whistleblowers, who disclosed it, is alarming. “The government’s new justification for secrecy will be strongest when its conduct most clearly violates accepted international norms,” Goitein wrote in a piece published by Al Jazeera America in October 2013. “The reasons why people choose to align themselves against the United States—or any other country—are nearly as numerous and varied as the people themselves.” The Brennan Center has published a study asserting that over-classification itself is a threat to American national security. The argument is that democratic governance ceases to function when terabytes of information hide government waste, fraud, abuse and crimes. “Government secrecy has slipped its traditional moorings and is venturing forth into dangerous waters, where accountability and the rule of law cannot readily follow,” Goitein has said.

## Limited Damage

At sentencing, military prosecutors could not link any of Manning’s disclosures to known deaths. Instead, they offered evidence of the government’s mitigation efforts and the expert opinions of lifelong federal employees and contractors. These witnesses testified that the leaks affected diplomatic reporting and relationships with foreign governments. The evidence and testimony concerning damage or the lack thereof was offered in closed session or hidden under redactions in classified stipulations.

Manning’s defense maintained that any impact on bilateral relations was short term and temporary. Reuters reported that government reviews of the release of

diplomatic cables caused only “limited damage to U.S. interests abroad despite the Obama administration’s public statements to the contrary.” A congressional aide briefed by the State Department was quoted saying the revelations were “embarrassing but not damaging,” The “Obama administration felt compelled to say publicly that the revelations had seriously damaged American interests in order to bolster legal efforts to shut down the WikiLeaks website and bring charges against the leakers,” the aide said.

### “Aiding the Enemy”

The last time a U.S. soldier was charged with giving intelligence to the enemy via a media organization was in 1863 during the American Civil War. Private Henry Vanderwater, a Union soldier, was convicted of giving a command roster to a newspaper in Alexandria, Virginia, which later published it. Vanderwater, who willfully intended to provide the information to the Confederate army, was sentenced to several months in the brig. Manning, though acquitted of aiding the enemy, was nonetheless sentenced to more than three decades in confinement.

Manning faced life in prison if convicted of aiding the enemy. Yet while Lind acquitted Manning on that charge, she had rejected two defense motions to dismiss it altogether. That sets a chilling precedent for future whistleblowers and journalists who write about national security issues. When Lind asked the prosecution if it would have acted in the same way had the organization in question been the *New York Times* rather than WikiLeaks, the reply was “Yes, Ma’am.”

According to defense witness Professor Yochai Benkler of Berkman Center for Internet and Society at Harvard Law School, Lind’s failure to dismiss the aiding the enemy charge established a broad precedent. “Leaking classified documents to... newspapers can by itself be legally sufficient to constitute the offense of ‘aiding the enemy,’ if the leaker was sophisticated enough about intelligence and how the enemy uses the Internet,” he explained. In other words, all a prosecutor will have to prove in any future legal case against a national security whistleblower is that the accused knew that an enemy or foreign adversary of the United States used the media organization’s platform to collect intelligence.

### Wanton Publication

Philip J. Crowley, the assistant secretary of state for public affairs who resigned over his statements that Manning’s treatment at Quantico was “stupid” and “unproductive,” has described Manning’s leaks as “industrial scale.” In reality, the leaks are proportional to the information age that Manning was born into.

Former Ambassador Shearer said at USC:

When I went out as ambassador it was the end of the kind of old-school style of what an ambassador did. And the idea was that if you had a message for the local government, you got a cable from Washington and it told you to deliver a message, and you would print out the cable. You would make an appointment. You would go over to the foreign ministry. You would give them a message. That was already almost out of date by the Clinton administration, because CNN had already created a twenty-four hour news cycle and many things that were happening that you might want to go tell the local government were already on CNN.... The Internet basically exploded during the Clinton administration. When Clinton came in there was about 400 websites, when he went out there was like 40 million.... But, now today, if you just go on the web and look at any American embassy or other country's embassy, you are going to see a very vibrant embassy website. The ambassador is going to have a Twitter account. He is going to keep a blog or she will keep a blog. People will write in, locals, on their opinions and things. And, most of the old-time diplomacy has become what is now called in a broader sense public diplomacy. It is not just government-to-government, but public-to-public. And, there aren't a lot of—there are technical secrets about weapons and some about troop movements, but most everything else is in fact public.

Manning's conviction for the unprecedented offense of "wanton publication," which is not tied to any existing punitive article under the Uniform Code of Military Justice or any other federal criminal violation—is intended to interdict the future leak of large datasets capable of being mined or modeled for revelations by digital journalists and organizations like WikiLeaks.

When asked by the military prosecutors if "mass document leaking is somewhat inconsistent with journalism," Benkler said that large datasets like the Iraq War Logs provide insight that cannot be found in one or two documents containing a "smoking gun." The Iraq War Logs, added Benkler, provided an alternative, independent count of casualties "based on formal documents that allowed for an analysis that was uncorrelated with the analysis that already came with an understanding of its political consequences." According to the online organization Iraq Body Count, the Iraq War Logs revealed 15,000 previously unknown civilian deaths; the organization's estimate of total violent deaths increased to 150,000, 80 percent of whom were civilians.

Manning's leaks highlight the vital role that access to information plays in the deliberative process and oversight functions of the Congress and the press. Her trial illustrates the government's battle for control over information in the digital age. It

is a battle being waged against what Mike Rogers, chairman of the House Permanent Select Committee on Intelligence, calls the Internet's "culture of disclosure."

"I am the type of person who likes to know how things work," Manning said in court. "As an analyst, this means I always want to figure out the truth. Unlike other analysts in my section or other sections within the 2nd Brigade Combat Team, I was not satisfied with just scratching the surface and producing canned or cookie-cutter assessments. I wanted to know why something was the way it was and what we could do to correct or mitigate a situation."

### **Fort Leavenworth**

Manning is confined at the U.S. Disciplinary Barracks at Fort Leavenworth in Kansas. Her case must be reviewed and approved by the Convening Authority, Major General Jeffrey Buchanan. This process is referred to as "taking action" on a case. Buchanan has the power to disapprove any conviction and/or reduce Manning's sentence. Once Buchanan takes action, the case will automatically be reviewed on appeal by the Army Court of Criminal Appeals (ACCA). Such a review by ACCA could take years. Manning's defense attorney has filed an application seeking a presidential pardon from President Obama. Coombs says it is unlikely that the request will be granted. Obama has only granted nine pardon requests during his presidency, and he has never granted a pardon for someone that he has previously said "broke the law." For her part, Manning appears to have appreciated the risks when she decided to release classified information. In her chats with Lamo, she expressed hope that the information would make a difference. She stated that she was willing to pay a heavy price for her decision, telling Lamo: "I wouldn't mind going to prison for the rest of my life..."