

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

UNITED STATES OF AMERICA

v.

**KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH
MUBARAK BIN ‘ATTASH,
RAMZI BIN AL SHIBH,
ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM
AL HAWSAWI**

AE 555JJJ

RULING

**Mr. al Baluchi’s Motion to Compel
The Convening Authority to Produce
a Complete Transcript of Mr.
William Castle’s Testimony on
13 November 2018**

22 March 2019

1. **Background.** On 4 March 2019, Mr. Ali (a.k.a. Mr. al Baluchi) moved¹ the Commission to compel the Government to produce a complete transcript of Mr. William Castle’s testimony before the Commission on 13 November 2018.² Specifically, Counsel sought a written verbatim transcript of Mr. Castle’s testimony to include “pauses, filler sounds, and non-verbal vocalizations that may reflect on his credibility” so that, “future reviewing authorities may properly consider the credibility of this crucial witness.”³ Mr. Ali argued that, unlike the record of trial provisions of the Uniform Code of Military Justice (UCMJ), those of the Military Commissions Act of 2009 (M.C.A. 2009) require the Government to produce a written verbatim transcript to be considered complete which would require the inclusion of pauses and non-verbal vocalizations.⁴

On 15 March 2019, the Government responded,⁵ opposing the motion because while the M.C.A. 2009 requires Government production of a written verbatim transcript, applicable case law regarding the meaning of the word “verbatim” does not support the Defense interpretation.⁶

¹ AE 555GGG (AAA), Mr. al Baluchi’s Motion to Compel The Convening Authority to Produce a Complete Transcript of Mr. William Castle’s Testimony on 13 November 2018, filed 4 March 2019.

² *Id.* at 1.

³ *Id.*

⁴ *Id.* at 4-5.

⁵ AE 555HHH (GOV), Government Response To Mr. Ali’s Motion to Compel The Convening Authority to Produce a Complete Transcript of Mr. William Castle’s Testimony on 13 November 2018, filed 15 March 2019.

⁶ *Id.* at 5-7.

The Government noted that the unofficial/unauthenticated written transcript of Mr. Castle’s testimony consisting of 255 pages contains “at least fourteen (14) separate occasions where the witness used vocal segregates and paused as he worked to articulate his recollections of the events.”⁷

On 21 March 2019, Mr. Ali replied⁸ reiterating his argument that the current unofficial/unauthenticated written transcript of Mr. Castle’s testimony is not verbatim or even substantially verbatim.⁹

2. **Analysis.** At its heart, Mr. Ali’s motion seeks to ensure the record actually captures the pauses, filler sounds, and non-verbal vocalizations made by Mr. Castle when he testified so that future reviewing authorities may, if necessary, access his credibility. To achieve this aim, the Commission finds it unnecessary to decide what, if any, distinction exists between the U.C.M.J. and the M.C.A. 2009 with regard to what is a verbatim or substantially verbatim record of trial. Should a reviewing authority deem it necessary and appropriate to conduct an assessment of Mr. Castle’s credibility beyond the existing transcript, the best evidence of his inflection, pauses, filler sounds, and non-verbal vocalizations is captured in the actual audio recordings of his oral testimony. Accordingly, the Commission will order the Government to segment the audio recording of Mr. Castle’s testimony on 13 November 2018 and attach it to the record as the next appellate exhibit in the AE 555 series.

3. **Ruling.** The motion is **GRANTED IN PART** as provided in the Order in paragraph four (4). The motion is otherwise **DENIED**.

⁷ *Id.* at 8.

⁸ AE 555III (AAA), Mr. al Baluchi’s Reply to Government Response To Mr. al Baluchi’s Motion to Compel the Convening Authority To Produce a Complete Transcript of Mr. William Castle’s Testimony on 13 November 2018, filed 21 March 2019.

⁹ The reply states that Mr. Castle’s testimony “spans 210 pages.” *Id.* at 5.

4. **Order.** Within **14 days** of the issuance of this ruling, the Government will segment the audio recording of Mr. Castle's testimony on 13 November 2018 and add it to the record of trial as the next appellate exhibit in the AE 555 series.

So **ORDERED** this 22nd day of March, 2019.

//s//
K. A. PARRELLA
Colonel, U. S. Marine Corps
Military Judge