

**Constitution Subcommittee Oversight Hearing on  
“Legal Issues Surrounding the Military Commissions System”  
July 8, 10:00 a.m. in Room 2141 Rayburn**

**Written Testimony of  
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I would like to thank the members of the subcommittee for inviting me here today. The role of military commissions is an important and timely topic for discussion, especially as President Obama's administration decides how it will handle existing and future detainees' cases. So, I am grateful for the opportunity to present my views.

The military commission system is just one of the options the Obama administration is currently considering for trying terrorist suspects. In my opinion, it will take some work to make the commissions function properly.

Although the Military Commissions Act was passed in 2006, only a few commissions have completed their work. And those commissions have had mixed results. For example, Salim Hamdan, who swore bayat – the ultimate oath of loyalty – to Osama bin Laden and who served the terror master as a bodyguard and driver, received only a minimal sentence (five and one half years) for his devotion to al Qaeda. Hamdan was even granted time served. Common criminals in the U.S. frequently receive longer and less lenient sentences. Hamdan was subsequently transferred to Yemen, a country that is home to one of the strongest al Qaeda affiliates in the world and that has a poor track record when it comes to keeping tabs on known al Qaeda terrorists.

So, the commissions have been far from perfect. This is not to suggest that there is a perfect system for trying terrorist suspects. There are flaws with each of the available options, including trials in federal courts.

The federal courts have been uneven in their rulings. For example, the court's decision in *Parhat v. Gates* omitted key facts. Parhat is an ethnic Uighur from Western China. He was recently released to Bermuda. Parhat and his fellow Uighurs held at Gitmo challenged their detention, and a court found that there was no basis for holding them. However, the court's decision was fatally flawed. The court ignored the fact that Parhat, as well as at least seven of his fellow Uighurs, openly admitted that they were trained by a known al Qaeda terrorist named Abdul Haq in a camp at Tora Bora, Afghanistan.<sup>1</sup> The Obama administration's Treasury Department has subsequently designated Haq a senior al Qaeda terrorist.

Abdul Haq was not even mentioned in the *Parhat* decision.

So, the courts are far from perfect too.

I could go on with more examples of flawed court decisions. I'm sure we can document more flaws in the commission system as well. But all of this is of secondary importance, in my view.

The two most important reasons we detain terrorists are to prevent them from committing additional terrorist acts and to gain additional intelligence about the

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<sup>1</sup> For excerpts of the Uighurs' testimony, see here:

[http://www.longwarjournal.org/archives/2009/04/the\\_uighurs\\_in\\_their.php](http://www.longwarjournal.org/archives/2009/04/the_uighurs_in_their.php)

terror network, which thrives in the shadows. However the U.S. Government decides to proceed with the detainees' cases, it must make sure to protect this latter function, in particular. Intelligence is our primary weapon in this long war and without it we could quickly find ourselves blind to our enemies' designs once again.

All one has to do to understand the crucial value of this intelligence is look at the detainee population at Guantanamo. Because the detainees at Guantanamo are the most likely candidates for trial by military commission, I'd like to take just a few minutes to summarize the detainee population.

The most lethal terrorists held at Gitmo are the sixteen so-called "high value" detainees.<sup>2</sup> These terrorists are uniquely lethal, and have been responsible for thousands of deaths around the world. Had they been left to their own devices, they would have surely murdered thousands more. To name just two of them, their ranks include Khalid Sheikh Mohammed (KSM)), the chief planner of the September 11 attacks, and Ramzi Binalshibh, al Qaeda's point man for the September 11 operation.

In my view, there is no material dispute over the high value detainees' importance. From an intelligence perspective, they not only had detailed knowledge about al Qaeda's past attacks, but also extensive knowledge of al Qaeda's ongoing operations at the time of their capture.

We know that in the years following September 11, 2001, al Qaeda plotted attacks across the planet, stretching from the continental U.S. to Southeast Asia. Numerous plots were disrupted because the so-called "high value" terrorists were captured and interrogated.<sup>3</sup> Much of the history behind their interrogations remains to be told and there is, of course, an ongoing controversy over the manner in which they were questioned. But we know for certain that the "high value" detainees gave up vital details on al Qaeda's global operations, including during interrogation sessions in which they were subjected to the harshest treatment. The new Director of National Intelligence, Dennis Blair, has written as much.<sup>4</sup>

To give you a sense of the urgency surrounding these interrogations, consider the circumstances that existed at the time of KSM's capture. KSM was captured in Pakistan on March 1, 2003. A few weeks later, an al Qaeda-trained terrorist named Iyman Faris was arrested in the U.S. At the time of his arrest, Faris was casing targets such as the Brooklyn Bridge. Faris was acting on the orders of KSM and other senior al Qaeda terrorists.

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<sup>2</sup> A complete list of the "high value" detainees can be found here:

<http://projects.nytimes.com/guantanamo/detainees/high-value>

<sup>3</sup> By and large, these interrogations took place not at Gitmo, but at so-called "black sites" around the world.

<sup>4</sup> On April 16, 2009, Blair wrote: "High value information came from interrogations in which those methods [enhanced interrogation techniques] were used and provided a deeper understanding of the al Qaeda organization that was attacking this country."

A few weeks after Faris was arrested, yet another al Qaeda terrorist was arrested on American soil. Uzair Paracha was arrested in New York, and even had an office in the Garment District of Manhattan. Just as with Faris, Paracha was acting under orders from senior al Qaeda terrorists, including KSM, at the time of his arrest. Paracha attempted to assist other al Qaeda terrorists in their efforts to sneak into the U.S. Paracha most likely intended to smuggle explosives into the U.S. using his father's import-export company as well.

Both Faris and Paracha were subsequently convicted on terrorism-related charges.

I cannot say what role, if any, the interrogations of KSM played in the actual arrests of Faris and Paracha. But KSM clearly knew the details of their plotting, as well as the details of other al Qaeda terrorists' plans for attacking the American Homeland. Thus, the central goal of detaining KSM was not only to ensure that he himself could not commit any additional acts of terror, but to also learn what he knew about other al Qaeda operatives.

This includes terrorists who were already here - on American soil - months after the September 11 attacks.

These are just a few examples of the grave matters facing U.S. intelligence professionals at the time of KSM's capture. Similar examples could easily be provided for each of the other "high value" detainees held at Guantanamo as well. And it is not just the high value detainees who had crucial intelligence on their minds when they were initially detained.

Over the past two years, I have conducted an exhaustive study of the unclassified documents released from Guantanamo.<sup>5</sup> The detainees at Gitmo include safe house operators, bomb-makers, terrorist trainers and trainees, al Qaeda recruiters, committed recruits who desire martyrdom, Osama bin Laden's bodyguards, experienced fighters, and numerous other operatives who served the terror network in a variety of other functions.

Beyond the so-called "high value" detainees, here is just a short list of some of the detainees held at Guantanamo:

- **Ghassan Abdullah al Sharbi** - a former student of Embry Riddle University (Arizona), the same school where some of the September 11 hijackers learned to fly jumbo jets. Al Sharbi is a long-time al Qaeda terrorist and an admitted bomb-maker.
- **Fouad Mohaud Hasan al Rabia** - a Kuwaiti who was also educated at Embry Riddle (Florida). According to the government's unclassified files, al Rabia has extensive ties to al Qaeda.

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<sup>5</sup> Most of these documents can be found online here:

<http://projects.nytimes.com/guantanamo>

- **Mohamedou Slahi** – a longtime recruiter for Osama bin Laden. Slahi recruited three of the four suicide hijack pilots for the September 11 operation. He also most likely activated the al Qaeda cell based in Montreal that was responsible for the millennium plot against the LAX airport.
- **Mohammed al Qahtani** – an al Qaeda recruit who was scheduled to be the 20<sup>th</sup> hijacker. Al Qahtani was turned away from the Orlando Airport in the summer of 2001 by a suspicious immigration official and was later identified as a would-be hijacker while at Gitmo.
- **The Rabbani Brothers (2)** - two brothers who were responsible for managing al Qaeda’s safehouses in Pakistan. Most of the September 11 hijackers stayed at the Rabbani brothers’ safe houses.
- **Abdul al Salem al Hilal** – a former member of the Yemeni Political Security Organization (PSO) who helped al Qaeda members transit the globe. In a wiretapped phone call during the summer of 2000, Italian authorities caught al Hilal discussing a hijacking operation that was most likely the September 11 attacks.
- **Noor Uthman Mohammed** – a long-time trainer at the Khalden camp in Afghanistan. Mohammed was reportedly slated to take part in a terrorist attack against Israel at some point in the future.
- **Muhammad Ahmad Abdallah al Ansi** - An unnamed “senior al Qaeda operative” cited in the U.S. government's unclassified files produced at Gitmo says that he took al Ansi and others to Karachi two months before September 11, 2001 "to teach them English and American behaviors." The same senior al Qaeda operative identified al Ansi “as one of the martyrs who had been readied” for al Qaeda's “Southeast Asia hijacking plan.”
- **Saifullah Paracha** – the father of the aforementioned convicted terrorist Uzair Paracha. Along with his son, Saifullah assisted al Qaeda’s post-September 11 planning against the American Homeland. It was his export-import business that al Qaeda considered using to bring explosives into the U.S.
- **Several terrorists captured with Ramzi Binalshibh** – During the raid that netted Ramzi Binalshibh in September 2002, several of Binalshibh’s compatriots were also captured after a prolonged firefight. At the time of his capture, Binalshibh was plotting an attack against airline flights out of London’s Heathrow Airport. Computers captured during that same raid contained extensive information on al Qaeda’s plotting. According to the files produced at Gitmo, the computers contained a "flight simulator and flight navigation maps," as well as specific information on “United States military facilities and the layout of the exterior and interior views of various United

States Navy ships." In addition, the computers contained "several files that discussed kidnapping, hijacking, smuggling money, weapons, ammunition, and lectures and essays on terrorist training, executions, assassinations, [guerrilla] warfare and United States Special Operations Forces."

These are just some of the other detainees held at Guantanamo, beyond the sixteen "high value" detainees. There are good reasons to suspect that all of them knew important details about al Qaeda's operations at the time of their capture.

It is not yet publicly known what the Obama administration plans to do with them, or the many other detainees like them. Whether the detainees are tried by a military commission, a federal court, or not all, we should keep in mind a central fact: The intelligence learned from them has played a crucial role in our fight against terrorism.

On September 11, 2001, America was caught blind. She had little to no intelligence inside our terrorist enemies. Through the capture and detention of terrorist suspects, America has filled in many of the gaps in her understanding of al Qaeda and global terrorist networks.

We now have the luxury, many years later, to debate how terrorists should be tried for their crimes. But we must always remember that they did not stop on September 11. America has avoided being struck again, but this does not mean that they have stopped trying. And their attacks continued around the globe.

Whatever course we choose from here on out, intelligence must remain of paramount importance. However the detainees in American custody are tried, there must be assurances that intelligence professionals continue to have the opportunity to learn what they know. And at least some of that intelligence must be protected in such a manner that we do not disclose to the enemy all that we know about them.

Thank you, again, for taking the time to hear my views. I am happy to answer any and all questions you may have.