

## DECLARATION OF SHAYANA KADIDAL

I, Shayana Kadidal, hereby declare as follows:

1. I am an attorney with the Center for Constitutional Rights (“CCR” or “the Center”) and, along with others, represent the petitioners in this case. I make this declaration in support of Petitioners’ application for a writ of mandamus.

2. The Center for Constitutional Rights is a nonprofit public interest law firm in New York, where I have worked since 2001. I am a member of the bars of the State of New York and the District of Columbia, as well as several federal courts including the United States Supreme Court. I received my law degree in 1994 from Yale Law School, where I was a member of the law journal, and was afterwards a law clerk to Judge Kermit V. Lipetz of the United States Court of Appeals for the First Circuit. I have worked on a large portion of CCR’s post-9/11 litigation, including both cases successfully challenging the indefinite detention of foreign nationals at Guantánamo Bay Naval Station before the Supreme Court, *Rasul v. Bush*, 542 U.S. 466 (2004) and *Boumediene v. Bush*, 553 U.S. 723 (2008), and another case decided two terms ago at the Court, *Holder v. Humanitarian Law Project*, 561 U.S. \_\_\_, 130 S. Ct. 2705 (2010). I am currently managing attorney of CCR’s Guantánamo litigation project, a position I have held since late 2006. In that capacity I hold a current Top Secret//SCI clearance from the Justice Department.

3. CCR is counsel to the publisher of the WikiLeaks media group, Julian Assange, and Wikileaks. On behalf of Mr. Assange and Wikileaks the Center has sought to ensure public access to the proceedings in *United States v. Bradley Manning*, a Court Martial prosecution taking place in the Military District for Washington, D.C. and presided over by Chief Judge Col. Denise Lind. Manning is charged with potentially capital offenses for allegedly providing

materials later published by WikiLeaks and a large number of other media outlets including the *New York Times*, *The Guardian*, *Der Spiegel*, and others.

4. Concerned by the lack of transparency surrounding the *Manning* proceedings in general and, in particular, the lack of access to critical – and presumptively public – documents and filings in the case, the Center sent two letters to the Court requesting broader public access to the proceedings and to documents related to the *Manning* case. The first such letter, dated March 21, 2012, was addressed to Chief Judge Lind and set forth the constitutional and common law standards requiring broad public access to court martial proceedings, including access to non-classified documents filed in the case. (The March 21, 2012 letter is attached hereto as Exhibit A). On April 23, 2012, the Center sent a similar letter addressed to David Coombs, counsel to Bradley Manning, with a request that he deliver a copy to the Court and bring it to the attention of Chief Judge Lind. (The April 23, 2012 letter is attached as Exhibit B.) Both letters request public access to various documents in the *Manning* case including, *inter alia*, court orders, transcripts, and government filings, none of which have been made public to date. They also express concern about fact that many substantive matters are argued and decided in closed session during RCM 802 hearings, undermining this historic proceedings transparency and legitimacy. The April 23 letter also requests, consistent with the presumption of public access to military commissions proceedings, that all 802 conferences be reconstituted in open court.<sup>1</sup>

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<sup>1</sup> A third letter from the Reporters’ Committee for Freedom of the Press, dated March 12, 2012 and addressed to Defense Department General Counsel Jeh Johnson, requesting implementation of “the same measures provided for in the revised regulations governing trials by military commission” at Guantánamo to allow access to documents in the *Manning* proceedings, is appended as Exhibit C.

5. On April 23, 2012, I attended a pretrial hearing in *United States v. Manning* at the Magistrate's Court at Ft. Meade, Maryland. During that hearing one of the first issues addressed by the Court was CCR's April 23, 2012, letter demanding public access to the proceedings.

6. I took handwritten notes of the colloquy surrounding CCR's letter, which I relate in the following paragraphs, as no official transcript has been released to the public. (Indeed, there are no publicly-available transcripts of *any* proceedings before the Court Martial in *Manning*, including the RCM Article 32 hearings that took place beginning on December 16, 2011.). Quotations used in the following paragraphs are taken from my handwritten notes.

7. The Court stated that it had received CCR's letters, including the one addressed to David Coombs, and had entered both of them into the record in the case: "The Court has marked as appellate exhibit #66 a letter from the Center for Constitutional Rights. I received an earlier letter in March. Both are now [part of] appellate exhibit #66 in the record."

8. The Court then ruled on the requests. "The Court finds as follows: The letter asks that an attorney from the Center be allowed to address the Court. The letter is basically a request for intervention. That request is denied."

9. The Court went on to spell out some of its reasoning for denying CCR to access to critical documents in the case, including nonclassified portions the transcripts, court orders, and government filings. The Court stated that, "Documents are subject to a common law of access. That Common Law right of access is not absolute," citing *Nixon v. Warner Communications*, 435 U.S. 589 (1978). "This court also considers the Freedom of Information Act.... The common law right of access may be satisfied by FOIA. *Id.* at 603-606." The Court went on to imply that it lacked control over release of documents that might otherwise be subject to FOIA: "The Court is not the custodian of the record at trial," citing RCM 501, 808, and 1103. "Neither is the Court

the release authority under FOIA.” Chief Judge Lind gave no indication in her discussion that she believed the First Amendment right of public access applied to documents.

10. In short, the Court denied CCR the relief requested in our letters.

11. Prior to (and since) the hearing, a number of documents filed by the defense were publicly posted on defense counsel David Coombs’ website, <http://www.armycourtmarialdefense.info/>.<sup>2</sup> These include defense motions and replies in support of those defense motions, as well as defense responses to government motions. These defense filings were redacted by the government pursuant to a review procedure apparently agreed to by the parties.

12. However, to this day, *none* of the corresponding government filings—either government motions or government responses to defense motions—have been made publicly available anywhere. Indeed, it appears from the redacted defense documents that are available on the defense website that the government is insisting that any quotation from its own filings be redacted from the public version of the defense document solely on the basis that it is part of a government filing. *See, e.g.*, Defense Reply re. Motion to Compel Depositions (13 Mar. 2012), at ¶¶ 14-16;<sup>3</sup> Defense Reply re. Motion to Compel Discovery (13 Mar. 2012), at ¶¶ 2, 3, 3 n.1, 5.<sup>4</sup> This is so despite the fact that at the hearing the government attorney appeared to be quoting arguments from the briefs at the podium.

13. At the April 23 hearing defense counsel stated that it had offered to post government filings (after redaction by the government) as well, but that the government objected to this proposed mode of making its filings available to the public. At the hearing it was also stated that there was a RCM 802 conference on this very issue, and that a court order relevant to

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<sup>2</sup> It is not clear whether every document filed by the defense has yet been posted in redacted form.

<sup>3</sup> Available at [https://docs.google.com/file/d/0B\\_zC44SBaZPoQzFkT1ZtREtCbDg/edit](https://docs.google.com/file/d/0B_zC44SBaZPoQzFkT1ZtREtCbDg/edit)

<sup>4</sup> Available at [https://docs.google.com/file/d/0B\\_zC44SBaZPoV1FNVDNDc3FueVU/edit](https://docs.google.com/file/d/0B_zC44SBaZPoV1FNVDNDc3FueVU/edit)

the subject was issued on March 28, 2012. Yet, that order has not been publicly disclosed, nor have the original pleadings and arguments of the parties on the subject.

14. The Court's own orders, including the protective order, case management order, and pretrial publicity order, are not publicly available in documentary form. During the hearing on April 23, the Chief Judge Lind read several orders into the record from the bench. Most of the first hour of the session consisted of her reading several orders in this manner—so rapidly that it appeared she was losing her voice, and asked an assistant for water, near the end of that hour. Yet significantly, because there are also no publicly-available transcripts of the proceedings on April 23, the notes of those few members of the press and public who were present at the hearing are the only records of those orders that any members of the public have access to. The court gave no indication that there is currently any schedule contemplated for publication of redacted transcripts.

15. As a general matter, it was extremely difficult to follow what was being discussed and/or decided during the hearing without the having had an opportunity to read the Court's prior orders or the government's filings.

#### **Comparison With Guantanamo Military Commissions and Habeas Proceedings**

16. CCR has had substantial experience litigating habeas petitions on behalf of Guantanamo detainees in federal court under strict rules of confidentiality. CCR also has experience litigating cases in the Military Commission system established in Guantanamo by the President to adjudicate alleged war crimes. Based on our experiences in habeas cases and Military Commissions proceedings, it is striking how much *less* public access the Manning proceedings provides than these forums.

17. Many dozens of Guantanamo habeas cases have been consolidated in the district court for the District of Columbia. In these cases, all of the various protective orders in place since 2004 have been made public upon issuance. The courts have at various times allowed the intervention of representatives of the press and public seeking to vindicate a right of public access to the proceedings and in particular to documents filed during the proceedings. *See, e.g.,* Press Applicants' Motion to Intervene for the Limited Purpose of Opposing Government's Motion to Confirm Designation of Unclassified Factual Returns as 'Protected,' Dkt. No. 1526, *In re Guantanamo Bay Detainee Litigation*, No. 08-mc-442 (D.D.C. Jan 14, 2009) (motion of *New York Times*, AP, and *USA Today*, opposing sealing of unclassified information in Guantánamo detainee habeas cases); Minute Order (April 2, 2009) (granting motion). The district and appellate courts have gone to pains to allow certain parts of the courtroom proceedings to take place in public. For the most part, redacted versions of all judicial opinions and the filings of the parties, have been produced and made available via PACER quickly.

18. In the Military Commissions, far more openness also prevails than in the Manning proceeding. For example, the protective order applicable to proceedings before the commissions is publicly available, and court orders and submissions by the parties are routinely posted in redacted form on the website for the Military Commissions, <http://www.mc.mil/>, within a maximum of fifteen days even where classification review and redaction occurs. Access to the courtroom by members of the press and public (including observers from human rights organizations) is facilitated by the use of a glass partition between the court and the audience and an audio delay that allows the authorities to cut off the sound feed whenever classified information is inadvertently discussed during the proceedings. A viewing location has been set up at Ft. Meade allowing spectators who are unable to travel to Guantánamo to see the

proceedings in real time over closed-circuit television. Transcripts of these public courtroom proceedings are also posted in a time frame comparable to that provided for high-profile criminal trials in the Article III courts; for instance, on Saturday May 5, 2012, during the thirteen hour arraignment proceedings for Khalid Sheikh Mohammed and other accused planners of the 9/11 attacks, transcripts from the morning sessions were already posted on the website several hours before the end of the evening sessions that night around 10:28pm.

19. Written rules governing access to the proceedings and classification review are codified in Section 949d(c)(2) of the Military Commissions Act of 2009 (allowing closure only upon specific findings) and in the published *Regulation for Trial by Military Commission* (2011 Ed.).<sup>5</sup> Chapter 19 of that Regulation provides rules governing “Public Access to Commission Proceedings and Documents,” including provisions ensuring access for spectators “to the maximum extent practicable” (§ 19-6), allowing for “Public Release of transcripts, Filings, Rulings, Orders and Other Materials” within fixed, short time frames (one day for items requiring no classification review and 15 days for items requiring such review) (§ 19-4), and providing that the presiding military judge may resolve any dispute raised over public access to judicial materials (§ 19-3). Notably, the general section on public access (§ 19-1) notes the special importance of access to documents in conforming to the statutory requirement of transparency:

Making military commissions accessible to the public includes providing access to military commission proceedings, transcripts, pleadings, filings, rulings, orders and other materials used at military commission proceedings, to the extent that these materials are not classified, covered by a protective order, or otherwise protected by law

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<sup>5</sup> Available at [http://www.mc.mil/Portals/0/Reg\\_for\\_Trial\\_by\\_mcm.pdf](http://www.mc.mil/Portals/0/Reg_for_Trial_by_mcm.pdf)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 18th day of May, 2012.

  
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Shayana Kadidal

**Exhibit A**

centerforconstitutionalrights  
on the front lines for social justice

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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*Counsel for Wikileaks and Julian Assange*

cc: Jennifer Robinson

Jeh C. Johnson  
General Counsel  
Office of the General Counsel  
United States Department of Defense  
1600 Defense Pentagon  
Room 3E788  
Washington, D.C. 20301-1600

**Exhibit B**

April 23, 2012

**Via Email (coombs@armycourt martialdefense.com)**

David E. Coombs, Esq.  
Law Office of David E. Coombs  
11 South Angell Street, #317  
Providence, RI 02906

Re: *United States v. Bradley Manning*

Dear Mr. Coombs:

The Center for Constitutional Rights (CCR) represents the Wikileaks media organization and its publisher Julian Assange regarding access to the court-martial proceedings in *United States v. Bradley Manning* at Fort Meade, Maryland. We are also making this request for access on behalf of the Center for Constitutional Rights, a non-profit legal and educational organization. We ask that you forward copies of this letter to Chief Judge Lind and counsel for the prosecution in advance of the hearings commencing April 24, 2012.

By letter to Chief Judge Lind dated March 21, 2012, CCR requested public access to documents and information filed in this 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 received no response to our letter, and, with the exception of certain redacted defense motions recently published on your website, continue to be denied access to the requested materials without legal justification or other explanation.

Accordingly, in order to avoid any confusion and ensure that we have exhausted efforts to obtain meaningful, timely access to documents and information filed in this case without further litigation, we now renew our request for public access to these materials, including without limitation the following items referenced in open court during the arraignment and motions hearings on February 23, March 15, 16 2012:

- All orders issued by the Court, including the case management order, pretrial publicity order, protective order regarding classified information, and other protective orders;
- The government's motion papers and responses to the redacted defense motions; and
- Authenticated transcripts of all proceedings, including in particular transcripts of open court sessions, at the same time and in the same form they are provided to counsel for the parties.

This request includes timely public access to all documents and information filed subsequent to the March 16 hearing and all such documents and information filed in the future. These should be provided when filed.

We further request that the Court require all conferences held pursuant to R.C.M. 802 be held in open court and be made part of the record in this case, to the extent they involve substantive matters, and regardless of whether the parties agree to have those substantive matters discussed and decided off the record. Moreover, we request that all Rule 802 conferences which have already occurred be reconstituted in open court.

To the extent these requests are denied (or not decided) we request an explanation for the purported factual and legal basis for such result. We expect an immediate decision as the loss of First Amendment rights in this context “for even minimal periods of time” constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)).

As you are aware, the First Amendment to the Constitution and the federal common law guarantee a right of public access to criminal proceedings, including courts-martial, except in limited circumstances. See *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982); *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). In particular, “[t]he First Amendment guarantees the press and the public a general right of access to court proceedings and *court documents* unless there are compelling reasons demonstrating why it cannot be observed.” *Washington Post Co. v. Robinson*, 935 F.2d 282, 287 (D.C. Cir. 1991) (emphasis added) (citing cases); see also *In re Washington Post Co.*, 807 F.2d 383, 390-91 (4th Cir. 1986) (same). Access may only be denied where the government establishes that closure is necessary to further a compelling government interest and narrowly tailored to serve that interest, and the court makes specific findings on the record supporting the closure to aid review. See *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984). Any motion or request to seal a document or otherwise not disclose a document to the public must be “docketed reasonably in advance of [its] disposition so as to give the public and press an opportunity to intervene and present their objections to the court.” *In re Washington Post Co.*, 807 F.2d 383, 390-91 (4th Cir. 1986) (quoting *In re Knight Publishing Co.*, 743 F.2d 231, 234 (4th Cir. 1984)).

Indeed, it is reversible error for a court to withhold from the public each and every document filed, subject to further review and disclosure, because such procedures “impermissibly reverse the ‘presumption of openness’ that characterizes criminal proceedings ‘under our system of justice.’” *Associated Press v. District Court*, 705 F.2d 1143, 1147 (9th Cir. 1983) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980)). It is “irrelevant” that some of the pretrial documents might only be withheld for a short time. *Id.*

The Court’s authority to grant CCR’s requests for public access pursuant to the All Writs Act, 28 U.S.C. § 1651(a), is equally clear and indisputable. See, e.g., *Denver Post Co. v. United States*, Army Misc. 20041215 (A.C.C.A. 2005), available at 2005 CCA LEXIS 550 (exercising jurisdiction and granting writ of mandamus to allow public access); see also *ABC, Inc. v. Powell*, 47 M.J. 363, 365 (C.A.A.F. 1997), available at 1997 CAAF LEXIS 74. This is particularly true given the Supreme Court’s repeated conclusions that openness has a positive effect on the truth-determining function of proceedings and *can affect outcome*. See *Gannett Co. v. DePasquale*, 443 U.S. 368, 383 (1979)

(“Openness in court proceedings may improve the quality of testimony, induce unknown witnesses to come forward with relevant testimony, cause all trial participants to perform their duties more conscientiously”); *Richmond Newspapers*, 448 U.S. at 596 (open trials promote “true and accurate fact-finding”) (Brennan, J., concurring); *Globe Newspaper*, 457 U.S. at 606 (“[P]ublic scrutiny enhances the quality and safeguards the integrity of the factfinding process.”).

Finally, senior CCR attorney Shayana Kadidal will attend the hearing in this case on April 24, 2012. We request that he be afforded the opportunity to address the Court directly and present arguments concerning our requests for public access to documents and information filed in this case.

If you, the prosecution or the Court have any questions concerning request, please do not hesitate to contact Mr. Kadidal at (212) 614-6438, shanek@ccrjustice.org, or Michael Ratner at (917) 916-4554.

Very truly yours,

Michael Ratner  
Wells Dixon  
Shayana Kadidal

*Counsel for Wikileaks & Julian Assange*

**Exhibit C**

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

March 12, 2012

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www.rcfp.org

Lucy A. Dalglish  
Executive Director

Mr. Jeh C. Johnson  
General Counsel  
U.S. Department of Defense  
1400 Defense Pentagon  
Washington, D.C. 20301-1400

*Re: Access to records in the court-martial of Pfc. Bradley Manning*

Dear Mr. Johnson:

The media coalition (“coalition”) comprising the below-listed national and local news organizations and associations writes to express its concern about reports that journalists covering the court-martial of Pfc. Bradley Manning have been unable to view documents filed in the proceeding. *See, e.g.,* Josh Gerstein, *Bradley Manning Defers Plea in WikiLeaks Case*, POLITICO, Feb. 23, 2012, <http://www.politico.com/news/stories/0212/73214.html> (reporting that details of a proposed defense order aimed at limiting pretrial publicity in the case and other motions and orders filed therein and discussed during the first day of Manning’s court-martial were not publicly available). In light of the upcoming hearing this week, we respectfully urge the U.S. Department of Defense to take swift action to implement measures that will enable members of the news media to view documents filed in connection with the proceeding beforehand.

You will recall a similar group comprising news organizations and those who advocate on their behalf last fall successfully appealed to the Defense Department for greater and easier access to important information about military commission proceedings held at Guantanamo Bay. *See, e.g.,* U.S. Dep’t of Def., *Regulation for Trial by Military Commission* (2011 Edition). As such, the coalition respectfully urges the government to implement similar reforms in its regulations governing court-martial proceedings generally and that of Manning specifically to ensure that military personnel tried stateside have the same rights to a public trial as those afforded accused terrorists.

The prosecution of an American service member for the alleged leak of the largest amount of classified information in U.S. history is a matter of intense public interest, particularly where, as here, that person’s liberty is at stake. Public oversight of the proceeding is of vital importance. Indeed, the interest in openness in this case is not mere curiosity but rather a concern about the very integrity of this nation’s military courts — their ability to oversee the proceedings by which military personnel have their day in court to answer to and defend against allegations of serious offenses.

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STEERING COMMITTEE

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*The Associated Press*

WOLF BLITZER  
*CNN*

DAVID BOARDMAN  
*Seattle Times*

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*Creators Syndicate*

ERIKA BOLSTAD  
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JIM RUBIN  
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CRISTINE RUSSELL  
*Freelance*

BOB SCHIEFFER  
*CBS News*

ERIC SCHMITT  
*The New York Times*

ALICIA SHEPARD  
*National Public Radio*

PAUL STEIGER  
*Pro Publica*

PIERRE THOMAS  
*ABC News*

SAUNDRA TORRY  
*USA Today*

JUDY WOODRUFF  
*PBS: The NewsHour*

*Affiliations appear only  
for purposes of identification.*

Despite the recognition that such access helps promote a perception of fairness and foster a more informed and well-educated public, the overwhelming majority of court records filed in Manning's court-martial have remained shielded from public view. *See Gerstein, supra*. This secrecy extends even to the court's docket, meaning that journalists covering the proceeding are often unaware of what is being discussed therein. *See id.* The U.S. Supreme Court and the nation's highest military courts have said the American press and public have a First Amendment right of access to criminal proceedings. But by refusing to provide reasonable and proper notice of such proceedings and the nature of the documents filed in connection therewith, the military justice system has severely undercut this foundational tenet of American democracy.

Perhaps more significantly, though, this policy belies the Defense Department's recent renewed commitment to transparency in the trials of accused terrorists at Guantanamo Bay, as reflected in its creation of a new Web site that contains documents filed in the proceedings, its establishment of a viewing location at Fort Meade that allows the press and public to watch a closed-circuit broadcast of the hearings and its adoption of updated regulations governing the commissions. These new guidelines attempt to address the complaints of journalists covering trials at Guantanamo Bay that the long classified review procedures and otherwise heightened secrecy are significant obstacles to their effective reporting on the offshore commissions. In response to these concerns, the government has committed to providing reporters contemporaneous access to court documents from each of the military commission's cases against accused terrorists and a new process whereby they may object to the designation of information as "protected" and thereby shielded from public view. Ironically, however, these journalists' stateside counterparts covering Manning's military trial face the same unnecessary degree of secrecy that makes reporting on military court proceedings incredibly difficult.

Accordingly, the coalition respectfully urges the Defense Department to implement in domestic court-martials the same measures provided for in the revised regulations governing trials by military commission, namely:

- posting online, on the military commission Web site or elsewhere, filings and decisions that do not require classification security review within one business day, posting filings that do require a security review within 15 business days (except in "exceptional circumstances") and posting unofficial transcripts of the proceedings "as soon as practicable after the conclusion of a hearing each day" (Regulation for Trial by Military Commission, *supra*, at 75-76);
- authorizing military judges overseeing court-martials to rule on any dispute raised by the parties or the public regarding filings, rulings, orders or transcripts over whether the document was appropriately designated as "protected" (*id.* at 69); and
- allowing the prosecution to take an interlocutory appeal on any order or ruling of a military judge that relates to the closure of proceedings to the public or the protection of classified or protected information; *id.* at 105.

Swiftly adopting these media access reforms will help ensure that the public's right of access to stateside military trials is at least as strong as its right to participate in and serve as a check upon the judicial process that oversees trials of accused terrorists. As in the past, we are happy to assist the government in the development of these reforms. Please do not hesitate to contact us if we can be of further assistance to you.

Sincerely,

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Lucy A. Dalglish, Executive Director  
Gregg P. Leslie, Legal Defense Director  
Kristen Rasmussen, McCormick Legal Fellow

***On behalf of the following:***

**ABC News**  
**Advance Publications, Inc.**  
**A. H. Belo Corporation**  
**Allbritton Communications Company**  
**ALM Media, LLC**  
**American Society of News Editors**  
**The Associated Press**  
**Association of Alternative Newsweeklies**  
**Atlantic Media, Inc.**  
**Bloomberg News**  
**Cable News Network, Inc.**  
**CBS News**  
**Cox Media Group, Inc.**  
**Digital First Media**  
**Digital Media Law Project**  
**Dow Jones & Company, Inc.**  
**The E.W. Scripps Company**  
**First Amendment Coalition**  
**Gannett Co., Inc.**  
**Hearst Corporation**  
**Massachusetts Newspaper Publishers Association**  
**The McClatchy Company**  
**Meredith Corporation**  
**Military Reporters & Editors**  
**MPA – The Association of Magazine Media**  
**The National Press Club**  
**National Press Photographers Association**  
**NBC News**  
**New York Daily News**  
**The New York Times**  
**Newspaper Association of America**

**The Newspaper Guild – CWA**  
**The Newsweek/Daily Beast Company LLC**  
**North Jersey Media Group Inc.**  
**NPR, Inc.**  
**Online News Association**  
**POLITICO LLC**  
**Radio Television Digital News Association**  
**The Reporters Committee for Freedom of the Press**  
**Reuters News**  
**Society of Professional Journalists**  
**Stephens Media LLC**  
**Time Inc.**  
**Tribune Company**  
***USA TODAY***  
***The Washington Post***  
**WNET**

cc: Col. Denise Lind, JAG Corps, U.S. Army  
David Coombs, Counsel for Pfc. Bradley Manning  
Capt. Ashden Fein, JAG Corps, Special Prosecutor, U.S. Army  
Douglas B. Wilson, Assistant Secretary of Defense for Public Affairs  
U.S. Department of Defense