

March 21, 2012

Via Federal Express

Colonel Denise R. Lind
Chief Judge, 1st Judicial Circuit
U.S. Army Trial Judiciary
U.S. Army Military District of Washington
Office of the Staff Judge Advocate
103 Third Avenue, SW, Suite 100
Fort McNair, DC 20319

Re: Access to Court-Martial Records in *United States v. Bradley Manning*

Dear Chief Judge Lind:

The Center for Constitutional Rights (CCR) represents the Wikileaks media organization and its publisher Mr. Julian Assange regarding access to the court-martial proceedings in *United States v. Bradley Manning* at Fort Meade, Maryland. We write to request that the Court make available to the public and the media for inspection and copying all documents and information filed in the *Manning* case, including the docket sheet, all motions and responses thereto, all rulings and orders, and verbatim transcripts or other recordings of all conferences and hearings before the Court. We have been unable to obtain access to these important documents and have been told that they are not being made available to the public, media or interested parties. As the Manning court martial purports to be a public trial, we cannot understand why critical aspects of the proceedings are being withheld from public view. As Circuit Judge Damon Keith wrote in *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir. 2002): “Democracies die behind closed doors.” We urge the Court to take the action required by military law and the Constitution and make these documents available.

First, there is no dispute that military law (including RCM 806) mandates a presumption of open, public court-martial trials, which may be overcome only in limited circumstances based on specific findings that closure is necessary. The public, including the media, have First Amendment and common law rights of access to criminal trials. There is also no dispute that the public has a compelling interest in obtaining access to all documents and information filed in Pfc. Manning’s case given the nature of his alleged offenses. Access for media organizations, including groups such as Wikileaks which provide groundbreaking independent reporting on issues of great international significance, is especially important to ensure transparency, freedom of the press, and the integrity of these proceedings. The fairness of the proceedings have already been called into doubt by strong evidence and recent findings by United Nations Special Rapporteur on Torture, Juan Mendez, that Pfc. Manning suffered cruel, inhuman and degrading treatment – if not torture – during an 11-month period of solitary pretrial confinement in Kuwait and at Marine Corps Base Quantico.

Second, Wikileaks and Mr. Assange also have a unique and obvious interest in obtaining access to documents and information filed in this case. For more than a year, there has been intense worldwide speculation that hundreds of thousands of allegedly classified diplomatic cables published by Wikileaks – as well as *The New York Times*, *The Guardian*, and other international media organizations – were provided to Wikileaks and/or Mr. Assange by Pfc. Manning. Mr. Assange notably has a particular personal interest in this case because it appears that federal prosecutors in the Eastern District of Virginia have obtained a sealed indictment against him concerning matters that, based on prior official statements, will likely be addressed in Pfc. Manning’s court-martial.

Notwithstanding these substantial interests, the *Manning* court-martial case thus far has not proceeded with the requisite openness. Instead, to date this court-martial reflects – and indeed compounds – the lack of openness experienced in Pfc. Manning’s prior Article 32 hearing. Documents and information filed in the case are not available to the public anywhere, nor has the public received appropriate prior notice of issues to be litigated in the case. For example, undersigned counsel attended the motions hearing on March 15, 2012, and determined that it was not possible to understand fully or adequately the issues being litigated because the motions and response thereto were not available. Without access to these materials, the *Manning* hearings and trial cannot credibly be called open and public. We do not understand how a court-martial proceeding can be deemed to comply with the UCMJ or the Constitution unless its proceedings are accessible in a timely fashion. The public and our clients must be given access to the legal filings when filed and prior to arguments before the Court.

In addition, like the prior Article 32 hearing, it appears that a number of substantive issues are argued and decided in secret, in closed Rule 802 conferences. These important issues should be argued and decided in open court and on the record. This impedes the public’s and media’s right to a public trial. For example, when the undersigned was in court we were informed that the Court had signed a pre-trial publicity order apparently after a closed door 802 discussion with counsel. The argument regarding such an order, the decision and the order itself should have happened in public. This is particularly so because the order concerns what can and cannot be said to the public and press; an order of that sort should be dealt with in open court.

We therefore request that the Court order disclosure of all documents and information filed in the *Manning* case, and further implement procedures similar to those used in connection with military commission proceedings at Guantánamo Bay to ensure that information is accessible to the public in a timely and meaningful fashion. Specifically, we request that the Court enter an order requiring (a) immediate public access to all documents and information filed to date in this case, and (b) public disclosure of documents and information filed now or in the future, including disclosure of motions and responses thereto on a real-time basis, prior to argument and rulings on such motions.

We respectfully request that the Court enter such an order, or otherwise respond to this request, by Friday, March 30, 2012, in order to allow Wikileaks and Mr. Assange to seek any further judicial relief that may be necessary to protect their rights and the rights of the media and the general public.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

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