

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

Government Targeted Brief
on Courtroom Closures

Enclosure 7

29 March 2013

Encl 7 to
APPELLATE EXHIBIT 511
PAGE REFERENCED:
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CENTRAL
CIRCUIT

DEPARTMENT OF THE NAVY
GENERAL COURT-MARTIAL
NAVY AND MARINE CORPS TRIAL JUDICIARY
CENTRAL JUDICIAL CIRCUIT

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U N I T E D S T A T E S

v.

Matthew M. DIAZ
LCDR, JAGC, USN

GOVERNMENT MOTION FOR
APPROPRIATE RELIEF PURSUANT TO
MILITARY RULE OF EVIDENCE 505

1. Nature of Motion:

Pursuant to Rule for Court-Martial 906 and Military Rule of Evidence 505(e), the government moves for arraignment and a preliminary Article 39(a) session to consider matters relating to classified information that may arise in connection with the trial. Specifically, the government requests that the military judge issue a protective order under Military Rule of Evidence 505(g)(1) and establish timing for discovery and notice under Military Rule of Evidence 505(h). As the movant, the government has the burden to show that it is entitled to relief by preponderance of the evidence.

2. Facts:

In January of 2005, Ms. Barbara Olshansky received a card in an envelope bearing a return address at the Joint Task Force in Guantanamo Bay, Cuba. A determination was made that the information contained on the pieces of paper was and is classified at the SECRET/NOFORN level.

Subsequent investigation into the origins of the pieces of paper received by Ms. Olshansky determined that they contained information from the Joint Detainee Information Management System (JDIMS). This system is a classified web based computer program, which is accessible through the SECRET Internet Protocol Router Network (SIPERNET).

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APPELLATE EXHIBIT I
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APPENDED PAGE 19

The convening authority referred charges in this case to a general court-martial on 5 January 2007. The information disclosed by the accused is still classified at the SECRET/NOFORN level.

3. Authority:

Military Rule of Evidence 505

4. Discussion:

The government moves pursuant to Mil. R. Evid. 505(e) for a preliminary session under Article 39(a) to consider matters relating to classified information that may arise in connection with the trial.

a. Pre-Trial Hearing

After referral of charges, "any party may move for a session under Article 39(a) to consider matters relating to classified information." Mil. R. Evid. 505(e). After such a motion, "the military judge promptly shall hold a session under Article 39(a) to establish the timing of requests for discovery, the provisions of notice under subdivision (h), and the initiation of the procedure under subdivision (i)." *Id.*

The government requests this hearing to establish defense notice requirements under Mil. R. Evid. 505(h) and a timeline for any proceedings that may be necessary under Mil. R. Evid. 505(i).

Mil. R. Evid. 505(h) requires that the defense provide the trial counsel notice if the defense reasonably expects to disclose or cause the disclosure of classified material in any manner during the court-martial process. The government requests this session so that the government can ensure that the proper documentation is obtained and requested in order that the courtroom can be properly closed for any defense requested disclosure for the purpose of protecting classified information.

Based on the inherent difficulty in dealing with classified information during the court-martial process, the government requests that this Article 39(a) session be held as soon as practicable to establish the requirements under Mil. R. Evid. 505(h) and 505(i).

b. Protective Order

The government also moves pursuant to Mil. R. Evid. 505(g)(1) for the issuance of a protective order to govern the handling of classified information in this case.

Mil. R. Evid. 505(g)(1) requires the court, upon the request of the government, to issue an order "to guard against the compromise of information disclosed to the accused." Mil. R. Evid. 505(g)(1) makes explicit the court's authority to issue protective orders for classified information. Mil. R. Evid. 505(g)(1) further provides that the protective order may include the following provisions:

- (1) prohibiting the disclosure of the information except as authorized by the military judge;
- (2) requiring storage of material in a manner appropriate for the level of classification assigned to the documents to be disclosed;
- (3) requiring controlled access to the material during normal business hours and at other times upon reasonable notice;
- (4) requiring all persons to cooperate with personnel in any investigations which are necessary to obtain a security clearance;
- (5) requiring the maintenance of logs recording access by all persons authorized by the military judge to have access to the classified information in connection with the preparation of the defense;
- (6) regulating the making and handling of notes taken from material containing classified information; and
- (7) requesting the convening authority authorize the assignment of government security personnel and the provision of government storage facilities.

A protective order issued by the military judge has the same force and effect as other orders issued by the military judge, and violations of a Mil. R. Evid. 505(g)(1) may be punished in the same manner that violations of other court orders are enforced.

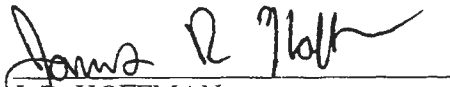
Here, the government seeks the issuance of a protective order seeking the terms set forth above, as well as other measures which it believes is necessary to protect the classified information at issue in this case. A proposed protective order is attached.

5. Attachments:

- a. Charge Sheet
- b. Affidavit of Mr. Paul Rester
- c. Proposed Protective Order

6. Oral Argument:

If this motion is opposed by the defense then the government requests oral argument.


 J. R. HOFFMAN
 LT, JAGC, USN
 Trial Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of this response was served on Detailed Defense Counsel in the above captioned case on 8 January 2007.


 J. R. HOFFMAN