



UNITED STATES COURT OF
MILITARY COMMISSION REVIEW

**Appellate Oral Argument
in the case of:**

United States
v.
ali Hamza Ahmad Suliman al Bahlul

CMCR No. 09-001

Tuesday, January 26, 2010

10:00 a.m.

United States Court of Appeals for the Federal Circuit

Courtroom 201

717 Madison Place, N.W., Washington D.C. 20439

Counsel:

Counsel for the United States, the Appellee, are:

Captain John F. Murphy, JAGC, U.S. Navy Reserve,*
Captain Edward S. White, JAGC, U.S. Navy, and
Colonel Francis Gilligan, JA, U.S. Army (Ret.).

Captain White will argue for the United States.

Counsel for Mr. al Bahlul, the Appellant, are:

Mr. Michel Paradis, Esq.
Major Todd E. Pierce, U.S. Army Reserve, and
Captain Scott Medlyn, U.S. Air Force.

Mr. Paradis will argue for the Appellant.

The Court:

Three judges will conduct the oral arguments and decide the legal issues.

Colonel David L. Conn, JA, U.S. Army, Presiding Judge
Colonel Cheryl H. Thompson, U.S. Air Force, and
Captain Eric Price, JAGC, U.S. Navy.

Case summary:

The government alleges: Mr. al Bahlul, the Accused, traveled to Afghanistan in 1999. There, he swore *bayat* (allegiance) to Usama bin Laden and began working as technical support for him. Mr. al Bahlul ultimately served as Usama bin Laden’s personal secretary, conducting research, drafting speeches and correspondence for him, pledges of *bayat* and martyr wills for two 9/11 hijackers, and directing media activities. As part of this media effort, Mr. al Bahlul produced a video variously called *State of the Ummah* or *The Destruction of the American Destroyer Cole*. This video includes images of the U.S.S. Cole with a simulated explosion superimposed on it. It also shows news footage interspersed with Usama bin Laden’s and others’ speeches on issues such as the Israeli-Palestinian conflict, the government of Saudi Arabia, and the moral necessity of waging holy war against Western countries. In 2001 Pakistani forces captured Mr. al Bahlul and turned him over to U.S. custody. He was then transported to Guantánamo, Cuba.

Mr. al Bahlul was tried by Military Commission at Guantánamo Bay, Cuba. He was convicted, contrary to his pleas, of conspiracy and solicitation to commit several law of war offenses including murder of protected persons, as well as providing material support for terrorism.

* Captain Murphy is Chief Prosecutor, Office of Military Commissions.

Issues Presented:

The Court of Military Commission Review will hear arguments on the following issues:

- I. Was Appellant's communication protected by the First Amendment?
- II. Did the Military Commission have jurisdiction over all of the charges and specifications?
- III. Did Charge III and its Specification regarding providing Material Support To Terrorism violate the *Ex Post Facto* clause of the United States Constitution?
- IV. Whether the sentence of confinement life is inappropriately severe?

Order of Proceedings:^{*}

The Court Commissioner will call the court to order.

Each party will have thirty minutes for argument.

Appellant Defense Counsel will argue first.

Appellee Government Counsel will argue second.

The Defense may ask to reserve 5 minutes for rebuttal.

The judges may ask questions at any time during the arguments.

After arguments are complete, the court will adjourn, and will deliver its decision in due course.

*Questions may be addressed to Mr. Joseph DellaVedova, Public Affairs Office,
Office of Military Commissions, at: 703 428 7244.*

^{*} The Court of Military Commission Review Rules of Practice are available at:
<http://www.defenselink.mil/news/courtofmilitarycommissionreview.html>

Appellate Judge Biographies:

Colonel David L. Conn, JA, U.S. Army - Presiding Judge

The Presiding Judge for this oral argument is Colonel David L. Conn. Colonel Conn is a Senior Judge at the U.S. Army Court of Criminal Appeals where he has served since 2008. Prior to this assignment he served in various assignments as an Army Judge Advocate, including Trial Counsel and Brigade Legal Advisor, Frankfurt, Germany; Associate Professor of Constitutional Law at the U.S. Military Academy; Senior Defense Counsel at Fort Riley, Kansas; Chief, Administrative and Civil Law, Fort Stewart, Georgia; Army Civil Litigation Attorney in Arlington, Virginia; European Regional Defense Counsel; and Trial Judge and Chief Circuit Judge, 1st Circuit, Fort Drum, New York. Colonel Conn is a native of Pennsylvania and graduate of Washington & Jefferson College where he received his Bachelor of Arts Degree. He received his Juris Doctorate degree from the College of William and Mary, and his Master of Laws degree from the Army's Judge Advocate General's School in Charlottesville, Virginia.

Colonel Cheryl H. Thompson, JA, U.S. Air Force

Colonel Cheryl H. Thompson is an Appellate Judge on the Air Force Court of Criminal Appeals, Bolling Air Force Base in Washington where she has served since 2008. Prior to this assignment, Colonel Thompson served as the Staff Judge Advocate, Headquarters Air Force Office of Special Investigations, Andrews Air Force Base, Maryland; Staff Judge Advocate at Whiteman Air Force Base in Missouri; Chief of Military Justice and member of the command Inspector General inspection team at Headquarters Air Education and Training Command. Prior assignments include Staff Judge Advocate at Laughlin Air Force Base in Del Rio, Texas; Chief of Executive Services for the Judge Advocate General in the Pentagon; Chief Civil Law and Chief of Claims at Fifth Air Force and United States Forces Japan in Yokota Air Base, Japan. Colonel Thompson has also served as Deputy Staff Judge Advocate and Chief of International and Operational Law at Kunsan Air Base, Republic of Korea, Chief of Military Justice at Kelly Air Force Base, Texas and Chief of Legal Assistance and Preventive Law, Chief of Civil Law and Chief of General Law and Chief of Claims at Spangdahlem Air Base in Germany. She received her Bachelor of Arts in Business Administration, with honors, from Texas Christian University, and her Juris Doctorate from Texas Tech School of Law.

Captain Eric C. Price, JAGC, U.S. Navy

Captain Eric C. Price is a Judge on the Navy-Marine Corps Court of Criminal Appeals where he has served since August 2008. Immediately prior to his present assignment, Captain Price served as Commanding Officer, Region Legal Service Office, Naval District Washington. His previous assignments include service as military prosecutor, defense counsel, appellate defense counsel, staff judge advocate, and Executive Assistant and Special Counsel to the General Counsel of the Navy. He has served at all levels of Naval legal practice in the United States, overseas and at sea. A native of Fairmont, West Virginia, he received his Bachelor's Degree from West Virginia University, his Juris Doctor degree from the West Virginia University College of Law, and a Master of Laws degree in Military Law from The Army Judge Advocate General's School in Charlottesville, Virginia.