

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 MOTION
FOR JUDICIAL NOTICE

25 June 2013

CORRECTED COPY

RELIEF SOUGHT

COMES NOW the United States of America, by and through undersigned counsel, and respectfully requests this Court take judicial notice of the following adjudicative facts:

Adjudicative Facts: WikiLeaks Releases

- a. WikiLeaks released a video titled "Collateral Murder" on 5 April 2010;
- b. WikiLeaks released more than 390,000 records from the Combined Information Data Network Exchange (CIDNE) Iraq database on 22 October 2010;
- c. WikiLeaks released more than 75,000 records from the CIDNE Afghanistan database on 25 July 2010;
- d. WikiLeaks released more than 700 detainee assessments produced by Joint Task Force Guantanamo (JTF-GTMO) on 25 April 2011;
- e. WikiLeaks released a memorandum produced by the Army Counterintelligence Center titled "Wikileaks.org—An Online Reference to Foreign Intelligence Services, Insurgents, or Terrorist Groups?" on 15 March 2010;

Adjudicative Facts: Salary of Servicemembers and Government Employees

- f. The monthly base salary for Servicemembers at the rank of Specialist, E-4, was \$1,502.70 in 2003, \$1,558.20 in 2004, \$1,612.80 in 2005, \$1,662.90 in 2006, \$1,699.50 in 2007, \$1,758.90 in 2008, \$1,827.60 in 2009, and \$1,889.70 in 2010;
- g. The yearly base salary for government employees at the grade of 12 on the General Schedule (GS) scale was \$51,508 in 2003, \$52,899 in 2004, \$54,221 in 2005, \$55,360 in 2006, \$56,301 in 2007, \$57,709 in 2008, \$59,383 in 2009, and \$60,274 in 2010;

Adjudicative Facts: Reference Materials

- h. The existence of Army Regulation (AR) 25-1, dated 13 November 2007, specifically paragraphs 1-1, subparagraphs (a) and (b) of 1-7, and subparagraphs (d), (e), and (f) of 6-1 and the definition found in AR 25-2 of "Information System;"

i. The existence of DoD 5400.11-R: Department of Defense Privacy Program, dated 14 May 2007, specifically Appendix 1 and the definition of "Personal Information;"

Adjudicative Facts: Miscellaneous

j. Thanksgiving of 2009 occurred on 26 November 2009;

k. The term, ".is," is the top level internet domain of Iceland;

l. Johanna Sigurdardottir was the Prime Minister of Iceland from February 2009 – May 2013, Ossur Skarphedinsson was the Icelandic Minister for Foreign Affairs from February 2009 – May 2013, Albert Jonsson was the Icelandic Ambassador to the United States from 2006-2009, and Birgitta Jonsdottir has been a member of the Icelandic parliament since 2009; and

m. The Internet chat lingo and their meanings in Enclosure 13 are synonymous.

BURDEN OF PERSUASION AND BURDEN OF PROOF

The burden of proof on any factual issue the resolution of which is necessary to decide a motion shall be by preponderance of the evidence. Rule for Courts-Martial (RCM) 905(c)(1). The burden of persuasion on any factual issue the resolution of which is necessary to decide a motion shall be on the moving party. RCM 905(c)(2). The United States has the burden of persuasion as the moving party.

FACTS

The accused is charged with giving intelligence to the enemy, in violation of Article 104, Uniform Code of Military Justice (UCMJ). The accused is also charged with eight specifications alleging misconduct in violation of 18 U.S.C. § 793(e), five specifications alleging misconduct in violation of 18 U.S.C. § 641, two specifications alleging misconduct in violation of 18 U.S.C. § 1030(a)(1), five specifications alleging misconduct in violation of Article 92, UCMJ, and one specification alleging misconduct prejudicial to good order and discipline and service discrediting. *See* Charge Sheet.

WITNESSES/EVIDENCE

The United States does not request any witnesses be produced for this filing. The United States requests that this Court consider the Charge Sheet and the enclosures to this motion.

LEGAL AUTHORITY AND ARGUMENT

A judicially noticed fact "must be one not subject to reasonable dispute in that it is either (1) generally known universally, locally, or in the area pertinent to the event or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Military Rule of Evidence (MRE) 201(b); *see also United States v. Needham*, 23

M.J. 383 (C.M.A. 1987). Judicial notice of facts serves as a substitute for testimonial, documentary, or real evidence. *See* Stephen A. Saltzburg, et al., *Military Rules of Evidence Manual* § 201.02[1] (7th ed. 2011). Additionally, judicial notice promotes judicial economy as it relieves a proponent from formally proving certain facts that a reasonable person would not dispute. *See id.*

Adjudicative Facts: WikiLeaks Releases

a. WikiLeaks released a video titled "Collateral Murder" on 5 April 2010.

The fact that WikiLeaks released a video titled "Collateral Murder" on 5 April 2010 is a fact generally known or, at a minimum, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. This fact was reported in several media sources, as well as in the Information Review Task Force (IRTF) impact statement. *See* Enclosure 1; *see also* Enclosure to Appellate Exhibit (AE) 132, at 102. The video released by WikiLeaks is an edited version of the video that forms the basis of Specification 2 of Charge II.

The fact that WikiLeaks released this video on 5 April 2010 is relevant to Specification 2 of Charge II, a specification to which the accused has pled not guilty to the charged offense. The fact that WikiLeaks released this video on 5 April 2010 makes it more probable than not that the video was closely held prior to 5 April 2010. *See* MRE 401; *see also* Charge Sheet.

b. WikiLeaks released more than 390,000 records from the CIDNE Iraq database on 22 October 2010.

The fact that WikiLeaks released more than 390,000 records from the CIDNE Iraq database on 22 October 2010 is a fact generally known or, at a minimum, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. This fact was reported in several media sources, as well as in a press release by the Department of Defense and in the IRTF impact statement. *See* Enclosure 2; *see also* Enclosure to AE 132, at 34.

The fact that WikiLeaks released more than 390,000 records from the CIDNE Iraq database on 22 October 2010 is relevant to Specifications 4 and 5 of Charge II, two specifications to which the accused has pled not guilty to the charged offenses. The fact that WikiLeaks released more than 390,000 records from the CIDNE Iraq database on 22 October 2010 makes it more probable than not that the accused stole, purloined, or knowingly converted those records between on or about 31 December 2009 and on or about 5 January 2010. Further, the fact that WikiLeaks released these records makes it more probable than not that the records were closely held prior to 22 October 2010. *See* MRE 401; *see also* Charge Sheet.

c. WikiLeaks released more than 75,000 records from the CIDNE Afghanistan database on 25 July 2010.

The fact that WikiLeaks released more than 75,000 records from the CIDNE Afghanistan database on 25 July 2010 is a fact generally known or, at a minimum, capable of accurate and

ready determination by resort to sources whose accuracy cannot be reasonably questioned. This fact was reported in several media sources, as well as in a press release by the Department of Defense and in the IRTF impact statement. *See* Enclosure 3; *see also* Enclosure to AE 132, at 10.

The fact that WikiLeaks released more than 75,000 records from the CIDNE Afghanistan database on 25 July 2010 is relevant to Specifications 6 and 7 of Charge II, two specifications to which the accused has pled not guilty to the charged offense. The fact that WikiLeaks released these records on 25 July 2010 makes it more probable than not that the accused stole, purloined, or knowingly converted those records between on or about 31 December 2009 and on or about 8 January 2010. Further, the fact that WikiLeaks released these records on 25 July 2010 makes it more probable than not that the documents were closely held prior to 25 July 2010. *See* MRE 401; *see also* Charge Sheet.

d. WikiLeaks released more than 700 detainee assessments produced by JTF-GTMO on 25 April 2011.

The fact that WikiLeaks released more than 700 detainee assessments produced by JTF-GTMO on 25 April 2011 is a fact generally known or, at a minimum, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. This fact was reported in several media sources, as well as in a press release by the Department of Defense and in the IRTF impact statement. *See* Enclosure 4; *see also* Enclosure to AE 132, at 58.

The fact that WikiLeaks released more than 700 detainee assessments produced by JTF-GTMO on 25 April 2011 is relevant to Specifications 8 and 9 of Charge II, two specifications to which the accused has pled not guilty to the charged offenses. The fact that WikiLeaks released these records on 25 April 2011 makes it more probable than not that the accused stole, purloined, or knowingly converted those records on or about 8 March 2010. Further, the fact that WikiLeaks released these records on 25 April 2011 makes it more probable than not that the documents were closely held prior to 25 April 2011. *See* MRE 401; *see also* Charge Sheet.

e. WikiLeaks released a memorandum produced by the Army Counterintelligence Center titled "Wikileaks.org—An Online Reference to Foreign Intelligence Services, Insurgents, or Terrorist Groups?" on 15 March 2010.

The fact that WikiLeaks released the above record on 15 March 2010 is a fact generally known or, at a minimum, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. This fact was reported in several media sources, as well as in the IRTF impact statement. *See* Enclosure 5; *see also* Enclosure to AE 132, at 97. This record forms the basis of Specification 15 of Charge II.

The fact that WikiLeaks released this record on 15 March 2010 is relevant to Specification 15 of Charge II, a specification to which the accused has pled not guilty to the charged offense. The fact that WikiLeaks released this record on 15 March 2010 makes it more

probable than not that the record was closely held prior to 15 March 2010. *See* MRE 401; *see also* Charge Sheet.

Adjudicative Facts: Salary of Servicemembers and Government Employees

f. The monthly base salary for Servicemembers at the rank of Specialist, E-4, was \$1,502.70 in 2003, \$1,558.20 in 2004, \$1,612.80 in 2005, \$1,662.90 in 2006, \$1,699.50 in 2007, \$1,758.90 in 2008, \$1,827.60 in 2009, and \$1,889.70 in 2010.

The fact that Servicemembers at the rank of Specialist, E-4, earned the above monthly base salary from 2003-2010 is a fact generally known or, at a minimum, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. The base monthly salary of these Servicemembers is published by the Department of Defense. *See* Enclosure 6.

The base monthly salary of Servicemembers at this rank is relevant to prove that the charged documents in Specifications 8 and 16 of Charge II, two specifications to which the accused has pled not guilty, are of a value of more than \$1,000. The United States has presented evidence that these charged documents were produced and/or maintained by Servicemembers with the lowest rank of Specialist, E-4, between 2003-2010. *See* Prosecution Exhibit (PE) 131; Testimony of Chief Warrant Officer 4 Armond Rouillard. The fact that Servicemembers at the rank of Specialist, E-4, earned the above monthly base salary makes it more probable than not that the records were of a value of more than \$1000. *See* MRE 401; *see also* Charge Sheet.

g. The yearly base salary for government employees at the grade of 12 on the GS scale was \$51,508 in 2003, \$52,899 in 2004, \$54,221 in 2005, \$55,360 in 2006, \$56,301 in 2007, \$57,709 in 2008, \$59,383 in 2009, and \$60,274 in 2010.

The fact that government employees at the grade of 12 on the GS scale earned the above yearly base salary from 2003-2010 is a fact generally known or, at a minimum, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. The base yearly salary of these government employees is published by the Department of Defense. *See* Enclosure 7.

The base yearly salary of these government employees is relevant to prove that the charged documents in Specification 8 of Charge II, a specification to which the accused has pled not guilty, are of a value of more than \$1,000. The United States has presented evidence that these charged documents were produced and/or maintained by government employees with the lowest grade of 12 on the GS scale. *See* PE 131. The fact that government employees at the grade of 12 on the GS scale earned the above yearly base salary makes it more probable than not that the records were of a value of more than \$1000. *See* MRE 401; *see also* Charge Sheet.

Adjudicative Facts: Reference Materials

h. The existence of AR 25-1, dated 13 November 2007, specifically paragraphs 1-1, subparagraphs (a) and (b) of 1-7, and subparagraphs (d), (e), and (f) of 6-1 and the definition found in AR 25-2 of "Information System."

The existence of AR 25-1, dated 13 November 2007, is a fact generally known or, at a minimum, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. AR 25-1 can be found at the Army Publishing Directorate, a source whose accuracy cannot be reasonably questioned. *See* Enclosure 8. This Court has previously taken judicial notice of other paragraphs contained within AR 25-2. *See* AE 288.

The United States specifically requests this Court take judicial notice of paragraphs 1-1, subparagraphs (a) and (b) of 1-7, subparagraphs (d), (e), and (f) of 6-1, and the definition found in AR 25-2 of "Information System." These specific paragraphs and subparagraphs are relevant to Specification 16 of Charge II and Specification 4 of Charge III. These paragraphs make it more probable than not that the information for which the accused is charged with stealing, purloining, or knowingly converting in Specification 16 of Charge II was a record or thing of value belonging to the United States government. These paragraphs make it more probable than not that the accused's use of the information system in Specification 4 of Charge III was in a manner other than its intended purpose. *See* MRE 401; *see also* Charge Sheet.

i. The existence of DoD 5400.11-R: Department of Defense Privacy Program, dated 14 May 2007, specifically Appendix 1 and the definition of "Personal Information."

The existence of DoD 5400.11-R, dated 14 May 2007, is a fact generally known or, at a minimum, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. DoD 5400.11-R can be found at the Defense Technical Information Center database, a source whose accuracy cannot be reasonably questioned. *See* Enclosure 9.

The United States specifically requests this Court take judicial notice of Appendix 1 and the definition of "Personal Information." These specific portions are relevant to Specification 16 of Charge II and Specification 4 of Charge III. These portions make it more probable than not that the information for which the accused is charged with stealing, purloining, or knowingly converting in Specification 16 of Charge II was a record or thing of value belonging to the United States government. These portions make it more probable than not that the accused's use of the information system in Specification 4 of Charge III was in a manner other than its intended purpose. *See* MRE 401; *see also* Charge Sheet.

Adjudicative Facts: Miscellaneous

j. Thanksgiving of 2009 occurred on 26 November 2009.

The fact that Thanksgiving of 2009 occurred on 26 November 2009 is a fact that is generally known or, at a minimum, capable of accurate and ready determination by resort to

sources whose accuracy cannot be reasonably questioned. The date of Thanksgiving was published in several media sources, as well as in a Presidential Proclamation released by the White House. *See* Enclosure 10.

The date of Thanksgiving in 2009 is relevant to Specifications 1 and 11 of Charge II, two specifications to which the accused has pled not guilty to the charged offense. Both specifications allege that the accused transmitted information to WikiLeaks as early as 1 November 2009. The United States has presented evidence, through the accused's own admission, that the accused began helping WikiLeaks "right after thanksgiving timeframe of 2009." *See* PE 30. The fact that Thanksgiving occurred on 26 November 2009 makes it more probable than not that the accused caused intelligence to be published on the internet for Specification 1 of Charge II and transmitted the charged video file in Specification 11 of Charge II to WikiLeaks during the alleged timeframe. *See* MRE 401; *see also* Charge Sheet.

k. The term, ".is," is the top level internet domain of Iceland.

The fact that ".is" is the top level internet domain of Iceland is a fact that is generally known or, at a minimum, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. The fact that ".is" is the top level internet domain of Iceland is capable of accurate and ready determination by reviewing the Uniform Resource Locator (URL) of any Iceland government website. *See* Enclosure 11.

The fact that ".is" is the top level internet domain of Iceland is relevant to Specification 1 of Charge II, a specification to which the accused has pled not guilty. Specification 1 of Charge II alleges that the accused "wantonly" caused intelligence to be published on the Internet. *See* Charge Sheet. The defense stipulated that the accused searched for "Iceland" on Intelink. *See* Testimony of Mr. Chad Madaras. The United States presented evidence that the accused had no legitimate reason to search for information relating to Iceland. *See* Testimony of Chief Warrant Officer 2 Kyle Balonek. Further, the fact that ".is" is the top level internet domain of Iceland is relevant to explain portions of the accused's chat logs with Julian Assange, where the accused mentioned ".is" in the context of a conversation about information the accused has reviewed on the SIPRNET. *See* PE 123 at 5 (06:19:16). The fact that the accused searched for and reviewed information relating to Iceland on SIPRNET, without a legitimate reason for doing so, makes it more probable than not that the accused acted wantonly. *See* MRE 401; *see also* Charge Sheet.

1. Johanna Sigurdardottir was the Prime Minister of Iceland from February 2009 – May 2013, Ossur Skarphedinsson was the Icelandic Minister for Foreign Affairs from February 2009 – May 2013, Albert Jonsson was the Icelandic Ambassador to the United States from 2006-2009, and Birgitta Jonsdottir has been a member of the Icelandic parliament since 2009.

The fact that Johanna Sigurdardottir was the Prime Minister of Iceland from February 2009 – May 2013, Ossur Skarphedinsson was the Icelandic Minister for Foreign Affairs from February 2009 – May 2013, Albert Jonsson was the Icelandic Ambassador to the United States from 2006-2009, and Birgitta Jonsdottir has been a member of the Icelandic parliament since 2009 are facts that are generally known or, at a minimum, capable of accurate and ready

determination by resort to sources whose accuracy cannot be reasonably questioned. The facts are published in several media sources. *See* Enclosure 12.

These facts are relevant to Specification 1 of Charge II, a specification to which the accused has pled not guilty. Specification 1 of Charge II alleges that the accused "wantonly" caused intelligence to be published on the Internet. *See* Charge Sheet. The United States has presented evidence that the accused downloaded information relating to Ossur Skarphedinsson, Johanna Sigurdardottir, and Albert Jonsson at Forward Operating Base (FOB) Hammer, Iraq. *See* PE 39. The United States also presented evidence, and the defense stipulated, that the accused searched for Birgitta Jonsdottir, among others, on Intelink. *See* PE 49; *see also* Testimony of Mr. Chad Madaras. The United States has presented evidence that the accused had no legitimate reason to search for information relating to Iceland. *See* Testimony of Chief Warrant Officer 2 Kyle Balonek. The identity of these persons will assist the Court with understanding the accused's activity during his deployment. *See* PE 39 and PE 81. The fact that the accused searched for, and downloaded, information relating to these persons, without a legitimate reason for doing so, makes it more probable than not that the accused acted "wantonly." *See* MRE 401; *see also* Charge Sheet.

m. The Internet chat lingo and their meanings in Enclosure 13 are synonymous.

The fact that the Internet chat lingo and their meanings in Enclosure 13 are synonymous is generally known universally and locally. *See* Enclosure 13. The United States presented evidence that the accused discussed his misconduct with both Mr. Adrian Lamo and Mr. Julian Assange. *See* PEs 30 and 123. The meaning of this chat lingo will assist the Court with understanding these statements made by the accused. Further, the meaning of this chat lingo is relevant to Specifications 1 and 11 of Charge II, two specifications to which the accused has pled not guilty. Defining this Internet chat lingo will assist the Court with understanding the accused's statements to Mr. Lamo and Mr. Assange relating to his misconduct. The meaning of this chat lingo makes it more probable than not that the accused acted "wantonly" by compromising classified information to WikiLeaks. Further, the accused specifically discussed with Mr. Lamo his involvement with the video file compromised to WikiLeaks. *See* PE 30, at 12 (2:15:57 PM) and at 46 (04:35:31 PM). The meaning of this chat lingo makes it more probable than not that the accused committed the misconduct alleged in Specification 11 of Charge II. *See* MRE 401; *see also* Charge Sheet.

CONCLUSION

For the reasons stated above, the United States respectfully requests this Court take judicial notice of the above adjudicative facts.




J. HUNTER WHYTE
CPT, JA
Assistant Trial Counsel

13 Enclosures

1. Sources (WikiLeaks release of Collateral Murder)
2. Sources (WikiLeaks release of CIDNE Iraq records)
3. Sources (WikiLeaks release of CIDNE Afghanistan records)
4. Sources (WikiLeaks release of JTF-GTMO records)
5. Sources (WikiLeaks release of Army Counterintelligence Center report)
6. Sources (Salary of Servicemembers)
7. Sources (Salary of Government Employees)
8. AR 25-1, paragraphs 1-1, subparagraphs (a) and (b) of 1-7, and subparagraphs (d), (e), and (f) of 6-1 and the definition found in AR 25-2 of "Information System"
9. DoD 5400.11-R, Appendix 1 and the definition of "Personal Information"
10. Sources (Thanksgiving 2009)
11. Sources (Internet Domain for Iceland)
12. Sources (Identity of Persons)
13. Chat Lingo and Meanings

I certify that I served or caused to be served a true copy of the above on Defense Counsel, via electronic mail, on 25 June 2013.



J. HUNTER WHYTE
CPT, JA
Assistant Trial Counsel