

Assuming two days of travel time, plus the typical two days at Guantanamo Bay, Cuba for hearings, Professor Watts would need a minimum of four days TDY to testify at trial.

c. Travel costs:

Professor Watts would, at a minimum, require travel to and from Guantanamo Bay, Cuba and lodging there for the purpose of testifying at Mr. Khadr's trial. He would also require travel to and from Washington DC from Omaha, Nebraska and lodging in Washington DC to get on the military flight to Guantanamo Bay. Professor Watts charges his standard rate for travel time.

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

Professor Watts's fees are \$250.00 per hour plus expenses for consultation, analysis and/or review.

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

Professor Watts charges his hourly rate for testimony. We anticipate Professor Watts appearing during trial as a defense witness. His testimony should last no longer than one or two days.

f. Inconvenience fee, if any:

None.

6. On 30 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 ³ [REDACTED]


WILLIAM KUEBLER
LCDR, JAGC, USN
Detailed Defense Counsel

CC: Chief Defense Counsel
Major ³ [REDACTED] Lead Prosecutor



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

1 July 2008

MEMORANDUM FOR THE CONVENING AUTHORITY

Subj: *UNITED STATES V. OMAR KHADR* – RESPONSE TO CONVENING AUTHORITY'S REQUEST FOR MORE INFORMATION ON THE DEFENSE REQUEST FOR EXPERT WITNESS ALISON PARGETER

Encl: (1) Ruling on Defense Motion D-061 to Compel Production of Documents (information relating to Abu Laith Al Libbi), dated 20 June 2008

1. This memorandum responds to the Convening Authority's request for more information regarding the expected testimony of Ms. Alison Pargeter. On 15 May 2008, the Defense submitted a request to the Convening Authority for approval of funds to provide Ms. Alison Pargeter, Senior Research Associate, Centre of International Studies, University of Cambridge and Visiting Fellow, Pembroke College, Cambridge, as an expert witness at the trial Mr. Khadr. Specifically, the defense requested Ms. Pargeter to testify as to the nature of the relationship between the Libyan Islamic Fighting Group ("LIFG"), and its leader in Afghanistan, Abu Laith al-Libbi, and the al Qaeda organization.

2. As an initial matter, the defense supplements its request of 15 May by noting that the military judge ordered the production of evidence relating to Abu Laith. See Ruling on Defense Motion D-061 to Compel Production of Documents (information relating to Abu Laith Al Libbi), dated 20 June 2008 (encl. 1). In pertinent part, the military judge held:

The government said that [Abu Laith] is one of the unnamed co-conspirators in Charge III. The government said that it intends to introduce evidence in its case-in-chief concerning [Abu Laith]. That being the case, the commission finds that certain information concerning [Abu Laith] would be material to the defense and should be provided to the defense under R.M.C. 701.

Id. at para 4. The testimony of Ms. Pargeter is therefore even more relevant now in piecing together the information ordered produced by the military judge as well as rebutting whatever, heretofore undisclosed, evidence the government intends to introduce as part of its case-in-chief concerning Abu Laith.

3. On 28 May 2008, the Convening Authority requested that the Defense supplement its request before the Convening Authority would make a decision as to funding. The Convening Authority stated that the request "fails to state what [Ms. Pargeter's] testimony would be regarding the existence of [connections between al-Libi and al Qaeda in June or July of 2002], and if they do exist, what those connections are." Ms. Pargeter will testify that whatever connections existed between Abu Laith and the al Qaeda organization in June-July 2002 were at most casual and associational.

a. More specifically, Ms. Pargeter will contest the notion that Abu Laith in any active way conspired with the al Qaeda organization for the purpose of "attacking civilians; attacking civilian objects; murder in violation of the law of war; destruction of property in violation of the law of war; hijacking or hazarding a vessel or aircraft; and terrorism." (Charges Referred at 2). She will testify that whatever the activities and purposes of Abu Laith and his organization, the LIFG, that they were independent of any al Qaeda conspiracy that existed in June-July 2002.

b. Ms. Pargeter will also testify that in 2002, Abu Laith and the LIFG maintained an independent militia in Afghanistan. She will testify that the aims and purposes of the LIFG primarily focused on destabilizing the Qaddafi regime in Libya and preserving itself in Afghanistan. She will testify that the LIFG took refuge in Afghanistan in the 1990s, years before the commencement of operations there by al Qaeda or the Taliban. She will testify that Abu Laith and the LIFG in June-July 2002 preserved their independent character and that any relationship they may have had with al Qaeda or the Taliban was incidental or convenient to some narrow, short-term objective, wholly distinct from the wide-ranging al Qaeda conspiracy alleged by the government. She will testify as to how the LIFG were frequently and substantially opposed to al Qaeda in both aims and tactics during this period. Ms. Pargeter will testify that any formal association that would rise to the level of coordinated strategic operations and goals between Abu Laith and al Qaeda did not arise until at least November 2007, following Abu Laith's declared allegiance with al Qaeda.

c. Ms. Pargeter's testimony will therefore rebut the government's theory that anyone who supported or sponsored the goals, plans and operations of Abu Laith in June-July 2002 would, by extension, be a member of the al Qaeda conspiracy. Her testimony will further rebut the government's theory that the connections between Abu Laith and al Qaeda were so substantial in June-July 2002 as to make any material support for Abu Laith or the LIFG necessarily tantamount to support for the al Qaeda organization.

4. The Convening Authority also requested an explanation as to 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." Defense counsel do not have the resources to independently investigate and provide this information to the military commission. Furthermore, the primary sources that would be necessary to present such evidence to the military commission span diverse countries, cultures and languages. It is research that requires the kind of field-work and analysis that can only be provided by a trained academic who has specialized in the region and these issues such as Ms. Pargeter. Even if counsel could acquire the knowledge in time for trial, it would be highly unusual for defense counsel to appear as fact-witnesses on a subject such as this before the commission.

5. The Convening Authority's 28 May memorandum states that Ms. Pargeter's testimony is not relevant because the defense has not asserted that the government's own al Qaeda expert, Evan Kohlman, and his film "The al Qaeda Plan", which the government intends to introduce into evidence, "present any evidence regarding Libyan militants and organizations, including the LIFG." The defense supplements its initial request as follows.

a. "The al Qaeda Plan" motion picture depicts various al Qaeda spokesmen and operatives making broad claims on behalf of the "Mujahideen," the "Afghan jihad" and the "World Islamic Front for Jihad against the Jews and Crusaders." These excerpts lack any context and are clearly motivated by a desire to cast al Qaeda as the single and dominant military organization in Afghanistan based upon nothing other than the delusional propaganda of its hard-core leadership. Ms. Pargeter will rebut this attempt to depict any and all Arab Muslims or Arab Muslim fighters in Afghanistan, who as early as the late seventies broadly self-identified as "Mujahideen" regardless of regional or political affiliation, as members of the same "jihad" against "Jews and Crusaders" that underlies the al Qaeda conspiracy.

b. A few minutes of the movie are devoted to footage depicting attacks upon (apparently western) convoys in Afghanistan. The obvious implication the government is seeking to draw is that any fighter in Afghanistan, regardless of their actual affiliation or political objectives, were members or associates of the various al Qaeda leaders whose statements and images dominate the video. Ms. Pargeter will testify that Abu Laith and the LIFG, among many other unaffiliated militant organizations that had sought safe-haven in Afghanistan for decades, would have engaged *any* invading army, simply as a matter of self-preservation. She will testify that in doing so, they were not subordinate to or in any way strategically coordinated with al Qaeda and its criminal or terrorist objectives.

c. The movie footage is taken from al Qaeda propaganda films and broadcasts of As-Sahab, al Qaeda's media front. She will testify that the LIFG maintained their own media operation that was distinct from As-Sahab, thereby emphasizing the military commission and its members that Abu Laith cannot be presumed to have endorsed or acted upon everything al Qaeda sought fit to disseminate on television.

d. Finally, Ms. Pargeter's testimony is crucial to providing context to Mr. Kohlmann's sweeping portrayal of al Qaeda, its membership and its operations as they would have existed in June-July 2002.

6. As a final matter, the defense emphasizes the significance of the information regarding LIFG to Mr. Khadr's defense to Charges III and IV.

a. The gist of the conspiracy and providing material support for terrorism charges is that Mr. Khadr affiliated with al Qaeda, and therefore committed the offenses of conspiracy and providing material support for terrorism. The claim that Mr. Khadr fought on behalf of *al Qaeda* (as opposed to some other armed group) as explicitly alleged in Charge IV and implied by the alleged overt acts and Specification of Charge III is based exclusively upon his alleged activities in the company of a few individuals in June and July 2002. Since Mr. Khadr is not alleged to have had any direct contact with any of the named co-conspirators and principals of al Qaeda (see list of individuals in Charge III), assuming the conduct alleged is true, whether Mr. Khadr actually affiliated with *al Qaeda* or the named co-conspirators is a function of the associations or connections to al Qaeda of the individuals Mr. Khadr is alleged to have associated with in 2002 (the alleged "al Qaeda operatives"). In other words, if the alleged "al Qaeda operatives" Mr. Khadr is alleged to have joined (who are the only link between Mr. Khadr and al Qaeda) were not, in fact, affiliated with al Qaeda, but instead were affiliated with some

other organization, then the prosecution will not be able to establish that Mr. Khadr conspired with the alleged al Qaeda co-conspirators or that he provided material support to al Qaeda.

b. Aside from Mr. Khadr's purported statements, which the defense intends to argue are coerced and unreliable, the only link the government has to connect Mr. Khadr to al Qaeda in June and July 2002 is the few individuals he was with during that time. Abu Laith is the only one of those men about which anything of significance is known. Ms. Pargeter's testimony regarding LIFG, Abu Laith's affiliation to the LIFG and his lack of affiliation to al Qaeda during the relevant period is therefore critical to the defense's ability to defend Mr. Khadr against Charges III and IV.

7. The defense therefore requests that the funding be authorized so that Ms. Pargeter can testify regarding the facts that both the government and military judge have determined to be "material to the defense."


WILLIAM C. KUEBLER
LCBR, JAGC, USN
Detailed Defense Counsel

CC: Chief Defense Counsel
Major  Lead Prosecutor



CONVENING AUTHORITY

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

9 July 2008

MEMORANDUM FOR LCDR WILLIAM KUEBLER, DEFENSE COUNSEL

SUBJECT: Request for Ms. Alison Pargeter as an expert witness in *United States v. Khadr*

I received the supplement dated 1 July 2008 to your initial request dated 15 May 2008 for approval of Ms. Alison Pargeter as an expert witness in the field of the Libyan Islamic Fighting Group (LIFG), its leader Abu Laith al-Libbi, and any connection to the al Qaeda network. I reviewed your supplement and at this time, I approve Ms. Pargeter as an expert witness only for pretrial proceedings. I approve 20 hours at a rate of \$250.00/hour with a maximum of \$5,000.00 and reasonable costs for travel to and from the trial site. The 20 hours are approved in order to: (1) prepare a written report; (2) consult with both defense and trial counsel (at least two hours are reserved for consultation with trial counsel); and (3) testify at a pretrial hearing.

A handwritten signature in black ink that reads "Susan J. Crawford".

Susan J. Crawford
Convening Authority for
Military Commissions

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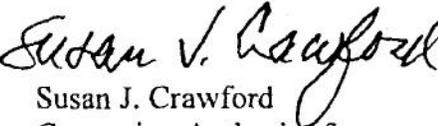
CONVENING AUTHORITY

9 July 2008

MEMORANDUM FOR LCDR WILLIAM KUEBLER, DEFENSE COUNSEL

SUBJECT: Request for Dr. Brian Williams as an expert witness in *United States v. Khadr*

I received the request dated 5 June 2008 for approval of Dr. Brian Williams as an expert witness in the field of Islamic militias in Afghanistan. I reviewed your submission as well as the memorandum from the trial counsel. I hereby approve Dr. Williams as an expert witness. At this time, I approve 20 hours at a rate of \$125.00/hour and reasonable costs for travel to and from the trial site. The 20 hours are approved in order to: (1) review material; (2) prepare a written report; (3) consult with both defense and trial counsel (at least two hours are reserved for consultation with trial counsel); and (4) testify at a pretrial hearing.


Susan J. Crawford
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CONVENING AUTHORITY

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14 July 2008

MEMORANDUM FOR LCDR WILLIAM KUEBLER

SUBJECT: Request for Mr. John Nixon as an expert witness in *United States v. Khadr*

I received the request dated 13 June 2008 for approval of Mr. John Nixon as an expert witness in the field of ballistics, munitions and the effect of blast overpressure on humans. I reviewed your submission and I find Mr. Nixon is a mechanical engineer and a qualified expert in ballistics and munitions. However, I do not find that he is a qualified expert on the physical and mental impairment resulting from exposure to detonation. Therefore, I approve Mr. Nixon as an expert witness on the subject matter pertaining to the type of grenade alleged to have been involved in this controversy. I approve 40 hours at a rate of \$350.00/hour with a maximum of \$14,000.00 and reasonable costs for travel to and from the trial site. The 40 hours are approved in order to: (1) review material; (2) prepare a written report; (3) consult with both defense and trial counsel (at least two hours are reserved for consultation with trial counsel); and (4) testify at trial.


Susan J. Crawford
Convening Authority for
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CONVENING AUTHORITY

14 July 2008

MEMORANDUM FOR LCDR WILLIAM KUEBLER

SUBJECT: Request for Professor Sean Watts, *United States v. Khadr*

Your 30 June 2008 request to employ Professor Sean Watts as an expert witness on various aspects of the law of war is denied.

The request states that Professor Watts will provide expert testimony, in the form of an opinion, on the law of war. M.C.R.E. 702 states that an expert witness may only testify in the form of an opinion if his "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Expert opinions on the law are not helpful to the trier of fact and invade the province of the court as the final arbiter of the law. See *United States v. Curtis*, 782 F.2d 593 (6th Cir. 1986) (judge's special legal knowledge is presumed to be sufficient, and it is the judge's duty to inform the jury about the law that is relevant to their deliberations). Therefore, the proffered testimony of Professor Watts is not relevant and necessary.

A handwritten signature in black ink that reads "Susan J. Crawford".

Susan J. Crawford
Convening Authority for
Military Commissions

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DEPARTMENT OF DEFENSE
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17 July 2008

MEMORANDUM FOR CONVENING AUTHORITY FOR MILITARY COMMISSIONS

Via: MAJ³ [REDACTED] USMC, Trial CounselSubj: Proposed alternative disposition ICO *United States v. Omar Khadr*

Encl: (1) Disarmament, Demobilization, and Rehabilitation (DDR) Plan

1. The purpose of the memorandum is to propose a settlement in the above-referenced case. Mr. Khadr, through his counsel, proposes the following:

a. The United States Government will request (through appropriate diplomatic means) the Government of Canada (Director of Public Prosecutions [DPP]) to investigate and charge Mr. Khadr with the offense of Participation in the Activity of a Terrorist Group, in violation of section 83.18(1) of the Canadian Criminal Code. The defense believes that sufficient evidence is currently available to the DPP to initiate charges² [REDACTED] appears to show Mr. Khadr assisting in the manufacture of explosive devices in Afghanistan). In addition, Mr. Khadr is willing to enter into a confessional stipulation of fact (to be used exclusively for the purposes of facilitating settlement) that may be used as a basis for initiation of criminal charges by the DPP.

b. When charged, Mr. Khadr will enter a plea of guilty to the offense of Participation in the Activity of a Terrorist Group. Mr. Khadr will do so either via VTC link from JTF-GTMO pursuant to section 650(1.1) of the Canadian Criminal Code, or, upon waiver of his right to appear and consent to the jurisdiction of the court, through counsel, in a court of competent jurisdiction in Canada.

c. Prior to entry of a plea, Mr. Khadr will enter into a Joint Sentencing Recommendation (JSR) with the Canadian Government. The JSR will provide for a period of incarceration upon Mr. Khadr's transfer to Canada, to be followed by a period of probation. The terms of the probation may include restrictions on travel, place of residence, and a requirement to continue his participation in any appropriate rehabilitative program.

d. With respect to incarceration, the JSR will provide the following:

(1) Mr. Khadr will serve a minimum of nine months in custody at an appropriate rehabilitative facility, such as the Center for Addiction and Mental Health (CAMH), Toronto, Canada. Mr. Khadr may be released from custody thereafter upon recommendation by a designated treating clinician with CAMH (or other appropriate facility). In no event, will Mr. Khadr serve more than eighteen months in custody.



(2) Mr. Khadr's incarceration by Canadian authorities shall otherwise be administered in a manner consistent with the terms of the DDR Plan, attached hereto.

(3) Following his release from custody, Mr. Khadr will be subject to a three-year term of probation. The conditions will include, at a minimum, that Mr. Khadr not reside with his mother, Maha Khadr, and/or sister, Zaynab Khadr, and that he not commit any offenses under Canadian law. The probation may be enforced by a mandatory sentence of confinement for violations thereof, to the extent permissible under Canadian law.

e. Mr. Khadr will waive appeal rights or other challenges to the validity of his sentence or conviction based on duress, coercion, or other potential grounds.

f. Mr. Khadr will waive any claim for damages against the United States Government and/or Canadian Government arising out of or in connection with Mr. Khadr's detention by U.S. authorities.

g. In consideration of Mr. Khadr's entry of a guilty plea to the offense of Participation in the Activity of a Terrorist Group (and other performance specified herein), the United States Government will:

(1) Withdraw and dismiss with prejudice all charges and specifications pending before the military commission in the above-referenced case;

(2) Transfer Mr. Khadr from JTF-GTMO to the jurisdiction of Canadian authorities within forty-five days of his conviction and sentence by a Canadian court of competent jurisdiction.

2. The proposed terms are advantageous to the United States Government for the following reasons:

a. The proposed settlement resolves the case in a manner consistent with stated United States Government policy to transfer GTMO detainees to their countries of origin for appropriate judicial proceedings to the extent possible. While evidentiary issues may have precluded such a transfer for disposition in Canada in the past, the willingness of the defense to enter a plea of guilty to a Canadian charge on the terms specified above, clears the way for a resolution consistent with this larger United States policy.

b. The proposed settlement avoids a host of legal issues relating to Mr. Khadr's age at the time of his alleged offenses and initial detention. As a former child soldier, Mr. Khadr has a strong legal challenge to the jurisdiction of the military commission. Although unsuccessful in challenging the jurisdiction of the military commission before COL Brownback on this basis, it is abundantly clear that Congress did not intend military commissions to exercise jurisdiction over juvenile defendants and that doing so is inconsistent with U.S. obligations under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict ("Optional Protocol"). There is a significant likelihood that Mr. Khadr will

prevail when this claim is presented (either via habeas corpus challenge or on appeal) to an Article III court. For obvious reasons, it is not in the Government's interests to expend time and resources on trial in this matter only to have the conviction reversed on appeal.

c. This disposition is generally consistent with U.S. obligations under the Optional Protocol. Even if the Government is ultimately successful in defending the jurisdiction of the military commission against legal challenges relating to Mr. Khadr's age at the time of the offenses, it is beyond question that there is (at the very least) a strong tension between U.S. obligations under the Optional Protocol and Mr. Khadr's prosecution, as an alleged adult war criminal, before a military commission. It is no secret that this prosecution has drawn strong criticism from numerous individuals and organizations involved in efforts to combat the use of child soldiers (e.g., UNICEF and the UN Special Representative for Children in Armed Conflict), and specific criticism from the UN Committee on the Rights of the Child, which issued a report, just last month, stating that "[t]he conduct of criminal proceedings against children within the military justice system should be avoided." By effectuating a sentence with *rehabilitative* objectives *outside* a military justice process, the United States Government can resolve this matter and maintain its credibility with partner nations and organizations involved in initiatives (which the United States generally supports) in support of children unlawfully exploited in connection with armed conflict.

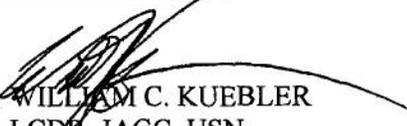
d. In this regard, it appears that a disposition involving a conviction and sentence under Canadian law is the *only* means of achieving rehabilitative goals. A military commission does not provide sufficient flexibility to achieve such ends as having Mr. Khadr's release from custody subject to the approval of a treating clinician or providing for a period of probation. While the defense believes that Mr. Khadr, as a former child soldier, is *entitled* to a rehabilitative sentence under the terms of the Optional Protocol, available evidence suggests that, whatever the case, he is an ideal candidate for such a disposition. Mr. Khadr is detained² [REDACTED] the JTF-GTMO facility² [REDACTED]. Moreover, he is described by Canadian government officials and senior personnel within JTF-GTMO as "salvageable," "non-radicalized," and a "good kid." A senior JTF official, whom the defense believes to be CAPT Patrick McCarthy, the JTF-GTMO Staff Judge Advocate, has said that Mr. Khadr should be removed from GTMO soon, before he is adversely influenced by other, radicalized detainees. It is beyond question that Mr. Khadr, a victim of decisions made for him by his father and family as a child, is capable of leading a productive and peaceful life if given the chance to do so.

e. The evidence against Mr. Khadr on the most serious charge he faces (murder in violation of the law of war) is extremely weak. Contrary to initial representations, which may have been used to persuade the Convening Authority (and perhaps the "Appointing Authority" under the previous military commission system) to pursue a murder case against Mr. Khadr, there was at least one other person who could have been responsible for throwing the grenade that allegedly killed SSG Christopher Speer. No witness claims to have seen Mr. Khadr throw a grenade and the on-scene commander, Major² [REDACTED] wrote an after action report the day after the incident indicating that the person responsible for Speer's fatal wounding had been "killed." The prosecution's case at trial will therefore depend largely (if not entirely) on the reliability of statements taken from Mr. Khadr during his detention and interrogation by U.S. authorities (apparently under the misimpression that Mr. Khadr was the only person in the compound who

could have caused the death of SSG Speer). Mr. Khadr's inculpatory statements are contradictory, often implausible, and in certain cases demonstrably inconsistent with known physical evidence. Mr. Khadr's trial will therefore focus on the circumstances of his detention and interrogation (as a juvenile) by U.S. authorities, defense efforts to corroborate allegations of abuse and mistreatment, and the effects of his treatment on the reliability of information he may have provided to interrogators. In short, there is an abundance of "reasonable doubt" in this case. And, as Mr. Khadr, a Canadian citizen, has been detained, at all times since 2002, as an *adult*, and subjected to an *adult* interrogation regime, in light of U.S. obligations under the Optional Protocol, a public trial focusing on such matters is not in the interests of the United States or Canadian Governments.

f. Mr. Khadr is not accused of an actual "war crime" in connection with SSG Speer's death. Unlike other pending military commission cases (e.g., *United States v. Jawad*), there is no suggestion that Mr. Khadr engaged in "perfidy" or other conduct that would make SSG Speer's killing a "violation of the law of war." Mr. Khadr's case thus starkly presents for the first time the question of whether merely engaging in combat without meeting the criteria for Prisoner of War status under the Third Geneva Convention is a violation of the law of war. It is therefore the worst possible case, from the Government's point of view, to be reviewed on appeal as the "test case" for one of the most controversial legal propositions underlying the military commission system. As Mr. Khadr's case (along with *United States v. Hamdan*) is furthest along in the process, it is likely, absent alternative disposition, that his will be the first case to present this question to the Court of Military Commission Review and U.S. federal courts on review. It is not in the interests of the United States, especially in view of the unique issues arising from Mr. Khadr's age at the time of the alleged misconduct, for it to be so.

3. The defense respectfully submits that the proposed settlement terms are consistent with the interests of all parties and are in the interests of justice. The defense plans to travel to GTMO next week to meet with Mr. Khadr and hopes to be able to discuss terms of implementation (or a reasonable counter-proposal) in connection with that visit. Should you have additional questions or concerns, please contact me ² [REDACTED]


WILLIAM C. KUEBLER
LCDR, JAGC, USN
Detailed Defense Counsel



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OFFICE OF MILITARY COMMISSIONS
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CONVENING AUTHORITY

21 July 2008

MEMORANDUM FOR LCDR William Kuebler, Office of Defense Counsel

SUBJECT: *U.S. v. Khadr*: Response to Proposed Alternative Disposition

I have reviewed your 17 July 2008 request for an alternate disposition in *United States v. Khadr* and decline to take any action. Other than dismissing the charges and specifications, the terms of the proposed agreement are outside my capacity as Convening Authority.

A handwritten signature in black ink that reads "Susan J. Crawford".

Susan J. Crawford
Convening Authority
for Military Commissions

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

28 July 2008

MEMORANDUM FOR THE CONVENING AUTHORITY

Subj: *UNITED STATES v. KHADR* – DEFENSE REQUEST FOR PRODUCTION OF EXPERT WITNESS DR. KRIS SPERRY, M.D.

- Encl: (1) Curriculum Vitae of Dr. Kris Sperry, M.D.
 (2) Autopsy Report of SFC Chris Speer
 (3) CITF Report of Investigative Activity, Interview of CPT [REDACTED] dated 28 Oct 05
 (4) Medical Report on the Hospitalization in the Neurosurgical Center from 28 Jul 02 to 6 Aug 02, dated 8 August 2002
 (5) CITF Report of Investigative Activity, Interview of "OC-1", dated 17 Mar 04
 (6) Memorandum to Commander, 28 July 2002
 (7) After Action Report, 27 July 2002
 (8) MC Form 13-1

1. The defense in the case of *United States v. Omar A. Khadr* requests the Convening Authority to approve Dr. Kris Sperry as an expert witness in the field of forensic pathology.

2. Qualifications: Dr. Sperry has served as the Chief Medical Examiner for the State of Georgia, Georgia Bureau of Investigation, Division of Forensic Science since 13 June 1997. Dr. Sperry graduated from Kansas State College of Pittsburgh in Pittsburgh, Kansas in 1975, and completed medical school at the University of Kansas School of Medicine in Kansas City, Kansas in 1978. He is a nationally recognized expert in the fields of forensic pathology and childhood injury and has lectured extensively concerning the evaluation of childhood injury and abuse, as well as ballistics and gunshot wound diagnosis. Notably, he was the chief forensic pathologist in charge of conducting the post-mortem medical examination of the victims of the 1996 terrorist bombing at the Atlanta Olympics.

3. Expert witness's address and telephone number:

Georgia Bureau of Investigation, Division of Forensic Sciences
 Medical Examiner's Office
 3121 Panthersville Road
 P. O. Box 370808
 Decatur, Georgia 30037-0808
 Phone: (404) 270-8186 (Office)
 Fax: (404) 270-8183
 Cell Phone: (404) 697-7095
 Cell Phone #2: 678-949-7449
 E-mail: kris.sperry@gbi.state.ga.us

4. Synopsis of expected testimony:

Sperry to support Nixon testimony

a. Relevance:

i. The government will likely rely on a statement in which Mr. Khadr allegedly reported throwing an F-1 grenade, Dr. Sperry will be able to testify in conjunction with defense expert John Nixon as to the inconsistency of SFC Speer's wounds with an F1 grenade, or any similar "pineapple" shaped grenade that could be confused with the F1, or if there are other possible causes of SFC Speer's injuries.

A. [Redacted]

in all of the what will actually test the likelihood burns?

B. Dr. Sperry will testify as to the wounds that would likely result from Mr. Nixon's reporting on the fragmentation patterns of widely available grenades in Afghanistan in 2002. Dr. Sperry will testify as to the likely injuries an individual would suffer from these ordinance from various distances. [Redacted] that would result from a close proximity Russian F-1 (or similar "pineapple") grenade, but are consistent with the U.S.-made M67 grenade that exploded a few meters away from SFC Speer, like those being thrown by coalition forces inside the walls of the compound.

Nixon will testify if fragmentation, Sperry will testify to types of injury likely to result from those grenades

what evidence is there that a US made M67 ever exploded a few meters away from Speer's?

→ true but what ever said they exploded near Speer's?

C. [Redacted] (See Medical Report on the Hospitalization in the Neurosurgical Center from 28 Jul 02 to 6 Aug 02, dated 8 August 2002, Bates # 00766-001136-39 (encl. 4).) Defense counsel have requested the production of these CT scans, as well as any other medical documentation for SFC Speer, that have not yet been produced. The prosecution has indicated its willingness to provide the requested materials. Once they are produced, Dr. Sperry will evaluate the CT scans and other medical evidence to determine the depth of the wounds, their size and the fragment type. This will allow him to make a conclusive professional judgment as to the velocity, and therefore distance, of the exploded ordinance from SFC Speer, to corroborate the proposition that the wounds to SFC Speer resulted from an explosion several meters away.

** Defense wants Sperry to evaluate CT scans to determine velocity + distance of ordinance which killed Speer.*

ii. Dr. Sperry will also review the Autopsy Report and accompanying documentation to confirm or deny its findings. Specifically, Dr. Sperry will contrast the standards of care and due diligence applied for medical examinations of homicide victims, with the standard of care applied in the autopsy of SFC Speer. SFC Speer's medical examiner did not

is this a appropriate standard?