

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

March 12, 2012

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.

1101 Wilson Blvd., Suite 1100
Arlington, Va. 22209-2211
(703) 807-2100
www.rcfp.org

Lucy A. Dalglish
Executive Director

STEERING COMMITTEE

SCOTT APPLEWHITE
The Associated Press

WOLF BLITZER
CNN

DAVID BOARDMAN
Seattle Times

CHIP BOK
Creators Syndicate

ERIKA BOLSTAD
McClatchy Newspapers

JESS BRAVIN
The Wall Street Journal

MICHAEL DUFFY
Time

RICHARD S. DUNHAM
Houston Chronicle

ASHLEA EBELING
Forbes Magazine

FRED GRAHAM
InSession

JOHN C. HENRY
Freelance

NAT HENTOFF
United Media Newspaper Syndicate

DAHLIA LITHWICK
Slate

TONY MAURO
National Law Journal

DOYLE MCMANUS
Los Angeles Times

ANDREA MITCHELL
NBC News

MAGGIE MULVIHILL
New England Center for Investigative Reporting

BILL NICHOLS
Politico

SANDRA PEDDIE
Newsday

DANA PRIEST
The Washington Post

DAN RATHER
HD Net

JIM RUBIN
Bloomberg News

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,

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