

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

MANNING, Bradley E., PFC)
U.S. Army, xxx-xx-9504)
Headquarters and Headquarters Company, U.S.)
Army Garrison, Joint Base Myer-Henderson Hall,)
Fort Myer, VA 22211)

**DEFENSE REQUEST FOR
PARTIAL RECONSIDERATION
OF DISCOVERY RULING**

DATED: 12 April 2012

RELIEF SOUGHT

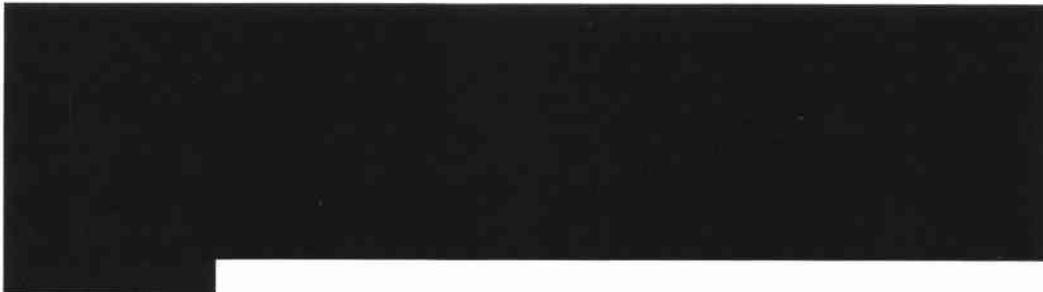
1. The Defense respectfully requests that the Court reconsider, in part, its ruling on the Defense Motion to Compel Discovery.

BURDEN OF PERSUASION AND BURDEN OF PROOF

2. As the moving party, the Defense has the burden of persuasion. R.C.M. 905(c)(2), 905(f). The burden of proof is by a preponderance of the evidence. R.C.M. 905(c)(1), 905(f).

ARGUMENT

3. In the Prosecution Response to Defense Motion to Compel Discovery (“Government Motion”), the Government stated the following:



See Government Motion, p. 14. Presumably based on the Government’s representation, the Court did not specifically address the grand jury testimony in its Ruling.

4. The Defense requested clarification from the Government on what exactly it intended to provide in regard to the grand jury materials. During an 802 telephonic conference, the Government seemed to suggest that it would produce all relevant information from the grand jury testimony. The Government explained that since there were some wholly irrelevant aspects to the grand jury testimony, those portions of the grand jury testimony would not be provided. The Government implied, however, that everything else would be provided. The Government indicated that it would provide such grand jury testimony in accordance with the timeframe established by the court (i.e. April 20).

5. Unfortunately, the Defense is still not clear on what exactly the Government was planning on turning over. On 9 April 2012, the Defense sent an email seeking further clarification. The email traffic reads as follows:

David Coombs: In your response to the Defense Motion to Compel Discovery, dated 8 March 2012, you stated [REDACTED]

[REDACTED] During our last 802 conference you stated that you intending to provide the grand jury materials. Can you provide me with an estimated time line for these materials? Thank you.

[REDACTED]

David Coombs: I am not for sure I understand your response. What is the “discoverable material” standard that you are using to determine what to disclose? Also, why do you believe it would take until May 1st to complete your review? The Grand Jury investigation started in December of 2010. At that time, the Defense requested access to the investigation being conducted by the DOJ. Additionally, you have been on notice that these materials were the subject of a compel discovery motion since February. I am not clear on why the review hasn’t already been done, and why I don’t have these documents.

[REDACTED]

David Coombs: Can you provide me with the Bates numbers for any grand jury testimony that have you provided to the Defense? Thank you.



6. In the Defense's opinion, it is still not clear what the Government will provide in relation to the grand jury materials. However, it seems based on the latest representations of the Government that not all relevant materials will be turned over. It only intends to disclose to the Defense *Brady* material under R.C.M. 701(a)(6).

7. Consequently, the Defense requests that the Court order the entire grand jury proceedings in relation to PFC Manning or Wikileaks to be produced to the Defense. Alternatively, the Defense requests that the grand jury proceedings be produced for *in camera* review to determine whether the evidence is discoverable under R.C.M. 701(a)(2) as being material to the preparation of the defense.

Respectfully submitted,

DAVID EDWARD COOMBS
Civilian Defense Counsel