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

[redacted]

UNITED STATES OF AMERICA	)	
	)	
v.	)	**Prosecution Response To Scheduling Order: 39a Session On Closure and Motion to Close the Courtroom for Specified Testimony**
	)	
Manning, Bradley E.	)	
PFC, U.S. Army,	)	
HHC, U.S. Army Garrison,	)	
Joint Base Myer-Henderson Hall	)	**1 February 2013**[1]
Fort Myer, Virginia 22211	)	

(U) On 11 December 2012, this Court ordered the United States to provide information on the protection of classified information, by presenting the Court with (a) a list of all classified information for which it intends to request a closed session during trial; (b) an explanation as to whether declassification, redactions, substitutions, or other alternatives will allow for evidence presentation in open court; and, if such alternatives are not possible, (c) an indication as to why. Section I of this response provides the requested information and explanations. Sections II and III address the other directives in the Court's Scheduling Order; specifically, Section II outlines the procedures for courtroom closure, should that protection be warranted, and Section III addresses whether the discussion of these issues need occur wholly or partly *in camera*. *See* AE 444 at 2(a)-(c).

RELIEF SOUGHT

(U) The United States respectfully moves the Court to order courtroom closure to hear the classified testimony of the thirty-seven witnesses outlined below. If, following response by the defense, the Court finds closure appropriate, the United States will provide the Court with a draft closure order based on the information articulated in this motion.

BURDEN OF PERSUASION AND BURDEN OF PROOF

(U) The burden of proof on any factual issue, the resolution of which is necessary to decide a motion, shall be by preponderance of the evidence. RCM 905(c)(1). The burden of persuasion on any factual issue, the resolution of which is necessary to decide a motion, shall be on the moving party. RCM 905(c)(2).

FACTS

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[1] (U) This motion was originally filed on 31 January 2013. On 1 February 2013, the Court advised the Government that it did not accept the motion as it was signed by CPT Katherine Mitroka, a person who has not been detailed/qualified/certified to this case on the record. Although CPT Mitroka was detailed to this case by the SJA, USAMDW, on 2 November 2012, her detail has not been announced on the record. The Government resubmits its motion.

[redacted]

APPELLATE EXHIBIT 480
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(U) The Accused is charged with aiding the enemy by giving intelligence, one specification of disorders and neglects to the prejudice of good order and discipline and service discrediting, eight specifications alleging misconduct in violation of 18 U.S.C. § 793(e), five specifications alleging misconduct in violation of 18 U.S.C. § 641, two specifications alleging misconduct in violation of 18 U.S.C. § 1030(a)(1), and five specifications of violating a lawful general regulation, in violation of Articles 104, 134, and 92, Uniform Code of Military Justice (UCMJ). *See* Charge Sheet. A total of nine charged specifications allege the unauthorized possession or disclosure of classified information. *See id.* Since its first proposed court calendar, dated 21 February 2012, the Prosecution has notified the Court that a separate Grunden session would be required in order to evaluate and establish procedures for managing the high volume of classified information involved in the case. *See* AE 1.

(U) At this time, the United States intends to call 141 witnesses. *See* AE Government's 31 January 2013 Witness List #4 filing. Approximately 73 of those witnesses' testimony will involve classified information. *See id.* The United States requests courtroom closure to take classified testimony for less than half of these witnesses.

LEGAL AUTHORITY

(U) "[I]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. The right to a public trial also extends to the public's right to attend courts-martial. *See United States v. Hershey*, 20 M.J. 433, 435-36 (C.M.A. 1985). However, "the right to a public trial is not absolute." *Grunden*, 2 M.J. at 120. In particular, MRE 505 authorizes the closure of a court-martial during presentation of classified information. MRE 505(j)(5). Additionally, RCM 806 states that courts-martial shall be open to the public unless: (1) there is a substantial probability that an overriding interest will be prejudiced if the proceedings remain open; (2) closure is no broader than necessary to protect the overriding interest; (3) reasonable alternatives to closure were considered and found inadequate; and (4) the military judge makes case-specific findings on the record justifying closure. *See* RCM 806(b)(2); *Hershey*, *supra*.

RESPONSE TO COURT'S 11 DECEMBER 2012 RULING AND BASIS FOR RELEIF

I. INFORMATION PROTECTIONS

A. Practical Implementation of Alternatives

(U) Below, the United States sets forth its understanding of how the alternatives articulated by the Court are practically implemented and identifies their limitations. Specifically, it covers: declassification, redaction, and substitutions, as well as stipulations, use of code words or special names, use of screens, disguises, code names for classified witnesses, electronic imagery, and the "silent witness rule". They are organized below into categories based on the *type of evidence* a given alternative is designed to protect.

[redacted]

1. (U) Alternatives Useful for Documentary or Physical Material Only

(U) **Redactions.** Redaction entails blocking out words and phrases from written documents to avoid disclosure to an audience unauthorized to view the hidden information. It is useful only when dealing with written material whose value derives not from the hidden content but from some other unclassified attribute or context.

(U) *Example: The legal importance of a document could exist solely in its designation as "classified". If relevant and necessary, this attribute could be presented to the fact-finder via the introduction of the document – with all substantive content redacted and only header/footer classification markings available for open viewing.*

(U) **Imagery.** Classified information could be shown to a limited population through the use of either an electronic display, such as a screen or monitor, or through a non-electronic display, such as a carefully-positioned poster or limitedly-distributed print-out. Yet, by their very nature, such actions must be applied to an actual physical document or image and cannot be applied to oral testimony. Additionally, imagery alone does not allow for the classified content displayed to be openly discussed or evaluated.

(U) *Example: Classified crime scene photos could be shown to the parties and fact-finder, for their contextual reference, without that location needing to be substantively discussed.*

(U) **Silent Witness Rule.** The Silent Witness Rule (SWR) would allow for evidence to be presented by a witness to the fact-finder and the parties while being withheld from the public. Under the SWR, a classified document is introduced via witness testimony concerning the facts necessary to authenticate and admit the document without discussing its substantive material. Instead, the document may have portions marked or tabbed, so that counsel and the witness can discuss sections of the document in an unclassified way while providing the Court with the classified point of reference. However, the SWR is appropriate when the Court's attention need only be directed to documentary content that is otherwise self-explanatory, or for the authentication and description of physical or documentary evidence. That is, like with imagery, the SWR does not allow classified analytic content (such as evaluation of harm/damage or expression of national security interests at stake) to be substantively discussed.

(U) Example: This rule could be used in conjunction with the types of imagery described above. For example, a document could be displayed on a screen for the fact-finder and parties, and then referenced by the witness using terms like "upper right hand corner" or "the third paragraph." Alternatively, two identical pictures could be displayed before the Court – one from the accused's personal media and the other from a classified database. A witness could draw the Court's attention to the evidence at issue by circling/highlighting certain sections with a special pen – the markings of which are only visible to those persons viewing the document on the monitor.

[redacted]

(U) **Physical Screens and Disguises.** Screens or disguises may be used to protect the identity or description of a particular witness. However, as such devices only prevent visual communication. They would not protect the substance of classified content that witness may have to orally convey.

(U) *Example: A person associated with an operation or organization whose connection to these proceedings is classified could appear in a disguise or testify from behind a screen, so that his/her identity is not disclosed to the general public. Such measures would however leave the content of that person's testimony unprotected.*

2. (U) Alternatives Useful for Written or Oral Material but with Limited Applicability

(U) **Substitution.** Substitution entails providing a summary or alternative description of classified material. Substitutions could potentially be employed for either oral or documentary evidence. However, substitutions and summaries are helpful only if the legal importance of the testimony derives from the unclassified significance of the subject matter and not from the classified details from which that significance arises.

(U) *Example: Much like a filing that may include classified and unclassified paragraphs when making an argument, a witness may be able to make some statements unclassified by summarizing impact in a non-specific way, without communicating classified specific examples of that impact. However, like in a filing, the fact-finder may need additional context in order to adjudge true impact, or the counsel may be need to hear specific examples in order to challenge the thoroughness of the witness's evaluation of them. Therefore, if only substitutions and summaries are available for the evaluation of otherwise classified information, the accused's ability to fully and thoroughly cross-examine a witness could be curtailed.*

(U) **Code Words/Names.** The use of code words and names to convey information would require the development and use of a legend to keep track of the alternative expressions. Like substitution and summary, such an alternative could be helpful to elicit evidence in written or oral form. However, when used by a live witness, the use of code or alternative descriptions is appropriate only in situations which require the protection of single names or uncomplicated material. For three main reasons, such an "alternative" is not viable for witnesses who will need to contextualize his/her testimony and explain nuanced and complicated issues. First, if applied to complicated material, direct examinations would become unduly confusing and burdensome. The testimony would sound similar to the following: "This document, which describes 'Country A' providing 'Information 24' to 'Country Q' relates to the national defense for 'Reason 89'. The document was closely held and might be useful to the enemy for 'Reason 412'." Second, like with substitutions, reliance on code names and words can restrict an accused's ability to cross-examine witnesses. For example, when answering cross-examination questions, a witness would have to take time to locate the code words and reasons appropriate for his answer from within a compendium developed for trial and then would be confined to rely on these pre-set

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answers, which may not adequately capture the nuance and complexity the witness may wish to convey. Finally, the whole point behind using substitute words and legends might be defeated by the context in which they are implemented. That is, unauthorized listeners may be able to tell what is being discussed through context clues.

(U) *Example: Code or alternative words/names could be used to prevent closure if a witness providing an unclassified summary of an operation, also used different names for individuals involved in the operation. Like a disguise or screen described above a code name can protect the identity of witnesses – warranted either because their connection to these issues is classified, or because they remain involved in an on-going classified operation being discussed.*

3. (U) Alternatives Rendering Protection of Information a Non-issue

(U) **Declassification.** Material correctly classified (*See* Executive Order 13526, Sec. 3.1(e)) for the national security reasons outlined in Sections 1.2 and 1.4 of Executive Order (EO) 13526 is subject to declassification in three circumstances. First, when protection is no longer warranted, an OCA or owning agency may declassify the material *sua sponte* or in response to a request. *See* Id. at Sec.3.1(b). In either event the decision hangs on whether reasons for classification still exist. *See* Id. at Sec.3.5(c). Second, an agency head has determined declassification is in the public interest. *See* Id. at Sec. 3.1(d). And finally, it is appropriate when the material is at least twenty-five (25) years old, of statutorily-defined historical significance, and not subject to a specified exception. *See* Id. at Sec. 3.3. Therefore declassification is not a viable alternative when information is recent, has not been found by an agency head to be in the public interest, and still requires protection in the interests of national security. All of the compromised classified information in this case is recent. Much of the material at issue in this case has undergone a classification review and not been declassified. In short, the information still implicates national security interests in need of the protection classification affords.

(U) *Example: A presidential paper written three decades ago may be automatically declassified.*

(U) **Stipulations.** The United States is willing to consider stipulations of fact and/or expected testimony. Both parties must agree to a stipulation of fact and/or expected testimony. Such an agreement may obviate the need to call one or more witnesses – including those named in the present motion. Stipulations of fact can aid the efficiency of the proceeding by allowing document admissibility or characteristics to be set before the Court, and thereby avoid the need to call authentication witnesses and allow the Court more time to hear other information requiring its consideration as fact-finder. Stipulations of expected testimony might be helpful if both sides agree that a witness would provide facts with much the same legal significance as a stipulation of fact could secure about authenticity. For example, a stipulation of expected testimony may be prudent when both sides agree a record clerk would testify that he signed a

[redacted]

certified copy. However, stipulations of fact, and especially of expected testimony, do have limited prudency. Neither form allows for nuance or context of the stipulated material to be explored. Also, stipulations of expected testimony, for example, are not admissions of that testimony's truth. They can still be impeached and contradicted by the parties. *See* RCM 811(e). And so, if stipulations of expected testimony are used instead of calling a witness to testify, the fact-finder may not be able to undertake the additional inquiry necessary to evaluate the veracity, content, and weight of the testimony covered by the stipulation

(U) *Example: A stipulation as to the admissibility of a computer server log, may obviate the need for a witness to testify about the classified systems that produced the log, a necessary predicate to authentication.*

B. <u>List of Classified Information Necessitating Closure</u>

(U) Each of the alternatives described above will be used to the greatest extent possible in this proceeding. For example, if only the identity of a witness need be protected, subject to the Court's authorization, the United States will devise and use a disguise and alternate name. Or, if a classified document need only be described to the court, classified information will be redacted. And, if a document can speak for itself, the United States will arrange for the classified content of the document to be available only to the parties and the fact-finder. A witness will then orient the Court to the document through the use of special viewing equipment and unclassified oral descriptions. The United States understands this to be consistent with the "constitutionally required scalpel" approach required of it. *See* United States v. Grunden, 2 M.J. 116, 120 (C.M.A. 1977).

(U) For the *specific areas of testimony concerning classified information,* identified by witness below, no meaningful or effective alternative exists. With this motion, the United States moves the Court, under the procedures described in Section II, to order courtroom closure in order to hear the classified testimony of the below-named witnesses. Again, the United States understands such targeted closure to be responsive the burden of instituting closure only to protect an "overriding interest" in a way "no broader than necessary" in the event alternatives are inadequate. *See* RCM 806(b)(2).

(U) The information articulated below is organized by witness simply because the evidence will be elicited in oral form. Following each witness name appears the classified subject matter to which he/she will testify. Pursuant to RCM 806(b)(2), the description also offers (a) the reasoning behind this classification in order to communicate the "overriding interest" at risk of prejudice; (b) an explanation as to why closure is a remedy "no broader than necessary" to protect this interest; and, by reference to the practical limitations described above, (c) the reason other "alternatives" are inadequate. In addressing overriding interest, and only where necessary, the United States provides a classified proffer of the piece of information these witnesses will address as well as an unclassified identification of the overriding national security interest pursuant to which this piece of information is classified.

[redacted]

1. (U) BG (Ret) Robert Carr, Defense Intelligence Agency

a. (U) Classified Information and Overriding Interest.

(1) [redacted]

(2) (U) This portion of BG (Ret) Carr's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the parties and fact-finder as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

2. (U) Col Julian Chesnutt, Defense Intelligence Agency

a. (U) Classified Information and Overriding Interest.

(1) [redacted]

[redacted]

[redacted]

[redacted]

(2) (U) This portion of Col Chesnutt's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the parties and fact-finder as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

3. [redacted]

a. (U) Classified Information and Overriding Interest.

(1) [redacted]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c).

[redacted]

[redacted]

b. (U) Scope of Closure.

(1) [redacted]

(2) (U) As the witness's association with this proceeding as well as the subject matter of testimony is classified, the courtroom closed for the entirety of this individual's testimony, including the announcement of the witness's name.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's identity is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the charged documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

4. (U) Ms. Elizabeth Dibble, Principal Deputy Assistant Secretary, Bureau of Near Eastern Affairs, Department of State

a. (U) Classified Information and Overriding Interest.

(1) [redacted]

[redacted]

[redacted]

(2) (U) This portion of Ms. Dibble's testimony relates to interests of national security addressed in EO 13526, Section 1.4(c)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the parties and the fact-finder as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

5. (U) John Doe, Department of Defense

(U) Court closure information for this witness is listed within the government's MRE 505(i)(2) motion filed on 31 January 2013.

6. (U) RADM Kevin Donegan, Director, Naval Warfare Integration, Pentagon

a. (U) Classified Information and Overriding Interest.

(1) [redacted]

(2) (U) This portion of RADM Donegan's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c)(d).

[redacted]

[redacted]

b. (U) **Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) **Alternatives.** As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

7. (U) Mr. John Feeley, Principal Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, Department of State

a. (U) **Classified Information and Overriding Interest.**

(1) [redacted]

(2) (U) This portion of Mr. Feeley's testimony relates to interests of national security addressed in EO 13526, Section 1.4 (b)(d).

[redacted]

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the above documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

8. (U) VADM Robert Harward, USCENTCOM

a. (U) Classified Information and Overriding Interest.

(1) (U) VADM Robert Harward will testify as an original classification authority (OCA) that charged USCENTCOM information was properly classified. To explain the basis of his classifications, he must discuss the details of the subject matter he is classifying. This information is properly classified at the SECRET level according to the USCENTCOM Classification Review dated 21 October 2011. Unauthorized disclosure of this information could cause (serious) damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of VADM Robert Harward's testimony relates to interests of national security addressed in EO 13526, Section 1.4 (a)(b)(c)(g).

b. (U) Scope of Closure. The Court would be closed only at the point which VADM Robert Harward must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or

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evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the charged documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

9. (U) Mr. Patrick Hoeffel, Intelligent Software Solutions, Inc.

a. (U) Classified Information and Overriding Interest.

(1) (U) Mr. Patrick Hoeffel will testify about the CIDNE database and how it appeared at a particular time, including classified information. This information is properly classified at the SECRET level according to the USCENTCOM Classification Review dated 21 October 2011. Unauthorized disclosure of it could cause damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4 (a)(b).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the CIDNE SIGACTS. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the

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time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

10. (U) Mr. Thomas Hoskins, USCENTCOM

a. (U) Classified Information and Overriding Interest.

(1) (U) Mr. Thomas Hoskins will testify about the content of charged USCENTCOM documents containing J-5 information, and why the information relates to the national defense, including classified information. This information is properly classified at the SECRET level according to the USCENTCOM Classification Review dated 21 October 2011. Unauthorized disclosure of it could cause severe damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of Mr. Hoskins' testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the charged documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore, declassification is not warranted.

11. (U) AMB Patrick F. Kennedy, Under Secretary for Management, Department of State

a. (U) Classified Information and Overriding Interest.

(1) [redacted]

[redacted]

[redacted]

[redacted]

(2) (U) This portion of AMB Kennedy's testimony relates to interests of national security addressed in EO 13526, Section 1.4(c)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

12. (U) Mr. John Kirchhofer, Defense Intelligence Agency

a. (U) Classified Information and Overriding Interest.

(1) [redacted]

[redacted]

[redacted]

(2) (U) This portion of Mr. Kirchhofer's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

13. (U) AMB Michael Kozak, Department of State

a. (U) Classified Information and Overriding Interest.

(1) (U) AMB Michael Kozak will testify on sentencing about the impact on individuals identified as persons at risk by the Department of State, including classified information. This testimony will not include PII of any specific individual. This information is properly classified at the SECRET level according to the Department of State Classification Guide (DSCG 11-01, dated May 2011). Unauthorized disclosure of this information could cause serious damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of AMB Kozak's testimony relates to interests of national security addressed in EO 13526, Section 1.4(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used

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[redacted]

under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

14. [redacted]

a. **(U) Classified Information and Overriding Interest.**

(1) [redacted]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c).

b. **(U) Scope of Closure.**

(1) [redacted]

(2) (U) As the witness's association with this proceeding as well as the subject matter of testimony is classified, the courtroom closed for the entirety of this individual's testimony, including the announcement of the witness's name.

c. **(U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or

[redacted]

evaluated. As the witness's identity is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the charged documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

15. (U) Mr. Danny J. Lewis, Defense Intelligence Agency

a. (U) Classified Information and Overriding Interest.

(1) (U) Mr. Danny J. Lewis will testify about counterintelligence and the value of information, including classified information concerning the value of government information. This information is properly classified at the SECRET level according to the Department of Defense Offensive Counterintelligence Operations Procedures and Security Classification Guide (S-5240.09-M, dated January 13, 2011). Unauthorized disclosure of this information could cause serious damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of Mr. Lewis's testimony relates to interests of national security addressed in EO 13526, Section 1.4(c).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finders and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently

[redacted]

classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

16. (U) Mr. Randall MacRobbie, Defense Intelligence Agency

a. **(U) Classified Information and Overriding Interest.**

(1) [redacted]

(2) (U) This portion of Mr. MacRobbie's testimony relates to interests of national security addressed in EO 13526, Section 1.4(g).

b. **(U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. **(U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

17. (U) Mr. James McCarl, Joint IED Defeat Organization (JIEDDO),

a. **(U) Classified Information and Overriding Interest.**

(1) [redacted]

[redacted]

[redacted]

[redacted]

(2) (U) This portion of Mr. McCarl's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(g).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to proceeding personnel as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

18. (U) MajGen Kenneth McKenzie, USMC HQ Staff

a. (U) Classified Information and Overriding Interest.

(1) [redacted]

[redacted]

[redacted]

(2) (U) This portion of MajGen McKenzie's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

19. (U) Mr. James Moore, Department of State

a. (U) Classified Information and Overriding Interest.

(1) (U) Mr. James Moore will testify about the content of cables originating from South and Central Asia on the merits (specifically, 06 Colombo 1889; 06 Kathmandu 3023; 06 Kathmandu 3024; 07 Ashgabat 1359; 07 Dhaka 24; 07 New Delhi 80; 09 New Delhi 267; 09 State 92641), and why the information requires protection against unauthorized disclosure for reasons of national defense or foreign relations, including classified information. This information is properly classified at the CONFIDENTIAL level according to the Department of State Classification Review dated 30 October 2011. Unauthorized disclosure of it could cause damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of Mr. Moore's testimony relates to interests of national security addressed in EO 13526, Section 1.4(b)(d)

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of

[redacted]

redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the above documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

20. (U) Mr. Ken Moser, USCENTCOM

a. (U) Classified Information and Overriding Interest.

(1) (U) Mr. Ken Moser will testify about the information posted to the USCENTCOM OSJA SIPRNET, potentially including classified information. This information is properly classified at the SECRET level according to the USCENTCOM Classification Review dated 21 October 2011. Unauthorized disclosure of it could cause serious damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4 (a)(c).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if

both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as is described above. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

21. (U) Mr. Jeffery Motes, JTF-GTMO, Guantanamo Bay, Cuba

a. (U) Classified Information and Overriding Interest.

(1) (U) Mr. Jeffery Motes will testify about the JTF-GTMO database and the contents of compromised information, and why the information relates to the national defense, including classified information. For sentencing, he will testify about the impact resulting from the compromise of the JTF-GTMO database. This information is properly classified at SECRET level according to the JTF-GTMO Classification Review dated 4 November 2011. Unauthorized disclosure of it could cause serious damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as detainee assessments. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

22. (U) Mr. Nicholas Murphy, Department of State

[redacted]

a. **(U) Classified Information and Overriding Interest.**

(1) (U) Mr. Nicholas Murphy will testify as an OCA that Department of State information was properly classified, including classified information. To explain the basis of his classifications, he must discuss the details of the subject matter he is classifying. This information is properly classified at the SECRET and CONFIDENTIAL level according to the Department of State Classification Review dated 30 October 2011. Unauthorized disclosure of this information could cause (serious) damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of Mr. Murphy's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(b)(d)(e)(g).

b. **(U) Scope of Closure.** The Court would be closed only at the point which Mr. Murphy must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. **(U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

23. (U) MG Michael Nagata, Joint Staff, the Pentagon

a. **(U) Classified Information and Overriding Interest.**

(1) [redacted]

[redacted]

[redacted]

[redacted]

(2) (U) This portion of MG Nagata's testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

24. (U) Lt Col (Ret) Martin Nehring, USCENTCOM

a. (U) Classified Information and Overriding Interest.

(1) (U) Lt Col (Ret) Martin Nehring will testify about the content of charged documents containing J3 information, and why the information relates to the national defense, including classified information. This information was properly classified at the SECRET level according to the USCENTCOM Classification Review dated 21 October 2011. Unauthorized disclosure of it could cause damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(b)(c).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used

[redacted]

under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the charged documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

25. (U) SSA Alexander Otte, Federal Bureau of Investigation

a. (U) Classified Information and Overriding Interest.

(1) (U) SSA Alexander Otte will testify as a chain of custody witness for classified information concerning four files extracted from digital media found in the possession of Usama bin Laden on 1 May 2011. This information is properly classified at the SECRET level according to authorities specified in the Government's RCM 505(i) filing, dated 31 January 2013. Unauthorized disclosure of it could cause serious damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(c).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if

relevant, to memorialize the admissibility of material described above. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

26. (U) AMB David Pearce, Department of State

a. **(U) Classified Information and Overriding Interest.**

(1) (U) AMB David Pearce will testify about the content of cables originating from Afghanistan and Pakistan on the merits (specifically, 06 Kabul 5420; 06 Kabul 5421; 06 Kabul 5435; 99 Islamabad 495), and why the information requires protection against unauthorized disclosure for reasons of national defense or foreign relations, including classified information. This information is properly classified at the CONFIDENTIAL level according to Department of State Classification Review dated 30 October 2011. Unauthorized disclosure of it could cause damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(b)(d).

b. **(U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. **(U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the above documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

27. (U) Mr. Adam Pearson, Joint IED Defeat Organization (JIEDDO)

[redacted]

a. **(U) Classified Information and Overriding Interest.**

(1) [redacted]

(2) (U) This portion of Mr. Pearson's testimony relates to interests of national security addressed in EO 13526, Section 1.4(c) and (g).

b. **(U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information The closure would therefore be no broader than necessary to protect the classified information.

c. **(U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

28. (U) Mr. H. Dean Pittman, Department of State

a. **(U) Classified Information and Overriding Interest.**

(1) (U) Mr. H. Dean Pittman will testify about the content of cables originating from International Organizations on the merits (specifically 07 USUN New York 573; 07 USUN New York 575; 07 USUN New York 578), and why the information requires protection against unauthorized disclosure for reasons of national defense or foreign relations, including classified information. This information is properly classified at the CONFIDENTIAL level according to the Department of State Classification Review dated 30 October 2011.

[redacted]

[redacted]

Unauthorized disclosure of it could cause damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(b)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the above documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

29. [redacted]

a. (U) Classified Information and Overriding Interest.

(1) [redacted]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c)(g).

b. Scope of Closure.

[redacted]

[redacted]

(1) [redacted]

(2) (U) As the witness's association with this proceeding as well as the subject matter of testimony is classified, the courtroom closed for the entirety of this individual's testimony, including the announcement of the witness's name.

c. **(U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's identity is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

30. (U) AMB Stephen Seche, Department of State

a. **(U) Classified Information and Overriding Interest.**

(1) (U) AMB Stephen Seche will testify about the content of cables originating from the Near East on the merits (specifically, 05 Algiers 1836; 06 Algiers 1961; 06 Baghdad 2646; 06 Baghdad 4205; 06 Beirut 3603; 06 Beirut 3604; 06 Beirut 3703; 06 Kuwait 4430; 06 Kuwait 4438; 06 Riyadh 8811; 06 Tripoli 645; 06 Tripoli 648; 07 Baghdad 35; 07 Baghdad 36; 07 Baghdad 37; 07 Baghdad 42; 07 Baghdad 53; 07 Baghdad 56; 07 Baghdad 63; 07 Baghdad 64; 07 Baghdad 70; 07 Basrah 3; 07 Beirut 1958; 07 Riyadh 21; 07 Riyadh 22; 07 Riyadh 23; 07 Tunis 47; 08 Amman 535; 08 Cairo 569; 09 Baghdad 2390; 09 Riyadh 1156; 10 Rabat 294), and why the information requires protection against unauthorized disclosure for reasons of national defense or foreign relations, including classified information. This information is properly classified at the CONFIDENTIAL and SECRET level according to the Department of State Classification Review dated 30 October 2011. Unauthorized disclosure of it could cause damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

[redacted]

[redacted]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(b)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the above documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

31. (U) <u>SA David Shaver, U.S. Department of Treasury</u>

a. (U) Classified Information and Overriding Interest.

(1) [redacted]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c)(g).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information The closure would therefore be no broader than necessary to protect the classified information.

[redacted]

[redacted]

c. **(U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as his forensic reports. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

32. (U) Ms. Cathryn Strobl, Central Intelligence Agency

a. **(U) Classified Information and Overriding Interest.**

(1) [redacted]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c)(g).

b. **(U) Scope of Closure.** The Court would be closed only at the point which the witness must disclose classified information The closure would therefore be no broader than necessary to protect the classified information.

c. **(U) Alternatives.** As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-

[redacted]

finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as is described above. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

33. (U) Ms. Louis Travieso, USCENTCOM

a. (U) Classified Information and Overriding Interest.

(1) (U) Ms. Louis Travieso will testify about the content of the charged document(s) containing J-2 information, and why the information relates to the national defense, including classified information. This information is properly classified at SECRET level according to the USCENTCOM Classification Review dated 21 October 2011. Unauthorized disclosure of it could cause damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(c).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

34. (U) RDML David Woods, Strike Force Training Pacific

a. (U) Classified Information and Overriding Interest.

[redacted]

(1) (U) RDML David Woods will testify as an OCA that JTF-GTMO information was properly classified, including classified information. To explain the basis of his classifications, he must discuss the details of the subject matter he is classifying. This information is properly classified at SECRET level according to the JTF-GTMO Classification Review dated 4 November 2011. Unauthorized disclosure of this information could cause (serious) damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of RDML David Woods's testimony relates to interests of national security addressed in EO 13526, Section 1.4(c).

b. (U) Scope of Closure. The Court would be closed only at the point which RDML David Woods must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

35. (U) AMB Don Yamamoto, Department of State

a. (U) Classified Information and Overriding Interest.

(1) (U) AMB Don Yamamoto will testify about the content of cables originating from Africa on the merits (specifically, 07 Addis Ababa 2197; 07 Lagos 719; 08 Dar Es Salaam 206; 08 Khartoum 246; 08 Khartoum 428; 09 Addis Ababa 1063; 09 Bamako 85; 10 Pretoria 636), and why the information requires protection against unauthorized disclosure for reasons of national defense or foreign relations, including classified information. This information is properly classified at the CONFIDENTIAL level according to the Department of State Classification Review dated 30 October 2011. Unauthorized disclosure of it could cause damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

[redacted]

[redacted]

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(b)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the above documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

36. (U) AMB Marie Yovanovitch, Department of State

a. (U) Classified Information and Overriding Interest.

(1) (U) AMB Marie Yovanovitch will testify about the content of cables originating from or sent to Europe or Eurasia on the merits (specifically, 10 Reykjavik 13; 06 Belgrade 1681 ; 06 Madrid 2955; 06 Madrid 2956; 06 Pristina 947; 06 Pristina 948; 07 Ankara 23; 07 Ankara 2468; 07 Bratislava 665; 07 Minsk 1 024; 07 Moscow 5824; 07 Moscow 5825; 07 Paris 4722; 07 Paris 4723; 07 Reykjavik 203; 07 Vilnius 1 3; 09 Paris 217; 09 Prague 88; 09 Pristina 58; 09 State 92632; 09 State 92657; 09 Brussels 382; 09 Geneva 347), and why the information requires protection against unauthorized disclosure for reasons of national defense or foreign relations, including classified information. This information is properly classified at the CONFIDENTIAL and SECRET levels according to the Department of State Classification Review dated 30 October 2011. Unauthorized disclosure of it could cause damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(a)(b)(d)(e).

[redacted]

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the above documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

37. (U) Mr. Joseph Yun, Department of State

a. (U) Classified Information and Overriding Interest.

(1) (U) Mr. Joseph Yun will testify about the content of cables originating from East Asia and the Pacific on the merits (specifically, 06 Seoul 3882; 06 Seoul 3885; 06 Suva 489; 06 Taipei 3830; 07 Bangkok 111; 07 Beijing 1 52; 07 Kuala Lumpur 40; 07 Rangoon 22; 07 Suva 1 8; 07 Vientiane 1 2; 1 0 Tokyo 627), and why the information requires protection against unauthorized disclosure for reasons of national defense or foreign relations, including classified information. This information is properly classified at the CONFIDENTIAL and SECRET levels according to the Department of State Classification Review dated 30 October 2011. Unauthorized disclosure of it could cause damage to national security. Therefore, discussion of this information in open session would undermine national security interests.

(2) (U) This portion of testimony relates to interests of national security addressed in EO 13526, Section 1.4(b)(d).

b. (U) Scope of Closure. The Court would be closed only at the point which the witness must disclose classified information. The closure would therefore be no broader than necessary to protect the classified information.

c. (U) Alternatives. As this testimony will be offered orally, it is not capable of

redaction. Should the witness require the use of any classified documents, they will be used under the SWR and/or projected by electronic displays, unless their content must be discussed or evaluated. As the witness's participation is itself not classified, no disguises or screens will be necessary to shield the witness's identity from the public. The classified content of the material the witness will address, and not just its overall significance, is necessary and relevant. Therefore unclassified summary is untenable. Finally, the witness will be testifying to nuanced information requiring complicated explanation and must remain free to describe it to the fact-finder and parties as they may require. Therefore, the witness's testimony cannot be reduced to code. No stipulations have been agreed upon to date, although a possibility for this witness if both parties agree. Stipulations may be useful to establish classification level as a fact, and, if relevant, to memorialize the admissibility of material such as the above documents. Finally, for the reasons articulated above, the information at issue is currently classified and will be at the time of the trial, as harm could still occur as a result of unauthorized disclosure. Therefore declassification is not warranted.

II. (U) PROPOSED TRANSITIONING PROCESS

(U) Under RCM 806(b)(2) and MRE 505(i), the Military Judge may order portions of the Court-Martial closed to the public in order to hear classified information. Should the Court order such a closing, the United States proposes the Court use the procedures detailed below.

A. (U) Transition from Open to Closed

(U//FOUO) When closing the courtroom, both information and physical security must be addressed. The procedures for achieving physical security of the building outlined below are derived from the Fort Meade Classified Meeting and Conferences Standard Operating Procedure. They cover four main areas. First, judicial personnel identified below will need to ensure that only people with proper clearance and need-to-know are present for classified proceedings. Second, external connections will need to be severed. Third, equipment cleared for classified use will need to be set up and employed by the Court Reporter. And last, courtroom officials will coordinate with the Court Security Officer to ensure proper evidence accountability and courtroom classification status.

1. (U) Physical Courtroom Security

(U//FOUO) To transition from an open to a closed session, the Court should call a recess. A script with proposed language for effectuating the stages of closure is attached. *See* Enclosure 1. One bailiff will advise the spectators that the court has been closed. Then, the two MPs will clear the courtroom of all spectators. The spectators will be advised that they may relocate to the overflow trailer or wait outside the building. Spectators will experience a courtroom closure, just as they would any other recess. The United States will endeavor to schedule sessions involving witnesses who necessitate closure for first thing in the morning, at lunch time, or before dinner.

[redacted]

(U//FOUO) After spectators have been escorted from the courtroom, one MP and one unit escort will inspect the courtroom building for any spectators who may have remained behind. The other escort will remain behind to guard the accused, while the second MP posts at the building front door to control access. After the inspection, this detail will return to the courtroom and check in with the CSO.

(U//FOUO) While the inspection for spectators is being conducted, the CSO will cut all media feeds by pressing the appropriate control switch to cease transmission. The operations legal administrator will verify with one PAO representative stationed in the Smallwood Hall media space that the audio/visual feed has been cut. He will then verify in person that the feed has been cut to the overflow trailer. Upon completion, he will alert the CSO that the media feed has been successfully cut. PAO representatives will not be allowed in the courtroom during closed sessions.

(U//FOUO) Once the CSO confirms that all spectators have left and the media feed has been cut, all personnel in the courtroom itself will file into the hallway through the public courtroom entrance. The CSO and one MP will exit the courtroom first (through the public entrance). The CSO will then post at the public entrance to the courtroom, while the MP guards the hallway to prevent anyone from traveling past the public entrance room. The accused and one unit escort will then move to the defense office (through the courtroom side door) and the Military Judge and paralegal will exit through the Court's entrance, and the bailiffs and court reporter will exit through the public entrance.

(U//FOUO) While individuals are absent from the courtroom, the MPs with military working dogs will conduct a security sweep of the courtroom and the cyber security team will conduct a "technical sweep" of the courtroom itself. After the sweeps, the CSO will re-enter the courtroom first. He will then post at the entrance of the public waiting room into the courtroom itself and visually check the badges of each person who proceeds back into the courtroom to determine that each individual holds a clearance at or above the level of classification for the information expected to be considered during the session. The Government will have previously checked the security clearance of individuals in attendance (e.g. government representatives, defense experts) to ensure that striped security badges have been made for and issued to only those individuals with appropriate clearances. Those Government representatives present because the testimony implicates the equities of their organization will also be checked against a need-to-know list. This list will have been prepared by the United States in advance of the session for each witness whose testimony requires closure.

(U//FOUO) After courtroom checks have been completed, the defense security expert will visit the defense trailer to advise anyone within it of the closed session and verify the security badges and need-to-know of those occupants. If the trailer is unattended, he will turn off the video feed and lock the door. Meanwhile, the prosecution security expert will do the same in the prosecution trailer. The external MPs will guard all trailers to ensure no unauthorized access

[redacted]

occurs. The security experts will return to the courtroom and notify the CSO that the trailer checks are complete.

(U//FOUO) While the trailer checks occur, the CSO will retrieve the classified recording equipment (previously staged by him in a courtroom safe) and provide it to the Court Reporter. The Court Reporter will then set up and use equipment cleared for processing classified material, while the CSO returns the unclassified equipment to the safe. The CSO, the government, or the defense will retrieve any classified materials needed for the hearing. The CSO must see each item and be aware of all classified materials in the Courtroom. The CSO will complete the Closed Hearing Checklist and give it to the court reporter. *See* Enclosure 2.

(U//FOUO) Upon completion of the checklist, the courtroom will be ready to host a classified hearing (up to the "SECRET" level). At the next recorded classified session, the Trial Counsel will announce on the record the highest expected classification level for the hearing.

2. (U) Electronic Security

(U//FOUO) The Wolfhound and Watchhound systems, which monitor the transmission of wireless electronic data from the courtroom, will continue to monitor during classified proceedings. While they capture no substance, their use enables security personnel to alert the Court should data transmission be detected during the hearing.

3. (U) Security Outside the Courtroom Itself

(U//FOUO) The MP will positioned him-/herself at the main entrance to the building will conduct a 100% ID card check at this door until the closed session is completed. (S)he will check identification against a roster listing individuals with a need-to-know for the specific testimony occurring during that closure and check for proper clearance level (noted by the type of prosecution-issued badge they carry). Anyone whose association with the proceedings or identity may be classified will be assigned a number and escorted to the courtroom by a member of the prosecution team. The list of people with authorized access to closed proceedings will be testimony-specific and have been prepared by the prosecution in advance of closure. If closure must occur unexpectedly, only prosecution and defense teams will be authorized for courtroom attendance; however, no need-to-know equity holders will be allowed unless on a list for the witness testifying.

(U//FOUO) Upon completing their sweep for additional spectators and checking in with the CSO, the escort and MP will post outside the courtroom itself to monitor the hallway. This hallway will serve as a standoff area between the courtroom and the main entrance. A sign that prohibits entry and advises that classified information is currently being processed will be posted at each entrance to the courtroom from the hallway. This sign is attached as Enclosure 3. The fence line along the facility's outer perimeter will be what secures the outside entrances to

the building. According to guidance from the S-2, external MP's will patrol this area.

B. (U) Transition from Closed to Open

(U//FOUO) To transition from a closed to an open session, the Trial Counsel must announce the highest classification level of information discussed during the classified session. Also, classified material and equipment must be secured. Then, external connections must be restored and spectators allowed to re-enter the courtroom. The responsibility of individuals and the order of actions which must be taken to effectuate this transition is detailed below.

(U//FOUO) Once the Court orders the courtroom opened, the Trial Counsel will announce the highest level of classification of the hearing on the record. Then the Court should then announce a recess. The CSO will collect the classified court reporting equipment and secure it in the safe - returning with the unclassified equipment for the court reporter to assemble. The CSO will also secure any notes that may have been taken by individuals who were present during the classified session, and store them in the courtroom safe. Each party has been given a drawer in the safe for separate storage; each drawer has its own lock. Before the Court's notes are secured, the Court will prepare an unclassified summary of the proceedings, and the Court Security Officer will review it for spillage of classified information. Any classified information in the Court's possession will then also be secured by the Court Security Officer.

(U//FOUO) Once the Court Security Officer has verified that no classified material is in the courtroom, (s)he will reconnect the media feed. The courtroom PAO will verify with the previously identified satellite locations that the media feed has been successfully reestablished. A bailiff will notify the security detail at the door and in the hallway that the classified portion has ended. The OIC will alert the spectators that the session has reopened and usher them back into the courtroom. The Court Security Officer will complete the enclosed Open Hearing Checklist, after which point, normal open courtroom procedures for an unclassified hearing resume. *See* Enclosure 2. A script with proposed language for effectuating the stages of opening the courtroom is attached for the Courts consideration. *See* Enclosure 1.

III. (U) REQUEST FOR PARTIALLY CLOSED ARTICLE 39(A) SESSION

(U) In the interests of applying a scalpel to courtroom closure decisions, the United States proposes this Article 39(a) session be open. The United States believes discussion of closure and associated procedures can be held in open session and any classified materials referenced in the filing can be provided for the Court's review without public disclosure. However, should the Court require oral testimony or wish to discuss with counsel the contours of the classified assertions or materials provided, for the same reasons articulated above, courtroom closure is the

only way to protect those discussions. A script to close the proceeding for these purposes is also enclosed. *See* Enclosure 1.

ASHDEN FEIN
MAJ, JA
Trial Counsel

(U) I certify that I served or caused to be served a true copy of the above, via SIPRNET email, to Mr. David Coombs, Civilian Defense Counsel, though the defense security experts on 31 January 2013.

ASHDEN FEIN
MAJ, JA
Trial Counsel

3 Enclosures
1. Scripts
2. Battle Drill Checklists
3. "Classified Work in Progress" Sign