Unmarked redactions were present when Army received this document. Redactions are in accordance with (b)(1)(B).

[redacted]

UNITED STATES OF AMERICA	)	
	)	**Prosecution Responses**
v.	)	**to Defense Interrogatories**
	)	**For**
Manning, Bradley E.	)	**Speedy Trial**
PFC, U.S. Army,	)	
HHC, U.S. Army Garrison,	)	
Joint Base Myer-Henderson Hall	)	**19 November 2012**
Fort Myer, Virginia 22211	)	

(U) On behalf of each member of the prosecution team, including those assigned to the prosecution prior to this case being transferred to the United States Army Military District of Washington, I, Ashden Fein, hereby declare and state, the below ANSWERS to the defense interrogatories:

Original Classification Authorities: Charged Documents

1. Did you believe a classification review of charged documents was mandatory to have prior to an Article 32 hearing? If yes, why?

ANSWER: (U) The prosecution is not aware of any legal requirement that a classification review of the charged documents be completed before the Article 32 investigation. However, because the classification of the charged documents is an element of the majority of specifications and all parties needed to understand how to properly handle the information, the prosecution found it necessary to put forth evidence confirming the classification of the documents both at the time of the offense and at present time. Thus, the prosecution requested this information from the competent authorities. Additionally, after recommendations from the Department of Justice and Code 30, OTJAG, US Navy, including the Code 30 Primer on Prosecuting, Defending, and Adjudicating Cases Involving Classified Information, the prosecution understood the importance of confirming the classification of information prior to starting an Article 32.

2. On 21 April 2011, you "researched conducting Article 32 investigation without classification reviews." On April 28 2011, you "Finalized research on classification reviews for Article 32". Why did your research make you conclude that the classification review was necessary?

ANSWER: (U) Only a competent authority could confirm the classification of the charged documents, both at the time of the offense and at present, so that proper storage and handling could occur. Thus, the classification review process was necessary based on the charges facing the accused. Additionally, based on the advice described above, the prosecution concluded a classification review was necessary.

[redacted]

[redacted]

APPELLATE EXHIBIT 406
PAGE REFERENCED: ____
PAGE ____ OF ____ PAGES

3. How did you use each OCA classification review at the Article 32 hearing? Please be specific.

ANSWER: (U) The prosecution used each OCA classification review of charged documents to prove the element of the particular specifications that the charged documents were classified at the time of the offense. Additionally, the OCA classification reviews provided all parties, including the Article 32 investigating officer and his security officer, the requisite information to properly store and handle the information in accordance with AR 380-5.

4. Were there other ways that you could have accomplished the same thing without the classification review?

ANSWER: (U) Only a competent authority could confirm the classification of the charged documents, both at the time of the offense and at present. The classification review process is the process by which the competent authority confirms the classification of information. Whether the prosecution sought a written declaration or the testimony of the competent authority, the classification review process was still necessary and would not have been shortened.

5. When did you first communicate with each of the OCAs about conducting a classification review in this case? Please list each OCA and date separately.

6. When did you first request that each OCA complete a classification review? Please list each OCA and date separately.

7. How did you communicate with the OCA when you first requested that the OCA complete a classification review? If a written communication, please provide the documentation.

ANSWER: (U) All communications with each organization occurred through email, telephone conversations, and in-person meetings. Once initial contact was established, the majority of meetings occurred in-person based on the classified nature of the information. For the organizations within DoD, the prosecution requested assistance from OTJAG to funnel requests to CENTCOM, JTF-GTMO, and INSCOM. The prosecution formally requested, in writing, that the OCAs complete a classification. Any follow-up requests, were conducted in-person, using the telephone, and by email, and either directly with the organization's representative or through OTJAG. All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

8. What, if anything, did you communicate about the timing of the classification review? If a written communication, please provide the documentation.

ANSWER: (U) The prosecution explained to each organization the importance both of a thorough and accurate classification review and of receiving a response as soon as possible because of speedy trial. The formal requests gave a suspense for approximately two weeks and explained that the information was needed for an Article 32 investigation. All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

9. What is your understanding of when each OCA began the classification review process? Please list each OCA and date separately.

ANSWER: (U) It is the prosecution's understanding that each organization began their classification review process after approving the use of their organization's compromised documents prior to the prosecution's documented request in March 2011. The request in March 2011, was intended to create a record of the ongoing requests.

10. How many documents did you ask each OCA to review?

[redacted]

[redacted]

11. On 18 March 2011, you sent memoranda to each of the OCAs and requested that they "finalize" their reviews. Does this mean that the OCAs had already been asked to complete the reviews and should have been in the process of "finalizing" the reviews? Please explain this statement.

ANSWER: (U) Before 18 March 2011, the prosecution had informally requested that each organization conduct a classification review of charged documents along with other pieces of critical evidence that was identified at the time.

12. If 18 March 2011 was the first time you requested the OCAs to complete a classification review, why did you use the word "finalize" in each of the memoranda?

ANSWER: (U) Not applicable.

13. What is your understanding of what each of the OCAs had done in the ten months prior to you submitting the 18 March 2011 memorandum?

ANSWER: (U) Although the Iraq prosecution originally identified some potentially classified information to serve as a basis of the original charges, the United States, including law enforcement, victim organizations, and the command, did not understand or know the extent of the accused's criminal misconduct until early Winter of 2010. Many organizations started the process of conducting classification reviews of the originally identified information in the summer of 2010, but the majority of the classification reviews did not start until late Fall of 2010. During this time, the prosecution understood the organizations were conducting normal operations, while attempting to mitigate the ongoing effects of the WikiLeaks rolling releases of classified information later determined to be compromised by the accused.

14. If 18 March 2011 was the first time you requested the OCAs to complete a classification review, why did you wait almost a year before submitting the request?

ANSWER: (U) Not applicable.

15. Your chronology shows that you had draft memoranda for the OCAs in August 2010. Why did you wait until 7 months later to submit these requests?

ANSWER: (U) The Iraq and MDW prosecution worked together to initially draft a classification review request for the Department of State on 20 August 2010. The prosecution did not submit this request because at the time there were no public releases

[redacted]

of the purported Department of State information, and law enforcement was still finalizing their computer forensic review of the accused's many different information systems to determine which purported Department of State information was still identifiable on the accused's media.

16. If 18 March 2011 was the first time you requested the OCAs to complete a classification review, why was the Convening Authority already excluding time based on "OCA review of classified evidence"?

ANSWER: (U) Not applicable.

17. For the 18 March 2011 memoranda, you included a suspense of 31 March 2011 for each OCA?

ANSWER: (U) That is correct.

18. How did you select the 31 March 2011 suspense date?

ANSWER: (U) The prosecution selected the 31 March 2011 suspense date in light of the accused's right to a speedy trial. After many months of in-person and telephonic meetings with the organizations, the prosecution determined that a short suspense would assist the organization representatives in completing the prosecution's request. The prosecution was also aware that, although we set suspenses, the suspenses were actually requests for completion dates because the prosecution or its command did not have tasking authority over any organization.

19. Why was the suspense date so short?

ANSWER: (U) After many months of in-person and telephonic meetings with the organizations, the prosecution determined that a short suspense would assist the organization representatives in completing the prosecution's request.

20. Did they meet this suspense date?

ANSWER: (U) No.

21. If not (and it appears not), did you follow-up and ask why they did not meet the suspense date? What was the answer you were given. Please provide documentation.

22. In the OCA requests, you specifically reference the accused's right to a speedy trial and indicate that if the OCA does not complete his task in a timely manner, this could severely hinder the prosecution. What did you mean by this?

ANSWER: (U) The prosecution referenced the accused's right to a speedy trial to convey the urgency of the request. The prosecution requested that the OCAs complete the task in a timely manner because of the accused's right to a speedy trial and the potential of litigating this issue during speedy trial litigation. The prosecution felt it was important for all organizations involved in this court-martial to understand the unique speedy trial laws within the Armed Forces, especially considering many organizations did not belong to DoD.

23. In a 6 October 2011 memorandum to Central Command, you ask that they review some additional documents and state that that "any delay by your command to comply with this firm deadline [31 October 2011] may severely jeopardize the prosecution." What did you mean by this?

ANSWER: (U) The prosecution requested that CENTCOM complete the task in a timely manner because of the accused's right to a speedy trial and the potential of litigating this issue during speedy trial litigation.

24. Did Central Command meet this suspense date for the additional documents?

ANSWER: (U) Yes.

25. You sent several further requests to the OCAs asking them to complete a classification review. Please provide all the dates that you sent further requests.

ANSWER: (U) 28 July 2011, 4 August 2011, 7 September 2011, 6 October 2011, 13 October 2011, and 18 October 2011.

26. Other than the date at the top of the memo and the suspense date, were these requests any different from the original 18 March request? If so, how?

ANSWER: (U) Yes. The subsequent requests included a paragraph explaining the accused's right to a speedy trial. They were duplicative because they were the formal update requests that accompanied the numerous in-person and/or telephonic conversations about completing the classification reviews.

27. If not, why did you keep sending duplicative requests?

ANSWER: (U) Not applicable.

28. Each of the further memoranda had short suspense dates that the OCAs did not meet. Did you follow-up with the OCAs when the suspense dates had passed?

ANSWER: (U) Yes.

29. If so, what did the communication entail? Please provide documentation.

ANSWER: (U) The in-person or telephonic communications consisted of updates to the request for classification reviews. All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

30. Did you ever communicate with the OCA personally? (i.e. not the OCAs' delegates)

ANSWER: (U) No.

31. Did you ask for updates on where the OCAs were in the process of completing the classification review? If so, how and when did you ask? If in written form (e.g. email, letter, memo), please provide documentation.

ANSWER: (U) See above #28-29.

32. Did you ever ask you how much longer the process would take? If so, how and when did you ask? If in written form (e.g. email, letter, memo), please provide documentation.

ANSWER: (U) The prosecution frequently requested updates on the classification review process, which included a brief description of how much longer the process was expected to take. All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

33. Did you ever ask you what specifically was taking so long? If so, how and when did you ask? If in written form (e.g. email, letter, memo), please provide documentation.

ANSWER: (U) The prosecution frequently requested updates on the classification review process, which included a brief description of what steps were being taken. All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

34. Did you ask how many people were working on the classification review? If so, how and when did you ask? If in written form (e.g. email, letter, memo), please provide documentation.

ANSWER: (U) The prosecution does not specifically remember asking this question.

35. Did you ask how much time you were devoting to the classification review process? If so, how and when did you ask? If in written form (e.g. email, letter, memo), please provide documentation.

ANSWER: (U) The prosecution does not specifically remember asking this question.

36. List any other communications you had with respect to the classification reviews of the charged documents with each of the OCAs and/or his delegates. Please list agency, date, and substance of communication.

ANSWER: (U) See above #6, 11, 21, 25, 26, 29, 31-33.

37. When did you receive each completed classification review from each OCA? When did you disclose these reviews to the Defense? List each OCA and date separately, along with when you received the review and when you disclosed it to the Defense.

38. On 3 May 2011, there is a time entry that reads "Phone call with CENTCOM who asked for new classification review discs because the original copies did not work in CENTCOM classified computers." Does this refer to the 18 May 2011 request for classification review? If not, what does it refer to? When were the disks provided to CENTCOM?

ANSWER: (U) This request referenced the 18 March 2011 request for a classification review. Based on the number of files and size of documents, the prosecution attempted to electronically send the information to CENTCOM via SIPRNET, but could not successfully upload the information. Then the prosecution sent classified discs to CENTCOM with the classified documents and videos for the classification review and the first set were received on or about 15 April 2011. The first set of discs did not work on the CENTCOM SIPRNET machines. CENTCOM established a SharePoint portal for the prosecution to upload the files through SIPRNET and the files were uploaded on or about 6 May 2011.

39. On 16 March 2011, there is the following time entry, "16-Mar-11 Wed Email with CENTCOM-prosecution received unclass class review Apache video." When you did request that CENTCOM review the Apache video? When did you disclose this review to the Defense?

ANSWER: (U) The Iraq prosecution first began discussing the classification review of the Apache video with OTJAG on 28 July 2010 and it was processed based on that request. The MDW prosecution was notified of the results of the Apache classification review on 18 October 2010. The version of the classification review the prosecution reviewed in October 2010 was marked classified, although the video was not classified. On 1 March 2011, the SCMCA considered this when preferring additional charges, and chose not to charge the accused with compromising a classified video in Specification 2 of Charge II. The prosecution started working with OTJAG and CENTCOM to

declassify the classification review. This classification (BATES # 00419522) was delivered to the prosecution on 13 April 2012.

40. In light of the answer above, please explain the following time entry, "18-Oct-10 Mon Email with CENTCOM-prosecution received original classification review for Apache video."

ANSWER: (U) The prosecution was notified of the results of the Apache classification review on 18 October 2010.

41. Did you provide any of the OCAs with sample declarations to use? Please list which ones.

ANSWER: (U) Yes. The prosecution provided a sample declaration to all the organizations that conducted classification reviews for the charged documents as enclosure 4 and 5 to the requests dated 18 March 2011 and any subsequent requests.

42. If not, please explain the following statement in your 30 November 2010 classification review request for the Deputy Chief of Staff for Intelligence (Pentagon), "The prosecution team requests each OCA or their subject matter expert on classified information use the enclosed sample declaration to answer the above questions."

ANSWER: (U) Not applicable.

43. The suspense date on this memorandum was 1 January 2010 [2011?]. Did the Deputy Chief of Staff for Intelligence (Pentagon) meet this suspense date? If not, when did they provide the classification review? When was that review provided to the Defense?

ANSWER: (U) No. The prosecution received the originally requested CENTCOM classification review on or about 22 February 2011, but this was for the original information identified by the Iraq prosecution. The final classification review for the CENTCOM information charged on 1 March 2011, was received on 21 October 2011, and disclosed to the defense on 8 November 2011 starting at BATES # 00376879, and the SOUTHCOM classification review for charged information was received on 4 November 2011, and disclosed to the defense on 18 November 2011 starting at BATES # 00378646.

<u>Computer Forensics and Original Classification Authorities</u>

Unclassified CID Report

44. When was the unclassified CID/CCIU file completed, or substantially completed?

ANSWER: (U) The unclassified CID/CCIU investigative file has not been finalized as it is an ongoing investigation. CID/CCIU continues to investigate the accused's misconduct and current releases by WikiLeaks. CCIU completed 22 separate final computer forensic reports – 3 unclassified reports of NIPRNET systems (dated 15 September 2010, 20 September 2010, and 27 July 2011), 1 unclassified report of a

SIPRNET system (dated 22 September 2011), 1 unclassified report of digital media (dated 22 September 2011), and 17 final classified reports (dated 22 September 2011 and 20 October 2011). Before the final forensic reports, CCIU produced, in general, 10 waves of interim reports. Although the dates on the reports vary, the approximate dates of the release of the forensic reports are the following: 7 July 2010, 13 July 2010, 6 August 2010, 23 August 2010, 21 January 2011, 2 February 2011, 7 June 2011, 28 June 2011, 18 July 2011, and 22 September 2011. All the final reports and interim reports have been provided to the defense.

45. Did you require authority to disclose the unclassified CID/CCIU file to the Defense? If yes, explain.

ANSWER: (U) Yes. When the prosecution learned that the unclassified CID investigative file may contain unclassified but protected information and classified information, the appropriate organizations reviewed the documents for any required approvals. For the unclassified but protected information, the Department of Justice reviewed the file for grand jury information and information that was obtained by sealed search warrants. Additionally, the prosecution requested that the Army G2 office review the unclassified CID file and identify any potentially classified material contained within the originally designated unclassified file. Because the file contained multiple sworn statements and AIRs of intelligence operators, it was suspected that some of the documents might contain classified information. The Army G2 office identified two major equity holders of classified information. Then, the prosecution requested that those two equity holders review the relevant portion of the unclassified CID file for classified information originating from their respective organization. Both organizations discovered classified information originating from their organization in the unclassified CID file. The prosecution requested authority to disclose that information to the defense and to have those documents properly marked for classified material.

46. If yes, explain when you got each of the relevant approvals?

ANSWER: (U) While still in Iraq, the prosecution disclosed more than 200 pages, in BATES #: 00000001-00000429, which was reproduced to the defense on 22 October 2010. Approvals to disclose the unclassified but protected information and classified information from the CID/CCIU investigative file was obtained on a rolling basis in order to disclose as much information to the defense as soon as possible. After reviews for classified information and unclassified but protected information, the prosecution received approvals to disclose the information on 16 June 2011, but only after the defense signed SPCMCA issued protective orders. On 22 June 2011, the prosecution emailed the defense team two protective orders for the Secretary of the Army 15-6 material and law enforcement sensitive and other protected information. On 12 July 2011 and based on having received the signed acknowledgments from the primary defense counsel and legal administrator for the Secretary of the Army 15-6 material, the prosecution sent this unclassified but protected information to the defense (BATES #: 00013162-00020152). By 19 July 2011, the prosecution received the primary defense counsel and legal administrator's signed acknowledgments for the unclassified but protected law

enforcement sensitive information, and delivered the first batch of the approved CID investigative files on 25 July 2011, including more than 3,000 pages. Additional disclosures include but are not limited to the following:

00000179-00000376 – 22 October 2010; 00000402-00000411 – 22 October 2010; 00021364-00025526 – 25 July 2011; 00026079-00026082 – 25 July 2011; 0026356-0036617 – 25 July 2011; 0026618-0036786 – 2 August 2011; 00045302-00045581 – 12 October 2011; 00045581-00046073 – 20 October 2011; 00375198-00375724 – 8 November 2011; 00378219-00378623 – 17 November 2011; 00407991-00408088 – 6 December 2011; 00409781-00410553 – 8 December 2011; 00410635-00416049 – 8 December 2011; 00410671-00410689 – 12 December 2011; 00410690-00410692 – 19 December 2011; 00410705-00410760 – 13 January 2012; 00410789-00410870 – 20 January 2012; 00410875-00410875 – 27 January 2012; 00410997-00411277 – 27 January 2012; 00411371-00411375 – 14 March 2012; 00411377-00411380 – 14 March 2012; 00412426-00412429 – 14 March 2012; 00412538-00412545 – 14 March 2012; 00419521-00419521 – 13 April 2012; 00419647-00419660 – 13 April 2012; 00447380-00447380 – 15 April 2012; 00447870-00447917 – 25 May 2012; 00449432-00449432 – 5 July 2012; 00449565-00449571 – 12 July 2012; 00449572-00449581 – 13 July 2012; 00504461-00504464 – 2 August 2012; 00505084-00505183 – 3 August 2012; 00505185-00505200 – 3 August 2012; and 00505253-00505256 – 3 August 2012.

All organizations approved disclosure of classified information identified in the original unclassified CID case file on or about 17 September 2011 and provided the prosecution properly marked, for classified information, documents on 27 October 2011. The prosecution disclosed all these documents by 17 November 2011. As CID obtains additional information, the prosecution continues to review the material and disclose under applicable rules.

47. When was the unclassified CID/CCIU file produced to the Defense?

ANSWER: (U) See above #44-46.

48. With the exception of a couple of documents in the unclassified CID file, all the reports were prepared in December 2010 or earlier. Why were these documents not disclosed until 25 July 2011?

ANSWER: (U) See above #44-46.

Classified CID/CCIU Report

49. When was the classified CID/CCIU file completed, or substantially completed?

ANSWER: (U) The classified CID/CCIU investigative file has not been finalized as it is an ongoing investigation. ID/CCIU continues to investigate the accused's misconduct and current releases by WikiLeaks. CCIU completed 22 separate final computer forensic reports – 3 unclassified reports of NIPRNET systems (dated 15 September 2010, 20

September 2010, and 27 July 2011), 1 unclassified report of a SIPRNET system (dated 22 September 2011), 1 unclassified report of digital media (dated 22 September 2011), and 17 final classified reports (dated 22 September 2011 and 20 October 2011). Before the final forensic reports, CCIU produced, in general, 10 waves of interim reports. Although the dates on the reports vary, the approximate dates of the release of the forensic reports are the following: 7 July 2010, 13 July 2010, 6 August 2010, 23 August 2010, 21 January 2011, 2 February 2011, 7 June 2011, 28 June 2011, 18 July 2011, and 22 September 2011. All the final reports and interim reports have been provided to the defense.

50. On 12 March 2011, your Chronology indicates that you "emailed [] CCIU to request CCIU to review all classified information in the case file to determine which OCAs are in the file." What sort of report did CCIU have as of 12 March 2011?

ANSWER: (U) The prosecution requested that CID conduct an administrative review of all previously identified classified information in the case file to identify what equity holders may have classified information in the case file. The case file consisted of the investigative file, both classified and unclassified, and the forensic reports referenced above in #44 and 49. The purpose of that request was to determine the most efficient method to receive approval from the OCAs to disclose the CID documents that contained their classified information. At that time the prosecution decided the more efficient process would be for the prosecution to receive approval to disclose the underlying evidence to the defense and ensure the OCAs provided approval to disclose any derivative reports based on the evidence, so the prosecution would not have to provide the final classified reports to the organizations for approval in the future.

51. On 7 April 2011, your Chronology indicates "Thu Meeting-review CCIU case file at CCIU". What sort of report did CCIU have as of 7 April 2011?

ANSWER: (U) The case file consisted of the investigative file, both classified and unclassified, and the forensic reports referenced above.

52. What are the dates on each of the forensic reports compiled by CID/CCIU?

ANSWER: (U) See above #44 and 49.

53. How many of the forensic reports were classified and how many were unclassified?

ANSWER: (U) See above #44 and 49.

54. Which OCAs needed to review the classified CID/CCIU file?

ANSWER: (U) No OCA needed to review the classified forensic reports because in the prosecution's disclosure requests, the prosecution requested authority to disclose "derivative use of the classified information originating from the evidence listed [in the request] and contained in forensic reports, general law enforcement reports, and other compiled documentation within law enforcement and prosecution case files." The

purpose of this was to make one disclosure approval request and not have to request disclosure of evidence and then send the forensic and law enforcement documentation to the OCAs for subsequent approvals. The CID investigative case file contained some classified documentation belonging to certain organizations that was obtained during meetings the agents attended, e.g. PowerPoint slides, memoranda, and reports. The prosecution submitted these individually to each relevant organization for approval to disclose.

55. When did you ask each OCA to review the classified CID/CCIU file?

ANSWER: (U) OCAs did not review the classified CID/CCIU file, except for less than 10 documents which were located in the investigative file, not forensic files, and requested in March 2011. See above # 54. OCAs later reviewed the unclassified CID/CCIU investigative file as part of a separate request when it was noted that possibly classified information was commingled with the unclassified CID/CCIU investigative file.

56. What were they asked to do?

ANSWER: (U) They were asked to approve disclosure to the defense of the less than 10 documents.

57. When did each OCA begin the review the classified CID/CCIU file?

ANSWER: (U) To the best of the prosecution's knowledge, upon receipt.

58. When did each OCA complete the review of the classified CID/CCIU file?

ANSWER: (U) Upon granting approval to disclose.

59. When did each OCA consent to disclosure of the classified CID/CCIU file to the Defense?

ANSWER: (U) The authority to disclose the forensic reports was directly tied to the approval to disclose the underlying evidence. Although the prosecution received rolling approvals based on its rolling requests, the prosecution did not receive final approval from all the relevant equity holders until 28 October 2011. The classified forensic reports were produced after CID/CCIU analyzed approximately 8 terabytes of digital media containing classified material. As the case continued being investigated, more classified information was found on the accused's digital media; therefore additional approvals had to be obtained. On 14 March 2011, the prosecution submitted the original requests to the different equity holders involved in this case. Below is a summary of when they approved certain discovery of classified information, which most pieces of evidence contained some portion of.

(U) DoD and DA. The Deputy Army G2 approved the 14 March 2011 request on 30 March 2011, and other requests, dated 23 June 2011 and 4 August 2011. On 28 October 2011, the Deputy Army G2 approved the prosecution's request, dated 26 October 2011, for the disclosure of the CID/CCIU classified forensic reports and case file. The Deputy Army G2 also approved requests for sensitive information throughout the summer of 2011.

(U) ODNI. ODNI approved disclosure of the Intelink logs on 9 August 2011, but only a certain portion. On 4 October 2011, ODNI approved final disclosure of the portions of the information that the prosecution intended to use as part of its case. ODNI also approved requests for sensitive information throughout the summer of 2011.

(U) DIA. DIA approved the 21 March 2011 request on 7 April 2011, and other requests, dated 23 June 2011, 4 August 2011, 6 October 2011, and for sensitive information throughout the summer of 2011.

(U) DOS. The Department of State approved the 14 March 2011 request on 29 March 2011, and other requests for sensitive information throughout the summer of 2011.

(U) On 3 October 2011, the prosecution received the final version of the forensic reports from CCIU. On 4 October 2011, the Deputy Director, CCIU approved release of the reports, after review to ensure none of the information was classified pursuant to CID's original classification authority and authorization for further dissemination. Between 3 October 2011 and 26 October 2011, the prosecution support staff processed the completed forensic reports, consisting of more than 330,000 pages, and prepared them for production. On 26 October 2011, the prosecution submitted a request to the Army G2 for approval to disclose the Army CID forensic reports, but "only the classified portions of the CID investigation that involve DoD equities or equities of other intelligence agencies that [the prosecution has] received independent approval for release." Additionally in this request the prosecution submitted requests to disclose any other miscellaneous DoD owned information that was collected in the forensic reports by CID. On 28 October 2011, the Army Deputy G2 approved the prosecution's request for disclosure of classified evidence to the defense and accused. By 28 October 2011, the prosecution received, from all the relevant OCAs, the last approval to disclose all the images of the digital media, which contained approximately 8 terabytes of classified data, the forensic reports, and any other information associated with the forensic reports. On 4 November 2011, the prosecution disclosed the classified evidence.

60. When was the classified CID/CCIU file disclosed to the Defense?

ANSWER: (U) The prosecution disclosed the final CCIU forensic reports on 4 November 2011 (BATES #: 00046074-00375129). After coordination with the defense about whether to produce the all the interim reports, in their entirety, or just the portions that are not the same, the prosecution disclosed to the defense, those portions of the interim reports, for which it had authority to disclose, on 24 April 2012 (BATES #: 00419805-00445503).

61. Why do you believe that you needed the classified CID/CCIU file prior to proceeding with the Article 32 hearing? Explain why?

ANSWER: (U) The prosecution determined that disclosure of the forensic reports was necessary before the Article 32 investigation because the forensic reports illustrate the prosecution's theory of how the accused committed the charged misconduct. The defense is entitled to these forensic reports under RCM 405(g), and, had the Article 32 investigation continued without the forensic reports (i.e., the evidence linking the accused to the charged misconduct), the prosecution would not have met its burden or there likely would have been a defective Article 32 investigation.

62. Were classified CID/CCIU files provided to the Defense after the Article 32 hearing?

ANSWER: (U) Yes. See above #60.

63. How many witnesses at the Article 32 hearing discussed classified forensic evidence, requiring a closed session?

ANSWER: (U) One witness discussed classified forensic evidence requiring closed sessions. SA David Shaver discussed classified forensic evidence at two closed sessions that were held during the Article 32 hearing.

Requests for Excludable Delay

64. Did you tell the Convening Authority that it was necessary (i.e. a legal prerequisite) to have a classification review prior to an Article 32 hearing?

ANSWER: (U) The prosecution explained to the Convening Authority that the prosecution was not aware of any legal requirement that a classification of the charged documents be completed before the Article 32 investigation. However, because the classification of the charged documents is an element of the majority of specifications and all parties needed to understand how to properly handle the information, the prosecution found it necessary to put forth evidence confirming the classification of the documents both at the time of the offense and at present time. Thus, the prosecution requested this information from the competent authorities. Additionally, after recommendations from the Department of Justice and Code 30, OTJAG, US Navy, including the Code 30 Primer on Prosecuting, Defending, and Adjudicating Cases

Involving Classified Information, the prosecution understood the importance of confirming the classification of information prior to starting an Article 32.

65. Did you use the same document template every time you asked for excludable delay, or did you re-type a whole new memorandum?

ANSWER: (U) The prosecution developed the document used in this case specifically for this case and modified the document each time the request was submitted to the SPCMCA, to reflect any major update.

66. How did you communicate with the Convening Authority for each of the excludable delay memoranda? List each excludable delay memorandum and indicate whether the communication was in person, over the phone, by email, or in some other way.

ANSWER: (U) The prosecution submitted the below requests for excludable delay as follows: (1) 25 April 2011; (2) 22 May 2011; (3) 27 June 2011; (4) 25 July 2011; (5) 25 August 2011; (6) 26 September 2011; (7) 25 October 2011; and (8) 16 November 2011. The prosecution does not have records on whether it discussed the substance of the requests for excludable delay by telephone or in-person, but a discussion occurred every time a request was submitted. For any telephonic discussion, the SPCMCA had the request in his possession prior to the discussion.

67. If the communication was by email, please provide the supporting emails (both Government and Convening Authority).

ANSWER: (U) No discussions occurred via email; they all occurred either in-person or by telephone.

68. If the communication was by phone, please indicate how long you spoke with the Convening Authority on each occasion.

ANSWER: (U) The communications relating to the prosecution's request for excludable delay lasted approximately 10-20 minutes.

69. If the communication was in person, please indicate how long you spoke with the Convening Authority on each occasion.

ANSWER: (U) The in-person meetings relating to the prosecution's request for excludable delay lasted approximately 10-20 minutes.

70. Did the Convening Authority sign the memoranda at these meetings, or did he just take them from you?

ANSWER: (U) The SPCMCA did not sign the requests for excludable delay at these meetings; he waited until receiving input from the defense.

71. Did you draft the memoranda for the Convening Authority to sign?

ANSWER: (U) A member of the prosecution drafted the memoranda.

72. If yes, did he ever make any changes to what you had drafted?

ANSWER: (U) The SPCMCA did not make any changes to drafted speedy trial memoranda but did make changes to other memoranda.

73. Did the Convening Authority have digital versions of the documents you were presenting to him so he could have made changes?

ANSWER: (U) Yes.

Did the Convening Authority ever ask:

74. What the classification review entailed? If yes, explain what you told him.

ANSWER: (U) Yes. The prosecution provided him an explanation of the process and who the likely OCAs were for each organization.

75. What the approval for classified information entailed? If yes, explain what you told him.

ANSWER: (U) Yes. The prosecution provided him an explanation of the types of documents and information that needed approvals and who the approval authorities were for each organization.

76. What the Defense request for "substitutions" meant? If yes, explain what you told him.

ANSWER: (U) Yes. The prosecution provided the SPCMCA an explanation based on MRE 505 and the Code 30 Primer on Prosecuting, Defending, and Adjudicating Cases Involving Classified Information, along with advice from the Department of Justice and Code 30, OTJAG, US Navy.

77. What R.C.M. 707 and Article 10 entailed? If yes, explain what you told him.

ANSWER: (U) Yes. The prosecution explained the rule and law.

78. What was taking so long with the classification reviews of charged documents? If yes, explain what you told him.

ANSWER: (U) Yes. The prosecution explained which organizations were reviewing the documents and how certain documents had to go through the referral process, to another organization, because they contained information that potentially belonged to other equity holders. The prosecution also explained that the process was lengthy because of

the volume of information and the organizations having to balance real-world operations, mitigation of WikiLeaks releases, and completing the classification reviews.

79. You to go back to the OCAs to expedite the process? If yes, explain what you told him.

ANSWER: (U) Yes. The prosecution provided the SPCMCA with updates on how the prosecution was requesting updates from the organizations and how we were explaining the prosecution's speedy trial obligations to the organizations.

80. Whether he could help expedite the OCA approval process? If yes, explain what you told him.

ANSWER: (U) Although the SPCMCA asked multiple times whether he could assist with processes, the prosecution explained the process to him and how that process was being coordinated between legal offices. Additionally, the prosecution explained to him that if his assistance could speed up the process, the prosecution would ask for him to be directly involved.

81. How many people from each of the OCAs was working on the classification review? If yes, explain what you told him.

ANSWER: (U) No.

82. Why it was necessary to have a classification review prior to the Article 32? If yes, explain what you told him.

ANSWER: (U) Yes. See above #64.

83. How many charged documents each of the OCAs was reviewing? If yes, explain what you told him.

ANSWER: (U) Yes. We provided the SPCMCA with copies of each of our requests that listed the documents in Enclosure 1 of each request.

84. How long the final work product of the OCAs for the classification reviews of the charged documents should be? If yes, explain what you told him.

ANSWER: (U) No. Although our classification review request provided an example of a declaration and OCA cover letter, the prosecution never discussed with organizations or the SPCMCA the length of a classification review. The length of a document is not necessarily indicative of the amount of effort or thoroughness of the document, so length was never a consideration.

85. How long the classification reviews that were coming in in the Fall of 2011 were? If yes, explain what you told him.

ANSWER: (U) No. See above #84.

86. To see a classification review in this case? If yes, explain what you told him.

ANSWER: (U) The SPCMCA reviewed all classification reviews before ordering the Article 32 to restart and before giving his recommendation to the General Court-Martial Convening Authority.

87. Whether the Defense was entitled to the classification review in the absence of a specific Defense request? If yes, explain what you told him.

ANSWER: (U) The prosecution does not specifically remember the SPCMCA asking this question, because it was determined that the prosecution needed adequate evidence of the classified nature of the information before proceeding to the Article 32 to ensure the information was actually classified.

88. How long it should take and did take to get all relevant individuals security clearances? If yes, explain what you told him.

ANSWER: (U) Yes. The prosecution discussed the security clearance process with the SPCMCA and explained how the prosecution was able to establish a process through the Army G2 security office to expedite clearances in this case, even for TS/SCI clearances. Once the Preliminary Classification Review (PCR) was completed, the process could be expedited based on the bona fide need for clearances.

89. Whether you could have proceeded with the Article 32 in the absence of the OCA classification reviews? If yes, explain what you told him.

ANSWER: (U) Yes. The SPCMCA directed the prosecution to figure out the fastest way to proceed to an Article 32, while ensuring the information was classified because it was required based on the charges and that the accused had access to the information to defend himself at the Article 32.

90. For a more detailed accounting of what the Government was doing? If yes, explain what you told him.

ANSWER: (U) Yes. During the approximate weekly meetings, the SPCMCA inquired into the activities of the prosecution and what updates the prosecution received from any organizations.

91. Once you began making Government requests for delay, what you had done in the one year prior?

ANSWER: (U) The prosecution consulted with the SPCMCA on an approximate weekly basis relating to the status of this case, to include all periods of delay before and after the

prosecution began requesting periods of excludable delay, which included discussions about prior activities.

92. Other than his 21 January 2010 memorandum to Col Choike, did COL Coffman express a concern over PFC Manning's confinement conditions at Quantico during the time he signed the excludable delay memoranda? Explain.

ANSWER: (U) Yes. After receiving the accused in his command, the SPCMCA directed his company commander to ensure the command visited the accused at least twice a month and to try and visit weekly. He was briefed either by the chain of command or prosecution about the accused's status and any complaints or other issues the accused raised with the chain of command during their visits. Additionally, the SPCMCA sent his CSM to visit the accused on his behalf.

93. Did COL Coffman ever express concern about how many raw days had elapsed since PFC Manning was placed in pretrial confinement?

ANSWER: (U) Yes. The SPCMCA was concerned about the total amount of time since the accused was placed in pretrial confinement, including the amount of time since the original charges were preferred, and the time after the additional charges were preferred.

94. If COL Coffman had ordered OPLAN Bravo to be executed as of November 1, 2011, could it have been executed in 30 days?

ANSWER: (U) The mission of OPLAN BRAVO was to provide support to the SPCMCA's command to conduct the Article 32 hearing by conducting transport and security of the accused between Fort Leavenworth and Fort Meade and provide security and other support at Fort Meade. Phase I (Coordination and Planning) of OPLAN BRAVO actually started prior to the SPCMCA's order as outlined on page 3 of the order. As outlined in the order, the command made all the necessary preparations in order to execute the Article 32 prior to the SPCMCA ordering the Article 32 to restart. Phase II of OPLAN BRAVO was only triggered by the SPCMCA's order to restart the Article 32 which then implements these security, travel, public affairs, and installation management organizations to execute the requirements that were previously planned for in Phase I. This execution process took no more than 30 days to complete. If the SPCMCA ordered the Article 32 to restart on 1 November 2011, then OPLAN BRAVO Phase II would have been completed within 30 days.

R.C.M. 706 Board

95. Why wasn't the 706 board ordered to resume its work when the Preliminary Classification Review (PCR) was completed on 13 December 2010?

ANSWER: (U) The purpose of the PCR was to determine the level of clearances needed for the defense counsel, defense experts, RCM 706 board, Article 32 officer, and all others involved in this case. Once the PCR was completed on 13 December 2010, the

prosecution started obtaining the appropriate clearances for the RCM 706 board. The board could not start its work until its final composition was determined, which could not occur until the level of clearance was determined. On 21 December 2010, the final board membership was determined by the president of the board and the prosecution started processing the board members for appropriate security clearances on 21 December 2010. Until all board members obtained the proper clearances, the board could not start work, because if a board member was not able to be granted a TS/SCI clearance, then they could not be remain a board member based on the defense request.

96. What did the Government do between 3 August 2010, when the Convening Authority initially ordered the board, and 13 December 2010, when the PCR was completed, to identify potential board members?

ANSWER: (U) The prosecution originally coordinated with the president of the board to identify the board members, until the defense submitted its request to divulge classified information to the board. At that point, the prosecution coordinated the PCR based on the defense's request dated 26 August 2010 (to include locating a SCIF and arranging the accused's transportation to/from the facility), acted on five defense requests for experts, coordinated with Army CID about the investigation and the ongoing WikiLeaks releases of compromised information, responded to more than 200 defense emails, and coordinated with those OCAs known at the time.

97. When did the Government know the identity of each of the board members?

ANSWER: (U) On 9 September 2010, the original members of the sanity board were identified. Those members were Dr. Sweda, LTC Schneider, and CPT(P) Benesh. On 21 December 2010, LTC Hemphill replaced LTC Schneider because she had greater availability at that point.

98. Did each board member have the appropriate security clearance once they were selected to serve on the RCM 706 board?

ANSWER: (U) No. Based on coordination with the board president (Dr. Sweda) and the senior DoD forensic psychiatrist (COL Malone), DoD did not have enough personnel with TS/SCI clearances in the national capital region to support the defense's specific request for the composition of the RCM 706 board because the same doctors that could be on the board with clearances were also provided to the defense as defense experts. Therefore, doctors with only "secret" clearances were selected and the prosecution worked with Army G2 security to obtain quickly LTC Hemphill's and CPT(P) Benesh's TS/SCI clearances.

99. If any member did not have the requisite clearance, what did the Government need to do to obtain the appropriate security clearance for the member? Please explain for each member that did not have the requisite security clearance.

ANSWER: (U) The prosecution requested that each member complete, and return to the prosecution, the appropriate paperwork to receive a security clearance (e.g., SF 86). Then, the prosecution submitted a formal request to the Army G2 office for those members to receive the appropriate security clearance. Once approved, the prosecution coordinated with the Army G2 office to arrange the necessary appointments (e.g., read-on, fingerprints, etc.) and to arrange an expedited background investigation.

100. How long did it take to complete the process of getting every member the requisite security clearances?

ANSWER: (U) Approximately 40 days to obtain TS/SCI clearances with read-on's to the compartments identified by the defense experts.

101. Your chronology states that on 31 January 2011 "ALL RCM 706 BOARD MEMBERS GRANTED SECURITY CLEARANCE (TS-SCI) AND READ-ON (SCI)" – why did it take until 31 January 2011 to complete this process? Why wasn't this process completed earlier?

ANSWER: (U) See above explanation about the PCR and the RCM 706 (#95 and 99).

102. On 26 August 2010, the Defense notified the Government that any board members would need a TS-SCI clearance, what didn't identify the board members at that point and ensure each member had the requisite security clearance?

ANSWER: (U) See above explanation about the PCR and the RCM 706 (#95 and 99). Further, the defense did not object to the process of using the PCR to determine what clearances were required for the RCM 706 board, rather than relying on the accused's proffer alone.

103. What steps did the Government take to locate a SCIF for the board members to meet with PFC Manning?

ANSWER: (U) In early October 2010, the prosecution found a SCIF location that was easily accessible and provided adequate physical security for the accused. It was also secluded to provide privacy, so that the accused's exposure to the public while in shackles was minimized. The prosecution coordinated with the defense to determine whether they supported the location, at Fort Belvoir, for the PCR, client meetings, and the RCM 706. On 12 October 2010, the prosecution sent an email to Mr. Coombs asking for final input. On the same day, Mr. Coombs emailed the prosecution stating "the [location] is fine for the PCR, client meetings, and the 706 board." From that point forward, the prosecution secured a location for the SCIF for the future RCM 706 board. During telephonic and email conversation around 30 November 2010, Mr. Coombs stated that the defense no longer wanted defense meetings and the RCM 706 to be held at the predetermined location at Fort Belvoir because it was a law enforcement organization. Once the PCR was completed and it was determined that a SCIF was actually needed for the RCM 706, the prosecution started to coordinate with different intelligence organizations within the national capital region to try and find a suitable facility. On 27

January 2011, the prosecution requested assistance from INSCOM to use a facility that had previously been considered for the PCR as a location for the RCM 706. On 25 February 2011, the prosecution notified Mr. Coombs via email that based on the defense's request to have client meetings and the RCM 706 interview at a location other than the location previously identified on Fort Belvoir, INSCOM had formally authorized the use of a different location. This location was an INSCOM operated facility that had large conference rooms spread throughout multiple floors. Unlike the previously identified building at Fort Belvoir, this building was setup like a normal civilian office building and only had one set of elevators and stairs. This facility is mostly occupied by civilians and used for intelligence training courses. Based on this, the facility could not provide a level of privacy during the week that could prevent bystanders from seeing the accused being escorted through the facility in shackles. The command chose to use this facility over the weekends to provide the proper privacy to the accused and not disrupt the current operations of the building.

104. When did the Government begin the process of locating a SCIF?

ANSWER: (U) See above # 103.

105. According to the trial your chronology, you conduct a "recon" of the INSCOM SCIF on 25 February 2011. Why did you wait unit until 25 February 2011 to conduct a recon of the INSCOM SCIF?

ANSWER: (U) The recon conducted on 25 February 2011 was for security and other support personnel, and not for the purpose of determining which facility to use.

106. Was the 706 board conducting any work between 3 February and 25 February 2011?

ANSWER: (U) During this time, the RCM 706 board notified both the prosecution and the defense that it had considered the defense's request for CAPT Moore to attend the interview portions of the evaluation and that it was beginning to schedule the evaluation of the accused. Additionally, the board notified both the prosecution and defense about setting up medical appointments and coordinating evaluations at Quantico. Additionally, the RCM 706 board went to Quantico on 16 February 2011 to evaluate the accused, as indicated on Dr. Sweda's email, dated 15 February 2011, to both the prosecution and defense, and for the purpose to allow the defense expert to meet them at Quantico.

107. On 1 March 2011, your chronology indicates that you scheduled a tour of the INSCOM SCIF for the 706 board? Why did the 706 board need to tour the INSCOM SCIF?

ANSWER: (U) The prosecution scheduled a leader recon of the INSCOM SCIF for the command chasers and not the RCM 706 board to tour the facility. This was outlined to the defense by email, dated 27 February 2011, where the prosecution specifically stated "we will meet with INSCOM early this week to ensure we have the proper facility and it provides your client with the appropriate amount of protection, both for his physical

security and also shield him from the general public to minimize any potential embarrassment."

108. According to your chronology, you notified the Defense on 5 March 2011, that the INSCOM SCIF was available any Saturday after 5 March. Why did it take so long to secure the INSCOM SCIF?

ANSWER: (U) See above # 103 and 107.

109. In the email to the Defense, you stated that "we received authorization to use the SCIF on Saturdays to minimize the accused's exposure to third parties." Why did you need to limit the use of the SCIF to Saturdays only?

ANSWER: (U) It was preferred that the board evaluate the accused on a weekend to limit any transportation issues of the accused to INSCOM and to limit the exposure of the accused, a pretrial confinee allegedly responsible for the largest compromise of classified information in military justice history, to third parties for safety and humiliation purposes, as outlined above.

110. Were you ever informed that Dr. Sweda wanted to meet with PFC Manning in a SCIF on a week day instead of weekend?

ANSWER: (U) Yes. On 3 March 2011, the RCM 706 board notified the prosecution and defense that it had scheduled an interview of the accused on a weekday. The RCM 706 board asked both parties if that would work. On 3 March 2011, the prosecution notified the board and defense that interviewing the accused on a weekend would be preferred and the defense did not object.

Department of State

Damage Assessment

111. When did you first learn that the Department of State was working on a damage assessment?

ANSWER: (U) On 6 October 2011, the prosecution requested authority to review any Department of State damage assessment. This request was denied; however, the prosecution was authorized to meet with the author of the draft damage assessment. At that point, the prosecution learned the draft damage assessment was a working project.

112. Why did you use the expression "The Department of State has not completed a damage assessment" in your motion, in oral argument, and in response to the Court's questions?

ANSWER: (U) Based on the briefing the prosecution received referenced above, and the inquiries the prosecution made to the Department, and based on the prosecution not having access to the draft damage assessment until 17 April 2012, the prosecution

understood the Department did not have a completed damage assessment and only a draft. Also, based on the review of the document and the explanation by the Department, the Department never had a completed damage assessment, only a document in draft form.

113. Did the Department of State require you to use that expression? If so, please provide documentation.

ANSWER: (U) The Department provided the prosecution with answers to the prosecution's questions, based on defense and Court requests. All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

114. Prior to the 15 March 2012 motions argument, you had several communications with the Department of State regarding the "draft" damage assessment? What did these communications entail?

ANSWER: (U) The prosecution and the Department of State discussed many issues, including the status of the alleged damage assessment, any Touhy requirements, and FOIA requests regarding WikiLeaks.

115. Your Chronology in early March 2012 refers to discussions with the Department of State regarding the "draft" damage assessment. Why did you not tell the Court that the Department of State had a draft damage assessment when you yourself were referring to it as a "draft" damage assessment in your timesheets?

ANSWER: (U) The prosecution created the chronology in September and October of 2012, after litigation on this issue. At the time of litigation, the prosecution was not authorized to review the draft damage assessment until 17 April 2012. Until that time, the prosecution was not in a position to definitively confirm the status of the assessment. Thus, the prosecution relied upon the status updates provided by the Department of State.

116. Why did you refuse to acknowledge that the Department of State had some form of damage assessment? (you referred to it as "alleged" and refused to confirm whether it existed)

ANSWER: (U) The prosecution was not authorized to review the draft damage assessment until 17 April 2012. Until that time, the prosecution was not in a position to definitively confirm the status of the assessment. Additionally, the prosecution uses the term "alleged" during public sessions for many reasons, including for information that cannot be confirmed or denied to exist based on its classification. Until the prosecution receives confirmation from the owning organization that information is not classified, the prosecution cannot confirm the existence of information.

117. Did the Department of State require you to refer to it as "alleged"? If so, please provide documentation.

ANSWER: (U) No. See above # 116.

118. In light of your knowledge and discussions about the "draft" damage assessment, do you believe the expression you used "The Department of State has not completed a damage assessment" gave a false impression?

ANSWER: (U) No.

119. You indicated at oral argument that you could not confirm whether or not the Department of State draft damage assessment contained Brady information because that information was classified. Please provide supporting documentation.

ANSWER: (U) The prosecution cannot confirm or deny whether classified information exists, unless it has specific authority to do so. Any Brady information would be contained in the text of the classified document and would require authority to publically confirm or deny its existence.

120. Is the Department of State's position that the document is still a "draft"? (i.e. that it is not completed).

ANSWER: (U) Yes.

121. If so, has the document been changed since last reviewed by the Court and Defense?

ANSWER: (U) No.

122. What is the date on the Department of State damage assessment?

ANSWER: (U) August 2011. The Department did not update the draft assessment since August 2011.

123. When did you first ask to review the Department of State damage assessment?

ANSWER: (U) The prosecution formally requested authority to review any records relating to the accused and/or WikiLeaks as part of its Prudential Search Request dated 14 June 2011. The prosecution later specifically requested authority to review any damage assessment on 6 October 2011. Before then, the prosecution had informally requested such authority.

124. When did the Department of State authorize you to view the damage assessment?

ANSWER: (U) 17 April 2012.

125. When did you view the Department of State damage assessment?

ANSWER: (U) 17 April 2012.

126. When did the Department of State authorize the Defense to view the damage assessment?

ANSWER: (U) The Department of State authorized the draft damage assessment to be made available to the defense for inspection on 18 May 2012, after the Court's ruling.

127. When was the damage assessment made available to the Defense?

ANSWER: (U) The draft damage assessment was made available to the defense for inspection on 18 May 2012.

128. Did the Department of State resist providing the damage assessment to the Defense?

ANSWER: (U) The Department did not provide the defense or prosecution access to the document because it was in draft form, until the Court ordered its disclosure.

129. Did the Department of State insist that the damage assessment was a draft and not discoverable?

ANSWER: (U) The Department of State notified the prosecution that the assessment was a draft and inquired whether it would be discoverable.

130. Did the Department of State request or advise that you submit a motion for reconsideration of the Court's ruling with respect to the discoverability of the damage assessment?

ANSWER: (U) The prosecution made all decisions regarding which motions to file.

Brady Discovery

131. When did you first make a request for Brady material from the Department of State?

ANSWER: (U) The prosecution first formally requested a Prudential Search for responsive material, which included Brady, on 14 June 2011.

132. Why did you not contact the Department of State earlier to make the request for Brady material?

ANSWER: (U) During 2010, the prosecution's relationship with the Department of State was primarily focused on the investigative activities of DSS into the compromised purported cables, including the effect of the ongoing WikiLeaks releases, and identifying purported cables that would be authorized to be used at trial. During this time, the prosecution was also involved in the PCR, as well as multiple defense requests and correspondence, as explained above. In March 2011, additional charges were preferred. The prosecution understood the necessity to preserve any discoverable material for the court-martial and, with the assistance of the Department of Justice, submitted Prudential

Search Requests to each organization for which it had a good faith basis may have records or information relating to the accused and/or WikiLeaks.

133. Did you use the term Brady and/or R.C.M. 701(a)(6) in your request?

ANSWER: (U) No. The purpose of the Prudential Search Request was to include more than what Brady and RCM 701(a)(6) require so that the prosecution could review the information and determine whether it was Brady or RCM 701(a)(6) material.

134. Did you explain in this request that you were looking for mitigating evidence, both for merits and for sentencing?

ANSWER: (U) The Prudential Search Requests included broad language that would include any mitigating information. The prosecution specifically stated that it was requesting any documents relating to damage.

135. How many manpower hours in total did it take the Department of State to gather responsive documents? (this relates solely to the Brady discovery)

ANSWER: (U) The prosecution does not know.

136. When did the Department of State provide you with Brady material?

ANSWER: (U) The Department of State first authorized the prosecution to review some documents on 17 April 2012, and all documents on 28 June 2012.

137. Between the date that you first made a request for Brady material from the Department of State and the time the Department of State provided you with Brady material, did you contact the Department of State about expediting the process? If so, when? What was said? Please provide documentation.

ANSWER: (U) The prosecution never cited Brady in its request, but rather requested material that would be responsive to the Prudential Search Request. From the date of the Prudential Search Request (i.e., 14 June 2011) until the date records were provided in response thereto (28 June 2012), the prosecution contacted the Department of State more than 100 times. Those communications included updates on the status of the request and answering any questions regarding the scope of the request.

138. When did you review the Brady material provided by the Department of State? Please provide dates.

ANSWER: (U) The prosecution first reviewed information on 17 April 2012, and other information on 28-29 June 2012, 5 July 2012, 11-12 July 2012, and 19 July 2012.

139. How many documents did the Department of State provide you with?

ANSWER: (U) Approximately 6,000 documents.

140. How many hours collectively did it take you to review the Brady material?

ANSWER: (U) The prosecution reviewed the approximately 6,000 documents for more than 100 hours.

141. When did you disclose the Brady material from the Department of State to the Defense?

ANSWER: (U) The prosecution disclosed more than Brady information to the defense. The prosecution disclosed the entire DSS investigative file to the defense on or about 5 December 2011 (BATES #: 00408089-00408167). The prosecution made the draft damage assessment available to the defense for inspection on 18 May 2012. The prosecution made available for inspection on 3 August 2012, and delivered copies 21 September 2012 of discoverable material for which limited disclosure was not sought (BATES #: 00519353-00523672). The prosecution filed a motion for limited disclosure under MRE 505(g)(2) for the remaining discoverable material on 3 August 2012. The Court granted the motion on 28 September 2012 and 18 October 2012. The prosecution applied the appropriate redactions and delivered this material to the defense on 26 October 2012 (BATES #: 00525870-00526366). All captioned material is located at the Department and available for inspection, as outlined in the MRE 505(g) motion and subsequent notice disclosures.

142. When you filed your June motion resisting production of Department of State documents on the grounds that they were likely cumulative, had you reviewed all the Department of State documents?

ANSWER: (U) The prosecution reviewed all the material (except where otherwise annotated in the motion) provided by the Department of State that was responsive to the Court's Order, dated 8 June 2012.

143. If not, what were you basing your litigation position on?

ANSWER: (U) Not applicable.

144. Did the Department of State advise or suggest that you adopt this litigation position?

ANSWER: (U) No.

145. Prior to June 2012, did the Department of State provide you with evidence for your case in chief? Please list categories of evidence that the Department of State provided to you prior to June 2012.

ANSWER: (U) Yes. The Department of State provided the prosecution with the charged documents, forensic evidence, a classification review of classified information, and the DSS investigative file. See above #141.

146. Was the Department of State involved in selecting the charged documents?

ANSWER: (U) Yes. The prosecution had to obtain approval by an OCA to use the information in a criminal proceeding; therefore, the Department was involved in the selection process.

147. Was the Department of State involved in providing valuation evidence?

ANSWER: (U) Yes. The prosecution obtained valuation documentation and witnesses from the Department.

Touhy Request

148. When did the Defense submit to a Touhy request to you?

ANSWER: (U) The defense did not submit a Touhy request to the prosecution, but rather to the Department of State, and the prosecution received a copy. The defense notified the Court that it submitted the request on 23 March 2012.

149. When did you submit the *Touhy* request to the Department of State?

ANSWER: (U) The prosecution did not submit a Touhy request to the Department, but rather assisted with ensuring the Department received the request that defense submitted via mail. On 26 March 2012, the prosecution forwarded the digital copy of the Touhy request to the Department so they would be able to know what to expect through the mail.

150. When did the Department of State receive the Touhy request?

ANSWER: (U) On 5 April 2012 and the prosecution informed the defense of this date via email on 9 April 2012.

151. If there is a time lag between the date the Defense submitted the Touhy request and the date the Department of State received the Touhy request, please explain.

ANSWER: (U) The prosecution is not aware of a time lag as the defense mailed the request to the Department of State.

152. Since the Defense submitted the Touhy request, did you ever contact the Department of State about expediting the process? If so, please provide dates, details and documentation.

ANSWER: (U) The prosecution contacted the Department more than 10 times about the Touhy request. All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

153. Why was the Defense's Touhy request not processed after being told you would ensure timely and meaningful access to Department of State witnesses?

ANSWER: (U) The Department processed the defense's Touhy request; however, based on the prosecution's witness list, dated 22 June 2012, the Department voluntarily made its witnesses available to the defense. On 9 August 2012, the defense first contacted the Department to schedule interviews, and the attorney-advisor who was responsible for this process was on leave. The prosecution is not aware if the defense followed-up with the Department prior to 1 November 2012. Based on the explanation of the MRE 505 and protective order requirements outlined in the prosecution notice, dated 18 October 2012, the prosecution notified the Department of what notice the defense is required to give prior to classified discussions with witnesses. Based on that update, the Department emailed the defense on 1 November 2012 to continue the planning for the defense to meet with Undersecretary Kennedy first, based on the defense's request. Since that time, the Department and defense are coordinating all witness interviews.

DSS

154. When did DSS complete its investigation?

ANSWER: (U) The prosecution is not aware of when DSS officially completed its investigation.

155. When did you first request to view DSS files?

ANSWER: (U) 6 May 2011.

156. When did you first view the DSS files?

ANSWER: (U) 25 May 2011 and we received a copy of the files to complete our review on 26 August 2011.

157. How many total manpower hours did it take you to review the DSS files?

ANSWER: (U) It took approximately 20 total manpower hours to review the files.

158. Did you require approval to disclose those files to the Defense?

ANSWER: (U) Yes.

159. When did you request such approval?

ANSWER: (U) On or about 29 August 2011.

160. When did DSS consent to disclosure of the files?

ANSWER: (U) On or about 29 August 2011.

161. When were all the DSS files produced to the Defense?

ANSWER: (U) 23 November 2011.

Federal Bureau of Investigation

Investigative File

162. When did the FBI start its investigation of the accused?

ANSWER: (U) 30 July 2010.

163. When did the FBI complete its investigation of the accused?

164. According to your Response, on 19 April 2011, you requested approval to disclose to the defense the FBI case file and its sub-files. You also made two other duplicative requests on 28 July 2011 and 15 August 2011. Why did you have to make three requests for the same thing?

ANSWER: (U) On 19 April 2011, 28 July 2011, and 15 August 2011, the prosecution requested the FBI case file and its sub-files related to the accused. After the first request, the prosecution travelled to the FBI field office and reviewed portions of the case file to understand what type of information exists in the entire file, not just what is related to the accused. Based on the previous reviews and multiple meetings with FBI HQ, the FBI provided the prosecution with a copy of its files on 25 August 2011 to conduct a Brady review which expedited its review of the file for discoverable material.

165. When did the FBI consent to disclosure of the FBI file to the Defense? Please provide documentation to this effect.

ANSWER: (U) The first batch of approval was received on 7 March 2012, but was conditioned on the Court issuing a protective order for classified information, which was ordered on 16 March 2012.

166. If you were requesting on 19 April 2011 approval to disclose the FBI file to the defense, why was it that you did not finish reviewing the file until 1 February 2012?

ANSWER: (U) The prosecution requested the files for its review on 19 April 2011 and received a copy of the files on 25 August 2011 for the limited purpose of searching for Brady material. The prosecution completed its review of those files on 1 February 2012.

167. When was the first time that you saw the FBI file?

ANSWER: (U) The prosecution first reviewed portions of the file on 27-29 April 2011.

168. When were you given a copy of the FBI file?

ANSWER: (U) The prosecution was given a copy of the records relating to the accused on 25 August 2011 for the sole purpose of reviewing for Brady information. At that point, the prosecution's support staff started to process more than 44,000 pages. In September and October 2011, the prosecution was able to ingest digitally all the documentation into the discovery review and tracking software, which was originally provided in hardcopy, and prepare the information for review by the prosecutors.

169. How many hours collectively did it take the prosecution to review the FBI file?

ANSWER: (U) The prosecution spent approximately 400 hours reviewing the FBI file.

170. When did you review the FBI file? Please give specific dates.

ANSWER: (U) 27-29 April 2011, 18 May 2011, between 3 January 2012 and 1 February 2012, and multiple times after 1 February 2012 after discussions about specific documents with the FBI and DOJ.

171. When did you disclose the entirety of the discoverable FBI file to the Defense?

ANSWER: (U) The prosecution started to disclose the FBI file to the defense on 16 March 2012 and completed production on 25 October 2012 after the Court approved the final substitutions under MRE 505(g) on 18 October 2012.

172. You say that on 7 February 2012, you "began extensive negotiations with DOJ and the FBI to disclose all requested information to the defense." You then state, "The FBI would not approve disclosure to the defense, absent a military judge to issue a Protective Order." Is your position that, as of 7 February 2012, the FBI refused to consent to disclosure of the FBI investigative file to the Defense because the Military Judge had not signed a protective order?

ANSWER: (U) Yes.

173. Is there any documentation from the FBI, other than Unclassified Email 0451, that reflects the FBI's position that it would not consent to disclosure of the investigative file absent a protective order signed by a Military Judge?

ANSWER: (U) Unclassified Email 0451 does not reflect this information, but rather focuses on DOJ and the FBI's review of the originally unclassified CID case file. The prosecution inaccurately cited this in its reply to the defense motion. The requirement for a Court order was relayed to the prosecution during an in-person or telephonic meeting.

174. How can the Unclassified Email 0451 be read to say that the FBI's position is that the FBI would not consent to disclosure of the investigative file absent a protective order signed by a Military Judge?

ANSWER: (U) See above #173.

175. How can an email from 5 May 2011, written nine months prior to you reviewing the FBI file be read as saying that the FBI will not consent to disclosure of the investigative file absent a protective order signed by a Military Judge?

ANSWER: (U) See above #173.

176. Why is Unclassified Email 0451 entitled "CID Case File and Update" if it deals with the FBI investigative file?

ANSWER: (U) See above #173. The referenced email was in relation to DOJ and the FBI's review of the originally unclassified CID case file.

177. Is Unclassified Email 0465 part of the same email chain since it has the same subject line?

ANSWER: (U) Yes.

178. In Unclassified Email 0465, you state, "Joe and Angel are going to coordinate with [redacted] to finish scrubbing the FBI files, and then we will put together our 'wish list' of the documents we would like authorization to use and/or turn over in discovery. Ideally, in the coming weeks, we will have a comprehensive list of all documents in all investigative files (CID, FBI, and DSS), that we would like to seek approval for use during discovery and will present the list to all for input and potential for follow-on action (e.g. requesting a modification of sealing orders)." How can the FBI have refused to consent to disclosure of documents in Unclassified Email 0451 when you had not yet prepared your 'wish list'?

ANSWER: (U) See above #173.

179. Why would you tell the FBI you would put together a "comprehensive list of all documents in all investigative files (CID, FBI, and DSS), that we would like to seek approval for use during discovery and will present the list to all for input and potential for follow-on action" if the FBI had already told you that it would not consent to disclosure of the FBI file absent a Military Judge's order?

ANSWER: (U) See above #173.

180. If the FBI had indicated on 5 May 2011 that it would not disclose the files to the Defense absent a Military Judge's order, why did you request on 28 July 2011 and 15 August 2011 that the FBI consent to disclosure of the files to the Defense?

ANSWER: (U) See above #173.

181. If the FBI's position was that it would not disclose documents absent a military judge's protective order, was it aware that a protective order was already in place? Why was that protective order not sufficient for the FBI?

ANSWER: (U) Yes. The FBI and DOJ were aware that a convening authority's order was in place; however, they required a court issued protective order which could be enforced by a military judge.

FBI Impact Statement

182. When did you know that the FBI was working on an impact statement/damage assessment (hereafter "impact statement")?

ANSWER: (U) The prosecution first became aware of the FBI impact statement on 2 November 2011 after the prosecution submitted a request on 6 October 2011 to review any damage assessment that was produced.

183. When did the FBI start working on the impact statement?

ANSWER: (U) The prosecution does not know.

184. When did the FBI complete the impact statement?

ANSWER: (U) The prosecution does not know.

185. When did you first request to view the impact statement?

ANSWER: (U) On 27 June 2011, the prosecution submitted its Prudential Search Request to the Federal Bureau of Investigation. On 6 October 2011, the prosecution requested authority to review any damage assessment. The prosecution did not know of the existence of the FBI impact statement at these times.

186. When did the FBI grant approval for you to view the impact statement?

ANSWER: (U) 2 November 2011.

187. When did you view the impact statement?

ANSWER: (U) The prosecution conducted a cursory review of the FBI impact statement on 2 November 2011. The prosecution reviewed the entire impact statement for discovery purposes on 18 April 2012.

188. Did the FBI request for you not to disclose the existence of the impact statement to the Defense?

ANSWER: (U) No.

189. Why did you wait until 31 May 2012 to alert the Court and the Defense to the impact statement?

ANSWER: (U) The prosecution did not review the entire impact statement until 18 April 2012.

190. Why did you use the phraseology that you "discovered" that the FBI had conducted an impact statement when you had known about the impact statement for some time?

ANSWER: (U) On 31 May 2012, the prosecution stated that it "discovered that the FBI conducted an impact statement, outside of the FBI law enforcement file, for which the prosecution intends to file an ex parte motion under MRE 505(g)(2)." The prosecution did not review the entire impact statement until 18 April 2012 and, in consultation with the FBI, determined that it would seek limited disclosure under MRE 505(g)(2).

191. Why did you provide "notice" to the Court of the impact statement in the middle of a Response motion, and not as a separate motion?

ANSWER: (U) The prosecution included this information in the section of the Response that discussed the prosecution's obligation to search for discoverable information in the files of law enforcement authorities, which included the FBI.

192. Why did you not disclose the existence of the impact statement to the Defense when the Defense made the following discovery request on 20 January 2012: "Does the Government possess any report, damage assessment, or recommendation as a result of any joint investigation with the Federal Bureau of Investigation (FBI) or any other governmental agency concerning the alleged leaks in this case?"

ANSWER: (U) There was no damage assessment as a result of any joint investigation with the FBI. The FBI impact statement was not prepared as a result of the joint investigation between CID and the FBI. In addition, the defense request was not specific, and the defense did not cite any authority requiring the prosecution to answer the request at that time. The prosecution requested the authority for the defense's discovery request, but none was provided. The prosecution did produce the FBI impact statement because it was aware of the statement and had a copy in its records to review as part of a MRE 505(g) motion.

193. When was the impact statement (with substitutions) provided to the Defense?

ANSWER: (U) On 2 August 2012 with redactions applied, after the Court's authorization of redactions on 19 July 2012.

Brady Discovery

194. When did you first make a request for Brady material from the FBI?

ANSWER: (U) The prosecution first formally requested Brady material in a Prudential Search for responsive material, which included Brady, on14 June 2011.

195. Why did you not contact the FBI earlier to make the request for Brady material?

ANSWER: (U) During 2010, the prosecution's relationship with the Federal Bureau of Investigation was primarily focused on the investigative activities into the compromised information, including the effect of the ongoing WikiLeaks releases. During this time, the prosecution was also involved in the PCR, as well as multiple defense requests and correspondence, as explained above. In March 2011, additional charges were preferred. The prosecution understood the necessity to preserve any discoverable material for the court-martial and, with the assistance of the Department of Justice, submitted Prudential Search Requests to each organization for which it had a good faith basis may have records or information relating to the accused and/or WikiLeaks. The prosecution then worked with the FBI to obtain the records to conduct the review.

196. Did you use the term Brady and/or R.C.M. 701(a)(6) in your request?

ANSWER: (U) See above #133 and 194-195.

197. Did you explain in this request that you were looking for mitigating evidence, both for merits and for sentencing?

ANSWER: (U) See above #134 and 194-195.

198. When did the FBI provide you with Brady material?

ANSWER: (U) The FBI made all the records related to the accused available for inspection on 27-29 April 2011 and 18 May 2011. On 25 August 2011, the FBI provided the prosecution with a copy of the records for the sole purpose of searching for Brady material. The prosecution completed its review of FBI records 1 February 2012.

199. How many documents did the FBI provide you with?

ANSWER: (U) Approximately 3,500 documents, totaling approximately 44,000 pages.

200. Between the date that you first made a request for Brady material from the FBI and the time the FBI provided you with Brady material, did you contact the FBI about expediting the process? If so, when? What was said? Please provide documentation.

ANSWER: (U) From the date of the Prudential Search Request (i.e., 14 June 2011) until the date all records were provided in response thereto (25 August 2011), the prosecution contacted the Federal Bureau of Investigation more than 20 times. Those

communications included updates on the status of the request and answering any questions regarding the scope of the request. The prosecution worked with DOJ, the FBI field office, and HQ FBI to determine the most efficient and fastest way to have the Army prosecutors review the records and obtain documents that needed to be produced, while maintaining proper security and ensuring there is no compromise of ongoing criminal investigations or national security.

201. When did you review the Brady material provided by the FBI? Please provide dates.

ANSWER: (U) See above #198.

202. How many hours collectively did it take you to review the Brady material?

ANSWER: (U) See above #169.

203. When did you disclose the Brady material from the FBI to the Defense?

ANSWER: (U) See above # 171.

ONCIX

204. How many agencies did ONCIX include in its compiling its damage assessment?

ANSWER: (U) To the best of the prosecution's knowledge, ONCIX contacted fifty-seven government organizations to inquire what, if any, damage resulted from the WikiLeaks releases. Several, but not all, of those organizations responded to ONCIX with written or oral individual assessments. These individual assessments contributed, in whole or in part, to the ONCIX damage assessment. The prosecution contacted each of the fifty-seven organizations and retrieved those individual assessments. For those organizations that orally disclosed their individual assessment to ONCIX, the prosecution requested that those organizations memorialize their oral response in an email. The prosecution received approval to disclose all written and oral individual assessments to the defense. As of 3 August 2012, the prosecution has disclosed, or made available for inspection, all individual assessments to the defense.

205. What is the earliest date on these individual damage assessments? What is the latest date on these damage assessments?

ANSWER: (U) The prosecution has disclosed, or made available for inspection, all individual assessments to the defense, which answer this question.

206. How many of these damage assessments are dated after April 2011?

ANSWER: (U) The prosecution has disclosed, or made available for inspection, all individual assessments to the defense, which answer this question.

207. When did ONCIX begin working on the damage assessment?

ANSWER: (U) To the best of the prosecution's knowledge, ONCIX began receiving individual assessments as early as March 2010. ONCIX continued to update its draft damage assessment as information was compiled and analyzed amid ongoing WikiLeaks releases.

208. When did you first learn that ONCIX was charged with, or in the process of, working on a damage assessment?

ANSWER: (U) On 2 February 2011, the prosecution first met with ONCIX to discuss the damage assessment process. At that meeting, ONCIX notified the prosecution of its charter to produce a damage assessment.

209. According to your Chronology and/or Response, on 22 September 2011, the Government was informed that ONCIX had a damage assessment that was "in working draft form" and on 6 March 2012, ONCIX informed the Government that its "draft damage assessment is currently a draft." In light of these two statements that ONCIX had a draft damage assessment, why did you tell the Court that you "were unaware [when the Court asked its questions] that [ONCIX] had any other documentation created that would even qualify as a draft."?

ANSWER: (U) ODNI, on behalf of ONCIX, provided the prosecution with the status of the ONCIX damage assessment at various points in this case. The prosecution relied upon those updates to answer the Court's questions relating to the status of the assessment, because the prosecution did not have the authority to review the damage assessment until 13 July 2012 and had to rely on the information provided by a non-DoD organization.

210. In light of the above statements, why did you further tell the Court twice that you had "no clue" that ONCIX had a draft damage assessment?

ANSWER: (U) See above #209.

211. When you responded to the Court's questions by stating "ONCIX has not produced any interim or final damage assessment in this matter," why didn't you include the rest of ONCIX's statement?

ANSWER: (U) The prosecution relied upon updates provided by ODNI, on behalf of ONCIX, to answer the Court's questions relating to the status of the assessment, because the prosecution did not have the authority to review the damage assessment until 13 July 2012. The prosecution provided the information that it received that at the time was responsive to the Court's questions.

212. Why did you not inform the Court that ONCIX was in the process of working on a damage assessment (irrespective of whether it was a draft or something else)?

ANSWER: (U) See above #211.

213. How did ONCIX provide the following statement to you?

To date, ONCIX has not produced any interim or final damage assessment in this matter. ONCIX is tasked with preparing a damage assessment. However, that draft damage assessment is currently a draft and is incomplete and continues to change as information is compiled and analyzed. Damage assessments can take months or even years to complete, and given the sheer volume of disclosures in this case, we do not know when a draft product will be ready for coordination, must less dissemination.

ANSWER: (U) ODNI, on behalf of ONCIX, disclosed the information via telephone and emailed the prosecution unclassified versions of the statement.

214. If in writing, please provide the entire email/memorandum/letter.

ANSWER: (U) All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

215. If in writing, why did you tell the Court that ONCIX provided this statement to you orally and that you wrote it down verbatim?

ANSWER: (U) If the prosecution made this statement then it was mistaken. Many positions of the United States government have been transmitted to the prosecution through many different forums, and after reviewing all the prosecution's emails in preparation for the due diligence filing, the prosecution found where the unclassified version of the statement was provided.

216. Did ONCIX request and/or advise that you not disclose the existence of the damage assessment to the Defense or the Court?

ANSWER: (U) No. ODNI, on behalf of ONCIX, provided the prosecution with updates on the status of its draft damage assessment, to be shared with the Court and the defense. The prosecution relayed those updates to the Court verbatim because the prosecution was not in a position to comment on the status of the assessment until it reviewed the assessment on 13 July 2012.

217. Did ONCIX require you to use the statement "To date, ONCIX has not produced any interim or final damage assessment in this matter" in your communication with the Court? If so, please provide documentation.

ANSWER: (U) Yes. ODNI, on behalf of ONCIX, provided answers to questions about the status of its damage assessment. The prosecution relayed those updates to the Court verbatim because the prosecution was not in a position to comment on the status of the assessment until it reviewed the assessment on 13 July 2012.

218. If ONCIX required you to use the statement "To date, ONCIX has not produced any interim or final damage assessment in this matter" in your communication with the Court, did ONCIX prevent you from using the remainder of the statement (i.e. "ONCIX is tasked with preparing a damage assessment. However, that draft damage assessment is currently a draft ...)?

ANSWER: (U) Yes. ODNI, on behalf of ONCIX, provided answers to questions about the status of its damage assessment. The prosecution relayed those updates to the Court verbatim because the prosecution was not in a position to comment on the status of the assessment until it reviewed the assessment on 13 July 2012.

219. Do you believe that the expression "To date, ONCIX has not produced any interim or final damage assessment in this matter" conveys a false impression?

ANSWER: (U) No. ODNI, on behalf of ONCIX, provided answers to questions about the status of its damage assessment. The prosecution relayed those updates to the Court verbatim because the prosecution was not in a position to comment on the status of the assessment until it reviewed the assessment on 13 July 2012.

220. After the Court asked its questions on 21 March 2012, did you contact ONCIX about its damage assessment prior to responding on 22 March 2012?

ANSWER: (U) Yes. After the Court asked its questions via email, the prosecution contacted ODNI, on behalf of ONCIX, and sought clarification. This conversation occurred over the telephone and ODNI confirmed the previously provided statement, that ONCIX has not produced any interim or final damage assessment.

221. If yes, what did you ask? What did ONCIX say? Please provide documentation.

ANSWER: (U) See above #220.

222. If yes, why was it necessary to reach out to ONCIX again since they had already given you its response on 6 March 2012?

ANSWER: (U) Because the prosecution was not in a position to comment on the status of the assessment until it reviewed the assessment on 13 July 2012, it had to rely on the information provided by ODNI, on behalf of ONCIX. For each motions hearing, filing, or answer to the Court, the prosecution contacted ODNI to receive an update.

223. If yes, why aren't these entries on your Chronology?

ANSWER: (U) The prosecution's master chronology does not account for every single action by the prosecution in this case; rather it is only an overview of the different activities members of the prosecution team conducted on a daily basis, and includes some specificity when practical.

224. If no, why did you tell the Court at oral argument that you had reached out to ONCIX again prior to responding to the Court's questions?

ANSWER: (U) Not applicable.

225. You claim that it was after the Court's Ruling on 11 May 2012 regarding the discoverability of the Department of State damage assessment that you felt compelled to go back to ONCIX to get ONCIX to reassess its position as to whether it had a draft. Why was this necessary in light of ONCIX's repeated admissions that it had a "working draft" or a "draft"?

ANSWER: (U) On 23 March 2012, and based on the prosecution's answers to the Court's questions, the Court ruled that the Department of State draft assessment was to be produced and did not rule that the ONCIX draft assessment has to be produced. After litigation on the discoverability of drafts and on 11 May 2012, the Court ruled that the Department of State draft damage assessment was discoverable. The prosecution interpreted the ruling also to apply to the discoverability of all draft documents, in general, regardless of their status of completeness. The prosecution immediately notified ONCIX of its interpretation of this ruling to ensure compliance with its discovery obligation and because the defense, in its Motion to Compel Discovery #2 dated 10 May 2012, requested all ONCIX records related to the accused, WikiLeaks, and/or damage resulting from the charged offenses. It was the prosecution's position that ONCIX's response would not answer the Court's inquiry. Again, because ONCIX did not authorize the prosecution to review its damage assessment until 13 July 2012, the prosecution relied upon ODNI's response to answer the Court's inquiry.

226. Did you and ONCIX have discussions about the discoverability of draft documents?

ANSWER: (U) Yes.

227. If yes, explain what these communications entailed and provide documentation.

ANSWER: (U) When ONCIX notified the prosecution that its damage assessment was in working draft form, the prosecution researched the issue and consulted with the Department of Justice. The prosecution explained the results of its research with ODNI and ONCIX. The prosecution also discussed what is described above in #225 about the Court's ruling concerning the Department of State.

228. Is the version of the damage assessment that the Government disclosed to the Defense still the latest version of the damage assessment?

ANSWER: (U) Yes.

229. Is the version of the damage assessment that the Government disclosed to the Defense the final version of the damage assessment?

ANSWER: (U) Yes.

230. If not, when does ONCIX plan on finalizing the damage assessment?

ANSWER: (U) Not applicable.

231. When did you first request authority to view the ONCIX damage assessment?

ANSWER: (U) Since first learning that ONCIX was tasked with preparing a damage assessment in February 2011, the prosecution informally requested authority to review any individual assessments that contributed to the ONCIX assessment. On 25 May 2011, the prosecution submitted a formal Prudential Search Request to ODNI and ONCIX which requested that the ONCIX authorize the prosecution to review, *inter alia*, its damage assessment. On 14 June 2011, the prosecution submitted an updated Prudential Search Request to ODNI/ONCIX. On 14 October 2011, ONCIX provided the prosecution with the contact information for each of the fifty-seven government organizations contacted by ONCIX. Beginning February 2012, the prosecution contacted each of the fifty-seven government organizations to request the individual assessments submitted to ONCIX that contributed to ONCIX's draft damage assessment. On 11 May 2012, the Court ruled that the Department of State draft damage assessment was discoverable. Although the Court did not explicitly comment on the ONCIX draft damage assessment, the prosecution interpreted the ruling also to apply to the discoverability of draft documents, in general. On 24 May 2012, the prosecution again formally requested the authority to review ONCIX's draft damage assessment.

232. According to your Chronology, it appears that you "requested authority to review the ONCIX damage assessment" in February 2011. If you requested authority to view the damage assessment in February 2011, why is it that over one year later, you claim that you did not know that ONCIX had a draft damage assessment?

ANSWER: (U) On 2 February 2011, the prosecution met with ONCIX to discuss the damage assessment process. ONCIX notified the prosecution of its charter to prepare a government-wide damage assessment and that it sent letters to multiple government organizations with a series of questions designed to measure what, if any, damage resulted from the WikiLeaks releases. On 18 February 2011, the prosecution sought assistance from ONCIX to retrieve the individual damage assessments of those organizations from which ONCIX requested input. On 25 May 2011, the prosecution submitted a formal Prudential Search Request to ODNI and ONCIX which requested that the ONCIX authorize the prosecution to review, *inter alia*, its damage assessment. On 14 June 2011, the prosecution submitted an updated Prudential Search Request to ODNI/ONCIX. After litigation relating to the discoverability of draft documents concluded, the prosecution again formally requested the authority to review ONCIX's draft damage assessment. The prosecution was first authorized to review the classified ONCIX damage assessment on 13 July 2012. Until that time, the prosecution relied upon updates from ONCIX to answer the then-current status of its damage assessment.

233. Was it your belief that ONCIX simply did nothing in that one year period?

ANSWER: (U) No.

234. When did you actually view the ONCIX damage assessment?

ANSWER: (U) 13 July 2012.

235. Why did you not view the ONCIX damage assessment earlier?

ANSWER: (U) The prosecution did not have the authority to review the ONCIX damage assessment until 13 July 2012.

236. The ONCIX damage assessment is not dated. Do you know the date of the damage assessment? If so, what is the date of the ONCIX damage assessment? [If this information is classified, please provide an explanation and documentation to this effect].

ANSWER: (U) The prosecution does not know the date, but the defense reviewed the final version.

237. Does the Government consider the length of the ONCIX damage assessment to be classified? If yes, please provide documentation. If not, please inform the Court of the length of the ONCIX damage assessment.

ANSWER: (U) The prosecution does not know whether the length is classified and the length can be determined by counting the total pages. Although the defense reviewed the final damage assessment, the prosecution has not reviewed the final version.

238. How many total hours did it take you to review the ONCIX damage assessment?

ANSWER: (U) On 13 July 2012, the prosecution reviewed the ONCIX damage assessment for approximately three hours. On 3 August 2012, the prosecution conducted a cursory review of the ONCIX damage assessment for approximately 15 minutes to verify proposed redactions and substitutions.

239. When did you review the ONCIX damage assessment?

ANSWER: (U) 13 July 2012.

240. When did you produce the ONCIX damage assessment to the Defense?

ANSWER: (U) The damage assessment was made available for inspection on 23 August 2012 after the Court's ruling on the associated MRE 505(g) motion.

Brady Discovery

241. When did you first make a request for Brady material from ONCIX?

ANSWER: (U) The prosecution first formally requested a Prudential Search Request for responsive material, which included Brady material, from ODNI and ONCIX on 25 May 2011.

242. Why did you not contact ONCIX earlier to make the request for Brady material?

ANSWER: (U) From when the prosecution first learned about ONCIX's charter to prepare a damage assessment in January 2011 until the prosecution submitted a formal request for material on 25 May 2011, the prosecution was learning exactly what type of information existed and from whom that information should be requested. It was necessary for the prosecution to learn what type of information existed and from which organizations that information should be requested before submitting any Prudential Search Requests in this case. Otherwise, the prosecution would be sending its requests blindly without any good faith basis that the respective government organization had any records relating to the accused and/or WikiLeaks.

243. Did you use the term Brady and/or R.C.M. 701(a)(6) in your request?

ANSWER: (U) See above #133 and 241-242.

244. Did you explain in this request that you were looking for mitigating evidence, both for merits and for sentencing?

ANSWER: (U) See above #134 and 241-242.

245. When did ONCIX provide you with Brady material?

ANSWER: (U) ODNI provided responsive material for inspection on 9 February 2012 which included ONCIX information, and the prosecution reviewed the damage assessment on 13 July 2012.

246. How many documents did ONCIX provide you with?

ANSWER: (U) ODNI provided approximately 4,000 pages for review, which included ONCIX information.

247. Between the date that you first made a request for Brady material from ONCIX and the time ONCIX provided you with Brady material, did you contact ONCIX about expediting the process? If so, when? What was said? Please provide documentation.

ANSWER: (U) From 25 May 2011 until 13 July 2012, the prosecution contacted ODNI on behalf of ONCIX specifically more than 80 times. Communications with ODNI consisted largely of requests to expedite the prosecution's review of any records responsive to the prosecution's requests dated 25 May 2011 and 14 June 2011, to include the draft damage assessment and any individual assessments in the possession of ONCIX.

248. When did you review the *Brady* material provided by ONCIX? Please provide dates.

ANSWER: (U) See above #245.

249. How many hours collectively did it take you to review the Brady material?

ANSWER: (U) The prosecution spent a total of more than 50 hours reviewing documents responsive to the prudential search request.

250. When did you disclose the Brady material from ONCIX to the Defense?

ANSWER: (U) The prosecution disclosed or made any discoverable information available to the defense on 23 August 2012.

63 Agencies

251. When did you first learn that part of the ONCIX damage assessment involved reaching out and getting individual damage assessments from various agencies (hereinafter "the 63 agencies" – even though the Government now indicates that there are only 57 agencies)?

ANSWER: (U) On 2 February 2011, the prosecution learned that ONCIX contacted other government organizations to inquire what, if any, damage resulted from the WikiLeaks releases.

252. When did you first request access from ONCIX to these individual damage assessments?

ANSWER: (U) On 18 February 2011, the prosecution sought assistance from ONCIX to retrieve the individual assessments of those government organizations from which ONCIX requested input.

253. What did ONCIX tell you? Please provide documentation.

ANSWER: (U) ONCIX notified the prosecution that it would need authorization from the other government organizations to retrieve those organizations' individual assessments. ONCIX later informed the prosecution that it would assist in retrieving those letters submitted to each government organization. All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

254. From your Response, you state that on 18 February 2011, ONCIX informed you that it would not be able to turn over the individual damage assessments it had received from the agencies it had contacted and that "approval from the other government organizations was necessary, since many of the individual assessments were classified." Why did you not go to the other agencies directly at this point?

ANSWER: (U) The prosecution kept working with ODNI and ONCIX to obtain approval to receive the information from them as one source of all the information in order to save time overall. At the time, and what proved to be true later, the prosecution attempting to contact more than 50 agencies individually would be a very difficult task and it would be more efficient to obtain the information directly from ONCIX.

255. When did you first request contact information for the individual agencies from ONCIX?

ANSWER: (U) On 18 February 2011, the prosecution sought assistance from ONCIX to retrieve the individual assessments of those government organizations from which ONCIX requested input. On 21 April 2011, the prosecution requested copies of the letters ONCIX disseminated to each non-Department of Defense agency. On 11 October 2011, the prosecution requested the names and contact information for each organization.

256. What did you do to get the individual damage assessments from 18 February 2011 to 11 October 2011?

ANSWER: (U) During this time, the prosecution worked with ODNI and ONCIX to obtain the documents from ONCIX, even though they initially did not provide them. Between 18 February 2011 and 11 October 2011, the prosecution continued to work with them to negotiate an efficient resolution to obtaining the information.

257. You state in your Response that you didn't receive the contact information for the various agencies until 14 October 2011, but that you attempted to contact the different organizations on 11 October 2011. How is this possible?

ANSWER: (U) Prior to asking for a contact list, the prosecution reached out to other government organizations for contact information of others and started cold-calling some organizations. This was not effective, so the prosecution requested a contact list from ONCIX.

258. When did you first receive the agencies' contact information?

ANSWER: (U) See above #231.

259. Who did you receive it from?

ANSWER: (U) The prosecution received the contact information from the Office of the General Counsel (OGC) at ODNI.

260. How did you receive it?

ANSWER: (U) Through email.

261. On what date did you have a list of all the agencies that prepared a damage assessment for ONCIX?

ANSWER: (U) The prosecution received the complete list of all the government organizations contacted by ONCIX on 14 October 2011.

262. Was it possible to get phone numbers or addresses for these agencies absent ONCIX providing them to you?

ANSWER: (U) Not for the majority of agencies. The list provided the specific offices within the agencies and Executive Departments that handled their own assessments and there was no readily available or accessible source that provided the information, especially considering most agencies did not have fulltime offices that handled these types of issues.

263. Did you reach out to ONCIX between 18 February 2011 and 11 October 2011 to request phone numbers/contact information?

ANSWER: (U) Yes.

264. If yes, what did ONCIX say?

ANSWER: (U) ONCIX notified the prosecution that it would assist the prosecution in retrieving the letters sent to each government organization, but that the prosecution would need authorization from each government organization to retrieve the respective individual assessment.

265. How many times did you request contact information from ONCIX? Please provide dates.

ANSWER: (U) The prosecution reached out to ONCIX, at a minimum, on 21 April 2011, 13 June 2011, 14 July 2011, and 25 August 2011.

266. If you had contact information for the individual agencies prior to 11 October 2011, why did you not contact these agencies earlier?

ANSWER: (U) See above #231 and 262.

267. Which agencies did you contact on or about 11 October 2011?

268. What did you ask them for?

ANSWER: (U) The prosecution requested, *inter alia*, to review any damage assessment from the above government organizations.

269. Did they provide it?

ANSWER: (U) Yes.

270. When?

271. Who specifically contacted these agencies? Please provide names.

ANSWER: (U) MAJ Fein on behalf of the prosecution.

272. According to your Response, on 18 February 2011, "the prosecution sought assistance from ONCIX to retrieve the individual damage assessments of those government organizations from which ONCIX requested input. ONCIX advised the prosecution that approval from the other government organizations was necessary, since many of the individual assessments themselves were classified." On 14 July 2011, "ONCIX notified the prosecution that it would need authorization from the other government organizations to retrieve those organizations' individual assessments." Why was there no progress on this issue for 5 months?

ANSWER: (U) There was progress on this issue during these five months. At the time, the prosecution was still learning exactly what type of information existed to determine to whom it would send Prudential Search Requests, pursuant to its discovery obligations. These discussions also culminated in the additional charges being preferred in March 2011. In April 2011, the prosecution was informed that ONCIX was working towards retrieving the contact information for each government organization. In May 2011, the prosecution memorialized its Prudential Search Request for any information relating to the accused and/or WikiLeaks. In June 2011, the prosecution met with ONCIX to discuss its Prudential Search Request. Also, in June 2011, the prosecution submitted an updated Prudential Search Request to ODNI/ONCIX. Additionally, as described above, the prosecution kept working with ODNI and ONCIX to obtain the assessments because if they could obtain approval to disclose all the individual assessments to the prosecution, then we would receive the entire batch, rather than having to go to individual agencies throughout the United States Government.

273. On what date did you learn that you needed to go to the agencies directly, rather than go through ONCIX to retrieve the individual damage assessments?

ANSWER: (U) Around 11 October 2011, the prosecution discussed with an ODNI attorney that ONCIX would likely not be able to obtain the authority to disclose the assessment, so the prosecution decided not to wait any longer to obtain the individual

assessments with the assistance of ONCIX, so it requested the contact information for the individual agencies and at that point made the decision to go forward independently.

274. How did you learn this? Please provide documentation.

ANSWER: (U) See above #273.

You claim that on or about 1 November 2011, "the prosecution began to reach out to individuals on the ONCIX contact list in order to obtain copies of the damage assessments."

275. Which specific agencies did you contact on or about 1 November 2011?

ANSWER: (U) On or about 1 November 2011, the prosecution contacted the Federal Bureau of Investigation and the Drug Enforcement Agency.

276. What did you ask them for?

ANSWER: (U) The prosecution requested any individual assessment provided to ONCIX in response to its request.

277. Did they provide it?

ANSWER: (U) Yes.

278. When?

ANSWER: (U) The prosecution conducted a cursory review of the FBI impact statement in preparation for its meeting with the defense on 2 November 2011, and reviewed the impact statement for discovery purposes on 18 April 2012. On 5 March 2012, the prosecution reviewed the DEA damage assessment.

279. Who specifically contacted these agencies? Please provide names.

ANSWER: (U) MAJ Fein contacted these agencies. On 18 April 2012, CPT Overgaard and CPT von Elten reviewed the FBI impact statement. On 5 March 2012, MAJ Fein reviewed the DEA damage assessment.

In an email from SGT Bradley on 27 February 2011 to one of the agencies, he states:

> Although we have been coordinating with NCIX/ODNI for the past year, *just two weeks ago they determined that we cannot review copies of your organization's documents in their possession, and we must directly go to your organization to coordinate a review.*

280. How could you have discovered "just two weeks ago" (i.e. early February 2011) that you had to go to the agencies directly, but have contacted the agencies directly on or about 1 November 2011?

ANSWER: (U) The referenced email is dated 27 February 2012. The email was drafted with the intent to most effectively obtain information from the organizations. Prior to sending the email, the prosecution requested the individual assessments again from ONCIX and they confirmed they could not provide the assessments.

As of the date of the first 802 session on 23 February 2012:

281. What agencies had you contacted?

ANSWER: (U) (1) Bureau of Alcohol, Tobacco, Firearms, and Explosives; (2) Department of Education; (3) Department of Energy; (4) Department of Health & Human Services; (5) Department of Housing & Urban Development; (6) Department of Transportation; (7) Department of Veteran's Affairs; and (8) Tennessee Valley Authority

282. What did you ask these agencies for?

ANSWER: (U) The prosecution requested any documents provided to ONCIX in response to their request.

283. What did they provide, and when?

ANSWER: (U) The following government organizations provided any such documents on the following dates: (1) Bureau of Alcohol, Tobacco, Firearms, and Explosives (12 April 2012); (2) Department of Education (17 February 2012); (3) Department of Energy (21 May 2012); (4) Department of Health & Human Services (19 April 2012); (5) Department of Housing & Urban Development (28 February 2012); (6) Department of Transportation (28 February 2012); (7) Department of Veteran's Affairs (22 March 2012); and (8) Tennessee Valley Authority (9 April 2012).

284. When did you first contact the Department of Agriculture?

ANSWER: (U) 24 February 2012.

285. If after 23 February 2012, why did you tell the Court on 23 February 2012 that you already contacted the Department of Agriculture and they had no Brady?

ANSWER: (U) The prosecution never represented to the Court that it had actually contacted the Department of Agriculture. The prosecution notified the Court and defense, starting at the first RCM 802 conference that it was reaching out to all organizations contacted by ONCIX. The prosecution used the Department of Agriculture as an example to demonstrate the breadth of discovery issues with various organizations.

286. When did you receive a damage assessment from the Department of Agriculture?

ANSWER: (U) The prosecution received the individual assessment from the Department of Agriculture on 30 March 2012.

287. Does the damage assessment contain Brady material (i.e. tends to reduce punishment)?

ANSWER: (U) Yes.

288. You claim that in February 2012, you tasked a paralegal to track down the damage assessments. Please provide a list of each agency that the paralegal contacted from February 2012 onward and when.

ANSWER: (U) This was provided as part of the due diligence filing.

289. If any agency is duplicative of an agency already contacted prior to February 2012, please provide an explanation as to why the paralegal needed to reach out to the agency a second time.

ANSWER: (U) Prior to receiving the contact information for each organization contacted by ONCIX, the prosecution was cold-calling the applicable general counsel's office. That effort, though necessary to try to expedite discovery, was largely unsuccessful. In February 2012, after the prosecution reviewed the actual contact list from ONCIX, a paralegal began contacting the specific point of contact provided by ONCIX.

290. From the day the paralegal send out the first email to the date that he received the last damage assessment, how many days elapsed?

ANSWER: (U) The paralegal began contacting the government organizations on or about 14 February 2012. Of those government organizations contacted by the paralegal and with the assistance of a trial counsel, the prosecution received the final individual assessment on 10 July 2012.

291. How many total manpower hours did it take the paralegal to contact these agencies and collect the documentation?

ANSWER: (U) From 14 February 2012 until 10 July 2012, it is estimated that the paralegal dedicated to this task spent approximately five hours per work week towards this task, which included corresponding with the applicable government officials, retrieving any individual assessments, and tracking the status of any requests. During this period, it is estimated that the trial counsel dedicated to this task spent approximately two hours per work week towards this task, which included corresponding with the applicable government officials, responding to any requests from those organizations, and reviewing any individual assessments. Processing the disclosure of any discoverable material to the defense is not included in these estimates.

292. Why could you not have appointed a paralegal to complete this job one year earlier?

ANSWER: (U) The only information the prosecution had in February 2011 was that ONCIX was chartered to conduct a damage assessment. See above # 231.

293. If you began reaching out to agencies in October/November 2011, why was there a three month lag between that time and the time it you tasked a paralegal to reach out to these agencies in late February 2012?

ANSWER: (U) Based on a defense request, the prosecution presented its case-in-chief, both on the merits and pre-sentencing, to the defense on 8 November 2011 and again on 18 November 2011. The prosecution presented two PowerPoint presentations totaling approximately 585 slides. These defense-requested presentations absorbed all resources during that time. Afterwards, the entire prosecution team was needed to prepare for the Article 32 investigation which took place from 16-22 December 2011.

294. Did you have knowledge (actual or constructive) prior to 23 February 2012 that any of the individual damage assessments had concluded that little to no harm was done to the particular agency?

ANSWER: (U) Yes, but only in very limited circumstances. The evidence at the time and today is overwhelmingly aggravating.

295. If yes, how did you come to have that knowledge? (e.g. did you review the damage assessment; did ONCIX tell you, etc.)

ANSWER: (U) The prosecution reviewed a damage assessment.

296. If yes, why did you tell the Court that you had found no Brady information?

ANSWER: (U) The prosecution did not tell the Court that it has not found any Brady information. Instead, the prosecution told the Court it had not found any exculpatory information during its searches.

297. Please provide a list of each agency on the ONCIX list that you contacted, when you contacted them, when they provided responsive documentation, when you asked for permission to disclose that responsive documentation, and when you disclosed that responsive information to the Defense.

ANSWER: (U) This was provided as part of the due diligence filing.

298. It appears from the Chronology that there is a several month time lag between the time you asked for the damage assessment of these agencies and the time you asked for permission to disclose the damage assessment to the Defense? Why did you not ask for permission to disclose the damage assessment to the Defense at the same time as you asked for the damage assessment?

ANSWER: (U) The prosecution did not request authority to disclose a damage assessment until after it confirmed the damage assessment existed and until it reviewed the damage assessment for discoverable material and determined there was discoverable material contained within the document.

HQDA Memo

299. When did you complete drafting the original HQDA memorandum?

ANSWER: (U) The prosecution sent its Prudential Search Request to DoD on 25 May 2011 and again on 6 June 2011.

300. Once you completed drafting the original HQDA memorandum, who did you give it to? When?

ANSWER: (U) The prosecution sent its Prudential Search Request to OGC, DoD.

301. When was the original HQDA memorandum sent out to HQDA? Who sent it out?

ANSWER: (U) On 29 July 2011, OGC, DoD disseminated the prosecution's Prudential Search Request to Headquarters, Department of the Army (HQDA).

302. Did you request in the original HQDA memorandum that HQDA search for Brady material?

ANSWER: (U) The Prudential Search Request submitted to DoD included broad language that would include any Brady material. See above #134.

303. Did you use either the term "Brady" or R.C.M. 701(a)(6)?

ANSWER: (U) See above #133 and 302.

304. Why did you wait until this date to send out a request that HQDA search for Brady material?

ANSWER: (U) In March 2011, additional charges were preferred against the accused. In April 2011, WikiLeaks began releasing purported DoD documents and continued releasing them through 2011. During this time, the prosecution was trying to understand what information existed and how best to assist CID in its ongoing investigation. The prosecution understood the importance of preserving any discoverable material as soon as possible and, in consultation with the Department of Justice, began preparing a Prudential Search Request to capture this intent.

305. According to your response, you had DOD involved in the HQDA memorandum. Why was this necessary?

ANSWER: (U) The prosecution submitted its Prudential Search Request to encompass the entire department- to include the Department of the Army. The DoD facilitated the prosecution's request to the Department of the Army. Additionally, HQDA took part in the planning process for the prosecution to submit its request through DoD.

306. Was there a prohibition against you contacting HQDA directly?

ANSWER: (U) No. OTJAG is part of HQDA; therefore, the prosecution did directly contact HQDA.

307. In July 2011, you had other emails with HQDA. Why did you not submit the memo to HQDA directly?

ANSWER: (U) The prosecution had knowledge that the DoD would be facilitating the prosecution's request through the appropriate channels, to include the Department of the Army. HQDA agreed that the request should be sent through DoD.

308. Did DOD act as a middleman in obtaining other discovery? (not including DOD discovery itself). If so, what other discovery did DOD act as a middleman for?

ANSWER: (U) No. The prosecution only corresponded with DoD for DoD discovery.

309. How did you keep track of what DOD was doing and what it "owed" you in terms of discovery?

ANSWER: (U) The prosecution coordinated with the OGC at DoD, and if the office directed the prosecution to other offices within DoD, we coordinated directly with them, such as the Joint Staff. As the prosecution coordinated with each subordinate organization it kept track of what information was being gathered and when it was being made available for the prosecution.

310. What was the suspense date on the original HQDA memorandum?

ANSWER: (U) The prosecution's initial Prudential Search Request to DoD included a suspense date of 1 August 2011.

311. When the suspense date came and went, did you follow up with HQDA? DOD? Any other entity?

ANSWER: (U) Yes. The prosecution sent multiple emails and had many phone calls with OGC, DoD to determine the status of the request, and coordinated directly with subordinate organizations to obtain the information at the direction of OGC, DoD.

312. On what date did DOD tell you that all responsive material had been compiled?

ANSWER: (U) On 4 October 2011, the prosecution retrieved the Joint Staff files responsive to the Prudential Search Request. On 27 April 2012, the prosecution retrieved the Army G2 files responsive to the Prudential Search Request. On 11 May 2012, the prosecution retrieved the Headquarters Department of the Army files responsive to the Prudential Search Request.

313. Did DOD provide an accounting of what information they were giving you? If so, in what form?

ANSWER: (U) The organizations provided all responsive material on compact discs.

314. When did you finish reviewing all this "responsive material"?

ANSWER: (U) The prosecution finished reviewing all responsive material to the Prudential Search Request on 10 July 2012.

315. On what date did you become aware that you did not receive any response from HDQA?

ANSWER: (U) 5 January 2012. Once all the initial material was received from DoD in the Fall, the prosecution started preparing for the defense briefs of the prosecution's case and the Article 32. After the completion of the Article 32, it started reviewing the information and identified that HQDA information was not contained within the DoD responsive material.

316. What did you do in reference to the missing HQDA documents at that point? When?

ANSWER: (U) On 5 January 2012, the prosecution contacted OGC, DoD.

317. You claim that on 5 January 2012, you contacted DOD who "advised the prosecution to contact HQDA directly to speed up the process." Is that true?

ANSWER: (U) Yes.

318. Did you contact HQDA <u>directly</u> at that point?

ANSWER: (U) The prosecution contacted Criminal Law Division, OTJAG, on 10 January 2012.

319. You claim on 10 January 2012 to have "emailed Criminal Law Division, Office of the Judge Advocate General, United States Army (hereinafter "OTJAG") to request an update, and was informed that OTJAG needed to contact DOD OGC for the inquiry." Why did you email Criminal Law Division after being told on 5 January 2012 to go to HQDA directly?

ANSWER: (U) The prosecution followed the exact instructions it was given, and contacted the HQDA legal representatives – OTJAG.

320. Why did you continue to involve OTJAG in the process for the next several months instead of working with HQDA directly?

ANSWER: (U) OTJAG is the legal representative of Headquarters, Department of the Army, therefore, the prosecution did coordinate directly with HQDA.

321. When did the revised HQDA memorandum get sent out (i.e. the second time)?

ANSWER: (U) The prosecution did not know of the existence of the HQDA memorandum until the defense provided it to the Court and the prosecution.

322. Was this an identical copy of the first HQDA memorandum?

ANSWER: (U) The prosecution was not privy to the tasking memoranda within HQDA.

323. Did the original HQDA memorandum from 29 July 2011 include the following language?

DOD OGC is requesting that HQDA search for and preserve any documents with material pertaining to: any type of investigation; working groups; resources provided to aid in rectifying an alleged compromise of government information damage assessments of the alleged compromise; or the consideration of any remedial measures in response to the alleged activities of PFC Manning and Wikileaks.

ANSWER: (U) The prosecution was not privy to the tasking memoranda within HQDA.

324. If yes, why does this language not appear in any other preservation request submitted, e.g., to the FBI, Department of State, ONCIX, etc.?

ANSWER: (U) The prosecution was not privy to the tasking memoranda within HQDA.

325. If no, why was this new language included in the second HQDA memorandum?

ANSWER: (U) The prosecution was not privy to the tasking memoranda within HQDA.

326. When did HQDA receive all responsive documentation to the second HQDA memorandum?

ANSWER: (U) On 23 April 2012, OTJAG notified the prosecution that it had started receiving responsive information.

327. When did HQDA provide the responsive documentation to you?

ANSWER: (U) On 11 May 2012, the prosecution received all responsive information.

328. When did you review the HQDA information? Please provide specific dates.

ANSWER: (U) From 30 June 2012 to 1 July 2012, the prosecution completed its review of records responsive to the DoD Prudential Search Request, including Joint Staff and Headquarters, Department of the Army, material.

329. How many responsive documents did HQDA provide you with?

ANSWER: (U) The prosecution received approximately 17,000 pages of documents from the Department of the Army. Additionally, the prosecution received approximately 37,000 pages of documents from DoD (excluding HQDA).

330. When did you request authority to disclose the HQDA documents to the Defense?

ANSWER: (U) On 28 June 2012, the prosecution met with representatives from HQDA and the Joint Staff to discuss streamlining a process for approvals of any documents being disclosed to the defense under the Court's order. After finishing the review, the prosecution submitted all the discoverable documents for approval on 5 July 2012.

331. When did HQDA approve of that request?

ANSWER: (U) The Army G2 approved disclosure of HQDA, DoD, Joint Staff, USCENTCOM, USSOUTHCOM, and other DoD information on 30 July 2012.

332. When were all the HQDA documents produced to the Defense?

ANSWER: (U) Unlike other organizations, HQDA approved disclosure without any requirements to file MRE 505(g) motions; therefore, the prosecution delivered the discoverable material on 2 August 2012, along with material from DoD, the Joint Staff, USCENTCOM, USSOUTHCOM, and DIA (BATES #: 00449943-00479483).

333. Please explain this entry in your Chronology: "30-Jun-11 Thu Prosecution reviews HQDA records responsive to prudential search request to DoD but not TS-SCI records responsive to the prudential search request."

ANSWER: (U) From 30 June 2012 to 1 July 2012, the prosecution completed its review of records responsive to the DoD Prudential Search Request that were unclassified or classified at the SECRET level. The prosecution reviewed approximately 13,000 documents. The prosecution reviewed all TS-SCI records responsive to the request on 10 July 2012.

Other Closely Aligned Agencies and Prudential Search Requests

334. Please provide a list of every agency that you sent a "prudential search request" to and when. In this list, please provide the original suspense date for the agency to respond. Do not include the 63 agencies that were contacted for the ONCIX damage assessment.

[redacted]

[redacted]

335. From documentation already provided, it appears that these search requests were sent no earlier than May 2011, one year after the accused was placed in pretrial confinement. Why did you wait one year before sending out prudential search requests?

ANSWER: (U) It did not makes sense to send the requests at an earlier time. From May 2010 until May 2011, WikiLeaks continued to release compromised information which led to additional charges being preferred and a broader investigation into the accused's misconduct. The prosecution understood the importance of preserving any discoverable material as soon as possible and, in consultation with the Department of Justice, began preparing a Prudential Search Request to capture this intent.

336. Could relevant information have been destroyed in this one year?

ANSWER: (U) Not likely. The material sought by the defense in discovery requests, and by the prosecution in its Prudential Search Requests, did not exist in May 2010. The disclosures were ongoing and the investigations were ongoing. The Prudential Search Requests were designed to preserve any information created before trial so that the prosecution could conduct Brady reviews and reviews of potentially discoverable material relating to the accused and WikiLeaks.

337. To your knowledge, was relevant information destroyed in this one year?

ANSWER: (U) No.

338. If not, then please explain the following: "Furthermore, please take steps to preserve materials related to PFC Manning and/or WikiLeaks from any routine data destruction practices."

ANSWER: (U) The prosecution included this language because the accused's misconduct took place in a deployed setting where commands tend to adopt routine data destruction practices and the prosecution was not aware at the time of what each organization's routine practices included.

[redacted]

339. Do any of the agencies that you contacted have "routine data destruction practices"? If so, which ones?

ANSWER: (U) The prosecution is not aware of any routine data destruction practices exercised with any information pertaining to this case.

340. Could the documents pertaining to the Department of State's reporting to Congress have been destroyed pursuant to routine data destruction practices?

ANSWER: (U) The prosecution is not aware of any routine data destruction practices exercised with any information pertaining to this case at the Department.

341. Were there any agencies/organizations that you contacted to provide discovery, but that you did not submit a prudential search request to? If yes, please list all agencies, the date you contacted them, how you contacted them, the date they produced information, the date you reviewed information, and the date you disclosed that information to the Defense.

ANSWER: (U) The only agencies/organizations that the prosecution contacted to provide discovery, but that it did not submit a Prudential Search Request to, are those organizations contacted by ONCIX not previously identified as having been sent such a request.

342. Do you think that your prudential search requests are synonymous with a request for Brady material? In other words, are these the same as your Brady requests?

ANSWER: (U) The Prudential Search Requests were broader in scope than a request for Brady material. Any Brady material would necessarily be responsive to the Prudential Search Request.

343. If not, please provide dates when you send a request for Brady to each agency. Also, please provide a copy of your Brady request.

ANSWER: (U) Not applicable.

344. If these prudential search requests are your request for Brady, did you mention the word "Brady" or R.C.M. 701(a)(6) in the prudential search requests?

ANSWER: (U) No. See above #133 and 342.

345. If not, why not?

ANSWER: (U) The prosecutors in a criminal case are best suited to gauge whether information qualifies as Brady, especially regarding potentially exculpatory information. Brady determinations under Williams are made by the prosecution and not other organizations.

346. What part of the prudential search requests refers to Brady? Please identify specific language.

ANSWER: (U) The request for "any information held by [the respective] agency, which concerns or references [the accused] and/or WikiLeaks." The request specifically sought "any information directly concerning [the accused] including but not limited to any documents that discuss damage or harm caused by [the accused] and WikiLeaks[.]"

347. Please explain how this specific language asks for Brady material.

ANSWER: (U) The request is broader than what is required under Brady. Any Brady material would necessarily be responsive to the Prudential Search Request.

348. You ask in your search request that the agencies preserve and produce documents that "discuss damage or harm caused by PFC Manning." Did you ever ask for documents which discuss a lack of harm or damage caused by PFC Manning?

ANSWER: (U) The prosecution requested any documents that discussed damage or harm. The request was not limited solely to documents showing actual harm. Instead, the request includes documents showing actual damage or harm and documents showing lack of damage or harm. Further, the request asked organizations to err on the side of preserving material. Again, the prosecution's request necessarily includes any Brady material because the request includes any documents relating to the accused and/or WikiLeaks. Also, all requests were submitted after extensive discussions with each organization that included explaining that damage or harm included lackther of or minimal levels of harm.

349. In your preservation requests, you referred to PFC Manning's Article 46 rights. Why did you not refer to Brady?

ANSWER: (U) The prosecution referenced Article 46, UCMJ, the Rules for Courts-Martial, and applicable case law. Article 46, UCMJ, serves as the basis for broad discovery in the military justice system. See above responses for why the requests included Brady material (#342-348).

350. You state in your search request, "This request is designed to allow the prosecutors to assess the totality of information available and held as records by other government agencies." You do not state that the request is designed to provide Brady discover to the Defense (in fact you state, "It is not intended to, nor should it be interpreted as, ascribing any legal relevance, including whether such information may be provided in discovery to the information requested.). Were these search requests designed to compile evidence for your case-in-chief?

ANSWER: (U) These requests were designed to encompass a broad spectrum of information, including that which is discoverable under Brady and other rules of discovery. The main purpose was to understand what type of Brady information exists within the United States Government.

351. In your search request you ask for "certain information, detailed below, which directly implicates the evidence in the above-referenced case." What does this mean?

ANSWER: (U) The prosecution's request was two-fold: first, to preserve any records relating to the accused and/or WikiLeaks; and second, to preserve any records relating to the evidence in this case. The prosecution requested any records relating to the evidence in this case because such records may be discoverable, even though those records may not readily be related to the accused and/or WikiLeaks (e.g., IP addresses).

352. Did you ever specifically ask any agency for documents or evidence which reasonably tends to negate guilt, reduce guilt, or reduce punishment? If so, how did you ask these agencies? Please provide a list of agencies, and how and when the communication took place.

ANSWER: (U) See above #342-350.

353. The first reference to Brady in your chronology is after you submitted your prudential search requests ("9-Jun-11 Thu PTA and Brady research/memo"). Why did you wait over one year to research Brady?

ANSWER: (U) The prosecution did not wait over one year to research Brady. The prosecution started researching its Brady obligations within 30 days of receiving the case from Iraq. The prosecution researched specific discovery issues as they arose throughout the pretrial process. The specific entry referenced above related to whether the accused may waive discovery as part of a pretrial agreement.

354. Why did you send out preservation requests without researching Brady?

ANSWER: (U) The prosecution did not send out preservation requests without researching Brady. The prosecution researched discovery issues, to include Brady, well before it sent out the Prudential Search Requests.

355. After your May 2011 (or thereabouts) prudential search request, did you ever follow-up with the agencies to ask why you had not received any responsive documentation? Please provide a list of agencies, the dates you contacted them, and the substance of the communications. If in writing, please provide documentation.

356. Did any of the agencies meet the original suspense dates? If yes, please provide details and dates.

ANSWER: (U) No.

357. For those agencies that did not meet the original suspense dates, did you contact them? If yes, when? Please provide a list of each agency, when the communication took place, and what the substance of the communication entailed. If in writing, please provide documentation.

ANSWER: (U) See above #355.

358. Why did you send out the exact same search request to DIA on 25 March 2012 and 14 June 2012?

ANSWER: (U) The requests dated 25 May 2011 and 14 June 2011 were not identical. The request dated 25 May 2011 requested that the organizations preserve records responsive to the prudential search request, as well as any other records discovered that may not be responsive. Many organizations were confused how to answer the first request. In consultation with the Department of Justice, the prosecution redefined its request on 14 June 2011 to include those records relating to the accused and/or WikiLeaks.

359. How many other duplicative search requests did you send out? Please list each agency and the dates that the duplicative search requests were sent out.

360. Why did you keep sending the same requests to these agencies?

ANSWER: (U) See above #358 and 359.

361. Other than these duplicative requests, did you ever contact the agencies to inquire as to the progress in collecting the requested information? If yes, please provide details. In particular,

please provide the list of agencies you contacted, when you contacted them, what the discussion entailed. Please provide documentary evidence to this effect.

ANSWER: (U) See above #355.

362. Did you ever ask any agency how they were collecting the responsive information? If yes, explain and provide documentation.

ANSWER: (U) The prosecution frequently inquired about the status of its Prudential Search Requests, to include the steps taken by the organizations to gather records responsive to the request.

363. Did you ever ask any agency how many people they had asked to collect this information? If yes, explain and provide documentation.

ANSWER: (U) No.

364. Did you ever ask for updates on when you should expect the discovery? If yes, explain and provide documentation.

ANSWER: (U) The prosecution frequently inquired about the status of its Prudential Search Requests, to include what, if any, progress was being made. All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

365. Did you ever communicate with any agency about PFC Manning's right to a speedy trial? If yes, explain and provide documentation.

ANSWER: (U) The prosecution prepared a memorandum for each of the organizations that explained the right to a speedy trial in the military justice system. All documentation, if any, that the prosecution has authority to provide or will reference during the motions hearing has been provided to the defense.

366. Did any agency provide you with an explanation as to what was taking so long to collect the documents? If yes, explain.

ANSWER: (U) The prosecution frequently inquired about the status of its Prudential Search Requests, to include the steps taken by the organizations to gather records responsive to the request and what, if any, progress was being made.

367. Did you ever attempt to gather this information for disclosure prior to the Article 32 hearing?

ANSWER: (U) Pre-referral, the prosecution submitted its Prudential Search Requests to all government organizations for which it had a good faith basis may have records or information relating to the accused and/or WikiLeaks. The prosecution submitted these

requests pre-referral, so that any discoverable material that did not require a military judge to regulate may be disclosed to the defense as soon as possible.

368. Was any evidence from any prudential search request produced to the Defense prior to the Article 32 hearing?

ANSWER: (U) No.

369. When did each agency provide you with responsive documents? Please provide a list of agencies and dates where the agency had provided all responsive documents for your review.

370. How many responsive documents did each agency provide to you?

[1] The prosecution conducted a cursory review of the FBI records on 27 April 2011. The prosecution was given access to all FBI records on 25 August 2011.

[2] On 27 April 2011, the Army G2 office provided approximately 1341 documents responsive to the request. On 3 October 2011, the Joint Staff provided approximately 9476 documents responsive to the request. On 11 May 2012, HQDA provided approximately 1462 documents responsive to the request.

[3] Many of the above organizations discovered additional records responsive to the prosecution's request based on subsequent developments. The prosecution reviewed those records as soon as they became available.

371. How many total manpower hours per agency did it take to collect the documents?

ANSWER: (U) The prosecution does not know the answer to this question.

372. When did you review all the documents from each agency? Please provide a list of agencies and dates where you first reviewed all documents and dates where you finished reviewing all documents.

373. How many total hours did it take you to review documents from each agency? Please break it down by agency.

374. When did you disclose all the responsive documents to the Defense? Please break it down by agency (and use the date on which the last agency document was produced to the Defense).

ANSWER: (U) The defense is in possession of the referenced material that answers this question.

375. Do you have any document to an external agency from prior to the Court's ruling on 23 March 2012 that explains the correct view of Brady and asks the agency for Brady discovery. If so, please provide that document.

ANSWER: (U) See above for explanation of Prudential Search Requests (#133-134). Prior to 23 March 2012, the prosecution submitted multiple filings with the Court explaining Brady.

376. After the Court's ruling on 23 March 2012 did you contact closely aligned agencies to specifically ask for evidence that reasonably tends to reduce punishment? If so, please provide documentation.

ANSWER: (U) Well before referral, the prosecution submitted Prudential Search Requests to all closely aligned agencies. This request included any material that reasonably tends to reduce punishment.

Department of Homeland Security

377. When did you first learn that the DHS was working on a damage assessment?

ANSWER: (U) The prosecution first learned that the Department of Homeland Security was preparing a damage assessment on 19 October 2011.

378. When did the DHS complete the damage assessment?

ANSWER: (U) To the best of the prosecution's knowledge, the damage assessment was completed on 21 March 2011.

379. What is the date on the DHS damage assessment?

ANSWER: (U) 21 March 2011.

380. When were you authorized to view the DHS damage assessment?

ANSWER: (U) 19 October 2011.

381. When did you first view the DHS damage assessment?

ANSWER: (U) 19 October 2011.

382. How long did it take you to review the DHS damage assessment?

ANSWER: (U) Approximately 4 hours.

383. When was the first time you revealed the existence of the DHS damage assessment to the Defense? To the Court?

ANSWER: (U) As the defense outlined in its Addendum #2 to Defense Motion to Compel Discovery #2, dated 18 June 2012, the prosecution orally notified the defense on 8 June 2012 after a motions hearing. The prosecution did not notify the Court of its existence because the documents were disclosed to the defense in their entirety on 13 June 2012. Based on the Court's emails with the parties, it appears the Court became aware of its existence through the defense's filing on 18 June 2012, after the assessment was fully disclosed to the defense.

384. Why did you wait until that date to reveal the existence of the DHS damage assessment to the Defense and the Court?

ANSWER: (U) The damage assessment is classified; thus, approval from the equity holder is necessary before disclosure to the defense. Furthermore, the prosecution was coordinating with the Department of Homeland Security for any records responsive to the prosecution's Prudential Search Request.

385. After the Court's ruling on 11 May 2012 denying your request for reconsideration of the Department of State damage assessment, did you have contact with the DHS? If so, when? What was the substance of these communications?

ANSWER: (U) No. The prosecution did not discuss the Court's ruling dated 11 May 2012 with the Department of Homeland Security. The prosecution contacted the Department of Homeland Security on 16 May 2012 to discuss the Court's ruling dated 23 March 2012 and to obtain authority to disclose their assessment without redactions or substitutions, which DHS approved on 7 June 2012 and the prosecution immediately disclosed its existence on 8 June 2012, and produced the document in discovery on 13 June 2012.

In the aftermath of the Court's ruling on 11 May 2012, you reached out to various organizations:

14-May-12 Mon Email with Export-Import Bank of US to inquire about any discoverable material
14-May-12 Mon Email with FMC to inquire about any discoverable material
14-May-12 Mon Email with MMC to inquire about any discoverable material
14-May-12 Mon Email with OPI to inquire about any discoverable material
14-May-12 Mon Email with SSA to inquire about any discoverable material
14-May-12 Mon Email with SSS to inquire about any discoverable material
14-May-12 Mon Phone call with Export-Import Bank of US to inquire about any discoverable material
14-May-12 Mon Phone call with FCA to inquire about any discoverable material
14-May-12 Mon Phone call with FMC to inquire about any discoverable material
14-May-12 Mon Phone call with MMC to inquire about any discoverable material

14-May-12 Mon Phone call with OPI to inquire about any discoverable material
14-May-12 Mon Phone call with SBA to inquire about any discoverable material
17-May-12 Thu Email with ODNI to inquire about any discoverable material with NCPC
17-May-12 Thu Email with ODNI to inquire about any discoverable material with NCTC

386. Why did you wait until mid-May 2012 (two years after PFC Manning was arrested) to reach out to these organizations?

ANSWER: (U) The prosecution did not wait to reach out to these organizations, nor were these communications pursuant to the Court's ruling on 11 May 2012. Rather, they were part of the continuing effort to obtain information from the agencies that started in February 2012.

387. Was the need to reach out to these agencies tied to the Court's 11 May 2012 ruling? Explain.

ANSWER: (U) No. The prosecution bore a discovery obligation to search for any individual assessment from the above organizations.

388. Did you submit a prudential search request to DHS? If yes, when?

ANSWER: (U) Yes, on 25 October 2011.

389. If you did not submit a prudential search request, did you otherwise ask DHS to produce responsive documentation?

ANSWER: (U) Not applicable.

390. Did you receive discoverable information from DHS? When?

ANSWER: (U) The prosecution received records in response to its Prudential Search Request on 27 January 2012.

391. When did you review that discoverable information?

ANSWER: (U) The prosecution completed its review of those records provided in response to its Prudential Search Request on 26 July 2012.

392. How many total manpower hours did it take you to review that information?

ANSWER: (U) Approximately 75 hours

393. When did you produce that information to the Defense?

ANSWER: (U) The prosecution disclosed the DHS information to the defense on 14 September 2012, except for one document which was the subject of a MRE 505(g) motion. The Court authorized redactions for this one document on 28 September 2012,

and the single document, with redactions applied, was produced to the defense on 26 October 2012.

IRTF Damage Assessment

394. When did you first learn of the existence of the IRTF damage assessment?

ANSWER: (U) The prosecution first learned about the Information Review Task Force in August of 2010 but did not know they were creating a damage or impact statement. The prosecution first learned of the existence of the damage assessment on or about 1 October 2011 through discussions with DIA.

395. When was the IRTF damage assessment completed?

ANSWER: (U) To the best of the prosecution's knowledge, the damage assessment was completed on 29 July 2011.

396. What is the date on the IRTF damage assessment? [If this information is classified, please provide an explanation and documentation to this effect].

ANSWER: (U) The date that is printed on the front of the assessment is 29 July 2011, which has been available to the defense for inspection since 6 June 2012 after the Court approved redactions under MRE 505(g)(2) on the record on 6 June 2012.

397. When did you first request to view the IRTF damage assessment?

ANSWER: (U) On 25 May 2011, as part of the Prudential Search Request, which would have included the document, and the prosecution specifically requested to review the damage assessment on 4 October 2011.

398. When did the CIA approve of your request to view the IRTF damage assessment?

ANSWER: (U) CIA was not involved in the request to view the document, but rather DIA. DIA approved the request on 5 October 2011.

399. When did you first receive the IRTF damage assessment?

ANSWER: (U) 5 October 2011.

400. When did you review the IRTF damage assessment?

ANSWER: (U) The prosecution started reviewing the document on 5 October 2011.

401. How many total hours did it take you to review the IRTF damage assessment?

ANSWER: (U) Approximately 4 hours.

402. How many pages was the IRTF damage assessment?

ANSWER: (U) 121 pages, which has been available to the defense for inspection since 6 June 2012 after the Court approved redactions under MRE 505(g)(2) on the record on 6 June 2012.

403. When was the IRTF damage assessment produced to the Defense?

ANSWER: (U) The assessment has been available to the defense for inspection since 6 June 2012 after the Court approved redactions under MRE 505(g)(2) on the record on 6 June 2012.

OGA#1 Second Follow-On Damage Assessment

404. When were you first informed that the OGA#1 was working on a second follow-on report?

ANSWER: (U) The prosecution does not understand this question and subsequent questions about "OGA#1 Second Follow-On Damage Assessment," because the CIA created the follow-on damage assessment.[4] As outlined in the government's notice filing on 12 July 2012, the prosecution "learned on 11 July 2012 that the CIA had drafted another report analyzing the impact on the WikiLeaks disclosures on a discrete matter."

405. How did you learn of this? Please provide documentation.

ANSWER: (U) During a phone conversation with Agency counsel, the prosecution was informed about the report.

406. When did the OGA#1 begin the second follow-on report?

ANSWER: (U) The prosecution does not understand this question and subsequent questions about "OGA#1 Second Follow-On Damage Assessment," because the CIA created the follow-on damage assessment. The prosecution does not know when the CIA started the follow-on report.

407. When did the OGA#1 complete second follow-on report?

ANSWER: (U) The prosecution does not understand this question and subsequent questions about "OGA#1 Second Follow-On Damage Assessment," because the CIA created the follow-on damage assessment. The prosecution does not know when the CIA

completed the follow-on report; however the date of the report is the likely completion date.

408. What is the date on the OGA#1 second follow-on report? [If this information is classified, please provide an explanation and documentation to this effect].

ANSWER: (U) The prosecution does not understand this question and subsequent questions about "OGA#1 Second Follow-On Damage Assessment," because the CIA created the follow-on damage assessment. The prosecution does not know the date the CIA completed the follow-on report.

409. When did you request to view the OGA#1 second follow-on report?

ANSWER: (U) The prosecution does not understand this question and subsequent questions about "OGA#1 Second Follow-On Damage Assessment," because the CIA created the follow-on damage assessment. The prosecution requested to review the CIA's follow-on report on 11 July 2012.

410. When were you given approval to view the OGA#1 second follow-on report?

ANSWER: (U) The prosecution does not understand this question and subsequent questions about "OGA#1 Second Follow-On Damage Assessment," because the CIA created the follow-on damage assessment. The CIA gave the prosecution approval on 11 July 2012.

411. When did you view the OGA#1 second follow-on report?

ANSWER: (U) The prosecution does not understand this question and subsequent questions about "OGA#1 Second Follow-On Damage Assessment," because the CIA created the follow-on damage assessment. The prosecution reviewed the CIA report on 13 July 2012.

412. How many pages was the OGA#1 second follow-on report?

ANSWER: (U) The prosecution does not understand this question and subsequent questions about "OGA#1 Second Follow-On Damage Assessment," because the CIA created the follow-on damage assessment. The prosecution does not have the authority to disclose the length of the CIA's report.

413. How long in total did it take you to review the OGA#1 second follow-on report?

ANSWER: (U) The prosecution does not understand this question and subsequent questions about "OGA#1 Second Follow-On Damage Assessment," because the CIA created the follow-on damage assessment. The prosecution does not have the authority to disclose the length of the CIA's report.

414. When did you disclose the existence of the OGA#1 second follow-on report to the Court and the Defense?

ANSWER: (U) See above #404.

415. On 11 April 2012, you indicate the "Prosecution reviews two versions of OGA1 damage assessment." Was one of the two damage assessments the OGA#1 "follow-on report"?

ANSWER: (U) No.

416. If not, why were there two damage assessments?

ANSWER: (U) See above #415.

417. Have you disclosed both damage assessments to the Court and the Defense?

ANSWER: (U) See above #415.

Grand Jury Testimony

418. You indicate that on 29 September 2010, "DOJ informed prosecution that judge signed order disclosing grand jury matters to prosecution." Does that mean you were authorized to view the grand jury testimony on that date?

ANSWER: (U) Yes.

419. If not, why not?

ANSWER: (U) Not applicable.

420. If not, on what date were you authorized to view the grand jury testimony? Who authorized this?

ANSWER: (U) Not applicable.

421. When did you request to view the grand jury testimony?

ANSWER: (U) The prosecution had multiple conversations with the United States Attorney's Office for the Eastern District of Virginia (EDVA) about viewing the grand jury testimony in January and February 2012. On 14 February 2012, the prosecution

formally requested to review the testimony. The Department of Justice authorized the prosecution to review the transcripts of grand jury testimony on 12 April 2012.

422. When did you receive the grand jury testimony?

ANSWER: (U) The prosecution reviewed the grand jury testimony at EDVA on 12 April 2012 and never received copies, except the final redacted versions produced to the defense.

423. When did you review the grand jury testimony? Please provide the date that you started reviewing the testimony and the date you finished reviewing the grand jury testimony.

ANSWER: (U) The prosecution reviewed the grand jury testimony on 12 April 2012 and the final redacted versions on 21 May 2012.

424. How many total manpower hours did it take to review the grand jury testimony?

ANSWER: (U) The prosecution estimates it took approximately 3 hours to review the grand jury testimony.

425. When did you produce the grand jury testimony to the Defense?

ANSWER: (U) Based on the Court's ruling on 25 April 2012, the prosecution delivered the relevant portions of the grand jury testimony to the defense on 21 May 2012 (BATES #: 00447667-00447817).

Quantico Emails

426. When did you request that Quantico preserve all emails related to PFC Manning?

ANSWER: (U) The prosecution never requested that Quantico preserve all its emails relating to the accused. On 28 April 2011, the prosecution requested the Commander, Marine Corps Base Quantico (MCBQ) to "take any and all reasonable and necessary steps to preserve any information held by your command which concerns or references PFC Manning."

427. When did you begin receiving emails from Quantico?

ANSWER: (U) The prosecution first received emails on or about 2 June 2011 and continued to receive emails throughout the summer and fall along with other documentation.

428. When did you receive the last email from Quantico?

ANSWER: (U) On or about 5 December 2011.

429. You indicate that on 2 June 2011 you "Picked up Quantico MCB Discovery docs" at Quantico. Were these emails in the "discovery docs" that you picked up?

ANSWER: (U) Some of the emails were contained within the information.

430. When did you begin reviewing emails from Quantico?

ANSWER: (U) 25 July 2012.

431. Did any member of the prosecution team see, open, or look at any of the emails prior to two days before you informed the Defense of their existence?

ANSWER: (U) The prosecution did not review the emails for discovery purposes until 25 July 2012. It is likely that a staff member of the prosecution team saw, opened, or looked at some of the emails during the discovery in-processing.

432. Where were the emails between the time you received the last email from Quantico and the time you began reviewing the emails?

ANSWER: (U) The prosecution stored the email digitally.

433. Why did you wait until 2 days before the Defense filing to review the emails from Quantico?

ANSWER: (U) The prosecution began reviewing those emails in preparation for the Article 13 motion. On 25 July 2012, the prosecution began prioritizing its review of the emails for Giglio/Jencks material based on potential witnesses.

434. Did you know, based on communication with people at Quantico Brig or otherwise, that the emails contained unfavorable information for the Government?

ANSWER: (U) No.

435. Did you know prior to reviewing the emails that LtGen. Flynn was involved in confinement decisions at Quantico?

ANSWER: (U) The prosecution has never been aware that LtGen Flynn was involved in confinement decisions at Quantico, but rather his involvement was as the senior commander on MCBQ and he exercised his command supervision over the MCBQ Garrison Commander.

436. Is it your honest belief that the Defense did not want emails from Quantico pertaining to PFC Manning?

ANSWER: (U) The prosecution responds to discovery requests and relies on the defense to provide specific requests. The defense requested documents and not emails. Once the

prosecution reviewed the information as part of its Giglio/Jencks review and determined that it was discoverable for other reasons, the prosecution produced the information.

437. Do you believe that emails are "documents" within the meaning of R.C.M. 701(a)(2)?

ANSWER: (U) No. The defense previously differentiated between "documents" and "emails"; thus, the prosecution read the defense request to include only documents.

438. After the Defense informed the Court and Government that it was planning on mailing out attachments earlier than its official filing, why did you not alert the Defense to the existence of the emails?

ANSWER: (U) The prosecution notified the defense of discoverable emails as soon as it became aware of their existence. The prosecution notified the defense of the discoverable emails before the filing date of the Article 13 motion and did not open the defense's attachments to the Article 13 motion until after the RCM 802 conference where the defense notified the Court that it still intended to move forward with the motion as filed; otherwise, the prosecution would not have reviewed the documents.

439. In the email accompanying the original batch of 84 emails, MAJ Fein stated that these emails were "obviously material to the preparation of the defense." The Defense asked the question: "Are there emails you have which are material to the preparation of the defense, but not obviously material?" Two prosecutors responded something to the effect, "No – we have given you everything that is material to the preparation of the defense." Several weeks later, you disclosed another 600 emails as being material to the preparation of the defense. Why did these prosecutors tell the Defense that you had disclosed everything that was material to the preparation of the defense?

ANSWER: (U) On 26 July 2012, the prosecution disclosed the emails that were obviously material to the preparation of the defense for Article 13 purposes. After the Mr. Coombs submitted the same question twice to the prosecution via email, both CPT Overgaard and CPT Morrow responded that the prosecution disclosed the information that was material to the preparation of the defense. At the point of the initial disclosure, the prosecution was not on notice of what the defense considered material except that which was obvious. As stated in the prosecution's response to the Defense Motion to Compel Number 3, dated 23 August 2012, the prosecution only became aware of what information was also material to the preparation of defense, outside of that which was obvious on 17 August 2012, when the defense finally provided specificity in its motion to compel. In both the 8 December 2010 pre-referral discovery request and 1 August 2012 post-referral discovery request, the defense did not provide any specificity to inform the prosecution, but rather asked for all information or all emails.

440. On 3 August 2012, after the Defense had filed its Article 13 motion, you have the following entry "Email with CID to obtain Article 13 evidence." Why did you wait until over two years into the case to email CID about obtaining Article 13 evidence?

ANSWER: (U) In preparation for the Article 13 motion, the prosecution requested that CID search the evidence locker for a particular piece of evidence. The evidence requested was not in the possession of any known government organization and the prosecution requested CID's assistance. It was not known to the prosecution that this evidence was needed until after the defense filed its motion and made its allegations against the USMC.

441. When did you receive this information?

ANSWER: (U) The prosecution received information about and pictures of the nooses the accused created while in confinement on or about 17 September 2012 and 16 October 2012.

442. Is this the evidence you disclosed to the Defense on 25 October 2012, months after the Defense had filed its Article 13 motion?

ANSWER: (U) This evidence about the nooses was disclosed after the defense filed its Article 13 motion because the prosecution was not aware that the defense would ignore the fact that the accused was suicidal and made multiple suicidal ideations while in pretrial confinement. Therefore, only after the defense's filing, was the prosecution on notice that the defense would contest the accused's mental health as part of the Article 13 motion.

Miscellaneous Issues

443. For all agencies not specifically mentioned, please provide: a) date of prudential search request or any other type of discovery request; b) date agency provided responsive documentation; c) date you reviewed responsive documentation; and d) date you produced responsive documentation.

ANSWER: (U) Absent what is listed above and below, the prosecution submitted preservation requests based on the defense's preservation request for any hard drives that were in the 2/10 MTN TOC and SCIF. On 21 September 2011 – more than one year after the accused's unit redeployed back to Fort Drum, New York – the Defense requested that the United States preserve these hard drives. With assistance of supply and logistics experts who had deployed to Iraq, the prosecution identified four commands or agencies that may possess hard drives responsive to this request and promptly submitted a Request to Locate and Preserve Evidence to each command or agency on 6 October 2011. Those entities included: (1) 2d Brigade Combat Team, 10th Mountain Division (2/10 MTN); (2) the Federal Bureau of Investigation (FBI); (3) Third Army, United States Army Central (ARCENT); and (4) the Computer Crime Investigative Unit, U.S. Army Criminal Investigative Command (CCIU). On 13 December 2011, 2/10 MTN preserved 181 hard drives. On 20 October 2011, the ARCENT Commander confirmed that the "command does not have possession of any Theater Provided Equipment hard drives responsive to [the United States'] request," which would account for any equipment which did not redeploy with the unit. Similarly, around 7 October 2011, the

FBI confirmed it had no hard drives responsive to the United States' request, outside those collected by Army Criminal Investigation Command (CID). CID had already preserved any hard drives by collecting them as evidence.

444. The Secretary of the Army AR 15-6 investigation was completed on 14 February 2011 and disclosed to the defense on 30 June 2011, 136 days later. Similarly, the United States Forces-Iraq (USF-I) AR 15-6 investigation was completed on 16 June 2010; the documents were not produced to the Defense until 12 May 2011, 262 days later. Finally, the United States Division-Center (USD-C) AR 380-5 investigation was completed on 16 June 2010, but not disclosed to the Defense until 9 February 2011, 238 days later. Why was there a time lag in disclosing these documents to the Defense?

ANSWER: (U) The accused was not transferred from USD-C, Iraq to MDW until 28 July 2010. The prosecution was not aware of any administrative investigations completed in Iraq and relating to the accused's misconduct until early Fall of 2010. Once the prosecution became aware of the administrative investigations completed in Iraq – specifically the USF-I and USD-C investigations – the prosecution began immediately coordinating with those respective commands in order to compile the entire investigation, including all witness statements, attachments, and enclosures. In September 2010 and after coordination with the Iraq prosecution, the MDW prosecution learned of the USD-C AR 380-5 investigation. After coordinating with the Iraq prosecution, the MDW prosecution received a complete digital copy by 30 November 2010. After reviewing the investigation, the prosecution delivered it 9 February 2011 (BATES#: 00000633-00000771).

(U) On 16 December 2010 and based on a Secretary of Defense directive, the Secretary of the Army appointed LTG Caslen the investigating officer for the Secretary of the Army 15-6 ("SecArmy 15-6"). The report was completed on 14 February 2011 and forwarded to HQDA. At the end of December 2010, the SecArmy 15-6 investigating team met with the prosecutors to discuss information associated with the case and the scope of their investigation. Once the prosecution learned the 15-6 was completed, it submitted a request for a copy of the 15-6 in order to start reviewing it for discoverable material. On 15 March 2011, the prosecution submitted a request to HQDA to review the information and received approval and the information on 21 March 2011. Between 21 March 2011 and 30 May 2011, the prosecution reviewed the SecArmy 15-6 to determine what information is discoverable, and whether any of the information contained within the hundreds of files was classified or missing. On 30 May 2011 the prosecution submitted a request to disclose the entire SecArmy 15-6 to defense. On 17 June 2011, HQDA forwarded OSD's approval to the prosecution for the prosecution to disclose the SecArmy 15-6, subject to a protective order. On 22 June 2011, the SPCMCA issued a protective order for the SecArmy 15-6, and the prosecution emailed the defense team the protective order. On 12 July 2011 and based on having received the signed acknowledgments from the primary defense counsel and legal administrator for the SecArmy 15-6 material, the prosecution sent this unclassified but protected information to the defense (BATES #: 00013162-00020152).

(U) In late December 2010 and during the meeting with the SecArmy 15-6 investigators, the prosecution learned of the United States Forces – Iraq (USF-I) 15-6 investigation and received a copy from the SecArmy 15-6 investigators. On 29 December 2010, the prosecution requested an unclassified version from USF-I for discovery purposes because it appeared there was very little classified information contained throughout the report. After many emails to the forward deployed forces, the prosecution received the declassified investigation on 23 April 2011 from USF-I. The prosecution delivered the investigation on 16 May 2011 (BATES #: 00012721-00012903).

445. There are dozens (if not hundreds) of references to 'developed discovery tracking system' in the spring and summer of 2011. How long did it take to develop a system to track discovery? Why was the system developed more than one year after the accused was placed in pretrial confinement?

ANSWER: (U) On the chronology, there are less than 40 entries referring to developing a discovery tracking system occurring in June of 2011. Based on conversations with multiple government organizations and the potential results of the Prudential Search Requests, the prosecution found it necessary to acquire and develop a system to ingest information, review information, track not only the substantial amount of documents it would need to review for discoverable information, but also what would be disclosed to the defense. In late May 2011, the prosecution received a legal administrator to assist with processing discovery, and also to assist with coordinating to provide the defense with its own legal administrator for the same purpose. The prosecution dedicated a legal administrator to creating this system that was unique to the military justice system. Perfecting the system required significant manpower, resources, and time- including dedicating a paralegal to the same task. The system was developed once the prosecution could accurately predict the amount of information it would have to review. The amount totaled more than 1,000,000 pages and entailed the discovery disclosure of more than 520,000 pages. Prior to 1 July 2011, the prosecution produced and tracked discovery by hand and produced approximately 21,000 pages in discovery.

446. If you were prepared to arraign the accused in February 2011, why were you not prepared to disclose relevant documents and/or claim a privilege at that time?

ANSWER: (U) The GCMCA referred the case on 3 February 2012. On that day, the prosecution was prepared to arraign the accused. As of today, no organization within the Executive Branch has claimed the privilege for classified information; rather the majority of organizations have approved the release of discoverable information, even if classified, to the defense- including over 400,000 pages in classified discovery. By 3 February 2012, the prosecution had not received all records responsive to its Prudential Search Requests. Further, many government organizations did not authorize the prosecution to disclose any classified documents until post-referral, so that the Court could regulate classified discovery. Finally, many organizations were aware that, until a case is referred to court-martial, a Soldier is not tried and there are no formal discovery obligations; thus, classified information could be further protected and not disclosed unless required by law.

447. As of the date of arraignment, had you asked any agency whether it would claim a privilege over classified information? Please explain.

ANSWER: (U) Since the very first conversations with each organization in the Fall of 2010, the prosecution continuously educated the organizations about the military justice system and the ability for the US Army to control the distribution of classified information, including to the defense, despite the accused being a charged leaker of classified information. The prosecution had conversations with the relevant government organizations about MRE 505 and the steps it would take to protect classified information, as evidenced in the litany of requests provided to the defense and Court. These conversations and subsequent requests, allowed the prosecution to obtain the approval to disclose the super-majority of classified information and not have to invoke the privilege on the organization's behalf. It was only for a very small portion of classified documents that the prosecution had to submit MRE 505(g) motions to redact or substitute information for classified information, but none of the requests to date included invoking the classified information privilege.

448. As of the date of the Article 32 hearing, had you provided any Brady discovery to the Defense? If yes, please identify with specificity.

ANSWER: (U) As of 16 December 2011, the prosecution disclosed to the defense approximately 400,000 pages in discovery, which included different forms of Brady information.

449. On numerous occasions, you asked for an additional 45-60 days to determine whether you would ask for redactions and substitutions or determine whether the agency would claim a privilege. Why did these communications not take place in the 20 months prior to arraignment?

ANSWER: (U) Many of the documents sought by the defense – in fact, practically all the documents sought by the defense – did not exist in July 2010. Thus, any coordination with an organization regarding redactions, substitutions, or the invocation of a privilege prior to the existence of the documents would be fruitless. Furthermore, organizations would not have started the process of reviewing documents for redactions and substitutions, or decided whether to invoke a privilege, until the prosecution had complete clarity regarding what documents or information the Court determined were discoverable in the first instance.

450. As of December 2011 (the date of the Article 32 hearing), which damage assessments had you: a) requested to review; and b) actually reviewed?

ANSWER: (U) Prior to the date of the Article 32 hearing, the prosecution submitted Prudential Search Requests to the organizations listed in #334. The prosecution submitted specific requests to review damage assessments to the organizations listed in #267. The prosecution reviewed the IRTF, FBI, and DHS damage assessments prior to

the Article 32, but that review was not for the purpose of specifically identifying discoverable information.

451. Why were no damage assessments produced to the Defense in advance of the Article 32 hearing?

ANSWER: (U) The prosecution did not have authority to disclose any damage assessments to the defense before the Article 32 investigation.

452. On 12 May 2012, your Chronology has the following entry: "ATF OGC- Stated that the documents received via JWICS were not the damage assessments requested and elaborated on the prosecution's request to locate the correct documents; replied that they will double check their SIPR archives." How many organizations needed to check their archives in order to retrieve responsive information? Please specify which organizations.

ANSWER: (U) The prosecution is unaware of any organizations other than the ATF OGC.

453. How many organizations indicated that they may have deleted certain files pertaining to the search request? Please specify which organizations.

ANSWER: (U) None.

454. The Defense asked for documents from the President's Intelligence Advisory Board in October 2011. When did you first request to review files from the President's Intelligence Advisory Board? When did you actually review any responsive documents? When did you produce PIAB documents to the Defense?

ANSWER: (U) On 22 May 2012, the prosecution contacted White House to obtain any information produced by multiple organizations, including the President's Intelligence Advisory Board (PIAB). Prior to directly contacting the White House, the prosecution attempted to work through other government organizations to obtain the contact information of PIAB attorneys but was ultimately told that the prosecution had to coordinate through the White House. The prosecution reviewed the individual assessment on or about 25 July 2012. The prosecution delivered the PIAB information on 3 August 2012 (BATES #: 00505083).

(U) I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of November 2012.

ASHDEN FEIN
MAJ, JA
Trial Counsel