

[REDACTED]

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 Motion for  
Use of Alternative  
Under MRE 505(j)(2)**

**31 May 2013**

**REQUESTED RELIEF**

(U) The United States respectfully requests the Court authorize use of an alternative detailed herein. The United States also requests the Court order all parties and witnesses not to identify classified information in the alternative during open sessions or with witnesses without security clearances, and not to identify the subject matter that forms the basis of this motion.

**BURDEN OF PERSUASION AND BURDEN OF PROOF**

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

**FACTS**

[REDACTED]

(U) The United States intends to admit the alternative as evidence at trial, and the Defense has intimated during RCM 802 conferences that it intends to use the alternative at trial as well.

**WITNESSES/EVIDENCE**

(U) The United States does not request any witnesses be produced for this motion. The United States requests that the Court consider the enclosures listed at the end of this motion.

**LEGAL AUTHORITY AND ARGUMENT**

(U) MRE 505(j)(2) authorizes a military judge to admit an alternative form of classified information to prevent unnecessary disclosure of classified information. See Military Rule of

[REDACTED]

[REDACTED]

APPELLATE REVIEW 556  
PAGE REFERENCED:  
PAGE \_\_\_\_ OF \_\_\_\_ PAGES

[illegible][illegible]

[REDACTED]

<sup>1</sup> (U) The United States and Defense agreed to apply the 2012 Military Rules of Evidence and not to apply the Military Rules of Evidence as amended by President Obama on 15 May 2013, to include MRE 505 (2013). The equivalent section in the 2013 MRE is MRE 505(k) (2013).

[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

1. (U) Order both parties to use at trial the alternative identified in Enclosure 3 as a substitute for Enclosure 2 or any other related evidence. Order both parties not to use at trial Enclosure 2 or any other variation.

2. (U) Order both parties not to identify nor elicit testimony regarding the specified classified information during an open session of trial. Order both parties not to discuss the specified classified information with any witness without a security clearance. Order both parties not to isolate, highlight, nor reference the specified classified information during an open session of trial.

3. (U) The original document and the alternative are both classified. Based on the Original Classification Authority's determination, the alternative will be marked for classification at the conclusion of trial. Order that both documents be sealed pursuant to the Court's omnibus sealing order at the conclusion of the trial.

4. (U) Order both parties not to identify publicly the subject matter that serves as the basis of this the Government's 31 May 2013 motion and this protective order.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

//original signed//  
ASHDEN FEIN  
MAJ, JA  
Trial Counsel

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

(U) I certify that I served or caused to be served a true copy of the above, via SIPRNET email, to Mr. David Coombs, Civilian Defense Counsel, though the defense security experts on 31 May 2013.

//original signed//  
ASHDEN FEIN  
MAJ, JA  
Trial Counsel

4 Enclosures

1. OCA Declaration, 30 May 2013 (U)
2. [REDACTED]
3. [REDACTED]
4. Draft Ruling and Protective Order (U)

[REDACTED]

[REDACTED]

[REDACTED]

IN THE UNITED STATES ARMY FIRST JUDICIAL CIRCUIT

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

)  
)  
) **Ruling and Protective Order:**  
) **Government MRE 505(j)(2) Alternative**

) **DATED:** \_\_\_\_\_  
)

**(U) Findings of Fact and the Law:**

(U) Military Rule of Evidence (MRE) 505(j) (2012) governs the introduction of classified information into evidence at trial.

[REDACTED]

(U) The Court finds that the information in the above paragraph is properly classified under Executive Order 13526 and MRE 505. The properly classified information is referenced herein as "specified classified information."

(U) The Government presented evidence that use of the original document at trial may result in disclosure of the specified classified information.

**(U) Conclusions of Law:**

(U) MRE 505(j)(2) permits the Court to authorize use of a copy as an alternative "to prevent unnecessary disclosure of classified information." *See* MRE 505(j)(2). The Government established good cause for use of an alternative document because use of the original could disclose classified information. The Court issues this protective order to authorize the use of the alternative and to preclude identification of the specified classified information.

**(U) IT IS ORDERED:**

1. (U) Both parties shall use at trial the alternative identified in Enclosure 3 of the Government's 31 May 2013 motion as a substitute for Enclosure 2 of the same motion or any other related evidence. Neither party shall use at trial Enclosure 2 or any other variation of the Government's 31 May 2013 motion.

[REDACTED]

[REDACTED]

2. (U) Neither party identify nor elicit testimony regarding the specified classified information during an open session of trial. Neither party shall discuss the specified classified information with any witness without a security clearance. Neither party shall isolate, highlight, nor reference the specified classified information during an open session of trial.

3. (U) The original document and the alternative are both classified. Based on the Original Classification Authority's determination, the alternative will be marked for classification at the conclusion of trial. Both documents will be sealed pursuant to the Court's omnibus sealing order at the conclusion of the trial.

4. (U) Neither party may publicly identify the subject matter that serves as the basis of this the Government's 31 May 2013 motion and this protective order.

(U) **ORDERED**, this \_\_\_\_ day of \_\_\_\_ 2013.

DENISE R. LIND  
COL, JA  
Chief Judge, 1st Judicial Circuit