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# **SPYING ON ATTORNEYS AT GTMO: GUANTANAMO BAY MILITARY COMMISSIONS AND THE DESTRUCTION OF THE ATTORNEY-CLIENT RELATIONSHIP**

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## EXECUTIVE SUMMARY

Lawyers at Guantanamo Bay Naval Base, Cuba can no longer assure their clients that the government is not listening to their conversations. We now know that the government has installed surveillance devices with the capacity to listen even to whispers between attorneys and clients, and to read the attorneys' own notes.

- Of all the facilities in Guantanamo Bay for attorneys to meet with their clients, the military chose Camp Echo, the former CIA interrogation facility.
- Listening devices in the attorney-client meeting rooms are disguised as smoke detectors.
- The listening devices are so hypersensitive that they can detect even whispers between attorneys and their clients.
- Cameras in the attorney-client meeting rooms are so powerful that they can read attorneys' handwritten notes and other confidential documents.
- The camera models can be operated secretly from a location outside of the room.

None of the capacities of the eavesdropping equipment would be necessary for CIA interrogations. Instead, the equipment has been implemented in a practice of multi-layered deception of defense attorneys. As a first layer of deception, defense attorneys were advised regularly that there was no recording in place. As a second layer of deception, the recording devices in Camp Echo huts were disguised as smoke detectors, concealing that even whispers between attorneys and their clients could be monitored. As a third layer of deception, although the defense attorneys were advised that there were cameras in Camp Echo for safety purposes, they were not advised that the cameras were capable of zooming in on the attorneys' notes and other documents.

Even after the layers of deception were discovered, the government provided a series of varied and inconsistent explanations about the extent to which eavesdropping between attorneys and their clients has been taking place in Camp Echo:

- No audio monitoring equipment existed.
- The audio-monitoring equipment existed.
- The audio-monitoring equipment existed, but an oral instruction prohibited personnel from using it.
- The audio-monitoring equipment in place was never used.
- The audio-monitoring equipment was only used for limited purposes.
- The audio-monitoring equipment was rendered inoperable.
- The audio-monitoring equipment was discovered to be broken.
- The audio-monitoring equipment was repaired.
- The audio-monitoring equipment was upgraded.

- The person responsible for authorizing the repair and upgrade of the audio-monitoring equipment was unaware that the equipment existed.
- The audio-monitoring equipment did, in fact, exist and function but the power supplies were removed once the defense attorneys discovered it.

When the defense attorneys discovered layer after layer of deception, they could no longer trust that the government had not compromised their work product: even the Military Commission at Guantanamo Bay was deceived.

## INTRODUCTION

In January 2013, the Military Commission hearings at Guantanamo Bay discovered that an “external body” was not only monitoring the proceedings surreptitiously but also had the ability censor the proceedings, superseding the presiding judge’s supposed sole authority to do so.<sup>1</sup> The external body censored Khalid Sheikh Mohammed’s Learned Counsel, David Nevin, while he recited the title of a motion that contained mostly unclassified information pertaining to CIA dark site prisons.<sup>2</sup> Immediately after the hearing’s audio feed was reinstated, the Military Commission’s presiding judge, Army Colonel James Pohl, announced:

[I]f some external body is turning the commission off under their own view of what things ought to be, with no reasonable explanation because [there] is no classification on it, then we are going to have a little meeting about who turns that light on or off.<sup>3</sup>

Within one week, Judge Pohl seemed to have accepted having an external body eavesdropping on the Military Commission hearings and censoring information from the public with no explanation. In fact, Judge Pohl even seemed to defend the notion on the government’s behalf. Judge Pohl challenged Navy Lieutenant Commander Stephen Reyes, the detailed defense counselor for Abd al-Rahim al-Nashiri: “Does it surprise you that the United States government has all sorts of ability to monitor conversations throughout the world?”<sup>4</sup> Lieutenant Commander Reyes responded, “Your Honor, when it comes to the courtroom, absolutely.”<sup>5</sup> Lieutenant Commander Reyes identified a grave cause of concern surrounding the evident eavesdropping practices exercised in Guantanamo Bay: “Your Honor, if it is the CIA that is conducting the listening, this is the same organization that detained and tortured Mr. al Nashiri. It is the same organization that lied to a federal court judge regarding the existence of videotapes.”<sup>6</sup>

Soon after the United States Government’s display of courtroom eavesdropping capabilities, defense counsel for Guantanamo Bay detainees learned that the meeting rooms assigned to them for private conversations with their clients had been bugged with convincingly disguised microphones for clandestine audio recording. The microphones are hidden in realistic smoke detector shells mounted on the meeting rooms’ ceilings.<sup>7</sup> The defense team in the Khalid Sheikh Mohammed, et al. trial, submitted a photograph of the listening device from Echo II,

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<sup>1</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 1/28/2013 from 1:31 PM to 2:46 PM*, Page 1445 at Line 14 to Page 1446 at Line 7. Transcripts of Military Commission Hearings are accessible at <http://www.mc.mil/CASES/MilitaryCommissions.aspx>.

<sup>2</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 1/29/2013 from 9:09 AM to 10:08 AM*, Page 1469 at Line 12 through Page 1470 at Line 16.

<sup>3</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 1/28/2013 from 1:31 PM to 2:46 PM*, Page 1446 at Lines 2-7.

<sup>4</sup> *Unofficial/Unauthenticated Transcript of the Al Nashiri (2) Hearing Dated 2/5/2013 from 9:01 AM to 9:56 AM*, Page 1556 at Lines 3-5.

<sup>5</sup> *Id.* Page 1556 at Lines 6-7.

<sup>6</sup> *Id.* Page 1538 at Lines 13-17. This reference is to videotapes of “high-value detainee” interrogations, as discussed in this report.

<sup>7</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/12/2013 from 1:00 PM to 2:37 PM*, Page 1984 at Line 5 through Page 1985 at Line 11; Page 2021 at Line 4 through Page 2022 at Line 5.

depicted below.<sup>8</sup> When the photograph is enlarged, the Louroe logo can be recognized on what appears to be a smoke detector.<sup>9</sup>



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“Often used in law enforcement interview rooms, Louroe microphones are sensitive enough to capture a suspect’s comments even when whispered,”<sup>11</sup> according to Louroe’s global marketing coordinator. Thus, the disguised listening devices in Echo II overhear tones not likely to be overheard and therefore intended to be confidential, as discussed below.

Following the public discovery of the listening devices, Army Colonel John Bogdan ordered the use of audio in Echo II to be disconnected, but not dismantled.<sup>12</sup> In order to comply with Colonel Bogdan’s orders to disconnect the listening devices without cutting any of the equipment’s wires, “the only thing [the staff] could do was disconnect all the power supplies and secure all the power supplies so the system couldn’t be inadvertently turned on.”<sup>13</sup> The surveillance equipment can be restored to full functionality simply by reconnecting the power supplies, which are “available” and “secured in the safe.”<sup>14</sup>

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<sup>8</sup> Photo of Listening Device Submitted by Defense, KSM et al. (2), Appellate Exhibit 133V. Appellate exhibits are accessible at <http://www.mc.mil/CASES/MilitaryCommissions.aspx>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Joseph Goudlock, *Where are You Using Louroe Electronics?*, Louroe Electronics Blog (Sep. 27, 2012, 12:00 AM), <http://www.louroe.com/blog.php>.

<sup>12</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2243 at Lines 1 through 4.

<sup>13</sup> *Id.* Page 2243 at Line 1 through Page 2244 at Line 5.

<sup>14</sup> *Id.* Page 2243 at Lines 1 through 23.

In addition to the secret microphones finally detected in each attorney-client meeting room assigned to Military Commission attorneys, those rooms also host at least two video cameras, comparatively more recognizable as such. Colonel Bogdan confirmed that there was one infrared camera mounted on the wall opposite “from where the detainee would be locked in when there was not a meeting,” and another encased point-tilt-zoom camera mounted in a corner.<sup>15</sup> At least one of the cameras in each of the attorney-client meeting areas is so sensitive that “from the distance they are in the cell, most definitely” they are capable of zooming to read “very tiny writing” on a document used during an attorney-client discussion.<sup>16</sup> Installing, maintaining, and using cameras with such powerful lenses far exceeds any needs for their ostensible security purposes.

The combination of state-of-the-art audio-visual monitoring equipment in every Echo II meeting room, in addition to the “external body” remotely monitoring audio in the courtroom, created an environment in which it is virtually impossible for attorneys and their clients to have any privacy at all, or for attorneys to claim privacy to their clients.

If there is the capability to monitor the audio remotely – like there is in the courtroom and in the designated attorney-client meeting rooms – then nothing prevents both monitoring and recording of that audio, or reading “very tiny writing,” particularly when those who installed the eavesdropping equipment believe they can collect intelligence information from the detainees and their attorneys.

The public relations manager of the company that manufactured the covert audio surveillance equipment specifically shunned the manner of clandestine usage of its products at Guantanamo Bay: “If I’m monitoring audio covertly or surreptitiously, then it is 100% illegal. Not only have I broken the law, but I can’t use any of that audio as evidence in a court case” absent providing notice and obtaining consent.<sup>17</sup> He is correct.

In general, any communication intended to be confidential between a client and his attorney is protected by the attorney-client privilege.<sup>18</sup> This privilege is recognized both in the Federal Rules of Evidence<sup>19</sup> and The Model Rules of Professional Conduct.<sup>20</sup> Beyond those rules, which apply in civil and criminal cases, various Military Codes of professional conduct also recognize the attorney-client privilege as important to the integrity of the military judiciary.<sup>21</sup> Thus, regardless of the choice of law operating during the Guantanamo Bay Military

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<sup>15</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2227 at Line 7 through Page 2228 at Line 19.

<sup>16</sup> *Id.* Page 2239 at Line 11 through Page 2240 at Line 8.

<sup>17</sup> Cameron Javdani, *Legal Use of Audio*, Louroe Electronics Blog (Sep. 6, 2011, 4:51 PM), <http://louroe.com/blog.php>.

<sup>18</sup> *Evidence: Text, Problems, and Cases*, 805 (Ronald J. Allen et al. eds., 5th ed. 2011).

<sup>19</sup> Federal Rules of Evidence Rule 502, as defined in Rule 502(g)(1).

<sup>20</sup> Model Rules of Professional Conduct Rule 1.6.

<sup>21</sup> *See* Army Regulation 27-26, *Rules of Professional Conduct for Lawyers*, Rule 1.6, (May 1, 1992); *Air Force Rules of Professional Conduct*, Rule 1.6, (Aug. 17, 2005) <http://www.caaflog.com/wp-content/uploads/AirForceRulesofProfessionalConduct.pdf>; Navy Judge Advocate General (JAG) Instruction 5803.1C, *Professional Conduct of Attorneys*, Rule 1.6 (May 1, 2012) [http://www.jag.navy.mil/library/instructions/JAGINST\\_5803-1D.pdf](http://www.jag.navy.mil/library/instructions/JAGINST_5803-1D.pdf). *See also* Norman K. Thompson & Joshua E. Kastenber, *The Attorney-Client Privilege: Practical Military Applications of A Professional Core Value*, 49 A.F. L.

Commission hearings, the attorney-client protection applies to the parties in both the courtroom and in the attorney-client meeting rooms. It is true that the attorney-client privilege is not absolute – it is subject to the crime-fraud exception whereby attorney-client communications that are made with the intent of carrying out a crime or fraud actually committed by the client are not protected.<sup>22</sup> However, crime-fraud grounds for breaching attorney-client privacy must be justified.

When the United States Attorney General believes that a detainee “may use communications with attorneys or their agents to further or facilitate acts of terrorism,” based on information from the head of a federal intelligence agency identifying a crime-fraud abuse of the privilege, he may order “appropriate procedures for the monitoring or review of communications between that inmate and attorneys or attorneys’ agents who are traditionally covered by the attorney-client privilege, for the purpose of deterring future acts,” a § 501.3 order.<sup>23</sup> Absent the Attorney General’s § 501.3 order, however, the monitoring of attorney-client communications is simply eavesdropping that substantially undermines two bulwarks of due process and effective representation, attorney-client privacy and privilege.

“Eavesdroppers present special problems for the privilege.”<sup>24</sup> Generally, the privilege still applies “as long as the setting of the conversation suggests that the speakers intended the conversation to be confidential.”<sup>25</sup> For instance, even on a commercial airline flight where other parties could have been seated close by, an attorney and his client communicating by using “‘tones’ not likely to be overheard” was sufficient to implicate the privilege.<sup>26</sup> Similarly, conducting a meeting in a room explicitly designated for private attorney-client meetings in Guantanamo Bay, with the belief that the room’s smoke detector actually is a smoke detector and not a secret microphone, suggests that the speakers intended the conversation to be confidential. As stated above, unless there is a § 501.3 order from the Attorney General, the monitoring or recording of such a conversation is eavesdropping in violation of attorney-client privacy. Regardless of whether audio eavesdropping occurred, communication between a client and his attorney includes “very tiny writing” on a document used during an attorney-client discussion, meaning that if an individual exploited the cameras’ capabilities and observed a video monitor that revealed writing during an attorney-client meeting in Echo II, that individual accessed communication intended by the client to be confidential.<sup>27</sup>

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Rev. 1, 64 (2000) (“The attorney-client privilege is the oldest and most universally respected of the testimonial privileges. It remains a professional core value and all military and civilian attorneys owe their best efforts to keep the privilege and client confidences inviolate. An attorney who cannot or will not keep his client’s confidences has no place in our profession. Violation of this sacred trust eviscerates fundamental constitutional, codal, MCM, regulatory, ethical, and common law principles and brings our profession into disrepute.”).

<sup>22</sup> *In re Sealed Case*, 107 F.3d 46, 49 (D.C. Cir. 1997).

<sup>23</sup> Prevention of Acts of Violence and Terrorism, 28 C.F.R. § 501.3 (2013).

<sup>24</sup> Evidence: Text, Problems, and Cases, 808 (Ronald J. Allen et al. eds., 5th ed. 2011).

<sup>25</sup> *Id.*

<sup>26</sup> *In re Sealed Case*, 737 F.2d 94, 102 (D.C. Cir. 1984).

<sup>27</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2239 at Line 11 through Page 2240 at Line 8.

In Article III courts, the prosecution's invasion into attorney-client privacy is a violation of the defendant's Sixth Amendment right to effective assistance of counsel.<sup>28</sup> The Supreme Court has recognized Guantanamo Bay detainees' right to consult with counsel and to be provided access to courts by virtue of being "in custody, under or by the colour [sic] of the authority of the United States, or are committed for trial before some court of the same."<sup>29</sup> When attorney-client privacy is breached, the remedy is proportional to the prejudice caused by the constitutional violation.<sup>30</sup> Egregious governmental intrusions into attorney-client privacy can result in dismissal of charges against the defendant.<sup>31</sup> However, because the Guantanamo Bay Military Commission continues to litigate even the procedural rules that apply in that forum, whether remedies are even available for breach of attorney-client privacy remains uncertain.

The recent discovery of monitoring devices during Guantanamo Bay attorney-client meetings was not the first occurrence of such an instance – but it was the first instance in a long time. A decade earlier, dozens of audio-visual recordings were made of meetings between detainees suspected of 9/11 involvement and their attorneys. The Department of Justice's Office of the Inspector General reported on pervasive breaches of private meetings between attorneys and their clients detained at the Metropolitan Detention Center in Brooklyn, New York<sup>32</sup> soon after 9/11:

In total, we found more than 40 examples of staff videotaping detainees' attorney visits. On many videotapes, we were able to hear significant portions of what the detainees were telling their attorneys and sometimes what the attorneys were saying as well. [...]

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<sup>28</sup> *Bursey v. Weatherford*, 429 U.S. 545, 557–58 (1977) (although rejecting a *per se* rule that third party presence violates the Sixth Amendment, the court suggested that communication of privileged information to government at the detriment of the defendant or benefit of the State would be a violation); *Coplon v. United States*, 191 F.2d 749, *cert. denied*, 342 U.S. 926 (1952) (holding that interception of telephone communications between the defendant and her lawyer before and during trial deprived the defendant of her Sixth Amendment right to effective assistance of counsel); *United States v. Singer*, 785 F.2d 228, 232 (8th Cir.) (the Government's review of the defendant's confidential trial strategy files acquired through an informant constituted an unconstitutional intrusion into defendant's attorney-client relationship), *cert. denied*, 479 U.S. 883 (1986).

<sup>29</sup> *Rasul v. Bush*, 542 U.S. 466, 473 (2004) (quoting Act of Sept. 24, 1789, ch. 20, § 14, 1 Stat. 82).

<sup>30</sup> Evidence obtained through an intrusion of the attorney-client privilege, as well as any fruits thereof, must be suppressed in proceedings against him or, if the intrusion taints the entire proceedings, the court may require a new prosecutor or dismiss the indictment. *Shillinger v. Haworth*, 70 F.3d 1132, 1143 (8th Cir. 1995)

<sup>31</sup> *Id.* See *State v. Lenarz*, 301 Conn. 417, 22 A.3d 536 (Conn. 2011) (ordering dismissal of charge against the defendant because the prosecutor used privileged trial strategy information against the defendant for more than one year).

<sup>32</sup> *Turkmen v. Ashcroft*, the principal class-action suit against Brooklyn Metropolitan Detention Center (MDC) officers and guards, and named individuals from the federal government, was filed in April 2002 but remains pending. Notwithstanding the Department of Justice's December 2003 findings of breached attorney-client privacy, on January 15, 2013, Judge Gleeson granted in part the MDC defendants' motions to dismiss, including alleged interference with counsel. *Turkmen v. Ashcroft*; Memorandum and Order (Case 1:02-cv-02307-JG-SMG Document 767 (Jan. 20, 2013)) at Page 62, <http://www.ccrjustice.org/files/Turkmen%20decision%20Jan%202013.pdf>. The granted motions to dismiss implicated, in relevant part, "the video and audiotaping of the detainees' visits with their attorneys, including the use of sound recording." *Id.* at Page 42. However, five related Brooklyn MDC detainees were awarded a \$1.2 million settlement from the United States Government in 2009 because of the practices at the MDC in 2001. Nina Bernstein, *U.S. to Pay \$1.2 Million to 5 Detainees Over Abuse Lawsuit*, New York Times (Nov. 2, 2009), <http://www.nytimes.com/2009/11/03/nyregion/03jail.html>.

Nearly every time we saw a detainee escorted to an attorney visit, his visit was videotaped. [...]

It appeared that detainees' attorney visits were recorded intentionally. [...]

In sum, we concluded that audio taping attorney visits violated the law and interfered with the detainees' effective access to legal counsel.<sup>33</sup>

Although these known breaches of attorney-client privacy occurred before Guantanamo Bay even held suspected al-Qaeda and Taliban members, such a breach of privacy followed by silence for so long raises several questions. Did violations of attorney-client privacy actually stop, or was it merely the reports of violations that stopped? If the surveillance of attorney-client meetings did not stop but instead persisted unreported, could that have been the result of better concealment of the surveillance methods and devices?

Beyond surveying what the Military Commission at Guantanamo Bay has established in the al-Nashiri and KSM, et al. hearings' records regarding the United States Government's eavesdropping equipment discovery, this paper reveals the following:

- Despite the denials of Guantanamo Bay command staff, Camp Echo has possessed audio-recording equipment throughout the past decade, and it has been used as recently as 2012, if not more recently. Guantanamo Bay command staff's denials to the contrary are either alarmingly misinformed or made in order to conceal the truth.
- The only rooms on the entire Guantanamo Bay Naval Base where defense attorneys are permitted to hold private meetings with their high-value-detainee clients are the same rooms formerly used by intelligence agencies for the purpose of recording interrogations of the same group of detainees. Monitoring equipment in those rooms has been repaired and upgraded repeatedly during the past decade – even as recently as a month before it was discovered.
- The United States Government has consistently adhered to its long-standing policy of recording high-value detainees' activities, especially those activities in Camp Echo. Although the Government historically denies recording high-value-detainees, those denials are proven false.

Although the Government claims that the listening devices have been disabled, the ability to revive them remains "available."<sup>34</sup> Even if the listening devices remain dormant, their installment and concealment by the Government in the meeting rooms assigned to attorneys and their detainee-clients have irreparably undermined the defense counsels' ability to establish trust and to deliver effective assistance.

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<sup>33</sup> Department of Justice Office of the Inspector General, *Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York*. Chapter III, Section B.: Video and Audio Taping Detainees' Meetings with Their Attorneys, <http://www.justice.gov/oig/special/0312/chapter3.htm>.

<sup>34</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2243 at Line 1 through Page 2244 at Line 5.

## I. Assertions Regarding Echo II's Audio-monitoring Capabilities

JTF-GTMO's command staff recently offered statements under oath regarding the audio-monitoring capabilities in the facilities dedicated to private attorney-client meetings. Despite the command staff's attempt to downplay the extent of the breach of attorney-client privacy at Guantanamo Bay, this report identifies policies and practices consistent with eavesdropping as suspected by defense attorneys – policies and practices that have created an environment in which it is impossible for attorneys to have any privacy at all, or to claim such to their clients.

Chief Legal Advisor to JTF-GTMO, Navy Captain Welsh identified on the record the area of the detention center at Guantanamo Bay dedicated to private attorney-client meetings<sup>35</sup> as Echo II.<sup>36</sup> Captain Welsh, a career lawyer stationed at Guantanamo Bay since May 2011, has been aware of Echo II's audio-monitoring capabilities since January 2012. He observed an FBI agent wearing headphones listening to audio and watching video from an Echo II meeting room in which defense and prosecution attorneys were discussing a potential plea bargain – an activity not protected by attorney-client privilege.<sup>37</sup> The same meeting room designed for audio-visual surveillance is also assigned to attorneys and clients for private discussions.

Captain Welsh insists that the standard operating procedure is to monitor meetings in Camp Echo visually, but not audibly, for safety and security.<sup>38</sup> Two senior officers assured Captain Welsh that audio is not monitored during attorney-client meetings. Army Colonel Donny Thomas, the former commander of the Joint Detention Group, Guantanamo Bay (JDG-GTMO), informed Captain Welsh that “we do not monitor [audio in] any attorney-client meetings” but Thomas confirmed that video surveillance of the meetings is monitored.<sup>39</sup> Moreover, in January 2012 Navy Admiral David Woods insisted that “No microphones are installed to ensure privacy between attorney and client is maintained.”<sup>40</sup>

Admiral Woods' statement regarding the nonexistence of microphones in Echo II is very troubling. If true, Admiral Woods' statement establishes that the disguised microphones discovered in Echo II in January 2013 must have been installed after January 2012, a period during which the only activities that could have been recorded were attorney-client meetings or defense-requested medical visits with detainees.<sup>41</sup> According to other senior command staff at

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<sup>35</sup> Echo II meeting rooms are also dedicated to meetings between the International Committee of the Red Cross (ICRC) and detainees, and medical reviews of detainees at defense counsel's request. See *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/12/2013 from 1:00 PM to 2:37 PM*, Page 1968 at Line 20 through Page 1969 at Line 7.

<sup>36</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/12/2013 from 1:00 PM to 2:37 PM*, Page 1967 at Line 1 through Page 1968 at Line 17.

<sup>37</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/12/2013 from 1:00 PM to 2:37 PM*, Page 1967 at Line 1 through Page 1968 at Line 9. See also *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2187 at Line 1 through Page 2188 at Line 20.

<sup>38</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/12/2013 from 1:00 PM to 2:37 PM*, Page 1971 at Lines 11-20.

<sup>39</sup> *Id.* Page 1972 at Lines 9-22.

<sup>40</sup> *Id.* Page 1983 at Lines 15-22.

<sup>41</sup> The three usages of Echo II since at least June 2012 are private attorney-client meetings, meetings between the International Committee of the Red Cross (ICRC) delegates and detainees, and defense-requested medical meetings with detainees. See *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/12/2013 from 1:00*

Guantanamo Bay, no audio from either of those types of meetings is recorded.<sup>42</sup> Thus, if Admiral Woods' statement is true, the installation of sophisticated audio surveillance equipment in Echo II is inexplicable. If untrue, Admiral Woods' statement is even more troubling since that would suggest he had something to conceal.

Curiously, a logistics order issued by Admiral Woods on December 27, 2011 that requires defense attorneys to arrange private meetings with their clients fourteen days in advance also requires them to list "the language or languages that will be used during the meeting."<sup>43</sup> Moreover, the detainee client and the defense attorney are directed to "speak in the same language or languages during visits to the maximum extent possible."<sup>44</sup> Defending the protocols that seem to provide third parties to the attorney-client meeting the most conducive environment for monitoring, Captain Welsh remarked, "I see that but I know in practice we don't follow it."<sup>45</sup> But the policy need not be followed for third parties to use audio recordings to translate statements made in unannounced languages. Moreover, Captain Welsh's statement brings into question which orders regarding attorney-client meetings actually are followed at Guantanamo Bay. Microphones have been installed in Echo II despite Admiral Woods' assurances to the contrary, and according to Captain Welsh, Guantanamo Bay personnel unilaterally disregard Admiral Woods' logistics order requiring detainees to speak only in a language approved two weeks in advance. Given this pattern of disregard for orders, the insistence that state-of-the-art, clandestine audio-monitoring equipment installed throughout an entire camp is not used seems difficult to believe.

While testifying under oath the day after Captain Welsh had testified, the present commander of JDG-GTMO, Army Colonel Bogdan, contradicted Admiral Woods' statement about monitoring attorney-client meetings. Colonel Bogdan asserted that the FBI set up Echo II's huts to include both audio and video capabilities before turning over the huts to the military in 2008.<sup>46</sup> Colonel Bogdan's information comes directly from Andrew De la Rocha, the FBI Special Agent in Charge (SAIC) at Guantanamo Bay in mid-June 2012, when Colonel Bogdan took command. According to Colonel Bogdan, SAIC De la Rocha advised him that the audio and video monitoring systems lacked the capability for recording.<sup>47</sup>

Much like Colonel Bogdan contradicted Admiral Woods, Rear Admiral Mark Buzby contradicted SAIC De La Rocha's statement. Commander of JTF-GTMO in 2008, Rear Admiral Buzby provided extensive details about Guantanamo Bay camps' history of DVR recording capabilities – including multiple times that Camp Echo's DVR devices were upgraded for the

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*PM to 2:37 PM*, Page 1968 at Line 20 through Page 1969 at Line 7. The ICRC delegates so adamantly resist surveillance of their meetings that they require the video cameras to be covered. See *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2186 at Lines 1-19.

<sup>42</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2186 at Lines 1-19.

<sup>43</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/12/2013 from 1:00 PM to 2:37 PM*, Page 1992 at Lines 8-13 and Page 1995 at Line 20 through Page 1996 at Line 7.

<sup>44</sup> *Id.* Page 1997 at Lines 3-9.

<sup>45</sup> *Id.* Page 1996 at Line 7.

<sup>46</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2176 at Line 22 through Page 2177 at Line 10.

<sup>47</sup> *Id.*

explicit purpose of recording detainees in the Camp.<sup>48</sup> Not only were the Camp Echo monitoring systems capable of recording, year after year they did record every minute of every day.<sup>49</sup>

The JTF-GTMO command staff's contradictory statements under oath about Echo II's audio-monitoring capabilities raise the question of what the truth of Echo II's history is.

## II. Echo II' History

Historically, Echo II has been used as a dual-purpose interrogation and interview facility with full audio-visual recording capabilities. Camp Echo was configured to facilitate audio-visual recording of high-value detainees around the clock, an environment devoid of privacy. According to Guantanamo Bay command staff, Camp Echo has been used during the same time period both for high-value detainee interrogations and attorney-client meetings.

### A. Camp Echo's Surveillance Infrastructure

Camp Echo contains twenty-four cells used as "a segregation site for captives who can't mix with others."<sup>50</sup> Presently Echo II, the location where disguised microphones were found, is "an area of the facility where high-value detainees<sup>51</sup> [...] meet with their attorneys."<sup>52</sup> Echo I is "an area where similar meetings take place with low-value detainees."<sup>53</sup> Of the twenty-four cells in Camp Echo, sixteen cells are in Echo II's eight huts.<sup>54</sup> Echo II's eight huts are located in a fenced-in gravel courtyard, situated in two lines of four huts each, numbered 1 through 4, and 5 through 8, with 4 opposite of 5, leading back to 8 opposite of 1 at the entrance.<sup>55</sup> "Each hut is

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<sup>48</sup> Rear Admiral Mark H. Buzby, *Declaration of Rear Admiral Mark H. Buzby*, [http://archive.org/stream/gov.uscourts.dcd.116163/gov.uscourts.dcd.116163.37.0\\_djvu.txt](http://archive.org/stream/gov.uscourts.dcd.116163/gov.uscourts.dcd.116163.37.0_djvu.txt).

<sup>49</sup> *Id.*

<sup>50</sup> *A Prison Camps Primer*, Miami Herald (Dec. 22, 2011), <http://www.miamiherald.com/2011/12/22/2558413/web-extra-a-prison-camps-primer.html>.

<sup>51</sup> A "high value detainee" is defined as: "a detainee who, until time of capture, we have reason to believe: (1) is a senior member of al-Qai'da or an al-Qai'da associated terrorist group (Jemaah Islamiyyah, Egyptian Islamic Jihad, al-Zarqawi Group, etc.); (2) has knowledge of imminent terrorist threats against the USA, its military forces, its citizens and organizations, or its allies; or that has/had direct involvement in planning and preparing terrorist actions against the USA or its allies, or assisting the al-Qai'da leadership in planning and preparing such terrorist actions; and (3) if released, constitutes a clear and continuing threat to the USA or its allies." U.S Department of Justice, Office of Legal Counsel, *Memorandum for John A. Rizzo, Senior Deputy General Counsel, CIA* (May 10, 2005) at Page 4, citing *Fax for Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, from [redacted] Assistant General Counsel, CIA*, at 3 (Jan. 4, 2005), [http://www.thetorturedatabase.org/files/foia\\_subsite/pdfs/DOJOLC000798.pdf](http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC000798.pdf).

<sup>52</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2172 at Lines 17-22.

<sup>53</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2173 at Lines 1-3.

<sup>54</sup> Carol Rosenberg, *FBI Hid Microphones in Guantanamo, But No One Listened, Prison Commander Testifies*, Miami Herald (Feb. 13, 2013), <http://www.miamiherald.com/2013/02/13/3232992/fbi-hid-microphones-in-guantanamo.html>.

<sup>55</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2222 at Line 10 through Page 2223 at Line 2.

divided in half. Inside are a steel cage, a restroom, and a table for interviews and interrogations.”<sup>56</sup> A control room is located in a separate structure.<sup>57</sup>

The Echo II control room houses the interview and interrogation surveillance equipment connected to each of the location’s eight huts.<sup>58</sup> SAIC De la Rocha informed Colonel Bogdan that “the FBI originally installed the technical systems within Echo II” at an unspecified date since 2002 and that the Bureau “turned over” the surveillance equipment to the military in 2008.<sup>59</sup> Since 2008, the JDG has controlled Echo II,<sup>60</sup> although J2, the intelligence staff at Guantanamo Bay, owns the surveillance equipment and is “responsible for maintaining it, installing it, replacing it, upgrading it.”<sup>61</sup>

Colonel Bogdan testified that, although he was not surprised when he learned that the FBI was present in Echo II, he was surprised that they conducted surveillance in Echo II in January 2012.<sup>62</sup> Perhaps the FBI was unaware of the “verbal policy” of not conducting audio surveillance, given that the written Standard Operating Procedures “neither permit nor forbid” audio monitoring.<sup>63</sup>

## **B. Camp Echo Use 1: High-Value-Detainee Interrogations**

Camp Echo housed detainees at least as early as 2003, and it is likely that they were interrogated in the Camp since then.<sup>64</sup> Camp Echo was originally designed to operate as “a prison within a prison,” built to confine the Defense Department’s high-value detainees.<sup>65</sup> The CIA ran a facility located in Camp Echo since at least as early as 2004.<sup>66</sup> This facility was “off-limits to nearly everyone on the base [according to a] military official familiar with operations at Guantanamo Bay.”<sup>67</sup> The CIA had operated out of Guantanamo Bay since early 2002, and “[took] part in interrogation sessions of Department of Defense detainees alongside FBI agents, military intelligence officers and others in what are called Tiger Teams.”<sup>68</sup> It is unknown if the control room that houses the interview and interrogation surveillance equipment connected to Echo II’s huts is the same facility used by the CIA. However, since Echo I is used for “low-value

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<sup>56</sup> Dana Priest and Scott Higham, *At Guantanamo, A Prison Within A Prison*, Washington Post (Dec. 17, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A5918-2004Dec16.html>.

<sup>57</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2222 at Lines 8-9.

<sup>58</sup> *Id.* Page 2203 at Lines 12-15.

<sup>59</sup> *Id.* Page 2176 at Line 22 through Page 2177 at Line 10.

<sup>60</sup> *Id.* Page 2178 at Lines 8-11.

<sup>61</sup> *Id.* Page 2179 at Line 22 through Page 2180 at Line 7.

<sup>62</sup> *Id.* Page 2190 at Line 20 through Page 2191 at Line 16.

<sup>63</sup> *Id.* Page 2189 at Line 1 through Page 2190 at Line 12.

<sup>64</sup> *Hamdan v. Rumsfeld*; Notice of Motion and Motion for Order Holding Petition in Abeyance; Memorandum of Points and Authorities in Support Thereof, Page 4 at Lines 17-20, [www.defense.gov/news/Jan2006/d20060104khadrstayrequest2.pdf](http://www.defense.gov/news/Jan2006/d20060104khadrstayrequest2.pdf).

<sup>65</sup> Dana Priest and Scott Higham, *At Guantanamo, A Prison Within A Prison*, Washington Post (Dec. 17, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A5918-2004Dec16.html>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

detainees,” it is likely that the Echo II control room is part of the CIA’s former high-value detainee facility.

### **C. Camp Echo Use 2: Attorney-Client Meetings**

In addition to Camp Echo being used for CIA and FBI interrogations, the Commander of JTF-GTMO in 2004, Army Major General Geoffrey Miller, discussed the Camp’s alternate purpose in a press briefing early that year:

Camp Echo is our facility where we hold the pre-commissions detainees. Once the President has decided to move forward in this process, we separate these enemy combatants from the general population and move them into Camp Echo, in that facility, to allow us to separate them, plus, to allow their lawyers, when they're appointed, to have access to the enemy combatants to hold private conversations.<sup>69</sup>

Thus, the facilities installed with interrogation monitoring and recording equipment are the same facilities assigned to attorneys to conduct purportedly private meetings with their clients since at least 2004. This raises the question of what policies and practices exist regarding the recording of high-value detainees.

## **III. United States’ Policies and Practices Regarding Recording High-value Detainees**

Beyond maintaining audio-visual recording infrastructure in Camp Echo, Pentagon officials have endorsed extensive recording of detainees as a general policy both at Guantanamo Bay and in other detention and interrogation facilities worldwide. Senior Defense Department and Guantanamo Bay officials have confirmed broad compliance with the Pentagon’s policy, and as a result, tens of thousands of interrogations have been recorded at Guantanamo Bay. This practice has been conducted pursuant to two policies. The first policy mandated audio-visual recordings of all interrogations, and the second policy mandated audio-visual monitoring of all interrogations, but required monitors not to listen to the audio during the interrogation. However, the policy did not apply to authorized personnel who reviewed the recorded audio afterward.

Moreover, this section also discusses three notorious examples of the government’s audio-visual recording of detainees. From these examples, it is apparent that, despite denials and attempts to hide or destroy evidence, the United States has adopted and exercised definitive audio-visual recording policies that confirm that audio recordings are, in fact, reviewed.

### **A. Guantanamo Bay Surveillance Recording Policies**

Historically, Camp Echo’s surveillance equipment was used for monitoring and recording interrogations. During a Pentagon briefing in 2009, Vice Chief of Naval Operations, Admiral Patrick Walsh, was explicit about the Navy’s video recording policy in Guantanamo Bay: “We

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<sup>69</sup> Paul Butler, *Briefing on Detainee Operations at Guantanamo Bay*, U.S. Department of Defense (Feb. 13, 2004), <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=2071>.

endorse the use of video recording in all camps and all interrogations.”<sup>70</sup> Beyond the Navy’s endorsement of video recording, the Office of the Surgeon General of the Army asserted in May 2005 that in the Guantanamo Bay Detention Facility, “[a]ll interrogations are videotaped,”<sup>71</sup> including those conducted in Camp Echo. Between 2002 and 2005, “all interrogations” conducted in Guantanamo Bay had already totaled 24,000 separate sessions.<sup>72</sup> A year before Admiral Walsh’s endorsement, Rear Admiral Buzby reported the extent of JTF-GTMO’s compliance with the Navy’s policy of recording all camps:

Activities taking place in Camps 4, 6, Echo, and Iguana have been recorded 24 hours per day, seven days per week (hereafter referred to as ‘foil-time’) by means of digital video recording (DVR) systems that are part of the video monitoring systems that guards use to ensure good order and discipline within the camps.<sup>73</sup>

Video recording was so extensive throughout Guantanamo Bay’s camps that the DVRs reached capacity and began overwriting data several times during Rear Admiral Buzby’s command.<sup>74</sup> In response to the overwhelming surveillance recording, Rear Admiral Buzby ordered the guard staff in January 2008 “to video record, on an ‘on-demand’ basis, all significant events in Camp 4, 6, Echo, and Iguana,” rather than recording all activities in all camps at all hours of the day as had been the standing policy and practice.<sup>75</sup>

The 2006 Army Human Intelligence (HUMINT) Collector Operations Report emphasized the inherent feature of conventional video recording that makes it preferred to mere audio recording: “*Video recording* is possibly the most accurate method of recording a questioning session since it *records not only the voices* but also can be examined for details of body language and source and collector interaction.”<sup>76</sup>

Camp Delta’s SOP Manual provides another example of JTF-GTMO’s interrogation recording policy and practice:

A JIIF [Joint Interagency Interrogation Facility] monitor will be located either in a monitor room that is equipped with two-way mirrors and CCTV or in a

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<sup>70</sup> Vice Chief of Naval Operations, Admiral Patrick M. Walsh, *DoD News Briefing with Adm. Walsh from the Pentagon*, U.S. Department of Defense (Feb. 23, 2009), <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4359>.

<sup>71</sup> Office of the Surgeon General of the Army, *Final Report – Assessment of Detainee Medical Operations for OEF, GTMO, and OIF* (May 24, 2005), at 18-2.d, <http://www1.umn.edu/humanrts/OathBetrayed/Army%20Surgeon%20General%20Report.pdf>.

<sup>72</sup> *Schmidt-Furlow Report* (April 1, 2005, amended June 9, 2005), Pages 1, 6, <http://www.defense.gov/news/Jul2005/d20050714report.pdf>.

<sup>73</sup> Rear Admiral Mark H. Buzby, *Declaration of Rear Admiral Mark H. Buzby*, [http://archive.org/stream/gov.uscourts.dcd.116163/gov.uscourts.dcd.116163.37.0\\_djvu.txt](http://archive.org/stream/gov.uscourts.dcd.116163/gov.uscourts.dcd.116163.37.0_djvu.txt).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> United States Army, *Field Manual 2-22.3 (FM 34-52) Human Intelligence Collector Operations*, Pages 9-11 (emphasis added), [https://armypubs.us.army.mil/doctrine/DR\\_pubs/dr\\_b/pdf/fm2\\_22x2.pdf](https://armypubs.us.army.mil/doctrine/DR_pubs/dr_b/pdf/fm2_22x2.pdf).

CCTV only room.<sup>77</sup> [...] JIIF monitors will observe all interrogations. They will NOT listen to any interrogations.<sup>78</sup>



*Intelligence analysts observe interrogations remotely from this monitoring room in Camp 5, the new state-of-the-art detention and intelligence facility at Naval Base Guantanamo Bay, Cuba.<sup>80</sup>*

Note that the explicit order not to listen to interrogations indicates that the CCTV monitors, located in every monitoring room used by JIIF personnel, include an audio feed that must be actively disregarded. Despite this SOP, an incident report in a 2003 memorandum from Major General Miller, during his command of Guantanamo Bay, to SOUTHCOM<sup>81</sup> specifically refers to individuals in a monitoring room listening to an interrogation as it occurred: “The two analysts in the monitoring room had a speaker plugged into the audio output from Room 6 and [redacted].... Over the speaker that [redacted] and the other analyst were using I could hear [redacted] becoming louder and louder in his interrogation.”<sup>82</sup>

Audio and video recording of high-value detainees held at Guantanamo Bay was never limited to interrogations. Since at least June 21, 2002, the United States Department of State had

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<sup>77</sup> *Camp Delta Standard Operating Procedures*, Intelligence Operations SOP 14-12.b, [http://www.dod.mil/pubs/foi/operation\\_and\\_plans/Detainee/CampDeltaSOP\\_dec07.pdf](http://www.dod.mil/pubs/foi/operation_and_plans/Detainee/CampDeltaSOP_dec07.pdf).

<sup>78</sup> *Camp Delta Standard Operating Procedures*, Intelligence Operations SOP 14-12.e (emphasis in original), [http://www.dod.mil/pubs/foi/operation\\_and\\_plans/Detainee/CampDeltaSOP\\_dec07.pdf](http://www.dod.mil/pubs/foi/operation_and_plans/Detainee/CampDeltaSOP_dec07.pdf).

<sup>79</sup> Kathleen T. Rhem, *Guantanamo Detainees Still Yielding Valuable Intelligence*, American Forces Press Service (Mar. 4, 2005), <http://www.defense.gov/news/newsarticle.aspx?id=31279>.

<sup>80</sup> *Id.*

<sup>81</sup> The Southern Command of the United States Military, based in Miami, Florida.

<sup>82</sup> Major General Geoffrey Miller, *Department of Defense, Joint Task Force GTMO, Guantanamo Bay, Cuba, Memorandum for Commander, United States Southern Command: Commander's Inquiry, Allegation of Inhumane Treatment of [Redacted]*, at 1329 (May 3, 2003).

[http://www.thetorturedatabase.org/files/foia\\_subsite/pdfs/DOD023885.pdf](http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOD023885.pdf).

warned representatives of foreign governments the extent of the “conditions governing [...] foreign access to detainees at Guantanamo Bay.”<sup>83</sup> The first condition was:

The United States will video tape and *sound record the interviews between representatives of your government and the detainee(s)* named above. Your government representative may photograph, video tape or make sound recordings during the interviews only with prior approval of the U.S. Department of Defense.<sup>84</sup>

In sum, visitors to Guantanamo Bay detainees have had a reasonable basis for assuming that their private meetings have been video and audio recorded since June 2002.

## **B. Examples of Detainee Video Recordings for Intelligence-Gathering Purposes**

There are several notorious incidents of interrogation recordings conducted by the United States. Perhaps the most notorious is the 92 videotapes of interrogations of a high-value detainee, Abu Zubaydah, made by CIA interrogation teams.<sup>85</sup> One “initial purpose” of recording the interrogations was to create “a record of Abu Zubaydah's medical condition and treatment should he succumb to his wounds and questions arise about the medical care provided to him by CIA.”<sup>86</sup> However, “[a]nother purpose was to assist in the preparation of the debriefing reports.”<sup>87</sup> All 92 tapes were destroyed in November 2005 on the order of the CIA’s director of clandestine operations at the time.<sup>88</sup> The CIA listened to the audio from the videotapes of the interrogations to prepare debriefing reports.<sup>89</sup>

A second notorious incident of interrogation recordings surfaced in 2010, when the CIA confirmed that it still possessed two videotapes and one audiotape of their interrogations of Ramzi Binalshibh.<sup>90</sup> Binalshibh is one of the five detainees who were present in the Military Commission courtroom when the external body’s eavesdropping practice was exposed in January 2013. Presently, Binalshibh’s attorneys are concerned that surreptitious recordings of meetings in Echo II have breached attorney-client privacy. The CIA had claimed that in 2005 it had destroyed all recordings it made of Binalshibh, around the same time that the Agency destroyed the 92 recordings of Abu Zubaydah.<sup>91</sup> Prior to finally admitting the existence of

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<sup>83</sup> United States Department of State, *State Department Cable re: Guidance and Talking Points to Foreign Governments Concerning Their Citizens Detained At Guantanamo* (June 21, 2002), DOS000108, [http://www.thetorturedatabase.org/files/foia\\_subsite/pdfs/DOS000108.pdf](http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOS000108.pdf).

<sup>84</sup> *Id.* DOS000109 (emphasis added).

<sup>85</sup> CIA Office of the Inspector General, *Special Review – Counterterrorism Detention and Interrogation Activities (September 2001 – October 2003)* (May 7, 2004), Page 36, [http://www.thetorturedatabase.org/files/foia\\_subsite/pdfs/CIA000349.pdf](http://www.thetorturedatabase.org/files/foia_subsite/pdfs/CIA000349.pdf).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Dan Eggen and Joby Warrick, *CIA Destroyed Videos Showing Interrogations*, Washington Post (Dec. 7, 2012), [http://www.washingtonpost.com/wp-dyn/content/article/2007/12/06/AR2007120601828\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/12/06/AR2007120601828_pf.html).

<sup>89</sup> CIA Office of the Inspector General, *Special Review – Counterterrorism Detention and Interrogation Activities (September 2001 – October 2003)* (May 7, 2004), Page 36.

<sup>90</sup> *US Confirms Interrogation Tapes*, Al-Jazeera (Aug. 18, 2010), <http://www.aljazeera.com/news/americas/2010/08/201081853357268955.html>.

<sup>91</sup> *Id.*

Binalshibh's interrogation recordings, the CIA disinformed the Department of Justice twice that the recordings no longer existed.<sup>92</sup>

Once again, Defense Department representatives in the 9/11 Military Commission Hearings deny recording Binalshibh, but this time they deny recording Binalshibh in a room filled with cameras and hidden microphones – a room designed to record interrogations of detainees like Binalshibh.

A third notorious incident of interrogation recordings conducted by the United States involved the worldwide broadcasted recording of Omar Khadr, a Canadian who was held at Guantanamo since he was 16 years old.<sup>93</sup> In February 2003, Canadian Security Intelligence Service (CSIS) officials interrogated Khadr in Guantanamo Bay.<sup>94</sup> The interrogation room's surveillance equipment recorded the interrogations. In July 2008, Khadr's defense attorneys released the interrogation recordings to the public.<sup>95</sup> Ultimately, seven hours of interrogations of Khadr conducted over four days at Guantanamo Bay were edited into a feature-length documentary film.<sup>96</sup> The surveillance camera video footage includes synchronized audio recording.

A Special Agent for the Naval Criminal Investigative Service (NCIS) watched and listened to all recordings of the CSIS's interrogations of Omar Khadr a week after they were made and reported on the intelligence gathered during the sessions.<sup>97</sup> An excerpt from the Report of Investigative Activity with specific mention of the recorded sound follows:

On 14Feb03, KHADR again was placed in the same type of room with a large table and folding chair. *The interrogators could be heard* during some of the interview. KHADR was difficult to hear. He mumbled and had his head down. [...] *The sound improved some* and KHADR removed his shirt to show the interviewers the wounds on his back and stomach.<sup>98</sup>

Thus, the monitoring equipment in the interrogation rooms at Guantanamo Bay record not only video, but also audio. Furthermore, not only are tens of thousands of audio-visual recordings of detainees made, the recordings are reviewed. Given the United States Government's proclivity for recording high-value detainees, specifically including Ramzi Binalshibh, the extent of the clandestine audio-monitoring capabilities in the interrogation rooms repurposed as attorney-client meeting rooms is a particular issue of concern.

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<sup>92</sup> *Id.*

<sup>93</sup> *Key Events in the Omar Khadr Case*, CBC News (Sep. 30, 2012), <http://www.cbc.ca/news/politics/story/2012/09/30/omar-khadr-timeline.html>.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *You Don't Like the Truth: 4 Days Inside Guantanamo*, <http://www.youdontlikethetruth.com>.

<sup>97</sup> Air Force Office of Special Investigations *Report of Investigative Activity* (Feb. 24, 2003), Page 000060, <http://www.cbc.ca/documentaries/doczone/2008/omarkadr/DFAIT%20and%20CSIS%20Docs.pdf>.

<sup>98</sup> *Id.* (emphasis added).

#### **IV. Echo II's Audio-monitoring Capabilities**

Camp Echo's audio-monitoring equipment is state-of-the-art. The hardware installed throughout Echo II has been repaired and upgraded repeatedly, despite the insistence of Guantanamo Bay representatives who have alleged at various points that the Camp lacks audio-monitoring capabilities, or that the capabilities exist but are not used. Moreover, the equipment is so sophisticated that it can be programmed in advance to record, and can be accessed remotely. The extensive audio-visual monitoring capabilities have created an environment in which it is impossible for attorneys and their clients to have any privacy at all.

##### **A. The AP-4 Audio Monitoring Base Station**

As identified during Military Commission hearings held in February 2013, the microphones disguised as smoke detectors in each of Echo II's sixteen cells are routed into several Louroe Electronics' AP-4 Audio Monitoring Base Stations in the Echo II control room.<sup>99</sup> Essentially, an AP-4 Audio Monitoring Base Station has two purposes. The first purpose is to connect up to four microphones per Base Station, to listen to the sound from any combination of those microphones either through a speaker built into the Base Station, or through headphones.<sup>100</sup> Alternatively, audio from a DVR can be played through the Base Station. The second purpose of the Base Station is to connect microphones to a DVR to provide the sound while the DVR records video from cameras.<sup>101</sup> The volume knob for the Base Station is also the power switch, and each microphone input can be muted while the monitored conversation is taking place.<sup>102</sup> However, if the Base Station is turned on and the DVR is recording, the audio from each connected microphone is recorded, regardless of whether it is played through the Base Station's speaker or headphones.<sup>103</sup>

##### **B. The Verifact A Microphone**

Microphones also designed by Louroe Electronics connect to the Base Station with a special "3-Pin" connector.<sup>104</sup> The basic design of Louroe Electronics' microphone models that looks conspicuously like a smoke detector, and bears the same Louroe logo as the smoke detector in the defense team's photograph, is the Verifact A.<sup>105</sup> As discussed above, the Verifact A is "sensitive enough to capture a suspect's comments even when whispered."<sup>106</sup> Louroe describes its smoke-detector microphone's capabilities as follows:

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<sup>99</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2203 at Line 5 through Page 2204 at Line 8.

<sup>100</sup> Louroe Electronics, *AP-2/AP-4/AP-8 Audio Monitoring Base Station Installation and Operating Instructions*, [http://www.louroe.com/products/instructions/ap4\\_louroe.pdf](http://www.louroe.com/products/instructions/ap4_louroe.pdf).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Louroe Electronics, *Verifact A Audio Monitoring System Installation and Operating Instructions*, [http://www.louroe.com/products/instructions/amic\\_louroe.pdf](http://www.louroe.com/products/instructions/amic_louroe.pdf).

<sup>106</sup> Joseph Goudlock, *Where are You Using Louroe Electronics?*, Louroe Electronics Blog (Sep. 27, 2012, 12:00 AM), <http://www.louroe.com/blog.php>.

The Model Verifact™ A is an omni-directional, low impedance, electret condenser microphone with built-in preamp. It can pick up normal sounds approximately 15 ft. away, or within a 30 ft. diameter circle. Verifact™ A produces line level output (0 dB @ 1000W) and can be located up to 1,000' from the Louroe base station. It is primarily designed for ceiling mounting but can also be installed on any type of flat surface. The Verifact™ A is compatible with all Louroe Audio Base Stations or Louroe Audio Interface Adapters.<sup>107</sup>

Louroe Electronics' microphone product line includes variations on the Verifact A, including the Verifact A-ML, which "comes with 20' pre-made cable with a stereo plug on one end that can be plugged directly into the Audio Input of an IP camera."<sup>108</sup> The ceilings of the attorney-client meeting areas in Echo II, upon which the microphones were mounted when discovered, are approximately eight feet from the floors, well within the Verifact A's sensitivity field.<sup>109</sup>

The smoke-detector microphone models have only one control, which is not visible when the device is mounted on the ceiling.<sup>110</sup> This control is a "sensitivity switch" which can reduce the volume of the audio from the microphone to the Base Station by up to 6 decibels.<sup>111</sup> The microphone does not have an off switch.<sup>112</sup> Thus, if the microphone is connected to a camera or base station, as is the case in Camp Echo, it is always transmitting audio. However, Louroe manufactures a wall-mounted mute switch that labels the control in bold lettering, "MICROPHONE ON WHEN ILLUMINATED," and "MICROPHONE OFF."<sup>113</sup> If JTF-GTMO wanted to be transparent about the ability to monitor audio in attorney-client meeting rooms, it easily could have installed these mute switches with "ON" and "OFF" indicators, but they conspicuously omitted this feature from the Echo II surveillance installations.

As noted above, Camp Echo's surveillance equipment is connected to DVR equipment designed to record audio and video.<sup>114</sup> DVRs are designed to record audio and video in two ways: one, beginning at the moment the recording is initiated and continuing indefinitely until stopped; and two, to begin recording at a predetermined date and time, provided that they are programmed in advance to do so. Rather than recording all activities in Camp Echo at all hours

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<sup>107</sup> Louroe Electronics, *Verifact A Audio Monitoring System Installation and Operating Instructions*, [http://www.louroe.com/products/instructions/amic\\_louroe.pdf](http://www.louroe.com/products/instructions/amic_louroe.pdf).

<sup>108</sup> Louroe Electronics, *Verifact A-ML Audio Monitoring System Installation and Operating Instructions*, [http://louroe.com/products/instructions/amiclevel\\_louroe.pdf](http://louroe.com/products/instructions/amiclevel_louroe.pdf). IP or Internet Protocol cameras are designed to transmit audio and video over Internet connections to remote locations. An example of an IP camera with pan-tilt-zoom capability, as identified by Colonel Bogdan, is the Cisco 5010/5011 model. Cisco Systems, Inc., *Cisco Video Surveillance 5010/5011 Indoor Fixed Dome IP HD Camera Data Sheet*. [http://www.cisco.com/en/US/prod/collateral/ps6712/ps9692/ps11027/datasheet\\_c78-612990.pdf](http://www.cisco.com/en/US/prod/collateral/ps6712/ps9692/ps11027/datasheet_c78-612990.pdf).

<sup>109</sup> Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 1:02 PM to 2:46 PM, Page 2252 at Line 3 through Page 2253 at Line 20.

<sup>110</sup> Louroe Electronics, *Verifact A Audio Monitoring System Installation and Operating Instructions*, [http://www.louroe.com/products/instructions/amic\\_louroe.pdf](http://www.louroe.com/products/instructions/amic_louroe.pdf).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Louroe Electronics, *MS-1 Mute Switch Installation and Operating Instructions*, [http://www.louroe.com/products/instructions/ms1\\_louroe.pdf](http://www.louroe.com/products/instructions/ms1_louroe.pdf).

<sup>114</sup> See Buzby *supra* note 48.

of the day, Rear Admiral Buzby ordered the guard staff in January 2008 “to video record, on an ‘on-demand’ basis, all significant events” in that Camp.<sup>115</sup> Given that attorney-client meetings must be scheduled fourteen days in advance,<sup>116</sup> there is plenty of time for personnel with access to Camp Echo to program a DVR “on an ‘on-demand’ basis” the “significant events” of detainees discussing potential intelligence information with their attorneys.<sup>117</sup>

### C. Repeated Repairs and Upgrades To Allegedly Unused Equipment

Around the first week of December 2012, Echo II cameras were upgraded “from an analog to a digital capacity.”<sup>118</sup> The upgrade was at J2’s request and under Colonel Bogdan’s knowledge and authorization.<sup>119</sup> The upgrade was necessitated in part by a refurbishment project on all huts in Echo II, undertaken in October and November 2012, during which time several wires in the audio surveillance system were cut inadvertently.<sup>120</sup>

When the officer in charge of Echo II learned that the surveillance system had been damaged, he requested for the audio wires to be repaired, but Colonel Bogdan maintains that he first learned that there even was an audio surveillance system in Echo II in late January 2013.<sup>121</sup> Thus, Colonel Bogdan authorized the repair of a state-of-the-art audio component of a camp-wide surveillance system: a component that he claims he did not know existed and was not even used. But someone or some group not only knew that the audio surveillance equipment existed, they must have tried to use it in order to learn that it did not work. As of early February 2013, the audio surveillance capability was functional in huts 5 through 8, but not in huts 1 through 4.<sup>122</sup>

Although Colonel Bogdan denied knowledge of the fact, Learned Defense Counselor David Nevin indicated during the February Military Commission hearings that there is evidence that at some point the Audio Monitoring Base Stations in the Echo II control room were upgraded from sixteen separate controllers, one for each Echo II cell’s microphone, to four Base Stations each controlling four cells’ microphones.<sup>123</sup>

Additionally, as discussed above, Rear Admiral Buzby detailed the numerous times that Camp Echo’s DVRs were upgraded during his command alone.<sup>124</sup> Similarly, these upgrades only became necessary when someone or some group that knew of the surveillance capabilities attempted to access recorded surveillance audio or video, but failed.

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<sup>115</sup> *Id.*

<sup>116</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/12/2013 from 1:00 PM to 2:37 PM*, Page 1997 at Lines 3-9.

<sup>117</sup> *See* Buzby *supra* note 48.

<sup>118</sup> *Unofficial/Unauthenticated Transcript of the KSM et al. (2) Hearing Dated 2/13/2013 from 10:28 AM to 12:02 PM*, Page 2195 at Line 15 through Page 2196 at Line 17.

<sup>119</sup> *Id.* Page 2196 at Line 12 through Page 2197 at Line 1.

<sup>120</sup> *Id.* Page 2199 at Line 5 through Page 2200 at Line 20; Page 2223 at Lines 4-15.

<sup>121</sup> *Id.* Page 2199 at Line 5 through Page 2201 at Line 7.

<sup>122</sup> *Id.* Page 2223 at Line 4 through Page 2224 at Line 1.

<sup>123</sup> *Id.* Page 2204 at Lines 2-17.

<sup>124</sup> *See* Buzby *supra* note 48.

## CONCLUSION

The United States military and intelligence agencies have built an environment in which it is impossible for attorneys and their clients to have any privacy at all in Echo II. Every meeting room in which attorneys have been permitted to meet with their clients contained live microphones, disguised as ordinary objects, sensitive enough to detect the slightest whisper. Every room in which attorneys have been permitted to meet with their clients contains cameras capable of the functional equivalent of detecting the slightest whisper – zooming in to read very tiny writing. Every whispered word can be heard. Every written word can be read.

This report has reviewed the following: assertions made by JTF-GTMO's command staff regarding Echo II's audio-surveillance capabilities, Echo II's dual-purpose history, the United States Government's policies and practices regarding recording high-value detainees, and Echo II's audio-surveillance capabilities. This report has illuminated four conclusions.

First, despite the denials of Guantanamo Bay command staff, Camp Echo has possessed audio-recording equipment throughout the past decade. In fact, the recording equipment has been used admittedly as recently as January 2012, several years after intelligence units relinquished control of Camp Echo to the military. Thus, it appears that the command staff denied Camp Echo's audio-monitoring capabilities either as a result of being alarmingly misinformed or in order to conceal the truth.

Second, the only rooms on the entire Guantanamo Bay Naval Base where defense attorneys are permitted to hold private meetings with their high-value-detainee clients are the same rooms formerly used by the CIA, FBI, and other agencies for the purpose of recording interrogations of the same group of detainees. After the intelligence agencies relinquished control over Camp Echo – the “prison within a prison” – to the military, the military repeatedly repaired and upgraded audio-monitoring equipment that was purportedly never used. However, the military could have learned that the equipment required repairs and upgrades only if it knew how the equipment functioned and that it did not function properly when they attempted to use it. Moreover, the high-ranking officer in charge of Camp Echo who denied knowing that audio-monitoring equipment existed authorized that equipment's repair. The final maintenance on audio feeds in Camp Echo was conducted mere weeks before the surveillance capabilities were eventually discovered by defense counsel.

Third, the United States Government has consistently adhered to its long-standing policy of recording high-value detainees' activities, especially those activities in Camp Echo, the very location in which attorney-client privacy breaches have been alleged. Tens of thousands of recordings have been made. The United States Government now denies using the same equipment in Camp Echo it has always used to record detainees when they are more likely than ever to divulge valuable information, now that the conversations are intended to be private and voluntary with their attorneys rather than compelled through interrogation and used as evidence against them. Intelligence agencies continue to enjoy access to Camp Echo and its recording equipment which easily can be programmed to record without having personnel present in the control hut to monitor the private attorney-client meetings in real-time.

Finally, the law provides that the surreptitious use of monitoring equipment during private attorney-client meetings in Guantanamo Bay will be justified only if the United States Attorney General strongly suspects that the defense attorneys are assisting ongoing terrorist activities and authorizes the equipment's usage to thwart the attorneys' efforts. Absent such an authorization, third-party eavesdropping on attorney-client meetings in Camp Echo undermines due process during the Military Commission hearings and betrays United States values.