

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY**

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**

AE 538(WBA)

**Defense Motion to Compel
FBI Manual for Terrorism Interrogation**

16 November 2017

1. Timeliness:

This filing is timely. RC 3.7(b); R.M.C. 905, 906.

2. Relief Sought:

Counsel for Mr. Walid bin 'Atash request that this Commission enter an order compelling the Prosecution to produce to the defense all materials, information, and correspondence about the development of policies related to interrogation methods used by the FBI to suspected al-Qaeda operatives between 11 September 2001 and the present. The Commission must order the Prosecution to comply with the attached discovery request of the Defense, pursuant to the Sixth Amendment to the United States Constitution, the Due Process Clause of the United States Constitution, binding case law, and relevant statutory and rule-making authority. See Washington v. Texas, 388 U.S. 14 (1967); Brady v. Maryland, 373 U.S. 83 (1963); United States v. Lloyd, 69 M.J. 95 (C.A.A.F. 2010); United States v. Garries, 22 M.J. 288 (C.M.A. 1986); United States v. Toronowski, 29 M.J. 578 (A.F.C.M.R. 1989); 10 U.S.C. § 949j(a)(1) (2012); R.M.C. 701, 703, 905, and 906.

3. Overview:

The Prosecution continues to resist or delay compliance with simple discovery requests from the Defense. In this instance, the Prosecution has announced that they intend to introduce in their case against Mr. bin 'Atash, statements of Mr. bin 'Atash (and presumably the other defendants) taken by members of law enforcement including the Federal Bureau of Investigation. Consequently, Mr. bin 'Atash has requested all materials, information, and correspondence related to interrogation methods planned and/or used by the FBI on suspected al Qaeda operatives between 11 September 2001 and the present. This request is material to the investigation of case, to the preparation of pretrial motion(s) to suppress, and to the preparation for trial and sentencing. All of this information is in the sole custody and control of the Government. The Prosecution did not object to the request. Instead, the Prosecution sought more time to conduct a due diligence search and indicated a "belief" that, upon completion of its due diligence, some responsive documents would be provided to the defense. Three years later, the Prosecution has failed to produce anything.

4. Burden of Proof:

As the moving party, the Defense accepts the burden of proof on factual issues by a preponderance of the evidence. R.M.C. 905(c)(1).

5. Facts:

a. On 15 July 2014, the Defense sent a discovery request to the Office of the Chief Prosecutor (styled as DR-182-WBA), seeking all materials, information, and correspondence about the development of policies related to interrogation methods used by the FBI upon suspected al-Qaeda operatives between 11 September 2001 and the present. (Attach. B). Specifically, the

Request sought production of the “following documents, records, recorded communications, papers, photographs and/or tangible objects”:

1. Any and all documents, records, SOPs, memoranda, instruction materials, and information/correspondence about the development of policies related to interrogation methods used by the FBI to interrogate Mr. bin ‘Atash, Mr. Mohammad, Mr. Binalshibh, Mr. al Baluchi, Mr. Al Hawsawi, Mr. Majid Kahn, Mr. al-Nashiri and others who were questioned about al Qaeda operations between September 11, 2001 and the present. This material includes, but is not limited to, the following documents.
 - a. Cross Cultural, Rapport-Based Interrogation (Version 5, unredacted), FBI, dated 23 February 11;
 - b. Cross Cultural, Rapport-Based Interrogation (Version 4, unredacted), FBI, date unknown;
 - c. Cross Cultural, Rapport-Based Interrogation (Version 3, unredacted), FBI, dated 18 January 2010;
 - d. Cross Cultural, Rapport-Based Interrogation (Version 2, unredacted), FBI, date unknown;
 - e. Cross Cultural, Rapport-Based Interrogation (Version 1, unredacted), FBI, date unknown;
2. Any and all documents, records, SOPs, memoranda, instruction materials, and Information/correspondence about the development of policies related to the FBI’s treatment of prisoners and detainees between September 11, 2001 and the present where those detainees and prisoners were subject to interrogation about al Qaeda and its operations. This material includes, but it not limited to, an FBI electronic communication titled “Treatment of Prisoners and Detainees,” dated 05/19/2004.

(Attach. B at 1-2).

b. On 29 July 2014, the Prosecution issued its initial response to the request for discovery regarding the development of policies related to interrogation methods used by the FBI upon suspected al-Qaeda operatives between 11 September 2001 and the present. (Attach. C). The Prosecution indicated, as to all requested material, that it was “currently conducting its due diligence” and that it would “respond accordingly upon completion of its due diligence.” (Attach. C at 1, 2).

c. On 12 August 2014, the Prosecution issued a second response to the request for discovery. (Attach. D). The Prosecution indicated, again, as to all the requested documents, that it was “still conducting its due diligence.” (Attach. D at 1, 2). However, as to the first portion of the request, the Prosecution indicated its belief that production would be forthcoming and fruitful when it said:

It is the belief of the Prosecution that completion of its due diligence will result in the identification of some responsive documents that the Prosecution will provide to the Defense.

(Attach. D at 1). As to the second portion of the request, the Prosecution assured the Defense that it believed “the completion of its due diligence will result in the identification of at least one responsive document that the Prosecution will provide to the Defense.” (Attach. D at 2).

d. As of the date of this motion, the Prosecution has not provided one document in response to the request for discovery regarding the development of policies related to and/or used by the FBI interrogating suspected al-Qaeda operatives (including Mr. bin 'Atash) between 11 September 2001 and the present (DR-182-WBA).

6. Argument:

Every accused defendant has a right to a robust factual record, and to obtain witnesses and evidence to present a complete defense. Washington v. Texas, 388 U.S. 14, 19 (1967); 10 U.S.C. § 949j(a)(1)(A). Mr. bin 'Atash's right to a complete defense includes the right to obtain all evidence against him, to receive any incriminating statements purported to be by him or by his co-accused, to review any exculpatory information relating to him or his co-accused, to receive and to use any mitigating evidence, and to identify and reveal any outrageous government conduct. The Prosecution has neither objected to this request nor asserted any privilege and has assured the Defense that it would conduct its due diligence investigation surely to find “at least one responsive

document.” Three years have passed, however, and no documents have been forthcoming. This Commission should grant this Motion.

I. THE GOVERNMENT MUST PRODUCE ALL EVIDENCE MATERIAL TO THE PREPARATION OF THE DEFENSE IN THEIR POSSESSION OR THAT IS KNOWN OR REASONABLY MAY BE KNOWN TO THEM.

In the Military Commissions Act of 2009, Congress specifically recognized the importance of discovery and production when it directed that “[t]he opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant in a court of the United States under article III of the Constitution.” 10 U.S.C. § 949j(a)(1). The applicable rule at issue before this tribunal, R.M.C. 701, provides that “the Government shall permit the defense counsel to examine any books, paper, documents, photographs, tangible objects, buildings, or places so long as they are: (1) under the control of the government, and (2) material to the preparation of the defense or intended for use by the trial.” R.M.C. 701(c)(1).

Materiality is a threshold well below the evidentiary standard of relevance. Relevance governs admissibility: what evidence the factfinder may receive and consider. See M.C.R.E. 401. The standard of materiality, on the other hand, compels the production of evidence “as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal.” United States v. Lloyd, 992 F.2d 348, 351 (D.C. Cir. 1993) (internal quotation marks and citation omitted); see also United States v. Libby, 429 F. Supp. 2d. 1, 7 (D.D.C. 2006); United States v. Roberts, 59 M.J. 323, 325 (C.A.A.F. 2004) (the scope of materiality is broad and is “not focused solely upon evidence known to be admissible at trial” but includes evidence used in formulating defense strategy); United States v. George, 786 F. Supp. 56, 58 (D.D.C. 1992) (demonstrating materiality is “not a heavy burden”). The Prosecution, therefore, must produce any evidence in possession of

the Government known by trial counsel, or may be known through the exercise of due diligence, which is material to the preparation of the defense. R.M.C. 701(c).

Beyond the plain language of statutes and rules, the United States Constitution governs the ability of Mr. bin 'Atash to obtain discovery material to his defense. The Prosecution is required to disclose "evidence favorable to an accused" that is "material either to guilt or to punishment." Brady v. Maryland, 373 U.S. 83, 87 (1963); see also 10 U.S.C. § 949j(b)(1)-(4) (requiring disclosure of exculpatory evidence that tends to negate guilt, reduce the degree of guilt, impeach a prosecution witness, or mitigate a sentence). Evidence material to punishment includes any mitigating evidence that "may justify a sentence of life imprisonment as opposed to death." United States v. Feliciano, 998 F. Supp. 166, 170 (D. Conn. 1998). Further, the duty to provide such evidence includes the duty to search for evidence, where the evidence may be maintained by any other Government agency. Kyles v. Whitley, 514 U.S. 419, 438 (1995). The Government is clearly motivated to "go and search" for inculpatory information. Due Process requires that the Government also "go and search" for exculpatory information within its control.

II. THE REQUESTED DISCOVERY IS MATERIAL TO THE PREPARATION OF THE DEFENSE BECAUSE IT IS RELEVANT TO THE DETERMINATION OF WHETHER ANY ALLEGED STATEMENTS OF THE ACCUSED ARE ADMISSIBLE AND WHETHER THE GOVERNMENT ENGAGED IN OUTRAGEOUS CONDUCT.

Mr. bin 'Atash submits that the requested discovery is material to the preparation of the defense because it assists the assessment by this Commission as to whether the alleged statements of Mr. bin 'Atash to the FBI are reliable and voluntary. The material will also provide a factual basis upon which this Commission may determine that the Government engaged in conduct so outrageous that prosecution of Mr. bin 'Atash is precluded by the Fifth Amendment to the U.S. Constitution.

a. **The requested discovery is material to the determination by this Commission that the alleged statements of Mr. bin ‘Atash to the FBI are not reliable.**

For years, while in the custody and control of American intelligence agencies, Mr. bin ‘Atash was tortured. In the midst of this torture, he allegedly made statements to American intelligence officers. There is no dispute that these statements are not admissible in the current proceedings. Their use in a trial by the same government that tortured him would run afoul of the most “fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.” Brown v. Mississippi, 297 U.S. 278, 286 (1936). As noble as these fundamental principles are, there is another more practical concern: statements made under torture are often not reliable. Specifically, statements or confessions obtained by torture are often false. See Linkletter v. Walker, 381 U.S. 618, 638 (1965).

The Prosecution’s position regarding the reliability and/or truthfulness of statements made by Mr. bin ‘Atash is to suggest that subsequent, post-torture statements of Mr. bin ‘Atash—made while allegedly not being immediately tortured—are reliable and true. These allegedly “reliable” statements serve as the crux of the prosecution’s evidence against Mr. bin ‘Atash. Conversely, Mr. bin ‘Atash intends to challenge the reliability of any and all statement(s) taken from him by any government official after the commencement of enhanced interrogation techniques.

While previously coerced confessions and statements do not per se render all subsequent statements equally unreliable, the federal district courts—particularly those in the District of Columbia—have repeatedly noted that there exist legitimate concerns whether statements obtained after torture under conditions that do not constitute torture are true and accurate. Mohammed v. Obama, 689 F. Supp. 2d 38, 62, 64-65 (D.D.C. 2009) (detailing corrosive effect statements obtained under torture may have on subsequent reliability of “confessions” made under non-

torturous conditions). To resolve these questions, the federal district courts attempt to determine whether “there exists a ‘break in the stream of events . . . sufficient to insulate the statement from the effect of all that went before.’” United States v. Karake, 443 F. Supp. 2d 8, 87 (D.D.C. 2006) (quoting Clewis v. Texas, 386 U.S. 707, 710 (1967)). Among the factors considered to determine the existence of a “break in the stream of events,” courts evaluate “the time that passes between confessions, the change in place of interrogations, and the change in identity of the interrogators.” Oregon v. Elstad, 470 U.S. 298, 310 (1985). The district courts have also viewed, among other factors, “the length of time between the removal of the coercive circumstances and the present confession,” Karake, 443 F. Supp. 2d at 89, as well as the existence of shared information between the interrogators who engaged in torture and the so-called “clean teams,” Anam v. Obama, 696 F. Supp. 2d 1, 7 (D.D.C. 2010).

The requested discovery constitutes the documented plan by the FBI to create a “break in the stream of events” after years of torture by the CIA. At issue, assuming the FBI conscientiously followed their own policies and protocols, would be the adequacy of the plan to create the necessary constitutional break. Mr. bin ‘Atash asserts that the policies and protocols were inadequate per se and the production of this requested discovery is material to a similar determination by the Commission. Moreover, the requested discovery provides Mr. bin ‘Atash the means by which to impeach or rebut claims or testimony by government witnesses that a protocol existed, what the substance of the protocol was, and that the protocol was followed. See Lloyd, 992 F.2d at 351. This Commission should order the discovery as material to the preparation of the defense.

b. **The requested discovery is material to the determination by this Commission that the alleged statements of Mr. bin ‘Atash to the FBI were not voluntary.**

Independent of the issue of the reliability of statements given by Mr. bin ‘Atash to government officials is the question of the voluntariness of his statements. The Prosecution bears the burden of demonstrating that each statement given by Mr. bin ‘Atash was voluntary. See Schneckloth v. Bustamonte, 412 U.S. 218, 225 (1973) (holding that the prosecution bears the burden of proving that each of multiple statements made by defendant was the “product of an essentially free and unconstrained choice”).

Once more, the admissibility of later statements allegedly made by Mr. bin ‘Atash to agents characterized by the Prosecution as law-enforcement officials rests on a judicial determination whether the taint of the prior illegally-obtained, coercive statements was, somehow, dissipated. The Commission is required to determine whether Mr. bin ‘Atash’s “will has been overborne and his capacity for self-determination critically impaired.” Schneckloth, 412 U.S. at 225; see also R.M.C. 304(a)(2)(B)(iii) (military judge must find that the “statement was voluntarily given”). Using circumstances similar to those to assess the reliability of post-torture statements, courts consider the voluntariness of subsequent confessions under a “totality of the circumstances” test that includes factors such as time between the confessions, the location of the confessions, and changes in the persons present at the interrogations. See Elstad, 470 U.S. at 310. The applicable test is broad, and considers many factors: whether the Government advised the interrogated person of certain Constitutional rights, the period of detention, the nature of the prior coercion, the age, education, intelligence and mental health of the accused, the “repeated and prolonged nature of the questioning” and the “use of physical punishment such as the deprivation of food or sleep.” Schneckloth, 412 U.S. at 226.

The requested discovery is material to this determination. Before the Commission can rule on any challenge to the admissibility of statements made by Mr. bin 'Atash to FBI interrogators, it must consider whether those statements were voluntarily made. It is the position of Mr. bin 'Atash that they were not; the Prosecution believes otherwise. Critical to this determination is what the FBI's interrogation methods were and how they were developed. Only then can the Commission determine if they were of such sufficient quality as to vitiate years of torture. Moreover, the degree to which the FBI followed (or intentionally and/or negligently deviated from) these techniques is material to the question of admissibility of any purported statement. Deviation from the proscribed standards will also serve as a basis for cross-examination and impeachment of government witnesses. This Commission should order the discovery as material to the preparation of the defense.

- c. **The requested discovery is materials to any determination by this Commission that the United States engaged in outrageous government conduct, in violation of the Fifth Amendment to the U.S. Constitution.**

The requested discovery purports to reflect both the process and the end-result of an attempt by FBI interrogators to obtain legally-admissible statements from persons subjected to years of torture at the hands of the Government. Simply, the Government, namely, the FBI, has devised these plans and policies in an attempt to create a "break in the stream of events" such that the Commission can deem statements obtained by their agents to be both reliable and voluntary. Mr. bin 'Atash disputes that these policies are sufficient.

But even if these policies—in the abstract—could have provided a constitutionally-sufficient rampart against years of torture, Mr. bin 'Atash also disputes that that policies were followed. Mr. bin 'Atash asserts that, in fact, there was no break in the stream of events. FBI interrogations occurred under circumstances that did not constitute a sufficient "break" in place,

personnel, or methods. Instead of a break in the stream of events, the conduct of law-enforcement interrogators mirrored and overlapped with those of the intelligence agencies.

The failure of FBI interrogators to follow their own policies and practices constitutes outrageous government conduct. Instead of attempting to mark a clean break from past practices, the FBI interrogators exploited and perpetuated torture. The Supreme Court has recognized that “outrageous government conduct” could implicate due process concerns and serve to bar a criminal conviction. Hampton v. United States, 425 U.S. 484, 489 (1976); United States v. Bout, 731 F.3d 233, 238 (2d Cir. 2013) (noting that “to be ‘outrageous’ the government’s involvement must involve either coercion or a violation of the defendant’s person”). The requested discovery serves as material evidence that the FBI behaved outrageously and wantonly. The degree to which the FBI deviated—intentionally, recklessly, or negligently—from their own guidelines and practices is material to the question of outrageous government conduct. The Commission should order the requested discovery.

7. Conclusion:

The requested information is material to the admissibility of purported statements of Mr. bin ‘Atash, those of various witnesses, and those purported to be by the co-Accused. The requested information is also material to the issue of whether the Government engaged in conduct so outrageous that it would bar prosecution under the Fifth Amendment. This Commission should grant this Motion and enter an order compelling production of the requested information.

8. Oral Argument: The Defense requests oral argument.

9. Witnesses: Defense counsel for Mr. bin ‘Atash do not request witnesses at this time.

10. Conference with Opposing Counsel: The Prosecution did not respond to the request for position sent on 9 November 2017 and is presumed to object to the relief requested. R.C. 3.5.k.

11. Attachments:

- A. Certificate of Service
- B. The Defense's Request for Discovery, styled as DR-182-WBA, dated 15 July 2014 (2 pages).
- C. The Prosecution's First Response to DR-182-WBA, dated 29 July 2014 (2 pages).
- D. The Prosecution's Second Response to DR-182-WBA, dated 12 August 2014 (2 pages).

12. Signatures:

/s/
CHERYL T. BORMANN
Learned Counsel

/s/
EDWIN A. PERRY
Detailed Defense Counsel

/s/
BRIAN D. BRADY
Captain, USAFR
Detailed Military Counsel

/s/
MATTHEW H. SEEGER,
Major, USA
Detailed Military Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on 16 November 2017, I caused to be electronically filed the attached, AE 538(WBA), Defense Motion to Compel FBI Manual for Terrorism Interrogation, with the Trial Judiciary and provided copies to Trial Counsel and counsel for the co-defendants.

//s//

CHERYL T. BORMANN
Learned Counsel

Attachment B



**DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620**

15 July 2014

MEMORANDUM FOR TRIAL COUNSEL, *UNITED STATES v. MOHAMMAD, et al.*

FROM: Cheryl Bormann, Learned Counsel for Walid bin 'Atash
 LCDR James Hatcher, Detailed Counsel for Walid bin 'Atash
 Capt Michael Schwartz, Detailed Counsel for Walid bin 'Atash
 Capt Todd Swensen, Detailed Counsel for Walid bin 'Atash

SUBJECT: Request for Discovery dtd 15 July 2014

Pursuant to RMC 701 and 10 U.S.C. § 949j, Mr. bin 'Atash requests that the Government provide the following information in discovery. Failure to provide the requested Federal Bureau of Investigation (FBI) and inter-agency information will deny Mr. bin 'Atash his rights to the due process of law, to the effective assistance of counsel, a fair, speedy, and public trial, and to be free from cruel and unusual punishment, guaranteed by the Fifth, Sixth, and Eight Amendments to the United States Constitution and/or other provisions of U.S. and international law.

Please produce the following documents, records, recorded communications, papers, photographs and/or tangible objects. If any of the requested documents, records, or communications will be withheld, please identify the parties involved and the reasons for withholding.

1. Any and all documents, records, SOPs, memoranda, instruction materials, and information/correspondence about the development of policies related to interrogation methods used by the FBI to interrogate Mr. bin 'Atash, Mr. Mohammad, Mr. Binalshibh, Mr. al Baluchi, Mr. al Hawsawi, Mr. Majid Khan, Mr. al Nashiri, and others who were questioned about al Qaeda and its operations between September 11, 2001 and the present. This material includes, but is not limited to, the following documents:
 - a. Cross Cultural, Rapport-Based Interrogation (Version 5, unredacted), FBI, dated 23 Feb 11;
 - b. Cross Cultural, Rapport-Based Interrogation (Version 4, unredacted), FBI, date unknown;
 - c. Cross Cultural, Rapport-Based Interrogation (Version 3, unredacted), FBI, dated 01/18/2010;
 - d. Cross Cultural, Rapport-Based Interrogation (Version 2, unredacted), FBI, date unknown;
 - e. Cross Cultural, Rapport-Based Interrogation (Version 1, unredacted), FBI, date unknown;

2. Any and all documents, records, SOPs, memoranda, instruction materials, and Information/correspondence about the development of policies related to the FBI's treatment of prisoners and detainees between September 11, 2001 and the present where those detainees and prisoners were subject to interrogation about al Qaeda and its operations. This material includes, but is not limited to, an FBI electronic communication titled "Treatment of Prisoners and Detainees", dated 05/19/2004.

The aforementioned documents are material to the preparation of the defense, and are requested because Mr. bin 'Atash and the witnesses whose statements might be used against Mr. bin 'Atash were interrogated by the FBI between September 11, 2001 and the present. Mr. bin 'Atash cannot prepare potential motions, conduct an appropriate investigation, and properly prepare for trial and sentencing proceeding, without production of the documents requested. The disclosure of the items requested is paramount to ensure a "full and fair trial" as mandated by the Military Commissions Act of 2009, and to afford Mr. bin 'Atash all the judicial guarantees which are recognized as indispensable by civilized people, as mandated in the Manual for Military Commissions and well established principles under the United States Constitution, death penalty jurisprudence, and international law. The ability of an attorney to fully represent his or her client depends on the "full and frank communication between [them]."¹ The firmly established attorney-client privilege is "founded upon the necessity...of the aid of persons having knowledge of the law and skilled in its practice, which assistance can only be safely and readily availed of **when free from the consequences or the apprehension of disclosure.**"²

Respectfully submitted,

//s//
CHERYL T. BORMANN
Learned Counsel

//s//
JAMES E. HATCHER
LCDR, USN
Defense Counsel

//s//
MICHAEL A. SCHWARTZ
Capt, USAF
Defense Counsel

//s//
TODD M. SWENSEN
Capt, USAF
Defense Counsel

¹ *Upjohn Co. v. U.S.*, 449 U.S. 383, 389 (1981).

² *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888) (emphasis added).

Attachment C



OFFICE OF THE
CHIEF PROSECUTOR

DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF PROSECUTOR OF MILITARY COMMISSIONS
1610 DEFENSE PENTAGON
WASHINGTON, DC 20301-1610

29 July 2014

MEMORANDUM FOR Defense Counsel for Mr. bin 'Attash

SUBJECT: Prosecution Initial Response to 15 July 2014
Request for Discovery (DR-182-WBA)

1. The Prosecution received the Defense request for discovery on 15 July 2014. The Prosecution hereby responds to the Defense request.

2. The Defense requests production of any and all documents, records, SOPs, memoranda, instruction materials, and information/correspondence about the development of policies related to interrogation methods used by the FBI to interrogate Mr. bin 'Atash, Mr. Mohammad, Mr. Binalshibh, Mr. al Baluchi, Mr. al Hawsawi, Mr. Majid Khan, Mr. al Nashiri, and others who were questioned about al Qaeda and its operations between September 11, 2001 and the present. This material includes, but is not limited to, the following documents:

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- d. Cross Cultural, Rapport-Based Interrogation (Version 2, unredacted), FBI, date unknown;
- e. Cross Cultural, Rapport-Based Interrogation (Version 1, unredacted), FBI, date unknown;

The Prosecution responds as follows, in bold:

The Prosecution is currently conducting its due diligence and will respond accordingly upon completion of its due diligence.

3. The Defense requests production of "any and all documents, records, SOPs, memoranda, instruction materials, and information/correspondence about the development of policies related to the FBI's treatment of prisoners and detainees between September 11, 2001 and the present where

Attachment D



OFFICE OF THE
CHIEF PROSECUTOR

DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF PROSECUTOR OF MILITARY COMMISSIONS
1610 DEFENSE PENTAGON
WASHINGTON, DC 20301-1610

12 August 2014

MEMORANDUM FOR Defense Counsel for Mr. bin 'Attash

SUBJECT: Prosecution Response to 15 July 2014 Request for
Discovery (DR-182-WBA)

1. The Prosecution received the Defense request for discovery on 15 July 2014. The Prosecution hereby responds to the Defense request.

2. The Defense requests production of any and all documents, records, SOPs, memoranda, instruction materials, and information/correspondence about the development of policies related to interrogation methods used by the FBI to interrogate Mr. bin 'Atash, Mr. Mohammad, Mr. Binalshibh, Mr. al Baluchi, Mr. al Hawsawi, Mr. Majid Khan, Mr. al Nashiri, and others who were questioned about al Qaeda and its operations between September 11, 2001 and the present. This material includes, but is not limited to, the following documents:

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- e. Cross Cultural, Rapport-Based Interrogation (Version 1, unredacted), FBI, date unknown;

The Prosecution responds as follows, in bold:

The Prosecution is still conducting its due diligence regarding the requested documents. It is the belief of the Prosecution that completion of its due diligence will result in the identification of some responsive documents that the Prosecution will provide to the Defense.

3. The Defense requests production of "any and all documents, records, SOPs, memoranda, instruction materials,

and information/correspondence about the development of policies related to the FBI's treatment of prisoners and detainees between September 11, 2001 and the present where those detainees and prisoners were subject to interrogation about al Qaeda and its operations. This material includes, but is not limited to, an FBI electronic communication titled "Treatment of Prisoners and Detainees", dated 05/19/2004." The Prosecution responds as follows, in bold:

The Prosecution is still conducting its due diligence regarding the requested documents. It is the belief of the Prosecution that completion of its due diligence will result in the identification of at least one responsive document that the Prosecution will provide to the Defense.

Respectfully submitted,

 //s//

Nicole A. Tate
Assistant Trial Counsel