

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

Center for Constitutional)	MOTION TO ATTACH TRIAL TRANSCRIPT
Rights, et al.,)	IN RESPONSE TO COURT ORDER
Petitioners-Appellants)	
)	Crim. App. Dkt. No. Misc. 20120514
v.)	
)	USCA Misc. Dkt. No. 12-8027/AR
UNITED STATES OF AMERICA)	
)	
and)	
)	
Colonel DENISE LIND)	
Military Judge,)	
Respondents-Appellees.)	
)	

TO THE HONORABLE JUDGES OF THE UNITED STATES
COURT OF APPEALS FOR THE ARMED FORCES

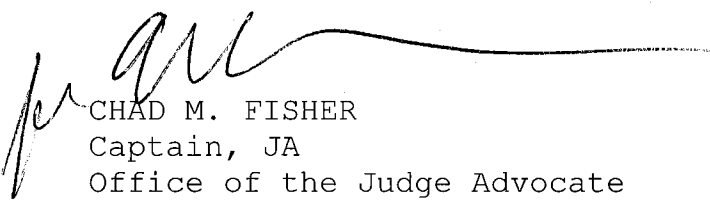
COME NOW the United States Government, by and through its undersigned attorneys of record, and hereby submits its Motion to Attach Trial Transcript in Response to Court Order in the above captioned case.

On July 24, 2012, this Honorable Court issued an interlocutory order to the Government to file the ruling and analysis of the military judge regarding Petitioner's requested order for public access to all documents and information filed in the case of United States v. Private First Class Bradley Manning. The Government hereby attaches an excerpt of the authenticated transcript from the April 24, 2012, Article 39(a), UCMJ, session, wherein the military judge ruled on Petitioner's

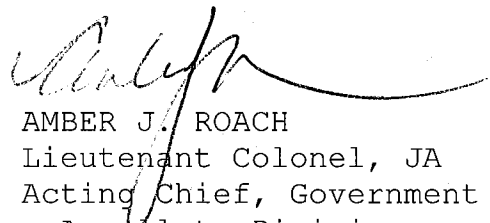
request. No other motions or filings were submitted with regard to Petitioner's claims.

The Government will provide a copy of this filing and its attachment to counsel for the accused, Private First Class Bradley Manning.

WHEREFORE, the Government respectfully requests that its motion be granted.




CHAD M. FISHER
Captain, JA
Office of the Judge Advocate
General, United States Army
Appellate Government Counsel
9275 Gunston Road
Fort Belvoir, VA 22060
(703) 693-0783
Chad.m.fisher.mil@mail.mil
Lead Counsel
C.A.A.F. Bar Number 34883



AMBER J. ROACH
Lieutenant Colonel, JA
Acting Chief, Government
Appellate Division
U.S.C.A.A.F. Bar No. 35224

CERTIFICATE OF FILING AND SERVICE

I certify that the original was electronically filed to efiling@armfor.uscourts.gov on 3 August 2012, and contemporaneously served electronically on appellate defense counsel, Mr. Shayana D. Kadidal at shanek@ccrjustice.org.


ANGELA R. RIDDICK
Paralegal Specialist
Government Appellate
Division

Original

VERBATIM 1

EXCERPT OF TRIAL TRANSCRIPT
BY ORDER OF C.A.A.F. 2
(and accompanying papers)

of

MANNING, Bradley E.
(Name, Last, First, Middle Initial)

445-98-9504
(Social Security Number)

PFC/E3
(Rank)

Headquarters and
Headquarters Company,
United States Army Garrison
(Unit/Command Name)

U.S. Army
(Branch of Service)

Fort Myer, Virginia 22211
(Station or Ship)

by

GENERAL COURT-MARTIAL

Convened by Commander
(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON
(Unit/Command of Convening Authority)

Tried at

Fort Meade, Maryland
(Place or Places of Trial)

on

24 April 2012
(Date or Hearing)

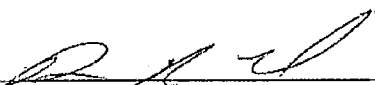
Companion Case(s): None

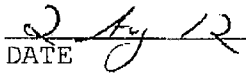
1 Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

2 See inside back cover for instructions as to preparation and arrangement.

**MILITARY JUDGE'S ERRATA (CCR FILING RULING)
UNITED STATES V. MANNING, BRADLEY E.**

Military Judge: COLONEL LIND		Trial Counsel: CPT WHYTE MAJ FEIN		Defense Counsel: MAJ HURLEY MR. COOMBS, ESQ.		Court Reporter: TRISHA WILLIAMS-BUTLER	
LOCATION		CHANGE				INITIALS	
PAGE #	LINE #	FROM	TO	Court Reporter			
5	19	Rules	Rule	DJ			
7	7	determination	determinations	DJ			
11	2	is	are	DJ			
12	2	delete "of what"		DJ			
13	2	is	are	DJ			
14	22	delete "not"		DJ			
16	15	delete "filing"		DJ			
19	6	request	requests	DJ			
20	11	delete "a"		DJ			
20	11	finding	findings	DJ			
20	20	Constitutionally	Congressionally	DJ			
21	5	change "a" to "of"		DJ			
21	11	case, whether	case, whether	DJ			
21	12	exhibit	exhibits	DJ			
 							
 							
 							
 							
 							
 							
 							
 							
 							
 							
 							
 							
 							
 							
 							
 							
 							

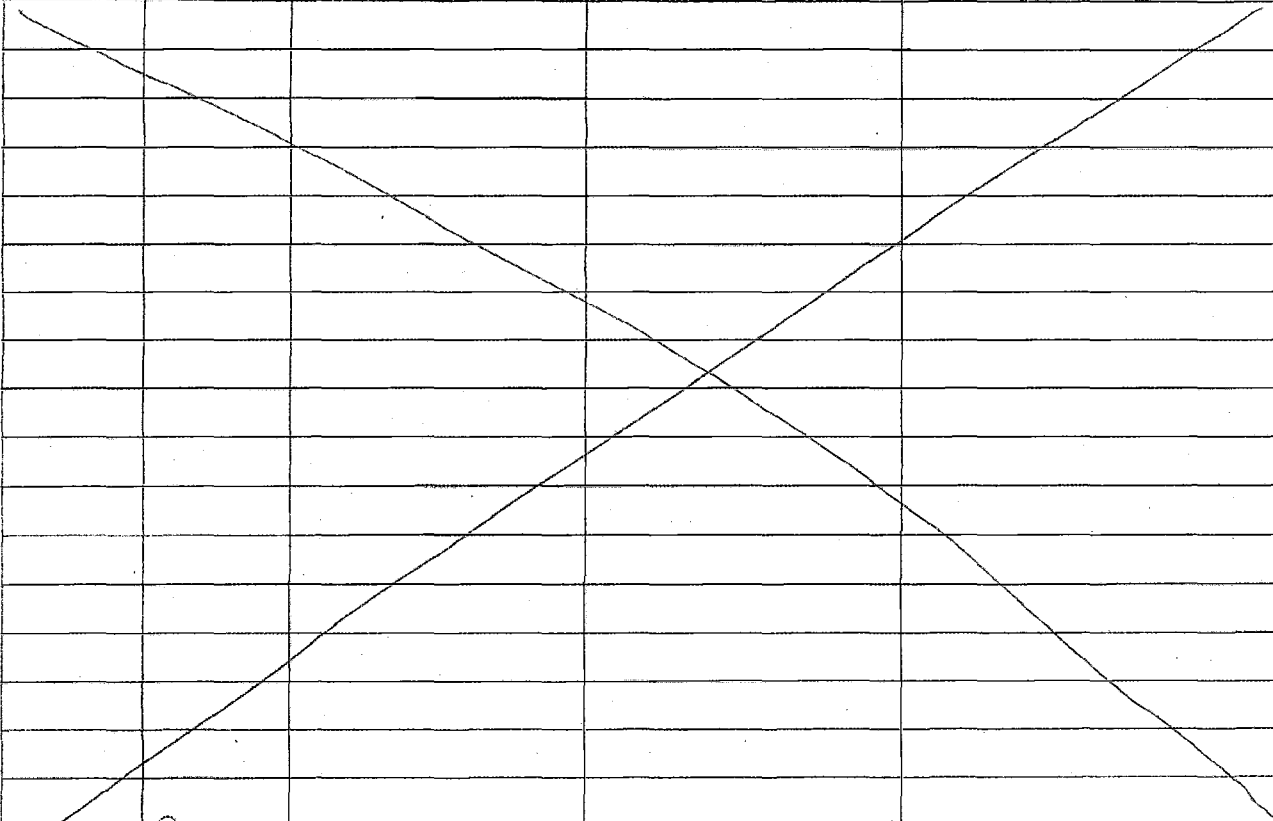




DENISE R. LIND, COL, JA, Military Judge
 DATE

TRIAL COUNSEL ERRATA (CCR FILING RULING)
UNITED STATES V. MANNING, BRADLEY E.

Military Judge: COLONEL LIND	Trial Counsel: CPT WHYTE MAJ FEIN	Defense Counsel: MR. COOMBS, ESQ.	Court Reporter: TRISHA WILLIAMS-BUTLER
---------------------------------	---	--------------------------------------	---

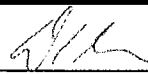
LOCATION		CHANGE		INITIALS
PAGE #	LINE #	FROM	TO	Court Reporter
7	2	documents	document	on audio
7	16	by other approved means	other approved means	
8	1	pleading, and	pleading, or	
9	17	Any communications	Any communication	
11	4	Amicus Curie	Amicus Curiae	Gaw-B
21	12	exhibit	exhibits	on audio
				

(Handwritten signature)

30 July 2012

ALEXANDER S. VON ELTEN, CPT, JA, Assistant Trial Counsel DATE

**DEFENSE COUNSEL ERRATA (CCR FILING RULING)
UNITED STATES V. MANNING, BRADLEY E.**

Military Judge: COLONEL LIND	Trial Counsel CPT WHYTE MAJ FEIN	Defense Counsel: MR. COOMBS, ESQ.	Court Reporter: TRISHA WILLIAMS-BUTLER
LOCATION	CHANGE		INITIALS
PAGE #	LINE #	FROM	TO Court Reporter
NC	NC	No Changes to Document	

DAVID E. COOMBS, ESQ. Civilian Defense Counsel

DATE

DEFENSE COUNSEL ERRATA (CCR FILING RULING)

UNITED STATES V. MANNING, BRADLEY E.

Military Judge: COLONEL LIND	Trial Counsel CPT WHYTE MAJ FEIN	Defense Counsel: MAJ Thomas F. Hurley	Court Reporter: TRISHA WILLIAMS-BUTLER
---------------------------------	--	---	---

LOCATION	CHANGE	INITIALS
----------	--------	----------

PAGE #	LINE #	FROM	TO	Court Reporter
--------	--------	------	----	----------------

		<i>No changes requested</i>	<i>requested</i>	<i>Paw-B</i>
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				
 				

Thomas F. Hurley
THOMAS F. HURLEY, MAJ, JA, DEFENSE COUNSEL

2 August 2012
DATE

1 [The Article 39(a) session was called to order at 1007, 24 April
2 2012.]

3 MJ: Please be seated.

4 This Article 39(a) session is called to order.

5 Trial counsel, please account for parties?

6 TC: Your Honor, all present, all previous parties are present
7 with the following exceptions:

8 Captain Overgaard is no longer sitting at the prosecution
9 table. Captain Whyte is and his credentials already have been
10 previously put on the record.

11 For the defense also, also Captain Tooman is present and
12 Captain Bouchard is no longer present.

13 MJ: Now was Major Kemkes at the last session?

14 TC: He was not, ma'am.

15 MJ: Okay.

16 Let us begin with the defense counsel issue.

17 Now, PFC Manning, do you remember at the arraignment I
18 advised you of your rights to counsel?

19 ACC: Yes, Your Honor.

20 MJ: All right. At that time I advised you that you have the
21 right to be represented by your then detailed defense counsel, who
22 were Major Kemkes and Captain Bouchard.

23

24

1 MJ: They were lawyers certified by the Judge Advocate General
2 as qualified to act as your defense counsel and that they were
3 members of the United States Army's Trial Defense Service. Their
4 services were provided at no expense to you. I also advised you
5 that you have the right to be represented by military counsel of
6 your own selection provided that the counsel you request is
7 reasonably available. If you're represented by military counsel of
8 your own selection then your detailed defense counsel would
9 normally be excused. However, you could request that your detailed
10 defense counsel continue to represent you, but that request would
11 not have to be granted.

12 In addition to your military defense counsel, you have
13 the right to be represented by civilian counsel at no expense to
14 the government. Civilian counsel may represent you along with your
15 military defense counsel; or you could excuse your military defense
16 counsel and be represented solely by your civilian counsel. At the
17 arraignment you advised me that you wish to be represent by Mr.
18 Coombs, and by Major Kemkes, and Captain Bouchard.

19 Do you remember that discussion?

20 ACC: Yes, Your Honor.

21 MJ: All right. I'm looking at Appellate Exhibit LXI, which
22 is a Memorandum for Record, dated 13 April 2012 signed by you, PFC
23 Manning.

24

1 MJ: It states:

2 One, I've thoroughly discussed my options regarding my
3 detailed military counsel with Mr. Coombs. We have spoken about
4 the advantages and disadvantages of retaining my detailed counsel,
5 Major Matthew Kemkes and Captain Paul Bouchard, on my case. I
6 elect to excuse my detailed counsel, Major Kemkes and Captain
7 Bouchard; and I request that Major Joshua Tooman be detailed to my
8 case at my military counsel. I do not request any other defense
9 counsel be detailed to my case at this time.

10 Now did you write this memorandum?

11 ACC: I did. Yes, Your Honor. Yes.

12 MJ: And did you sign it?

13 ACC: Yes, Your Honor.

14 MJ: So do you consent then to having, basically, Major Kemkes
15 and Captain Bouchard being replaced as detailed defense counsel by
16 Captain Tooman?

17 ACC: That is correct, Your Honor.

18 MJ: All right. Mr. Coombs, do you also agree that you've
19 advised PFC Manning and that you concur in this decision?

20 CDC: Yes, Your Honor.

21 MJ: All right. The Court then finds that this is an
22 appropriate change in defense counsel under Rule for Courts-Martial
23 505(d)(2)(b)(2) and R.C.M. 506(c).

24

1 MJ: Captain Tooman, please announce your detailing
2 qualifications for the record.

3 DC: Your Honor, I have been detailed to the court-martial by
4 Lieutenant Colonel Douglas Watkins, the Regional Defense Counsel of
5 the Great Plains Region, United States Army Trial Defense Service.
6 I am qualified and certified under the Article 27(b) and sworn
7 under Article 42(a) of the Uniform Code of Military Justice. I
8 have not acted in any manner which might tend to disqualify me in
9 this court-martial.

10 MJ: All right. Thank you.

11 All right, I would like to begin by going over some
12 issues that have arisen since our last session. Today we will be
13 going over basically those housekeeping issues; as well as
14 addressing discovery issues that have been raised by the parties.

15 May I see the Security Officer Order, please?

16 [The court reporter handed the Military Judge AE XXXIV.]

17 MJ: All right. After the last session the government
18 proposed an order to Court Security Officers and detailed security
19 experts. The defense had no objections to it. So the Court has
20 signed the order to the security experts.

21 [END OF PAGE.]

1 MJ: It basically states:

2 The matter comes before the Court upon Protective Order
3 on 16 March 2012 to prevent the unauthorized disclosure or
4 dissemination of classified national security information which
5 will be reviewed by, or made available to, or is otherwise in the
6 possession of the accused and the parties to this case. The Court
7 finds that this case will involve information that has been
8 classified in the interest of national security. The storage,
9 handling, and control of this information will require special
10 security procedures mandated by statute, Executive Order, and
11 regulation, and access to which requires the appropriate security
12 clearances and "need to know". Under Executive Order 13526, "need
13 to know" means a determination within the executive branch in
14 accordance with the directives issued pursuant to this order that a
15 prospective recipient requires access to specified classified
16 information in order to perform or assist in a lawful and
17 authorized governmental function.

18 Three, pursuant to the authority granted under the
19 Military Rule of Evidence 505, the general supervisory authority of
20 the Court, and in order to protect the national security, it is
21 hereby ordered that:

22 A - Definitions. All definitions in the Protective Order
23 that was already entered shall apply;

24

1 MJ: B - Court Security Officer. Mr. Jay Prather, shall serve
2 as the Court's Security Officer for supervising security
3 arrangements necessary to protect from authorized disclosure any
4 classified documents or information submitted or made available to
5 the Court in connection with the above referenced court-martial.

6 One, the defense may request to disclose classified
7 information to recipients not authorized pursuant to the Protective
8 Order, subject to the approval of the United States or the Court.
9 If such request is approved, the Court Security Officer shall
10 verify that the intended recipients of the classified information
11 hold the required security clearance, signed a Memorandum of
12 Understanding at Appendix 'A' of the Protective Order, and have a
13 need to know. The Court Security Officer may request the
14 assistance of trial counsel to verify whether the intended
15 recipients hold the required security clearance. The Court
16 Security Officer shall promptly notify the United States and the
17 Court whether such intended recipients of classified information
18 satisfy these three requirements.

19 Two, the Court Security Officer shall accept receipt of
20 any pleading, document, or other substantive communication filed by
21 either party that contains classified information or information
22 reasonably believed to be classified, if required.

23

1 MJ: Three, the Court Security Officer shall promptly examine
2 any proceeding or other documents filed by either party that
3 contains classified information or information reasonably believed
4 to be classified to determine any question of derivative
5 classification or any other matter that could be reasonably be
6 believed to relate to classified information, but is not authorized
7 to make classification determinations; that is, whether information
8 is properly classified and verify whether the proceeding or
9 document contains classified information and is properly marked.

10 Four, the Court Security Officer shall promptly deliver
11 to the Court and opposing party any filing by either party that
12 contains classified information, except for any *ex-parte* filing
13 which shall be delivered only to the Court, absent Court approval.

14 Five, the Court Security Officer shall promptly notify
15 the prosecution, as the command's representative, over SIPRNET or
16 by other approved means under Army Regulation 380-5 of any spillage
17 of classified information.

18 C - Security Experts. Detailed security experts shall
19 provide advice to their respective party concerning procedures
20 governing the appropriate storage, handling, and transmittal of
21 classified documents and information, pursuant to the Protective
22 Order and applicable regulations and federal law.

23

1 MJ: Detailed security experts shall also provide their
2 respective party with procedures for preparing any document,
3 pleading, and substantive communication that contains classified
4 information or information reasonably believed to be classified.

5 Detailed security experts should be consulted by the
6 defense and prosecution regarding any question of derivative
7 classification or any other matter that could reasonably be
8 believed to relate to classified information, but are not
9 authorized to make classification determinations; that is, whether
10 information is properly classified.

11 One, a detailed security expert shall review, in-person
12 or over SIPRNET, while in a government facility approved for
13 classified information processing, any pleading, document or
14 subject of communication, including all attachments and enclosures
15 thereto, which contains classified information or information
16 reasonably believed to be classified, whether by original,
17 derivative, or compilation, and verify whether the pleading or
18 document contains classified information and is properly marked.

19 Two, a security expert detailed to the defense shall be
20 present at all times that the defense intends to disclose or elicit
21 classified information under paragraph 3(L)(6) of the Protective
22 Order and shall promptly terminate any conversation whenever the
23 defense elicits or attempts to elicit classified information not
24 previously approved for disclosure by the United States or the

1 Court, or whenever the intended recipient discloses classified
2 information for which the defense has no need to know.

3 MJ: Three, if requested by the defense, a security expert
4 detailed to the defense shall promptly and properly deliver any
5 pleading or document filed by the defense to the Court Security
6 Officer and the prosecution, except for any ex-parte filing which
7 shall be delivered only to the Court or to the Court Security
8 Officer.

9 Four, detailed security experts to the defense shall
10 properly destroy, by means approved for classified information
11 destruction, any documents requested by the defense, in the
12 presence of the defense.

13 Five, detailed security experts to the defense shall
14 promptly notify the Court Security Officer, over SIPRNET, or by
15 other approved means under Army Regulation 380-5 of any spillage of
16 classified information.

17 D - Communications. Any communications related to this
18 case, including internal communications between members of the
19 prosecution or defense; and communications between the parties, the
20 Court, and the Court Security Officer that contains classified
21 information or information reasonably believed to be classified
22 shall not be transmitted over any standard commercial telephone
23 instrument or office intercommunication system, including but not
24 limited to the internet.

1 MJ: Any communication related to this case, including
2 internal communications between members of the prosecution or the
3 defense and communications between the parties, the Court, and the
4 Court Security Officer that contains classified information or
5 information reasonably believed to be classified shall be
6 transmitted over SIPRNET or by other approved means under Army
7 Regulation 380-5.

8 Further ordered, the procedures set forth in this order
9 may be modified by further order of the Court acting under Military
10 Rule of Evidence 505 and the Court's inherent supervisory authority
11 to ensure fair and expeditious trial.

12 Five, Army Regulation 380-5, no procedure in this order
13 shall operate to supersede, or cause a violation of any provision
14 of Army Regulation 380-5.

15 So ordered this 22nd day of March 2012.

16 Does either side have anything further to address with
17 respect to the Court's Security Order?

18 TC: No, Your Honor.

19 CDC: No, Your Honor.

20 MJ: All right. I was also advised after the proceedings
21 yesterday that the--may I see the *Amicus* Order, please?

22 [The court reporter handed AE XXXV to the Military Judge.]

23

1 MJ: That there may be non-parties who wish to file *Amicus*
2 Briefs, which are called 'Friend of the Court Briefs' with the
3 Court. Based on that information, the Court has made the following
4 ruling with respect to *Amicus Curiae* filings, dated 23 March 2012.

5 The Court has been advised that there may be non-parties
6 who will move the Court for leave to file an *Amicus Curiae* brief.

7 The Court will not grant leave for a non-party to file an
8 *Amicus* brief. The government or the defense may attach such a
9 filing by a non-party as part of the brief filed within the
10 suspense dates set by the Court.

11 MJ: Does either side have anything to address further with
12 respect to *Amicus* filings?

13 CDC: No, Your Honor.

14 TC: No, Your Honor.

15 MJ: Okay.

16 May I see the Interim Order, please.

17 [The court reporter handed AE XXXIX to the Military Judge.]

18 MJ: All right. After the last session the defense advised
19 the Court--apparently I understand the defense has a website of
20 some kind?

21 CDC: Yes, ma'am.

22 MJ: All right. The defense advised the Court that the
23 defense wishes to file its motions on the website that the defense
24 has.

1 MJ: Would you like to describe for the record what you
2 advised the Court you wanted to do?

3 CDC: Yes, ma'am.

4 The defense simply requested to be allowed to present
5 redacted portions of their motions on our blog. Basically, the
6 *Army Court-Martial Defense Blog* in order for the public to have
7 access to this information. One of the common criticisms that has
8 been launched so far against this case is that it has not been
9 sufficiently public and that the public has not had the access to
10 the court filings by both of the parties. Both the Center for
11 Constitutional Rights and also the Reporters Committee on Freedom
12 of the Press has requested to have access to the court filings.
13 The defense does not see any need to deny that request. So we have
14 asked both from the Court and basically with negotiations with the
15 government to allow us to have our defense motions posted. We've
16 offered to post also the government's response motions and their
17 motions and they declined that offer. However, with their
18 redactions, the government, now under our agreement, can look at
19 our motions and indicate what areas of the motions need to be
20 redacted. The defense will comply with that request and only until
21 the government is satisfied, will the defense then post its motions
22 on our webpage.

23 MJ: All right.

24

1 MJ: Government, you initially objected to that procedure.

2 Is that correct?

3 TC: Yes, Your Honor.

4 MJ: Okay. Now what is the government's current position?

5 TC: Your Honor, the government's current position is we still
6 object overall to the procedure but as the defense submits their
7 proposed redactions we will review them and we will comply with the
8 Court's order on having the information reviewed; and if there are
9 any additional Protective Orders to request then ultimately the
10 government needs to ensure it protects essential witnesses,
11 individuals, and any information that is subject to the Court's
12 Protective Orders.

13 MJ: All right. The parties and I had a telephonic R.C.M. 802
14 conference on this issue. Once again, what an R.C.M. 802
15 conference is where I talk to the parties about logistics and other
16 issues that arise in cases; and then at the next session the
17 parties and I put what was discussed on the record. In this case,
18 the Court heard both sides and arrived at an Interim Order which
19 was signed on 28 March 2012. What that order says is:

20 One, at an R.C.M. 802 conference after the Article 39(a)
21 session on 16 March 2012, the defense advised the government and
22 the Court of its intent to publish without enclosures, defense
23 filings and proposed filings with the Court on the internet.

1 MJ: The government, via email dated 23 March 2012, 1733
2 [hours], advised the Court that the government opposes internet
3 publication of such defense filings.

4 The government further requested that prior to any
5 internet publication of a Court filing or proposed filing by the
6 defense, the government have:

7 One, an opportunity to file a motion for a Protective
8 Order or multiple Protective Orders under Rule for Courts-Martial
9 701(g) and Rule for Courts-Martial 806(d); and

10 Two, 30 days to receive input from all different federal
11 entities on what discovery information such agencies did not intend
12 to be publicly available.

13 Two, the defense, via email dated 23 March 2012 at 1745
14 and 1803 [hours] advised the government of its intent to publish on
15 the internet all previous defense filings with the Court without
16 enclosures and proposed defense filings for the next Article 39(a)
17 session; 24 through 26 April 2012, unless subject to a Protective
18 Order by the Court. The emails are attached as Attachment 'A'.

19 Three, a pleading is "filed" with the Court when it is
20 identified as an exhibit on the record at an Article 39(a) session.
21 Pleadings served on the opposing party that have not been
22 identified on the record at an Article 39(a) session are "proposed
23 filings".

1 MJ: Four, the Interim Order is issued in accordance with
2 Military Rule of Evidence 505(g) and (h); Military Rule of Evidence
3 506(g) and (h); Rule for Courts-Martial 701(g); and Rule for
4 Courts-Martial 806(d); and Seattle Times v. Rhinehart, 104 Supreme
5 Court 2199 (1984). This Interim Order provides procedures for the
6 government to request Protective Orders prior to any public release
7 of defense Court filings or proposed filings.

8 The Court finds this Interim Order necessary under the
9 above authorities. The government has provided the defense both
10 classified information and government information subject to
11 Protective Order under Military Rule of Evidence 505(g)(1) and
12 Military Rule of Evidence 506(g).

13 This Court has issued a Protective Order for classified
14 information provided to the defense in discovery. The defense has
15 accepted such discovery and agreed to comply with the Protective
16 Orders. There have been two classified information spillage
17 incidents to date in this case.

18 Five, this Interim Order applies to all previous Court
19 filings and any pleadings proposed for Court filing during the
20 Article 39(a) session currently scheduled to be held on 24 through
21 26 April 2012.

22

1 MJ: Interim Order.

2 One, the government's request to file a motion for a
3 Protective Order or multiple Protective Orders prior to public
4 release of defense Court filings or proposed Court filings is
5 granted as provided below.

6 Two, the defense will notify the government of each
7 defense Court filing or proposed filing intended for public
8 release. The defense will provide the government with the original
9 filing and the redacted filing intended for public release.

10 Three, government motions for Protective Order will:

11 A - Address each defense Court filing or proposed Court
12 filing individually and identify, with particularity, each portion
13 of the filing to which the government objects to public release and
14 the legal basis for each objection to public release.

15 B - Provide proposed findings of fact for the Court with
16 respect to each portion of each filing to which the government
17 objects to public release.

18 Four, suspense dates for defense filings and proposed
19 filings the defense intends to publicly release; and the Court in
20 the order sets suspense dates that have already passed.

21 [END OF PAGE.]

1 MJ: Five, the defense will not publicly release any defense
2 appellate exhibit or proposed filing with the Court to which the
3 government objects until after the government motions for
4 Protective Order are addressed at the Article 39(a) session 24
5 through 26 April 2012.

6 Six, the defense will not disclose any information known
7 or believed to be subject to a claim of privilege under Military
8 Rule of Evidence 505 or Military Rule of Evidence 506 without
9 specific Court authorization. Prior to any disclosure of
10 classified information, the defense will provide notice under
11 Military Rule of Evidence 505(h) and follow the procedures under
12 that Rule.

13 Seven, personal identifying information, P-I-I, will be
14 redacted from all defense filings publicly released. P-I-I
15 includes personal addresses, telephone numbers, email addresses,
16 first five digits of social security numbers, dates of birth,
17 financial account numbers, and the names of minors.

18 Eight, to protect the safety of potential witnesses all
19 persons who are not parties to the trial shall be referenced by
20 initials of first and last name in any defense filing publicly
21 released.

22

1 MJ: Nine, for future defense filings with the Court where the
2 government moves for a Protective Order preventing public release,
3 the Court proposes the procedures in the draft Protective Order at
4 Attachment 'C'. Objections to the proposed procedures will be
5 addressed at the Article 39(a) session.

6 Counsel and I met in chambers briefly before coming on
7 the record today. I had asked the counsel if they had any
8 objections to the draft Protective Order, which in essence just
9 sets future time lines and is, in substance, pretty much the same
10 as the Interim Order that I just read.

11 Do the parties have any objections to the draft----

12 TC: No, Your Honor.

13 MJ: ----Protective Order?

14 CDC: No, Your Honor.

15 MJ: All right. So the Court will go ahead and sign that; and
16 that will apply to future postings.

17 [The Military Judge signed AE XXXIX.]

18 MJ: Let me see the letter.

19 [The court reporter handed AE LVI to the Military Judge.]

20 MJ: All right. The Court has marked as an exhibit; Appellate
21 Exhibit LXVI. Last night, Mr. Coombs forwarded me a letter from
22 the Center for Constitutional Rights; and I received an earlier
23 such letter on the 21st of March 2012.

24

1 MJ: Those are both marked as Appellate Exhibit LXVI,
2 requesting access to documents in this case. The Court finds as
3 follows:

4 The letter that I received last night requested that an
5 attorney will attend the hearing on April 24th and that the Center
6 for Constitutional Rights requests that he be afforded an
7 opportunity to address the Court directly and present arguments
8 concerning the request for public access to documents and
9 information filed in the case. It's basically a request for
10 intervention.

11 That request is denied.

12 The Court notes as follows:

13 The Court has received several requests for copies of
14 exhibits from this case from entities who are not parties to the
15 trial. Now, this Court's duty is to ensure that the 1st Amendment
16 Right to a public trial; and the accused's 6th Amendment Right to a
17 public trial are guaranteed. That Rule is also codified in Rule
18 for Courts-Martial 806. These proceedings have been open and will
19 remain open to the maximum extent. There may potentially be some
20 closed proceedings for classified information, if justified by the
21 government and findings of the Court.

22

23

24

1 MJ: The standard for closure of trials in the military is
2 under Rule for Court-Martial 806(c), which says that courts-martial
3 shall be open to the public unless:

4 One, there is a substantial probability that an
5 overriding interest would be prejudiced if the proceedings remained
6 open;

7 Two, closure is no broader than necessary to protect the
8 overriding interest;

9 Three, reasonable alternatives to closures were
10 considered and found inadequate; and

11 Four, the Military Judge makes case specific findings on
12 the record justifying closure. As I said earlier, these
13 proceedings have remained open thus far.

14 The Court has received several requests for copies of the
15 exhibits in this case from entities who are not parties to the
16 trial. While the Court acknowledges the existence of a common law
17 right of access to public records, including judicial documents,
18 that right is not absolute; Nixon versus Warner Communications
19 Inc., 435 U.S. 589 at 599, (1978).

20 The Court also notes the existence of a Congressionally
21 devised system of access to government documents, the Freedom of
22 Information Act or FOIA.

23

24

1 MJ: When Congress has created an administrative procedure for
2 processing and releasing to the public on terms meeting with
3 Congressional approval the common-law right of access may be
4 satisfied under the terms of that Congressionally devised system of
5 access. *Id.* at 603 to 606. Nor does the 1st Amendment guarantee
6 of freedom of the press or the 6th Amendment guarantee of a public
7 trial mandate access to or copying by non-parties of exhibits
8 admitted during a court-martial. Constitutional interpretation
9 aside, the Court notes that under the military justice system, the
10 Court does not call a court-martial into existence, nor is the
11 Court the custodian of exhibits in the case; whether appellate,
12 prosecution, or defense exhibits, which become part of a record of
13 trial. See for example, Rules for Courts-Martial 503(a) and (c);
14 601(a); 808 and 1103(b)(1)(a) and (d)(5).

15 Neither is the Court the release authority for such
16 documents if requested under FOIA. Requests for access to exhibits
17 in this case should be directed to the appropriate records
18 custodian.

19 [END OF PAGE.]

AUTHENTICATION OF EXCERPT OF TRANSCRIPT

in the case of

PRIVATE FIRST CLASS MANNING, BRADLEY E., 445-98-9504, HEADQUARTERS AND

HEADQUARTERS COMPANY, UNITED STATES ARMY GARRISON, FORT MYER, VIRGINIA

22211

I received for review and authentication the transcript excerpt from the 24 April 2012 Article 39(a) session pertaining to the Court's ruling on the Center for Constitutional Rights' application for documents and any sort of written findings on 2 August 2012



DENISE R. LIND
COL, JA
Military Judge

DATE: 2 August 2012

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM – Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES – See MCM, 1984, RCM 1-103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT – When forwarded to the appropriate Judge Advocate General or for the judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DROP-DOWN Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(e)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1-105).

9. DROP-DOWN Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
- c. Record of proceedings in court, including Article 39(a) sessions, if any.
- d. Authentication sheet, followed by certificate of correction, if any.
- e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.