

THE BRADLEY MANNING SENTENCING DYNAMICS

U.S. Army Private First Class Bradley Manning stands convicted of crimes under the Uniform Code of Military Justice (UCMJ). The convictions result from two events. The first was a voluntary plea of guilty by Pvt. Manning to ten lesser included charges in February, and the remainder from a verdict of guilty after trial entered by Judge Denise Lind on July 30.

The maximum possible combined sentence originally stood at 136 years for the guilty counts, but that was reduced to a maximum possible sentence of 90 years after the court entered findings of merger for several of the offenses on August 6. The “merger” resulted from the partial granting of a motion by Mr. Manning’s attorney arguing some of the offenses were effectively the same conduct and were therefore multiplicitous. The original verdict status, as well as the revised verdict status after the partial merger of offenses by the court, is contained in a very useful spreadsheet created by Alexa O’Brien (whose tireless coverage of the Manning trial has been nothing short of incredible).

Since the verdict and merger ruling, there have been two weeks of sentencing witnesses, testimony and evidence presented by both the government and defense to the court. It is not the purpose of this post to detail the testimony and evidence per se, but rather the mechanics of the sentencing process and how it will likely be carried out. For detailed coverage of the testimony and evidence, in addition to Alexa O’Brien, the reportage of Kevin Gosztola at FDL Dissenter, Julie Tate at Washington Post, Charlie Savage at New York Times and Nathan Fuller at the Bradley Manning Support Network has been outstanding.

All that is left are closing arguments and deliberation by Judge Lind on the final sentence

she will hand down. So, what exactly does that portend for Bradley Manning, and how will it play out? Only Judge Lind can say what the actual sentence will be, but there is much guidance and procedural framework that is known and codified in rules, practice and procedure under the UCMJ.

Initially, the obvious should be stated, Bradley Manning is in front of an Army court martial process under the UCMJ, and while there is much similar to the traditional state and federal civilian trial processes covered over the years here, much is different and unique. There has been much said about the process in terms of the Manning trial in terms of the secrecy, lack of transparency in docket items and evidence and closed proceedings. Much of it is fair, some is not. Having been involved in a few UCMJ proceedings, the issues of poor access to docket items and pleadings is not unique to the Manning trial, it is inherent in the decentralized and rigid UCMJ system. That is certainly something that is an issue compared to civilian systems and needs to be improved on by the military.

By the same token, the secrecy and utilization of closed proceedings for portions of the trial were not necessarily much different than would have occurred in a federal District Court which also can utilize closed proceedings as well as the CIPA process. All in all, many defense attorneys I know that have practiced in both jurisdictions have, surprisingly, found the UCMJ process to be generally fair and protective of defendants' rights. Certainly others may differ, but that comports with my experience as well. That is no comment on the Manning proceedings, but just a general observation.

With that overview in mind, let's take a look at how the process looks to play out for Pvt. Manning. As stated above, the evidentiary portion of the sentencing process concluded late last week. Rule for Courts-Martial (RCM) 1001 outlines the presentation of sentencing evidence and what qualifies as sentencing evidence.

Specifically, the prosecution presents personnel records which include the accused's marital status, number of dependents, character of prior service, performance reports, prior convictions, and any other personnel records which were made or maintained in accordance with Army regulations such as prior non-judicial punishment and letters of reprimand/counseling.

Thereafter, the prosecution presents evidence in aggravation which is defined as evidence directly relating to or resulting from the offenses for which the accused has been found guilty. This may include evidence of financial, social, psychological, medical impact on victims and adverse impacts on the mission or discipline of the service units. Lastly, the prosecution may present opinion evidence as to the accused's rehabilitative potential.

The defense then may present any matter in extenuation or mitigation that it considers favorable to the convicted individual, in this case Bradley Manning. This includes information which may explain the circumstances surrounding why the accused committed the offenses and matters which may cause the court to lessen the punishment which may include acts of good conduct, bravery, reputation, or any other trait that is probative and favorable.

The accused has the right to make a sworn or unsworn statement during sentencing. It is not uncommon for a defendant to exercise this right and make an unsworn statement, which is exactly what Bradley Manning did. Other defense evidence frequently consists of letters of support for the accused. Military courts are required to consider all the evidence before them when determining the most appropriate sentence; however, the exact weight that the court gives to any particular piece of evidence is within the deliberative process and discretion of the court, and is not specifically delineated or disclosed with the final sentence.

In a civilian court, many of the separate counts would, for final sentence calculation, be

considered as either concurrent or consecutive for sentence determination and, at least in the federal system, the Federal Sentencing Guidelines would then be calculated to provide a range of sentence to guide the court. That, however, is not how it works under the UCMJ.

Under the UCMJ, once the charges and specifications are reviewed, a maximum punishment is determined by the court and, in this case, as stated above, it is 90 years confinement. The court also has available other sentencing modalities such as dishonorable discharge, reduction to the lowest enlisted grade, a reprimand, and the possibility of a fine (although a fine is uncommon in non-financial cases). At that point, the Court will review what Manning has been convicted of and the sentencing evidence to decide what punishment to impose. The Court does not impose a separate punishment for each charge or specification. The court, i.e. Judge Lind, will come up with one lump sum sentence for the entire case and impose it pursuant to RCM 1003 and 1005.

To whatever sentence Pvt. Manning is given, he will be given credit for 112 days as compensation for mistreatment in his initial pre-trial confinement period at Quantico. You would think the court should take further notice of the abuse inflicted on Bradley Manning in his confinement, but such is unlikely to be the case and, again, there will be no way to tell since the basis of the sentence is not specifically delineated by the court. Credit for time in confinement pre-trial and pre-sentence, since his arrest on May 27, 2010, will also be given.

And that is the process for the sentencing of Bradley Manning. Final statements will be given this morning and Judge Lind may well hand down the final sentence as early as this morning or afternoon; Tuesday morning at the likely latest. Once the court has issued its sentence, a host of new factors and processes, including parole and appeal considerations, that are far

different from civilian courts (and arguably much more favorable), will come into play, and those will be explained in a separate post once Judge Lind has issued her sentence.