

**MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA**

<p style="text-align: center;">UNITED STATES OF AMERICA</p> <p style="text-align: center;">v.</p> <p>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN 'ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL-AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</p>	<p style="text-align: center;"><b>AE400</b></p> <p style="text-align: center;"><b>PRESS MOVANTS' MOTION TO UNSEAL 30 OCTOBER 2015 TRANSCRIPT OF PUBLIC PROCEEDINGS</b></p> <p style="text-align: center;">6 January 2016</p>
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1. **Timeliness.** This motion to unseal the 30 October 2015 transcript of public proceedings is timely filed, pursuant to the Military Commissions Trial Judiciary Rules of Court (“R.C.”), Rule 3, and the Regulation for Trial by Military Commission (“RTMC”), Regulation 19-3(c).
2. **Statement of Relief Sought.** This is a motion to unseal all portions of a transcript of an open proceeding of this Commission that have been improperly redacted in violation of the public’s constitutional right of access. *See Press-Enterprise Co. v. Super. Ct.*, 478 U.S. 1, 15 (1986) (“*Press-Enterprise II*”). The motion is made pursuant to Regulations 19-3(c) & (d) of the 2011 RTMC by The Miami Herald, ABC, Inc., Associated Press, Bloomberg L.P., BuzzFeed, Inc., CBS Broadcasting Inc., Dow Jones & Company, Inc., First Look Media, Inc., Fox News Network, Guardian US, Hearst Corporation, Inc., The McClatchy Company, The New York Times Company, The New Yorker, Reuters America LLC (Reuters), Tribune Publishing Company, LLC, and WP Company LLC (d/b/a The Washington Post) (collectively, “the Press Movants”), and specifically seeks to unseal the entire transcript of the 30 October 2015 testimony in this case, including the testimony of Staff Sergeant Jinx, U.S. Army National

Guard.<sup>1</sup> This testimony was given in an open courtroom and reported on by Press Movants, but the transcript in the public docket was unexpectedly redacted.

A number of news and public advocacy organizations have previously submitted motions seeking access to the records and proceedings of this prosecution (and other Commission proceedings). See AE081 (1 Oct. 2012) (seeking advance notice and opportunity to be heard before any proceeding is closed to the public); AE013F (16 May 2012) (opposing certain provisions in protective order requested by the government); see also *United States v. Abd al Rahim Hussayn Muhammad al Nashiri*, AE127, AE065; AE093B (hereinafter, “*al Nashiri*”). The access rights that the Press Movants seek to protect are affirmative, enforceable rights, and they include the right to findings of fact by the Court justifying the basis for any closure in sufficient detail to be reviewed on appeal.<sup>2</sup> See, e.g., *al Nashiri*, AE127 at 2; *Press-Enterprise II*, 478 U.S. at 13-14.

3. **Burden of Proof.** These proceedings are subject to the constitutional right of public access to court proceedings. See *al Nashiri*, AE159A. As the party seeking to abridge the constitutional access right, the Government bears the burden of establishing a sufficient factual basis for sealing portions of the transcript. *Press-Enterprise II*, 478 U.S. at 13-14.

4. **Statement of Facts.** On 17 October 2014, counsel for Mr. bin ‘Attash filed a motion requesting an order to JTF-GTMO and the Commander, Joint Detention Group (“JDG”) “to cease all activities that bring female members of the JTF-GTMO guard force into direct physical

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<sup>1</sup> “Jinx” is a pseudonym. 30 Oct. 2015 Tr. 9107:13-16

<sup>2</sup> The press and public have a right to be heard in opposition to the denial of access. See, e.g., *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 609 n.25 (1982) (“representatives of the press and general public ‘must be given an opportunity to be heard on the question of their exclusion’”) (citation omitted); *al Nashiri*, AE159A at 3 (stating that “the press [have] an opportunity to be heard” when access to Commission proceedings is denied).

contact.” AE254Y at 1. More specifically, Mr. bin ‘Attash sought to have the JDG “cease utilizing female guards to escort him, where female guards are required to touch his body.” *Id.* Other defendants joined the motion (collectively, “the Accused”). AE254Y (MAH Sup.); AE254Y (RBS Sup.); AE254Y (Mohammad Sup.). The Government opposed. AE254EE.

On 7 January 2015, the Commission issued an order temporarily granting the Accused’s request: “to best serve the interests of all parties requires temporarily directing that female guards will only physically touch the Accused in cases of emergency and other urgent needs.” AE254JJ at 2-3. As a result of that order, the Military Judge was subject to an Equal Opportunity complaint by female service members. AE254QQ. In turn, defense counsel for the Mr. al Hawsawi asked the Military Judge to recuse himself from consideration of the motion until those Equal Opportunity complaints had been resolved. AE254WW(MAH).

The Commission’s order and its aftermath has been the subject of continuing public interest. During a hearing before the United States Senate Armed Services Committee, for example, Senator Kelly Ayotte questioned Defense Secretary Ashton Carter and General Joseph Dunford about the order, which they characterized as “outrageous.”<sup>3</sup> The Press Movants and others have extensively reported on the order, its effects, and the subsequent complaint filed against the Military Judge.<sup>4</sup>

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<sup>3</sup> See Hearing on United States Military Strategy in the Middle East, U.S. Senate Committee on the Armed Services (27 Oct. 2015), <http://www.armed-services.senate.gov/hearings/15-10-27-united-states-military-strategy-in-the-middle-east> (question from Sen. Kelly Ayotte to Gen. Joseph F. Dunford, Jr. and Secretary of Defense Ashton Carter regarding the Military Judge’s order).

<sup>4</sup> See, e.g., Ed Pilkington, *Guantánamo Bay prisoners ask judge to ban use of female guards*, *The Guardian* (5 Nov. 2015), <http://www.theguardian.com/us-news/2015/nov/05/guantanamo-bay-prisoners-ask-judge-to-ban-use-of-female-guards>; David Welna, *Citing Religious Beliefs, Muslim Gitmo Inmates Object To Female Guards*, *NPR* (4 May 2015), <http://www.npr.org/2015/05/02/403572938/citing-religious-beliefs-muslim-gitmo-inmates->

On 21 September 2015, the Military Judge issued an order setting a hearing in this case to take up, *inter alia*, the motion by the Accused for an order prohibiting female contact. AE374 at 2. The Commission held a public hearing on the motion on 30 October 2015, during which a female guard, SSgt Jinx, testified at length. The hearing was public and all of the testimony was taken in open court.<sup>5</sup> Observing the hearing were press representatives (both at Guantanamo and Fort Meade), a dozen or so legal observers, and several family members of victims of the 9/11 attacks. *See* Declaration of Carol Rosenberg (“Rosenberg Decl.”), Ex. B; *see also* C. Rosenberg, *Former public testimony disappears from Guantánamo transcripts*, Miami Herald (6 Dec. 2015), <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article48324240.html>.

When transcripts of the public hearing were subsequently posted to the Commission’s website, however, they contained substantial redactions to the sworn public testimony taken during the open hearing.<sup>6</sup> The redacted portions of the transcript span a wide-variety of topics, including:

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[object-to-female-guards](#); Ian Simpson, *Prosecutor urges lifting Guantanamo ban on women guards touching inmate*, Reuters (29 Jan. 2015), <http://www.reuters.com/article/us-usa-guantanamo-women-idUSKBN0L22FD20150129>; David Dishneau, *Female guards at Gitmo file discrimination complaints*, AP (26 Jan. 2015), <http://www.pbs.org/newshour/rundown/female-guards-gitmo-file-discrimination-complaints/>; Carol Rosenberg, *Female guards file discrimination complaints against Guantánamo judges*, Miami Herald (26 Jan. 2015), <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article8155056.html>.

<sup>5</sup> In addition to SSgt Jinx, testimony was given by an unidentified commander of Camp VII referred to pseudonymously as “Major.” 30 Oct. 2015 Tr. 9299:18-21. Portions of that testimony, given in public, have also been redacted. *See id.* at 9300, *et seq.* In addition, an Assistant Staff Judge Advocate testified, but none of his testimony was redacted. *Id.* at 9067:1-9068:14.

<sup>6</sup> The redacted portions of the transcript are found at: 30 Oct. 2015 Tr. 9107:22-23; 9108:7, 14, 16; 9109:8; 9111:18; 9113:21; 9114:2-9115:3; 9117:13-20; 9119:12-9120:22; 9122:17-9123:3;

- SSgt Jinx's qualifications and service history, *see, e.g., id.* at 9107:22-23, 9108:7, 14, 16, 9109:8, 9111:18, 9113:21; 9300:18-23, 9301:2;
- Camp VII procedures relating to the use of guards, *see, e.g., id.* at 9122:17-9123:3;
- the process of moving a detainee from one place to another, *see, e.g., id.* at 9136:15-18, 9138:15-21, 9138:23-9140:3, 9140:9-9156:16;
- complaints from detainees relating specifically to being touched by female guards, *see, e.g., id.* at 9200:12-13, 9202:21-9203:11, 9204:8-10; 9317:20-9319:1; 9319:6-14; 9321:13,
- forced cell extraction procedures, *see, e.g., id.* at 9214:21-23, 9219:18-9221:5, 9224:20-9225:6; and
- statements made by the Court, *see, e.g., id.* at 9179:4-9, 9313:12-9317:14.

Some redactions span entire series of pages. *See, e.g., id.* at 9313-18. Much of the redacted testimony had previously been reported by journalists covering the proceeding, *see, e.g.,* Rosenberg Decl., Ex. A, and information about certain procedures discussed during the redacted testimony has been widely reported in other contexts.<sup>7</sup>

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9123:12-9124:5; 9124:13-16; 9124:2-9125:11; 9133:19, 9134:1; 9136:15-18; 9138:15-21; 9138:23-9140:3; 9140:9-9156:16; 9170:11-12; 9172:15-9177:17; 9179:4-9; 9183:3-4; 9186:3-7; 9200:12-13; 9202:21-9203:11; 9204:8-10; 9205:21-22; 9210:16-9211:15; 9214:21-23; 9219:18-9221:5; 9223:4-11; 9224:20-9225:6; 9237:20-9240:8; 9240:20-21; 9241:15-9242:18; 9244:10-9246-10; 9247:8-9248-18; 9249:9250:3; 9251:3-9251:9; 9171:15-9272:8; 9274:4-5; 9274:17-9274:23; 9276:17-9277:19; 9278:1-19; 9283:8, 13; 9300:18-23, 9301:2; 9303:11-13; 93004:16, 19-20; 9313:2-9317:14; 9317:20-9319:1; 9319:6-14; 9321:13.

<sup>7</sup> *See, e.g.,* Ex.1 to Declaration of Rear Admiral Richard W. Butler, former Commander of the Joint Detention Group, *Dhiab v. Obama*, No. 05-cv-01457 (D.D.C.) Dkt. 288-1 at 18 (stating that the FCE procedures "used at JTF-GTMO are modeled on the rules of force in military corrections facilities and the Federal Bureau of Prisons"); *id.* at 19-20 (describing FCE procedures); 28 C.F.R. § 552.20, *et seq.* (detailing application of force and restraint procedures); Federal Bureau of Prisons Program Statement P5566.06, Subject: Use of Force and Application of Restraints.

On 5 December 2015, Gen. Martins discussed during a press briefing the Government's reasons for redacting the transcript of a public hearing. Rosenberg Decl. ¶ 7; *see also id.*, Ex. C. Gen. Martins acknowledged that SSgt Jinx's testimony was "public testimony" that normally "com[es] out word for word with no redactions" in a transcript, but he asserted that the Regulation for Trial by Military Commission empowers the Government to make *ex post* redactions to public testimony.<sup>8</sup> As he put it: "public utterance of [the testimony] is one thing. Putting it on the website in a way it can be reviewed is another." Gen. Martins would not "confirm or deny" anything about the kind of information redacted from the transcript. *Id.*

On 7 December 2015, counsel for Press Movants wrote to Gen. Martins to object to the redaction of a transcript of public testimony, to refute his claim that the Commission's Regulation for Trial authorizes such redactions, and to provide authorities demonstrating that the redactions made in this case violate the public's First Amendment right to the transcript of the open hearing. Declaration of David A. Schulz ¶¶ 2-3. On 11 December, Jason Foster of the Office of General Counsel responded that Press Movants had "raised important considerations" and advised Mr. Schulz that the Office of General Counsel would "conduct further review of the redacted transcript with your concerns in mind." *Id.* Despite subsequent, repeated inquiries, as of 6 January 2016, Press Movants have received no assurance that an unredacted transcript will be released. *Id.* at ¶ 5.

5. **Legal Basis for Relief Requested.** "Articulated judicial policy is to encourage media and public access to all Commission proceedings." AE081A at 3; *see also* R.C., Rule 6-1 ("the Military Judge will ensure all Commission proceedings are as open and transparent as

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<sup>8</sup> During the briefing, Gen. Martins repeatedly cited a "rule" that allegedly allows for such redactions. He later disclosed to counsel for the Press Movants that the Rule on which the Government was relying was Regulation 19-4(e).

possible.”). The Government itself has emphasized its “strong interest in ensuring public access to these historic proceedings and . . . the important and vital role that the news media plays within our society.” AE014F at 1.

## I.

### **THE REGULATION FOR TRIAL BY MILITARY COMMISSIONS DOES NOT ALLOW *EX POST* REDACTIONS BY THE GOVERNMENT**

In adopting the Military Commissions Act in 2006, Congress recognized the critical importance that these proceedings be conducted in the open so the public would accept their validity. *See, e.g.*, 152 Cong. Rec. H7522-03, H7534 (27 Sept. 2006) (statement of Rep. Hunter); 152 Cong. Rec. H7508-06, H7509 (27 Sept. 2006) (statement of Rep. Cole); 152 Cong. Rec. H7925-02, H7945 (29 Sept. 2006) (statement of Rep. Sensenbrenner). Congress thus expressly mandated, in 2006 and again in 2009, that the Commission proceedings must be open to the press and public, except in certain narrowly limited circumstances. *See* 10 U.S.C. § 949d(c)(2).

Consistent with this statutory mandate, the Department of Defense Regulation for Trial by Military Commission, the Manual for Military Commissions (“Manual” or “R.M.C.”), and the Military Commissions Trial Judiciary Rules of Court all make plain that the proceedings are to be open to “representatives of the press, representatives of national and international organizations, . . . and certain members of both the military and civilian communities.” R.M.C. 806(a); *see also* RTMC, Reg. 19-4; R.C., Rule 6. Under the Regulation, the right of access applies “from the swearing of charges until the completion of trial and appellate proceedings or any final disposition of the case.” RTMC, Reg. 19-2. This right of public access to Commission proceedings necessarily extends fully to the transcripts of open proceedings. *See Press Enterprise II*, 478 U.S. at 13-15.

Consistent with the mandate of the First Amendment right of access, proceedings of the Commission may only be closed, under the MCA, or transcripts redacted, if a military judge first makes a “specific finding” that closure is “necessary” to protect information “which could reasonably be expected to cause damage to the national security” or to “ensure physical safety of individuals.” *See* MCA §949d(c)(2). The Department of Defense cannot impose restrictions on access that are inconsistent with this statutory mandate. *See* 10 U.S.C. 949a(a) (“Pretrial, trial, and post-trial procedures” before military commissions, to be prescribed by Secretary of Defense, “may not be contrary to or inconsistent with this chapter.”). Recognizing this fact, Regulation 19-6 states that “[t]he military judge may close proceedings of military commissions to the public *only* upon making the findings required by MCA § 949d(c) and R.M.C. 806.” RTMC, Reg. 19-6 (emphasis added); *see also* RTMC, Reg. 18-3 (requiring express finding, which “shall be appended to the record of trial”).

The Government failed to comply with these regulations. It asserts that the regulations allow for *ex post* redactions to transcripts of public proceedings taking place in front of observers, the press, and victims’ family members. They do not.

General Martins identified Regulation 19-4(e) as authority for the redactions to the 30 October transcript, but that Regulation says nothing about *ex post* redactions.<sup>9</sup> It authorizes an

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<sup>9</sup> RTMC, Reg. 19-4(e) states:

Except under exceptional circumstances, including equipment failure, the Convening Authority shall ensure the custodian of the OMC website posts a draft, unofficial, unauthenticated transcript of the public portions of the military commission proceedings to the OMC website as soon as practicable after the conclusion of a hearing each day the military commission is in session (whether the hearing is recessed, adjourned, or closed). This draft, unofficial, unauthenticated transcript shall be prepared by a court reporter seated in a room that receives an audio feed of the proceedings that is identical to the audio feed broadcast in the public gallery. This procedure will avoid inclusion in the draft, unofficial, unauthenticated transcript of any inadvertent utterances of classified or



unofficial transcript to be prepared by a court reporter listening to “an audio feed of the proceedings that is identical to the audio feed broadcast in the public gallery,” screened with a forty-second delay to remove classified or protected information, rather than preparing the transcript verbatim from disclosures “inside the courtroom” that could include disclosures of sensitive information. *Id.* It is *this* procedure, requiring a transcript of the *public* portion of the proceeding, that “avoid[s] the inclusion in the draft . . . transcript of any inadvertent utterances of classified or protected information”—not *ex post* redactions. *Id.*

## II.

### **THE GOVERNMENT CANNOT CARRY ITS BURDEN OF OVERCOMING THE PUBLIC’S PRESUMPTIVE RIGHT OF ACCESS**

Even if the regulations sanctioned unilateral *ex post* redaction of the public record, the First Amendment prohibits it. The First Amendment independently “protects the public and the press from abridgment of their rights of access to information about the operation of their government.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 584 (1980) (Stevens, J., concurring) (recognizing First Amendment right of public access to criminal trials). As an element of the supreme law of the land, the constitutional access right necessarily supersedes any contrary law, rule or regulation.

While the constitutional access right is a qualified right, not an absolute right, a proceeding subject to the First Amendment right may be closed *only* if the party seeking to seal can satisfy a rigorous four-part test. Before any portion of a proceeding may be sealed from view, the Commission must first make factual findings that:

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protected information inside the courtroom. Further, this draft, unofficial, unauthenticated transcript shall indicate that it is an unofficial, unauthenticated draft that may be further revised, and that it is being released to facilitate the public’s access to military commission proceedings.

1. **There is a substantial probability of prejudice to a compelling interest.** See, e.g., *Richmond Newspapers, Inc.*, 448 U.S. at 580-81; *Press-Enterprise Co. v. Super. Ct.*, 464 U.S. 501, 510 (1984) (“*Press-Enterprise I*”); *Press-Enterprise II*, 478 U.S. at 13-14.
2. **There is no alternative to closure that will adequately protect the threatened interest.** See *Press-Enterprise II*, 478 U.S. at 13-14; see also *Presley v. Georgia*, 558 U.S. 209, 213-16 (2010) (per curiam) (“Trial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials” and “to consider alternatives to closure even when they are not offered by the parties.”); *Washington Post v. Robinson*, 935 F.2d 282, 290 (D.C. Cir. 1991); *In re The Herald Co.*, 734 F.2d 93, 100 (2d Cir. 1984) (A “trial judge must consider alternatives and reach a reasoned conclusion that closure is a preferable course to follow to safeguard the interests at issue.”).
3. **Any restriction on access will effectively protect against the threatened harm.** See *Press-Enterprise II*, 478 U.S. at 14 (the party seeking secrecy must demonstrate “that closure would prevent” the harm sought to be avoided); *Robinson*, 935 F.2d at 291-92 (disclosure could not pose any additional threat in light of already publicized information); *In re The Herald Co.*, 734 F.2d at 101 (closure order cannot stand if “the information sought to be kept confidential has already been given sufficient public exposure”); *U.S. v. Grunden*, 2 M.J. 116, 123 n.18 (C.M.A. 1977) (“the ‘public’ nature of the material [would] establish a separate ground prohibiting exclusion of the public”).
4. **Any restriction on access is narrowly tailored.** See *Shelton v. Tucker*, 364 U.S. 479, 488 (1960) (even “legitimate and substantial” governmental interests “cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.”); see also *Press-Enterprise II*, 478 U.S. at 13-14; *Robinson*, 935 F.2d at 287; cf. *Grunden*, 2 M.J. at 120 (“In excising the public from the trial, the trial judge employed an ax in place of the constitutionally required scalpel.”).

The Government agrees, as it must, that the constitutional access right applies and that this test controls public access to Commission proceedings. See, e.g., 17 Oct. 2012 Tr. at 678, 694. As the Government has acknowledged, the findings required by *Press-Enterprise II* must be made by the Commission before closing any part of a proceeding, even to discuss information that is “classified.” See Response of Respondent, *Miami Herald, et al. v United States*, Case No. 13-002 (U.S.C.M.C.R. 7 Mar. 2013) at 1, 9 (“the Commission can only close the proceedings [discussing classified information] after it makes appropriate findings, consistent with the

M.C.A. and Supreme Court precedent.”); *see also* 17 Oct. 2012 Tr. 672:19-21 (“MJ [COL POHL]: The mere fact it is classified is not sufficient showing by government to close the proceeding. ATC [MS. BALTES]: Right.”); *id.* at 687:10-23 (same).

This Commission also has recognized already that “criminal trials are ‘presumptively open’ *see Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 569 (1980), and the controlling legal authority and the test for closure set forth in *Press-Enterprise [II]*.” *al Nashiri*, AE159A at 2; *see also* AE331 (“The Commission has also guaranteed the public, and other interested parties, that the classified nature of information before the court will be kept to the minimum required by law so as to ensure the utmost transparency.”); R.M.C., Rule 806(a) (“military commissions shall be publicly held.”); RTMC, Reg. 19-4 (right of access to transcripts). This constitutional right of access extends fully to pretrial hearings and to the transcripts of such hearings as well. *Press-Enterprise II*, 478 U.S. at 13-15. While the Regulations purport to allow the “non-release of unclassified or unprotected information” in “exceptional cases,” it is the *Military Judge* not the Government who determines, according to the constitutional standards, whether such material can properly be redacted. RTMC, Reg. 19-5. No proper basis can exist to withhold from a transcript information already disclosed to the public.

**A. The Government Cannot Show A Substantial Probability Of Harm Nor That Sealing Will Advance Any Compelling Interest**

It has long been recognized that, under our Constitution, “[a] trial is a public event” and “[w]hat transpires in the court room is public property.” *Craig v. Harney*, 331 U.S. 367, 374 (1947); *see also United States v. Mitchell*, 551 F.2d 1252, 1258 (D.C. Cir. 1976) (“Any attempt to maintain secrecy, as to the records of this court, would seem to be inconsistent with the common understanding of what belongs to a public court of record, to which all persons have the right of access.”), *overruled on other grounds*, 435 U.S. 589 (1978). This is not a mere

formalism, it is central to the fabric of our democracy: “Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account.” *Richmond Newspapers, Inc.*, 448 U.S. at 569 (citation and marks omitted). It is thus firmly established that no member of the public or press who attends an open proceeding can ever be barred from, or otherwise sanctioned for, publishing information from that proceeding at any point. *See, e.g., The Florida Star v. B.J.F.*, 491 U.S. 524, 535 (1989) (“once information was ‘publicly revealed’ or ‘in the public domain,’ the court could not constitutionally restrain its dissemination.”) (citations omitted).

This same constitutional principle that protects the public’s right to discuss information disclosed in an open courtroom, leads courts routinely to reject attempts to seal evidence after it has been admitted at an open proceeding. “Once the evidence has become known to the members of the public, including representatives of the press, through their attendance at a public session of court, it would take the most extraordinary circumstances to justify restrictions on the opportunity of those not physically in attendance at the courtroom to see and hear the evidence . . . .” *Application of Nat’l Broad. Co., Inc.*, 635 F.2d 945, 952 (2d Cir. 1980); *see also In re Nat’l Broadcasting Co., Inc.*, 653 F.2d 609, 614 (D.C. Cir. 1981) (rejecting sealing where “the tapes had been seen and heard by those members of the press and public who attended the trial”); *United States v. Criden*, 648 F.2d 814, 825 (3d Cir. 1981) (same). Courts across the country have thus rejected efforts to redact transcripts of public proceedings. *See, e.g., United States v. Antar*, 38 F.3d 1348, 1360 (3d Cir. 1994) (refusing to redact transcript because “[i]t would be an odd result indeed were we to declare that our courtrooms must be open, but that transcripts of the proceedings occurring there may be closed”); *Warner Chilcott Co., LLC v. Mylan Inc.*, 2015 WL 918635, at \*1 (D.N.J. 3 Mar. 2015) (same); *TriQuint Semiconductor, Inc. v. Avago Techs. Ltd.*,

2012 WL 1432519, at \*7 (D. Ariz. 25 Apr. 2012) (same); *Haas v. Golding Transp. Inc.*, 2010 WL 1257990, at \*6 (M.D.N.C. 26 Mar. 2010) (refusing to approve protective order allowing parties to mark as confidential testimony offered in open court).

These cases are entirely consistent with mountains of authority finding that public disclosure of information—either at trial or elsewhere in the public domain—vitiates any compelling interest in sealing that information. *Robinson*, 935 F.2d at 292 (“Because disclosure of the contents of the plea agreement would only have confirmed to the public what was already validated by an official source . . . it [is not] evident how such disclosure could pose any extra threat.”); *CBS, Inc. v. U.S. Dist. Ct.*, 765 F.2d 823, 825 (9th Cir. 1985) (no compelling reason to seal where much of the information “might easily be surmised from what is already in the public record”); *In re The Herald Co.*, 734 F.2d at 101 (closure not proper where “information sought to be kept confidential has already been given sufficient public exposure”). As the Second Circuit has explained, “[o]nce the evidence has become known to the members of the public, including representatives of the press, through their attendance at a public session of court, it would take the most extraordinary circumstances to justify restrictions on the opportunity of those not physically in attendance at the courtroom to see and hear the evidence . . . .” *In re Nat’l Broad. Co., Inc.*, 635 F.2d at 952.

These same principles apply in military proceedings. Even the classification of information does not justify closing a proceeding where the classified information already has been publicly disclosed. As explained in *Grunden*, 2 M.J. at 124 n.18, classification “does not preclude the defense from going forward and demonstrating the ‘public’ nature of the material which would thus establish a separate ground prohibiting exclusion of the public.” Similarly, no proper basis would exist for sealing a transcript of such a public proceeding. Simply put, there is

no compelling interest in sealing—after the fact—public testimony given in an open public courtroom.

There is no dispute whatever that the entirety of SSgt Jinx’s testimony was taken in open session. Press Movants reported on the very testimony that is now sealed. *See, e.g.*, Rosenberg Decl., Exs. A, B. During the hearing, that testimony was screened for sensitive information during the forty-second delay, and nothing was closed to the press or public observing the hearing. *Id.* ¶ 5. As a practical matter, the bell cannot be unringed and, as a legal matter, the First Amendment would prohibit it, even if that were possible to do.

At any rate, it seems highly unlikely that a public transcript would create a substantial probability of harm, or that redactions could be effective, in light of the past disclosure of Guantanamo procedures and the specific reporting on the public hearing that has already occurred. Much of the information redacted from the transcript is available online in news reports and contemporaneous coverage of the hearing. For example, defense counsel asked SSgt Jinx how long she had served in the Army National Guard and Carol Rosenberg, a reporter for The Miami Herald, reported on Twitter that Jinx enlisted in the 1990s. This public information nevertheless was redacted from the transcript. *Compare* 30 Oct. 2015 Tr. 9107:21-23 *with* Rosenberg Decl., Ex. A at 3. Similarly, Jinx testified that she was part of the “S-2 Shop,” and Ms. Rosenberg reported that acknowledgement, but it nevertheless was censored from the transcript. *Compare* 30 Oct. 2015 Tr. 9111:18 *with* Rosenberg Decl., Ex. A at 3.

Indeed, a great deal of the redacted testimony has already been publicly reported:

- Multiple questions and answers are redacted from a discussion about the deployment with the 193rd National Guard unit, *see* 30 Oct. 2015 Tr. 9117:13-20, but Ms. Rosenberg

has reported: “SSG Jinx says she arrived in December with 140 Colorado MPs, 24 of them females, all of them assigned to Camp 7.” Rosenberg Decl., Ex. A at 3.

- Jinx was questioned about “how a move to-from a detainee’s cell to the recreation yard would occur.” 30 Oct. 2015 Tr. 9136:15-18. Her response is redacted, but Ms. Rosenberg already reported in detail the substance of her testimony:

Nevin is asking about how these moves are done and SSG is discussing how a captive is cuffed in his cell through feed-tray slot. So we get a rote recitation from SSG Jinx about two guards, supervisor outside cell, captive inside handcuffed through slot in cell door . . . . SSG Jinx says three guards touch a detainee moving inside the tier, and four guards do movements elsewhere in Camp 7. . . . In move to Camp Echo II or court there are more guards, more restraints—ankles, hands plus belly cuff. Unclear how many guards touching. Now we’re getting into details of touching: Guard sticks a finger inside a cuff to measure, guards put hands on moving restrained detainee. . . . Now lots of back and forth on when, where guards do positive control, touch, un-cuff for legal meetings, court. Deep divers: See transcript. Now it sounds like SSG Jinx isn’t doing the touching. She’s like a supervisor, runs 35 escort troops at Echo II—2 of them women.

Rosenberg Decl. at 4-5; *see also, e.g.*, Tom Ramstack, *9/11 suspects’ lawyers say U.S. senators may have swayed testimony*, Reuters (30 Oct. 2015) (quoting apparently redacted testimony from Jinx, “To remove the restraints, I imagine a minimal amount of touching might happen”), <http://www.reuters.com/article/us-usa-guantanamo-idUSKCN0SO2RG20151030#jKWj7g30V7L28VRx.97>.

- After a question regarding complying with the female, no-contact order, the transcript is redacted, *see* 30 Oct. 2015 Tr. 9172:15-9177:17, but Ms. Rosenberg has reported:

Nevin asks if Camp 7 has 14 detainees. She declines to answer until instructed to and then confirms. yup. 14 detainees at Camp 7. Nevin asks how many guards at Camp 7. SSG Jinx: A minimum of 28 for each shift. SSG Jinx breaks down Camp 7 staffing: Twenty shift guards in Camp 7 plus management, 35 escorts, 2 librarians and 2 evidence custodians. And it sounds like there’s a mysterious maybe 80 more troops ‘not on Camp 7’ that she won’t discuss—maybe handling pay and

leave issues. Judge Pohl helps: Eighty people work in support, possibly 60 people work in the camp. Not all 80 are trained to be MPs.”

Rosenberg Decl., Ex. A at 6.

- The Government similarly censored out portions of the transcript relating to forced-cell extractions, *see* 30 October 2015 Tr. 9219:18-9221:5, even though Ms. Rosenberg has reported on the testimony:

Now SSG Jinx describes FCE: ‘The 5-man team, excuse me, 5-soldier team,’ takes control of each detainee body part—1 head, 4 limbs. Prosecutor Bob Swann protests putting FCE talk. Thomas says, absent order detainee must choose: submit to female guard move or FCE.

Rosenberg Decl., Ex. A at 8; *see also id.*, Ex. C.

- The transcript also censors a wide-ranging discussion about morale issues among male service members in light of the order and a memorandum directing that female service members not be docked in performance reviews because they cannot touch the detainees.

30 October 2015 Tr. 9237:20-9240:8. As reported by Ms. Rosenberg:

SSG Jinx tells Ruiz the male guards’ morale was effected by taking on female guard detainee-touch duty, not endangered Camp 7 security. Ruiz discloses that there’s a memorandum to Camp 7 supervisors not to rate females worse because they can’t touch certain detainees. Ruiz is trying to figure out balance of power in detainee-touching transport unit: Team leader vs armed guard vs positive control escorts.

Rosenberg Decl., Ex. A at 9.

The contemporaneous coverage of the hearing and related news reports about the public proceedings refute the Government’s objection that information in the transcript “ought to be protected” before the transcript is made available online. Where, as here, sealed information has previously been made public, maintaining that information under seal is not proper except possibly in that most rare circumstance where, “despite what the public already knows, the documents’ release would *still* give rise to a substantial probability of harm.” *Dhiab v. Obama*,



70 F. Supp. 3d 486, 496 (D.D.C. 2014), *appeal dismissed*, 787 F.3d 563 (D.C. Cir. 2015) and *reconsideration denied*, --- F. Supp. 3d ----, 2015 WL 6501509 (D.D.C. 27 Oct. 2015). The mere fact that people who did not attend the proceeding will have access to a transcript, does *not* justify sealing the record of a public hearing. *United States v. Massino*, 356 F. Supp. 2d 227 (E.D.N.Y. 2005) (granting motion to copy tapes in open court despite argument that disclosure on the internet amplified harm to witness safety).

The Government has not, and likely cannot, meet its burden of establishing a compelling need to seal the transcript to any extent. It did not seek to protect the testimony by closing the hearing, and that testimony is already “out there on a website.” On the other hand, the harm to the public’s interest caused by sealing the transcript is real and on-going. Access to complete transcripts is essential for reporters seeking to follow these proceedings who are unable to observe the live sessions. Access to the transcripts is also important for those reporters in attendance, who use transcripts for reference and to assure the accuracy of their reports. *See, e.g., Rosenberg Decl.* ¶ 6. This Commission itself has recognized the importance of posting the records of this proceeding to its website as an effective means of vindicating the right of access. *al Nashiri*, AE159A at 2 (noting that the public is given notice on the Military Commission website of applications seeking to limit access). Yet, the website means little if information disclosed in public session is later sealed from view.

The harm to the public in this instance is compounded by the highly controversial nature of the motion that is the subject of the now censored testimony. *See supra* at 3-4. The public’s legitimate interest in the resolution of this motion is only heightened by Secretary Carter’s recent

order that women be allowed to serve in the same combat roles as men.<sup>10</sup> As one district court judge explained in denying a Government request to close a former-Guantanamo detainee’s preliminary injunction hearing: “With such a long-standing and ongoing public interest at stake, it would be particularly egregious to bar the public from observing the credibility of live witnesses [and] the substance of their testimony.” *Dhiab v. Obama*, 70 F. Supp. 3d 465, 468 (D.D.C. 2014); *see also, e.g., Criden*, 648 F.2d at 824 (“such publicity, rather than favoring rejection of the application, may in fact support its grant.”); *In re Guantanamo Bay Detainee Litig.*, 624 F. Supp. 2d 27, 37 (D.D.C. 2009) (finding right of access to detainee *habeas* proceedings, in part because “[p]ublic interest in Guantanamo Bay generally and these proceedings specifically has been unwavering”).

**B. The Government’s Sealing Of At Least Thirty Seven Pages Of Public Testimony Is Not Narrowly Tailored**

Even in the unlikely event that the Government could carry its burden of justifying to the satisfaction of this Commission that sealing *some* discrete factual disclosures made during the open hearing is justified, the blunderbuss redactions the Government unilaterally imposed should not be countenanced. Thirty seven pages of the transcript have been fully redacted, a plainly overbroad censorship. *See Press Enterprise II*, 478 U.S. at 14 (closure must be “narrowly tailored” to serve the compelling interest); *In re Nat’l Broadcasting Co., Inc.*, 653 F.2d at 620 (a court should “sanitize the objectionable portions . . . to remove the offending [material]” but otherwise disclose as much as possible); *Grunden*, 2 M.J. at 120 (access right requires use of a “scalpel” not an “ax” when closing proceedings); *In re N.Y. Times Co.*, 585 F. Supp. 2d 83, 87,

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<sup>10</sup> *See, e.g.,* Dan Lamothe, *In historic decision, Pentagon chief opens all jobs in combat units to women*, Wash. Post (3 December 2015), <https://www.washingtonpost.com/news/checkpoint/wp/2015/12/03/pentagon-chief-to-announce-how-womens-roles-in-the-military-will-expand>.

91 (D.D.C. 2008) (where informants' identities could be redacted, only that information properly withheld). A portion of the transcript may only properly be sealed if the Government can come forward with evidence establishing a substantial probability of harm to a compelling interest that can effectively be avoided by limited sealing. No such showing has been made here, nor can it be made given the past public disclosures.

For the foregoing reasons, the Press Movants seek the immediate unsealing of the 30 October 2015 Transcript of the public proceedings in this case. Such relief is necessary under the *Press Enterprise II* standards and the public's right of access.

6. **Oral Argument.** The Press Movants are prepared to argue this motion if oral argument would be useful to the Commission, but otherwise rest on this submission.

7. **Certificate of Conference.** Prior to filing this motion, the Press Movants attempted to confer with counsel for the Government, who failed to timely respond to Press Movants' objections to redaction.

8. **Attachments.**

- A. Declaration of Carol Rosenberg, dated 30 December 2015.
- B. Declaration of David A. Schulz, dated 6 January 2016.
- C. Notice of Appearance of David A. Schulz, dated 6 January 2016.
- D. Notice of Appearance of Matthew L. Schafer, dated 6 January 2016.
- E. Certificate of Service, dated 6 January 2016.

Dated: 6 January 2016

Respectfully submitted,

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By:

  
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*Counsel for Press Movants*

# **ATTACHMENT**

## **A**

Filed with TJ  
8 January 2016

Appellate Exhibit 400 (Press)  
Page 21 of 58

DECLARATION OF CAROL ROSENBERG

I, CAROL ROSENBERG, hereby declare under the penalty of perjury:

1. I am a military affairs reporter for *The Miami Herald*, where I cover military commissions taking place at the U.S. Naval Station, Guantanamo Bay, Cuba. As a result of my coverage, a former Supreme Allied Commander of Europe dubbed me the “Dean of the Guantanamo Press Corps.” I have been a reporter at *The Miami Herald* for twenty-five years; before that I was a freelance journalist covering the Middle East.

2. Currently, I spend a significant portion of my time reporting on the 9/11 military commissions from the Naval Station at Guantanamo Bay. In the process of that reporting, I observed a pre-trial proceeding in the matter of *United States v. Mohammad, et al.*, that was held in an open courtroom at Guantanamo on October 30, 2015. I observed the proceeding via a forty-second delay video feed and reported the proceedings via Twitter in real time.

3. One witness during the October 30 proceeding was a female staff sergeant deployed at Guantanamo and who testified publicly under the assumed name of “SSgt. Jinx,” a pseudonym intended to protect her identity. SSgt. Jinx testified in open court about procedures relating to detainee treatment—specifically, the physical interaction between guards and detainees.

4. Throughout this hearing, I updated my Twitter account with descriptions of the staff sergeant’s testimony, including direct quotations from the witness. A true and correct copy of those updates is annexed hereto as **Exhibit A**. A true and correct copy of my subsequent reporting about the testimony given by SSgt. Jinx in the *Miami Herald* is annexed hereto as **Exhibit B**.

5. At no time during SSgt. Jinx’s testimony on October 30 was the courtroom closed

to the press and public, nor was the staff sergeant's testimony censored, although the courtroom and video feed used at Guantanamo are equipped to do so. I was able to hear everything that the staff sergeant said during her testimony.

6. When the transcript of the open proceeding was subsequently filed in a highly redacted form, I voiced immediate objections. I rely on transcripts like the one for the October 30 proceeding for details I am not able to capture, because rules prohibit me from recording the proceedings myself. Other reporters who are not able to attend the hearings rely on the transcripts to stay abreast of developments in the Guantanamo prosecutions.

7. After the redacted transcript was posted, I attended a press briefing at Guantanamo by the Chief Prosecutor, Brigadier General Mark Martins. During that briefing Gen. Martins discussed the redaction of the transcript. A true and correct copy of my subsequent report about that press briefing is annexed hereto as **Exhibit C**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 30th day of December, 2015 at Miami, Florida.

  
\_\_\_\_\_  
CAROL ROSENBERG

EX



30 October 2015 wees m a Rose e @ a se er

- 05:08 Two UK sources Sha er amer gone om  
#Guantanamo. S all exec jet went wheel t 1203  
to a Prison c n u 112
- 05:51 St r o f r Capti e Sha er amer one om  
Gu ntán mo ttps://t.co/Q Ww8C 9 @Miami erald  
tt s://t. o/z Pwj9 w
- 07:19 Here at Camp Justice, we may get troop testimony on  
judge' e ale guard order P ntagon a lled  
"o t geou " tt s://t.co/MVL b naV7
- 07:25 eanti e US ilitar ilent n K a no n cement o  
latest #Gitmo prison downsizing -- departure of  
Shaker Aamer. https://t.co/QnaWw8UsLH
- 07:56 ust told BB i t i ewer nother #Guantanamo  
pti e e amil re ni ication in the UK He' in  
t r tt s://t. /Qn Ww8 9
- 08:05 Here at Camp Justice, Judge Pohl has #Guantanamo  
war court back in session. Four of the 5 alleged 911  
plotters are in court. Hawsawi waived.
- 08:09 N w t the war urt alid bin tta h de ender  
C er l B r anni ar uing r dismis al the ase  
fo "d fecti e erral"
- 08:12 ...essentially that the Pentagon pursued this case  
without allowing Bin Attash to first oppose a capital  
case on grounds of CIA torture.
- 08:13 Bor ann: B n tt h t eat ent wa "ho ri ic " de ied  
sunlight, held incommunicado then "deposited" at  
#Gitmo in 2006, he has trust issues.
- 08:18 Bor ann tell Pohl he met Bin tta h "8 ear ter  
the torture ad gun " g a ter e "wa de o ited t  
#Guantanamo."
- 08:20 Bormann: Pentagon official (convening Authority) put  
on "blindens and ear muffs" to ignore CIA treatment  
before he choose capital option.
- 08:22 Bor ann nd Pohl just d a ck nd orth ow US  
tto ney of ice do thi ll w put on it atio in  
eciding whether to go pital.
- 08:23 Attorney Walter Ruiz, for Hawsawi: Original request  
for "defective referral" dismissal is bolstered by  
e e o Se ate Torture Re ort

- 08:33 Ruiz to Pohl: Prosecution originally sought 6 an death-penalty trial, but CA Susan Crawford learned of al-Qahtani torture, excluded him.
- 08:34 Prosecutor La Triett objects that evidence Pohl Overrule grants away to Ruiz who thinks the Qahtani case is in the record.
- 08:35 Pohl to Ruiz: So was prosecution obliged to disclose to CA, not necessarily a defense lawyer to prepare pre-referral mitigation packet?
- 08:37 Ruiz: Secretary has a duty to do it. But war court structure is different with litigation expert to be engaged to deal with it.
- 08:38 Ruiz: How were the SS Black Site reports describing torture "ectal y atio " he all ta" u e is for sodomy" like waterboarding
- 08:39 Ruiz was going to give more examples of post-referral disclosure but Pohl cut it off and says now they want full Senate Torture Report.
- 08:42 Pohl calls that "another kettle of fish," says even now Ruiz is a good illustration to Commission authority to try to stop death penalty option
- 08:43 Ruiz says that part of the presentation didn't provide CA with full information about the five captives CIA circumstances.
- 08:44 Ruiz is asking "original in" question want Pohl to limit the case because CA didn't get acts of terrorism restriction reentered
- 08:48 Meantime, Pentagon statement confirms what you already know: Shaker Aamer gone from Guantanamo. Prison number 112 <http://t.co/QnWw8> 9
- 08:51 Back at the war court judge Pohl turn to the female guard who is deen she should now question guard witnesses.
- 08:52 For KSM, attorney Maj. Poteet objects to doing it now, cites Senate "outrageous" hearing. Pohl says he got it, noted objection recorded.
- 08:54 Poteet also seemed to be asking for a curative instruction to the witnesses in light of remarks by SecDef Carter, GEN Dunford at Senate.
- 08:55 KSM attorney David Nevin clarifies that there will be more opportunities to do female guard discovery. Pohl highlights that off the record.

08:57 Did she in all or witness, "Staff Sgt. Jinx" as an NCOIC escort guard at the Gitmo's Camp 7 prison, where alleged 911 plotters are held.

08:58 SSG Jinx as a uniformed male guard who worked as an escort at the secret camp 7.

08:59 Did she testify as an object to subpoenaing it hard to do research on whether this woman has testified elsewhere.

09:01 She now sees SSG Jinx, who enlisted in 90, is based in Colorado National Guard as a Private since 2010. She's a married woman in attendance.

09:03 SSG says she's full-time Colorado National Guard, has dual MP specialty, 31 Bravo and Echo, Army cop and retrained detention.

09:04 She says she's done detention work in Guantanamo before or earlier "management" in the S-2 operation, overseas deployment.

09:05 KSM attorney David Nevin, questioner, asks when SSG Jinx got to Guantanamo: December 2014. She started as a watch commander.

09:06 Now SSG Jinx Detainee Movement Superior, says her facility is "cholesterol." She's based there for HVD captive arrival from Camp 7.

09:08 SSG Jinx's job typically is to lead and escort units out to court releases.

09:09 SSG Jinx says she was attached to Leavenworth HQ 256 MP Co.

09:11 Nevin asks if 9-month deployment is voluntary. Jinx: "I would've said didn't want to be recruited on this. I would've been excited."

09:12 SSG Jinx finished her 9-month deployment and then volunteered for another 9 months, along with 9 others from her Colorado NG unit.

09:16 SSG Jinx says she arrived in December with 140 Colorado Private, 24 other males, all the way from Camp 7 to Camp 7.

09:17 Now she's describing the Camp 7 guard force duties: There are guards on the tiers, guards on escort teams and guards in operations.

09:18 SSG Jinx says more members of Colorado unit are working out of Camp Delta administration of all at camp 7.

- 09:19 SSG Jinx says she has other fellow unit members "in t er c tions" she won't discu She's ure f their ole s cla ied.
- 09:20 N in trie to et her to d cribe t generically what t er a p 7 gn d MP do P o ector Bob Swann bj ct Pohl o e on
- 09:22 SSG says before Gitmo she trained to be a 31Echo at Fort Knox, didn't get specific Guantanamo training, idn't know he wa oing to amp 7.
- 09:23 N in N ne trained u out the i tor the en t amp 7 e ore ou got to amp 7? SSG inx No.
- 09:23 SSG: didn't even now Camp 7 exi ted ore got ere. Ne in Did you now they were GWOT det ine ? SSG: Ye .
- 09:24 N in D d ou kn w the were in RD BI ck St ? SSG: No. Nevin: Did you know they were tortured? SSG: No?
- 09:26 N in a i he k ew n thi g a out t e t re f er captive . Nope she a . ll deta nee et tr ated the s me no atter what.
- 09:28 Nevin tries to invoke a drunk driver analogy, is shut down. So, he says, all prisoners are treated the same, o matter what?
- 09:28 SSG Ji x "We don't e p i oner er D t inee . e treat th m all the a e "
- 09:30 SSG Jinx is talking about when detainees are moved from their cells: Recreation, medical and DSMP.
- 09:31 N in hat' DSMP? Ji x "Social ti e f ou will, with the i cuit (BS T) t am rcei e t a socialization time t a t onthly "
- 09:31 Nevin is asking about how these moves are done and SSG is discussing how a captive is cuffed in his cell through feed-tray slot.
- 09:33 Prosecutor Swann ject k or levance Ne in sa ol eath writ women c n't id touching captives, defense is exploring that.
- 09:34 Judge Pohl overrules, says this is about getting e cripti n o o ement

09:35 So we get the information from SSG Jinx about two guards, supervisor outside cell, captive inside handcuffed through slot in cell door...

09:38 SSG Jinx says three guards touch detainee inside the tier and our guard does something elsewhere. Camp 7

09:40 None to Camp E. However, court there are more guards, more training area and lubel. Uclear own guard touching

09:41 Now we're getting into detail of touching. Guard sticks in there, side cuff to detainee guard put an inmate in a restricted detainee

09:49 Now lots of back and forth on when, where guards do something control touch for something. Urt D p di er See transcript

09:53 Now that would like SSG Jinx isn't doing the touching. She's the supervisor, uns 35 contractors. E h II-- 2 of them women.

10:04 and we're in "comfortable" case.

10:08 reminder. Pohl isn't deciding female guard touching case today just starting to receive responses. He's trying to get something out of it.

10:16 Court back in session. I hope we learn whether 'they're not prisoners, they're detainees' changes the calculus, what they do at Leavenworth.

10:20 SSG Jinx says he was 193 P Co EO plan led the now open female guard discrimination complaints against Pohl. <https://t.co/V9OTTGQqch>

10:22 SSG Jinx says he can't tell Nevin how a guard filed complaints against the judge at her height. He says she's still on the ground.

10:23 Nevin asks the judge to instruct SSG Jinx say how many, unless he believes it's classified. Pohl excuses SSG to figure this out.

10:24 Judge Pohl tries to articulate the examination of national influence today just acting. He's not even arching issue.

10:26 Pohl says what does it matter if guards aren't "happy with the accommodation they were forced to live with or the atmosphere" #notouch

- 10:27 Pohl say di ng d eper into the O complaint sk "sliding into the collateral matter of the unlawful influence."
- 10:28 Sound ke Pohl told e in to f c n what they're oing now at the detention center to compl with i rder
- 10:28 SSG inx s bac nd a he did not p r onall l ge a discrimination complaint against the judge to her right.
- 10:32 SSG Jinx sa n Ja uar en d women in r 193d pe ation el tC mp 7 began di cu ing ow to "do ur anni g" to eet Pohl' der
- 10:33 N in a if a p 7 ha 14 etainee She ecli e to n wer ntil instru ted to nd then n ir up 14 etai ee at amp 7
- 10:34 N in a how man guard at C mp 7 SSG inx in 28 or ea h hi t
- 10:37 SSG Jinx brea own a p 7 ta ing Twenty hi t uard in a p 7 plu anagement, 35 cort , 2 ria nd 2 ide ce cu t di n
- 10:39 nd t ound like there' m steriou e 80 re tr op " ot on a p 7" that he won't i cu a be ndling a and l ve s e
- 10:40 udge Pohl he ight p pl wor in upport o ibly 60 eo le wor n the camp. Not all 80 are tr ined to e MP
- 10:41 SSG Jinx says she's not been promoted at #Guantanamo. Nevin: Do you expect to be promoted. SSG Jinx: Eventually.
- 10:42 N in a how man C p 7 detainee have xpre sed to in touched b f male uard SSG: "t' ot all of th m ir."
- 10:45 SSG Jinx and Nevin talk about how to rate female guards who can't touch detainees -- she writes no-fault, no-touch order on their eval.
- 10:48 SSG Jinx sa when he was C p 7 a i tant watch mander SOPs quired ale tro p onl fr sk g; but didn't frisk at that time.
- 10:49 Pohl hen ou wor ed t Ca p 7 o emale t oop fr ked watched hower Onl thi ga ed o-t ching or er? SSG Jinx That' correct.

- 10:50       evin a   SSG Jinx   he k ow what h   pe ed to his client, KSM before Gitmo. Jinx: "I have not been made aware of those details."
- 10:51       SSG Ji x "It'   y o e ion to treat each detainee qual " u le   he' be n given a medical explanation to ju ti i quit
- 10:54       In   on e to   evin que tion SSG inx a   he et some senators here at Guantanamo recently.
- 10:55       evin want to k ow a out it SSG inx " won't i cu that with ou. here we et nd what we i cu ed o no l v ce to thi "
- 10:56       Judge Pohl makes clear that he, not the soldier, ecid what' levant SSG Jinx excu ed or e in to a gue for detail n meeting
- 10:59       evin ar ue that SSG inx s a " ercipient witne to nt " that Nevi gue a a e ovoked t e f ale g ard i e
- 11:01       Judge rules against the line of inquiry. So we don't know which senators the soldier met, where, what the di cu ed ore thi te timony
- 11:02       N in   e' xplo ing "i t ere s a litical u o e to thi " not ju t operational ece it that Col. Health defines as "hardship."
- 11:04       i Harrin ton att rne for R mzi bin I Shi h a SSG Jinx bout er contact with W , i tant watch commander.
- 11:05       She says not often, maybe once a week. Her job was to meet a detainee to hear complaint, and sometimes Bin al Shibh did this.
- 11:06       H rri gton s a out to a   SSG Jinx bout the no se nd ibratio nd Swann ob cts a t' ot on topic.
- 11:07       Pohl tells Harrington this hearing is to take testimony on "a religious objection to the touching by the female guards."
- 11:08       H rri gton k i she p onall ppo e the judge' o-t ch or er SSG inx won't go there " hat a no ea ing n m r f ssi nal."
- 11:09       SSG Jinx, in terms of reverse handshake handcuffing, is "not aware of what they're currently doing -- up th re "

- 11:12 SSG Jinx says he is a soldier during detainee ops in Afghanistan. "I wanted to understand a little bit more about the religion."
- 11:22 Harrington is in the judge's order Bin Laden's mother is a female guard in the camp 7 which is forbidden. She doesn't know.
- 11:22 SSG Jinx says the captives of Camp 7 are detainees not prisoners "because they haven't gone through prosecution, sir."
- 11:26 LT Stirling Thoma wants to discuss the force cell extraction. During which the 'll di us if the recall is.
- 11:27 If so, BG Martins proposes doing a bifurcation. That would be a closed session when only judge and lawyer would get to listen.
- 11:28 I want to see we're in an extended session until 1:45 to accommodate the captive. From a middle prisoner.
- 12:46 @anjoudad He's the last Mauritanian at Guantanamo after Wednesday's release. He's not cleared. Story, here: <https://t.c/VpQ46D6EGI>
- 12:54 @uremuge Our complete 911 trial guide, who's the author? <https://t.c/fWgQ6SiM>
- 12:59 @GitmoWatch You just don't see it defined that way. It's in a #Guantanamo text.
- 12:59 @ic\_ento SSG Jinx says the captive Camp 7 detainees not because they haven't gone through prosecution, sir."
- 13:01 Judge Pohl back on the bench to resume testimony from SSG Jinx. F Thoma says that FC SOP is in the interest.
- 13:03 Now SSG Jinx describes F E "The 5 member team, me, 5-soldier team," takes control of each detainee body part -- 1 head, 4 limbs.
- 13:06 Prosecutor Bob Swann protests putting FCE talk. Thomas is absent. Detainee is not chosen to submit to female guard. FC.
- 13:10 Hawaii attorney Walter Ruiz asks judge, out of earshot of SSG Jinx, to ask her what complaints she lodged with government officials.
- 13:13 Ruiz wants to know SSG Jinx told the senator that we're that out of choice. A related security concern in camp 7 regarding the attorney.



- 13:13 Ruiz said it would speak to SSG Jinx credibility if she didn't see her front line supervisor.
- 13:15 Pohl: "I think that's the issue with the Congressional delegation re: the SS." Ruiz: "I'm not sure."
- 13:16 SSG Jinx says she doesn't know if she was working in Camp 7 before the no-touch order.
- 13:17 Pohl: "I'm not sure, as far as the no-touch order goes." SSG Jinx: "I'm not sure."
- 13:19 SSG Jinx tells Ruiz the male guards' morale was low. Ruiz: "I'm not sure." SSG Jinx: "I'm not sure."
- 13:21 Ruiz: "I'm not sure that the male guards' morale was low." SSG Jinx: "I'm not sure."
- 13:24 Ruiz is trying to figure out balance of power in the camp. Ruiz: "I'm not sure." SSG Jinx: "I'm not sure."
- 13:25 SSG Jinx: "By touching the detainees, the guards are responsible for more injuries than an armed guard." Ruiz: "I'm not sure."
- 13:30 Ruiz: "I'm not sure." SSG Jinx: "I'm not sure." Ruiz: "I'm not sure." SSG Jinx: "I'm not sure."
- 13:32 Jinx says there's a Hawawii medical order requiring different restraints, won't elaborate, says she doesn't know the reason for the order.
- 13:33 Judge Pohl: "I'm not sure how many people touch detainees on Camp 7 to court: Three at present, three in the van plus one more." (7)
- 13:34 Pohl asks SSG Jinx if there's any other kind of Camp 7 movement that would require more than 7 troops.
- 13:35 Pohl: "I'm not sure if Camp 7 would require seven troops touching a detainee?" SSG Jinx: "Yes."
- 13:38 Bin Attash attorney Cheryl Bormann is asking SSG Jinx how long ago she knew he'd be testifying this.

- 13:40 Her boss on Oct. 21 then prosecutor Swann told her last week she might be testifying today. By Swann, possibly about the female guard issue.
- 13:42 SSG Jinx Swann explained to her it's a possibility we would discuss the female guard issue.
- 13:45 Jinx says she nevered some 911 deen e tto ney ' questions on Oct. 22. By then, she said, she already met Congress members.
- 13:46 Borman says SSG Jinx reported to her that she was to discuss the testimony Swann brought out. Borman disagreed.
- 13:49 Borman out of earshot of SSG Jinx argues Jinx met some US Senators on female guard issue after defense lawyer Kowig heard a witness.
- 13:51 Borman says she said "I'm not saying she's lying. I don't know if she's lying."
- 13:53 Borman says she wants to know if SSG Jinx was on her way to the Senator's office because she was already a designated witness today.
- 13:56 SSG Jinx says she went to the "CAMP 7" operation cell with the Senators.
- 13:58 SSG Jinx says she went "purely based on curiosity," expecting to receive a status briefing on the female guard situation at Gitmo in Camp 7.
- 13:58 SSG Jinx said she went to the "female guard issue" and said it was "the female guard issue."
- 14:00 Judge Pohl cuts her off. Borman says it's relevant. Pohl: "Move on to another subject, away from the Congressional Delegation."
- 14:02 So we get a list on the "CAMP 7 DMS" word in the "Operation Management System". It tracks the complaint.
- 14:04 Borman says she's punished as last to question SSG Jinx. Pohl says not at all. [By me, though, maybe with the "Long distance"]

14:06 SSG Jinx says Camp 7 guards at the court require TS-SCI. All other Camp 7 guards require just secret clearance.

14:07 Bormann says the escort guard going to medical or gal pp int ent don't require S S Ju t to it in 911 court.

14:10 As 193d EO rep in Camp 7, SSG Jinx said, she gave out forms to soldiers but not to the female guards who filed against Judge Pohl.

14:12 SSG Jinx says he got "individual weapons training" in individual weapons training, "specific"

14:13 SSG Jinx says he met Ghani Khan in the area where he met Mu Lim

14:15 Judge Pohl just referred to "the release" then referred to "the detainee"

14:17 @PradhanAlka Twice.

14:21 Bormann asks SSG Jinx if as AWC or escort Bin Attash "a wedding voluntarily be touched female" SSG Jinx: No

14:21 Judge Pohl indicates that SSG Jinx' testimony ends today, at 4 p.m.

14:24 SSG Jinx doesn't know which Senator he met but he knows their state. "One of the states are the Virginias and New Hampshire."

14:29 From left to right, posing at #Gitmo last week with troops: @SenatorTimScott, S.C., @KellyAyotte, N.H., @SenCapito, W.VA. <https://t.co/iCTSDgNHKa>

14:32 He got 30 minutes or so testimony now The Camp 7 O O last 2 months and Major P He from Fort Leavenworth

14:33 Major OIC is being questioned by Nevin but he looks at the prosecution table after he answers each question, sometimes during.

14:36 Major OIC says he went to Gitmo for 24 months at Fort Leavenworth and that he was in Afghanistan.

14:37 Maj. OIC says his focus is "their humane, care and treatment" not all their background

- 14:38 A little context here, KSM attorney David Nevin is starting question the a or, will get a transcript and cut up December
- 14:40 Major OIC asks the "read now at the indicated" about 911 detainee but got specific training their back site experience
- 14:41 Major OIC is a news consumer: He says he learned, before getting to Gitmo, of female guard no-touch situation online, maybe from FOX or CNN.
- 14:42 Major OIC said at the same time of no gender specific instruction when put together in a 7 guard team
- 14:44 Major OIC says he has had no disputes or refusals to provide detainee his two month tenure in a 7.
- 14:45 Major OIC probably doesn't know about the no-touch order governing 911 commission rule almost during their change over.
- 14:46 Major OIC says he has less than 140 troops under his command 10 percent women Colonel Heath said order restriction on training
- 14:47 Major OIC doesn't want to allow male female guard he's got on the tiers at Camp 7, citing #Opsec.
- 14:48 Pohl asks how many people work at camp 7 with contact with detainee or supervising Major OIC says 13 none don't work at camp
- 14:50 Pohl asks if between 90ish and 130ish could touch detainees, then gives up -- instructs Swann to give Nevin numbers under seal.
- 14:52 Nevin gives it a whirl, as is between 80 and 120 Camp 7 troops could have contact with detainee  
Major: Yup
- 14:52 Nevin: Ten percent are women? Major OIC: Yup. Nevin: So 8 to 12 female women? Major OIC: Yup.
- 14:53 Major OIC asks in his two month tenure and other detainee object to being touched women (not all women are touching though).
- 14:55 Major OIC: "Female guards do not conduct frisk searches or observe detainees in the shower." Adds no EO complaint made in his tenure.

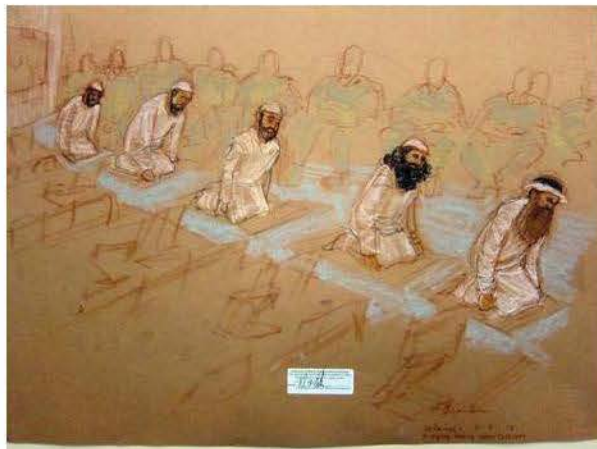
- 14:56 Major O " wa pr nt on isl nd when the enator were here" but adds he didn't sit in on the senator-soldier meeting.
- 15:00 N in a Major O f e uggested that SSG inx eet wit the nator .
- 15:03 Major O C ay he ga e ir rce B ig Gen R nald E Paul, then deputy JTF commander, a list of females to meet with the senators.
- 15:07 Paul' t Git o, en p ced But that' e nteagudo at ar ri t with @Kell yotte the hoto tt s://t.co/iCTSD NHKa
- 15:08 With that we're done with this 2-week session. KSM tt ney Da id N in get rmi ion to eet with i nt until 5 mo e c to 7
- 16:10 N w we a e BG Martin oing a wrap up ew n er nce e en e aw er e gn d MO got r are getting 300K ag i co er
- 18:38 Sha er amer wa n't the st #Git o capti e with fa l Britain nother captive' kid v N tt g m tt s://t.c /Qn Ww8 U9
- 21 50 Today at the warcourt on a ng #Guantanamo a 911 ea ing wr p up with potlight female uard [@MiamiHerald](https://t.co/4bzOY2Aywl)

**H**    **B**

GUANTÁNAMO OCTOBER 30, 2015 8:02 PM

# Sept. 11 hearing wraps up with spotlight on female guards

## HIGHLIGHTS



1 of 2



BY CAROL ROSENBERG

[croseberg@miamiherald.com](mailto:croseberg@miamiherald.com)

GUANTANAMO BAY NAVY BASE, CUBA Defense lawyers for the alleged 9/11 plotters capped two weeks of hearings with testimony about the judge's 9-month-old order restricting female guards' actions that in the same week drew top Pentagon brass condemnation.

The judge, Army Col. James L. Poh, however, made clear that he would not rule on whether to rescind his controversial no-touch order regarding female guards before hearings resume in December, when more guards testify.

At issue is whose rights trump whose: Female Army guards who want to do the same duties as their male counterparts, except maybe frisk or supervise showers of the alleged Sept. 11 plotters at a secret lockup here, Camp 7. Or the Muslim captives who argue that being touched by women other than close female relatives violates their traditions and religion.

Since January, Pohl has forbidden female guards from touching the five men awaiting a death-penalty tribunal as they go to and from court and legal meetings until he hears full testimony and legal argument—an order that infuriated some in the Pentagon and U.S. Senate.

So much so that, before this week's hearings, a three-member Congressional delegation came to this base on a fact-finding mission and during a Senate Armed Services Committee hearing this week Defense Secretary Ash Carter and Gen. Joseph Dunford Jr., chairman of the joint chiefs of staff, declared Pohl's order "outrageous."

In court, a Colorado National Guard staff soldier called "Staff Sgt. Jinx" said she had only worked at Camp 7 during the time of the order but described it as both a scheduling and performance review change for supervisors. Female soldiers who can't serve on the 9/11 defendants' escort squads—three- to six-troop teams that move the alleged terrorists from place to place in shackles—are at risk of having a vacuum in their service records.

Defense lawyers had first asked Pohl to delay hearing any evidence on the question this week in light of the fresh comments by Pentagon brass at the Senate. Attorney Walter Ruiz, for alleged conspirator Mustafa al-Hawsawi, on Friday called the remarks illegal, and "deliberately aimed at manipulating and orchestrating the reversal of a judge's order in a military courtroom."

So, with Sgt. Jinx in court, the lawyers focused on what input she gave members of Congress who visited the base on a female-guard, fact-finding mission focused on the judge's order.

"I won't discuss that with you. Where we met and what we discussed is of no relevance to this," the Colorado National Guard soldier told attorney David Neven, the death-penalty defender for the alleged mastermind Khalid Sheikh Mohammed. Pohl cautioned the soldier that the judge decides what is relevant and then in the course of the day allowed lawyers to exact scant few details.

Jinx's boss, a major who was not identified, said senior prison leadership asked for a list of female guards who might meet with members of Congress. The sergeant said she went knowing it was about the judge's order but expecting the politicians to brief her, not she them. She would not elaborate.



Jinx said she thought she met with the politicians before these hearings began Oct. 19. She didn't recall the politicians' names but listed the states "one of the Carolinas, one of the Virginias and New Hampshire" clearly referring to the Oct. 23 fact-finding mission by Sens. Kelly Ayotte of New Hampshire, Tim Scott of South Carolina, and Shelley Moore Capito, of West Virginia.

They arrived after the sergeant was told she would be called as a witness.

Pohl, who as a colonel would be retired from the Army were he not serving as chief judge of the Guantánamo war court, was repeatedly dismissive of the idea that political and military leaders could influence his decisions making, but said he would allow argument on that at a later hearing.

Earlier this year, when the Pentagon ordered war court judges to move to Guantánamo to speed along the trials, Pohl froze a Sept. 11 trial proceedings until Deputy Secretary of Defense Bob Work withdrew the move-order which he did two days later.

The judge reminded the lawyers about that episode on Thursday and said if the leadership actively constituted "unlawful command influence" illegal meddling in the independence of the judiciary he'd deal with it.

"I'm not saying you won't get a remedy. I'm not saying this is not an issue," Pohl told a Marine defense attorney. "I'm just saying it's not ripe, and I fail to see why it cannot be handled in the normal course of business."

That essentially provided the defense attorneys with more time to look into the timing of the senators' fact-finding mission and the senior Pentagon brass' remarks before hearings resume in mid-December.

Army Brig. Gen. Mark Martins, the chief prosecutor, said the two-week session had made good progress:

*Carol Rosenberg: 305-376-3179, @carlrosenberg*

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EX      C

GUANTÁNAMO DEC MB R 6, 2015 4:32 PM

# Former public testimony disappears from Guantánamo transcripts

## HIGHLIGHTS

The open war court hearing lasted 5 hours; chunks of it vanished from court transcript

Prosecutor defends retroactive censorship as a national security necessity

Experts say after-the-fact redaction is at odds with prison transparency commitment

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~~UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT~~

1 A. Yes.

2 Q. [REDACTED]

3 A. [REDACTED]

4 [REDACTED]

5 Q. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 A. [REDACTED]

9 Q. [REDACTED]

10 [REDACTED]

11 A. [REDACTED]

12 Q. [REDACTED]

13 [REDACTED]

14 A. [REDACTED]

15 Q. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 A. [REDACTED]

19 Q. [REDACTED]

20 [REDACTED]

21 A. [REDACTED]

22 Q. [REDACTED]

23 [REDACTED]

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BY CAROL ROSENBERG

[croseberg@miamiherald.com](mailto:croseberg@miamiherald.com)

GUANTANAMO BAY NAVY BASE, CUBA For hours on a Friday, a staff sergeant using the fake name “Jinx” testified in open court about her yearlong work here at a prison for suspected terrorists once considered the CIA’s prized war-on-terror captives.

An Army cop by training, she signed up with the National Guard in the ’90s, and now runs 35 troops, just two of them women, tasked with escorting captives from their secret Camp 7 prison to Camp Echo II, where the alleged Sept. 11 mastermind Khalid Sheikh Mohammed and other captives meet with their lawyers.

Around 120 troops are assigned to Camp 7, which holds 14 captives. But just half of them actually go up to the inside prison.

On a given shift, she said, there are 20 guards, 35 escorts, two librarians, two evidence custodians and on-site management.

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**OF THE 379-PAGE TRANSCRIPT, MORE THAN 130 PAGES HAD REDACTIONS AND 37 WERE FULLY BLACKED OUT.**

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If a captive resists an order, it takes a “five-man team, excuse me, five-soldier team,” to force him, Jinx testified; one to take charge of a captive’s head and four more soldiers each assigned to a limb.

The few reporters who went to court or watched on video feeds from Guantánamo to Fort Meade, Maryland, as well as a dozen legal observers and the mother and sister of a man killed in the World Trade Center on Sept. 11, 2001, heard her say all that in open court.

But as far as the public court records concerned, those things were never said.

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“

**THERE IS A RULE THAT ALLOWS *EXPOSTREDACTION*.**

Army Brig. Gen. Mark Martins, chief war court prosecutor

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In a first for the war court, intelligence agencies scrubbed those and other facts including questions asked by the judge, Army Col. James L. Pohl from a 379-page transcript of the Oct. 30 pretrial hearing in the 9/11 death-penalty case.

A Miami Herald examination counted more than 130 pages with blacked-out public testimony. Of them, 37 pages are completely redacted in the latest challenge to the remote war court's motto, "Fairness, Transparency, Justice."

Typically the court releases the transcripts "word for word with no redactions," chief prosecutor Brig. Gen. Mark Martins told reporters Saturday, defending the "rare" exception of "ex-post redactions" as a security necessity.

"I have not encountered it actually thus far for a transcript to be redacted. But there is a rule that enables that," he said. "The government is fully entitled to look and say in the aftermath ... 'It ought to be protected, it could be damaging.'"

At issue on Oct. 30 was Pohl's January restraining order forbidding female guards from touching the alleged Sept. 11 plotters as they come and go from court and legal meetings, an accommodation to their Islamic traditions. The restriction recently sparked outrage among top Pentagon brass and some in Congress. The issue is unlikely to be resolved before a closed session in February to hear classified testimony.

But now, in light of the reactive redacting, case lawyers and the Sept. 11 trial judge will spend Monday huddling in closed court — no public, none of the accused conspirators listening — as they discuss how to go forward with the testimony on Pohl's controversial restraining order.

Yale Law School lecturer Eugene Fidell, whose specialty has long been military justice, said the court has a 40-second audio delay to the public and a security officer assigned to block the feed with white noise and warned that the after-the-fact censorship could be "the new normal."

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“

**THE MILITARY HAS A REAL ALLERGY TO TRANSPARENCY.**

Yale law instructor Eugene Fidell, military law expert

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"The military has a real allergy to transparency," said Fidell after declaring himself dumfounded by the effort to "sanitize stuff that has already been uttered in open court."

“Obviously there are things that can and must be kept secret,” he said. “But to try to get the genie back in the bottle for information that has already been uttered in a public proceeding — especially where there’s a time delay to protect classified information — is preposterous.”

American University law professor Steve Vladeck says “there’s actually a fair amount of precedent for the government taking material that was in the public domain, and then choosing to classify it.”

He points to the current periodic release of State Department emails from the private server of former Secretary of State Hillary Clinton that were sent in an unclassified fashion and are being retroactively reviewed and in some instances redacted before being released to the public.

So, while not unprecedented, says Vladeck, “it *does* provide further evidence of the extent to which the prosecution’s repeated insistence on transparency often rings hollow.”

Martins, the chief prosecutor, countered: “It was uttered. There were people who heard it. It wasn’t being hidden in that sense. It was part of a hearing that is trying to be as transparent as possible.”

He added: “Public utterance of it is one thing, putting it on a website in the way it can be viewed is another and there’s an entitlement to redact. There is a rule that allows *ex post* redaction.”

Martins declined to say which intelligence agencies were involved in the censorship but said the prison’s higher headquarters at the Southern Command, the Department of Defense and other government agencies all have interests. The process took a full month and, the Herald has learned, included a detailed explanation of the calculus for censorship emailed to case defense attorneys by a 9/11 prosecutor, Clay Trivett, that the prosecution won’t release.

Monday, defense attorney Jay Connel, representing alleged 9/11 conspirator Ammar al-Baluch, said the redactions went too far, and cited an example:

Censors backed out unclassified descriptions of how the military conducts a forced extraction, he said, referring to the five-troop tackle-and-shackle technique to subdue a disobedient captive.

Meant me, the judge has not yet set a trial date for the five men accused of orchestrating the Sept. 11, 2001, attacks that killed nearly 3,000 people in New York, the Pentagon and a Pennsylvania field. “These are pretrial proceedings not going to guilt or innocence,” Martin told reporters, pledging an open trial. “These are important distinctions in deciding whether something is public.”

Since last they met on the topic, Oct. 30, one thing has changed: The Pentagon is opening a combat post to women.

Defense attorney Cheryl Bormann, representing alleged plot deputy Walid bin Attash, dismissed Secretary of Defense Ash Carter’s recent decision as irrelevant to the female-guard escort question that emerged last year with the arrival of temporary Camp 7 forces, including women assigned to escort squads. “It’s really not an equal opportunity issue,” she said. “It’s really a religious accommodation issue.”

*Editor’s Note: This story was updated on Dec. 7 to indicate female guard testimony is likely to continue in February. We also inserted an example of overreach in redaction cited by a defense attorney.*

*Carol Rosenberg: 305-376-3179, @arolrosenberg*

Our reporter live-tweeted the Oct. 30 hearing, which has been retroactively censored. [Click here](#) for a compilation of those tweets.



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# **ATTACHMENT**

## **B**



DECLARATION OF DAVID A. SCHULZ

I, DAVID A. SCHULZ, hereby declare under the penalty of perjury:

1. I am a member of Levine Sullivan Koch & Schulz, LLP, counsel for Press Movants in this action. I submit this declaration in support of the Press Movants' motion to unseal the 30 October 2015 transcript of public proceedings.
2. On December 5, 2015, I contacted Chief Prosecutor, Brigadier General Mark Martins regarding the filing of a transcript of a public pre-trial proceeding in the matter of *United States v. Mohammad, et al.*, held on October 30, 2015. The transcript had been subject to extensive redaction of testimony given in open court.
3. In response, Gen. Martins explained the government's position as to its authority to redact a transcript of a public proceeding. On December 7, I provided Gen. Martins with legal authority demonstrating that the redactions of public testimony are generally prohibited by the constitution and were not proper in this case.
4. On December 8, Gen. Martins referred Press Movants to Jason Foster at the Office of General Counsel, who indicated on December 11 that Press Movants "raised important considerations" and, as a result, the government was "going to conduct further review of the redacted transcript with [Press Movants'] concerns in mind."
5. I followed up with Mr. Foster on December 15, 23, and 28, 2015, and again on January 5, 2016, regarding the Government's progress in reviewing the transcript. The Government to date has been unable to provide any assurance that an unredacted transcript will be made available.
6. Press Movants now seek relief from this tribunal because the absence of a full and complete transcript of the public proceedings in this prosecution constitutes an ongoing violation

of their rights under the First Amendment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 6th day of January, 2016 at New York, New York.

  
DAVID A. SCHULZ

# **ATTACHMENT**

## **C**

Filed with TJ  
8 January 2016

Appellate Exhibit 400 (Press)  
Page 51 of 58

**MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA**

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN 'ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL-AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</p>	<p><b>CIVILIAN COUNSEL NOTICE OF APPEARANCE</b></p> <p>6 January 2016</p>
--	---

Pursuant to procedures of court/instruction for counsel, I, DAVID A. SCHULZ, hereby provide notice to the Military Judge of my appearance on behalf of The Miami Herald, ABC, Inc., Associated Press, Bloomberg L.P., BuzzFeed, Inc., CBS Broadcasting Inc., Dow Jones & Company, Inc., First Look Media, Inc., Fox News Network, Guardian US, Hearst Corporation, Inc., The McClatchy Company, The New York Times Company, The New Yorker, Reuters America LLC (Reuters), Tribune Publishing Company, LLC, and WP Company LLC (d/b/a The Washington Post) (collectively, "the Press Movants"). My office address, phone numbers, and email address are:

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I am an active member in good standing licensed to practice in the following jurisdictions: New York, the District of Columbia, the U.S. Supreme Court, the U.S. Courts for Appeals for the Second, Third, Fourth, Ninth, Tenth, and District of Columbia Circuits, and the

U.S. District Courts for the District of Columbia and the Southern, Eastern, Western, and Northern Districts of New York.

Dated: 6 January 2016

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By:   
David A. Schulz

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*Counsel for Press Movants*

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## D

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8 January 2016

Appellate Exhibit 400 (Press)  
Page 54 of 58

**MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA**

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN 'ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL-AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</p>	<p><b>CIVILIAN COUNSEL NOTICE OF APPEARANCE</b></p> <p>6 January 2016</p>
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Pursuant to procedures of court/instruction for counsel, I, MATTHEW L. SCHAFER, hereby provide notice to the Military Judge of my appearance on behalf of The Miami Herald, ABC, Inc., Associated Press, Bloomberg L.P., BuzzFeed, Inc., CBS Broadcasting Inc., Dow Jones & Company, Inc., First Look Media, Inc., Fox News Network, Guardian US, Hearst Corporation, Inc., The McClatchy Company, The New York Times Company, The New Yorker, Reuters America LLC (Reuters), Tribune Publishing Company, LLC, and WP Company LLC (d/b/a The Washington Post) (collectively, "the Press Movants"). My office address, phone numbers, and email address are:

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I am an active member in good standing licensed to practice in the following jurisdictions: Maryland, the District of Columbia, the U.S. Courts of Appeals for the Ninth and

District of Columbia Circuits, and the U.S. District Courts for the District of Columbia and the District of Maryland.

Dated: 6 January 2016

Respectfully submitted,

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*Counsel for Press Movants*

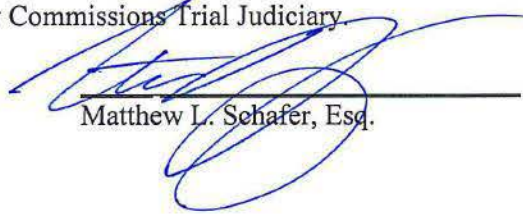


# ATTACHMENT

## E

**CERTIFICATE OF SERVICE**

I certify that on the 7th day of January 2016, I filed AE400 **PRESS MOVANTS' MOTION TO UNSEAL 30 OCTOBER 2015 TRANSCRIPT OF PUBLIC PROCEEDINGS** with the Office of Military Commissions Trial Judiciary.



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Matthew L. Schafer, Esq.