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Bradley Manning Lynching: Judge Runs A Shell Game, Public Excluded from Hearings

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U.S. Army Cons Public With Three-Card Monte Sting in Form of Court-Martial

To Have a Constitutional Public Trial, Don't You Have to Let the Public in?

Public access to the Bradley Manning court-martial doesn't exist in any meaningful sense, despite the demands of the U.S. Constitution or the Manual for Courts Martial United States (MCM) published by the U.S. Dept. of Defense, which is the prosecutor.

Court-martial judge Col. Denise Lind hasn't exactly banned the public – or reporters, who are part of the public – from the courtroom or its extensions, but she has presided over a system that, so far, seems designed to protect the public's right to know as little as possible.

It's a scripted con game, a kind of judicial three-card monte in which the public is expected to keep believing it has a chance to know. The following excerpts from the script, the unofficial court transcript, illuminate how the military plays the shell game of doing injustice while trying not to let injustice be seen to be done.

The comments here are all by Judge Col. Lind from the June 10 morning session:

> "Just for the record, while the court is not interested in getting into the area of who is credentialed and who isn't credentialed as it's beyond the scope of this trial, the court does note and so advised the parties in the RCM 802 that rules of court-martial are not structured to provide a contemporaneous transcript of proceedings."

Nice distraction, putting attention on "who is credentialed" when the substantive issue us *who gets access.* The Judge's MCM has no index listing for "press" or "media." There is a listing for "public," which by definition includes all reporters, as well as all military personnel. That's in Role 806(a), which also sets the primary expectation that *"courts-martial shall be open to the public."*

That "shall" in the rule means that it's a judge's primary *obligation* to open the court-martial to the public, not an *option*, although the rule provides limited exceptions under exigent circumstances. The rule's discussion section states: *"However, such exigencies should not be manipulated to prevent attendance at a court-martial."*

RCM 802 is a jargon reference to pre-trial hearings that have already been held.

The provision of a "contemporaneous transcript" is another distraction that leads attention away from the need for a meaningfully public trial.

That "the court is not interested" in all this bespeaks a disdain for the public that one would expect to be better concealed.

And that the court has, in effect outsourced its responsibility to control the courtroom and access to it, as described in Rule 806(b)(1), suggests possible dereliction of duty.

Turning to Reader Supported News's motion, without identifying it beyond "the request for public access or in the alternative motion to intervene to vindicate right to public access," Judge Col. Lind made findings:

> "One. The proceedings have been open to the public since the start of the trial…."

This may be technically correct and short of a false statement, but it suggests a non-existent state of affairs sharply at odds with the widely-observed restraints put on public access by the judge, the government, or its contractors. "The court martial of Manning," observed the Huffington Post, "has been surrounded by secrecy and security."

n example of what amounts to military doublespeak is that the court says it's not "structured" to provide a daily transcript, as if that wasn't something other courts do and the Army could do if it wanted to. Worse, even though the Freedom of the Press Foundation is paying for its own stenographers, the judge continues to tolerate interference with the stenographers' ability to do their job.

> "Two. Neither the court nor anyone acting pursuant to order of the court has specifically excluded any person from observing the proceedings either in court or in a designated overflow area."

One might argue that this is another technically correct statement in the furtherance of falsehood, but it's more deceitful that that. Dozens if not hundreds of members of the public have been excluded, by apparent design, either implemented or tolerated by the court.

But they have not been "specifically" excluded and that "specifically" has a serious lawyerly purpose in the worst sense of the word. Rule 806(b)(1) says, in part: "When excluding specific persons, the military judge must make findings on the record establishing the reason for the exclusion, the basis for the military judge's belief that exclusion is necessary, and that the exclusion is as narrowly tailored as possible."

Here, where the court is allowing large-scale, *random* exclusions there's no need for findings on the record of the basis for the exclusion, or concern that the exclusion is narrowly tailored. The exclusion is not narrowly tailored and thus gives the appearance of bad faith.

> "Three. Reasonable policies and procedures for media registration and credentialing have been established and published by the Military District of Washington as set forth in appellate exhibit 561."

That there are "reasonable policies and procedures" is not self-evident and continues to be

widely challenged.

More importantly, Rule 806 does not provide for the judge to outsource her responsibility for the courtroom to a third party who is neither answerable nor accountable in reasonably timely manner within the time-pressure of a court-martial.

> "Four. 806C prohibits photography and broadcasting to include audio and video recording."

This is absolutely true, but only if you stop after the first sentence of Rule 806(c).

The second sentence begins, "*However, the military judge may, as a matter of discretion permit contemporaneous closed-circuit video or audio transmission....*"

By making this finding, Judge Col. Lind effectively admits that she has chosen to use her discretion to severely limit public access to the court-martial under conditions explicitly anticipated in the rule – "when courtroom facilities are inadequate to accommodate a reasonable number of spectators."

In what way are the judge's deliberate truncating of public access not clear violations of at least the First and Fourth Amendment rights of the public and the press?

> "Five. The two parties to this trial are the United States and PFC Manning. Unless authorized by the rules for court-martial, or in special circumstances recognized by the Court of Appeals for the Armed Forces, only parties to the trial have standing to file motions to be considered by this court. ABC Inc. versus Powell, Court of Appeals for the Armed Forces, 1997."

The opinion cited is not on point, as it deals with an investigative hearing, not a court-martial, and the issue leading to closing the hearing to the public was the protection of women whose sexual histories were likely to be explored during their testimony.

The question of parties to the trial is not at issue in the opinion cited. The petitioners in the case were media companies (ABC, CBS, NBC, CNN, Fox, and the Washington Post). They filed a Writ of Mandamus requesting the court to open the hearing in question to the press and public.

The court, in both its preliminary order and final order, ordered the hearings open to the press and public. The court noted in passing that "we have consistently held that the Sixth Amendment right [to a public trial] does apply to a court-martial."

So what is Judge Col. Lind talking about? Certainly not the fact that one of the parties in the case is also her employer.

> "Ruling. The court declines to consider [the request for public access] as it is from three individuals who are not parties to the trial and who under the circumstances lack standing to file a motion with the court."

Done and done. The ruling ignores the clearly, repeatedly stated intent of both Rule 806 and the opinion cited to give primacy to the openness of the proceedings.

It might be tempting to think that petitioners who are not parties to a case might be

perpetrating a fraud upon the court, but that would be a stretch. Here, it's much less of a stretch to consider that perhaps the court is perpetrating a fraud on the public.

"Quia volo" is a seldom-used term in legal circles for judicial decisions of this nature. It means, "Because I want to."

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