

ANNEX C

Role of the Investigation Security Officer and the Court Security Officer

As stated above, the protective order will appoint an investigation security officer and/or court security officer who is charged with safeguarding classified material during the proceeding. Both the investigation security officer and court security officer are neutral and serve as the security advisor to the Article 32 investigating officer or military judge and serve as experts on protecting classified information. The investigation security officer and court security officer should have considerable familiarity with the material relevant to the proceeding so that they can best advise the investigating officer or military judge with regard to what information is classified and the required handling procedures for the specific classified information at issue. If specific programs or special access material is at issue in a particular session (open or closed), it may be necessary to have a subject matter expert serve as a security officer to assist in signaling the investigating officer or military judge when a question calls for classified information or testimony inadvertently strays into classified matters.

It is paramount to remember that none of the security officers is a member of the prosecution or defense team. Rather, all security officers are primarily responsible to the investigating officer or the military judge for providing security guidance and assistance to the proceeding, including, as necessary, the government and defense teams. The security officers are there to prevent the military judge and the government and defense teams from committing security violations. They advise the investigation or court from a security perspective, not from a legal perspective. The defense should request an expert in security issues from the convening authority should they feel the need, based on the facts of the case, to receive privileged advice on those issues.

Security officers should be experienced military members with a broad background in information, personnel, and physical security. Convening authority staff judge advocates, working with the local security managers and special security officers, should identify a pool of individuals with requisite backgrounds. These individuals must be cleared for the material that will be at issue in the proceeding. This means that if the proceeding involves classified material from a Special Access Program (SAP) or at the level of Top Secret/Sensitive Compartmented Information, then the security officers must be "read in" and cleared to handle that particular information. It is incumbent upon the staff judge advocate to ensure that an investigation security officer is assigned to the case at the outset. This is usually done by naming the investigation security officer in the Article 32 appointing order or in the protective order.

The security officers also ensure that all the necessary parties have the requisite security clearances and accesses. They also generate an access list that contains the names of the personnel authorized to be in the courtroom during classified sessions. The bailiff or a door sentry may use this list to prevent unauthorized access to the courtroom.

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