



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

CONVENING AUTHORITY

28 May 2008

MEMORANDUM FOR LCDR William Kuebler, Office of Defense Counsel

SUBJECT: *U.S. v. Khadr*: Response to Request for Expert Witness (Dr. Pargeter)

I have reviewed your 15 May 2008 request for employment of Dr. Alison Pargeter as an expert witness on "the structure, nature and activities of Libyan militants and organizations, including the Libyan Islamic Fighting Group (LIFG)." The request does not contain a sufficient synopsis of testimony to show that Dr. Pargeter's testimony is relevant and necessary, as required by R.M.C. 703(c)(2)(B). Nor does it explain how Dr. Pargeter's "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue," which is the required showing before an expert witness' opinion is admissible. See M.C.R.E. 702.

The request contemplates that the prosecution will introduce evidence that Abu Layth al-Libi was an "unnamed co-conspirator" of Mr. Khadr. The request includes a news story which quoted a U.S. counterintelligence official as stating "[i]n an earlier role, [al-Libi] was a leader of the Libyan Islamic Fighting Group, which eventually merged with al Qaeda...." The story states that al-Libi "appeared in a 2002 audio recording posted on an Islamist Web site, saying al Qaeda had regrouped and intended to expand its war to include assassinations and attacks against infrastructure."

Paragraph 4.a.v. of the request summarizes Dr. Pargeter's testimony as follows:

Ms. Pargeter will provide testimony detailing the history, structure, aims, activities and associations of the LIFG as of June-July 2002. Ms. Pargeter will be able to testify as to why LIFG fighters would have been in Afghanistan at that time and what relationship, if any, they would have maintained with the al Qaeda organization. Ms. Pargeter will also testify as to the role of Abu Layth al-Libi within the LIFG and what connections, if any, he had with al Qaeda in June-July 2002.

The request argues that Dr. Pargeter is necessary to "challeng[e] the government's theory of a link between al Qaeda and those individuals with whom Mr. Khadr is alleged to have joined in June-July of 2002." The request also references Evan Kohlmann's consultations with the prosecution and the creation of "The al Qaeda Plan" video.

The synopsis of testimony does not state whether Dr. Pargeter could offer any evidence negating a connection between al-Libi and al Qaeda in June or July of 2002. The synopsis fails to state what her testimony would be regarding the existence of such connections, and if they do

exist, what those connections were. Without such information, I can only speculate about the probative value of Dr. Pargeter's testimony.

The request also states that Dr. Pargeter is necessary in light of the prosecution's consultations with an expert, Evan Kohlmann. However, the request does not assert that Mr. Kohlmann or "The al Qaeda Plan" video will present any evidence regarding Libyan militants and organizations, including the LIFG. Therefore, it does not appear that Dr. Pargeter will rebut any fact in issue presented by Mr. Kohlmann.

I encourage you to provide the requested information and will continue to evaluate each request on an objective basis.



Susan J. Crawford  
Convening Authority  
for Military Commissions



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

5 June 2008

## MEMORANDUM FOR THE CONVENING AUTHORITY

Subj: *UNITED STATES V. OMAR KHADR* – DEFENSE REQUEST FOR EXPERT WITNESS  
DR. BRIAN WILLIAMS

Encl: (1) Curriculum Vitae of Dr. Brian Williams  
(2) Gen. Thomas L. Hemmingway, Legal Advisor's Pretrial Advice, 13 April 2007  
(3) *United States v. Hamdan*, Ruling on Defense Motion D-025 for Employment of  
Expert Witness (Dr. Brian Williams), dated 23 April 2008.  
(4) Aljazeera.net report, 3 Nov 07  
(5) MC Form 13-1

1. The defense in the case of *United States v. Omar Khadr* requests that the Convening Authority approve Dr. Brian Williams as an expert witness on the structure, nature and activities of al Qaeda in Afghanistan, as well as the structure, nature and activities of other militant groups based in Afghanistan in 2001-2002, and their relationship to al Qaeda.

2. Qualifications: Dr. Williams is an associate professor of Islamic History at the University of Massachusetts, Dartmouth, with two decades of field work and research on the nature and activities of Islamic militant groups in Eurasia. He has been retained as a counter-terrorism expert and advisor by the Jamestown Foundation, the Central Intelligence Agency, the Joint Information Operations Warfare Center, and in connection with various military operations in Afghanistan, among others. Dr. Williams is the author of dozens of publications, book chapters and encyclopedia entries on Islamic militancy and the conflict in Afghanistan, and has already been certified and approved as an expert on these issues in the military commissions case, *United States v. Hamdan*. See encl. 3.

3. Expert consultant's address and telephone number:

University of Massachusetts at Dartmouth  
Room 313, Group I  
285 Old Westport Road  
North Dartmouth, MA 02747-2300  
Office: (508) 999-8302  
Cell: (857) 523-0894

4. Synopsis of expected testimony:

a. Relevance:

- i. Central to the government's theory of Mr. Khadr's liability are his connections to the al Qaeda organization. The legal advisor to the convening authority has expressly relied on Mr. Khadr's membership or affiliation with

al Qaeda as the basis for personal jurisdiction over him. Encl. 2 at 2 (“Khadr is an enemy combatant and a *member* of or affiliated with al Qaeda. The M.C.A. defines such persons as unlawful enemy combatants.”). Charge III, Conspiracy, alleges that Mr. Khadr did “conspire and agree with Usama bin Laden, Ayman al Zawahiri, Sheikh Sayeed al Masri, Saif al Adel, Ahmed Sa’id Khadr (alk/a Abu Al-Rahman Al-Kanadi), and various other members and associates of the al Qaeda organization” and that he “joined a group of Al Qaeda operatives.” (Charge Sheet.) At a recent Commission hearing, the government stated that one of the unnamed alleged co-conspirators is Abu Laith al-Libi, whom it claims is affiliated with al Qaeda. Charge IV, Material Support for Terrorism, alleges that Mr. Khadr did “intentionally provide material support or resources to wit: personnel, himself, to al Qaeda, an international terrorist organization founded by Usama bin Laden.” (Charges Sheet). Finally, Charge V, Spying, alleges that Mr. Khadr conducted unlawful surveillance and “intended to convey such information to an enemy of the United States, namely al Qaeda or its associated forces.”

- ii. In order for the government to prove jurisdiction and its allegations on three of the five charges against Mr. Khadr, therefore, it must demonstrate that the individuals with whom Mr. Khadr allegedly “conspired,” “supported” and “conveyed information” to were, in fact, members or close affiliates of al Qaeda. Since Mr. Khadr’s guilt is premised upon his connection to various individuals to whom he was allegedly given by his father in June-July 2002, the government must demonstrate, and the defense must be afforded an opportunity to rebut, the relationship these individuals did or did not have with al Qaeda or Terrorism, and whether Mr. Khadr was both aware of and took active steps to further al Qaeda’s organizational goals as such.
- iii. At a minimum, it is fatal to the government’s case on Charge IV, if the individuals that Mr. Khadr is alleged to have provided “himself” as “personnel” to were not members of al Qaeda or some other known terrorist organization. The military judge in another proceeding has already ruled that the nature of the testimony that Dr. Williams can offer and his qualifications to offer it warrant compelling his employment as an expert witness on a nearly identical issue. *United States v. Hamdan*, Ruling on Defense Motion D-025 for Expert Witness Dr. Brian Williams, dated 23 April 2008. In *Hamdan*, Judge Allred ruled that in contesting the charge of Material Support for Terrorism, Dr. Williams’ testimony was both relevant and necessary to deciding whether the individual or organization the accused is alleged to have aided had the “status of a terrorist, terrorist organization or an unlawful fighting force.” *Id.* at 2.
- iv. Dr. Williams will rebut trial counsel’s and the Legal Advisor’s assertions that Mr. Khadr himself or the individuals with whom he is alleged to have “joined” and “supported” were in fact “members” of al Qaeda. Membership in al Qaeda has a specific meaning that is not satisfied simply by being in the

Williams will demonstrate error in the pre trial advice

multiple detainees  
statements  
refute this  
claim

presence of al Qaeda fighters. According to Dr. Williams, membership in al Qaeda is exclusively obtained by one's swearing "bayat," or allegiance, to Usama bin Laden. Dr. Williams will explain the nature of such an oath of allegiance, its form, its requirements and how it was recorded by the al Qaeda organization.

v. Mr. Khadr has never been alleged to have sworn bayat himself. Aside from speculative inferences based on statements extracted from a critically wounded fifteen-year-old boy, the government has thus far not demonstrated that Mr. Khadr's father (the only allegedly named al Qaeda member with whom Mr. Khadr is alleged to have had significant contacts) sought or attained al Qaeda membership. The government has not even proffered any evidence to demonstrate the "membership" of the unnamed coconspirators, who are alleged to have been "members and associates of the al Qaeda organization" in Charge III. The only one of these individuals so far identified by the government is Abu Laith al-Libi, who had no formal relationship with al Qaeda until November 2007 according to open source intelligence. See Encl. 4. Dr. Williams' testimony will contradict the government's assertion that Mr. Khadr, his father, and other individual's with whom he alleged to have "conspired" and "supported" were, in law and fact, "members" of al Qaeda.

vi. Dr. Williams will further rebut the government's apparent effort to conflate the definition of "enemy combatant" with liability under Charges III and IV. Other than purported statements of Mr. Khadr, the government has provided almost no discovery as to the identities or relationships of the "al Qaeda operatives" in Charge III or attempted to substantiate that the individuals to whom Mr. Khadr allegedly provided "himself" as "personnel" were members of al Qaeda. In fact, the government's response to defense requests for such discovery have been met with refusals justified by the fact that Mr. Khadr may have succumbed to interrogators insistence that such individuals were members of al Qaeda. The government cannot convert statements extracted from a wounded boy, the reliability of which has not yet been litigated, as *res judicata* of a material fact at trial. Regardless of whether the statements taken from Mr. Khadr are admissible and voluntary, he could have simply been mistaken as to the identities and affiliations of the individuals to whom his father gave him, and he certainly contests that they were al Qaeda now.

vii. In the absence of such discovery, the government's theory comes down to nothing more than the presumption that any Arab fighter who may have engaged the invading U.S. forces in Afghanistan is conclusively a member of or substantially affiliated with al Qaeda. Dr. Williams will be able to testify as to the myriad militant groups that had encamped in Afghanistan beginning in the late 1980s, seeking safe-havens for various conflicts around the world.

viii. Dr. Williams will further testify to the presence of militant groups other than al Qaeda in Afghanistan and that Usama bin Laden and al Qaeda did not begin

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- juris would not require that these individuals be AQ to have but to have violated the MCA? or LOI if an AUFC...  
- these myriad militant groups are lawful or unlawful? seeking safe-havens does not imply illegality

operations in Afghanistan until the mid-1990s. He will attest to relationships that did, and did not exist, between these unaffiliated groups and the al Qaeda organization. He will attest to the fact that these relationships were often adversarial, especially between the culturally distinct North African militias and Gulf state militias, who were more strongly allied with al Qaeda, and will further attest to the fact that simply because a militia was willing to engage U.S. coalition forces in Afghanistan, does not automatically entail that it was in any way affiliated with al Qaeda or supportive of its aims.

But A.Q. isn't  
dispositive;

- ix. The government must prove, and the defense must be provided an opportunity to rebut, the extent of the connections between the fighters to whom Mr. Khadr is alleged to have been given by his father and the al Qaeda organization. The allegation that Mr. Khadr fought on behalf of al Qaeda (as opposed to some other armed group) is based exclusively upon his alleged activities in the company of a few individuals in June and July 2002. Mr. Khadr is not alleged to have had any direct contact with any of the named co-conspirators and principals of al Qaeda other than his father (see individuals listed in Charge III).
- x. Even assuming the underlying conduct alleged is true, jurisdiction over him as an "unlawful enemy combatant", the nature of the conspiracy he is alleged to have joined under Charge III and his liability under Charges IV and V are a function of the membership or connections his associates had with al Qaeda in 2002 (the alleged "al Qaeda operatives"). Dr. Williams will be able to testify as to whether the government's evidence of such connections between these fighters and al Qaeda demonstrates the type of command-and-control, or at a minimum, common purpose, that is sufficient to prove that Mr. Khadr's presence and conduct with these individuals substantiate the allegations sworn against him or otherwise constitute a violation of the MCA.

b. Necessity:

- i. Dr. Williams is an expert on the politics and history of Islamic militants operating in Afghanistan. His testimony is critical to challenging the government's theory that those individuals with whom Mr. Khadr is alleged to have been given in June-July of 2002 were members or close affiliates of the al Qaeda organization. Dr. Williams' testimony is made more "necessary" by the government's resistance to providing discovery relating to Abu Laith Al Libbi and his group, the Libyan Islamic Fighting Group. If this situation holds, the expert testimony of Dr. Williams will be the *only* means through which the defense can challenge the government's evidence on Mr. Khadr's affiliation, as discussed above.
- ii. Defense counsel do not have the resources to independently investigate and provide this information to the military commission. While there is some English-language literature about the Afghan conflict, the vastness of it and its

inconsistent quality leave no time for independent investigation adequate to prepare trial presentations. Furthermore, the primary sources that would be necessary in presenting such evidence to the military commission span diverse countries, cultures and languages. It is the kind of research that requires field-work and analysis of the kind that can only be provided by a trained academic who has specialized in the region and these issues such as Dr. Williams. And even if counsel could acquire the knowledge in time for trial, they cannot testify before the commission.

iii. The government has enlisted the expert assistance of Evan Kohlmann, who not only provided consultations to trial counsel on the structure and politics of organizations such as al Qaeda, but produced an elaborate motion picture called "The al Qaeda Plan", which trial counsel has sought to introduce as evidence against Mr. Khadr. Dr. Williams is needed to evaluate the veracity and substance of "The al Qaeda Plan" to either support or undermine the government's theory of the nature of the conspiracy that Omar allegedly joined.

iv. Furthermore, when the government builds its case around expert testimony or evidence compiled and created by an expert on a complicated subject such as this one, basic equality of arms necessitates that the defense be afforded the opportunity to introduce evidence from its own experts in rebuttal. "[T]he playing field at trial is rendered even more uneven when the Government benefits from scientific evidence and expert testimony while the defense is wholly denied a necessary expert to prepare for and respond to the Government's expert." *United States v. Lee*, 64 M.J. 213, 218 (C.A.A.F. 2006); *see also United States v. Warner*, 62 M.J. 114, 120 (C.A.A.F. 2005). The defense is entitled to an expert to evaluate and respond to evidence created by the government's expert. *See Lee*, 64 M.J. at 218.

*Δ entitled to an expert when the P has one*

v. In fact, the need for the testimony of Dr. Williams is both more relevant and necessary than in the case of Usama bin Laden's reputed driver and body guard. There was forensic as well as documentary evidence to establish an unambiguous and direct relationship between Usama bin Laden and Mr. Hamdan. By contrast, the only evidence tying Mr. Khadr to the al Qaeda organization (other than Mr. Khadr's statements that the defense will seek to suppress) or to Usama bin Laden is his father's alleged connection to al Qaeda and the fact that he was given by his father to a group of largely unidentified fighters, most of whom appear to be North Africans. It is therefore vital to Mr. Khadr's defense against charges that he supported al Qaeda and its aims that the government presents and the defense has the opportunity to rebut the connections these North Africans may or may not have had to the al Qaeda organization.

5. Estimated Cost:

a. Total hours/days and total cost:

Dr. Williams typically charges \$125.00 per hour for consultative services. Dr. Williams will require time to write-up his findings in a formal report that will be submitted to the military commission as well as prepare a presentation to accompany his testimony. He will also require time to be consulted by counsel in the case and to testify at trial. The defense, therefore, requests a maximum authorization of 50 hours be allotted to Dr. Williams. The Defense therefore requests authorization for up to \$6,250 in fees to Dr. Williams.

b. Total days TDY at the per diem rate (such as travel days and casual status):

Assuming two days of travel time, plus the typical two days at Guantanamo Bay, Cuba for the conduct of hearings, Dr. Williams would need a minimum of eight days TDY to testify both at pre-trial hearings relating to military commission jurisdiction and then again at trial.

c. Travel costs:

Dr. Williams would, at a minimum, require travel and lodging at Guantanamo Bay, Cuba for the purpose of testifying at Mr. Khadr's trial and pre-trial hearings. Lodging is \$45 per night. Travel from Washington, DC to Guantanamo is provided by the government. Dr. Williams will require travel between North Dartmouth, Massachusetts and ?

d. Rate for professional services and hours/days (when neither travel nor in-court testimony is involved):

Dr. Williams typically charges \$125.00 per hour for consultative services.

e. Rate for in-court testimony and number of hours/days:

Dr. Williams charges his standard \$125.00 per hour rate for in court testimony.

f. Inconvenience fee, in any:

None requested.

6. On 5 June 2008, I notified the opposing party of this request.

7. In the event this request is denied, the defense requests a written response articulating the reasons for the denial. Should you have any questions or require further information, please contact me at (202) 761-0133 (ext. 116) or [kueblerw@dodgc.osd.mil](mailto:kueblerw@dodgc.osd.mil).



WILLIAM KUEBLER  
LCDR, JAGC, USN  
Detailed Defense Counsel

CC: Chief Defense Counsel  
Major  Lead Prosecutor

**Curriculum Vitae**  
**Brian Williams**  
[www.brianglynwilliams.com](http://www.brianglynwilliams.com)

**UNIVERSITY EXPERIENCE**

**2001-Present:** Associate Professor of Islamic History,  
**University of Massachusetts, Dartmouth.**

**1999-2001:** Lecturer of Middle Eastern History,  
**University of London, School of Oriental and African Studies.**

**1996-1999:** Lecturer, Central Asian History, **University of Wisconsin.**

**COUNTER-TERRORISM ANALYST/RESEARCHER**

**Jamestown Foundation** (Foreign Policy Think Tank). Washington DC.

**CIA. Counter-Terrorism Center.** Tysons Corner, Virginia.

**Joint Information Operations Warfare Center.** Lackland Air Base, Texas.

**President Karzai's Center for Afghan Peace Studies.** Kabul, Afghanistan.  
(Fellow).

**New Scotland Yard,** London, England.

**EDUCATION**

- **Ph.D.** Central Eurasian History (1999) *University of Wisconsin.*
- **MA** Russian History (1992) *Indiana University,* Bloomington.
- **MA** Central Eurasian Studies (1990) *Indiana University,* Bloomington
- **BA** History (1988) *Stetson University,* Deland, Florida.
- **High School.** (1984), Deland, Florida.
- **Junior High.** Friar's Middle School, Bangor, Wales (UK)

**BOOK**

*The Crimean Tatars. The Diaspora Experience and the Forging of a Nation.* Leiden/Koln/Boston; Brill Academic Publishers. Inner Asian Library. 2001.

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"*Dar al-Harb. The 19th Century Crimean Tatar Migrations from Russia to the Ottoman Empire.*" **Cahiers du Monde Russe**. (Journal of the Russian World.) vol. 41 no. 1, January-March 2000.

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"*A Community Reimagined. The Role of "Homeland" in the Forging of National Identity, the Case of the Crimean Tatars.*" **Journal of Muslim Minority Affairs**. vol. 17 number 2. Fall 1997.

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"*The Return of the Arabs. Al Qa'ida's Military Role in the Afghan Insurgency.*" **West Point Confronting Terrorism Center Sentinel**. February 2008. Volume 1, Issue 3.

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