

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

Prosecution Notice to the Court of
Defense's Notification Pursuant to
Military Rule of Evidence 505(h)

22 April 2013

On 22 February 2013, the defense completed its notice of intent to disclose classified information in the above-captioned court-martial pursuant to Military Rule of Evidence (MRE) 505(h). On 28 February 2013, the parties met to discuss, and resolve, any issues relating to this defense filing. On 1 March 2013, the United States filed a notice explaining the information it requires to process the defense's MRE 505(h) notice. On 1 March 2013, the defense did not object to the prosecution's notice. On 8 March 2013, the defense submitted an additional notice of intent to disclose classified information based on the issues the parties' discussed on 28 February 2013. This notice provides an update on two different aspects of the defense's MRE 505(h) notice: (1) the defense notice of information it intends to use at trial through government witnesses and (2) the defense notice of the damage/impact assessments it intends to use at trial.

1. The United States and applicable equity holders processed the defense's MRE 505(h) notices dated 26 October 2012, 22 February 2013 and 8 March 2013, outlining what classified information the defense intends to use with government and defense witnesses at trial. Separately, the defense notified the United States that it does not intend to share any of the contents of the Office of the National Counterintelligence Executive (ONCIX) damage assessment with any witness. The United States does not object to the use of the classified information outlined in the defense's notice, so long as the information remains classified, and the information is properly protected under applicable laws and regulations and not disclosed publically. This approval is contingent upon the information being referred to or elicited from a witness during a closed session, or only after the appropriate equity holders approve any proposed alternatives to the classified information, including the silent witness rule.

2. As outlined in the 1 March 2013 government filing, both parties are under an agreement that the defense is not seeking to share the original assessments with the accused. Both parties agreed to work together toward stipulations of fact concerning the contents of the damage/impact assessments, which would be shared with the accused and be used during trial. On 5 March 2013 and 17 April 2013, the United States and military defense counsel met to review certain damage/impact assessments. Below is an update by assessment of the approvals or ongoing coordination for approvals of summaries of those assessments.

a. **Department of State.** The original Department of State's draft impact assessment is approved for use at trial during the presentencing proceedings, so long as the information remains classified, and the information is properly protected under applicable laws and regulations and not disclosed publically. Because the original document is approved for use vice

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a summarized version, the defense is not authorized to share the classified contents of this assessment with the accused until a finding of guilt is made on the record.

b. **ONCIX.** After meeting with the defense, the United States is working with the equity holders to update their approvals for specific information to be re-summarized in a different form. The United States does not expect to claim the national security privilege over this information and to have a final summarized document for the parties' stipulation by 7 May 2013. The United States does expect the summarized document to be classified at the "Top Secret" level with sensitive compartmented information.

c. **Department of Defense.** After meeting with the defense, the United States is working with the equity holders to update their approvals for specific information to be summarized. The United States does not expect to claim the national security privilege over this information and to have a final summarized document for the parties' stipulation by 7 May 2013.



ASHDEN FEIN
MAJ, JA
Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 22 April 2013.



ASHDEN FEIN
MAJ, JA
Trial Counsel