

RECORD OF TRIAL

COVER SHEET

**IN THE
MILITARY COMMISSION
CASE OF**

UNITED STATES

V.

SUFYIAN BARHOUMI

ALSO KNOWN AS:

**ABU OBAIDA
UBAYDAH AL JAZA'IRI
SHAFIQ**

No. 050006

VOLUME ___ OF ___ TOTAL VOLUMES

**1ST VOLUME OF TRANSCRIPT
MARCH 2, 2006 SESSION
(NO REDACTIONS)**

United States v. Sufyan Barhoumi, No. 050006

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.

<u>VOLUME NUMBER</u>	<u>SUBSTANCE OF CONTENTS</u>
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Directive; Military Commission Instructions; Appointing Authority Regulations; Presiding Officer Memoranda—includes DoD rescinded publications)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: <i>Rasul v. Bush</i> , 542 U.S. 466 (2004); <i>Johnson v. Eisentrager</i> , 339 U.S. 763 (1950); <i>In re Yamashita</i> , 327 U.S. 1 (1946); <i>Ex Parte Quirin</i> , 317 U.S. 1 (1942); <i>Ex Parte Milligan</i> , 71 U.S. 2 (1866)
III ¹	DoD Decisions on Commissions including Appointing Authority orders and decisions, Chief Clerk of Commissions documents
IV ¹	Federal Litigation in <i>Hamdan v. Rumsfeld</i> , at U.S. Supreme Court and D.C. Circuit
V ¹	Federal Litigation at U.S. District Courts Not Filed by Counsel in <i>United States v. Barhoumi</i>
VI ¹	Selected 2005 filings and U.S. District Court decisions in <i>United States v. Barhoumi</i>
VII ¹	Selected 2006 filings and U.S. District Court decisions in <i>United States v. Barhoumi</i>

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

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

VOLUME I OF TRANSCRIPT

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March 2, 2006

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*The commissions hearing was called to order at 1458, on 2
March 2006.*

Presiding Officer: This military commission is called to
order.

Would the prosecutor please state the
jurisdictional basis for this military commission.

PROS: This military commission is appointed by Appointing
Order 05-0007, dated December 16-th, 2005, as
amended by Appointing Order 06-0005, dated
February 1 2006; copies of which have been
furnished to the Presiding Officer, counsel, and
the accused, and which have been marked -- excuse
me -- as Review Exhibits 5 and 30, respectively.

The Presidential determination that the accused may
be subject to trial by military commission has been
marked as RE-1 and has been previously shown to the
defense.

1
2 The charges have been marked as RE-2 and have been
3 properly approved by the Appointing Authority and
4 referred to this commission for trial. The
5 approval of the charges and their referral to this
6 commission have been marked as RE 3 and 4,
7 respectively.

8
9 The prosecution caused a copy of the charges in
10 English and Arabic, the accused's native language,
11 to be served on the accused on November 30th, 2005.

12
13 The prosecution is ready to proceed in the
14 commission trial of the *United States v. Sufyian*
15 *Barhoumi*.

16
17 The accused, the Presiding Officer, and all
18 detailed counsel are present.

19
20 The court reporter has been detailed reporter for
21 this commission and has been previously sworn.
22

1 Security personnel that have been detailed for this
2 commission have been previously sworn.

3
4 Presiding Officer: Thank you. I have been designated as the
5 Presiding Officer of this military commission by
6 the Appointing Authority, and I have been
7 previously sworn.

8
9 Before continuing with the preliminary matters,
10 it's necessary for me to inquire into the accused's
11 need for an interpreter-translator.

12
13 Mr. Barhoumi, are you able to speak and understand
14 English?

15
16 ACC: I do not need a translator -- I do need a
17 translator.

18
19 Presiding Officer: Well, is there a translator with you now
20 in the courtroom that speaks the language that you
21 also speak?

1 ACC: Yes. He is sitting next to me.

2

3 Presiding Officer: Very well. Sir, will you please tell me
4 if you are the defendant's translator.

5

6 Translator: Yes, I am, sir.

7

8 Presiding Officer: And do you object to your stating your
9 name in court?

10

11 Translator: I would rather not to, sir.

12

13 Presiding Officer: Very well. Would you please write your
14 name on a piece of paper?

15

16 *The translator did as directed.*

17

18 Presiding Officer: Very well. Bailiff, will you please
19 convey that to the court reporter for insertion
20 into the court as the next review exhibit.

21

22 *The bailiff did as directed.*

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Presiding Officer: And, sir, are you qualified to interpret
and to translate into the accused's native
language?

Translator: Yes, I do, sir.

Presiding Officer: And have you been previously sworn?

Translator: No, I haven't, sir.

Presiding Officer: Very well. Will the prosecution please
swear in the translator.

The translator was sworn.

Presiding Officer: Will the prosecutor please state by whom
you have been detailed and your legal
qualifications.

PROS: All members of the prosecution have been detailed
to this military commission by the Chief

1 Prosecutor. All members of the prosecution are
2 qualified under Military Commission Order 1,
3 Paragraph 4(b), and we have been previously sworn.
4 No member of the prosecution has acted in any
5 manner which might tend to disqualify us in this
6 proceeding.

7
8 The detailing document has been marked as RE-11.

9
10 The prosecution also has sitting at prosecution
11 table an assistant who will assist the prosecution
12 but will not be representing the government.

13
14 Presiding Officer: Thank you. Will the military defense
15 counsel please state by whom you have been detailed
16 and your legal qualifications.

17
18 DC: Yes, sir. I have been detailed to this military
19 commission by the Chief Defense Counsel. I am
20 qualified under Military Commission Order 1,
21 Paragraph 4(c), and I have previously been sworn.
22 I have not acted in any manner, which might tend to

1 disqualify me in this proceeding.

2
3 The document detailing counsel has been marked as
4 Review Exhibit 6.

5
6 Presiding Officer: Thank you. Mr. Barhoumi, pursuant to
7 Military Commission Order 1, Captain Faulkner, who
8 is a military lawyer, has been assigned to
9 represent you as your detailed defense counsel.
10 Detailed defense counsel are provided to you at no
11 expense.

12
13 You may also request a different military lawyer to
14 represent you; and if the military lawyer you
15 request is reasonably available, that lawyer would
16 be appointed to represent you free of charge.

17
18 In addition, you may be represented by a qualified
19 civilian lawyer. However, a civilian lawyer would
20 represent you at no expense to the United States.

21
22 A civilian lawyer whom you wish to represent you

1 must be a U.S. citizen; admitted to the practice of
2 law in a state, district, territory, or possession
3 of the United States or a federal court; may not
4 have been sanctioned or disciplined for any
5 relevant misconduct; be eligible for a secret
6 clearance; and agree in writing to comply with the
7 orders, rules, and regulations of these military
8 commissions. If a civilian lawyer represents you,
9 your detailed defense counsel will also continue to
10 represent you, and your detailed defense counsel
11 will be present during the presentation of all of
12 the evidence.

13
14 Do you understand what I've just told you with
15 respect to your rights to counsel?
16

17 ACC: Yes, I do.
18

19 Presiding Officer: Thank you. Do you have any questions
20 about your rights to counsel before this
21 commission?
22

1 ACC: I do not have any questions.

2

3 Presiding Officer: Thank you. Do you desire to be
4 represented by Captain Faulkner, who is your
5 detailed defense counsel?

6

7 ACC: I currently need more time, so I am able to trust
8 him. I've only known him for a short period of
9 time. I will need further time.

10

11 Presiding Officer: I understand. Do you desire to be
12 represented by any other counsel?

13

14 ACC: Which attorney do you mean?

15

16 Presiding Officer: Well, it would be up to you to select or
17 request another military counsel or a civilian
18 counsel who is qualified.

19

20 ACC: I request a civilian attorney.

21

22 Presiding Officer: Very well. I understand that you wish to

1 have a civilian attorney by the name of Lee Foreman
2 represent you before this commission. Is that
3 correct?

4
5 ACC: Yes.

6
7 Presiding Officer: Have you had the opportunity to speak
8 with Mr. Foreman?

9
10 ACC: I did not understand the question.

11
12 Presiding Officer: The civilian attorney, Mr. Lee Foreman
13 whom you just indicated that you would like to
14 represent you, have you met Mr. Foreman?

15
16 ACC: No, I have not spoken with him at all.

17
18 Presiding Officer: Have you corresponded with him in
19 writing?

20
21 ACC: No, I have not.

1 Presiding Officer: Mr. Barhoumi, I believe you know that
2 this session was originally scheduled more than a
3 month ago to address a number of issues; but in
4 deference to you, I've delayed consideration of all
5 those other issues until the next session of the
6 commission and I've limited your time in this
7 commission room today to only the matters of
8 discussing your counsel. I've advised you of your
9 rights to counsel, and I'll simply conclude by
10 telling you that Captain Faulkner is your detailed
11 defense counsel.

12
13 I will not require you to elect additional counsel
14 today. However, I will tell you that you must work
15 with your detailed defense counsel to obtain other
16 qualified counsel, including Mr. Foreman, whom you
17 desire to represent you and to have that counsel
18 present at the next session of this commission, which
19 is presently scheduled to begin on April the 3rd.

20
21 Do you understand what I've just described for you?
22

1 ACC: Yes.

2

3 Presiding Officer: Thank you. Captain Faulkner, I want to
4 ensure that you understand that you and any other
5 qualified counsel are to be prepared for the next
6 session of this commission and be present at that
7 session prepared to address the issues that were
8 originally scheduled for today, which were delayed
9 in response to your request on behalf of
10 Mr. Barhoumi. These would include voir dire for
11 the Presiding Officer, issuing any challenge
12 against the Presiding Officer, addressing
13 protective orders, addressing the motion to abate
14 which you've filed, raising objections to
15 discovery, and otherwise complying with the
16 discovery and other orders of this commission.

17

18 Do you have any questions?

19

20 DC: No, sir.

21

22 Presiding Officer: Thank you. I'd also -- perhaps it goes

1 without saying -- I do want to at least place it on
2 the record that -- and I'm sure that you understand
3 this -- that it's your responsibility to help
4 Mr. Barhoumi to obtain counsel of his choosing.
5 He's indicated that he would like to have a
6 civilian counsel and specifically Mr. Foreman. I
7 don't know that Mr. Foreman is yet on the approved
8 list, so I view it as your responsibility to assist
9 Mr. Foreman in maintaining or achieving
10 qualifications, facilitate Mr. Barhoumi's
11 communications with Mr. Foreman in order to
12 determine whether he is able and willing to
13 represent him before the commissions. And, in
14 addition, should Mr. Barhoumi choose to exercise
15 his right to have additional military counsel,
16 assist him in obtaining that counsel as well.

17
18 Is that your understanding?

19
20 DC: Yes, sir.

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22 Presiding Officer: And you're able to do that?

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DC: I am, sir.

Presiding Officer: Mr. Barhoumi, do you understand that Captain Faulkner will help you to retain the services of Mr. Foreman and additional military counsel if you choose to have one or both of those lawyers join your defense team?

ACC: Yes, I understand.

Presiding Officer: Do you have any questions?

ACC: No, I don't. Thank you.

Presiding Officer: Captain Faulkner, do you have any questions about how we are to proceed here?

DC: I do not, sir.

Presiding Officer: Very well. Does the prosecution have anything else to accomplish today?

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PROS: The prosecution does not, sir.

Presiding Officer: Captain Faulkner, anything further?

DC: Sir, if we could address two brief subjects.

Presiding Officer: Yes.

DC: I talked briefly with the prosecution this morning, and it is their understanding that Protective Order 3, which is at RE-17, would prohibit the defense team from disclosing FOUO or law enforcement sensitive materials to the accused. They indicated to me in this brief conversation that they believe, as do I, that I should be able to share those materials with the accused. And if there's no objection from the prosecution, if you could order that that -- that that is okay for me to share those materials with Mr. Barhoumi, I would appreciate it.

1 Presiding Officer: Well, what I would ask you to do, if both
2 sides are in agreement to that, then submit
3 something to me with your concurrences and I will
4 consider that.

5
6 DC: Will do, sir.

7
8 One other issue, as you are aware, Mr. Barhoumi was
9 informed late Tuesday that his father had passed
10 away.

11
12 Presiding Officer: Yes.

13
14 DC: And the defense would like to know if there is
15 anyway that you can allow for him to make a brief
16 phone call to his family in Algeria with the --
17 I've already checked and the phone line that is
18 adjacent to the room where they keep Mr. Barhoumi
19 in the commission house does have a line available,
20 and that line is able to call Algeria, and there
21 could be a government representative and translator
22 present to make sure that nothing untoward was

1 passed over the phone lines or anything like that.
2 He just wanted to check on the status and get some
3 more details on his father, sir.

4
5 Presiding Officer: I understand. It was precisely for that
6 reason that I deferred all of the issues that we
7 were to cover today in deference to Mr. Barhoumi's
8 personal situation.

9
10 Have you approached the chain of command that is in
11 charge of security and the like to facilitate this
12 phone call?

13
14 DC: I have not as of yet, sir.

15
16 Presiding Officer: Let me send you to those who are in
17 charge of the phones and make other security
18 arrangements and approach them to do that.

19
20 If you are not able -- well, let me just send you
21 to them and see what the answer is. I don't know
22 whether that's something they can do or not. I

1 simply don't have any information before me.

2
3 So let me ask you to go and see those people; and
4 then if you're not satisfied, go to the prosecution
5 and see if there is something else that needs to be
6 raised to my attention.

7
8 DC: Okay. We'll do that, sir. Thank you.

9
10 Presiding Officer: Very well. Anything else?

11
12 DC: No, sir.

13
14 PROS: No, sir.

15
16 Presiding Officer: This commission is in recess.

17
18 *The commissions hearing recessed at 1514, 2 March 2006.*

**AUTHENTICATION OF
FINAL SESSION TRANSCRIPT**

in the case of:

United States v. Sufyian Barhoumi

a/k/a/ Abu Obaida

a/k/a Ubaydah al Jaza'iri

a/k/a Shafiq

This is to certify that the Pages 1 through 19 are an accurate and verbatim transcript of the proceedings held in the above styled case on March 2, 2006.



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

20 March 2006

DATE