

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

2019-1-13-10

UNDR SEAL

In re: Grand Jury Subpoena,)
)
CHELSEA MANNING,)
)
Subpoenaed Party.)
_____)

OMNIBUS
MOTION TO QUASH
GRAND JURY SUBPOENA

18-4

1:19DM3
10GT 3793

STATEMENT OF MOTION

Comes now Chelsea Manning, by and through counsel, and pursuant to the First, Fourth, and Fifth Amendments to the United States Constitution, hereby moves this court to quash the subpoena *ad testificandum* summoning her to testify before a federal grand jury in this district. For reasons set forth herein, if enforced the subpoena 1) will violate Ms. Manning's Fifth Amendment right against compelled self incrimination and Double Jeopardy, 2) will violate her First Amendment right to Freedom of Association and Freedom of Speech 3) is an abuse of the grand jury process and 4) is a product of illegal electronic surveillance.

Ms. Manning further requests disclosure of any ministerial documents relevant to the instant grand jury and any prior statements of Ms. Manning in the possession of the government.

Ms. Manning states the following in support of these requests:

STATEMENT OF FACTS

The movant Chelsea Manning has been and is recognized world-wide as a champion of the Free Press and open government. In 2013, Ms. Manning, then an all-source intelligence analyst for the U.S. military, was convicted at a United States Army court martial for disclosing classified information to the public. She was sentenced to thirty-five years imprisonment and a

dishonorable discharge. She was confined under onerous conditions, including but not limited to prolonged solitary confinement. In 2017 her sentence was commuted by then-President Barack Obama. However, her appeal from that conviction remains pending and Ms. Manning may be subject to military re-call.

Following her release Ms. Manning has continued to be outspoken in her defense of First Amendment freedoms, for the rights of transgender persons, and against some United States government policies. The current administration has made clear its views of Ms. Manning and her release. The President of the United States himself tweeted that Ms. Manning “should never have been released.” The Central Intelligence Agency tweeted a letter written on CIA letterhead, in which then-CIA director, and now Secretary of State Mike Pompeo effectively convinced Harvard University to withdraw a fellowship that she had been awarded by their students. See @realDonaldTrump tweet of January 26, 2017, and the September 14, 2017 tweet from @CIA Twitter account. Based on the explicit statements of this administration, Ms. Manning reasonably believes that the current administration is unhappy with her release, and seeks to punish her further by using any means at their disposal to incarcerate her. She reasonably fears that despite living a law-abiding life, the government is subjecting her to physical and electronic surveillance (see Declaration of Chelsea Manning) and other intrusions. The instant subpoena is part of that process.

On February 5, 2019, Chelsea Manning was served through counsel with a subpoena *ad testificandum* ordering her to appear before a grand jury empaneled in this district. The appearance is now scheduled for March 5, 2019.

Secrecy is the defining feature of grand jury proceedings, and Federal Rule of Criminal Procedure 6(e) mandates that information presented to this grand jury is protected against public disclosure¹, absent a compelling need. While the subject of this grand jury's investigation is not publicly known, it almost certainly involves a complex of people, events, and disclosures with which Ms. Manning was briefly associated, and for her involvement with which she has been held accountable.

While it is our understanding that an immunity order has been secured, the subpoena will nonetheless violate Ms. Manning's Fifth Amendment rights. The appeal of her court martial remains pending. It is unclear that the immunity order would be effective as to that proceeding, which, as a function of the military, falls outside the jurisdiction of the Department of Justice. It is likewise unclear whether the military might attempt to assert jurisdiction over her, and while she would reserve the right to resist such an assertion, the jeopardy in which she might be placed were she to cooperate with this proceeding is very real. Additionally, the threat of foreign prosecution, unaffected by an immunity order, incentivizes disobedience with even perfectly immunized testimony.

Ms. Manning possesses no material information not already disclosed to the government. Ms. Manning herself gave robust testimony about her own relationship to the 2010 public disclosures during her court martial proceeding. At that time, the military, in consultation with the Department of Justice, cross-examined her and elicited testimony from her. Following that testimony she was confined and monitored, and since her release she has gained no further personal knowledge of any relevant people or events. Moreover, this constellation of digital

¹ Unlike attorneys and grand jurors, witnesses before grand juries are less constrained by this secrecy, as it is intended largely for their own protection.

media leaks and those associated with them have been obsessively studied, reported upon, and investigated by scholars, journalists, and governments around the world since at least 2010. Indeed, it is known that the federal investigation into these disclosures has involved information-gathering, testimony both voluntary and compelled, and both overt and covert surveillance for many years. There is little doubt that the prosecutor and this grand jury have access to a great deal of both public and non-public information on these matters, including, but far exceeding Ms. Manning's prior sworn testimony.

Ms. Manning has no knowledge of or information to offer about any other federal offense, and therefore no relevant testimony to offer to any investigative grand jury. The government is seeking Ms. Manning's testimony nearly a decade later despite the fact that it has unfettered access to hundreds of thousands of pages of documentary evidence and the sworn testimony of ninety witnesses (including Ms. Manning herself) presented in 2013 and found by a military judge to constitute proof beyond a reasonable doubt of Ms. Manning's central role in the 2010 disclosures. Ms. Manning cannot give the government or this grand jury information anywhere near the quality and quantity of that presented at her court martial in 2013. The government's interest in relying on anything other than the evidence acquired closest in time to the events purportedly under investigation gives rise to a legitimate concern that the instant subpoena was not motivated by the government's desire to discover information concerning possible violations of federal law.

There is a long and well-documented history of grand jury abuse. The grand jury system is enshrouded in secrecy and is, by its very nature, susceptible to abuse and impermissible government overreach. See, e.g., Mark Kadish, *Behind the Locked Door of An American Grand*

Jury: Its History, Its Secrecy, and Its Process, 24 Fla. St. U. L. Rev. 1 (1996); Michael Deutsch, *The Improper Use of the Federal Grand Jury: An Instrument for the Internment of Political Activists*, 75 J. Crim. L. & Criminology 1159 (1984). As a consequence of grand jury secrecy, neither the courts, nor Congress, nor - most importantly - the public, can gauge how the institution is being used - or abused, as the case may be. Marvin E. Frankel & Gary P. Naftalis, *The Grand Jury: An Institution on Trial* 125 (1977).

Given this history, Ms. Manning has reason to believe that she will be subject to questions intended to elicit information not properly within the scope of the grand jury, and that questioning rather will focus on activities protected by the First Amendment such as news gathering and other forms of protected speech and associations. Indeed, the mere issuance of this subpoena is already serving to chill her exercise of constitutional rights.

Notwithstanding the purported legitimacy of this grand jury investigation generally, Ms. Manning fears the subpoena directed toward her may have issued in other than good faith. The exhaustive and complex testimony in the court martial proceedings to which the government has always had unrestricted access raises the inference that this subpoena has issued for the primary purpose of coercing perjury or contempt, although she vigorously disputes that she has ever been anything but truthful in her prior statements. Whether issued in violation of the first amendment or in bad faith, whether as a means of undermining her credibility, creating a perjury trap, or coercing contempt, the subpoena must be quashed.

The subpoena should also be quashed because Ms. Manning has reason to believe that she and those around her have been subject to unlawful electronic surveillance in violation of her Fourth Amendment rights and other statutory prohibitions on such surveillance. See declaration

of Chelsea Manning, attached. During her time in prison, Ms. Manning was of course subject to routine observation. Since her release, Ms. Manning has experienced all manner of intrusive surveillance, including surveillance vans parked outside her apartment, federal agents following her, and strangers attempting to goad her into an absurdly contrived conversation about selling dual-use technologies to foreign actors.

Given Ms. Manning's notoriety it is likely that the grand jurors themselves harbor a bias against her. Her name and face are widely recognizable, and are likely well-known to all in the pool of potential grand jurors for the Eastern District of Virginia, which includes people who are more than usually likely to be connected with the intelligence community of which she was once a part. Due to her political notoriety, as well as her recent gender transition, she fears she will be subject to harms stemming from the grand jurors' preconceived notions and prejudices.

Ms. Manning believes this entire subpoena has been propounded unnecessarily, possibly in retaliation for her recent release from prison, and in violation of her First, Fourth, Fifth, and Sixth Amendment rights, and other statutory rights, such as would excuse her grand jury testimony. These concerns are magnified given not only the history of grand jury abuses, but the degree to which she personally has been subject to political harassment, oppression and demonization by certain forces within the government.

Ms. Manning therefore moves this court to quash the subpoena; to direct the government to canvass federal agencies to determine whether any electronic surveillance has been conducted and either affirm or deny that such surveillance has taken place; for disclosure of ministerial documents; for the right to instruct the grand jury; for disclosure of any prior statements relevant

to the questions propounded by the prosecution, and for all other and further relief as this court deems just and proper.

ARGUMENT

A. NOTWITHSTANDING ANY IMMUNITY ORDER, THE SUBPOENA EXPOSES MS. MANNING TO JEOPARDY WITH RESPECT TO HER ONGOING MILITARY CASE AND POSSIBLE FOREIGN PROSECUTION

The grand jury subpoena should be quashed because Ms. Manning is still subject to military criminal jurisdiction. Thus any statements or testimony given in the grand jury proceeding could subject her to a court-martial, other military discipline, or prejudice her ongoing military appeal.² Accordingly the subpoena must be quashed as enforcement will violate her Fifth Amendment right against self incrimination.

The Fifth Amendment right against self-incrimination applies to the ongoing court-martial appeal, and obviously to any future military criminal investigations or actions. “The privilege against self-incrimination may be invoked when a ‘witness has reasonable cause to apprehend danger’ that he will implicate himself in a criminal offense by answering a question. *United States v. Villines*, 13 M.J. 46, 52 (C.M.A. 1982) (quoting *Hoffman v. United States*, 341 U.S. 479, 486). The *Villines* case is poignant because the military defendant in that case had been compelled to testify as a co-conspirator witness after he had already been convicted but while his appeal was pending. The court refused to compel him to testify because of the possibility that any statements he made as a witness could be used at a re-trial.

This logic holds true in Ms. Manning’s case. Ms. Manning’s case is presently on appeal. Depending on the outcome of the appeal the case could be sent back to the lower court for

² Ms. Manning reserves the right to contest an assertion of military jurisdiction.

further proceedings. In those proceedings, the military prosecutor would have access to, and likely seek to use, any testimony given by Ms. Manning before the grand jury. Alternatively, the military could drum up an entirely new prosecution since Ms. Manning may yet be subject to military jurisdiction.

The facts and circumstances of this case are unusual because of Ms. Manning's status in the military. It is well-known that Ms. Manning was convicted at an Army court-martial in 2013 for disclosing classified information the public through a number of different news sources. She was sentenced to thirty-five years imprisonment and a dishonorable discharge. In 2017 President Barack Obama commuted the sentence to time served.

Because the commutation did not affect the conviction, Ms. Manning's case is presently on appeal in the United States Court of Appeals for the Armed Forces, an Article I appellate court that hears military appeals. Under Article 76a of the Uniform Code of Military Justice (UCMJ), the military may retain jurisdiction over a servicemember while his or her appeal is pending. See 10 U.S.C. § 876a. To effectuate Article 76a, UCMJ, the military typically places servicemembers who have been punitively discharged at a court-martial (i.e., a dishonorable or bad conduct discharge) on *involuntary appellate leave* pending the conclusion of the appeal. Ms. Manning, who was dishonorably discharged, was placed on involuntary appellate leave after she was released from military prison pursuant to President Obama's commutation order.

"Although a person on involuntary appellate leave remains subject to military jurisdiction and possible recall, the individual returns to civilian life throughout the period of leave." *United States v. Pena*, 64 M.J. 259, 267 (C.A.A.F. 2007). If a servicemember violates the UCMJ while on involuntary appellate leave he or she may be court-martialed for offenses that are service-connected. See, e.g., *United States v. Ray*, 24 M.J. 657 (A.F.C.M.R. 1987) (holding that a

servicemember who was on involuntary appellate leave could be prosecuted for distributing cocaine to a servicemember).

The threat of a military prosecution is real. President Obama's decision to commute Ms. Manning's sentence was not well-received by some military leaders and influencers. President Trump, in fact, tweeted on January 26, 2017 that Ms. Manning "should never have been released from prison." See <https://twitter.com/realDonaldTrump/status/824573698774601729>, last visited February 28, 2019. The prosecution has revealed very little about the nature of the grand jury or the questions Ms. Manning may be asked. At most we know that the grand jury probably relates to the 2010 disclosures, and related people and organizations. And despite repeated requests by Ms. Manning's legal team for information about the nature of the expected grand jury questions, the prosecutor has only generally revealed that he believes some of Ms. Manning's statements at the court-martial were either false or mistaken, and that the grand jury would benefit from hearing more details about Ms. Manning's contacts and communications with respect to the 2010 disclosures. Given the prosecutor's unwillingness to disclose information to Ms. Manning that would help her evaluate the risks of testifying, she must assume that the grand jury is a "perjury trap" or even worse, a subterfuge for another military prosecution.

Granting Ms. Manning immunity in the federal grand jury context will not shield her from prosecution by the military. In the military only a general court-martial convening authority (i.e., a military commander who is sufficiently high-ranking and who has command over the subject servicemember) can grant immunity from prosecution at a court-martial. See Rules for Court-Martial (RCM) 704. It would be wholly unfair to compel Ms. Manning to testify before the grand jury based on the limited protection of the grand jury immunity order.

Nor can it be argued that Ms. Manning's grand jury testimony will be kept secret from

the military. Rule 6(3)(A) of the Federal Rules of Criminal Procedure permits the disclosure of grand-jury information when a government attorney believes it is “necessary to assist in performing that attorney’s duty to enforce federal criminal law.” If Ms. Manning is compelled to testify in the grand jury proceeding it is foreseeable the prosecution could pass along her testimony to the military to assess whether criminal charges that are otherwise precluded from federal prosecution could be brought at a court-martial.

As a last note, Ms. Manning has reason to fear foreign prosecution, from which she is not shielded by any U.S. issued immunity agreement. United States v Balsys, 524 US 666, (1998). This exposes her to the dilemma of choosing between domestic contempt, or foreign prosecution. The failure of the law to accommodate this conundrum creates a regrettable and perverse incentive for refusal to give even immunized testimony.

For these reasons the grand jury subpoena should be quashed.

B. THE SUBPOENA WILL IMPERMISSIBLY INTRUDE UPON CONSTITUTIONALLY PROTECTED EXPRESSIVE AND ASSOCIATIONAL RIGHTS

During her court martial, Ms. Manning gave expansive testimony about her role in and knowledge of events and actors relevant to disclosing information on “asymmetric warfare” to the public. She was exhaustive and truthful in her testimony, and after her own statements, she was subject to further questioning by the government. United States v. Manning, U.S. Army 1st Judicial Circuit, Colonel Lind Presiding (2013), transcript at pp. 6705-6918; Appellate Exhibit 499, 34 page, single-spaced Statement of PFC Manning. Nothing further is to be gained by compelling her to answer yet more questions about these subjects. Ms. Manning has no undisclosed knowledge relevant or material to an investigation of any other federal offense.

In the event that the government seeks information about which she has *not* already given testimony, Ms. Manning must assume that such questions involve her own or other peoples' lawful and constitutionally protected activities, associations, and expressions. It has long been held that the First Amendment *does* apply to grand jury proceedings. Compelled disclosure "can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Hispanic Leadership Fund, Inc. v Fed. Election Com'n, 897 F Supp. 2d 407, 420 (E.D. Va. 2012); Buckley v. Valeo, 424 U.S. 1, 64 (1976); Gibson v. Florida Legislative Comm., 372 U.S. 539 (1963); N.A.A.C.P. v. Button, 371 U.S. 415 (1963); Shelton v. Tucker, 364 U.S. 479 (1960); N.A.A.C.P. v. Alabama, 357 U.S. 449 (1957). Because of the possible "chilling effect" such compelled disclosure may have on protected rights, the government's request for such disclosure must survive "exacting scrutiny." Buckley v. Valeo, *supra*, N.A.A.C.P. v. Alabama, at 463; Weiman v. Updegraff, 344 U.S. 183 (1952). In the event that a viable First Amendment claim is made, it is the government's burden to show that its interests in disclosure are both legitimate and compelling, and that there is a "relevant correlation" between the government's interest and the precise information to be disclosed. "The public's undoubted "right to every man's evidence," does not give government, for example, 'an unlimited right of access to [private parties'] papers with reference to the possible existence of [illegal] practices.'" In re Grand Jury Subpoena: Subpoena Duces Tecum, 829 F2d 1291, 1297 (4th Cir 1987) internal citations omitted; Brown v. Hartlage, 456 U.S. 45 (1982); Buckley v. Valeo, *supra*, at 64; DeGregory v. Attorney General, 383 U.S. 825 (1966); Gibson v. Florida Legislative Comm., *supra*; In re First National Bank, Englewood, Colo., 701 F.2d 115 (10th Cir. 1983) (grand jury proceedings); Smilow v.

United States, 465 F.2d 802 (2d Cir. 1973); Burse v. United States, 466 F.2d 1059 (9th Cir. 1972).

First, there is a likelihood that this grand jury to be used expressly to disrupt the integrity of the journalistic process by exposing journalists to a kind of accessorial liability for leaks attributable to independently-acting journalistic sources. This administration has been quite publicly hostile to the press, and there is reason to believe that this grand jury may function to interfere profoundly with the operation of a free press. As the Court stated in Branzburg v. Hayes, “Official harassment of the press undertaken not for purposes of law enforcement, but to disrupt a reporter’s relationship with his news sources would have no justification.” 408 U.S. 665, 707-08 (1973).

In addition to concerns about the implications of this subpoena for journalism generally if Ms. Manning testifies, she fears that she may be compelled to disclose protected information about lawful First Amendment protected associations and activities. This is particularly troubling where, as here, she might be called upon to divulge names and political affiliations, despite having no information legitimately necessary for purposes of investigating crime. Ms. Manning objects on First Amendment grounds to the subpoena in its entirety, and in any event reserves the right to object to individual questions on the same grounds.

While this circuit has left the “First Amendment versus Grand Jury dilemma” for another day, the Ninth Circuit’s test for objecting to potential First Amendment violations in the context of specific grand jury questions is instructive. See In re Grand Jury 87-3 Subpoena Duces Tecum, 955 F.2d 229, 234 (4th Cir 1992); Burse v. United States, *supra*. According to Burse, where First Amendment interests are threatened by grand jury questions, the government must establish

that their interest is “immediate, substantial, and subordinating;” that there is a “substantial connection between the information it seeks... and the overriding government interest in the subject matter;” and that the use of the grand jury to compel the desired testimony is “not more drastic than necessary to forward the asserted governmental interest.” Bursey at 1083.

This test will likely be relevant for Ms. Manning, in the event that the government wishes to inquire into her recent, lawful, and constitutionally protected political activities. Since her release, Ms. Manning has been an active and public participant in lawful community organizing against prosecutorial overreach, and rising neofascism, as well as running as a candidate for elected office. Ms. Manning is acutely aware that her public political activity has displeased the current government, including those holding immense executive power. She is aware that the community activities in which she has been involved have been subject to physical and electronic surveillance. She is also aware that as a result of her participation in this activity, she herself has been subject to physical and electronic surveillance. She believes one goal of this surveillance is to chill her exercise of constitutionally protected activity.

While the first amendment imposes constraints on the state’s exercise of power to punish a person for their political ideals or associations, the subpoena power has in the past been used as an end run around the first amendment’s promise. Gibson v. Florida Legislative Comm., *supra*; N.A.A.C.P. v. Alabama, *supra*; Bursey, *supra*, at 1084; In re Verplank, 329 F.Supp. 433 (C.D. Cal. 1971). By issuing a grand jury subpoena, the government may inquire into aspects of a witness’ knowledge, life, beliefs, and associations, in ways that would not otherwise be permissible. The subpoena may not be issued in bad faith, with the primary intent to go on a “fishing expedition.” A subpoena issued for purposes of gathering information about protected

activities and associations, or for purposes of discouraging protected activities and associations, is infirm, and must be quashed. Furthermore, individual questions that are clearly irrelevant to the investigation being conducted, and that infringe upon specifically political associational rights, fall afoul of the First Amendment, and must be disallowed. Ealy v. Littlejohn, 569 F.2d 219 (5th Cir. 1978), United States v (Under Seal), (stating that “practices which do not aid the grand jury in its quest for information bearing on the decision to indict are forbidden”) 714 F.2d 347, 349 (4th Cir. 1983).

Ms. Manning’s concerns about the use of this particular Grand Jury subpoena as a mechanism for fishing into her protected political activity or simply to harass her are not the narcissistic paranoia of a naive activist. The history of the use of grand juries to gather intelligence on or quell political dissent is well-documented, and grand juries are particularly susceptible to overreach.

Almost none of the procedural protections guaranteed to defendants in criminal trials are available during grand jury proceedings, a practice that runs counter to the purpose of the grand jury to act as a check on the executive's prosecutorial power. The enormous discretion held by prosecuting authorities in the United States allows them to use the law for political and other ends. Norman Dorsen & Leon Friedman, *Disorder in the Court: Report of the Association of the Bar of the City of New York Special Committee on Courtroom Conduct*, 170 (1973). Historically, the grand jury system was used to indict outspoken opponents of slavery for sedition, and then to harass and indict black people and Reconstruction officials attempting to gain suffrage. Richard D. Younger, *The People's Panel: The Grand Jury in the United States*, 163-1974, 85-133 (1963).

In the mid-20th century, the grand jury system was improperly used to frame labor organizers and union leaders. Deutsch, *supra*, at 1171-73, 1175-78. During the Nixon

administration, over one thousand political activists were subpoenaed to more than one hundred grand juries investigating lawful anti-war, women's rights, and black activist movements. *Id.* at 1179.

In 2012, the FBI issued 14 grand jury subpoenas to activists after the 2008 Republican National Convention in Minneapolis, MN, and proceeded to question them without ever issuing any indictments. The same year, a grand jury ostensibly investigating property damage at a demonstration asked activist Katherine Olejnik more than 50 questions about people's political beliefs and their relationships. The government did not question her about criminal conduct *as they knew she had no knowledge of the crimes they were supposed to be investigating*. In 2013, 23 year old Gerald Koch was summoned before a grand jury on the purported basis that he might have overheard a discussion in 2009 about some high profile property damage that had occurred in 2008. This culminated in his eight-month confinement on civil contempt, and cast a palpable chill over the political activities of New York City activists. In 2017, anti-pipeline activist Steve Martinez was subpoenaed to appear before a grand jury in North Dakota to testify about an injury law enforcement had caused to a young activist. The prosecution asked no questions at all about unlawful conduct or the relevant injury.

The government, and especially this administration, has shown unambiguously their hostility to political dissidents, and their willingness to treat certain political beliefs and associations as functionally criminal. In sum, there is a clear and uninterrupted history of the government misusing and abusing the grand jury apparatus. From COINTELPRO to the PATRIOT ACT, and the revelations of the scope and nature of the NSA's data collection on ordinary citizens, the history of government intrusion into activities that are not only constitutionally protected, but politically *valuable*, is historically consistent, and demonstrably true. There is no reasonable dispute that this kind of targeted retaliation occurs; it is in fact so

relevant to this particular witness that to fail to raise it as a possibility would be a dereliction of counsel's professional obligations.

Ms. Manning is not simply aware of surveillance, she is in fact, and as the government well knows, uniquely equipped to identify it. There is simply no doubt that she has been the subject of keen and intrusive observation efforts by the government. Her belief that this subpoena could be used to investigate constitutionally protected activity is consistent not only with the long history of grand jury abuse detailed above, but her own experience of government surveillance and disruption.

Furthermore, such intrusion, rather than being based on a reasonable belief that Ms. Manning is engaging in unlawful conduct, is likely a retaliatory move stemming from the government's publicly expressed frustration at her release. While the government may not have any good faith belief that she has knowledge of a federal crime, they may well be interested in inquiring into whether she has any knowledge of people, relationships, and strategies relative to political and activist communities. Relief from this subpoena is therefore justified, inasmuch as it has issued with the knowledge that it will chill political speech and association among Ms. Mannings community members and intrude upon the ability of this nation to maintain a free and open press.

Investigations or individual subpoenas that concern matters of journalism and political activities and associations, are subject to First Amendment limitations. Given that Ms. Manning is not possessed of any information not already disclosed during her trial that could be of use to any federal criminal investigation, any information she is in a position to give would likely touch on first amendment protected activities and associations. Such information is protected by the

first amendment so as to excuse her from answering questions related to those subjects. The case before Your Honor is highly suspect and should be put to the utmost judicial scrutiny.

C. THE SUBPOENA IMPERMISSIBLY SEEKS TO COMPEL TESTIMONY FOR AN IMPROPER PURPOSE, AND IS AN ABUSE OF THE GRAND JURY PROCESS

The grand jury satisfies an investigative function, specifically to investigate federal crimes. While this grand jury has presumably convened to investigate a possible federal offense, Given Ms. Manning's history, discussed *supra*, she reasonably fears that the reason she specifically has been summoned falls outside the recognized boundaries of the grand jury's legitimate investigative function.

Ms. Manning, having already given thorough and truthful testimony about the subjects that might be properly investigated by this grand jury, fears that this subpoena will instead be used to compel testimony about other subjects, including subjects unrelated to any federal crime. As detailed above, there is a distinct possibility that her testimony before this grand jury could be used to harass her, intimidate her or chill her political speech and associations.

Additionally, in light of the vitriol directed at her by arguably the most powerful human being on Earth, it is not unreasonable for her to fear that this subpoena may be motivated by the government's desire to find a way to manufacture a case against her, by coercing perjury or contempt, neither of which are forestalled by an immunity order. Because she has already given exhaustive testimony, it is entirely possible that efforts at repeated questioning are intended or designed to "coax [her] into the commission of perjury or contempt, [and] such conduct would be an abuse of the grand jury process." Burse v. United States, 466 F.2d 1059, 1080 n.10 (9th Cir. 1972); United States v. Caputo, 633 F.Supp 1479 (E.D. Pa. 1986); United States v. Simone,

627 F. Supp. 1264 (D.N.J. 1986); People v. Tyler, 413 N.Y.S.2d 295 (1978). See also Gershman, The “Perjury Trap” 192 U. Pa. L. Rev. 624 (1981).

Furthermore, it is possible that this subpoena represents an effort on the part of the FBI or another investigative agency in collaboration with government prosecutors to compel by grand jury process testimony that would otherwise be inaccessible. United States v. Ryan, 455 F.2d 728 (9th Cir. 1972). In the years leading up to the issuance of this subpoena, the intelligence community expended enormous time, energy, and resources investigating unauthorized disclosures of government information, including but not limited to those in which Ms. Manning was involved in 2010. Evidence adduced at Ms. Manning’s court martial was the source of some of this information. She is of the opinion that while her testimony was truthful and complete, it did not function to corroborate the narrative proposed by the government, or to serve the government’s goals. Therefore, it would be in the interest of the government to elicit more statements from her, either to discredit her, or to extract from her a set of statements that are more in line with their own theory.

The FBI attempted unsuccessfully to speak with Ms. Manning in late 2010, while she was at Quantico, despite the fact that she was represented by counsel. As her military case is ongoing, and she remains represented, they are yet unable to access and question her. The US Attorney, however, may use his power to compel her to appear, and may thus gain access otherwise unavailable to the agencies. To acquire access in this manner and for this purpose would also be an improper use of subpoena power, but by no means would it represent a unique instance of such conduct. In re September 1971 Grand Jury (Mara v. United States), 454 F.2d 580, 585 (7th

Cir. 1971) (rev'd on other grounds by United States v Mara, 410 U.S. 19 (1973)), In re Sylvia Brown, No. 14-72-H-2 (W.D. Wash., May 17, 1972).

It is axiomatic that “the grand jury is not meant to be the private tool of the prosecutor.” United States v. Fisher, 455 F.2d 1101, 1105 (2d Cir. 1972), United States v (Under Seal), 714 F.2d 347, 349 (4th Cir 1983). Nor is it proper for the government to use its subpoena power to conduct “a general fishing expedition,” for the prosecution or any other government office. In the event that the grand jury or its subpoena power is being used in any manner that exceeds its legitimate scope, the Court must excuse Ms. Manning’s testimony. As the Court stated in United States v. Dionisio, 410 U.S. 1 (1973), “The Constitution could not tolerate the transformation of the grand jury into an instrument of oppression.”

In any case, the prosecution knows or should know that Ms. Manning has no further information to disclose. They know, moreover, that Ms. Manning’s previous testimony at her own court martial may undercut their agenda. This suggests then that their purpose in calling her before the grand jury is not to discover further and more helpful information (which she does not have). It suggests rather that they will attempt to elicit statements that could be construed as inconsistent with her prior statements. Doing so would enable them to undermine her credibility as a potential defense witness, while also creating the possibility of a criminal case against her for perjury. To do so with this intent would constitute an absolutely improper use of the grand jury, and the court must exercise its oversight to ensure such abuse is not allowed to occur under its supervision.

While there may be a legal presumption of regularity as to grand jury proceedings, this presumption disappears once evidence of abuse has been introduced, and the prosecution bears

the burden of demonstrating regularity. Mullaney v. Wilbur, 421 U.S. 684, 702 ns. 30 and 31 (1975). Given the secrecy in which grand juries are shrouded, and the extreme discretion granted the prosecution in the exercise of subpoena power, the burden of showing this regularity must lie with the prosecution. The only information available to Ms. Manning is that the most powerful actors in the federal government are greatly displeased at her release and have made efforts to undermine and harass her. Regardless of the general purpose of this grand jury, it is completely reasonable to harbor concerns about the purpose of this particular subpoena.

D. MS. MANNING BELIEVES THE SUBPOENA WAS PROPOUNDED ON THE BASIS OF UNLAWFUL ELECTRONIC SURVEILLANCE, SUCH AS WOULD CONSTITUTE “JUST CAUSE” FOR REFUSING TO TESTIFY

Attached hereto and made a part thereof, please find Chelsea Manning’s declaration, setting forth with specificity facts tending to suggest that she and others have been subjected to unlawful electronic surveillance.

These facts set forth in the Manning declaration include phone numbers and email addresses that she has reason to believe were subject to surveillance, and the range of dates on which such surveillance may have occurred; various places that may have been subject to surveillance, and the names of the lessees/licensees of those premises.

There can be little doubt that local police, federal agencies, and possibly the military have been involved in surveilling and communicating about Ms. Manning, people with whom she is lawfully associated, and the entirely lawful activities in which they engage. Likewise, there is reason to believe that non-state actors may have enabled the state to circumvent legal constraints on electronic surveillance, by surveilling Ms. Manning, and then conveying their intelligence to state actors. Unfortunately, this is not unheard of. Such a thing happened, for example, during

the prosecution of the 230 people arrested at the inauguration on January 20, 2017, where individuals from the disingenuously named Project Veritas secretly taped a community meeting and conveyed the footage to prosecutors. As Ms. Manning has encountered at least one individual who appeared to tape her while attempting to goad her into conversations about unlawful uses of technology, she reasonably fears that this or something similar is happening to her.

The information provided by Ms. Manning in her declaration constitutes at the very least a colorable basis supporting her belief that she has been subject to unlawful electronic surveillance. Such surveillance violates the Fourth Amendment, as well as her statutory rights under 18 U.S.C. §§2515 and 3504. Such surveillance constitutes a complete defense to contempt, and should trigger an obligation of the part of the government to either affirm or deny that such surveillance occurred. 28 U.S.C. §1826(a) (stating that a witness may refuse to testify for “just cause.”).

Also well-documented is a history of suspicious electronic activity and widespread surveillance of Ms. Manning, her friends, political associates, professional contacts, and technologist peers. For example, technologists at riseup.net and May First/People Link have been subject to surveillance, despite never having been charged with a crime. Technologists at Boston University’s BUILDS space were summoned before at least one grand jury despite having no material information about federal offenses. It would be difficult to deny that a great deal of electronic surveillance has taken place and been directed at Ms. Manning. It is likely that at least some of it was relevant to the propounding of this subpoena. Ms. Manning is not in a position to know whether any of it occurred in the absence of a warrant or other legal authority.

Finally, after Ms. Manning gave thorough, accurate, and complete testimony about the matters presumably being investigated by this grand jury, she thereafter made it a policy not to speak about the substance of those matters. In preliminary discussions, the prosecution indicated that they had reason to believe that Ms. Manning may have made statements inconsistent with her prior testimony. It is incumbent upon the court to direct the government to disclose not only electronic surveillance of Ms. Manning, but whether they intercepted communications authored and sent by third parties, as there are no such statements by Ms. Manning herself that would be at variance with her previous testimony. See Manning Dec. at Para.14. The concern here is that the subpoena as a whole is the product of unlawful - and possibly misunderstood - electronic surveillance.

This showing creates a colorable claim of electronic surveillance and requires that the government review not only the evidence gathered by their own actors and actually in the possession of the US Attorney's Office, but canvass all other agencies that may have engaged in such surveillance. They must then either issue an unequivocal and specific denial that such surveillance took place, or they must affirm that it did, in which case an expanded hearing on the issue of possible taint to the propounding of the subpoena and questions must be held. The government's representation ought to be in a sworn writing, and must be "responsive, factual, unambiguous, and unequivocal." United States v. Alter, 482 F.2d 1016 (9th Cir. 1973) note 110, at 1027; United States v Apple, 915 F2d 899, 908 (4th Cir. 1990) (finding that where "there was no question that a state wiretap was involved ... a check of only federal agencies was not an adequate response."). The government's response must furthermore include an "explicit assurance indicating that all agencies providing information relevant to the inquiry were

canvassed.” In re Quinn, 525 F.2d 222 (1st Cir. 1975), United States v. Apple, *supra*, (“The government’s denial ... is usually based on inquiries to the relevant government agencies ... [t]he predicate for acceptance of the government’s denial is that the government official making the denial have sufficient information upon which a reasonable response can be based.”).

As it is well-settled that electronic surveillance is relevant to a grand jury proceeding only where it is unlawful, and directly connected to subpoena or questions, it is not at this time necessary to request such a hearing. The Court, now, must hold the government to its minimal responsibility, simply to determine whether, and unambiguously affirm or deny, that there has been such surveillance.

It is by no means settled in this circuit that a witness must do more than make a mere assertion in order to trigger the government’s obligations. In re Grand Jury Subpoena (T-112), 597 F.3d 189, 200 (4th Cir. 2010), finding that the government satisfied its obligation by denying that *any* electronic surveillance was conducted; Wikimedia Found. v Natl. Sec. Agency/Cent. Sec. Serv., 335 F Supp 3d 772, 786 (D.Md. 2018) (affirming that a claim of unlawful electronic surveillance automatically triggers an obligation to render a simple affirmation or denial by the government). Nevertheless, the facts recited in the annexed declaration of Ms. Manning, even by the most stringent standard, set forth a colorable claim sufficient to require that the government unequivocally either affirm or deny that such surveillance took place. Critically, because a witness is not in position to know the details of a governmental investigation, the claim need only be “colorable,” and not “particularized.” The existence of unlawful electronic surveillance constitutes “just cause” excusing the appearance of a witness before a grand jury. Gelbard v. U.S., 408 U.S. 41, 51, 92 (1972), see 28 U.S.C. §1826(a), which contemplates “just cause” for

refusal to testify, as well as 18 U.S.C. §2515, mandating that “no part of the contents of [unlawfully intercepted] communication and no evidence derived therefrom may be received in evidence... before any ... grand jury.”

Furthermore the evidentiary prohibitions of 18 U.S.C. §2515 are not only intended to protect individuals’ privacy, but to ensure that the court itself does not become a party to illegal conduct on the part of the government. Because of the heightened secrecy of the grand jury, the need for the court to forestall even the appearance of impropriety becomes yet more acute. Thus, upon a colorable claim, it is absolutely incumbent upon the court to ensure that the government satisfies its obligation to either affirm or deny the allegations, in a sufficient form, and to make all necessary disclosures. United States v. James, In re Quinn, 525 F.2d 222, 225 (1st Cir. 1975). Failure to do so will constitute a fatal defect in procedure.

Judge Learned Hand stated in United States v. Coplon, “few weapons in the arsenal of freedom are more useful than the power to compel a government to disclose the evidence on which it seeks to forfeit the liberty of its citizens.” Id. 185 F.2d 629, 638 (2d Cir. 1950), cert. denied, 342 U.S. 920 (1952). Nowhere is this so true as it is in the context of the grand jury, shrouded as it is in secrecy. If in fact Ms. Manning has been subject to the practices that Justice Holmes pointedly described as “dirty business” - and there is little doubt that she has been - the government must disclose that fact, and the Court must itself assiduously avoid complicity by insisting upon that prompt and full disclosure. In the event that the prosecution is unwilling to make the necessary disclosures, they must withdraw the subpoena, or the court must quash it.

MOTION FOR DISCLOSURE OF MINISTERIAL DOCUMENTS

Federal Rule of Criminal Procedure 6(e) makes quite clear that information about what occurs in the presence of the grand jury is protected against public disclosure, absent a compelling need. Information, however, regarding the empanelment of the grand jury, its term, and its mechanical operation, is beyond the scope of Rule 6(e)'s protections. In re Special Grand Jury(for Anchorage, Alaska), 674 F.2d 778 (9th, Cir. 1982); United States v. Alter, 482 F.2d 1016, 1028-29 (9th Cir. 1973) (“Alter was entitled to know the content of the court’s charge to the grand jury. The proceedings before the grand jury are secret, but the ground rules by which the grand jury conducts those proceedings are not.”) See, Judicial Conference of the United States, Administrative Office of the U.S. Courts, Handbook for Federal Grand Jurors, HB 101 Rev 4/12.

Disclosure of ministerial information does not violate the freedom and integrity of the deliberative process of the grand jurors. Furthermore, American courts have long recognized a general right of access to court records.” In re Grand Jury Investigation, 903 F.2d 180, 182 (3rd Cir. 1990)(citing Nixon v. Warner Communications, Inc., 435 U.S. 589, 8 S.Ct. 1306, 55 L.Ed.2d 570 (1978)); Washington v Bruraker, 3:02-CV-00106, 2015 WL 6673177, at *1 (WD Va Mar. 29, 2015) (reiterating that the common law and the First Amendment presume a right to inspect and copy judicial records and documents); Reporters Comm. for Freedom of Press to Unseal Criminal Prosecution of Assange, 1:18-MC-37 (LMB/JFA), 2019 WL 366869, at 2 (ED Va Jan. 30, 2019), (confirming that “the public and the press share a qualified right to access civil and criminal proceedings and the judicial records filed therein.”)

Orders reflecting 1) the beginning or extension of the terms of a grand jury, 2) the instructions even a grand jury upon empanelment, and 3) records setting forth the method by which the grand jury was empaneled (including the manual of forms, procedures, and checklists uses to compile the master and qualified jury wheels) are to be disclosed upon request for the reason that such records ‘would not reveal the substance or essence of the grand jury proceedings,’ “pose no security threat to past, current, or prospective jurors,” and “do not infringe upon the freedom and integrity of the deliberative process.” United States v. Diaz, 236 F.R.D. 470, 477-478 (N.D. California 2006).

The ministerial records of the grand jury requested by Ms. Manning and her counsel do not in any manner violate the principle of grand jury secrecy.

Ms. Manning here requests all such ministerial information with respect to the following categories of documents be disclosed. To wit:

1) documents reflecting the commencement and termination dates of the current grand jury,

2) any orders extending the term of the current grand jury,

3) all written instructions given to the current grand jury at the time of empaneling,

4) attendance roles of each session of the current grand jury with names of the grand jurors redacted, and

5) the oath of the current grand jury, and 6) records setting forth the method by which the grand jury was empaneled (including the manual of forms, procedures, and checklists used to compile the master and qualified jury wheels but excluding any names of individuals summoned for the grand jury).

Should the Court decline to sign the attached order, counsel respectfully advises the Court that such a discovery denial is appealable by way of mandamus, prior to any contempt proceedings, and requests that all further proceedings be stayed pending interlocutory challenge.

MOTION TO INSTRUCT THE GRAND JURY

There is no question but that the grand jury is an appendage to the Court, and is not a “mere tool of the prosecutor.” In re Grand Jury Subpoena to Cent. States, Se. & Sw. Areas Pension Fund, Aug. Term, 1963, 225 F. Supp. 923, 925 (N.D. Ill. 1964). Although a grand jury is a hybrid proceeding, because the possibility of civil contempt looms over Ms. Manning, certain precautions must be taken to ensure that the grand jurors understand their power and purpose. It is critical that they are made aware of the Constitutional and testimonial privileges enjoyed by the witness, in particular (a) the power and authority of the grand jury to question witnesses and hear evidence as emanating from the court;(b) the nature and extent of this power; (c) the role of the United States Attorney as an assistant to the grand jury; (d) a witness' right to assert the Fifth Amendment prior to the grant of immunity, the lack of counsel in the grand jury room, and the legal effect of an immunity grant. United States v. Alter, 482 F.2d 1016, 1029 (9th Cir. 1973). Furthermore, the grand jurors must be made aware that they are not to draw adverse inferences from the invocation of those rights and privileges. Finally, they ought to be advised of their own power to decline to continue to question the witness.

Annexed hereto, please find a set of proposed supplementary grand jury instructions. It is beyond question that the Court has the authority to instruct the grand jury as to their powers, and as to the rights of the witness. Should the Court decline to do so, and should the existing

instructions to the grand jury be found inadequate according to established law, counsel respectfully advises the Court that the inadequate instruction will be challenged.

MOTION TO DISCLOSE PRIOR STATEMENTS

When an individual is asked the same question repeatedly, there is “always the hovering possibility that inconsistency in his answer may expose him to prosecution for perjury.” Burse v. United States, 466 F.2d 1059 (9th Cir. 1972), Matter of Ferris, 512 F.Supp 91 (D. Nev. 1981). Courts have therefore ruled that transcripts of previous testimony, including secret grand jury testimony, and sometimes even 302 material produced in interviews with the FBI, should be produced even to an immunized witness at least 72 hours prior to their scheduled appearance. In re Sealed Motion, 880 F.2d 1367, 1370-71 (D.C. Cir. 1989), (holding that “because the right to secrecy in grand jury proceedings belongs to the grand jury witness, a grand jury witness ... is entitled to a transcript of his own testimony absent a clear showing by the government that other interests outweigh the witness' right to such transcript”); In re Grand Jury, 490 F.3d 978, 986 (D.C. Cir. 2007) (affirming that “federal courts have the authority under Rule 6(e)(3)(E)(i) to order disclosure to grand jury witnesses of their own transcripts.”) See also In re: Russo, 52 F.R.D. 564 (C.D. Cal 1971); Gebhard v. United States, 422 F.2d 281 (9th Cir. 1970), United States v. Nicoletti, 310 F.2d 359 (7th Cir. 1962). Since it is unlawful for a prosecutor to ask a witness questions with the purpose of enticing them into committing perjury, providing such prior statements may go far in guarding against this possible misuse of the grand jury.

CONCLUSION

Based upon the foregoing facts, and the application of relevant law thereto, Ms. Manning brings this motion to quash on the basis that the subpoena represents an abuse of grand jury

process, may intrude upon First and Fifth Amendment protections and privileges, and if applicable, on the basis that the subpoena was propounded on the basis of unlawful electronic surveillance in violation of the Fourth, and possible Sixth Amendments, and related statutory prohibitions against warrantless electronic surveillance. Ms. Manning furthermore proffers her declaration and other evidence in support of her motion to quash on the basis of unlawful electronic surveillance, requiring here, at the very least, a thorough canvass of relevant agencies to determine whether there has been any electronic surveillance, lawful or otherwise; affirmation or denial on the part of the government, and any relevant disclosures; and if necessary, an expanded hearing on the issue.

Ms. Manning furthermore demands production of all ministerial documents`related to this grand jury, suggests a set of supplemental grand jury instructions, and requests disclosure of any prior statements she has made. In all events, Ms. Manning, through counsel, requests a full stay of all proceedings until the above questions are fully resolved through any necessary litigation, including , where permissible, collateral appeals and extraordinary writs.

Respectfully Submitted,
By Counsel

Dated: March 1, 2019

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FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MAR 04 P 2:08
U.S. DISTRICT COURT
ALEXANDRIA

IN RE:	)	<u>UNDER SEAL</u>
	)	(Pursuant to Local Criminal Rule 49 and
	)	Fed. R. Crim. P. 6(e))
GRAND JURY CASE NO. 10-GJ-3793)	
	)	Case No. 1:19-DM-3
)	
	)	GRAND JURY NO. 18-4
)	

**GOVERNMENT’S RESPONSE IN OPPOSITION TO
CHELSEA MANNING’S MOTION TO QUASH GRAND JURY SUBPOENA**

A grand jury of the Eastern District of Virginia has lawfully subpoenaed Chelsea Manning to testify in connection with an ongoing criminal investigation. The Court has ordered Manning to testify in front of the grand jury. The Court and a convening authority within the Department of the Army have also granted Manning full use and derivative use immunity to ensure that her testimony cannot be used against her. After a one-month postponement at her request, Manning has been directed to appear in front of the grand jury on March 5, 2019. Four days before her scheduled appearance, she filed the pending motion to quash the subpoena, speculating that the questioning will violate her constitutional, common-law, and statutory rights.

The motion should be denied. As a general matter, it is premature. The nature of Manning’s claims requires that she hear the questioning before determining whether it violates her rights. Until then, she can rely only on conjecture, which is an inadequate basis for a motion to quash. In addition to being premature, Manning’s claims fail on their merits. The subpoena was lawfully issued in the normal course of the grand jury proceedings. Manning was subpoenaed because her testimony is highly relevant to an ongoing criminal investigation. Like

any other citizen, Manning must appear before the grand jury as scheduled, and she must testify fully and truthfully as this Court has ordered her to do.

BACKGROUND

Manning is a former all-source intelligence analyst in the United States Army who may remain subject to military jurisdiction, despite her dishonorable discharge, because of an ongoing appeal relating to the following. In the 2009 to 2010 timeframe, Manning illegally leaked hundreds of thousands of classified documents of the United States Government. She provided the classified documents to one or more agents of WikiLeaks for public disclosure on its website. Manning was arrested for these crimes in May 2010. She was convicted of Espionage Act and other related offenses in a military court-martial. In 2013, Manning was sentenced to 35 years of imprisonment. In January 2017, however, President Barack Obama commuted Manning's sentence so that she would be released in May 2017, after serving approximately 7 years in prison.

In January 2019, Manning was served through counsel with a subpoena to testify on February 5 before a grand jury empaneled in the Eastern District of Virginia. Manning has been further ordered to testify in front of the grand jury by this Court and a general court-martial convening authority.¹ *See* Ex. A; Ex. B. In the compulsion orders, both authorities have granted her full use and derivative use immunity. *See* Ex. A; Ex. B.

At the request of Manning's counsel, the original appearance date was moved back approximately one month. Manning is now scheduled to appear in front of the grand jury on

¹ The Court's original immunity order dated January 22, 2019, erroneously referenced "Grand Jury 19-1" in the caption. On February 25, 2019, the Court signed an identical immunity order that simply corrected the caption to reference "Grand Jury 18-4."

March 5. Manning filed the pending Motion to Quash on March 1, four days before her scheduled appearance.

DISCUSSION

The Court “may quash or modify [a] subpoena if compliance would be unreasonable or oppressive.” Fed. R. Crim. P. 17(c). While the Court oversees that the grand jury uses its powers for legitimate purposes, the Court “should not intervene in the grand jury process absent a compelling reason.” *United States v. (Under Seal)*, 714 F.2d 347, 350 (4th Cir. 1983). “The investigative power of the grand jury is necessarily broad if its public responsibility is to be adequately discharged.” *Branzburg v. Hayes*, 408 U.S. 665, 700 (1972). As the Fourth Circuit has explained, “in the context of a grand jury subpoena, the longstanding principle that the public has a right to each person’s evidence is particularly strong.” *In re Grand Jury Subpoena*, 646 F.3d 159, 164 (4th Cir. 2011) (quoting *In re Grand Jury Proceedings #5 Empanelled Jan. 28, 2004*, 401 F.3d 247, 250 (4th Cir. 2005)). “[T]he grand jury’s authority to subpoena witnesses is not only historic, but essential to its task.” *Branzburg*, 408 U.S. at 688.

A party faces a heavy burden in moving to quash a grand jury subpoena. “[A] grand jury subpoena issued through normal channels is presumed to be reasonable, and the burden of showing unreasonableness must be on the recipient who seeks to avoid compliance.” *United States v. R. Enters., Inc.*, 498 U.S. 292, 301 (1991). A “presumption of regularity” attaches to the grand jury’s proceedings, including its issuance of subpoenas. *See Grand Jury Subpoena*, 646 F.3d at 164. To prevail on a motion to quash, the subpoena recipient “bears the burden of rebutting th[at] ‘presumption of regularity.’” *Id.* For the reasons explained below, Manning has failed to carry that burden.

I. The Grand Jury Subpoena Does Not Infringe on Manning's Fifth Amendment Rights

The Fifth Amendment right against self-incrimination applies to grand jury proceedings. *See Kastigar v. United States*, 406 U.S. 441, 444 (1972). Federal law, however, allows district courts to immunize witnesses and compel them to testify before a grand jury. *See* 18 U.S.C. § 6003(a). Under those circumstances, the witness's testimony cannot be used, or derivatively used, against the witness "in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order." *Id.* § 6002. In the military courts, the Rules for Court-Martial (R.C.M.) likewise allow a general court-martial convening authority to grant such use and derivative use immunity. *See* Manual for Courts-Martial, United States, R.C.M. 704 (2016 ed.) (Ex. C.)

It is well established that, where such immunity has been conferred, the government may compel the immunized witness to testify in front of the grand jury, even if her testimony would otherwise incriminate her. *See Kastigar*, 406 U.S. at 462. As the Supreme Court has explained, "the immunity . . . leaves the witness and the prosecutorial authorities in substantially the same position as if the witness had claimed the Fifth Amendment privilege." *Id.* "The immunity therefore is coextensive with the privilege and suffices to supplant it." *Id.*

In light of this precedent, Manning's Fifth Amendment claim fails. Both the Court and a general court-martial convening authority have issued orders compelling her to testify before the grand jury. *See* Ex. A; Ex. B. Both orders expressly grant Manning use and derivative use immunity in connection with her testimony. *See* Ex. A; Ex. B. Under *Kastigar*, those orders eliminate any Fifth Amendment concerns.

Manning's primary argument is that she is still subject to military criminal jurisdiction, where she claims that her grand jury testimony could be used against her. *See* Mot. to Quash 7-10 (Mar. 1, 2019). But the Army's immunity order definitively resolves that issue. It explicitly extends the immunity to court-martial proceedings: "no testimony or other information given by you pursuant to this order or any information directly or indirectly derived from such testimony or other information shall be used against you in a criminal case, *to include any courts-martial*, except as permitted by 18 U.S.C. § 6002." Ex. B (emphasis added). There is no question that Manning's grand jury testimony cannot be used against her in a court-martial proceeding. Accordingly, the alleged threat of military prosecution does not present Fifth Amendment concerns.

The case relied on by Manning, *United States v. Villines*, 13 M.J. 46 (C.M.A. 1982), is distinguishable on that basis. In that case, unlike here, the court refused to immunize the potential witness. *See id.* at 50. In fact, a primary issue on appeal was whether the court erred in refusing to immunize the potential witness so he could testify without Fifth Amendment concerns. *See id.* at 54. Manning, however, has been immunized so she can testify. *Villines* is therefore inapplicable.

Manning also urges (at 3) the Court to quash the subpoena based on "the threat of foreign prosecution" that is "unaffected by an immunity order." But the Supreme Court squarely rejected this argument in *United States v. Balsys*, 524 U.S. 666 (1998). There, the defendant was administratively subpoenaed to testify "about his wartime activities between 1940 and 1944." *Id.* at 669. He refused "to answer such questions, claiming the Fifth Amendment privilege against self-incrimination, based on his fear of prosecution by a foreign nation." *Id.* In ruling that the defendant had to testify, the Supreme Court held that "concern with foreign prosecution

is beyond the scope of the Self-Incrimination Clause.” *Id.* Manning’s concern about potential foreign prosecution, therefore, is no defense to her obligation to comply with the grand jury subpoena. *See, e.g., In re Grand Jury Proceedings of the Special April 2002 Grand Jury*, 347 F.3d 197, 208 (7th Cir. 2003) (holding that “any Fifth Amendment claim based on fear of prosecution by a foreign government would provide no defense to contempt in a grand jury proceeding”); *In re Grand Jury Investigation John Doe*, 542 F. Supp. 2d 467, 469 (E.D. Va. 2008) (“The Fourth Circuit has also held that a witness is required to testify under a grant of immunity in the United States even if that witness’s testimony would result in a possible criminal conviction in a foreign country.”).

In addition to being meritless, Manning’s Fifth Amendment claim is premature. A person subpoenaed to testify before the grand jury may not claim the Fifth Amendment “as a blanket defense.” *In re Grand Jury Subpoena*, 739 F.2d 1354, 1359 (8th Cir. 1984). “Rather, the witness must make specific objections in response to specific questions.” *Id.* Because Manning has not yet appeared before the grand jury, the Fifth Amendment provides no grounds for quashing the subpoena.

II. Manning’s First Amendment Claims Are Premature and Lack Merit

Even though Manning has not yet appeared before the grand jury, she asserts that the grand jury questioning will infringe upon her First Amendment rights. Specifically, Manning speculates that she may be questioned about her prior disclosures of classified information, for which she was convicted. *See Mot. to Quash* 9-10; *Manning Aff.* ¶ 4 (Mar. 1, 2019). Manning claims “that questioning . . . will focus on activities protected by the First Amendment such as news gathering.” *Mot. to Quash* 5. According to Manning, such questioning would “disrupt the integrity of the journalistic process by exposing journalists to a kind of accessorial liability for

leaks attributable to independently-acting journalist sources.” *Id.* at 12. In addition, Manning speculates that the grand jury may ask her questions about her political associations and activities. *See id.* at 12-13. These claims are wholly without merit.

As a threshold matter, Manning’s arguments are premature, and the Court should deny the motion on that basis alone. As Justice Powell explained in *Branzburg v. Hayes*, district courts should address First Amendment concerns only after the witness appears and is subject to “improper or prejudicial questioning.” 408 U.S 665, 710 n.* (1972) (Powell, J., concurring). The Fourth Circuit has adopted Justice Powell’s concurrence, reaffirming “that witnesses cannot litigate the state’s authority to subpoena them ‘at the threshold’” based on First Amendment concerns. *In re Grand Jury 87-3 Subpoena Duces Tecum*, 955 F.2d 229, 233 (4th Cir. 1992). Manning must therefore appear before the grand jury and subject herself to questioning before challenging it on First Amendment grounds. The time for her to raise a First Amendment defense is only in response to a particular question.² Until that time, her First Amendment claims are premature. *See In re Grand Jury Investigation*, 431 F. Supp. 2d 584, 592 (E.D. Va. 2006) (holding that an assertion of marital privilege was “premature” and that the witness “must appear and testify, but may assert the privilege in response to specific questions”).

Moreover, even assuming the grand jury were to inquire about Manning’s prior disclosures of classified information, any motion to quash such inquiry would fail on its merits. Questions about those disclosures would not affect her First Amendment rights. Manning was

² If Manning asserts a First Amendment challenge to a particular question, the Court should reject her invitation (at 12) to adopt the “substantial relationship” test from *Bursey v. United States*, 466 F.2d 1059 (9th Cir. 1972). The Fourth Circuit previously recognized that “the Supreme Court has twice declined to apply the substantial relationship test in cases involving subpoenas challenged on First Amendment grounds.” *Grand Jury 87-3 Subpoena Duces Tecum*, 955 F.2d at 232. Instead, the Fourth Circuit has adopted a simple balancing test that does not place “any special burden on the government.” *Id.* at 234.

an intelligence analyst in the U.S. Army—a government insider who signed a nondisclosure agreement—when she disclosed the classified information. As such, the law is clear that Manning had no First Amendment protections in disclosing the information. *See Snepp v. United States*, 444 U.S. 507, 509 n.3 (1980); *Wilson v. CIA*, 586 F.3d 171, 183-84 (2d Cir. 2009); *Stillman v. CIA*, 319 F.3d 546, 548 (D.C. Cir. 2003); *United States v. Morison*, 844 F.2d 1057, 1069-70 (4th Cir. 1988); *Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362, 1370 (4th Cir. 1975); *United States v. Rosen*, 445 F. Supp. 2d 602, 635-36 (E.D. Va. 2006). Her successful prosecution at the court-martial evidences that she had no First Amendment protections. Quite simply, Manning broke the law in disclosing classified information, and therefore, the grand jury properly could inquire about that offense, just as it properly could inquire about any other potential offense that Manning committed or witnessed.

Similarly, Manning’s speculation about the need for her to protect the concerns of journalists would not preclude questioning about her illegal disclosures. It is unclear how any questioning on this topic alone, within the confines of the secrecy of the grand jury proceeding, would “disrupt the integrity of the journalistic process.” Mot. to Quash 12. Manning fails to explain how it would. *See Branzburg*, 408 U.S. at 693-94 (emphasizing that the asserted “inhibiting effect” that subpoenas to reporters would have in recruiting sources was “to a great extent speculative”). Regardless, Manning does not have standing to raise the First Amendment rights of journalists.

Even if Manning did have standing, her argument would fail. Reporters enjoy no special solicitude vis-à-vis the grand jury. *See id.* at 690; *United States v. Sterling*, 724 F.3d 482, 499, 505 (4th Cir. 2013). The First Amendment does not “relieve a newspaper reporter of the obligation shared by all citizens to respond to a grand jury subpoena and answer questions

relevant to a criminal investigation, even though the reporter might be required to reveal a confidential source.” *Cohen v. Cowles Media Co.*, 501 U.S. 663, 669 (1991). It is “the duty of a citizen, whether reporter or informer, to respond to [a] grand jury subpoena and answer relevant questions put to him.” *Branzburg*, 408 U.S. at 697; *see also Citizens United v. FEC*, 558 U.S. 310, 352 (2010) (“We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers.”); *Dahlstrom v. Sun-Times Media, LLC*, 777 F.3d 937, 946 (7th Cir. 2015) (recognizing that “the First Amendment provides no special solicitude for members of the press”); *In re Greensboro News Co.*, 727 F.2d 1320, 1322 (4th Cir. 1984) (recognizing that “the rights of the news media . . . are co-extensive with and do not exceed those rights of members of the public in general”).

Nor is the topic of newsgathering immune from criminal investigation, as Manning’s argument suggests (at 5). It is well settled that journalists cannot break the law to obtain information. *See, e.g., Bartnicki v. Vopper*, 532 U.S. 514, 532 n.19 (2001) (“It would be frivolous to assert—and no one does in these cases—that the First Amendment, in the interest of securing news or otherwise, confers a license on either the reporter or his news sources to violate valid criminal laws. Although stealing documents or private wiretapping could provide newsworthy information, neither reporter nor source is immune from conviction for such conduct, whatever the impact on the flow of news.” (quoting *Branzburg*, 408 U.S. at 691)); *Dietemann v. Time, Inc.*, 449 F.2d 245, 249 (9th Cir. 1971) (“The First Amendment has never been construed to accord newsmen immunity from torts or crimes committed during the course of newsgathering. The First Amendment is not a license to trespass, to steal, or to intrude by electronic means into the precincts of another’s home or office.”). Criminal acts committed by citizens and journalists alike in obtaining information is a proper subject of inquiry by a grand

jury. For all of these reasons, even assuming that Manning were asked about her disclosure of classified information, the First Amendment would not preclude the inquiry.

In the end, the government is confident that its questioning will pose no legitimate First Amendment concerns. As will become clear during the questioning, Manning's testimony is highly relevant to an ongoing criminal investigation. The questioning will be properly tailored to that investigation. Under the Supreme Court's and Fourth Circuit's precedent, it will not violate Manning's First Amendment rights.

III. The Grand Jury Subpoena Is Not Improper or Abusive

In addition to her constitutional claims, Manning alleges that the grand jury subpoena was issued for improper purposes. Throughout her papers, she offers a series of theories maligning the government's motives: that the purpose of the subpoena is to harass her, to retaliate against her, to set up a perjury trap for her, or to obtain otherwise "inaccessible" information. *See* Mot. to Quash 17-20. She has no evidence, however, of any foul play at the grand jury. Her arguments are pure conjecture.

Manning's allegations fail to rebut the presumption of regularity that attaches to grand jury subpoenas. "[T]he law presumes, absent a strong showing to the contrary, that a grand jury acts within the legitimate scope of its authority." *United States v. R. Enters., Inc.*, 498 U.S. 292, 300-01 (1991). The "recipient who seeks to avoid compliance" bears the burden of showing otherwise, *id.* at 301, and has the "initial task of demonstrating . . . some valid objection to compliance," *In re Grand Jury Matter (Special Grand Jury Narcotics December Term, 1988, Motion to Quash Subpoena)*, 926 F.2d 348, 350 (4th Cir. 1991) (quoting *R. Enters.*, 498 U.S. at 305 (Stevens, J., concurring in part and concurring in the judgment)). It is well established that mere conjecture and speculation about the government's motives do not satisfy that burden. *See*

United States v. Leung, 40 F.3d 577, 582 (2d Cir. 1994) (holding that “speculations about possible irregularities in the grand jury investigation were insufficient to overcome the presumption that this investigation was for a proper purpose”); *United States v. Bellomo*, No. 02-CR-140 (ILG), 2002 WL 1267996, at *2 (E.D.N.Y. Apr. 10, 2002) (rejecting a motion to quash a subpoena because there was no “particularized proof that the government acted arbitrarily and for an improper purpose”); *United States v. Bin Laden*, 116 F. Supp. 2d 489, 493 (S.D.N.Y. 2000) (recognizing that “speculations about the Government’s motives are insufficient to overcome the presumption of regularity”); *United States v. McVeigh*, 896 F. Supp. 1549, 1557-58 (W.D. Okla. 1995) (“Such rank speculation or supposition is insufficient to overcome the presumption of regularity that attaches to the grand jury’s acts or to raise a substantial factual issue as to the purpose for which the subpoena and directive were issued.”). Since that is all she offers, Manning has failed to carry her burden.

On the contrary, the circumstances reflect that the issuance of the subpoena to Manning was for a legitimate purpose. Manning was validly convicted of high-profile unauthorized disclosure offenses after she committed one of the largest leaks of classified information in American history. Even assuming that Manning is correct that she will be asked about those offenses, such activity would fall squarely within the purview of a legitimate grand jury investigation.

The fact that the Department of Justice requested immunity for Manning further reinforces that the subpoena was for a legitimate purpose. The decision to grant a witness immunity is not taken lightly. Under federal law, the Department must request use and derivative use immunity before the court can grant it. *See* 18 U.S.C. § 6003(a). Such an application must be approved by statutorily designated leadership within the Department, and it

can be approved only when “the testimony or other information from such individual *may be necessary to the public interest.*” *Id.* § 6003(b) (emphasis added). All of those steps were followed here. In fact, the Court’s immunity order reflects that it was “satisfied that the testimony or other information from [Manning] may be necessary in the public interest.” Ex. A. The solemn decision to provide Manning with immunity reflects the importance of her testimony to an ongoing investigation.

The government, moreover, offered to meet Manning in advance of the grand jury to ask the questions and obtain answers in the presence of her attorneys. This would have given Manning insight into the proper purpose of the subpoena. While Manning had the right to decline that voluntary meeting, her effort to quash the subpoena on the basis of conjectured improprieties and ulterior motives is nothing more than an attempt to unnecessarily “saddle [the] grand jury with minitrials and preliminary showings [that] would assuredly impede its investigation and frustrate the public’s interest in the fair and expeditious administration of the criminal laws.” *R. Enters.*, 498 U.S. at 298-99 (quoting *United States v. Dionisio*, 410 U.S. 1, 17 (1973)).

It is worth noting that Manning’s primary arguments are premised on a false and misleading factual premise. In her papers, Manning suggests that she “has already given exhaustive testimony” at her court-martial proceeding. Mot. to Quash 17. Manning further represents that, “[a]t that time, the military, in consultation with the Department of Justice, cross-examined her and elicited testimony from her.” *Id.* at 3.

These representations do not withstand scrutiny. During her court-martial, Manning pleaded guilty to some of the charges. In connection with her guilty plea, the military judge conducted a “providence inquiry”—“a more elaborate relative of the Rule 11 proceeding under

the Federal Rules of Criminal Procedure” that serves to “ensure that a plea is voluntary and that there is a factual basis for the plea.” *Partington v. Houck*, 723 F.3d 280, 282-83 (D.C. Cir. 2013). The Rules for Courts-Martial provided that “[t]he military judge shall not accept a plea of guilty without making such inquiry of the accused as shall satisfy the military judge that there is a factual basis for the plea.” Manual for Courts-Martial, United States, R.C.M. 910(e) (2012 ed.) (Ex. D). As the notes to the rule explain, “[t]he accused need not describe from personal recollection all the circumstances necessary to establish a factual basis for the plea. Nevertheless the accused must be convinced of, and able to describe all the facts necessary to establish guilt.” *Id.*

The government has attached the colloquy from Manning’s providence inquiry. *See* Ex. E. As it reflects, Manning first read a voluntary statement providing a factual basis for her plea. *See* Ex. E, at 6739-85. That statement was also entered as an exhibit in the record. *See* Ex. F. Then, the court questioned her specifically about the factual basis for certain elements to which she was pleading guilty. *See id.* Ex. E, at 6786-916.

Thus, Manning’s representation that she gave exhaustive testimony and was “cross-examined” is misleading. Manning chose what facts to admit to support her guilty pleas. And the military court engaged in a limited inquiry to ensure the factual basis for the pleas. There is no evidence that the Department of Justice was involved in the military court’s questioning of her.

IV. Manning Has Failed to Demonstrate that She May Have Been Subjected to Unlawful Electronic Surveillance

Manning claims that she may have been subjected to unlawful electronic surveillance. While Manning recognizes that it is premature to request a hearing to determine whether it

affected the grand jury subpoena or any questioning, she insists that the government must affirm or deny that such surveillance occurred. *See* Mot. to Quash 21, 23. As explained below, Manning’s claim is meritless.

Upon a claim of a party aggrieved by unlawful electronic surveillance under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2522 (“Title III”), the government is required by 18 U.S.C. § 3504(a)(1) to affirm or deny the occurrence of the alleged unlawful act. Specifically, the statute provides as follows:

(a) In any trial, hearing, or other proceeding in or before any court [or] grand jury . . . of the United States—

(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act.

18 U.S.C. § 3504(a)(1). An “unlawful act” includes the use of electronic surveillance—as defined in Title III—in violation of the Constitution or the laws of the United States. *Id.* § 3504(b).

Under this statute, Manning must satisfy a two-part test. First, to establish standing, she must make a “claim” that there actually was electronic surveillance and that she was a party “aggrieved” by its use. *See United States v. Apple*, 915 F.2d 899, 905 (4th Cir. 1990). Second, she must show a plausible causal link between the electronic surveillance she alleges to have occurred and the evidence that the government intends to use against her in the grand jury. *See In re Grand Jury Investigation, 2003R01576*, 437 F.3d 855, 858 (9th Cir. 2006); *United States v. Robins*, 978 F.2d 881, 887 (5th Cir. 1992). Only if she satisfies both conditions may the government be required to affirm or deny any surveillance. Manning has failed to satisfy either.

A. Manning Does Not Have Standing.

As the Fourth Circuit has explained, “a party claiming to be the victim of illegal electronic surveillance must first demonstrate that his interests were affected before the government’s obligation to affirm or deny is triggered.” *Apple*, 915 F.2d at 905. “This ‘standing’ requirement is met if a definite ‘claim’ is made by an ‘aggrieved party.’” *Id.* Manning has failed to make a definite claim or demonstrate that she is an aggrieved party.

1. Manning has not made a sufficient “claim” under § 3504.

To satisfy the “claim” requirement under § 3504, the Fourth Circuit has held that a party must make “a positive statement that illegal surveillance has taken place.” *Id.* Equivocal statements are insufficient. The “mere allegation that such surveillance ‘may’ have occurred does not warrant any response from the government.” *In re Grand Jury Proceedings*, 831 F.2d 228, 230 (11th Cir. 1987). Similarly, “a motion alleging only a ‘suspicion’ of such surveillance, or that the movant has ‘reason to believe’ that someone has eavesdropped on his conversations, does not constitute a positive representation giving rise to the government’s obligation to respond.” *Robins*, 978 F.2d at 886.

Manning never positively states in her papers that illegal electronic surveillance took place. Instead, Manning makes only equivocal assertions. She consistently qualifies her statements with language that she “believed” or had “reason to believe” that illegal surveillance occurred. *See, e.g.*, Mot. to Quash 5 (asserting Manning “has reason to believe” that she was subject to unlawful electronic surveillance); *id.* at 20 (asserting that the “facts tend[] to suggest that she . . . ha[s] been subjected to unlawful electronic surveillance”); *id.* (asserting a “reason to believe” she was subject to electronic surveillance); *id.* at 21 (“It would be difficult to deny that a great deal of electronic surveillance has taken place and been directed at Ms. Manning.”);

Manning Aff. ¶¶ 16-17 (stating she “believ[ed]” and had “reason to believe” unlawful electronic surveillance had taken place). In the absence of a positive statement that unlawful electronic surveillance actually occurred, Manning’s motion under § 3504 must be denied.

2. Manning has not sufficiently alleged that she was an aggrieved party.

The standard for establishing that she is an aggrieved party is even “more demanding” than the requirements for making a claim. *In re Grand Jury Investigation*, 431 F. Supp. 2d 584, 590 (E.D. Va. 2006). To satisfy this requirement, Manning must “make a prima facie showing that [s]he was ‘aggrieved’ by the surveillance; that is, that [s]he was a party to an intercepted communication, that the government’s efforts were directed at [her], or that the intercepted communications took place on [her] premises.” *Apple*, 915 F.2d at 905. “This critical showing may not be based on mere suspicion; it must have at least a ‘colorable basis.’” *Id.*

Manning’s allegations fall decidedly short of satisfying this “demanding standard.” *Grand Jury Investigation*, 431 F. Supp. 2d at 591 n.14. Her allegations, at most, suggest that she was subjected to *physical* surveillance (i.e., the alleged van outside of her house and the alleged men on the Amtrak). None of the allegations provides a colorable basis that the government was intercepting her communications. In that regard, Manning has not offered anything more than “mere suspicion” to suggest that she was subjected to illegal electronic surveillance.

The Fourth Circuit’s decision in *United States v. Apple* demonstrates how far short Manning’s allegations fall. There, a defendant stated that he called a third party whose phone was tapped. *See Apple*, 915 F.2d at 906. The defendant specified where he called the third party—in Fluvanna County, Virginia. *See id.* The defendant approximated when he called the third party—in May, June, or July 1985. *See id.* And the defendant stated that he “spoke ‘regularly’ on the telephone” with the third party. *Id.* The Fourth Circuit held that this showing

was nevertheless insufficient to establish that the defendant was an aggrieved party because the defendant “never averred that he completed telephone calls to the number known to have been tapped during the period that surveillance took place.” *Id.* at 907. The defendant’s “failure to aver that he was involved in telephone conversations on the tapped line [was] . . . fatal to his claim.” *Id.*

Manning’s allegations are less compelling than the *Apple* defendant’s claim. Unlike the *Apple* defendant, Manning cannot clarify when, where, and on what medium her communications were allegedly intercepted. Whereas the *Apple* defendant specified that the intercepts involved telephone communications, Manning speculates that she was intercepted on two cell phones and an email address. *See Manning Aff.* ¶ 18. Whereas the *Apple* defendant pinpointed the area in which the wiretap occurred, Manning claims that she thought she was intercepted in New York, Maryland, and San Francisco. *See id.* Whereas the *Apple* defendant specified that the intercepts occurred during a three-month timeframe, Manning broadly states that the intercepts of her various devices occurred over nine months. *See id.* Manning’s kitchen-sink allegations underscore that she has no idea whether electronic surveillance occurred and, if so, whether she was subjected to it. As a result, the Court has even less of a basis to conclude that she is an aggrieved party than the Fourth Circuit had in *Apple*.

B. Manning Has Failed to Show a Connection Between the Grand Jury Proceedings and Any Intercepted Electronic Communications.

Section 3504 also contains an express requirement that there be a connection between the unlawful surveillance and the questions asked or evidence used at a grand jury proceeding. *See* 18 U.S.C. § 3504(a)(1) (requiring a “claim . . . that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful

act”). The statute, after all, is meant “to provide procedures by which a witness may attempt to demonstrate that the questions posed to him fail to comply with the mandate of section 2515,” a provision that “proscribes the use in an official proceeding of evidence tainted by illegal surveillance.” *In re Grand Jury Matter*, 906 F.2d 78, 91 (3d Cir. 1990). It “is not a discovery tool to be used to determine the existence or validity of wiretaps completely unrelated in time or substance to the on-going proceeding.” *Id.* at 93.

The Ninth Circuit’s decision in *In re Grand Jury Investigation*, 2003R01576, 437 F.3d 855 (9th Cir. 2006), is instructive. There, a district court held a grand jury witness in contempt after he refused to answer questions posed to him. *Id.* at 857. The witness asserted § 3504 as a defense, claiming that “the government did not meet its burden of proof in responding to his allegations that he ha[d] been the subject of illegal surveillance.” *Id.* The Ninth Circuit disagreed. While it concluded that he sufficiently showed he was an aggrieved party, the court determined that he did not demonstrate “that the government’s questions were the ‘primary product’ of unlawful surveillance or were ‘obtained by the exploitation’ of any unlawful surveillance.” *Id.* at 858 (quoting § 3504(a)(1)). The Ninth Circuit emphasized that there must be at least “an arguable causal connection between the questions being posed to the grand jury witness and the alleged unlawful surveillance.” *Id.* The court noted that “[t]he nature of the questions posed to [the witness] before the grand jury [was] so generic that the questions d[id] not suggest any reliance on surveillance of any sort.” *Id.*

In her papers, Manning recognizes that she cannot demonstrate that the subpoena or any questioning will be based on unlawful electronic surveillance. In fact, she recognizes that “it is well-settled that electronic surveillance is relevant to a grand jury proceeding only where it is unlawful, and directly connected to [the] subpoena or questions.” *Mot. to Quash* 23. And she

acknowledges that “it is not at this time necessary to request such a hearing.” *Id.* Instead, she asks the Court to compel the government to affirm or deny any such surveillance. *Id.*

The text of the statute undermines Manning’s request. Under the clear language of the statute, the government does not have to affirm or deny until Manning shows that the subpoena or questioning was a “primary product” of unlawful surveillance or “was obtained by the exploitation” of unlawful surveillance. § 3504(a)(1). She has offered nothing to suggest that the subpoena was the product of unlawful surveillance. And, given that Manning has not appeared before the grand jury, she has no basis for arguing that the questioning is a product of unlawful surveillance. In short, Manning has failed to assert a connection between the alleged unlawful surveillance and the grand jury proceedings. As a result, her motion must be denied. *See also In re Grand Jury Subpoena (T-112)*, 597 F.3d 189, 196-200 (4th Cir. 2010) (holding that a grand jury enforcement action is not the proper forum for litigating whether surveillance violated the Fourth Amendment or FISA).

V. Manning Has No Right to Disclosure of “Ministerial” Grand Jury Records

Manning is not entitled to so-called “ministerial” records of the grand jury. Federal Rule of Criminal Procedure 6(e) codifies the “long-established policy of maintaining the secrecy of grand jury proceedings.” *United States v. Penrod*, 609 F.2d 1092, 1098 (4th Cir. 1979). The rule sets forth the exceptions under which the Court may “lift the veil of secrecy.” *See* Fed. R. Crim. P. 6(e)(3)(E); *United States v. Loc Tien Nguyen*, 314 F. Supp. 2d 612, 615 (E.D. Va. 2004) (addressing exceptions under prior version of Rule 6(e)).

Manning does not point to any of Rule 6(e)’s exceptions as allowing for a right to the purportedly “ministerial” records she seeks. Instead, she cites (at 25) the Ninth Circuit’s opinion in *In re Special Grand Jury (for Anchorage, Alaska)*, 674 F.2d 778 (9th Cir. 1982), where the

court held that members of the public “have a right, subject to the rule of grand jury secrecy, of access to the ministerial records” of the grand jury. *Id.* at 781. Courts in this district, however, have rejected that holding. “[T]here is no rule in the Fourth Circuit that some grand jury records may be labeled as ministerial and disclosed to the public if they do not fall within the bounds of Rule 6(e) or otherwise offend the goals of the grand jury secrecy doctrine.” *Nguyen*, 314 F. Supp. 2d at 618.

Manning’s attempt to invoke (at 25) cases involving the public’s “general right of access to court records” fares no better. Even the court in *In re Special Grand Jury* recognized that the common-law right of access to court records was “subject to the rule of grand jury secrecy.” 674 F.2d at 781; *see also Douglas Oil Co. of Cal. v. Petrol Stops N.W.*, 441 U.S. 211, 218 n.9 (1979) (describing grand jury secrecy as dating to the 17th century and “imported into our federal common law” as “an integral part of our criminal justice system”).

Moreover, Manning has not even attempted to meet the standard required for disclosure of grand jury records under Rule 6(e)(3)(E)(i)—the only exception even potentially applicable to someone in Manning’s shoes. *See* Fed. R. Crim. P. 6(e)(3)(E)(i) (allowing disclosure of grand jury matter “preliminary to or in connection with a judicial proceeding”). A party seeking to lift the veil of secrecy under that rule must make a “strong showing of a particularized need for grand jury materials.” *United States v. Sells Eng’g, Inc.*, 463 U.S. 418, 443 (1983). Specifically, a party “must show that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed.” *Douglas*, 441 U.S. at 222. Manning has not identified any other relevant judicial proceeding, or otherwise addressed any element of the *Douglas* test. *See also Nguyen*, 314 F. Supp. 2d at 616 n.6 (“Invocation of

general constitutional rights does not qualify as a particularized need justifying disclosure.”).

She is therefore not entitled to any records of the grand jury in this case.

VI. Manning Has No Right to Have the Court Instruct the Grand Jury as She Demands

“Traditionally the grand jury has been accorded wide latitude to inquire into violations of criminal law. No judge presides to monitor its proceedings. It deliberates in secret and may determine alone the course of its inquiry.” *United States v. Calandra*, 414 U.S. 338, 343 (1974).

The Fourth Circuit has thus “repeatedly recognized that district courts should refrain from intervening in the grand jury process absent compelling evidence of grand jury abuse” and in light of the “presumption of regularity” attached to grand jury proceedings. *United States v. Alvarado*, 840 F.3d 184, 189 (4th Cir. 2016). Motions to instruct the grand jury “have uniformly met with no success.” *In re Balistrieri*, 503 F. Supp. 1112, 1114 (E.D. Wis. 1980); *see also United States v. Zangger*, 848 F.2d 923, 935 (8th Cir. 1988) (“The prosecutor is under no obligation to give the grand jury legal instructions.”).

Despite the presumption of regularity, Manning proposes (at 27) that the Court provide a novel set of grand jury instructions related to, among other things, “the power and authority of the grand jury,” Manning’s purported Fifth Amendment rights, “and the legal effect of an immunity grant.” Manning, however, fails to cite a single case in the Fourth Circuit that supports the Court instructing the grand jury about such matter, because no such case exists. Nor has Manning offered a shred of evidence of grand jury abuse that would rebut the presumption of regularity. *See Alvarado*, 840 F.3d at 189. Manning asserts (at 27) that her proposed instructions are necessary “because the possibility of civil contempt looms over Ms. Manning.” But that possibility hangs over every grand jury witness and, therefore, does nothing to rebut the presumption of regularity or counsel in favor of Manning’s proposed instructions.

Manning's sole support for her proposed instruction is the Ninth Circuit's opinion in *United States v. Alter*, 482 F.2d 1016 (9th Cir. 1973). The court in *Alter*, however, did not consider the propriety of the grand jury witness's proposed instructions. Indeed, the court stated that the proposed instructions were not even given by the district court. *See id.* at 1029 ("The record supplies no basis for us to infer that he was prejudiced . . . by the refusal to give his requested instructions to the grand jury.")

VII. Manning Has No Right to Discovery from the Government Prior to Her Grand Jury Testimony

There is no rule of criminal procedure that obligates the government to produce discovery to a grand jury witness prior to her testimony. Manning cites (at 28) out-of-circuit cases supporting the proposition that, in some circumstances, a grand jury witness may be entitled to the transcript of her grand jury testimony after she testifies. But as expressly acknowledged in the cases Manning cites, that is *not* the law in the Fourth Circuit. *See In re Grand Jury*, 490 F.3d 978, 987 (D.C. Cir. 2007) (describing circuit split and that the Fourth Circuit "held that grand jury witnesses are not entitled to obtain copies of their transcripts"). In the Fourth Circuit, witnesses are not entitled to their own grand jury transcripts absent a showing that a "particularized need" outweighs the policy of grand jury secrecy. *Bast v. United States*, 542 F.2d 893, 896-97 (4th Cir. 1976). Other than speculating that she might commit perjury if she testifies, Manning does not even attempt to make such a showing.

In any event, the out-of-circuit cases Manning cites address disclosure of a grand jury transcript *after* a witness testifies before the grand jury. Contrary to Manning's suggestion, those cases do not provide a general right to discovery of a witness's prior statements before the witness appears. *See In re Sealed Motion*, 880 F.2d 1367, 1370-73 (D.C. Cir. 1989) (finding


general right to transcript of a witness's own testimony absent countervailing interests); *In re Grand Jury*, 490 F.3d at 990 (grand jury witness entitled to review transcript of his own testimony "in private at the U.S. Attorney's Office or a place agreed to by the parties or designated by the district court"); *In re Russo*, 53 F.R.D. 564, 569 (C.D. Cal. 1971) ("The question . . . is the extent to which providing a witness with a transcript of his own grand jury testimony would be inconsistent with valid reasons for secrecy."); *Gebhard v. United States*, 422 F.2d 281, 289 (9th Cir. 1970) (considering whether it was error for petit jury in perjury case "to hear the complete transcript of the defendant's testimony before the grand jury"); *United States v. Nicoletti*, 310 F.2d 359 (7th Cir. 1962) (holding that the "two witness" rule was not applicable in a perjury case).

CONCLUSION

For the foregoing reasons, the Court should deny the motion to quash.

Respectfully submitted,

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United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of March, 2019, I caused the foregoing document to be sent to the following via electronic mail:

Moira Meltzer-Cohen
Attorney at Law
Mo_at_Law@protonmail.com



Thomas W. Traxler
Assistant United States Attorney

EXHIBIT A

FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNDER SEAL

UNITED STATES OF AMERICA)

v.)

JOHN DOE 2010R03703)

GRAND JURY 19-1

ORDER

The United States of America, by its attorneys, G. Zachary Terwilliger, United States Attorney for the Eastern District of Virginia, and Gordon D. Kromberg, Assistant United States Attorney, having requested that this Court issue an Order pursuant to 18 U.S.C. § 6003 compelling CHELSEA MANNING, formerly known as BRADLEY MANNING (hereinafter referred to as "the witness") to testify and to provide other information in the above-captioned proceeding and in any other proceedings ancillary thereto;

AND being advised that the request was approved by John C. Demers, Assistant Attorney General, U.S. Department of Justice, pursuant to his authority under 18 U.S.C. § 6003(b) and 28 C.F.R. § 0.175(a);

AND the Court being satisfied that the testimony or other information from the witness may be necessary in the public interest, and that the witness is likely to refuse to testify or provide other information on the basis of the witness' privilege against self-incrimination;

IT IS ORDERED that the witness shall testify fully, completely and truthfully before the above-captioned proceeding;

IT IS FURTHER ORDERED that the witness shall provide full, complete and truthful information in regard to any other proceedings ancillary to the above-captioned proceeding;

IT IS FURTHER ORDERED that no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except as permitted by 18 U.S.C. § 6002.

Clause M. Helton
USDJ

Date: Jan. 22, 2019
Alexandria, Virginia

WE ASK FOR THIS:

G. Zachary Terwilliger
United States Attorney

By: GDK
Gordon D. Kromberg
Assistant United States Attorney

EXHIBIT B

FILED UNDER SEAL



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY FIRES CENTER OF EXCELLANCE AND FORT SILL
466 MCNAIR AVE, SUITE 100
FORT SILL, OKLAHOMA 73530

ATZR-C

01 MAR 19

MEMORANDUM FOR Private Bradley Manning, aka, Chelsea Manning

SUBJECT: Grant of Testimonial Immunity and Order to Testify

1. As an officer empowered to convene general courts-martial, and pursuant to the provisions of sections 6002 and 6004, Title 18, United States Code, and Rule for Courts-Martial 704, I make the following findings:

a. You possess information relevant to a pending Grand Jury investigation of United States v. John Doe 2010R03793, in the United States District Court for the Eastern District of Virginia.

b. On 22 January 2019, a United States District Judge in the Eastern District of Virginia found that the presentation of evidence by you in this case is necessary to the public interest.

c. It is likely that you would refuse to testify on the basis of your privilege against self-incrimination if ordered to appear as a witness without testimonial immunity.

2. Pursuant to Rule for Courts-Martial 704 and section 6004, Title 18, United States Code, I order you to cooperate fully with the order issued by the United States District Court for the Eastern District of Virginia, to appear and testify fully, completely and truthfully before the aforementioned Grand Jury proceedings, and you shall provide full, complete and truthful information in regard to any other proceedings ancillary to the above-captioned proceeding.

3. As provided in R.C.M. 704 and section 6002, Title 18, United States Code, it is further ordered that no testimony or other information given by you pursuant to this order or any information directly or indirectly derived from such testimony or other information shall be used against you in a criminal case, to include any courts-martial, except as permitted by 18 U.S.C. § 6002.

A handwritten signature in black ink, appearing to read "Wilson A. Shoffner".

WILSON A. SHOFFNER
Major General, USA
Commanding

EXHIBIT C

FILED UNDER SEAL

R.C.M. 703(f)(4)(B)

ernment. Evidence not under the control of the government may be obtained by a subpoena issued in accordance with subsection (e)(2) of this rule. A subpoena *duces tecum* to produce books, papers, documents, data, or other objects or electronically stored information for a preliminary hearing pursuant to Article 32 may be issued, following the convening authority's order directing such preliminary hearing, by counsel for the government. A person in receipt of a subpoena *duces tecum* for an Article 32 hearing need not personally appear in order to comply with the subpoena.

Discussion

The National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81, § 542, amended Article 47 to allow the issuance of subpoenas *duces tecum* for Article 32 hearings. Although the amended language cites Article 32(b), this new subpoena power extends to documents subpoenaed by counsel representing the United States, whether or not requested by the defense.

(C) *Relief.* If the person having custody of evidence requests relief on grounds that compliance with the subpoena or order of production is unreasonable or oppressive, the convening authority or, after referral, the military judge may direct that the subpoena or order of production be withdrawn or modified. Subject to Mil. R. Evid. 505 and 506, the military judge may direct that the evidence be submitted to the military judge for an in camera inspection in order to determine whether such relief should be granted.

Rule 704. Immunity

(a) *Types of immunity.* Two types of immunity may be granted under this rule.

(1) *Transactional immunity.* A person may be granted transactional immunity from trial by court-martial for one or more offenses under the code.

(2) *Testimonial immunity.* A person may be granted immunity from the use of testimony, statements, and any information directly or indirectly derived from such testimony or statements by that person in a later court-martial.

Discussion

"Testimonial" immunity is also called "use" immunity.

Immunity ordinarily should be granted only when testimony or other information from the person is necessary to the public interest, including the needs of good order and discipline, and

when the person has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

Testimonial immunity is preferred because it does not bar prosecution of the person for the offenses about which testimony or information is given under the grant of immunity.

In any trial of a person granted testimonial immunity after the testimony or information is given, the Government must meet a heavy burden to show that it has not used in any way for the prosecution of that person the person's statements, testimony, or information derived from them. In many cases this burden makes difficult a later prosecution of such a person for any offense that was the subject of that person's testimony or statements. Therefore, if it is intended to prosecute a person to whom testimonial immunity has been or will be granted for offenses about which that person may testify or make statements, it may be necessary to try that person before the testimony or statements are given.

(b) *Scope.* Nothing in this rule bars:

(1) A later court-martial for perjury, false swearing, making a false official statement, or failure to comply with an order to testify; or

(2) Use in a court-martial under subsection (b)(1) of this rule of testimony or statements derived from such testimony or statements.

(c) *Authority to grant immunity.* Only a general court-martial convening authority may grant immunity, and may do so only in accordance with this rule.

Discussion

Only general court-martial convening authorities are authorized to grant immunity. However, in some circumstances, when a person testifies or makes statements pursuant to a promise of immunity, or a similar promise, by a person with apparent authority to make it, such testimony or statements and evidence derived from them may be inadmissible in a later trial. Under some circumstances a promise of immunity by someone other than a general court-martial convening authority may bar prosecution altogether. Persons not authorized to grant immunity should exercise care when dealing with accused or suspects to avoid inadvertently causing statements to be inadmissible or prosecution to be barred.

A convening authority who grants immunity to a prosecution witness in a court-martial may be disqualified from taking post-trial action in the case under some circumstances.

(1) *Persons subject to the code.* A general court-martial convening authority may grant immunity to any person subject to the code. However, a general court-martial convening authority may grant immunity to a person subject to the code extending to a prosecution in a United States District Court only when specifically authorized to do so by the Attor-

R.C.M. 705(a)

ney General of the United States or other authority designated under 18 U.S.C. § 6004.

Discussion

When testimony or a statement for which a person subject to the code may be granted immunity may relate to an offense for which that person could be prosecuted in a United States District Court, immunity should not be granted without prior coordination with the Department of Justice. Ordinarily coordination with the local United States Attorney is appropriate. Unless the Department of Justice indicates it has no interest in the case, authorization for the grant of immunity should be sought from the Attorney General. A request for such authorization should be forwarded through the office of the Judge Advocate General concerned. Service regulations may provide additional guidance. Even if the Department of Justice expresses no interest in the case, authorization by the Attorney General for the grant of immunity may be necessary to compel the person to testify or make a statement if such testimony or statement would make the person liable for a Federal civilian offense.

(2) *Persons not subject to the code.* A general court-martial convening authority may grant immunity to persons not subject to the code only when specifically authorized to do so by the Attorney General of the United States or other authority designated under 18 U.S.C. § 6004.

Discussion

See the discussion under subsection (c)(1) of this rule concerning forwarding a request for authorization to grant immunity to the Attorney General.

(3) *Other limitations.* The authority to grant immunity under this rule may not be delegated. The authority to grant immunity may be limited by superior authority.

Discussion

Department of Defense Directive 1355.1 (21 July 1981) provides: "A proposed grant of immunity in a case involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States, shall be forwarded to the General Counsel of the Department of Defense for the purpose of consultation with the Department of Justice. The General Counsel shall obtain the view of other appropriate elements of the Department of defense in furtherance of such consultation."

(d) *Procedure.* A grant of immunity shall be written and signed by the convening authority who issues it. The grant shall include a statement of the authority

under which it is made and shall identify the matters to which it extends.

Discussion

A person who has received a valid grant of immunity from a proper authority may be ordered to testify. In addition, a servicemember who has received a valid grant of immunity may be ordered to answer questions by investigators or counsel pursuant to that grant. See Mil. R. Evid. 301(c). A person who refuses to testify despite a valid grant of immunity may be prosecuted for such refusal. Persons subject to the code may be charged under Article 134. See paragraph 108, Part IV. A grant of immunity removes the right to refuse to testify or make a statement on self-incrimination grounds. It does not, however, remove other privileges against disclosure of information. See Mil. R. Evid., Section V.

An immunity order or grant must not specify the contents of the testimony it is expected the witness will give.

When immunity is granted to a prosecution witness, the accused must be notified in accordance with Mil. R. Evid. 301(e)(2).

(e) *Decision to grant immunity.* Unless limited by superior competent authority, the decision to grant immunity is a matter within the sole discretion of the appropriate general court-martial convening authority. However, if a defense request to immunize a witness has been denied, the military judge may, upon motion by the defense, grant appropriate relief directing that either an appropriate convening authority grant testimonial immunity to a defense witness or, as to the affected charges and specifications, the proceedings against the accused be abated, upon findings that:

(1) The witness intends to invoke the right against self-incrimination to the extent permitted by law if called to testify; and

(2) The Government has engaged in discriminatory use of immunity to obtain a tactical advantage, or the Government, through its own overreaching, has forced the witness to invoke the privilege against self-incrimination; and

(3) The witness' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source and does more than merely affect the credibility of other witnesses.

Rule 705. Pretrial agreements

(a) *In general.* Subject to such limitations as the Secretary concerned may prescribe, an accused and

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R.C.M. 910(c)(5)

begin anew on the date the general court-martial convening authority takes custody of the accused at the end of any period of commitment.

Rule 910. Pleas

(a) Alternatives.

(1) *In general.* An accused may plead as follows: guilty; not guilty to an offense as charged, but guilty of a named lesser included offense; guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any; or, not guilty. A plea of guilty may not be received as to an offense for which the death penalty may be adjudged by the court-martial.

Discussion

See paragraph 2, Part IV, concerning lesser included offenses. When the plea is to a lesser included offense without the use of exceptions and substitutions, the defense counsel should provide a written revised specification accurately reflecting the plea and request that the revised specification be included in the record as an appellate exhibit. In 2010, the court held in *United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2010), that the elements test is the proper method of determining lesser included offenses. As a result, "named" lesser included offenses listed in the Manual are not binding and must be analyzed on a case-by-case basis in conformity with *Jones*. See discussion following paragraph 3b(1)(c) in Part IV of this Manual and the related analysis in Appendix 23.

A plea of guilty to a lesser included offense does not bar the prosecution from proceeding on the offense as charged. See also subsection (g) of this rule.

A plea of guilty does not prevent the introduction of evidence, either in support of the factual basis for the plea, or, after findings are entered, in aggravation. See R.C.M. 1001(b)(4).

(2) *Conditional pleas.* With the approval of the military judge and the consent of the Government, an accused may enter a conditional plea of guilty, reserving the right, on further review or appeal, to review of the adverse determination of any specified pretrial motion. If the accused prevails on further review or appeal, the accused shall be allowed to withdraw the plea of guilty. The Secretary concerned may prescribe who may consent for Government; unless otherwise prescribed by the Secretary concerned, the trial counsel may consent on behalf of the Government.

(b) *Refusal to plead; irregular plea.* If an accused fails or refuses to plead, or makes an irregular plea,

the military judge shall enter a plea of not guilty for the accused.

Discussion

An irregular plea includes pleas such as guilty without criminality or guilty to a charge but not guilty to all specifications thereunder. When a plea is ambiguous, the military judge should have it clarified before proceeding further.

(c) *Advice to accused.* Before accepting a plea of guilty, the military judge shall address the accused personally and inform the accused of, and determine that the accused understands, the following:

(1) The nature of the offense to which the plea is offered, the mandatory minimum penalty, if any, provided by law, and the maximum possible penalty provided by law;

Discussion

The elements of each offense to which the accused has pleaded guilty should be described to the accused. See also subsection (e) of this rule.

(2) In a general or special court-martial, if the accused is not represented by counsel, that the accused has the right to be represented by counsel at every stage of the proceedings;

Discussion

In a general or special court-martial, if the accused is not represented by counsel, a plea of guilty should not be accepted.

(3) That the accused has the right to plead not guilty or to persist in that plea if already made, and that the accused has the right to be tried by a court-martial, and that at such trial the accused has the right to confront and cross-examine witnesses against the accused, and the right against self-incrimination;

(4) That if the accused pleads guilty, there will not be a trial of any kind as to those offenses to which the accused has so pleaded, so that by pleading guilty the accused waives the rights described in subsection (c)(3) of this Rule; and

(5) That if the accused pleads guilty, the military judge will question the accused about the offenses to which the accused has pleaded guilty, and, if the accused answers these questions under oath, on the record, and in the presence of counsel, the accused's

R.C.M. 910(c)(5)

answers may later be used against the accused in a prosecution for perjury or false statement.

Discussion

The advice in subsection (5) is inapplicable in a court-martial in which the accused is not represented by counsel.

(d) *Ensuring that the plea is voluntary.* The military judge shall not accept a plea of guilty without first, by addressing the accused personally, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement under R.C.M. 705. The military judge shall also inquire whether the accused's willingness to plead guilty results from prior discussions between the convening authority, a representative of the convening authority, or trial counsel, and the accused or defense counsel.

(e) *Determining accuracy of plea.* The military judge shall not accept a plea of guilty without making such inquiry of the accused as shall satisfy the military judge that there is a factual basis for the plea. The accused shall be questioned under oath about the offenses.

Discussion

A plea of guilty must be in accord with the truth. Before the plea is accepted, the accused must admit every element of the offense(s) to which the accused pleaded guilty. Ordinarily, the elements should be explained to the accused. If any potential defense is raised by the accused's account of the offense or by other matter presented to the military judge, the military judge should explain such a defense to the accused and should not accept the plea unless the accused admits facts which negate the defense. If the statute of limitations would otherwise bar trial for the offense, the military judge should not accept a plea of guilty to it without an affirmative waiver by the accused. See R.C.M. 907(b)(2)(B).

The accused need not describe from personal recollection all the circumstances necessary to establish a factual basis for the plea. Nevertheless the accused must be convinced of, and able to describe all the facts necessary to establish guilt. For example, an accused may be unable to recall certain events in an offense, but may still be able to adequately describe the offense based on witness statements or similar sources which the accused believes to be true.

The accused should remain at the counsel table during questioning by the military judge.

(f) *Plea agreement inquiry.*

(1) *In general.* A plea agreement may not be accepted if it does not comply with R.C.M. 705.

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(2) *Notice.* The parties shall inform the military judge if a plea agreement exists.

Discussion

The military judge should ask whether a plea agreement exists. See subsection (d) of this rule. Even if the military judge fails to so inquire or the accused answers incorrectly, counsel have an obligation to bring any agreements or understandings in connection with the plea to the attention of the military judge.

(3) *Disclosure.* If a plea agreement exists, the military judge shall require disclosure of the entire agreement before the plea is accepted, provided that in trial before military judge alone the military judge ordinarily shall not examine any sentence limitation contained in the agreement until after the sentence of the court-martial has been announced.

(4) *Inquiry.* The military judge shall inquire to ensure:

- (A) That the accused understands the agreement; and
- (B) That the parties agree to the terms of the agreement.

Discussion

If the plea agreement contains any unclear or ambiguous terms, the military judge should obtain clarification from the parties. If there is doubt about the accused's understanding of any terms in the agreement, the military judge should explain those terms to the accused.

(g) *Findings.* Findings based on a plea of guilty may be entered immediately upon acceptance of the plea at an Article 39(a) session unless:

- (1) Such action is not permitted by regulations of the Secretary concerned;
- (2) The plea is to a lesser included offense and the prosecution intends to proceed to trial on the offense as charged; or
- (3) Trial is by a special court-martial without a military judge, in which case the president of the court-martial may enter findings based on the pleas without a formal vote except when subsection (g)(2) of this rule applies.

Discussion

If the accused has pleaded guilty to some offenses but not to others, the military judge should ordinarily defer informing the members of the offenses to which the accused has pleaded guilty until after findings on the remaining offenses have been entered.

R.C.M. 912(a)(1)(C)

See R.C.M. 913(a), Discussion and R.C.M. 920(e), Discussion, paragraph 3.

(h) *Later action.*

(1) *Withdrawal by the accused.* If after acceptance of the plea but before the sentence is announced the accused requests to withdraw a plea of guilty and substitute a plea of not guilty or a plea of guilty to a lesser included offense, the military judge may as a matter of discretion permit the accused to do so.

(2) *Statements by accused inconsistent with plea.* If after findings but before the sentence is announced the accused makes a statement to the court-martial, in testimony or otherwise, or presents evidence which is inconsistent with a plea of guilty on which a finding is based, the military judge shall inquire into the providence of the plea. If, following such inquiry, it appears that the accused entered the plea improvidently or through lack of understanding of its meaning and effect a plea of not guilty shall be entered as to the affected charges and specifications.

Discussion

When the accused withdraws a previously accepted plea for guilty or a plea of guilty is set aside, counsel should be given a reasonable time to prepare to proceed. In a trial by military judge alone, recusal of the military judge or disapproval of the request for trial by military judge alone will ordinarily be necessary when a plea is rejected or withdrawn after findings; in trial with members, a mistrial will ordinarily be necessary.

(3) *Pretrial agreement inquiry.* After sentence is announced the military judge shall inquire into any parts of a pretrial agreement which were not previously examined by the military judge. If the military judge determines that the accused does not understand the material terms of the agreement, or that the parties disagree as to such terms, the military judge shall conform, with the consent of the Government, the agreement to the accused's understanding or permit the accused to withdraw the plea.

Discussion

See subsection (f)(3) of this rule.

(i) *Record of proceedings.* A verbatim record of the guilty plea proceedings shall be made in cases in

which a verbatim record is required under R.C.M. 1103. In other special courts-martial, a summary of the explanation and replies shall be included in the record of trial. As to summary courts-martial, see R.C.M. 1305.

(j) *Waiver.* Except as provided in subsection (a)(2) of this rule, a plea of guilty which results in a finding of guilty waives any objection, whether or not previously raised, insofar as the objection relates to the factual issue of guilt of the offense(s) to which the plea was made.

Rule 911. Assembly of the court-martial

The military judge shall announce the assembly of the court-martial.

Discussion

When trial is by a court-martial with members, the court-martial is ordinarily assembled immediately after the members are sworn. The members are ordinarily sworn at the first session at which they appear, as soon as all parties and personnel have been announced. The members are seated with the president, who is the senior member, in the center, and the other members alternately to the president's right and left according to rank. If the rank of a member is changed, or if the membership of the court-martial changes, the members should be reseated accordingly.

When trial is by military judge alone, the court-martial is ordinarily assembled immediately following approval of the request for trial by military judge alone.

Assembly of the court-martial is significant because it marks the point after which: substitution of the members and military judge may no longer take place without good cause (see Article 29; R.C.M. 505; 902; 912); the accused may no longer, as a matter of right, request trial by military judge alone or withdraw such a request previously approved (see Article 16; R.C.M. 903(a)(2)(d)); and the accused may no longer request, even with the permission of the military judge, or withdraw from a request for, enlisted members (see Article 25(c)(1); R.C.M. 903(a)(1)(d)).

Rule 912. Challenge of selection of members; examination and challenges of members

(a) *Pretrial matters.*

(1) *Questionnaires.* Before trial the trial counsel may, and shall upon request of the defense counsel, submit to each member written questions requesting the following information:

- (A) Date of birth;
- (B) Sex;
- (C) Race;

EXHIBIT E

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1 MJ: Now, you do understand if you do read the statement and you
2 tell me something that's not true, that the statement can be used
3 against you later for charges of perjury or making false statements?

4 ACC: Yes, Your Honor.

5 MJ: Your counsel has asked for a brief recess. What we're
6 going to do is we'll take that brief recess, we'll come back, you can
7 read your statement, and then we'll go over -- I'll be oriented to
8 the facts, we'll go over each of the specifications that you're
9 pleading guilty to at that time.

10 How long would you like for a recess?

11 CDC[MR.COOMBS]: Just 10 minutes, Your Honor.

12 MJ: All right.

13 TC[MAJ FEIN]: Ma'am, if we can just make it 15 because of the
14 number of spectators?

15 MJ: Why don't we just do that? We'll just reconvene here at 11
16 o'clock. Court is in recess.

17 **[The Article 39(a) session recess at 1050, 28 February 2013.]**

18 **[The Article 39(a) session was called to order at 1109, 28 February**
19 **2013.]**

20 MJ: This Article 39(a) session is called to order. Let the
21 record reflect all parties present when the court last recessed are
22 again present in court. PFC Manning, you may read your statement.

1 ACC: Yes, Your Honor. I wrote this statement in confinement, so
2 I'll start now. The following facts are provided in support of the
3 providence inquiry for my court-martial, United States v. PFC Bradley
4 E. Manning.

5 Personal facts: I'm a 25 year-old Private First Class in
6 the United States Army currently assigned to Headquarters and
7 Headquarters Company (HHC), U.S. Army Garrison (USAG), Joint Base
8 Myer-Henderson Hall, Fort Myer, Virginia. Prior to this assignment,
9 I was assigned to HHC, 2nd Brigade Combat Team, 10th Mountain
10 Division at Fort Drum, New York. My Primary Military Occupational
11 Specialty or PMOS is 35F, Intelligence Analyst. I entered active
12 duty status on 2 October 2007. I enlisted with the hope of obtaining
13 both real-world experience and earning benefits under the G.I. Bill
14 for college opportunities.

15 Facts regarding my position as an intelligence analyst: In
16 order to enlist in the Army, I took the Standard Armed Services
17 Aptitude Battery or ASVAB. My score on this battery was high enough
18 for me to qualify for any enlisted MOS position. My recruiter
19 informed me that I should select an MOS that complemented my
20 interests outside the military. In response, I told him that I was
21 interested in geopolitical matters and information technology. He
22 suggested that I consider becoming an intelligence analyst.

1 After researching the intelligence analyst position, I
2 agreed that this would be a good fit for me. In particular, I
3 enjoyed the fact that an analyst would use information derived from a
4 variety of sources to create work products that informed the command
5 of its available choices for determining the best course of action or
6 COAs. Although the MOS required a working knowledge of computers, it
7 primarily required me to consider how raw information could be
8 combined with other available intelligence sources in order to create
9 products that assist in the command and its situational awareness or
10 SA.

11 I assessed that my natural interest in geopolitical affairs
12 and my computer skills would make me an excellent intelligence
13 analyst. After enlisting, I reported to the Fort Meade Military
14 Entrance Processing Station on 1 October 2007. I then traveled to
15 and reported at Fort Leonard Wood, Missouri on 2 October 2007 to
16 begin Basic Combat Training or BCT.

17 Once at Fort Leonard Wood, I quickly realized that I was
18 neither physically nor mentally prepared for the requirements of
19 basic training. My BCT experience lasted 6 months instead of the
20 normal 10 weeks. Due to medical issues, I was placed on a hold
21 status. A physical examination indicated that I sustained injuries
22 to my right shoulder and left foot. Due to those injuries, I was
23 unable to continue Basic. During medical hold, I was informed that I

1 may be out processed from the Army, however, I resisted being
2 chaptered out because I felt I could overcome my medical issues and
3 continue to serve.

4 On 20 January 2008, I returned to Basic Combat Training.
5 This time, I was better prepared and I completed training on 2 April
6 2008. I then reported for the MOS-specific Advanced Individual
7 Training or AIT on 7 April 2008.

8 AIT was an enjoyable experience for me. Unlike Basic
9 Training where I felt different from the other Soldiers, I fit in and
10 did well. I preferred the mental challenges of reviewing a large
11 amount of information from various sources and trying to create
12 useful or actionable products. I especially enjoyed the practice of
13 analysis through the use of computer applications and methods I was
14 familiar with.

15 I graduated from AIT on 16 August 2008 and reported to my
16 first duty station, Fort Drum, New York on 28 August 2008. As an
17 analyst, Significant Activities or SIGACTs were a frequent source of
18 information for me to use in creating work products.

19 I started working extensively with SIGACTs early after my
20 arrival at Fort Drum. My computer background allowed me to use the
21 tools organic to the Distributed Common Ground System-Army or DCGS-A
22 computers to create polished work products for the 2nd Brigade Combat
23 Team chain of command.

1 The noncommissioned officer in charge, or NCOIC, of the S-2
2 section, then Master Sergeant David P. Adkins, recognized my skills
3 and potential and tasked me to work on a tool abandoned by a
4 previously assigned analyst, the incident tracker. The incident
5 tracker was viewed as a backup to the Combined Information Data
6 Network Exchange or CIDNE and as a unit historical reference tool.

7 In the months preceding my upcoming deployment, I worked on
8 creating a new version of the incident tracker and used SIGACTS to
9 populate it. The SIGACTs I used were from Afghanistan because, at
10 the time, our unit was scheduled to deploy to the Logar and Wardak
11 Provinces of Afghanistan. Later, our unit was reassigned to deploy
12 to Eastern Baghdad, Iraq. At that point, I removed the Afghanistan
13 SIGACTs switch to Iraq SIGACTs.

14 As an analyst, I viewed the SIGACTs as historical data. I
15 believe this view is shared by other all-source analysts as well.
16 SIGACTs give a first-look impression of a specific or isolated event.
17 This event can be an Improvised Explosive Device attack, or IED;
18 Small Arms Fire engagement, or SAF; engagement with a hostile force
19 or any other event a specific unit documented and reported in real
20 time. In my perspective, the information contained within a single
21 SIGACT or group of SIGACTs is not very sensitive. The events
22 encapsulated within most SIGACTs involve either enemy engagements or
23 casualties. Most of this information is publicly reported by the

1 public affairs office or PAO, embedded media pools, or host nation
2 (HN) media.

3 As I started working with SIGACTs, I felt they were similar
4 to a daily journal or log that a person may keep. They capture what
5 happens on a particular date and time. They are created immediately
6 after the events and are potentially updated over a period of hours
7 until a final version is published on the CIDNE -- on the Combined
8 Information Data Network Exchange. Each unit has its own Standard
9 Operating Procedure or SOP for reporting and recording SIGACTs. The
10 SOP may differ between reporting in a particular deployment and
11 reporting in garrison. In garrison, a SIGACT normally involves
12 personnel issues such as driving under the influence or DUI incidents
13 or an automobile involving the death or serious injury of a Soldier.
14 The report starts at the company level and goes up to the battalion,
15 brigade, and even up to the division level.

16 In a deployed environment, a unit may observe or
17 participate in an event and a platoon leader or platoon sergeant may
18 report the event to a SIGACT -- as a SIGACT to the company
19 headquarters through the Radio Transmission Operator or RTO. The
20 commander or RTO will then forward the report to the battalion battle
21 captain or battle noncommissioned officer or NCO. Once the battalion
22 battle captain or battle NCO receives the report, they will either,
23 one, notify the battalion operations officer or S-3, two, conduct an

1 action such as launching the quick reaction force or, three, record
2 the event and report -- and further report it up the chain of command
3 to the brigade. The recording of each event is done by radio or over
4 the Secret Internet Protocol Router Network or SIPRNET, normally by
5 an assigned Soldier, usually junior-enlisted, E4 and below. Once the
6 SIGACT is reported, the SIGACT is further sent up the chain of
7 command. At each level, additional information can either be added
8 or corrected as needed. Normally, within 24 to 48 hours, the
9 updating or recording of a particular SIGACT is complete.
10 Eventually, all reports and SIGACTs go through the chain of command
11 from brigade to division and division to corps. At corps level, the
12 SIGACT is finalized and published.

13 The CIDNE system contains a database that is used by
14 thousands of Department of Defense (DoD) personnel, including
15 Soldiers, civilians, and contractor support. It was the United
16 States Central Command or CENTCOM reporting tool for operational
17 reporting in Iraq and Afghanistan. Two separate but similar
18 databases were maintained for each theater: CIDNE-I for Iraq and
19 CIDNE-A for Afghanistan. Each database encompasses over 100 types of
20 reports and other historical information for access. They contain
21 millions of vetted and finalized records including operational
22 intelligence reporting. CIDNE was created to collect and analyze
23 battle space data to provide daily operational and Intelligence

1 Community (IC) reporting relevant to a commander's daily decision-
2 making process. The CIDNE-I and CIDNE-A databases contain reporting
3 and analysis fields from multiple disciplines including Human
4 Intelligence or HUMINT Reports, Psychological Operations or PYSOP
5 reports, engagement reports, Counter-Improvised Explosion Device or
6 CIED reports, SIGACT reports, targeting reports, social and cultural
7 reports, civil affairs reports, and human terrain reporting.

8 As an intelligence analyst, I had unlimited access to the
9 CIDNE-I and CIDNE-A databases and the information contained within
10 them. Although each table within the database is important, I
11 primarily dealt with HUMINT reports, SIGACT reports, and Counter-IED
12 reports because these reports were used to create the work product I
13 was required to publish as any analyst.

14 When working on an assignment, I looked anywhere and
15 everywhere for information. As an all-source analyst, this was
16 something that was expected. The DCGS-A systems had databases built
17 in and I utilized them on any daily basis. This includes the search
18 tools available on DCGS-A systems on SIPRNET such as Query Tree, and
19 the DOD and Intelink search engines. Primarily, I utilized the CIDNE
20 database using the historical and HUMINT reporting to conduct my
21 analysis and provide back-up for my end work product. I did
22 statistical analysis on historical data including SIGACTs to backup
23 analyses that were based on HUMINT reporting and produced charts,

1 graphs, and tables. I also created maps and charts to conduct
2 predictive analysis based on statistical trends. The SIGACT
3 reporting provided a reference point for what occurred and provided
4 myself and other analysts with the information to conclude possible
5 outcomes.

6 Although SIGACT reporting is sensitive at the time of their
7 creation, their sensitivity normally dissipates within 48 to 72 hours
8 as the information is either publicly released, the unit involved is
9 no longer in the area and not in danger -- or the unit involved is no
10 longer in the area and not in danger. It is my understanding that
11 the SIGACT reports remain classified only because they are maintained
12 within CIDNE because it is only accessible on SIPRNET. Everything on
13 CIDNE-I and CIDNE-A, to include SIGACT reporting, was treated as
14 classified information.

15 Facts regarding the storage of SIGACT reports. As part of
16 my training at Fort Drum, I was instructed to ensure that I create
17 backups of my work product. The need to create backups was
18 particularly acute given the relative instability and reliability of
19 the computer systems we used in the field during the deployment.
20 These computer systems included both organic and theater-provided
21 equipment (TPE) DCGS-A machines.

22 The organic DCGS-A machines we brought with us into the
23 field on our deployment were Dell M90 laptops and the TPE DCGS-A

1 machines were Alienware brand laptops. The M90 DCGS-A laptops were
2 the preferred machine to use as they were slightly faster and had
3 fewer problems with dust and temperature than the theater-provided
4 Alienware laptops. I used several DCGS-A machines during the
5 deployment due to various technical problems with laptops.

6 With these issues, several analysts lost information, but I
7 never lost information due to the multiple backups I created. I
8 attempted to backup as much relevant information as possible. I
9 would save the information so that I, or another analyst, could
10 quickly access it whenever a machine crashed, SIPRNET connectivity
11 was down, or I forgot where the data was stored. When backing up
12 information, I would do one or all of the following things based on
13 my training:

14 Physical backup. I tried to keep physical backup copies of
15 information on paper so that the information could be grabbed
16 quickly. Also, it was easier to brief from hard copies of research
17 in HUMINT reports.

18 Two, local drive backup. I tried to sort out information I
19 deemed relevant and keep complete copies of the information on each
20 of the computers I used in the Temporary Sensitive Compartmentalized
21 -- Compartmented Information Facility, or T-SCIF, including my
22 primary and secondary DCGS-A machines. This was stored under my user
23 profile on the desktop.

1 Share drive -- or share drive backup. Each analyst had
2 access to a T-drive -- what we called a "T-drive" -- shared across
3 the SIPRNET. It allowed others to access information that was stored
4 on it; S-6 operated the T-drive.

5 Compact Disc-Rewritable or CD-RW back up. For larger data
6 sets, I saved the information onto a re-writable disc, labeled the
7 discs, and stored them in the conference room of the T-SCIF. This
8 redundancy permitted us the ability to not worry about information
9 loss. If a system crashed, I could easily pull the information from
10 a secondary computer, the T-drive, or one of the CD-RWs. If another
11 analyst wanted to access my data but I was unavailable, she could
12 find my published products directory on the T-drive or on the CD-RWs.
13 I sorted all of my products and research by date, time, and group and
14 updated the information on each of the storage methods to ensure that
15 the latest information was available to them.

16 During the deployment, I had several of the DCGS-A machines
17 crash on me. Whenever a computer crashed, I usually lost information
18 but the redundancy method ensured my ability to quickly restore old
19 backup data and add my current information to the machine when it was
20 repaired or replaced.

21 I stored the backup CD-RWs of larger data sets in the
22 conference room of the T-SCIF or next my workstations. I marked the
23 CD-RWs based on the classification level and its content.

1 Unclassified CD-RWs were only labeled with content type and not
2 marked with classification markings. Early on in the deployment, I
3 only saved and stored the SIGACTs that were within or near our
4 operational environment. Later, I thought it would be easier just to
5 save all the SIGACTs on to a CD-RW. The process would not take very
6 long to complete and so I downloaded the SIGACTs from CIDNE-I onto a
7 -- onto a DCGS-on to a CD-RW. After finishing with CIDNE-I, I did
8 the same with CIDNE-A. By retrieving the CIDNE-I and CIDNE-A
9 SIGACTs, I was able to retrieve the information whenever I needed it
10 and not rely upon the unreliable and slow SIPRNET connectivity needed
11 to pull them. Instead, I could just find the CD-RW and open the pre-
12 loaded spreadsheet. This process began in late December 2009 and
13 continued through early January 2010. I could quickly export one
14 month of the SIGACT data at a time and download in the background as
15 I did other tasks. The process took approximately a week for each
16 table.

17 After downloading the SIGACT tables, I periodically updated
18 them by pulling only the most recent SIGACTs and simply copying them
19 and pasting them into the database saved on the CD-RW. I never hid
20 the fact that I had downloaded copies of both the SIGACT tables from
21 CIDNE-I and CIDNE-A. They were stored on appropriately labeled and
22 marked CD-RWs, stored in the open. I viewed the saved copies of the
23 CIDNE-I and CIDNE-A SIGACT tables as being both for my use and the

1 use of anyone within S-2 section during the SIPRNET connectivity
2 issues.

3 In addition to the SIGACT tables, I had a large repository
4 of HUMINT reports and counter-IED reports downloaded from CIDNE-I.
5 These contained reports that were relevant to the area in and around
6 our operational environment in Eastern Baghdad and the Diyala
7 Province of Iraq.

8 In order to compress the data to fit onto a CD-RW, I use a
9 compression algorithm called "BZIP2." The program used to compress
10 the data is called "WinRar." WinRar is an application that is free
11 and can be easily downloaded from the internet via the Nonsecure
12 Internet Relay Protocol Network, or NIPRNET. I downloaded WinRar on
13 NIPRNET and transferred it to the DCGS-A machine user profile desktop
14 using the CD-RW. I did not try to hide the fact that I was
15 downloading WinRar onto my SIPRNET DCGS-A machine or computer. With
16 the assistance of the BZIP2 compression algorithm, using the WinRar
17 program, I was able to fit all the SIGACTs onto a single CD-RW and
18 the relevant HUMINT and Counter-IED reports onto a separate CD-RW.

19 Facts regarding my knowledge of the WikiLeaks Organization
20 or WLO: I first became vaguely aware of the WLO during my AIT at
21 Fort Huachuca, Arizona, though I did not fully pay attention until
22 WLO -- until the WLO released purported Short Messaging System or SMS
23 messages from 11 September 2001 on 25 November 2009. At that time,

1 references to the release and the WLO website showed up in my daily
2 Google News open-source search for information related to U.S.
3 foreign policy. The stories were about how WLO published
4 approximately 500,000 messages. I then reviewed the messages myself
5 and realized that the posted messages were very likely real, given
6 the sheer volume and detail of the content.

7 After this, I began conducting research on WLO. I
8 conducted searches on both NIPRNET and SIPRNET on WLO beginning in
9 late November 2009 and early 2000 -- early December 2009. At this
10 time, I also began to routinely monitor the WLO website. In response
11 to one of my searches in December 2009, I found the United States
12 Army Counterintelligence Center or USACIC report on the WikiLeaks
13 Organization. After reviewing the report, I believe that this report
14 was one of the -- was possibly the one that my AIT instructor
15 referenced in early 2008. I may or may not have saved the report on
16 my DCGS-A workstation. I know I reviewed the document on other
17 occasions throughout early 2010 and saved it on both my primary and
18 secondary laptops.

19 After reviewing the report, I continued doing research on
20 WLO, however, based upon my open-source collection, I discovered
21 information that contradicted the 2008 USACIC report including
22 information indicating that, similar to other press agencies, WLO
23 seemed to be dedicated to exposing illegal activities and corruption.

1 WLO received numerous awards and recognition for its reporting
2 activities.

3 Also, in reviewing the WLO website, I found information
4 regarding U.S. military SOPs for Camp Delta at Guantánamo Bay, Cuba
5 and information on the, then, outdated rules of engagement or ROE in
6 Iraq for cross-border pursuits of former members of Saddam Hussein's
7 al-Tikiriti's government.

8 After seeing the information available on the WLO website,
9 I continued following it and collecting open-source information from
10 it. During this time period, I followed several organizations and
11 groups including wire press agencies such as the Associated Press and
12 Reuters and private intelligence agencies including Strategic
13 Forecasting or STRATFOR. This practice was something I was trained
14 to do during AIT and was something that good analysts are expected to
15 do.

16 During the searches of WLO, I found several pieces of
17 information that I found useful in my work product -- in my work as
18 an analyst, specifically, I recall WLO publishing documents related
19 to weapons trafficking between two nations that affected my OE. I
20 integrated this information into one or more of my work products. In
21 addition to visiting the WLO website, I began following WLO using and
22 Instant Relay Chat or IRC client called "XChat" sometime in early
23 January 2010.

1 IRC is a protocol for real-time Internet communications by
2 messaging and conferencing, colloquially referred to as chat rooms or
3 chats. The IRC chat rooms are designed for group communication
4 discussion forums. Each IRC chat room is called a channel. Similar
5 to a television, you can tune in or follow it -- follow a channel so
6 long as it is open and does not require an invite. Once joining a
7 specific IRC conversation, other users in the conversation can see
8 that you have joined the room. On the Internet, there are millions
9 of different IRC channels across several services. Channel topics
10 span a range of topics covering all kinds of interests and hobbies.

11 The primary reason for following WLO on IRC was curiosity,
12 particularly in regards to how and why they obtained the SMS messages
13 referenced above. I believed that -- I believed that collecting
14 information on the WLO would assist me in this goal.

15 Initially, I simply observed the IRC conversations. I
16 wanted to know how the organization was structured and how they
17 obtained their data. The conversations I viewed were usually
18 technical in nature, but sometimes switched to a lively debate on
19 issues a particular individual may have felt strongly about.

20 Over a period of time, I became more involved in these
21 discussions, especially when conversations turned to geopolitical
22 events and information topics -- information technology topics such

1 as networking and encryption methods. Based on these observations, I
2 would describe the WL organization as almost academic in nature.

3 In addition to the WLO conversations, I participated in
4 numerous other IRC channels across at least three different networks.
5 The other IRC channels I participated in normally dealt with
6 technical topics including the LINUX and Berkley Security
7 Distribution (BSD) operating systems or OSs, networking, encryption
8 algorithms and techniques, and other more political topics such as
9 politics and queer rights.

10 I normally engaged in multiple IRC conversations
11 simultaneously; mostly publicly but often privately. The XChat
12 client enabled me to manage these multiple conversations across
13 different channels and servers. The screen for XChat was often busy,
14 but experience enabled me to see when something was interesting. I
15 would then select conversation and either observe or participate.

16 I really enjoyed the IRC conversations pertaining to and
17 involving the WLO. However, at some point in late February or early
18 March of 2010, the WLO IRC channel was no longer accessible.
19 Instead, the regular participants of this channel switched to using a
20 Jabber server.

21 Jabber is another Internet communication tool similar, but
22 more sophisticated than IRC. The IRC and Jabber conversations

1 allowed me to feel connected to others, even when alone. They helped
2 me pass the time and keep motivated throughout the deployment.

3 Facts regarding the unauthorized storage and disclosure of
4 the SIGACTs: As indicated above, I created copies of the CIDNE-I and
5 CIDNE-A SIGACT tables as part of the process of backing up
6 information. At the time I did so, I did not intend to use this
7 information for any purpose other than for backup. However, I later
8 decided to release this information publicly. At that time, I
9 believed and still believe that these tables are two of the most
10 significant documents of our time.

11 On 8 January 2010, I collected the CD-RW I stored in the
12 conference room of the T-SCIF and placed into the cargo pocket of my
13 ACU or Army Combat Uniform. At the end of my shift, I took the CD-RW
14 out of the T-SCIF and brought it to my Containerized Housing Unit or
15 CHU. I copied the data onto my personal laptop. Later, at the
16 beginning of my shift, I returned to -- I returned the CD-RW back to
17 the conference room of the T-SCIF.

18 At the time I saved the SIGACTs to my laptop, I planned to
19 take them -- I planned to take them with me on mid-tour leave and
20 decide what to do with them. At some point prior to my mid-tour
21 leave, I transferred the information from my computer to a Secure
22 Digital memory card for my digital camera. The SD card for the

1 camera also worked on my computer and allowed me to store the SIGACT
2 tables in a secure manner for transport.

3 I began mid-tour leave on 23 January 2010, flying from
4 Atlanta, Georgia to Reagan National Airport in Virginia. I arrived
5 at the home of my aunt, Debra M. Van Alstyne in Potomac, Maryland and
6 quickly got in contact with my then boyfriend, Tyler R. Watkins.

7 Tyler, then a student at Brandeis University in Waltham,
8 Massachusetts, and I made plans to -- for me to visit him in Boston,
9 Massachusetts area. I was excited to see Tyler and planned on
10 talking to Tyler about where our relationship was going and about my
11 time in Iraq. However, when arrived in the Boston area, Tyler and I
12 seem to become distant. He did not seem very excited about my return
13 from Iraq. I tried talking to him about our relationship, but he
14 refused to make any plans. I also tried raising the topic of
15 releasing the CIDNE-I and CIDNE-A SIGACT tables to the public.

16 I asked Tyler hypothetical questions about what he would do
17 if he had documents that he thought the public needed -- that the
18 public needed access to. Tyler didn't really have a specific answer
19 for me. He tried to answer the question and be supportive, but
20 seemed confused by the question and its context. I then tried to be
21 more specific, but he asked too many questions. Rather than try to
22 explain my dilemma, I decided just to drop the conversation. After a
23 few days in Waltham, I began feeling that I was overstaying my

1 welcome and I returned to Maryland. I spent the remainder of my time
2 on leave in the Washington, D.C. area.

3 During this time, a blizzard bombarded the Mid-Atlantic and
4 I spent a significant time period of time, essentially, stuck at my
5 aunt's house in Maryland. I began to think about what I knew and the
6 information I still had in my possession. For me, the SIGACTs
7 represented the on-the-ground reality of both the conflicts -- both
8 the conflicts in Iraq and Afghanistan. I felt we were risking so
9 much for -- risking so much for people that seemed unwilling to
10 cooperate with us leading to frustration and hatred on both sides.

11 I began to become depressed with the situation that we
12 found ourselves increasingly mired in year after year. The SIGACTs
13 documented this in great detail and provided context to what we were
14 seeing on the ground. In attempting to conduct counterterrorism or
15 CT and counterinsurgency (COIN) operations, we became obsessed with
16 capturing/killing human targets on lists and on being suspicious and
17 avoiding cooperation with our host nation partners and ignoring the
18 second and third order effects of accomplishing short-term goals and
19 missions.

20 I believe that if the general public, especially the
21 American public, had access to the information contained within the
22 CIDNE-I and CIDNE-A tables, this could spark a domestic debate on the
23 role of the military and our foreign policy, in general, as well as

1 it related to Iraq and Afghanistan. I also believe the detailed
2 analysis of the data over a long period of time by different sectors
3 of society might cause society to reevaluate the need or even the
4 desire to engage in counterterrorism and counterinsurgency operations
5 that ignore the complex dynamics of the people living in the affected
6 environment every day.

7 At my aunt's house, I debated what I should do with the
8 SIGACTs; in particular, whether I should hold onto them or disclose
9 them through a press agency. At this point, I decided it made sense
10 to try and disclose the SIGACT tables to an American newspaper. I
11 first called my local newspaper, the *Washington Post*, and spoke with
12 a woman saying that she was a reporter. I asked her if the
13 *Washington Post* would be interested in receiving information that
14 would have enormous value to the American public. Although we spoke
15 for about 5 minutes concerning the general nature of what I
16 possessed, I do not believe she took me seriously. She informed me
17 that the *Washington Post* would possibly be interested, but that such
18 decisions were made only after seeing the information I was referring
19 to and after consideration by the senior editors.

20 I then decided to contact the largest and most popular
21 newspaper, the *New York Times*. I called the public editor number on
22 the *New York Times* website. The phone rang and was answered by a
23 machine. I went through the menu to the section for news tips and

1 was routed to an answering machine. I left a message stating that I
2 had access to information about Iraq and Afghanistan that I believed
3 was very important. However, despite leaving my Skype phone number
4 and personal e-mail address, I never received a reply from the *New*
5 *York Times*.

6 I also briefly considered dropping into the office for the
7 political commentary blog, *Politico*, however, the weather conditions
8 during my leave hampered my efforts to travel. After these failed
9 efforts, I ultimately decided to submit the materials to the WLO. I
10 was not sure if the WLO would actually publish the SIGACT tables or
11 even if they would publish. I was concerned that they might -- I was
12 also concerned that they might not be noticed by the American media.
13 However, based upon what I read about the WLO through my research
14 described above, they seemed to be the best medium for publishing
15 this information to the world within my reach.

16 At my aunt's house, I joined in on an IRC conversation and
17 stated I had information that needed to be shared with the world. I
18 wrote that the information would help document the true costs of the
19 wars in Iraq and Afghanistan. One of individuals in the IRC asked me
20 to describe the information. However, before I could describe
21 information, another individual pointed me to the link for the WLO
22 website's online submission system. After ending my IRC connection,

1 I considered my options one more time. Ultimately, I felt that the
2 right thing to do was to release the SIGACTs.

3 On 3 February 2010, I visited the WLO website on my
4 computer and clicked on the "submit documents" link. Next, I found
5 the "Submit Your Information Online" link and elected to submit the
6 SIGACTs via the Onion Router or TOR (T-O-R) anonymizing network by a
7 special link.

8 TOR is a system intended to provide anonymity online.
9 Software routes Internet traffic through a network of servers and
10 other TOR clients in order to conceal a user's location and identity.
11 I was familiar with TOR and had it previously installed on my
12 computer to anonymously monitor the social media websites and militia
13 groups operating within central Iraq.

14 I follow the prompts and attached the compressed data files
15 of CIDNE-I and CIDNE-A SIGACTs. I attached the text file I drafted
16 while preparing to provide documents to the *Washington Post*. It
17 provided rough guideline saying, "It's already been sanitized of any
18 source-identifying information. You might need to sit on this
19 information, perhaps 90 to 100 days, to figure out how to best
20 release such a large amount of data and to protect the source. This
21 is possibly one of the more significant documents of our time,
22 removing the fog of war and revealing the true nature of 21st-century
23 asymmetric warfare. Have a good day."

1 After sending this, I left the SD card in a camera case at
2 my aunt's house in the event I needed it again in the future.

3 I returned from mid-tour leave on 11 February 2010.

4 Although the information had not yet been publicly -- had not yet
5 been published by the WLO, I felt a sense of relief by them having
6 it. I felt I had accomplished something that allowed me to have a
7 clear conscience based upon what I had seen and read about and knew
8 were happening in both Iraq and Afghanistan every day.

9 Facts regarding the unauthorized storage and disclosure of
10 10 Reykjavík 13. I first became aware of the diplomatic cables
11 during my training period in AIT. I later learned about the
12 Department of State, or DoS, Net-Centric Diplomacy (NCD) portal from
13 the 2/10 Brigade Combat Team S-2, Captain Steven Lim.

14 Captain Lim sent a section-wide e-mail to the other
15 analysts and officers in late December 2009 containing the SIPRNET
16 link to the portal along with the instructions to look at the cables
17 contained within them and to incorporate them into our work product.
18 Shortly after this, I also noticed the diplomatic cables were being
19 referred to in products from the corps level, U.S. Forces Iraq or
20 USF-I. Based upon Captain Lim's direction to become familiar with
21 its contents, I read virtually every published cable concerning Iraq.
22 I also began scanning database and other -- and reading other random
23 cables that piqued my curiosity.

1 It was around this time in early to mid-January 2010 that I
2 began searching the database for information on Iceland. I became
3 interested in Iceland due to the IRC conversations I viewed in the
4 WLO channel discussing an issue called "Icesave." At this time, was
5 not very familiar with the topic, but it seemed to be a big issue for
6 those participating in the conversation. This is when I decided to
7 investigate and conduct a few searches on Iceland and find out more.

8 At the time, did not find anything -- I did not find
9 anything discussing the Icesave issue, either directly or indirectly.
10 I then conducted an open source search for Icesave. I then learned
11 that Iceland was involved in the dispute with the United Kingdom and
12 the Netherlands concerning the financial collapse of one or more of
13 Iceland's banks. According to open source reporting, much of the
14 public controversy involved the United Kingdom's use of anti-
15 terrorism legislation against Iceland in order to freeze Icelandic
16 assets for payments of the guarantees for UK depositors that lost
17 money.

18 Shortly after returning from mid-tour leave, I returned to
19 the Net-Centric Diplomacy portal to search for information on Iceland
20 and Icesave as the topic had not abated on the WLO IRC channel. To
21 my surprise, on 14 February 2010, I found the cable 10 Reykjavik 13
22 which referenced the Icesave issue directly. The cable, published on
23 13 January 2010, was just over two pages in length. I read the cable

1 and quickly concluded that Iceland was, essentially, being bullied,
2 diplomatically, by two larger European powers. It appeared to me
3 that Iceland was out of viable options and was coming to the U.S. for
4 assistance. Despite their quiet request for assistance, it did not
5 appear that we were going to do anything. From my perspective, it
6 appeared that we were not getting involved due to the lack of long-
7 term geopolitical benefit to do so.

8 After digesting the contents of 10 Reykjavik 13, I debated
9 on whether this was something I should send to the WLO. At this
10 point, the WLO had not published nor acknowledged receipt of the
11 CIDNE-I and CIDNE-A SIGACTs tables. Despite not knowing if the
12 SIGACTs were a priority for the WLO, I decided the cable was
13 something that would be important and I felt I might be able to right
14 a wrong by having them publish this document.

15 I burned the document -- or I burned the information onto a
16 CD-RW on 15 February 2010, took it to my CHU, and saved it onto my
17 personal laptop. I navigated to the WLO website via TOR connection,
18 like before, and uploaded the document via the secure form.
19 Amazingly, the WLO published 10 Reykjavik 13 within hours, proving
20 that the form worked and that they must have received the SIGACT
21 tables.

22 Facts regarding the unauthorized disclosure -- unauthorized
23 storage and disclosure of the 12 July 2007 aerial weapons team or AWT

1 video. During the mid-tour -- or mid-February time frame, the 2nd
2 Brigade Combat Team, 10th Mountain Division targeting analyst, then
3 Specialist Jihrleah W. Showman and others discussed a video that Ms.
4 Showman had found on the T-drive. The video depicted several
5 individuals being engaged by an aerial weapons team. At first, I did
6 not consider the video very special as I have viewed the countless
7 other war-tore -- war war-porn type videos depicting combat.
8 However, the recording of audio comments by the aerial weapons team
9 and crew and the second engagement in the video of an unarmed bongo
10 truck troubled me.

11 Ms. Showman and a few other analysts and officers in the T-
12 SCIF commented on the video and debated whether the crew violated the
13 rules of engagement or ROE in the second engagement. I shied away
14 from this debate, instead conducted some research on the event. I
15 wanted to learn about what happened and whether there was any
16 background to the events of the day that the event occurred, 12 July
17 2007.

18 Using Google, I searched for the event by its date and
19 general location. I found several news accounts involving two
20 Reuters employees who were killed during the aerial weapon team's
21 engagement. Another story explained that Reuters had requested for a
22 video -- requested for a copy of the video under the Freedom of
23 Information Act or FOIA. Reuters wanted to view the video in order

1 to be able to understand what had happened and to improve their
2 safety practices in combat zones. A spokesperson for Reuters was
3 quoted saying that the video might help avoid a reoccurrence of the
4 tragedy and believed there was a compelling need for the immediate
5 release of the video.

6 Despite the submission of the FOIA request, the news
7 account explained that CENTCOM replied to Reuters stating that they
8 could not give a timeframe for considering a FOIA request and that
9 the video may no longer -- might no longer exist. Another story I
10 found, written a year later, said that, even though Reuters was still
11 pursuing their request, they still do not receive a formal response
12 or written determination in accordance with FOIA.

13 The fact that neither CENTCOM nor Multi-National Forces,
14 Iraq or MNF-I, would not voluntarily release the video troubled me
15 further. It was clear to me that the event happened because the
16 aerial weapons team mistakenly identified the Reuters employees as a
17 potential threat and that the people in the bongo truck were merely
18 attempting to assist the wounded. The people in the van were not a
19 threat, but were merely good Samaritans.

20 The most alarming aspect of the video, to me, however, was
21 the seemingly delightful bloodlust the aerial weapons -- they
22 appeared to have. They dehumanized the individuals they were
23 engaging and seemed to not value human life by referring to them as

1 "dead bastards" and congratulating each other on the ability to kill
2 in large numbers. At one point in the video, there's an individual
3 on the ground attempting to crawl to safety; the individual is
4 seriously wounded. Instead of calling for medical attention to the
5 location, one of the aerial weapons team crew members verbally asks
6 for the wounded person to pick up a weapon so that he can have a
7 reason to engage. For me, this seems similar to a child torturing
8 ants with a magnifying glass.

9 While saddened by the aerial weapons teams crew -- or the
10 aerial weapon teams crew's lack of concern about human life, I was
11 disturbed by the response the discovery of injured children at the
12 scene. In the video, you can see that the bongo truck driving up to
13 assist the wounded individual. In response, the aerial weapons team
14 crew assumes the individuals are a threat. They repeatedly request
15 for authorization to fire on the bongo truck and, once granted -- and
16 once granted, they engage the vehicle at least six times.

17 Shortly after the second engagement, a mechanized infantry
18 unit arrives at the scene. Within minutes, the aerial weapons team
19 crew learns that the children -- that children were in the van and,
20 despite the injuries, the crew exhibits no remorse. Instead, they
21 downplay the significance of their actions saying, "Well, it's their
22 fault for bringing their kids into a battle." The aerial weapons
23 team crew members sound like they lack sympathy for the children or

1 the parents. Later, in a particularly disturbing manner, the aerial
2 weapons team crew verbalizes enjoyment at the sight of one of the
3 ground vehicles driving over a body -- or one of the bodies.

4 As I continued my research, I found an article discussing a
5 book, *The Good Soldiers*, written by *Washington Post* writer David
6 Finkel. In Mr. Finkel's book, he writes about the aerial weapons
7 team attack. As I read an online excerpt on Google Books, I followed
8 Mr. Finkel's account of the event along with the video. I quickly
9 realized that Mr. Finkel was quoting, I feel, in verbatim, the audio
10 communications of the aerial weapons team crew. It is clear to me
11 that Mr. Finkel obtained access and a copy of the video during his
12 tenure as an embedded journalist.

13 I was aghast at Mr. Finkel's portrayal of the incident.
14 Reading his account, one would believe the engagement was somehow
15 justified as payback for an earlier attack that led to the death of a
16 Soldier.

17 Mr. Finkel -- Mr. Finkel ends his account of the engagement
18 by discussing how a Soldier finds an individual still alive from the
19 attack. He writes that the Soldier finds him and sees him gesture
20 with his two forefingers together, a common method in the Middle East
21 to communicate that they are friendly. However, instead of assisting
22 him, the Soldier makes an obscene gesture extending his middle
23 finger. The individual apparently dies shortly thereafter. Reading

1 this, I can only think of how this person was simply trying to help
2 others and then quickly finds he needs help as well. To make matters
3 worse, in the last moments of his life, he continues to express his
4 friendly -- this -- his friendly intent, only to find himself
5 receiving this well-known gesture of unfriendliness. For me, it's
6 all a big mess and I'm left wondering what these things mean and how
7 it all fits together and it burdens me emotionally.

8 I saved a copy of the video on my workstation. I searched
9 for and found the rules of engagement, the rules of engagement
10 annexes, and a flow chart from the 2007 time period as well as an
11 unclassified rules of engagement smart card from 2006.

12 On 15 February 2010, I burned these documents onto a CD-RW
13 the same time I burned the 10 Reykjavík 13 cable onto a CD-RW. At
14 the time, I placed the video and rules of engagement information onto
15 my personal laptop in my CHU. I planned to keep this information
16 there until I redeployed in summer of 2010. I planned on providing
17 this to the Reuters office in London to assist them in preventing
18 events such as this in the future. However, after the WLO published
19 10 Reykjavík 13, I altered my plans. I decided to provide the video
20 and rules of engagement to them so that the -- so that Reuters would
21 have this information before I redeployed from Iraq.

22 On about 21 February 2010, as described above, I used the
23 WLO submission form and uploaded the documents. The WLO released the

1 video on 5 April 2010. After the release, I was concerned about the
2 impact of the video and how it would be perceived by the general
3 public. I hoped that the video would be -- I hoped that the public
4 would be as alarmed as me about the conduct of the aerial weapons
5 team members. I wanted the American public to know that not everyone
6 in Iraq and Afghanistan were targets that needed to be neutralized,
7 but rather people who were struggling to live in the pressure cooker
8 environment of what we call asymmetric warfare.

9 After the release, I was encouraged by the response in the
10 media and general public who observed the aerial weapons team video.
11 As I hoped, others were just as troubled, if not more troubled than
12 me, by what they saw.

13 At this time, I began seeing reports claiming that the
14 Department of Defense and CENTCOM could not confirm -- cannot confirm
15 the authenticity of the video. Additionally, one of my supervisors,
16 Captain Casey Fulton, stated her belief that the video was not
17 authentic. In her response, I decided to ensure that the
18 authenticity of the video would not be questioned in the future.

19 On 25 February 2010, I emailed Captain Fulton a link to the
20 video that was on our T-drive and a copy of the video published by
21 WLO that was collected by the open source Center so she could compare
22 them herself.

1 Around this time frame, I burned a second CD-RW containing
2 the aerial weapons team video. In order to make it appear authentic,
3 I placed a classification sticker and wrote "Reuters FOIA REQ" on its
4 face. I placed the CD-RW in one of my personal CD cases containing a
5 set of "Starting Out in Arabic" CDs. I planned on mailing the CD-RW
6 to Reuters after I redeployed so that they could have a copy that was
7 unquestionably authentic.

8 Almost immediately after submitting the aerial weapons team
9 video and the rules of engagement documents, I notified the
10 individuals in the WLO IRC to expect an important submission. I
11 received a response from an individual going by the handle of
12 "Office." At first, our conversations were general in nature but
13 over time, as our conversations progressed, I assessed this
14 individual to be an important part of the WLO.

15 Due to the strict adherence of anonymity by the WLO, we
16 never exchanged identifying information. However, I believe the
17 individual was likely Mr. Julian Assange, Mr. Daniel Schmidt, or a
18 proxy representative of Mr. Assange and Schmidt.

19 As the communications transferred from IRC to the Jabber
20 client, I gave "Office" and later "Press Association" the name of
21 Nathaniel Frank in my address book, after the author of -- after the
22 author of a book I read in 2009. After a period of time, I developed
23 what I felt was a friendly relationship with Nathaniel. Our mutual

1 interest in information technology and politics made our
2 conversations enjoyable. We engaged in conversation often, sometimes
3 as long as an hour or more. I often looked forward to my
4 conversations with Nathaniel after work.

5 The anonymity that was provided by TOR, the Jabber client,
6 and the WLO's policy allowed me to feel I could just be myself, free
7 of the concerns of social labeling and perceptions that are often
8 placed upon me in real life. In real life, I lacked a close
9 friendship with the people I worked with in my section, the S-2
10 section, the S-2 sections in subordinate battalions, and the 2nd
11 Brigade Combat Team as a whole. For instance, I lacked close ties to
12 my roommate due to his discomfort regarding my perceived sexual
13 orientation.

14 Over the next few months, I stayed in frequent contact with
15 Nathaniel. We conversed on nearly a daily basis and I felt that we
16 were developing a friendship. The conversations covered many topics
17 and I enjoyed the ability to talk about pretty much anything and not
18 just the publications that the WLO was working on.

19 In retrospect, I realize that these dynamics were
20 artificial and were valued more by myself than Nathaniel. For me,
21 these conversations represented an opportunity to escape from the
22 immense pressures and anxiety that I experienced and built up
23 throughout the deployment. It seems that as I tried harder to fit in

1 at work, the more I seemed to alienate my peers and lose respect,
2 trust, and the support I needed.

3 Facts regarding the unauthorized disclosure -- or
4 unauthorized storage and disclosure of documents related to the
5 detainments by the Iraqi Federal Police or FP and the Detainee
6 Assessment Briefs, and the USACIC -- United States Army
7 Counterintelligence Center report. On 27 February 2010, a report was
8 received -- a report was received from a subordinate battalion. The
9 report described an event in which the Federal Police detained, or
10 FP, detained 15 individuals for printing anti-Iraqi literature.

11 By 2 March 2010, I received instructions from an S-3
12 section officer in the 2nd Brigade Combat Team, 10th Mountain
13 Division Tactical Operations Center or TOC to investigate the matter
14 and figure out who these "bad guys" were and how significant this
15 event was for the Federal Police.

16 Over the course of my research, I found that none of the
17 individuals had previous ties to anti-Iraqi actions or suspected
18 terrorist militia groups. A few hours later, I received several
19 photos from the scene from the subordinate battalion. They were
20 accidentally sent to an officer on a different team than the S-2
21 section and she forwarded them to me. These photos included pictures
22 of the individuals, pallets of unprinted paper, and seized copies of
23 the final printed material -- or printed document and a high-

1 resolution photo of the printed material itself. I printed a blown
2 up copy of the high-resolution photo, I laminated it for ease of use
3 and transfer, I then walked to the TOC, and delivered the laminated
4 copy to our category two interpreter. She reviewed the information
5 and, about a half an hour later, delivered a rough, written
6 transcript in English to the S-2 section. I read the transcript and
7 followed up with her asking her for her take on the contents. She
8 said it was easy for her to transcribe verbatim since I blew up the
9 photograph and laminated it. She said the general nature of the
10 document was benign.

11 The documentation, as I assessed as well, was merely a
12 scholarly critique of the, then, current Iraqi prime minister, Nouri
13 al-Maliki. It detailed corruption with the cabinet of al-Maliki's
14 government and the financial impact of his corruption on the Iraqi
15 people.

16 After discovering this discrepancy between the Federal
17 Police's report and the interpreter's transcript, I forwarded this
18 discovery to the TOC OIC and the Battle NCOIC. The TOC OIC and the
19 overbearing Battle Captain informed me that they didn't want -- or
20 that they didn't need or want to know this information any more.
21 They told me to "drop it" and to just assist them and the Federal
22 Police in finding out where more of these print shops creating "anti-
23 Iraqi literature" might be. I couldn't believe what I heard -- or I

1 couldn't believe what I heard and I returned to the T-SCIF and
2 complained to the other analysts and my section NCOIC about what
3 happened. Some were sympathetic, but none wanted to do anything
4 about it. I'm the type of person who likes to know how things work,
5 and, as an analyst, this means I always want to figure out the truth.
6 Unlike other analysts in my section or other sections within the 2nd
7 Brigade Combat Team, I was not satisfied with just scratching the
8 surface of producing canned or cookie-cutter assessments. I wanted
9 to know why something was the way it was and what we could do to
10 correct or mitigate a situation.

11 I knew that if I continue to assist the Baghdad Federal
12 Police in identifying the political opponents of Prime Minister al-
13 Maliki, those people would be arrested and in the custody of the
14 Special Unit of the Baghdad Federal Police, very likely tortured and
15 not seen again for a very long time, if ever.

16 Instead of assisting the Special Unit of the Baghdad
17 Federal Police, I had decided to take the information and disclose it
18 to the WLO in the hope that, before the upcoming 7 March 2010
19 election, they could generate some immediate press on the issue and
20 prevent this unit of the Federal Police from continuing to crack down
21 on political opponents of al-Maliki.

22 On 4 March 2010, I burned the report, the photos, the high-
23 resolution copy of the pamphlet, and the interpreter's hand-written

1 transcript onto a CD-RW. I took the CD-RW to my CHU and copied the
2 data onto my personal computer. Unlike the times before, instead of
3 uploading the information through the WLO website's submission form,
4 I made a Secure File Transfer Protocol or SFTP connection to a Cloud
5 drop box operated by the WLO. The drop box contained a folder that
6 allowed me to upload directly into it. Saving files into this
7 directory allowed me -- allowed anyone with log in access to the
8 server to view and download them. After downloading these file -- or
9 after uploading these files to the WLO on 5 March 2010, I notified
10 Nathaniel over Jabber.

11 Although sympathetic, he said that the WLO needed more
12 information to confirm the event in order for it to be published or
13 to gain interest in the international media. I attempted to provide
14 these specifics, but, to my disappointment, the WLO website chose not
15 to publish this information. At the same time, I began sifting
16 through information from the U.S. SOUTHCOM -- or U.S. Southern
17 Command or SOUTHCOM and Joint Task Force Guantánamo, Cuba or JTF-
18 GTMO. The thought occurred to me, although unlikely -- that I
19 wouldn't be surprised if the -- although unlikely -- that I wouldn't
20 be surprised if the individuals detained by the Federal Police might
21 be turned over back into U.S. custody and ending up in the custody of
22 Joint Task Force Guantánamo.

1 As I digested -- as I digested through the information on
2 Joint Task Force Guantánamo, I quickly found the Detainee Assessment
3 Briefs or DABs. I previously came across these documents before in
4 2009 but did not think much of them. However, this time, I was more
5 curious during this search and I found them again.

6 The DABs were written in standard DoD memorandum format and
7 addressed the Commander, U.S. SOUTHCOM. Each memorandum gave basic
8 and background information about a specific detainee held, at some
9 point, by Joint Task Force Guantánamo. I have always been interested
10 on the issue of the moral efficacy of our actions surrounding Joint
11 Task Force Guantánamo. On the one hand, I've always understood the
12 need to detain and interrogate individuals who might wish to harm the
13 United States and our allies, however, I felt that there -- that that
14 was -- however, I felt that's what we were doing -- what we were
15 trying to do at Joint Task Force Guantánamo. However, the more I
16 became educated on the topic, it seemed that we found ourselves
17 holding an increasing number of individuals indefinitely that we
18 believed, or knew, to be innocent, low-level foot support -- low-
19 level foot soldiers that we didn't -- that did not have useful
20 intelligence and would be released if they were still in theater --
21 if they were still held in theater.

22 I also recall that, in early 2009, the then newly elected
23 president, Barack Obama, stated that he would close Joint Task Force

1 Guantánamo and that the facility compromised our standing in the
2 world and diminished our "moral authority." After familiarizing
3 myself with the Detainee Assessment Briefs, I agreed. Reading
4 through the Detainee Assessment Briefs, I noticed that they were not
5 analytical products. Instead, they contained summaries of tear-line
6 versions of interim intelligence reports that were old or
7 unclassified. None of the DABs contained names of sources or quotes
8 from a Tactical Interrogation Reports or TIRs. Since the DABs were
9 being sent to the U.S. SOUTHCOM Commander, I assessed that they were
10 intended to provide very general background information on each
11 detainee and not a detailed assessment.

12 In addition to the manner in which DABs were written, I
13 recognized that they were at least several years old and discussed
14 detainees that were already released from Joint Task Force
15 Guantánamo. Based on this, I determined that the DABs were not very
16 important from either an intelligence or national security
17 standpoint.

18 On 7 March 2010, during my Jabber conversations with
19 Nathaniel, I asked him if he thought the DABs were of any use to
20 anyone. Nathaniel indicated, although he didn't -- did not believe
21 that they were of political significance, he did not believe -- he
22 did believe that they could be used to merge into the general,
23 historical account of what occurred at Joint Task Force Guantánamo.

1 He also thought that the DABs might be helpful to a legal counsel of
2 those currently and previously held at JTF-GTMO.

3 After this discussion, I decided to download the DABs. I
4 used an application called Wget to download the DABs. I downloaded
5 Wget off of the NIPRNET laptop in the T-SCIF like other programs. I
6 saved that onto a CD-RW and placed the executable in my My Documents
7 directory of my user profile on the DCGS-A SIPRNET workstation.

8 On 7 March 2010, I took the list of four link -- I took the
9 list of links for the Detainee Assessment Briefs and Wget downloaded
10 them sequentially. I burned the DABs onto a CD-RW and took it into
11 my CHU and copied them to my personal computer.

12 On 8 March 2010, I combined the Detainee Assessment Briefs
13 with the United States Army Counterintelligence Center Report on the
14 -- on the WLO into a compressed zip file. Zip files contain multiple
15 files which are compressed to reduce their size. After creating the
16 zip file, I uploaded the file onto their Cloud drop box via Secure
17 File Transfer Protocol. Once these were uploaded, I notified
18 Nathaniel that the information was in the X directory which had been
19 designated for my use.

20 Earlier that day, I downloaded the USACIC report on WLO.
21 As discussed above, I previously reviewed the report on numerous
22 occasions and, although I saved the document onto the workstation
23 before, I could not locate it. After I found the document again, I

1 downloaded it to my workstation and saved it onto the same CD-RW as
2 the Detainee Assessment Briefs described above.

3 Although my access included a great deal of information, I
4 decided I had nothing else to send the WLO after sending the Detainee
5 Assessment Briefs and the USACIC report. Up to this point, I had
6 sent them the following: the CIDNE-I and CIDNE-A SIGACT tables; the
7 Reykjavík 13 Department of State cable; the 12 July 2007 aerial
8 weapons team video and the 2006-2007 rules of engagement documents;
9 the SIGACT report and supporting documents concerning the 15
10 individuals detained by the Baghdad Federal Police; the U.S. SOUTHCOM
11 and Joint Task Force Guantánamo Detainee Assessment Briefs; the
12 USACIC report on the WikiLeaks website -- on the WikiLeaks
13 organization and website.

14 Over the next -- over the next few weeks, I did not find --
15 or I did not send any additional information to the WLO. I
16 considered -- I continued to converse with Nathaniel over the Jabber
17 client and in the WLO IRC channel. Although I stopped sending
18 documents to WLO, no one associated with the WLO pressured me into
19 giving more information. The decisions that I made to send documents
20 and information to the WLO and website were my own decisions and I
21 take full responsibility for my actions.

22 Facts regarding the unauthorized storage and disclosure of
23 other government documents. On 22 March 2010, I downloaded two

1 documents. I found these documents over the course of my normal
2 duties as an analyst. Based on my training and the guidance of my
3 superiors, I looked at as much information as possible. Doing so
4 provided me with the ability to make connections others might miss.
5 On several occasions during the month of March, I accessed
6 information from a government entity. I read several documents from
7 a section within this government entity. The content of two of these
8 documents upset me greatly. I have difficulty believing what this
9 section was doing.

10 On 22 March 2010, I downloaded the two documents that I
11 found troubling, I compressed them into a zip file named "blah.zip"
12 and burned them onto a CD-RW. I took the CD-RW to my CHU and saved
13 the file to my personal computer. I uploaded the information to the
14 WLO website using the designated drop box.

15 Facts regarding the unauthorized storage and disclosure of
16 the Net-Centric Diplomacy Department Of State cables. In late March
17 of 2010, I received a warning over Jabber from Nathaniel that the WLO
18 website would be publishing the aerial weapons team video. He
19 indicated that the WLO would very likely -- would be very busy and
20 the frequency and intensity of our Jabber conversations decreased
21 significantly.

22 During this time, I had nothing but work to distract me. I
23 read more of the diplomatic cables published on the Department of

1 State Net-Centric Diplomacy server. With my insatiable curiosity and
2 interest in geopolitics, I became fascinated with them. I read not
3 only the cables on Iraq, but also about countries and events I found
4 interesting. The more I read, the more I was fascinated by the way
5 we dealt with other nations and organizations. I also began to think
6 that they documented backdoor deals and seemingly criminal activity
7 that didn't seem characteristic of the de facto leader of the free
8 world.

9 Up to this point, during deployment, I had issues that I
10 struggled with and difficulty at work. Of the documents released,
11 the cables were the only ones I was not absolutely certain wouldn't -
12 - couldn't harm the United States. I conducted research on the
13 cables published on the net -- on Net-Centric Diplomacy, as well as
14 how Department of State cables work in general. In particular, I
15 wanted to know how each cable was published on SIPRNET via the Net-
16 Centric Diplomacy.

17 As part of my open-source research, I found a document
18 published by the Department of State on its official website. The
19 document provided guidance on caption markings for individual cables
20 and handling instructions for their distribution. I quickly learned
21 that the caption markings clearly detailed the sensitivity level of a
22 Department of State cable. For example, "NODIS," or "No
23 Distribution," was used for messages of the highest sensitivity and

1 were only distributed to the authorized recipients. The SIPDIS or
2 SIPRNET Distribution caption was applied only to reporting at other
3 information messages that were deemed appropriate for a release of a
4 wide number -- to a wide number of individuals.

5 According to the Department of State guidance for a cable
6 to have the SIPDIS -- that caption, it could not include other
7 captions that were intended to limit distribution. The SIPDIS
8 caption was only for information that could be shared with anyone
9 with access to SIPRNET. I was aware that thousands of military
10 personnel, DoD, Department of State, and other civilian agencies have
11 easy access to the cables and the fact that the SIPDIS caption was
12 only for wide distribution made sense to me, given that the vast
13 majority of the Net-Centric Diplomacy cables were not classified.
14 The more I read the cables, the more I came to the conclusions that
15 this was the type of information that should be -- that this type of
16 information should become public. I once read and used a quote on
17 open diplomacy written after the First World War and how the world
18 would be a better place if states would avoid making secret pacts and
19 deals with and against each other.

20 I thought these cables were a prime example of a need for a
21 more open diplomacy. Given all the Department of State information I
22 read, the fact that most of the cables were unclassified and that all
23 the cables had the SIPDIS caption, I believed that the public release

1 of these cables would not damage the United States. However, I did
2 believe the cables might be embarrassing, since they represented very
3 honest opinions and assessments behind or statements behind the backs
4 of other nations and organizations.

5 In many ways, these cables are a catalog of cliques and
6 gossip. I believe exposing this information might make some within
7 the Department of State and other government entities unhappy. On 22
8 March 2010, I began downloading a copy of the SIPDIS cables using the
9 program Wget described above. I used instances of the Wget
10 application to download the Net-Centric Diplomacy cables in the
11 background. As I worked on my daily tasks, the Net-Centric Diplomacy
12 cables were downloaded from 28 March 2010 to 9 April 2010. After
13 downloading the cables, I saved them onto a CD-RW. These cables went
14 from the earliest dates in Net-Centric Diplomacy to 28 February 2010.
15 I took the CD-RW to my CHU on 10 April 2010. I sorted the cables on
16 my personal computer, compressed them using the bzip2 compression
17 algorithm described above and uploaded them to the WLO via the
18 designated drop box described above.

19 On 3 May 2010, I used Wget to download an update of the
20 cables for the months of 20 -- for the months of March 2010 and April
21 2010 and saved the information onto a zip file and burn it to a CD-
22 RW. I took -- I then took the information--I then took the CD-RW to
23 my CHU and saved them to my computer. I later found that the file

1 was corrupted during the transfer. Although I intended to re-save
2 another copy of these cables, I was removed from the T-SCIF on 8 May
3 2010 after an altercation.

4 Facts regarding the unauthorized storage and disclosure of
5 the Garani Farah Province, Afghanistan 15-6 investigation and videos.
6 In late March 2010, I discovered a U.S. CENTCOM directory only 2009
7 airstrike in Afghanistan. I was searching CENTCOM for information I
8 could use as an analyst. As described above, this was something that
9 myself and other analysts and officers did on a frequent basis. As I
10 reviewed the documents, I recalled the incident and what happened.
11 The airstrike occurred in the Garani Village of the Farah Province in
12 northwestern Afghanistan. They receive worldwide press and --
13 worldwide press coverage during the time as it was reported that up
14 to 100 to 150 Afghan civilians, mostly women and children, were
15 accidentally killed during the airstrike.

16 After going through the report and its annexes, I began to
17 review the incident as being similar to the 12 July 2007 aerial
18 weapons team engagements in Iraq. However, this event was noticeably
19 different in that it involved a significantly higher number of
20 individuals, larger aircraft, and much heavier munitions. Also, the
21 conclusion of the report are even more disturbing than those of the
22 12 July 2007 incident. I did not see anything in the 15-6 report or
23 its annexes that give away sensitive information. Rather, the

1 investigation and its conclusions help explain how this incident
2 occurred and what those involved should have done and how to avoid an
3 event like this from occurring again.

4 After investigating the report and its annexes, I
5 downloaded the 15-6 investigation, PowerPoint presentations, and
6 several other supporting documents to my DCGS-A workstation. I also
7 downloaded three zip files containing the videos of the incident. I
8 burned this information onto a CD-RW and transferred it to the
9 personal computer in my CHU. Either later that day or the next day I
10 uploaded the information to the WLO website, this time using a new
11 version of the WLO website submission form. Unlike other times using
12 the submission form above, I did not activate the TOR anonymizer.

13 Your Honor, this concludes my statement and facts for this
14 providence inquiry.

15 MJ: All right. Looking at the time, my proposal for the way
16 forward would be to take the recess that we were discussing earlier,
17 go over the charged documents briefly, and then recess for lunch and
18 then begin the rest of the providence inquiry. Is that acceptable to
19 both sides or would you prefer something different?

20 CDC[MR.COOMBS]: That's fine with the defense, Your Honor.

21 TC[MAJ FEIN]: Yes, ma'am, the United States asks for 10 minutes
22 for that recess.

23 MJ: All right. Court is in recess until 25 minutes after 12.

1 [The Article 39(a) session recessed at 1217, 28 February 2013.]

2 [The Article 39(a) session was called to order at 1231, 28 February
3 2013.]

4 MJ: This Article 39(a) session is called to order. Let the
5 record reflect that all parties present when the court last recessed
6 are again present in court.

7 Now, Major Fein, I understand there has been an additional
8 appellate exhibit marked. Would you like to describe it for the
9 record?

10 TC[MAJ FEIN]: Yes, ma'am, Appellate Exhibit -- what has been
11 marked as Appellate Exhibit 501 is a compilation -- two different
12 binders combined all the different charged documents for which
13 Private First Class Manning is pleading guilty today to. And, also,
14 for the record, Private First Class Manning is currently located at
15 the panel box in the back row with a copy of Appellate Exhibit 501
16 and a charge sheet in front of him. Another copy of the Appellate
17 Exhibit 501 -- the record copy is excuse me, the record copy is in
18 front of Private First Class Manning and the Court has a copy in
19 front of her as well.

20 MJ: All right. Thank you. All right, PFC Manning, what I'd
21 like to do is go through -- there are two binders; do you have a copy
22 of them in front of you?

23 ACC: Yes, Your Honor.

1 MJ: All right. I like to go through Appellate Exhibit 501 and
2 have you looked through the binder with me when we go through this to
3 make sure that you either identify or don't -- whether these
4 documents are the actual charged documents that your pleading guilty
5 to.

6 Let's look at tab one ----

7 ACC: Yes, Your Honor.

8 MJ: ---- which would be the charged documents for Charge II,
9 Specification 2, which would be a video file named "12 July 07 CZ
10 Engagement Zone 30 GC Anyone.avi". Now, you're looking at a video.
11 Have you had an opportunity to look at this video?

12 ACC: Yes, Your Honor.

13 MJ: And is it the video that has been charged in the -- in
14 Specification 2 of Charge II?

15 ACC: Yes, Your Honor.

16 MJ: All right. Now, unlike the rest of the charges, this one
17 says, "a video file." So, is it classified or not classified?

18 ACC: It is not, Your Honor.

19 MJ: All right. Thank you. Let's look at tab two. Please take
20 a look at the documents through tab two and let me know when you're
21 finished.

22 **[The accused did as directed.]**

23 ACC: I'm finished, Your Honor.

1 MJ: Are the pages on tab -- enclosed in tab two the charged
2 documents in Specification 3 of Charge II which would be more than
3 one classified memorandum produced by a United States Government
4 agency?

5 ACC: Yes, Your Honor.

6 MJ: All right. And are they, in fact, classified?

7 ACC: They are, Your Honor, yes.

8 MJ: Let's look at tab three. Once again, same procedure for
9 all these tabs, just take a look through them and let me know when
10 you're finished.

11 **[The accused did as directed.]**

12 ACC: I'm finished, Your Honor.

13 MJ: All right. Are the pages at tab three the charged
14 documents in Specification 15 which would be a classified record
15 produced by a United States Army intelligence organization?

16 ACC: Yes, Your Honor.

17 MJ: Okay. And are they, in fact, classified as well?

18 ACC: Yes, Your Honor.

19 TC[MAJ FEIN]: Your Honor, I'm sorry to interrupt, but is it
20 possible that Private First Class Manning put the binder in his lap
21 just while he's flipping the pages?

1 MJ: All right. I think the goal is -- yeah, just keep it down.
2 Thank you PFC Manning. I know this is making it a little bit more
3 difficult. Let's look at tab four.

4 ACC: Yes, Your Honor.

5 MJ: All right. Are you finished with the documents in tab
6 four?

7 ACC: I am, Your Honor.

8 MJ: Are those the charge documents for Specification 5 of
9 Charge II which would be more than 20 classified records from the
10 Combined Information Data Network Exchange-Iraq database?

11 ACC: They are, Your Honor.

12 MJ: And are they classified as well?

13 ACC: Yes.

14 MJ: All right. Let's look at tab five.

15 ACC: Yes, Your Honor.

16 MJ: All right. Are these documents at tab five the charged
17 documents for Specification 7 of Charge II that would be more than 20
18 classified records from the Combined Information Data Network
19 Exchange-Afghanistan database?

20 ACC: They are, Your Honor.

21 MJ: All right. And there they classified as well?

22 ACC: Yes, Your Honor.

23 MJ: Let's look at tab six.

1 ACC: Yes, Your Honor.

2 MJ: All right. Are the documents at tab six the charged
3 documents for Specification 9 of Charge II, that is, more than three
4 classified records from the United States Southern Command database?

5 ACC: It is, Your Honor.

6 MJ: Are they classified as well?

7 ACC: Yes, Your Honor, they are.

8 MJ: All right. Let's look at tab seven.

9 ACC: I'm finished, Your Honor.

10 MJ: Are the documents at enclosure seven the charged documents
11 in Specification 10 of Charge II that would be more than five
12 classified records relating to the military operation in Farah
13 Province, Afghanistan occurring on or about 4 May 2009?

14 ACC: They are, Your Honor.

15 MJ: And are they classified as well?

16 ACC: Most of it is, Your Honor.

17 MJ: Let's look at tab eight.

18 ACC: Yes, Your Honor.

19 MJ: Is this the document that is charged in Specification 14 of
20 Charge II which would be a classified Department of State cable
21 entitled Reykjavik 13?

22 ACC: It is, Your Honor.

23 MJ: Is a classified?

1 ACC: Yes, ma'am.

2 MJ: All right. Let's look at enclosure nine.

3 ACC: I am finished, Your Honor.

4 MJ: All right. Are the documents at tab nine the charged
5 documents in Specification 13 of Charge II which would be more than
6 75 classified United States Department of State cables?

7 ACC: Yes, ma'am.

8 MJ: Are they class -- you testified earlier that most of the
9 Department of State cables were not classified. Are these documents
10 in enclosure nine classified?

11 ACC: These ones, yes, Your Honor.

12 MJ: And are you convinced there's over 70 -- more than 75 of
13 them?

14 ACC: Yes, Your Honor, definitely.

15 MJ: Does either side desire any further inquiry with respect to
16 Appellate Exhibit 501?

17 TC[MAJ FEIN]: No, Your Honor.

18 CDC[MR.COOMBS]: No, Your Honor.

19 MJ: All right. This appears to be a good time to break for
20 lunch. How long would the parties like?

21 CDC[MR.COOMBS]: 1400.

22 MJ: Does that work for the government?

23 TC[MAJ FEIN]: Yes, ma'am.

1 MJ: All right. Court is in recess until 1400.

2 **[The Article 39(a) session recessed at 1244, 28 February 2013.]**

3 **[The Article 39(a) session was called to order at 1408, 28 February**
4 **2013.]**

5 MJ: This Article 39(a) session is called to order. Let the
6 record reflect all parties present when the court last recessed are
7 again present in court.

8 TC[MAJ FEIN]: Ma'am, for the record, Private First Class
9 Manning is back at counsel's table.

10 MJ: All right. Okay, PFC Manning, let's continue on, then,
11 with your providence inquiry.

12 ACC: Yes, ma'am.

13 MJ: All right. I'm going to explain the elements of the
14 offenses for which you've pled guilty.

15 By "elements," I mean those facts which the prosecution
16 would have to prove beyond a reasonable doubt before you could be
17 found guilty if you have pled not guilty. When I state each element,
18 ask yourself two things: first, is the element true and, second,
19 whether you want to admit that it's true. After I list the elements
20 for you, be prepared to talk to me about the facts regarding the
21 offenses.

22 I want you to take a look at Specifications 2, 3, 5, 7, 9,
23 10, and 15 of Charge II as you pled them. These specifications

1 allege the offense of -- as originally charged, alleged the offense
2 of transmitting defense information in violation of Title 18, United
3 States Code section 793(e) and Article 134, UCMJ. Your counsel has
4 entered a plea of guilty by exceptions and substitutions for you to
5 the lesser included offense of conduct prejudicial to good order and
6 discipline and service discrediting conduct under Article 134,
7 clauses one and two. By pleading guilty to this offense, you're
8 admitting that the following elements are true and accurately
9 describe what you did:

10 Element one: that, at or near Contingency Operating
11 Station Hammer, Iraq;

12 Specification two: between on or about 14 February 2010
13 and 21 February 2010, you, without authorization, had possession of,
14 access to, or control over a video named "12 July 07 CZ Engagement
15 Zone 30 GC Anyone.avi".

16 Specification 3: between on or about 17 March and 22 March
17 2010, you, without authorization, had possession of, access to, or
18 control over more than one classified memorandum produced by a United
19 States Government agency.

20 Specification 5: between on or about 5 January 2010 and 3
21 February 2010, you, without authorization, had possession of, access
22 to, or control over more than 20 classified records from the Combined
23 Information Data Network Exchange-Iraq database.

1 Specification 7: between on or about 5 January 2010 and 3
2 February 2010, you, without authorization, had possession of, access
3 to, or control over more than 20 classified records from the Combined
4 Information Data Network Exchange-Afghanistan database.

5 Specification 9: on or about 8 March 2010, you, without
6 authorization, had possession of, access to, or control over more
7 than three classified records from a United States Southern Command
8 database.

9 Specification 10: between on or about 10 April 2010 and 12
10 April 2010, you, without authorization, had possession of, access to,
11 or control over more than five classified records relating to a
12 military operation in Farah Province, Afghanistan, occurring on or
13 about 4 May 2009.

14 And Specification 15: on or about 8 March 2010, you,
15 without authorization, had possession of, access to, or control over
16 a classified record produced by a United States Army intelligence
17 organization, dated 18 March 2008.

18 Elements common to all specifications, element two:

19 That you willfully communicated the classified records,
20 classified memorandum, videos, and files described for each
21 specification in element one to a person not authorized to receive
22 it; and

1 Three: that under the circumstances, your conduct was to
2 the prejudice of good order and discipline in the armed forces or was
3 of a nature to bring discredit upon the armed forces.

4 All right. Some definitions that apply to these offenses
5 are:

6 "Conduct prejudicial to good order and discipline" is
7 conduct which causes a reasonably direct and obvious injury to good
8 order and discipline.

9 "Service discrediting conduct" is conduct which tends to
10 harm the reputation of the service or lower it in public esteem.

11 With respect to good order and discipline, the law
12 recognizes that almost any irregular or improper act on the part of a
13 service member could be regarded as prejudicial in some indirect or
14 remote sense. However, only those acts in which the prejudice is
15 reasonably direct and palpable is punishable under this article.

16 With respect to service discrediting, the law recognizes
17 that almost any irregular or improper act on the part of a
18 Servicemember could be regarded as service discrediting in some
19 indirect or remote sense. However, only those acts which would have
20 a tendency to bring the service into disrepute or which tend to lower
21 it in public esteem are punishable under this article. Under some
22 circumstances, your conduct may not be prejudicial to good order and
23 discipline, but, nonetheless, be service discrediting as I've

1 explained those terms. Likewise, depending on the circumstances,
2 your conduct could be prejudicial to good order and discipline but
3 not be service discrediting.

4 An act is done willfully if it is done voluntarily and
5 intentionally and with the specific intent to do something the law
6 forbids, that is, with a bad purpose to disobey or disregard the law.

7 "Possession" means the act of having or holding property or
8 the detention of property in one's power or command. Possession may
9 mean actual, physical possession or constructive possession.

10 "Constructive possession" means having the ability to exercise
11 dominion or control over an item. Possession inherently includes the
12 power or authority to preclude control by others. It is possible for
13 more than one person to possess an item simultaneously as when
14 several people share control of an item.

15 A person has unauthorized possession of documents,
16 photographs, videos, or computer files when he possesses such
17 information under circumstances or in a location which is contrary to
18 law or regulation for the conditions of his employment.

19 If this was before a trier of fact, whether the person
20 received the information was entitled to have it, the trier of fact
21 would consider all the evidence introduced at trial, to include any
22 evidence concerning the classification status of the information, any
23 evidence relating to the laws and regulations governing

1 classification and declassification of national security information,
2 its handling and distribution, as well as any evidence relating to
3 regulations governing the handling, use, and distribution of
4 information obtained from classification systems.

5 The term "person" means any individual, firm, corporation,
6 education institution, financial institution, government entity, or
7 legal or other entity.

8 Do you understand the elements and the definitions as I've
9 read them to you?

10 ACC: Yes, Your Honor.

11 MJ: Do you have any questions about them?

12 ACC: No, ma'am.

13 MJ: You understand that your plea of guilty admits that these
14 elements accurately describe what you did?

15 ACC: Yes, Your Honor.

16 MJ: Do you believe and admit that the elements and definitions,
17 taken together, correctly describe what you did?

18 ACC: Yes, Your Honor.

19 MJ: All right. Now, do you understand that, as we talked about
20 before, that you're -- If I accept your plea to these lesser included
21 offenses and the government decides to go forward with the greater
22 offenses, your plea is going to establish some -- the elements we
23 talked about earlier -- some of the elements for the greater offense.

1 Do you understand that?

2 ACC: Yes, Your Honor.

3 MJ: Okay. All right. Why don't we go -- we'll just go in
4 order, here. Why don't we start with Specification 2 of Charge II?
5 But, before we get there, let's just talk in generalities. You went
6 over some of this in your statement and, as we go through this, I may
7 be asking you just to orient me in your statement where you talked
8 about the particular specifications involved.

9 ACC: Yes, Your Honor.

10 MJ: But, just in the beginning, you told me earlier -- you
11 testified earlier that you were in the Army for about 5 1/2 years, is
12 that accurate?

13 ACC: Just under, yes, ma'am.

14 MJ: Okay. And were you in -- at -- stationed at Fort Drum, New
15 York before you deployed?

16 ACC: I was in training before I deployed -- well -- yes, Your
17 Honor.

18 MJ: Okay. Well, just briefly walk me through, then. You came
19 into the Army and you said your basic training lasted a little bit
20 longer than usual?

21 ACC: Yes, Your Honor.

22 MJ: And then when did you go to AIT?

23 ACC: That would've been April of 2008, Your Honor.

1 MJ: Okay. And you were an intelligence analyst?

2 ACC: Yes, Your Honor.

3 MJ: And, just in a nutshell, what do intelligence analysts --
4 what do they train you to do with classified information?

5 ACC: Well, one of the first things that they teach at -- or
6 whenever I went through training was -- one of the first things that
7 they teach us -- is information security which is mostly talking
8 about classified information, specifically, Your Honor.

9 MJ: In your training, did they tell you -- who gets to classify
10 information in the United States?

11 ACC: The original classification authorities, they have the
12 actual authority, although they can delegate that authority from my
13 understanding, Your Honor.

14 MJ: Okay. And if a person isn't an original classification
15 authority or delegate, do they have the authority to classify
16 information? At the original level?

17 ACC: At the original level, no, Your Honor.

18 MJ: What about to declassify information?

19 ACC: I don't know that, Your Honor. I think it requires the
20 original classification authority's approval, Your Honor.

21 MJ: Okay. So, you went to AIT and you learned about
22 information security?

23 ACC: Yes, Your Honor.

1 MJ: And then what happened? Where did you go after AIT?

2 ACC: I went -- I traveled to Fort Drum and then I stayed there
3 until I deployed, Your Honor.

4 MJ: And you were still on a training status at that time?

5 ACC: We weren't officially -- I mean, I was in garrison, Your
6 Honor, but we spent most of our time -- I spent most of my time at
7 Fort Drum in some kind of training, Your Honor.

8 MJ: You mean like Soldierly training as opposed to intelligence
9 class training?

10 ACC: Yes, Your Honor.

11 MJ: Okay.

12 ACC: So we had TDY to different locations and we went to Fort
13 Polk for 2 months, Your Honor.

14 MJ: Okay. So your unit was gearing up to deploy, then, is that
15 right?

16 ACC: Yes, Your Honor.

17 MJ: Okay. And when did you deploy?

18 ACC: We deployed October of 2009, Your Honor.

19 MJ: Okay. And when you deployed, you said -- you testified you
20 were on FOB Hammer and that's in Iraq?

21 ACC: Yes, Your Honor.

22 MJ: Okay. What was your job there?

1 ACC: I was an analyst that had -- I had a particular problem set
2 as my assigned thing that I did. It was -- we were militia -- I was
3 a militia expert -- there's a different name for it, but we didn't go
4 by that publicly, Your Honor.

5 MJ: Okay. And -- I'm not trying to elicit any classified
6 information, so if I'm heading that way, please stop me.

7 ACC: Yes, Your Honor.

8 TC[MAJ FEIN]: Yes, ma'am.

9 MJ: All right. So, you are in Iraq -- where do you -- when
10 you're doing this intelligence analyst work, where are you doing it?

11 ACC: We were doing it in the temporary SCIF -- the temporary
12 Sensitive Compartmentalized Information Facility at the brigade
13 headquarters building that we had at FOB Hammer, Your Honor.

14 MJ: So that's called a "SCIF"?

15 ACC: A T-SCIF, Your Honor.

16 MJ: T-SCIF? What's a SCIF?

17 ACC: A SCIF is a Sensitive Compartmentalized Information
18 Facility where information at higher -- there is a higher level of
19 sensitivity that the government has authorized these particular
20 locations to hold this information, Your Honor.

21 MJ: Can anybody go into a SCIF?

22 ACC: No, Your Honor.

23 MJ: What's a -- what are the requirements to go into a SCIF?

1 ACC: Generally, a -- you need to have an SCI or -- you have to
2 have an SCI clearance -- caveat to your security clearance or an
3 escort and they can lower -- you can make a SCIF clean -- you can
4 clean a SCIF for temporary visitors, Your Honor.

5 MJ: Okay. But you worked there permanently, is that correct?

6 ACC: Yes, Your Honor.

7 MJ: And what was your clearance level at the time?

8 ACC: Top Secret, Your Honor.

9 MJ: And what's the difference between a SCIF and -- you said
10 you worked in a T-SCIF?

11 ACC: Yes, Your Honor.

12 MJ: What's the difference between a SCIF and a T-SCIF?

13 ACC: T-SCIF are locations that are assigned by a government
14 agency to hold this information temporarily, so they're not designed
15 to be permanent structure locations so they have some -- they don't
16 always meet all the requirements that a full SCIF has because of --
17 because it's in the field or something.

18 MJ: Okay. So, when you are in the SCIF and you are working,
19 what kind of automation do you use? Do you have just a regular
20 computer or is it something different?

21 ACC: We have lots of computers, Your Honor.

22 MJ: Okay. If you have -- well -- what is a -- let's go to
23 SIPRNET. What is SIPRNET?

1 ACC: SIPRNET is Internet protocol system that we have at the
2 Secret level where we can transfer information up to that level of
3 information, Your Honor.

4 MJ: Okay. Do the charged documents that we're talking about at
5 issue, were they all on SIPRNET?

6 ACC: Yes, Your Honor.

7 MJ: Okay. So, they didn't come from any other -- SIPRNET is a
8 system on a particular computer, is that right?

9 ACC: Yes, Your Honor, the ----

10 MJ: I mean, you can't have your regular computer and access
11 SIPR through that, can you?

12 ACC: No, no, Your Honor.

13 MJ: Okay. So, it's a separate computer, basically -- is it to
14 hold Secret-level classified information?

15 ACC: Up to that level, yes, Your Honor.

16 MJ: Okay.

17 ACC: It can be lower, but ----

18 MJ: Can it be unclassified?

19 ACC: You can hold unclassified information on there, yes, Your
20 Honor.

21 MJ: Okay. So, if you're working with SCIF and you have
22 unclassified information -- or working in a SCIF and you're using

1 SIPRNET and you have unclassified information that's on SIPRNET, are
2 you allowed to print that off and take it with you?

3 ACC: If it's unclassified ----

4 MJ: Yes.

5 ACC: ---- and the paper has "Unclassified" on the top and
6 bottom, then yes, Your Honor.

7 MJ: Okay. Now, what if it has -- or there's a paragraph in it
8 that has the Secret classification or a -- but first of all, before
9 we get there, can you explain to me the difference between
10 classification levels at the Confidential level, at the Secret level,
11 and the Top Secret level?

12 ACC: Generally, yes, Your Honor, so the -- information at the
13 Confidential level, which the military -- we don't usually use
14 Confidential, but Confidential usually involves a lower sensitivity
15 of documents and I think that you don't have to, necessarily, always
16 have it in a -- you don't always have to lock it up; you can leave
17 some of it on your desk and things like that, Your Honor. But for
18 Secret, you can -- you have to lock it up and there always has to be
19 somebody that has control over that level and then, at the TS level,
20 there is so many -- there's a lot of different types of handling
21 instructions, Your Honor.

1 MJ: Okay. Well, with Secret level, if you're working in the T-
2 SCIF like you were and you have -- you're working with Secret level
3 documents that, I guess, there are -- hard copy ----

4 ACC: Yes, Your Honor.

5 MJ: ---- and you finish work or you leave the SCIF to go for
6 dinner or something like that, do you have to store those in a
7 particular place or the fact that they're in a SCIF is enough?

8 ACC: Yes, yes, Your Honor. Secret information -- it's called a
9 Secret Collateral Area, you can keep up to Secret information -- just
10 as a habit, sitting around, Your Honor, as long as it's in a SCIF or
11 a certified T-SCIF.

12 MJ: Okay. So, just to make sure I'm -- clear me up if I'm
13 wrong, if you have information that's classified at the Secret level
14 and you're some place other than a SCIF, does it have to be in a safe
15 or some locked place?

16 ACC: Normally, yes, Your Honor, or as long as you -- as long as
17 it's in a container, you can have -- as long as it contained within
18 two ----

19 MJ: Like one of those carry bags?

20 ACC: The courier bags and -- or, again, you could -- sometimes
21 you have -- there are certain circumstances where you could have a
22 Secret collateral area outdoors, but it's very -- that's only a field
23 situation, Your Honor.

1 MJ: Okay. But would such an area have to be designated by
2 someone with authority to do that?

3 ACC: Yes, Your Honor.

4 MJ: I mean, you can't just decide -- can you just decide,
5 "Okay, I'm going to designate this an area where I'm putting all
6 Secret documents out in the open"?

7 ACC: Correct, you need to have authority for that, Your Honor.

8 MJ: Okay. So, when you're, then, in your -- so, if I'm
9 understanding you, when you're working in your T-SCIF, it's --
10 because it's a SCIF in and of itself, you can come and go and leave
11 the documents or the CD-ROMs, or anything that you just discussed,
12 basically out for other people working in the SCIF to see and use, is
13 that correct?

14 ACC: Yes, Your Honor.

15 MJ: Okay. Now, let's move on, then, to Specification 2 of
16 Charge II. Can you show me where in your statement that you're
17 talking about that

18 ACC: Your Honor, we start talking about Charge -- or
19 Specification 2 at -- pretty much, closer to the middle. It's the --
20 --

21 MJ: Let me ask you a question ----

22 ACC: ---- Paragraph 8 at ----

1 MJ: ---- PFC Manning, do you think it would be easier to get
2 through this if we go chronologically by, you know -- as you sort of
3 did in your statement; the first things that you downloaded and how
4 it evolved? Would that be easier for you or ----

5 ACC: Oh, we can go by specification.

6 MJ: ---- would specification by specification? All right. So,
7 just then tell me where Specification 2 is.

8 ACC: Specification 2 is at Page 19.

9 MJ: Okay. All right, now, we talked about -- earlier, when I
10 asked you, with respect to the video at Specification 2 of Charge II,
11 you told me that that was not classified, is that correct?

12 ACC: Yes, Your Honor.

13 MJ: Where did you access that video? How did you have access
14 to it?

15 ACC: Well, it was on our shared T-drive, Your Honor, that S-6
16 operated on SIPR.

17 MJ: Okay. So, it was on SIPR? So, tell me about how -- so,
18 you had access to that video. Now, were you authorized to give that
19 video to anyone outside of the service who didn't have a clearance?

20 ACC: No, Your Honor.

21 MJ: Why not? It wasn't classified.

22 ACC: I thought it was classified. I looked at the
23 classification matrix for -- at the corps level whenever I was

1 reviewing the video and I thought it would -- I thought that the OCA
2 would have said the same thing -- that it would have been classified
3 at the Secret level, Your Honor.

4 MJ: Was it marked in any way?

5 ACC: It didn't have markings, Your Honor, but it -- going by the
6 matrix, you can -- because it didn't have markings, that's why I went
7 to the classification matrix, Your Honor.

8 MJ: And what is a classification matrix?

9 ACC: It's sort of a quick-hand -- a short-hand guide for
10 derivative classification -- for people with derivative
11 classification to classify documents within the guidelines of the
12 original classification authority when you don't have an OCA there to
13 determine, specifically, what it is at that time.

14 MJ: Just to make sure I understand this, we talked earlier
15 about if you're doing an original classification, it has to be by an
16 OCA or his delegee, right?

17 ACC: Yes, Your Honor.

18 MJ: And then if you -- I guess you create your own -- you
19 create products down the road using some of that originally
20 classified information? Is that what derivative classification is?

21 ACC: Yes, Your Honor.

22 MJ: Okay. And who has authority to derivatively classify?

1 ACC: Anybody with that level of security clearance and as long
2 as you can point to where you're getting the authority from the
3 original classification authority, then you can do that, Your Honor.

4 MJ: And the matrix is where you would look to see that?

5 ACC: Yes, in the Army, or in the -- downrange, in the DoD
6 environment, we have matrices --I t's a table that tells you what the
7 classification level is for this particular type of information, Your
8 Honor.

9 MJ: Okay. So what did you do -- when did you first see the
10 video?

11 ACC: This would have been in January or late February -- it was
12 mid-February of 2010, Your Honor.

13 MJ: Okay. And what did you -- you said you originally saw the
14 video and ----

15 ACC: Yes, Your Honor.

16 MJ: ---- some people in your office were talking about it?

17 ACC: Yes, Your Honor.

18 MJ: Okay. And this was the video that you described as "war
19 porn"?

20 ACC: Yes, Your Honor.

21 MJ: Okay. And what was going on in the video that you can talk
22 about?

1 ACC: It was aerial weapons team -- it was from the camera
2 onboard of an aerial team aircraft that also record the flight crew
3 audio, Your Honor, and they're just -- in the course of duties,
4 they're engaging some -- engaging some targets and then there's two
5 separate engagements and then there's a third section to the video
6 for a third one, later.

7 MJ: Okay. And you testified when you were reading your
8 statement that some news organizations were interested in getting
9 that video from the Freedom of Information Act?

10 ACC: Yes, Your Honor.

11 MJ: And did you know why they were interested in getting that
12 video?

13 ACC: Just based upon what I could see online on some open source
14 reporting that I was looking up, Your Honor.

15 MJ: And what did that say?

16 ACC: It said that the company, Reuters, had made the request and
17 that those requests were not necessarily being denied, but they were
18 being -- they were receiving responses to that, but not getting the
19 video, Your Honor.

20 MJ: Okay. And what did you do with the video? You said you
21 did some research here to find out what the facts were with respect
22 to the video and that caused you to reach some conclusions -- and
23 what were those conclusions that you reached?

1 ACC: Conclusions -- I mean -- conclusions about?

2 MJ: Well, about -- you made a decision -- did you make a
3 decision, at some point, then you needed to give that video to the
4 news media?

5 ACC: Yes, Your Honor, probably about a week or so after first
6 viewing it, Your Honor.

7 MJ: Okay. And did you, at some point, give that video -- I
8 mean, what did you do -- did you take it out of the T-SCIF? Let's
9 start there.

10 ACC: Yes, Your Honor, I burned the video to a CD-RW and then I
11 took that out of the T-SCIF put it onto my personal computer, Your
12 Honor.

13 MJ: Okay. Now, is a CD-RW ----

14 ACC: Or it could have been ----

15 MJ: ---- a CD-ROM?

16 ACC: Yes, Your Honor.

17 MJ: It's just a disc?

18 ACC: Some of them might be DVD-RWs, but I'm just using compact
19 discs in general, Your Honor.

20 MJ: Okay. And so you took it out and put it on your own
21 personal computer?

22 ACC: Yes, Your Honor.

23 MJ: Now, were you authorized to do that?

1 ACC: No, Your Honor.

2 MJ: What is the guidance given to people like you working in a
3 T-SCIF with regard to information that comes from SIPRNET?

4 ACC: If it's coming from a CD -- if it's on a CD, there's -- I
5 mean, there are two thoughts on how it's done, Your Honor. Some
6 people think that if you just burn only unclassified information onto
7 the CD and then you mark the CD as unclassified, then you can do
8 whatever with it, but then there's a lot of -- but the more proper
9 way of doing it would be to verify and there are some technical
10 personnel that can verify that nothing -- no other digital,
11 potentially Secret information might be inside of that first before
12 you transfer it over, Your Honor.

13 MJ: So, if I'm understanding you correctly, if you have
14 completely unclassified information, it's okay to -- and it's
15 verified, it's okay to take it out of the T-SCIF and put it on your
16 own personal computer?

17 ACC: Yes, Your Honor, but it's -- there's different ways --
18 there's different ideas on how it's verified. Some -- I've seen
19 where you need a memorandum sometimes and I've seen where you just
20 needed somebody to -- with the right rank to say it's okay, Your
21 Honor.

22 MJ: What rank were you at the time?

23 ACC: I was a specialist, Your Honor.

1 MJ: Were you, as a specialist, at that time, authorized to
2 verify?

3 ACC: No, Your Honor.

4 MJ: So, if you wanted to take information, even unclassified
5 information, out of the SCIF and put it on your personal computer,
6 you would've had to go to somebody higher in the chain? Is that what
7 I'm understanding that, at a minimum, to get verification?

8 ACC: Yes, Your Honor, I would've had -- I think the S-2 would
9 have been the person that I would have gotten guidance from, Your
10 Honor.

11 MJ: Did you do that with respect to this video before you took
12 it?

13 ACC: No, Your Honor.

14 MJ: Okay. So, did you have any authorization to take the video
15 out of the T-SCIF?

16 ACC: No, Your Honor.

17 MJ: Did you have any authorization to put it on your personal
18 computer?

19 ACC: No, Your Honor.

20 MJ: All right. Once it was there, what did you do with it?

21 ACC: It was -- I kept it on -- I left it on the computer for a
22 few days, Your Honor. I wasn't sure what I was going to do with it.
23 I thought -- I mean, I think I had just come back off mid-tour leave,

1 Your Honor, and I wasn't -- I thought I would just keep it and I
2 intended on giving -- on somehow getting it to Reuters at some point
3 so they can see it, but I didn't know how. It took me a few days
4 until I decided to upload it to the website, Your Honor.

5 MJ: Okay. I believe you testified earlier how you did that,
6 but just briefly go -- recount that once again -- how you uploaded
7 it.

8 ACC: I just went to the website -- the WikiLeaks website, in
9 this case, and I went -- and I clicked around and I found a
10 submission form and I uploaded the video using the submission form,
11 Your Honor.

12 MJ: And to your knowledge -- I mean, you were submitting at
13 that point, were you submitting it to a particular person or to the
14 organization of WikiLeaks?

15 ACC: Just the organization, Your Honor.

16 MJ: Now, did you -- were any of those people cleared, to your
17 knowledge, to receive this?

18 ACC: No, Your Honor.

19 MJ: Did anybody from WikiLeaks have a need to know, as defined
20 by the United States government ----

21 ACC: No, Your Honor.

22 MJ: ---- for classified information?

23 ACC: Not to my knowledge, Your Honor, no.

1 MJ: Okay. And you believed, actually, that this video was
2 classified at the time?

3 ACC: Yes, Your Honor, I did.

4 MJ: Now, as I understand from both parties, the video actually
5 wasn't classified, is that correct? Government?

6 TC[MAJ FEIN]: Yes, ma'am, after a classification review was
7 conducted it was determined not to be classified.

8 CDC[MR.COOMBS]: That's correct, ma'am.

9 MJ: Then if it ultimately was determined not to be classified,
10 why was it wrong for you to take -- why was it unauthorized for you
11 to take it out of the SCIF and to send it to WikiLeaks?

12 ACC: Well, first, Your Honor, it -- at the time, I thought it
13 was -- I believed it was classified and then, also, the digital
14 method -- you're supposed to have verification and I didn't have
15 anybody to verify and ensure that that information was okay to put
16 onto a -- to downgrade its level to an unclassified network, Your
17 Honor.

18 MJ: And you had to have that authority to do that?

19 ACC: Yes, Your Honor.

20 MJ: Even if it wasn't classified, ultimately, you still had to
21 have the authority to do that with that information at the SCIF at
22 that time, is that correct?

1 ACC: Yes, Your Honor, whether verbal or on paper, Your Honor,
2 yes.

3 MJ: Okay. Now, here, your element two is that you willfully
4 communicated the video to a person not entitled to receive it. Was
5 WikiLeaks entitled to receive the video?

6 ACC: No, Your Honor.

7 MJ: In your statement, you talk about, on Page 20, that you
8 transferred the video because you were disturbed, basically, by its
9 contents and you thought it should be out in the public because
10 people were killing kids -- or killed kids, is that correct or do you
11 want to articulate that for a little bit better?

12 ACC: Just to -- I found it -- I mean, I find it trouble -- I
13 found the video troubling at the time, Your Honor, and I still do,
14 but it's just my opinion, Your Honor.

15 MJ: Okay. Going to go over this little bit with you all the
16 way through, but let's start here. There's certain potential
17 defenses and when we get into -- that may or may not be raised by the
18 evidence if this case actually went into trial, but -- and it goes a
19 little bit with your willfulness element because you have to be --
20 willfulness has -- if you're acting willfully, you have to act
21 intentionally with the bad purpose to disobey the law. Now, in your
22 case, did you know it was not lawful to -- were you intending to
23 violate the law when you said that video to WikiLeaks?

1 ACC: Yes, Your Honor, I knew that, yes Your Honor.

2 MJ: Okay. Now, there is also a potential defense -- well,
3 there is two of them. One of them is called "justification" and what
4 that is -- is it excuses a crime if it's done in the proper
5 performance of a legal duty. Did you believe you had a legal duty to
6 transmit that video -- take it to your personal computer and give it
7 to WikiLeaks?

8 ACC: No, Your Honor.

9 MJ: Okay. So, do you believe the defense of justification
10 applies in your case?

11 ACC: I do not, Your Honor, no.

12 MJ: All right. And, lastly, I want to talk to you about the
13 necessity defense and what that is -- is it's not formally recognized
14 in the Uniform Code of Military Justice, but the appellate courts
15 have said it's a form of a duress defense. What a duress defense is
16 -- is when a third party -- where there's a threat of serious,
17 imminent harm to you or somebody else caused by a third-party.
18 Necessity is a little bit different because it's the circumstances --
19 it's the choice of evils defense. The typical example that's given
20 for necessity is if you have to trespass over -- if there's somebody
21 who is drowning in a pond and you have to trespass over somebody's
22 yard to get to that pond to save that person and there's nobody else
23 around to save that person so if you don't trespass over that

1 person's yard, that person -- the other person in the pond drowns.
2 So, that's the defense of necessity, basically; it's a choice of
3 evils defense. So, you have to commit your crime to -- because of
4 the threat of serious, imminent harm to somebody else.

5 In your case, do you believe the necessity defense applies
6 when you transferred that video?

7 ACC: No. No, Your Honor, I don't believe it applies in this
8 case, Your Honor.

9 MJ: Okay. Now, the third element to this offense is that the
10 conduct has to be prejudicial to good order and discipline or service
11 discrediting conduct. Do you believe that your transmission of this
12 video to WikiLeaks was prejudicial to good order and discipline?

13 ACC: Yes, Your Honor.

14 MJ: Why?

15 ACC: Well, in the military we have rules and regulations and
16 structures designed to safeguard sensitive information, whether it be
17 classified or unclassified and I circumvented those and, thereby --
18 you know, by circumventing them on my own authority without -- I'm
19 not the right pay grade to make these decisions or anything, so, by
20 doing that, I violated some orders and regulations and that's
21 prejudicial to good order and discipline.

22 MJ: Okay. So, what you're telling me is sometimes referred
23 into the law as "Self-help." And so, if somebody else has the

1 authority to make the rules and you don't agree with them, you elect
2 a self-help remedy to basically do -- go against the law because you
3 believe, personally, it's for a greater good. Is that kind of
4 describing what you did a little bit?

5 ACC: Yes, Your Honor.

6 MJ: Okay. You just told me that that kind of conduct is
7 prejudicial to good order and discipline because the military has a
8 command structure that's established to make those rules and people
9 in the military need to follow them, is that what you're telling me?

10 ACC: Yes, Your Honor.

11 MJ: Okay. Now, what about service discrediting? Do you think
12 that your conduct in giving the video to WikiLeaks is service
13 discrediting?

14 ACC: Yes, Your Honor.

15 MJ: Why?

16 ACC: Well, there's -- for the service discrediting, it's about
17 public perception of the military and the services and our ability to
18 -- and their trust and their perception that we can safeguard our
19 sensitive information for their protection. So, by not abiding by
20 those -- by the system, it undermines our -- our service, Your Honor,
21 and their perception of how we operate, Your Honor.

22 MJ: Okay. So, basically, if I'm understanding what you're
23 saying correctly, people should -- the military would hope that

1 people have confidence in the system and the people in it to follow
2 the rules and, basically, if you don't have any rules or people
3 aren't following the rules -- I mean, if there is more than one
4 person that's doing what you're doing then the whole system crashes?

5 ACC: Yes, Your Honor.

6 MJ: And I don't want to put words in your mouth, I mean, I'm
7 just sort of paraphrasing what I thought you told me. Is that a
8 little ----

9 ACC: You got it.

10 MJ: ---- bit, in essence, of what you're telling me?

11 ACC: Yes, Your Honor.

12 MJ: Okay. How do you know WikiLeaks wasn't entitled to receive
13 the video?

14 ACC: Well, Your Honor, it wasn't over an -- to start off with,
15 it wasn't using an authorized means of--for transferring this
16 information as far as I was aware. I mean, this was over a non-
17 secure network, so I have no guarantees that anybody is authorized to
18 receive it on the other end and I'm not aware that -- I mean, I know
19 that they're -- I'm not aware of them being a U.S organization -- or
20 U.S. government entity, so -- and then, also, I'm not aware of any of
21 them having any type of security clearances or anything, Your Honor.

22 MJ: Okay. And I know you talked about it earlier in your
23 statement not going to try to get you to rehash your entire

1 statement, but, just briefly, what's your understanding of WikiLeaks?
2 What kind of -- what's -- how did you discover it and what did you
3 come to think of it?

4 ACC: I discovered it in November -- around the Thanksgiving
5 timeframe of 2009 when they published some SMS text -- or text
6 messages or -- and then I did some research into them after that
7 based upon the fact that I had heard of the website before, but never
8 visited it prior to that, but I was interested -- I became interested
9 in it after that and I became familiar with the organization and how
10 it operated and what they were publishing and all the rest of it
11 after a few weeks of going through it -- going through stuff, both on
12 the open-source Google site on my personal computer and using my
13 access to Secret documents, Your Honor.

14 MJ: Okay. You said an "SMS text." What's that?

15 ACC: It's a Short Messaging System -- it's basically -- whenever
16 you text message on cell phones, those are -- that's the kind of
17 message. But, before hand, it used to be pagers -- it's the same
18 standard that they still haven't updated for modern phones, yet, Your
19 Honor.

20 MJ: Okay. And you said you did some intelligence and you came
21 to learn about WikiLeaks and its organization. What did you learn?

22 ACC: I learned about how -- I learned -- I was trying to learn
23 how it was structured, where their servers were, who operated it,

1 just for my -- because it -- they're not as open about that stuff as
2 normal -- or as normal websites and publishers are so I found that
3 interesting, Your Honor. I don't know if I missed the question, Your
4 Honor?

5 MJ: No, no, you answered it. Did WikiLeaks ultimately release
6 the video?

7 ACC: Yes, Your Honor.

8 MJ: Okay, is that what you said in your ----

9 ACC: In April.

10 MJ: ---- statement, here, in 5 April of 2010 ----

11 ACC: Yes, Your Honor.

12 MJ: Okay, I believe you've already answered this, but let me
13 just ask one more time, did you willfully communicate that video to
14 WikiLeaks?

15 ACC: Yes, Your Honor.

16 MJ: Does either side believe any further inquiry is required
17 with respect to Specification 2 of Charge II?

18 CDC[MR.COOMBS]: Nothing from the defense, Your Honor.

19 TC[MAJ FEIN]: One moment please, Your Honor.

20 MJ: Uh-huh.

21 TC[MAJ FEIN]: No, just a factual clarification for the record.
22 It might be worth the Court asking if there's a difference between

1 COS Hammer and FOB Hammer because the two terms are being used
2 interchangeably.

3 MJ: What Hammer? What's the first one you said?

4 TC[MAJ FEIN]: Forward Operating Base Hammer, ma'am, or Combined
5 Operating Station -- Contingency Operating Station; FOB and COS
6 Hammer.

7 MJ: Okay. PFC Manning, what is the difference between FOB and
8 COS Hammer?

9 ACC: They are the same location, Your Honor, but -- and we never
10 really understood what -- when the change was, but it was used
11 interchangeably while we were there as well, Your Honor.

12 MJ: So they're both the same place?

13 ACC: Yes, Your Honor.

14 MJ: Just have different names at different times?

15 ACC: I believe Corps came down with the change, but we didn't
16 adopt it, Your Honor.

17 MJ: Okay. So, in your -- the charges and specifications at
18 issue here, they're all charged with happening at F-O-B Hammer, I
19 believe.

20 ACC: Combined Operating Station, Your Honor.

21 MJ: Oh -- that's -- hold on. I'm sorry, Contingency Operation
22 -- was it Combined Operating Station or Contingency Operating
23 Station?

1 ACC: I don't -- it's Contingency Operating Station, Your Honor.

2 MJ: Okay, and is that what it was called when you were there?

3 ACC: There was a lot of different names for it, Your Honor.

4 MJ: Okay, was that one of them?

5 ACC: That was one of them, yes, Your Honor.

6 MJ: When you look at that, when it says -- look at the -- when
7 it says, "that, at or near Contingency Operating Station Hammer,
8 Iraq," does that mean to you where you were in Iraq or does that mean
9 to you that that's someplace else?

10 ACC: That's where I was, Your Honor.

11 MJ: Okay. And Specification 2, did you actually -- when you
12 transferred the video, what was base that you did that?

13 ACC: That was at Contingency Operating Station Hammer, Your
14 Honor.

15 MJ: Okay. And was that between 14 February of 2010 and 21
16 February 2010 when you transferred the video?

17 ACC: Yes, Your Honor.

18 MJ: Does other side believe any further inquiries required?

19 TC[MAJ FEIN]: No, ma'am.

20 CDC[MR.COOMBS]: No, Your Honor.

21 MJ: Okay. Let me just ask you one thing, PFC Manning, I should
22 have asked you a little bit earlier, are you on any medications
23 today?

1 ACC: No, Your Honor.

2 MJ: Is there anything preventing you and I from having an
3 intelligent back-and-forth dialogue?

4 ACC: No, Your Honor.

5 MJ: Let's move on Specification 3 of Charge II. Specification
6 3 addresses the classified memoranda produced by a United States
7 government intelligence agency. Can you orient me to where in your
8 statement that we talk about that?

9 ACC: It's Paragraph 10 at Page 5, Your Honor. I'm sorry, 29.

10 MJ: Page 29?

11 ACC: Yes, Your Honor.

12 MJ: So, this is -- this document that we're talking about,
13 here, for Specification 3, where did you come across that?

14 ACC: I don't know if I can say, Your Honor.

15 MJ: Oh, okay, well, let's not. Was it in the T-SCIF?

16 ACC: It was, Your Honor.

17 MJ: Okay. Was it something that you were authorized to take
18 out of the T-SCIF?

19 ACC: It was not, Your Honor.

20 MJ: Okay. Did you take it out of the T-SCIF?

21 ACC: Yes, Your Honor.

22 MJ: How did you do that?

1 ACC: Using the same method -- a CD-RW or it might have been a
2 DVD-RW -- or a DVD-W, sorry -- RW.

3 MJ: Okay. And where -- when you took it out of the SCIF, where
4 did you take it?

5 ACC: To my -- to the Compartmentalized Housing Unit -- to my
6 personal area.

7 MJ: And what did you do with it?

8 ACC: I put it onto a computer -- my personal computer and I
9 uploaded it using the submission form, Your Honor -- no, the drop --
10 I used the drop box, as I ----

11 MJ: And where did you -- you used the drop box to do what?

12 ACC: To upload, Your Honor, the documents.

13 MJ: And whose drop box was it?

14 ACC: It was somebody within the WikiLeaks organization. I never
15 got a full identification as to who, but pointed me to that and it
16 resolved -- the IP address resolved to that website, Your Honor.

17 MJ: Okay. What does that mean?

18 ACC: It means that -- it -- well, the IP address that was
19 attached to that, wasn't attached to the domain name wikileaks.org if
20 I used the IP address, Your Honor.

21 MJ: Okay. So, this drop box, would that be a place where, if
22 someone wanted to send something to WikiLeaks, they would send it
23 there?

1 ACC: Yes, Your Honor, during ----

2 MJ: And then WikiLeaks would retrieve it?

3 ACC: Yes, Your Honor, they -- as they were changing something, I
4 think, they were changing how they were doing it, Your Honor.

5 MJ: Okay, because you were talking to me, before, about some of
6 the ways that you transmitted these documents was anonymous and some
7 wasn't, is that what I heard you say earlier?

8 ACC: Yes, Your Honor, well, I was -- I would -- I received over
9 the IRC and then later the Jabber -- I would ask for how do I send
10 something and then they would give me directions to where I needed to
11 send it, although I wouldn't say what it was, Your Honor ----

12 MJ: And that was the drop box ----

13 ACC: ---- that I was sending.

14 MJ: ---- that you were talking about, right?

15 ACC: Yes, Your Honor.

16 MJ: Okay. So, rather than repeat my questions for each of
17 these specifications, was -- when we talk about all of the
18 specifications, was -- when we talk about all of the specifications
19 that you're pleading guilty to today, was WikiLeaks authorized to
20 receive anything that you sent?

21 ACC: No, Your Honor.

1 MJ: Okay. And were you authorized to send anything you sent in
2 these specifications that we're talking about, that you're pleading
3 guilty to, to WikiLeaks?

4 ACC: No, Your Honor.

5 MJ: And other than the video in Specification 2, was everything
6 else classified?

7 ACC: Yes, Your Honor. Well, not everything -- for the charged
8 documents, yes, Your Honor.

9 MJ: For the charged documents?

10 ACC: Yes, Your Honor.

11 MJ: But some of the Department of State cables, I believe in
12 Specification 13 of Charge II, you testified earlier, not all of them
13 were classified, right?

14 ACC: Yes, Your Honor.

15 MJ: But the charged documents that we are talking about were?

16 ACC: Yes, Your Honor.

17 MJ: Now, with Specification 3, when you sent that -- the
18 document that we're talking about for that specification -- or the
19 two documents, did you willfully transmit those documents to
20 WikiLeaks?

21 ACC: Yes, Your Honor.

22 MJ: So you did it intentionally?

23 ACC: Yes, Your Honor.

1 MJ: Okay. And we talked earlier, you didn't have any authority
2 to do it, is that correct?

3 ACC: that is correct, Your Honor.

4 MJ: Okay. Now, I asked you about conduct -- was your conduct
5 prejudicial to good order and discipline, earlier, with respect to
6 Specification 2 of Charge II. Is your answer any different for this
7 specification?

8 ACC: Not really, Your Honor; it's a blanket statement for all of
9 the specifications under the charge.

10 MJ: So, for all the specification you are pleading guilty to,
11 the reasons that you gave me that -- so you believe -- first of all,
12 do you believe all the specifications that you're pleading guilty to,
13 that your conduct was prejudicial to good order and discipline in the
14 armed forces?

15 ACC: Yes, Your Honor.

16 MJ: And was that for the reasons we discussed when we talked
17 about Specification 2 of Charge II?

18 ACC: Yes, Your Honor.

19 MJ: Now, do you believe all of the conduct that you're pleading
20 guilty to is prejudicial -- was service discrediting?

21 ACC: Yes, Your Honor.

22 MJ: And is that for the same reason we talked about for
23 Specification 2 of Charge II?

1 ACC: Yes, Your Honor, I mean ----

2 MJ: Okay, so, if I ask you these questions for each
3 specification, are you going to give me an answer that's any
4 different than you gave me for that?

5 ACC: No, Your Honor, they're all going to be along the same
6 lines, Your Honor.

7 MJ: Okay. Was there more than one classified memorandum in
8 Specification 3 that you transmitted?

9 ACC: There were two, your Honor.

10 M: Okay. And when did you transmit that?

11 ACC: That would have been ----

12 MJ: You can look at your statement.

13 ACC: Okay. 22 March, your Honor.

14 MJ: Of what year?

15 ACC: 2010, Your Honor.

16 MJ: Okay. And for all these specifications, these
17 transmissions are -- at least for Specification 3 is also -- is it
18 Contingency Operations Station Hammer?

19 ACC: Yes, Your Honor.

20 MJ: Does either side believe any further inquiry is required
21 with respect to Specification 3 of Charge II?

22 ATC[CPT MORROW]: Your Honor, the accused stated earlier that
23 "the content of two of these documents upset me greatly. I had

1 difficulty believing what the session was discussing." It may be
2 helpful to the Court just to explore the defenses again with respect
3 to these documents.

4 MJ: Okay. Now, you looked at these documents -- your statement
5 says that the contents upset you greatly. We talked earlier about,
6 you know, to willfully communicate something, you have to be doing it
7 with a bad purpose to violate the law.

8 ACC: Correct.

9 MJ: And you talked to me earlier about that you intentionally
10 communicated these two documents. Did you know you were violating
11 the law when you did that?

12 ACC: Yes, Your Honor.

13 MJ: Okay. We also talked about, earlier, justification is
14 something that is in the proper performance of a legal duty. Did you
15 believe that you were acting in the proper performance of a legal
16 duty?

17 ACC: No, Your Honor.

18 MJ: We also talked about necessity. Do you believe, in your
19 case, that your conduct was necessary -- basically your choice of
20 evils, there, that you had to believe that your actions were
21 necessary, they must have been -- your belief must've been reasonable
22 in their must've been no other alternative to committing your crime
23 to prevent death or imminent injury.

1 Do believe that the necessity defense applies in your case?

2 ACC: Yes, Your Honor, I had a lot of alternatives.

3 MJ: Okay. Let me ask -- maybe my question was bad. Do you
4 believe the defense of necessity applies in your case?

5 ACC: No, Your Honor.

6 MJ: Okay. And you said you believed you had a lot of
7 alternatives. What other -- describe some of them for me.

8 ACC: Well, not necessarily for this-that specification, but
9 speaking generally for the other -- for two, as well, Your Honor.

10 MJ: Okay. Why don't you speak generally and just tell me what
11 alternatives you could have ----

12 ACC: Well, for -- I had the chain of command as a first
13 alternative. I could've went to the chain of command and asked for
14 guidance on how to release certain information. I had -- the public
15 affairs office was -- I knew where the public affairs office was and
16 they actually have the authority to officially release sensitive
17 information and -- I mean, there is also the Freedom of Information
18 Request -- Freedom of Information Act and other -- there were other
19 avenues to approach, Your Honor.

20 MJ: Okay. And you didn't exercise those?

21 ACC: No, Your Honor.

22 MJ: Any further inquiry?

23 TC[CPT MORROW]: No, Your Honor.

1 CDC[MR.COOMBS]: No, Your Honor.

2 MJ: All right. Let's move on, then, to Specification -- it's
3 were jumping, now, to Specification 15 of Charge II. And where in
4 your statement is that discussed?

5 ACC: Page 24, Your Honor.

6 MJ: Okay. Maybe I am confused, I thought that was
7 Specification 9? Specification 15 -- we're talking about ----

8 ACC: There was a mix-up, here, Your Honor. It's in this
9 paragraph, yes, Your Honor; Paragraph 9 -- Section 9.

10 MJ: Oh, it's in Section 9? Okay.

11 ACC: Yes, Your Honor. But its first talked about earlier on in
12 there, as well, like the contents of it Your Honor.

13 MJ: Okay where you -- where do you first begin to address it --
14 and that would be the -- it would be a classified record produced by
15 United States Army intelligence agency, dated 18 March 2008. Is that
16 the information we're talking about that specification?

17 ACC: Yes, Your Honor.

18 MJ: Okay. And where do you first address in your statement?

19 ACC: It's Section 5, Paragraph Delta, on Page 10.

20 MJ: On Page 10? Okay. All right, so were you working at the
21 T-SCIF when you were -- it says you were conducting a search to look
22 for information and you found this? Were you working in the T-SCIF?

23 ACC: Yes, Your Honor.

1 MJ: Okay. And did you -- was this information classified?

2 ACC: Yes, Your Honor, it is.

3 MJ: Okay. Did you take that information -- did you take it off
4 of where you found it and put it on a CD like you did the last two
5 pieces of information that we talked about?

6 ACC: It was a CD, yes, Your Honor.

7 MJ: Okay. And did you take it out of the T-SCIF?

8 ACC: Yes, Your Honor.

9 MJ: And where did you bring it?

10 ACC: Again to my personal housing -- my housing area and then to
11 -- LSA Dragon and then onto my personal computer, Your Honor.

12 MJ: And what did you do with it?

13 ACC: Then, I uploaded it using the drop box, again, as I
14 described, Your Honor.

15 MJ: Okay. Did you willfully and intentionally do that?

16 ACC: Yes, Your Honor.

17 MJ: Did you have authority to do it?

18 ACC: I did not.

19 MJ: And we already talked about -- you said for all of these
20 specifications WikiLeaks was not an authorized receiver of any of
21 this information. Does that apply to this too?

22 ACC: Yes, Your Honor.

1 MJ: And as we talked about earlier, was your conduct
2 prejudicial to good order and discipline and service discrediting?

3 ACC: Yes, Your Honor.

4 MJ: And for the reasons we earlier discussed or for some other
5 reason?

6 ACC: Same reasons, Your Honor.

7 MJ: And that was, once again -- was that at Contingency
8 Operating Station Hammer?

9 ACC: Yes, Your Honor.

10 MJ: And was that where you did the transmission to the drop box

11 ACC: Correct, Your Honor.

12 MJ: And that was over the Internet?

13 ACC: Yes, Your Honor.

14 MJ: What were the dates that you did that?

15 ACC: That would have been 7th through 8th of March, Your Honor.

16 MJ: So, on or about 8 March of 2010?

17 ACC: Yes, Your Honor.

18 MJ: Okay. Does either side believe any further inquiry is
19 required?

20 TC[MAJ FEIN]: May we have a moment, Your Honor?

21 MJ: Yes. Mr. Coombs, while they're having their moment, does
22 the defense believe any further inquiry is required?

23 CDC[MR.COOMBS]: No, Your Honor.

1 MJ: Okay.

2 TC[MAJ FEIN]: Ma'am, the only question the government has is if
3 the Court needed to explore the willful component for this
4 specification. I guess we still don't remember if he did it for all
5 specifications or not when you were questioning him.

6 MJ: Okay. Well, PFC Manning, let's cover that again. The -- I
7 asked you earlier if your conduct was willful, that is, intentional
8 with an intent to violate the law. Was it in this case?

9 ACC: Yes, Your Honor.

10 MJ: Okay. Did you know you are violating the law when you
11 transmitted that information?

12 ACC: Yes, Your Honor.

13 MJ: Now, is that correct for all of these specifications that
14 were going to discuss today? Did you act willfully and intentionally
15 when you transmitted all of these -- this information?

16 ACC: Yes, Your Honor, I was familiar with how we were supposed
17 to be doing -- safeguarding this information and the channels and the
18 authorities that are in place for it, yes.

19 MJ: So, for all of this information in Specifications 2, 3, 5,
20 7, 9, 10, 13, 14, and 15, did you willfully and intentionally
21 transfer this information to WikiLeaks?

22 ACC: Yes, Your Honor.

1 MJ: Did you know you were violating the law when you
2 transferred all of the information in these specifications?

3 ACC: Yes, Your Honor.

4 MJ: Okay. And when you transferred all of these -- this
5 information in these specifications I mean, we already asked this
6 question, but I'm going to ask it again: was WikiLeaks entitled to
7 receive any of it?

8 ACC: No, ma'am.

9 MJ: And for any of these specifications, was your conduct not
10 prejudicial to good order and discipline?

11 ACC: No, ma'am.

12 MJ: It was prejudicial to good order and discipline?

13 ACC: It was all prejudicial to good order and discipline, Your
14 Honor.

15 MJ: If I asked you why, what would you tell me?

16 ACC: It's prejudicial to good order and discipline, again,
17 because of the rules and regulations that were in place to safeguard
18 sensitive information, whether it be classified or not.

19 MJ: All right. Same question for service discrediting -- for
20 any of these specifications, was -- were any of these specifications
21 not service discrediting -- your conduct in transmitting these
22 documents WikiLeaks?

23 ACC: No, Your Honor.

1 MJ: And why would that be? So, it was service discrediting is
2 what you're telling me ----

3 ACC: Yes, Your Honor.

4 MJ: ---- for each of these specifications. And why would that
5 be?

6 ACC: Well, I -- again, just service discrediting -- for
7 something to be service discrediting, it has to undermine the public
8 perception as well as the service's perception of itself, Your Honor,
9 and that -- misconduct undermines that, Your Honor.

10 MJ: Okay. I guess where I'm going with this, Government -- I
11 can ask the same question for each specification, if I'm going to get
12 the same answer that we just got, I don't really see the point unless
13 you do?

14 TC[MAJ FEIN]: No, no, ma'am, not at all.

15 MJ: Okay. So, your conduct through all of these specifications
16 was -- you willfully acted to -- and you knew you were in violation
17 of the law, is that what you're telling me?

18 ACC: Yes, Your Honor.

19 MJ: And you're telling me for all of these specifications, your
20 conduct was prejudicial to good order and discipline and service
21 discrediting for the reasons you told me when we first discussed
22 Specification 2 of Charge II? Is that right?

23 ACC: That is correct, Your Honor.

1 MJ: Okay. Does either side see any need for me to ask any more
2 of those willfulness or service discrediting or prejudice to good
3 order and discipline questions with respect -- when I'm going through
4 the factual predicate for the other offenses?

5 TC[MAJ FEIN]: No, ma'am, not the general questions. The
6 government might have specific ones based off of prior -- what was
7 said in the statement per spec, but that will come up later ma'am.

8 MJ: No, my intent, now -- and this is where I want to explore
9 it with the parties -- is to go over with PFC Manning the facts
10 regarding each of the additional transmissions, but I don't intend --
11 you know, I'll ask just the leading question, "was it willful, was it
12 service discrediting, and prejudice to good order and discipline,"
13 but what I'm understanding what PFC Manning has told me is the same
14 reasons apply. All of the conduct was willful and the same reasons
15 apply for prejudice to good order and discipline and service
16 discrediting conduct as he first described to me for Specification 2
17 of Charge II.

18 TC[MAJ FEIN]: Sounds good, ma'am.

19 CDC[MR.COOMBS]: That's correct, ma'am.

20 MJ: All right. I guess now we are moving on, then, to
21 Specification 5 of Charge II. Where would I find that?

22 ACC: It's first mentioned on Page 3 and then again on Page 5,
23 Your Honor.

1 MJ: All right. And for Specification 5, we are talking about
2 more than 20 classified records from the Combined Information Data
3 Network Exchange-Iraq. Now, you spent some time talking about that
4 when you read your statement earlier in the day. Can you just
5 briefly describe what that database is?

6 ACC: Again, Your Honor, it's a database that exists -- have the
7 -- on SIPR -- on SIPRNET and it -- there's two -- I mean there's two
8 separate ones. There was one for each theater, at the time, for both
9 Iraq and Afghanistan and it holds a large amount of data that is
10 exchanged between the -- between different units within DoD and the
11 different sections of the different branches of the military -- or
12 different branches of government -- or different agencies within the
13 government, Your Honor.

14 MJ: All right. And were -- was this information found on the
15 SIPRNET computer?

16 ACC: Yes, Your Honor.

17 MJ: Was it classified?

18 ACC: Yes, Your Honor.

19 MJ: At what level?

20 ACC: Not all the information in -- contained within CIDNE is
21 classified, but the information within was often classified up to
22 Secret, Your Honor.

1 MJ: Okay. Was that information you are authorized to take out
2 of the T-SCIF?

3 ACC: No, Your Honor.

4 MJ: All right. Did you take it out of the T-SCIF?

5 ACC: Yes, Your Honor.

6 MJ: And how did you do that?

7 ACC: I -- it was -- I had already created a back-up of the
8 entire -- for both -- for a particular section of that database, the
9 Significant Activities tables and I placed them onto two separate
10 DVD-RWs -- I believe -- yeah, DVD-RWs and stored them in to the
11 conference area of the SCIF and I physically took that from the SCIF,
12 Your Honor.

13 MJ: Okay. Were there more than 20 records that you physically
14 took out the SCIF?

15 ACC: Yes, Your Honor, there were about 100, Your Honor.

16 MJ: Were there more than 20 classified records?

17 ACC: Charged records, yes, Your Honor.

18 MJ: Okay. So, the number in the charge in specification is
19 accurate, then? More than 20?

20 ACC: Yes, Your Honor.

21 MJ: Okay. And you took it out of the CD and brought it -- did
22 you bring it back to your personal computer?

23 ACC: I did, Your Honor.

1 MJ: Okay. And what did you do with it?

2 ACC: I took the information and I uploaded it, again -- I mean,
3 this was the first thing that I ever uploaded to the WikiLeaks
4 website. I uploaded it using their submission form.

5 MJ: So, this was -- out of all of these specifications, even
6 though it's in middle in Specification 5, this was the first time you
7 uploaded to WikiLeaks, is that correct?

8 ACC: Correct, Your Honor.

9 MJ: Okay. Did you do the Afghanistan database at the same time
10 or a different time?

11 ACC: They were -- yes, they -- I -- they were on -- they were
12 both on the same DVD-RW that I took from the conference room of the
13 SCIF.

14 MJ: Okay. Well, let's talk about Specification 5 and
15 Specification 7 together, then. Did you -- you downloaded the
16 Afghanistan and Iraq CIDNE databases at the same time or ----

17 ACC: It was sequential. So, I got Iraq first and then I
18 downloaded Afghanistan, Your Honor.

19 MJ: Okay. Was it on the same CD?

20 ACC: Yes, it should have been on the -- I labeled the CD "CIDNE
21 SIGACTs," Your Honor.

22 MJ: Okay. Now, Specification 7 also says "more than 20
23 classified records." Are the records -- did you download more than

1 20 classified -- or is it more than 20 records from the Afghanistan
2 database to your CD also?

3 ACC: Yes, Your Honor.

4 MJ: Were there more than 20 classified records?

5 ACC: Yes, Your Honor.

6 MJ: Okay. So, did you take the Afghanistan records and the
7 Iraq database records out of the T-SCIF together on one CD?

8 ACC: Yes, Your Honor.

9 MJ: Okay. And you said -- you testified you went back to your
10 personal computer and uploaded it?

11 ACC: Well, I copied -- this wasn't immediately, no.

12 MJ: Okay.

13 ACC: This was -- I copied it onto -- I copied it onto my
14 personal computer and then I put it onto -- it's like a little SD
15 card for cameras. So, I didn't have it on the laptop anymore, but I
16 could put it on there. And then I took the actual CD that I took it
17 from back into the SCIF and I set it back in the conference room.

18 MJ: Okay. So, once you have this on that -- what did you call
19 it? The ----

20 ACC: SD card.

21 MJ: The SD card -- you said in your camera?

22 ACC: Yes, Your Honor. Digital camera.

23 MJ: All right. What did you do with it then?

1 ACC: I took it with me on my mid-tour leave to my ----

2 MJ: And this is when you went to your aunt's house and then you
3 went up to Massachusetts and then you came back and got stuck in the
4 blizzard?

5 ACC: Yes, Your Honor, but I didn't bring my camera case with me
6 to Massachusetts.

7 MJ: Okay. So, you -- but you did bring your camera case with
8 that SD card to your aunt's house?

9 ACC: Yes, Your Honor.

10 MJ: And that was in Maryland?

11 ACC: Yes, Your Honor.

12 MJ: And did you -- what did you do with that information -- or
13 SD card at your aunt's house?

14 ACC: I -- after deciding what I was going to do with it, I
15 eventually put it on to a -- put it on -- back on to my laptop and I
16 uploaded it -- I uploaded it to the WikiLeaks website at some point
17 during my mid-tour leave, Your Honor.

18 MJ: So, when you were ----

19 ACC: At the end -- towards the end.

20 MJ: When you uploaded the Iraq and Afghanistan databases to the
21 WikiLeaks website, were you in Contingency Operating Station Hammer,
22 Iraq or were you at your aunt's house in Maryland?

23 ACC: I think I was actually at a Barnes & Nobles, Your Honor.

1 MJ: In -- I assume there's no Barnes & Nobles in Contingency
2 Operating Station Hammer, Iraq, so would this be in Maryland?

3 ACC: Yes, Your Honor, this was Rockville, Maryland.

4 MJ: Rockville, Maryland?

5 ACC: Or it could have been North Bethesda; it's right between
6 the two, Your Honor.

7 MJ: All right. Mr. Coombs, I don't believe that the plea by
8 exceptions and substitutions changed the location, did it?

9 CDC[MR.COOMBS]: The way that it -- and I covered this with my
10 client -- the way we looked at the location, ma'am, was that's where
11 he had the unauthorized possession of it and the actual disclosure of
12 it was in the United States. However, the way the specification is,
13 he has the unauthorized possession at or near Contingency Operation
14 Station Hammer, Iraq. I've discussed with him that the actual
15 disclosure was in the United States. Looking at it, I did not
16 believe that would require us to do exceptions and substitutions for
17 the location, however I have covered that with my client and the
18 defense is prepared to enter, by exceptions and substitutions, if the
19 Court believes that's warranted.

20 MJ: Well, reading it here that Contingency Hammer Station,
21 Iraq, that you had unauthorized possession. Just to make the --
22 Specification 5 and 7 clear -- are those -- first of all, PFC
23 Manning, are those the only specifications -- Specifications 5 and 7

1 of Charge II, where you transmitted the data from Barnes & Noble in
2 Maryland or anywhere in Maryland?

3 ACC: Yes, Your Honor.

4 MJ: Okay. So all of the other transmission were done from
5 Contingency Operating Hammer, Iraq?

6 ACC: Correct, Your Honor.

7 MJ: Well, I'm thinking it might just be prudent to say ----

8 CDC[MR.COOMBS]: Just put an "and" in ----

9 MJ: For the -- well, you're not really excepting words, though,
10 there, you're adding words.

11 CDC[MR.COOMBS]: Correct, Your Honor, so we would not object to
12 adding -- when you look at "at or near Contingency Operation Station
13 Hammer, Iraq" and just putting the "and" -- conjunction "and
14 Maryland" -- in this case, it would be Rockville, Maryland, United
15 States adding that to both Specifications 5 and 7.

16 MJ: All right. Government, do you have any objection if the
17 defense modifies their plea?

18 TC[MAJ FEIN]: Ma'am, it might be even easier -- we could just
19 amend it also -- the actual charge sheet for those two specs.

20 MJ: All right. So, I assume if the government is going forward
21 with the greater offense, that the government is going forward with
22 those locations as well, is that correct?

1 TC[MAJ FEIN]: Well, the greater offense -- it would be a common
2 element of a greater offense anyways, Your Honor, so, yes.

3 MJ: Okay. Well, this is a good time for a brief recess anyway,
4 so why don't we go ahead and take a recess and then you all discuss
5 how you want to move ahead and just come see me before we call the
6 court back to session and let me know what you decide to do.

7 TC[MAJ FEIN]: Yes, Your Honor.

8 MJ: How long would you like?

9 TC[MAJ FEIN]: Can we go at 1530, ma'am?

10 MJ: All right. The court is in recess until 1530.

11 **[The Article 39(a) session recessed at 1515, 28 February 2013.]**

12 **[The Article 39(a) session was called to order at 1542, 28 February**
13 **2013.]**

14 MJ: This Article 39(a) session is called to order. Let the
15 record reflect that all parties present when the court last recessed
16 are again present in court.

17 Government has what has happened with the charge sheet?

18 TC[MAJ FEIN]: Yes, ma'am, the parties discussed this issue,
19 ma'am, and the United States, I guess, has amended, with the
20 concurrence of the defense, the two charges, Specification 5 and 7,
21 of a copy of the original charge sheet which will now become the new
22 original. Specification 5 has been amended to say, "In that Private
23 First Class Bradley E. Manning, U.S. Army, did, at or near

1 Contingency Operating Station Hammer, Iraq and at or near Rockville,
2 Maryland," and then the remaining portion. And then the same
3 amendment has occurred in Specification 7, Your Honor.

4 MJ: All right. Defense, do you have any objection to this
5 amendment?

6 CDC[MR.COOMBS]: No, Your Honor.

7 MJ: PFC Manning, have you had an opportunity to look at the
8 amended charge sheet?

9 ACC: Yes, Your Honor.

10 MJ: Do you have any objections to it?

11 ACC: No, Your Honor.

12 MJ: Okay. It was amended, basically, based on yours and my
13 dialogue and what you have in your statement to be factually correct.

14 ACC: Yes, Your Honor.

15 MJ: Okay. Now, Government, normally, after someone has been
16 arraigned, we don't normally -- the original charge sheet is supposed
17 to stay the same. So, do it one of two ways: either put the
18 original charge sheet back in the record somehow ----

19 TC[MAJ FEIN]: Ma'am, it was fortuitous that we did not have the
20 original charge sheet, so it will remain in the record with this
21 amended charge sheet on top of it.

22 MJ: Okay. Great. And the amended words are "at or near
23 Contingency Hammer Station [sic], Iraq and at or near Rockville,

1 Maryland," for Specifications 5 and 7 of Charge II. Is that the
2 parties' understanding?

3 CDC[MR.COOMBS]: Yes, Your Honor.

4 TC[MAJ FEIN]: Yes, Your Honor.

5 MJ: All right. Is there anything else I need to address with
6 this issue?

7 CDC[MR.COOMBS]: No, Your Honor.

8 TC[MAJ FEIN]: No, Your Honor.

9 MJ: Okay. PFC Manning, as we discussed, the charge sheet was
10 amended based on yours and my discussion with respect to these two
11 specifications and, as I understand what you told me on what's in
12 your statement, you got the Iraq and Afghanistan databases from the
13 T-SCIF at Contingency Operating Base Hammer in Iraq ----

14 ACC: Yes, Your Honor.

15 MJ: ---- you put them on your CDs -- or your CD, brought it
16 home -- brought it back to your CHU -- your personal computer ----

17 ACC: CHU.

18 MJ: ---- at the CHU and then you -- Containerized Housing?
19 What's the ----

20 ACC: Containerized Housing.

21 MJ: Containerized Housing Unit? Okay. It's been a while.
22 Okay. So, then, you uploaded that onto the CD -- or the SD card in
23 your camera and then you brought that back to Maryland? Is that my

1 understanding of your testimony? And then in a Barnes & Noble
2 somewhere near Rockville, Maryland, you transmitted that data to
3 WikiLeaks?

4 ACC: Yes, Your Honor.

5 MJ: Okay. And, once again, you've already been asked the
6 willful questions, did you do -- did you transmit that data -- the
7 Iraq and Afghanistan databases to WikiLeaks willfully as well?

8 ACC: Yes, Your Honor.

9 MJ: And was your conduct prejudicial to good order and
10 discipline and service discrediting?

11 ACC: Yes, Your Honor.

12 MJ: And would that be for the same reasons you told me before
13 or something different?

14 ACC: Yes, Your Honor, the same reasons, Your Honor.

15 MJ: Okay. Does either side believe any further inquiry is
16 required with respect to Specifications 5 or 7?

17 TC[MAJ FEIN]: Yes, ma'am, based off of Page 14, what has been -
18 - it is based off Private First Class Manning's statement, but Page
19 14, Paragraph J, at the bottom. The United States believes that
20 further inquiry into the potential defenses of necessity and
21 justification for these specific specifications, Your Honor.

22 MJ: Okay. Look at Page 14, there, at -- Paragraphs I and J.
23 It talks about -- that you began to get depressed with the situation.

1 Now, was it -- when you got depressed with the situation, that was
2 when you were in Maryland after you'd already taken these databases,
3 is that correct?

4 ACC: It's more of a general, broad feeling that I had over a
5 period of time, Your Honor.

6 MJ: Okay. Now, was that -- when you took these databases out
7 of Iraq and you took them back home with you on leave, as I
8 understand your statement, were you still deciding what you were
9 going to do with them?

10 ACC: Yes, Your Honor, I was looking at different -- and trying
11 to figure out different people that I could possibly give this to,
12 Your Honor.

13 MJ: Did you plan to ----

14 ACC: I didn't know how ----

15 MJ: ---- give it to somebody or -- had you already made that
16 decision that you were going to give it to somebody?

17 ACC: Yes, Your Honor. Before I left Iraq, I knew I was going to
18 probably give it to some news organization, Your Honor.

19 MJ: You just -- at that point -- so, you left Iraq, did you
20 know which news organization you're going to give it to?

21 ACC: My preference would have been the Washington Post, Your
22 Honor.

1 MJ: Okay. And I remember your statement, earlier -- I think --
2 were these the -- was this the information you were trying to give to
3 the Washington Post?

4 ACC: Yes.

5 MJ: Or was that something different?

6 ACC: Yes, Your Honor, that was the way it started out, Your
7 Honor.

8 MJ: Okay. So, that's what's on 15 of your statement, then?
9 You just tried to do it -- to give it to the Washington Post, you
10 talked to somebody there and they said, well, they might be
11 interested but they have to see it first?

12 ACC: Yes, Your Honor, and I never went down, physically, to
13 there but I thought of -- I considered actually going to the
14 Washington Post downtown, Your Honor.

15 MJ: And, at some point, did you make a decision that that
16 wasn't a good idea?

17 ACC: I was nervous, Your Honor, yes.

18 MJ: Okay. And then did you -- what was the next thing you were
19 thinking about doing?

20 ACC: I thought about -- well, after, I made a phone call -- I
21 made a few phone calls -- I made at least one phone call to the
22 Washington Post and then I called the New York Times and sort of got
23 the same response. And then I also thought about going -- there's

1 Allbritton Communications Office where Politico operates and I
2 thought about going down there, Your Honor.

3 MJ: Okay. And, ultimately, what decision did you make?

4 ACC: By -- with time running out on my mid-tour leave, I decided
5 that I was going to upload it to the WikiLeaks website before I lost
6 a good Internet connection -- before I lost a really strong broadband
7 Internet connection, Your Honor.

8 MJ: Did you need a really strong broadband to transmit that
9 data?

10 ACC: Yes, Your Honor.

11 MJ: Okay. And is that why you went to Barnes & Noble?

12 ACC: There was a blizzard as well, so we lost our -- at the
13 house, we lost our heating and our Internet access. We still had
14 some power, though, Your Honor.

15 MJ: Okay. So, you -- did you actually transmit those -- the
16 Iraq and Afghanistan databases from Maryland to WikiLeaks?

17 ACC: Yes, Your Honor.

18 MJ: Okay. Now let's go back to Page 14 where it says you
19 became depressed at the situation. What situation -- are you talking
20 about the situation in Iraq and Afghanistan?

21 ACC: Yes, Your Honor.

22 MJ: Okay. And remember we talked earlier about -- I believe
23 that you're--also, here, in Paragraph J, you said you released this

1 information to spark a debate. Were you authorized to release this
2 information to spark a debate?

3 ACC: No, Your Honor, I was not.

4 MJ: Okay. When it talks about you being depressed about this -
5 - we went over the defenses of justification and necessity. Earlier,
6 I defined them for you. Do you want me to redefine them for you?

7 ACC: No, Your Honor.

8 MJ: Okay. Do you believe that either justification or
9 necessity -- those defenses apply in your case?

10 ACC: No, Your Honor, not for that.

11 MJ: Why not?

12 ACC: It's just a general feeling; it wasn't a depression
13 depressed, it was just a general feeling of what was going on was not
14 good, generally so.

15 MJ: Well, if -- even if -- and remember, we talked about self-
16 help, before, and ----

17 ACC: Right.

18 MJ: ---- even if you, personally, believed maybe you weren't in
19 favor of some of the policies that were going on for some of the
20 things that were happening in Iraq and Afghanistan, do you believe
21 that that gave you the authority to go ahead and download these
22 databases and then bring them to Maryland and transmit them to
23 WikiLeaks?

1 ACC: Correct, Your Honor.

2 MJ: Do you believe it gave you authority to do that?

3 ACC: No, Your Honor.

4 MJ: Okay. So, in the military, in the chain of command
5 structure, if -- or in the government structure in general, if
6 someone disagrees with policies that are made by senior people more
7 senior to them in charge of making those policies, are you allowed
8 just to take self-help and violate the rules and give somebody
9 classified information?

10 ACC: No, Your Honor.

11 MJ: Okay. Now, let's talk a little bit about -- you said you
12 became depressed -- you said you weren't -- you were depressed, but
13 not "depressed" depressed. Tell me what that means?

14 ACC: I wasn't like -- for -- that general feeling I'm describing
15 is not attached to depression as a mental issue, although -- so I'm
16 not raising that for that portion, Your Honor. For that paragraph.

17 MJ: Okay. Well, let's talk a little bit about that because
18 this is during the period of time when you were in Contingency
19 Operating Station Hammer and back at Fort Drum, too, you had received
20 some mental health treatment for anxiety issues ----

21 ACC: Yes.

22 MJ: ---- is that correct?

23 ACC: Yes, Your Honor.

1 MJ: And that's come through when we talked about the Article 13
2 motion and a little bit in the speedy trial even. Have you gone over
3 with Mr. Coombs the defense of lack mental responsibility or lack of
4 *mens rea* due to partial mental responsibility?

5 ACC: Yes, Your Honor, we have.

6 MJ: Okay. Mr. Coombs, have you gone over that with PFC
7 Manning?

8 CDC[MR.COOMBS]: I have, Your Honor.

9 MJ: There has been an R.C.M. 706 board in this case, right?

10 CDC[MR.COOMBS]: That is correct, Your Honor.

11 MJ: And actually a pretty extensive one?

12 CDC[MR.COOMBS]: Yes, Your Honor.

13 MJ: When the board came back, what were the short-form results?

14 CDC[MR.COOMBS]: The short form indicated that he was not
15 suffering from a lack of mental responsibility, either at the time of
16 the incident or presently.

17 MJ: Was he suffering from a serious mental disease or defect at
18 that time?

19 CDC[MR.COOMBS]: No, Your Honor.

20 MJ: Okay. These offenses all require a willful intent. So,
21 before we -- so, Mr. Coombs, am I hearing from you, then, you fully
22 explored the issue of lack of mental responsibility?

23 CDC[MR.COOMBS]: That is correct, Your Honor.

1 MJ: Okay. And do you believe there's anything else left to
2 explore with respect to that issue?

3 CDC[MR.COOMBS]: No, Your Honor.

4 MJ: All right. PFC Manning, do you agree with that?

5 ACC: I agree, Your Honor.

6 MJ: Okay. Now, let's talk about the willful aspect of these
7 specifications. Mr. Coombs, have you fully investigated the issue of
8 whether PFC Manning suffered from a mental disease or defect or
9 impairment or condition or character behavior disorder that prevented
10 him from forming -- or basically willfully acting in this case?

11 CDC[MR.COOMBS]: I have, Your Honor.

12 MJ: Okay. And what were your conclusions from ----

13 CDC[MR.COOMBS]: That he was not, Your Honor.

14 MJ: All right. PFC Manning, do you agree with that?

15 ACC: Yes, Your Honor.

16 MJ: Okay. Now, did Mr. Coombs -- or did your defense team
17 explain to you that partial lack of mental responsibility can negate
18 the intent required for offenses we call "specific-intent" or
19 "knowledge" offenses?

20 ACC: Yes, Your Honor, we have.

21 MJ: Okay. So, this willful intent falls within that? Okay.
22 So, at the time you made these transmissions, were you seeing mental
23 health professionals at that time?

1 ACC: I had seen one a few weeks before, yes, Your Honor.

2 MJ: Okay. Were you on any medications?

3 ACC: No, Your Honor.

4 MJ: So, was there any -- so you were not on any medications at
5 the time?

6 ACC: That is correct.

7 MJ: And did you continue to perform your military -- was there
8 anything about your state of mind that made you unable to perform
9 your military duties at that time?

10 ACC: No, Your Honor.

11 MJ: So, you're going to work and going home just like everybody
12 else?

13 ACC: Yes, Your Honor.

14 MJ: Were you acting differently than you normally act during
15 that period of time? I mean, was there anything strange that you
16 noticed about your mental health behavior?

17 ACC: Trouble sleeping, that's it, Your Honor.

18 MJ: So, do you believe that you were fully capable of acting
19 willfully in making these communications?

20 ACC: Yes, Your Honor.

21 MJ: Do you believe you were of sound mind when you did that?

22 ACC: Yes, Your Honor.

1 MJ: Does either side believe any further inquiry is required
2 with respect to mental responsibility or partial mental
3 responsibility?

4 TC[MAJ FEIN]: Yes, ma'am, just maybe a little bit more -- and
5 if the Court remembers and we can get these for the Court if needed -
6 - the Master Sergeant Adkins memos, they used some pretty specific
7 details -- I'm not asking the Court to go through that, but some
8 behaviors that were going on concurrent with the charged misconduct
9 that might just be -- they're already on the record to be explored
10 and make sure that doesn't necessarily go to the willful aspect
11 either.

12 MJ: I don't ----

13 TC[MAJ FEIN]: I'm sorry, Your Honor, the question, just now, to
14 Private First Class Manning was: "Was there any mental condition at
15 the time that would have affected the *mens rea*, essentially" -- that
16 -- there's documentation that there could have been, so just
17 exploring whether that mental -- his state of mind at that time would
18 have affected the charged misconduct.

19 MJ: All right, I don't have the Adkins documents in front of
20 me. What we can do is -- can someone make a Xerox copy of them and
21 give them to me and ----

22 TC[MAJ FEIN]: We can keep going, Your Honor, and we'll get
23 that.

1 MJ: ---- we'll keep going and if you can make that happen,
2 we'll come back to that.

3 TC[MAJ FEIN]: Yes, ma'am.

4 MJ: Okay. So, PFC Manning, we're going to put that piece of
5 the discussion -- table it for a little while and then continue on,
6 here.

7 ACC: Yes, Your Honor.

8 MJ: All right. So any further questions with respect to
9 Specifications 5 and 7 of Charge II?

10 TC[MAJ FEIN]: No, ma'am.

11 CDC[MR.COOMBS]: No, Your Honor.

12 MJ: All right. Let's move on to Specification 9 of Charge II.
13 Where would I find that in your statement?

14 ACC: Page 24, Your Honor.

15 MJ: Now, Specification 9 of Charge II involves more than three
16 classified records from the United States Southern Command database.
17 What are those records?

18 ACC: They are Detainee Assessment Briefs, Your Honor.

19 MJ: Okay. And what is that?

20 ACC: They are documents that, generally, outline and describe
21 detainees that were held at Joint -- Joint Task Force Guantánamo,
22 Your Honor.

23 MJ: Okay.

1 ACC: Held under.

2 MJ: Where did you find these documents?

3 ACC: These were on a U.S. Southern Command portal, Your Honor.

4 MJ: And was that portal on SIPRNET?

5 ACC: Yes, Your Honor.

6 MJ: Where they -- where these documents classified?

7 ACC: Yes, Your Honor.

8 MJ: Okay. And what did you do with these documents -- and were
9 there more than three of them?

10 ACC: There were five, I think, Your Honor -- or charged, Your
11 Honor.

12 MJ: All right. And what did you do with them?

13 ACC: I -- as I was downloading I mean, as I was going through
14 some things, I segregated them some of them and went through them and
15 then I downloaded them -- or I downloaded all of them that I could
16 and then I put them onto a CD and they took them to my housing unit
17 and put it into -- put it onto my personal laptop and uploaded it
18 using the drop box that I described, Your Honor.

19 MJ: Okay. Now, your statement talks about getting an
20 interpreter and all of that -- what happened there?

21 ACC: That was a separate -- that's a separate incident that
22 happened, but it made me sort of look into detainments as a whole
23 after some detainees were found at -- down in the Karada Peninsula of

1 Baghdad -- the Federal Police -- it was a joint operation in which 15
2 detainees were, basically, taken into the -- and they were turned
3 over to the FPs and -- at the -- and going -- and I was assigned to
4 do some research into this matter and it got me thinking about
5 detainments and things, Your Honor.

6 MJ: Okay. So you said it got you thinking about detainments
7 and is that why you took those records out of the SCIF?

8 ACC: Is one of the reasons that I found them and -- I found them
9 again and then, after reviewing them, then I took them, Your Honor.

10 MJ: All right. In this particular case, with these records, do
11 you think that there was -- was your conduct willful?

12 ACC: Yes, Your Honor.

13 MJ: Did you know you are violating the law when you gave those
14 records -- when you took them out -- the classified records out of
15 the T-SCIF, put them on your personal computer, and transmitted them
16 to WikiLeaks?

17 ACC: Yes, Your Honor.

18 MJ: And you did transmit those to WikiLeaks, too?

19 ACC: To the drop box that was associated with them, yes, Your
20 Honor.

21 MJ: Okay. We talked about justification and necessity before.
22 Do you think that you had any -- you have any justification or
23 necessity defense with respect to these records?

1 ACC: No, Your Honor.

2 MJ: Okay. Why not?

3 ACC: I knew that I was -- I knew I was doing and I knew that I
4 was breaking the rules and not going by the regulations, Your Honor.

5 MJ: When you are submitting these detainee assessments -- I
6 mean, you weren't doing -- were you doing that to save somebody in
7 imminent danger at that time?

8 ACC: No, Your Honor, nobody was in imminent danger.

9 MJ: And was it a part of your official military duties?

10 ACC: No, Your Honor, it was not.

11 MJ: Does either side believe any further -- well, first of all,
12 was it -- was your conduct prejudicial to good order and discipline
13 and service discrediting?

14 ACC: Yes, Your Honor.

15 MJ: And was that for the same reasons we talked about before or
16 different reasons?

17 ACC: The same reasons, Your Honor.

18 MJ: And when did you make this transmission to WikiLeaks of
19 these documents?

20 ACC: This was 8 -- it was -- I downloaded them and took them on
21 the 7th of March; it was the election for Iraq and then the day after
22 is whenever I uploaded them, Your Honor.

1 MJ: And then were you authorized to transmit those documents to
2 WikiLeaks?

3 ACC: No, Your Honor.

4 MJ: And were they entitled to receive them?

5 ACC: No, Your Honor.

6 MJ: All right. Does either side believe any further inquiries
7 required with respect to Specification ----

8 TC[MAJ FEIN]: Can we have a moment, Your Honor?

9 MJ: Yes.

10 CDC[MR.COOMBS]: Nothing from the defense, Your Honor.

11 ATC[CPT MORROW]: Your Honor, I just refer the parties and the
12 Court to Page 26, Paragraphs M and N. It may be beneficial for the
13 Court to explore the answers with respect to prejudicial to good
14 order and discipline with the statement made in those two paragraphs.

15 MJ: All right. Look at page -- Paragraphs M and N in your
16 statement.

17 ACC: Yes, Your Honor.

18 MJ: When it talks about, here, that you'd always been
19 interested in the moral efficacy of the actions in JTF-GTMO and you
20 always understood the need to detain and interrogate individuals who
21 might harm the United States and allies, and you felt that that's
22 what we're trying to do at JTF-GTMO, but then, as you became educated
23 on the topic, you believed that the United States was holding an

1 increasing number of individuals indefinitely that we -- that you
2 believed were innocent, low-level foot Soldiers that didn't have
3 useful intelligence who would be released if they were still held in
4 theater and, then, that you remember back in early 2009, the newly
5 elected president, Barack Obama, said he would close JTF-GTMO and the
6 facility compromised our standing in the world and diminished our
7 moral authority and after you familiarized yourself with the DABs,
8 that you agreed.

9 Now, even if -- this is kind of -- what you're saying is
10 that you had your own personal, noble motive in doing what you did.
11 Do you believe -- and you also testified that you believed that this
12 conduct is service discrediting in prejudicial to good order and
13 discipline. How can that coexist?

14 ACC: Your Honor, it's -- regardless of my opinion on -- or my
15 assessment on documents such as this -- you know it's beyond my pay
16 grade, it's not my authority to make these decisions and there are --
17 again, there are channels that you are supposed to go through and I
18 didn't even look at the possible channels of doing -- having this
19 information released properly. So, that's not how we do business
20 Your Honor, and it's so ----

21 MJ: So, my understanding -- your testimony -- are you telling
22 me that even though you, personally, have a disagreement with how
23 policy was being formed and implemented, that your conduct, to

1 further your personal goals, could still be prejudicial to good order
2 and discipline and service discrediting conduct?

3 ACC: Yes, Your Honor, and, just clarify, I mean -- for the
4 policy standpoint, it's not necessarily my issues with the policies
5 that were the driver, it was my concerns about not -- about the lack
6 of openness about the policies, Your Honor. But, regardless my
7 opinions on those, again, I don't have the authority.

8 MJ: Okay. It was the fact that you acted without that
9 authority -- is that what made your conduct prejudicial to good order
10 and discipline?

11 ACC: Yes, Your Honor.

12 MJ: Was that when made your conduct service discrediting?

13 ACC: What made my service discrediting is the fact that these --
14 the public sees this -- sees that these documents have been released
15 and then you know, it damages their perception and their feeling
16 about whether the armed services, as a whole, can safeguard
17 information at all.

18 MJ: All right. Does the government have any -- desire any
19 further inquiry?

20 TC[MAJ FEIN]: No, Your Honor.

21 MJ: All right. Let's move on to Specification 10. Where am I
22 in your statement?

23 ACC: Page 33, Your Honor.

1 MJ: All right, Specification 10 involves more than five
2 classified records relating to a military operation in Farah
3 Province, Afghanistan occurring on or about 4 May of 2009. Now, did
4 you have -- acquire unauthorized possession of, access to, or control
5 over more than five classified records relating to that military
6 operation?

7 ACC: Yes, Your Honor.

8 MJ: And where did those records come from?

9 ACC: Those records came from the U.S CENTCOM portal under their
10 Judge Advocate General folder.

11 MJ: Was that from the SIPRNET computer too?

12 ACC: Yes, Your Honor.

13 MJ: And were those more than five records classified?

14 ACC: Yes, Your Honor.

15 MJ: Okay. And what did you do -- what did they involve ----

16 ACC: They ----

17 MJ: ---- that you can tell me?

18 ACC: They reference an event that occurred in 2009, Your Honor,
19 in which they were -- there are reports of civilian casualties at an
20 event.

21 MJ: Okay. And when you came across this information, was it a
22 15-6 investigation or did that include a 15-6 investigation?

1 ACC: It might have been 15-6 -- I think it was DoD that -- it
2 was under DoD, but I don't remember if -- whether it was the Army
3 regulation that they went by or not, Your Honor.

4 MJ: Was there some kind of investigation into this incident
5 that you're talking about?

6 ACC: It was at least a 15-6-type investigation, Your Honor.

7 MJ: Are those the records that you took, or did you take some
8 different ones?

9 ACC: And the supporting annexes and supplements and things like
10 that, Your Honor.

11 MJ: Okay. So, that's what you -- did you download that from
12 the SIPRNET onto something?

13 ACC: Yes, Your Honor.

14 MJ: What something was it?

15 ACC: First, my work computer, then a CD-RW and then I uploaded -
16 - and then I placed that onto my personal computer in the CHU and
17 uploaded that sometime later, Your Honor, a few days later at least.

18 MJ: So, the specification has the time frames of between on or
19 about 10 April 2012 and 12 April -- 10 April 2010, excuse me, and 12
20 April 2010. Are those the accurate dates?

21 ACC: Yes, Your Honor.

22 MJ: Those are the dates that you downloaded that information
23 and then you gave it to WikiLeaks?

1 ACC: Yes, Your Honor, so it would have been 11 April of 2010.

2 MJ: You talked about something -- you didn't use the TOR
3 anonymizer? I think I'm pronouncing this right.

4 ACC: It's anonymizer.

5 MJ: Anonymizer? Okay, we'll get there. So, what did you use?

6 ACC: I used a new version of the form that was up on the website
7 because they changed the website -- how they had the website set up
8 and I just used a new version of that and it had like a bar in which
9 you could see how far it was downloaded and you didn't have to use
10 the annoyimizer, Your Honor.

11 MJ: Okay. Did you act willfully?

12 ACC: I did, Your Honor.

13 MJ: Did you know you were violating the law?

14 ACC: Yes, Your Honor.

15 MJ: Did you -- was your conduct prejudicial to good order and
16 discipline?

17 ACC: Yes, Your Honor.

18 MJ: Was it service discrediting?

19 ACC: Yes, Your Honor.

20 MJ: For the same reasons we talked about before, or for
21 different reasons?

22 ACC: For the same reasons, Your Honor.

1 MJ: Does either side believe any further inquiry is required
2 with respect to Specification 10?

3 TC[MAJ FEIN]: Could we have a moment, Your Honor?

4 MJ: Yes.

5 CDC[MR.COOMBS]: The defense does not, Your Honor.

6 ATC[CPT MORROW]: Your Honor, just briefly, I think, but on Page
7 33, Paragraph B. Again, it might be helpful for the Court to explore
8 service discrediting and PGOD aspect to this as compared to what's in
9 the statement.

10 MJ: All right. PFC Manning, well, first of all, just before we
11 even get there, you weren't authorized to take any of this
12 information out of the SCIF, were you?

13 ACC: No, I was not, Your Honor.

14 MJ: Okay. So, were you authorized to load it on your personal
15 computer?

16 ACC: No, Your Honor.

17 MJ: Were you authorized to transmit it to WikiLeaks?

18 ACC: No, Your Honor.

19 MJ: Were they cleared to receive it?

20 ACC: No, Your Honor.

21 MJ: Now, looking at Page 33, here, it talks about, in
22 Paragraphs A and B that this information -- you said it was reported

1 in the press, here, that's up to 100 to 150 Afghan civilians were
2 accidentally killed?

3 ACC: That was just the press, Your Honor.

4 MJ: Okay. So, you transmit this information to WikiLeaks --
5 why?

6 ACC: What was that, Your Honor?

7 MJ: Why did you transmit this information to WikiLeaks?

8 ACC: I felt -- I mean -- I just felt that the report was
9 different than -- I felt that there were things within the report
10 that might help enlighten the general public of what happened and how
11 it happened.

12 MJ: Okay. And this report was classified at the time, is that
13 correct?

14 ACC: Yes, Your Honor, it was, Your Honor.

15 MJ: All right. And, at least in accordance with the people
16 that had authority to classify this report, nobody with authority to
17 classify this report had made a determination that it should be
18 unclassified and disseminated to the general public, is that correct?

19 ACC: That is correct, Your Honor.

20 MJ: Okay. Now, we talked earlier about, sort of, the
21 difference that even though you think something is a good idea, that
22 the people who are authorized to make those choices don't think
23 that's a good idea, and you act in accordance with your personal

1 idea, that that conduct can be prejudicial to good order and
2 discipline.

3 ACC: Certainly, Your Honor, yes.

4 MJ: Do you think, in this case, that that's true?

5 ACC: Yes, Your Honor.

6 MJ: Okay. And for the same reasons we talked about before?

7 ACC: Yes, Your Honor.

8 MJ: And what about service discrediting conduct? If you
9 personally think that you're doing something for the greater good,
10 but the people with the authority to make those decisions hadn't made
11 the same decision you did, do you think that your conduct can still
12 be service discrediting?

13 ACC: Yes, Your Honor.

14 MJ: Do you think it was service discrediting in this case?

15 ACC: Yes, Your Honor it was.

16 MJ: And for this specification as well?

17 ACC: For this specification, yes.

18 MJ: Okay. And for different reasons or reasons we talked about
19 earlier?

20 ACC: For the same reasons..

21 MJ: All right. Government, anything else?

22 TC[MAJ FEIN]: No, Your Honor. Also, Your Honor, the government
23 has a copy of the Adkins memos, although, after reviewing the memos,

1 the inquiry that the Court already had about the extensive R.C.M. 706
2 board and findings the board should cover this material; it's
3 probably not needed.

4 MJ: All right. I'm just going to do -- I don't need to see the
5 material, but, PFC Manning, there were a couple of incidents around
6 the time you were making these disclosures where there was maybe a
7 little bit of outburst behavior. How did that impact your -- did
8 that impact your mental state, in any way, when you were making these
9 decisions to willfully disclose this classified information?

10 ACC: No, Your Honor.

11 MJ: Okay. Were you of -- I mean, was your mind clear when you
12 are making these decisions?

13 ACC: Yes, Your Honor.

14 MJ: Okay. Do you think that there was anything that was
15 influence -- that was of any kind of mental health issue or mental
16 condition that was influencing your decisions to transmit these
17 documents willfully?

18 ACC: I think I had some issues, but I don't think it would
19 impact my performance or my ability to perform my duties, Your Honor,
20 so, no.

21 MJ: All right. Any further inquiry?

22 TC[MAJ FEIN]: No, ma'am.

23 MJ: Okay. Mr. Coombs?

1 CDC[MR.COOMBS]: No, Your Honor.

2 MJ: All right. Lastly, for this charge and specification,
3 let's talk about -- oh, we already talked about Specification 15,
4 didn't we? All right.

5 ACC: Yes, Your Honor.

6 MJ: Any other remaining specifications for charges under 18 --
7 the lesser included offenses for 18 United States Code, Section
8 793(e)?

9 TC[MAJ FEIN]: No, ma'am.

10 CDC[MR.COOMBS]: No, Your Honor.

11 MJ: All right. PFC Manning, do you admit that, at or near
12 Contingency Operation Station Hammer, Iraq, and for Specifications 5
13 and 7, also, at or near Rockville, Maryland, for Specification 2,
14 between on or about February 2010 [sic] and 21 February 2010, you,
15 without authorization, had possession of, access to, or control over
16 a video file named, "12 Jul 07 CZ Engagement Zone 30GC anyone.avi"?

17 ACC: Yes, Your Honor.

18 MJ: Do admit, for Specification 3 of Charge II, that between on
19 or about 17 March 2010 and 22 March 2010, you, without authorization,
20 had possession of, access to, or control over more than one
21 classified memorandum produced by a United States government
22 intelligence agency?

23 ACC: Yes, ma'am.

1 MJ: For Specification 5, to admit that, at or near Contingency
2 Operation Station Hammer, Iraq and at or near Rockville, Maryland
3 that you, without authorization, had possession of, access to, or
4 control over more than 20 classified records from the Combined
5 Information Data Network Exchange-Iraq database?

6 ACC: Yes, ma'am.

7 MJ: Do admit, for Specification 7, that, at or near Contingency
8 Operation Station Hammer, Iraq, and at or near Rockville, Maryland,
9 between on or about 5 February -- or 5 January 2010 and 3 February
10 2010, you, without authorization, had possession of, access to, or
11 control over more than 20 classified records from the Combined
12 Information Data Network Exchange-Afghanistan database?

13 ACC: Yes, ma'am.

14 MJ: For Specification 9, do admit that, at or near Contingency
15 Hammer Station, Iraq [sic], that on or about 8 March 2010, you,
16 without authorization, had possession of, access to, or control over
17 more than three classified records from the United States Southern
18 Command database?

19 ACC: Yes, ma'am.

20 MJ: For Specification 10, do admit that, at or near Contingency
21 Operating Station Hammer, Iraq, between on or about 10 April 2010 and
22 12 April 2010, you, without authorization, had possession of, access
23 to, or control over more than five classified records relating to a

1 military operation in Farah Province, Afghanistan occurring on or
2 about 4 May 2009?

3 ACC: Yes, ma'am.

4 MJ: For Specification 15, do you admit that, at or near
5 Contingency Hammer -- Operating Station Hammer, Iraq, on or about 8
6 March 2010, you, without authorization, had possession of, access to,
7 or control over a classified record produced by a United States Army
8 intelligence organization, dated 18 March 2008?

9 ACC: Yes, ma'am.

10 MJ: All right. For all of the specifications, do you admit
11 that you willfully communicated the classified records, classified
12 memorandum, videos, and files described for each specification
13 described in element one to a person not entitled to receive it?

14 ACC: Yes, Your Honor.

15 MJ: And do you admit that, under the circumstances, your
16 conduct was to the prejudice of good order and discipline in the
17 armed forces or the nature to bring discredit upon the armed forces?

18 ACC: Yes, Your Honor.

19 MJ: All right. Let's move into Specifications 13 and 14 of
20 Charge II which are the lesser included offenses to the offenses
21 charged as a violation of 18 United States Code, Section 1030(a)(1),
22 and Article 134.

1 All right, Specifications 13 and 14 of Charge II allege the
2 offense of fraud and related activity in connection with computers in
3 violation of Title 18, United States Code, Section 1030(a)(1) and
4 Article 134, UCMJ. Your counsel has entered a plea of guilty by
5 exceptions and substitutions for you to the lesser included offense
6 of conduct prejudicial to good order and discipline and service
7 discrediting conduct in violation of Article 134, UCMJ, clauses one
8 and two.

9 Now, your plea of guilty admits that the following elements
10 are true and accurately describe what you did:

11 One, that at or near Contingency Operation Station Hammer,
12 Iraq, for Specification 13 between on or about 28 March 2010 and on
13 or about 4 May 2010; for Specification 14, between on or about 14
14 February 2010 and 15 February 2010, you knowingly accessed a computer
15 on a Secret Internet Protocol Router Network.

16 Element two, that you obtained information that has been
17 determined by the United States government, by executive order or
18 statute, to require protection against unauthorized disclosure for
19 reasons of national defense or foreign relations, to wit:
20 Specification 13, more than 75 classified United States Department of
21 State cables; in Specification 14, a classified Department of State
22 cable titled "Reykjavik 13."

1 Element three, that you communicated, delivered,
2 transmitted, or caused to be communicated, delivered, or transmitted
3 the information to a person not entitled to receive it.

4 Element four, that you acted willfully.

5 And element five, that under the circumstances, your
6 conduct was to the prejudice of good order and discipline in the
7 armed forces or was of a nature to bring discredit upon the armed
8 forces.

9 The same definitions for "prejudice to good order and
10 discipline in the armed forces" and "of a nature to bring discredit
11 upon the armed forces" that I read for you for the offenses charged
12 in Specifications 2, 3, 5, 7, 9, 10, and 15 of Charge II also apply
13 to this offense.

14 Would you like me to read them to you again?

15 ACC: No, Your Honor, that's not necessary.

16 MJ: An act is done willfully if it is done voluntarily and
17 intentionally with a specific intent to do something the law forbids,
18 that is, with a bad purpose to disobey or disregard the law.

19 An act is done knowingly if it's done voluntarily and
20 intentionally and not because of a mistake or accident or other
21 innocent reason.

22 The term "computer" means an electronic, magnetic, optical,
23 electrochemical, or other high-speed data processing device

1 performing logical, arithmetic, or storage functions and includes any
2 data storage facility or communications facility directly related to,
3 or operating in conjunction with such device, but the term does not
4 include an automatic typewriter or typesetter, portable handheld
5 calculator, or a similar device.

6 All right. Once again, in -- I defined "person" for you,
7 earlier; the same definitions apply. Would you like me to read that
8 again?

9 ACC: No, Your Honor.

10 MJ: All right. And if this was going to a trier of fact, in
11 determining whether the person who received the information was
12 entitled to receive it, the trier of fact may consider all the
13 evidence introduced at trial, including any evidence concerning the
14 classification status of the information, any evidence relating to
15 law or regulations governing classification and declassification of
16 national security information, its handling use and distribution, as
17 well as any evidence relating to regulations governing the handling,
18 use, and distribution of the information obtained from the classified
19 systems.

20 Do you understand the elements and definitions as I read
21 them to you?

22 ACC: Yes, ma'am.

23 MJ: Do you have any questions about them?

1 ACC: No, ma'am.

2 MJ: Do you understand that your plea of guilty admits that
3 these elements accurately describe what you did?

4 ACC: Yes, Your Honor.

5 MJ: Do you believe and admit that the elements and definitions,
6 taken together, correctly describe what you did?

7 ACC: Yes, Your Honor.

8 MJ: Now, do you understand -- also, same for this offense as
9 the other offenses, that -- if -- your plea to the lesser included
10 offenses I just read is going to establish some of the elements for
11 the government if they intend to proceed with the greater offenses?

12 ACC: Yes, Your Honor.

13 MJ: I just want to stop here and make sure both sides agree
14 with this. Even though -- I distinguished the elements that -- what
15 your plea would establish and what the government had left to prove.
16 What I neglected to say is there is some discrepancy in the dates.
17 You pled by exceptions and substitutions to dates, so if the
18 government has a broader date range, even in an element you
19 established by your plea, the government still has to prove that
20 broader date range. Okay? Do you understand that?

21 ACC: Yes, Your Honor.

22 MJ: Do both sides agree with that?

23 CDC[MR.COOMBS]: Yes, Your Honor.

1 TC[MAJ FEIN]: Yes, Your Honor.

2 MJ: All right. Let's talk about Specification -- well, let's
3 talk about Specification 14 first. That's the Reykjavik cable?

4 ACC: Yes, Your Honor.

5 MJ: All right. Where is that in your ----

6 ACC: Its Page 17, Your Honor.

7 MJ: Okay. This was the cable where I believe you were talking
8 about you were beginning in -- to get interested in this Icesave?

9 ACC: Yes, Your Honor.

10 MJ: Okay. Now, what -- this cable entitled "Reykjavik," it's
11 from the Department of State Net-Centric Diplomacy portal. What is
12 that?

13 ACC: It is the -- or was the SIPR -- one of the SIPR portals
14 that the Department of State had that published -- I guess their wide
15 distribution tables, Your Honor.

16 MJ: So, did -- you had access to SIPRNET as part of your
17 duties?

18 ACC: Yes, Your Honor.

19 MJ: And you were cleared to have access to that level of
20 information?

21 ACC: Yes, Your Honor.

22 MJ: Now, you testified earlier that you had gone to SIPRNET to
23 get CENTCOM and SOUTHCOM and other database information. Was this

1 Department of State site on the same SIPRNET -- you know -- could you
2 go to the Department of State just like you could go to CENTCOM or
3 SOUTHCOM?

4 ACC: Yes, Your Honor, you just change the address that you go
5 to, yes.

6 MJ: So, were you authorized to go and get that Department of
7 State -- to access that portal?

8 ACC: Yes, Your Honor, I was actually told to go there, Your
9 Honor.

10 MJ: And were you told by this Captain Lim to go there?

11 ACC: Yes, Your Honor.

12 MJ: Okay. Who is Captain Lim?

13 ACC: Captain Lim was originally the Assistant S-2 and after our
14 full-time S-2 shifted to a different position, he became -- he
15 covered down and became the brigade S-2, Your Honor.

16 MJ: All right. So, were you and the other analysts all
17 authorized to go to this database?

18 ACC: Yes, Your Honor.

19 MJ: And did you use it in your intelligence analyst duties?

20 ACC: I did, Your Honor, yes.

21 MJ: The information from it?

22 ACC: Yes, Your Honor.

1 MJ: Okay. Now, was this information -- you testified earlier
2 that not all of it was classified, but was this Reykjavik cable
3 classified?

4 ACC: It was, Your Honor.

5 MJ: Now, what did you do -- so, then, were you authorized from
6 that portal to download it onto a portable medium and take it to your
7 house -- or your CHU?

8 ACC: No, Your Honor.

9 MJ: Okay. What did you do -- did you download that cable?

10 ACC: I did, Your Honor.

11 MJ: On what?

12 ACC: I took the web page and I copied and pasted the data onto a
13 text file which I then burned to a CD containing some other things --
14 I don't remember what -- and then I took that to my CHU, Your Honor.

15 MJ: And what did you do with that when you went -- when you got
16 to your CHU?

17 ACC: I put that onto my personal computer and then uploaded it
18 using the form, Your Honor.

19 MJ: Using what form?

20 ACC: The website form for the WikiLeaks website.

21 MJ: So, you uploaded that Reykjavik cable to your personal
22 computer and then -- am I understanding your testimony -- that you
23 sent that cable to WikiLeaks?

1 ACC: Correct, Your Honor.

2 MJ: On the form that they told senders to use?

3 ACC: Yes, Your Honor.

4 MJ: Okay. And, once again, same as the other things, were you
5 acting willfully?

6 ACC: Yes, Your Honor.

7 MJ: Did you know you are violating the law?

8 ACC: I did, Your Honor, yes.

9 MJ: Okay. Did you -- was WikiLeaks entitled to receive this
10 Department of State cable?

11 ACC: No, Your Honor.

12 MJ: Were they authorized to receive it?

13 ACC: No, Your Honor.

14 MJ: Okay. Were you authorized to send it?

15 ACC: I was not, Your Honor.

16 MJ: Were you authorized to take it out of the SCIF?

17 ACC: No, Your Honor.

18 MJ: These offenses also have the element of conduct prejudicial
19 to good order and discipline and service discrediting conduct. Do
20 you believe your conduct, in sending this Reykjavik cable to
21 WikiLeaks, was prejudicial to good order and discipline?

22 ACC: It was, Your Honor, yes.

1 MJ: And was it for the same reason we talked about earlier or
2 different reasons?

3 ACC: Definitely the same reasons, Your Honor, yes.

4 MJ: Do you believe it was service discrediting?

5 ACC: Yes, Your Honor.

6 MJ: And for the same reasons we talked about earlier or for
7 different reasons?

8 ACC: The same reasons, Your Honor.

9 MJ: Okay. You talked about, here, in your statement that you,
10 basically, concluded that Iceland was being bullied, diplomatically,
11 by two larger European powers and out of viable solutions and coming
12 to the U.S. for assistance and it didn't appear that we were going to
13 do anything. We're you in a position of authority to decide what the
14 United States government was going to do with respect to Iceland?

15 ACC: No, Your Honor.

16 MJ: Did -- We talked about the defense of justification and
17 necessity already. Do you believe the fact that you -- you had a
18 personal belief in this -- that that somehow gave you an authorized
19 military duty to send this cable to WikiLeaks?

20 ACC: I did not have that belief, no, Your Honor.

21 MJ: Okay. So, you had no military duty, then, to send this
22 cable to WikiLeaks?

23 ACC: No, Your Honor.

1 MJ: Okay. And did you believe -- do you believe the defense of
2 necessity, as I defined it before -- you know, were you preventing
3 imminent harm to somebody, like the drowning person in the lake, by
4 sending this cable?

5 ACC: Correct, Your Honor. So it doesn't ----

6 MJ: That's a bad question.

7 ACC: ---- apply.

8 MJ: Did I -- let me ask it again a better way. We talked about
9 the defense of necessity.

10 ACC: Yes, Your Honor.

11 MJ: To talk about trespassing over somebody's house to rescue
12 the drowning person because there is nobody else who can do it. When
13 you sent this cable, were you in that kind of situation?

14 ACC: No, Your Honor, I was not.

15 MJ: Does the defense of necessity apply in your case?

16 ACC: No, Your Honor.

17 MJ: For this specification, did the ----

18 ACC: Not this specification, no Your Honor.

19 MJ: Okay. Does either side believe any further inquiry is
20 required? Except for the date of the specification, did you act on -
21 - just a minute, what's the date on the specification, here? That
22 would be -- did you act on 15 -- between 15 February and 18 February
23 of 2010?

1 ACC: Yes, Your Honor, it was 14 February and 15 February, Your
2 Honor.

3 MJ: Oh, I'm sorry, that's right. Those are the words you said
4 -- 14 and 15 February 2010; that's the exceptions and substitutions
5 you made. So, your conduct, here, in Specification 14, then, was
6 between 14 February 2010 and 15 February 2010?

7 ACC: Yes, Your Honor.

8 MJ: Okay. Now, does either side believe any further inquiry is
9 required?

10 ATC[CPT MORROW]: Your Honor, on Page 18, Paragraph F, the
11 accused states, "I felt I might be able to right a wrong by having
12 them publish this document." That line, in particular, tends to
13 contradict something being service discrediting, so it might be
14 something the Court wants to explore just one more time.

15 MJ: All right. Well, we went over a little bit and the
16 government would like me to go over this in more detail. This is --
17 your statement that they're talking about is, "I decided the cable
18 was something that would be important and I felt I might be able to
19 right a wrong by having them publish this document." So, you,
20 personally, believed that you are doing a good thing, is that fair?

21 ACC: I felt it could be, yes, Your Honor.

1 MJ: Okay. So, we talked about, earlier, that -- did you have
2 the authority to decide to declassify a cable and send it to
3 WikiLeaks because you think a policy is a good thing?

4 ACC: Your Honor, being a junior-enlisted specialist, you know,
5 in the Army, no, Your Honor.

6 MJ: So -- I mean -- so does somebody else get to make those
7 decisions?

8 ACC: I imagine in this case it would be the Department of State
9 in their channels, Your Honor.

10 MJ: So, if the Department of State determines that this cable
11 should be classified and should not be released to WikiLeaks and you
12 decide, as a personal matter, that you don't agree with that and you
13 think it should be released to WikiLeaks and you do release it to
14 WikiLeaks, the fact that you think you're doing the right thing, can
15 that still be service discrediting?

16 ACC: Yes, Your Honor.

17 MJ: And why?

18 ACC: Because it -- if Soldiers in the position I had did that,
19 then it -- I mean, it damages our perception -- the public's
20 perception of how -- whether the military and the services can
21 safeguard information, Your Honor.

1 MJ: So, with respect to prejudice to good order and discipline,
2 if -- is the military and organization that follows a chain of
3 command?

4 ACC: Yes, Your Honor.

5 MJ: So, if someone at the top of the chain of command makes a
6 decision and people below decide, "Well, I don't agree with that
7 decision, so I'm going to live off of my own moral code and not
8 follow the rules and regulations that are set forth by the people
9 with authority to make those rules and regulations," what happens to
10 the organization?

11 ACC: It -- you can't operate in that -- I mean, you just have --
12 we would have junior ranks making decisions that contradict the
13 orders and so the system would seize up, Your Honor.

14 MJ: So, do you think that could be prejudicial to good order
15 and discipline?

16 ACC: Absolutely, Your Honor, yes.

17 MJ: All right. And is that sort of what you were talking to me
18 -- when you were talking to me earlier about service discrediting
19 conduct that might cause people to lose confidence in an organization
20 if they see it sort of disintegrating like that?

21 ACC: Yes, Your Honor, it would be worrying, yes.

1 MJ: All right. And do you believe that your conduct in this
2 case, you know, contributed, I guess to, at least a minor part, to
3 that disorganization?

4 ACC: Yes, Your Honor.

5 MJ: Okay. Does the government believe any further inquiry is
6 required?

7 ATC[CPT MORROW]: No, Your Honor.

8 CDC[MR.COOMBS]: No, Your Honor.

9 MJ: Now, let's look at Specification 13. Now, that talks about
10 more than 75 classified cables. Now, did you have access to more
11 than 75 classified cable -- Department of State cables?

12 ACC: Yes, Your Honor.

13 MJ: All right. Did you get those from the same portal that you
14 got the Reykjavik cable from?

15 ACC: I did, Your Honor.

16 MJ: All right. And was that also done -- was that done between
17 28 March 2010 and 4 May 2010?

18 ACC: It was done, I think, around the 10th of April, Your Honor.

19 MJ: All right. So, is the 10th of April between 28 March 2010
20 and on or about 4 May 2010?

21 ACC: Yes, it is, Your Honor; April.

1 MJ: Okay. So, it would be between those dates that -- I mean,
2 that's the way that your plea by exceptions and substitutions has
3 those dates. Do you believe that those are accurate dates?

4 ACC: Yes, Your Honor, I do.

5 MJ: Okay. Now, where on your timeline are we talking about --
6 or in your statement are we talking about those cables in
7 Specification 13 of Charge II?

8 ACC: It's Page 30, Your Honor, Section 11.

9 MJ: All right. So, this is -- so, when you -- are these cables
10 the last thing that you uploaded and sent?

11 ACC: Yes, Your Honor.

12 MJ: Okay. So, we're getting, now, into the late March
13 timeframe and you said in your statement that you had begun
14 establishing a dialogue with some -- at least one person -- or two
15 people from WikiLeaks?

16 ACC: At least one user account. I don't know what was on the
17 other side, Your Honor.

18 MJ: Okay. And I guess at some point in your statement you were
19 talking about -- you began to look at these Department of State
20 cables and you began to be really interested in them?

21 ACC: Yes, Your Honor.

22 MJ: Okay. Tell me about that.

1 ACC: Well, in the course of my duties, I previously started
2 looking at, as directed -- I started looking at cables, more
3 specifically, for the Baghdad series of cables and then things that
4 were tagged with "Iraq" -- so, the general area of Iraq and then I
5 went over to Afghanistan and then I started looking just wherever my
6 interest piqued, Your Honor.

7 MJ: Okay. And did you download any cables off of the SIPRNET?

8 ACC: Yes, Your Honor.

9 MJ: And to what?

10 ACC: To, first, the -- my workstation, Your Honor, and then from
11 the workstation onto CD -- onto DVD-RW and then onto my personal
12 laptop.

13 MJ: Okay. So, did you do this, basically, the same way that --
14 and you were -- were you authorized to access the portal to get the
15 cable -- to look at the cables?

16 ACC: Yes, Your Honor.

17 MJ: Were you authorized to download them to your personal
18 workstation?

19 ACC: To my workstation? Yes, Your Honor.

20 MJ: Were you authorized to download them to a CD?

21 ACC: Yes, Your Honor.

22 MJ: Were you authorized to take them out of the SCIF?

23 ACC: No, Your Honor.

1 MJ: All right. Were you authorized put them on your personal
2 computer?

3 ACC: No, Your Honor.

4 MJ: Were you authorized -- did you transfer them to WikiLeaks?

5 ACC: I re-did the documents to clean them up and then I uploaded
6 them.

7 MJ: Okay. When you said you re-did the documents to clean them
8 up, what does that mean?

9 ACC: There was a lot of, like, extraneous formatting that I
10 removed from the documents and I put it into a table, Your Honor.

11 MJ: Other than formatting, did you take any -- did you change
12 any of the substance?

13 ACC: No substance changes, no, Your Honor.

14 MJ: So -- what -- and these more than 75 cables were
15 classified, the charged cables?

16 ACC: Yes, Your Honor.

17 MJ: And did you move anything -- remove anything from those
18 cables that would have made them unclassified?

19 ACC: No, Your Honor.

20 MJ: So, when you sent them to WikiLeaks, were they still
21 classified?

22 ACC: They still had classification markings, yes, Your Honor.

1 MJ: Well, if the substance didn't change, would the reason that
2 they had classification markings still be present?

3 ACC: Yes, Your Honor.

4 MJ: Okay. So, you didn't change the words?

5 ACC: Correct, Your Honor.

6 MJ: You just changed the formatting, is that what I'm hearing?

7 ACC: Changed how it worked and how you accessed it, Your Honor.

8 MJ: But the words of the substance from what you took out of
9 the State Department portal and what you, ultimately, wound up
10 sending to WikiLeaks was the same?

11 ACC: Yes, Your Honor.

12 MJ: Okay. Did you act willfully?

13 ACC: Yes, Your Honor.

14 MJ: And was WikiLeaks entitled to receive the State Department
15 -- the classified State Department cables?

16 ACC: No, Your Honor.

17 MJ: And, under the circumstances, was your conduct to the
18 prejudice of good order and discipline in the armed forces or of a
19 nature to bring discredit upon the armed forces?

20 ACC: No, Your Honor -- well, yes -- I think. Yes, it is ----

21 MJ: Okay. Let me ask the question again ----

22 ACC: ---- prejudicial.

1 MJ: Sometimes my questions can be confusing. Was your conduct
2 to the prejudice of good order and discipline in the armed forces?

3 ACC: Yes, Your Honor.

4 MJ: Was is of a nature to bring discredit upon the armed
5 forces?

6 ACC: Yes, Your Honor.

7 MJ: Was -- are you answering "yes" because of the reasons we
8 spoke about earlier or for different reasons?

9 ACC: The same reasons, Your Honor.

10 MJ: Okay. So, am I -- what I'm hearing you tell me, is, then -
11 - basically, for all these specifications that we talked about today,
12 your conduct was prejudicial to good order and discipline and service
13 discrediting conduct for the same reason?

14 ACC: Yes, Your Honor.

15 MJ: All right. You also say here that you were talking about
16 looking at the Department of State cables and how they were --you
17 know, they're SIPDIS means it goes onto SIPRNET and a lot of people
18 have access to SIPRNET -- when classified documents are on SIPRNET
19 and a lot of people are cleared to have access to SIPRNET, does that
20 give you any authorization, justification, or excuse to -- does that
21 mean those can be downloaded off of SIPRNET to personal computers and
22 shipped to people who don't have clearances?

23 ACC: No, Your Honor.

1 MJ: Okay. So, even though a lot of people have access to
2 SIPRNET, it's a controlled access? I mean, did somebody give them
3 authority to get onto SIPRNET or can any Tom, Dick, and Harry just go
4 onto SIPRNET?

5 ACC: If you have -- at the time, if you had access to a SIPRNET
6 computer and you were on SIPRNET, you have access to the Net-Centric
7 Diplomacy site, Your Honor.

8 MJ: I guess where I'm going is -- to -- for a person to get
9 access to SIPRNET, you have to -- does someone have to give you a
10 username and password?

11 ACC: For our unit, it was the S-6 that would give us that, Your
12 Honor.

13 MJ: All right. So, say I walk into your unit at Contingency
14 Operation Base Hammer and I haven't been authorized by anybody to do
15 anything with respect to SIPRNET and I walk into the SCIF, can I go
16 on SIPRNET?

17 ACC: No, Your Honor, you would have to -- we wouldn't let you
18 in, Your Honor.

19 MJ: But I guess where I'm going with this is to get onto
20 SIPRNET, are there some kind of controls so I can't get on it if I
21 walk into the SCIF on Contingency Operation Base Hammer?

22 ACC: In the SCIF? Yes, Your Honor.

1 MJ: Okay. If there is SIPRNET anywhere other than the SCIF,
2 are there some controls on who can get on it and who can have access
3 to that information?

4 ACC: Sometimes no, Your Honor.

5 MJ: No? Okay. So anybody can just get on and go use it?

6 ACC: For some workstations, yes, Your Honor. Legally, no, but
7 the reality was yes.

8 MJ: Okay. WikiLeaks -- are they -- would they have any
9 authorization under any circumstances to access the SIPRNET computer?

10 ACC: No, Your Honor.

11 MJ: So, when you downloaded that Department of State
12 information and brought it to your personal computer and when you
13 sent it to WikiLeaks, did you have any thought in your mind that they
14 were legally authorized to receive it?

15 ACC: No, Your Honor.

16 MJ: Okay. So you knew what you're doing was wrong?

17 ACC: Yes, Your Honor.

18 MJ: And you knew it was against the law?

19 ACC: Correct, Your Honor.

20 MJ: Does either side desire any further inquiry with respect to
21 the more than 75 classified cables?

22 TC[MAJ FEIN]: No, Your Honor.

23 CDC[MR.COOMBS]: No, Your Honor.

1 MJ: All right. Did you say something about these files were
2 corrupted and they had to be sent again or something of that nature?

3 ACC: The later ones -- although the ones that were available up
4 to February of 2010 and then March and April were corrupted, Your
5 Honor.

6 MJ: Okay. Well, what happened -- I thought you testified
7 earlier that, for Specification 13 of Charge II, you sent them in
8 April?

9 ACC: I did send them in April, but that was the ones up to
10 February, Your Honor.

11 MJ: Oh, okay. So you sent the ones up in February that were
12 not corrupted in April?

13 ACC: Yes, Your Honor, and then ----

14 MJ: So, the more than 75 classified charged documents, were
15 they among the corrupted or the not corrupted?

16 ACC: The not corrupted, Your Honor.

17 MJ: So they -- you sent them and they made it?

18 ACC: Yes, Your Honor.

19 MJ: Okay.

20 ACC: And then I made an attempt to add two more months and that
21 never happened, Your Honor.

22 MJ: Okay. So, you actually did send them more than 75
23 classified cables to WikiLeaks?

1 ACC: Correct, Your Honor.

2 MJ: Does either side believe any further inquiry is required
3 with respect to Specifications 13 and 14 of Charge II?

4 TC[MAJ FEIN]: No, Your Honor.

5 CDC[MR.COOMBS]: No, Your Honor.

6 MJ: All right. PFC Manning, then, do you admit that, at or
7 near Contingency Operating Station Hammer, Iraq, for Specification
8 13, between on or about 28 March and on or about 4 May 2010, that you
9 obtained information that has been determined by the United States
10 government, by executive order or statute, to require protection
11 against unauthorized disclosure for reasons of national defense or
12 foreign relations, to wit, for Specification 13: more than 75 United
13 States Department of State cables? And do you admit that, at or near
14 Contingency Operations Station Hammer, for Specification 14, between
15 on or about 14 February 2010 and 15 February 2010, you knowingly
16 accessed a computer on a Secret Internet Protocol Router Network and
17 that you obtained information that has been determined by the United
18 States government, by executive order or statute, to require
19 protection against unauthorized disclosure for reasons of national
20 defense or foreign relations, to wit, for Specification 14: a
21 classified Department of State cable titled, "Reykjavik 13"?

22 ACC: Yes, Your Honor.

1 MJ: All right. For this element, too, were you talking about -
2 - the information has been determined by the United States
3 government, by executive order or statute, to require protection
4 against unauthorized disclosure for reasons of national defense or
5 foreign relations, does that mean classification?

6 ACC: Yes, Your Honor.

7 MJ: Okay. So, if a document is classified, does that fall into
8 that category, here?

9 ACC: It does, Your Honor.

10 MJ: Do the parties agree?

11 CDC[MR.COOMBS]: Yes, Your Honor.

12 TC[MAJ FEIN]: Yes, Your Honor.

13 MJ: Okay. And do you admit, then, for Specifications 13 and 14
14 of Charge II that you communicated, delivered, transmitted, or caused
15 to be communicated, delivered, or transmitted, the information to a
16 person not entitled to receive it?

17 ACC: Yes, Your Honor.

18 MJ: Do you admit that you acted willfully?

19 ACC: Yes, Your Honor.

20 MJ: And do you admit that under the circumstances, your conduct
21 was to the prejudice of good order and discipline in the armed forces
22 or of a nature to bring discredit upon the armed forces?

23 ACC: Yes, Your Honor.

1 MJ: All right. We have one final specification to go over and
2 that's Specification 5 of Charge III. Are the parties ready to
3 proceed? PFC Manning, are you ready to proceed or do you want to
4 have a brief recess before we go into that one?

5 ACC: Continue, Your Honor.

6 MJ: All right. Now, do you have a copy -- I've asked your
7 counsel to make a copy for you of the first page of Army Regulation
8 380-5, dated 29 September 2000, as well as Paragraph 7-4, the
9 paragraph you're charged with violating in that regulation and
10 Paragraph 1-21, entitled "Sanctions." Do you have a copy of all
11 three of those before you?

12 ACC: Yes, Your Honor.

13 MJ: Let's talk about Specification 5 of Charge III. In
14 Specification 5 of Charge III, you're charged with the offense of
15 violating a lawful general order in violation of Article 92, UCMJ.
16 Your defense counsel has entered pleas by exceptions and
17 substitutions for this offense as well. By pleading guilty -- but
18 you're pleading guilty to the same offense, just different dates, I
19 believe, is the exceptions and substitutions.

20 By pleading guilty to this offense, you're admitting that
21 the following elements accurately describe what you did:

1 One, there was in existence a certain lawful general
2 regulation in the following terms: Paragraph 7-4, Army Regulation
3 380-5, dated 29 September 2000.

4 Two, that you had a duty to obey that regulation.

5 And three, that at or near Contingency Operating Station
6 Hammer, Iraq, between on or about 8 January 2010 and on or about 10
7 May 2010, you violated this lawful general regulation by wrongfully
8 storing classified information.

9 Okay, give me one minute, here.

10 CDC[MR.COOMBS]: Ma'am, the Court had stated 10 May for the end
11 date and it's 27 May

12 MJ: 27 May -- that's what -- I thought I saw that. Okay. So,
13 let's go -- let's just change that last element, here. So, that
14 would be that, at or near -- the element three would be that, at or
15 near Contingency Operations Station Hammer, Iraq, between on or about
16 8 January 2010 and on or about 27 May 2010, you violated this lawful
17 general regulation by wrongfully storing information.

18 And general regulations are those regulations which are
19 generally applicable to an armed force in which are properly
20 published by the secretary of a military -- by a military department.
21 General regulations also include regulations which are generally
22 applicable to the command of the officer issuing them throughout the
23 command or a particular subdivision in which are issued by a general

1 officer having general court-martial jurisdiction or a general or
2 flag officer in command or a commander superior to one of those.

3 When a general regulation prohibits certain acts, except
4 under certain conditions, then your conduct must not have come in --
5 fallen within one of the exceptions to regulation. And, once again,
6 you must have had a duty to obey that regulation.

7 To do something wrongfully means to do something without
8 legal justification or excuse.

9 Do you understand the elements and definitions as I read
10 them to you?

11 ACC: Yes, Your Honor.

12 MJ: Do you have any questions about them?

13 ACC: Yes, Your Honor, or no, Your Honor, I don't have any.

14 MJ: Do understand that your plea of guilty admits that these
15 elements accurately describe what you did?

16 ACC: Yes, Your Honor.

17 MJ: Do you believe it admits that the elements and definitions,
18 taken together, correctly describe what you did?

19 ACC: Yes, ma'am.

20 MJ: All right. Now, let's -- were you still at Contingency --
21 were you still deployed at Contingency Operation Base Hammer, Iraq on
22 the dates that you -- between 8 January 2010 and 27 May 2010?

23 ACC: Yes, Your Honor.

1 MJ: Okay. Now, you have a copy -- we talked about earlier of
2 the front page of the Army Regulation 380-5?

3 ACC: I do, Your Honor.

4 MJ: Was the title of that regulation?

5 ACC: Department of Army Information Security Program.

6 MJ: And who is it issued by? It's on the bottom.

7 ACC: Headquarters, Department of the Army.

8 MJ: Do you believe that this is a lawful general regulation?

9 ACC: Yes, Your Honor.

10 MJ: All right. Next, at Paragraph 21 -- 1-21, where it says,
11 "Sanctions" ----

12 ACC: Just, Your Honor.

13 MJ: ---- do you believe that this -- a regulation has to be --
14 sometimes regulations provide guidance and sometimes they're
15 punitive. Do you believe that AR 380-5 is a punitive regulation?

16 ACC: Yes, Your Honor.

17 MJ: And what's this regulation meant to govern?

18 ACC: It governs information security, Your Honor.

19 MJ: All right. Let's look at -- it's Chapter 7 you also have a
20 copy of, it talks about storage and physical security standards and
21 part of that, in Section 2, is Paragraph 7-4 and that's the paragraph
22 that you are accused of violating. Can you tell me how you violated
23 that paragraph?

1 ACC: Yes, Your Honor, by not abiding by 380-5 -- in this
2 paragraph -- in my -- in wrongfully storing and transferring
3 classified information -- properly classified information throughout
4 my period in Iraq.

5 MJ: So, are you talking about -- is this information targeting
6 -- we spent the afternoon talking about how you transferred
7 everything from the Reykjavik cable all the way through and then
8 ending with the Department of State cables in each of the
9 specifications that we just discussed.

10 ACC: Yes, Your Honor.

11 MJ: So, when you were telling me about taking the --
12 downloading the information from your computer to your workstation
13 and then to your CD and then leaving the SCIF and uploading that to
14 your personal computer and sending it out, basically, over the
15 unsecured Internet, is that the conduct that you're talking to me
16 about that violates this regulation?

17 ACC: Yes, Your Honor.

18 MJ: Are you allowed, under this regulation, to take classified
19 information from a SIPRNET computer and take it to your home computer
20 and upload it?

21 ACC: No, Your Honor.

1 MJ: Are you authorized to send classified information that
2 you've taken and downloaded on a CD and put on your personal computer
3 to send that over the general Internet waves?

4 ACC: No, Your Honor.

5 MJ: All right. When you do that, does this violate this
6 Paragraph 7-4 of Army Regulation 380-5?

7 ACC: Yes, Your Honor.

8 MJ: All right. Is it the parties' theory that this is -- in
9 this specification, that it's violated in some other fashion?

10 TC[MAJ FEIN]: No, Your Honor.

11 CDC[MR.COOMBS]: No, Your Honor.

12 MJ: All right. Do the parties believe -- and this was done
13 between the dates we talked about, here, between 8 January 2010 and
14 27 May 2010?

15 ACC: Yes, Your Honor.

16 MJ: Okay. Does either side believe any further inquiry is
17 required?

18 ATC[CPT MORROW]: Your Honor, I may have missed this, but did
19 you explain divers occasions to the accused?

20 MJ: Do I have divers occasions on here?

21 ATC[CPT MORROW]: It is in the specification.

22 MJ: No, I didn't even read it in the element, thank you.

1 All right, the written statement, I believe I have also
2 from you all, doesn't have the words "divers occasions" in it with
3 the elements. So, PFC Manning, when I'm going over -- this is the
4 attachment to the statement that you gave me. So, I just want to
5 make sure you understand what divers occasions means and that --
6 since you didn't except those words out, what you are pleading guilty
7 to. You're charged with -- on divers -- your -- violating this
8 regulation on divers occasions between the dates we just discussed
9 which were 8 January 2010 and 27 May 2010. Now, "divers occasions"
10 means two or more times. So, did you violate this regulation,
11 between those dates, two or more times?

12 ACC: Yes, Your Honor.

13 MJ: Okay. Because we discussed -- basically -- does your
14 conduct in Specifications 2, 3, 5, 7, 9, 10, 13, 14, and 15, all of
15 those specifications we just discussed involve you taking information
16 off of the SIPRNET, taking it out of the SIPR, and loading it either
17 onto your personal computer or your camera and sending those to
18 WikiLeaks. So, the loading of the information in those
19 specifications on your personal computer, is that in violation of AR
20 380-5, Paragraph 7-4?

21 ACC: Yes, Your Honor.

22 MJ: Okay. And you did that more than two times, right?

23 ACC: Yes, Your Honor.

1 MJ: Okay. Same thing for sending the information from your
2 personal computer to, over the unsecure Internet, to WikiLeaks, you
3 did that more than two times, too, is that right?

4 ACC: Yes, Your Honor.

5 MJ: Okay. Does either side believe any further inquiry is
6 required?

7 ATC[CPT MORROW]: No, Your Honor.

8 CDC[MR.COOMBS]: No, Your Honor.

9 MJ: All right. PFC Manning, do you admit that there was in
10 existence a lawful general regulation in the following terms:
11 Paragraph 7-4, Army Regulation 380-5, dated 29 September 2000?

12 ACC: Yes, Your Honor.

13 MJ: Do you admit that you had a duty to obey that regulation?

14 ACC: Yes, Your Honor.

15 MJ: And do you admit that, on divers occasions, between on or
16 about 8 January 2010 and on or about 27 May 2010, at or near
17 Contingency Operating Station Hammer, you violated this lawful
18 general regulation by wrongfully storing classified information?

19 ACC: Yes, Your Honor.

20 MJ: Does either side believe any further inquiry is required as
21 to any of this?

22 CDC[MR.COOMBS]: No, Your Honor.

1 TC[MAJ FEIN]: Your Honor, may we ask for a short recess before
2 you continue and before we answer that question?

3 MJ: Certainly. How long would you like?

4 TC[MAJ FEIN]: 15 minutes, Your Honor.

5 MJ: All right. If we start at 5 after, will 13 minutes give
6 you enough time to do what you need to do?

7 TC[MAJ FEIN]: It will, ma'am.

8 MJ: All right. Court is in recess until 1705 or 5:05 PM.

9 **[The Article 39(a) session recessed at 1655, 28 February 2013.]**

10 **[The Article 39(a) session was called to order at 1708, 28 February**
11 **2013.]**

12 MJ: This Article 39(a) session is called order. Let the record
13 reflect all parties present when the court recessed are again present
14 in court.

15 PFC Manning, let me just ask you one more question on that
16 last -- your plea of guilty to Specification 5 of Charge III. Did
17 you have a duty to obey that regulation?

18 ACC: Yes, Your Honor.

19 MJ: Government, any further inquiry?

20 TC[MAJ FEIN]: Yes, ma'am, the first, really, is a question for
21 the Court, Your Honor. Earlier the Court asked -- or made a
22 statement about the dates and how the government would have to prove
23 the greater date range versus the inclusive date range, but most of

1 the specifications are pled in between two dates. So, I guess, the
2 government was unclear what the Court actually meant after looking
3 back at it.

4 MJ: Well, if they're pled between two dates, that's fine.
5 Let's address that issue when it's ripe.

6 TC[MAJ FEIN]: Yes, ma'am.

7 MJ: If the evidence shows that it's -- if they're two broad
8 dates and the evidence shows it's two narrow dates, the Court could
9 find, by exceptions and substitutions, the narrower dates. Or, if
10 they're different dates -- I don't know all of the -- I haven't
11 looked at this. Are all of the lesser included offenses within the
12 dates charged by the government -- in the exceptions and
13 substitutions?

14 TC[MAJ FEIN]: Yes, ma'am, that's why -- just making sure that
15 the Private First Class Manning understands that they're all
16 inclusive.

17 CDC[MR.COOMBS]: The lesser included falls within their date
18 range, so the government's date ranges are wider than -- and what we
19 gave them were specific dates.

20 MJ: All right. So, I mean, PFC Manning, that's going to be a
21 fact-specific determination, you know, for the fact-finder at the
22 time. You can plead guilty with a subset within a larger subset, but
23 your subset still is within a larger subset but it would be -- you

1 know, the fact-finder could say, "Well, I just--truncate it and make
2 it on the evidence that has been presented." So, do you have any
3 questions about that?

4 ACC: No, Your Honor. I am good.

5 MJ: Do the parties agree with my interpretation of this? It's
6 really a fact-finding decision; it could be excepted and substituted
7 or left within the broader date range depending on how the facts come
8 out.

9 TC[MAJ FEIN]: Yes, ma'am.

10 CDC[MR.COOMBS]: Yes, Your Honor.

11 MJ: Any further inquiry other than that?

12 TC[MAJ FEIN]: Yes, ma'am, I defer to co-counsel.

13 ATC[CPT OVERGAARD]: Ma'am, on Specification 13, you had
14 explored whether or not the cables were the same when they were
15 transmitted as they were when they were downloaded from the SIPRNET
16 and the government just wonders if the Court wants to explore that
17 with Specifications 5 and 7 as well because in Paragraph 6(t) on Page
18 16, there's reference to the possibility that the CIDNE-I and CIDNE-A
19 transmission had been sanitized between the download and the
20 transmission.

21 MJ: All right. Well, PFC Manning, let's talk about -- in all
22 of the specifications we talked about, let's look at it specification

1 by specification. In Specification 2 of Charge II, was the video
2 altered in any way when you sent it?

3 ACC: No, Your Honor.

4 MJ: So, you took what you got off the SIPRNET and that's what
5 you sent?

6 ACC: Yes, Your Honor.

7 MJ: Specification 3, the two documents in Specification 3, the
8 classified memorandum, was that changed, in anyway, between the time
9 that you got it from SIPRNET and the time you sent it?

10 ACC: No, Your Honor.

11 MJ: Specification 5, these are the two that the government
12 wants me to explore, Specifications 5 and 7; those are the two
13 databases -- the more than 20 documents. Did you change those
14 between the time you took them off the SIPRNET and the time you sent
15 them to WikiLeaks?

16 ACC: Yes, Your Honor, I removed some extraneous information that
17 I did not feel needed to be in the version that I sent to whoever I
18 was going to send it to.

19 MJ: When you talked about "you removed extraneous information,"
20 what extraneous information?

21 ACC: Specifically, IP addresses, usernames, a lot of other
22 information attached to the records, Your Honor.

1 MJ: Would that -- the information that you removed, would that
2 have changed their status from classified to unclassified?

3 ACC: The -- I believe that the extraneous information that was
4 on there was classified -- that's my -- that was my impression and --
5 that, I removed. So, I removed some classified information without
6 changing the other information, Your Honor.

7 MJ: So, if the extraneous information you removed was
8 classified, were the cables -- the declassified cables that are
9 charged here that you sent ----

10 ACC: SIGACTs, Your Honor.

11 MJ: ----- or the SIGACTs, I'm sorry. Were they -- did they
12 remain classified because you took some of the classified information
13 out?

14 ACC: I did not remove the field -- the classification field, so
15 I don't know what status they are in because a lot of the documents
16 don't have classification markings separately.

17 MJ: Okay. Now, Government, the charged documents that we went
18 over at the beginning of the trial when PFC Manning was sitting over
19 here at the panel box, were they the charged documents as downloaded
20 from the SIPRNET or were they the charged documents as released?

21 TC[MAJ FEIN]: Your Honor, the charged documents that were
22 printed and put in the binder in Appellate Exhibit 501 were the exact

1 documents printed from the SD card found at Private First Class
2 Manning's aunt's house.

3 MJ: Okay.

4 TC[MAJ FEIN]: So, as released.

5 MJ: The charged documents on Specifications 5 and 7 that we
6 looked through, were those -- did they appear, when you viewed them,
7 in the same form as they were on the SD card in your aunt's camera?

8 ACC: Yes, Your Honor.

9 MJ: Now, was that before or after they had been changed and the
10 extraneous information removed?

11 ACC: That's after, Your Honor.

12 MJ: So, the charged documents, as they appear in that binder
13 that you looked at, are in the form that you had already changed and
14 the form that was sent to WikiLeaks?

15 ACC: Yes, Your Honor, it did.

16 MJ: Were those documents, as you reviewed them in that binder,
17 are they classified?

18 ACC: Well, I would assume so because -- yes, Your Honor.

19 MJ: Well, you're admitting, here, to a criminal offense that --

20 --

21 ACC: Yes.

1 MJ: ---- you are transmitting classified documents so why don't
2 you take a couple of moments and talk to your counsel? If they're
3 not classified, we may need to have another ----

4 ACC: They are classified, Your Honor.

5 MJ: ---- conversation.

6 ACC: The original classification authority said that they're
7 classified, yes, Your Honor.

8 MJ: And you're sure about that?

9 ACC: Yes, Your Honor.

10 MJ: Okay. So, at the time you sent them, they were classified?

11 ACC: Yes, Your Honor.

12 MJ: All right. And you're sure about that?

13 ACC: Yes, Your Honor.

14 MJ: Okay. Does other side believe any further inquiry is
15 required?

16 TC[MAJ FEIN]: No, Your Honor.

17 CDC[MR.COOMBS]: No, Your Honor.

18 MJ: Trial Counsel, what did you calculate to be the maximum
19 punishment authorized in this case based solely on PFC Manning's
20 plea?

21 TC[MAJ FEIN]: Your Honor, based solely on Private First Class
22 Manning's plea, the maximum punishment is to forfeit all pay and

1 allowances, to be reduced to Private (E1), to be confined for 20
2 years, and to be dishonorably discharged from the service.

3 MJ: Defense Counsel, do you agree?

4 CDC[MR.COOMBS]: Yes, Your Honor.

5 MJ: All right. PFC Manning, do you understand that, based on
6 your plea, alone, this court could sentence you to be reduced to the
7 grade of E1, to forfeit all pay and allowances, to be confined for up
8 to 20 years, and to be dishonorably discharged from the service?

9 ACC: Yes, ma'am.

10 MJ: Is the government interested in a fine in this case?

11 TC[MAJ FEIN]: Yes, Your Honor.

12 MJ: And a potential fine also. Do you have any question as to
13 the maximum sentence that could be imposed as a result of your guilty
14 plea?

15 ACC: No, Your Honor.

16 MJ: And, Trial Counsel, is there any pre-trial agreement in
17 this case?

18 TC[MAJ FEIN]: No, Your Honor.

19 MJ: Even though, Counsel, there are no formal, written pre-
20 trial agreements, are there any unwritten agreements or
21 understandings in this case?

22 CDC[MR.COOMBS]: No, Your Honor.

23 TC[MAJ FEIN]: No, Your Honor.

1 MJ: PFC Manning, has anybody made any agreement with you or
2 promise to you in order to get you to plead guilty?

3 ACC: No, Your Honor.

4 MJ: Mr. Coombs and the rest of the defense team, have you had
5 enough time and opportunity to discuss this case with PFC Manning?

6 CDC[MR.COOMBS]: Yes, Your Honor.

7 ADC [MAJ HURLEY]: Yes, ma'am.

8 ADC [CPT TOOMAN]: Yes, Your Honor.

9 MJ: All right. So, I've asked all three of you that; from now
10 on, I'll just -- Mr. Coombs if you can answer as lead counsel, then?

11 CDC[MR.COOMBS]: Okay.

12 MJ: PFC Manning, have you, in fact, consulted fully with your
13 defense team and received the full benefit of their advice?

14 ACC: Yes, Your Honor.

15 MJ: Are you satisfied that your defense team's advice is in
16 your best interest?

17 ACC: Yes, Your Honor.

18 MJ: Are you satisfied with your defense counsel?

19 ACC: Yes, Your Honor.

20 MJ: Are you pleading guilty voluntarily and of your own free
21 will?

22 ACC: Yes, ma'am.

1 MJ: Has anyone made any threat or in any way tried to force you
2 to plead guilty?

3 ACC: No, Your Honor.

4 MJ: Do you have any questions as to the meaning and effect of
5 your guilty plea?

6 ACC: No, Your Honor.

7 MJ: Do you fully understand the meaning and effect of your
8 guilty plea?

9 ACC: Yes, Your Honor.

10 MJ: Do you understand that, even though you believe you are
11 guilty, you have a legal right to plead not guilty in place upon the
12 government the burden of proving your guilt beyond a reasonable
13 doubt?

14 ACC: Yes, Your Honor.

15 MJ: Take a moment now consult, once again, with your defense
16 team and tell me if you still want to plead guilty.

17 **[The accused did as directed.]**

18 MJ: All right. Do you still want to plead guilty?

19 ACC: Yes, Your Honor.

20 MJ: All right. PFC Manning, I find your plea of guilty is made
21 voluntarily and with full knowledge of its meaning and effect. I
22 further find you have knowingly, intelligently, and consciously
23 waived your rights against self-incrimination, to a trial of the

1 facts by a court-martial, and to be confronted by the witnesses
2 against you. Accordingly, your plea of guilty is provident and is
3 accepted. However, I advise you may request withdraw your plea at
4 any time before sentence is announced and, if you have a good reason
5 for your request, I will grant it.

6 Now, is the government going forward on the offenses to
7 which the accused has plead not guilty?

8 TC[MAJ FEIN]: Ma'am, given the seriousness of Private First
9 Class Manning's charged conduct, the United States does intend to go
10 forward with all the charges as originally charged.

11 MJ: All right, then, in that case the Court is not going to
12 make findings with respect to the guilty pleas at this point. PFC
13 Manning, as we discussed earlier, what that means is the government
14 is going to go forward with the charges as charged. Nothing you've
15 said today can be used by the government when they prove the case,
16 however, the elements that you've established in your plea, the
17 government does not have to present any proof of those. Your plea
18 has established those elements so we just have the remaining elements
19 that are left, we've got the outstanding issue that the parties are
20 briefing with the 793(e) offenses as to the tangible/intangible
21 element that we discussed earlier, whether it's only intangible that
22 requires the reason to believe additional elements or whether both
23 do. So, that's -- will be decided at the next Article 39(a) session.

EXHIBIT F

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Unmarked redactions were present when the Army received this document. 29 January 2013

MEMORANDUM THRU Civilian Defense Counsel, 11 South Angell Street
#317, Providence, RI 02906
Military Defense Counsel, U.S. Army Trial Defense Service
(USATDS), Fort Belvoir, VA 22060

FOR Military Judge, U.S. Army First Judicial Circuit, Fort
Meade, MD 20755
Trial Counsel, Joint Force Headquarters - National Capital
Region/Military District of Washington (JFHQ-NCR/MDW), 103 3rd
Avenue SW, Fort McNair, DC 20319-5058

SUBJECT: Statement in Support of Providence Inquiry -- U.S. v.
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1. (U) The following facts are provided in support of the
providence inquiry for my court-martial, United States v. PFC
Bradley E. Manning.

2. (U) Personal Facts.

a. (U) I am a twenty-five (25) year-old Private First Class
in the United States Army, currently assigned to Headquarters
and Headquarters Company (HHC), U.S. Army Garrison (USAG), Joint
Base Myer-Henderson Hall, Fort Myer, Virginia. Prior to this
assignment, I was assigned to HHC, 2nd Brigade Combat Team, 10th
Mountain Division, Fort Drum, New York. My Primary Military
Occupational Specialty (PMOS) is 35F, "Intelligence Analyst."

b. (U) I entered Active Duty status on 2 October 2007. I
enlisted with the hope of obtaining both real-world experience
and earning benefits under the GI Bill for college
opportunities.

3. (U) Facts Regarding My position as an Intelligence Analyst.

a. (U) In order to enlist in the Army, I took the standard
Armed Services Aptitude Battery (ASVAB). My score on this
battery was high enough for me to qualify for any enlisted MOS
position. My recruiter informed me that I should select an MOS
that complimented my interests outside the military. In
response, I told him I was interested in geopolitical matters
and information technology. He suggested I consider becoming an
intelligence analyst.

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b. (U) After researching the Intelligence Analyst position, I agreed that this would be a good fit for me. In particular, I enjoyed the fact that an analyst would use information derived from a variety of sources to create work products that informed the command on its available choices for determining the best courses of action (COAs). Although the MOS required a working knowledge of computers, it primarily required me to consider how raw information can be combined with other available intelligence sources in order to create products that assisted the command in its situational awareness (SA). I assessed that my natural interest in geopolitical affairs and my computer skills would make me an excellent Intelligence Analyst.

c. (U) After enlisting, I reported to the Fort Meade Military Entrance Processing Station (MEPS) on 01 October 2007. I then traveled to, and reported at Fort Leonard Wood on 02 October 2007 to begin Basic Combat Training (BCT).

d. (U) Once at Fort Leonard Wood, I quickly realized that I was neither physically nor mentally prepared for the requirements of BCT. My BCT experience lasted six (6) months instead of the normal ten (10) weeks. Due to medical issues, I was placed in a hold status. A physical examination indicated I sustained injuries to my right shoulder and left foot. Due to these injuries I was unable to continue BCT.

e. (U) During medical hold, I was informed that I may be out-processed from the Army. However, I resisted being "chaptered" because I felt I could overcome my medical issues and continue to serve.

f. On 20 January 2008, I returned to BCT. This time I was better prepared, and I completed training on 2 April 2008. I then reported for the MOS-specific Advanced Individual Training (AIT) on 7 April 2008.

g. (U) AIT was an enjoyable experience for me. Unlike BCT, where I felt different than the other Soldiers, I fit in and did well. I preferred the mental challenges of reviewing a large amount of information from various sources and trying to create useful, or "actionable," products. I especially enjoyed the practice of analysis through the use of computer applications and methods I was familiar with.

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h. (U) I graduated from AIT on 16 August 2008 and reported to my first duty station, Fort Drum, New York on 28 August 2008. As an analyst, Significant Activities (SIGACTs) were a frequent source of information for me to use in creating work products. I started working extensively with SIGACTs early after my arrival at Fort Drum. My computer background allowed me to use the tools organic to the Distributed Common Ground System--Army (DCGS-A) computers and create polished work products for the 2nd Brigade Combat Team (2BCT) chain of command.

i. (U) The non-commissioned-officer-in-charge (NCOIC) of the S2 section, Master Sergeant (MSG) David P. Adkins recognized my skills and potential, and tasked me to work on a tool abandoned by a previously assigned analyst, the "Incident Tracker." The Incident Tracker was viewed as a backup to the Combined Information Data Network Exchange (CIDNE) and a unit historical reference tool.

j. (U) In the months preceding my upcoming deployment, I worked on creating a new version of the incident tracker, and used SIGACTs to populate it. The SIGACTs I used were from Afghanistan, because at the time our unit was scheduled to deploy to the Logar and Wardak provinces Afghanistan. Later, our unit was reassigned to deploy to eastern Baghdad, Iraq. At that point, I removed the Afghanistan SIGACTs and switched to Iraq SIGACTs.

k. (U) As an analyst, I view the SIGACTs as historical data. I believe this view is shared by other all-source analysts as well. SIGACTs give a first-look impression of a specific or isolated event. This event can be an Improvised Explosive Devise (IED) attack, a Small Arms Fire (SAF) engagement with a hostile force, or any other event a specific unit documented and reported in real-time. In my perspective, the information contained within a single SIGACT, or group of SIGACTs is not very sensitive. The events encapsulated within most SIGACTs involve either enemy engagements or casualties. Most of this information is publicly reported by the Public Affairs Office (PAO), embedded media pools, or host-nation (HN) media.

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l. (U) As I started working with SIGACTs, I felt they were similar to a daily journal or log that a person may keep. They capture what happens on a particular day and time. They are created immediately after the event and are potentially updated over a period of hours until a final version is published on CIDNE.

m. (U) Each unit has its own standard operating procedure (SOP) for reporting and recording SIGACTs. The SOP may differ between reporting in a particular deployment, and reporting in garrison. In garrison, a SIGACT normally involves personnel issues, such as a Driving Under-the-Influence (DUI) incident, or an automobile accident involving the death or serious injury of a Soldier. The report starts at the company level, and goes up to the battalion, brigade, and even up to the division level. In a deployed environment, a unit may observe or participate in an event and the platoon leader or platoon sergeant may report the event as a SIGACT to the Company Headquarters through the radio transmission operator (RTO). The commander or RTO will then forward the report to the Battalion Battlecaptain or Battle Non-commissioned officer (NCO). Once the Battalion Battlecaptain or Battle NCO receives the report, they will either:

(1) Notify the Battalion Operations Officer (S3).

(2) Conduct an action, such as launching the Quick Reaction Force (QRF).

(3) Record the event and report further report it up the chain of command to the Brigade.

The recording of each event is done by radio or over the Secret Internet Protocol Router Network (SIPRNet), normally by an assigned Soldier, usually junior enlisted (E-4 and below).

n. (U) Once a SIGACT is reported, the SIGACT is further sent up the chain of command. At each level, additional information can either be added or corrected as needed. Normally, within 24 to 48 hours, the updating and reporting of a particular SIGACT is complete. Eventually, all reports and SIGACTs go through the chain of command from Brigade to Division, and Division to Corps. At Corps-level, the SIGACT is finalized and published.

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o. (U) The CIDNE system contains a database that is used by thousands of Department of Defense (DoD) personnel, including Soldiers, civilians, and contractor support. It was the U.S. Central Command (CENTCOM) reporting tool for operational reporting in Iraq and Afghanistan. Two separate but similar databases were maintained for each theater, "CIDNE-I" for Iraq and "CIDNE-A" for Afghanistan.

p. (U) Each database encompasses over a hundred types of reports and other historical information for access. They contain millions of vetted and finalized records including operational and intelligence reporting. CIDNE was created to collect and analyze battlespace data to provide daily operation and intelligence community (IC) reporting relevant to a commander's daily decision making process.

q. (U) The CIDNE-I and CIDNE-A databases contain reporting and analysis fields from multiple disciplines including:

- (1) Human Intelligence (HUMINT) reports.
- (2) Psychological Operations (PSYOP) reports.
- (3) Engagement reports.
- (4) Counter-Improvised Explosive Device (CIED) reports.
- (5) SIGACT reports.
- (6) Targeting reports.
- (7) Social-Cultural reports.
- (8) Civil Affairs reports.
- (9) Human Terrain reporting.

r. (U) As an intelligence analyst, I had unlimited access to the CIDNE-I and CIDNE-A databases and the information contained within them. Although each table within the databases is important, I primarily dealt with HUMINT reports, SIGACT reports, and CIED reports because these reports were used to create the work product I was required to publish as an analyst.

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s. (U) When working on an assignment, I looked anywhere and everywhere for information. As an all-source analyst, this was something that was expected. The DCGS-A systems had databases built in, and I utilized them on a daily basis. This includes the search tools available on DCGS-A systems on SIPRNet such as Query-Tree, and the DoD and Intelink search engines.

t. (U) Primarily, I utilized the CIDNE database, using the historical and HUMINT reporting to conduct my analysis and provide backup for my work product. I did statistical analysis on historical data, including SIGACTs, to back up analyses that were based on HUMINT reporting and produce charts, graphs, and tables. I also created maps and charts to conduct predictive analysis based on statistical trends. The SIGACT reporting provided a reference point for what occurred, and provided myself and other analysts with the information to conclude a possible outcome.

u. (U) Although SIGACT reporting is sensitive at the time of their creation, their sensitivity normally dissipates within 48 to 72 hours as the information is either publicly released, or the unit involved is no longer in the area and not in danger. It is my understanding that the SIGACT reports remain classified only because they are maintained within CIDNE, because it is only accessible on SIPRNet. Everything on CIDNE-I and CIDNE-A, to include SIGACT reporting was treated as classified information.

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4. (U) Facts Regarding Storage of SIGACT Reports.

a. (U) As part of my training at Fort Drum, I was instructed to ensure that I create back-ups of my work product. The need to create back-ups was particularly acute given the relative instability of and unreliability of the computer systems we used in the field and during deployment. These computer systems included both organic and theater-provided equipment (TPE) DCGS-A machines. The organic DCGS-A machines we brought with us into the field and on deployment were Dell M-90 laptops, and the TPE DCGS-A machines were Alienware brand laptops.

b. (U) The M-90 DCGS-A laptops were the preferred machine to use, as they were slightly faster, and had fewer problems with dust and temperature than the TPE Alienware laptops.

c. (U) I used several DCGS-A machines during the deployment due to various technical problems with the laptops. With these issues, several analysts lost information, but I never lost information due to the multiple back-ups I created.

d. (U) I attempted to back-up as much relevant information as possible. I would save the information so that I, or another analyst could quickly access it when a machine crashed, SIPRNet connectivity was down, or I forgot where data was stored. When backing-up information I would do one or all of the following things, based on my training:

(1) (U) Physical Back-up. I tried to keep physical backup copies of information on paper, so information could be grabbed quickly. Also, it was easier to brief from hard-copies research and HUMINT reports.

(2) (U) Local Drive Back-up. I tried to sort out information I deemed relevant and keep complete copies of the information on each of the computers I used in the Temporary Sensitive Compartmented Information Facility (T-SCIF), including my primary and secondary DCGS-A machines. This was stored under my user-profile on the "desktop."

(3) (U) Shared Drive Backup. Each analyst had access to a "T-Drive" shared across the SIPRNet. It allowed others to access information that was stored on it. S6 operated the "T-Drive."

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(4) (U) Compact Disc Re-Writable (CD-RW) Back-up. For larger datasets, I saved the information onto a re-writable disc, labeled the discs and stored them in the conference room of the T-SCIF.

e. (U) This redundancy permitted us the ability to not worry about information loss. If a system crashed, I could easily pull the information from my secondary computer, the "T-Drive," or one of the CD-RWs. If another analyst wanted access to my data, but I was unavailable, she could find my published products directory on the "T-Drive" or on the CD-RWs. I sorted all of my products and research by date, time, and group, and updated the information on each of the storage methods to ensure that the latest information was available to them.

f. (U) During the deployment, I had several of the DCGS-A machines crash on me. Whenever the computer crashed, I usually lost information, but the redundancy method ensured my ability to quickly restore old backup data, and add my current information to the machine when it was repaired or replaced.

g. (U) I stored the backup CD-RWs of larger datasets in the conference room of the T-SCIF or next to my workstation. I marked the CD-RWs based on the classification level and its content. Unclassified CD-RWs were only labeled with the content type, and not marked with classification markings.

h. (U) Early on in the deployment, I only saved and stored the SIGACTs that were within or near our Operational Environment (OE). Later, I thought it would be easier just to save all the SIGACTs onto a CD-RW. The process would not take very long to complete, and so I downloaded the SIGACTs from CIDNE-I onto a CD-RW. After finishing with CIDNE-I, I did the same with CIDNE-A. By downloading the CIDNE-I and CIDNE-A SIGACTs, I was able to retrieve the information whenever I needed it, and not rely upon the unreliable and slow SIPRNet connectivity needed to "pull" them. Instead, I could just find the CD-RW, and open the preloaded spreadsheet.

i. This process began in late-December 2009, and continued through early-January 2010. I could quickly export one month of the SIGACT data at a time, and download in the background as I did other tasks.

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j. (U) The process took approximately a week for each table. After downloading the SIGACT tables, I periodically updated them by pulling only the most recent SIGACTs, and simply copying them and "pasting" them into the database saved on CD-RW.

k. (U) I never hid the fact I had downloaded copies of both the SIGACT tables from CIDNE-I and CIDNE-A. They were stored on appropriately labeled and marked CD-RWs stored in the open. I views the saved copies of the CIDNE-I and CIDNE-A SIGACT tables as being for both my use, and the use of anyone within the S2 section during SIPRNet connectivity issues.

l. (U) In addition to the SIGACT table, I had a large repository of HUMINT reports and CIED reports downloaded from CIDNE-I. These contained reports that were relevant to the area in and around our OE, in eastern Baghdad and the Diyala province of Iraq.

m. (U) In order to compress the data to fit onto a CD-RW, I used a compression algorithm called "BZip2." The program used to compress the data is called "WinRAR." WinRAR is an application that is free and can easily be downloaded from the Internet via the Non-secure Internet Relay Protocol Network (NIPRNet). I downloaded WinRAR on NIPRNet and transferred it to the DCGS-A machine user profile "desktop" using a CD-RW.

n. (U) I did not try to hide the fact that I was downloading WinRAR onto my SIPRNet DCGS-A computer. With the assistance of the BZip2 compression algorithm using the WinRAR program, I was able to fit all the SIGACTs onto a single CD-RW, and the relevant HUMINT and CIED reports onto a separate CD-RW.

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5. (U) Facts regarding my knowledge of the WikiLeaks Organization (WLO)

a. (U) I first became vaguely aware of WLO during my AIT at Fort Huachuca, AZ. Though, I did not fully pay attention until WLO released purported Short Messaging System (SMS) messages from 11 September 2001 on 25 November 2009. At that time, references to the release and the WLO website showed up in my daily Google News open source search for information related to U.S. foreign policy.

b. (U) The stories were about how WLO published approximately 500,000 messages. I then reviewed the messages myself, and realized that the posted messages were very likely real given the sheer volume and detail of the content.

c. (U) After this, I began conducting research on WLO. I conducted searches on both NIPRNet and SIPRNet on WLO beginning in late November 2009 and early December 2009. At this time I also began to routinely monitor the WLO website.

d. (U) In response to one of my searches in December 2009, I found the U.S. Army Counter-Intelligence Center (USACIC) report on WLO. After reviewing the report, I believed that this report was the one that my AIT instructor referenced in early 2008. I may or may not have saved the report on my DCGS-A workstation. I know I reviewed the document on other occasions throughout early 2010, and saved it on both my primary and secondary laptops.

e. (U) After reviewing the report, I continued doing my research on WLO. However, based upon my open-source collection, I discovered information that contradicted the 2008 USACIC report, including information indicating that, similar to other press agencies, WLO seemed to be dedicated to exposing illegal activities and corruption. WLO received numerous awards and recognition for its reporting activities. Also, in reviewing the WLO website, I found information regarding U.S. military SOPs for Camp Delta at Guantanamo Bay, Cuba, and information on then-outdated Rules of Engagement (ROE) in Iraq for cross-border pursuits of former members of Saddam Hussein al-Tikriti's government.

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f. (U) After seeing the information available on the WLO website, I continued following it and collecting open-source information from it. During this time period, I followed several organizations and groups, including wire press agencies such as the Associated Press and Reuters and private intelligence agencies including Strategic Forecasting (STRATFOR). This practice was something I was trained to do during AIT, and was something that good analysts are expected to do.

g. (U) During the searches of WLO I found several pieces of information that I found useful in my work as an analyst. Specifically, I recall WLO publishing documents relating to weapons trafficking between two nations that affected my OE. I integrated this information into one or more of my work products.

h. (U) In addition to visiting the WLO website, I began following WLO using an Instant Relay Chat (IRC) client called "X-Chat" sometime in early January 2010. IRC is a protocol for real-time internet communications by messaging or conferencing, colloquially referred to as "chat rooms" or "chats." The IRC chat rooms are designed for group communication in discussion forums. Each IRC chat room is called a "channel." Similar to a television, you can "tune-in" to or "follow" a channel, so long as it is open and does not require an invite. Once joining a specific IRC conversation, other users in the conversation can see you have "joined" the room. On the Internet, there are millions of different IRC channels across several services. Channel topics span a range of topics, covering all kinds of interests and hobbies.

i. (U) The primary reason for following WLO on IRC was curiosity, particularly in regards to how and why they obtained the SMS messages referenced above. I believed collecting information on the WLO would assist me in this goal.

j. (U) Initially, I simply observed the IRC conversations. I wanted to know how the organization was structured, and how they obtained their data. The conversations I viewed were usually technical in nature, but sometimes switched to a lively debate on issues a particular individual felt strongly about.

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k. (U) Over a period of time, I became more involved in these discussions, especially when the conversation turned to geopolitical events and information topics, such as networking and encryption methods. Based on these observations I would describe the WLO conversation as almost academic in nature.

l. (U) In addition to the WLO conversations, I participated in numerous other IRC channels across at least three different networks. The other IRC channels I participated in normally dealt with technical topics including the Linux and Berkeley Security Distribution (BSD) Operating Systems (OS), networking, encryption algorithms and techniques, and other more political topics such as politics and queer rights.

m. (U) I normally engaged in multiple IRC conversations simultaneously, mostly publicly but often privately. The X-Chat client enabled me to manage these multiple conversations across different channels and servers. The screen for X-Chat was often busy, but experience enabled me to see when something was interesting. I would then select the conversation and either observe or participate.

n. (U) I really enjoyed the IRC conversations pertaining to and involving the WLO. However, at some point in late February or early March, the WLO IRC channel was no longer accessible. Instead, the regular participants of this channel switched to using a "Jabber" server. Jabber is another Internet communication tool, similar, but more sophisticated than IRC. The IRC and Jabber conversations allowed me to feel connected to others even when alone. They helped me pass the time and keep motivated throughout the deployment.

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6. (U) Facts regarding the unauthorized storage and disclosure of the SIGACTs.

a. (U) As indicated above, I created copies of the CIDNE-I and CIDNE-A SIGACTs tables as part of the process of backing up information. At the time I did so, I did not intend to use this information for any purpose other than for back-up. However, I later decided to release this information publicly. At that time I believed, and still believe, that these tables are two of the most significant documents of our time.

b. (U) On 8 January 2010, I collected the CD-RW I stored in the conference room of the T-SCIF and placed it into the cargo pocket of my Army Combat Uniform (ACU). At the end of my shift, I took the CD-RW out of the T-SCIF and brought it to my Containerized Housing Unit (CHU). I copied the data onto my personal laptop. Later, at the beginning of my shift, I returned the CD-RW back to the conference room of the T-SCIF.

c. (U) At the time I saved the SIGACTs to my laptop, I planned to take them with me on mid-tour leave, and decide what to do with them. At some point prior to mid-tour leave, I transferred the information from my computer to a Secured Digital memory card for my digital camera. The SD card for the camera also worked on my computer, and allowed me to store the SIGACT tables in a secure manner for transport.

d. (U) I began mid-tour leave on 23 January 2010, flying from Atlanta, GA to Reagan National Airport in Virginia. I arrived at the home of my aunt, Debra M. Van Alstyne, in Potomac, MD and quickly got into contact with my then-boyfriend Tyler R. Watkins. Tyler, then a student at Brandeis University in Waltham, MA, and I made plans for me to visit in the Boston, MA area. I was excited to see Tyler, and planned on talking to Tyler about where our relationship was going, and about my time in Iraq.

e. (U) However, when I arrived in the Boston area, Tyler and I seemed to have become distant. He did not seem very excited about my return from Iraq. I tried talking to him about our relationship, but he refused to make any plans. I also tried raising the topic of releasing the CIDNE-I and CIDNE-A SIGACT tables to the public.

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f. (U) I asked Tyler hypothetical questions about what he would do if he had documents that he thought the public needed access to. Tyler didn't really have a specific answer for me. He tried to answer the question and be supportive, but seemed confused by the question and its context. I then tried to be more specific, but he asked too many questions. Rather than try to explain my dilemma, I decided to just drop the conversation.

g. (U) After a few days in Waltham, I began feeling that I was overstaying my welcome, and I returned to Maryland. I spent the remainder of my time on leave in the Washington, DC area.

h. (U) During this time, a blizzard bombarded the mid-Atlantic, and I spent a significant period of time essentially stuck at my aunt's house in Maryland. I began to think about what I knew, and the information I still had in my possession. For me, the SIGACTs represented the on-the-ground reality of both the conflicts in Iraq and Afghanistan. I felt we were risking so much for people that seemed unwilling to cooperate with us, leading to frustration and hatred on both sides.

i. (U) I began to become depressed at the situation that we found ourselves increasingly mired in, year-after-year. The SIGACTs documented this in great detail, and provided context to what we were seeing on-the-ground. In attempting to conduct counter-terrorism (CT) and counter-insurgency (COIN) operations, we became obsessed with capturing and killing human targets on lists, on being suspicious of and avoiding cooperation with our host-nation partners, and ignoring the second and third order effects of accomplishing short-term goals and missions.

j. (U) I believed that if the general public, especially the American public, had access to the information contained within the CIDNE-I and CIDNE-A tables, this could spark a domestic debate on the role of the military and our foreign policy in general, as well as it related to Iraq and Afghanistan. I also believed a detailed analysis of the data over a long period of time, by different sectors of society, might cause society to re-evaluate the need, or even the desire to engage in CT and COIN operations that ignored the complex dynamics of the people living in the affected environment each day.

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k. (U) At my aunt's house, I debated about what I should do with the SIGACTs. In particular, whether I should hold on to them, or disclose them through a press agency. At this point, I decided it made sense to try and disclose the SIGACT tables to an American newspaper.

l. (U) I first called my local newspaper, the Washington Post and spoke with a woman saying she was a reporter. I asked her if the Washington Post would be interested in receiving information that would have enormous value to the American public. Although we spoke for about five minutes concerning the general nature of what I possessed, I do not believe she took me seriously. She informed me that the Washington Post would possibly be interested, but that such decisions are made only after seeing the information I was referring to, and after consideration by the senior editors.

m. (U) I then decided to contact the largest and most popular newspaper, the New York Times. I called the public editor number on the New York Times website. The phone rang and was answered by a machine. I went through the menu to the section for news tips and was routed to an answering machine. I left a message stating I had access to information about Iraq and Afghanistan that I believed was very important. However, despite leaving my Skype phone number and personal email address, I never received a reply from the New York Times.

n. (U) I also briefly considered dropping into the office for the political commentary blog Politico. However, the weather conditions during my leave hampered my efforts to travel.

o. (U) After these failed efforts, I ultimately decided to submit the materials to the WLO. I was not sure if WLO would actually publish the SIGACT tables, or, even if they did publish, I was concerned they might not be noticed by the American media. However, based on what I read about WLO through my research described above, this seemed to be the best medium for publishing this information to the world within my reach.

p. (U) At my aunt's house, I joined in on an IRC conversation and stated I had information that needed to be shared with the world. I wrote that the information would help document the true costs of the wars in Iraq and Afghanistan.

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q. (U) One of the individuals in the IRC asked me to describe the information. However, before I could describe the information, another individual pointed me to the link for the WLO website's online submission system.

r. (U) After ending my IRC connection, I considered my options one more time. Ultimately, I felt that the right thing to do was to release the SIGACTs. On 3 February 2010, I visited the WLO website on my computer, and clicked on the "Submit Documents" link. Next, I found the "submit your information online link," and elected to submit the SIGACTs via the TOR Onion Router (TOR) anonymizing network by a special link.

s. (U) TOR is a system intended to provide anonymity online. The software routes Internet traffic through network of servers and other TOR clients in order to conceal a user's location and identity. I was familiar with TOR and had it previously installed on my computer to anonymously monitor the social media websites of militia groups operating within central Iraq.

t. (U) I followed the prompts and attached the compressed data files of the CIDNE-I and CIDNE-A SIGACTs. I attached a text file I drafted while preparing to provide the documents to the Washington Post. It provided rough guidelines stating "it's already been sanitized of any source identifying information. You might need to sit on this information, perhaps 90-180 days, to figure out how best to release such a large amount of data, and to protect source. This is possibly one of the more significant documents of our time, removing the fog of war, and revealing the true nature of 21st century asymmetric warfare. Have a good day." After sending this, I left the SD card in a camera case at my aunt's house, in the event I needed it again in the future.

u. (U) I returned from mid-tour leave on 11 February 2010. Although the information had not yet been published by the WLO, I felt a sense of relief by them having it. I felt had accomplished something that allowed me to have a clear conscience based upon what I had seen, read about and knew were happening in both Iraq and Afghanistan every day.

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7. (U) Facts regarding the unauthorized storage and disclosure of "10REYKJAVIK13".

a. (U) I first became aware of diplomatic cables during my training period in AIT. I later learned about the Department of State (DOS) Net-Centric Diplomacy (NCD) portal from the 2-10BCT S2, Captain (CPT) Steven Lim. CPT Lim sent a section-wide email to the other analysts and officers in late December 2009 containing the SIPRNet link to the portal, along with instructions to look at the cables contained within and incorporate them into our work product. Shortly after this, I also noticed that diplomatic cables were being referred to in products from the Corps-level, U.S. Forces-Iraq (USF-I).

b. (U) Based on CPT Lim's direction to become familiar with its contents, I read virtually every published cable concerning Iraq. I also began scanning the database and reading other, random, cables that piqued my curiosity. It was around this time, in early-to-mid-January 2010 that I began searching the database for information on Iceland. I became interested in Iceland due to IRC conversations I viewed in the WLO channel discussed an issue called "Icesave." At this time, I was not very familiar with the topic, but it seemed to be a big issue for those participating in the conversation. This is when I decided to investigate, and conduct a few searches on Iceland to find out more.

c. (U) At the time, I did not find anything discussing the "Icesave" issue, either directly or indirectly. I then conducted an open source search for "Icesave." I then learned that Iceland was involved in a dispute with the United Kingdom (UK) and Netherlands concerning the financial collapse of one or more of Iceland's banks. According to open source reports, much of the public controversy involved the UK's use of "anti-terrorism legislation" against Iceland in order to freeze Icelandic assets for payment of the guarantees for UK depositors that lost money.

d. (U) Shortly after returning from mid-tour leave, I returned to the NCD to search for information on Iceland and "Icesave" as the topic had not abated on the WLO IRC channel. To my surprise, on 14 February 2010, I found the cable 10REYKJAVIK13 which referenced the "Icesave" issue directly.

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e. (U) The cable, published on 13 January 2010, was just over two pages in length. I read the cable, and quickly concluded that Iceland was essentially being bullied, diplomatically, by two larger European powers. It appeared to me that Iceland was out of viable solutions, and was now coming to the U.S. for assistance. Despite their quiet request for assistance, it did not appear we were going to do anything. From my perspective, it appeared we were not getting involved due to the lack of long term geopolitical benefit to do so.

f. (U) After digesting the contents of 10REYKJAVIK13, I debated on whether this was something I should send to the WLO. At this point, the WLO had not published nor acknowledged receipt of the CIDNE-I and CIDNE-A SIGACT tables. Despite not knowing if the SIGACTs were a priority for the WLO, I decided the cable was something that would be important, and I felt I might be able to right a wrong by having them publish this document. I burned the information onto a CD-RW on 15 February 2010, took it to my CHU and saved it onto my personal laptop.

g. (U) I navigated to the WLO website via a TOR connection like before, and uploaded the document via the secure form. Amazingly, the WLO published 10REYKJAVIK13 within hours, proving that the form worked and that they must have received the SIGACT tables.

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8. (U) Facts regarding the unauthorized storage and disclosure of the 12 July 2007 Air Weapons Team (AWT) video.

a. (U) During the mid-February 2010 timeframe, the 2-10BCT Targeting analyst, then-Specialist (SPC) Jihrleah W. Showman and others discussed video Ms. Showman found on the "T-Drive." The video depicted a several individuals being engaged by an Air Weapons Team (AWT). At first, I did not consider the video very special, as I had viewed countless other "war-porn" type videos depicting combat. However, the recorded audio comments by the AWT crew and the second engagement in the video, of an unarmed bongo truck, troubled me.

b. (U) Ms. Showman and a few other analysts and officers in the T-SCIF commented on the video, and debated whether the crew violated the Rules of Engagement (ROE) in the second engagement. I shied away from this debate, and instead conducted some research on the event. I wanted to learn what happened, and whether there was any background to the events of the day the event occurred, 12 July 2007.

c. (U) Using Google, I searched for the event by its date and general location. I found several news accounts involving two Reuters employees who were killed during the AWT's engagement. Another story explained that Reuters requested for a copy of the video under the Freedom of Information Act (FOIA). Reuters wanted to view the video in order to be able to understand what happened, and improve their safety practices in combat zones. A spokesperson for Reuters was quoted saying that the video might help avoid a reoccurrence of the tragedy, and believed there was a compelling need for the immediate release of the video.

d. (U) Despite the submission of a FOIA request, the news account explained that CENTCOM replied to Reuters, stating that they could not give a timeframe for considering the FOIA request, and the video might no longer exist. Another story I found, written a year later, said that even though Reuters was still pursuing their request, they still did not receive a formal response or written determination in accordance with the FOIA.

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e. (U) The fact neither CENTCOM nor Multi-National Forces-Iraq (MCF-I) would not voluntarily release the video troubled me further. It was clear to me that the event happened because the AWT mistakenly identified the Reuters employees with a potential threat, and that the people in the bongo truck were merely attempting to assist the wounded. The people in the van were not a threat, but "good Samaritans."

f. (U) The most alarming aspect of the video to me, however, was the seemingly delightful bloodlust they appeared to have. They dehumanized the individuals they were engaging, and seemed to not value human life by referring to them as "dead bastards" and congratulating each other on the ability to kill in large numbers.

g. (U) At one point in the video, there is an individual on the ground attempting to crawl to safety. The individual is seriously wounded. Instead of calling for medical attention to the location, one of the AWT crew members verbally asked for the wounded person to pick up a weapon so he would have a reason to engage. For me, this seems similar to a child torturing ants with a magnifying glass.

h. (U) While saddened by the AWT crew's lack of concern about human life, I was disturbed by their response to the discovery of injured children at the scene. In the video, you can see the bongo truck driving up to assist the wounded individual. In response, the AWT crew assumes the individuals are a threat. They repeatedly request for authorization to fire on the bongo truck, and once granted, they engage the vehicle at least six times.

i. (U) Shortly after the second engagement, a mechanized infantry unit arrives at the scene. Within minutes, the AWT crew learns that children were in the van and, despite the injuries, the crew exhibits no remorse. Instead, they downplayed the significance of their actions saying "well, it's their fault for bringing their kids into a battle." The AWT crew members sound like they lack sympathy for the children or their parents. Later, in a particularly disturbing manner, the AWT crew verbalizes enjoyment at the sight of one of the ground vehicles driving over the bodies.

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j. (U) As I continued my research I found an article discussing a book "The Good Soldiers," written by Washington Post writer David Finkel. In Mr. Finkel's book, he writes about the AWT attack. As I read an online excerpt on "Google Books," I followed Mr. Finkel's account of the event, along with the video. I quickly realized Mr. Finkel was quoting, I feel in verbatim, the audio communications of the AWT crew. It's clear to me that Mr. Finkel obtained access and a copy of the video during his tenure as an embedded journalist.

k. (U) I was aghast at Mr. Finkel's portrayal of the incident. Reading his account, one would believe the engagement was somehow justified as "payback" for an earlier attack that lead to the death of a Soldier. Mr. Finkel ends his account of the engagement by discussing how a Soldier finds an individual still alive from the attack. He writes that the Soldier finds him, and sees him gesture with his two forefingers together, a common method in the Middle-East to communicate that they are friendly. However, instead of assisting him, the Soldier makes an obscene gesture, extending his middle finger. The individual apparently dies shortly thereafter. Reading this, I can only think of how this person was simply trying to help others, and then quickly finds he needs help as well. To make matters worse, in the last moments of his life, he continues to express his friendly intent, only to find himself receiving this well known gesture of "unfriendliness." For me, it's all a big mess, and I'm left wondering what these things mean, and how it all fits together. It burdens me emotionally.

l. (U) I saved a copy of the video on my workstation. I searched for, and found the ROE, ROW Annexes and a flowchart from the 2007 time period, as well as an unclassified ROE smart card from 2006. On 15 February 2010, I burned these documents onto a CD-RW, the same time I burned 10REYKJAVIK13 onto a CD-RW.

m. (U) At the time, I placed the video and ROE information onto my personal laptop in my CHU. I planned to keep this information there until I redeployed in Summer 2010. I planned on providing this to the Reuters office in London, UK to assist them in preventing events such as this in the future.

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n. (U) However, after the WLO published 10REYKJAVIK13, I altered my plans. I decided to provide the video and ROEs to them, so that Reuters would have this information before I redeployed from Iraq. On about 21 February 2010, as described above, I used the WLO submission form and uploaded the documents.

o. (U) The WLO released the video on 5 April 2010. After the release, I was concerned about the impact of the video, and how it would be perceived by the general public. I hoped the public would be as alarmed as me about the conduct of the AWT crew members. I wanted the American public to know that not everyone in Iraq and Afghanistan were targets that needed to be neutralized, but rather people who were struggling to live in the "pressure-cooker" environment of what we call asymmetric warfare.

p. (U) After the release, I was encouraged by the response in the media and general public who observed the AWT video. As I hoped, others were just as troubled, if not more troubled, than me by what they saw. At this time, I began seeing reports claiming that DoD and CENTCOM could not confirm the authenticity of the video. Additionally, one of my supervisors CPT Casey Fulton (nee Martin) stated her belief that the video was not authentic. In response, I decided to ensure that the authenticity of the video would not be questioned in the future. On 25 April 2010 I e-mailed CPT Fulton a link to the video that was on our "T-Drive" and to a copy of the video published by WLO from the Open Source Center (OSC) so she could compare them herself.

q. (U) Around this timeframe, I burned a second CD-RW containing the AWT video. In order to make it appear authentic, I placed a classification sticker and wrote "Reuters FOIA Req" on its face. I placed the CD-RW in one of my personal CD cases containing a set of "Starting out in Arabic." I planned on mailing the CD-RW to Reuters after I redeployed so they could have a copy that was unquestionably authentic.

r. (U) Almost immediately after submitting the AWT video and ROE documents, I notified the individuals in the WLO IRC to expect an important submission. I received a response from an individual going by the handle of "office."

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s. (U) At first our conversations were general in nature, but over time, as our conversations progressed, I assessed this individual to be an important part of the WLO. Due to the strict adherence of anonymity by the WLO, we never exchanged identifying information; however, I believed the individual was likely Mr. Julian Assange, Mr. Daniel Schmidt, or a proxy-representative of Mr. Assange and Schmidt.

t. (U) As the communications transferred from IRC to the Jabber client, I gave "office," and later "pressassociation" the name of "Nathaniel Frank" in my address book, after the author of a book I read in 2009.

u. (U) After a period of time, I developed what I felt was a friendly relationship with Nathaniel. Our mutual interest in information technology and politics made our conversations enjoyable. We engaged in conversation often, sometimes as long as an hour or more. I often looked forward to my discussions with Nathaniel after work.

v. (U) The anonymity that provided by TOR, the Jabber client, and WLO's policy allowed me to feel I could just be myself, free of the concerns of social labeling and perceptions that are often placed upon me in real life (IRL). IRL, I lacked close friendship with the people I worked with in my section, the S2 sections in subordinate battalions, and 2BCT as a whole. For instance, I lacked close ties with my roommate due to his discomfort regarding my perceived sexual orientation.

w. (U) Over the next few months, I stayed in frequent contact with Nathaniel. We conversed on nearly a daily basis, and I felt we were developing a friendship. The conversations covered many topics, and I enjoyed the ability to talk about pretty much anything, and not just the publications that the WLO was working on.

x. (U) In retrospect, I realize these dynamics were artificial, and were valued more by myself than Nathaniel. For me, these conversations represented an opportunity to escape from the immense pressures and anxiety that I experienced and built up throughout the deployment. It seemed that as I tried harder to "fit in" at work, the more I seemed to alienate my peers, and lose respect, trust and the support I needed.

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9. (U) Facts regarding the unauthorized storage and disclosure of documents relating to detainments by the Iraqi Federal Police (FP), the Detainee Assessment Briefs (DABs), and the USACIC report.

a. (U) On 27 February 2010, a report was received from a subordinate battalion. The report described an event in which the FP detained fifteen (15) individuals for printing "anti-Iraqi literature." By 2 March 2010, I received instructions from an S3 section officer in the 2-10BCT Tactical Operations Center (TOC) to investigate the matter, and figure out who these "bad guys" were, and how significant this event was for the FP.

b. (U) Over the course of my research, I found that none of the individuals had previous ties with anti-Iraqi actions or suspected terrorist or militia groups. A few hours later, I received several photos from the scene from the subordinate battalion. They were accidentally sent to an officer on a different team in the S2 section, and she forwarded them to me. These photos included pictures of the individuals, palettes of unprinted paper, seized copies of the final printed document, and a high-resolution photo of the printed material.

c. (U) I printed a blown up copy of the high-resolution photo, and laminated it for ease of storage and transfer. I then walked to the TOC and delivered the laminated copy to our category 2 interpreter. She reviewed the information and about a half-hour later delivered a rough written transcript in English to the S2 section.

d. (U) I read the transcript, and followed up with her, asking for her take on its contents. She said it was easy for her to transcribe verbatim since I blew up the photograph and laminated it. She said the general nature of the document was benign. The documentation, as I assessed as well, was merely a scholarly critique of the then-current Iraqi Prime Minister, Nouri al-Maliki. It detailed corruption within the cabinet of al-Maliki's government, and the financial impact of this corruption on the Iraqi people.

e. (U) After discovering this discrepancy between the FP's report, and the interpreter's transcript, I forwarded this discovery, in person to the TOC OIC and Battle NCOIC.

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f. (U) The TOC OIC and, the overhearing Battlecaptain, informed me they didn't need or want to know this information any more. They told me to "drop it" and to just assist them and the FP in finding out where more of these print shops creating "anti-Iraqi literature" might be. I couldn't believe what I heard, and I returned to the T-SCIF and complained to the other analysts and my section NCOIC about what happened. Some were sympathetic, but no-one wanted to do anything about it.

g. (U) I am the type of person who likes to know how things work, and as an analyst, this means I always want to figure out the truth. Unlike other analysts in my section, or other sections within 2-10BCT, I was not satisfied with just scratching the surface, and producing "canned" or "cookie-cutter" assessments. I wanted to know why something was the way it was, and what we could do to correct or mitigate a situation. I knew that if I continued to assist the Baghdad FP in identifying the political opponents of Prime Minister al-Maliki, those people would be arrested, and in the custody of this special unit of the Baghdad FP, very likely tortured and not seen again for a very long time, if ever.

h. (U) Instead of assisting the special unit of the Baghdad FP, I decided to take the information and disclose it to the WLO in the hope that, before the upcoming 7 March 2010 election, they could generate immediate press on the issue, and prevent this unit of the FP from continuing to crack down on political opponents. On 4 March 2010, I burned the report, the photos, the high resolution copy of the pamphlet, and the interpreter's handwritten transcript onto a CD-RW. I took the CD-RW to my CHU and copied the data onto my personal computer.

i. (U) Unlike the times before, instead of uploading the information through the WLO websites' submission form, I made a Secure File Transfer Protocol (SFTP) connection to a "cloud" dropbox operated by the WLO. The dropbox contained a folder that allowed me to upload directly into it. Saving files into this directory allowed anyone with login access to the server to view and download them.

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j. (U) After uploading these files to the WLO on 5 March 2010, I notified Nathaniel over Jabber. Although sympathetic, he said that the WLO needed more information to confirm the event in order for it to be published or to gain interest in the international media. I attempted to provide specifics, but to my disappointment, the WLO website chose not to publish this information.

k. (U) At the same time, I began sifting through information from the U.S. Southern Command (SOUTHCOM) and Joint Task Force (JTF) Guantanamo, Cuba (GTMO). The thought occurred to me, although unlikely, that I wouldn't be surprised if the individuals detained by the FP might be turned over back into U.S. custody and ending up in the custody of JTF-GTMO.

l. (U) As I digested through the information on JTF-GTMO, I quickly found the detainee assessment briefs (DABs). I previously came across these documents before, in 2009, but did not think much of them. However, this time I was more curious and during this search I found them again. The DABs were written in standard DoD memorandum format, and addressed the Commander, U.S. SOUTHCOM. Each memorandum gave basic background information about a specific detainee held at some point by JTF-GTMO.

m. (U) I have always been interested on the issue of the moral efficacy of our actions surrounding JTF-GTMO. On the one hand, I always understood the need to detain and interrogate individuals who might wish to harm the U.S. and our allies. I felt that was what we were trying to do at JTF-GTMO. However, the more I became educated on the topic, it seemed that we found ourselves holding an increasing number of individuals indefinitely that we believed or knew were innocent, low-level "foot soldiers" that didn't have useful intelligence and would be released if they were still held in theater.

n. (U) I also recalled that in early 2009, the then-newly-elected President Barack Obama stated he would close JTF-GTMO and that the facility compromised our standing in the world and diminished our "moral authority." After familiarizing myself with the DABs, I agreed.

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o. (U) Reading through the DABs, I noted that they were not analytical products. Instead, they contained summaries of tear-lined versions of Interim Intelligence Reports (IIRs) that were old or unclassified. None of the DABs contained names of sources or quotes from Tactical Interrogation Reports (TIRs). Since the DABs were being sent to the U.S. SOUTHCOM commander, I assessed that they were intended to provide very general background information on each detainee, and not a detailed assessment.

p. (U) In addition to the manner the DABs were written, I recognized that they were at least several years old, and discussed detainees that were already released from JTF-GTMO. Based on this, I determined that the DABs were not very important from either an intelligence or national security standpoint.

q. (U) On 7 March 2010, during my Jabber conversations with Nathaniel, I asked him if he thought the DABs were of any use to anyone. Nathaniel indicated that although he didn't believe they were of political significance he did believe that they could be used to merge into the general historical account of what occurred at JTF-GTMO. He also thought that the DABs might be helpful to the legal counsel of those currently and previously held at JTF-GTMO.

r. (U) After this discussion, I decided to download the DABs. I used an application called "WGet" to download the DABs. I downloaded WGet off the NIPRNet laptop in the T-SCIF like other programs. I saved that onto a CD-RW and placed the executable in "My Documents" directory of my user profile on the DCGS-A SIPRNet workstation.

s. (U) On 7 March 2010, I took the list of links for the DABs and WGet downloaded them sequentially. I burned the DABs onto a CD-RW and took it to my CHU and copied them to my personal computer. On 8 March 2010, I combined the DABs with the USACIC report on the WLO into a compressed "zip" file. Zip files contain multiple files which are compressed to reduce their size. After creating the zip file, I uploaded the file onto their "cloud" dropbox via SFTP. Once these were uploaded, I notified Nathaniel that the information was in the "x" directory, which had been assigned for my use.

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t. (U) Earlier that day, I downloaded the USACIC report on WLO. As discussed above, I previously reviewed the report on numerous occasions and, although I had saved the document onto workstation before, I could not locate it. After I found the document again, I downloaded it to my workstation and saved it onto the same CD-RW as the DABs, described above.

u. (U) Although I my access included a great deal of information, I decided I had nothing else to send to the WLO after sending them the DABs and the USACIC report. Up to this point I sent them the following:

(1) The CIDNE-I and CIDNE-A SIGACT tables.

(2) The "10REYKJAVIK13" DOS cable.

(3) The 12 July 2007 AWT video and the 2006 and 2007 ROE documents.

(4) The SIGACT report and supporting documents concerning the 15 individuals detained by the Baghdad FP.

(5) The U.S. SOUTHCOM and JTF-GTMO DABs.

(6) The USACIC report on the WLO and website.

v. (U) Over the next few weeks, I did not send any additional information to the WLO. I continued to converse with Nathaniel over the Jabber client, and in the WLO IRC channel. Although I stopped sending documents to WLO, no one associated with the WLO pressured me into giving more information. The decisions that I made to send documents and information to the WLO and website were my own decisions, and I take full responsibility for my actions.

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10. (U) Facts regarding the unauthorized storage and disclosure of other government documents.

a. (U) On 22 March 2010, I downloaded two documents. I found these documents over the course of my normal duties as an analyst. Based on my training and the guidance of my superiors, I looked at as much information as possible. Doing so provided me with the ability to make connections others might miss.

b. (U) On several occasions during the month of March, I accessed information from a government entity. I read several documents from a section within this government entity. The content of two of these documents upset me greatly. I had difficulty believing what this section was discussing.

c. (U) On 22 March 2010, I downloaded the two documents that I found troubling. I compressed them into a zip file named "blah.zip" and burned them onto a CD-RW. I took the CD-RW to my CHU and saved the file to my personal computer. I uploaded the information to the WLO website using the designated drop-box.

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11. (U) Facts regarding the unauthorized storage and disclosure of the NCD DOS cables.

a. (U) In late March I received a warning over Jabber from Nathaniel that the WLO website would be publishing the AWT video. He indicated that the WLO would be very busy and the frequency and intensity of our Jabber conversations decreased significantly.

b. (U) During this time, I had nothing but work to distract me. I read more of the diplomatic cables published on the DOS NCD server. With my insatiable curiosity and interest in geopolitics, I became fascinated with them. I read not only cables on Iraq, but also about countries and events I found interesting. The more I read, the more I was fascinated by the way we dealt with other nations and organizations. I also began to think that they documented backdoor deals and seemingly criminal activity that didn't seem characteristic of the de facto leader of the free world.

c. (U) Up to this point during the deployment, I had issues I struggled with and difficulty at work. Of the documents released, the cables are the only one I was not absolutely certain couldn't harm the U.S. I conducted research on the cables published on NCD, as well as how DOS cables work in general. In particular, I wanted to know how each cable was published on SIPRNet via the NCD.

d. (U) As part of my open-source research, I found a document published by DOS on its official website. The document provided guidance on caption markings for individual cables and handling instructions for their distribution. I quickly learned that caption markings clearly detail the sensitivity level of a DOS cable. For example, "NODIS" (No Distribution) was used for messages of the highest sensitivity, and were only distributed to the authorized recipients. The "SIPDIS" (SIPRNet Distribution) caption was applied only to reporting and other informational messages that were deemed appropriate for release to a wide number of individuals.

UNCLASSIFIED

SUBJECT: Statement in Support of Providence Inquiry -- U.S. v. Private First Class (PFC) Bradley E. Manning (U)

e. (U) According to the DOS guidance for a cable to have the SIPDIS caption it could not include any other captions that were intended to limit distribution. The SIPDIS caption was only for information that could be shared with anyone with access to SIPRNet. I was aware that thousands of military personal, DoD, DOS, and other civilian agencies had easy access to the cables. The fact that the SIPDIS caption was only for wide distribution made sense to me given that the vast majority of the NCD cables were not classified.

f. (U) The more I read the cables, the more I came to the conclusion that this type of information should become public. I once read and used a quote on open diplomacy written after the First World War, and how the world would be a better place if states would avoid making secret pacts and deals with and against each other. I thought these cables were a prime example of the need for a more open diplomacy. Given all the DOS information I read, the fact that most of the cables were unclassified, and that all of the cables had the SIPDIS caption, I believed that the public release of these cables would not damage the U.S. However, I did believe the cables might be embarrassing, since they represented very honest opinions and statements behind the backs of other nations and organizations. In many ways, these cables are a catalog of cliques and gossip. I believed exposing this information might make some within the DOS and others unhappy.

g. (U) On 28 March 2010, I began downloading a copy of the SIPDIS cables using the program WGet described above. I used instances of the WGet application to download the NCD cables in the background, as I worked on my daily tasks. The NCD cables were downloaded from 28 March 2010 to 9 April 2010. After downloading the cables, I saved them onto a CD-RW. These cables went from the earliest dates in NCD to 28 February 2010. I took the CD-RW to my CHU on 10 April 2010. I sorted the cables on my personal computer, compressed them using the BZip2 compression algorithm described above, and uploaded them to the WLO via the designated dropbox described above.

UNCLASSIFIED

SUBJECT: Statement in Support of Providence Inquiry -- U.S. v. Private First Class (PFC) Bradley E. Manning (U)

h. (U) On 3 May 2010, I used WGet to download an update of the cables for the months of March 2010 and April 2010, and saved the information onto a zip file and burned it to CD-RW. I then took the CD-RW to my CHU and saved them to my computer.

i. (U) I later found that the file was corrupted during the transfer. Although I intended to resave another copy of these cables, I was removed from the T-SCIF on 8 May 2010, after an altercation.

UNCLASSIFIED

12. (U) Facts regarding the unauthorized storage and disclosure of the Gharani (Farah province), Afghanistan 15-6 investigation and videos.

a. (U) In late March 2010, I discovered a U.S. CENTCOM directory on a 2009 airstrike in Afghanistan. I was searching CENTCOM for information I could use as an analyst. As described above, this was something that myself and other analysts and officers did on a frequent basis.

b. (U) As I reviewed the documents, I recalled the incident and what happened. The airstrike occurred in the Gharani village in the Farah Province of Northwestern Afghanistan. It received worldwide press coverage during the time as it was reported that up to 100 to 150 Afghan civilians, mostly women and children, were accidentally killed during the airstrike.

c. (U) After going through the report and its annexes, I began to view the incident as being similar to the 12 July 2007 AWT engagements in Iraq. However, this event was noticeably different in that it involved a significantly higher number of individuals, larger aircraft, and much heavier munitions. Also, the conclusions of the report are even more disturbing than those of the 12 July 2007 incident.

d. (U) I did not see anything in the 15-6 report or its annexes that gave away sensitive information. Rather, the investigation and its conclusions help explain how this incident occurred and what those involved should have done, and how to avoid an event like this from occurring again.

e. (U) After reviewing the report and its annexes, I downloaded the 15-6 investigation, PowerPoint presentations, and several other supporting documents to my DCGS-A workstation. I also downloaded three zip files containing the videos of the incident. I burned this information onto a CD-RW and transferred it to the personal computer in my CHU. Either later that day or the next day, I uploaded the information to the WLO website, this time using a new version of the WLO website submission form. Unlike other times using the submission form above, I did not activate the TOR anonymizer.

UNCLASSIFIED

SUBJECT: Statement in Support of Providence Inquiry -- U.S. v. Private First Class (PFC) Bradley E. Manning (U)

13. (U) This concludes my statement and facts for this providence inquiry. The point of contact (POC) for this memorandum is the undersigned at HHC, USAG, Joint Base Myer-Henderson Hall, Fort Myer, Virginia 22211.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

FILED

In re: Grand Jury Subpoena,)	
	)	1:19-DM-3
CHELSEA MANNING,)	
	)	18-4 / 10-GJ-3793
Subpoenaed Party)	
_____)	

0 MAR - 04 2019
 UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF VIRGINIA

MOTION TO UNSEAL

Comes now Ms. Chelsea Manning, by and through counsel and pursuant to the First Amendment to the United States Constitution, 18 U.S.C. §3322, Federal Rule of Criminal Procedure 6(e), and Eastern District of Virginia Local Criminal Rules 49 and 57.1 to unseal the pleadings (with the exception of the Declaration of Ms. Manning containing personal identifying information) filed on Ms. Manning’s behalf as a witness under subpoena. In support of this request, Ms. Manning states the following:

FACTS

The subpoenaed party and movant Chelsea Manning is recognized world-wide as a champion of the Free Press and open government. In 2013, Ms. Manning, then an all-source intelligence analyst for the United States military, was convicted at a United States Army court martial for disclosing classified information to the public. She was sentenced to thirty-five years imprisonment and a dishonorable discharge, then confined under onerous conditions including prolonged solitary confinement. In 2017 her sentence was commuted by then-President Barack Obama. Despite the commutation of her sentence, Ms. Manning’s appeal from that conviction remains pending and she may be subject to military re-call.

In February of this year Ms. Manning was served through counsel with a subpoena *ad testificandum* ordering her to appear before a grand jury empaneled in this district. The appearance is

now scheduled for March 5, 2019. On Friday March 1, 2019 counsel for Ms. Manning filed a Motion to Quash the instant subpoena; the request is based on the unnecessary issuance of the subpoena possibly targeting Ms. Manning in retaliation for her recent release from prison, and in violation of her First, Fourth, Fifth, and Sixth Amendment rights, and other statutory rights such as would excuse her grand jury testimony. The motion does not contain information prohibited from disclosure by statute and the rules of procedure because neither counsel nor Ms. Manning has personal knowledge beyond the public record about anything that has occurred before the grand jury.

ARGUMENT

The bare fact that Ms. Manning has received a subpoena, and the Motion to Quash the subpoena filed on Ms. Manning's behalf are not subject to the obligations of secrecy imposed by 18 U.S.C. §3322, Fed. R. Crim. P. 6(e), or criminal rules 49 and 57.1 of this Court's local rules. See In re: Grand Jury Proceedings, 417 F.3d 18 (1st Cir. 2005)(noting that because Rule 6(e)(2)(B) does not list "witnesses" as a category of persons who "must not" disclose grand jury matters, the plain language of the rule does not automatically impose an obligation of secrecy on a grand jury witness). Moreover, the government itself confirmed the investigation and indictment of Wikileaks in the matter of United States v. Seitu Sulayman Kokayi (E.D.V.A, Alexandria Div., 1:18-cr-00410, Docket No. 5); that a grand jury has been empaneled to investigate and indict persons associated with Wikileaks is at this point public information and is therefore not subject to the protection and secrecy imposed by Rule 6(e) because "grand jury secrecy is not unyielding when there is no secrecy left to protect." In re: Grand Jury Subpoena, Judith Miller, 493 F.3d 152, at 154 (D.C. Cir. 2007).

Should the Court find that the Motion to Quash filed on Ms. Manning's behalf is subject to the rules of grand jury secrecy, the Court should nevertheless authorize disclosure of Ms. Manning's Motion to Quash and further pleadings as made preliminarily to or in connection with a judicial

proceeding as permitted by Fed. R. Crim. P. 6(e)(3)(E)(1). Ms. Manning further requests that the Court require the government to show with particularity that there is a compelling necessity for secrecy of the motion to quash and other pleadings filed that may be subsequently filed on Ms. Manning's behalf regarding the subpoena seeking her testimony. See In re Grand Jury Subpoena Duces Tecum, 797 F.2d 676 at 681 (8th Cir. 1986)(quoting United States v. Procter & Gamble Co., 356 U.S. 677 (1958)).

A. THE ISSUANCE OF THE SUBPOENA AND FILING OF MOTIONS REGARDING THE SUBPOENA ARE NOT "MATTERS OCCURRING BEFORE THE GRAND JURY" SUBJECT TO THE RULES IMPOSING GRAND JURY SECRECY.

Ms. Manning and the pleadings filed on her behalf are not mandatorily subject to the secrecy requirements imposed by statute or the federal rules of criminal procedure. The secrecy of grand jury proceedings is based on the requirements in rule 6(e)(2) of the Federal Rules of Criminal Procedure and 18 U.S.C. §3322. Federal Rule 6(e)(2)(B) makes quite clear that specific classes of persons are prohibited from disclosing *matters occurring before* the grand jury: grand jurors, interpreters, court reporters, persons operating recording devices, persons transcribing recorded testimony, attorneys for the government, government personnel necessary for enforcement of federal law (Fed. R. Crim. P 6(e)(3)(A)(ii)), and government attorneys or personnel of Federal and State financial institution regulatory agencies. 18 U.S.C. §3322.

The list of persons prohibited by Federal Rule 6(e)(2)(B) from disclosing grand jury matters is preceded by rule 6(e)(2)(A), which says that "no obligation of secrecy may be imposed on any person *except* in accordance with rule 6(e)(2)(B)." (emphasis added). Rule 6(e) does not intend to impose an obligation of secrecy on witnesses subpoenaed to appear before a grand jury, a point made clear in the original Advisory Committee note on Rule 6(e):

The rule does not impose any obligation of secrecy on witnesses. The existing practice on this point varies among the districts. The seal of secrecy on witnesses seems an unnecessary

hardship and may lead to injustice if a witness is not permitted to make a disclosure to counsel or to an associate.

Rule 6 Advisory Committee Notes, 1944 Note to Subdivision (e). See also In re Grand Jury Proceedings, 17 F.Supp.3d 1033 (S.D. Cal., 2012).

A strict reading of rule 6(e) has led courts to conclude that because Rule 6(e)(2)(B) does not list “witnesses” as a category of persons who “must not” disclose grand jury matters, the plain language of Rule 6(e)(2) itself coupled with the Advisory Committee note clearly demonstrates that the rule does not mandatorily impose an obligation of secrecy on a grand jury witness. In re: Grand Jury Proceedings, 417 F.3d 18, at 26 (1st Cir. 2005). The existence of the subpoena to Ms. Manning and the motion to quash (as well as other pleadings authored by her counsel), are generated independently of the grand jury proceedings and enjoy a legal status akin to that of the ministerial documents requested by Ms. Manning in her motion to quash and should therefore not be subject to the secrecy provisions in Rule 6(e). United States v. McRae, 580 F.Supp 1560 (D. D.C. 1984)(holding that disclosure of independently generated documents are not cloaked with such secrecy unless they reveal something about content of the grand jury proceedings). The fact of a subpoena to a witness, the witness herself, and the witness’ motions and legal defenses regarding the subpoena are beyond the scope of Rule 6(e)’s secrecy requirements because they “do not disclose the essence of what took place in the grand jury room.” In re Grand Jury Investigation, 903 F.2d 180, 182 (3rd Cir. 1990)(citing Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978)). See also In re: Cudahy, 294 F.3d 947 (7th Cir. 2002) (declining to discipline federal judge for disclosure of independent counsel’s grand jury investigation of President Clinton because disclosure of empaneling was not “a matter occurring before the grand jury.”). This application of Rule 6(e) was upheld by the Fourth Circuit Court of Appeals in In re: Grand Jury Subpoena, United States v. John Doe A01-246 (T-112),(No. 07-1692 (4th Cir. Ct. App. 2008)), a matter involving journalist Joshua Gerstein’s request to unseal matters related to grand jury and civil

contempt proceedings involving Dr. Sami Al-Arian and his refusal to testify before a grand jury. The request to unseal made to the appellate court was based on the argument that the district court erroneously ordered all documents and proceedings related to the grand jury to be held under seal despite the fact that some of information sought about the proceedings had already been made public. In that case, the appellate court remanded the matter with an order to “unseal the records from Mr. Al-Arian’s civil contempt proceedings to the extent that they do not reveal any non-public grand jury information protected by Federal Rule of Criminal Procedure 6(e).” In re: Grand Jury Subpoena, United States v. John Doe A01-246 (T-112), No. 07-1692, Doc. 69.

Unsealing Ms. Manning’s Motion to Quash the grand jury subpoena will “not violate the freedom and integrity of the deliberative process of the grand jurors. Furthermore, American courts have long recognized a general right of access to court records.” 903 F.2d 180, 182 (3rd Cir. 1990). In light of the plain language of Rule 6(e), this Court should unseal the Motion to Quash the subpoena issued to Ms. Manning and permit further pleadings filed on her behalf to remain open and visible to the public so long as they do not disclose contain non-public information regarding matters occurring before the grand jury.

B. THE PUBLIC KNOWS OF THE GRAND JURY INVESTIGATION OF JULIAN ASSANGE & WIKILEAKS & THE COURT SHOULD AUTHORIZE UNSEALING OF THE PLEADINGS.

On August 24, 2018 the government filed a request to seal the criminal complaint in the matter of United States v. Seitu Sulayman Kokayi (E.D.V.A, Alexandria Div., 1:18-cr-00410, Docket No. 5). In that pleading the government indicated sealing of the Kokayi complaint was necessary “due to the sophistication of the defendant and the publicity surrounding the case, no other procedure is likely to keep confidential the fact that Assange has been charged.” National news media including CNN, the Washington Post, and the New York Times reported on the government’s disclosure of pending charges

against the Julian Assange and Wikileaks. See, e.g., Matt Zapposky and Devlin Barrett, *Julian Assange has been charged, prosecutors reveal inadvertently in court filing*, Washington Post, November 15, 2018, https://www.washingtonpost.com/world/national-security/julian-assange-has-been-charged-prosecutors-reveal-in-inadvertent-court-filing/2018/11/15/9902e6ba-98bd-48df-b447-3e2a4638f05a_story.html?utm_term=.e465179cdb96, last accessed on 04 March 2019.

Independently of the filing in Kokayi, the investigation and possible indictment of WikiLeaks the organization and/or Julian Assange have been the subject of discussion and commentary by countless publications and political figures worldwide for nearly a decade. The subject of Wikileaks, Mr. Assange, Ms. Manning, the legality and the ethics of releasing classified or private information, and the crimes forming the bases for Ms. Manning's court martial have become a part of the public consciousness and debate. "The purpose in Rule 6(e) is to preserve secrecy. Information widely known is not secret," (In re: North, 16 F.3d 1234 (D.C. Cir. 1994)), and the rule cannot function to keep rightfully and already public proceedings, records, and legal defenses secret.

The law is clear that sealing is not only unnecessary but improper when the information is a matter of public record and therefore no longer secret. See In re: Charlotte Observer, 921 F.2d 47, 50 (4th Cir. 1990)(vacating injunctions forbidding press from disclosing subject of grand jury investigation when subject's name had been inadvertently announced during public proceedings). See also In re: North, 16 F.3d 1234, 1245 (D.C. Cir. 1994)("There must come a time... when information is sufficiently widely known that it has lost its character as Rule 6(e) material."). Although "Rule 6(e) does not create a type of secrecy which is waived once public disclosure occurs," at some point it will become impossible to remove information from the media and force the matter to once again become a secret. See Barry v. United States, 740 F.Supp. 888, 891 (D.D.C.1990)(affirming lower court's finding of Rule 6(e) violation after publication in major newspapers and widespread knowledge of a grand jury investigation).

Ms. Manning underwent a very public court martial, and the purported subject of the investigation of this grand jury has already been a part of the public discourse for nearly a decade. To impose grand jury secrecy upon Ms. Manning's Motion to Quash the subpoena and subsequent filings would allow the grand jury to impermissibly function as a tool of oppression. United States v. Dionisio, 410 U.S. 1 (1973).

C. THE GOVERNMENT SHOULD SHOW WITH PARTICULARITY THAT A COMPELLING NECESSITY OUTWEIGHS THE POLICY AND INTENT OF THE RULES OF GRAND JURY SECRECY.

Secrecy is the defining feature of the grand jury, but the grand jury is not meant to be a private tool of the prosecutor. United States v. (Under Seal), 714 F.2d 347, at 349 (4th Cir. 1983). It is clear that the intent behind Rule 6 is to prevent public dissemination of what is occurring in front of the grand jury in order to protect witnesses and grand jurors, and to avoid giving notice to a subject who might flee the jurisdiction. The subject matter of this investigation has already been made public by the government itself, and imposing a secrecy order on Ms. Manning's Motion to Quash and further pleadings is unnecessary because once the government's target in this matter was "announced to the world, the information lost its secret characteristic, an aspect that could not be restored by the issuance" of a secrecy order under Rule 6(e). In re: Charlotte Observer, 921 F.2d 47, at 50 (4th Cir., 1990).

The intent underlying the federal rules and this Court's local rules regarding secrecy of grand juries and imminent criminal litigation is to ensure that dissemination of information does not "interfere with a fair trial or otherwise prejudice the due administration of justice." E.D.V.A. Local Crim. R. 57.1(A). This rule restricts lawyers participating in or associated with a grand jury investigation from "making any extrajudicial statement... that goes beyond the public record or that is not necessary to inform the public that the investigation is underway [and] to describe the general scope of the investigation." E.D.V.A. Local Crim. R. 57.1(B). The United States Attorney in this matter has honored

the obligation of secrecy imposed upon him by Rule 6(e) and has not disclosed to Ms. Manning or her counsel the focus of this grand jury. Ms. Manning's Motion to Quash the Subpoena issued to her is based wholly upon logic and information available in the public record. Like ministerial records, the substance of Ms. Manning's Motion to Quash and future pleadings will "not reveal the substance or essence of the grand jury proceedings," "pose no security threat to past, current, or prospective jurors," and "do not infringe upon the freedom and integrity of the deliberative process." United States v. Diaz, 236 F.R.D. 470, 477-478 (N.D. California 2006).

Should the government move the Court to place Ms. Manning's Motion to Quash and other pleadings on her behalf under seal, Ms. Manning requests that the Court order the government to show with particularity that there is a compelling necessity for secrecy of the motion to quash and other pleadings that may be subsequently filed on Ms. Manning's behalf regarding the subpoena seeking her testimony. In In re Grand Jury Subpoena Duces Tecum, the Eighth Circuit held that "upon a proper showing in an appropriate case, the district court may direct a grand jury witness to keep secret from targets of the investigation the existence of a subpoena, the nature of the documents subpoenaed, or testimony before the grand jury, for an appropriate period of time." 797 F.2d 676, 680 (8th Cir.1986). The Court then articulated a standard for an order imposing secrecy for persons and information not covered by Rule 6(e)(2)(B): the government must show that the order imposing secrecy is a "compelling necessity" demonstrated with "particularity." 797 F.2d at 681 (quoting United States v. Procter & Gamble Co., 356 U.S. 677, 682, 78 S.Ct. 983, 2 L.Ed.2d 1077 (1958)). The Eight Circuit phrased the Government's burden as follows: "[w]e observe that the policy of non-secrecy as to grand jury witnesses embodied in Rule 6(e)(2) should not be set aside except in situations where the need for secrecy outweighs the countervailing policy, and that this need must be shown with particularity." Id. at 680.


This Court's local rules regarding sealing and requests for filing under seal operate in harmony with Rule 6(e)(2), which is rooted in the presumption that no obligation of grand jury secrecy exists for any person other than those listed in Rule 6(e)(2)(B). Given the very public and ongoing nature of this investigation, the fact that Ms. Manning gave clear and lengthy testimony at a public trial following years of investigation and pretrial litigation, and the government's own disclosures, the government does not have a particularized and compelling necessity such as to require the Court to maintain all proceedings and pleadings in this case under seal.

CONCLUSION

For the foregoing reasons and others that may appear to this Court, Ms. Manning moves the Court to find that the fact that Ms. Manning has received a subpoena and the Motion to Quash the subpoena filed on Ms. Manning's behalf are not subject to the obligations of secrecy imposed by 6(e), and to order that Ms. Manning's motion to quash be unsealed, excepting the declaration of Ms. Manning attached as an exhibit thereto. Should the Court find that the Motion to Quash is subject to the rules of grand jury secrecy, the Court should authorize disclosure of Ms. Manning's Motion to Quash and further pleadings as made preliminarily to or in connection with a judicial proceeding as permitted by Fed. R. Crim. P. 6(e)(3)(E)(1). Ms. Manning further requests that the Court require the government to show with particularity that there is a compelling necessity for secrecy of the Motion to Quash, and the government be required to meet this standard prior to placing under seal any future pleadings regarding the subpoena issued to Ms. Manning.

Respectfully Submitted,
CHELSEA MANNING
By Counsel

Dated March 4, 2019



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CERTIFICATE OF SERVICE

I, Sandra C. Freeman, hereby certify that I served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below, by hand delivering the same at their last known address(es), to wit:

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Dated March 4, 2019.

/s/ Sandra C. Freeman
Sandra C. Freeman

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MAR 18 2019

IN RE:	)	<u>UNDER SEAL</u>
	)	(Pursuant to Local Criminal Rule 49 and
	)	Fed. R. Crim. P. 6(e))
GRAND JURY CASE NO. 10-GJ-3793))
	)	Case No. 1:19-DM-3
))
	)	GRAND JURY NO. 18-4
))

GOVERNMENT’S RESPONSE TO MOTION TO UNSEAL

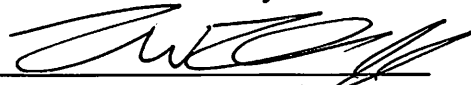
The United States respectfully submits this response to Chelsea Manning’s Motion to Unseal. In her motion, Manning requests that the Court unseal the pleadings related to her Motion to Quash filed on March 1, 2019. In light of the contempt proceedings that were conducted in open court, the United States does not oppose this request. As a result, the United States submits that the Court may unseal (1) the Motion to Quash (with the exception of the Declaration of Chelsea Manning, which Manning asks be kept under seal), (2) the Government’s Response in Opposition to the Motion to Quash, filed on March 4, 2019, (3) the transcript of the March 5, 2019 hearing on the Motion to Quash, (4) the Motion to Unseal, filed on March 4, 2019, and (5) this response.¹ The United States has attached a proposed order to this effect.

¹ Manning has not moved to unseal the transcript of the closed portion of the contempt proceedings. The Court should keep that transcript under seal because it reveals questions that were asked of Manning during the grand jury proceeding. Consistent with well-established caselaw, the Court properly closed the courtroom during that portion of the contempt proceeding and then opened the courtroom for the remainder of the proceeding. *See, e.g.*, Fed. R. Crim. P. 6(e)(5) advisory committee’s notes to 1983 amendments; *Levine v. United States*, 362 U.S. 610, 614-15 (1960); *United States v. Index Newspapers LLC*, 766 F.3d 1072, 1090-91 (9th Cir. 2014); *United States v. Smith*, 123 F.3d 140, 149 n.13 (3d Cir. 1997); *In re Grand Jury Subpoena*, 97 F.3d 1090, 1094-95 (8th Cir. 1996).

Because the United States does not oppose the relief sought in the Motion to Unseal, the Court need not conduct a hearing on it.

Respectfully submitted,

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United States Attorney

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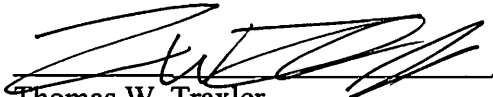
CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2019, I caused the foregoing document to be sent to the following via electronic mail:

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Thomas W. Traxler
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:	)	Case No. 1:19-DM-3
)	
GRAND JURY CASE NO. 10-GJ-3793	)	GRAND JURY NO. 18-4
)	

PROPOSED ORDER

This matter is before the Court on Chelsea Manning’s Motion to Unseal. The Government does not oppose the motion. The Motion to Unseal is GRANTED. The Clerk’s Office shall unseal the following filings: (1) the Motion to Quash filed by Chelsea Manning on March 1, 2019, (2) the Response in Opposition to the Motion to Quash filed by the Government on March 4, 2019, (3) the transcript of the March 5, 2019 hearing on the Motion to Quash, (4) the Motion to Unseal filed by Chelsea Manning on March 4, 2019, and (5) the Response to the Motion to Unseal filed by the Government on March 18, 2019. The Clerk’s Office shall not unseal the Declaration of Chelsea Manning that was submitted as an exhibit to her Motion to Quash. All other sealed filings and transcripts shall remain under seal until further notice from the Court.

IT IS SO ORDERED.

THE HONORABLE CLAUDE M. HILTON
UNITED STATES DISTRICT JUDGE

Date: _____
Alexandria, Virginia

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE: GRAND JURY SUBPOENA) Case 1:19-dm-00003
FOR CHELSEA MANNING)
) Alexandria, Virginia
) March 5, 2019
) 9:34 a.m.
) Pages 1 - 32

TRANSCRIPT OF UNDER SEAL HEARING
BEFORE THE HONORABLE CLAUDE M. HILTON
UNITED STATES DISTRICT COURT JUDGE

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

UNDER SEAL

1 APPEARANCES:

2 FOR THE UNITED STATES OF AMERICA:

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4 GORDON D. KROMBERG, ESQUIRE
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UNDER SEAL

1 THE CLERK: Case No. 19-3, *In Re Grand Jury*
2 *Subpoena Regarding Chelsea Manning.*

3 MR. TRAXLER: Good morning, Your Honor.
4 Tommy Traxler on behalf of the United States. With me
5 at counsel table is Gordon Kromberg, Tracy McCormick,
6 Kellen Dwyer, and Nicolas Hunter also on behalf of the
7 United States, Your Honor.

8 THE COURT: All right.

9 MR. LEIBIG: Good morning, Judge. Chris
10 Leibig for Ms. Manning. With me is Sandra Freeman and
11 Moira Meltzer-Cohen.

12 As an initial matter, Judge, I would ask that
13 you grant my motion to move Ms. Meltzer-Cohen *pro hac*
14 *vice* for this matter.

15 THE COURT: All right. The motion is
16 granted.

17 MR. LEIBIG: Thank you, sir.

18 MS. FREEMAN: Good morning, Your Honor.
19 Sandra Freeman on behalf of Ms. Manning.

20 As a preliminary matter, I would request the
21 Court first take up our motion to unseal the pleadings,
22 and I would join that with a motion to open the
23 courtroom to the public.

24 THE COURT: All right.

25 MS. FREEMAN: Yes, sir. I just wanted to

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1 make sure the Court received the pleadings filed
2 yesterday and the motion to unseal the pleadings.

3 THE COURT: I have.

4 MS. FREEMAN: Judge, the matter before the
5 Court today is not a matter occurring before the grand
6 jury as we are not in front of the grand jury. The
7 pleadings filed on Ms. Manning's behalf by counsel are
8 not subject to the secrecy provisions in Rule 6(e), and
9 Ms. Manning, as a witness, is not contemplated by the
10 secrecy rules of 6(e).

11 The pleadings that we filed before you,
12 specifically the motion to quash and the motion to
13 unseal, do not contain any information about what has
14 occurred before the grand jury. The United States
15 Attorneys have not disclosed any of the information
16 that they are prohibited from disclosing. The
17 information that we have put before the Court within
18 our pleadings and the information that we anticipate
19 arguing to you today are all matters that are already
20 within the sphere of public knowledge and that are not
21 protected by the secrecy provisions within the law.

22 The motion to quash in and of itself is not
23 something that is subject to the rules of grand jury
24 secrecy.

25 We would ask the Court to authorize

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1 disclosure of the pleadings filed as to Ms. Manning
2 with the exception, of course, of Ms. Manning's
3 declaration that is sealed and secret pursuant to the
4 personal identifying detail provisions in the rules
5 regarding redaction.

6 The rules around grand jury secrecy, first, I
7 think are explicit in that they say that no one other
8 than those listed in 6(e)(2)(B) shall be required to
9 adhere to the rules of secrecy. The persons are
10 identified, such as the attorneys for the government
11 and court personnel. Of course, those people are
12 subject to the provisions, and they are explicitly
13 identified.

14 It's clear from the rule, from the advisory
15 committee notes to the rule, and from case law from
16 various circuits interpreting the rule that the witness
17 herself, the pleadings that we have filed that do not
18 contain nonpublic information regarding the nonpublic
19 proceedings before the grand jury are not subject to
20 those secrecy provisions.

21 What we are asking today is that the Court
22 authorize unsealing of the motion to quash filed on
23 Ms. Manning's behalf, authorize unsealing of the motion
24 to unseal, and we would further ask the Court open the
25 courtroom to the public for arguments on these matters.

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1 Of course, the public has no right to be
2 present for the grand jury itself. The public and
3 press have no First Amendment right of access. We are
4 not requesting that the public or the press or even
5 counsel have any access to the actual proceedings
6 before the grand jury.

7 Our request here is for these proceedings
8 specifically before you regarding whether or not to
9 quash Ms. Manning's subpoena, regarding whether or not
10 to unseal the pleadings, that those matters the public
11 does have a particularized interest and a right of
12 access to be present. Ms. Manning has a right for the
13 public to be able to be present for specifically these
14 arguments that do not involve protected information and
15 material.

16 There are questions and tests set out. We
17 have to show a particularized need and that those
18 materials were present and opening of the courtroom
19 would be needed to avoid injustice at other
20 proceedings. This is another proceeding being
21 contemplated by the rule. We are not asking the Court
22 to open up the proceedings of the grand jury itself.
23 We are asking that these proceedings particularly be
24 opened. The request has been narrowly tailored as to
25 these pleadings.

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1 So based on all of that, we would ask that
2 the Court be opening the pleadings and the public
3 information, the information that has already been
4 disclosed and revealed by both the government and by
5 socialists throughout the past decade, to be accessible
6 by the public and the hearing as well.

7 THE COURT: All right.

8 MR. TRAXLER: Thank you, Your Honor.

9 As a preliminary matter, I want to observe
10 that the government has not received a copy of the
11 motion to unseal. So we don't have the benefit of
12 responding to the specific arguments that were in that
13 pleading. But instead, we just heard about it today
14 from Ms. Manning's counsel. We would oppose
15 Ms. Manning's request to open the courtroom and to
16 unseal the pleadings in this matter.

17 First, I want to take up opening the
18 courtroom. Rule 6(e)(5), Your Honor, states, and I
19 quote, that aside from criminal contempt proceedings,
20 the Court must close any hearing to the extent
21 necessary to prevent disclosure of a matter occurring
22 before a grand jury.

23 We would submit, Your Honor, that this entire
24 hearing concerns a matter occurring before a grand
25 jury, and that is a subpoena that the grand jury has

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1 issued for Ms. Manning to testify in connection with a
2 grand jury investigation. That investigation is
3 ongoing. It's hard to imagine, Your Honor, how we can
4 have an effective hearing this morning without
5 discussing or potentially discussing matters that are
6 occurring before a grand jury.

7 Moreover, the pleadings and the hearing
8 directly involve matters occurring before the grand
9 jury. Rule 6(e) would preclude the government from
10 confirming Ms. Manning's subpoena, a matter occurring
11 before a grand jury; Ms. Manning's immunity order,
12 another order that was issued in connection with a
13 matter occurring before a grand jury; and other items.

14 So practically speaking, Your Honor, we
15 wouldn't be able to have an effective hearing if the
16 government is constantly evaluating under Rule 6(e)
17 whether it can say certain things because the media is
18 present in the courtroom. So we would submit, Your
19 Honor, that Rule 6(e)(5) answers the question this
20 morning, and that is the hearing, because it addresses
21 a matter occurring before the grand jury, should be
22 closed.

23 With respect to sealing, Your Honor, I would
24 direct the Court's attention to the following
25 subsection of Rule 6(e), and that's Rule 6(e)(6). That

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1 specifically states that records, orders, and subpoenas
2 relating to grand jury proceedings must be kept under
3 seal to the extent and as long as necessary to prevent
4 the unauthorized disclosure of a matter occurring
5 before a grand jury.

6 Your Honor, at the outset, we would submit,
7 having not had the benefit of receiving the pleading
8 that Ms. Manning filed yesterday, that the Court should
9 defer ruling on unsealing at this time. There is no
10 reason to go to a rushed judgment today. There is too
11 much at stake, and whatever the Court's ruling is, it
12 would likely be appealed to the Fourth Circuit.

13 Instead, let the parties brief this issue in
14 due course, and that would give the parties an
15 opportunity to work through these issues. It would
16 also give the Court an opportunity to make a considered
17 judgment in light of full briefing and the parties'
18 views on the issue.

19 But if the Court is inclined to rule today,
20 we would oppose unsealing all of the pleadings and
21 papers that they request be unsealed.

22 Just to reiterate, the fact that Ms. Manning
23 has been subpoenaed to testify in an ongoing grand jury
24 proceeding is a matter occurring before the grand jury.
25 Again, the fact that she's been granted immunity is

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1 directly contemplated in the advisory notes of
2 Rule 6(e)(5) as being a matter that should be sealed,
3 as being paper that should be sealed, and is a matter
4 occurring before the grand jury. Therefore, the briefs
5 that talk about that immunity order and the subpoena,
6 those are related to an ongoing grand jury proceeding
7 and should be sealed.

8 Thank you, Your Honor.

9 THE COURT: All right. Well, I find that
10 Rule 6(e)(5) and Rule 6(e)(6) require that we go
11 forward with these matters at this point in time under
12 seal and also that the courtroom be closed for the
13 hearing.

14 The government hasn't had time to respond to
15 your brief. I will give time for you all to look
16 further at this issue as to what ought to be unsealed
17 or not unsealed.

18 As far as the hearing on the motion to quash
19 this grand jury subpoena, that's a matter before the
20 grand jury, and we'll go forward with the courtroom
21 closed.

22 MS. MELTZER-COHEN: Good morning, Your Honor.
23 So thank you for hearing us this morning, Your Honor.

24 We understand that this is a robust and
25 complicated motion, so I will try to simplify it. This

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1 is an omnibus motion. The motion to quash is an
2 omnibus motion that contains several smaller motions
3 within it, many of which contain arguments that
4 interact with each other or are somewhat overlapping.

5 Each of the quash motions in our omnibus
6 motion represents an independent legal basis that would
7 constitute just cause for objecting to the subpoena
8 generally. Each of these quash motions might also
9 constitute grounds to object to individual questions
10 that would be propounded before the grand jury.

11 So to the extent that the government has said
12 that some of these motions may be premature, they're
13 not entirely incorrect because it is true that we can't
14 litigate these issues today with respect to questions
15 that we have not yet heard. But these motions may be
16 appropriate both today and then, again, revisited after
17 Ms. Manning hears questions.

18 THE COURT: Aren't you conceding the
19 government's position in regard to what questions may
20 be asked? I don't know how I can rule on that. I have
21 no idea what questions are there. You don't have any
22 idea what questions are there. Clearly, we can't go
23 forward with today; can we?

24 MS. METZLER-COHEN: Judge, I'm sorry. Your
25 Honor, what I'm suggesting and I believe what the law

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1 says is we can object to the subpoena generally, and we
2 can also, you know, in a later hearing object on
3 similar or the same grounds to individual questions.

4 So what's not premature here are the
5 following issues: With regard to Ms. Manning's Fifth
6 Amendment privileges, it would appear that the
7 government has worked to moot this issue by not only
8 securing an immunity order from you but by securing a
9 parallel order from the military.

10 So, first, as we said in the motion, we do
11 have concerns about a perjury trap. Ms. Manning gave
12 extensive and truthful testimony at her court marshal.
13 If you look at the document that's appended to the
14 government's reply, you will, in fact, see the
15 painstaking detail with which Ms. Manning accounted for
16 each instance of her conduct. I mean down to file
17 names, Your Honor.

18 So if the government intends to question her
19 about any of the same matters, which the reply seems to
20 suggest they do, she's sort of faced with the choice of
21 reiterating her previous answers, which the government
22 appears not to accept, or being untruthful, which she
23 refuses to do.

24 Ms. Manning has not given and would not give
25 untruthful testimony. However, since her prior

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1 testimony made clear that she acted alone and since we
2 have been advised that she is herself not a target in
3 this investigation, it would appear that the government
4 may harbor an interest in undermining her previous
5 testimony since it doesn't inculcate anyone else who
6 might be a target.

7 THE COURT: Aren't you getting back where we
8 were just a minute ago? You're saying if or what.
9 There's no way of knowing this. This is just entire
10 speculation. I can't base a ruling on that.

11 MS. METZLER-COHEN: Okay. Judge, I think
12 I -- I think it's important for me to make the record
13 of the argument here. So if you'll --

14 THE COURT: Well, you have that in your
15 papers, but go ahead and make your argument quickly.
16 It seems to me we're right at the same ground we were
17 before.

18 MS. METZLER-COHEN: Okay. I will attempt to
19 be clear and quick.

20 THE COURT: Well, that is, we can't base a
21 decision on that.

22 MS. METZLER-COHEN: Okay.

23 THE COURT: I mean, you can conjure up
24 anything, or I could too. Who knows whether that's
25 going to happen or not?

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1 MS. METZLER-COHEN: Well, Judge, there are
2 questions as to the subpoena as a whole that I think
3 deserve to be heard and are ripe for review today. So,
4 you know, if in case the subpoena has been propounded
5 with an interest in either coercing perjury or
6 attempting to build a case against Ms. Manning for
7 perjury, you know, in order to undermine her as a
8 potential defense witness, since the immunity order
9 can't immunize that potential perjury, she retains an
10 interest in not testifying.

11 I do also want to clarify for the record that
12 the government correctly repeated my statement of the
13 law with respect to foreign prosecution. It is
14 absolutely the case that the Supreme Court ruled in
15 *Balsys*, which both of us cite, that the immunity order
16 and immunity orders coextensive with the Fifth
17 Amendment privilege and that that privilege extends
18 only to domestic and not foreign prosecution. I am not
19 suggesting that it does extend to foreign prosecution
20 but that because the immunity order does not extend to
21 foreign prosecution, it does create an unresolved
22 problem for Ms. Manning, which I think is worth
23 considering.

24 With respect to constitutional rights, it
25 appears to be the government's position that this

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1 challenge is premature. While we, of course, agree
2 that we can't make arguments today about grand jury
3 questions that we haven't yet heard, there are other
4 issues with respect to the subpoena generally, again,
5 that can be heard today.

6 As mentioned, Ms. Manning has disclosed to
7 the government everything she can about her involvement
8 in the 2010 disclosures for which she took full
9 responsibility. If the government wishes to question
10 her further about these issues, as I said before, we
11 have concerns about a perjury trap.

12 But maybe they have interest in asking her
13 about subjects beyond those disclosures, and that would
14 be very concerning because Ms. Manning has no
15 information material or relevant to any other violation
16 of federal law. So we can only conclude at that point
17 that the government wants to ask questions of
18 Ms. Manning that do not implicate any crimes. That
19 would be information to which the grand jury is not
20 entitled because it would be an obvious violation of
21 her First Amendment expressive and associational
22 rights.

23 As we discussed in our pleadings, there is a
24 long and well-documented history with grand juries
25 being used for improper purposes, specifically to

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1 disrupt communities of activists and journalists who
2 are engaged in lawful and constitutionally valuable
3 activities. Ms. Manning is not bringing this up in
4 order to assert the constitutional rights of
5 journalists or other third parties but to ensure that
6 the issue of the grand jury's purpose here and the
7 issue of this particular subpoena here is duly
8 considered.

9 The administration has been very publicly
10 hostile to the press. This administration has also
11 been very publicly hostile to Ms. Manning. The highest
12 ranking government officials have called her out by
13 name and called for her reincarceration and expressed
14 displeasure at her release. So tremendous executive
15 pressure has been brought to bear on issues that are
16 implicated by this grand jury with respect to the
17 press, and tremendous executive pressure has been
18 brought to bear more specifically on Ms. Manning, who
19 is the subject of this individual subpoena.

20 So we think it makes sense for Ms. Manning to
21 be worried about a possible improper motive for this
22 subpoena in general. We believe that that issue is
23 ripe today.

24 We have, of course, expressed our concerns
25 about the potential for a perjury trap and our concerns

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1 that this grand jury subpoena is being used to
2 undermine Ms. Manning potentially as a witness, put her
3 in jeopardy of contempt and reincarceration, or to go
4 on a fishing expedition to constitutionally protected
5 activity.

6 As the government noted, there is a
7 presumption of regularity that attaches to grand jury
8 proceedings. There is -- either must be a real
9 compelling need for judicial intervention into grand
10 jury proceedings, but we think that's present here.
11 Because once evidence of abuse has been introduced, it
12 is the prosecution that must demonstrate that
13 regularity.

14 Ms. Manning, of course, is not in a position
15 to introduce highly specific concrete evidence of
16 abuse. But given the kind of attention that she has
17 been subject to, it is absolutely reasonable for her to
18 balk at being compelled to cooperate with a government
19 that has been actively and publicly hostile to her. We
20 believe that the prosecution should be called upon to
21 establish the regularity, not simply this grand jury
22 proceeding but specifically of this subpoena.

23 The electronic surveillance motion we believe
24 is also ripe for review but might also be appropriately
25 revisited after questioning before the grand jury.

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1 Unlawful electronic surveillance, if used to propound a
2 subpoena or any question before a grand jury, would
3 constitute just cause excusing testimony. The subject
4 of covert surveillance is rarely well positioned to
5 prevent overwhelming evidence of that surveillance, and
6 Ms. Manning is no exception.

7 That is why the law is well settled that
8 making even an allegation or at most, I think, in this
9 circuit a colorable claim of electronic surveillance is
10 sufficient to trigger the government's obligation to
11 either affirm or deny that electronic surveillance took
12 place. This is not a particularly onerous task for
13 them, and we think it's worth noting that the
14 government did not make such a denial in their reply.

15 The government's argument here on the law is
16 a little misplaced. Ms. Manning certainly has standing
17 to object to any electronic surveillance that would
18 have led to -- any unlawful electronic surveillance of
19 her that would have led to this subpoena or to
20 questions that may occur before it.

21 The case that is cited by both Ms. Manning
22 and the government, *U.S. v. Apple*, makes clear that a
23 cognizable claim -- and this is a quote from the
24 case -- need be no more than a mere assertion but must
25 have a colorable basis.

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1 While this circuit may overwhelmingly find
2 that government denials of electronic surveillance are
3 sufficient to defeat this kind of claim, making a
4 colorable claim suffices to trigger the government's
5 obligation. So the government would be expected to
6 make the requisite canvas of agencies and state their
7 unambiguous denials for the record.

8 So, Your Honor, all we're asking for here is
9 a very simple answer. You know, to start with, if --
10 you know, if you ask the government now, "Are you aware
11 of any electronic surveillance," and if he says, "Yes,
12 we're done," you know, we know and we can go from
13 there. If he says no, then all the government has to
14 do is make the relevant inquiries of the federal
15 agencies, and either they say yes, this kind of
16 surveillance happened, or no, it didn't.

17 Your Honor, we also included a motion to
18 instruct the grand jury to which the government
19 objects. It is our position -- and I think it is
20 noncontroversial -- that the grand jurors are entitled
21 to fully understand not only the full scope of their
22 rights and power, but also the rights afforded to a
23 witness called to testify before them. There is
24 nothing in our set of proposed grand jury instructions
25 that is legally questionable. Each proposed

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1 instruction is a simple statement of fact regarding the
2 powers of the grand jury or the rights of the witness.
3 In that the government painted such a plainly
4 educational document as in some way controversial is
5 perplexing and does not necessarily bode well for the
6 grand jury's independence.

7 Your Honor, there is also a motion for
8 disclosure of prior statements that I do want to
9 clarify in light of the government's response to us.
10 The government has objected to our request for
11 disclosure of prior statements based on the admittedly
12 stringent rules around disclosing grand jury testimony.
13 They are correct also that there is no prior grand jury
14 testimony to disclose. I want to clarify that with
15 respect to the law on which this request is based, I am
16 arguing here by analogy. Presumably, nongrand jury
17 testimony or other statements that are not bound by
18 Rule 6 would be significantly less tightly controlled
19 than grand jury testimony.

20 In preliminary discussions with the
21 government, counsel was given to understand that the
22 government believes Ms. Manning may have made prior
23 statements that were either incorrect or in some way at
24 variance with her prior statements or testimony.
25 Ms. Manning, of course, has raised concerns that this

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1 grand jury may be working toward eliciting
2 contradictory statements or worse, and her perceptions
3 have not been helped by the public resentment that has
4 been expressed by other actors in the government. So
5 one way in which the government might make a show of
6 good faith here would be to disclose whatever prior
7 statements they seem to be relying on to justify the
8 subpoena.

9 It is in no way a violation of grand jury
10 secrecy to reveal to a witness statements that they
11 themselves are said to have made. Doing so could have
12 many collateral benefits, including clarifying
13 authorship and attribution and refreshing the witness'
14 recollection. There is certainly no law that forbids
15 such disclosure, and there does appear to be law both
16 encouraging and compelling it.

17 The final component of our omnibus motion
18 concerns our motion to disclose ministerial documents,
19 and Ms. Freeman will speak to that now. I thank you,
20 Your Honor.

21 MS. FREEMAN: Thank you, Your Honor. Just
22 briefly, I would reincorporate everything that I said
23 regarding our motion to unseal in that I think that the
24 law that applies in terms of determining what is a
25 matter that occurs before the grand jury also applies

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1 to this when you're looking at the analysis under
2 Rule 6(e). Cases are clear not only from the Ninth
3 Circuit but from circuits across the country that
4 documents reflecting the commencement and termination,
5 reflecting that the grand jury has been -- a term has
6 been extended, records of impanelment to include
7 manuals, procedures, and the impanelment instructions,
8 that none of those issues have been held to be matters
9 occurring before the grand jury. It would not affect
10 deliberations of a grand jury for us to know them. It
11 would not potentially undermine the integrity of the
12 investigation or any witness' testimony to the grand
13 jury itself.

14 THE COURT: You have available the
15 impanelment of this grand jury.

16 MS. FREEMAN: No, sir, we do not.

17 THE COURT: It was impaneled in the
18 courtroom; wasn't it?

19 MS. FREEMAN: Judge, we do not have any of
20 the documents reflecting the --

21 THE COURT: Every grand jury I've impaneled
22 is done here in the open courtroom.

23 MS. FREEMAN: Understood, Judge. It is
24 something that we would request access to. It appears
25 that the --

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1 THE COURT: I don't have it. I don't know if
2 the clerk has it somewhere. There is some record of it
3 around here; isn't it? We don't impanel the grand jury
4 in secret.

5 MS. FREEMAN: Judge, I think the issue is
6 that the -- what different courts and what different
7 clerks -- I think that it is understandable the clerks
8 would be acting in abundance of caution in refusing to
9 disclose some of those documents. It's our position
10 that things, such as an impanelment --

11 THE COURT: While they're here, that's a
12 matter of information they may not give out, as to who
13 in particular is sitting on a grand jury.

14 MS. FREEMAN: Yes. We would not be
15 requesting identifying information of who those grand
16 jurors are. These would just be documents basically
17 affecting the form and function, the mode, if you will,
18 of operation of this particular grand jury, not
19 regarding persons specifically on the grand jury, not
20 regarding witnesses who have testified before it, but
21 simply the -- what we would call the ministerial
22 documents.

23 THE COURT: That's impaneling the grand jury
24 and the termination of the grand jury when it's over.

25 MS. FREEMAN: Yes, sir. So that would be the

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1 request. It's not for any of the private information.

2 THE COURT: All right. I understand.

3 MS. FREEMAN: Thank you, Judge.

4 All right. Mr. Traxler.

5 MR. TRAXLER: Thank you, Your Honor.

6 Your Honor, I'd like to pick up where the
7 Court began, and that is that Ms. Manning's arguments
8 today are premature. As Your Honor noted, there has
9 been no questioning yet. Ms. Manning has not appeared
10 before the grand jury. So she can only speculate that
11 the questions that might be asked would infringe upon
12 the rights that she cites in her papers. As we
13 explained in our submission, such premature arguments
14 should be rejected. They should be normally answered
15 on a question-by-question basis.

16 That said, Your Honor, we did argue
17 alternatively that this motion could be denied on its
18 merits. We would, in fact, urge the Court, if it's so
19 inclined, to deny the motion on its merits now. We
20 submit that the advantage of doing that would be it
21 would hopefully reduce the number of times or eliminate
22 the parties coming up here during the actual grand jury
23 questioning to have the Court rule on various issues
24 that have already been teed up in the papers.

25 So with that, I would like to address the

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1 merit arguments that Ms. Manning makes in her papers.
2 First would be her Fifth Amendment claim. As the
3 government argued in its papers, under *Kastigar*
4 (phonetic), there are no Fifth Amendment concerns here.
5 Ms. Manning has received full use and derivative use
6 immunity for her testimony by both this Court and the
7 Department of the Army. Under *Kastigar*, that
8 eliminates any Fifth Amendment concerns.

9 The next argument Ms. Manning makes is a
10 First Amendment claim, and the government submits, as
11 we argued in our papers, that she has not asserted any
12 legitimate First Amendment interest that could be
13 infringed upon.

14 We submit, Your Honor, that the Supreme
15 Court's decision in *Branzburg v. Hayes* forecloses
16 Ms. Manning's arguments. There the Supreme Court held
17 that reporters had to testify in front of the grand
18 jury even if it required them to disclose their
19 sources. The reporters argued that they should have a
20 First Amendment privilege to not have to go before the
21 grand jury because disclosing those sources would have
22 an inhibiting effect for reporters to recruit sources
23 and it would diminish the flow of news. The Supreme
24 Court rejected that argument. It held it was
25 speculative. We submit, Your Honor, that Ms. Manning

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1 has an even weaker claim than the reporters had in
2 *Branzburg*.

3 Even assuming the questioning in the grand
4 jury were to touch on the disclosures from 2009 and
5 2010, Ms. Manning had no First Amendment rights with
6 respect to those disclosures. As the government noted
7 in its papers, Ms. Manning was a government insider who
8 signed a nondisclosure agreement, and under
9 well-established precedent, that means that she had no
10 First Amendment rights.

11 Ms. Manning talks about the concerns that the
12 questioning would have for journalists. I'll say at
13 the outset: Certainly, Ms. Manning seems to be
14 speculating that at some future date the grand jury may
15 return an indictment that she speculates might violate
16 the First Amendment. That's not a legitimate basis,
17 Your Honor, for a fact witness to refuse to testify in
18 front of the grand jury. If it was, the whole grand
19 jury process would break down if every fact witness who
20 came in front of the grand jury could speculate that
21 the crimes being investigated might violate someone
22 else's constitutional rights. She has no standing to
23 make that argument.

24 Next, Your Honor, Ms. Manning argues that the
25 grand jury subpoena was improperly motivated, and we

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1 emphasize to the Court that Ms. Manning's speculations
2 are exactly that. They are mere speculations. As the
3 cases that we cited in our papers show, speculation and
4 conjecture is not enough to rebut the long-standing
5 presumption that the grand jury acts reasonably and
6 properly when it issues a subpoena.

7 Your Honor, I want to address in particular
8 one thing that we heard throughout counsel's argument,
9 and that is the speculation that the government issued
10 a grand jury subpoena just so it could catch
11 Ms. Manning in a so-called perjury trap. Again, we
12 emphasize to the Court that's just speculation as to
13 what the government's motives are. There's no basis
14 for that.

15 We also submit, Your Honor, that that
16 argument is premature. Any concerns about an alleged
17 perjury trap are properly raised if there was some
18 charge for perjury at a future date. It's not a
19 justification for a fact witness to refuse to go in
20 front of the grand jury.

21 Finally, Your Honor, we submit that
22 Ms. Manning has not provided the Court with a colorable
23 basis for believing that the government has -- I'm
24 sorry -- that she might have been subjected to unlawful
25 electronic surveillance. As the Court noted in its

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1 papers, there's certain threshold requirements that
2 Ms. Manning has to meet to even trigger the
3 government's obligation to affirm or deny or generally
4 respond to her allegations. She has to come forward
5 with something more than mere suspicion that she might
6 have been subjected to unlawful electronic
7 surveillance.

8 If you read her papers, she clearly has not
9 done that. You can tell by the way she couches her
10 argument throughout her papers, that she has reason to
11 believe, that she believes she might have been subject
12 to unlawful electronic surveillance. The truth is she
13 has no idea, and she is using this statute improperly
14 as an attempt to get discovery from the government.
15 Therefore, the government submits that Ms. Manning is
16 not entitled to even that threshold affirmance or
17 denial from the government about whether there is any
18 such surveillance in this case.

19 There is one last topic I want to touch on,
20 and that's the ministerial documents issue that counsel
21 raised just a moment ago. I would emphasize that, as
22 Judge Ellis noted in the decision we cited in our
23 papers, the Fourth Circuit has not adopted the approach
24 of the cases that Ms. Manning cites. We submit that
25 Ms. Manning, if there is anything done in open court,

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1 should figure out on her own what's available. If it's
2 not available because it was not done in open court, we
3 submit she should not receive those materials.

4 There is no right of access to the grand jury
5 proceedings. Ms. Manning has provided no justification
6 or no need or has not provided any justification or
7 explained why she needs those documents. In light of
8 that, we submit to the Court that the general rule of
9 secrecy should apply here and she should not receive
10 any documents relating to the grand jury proceedings
11 that have not otherwise already been done in open
12 court.

13 So with that, Your Honor, we would rest on
14 our papers for the rest of the arguments. We submit
15 that the Court should deny the motion to quash. It's a
16 bedrock principal, a long-standing principal in our
17 jurisprudence that the grand jury is entitled to every
18 person's evidence. We submit that Ms. Manning is no
19 different. She has been lawfully subpoenaed to testify
20 in the grand jury. The Court has ordered her to
21 testify already fully and truthfully in front of the
22 grand jury. She's been fully immunized with use and
23 derivative use testimony -- I'm sorry -- immunity in
24 connection with her testimony. Like every other
25 citizen in this nation, Ms. Manning should be required

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1 to appear before the grand jury pursuant to the
2 subpoena and to testify fully and truthfully. We
3 submit that there is no reason to treat Ms. Manning
4 differently than we would any other civilian in
5 responding to a grand jury subpoena.

6 Thank you, Your Honor.

7 THE COURT: All right. Well, as I've
8 listened to the arguments here, it's almost like
9 listening to lawyers discussing a case that they're
10 looking into and finding out what issues are involved.
11 This whole thing is just really speculation about what
12 may or may not happen. Most of this is really
13 premature except your issue of the Fifth Amendment. I
14 find that you have no rights in that regard because of
15 the immunity order that I've entered, and you have one
16 from the military. I also find that there's no First
17 Amendment implication here that's been represented to
18 me or that I can even get my hands around to rule on.
19 There just isn't anything.

20 There's no evidence presented of any improper
21 motive. You've raised questions about what might or
22 might not be the motive. I don't have anything in
23 front of me that would require me to rule on it.

24 Also, your motion to instruct the grand jury,
25 I see no need to instruct the grand jury.

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1 Your motion for disclosure of prior
2 statements, that's going to be denied as well.
3 Disclosing the ministerial documents here, I don't see
4 any relevancy that's been presented to me that would
5 require that at all.

6 So with that said, your motion to quash the
7 subpoena will be denied.

8 Now, I don't know if you want to set a time
9 frame on this unsealing or whatever it is, time to
10 respond to it. I mean, I'll deal with that.

11 MR. TRAXLER: Your Honor, the government
12 would request two weeks to prepare a response. Like I
13 mentioned, we still need to receive the papers from
14 Ms. Manning and then time to formulate a response.

15 THE COURT: All right. Why don't you all get
16 together on that. Two weeks sounds reasonable. Just
17 notice it to a Friday, and I'll deal with it when you
18 get ready to argue it again.

19 MR. TRAXLER: We will. Thank you, Your
20 Honor.

21 MR. KROMBERG: If I may, Your Honor. Our
22 time before the grand jury is tomorrow at 9:30. We ask
23 the Court -- we just let the Court know that so in case
24 these issues recur tomorrow or new issues come up
25 tomorrow, that's when we're expecting to be before the

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1 grand jury.

2 THE COURT: Well, I hope that I have dealt
3 with enough of them that we won't have any problems
4 like that. If not, I'll be around.

5 MR. KROMBERG: Thank you, Your Honor.

6 THE COURT: All right. We'll adjourn until
7 tomorrow morning at 9:30.

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Time: 10:15 a.m.

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I certify that the foregoing is a true and
accurate transcription of my stenographic notes.

Rhonda F. Montgomery, CCR, RPR

UNDER SEAL

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:)	
	)	Case No. 1:19-DM-3
)	
GRAND JURY CASE NO. 10-GJ-3793	)	GRAND JURY NO. 18-4
)	

PROPOSED ORDER

This matter is before the Court on Chelsea Manning’s Motion to Unseal. The Government does not oppose the motion. The Motion to Unseal is GRANTED. The Clerk’s Office shall unseal the following filings: (1) the Motion to Quash filed by Chelsea Manning on March 1, 2019, (2) the Response in Opposition to the Motion to Quash filed by the Government on March 4, 2019, (3) the transcript of the March 5, 2019 hearing on the Motion to Quash, (4) the Motion to Unseal filed by Chelsea Manning on March 4, 2019, and (5) the Response to the Motion to Unseal filed by the Government on March 18, 2019. The Clerk’s Office shall not unseal the Declaration of Chelsea Manning that was submitted as an exhibit to her Motion to Quash. All other sealed filings and transcripts shall remain under seal until further notice from the Court.

IT IS SO ORDERED.



 THE HONORABLE CLAUDE M. HILTON
 UNITED STATES DISTRICT JUDGE

Date: Mar. 20, 2019
Alexandria, Virginia