



Written by [Joe Wolverton, II, J.D.](#) on August 7, 2012

Media, Civil Rights Groups Challenge Gitmo Trial Secrecy

The Army colonel presiding over the trial of five men accused of participating in the attacks of September 11, 2001 has ruled that attorneys for a consortium of media and civil liberties organizations may argue for increased transparency in the proceedings.

The lawyers for the 14 media groups (including the American Civil Liberties Union) filed motions with the military tribunal challenging a previously entered order that prevented publication of testimony considered “secret.”



Per the terms of the [new one-page order issued by Judge James Pohl](#) the lawyers will present their case for increased openness on August 22, the day on which a week of hearings on several pre-trial motions is set to begin.

The Judge Advocate General (JAG) lawyer representing the Pentagon, Army Brigadier General Mark Martins, also agreed to allow the hearing without objection.

Attorneys for the so-called “Gitmo 5” did not object to the hearing of oral arguments on the motions against the protective order. In fact, an attorney for one of the alleged 9/11 co-conspirators welcomed the ruling.

“Oral argument from the media and ACLU will emphasize the critical public interest in open proceedings at Guantánamo,” said James Connell, the attorney representing Ammar al Baluchi, also known as Ali Abdul Aziz Ali.

In [a motion for challenging the government’s clamp-down](#) on the flow of information filed May 2, the American Civil Liberties Union (ACLU) argued that such a restriction was overly broad and that the government has “no legal authority to classify defendants’ statements containing their personal knowledge of the detention and treatment, including torture, to which they were subjected in U.S. custody — information that defendants acquired by virtue of the government forcing it upon them.”

At issue in the ACLU’s motion is first, the government’s request that the public be denied access to the defendants’ statements regarding abuse and torture suffered while in the custody of the CIA or other American agents; and second, the 40-second delay in the audio feed of the commission’s proceedings.

Under the guidelines suggested by the prosecution, an intelligence officer present at the trial may hit a “white noise” button whenever defendants “describe their detention and interrogation in U.S. custody.”

Later in its motion, the ACLU outlined the constitutional issues at the center of the government’s request to censor the trial:

Both the Constitution and the Military Commissions Act of 2009 recognize the public’s presumptive right of access to all proceedings and records of this historic military commission. That right of access may only be overcome if there is a countervailing interest of “transcendent” importance, a standard that the government’s extraordinary and draconian proposed restrictions cannot meet.



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The government asks this Commission to suppress as presumptively classified the defendants' every utterance concerning their personal knowledge of their detention and abuse in CIA custody....

The eyes of the world are on this Military Commission, and the public has a substantial interest in and concern about the fairness and transparency of these proceedings. This Commission should reject — and not become complicit with — the government's improper proposals to suppress the defendants' personal accounts of government misconduct.

The legal proceedings began on May 5, 2012 when Khalid Sheikh Mohammed, the man accused by the U.S. government of masterminding the attacks of September 11, 2001, was arraigned along with four alleged co-conspirators before a military tribunal at the Naval base at Guantánamo Bay, Cuba.

The five defendants were presented with an 87-page indictment that took nearly three hours to read. The indictment charges the men with 2,976 counts of murder, as well as acts of terrorism, hijacking, conspiracy, and destruction of property. If convicted by the military court, they will be eligible for the death penalty.

As *The New American* has previously reported, the [Department of Defense referred the case](#) against the "Gitmo Five" to a military commission last April, and a month later [the Defense Department announced that charges had been formally filed](#) against the men accusing them of participating in the planning of the attacks on the Trade Towers in New York City and the Pentagon in Washington, D.C.

Originally, President Obama promised to hold civilian trials for those suspected of terrorism. In fact, in that statement he specifically mentioned the case of Khalid Sheikh Mohammed.

Last April, however, Attorney General Eric Holder announced that Mohammed and the other four detainees classified as 9/11 co-conspirators would be arraigned before military tribunals.

Mohammed, a Kuwaiti national, is accused by the U.S. government of being a member of al-Qaeda, including running the group's propaganda machine since 1999.

According to the report issued by the 9/11 Commission, Mohammed was the "principal architect of the 9/11 attacks." His alleged terrorist activities also include playing a major role in the bombing of the World Trade Center in 1993, the bombings of nightclubs in Bali, and personally beheading American journalist Daniel Pearl in 2002.

He was captured on March 1, 2003 in Pakistan and has been detained at the Guantánamo Bay facility in Cuba since September of 2006.

Mohammed, 46, was charged in 2008 by an American military commission with war crimes and murder and faces the death penalty if convicted.

The other four detainees have also been in custody at the Guantánamo facility since 2006 after having been detained (and allegedly tortured) by the Central Intelligence Agency at secret "black site" prisons located throughout the world.

A separate though related motion was filed by a group of newspapers calling themselves "the press objectors." The *Miami Herald*, ABC Inc., the Associated Press, Bloomberg News, CBS Broadcasting Inc., Fox News Network, National Public Radio, the *New York Times*, *The New Yorker*, Reuters, Tribune Company, the *Wall Street Journal*, and the *Washington Post* are participating in the group.

"The First Amendment allows commission proceedings to be closed only upon a specific finding of a



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“substantial probability” of harm to national security or some equally compelling governmental interest,” argued a lawyer representing “the press objectors” in its motion filed on May 16.

Evidence of why the government would want to keep a tight lid on the tribunal is found in the atmosphere surrounding the arraignment in May. There is no debate that the legal proceedings against the five “high value detainees” got off to a rocky — and, for the military and the Obama administration, embarrassing — start. Initially scheduled to last less than an hour, the event dragged on for 13 hours before being adjourned by Colonel James Pohl, the presiding officer.

A survey of reports from eyewitnesses reveals an almost circus-like atmosphere at the arraignment.

For example, take the description of the arraignment [published by the Guardian](#):

KSM [Khalid Sheikh Mohammed] is refusing to address judge and has taken his headphones out in an apparent bid to ignore what he is being told.

Then there is this account [from the Associated Press](#):

At one point, Mohammed cast off his earphones providing Arabic translations of the proceeding and refused to answer Army Col. James Pohl’s questions or acknowledge he understood them. All five men refused to participate in the hearing; two passed around a copy of The Economist magazine and leafed through the articles.

Finally, this was the scene [as reported by CBS News](#):

“All five of them were defiant. They were dismissive. They refused to answer repeated questions from the judge,” [CBS News correspondent Jan] Crawford said. “They wouldn’t even look at the judge when he asked them questions. They looked down, flipped through magazines or even read the Koran.”

At the conclusion of the arraignment, Colonel Pohl announced that the trial of Khalid Sheikh Mohammed and three of his co-defendants is preliminarily scheduled to begin in May 2013, but he also indicated that the date was fluid and could be delayed.



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