

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)

Combined Judicial Notice

28 June 2013

I. Reference Materials

A. The Court took judicial notice that the existence and the content of following reference materials are adjudicative facts:

1. Army Regulation (AR) 25-2, paras 1-4, 1-5, 3-3, 4-5, 4-16, 4-17, and Figure B 1. *See* Appellate Exhibit (AE) 288; AE 248.

2. AR 380-5, paras 1-20, 1-21, 1-22 and Chapters 2, 4 (Section 1), 5 (Sections I and V), and paras 6-1, 6-2, 6-3, 7-4, 8-3, and 8-12. *Id.*

3. AR 530-1, paras 1-5, 1-6, 1-7, and 2-1. *Id.*

4. 18 U.S.C. §793(e). *Id.*

5. 18 U.S.C. §1030(a). *Id.*

6. 18 U.S.C. §641. *Id.*

7. Executive Order (EO) 13526. *Id.*

8. Authorization for the Use of Military Force. *Id.*

9. July 2011 Information Paper by HQDA DCS, G-2, Initiatives Group (DIG). *See* AE 288; AE 233, Attachment A.

10. Commander's Handbook Distributed Common Ground System – Army DCGS-A, March 30, 2009. *See* AE 288; AE 233, Attachment B.

11. EO 12958. *See* AE 472.

12. EO 12972. *Id.*

13. EO 13142. *Id.*

14. EO 13292. *Id.*

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15. Public Law 111-258. AE 481.

16. AR 25-1, paras 1-1, 1-7(a) and (b), and 6-1 (d) –(f). *See* AE 582.

17. AR 25-2 definition of “Information System”. *Id.*

18. Department of Defense Regulation 5400.11-R, Appendix 1 and the definition of “Personal Information”. *Id.*

B. The Court will take judicial notice of the existence and the content of the following reference materials, conditional on the relevance of these materials:

1. Army Field Manual 2-0 “Intelligence”. *See* AE 472.

2. Army Field Manual 2-19.4 “Brigade Combat Team Intelligence Operations”. *Id.*

3. Army Field Manual 2-22.2 “Counterintelligence”. *Id.*

4. Army Field Manual 2-22.3 “Human Intelligence Collector Operations”. *Id.*

5. Army Soldier’s Manual and Trainer’s Guide for Intelligence Analysis MOS 35F, Skill Level 1/2/3/4. *Id.*

6. Court will take judicial notice of the findings in Section 2 of PL 111-258 to the degree they are relevant. Such judicial notice would be the adjudicative fact that Congress made the findings (that Congress believed over-classification was a potential issue and passed this legislation – which contains not just findings but specific statutory initiatives – to address that issue), not that the findings by Congress are adjudicative fact. Thus, subject to a demonstration of relevance, the Court will take judicial notice of the existence of PL 111-258, to include the Congressional finding in Section 2, the date of introduction of H.R. 255 and the date the law was enacted. The Court will not take judicial notice of the truth of the matter asserted in PL 111-258 as adjudicative facts. AE 481.

II. Statements, Articles, and Print Material

A. The Court took judicial notice of the following facts associated with statements, articles, and print material:

1. That the 13 October 2010 classification assessment by RADM Donegan exists and that RADM Donegan gave this assessment. This information is admissible as an admission of a party opponent under MRE 801(d)(2)(D), given he was acting in his official capacity as Direct of Operations, CENTCOM, when he made the classification assessment and that the assessment states facts inconsistent with the Stipulation of Expected Testimony of CW5 John Larue at PE 117. *See* AE 582.

2. The audio transcript for PE 15. *Id.* The parties stipulate that Enclosure 2 to AE 574 is an accurate transcript of the audio in PE 15.

B. The Court took judicial notice of the following facts associated with statements, articles, and print material for pre-sentencing only:

1. That the Advanced Ace, Advanced Analytical, Capability Joint Urgent Operation Need Statement, MG Michael T Flynn, Deputy Chief of Staff Intelligence 2 July 2010 exists. *See* AE 288; AE 233, Attachment C.

2. That the letter regarding global knowledge management dated 19 July 2010 from three members of Congress to the Chairman and ranking members of the House Appropriations Committee exists. *See* AE 288; AE 233, Attachment D.

3. That the letter to the Chairman of the House Appropriations Committee from COL Peter A. Newell, Director, Rapid Equipping Force, dated 28 July 2010, exists. *See* AE 288; AE 233, Attachment E.

4. That the letter to COL Newell from members of Congress Gabrielle Giffords and Adam Smith, dated 25 August 2011, exists. *See* AE 288; AE 233, Attachment F.

5. That the letter from Adam Smith, Congress member, to General Dempsey, dated 23 May 2011, exists. *See* AE 288; AE 233, Attachment G.

6. That a Department of Defense news Release entitled "Statement by Pentagon Press Secretary Geoff Morrell and Special Envoy for Closure of Guantanamo Detention Facility Ambassador Daniel Fried", dated 24 April 2011, exists and that Mr. Morrell made these statements. The statements are admissible under MRE 801(d)(2)(D). *See* AE 356; AE 316.

7. That a White House release entitled "Remarks by the President After Bipartisan Leadership Meeting", dated 27 July 2010, exists and that President Obama made these statements. The statements are admissible under MRE 801(d)(2)(D). *Id.*

8. That a letter to Secretary Robert Gates from Carl Levin, dated 28 July 2010, exists. ~~The statements are admissible under MRE 801(d)(2)(D) and MRE 803(8)(A).~~ *Id.*

9. That a letter to Carl Levin from Robert Gates, dated 16 August 2010, exists. The statements are admissible under MRE 801(d)(2)(D) and MRE 803(8)(A). *Id.*

10. That a news release entitled "DOD News Briefing with Secretary Gates and Adm. Mullen from the Pentagon", dated 30 November 2010, exists and that Secretary Gates made these statements. Admissible for non-hearsay purpose as public statements made by government officials that provide circumstantial evidence of minimized damage cause by the alleged Wikileaks disclosures. *Id.*

11. That Department of State-published remarks entitled “Remarks with Kazakh Foreign Minister Saudabayev after their Meeting”, dated 1 December 2010, exist and that Secretary Clinton made these statements. Admissible for non-hearsay purpose as public statements made by government officials that provide circumstantial evidence of minimized damage cause by the alleged Wikileaks disclosures. *Id.*

12. William Leonard, Director of Information Security Oversight Office of the National Archive, statements, dated 22 March 2007 given at the 2007 House Committee on Homeland Security Hearings.

C. The Court will take judicial notice of the below-listed facts associated with statements, articles, and print material, conditional on the following:

1. That LTC Lee Packnett was quoted in a New York Times article, dated 18 March 2010. In this instance, judicial notice is conditional upon relevance and a non-hearsay or hearsay exception usage. *See* AE 472.

2. That a New Yorker profile of Julian Assange, titled “No Secrets: Julian Assange’s Mission for Total Transparency” exists and was dated 7 June 2010. In this instance, judicial notice is conditional upon relevance and a non-hearsay or hearsay exception usage. *Id.*

3. David Finkel’s book “The Good Soldiers” exists. AE 356. The Court will take judicial notice the date of publication, and the provided excerpts. AE 356. Comparisons between Mr. Finkel’s book and conclusions to be drawn from the comparisons are properly presented to the fact finder by the parties not by the Court. The request to take judicial notice that the book quotes the video verbatim at several key points is denied. AE 356. Linkages, argument, and legal conclusions regarding the contents of Mr. Finkel’s book and the audio in the video are properly presented to the fact finder by the parties. *See* AE 288.

D. The Court will take judicial notice of the below-listed facts associated with statements, articles, and print material, for pre-sentencing only, conditional on the following:

1. That a UPI News Track news story entitled “Clinton on Leaked Documents: So What?”, dated 4 December 2010, exists. In this instance, judicial notice is conditional on a relaxation of the rules. *See* AE 356; AE 316.

2. That a New York Times news story entitled “From WikiLemons, Clinton Tries to make Lemonade”, dated 4 December 2010, exists. In this instance, judicial notice is conditional on a relaxation of the rules. *See* AE 356; AE 316.

3. That a CNN news story entitled “Clinton: WikiLeaks Cables Show Diplomacy at Work”, dated 4 December 2011, exists. In this instance, judicial notice is conditional on a relaxation of the rules. *Id.*

4. That an interview described on MSNBC entitled “Biden on Start, WikiLeaks” exists. In this instance, judicial notice is conditional on the defense providing the Court with the date of this interview. *Id.*

5. The 22 March 2007 testimony of Mr. Leonard is admissible under MRE 803(8)(A) if relevant. AE 481. The key assertion cited by the Defense, that trained government classifiers only made “clearly” correct classification decisions 64 percent of the time was based on an official audit. (“In an audit of agency classification activity conducted by my office approximately one year ago, we discovered that even trained classifiers, with ready access to the latest classification and declassification guides, and trained in their use, got it right only 64 percent of the time in making determinations as to the appropriateness of classification.”).

III. Historical Facts

A. The Court took judicial notice of the following historical facts:

1. WikiLeaks and various news organizations began publishing purported Department of State diplomatic cables over the weekend of 27-28 November 2010. *See* AE 472.

2. On 19 January 2010, the Department of State listed “al-Qa’ida in the Arabian Peninsula” (AQAP) as a foreign terrorist organization. Since that date, AQAP has been an enemy of the United States. *See* AE 472.

3. Usama bin Laden was a member of Al-Qaeda (AQ) and an enemy of the United States. *See* AE 472.

4. Adam Gadahn is a member of AQ and an enemy of the United States. *See* AE 472.

5. David Finkel’s book “The Good Soldiers” was published prior to the alleged leaks in this case. *See* AE 288.

6. There has been consistent and extensive media coverage of this case. *See* AE 283.

7. WikiLeaks released a video titled “Collateral Murder” on 5 April 2010. *See* AE 582.

8. WikiLeaks released more than 390,000 records from the Combined Information Data Network Exchange (CIDNE) Iraq database on 22 October 2010. *Id.*

9. Wikileaks released more than 75,000 records from the CIDNE Afghanistan database on 25 July 2010. *Id.*

10. WikiLeaks released more than 700 detainee assessments produced by Joint Task Force Guantanamo (JTF-GTMO) on 25 April 2011. *Id.*

11. 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. *Id.*

12. 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. *Id.*

13. 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. *Id.*

14. Thanksgiving of 2009 occurred on 26 November 2009. *Id.*

15. The term ".is" is the top level internet domain of Iceland. *Id.*

16. Johanna Sigurdardottir was the Prime Minister of Iceland from February 2009 – May 2013. *Id.*

17. Ossur Skarphedinsson was the Icelandic Minister for Foreign Affairs from February 2009- May 2013. *Id.*

18. Albert Jonsson was the Icelandic Ambassador to the United States 2006-2009. *Id.*

19. Birgitta Jonsdottir has been a member of the Icelandic parliament since 2009. *Id.*

20. On or about 25 November 2009, WikiLeaks published what it claimed to be text and pager messages sent on 11 September 2001. Judicial notice does not extend to the content of the messages or that the messages are actually from 11 September 2001. *Id.*

21. On 25 July 2007, Reuters made a FOIA request to DoD for video and audio recordings relating to the deaths of Mr. Namir Noor-Eldeen and Mr. Saeed Chmagh, Reuters journalists. CENTCOM responded to the Reuters request on 24 April 2009. *Id.*

B. The Court took judicial notice of the following historical facts for the presentencing phase of proceedings:

1. Damage Assessments exist. *See* AE 472.

2. The Office of National Counterintelligence Executive, the Information Review Task Force, and the Department of States created or compiled their respective damage assessments on the noted dates. *Id.*

3. The Department of State damage assessment is the most current version and is a draft. *Id.*

C. The Court will take judicial notice of the following historical facts, conditional on the relevance of these materials:

1. Julian Assange was located in Iceland in February of 2010 and working on the Icelandic Modern Media Initiative. *See* AE 472.

2. "Inspire" is a magazine. *Id.*