



2. The testimony related to the belief that if we (United States) do not have the trust of others, we cannot get accurate information and that if we (United States) do not get accurate information we cannot compile a complete product. The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under RCM 1001(b)(4).

**Government Position:** Under Secretary Kennedy provided this information as context for the foundation of his ultimate opinion, and this was based on his personal experience and knowledge.

**Ruling:** This is explanatory testimony that falls within the scope of Under Secretary Kennedy's expertise in the use of diplomatic reporting. The testimony forms part of the foundation for the relevance of his testimony and opinion in (1) above. It is admissible under RCM 1001(b)(4) for that purpose.

3. The testimony related to the belief that non-governmental persons were no longer willing to talk fully and frankly with United States diplomats due to the charged leaks in this case. The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under R.C.M. 1001(b)(4).

**Government Position:** Under Secretary Kennedy's opinion on the lack of openness of non-governmental persons was based on facts or data perceived by or made known to Under Secretary Kennedy before the hearing. His conclusion was that PFC Manning's misconduct resulted in the unwillingness of non-governmental persons to talk fully and frankly with the United States, and was the natural and probable consequence of PFC Manning's actions, and not based on any intervening event that played the only important part in bringing about that effect.

**Ruling:** This opinion testimony is similar to the opinion testimony in (1) above and is admissible aggravation evidence under RCM 1001(b)(4) for a limited duration in time following the WikiLeaks releases or subsequent media accounts of the WikiLeaks releases in the various countries as set forth in the Court's ruling in (1) above.

4. The testimony related to the belief that some embassies included less information in their reporting than they did before out of fear that the information would not be protected. Under Secretary Kennedy testified that the act of reporting less information was a self-generated limitation on information from various embassies and not as a result of direction by the DOS. The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under R.C.M. 1001(b)(4).

**Government Position:** Under Secretary Kennedy's opinion that embassies included less information in their reporting was based on facts or data perceived by or made known to Under Secretary Kennedy before the hearing. His conclusion was that PFC Manning's misconduct resulted embassies including less information was the natural and probable consequence of PFC Manning's actions, and not based on any intervening event that played the only important part in bringing about that effect.

**Ruling:** The testimony that PFC Manning's offenses caused some embassies to include less information in their reporting for fear the information will not be protected is admissible under RCM 1001(b)(4), but is limited in time to periods directly following the WikiLeaks releases or directly following subsequent media accounts of the WikiLeaks releases in the various countries as set forth in the Court's ruling in (1) above. PFC Manning's offenses directly resulted in the decisions by certain embassies to report less information in their cables.

5. The testimony related to the belief that the disclosures had a chilling effect on diplomatic reporting and that the disclosures have had and will continue to have an impact on reporting for some indefinite time period. The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under R.C.M. 1001(b)(4) and also as being speculative.

**Government Position:** Under Secretary Kennedy's opinion on the chilling effect on diplomatic reporting and his opinion on the future impact on reporting were based on facts or data perceived by or made known to Under Secretary Kennedy before the hearing. His conclusion was that PFC Manning's misconduct resulted in this chilling effect and the future impact, and these results were the natural and probable consequences of PFC Manning's actions, and not based on any intervening events that played the only important part in bringing about those effects.

**Ruling:**

a. Under Secretary Kennedy's opinion on the chilling effect on diplomatic reporting occurring during periods directly following the WikiLeaks releases or directly following subsequent media accounts of the WikiLeaks releases is admissible under RCM 1001(b)(4) as directly relating to and resulting from PFC Manning's offenses.

b. The foundation for Under Secretary Kennedy's opinion that PFC Manning's misconduct resulting in WikiLeaks disclosures of purported DOS cables caused a long-term chilling effect on diplomatic reporting that continues to date and will continue into the future is not based on any quantifiable data. It is speculative and inadmissible under MRE 403. The Court will not consider it.

6. The testimony that due to the perceived chilling effect on diplomatic reporting, the decrease in information has had a negatively effect on policy makers in Washington D.C. and our interagency partners. Specifically, Under Secretary Kennedy testified that policy decisions are being made based upon incomplete information (because other countries chose not to engage in full and frank reporting, which reporting is relied on by policy makers). The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under R.C.M. 1001(b)(4) and also as being speculative. The Defense also objects based on foundation since Under Secretary Kennedy did not explain how he is familiar with policy making, the various variables that go into policy making, and how diplomatic reporting fits into policy making. Also, "policy making" is an extremely broad category. Under Secretary Kennedy did not explain what type of policy making he was referring to and certainly he is not an expert on "policy making" in general.

**Government Position:** The United States qualified Under Secretary Kennedy as an expert in the fields of “management and operations of the Department of State” and “the use of diplomatic reporting by United States policy makers.” The Defense did not contest this expertise. Under Secretary Kennedy’s opinion on the impact to policy makers in Washington D.C. and interagency partners was based on facts or data perceived by or made known to Under Secretary Kennedy before the hearing, and not speculative in nature. His conclusion was that PFC Manning’s misconduct had a chilling effect that negatively affected policy makers, which was the natural and probable consequence of PFC Manning’s actions, and not based on any intervening event that played the only important part in bringing about that effect.

**Ruling:**

a. Under Secretary Kennedy’s testimony about policy making in general, the variables that go into policy making, and how diplomatic reporting fits into policy making is within his expertise on the use of diplomatic reporting by United States policy makers and his 40 plus years of working at the highest levels of the interagency decision making organizations, is relevant, and is admissible to lay the foundation for his opinions in (1), (3), (4), and (5) above.

b. The foundation for Under Secretary Kennedy’s opinion that the accused’s offenses had a negative effect on policy makers in Washington D.C. and our interagency partners and that policy decisions are being made based upon incomplete information (because other countries chose not to engage in full and frank reporting, which reporting is relied on by policy makers) is not based on any quantifiable data. It is speculative and inadmissible under MRE 403. The Court will not consider it.

**MRE 403 analysis.**

Under Secretary Kennedy was properly accepted as an expert in management and operations of the Department of State and in the use of diplomatic reporting. The probative value of those portions of his testimony ruled admissible as aggravation evidence under RCM 1001(b)(4) is not substantially outweighed by the danger of unfair prejudice under MRE 403. The Court has limited the scope of the opinion to the periods directly following the WikiLeaks releases or directly following subsequent media accounts of the WikiLeaks releases in the various countries.

So **ORDERED** this 6<sup>th</sup> day of August 2013.



DENISE R. LIND  
COL, JA  
Chief Judge, 1<sup>st</sup> Judicial Circuit