UNITED STATES OF AMERICA	)	
	)	**DEFENSE RESPONSE TO**
v.	)	**GOVERNMENT SUPPLEMENT**
	)	**ADDENDUM TO MOTION TO**
Manning, Bradley E.	)	**TAKE JUDICIAL NOTICE**
PFC, U.S. Army,	)	**DATED 11 JANUARY 2013**
HHC, U.S. Army Garrison,	)	
Joint Base Myer-Henderson Hall	)	**15 January 2013**
Fort Myer, Virginia 22211	)	

RELIEF SOUGHT

The Defense requests this Court deny, in part, the Government's request for judicial notice.

ARGUMENT

The Defense will address each of the Government's requests in turn.

a. Julian Assange was located in Iceland in February 2010 and working on the Icelandic Modern Media Initiative.

The Government has failed to establish the relevance of this evidence and the Defense maintains its relevance objection. Whether or not Julian Assange, specifically, was the recipient of chats from PFC Manning does not make any fact of consequence more or less likely. The Government's case is not strengthened with respect to *any* element of *any* specification by this evidence. Quite simply, PFC Manning's guilt does not turn on whether or not he was chatting with Julian Assange.

b. LTC Lee Packnett was quoted in a New York Times article, dated 18 March 2010.

The Defense maintains its relevance objection. As noted above, the Defense does not believe the fact that PFC Manning allegedly had an internet chat with Mr. Assange has any bearing on any element of any offense. Likewise, the fact that LTC Packnett was quoted in an article published by the New York Times does not make any element of any offense more or less likely. The Government has failed to articulate which element for which this information is relevant and, as such, their motion for judicial notice should be denied.

Additionally, the Government has failed to articulate a hearsay exception for the requested evidence. On 18 October 2012 this Court ruled that a statements appearing in a newspaper are admissible "only if the newspaper article within which the statements appear qualify for a hearsay exception." *See* Appellate Exhibit 356 at 11. Here, the Government requests judicial notice of hearsay; the date of a New York Times article. Absent an articulation of a hearsay example for the newspaper article, the Government's request for judicial notice should be denied.

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c. A New Yorker profile of Julian Assange, titled "No Secrets: Julian Assange's Mission for Total Transparency" was dated 7 June 2010.

The Defense maintains its relevance objection. The existence of a New Yorker article about Mr. Assange makes no fact of consequence more or less likely. Whether or not the accused knew about this article does not strengthen the Government's case as it relates to any element. Again, the Government has failed to point out for which element this evidence would be relevant. As such, it is appropriate to deny the Government's request.

Moreover, both the title and date of the New Yorker profile on Mr. Assange call for hearsay. On 18 October 2012 this Court ruled that a statements appearing in a newspaper are admissible "only if the newspaper article within which the statements appear qualify for a hearsay exception." *See* Appellate Exhibit 356 at 11. The Government has offered no exception for the proffered hearsay, and, as such, their request for judicial notice should be denied.

d. WikiLeaks began releasing the alleged Department of State diplomatic cables over the weekend of 27-28 November 2010.

The Defense does not object to the Court taking judicial notice of this fact.

e. Al-Qaeda (AQ), al-Qaeda in the Islamic Maghreb, al-Qaeda in Iraq, and al-Qaeda in the Arabian Peninsula are all listed as foreign terrorist organizations by the Department of State. Additionally, they are, in fact, enemies of the United States.

The Defense does not object to the Court taking judicial notice that the State Department designated Al-Qaeda, al-Qaeda in the Islamic Maghred and al-Qaeda in Iraq as terrorist organizations.

The Defense does object to the Court taking judicial notice of the State Department's designation of al-Qaeda in the Arabian Peninsula as an enemy. The Government has alleged that PFC Manning gave intelligence to the enemy beginning in November 2009. This designation did not take place until 19 January 2010, which is after the alleged misconduct in this case began. As such, it is not possible for the accused to have been on notice that al-Qaeda in the Arabian Peninsula was an enemy at the time of the alleged misconduct. Thus, the requested evidence is not relevant and should not be judicially noticed.

f. Usama bin Laden (UBL) is a member of al-Qaeda and an enemy of the United States.

The Defense does not object to this Court taking judicial notice that Usama bin Laden *was* a member of al-Qaeda and an enemy of the United States. To the best of the Defense's knowledge Usama bin Laden was killed in May 2011.

g. Adam Gadahn is a member of al-Qaeda and an enemy of the United States.

The Defense does not object to the Court taking judicial notice of these facts.

h. "Inspire" is a magazine. It advocates violent jihad and promotes the ideology of al-Qaeda in the Arabian Peninsula.

The Defense maintains its relevance objection. Whether or not Inspire magazine encouraged readers to gather documents from WikiLeaks does not make any element of any specification more or less likely. The Government is not required, even tangentially, to prove such and the Government has failed to identify the element for which such evidence would be relevant. Because this evidence does not make any fact at issue more or less likely the evidence is not relevant and should not be judicially noticed.

Additionally, the Government's request calls for the Court to draw an inference. On 30 August 2012 this Court held "[j]udicial notice is not appropriate for inferences a party hopes the fact finder will draw from the fact(s) judicially noticed." *See* Appellate Exhibit 288 at 4. Here, the Government has requested this Court look at a magazine and news reports about that magazine and then draw an inference from the contents. The Government's request puts the Court in a position to judicially notice an opinion, rather than a fact.

CONCLUSION

As indicated above, the Defense respectfully requests the Court deny, in part, the Government's requests for judicial notice.

JOSHUA J. TOOMAN
CPT, JA
Defense Counsel

I certify that I served or caused to be served a true copy of the above on MAJ Ashden Fein, via electronic mail, on 15 January 2013.

JOSHUA J. TOOMAN
CPT, JA
Defense Counsel