RECORD OF TRIAL

COVER SHEET

IN THE
MILITARY COMMISSION
CASE OF

UNITED STATES
V.
GHASSAN ABDULLAH AL SHARBI

ALSO KNOWN AS:

ABDULLAH AL MUSLIM
ABU MUSLIM

NO. 050005

VOLUME _IV__ OF _IV__ TOTAL VOLUMES

1ST VOLUME OF REVIEW EXHIBITS (RE): REs 1-32
APRIL 27, 2006 SESSION
(REDACTED VERSION)

United States v. Ghassan Abdullah al Sharbi, NO. 050005

INDEX OF VOLUMES

A more detailed index for each volume is included at the front of the particular volume concerned. An electronic copy of the redacted version of this record of trial is available at http://www.defenselink.mil/news/commissions.html.

Some volumes have not been numbered on the covers. The numerical order for the volumes of the record of trial, as listed below, as well as the total number of volumes will change as litigation progresses and additional documents are added.

After trial is completed, the Presiding Officer will authenticate the final session transcript and exhibits, and the Appointing Authority will certify the records as administratively complete. The volumes of the record of trial will receive their final numbering just prior to the Appointing Authority's administrative certification.

Transcript and Review Exhibits are part of the record of trial, and are considered during appellate review. Volumes I-VI, however, are allied papers and as such are not part of the record of trial. Allied papers provide references, and show the administrative and historical processing of a case. Allied papers are not usually considered during appellate review. *See generally United States v. Gonzalez*, 60 M.J. 572, 574-575 (Army Ct. Crim. App. 2004) and *United States v. Castleman*, 10 M.J. 750, 751 (AFCMR 1981) and cases cited therein discussing when allied papers may be considered during the military justice appellate process, which is governed by 10 U.S.C. § 866). For more information about allied papers in the military justice process, see Clerk of Military Commission administrative materials in Volume III.

VOLUME NUMBER	SUBSTANCE OF CONTENTS
ALLIED PAPERS	**Not part of "record of trial"**
I[1]	Military Commission Primary References (Congressional Authorizations for Use of Force; Detainee Treatment Act; UCMJ articles; President's Military Order; Military Commission Orders; DoD Directive; Military Commission Instructions; Appointing Authority Regulations; Presiding Officer Memoranda—includes DoD rescinded publications)
II[1]	Supreme Court Decisions: *Rasul v. Bush*, 542 U.S. 466 (2004); *Johnson v. Eisentrager*, 339 U.S. 763 (1950); *In re Yamashita*, 327 U.S. 1 (1946); *Ex Parte Quirin*, 317 U.S. 1 (1942); *Ex Parte Milligan*, 71 U.S. 2 (1866)

[1] **Interim volume numbers. Final numbers to be added when trial is completed.**

United States v. Ghassan Abdullah al Sharbi, NO. 050005

INDEX OF VOLUMES

VOLUME NUMBER	SUBSTANCE OF CONTENTS
III[2]	DoD Decisions on Commissions including Appointing Authority orders and decisions, Chief Clerk of Commissions documents
IV[2]	Federal Litigation in *Hamdan v. Rumsfeld*, at U.S. Supreme Court and D.C. Circuit
V[2]	Federal Litigation at U.S. District Courts Not Filed by Counsel in *United States v. Sharbi*
VI[2]	Selected filings and U.S. District Court decisions in *United States v. Sharbi*

Record of Trial

VII[2]	Transcript (R. 1-58) (April 27, 2006 session)
VIII[2]	Review Exhibits 1-32 (April 27, 2006 session)

[2] Interim volume numbers. Final numbers to be added when trial is completed.

UNITED STATES V. GHASSAN ABDULLAH AL SHARBI, NO. 050005—1ST VOLUME OF REVIEW EXHIBITS

Description of Exhibit **PAGE No.**

1ST VOLUME OF REVIEW EXHIBITS: REs 1-32 SESSION OF APR. 27, 2006

RE 1 Presidential Reason to Believe Determination, July 6, 2004 (1 page) 1

RE 2 Charge Sheet (4 pages) 2

RE 3 Appointing Authority approves charges, Nov. 4, 2005 (1 page) 6

RE 4 Appointing Authority refers case to trial (non-capital), Dec. 12, 2005 (1 page) 7

RE 5 Appointing Authority appoints Commission Members, Dec. 12, 2005, Order No. 05-0007 (1 page) 8

RE 6 Memorandum from Chief Prosecutor Detailing Prosecutors to this case, Dec. 15, 2005 (1 page) 9

RE 7 Lieutenant Commander (Select) (LCDR Kuebler detailed to Defense team, Nov. 14, 2005 (2 pages) 10

RE 8 PO1 Scheduling, Dec. 21, 2005 (11 pages) 12

1. PO2 Discovery Order by Presiding Officer, Dec. 21, 2005 (5 pages) 14

2. Table with Significant Commission dates 19

3. Presiding Officer Instructions to Panel Members 20

RE 9 PO2 Presiding Officer's Discovery Order, Dec. 21, 2005 (5 pages) 23

RE 10 Email providing Presiding Officer's Instructions to Panel Members, Dec. 21, 2005 (3 pages) 28

RE 11 PO3, Email Delay in Scheduling next session and issue of Pro Se Representation-Problems in establishing attorney-client

Description of Exhibit		PAGE No.
	Relationship, asking Bar Assn for advice, Dec. 30, 2006 (5 pages)	31
RE 12	PO1A, Announcement of Feb. 2006 Trial Term, Jan. 19, 2006 (3pages)	36
	1. Table Showing Parties on each case (1 page)	38
RE 13	Bio of Presiding Officer, Captain O'Toole (1 page)	39
RE 14	ProOrd 1, Protective Order No. 1 RE Protection of Identities Of Witnesses, Jan. 23, 2006 (1 page)	40
RE 15	ProOrd 2, Protective Order No. 2 RE Protection of Identities Of Investigators and Interrogators, Jan. 23, 2006 (2 pages)	41
RE 16	ProOrd 3, Protective Order No. 3 RE Protection of FOUO, Law Enforcement Sensitive and Classified Documents, Jan. 23, 2006 (3 pages)	43
RE 17	PO1B, Email Concerning Defense Plans for Feb. 2006 Session, Jan. 23, 2006 (5 pages)	46
RE 18	PO1C, Trial Order Concerning Scheduling, Jan. 23, 2006 (4 pages)	51
	1. Table Showing Significant Trial Events (1 page)	54
RE 19	Presiding Officer's Litigation Advice on Motions, Jan. 25, 2006 2006 (2 pages)	55
RE 20	P1, Prosecution Motion to Join three cases, Feb. 6, 2006 (24 pages)	57
	1. Memorandum from Chief Prosecutor to Appointing Authority Feb. 2, 2006 (2 pages)	62
	2. al Sharbi Appointing Order No. 05-0006, Dec. 12, 2005 (1 page)	64
	3. Barhoumi Appointing Order No. 05-0007, Dec. 16, 2005	

Description of Exhibit	PAGE No.
(1 page)	65
4. al Qahtani Appointing Order No. 05-0008, Dec. 16, 2005 (1 page)	66
5. al Sharbi Charge Sheet (4 pages)	67
6. al Qahtani Charge Sheet (5 pages)	71
7. Barhoumi Charge Sheet (5 pages)	76
RE 21 PO1D, Prosecution Proposed Trial Schedule (2 pages)	81
RE 22 Supplemental Voir Dire for Presiding Officer (1 page)	83
RE 23 File Concerning Joinder Issue, Feb. 23, 2006 (31 pages)	84
1. Appointing Authority's Decision Denying Joinder, Feb. 15, 2006 (1 page)	88
2. CPT Faulkner's Objection to Joinder, Feb. 8, 2006 (2 pages)	89
3. LTC Broyles' Objection to Joinder, Feb. 9, 2006 (1 page)	91
4. LT Kuebler's Objection to Joinder, Feb. 9, 2006 (1 page)	92
5. BG Hemingway's Request for Input on Joinder from Counsel, Feb. 3, 2006 (3 pages)	93
6. Memorandum from Chief Prosecutor to Appointing Authority Requesting Joinder, Feb. 2, 2006 (2 pages) (6 enclosures)	96
a. al Sharbi Appointing Order No. 05-0006, Dec. 12, 2005 (1 page)	98
b. Barhoumi Appointing Order No. 05-0007, Dec. 16, 2005 (1 page)	99
c. al Qahtani Appointing Order No. 05-0008, Dec. 16, 2005 (1 page)	100

Description of Exhibit	PAGE No.
d. al Sharbi Charge Sheet (4 pages)	101
e. al Qahtani Charge Sheet (5 pages)	105
f. Barhoumi Charge Sheet (5 pages)	110
RE 24 PO2A, Modification to Discovery Order, Mar. 3, 2006 (2 pages)	115
RE 25 Email from Presiding Officer RE Telephonic Contact between al Sharbi and his family, as well as visitation, Mar. 14, 2006 (1 page)	117
RE 26 Summary of 8-5 Conference at Guantanamo Bay, Cuba, Concerning Telephonic Contact with al Sharbi and visitation with al Sharbi's family, Mar. 15, 2006 (11 pages)	118
RE 27 Presiding Officer Grants Government's Request to Extend the Government's Discovery Deadline because the FBI has not provided the required materials, Mar. 24, 2006 (3 pages)	129
RE 28 Presiding Officer Details Purpose for Session of April 24, 2006 (1 page)	132
RE 29 CV of Commission Translators (7 pages) [Sealed-Not Available On DoD Public Affairs Web Site]	135
RE 30 Excusal of LTC B (Feb. 1, 2006), COL S (Mar. 27, 2006), and Denial of Excusal Request for CMDR C (Feb. 14, 2006) (3 pages)	140
RE 31 Index of current Presiding Officer Memoranda, as of April 23, 2006 (1 page)	143
RE 32 Filings Inventory (7 pages)	144

[redacted]

TO THE SECRETARY OF DEFENSE:

Based on the information available to me from all sources, including the factual summary from the Department of Defense Criminal Investigation Task Force dated June 17, 2004 and forwarded to me by you by letter dated June 29, 2004;

Pursuant to the Military Order of November 13, 2001 on "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism";

In accordance with the Constitution and consistent with the laws of the United States, including the Authorization for Use of Military Force Joint Resolution (Public Law 107-40);

I, GEORGE W. BUSH, as President of the United States and Commander in Chief of the Armed Forces of the United States, hereby DETERMINE for the United States of America that in relation to Ghassan Abdullah al Sharbi, Department of Defense Internment Serial No. [redacted] who is not a United States citizen:

(1) There is reason to believe that he, at the relevant times:
- (a) is or was a member of the organization known as al Qaida;
- (b) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
- (c) has knowingly harbored one or more individuals described in subparagraphs (a) or (b) above.

(2) It is in the interest of the United States that he be subject to the Military Order of November 13, 2001.

Accordingly, it is hereby ordered that, effective this day, Ghassan Abdullah al Sharbi shall be subject to the Military Order of November 13, 2001.

DATE: July 6, 2004

White House Office-controlled Document

[redacted]

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
GHASSAN ABDULLAH AL SHARBI	)	**CHARGE:**
a/k/a Abdullah al Muslim	)	**CONSPIRACY**
a/k/a Abu Muslim	)	

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 6, 2004 that Ghassan Abdullah al Sharbi (a/k/a/ Abdullah al Muslim a/k/a/ Abu Muslim hereinafter "al Sharbi") is subject to his Military Order of November 13, 2001.

2. The charged conduct alleged against al Sharbi is triable by a military commission.

GENERAL ALLEGATIONS

3. Al Qaida ("the Base"), was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.

4. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaida.

5. A purpose or goal of al Qaida, as stated by Usama bin Laden and other al Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and in retaliation for U.S. support of Israel.

6. Al Qaida operations and activities are directed by a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.

7. Between 1989 and 2001, al Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

8. In 1992 and 1993, al Qaida supported violent opposition of US. property and nationals by, among other things, transporting personnel, weapons, explosives, and ammunition to Yemen, Saudi Arabia, Somalia, and other countries.

9. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.

10. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."

11. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."

12. Since 1989 members and associates of al Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the *USS COLE* in October 2000; and the attacks on the United States on September 11, 2001.

CHARGE: CONSPIRACY

13. Sufyian Barhoumi, Jabran Said bin al Qahtani, and Ghassan al Sharbi in the United States, Afghanistan, Pakistan, and other countries, from on or about January 1996 to on or about March 2002, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden (a/k/a Abu Abdullah), Saif al Adel, Dr. Ayman al Zawahiri (a/k/a "the Doctor"), Muhammad Atef (a/k/a Abu Hafs al Masri), Zayn al Abidin Muhammad Husayn (a/k/a/ Abu Zubayda, hereinafter "Abu Zubayda"), Binyam Muhammad, Noor al Deen, Akrama al Sudani and other members and associates of the al Qaida organization, known and unknown, to commit the following offenses triable by military commission: attacking civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.

14. In furtherance of this enterprise and conspiracy, al Sharbi, Barhoumi, al Qahtani, Abu Zubayda, Binyam Muhammad, Noor al Deen, Akrama al Sudani, and other members or associates of al Qaida committed the following overt acts:

    a. In 1998 Barhoumi, an Algerian citizen, attended the electronics and explosives course at Khalden Camp in Afghanistan, an al Qaida-affiliated training camp, where he received training in constructing and dismantling electronically-controlled explosives.

    b. After completing his training, Barhoumi became an explosives trainer for al Qaida, training members of al Qaida on electronically-controlled explosives at remote locations.

c. In or about August 2000, al Sharbi, a Saudi citizen and Electrical engineering graduate of Embry Riddle University, in Prescott, Arizona, departed the United States in search of terrorist training in Afghanistan.

d. In July 2001, Muhammad Atef (a/k/a/ Abu Hafs al Masri), the head of al Qaida's military committee and al Qaida's military commander, wrote a letter to Abu Muhammad, the *emir* of al Qaida's al Farouq Camp, asking him to select two "brothers" from the camp to receive electronically-controlled explosives training in Pakistan, for the purpose of establishing a new and independent section of the military committee.

e. In July 2001, al Sharbi attended the al Qaida-run al Farouq training camp, where he was first introduced to Usama bin Laden. At al Farouq, al Sharbi's training included, *inter alia*, physical training, military tactics, weapons instruction, and firing on a variety of individual and crew-served weapons.

f. During July and August 2001, al Sharbi stood watch with loaded weapons at al Farouq at times when Usama bin Laden visited the camp.

g. From July 2001 to September 13, 2001, al Sharbi provided English translation for another camp attendee's military training at al Farouq, to include translating the attendee's personal *bayat* ("oath of allegiance") to Usama bin Laden.

h. On or about September 13, 2001, anticipating a military response to al Qaida's attacks on the United States of September 11, 2001, al Sharbi and the remaining trainees were ordered to evacuate al Farouq. Al Sharbi and others fled the camp and were told to fire warning shots in the air if they saw American missiles approaching.

i. Shortly after the September 11 2001 attacks on the United States, al Qahtani, a Saudi citizen and Electrical engineering graduate of King Saud University in Saudi Arabia, left Saudi Arabia with the intent to fight against the Northern Alliance and American Forces, whom he expected would soon be fighting in Afghanistan.

j. In October 2001, al Qahtani attended a newly established terrorist training camp north of Kabul, where he received physical conditioning, and training in the PK Machine gun and AK-47 assault rifle.

k. Between late December 2001 and the end of February 2002, Abu Zubayda, a high-ranking al Qaida recruiter and operational planner, assisted in moving al Sharbi, al Qahtani and Binyam Muhammad from Birmel, Afghanistan to a guest house in Faisalabad, Pakistan where they would obtain further training.

l. By early March 2002, Abu Zubayda, Barhoumi, al Sharbi, al Qahtani, and Binyam Muhammad had all arrived at the guest house in Faisalabad, Pakistan. Barhoumi was to train al Sharbi, al Qahtani and Binyam Muhammad in building small, hand-held remote-detonation devices for explosives that would later be used in Afghanistan against United States forces.

m. In March 2002, after Barhoumi, al Sharbi and al Qahtani had all arrived at the guest house, Abu Zubayda provided approximately $1,000 U.S. Dollars for the purchase of components to be used for training al Sharbi and al Qahtani in making remote-detonation devices.

n. Shortly after receiving the money for the components, Barhoumi, Noor al Deen and other individuals staying at the house went into downtown Faisalabad with a five page list of electrical equipment and devices for purchase which included, *inter alia,* electrical resistors, plastic resistors, light bulbs for circuit board lights, plastic and ceramic diodes, circuit testing boards, an ohmmeter, watches, soldering wire, soldering guns, wire and coil, six cell phones of a specified model, transformers and an electronics manual.

o. After purchasing the necessary components, al Qahtani and al Sharbi received training from Barhoumi on how to build hand-held remote-detonation devices for explosives while at the guest house.

p. During March 2002, after his initial training, al Qahtani was given the mission of constructing as many circuit boards as possible with the intent to ship them to Afghanistan to be used as timing devices in bombs.

q. After their training was completed and a sufficient number of circuit boards were built, Abu Zubayda had directed that al Qahtani and al Sharbi were to return to Afghanistan in order to use, and to train others to construct remote-control devices to detonate car bombs against United States forces.

r. During March 2002 al Qahtani wrote two instructional manuals on assembling circuit boards that could be used as timing devices for bombs and other improvised explosive devices.

15. On March 28, 2002, Barhoumi, al Sharbi, al Qahtani, Abu Zubayda and others were captured in a safe house in Faisalabad after authorities raided the home.

[redacted]

Military Commission Case No. 05-0005

UNITED STATES	)	
v.	)	Approval of Charges
GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	)	November 4, 2005

The charges against Ghassan Abdullah al Sharbi (a/k/a Abdullah al Muslim, a/k/a Abu Muslim) are approved. Referral for trial and appointment of a panel of officers to serve as a Military Commission will be published in a separate order.

John D. Altenburg, Jr.
Appointing Authority
for Military Commissions

[redacted]

[redacted]

Military Commission Case No. 05-0005

UNITED STATES v. GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	)))))))))	**Referral** DEC 1 2 2005

The charges against Ghassan Abdullah al Sharbi (a/k/a Abdullah al Muslim, a/k/a Abu Muslim) are referred, as a noncapital case, to the Military Commission identified in Appointing Order No. 05-0006. As soon as practicable, the Presiding Officer will conduct those sessions he deems appropriate to ensure the expeditious conduct of the trial.

John D. Altenburg, Jr.
Appointing Authority
for Military Commissions

[redacted]

[redacted]

Military Commission Case No. 05-0005

UNITED STATES	)	**Military Commission Members**
v.	)	Appointing Order No. 05-0006
GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	)	DEC 12 2005

The following officers are appointed to serve as members and alternate members, respectively, of a Military Commission for the purpose of trying any and all charges referred for trial in the above-styled case. The Military Commission will meet at such times and places as directed by the Appointing Authority or the Presiding Officer. Each member or alternate member will serve until removed by proper authority.

In the event that one or more of the members, not including the Presiding Officer, is removed by the Appointing Authority, one or more of the alternate members will automatically be appointed, in order, to replace the removed member(s), until either all removed members have been replaced or no alternate members remain. Should the Presiding Officer grant a challenge for cause against any member, that member will be removed as a member, excused from further proceedings, and automatically replaced by the next alternate member. Any alternate member appointed under the automatic replacement provisions herein described shall become a member of the commission and shall be subject to removal and automatic replacement as if originally appointed as a member. In accordance with Paragraph 4(A)(1)&(2) of Military Commission Order No. 1, should no alternate member be available to replace any member I remove or any member removed pursuant to a challenge for cause, and provided that at least three members, in addition to the Presiding Officer, remain, the commission may proceed without appointment of additional members.

Captain Daniel E. O'Toole, USN, Presiding Officer
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USA, Member
Colonel [redacted] USA, Member
Captain [redacted] USN, Member
Lieutenant Commander [redacted] USN, First Alternate Member
Lieutenant Colonel [redacted] USMC, Second Alternate Member

John D. Altenburg, Jr.
Appointing Authority for Military Commissions

[redacted]

OFFICE OF THE CHIEF PROSECUTOR

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

December 15, 2005

MEMORANDUM FOR LIEUTANANT [redacted] USNR
CAPTAIN [redacted] USAF

SUBJECT: Detailed Prosecutors

Consistent with my authority as Chief Prosecutor and the provisions of Sections 4B(2) of Military Commission Order No. 1, dated August 31, 2005, and Section 3B(9) of Military Commission Instruction No. 3, dated July 15, 2005, the above named counsel are detailed and designated as follows:

United States v. Al Sharbi
Detailed Prosecutor:
Lieutenant [redacted] USNR
Detailed Assistant Prosecutor:
Captain [redacted] USAF

MORRIS D. DAVIS
Colonel, U.S. Air Force
Chief Prosecutor
Office of Military Commissions

cc:
Deputy Chief Prosecutor

DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620

14 November 2005

MEMORANDUM DETAILING DEFENSE COUNSEL

To: Lieutenant Commander (Select) William C. Kuebler, JAGC, USN

Subj: DETAILING LETTER REGARDING MILITARY COMMISSION PROCEEDINGS OF GHASSAN ABDULLAH AL SHARBI

1. Pursuant to the authority granted to me by my appointment as Chief Defense Counsel; Sections 4.C and 5.D of Military Order No. 1, dated August 31, 2005, and Section 3.B(8) of Military Commission Instruction No. 4, dated September 16, 2005, you are hereby detailed as Military Counsel for all matters relating to Military Commission proceedings involving Ghassan Abdullah al Sharbi. Your appointment exists until such time as any findings and sentence become final as defined in Section 6.H(2) of Military Commission Order No. 1, unless you are excused from representing Mr. al Sharbi by a competent authority.

2. In your representation of Mr. al Sharbi, you are directed to review and comply with the President's Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 Fed. Reg. 57,833 (Nov. 16, 2001), Military Commission Orders Nos. 1 and 3, Military Commission Instructions 1 through 9, and all Supplementary Regulations and Instructions issued in accordance therewith. You are directed to ensure that your conduct and activities are consistent with all applicable prescriptions and proscriptions.

3. You are directed to inform Mr. al Sharbi of his rights before a Military Commission. In the event that Mr. al Sharbi chooses to exercise his rights to Selected Military Counsel or his right to Civilian Defense Counsel as his own expense, you shall inform me as soon as possible.

4. In the event that you become aware of a conflict of interest arising from the representation of Mr. al Sharbi before a Military Commission, you shall immediately inform me of the nature and facts concerning such conflict. You should be aware that in addition to your State Bar and Service Rules of Professional Conduct, that by virtue of your appointment to the Office of Military Commissions you will be attached to the Defense Legal Services Agency and will be subject to professional supervision by the Department of Defense General Counsel.

5. You are directed to inform me of all requirements for personnel, office space, equipment, and supplies necessary for preparation of the defense of Mr. al Sharbi.

Dwight H. Sullivan
Colonel, United States Marine Corps Reserve

cc:
Colonel Morris Davis
Brigadier General Thomas L. Hemingway
Mr. [redacted]

[redacted]

From: [redacted]
Sent: Wednesday, December 21, 2005 11:45 AM
To: [redacted]
Subject: US v. al Sharbi: Directions of the Presiding Officer
Attachments: Email and attachment - First instructions by PO Chester adopted by POs O'Toole and Kohlmann, 21 Dec 05.pdf; PO 2 - al Sharbi - Discovery Order - 21 Dec 05.pdf; Significant Commission Dates - worksheet v1.doc

1. This email, and attachments 1 and 2, are being added to the filings inventory as PO 1. (See POM 12-1 for a description of the Filings Inventory.)

2. I am [redacted], the Assistant to the Presiding Officer in the case in the subject line of this email. My duties are outlined in Presiding Officer Memorandum (POM - which serve as rules of court) 2-2. That POM, and all the others POMs, can be found at: http://www.defenselink.mil/news/Aug2004/commissions_memoranda.html. This email, and all others that I send that state "BY DIRECTION OF THE PRESIDING OFFICER" are sent at the Presiding Officer's direction. The Presiding Officer has directed that all the current POMs, to include as later modified or supplemented, are in effect for this case.

3. You attention is invited to the enclosed Discovery Order (PO 2) for compliance by the parties.

4. NLT 5 Jan 06 the Presiding Officer wishes to know what is the earliest possible time that you and can attend a session of the Commission, without the other members, at Guantanamo to accomplish the following business ("Reply all" with your answer):

a. Initial session without members (convening of the Commission.)

b. Accused's election of counsel.

c. *Voir dire* of the Presiding Officer (materials to assist you in *voir dire* will be sent at a later time.)

d. Discussion - and if necessary - litigation concerning the attached discovery order, its terms and enforceability.

e. Entry of pleas. (If the accused requests to defer pleas, the Presiding Officer advises he will grant the request.)

f. Motions. (If the parties request to defer motions - except a motion as to the wording, terms, and enforceability of the discovery order - the Presiding Officer advises he will grant the request.)

g. Setting a schedule for future sessions and the trial to include: law motions (motions other than on the admissibility or form of evidence); evidentiary motions; *voir dire* of the other members, and the trial. The dates the Presiding Officer will be looking at are those on the attached "Significant Dates Worksheet."

5. If you request a date in paragraph 4 above later than 13 February 2006, your reply must include the reasons for the delay and a calendar showing your activities and commitments - personal and professional - between 5 Jan 2006 and the date you request a delay that make it impossible to proceed by 13 February 2006.

6. NLT 5 Jan 06, the parties will provide the Presiding Officer, opposing counsel, and me a copy of all protective orders, issued by any authority, that they believe have been issued and remain in effect. Any party requesting a protective order from the Presiding Officer will use the procedures in POM 9-1.

7. Also attached is an email sent at the direction of the Presiding Officer adopting "first instructions" issued earlier by another Presiding Officer, COL Chester. The instructions that were adopted are also attached.

Three attachments:
1 – PO 2 – Discovery Order
2 – Significant dates worksheet
3 – Email on adopted "first instructions" and those instructions

BY DIRECTION OF THE PRESIDING OFFICER
[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

<<Email and attachment - First instructions by PO Chester adopted by POs O'Toole and Kohlmann, 21 Dec 05.pdf>> <<PO 2 - al Sharbi - Discovery Order - 21 Dec 05.pdf>> <<Significant Commission Dates - worksheet v1.doc>>

UNITED STATES OF AMERICA	)	
v.	)	
GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	)	**DISCOVERY ORDER (PO 2)** **December 21, 2005**

1. The Presiding Officer finds that to ensure a full and fair trial, the following ORDER is necessary.

2. This Order does not relieve any party of any duty to disclose those matters that Commission Law requires to be disclosed. Where this Order requires disclosure at times earlier or later than Commission Law provides or requires, the Presiding Officer has determined that such earlier or later disclosure is necessary for a full and fair trial.

3. All disclosures required by this Order are continuing in nature. The times set forth below apply to any matter known to exist, or reasonably believed to exist, on the date this Order is issued. If any matter required to be disclosed by this order is not known to exist on the date this Order is issued, but later becomes known, the party with the responsibility to disclose it under this Order will disclose it as soon as practicable, but not later than three duty days from learning that the matter exists. In those cases when any matter required to be disclosed by this Order, becomes known after the date of this Order, but the party is unable to obtain or produce it as required, the party shall give written (email) notice to opposing counsel within three duty days, said notice including a description of the nature of the item or matter and the date and time when it will be produced or disclosed.

4. Any matter that has been provided or disclosed to opposing counsel prior to the entry of this Order need not be provided again if only to comply with this Order.

5. Providing a list of witness names in compliance with this discovery Order does not constitute a witness request. Witness requests must be made in accordance with POM #10-2.

6. Neither the Presiding Officer nor the Assistant shall be provided with a copy of the items ordered to be produced or disclosed by this Order. If counsel believe there has not been adequate compliance with this Order, counsel shall seek relief using the procedures in POM 4-3 or POM 7-1, as appropriate.

7. Objections to the wording of this Order, or the authority to issue this Order. Counsel who object to the requirements of this discovery Order, the Presiding Officer's authority to issue a discovery order, or who seek any relief from the requirements of this Order shall file a motion in accordance with POM 4-3 NLT 31 Jan 2006.

8. Failure to disclose a matter as required by this Order may result in the imposition of those sanctions which the Presiding Officer determines are necessary to enforce this Order or to otherwise ensure a full and fair trial.

9. If any matter that this Order, or Commission Law, requires to be disclosed was in its original state in a language other than English, and the party making the disclosure has translated it, has arranged for its translation, or is aware that it has been translated into English from its original language, that party shall also disclose a copy of the English translation along with a copy of the original untranslated document, recording, or other media in which the item was created, recorded, or produced.

10. Each of the disclosure requirements of this Order shall be interpreted as a requirement to provide to opposing counsel a duplicate of the original of any matter to be disclosed. Transmittal of a matter to opposing counsel electronically satisfies the disclosure requirements herein and is the preferred method of production. When disclosure of any matter is impracticable or prohibited because of the nature of the item (a physical object, for example), or because it is protected or classified, the disclosing party shall permit the opposing counsel to inspect the item in lieu of providing it.

11. A party has not complied with this Order until that party has disclosed to detailed counsel for the opposing party - or another counsel lawfully designated by the detailed counsel - the matter required to be disclosed or provided.

12. Definitions:

a. "At trial." As used in this order, the term "at trial" means during the proponent party's case in chief (and not rebuttal or redirect), whether on merits or during sentencing. Matters to be disclosed which relate solely to sentencing will be so identified.

b. "Exculpatory evidence" includes any evidence that tends to negate the guilt of the accused, or mitigates any offense with which the accused is charged, or is favorable and material to either guilt or to punishment.

c. "Synopsis of a witness' testimony" is that which the requesting counsel has a good faith basis to believe the witness will say, if called to testify. A synopsis shall be prepared as though the witness were speaking (first person), and shall be sufficiently detailed as to demonstrates both the testimony's relevance and that the witness has personal knowledge of the matter offered. *See* Enclosure 1, POM 10-2, for some suggestions.

d. "Disclosure" as used in this Order is synonymous with "production."

e. "Matter" includes any matter whatsoever that is required to be produced under the terms of this Order, whether tangible or intangible, including but not limited to, physical objects,

documents, audio, video or other recordings in any media, electronic data, studies, reports, or transcripts of testimony, whether from depositions, former commission hearings, or other sworn testimony.

13. Nothing in this Order shall be interpreted to require the disclosure of attorney work product to include notes, memoranda, or similar working papers prepared by counsel or counsel's trial assistants.

14. The Prosecution shall provide to the Defense the items listed below not later 31 Jan 2006. The items shall be provided to the detailed defense counsel unless the detailed defense counsel designates another lawful recipient of the items.

a. Evidence and copies of all information the prosecution intends to offer at trial.

b. The names and contact information of all witnesses the prosecution intends to call at trial along with a synopsis of the witness' testimony.

c. As to any expert witness or any expert opinion the prosecution intends to call or offer at trial, a *curriculum vitae* of the witness, copies of reports or examinations prepared or relied upon by the expert relevant to the subject matter to which the witness will testify or offer an opinion, and a synopsis of the opinion that the witness is expected to give.

d. Exculpatory evidence known to the prosecution.

e. Statements of the accused in the possession or control of the Office of the Chief Prosecutor, or known by the Office of the Chief Prosecutor to exist, that:

1. The prosecution intends to offer at trial whether signed, recorded, written, sworn, unsworn, or oral, and without regard to whom the statement was made.

2. Are relevant to any offense charged, and were sworn to, written or signed by the accused, whether or not to be offered at trial.

3. Are relevant to any offense charged, and were made by the accused to a person the accused knew to be a law enforcement officer of the United States, whether or not to be offered at trial.

f. Prior statements of witnesses the prosecution intends to call at trial, in the possession or control of the Office of the Chief Prosecutor, or known by the Office of the Chief Prosecutor to exist, and relevant to the issues about which the witness is to testify that were:

(1.) Sworn to, written or signed by, the witness.

(2.) Adopted by the witness, provided that the statement the witness adopted was reduced to writing and shown to the witness who then expressly adopted it.

(3) Made by the witness, and no matter the form of the statement, contradicts the expected testimony of that witness.

15. The Defense shall provide to the detailed Prosecution the items listed below not later than 28 Feb 2006. The items shall be provided to the detailed prosecutor unless the detailed prosecutor designates another lawful recipient of the items. These provisions shall not require the defense to disclose any statement made by the accused, or to provide notice whether the accused shall be called as a witness.

a. Evidence and copies of all matters the defense intends to offer at trial.

b. The names and contact information of all witnesses the defense intends to call at trial along with a synopsis of the witness' testimony.

c. As to any expert witness or any expert opinion the defense intends to call or offer at trial, a *curriculum vitae* of the witness, copies of reports or examinations prepared or relied upon by the expert relevant to the subject matter to which the witness will testify or offer an opinion, and a synopsis of the opinion that the witness is expected to give.

d. Prior statements of witnesses the defense intends to call at trial, in the possession or control of the defense counsel, or known by the defense counsel to exist, and relevant to the issues about which the witness is to testify that were:

(1.) Sworn to, written or signed by, the witness.

(2.) Adopted by the witness, provided that the statement the witness adopted was reduced to writing and shown to the witness who then expressly adopted it.

(3.) Made by the witness, and no matter the form of the statement, contradicts the expected testimony of that witness.

e. Notice to the Prosecution of any intent to raise an affirmative defense to any charge. An affirmative defense is any defense which provides a defense without negating an essential element of the crime charge including, but not limited to, lack of mental responsibility, diminished capacity, partial lack of mental responsibility, accident, duress, mistake of fact, abandonment or withdrawal with respect to an attempt or conspiracy, entrapment, accident, obedience to orders, and self-defense. Inclusion of a defense above is not an indication that such a defense is recognizable in a Military Commission, and if it is, that it is an affirmative defense to any offense or any element of any offense.

f. In the case of the defense of alibi, the defense shall disclose the place or places at which the defense claims the accused to have been at the time of the alleged offense.

g. Notice to the prosecution of the intent to raise or question whether the accused is competent to stand trial.

16. When Alternatives to Live Testimony Will Be Offered by a Party.

a. The testimony of a witness may be offered by calling the person to appear as a witness before the Commission (live testimony) or by using alternatives to live testimony.

b. Whenever this Order requires a party to disclose the names of witnesses to be called, a

party which intends to offer an alternative to live testimony shall provide the notice below to the opposing party:

(1.) Intent to use alternatives to live testimony rather than calling the witness.

(2.) The method of presenting the alternative to live testimony the party intends to use. (*See* paragraph 3c(6)(a-g), POM 10-2, for examples),

(3.) The dates, locations, and circumstances - and the persons present - when the alternative was created, and

(4.) The reason(s) why the alternative will be sought to be used rather than production of live testimony.

17. Objections to Alternatives to Live Testimony.

If, after receiving a notice required by paragraph 16 above, the party receiving the notice wishes to prevent opposing counsel from using the proposed alternative to live testimony, the receiving party shall file a motion under the provisions of POM# 4-3. Such motion shall be filed within 5 days of disclosure of the intent to offer an alternative to live testimony, or the receiving party shall be deemed to have waived any objection to the use of an alternative to live testimony.

18. Obtaining or Creating Alternatives to Live Testimony - Notice and Opportunity to Attend and Participate.

a. Under Commission Law, confrontation of persons offering information to be considered by the Commission is not mandatory, nor is there a requirement for both parties to participate in obtaining or creating alternatives to live testimony. Further, there is no general rule against hearsay.

b. As a result, parties must afford opposing counsel sufficient notice and opportunity to attend witness interviews when such interviews are intended to preserve testimony for actual presentation to the Presiding Officer or other members of the Commission.

c. Failure to provide such notice as is practical may be considered - at the discretion of the Presiding Officer (or in a paragraph 6D(1), MCO# 1 determination , by the other Commission members) - along with other factors, on the issue of admissibility of the proffered testimony.

IT IS SO ORDERED:

DANIEL E. O'TOOLE
CAPTAIN, JAGC, U.S. NAVY
Presiding Officer

Significant Commission Dates
United States v. _____

# [1]	Event	Date	Notes
1.	First session (without members) • Convening the Commission • Choice of counsel • Voir dire of PO • Pleas (ordinarily reserved) • Motions (ordinarily reserved)		
2.	Provide copies of existing Protective Orders to PO		
3.	Submit Protective Orders for PO signature.		POM 9-1
4.	Discovery – Prosecution [2]	xxx	
5.	Discovery – Defense [2]	xxx	
6.	Requests for access to evidence		POM 7-1
7.	"Law" Motions: *Motion* [3]		POM 4-3
8.	"Law" Motions: *Response*		POM 4-3
9.	"Law" Motions: *Reply*		POM 4-3
10.	Witness requests on law motions		POM 10-2
11.	Evidentiary motions: *Motion*		POM 4-3
12.	Evidentiary motions: *Response*		POM 4-3
13.	Evidentiary motions: *Reply*		POM 4-3
14.	Witness requests on evidentiary motions		POM 10-2
15.	Voir dire of members		
16.	Prosecution case in chief - *Merits*		Also indicate # of days to present
17.	Defense case in chief - *Merits*		Also indicate # of days to present
18.	Prosecution – *Sentencing*		Also indicate # of days to present
19.	Defense - *Sentencing*		Also indicate # of days to present
20.	Witness requests – merits and sentencing		POM 10-2
21.	Directed briefs [4]	xxx	
22.	Requests to take conclusive notice		POM 6-2

[1] The requested dates do not have to be in the chronological order that they appear on this list. For example, counsel may request an earlier date for item 15 than they would for item 7.

[2] Discovery dates will be included in the discovery order.

[3] A "law motion" is any motions except that to suppress evidence or address another evidentiary matter.

[4] Dates will be established in the directed brief if directed briefs are used.

[redacted]

From: [redacted]
Sent: Wednesday, December 21, 2005 11:03 AM
Subject: Military Commission Business

Attachments: First PO instructions to Panel 2 dtd 1 Dec 05.pdf

1. On December 1, 2005, COL Chester sent you instructions concerning your possible service as a member of a Military Commission. A copy of those instructions is attached.

2. Since that time, two additional Presiding Officers have been appointed, and it is possible that if you sit as a Commission member, one of these officers could also be the Presiding Officer. The two other Presiding Officers are CAPT Daniel O'Toole, USN, and COL Ralph Kohlmann, U.S.M.C.

3. CAPT O'Toole and COL Kohlmann have adopted COL Chester's earlier (attached) instructions, and those instructions are now applicable to any Commission in which COL Chester, CAPT O'Toole, or COL Kohlmann is the Presiding Officer.

4. Please reply to me that you have received this email.

5. It does not appear likely that any Military Commission will need your services through the end of February 2006.

BY DIRECTION OF THE PRESIDING OFFICERS

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

First PO instructions to Panel...

Instructions to Prospective Commission Members
To be provided by APO to each prospective member.

1 December 2005

This email is being sent to each prospective member by [redacted], Assistant to the Presiding Officers for Military Commissions, at the direction of and on behalf of Colonel Chester.

1. I am Colonel Robert S. Chester. I am the Presiding Officer for Military Commissions to which you have been detailed.

2. You have been detailed as a prospective member to a Military Commission convened to try one or more individuals now being detained at US Naval Station, Guantanamo Bay, Cuba. It is possible you will be detailed to hear a case with a different Presiding Officer in which case you will receive instructions from that officer.

3. Each of you must respond by email to [redacted], the Assistant to the Presiding Officers, acknowledging receipt of these instructions. I am aware that you received an email from [redacted] earlier, but acknowledge receipt of these instructions as well. Email will be the preferred method to provide you any information. You will not receive any classified emails concerning your service as a member, and you may not send any. Please also tell [redacted] your home mailing address in the event we need to mail you something. (We find that mail to home addresses is quicker and nothing gets x-rayed.)

Your personal-information will NOT be released to anyone else, and will ONLY be used for emergencies.

4. Due to the publicity that these cases may have already received, and recognizing the possibility of further publicity, each of you is instructed as follows:

a. You may not discuss with anyone, other than as required to inform your military superiors and family of your duty status, your detail to this Commission as a prospective member. You must not listen to, look at, or read any accounts of alleged incidents involving these cases or any accounts of any proceedings in these cases, or any matters concerning the detention of detainees at Guantanamo. Please moderate your web surfing accordingly. You may not consult any source, written or otherwise, as to matters involved in such alleged incidents to include any legal references. You may not discuss these cases with anyone, and if anyone attempts to discuss these cases with you, you must forbid them to do so and report the occurrence to me by emailing the Assistant, [redacted]

b. A trial by Military Commission includes the determination of the ability of each member to sit as a member. As a prospective member, you may be questioned in open session by counsel for either side or by myself to determine whether you should serve.

c. Trial by Military Commission requires members who approach the case with an open mind, and you must keep an open mind until all of the evidence and law has been presented and the Commission closes to deliberate. A Commission member should be as free as humanly possible from any preconceived ideas as to the facts or the law. From the date of receipt of these instructions, you must keep a completely open mind and wait until all of the evidence is presented, you have been instructed on the law to be applied, and the Commission has retired to deliberate before you discuss the facts of this case with anyone, including other Commission members.

5. Administrative matters:

a. If you believe there is a reason you should be excused from serving on the Commission and you request that you be excused, you may make such a request to the Appointing Authority through the Chief Clerk for Military Commissions ([redacted] at email[redacted])

b. All sessions of the Commission will be held at Naval Base, Guantanamo Bay, Cuba. It is not known when the first session will be held, and you will be informed as soon as I know. All TDY costs will be born by the Office of Military Commissions. At Guantanamo:

1) You will be given the opportunity to access web based email. To do this, you will obviously have to know the web address for your command's Exchange server, or you must have a free web account such as hotmail, yahoo, or the like.

2) Normal cell phones will NOT work at Guantanamo. However, you will have access to Class A phone service on an as-needed basis.

c. Both [redacted] are authorized to send you administrative information concerning logistics, security clearances, uniforms, lodging, orders, travel and the like. They will not be communicating with you concerning the facts, the law, or any other aspect of any case.

/s/
Robert S. Chester
Colonel, USMC
Presiding Officer

UNITED STATES OF AMERICA	)	
v.	)	
GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	)	**DISCOVERY ORDER (PO 2)** **December 21, 2005**

1. The Presiding Officer finds that to ensure a full and fair trial, the following ORDER is necessary.

2. This Order does not relieve any party of any duty to disclose those matters that Commission Law requires to be disclosed. Where this Order requires disclosure at times earlier or later than Commission Law provides or requires, the Presiding Officer has determined that such earlier or later disclosure is necessary for a full and fair trial.

3. All disclosures required by this Order are continuing in nature. The times set forth below apply to any matter known to exist, or reasonably believed to exist, on the date this Order is issued. If any matter required to be disclosed by this order is not known to exist on the date this Order is issued, but later becomes known, the party with the responsibility to disclose it under this Order will disclose it as soon as practicable, but not later than three duty days from learning that the matter exists. In those cases when any matter required to be disclosed by this Order, becomes known after the date of this Order, but the party is unable to obtain or produce it as required, the party shall give written (email) notice to opposing counsel within three duty days, said notice including a description of the nature of the item or matter and the date and time when it will be produced or disclosed.

4. Any matter that has been provided or disclosed to opposing counsel prior to the entry of this Order need not be provided again if only to comply with this Order.

5. Providing a list of witness names in compliance with this discovery Order does not constitute a witness request. Witness requests must be made in accordance with POM #10-2.

6. Neither the Presiding Officer nor the Assistant shall be provided with a copy of the items ordered to be produced or disclosed by this Order. If counsel believe there has not been adequate compliance with this Order, counsel shall seek relief using the procedures in POM 4-3 or POM 7-1, as appropriate.

7. Objections to the wording of this Order, or the authority to issue this Order. Counsel who object to the requirements of this discovery Order, the Presiding Officer's authority to issue a discovery order, or who seek any relief from the requirements of this Order shall file a motion in accordance with POM 4-3 NLT 31 Jan 2006.

8. Failure to disclose a matter as required by this Order may result in the imposition of those sanctions which the Presiding Officer determines are necessary to enforce this Order or to otherwise ensure a full and fair trial.

9. If any matter that this Order, or Commission Law, requires to be disclosed was in its original state in a language other than English, and the party making the disclosure has translated it, has arranged for its translation, or is aware that it has been translated into English from its original language, that party shall also disclose a copy of the English translation along with a copy of the original untranslated document, recording, or other media in which the item was created, recorded, or produced.

10. Each of the disclosure requirements of this Order shall be interpreted as a requirement to provide to opposing counsel a duplicate of the original of any matter to be disclosed. Transmittal of a matter to opposing counsel electronically satisfies the disclosure requirements herein and is the preferred method of production. When disclosure of any matter is impracticable or prohibited because of the nature of the item (a physical object, for example), or because it is protected or classified, the disclosing party shall permit the opposing counsel to inspect the item in lieu of providing it.

11. A party has not complied with this Order until that party has disclosed to detailed counsel for the opposing party - or another counsel lawfully designated by the detailed counsel - the matter required to be disclosed or provided.

12. Definitions:

a. "At trial." As used in this order, the term "at trial" means during the proponent party's case in chief (and not rebuttal or redirect), whether on merits or during sentencing. Matters to be disclosed which relate solely to sentencing will be so identified.

b. "Exculpatory evidence" includes any evidence that tends to negate the guilt of the accused, or mitigates any offense with which the accused is charged, or is favorable and material to either guilt or to punishment.

c. "Synopsis of a witness' testimony" is that which the requesting counsel has a good faith basis to believe the witness will say, if called to testify. A synopsis shall be prepared as though the witness were speaking (first person), and shall be sufficiently detailed as to demonstrates both the testimony's relevance and that the witness has personal knowledge of the matter offered. *See* Enclosure 1, POM 10-2, for some suggestions.

d. "Disclosure" as used in this Order is synonymous with "production."

e. "Matter" includes any matter whatsoever that is required to be produced under the terms of this Order, whether tangible or intangible, including but not limited to, physical objects,

documents, audio, video or other recordings in any media, electronic data, studies, reports, or transcripts of testimony, whether from depositions, former commission hearings, or other sworn testimony.

13. Nothing in this Order shall be interpreted to require the disclosure of attorney work product to include notes, memoranda, or similar working papers prepared by counsel or counsel's trial assistants.

14. The Prosecution shall provide to the Defense the items listed below not later 31 Jan 2006. The items shall be provided to the detailed defense counsel unless the detailed defense counsel designates another lawful recipient of the items.

a. Evidence and copies of all information the prosecution intends to offer at trial.

b. The names and contact information of all witnesses the prosecution intends to call at trial along with a synopsis of the witness' testimony.

c. As to any expert witness or any expert opinion the prosecution intends to call or offer at trial, a *curriculum vitae* of the witness, copies of reports or examinations prepared or relied upon by the expert relevant to the subject matter to which the witness will testify or offer an opinion, and a synopsis of the opinion that the witness is expected to give.

d. Exculpatory evidence known to the prosecution.

e. Statements of the accused in the possession or control of the Office of the Chief Prosecutor, or known by the Office of the Chief Prosecutor to exist, that:

1. The prosecution intends to offer at trial whether signed, recorded, written, sworn, unsworn, or oral, and without regard to whom the statement was made.

2. Are relevant to any offense charged, and were sworn to, written or signed by the accused, whether or not to be offered at trial.

3. Are relevant to any offense charged, and were made by the accused to a person the accused knew to be a law enforcement officer of the United States, whether or not to be offered at trial.

f. Prior statements of witnesses the prosecution intends to call at trial, in the possession or control of the Office of the Chief Prosecutor, or known by the Office of the Chief Prosecutor to exist, and relevant to the issues about which the witness is to testify that were:

(1.) Sworn to, written or signed by, the witness.

(2.) Adopted by the witness, provided that the statement the witness adopted was reduced to writing and shown to the witness who then expressly adopted it.

(3) Made by the witness, and no matter the form of the statement, contradicts the expected testimony of that witness.

15. The Defense shall provide to the detailed Prosecution the items listed below not later than 28 Feb 2006. The items shall be provided to the detailed prosecutor unless the detailed prosecutor designates another lawful recipient of the items. These provisions shall not require the defense to disclose any statement made by the accused, or to provide notice whether the accused shall be called as a witness.

a. Evidence and copies of all matters the defense intends to offer at trial.

b. The names and contact information of all witnesses the defense intends to call at trial along with a synopsis of the witness' testimony.

c. As to any expert witness or any expert opinion the defense intends to call or offer at trial, a *curriculum vitae* of the witness, copies of reports or examinations prepared or relied upon by the expert relevant to the subject matter to which the witness will testify or offer an opinion, and a synopsis of the opinion that the witness is expected to give.

d. Prior statements of witnesses the defense intends to call at trial, in the possession or control of the defense counsel, or known by the defense counsel to exist, and relevant to the issues about which the witness is to testify that were:

(1.) Sworn to, written or signed by, the witness.

(2.) Adopted by the witness, provided that the statement the witness adopted was reduced to writing and shown to the witness who then expressly adopted it.

(3.) Made by the witness, and no matter the form of the statement, contradicts the expected testimony of that witness.

e. Notice to the Prosecution of any intent to raise an affirmative defense to any charge. An affirmative defense is any defense which provides a defense without negating an essential element of the crime charge including, but not limited to, lack of mental responsibility, diminished capacity, partial lack of mental responsibility, accident, duress, mistake of fact, abandonment or withdrawal with respect to an attempt or conspiracy, entrapment, accident, obedience to orders, and self-defense. Inclusion of a defense above is not an indication that such a defense is recognizable in a Military Commission, and if it is, that it is an affirmative defense to any offense or any element of any offense.

f. In the case of the defense of alibi, the defense shall disclose the place or places at which the defense claims the accused to have been at the time of the alleged offense.

g. Notice to the prosecution of the intent to raise or question whether the accused is competent to stand trial.

16. When Alternatives to Live Testimony Will Be Offered by a Party.

a. The testimony of a witness may be offered by calling the person to appear as a witness before the Commission (live testimony) or by using alternatives to live testimony.

b. Whenever this Order requires a party to disclose the names of witnesses to be called, a

party which intends to offer an alternative to live testimony shall provide the notice below to the opposing party:

(1.) Intent to use alternatives to live testimony rather than calling the witness.

(2.) The method of presenting the alternative to live testimony the party intends to use. (*See* paragraph 3c(6)(a-g), POM 10-2, for examples),

(3.) The dates, locations, and circumstances - and the persons present - when the alternative was created, and

(4.) The reason(s) why the alternative will be sought to be used rather than production of live testimony.

17. Objections to Alternatives to Live Testimony.

If, after receiving a notice required by paragraph 16 above, the party receiving the notice wishes to prevent opposing counsel from using the proposed alternative to live testimony, the receiving party shall file a motion under the provisions of POM# 4-3. Such motion shall be filed within 5 days of disclosure of the intent to offer an alternative to live testimony, or the receiving party shall be deemed to have waived any objection to the use of an alternative to live testimony.

18. Obtaining or Creating Alternatives to Live Testimony - Notice and Opportunity to Attend and Participate.

a. Under Commission Law, confrontation of persons offering information to be considered by the Commission is not mandatory, nor is there a requirement for both parties to participate in obtaining or creating alternatives to live testimony. Further, there is no general rule against hearsay.

b. As a result, parties must afford opposing counsel sufficient notice and opportunity to attend witness interviews when such interviews are intended to preserve testimony for actual presentation to the Presiding Officer or other members of the Commission.

c. Failure to provide such notice as is practical may be considered - at the discretion of the Presiding Officer (or in a paragraph 6D(1), MCO# 1 determination , by the other Commission members) - along with other factors, on the issue of admissibility of the proffered testimony.

IT IS SO ORDERED:

DANIEL E. O'TOOLE
CAPTAIN, JAGC, U.S. NAVY
Presiding Officer

[redacted]

From: [redacted]
Sent: Wednesday, December 21, 2005 11:03 AM
Subject: Military Commission Business

Attachments: First PO instructions to Panel 2 dtd 1 Dec 05.pdf

1. On December 1, 2005, COL Chester sent you instructions concerning your possible service as a member of a Military Commission. A copy of those instructions is attached.

2. Since that time, two additional Presiding Officers have been appointed, and it is possible that if you sit as a Commission member, one of these officers could also be the Presiding Officer. The two other Presiding Officers are CAPT Daniel O'Toole, USN, and COL Ralph Kohlmann, U.S.M.C.

3. CAPT O'Toole and COL Kohlmann have adopted COL Chester's earlier (attached) instructions, and those instructions are now applicable to any Commission in which COL Chester, CAPT O'Toole, or COL Kohlmann is the Presiding Officer.

4. Please reply to me that you have received this email.

5. It does not appear likely that any Military Commission will need your services through the end of February 2006.

BY DIRECTION OF THE PRESIDING OFFICERS

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

First PO instructions to Panel...

Instructions to Prospective Commission Members
To be provided by APO to each prospective member.

1 December 2005

This email is being sent to each prospective member by [redacted], Assistant to the Presiding Officers for Military Commissions, at the direction of and on behalf of Colonel Chester.

1. I am Colonel Robert S. Chester. I am the Presiding Officer for Military Commissions to which you have been detailed.

2. You have been detailed as a prospective member to a Military Commission convened to try one or more individuals now being detained at US Naval Station, Guantanamo Bay, Cuba. It is possible you will be detailed to hear a case with a different Presiding Officer in which case you will receive instructions from that officer.

3. Each of you must respond by email to [redacted], the Assistant to the Presiding Officers, acknowledging receipt of these instructions. I am aware that you received an email from [redacted] earlier, but acknowledge receipt of these instructions as well. Email will be the preferred method to provide you any information. You will not receive any classified emails concerning your service as a member, and you may not send any. Please also tell [redacted] your home mailing address in the event we need to mail you something. (We find that mail to home addresses is quicker and nothing gets x-rayed.)

Your personal-information will NOT be released to anyone else, and will ONLY be used for emergencies.

4. Due to the publicity that these cases may have already received, and recognizing the possibility of further publicity, each of you is instructed as follows:

a. You may not discuss with anyone, other than as required to inform your military superiors and family of your duty status, your detail to this Commission as a prospective member. You must not listen to, look at, or read any accounts of alleged incidents involving these cases or any accounts of any proceedings in these cases, or any matters concerning the detention of detainees at Guantanamo. Please moderate your web surfing accordingly. You may not consult any source, written or otherwise, as to matters involved in such alleged incidents to include any legal references. You may not discuss these cases with anyone, and if anyone attempts to discuss these cases with you, you must forbid them to do so and report the occurrence to me by emailing the Assistant, Mr. Hodges.

b. A trial by Military Commission includes the determination of the ability of each member to sit as a member. As a prospective member, you may be questioned in open session by counsel for either side or by myself to determine whether you should serve.

c. Trial by Military Commission requires members who approach the case with an open mind, and you must keep an open mind until all of the evidence and law has been presented and the Commission closes to deliberate. A Commission member should be as free as humanly possible from any preconceived ideas as to the facts or the law. From the date of receipt of these instructions, you must keep a completely open mind and wait until all of the evidence is presented, you have been instructed on the law to be applied, and the Commission has retired to deliberate before you discuss the facts of this case with anyone, including other Commission members.

5. Administrative matters:

a. If you believe there is a reason you should be excused from serving on the Commission and you request that you be excused, you may make such a request to the Appointing Authority through the Chief Clerk for Military Commissions ([redacted] at email [redacted]

b. All sessions of the Commission will be held at Naval Base, Guantanamo Bay, Cuba. It is not known when the first session will be held, and you will be informed as soon as I know. All TDY costs will be born by the Office of Military Commissions. At Guantanamo:

1) You will be given the opportunity to access web based email. To do this, you will obviously have to know the web address for your command's Exchange server, or you must have a free web account such as hotmail, yahoo, or the like.

2) Normal cell phones will NOT work at Guantanamo. However, you will have access to Class A phone service on an as-needed basis.

c. Both [redacted] are authorized to send you administrative information concerning logistics, security clearances, uniforms, lodging, orders, travel and the like. They will not be communicating with you concerning the facts, the law, or any other aspect of any case.

/s/
Robert S. Chester
Colonel, USMC
Presiding Officer

[redacted]

From: [redacted]
Sent: Friday, December 30, 2005 11:07 AM
To: Kuebler, William LT SUBASE; [redacted]
Cc: Dwight COL DoD OGC Sullivan (E[redacted]

Subject: PO 3: US v. al Sharbi: Jan/Feb Schedule and Pro Se Representation

LT Kuebler.

1. This email and the below emails will be placed on the filings inventory as PO 3.

2. The Presiding Officer agrees, given the situation as you have described it, not to hold a session of the Commission in this case until approximately the second week in February 2006.

3. As I believe you appreciate, at some point and in a session of the Commission, the Presiding Officer must explain to Mr. al Sharbi his rights to counsel and obtain his election. If Mr. al Sharbi elects pro se representation, it will then be up to the Presiding Officer whether that request can or will be granted. The Presiding Officer appreciates that presently you do not represent Mr. al Sharbi, but as one who has been detailed as the defense counsel, there are still duties that may be incumbent upon you that do not require "representation." If you receive guidance from the Presiding Officer that you believe is a requirement that you "represent" Mr. al Sharbi inconsistent with your ethical obligations as an attorney, please request clarification.

4. Please provide notice of your client's preference for representation by counsel, or his desire to proceed pro se, as soon as you have determined his decision has been made. Assuming that Mr. al Sharbi does not change his mind and desires to go pro se - a matter that you should know well before the anticipated February session - and be prepared to:

a. Be present at any initial session the Presiding Officer may direct. At the initial session, be prepared to conduct voir dire of the Presiding Officer if you are directed by the Presiding Officer to represent Mr. al Sharbi.

b. Explain to the Presiding Officer why Mr. al Sharbi's request to proceed pro se should be honored given the state of Commission Law on this issue.

c. Seek guidance from the Bars of which you are a member and the appropriate office within the Navy Office of the Judge Advocate General in the event you are directed to represent Mr. al Sharbi.

d. Provide the advice of the Navy Office of the Judge Advocate General and from those Bars of which you are a member so you and the Presiding Officer may determine your ethical obligations in the event that you are directed to represent Mr. al Sharbi notwithstanding his wishes.

5. It does not seem to the Presiding Officer that preparing yourself to perform certain functions is "representation," but instead preparing yourself in the event you are directed to represent Mr. al Sharbi. As to item 4b above, if you consider filing a brief on the matter of your client proceeding pro se as "representing" Mr. al Sharbi, the Presiding Officer would like to know what other method that

Mr. al Sharbi's views on the law might be brought before the Presiding Officer. In a different case involving a similar issue, but before a different Presiding Officer, the detailed defense counsel filed an amicus brief.

BY DIRECTION OF THE PRESIDING OFFICER

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

-----Original Message-----
From: Kuebler, William LT SUBASE [redacted]
Sent: Thursday, December 29, 2005 12:12 PM
To: [redacted]
Cc: Dwight COL DoD OGC Sullivan (E-mail) [redacted]
Subject: RE: US v. al Sharbi: Directions of the Presiding Officer

Sir,

Leaving aside, for the moment, the question of whether it would be appropriate for me to appear "on the record" at a hearing for Mr. Al Sharbi given my relationship (or lack thereof) with the accused, frankly, I fear that what you propose (i.e., insisting that I meet Mr.
Al Sharbi for the first time, over his objection, in the context of a formal commission proceeding) may, for reasons that should be apparent, significantly (and permanently) damage any chance I have to develop an attorney-client relationship with Mr. Al Sharbi. I understand that we may come to a point at which the Presiding Officer concludes that this is the only option available to the commission, however, I do not believe that we are there quite yet.

In furtherance of my efforts to obtain Mr. Al Sharbi's consent to meet with me, on 13 Dec 05, I provided the JTF SJA, LCDR [redacted] with correspondence from Mr. Al Sharbi's family encouraging him to meet and cooperate with Mr. Robert Rachlin (currently habeas, and potential commission civilian defense counsel) and me as his counsel. My understanding is that these letters have now been delivered. My hope is that after reading and reflecting on these letters, Mr. Al Sharbi will agree to meet with Mr. Rachlin and me sometime in January (not necessarily the week of 9 Jan, but shortly thereafter, depending on Mr.
Rachlin's schedule) and accept my/our representation. If he does not, then I would probably have to agree that it would be time to evaluate the situation and figure out "where we go from there." However, I certainly believe (and hope you will agree) that it would be worth the potential delay of a few weeks to give the current approach a genuine chance before resorting to more drastic options. I will, of course, keep the tribunal apprised of my progress in this matter.

Finally, as I have previously indicated, I am in the process of relocating [redacted] to the Washington, D.C., area. I anticipate that our household goods shipment will arrive on the 4th or 5th of January, and I would like to avoid (if possible) leaving [redacted] in unfamiliar surroundings without having an opportunity to get them settled to some degree before heading back

to GTMO. After speaking with the prosecutor, LT [redacted] about the case earlier in December, I had come to the understanding that Mr. Al Sharbi's case would not be going forward with the other two cases the week of 9 Jan.
I understand that it is not the prosecution requesting that the matter go forward on 9 Jan, but had I been alerted to the possibility of a 9 Jan hearing at some point prior to this week, I may have been able to plan accordingly.

For all the reasons stated above, I very respectfully request that the commission not insist on my presence on 9 Jan 06. Thank you.

VR, WCK

-----Original Message-----
Fro[redacted]
Sent: Friday, December 23, 2005 13:41
To: Kuebler, William LT SUBASE; [redacted]
Cc: Dwight COL DoD OGC Sullivan (E-mail)
Subject: RE: US v. al Sharbi: Directions of the Presiding Officer

LT Kuebler,

Would you please forward this email to (and the whole thread as below) to ALL the people that I sent my 21 Dec email to, please. This is the only way to ensure all have the same information and is what POM 3-1 requires. I would do it, but I am reading web-based email and it is "too hard."

Also please advise if there is any reason why YOU could not be at GTMO the week of 9 Jan 06 to put this all on the record (with Mr. Al Sahrbi
present) to see where we go from there? If there are such reasons, please provide them. It is best for all, to include Mr. Al Sharbi, that his state of representation be known.

[redacted]

From: Kuebler, William LT SUBASE [redacted]
Sent: Fri 12/23/2005 10:16 AM
To: [redacted]
Cc: Dwight COL DoD OGC Sullivan (E-mail)
Subject: RE: US v. al Sharbi: Directions of the Presiding Officer

[redacted]

I have been detailed by the Chief Defense Counsel to represent Mr. Al Sharbi in connection with military commission proceedings. However, as you may be aware, Mr. Al Sharbi has thus far indicated an unwillingness to meet with me as his counsel and has not accepted my representation. Accordingly, I do not consider myself to represent Mr. Al Sharbi at this time. It would therefore, in my view, be inappropriate for me to propose or agree to any dates for the commencement of commission proceedings on his behalf. Moreover, as Mr. Al Sharbi is currently unrepresented in connection with

these proceedings, any communications or discussions between the Presiding Officer and counsel would appear to be ex parte in nature absent Mr. Al Sharbi's direct participation in those discussions.

Please be aware that I currently intend to undertake additional efforts to meet with Mr. Al Sharbi in January and discuss his rights to counsel in connection with military commission proceedings. It is possible that Mr. Al Sharbi will thereafter express a desire to have me (and/or other counsel) represent him.

Thank you.

VR, WCK

-----Original Message-----
From: [redacted]
Sent: Wednesday, December 21, 2005 11:45
To: [redacted]
Subject: US v. al Sharbi: Directions of the Presiding Officer

1. This email, and attachments 1 and 2, are being added to the filings inventory as PO 1. (See POM 12-1 for a description of the Filings Inventory.)

2. I am [redacted], the Assistant to the Presiding Officer in the case in the subject line of this email. My duties are outlined in Presiding Officer Memorandum (POM - which serve as rules of court) 2-2.
That POM, and all the others POMs, can be found at:
http://www.defenselink.mil/news/Aug2004/commissions_memoranda.html
<http://www.defenselink.mil/news/Aug2004/commissions_memoranda.html> .
This email, and all others that I send that state "BY DIRECTION OF THE PRESIDING OFFICER" are sent at the Presiding Officer's direction. The Presiding Officer has directed that all the current POMs, to include as later modified or supplemented, are in effect for this case.

3. You attention is invited to the enclosed Discovery Order (PO 2) for compliance by the parties.

4. NLT 5 Jan 06 the Presiding Officer wishes to know what is the earliest possible time that you and can attend a session of the Commission, without the other members, at Guantanamo to accomplish the following business ("Reply all" with your answer):

a. Initial session without members (convening of the Commission.)

b. Accused's election of counsel.

c. Voir dire of the Presiding Officer (materials to assist you in voir dire will be sent at a later time.)

d. Discussion - and if necessary - litigation concerning the attached discovery order, its terms and enforceability.

e. Entry of pleas. (If the accused requests to defer pleas, the Presiding Officer advises he will grant the request.)

f. Motions. (If the parties request to defer motions - except a motion as to the wording, terms, and enforceability of the discovery order - the Presiding Officer advises he will grant the request.)

g. Setting a schedule for future sessions and the trial to include: law motions (motions other than on the admissibility or form of evidence); evidentiary motions; voir dire of the other members, and the trial. The dates the Presiding Officer will be looking at are those on the attached "Significant Dates Worksheet."

5. If you request a date in paragraph 4 above later than 13 February 2006, your reply must include the reasons for the delay and a calendar showing your activities and commitments - personal and professional - between 5 Jan 2006 and the date you request a delay that make it impossible to proceed by 13 February 2006.

6. NLT 5 Jan 06, the parties will provide the Presiding Officer, opposing counsel, and me a copy of all protective orders, issued by any authority, that they believe have been issued and remain in effect. Any party requesting a protective order from the Presiding Officer will use the procedures in POM 9-1.

7. Also attached is an email sent at the direction of the Presiding Officer adopting "first instructions" issued earlier by another Presiding Officer, COL Chester. The instructions that were adopted are also attached.

Three attachments:
1 - PO 2 - Discovery Order
2 - Significant dates worksheet
3 - Email on adopted "first instructions" and those instructions

BY DIRECTION OF THE PRESIDING OFFICER
[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

<<Email and attachment - First instructions by PO Chester adopted by POs O'Toole and Kohlmann, 21 Dec 05.pdf>> <<PO 2 - al Sharbi
- Discovery Order - 21 Dec 05.pdf>> <<Significant Commission Dates - worksheet v1.doc>>

[redacted]

From: [redacted]
Sent: Thursday, January 19, 2006 12:14 PM
To: [redacted]

Cc: [redacted]

Subject: Trial/Session Term of the Military Commission - 27 Feb - 3 Mar 2006

Attachments: Referred Commission Cases - 18 Jan 06 v2.doc

This email is to provide long-range planning guidance to all counsel in the following cases:

United States v al Bahlul
United States v Khadr
United States v al Qahtani
United States v Barhoumi
United States v al Sharbi
United States v Muhammad

All counsel on all the above cases are to respond to the Assistant that you received this email. Defense, please also pay special attention to paragraph 6 below.

1. The Commission will hold a trial/session term the week of 27 February 2006 at Guantanamo Bay Naval Station, Cuba. Counsel in the above named cases must be prepared to conduct any and all business before the Commission that can be conducted at that time. The individual Presiding Officers, through the Assistant, will work with counsel to determine the exact business to be addressed. Collectively, the Presiding Officers will set the exact schedule and publish it at a later date.

2. The Office of the Presiding Officers is advised that there are no Muslim Holy days during the above period. If addressees have different information, please advise soonest.

3. The first session of the Commission may be held as early as 1300, 27 February 2006. The last session may be held as late as COB Friday, 3 March 2006.

4. The Presiding Officers request that counsel for those cases that will not be in session at GTMO during this term still be present at GTMO so that the parties and the PO can work together to discuss issues and make plans. For example, at the last term, the parties were able to discuss and agree on the wording of Protective Orders. The Presiding Officers are aware of the limitations on conferences and discussions versus what must be resolved in a session. All counsel should obtain the appropriate country clearances and make other necessary logistical arrangements.

5. If any counsel in the above listed cases cannot be at GTMO during the February trial/session term, advise the Assistant, and the Presiding Officer and opposing and other counsel on that case, **NLT 1200, EST (Monday) 23 January 2006** with the reasons for the unavailability.

6. All Defense counsel.

a. The fact that an attorney client relationship has not yet been established, or a client has indicated he wishes to proceed pro se, does not amount to "unavailability," and it may suggest a session in February is paramount. Counsel are encouraged to provide such information, however, as it might be useful in planning sessions.

b. Detailed Defense Counsel will advise if there are any other counsel (military or civilian) who are also detailed, or who may be detailed or may join the case in the future, and who are not on the attached list. If there are other such counsel, advise the Assistant, Presiding Officer, and other counsel on the case and provide email addresses and other contact information.

BY DIRECTION OF THE PRESIDING OFFICERS

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]

Referred
mmission Cases - 18

Referred Commission Cases – 18 Jan 06

Case	PO	Prosecution	Defense	Panel	Status
Hicks	Brownback		Mori – Det Lippert - Asst Dratel - Civ	05-0001 [redacted]	Stayed
al Qosi	Brownback		Shaeffer – Det Thompson - Asst	New panel ?	Stayed
Hamdan	Brownback		Swift – Det Autorino - Asst Katyal - Civ	New panel ?	Stayed
al Bahlul	Brownback		Fleener - Det	05-0003 [redacted]	First restart session held
Khadr	Chester		Merriam – Det Ahmad – Civ Wilson – Civ ?? Vokey	05-0004 ([redacted]	First session held
al Qahtani	O'Toole		Broyles - Det	05-0008 [redacted]	
Barhoumi	O'Toole		Faulkner - Det	05-0007 ([redacted])	
al Sharbi	O'Toole		Kuebler – Det	05-0006 [redacted]	
Muhammad	Kohlmann		Bradley – Det Stafford-Smith - Civ	05-0005 ([redacted]	

CAPTAIN DANIEL E. O'TOOLE
JUDGE ADVOCATE GENERAL'S CORPS
UNITED STATES NAVY

Captain Daniel E. O'Toole, Judge Advocate General's Corps, U.S. Navy, received a Juris Doctor degree from Wake Forest University School of Law in 1980 and is admitted to the North Carolina State Bar. He is a 1984 honors graduate of the Naval Justice School. He was awarded a Master of Laws degree from the George Washington University National Law Center in 1994 and he was the 2004 Distinguished Graduate of the 47th Military Judges Course, The Judge Advocate General's School, U.S. Army.

Following four years in private practice, principally engaged in criminal and civil litigation in state and federal courts, Captain O'Toole accepted a direct commission into the Navy JAG Corps. He served successively as Senior Defense Counsel and Senior Trial Counsel at Naval Legal Service Office, Newport, and then as Staff Judge Advocate, Naval Surface Group FOUR, Newport, Rhode Island. He transferred to Naval Air Station, Brunswick, Maine, in 1986, where he served as Staff Judge Advocate until 1988. He then transferred to Commander, Carrier Group EIGHT, embarked on USS JOHN F. KENNEDY (CV-67). Following that assignment, Captain O'Toole served as Assistant Fleet Judge Advocate, Commander Naval Air Force, U.S. Atlantic Fleet.

From 1990 to 1992, Captain O'Toole served as Command Judge Advocate on USS THEODORE ROOSEVELT (CVN-71). He then transferred to Joint Exercise Control Group, Ocean Venture 1992, as an exercise planner and controller. Following post-graduate school in 1994, Captain O'Toole was assigned to Commander, Naval Base, Norfolk, Virginia, as the Navy's first Mid-Atlantic Regional Environmental Counsel. In 1995, he transferred to Commander-in-Chief, U.S. Atlantic Fleet, with additional duty to U.S. Atlantic Command, as Environmental Counsel. When Trial Service Office East was established in the fall of 1996, with responsibility for the prosecution of Navy courts-martial throughout the eastern and central United States, Captain O'Toole was assigned as its first Executive Officer, and later as interim Commanding Officer. In the fall of 1999, Captain O'Toole transferred to the General Litigation Division, Office of the Judge Advocate General, as Deputy Director. While in the General Litigation Division, Captain O'Toole defended civil and criminal cases in state and federal district courts throughout the country, as well as various U.S. Circuit Courts of Appeal and the U.S. Court of Federal Claims.

In July 2001, Captain O'Toole was selected as Deputy Assistant Judge Advocate General (Management and Plans), and served simultaneously as the JAG Corps Officer Community Manager until September 2002, when he returned to the General Litigation Division as its Director. In March 2003, Captain O'Toole was selected by the Navy General Counsel as his Executive Assistant and Special Counsel, and he served in that capacity until his appointment as Circuit Military Judge, Tidewater Judicial Circuit, in July 2004.

During his nearly 14 years in the courtroom as a trial advocate and judge, Captain O'Toole has supervised, litigated, or presided over nearly a thousand cases, including national security and capital murder cases.

Captain O'Toole's personal decorations include the Legion of Merit with gold star in lieu of third award, the Meritorious Service Medal with three gold stars, the Navy Commendation Medal with two gold stars, the Joint Services Achievement Medal, and the Navy-Marine Corps Achievement Medal with gold star.

UNITED STATES OF AMERICA v. GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al-Muslim a/k/a Abu Muslim	Protective Order # 1 Protection of Identities of All Witnesses 23 January 2006

This Protective Order has been issued pursuant to Commission Law sua sponte by the Presiding Officer to ensure the protection of information, and so that the parties may begin the discovery process thus ensuring a full and fair trial. Counsel who desire this order modified or rescinded shall follow the Procedures in POM 9-1.

1. This Protective Order protects the identities or other identifying information of all individuals identified in materials provided to the Defense by the prosecution. In addition, this Order also applies to any identifying information obtained by the Defense during their independent discovery efforts.

2. The names and background information of witnesses are considered sensitive material that constitutes Protected Information in accordance with Military Commission Order No. 1, Section 6(D)(5).

3. Accordingly, IT IS HEREBY ORDERED:

   a. Names or other identifying information of witnesses that have been or may, from time to time, be disseminated to or obtained by the Defense Counsel for the accused, may be disclosed to members of the Defense team, such as paralegals, investigators, and administrative staff, with an official need to know. However, such information shall not be disclosed to the accused or to anyone outside of the Defense team other than the Military Commission panel subject to the limitations below;

   b. Names or other identifying information of any witness shall not be disclosed in open court or in any unsealed filing. Any mention of the name or other identifying information of witnesses must occur in closed session and any filing to the Military Commission panel that includes such information shall be filed under seal; and

   c. Either party may file a motion for appropriate relief to obtain an exception to this Order should they consider it necessary for a full and fair trial.

4. Any breach of this Protective Order may result in disciplinary action or other sanctions.

IT IS SO ORDERED

DANIEL H. O'TOOLE
CAPTAIN, JAGC, U.S. NAVY
Presiding Officer

UNITED STATES OF AMERICA v. GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	**Protective Order # 2** Protection of Identities of Investigators and Interrogators **23 January 2006**

This Protective Order has been issued pursuant to Commission Law sua sponte by the Presiding Officer to ensure the protection of information, and so that the parties may begin the discovery process thus ensuring a full and fair trial. Counsel who desire this order modified or rescinded shall follow the Procedures in POM 9-1.

1. This Protective Order protects the identities of law enforcement, intelligence, or other investigators and interrogators working on behalf of their government (collectively referred to as "investigators and interrogators") who participated in the investigation of the accused.

2. The names and background information of investigators and interrogators are considered sensitive material that constitutes Protected Information in accordance with Military Commission Order No. 1, Section 6(D)(5).

3. Accordingly, IT IS HEREBY ORDERED:

   a. Names or other identifying information of investigators and interrogators that have been or may, from time to time, be disseminated to Defense Counsel for the accused, may be disclosed to members of the Defense team, such as paralegals, investigators, and administrative staff, with an official need to know. However, such information shall not be disclosed to the accused or to anyone outside of the Defense team other than the Military Commission panel subject to the limitations below; and

   b. Names or other identifying information of investigators and interrogators shall not be disclosed in open court or in any unsealed filing. Any mention of the name or other identifying information of investigators and interrogators must occur in closed session and any filing to the Military Commission panel that includes such information shall be filed under seal.

4. The following actions do not violate this protective order:

   a. Showing pictures of individuals who had questioned the accused for the purposes of discussing the nature of those interrogations with the accused;

   b. Using "nicknames" or any other name (aliases) that the individual who questioned the accused told to the accused when questioned. This does NOT

include any name that the accused may have learned through some other means other than the individual themselves; and

c. Using physical descriptions of the individual who questioned the accused for the purposes of the defense discussing with the accused that specific interrogation.

5. The protective order protects the true identities of the individual from release to the accused and the public and of course any private information relating to the individual (family names, addresses, phone numbers, etc.).

6. Either party may file a motion for appropriate relief to obtain an exception to this Order should they consider it necessary for a full and fair trial.

7. Any breach of this Protective Order may result in disciplinary action or other sanctions.

IT IS SO ORDERED:

DANIEL E. O'TOOLE
CAPTAIN, JAGC, U.S. NAVY
Presiding Officer

UNITED STATES OF AMERICA v. GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	**Protective Order # 3** Protection of "For Official Use Only" or "Law Enforcement Sensitive" Marked Information and Information with Classified Markings **23 January 2006**

This Protective Order has been issued pursuant to Commission Law sua sponte by the Presiding Officer to ensure the protection of information, and so that the parties may begin the discovery process thus ensuring a full and fair trial. Counsel who desire this order modified or rescinded shall follow the Procedures in POM 9-1.

1. **Generally:** The following Order is issued to provide general guidance regarding the below-described documents and information. Unless otherwise noted, required, or requested, it does not preclude the use of such documents or information in open court.

2. **Scope:** This Order pertains to information, in any form, provided or disclosed to the defense team in their capacity as legal representatives of the accused before a military commission. Protection of information in regards to litigation separate from this military commission would be governed by whatever protective orders are issued by the judicial officer having cognizance over that litigation.

3. **Definition of Prosecution and Defense:** For the purpose of this Order, the term "Defense team" includes all counsel, co-counsel, counsel, paralegals, investigators, translators, administrative staff, and experts and consultants assisting the Defense in Military Commission proceedings against the accused. The term "Prosecution" includes all counsel, co-counsel, paralegals, investigators, translators, administrative staff, and experts and consultants who participate in the prosecution, investigation, or interrogation of the accused.

4. **Effective Dates and Classified Information**: This Protective Order shall remain in effect until rescinded or modified by the Presiding Officer or other competent authority. This Order shall not be interpreted to suggest that information classified under the laws or regulations of the United States may be disclosed in a manner or to those persons inconsistent with those statutes or regulations.

5. <u>UNCLASSIFIED SENSITIVE MATERIALS:</u>

   a. IT IS HEREBY ORDERED that documents marked "For Official Use Only (FOUO)" or "Law Enforcement Sensitive" and the information contained therein shall be handled strictly in accordance with and disseminated only pursuant to the limitations contained in the Memorandum of the Under Secretary of Defense ("Interim Information Security Guidance") dated April 18, 2004. If either party disagrees with the marking of a document, that party must continue to handle that document as marked unless and until proper authority removes such marking. If either party

wishes to disseminate FOUO or Law Enforcement Sensitive documents to the public or the media, they must make a request to the Presiding Officer.

b. IT IS FURTHER ORDERED that Criminal Investigation Task Force Forms 40 and Federal Bureau of Investigation FD-302s provided to the Defense shall, unless classified (marked "CONFIDENTIAL," "SECRET," or "TOP SECRET"), be handled and disseminated as "For Official Use Only" and/or "Law Enforcement Sensitive."

6. CLASSIFIED MATERIALS:

a. IT IS FURTHER ORDERED that all parties shall become familiar with Executive Order 12958 (as amended), Military Commission Order No. 1, and other directives applicable to the proper handling, storage, and protection of classified information. All parties shall disseminate classified documents (those marked "CONFIDENTIAL," "SECRET," or "TOP SECRET") and the information contained therein only to individuals who possess the requisite clearance and an official need to know the information to assist in the preparation of the case.

b. IT IS FURTHER ORDERED that all classified or sensitive discovery materials, and copies thereof, given to the Defense or shared with any authorized person by the Defense must and shall be returned to the government at the conclusion of this case's review and final decision by the President or, if designated, the Secretary of Defense, and any post-trial U.S. federal litigation that may occur.

7. BOOKS, ARTICLES, OR SPEECHES:

a. FINALLY, IT IS ORDERED that neither members of the Defense team nor the Prosecution shall divulge, publish or reveal, either by word, conduct, or any other means, any documents or information protected by this Order unless specifically authorized to do so. Prior to publication, members of the Defense team or the Prosecution shall submit any book, article, speech, or other publication derived from, or based upon information gained in the course of representation of the accused in military commission proceedings to the Department of Defense for review. This review is solely to ensure that no information is improperly disclosed that is classified, protected, or otherwise subject to a Protective Order. This restriction will remain binding after the conclusion of any proceedings that may occur against the accused.

b. The provisions in paragraph 7a apply to information learned in the course of representing the accused before this commission, no matter how that information was obtained. For example, paragraph 7a:

(1) Does not cover press conferences given immediately after a commission hearing answering questions regarding that hearing so long as it only addresses the aspects of the hearing that were open to the public.

(2) Does not cover public discourses of information or experiences in representing the accused before this military commission which is already known and available in the public forum, such as open commission hearings, and motions filed and made available to the public.

(3) Does cover information or knowledge obtained through any means, including experience, that is not in the public forum, and would and could only be known through such an intimate interaction in the commission process (for example, a defense counsel's experience logistically in meeting a client).

8. REQUEST FOR EXCEPTIONS: Either party may file a motion, under seal and in accordance with POM 4-3 or 9-1 as appropriate, for appropriate relief to obtain an exception to this Order should they consider it necessary for a full and fair trial and/or, if necessary, any appeal.

9. BREACH: Any breach of this Protective Order may result in disciplinary action or other sanctions.

IT IS SO ORDERED.

DANIEL E. O'TOOLE
CAPTAIN, JAGC, U.S. NAVY
Presiding Officer

[redacted]

From: [redacted]
Sent: Monday, January 23, 2006 11:11 AM
To: Kuebler, William, LT, DoD OGC; [redacted]
Subject: PO 1 B: Reply to LT Kuebler and Mr Rachin
Attachments: PO 1 A - al Sharbi - Announcement of Feb trial term, 19 Jan 06.pdf

I received a reply earlier from Mr. Rachin in response to the 19 Jan email (now PO 1 A - attached.)

I did not receive a reply from LT Kuebler to PO 1 A, but believed he received it. LT Kuebler - please confirm.

The Presiding Officer has directed that I respond to LT Kuebler's email below and Mr Rachin's earlier email as follows. (There are also some action items for the Prosecution.)

1. The Presiding Officers thanks the parties (Prosecution, LT Kuebler, and Mr. Rachin) for their emails and for the Defense efforts to clarify Mr. al Sharbi's counsel preference.

2. At this time, the Presiding Officer does intend to conduct a session in this case during the week of 27 February 2006 in Guantanamo Bay. Later today the Presiding Officer intends to issue a trial order laying out those items that he plans to accomplish at the Feb trial term. This may have to be adjusted later depending on Mr. al Sharbi's position with respect to counsel, but the Presiding Officer has directed that, unless directed otherwise, counsel shall proceed to be prepared for the 27 February session in accordance with the forthcoming trial order.

3. The Presiding Officer has granted the defense request for a delay to respond to file a motion with respect to the Discovery Order should the defense desire to file one. A new date will be established at a later time. The Defense request that its obligations under PO 2 be stayed was also granted. A new date will be established at a later time.

4. The Prosecution will file a motion in accordance with PO 2 as provided in that filing if they desire to file such a motion.

5. The Prosecution and Defense will continue to assemble the matters required by PO 2 to prepare to deliver them to the opposing parties upon order from the Presiding Officer. The date for delivery will be established at a later time by the Presiding Officer.

6. The Presiding Officer will issue Protective Orders sua sponte as authorized by Commission Law. These orders are binding upon those named in the Order and without regard to whether the accused has accepted the services of counsel as counsel has been detailed. Those Orders will provide a mechanism to have them modified or rescinded.

BY DIRECTION OF THE PRESIDING OFFICER

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

From: Kuebler, William, LT, DoD OGC [redacted]
Sent: Monday, January 23, 2006 9:56 AM
To: [redacted] CPT, DoD OGC; Davis, Morris, COL, DoD OGC; Sullivan, Dwight, COL, DoD OGC; [redacted]
Subject: RE: Reminder: US v. al Sharbi: Directions of the Presiding Officer

Sir,

The Discovery Order issued as PO2 requires certain actions to take place with respect to discovery in this case NLT 31 Jan, and requires the defense to provide comprehensive pre-trial disclosures to the prosecution by 28 Feb. To begin with, without waiving any objection as to the propriety of requiring the defense to be essentially prepared for trial at the time of the first hearing, I believe these dates were established with the idea in mind that an initial session would take place the week of 13 Feb. Now, it does not appear that there is any intention of conducting an initial session prior to the week of 27 Feb. Moreover, as I have previously stated, it is my position that Mr. Al Sharbi is unrepresented at this time. Accordingly, I am unable to accept discovery and agree to the terms of a protective order (or make any motion with respect thereto) that would potentially bind Mr. Al Sharbi absent the opportunity to even speak with him about the matter. Accordingly, without prejudice to any position Mr. Al Sharbi may wish to assert concerning his right to counsel, or position that I may take with respect to my ethical obligations in this matter, *I would ask the Presiding Officer to vacate the dates in PO2 until such time as I have had the opportunity to meet with Mr. Al Sharbi.* Mr. Rachlin and I are planning to travel to GTMO on 4 Feb and we have asked the government to arrange a face-to-face meeting with Mr. Al Sharbi on 5 Feb. Depending on the outcome of that meeting, I may, as previously suggested by Mr. Hodges, ask for additional time in which to travel to GTMO for subsequent meetings with Mr. Al Sharbi concerning his rights to counsel before the commencement of formal commission proceedings. I will, of course, make every effort to keep the tribunal informed as to my belief regarding the prospect that Mr. Al Sharbi will accept my (or any attorney's) representation. Thank you.

VR, WCK

-----Original Message-----
From: [redacted] [mailto [redacted]
Sent: Wednesday, January 04, 2006 19:11
To: [redacted]
Subject: Reminder: US v. al Sharbi: Directions of the Presiding Officer

LT Kuebler,

A reminder you have a due date of 5 Jan 06 per paragraphs 4 and 6 of PO 1 (below).

If you need the attachments sent again, advise ASAP.

I know you just moved to the DC area. Though the questions presented should not take long to answer, if you need an extension, request it of the PO. You may do so in the body of an email.

FOR THE PRESIDING OFFICER

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
[redacted]

From: [redacted]
Sent: Wednesday, January 04, 2006 11:04 AM
To: [redacted]
Subject: RE: US v. al Sharbi: Directions of the Presiding Officer

Thank you. Your email will be added to the filings inventory.

We look forward to hearing from the defense.

FOR THE PRESIDING OFFICER

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

From: [redacted] LT, DoD OGC [redacted]
Sent: Wednesday, January 04, 2006 10:29 AM
To: [redacted] Davis, Morris, COL, DoD OGC; Sullivan, Dwight, COL, DoD OGC; [redacted]
Subject: RE: US v. al Sharbi: Directions of the Presiding Officer

[redacted]

The government is available for an initial session in the subject case during the week of 13 February 2006.

The government does not, at this time, have any protective orders that are in effect in this case. However, the government may request protective orders in accordance with POM 9-1 in the

future, should it be unable to come to agreement on a protective order with the defense prior to discovery.

Very Respectfully,

LT[redacted]
Prosecutor, Office of Military Commissions
Department of Defense
Phone:[redacted]
Fax:[redacted]

-----Original Message-----
From:[redacted]
Sent: Wednesday, December 21, 2005 11:45
To:[redacted]
Subject: US v. al Sharbi: Directions of the Presiding Officer

1. This email, and attachments 1 and 2, are being added to the filings inventory as PO 1. (See POM 12-1 for a description of the Filings Inventory.)

2. I am [redacted], the Assistant to the Presiding Officer in the case in the subject line of this email. My duties are outlined in Presiding Officer Memorandum (POM - which serve as rules of court) 2-2. That POM, and all the others POMs, can be found at: http://www.defenselink.mil/news/Aug2004/commissions_memoranda.html. This email, and all others that I send that state "BY DIRECTION OF THE PRESIDING OFFICER" are sent at the Presiding Officer's direction. The Presiding Officer has directed that all the current POMs, to include as later modified or supplemented, are in effect for this case.

3. You attention is invited to the enclosed Discovery Order (PO 2) for compliance by the parties.

4. NLT 5 Jan 06 the Presiding Officer wishes to know what is the earliest possible time that you and can attend a session of the Commission, without the other members, at Guantanamo to accomplish the following business ("Reply all" with your answer):

a. Initial session without members (convening of the Commission.)

b. Accused's election of counsel.

c. *Voir dire* of the Presiding Officer (materials to assist you in *voir dire* will be sent at a later time.)

d. Discussion - and if necessary - litigation concerning the attached discovery order, its terms and enforceability.

e. Entry of pleas. (If the accused requests to defer pleas, the Presiding Officer advises he will grant the request.)

f. Motions. (If the parties request to defer motions - except a motion as to the wording, terms, and enforceability of the discovery order - the Presiding Officer advises he will grant the request.)

g. Setting a schedule for future sessions and the trial to include: law motions (motions other than on the admissibility or form of evidence); evidentiary motions; *voir dire* of the other members, and the trial. The dates the Presiding Officer will be looking at are those on the attached "Significant Dates Worksheet."

5. If you request a date in paragraph 4 above later than 13 February 2006, your reply must include the reasons for the delay and a calendar showing your activities and commitments - personal and professional - between 5 Jan 2006 and the date you request a delay that make it impossible to proceed by 13 February 2006.

6. NLT 5 Jan 06, the parties will provide the Presiding Officer, opposing counsel, and me a copy of all protective orders, issued by any authority, that they believe have been issued and remain in effect. Any party requesting a protective order from the Presiding Officer will use the procedures in POM 9-1.

7. Also attached is an email sent at the direction of the Presiding Officer adopting "first instructions" issued earlier by another Presiding Officer, COL Chester. The instructions that were adopted are also attached.

Three attachments:
1 - PO 2 - Discovery Order
2 - Significant dates worksheet
3 - Email on adopted "first instructions" and those instructions

BY DIRECTION OF THE PRESIDING OFFICER
[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

<<Email and attachment - First instructions by PO Chester adopted by POs O'Toole and Kohlmann, 21 Dec 05.pdf>> <<PO 2 - al Sharbi - Discovery Order - 21 Dec 05.pdf>> <<Significant Commission Dates - worksheet v1.doc>>

[redacted]

From: [redacted]
Sent: Monday, January 23, 2006 1:32 PM
To: [redacted]
Subject: PO 1 C (Trial Order - US v. al Sharbi)
Attachments: CAPT O'Toole Biograhical Summary - Voir Dire.pdf; PO 1 A - al Sharbi - Announcement of Feb trial term, 19 Jan 06.pdf; PO 1 B - al Sharbi - Email from DDC and PO reply regarding the Feb session (23 Jan 06).pdf; Protective Order 1 - al Sharbi - ID of all witnesses (23 Jan 06).pdf; Protective Order 2 - al Sharbi - ID of investigators (23 Jan 06).pdf; Protective Order 3 - al Sharbi - FOUO and other markings (23 Jan 06).pdf; Significant Commission Dates - worksheet - Feb trial term trial Order attachment.doc

1. This email Trial Order has been personally directed by the Presiding Officer in the subject case to prepare the parties for the February Trial term (27 Feb – 3 Mar 06.) It lists the functions that the parties are expected to perform at that trial term. This email and all replies will be added to the PO 1 filings series. This Order takes into account PO 1 B (attached) concerning the Defense's efforts to work with Mr. al Sharbi's making an informed choice as to counsel.

2. **Defense only – counsel choice**. Advise not later than 15 Feb 2006 whether you believe that you are representing the accused (i.e., the accused has *not* indicated he wishes to proceed pro se, and the accused *has* accepted your representation) and whatever information you have whether a civilian counsel will join the case (and the email address and contact information for that counsel.) This information is necessary not only so the business of the February trial term can be planned, but so the Presiding Officer can know why motions, filings, or other information might not be provided. *Note*: Even if counsel believe that an accused may wish to proceed pro se, or has or will reject the services of counsel, the parties will still prepare themselves to proceed in accordance with this Order.

3. **Existing Protective Orders**. The parties were directed in PO 1 to provide copies of all existing Protective Orders. None were provided and therefore the Presiding Officer presumes that none exist. If such orders exist, send them immediately. The PO 1 deadline was 5 Jan 2006.

4. **Protective Orders.**

a. The three attached Protective Orders have been issued pursuant to Commission Law *sua sponte* by the Presiding Officer to ensure the protection of information, and so that the parties may begin the discovery process thus ensuring a full and fair trial.

b. Counsel who wish this order modified or rescinded shall follow the Procedures in POM 9-1.

5. Motions on the Discovery Order (PO 2.) As indicated in PO 1 B:

a. The Presiding Officer has granted the defense request for a delay to file a motion with respect to the Discovery Order should the defense desire to file one. A new date will be established at a later time. The Defense request that its obligations under PO 2 be stayed was also granted. A new date will be

established at a later time.

b. The Prosecution will file a motion in accordance with PO 2 as provided in that filing if they desire to file such a motion.

c. The Prosecution and Defense will continue to assemble the matters required by PO 2 to prepare to deliver them to the opposing parties upon order from the Presiding Officer. The date for delivery will be established at a later time by the Presiding Officer.

6. **Voir dire**. If counsel desire to voir dire and/or to challenge the Presiding Officer, this will be accomplished during the February trial term.

a. A mini biography of the Presiding Officer is attached to assist counsel.

b. Counsel are strongly encouraged to submit written question for the Presiding Officer. Such questions will be provided to the APO, Presiding Officer, and opposing counsel not later than 17 Feb 2006 in *Word (not PDF)* so the Presiding Officer can answer the questions in the same electronic file.

7. **Setting a trial calendar**. Not later than 17 Feb 2006, counsel for both sides will complete the attached "Trial Schedule" filling in the appropriate dates and file it with the APO, Presiding Officer and opposing counsel.

8. **Entry of pleas**. The accused will be called upon to enter pleas. (If the accused requests to defer pleas, the Presiding Officer advises he will grant the request.)

9. **Motions (other than on the Discovery Order.)** Counsel may file motions in accordance with POM 4-3. Such motions a party desires litigated at the February trial term shall be filed not later than 15 Feb 2006. Responses shall be filed not later than 7 days from the filing of the motion. Replies, if desired, shall be filed not later than 3 days from when the response was filed. All filing will be done electronically. Be attentive to the requirements of POM 4-3.

10. **Motions other than the Discovery Order and those motions filed in accordance with paragraph 9 above**. The parties will be asked if they have motions or other motions if motions were made. (If the parties request to defer motions - except a motion as to the wording, terms, and enforceability of the Discovery Order - the Presiding Officer advises he will grant the request.)

11. Inability to perform functions and unavailability. If there is any reason why counsel cannot perform the functions listed in this Order, such matters will be filed with the APO, Presiding Officer, and opposing counsel not later than 15 Feb clearly indicating the functions that counsel cannot perform and the reasons therefore.-

12. Representational issues and unavailability (Defense counsel.) Para 6 of PO 1 A stated:

> 6. All Defense counsel.
> a. The fact that an attorney client relationship has not yet been established, or a client has indicated he wishes to proceed pro se, does not amount to "unavailability," and it may suggest a session in February is paramount. Counsel are encouraged to provide such

information, however, as it might be useful in planning sessions.

b. Detailed Defense Counsel will advise if there are any other counsel (military or civilian) who are also detailed, or who may be detailed or may join the case in the future, and who are not on the attached list. If there are other such counsel, advise the Assistant, Presiding Officer, and other counsel on the case and provide email addresses and other contact information.

Attachments to this email Trial Order

1. Three Protective Orders issued by the Presiding Officer
2. Mini-biography of the Presiding Officer
3. Trial schedule form (Significant Dates)
4. PO 1 A
5. PO 1 B

BY DIRECTION OF THE PRESIDING OFFICER
[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

<<CAPT O'Toole Biograhical Summary - Voir Dire.pdf>> <<PO 1 A - al Sharbi - Announcement of Feb trial term, 19 Jan 06.pdf>> <<PO 1 B - al Sharbi - Email from DDC and PO reply regarding the Feb session (23 Jan 06).pdf>> <<Protective Order 1 - al Sharbi - ID of all witnesses (23 Jan 06).pdf>> <<Protective Order 2 - al Sharbi - ID of investigators (23 Jan 06).pdf>> <<Protective Order 3 - al Sharbi - FOUO and other markings (23 Jan 06).pdf>> <<Significant Commission Dates - worksheet - Feb trial term trial Order attachment.doc>>

Significant Commission Dates
United States v. _____

Highlighting signifies modifications from the "worksheet" provided with PO 1.

# [1]	Event	Date	Notes
1.	First session (without members) • Convening the Commission • Choice of counsel • Voir dire of PO • Pleas (ordinarily reserved) • Motions (ordinarily reserved) • Discovery Order litigation	27 Feb – 3 Mar 06	
2.	Provide copies of existing Protective Orders to PO	5 Jan 06 (Past due)	
3.	Submit Protective Orders for PO signature.		POM 9-1
4.	Discovery – Prosecution [2]	xxx	
5.	Discovery – Defense [2]	xxx	
6.	Requests for access to evidence		POM 7-1
7.	"Law" Motions: *Motion* [3]		POM 4-3
8.	"Law" Motions: *Response*		POM 4-3
9.	"Law" Motions: *Reply*		POM 4-3
10.	Witness requests on law motions		POM 10-2
11.	Evidentiary motions: *Motion*		POM 4-3
12.	Evidentiary motions: *Response*		POM 4-3
13.	Evidentiary motions: *Reply*		POM 4-3
14.	Witness requests on evidentiary motions		POM 10-2
15.	Voir dire of members		
16.	Prosecution case in chief - *Merits*		Also indicate # of days to present
17.	Defense case in chief - *Merits*		Also indicate # of days to present
18.	Prosecution – *Sentencing*		Also indicate # of days to present
19.	Defense - *Sentencing*		Also indicate # of days to present
20.	Witness requests – merits and sentencing		POM 10-2
21.	Directed briefs [4]	xxx	
22.	Requests to take conclusive notice		POM 6-2

[1] The requested dates do not have to be in the chronological order that they appear on this list. For example, counsel may request an earlier date for item 15 than they would for item 7.

[2] Discovery dates will be included in the discovery order.

[3] A "law motion" is any motions except that to suppress evidence or address another evidentiary matter.

[4] Dates will be established in the directed brief if directed briefs are used.

[redacted]

From: [redacted]
Sent: Wednesday, January 25, 2006 2:01 PM
To: [redacted]

Cc: [redacted] Mr, DoD OGC'
Subject: Preserving objections, concerns and issues: POM 4-3 and POM 12-1

To all counsel in all Military Commission Cases

1. The Presiding Officers have asked me to point out some features of the POMs of which you might be unaware. The POMs are the Rules of Court for the Presiding Officers and they describe the manner in which parties communicate with the Presiding Officers.

2. A main feature of POM 4-3 is that if a counsel wants relief, the counsel must comply with that POM - which means to file a motion. A main feature of the filings inventory POM (12-1) is that the only issues before the Presiding Officer are those listed on the filings inventory in the appropriate section (D for defense and P for Prosecution.) Taken together, this means that motions filed by the parties that meet the formatting and other requirements of POM 4-3 are placed on the filings inventory in the appropriate section. This document is available to the parties, and all can see what matters are before the Presiding Officer to resolve. If counsel believes that s/he has a motion or other request for relief pending before the Presiding Officer and it is not on the filings inventory in the appropriate section, then counsel must take action to file; if counsel believes a motion has already been filed, work with me so we can find that filing and ensure it gets on the list. How you raise matters on the record - by which I mean during a session - with the Presiding Officer is outside the scope of this email. This email addresses only communications outside the record - by which I mean not during a session.

4. The PO (Presiding Officer) section of the filings inventory reflects only those significant matters that the Presiding Officer sends or elects to place there so that there is a record of them. An email from counsel, containing an objection or other request for relief, might find its way into the PO section. But, if the counsel wants that objection to be resolved by the Presiding Officer, counsel must file in accordance with POM 4-3. Only when that is done will the filing be placed on the filings inventory in the appropriate P or D section and the matter preserved.

5. I point out these features so that all may appreciate that an objection, concern, observation, or request for relief in the body of an email is not a motion under POM 4-3 and therefore will not be added to the filings inventory in the P or D section. So, as an example, suppose in an email a prosecution counsel said, "I object to X." That is not a motion IAW POM 4-3, and unless the Presiding Officer directed otherwise, it would be not added to the Prosecution section of the filings inventory. Since that objection is not in the Prosecution section of

the filings inventory, it is not before the Presiding Officer for resolution. Of course, the same analysis would hold true if the defense counsel said, "I object to X."

6. Finally, please appreciate the reason behind the inter-relationship between POM 4-3 and 12-1. The parties and the Presiding Officer deserve to know what matters are before the Presiding Officer. Notwithstanding all the advantages of email, its downside is that what one person views as a casual observation, discussion, or a prelude to a motion to be made could be viewed by another as having preserved a matter to go before the Commission and/or on appeal. The only way to ensure all know what is intended by an email, what matters they are expected to respond to or resolve, to ensure issues for the Presiding Officer to resolve are preserved, and to prevent inadvertent waiver is to have a system that lists such matters and is available to all.

7. A copy of this email will be placed in the filings inventory of all cases. A filings inventory in all cases that have not been stayed will be sent later this week.

BY DIRECTION OF THE PRESIDING OFFICERS

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]

UNITED STATES OF AMERICA v. GHASSAN AL SHARBI	**PROSECUTION MOTION** TO JOIN THE CASES OF U.S v AL SHARBI, U.S. v AL QAHTANI AND US v BARHOUMI 6 FEBRUARY 2006

1. Timeliness- This motion is being filed within the timelines set by the Presiding Officer in his trial order of 23 January 2006 for motions to be considered at the February trial session.

2. Relief Requested- The prosecution asks the Presiding Officer to consolidate the cases of United States v al Sharbi, United States v al Qahtani and United States v Barhoumi into one joint trial before military commission.

3. Facts-

   a. On 12 December 2005 the Appointing Authority, Mr. John Altenberg, referred charges against Ghassan Abdullah Al Sharbi. On 16 December 2005, Mr. Altenberg referred charges against Sufyian Barhoumi and Jabran Said Bin al Qahtani.

   b. In his Appointing Orders for the above-named cases, Mr. Altenberg appointed Captain Daniel E. O'Toole, USN, as the Presiding Officer for all three cases, and detailed the same six members (and two alternate members). The referrals are silent on the issue as to whether the cases may be joined for trial.

   c. Other than the caption and basis for jurisdiction at the top of each individual charge sheet, all three of the above-named accused are charged with identical General Allegations, the identical Conspiracy charge, the same named co-conspirators, and the same overt acts.

   d. Of particular note, overt acts alleged to have been committed by al Sharbi, al Qahtani and Barhoumi are present on each of the accused's charge sheets in identical sub-paragraphs.

   e. The three charge sheets allege that al Sharbi, al Qahtani and Barhoumi conspired and joined a criminal enterprise of persons who shared the common criminal purpose of attacking civilians, attacking civilian objects, committing murder by an

unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.

f. As proof of the three above-named accuseds' participation in the conspiracy, the government alleges that al Sharbi and al Qahtani were being trained by Barhoumi in the construction of remote-control detonation devices for use in explosives. The government alleges in its charges that al Sharbi and al Qahtani were to go back to Afghanistan to build, and train others to build, remote-controlled explosive devices to target U.S. Forces.

g. The government alleges that the three accused were captured together in an al Qaida safe house in Faisalabad, Pakistan on 28 March 2002.

h. The government intends on presenting physical and documentary evidence seized in the safe house against all three accused, as well as statements made by each of the accused against one another. More simply stated, should the cases not be joined for trial, the government intends to present the exact same case three different times, with the same witnesses, same evidence, and same statements against the three accused.

i. On 2 February 2006, the Chief Prosecutor requested that the Appointing Authority consolidate the aforementioned cases. On the date of this filing, a decision has not been issued by the Appointing Authority.

4. Discussion- The Presiding Officer has the authority to join cases that could have been properly referred together in the first instance. Military Commission Order No. 1, 31 August 2005, 4(A)(5)(a) states that the Presiding Officer shall rule upon all questions of law. Such a request is a question of law within the province of the Presiding Officer and having such authority is common practice in the federal courts of the United States.

While these commissions are clearly a military function, the nature of the charges and the nature of the al Qaida criminal enterprise clearly indicate that these are not the types of crimes and criminal organizations typically contemplated in courts-martial practice. These types of crimes and organizations are much more akin to federal prosecutions of organized crime families, gangs and other large-scale criminal enterprises. While federal law and procedure is certainly not binding on this commission, following the policies that have developed in the federal courts, that have handled thousands of joint criminal trials, makes for sound military commission jurisprudence, and such authority should be persuasive to this presiding officer.

"There is a preference in the federal system for joint trials of defendants who are indicted together. Joint trials 'play a vital role in the criminal justice system.'" *Zafiro v. United States*, 506 U.S. 534, 537 (1993) *citing Richardson v. Marsh*, 481 U.S. 200, 209 (1987). Joint trials "promote efficiency and 'serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts.'" *Id. citing Richardson v. Marsh* at 210. For these reasons, the Supreme Court has repeatedly approved of joint trials. *Id. citing Richardson v. Marsh* at 210; *Opper v. United States*, 348 U.S. 84, 95, 99 L. Ed. 101, 75 S. Ct. 158 (1954); *United States v. Marchant*,

25 U.S. 480, 12 Wheat. 480, 6 L. Ed. 700 (1827); cf. 1 C. Wright, Federal Practice and Procedure § 223 (2d ed. 1982) (citing lower court opinions to the same effect).

Historically, American military commissions have often utilized joint trials. The International Military Tribunal at Nuremberg, and many of the subsequent American war crimes commissions that followed after World War II were joint trials. *See* Kristina D. Rutledge, *Giving the Devil His Due: The Pursuit & Capture of Nazi War Criminals-A Call for Retributive Justice in International Criminal Law*, 3 Regent J. Int'l L. 27, 35-40 (2005). The military commission against the German Saboteurs, held at the Department of Justice in July of 1942,[1] was, also a joint trial. *See Transcript of Proceedings before the Military Commission to Try Persons Charged with Offenses against the Law of War and the Articles of War, Washington D.C., July 8 to July 31, 1942* (http://www.soc.umn.edu/~samaha/nazi_saboteurs/nazi01.htm). President Roosevelt's order[2] creating the German Saboteur commission, much like the referrals made by Mr. Altenberg, was also silent on the issue of whether the trial should be held jointly for all accused. Although President Roosevelt's order was one order, as opposed to Mr Altenberg's three referrals in the above-named cases, it should be of no consequence that President Roosevelt's order to refer the case to trial was done on one sheet of paper, and Mr. Altenberg's referrals on separate pieces of paper, when the charges the Appointing Authority referred are identical and the military commission members the same.

As a point of reference for the Presiding Officer, the three rules that come into play in the federal system when individuals are joined in a criminal trial are FED. R. CRIM. P. 8, 13 , and 14. FED. R. CRIM. P. 13, specifically, provides the mechanism by which a judge in federal court can join defendants who have been indicted in separate indictments into one joint trial.

"The Court may order that separate cases be tried together as though brought in a single indictment or information if all offenses and all defendants could have been joined in a single indictment or information." FED. R. CRIM. P. 13. In essence the prosecution now asks the Presiding Officer to take three cases, whose separate referrals are silent on the issue of whether they may be tried together, and order that the cases be tried together to promote efficiency in the commission process and serve the interests of justice. The issue then, that needs to be considered by the Presiding Officer, is whether these three cases are proper to join together in the first instance. For guidance on this determination, the Presiding Officer could look to FED. R. CRIM. P. 8.

---

[1] These cases, collectively, resulted in the Supreme Court case of *Ex Parte Quirin, et al. Ex Parte Quirin* may be found at 317 U.S. 1 (1942).

[2] *See* President Roosevelt's Order of 2 July 1942: "The Military Commission shall meet in Washington, D.C., on July 8th, 1942, or as soon thereafter as is practicable, to try for offenses against the Law of War and the Articles of War, the following persons: Ernest Peter Burger, George John Dasch, Herbert Hans Haupt, Henry Harm Heinck, Edward John Kerling, Hermann Otto Neubauer, Richard Quirin, Werner Thiel."

Defendants may be charged together "if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." FED. R. CRIM. P. 8(b). The Rules for Courts-Martial apply an identical standard. *See* R.C.M. 601(e)(3). Clearly, in the charges against al Sharbi, al Qahtani and Barhoumi the government has alleged that the three accused conspired and participated jointly to learn to develop remote-controlled detonation devices for explosives. This clearly constitutes "the same act or transaction" that would have permitted these individuals to be indicted together (and therefore tried together) had they been charged in the federal court system or a court-martial.

The final consideration that the Presiding Officer would then need to address is whether the three accused would be prejudiced by joinder. *See generally Zafiro v. United States, supra.* This type of analysis would no doubt fall under the requirement that the Presiding Officer ensure the accused receives a full and fair trial. In this specific instance, and under the current rules for military commissions, there is no prejudice that any of the three accused could suffer if their cases are joined due to the nature of the charges they face.

All eighteen overt acts alleged against each accused are identical. Of the eighteen overt acts that are alleged against the three accused, al Sharbi's name is found in ten of the overt acts, al Qahtani's name is found in nine of the overt acts and Barhoumi's name appears in six of them. Under the offense of Conspiracy found in Military Commission Instruction No. 2, like under all traditional conspiracy law, the government only need prove *one* overt act by *one* of the conspirators or enterprise members. See MCI No. 2, C(6). The government is in no way limited to those overt acts only committed by the accused, nor has the government charged al Sharbi, al Qahtani or Barhoumi in that fashion.

Military Commission Order No. 1 6(D)(1) states that "evidence shall be admitted if...the evidence would have probative value to a reasonable person." See MCO No. 1 6(D)(1). The government fully intends on presenting evidence of al Sharbi's acts against him, al Qahtani and Barhoumi, his alleged co-conspirators, and vice-versa, in every case, even if the cases are not joined. The Military Commission rules of evidence clearly allow for the introduction of evidence in this manner, and the nature of the charges and the overt acts literally demand it. Presenting identical cases at separate trials is not efficient, wastes government resources, and runs the risk of having inconsistent factual determinations. These reasons alone obviate any potential prejudice the three accused could possibly claim from being joined together for trial in this instance.

All three accused have been identically charged, have received identical discovery to date, have received identical witness lists (which include over forty witnesses), and have been referred to military commission in front of the same Presiding Officer and commission members. Justice demands the cases be consolidated for joint trial before one military commission. The Presiding Officer has the authority to join cases, especially when efficiency and consistency were likely contemplated when the Appointing Authority referred these three cases, with identical charges, to the same Presiding Officer and same members.

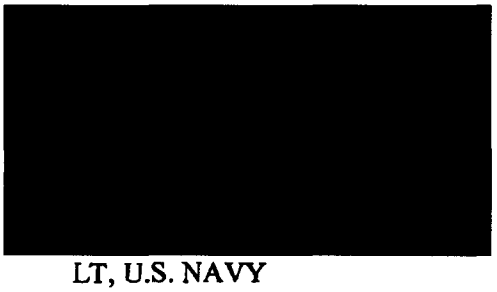
5. Table of Authorities.

a. MCO No. 1 4(A)(5) (a)
b. MCO No. 1 6(D)(1)
c. MCI No. 2, C(6)
d. FED. R. CRIM. P. 8
e. FED. R. CRIM. P. 13
f. FED. R. CRIM. P. 14
g. Zafiro v. United States, 506 U.S. 534, 535 (1993)
h. R.C.M. 601(e)(3)
i. Kristina D. Rutledge, *Giving the Devil His Due: The Pursuit & Capture of Nazi War Criminals-A Call for Retributive Justice in International Criminal Law*, 3 Regent J. Int'l L. 27, 35-40 (2005).
j. President Roosevelt's Military Order of 2 July 1942
k. Ex Parte Quirin 317 U.S. 1 (1942)

6. Attachments. Chief Prosecutor's request to the Appointing Authority to consolidate cases.

7. Oral Argument. Government requests oral argument on this issue.

8. Witnesses. None



LT, U.S. NAVY
Prosecutor

[redacted]

DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF PROSECUTOR
1610 DEFENSE PENTAGON
WASHINGTON, DC 20301-1610

February 2, 2006

MEMORANDUM FOR APPOINTING AUTHORITY FOR MILITARY COMMISSIONS

SUBJECT: Request for Consolidation of Cases: Appointing Order 05-0006; Appointing Order 05-0007; Appointing Order 05-0008

1. In December of 2005, Appointing Orders were signed in the following cases:

a. *United States v. al Sharbi*
b. *United States v. Barhoumi*
c. *United States v. al Qahtani*

All three of the accused listed above are charged with the same crimes arising out of the same criminal conduct. The factual allegations against all three accused are the same, in fact, the charge sheets for all three individuals are identical aside from their caption. All three cases were separately designated to be tried by Military Commissions comprised of the same Presiding Officer and Commission Members.

2. The Prosecution respectfully requests that the Appointing Authority consolidate these cases pursuant to the authority to "Issue orders from time to time appointing one or more military commissions to try individuals subject to the President's Military Order (reference (c)) and reference (d); and appoint any other personnel necessary to facilitate military commissions." DoDD 5105.70, *Appointing Authority for Military Commissions*, Feb 10, 2004, para 4.1.1. Since *United States v. al Sharbi* and *United States v. Barhoumi* have been included on the trial term beginning on 27 February 2006, the Prosecution requests that this matter be resolved prior to the initiation of proceedings.

3. As all three cases could have been designated for trial in the same Military Commission and in fact have been referred to the same Presiding Officer and Commission Members, consolidation serves the interests of justice and judicial economy. Because the factual allegations against each accused are identical, separate proceedings would require litigation of the same legal challenges and presentation of the same evidence on three separate occasions. Rather than requiring the same Presiding Officer to make legal rulings and the same Commission Members to make factual determinations in three identical but separate proceedings, one unified proceeding would clearly serve the interest of judicial economy and the interest of justice. While the Prosecution is mindful of the potential logistical challenges that may be involved if all three cases are consolidated, the interests of justice and judicial economy as outlined above clearly outweigh any burden associated with overcoming these logistical challenges.

4. If you have any questions regarding this request or require any further information, please contact me, or the detailed Lead Prosecutor for these cases, LT[redacted]USN,[redacted]

[redacted]

[redacted]

[redacted] or the detailed Assistant Prosecutor for these cases, Capt [redacted] USAF, [redacted]

MORRIS D. DAVIS
Colonel, USAF
Chief Prosecutor

cc:
Col Dwight Sullivan, USMCR
LTC Bryan Broyles, USA
CPT Wade N. Faulkner, USA
LT William Kuebler, USN

Encl:
1. Appointing Order 05-0006 (*United States v. al Sharbi)*
2. Appointing Order 05-0007 (*United States v. Barhoumi)*
3. Appointing Order 05-0008 (*United States v. al* Qahtani)
4. Charge Sheet *United States v. al Sharbi*
5. Charge Sheet *United States v. al Qahtani*
6. Charge Sheet *United States v. Barhoumi*

[redacted]

[redacted]

Military Commission Case No. 05-0005

UNITED STATES	)	**Military Commission Members**
v	)	Appointing Order No. 05-0006
GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	)	DEC 12 2005

The following officers are appointed to serve as members and alternate members, respectively, of a Military Commission for the purpose of trying any and all charges referred for trial in the above-styled case. The Military Commission will meet at such times and places as directed by the Appointing Authority or the Presiding Officer. Each member or alternate member will serve until removed by proper authority.

In the event that one or more of the members, not including the Presiding Officer, is removed by the Appointing Authority, one or more of the alternate members will automatically be appointed, in order, to replace the removed member(s), until either all removed members have been replaced or no alternate members remain. Should the Presiding Officer grant a challenge for cause against any member, that member will be removed as a member, excused from further proceedings, and automatically replaced by the next alternate member. Any alternate member appointed under the automatic replacement provisions herein described shall become a member of the commission and shall be subject to removal and automatic replacement as if originally appointed as a member. In accordance with Paragraph 4(A)(1)&(2) of Military Commission Order No. 1, should no alternate member be available to replace any member I remove or any member removed pursuant to a challenge for cause, and provided that at least three members, in addition to the Presiding Officer, remain, the commission may proceed without appointment of additional members.

Captain Daniel E. O'Toole, USN, Presiding Officer
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USA, Member
Colonel [redacted] USA, Member
Captain [redacted] USN, Member
Lieutenant Commander [redacted] USN, First Alternate Member
Lieutenant Colonel [redacted] USMC, Second Alternate Member

John D. Altenburg, Jr.
Appointing Authority for Military Commissions

[redacted]

[redacted]

Military Commission Case No. 05-0006

UNITED STATES	)	**Military Commission Members**
	)	
v.	)	Appointing Order No. 05-0007
	)	
SUFYIAN BARHOUMI	)	
a/k/a Abu Obaida	)	DEC 16 2005
a/k/a Ubaydah Al Jaza'iri	)	
a/k/a Shafiq	)	
	)	

The following officers are appointed to serve as members and alternate members, respectively, of a Military Commission for the purpose of trying any and all charges referred for trial in the above-styled case. The Military Commission will meet at such times and places as directed by the Appointing Authority or the Presiding Officer. Each member or alternate member will serve until removed by proper authority.

In the event that one or more of the members, not including the Presiding Officer, is removed by the Appointing Authority, one or more of the alternate members will automatically be appointed, in order, to replace the removed member(s), until either all removed members have been replaced or no alternate members remain. Should the Presiding Officer grant a challenge for cause against any member, that member will be removed as a member, excused from further proceedings, and automatically replaced by the next alternate member. Any alternate member appointed under the automatic replacement provisions herein described shall become a member of the commission and shall be subject to removal and automatic replacement as if originally appointed as a member. In accordance with Paragraph 4(A)(1)&(2) of Military Commission Order No. 1, should no alternate member be available to replace any member I remove or any member removed pursuant to a challenge for cause, and provided that at least three members, in addition to the Presiding Officer, remain, the commission may proceed without appointment of additional members.

Captain Daniel E. O'Toole, USN, Presiding Officer
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USA, Member
Colonel [redacted] USA, Member
Captain [redacted] USN, Member
Lieutenant Commander [redacted] USN, First Alternate Member
Lieutenant Colonel [redacted] USMC, Second Alternate Member

John D. Altenburg, Jr.
Appointing Authority for Military Commissions

[redacted]

[redacted]

Military Commission Case No. 05-0007

UNITED STATES	)	**Military Commission Members**
	)	
v.	)	Appointing Order No. 05-0008
	)	
JABRAN SAID BIN AL QAHTANI	)	
a/k/a Salam al Farsi	)	
a/k/a Hateb	)	DEC 16 2005
a/k/a Jabran al Qahtan	)	
a/k/a Saad Wazar Hatib Jabran	)	
a/k/a Jabran Saad Wazar Sulayman	)	
a/k/a Jabran Wazar	)	
	)	

The following officers are appointed to serve as members and alternate members, respectively, of a Military Commission for the purpose of trying any and all charges referred for trial in the above-styled case. The Military Commission will meet at such times and places as directed by the Appointing Authority or the Presiding Officer. Each member or alternate member will serve until removed by proper authority.

In the event that one or more of the members, not including the Presiding Officer, is removed by the Appointing Authority, one or more of the alternate members will automatically be appointed, in order, to replace the removed member(s), until either all removed members have been replaced or no alternate members remain. Should the Presiding Officer grant a challenge for cause against any member, that member will be removed as a member, excused from further proceedings, and automatically replaced by the next alternate member. Any alternate member appointed under the automatic replacement provisions herein described shall become a member of the commission and shall be subject to removal and automatic replacement as if originally appointed as a member. In accordance with Paragraph 4(A)(1)&(2) of Military Commission Order No. 1, should no alternate member be available to replace any member I remove or any member removed pursuant to a challenge for cause, and provided that at least three members, in addition to the Presiding Officer, remain, the commission may proceed without appointment of additional members.

Captain Daniel E. O'Toole, USN, Presiding Officer
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USA, Member
Colonel [redacted] USA, Member
Captain [redacted] USN, Member
Lieutenant Commander [redacted] USN, First Alternate Member
Lieutenant Colonel [redacted] USMC, Second Alternate Member

John D. Altenburg, Jr.
Appointing Authority for Military Commissions

[redacted]

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
GHASSAN ABDULLAH AL SHARBI	)	**CHARGE:**
a/k/a Abdullah al Muslim	)	**CONSPIRACY**
a/k/a Abu Muslim	)	

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 6, 2004 that Ghassan Abdullah al Sharbi (a/k/a/ Abdullah al Muslim a/k/a/ Abu Muslim hereinafter "al Sharbi") is subject to his Military Order of November 13, 2001.

2. The charged conduct alleged against al Sharbi is triable by a military commission.

GENERAL ALLEGATIONS

3. Al Qaida ("the Base"), was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.

4. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaida.

5. A purpose or goal of al Qaida, as stated by Usama bin Laden and other al Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and in retaliation for U.S. support of Israel.

6. Al Qaida operations and activities are directed by a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.

7. Between 1989 and 2001, al Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

8. In 1992 and 1993, al Qaida supported violent opposition of US. property and nationals by, among other things, transporting personnel, weapons, explosives, and ammunition to Yemen, Saudi Arabia, Somalia, and other countries.

9. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.

10. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."

11. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."

12. Since 1989 members and associates of al Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the *USS COLE* in October 2000; and the attacks on the United States on September 11, 2001.

CHARGE: CONSPIRACY

13. Sufyian Barhoumi, Jabran Said bin al Qahtani, and Ghassan al Sharbi in the United States, Afghanistan, Pakistan, and other countries, from on or about January 1996 to on or about March 2002, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden (a/k/a Abu Abdullah), Saif al Adel, Dr. Ayman al Zawahiri (a/k/a "the Doctor"), Muhammad Atef (a/k/a Abu Hafs al Masri), Zayn al Abidin Muhammad Husayn (a/k/a/ Abu Zubayda, hereinafter "Abu Zubayda"), Binyam Muhammad, Noor al Deen, Akrama al Sudani and other members and associates of the al Qaida organization, known and unknown, to commit the following offenses triable by military commission: attacking civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.

14. In furtherance of this enterprise and conspiracy, al Sharbi, Barhoumi, al Qahtani, Abu Zubayda, Binyam Muhammad, Noor al Deen, Akrama al Sudani, and other members or associates of al Qaida committed the following overt acts:

    a. In 1998 Barhoumi, an Algerian citizen, attended the electronics and explosives course at Khalden Camp in Afghanistan, an al Qaida-affiliated training camp, where he received training in constructing and dismantling electronically-controlled explosives.

    b. After completing his training, Barhoumi became an explosives trainer for al Qaida, training members of al Qaida on electronically-controlled explosives at remote locations.

c. In or about August 2000, al Sharbi, a Saudi citizen and Electrical engineering graduate of Embry Riddle University, in Prescott, Arizona, departed the United States in search of terrorist training in Afghanistan.

d. In July 2001, Muhammad Atef (a/k/a/ Abu Hafs al Masri), the head of al Qaida's military committee and al Qaida's military commander, wrote a letter to Abu Muhammad, the *emir* of al Qaida's al Farouq Camp, asking him to select two "brothers" from the camp to receive electronically-controlled explosives training in Pakistan, for the purpose of establishing a new and independent section of the military committee.

e. In July 2001, al Sharbi attended the al Qaida-run al Farouq training camp, where he was first introduced to Usama bin Laden. At al Farouq, al Sharbi's training included, *inter alia*, physical training, military tactics, weapons instruction, and firing on a variety of individual and crew-served weapons.

f. During July and August 2001, al Sharbi stood watch with loaded weapons at al Farouq at times when Usama bin Laden visited the camp.

g. From July 2001 to September 13, 2001, al Sharbi provided English translation for another camp attendee's military training at al Farouq, to include translating the attendee's personal *bayat* ("oath of allegiance") to Usama bin Laden.

h. On or about September 13, 2001, anticipating a military response to al Qaida's attacks on the United States of September 11, 2001, al Sharbi and the remaining trainees were ordered to evacuate al Farouq. Al Sharbi and others fled the camp and were told to fire warning shots in the air if they saw American missiles approaching.

i. Shortly after the September 11 2001 attacks on the United States, al Qahtani, a Saudi citizen and Electrical engineering graduate of King Saud University in Saudi Arabia, left Saudi Arabia with the intent to fight against the Northern Alliance and American Forces, whom he expected would soon be fighting in Afghanistan.

j. In October 2001, al Qahtani attended a newly established terrorist training camp north of Kabul, where he received physical conditioning, and training in the PK Machine gun and AK-47 assault rifle.

k. Between late December 2001 and the end of February 2002, Abu Zubayda, a high-ranking al Qaida recruiter and operational planner, assisted in moving al Sharbi, al Qahtani and Binyam Muhammad from Birmel, Afghanistan to a guest house in Faisalabad, Pakistan where they would obtain further training.

l. By early March 2002, Abu Zubayda, Barhoumi, al Sharbi, al Qahtani, and Binyam Muhammad had all arrived at the guest house in Faisalabad, Pakistan. Barhoumi was to train al Sharbi, al Qahtani and Binyam Muhammad in building small, hand-held remote-detonation devices for explosives that would later be used in Afghanistan against United States forces.

m. In March 2002, after Barhoumi, al Sharbi and al Qahtani had all arrived at the guest house, Abu Zubayda provided approximately $1,000 U.S. Dollars for the purchase of components to be used for training al Sharbi and al Qahtani in making remote-detonation devices.

n. Shortly after receiving the money for the components, Barhoumi, Noor al Deen and other individuals staying at the house went into downtown Faisalabad with a five page list of electrical equipment and devices for purchase which included, *inter alia,* electrical resistors, plastic resistors, light bulbs for circuit board lights, plastic and ceramic diodes, circuit testing boards, an ohmmeter, watches, soldering wire, soldering guns, wire and coil, six cell phones of a specified model, transformers and an electronics manual.

o. After purchasing the necessary components, al Qahtani and al Sharbi received training from Barhoumi on how to build hand-held remote-detonation devices for explosives while at the guest house.

p. During March 2002, after his initial training, al Qahtani was given the mission of constructing as many circuit boards as possible with the intent to ship them to Afghanistan to be used as timing devices in bombs.

q. After their training was completed and a sufficient number of circuit boards were built, Abu Zubayda had directed that al Qahtani and al Sharbi were to return to Afghanistan in order to use, and to train others to construct remote-control devices to detonate car bombs against United States forces.

r. During March 2002 al Qahtani wrote two instructional manuals on assembling circuit boards that could be used as timing devices for bombs and other improvised explosive devices.

15. On March 28, 2002, Barhoumi, al Sharbi, al Qahtani, Abu Zubayda and others were captured in a safe house in Faisalabad after authorities raided the home.

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
JABRAN SAID BIN AL QAHTANI	)	**CHARGE:**
a/k/a Salam al Farsi	)	**CONSPIRACY**
a/k/a Hateb	)	
a/k/a Jabran al Qahtan	)	
a/k/a Saad Wazar Hatib Jabran	)	
a/k/a Jabran Saad Wazar Sulayman	)	
a/k/a Jabran Wazar	)	
	)	

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 6, 2004 that Jabran Said Bin al Qahtani (a/k/a/ Salam al Farsi a/k/a Hateb a/k/a Jabran Qahtan a/k/a/ Saad Wazar Hatib Jabran a/k/a/ Jabran Saad Wazar Sulayman a/k/a Jabran Wazar) is subject to his Military Order of November 13, 2001.

2. The charged conduct alleged against al Qahtani is triable by a military commission.

GENERAL ALLEGATIONS

3. Al Qaida ("the Base"), was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.

4. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaida.

5. A purpose or goal of al Qaida, as stated by Usama bin Laden and other al Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and in retaliation for U.S. support of Israel.

6. Al Qaida operations and activities are directed by a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.

7. Between 1989 and 2001, al Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

8. In 1992 and 1993, al Qaida supported violent opposition of US. property and nationals by, among other things, transporting personnel, weapons, explosives, and ammunition to Yemen, Saudi Arabia, Somalia, and other countries.

9. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.

10. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."

11. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."

12. Since 1989 members and associates of al Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the *USS COLE* in October 2000; and the attacks on the United States on September 11, 2001.

CHARGE: CONSPIRACY

13. Sufyian Barhoumi, Jabran Said bin al Qahtani, and Ghassan al Sharbi in the United States, Afghanistan, Pakistan, and other countries, from on or about January 1996 to on or about March 2002, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden (a/k/a Abu Abdullah), Saif al Adel, Dr. Ayman al Zawahiri (a/k/a "the Doctor"), Muhammad Atef (a/k/a Abu Hafs al Masri), Zayn al Abidin Muhammad Husayn (a/k/a/ Abu Zubayda, hereinafter "Abu Zubayda"), Binyam Muhammad, Noor al Deen, Akrama al Sudani and other members and associates of the al Qaida organization, known and unknown, to commit the following offenses triable by military commission: attacking civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.

14. In furtherance of this enterprise and conspiracy, al Sharbi, Barhoumi, al Qahtani, Abu Zubayda, Binyam Muhammad, Noor al Deen, Akrama al Sudani, and other members or associates of al Qaida committed the following overt acts:

    a. In 1998 Barhoumi, an Algerian citizen, attended the electronics and explosives course at Khalden Camp in Afghanistan, an al Qaida-affiliated

training camp, where he received training in constructing and dismantling electronically-controlled explosives.

b. After completing his training, Barhoumi became an explosives trainer for al Qaida, training members of al Qaida on electronically-controlled explosives at remote locations.

c. In or about August 2000, al Sharbi, a Saudi citizen and Electrical engineering graduate of Embry Riddle University, in Prescott, Arizona, departed the United States in search of terrorist training in Afghanistan.

d. In July 2001, Muhammad Atef (a/k/a/ Abu Hafs al Masri), the head of al Qaida's military committee and al Qaida's military commander, wrote a letter to Abu Muhammad, the *emir* of al Qaida's al Farouq Camp, asking him to select two "brothers" from the camp to receive electronically-controlled explosives training in Pakistan, for the purpose of establishing a new and independent section of the military committee.

e. In July 2001, al Sharbi attended the al Qaida-run al Farouq training camp, where he was first introduced to Usama bin Laden. At al Farouq, al Sharbi's training included, *inter alia*, physical training, military tactics, weapons instruction, and firing on a variety of individual and crew-served weapons.

f. During July and August 2001, al Sharbi stood watch with loaded weapons at al Farouq at times when Usama bin Laden visited the camp.

g. From July 2001 to September 13, 2001, al Sharbi provided English translation for another camp attendee's military training at al Farouq, to include translating the attendee's personal *bayat* ("oath of allegiance") to Usama bin Laden.

h. On or about September 13, 2001, anticipating a military response to al Qaida's attacks on the United States of September 11, 2001, al Sharbi and the remaining trainees were ordered to evacuate al Farouq. Al Sharbi and others fled the camp and were told to fire warning shots in the air if they saw American missiles approaching.

i. Shortly after the September 11 2001 attacks on the United States, al Qahtani, a Saudi citizen and Electrical engineering graduate of King Saud University in Saudi Arabia, left Saudi Arabia with the intent to fight against the Northern Alliance and American Forces, whom he expected would soon be fighting in Afghanistan.

j. In October 2001, al Qahtani attended a newly established terrorist training camp north of Kabul, where he received physical conditioning, and training in the PK Machine gun and AK-47 assault rifle.

k. Between late December 2001 and the end of February 2002, Abu Zubayda, a high-ranking al Qaida recruiter and operational planner, assisted in moving al Sharbi, al Qahtani and Binyam Muhammad from Birmel, Afghanistan to a guest house in Faisalabad, Pakistan where they would obtain further training.

l. By early March 2002, Abu Zubayda, Barhoumi, al Sharbi, al Qahtani, and Binyam Muhammad had all arrived at the guest house in Faisalabad, Pakistan. Barhoumi was to train al Sharbi, al Qahtani and Binyam Muhammad in building small, hand-held remote-detonation devices for explosives that would later be used in Afghanistan against United States forces.

m. In March 2002, after Barhoumi, al Sharbi and al Qahtani had all arrived at the guest house, Abu Zubayda provided approximately $1,000 U.S. Dollars for the purchase of components to be used for training al Sharbi and al Qahtani in making remote-detonation devices.

n. Shortly after receiving the money for the components, Barhoumi, Noor al Deen and other individuals staying at the house went into downtown Faisalabad with a five page list of electrical equipment and devices for purchase which included, *inter alia*, electrical resistors, plastic resistors, light bulbs for circuit board lights, plastic and ceramic diodes, circuit testing boards, an ohmmeter, watches, soldering wire, soldering guns, wire and coil, six cell phones of a specified model, transformers and an electronics manual.

o. After purchasing the necessary components, al Qahtani and al Sharbi received training from Barhoumi on how to build hand-held remote-detonation devices for explosives while at the guest house.

p. During March 2002, after his initial training, al Qahtani was given the mission of constructing as many circuit boards as possible with the intent to ship them to Afghanistan to be used as timing devices in bombs.

q. After their training was completed and a sufficient number of circuit boards were built, Abu Zubayda had directed that al Qahtani and al Sharbi were to return to Afghanistan in order to use, and to train others to construct remote-control devices to detonate car bombs against United States forces.

r. During March 2002 al Qahtani wrote two instructional manuals on assembling circuit boards that could be used as timing devices for bombs and other improvised explosive devices.

15. On March 28, 2002, Barhoumi, al Sharbi, al Qahtani, Abu Zubayda and others were captured in a safe house in Faisalabad after authorities raided the home.

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
SUFYIAN BARHOUMI	)	**CHARGE:**
a/k/a Abu Obaida	)	**CONSPIRACY**
a/k/a Ubaydah Al Jaza'iri	)	
a/k/a Shafiq	)	
	)	
	)	

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 6, 2004 that Sufyian Barhoumi (a/k/a Abu Obaida a/k/a/ Ubaydah Al Jaza'iri a/k/a/ Shafiq hereinafter "Barhoumi") is subject to his Military Order of November 13, 2001.

2. The charged conduct alleged against Barhoumi is triable by a military commission.

GENERAL ALLEGATIONS

3. Al Qaida ("the Base"), was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.

4. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaida.

5. A purpose or goal of al Qaida, as stated by Usama bin Laden and other al Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and in retaliation for U.S. support of Israel.

6 Al Qaida operations and activities are directed by a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.

7. Between 1989 and 2001, al Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

8. In 1992 and 1993, al Qaida supported violent opposition of US. property and nationals by, among other things, transporting personnel, weapons, explosives, and ammunition to Yemen, Saudi Arabia, Somalia, and other countries.

9. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.

10. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."

11. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."

12. Since 1989 members and associates of al Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the *USS COLE* in October 2000; and the attacks on the United States on September 11, 2001.

CHARGE: CONSPIRACY

13. Sufyian Barhoumi, Jabran Said bin al Qahtani, and Ghassan al Sharbi in the United States, Afghanistan, Pakistan, and other countries, from on or about January 1996 to on or about March 2002, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden (a/k/a Abu Abdullah), Saif al Adel, Dr. Ayman al Zawahiri (a/k/a "the Doctor"), Muhammad Atef (a/k/a Abu Hafs al Masri), Zayn al Abidin Muhammad Husayn (a/k/a/ Abu Zubayda, hereinafter "Abu Zubayda"), Binyam Muhammad, Noor al Deen, Akrama al Sudani and other members and associates of the al Qaida organization, known and unknown, to commit the following offenses triable by military commission: attacking civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.

14. In furtherance of this enterprise and conspiracy, al Sharbi, Barhoumi, al Qahtani, Abu Zubayda, Binyam Muhammad, Noor al Deen, Akrama al Sudani, and other members or associates of al Qaida committed the following overt acts:

    a. In 1998 Barhoumi, an Algerian-citizen, attended the electronics and explosives course at Khalden Camp in Afghanistan, an al Qaida-affiliated training camp, where he received training in constructing and dismantling electronically-controlled explosives.

b. After completing his training, Barhoumi became an explosives trainer for al Qaida, training members of al Qaida on electronically-controlled explosives at remote locations.

c. In or about August 2000, al Sharbi, a Saudi citizen and Electrical engineering graduate of Embry Riddle University, in Prescott, Arizona, departed the United States in search of terrorist training in Afghanistan.

d. In July 2001, Muhammad Atef (a/k/a/ Abu Hafs al Masri), the head of al Qaida's military committee and al Qaida's military commander, wrote a letter to Abu Muhammad, the *emir* of al Qaida's al Farouq Camp, asking him to select two "brothers" from the camp to receive electronically-controlled explosives training in Pakistan, for the purpose of establishing a new and independent section of the military committee.

e. In July 2001, al Sharbi attended the al Qaida-run al Farouq training camp, where he was first introduced to Usama bin Laden. At al Farouq, al Sharbi's training included, *inter alia*, physical training, military tactics, weapons instruction, and firing on a variety of individual and crew-served weapons.

f. During July and August 2001, al Sharbi stood watch with loaded weapons at al Farouq at times when Usama bin Laden visited the camp.

g. From July 2001 to September 13, 2001, al Sharbi provided English translation for another camp attendee's military training at al Farouq, to include translating the attendee's personal *bayat* ("oath of allegiance") to Usama bin Laden.

h. On or about September 13, 2001, anticipating a military response to al Qaida's attacks on the United States of September 11, 2001, al Sharbi and the remaining trainees were ordered to evacuate al Farouq. Al Sharbi and others fled the camp and were told to fire warning shots in the air if they saw American missiles approaching.

i. Shortly after the September 11 2001 attacks on the United States, al Qahtani, a Saudi citizen and Electrical engineering graduate of King Saud University in Saudi Arabia, left Saudi Arabia with the intent to fight against the Northern Alliance and American Forces, whom he expected would soon be fighting in Afghanistan.

j. In October 2001, al Qahtani attended a newly established terrorist training camp north of Kabul, where he received physical conditioning, and training in the PK Machine gun and AK-47 assault rifle.

k. Between late December 2001 and the end of February 2002, Abu Zubayda, a high-ranking al Qaida recruiter and operational planner, assisted in moving al Sharbi, al Qahtani and Binyam Muhammad from Birmel, Afghanistan to a guest house in Faisalabad, Pakistan where they would obtain further training.

l. By early March 2002, Abu Zubayda, Barhoumi, al Sharbi, al Qahtani, and Binyam Muhammad had all arrived at the guest house in Faisalabad, Pakistan. Barhoumi was to train al Sharbi, al Qahtani and Binyam Muhammad in building small, hand-held remote-detonation devices for explosives that would later be used in Afghanistan against United States forces.

m. In March 2002, after Barhoumi, al Sharbi and al Qahtani had all arrived at the guest house, Abu Zubayda provided approximately $1,000 U.S. Dollars for the purchase of components to be used for training al Sharbi and al Qahtani in making remote-detonation devices.

n. Shortly after receiving the money for the components, Barhoumi, Noor al Deen and other individuals staying at the house went into downtown Faisalabad with a five page list of electrical equipment and devices for purchase which included, *inter alia,* electrical resistors, plastic resistors, light bulbs for circuit board lights, plastic and ceramic diodes, circuit testing boards, an ohmmeter, watches, soldering wire, soldering guns, wire and coil, six cell phones of a specified model, transformers and an electronics manual.

o. After purchasing the necessary components, al Qahtani and al Sharbi received training from Barhoumi on how to build hand-held remote-detonation devices for explosives while at the guest house.

p. During March 2002, after his initial training, al Qahtani was given the mission of constructing as many circuit boards as possible with the intent to ship them to Afghanistan to be used as timing devices in bombs.

q. After their training was completed and a sufficient number of circuit boards were built, Abu Zubayda had directed that al Qahtani and al Sharbi were to return to Afghanistan in order to use, and to train others to construct remote-control devices to detonate car bombs against United States forces.

r. During March 2002 al Qahtani wrote two instructional manuals on assembling circuit boards that could be used as timing devices for bombs and other improvised explosive devices.

15. On March 28, 2002, Barhoumi, al Sharbi, al Qahtani, Abu Zubayda and others were captured in a safe house in Faisalabad after authorities raided the home.

Significant Commission Dates
United States v. al Sharbi

Highlighting signifies modifications from the "worksheet" provided with PO 1.

# [1]	Event	Date	Notes
1.	First session (without members) • Convening the Commission • Choice of counsel • Voir dire of PO • Pleas (ordinarily reserved) • Motions (ordinarily reserved) • Discovery Order litigation	27 Feb – 3 Mar 06	
2.	Provide copies of existing Protective Orders to PO	5 Jan 06 (Past due)	
3.	Submit Protective Orders for PO signature.		POM 9-1
4.	Discovery – Prosecution [2]	xxx	
5.	Discovery – Defense [2]	xxx	
6.	Requests for access to evidence	20 Mar 06	POM 7-1
7.	"Law" Motions: *Motion* [3]	23 Mar 06 (Please see Note)	POM 4-3 Assumes that either all necessary coordination to permit completion of discovery has been accomplished or assumes that "Law" motions requiring completion of discovery will be reserved
8.	"Law" Motions: *Response*	Per POM or PO	POM 4-3
9.	"Law" Motions: *Reply*	Per POM or PO	POM 4-3
10.	Witness requests on law motions	5 Apr 06	POM 10-2
11.	Evidentiary motions: *Motion*	20 Apr 06 (Please see Note)	POM 4-3 Assumes that either all necessary coordination to permit completion of discovery has been accomplished or assumes that "Evidentiary" motions requiring completion of discovery will be reserved
12.	Evidentiary motions: *Response*	Per POM or PO	POM 4-3
13.	Evidentiary motions: *Reply*	Per POM or PO	POM 4-3
14.	Witness requests on evidentiary motions	3 May 06	POM 10-2
15.	Voir dire of members	11 Jul 06	Please see note attached to

[1] The requested dates do not have to be in the chronological order that they appear on this list. For example, counsel may request an earlier date for item 15 than they would for item 7.

[2] Discovery dates will be included in the discovery order.

[3] A "law motion" is any motions except that to suppress evidence or address another evidentiary matter.

			bottom of form placed there on account of space
16.	Prosecution case in chief - *Merits*	13 Jul 06 Estimate 11 days	Also indicate # of days to present
17.	Defense case in chief - *Merits*		Also indicate # of days to present
18.	Prosecution – *Sentencing*	Within 1-2 days of completion of findings Estimate 2 days	Also indicate # of days to present
19.	Defense - *Sentencing*		Also indicate # of days to present
20.	Witness requests – merits and sentencing	1 Jun 06	POM 10-2
21.	Directed briefs [4]	xxx	
22.	Requests to take conclusive notice	5 Jun 06	POM 6-2

The Prosecution has proposed identical dates for the cases of the *United States v al Qahtani, United States v. Barhoumi* and *United States v al Sharbi* pursuant to its desire to have all three cases consolidated for trial. However, in the event that the Prosecution's request to consolidate the cases sent to the Presiding Officer is denied, the Prosecution still intends to try these three accused on the same dates in consecutive fashion. This Prosecution determination was made in order to save time, money and other governmental resources by not requiring the same participants (of which there are many) to travel for the same testimony three separate times.

[4] Dates will be established in the directed brief if directed briefs are used.

Supplemental Voir Dire Materials – CAPT O'Toole

In the interest of ensuring a full and fair trial, and to assist counsel in preparing voir dire, the Presiding Officer provides the following to supplement the previously-provided biography. This document will be made Review Exhibits in the cases of *United States v. al Qahtani, al Sharbi, and Barhoumi.*

Relationship to Deputy Secretary of Defense (DEPSECDEF).

In my capacity as Executive Assistant to the Navy General Counsel, I had occasion to meet Secretary of the Navy Gordon England, who now serves as DEPSECDEF. My contacts with the Secretary England were always in my professional capacity and consisted solely of meetings that I attended with the Navy General Counsel. One of my duties consisted of assisting the General Counsel with the staffing of various documents necessary to stand up the status review process for detainees held at Guantanamo Bay. My role was only process related and I was not made privy to any allegations in any case to which I have been detailed or any other case pending before a military commission. I have never discussed the military commissions, any case to which I have been detailed, or any other case pending before a military commission with Secretary England.

Relationship to Department of Defense General Counsel (DoD GC).

In my capacity as Executive Assistant to the Navy General Counsel, I had occasion to meet the DoD General Counsel on several occasions. My contacts with the DoD GC were always in my professional capacity and consisted solely of meetings that I attended with the Navy General Counsel. I have never discussed the military commissions, the facts in any case to which I have been detailed, or any other case pending before a military commission with the DoD GC.

[redacted]

[redacted]

From: Kuebler, William, LT, DoD OGC [redacted]
Sent: Thursday, February 23, 2006 8:21 AM
To: [redacted]
Subject: RE: SECOND REQUEST: For DC in al Sahrbi and al Qahntani - Objection to Withdrawal of Prosecution Joinder Motion

Sir,

I do not have an objection.

VR, WCK

-----Original Message-----
From: [redacted]
Sent: Wednesday, February 22, 2006 16:51
To: [redacted]
Subject: SECOND REQUEST: For DC in al Sahrbi and al Qahntani - Objection to Withdrawal of Prosecution Joinder Motion

Please see the below email.

[redacted]
Assistant

From: [redacted]
Sent: Tuesday, February 21, 2006 5:57 PM
To: [redacted]

Subject: Withdrawal of Prosecution Joinder Mortion ICO Sharbi, Barhoumi, al Qahtani-Joinder Documents

Do any defense counsel in the subject cases object to the government's request to withdraw the joinder motion?

FOR THE PRESIDING OFFICER

Assistant to the Presiding Officers
Military Commission
Voice:
Fax:

From:
Sent: Tuesday, February 21, 2006 4:35 PM
To
Subject: RE: Sharbi, Barhoumi, al Qahtani-Joinder Documents (FOUO)

Sir,

Prosecution requests to withdraw the joinder motion.

v/r
LT

-----Original Message-----
From
Sent: Thursday, February 16, 2006 15:01
To:

[redacted]

Subject: Sharbi, Barhoumi, al Qahtani-Joinder Documents (FOUO)

1. Counsel in *United States v. al Sharbi, Barhoumi and al Qahtani,* your attention is invited to the below email and the attachment.

2. Prosecution, do you withdraw your joinder motion in each of these cases?

3. Defense, if the Prosecution withdraws its joinder motion, do you object to their request to do so?

FOR THE PRESIDING OFFICERS

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]

From: [redacted]
Sent: Thursday, February 16, 2006 2:36 PM
To: [redacted]
Subject: Sharbi, Barhoumi, al Qahtani-Joinder Documents (FOUO)

[redacted]

Please distribute the attached 27-page file to the parties in *United States v. al Sharbi, Barhoumi and al Qahtani.*

It is FOUO as it contains sensitive information, such as the names of the Commission members.

This file contains the following documents:

1. Appointing Authority decision dated 15 Feb. 2006 (1 page)
2. CPT Faulker's comments on joinder issue, dated 8 Feb. 2006 (2 pages)
3. LTC Broyles' comments on joinder issue, dated 9 Feb. 2006 (1 page)
4. LT Kuebler's comments on joinder issue, dated 9 Feb. 2006 (1 page)
5. BG Hemingway's request for LTC Broyles' comments, dated 3 Feb. 2006 (1 page)
6. BG Hemingway's request for CPT Faulkner's comments, dated 3 Feb. 2006 (1 page)
7. BG Hemingway's request for LT Kuebler's comments, dated 3 Feb. 2006 (1 page)

8. Prosecution request for joinder, 2 Feb. 2006 (2 pages with the below 6 enclosures)
   1. Appointing Order 05-0006 *(United States* v. *al Sharbi*) (1 page)
   2. Appointing Order 05-0007 *(United States* v. *Barhoumi*) (1 page)
   3. Appointing Order 05-0008 *(United States* v. *al Qahtani*) (1 page)
   4. Charge Sheet *United States* v. *al Sharbi* (4 pages)
   5. Charge Sheet *United States* v. *al Qahtani* (5 pages)
   6. Charge Sheet *United States* v. *Barhoumi* (5 pages)

[redacted]
Chief Clerk of Military Commissions

LEGAL ADVISOR TO THE
APPOINTING AUTHORITY

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

February 15, 2006

MEMORANDUM FOR COLONEL MORRIS D. DAVIS, CHIEF PROSECUTOR

SUBJECT: Request for Consolidation of Cases: Appointing Order 05-0006; Appointing Order 05-0007; Appointing Order 05-0008

I have considered the matters submitted with your request, as well as those submitted by LTC Broyles, CPT Faulkner, and LT Kuebler (detailed defense counsel). I adhere to my earlier, individual referral decisions in the cases of United States v. al Sharbi, United States v. Barhoumi, and United States v. al Qahtani. Accordingly, your request is denied.

John D. Altenburg, Jr.
Appointing Authority for Military Commissions

cc: Chief Defense Counsel for Military Commissions
LTC Bryan T. Broyles
CPT Wade N. Faulkner
LT William C. Kuebler

Printed on Recycled Paper

DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620

February 8, 2006

MEMORANDUM FOR Major General Thomas L. Hemingway, Legal Advisor to the Appointing Authority for Military Commissions 1600 Defense Pentagon, Washington, D.C. 20301

SUBJECT: Response to Request for Consolidation of Cases: Appointing Orders 05-006, 05-007, and 05-008

1. On 2 February 2006, the Chief Prosecutor for Military Commissions requested consolidation of the above cases into one joint trial. On 3 February 2006, you issued guidance to Defense Counsel that you sought concurrence, objection, or comment.

2. As the Detailed Defense Counsel in the case of United States v. Barhoumi, Appointing Order 05-007, the Defense objects to the consolidation of any cases.

3. There are several reasons for the Defense objection:

a. In the Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (November 16, 2001), hereafter referred to as the President's Military Order, Section 4(a) states, "Any *individual* subject to this order shall, when tried, be tried by military commission for any and all offenses triable by military commission that such *individual* is alleged to have committed, and may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death." [Emphasis added].

b. Section 6(a) of the President's Military Order provides, "As a military function and in light of the findings in section 1, the Secretary of Defense shall issue such orders and regulations as may be necessary to carry out any of the provisions of this order."

c. In light of the President's Military Order, there is no authority for the requested consolidation of cases. The President's Military Order refers only to an individual, not to individuals. The plain meaning of this language evidences an intent on the part of the President to only try a single individual before any military commission. Any orders or regulations issued by the Secretary of Defense that flow from this order that purport to authorize joint trials exceed the power delegated by the President.

d. Even if the Appointing Authority has the power to authorize joint trials, he has not done so in this case. Each case was referred separately with no indication that the trials were to be joined together. The Preamble to the Manual for Courts-Martial (2205 Edition), paragraph 2(b)(2) states, in pertinent part, "military commissions and provost courts shall be guided by the appropriate principles of law and rules of procedures and evidence prescribed for courts-

[redacted]

martial." The rules of procedure for courts martial are governed by the Rules for Court-Martial (RCM). RCM 601(e)(3) provides that "Allegations against two or more accused may be referred for joint trial if the accused are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting and offense or offenses."

e. In this case, assuming arguendo that the Appointing Authority could have referred the cases to a joint trial, the Appointing Authority made no indication in the Appointing Order that these cases were to be tried jointly. The fact that all the referenced cases are comprised of the same Presiding Officer and Commission Members is of no consequence. Oftentimes in the case of courts-martial, cases are referred to the same court-martial convening order. However, without an indication of an intent to try cases together, each case is tried separately.

f. Even if the Appointing Authority were to have referred these cases to a joint trial, such joinder would be inappropriate in this case. The discussion to RCM 610(e)(3) states, "Convening authorities should consider that joint and common trials may be complicated by procedural and evidentiary rules." In the instant case, there are numerous potential complications posed by a joint trial. By way of example only, there is an argument that the Sixth Amendment confrontation clause applies in the commission system and that the US Supreme Court case of Crawford v. Washington will preclude the use of a declarant's statements against an alleged co-conspirator but would allow them against the declarant himself. In this case, such a situation may arise where a statement of Mr. Al Sharbi or Mr. Al Qahtani, while admissible against them in their individual trials, will not be admissible in Mr. Barhoumi's trial. In a joint trial context, the commission members, most of whom are non-lawyers, would be asked to keep such evidence separate and apart. This will prove impossible to do.

4. In light of the above, the Defense in the case of United States v. Barhoumi respectfully requests you deny the Government's request for consolidation of cases.

WADE N. FAULKNER
Captain, US Army
Detailed Defense Counsel

cc:
Col Dwight Sullivan, USMCR
LT [redacted] USN

[redacted]

[redacted]Mr, DoD OGC

From: [redacted]Mr, DoD OGC
Sent: Friday, February 10, 2006 07:11
To: [redacted]Mr, DoD OGC
Subject: FW: Joinder of Al Qahtani with other cases

FYI

-----Original Message-----
From: Hemingway, Thomas, BG, DoD OGC
Sent: Thursday, February 09, 2006 16:11
To: [redacted]Mr, DoD OGC
Subject: FW: Joinder of Al Qahtani with other cases

FYI

Thomas L. Hemingway, Brig Gen, USAF
Legal Advisor to the Appointing Authority
Office of Military Commissions (DoD)
[redacted]

-----Original Message-----
From: Broyles, Bryan, LTC, DoD OGC
Sent: Thursday, February 09, 2006 2:16 PM
To: Hemingway, Thomas, BG, DoD OGC
Cc: [redacted]
Subject: Joinder of Al Qahtani with other cases

Sir,

I oppose the joinder of these cases. I have not as yet formed an attorney client relationship with Jabran Sa'ad Al Qahtani and therefore cannot act on his behalf. I believe this to be a matter that is representational in nature. I was unable to discuss this with my client during my visit to Guantanamo this week, and thus do not know his stance on the matter.

In the interim, I oppose the joinder, not because I believe that is the wish of Mr. Al Qahtani, but because it represents a change in his status to which that he should have the right to object or acquiesce. The current status is that his case is separate, and it should continue as such until he has the right to express his views on that, either through counsel or otherwise.

As a factual matter, the prosecution states, "The factual allegations against all three accused are the same, in fact, the charge sheets for all three individuals are identical aside from their caption." This is incorrect. The "factual allegations" are distinct, as a read of the charge sheet reveals. In the charge sheet against Al Qahtani the government did include allegations against the other accused, but those are not factual allegations "against" Al Qahtani. The fact that the government chose to simply cut and past the captions of the charge sheets has no legal impact.

Bryan Broyles
LTC, JA
[redacted]

[redacted]Mr, DoD OGC

From: [redacted]Mr, DoD OGC
Sent: Friday, February 10, 2006 07:49
To: [redacted]Mr, DoD OGC
Subject: FW: U.S. v. al Sharbi (Request for Consolidation of Cases)

FYI

-----Original Message-----
From: Hemingway, Thomas, BG, DoD OGC
Sent: Friday, February 10, 2006 07:38
To: [redacted]Mr, DoD OGC
Subject: FW: U.S. v. al Sharbi (Request for Consolidation of Cases)

FYI

Thomas L. Hemingway, Brig Gen, USAF
Legal Advisor to the Appointing Authority
Office of Military Commissions (DoD)
[redacted]

-----Original Message-----
From: Kuebler, William, LT, DoD OGC
Sent: Thursday, February 09, 2006 4:44 PM
To: Hemingway, Thomas, BG, DoD OGC
Cc: Sullivan, Dwight, COL, DoD OGC
Subject: U.S. v. al Sharbi (Request for Consolidation of Cases)

Sir,

I received your memorandum of 3 Feb 06. Please be advised that although detailed, I have been unable to meet with Mr. al Sharbi, have not formed an attorney-client relationship with him, and do not currently consider myself to represent him in connection with this matter. In addition, I do not know whether Mr. al Sharbi desires other military counsel, civilian counsel, or to represent himself in connection with commission proceedings. I had hoped to clarify my status and Mr. al Sharbi's desires during a trip to GTMO this week, but notwithstanding efforts by the prosecution to facilitate access to Mr. al Sharbi (pursuant to my written request of 17 Jan 06), JTF GTMO refused to allow me to enter the camp in which Mr. al Sharbi is being detained to speak with him directly. Accordingly, I am unable to provide "input" or otherwise take a position on behalf of Mr. al Sharbi concerning the prosecution's request to consolidate Mr. al Sharbi's case with those of Messrs. al Qahtani and Barhoumi.

I will note, however, that there appears to be no authority under so-called "Commission Law" for the "consolidation" of commission cases. The Chief Prosecutor's strained interpretation of certain language from DoD Directive 5105.70 confirms the point. Moreover, even if I did represent Mr. al Sharbi and the Appointing Authority possessed the authority to join these cases, I would be unable to comment intelligently without some idea of the government's evidence against Mr. al Sharbi and consequent ability to evaluate the potential for prejudice to Mr.al Sharbi resulting from "joinder" of his case with those of Messrs. al Qahtani and Barhoumi. At present, I have not personally received or reviewed any evidence in connection with this case. Finally, since I do not currently represent Mr. al Sharbi, I wish to note my continuing discomfort at being included in *ex parte* communications concerning his case. I realize that I may be "ordered" to represent Mr. al Sharbi over his objection or otherwise forced upon him at some point, however, unless and until this happens, I respectfully request not to be included in communications about his case or regarded as his legal representative.

VR, WCK

LT William C. Kuebler, JAGC, USN

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

LEGAL ADVISOR TO THE
APPOINTING AUTHORITY

February 3, 2006

MEMORANDUM FOR LIEUTENANT COLONEL BRYAN T. BROYLES

SUBJECT: Re: Request for Consolidation of Cases: United States v. al Qahtani; United States v. Barhoumi; United States v. al Sharbi

1. I have received the attached request from the Chief Prosecutor for consolidation of the above-styled cases. Before advising the Appointing Authority on the disposition of this matter, I am referring the request to you for your concurrence, opposition, or comment.

2. Because of the need for expeditious resolution, I must receive your input no later than COB February 8, 2006.

Thomas L. Hemingway
Brigadier General, U.S. Air Force
Legal Advisor to the Appointing Authority
for Military Commissions

cc: Chief Defense Counsel for Military Commissions

LEGAL ADVISOR TO THE
APPOINTING AUTHORITY

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

February 3, 2006

MEMORANDUM FOR CAPTAIN WADE N. FAULKNER

SUBJECT: Re: Request for Consolidation of Cases: United States v. al Qahtani; United States v. Barhoumi; United States v. al Sharbi

1. I have received the attached request from the Chief Prosecutor for consolidation of the above-styled cases. Before advising the Appointing Authority on the disposition of this matter, I am referring the request to you for your concurrence, opposition, or comment.

2. Because of the need for expeditious resolution, I must receive your input no later than COB February 8, 2006.

Thomas L. Hemingway
Brigadier General, U.S. Air Force
Legal Advisor to the Appointing Authority
for Military Commissions

cc: Chief Defense Counsel for Military Commissions

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

LEGAL ADVISOR TO THE
APPOINTING AUTHORITY

February 3, 2006

MEMORANDUM FOR LIEUTENANT WILLIAM KUEBLER

SUBJECT: Re: Request for Consolidation of Cases: United States v. al Qahtani; United States v. Barhoumi; United States v. al Sharbi

1. I have received the attached request from the Chief Prosecutor for consolidation of the above-styled cases. Before advising the Appointing Authority on the disposition of this matter, I am referring the request to you for your concurrence, opposition, or comment.

2. Because of the need for expeditious resolution, I must receive your input no later than COB February 8, 2006.

Thomas L. Hemingway
Brigadier General, U.S. Air Force
Legal Advisor to the Appointing Authority
for Military Commissions

cc: Chief Defense Counsel for Military Commissions

[redacted]

DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF PROSECUTOR
1610 DEFENSE PENTAGON
WASHINGTON, DC 20301-1610

February 2, 2006

MEMORANDUM FOR APPOINTING AUTHORITY FOR MILITARY COMMISSIONS

SUBJECT: Request for Consolidation of Cases: Appointing Order 05-0006; Appointing Order 05-0007; Appointing Order 05-0008

1. In December of 2005, Appointing Orders were signed in the following cases:

a. *United States v. al Sharbi*
b. *United States v. Barhoumi*
c. *United States v. al Qahtani*

All three of the accused listed above are charged with the same crimes arising out of the same criminal conduct. The factual allegations against all three accused are the same, in fact, the charge sheets for all three individuals are identical aside from their caption. All three cases were separately designated to be tried by Military Commissions comprised of the same Presiding Officer and Commission Members.

2. The Prosecution respectfully requests that the Appointing Authority consolidate these cases pursuant to the authority to "Issue orders from time to time appointing one or more military commissions to try individuals subject to the President's Military Order (reference (c)) and reference (d); and appoint any other personnel necessary to facilitate military commissions." DoDD 5105.70, *Appointing Authority for Military Commissions*, Feb 10, 2004, para 4.1.1. Since *United States v. al Sharbi* and *United States v. Barhoumi* have been included on the trial term beginning on 27 February 2006, the Prosecution requests that this matter be resolved prior to the initiation of proceedings.

3. As all three cases could have been designated for trial in the same Military Commission and in fact have been referred to the same Presiding Officer and Commission Members, consolidation serves the interests of justice and judicial economy. Because the factual allegations against each accused are identical, separate proceedings would require litigation of the same legal challenges and presentation of the same evidence on three separate occasions. Rather than requiring the same Presiding Officer to make legal rulings and the same Commission Members to make factual determinations in three identical but separate proceedings, one unified proceeding would clearly serve the interest of judicial economy and the interest of justice. While the Prosecution is mindful of the potential logistical challenges that may be involved if all three cases are consolidated, the interests of justice and judicial economy as outlined above clearly outweigh any burden associated with overcoming these logistical challenges.

4. If you have any questions regarding this request or require any further information, please contact me, or the detailed Lead Prosecutor for these cases, [redacted]

[redacted]

[redacted]

[redacted] or the detailed Assistant Prosecutor for these cases, Capt [redacted] USAF, [redacted]

MORRIS D. DAVIS
Colonel, USAF
Chief Prosecutor

cc:
Col Dwight Sullivan, USMCR
LTC Bryan Broyles, USA
CPT Wade N. Faulkner, USA
LT William Kuebler, USN

Encl:
1. Appointing Order 05-0006 (*United States v. al Sharbi)*
2. Appointing Order 05-0007 (*United States v. Barhoumi)*
3. Appointing Order 05-0008 (*United States v. al* Qahtani)
4. Charge Sheet *United States v. al Sharbi*
5. Charge Sheet *United States v. al Qahtani*
6. Charge Sheet *United States v. Barhoumi*

[redacted]

[redacted]

Military Commission Case No. 05-0005

UNITED STATES	)	**Military Commission Members**
v.	)	Appointing Order No. 05-0006
GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	)	DEC 12 2005

The following officers are appointed to serve as members and alternate members, respectively, of a Military Commission for the purpose of trying any and all charges referred for trial in the above-styled case. The Military Commission will meet at such times and places as directed by the Appointing Authority or the Presiding Officer. Each member or alternate member will serve until removed by proper authority.

In the event that one or more of the members, not including the Presiding Officer, is removed by the Appointing Authority, one or more of the alternate members will automatically be appointed, in order, to replace the removed member(s), until either all removed members have been replaced or no alternate members remain. Should the Presiding Officer grant a challenge for cause against any member, that member will be removed as a member, excused from further proceedings, and automatically replaced by the next alternate member. Any alternate member appointed under the automatic replacement provisions herein described shall become a member of the commission and shall be subject to removal and automatic replacement as if originally appointed as a member. In accordance with Paragraph 4(A)(1)&(2) of Military Commission Order No. 1, should no alternate member be available to replace any member I remove or any member removed pursuant to a challenge for cause, and provided that at least three members, in addition to the Presiding Officer, remain, the commission may proceed without appointment of additional members.

Captain Daniel E. O'Toole, USN, Presiding Officer
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USA, Member
Colonel [redacted] USA, Member
Captain [redacted] USN, Member
Lieutenant Commander [redacted] USN, First Alternate Member
Lieutenant Colonel [redacted] USMC, Second Alternate Member

John D. Altenburg, Jr.
Appointing Authority for Military Commissions

[redacted]

[redacted]

Military Commission Case No. 05-0006

UNITED STATES	)	**Military Commission Members**
	)	
v.	)	Appointing Order No. 05-0007
	)	
SUFYIAN BARHOUMI	)	
a/k/a Abu Obaida	)	DEC 16 2005
a/k/a Ubaydah Al Jaza'iri	)	
a/k/a Shafiq	)	
	)	

The following officers are appointed to serve as members and alternate members, respectively, of a Military Commission for the purpose of trying any and all charges referred for trial in the above-styled case. The Military Commission will meet at such times and places as directed by the Appointing Authority or the Presiding Officer. Each member or alternate member will serve until removed by proper authority.

In the event that one or more of the members, not including the Presiding Officer, is removed by the Appointing Authority, one or more of the alternate members will automatically be appointed, in order, to replace the removed member(s), until either all removed members have been replaced or no alternate members remain. Should the Presiding Officer grant a challenge for cause against any member, that member will be removed as a member, excused from further proceedings, and automatically replaced by the next alternate member. Any alternate member appointed under the automatic replacement provisions herein described shall become a member of the commission and shall be subject to removal and automatic replacement as if originally appointed as a member. In accordance with Paragraph 4(A)(1)&(2) of Military Commission Order No. 1, should no alternate member be available to replace any member I remove or any member removed pursuant to a challenge for cause, and provided that at least three members, in addition to the Presiding Officer, remain, the commission may proceed without appointment of additional members.

Captain Daniel E. O'Toole, USN, Presiding Officer
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USA, Member
Colonel [redacted] USA, Member
Captain [redacted] USN, Member
Lieutenant Commander [redacted] USN, First Alternate Member
Lieutenant Colonel [redacted] USMC, Second Alternate Member

John D. Altenburg, Jr.
Appointing Authority for Military Commissions

[redacted]

[redacted]

Military Commission Case No. 05-0007

UNITED STATES	)	**Military Commission Members**
	)	
v.	)	Appointing Order No. 05-0008
	)	
JABRAN SAID BIN AL QAHTANI	)	
a/k/a Salam al Farsi	)	
a/k/a Hateb	)	DEC 16 2005
a/k/a Jabran al Qahtan	)	
a/k/a Saad Wazar Hatib Jabran	)	
a/k/a Jabran Saad Wazar Sulayman	)	
a/k/a Jabran Wazar	)	
	)	

The following officers are appointed to serve as members and alternate members, respectively, of a Military Commission for the purpose of trying any and all charges referred for trial in the above-styled case. The Military Commission will meet at such times and places as directed by the Appointing Authority or the Presiding Officer. Each member or alternate member will serve until removed by proper authority.

In the event that one or more of the members, not including the Presiding Officer, is removed by the Appointing Authority, one or more of the alternate members will automatically be appointed, in order, to replace the removed member(s), until either all removed members have been replaced or no alternate members remain. Should the Presiding Officer grant a challenge for cause against any member, that member will be removed as a member, excused from further proceedings, and automatically replaced by the next alternate member. Any alternate member appointed under the automatic replacement provisions herein described shall become a member of the commission and shall be subject to removal and automatic replacement as if originally appointed as a member. In accordance with Paragraph 4(A)(1)&(2) of Military Commission Order No. 1, should no alternate member be available to replace any member I remove or any member removed pursuant to a challenge for cause, and provided that at least three members, in addition to the Presiding Officer, remain, the commission may proceed without appointment of additional members.

Captain Daniel E. O'Toole, USN, Presiding Officer
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USAF, Member
Colonel [redacted] USA, Member
Colonel [redacted] USA, Member
Captain [redacted] USN, Member
Lieutenant Commander [redacted] USN, First Alternate Member
Lieutenant Colonel [redacted] USMC, Second Alternate Member

John D. Altenburg, Jr.
Appointing Authority for Military Commissions

[redacted]

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
GHASSAN ABDULLAH AL SHARBI	)	**CHARGE:**
a/k/a Abdullah al Muslim	)	**CONSPIRACY**
a/k/a Abu Muslim	)	

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 6, 2004 that Ghassan Abdullah al Sharbi (a/k/a/ Abdullah al Muslim a/k/a/ Abu Muslim hereinafter "al Sharbi") is subject to his Military Order of November 13, 2001.

2. The charged conduct alleged against al Sharbi is triable by a military commission.

GENERAL ALLEGATIONS

3. Al Qaida ("the Base"), was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.

4. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaida.

5. A purpose or goal of al Qaida, as stated by Usama bin Laden and other al Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and in retaliation for U.S. support of Israel.

6. Al Qaida operations and activities are directed by a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.

7. Between 1989 and 2001, al Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

8. In 1992 and 1993, al Qaida supported violent opposition of US. property and nationals by, among other things, transporting personnel, weapons, explosives, and ammunition to Yemen, Saudi Arabia, Somalia, and other countries.

9. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.

10. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."

11. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."

12. Since 1989 members and associates of al Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the *USS COLE* in October 2000; and the attacks on the United States on September 11, 2001.

CHARGE: CONSPIRACY

13. Sufyian Barhoumi, Jabran Said bin al Qahtani, and Ghassan al Sharbi in the United States, Afghanistan, Pakistan, and other countries, from on or about January 1996 to on or about March 2002, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden (a/k/a Abu Abdullah), Saif al Adel, Dr. Ayman al Zawahiri (a/k/a "the Doctor"), Muhammad Atef (a/k/a Abu Hafs al Masri), Zayn al Abidin Muhammad Husayn (a/k/a/ Abu Zubayda, hereinafter "Abu Zubayda"), Binyam Muhammad, Noor al Deen, Akrama al Sudani and other members and associates of the al Qaida organization, known and unknown, to commit the following offenses triable by military commission: attacking civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.

14. In furtherance of this enterprise and conspiracy, al Sharbi, Barhoumi, al Qahtani, Abu Zubayda, Binyam Muhammad, Noor al Deen, Akrama al Sudani, and other members or associates of al Qaida committed the following overt acts:

    a. In 1998 Barhoumi, an Algerian citizen, attended the electronics and explosives course at Khalden Camp in Afghanistan, an al Qaida-affiliated training camp, where he received training in constructing and dismantling electronically-controlled explosives.

    b. After completing his training, Barhoumi became an explosives trainer for al Qaida, training members of al Qaida on electronically-controlled explosives at remote locations.

c. In or about August 2000, al Sharbi, a Saudi citizen and Electrical engineering graduate of Embry Riddle University, in Prescott, Arizona, departed the United States in search of terrorist training in Afghanistan.

d. In July 2001, Muhammad Atef (a/k/a/ Abu Hafs al Masri), the head of al Qaida's military committee and al Qaida's military commander, wrote a letter to Abu Muhammad, the *emir* of al Qaida's al Farouq Camp, asking him to select two "brothers" from the camp to receive electronically-controlled explosives training in Pakistan, for the purpose of establishing a new and independent section of the military committee.

e. In July 2001, al Sharbi attended the al Qaida-run al Farouq training camp, where he was first introduced to Usama bin Laden. At al Farouq, al Sharbi's training included, *inter alia*, physical training, military tactics, weapons instruction, and firing on a variety of individual and crew-served weapons.

f. During July and August 2001, al Sharbi stood watch with loaded weapons at al Farouq at times when Usama bin Laden visited the camp.

g. From July 2001 to September 13, 2001, al Sharbi provided English translation for another camp attendee's military training at al Farouq, to include translating the attendee's personal *bayat* ("oath of allegiance") to Usama bin Laden.

h. On or about September 13, 2001, anticipating a military response to al Qaida's attacks on the United States of September 11, 2001, al Sharbi and the remaining trainees were ordered to evacuate al Farouq. Al Sharbi and others fled the camp and were told to fire warning shots in the air if they saw American missiles approaching.

i. Shortly after the September 11 2001 attacks on the United States, al Qahtani, a Saudi citizen and Electrical engineering graduate of King Saud University in Saudi Arabia, left Saudi Arabia with the intent to fight against the Northern Alliance and American Forces, whom he expected would soon be fighting in Afghanistan.

j. In October 2001, al Qahtani attended a newly established terrorist training camp north of Kabul, where he received physical conditioning, and training in the PK Machine gun and AK-47 assault rifle.

k. Between late December 2001 and the end of February 2002, Abu Zubayda, a high-ranking al Qaida recruiter and operational planner, assisted in moving al Sharbi, al Qahtani and Binyam Muhammad from Birmel, Afghanistan to a guest house in Faisalabad, Pakistan where they would obtain further training.

l. By early March 2002, Abu Zubayda, Barhoumi, al Sharbi, al Qahtani, and Binyam Muhammad had all arrived at the guest house in Faisalabad, Pakistan. Barhoumi was to train al Sharbi, al Qahtani and Binyam Muhammad in building small, hand-held remote-detonation devices for explosives that would later be used in Afghanistan against United States forces.

m. In March 2002, after Barhoumi, al Sharbi and al Qahtani had all arrived at the guest house, Abu Zubayda provided approximately $1,000 U.S. Dollars for the purchase of components to be used for training al Sharbi and al Qahtani in making remote-detonation devices.

n. Shortly after receiving the money for the components, Barhoumi, Noor al Deen and other individuals staying at the house went into downtown Faisalabad with a five page list of electrical equipment and devices for purchase which included, *inter alia,* electrical resistors, plastic resistors, light bulbs for circuit board lights, plastic and ceramic diodes, circuit testing boards, an ohmmeter, watches, soldering wire, soldering guns, wire and coil, six cell phones of a specified model, transformers and an electronics manual.

o. After purchasing the necessary components, al Qahtani and al Sharbi received training from Barhoumi on how to build hand-held remote-detonation devices for explosives while at the guest house.

p. During March 2002, after his initial training, al Qahtani was given the mission of constructing as many circuit boards as possible with the intent to ship them to Afghanistan to be used as timing devices in bombs.

q. After their training was completed and a sufficient number of circuit boards were built, Abu Zubayda had directed that al Qahtani and al Sharbi were to return to Afghanistan in order to use, and to train others to construct remote-control devices to detonate car bombs against United States forces.

r. During March 2002 al Qahtani wrote two instructional manuals on assembling circuit boards that could be used as timing devices for bombs and other improvised explosive devices.

15. On March 28, 2002, Barhoumi, al Sharbi, al Qahtani, Abu Zubayda and others were captured in a safe house in Faisalabad after authorities raided the home.

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
JABRAN SAID BIN AL QAHTANI	)	**CHARGE:**
a/k/a Salam al Farsi	)	**CONSPIRACY**
a/k/a Hateb	)	
a/k/a Jabran al Qahtan	)	
a/k/a Saad Wazar Hatib Jabran	)	
a/k/a Jabran Saad Wazar Sulayman	)	
a/k/a Jabran Wazar	)	
	)	

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 6, 2004 that Jabran Said Bin al Qahtani (a/k/a/ Salam al Farsi a/k/a Hateb a/k/a Jabran Qahtan a/k/a/ Saad Wazar Hatib Jabran a/k/a/ Jabran Saad Wazar Sulayman a/k/a Jabran Wazar) is subject to his Military Order of November 13, 2001.

2. The charged conduct alleged against al Qahtani is triable by a military commission.

GENERAL ALLEGATIONS

3. Al Qaida ("the Base"), was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.

4. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaida.

5. A purpose or goal of al Qaida, as stated by Usama bin Laden and other al Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and in retaliation for U.S. support of Israel.

6. Al Qaida operations and activities are directed by a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.

7. Between 1989 and 2001, al Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

8. In 1992 and 1993, al Qaida supported violent opposition of US. property and nationals by, among other things, transporting personnel, weapons, explosives, and ammunition to Yemen, Saudi Arabia, Somalia, and other countries.

9. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.

10. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."

11. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."

12. Since 1989 members and associates of al Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the *USS COLE* in October 2000; and the attacks on the United States on September 11, 2001.

CHARGE: CONSPIRACY

13. Sufyian Barhoumi, Jabran Said bin al Qahtani, and Ghassan al Sharbi in the United States, Afghanistan, Pakistan, and other countries, from on or about January 1996 to on or about March 2002, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden (a/k/a Abu Abdullah), Saif al Adel, Dr. Ayman al Zawahiri (a/k/a "the Doctor"), Muhammad Atef (a/k/a Abu Hafs al Masri), Zayn al Abidin Muhammad Husayn (a/k/a/ Abu Zubayda, hereinafter "Abu Zubayda"), Binyam Muhammad, Noor al Deen, Akrama al Sudani and other members and associates of the al Qaida organization, known and unknown, to commit the following offenses triable by military commission: attacking civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.

14. In furtherance of this enterprise and conspiracy, al Sharbi, Barhoumi, al Qahtani, Abu Zubayda, Binyam Muhammad, Noor al Deen, Akrama al Sudani, and other members or associates of al Qaida committed the following overt acts:

    a. In 1998 Barhoumi, an Algerian citizen, attended the electronics and explosives course at Khalden Camp in Afghanistan, an al Qaida-affiliated

training camp, where he received training in constructing and dismantling electronically-controlled explosives.

b. After completing his training, Barhoumi became an explosives trainer for al Qaida, training members of al Qaida on electronically-controlled explosives at remote locations.

c. In or about August 2000, al Sharbi, a Saudi citizen and Electrical engineering graduate of Embry Riddle University, in Prescott, Arizona, departed the United States in search of terrorist training in Afghanistan.

d. In July 2001, Muhammad Atef (a/k/a/ Abu Hafs al Masri), the head of al Qaida's military committee and al Qaida's military commander, wrote a letter to Abu Muhammad, the *emir* of al Qaida's al Farouq Camp, asking him to select two "brothers" from the camp to receive electronically-controlled explosives training in Pakistan, for the purpose of establishing a new and independent section of the military committee.

e. In July 2001, al Sharbi attended the al Qaida-run al Farouq training camp, where he was first introduced to Usama bin Laden. At al Farouq, al Sharbi's training included, *inter alia*, physical training, military tactics, weapons instruction, and firing on a variety of individual and crew-served weapons.

f. During July and August 2001, al Sharbi stood watch with loaded weapons at al Farouq at times when Usama bin Laden visited the camp.

g. From July 2001 to September 13, 2001, al Sharbi provided English translation for another camp attendee's military training at al Farouq, to include translating the attendee's personal *bayat* ("oath of allegiance") to Usama bin Laden.

h. On or about September 13, 2001, anticipating a military response to al Qaida's attacks on the United States of September 11, 2001, al Sharbi and the remaining trainees were ordered to evacuate al Farouq. Al Sharbi and others fled the camp and were told to fire warning shots in the air if they saw American missiles approaching.

i. Shortly after the September 11 2001 attacks on the United States, al Qahtani, a Saudi citizen and Electrical engineering graduate of King Saud University in Saudi Arabia, left Saudi Arabia with the intent to fight against the Northern Alliance and American Forces, whom he expected would soon be fighting in Afghanistan.

j. In October 2001, al Qahtani attended a newly established terrorist training camp north of Kabul, where he received physical conditioning, and training in the PK Machine gun and AK-47 assault rifle.

k. Between late December 2001 and the end of February 2002, Abu Zubayda, a high-ranking al Qaida recruiter and operational planner, assisted in moving al Sharbi, al Qahtani and Binyam Muhammad from Birmel, Afghanistan to a guest house in Faisalabad, Pakistan where they would obtain further training.

l. By early March 2002, Abu Zubayda, Barhoumi, al Sharbi, al Qahtani, and Binyam Muhammad had all arrived at the guest house in Faisalabad, Pakistan. Barhoumi was to train al Sharbi, al Qahtani and Binyam Muhammad in building small, hand-held remote-detonation devices for explosives that would later be used in Afghanistan against United States forces.

m. In March 2002, after Barhoumi, al Sharbi and al Qahtani had all arrived at the guest house, Abu Zubayda provided approximately $1,000 U.S. Dollars for the purchase of components to be used for training al Sharbi and al Qahtani in making remote-detonation devices.

n. Shortly after receiving the money for the components, Barhoumi, Noor al Deen and other individuals staying at the house went into downtown Faisalabad with a five page list of electrical equipment and devices for purchase which included, *inter alia*, electrical resistors, plastic resistors, light bulbs for circuit board lights, plastic and ceramic diodes, circuit testing boards, an ohmmeter, watches, soldering wire, soldering guns, wire and coil, six cell phones of a specified model, transformers and an electronics manual.

o. After purchasing the necessary components, al Qahtani and al Sharbi received training from Barhoumi on how to build hand-held remote-detonation devices for explosives while at the guest house.

p. During March 2002, after his initial training, al Qahtani was given the mission of constructing as many circuit boards as possible with the intent to ship them to Afghanistan to be used as timing devices in bombs.

q. After their training was completed and a sufficient number of circuit boards were built, Abu Zubayda had directed that al Qahtani and al Sharbi were to return to Afghanistan in order to use, and to train others to construct remote-control devices to detonate car bombs against United States forces.

r. During March 2002 al Qahtani wrote two instructional manuals on assembling circuit boards that could be used as timing devices for bombs and other improvised explosive devices.

15. On March 28, 2002, Barhoumi, al Sharbi, al Qahtani, Abu Zubayda and others were captured in a safe house in Faisalabad after authorities raided the home.

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
SUFYIAN BARHOUMI	)	CHARGE:
a/k/a Abu Obaida	)	CONSPIRACY
a/k/a Ubaydah Al Jaza'iri	)	
a/k/a Shafiq	)	
	)	
	)	

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 6, 2004 that Sufyian Barhoumi (a/k/a Abu Obaida a/k/a/ Ubaydah Al Jaza'iri a/k/a/ Shafiq hereinafter "Barhoumi") is subject to his Military Order of November 13, 2001.

2. The charged conduct alleged against Barhoumi is triable by a military commission.

GENERAL ALLEGATIONS

3. Al Qaida ("the Base"), was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.

4. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaida.

5. A purpose or goal of al Qaida, as stated by Usama bin Laden and other al Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and in retaliation for U.S. support of Israel.

6. Al Qaida operations and activities are directed by a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.

7. Between 1989 and 2001, al Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

8. In 1992 and 1993, al Qaida supported violent opposition of US. property and nationals by, among other things, transporting personnel, weapons, explosives, and ammunition to Yemen, Saudi Arabia, Somalia, and other countries.

9. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.

10. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."

11. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."

12. Since 1989 members and associates of al Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the *USS COLE* in October 2000; and the attacks on the United States on September 11, 2001.

CHARGE: CONSPIRACY

13. Sufyian Barhoumi, Jabran Said bin al Qahtani, and Ghassan al Sharbi in the United States, Afghanistan, Pakistan, and other countries, from on or about January 1996 to on or about March 2002, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden (a/k/a Abu Abdullah), Saif al Adel, Dr. Ayman al Zawahiri (a/k/a "the Doctor"), Muhammad Atef (a/k/a Abu Hafs al Masri), Zayn al Abidin Muhammad Husayn (a/k/a/ Abu Zubayda, hereinafter "Abu Zubayda"), Binyam Muhammad, Noor al Deen, Akrama al Sudani and other members and associates of the al Qaida organization, known and unknown, to commit the following offenses triable by military commission: attacking civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.

14. In furtherance of this enterprise and conspiracy, al Sharbi, Barhoumi, al Qahtani, Abu Zubayda, Binyam Muhammad, Noor al Deen, Akrama al Sudani, and other members or associates of al Qaida committed the following overt acts:

    a. In 1998 Barhoumi, an Algerian-citizen, attended the electronics and explosives course at Khalden Camp in Afghanistan, an al Qaida-affiliated training camp, where he received training in constructing and dismantling electronically-controlled explosives.

b. After completing his training, Barhoumi became an explosives trainer for al Qaida, training members of al Qaida on electronically-controlled explosives at remote locations.

c. In or about August 2000, al Sharbi, a Saudi citizen and Electrical engineering graduate of Embry Riddle University, in Prescott, Arizona, departed the United States in search of terrorist training in Afghanistan.

d. In July 2001, Muhammad Atef (a/k/a/ Abu Hafs al Masri), the head of al Qaida's military committee and al Qaida's military commander, wrote a letter to Abu Muhammad, the *emir* of al Qaida's al Farouq Camp, asking him to select two "brothers" from the camp to receive electronically-controlled explosives training in Pakistan, for the purpose of establishing a new and independent section of the military committee.

e. In July 2001, al Sharbi attended the al Qaida-run al Farouq training camp, where he was first introduced to Usama bin Laden. At al Farouq, al Sharbi's training included, *inter alia*, physical training, military tactics, weapons instruction, and firing on a variety of individual and crew-served weapons.

f. During July and August 2001, al Sharbi stood watch with loaded weapons at al Farouq at times when Usama bin Laden visited the camp.

g. From July 2001 to September 13, 2001, al Sharbi provided English translation for another camp attendee's military training at al Farouq, to include translating the attendee's personal *bayat* ("oath of allegiance") to Usama bin Laden.

h. On or about September 13, 2001, anticipating a military response to al Qaida's attacks on the United States of September 11, 2001, al Sharbi and the remaining trainees were ordered to evacuate al Farouq. Al Sharbi and others fled the camp and were told to fire warning shots in the air if they saw American missiles approaching.

i. Shortly after the September 11 2001 attacks on the United States, al Qahtani, a Saudi citizen and Electrical engineering graduate of King Saud University in Saudi Arabia, left Saudi Arabia with the intent to fight against the Northern Alliance and American Forces, whom he expected would soon be fighting in Afghanistan.

j. In October 2001, al Qahtani attended a newly established terrorist training camp north of Kabul, where he received physical conditioning, and training in the PK Machine gun and AK-47 assault rifle.

k. Between late December 2001 and the end of February 2002, Abu Zubayda, a high-ranking al Qaida recruiter and operational planner, assisted in moving al Sharbi, al Qahtani and Binyam Muhammad from Birmel, Afghanistan to a guest house in Faisalabad, Pakistan where they would obtain further training.

l. By early March 2002, Abu Zubayda, Barhoumi, al Sharbi, al Qahtani, and Binyam Muhammad had all arrived at the guest house in Faisalabad, Pakistan. Barhoumi was to train al Sharbi, al Qahtani and Binyam Muhammad in building small, hand-held remote-detonation devices for explosives that would later be used in Afghanistan against United States forces.

m. In March 2002, after Barhoumi, al Sharbi and al Qahtani had all arrived at the guest house, Abu Zubayda provided approximately $1,000 U.S. Dollars for the purchase of components to be used for training al Sharbi and al Qahtani in making remote-detonation devices.

n. Shortly after receiving the money for the components, Barhoumi, Noor al Deen and other individuals staying at the house went into downtown Faisalabad with a five page list of electrical equipment and devices for purchase which included, *inter alia*, electrical resistors, plastic resistors, light bulbs for circuit board lights, plastic and ceramic diodes, circuit testing boards, an ohmmeter, watches, soldering wire, soldering guns, wire and coil, six cell phones of a specified model, transformers and an electronics manual.

o. After purchasing the necessary components, al Qahtani and al Sharbi received training from Barhoumi on how to build hand-held remote-detonation devices for explosives while at the guest house.

p. During March 2002, after his initial training, al Qahtani was given the mission of constructing as many circuit boards as possible with the intent to ship them to Afghanistan to be used as timing devices in bombs.

q. After their training was completed and a sufficient number of circuit boards were built, Abu Zubayda had directed that al Qahtani and al Sharbi were to return to Afghanistan in order to use, and to train others to construct remote-control devices to detonate car bombs against United States forces.

r. During March 2002 al Qahtani wrote two instructional manuals on assembling circuit boards that could be used as timing devices for bombs and other improvised explosive devices.

15. On March 28, 2002, Barhoumi, al Sharbi, al Qahtani, Abu Zubayda and others were captured in a safe house in Faisalabad after authorities raided the home.

UNITED STATES OF AMERICA v. GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	)	**PO 2 A** **Modification to PO 2, (Discovery Order)** **March 3, 2006**

1. This filing modifies PO 2 (Discovery Order).

2. If either party objects to this modification, they shall file a motion in accordance with POM 4-3 not later than 10 March 2006.

3. Add the following to paragraph 10, PO 2:

a. If a matter required to be disclosed is in electronic form, it shall be provided to the opposing party in the same electronic form, unless the disclosing party is unable to do so as a result of a circumstance beyond that party's control, such as a proprietary program being unavailable to the parties, security considerations, or other similar limitation. In the event electronic matter is provided in a different form, the reason for doing so shall be specifically set forth in a transmittal document.

b. Electronic "searchability" of documents.

(1) It is generally not possible to create a completely accurate, text-searchable document using Optical Character Recognition (OCR) or other software, and no party is required to vouch that a text search of any electronic document disclosed by that party will be 100% accurate. While providing documents and other evidence in electronic form is the preferred method of disclosure, and while electronic text searching is a useful technology, it is not a substitute for reading or viewing the matter disclosed. A party receiving information in electronic media is responsible for reading all such information.

(2) Matter shall be considered to have been disclosed pursuant to this Discovery Order when the matter provided is viewable either as displayed on a computer monitor, printed, or in other hard copy form, regardless of whether an electronic text search reveals any particular information that is the object of a text search.

(3) At no time may a party convert a text-searchable or OCR document before serving it on the opposing party in order to prevent the opposing party from using text-search software or tools.

4. Change paragraph 12.c. to read:

c. "Synopsis of a witness' testimony" is that which the sponsoring counsel has a good faith basis to believe the witness will say, if called to testify.

(1) A synopsis shall be prepared as though the subject witness is speaking (in the first person), and shall be sufficiently detailed as to demonstrate both the testimony's relevance and that the witness has personal knowledge of the matter being offered into evidence. *See* Enclosure 1, POM 10-2 for suggestions.

(2) If any matter that has been disclosed to an opposing party contains a complete synopsis of a witness' testimony, the document is identified by Bates stamp number or otherwise, and the location of the document is reasonably described, no additional synopsis is required to be disclosed, provided that the witness list refers to the matter as containing the synopsis. If a document contains a synopsis of only a portion of a witness' testimony, that document shall be identified as described above, but a synopsis must be provided to the opposing party setting forth any additional matter about which the witness is expected to testify.

IT IS SO ORDERED:

/s/
DANIEL E. O'TOOLE
CAPTAIN, JAGC, U.S. NAVY
Presiding Officer

[redacted]

From: [redacted]
Sent: Tuesday, March 14, 2006 2:55 PM
To: [redacted]
Cc: [redacted]

Subject: Telephonic and Visitation Arrangements for Detainee al Sharbi

1. The purpose of this email is to assist the decision making process of whether detainee al Sharbi should be allowed telephonic contact with family, and in conjunction with a session of the Commission involving detainee al Sharbi, a visit from his family.

2. The defense counsel has been forthright with the Presiding Officer from the beginning that detainee al Sharbi has refused to meet with him. The defense counsel requested time to arrange for family members and others to attempt to have al Sharbi speak with counsel. The Presiding Officer has been receptive to the delays thus far observing that meeting with the client for the first time in a courtroom was not conducive to the attorney-client relationship.

3. During the February Trial Term at Guantanamo, the Presiding Officer held a conference attended by the JTF SJA, JTF Chief of Staff, prosecutors, LT Kuebler (defense counsel), and others involved in U.S. v. Sharbi. The purpose of the 8-5 session was to facilitate LT Kuebler's representation of al Sharbi because al Sharbi refused to meet with LT Kuebler. LT Kuebler requested support for a telephone call from al Sharbi's parents to al Sharbi. The JTF personnel said they would support the phone call, provided al Sharbi's parents made the call from a US Embassy or elsewhere where the identity of the caller could be ascertained by US authorities. The prosecutors supported the phone call too. The Presiding Officer strongly recommended that the phone call be arranged consistent with security concerns.

4. During the same conference, the defense counsel also asked that al Sharbi's parents be allowed to meet with him at GTMO, as was permitted in U.S. v. Hicks. The JTF explained that this could occur just prior to a Commission hearing in which the detainee was scheduled to appear. The JTF and prosecutors supported the visit of al Sharbi's parents to GTMO under the conditions set by the JTF, should the phone call be insufficient. The Presiding Officer strongly recommended that the visit be arranged, if the phone call was insufficient to convince al Sharbi to discuss detailed defense counsel's services with the defense counsel, consistent with security concerns.

FOR THE PRESIDING OFFICER

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, March 15, 2006 1:17 PM
To: [redacted]
Subject: US v. al Sharbi - Summary of 8-5 Conference

U.S. v. al SHARBI
8-5 Conference Summary
28 Feb 2006

1. A conference was held at the request of the PO to receive a status update on Detailed Defense Counsel (DDC) concerns expressed in his 15 Feb 06 email about access to his client and difficulty establishing an attorney-client relationship. With the consent of the parties, the following personnel were present:

LT Kuebler, Detailed Defense Counsel (DDC)
Mr. Rachlin, Civilian Defense Counsel
COL Sullivan, Chief Defense Counsel
LT [redacted] Prosecutor (Pros)
CPT [redacted] Prosecutor
COL [redacted] JTF representative
LTC [redacted] JTF representative
[redacted] Clerk of Commissions
[redacted] Assistant to the Presiding Officer

2. DDC indicated that he has requested to meet with the accused, but the accused has not yet consented to meet him. To encourage the accused to meet with him, DDC obtained a letter from the accused's father and delivered it to the accused. Despite having the letter, the accused has not yet agreed to meet with DDC. However, in a letter to LT Kuebler, the accused indicated a desire to meet with his father. LT Kuebler represented that he has worked closely and cooperatively with the accused's father, who is willing to travel to GTMO to meet with his son. DDC's expectation is that the father will affirmatively encourage the accused to accept representation by DDC and that this would likely be a significant factor in providing a favorable environment in which LT Kuebler can further attempt to meet with the accused and establish an attorney-client relationship with him.

3. The JTF representatives indicated that, in order to meet with counsel, the accused is required to move from his present location, because his present location is not conducive to a visit by counsel. Security arrangements and the configuration of the physical facilities were not designed with counsel visits in mind. Facilities are available elsewhere that are appropriate for visits with counsel and the accused is authorized to use those facilities, however, the accused has thus far not been willing to go to those facilities.

4. The JTF representatives confirmed that, in an effort to facilitate a meeting between DDC and the accused, MGEN Hood met with the accused. DDC confirmed that he understood the accused had a favorable reaction to the visit and that it was during this visit that the accused passed the letter to the MGEN, for deliver to DDC, indicating his desire to meet with his father.

5. MGEN Hood provided assurances to LT Kuebler that if a visit with the accused's family is arranged by the defense, the JTF will extend its support to facilitating the visit at Guantanamo Bay. JTF representatives emphasized that necessary arrangements, which are external to the JTF, such as travel and visas, were the responsibility of the defense.

6. DDC acknowledged travel arrangements, visas and other arrangement external to the JTF were defense responsibilities and he indicated that he was working on those arrangements. JTF representatives indicated that, consistent with MGEN Hood's offer, JTF will facilitate a meeting with family members in conjunction with a session of the commission in the commission building. DDC had no objection to the venue for the meeting, but questioned the efficacy of first meeting the accused only minutes before his first appearance before the commission. JTF representatives provided DDC with a primary point of contact (LCDR[redacted]for coordinating the family visit.

7. In addition to facilitating a visit by family members, the JTF representatives indicated that they were prepared to facilitate a phone call from a family member to the accused. Such a phone call would be permitted, provided it was initiated from the U.S. Embassy or a similar government facility, where the caller's ID could be verified and further provided that the call was monitored. DDC acknowledged this offer, but indicated he needed to consider further whether such a call would be helpful.

8. The PO asked if there was anything else the DDC wished to request of the JTF in order to facilitate his meeting with the accused. DDC had no other requests.

10. The parties agreed to proceed as follows:

a. Defense:

1 – DDC will provide a request to the Prosecution, to LCDR[redacted]of the JTF staff, and to the PO for such delay as the DDC deems necessary in order to facilitate a family visit for the accused.

2 – In support of that request for delay, DDC will provide to the Prosecution and to the PO a plan of action with milestones needed to accomplish a family visit.

3 – DDC requested that the session scheduled for 28 Feb 2006 be delayed, pending consideration of the broader request for delay to accomplish a family visit.

b. Prosecution:

1 – In reply to any request for delay, the Prosecution will coordinate with the JTF staff and provide a written response to the defense and to the PO.

2 – The Prosecution indicated they are prepared to proceed with a session as scheduled on 28 Feb 2006, but did not object to a delay of that session in order to consider and respond to the defense's broader request for delay.

c. JTF Staff:

1 – JTF Staff agreed to develop and to submit to the prosecution and to the defense a support plan for the family visit, beginning with Day-1 as the day the family arrives in Guantanamo Bay.

2 – JTF Staff reiterated that they will facilitate a phone call between the accused and his family, under

the conditions noted.

11. The Assistant will make this document, and the following items, a Review Exhibit:

a. Email from LT Kuebler of 15 Feb (Update email), APO email of 15 Feb setting the 8-5 conference, 22 Feb email from LT Kuebler with other developments, and 22 Feb APO reply. This document is a single thread of emails.

b. APO email of 14 March SUBJ: First Session in US v. al Sharbi, and LT Kuebler's reply and attachment forwarded with that reply.

/s/
DANIEL E. O'TOOLE
CAPTAIN, JAGC, U.S. NAVY
Presiding Officer

[redacted]

From: Kuebler, William, LT, DoD OGC [redacted]
Sent: Wednesday, February 22, 2006 9:59 AM
To: [redacted]; Kuebler, William, LT, DoD OGC
Cc: [redacted]
Subject: RE: Contact issues: U.S. v. al Sharbi - 8-5 Conference at GTMO

Sir,

1. In order to bring you up to date on events occurring since our last e-mail exchange and request further appropriate action concerning this matter, the following information is provided:

2. Major General Hood (Commander, JTF GTMO) personally contacted Colonel Sullivan last Friday to discuss the difficulties I have encountered in attempting to establish contact with Mr. al Sharbi. MG Hood said that he would himself attempt to persuade Mr. al Sharbi to meet with me, that I should be prepared to travel to Miami at a moment's notice, and that JTF would do whatever was necessary to get me from Miami to GTMO ASAP. Accordingly, I made travel arrangements in anticipation of travel to GTMO early this week, but learned over the weekend, via e-mail from LTC [redacted] that despite MG Hood's efforts, Mr. al Sharbi had refused to meet with me. Nonetheless, a number of positive indications did come out of MG Hood's discussions with Mr. al Sharbi as related to Col. Sullivan. Specifically, MG Hood indicated that Mr. al Sharbi reacted positively when MG Hood mentioned that I might be able to facilitate a meeting or other contact with Mr. al Sharbi's family. MG Hood indicated that Mr. al Sharbi's family would only be permitted to travel to GTMO if authorized by appropriate authority (i.e., the Department of State), but ensured that they would be well-treated in the event they are permitted to travel to GTMO. As I may have mentioned previously, I have been in contact with Mr. al Sharbi's family in Saudi Arabia. His father has been very cooperative and has offered his support and assistance in attempting to obtain his son's agreement to meet and cooperate with counsel in connection with military commission proceedings. Accordingly, I do not believe that I will have exhausted all reasonable efforts to establish a relationship with Mr. al Sharbi unless and until I am permitted to pursue this particular course of action (again, I believe that similar consideration has been afforded to prospective counsel in another case originally scheduled to go forward next week). Although I will work to facilitate a meeting between Mr. al Sharbi and his family at the earliest possible date, even with MG Hood's gracious offer of support, I don't see any way such a meeting can take place by next week. I am, however, hopeful that such a meeting could take place sometime in March, before the next anticipated "trial term" in GTMO.

3. As I have said before, I believe the "worst case scenario" for my formation of an effective attorney-client relationship with Mr. al Sharbi would consist of a forced meeting immediately (even a day or two) prior to the initial session of the commission. Even if I am able to meet with Mr. al Sharbi in some form or fashion next week, I consider it extremely unlikely that I will obtain his consent to represent him and be prepared to go forward next week. Moreover, the prospect of an initial session as early as next week may adversely influence the manner in which I engage with him in our initial meeting(s), i.e., I may be compelled to "rush" the formation of a relationship, a concern to which you directed my attention during our January conference call.

4. Based on the foregoing, and in order to spare all parties the logistical hardship in preparing for and attending a session next week, I respectfully request the PO to order a delay in the commencement of commission proceedings until, tentatively, the April "trial term" in GTMO. This is *not* a request for postponement of the "8-5" session directed by the PO to take place in GTMO on 28 Feb 06.

VR, WCK

-----Original Message-----
From: [redacted]
Sent: Wednesday, February 15, 2006 17:20
To: Kuebler, William, LT, DoD OGC; [redacted]
Cc: [redacted]

[redacted]

Subject: Contact issues: U.S. v. al Sharbi - 8-5 Conference at GTMO

1. CAPT O'Toole has directed that I send the addresses the following instructions. The Chief Defense Counsel, Chief Prosecutor, and LT Kuebler are requested to acknowledge receipt.

2. At 0900, 28 February, at the Commissions building at Guantanamo Naval Base, the Presiding Officer will hold an 8-5 conference for the purpose of discussing issues concerning the Defense's access to Mr. al Sharbi raised in LT Kuebler's email. The time may be adjusted to accommodate attendees, but the conference needs to be held on that day. The focus of the discussions will not be the past except as necessary to work for a systemic solution for the future.

3. The Presiding Officer desires the following persons to be present:
a. All defense counsel on the case. Mr Rachin is invited to attend.
b. Prosecutors on the case.
c. The Chief Defense Counsel and the Chief Prosecutor.
d. A representative from the JTF SJA office (preferably the SJA.)
e. Those personnel from JDOG and/or JTF necessary to discuss how LT Kuebler might have contact with his client under the circumstances. These persons should be of sufficient position that they can "make happen" those arrangements that might be agreed upon.

3. The Chief Defense counsel is requested to ensure that the necessary logistical arrangements have been made so that LT Kuebler will be at this conference. Further, the Chief Defense Counsel is requested to extend an invitation to Mr. Rachin to attend, and if he wishes to attend, to make the necessary arrangements.

4. The Chief Prosecutor is requested to identify and notify those persons listed in paragraph 3b, 3d and 3e above and coordinate their presence. Authority to speak for the command is the key with respect to 3e.

5. The Defense in al Sharbi perform those steps to request a visit with Mr al Sharbi on 1 AND 2 March in the event that the 8-5 results in suitable arrangements for the Defense to visit the client. (There is no point in missing this opportunity to visit with the client while counsel are already at GTMO.)

6. If any clarification is necessary, please advise me immediately.

7. The date for the initial session in US v. al Sharbi remains unchanged.

BY DIRECTION OF THE PRESIDING OFFICER

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]

From: Kuebler, William, LT, DoD OGC[redacted]
Sent: Wednesday, February 15, 2006 4:05 PM
To: [redacted]
Cc: [redacted]
Subject: U.S. v. al Sharbi

Sir,

Pursuant to your request for an update as to my status NLT 15 Feb 06, the following information is provided:

On 17 Jan 06, I submitted a written request, via e-mail, to LT[redacted] asking for the prosecution's assistance in facilitating a face-to-face meeting with Mr. al Sharbi, i.e., one that would not require his consent to be moved to a different camp. I specifically asked to be taken to see Mr. al Sharbi on 5 Feb 06. LT[redacted] agreed to discuss the request with the JTF. Shortly before departing for GTMO, I called LT [redacted] to ascertain the status of the request. He informed me that the JTF would "assist in any way they can," or words to that effect, but that I would not be allowed to see Mr. al Sharbi in his cell.

Mr. Rachlin and I traveled to GTMO on 4 Feb 06. We met with LCDR[redacted] Deputy SJA, JTF GTMO, on the morning of 5 Feb 06. LCDR[redacted] confirmed that we would not be permitted to see Mr. al Sharbi in his cell and then chastised us for not "arranging to see" Mr. al Sharbi with his office - a strange remark in light of the prosecution's agreement to help facilitate a meeting for 5 Feb 06 and the JTF's knowledge and refusal of our request. LCDR[redacted] then said that he would see what he could do about setting up a meeting the next day, 6 Feb 06.

On the morning of 6 Feb 06, I received an e-mail from LCDR[redacted] indicating that JTF personnel had attempted to move Mr. al Sharbi for a meeting with counsel and that he had refused. Later that day, I met with the JTF SJA, LTC[redacted] and reiterated my desire to be taken to see Mr. al Sharbi in his cell. LTC [redacted] said that I would not be permitted this type of access to Mr. al Sharbi, citing concerns over "camp dynamics" as a basis - specifically, he noted a concern that if I were now taken to see Mr. al Sharbi contrary to his expressed desire not to meet with me, Mr. al Sharbi might use his influence with other detainees to create "problems" for the staff. I subsequently met with the JTF Commander, Major General Hood, at his request. MG Hood agreed to use the good offices of the JTF cultural advisor, and possibly even meet with Mr. al Sharbi himself, in order to persuade Mr. al Sharbi to meet with me.

Upon return to the D.C. area and relocation to new spaces occasioned by the flooding of our offices, on 10 Feb 06, I located and reviewed discovery materials provided by the prosecution while I was TDY/TAD. Included were statements from LTC[redacted] and the JTF cultural advisor describing the prosecution's service of charges on Mr. al Sharbi in Nov 05 - approximately two weeks after my first visit to GTMO. At the time, Mr. al Sharbi was participating in a hunger strike and was being detained in a medical facility with other detainees. The prosecutor serving charges was allowed to enter the facility, along with the cultural advisor and the SJA. Mr. al Sharbi was told that there were two men who needed to "speak with him in private." He consented, was wheeled outside the facility and served with his charges.

I should note that when I traveled to GTMO the first time, in mid-Nov 05, and Mr. al Sharbi reportedly "refused" to meet with me, I specifically asked LCDR[redacted] and LTC[redacted] if it would be possible to see Mr. al Sharbi in the medical facility. I was told that I would not be allowed to enter the facility, and moreover, that such action would be imprudent because there would be no way to accomplish a meeting outside the view of the other detainees, thereby creating the appearance that Mr. al Sharbi was somehow "cooperating" with the government. In view of the aforementioned statements, it appears that this is not true and that the JTF staff, had they been so inclined, could have provided me with precisely the same type of access, in a somewhat confidential setting, as they provided to the prosecution. In addition, after I became aware of the fact that Mr. al Sharbi had been served in some manner by the prosecution within the medical facility, I recall discussing the matter with LCDR[redacted] LCDR[redacted] distinguished the prosecution visit, indicating that prior to meeting with the prosecution, Mr. al Sharbi was informed as to the purpose of their visit and that he had somehow agreed or consented to a meeting in order to be

served. I believe LCDR [redacted] repeated this claim when I met with him in GTMO last week. The sworn statements provided in discovery, however, do not support the contention that Mr. al Sharbi was aware of why he was being taken out of the medical facility before he was served. Rather, they indicate that the prosecution was allowed to establish contact in precisely the manner I suggested in my 17 Jan 06 e-mail to LT [redacted] I am certainly not accusing LCDR [redacted] of intentionally deceiving me - I believe it more likely that he was mistaken. His comments are, however, reflective of the fact that I have not been extended the same courtesy as the prosecution.

As things stand, I have not met with Mr. al Sharbi and cannot provide any information with respect to his desires concerning counsel, whether he wishes to proceed pro se, and/or whether he is presently competent to make these determinations. Although he has reportedly expressed an unwillingness to meet with me, I have no personal knowledge as to how "invitations" to meet with me have been presented or exactly how he has responded. Moreover, it appears that absent outside intervention, the JTF will continue to disparately treat the prosecution and defense in this case.

Based on the foregoing, I must respectfully request additional time (until at least the April trial term) before the commencement of commission proceedings in this case in order to continue my efforts to establish an attorney-client relationship with Mr. al Sharbi. I recently submitted a request to the JTF to permit Mr. al Sharbi's father and mother to telephone or visit him in an effort to encourage his cooperation with counsel (it is my understanding that delay for similar reasons was recently provided to counsel in another case). I hope to receive a response to this request soon. My fear is that if commission proceedings commence, as currently scheduled, the week of 27 Feb 06, Mr. al Sharbi will be moved, with or without his consent (likely the latter), to the commission building and that my first meeting with him will take place moments before we go on the record and discuss his elections concerning counsel. My hope is to avoid an "involuntary" meeting through the intervention of Mr. al Sharbi's family, or (less likely) the JTF cultural advisor. However, if these efforts are unsuccessful, the JTF persists in its refusal to provide me with access to Mr. al Sharbi in the camp, and our first meeting must be a "forced" meeting of some type, I think it would be far better, and far more likely to eventually yield a positive result, if the meeting took place well in advance of the "initial session" in Mr. al Sharbi's case.

If the JTF permits Mr. al Sharbi to have contact with his family, I will endeavor to arrange for such contact at the earliest possible date. I currently plan to travel to GTMO the week of 27 Feb and attempt again to meet with Mr. al Sharbi.

VR, WCK

[redacted]

From: Kuebler, William, LT, DoD OGC[redacted]
Sent: Tuesday, March 14, 2006 12:45 PM
To: [redacted]
Subject: RE: First Session in US v. al Sharbi
Attachments: Request for telephone contact between accused and Family.pdf

Sir,

1. I contacted LCDR[redacted]before leaving GTMO the week of our 8-5. He indicated that it would be best to have some idea of a timeline before working out the details of a plan for a visit by Mr. al Sharbi's parents. Shortly after returning to my office, I contacted Mr. al Sharbi's father to confirm his willingness to tr[redacted]Cuba. He indicated that only he (not Mr. al Sharbi's mother) would be coming. I also contacted Ms.[redacted]Victim-Witness Coordinator for the Office of the Appointing Authority. Ms.[redacted]graciously offered to provide support in obtaining necessary clearances for Mr. al Sharbi to travel to Cuba for the initial session in his son's case.

2. In the meantime, in response to the Presiding Officer's direction to consider whether I wanted to arrange a telephone call, I have come to the conclusion that it would be best to arrange a telephone call at the earliest opportunity. Ms.[redacted]once again, has graciously offered to assist. I provided her with a written request (addressed to the Appointing Authority) this morning, asking that Mr. al Sharbi be permitted to telephone his parents at the U.S. Consulate in Jeddah (the request is attached).

3. Finally, I am making arrangements for a trip to Jeddah, Saudi Arabia, the week of 10 April. Assuming all goes as anticipated with respect to the phone call and Mr. al Sharbi, Sr.'s planned travel to Cuba, my trip may be unnecessary, however, given the logistical hurdles involved, I wanted to start making appropriate arrangements in the event it appears that my traveling to Saudi Arabia will be beneficial in achieving the desired result in this matter.

4. In short, I believe I am making progress towards the objectives for which the Presiding Officer granted delay in this case, and am optimistic after speaking with Ms.[redacted]that everything can be in place for an initial session the week of 24 April. Accordingly, I would ask that the Presiding Officer not schedule an initial session prior to that week.

VR, WCK

-----Original Message-----
From: [redacted]
Sent: Tuesday, March 14, 2006 08:37
To: [redacted]
Subject: First Session in US v. al Sharbi

LT Kuebler, the Presiding Officer desires an update that answers the below. Please do this as soon as you can.

1. Please provide a quick update on where you are in terms of meeting/working with Mr. al Sharbi and discussing his counsel choices?

2. Is there any reason the Presiding Officer should not hold a session during the week of:

a. 3 Apr.
b. 24 Apr.

Please advise soonest.

FOR THE PRESIDING OFFICER

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

13 Mar 06

From: LT William C. Kuebler, JAGC, USN, Detailed Defense Counsel
To: Mr. John D. Altenberg, Jr., Appointing Authority for Military Commissions

Subj: REQUEST FOR TELEPHONE CONTACT BETWEEN ACCUSED AND FAMILY

Ref: (a) Military Commission Instruction No. 4
(b) Military Commission Instruction No. 8
(c) Phonecon w/ Ms. [redacted] of 9 Mar 06

1. Pursuant to reference (a), on or about 14 November 2005, I was detailed to represent Ghassan Abdullah Al-Sharbi, a Saudi national held at Naval Station Guantanamo Bay, Cuba, in connection with a charge referred for trial by Military Commission. Mr. Al-Sharbi has, however, declined repeated invitations to meet with me. As a result, I do not currently have an attorney-client relationship with Mr. Al-Sharbi, and fear significant impairment of my ability to represent him in the event he does not ultimately accept my representation and am I ordered to represent him in connection with Commission proceedings.

2. The Presiding Officer in Mr. Al-Sharbi's case originally scheduled an initial session for 1 March 2006. At a conference conducted pursuant to paragraph 5 of reference (b) (an "8-5 conference"), on 28 February 2006, I obtained a delay in the commencement of Commission proceedings to coordinate travel by Mr. Al-Sharbi's parents to Cuba in connection with the initial session of his Commission. As I explained to the Presiding Officer, I have been in contact with Mr. Al-Sharbi's father, who resides in Jeddah, Saudi Arabia. He has been very cooperative and has expressed his willingness to encourage his son to cooperate with counsel in this case. It is my hope that Mr. Al-Sharbi will respond positively to this encouragement. In addition, at the 8-5 conference, representatives of the Joint Task Force, Guantanamo Bay, indicated that it would be possible to arrange for a telephone call between Mr. Al-Sharbi and his family, provided the family is willing to travel to a nearby U.S. Embassy or Consulate. I was directed to consider whether I wanted to arrange a telephone call in addition to a visit. After giving the matter consideration and discussing it with Mr. Al-Sharbi's father, I believe it would be best to arrange for telephone contact between Mr. Al-Sharbi and his parents before a visit. There is a U.S. Consulate in Jeddah, Saudi Arabia, at which they can readily receive a telephone call from their son.

3. In light of the foregoing, and pursuant to reference (c), I respectfully request your assistance in facilitating telephone contact between Mr. Al-Sharbi and his parents at the earliest possible date. The purpose of the telephone call would be for Mr. Al-Sharbi's parents to speak with their son and encourage him to work with his detailed counsel to conduct a zealous defense in his Commission case. Participants in the telephone call would include Mr. Al-Sharbi's father, Abdullah Ghazi Al-Sherbi, and his mother, Khadija Abdulrahim Bukhari. I am able to contact Mr. Al-Sharbi's father by telephone or e-mail and can advise him of a date and time at which he and his wife should report to the U.S. Consulate in Jeddah.

4. Should you have any questions or concerns regarding this request, please contact me at [redacted]

W. C. KUEBLER

[redacted]

From: [redacted]h[redacted]]
Sent: Friday, March 24, 2006 1:42 PM
To: [redacted] Kuebler, William, LT, DoD OGC; [redacted]LT, DoD OGC; [redacted]
Cc: [redacted]
Subject: RE: Special Request for Relief IAW POM#4-3 for extension of Prosecution's discovery deadline ico US v al Sharbi

In the absence of defense objection, the Presiding Officer grants the prosecution's request for an extension.

BY DIRECTION OF THE PRESIDING OFFICER

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]

From: [redacted]
Sent: Friday, March 24, 2006 10:27 AM
To: [redacted]
Subject: RE: Special Request for Relief IAW POM#4-3 for extension of Prosecution's discovery deadline ico US v al Sharbi

LT Kuebler,

1. It appears there is no objection from the defense.

2. If you believe that what the prosecution has done or failed to do requires relief, you may file a motion. See POM # 4-3.

3. The Presiding Officer does not accept your characterization "no delay in the commencement of proceedings thus far can be fairly attributed to Mr. al Sharbi." If such is the case and that "fact" merits relief, you may file a motion.

FOR THE PRESIDING OFFICER

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]

Voice: [redacted]
Fax: [redacted]

From: Kuebler, William, LT, DoD OGC [redacted]
Sent: Friday, March 24, 2006 10:20 AM
To: [redacted]
Subject: RE: Special Request for Relief IAW POM#4-3 for extension of Prosecution's discovery deadline ico US v al Sharbi

Sir,

First, given my current status (i.e., I have been detailed, but do not represent Mr. al Sharbi), I do not believe I have standing to agree or object to the prosecution request.

Second, I would like to note for the record that since the prosecution has thus far been unable to discharge its initial discovery obligation to Mr. al Sharbi, and will not be able to do so before (at least) 1 May 2006, it does not appear that the prosecution has, at any time to date, been prepared to go forward in this case. Accordingly, no delay in the commencement of proceedings thus far can be fairly attributed to Mr. al Sharbi.

VR, WCK

-----Original Message-----
From: [redacted]
Sent: Thursday, March 23, 2006 17:44
To: [redacted]
Cc: [redacted]
Subject: RE: Special Request for Relief IAW POM#4-3 for extension of Prosecution's discovery deadline ico US v al Sharbi

Does the defense object?

[redacted]
Assistant

From: [redacted]
Sent: Thursday, March 23, 2006 5:31 PM
To: [redacted]
Cc: [redacted]
Subject: Special Request for Relief IAW POM#4-3 for extension of Prosecution's discovery deadline ico US v al Sharbi

Captain O'Toole,

In accordance with POM #4-3 the Prosecution makes a special request for relief for an additional

extension of the Prosecution's discovery deadline ico U.S. v al Sharbi. In regard to discovery, the Prosecution has worked with due diligence since the inception of this case. However, there is certain evidence that falls under the discovery order that is still pending approval for release and/or declassification from various originating agencies. Furthermore, a recent change to FBI policy requires an additional internal (to FBI) process that has delayed an anticipated release of most of the FBI documents. The Prosecution respectfully moves that the Presiding Officer grant an extension of the Prosecution's deadline for discovery to 1 May 2006 so that the Prosecution may obtain final release authority for the remaining evidence.

Very Respectfully,

LT[redacted]
Lead prosecutor
United States v al Sharbi

[redacted]

From: [redacted]
Sent: Wednesday, April 12, 2006 11:39 AM
To: [redacted]
Subject: Trial Order - US v. al Sharbi

The Presiding Officer advises he intends to conduct the following business at Guantanamo during the 24 April session in US v. al Sharbi:

1. Conduct an initial session.

2. Voir dire. Counsel shall be prepared to conduct voir dire and make challenges of the Presiding Officer.
3. Entry of pleas (if the defense requests to reserve entry of pleas and/or to reserve on motions, the Presiding Officer advises he will grant that request.)

4. The Presiding Officer will schedule specific case sessions during the term that best meet the ends of justice taking into account the needs of the parties, the Commission, and a full and fair trial.

BY DIRECTION OF THE PRESIDING OFFICER

[redacted]
Assistant to the Presiding Officers
Military Commission
[redacted]
Voice: [redacted]
Fax: [redacted]

AL SHARBI
REVIEW EXHIBIT 29

Review Exhibit (RE) 29 is curriculum vitae of Translators "A" and "B."

RE 29 consists of 7 pages.

Translators A and B have requested, and the Presiding Officer has determined that RE 29 not be released on the Department of Defense Public Affairs web site. In this instance Translators A and B's right to personal privacy outweighs the public interest in this information.

RE 29 was released to the parties in the case in litigation, and will be included as part of the record of trial for consideration of reviewing authorities.

I certify that this is an accurate summary of RE 29.

//signed//

[redacted]
Chief Clerk of Military Commissions

[redacted]

Military Commission Case No. 05-0005

UNITED STATES v. GHASSAN ABDULLAH AL SHARBI a/k/a Abdullah al Muslim a/k/a Abu Muslim	)))))))))	**Military Commission Members** Appointing Order No. 06-0004 FEB 0 1 2006

Appointing Order No. 05-0006 dated December 12, 2005, appointing military commission members in the above-styled case, is amended as follows:

Lieutenant Colonel [redacted] USMC, Second Alternate Member, is excused from participation in the case of United States v. Ghassan Abdullah Al Sharbi, pursuant to Paragraph (4)(A)(3) of Military Commission Order No. 1 dated August 31, 2005, due to his impending terminal leave and retirement effective May 1, 2006.

John D. Altenburg, Jr.
Appointing Authority
for Military Commissions

[redacted]

[redacted]

DEPARTMENT OF DEFENSE
OFFICE OF THE APPOINTING AUTHORITY
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1640

APPOINTING ORDER No. 06-0010 March 27, 2006

Appointing Order Numbers 05-0004, 05-0005, 05-0006, 05-0007, 05-0008, and 06-0001, appointing military commission members, are amended as follows:

Colonel [redacted] USAF, Member, is excused from participation in all military commission cases, pursuant to Paragraph (4)(A)(3) of Military Commission Order No. 1 dated August 31, 2005, due to his impending retirement.

John D. Altenburg, Jr.
Appointing Authority
for Military Commissions

cc:
Presiding Officer
Chief Prosecutor for Military Commissions
Chief Defense Counsel for Military Commissions
Detailed Military Defense Counsel

[redacted]

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

APPOINTING AUTHORITY

February 14, 2006

[redacted]

Dear Commander [redacted]

I have reviewed your request to be excused as a panel member for the Military Commissions. While I understand your concern regarding a possible career opportunity, your request is denied.

Serving as a member of the Military Commissions is an important duty. You were nominated by your service and selected to serve. Military Commission members are chosen based on their age, education, training, experience, length of service, and judicial temperament. They are absolutely critical to the process of affording all defendants a full and fair trial.

John D. Altenburg, Jr.
Appointing Authority
for Military Commissions

Index of Current POMs – April 23, 2006

See also: http://www.defenselink.mil/news/Aug2004/commissions_memoranda.html

Number	Topic	Date
1 - 2	Presiding Officers Memoranda	September 14, 2005
2 - 2	Appointment and Role of the Assistant to the Presiding Officers	September 14, 2005
3 - 1	Communications, Contact, and Problem Solving	September 8, 2005
4 - 3	Motions Practice	September 20, 2005
5 - 1 *	Spectators at Military Commissions	September 19, 2005
6 - 2	Requesting Conclusive Notice to be Taken	September 9, 2005
7 - 1	Access to Evidence, Discovery, and Notice Provisions	September 8, 2005
8 - 1	Trial Exhibits	September 21, 2005
9 - 1	Obtaining Protective Orders and Requests for Limited Disclosure	September 14, 2005
10 - 2	Presiding Officer Determinations on Defense Witness Requests	September 30, 2005
11	Qualifications of Translators / Interpreters and Detecting Possible Errors or Incorrect Translation / Interpretation During Commission Trials	September 7, 2005
12 - 1	Filings Inventory	September 29, 2005
13 - 1 *	Records of Trial and Session Transcripts	September 26, 2005
14 - 1 *	Commissions Library	September 8, 2005
(15)	There is currently no POM 15	
16	Rules of Commission Trial Practice Concerning Decorum of Commission Personnel, Parties, and Witnesses	February 16, 2006
(17)	There is currently no POM 17	
18	8-5 Conferences	March 21, 2006

* - Also a joint document issued with the Chief Clerk for Military Commissions.

Filings Inventory –

US v. al Sharbi

PUBLISHED:

Issued in accordance with POM #12-1.
See POM 12-1 as to counsel responsibilities.

This Filings Inventory includes only those matters filed since4 Nov 2005.

Prosecution (P designations)

Name	Motion Filed	Response	Reply	Status /Disposition/Notes 0R = First filing in series Letter indicates filings submitted after initial filing in the series. R=Reference	RE

Defense (D Designations)
Dates in red indicate due dates

Designation Name	Motion Filed / Attachs	Response Filed / Attachs	Reply Filed / Attachs	Status /Disposition/Notes 0R = First filing in series Letter indicates filings submitted after initial filing in the series. Ref=Reference	RE
				•	
				•	
				•	
				•	
				•	
				•	
				•	

PO Designations

Designation Name (PO)	Status /Disposition/Notes 0RIG = First filing in series Letter indicates filings submitted after initial filing in the series. Ref =Reference	RE
PO 1 – Scheduling	• Initial directions of PO w/ three attachments, Dec 21 05 • A. Announcement of Feb trial term, 19 Jan 06 • B. Email from DDC and PO reply regarding the Feb session (23 Jan 06) • C. Trial order for February term, 23 Jan 06 • D. Prosecution proposed trial schedule • NOTE. Defense requirement for trial schedule delayed until 1 Mar. • NOTE: 8-5 held at GTMO, 28 Feb. See RE 26.	ORIG – 8 A – 12 B – 17 C – 18 D – 21
	•	
PO 2 - Discovery	• Discovery Order, Dec 21 05. • NOTE: Prosecution request for extension of discovery granted until 27 Mar. • A. Modification to Discovery Order (3 Mar 06). • NOTE Prosecution given delay until 1 May. See RE 27.	ORIG – 9 A - 24
PO 3 - Jan-Feb schedule and Pro Se	• Email not requiring Jan 06 session and PO instructions – Dec 30	ORIG – 11
PO 4 – Voir Dire	• Presiding Officers biographical summary. • Note: PO sent supplement to Voir Dire materials, 22 Feb 06. This was made RE 22.	ORIG – 13
PO 5 – Motions	• 25 Jan APO email RE Preserving Objections and POM 4-3 and 12-1	ORIG - 19

PROTECTIVE ORDERS

Pro Ord #	Designation when signed	Signed Pages	Date	Topic	RE
	Protective Order # 1	1	23 Jan 06	ID of all witnesses	14
	Protective Order # 2	2	23 Jan 06	ID of investigators	15
	Protective Order # 3	3	23 Jan 06	FOUO and other markings	16
				•	

Prosecution (P designations)

Name	Motion Filed	Response	Reply	Status /Disposition/Notes 0R = First filing in series Letter indicates filings submitted after initial filing in the series. Ref=Reference Notes	RE
P – 1: Motion to Join Cases (6 Feb 06)	6 Feb	POM 4-3		OR: Motion filed Note: Motion withdrawn with no objection from defense. See RE 23	OR - 20

Inactive Section

Defense (D Designations)

Designation Name	Motion Filed / Attachs	Response Filed / Attachs	Reply Filed / Attachs	Status /Disposition/Notes 0R = First filing in series Letter indicates filings submitted after initial filing in the series. Ref=Reference	RE
				•	
				•	
				•	
				•	
				•	
				•	
				•	
				•	
				•	
				•	

Inactive Section

PO Designations

Designation Name (PO)	Status /Disposition/Notes 0R = First filing in series Letter indicates filings submitted after initial filing in the series. Ref =Reference	RE