

**IN A GENERAL COURT-MARTIAL
IN THE SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY
FORT BRAGG, NORTH CAROLINA**

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| UNITED STATES |) | |
| |) | |
| v. |) | Government Notice in Accordance with |
| |) | Paragraph 1.I of the Protective Order for |
| BERGDAHL, ROBERT BOWDRIE |) | Classified Information |
| (BOWE) |) | |
| SGT, U.S. Army |) | |
| HHC, Special Troops Battalion |) | 17 May 2016 |
| U.S. Army Forces Command |) | |
| Fort Bragg, North Carolina 28310 |) | |

The purpose of this notice is to inform the Court that the Government provided members of the Defense Team access to classified documents as part of the Government's disclosures in accordance with the Rules for Courts-Martial and Military Rules of Evidence that contained information subject to an Alternative Compensatory Control Measure (ACCM) prior to all members of the Defense Team being read on to the ACCM program. In accordance with paragraph 1.h(4) of the Court's Protective Order for Classified Information, "no person may access [ACCM] information without first having conducted any required 'read on' or additional nondisclosure forms required for that...ACCM." The documents in question were marked by their originators as containing only SECRET information, but upon a classification review of the documents requested by Defense Counsel, were determined to also contain ACCM information.

The documents in question are within Government disclosures bearing the Bates numbers S0000944-S000033126, which were provided to the Defense Counsel in February 2016. These documents were provided to Government Counsel by the U.S. Central Command (CENTCOM). On 1 April 2016, LTC Franklin Rosenblatt sent an email message to Trial Counsel, Defense Counsel, and the Defense Security Officer stating that when he and a Defense paralegal viewed the documents provided by the Government, he noticed documents that were only marked SECRET, but should have additionally been marked as containing ACCM material. LTC Rosenblatt requested the Government "ask CENTCOM to determine and mark the proper classification, including review by ACCM control officers." On the same date, CPT Petrusic responded to all recipients on the original email requesting the Defense identify the specific documents or information of concern within the almost 30,000 pages of disclosures so that the Government could submit the documents to the proper Original Classification Authority (OCA) responsible for the ACCM in question for a determination whether the documents did contain ACCM material and should be re-marked appropriately. CPT Petrusic consulted with the U.S. Army Forces Command (FORSCOM) Focal Point Program Control Officer to ensure this was the proper course of action prior to sending the response.

On 4 April 2016, LTC Rosenblatt responded with a request for the contact information for the proper CENTCOM security official so that the Defense could directly inquire regarding the documents in question. After again consulting with the Focal Point Program Control Officer and the Government Security Officer, CPT Petrusic contacted the Government Counsel's point of contact at the special operations command that promulgates the security classification guide for the ACCM in question, and provided contact information for this point of contact to LTC Rosenblatt via email on 5 April 2016.

On 13 April 2016, Mr. Eugene Fidell and LTC Rosenblatt called MAJ Margaret Kurz and CPT Petrusic to further discuss this issue. During this call, LTC Rosenblatt requested that the Government address the Defense's security concern with the appropriate OCA. LTC Rosenblatt indicated he did not have Bates numbers for the documents that concerned him, but did provide search terms which would help Government Counsel identify the documents from within the Government's e-Discovery system. The Government used these search terms to identify almost 100 documents, totaling 650 pages, to submit to the appropriate OCA for a determination whether the documents contained ACCM material in accordance with the command's security classification guide. Defense Counsel further requested that the remainder of the Defense Counsel and paralegals be read on to the ACCM in question (Mr. Fidell and LTC Rosenblatt were previously read on), which the Government agreed to request from the OCA; the Government received the required information for the personnel requiring read-on on 18 April 2016 and subsequently submitted this read on request to the OCA. The requested members of the Defense Team were read on to the ACCM on 5 May 2016.

On 17 May 2016, the Government confirmed with the office of primary responsibility (OPR) for the ACCM security classification guide that, based on review of the first approximately 400 pages of documents, there was unmarked ACCM material within some of the disclosed documents. Upon completion of the OPR's review of the 650 pages of documents, the Government will obtain a complete list of documents marked as containing only SECRET material that actually contain ACCM material and must consequently be re-marked to reflect this fact. Once this list is compiled, the Government will immediately provide the list to the Defense and will work with the Focal Point Program Control Officer and the Government Security Officer to ensure that any additional required remediation steps are completed. It is the Government's understanding that all members of the Defense Team who require access to the documents in question have been read on to the ACCM program. All Government Counsel and paralegals with access to the documents in question have also been read on to the ACCM program.

During Government Counsel's search for the documents marked as containing only SECRET material that the Defense suspected to also contain ACCM material, Counsel did identify one document disclosed to Defense as S000030334, whose classification markings bore the name of an ACCM program. Government Counsel also submitted this document to the OPR for the ACCM program in question, who confirmed

that the document was improperly marked, does not actually contain ACCM material, and should consequently be remarked as SECRET//ORCON/NOFORN.



MICHAEL PETRUSIC
CPT, JA
Trial Counsel

I certify that I have served or caused to be served a true copy of the above Government Notice in Accordance with Paragraph 1.I of the Protective Order for Classified Information via email on 17 May 2016.



MICHAEL PETRUSIC
CPT, JA
Trial Counsel