IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES	)	
	)	**DEFENSE REPLY TO**
v.	)	**PROSECUTION RESPONSE**
	)	**TO DEFENSE 5 NOVEMBER**
MANNING, Bradley E., PFC	)	**MRE 505(h)(1) NOTICE**
U.S. Army, xxx-xx-(b)	)	
Headquarters and Headquarters Company,	)	
U.S. Army Garrison, Joint Base Myer-	)	4 January 2013
Henderson Hall, Fort Myer, VA 22211	)	

The defense provides the following responses to the 21 December 2012 Prosecution Response to Defense MRE 505(h)(1) Notice on Updated Prosecution Witness List #2, Dated 5 November 2012.

A. Clarification

1. The defense accepts the government's clarification and apologizes for the typographical error.

B. Objections

2. The defense accepts the government's objection to the witnesses the government no longer intends to call. This applies to (b) (6) [redacted], and (b) (6) [redacted].

3. The defense accepts the government's objection to (b) (6) [redacted] and (b) [redacted]. The defense will not discuss any classified matters with these witnesses.

4. The defense accepts the government's objection to (b) (6) [redacted]. The defense is concerned that certain questions suggested by the video (e.g. capabilities of weapons and communications equipment) will have answers that contain classified information, but will process those issues as they actually arise.

5. The defense accepts the government's objection to (b) (6) [redacted]. The defense is concerned that certain questions suggested by the nature of Mr. Muldoon's testimony (CENTAUR logs) will have answers that contain classified information, but will process those issues as they actually arise.

6. The defense accepts the government's objection to (b) (6) [redacted]. The defense is concerned that certain questions suggested by the subject covered by (b) (6) [redacted] testimony (authenticity of DCGS-A records) will have answers that contain classified information, but will process those issues as they actually arise.

7. The defense wishes to further clarify its 505(h) notice with respect to the following chain of custody witnesses: (b) (6) [redacted]. The defense wishes to fully discuss any evidence that these witnesses possessed. Certain common sense questions can be easily imagined: (1) what was the evidence that you possessed, (2) how do you know it was that, (3) how did you handle this evidence, (4) if the evidence itself was classified, distinguish between how you handle classified evidence and unclassified evidence, and (5) describe the official procedures for handling classified evidence as you understand them. The defense fears that these witnesses may believe that their responses to these questions contain classified information. In an abundance of caution, we want the government (more specifically the organizations for which these witnesses work) to give its official blessing to discussing these matters with the defense.

8. The defense stands by its notice with respect to (b) (6) [redacted] and intends to elicit information from his online conversations with PFC Manning. If the government believes information within the chat conversation is classified, the defense requests that the government identify this information for the defense. Depending upon the information identified, the defense will provide the appropriate notice in order for the specific equity holder to give its official blessing to discuss this information.

9. The defense intends to fully discuss any potential impact of PFC Manning's alleged misconduct on the Brigade S2 section with (b) (6) [redacted]. The defense does not believe any of this information is considered classified. If the government is aware of any classified mitigating or aggravating evidence discussing the potential impact of PFC Manning's alleged misconduct on the Brigade S2 section, the government has not provided this to the defense. If classified information on potential impact within the Brigade S2 section does exist, the defense requests that the government identify this information. Depending upon the information identified, the defense will provide the appropriate notice should we intend to elicit any classified information.

10. The defense requests that the Court deny the government's request and direct the government to provide the requested information in order for the defense to comply with its MRE 505 obligations.

Thomas F. Hurley

THOMAS F. HURLEY
MAJ, JA
Defense Counsel