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From [The Dissenter](#) | Original Article

(update below)

The trial for Pfc. Bradley Manning, the soldier accused of releasing classified information to WikiLeaks, has now been moved from September to November or January of next year. The judge moved the trial date because of “discovery issues” in the court martial. This was entirely predictable. All along, the military prosecutors and government have been engaged in secrecy games that have made it nearly impossible for the defense to obtain evidence that could be material to the guilt or innocence of Manning or that could help reduce his sentence if he was convicted for his alleged leaks.

In effect, the military prosecutors have played a dual role. Not only have they been working to convict Bradley Manning, but they have also been acting as gatekeepers for the government so that information on how the government responded to the WikiLeaks disclosures and how the government has been investigating Bradley Manning and WikiLeaks is not handed over. The prosecutors have claimed they are protecting national security and blacked out full portions of documents that the defense requested.

The prosecutors initially claimed that an FBI law enforcement file was not relevant to the accused. It would not fulfill the defense's request for material. Under a military rule for discovery of evidence, it found it was obligated to turn over at least some pages of the file so the defense could use some of it but most of the pages handed over are useless as they are pages of black ink. The file contains details on how a law enforcement agency has investigated Manning, the accused. As Judge Denise Lind asked in the case on Wednesday, [how is that not relevant](#) ?
And how is Manning going to make “particularized assertions when he doesn't know what's in the file”?

The prosecutors then made an argument that sounded much like the argument government

lawyers have made when invoking state secrets privilege in civilian courts. Major Ashden Fein of the prosecution said the defense would have to at least make an assertion and that information was protected by national security. They said if the judge was going to order evidence be turned over then the prosecution would file under a rule that grants the government the privilege to redact what must be withheld in order to safeguard classified or sensitive information. The judge asked, "How can the defense assert anything if the page is black?" Fein replied, "Well, that is what they have to do."

The judge asked the prosecution what percentage of this file had been disclosed. The prosecutors said fifty percent of 8,800 pages from 636 documents in the FBI investigation had been turned over. When the judge followed up moments later, the prosecutors gave the exact number of pages and documents in the entire file: 42,135 pages total, 3,475 documents. "So we're not nearly at 50 percent are we?" the judge asked.

Then in the same line of questioning prosecutors misrepresented when they had obtained an FBI impact assessment. They said that FBI headquarters had produced this report and they had recently become aware and were about ready to file a motion invoking a privilege to protect classified or sensitive information and then, once that information was substituted or redacted, the assessment could be provided to the defense. Manning's defense lawyer David Coombs stood up and said this was a problem. When did they find out about this? On May 18, they indicated they had "produced all relevant" evidence with regards to the FBI. Why is the government deciding on its own when to inform the court that evidence exists? They should have alerted the court before this hearing. They had represented to the court that they had reviewed all material and turned over everything. Why would the prosecution have just found out about this impact assessment now? The prosecutors have been preparing a case for over a year now.

Additionally, the prosecutors then lied about whether they would have an FBI witness during the trial. They had said they would not have a witness testify from the FBI. During questioning, they indicated they would and it would be on a piece of the assessment. If they would have a witness testify, they would have to turn over the assessment. Coombs noted to the judge that they just said they would call a witness. The judge tried to confirm this fact. The prosecution answered, "You asked if I would call an FBI agent, not the FBI."

The defense had fought for the past months to get a specific damage assessment report on the leaks from the State Department. The prosecution did not believe they had to turn this over. They argued the report was a "draft" and therefore the content was "speculative in nature." The judge did not buy this argument at all. The government was forced to hand over a "draft" to the

defense. The prosecution didn't want to provide reports from the Defense Intelligence Agency's Information Review Task Force (IRTF) or the CIA's WikiLeaks Task Force (WTF). The defense struggled and now versions of the reports with redactions and substitutions are finally going to be provided.

They've played word games as if they are Freedom of Information Act officers tasked with fulfilling FOIA requests. The defense asked for all investigative files. This did not properly describe evidence like the damage assessment report from the State Department. The prosecution said what the defense wanted was really a "working paper." The defense realized it had to use "magic words" and submitted a motion on May 10 for files from a list of specific agencies that might be "documents, reports, analyses, files, investigations, letters, working papers, and damage assessments."

The defense also alleged in [the same motion](#) filed on May 10 that the government had failed to take action "in response to the government's request" for discoverable materials for nine months.

...The government has not yet completed a Brady search of its own files (i.e. files which are clearly in the possession, custody, and control of military authorities) even though two years have elapsed since PFC Manning was arrested. That the Government cannot "get its ducks in a row" with respect to discovery which is clearly under its control does not inspire confidence that the Government has diligently conducted a Brady search of other agencies [*Note: Brady refers to a rule that mandates the disclosure of evidence]...

The government's failure has led the defense to renew its request for files that had "not yet been produced." This included a request for the "entire CID, DIA, DISA, and CENTCOM and SOUTHCOM files related to PFC Manning, Wikileaks, and/or the damage occasioned by the alleged leaks."

All along the government and military prosecutors have insinuated or outright suggested that the defense is asking for this information to "open up the government's files." Fein even preposterously [accused](#) the defense during the April motion hearing of "graymail," which is defined as "a tactic used by the defense in a spy trial, involving the threat to expose government secrets unless charges against the defendant are dropped." He said if the court approved the defense's demands for information, this could lead to other soldiers trying to

“graymail” the government. A soldier could then release any classified information and steps by the government to investigate the leak would be “discoverable.”

The conduct of the government and prosecutors is very suspicious given the fact that this makes it possible for President Barack Obama's administration to not have to deal with a trial against Bradley Manning before Election Day. It was always suspect that the judge went ahead and scheduled a date in September for a trial that would conclude in October. Now, “discovery issues” delayed the proceedings. This may or may not be calculated. In general, withholding evidence that is discoverable would be a shrewd way to ensure a trial didn't happen that might pose a nuisance to a president, who didn't want to deal with it while on the campaign trail (because undoubtedly there would be many Bradley Manning supporters confronting him. He doesn't want [any major run-in with supporters](#) to happen again).

It's possible that this delay is not the result of politics. This may just be how the government handles whistleblower prosecutions. NSA whistleblower Thomas Drake [said](#) something similar to what is happening with Manning happened in his case. The prosecutors egregiously withheld “exculpatory information and discovery favorable” to his defense. He, too, asked for a “damage assessment” in his Espionage Act case because the government accused him of endangering the lives of soldiers. The government would not produce the assessment.

This is all happening against the backdrop of an Obama administration that has selectively leaked sensitive if not classified information on a “kill list” used in the drone war. It is happening as the administration feeds propaganda that will help make counterterrorism operations that should be condemned or challenged seem legal or acceptable to the media. It's taking place as reporters pretend to be aggressive journalists as they are spoon fed these scoops. It unfolds as the administration has made it clear and continues to [make it clear to the world](#) that all leaks are created equal but some are more worth prosecuting than others. It plays out as the administration has made certain and continues to make certain that the world knows it believes all whistleblowers are created equal but some whistleblowers are more worth prosecuting than others.

The secrecy games by the prosecution in Bradley Manning's court martial and the selective leaking and war on whistleblowing by the Obama administration all serves one purpose: it protects people who have been involved in rendition, torture, warrantless wiretapping and other illegal acts of corruption from accountability. It makes it possible for bureaucratic institutions to press on without interference from a public that might demand the government change how it is operating and stop violating people who wish to call attention to mass corruption in the US government.

Update

President Barack Obama said today claims the White House is purposely leaking national security secrets are “ [offensive](#). ” Honestly, what is truly offensive is the war on whistleblowing and the amazing [disease of secrecy](#) in government, which induces symptoms like overclassification of information and government lawyers battling groups like the ACLU that [try to force the disclosure](#) of information on national security issues like the administration's targeted killing program.