

**APPELLATE EXHIBIT 436**

**Updated Prosecution Witness List (2 Dec. 2012)**

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 )

Updated Prosecution Witness List #3

2 December 2012

(U) The prosecution may call the below witnesses to testify on the merits at trial and/or during the presentencing phase<sup>1</sup> of the above-captioned court-martial. After each witness name is a brief description of the general substance of witness testimony, including whether the prosecution currently intends to elicit classified information during their testimony.

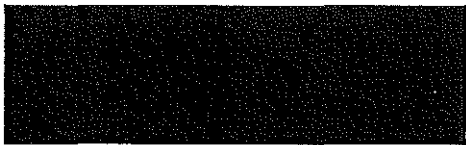
(U) This witness list is provided as an update to the 26 October 2012 witness list to inform the Court and the defense of the removal of witnesses, an update to a witness's name, and updates to unit information for several witnesses. The removal of eight witnesses from testifying during the sentencing portion of the trial is the only substantive update made to this witness list.

(U) The below witnesses are only offered to testify regarding information concerning the accused, the charged misconduct, the classified information used by the prosecution to prove the charges and their specifications, and classified information that is related to the impact or damage resulting from the accused's charged misconduct. The prosecution does not intend to elicit "Top Secret" or "Sensitive Compartmented Information" from any of these witnesses.

1. [REDACTED]

2. (U) ^ SFC [REDACTED] Headquarters and Headquarters Company, 2d Battalion, 14th Infantry Regiment, 2d Brigade Combat Team, 10th Mountain Division (LI), Fort Drum, NY, 13602, [REDACTED] He will testify about the accused's training, activities; and

<sup>1</sup> As of the date of this filing, persons identified with an asterisk ("\*") are witnesses only for purposes of the presentencing phase; persons identified with a caret ("^") are witnesses for purposes of presentencing and merits.



[REDACTED]

duties. For sentencing, he will testify about the impact of the accused's actions on him and the unit.

3. (U) Ms. [REDACTED], Fort Drum, NY, 13603, [REDACTED]  
[REDACTED] She will testify concerning the accused's execution of an SCI NDA.
4. (U) Ms [REDACTED] Office of Personnel Management, Boyers, PA, 16016, [REDACTED]  
[REDACTED] She will testify as to the authenticity of the OPM records.
5. (U) Mr. [REDACTED] Central Intelligence Agency, McLean, VA, 22101, POC: Ms. [REDACTED]  
[REDACTED] He will testify as to the authenticity of the OSC logs, including classified information concerning the administration of the logs and the substance of the logs as it relates to the accused.
6. (U) SPC [REDACTED] Camp Arifjan, Kuwait, APO AE, 09306, DSN: [REDACTED]  
[REDACTED] She will testify as to the authenticity of the JAMMS records.
7. (U) SPC [REDACTED] Bravo Company, 57th Signal Battalion, Ft. Hood, TX, 76544 (deployed to Afghanistan), [REDACTED] She will testify concerning her use of the supply room computer.
8. (U) SFC [REDACTED] Headquarters and Headquarters Company (HHC), National Ground Intelligence Center (NGIC), Charlottesville, VA, 22911, [REDACTED] He will testify about the accused's intelligence systems training and the accused's activities at 2/10, including potential classified information.
9. (U) Mr. [REDACTED] 902d MI Group, Fort Meade, MD, 20755, [REDACTED]. He will testify as to the authenticity of the ACIC logs, including classified information concerning the administration of the logs and the substance of the logs as it relates to the accused.
10. (U) SPC [REDACTED] [REDACTED] Ft. Drum, NY, 13602, [REDACTED]  
[REDACTED] He will testify about the accused's activity in his CHU and the accused's activities at 2/10.
11. (U) SPC [REDACTED], Headquarters and Headquarters Company (HHC), 2nd Brigade Combat Team (2BCT), 10th Mountain Division (LI), Fort Drum, NY, 13602, [REDACTED] She will testify about her deployment with the accused and the duties of a 35F, including classified information.
12. (U) WO1 [REDACTED] Headquarters and Headquarters Company (HHC), Headquarters and Headquarters Battalion (HHBN), 10th Mountain Division (LI), Fort Drum, NY, 13602, [REDACTED] He will testify about the requirements of being a 35F, the accused's duties and work product, including classified information.

- [REDACTED]
13. (U) CW4 [REDACTED] US Army Intelligence Center and Center of Excellence, Fort Huachuca, AZ, 85613, [REDACTED] He will testify as to the authenticity of the AIT documents.
  14. (U) Mr. [REDACTED] Watertown, NY, 13601, [REDACTED] He will testify about the requirements for access to government systems at 10th Mountain Division.
  15. (U) SA [REDACTED] U.S. Department of Treasury, Washington, DC, 20220, [REDACTED] He will testify about the IA training the accused received, authentication of multiple pieces of evidence, and the information that the accused leaked to WikiLeaks, including classified information.
  16. (U) SSG [REDACTED] US Army NATO, Allied Forces Command South, Naples, Italy, FPO AE, 09620, [REDACTED] He will testify about the accused's duties in the supply room and the accused's access to computer systems.
  17. (U) Mr. [REDACTED], Air Force Research Laboratory, Rome, NY, 13440, [REDACTED] He will testify about the CIDNE database, its value, and how it appeared at a particular time, including classified information.
  18. (U) [REDACTED], 3rd MP Group (CID), Ft. Eustis, VA, 23604, [REDACTED] He is a chain of custody witness.
  19. (U) [REDACTED], Intelink, Fort Meade, MD, 20755 [REDACTED] He will testify as to the authenticity of the Intelink logs, including classified information concerning the administration of the logs and the substance of the logs as it relates to the accused.
  20. [REDACTED]
  21. (U) Mr. [REDACTED], 902d MI Group, Fort Meade, MD 20755, [REDACTED] He will testify about how the ACIC logs data, how to read the logs, and the content of the logs, including classified information.
  22. (U) ^ CPT [REDACTED], NATO Force Command, Madrid, Spain, 28223, [REDACTED] He will testify about the 2/10 Mountain share drive and its contents, as well as the requirements to access it. For sentencing, he will also testify regarding the impact on the S-6 as a result of numerous investigations into the accused's misconduct.
  23. [REDACTED]

[REDACTED]

[REDACTED]

24. (U) SA [REDACTED] Arizona Branch Office - Computer Crime Investigative Unit, Fort Huachuca, AZ, 85613 [REDACTED] He is a chain of custody witness.
25. (U) Dr. [REDACTED] RedJack, Silver Spring, MD, 20910 [REDACTED]. He will testify about the Centaur logs, including potential classified information concerning the administration of the logs and the substance of the logs as it relates to the accused.
26. (U) Mr. [REDACTED] US Army Human Resources Command, Fort Knox, KY, 40122, [REDACTED] He will testify as to the authenticity of the accused's OMPF.
27. (U) SGT [REDACTED] Headquarters and Headquarters Company (HHC), 2nd Brigade Special Troops Battalion (2BSTB), 2<sup>nd</sup> Brigade Combat Team (2BCT), 10th Mountain Division (LI), Fort Drum, NY, 13602 [REDACTED] She will testify about the accused's work product and the accused's activities within 2/10, including classified information.
28. (U) \* Ms. [REDACTED] Principal Deputy Assistant Secretary, Bureau of Near Eastern Affairs, Department of State, Washington, DC, 20520, POC: [REDACTED] [REDACTED]. She will testify at sentencing about the impact to Near Eastern Affairs, including classified information.
29. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
30. (U) Mr. [REDACTED], Defense Information Systems Agency, Fort Meade, MD, 20755, [REDACTED] He will testify about Centaur logs, including potentially classified information concerning the administration of the logs and the substance of the logs as it relates to the accused.
31. (U) [REDACTED] El Paso, TX 79924 [REDACTED] He is a chain of custody witness.
32. (U) [REDACTED] Homeland Security Investigations, National Security Unit, Atlanta, GA 30301, [REDACTED] He is a chain of custody witness.
33. (U) [REDACTED] Rock Island Fraud Resident Agency, Major Procurement Fraud Unit, Moline, IL, 61265 [REDACTED]. He is a chain of custody witness.

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

- [REDACTED]
34. (U) ^ [REDACTED] Principal Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, Department of State, Washington, DC, 20520 [REDACTED]  
[REDACTED] He will testify about the content of the charged cables originating from and sent to the Western Hemisphere on the merits (specifically, 07 Bogota 101; 07 Bogota 5118; 07 Bridgetown 23; 07 Buenos Aires 1341; 07 Caracas 2346; 07 Caracas 35; 07 Kingston 25; 07 La Paz 1949; 07 Lima 2400; 07 Panama 1197; 07 Panama 1198; 07 San Salvador 1375; 07 Santo Domingo 28; 09 Bogota 2873; 09 Brasilia 1112; 09 Brasilia 1113; 09 Caracas 1168; 09 Lima 1309; 09 Mexico 2658; 09 Santiago 831; 09 Santiago 833; 09 Santiago 835; 09 Santo Domingo 1017; 09 Tegucigalpa 891; 09 Tegucigalpa 892; 09 Lima 333; 09 State 92655) and the impact to Western Hemisphere Affairs on sentencing, including classified information.
  35. (U) Mr. [REDACTED] Nacon Consulting, LLC, Annapolis, MD, 21403, [REDACTED]  
He will testify as to the authenticity of the accused's IA training.
  36. (U) ^ CPT [REDACTED] Fort Sill, OK, 73503, [REDACTED] He will testify about the accused's activities while deployed. For sentencing, he will testify about the impact on the unit as the company commander.
  37. (U) ^ CPT [REDACTED] [REDACTED], 2nd Brigade Combat Team (2BCT), 10th Mountain Division (LI), Fort Drum, NY, 13602, [REDACTED]. She will testify about the accused's training, duties, and work product, including classified information. For sentencing, she will testify regarding the impact of the accused's misconduct on the S-2 shop.
  38. (U) [REDACTED] Brookhaven National Laboratory, Upton, NY, 11973, [REDACTED]  
[REDACTED] He is a chain of custody witness.
  39. (U) Ms. [REDACTED] Fort Meade, MD, 20755, [REDACTED] She will testify about unclassified contents of the ACIC document in Specification 15 of Charge II.<sup>2</sup> The prosecution does not intend to elicit classified testimony from this witness.
  40. (U) Mr. [REDACTED] Brookhaven National Laboratory, Upton, NY, 11973, [REDACTED]  
[REDACTED] He is a chain of custody witness.
  41. (U) [REDACTED], Hawaii CID Office, 1314 Lyman Road, Building 3026, Schofield Barracks, HI, 96857, [REDACTED] She will testify about the law enforcement investigation in Iraq.

<sup>2</sup> [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

42. (U) Mr. [REDACTED] USCENTCOM, MacDill AFB, FL, 33621, [REDACTED] He will testify about the USCENTCOM server logs, including potentially classified information.
43. (U) CW3 [REDACTED] Joint Multinational Readiness Center, Hohenfels Military Community, Germany, APO AE, 09173, DSN: [REDACTED] He will testify about the accused's work product, including classified information.
44. (U) Mr. [REDACTED] HQDA G-2, Washington, DC, 20310, [REDACTED]. He will testify about information security.
45. (U) VADM [REDACTED], USCENTCOM, MacDill AFB, FL, 33621, USCENTCOM OSJA, [REDACTED]. He will testify as an original classification authority (OCA) that charged USCENTCOM information was properly classified, including classified information.
46. (U) Mr. [REDACTED], Senior System Administrator, USCENTCOM Intelligent Software Solutions, Inc., Tampa, FL, 33609, [REDACTED] He will testify about the CIDNE database, including potentially classified information.
47. (U) Mr. [REDACTED], Senior Technician, USCENTCOM Intelligent Software Solutions, Inc., Tampa, FL, 33609, [REDACTED] He will testify about the CIDNE database, including potentially classified information.
48. (U) Mr. [REDACTED], Intelligent Software Solutions, Inc., 2001 Jefferson Davis Hwy, Suite 909, Arlington, VA, 22202, [REDACTED] He will testify about the CIDNE database, including potentially classified information.
49. [REDACTED]
50. (U) Mr. [REDACTED] Westminster, CO, 80021, [REDACTED] He will testify about the C3 document.
51. (U) LT (US Navy) [REDACTED] USCENTCOM, MacDill AFB, FL, 33621, [REDACTED] He will testify about the content of charged USCENTCOM documents containing J-5 information, including classified information.
52. (U) Ms. [REDACTED], 439 West Ten Eyck Street, Watertown, NY, 13601, [REDACTED] She will testify about the authenticity of the accused's SCI Indoctrination packet.
- 53: (U) Mr. [REDACTED] HQDA G-3/5/7, Army Pentagon, Washington, DC, 20310, [REDACTED] He will testify about OPSEC.

[REDACTED]

[REDACTED]

- [REDACTED]
54. (U) Ms. [REDACTED] Forensic Examiner, Federal Bureau of Investigation, Washington, DC, 20535, [REDACTED]. She is a chain of custody witness.
  55. (U) Ms. [REDACTED] S2 OIC, 305th Military Intelligence Battalion, US Army Intelligence Center and Center of Excellence, Fort Huachuca, AZ, 85613, [REDACTED] She will testify concerning requirements of being a 35F.
  56. (U) Mr. [REDACTED] Director, Office of Continuity, Department of State, Washington, DC, 20520, Duty Station: U.S. Embassy, Kabul, Afghanistan, [REDACTED] He will testify about the authenticity and chain of custody of the DoS server logs.
  57. (U) Mr. [REDACTED], Deputy Chief Information Officer for Operations, Messaging Systems Office, Bureau of Information Resource Management, Department of State, Washington, DC, 20520, [REDACTED] He will testify about NCD, including potentially classified information concerning how NCD originated, operated, and was maintained.
  58. (U) ^ Mr. [REDACTED] Digital Forensics and Research Branch, Computer Crime Investigative Unit, Quantico, VA, 22134, [REDACTED] He will testify about his forensic analysis of the accused's digital media, including classified information concerning the contents of his forensic reports.
  59. (U) \* AMB [REDACTED] Under Secretary for Management, Department of State, Washington, DC, 20520, [REDACTED] He will testify on sentencing about the impact to the Department of State, including classified information concerning impact on foreign relations, foreign policy, and the management of the Department.
  60. (U) [REDACTED] Washington Metro Resident Agency, Computer Crime Investigative Unit, Quantico, VA, 22134, [REDACTED] He is a chain of custody witness.
  61. (U) \* Mr. [REDACTED] Chief of Enterprise Strategies, Office of Counterintelligence (CI) Human Intelligence (HUMINT) Enterprise Management, Defense Counterintelligence and Human Intelligence Center, Defense Intelligence Agency, Bolling AFB, DC, 20032 [REDACTED] He will testify at sentencing about the impact on the Department of Defense, including classified information concerning specific impacts within the Department of Defense, the administration and operation of the IRTF, and contents of the IRTF damage assessment.
  62. (U) \* AMB [REDACTED] Senior Adviser, Bureau of Democracy, Rights and Labor, Department of State, Washington, DC 20520 [REDACTED] He will testify on sentencing about the impact on individuals identified as persons at risk by the Department of State,



[REDACTED]

including classified information. This testimony will not include PII of any specific individual.

63. (U) Mr. [REDACTED] Carmichael, CA 95608, [REDACTED] He will testify regarding his digital chat with the accused. The United States does not intend to elicit any classified information contained within the digital chat log.
64. (U) CWS [REDACTED] DAMO-AV, Pentagon, DC, 20310, [REDACTED] He will testify about the content of the Apache Video.
65. (U) ^ Mr. [REDACTED], Defense Intelligence Agency, Bolling AFB, DC, 20032, [REDACTED] He will testify about counterintelligence and the value of information, including classified information concerning the value of government information. For sentencing, he will testify about the impact of the compromise on counterintelligence, including classified information.
66. (U) ^ CPT [REDACTED] HQ, 1st Army Division-East, Fort Meade, MD, 20755 [REDACTED] He will testify about the 2/10 Mountain share drive and its contents, the accused's training and duties, including potentially classified information. For sentencing, he will testify regarding the impact of the accused's misconduct on the S-2 shop.
67. (U) SA [REDACTED] Okinawa CID Office, Building 220 Unit 35139, Okinawa, Japan APO AP 96376-5139, DSN: [REDACTED] She will testify about the investigation in Iraq.
68. (U) Mr. [REDACTED] Forensic Examiner, Federal Bureau of Investigation, Washington, DC, 20535, [REDACTED] He is a chain of custody witness for classified information concerning four digital files extracted from digital media outlined at BATES #: 00505250-00505252.
69. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
70. (U) SGT [REDACTED] Headquarters and Headquarters Company, 2d Battalion, 14th Infantry Regiment, 2d Brigade Combat Team, 10th Mountain Division (LI), Fort Drum, NY, 13602 [REDACTED]. He will testify about the 35F training, 2/10 pre-deployment training, and the use of his SIPRNET computers while deployed, including potentially classified information.
71. (U) Mr. [REDACTED] 21057 W. Western Dr. Buckeye, AZ, 85326, [REDACTED] He will testify about the accused's training at AIT.

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

- 72. (U) Ms. [REDACTED], Headquarters, Computer Crime Investigative Unit, Quantico, VA, 22134, [REDACTED] She is a chain of custody witness.
- 73. (U) ^ SA [REDACTED] Washington Metro Resident Agency, Computer Crime Investigative Unit, Quantico, VA, 22134, [REDACTED] He will testify about Wikileaks operations, the investigation of the accused, and certain enemies of the United States being in possession of information, including classified information.
- 74. (U) SGT [REDACTED] 800th MP Brigade, Uniondale, NY, 11553, [REDACTED] He will testify about the accused's training at AIT.
- 75. (U) Mr. [REDACTED] Intelink, Fort Meade, MD, 20755, [REDACTED] He will testify about the Intelink logs, including classified information concerning the administration of the logs and the substance of the logs as it relates to the accused.
- 76. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 77. [REDACTED]  
[REDACTED]  
[REDACTED]
- 78. (U) Mr. [REDACTED] HQDA G-2, Washington, DC, 20310, [REDACTED] He will testify about the DCGS-A system, including potentially classified information.
- 79. (U) Mr. [REDACTED] USCENTCOM, MacDill AFB, FL, 33621, [REDACTED] He will testify about the training received at AIT.
- 80. [REDACTED]  
[REDACTED]  
[REDACTED]
- 81. (U) Mr. [REDACTED], Brookhaven National Laboratory, Upton, NY, 11973, [REDACTED] He is a chain of custody witness.
- 82. (U) Ms. [REDACTED] Federal Bureau of Investigation, Washington, DC, 20535, [REDACTED] She is a chain of custody witness.

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

- [REDACTED]
83. (U) ^ COI [REDACTED] BDE Modernization Command, Ft. Bliss, TX, [REDACTED]  
[REDACTED] He will testify about the accused's misconduct and the multiple administrative investigations.
  84. (U) Mr. [REDACTED] 262 Jefferson Drive West, Palmyra, VA, 22963, [REDACTED]  
[REDACTED] He will testify about the accused's access to DCGS-A, including potentially classified information.
  85. (U) Mr. [REDACTED] Deputy Assistant Secretary, Bureau of South and Central Asian Affairs, Department of State, Washington, DC, 20520, [REDACTED]  
[REDACTED] He will testify about the content of cables originating from South and Central Asia on the merits (specifically, 06 Colombo 1889; 06 Kathmandu 3023; 06 Kathmandu 3024; 07 Ashgabat 1359; 07 Dhaka 24; 07 New Delhi 80; 09 New Delhi 267; 09 State 92641), including classified information.
  86. (U) Mr. [REDACTED] USCENTCOM, MacDill AFB, FL, 33621, [REDACTED] He will testify about the information posted to the USCENTCOM OSJA SIPRNET website, including potentially classified information.
  87. (U) ^ Mr. [REDACTED] JTF-GTMO, Guantanamo Bay, Cuba, [REDACTED] He will testify about the JTF-GTMO database and the contents of compromised information, including classified information. For sentencing, he will testify about the impact resulting from the compromise of the JTF-GTMO database.
  88. (U) Mr. [REDACTED], US Army Intelligence Center and Center of Excellence, Fort Huachuca, AZ, 85613, [REDACTED] He will testify about instructing the accused at AIT.
  89. (U) Mr. [REDACTED] DISA, Pensacola, FL, 32508, [REDACTED] He will testify about the authenticity of the Centaur logs.
  90. (U) Mr. [REDACTED], Information Systems Security Officer, Bureau of Intelligence and Research, Department of State, Washington, DC, 20520, [REDACTED]  
[REDACTED] He will testify about the authenticity and chain of custody of the DoS firewall logs, including potentially classified information.
  91. (U) Mr. [REDACTED] Reviewer, Office of Global Information Services, Bureau of Administration, Department of State, Washington, DC 20520 (When Actually Employed), [REDACTED]  
[REDACTED] He will testify as an OCA that Department of State information was properly classified, including classified information.
  92. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
93. (U) Lt Col [REDACTED] USCENTCOM, MacDill AFB, FL, 33621, [REDACTED]. He will testify about the content of charged documents containing J3 information, including classified information.
94. (U) CW4 [REDACTED] ARCYBER, Fort Belvoir, VA, [REDACTED]. He will testify about the USF-I GAL.
95. (U) MAJ [REDACTED] Student, CGSC, Ft. Belvoir, VA, 22060 (until OCT, then NIU at Bolling AFB), [REDACTED]. She will testify about the accused's activities at AIT.
96. (U) SSA [REDACTED] Federal Bureau of Investigation, Washington, DC, 20535, [REDACTED]. He is a chain of custody witness for classified information concerning four files extracted from digital media outlined at BATES #: 00505250-00505252.
97. (U) SGT [REDACTED] Fort Leavenworth, KS, 66027 [REDACTED]. He will testify about the accused's training and duties and his interactions with the accused while deployed, including potentially classified information.
98. (U) AMB [REDACTED] Deputy Assistant Secretary and Senior Deputy Special Representative for Afghanistan and Pakistan, Bureau of South and Central Asian Affairs, Department of State, Washington, DC, 20520, [REDACTED]. He will testify about the content of cables originating from Afghanistan and Pakistan on the merits (specifically, 06 Kabul 5420; 06 Kabul 5421; 06 Kabul 5435; 99 Islamabad 495), including classified information.
99. (U) Mr. [REDACTED] Principal Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State, Washington, DC, 20520, [REDACTED]. He will testify about the content of cables originating from International Organizations on the merits (specifically 07 USUN New York 573; 07 USUN New York 575; 07 USUN New York 578), including classified information.
100. (U) SSG [REDACTED] Headquarters and Headquarters Company, 2nd Brigade Combat Team, 10th Mountain Division (LI), Fort Drum, NY, 13602, [REDACTED]. He will testify about access to computer systems within the brigade.
101. (U) Ms. [REDACTED], Federal Bureau of Investigation, Washington, DC, 20535, [REDACTED]. She is a chain of custody witness.

- [REDACTED]
102. (U) Mr. [REDACTED], Federal Bureau of Investigation, Washington, DC, 20535, [REDACTED] He is a chain of custody witness.
  103. (U) SA [REDACTED], Europe Branch Office - Computer Crime Investigative Unit, Funari Barracks, APO AE, 09008, DSN [REDACTED] He will testify about his forensic analysis of the accused's digital media, including classified information.
  104. (U) Ms. [REDACTED] 1 Overcash Avenue, Chambersburg, PA, 17201, [REDACTED] She will testify as to the authenticity of the DoD IA awareness training.
  105. (U) ^ SA [REDACTED], Assistant Regional Security Officer, Diplomatic Security Service, Department of State, Washington, DC, 20520, Duty Station: Consulate, Mazar-e-Sharif, Afghanistan, [REDACTED] He will testify about the chain of custody of the DoS firewall and server logs, including potentially classified information. For sentencing, he will discuss the impact of the compromise on the US Embassy at Reykjavik, including classified information.
  106. (U) Mr. [REDACTED], Forensic Examiner, Federal Bureau of Investigation, Washington, DC, 20535, [REDACTED] He is a chain of custody witness for classified information concerning four files extracted from digital media outlined at BATES #: 00505250-00505252.
  107. (U) CW4 [REDACTED] G33, US Army Network Enterprise Technology Command, Ft. Belvoir, VA, 22060, [REDACTED] He will testify about the value of information stolen from the USF-1 GAL, including potentially classified information.
  108. (U) SGT [REDACTED] 709th MI BN, Harrogate, UK, APO AE, 09468, DSN: [REDACTED] He will testify about his interactions with the accused at 2/10 Mountain and the accused's activities during their deployment, including potentially classified material.
  109. (U) Mr. [REDACTED] Wilco Technologies, Inc., 4125 Broadway, Suite 200, Kansas City, MO, 64106, [REDACTED] He will testify about the authenticity of the accused's annual Information Awareness training.
  110. (U) Ms. [REDACTED], USCENCOM, MacDill AFB, FL, 33621, [REDACTED] She will testify about the response to the FOIA request for the Apache video, including potentially classified material.
  111. (U) AMB [REDACTED] Deputy Assistant Secretary, Bureau of Near Eastern Affairs, Department of State, Washington, DC, 20520, [REDACTED] He will testify about the content of cables originating from the Near East on the merits (specifically, 05 Algiers 1836; 06 Algiers 1961; 06 Baghdad 2646; 06 Baghdad 4205; 06 Beirut 3603; 06 Beirut 3604; 06 Beirut 3703; 06 Kuwait 4430; 06 Kuwait 4438; 06 Riyadh 8811; 06 Tripoli 645; 06

[REDACTED]

Tripoli 648; 07 Baghdad 35; 07 Baghdad 36; 07 Baghdad 37; 07 Baghdad 42; 07 Baghdad 53; 07 Baghdad 56; 07 Baghdad 63; 07 Baghdad 64; 07 Baghdad 70; 07 Basrah 3; 07 Beirut 1958; 07 Riyadh 21; 07 Riyadh 22; 07 Riyadh 23; 07 Tunis 47; 08 Amman 535; 08 Cairo 569; 09 Baghdad 2390; 09 Riyadh 1156; 10 Rabat 294), including classified information.

112. (U) ^ SA [REDACTED] U.S. Department of Treasury, Washington, DC, 20220, [REDACTED]. He will testify about his forensic analysis of the accused's digital media and information posted to WikiLeaks, including classified information, concerning the contents of his forensic reports.
113. (U) ^ Ms. [REDACTED] Hamilton, GA, 31811, [REDACTED]. She will testify about the training the accused received before deployment, the accused's statements and activities before deployment, their duties during deployment and the accused's activities during deployment, including potentially classified information. For sentencing, she will testify about the impact of the accused's misconduct.
114. (U) Ms. [REDACTED] Forensic Examiner, Federal Bureau of Investigation, Washington, DC, 20535, [REDACTED]. She is a chain of custody witness for classified information concerning four files extracted from digital media outlined at BATES #: 00505250-00505252.
115. (U) SA [REDACTED] USACIDC, Fort Gordon, GA, 30905, [REDACTED]. He will testify about the investigation in Iraq.
116. (U) SA Mitchell Song, Federal Bureau of Investigation, Washington, DC, 20535, [REDACTED]. He is a chain of custody witness.
117. (U) CPT [REDACTED] Headquarters and Headquarters Battery (HHB), 1st Battalion, 37th Field Artillery Regiment (1-37 FA), 3rd Stryker Brigade, 2d Infantry Regiment (3/2 SBCT), Fort Lewis, WA (Deployed to Afghanistan), [REDACTED]. She will testify that she was the 2-10 security manager and witnessed the accused sign NDAs and acknowledgement of SCI briefings.
118. (U) Mr. [REDACTED] HQDA, G-1 (DAPE-MPT), Pentagon, DC, 20310, [REDACTED]. He will testify to the authenticity of the accused's ATTRS logs.
119. (U) SA [REDACTED] Chief, Operations Support Division G2X, 902d MI Monterey Field Office, Monterey, CA [REDACTED]. He is a chain of custody witness.

120. [REDACTED]

- [REDACTED]
121. (U) \* Ms. [REDACTED] former Chief Information Officer, Bureau of Information Resource Management, Department of State, Washington, DC 20520, [REDACTED] She will testify at sentencing about the impact to information systems at the Department of State, including potentially classified information.
  122. (U) Mr. [REDACTED] Forensic Examiner, Federal Bureau of Investigation, Washington, DC, 20535, [REDACTED] He is a chain of custody witness for classified information concerning four files extracted from digital media outlined at BATES #: 00505250-00505252.
  123. (U) Ms. [REDACTED] Agency Records Officer, Office of Global Information Services, Bureau of Administration, Department of State, Washington, DC 20520, [REDACTED] She will testify to the authenticity of all charged Department of State cables, including potentially classified information.
  124. (U) SSG [REDACTED], III, Headquarters and Headquarters Troop, Support Squadron, 3d ACR, Fort Hood, TX, ([REDACTED]) He will testify about the training received at AIT.
  125. (U) Ms. [REDACTED] USCENTCOM, MacDill AFB, FL, 33621, ([REDACTED]) He will testify about the content of the charged document(s) containing J-2 information, including classified information.
  126. (U) Mr. [REDACTED], USCENTCOM, MacDill AFB, FL, 33621 [REDACTED] He will testify about the USCENTCOM Sharepoint Server logs, including potentially classified information.
  127. (U) SFC [REDACTED], Headquarters and Headquarters Company, 2nd Brigade Special Troops Battalion (2 BSTB), 10th Mountain Division, (LI), Fort Drum, NY, 13602, ([REDACTED]) He is a chain of custody witness.
  128. (U) Mr. [REDACTED] Compliance Branch Chief, US Army Cyber Command, Ft. Belvoir, VA, 22060 G36 Compliance Division, ([REDACTED]) He will testify about information assurance.
  129. (U) Ms. [REDACTED], CERDEC Software Engineering Directorate, Aberdeen Proving Ground, MD, 21005, [REDACTED] She will testify to the authenticity of DCGS-A documentation.
  130. (U) SA John Wilbur, Department of Treasury, Washington, DC, 20220, [REDACTED] He is a chain of custody witness.

- [REDACTED]
131. (U) ^ SA [REDACTED] Digital Forensics and Research Branch, Computer Crime Investigative Unit, Quantico, VA, 22134, [REDACTED] He will testify about his forensic analysis of the accused's digital media.
132. (U) Mr. [REDACTED], Bureau of Information Resource Management, Department of State, Washington, DC, 20520 (When Actually Employed), [REDACTED] He will testify about the NCD system, including potentially classified information concerning how NCD originated, operated, and was maintained.
133. (U) Mr. [REDACTED] Brookhaven National Laboratory, Upton, NY, 11973, [REDACTED] He is a chain of custody witness.
134. (U) RDML [REDACTED] Commander, JTF-GTMO, Guantanamo Bay, Cuba, POC: CDR T. Welsh, DSN [REDACTED] He will testify as an OCA that JTF-GTMO information was properly classified, including classified information.
135. (U) AMB [REDACTED] Principal Deputy Assistant Secretary, Bureau of African Affairs, Department of State, Washington, DC, 20520, [REDACTED] He will testify about the content of cables originating from Africa on the merits (specifically, 07 Addis Ababa 2197; 07 Lagos 719; 08 Dar Es Salaam 206; 08 Khartoum 246; 08 Khartoum 428; 09 Addis Ababa 1063; 09 Bamako 85; 10 Pretoria 636), including classified information.
136. (U) Mr. [REDACTED] Headquarters, Computer Crime Investigative Unit, Quantico, VA, 22134, [REDACTED] He is a chain of custody witness.
137. (U) AMB [REDACTED] Principal Deputy Assistant Secretary, Bureau of European Affairs, Department of State, Washington, DC, 20520, [REDACTED] She will testify about the content of cables originating from or sent to Europe or Eurasia on the merits (specifically, 10 Reykjavik 13; 06 Belgrade 1681; 06 Madrid 2955; 06 Madrid 2956; 06 Pristina 947; 06 Pristina 948; 07 Ankara 23; 07 Ankara 2468; 07 Bratislava 665; 07 Minsk 1024; 07 Moscow 5824; 07 Moscow 5825; 07 Paris 4722; 07 Paris 4723; 07 Reykjavik 203; 07 Vilnius 13; 09 Paris 217; 09 Prague 88; 09 Pristina 58; 09 State 92632; 09 State 92657; 09 Brussels 382; 09 Geneva 347, including classified information.
138. (U) Mr. [REDACTED] Principal Deputy Assistant Secretary, Bureau of East Asian Affairs, Department of State, Washington, DC, 20520, [REDACTED] He will testify about the content of cables originating from East Asia and the Pacific on the merits (specifically, 06 Seoul 3882; 06 Seoul 3885; 06 Suva 489; 06 Taipei 3830; 07 Bangkok 111; 07 Beijing 152; 07 Kuala Lumpur 40; 07 Rangoon 22; 07 Suva 18; 07 Vientiane 12; 10 Tokyo 627), including classified information.



[REDACTED]

139. [REDACTED]

140. [REDACTED]

141. [REDACTED]

(U) Several of these witnesses may become unnecessary depending on the outcome of subsequent Court rulings. The prosecution may add witnesses to this list, depending on the outcome of subsequent Court rulings, to include those relating to Military Rule of Evidence (MRE) 505 and any witnesses relating thereto. The prosecution may replace witnesses on this list, should it become necessary due to a Permanent Change of Station, job relocation, change in job position, or change in level of security clearance of a listed witness.

(U) The prosecution acknowledges an ongoing obligation to provide the defense prompt notice of any other potential witnesses that come to its attention and will adhere to the local rules. The prosecution will communicate its final witness list according to Rule 2.1.8 of the Rules of Practice before Army Courts-Martial (2012) and the Court's order.

(U) If the defense intends to produce a witness who is listed above, the defense must provide a separate, appropriate request for that witness in accordance with Rule for Courts-Martial (RCM) 703 and the standard articulated in United States v. Rockwood, 52 M.J. 98, 105 (1999) that a witness request include a "synopsis of expected testimony," not merely a list of

<sup>3</sup> [REDACTED]

<sup>4</sup> See *supra* note 3.

<sup>5</sup> See *supra* note 3.

[REDACTED]

[REDACTED]

[REDACTED]

topics to be covered. If necessary for a particular witness employed by the United States Government, the defense shall also comply with 5 U.S.C. § 301 and Touhy v. Ragen, 340 U.S. 462 (1951).



ASHDEN FEIN  
MAJ, JA  
Trial Counsel

(U) I certify that I served or caused to be served a true copy of the above, in person, on Mr. David Coombs, Civilian Defense Counsel, on 2 December 2012.



ASHDEN FEIN  
MAJ, JA  
Trial Counsel

[REDACTED]

[REDACTED]

**APPELLATE EXHIBIT 344**

**Defense Witness List for Merits and Sentencing (15 Oct. 2012)**



(b) (6), (b) (7)(A) [Redacted text block]

3) (b) (6), (b) (7)(A) [Redacted text block]

4) (b) (6), (b) (7)(A) [Redacted text block] was the assistant S-6 for the 2BCT. (b) (6), (b) (7)(A) [Redacted text block]

(b) (7)(A) [Redacted text block]

- 5) (b) (6) [Redacted] will testify concerning his expectations of the analysts that worked within the S-2 Section. Specifically, CW2 [Redacted] will testify concerning the guidance that he provided

(b) (7)(A) [Redacted text block]



9) (b) (6) [redacted] will testify that at the time of the deployment she was a Specialist. SGT [redacted] will testify that she worked with PFC Manning. (b) (7)(A) [redacted]

[redacted]

[redacted] SGT [redacted] testimony will be used to rebut any testimony offered by the Government from Ms. (b) (6) [redacted]

10) (b) (6) [redacted] SGT [redacted] will testify about the work that she did along with PFC Manning during their time in the T-SCIF. (b) (7)(A) [redacted]

[redacted]

11) (b) (6) [redacted] SGT [redacted] will testify that he was a fellow analyst working with PFC Manning. SGT [redacted] will testify that at the time of the deployment he was a Specialist. (b) (7)(A) [redacted]

[redacted]





(b) (7)(A)

(b) (7)(A)

[Redacted text block]

15) Mr. (b) (6) Mr. [Redacted] will testify that he was a civilian contractor in Iraq assigned to work as the DCGS-A Field Software Engineer. Mr. [Redacted] will testify that he worked in this position from November 2007 to December of 2010. Mr. [Redacted] will testify that the only machines he worked on were the DCGS-A machines. (b) (7)(A)

[Redacted text block]

(b) (7)(A) [Redacted text block]

16) (b) (6) [Redacted] Mr. [Redacted] will testify as an expert witness. Mr. [Redacted] will testify about his inspection of hard drives provided to him from the Government. (b) (7)(A) [Redacted]

17) (b) (6) [Redacted] will testify that he had an instant messenger chat conversation with PFC Manning between 21 May and 26 May 2010. (b) (7)(A) [Redacted]

18) [Redacted] (b) (6) [Redacted] will discuss an instant messenger chat conversation that he had with PFC Manning over the course of six months in

2009. The conversation began on 21 February 2009 and ended on 11 August 2009.

(b) (7)(A) [Redacted]

19) (b) (6) [Redacted] will testify as a security expert witness. Mr. [Redacted] will testify that he conducted open source research on each of the charged diplomatic cables in Specification 13 of Charge II. (b) (7)(A) [Redacted]

20) (b) (6) [Redacted] will testify as an expert witness concerning the history of the WikiLeaks organization and how it was viewed prior to the charged leaks. (b) (7)(A) [Redacted]

(b) (7)(A) [Redacted]

21) (b) (6) [Redacted]

[Redacted] will testify as an expert witness. Mr. [Redacted] (b) (7)(A) [Redacted], one of their responsibilities is put out rapid adaption information to the field. Mr. [Redacted] will testify that rapid adaption is a process whereby information is analyzed and disseminated in a timely manner relative to the criticality of actions required for soldiers and leaders to adapt that information to current operations and DOTMLPF (doctrine, organization, training, material, leadership & education, personnel, and facilities) development. Mr. [Redacted] will testify that rapid adaption is a process that is designed to save soldier's lives and improve the effectiveness and/or efficiency of Army operations. (b) (7)(A) [Redacted]

**Sentencing Witnesses**

22) (b) (6) [Redacted]

(b) (7)(A) [Redacted]

(b) (7)(A) [Redacted text block]

23) (b) (6) [Redacted text] CAPT  
[Redacted text] will testify as an expert witness. (b) (6), (b) (7)(A) [Redacted text]



(b) (7)(A) [Redacted]

25) (b) (6) [Redacted] will testify that he had very little interaction with the S2 shop. MAJ [Redacted] will testify about the guidance he gave regarding whether soldiers would deploy. (b) (7)(A) [Redacted]

26) (b) (6) [Redacted] will testify that he was the 2/10 BCT S-2 until being replaced by CPT [Redacted] MAJ [Redacted] (b) (7)(A) [Redacted]





(b) (7)(A) [Redacted text block]

30) (b) (6) [Redacted text block]

(b) (7)(A) [Redacted text block]

31) (b) (6), (b) (7)(A) [Redacted text block]

(b) (7)(A) [Redacted text block]

(b) (7)(A)

[Redacted text block]

32) (b) (6), (b) (7)(A)

[Redacted text block]

33) (b) (6), (b) (7)(A)

[Redacted text block]

(b) (7)(A) [Redacted]

34) (b) (6), (b) (7)(A) [Redacted]

35) (b) (6) [Redacted] will testify that he was PFC Manning's NCOIC. (b) (7)(A), (b) (6) [Redacted]

36) (b) (6) [Redacted] will testify that he originally did not have supervisory responsibilities at his unit. SGT [Redacted] will testify that after approximately 60 days, he was given responsibility for supervising two subordinate 35F soldiers. SGT [Redacted] will testify that one of these soldiers was PFC Manning. SGT [Redacted] will testify that when he got to the unit in May of 2009, he (b) (7)(A) [Redacted]

(b) (7)(A) [Redacted text block]

37) (b) (6), (b) (7)(A) [Redacted] will testify that she has known PFC Manning since 2008. (b) (6), (b) (7)(A) [Redacted]

38) (b) (6), (b) (7)(A) [Redacted] will testify that while in Iraq, he worked as an analyst on the day shift and PFC Manning worked as an analyst on the night shift. (b) (7)(A) [Redacted]



(b) (7)(A) [Redacted text block]

42) (b) (6), (b) (7)(A) [Redacted text block]

(b) (6) [Redacted text block]

(b) (7)(A)

[Redacted text block]

43) (b) (6)

(b) (6), (b) (7)(A)

[Redacted text block]

44) (b) (6), (b) (7)(A)

[Redacted] will testify as an expert for the defense in information assurance practices. (b) (7)(A)

[Redacted text block]

45) (b) (6), (b) (7)(A)

[Redacted] (b) (7)(A)





2. The Defense reserves the right to supplement this witness list with additional witnesses. Any supplemental witness list will be filed in a timely manner and based upon either a filing by the Government of additional witnesses or the discovery of additional information relevant to either merits or sentencing.

Respectfully submitted,

DAVID EDWARD COOMBS  
Civilian Defense Counsel

**APPELLATE EXHIBIT 250**

**Prosecution Motion for Preliminary Determination of Admissibility (3 Aug. 2012)**

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 Preliminary Determination  
of Admissibility of  
MRE 404(b) Evidence  
3 August 2012

RELIEF SOUGHT

The Prosecution in the above case respectfully requests that this Court make preliminary determinations on the admissibility of evidence of crimes, wrongs, or acts that are not being used to prove character IAW Military Rule of Evidence (MRE) 404(b) and on the use of evidence to rebut the offer of a pertinent character trait of the Accused IAW MRE 404(a). The Government seeks said preliminary determinations to increase the efficiency of the proceedings and to ensure the trier of fact is only presented admissible evidence. See RCM 916(b)(13), discussion.

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. 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 one specification of aiding the enemy, one specification of disorders and neglects to the prejudice of good order and discipline and service discrediting, eight specifications of violations of 18 U.S.C. § 793(e), five specifications of violations of 18 U.S.C. § 641, two specifications of violations of 18 U.S.C. § 1030(a)(1), and five specifications of violating a lawful general regulation, in violation of Articles 104, 134, and 92, Uniform Code of Military Justice (UCMJ). See Charge Sheet.

The Accused attended Advanced Individual Training (AIT) in Fort Huachuca, Arizona from April 2008 to August 2008. See Prosecution Exhibit (PE) 4. His platoon sergeant was (b) (7)(C) B.M. See Enclosure 1. AIT began with a block of instruction on INFOSEC, which teaches the military analyst how to handle and safeguard classified information. Id. The INFOSEC training block of instruction included training on how to properly mark and handle classified information, the meaning of the various classifications, how to effectively use the internet, the value of the internet in research and collection, and operational security including the enemy's use of the internet. See PE 5.

In June 2008, the Accused received corrective training. See Enclosure 1. (b) (7)(C) B.M. required the Accused to give a presentation to the platoon at formation, present a PowerPoint

presentation to (b) (7)(C) B.M. and prepare a written product. The corrective training was a result of the Accused posting videos on YouTube where he used "buzzwords" such as top secret, secret, classified, and SCIF, which he was taught not to do. (b) (7)(C) B.M. saw one of the videos on YouTube in which the Accused discussed his work in a "secret SCIF" and his handling of classified information. Enclosure 1.

The presentation to the platoon discussed information security, proper handling of information, a Soldier's obligation to protect and not expose classified material, the possibility that a Soldier's disclosure that he or she has access to classified material may be dangerous to the Soldier, and that enemy forces are trying to collect information on the U.S. Military. *Id.* The written product defined secret information and identified the type of people who try to collect information for use against the United States, such as foreign governments, enemies, spies, hackers, etc. *Id.* The PowerPoint presentation closely mirrored the written product. *Id.* The PowerPoint presentation was found on the Accused's external hard drive. See Enclosure 2.

In approximately March 2009, (b) (7)(C) J.S. became the Accused's supervisor at Fort Drum, New York. Enclosure 3. Both she and the Accused were assigned the MOS 35F and attended training together at the unit, including JRTC training. *Id.* They also deployed together in October 2009. *Id.* Before the deployment, (b) (7)(C) J.S. counseled the Accused on his military bearing. *Id.* During this counseling, (b) (7)(C) J.S. asked the Accused what the flag meant to him. *Id.* The Accused responded that the flag meant absolutely nothing to him, and he had no allegiance to the United States or its people. *Id.* (b) (7)(C) J.S. repeated the Accused's statement in a sworn statement given during the investigation into the Accused's misconduct. See Enclosure 4.

On 8 May 2010, the Accused punched (b) (7)(C) J.S. in the face. See Enclosure 5. Because of this misconduct, the Accused was removed from the 2-10 Mountain SCIF and assigned to work in the supply room. Enclosure 6. He also received an Article 15 for his misconduct. See Enclosure 5.

The prosecution provided the defense MRE 404(b) notice on 6 April 2012. Enclosure 7.

The prosecution published its witness list on 22 June 2012 and named both (b) (7)(C) (b) (7)(C) J.S. and (b) (7)(C) B.M. as witnesses. See Appellate Exhibit (AE) CLXII.

#### WITNESSES/EVIDENCE

The prosecution requests the Court consider the charge sheet and the 7 listed enclosures.

#### LEGAL AUTHORITY AND ARGUMENT

##### **I. EVIDENCE OF THE ACCUSED'S OTHER WRONGS IS ADMISSIBLE FOR A NONCHARACTER PURPOSE**

In general, MRE 404(a) prohibits admission of evidence of a person's character to prove

action in conformity therewith on a particular occasion. MRE 404(b), however, allows the introduction of evidence of other crimes, wrongs, or acts provided they are not used to show action in conformity with that character on a specific occasion. The prosecution may offer this non-propensity evidence against the Accused in its case in chief as proof of “motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.” United States v. Morrison, 52 M.J. 117, 121 (C.A.A.F. 1999) (citing MRE 404(b)). Evidence does not, however, need to fall within one of the nonpropensity examples given by MRE 404(b) to be admissible. United States v. Castillo, 29 M.J. 145, 150 (CMA 1989).

MRE 404(b) “is a rule of inclusion, not exclusion.” United States v. Diaz, 59 M.J. 79, 93-94 (C.A.A.F. 2003); see also United States v. Tyndale, 56 M.J. 209, 212 (C.A.A.F. 2001); United States v. Browning, 54 M.J. 1, 6 (C.A.A.F. 2000). MRE 404(b) only excludes propensity evidence, and then goes on to give a nonexhaustive list of the purposes for which the evidence could be admissible. United States v. Johnson, 49 M.J. 467, 473 (C.A.A.F. 1998). “[T]he sole test under Mil.R.Evid. 404(b) is whether the evidence of the misconduct is offered for some purpose other than to demonstrate the Accused’s predisposition to crime and thereby to suggest that the fact finder infer that he is guilty . . . .” Castillo, 29 M.J. at 150; see also Huddleston v. United States, 485 U.S. 681, 686 (1988).

To ensure the evidence has a proper purpose under MRE 104(b), 402, and 403, the U.S. Court of Appeals for the Armed Forces (CAAF) applies the following three-pronged test to determine the admissibility of other acts evidence under MRE 404(b): (1) Does the evidence reasonably support a finding by the fact finder that the Accused committed prior crimes, wrongs, or acts? (2) What fact of consequence is made more or less probable by the existence of this evidence? (3) Does the probative value substantially outweigh any potential unfair prejudice? Diaz, 59 M.J. at 94 (citing United States v. Reynolds, 29 M.J. 105, 109 (CMA 1989)). If the evidence meets each of these three tests, it is admissible. Id.

#### **A. The Evidence Reasonably Supports a Finding by the Fact Finder that the Accused Committed Prior Bad Acts**

Whether the evidence reasonably supports a finding that the Accused committed prior crimes, wrongs, or acts, “is founded on [MRE] 104(b) dealing with relevance conditioned on a fact.” United States v. Acton, 38 M.J. 330, 333 (1994). The Court of Appeals has held that “[t]he threshold for this [first] prong of admissibility is low.” Acton, 38 M.J. at 333; see also Browning, 54 M.J. at 6. Acton provides:

[i]n determining whether the Government has introduced sufficient evidence to meet Rule 104(b), the trial court neither weighs credibility nor makes a finding that the Government has proved the conditional fact by a preponderance of the evidence. The court simply examines all the evidence in the case and decides *whether the jury could reasonably find the conditional fact . . . by a preponderance of the evidence.*

38 M.J. at 333 (citing Huddleston, 485 U.S. at 690) (emphasis added); see also Castillo, 29 M.J. at 151 (“[T]he military judge must admit the evidence if he concludes that the fact finder could reasonably find by a preponderance of the evidence that the other misconduct had occurred, even though the judge himself would not make such a finding.”)

All three government witnesses ((b) (7)(C) J.S., (b) (7)(C) B.M., and (b) (7)(C) P.B.) testified under oath at the Article 32. In addition, (b) (7)(C) J.S. gave a sworn statement consistent with her Article 32 testimony regarding the Accused's disloyal statement. The government will offer the slideshow to support (b) (7)(C) B.M. statement, which was recovered from the Accused's external hard drive. The Accused's actions of punching (b) (7)(C) J.S. in the face is supported by the Article 15 the Accused received and its supporting documentation. Based on sworn testimony alone, the trier of fact could reasonably find that the Accused committed the misconduct in all instances.

All three witnesses are on the prosecution's witness list. Assuming the above evidence is again elicited under oath at trial, there is sufficient evidence to admit the uncharged misconduct subject to the introduction of the evidence at trial. Accordingly, the first prong of the Reynolds test is conditionally satisfied.

#### **B. The Existence of this Evidence Makes Facts of Consequence More Probable**

MRE 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” MRE 401. In general, all relevant evidence is admissible. See MRE 402.

The Accused's infractions will directly assist the fact finder in deciding whether or not the Accused had the requisite knowledge to commit the misconduct. The evidence is not being offered to prove character. The training that the Accused presented to his platoon sergeant and his AIT class in response to his breach of INFOSEC/OPSEC shows that the Accused knew that information posted on the internet is accessible to and sought out by the enemy. See Charge Sheet, Charge II, Specification 1; see also Castillo, 29 M.J. at 151 (allowing the fact finder to consider uncharged misconduct between the Appellant and the victim to understand the significance of a gesture). Without discussing the underlying uncharged act, the fact finder will not be able to sufficiently comprehend why the Accused had to complete the various corrective training assignments.

The Accused's disloyal statement to (b) (7)(C) J.S. is evidence relevant to the Accused's state of mind. The evidence is not being offered to prove the character of the Accused nor is it being offered to prove motive. The evidence is being offered to show that the Accused made a statement that he had no particular loyalty to the country whose information it was his job to safeguard. The statement is evidence of the Accused's intent for the charged misconduct because it makes it more likely that the Accused did not care if the enemy had access to the information that was posted on the Internet. Specifically, it is circumstantial evidence that the Accused knowingly gave intelligence to the enemy in support of Charge I, Specification 1; that the Accused wrongfully and wantonly caused the information to be published on the internet with

knowledge that it would be accessible to the enemy in support of Charge II, Specification 1; that the Accused's conduct was willful in support of Charge II, Specifications 2, 3, 5, 7, 9, 10, 11, 12, 13, and 15; and that the Accused stole, purloined, or knowingly converted a thing of value to the United States in support of Charge II, Specifications 4, 6, 8, 12, and 16. See Charge Sheet; see, e.g., Huddleston, 485 U.S. at 685 ("Extrinsic acts evidence may be critical to the establishment of the trust as to a disputed issue, especially when that issue involves the actor's state of mind . . . ."); United States v. Humphreys, 57 M.J. 83, 91 (C.A.A.F. 2002) (Evidence of "other acts" of the Accused's inappropriate comments was admissible to show Accused's non-innocent intent in making charged inappropriate comment.)

The Accused's misconduct of punching (b) (7)(C) J.S. is necessary to show the timeline of the Accused's removal from the SCIF and placement in the Supply Room to work with (b) (7)(C) where the Accused's misconduct continued. Because of the battery, the Accused was removed from the 2-10 Mountain SCIF and assigned to work in the supply room. In the supply room, the Accused stole or converted the United States Forces-Iraq (USF-I) Global Address List (GAL). See Charge Sheet, Charge II, Specification 16. Without discussing the underlying misconduct, the sudden change in the Accused's position will be confusing to the panel and the timeline will be unclear. See Castillo, 29 M.J. at 150 ("It is unnecessary . . . that relevant evidence fit snugly into a pigeon hole provided by [MRE] 404(b).")

The uncharged misconduct makes facts of consequence more probable under the liberal admissibility standard outlined in MRE 402. The evidence is not being used to establish character, but is being used to show knowledge, state of mind, and a timeline of events. As such, the information will assist the fact finder in a proper determination on the merits, and satisfies the second prong of the Reynolds analysis.

### **C. The Probative Value Substantially Outweighs any Potential Unfair Prejudice**

Prejudice alone is not sufficient to warrant exclusion. Evidence of a legal relevance theory should only be excluded when the probative value is "substantially outweighed" by the accompanying prejudicial dangers. United States v. Teeter, 12 M.J. 716 (A.C.M.R. 1981) (stating that striking a balance between probative value and prejudicial effect is left to the trial judge and that the balance "should be struck in favor of admission"). Virtually all evidence is prejudicial to one party or another. To justify exclusion the prejudice must be unfair. United States v. Candelaria-Silva, 162 F.3d 698, 705 (1st Cir. 1998). However, "[a]n Accused is not immunized . . . against the Government's use of evidence of other misconduct because the other misconduct was especially flagrant and repugnant." Castillo, 29 M.J. at 151; see also United States v. Stokes, 12 M.J. 229, 239 (1982).

Relevant evidence must be weighed against its tendency to create *unfair* prejudice, mislead the fact finder, cause undue delay, or waste time. United States v. Dimberio, 56 M.J. 20, 24 (C.A.A.F. 2001) (emphasis added). Unfair prejudice occurs when the proffered evidence causes, or leads, the fact finder to make a decision on an improper basis. Old Chief v. United States, 519 U.S. 172, 180 (1997).



Although there is not a clear test to follow, CAAF has stated that factors for military judges to consider in conducting a balancing test are the following:

the strength of the proof of the prior act; the probative weight of the evidence; the potential to present less prejudicial evidence; the possible distraction of the factfinder; the time needed to prove the prior conduct; the temporal proximity of the prior event; the frequency of the acts; the presence of any intervening circumstances; and the relationship between the parties.

United States v. Berry, 61 M.J. 91 (C.A.A.F. 2005) (citing United States v. Wright, 53 M.J. 476, 482 (C.A.A.F. 2000)).

The Accused's INFOSEC/OPSEC breaches at AIT stand up to the factors in Berry. There is strong proof that the Accused committed the misconduct. His platoon sergeant saw and testified under oath to seeing the video posted on YouTube. In addition, CID recovered a corrective training PowerPoint from the Accused's external hard drive that corresponded to the date and content of the PowerPoint that the Accused presented to (b) (7)(C) B.M. The evidence is probative to the elements concerning the Accused's intent when he compromised information. In particular, the evidence directly establishes the Accused's knowledge required in Charge II, Specification 1. The evidence is also not particularly prejudicial to the Accused, apart from proving his knowledge, especially in light of the charged misconduct. The uncharged act shows a security infraction in a training environment. As stated, the misconduct is being used to elicit sufficient facts for the fact finder to understand the evidence on corrective training, thus minimal time will be spent on those cursory facts. The charged and uncharged misconduct are also temporally proximate as they occurred approximately eighteen months apart--one while the Accused was being trained in his MOS and one while the Accused was working in his MOS. The AIT misconduct occurred in June 2008 and the charged misconduct begins on or about 1 November 2009. The AIT misconduct was limited; however, the charged misconduct ranged over several months, not to mention several databases. There was no presence of intervening circumstances. The Accused committed the misconduct, it was reported by his peers, and it was dealt with by his supervisor. The acts complete a chronological and logical story; removing the acts would create confusing gaps.

(b) (7)(C) J.S. testimony regarding the Accused's disloyal statement also stands up to the factors in Berry. Consistent with her Article 32 testimony, (b) (7)(C) J.S. gave a sworn statement reporting the same misconduct by the Accused. The statement will likely be prejudicial to a panel of Soldiers; however, compared to the charged misconduct, the statement is not overly prejudicial when viewed in light of the probative value it has into the Accused's state of mind. All evidence presented to the fact finder regarding the Accused's serious misconduct will be prejudicial to the fact finder. Given the charged misconduct, however, the statement will likely not be a distraction to the fact finder who will be more focused on the serious misconduct charged. The testimony will take minimal time to elicit. The uncharged misconduct occurred in the months immediately preceding the unit's deployment, which is when, on or about November 2009, the charged misconduct began. The statement occurred during one counseling session; however, the charged misconduct ranged over several months, not to mention several databases.

There were no intervening circumstances; the Accused was in a counseling session with a superior, not in a casual setting with a friend.

The Accused's battery of (b) (7)(C) J.S. also stands up to the factors in Berry. The act was witnessed by several individuals and testified about under oath at the Article 32 by (b) (7) J.S. (b) (7)(C) and others. The battery is relevant to show the circumstances of the Accused's removal from the SCIF and the corresponding timelines of the charged misconduct. There is no less prejudicial evidence to sufficiently explain the Accused's movement to the fact finder. Compared to the charged misconduct, the battery will offer little, if any, distraction for the fact finder. The time needed to show the uncharged misconduct will be very minimal. The uncharged misconduct occurred during the charged misconduct. The specific battery only occurred on one occasion; however, the charged misconduct ranged over several months, not to mention several databases. There was an intervening circumstance of a verbal disagreement between (b) (7)(C) J.S. and the Accused; however, that can also be elicited in testimony. The relationship between the parties varied between a superior-subordinate and peers; they were not friends.

In addition to withstanding the factors recommended in Berry, the defense will have ample opportunity at trial, through cross-examination and argument, to attack this evidence's meaning, importance, and weight. Furthermore, the Court can and should issue a limiting instruction to the panel that specifically discusses the permissible and impermissible uses of this evidence. These aspects of trial procedure will help to ensure that the evidence is used only for its proper aforementioned purpose.

Because the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice, the third Reynolds prong is satisfied in this case.

## **II. THE INFOSEC/OPSEC VIOLATIONS, DISLOYAL STATEMENTS, AND BATTERY OF (b) (7)(C) J.S. ARE ADMISSIBLE UNDER M.R.E. 404(A)(1) TO IMPEACH DEFENSE WITNESSES ON GOOD SOLDIER EVIDENCE.**

Evidence of a person's character or a trait of character is generally not admissible for the purpose of proving action in conformity therewith on a particular occasion. MRE 404(a)(1). Evidence of a pertinent trait of character offered by an Accused, or by the prosecution to rebut the same, however, is admissible. Id. "The price a defendant must pay for attempting to prove his good name is to throw open the entire subject which the law has kept closed for his benefit and to make himself vulnerable where the law otherwise shields him." Michelson v. United States, 335 U.S. 469, 479 (1948); see also United States v. Johnson, 46 M.J. 8 (C.A.A.F. 1997).

If a defense witness offers opinion or reputation evidence that the Accused is a good Soldier, the prosecution can rebut that evidence. MRE 404(a)(1). On cross-examination, the Government may inquire into relevant specific instances of the Accused's conduct. MRE 405(a). The questions would refer to the relevant uncharged misconduct, such as the Accused's breach of INFOSEC/OPSEC at AIT, disloyal statements, and battery of (b) (7)(C) J.S. Specifically, the prosecution will test the foundation of the witness's opinion or reputation evidence by asking

“have you heard” or “did you know” questions of that witness. See, e.g., United States v. Pearce, 27 M.J. 121, 124 (C.A.A.F. 1988).

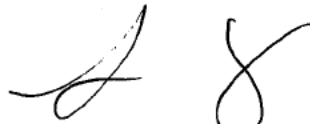
Based on the testimony of the witnesses at the Article 32, the sworn statement, the PowerPoint, the Article 15, and, presumably, the testimony the witnesses will give at trial, the Government has a good faith belief that the Accused did commit all the above discussed misconduct. Id.

The evidence is extremely probative into whether or not the Accused is a good Soldier. Good Soldiers do not breach the security of the information that they were trained to protect, they are loyal to the United States, and they do not punch their peers or superiors in the face. While certainly prejudicial to the defense, the evidence is not unfairly prejudicial such that it would be prohibited by MRE 403.

In addition, the defense will have ample opportunity to argue to the panel their theory of the case. Finally, if the defense believes the evidence is inordinately damaging to their case, they can choose not to call good Soldier witnesses. The risk of prejudice is “a risk undertaken by the defense in electing to present affirmative character evidence.” Pearce, 27 M.J. at 125.

### CONCLUSION

The prosecution requests the Court grant the prosecution's motion and preliminarily determine the uncharged acts are admissible pursuant to MRE 104(b), 402, 403, and 404(b), as all three Reynolds prongs are satisfied, and that the evidence is admissible for a different purpose under MRE 404(a)(1) if the defense presents good Soldier evidence.



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I certify that I have served or caused to be served a true copy of the above on the Defense counsel on 3 August 2012.



ANGEL M. OVERGAARD  
CPT, JA  
Assistant Trial Counsel

7 Encls

1. Summarized Article 32 Testimony, (b) (7)(C) B.M.

2. Accused's PowerPoint Presentation, 13 Jun 08
3. Summarized Article 32 Testimony, (b) (7)(C) J.S.
4. Sworn Statement, (b) (7)(C) J.S.
5. Article 15 Packet
6. Summarized Article 32 Testimony, (b) (7)(C) P.B.
7. MRE 404(b) Notice, 6 Apr 11