UNITED STATES OF AMERICA	)	
	)	**Prosecution Response To Scheduling Order: 39a Session On Closure and Motion to Close the Courtroom for Specified Testimony**
v.	)	
	)	
Manning, Bradley E. **PFC, U.S. Army,** **HHC, U.S. Army Garrison,** **Joint Base Myer-Henderson Hall** **Fort Myer, Virginia 22211**	)))))	**<u>Enclosure 1</u>** **31 January 2013**
	)	

Enclosure 1 - Scripts

Script for Closed Grunden Hearing (if ordered)

(1) United States files "Request to Close the Court for Purposes of Introducing and Maintaining Classified Information;"
(2) Military Judge conducts an Article 39(a) hearing to discuss whether Court will be closed;
(3) United States requests that the Article 39(a) hearing be closed;
(4) Article 39(a) hearing takes place and parties outline what testimony/evidence they anticipate will be classified, and discuss which portions will be closed and which will be open.

TC: Ma'am, the United States requests a closed hearing to determine if any classified information in this case should be heard in a closed session.

MJ: (Reviews the written request.)

MJ: The government wishes to present evidence in support of its request in a closed session, is that correct?

TC: Yes, Ma'am.

MJ: I will now close this courtroom. I will call a recess, and when we return, the only personnel in the courtroom will be the three defense counsels, three trial counsels, the Court Reporter, the Court Security Officer, the Accused, those personnel detailed to the defense and prosecution teams, the representatives of the relevant government agencies, the Military Judge's support paralegal, and myself. The audio and video feeds to the media center and the theater will be severed.

MJ: The Court-Martial is in recess.

(CONDUCT CLOSED SESSION DRILL)

MJ: This hearing is called to order. Let the record reflect that the hearing is now closed. The audio and video feeds to the media center and the theater have been severed. The only personnel in the courtroom are three defense counsels, three trial counsels, the Court Reporter, the Court Security Officer, the Accused, those personnel detailed to the defense and prosecution teams, the representatives of the relevant government agencies, the Military Judge's support paralegal, and myself.

TC: This portion of the Court-Marital hearing is classified _____ (*state highest expected classification level*)."

TC: Ma'am, the United States requests you to close the Court-Martial Court-Martial from the public for *(the testimony of/the introduction of)* under RCM 405.

MJ: On what grounds?

TC: The United States has reason to believe *(the testimony/the evidence)* may disclose classified information. The United States anticipates that the testimony/evidence will disclose information relating to *(provide an unclassified summary of the classified testimony/evidence)*.

MJ: Defense, do you have any objections?

DC:

MJ: Government, can you confirm the information is classified?

TC: Yes, Ma'am. The United States offers (declaration or affidavit) to confirm that this testimony/evidence has been properly classified *(classification level)*. Additionally, the United States requests that the Court Security Officer review the documents in question to determine their apparent classification level based on their markings and substance.

(*TC hands the documents in question to the Court Security Officer.*)

TC: (*TC gives copy to defense*) The United States is giving you what [(will be marked for identification as an Appellate Exhibit)(has been previously marked as Appellate Exhibit (#))(has been previously marked as enclosure (#) to Appellate Exhibit (#))] which is the (*classification review/declaration/affidavit*) for this information.

MJ: Defense, do you have any objection to this exhibit?

DC:

MJ: This document is labeled Appellate Exhibit (*exhibit number*), (***if necessary***). Government, please proceed.

TC: Closing the Court-Martial is necessary to protect this classified information in accordance with RCM 806(b)(2) and MRE 505(i). The value of protecting this classified information, specifically (list each item and give security damage levels for each), the disclosure of which [(*CONFIDENTIAL; "could reasonably be expected to cause damage to national security"*) (*SECRET; "could reasonably be expected to cause serious damage to national security"*) (*TOP SECRET; "could reasonably be expected to cause exceptionally grave damage to national security"*)], outweighs the value of an open Court-Martial. No lesser methods short of closing the Court-Martial are available. Closure of the Court-Martial is necessary for the prosecution to *(explain how prosecution intends to use the testimony of each specific witness/each specific piece of evidence (elicit classified testimony, discuss classified information in evidence))*. Furthermore, closure is necessary to ensure the accused receives a thorough and impartial trial. The United States requests you only close the Court-Martial for those specific portions of the (testimony/evidence) wherein this classified information may be disclosed. The United States requests you to make a finding in the record supporting the closure, as required under RCM 505(i)(4)(C).

MJ: Defense, would you like to be heard on this matter?

DC:

(IF APPROVED)

MJ: I make the following findings of fact:

(1) that the *(evidence/testimony)* has been properly classified *(classification level)* by *(agency/person on classification review)*;

(2) that protecting this classified information is an overriding interest;

(3) that the overriding interest of protecting this classified information outweighs the value of an open Court-Martial; and

(4) that other methods of protecting the information were considered, but no lesser methods short of closing the Court-Martial can be used to protect that interest. The Court-Martial shall be closed only for those portions of testimony wherein classified information may be disclosed.

(IF NOT APPROVED)

MJ: [(the document is not properly classified) (protecting this classified information is not an overriding interest) (the overriding interest of protecting this classified information does not outweigh the value of an open Court-Martial) (other methods of protecting the information will be used (*state other methods*)) (_____)]

MJ: I will now call a recess, and when we return, all spectators and media will be seated in the gallery, and the audio and video feeds to the media center and the theater will be restored. All parties to the closed hearing will be present. I will then open the hearing.

TC: The preceding portion of the Court-martial was classified _____ (state highest classification level).

MJ: The Court-Martial is in recess.

(CONDUCT OPEN SESSION DRILL)

MJ: This hearing is called to order. Let the record reflect that the hearing is now open. The audio and video feeds to the media center and the theater have been restored. All spectators and media are now seated in the gallery. All parties present in the closed hearing are again present.

TC: This portion of the Court-Martial is unclassified.

MJ: Prior to opening this hearing, I have secured all classified material not in use in the courtroom safe, and the Court Security Officer has completed the courtroom opening checklist. I make the following findings of fact: (Summarize findings of fact (unclassified)).

Script to Close the Courtroom Generally

MJ: I will now close this hearing. I will call a recess, and when we return, the only personnel in the courtroom will be the three defense counsels, three trial counsels, the Court Reporter, the Court Security Officer, the Accused, those personnel detailed to the defense and prosecution teams, the representatives of the relevant government agencies, the Military Judge's support paralegal, and myself. The audio and video feeds to the media center and the theater will be severed.

MJ: The investigation is in recess.

(CONDUCT CLOSED SESSION DRILL)

MJ: This hearing is called to order. Let the record reflect that the hearing is now closed. The audio and video feeds to the media center and the theater have been severed. The only personnel in the courtroom are the three defense counsels, three trial counsels, the Court Reporter, the Court Security Officer, the Accused, those personnel detailed to the defense and prosecution teams, the representatives of the relevant government agencies, the Military Judge's support paralegal, and myself.

TC: This portion of the Court-Martial is classified _____ (*state highest expected classification level*)."

Script to Open the Courtroom

MJ: I will now open the hearing. I will call a recess, and when we return, all spectators and media will be seated in the gallery, and the audio and video feeds to the media center and the theater will be restored.

MJ: The investigation is in recess.

(CONDUCT OPEN SESSION DRILL)

MJ: This hearing is called to order. Let the record reflect that the hearing is now open. The audio and video feeds to the media center and the theater have been restored. All spectators and media are now seated in the gallery.

TC: This portion of the Court-Martial is unclassified.

MJ: (Summarize findings of fact (Unclassified))

IF UNPLANNED…

TC: Ma'am, the United States requests an immediate closed session to determine whether this portion of the Court-Martial should be closed.

ADMINISTRATION OF OATH (BY GOVERNMENT)

TC: Do you swear or affirm that the testimony you shall give in the case now being investigated shall be the truth, the whole truth and nothing but the truth, so help you God?

WIT: Yes/No.

TC: Please be advised that while you are testifying, if you are asked any question that you believe may require a classified response, you have a personal responsibility to notify the Military Judge prior to answering. At no time should you disclose any classified information while this hearing is in an open session.

TC: Please state your name for the record.

WIT: (Response)

TC: Please state your unit of assignment or place of employment.

WIT: (Response)

BAILIFF SCRIPT FOR COURTROOM CLOSURE

"LADIES AND GENTLEMEN, THE COURTROOM HAS NOW BEEN CLOSED. PLEASE RISE AND EXIT THE COURTROOM THROUGH THE DOOR BEHIND YOU. SECURITY PERSONNEL WILL ESCORT YOU OUTSIDE. THANK YOU."