

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 1

29 March 2013

Encl 1 to
APPELLATE EXHIBIT 511
PAGE REFERENCED: _____
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**DEPARTMENT OF THE NAVY
GENERAL COURT-MARTIAL
NAVY-MARINE CORPS TRIAL JUDICIARY
CENTRAL JUDICIAL CIRCUIT**

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

v.

**MATTHEW M. DIAZ
LCDR, JAGC, USN**

CLOSURE ORDER

1. This matter comes before the Court pursuant to the Government Motion for Appropriate Relief Pursuant to M.R.E. 505 (Appellate Exhibit I) to close certain proceedings in the above captioned case. The defense did not file a responsive pleading, but has filed its own Defense Notice M.R.E. 505 (Appellate Exhibit LXIX).

2. The court considered the Assertion of Classified Information Privilege of Deputy Secretary of Defense, Gordon England dated 15 November 2006 (Appellate Exhibit 65); the memorandum of the Original Classification Authority (OCA), dated 14 August 2006 (Appellate Exhibit 57, Encl. F); and the Declaration of Paul B. Rester, Director of the Joint Intelligence Group, Joint Task Force Guantanamo Bay (JTF-GTMO), dated 21 April 2006 (Appellate Exhibit I, Encl. B). The court also considered the JTF-GTMO Classification Guide of 1 December 2006 (Appellate Exhibit LXIII (sealed)) by which classification of the document at issue is principally governed; and Appellate Exhibits LXI and LXII (sealed), which contain guidance implemented by Appellate Exhibit LXIII. The court enters the following:

Findings of Fact.

1. Appellate Exhibit LXIV (sealed), is a copy of the document at issue in this case (hereinafter "JDIMS list") (also referred to as Enclosure "A" to Appellate Exhibit 57 (not attached to that exhibit)). That list contains the names of GTMO detainees and related data fields.
2. Mr. Paul Rester has 30 years of experience in the intelligence and security field and he is presently the Director, Joint Intelligence Group, JTF-GTMO.
3. Mr. Rester has reviewed the JTF-GTMO Classification Guide and determined that the JDIMS list is currently properly classified SECRET.
4. The OCA concurred with the determination of Mr. Rester.
5. The Deputy Secretary of Defense reviewed the declaration of Mr. Rester and the OCA concurrence, determined that the JDIMS list is properly and currently classified SECRET,

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APPELLATE EXHIBIT LXXIX
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APPENDED PAGE _____

and invoked the M.R.E. 505 classified information privilege over disclosure of the list in open court.

6. In addition to having provided a declaration, Mr. Rester will be a witness in this case. Mr. Robert Kates will also testify. The testimony of both men during the government's case-in-chief will include information regarding the classified data fields contained in the JDIMS list and will necessarily include a discussion of information classified at the SECRET level.
7. Disclosure of the SECRET information contained in the JDIMS list and in the witnesses' testimony regarding that information is reasonably be expected to cause serious damage to national security. However, not all of their testimony will contain classified information.
8. The government has tendered the following order of presentation: Mr. Rester, followed by several other witnesses providing unclassified testimony, and then testimony by Mr. Kates. This order of presentation is necessary not only to establish the relevance of Mr. Kates' testimony, but also to permit a contextual and complete understanding of the classified testimony of both men. This order of presentation would necessitate two closed sessions, one for each witness.
9. The defense has not objected to the classified testimony being received in a closed session at this court-martial, but the defense has reserved any objection to the testimony of the witnesses on the basis of relevancy or other evidentiary objections.
10. Additionally, the defense has served notice of their need to present the JDIMS list to the members for examination, to inquire into an explanation of the data fields contained therein, and to demonstrate a working model of the JDIMS database. These matters the defense expects to introduce principally through cross-examination of Mr. Rester and Mr. Kates.

Conclusions.

1. The JDIMS list at issue in this case, in its present format, is currently properly classified SECRET.
2. The testimony of Mr. Rester and Mr. Kates regarding the JDIMS list is relevant because it relates to the classified nature of the list, how the JDIMS database works, and the classification status of the JDIMS list at the time it was released. The classified status of the document is an element of Charges I and II and is a factor that members may consider in determining whether the information contained in the list is national security information. An explanation of the nature of the information in the JDIMS list is also relevant for the members to determine whether the list is national security information, whether or not it was classified at the time of its release.
3. The prosecution has sustained their burden of persuasion that closure of this court-martial during the classified testimony of Mr. Rester and Mr. Kates is necessary in the interest of

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national security and the proposed closure shall be as narrowly tailored as is possible, as more fully set forth below.

4. This court has carefully balanced the constitutional mandate for the conduct of public trials, and the accused's right to a public trial, against the potential serious damage to the national security of the United States that would result from the public disclosure of SECRET testimony related to the JDIMS list in an open session of this court-martial.

5. The court concludes that the need to protect from disclosure the SECRET information contained in the JDIMS list, and the classified testimony related thereto, outweighs any danger of a miscarriage of justice that could attend the taking of that limited testimony in closed sessions of this court-martial, particularly when the accused has not objected to the closed sessions.

6. The testimony of both witnesses can be bifurcated between classified testimony and unclassified testimony, the latter including biographical and professional background information, the unclassified factual basis for the classified testimony, and an unclassified general summary of the classified testimony concerning the JDIMS list.

7. The bifurcating of testimony between unclassified and classified information properly and narrowly limits the closed session to only the classified portions of testimony and to the limited unclassified supporting information that is necessary to preserve the coherence of testimony during the closed session. However, to present the evidence in the manner most conducive to the court members understanding it, it will be necessary to have one closed session for each witness, with several other witnesses testifying in open session during the period between closed sessions.

8. The court considered alternatives to receiving classified testimony, including use of classified affidavits, unclassified summaries of testimony or unclassified testimony regarding the JDIMS list. A classified affidavit regarding JDMIS would not allow the court members to seek clarification of the technical matters being raised about the database. Even if classified affidavits could be initially used, undue delay in proceedings to seek additional affidavits would be required for any clarification. Use of affidavits would not permit the accused an opportunity to cross-examine the affiants or to present a working demonstration of the JDIMS database. Unclassified testimony or unclassified summaries would not adequately provide the court with the requisite level of detail needed to accurately assess the nature and status of the JDIMS list, which is at issue in all charges. As a result, the alternatives to classified testimony are inadequate even when compared to receipt of testimony in closed proceedings.

9. In bifurcating classified from unclassified testimony, the court seeks to provide the maximum public access to these proceedings consistent with national security. Additional protective measures, short of closure, will permit the introduction and use of classified documentary evidence relating to the testimony of the witnesses during open sessions of the court, and will further limit the need for, and the duration of, closed sessions.

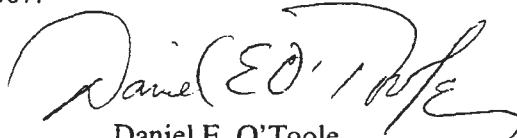
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Ruling.

1. It is hereby ORDERED that the classified testimony of Mr. Rester and Mr. Kates regarding the JDMIS list, and only so much of their unclassified testimony as is necessary to preserve the coherence of their classified testimony, shall be taken in separate closed sessions, one for the examination of each witness. These closed sessions will be held during the government's case-in-chief and will include direct and cross-examination.
2. The defense shall notify the court pursuant to M.R.E. 505 of any intention to introduce any classified information during the defense case-in-chief, which might necessitate additional closed sessions.
3. Open and closed sessions of this court will be conducted in accordance with the further requirements of the Court Room Protective Order of this court, issued separately this date.

Entered this 11th day of May 2007.



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

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