

**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>AE 661</p> <p>ORDER</p> <p>Trial Conduct Order</p> <p>13 September 2019</p>
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1. **Purpose.** In an effort to address any actual or potential concerns of Counsel related to the procedures to be in place for the questioning of witnesses during the September 2019 session of Commission hearings, in accordance with (IAW) Military Commission Rule of Evidence (M.C.R.E.) 611, Mode and Order of Interrogation and Presentation, the Commission provides the following procedures to be implemented by Counsel conducting direct and cross-examinations during the current session, as well as any Counsel making an objection to evidence or testimony of a witness during this session:

2. **Procedures for All Objections:**

- a. Counsel will stand and state his/her objection.
- b. The witness will not answer the question until a ruling has been made.
- c. After being acknowledged by the Military Judge and asked for a basis, the objecting Counsel will respond with the specific basis or bases for the objection.
- d. The Military Judge will then ask for a response from the non-objecting Counsel, as needed.

e. If additional information is necessary to rule on the objection, the Military Judge will ask for further information from the objecting Counsel.

f. The Military Judge will rule on the objection.

g. Counsel will refrain from making speaking objections prior to being asked for information beyond the basis of the objection by the Military Judge.

3. Procedures for Objections to Classified Questions and Answers.

a. In the event Counsel unintentionally asks a question that calls for classified information and the Government intends to protect the classified information, a Trial Counsel should stand and state that the Government objects to the question IAW M.C.R.E. 505(i)(3).

b. The witness should not respond to the question until an objection has been ruled upon by the Military Judge.

c. Upon recognition by the Military Judge that an objection under M.C.R.E. 505(i)(3) has been made, Trial Counsel shall refer the Military Judge and Defense Counsel to the specific paragraph in AE 658 (GOV) or protective order, in the most current version, that covers the information at issue without divulging the content of the paragraph.

d. The Military Judge will then issue a ruling.

e. If, at any time, any Counsel believes that a spill of classified information has occurred, said Counsel may immediately ask the Military Judge to cut the unclassified feed to prevent further dissemination.

f. The parties shall adhere to a one counsel per cause rule, but the parties may ask leave of the Commission to deviate from this requirement. Additionally, if a witness is testifying and a party believes that an Accused's interests are impacted by the evidence, any Counsel from that party may make an objection. In recognizing that evidence may be relevant for one Accused and

not another, the Military Judge will note the objection, and prior to considering the evidence against the objecting party, the Military Judge will rule on the objection at an appropriate time. However, because the objection was made, it will not be considered waived, even if the ruling is issued at a later time. No evidence will be considered against any Accused for which an objection has been made without a formal ruling by the Military Judge.

g. IAW M.C.R.E. 505(i)(3)(A), Trial Counsel may object to any question or line of inquiry that may require a witness to disclose classified information not previously found to be admissible.

h. Counsel may ask questions of a witness in an open session concerning the types of limitations the classification of evidence has had on the ability of the Defense to present its defense and gather information consistent with AE 658 (GOV), existing protective orders, and the classification of the evidence at issue. However, such questions should be worded in a way as to not require or seek the divulgence of classified information, which would include questions that would on their face indicate the existence of classified evidence, if the existence of said evidence in and of itself is classified.

i. These procedures are limited in applicability to the current September 2019 session and may be modified by the Military Judge based on observations and consultation with the counsel.

So **ORDERED** this 13th day of September, 2019.

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W. SHANE COHEN, Colonel, USAF
Military Judge
Military Commissions Trial Judiciary