



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
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PUBLIC AFFAIRS

June 14, 2010

Mr. David A. Schulz  
321 West 44<sup>th</sup> Street  
Suite 510  
New York, New York 10036

Dear Mr. Schulz:

This is in response to your May 13 letter regarding the action the Defense Department took with respect to Ms. Carol Rosenberg of the *Miami Herald*, Mr. Steven Edwards of *Canwest News Service* and Ms. Michelle Shephard of the *Toronto Star* as a result of their actions during Military Commissions proceedings at Guantanamo Bay on May 4-6, 2010.

The Department of Defense has provided U.S. and international media representatives with unprecedented access to military commission proceedings. In the eight years that the detention facility at Guantanamo Bay has been open, thousands of journalists, attorneys, international organizations, representatives of foreign governments and others have visited. A significant percentage of the media visits have been made in conjunction with military commission hearings.

I have reviewed the information you provided and given considerable thought to your request to reverse the decision to ban these reporters from future military commission proceedings. I have interviewed and questioned the Department's personnel who were on the ground at Guantanamo at the time of the infraction, as well as those who were involved in making the decision in Washington. I have also consulted with military commission officials responsible for the conduct of these trials, our General Counsel's office and senior media representatives from other news organizations.

Ms. Rosenberg, Mr. Edwards and Ms. Shephard were all aware of *The Media Policy and Ground Rules for Naval Station Guantanamo Bay Cuba* as evidenced by their signatures affixed to the Department's *Release, Indemnification, and Hold Harmless Agreements* that referenced each of them, respectively and directly, and which were provided to every reporter on April 26, 2010.

The current ground rules have been in effect for several years – before the first military commission was ever held - and in fact, were developed in collaboration with commission personnel, legal counsel, and news organizations. These ground rules serve as the foundation to facilitate media coverage of military commissions to the greatest extent practicable while the nation is still engaged in active conflict. Since these ground rules were first established, there has not been any specific request on the part of any news organization or reporter to change



them. The Department has always been open to examining any aspect of the ground rules if either the Office of Military Commissions or the media believe they require revision.

The relevant ground rules pertaining to the situation on April 26, 2010 were paragraphs 2a(1) and 2g of *The Media Policy and Ground Rules for Naval Station Guantanamo Bay Cuba*. By signing this document, news media representatives agreed to abide by the following restrictions:

- a. To not publish, release, discuss or share information identified by commission's personnel as being Protected Information or otherwise protected from disclosure by these ground rules.
- (1) Protected information includes: (i) information classified or classifiable; (ii) information protected by law or rule from unauthorized disclosure; (iii) information, the disclosure of which may endanger the physical safety of participants in the commission proceedings, including prospective witnesses; (iv) information concerning intelligence and law enforcement sources, methods, or activities; or (v) information concerning other national security interests.
- g. The identities of all commission personnel, to include the Presiding Officer, commission members, prosecutors, defense counsels, and witnesses, will not be reported or otherwise disclosed in any way without the prior release approval of OASD (PA).

These were the same ground rules that have been in effect for previous hearings and contained no new policies, procedures or restrictions.

The ground rules are designed to facilitate, not hamper, the greatest possible access to these proceedings consistent with the law. However, the Military Commission Act also recognizes that a military judge may close the proceedings to the public/ media to ensure the physical safety of individuals. The ground rules in question were designed to avoid having to completely close an entire proceeding -- the least intrusive way to ensure the physical safety of a witness and still permit media to observe and report on the proceedings.

The crux of the issue here is not whether one of the witnesses had appeared in news accounts prior to testimony. Rather, at issue here is whether these reporters violated the judge's protective order and the media ground rules by associating specific testimony with "Interrogator One." The information I have leaves no question that the reporters were aware of which witnesses were covered by the protective order. It is also evident that even after being cautioned about using the name of a protected witness, these three reporters ignored the judge's instructions and published the name of "Interrogator One." The judge did not respond to the note from one of your clients because he had already addressed the issue of the protective order in open court and felt his guidance was clear and sufficient. I would also note that the vast majority of the reporters present understood and abided by the order in accordance with the ground rules.

Regardless of what information is in the public domain, it is the judge, not reporters, who determines which witnesses fall under a protective order. The principle here is the ability of the

court to protect future witnesses. If protective orders are ignored by reporters covering the proceeding, it could very well have a chilling effect on the ability of defense and prosecution teams to call upon future witnesses to testify.

As I reviewed this incident, I found that the Department's decision to ban these reporters was based solely on their violation of the protective order, which was reinforced by the judge and codified in well-established, mutually agreed media ground rules. I see no evidence that any individuals or news organizations were unfairly targeted by this decision.

Therefore, it is my determination that officials of the Department were correct to take the actions they did against these three individuals. The totality of the information gives strong reason to believe that they knowingly and willfully violated the ground rules for access to Military Commission proceedings. I would note that action was taken only against the individuals who violated the ground rules and not their news organizations. Each of the news organizations are still permitted to cover future commission proceedings.

I do, however, agree that there should be some provision for these reporters future reinstatement. The Department will consider lifting the coverage ban on these reporters if they individually request reinstatement. Among the elements that we will take into account will be recognition and understanding of why we took this action despite the fact your clients may disagree with the decision itself, and a commitment to abide by all the ground rules to which they are signatories.

It is in the public interest to preserve future media access to these important proceedings. Our commitment to transparency is unchanged. Our commitment is also to work within the law to protect future witnesses who may be called upon to testify in a military commission.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bryan Whitman", with a stylized, cursive script.

Bryan G. Whitman  
Principal Deputy Assistant Secretary  
of Defense for Public Affairs