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RECORD

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Sessions:

On 27 August 2004 1

Introduction of Counsel: 1

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*The Commissions Hearing was called to order at 0930,
27 August 2004.*

PO: This military commission is called to order.

AP (1stLt XXXX): This military commission is convened by
Appointing Order Number 04-002, dated 28 June --

DC (LtCol Shaffer): Counsel -- sir, if I may correct
counsel. It is 04-0002, just to make sure we have
an accurate record.

AP (1stLt XXXX): Appointing Order Number 04-0002 dated
28 June 2004; copies of which have been furnished
to the members of the commission, counsel, and the
accused and which will be marked as Review Exhibit
1 and attached to the record. The Presidential
determination that the accused may be subject to
trial by military commission has been marked as
Review Exhibit 2 for inclusion in the record. At
this time I am providing a copy of Review Exhibits
1 and 2 to the bailiff to be provided to the court.

The charges have been properly approved by the
appointing authority and referred to this
commission for trial. The prosecution caused a
copy of the charge in English and Arabic, the
accused's native language, to be served on the
accused on 12 August 2004. The prosecution is
ready to proceed in the commission trial of United
States v. Ibrahim Ahmed Mahmoud al Qosi. The
accused, commission members, and alternate
commission member, named in the appointing order
and detailed to this commission are present. All
detailed counsel are present. Gunnery Sergeant XXXX
has been detailed reporter for this
commission and has been previously sworn.

Security personnel have been detailed for this
commission and have been previously sworn. The
interpreters have been detailed for this commission
and have been previously sworn. The full names of
the interpreters who are providing interpretation
for today's hearing are contained in Review Exhibit

3, a copy of which has been previously provided to the defense and the reporters for inclusion in the record.

PO: Previously marked, shown to counsel, and signed is RE 4, the protective order, concerning the identity of the translators. I have been designated as the presiding officer of this military commission by the appointing authority and have previously been sworn. The other members of the commission and alternate member will now be sworn.

The members were sworn.

The commission is assembled.

Prosecution, defense, let me discuss the duties of the commission translators. The duty of a translator is to provide an accurate translation of everything that is said. These duties are mechanical to only translate the words spoken. It is not the duty of the translator to explain, to repeat questions, or to clarify or summarize. So if a witness or the accused said I did not understand the question, that is the answer the translator would provide and the translator would not attempt to explain. Even if the translator is certain that someone misspoke, said something wrong, the translator is obligated to provide the answer given because the translator is only to translate the words spoken and not to explain or correct errors. All of us can assist the translator in performing this function by speaking clearly, loudly, in short bursts, and giving an opportunity for the question to be translated before following up.

Does the accused, or either side, have any questions?

P (LtCol XXXX): No, sir.

DC (LtCol Shaffer): No, sir.

PO: Does your client have any questions?

DC (LtCol Shaffer): No, sir.

PO: Before continuing with preliminary matters, let's talk about your client's need for an interpreter, or translator.

Mr. al Qosi, do you understand and speak English?

ACC: I speak a little English but I am need for an interpreter.

PO: What language do you speak, sir?

ACC: Arabic.

PO: As I said earlier, we have translators. Do you understand the language they are speaking?

ACC: Yes.

PO: Before we proceed I note that Mr. al Qosi' clothing is provided by the United States. The government is responsible for his clothing not Mr. al Qosi. Is that right, Colonel Shaffer?

DC (LtCol Shaffer): That's right, sir.

PO: Is that right, Colonel XXXX?

P (LtCol XXXX): Yes, sir.

PO: Trial, tell me about your team?

P (LtCol XXXX): Gentlemen, I am Lieutenant Colonel XXXX. Along with Lieutenant XXXX, U.S. Navy, and First Lieutenant XXXX U.S. Air Force. We have been detailed to the military commission by the chief prosecutor.

PO: I note again for the record when I make hand signs at counsel, members, or the accused I am telling them to slow down. Carry on, please.

P (LtCol XXXX): All members of the prosecution are qualified under Military Commission Order Number 1, Paragraph 4(B) and have previously been sworn. No members of the prosecution have acted in any manner which might tend to disqualify us in this proceeding. The detailing document is now being marked as Review Exhibit 5 and is being provided to the bailiff. We would note that the detailing document refers to First Lieutenant XXXX as a captain; but at present he is, in fact, a first lieutenant.

PO: Okay. Mr. al Qosi, I want to talk to you about your rights to counsel. Currently, pursuant to Military Commission Order 1, you are represented by Lieutenant Colonel Shaffer. She is your detailed defense counsel. She is provided to you at no expense. You may request another military lawyer to represent you. If the person you request is reasonably available, he or she would be appointed to represent you free of charge. If you get your requested lawyer, normally your detailed counsel, Lieutenant Colonel Shaffer, would be excused. However, you could ask that she be allowed to stay on the case. You may also be represented by a civilian lawyer. This lawyer would be at no expense to United States Government. She or he would have to be a United States citizen, certified to practice law in the United States, eligible for a secret clearance, and agree to comply with the rules of the commission. If a civilian lawyer represents you, Colonel Shaffer will stay on the case.

Do understand what I just said?

ACC: Yes.

PO: Do you have any questions about your rights to counsel before this commission?

ACC: No, I do not.

PO: Do you wish to be represented by Lieutenant Colonel Shaffer?

ACC: Yes.

PO: Do you wish to be represented by anyone else?

ACC: [No response]

PO: Mr. al Qosi, I apologize for interrupting --

ACC: If it is someone other than her, my answer is no; but if it is someone who would assist her, the answer is yes.

PO: Thank you, Mr. al Qosi.

ACC: If someone would assist her, that would be something or a decision left up to her.

PO: Thank you, Mr. al Qosi.

Lieutenant Colonel Shaffer, I am going to listen to that as a request for assistant detailed counsel and I presume that you will tell me about that shortly.

DC (LtCol Shaffer): Yes, sir. I would just make it clear for the record that my client has left any requests for assistant counsel up to me, his detailed counsel.

Good morning, members, I am Lieutenant Colonel Sharon Shaffer, United States Air Force. I have been detailed to this military commission by the chief defense counsel. I am qualified under Military Commission Order Number 1, Paragraph 4(C) and I have been previously sworn. I have not acted in any manner that might tend to disqualify me in this proceeding. I have previously provided my detailing documentation to the court reporter, 12 copies, and that should be marked as the next review exhibit which I believe is Number 6.

Sir, if at this time if I might I would like to detail my history of involvement in this commission proceeding. As I mentioned I was detailed by the chief defense counsel. That detailing occurred on the 3rd of February of this year. On the 11th of February of this year, I sent a request, a by name request, for appointment of an assistant defense counsel to the chief defense counsel. That request and copies have been previously provided to the court reporter and should be marked as Review Exhibit 7.

Somewhere in the chain of command that request was denied. On the 23rd of February of this year the charge against my client in its original form was preferred. On the 31st of May of this year, I was verbally informed by the assignments folks within the Air Force Judge Advocate General's Corps that I was selected for reassignment and that I would be leaving my duties as the Deputy Chief Defense Counsel in the Office of Military Commissions. On the 28th of June of this year the charge against my client was referred to a military commission. On the 14th of July, of this year, I received my physical permanent change of station orders from the Judge Advocate General's Corps. These orders, and copies, have been previously provided to the court reporter and should be marked as Review Exhibit 8.

On the 28th of July, of this year, I reported in to my new assignment. On the 29th of July, this year, I sent an e-mail to the presiding officer in the military commissions, Colonel Brownback. I stated in the e-mail that there was an ethical conflict that now existed and that I would have to suspend all of my activities on the defense of Mr. al Qosi. That e-mail, and copies, have been previously provided to the court reporter and should be marked as Review Exhibit 9.

On the 30th of July -- as part of my request and suspending my activities on the case, on the 30th of

July, I sent a request to the Chief Defense Counsel requesting to withdraw from Mr. al Qosi's defense. Based on the fact that I was being moved into a new full time position as the Deputy Chief Trial Judge of the Air Force, a full time duty, and the fact that I am the only resource on my defense team I felt at the time that it was in Mr. al Qosi's best interest for me to request to withdraw.

I was also concerned that under my ethical rules as a member of the Michigan bar, and under the Air Force uniform rules of professional conduct, I felt that Mr. al Qosi deserved conflict free counsel who could devote full time to his case. I was also concerned that with anticipation of once again being certified as a judge that in accordance with the Air Force Uniform Code of Judicial Conduct for trial and appellate judges specifically Canon Four, that I would not ethically be able to practice law except for in the performance of my judicial duties.

On the 6th of August of 2004, I received an e-mail from the presiding officer indicating that based on my assertions and my new military duties that he was hereby suspending all actions and deadlines in my case. That e-mail has been previously provided, with copies, to the court reporter and should be marked as the next Review Exhibit 10, at this time.

On the 17th of August of this year I received e-mail notification, via XXXX, through XXXX, that the appointing authority directed a hearing in Mr. al Qosi's case. That e-mail, and copies, has been previously provided to the court reporter and should be marked as Review Exhibit 11.

On the 19th of August I travelled down to Guantanamo Bay with a memorandum from my new supervisor, the Air Force Chief Trial Judge, authorizing me to appear before the commission to place my pending request to withdraw on the record. That memorandum, and copies, have been previously provided to the court reporter and should be marked

as Review Exhibit 12.

On the 25th of August this week, at approximately 1245, I received a telephone call from the Chief Trial Judge of the Air Force. I was informed at that time that while I remained in my new position as the Air Force Deputy Chief Trial Judge I am now given authority by the Judge Advocate General of the Air Force to devote my full time and attention to Mr. al Qosi's defense. In addition to avoid the ethical concerns under Cannon Four that I previously mentioned I will not be certified as a judge until such time as my representation of Mr. al Qosi is complete.

The conflict in so far as my time and the conflict as duties are concerned is now resolved. My own issues with lack of resources to adequately prepare this case are not. Nonetheless, at this time I hereby provide notice to the commission and to the chief defense counsel that I am withdrawing my request to withdraw my representation of Mr. al Qosi. I would just state for the record as I previously mentioned on the 11th of February I did request an assistant counsel that was denied. The issue regarding resources are still outstanding.

PO: Can we get -- we will get into the resources -- don't sit down -- we will get to the resources in just a second.

DC (LtCol Shaffer): Yes, sir.

PO: The other members of the commission are not as familiar with the law as they are going to be shortly. Would you agree, both you and Colonel XXXX that for a lawyer the term "ethics" in connection with her or his law license is of grave import?

(LtCol XXXX): Yes, sir.

DC (LtCol Shaffer): Absolutely, sir.

PO: A lawyer as a general rule who violates professional ethics propounded either by the service, the Air Force, or in your case the Michigan state bar, can have her law license taken away?

DC (LtCol Shaffer): I would agree with that, sir.

P (LtCol XXXX): Yes, sir.

PO: Thank you. We are still not going to hit the resources yet. Colonel Shaffer, you were a trial judge in a prior assignment; is that correct?

DC (LtCol Shaffer): Immediately prior to my duties as the Deputy Chief Defense Counsel from 2000 to 2003.

PO: Would you agree that being a trial judge is a great job?

DC (LtCol Shaffer): It is.

PO: I will ask you: In all candor do you want to be a trial judge?

DC (LtCol Shaffer): Yes, sir.

PO: So you want this assignment that you are not going to actually be able to take right now; right?

DC (LtCol Shaffer): Yes, sir.

PO: Is that in any way your desire to take up that assignment going to inhibit or hinder or any word you want to think of your zealous representation of Mr. al Qosi?

DC (LtCol Shaffer): Not in any way, sir. I will provide very zealous representation of Mr. al Qosi.

PO: Now, the members and I have looked at your table and see that you don't have an assistant. Have you provided another request to Colonel Gunn for an assistant?

DC (LtCol Shaffer): Request via e-mail and verbal requests, sir. As the former Deputy Chief Defense Counsel the resource issue within the office did not rest exclusively with my team.

PO: Members, if it sounded like I was saying that Colonel Gunn, who is the Chief Defense Counsel, has got a pot of defense counsel that he is holding in XXXX hostage, I wasn't saying that. However, he is the one to whom she must first forward the request.

DC (LtCol Shaffer): Sir, what I was trying to say is that in my capacity as the deputy my concern in asking for resource to the chief defense counsel was not only on behalf of myself but on behalf of the other defense teams that I supervised.

PO: Okay. Anything else you want to tell us about your detailing history?

DC (LtCol Shaffer): No, sir.

PO: Thank you. It appears that all personnel have the requisite qualifications and that all personnel have been sworn.

Trial, what is the charge sheet marked as?

P (LtCol XXXX): Sir, we will be up to -- this is marked as RE 7 and will be -- I believe we are up to 13 now; is that right?

PO: Please attach it to the record as 13.

P (LtCol XXXX): I am handing a copy to the bailiff at this time.

PO: Have you received a copy of the charges, Colonel Shaffer?

DC (LtCol Shaffer): Yes, I have.

PO: All parties to the trial have received a copy of the charges. Prosecutor, announce the general nature.

P (LtCol XXXX): The general nature of the Charge in this case is conspiracy to attack civilians, to attack civilian objects, to commit murder by an unprivileged belligerent, to destroy property as an unprivileged belligerent and terrorism.

PO: Okay, members, and the alternate member, please open your folder and take a moment to review the charge.

The members did as directed.

Have all members had an opportunity to review the charge sheet and the appointing order? Apparently so.

Is the name, rank and identifying data of each commission member and the alternate, properly reflected on the appointing order? Apparently so.

Does either party want the charges read?

P (LtCol XXXX): Prosecution does not, sir.

DC (LtCol Shaffer): Defense waives the reading.

PO: The reading of the charges may be omitted.

Colonel Shaffer, on or about the 29th of July, based on conflict concerns, you suspended your activities in this case, and on or about the 6th of August I suspended all activities in this case; is that correct?

DC (LtCol Shaffer): That's correct, sir.

PO: From the 6th -- well from the 29th of July up until -- what did you say it was, two days ago?

DC (LtCol Shaffer): That's correct, sir.

PO: Have you worked on this case?

DC (LtCol Shaffer): No, sir.

PO: There has been a great deal of voir dire material generated in this case. Have you had an opportunity to review that so that you are prepared at this time to conduct voir dire?

DC (LtCol Shaffer): No, sir.

PO: Do you contest that with all the voir dire material we got?

P (LtCol XXXX): No, sir.

PO: Both of you before Colonel Shaffer leaves the island you make sure that she's got all the voir dire material that we've prepared. You are generally now familiar with how much of a volume there is; correct?

DC (LtCol Shaffer): Yes, sir.

PO: When do you think you would be able to conduct voir dire effectively?

DC (LtCol Shaffer): Not later than the 3rd September, sir.

PO: Next Friday, is that when that is?

DC (LtCol Shaffer): Yes, sir.

PO: Both sides agree that come Sunday, the 29th of August the top floor, or the top deck for you, Lieutenant XXXX, and maybe even Colonel XXXX, will be extensively renovated and that all of the electronic stuff in this building is going to go down. You agree?

P (LtCol XXXX): That's correct, sir.

DC (LtCol Shaffer): Yes, sir.

PO: Given that, have you two discussed the possible date that we can do it since we can't do it when she will be ready?

P (LtCol XXXX): Yes, sir. We discussed the 4th of October.

PO: And you agree to that?

DC (LtCol Shaffer): That's correct, sir.

PO: And you have coordinated that date with the people that we are going to bring -- who are going to come visit; right, namely the people here at Guantanamo?

P (LtCol XXXX): I have discussed it with them; yes, sir.

PO: Coordinated or discussed?

P (LtCol XXXX): I don't know that it's been coordinated with everybody at this point --

PO: But you will do that?

P (LtCol XXXX): Yes, sir.

PO: Okay. Colonel Shaffer, will you be able to furnish -- excuse me. Will you be about to furnish notice of all non-evidentiary motions by 15 September?

DC (LtCol Shaffer): Yes, sir.

PO: Both sides then agree with notice due 15 September, motions due 1 October, response from prosecution 15 October, reply from defense 22 October?

DC (LtCol Shaffer): Yes, sir.

P (LtCol XXXX): Yes, sir.

PO: Hearing on or about the 1st of November?

P (LtCol XXXX): Yes, sir.

DC (LtCol Shaffer): I believe so, sir. We didn't discuss a hearing date, so.

PO: If you can't comply with the one in November, I am sure I you will tell me when I see you on the 4th of October.

DC (LtCol Shaffer): Yes, sir.

PO: I understand that both sides have agreed on a tentative, on a proposed, trial date of 7 December; is that correct?

P (LtCol XXXX): Yes, sir.

DC (LtCol Shaffer): Yes, sir.

PO: This trial date on Colonel Shaffer's behalf is based on her getting immediately within DoD terms, her ADC and her paralegal; is that correct?

DC (LtCol Shaffer): That's correct, sir.

PO: If either you don't get the assistance you requested or something that we don't know about happens, as often does, both sides have then agreed to the next available trial date sometime around the 8th of February; is that correct?

P (LtCol XXXX): Yes, sir.

DC (LtCol Shaffer): Yes, sir.

PO: Be seated.

Colonel Shaffer, you are not going to conduct voir dire until the 4th of October. However, I must advise you that other counsel are going to be submitting motions to the appointing authority concerning the proper standard to be used for

granting a challenge for cause. Some counsel have proposed a variant on the 912(N) implied bias standard. Since these materials will be reaching Mr. Altenburg on or about the 10th of September, I offer you the opportunity to provide your views on the matter to opposing counsel and the commission by 7 September and Colonel XXXX to send what you say and his reply to Mr. Altenburg by the 10th of September. I realize that it is not normal to challenge a standard before you voir dire, and I am not requiring you to do so. Okay?

DC (LtCol Shaffer): Understand, sir.

PO: Any problems with discovery or access to witnesses that we can handle right now?

P (LtCol XXXX): No, sir.

DC (LtCol Shaffer): Nothing that can be addressed at this time, sir.

PO: Prior to 15 September, both sides will file with the commission certain briefs. These briefs will address the meaning of the words in MCO Number 1, Section 4(A) (5)(D), "an interlocutory question which must be certified to the appointing authority for his decision because the disposition of the motion would affect a termination of the proceedings." We would like to know what you all think those words mean. Any questions?

P (LtCol XXXX): No, sir.

DC (LtCol Shaffer): No, sir.

PO: Counsel for both sides understand the protected information provisions of MCO-1?

P (LtCol XXXX): Yes, sir.

DC (LtCol Shaffer): Yes, sir.

PO: You understand that you got to tell me as soon as

possible if you are going to offer stuff like that so I can close the proceedings?

P (LtCol XXXX): Yes, sir.

DC (LtCol Shaffer): Yes, sir.

PO: Any issue relating to protection of witnesses that we got to take up?

P (LtCol XXXX): No, sir.

DC (LtCol Shaffer): No, sir.

PO: And both sides understand that we got a duty to protect witnesses so you both have to tell me about any concerns in that regard?

P (LtCol XXXX): Yes, sir.

DC (LtCol Shaffer): Yes, sir.

PO: And if possible please make sure, Colonel Shaffer, that -- I don't know what e-mail address you will be using for commission matters -- please provide that to all concerned as soon as you know.

DC (LtCol Shaffer): I will do that, sir.

PO: Thank you. Okay, members we are going to be going through voir dire at a later date. I will be giving you instructions then.

Right now, what I am going to tell you is, two things: don't discuss the case with anyone; and always the most important instruction in any case, we are going to decide this case solely on the evidence we receive in this courtroom and the law that is presented to us and that I instruct you upon in this commission room. Any questions? Apparently not.

Anything further from either side before we recess?

P (LtCol XXXX): No, sir.

DC (LtCol Shaffer): No, sir.

PO: Members? Apparently not.

The court is in recess.

The Commissions Hearing recessed at 1030, 27 August 2004.

UNOFFICIAL TRANSCRIPT

AUTHENTICATION OF COMMISSIONS PROCEEDINGS

in the case of

United States v. IBRAHIM AHMED MAHMOUD AL QOSI

a/k/a Mohammed Salih Ahmed
a/k/a Abu Khobaib al Sudani

This is to certify that Pages _____ through _____ are an accurate and verbatim transcript of the foregoing proceedings.

*Peter E. Brownback III
Colonel, U.S. Army
Presiding Officer*

Date



No. 040002

UNITED STATES)	
)	
v.)	
)	Military Commission Members
IBRAHIM AHMED MAHMOUD AL QOSI)	
a/k/a Mohammed Salih Ahmed)	
a/k/a Abu Khobaib al Sudani)	JUN 28 2004

The following officers are appointed to serve as 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 of the Military Commission will serve until relieved by proper authority.

In the event of incapacity, resignation, or removal of a member who has not been designated as the Presiding Officer, the alternate member is automatically appointed as a member.

- Colonel Peter E. Brownback, III, USA (Retired), Presiding Officer
- Colonel [REDACTED], USMC, Member
- Colonel [REDACTED], USMC, Member
- Colonel [REDACTED], USAF, Member
- Lieutenant Colonel [REDACTED], USAF, Member
- Lieutenant Colonel [REDACTED], USA, Alternate Member

John D. Altenburg, Jr.

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

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THE WHITE HOUSE
WASHINGTON

OFFICE OF THE
SECRETARY OF DEFENSE

2003 JUL 14 PM 5:12

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 24, 2003 and forwarded to me by the Deputy Secretary of Defense by letter dated July 1, 2003;

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 Ibrahim Ahmed Mahmoud al Qosi, Department of Defense Internment Serial No. US9YM-00054DP, 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 Qaeda;
 - (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, Ibrahim Ahmed Mahmoud al Qosi shall be subject to the Military Order of November 13, 2001.

DATE: July 3, 2003
White House Office-controlled Document

DECLASSIFIED IAW
JTF-GTMO-J2 SCG, 10 JUN 2004
DECLASSIFIED ON: 28 AUG 2004
Review Exhibit 2

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X02375 / 03

Interpreters

[REDACTED]
[REDACTED]
[REDACTED]

UNOFFICIAL COPY

Review Exhibit 3

Page 1 Of 1

**REVIEW EXHIBIT 4: PROTECTIVE ORDER
FOR INTERPRETERS' NAMES**

UNOFFICIAL COPY



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

July 28, 2004

MEMORANDUM FOR COMMANDER [REDACTED] USN
LIEUTENANT COLONEL [REDACTED] USMC
LIEUTENANT COLONEL [REDACTED] USMC
MAJOR [REDACTED] USA
CAPTAIN [REDACTED] USA
LIEUTENANT [REDACTED] USNR
CAPTAIN [REDACTED] USAFR

SUBJECT: Detailed Prosecutors

Consistent with my authority as Chief Prosecutor and the provisions of Sections 4B(2) of Military Commission Order No. 1, dated March 21, 2002, and Section 3B(9) of Military Commission Instruction No. 3, dated April 30, 2003, the above named counsel are detailed and designated as follows:

United States v. al Bahlul

Detailed Prosecutor: Commander [REDACTED]
Detailed Assistant Prosecutors: Lieutenant Colonel [REDACTED] Captain [REDACTED]

United States v. al Qosi

Detailed Prosecutor: Lieutenant Colonel [REDACTED]
Detailed Assistant Prosecutors: Lieutenant [REDACTED] Captain [REDACTED]

United States v. Hamdan

Detailed Prosecutor: Commander [REDACTED]
Detailed Assistant Prosecutors: Captain [REDACTED]

United States v. Hicks

Detailed Prosecutor: Lieutenant Colonel [REDACTED]
Detailed Assistant Prosecutors: Major [REDACTED]

ROBERT SWANN
Colonel, U.S. Army
Chief Prosecutor
Office of Military Commissions

cc:
Deputy Chief Prosecutor
Mr. [REDACTED]

Review Exhibit 5

Page 1 Of 1





DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600



3 February 2004

MEMORANDUM DETAILING DEFENSE COUNSEL

TO: LIEUTENANT COLONEL SHARON SHAFFER

SUBJECT: DETAILING LETTER REGARDING MILITARY COMMISSION
PROCEEDINGS OF IBRAHIM AHMED MAHMOUD AL QOSI

Pursuant to the authority granted to me by my appointment as Chief Defense Counsel; Sections 4C and 5D of Military Order No. 1, dated March 21, 2002; and Section 3B8 of Military Commission Instruction No. 4, dated April 30, 2003, you are hereby detailed as Military Counsel for all matters relating to Military Commission proceedings involving Ibrahim Ahmed Mahmoud al Qosi. Your appointment exists until such time 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 Qosi by me or my successor.

In your representation of Mr. al Qosi, you are directed to review and comply with the Presidential Military Order of November 13, 2001, "Detention, the Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," (66 FR 57833); Military Commission Orders No. 1 and 2 and Military Commission Instructions 1 through 9 and all Supplementary Regulations and Instructions issued in accordance therewith. Specifically, you are directed to ensure that your conduct and activities are consistent with the prescriptions and proscriptions specified in Section II of the Affidavit And Agreement By Civilian Defense Counsel at Appendix B to Military Instruction No. 5.

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

In the event that you become aware of a conflict of interest arising from the representation of Mr. al Qosi 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



Review Exhibit 6

Page 1 Of 2

Services Agency and will be subject to professional supervision by the Department of Defense General Counsel.

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 Qosi.



Colonel Will A. Gunn, USAF
Chief Defense Counsel
Office of Military Commissions

cc:
Col Borch
General Hemingway
Mr. Koffsky

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DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
OFFICE OF MILITARY COMMISSIONS

February 11, 2004

MEMORANDUM FOR COLONEL GUNN

FROM: Lt Colonel Sharon A. Shaffer

SUBJECT: Request for Appointment of Assistant Detailed Defense Counsel – United States v Ibrahim Ahmed Mahmoud al Qosi

1. Pursuant to Military Commission Instruction (MCI) No. 4, paragraph 3B(8)a, I request that Captain [REDACTED] be appointed as Assistant Detailed Defense Counsel and a member of the Defense Team in my representation of Ibrahim Ahmed Mahmoud al Qosi in any military commission proceedings. I anticipate this to be a fully litigated case, with many complex motions.
2. I had the pleasure of recruiting Captain [REDACTED] into the Judge Advocate General's Corps back in [REDACTED], when she was an ROTC cadet [REDACTED]. After entering active duty in [REDACTED], Captain [REDACTED] was assigned to the Office of the Staff Judge Advocate at [REDACTED]. Needless to say, she hit the ground running, successfully prosecuting 13 cases. Because of her great litigation skills, she was the Staff Judge Advocate's by-name choice to become the Area Defense Counsel (ADC). While an ADC, Captain [REDACTED] defended clients in 31 courts-martial and left that position with a very impressive record (see attached biography). Because of her record as an ADC, she was selected to her current position as a Circuit Defense Counsel for the [REDACTED].
3. While I had the privilege of recruiting Captain [REDACTED] into the Air Force, I also had a unique opportunity to personally observe her litigation skills in court. As a former Circuit Military Judge, I presided over many courts-martial in which Captain [REDACTED] was either the prosecutor or defense counsel. I was greatly impressed by her professionalism, case preparation, and courtroom demeanor. Her demonstrated talent clearly belies her short time in the service.
4. In a nutshell, Captain [REDACTED] has tried a total of [REDACTED] courts-martial, to include a murder case. With her current position as a [REDACTED], she could easily be detailed to Mr. al Qosi's case and assist me on a TDY basis without leaving her current position. She also understands that as the commission process kicks off, her representation of Mr. al Qosi would be her primary duty. Her chain of command is also supportive and recognizes the importance of this opportunity.

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5. I have attached a copy of Captain [REDACTED] biography and officer performance reports for your review.


Sharon A. Shaffer, Lt Colonel, USAF
Deputy Chief Defense Counsel
Office of Military Commissions

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Review Exhibit 7
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The following individual will proceed on permanent change of station.		PCS Without PCA	X	PCS With PCA	TED	JUL 04
1. GRADE, NAME (Last, First, Middle Initial) LTC SHAFFER SHARON A		2. SSN [REDACTED]		3. SDAFSC/CAFSC 51J4		
4. SECURITY CLEARANCE (Include date of last investigation) DCID 6/4 SBPR 031120		5. REPORT TO COMDR. NEW ASSIGNMENT NLT 040731		6. TRAVEL DAYS AUTHORIZED IF TRAVELING BY PRIVATELY OWNED CONVEYANCE 000		
7. TDY ENROUTE						
8. UNIT, MAJOR COMMAND, AND ADDRESS OF UNIT TO WHICH ASSIGNED AF LEGAL SER AG FO (LTC) BOLLING AFB DC 20332				9. UNIT, MAJOR COMMAND, AND ADDRESS OF UNIT FROM WHICH RELIEVED OFF SEC DEF DO (ZBL) PENTAGON ADM VA 20330		
10. TYPE OF TOUR (Check One)		ACCOMPANIED		UNACCOMPANIED		11. TOUR LENGTH (Total No. of Months)
		UNACCOMPANIED, DEPENDENTS RESTRICTED				12. EXTENDED LONG TOUR VOL →
13. DEPENDENT TRAVEL				14. THIS IS A JOIN-SPOUSE ASSIGNMENT (Include spouse's grade, name and SSN) → N		
A. CONCURRENT TRAVEL IS AUTOMATIC						
B. CONCURRENT TRAVEL IS APPROVED						
C. NONCONCURRENT TRAVEL IS AUTHORIZED IN LESS THAN 20 WEEKS						
D. NONCONCURRENT TRAVEL IS AUTHORIZED IN MORE THAN 20 WEEKS						
E. TRAVEL IS AUTHORIZED TO A DESIGNATED PLACE						
15. AUTHORITY FOR CCTVL			16. HOMEBASING/FOLLOW-ON ASSIGNMENT (Include AAN, GPAS, and ENLTD)			
17. DEPENDENT(S): (List names, DOB of Children, relationship to member and current address) [REDACTED] // [REDACTED]: [REDACTED] [REDACTED]				18. DEPARTURE CERTIFICATION: I certify that to the best of my knowledge I will depart PCS at ____ (hrs) ____ (date) ____ (signature)		
19. OVERSEAS TRANSPORTATION DATA						
A. Comply with MTA (DD Form 1482)		C. TDY station will obtain flight reservations. Member is not authorized to depart TDY station before receipt of validated MTA or GTR (SF1169) from the TMO				
B. Member will comply with reporting time and flight reservations in the MTA or as arranged by the TMO per AFI 24-10, and is not authorized to depart this station before receipt of validated MTA or GTR (SF1169) from the TMO.		D. Dependent(s) will comply with reporting data and flight reservations in the MTA.				
20. PCS EXPENSE CHARGEABLE TO NO FUNDS AUTHORIZED CIC: _____ TA: _____ ATAC: _____ NONTEMPORARY STORAGE CHARGEABLE TO:				21. AUTHORITY AND PCS CODE PCS ID: AFI 36-2110, PCS ID M AAN: 0740NE0903		
22. TDY EXPENSE CHARGEABLE TO				23. Excess Baggage Authorized PIECES _____ LBS _____		
Pursuant to AFR 32-6001, you will report to the base housing referral office servicing your new duty station before entering into any rental, lease, or purchase agreement for off-base housing.						
24. REMARKS (Submit travel voucher within 5 workdays after completion of travel. If TDY en route is authorized, attach receipts showing cost of all lodgings used. All promotional items incurred with PCS/TDY must be turned in to AFO upon arrival at gaining base.) PCS ADSC: N/A Training ADSC: N/A (see AFI 36-2107). ITEMS 2, 18 AND 20 APPLY ON REVERSE. THIS IS A NO COST PCA. DAS AND DDLDS WILL NOT CHANGE.						
25. DATE 14 JUL 04		26. MPF OFFICIAL (Typed Name and Grade) REUBEN LOUIS, SSGT USAF OUTBOUND ASSIGNMENTS		27. SIGNATURE OF MPF OFFICIAL [Signature]		
28. DESIGNATION AND LOCATION OF HEADQUARTERS DEPARTMENT OF THE AIR FORCE WASHINGTON D.C. 20330-1000				29. SPECIAL ORDER NO. AM-1355		30. DATE 14 Jul 04
32. DISTRIBUTION 3 - OL-P, 11 MSS/DPMAR 15 - INDIVIDUAL				31. TDN FOR THE COMMAND AND AIR FORCE		
34. ADDRESS OF GAINING MPF 11 MSS BOLLING AFB DC 20332				33. SIGNATURE ELEMENT OF ORDERS AUTHENTICATING OFFICIAL JARRARD GALBREATH, MAJ, USAF COMMANDER, PENTAGON MPF		

2. All military members being reassigned will have in their possession a current ID card and ID tags (overseas assignments only) prior to departure.
3. (a) Shipment of household goods, (b) Unaccompanied Hold baggage, (c) Privately owned conveyance, (d) No Government Quarters are available Full JFTR is authorized in the amount of _____ Lbs, (e) Member is limited to 2,000 Lbs (NET) or 25 percent of _____ LBS (net) weight allowance, whichever ever is greater. IAW JFTR, Volume I, and AF Supplement JFTR, Volume I and Volume II.
4. Dependents traveling overseas must have in their possession the following: valid passport (if required), current ID card, and immunization, certificates indicating appropriate immunization for the area to which the sponsor and dependents are being assigned.
5. Member must report to his/her servicing Military Pay Section NET 30 days prior to departure.
6. Variation in itinerary authorized for TDY purposes, as applicable.
7. Upon receipt of orders, contact Traffic Management Office (TMO) for appointment regarding your shipping entitlements.
8. PASSPORT/Visas: Military personnel and dependents requiring passports for overseas travel must have their passport in their possession prior to commencing travel to the port and returning to the port. The MPF Outbound Assignments Element will provide required passport forms. The Military sponsor is responsible for applying for passports within 15 days after assignment notification; failure to do so will require the military member to proceed on the assignment without dependents; however, dependents may proceed at a later date when passports are available.
9. This is a: (A) BOP, (B) Humanitarian, (C) EFMP, (D) CONUS SWAP, (E) Permissive Reassignment.
10. Early reporting authorized.
11. Four days proceed time authorized to an unaccompanied overseas tour.
12. Assignment is to a remote base in Alaska and dependents are not authorized. A total of 140 pounds of baggage is authorized enroute. On arrival at Elmendorf/Eielson, and additional 70 pounds are authorized for issuance of military arctic gear. Total baggage allowance must not exceed three pieces or 210 pounds while traveling in Alaska.
13. This is a Join spouse assignment and household goods weight allowances authorized per JFTR, vol. 1, Para U53330a.
14. Individual is participating in the Home Basing/Follow-On program and has voluntarily elected not to move household goods. _____ store household goods at government expense.
15. Individual authorized to travel via the ALCAN Highway and the Alaska Marine Highway System (State Ferry System) to duty station.
16. Individual must possess a valid Military Driver's License (SF-46).
17. Individual will complete M-16 and/or 38 training prior to departing this station. If arrangements cannot be obtained at this station, member will advise MPF Assignments Element ASAP for alternate arrangements. Failure to complete this item within the 60-90 day window may result in a delay of your RNLTD.
18. Close proximity moves; DO NOT change DDLDS or DAS. Movement of HHGs and payment of DDL is authorized only when AF/DPG issues a statement that a local move of the member's HHGs was necessary as a direct result of the PCS.
19. La persona a quien esta orden pertenezca esta autorizada par las autoridades militares competentes de los Estados Unidos de America para entrar o salir de Espana en mision oficial vestido de civil o militar.
20. Member must out-process the MPF Outbound Assignments Element the last duty day prior to departure for PCS. Military Uniform of the day is mandatory.
21. A request for investigation to meet the requirement for _____ was forwarded to DIS IAW AFI 31-401 on _____.
22. Gaining SSO has approved in-status transfer. The authority to proceed granted IAW SSO letter/msg _____.
23. Member is administratively PRP certified IAW AFI 36-2114. Certification is for critical/controlled projected duty position.
24. I do not desire to apply for a HB/FO assignment and understand I will not have another opportunity to apply at a later time.
25. Individual is being assigned to duty where this command has approved a civilian clothing allowance (summer and winter) IAW AFI 36-3014. "Amount of payment will be determined by the FSO in accordance with DCD 700014R".
26. Member will be entering Honduras for the purpose of a Permanent Change of Station to perform military duties in accordance with Command Directives. Este miembro estara llegando a Honduras con el proposito de un Cambio de Estacion Permanente (PCS) para realizar su trabajo militar de acuerdo a las ordenes directivas.....
27. Meals statement for the TDY enroute location: (A) All government meals are available and directed, (B) Partial government meals are available and directed. (C) Government meals are not available or directed. (D) Government meals are available, but are not directed.
28. Billeting statement for the TDY Enroute: Student must reserve on-base lodging. Should the student be placed in off-base lodging, he/she must check daily on availability of on-base lodging. When on-base lodging is available the student must move on base within 24 hrs IAW AETC Sup 1 to AFI 34-246.
29. Use the charge card statement: In accordance with Public Law 105-264, Government Travel Card (GTC) use is mandatory for all authorized expenses unless otherwise exempted under the specific provisions detailed in paragraph E of the Travel Transportation Reform Act.
30. Use the Authority for TDY statement: Authority: AFI 36-2201 chap 8, ETCA, and JFTR Vol. 1 (military) and JTR Vol. 2 (civilian).

Review Exhibit 8

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COL Gunn,

Please take appropriate actions to determine whether LTC Shaffer will be allowed to perform her duties as defense counsel - a duty which she was detailed to prior to her assumption of her current duties. Advise me of your determination as soon as possible.

If, as LTC Shaffer states below, "I respectfully will not be able to continue any work on the case at this time.", then it would appear that Al Qosi has no one representing him at this time. If I am mistaken, please so advise me.

There appear to me to be several solutions to this problem; I feel certain you will find the one which is best for Al Qosi.

Peter E. Brownback III

COL, JA

Presiding Officer

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

From: Shaffer, Sharon, LTC, DoD OGC

To: 'Pete Brownback'



Sent: Thursday, July 29, 2004 10:19 AM

Subject: RE: Counsel for Al Qosi

Good morning, sir. As you may already know, I have been officially PCS'd into my new assignment as Deputy to the Air Force Chief Trial Judge. Concerning the status of my client's case, you are correct in that I have not been released and substitute counsel has not been appointed. I also understand that you expect me to continue to work on the case and comply with deadlines you have set for motions, docketing, etc.

While I understand your direction in this matter, I respectfully will not be able to continue any work on the case at this time. Under the Air Force Uniform Code of Judicial Conduct for Military Trial and Appellate Judges, Canon 4, a judge shall not practice law. Therefore, I do not believe that I am able to ethically continue work on the case unless and/or until I receive further guidance from my current superiors.

/s/

Sharon A. Shaffer, Lt Colonel, USAF

Deputy to the Air Force Chief Trial Judge

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

Review Exhibit 9

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Shaffer Sharon LTC AFLSA/JAJT

From: Brash David Col AFLSA/JAJT
Sent: Monday, August 09, 2004 9:51 AM
To: Shaffer Sharon LTC AFLSA/JAJT
Subject: FW: Counsel for Al Qosi

FYI

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

From: Pete Brownback [REDACTED]
Sent: Friday, August 06, 2004 4:17 PM

[REDACTED]
Subject: Counsel for Al Qosi

Memorandum for Chief Defense Counsel, Chief Government Counsel

1. I find, that though officially represented by LtCol Shaffer, Mr. Al Qosi is not presently functionally represented by counsel. I make this finding aware that:

- a. LtCol Shaffer has been properly detailed to represent Mr. Al Qosi,
- b. LtCol Shaffer has formed an attorney-client relationship with Mr. Al Qosi,
- c. LtCol Shaffer has met with Mr. Al Qosi,
- d. LtCol Shaffer has conducted overseas travel on Mr. Al Qosi's behalf and has performed legal research on his behalf,
- e. LtCol Shaffer has not been relieved from her representation of Mr. Al Qosi by the Chief Defense Counsel or the Presiding Officer and has not been released by Mr. Al Qosi,
- f. LtCol Shaffer has stated in an email, Subject: Re: Counsel for Al Qosi, 10:19AM, 19 July 2004:

While I understand your direction in this matter, I respectfully will not be able to continue any work on the case at this time. Under the Air Force Uniform Code of Judicial Conduct for Military Trial and Appellate Judges, Canon 4, a judge shall not practice law. Therefore, I do not believe that I am able to ethically continue work on the case unless and/or until I receive further guidance from my current superiors.

- g. The Presiding Officer does not believe that he has the authority to order the United States Air Force to resolve this situation.

My findings concerning officially, but not functionally, represented are specifically based upon the above factors. A person who will not work on a case is not representing the client, regardless of any other factors. What LtCol Shaffer should or should not do is irrelevant to my findings or the case of Al Qosi. The fact that she is not representing him, and no one else is representing him, is key.

2. Accordingly, the times and dates imposed by Memoranda or other directives from the Presiding Officer on the defense in the case of US v. Al Qosi are hereby suspended until representation is reestablished. The requirements for the Prosecution to provide notice of motions and motions is likewise suspended.

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3. At this time, the Presiding Officer does not intend to have Mr. Al Qosi brought before the initial session of the commission during the week of 23 August 2004, because his detailed counsel will not represent him, and there is no other counsel detailed. The Appointing Authority may, of course, in his discretion direct that Mr. Al Qosi come before the commission to clarify or determine the status of his representation on the record. If the Appointing Authority intends to have Mr. Al Qosi come before the Commission during the week of 23 August 2004, the Presiding Officer hereby directs (UP MCO #1, para 6A(5)) that LtCol Shaffer be present for the session.

4. If LtCol Shaffer were to be allowed by competent authority to either a) represent Mr. Al Qosi or b) meet with Mr. Al Qosi in an attempt to get him to release her from representation, that would be a step forward in the resolution of this matter.

Peter E. Brownback III
 COL, JA
 Presiding Officer

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

From: [REDACTED]
To: [REDACTED]

Sent: Thursday, August 05, 2004 3:10 PM
Subject: RE: Counsel for Al Qosi

Thank you for your input. COL Brownback is out today and I will pass to him for a decision.

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

From: [REDACTED]
Sent: Thursday, August 05, 2004 2:59 PM
To: [REDACTED]

Subject: RE: Counsel for Al Qosi

Sir:

In response to the Presiding Officer's proposed instructions regarding Mr. al Qosi's representation, we provide the following:

1. I find, though nominally represented, Mr. Al Qosi is not presently functionally represented by counsel.

The Prosecution's view is that Lt Col Shaffer does not just nominally represent Mr. al Qosi. She has been properly detailed to represent Mr. al Qosi, has met with him and formed an attorney-client relationship, has conducted extensive overseas travel on his behalf, and has not been properly relieved (as she has indicated herself). Therefore, she continues to have an obligation to represent Mr. al Qosi, not just nominally, but functionally, unless and until properly relieved.

2. Accordingly, the times and dates imposed by Memoranda or other directives **Review Exhibiting** 2
 Officer on the defense in the case of US v. Al Qosi are hereby suspended until representation is

Shaffer Sharon LTC AFLSA/JAJT

From: Gunn, Will, Col, DoD OGC
Sent: Tuesday, August 17, 2004 3:29 PM
To: Shaffer Sharon LTC AFLSA/JAJT
Subject: FW: Al Qosi Hearing scheduled

Sharon, FYI

Col Will A. Gunn
Chief Defense Counsel
Office of Military Commissions

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

From: [REDACTED]
Sent: Tuesday, August 17, 2004 12:28
To: 'Pete Brownback'

[REDACTED]
Subject: Hearing schedule

Sir-

The Appointing Authority directs that a hearing in the case of US vs. al Qosi be held during the period of 23-27 AUG 04. You may schedule the hearing within that timeframe.

[REDACTED]
LTC, JA, USAR
Executive Officer

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Review Exhibit 11

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DEPARTMENT OF THE AIR FORCE
AIR FORCE LEGAL SERVICES AGENCY

MEMORANDUM FOR MILITARY COMMISSION

19 Aug 04

FROM: AFLSA/JAJT
112 Luke Ave. Ste 201
Bolling AFB DC 20032

SUBJECT: Status of Lt Col Sharon A. Shaffer

1. I have been advised that Lt Col Sharon Shaffer has been directed to appear before the Military Commission regarding the case of Mr. Ibrahim Ahmed Mahmoud al Qosi. I am her direct supervisor. Currently, Lt Col Shaffer is assigned to my office as the Deputy Chief Trial Judge. She has been so assigned since 31 July 04. Since her arrival, Lt Col Shaffer has been performing in the capacity of Deputy Chief Trial Judge. At this point, however, she has not been certified by The Judge Advocate General, under Article 26, UCMJ, pending resolution of her request to withdraw from representation of Mr. al Qosi.

2. I have given Lt Col Shaffer permission to travel and appear before the Military Commission in order to advise the Commission of the pendency of her request to withdraw as Defense Counsel for Mr. Al Qosi. Lt Col Shaffer has pressing duties in my office, however, I do understand the importance of her limited appearance before the Commission to address this single issue.

V/R
[Signature]
DAVID F. BRASH, Colonel, USAF
Chief Trial Judge

Attach: PCS Orders

Review Exhibit 12

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UNITED STATES OF AMERICA)	
)	
v.)	
)	
IBRAHIM AHMED MAHMOUD AL QOSI)	CHARGE:
a/k/a Mohammed Salih Ahmed)	CONSPIRACY
a/k/a Abu Khobaib al Sudani)	

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 3, 2003 that Ibrahim Ahmed Mahmoud al Qosi (a/k/a Mohammed Salih Ahmed, a/k/a Abu Khobaib al Sudani, hereinafter "al Qosi") is subject to his Military Order of November 13, 2001.
2. Al Qosi's charged conduct 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. Egyptian Islamic Jihad (EIJ), under the leadership of Dr. Ayman al Zawahiri, worked closely with al Qaida starting as early as 1989 through 1998, when EIJ formally merged with al Qaida. Until the merger, a main focus of EIJ was the assassination of the President of Egypt, Hosni Mubarak, and the establishment of a state in Egypt governed according to EIJ's own interpretation of Islam. It also advocated violent opposition to the United States, in part, for its support for the Government of Egypt.
7. 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.

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8. 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.
9. In 1992 and 1993, al Qaida supported violent opposition of U.S. property and nationals by, among other things, transporting personnel, weapons, explosives, and ammunition to Yemen, Saudi Arabia, Somalia, and other countries.
10. 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.
11. 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."
12. 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."
13. 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

14. Ibrahim Ahmed Mahmoud al Qosi (a/k/a Mohammed Salih Ahmed, a/k/a Abu Khobaib al Sudani, hereinafter "al Qosi"), in Afghanistan, Pakistan, the Sudan, Ethiopia, Yemen, and other countries, from on or about June 1989 to on or about December 2001, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden, Saif al Adel, Dr. Ayman al Zawahiri (a/k/a "the Doctor"), Abu Obeidah al Banshiri, Muhammad Atef (a/k/a Abu Hafs al Masri, hereinafter "Abu Hafs"), Sheikh Sayeed al Masri, Mohammed Suliman al Nalfi, Jamal Ahmed Mohammed al Fadl, Salem Ahmed Salem Hamdan (a/k/a Saqr al Jadawi, hereinafter "Hamdan"), 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, said conduct being in the context of and associated with armed conflict.

15. In furtherance of this enterprise and conspiracy, al Qosi and other members of al Qaida committed the following overt acts:

- a. In 1989, while in the Sudan, al Qosi, after learning the nature and purpose of al Qaida, became a member and remained a member of al Qaida until his capture in December 2001.
- b. From about June 1989 to about October 1990, in his capacity as an al Qaida member, al Qosi passed information between members of terrorist cells operating within the Sudan and provided logistical support such as food, shelter and clothing for members of these terrorist cells.
- c. In or about October 1990, al Qaida member Mohammed Suliman al Nalhi arranged for and paid, using al Qaida funds, al Qosi's travel from the Sudan into Afghanistan.
- d. In Afghanistan, around late 1990 to early 1991, al Qosi attended and completed the al Farouq camp, a training camp sponsored by al Qaida. Lasting approximately 45 days, his training included, among other things, physical training, military tactics, and weapons instruction and firing on a variety of individual and crew-served weapons.
- e. In or about September 1991, after participating for a period of time in the fighting in Afghanistan, al Qosi assumed a position as an accountant in al Qaida's *Mektabh al Muhassiba* (accounting office) in Peshawar, Pakistan. He assumed the position of deputy chief financial officer, reporting directly to Sheikh Sayeed al Masri, chief financial officer and leader of al Qaida's finance committee. Due to his accounting background, al Qosi was put in charge of managing donated money from non-governmental and charitable organizations and distributing it for salaries, travel, and support of al Qaida members, training camps, operations, and other al Qaida expenses.
- f. From about 1992 through about 1995, al Qosi worked in "Taba Investment Company" (Taba) in the Sudan as an accountant and treasurer. Usama bin Laden established Taba as one of a series of businesses intended to provide income to al Qaida for its training and operations, and to provide cover for the procurement of explosives, weapons and chemicals. Among other activities, al Qosi signed checks on behalf of Usama bin Laden, exchanged money on the black market from Sudanese currency to U.S. dollars, and couriered money on behalf of al Qaida.
- g. From around 1991 to around 1994, al Qosi assisted in loading and transporting explosives, weapons, and ammunition within and outside of the Sudan.

- h. In 1994, after a failed assassination attempt of Usama bin Laden in Khartoum, Sudan, Usama bin Laden handpicked al Qosi to serve as a member of his newly formed "bodyguard" force.
- i. In 1995, while still in the Sudan, al Qosi requested and received permission from Usama bin Laden to travel to Chechnya to fight alongside other Islamic militants against the Russians. Usama bin Laden financed al Qosi's trip to and from Chechnya.
- j. In 1996, al Qosi departed Chechnya and sought out Usama bin Laden. Al Qosi located and rejoined Usama bin Laden in the Tora Bora Mountains, Afghanistan. Along with Usama bin Laden and his entourage, al Qosi moved to the "Star of Jihad" compound in Jalalabad, Afghanistan, where al Qosi assisted in logistical support of the compound. This compound eventually moved to Qandahar, Afghanistan.
- k. From about 1996 until his capture in December 2001, al Qosi served as one of Usama bin Laden's bodyguards and drivers. When Usama bin Laden traveled, Al Qosi and others in the bodyguard detachment accompanied him. Al Qosi remained armed, providing Usama bin Laden with physical protection, and was a driver for the caravan of vehicles used to transport Usama bin Laden, occasionally driving Usama bin Laden himself. Additionally, al Qosi was responsible for the supplies and cooking for the detachment.
- l. After being placed on alert by Usama bin Laden in the weeks just before the attacks on the U.S. of September 11, 2001, al Qosi assisted Usama bin Laden and other al Qaida members in mobilizing and evacuating from Qandahar. Al Qosi remained with and assisted Usama bin Laden and other al Qaida leader before, during, and after the attacks of September 11, 2001.

الولايات المتحدة الأمريكية

ضد

احمد محمود القصي

الملقب محمد صالح احمد

الملقب ابو خبيب السوداني

التهمة:

مؤامرة

ابراهيم

الولاية القضائية

1. الولاية القضائية لهذه الهيئة العسكرية تابعة لقرار رئيس الجمهورية المؤرخ 3 يوليو/تموز 2003 حيث ان ابراهيم احمد محمود القصي (الملقب محمد صالح احمد، الملقب ابو خبيب السوداني، والمعروف بعدها في هذا النص بـ"القصي") يخضع لقراره العسكري المؤرخ 13 نوفمبر/تشرين الثاني 2001.

2. ان تصرفات المتهم بها القصي تخضع لمحاكمة من هيئة عسكرية.

ادعاءات عامة

3. لقد اسست القاعدة من قبل اساما بن لادن وغيره في او حوالي سنة 1989 بهدف معارضة بعض الانظمة والترسمين بالقوة والعنف.

4. يعرف اساما بن لادن كامير او قائد القاعدة.

5. هدف القاعدة، كما ذكر اساما بن لادن وغيره، من زعماء القاعدة، هو دعم الهجمات العنيفة ضد الممتلكات والمواطنين (العسكريين والمدنيين) التابعين للولايات المتحدة وغيرها من البلدان لكي ترغم، من بينها، الولايات المتحدة ان تجلي جنودها من الجزيرة العربية واقتصاصا لمناصرة الولايات المتحدة اسرائيل.

6. ان الجهاد الاسلامي المصري، برئاسة الدكتور ايمن الزواوي، عمل بجانب القاعدة من سنة 1989 الى سنة 1998 عندما اندمج بصورة رسمية الجهاد الاسمي المصري مع القاعدة. قبل الاندماج كان الغرض الاساسي من الجهاد الاسلامي المصري اغتيال رئيس الجمهورية في مصر، حسني مبارك، واقامة دولة في مصر يحكمها المنظور الاسلامي للجهاد الاسمي المصري. وقد دعى الى المعارضة العنيفة للولايات المتحدة، من بينها، لدعمها حكرية مصر.

7. ان عمليات واعمال القاعدة تدار من مجلس شوري مؤلف من لجان تضم الاتي: لجنة سياسية؛ لجنة عسكرية؛ لجنة امنية؛ لجنة مالية؛ لجنة اعلامية؛ لجنة دينية/قضائية.

8. من سنة 1989 حتى سنة 2001 اقامت القاعدة مخيمات تدريب وبيوت للنزلاء واعمال تجارية في افغانستان وباكستان وغيرها من البلدان لمؤازرة هجمات عنيفة ضد الممتلكات والمواطنين العسكريين والمدنيين التابعين للولايات المتحدة وبلدان اخرى.

9. في سنة 1992 و1993 دعمت القاعدة المعارضة العنيفة ضد الممتلكات والمواطنين الامريكيين عندما قامت، من بينها، بنقل اشخاص، اسلحة، متفجرات وذخائر الى اليمن والمملكة العربية السعودية وسوماليا وبلاد اخرى.

10. في اغسطس/آب 1996 قام بن لادن باصدار "بيان عام للجهاد ضد الامريكيين" داعيا قتل عسكريين في القوات الامريكية يخدمون في الجزيرة العربية.

11. في فبراير/شباط 1998 اصدر اساما بن لادن وايمين الزواهري وغيرهم فتوى تحت راية "الجبهة الاسلامية الدولية للجهاد ضد اليهود والصليبيين" تقول انه يتعين على جميع المسلمين القادرين ان يقتلوا الامريكيين المدنيين والعسكريين سواء حيثما وجدوا وان "يستولوا على اموالهم".

12. في او حوالي 29 مايو/ايار 1998 اصدر اساما بن لادن بيانا عنوانه "القنبلة الذرية الاسلامية" تحت راية "الجبهة الاسلامية الدولية للجهاد ضد اليهود والصليبيين" قال فيه "انه يتعين على المسلمين ان يقدموا بما لديهم من قوة لارهاب اعداء الله".

13. منذ عام 1989 قام اعضاء القاعدة ومناصريهم، معروف في الهوية والمجهولين منهم، بشن العديد من الهجمات الارهابية بما فيه على سبيل المثال لا الحصر: هجمات ضد السفارات الامريكية في كنيا وتنزانيا. اغسطس/آب 1998؛ الهجوم ضد سفينة ال "يوس س كول" في اكتوبر/تشرين الاول 2000؛ وهجمات ضد الولايات المتحدة في 11 سبتمبر/ايلول 2001.

التهمة: مؤامرة

14. قام ابراهيم احمد محمود القصي (الملقب محمد صالح احمد، الملقب ابو خبيب السوداني، والمعروف بعدها في هذا النص بـ "القصي") في افغانستان وباكستان والسودان واثيوبيا واليمن وغيرها من البلدان من او حوالي يونيو/حزيران 1989 حتى او حوالي ديسمبر/كانون الاول 2001 عمدا وبمعرفة تامة بمناصرة اشخاص يشاركون هدفا اجراميا مشتركا ويتواطون ويتفقون مع اساما بن لادن وسيف العدل والدكتور ايمين الزواهري (الملقب بـ "الاخو") وابو عبيدة البنشيري ومحمد عاطف (الملقب ابو حفص المصري، والمعروف بعدها في هذا النص بـ "ابو حفص") وشيخ سعيد المصري ومحمد سليمان النلفي وجمال احمد محمد الفضل وسالم احمد سالم حمدان (الملقب صقر الجدوي، والمعروف بعدها في هذا النص بـ "حمدان") واطرافهم واطرافهم اخرين لمنظمة القاعدة، معروف في الهوية او مجهولين، لارتكاب الجرائم اللاحقة التي تقاضى من الهيئة العسكرية: الهجوم على مدنيين؛ الهجوم على اهداف مدنية؛ القتل بواسطة محارب بدون امتيازات؛ تدمير املاك خاصة بواسطة محارب بدون امتيازات؛ ثم الارهاب؛ وهذا التصرف يكون في سياق نزاع مسلح ووفقا له.

15. للتمهيد لهذا المشروع وهذه المؤامرة قام القصي واطرافهم اخرين للقاعدة بارتكاب الاعمال السافرة الآتية:

ا. في سنة 1989، عندما كان في السودان، وبعد ان علم طبيعة وهدف القاعدة، اصبح القصي عضوا وظل عضوا في القاعدة الى ان القى القبض عليه في ديسمبر/كانون الاول 2001.

ب. من حوالي يونيو/حزيران 1989 الى اكتوبر/تشرين الاول 1990 قام القصي، كعضو للقاعدة، بنقل المعلومات بين اعضاء خلايا اراهابية في السودان واضفاء الدعم السوقي مثل المواد الغذائية، الملاجئ والكسوة لاعضاء تلك الخلايا الارهابية.

ج. في او حوالي اكتوبر/تشرين الاول 1990 قام عضو القاعدة محمد سليمان النافي بالتحضيرات اللازمة لسفر القصي من السودان الى افغانستان ودفع، بواسطة اموال القاعدة، تكاليف هذا السفر.

د. في افغانستان، من اواخر سنة 1990 تقريبا الى اوائل سنة 1991، حضر القصي واكمل التدريب في مخيم الفاروق، وهو مخيم للتدريب مدعوم من القاعدة. دام التدريب حوالي 45 يوما واشتمل، على سبيل المثال لا الحصر، تدريب بدني، خطط عسكرية، تدريب على الاسلحة والرمية بواسطة اسلحة شخصية واسلحة طاقم متفرقة.

هـ. في اوجحه الى سبتمبر/ايلول 1991 وبعد ان شارك لمدة من الزمن في المعارك في افغانستان، أصبح القصي محاسبا في مكتب المحاسبة التابع للقاعدة في بشاور، باكستان. وقد زاول منصب مساند رئيس القسم المالي، يعمل مباشرة تحت يد الشيخ سعيد المصري، رئيس القسم المالي وقائد اللجنة المالية للقاعدة. بموجب خبرته المحاسبية كلف القصي بإدارة الاموال الممنوحة من جمعيات غير حكومية وجمعيات خيرية وبتوزيع هذه الاموال لدفع الرواتب، تكاليف السفر ودعم اعضاء القاعدة ومخيمات التدريب وعمليات وغيرها من نفقات القاعدة.

و. من سنة 1992 تقريبا الى حوالي سنة 1995 عمل القصي في شركة طابا للاستثمار (طابا) في السودان كمحاسب وامين صندوق. اتد اس اساما بن لادن طابا حوالي سنة 1989 كشركة من مجمل شركات لكي تجلب الايرادات الى القاعدة من اجل التدريب والعمليات، ولكي تضني غطاء من اجل الحصول على المفرقات والاسلحة والمواد التموينية. من ضمن العمليات قام القصي بالتوقيع على الصكات نيابة عن اساما بن لادن وتحويل العملات في السوق السوداء من العملة السودانية الى الدولار الامريكي وارسال الاموال نيابة عن القاعدة.

ز. من حوالي سنة 1991 الى سنة 1994 تقريبا قام القصي بمؤازرة شحن ونقل المفرقات والاسلحة والذخيرة داخل وخارج السودان.

ح. في سنة 1994، بعد المحاولة الفاشلة لاغتيال اساما بن لادن في الخرطوم، السودان، اختار اساما بن لادن القصي لكي يخدم كعضو في الطاقم الجديد من الحراس الشخصيين.

ط. في سنة 1995، عندما كان في السودان، طلب القصي وحصل من بن لادن على اذن لكي يسافر الى الشيشان لكي يحارب مع غيره من المناضلين المسلمين ضد الروس. وقد مول اساما بن لادن سفر القصي الى الشيشان ذهابا وايابا.

ي. في سنة 1996 غادر القصي الشيشان واخذ يبحث عن اساما بن لادن. استطاع القصي ان يحدد موقعه وان يلتقي به في جبال تورا بورا في افغانستان. وقد انتقل القصي مع اساما بن لادن وحاشيته الى مركز "نجمة الجهاد" في جلاباد في افغانستان حيث عمل القصي في الدعم السوقي للمركز. بعدها نقل هذا المركز الى قندهار في افغانستان.

ك. من حوالي سنة 1996 حتى القاء القبض عليه في دسمير/كاتون الاول 2001 كان القصي احد الحراس الشخصيين لبن لادن واحد سائقه. عندما كان اساما بن لادن يعمد الى السفر كان القصي وغيره من الحراس الشخصيين يرافقونه. كان القصي ملازما للسلاح وكان يضيف على اساما بن لادن الحماية البدنية. وكان ايضا احد السائقين لقافلة العربات التي كانت نقل اساما بن لادن، حيث كان بعض الاحيان السائق للخاص لاساما بن لادن. علاوة على ذلك كان القصي مسؤولا عن التمويل وامور الطبخ للقافلة.

ل. بعد ان وضعه اساما بن لادن على اهبة الاستعداد في الاسابيع القليلة التي سبقت حوادث 11 سبتمبر/ايلول 2001، قام القصي بمساعدة اساما بن لادن واعضاء آخرين للقاعدة في التحضير والخروج من قندهار. بقي القصي مع اساما بن لادن وازره، كما تزر زعماء آخرين للقاعدة، قبل حدوث هجمات 11 سبتمبر/ايلول 2001 وعند حدوثهم وبعد حدوثهم.