

PFC Manning
Article 32 Script

PFC Manning, I am Lieutenant Colonel Paul Almanza. By order of Colonel Carl R. Coffman, Jr., I have been appointed as investigating officer under the provisions of Article 32(b) of the Uniform Code of Military Justice to conduct an investigation into the charges which have been preferred against you.

Before proceeding, I would like to advise the participants and persons observing that this is a formal investigation. In order to protect the dignity and decorum of these proceedings, I would ask that all present refrain from interrupting or otherwise disturbing the investigation. Should any person nevertheless engage in speech or conduct that interferes with the dignity and decorum of the proceedings, they may be removed from this courtroom.

PFC Manning, let the record show that Mr. David Coombs, civilian counsel, MAJ Matthew Kemkes, and Captain Paul Bouchard are here present with you.

On 23 November 2011, I advised you of this investigation and your rights to counsel in this investigation. As you were in pretrial confinement, I provided that notification to your counsel.

Counsel, when was your client provided with that notification?

I have read the written documents provided to your counsel for the sole purpose of determining which witnesses and evidence would be necessary to conduct a thorough and impartial investigation. Your counsel have examined those documents. I will not consider those documents for any other purpose, and I will make my findings, conclusions and recommendations based only on the evidence presented during the course of this investigation. After I have heard the evidence presented by both the government and your defense counsel and arguments by the government and the defense counsel, I will forward the results of this investigation and my recommendations to the appointing authority. Do you have a copy of the charge sheet in front of you?

The general nature of the charges in this case are one charge and its specification alleging aiding the enemy, in violation of Article 104, UCMJ, one charge and its sixteen specifications alleging causing intelligence belonging to the United States Government to be published on the Internet, transmitting national defense information to a person not entitled to receive it, and stealing a record or thing of

value of the United States, in violation of Article 134, UCMJ, and one charge and its five specifications alleging failure to obey a lawful general regulation, in violation of Article 92, UCMJ. The accuser for those charges was

I am now going to advise you of your rights in this investigation. You have the right:

1. to be present throughout the taking of evidence so long as your conduct is not disruptive.
2. to cross examine any witnesses if any are called against you;
3. to present anything you might desire in your own behalf, in defense, extenuation or mitigation;
4. to have a lawyer represent you at the investigation;
5. to have me examine available witnesses requested by you;
6. to make a statement in any form at the proper time, or to remain silent, or to refuse to make any statement regarding any offense that you are accused or suspected of, or concerning matters for which you are being investigated. Should you choose to remain silent or to make an unsworn statement, I will not hold that against you in any manner.

In addition you are advised that any statement made by you might be used as evidence against you in at trial by court-martial.

Before I begin the formal investigation and examination of any of the witnesses in this case, I must inform you that you have the right to be represented at all times during this investigation by legally qualified counsel. This means that you have the right to be represented by a civilian lawyer of your choice, but at no expense to the United States; by military counsel of your own selection if that counsel is reasonably available; or by counsel detailed by the Trial Defense Service to represent you during the investigation. There is no cost to you for military counsel.

Do you have any questions about any of the rights I have described for you?

Do you understand those rights?

By whom do you wish to be represented in this investigation?

Do you wish to be represented by anyone other than those individuals?

Do you still wish for these three attorneys to be your lawyers in this hearing?

Are you satisfied with the work that they have done for you up to this point?

Defense counsel, would you announce your detailing and qualifications for the record?

[if needed:

MAJ Kemkes, are you qualified and certified under Article 27(b) of the UCMJ and sworn under Article 42(a)? And are you a detailed military defense counsel for PFC Manning in this case? Have you acted in any manner which might disqualify you from representing PFC Manning at this hearing?

CPT Bouchard, are you qualified and certified under Article 27(b) of the UCMJ and sworn under Article 42(a)? And are you a detailed military defense counsel for PFC Manning in this case? Have you acted in any manner which might disqualify you from representing PFC Manning at this hearing?

Mr. Coombs, you are civilian counsel representing PFC Manning at no expense to the United States? Have you acted in any manner which might disqualify you from representing PFC Manning at this hearing?]

Trial Counsel, would you announce your detailing and qualifications for the record?

[if needed, similar qualification/certification questions]

PFC Manning, I am qualified and certified under Article 26(b) and Article 27(b) of the UCMJ, and I have not acted as an accuser in this matter. As the investigating officer in your case, it is my duty to thoroughly and impartially investigate the charges against you. This investigation shall include recommendations concerning the disposition which should be made of the case. It is my duty to impartially evaluate and weigh all of the evidence. I will consider the testimony of the witnesses and will also consider the evidence of which I previously notified your counsel. You and your counsel will be given full opportunity to present anything you may desire in your own behalf, either in defense, extenuation or mitigation.

Do you understand?

I can recommend that the charges against you be referred for trial to a general court-martial or to a different type of court-martial or that the charges be dismissed

or disposed of without proceeding to trial by court-martial. It is not my purpose during this investigation to act as a prosecutor, but only as an impartial fact finder.

I am currently assigned to the 150th Judge Advocate General Detachment (LSO), United States Army Reserve. At the time I was appointed to this investigation, I had no detailed knowledge of this case, having only seen limited coverage in the media concerning the allegations against you. As I previously mentioned, I have reviewed the documentary evidence provided by the government to both me and your defense team, but solely for the purpose of determining which witnesses and what evidence needed to be produced during this investigation. Other than those actions, I have no substantive knowledge of the actions alleged, and I do not know any of the witnesses or persons involved in this hearing. I have had several written communications with counsel and regarding administrative and scheduling matters related to this hearing. I have not acted in any way that would disqualify me from conducting this investigation. Does either side wish to question or challenge me?

PFC Manning, I want to remind you that my sole function as the Article 32 investigating officer in this case is to thoroughly and impartially gather, weigh and evaluate all the relevant facts of this case, and to make a recommendation concerning the disposition of the charges which have been referred against you. I have before me the charge sheet containing the charges which I have been directed to investigate. Do you also have a copy? Do you want the charges read to you? Do you understand what you are charged with?

PFC Manning, I advise you again that you do not have to make any statement regarding the offenses of which you are accused and that any statement you do make may be used against you in a trial by court-martial. You have the absolute right to remain silent regarding the offenses with which you are charged. You may, however, make a statement either sworn or unsworn and present anything you may desire, either in defense, extenuation, or mitigation. If you do make a statement, whatever you say will be considered and weighed as evidence by me just like the testimony of other witnesses. Should you choose not to make a statement, I will not draw any adverse inference from your silence.

You have previously been given a complete copy of the investigative file that has been compiled in your case. It contains many documents as they were provided both to me and to your defense team by the government. I have previously notified both your defense team and the government of the witnesses and evidence that I wanted produced and the government counsel, CPT Fein, has indicated those

witnesses and evidence will be presented at this hearing. Do you want me to list that evidence and those witnesses for you?

PFC Manning, before proceeding further I now ask you again whether you have any questions concerning

1. your right to remain silent,
2. the offenses of which you are accused,
3. your right to make a statement either sworn or unsworn,
4. the use which can be made of any statement you do make,
5. your right to cross examine witnesses against you,
6. your right to present anything you may desire on your own behalf
7. and your right to have me examine reasonably available witnesses requested by you either in defense, mitigation, or extenuation.

Government, you may call your first witness.

[defense cross, gov't re-direct, defense re-cross, and IO questions]

Defense, you may call your first witness.

CONCLUDING REMARKS: Defense, do you want me to produce any other witnesses or evidence for examination at this investigation, either in defense, extenuation or mitigation?

Do you want me to produce any other witnesses or evidence for cross-examination?

Defense, would you like to make a concluding statement?

Government, would you like to make a concluding statement?

Thank you, counsel. This hearing is closed.

OATH FOR WITNESSES: Do you swear that the evidence you shall give in the case now being investigated shall be the truth, the whole truth, and nothing but the truth, so help you God?

AFFIRMATION FOR WITNESSES: Do you affirm that the evidence you shall give in the case now being investigated shall be the truth, the whole truth, and nothing but the truth?

ADMONITION TO WITNESSES: _____, thank you. You are (temporarily) excused. (Please wait in the waiting room.) (You are free to go.) As long as this matter continues, do not discuss your testimony or knowledge of the case with anyone except counsel. If anyone else tries to talk to you about the case, stop them and report the matter to one of the counsel.

DETERMINATIONS RE: REMOVAL OF DISTURBING WITNESS:

1. Reason for exclusion
2. Basis for belief exclusion is necessary
3. Exclusion is as narrowly tailored as possible.

Script for Initial Closure Hearing

- (1) United States files "Request to Close the Article 32 for Purposes of Introducing and Maintaining Classified Information;"
- (2) Investigating Officer sets a hearing to discuss whether Article 32 will be closed;
- (3) United States requests that the hearing be closed;
- (4) hearing takes place and parties outline what testimony/evidence they anticipated would be classified, and discussed which portions would be closed and which would be open (like *Steele*)

TC: Sir, prior to calling any witnesses, the United States requests a closed hearing to determine if any classified information in this case should be heard in a closed session.

IO: Can I see the government request?

IO: The government wishes to present evidence in support of its request, is that correct?

TC: Yes, Sir.

IO: I will now close this hearing. I will call a recess, and when we return, the only personnel in the courtroom will be the (# ___) defense counsels, (# ___) trial counsels, the hearing security officer, the Accused, those personnel detailed to the defense and prosecution teams, the representatives of the relevant government agencies, the investigating officer's legal advisor, the investigating officer's support paralegal, and myself. The audio and video feeds to the media center and the theater will be severed.

IO: The investigation is in recess.

(CONDUCT CLOSED SESSION DRILL)

IO: This hearing is called to order. Let the record reflect that the hearing is now closed. The audio and video feeds to the media center and the theater have been severed. Only personnel in the courtroom are the (# ___) defense counsels, (# ___) trial counsels, the hearing security officer, the Accused, those personnel detailed to the defense and prosecution teams, the representatives of the relevant government agencies, the investigating officer's legal advisor, the investigating officer's support paralegal, and myself remain.

TC: This portion of the Article 32 hearing is classified _____ (state highest expected classification level)."

TC: Sir, the United States requests you to close the Article 32 proceeding from the public for (the testimony of/the introduction of) under RCM 405.

IO: On what grounds?

TC: The United States has reason to believe *(the testimony/the evidence)* may disclose classified information. The United States anticipates that the testimony/evidence will disclose information relating to *(provide an unclassified summary of the classified testimony/evidence)*.

IO: Defense, do you have any objections?

DC:

IO: Government, can you confirm the information is classified?

TC: Yes, Sir. The United States offers (# of memos) to confirm that this testimony/evidence has been properly classified *(classification level)*. Additionally, the United States requests that the hearing security officer review the documents in question to determine their apparent classification level based on their markings and substance.

(TC hands the documents in question to the hearing security officer.)

TC: *(TC gives copy to defense)* The United States is giving you what will be marked for identification as an Investigating Officer's Exhibit *(exhibit number)* which is the *(classification review/memo)* for this information.

IO: Defense, do you have any objection to this exhibit?

DC:

IO: This document is labeled Investigating Officer's Exhibit *(exhibit number)*.

TC: Closing the Article 32 proceeding is necessary to protect this classified information, an overriding interest specifically enumerated under RCM 405(h)(3). The value of protecting this classified information, the disclosure of (list each item and give security damage levels for each) which [*(CONFIDENTIAL; "could reasonably be expected to cause damage to national security") (SECRET; "could reasonably be expected to cause serious damage to national security") (TOP SECRET; "could reasonably be expected to cause exceptionally grave damage to national security")*], outweighs the value of an open proceeding. No lesser methods short of closing the proceeding are available. Closure of the proceeding is necessary for the prosecution to *(explain how prosecution intends to use the testimony of each specific witness/each specific piece of evidence (elicit classified testimony, discuss classified information in evidence))*. Furthermore, closure is necessary to ensure the accused receives a thorough and impartial investigation. The United States requests you only close the proceeding for those specific portions of the (testimony/evidence) wherein this classified information may be disclosed. The United States requests you to make a finding in the record supporting the closure, as required under RCM 405(h)(3).

IO: Defense, would you like to be heard on this matter?

DC:

(IF APPROVED)

IO: I make the following findings of fact:

(1) that the *(evidence/testimony)* has been properly classified *(classification level)* by *(agency/person on classification review)*;

(2) that protecting this classified information is an overriding interest;

(3) that the overriding interest of protecting this classified information outweighs the value of an open proceeding; and

(4) that other methods of protecting the information were considered, but no lesser methods short of closing the proceeding can be used to protect that interest. The proceeding shall be closed only for those portions of testimony wherein classified information may be disclosed.

(IF NOT APPROVED)

IO: [(the document is not properly classified) (protecting this classified information is not an overriding interest) (the overriding interest of protecting this classified information does not outweigh the value of an open proceeding) (other methods of protecting the information will be used *(state other methods)*) (_____)]

IO: I will now call a recess, and when we return, all spectators and media will be seated in the gallery, and the audio and video feeds to the media center and the theater will be restored. All parties to the closed hearing will be present. I will then open the hearing.

IO: The investigation is in recess.

(CONDUCT OPEN SESSION DRILL)

IO: This hearing is called to order. Let the record reflect that the hearing is now open. The audio and video feeds to the media center and the theater have been restored. All spectators and media are now seated in the gallery. All parties present in the closed hearing are again present.

TC: This portion of the Article 32 hearing is unclassified.

IO: Prior to opening this hearing, I have secured all classified material not in use in the courtroom safe, and my hearing security officer has completed the courtroom opening checklist. I make the following findings of fact: (Summarize findings of fact (Unclassified)).

Script to Close the Courtroom

IO: I will now close this hearing. I will call a recess, and when we return, the only personnel in the courtroom will be the (# ___) defense counsels, (# ___) trial counsels, the hearing security officer, the Accused, those personnel detailed to the defense and prosecution teams, the representatives of the relevant victim agencies, the investigating officer's legal advisor, the investigating officer's support paralegal, and myself. The audio and video feeds to the media center and the theater will be severed.

IO: The investigation is in recess.

(CONDUCT CLOSED SESSION DRILL)

IO: This hearing is called to order. Let the record reflect that the hearing is now closed. The audio and video feeds to the media center and the theater have been severed. Only personnel in the courtroom will be the (# ___) defense counsels, (# ___) trial counsels, the hearing security officer, the Accused, those personnel detailed to the defense and prosecution teams, the representatives of the relevant victim agencies, the investigating officer's legal advisor, the investigating officer's support paralegal, and myself remain.

TC: This portion of the Article 32 hearing is classified _____ (*state highest expected classification level*)."

Script to Open the Courtroom

IO: I will now open the hearing. I will call a recess, and when we return, all spectators and media will be seated in the gallery, and the audio and video feeds to the media center and the theater will be restored.

IO: The investigation is in recess.

(CONDUCT OPEN SESSION DRILL)

IO: This hearing is called to order. Let the record reflect that the hearing is now open. The audio and video feeds to the media center and the theater have been restored. All spectators and media are now seated in the gallery.

TC: This portion of the Article 32 hearing is unclassified.

IO: (Summarize findings of fact (Unclassified))

IF UNPLANNED...

TC: Sir, the United States requests an immediate closed session to determine whether this portion of the proceeding should be closed.

ADMINISTRATION OF OATH (BY GOVERNMENT)

TC: Do you swear or affirm that the testimony you shall give in the case now being investigated shall be the truth, the whole truth and nothing but the truth, so help you God?

WIT: Yes/No.

TC: Please state your name for the record.

WIT: (Response)

TC: Please state your unit of assignment or place of employment.

WIT: (Response)

TC: Please be advised that while you are testifying, if you are asked any question that you believe may require a classified response, you have a personal responsibility to notify the Investigating Officer prior to answering. At no time should you disclose any classified information while this hearing is in an open session.

Close Courtroom Battle Drill

Task: Close the Courtroom to Publish Classified Information

Conditions: TC or DC desires to publish classified information or hear classified testimony. The IO has previously published guidance advising all spectators of the need to clear the courtroom for classified sessions.

Standards: Courtroom is closed to all spectators. Required information is published to authorized parties only. MOC and Theater connections securely severed.

TASK STEPS AND PERFORMANCE MEASURES:

1. TC or DC notifies the IO of their intent to publish classified information.
2. IO gives the order to close the courtroom.
3. TC Support Paralegal makes the closure announcement to the gallery.
4. MP advises DES inner cordon guards that the courtroom has been closed.
5. Escorts for the accused physically clear the courtroom of all unauthorized personnel.
6. Escorts/MP post as guards outside the courtroom entrances.
7. TC Support Paralegal disengages the audio and video feed cables to the MOC and the theater.
8. TC Support Paralegal calls the POC numbers at the MOC and the theater to verify the feed has been cut.
9. HSO verifies that only authorized personnel remain in the courtroom based on SJA issued security badges and the IO instructions.
10. HSO retrieves classified information from courtroom safe, as necessary.
11. IO Support Paralegal switches to the classified recording equipment.
12. If digital information is to be displayed, HSO retrieves the classified laptop from the courtroom safe and TC Support Paralegal connects the laptop to the display port at his station.
13. HSO completes closed hearing checklist and hands it to the IO Support Paralegal for inclusion in the record.
14. (At next recorded session) TC announces on the record, "This portion of the Article 32 hearing is _____ (*state highest expected classification level*)."

Open Courtroom Battle Drill

Task: Open the Courtroom for Unclassified Use

Conditions: Classified hearing portion has been completed.

Standards: Courtroom is opened to all spectators. MOC and Theater connections restored.

TASK STEPS AND PERFORMANCE MEASURES:

1. IO orders the HSO to prepare to open the courtroom.
2. TC announces on the record, "The preceding portion of the Article 32 hearing was classified _____ (state highest expected classification level)."
3. If digital information was displayed, the TC Support Paralegal will disconnect the classified display laptop and secure the laptop in the security bag.
4. IO Support Paralegal stops recording and switches to the unclassified recording equipment.
5. IO Support Paralegal secures all copies of any classified documents and the classified recording laptop in the IO Support Paralegal drawer of the courtroom safe.
6. IO Support Paralegal secures all classified material not in use in the TC drawer of the courtroom safe.
7. IO Support Paralegal secures all classified material not in use in the DC drawer of the courtroom safe.

(PAUSE UNTIL IO COMPLETES THE UNCLASSIFIED SUMMARY)

8. IO Support Paralegal secures all classified material not in use in the IO drawer of the courtroom safe.
9. HSO locks the courtroom safe.
10. HSO completes open hearing checklist and hands it to the IO Support Paralegal for inclusion in the record.
11. IO gives the order to open the courtroom.
12. The TC Support Paralegal calls the POC numbers at the MOC and the theater to notify the feed will be restored in 5 minutes.
16. TC Support Paralegal advises DES personnel that the courtroom has been opened.
13. Escorts post in the courtroom.
14. After 5 minutes, the TC Support Paralegal calls the POC numbers at the MOC and the theater to verify the all devices are off.
15. TC Support Paralegal engages the external audio and video feed.
18. (At next recorded session) TC announces on the record, "This portion of the Article 32 hearing is unclassified."

Closed Hearing Checklist

All spectators have been cleared out of the courtroom.	
All remaining personnel possess a valid, SJA issued security badge.	
Guards are posted outside courtroom entrances.	
Classified recording equipment is in place.	
Audio and video feed to the MOC and the theater has been severed.	

Signed _____ Time _____ Date _____

Open Hearing Checklist

Classified display laptop (if used) is disconnected and secured.	
Secured all classified material from the IO Support Paralegal.	
Secured all classified material from the TC.	
Secured all classified material from the DC.	
Secured all classified material from the IO.	
The courtroom safe is locked.	
Unclassified recording equipment is in place.	

Signed _____ Time _____ Date _____

PARALEGAL SCRIPT FOR COURTROOM CLOSURE

“LADIES AND GENTLEMEN, THE COURTROOM HAS NOW BEEN CLOSED. PLEASE RISE AND EXIT THE COURTROOM THROUGH THE DOOR BEHIND YOU. SECURITY PERSONNEL WILL ESCORT YOU TO THE APPROPRIATE TRAILERS OUTSIDE. THANK YOU.”