

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD, WALID
MUHAMMAD SALIH MUBARAK BIN
'ATTASH, RAMZI BIN AL SHIBH, ALI
ABDUL-AZIZ ALI, MUSTAFA AHMED
ADAM AL HAWSAWI

AE233(AAA)

Defense Motion of Mr. al Baluchi
to Review the Letterhead Memorandum of His
Alleged "Clean Team" Statements

4 October 2013

1. **Timeliness:** This motion is timely filed.
2. **Relief Sought:** The military commission should authorize Mr. al Baluchi to personally review the Letterhead Memorandum prepared by the FBI memorializing statements Mr. al Baluchi allegedly made to the FBI and DOD investigators at Guantanamo Bay.
3. **Overview:** A "clean team" of FBI and DOD investigators interrogated Mr. al Baluchi in January 2007. The government relied on his alleged admissions when it charged him and it will continue to use the statement throughout the remainder of this case. Mr. al Baluchi needs to personally review his purported statements as part of the preparation of his defense.
4. **Burden and Standard of Proof:** The burden of proof rests with the moving party.¹
5. **Facts:**
 - a. The government interrogated Mr. al Baluchi over several days in January 2007. The statements are contained in sixty-two (62) page FBI Letterhead Memorandum which purports to memorialize statements made by both the agents and Mr. al Baluchi.²
 - b. On 8 March 2013, Mr. al Baluchi propounded a discovery request for all audio and video recordings, which would include any recordings of the FBI/DOD interrogation.³ To

¹ See M.C. 3.8.a (Motions; Burdens of Proof and Persuasion). This standard applies to both the production of evidence and ultimate burden of persuasion. *Id.*; see also R.M.C. 905(c)(movant has burden of persuasion on factual issues).

² This document is Bates-stamped MEA-RBR-S-00000217 to MEA-RBR-S-00000279, and submitted as **Attachment B**.

date, the government has not (1) produced responsive audio/video recordings of the interrogation; (2) denied the existence of such recordings, or (3) explained the destruction and/or non-production of such recordings. The government has also not produced the investigating agents' notes from the interrogation.⁴ There are approximately one hundred exhibits associated with the Letterhead Memorandum, which the government has also failed to produce.⁵ Thus, the Letterhead Memorandum is currently the only record of Mr. al Baluchi's statements to the FBI & DOD available to the defense.

c. On or about February 9, 2013, the government produced the Referral Binder to the defense. A redacted, unclassified version of the Letterhead Memorandum is Exhibit E to the Referral Binder and is Bates stamped MEA-RBR-00000217 through MEA-RBR-00000279 and also marked TAB E-001 through TAB E-062. The redacted Referral Binder version of the Letterhead Memorandum is not marked as "releasable" to Mr. al Baluchi.

d. On 21 March 2013, counsel for Mr. al Baluchi asked the prosecution whether he could provide the redacted, unclassified Letterhead Memorandum to Mr. al Baluchi.⁶

e. On 26 March 2013, the prosecution responded that the Letterhead Memoranda in the Referral Binder "are not marked releasable to the client intentionally, however, we are working on providing you a version of those documents that will be releasable to your client."⁷

³ Att. C (DR-032-AAA).

⁴ The production of these documents is at issue in AE194 Defense Motion to Compel Discovery of Mr. al Baluchi's statements.

⁵ On information and belief, most or nearly all of these items are unclassified and all involve exhibits used by the interrogators, i.e., (1) documents, e.g., airline tickets, bank account statements, etc., (2) photographs, and (3) hand-written notations that Mr. al Baluchi supposedly made during the interview and which the FBI appended to the interrogation memorandum as 1A envelope attachments. Notwithstanding that the government might have scattered some of these exhibits elsewhere in its 240,000+ pages of discovery production to date, the government has failed to produce either an index to these documents or the documents themselves.

⁶ Att. D.

f. The prosecution produced the Letterhead Memorandum on or about May 8, 2013.

It is marked SECRET//NOFORN, contains some redactions, and does not indicate that it is releasable to Mr. al Baluchi.

g. The Convening Authority relied on the Letterhead Memorandum in its charging decision. As indicated in Chief Prosecutor's Memorandum to the CA, the "referral binders contain the following information . . . TABS B-I contain eight FBI Letter head Memoranda (LHM) containing statements the accused gave to law enforcement in 2007. All five of the charged individuals provided voluntary statements to the FBI and CITF investigators beginning in January 2007 that detailed among other things, their individual roles in the attacks of September 11, 2001."⁸

6. **Law and Argument:**

As Congress recognized in 10 U.S.C. § 949p-1(b), Mr. al Baluchi has a right to know the evidence against him, one of the most basic elements of fundamental fairness.⁹ While other motions deal with government disclosure obligations to the defense, this motion is narrowly focused on a defendant's personal access to his own alleged admissions during custodial interrogation.

Initially, it is beyond dispute that the prosecution must provide the defense with access to statements it claims Mr. al Baluchi made to government interrogators. Two military commissions rules require that the government provide the "content of all relevant statements."¹⁰

⁷ Att. D.

⁸ See Att. E.

⁹ This argument is developed in more detail in AE013JJ Defense Motion to Amend AE013AA Protective Order #1 to Permit Defendant to Participate in His Own Defense, incorporated herein by reference.

¹⁰ RMC 701(c)(3) (government must disclose "contents of all relevant statements-oral, written, or recorded—made or adopted by the accused"); MCRE 304 (c)(1) ("prosecution shall disclose to

While there is little case law explaining R.M.C. 701, relevance is a low threshold under the court-martial counterpart. As the court held in *United States v. Callara*,

If there is a reasonable prospect that the statement might be offered in evidence during the trial, then disclosure is required. . . . the duty to disclose a pretrial statement is independent of any recognition by the accused that the statement was relevant at the time it was made. The evaluation is made solely in terms of what evidence might tend to prove guilt in light of the trial scenarios reasonably to be anticipated.¹¹

Military courts have not hesitated to find error in the government's failure to disclose accused statements.¹²

Once the prosecution has produced the statements, Mr. al Baluchi needs to review them personally. Although few prosecutors have attempted to deny defendants personal access to their alleged statements, there is authority in the D.C. District Court involving Guantanamo detainees in the habeas litigation which is nearly on point. *Mohammed v. Gates*¹³ involved a detainee who moved for the government to allow him to review and retain his alleged statements contained in the respondent's factual return. The court granted his request in part, because the motion sought access to important information necessary to facilitate his right to meaningful assistance of counsel. The court held that,

However, for Mohamed to have anything resembling a meaningful opportunity to demonstrate that he is being held contrary to law, he must be given an opportunity

the defense the contents of all relevant statements—oral, written, or recorded—made or adopted by the accused”).

¹¹ 21 M.J. 259, 263 (C.M.A. 1986); *see also United States v. Stevens*, 985 F.3d 1175, 1180 (2d Cir. 1993); *United States v. Brodie*, 871 F.2d 125, 129 (D.C. Cir. 1989); *United States v. Thomas*, 239 F.3d 163, 167 (2nd Cir. 2001); *United States v. Lanoue*, 71 F.2d 966, 974 (1st Cir. 1995); *United States v. Haldeman*, 559 F.2d 31, 74 n. 80 (D.C. Cir. 1976) (*en banc*).

¹² *See United States v. Dancy*, 38 M.J. 1, 4 (C.M.A. 1993) (government wrongly failed to disclose a letter from the accused to the victim's sister); *United States v. Callara*, 21 M.J. 259, 263 (C.M.A. 1986) (accused made informal oral statement to agent which was not in any report); *United States v. Trimper*, 28 M.J. 460, 463 (C.M.A. 1989) (prosecutor failed to disclose accused's statement to lay witness that he obtained a private drug test).

¹³ 624 F.Supp. 2d 40 (D.D.C. 2009).

at some point to review and discuss with his counsel all of the purported statements made by him to government agents that are used against him in the amended factual return. The respondent's concern that the court might force it to release classified information or declassify information that could harm the national security interests of the United States is misplaced. The respondent has not been directed to declassify any material. However, the respondent may not justify Mohamed's detention with statements of Mohamed's that he has not had a meaningful opportunity to discuss with his counsel. If the respondent were to choose not to divulge these statements to Mohamed, the respondent presumably would have to seek leave to file a new amended factual return that does not rely upon the undisclosed statements.¹⁴

Here, even though it relied on the statements to charge Mr. al Baluchi, the government wants to hide these from him. Unless the government recorded the interrogation, only the interrogating agents, Mr. al Baluchi, and those who observed the interrogation knew—almost seven years ago—exactly what was said. Mr. al Baluchi's counsel were not among those who observed the interrogation, and the prosecution has not produced any recording. To meaningfully present a defense, Mr. al Baluchi must be able to read the record of his alleged statements, and discuss it with his attorneys.

In March, and again in conferencing this motion, the prosecution has claimed that it is developing a different version of Mr. al Baluchi's Letterhead Memorandum for his personal review. The Fourth Circuit dealt with a related issue in *United States v. Abu Ali*¹⁵ where the court held,

If classified information is to be relied upon as evidence of guilt, the district court may consider steps to protect some or all of the information from unnecessary public disclosure in the interest of national security and in accordance with CIPA . . . However, *the government must at a minimum provide the same version of the evidence to the defendant that is submitted to the jury.* We do not balance a criminal defendant's right to see the evidence which will be used to convict him against the government's interest in protecting that evidence from public disclosure. If the government does not want the defendant to be privy to information that is classified, it may declassify the document, seek approval of an effective substitute, or forego its use altogether. What the government cannot do

¹⁴ *Id.* at 44.

¹⁵ 528 F.3d 210 (4th Cir. 2008).

is hide the evidence from the defendant, but give it to the jury. Such plainly violates the Confrontation Clause.¹⁶

Given that the statements supposedly came from Mr. al Baluchi in the first place, there is no reason he should not have access to the Letterhead Memorandum. A Letterhead Memorandum is already a summary, and the prosecution is proposing a summary of a summary. Although the motivation for an additional summary is not clear, one thing is: Whatever the prosecution leaves out of its modified statement, it cannot use at trial.

The commission plainly has the power to order disclosure now to Mr. al Baluchi. Amended Protective Order #1 already anticipated such an order: “Until further Order of this Commission, the Defense shall not disclose to an accused any classified information not previously provide by an accused to the Defense, except where information has been approved for release to an accused and marked accordingly.”¹⁷ The military commission should authorize Mr. al Baluchi to review the Letterhead Memorandum despite its classification.

7. **Request for Oral Argument:** Oral argument is requested.
8. **Request for Witnesses:** To be determined.
9. **Conference with Opposing Counsel:** The prosecution stated its position as follows: “We are currently working to provide to you a copy of the Letterhead Memorandum pertaining to your client's statements that can be shown to him. As such, a motion on this subject may not be necessary, although it is certainly up to you whether or not you choose to file.”
10. **Additional Information:** None.
11. **Attachments:**
 - A. Certificate of Service.

¹⁶ *Id.* at 255 (emphasis added).

¹⁷ AE013AA ¶ 6(i).

- B.** FBI Letterhead Memorandum (Filed Under Seal)
- C.** Discovery Request (DR-032-AAA), dated 8 March 2013
- D.** E-Mail with Prosecution, dated 29 March 2013
- E.** Chief Prosecutor's Memorandum to the CA, dated 1 June 2011

Very respectfully,

//s//

JAMES G. CONNELL, III
Detailed Learned Counsel

Counsel for Mr. al Baluchi

//s//

STERLING R. THOMAS
Lt Col, USAF
Detailed Military Defense Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on the 4th day of October, 2013, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by email.

//s//

JAMES G. CONNELL, III

Learned Counsel

Attachment B

Filed on SIPR

United States v. KSM et al.

APPELLATE EXHIBIT 233 (AAA)

(Pages 11-73)

SECRET/UNDER SEAL

Attachment B

**APPELLATE EXHIBIT 233 (AAA) is located in
original record of trial Secret Annex.**

**POC: Chief, Office of Court Administration
Office of Military Commissions**

United States v. KSM et al.

APPELLATE EXHIBIT 233 (AAA)

Attachment C

8 March 2013

MEMORANDUM FOR Trial Counsel

FROM: James G. Connell, III, Learned Counsel for Mr. al Baluchi

SUBJECT: DEFENSE REQUEST FOR DISCOVERY. (DR-032-AAA)

Pursuant to 10 U.S.C. § 949j, RMC 701, and the Due Process Clause of the Fifth Amendment to the United States Constitution, Mr. al Baluchi through counsel submits this discovery request.

Definition(s). For purposes of this request,

(a) The term *government* is not limited to the prosecutor's office but also includes United States government officials and/or any governmental entity or agency aligned with the prosecution. This further includes but is not limited to the White House, the CIA, FBI, and/or DOD. Further, this includes but is not limited to any private entity or person who performed services or contacted with the United States government.

(b) The term *communication* means any written, recorded, electronic, oral, verbal and/or telephonic exchange of information. The term includes but is not limited to briefings, documents, attachments, and/or exhibits accompanying any communications.

Request.

1. Please produce complete unredacted copies of any recordings of Mr. al Baluchi, including but not limited to:
 - a. Video recordings of Mr. al Baluchi (in any format);
 - b. Photographic records of Mr. al Baluchi (in any format);
 - c. Audio recordings of Mr. al Baluchi (in any format);
 - d. Any other recording of Mr. al Baluchi (regardless of the format).

This request includes the periods for which any recording was made regardless whether made before, during, or after Mr. al Baluchi was placed in U.S. custody.

2. Please produce complete unredacted records of all communications regarding audiovisual recording of Mr. al Baluchi.
3. Please produce complete unredacted copies of any all government policies, procedures, guidance, orders and/or instructions regarding the recording (of any kind and in any format) of detainees now or ever held at Guantanamo Bay.

UNCLASSIFIED//FOR PUBLIC RELEASE

Thank you for your attention to this matter. If you have any questions regarding this request or would like to discuss further, please feel free to contact me.

Respectfully Submitted,

//s//

James G. Connell, III

Attachment D

UNCLASSIFIED//FOR PUBLIC RELEASE

From: [Connell, James G III CIV OSD OMC Defense](#)
To: [Trivett, Clay Off-site](#)
Subject: RE: RBR 107-363
Date: Friday, March 29, 2013 8:39:09 AM

ATTORNEY COMMUNICATION: DO NOT MONITOR

Dear Mr. Trivett,

Here is the issue:

PO#2 says the government will segregate the unclassified discovery into "general discovery materials" and "sensitive discovery materials," with an additional exclusion for information in the public domain released by an authorized source. I can see what I think are examples of each of the three categories (e.g., F11 as general discovery materials, the baseline review reports as sensitive discovery materials, MEM as previously released). But there are no markings of the discovery as general, sensitive, or previously released. Instead, the discovery has markings such as FOUO and FOUO LES, which do not neatly align with the PO#2 categories. Similarly, the "releasable" markings are required by the Written Communications order, not PO#2, and don't align with the PO#2 categories either.

Fundamentally, what I am interested in is whether there is a way for me to tell which documents the government believes fall into each of the PO#2 categories.

I'll let you decide whether it would be better to have a meeting, or to handle via email. Thanks for looking at this issue and happy holiday.

Best regards,

James G. Connell, III
Office of the Chief Defense Counsel
1620 Defense Pentagon
Washington, DC 20301 1620


This email and any attachments are attorney communications exempt from DOD monitoring and potentially privileged. If you receive this email in error, please delete it and notify me of the error.

Original Message

From: Trivett, Clay Off site
Sent: Thursday, March 28, 2013 8:04 PM
To: Connell, James G III CIV OSD OMC Defense
Cc: Cox, Dale; Baltes2, Joanna Off site
Subject: RE: RBR 107 363

James,

Sorry for the delay in getting back to you on this. We would be available to meet next week to discuss. If it is feasible to call or email the nature of the problem in advance I can probably get you an answer sooner, or at least be better prepared at the meeting, but I understand that these things are not always easy to convey in writing or over the phone.

I will also get you an answer on the signed MOU issue for PO #2. My email was not artfully drafted, but I will answer your question more formally to the group so everyone has the benefit of the answer.

Hope all is well.

Clay
[REDACTED]

Original Message
From: Connell, James G III CIV OSD OMC Defense
[REDACTED]
Sent: Wednesday, March 27, 2013 9:26 AM
To: CLAYTOGT
Cc: DALEJC
Subject: RE: RBR 107 363

ATTORNEY COMMUNICATION: DO NOT MONITOR

Dear Mr. Trivett,

I am having some difficulty squaring the markings on the discovery with PO #2. It seems to me this might be the sort of issue we could resolve between the parties. Are you and Mr. Cox available to meet some time next week?

Best regards,

James G. Connell, III
Office of the Chief Defense Counsel
1620 Defense Pentagon
Washington, DC 20301 1620
[REDACTED]

This email and any attachments are attorney communications exempt from DOD monitoring and potentially privileged. If you receive this email in error, please delete it and notify me of the error.

Original Message
From: Trivett, Clay Off site
Sent: Tuesday, March 26, 2013 5:53 PM
To: Connell, James G III CIV OSD OMC Defense
Cc: Cox, Dale
Subject: RE: RBR 107 363

James,

Per the below, I verified with my paralegal that pages RBR 107 through RBR 363 are not marked releasable to the client intentionally, however, we are working on providing you a version of those documents that will be releasable to your client.

Regards,

Clay

Original Message
From: Connell, James G III CIV OSD OMC Defense
[REDACTED]
Sent: Thursday, March 21, 2013 5:00 PM
To: CLAYTOGT
Subject: RE: RBR 107 363

ATTORNEY COMMUNICATION: DO NOT MONITOR

Thanks!

Best regards,

James G. Connell, III
Office of the Chief Defense Counsel
1620 Defense Pentagon
Washington, DC 20301 1620
[REDACTED]

This email and any attachments are attorney communications exempt from DOD monitoring and potentially privileged. If you receive this email in error, please delete it and notify me of the error.

Original Message

From: Trivett, Clay Off site
Sent: Thursday, March 21, 2013 4:56 PM
To: Connell, James G III CIV OSD OMC Defense
Subject: FW: RBR 107 363

James,

No need to file a formal request. I am going to have my paralegal look into it and I will respond to you as soon as I can verify. Hope all is well.

Clay

Original Message

From: Trivett, Clayton CIV OSD OMC Prosecution
[REDACTED]
Sent: Thursday, March 21, 2013 4:53 PM
To: CLAYTOGT
Subject: FW: RBR 107 363

From: Connell, James G III CIV OSD OMC Defense
Sent: Thursday, March 21, 2013 4:52:47 PM (UTC 05:00) Eastern Time (US & Canada)
To: Trivett, Clay Off site; Trivett, Clayton CIV OSD OMC Prosecution
Subject: RBR 107 363

ATTORNEY COMMUNICATION: DO NOT MONITOR

Dear Mr. Trivett,

In reviewing the Feb. 9 discovery production (the referral binder), I notice that pages RBR 107 through RBR 363 are not marked releasable to the client, but the other RBR pages are releasable to all clients. Is this intentional, or an artifact of the production process? I can file a formal request, but I wanted to check in case it was simply an oversight. Please give me a call if you would like to discuss.

Best regards,

James G. Connell, III
Office of the Chief Defense Counsel
1620 Defense Pentagon
Washington, DC 20301 1620



This email and any attachments are attorney communications exempt from DOD monitoring and potentially privileged. If you receive this email in error, please delete it and notify me of the error.

Attachment E



OFFICE OF THE
CHIEF PROSECUTOR

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

1 June 2011

MEMORANDUM FOR CONVENING AUTHORITY, OFFICE OF MILITARY COMMISSIONS

THROUGH LEGAL ADVISOR TO THE CONVENING AUTHORITY, OFFICE OF
MILITARY COMMISSIONS

SUBJECT: Transmittal letter for the forwarding of charges in
United States v. Khalid Sheikh Mohammed, Walid
Muhammad Salih Mubarak Bin `Attash, Ramzi Binalshibh,
Ali Abdul Aziz Ali, and Mustafa Ahmed Adam al Hawsawi

1. I recommend that you refer the charges at TAB A to a joint trial by a military commission empowered to adjudge the penalty of death for all five accused. The five accused (Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarak Bin `Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, and Mustafa Ahmed Adam al Hawsawi) were each involved in the September 11, 2001 attacks on the United States. As currently pleaded, five of the proposed charges - Attacking Civilians, Murder in Violation of the Law of War, Hijacking, Terrorism, and Conspiracy are death-eligible offenses.

2. The Prosecution intends to prove or rely on the following aggravating factors to pursue a death sentence pursuant to Rule for Military Commission ("R.M.C.") 1004(b)(1) and (c):

- a. That the offense resulted in the death of one or more person;
- b. That the offense was committed in such a way or under circumstances that the life of one or more persons other than the victim was unlawfully and substantially endangered;
- c. That the crime was preceded by the intentional infliction of substantial physical harm or prolonged, substantial mental or physical pain and suffering to the victim or to another person; and
- d. That a victim was under the age of 15.



REL TO 10011, 10013,
10014, 10018, 10024

MEA-RBR-U-00000001

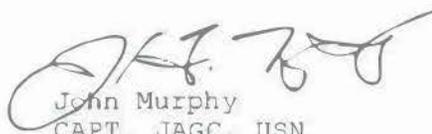
3. Before arraignment trial counsel will provide the defense written notice of the above-enumerated aggravating factors in accordance with R.M.C. Rule 1004(b)(1).

4. The following supports my recommendation for approval and referral of the charges against the above-named accused:

a. At all times material to the charges, it is my opinion that a military commission has both *in personam* and subject-matter jurisdiction over the above-named accused, and that the charges and specifications allege offenses triable by military commission.

b. In May 2008, in accordance with the Regulation for Trial by Military Commissions, paragraph 4-2(4) and R.M.C. 406(b)(4), trial counsel consulted with the Office of the Director of National Intelligence, and the Office of the Director of National Intelligence determined that the trial of these charges would not be harmful to national security. In May 2011, prior to swearing, trial counsel once again consulted with representatives from the General Counsel's Office and briefed them on the national security implications of this case. While the ODNI plans on making a new determination on whether these charges will be harmful to national security, charges should not be referred until they do so. I anticipate that the Office of the Director of National Intelligence will once again determine that the prosecution of this case will not be harmful to national security.

c. The evidence presented in the accompanying binders establishes reasonable grounds to believe that offenses triable by military commission have been committed, and that the above-named accused committed them.



John Murphy
CAPT, JAGC, USN
Chief Prosecutor

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

OFFICE OF THE
CHIEF PROSECUTOR

1 JUNE 2011

MEMORANDUM FOR CONVENING AUTHORITY, OFFICE OF MILITARY COMMISSIONS
THROUGH CHIEF PROSECUTOR, OFFICE OF MILITARY COMMISSIONS
THROUGH LEGAL ADVISOR TO THE CONVENING AUTHORITY

SUBJECT: Transmittal letter for the forwarding of charges in
United States v. Khalid Sheikh Mohammed, Walid
Muhammad Salih Mubarak Bin `Attash, Ramzi Binalshibh,
Ali Abdul Aziz Ali, and Mustafa Ahmed Adam al Hawsawi

1. Herein please find trial counsels' recommendation that you refer the charges at TAB A to a joint trial by military commission. The five accused (Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarak Bin `Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, and Mustafa Ahmed Adam al Hawsawi) were each involved in the September 11, 2001 attacks on the United States. All trial counsel recommend that the Convening Authority refer the charges to a joint military commission empowered to adjudge the penalty of death for all five accused.

2. In this matter, and as currently pleaded, five of the proposed charges - Attacking Civilians, Murder in Violation of the Law of War, Hijacking, Terrorism, and Conspiracy - carry a maximum penalty of death. The prosecution intends to prove or rely on one or more of the following aggravating factors to pursue a death sentence pursuant to Rule for Military Commission ("R.M.C.") 1004(b)(1) and (c):

- a. That the offense resulted in the death of more than one person;
- b. That the offense was committed in such a way or under circumstances that the life of one or more persons other than the victim was unlawfully and substantially endangered;
- c. That the crime was preceded by the intentional infliction of substantial physical harm or prolonged, substantial mental or physical pain and suffering to the victim or to another person; and
- d. That a victim was under the age of 15.

Printed on  Recycled Paper

**REL TO 10011, 10013,
10014, 10018, 10024**

MEA-RBR-U-00000003

2. The following persons are named for inclusion and removal of the charges against the respondent:

a. [Faint text listing names and details of charges]

b. [Faint text listing names and details of charges]

c. [Faint text listing names and details of charges]

d. [Faint text listing names and details of charges]

e. [Faint text listing names and details of charges]

3. The following persons are named for inclusion and removal of the charges:

a. [Faint text listing names and details of charges]

b. [Faint text listing names and details of charges]

[Faint handwritten notes]

1981-1982... (faint text)

1983-1984... (faint text)

1985-1986... (faint text)

1987-1988... (faint text)

1989-1990... (faint text)

1991-1992... (faint text)

1993-1994... (faint text)

1995-1996... (faint text)

- 1. ...
- 2. ...
- 3. ...
- 4. ...
- 5. ...

1981-1982... (faint text)

iii. As evidence to support the deaths of these five individuals, TAB L also includes a paper copy of a CITF Form 40, which details an interview with a representative from AFIP that explains why the five individuals were not issued death certificates by AFIP, as well as the results of a subsequent CITF investigation showing that different courts in the United States have declared these individuals to be deceased as a result of the September 11, 2001 attacks.

iv. Five additional persons were identified as victims of the September 11, 2001 attacks by the New York Medical Examiner following the May 2008 referral of the case. Death certificates for these individuals will follow shortly under separate cover. These five individuals are:

1. Sneha Anne Philip (Victim #2023)
2. Leon Heyward (Victim #1157)
3. Prem N. Jerath (Victim #1257)
4. Albert Joseph (Victim #1277)
5. Randy Drake (Victim #758)

v. A death certificate for victim #769-Felicia Dunn Jones, age 42, will also follow under separate cover.

vi. The 2008 list erroneously listed Jack D'Ambrosi twice (numbers 650 and 651 on the 2008 list) and Raymond Sanchez twice (numbers 2250 and 2251 on the 2008 list). With the correction of those two no longer being double-counted, and the addition of the five above-named individuals, the number of deceased now stands at 2,976.

vii. TAB L also contains a comprehensive list of those killed in the Pentagon, to include the five above-named individuals who were not issued death certificates, as reported by the Historical Office of the Office of the Secretary of Defense in "Pentagon 9/11."

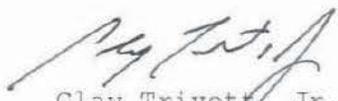
f. TAB M contains an electronic copy of the referral binders and all of their contents, for your convenience.

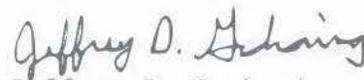
5. The evidence contained in the referral binders is just a fraction of the evidence the Prosecution intends to present. Because of the static nature of documents not every single fact contained within each overt act will be readily apparent on the face of the documents. One example of this would be approximated dates listed in the overt acts. However, there is sufficient evidence provided for you to determine that probable cause exists that each of the 167 overt acts were committed and that the accused named therein committed it.

a. Although the Prosecution listed 167 overt acts, including multiple overt acts for each accused, it is important to note that, in regard to the Conspiracy charge, the Prosecution only need prove the accused knowingly committed an overt act in order to accomplish some objective or purpose of the agreement.

6. The Office of the Chief Prosecutor will provide any other materials you feel are necessary to make your determination on referral of these charges.


Robert Swann
Prosecutor


Clay Trivett, Jr.
Prosecutor


Jeffrey D. Groharing
Prosecutor


Ed Ryan
Prosecutor