

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

Government Targeted Brief
on Courtroom Closures

Enclosure 6

29 March 2013

Encl 6 of
APPELLATE EXHIBIT 511
PAGE REFERENCED: _____
PAGE _____ OF _____ PAGES

UNCLASSIFIED

**DEPARTMENT OF THE NAVY
NAVY-MARINE CORPS TRIAL JUDICIARY
CENTRAL JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL**

U N I T E D S T A T E S

v.

**Matthew Diaz
LCDR, JAGC, USN**

**COURT ROOM PROTECTIVE
ORDER**

11 MAY 2007

1. This ORDER supplements the Closure Order issued this date.
2. Pursuant to the findings and conclusions in this court's Closure Order, the court finds that an additional Protective Order is required to address the orderly and secure process of court proceedings in which classified information might be present and might be published or otherwise disclosed. This Protective Order is issued by the presiding military judge, acting under his supervisory authority to ensure a fair and expeditious trial, while protecting the national security interests of the United States and pursuant to M.R.E. 505. The procedures set forth in this Protective Order apply in addition to those previously set forth in the Protective Order and Protective Order Modification #1 (Appellate Exhibits IV and X), the terms of which are incorporated herein by reference.
3. In determining the protective measures required in this case, the court has carefully reviewed the physical environment in which proceedings in this case are to be held, the needs of the parties for access to classified information and the need for public access to this court-martial. The court has taken judicial notice of and fully considered the provisions of the Department of Navy Information Security Program (SECNAVINST 5510.36A of 6 October 2006 and M-5510.36 of June 2006). The court has balanced the national security needs and protective policies of governing regulations against the rights of the accused to present an adequate defense at a public trial, and the need for orderly proceedings.
4. The court concludes that the following requirements are fully protective of information classified at the SECRET level and that no lesser means than those set forth below would adequately safeguard the classified information at issue in this case. While more stringent measures could perhaps provide a larger margin for error, that additional caution would provide no additional actual security. As a result, more stringent measures such as prohibiting the presence of properly protected classified information in open sessions of court would be an unjustifiable limitation on the accused's right to present an adequate defense at a public trial and would impede the orderly proceedings in this case. The following protective procedures are, therefore, the least intrusive of the accused's rights as is possible under the circumstances and the implementation of these measures will reduce the number and duration of closed sessions.

UNCLASSIFIED

APPELLATE EXHIBIT LXXX
PAGE 1 OF 4
APPENDED PAGE _____

UNCLASSIFIED

5. By copy of this Protective Order, the CSO is directed to immediately inform the court of any change in circumstances that, in his opinion, necessitates a modification of the security posture in, or immediately adjacent to, Courtroom No. 1 during the proceedings in this case.

6. Presence of Classified Documents. Open sessions of court are conducted in an open courtroom environment in which personnel are permitted to be present that do not have appropriate clearances or access to classified information. Therefore, classified documents shall only be brought into an open session of court if that document is required for reference during that session. Since classified material will be used during some open sessions, the following requirements are ordered:

- Central Circuit local rules for decorum in the courtroom shall be affirmatively and strictly enforced during all sessions of court. All photographic, sound or video recording equipment, any other recording device, cell phones, and all other electronic communication devices, are prohibited from entering the courtroom. Pagers or other electronic devices that are not capable of recording or transmitting are permitted in the courtroom, but must be cleared for entry by the CSO and must be placed in silent mode.
- All classified documents must be in the control of properly cleared personnel at all times.
- Any person carrying classified information into an open session of court must first notify the CSO of the number of documents and classification level of any such documents.
- All classified documents must be properly marked in accordance with regulations governing the classified information contained in the document.
- Classified documents may be carried into the courtroom, but must be contained in a briefcase or closed folder.
- All classified documents must be protected by affixing thereto a classified document cover consistent with regulations governing the classification level.
- When not in active use at counsel table, the podium or witness stand, classified documents shall remain inside a closed briefcase or a closed opaque folder. When being used by counsel or a witness, the document must remain covered, except the cover may be raised as needed by counsel or a witness to see the document's content. However, when the cover is raised, the classified document must remain flat on counsel's table, the podium, or witness stand.
- The CSO shall ensure that no classified document in use during any open session is visible from the gallery. If necessary, gallery seating will be removed to a distance from the bar sufficient to prevent inadvertent disclosures by counsel during use of classified information at counsel table and sufficient to protect against any intentional attempt by a gallery member to gain visual access to classified information. If, in the opinion of the CSO, there is insufficient distance to ensure security of classified information at counsel table from persons in the gallery, the CSO shall immediately so inform the court.

UNCLASSIFIED

APPELLATE EXHIBIT LXXX
PAGE 2 OF 4
APPENDED PAGE _____

UNCLASSIFIED

- If a classified document is referred to, offered into evidence, or otherwise utilized during an open session, it must remain under a protective cover sheet and may only be referred to by exhibit number, and, if necessary, by its classification level and the unclassified title of the document. No disclosure or discussion of classified material contained in any document is permitted during open sessions of court.
- At the conclusion of any open session of court during which classified information was present, the CSO will verify with the parties that all classified information is accounted for, secure, and properly removed from the courtroom. The parties are individually responsible for the proper handling and storage of classified material in their control.
- The CSO shall be present in the courtroom during all open and closed sessions of court. He shall ensure that there is a visual mechanism, such as a remotely activated signal light, by which to notify the military judge in the event the CSO detects that an inadvertent disclosure of classified information is imminent or has occurred.

7. Discussion of Classified Information. No classified discussion may occur during open sessions of court. If any party determines a discussion of classified information is necessary, that party shall request a recess or a closed session of court. The latter shall be requested in accordance with M.R.E. 505 and the prior orders of this court.

8. Closed Session Procedures.

a. In the event the presiding military judge directs a closed session, all persons not on the approved access list shall depart from the courtroom and the passageways immediately adjacent thereto. A recess will ordinarily be used to facilitate clearing the courtroom of unauthorized personnel. Thereafter, a sentry with a current copy of the access list will be posted at the main entrance to Courtroom No. 1. Under the supervision of the CSO, that sentry may admit only those persons presenting positive identification and who are listed on the access list. Other entrances to the courtroom will be secured from the inside, allowing emergency egress only. If other entrances cannot be so secured, additional sentries shall be posted to prevent access via these entrances. All personnel seeking admittance to the courtroom will be directed to the main entrance. No person may be permitted to loiter in the passageways immediately adjacent to Courtroom No. 1 during closed sessions unless that person is on the access list.

b. Prior to commencement of a close session, the CSO will verify that the unclassified recording system has been disabled by the court reporter.

c. Prior to commencement of a close session, the CSO will verify that all external audio and video feeds have been disabled and will provide an access list to the military judge and to counsel for both parties, which list will be inserted into the record.

d. In the event counsel or a witness requires the use of computer media to display classified information, the proponent counsel shall coordinate use of such media with the CSO, who must first authorize use of any electronic equipment inside the courtroom.

UNCLASSIFIED

APPELLATE EXHIBIT LXXX
PAGE 3 OF 4
APPENDED PAGE _____

UNCLASSIFIED

e. When satisfied that the actions set forth in paragraphs a. through c. are completed, the CSO shall inform the military judge that conditions for a closed session have been met. The military judge will then call the closed session to order.

f. At the conclusion of a closed session, the CSO will ensure that any classified electronic system, including media, is properly secured. He will also collect any notes made by the trial counsel and the military judge and review those notes for the presence of any classified information. If these notes contain classified information, the CSO shall have those notes properly secured or destroy the notes after consultation with the drafter. The CSO shall also make arrangements with the defense for the review and proper disposition of any classified defense notes. Finally, at the conclusion of a closed session, the CSO shall verify that all classified documents have been collected and secured as set forth above, that is, removed from the courtroom to proper storage, or placed inside briefcases or closed folders on counsel table. When all classified information is properly secured, the CSO shall advise the military judge that the courtroom is prepared for an open session.

g. At a recess of court prior to members' deliberations, the CSO shall inventory all classified exhibits that have been admitted into evidence and that are to be provided to the members during their closed session deliberations. During the open session prior to deliberations, the senior member shall be provided classified and unclassified exhibits and he will be the custodian of all exhibits used by the members in closed session. At the conclusion of deliberations and upon returning to an open session of court, the senior member will return all exhibits to the CSO, who shall inventory and verify that all classified material is accounted for and properly secured.

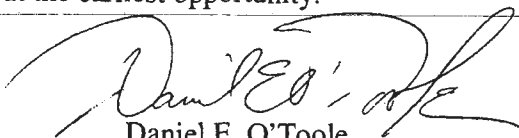
9. Storage of Classified Information.

a. The CSO has approved the storage of classified material by counsel in their local containers.

b. Storage of the original record of trial shall be stored in the safe labeled "Diaz Records" in Room B-204. Classified notes of the military judge shall be stored in this safe in a separate sealed envelope marked "Military Judge Notes." No other material may be stored in this safe without permission of the court.

c. The CSO will hold the combination to the safe labeled "Diaz Records" and will control access to it. The Region Legal Service Officer (RLSO) Security Manager will be provided the combination for use in an emergency, but, prior to opening the safe, the Security Manager must attempt to contact the CSO. In the event contact is not possible, the RLSO Security Manager must, as soon as possible, contact the CSO and report the nature of the emergency and any action taken. The CSO will inform the court at the earliest opportunity.

Entered this 11th Day of May 2007.



Daniel E. O'Toole
Captain, JAG Corps, U.S. Navy
Circuit Military Judge

UNCLASSIFIED