

EXHIBIT 1

MacLean, Matthew J.

From: Morris, Lawrence, COL, DoD OGC [REDACTED]
Sent: Tuesday, February 26, 2008 8:44 AM
To: MacLean, Matthew J.
Subject: RE: Kuwaiti detainees

Not so. Government can certainly have communications with your client on commissions-related issues independent of your representation of them, which are strictly for habeas/DTA purposes.
LM

From: MacLean, Matthew J. [REDACTED]
Sent: Monday, February 25, 2008 3:08 PM
To: Morris, Lawrence, COL, DoD OGC
Subject: RE: Kuwaiti detainees

However calm or active the process may be, I respectfully request to meet with you to discuss my clients' cases. I am their counsel to exactly the same extent that you are counsel for the government. I have written authorizations from the detainees and their next friends to act as their attorney, and I have appeared on their behalf in pending cases before several federal courts, including the U.S. Supreme Court.

Accordingly, pursuant to AR 27-26, Rule 4.2 and other applicable rules of professional conduct, neither you nor any person acting under your direction or control may have any communication with the Kuwaiti detainees without my consent.

I believe my requests so far have been quite modest. I would appreciate it if you could at least explain why you will not tell us who is being considered for prosecution or what offenses they are suspected of committing. If you cannot tell me because you do not have the authority to deal with the detainees' counsel, I would appreciate it if you would say so and direct me to someone who does.

Matthew J. MacLean | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8183 | Fax: 202.663.8007
2300 N Street, NW | Washington, DC 20037-1122

Email: matthew.maclean@pillsburylaw.com
Bio: www.pillsburylaw.com/matthew.maclean
www.pillsburylaw.com

From: Morris, Lawrence, COL, DoD OGC [REDACTED]
Sent: Friday, February 22, 2008 2:29 PM
To: MacLean, Matthew J.
Subject: RE: Kuwaiti detainees

There is nothing to meet about, and your tone does not help what should be a calm process - there is no "excessive secrecy" and you are not a "threat", but neither are you their defense counsel for commissions purposes. They are being considered for prosecution. Should they be charged, they will have the opportunity to

hire you, as you know, in addition to their detailed military counsel.
Larry Morris

From: MacLean, Matthew J. [mailto:matthew.maclea@pillsburylaw.com]
Sent: Thursday, February 21, 2008 11:53 AM
To: Morris, Lawrence, COL, DoD OGC
Subject: RE: Kuwaiti detainees

Thank you, but this does not really answer my question. I was aware that a military commission only has jurisdiction to try offenses under the law of war or the Military Commissions Act.

I would appreciate the opportunity to have some substantive discussion with you or somebody from your office who is familiar with these two cases. I have never been involved in a criminal case, military or civilian, in which the prosecutor was unwilling even to speak to defense counsel about an appropriate disposition. And excessive secrecy doesn't reflect well on what is supposed to be an open system, particularly when it is already public knowledge that you are preparing criminal charges.

I see no reason why you cannot even go so far as to identify what sections of the Military Commissions Act are alleged to have been violated, or why you cannot confirm which two of the four detainees are being charged. I'm not asking you to share your trial strategy. I'm only asking for the same courtesy that any prosecutor would show to a fellow member of the bar and a respected opponent. If you believe in the integrity of the system, then you cannot consider the involvement of a defense counsel to be a threat.

Please let me know when I can meet with you or somebody in your office who is familiar with these cases.

Matthew J. MacLean | Pillsbury Winthrop Shaw Pittman LLP

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Bio: www.pillsburylaw.com/matthew.maclea
www.pillsburylaw.com

From: Morris, Lawrence, COL, DoD OGC [REDACTED]
Sent: Thursday, February 21, 2008 11:07 AM
To: MacLean, Matthew J.
Subject: RE: Kuwaiti detainees

war crimes/offenses delineated in Military Commissions Act of 06

From: MacLean, Matthew J. [mailto:matthew.maclea@pillsburylaw.com]
Sent: Thursday, February 21, 2008 11:06 AM
To: Morris, Lawrence, COL, DoD OGC
Subject: RE: Kuwaiti detainees

With what?

Matthew J. MacLean | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8183 | Fax: 202.663.8007
2300 N Street, NW | Washington, DC 20037-1122

Email: matthew.maclea@pillsburylaw.com
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From: Morris, Lawrence, COL, DoD OGC [REDACTED]
Sent: Thursday, February 21, 2008 10:56 AM
To: MacLean, Matthew J.
Subject: RE: Kuwaiti detainees

I should have put an out of office on the voice mail when I was in Cuba. We remain in the prep stages of charging the two we discussed.
LM

From: MacLean, Matthew J. [<mailto:matthew.maclea@pillsburylaw.com>]
Sent: Thursday, February 21, 2008 10:54 AM
To: Morris, Lawrence J COL OTJAG
Subject: Kuwaiti detainees

COL Morris,

As you may recall, I represent the four Kuwaiti nationals detained in Guantanamo. A few weeks ago, we discussed the fact that your office is considering charging two of the four Kuwaiti detainees in military commissions. You indicated that you would follow up and call me back with whatever additional information you can provide. I have called you a few times since then, but have not been able to reach you.

I understand that you are probably very busy right now. Is there somebody in your office who is managing these particular cases that I could speak to?

Matthew J. MacLean | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8183 | Fax: 202.663.8007
2300 N Street, NW | Washington, DC 20037-1122

Email: matthew.maclea@pillsburylaw.com
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EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
FOUZI KHALID ABDULLAH AL AWDA,)	
<i>et al.</i>)	
Petitioners,)	
)	
v.)	Civil Action No. 02-CV-0828 (CKK)
)	
UNITED STATES, <i>et al.</i> ,)	
)	
Respondents.)	
)	
_____)	

DECLARATION OF JAMES R. CRISFIELD JR.


Pursuant to 28 U.S.C. § 1746, I, Commander James R. Crisfield Jr., Judge Advocate General's Corps, United States Navy, hereby state that to the best of my knowledge, information and belief, the following is true, accurate and correct:

1. I am the Legal Advisor to the Combatant Status Review Tribunals. In that capacity I am the principal legal advisor to the Director, Combatant Status Review Tribunals, and provide advice to Tribunals on legal, evidentiary, procedural, and other matters. I also review the record of proceedings in each Tribunal for legal sufficiency in accordance with standards prescribed in the Combatant Status Review Tribunal establishment order and implementing directive.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Fouzi Khalid Abdullah Al Awda that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto. I have redacted information that would personally identify certain U.S. Government

personnel in order to protect the personal security of those individuals. I have also redacted internee serial numbers because certain combinations of internee serial numbers with other information become classified under applicable classification guidance. I declare under penalty of perjury that the foregoing is true and correct.

Dated: 7 Oct 04



James R. Crisfield Jr.
CDR, JAGC, USN

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**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: _____ #4
ISN #: _____

1. Introduction

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and was part of or supporting Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

2. Synopsis of Proceedings

The Tribunal initially commenced on 28 August 2004. The unclassified evidence presented to the Tribunal by the Recorder in the form of the Summary of Evidence for Combatant Status Review Tribunal (Exhibit R-1) indicated: The detainee is associated with Al Qaida and the Taliban; in August or early September 2001, the detainee admitted to traveling through Afghanistan with Taliban members; the detainee admitted to firing an AK-47 at a training camp near Kandahar [Afghanistan]; the detainee admitted to staying at a guesthouse with fighters armed with AK-47 rifles; the detainee engaged in hostilities against the U.S. or its coalition partners; the detainee admitted to carrying an AK-47 through the Tora Bora mountains for ten (10) to eleven (11) days during the U.S. air campaign in that region; and the detainee was captured with five (5) other men by Pakistani border guards. The Recorder called no witnesses.

The detainee elected to participate in the Tribunal process. He communicated his desire to participate to his Personal Representative prior to the proceedings, and his decision was recorded on a Detainee Election Form dated 10 August 2004, which was signed by his Personal Representative. The detainee elected to testify under oath at the proceeding (Enclosure (3) to the CSRT Decision Report). In his oral statement, the detainee claimed, in sum, that the assertions in the Summary of Evidence for Combatant Status Review Tribunal (Exhibit R-1) are incorrect. After being reminded by the Tribunal President that he did not have to answer any questions, the detainee indicated he would answer questions. The detainee then proceeded to answer questions from the Personal Representative, the Recorder, and the Tribunal for a period of approximately fifteen (15) minutes. The detainee's answers were generally consistent with his statement and further explained why the detainee claimed the assertions in Exhibit R-1 were incorrect. The Personal Representative called no witnesses.

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ISN _____
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During the classified portion of the Tribunal, the Recorder presented Exhibits R-2 through R-14. After reading Exhibit R-12 (JTF GTMO Memorandum dated 31 January 2004), which referenced sensitive reporting information the Tribunal considered important to review prior to making its determination on the detainee's status, the Tribunal President directed the Recorder to produce the sensitive reporting information. As the requested information was not readily available, and some members associated with the proceeding did not have the appropriate clearance, the Tribunal President ordered a recess until all matters could satisfactorily be resolved.

On 11 September 2004, in the Joint Intelligence Group (JIG) Sensitive Compartmentalized Information Facility (SCIF), the Personal Representative, a substitute Recorder, and the Tribunal read the requested classified information (Exhibit R-16 and a TS/SCI document that can be retrieved by its classified subject line, which is specified in Enclosure (2) to the CSRT Decision Report). The Tribunal then reconvened to recap the classified document review on the record, admit Exhibit R-16, and formally close for deliberations.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

a. Exhibits: D-a through D-d, R-1 through R-16, and a TS/SCI document identified in Enclosure (2) to the CSRT Decision Report.

b. Testimony of the following persons: None.

c. Sworn statement of the detainee:

See Enclosure (3) to the CSRT Decision Report.

4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested no witnesses.

The Detainee requested no additional evidence be produced.

5. Discussion of Unclassified Evidence

The Tribunal considered the following unclassified evidence in making its determinations:

a. The Recorder offered Exhibits R-1 and R-15 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it offers conclusory statements

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ISN # [REDACTED]
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without supporting unclassified evidence. Exhibit R-15, an FBI certification regarding redacted information, provided no usable evidence. Accordingly, the Tribunal had to look to the classified exhibits to support its conclusions.

b. Essentially, the only unclassified evidence the Tribunal had to consider was the detainee's sworn testimony. A summarized transcript of the detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3). In sum, the detainee's sworn testimony claims the information in Exhibit R-1 is incorrect.

c. The Tribunal also considered Exhibit D-d, a USA Today article dated 19 April 2004, which describes the detainee's father's efforts to free his son. Although much of the article is not relevant to a determination of the detainee's status, the article notes the detainee contacted his parents shortly after the 11 September 2001 attacks and told them he was assisting refugees streaming from Afghanistan. The detainee did not mention this phone call or this activity during his testimony before the Tribunal. Instead, he explained he could not return to Kuwait right after the 11 September attacks because the Kuwaiti government would find his return suspicious. The Tribunal did not believe that explanation, and instead found his decision to remain in Afghanistan suspicious.

The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

6. Consultations with the CSRT Legal Advisor

The Tribunal consulted the CSRT Assistant Legal Advisor regarding how to conduct the review of sensitive reporting information in the JIG's SCIF. The Tribunal also swore in a substitute Recorder with a TS/SCI clearance to address the sensitive reporting information. The CSRT Assistant Legal Advisor provided guidance on the proper way of doing so.

7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.
- b. The detainee understood the Tribunal proceedings and actively participated in the Tribunal process.
- c. The detainee is properly classified as an enemy combatant because he was part of or supporting Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners.

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ISN [REDACTED]
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Combatant Status Review Board

7 August 2004

TO: Personal Representative

FROM: OIC, CSRT

Subject: Summary of Evidence for Combatant Status Review Tribunal – AL AWDA, Fouzi Khalid Abdullah

1. Under the provisions of the Department of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he associated with Al-Qaida and the Taliban and engaged in hostilities against the United States or its coalition partners.
 - a. Detainee is associated with Al-Qaida and the Taliban.
 1. In August or early September 2001, Detainee admits traveling through Afghanistan with Taliban members.
 2. Detainee admits firing an AK-47 at a training camp near Kandahar.
 3. Detainee admitted staying at a guesthouse with fighters armed with AK-47 rifles.
 - b. Detainee engaged in hostilities against the US or its coalition partners.
 1. The detainee admits carrying an AK-47 through the Tora Bora mountains for ten to eleven days during the U.S. air campaign in that region.
 2. Detainee was captured with five other men by Pakistani border guards.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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Exhibit R1

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAIZ MOHAMMAD AHMED)	
AL KANDARI, <i>et al.</i>)	
Plaintiffs,)	
v.)	Civil Action No. 02-CV-0828 (CKK)
UNITED STATES OF AMERICA,)	
<i>et al.</i> ,)	
Defendants.)	

DECLARATION OF JAMES R. CRISFIELD, JR.

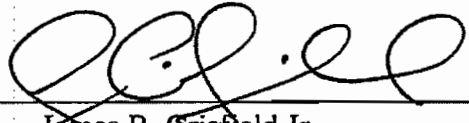
Pursuant to 28 U.S.C. § 1746, I, Commander James R. Crisfield Jr., Judge Advocate General's Corps, United States Navy, hereby state that to the best of my knowledge, information and belief, the following is true, accurate and correct:

1. I am the Legal Advisor to the Combatant Status Review Tribunals. In that capacity I am the principal legal advisor to the Director, Combatant Status Review Tribunals, and provide advice to Tribunals on legal, evidentiary, procedural, and other matters. I also review the record of proceedings in each Tribunal for legal sufficiency in accordance with standards prescribed in the Combatant Status Review Tribunal establishment order and implementing directive.
2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Faiz Mohammed Ahmed Al Kandari that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto. I have redacted information that would personally identify family members of detainees as well as certain U.S. Government personnel in order to protect the personal security of those

individuals.¹ I have also redacted internee serial numbers because certain combinations of internee serial numbers with other information become classified under applicable classification guidance.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 22 Oct 04


James R. Crisfield Jr.
CDR, JAGC, USN

¹ I have also removed a document written entirely in a foreign language because I do not have a translator to assist in redacting personally identifying information.

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: #5
ISN #: [REDACTED]

1. Introduction

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and is a member of, or affiliated with, al-Qaida. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

2. Synopsis of Proceedings

The unclassified summary of evidence presented to the Tribunal by the Recorder indicated that the detainee:

- a. Traveled to Afghanistan to participate in Jihad.
- b. Has family ties to an al-Qaida cell that killed a U.S. soldier in Kuwait.
- c. Recruited personnel to participate in the Jihad in Afghanistan and arranged their travel.
- d. Had resided at a guesthouse with known al-Qaida operatives while in Pakistan.
- e. Received weapons training at the Khaldan Training camp in Afghanistan where Usama bin Laden personally provided religious instruction and training.
- f. Received additional training at the al Farouq training camp to include explosives. Usama bin Laden was also at this camp along with individuals who were involved in the 11 September 2001 attacks.

The detainee chose not to participate in the Tribunal process. He had requested two witnesses. The Tribunal President found the requested witnesses not to be relevant to the Tribunal process. The Tribunal President's evidentiary and witness rulings are explained below.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a and R-1 through R-16.

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ISN [REDACTED]
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4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested the following witnesses be produced for the hearing:

<u>Witness</u>	<u>President's Decision</u>	<u>Testified?</u>
[REDACTED]	Not Relevant	No*
Sheik Mohammed Ali Allah Arrahmani	Not Relevant	No*

* The Tribunal President denied both witness requests. [REDACTED] is the Detainee's father. The Detainee indicated that the father would know the reason why the Detainee had left Kuwait. The President considered the request but since the reason for the Detainee leaving Kuwait was not a factor in the Detainee's enemy combatant determination, the President ruled that the witness' testimony was not relevant to the Tribunal's decision so the request was denied. The Detainee failed to provide any relevancy justification for his witness request of Sheik Mohammed Ali Allah Arrahmani, so the Tribunal President denied the witness request.

The Detainee requested no additional evidence be produced.

5. Discussion of Unclassified Evidence

The Tribunal considered the following unclassified evidence in making its determinations. The recorder offered Exhibits R-1 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2 was the response to a questionnaire that had been provided to the Detainee's family. The information in the questionnaire was unsworn and provided no usable evidence. Accordingly, the Tribunal had to look to classified exhibits for support of the Unclassified Summary of Evidence.

The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

6. Consultations with the CSRT Legal Advisor

No issues arose during the course of this hearing that required consultation with the CSRT legal advisor.

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ISN # [REDACTED]
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7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.
- b. The detainee understood the Tribunal proceedings. The Personal Representative spent 45 minutes explaining the process to the Detainee. The Detainee originally indicated that he wanted to participate. However, after the Tribunal President denied his witness request, the Detainee changed his mind and chose not to participate in the Tribunal process, as indicated in Exhibit D-a.
- c. The detainee is properly classified as an enemy combatant and is a member of, or affiliated with, al-Qaida.

8. Dissenting Tribunal Member's report


None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, USAF
Tribunal President

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ISN # 
Enclosure (1)
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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (21 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – AL KANDARI,
Faiz Mohammad Ahmed

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.

2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."

3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that the detainee is a member of al Qaida.

a. The detainee is a member of al Qaida:

1. The detainee traveled to Afghanistan and provided religious instruction at the al Farouq training camp in the September 2001 timeframe.

2. The detainee has family ties to an al Qaida cell that killed a U.S. soldier in Kuwait.

3. The detainee recruited personnel to participate in the Jihad in Afghanistan and arranged their travel, as well as his own, from the United Arab Emirates to Pakistan.

4. Once in Pakistan, the detainee and the others he had recruited resided at a guesthouse with known al Qaida operatives.

5. The detainee later traveled into Afghanistan and received weapons training at the Khaldan training camp. Usama Bin Laden personally provided religious instruction and trainee at this camp.

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6. The detainee then received further training, including with explosives, at the al Farouq training camp. Usama Bin Laden was also present at this camp, as were individuals who were involved with the 11 September 2001 attacks.

7. The detainee was in the Tora Bora mountain region in October or November 2001.

4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
KHALID BIN ABDULLAH MISHAL)	
THAMER AL HAMEYDANI, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 04-CV-0828 (CKK)
)	
UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Respondents.)	
)	
_____)	

DECLARATION OF JAMES R. CRISFIELD JR.

Pursuant to 28 U.S.C. § 1746, I, Commander James R. Crisfield Jr., Judge Advocate General's Corps, United States Navy, hereby state that to the best of my knowledge, information and belief, the following is true, accurate and correct:

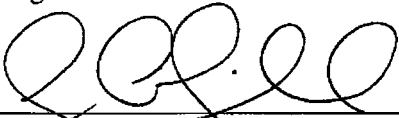
1. I am the Legal Advisor to the Combatant Status Review Tribunals. In that capacity I am the principal legal advisor to the Director, Combatant Status Review Tribunals, and provide advice to Tribunals on legal, evidentiary, procedural, and other matters. I also review the record of proceedings in each Tribunal for legal sufficiency in accordance with standards prescribed in the Combatant Status Review Tribunal establishment order and implementing directive.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Khalid Bin Abdullah Mishal Thamer Al Hameydani that are suitable for public release. The portions of the record that are classified or considered law enforcement

sensitive are not attached hereto. I have redacted information that would personally identify certain U.S. Government personnel in order to protect the personal security of those individuals. I have also redacted internee serial numbers because certain combinations of internee serial numbers with other information become classified under applicable classification guidance.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 12 Oct 04



James R. Crisfield Jr.
CDR, JAGC, USN

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: _____ #6
ISN #: _____

1. Introduction

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and was part of or supporting Taliban or Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

2. Synopsis of Proceedings

The Tribunal held this hearing on 29 September 2004. The Recorder presented Exhibits R-1 and R-2 during the unclassified portion of the Tribunal. The primary exhibit, the Unclassified Summary of Evidence (Exhibit R-1), indicates, among other things, that the detainee is associated with the Taliban and Al Qaida; that the detainee worked for Al Wafa, an Al Qaida associated organization; that the detainee received training at Lashkar e-Taiba (sic); that the detainee fought against the Northern Alliance at Tora Bora and Talaqoun; and that the detainee was among 84 Mujahidin fighters captured by the Pakistani government in the Nangarhar Province. The Recorder called no witnesses.

The detainee did not attend the Tribunal and refused to acknowledge the Personal Representative during their meeting prior to the Tribunal as indicated on the Detainee Election Form (Exhibit D-A). The detainee's failure to respond to the Personal Representative's invitation to participate in the Tribunal process was treated as a declination and the Tribunal proceeded without the detainee. The Personal Representative presented no evidence and called no witnesses on behalf of the detainee.

During the classified session of the Tribunal, the Recorder presented Exhibits R-3 through R-14. The Personal Representative presented no classified evidence. The Recorder commented on the classified exhibits; the Personal Representative did not.

After the Tribunal read all of the classified exhibits, the Tribunal requested additional information. In response to the Tribunal's request, the Recorder offered into evidence Exhibit R-15 after giving the Personal Representative an opportunity to review the document. Neither the Recorder nor the Personal Representative had any comments on

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ISN _____
Enclosure (1)
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the additional document. After considering the unclassified and the classified evidence, the Tribunal determined that the detainee is properly classified as an enemy combatant.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-15 and D-a.
- b. Testimony of the following persons: None.
- c. Statement of the detainee: None.

4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested no witnesses.

The Detainee requested no additional evidence be produced.

5. Discussion of Unclassified Evidence

The recorder offered Exhibits R-1 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2, the FBI redaction certification, provided no usable evidence. Because there was no other unclassified evidence for the Tribunal to consider (other than Exhibit R-15, which is discussed below), the Tribunal had to look to the classified exhibits to support the assertions on the Unclassified Summary of Evidence and the Tribunal's conclusions. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

The Recorder presented Exhibit R-15 in response to a question during the classified session regarding Lashkar e-Tayyiba. The exhibit indicates Lashkar e-Tayyiba is a terrorist organization and not a training camp, as is suggested by item 3.a.3 on the Unclassified Summary of Evidence. The Tribunal considered this information in reaching its decision.

6. Consultations with the CSRT Legal Advisor

No issues arose during the course of this hearing that required consultation with the CSRT Legal Advisor.

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7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

a. The detainee chose not to participate in the Tribunal proceeding. No evidence was produced that caused the Tribunal to question whether the detainee was mentally and physically capable of participating in the proceeding, had he wanted to do so. Accordingly, no medical or mental health evaluation was requested or deemed necessary.


b. As indicated in Exhibit D-A, the detainee made a conscious decision not to acknowledge the Personal Representative's invitation to participate in the Tribunal process. Because the Personal Representative fully explained the Tribunal process to the detainee, the Tribunal finds the detainee made a knowing, intelligent and voluntary decision not to participate in the Tribunal process.

c. The detainee is properly classified as an enemy combatant because he was part of or supporting Taliban or Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, U.S. Army
Tribunal President

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ISN # [REDACTED]
Enclosure (1)
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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (23 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – Al Hameydani, Khalid Bin Abdullah Mishal Thamer

1. Under the provisions of the Department of the Navy Memorandum, dated 16 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he associated with the Taliban and al Qaida and engaged in hostilities against the United States or its coalition partners.
 - a. Detainee is associated with the Taliban and al Qaida.
 1. The detainee worked for al Wafa, an al Qaida associated organization.
 2. Detainee's name and phone number were known to an al Qaida leader.
 3. Detainee received training at Lashkar e-Taiba.
 - b. Detainee engaged in hostilities against the US or its coalition partners.
 1. The detainee fought against the Northern Alliance at Tora Bora and Talaqoun.
 2. Detainee operated an anti-aircraft gun at Talaqoun.
 3. Detainee was among 84 Mujahidin fighters captured by the Pakistani government in Nangarhar Province.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not

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an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FOUAD MAHOUD HASAN AL RABIA)	
<i>et al.</i>)	
Petitioners,)	
)	
v.)	Civil Action No. 02-CV-0828 (CKK)
)	
UNITED STATES, <i>et al.</i> ,)	
)	
Respondents.)	
)	
)	
)	

DECLARATION OF JAMES R. CRISFIELD JR.

Pursuant to 28 U.S.C. § 1746, I, Commander James R. Crisfield Jr., Judge Advocate General's Corps, United States Navy, hereby state that to the best of my knowledge, information and belief, the following is true, accurate and correct:

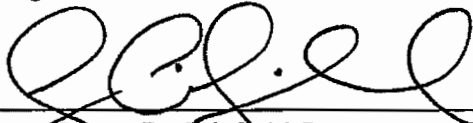
1. I am the Legal Advisor to the Combatant Status Review Tribunals. In that capacity I am the principal legal advisor to the Director, Combatant Status Review Tribunals, and provide advice to Tribunals on legal, evidentiary, procedural, and other matters. I also review the record of proceedings in each Tribunal for legal sufficiency in accordance with standards prescribed in the Combatant Status Review Tribunal establishment order and implementing directive.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Fouad Mahoud Hasan Al Rabia that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto. I have redacted the names of other detainees, family members of detainees, and

information that would personally identify certain U.S. Government personnel in order to protect the personal security of those individuals.¹ I have also redacted internee serial numbers because certain combinations of internee serial numbers with other information become classified under applicable classification guidance. Finally, I have redacted a document title that is actually classified but was listed on a document marked only as "FOUO."

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 12 Oct 04



James R. Crisfield Jr.
CDR, JAGC, USN

¹ The attached documents include an English translation of a letter written in a foreign language, which contains personal identifying information that I have redacted to protect the personal security of those individuals. The original letter is not included for public release, because I presently do not have the foreign language resources to make similar redactions in the original letter.

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**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: #4
ISN #: [REDACTED]

1. Introduction

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and was part of or supporting Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

2. Synopsis of Proceedings

The unclassified evidence presented to the Tribunal by the Recorder in the form of the Summary of Evidence for Combatant Status Review Tribunal (Exhibit R-1) indicated: The detainee provided material support to the Taliban and Al Qaida; the detainee traveled to Afghanistan in October 2001; the detainee met with Usama Bin Laden on four occasions during July 2001; the detainee delivered money to Usama Bin Laden; the detainee's name and telephone number were found in an address book recovered from the residence where senior Al Qaida operative Khalid Shaykh (sic) Muhammad was captured; the detainee provided coordination and logistical support to Taliban fighters in Tora Bora [Afghanistan]; the detainee was present at an Al Qaida meeting in the Tora Bora mountains [Afghanistan] where the distribution of SAM-7s and other anti-aircraft weapons was discussed; and the detainee was an operator for the Al Wafa non-governmental organization (NGO), and likely transferred large sums of money through a front company. The Recorder called no witnesses.

The detainee elected to participate in the Tribunal process. He communicated his desire to participate to his Personal Representative prior to the proceedings, and his decision was recorded on a Detainee Election Form dated 27 August 2004, which was signed by his Personal Representative. At the proceeding, the detainee elected to testify under a Muslim oath he provided instead of the one provided by the Tribunal (see Enclosure (3) to the CSRT Decision Report). In his oral statement, the detainee indicated: He was not a member of, or affiliated with, the Taliban or Al Qaida; he neither carried weapons nor trained to do so; he went to Afghanistan the first time to explore whether the Afghan people needed relief efforts; during that trip, he met Usama Bin Laden on four (4) occasions, but meeting Usama Bin Laden was not the purpose of his trip and the only reason interrogators know about the meetings is because he volunteered the information;

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he is not an operator for the Al Wafa organization; he never delivered money or any other support to Usama Bin Laden; his name and number likely showed-up in a phone book recovered from Khalid Sheik Muhammad's (KSM) residence because Abu Sullyman (the individual who arranged the detainee's first trip to Afghanistan) was an influential man and had the detainee's business card; and the detainee did not coordinate logistical support for the Taliban while fleeing through the Tora Bora Mountains to Pakistan. After being reminded by the Tribunal President that he did not have to answer any questions, the detainee indicated he would answer any questions. The detainee then proceeded to answer questions from the Tribunal for a period of approximately forty-five (45) minutes. During the questioning, information arose that conflicted with the detainee's opening statement. Specifically, while fleeing to Pakistan via the Tora Bora Mountains with a group the detainee admitted contained, in part, Al Qaida fighters, the detainee did, in fact, help coordinate logistics efforts for Abdul Ghoudous, someone the detainee admits was, in his estimation, Al Qaida. The Personal Representative called no witnesses.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-A through D-D and R-1 through R-16.
- b. Testimony of the following persons: None.
- c. Sworn statement of the detainee:

See Enclosure (3) to the CSRT Decision Report.

4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested no witnesses.

The Detainee requested no additional evidence be produced.

5. Discussion of Unclassified Evidence

The Tribunal considered the following unclassified evidence in making its determinations:

- a. The Recorder offered Exhibits R-1 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not sufficiently persuasive in that it offers conclusory statements without supporting unclassified evidence. Exhibit R-2, an FBI certification regarding redacted information, provided no usable evidence. Accordingly, the Tribunal had to look to classified exhibits to support its conclusions.

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b. Essentially, the only unclassified evidence the Tribunal had to consider was the detainee's sworn testimony. A summarized transcript of the detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3). The gist of the detainee's testimony is summarized in paragraph 2, above. Two points warrant mention. First, the detainee admitted he assisted with the logistics for the people held up in the Tora Bora Mountains, some of whom were Al Qaida or persons fighting together with Al Qaida. Although the detainee attempts to minimize his role, by his own admission, his efforts supported Al Qaida forces or associated forces that were engaged in hostilities against the United States or its allies. Furthermore, and this applies both to the detainee's statements about his logistics role and his testimony as a whole, the Tribunal did not find the detainee credible. For example, a respected businessman does not rely on someone he barely knows to arrange a trip to Afghanistan for him, and then allow himself to be smuggled across the border from Pakistan to Afghanistan. Also, the detainee's reason for returning to Afghanistan on 3 October 2004 – to photograph areas where relief would be channeled – was similarly unbelievable. The Tribunal did not believe either of the trips the detainee took to Afghanistan were for charitable work, but instead believed they were for the purpose of supporting Al Qaida. When the detainee's lack of credibility is coupled with his vague connections to charitable organizations, his trips taken with Al Qaida operators, and his meetings with Usama Bin Laden, the Tribunal found there was more to the story than the detainee would have the Tribunal believe.

c. The Tribunal also considered Exhibit D-B, a letter from the detainee's wife concerning the detainee's charitable activities. Even assuming the detainee did conduct some sort of charitable activities in Afghanistan (and that they were not a cover for his Al Qaida related activities), the Tribunal finds the detainee's non-charity related activities in Afghanistan established his enemy combatant status by a preponderance of the evidence.

d. The Tribunal also considered Exhibit D-D, the detainee's polygraph results. Because the results were inconclusive, the Tribunal gave no weight to the exhibit.

The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

6. Consultations with the CSRT Legal Advisor

The detainee mentioned during his testimony that he had taken and passed several Computer Voice Stress Analyzer (CVSA) tests and that they, together with his polygraph results, proved he was telling the truth. The Personal Representative then sought to admit both the CVSA and polygraph results. Because the Tribunal did not know whether CVSA results could be considered, the Tribunal President asked the Recorder to produce an e-mail ostensibly containing instructions on the use of CVSA results. During a recess in the Tribunal proceedings, the CSRT Assistant Legal Advisor produced the e-mail that directed CVSA results not be used because their reliability had not been established. Accordingly, the detainee's polygraph results were admitted (Exhibit D-D); however,

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based on the CSRT Assistant Legal Advisor's guidance and the 13 August 2004 e-mail concerning CSRT use of CVSA results, the Tribunal did not admit the CVSA results into evidence. The controlling e-mail is attached as Enclosure (5) to the CSRT Decision Report.

7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.
- b. The detainee understood the Tribunal proceedings, and actively participated in the Tribunal process.
- c. The detainee is properly classified as an enemy combatant because he was a part of or supporting Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, US Army
Tribunal President

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Combatant Status Review Board

25 August 2004

TO: Personal Representative

FROM: OIC, CSRT

Subject: Summary of Evidence for Combatant Status Review Tribunal – Fouad Mahoud Hasan (Al Rabia)

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.

2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."

3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he directly supported hostilities in aid of enemy forces fighting against the United States or its coalition partners.

a. The detainee provided material support to the Taliban and al Qaida.

1. Detainee traveled to Afghanistan in October 2001.
2. Detainee met with Usama Bin Laden on four occasions during July 2001.
3. Detainee delivered money to Usama Bin Laden.
4. Detainee's name and telephone number were found in an address book recovered from the residence where senior al Qaida operative Khalid Shaykh Muhammad was captured.
5. Detainee provided coordination and logistical support to Taliban fighters in Tora Bora.
6. Detainee was present at an al Qaida meeting in the Tora Bora mountains in which the topics discussed included the distribution of SAM-7s and other anti-aircraft weapons.
7. Detainee was an operator for the Al-Wafa NGO and likely transferred large sums of money through a front company.

4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available

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witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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EXHIBIT 6

**REVISED PROCEDURES FOR COUNSEL ACCESS TO DETAINEES
AT THE U.S. NAVAL BASE IN GUANTANAMO BAY, CUBA**

I. Applicability

Except as otherwise stated herein or by other Order issued in the United States District Court for the District of Columbia, the following procedures shall govern counsel access to all detainees in the control of the Department of Defense (“DoD”) at the U.S. Naval Base in Guantanamo Bay, Cuba (“GTMO”) by counsel for purposes of litigating the cases in which this Order is issued.

These procedures do not apply to counsel who are retained solely to assist in the defense of a detainee in a trial by military commission. Access by that counsel is covered by the Procedures for Monitoring Communications Between Detainees Subject to Trial by Military Commission and their Defense Counsel Pursuant to Military Commission Order No. 3.

II. Definitions

A. Communications: All forms of communication between counsel and a detainee, including oral, written, electronic, or by any other means.

B. Counsel: An attorney who is employed or retained by or on behalf of a detainee for purposes of representing the detainee in the United States District Court for the District of Columbia and who is admitted, either generally or pro hac vice, in this Court. Unless otherwise stated, “counsel” also includes co-counsel, interpreters, translators, paralegals, investigators and all other personnel or support staff employed or engaged to assist in the litigation.

C. Detainee: An individual detained by DoD as an alleged enemy combatant at the U.S. Naval Base in Guantanamo Bay, Cuba.

D. Privilege Team: A team comprised of one or more DoD attorneys and one or more intelligence or law enforcement personnel who have not taken part in, and, in the future, will not take part in, any domestic or foreign court, military commission or combatant status tribunal proceedings involving the detainee. If required, the privilege team may include interpreters/translators, provided that such personnel meet these same criteria.

E. Legal Mail: Letters written between counsel and a detainee that are related to the counsel’s representation of the detainee, as well as privileged documents and publicly-filed legal documents relating to that representation.

III. Requirements for Access to and Communication with Detainees

A. Security Clearance:

1. Counsel must hold a valid current United States security clearance at the Secret level or higher, or its equivalent (as determined by appropriate DoD intelligence personnel).
2. Counsel who possess a valid security clearance shall provide, in writing, the date of their background investigation, the date such clearance was granted, the level of the clearance, and the agency who granted the clearance. Access will be granted only after DoD verification of the security clearance.
3. Counsel who does not currently possess a Secret clearance will be required to submit to an application for clearance to the Department of Justice, Litigation Security Division.

B. Acknowledgment of and Compliance with Access Procedures

1. Before being granted access to the detainee, counsel will receive a copy of these procedures. To have access to the detainee, counsel must agree to comply fully with these procedures and must sign an affirmation acknowledging his/her agreement to comply with them.
2. This affirmation will not be considered an acknowledgment by counsel that the procedures are legally permissible. Even if counsel elects to challenge these procedures, counsel may not knowingly disobey an obligation imposed by these procedures.
3. The DoD expects that counsel, counsel's staff, and anyone acting on the behalf of the attorney will fully abide by the requirements of this document. Counsel is required to provide the DoD with signed affirmations from interpreters, translators, paralegals, investigators and all other personnel or support staff employed or engaged to assist in the litigation, upon utilization of those individuals by counsel in a manner that implicates these procedures.
4. Should counsel fail to comply with the procedures set forth in this document, access to or communication with the detainee will not be permitted.

C. Verification of Representation

1. Prior to being permitted access to the detainee, counsel must provide DoD with a *Notification of Representation*. This Notification must include the counsel's licensing information, business and email addresses and phone number, as well as

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the name of the detainee being represented by the counsel. Additionally, counsel shall provide evidence of his or her authority to represent the detainee.

2. Counsel shall provide evidence of his or her authority to represent the detainee as soon as practicable and in any event no later than ten (10) days after the conclusion of a second visit with the detainee. The Court recognizes that counsel may not be in a position to present such evidence after the initial meeting with a detainee. Counsel for detainees and counsel for respondents shall cooperate to the fullest extent possible to reach a reasonable agreement on the number of counsel visits allowed. Should counsel for a detainee believe that the government is unreasonably limiting the number of visits with a detainee, counsel may petition the Court at the appropriate time for relief.
3. If the counsel withdraws from representation of the detainee or if the representation is otherwise terminated, counsel is required to inform DoD immediately of that change in circumstances.
4. Counsel must provide DoD with a signed representation stating that to the best of counsel's knowledge after reasonable inquiry, the source of funds to pay counsel any fees or reimbursement of expenses are not funded directly or indirectly by persons or entities the counsel believes are connected to terrorism or the product of terrorist activities, including "Specially Designated Global Terrorists," identified pursuant to Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001) or Exec. Order No. 12,947, 60 Fed. Reg. 5079 (Jan. 23, 1995), and (b) counsel has complied with ABA Model Rule 1.8(f).

D. Logistics of Counsel Visits

1. Counsel shall submit to the Department of Justice (DoJ) any request to meet with a detainee. This request shall specify date(s) of availability for the meeting, the desired duration of the meeting and the language that will be utilized during the meeting with the detainee. Reasonable efforts will be made to accommodate the counsel's request regarding the scheduling of a meeting. Once the request has been approved, DoJ will contact counsel with the date and duration of the meeting.
2. Legal visits shall take place in a room designated by JTF-Guantanamo. No more than two attorneys (or one attorney and one assistant) plus one interpreter/translator shall visit with a detainee at one time, unless approved in advance by the Commander, JTF-Guantanamo. Such approval shall not be unreasonably withheld.
3. Due to the mission and location of the US Naval Base at Guantanamo Bay, Cuba, certain logistical details will need to be coordinated by counsel prior to arrival. This includes arrangements for travel and lodging. Specific information regarding these issues will be provided by DoJ.

EXHIBIT A

4. In order to travel to GTMO, all counsel must have a country and theater clearance for that specific visit. In order to begin processing country and theater clearances, counsel must have confirmed flight information for travel to GTMO and a valid current United States security clearance at the Secret level or higher, or its equivalent (as determined by appropriate DoD intelligence personnel). Country and theater clearances require twenty (20) days to process. Accordingly, counsel shall provide DoD, through DoJ, with the required information no later than 20 days prior to the GTMO visit date, or as soon as a visit is scheduled. Requests for visits made inside of 20 days will not normally be granted.

IV. Procedures for Correspondence Between Counsel and Detainee

A. Mail Sent by Counsel to Detainee (“Incoming Mail”)

1. Counsel shall send incoming legal mail for a detainee to the privilege team at the appropriate address provided by government counsel. Each envelope or mailer shall be labeled with the name of the detainee and shall include a return address for counsel sending the materials. The outside of the envelope or mailer for incoming legal mail shall be labeled clearly with the following annotation: “Attorney-Detainee Materials-For Mail Delivery to Detainee.”
2. Each page of legal mail shall be labeled “Attorney-Detainee Materials.” No staples, paper clips or any non-paper items shall be included with the documents.
3. Upon receiving legal mail from counsel for delivery to the detainee, the privilege team shall open the envelope or mailer to search the contents for prohibited physical contraband. Within two (2) business days of receipt of legal mail, and assuming no physical contraband is present, the privilege team shall forward the mail to military personnel at GTMO in a sealed envelope marked “Legal Mail Approved by Privilege Team” and clearly indicating the identity of the detainee to which the legal mail is to be delivered. The privilege team shall return to the sender any incoming mail that does not comply with the terms of paragraphs IV.A.1., 2.
4. Within two (2) business days of receipt of legal mail from the privilege team, personnel at GTMO shall deliver the envelope or mailer marked by the privilege team as “Legal Mail Approved by the Privilege Team” to the detainee without opening the envelope or mailer. If counsel desires confirmation that the documents were delivered to the detainee, counsel is responsible for providing a stamped, self-addressed envelope for that purpose. The detainee shall be responsible for mailing any confirmation of delivery to counsel as outgoing legal mail. This method shall be the sole and exclusive means by which confirmation of delivery is provided to counsel.

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5. Written correspondence to a detainee not falling within the definition of legal mail shall be sent through the United States Postal Service to the appropriate address provided by government counsel. Non-legal mail includes, but is not limited to, letters from persons other than counsel, including family and friends of the detainee. These non-privileged communications will be reviewed by military personnel at GTMO under the standard operating procedures for detainee non-legal mail.
6. Counsel is required to treat all information learned from a detainee, including any oral and written communications with a detainee, as classified information, unless and until the information is submitted to the privilege team and determined to be otherwise by the privilege team or by this Court or another court. Accordingly, if a counsel's correspondence contains any summary or recitation of or reference to a communication with a detainee that has not been previously determined to be unclassified, the correspondence shall be prepared, marked, transported and handled as classified material as required by Executive Order 12958, DOD Regulation 5200.1-R and AI 26, OSD Information and Security Supplement to DOD Regulation 5200.1R.
7. Written and oral communications with a detainee, including all incoming legal mail, shall not include information relating to any ongoing or completed military, intelligence, security, or law enforcement operations, investigations, or arrests, or the results of such activities, by any nation or agency or current political events in any country that are not directly related to counsel's representation of that detainee; or security procedures at GTMO (including names of U.S. Government personnel and the layout of camp facilities) or the status of other detainees, not directly related to counsel's representation.

B. Mail Sent by Detainee to Counsel ("Outgoing Mail")

1. Detainees will be provided with paper to prepare communications to counsel. In the presence of military personnel, the detainee will seal the written communication into an envelope and it will be annotated as "Attorney-Detainee Materials-For Mail Delivery To Counsel." Each envelope shall be labeled with the name of the detainee and the counsel. Envelopes annotated with the name of persons other than the detainee's counsel (including family/friends or other attorneys) shall be processed according to the standard operating procedures for detainee non-legal mail.
2. Military personnel will collect the outgoing legal mail within one (1) business day of being notified by the detainee that the communication is prepared for sealing and mailing.
3. After the outgoing legal mail is collected from the detainee, the envelope will be sealed into a larger envelope by military personnel at Guantanamo which will be marked as "Attorney-Detainee Materials-For Mail Delivery To Counsel" and will

EXHIBIT A

be annotated with the name of the detainee and the counsel. The envelope will be sealed and mailed in the manner required for classified materials. Within two (2) business days of receipt from the detainee, the communication will be mailed to the appropriate address as provided by government counsel.

4. Detainees also are permitted to send non-legal mail, including written communications to persons other than counsel, through the United States Postal Service. These communications shall be reviewed by military personnel at Guantanamo under the standard operating procedures for detainee non-legal mail.
5. In the event any non-legal correspondence or messages from a detainee to individuals other than his counsel (including family/friends or other attorneys) are sent to counsel as, or included with, legal mail, counsel shall return the documents to military personnel at GTMO for processing according to the standard operating procedures for detainee non-legal mail.

V. Materials Brought Into A Meeting With Detainee And Counsel

- A. Counsel shall bring only legal mail, writing utensils and paper into any meeting with a detainee unless counsel has received prior approval from the Commander, JTF-GTMO. The Commander shall not unreasonably withhold approval for counsel to bring into a meeting with a detainee letters, tapes, or other communications introducing counsel to the detainee, if the government has first reviewed the communication and determined that sharing the communication with the detainee would not threaten the security of the United States.
- B. Written and oral communications with a detainee, including all documents brought into a meeting with a detainee, shall not include information relating to any ongoing or completed military, intelligence, security, or law enforcement operations, investigations, or arrests, or the results of such activities, by any nation or agency or current political events in any country that are not directly related to counsel's representation of that detainee; or security procedures at GTMO (including names of U.S. Government personnel and the layout of camp facilities) or the status of other detainees, not directly related to counsel's representation.

VI. Materials Brought Out Of A Meeting With Detainee and Counsel

- A. Upon the completion of each meeting with a detainee or during any break in a meeting session, counsel will give the notes or documents used or produced during the meeting to a designated individual at Guantanamo. These materials will be sealed in the presence of counsel and will be handled as classified material as required by Executive Order 12958, DOD Regulation 5200.1-R and AI 26, OSD Information Security Supplement to DOD Regulation 5200.1R.
- B. Upon the completion of the counsel's visit to Guantanamo, the notes or documents used or produced during the visit shall be sealed in the presence of

EXHIBIT A

counsel and placed in an envelope labeled as “Attorney-Detainee Meeting Documents–For Delivery to Counsel.” The envelope shall be sealed into a larger envelope by military personnel at Guantanamo which shall be marked as “Attorney-Detainee Meeting Documents-For Mail Delivery To Counsel” and shall be annotated with the name of the detainee and the counsel. The envelope shall be sealed and mailed in the manner required for classified materials. Within two (2) business days following the completion of the counsel’s visit to Guantanamo, the package shall be mailed to the appropriate address provided by government counsel.

- C. Correspondence or messages from a detainee to individuals other than his counsel (including family/friends or other attorneys) shall not be handled through this process. If a detainee provides these communications to his counsel during a visit, counsel shall give those communications to military personnel at Guantanamo so they can be processed under the standard operating procedures for detainee non-legal mail.

VII. Classification Determination of Detainee Communications

- A. Counsel may submit information learned from a detainee to the privilege team for a determination of its appropriate security classification. Counsel shall memorialize the information submitted for classification review into a written memorandum outlining as specifically as possible the information for which counsel requests a classification determination. All documents submitted for classification review shall be prepared, handled and treated in the manner required for classified materials, as provided by as required by Executive Order 12958, DOD Regulation 5200.1-R and AI 26, OSD Information Security Supplement to DOD Regulation 5200.1R. No information derived from these submissions shall be disclosed outside the privilege team pursuant to these procedures until after the privilege team has reviewed it for security and intelligence purposes. Absent express consent given by the Court, or except as otherwise provided in this document, the submissions shall not be disclosed to any person involved in the interrogation of a detainee, and no such individual may make any use of those communications whatsoever, nor shall the submissions be disclosed to any Government personnel involved in any domestic or foreign court, military commission or combatant status tribunal proceedings involving the detainee.
- B. Counsel shall send all materials submitted for classification review to the appropriate address to be provided by government counsel. The outside of the envelope or mailer shall be clearly labeled “Attorney-Detainee Meeting Documents-For Classification Review By Privilege Team.” Each envelope or mailer shall be annotated with the name of the detainee and the counsel. Each page of the document submitted for classification review shall be marked “Attorney-Detainee Materials” and “Classified.” The envelope or mailer will be sealed and mailed in the manner required for classified materials.

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- C. As soon as possible after conducting the classification review, the privilege team shall advise counsel of the classification levels of the information contained in the materials submitted for review. The privilege team shall forward its classification determination directly to counsel after a review and analysis period not to exceed, from the time of receipt by the privilege team:
 - 1. Seven (7) business days for information that is written in the English language;
 - 2. Fourteen (14) business days for any information that includes writing in any language other than English, to allow for translations by the privilege team;
 - 3. Twenty (20) business days for any information where the privilege team has reason to believe that a code was used, to allow for further analysis.
- D. While conducting classification review, the privilege team shall promptly report any information that reasonably could be expected to result in immediate and substantial harm to the national security to the Commander, JTF-Guantanamo. In his discretion, the Commander, JTF-Guantanamo may disseminate the relevant portions of the information to law enforcement, military and intelligence officials as appropriate.
- E. If, at any time, the privilege team determines that information in the documents submitted for classification review relate to imminent acts of violence, the privilege team shall report the contents of those documents to Commander, JTF-Guantanamo. In his discretion, the Commander, JTF-Guantanamo may disseminate the relevant portions of the information to law enforcement, military and intelligence officials.
- F. The privilege team shall not disclose any information submitted by counsel for classification review outside the privilege team, except as provided by these procedures or as permitted by counsel submitting the information.

VIII. Telephonic Access to Detainee

- A. Requests for telephonic access to the detainee by counsel or other persons will not normally be approved. Such requests may be considered on a case-by-case basis due to special circumstances and must be submitted to Commander, JTF-Guantanamo.
- B. Any telephonic access by counsel will be subject to appropriate security procedures, but shall not include contemporaneous monitoring or recording.
- C. Any telephonic access by persons other than counsel will be subject to appropriate security procedures, including contemporaneous monitoring and recording.

IX. Counsel's Handling And Dissemination Of Information From Detainee

- A. Subject to the terms of any applicable protective order, counsel may disseminate the unclassified contents of the detainee's communications for purposes reasonably related to their representation of that detainee.
- B. Counsel is required to treat all information learned from a detainee, including any oral and written communications with a detainee, as classified information, unless and until the information is submitted to the privilege team and determined to be otherwise. All classified material must be handled, transported and stored in a secure manner, as provided by Executive Order 12958, DOD Regulation 5200.1-R and AI 26, OSD Information Security Supplement to DOD Regulation 5200.1R.
- C. Counsel shall disclose to DoJ or Commander, JTF-Guantanamo any information learned from a detainee involving future events that threaten national security or involve imminent violence.
- D. Counsel may not divulge classified information not learned from the detainee to the detainee. Counsel may not otherwise divulge classified information related to a detainee's case to anyone except those with the requisite security clearance and need to know using a secure means of communication. Counsel for detainees in the coordinated cases pending in the United States District Court for the District of Columbia are presumed to have a "need to know" information in related cases pending before this Court. Counsel for respondents in those cases may challenge this presumption on a case-by-case basis for good cause shown.

X. JTF-Guantanamo Security Procedures

- A. Counsel and translators/interpreters shall comply with the following security procedures and force protection safeguards applicable to the US Naval Base in Guantanamo Bay, Cuba, JTF-Guantanamo and the personnel assigned to or visiting these locations, as well as any supplemental procedures implemented by JTF-Guantanamo personnel.
- B. Contraband is not permitted in JTF-Guantanamo and all visitors are subject to search upon arrival and departure. Examples of contraband include, but are not limited to, weapons, chemicals, drugs, and materials that may be used in an escape attempt. Contraband also includes money, stamps, cigarettes, writing instruments, etc. No items of any kind may be provided to the detainee without the advance approval of the Commander, JTF-Guantanamo.
- C. Photography or recording of any type is prohibited without the prior approval of the Commander, JTF-Guantanamo. No electronic communication devices are permitted. All recording devices, cameras, pagers, cellular phones, PDAs, laptops, portable electronic devices and related equipment are prohibited in or near JTF-Guantanamo. Should any of these devices be inadvertently taken into a

EXHIBIT A

prohibited area, the device must be surrendered to JTF-Guantanamo staff and purged of all information.

- D. Upon arrival at JTF-Guantanamo, security personnel will perform a contraband inspection of counsel and translators/interpreters using metal detectors as well as a physical inspection of counsel's bags and briefcases and, if determined necessary, a physical inspection of his/her person.
- E. Counsel shall not be permitted to interview or question members of the Joint Task Force about their duties or interactions with detainees without first obtaining permission from the Commander, Joint Task Force Guantanamo. Should permission be unreasonably denied, counsel may seek an Order from this Court granting permission for good cause shown.
- F. Counsel will meet with a detainee in conference facilities provided by GTMO. These facilities are subject to visual monitoring by closed circuit TV for safety and security reasons. (The only other method of visual observation available is for the door to remain open with military police sitting outside the door.). No oral communications between counsel and detainee will be heard.
- G. At the conclusion of a meeting with a detainee, counsel and translators/interpreters will again be inspected using a metal detector and, if deemed necessary, by physical inspection of their persons.

EXHIBIT 7

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FAWZI KHALID ABDULLAH FAHAD AL ODAH,)	
et al.,)	
Plaintiffs-Petitioners,)	
)	
v.)	No. CV 02-0828 (CKK)
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants-Respondents.)	
)	

DECLARATION OF THOMAS WILNER

1. My name is Thomas Wilner. I am a partner of Shearman & Sterling LLP and am a member of the Bar of this Court as well as of the Bars of the State of New York, the Commonwealth of Pennsylvania and the Supreme Court of the United States.
2. I, and my colleagues at Shearman & Sterling LLP, represent 12 Kuwaiti nationals, 11 of whom continue to be imprisoned by the United States at the Guantanamo Bay Naval Station.
3. I have now met with the Kuwaiti nationals incarcerated at Guantanamo Bay four times. It has become clear in the course of those visits that U.S. government officials have engaged in practices to destroy the trust of the Kuwaiti nationals in us as their lawyers.
4. On February 15, 2005, I met with one of the Kuwaiti nationals, Fayiz Al Kandari. Mr. Al Kandari told me that his interrogator had told him many times not to trust his lawyers.

5. Mr. Al Kandari described his interrogator as a young, white attractive woman with blonde hair to her shoulders, which Mr. Al Kandari described as a "lion's cut," who is of medium height and wears tight civilian clothing. She calls herself "Megan" in the interrogations.
6. Mr. Al Kandari had previously been the only one of the Kuwaiti detainees at Guantanamo who had been allowed a book. He told me that his interrogator had recently taken away his book. He said the interrogator told him "your lawyer said you don't have books so I am taking away your book. Tell your lawyers that is why I am taking the book. Tell your lawyer to give you a book." We, of course, are not allowed by the U.S. government to provide books to the detainees.
7. Mr. Al Kandari reported that his interrogator also said to him that he would be tortured if he went back to Kuwait. When he said that his lawyers had assured him otherwise, the interrogator laughed and said "don't trust your lawyers." She also said "did you know your lawyers are Jews?"
8. During my last visit to Guantanamo, I again met with Mr. Al Kandari on March 16, 2005. He said that his interrogator, Megan, had come in after my last visit and told him that she was very angry at him because of what he had told his lawyers, and that she would no longer visit him but would send another interrogator.
9. During my last trip, I also met on March 16 with Fouad Mahmoud Al Rabiah, another of the Kuwaiti nationals imprisoned at Guantanamo. Mr. Al Rabiah reported that his interrogator, specifically said, "don't trust these lawyers." He said that his

interrogator “told me that if I signed the form to be represented by you, I would be kept here forever.”

10. Mr. Al Rabiah then asked me very politely: “By the way, may I ask what religion you are?” I answered that I am Jewish.
11. Mr. Al Rabiah reported that his interrogator had made numerous comments that he should not trust his lawyers because they are Jewish. At one point, the interrogator said: “Your lawyers are Jews. How could you trust Jews? Throughout history, Jews have betrayed Muslims. Don’t you think your lawyers, who are Jews, will betray you?”
12. Mr. Al Rabiah reported that the interrogator also said to him: “Don’t ever believe that a Jew will help a Muslim unless he gets more out of it than he gives.”
13. Mr. Al Rabiah reported that, at another time, the interrogator said to him: “Your lawyers are Jews. They are from one of the world’s biggest law firms, which is Jewish and represents the Government of Israel.” (Shearman & Sterling LLP is a law firm of diverse membership which represented the State of Israel on a very small trade dispute 15 years ago and has not represented the State of Israel since.)
14. Mr. Al Rabiah reported that, at another time, the interrogator said to him: “What will other Arabs and Muslims think of you Kuwaitis when they know the only help you can get is from Jews?”

15. I asked Mr. Al Rabiah whether the interrogator who said these things to him is a woman using the name Megan. He answered that his interrogator is not a woman, but a man.
16. During my most recent trip to Guantanamo, I met with another of the Kuwaiti detainees, Saad Al-Azmi, and asked whether the government had suggested to him that he should not trust his lawyers. Mr. Al-Azmi grew very embarrassed and refused to answer the question.
17. At approximately 5:30 p.m. on Thursday, March 17, as I was leaving the prison at Guantanamo having completed my scheduled interviews, I was informed that the Administrative Review Board (“ARB”) hearings for the Kuwaiti Detainees were scheduled to begin on March 28. I immediately asked the military escorts to extend my visit to Guantanamo for a few days so that I could meet again with the Kuwaiti Detainees to inform them that their ARB hearings were scheduled and to advise them regarding those hearings. I was put in touch with the Navy Commander who we understand is in charge of logistics at the prison. He said that he was not able to agree to an extension of my visit and that I would need to go through our normal contact at the Justice Department who schedules visits to Guantanamo. I called that person from Guantanamo and spoke to him that evening. He told me that, for logistical reasons, he would not be able to extend my visit at Guantanamo. I then asked him to consider allowing me and others from my firm to come down the following week to meet with the Kuwaiti Detainees to advise them about the ARB hearings. He said that he would consider that request. The following week that request was also denied.

18. After our requests to visit Guantanamo were denied, we requested to speak with the Detainees by telephone. The government denied this request for logistical reasons. We then requested that the government make available a means of sending legal mail on an expedited basis. This request was also denied.

19. During the night of March 17, I wrote a hand-written letter to Mr. Al Rabiah. As mentioned, I had met with Mr. Al Rabiah on Wednesday, March 16, and had expected to meet with him again the following morning of March 17. Mr. Al Rabiah had wanted to discuss his possible ARB hearing during that morning's meeting. When I arrived to meet with Mr. Al Rabiah on the morning of March 17, however, he had been mistakenly returned to his permanent cell the night before, and I therefore could not meet with him. When I learned that Mr. Al Rabiah's ARB hearing would begin on March 28 or soon thereafter, and that I would not be able to extend my visit to meet with him before then, I decided to write him a letter regarding the ARB hearing, which I did the night of March 17.

20. On leaving Guantanamo on the morning of March 18, I gave the letter to the sergeant who escorted us to the airport and asked the sergeant to deliver the letter to Mr. Al Rabiah as soon as possible. Although the sergeant said that he would do so, the letter was not delivered to Mr. Al Rabiah but, instead, was sent to the secure facility outside Washington, where it arrived 20 days later, on April 6. We asked that the letter immediately be sent back to Mr. Al Rabiah at Guantanamo. Given the time required for mail delivery to and from Guantanamo, however, it is likely that Mr. Al Rabiah will not receive that letter until well after his ARB hearing has been completed.

21. On March 25, we submitted a formal written request to the Department of Justice to visit our clients at Guantanamo the first week in May. On March 31, Terry Henry, the Justice Department trial attorney, wrote Neil Koslowe of our office a letter “demand[ing]” explanations of our conduct during prior visits to Guantanamo. In the last paragraph of that letter, Mr. Henry demanded “appropriate explanations . . . prior to scheduling additional visits to GTMO by members of your law firm.”
22. On April 4, 2005, Mr. Koslowe responded to that letter.
23. Mr. Henry responded on April 8, 2005. Mr. Henry made clear in his April 8 letter that the Justice Department would refuse to schedule additional visits by Shearman & Sterling attorneys to Guantanamo until it received additional assurances.
24. On April 11, Mr. Koslowe and I spoke with Mr. Henry by telephone and explained to him that (i) under Paragraph 49 of the Amended Protective Order entered by the Court a party is required to raise with the Court any alleged violations of the Amended Protective Order or the Revised Counsel Access Procedures and to seek appropriate sanctions from the Court; (ii) a party has no right unilaterally to determine that violations have occurred or unilaterally to impose sanctions for those alleged violations; (iii) the government, in other words, has no right unilaterally to determine that the terms of the Amended Protective Order have been violated or unilaterally to deny Detainees access to their counsel on the basis of such allegations.
25. As a result of the government’s refusal to schedule a trip during the first week of May, we were unable to make arrangements to travel to Guantanamo that week, and

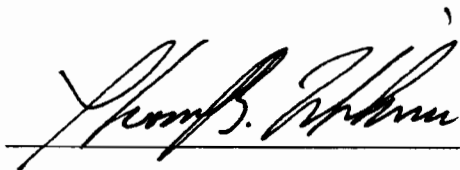
have now requested that we be allowed to visit our clients in Guantanamo the second week of May.

26. On our two initial trips to Guantanamo we had brought with us DVDs from family members of the Kuwaiti nationals which we were allowed to show them. The detainees uniformly told us that they greatly valued these DVDs from their families and that they were very thankful to us as their lawyers for bringing them.
27. The family members also prepared short DVDs to show each of the Kuwaiti detainees during our trip in February 2005. We offered to provide the DVDs to the Justice Department representative in Washington shortly prior to that trip, but he advised us to take the DVDs directly to the military at Guantanamo for security review. We did so and provided the DVDs to the military at Guantanamo when we arrived Monday morning, February 14, 2005, and waited during that trip for the DVDs to be cleared by the military so that we could show them to our clients. Each day during the trip we checked with the military on the progress of their review and were told it was continuing.
28. On the last day of the February trip, the Navy Commander who we understand is in charge of these matters told us that the military had edited some of the DVDs but had not finished reviewing all of them. We told him that we had promised our clients that we would show them the DVDs during this trip and that they would be extremely disappointed if we did not. The Navy Commander said that all of the DVDs would be ready in time for our next trip and that, in the future, we should give the military more advance time to do the security review. We informed our clients that we would

not be able to show the DVDs during the February trip but would do so when we returned in the middle of March.

29. On March 11, three days before our departure for our most recent trip, and after the government knew that we had promised the detainees that we would show them the DVDs on that trip and that they were looking forward to seeing the DVDs on the trip, Terry Henry, the Justice Department trial attorney, told us that we would not be allowed to show the DVDs. The government made no claim that the DVDs posed any security problems. Rather, Mr. Henry said that they were nothing more than “home movies” and that we would not be allowed to show them. We told our clients on the March trip that, despite our earlier promises, we were not able to show them the DVDs from their families. They were extremely disappointed.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Thomas Wilner", is written over a horizontal line.

Thomas Wilner

Executed on April 20, 2005 in Washington, DC