

**From:** Fein, Ashden MAJ USA JFHO-NCR/MDW SJA  
**To:** Lind, Denise R COL USARMY (US)  
**Cc:** Kemkes, Matthew J MAJ USARMY (US); Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S CW2 USARMY (US); Morrow III, JoDean, CPT USA JFHO-NCR/MDW SJA; Overgaard, Angel M, CPT USA JFHO-NCR/MDW SJA; David Coombs; Whyte, Jeffrey H, CPT USA JFHO-NCR/MDW SJA; Ford, Arthur D, CW2 USA JFHO-NCR/MDW SJA; Prather, Jay R CIV (US); Williams, Patricia CIV JFHO-NCR/MDW SJA  
**Bcc:** Bradley, Princeton L, SGT USA JFHO-NCR/MDW SJA; Feito, Beatriz SGT USA JFHO-NCR/MDW SJA; Parra, Jairo A, WO1 USA JFHO-NCR/MDW SJA; Waybright, Daniel W, SGT USA JFHO-NCR/MDW SJA; Haberland, John CPT USA Regimental Judge Advocate  
**Subject:** Protective Orders 3 of 3  
**Date:** Tuesday, March 27, 2012 6:16:00 PM  
**Attachments:** 10GJ3793-11EC1.pdf  
10GJ3793-11EC3.pdf  
10GJ3793-11EC9.pdf  
10GJ3793-RNK.pdf  
10-330-M-01-Order to Seal.pdf  
10GJ3793.pdf

---

Ma'am,

This email contains the second half of the federal protective and sealing orders.

v/r  
MAJ Fein

-----Original Message-----

**From:** Lind, Denise R COL USARMY (US) (b) (6)  
**Sent:** Tuesday, March 27, 2012 3:42 PM  
**To:** Fein, Ashden MAJ USA JFHQ-NCR/MDW SJA; David Coombs  
**Cc:** Kemkes, Matthew J MAJ USARMY (US); Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S CW2 USARMY (US); Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M, CPT USA JFHQ-NCR/MDW SJA; Whyte, Jeffrey H, CPT USA JFHQ-NCR/MDW SJA; Ford, Arthur D, CW2 USA JFHQ-NCR/MDW SJA; Prather, Jay R CIV (US); Williams, Patricia CIV JFHQ-NCR/MDW SJA  
**Subject:** Protective Orders (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Counsel,

Trial counsel, by COB today, provide the Court with a copy of all protective orders issued to the defense prior to referral regarding defense discovery.

Thank you,  
D

Denise R. Lind  
COL, JA  
Chief Judge, 1st Judicial Circuit

-----Original Message-----

**From:** Fein, Ashden MAJ USA JFHQ-NCR/MDW SJA (b) (6)  
**Sent:** Monday, March 26, 2012 9:56 AM  
**To:** Lind, Denise R COL USARMY (US); David Coombs  
**Cc:** Kemkes, Matthew J MAJ USARMY (US); Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S

CW2 USARMY (US); Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M CPT USARMY (US); Whyte, Jeffrey H CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Prather, Jay R CIV (US); Williams, Patricia A CIV (US)  
Subject: RE: Defense's Release of Court Filings (UNCLASSIFIED)

Ma'am,

The teleconference bridge is reserved for 2 hours on 28 March 2012 (1300-1500).

The dial-in instructions are:

(b) (6)

Note: When you dial, you will be asked to input this PASSCODE: "183603".  
Afterwards, dial the # key to join the conference call. The line will beready 5 minutes prior to start of teleconference.

v/r  
MAJ Fein

-----Original Message-----

From: Lind, Denise R COL USARMY (US) (b) (6)  
Sent: Monday, March 26, 2012 9:54 AM  
To: Fein, Ashden MAJ USA JFHQ-NCR/MDW SJA; David Coombs  
Cc: Matthew kemkes; Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S  
CW2 USARMY (US); Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA; Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA; Ford, Arthur D. CW2 USA JFHQ-NCR/MDW SJA; a (b) (6); Prather, Jay R CIV (US); Williams, Patricia CIV JFHQ-NCR/MDW SJA  
Subject: RE: Defense's Release of Court Filings (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: NONE

Counsel,

1300 on 28 March 2012 is fine.

D

Denise R. Lind  
COL, JA  
Chief Judge, 1st Judicial Circuit

-----Original Message-----

From: Fein, Ashden MAJ USA JFHQ-NCR/MDW SJA (b) (6)  
Sent: Monday, March 26, 2012 8:33 AM  
To: Lind, Denise R COL USARMY (US); David Coombs  
Cc: Kemkes, Matthew J MAJ USARMY (US); Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S  
CW2 USARMY (US); Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M CPT USARMY (US); Whyte, Jeffrey H CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); (b) (6); Prather, Jay R CIV (US); Williams, Patricia A CIV (US)  
Subject: RE: Defense's Release of Court Filings (UNCLASSIFIED)

Ma'am,

Both parties recommend 1300 on Wednesday (28 Mar) for the telephonic RCM 802 conference. The United States will establish a 2 hour long bridge.

v/r  
MAJ Fein

-----Original Message-----

From: Lind, Denise R COL USARMY (US) [(b) (6)]  
Sent: Friday, March 23, 2012 6:35 PM  
To: David Coombs  
Cc: Matthew kemkes; Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S CW2 USARMY (US); Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA; Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA; Ford, Arthur D. CW2 USA JFHQ-NCR/MDW SJA; [(b) (6)] Prather, Jay R CIV (US); Williams, Patricia CIV JFHQ-NCR/MDW SJA; Fein, Ashden MAJ USA JFHQ-NCR/MDW SJA  
Subject: RE: Defense's Release of Court Filings (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: NONE

Counsel,

Please confer and schedule a telephonic RCM 802 conference with me Tuesday or Wed after 1000.

Thank you,  
D

Denise R. Lind  
COL, JA  
Chief Judge, 1st Judicial Circuit

-----Original Message-----

From: David Coombs [<mailto:coombs@armycourt martialdefense.com>]  
Sent: Friday, March 23, 2012 6:03 PM  
To: Lind, Denise R COL USARMY (US)  
Cc: Kemkes, Matthew J MAJ USARMY (US); Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S CW2 USARMY (US); 'Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA'; Overgaard, Angel M CPT USARMY (US); Whyte, Jeffrey H CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); [(b) (6)] Prather, Jay R CIV (US); Williams, Patricia A CIV (US); Fein, Ashden MAJ USARMY (US)  
Subject: RE: Defense's Release of Court Filings (UNCLASSIFIED)

Ma'am,

Just to be clear, the Defense does not intend to publish any attachments; thus, the concerns about discovery are unwarranted. We request that this issue be resolved in a timely manner, as we would like to make public our filings for the next Article 39(a).

v/r  
David

David E. Coombs, Esq.  
Law Office of David E. Coombs  
11 South Angell Street, #317  
Providence, RI 02906  
Toll Free: 1-800-588-4156  
Local: (508) 689-4616  
Fax: (508) 689-9282

coombs@armycourt martialdefense.com  
www.armycourt martialdefense.com

\*\*\*Confidentiality Notice: This transmission, including attachments, may contain confidential attorney-client information and is intended for the person(s) or company named. If you are not the intended recipient, please notify the sender and delete all copies. Unauthorized disclosure, copying or use of this information may be unlawful and is prohibited.\*\*\*

-----Original Message-----

From: Lind, Denise R COL USARMY (US) (b) (5)  
Sent: Friday, March 23, 2012 5:52 PM  
To: David Coombs  
Cc: Kemkes, Matthew J MAJ USARMY (US); Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S CW2 USARMY (US); 'Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA'; Overgaard, Angel M CPT USARMY (US); Whyte, Jeffrey H CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); (b) (6); Prather, Jay R CIV (US); Williams, Patricia A CIV (US); Fein, Ashden MAJ USARMY (US)  
Subject: RE: Defense's Release of Court Filings (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Counsel,

Do not publish any filings on the internet until I have had an opportunity to consider the position of the parties.

D

Denise R. Lind  
COL, JA  
Chief Judge, 1st Judicial Circuit

-----Original Message-----

From: David Coombs [mailto:coombs@armycourt martialdefense.com]  
Sent: Friday, March 23, 2012 5:45 PM  
To: Lind, Denise R COL USARMY (US)  
Cc: Kemkes, Matthew J MAJ USARMY (US); Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S CW2 USARMY (US); 'Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA'; Overgaard, Angel M CPT USARMY (US); Whyte, Jeffrey H CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); (b) (6); Prather, Jay R CIV (US); Williams, Patricia A CIV (US); Fein, Ashden MAJ USARMY (US)  
Subject: RE: Defense's Release of Court Filings

Ma'am,

The proceedings have not been sufficiently open and transparent, as evidenced by this second letter that has been sent by the Center for Constitutional Rights regarding these proceedings. The Defense does not concur with the Government's dire predictions. In Federal cases that involve classified information (such as the recent Drake case), the pleadings are always publicized.

The Defense intends to publish its motions starting on Monday, unless subject to a gag order. With regards to future motions, the Defense intends to publish its motions a few days after filing so as to ensure that there is no inadvertent spillage.

v/r  
David

David E. Coombs, Esq.  
Law Office of David E. Coombs  
11 South Angell Street, #317  
Providence, RI 02906  
Toll Free: 1-800-588-4156  
Local: (508) 689-4616  
Fax: (508) 689-9282  
coombs@armycourt martialdefense.com  
www.armycourt martialdefense.com

\*\*\*Confidentiality Notice: This transmission, including attachments, may contain confidential attorney-client information and is intended for the person(s) or company named. If you are not the intended recipient, please notify the sender and delete all copies. Unauthorized disclosure, copying or use of this information may be unlawful and is prohibited.\*\*\*

-----Original Message-----

From: Fein, Ashden MAJ USA JFHQ-NCR/MDW SJA [(b) (6)]  
Sent: Friday, March 23, 2012 5:33 PM  
To: Lind, Denise R COL USARMY (US)  
Cc: David Coombs; Matthew kemkes; Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S CW2 USARMY (US); Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA; Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA; Ford, Arthur D. CW2 USA JFHQ-NCR/MDW SJA; (b) (6) Prather, Jay R CIV (US); Williams, Patricia CIV JFHQ-NCR/MDW SJA  
Subject: Defense's Release of Court Filings

Ma'am,

The United States opposes the defense's request to freely publish all motions, responses, and replies on the Internet. The defense's request would act to publicize information provided to the defense in discovery, the public disclosure of which may require outside agency approval and the substance of which may cause irreparable prejudice to the United States.

Much of the information in this case was disclosed under various protective orders which remain in effect, including grand jury subpoena information, Secretary of the Army 15-6 investigation information, and law enforcement sensitive information. This protected information was provided to the defense for discovery and under the specific condition not to publish or release it outside of the specific individuals who were allowed access to the information.

The defense purports that it wants to publish this information online to keep the public informed of the proceeding. The public, however, is already well informed of the proceedings. The public was present at the Article 32 hearing, the arraignment, and the first motions hearing, and will continue to be present at all open portions of the motions hearings and the trial.

The command provided the theater next door for overflow area so that the public can freely watch the proceedings and the media operations center for the media. Additionally, other than the electronic filing process, the military justice system is more open than the federal system from the Article 32 proceedings through the end of the trial.

The United States does not intend to publish its pleadings online. If the defense remains intent on publishing all pleadings and their enclosures online, the United States requests the opportunity to file a motion for a protective order or multiple protective orders under RCM 701(g)(2) and 806(d) for the Court to regulate the defense's use of information gained through discovery. Additionally the United States requests the Court allow the prosecution thirty days to receive input from all the different federal entities on what information they provided for discovery which they did not intend to

be made publically available. The sole purpose of discovery is to prepare for trial. Motions are filed to shape legal issues and belong to the Court. Most motions, e.g., motions to suppress or exclude evidence or testimony, are not appropriate for publication. Freely publicizing all pleadings, at this stage of the proceedings, may undermine the effectiveness of the publicity order and will circumvent those measures adopted to regulate what is available to the public and significantly jeopardize many interests of the United States, to include, protecting classified information (in the case of a spillage), preserving the confidentiality of law enforcement information, preventing potential witnesses from receiving information outside the scope of their projected testimony, protecting testifying witnesses, protecting trial participant safety, protecting the personal information of potential panel members, preventing disclosure of government information that threatens national security and is unclassified, and the deliberative processes of the United States Government. Furthermore, the United States believes that the defense's intended course of action would result in a substantial likelihood of materially prejudicing the proceeding, in violation of, inter alia, RCM 806(d) and Army Regulation 27-26, specifically Rule 3.6.

v/r  
MAJ Fein

Classification: UNCLASSIFIED  
Caveats: NONE

Classification: UNCLASSIFIED  
Caveats: NONE

Classification: UNCLASSIFIED  
Caveats: NONE

Classification: UNCLASSIFIED  
Caveats: NONE

























































