

the confidence of the American people in the vigor and stability of their institutions. It would bind us more closely together as a nation and enable us to show to the world the inherent and recuperative power of a government founded upon the will of the people and established upon the principles of liberty, justice, and intelligence. . . .

In our efforts to preserve "the unity of government which constitutes us one people" by restoring the States to the condition which they held prior to the rebellion, we

should be cautious, lest, having rescued our nation from perils of threatened disintegration, we resort to consolidation, and in the end absolute despotism, as a remedy for the recurrence of similar troubles. The war having terminated, and with it all occasion for the exercise of powers of doubtful constitutionality, we should hasten to bring legislation within the boundaries prescribed by the Constitution and to return to the ancient landmarks established by our fathers for the guidance of succeeding generations. . . .

256. EX PARTE MILLIGAN

4 Wallace, 2

1866

Certificate from the United States circuit court for the District of Indiana. By an act of March 3, 1863, Congress authorized the President to suspend the writ of *habeas corpus*, and under this authority President Lincoln, September 15, 1863, suspended the writ in cases where officers held persons for offenses against the military or naval service. Milligan, a civilian, was arrested, tried by a military commission, found guilty of fomenting insurrection, and sentenced to be hanged. He petitioned the United States circuit court for a writ of *habeas corpus*.

The decision of the Court in this case, one of the most notable in our history, condemned military tribunals in sections where the civil courts were open, and, by implication, raised serious doubts as to the legality of Congressional reconstruction. A thorough discussion of the case can be found in *The Milligan Case*, ed. by S. Klaus. See also in this connection the opinion of Taney in *ex parte Merryman*, Doc. No. 209. A standard work on the constitutional problems of the war is W. Whiting, *War Powers under the Constitution of the United States*. An excellent briefer discussion can be found in W. A. Dunning, *Essays on the Civil War and Reconstruction*, chs. i, ii. On Copperhead activities see I. W. Ayer, *The Great Northwest Conspiracy*; F. A. Stiger, *History of the Order of Sons of Liberty*; J. L. Vollandigham, *Life of Clement L. Vollandigham*.

DAVIS, J. . . . The importance of the main question presented by this record cannot be overstated; for it involves the very framework of the government and the fundamental principles of American liberty.

During the late wicked rebellion, the temper of the times did not allow that calmness in deliberation and discussion so necessary

to a correct conclusion of a purely judicial question. *Then*, considerations of safety were mingled with the exercise of power; and feelings and interests prevailed which are happily terminated. *Now*, that the public safety is assured, this question, as well as all others, can be discussed and decided without passion or the admixture of any element not required to form a legal judgment. We approach the investigation of this case, fully sensible of the magnitude of the inquiry and the necessity of full and cautious deliberation. . . .

The controlling question in the case is this: Upon the *facts* stated in Milligan's petition, and the exhibits filed, had the military commission mentioned in it *jurisdiction*, legally, to try and sentence him? Milligan, not a resident of one of the rebellious states, or a prisoner of war, but a citizen of Indiana for twenty years past, and never in the military or naval service, is, while at his home, arrested by the military power of the United States, imprisoned, and, on certain criminal charges preferred against him, tried, convicted, and sentenced to be hanged by a military commission, organized under the direction of the military commander of the military district of Indiana. Had this tribunal the legal power and authority to try and punish this man?

No graver question was ever considered by this court, nor one which more nearly concerns the rights of the whole people; for it is the birthright of every American citizen when charged with crime, to be tried and punished according to law. The power of punishment is alone through the means which the laws have

provided for that purpose, and if they are ineffectual, there is an immunity from punishment no matter how great an offender the individual may be, or how much his crimes may have shocked the sense of justice of the country, or endangered its safety. By the protection of the law human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers, or the clamor of an excited people. If there was law to justify this military trial, it is not our province to interfere; if there was not, it is our duty to declare the nullity of the whole proceedings. The decision of this question does not depend on argument or judicial precedents, numerous and highly illustrative as they are. These precedents inform us of the extent of the struggle to preserve liberty, and to relieve those in civil life from military trials. The founders of our government were familiar with the history of that struggle, and secured in a written Constitution every right which the people had wrested from power during a contest of ages. By that Constitution and the laws authorized by it this question must be determined. The provisions of that instrument on the administration of criminal justice are too plain and direct to leave room for misconstruction or doubt of their true meaning. Those applicable to this case are found in that clause of the original Constitution which says, "That the trial of all crimes, except in case of impeachment, shall be by jury"; and in the fourth, fifth, and sixth articles of the amendments. . . .

Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words, that it would seem the ingenuity of man could not evade them, are *now*, after the lapse of more than seventy years, sought to be avoided. . . . The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers

granted to it which are necessary to preserve its existence; as has been happily proved by the result of the great effort to throw off its just authority.

Have any of the rights guaranteed by the Constitution been violated in the case of Milligan? and if so, what are they?

Every trial involves the exercise of judicial power; and from what source did the military commission that tried him derive their authority? Certainly no part of the judicial power of the country was conferred on them; because the Constitution expressly vests it "in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish," and it is not pretended that the commission was a court ordained and established by Congress. They cannot justify on the mandate of the President, because he is controlled by law, and has his appropriate sphere of duty, which is to execute, not to make, the laws; and there is "no unwritten criminal code to which resort can be had as a source of jurisdiction."

But it is said that the jurisdiction is complete under the "laws and usages of war."

It can serve no useful purpose to inquire what those laws and usages are, whence they originated, where found, and on whom they operate; they can never be applied to citizens in states which have upheld the authority of the government, and where the courts are open and their process unobstructed. This court has judicial knowledge that in Indiana the federal authority was always unopposed, and its courts always open to hear criminal accusations and redress grievances; and no usage of war could sanction a military trial there for any offense whatever of a citizen in civil life, in nowise connected with the military service. Congress could grant no such power; and to the honor of our national legislature be it said, it has never been provoked by the state of the country even to attempt its exercise. One of the plainest constitutional provisions was, therefore, infringed when Milligan was tried by a court not ordained and established by Congress, and not composed of judges appointed during good behavior.

Why was he not delivered to the circuit court of Indiana to be proceeded against according to law? No reason of necessity could be urged against it; because Congress had de-

clared penalties against the offenses charged, provided for their punishment, and directed that court to hear and determine them. And soon after this military tribunal was ended, the circuit court met, peacefully transacted its business, and adjourned. It needed no bayonets to protect it, and required no military aid to execute its judgments. It was held in a state, eminently distinguished for patriotism, by judges commissioned during the rebellion who were provided with juries, upright, intelligent, and selected by a marshal appointed by the President. The government had no right to conclude that Milligan, if guilty, would not receive in that court merited punishment; for its records disclose that it was constantly engaged in the trial of similar offenses, and was never interrupted in its administration of criminal justice. If it was dangerous, in the distracted condition of affairs, to leave Milligan unrestrained of his liberty, because he "conspired against the government, afforded aid and comfort to rebels, and incited the people to insurrection," the law said, arrest him, confine him closely, render him powerless to do further mischief; and then present his case to the grand jury of the district, with proofs of his guilt, and, if indicted, try him according to the course of the common law. If this had been done, the Constitution would have been vindicated, the law of 1863 enforced, and the securities for personal liberty preserved and defended.

Another guarantee of freedom was broken when Milligan was denied a trial by jury. The great minds of the country have differed on the correct interpretation to be given to the various provisions of the federal Constitution; and judicial decision has been often invoked to settle their true meaning; but until recently no one ever doubted that the right of trial by jury was forfeited in the organic law against the power of attack. It is *now* assailed; but if ideas can be expressed in words, and language has any meaning, *this right*—one of the most valuable in a free country—is preserved to every one accused of crime who is not attached to the army, or navy, or militia in actual service. . . .

It is claimed that martial law covers with its broad mantle the proceedings of this military commission. The proposition is this: that in a time of war the commander of an

armed force (if, in his opinion, the exigencies of the country demand it, and of which he is to judge) has the power, within the lines of his military district, to suspend all civil rights and their remedies, and subject citizens as well as soldiers to the rule of *his will*; and in the exercise of his lawful authority cannot be restrained, except by his superior officer or the President of the United States.

If this position is sound to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the Executive, substitute military force for, and to the exclusion of, the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules.

The statement of this proposition shows its importance; for, if true, republican government is a failure, and there is an end of liberty regulated by law. Martial law, established on such a basis, destroys every guarantee of the Constitution, and effectually renders the "military independent of, and superior to, the civil power,"—the attempt to do which by the king of Great Britain was deemed by our fathers such an offense, that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable; and, in the conflict, one or the other must perish.

This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln; and if this right is conceded, and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a contingency, they would have been false to the trust reposed in them. They knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war; how often or

how long continued, human foresight could not tell; and that unlimited power, wherever lodged at such a time, was especially hazardous to freemen. For this, and other equally weighty reasons, they secured the inheritance they had fought to maintain, by incorporating in a written Constitution the safeguards which time had proved were essential to its preservation. Not one of these safeguards can the President, or Congress, or the judiciary disturb, except the one concerning the writ of habeas corpus.

It is essential to the safety of every government that, in a great crisis like the one we have just passed through, there should be a power somewhere of suspending the writ of habeas corpus. In every war, there are men of previously good character, wicked enough to counsel their fellow-citizens to resist the measures deemed necessary by a good government to sustain its just authority and overthrow its enemies; and their influence may lead to dangerous combinations. In the emergency of the times, an immediate public investigation according to law may not be possible; and yet the peril to the country may be too imminent to suffer such persons to go at large. Unquestionably, there is then an exigency which demands that the government, if it should see fit, in the exercise of a proper discretion, to make arrests, should not be required to produce the persons arrested in answer to a writ of habeas corpus. The Constitution goes no further. It does not say after a writ of habeas corpus is denied a citizen, that he shall be tried otherwise than by the course of the common law; if it had intended this result, it was easy by the use of direct words to have accomplished it. The illustrious men who framed that instrument were guarding the foundations of civil liberty against the abuses of unlimited power; they were full of wisdom, and the lessons of history informed them that a trial by an established court, assisted by an impartial jury, was the only sure way of protecting the citizen against oppression and wrong. Knowing this, they limited the suspension to one great right, and left the rest to remain forever inviolable. But, it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true, it could be well said

that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation. Happily, it is not so.

It will be borne in mind that this is not a question of the power to proclaim martial law, when war exists in a community and the courts and civil authorities are overthrown. Nor is it a question what rule a military commander, at the head of his army, can impose on states in rebellion to cripple their resources and quell the insurrection. The jurisdiction claimed is much more extensive. The necessities of the service, during the late rebellion, required that the loyal states should be placed within the limits of certain military districts and commanders appointed in them; and, it is urged, that this, in a military sense, constituted them the theatre of military operations; and, as in this case, Indiana had been and was again threatened with invasion by the enemy, the occasion was furnished to establish martial law. The conclusion does not follow from the premises. If armies were collected in Indiana, they were to be employed in another locality, where the laws were obstructed and the national authority disputed. On *her* soil there was no hostile foot; if once invaded, that invasion was at an end, and with it all pretext for martial law. Martial law cannot arise from a *threatened* invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration.

It is difficult to see how the *safety* of the country required martial law in Indiana. If any of her citizens were plotting treason, the power of arrest could secure them, until the government was prepared for their trial, when the courts were open and ready to try them. It was as easy to protect witnesses before a civil as a military tribunal; and as there could be no wish to convict, except on sufficient legal evidence, surely an ordained and established court was better able to judge of this than a military tribunal composed of gentlemen not trained to the profession of the law.

It follows, from what has been said on this subject, that there are occasions when martial rule can be properly applied. If, in foreign invasion or civil war, the courts are actually

closed, and it is impossible to administer criminal justice according to law, *then*, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration; for, if this government is continued *after* the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in the proper and unobstructed ex-

ercise of their jurisdiction. It is also confined to the locality of actual war. Because, during the late rebellion it could have been enforced in Virginia, where the national authority was overturned and the courts driven out, it does not follow that it should obtain in Indiana, where that authority was never disputed, and justice was always administered. . . .

Mr. Chief Justice Chase, for himself and Mr. Justice Wayne, Mr. Justice Swayne, and Mr. Justice Miller, delivered an opinion in which he differed from the court in several important points, but concurred in the judgment in the case.

257. EFFORTS TO ENCOURAGE IMMIGRATION

South Carolina Immigration Bill

1866

(*South Carolina Statutes at Large*, Vol. XIII, p. 380)

The demand for industrial labor, the opening up of the west, and the disorganization of the labor system of the South, all led to official as well as unofficial efforts to encourage immigration. Most Southern States attempted to attract immigrants to take the place of the negro worker, but uniformly without success. In South Carolina a state commissioner of agriculture was created and a pamphlet advertising the attractions of the state published in several languages and distributed widely throughout northern Europe. See, F. B. Simkins and R. H. Woody, *South Carolina During Reconstruction*, p. 243 ff.

To Encourage Immigration to South Carolina

1. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That for the purpose of encouraging, promoting and protecting European immigration to and in this State, the sum of ten thousand dollars be appropriated from the contingent fund, to be expended under the direction of the Government, for the purposes and in the manner hereinafter provided.

2. That the Governor, by and with the advice and consent of the Senate, shall appoint a Commissioner of Immigration, who shall open an office in the fire-proof building in Charleston, to perform such duties as may appertain to his office, and shall be paid for

his services the salary of fifteen hundred dollars per annum out of the fund aforesaid, in quarterly payments.

3. That it shall be the duty of said Commissioner of Immigration to advertise in all the gazettes of the State for lands for sale; to cause such lands, after having been duly laid off, platted and described, at the expense of the owner or owners of said lands, to be appraised by three disinterested persons, and their titles to be examined by the Attorney General or Solicitors of the State, and endorsed by them, as the case may be; to open a book or books for the registry of the same, together with the price demanded and the conditions of payment. And in case such lands be selected by any immigrant, to superintend the transfer of title and other necessary instruments and proceedings of conveyance.

4. That the said Commissioner shall periodically publish, advertise and cause to be distributed in the Northern and European ports and states, descriptive lists of such lands as have been registered and offered for sale, together with this Act, and a statement of such advantages as this State offers in soil, climate, productions, social improvements, etc., to the industrious, orderly and frugal European immigrant.

Military tribunal Help us improve Wikipedia by supporting it financially.

From Wikipedia, the free encyclopedia

A **military tribunal** is a kind of military court designed to try members of enemy forces during wartime, operating outside the scope of conventional criminal and civil matters. The judges are military officers and fulfill the role of jurors. It is distinct from the court martial.

A military tribunal is an inquisitorial system based on charges brought by a military authority, prosecuted by a military authority, judged by military officers, and sentenced by military officers against a member of an adversarial force.

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- 1 Military tribunals in the United States
 - 1.1 Jurisdiction
 - 1.2 Controversy
 - 1.3 Trial by military commission of the Guantánamo detainees
- 2 See also
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Military tribunals in the United States

The United States has, infrequently, made use of military tribunals or commissions, rather than rely on a court martial, within the military justice system. General George Washington used military tribunals during the American Revolution.

President Abraham Lincoln used military tribunals during the American Civil War. Their use in cases of civilians was often controversial, and critics of the administration charged that tribunals had become a political weapon, for which the accused had no legal recourse, except through an appeal to the President. The most prominent civilians tried in this way were Democratic politicians Clement L. Vallandigham, Lambdin P. Milligan, and Benjamin Gwynn Harris. All were convicted, and Harris was expelled from the Congress as a result. The so-called Lincoln conspirators were also tried by military commission in the spring and summer of 1865.^[1]

Military tribunals were used to try Native Americans who fought the United States during the Indian Wars; the thirty-eight people who were executed after the Dakota War of 1862 were sentenced by a military tribunal.

The U. S. Supreme Court took up the Milligan case in 1866, and in a unanimous opinion, ruled that civilians could not be tried by military commissions in any jurisdiction where the civil courts were functioning.

President Franklin D. Roosevelt ordered military tribunals for eight German prisoners accused of planning sabotage in the United States as part of Operation Pastorius. Roosevelt's decision was challenged, but upheld, in *Ex parte Quirin*. All eight of the accused were convicted and sentenced to death. Six were executed by electric chair at the District of Columbia jail on August 8, 1942. Two who had given evidence against the others had their sentences reduced by Roosevelt to prison terms. In 1948, they were released and deported to the American Zone of occupied Germany.

International war crimes tribunals were convened by allied forces in both Germany and Japan to try military leaders for war crimes in those cases.

Most recently, as discussed below, the administration of George W. Bush has sought to use military tribunals to try terrorism suspects, mostly individuals captured abroad and held at a prison camp at a military base in Guantanamo Bay, Cuba.

Jurisdiction

Courts-martial generally take jurisdiction only over members of their own military and sometimes, civilians present with them.



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The 1 of th

Even when court-martial procedures are used to try enemies, the body convened is often instead called a military tribunal or military commission.

A military tribunal or military commission, in contrast, is generally used to refer to bodies who assert jurisdiction over persons who are held in military custody and stand accused of being enemies in a conflict in which the military is engaged who a combatants who have violated a law of war.

Military tribunals convened to impose punishment (as opposed to tribunals established solely to classify persons in military custody as combatants or non-combatants), generally limit themselves to accusations that an individual violated the laws of war. Military tribunals generally do not consider cases where an individual is merely being accused of being a combatant on behalf of the enemy.

Military tribunals also, generally speaking, do not assert jurisdiction over people who are acknowledged to be non-combatants who have committed ordinary civil crimes. But, military tribunals are sometimes used to try individuals not affiliated with a national military who are nonetheless accused of being combatants acting in violation of the laws of war.

Controversy

While tribunals can provide for quick trials under the conditions of war, many critics say this occurs at the expense of fair justice.

For military tribunals the rules for admissible evidence are more lax than in civilian trials; hearsay and coerced testimony, if it would have "probative value to a reasonable person," and evidence kept secret from the defendant and his lawyer (if any) can be used to convict defendants.^[2]

Time constraints and the inability to obtain evidence can greatly hamper a case for the defense. Civilian trials must be open to the public, while military tribunals can be held in secret. Because conviction usually relies on some sort of majority quota, the separability problem can easily cause the verdict to be displeasing not only to the defendant but also to the tribunal.

Decisions made by a military tribunal cannot be appealed to federal courts. The only way to appeal is a petition for a panel of review (which may or may not include civilians as well as military officers) to review decisions, however the President, as Commander In Chief, has final review of all appeals. No impartial arbiter is available.

Although such tribunals do not satisfy most protections and guarantees provided by the Bill of Rights, that has not stopped Presidents from using them, nor the U.S. Congress from authorizing them, as in the Military Commissions Act of 2006. All U.S. Presidents have contended that the Bill of Rights does not apply to noncitizen combatants.

Trial by military commission of the Guantánamo detainees

President George W. Bush has ordered that certain detainees imprisoned at the Naval base on Guantánamo Bay were to be tried by military commissions. This decision sparked controversy and litigation. On June 29, 2006, the U.S. Supreme Court limited the power of the Bush administration to conduct military tribunals to suspected terrorists at Guantánamo Bay.

In December of 2006, the Military Commissions Act of 2006 was passed and authorized the establishment of military commissions subject to certain requirements and with a designated system of appealing those decisions. A military commission system addressing objections identified by the U.S. Supreme Court was then established by the Department of Defense. Litigation concerning the establishment of this system is ongoing.^{[3][4]} As of June 13, 2007, the appellate body in this military commission system had not yet been constituted.

Three cases had been commenced in the new system, as of June 13, 2007. One detainee, David Matthew Hicks plea bargained and was sent to Australia to serve a nine month sentence.^[5] Two case were dismissed without prejudice because the tribunal believed that the men charged had not been properly determined to be persons within the commission's jurisdiction on June 4, 2007, and the military prosecutors asked the commission to reconsider that decision on June 8, 2007.^[6] One of the dismissed cases involved Omar Ahmed Khadr, who was captured at age 15 in Afghanistan after having killed a U.S. soldier with a grenade. The other dismissed case involved Salim Ahmed Hamdan who is alleged to have been Osama bin Laden's driver and is the lead plaintiff in a key series of cases challenging the military commission system. The system is in limbo until the jurisdictional issues addressed in the early cases are resolved.

See also

- Guantánamo military commission

- Military rule
- Military law
- Office of Military Commissions—Office that would administer the trials in Guantánamo
- Captain John Carr—former prosecutor who described the Guantánamo trials as "rigged"
- Major Robert Preston—former prosecutor who described the Guantánamo trials as "rigged"
- Captain Carrie Wolf—former prosecutor who described the Guantánamo trials as "rigged"
- Combatant Status Review Tribunal
- Administrative Review Board

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- [^] For general history of Civil War commissions, see Neely, M. *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (1991) ISBN 0-19-506496-8 and Klement, F. *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War* (1984) ISBN 0-8071-1174-0. For extensive discussion of the Lincoln conspiracy trial, see Kauffman, M. *American Brutus: John Wilkes Booth and the Lincoln Conspiracies* (2004) ISBN 0-375-50785-X
- [^] "Why Am I in Cuba?", *Mother Jones*, July 12, 2006
- [^] [http://www.scotusblog.com/movabletype/archives/2007/06/hamdan_seeks_ne_1.html#comments]
- [^] [http://www.scotusblog.com/movabletype/archives/2007/06/broad_new_chall.html#more]
- [^] [1]
- [^] [2]

External links

- Official DoD site describing the history or Military Commissions
- Congressional Research Service (CRS) Report "Military Tribunals: Historical Patterns and Lessons"
- Military Tribunals - legal news and resources, JURIST
- Terrorism and the Laws of War: Trying Terrorists as War Criminals before Military Commissions (.pdf), Congressional Research Office - Library of Congress, December 11, 2001
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Ex parte Milligan

From Wikipedia, the free encyclopedia
(Redirected from Ex Parte Milligan)

Ex parte Milligan, 71 U.S. 2 (1866), was an important United States Supreme Court case involving civilians and military tribunals.

Contents

- 1 Background of the case
- 2 The Court's decision
- 3 See also
- 4 External links

Background of the case

Lambdin P. Milligan and four others were accused of planning to steal Union weapons and invade Union prisoner-of-war camps. Once the first prisoner of war camp was liberated they planned to use the liberated soldiers to help fight against the Government of Indiana and free other camps of Confederate soldiers. The plan was leaked and went to court, while in court they were sentenced to hang by a military court in 1864.

However, their execution was not set until May 1865, so they were able to argue the case after the Civil War ended. Milligan also attempted to take over the state governments of Indiana, Ohio, and Michigan.

The Court's decision

The Supreme Court decided that the suspension of *habeas corpus* was lawful, but military tribunals did not apply to citizens in states that had upheld the authority of the Constitution and where civilian courts were still operating, and the Constitution of the United States provided for suspension of habeas corpus only if these courts are actually forced closed. In essence, the Court ruled that military tribunals could not try civilians in areas where civil courts were open, even during times of war.

Ex parte Milligan



Supreme Court of the United States

Argued March 5, 1866

Decided April 3, 1866

Full case name: *Ex parte Lambdin P. Milligan*

Citations: 71 U.S. 2; 4 Wall. 2; 18 L. Ed. 281; 1866 U.S. LEXIS 861

Prior history: This case came before the Court upon a certificate of division from the judges of the Circuit Court for Indiana, on a petition for discharge from unlawful imprisonment.

Holding

Suspension of habeas corpus is unconstitutional when civilian courts are still operating; the Constitution provided for suspension of habeas corpus only if civilian courts are actually forced closed.

Court membership

Chief Justice: Salmon P. Chase

Associate Justices: James Moore Wayne, Samuel Nelson, Robert Cooper Grier, Nathan Clifford, Noah Haynes Swayne, Samuel Freeman Miller, David Davis, Stephen Johnson Field

Case opinions

Majority by: Davis

Joined by: Clifford, Field, Grier, Nelson

Concurrence by: Chase

Joined by: Wayne, Swayne, Miller

Laws applied

U.S. Const.

It observed further that during the suspension of the writ of habeas corpus, citizens may be only *held* without charges, not *tried*, and certainly not executed by military tribunals. After all, the *writ* of habeas corpus is not the right itself but merely the ability to issue orders demanding the right's *enforcement*.

It is important to note the political environment of the decision. Post-war, under a Republican Congress, the Court was reluctant to hand down any decision that questioned the legitimacy of military courts, especially in the occupied South. The President's ability to suspend habeas corpus independently of Congress, a central issue, was left unaddressed. That notwithstanding, military jurisdiction had been limited.

See also

- Supreme Court cases of the American Civil War
- List of United States Supreme Court cases
- *Ex Parte Merryman*
- *Ex parte Quirin*
- *Hamdi v. Rumsfeld*

External links

- Full text of the decision courtesy of Findlaw.com
- Historical analysis of the case - Elisheva Ruth Coleman Princeton University senior thesis

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Supreme Court collection

Ex parte Milligan ()

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Syllabus

SUPREME COURT OF THE UNITED STATES

71 U.S. 2

Ex parte Milligan

Argued: --- Decided: ---

1. Circuit Courts, as well as the judges thereof, are authorized, by the fourteenth section of the Judiciary Act, to issue the writ of habeas corpus for the purpose of inquiring into the cause of commitment, and they have [p3] jurisdiction, except in cases where the privilege of the writ is suspended, to hear and determine the question whether the party is entitled to be discharged.

2. The usual course of proceeding is for the court, on the application of the prisoner for a writ of habeas corpus, to issue the writ, and, on its return, to hear and dispose of the case; but where the cause of imprisonment is fully shown by the petition, the court may, without issuing the writ, consider and determine whether, upon the facts presented in the petition, the prisoner, if brought before the court, would be discharged.

3. When the Circuit Court renders a final judgment refusing to discharge the prisoner, he may bring the case here by writ of error, and, if the judges of the Circuit Court, being opposed in opinion, can render no judgment, he may have the point upon which the disagreement happens certified to this tribunal.

4. A petition for a writ of habeas corpus, duly presented, is the institution of a cause on behalf of the petitioner, and the allowance or refusal of the process, as well as the subsequent disposition of the prisoner is matter of law, and not of discretion.

5. A person arrested after the passage of the act of March 3d, 1863, "relating to habeas

corpus and regulating judicial proceedings in certain cases," and under the authority of said act, was entitled to his discharge if not indicted or presented by the grand jury convened at the first subsequent term of the Circuit or District Court of the United States for the District.

6. The omission to furnish a list of the persons arrested to the judges of the Circuit or District Court as provided in the said act did not impair the right of said person, if not indicted or presented, to his discharge.

7. Military commissions organized during the late civil war, in a State not invaded and not engaged in rebellion, in which the Federal courts were open, and in the proper and unobstructed exercise of their judicial functions, had no jurisdiction to try, convict, or sentence for any criminal offence, a citizen who was neither a resident of a rebellious State nor a prisoner of war, nor a person in the military or naval service. And Congress could not invest them with any such power.

8. The guaranty of trial by jury contained in the Constitution was intended for a state of war, as well as a state of peace, and is equally binding upon rulers and people at all times and under all circumstances.

9. The Federal authority having been unopposed in the State of Indiana, and the Federal courts open for the trial of offences and the redress of grievances, the usages of war could not, under the Constitution, afford any sanction for the trial there of a citizen in civil life not connected with the military or naval service, by a military tribunal, for any offence whatever.

10. Cases arising in the land or naval forces, or in the militia in time of war or public danger, are excepted from the necessity of presentment or indictment by a grand jury, and the right of trial by jury in such cases is subject to the same exception. [p4]

11. Neither the President nor Congress nor the Judiciary can disturb any one of the safeguards of civil liberty incorporated into the Constitution except so far as the right is given to suspend in certain cases the privilege of the writ of habeas corpus.

12. A citizen not connected with the military service and a resident in a State where the courts are open and in the proper exercise of their jurisdiction cannot, even when the privilege of the writ of habeas corpus is suspended, be tried, convicted, or sentenced otherwise than by the ordinary courts of law.

13. Suspension of the privilege of the writ of habeas corpus does not suspend the writ itself. The writ issues as a matter of course, and, on its return, the court decides whether the applicant is denied the right of proceeding any further.

14. A person who is a resident of a loyal State, where he was arrested, who was never resident in any State engaged in rebellion, nor connected with the military or naval service, cannot be regarded as a prisoner of war.

This case came before the court upon a certificate of division from the judges of the Circuit Court for Indiana, on a petition for discharge from unlawful imprisonment.

The case was thus:

An act of Congress -- the Judiciary Act of 1789, ^[n1] section 14 -- enacts that the Circuit Courts of the United States

Shall have power to issue writs of habeas corpus. And that either of the justices of the Supreme Court, as well as judges of the District Court, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment. *Provided,*

&c.

Another act -- that of March 3d, 1863, ^[n2] "relating to habeas corpus, and regulating judicial proceedings in certain cases" -- an act passed in the midst of the Rebellion -- makes various provisions in regard to the subject of it.

The first section authorizes the suspension, during the Rebellion, of the writ of habeas corpus, throughout the United States, by the President.

Two following sections limited the authority in certain respects. [p5]

The second section required that lists of all persons, being citizens of States in which the administration of the laws had continued unimpaired in the Federal courts, who were then held, or might thereafter be held, as prisoners of the United States, under the authority of the President, otherwise than as prisoners of war, should be furnished by the Secretary of State and Secretary of War to the judges of the Circuit and District Courts. These lists were to contain the names of all persons, residing within their respective jurisdictions, charged with violation of national law. And it was required, in cases where the grand jury in attendance upon any of these courts should terminate its session without proceeding by indictment or otherwise against any prisoner named in the list, that *the judge* of the court should forthwith make an order that such prisoner, desiring a discharge, should be brought before him or the court to be discharged, on entering into recognizance, if required, to keep the peace and for good behavior, or to appear, as the court might direct, to be further dealt with according to law. Every officer of the United States having custody of such prisoners was required to obey and execute *the judge's* order, under penalty, for refusal or delay, of fine and imprisonment.

The third section enacts, in case lists of persons other than prisoners of war then held in confinement or thereafter arrested, should not be furnished within twenty days after the passage of the act, or, in cases of subsequent arrest, within twenty days after the time of arrest, that any citizen, after the termination of a session of the grand jury without indictment or presentment, might, by petition alleging the facts and verified by oath, obtain *the judge's* order of discharge in favor of any person so imprisoned, on the terms and conditions prescribed in the second section.

This act made it the duty of the District Attorney of the United States to attend examinations on petitions for discharge.

By proclamation, ^[n3] dated the 15th September following, [p6] the President, reciting this statute, suspended the privilege of the writ in the cases where, by his authority, military, naval, and civil officers of the United States

hold persons in their custody either as prisoners of war, spies, or aiders and abettors of the enemy, . . . or belonging to the land or naval force of the United States, or otherwise amenable to military law, or the rules and articles of war, or the rules or regulations prescribed for the military or naval services, by authority of the President, or for resisting a draft, or for any other offence against the military or naval service.

With both these statutes and this proclamation in force, Lamdin P. Milligan, a citizen of the United States, and a resident and citizen of the State of Indiana, was arrested on the 5th day of October, 1864, at his home in the said State, by the order of Brevet Major-General Hovey, military commandant of the District of Indiana, and by the same authority confined in a military prison at or near Indianapolis, the capital of the State. On the 21st day of the same month, he was placed on trial before a "military commission," convened at Indianapolis, by order of the said General, upon the following charges, preferred by Major Burnett, Judge Advocate of the Northwestern Military Department, namely:

1. "Conspiracy against the Government of the United States;"

2. "Affording aid and comfort to rebels against the authority of the United States;"
3. "Inciting insurrection;"
4. "Disloyal practices;" and
5. "Violation of the laws of war."

Under each of these charges, there were various specifications. The substance of them was joining and aiding, at different times between October, 1863, and August, 1864, a secret society known as the Order of American Knights or Sons of Liberty, for the purpose of overthrowing the Government and duly constituted authorities of the United States; holding communication with the enemy; conspiring to seize munitions of war stored in the arsenals; to liberate [p7] prisoners of war, &c.; resisting the draft, &c.; . . .

at a period of war and armed rebellion against the authority of the United States, at or near Indianapolis [and various other places specified] in Indiana, a State within the military lines of the army of the United States and the theatre of military operations, and which had been and was constantly threatened to be invaded by the enemy.

These were amplified and stated with various circumstances.

An objection by him to the authority of the commission to try him being overruled, Milligan was found guilty on all the charges, and sentenced to suffer death by hanging, and this sentence, having been approved, he was ordered to be executed on Friday, the 19th of May, 1865.

On the 10th of that same May, 1865, Milligan filed his petition in the Circuit Court of the United States for the District of Indiana, by which, or by the documents appended to which as exhibits, the above facts appeared. These exhibits consisted of the order for the commission; the charges and specifications; the findings and sentence of the court, with a statement of the fact that the sentence was approved by the President of the United States, who directed that it should "be carried into execution without delay;" all "by order of the Secretary of War."

The petition set forth the additional fact that, while the petitioner was held and detained, as already mentioned, in military custody (and more than twenty days after his arrest), a grand jury of the Circuit Court of the United States for the District of Indiana was convened at Indianapolis, his said place of confinement, and duly empaneled, charged, and sworn for said district, held its sittings, and finally adjourned without having found any bill of indictment, or made any presentment whatever against him. That at no time had he been in the military service of the United States, or in any way connected with the land or naval force, or the militia in actual service; nor within the limits of any State whose citizens were engaged in rebellion against the United States, at any time during the war, but, during all the time aforesaid, and for twenty years last past, he had been an [p8] inhabitant, resident, and citizen of Indiana. And so that it had been

wholly out of his power to have acquired belligerent rights or to have placed himself in such relation to the government as to have enabled him to violate the laws of war.

The record, in stating who appeared in the Circuit Court, ran thus:

Be it remembered, that on the 10th day of May, A.D. 1865, in the court aforesaid, before the judges aforesaid, comes Jonathan W. Gorden, Esq., of counsel for said Milligan, and files here, in open court, the petition of said Milligan, to be discharged. . . . At the same time comes John Hanna, Esquire, the attorney prosecuting the pleas of the United States in this behalf. And thereupon, by agreement, this application is submitted to the court, and day is

given, &c.

The prayer of the petition was that, under the already mentioned act of Congress of March 3d, 1863, the petitioner might be brought before the court and either turned over to the proper civil tribunal to be proceeded with according to the law of the land or discharged from custody altogether.

At the hearing of the petition in the Circuit Court, the opinions of the judges were opposed upon the following questions:

I. On the facts stated in the petition and exhibits, ought a writ of habeas corpus to be issued according to the prayer of said petitioner?

II. On the facts stated in the petition and exhibits, ought the said Milligan to be discharged from custody as in said petition prayed?

III. Whether, upon the facts stated in the petition and exhibits, the military commission had jurisdiction legally to try and sentence said Milligan in manner and form, as in said petition and exhibit is stated?

And these questions were certified to this court under the provisions of the act of Congress of April 29th, 1802, ^[n4] an act [p9] which provides

that whenever any question shall occur before a Circuit Court upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen shall, during the same term, upon the request of *either party* or their counsel, be stated under the direction of the judges and certified under the seal of the court to the Supreme Court, at their next session to be held thereafter, and shall by the said court be *finally* decided, and the decision of the Supreme Court and their order in the premises shall be remitted to the Circuit Court and be there entered of record, and shall have effect according to the nature of the said judgment and order; *Provided*, That nothing herein contained shall prevent the cause from proceeding if, in the opinion of the court, further proceedings can be had without prejudice to the merits.

The three several questions above mentioned were argued at the last term. And along with them, an additional question raised in this court, namely:

IV. A question of jurisdiction, as -- 1. Whether the Circuit Court had jurisdiction to hear the case there presented? -- 2. Whether the case sent up here by certificate of division was so sent up in conformity with the intention of the act of 1802? in other words, whether this court had jurisdiction of the questions raised by the certificate? [p107]

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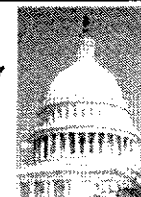
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Anti-Terrorism and the Preservation of Civil Liberties: Enemy Combatants

Overview

The September 11 and other terrorist attacks, at home and abroad, have raised difficult questions for our legal and political systems. In times of crisis our government has often struggled to find the proper balance between the protection of the populous and each person's individual rights. Our national experience has taught us that we must always guard against the dangers of overreaction and undue trespass on individual rights, lest we neglect the very freedoms we are fighting to protect.

At least two U.S. citizens have been designated as "enemy combatants" and detained incommunicado without access to counsel or meaningful judicial review. As the Court of Appeals for the Fourth Circuit noted in the case of Yaser Hamdi, the government has taken the position that "with no meaningful judicial review, any American citizen alleged to be an enemy combatant could be detained indefinitely without charge or counsel on the government's say-so." An ABA Task Force on the Treatment of Enemy Combatants was created to examine the complex questions of statutory, constitutional, and international law and policy raised by such detentions.

Status

In the 109th Congress, Representative Adam Schiff (D-CA) re-introduced a bill, H.R. 1076, to authorize the detention of enemy combatants and to set out procedural requirements for their detention. In the previous Congress, Senator Jeff Bingaman (D-NM) offered an amendment to the Department of Defense (DOD) FY 2004 appropriations bill that would require DOD to share with the relevant congressional committees information about those who are being held as enemy combatants. The amendment was tabled on a 52-42 vote.

On December 18, 2003, the Court of Appeals for the Second Circuit ruled that the President lacked the authority to detain American citizen Jose Padilla (the so-called "dirty bomber") as an "enemy combatant" without specific congressional authorization. The ABA filed an amicus brief, arguing that Padilla is entitled to meaningful judicial review of the basis for his detention, which necessarily requires access to counsel.

Additional Resources & Links

- [Overview](#)
- [Status](#)
- [Key Points](#)
- [ABA Policy](#)

Additional Resources & Links

- [Habeas Corpus Rights for Detainees Fact Sheet](#)
- [ABA Policy Statement on Torture, adopted August 9, 2004](#)
- [ABA Policy Statement on Enemy Combatants, adopted February 2003](#)
- [ABA Task Force on Enemy Combatants, Preliminary Report of August 2002](#)
- [President Dennis Archer's Statement on Second Circuit Court of Appeals Decision in *Padilla v. Rumsfeld*](#)

Contact

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Legislative Counsel
Governmental Affairs
Office

Padilla was arrested in May of 2002, in Chicago and subsequently declared by President Bush to be an enemy combatant and held incommunicado without access to his lawyer in a Navy brig in South Carolina. The appeals court gave the government 30 days to release Mr. Padilla or to take some other action, such as bringing criminal charges against him in civilian court or seek to hold him as a material witness in connection with a grand jury proceeding. The U.S. Supreme Court heard appeals from the *Hamdi* and *Padilla* cases on April 28, 2004. The ABA filed an amicus brief in the *Hamdi* case, arguing that fundamental due process requires that U.S. citizens indefinitely detained by the government have access to counsel and the opportunity to challenge the allegations against them.

In a blow to the Bush Administration's legal policies for its war against terrorism, the U.S. Supreme Court on June 28, 2004 held in two decisions that U.S. citizens being held by the military as "enemy combatants" must be given a "meaningful opportunity to contest the factual basis for that detention before a neutral decision-maker." In rejecting the Administration's argument that the executive branch alone has the authority to impose open-ended detentions on citizens and non-citizens deemed enemy combatants, the Court said "history and common sense teach us that an unchecked system of detention carries the potential to become means for oppression and abuse of others who do not present that sort of threat." *Hamdi v. Rumsfeld*, No. 03-6696, and *Rasul, et al., v. Bush, President of the United States, et al.*, No. 03-334.

In the case of *Rumsfeld, Secretary of Defense v. Padilla, et al.* No. 03-1027, the Court held that Padilla's attorney would have to resubmit his petition for habeas corpus because his attorney filed it in the wrong court. Padilla filed a habeas corpus petition in the District Court of South Carolina on July 2, 2004. In February 2005, the District Court judge granted Padilla's petition, ruling that an endorsement of indefinite detentions without charge would be a "betrayal of this nation's commitment to the separation of powers that safeguards our democratic values and individual liberties." The government filed an appeal. On June 13, 2005, the U.S. Supreme Court refused to intervene in the case, allowing the 4th Circuit Court of the Appeals proceed with hearing the government's appeal on July 19.

In September 2005, the 4th U.S. Circuit Court of Appeals ruled that the government could continue to hold Jose Padilla indefinitely, citing the President's power under the Sept. 14, 2001, congressional resolution authorizing the use of force against al-Qaeda. *Padilla v. Hanft*, No. 05-6396. However, on April 3, 2006, the U.S. Supreme Court declined to hear the appeal of Jose Padilla challenging his detention as an "enemy combatant" finding Padilla's claim moot because he had been subsequently indicted by a civilian court in November 2005 and transferred to a civilian jail. *Padilla v. Hanft*, No. 05-533.

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Key Points

- By direct constitutional demand, the writ of habeas corpus provides access to the federal courts to challenge detentions of persons by the Executive.
- Substantial, but not absolute, deference should be

given to Executive Branch designations of enemy combatants.

- The right to judicial review would be hollow unless detainees as enemy combatants are afforded meaningful access to counsel and to the effective assistance of counsel in order to appropriately challenge their detention.
- To preserve national security interests, the court may establish appropriate conditions to accommodate the needs of the government and the detainee.
- The Congress, in coordination with the Executive Branch, should establish clear standards and procedures governing detention of a U.S. citizen or resident, pursuant to 18 U.S.C. 4001 (a) which provides that "[n]o citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress."

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ABA Policy

The ABA urges that U.S. citizens and residents who are detained within the United States based on their designation as "enemy combatants" be afforded the opportunity for meaningful judicial review of their status, under a standard according such deference to the designation as the reviewing court determines to be appropriate to accommodate the needs of the detainee and the requirements of national security; that they not be denied access to counsel in connection with the opportunity for such review, subject to appropriate conditions as may be set by the court to accommodate the needs of the detainee and the requirements of national security; that Congress, in coordination with the Executive Branch, establish clear standards and procedures governing the designation and treatment of U.S. citizens, residents, or others who are detained within the United States as "enemy combatants" and that in setting and executing national policy regarding detention of "enemy combatants," Congress and the Executive Branch should consider how the policy adopted by the United States might affect the response of other nations to future acts of terrorism. The Association adopted policy at the 2004 Annual Meeting condemning the use of torture and cruel, inhuman, and degrading treatment of detainees in Iraq, Afghanistan and elsewhere by U.S. personnel. The policy also calls upon the Administration to comply fully with the U.S. Constitution and international laws and conventions ratified by the U.S. that outlaw torture, and urges the President and Congress to establish an independent, bipartisan commission with subpoena power to investigate the abuses of detainees.

UNCLASSIFIED

Verbatim Transcript of Combatant Status Review Tribunal Hearing for ISN 10024

OPENING

REPORTER: On the record

RECORDER: All rise.

PRESIDENT: Remain seated and come to order. Go ahead, Recorder.

RECORDER: This Tribunal is being conducted at 1328 March 10, 2007 on board U.S. Naval Base Guantanamo Bay, Cuba. The following personnel are present:
Captain [REDACTED], United States Navy, President
Lieutenant Colonel [REDACTED], United States Air Force, Member
Lieutenant Colonel [REDACTED], United States Marine Corps, Member
Lieutenant Colonel [REDACTED], United States Air Force, Personal Representative
Language Analysis [REDACTED]
Gunnery Sergeant [REDACTED], United States Marine Corps, Reporter
Lieutenant Colonel [REDACTED], United States Army, Recorder
Captain [REDACTED] is the Judge Advocate member of the Tribunal.

OATH SESSION 1

RECORDER: All Rise.

PRESIDENT: The Recorder will be sworn. Do you, Lieutenant Colonel [REDACTED] solemnly swear that you will faithfully perform the duties as Recorder assigned in this Tribunal so help you God?

RECORDER: I do.

PRESIDENT: The Reporter will now be sworn. The Recorder will administer the oath.

RECORDER: Do you Gunnery Sergeant [DELETED] swear or affirm that you will faithfully discharge your duties as Reporter assigned in this Tribunal so help you God?

REPORTER: I do.

PRESIDENT: The Translator will be sworn.

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RECORDER: Do you swear or affirm that you will faithfully perform the duties of Translator in the case now in hearing so help you God?

TRANSLATOR: I do.

PRESIDENT: We will take a brief recess now in order in to bring Detainee into the room. Recorder note the date and time.

RECORDER: The time is 1:30 pm hours on 10 March 2007. This Tribunal is in now in recess. [The Tribunal recessed at 1330, 10 March 2007. The members withdrew from the hearing room.]

CONVENING AUTHORITY

RECORDER: All Rise.
[The Tribunal reconvened and the members entered the room at 1334, 10 March 2007.]

PRESIDENT: This hearing will come to order. Please be seated.

PRESIDENT: Before we begin, Khalid Sheikh Muhammad, I understand you speak and understand English. Is that correct?

DETAINEE: [Detainee nods his head in affirmative].

PRESIDENT: Alright. Are you comfortable in continuing in English or would you like everything translated in Arabic?

DETAINEE: Everything in English but if I have a problem the linguist will help me.

PRESIDENT: We will proceed in English. If you indicate to me that you would like something translated we will go ahead and do that. Alright?

PRESIDENT: This Tribunal is convened by order of the Director, Combatant Status Review Tribunals under the provisions of his Order of 22 February 2007.

PRESIDENT: This Tribunal will determine whether Khalid Sheikh Muhammad meets the criteria to be designated as an enemy combatant against the United States or its coalition partners or otherwise meets the criteria to be designated as an enemy combatant.

OATH SESSION 2

PRESIDENT: The members of this Tribunal shall now be sworn. All rise.

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RECORDER: Do you swear or affirm that you will faithfully perform your duties as a member of this Tribunal; that you will impartially examine and inquire into the matter now before you according to your conscience, and the laws and regulations provided; that you will make such findings of fact and conclusions as are supported by the evidence presented; that in determining those facts, you will use your professional knowledge, best judgment, and common sense; and that you will make such findings as are appropriate according to the best of your understanding of the rules, regulations, and laws governing this proceeding, and guided by your concept of justice so help you God?

TRIBUNAL: I do.

PRESIDENT: The Recorder will now administer the oath to the Personal Representative.

RECORDER: Do you swear or affirm that you will faithfully perform the duties of Personal Representative in this Tribunal so help you God?

PERSONAL REPRESENTATIVE: I do.

PRESIDENT: Please be seated.

PRESIDENT: The Recorder, Reporter, and Translator have previously been sworn.

EXPLANATION OF PROCEEDINGS

PRESIDENT: Khalid Sheikh Muhammad, you are hereby advised that the following applies during this hearing:

PRESIDENT: You may be present at all open sessions of the Tribunal. However, if you become disorderly, you will be removed from the hearing, and the Tribunal will continue to hear evidence in your absence.

PRESIDENT: You may not be compelled to testify at this Tribunal. However, you may testify if you wish to do so. Your testimony can be under oath or unsworn.

PRESIDENT: You may have the assistance of a Personal Representative at the hearing. Your assigned Personal Representative is present.

PRESIDENT: You may present evidence to this Tribunal, including the testimony of witnesses who are reasonably available and whose testimony is relevant to this hearing. You may question witnesses testifying at the Tribunal.

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PRESIDENT: You may examine documents or statements offered into evidence other than classified information. However, certain documents may be partially masked for security reasons.

PRESIDENT: Khalid Sheikh Muhammad, do you understand this process?

DETAINEE: Yes. If I have question can I ask you?

PRESIDENT: Yes, you may.

DETAINEE: About the testimony which I ask about the witnesses.

PRESIDENT: Yes, I'm going to address the witnesses shortly. So, if you will bear with us I will take that up in a few moments.

DETAINEE: Okay.

PRESIDENT: Do you have any questions concerning the Tribunal process?

DETAINEE: Okay by me.

PRESENTATION OF UNCLASSIFIED INFORMATION

PRESIDENT: Personal Representative, please provide the Tribunal with the Detainee Election Form.

PERSONAL

REPRESENTATIVE: I am handing the Tribunal the Detainee Election Form, which was previously marked as Exhibit D-a.

PRESIDENT: Alright, the Tribunal has received Exhibit D-a that indicates the Detainee wants to participate in the Tribunal and wants the assistance of the Personal Representative.

RECORDER PRESENTS UNCLASSIFIED

PRESIDENT: Recorder, please provide the Tribunal with the unclassified evidence.

RECORDER: I am handing the Tribunal what has previously been marked as Exhibit R-1, the unclassified summary of the evidence that relates to this Detainee's status as an enemy combatant. A translated copy of this exhibit was provided to the Personal

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Representative in advance of this hearing for presentation to the Detainee. In addition, I am handing to the Tribunal the following unclassified exhibits, marked as Exhibit R-2. Copies of these Exhibits have previously been provided to the Personal Representative. [Documents presented to Tribunal]

PRESIDENT: Recorder, please read the unclassified summary of evidence for the record. But before you proceed, Khalid Sheikh Muhammad, let me remind you that you must not comment on this evidence at this time. You will be provided with an opportunity shortly to provide any comments that you would like. Recorder, please proceed.

RECORDER: The following facts support the determination that the Detainee is an enemy combatant:

Paragraph a. On the morning of 11 September 2001, four airliners traveling over the United States were hijacked. The flights hijacked were: American Airlines Flight 11, United Airlines Flight 175, American Airlines Flight 77, and United Airlines Flight 93. At approximately 8:46 a.m., American Airlines Flight 11 crashed into the North Tower of the World Trade Center, resulting in the collapse of the tower at approximately 10:25 a.m. At approximately 9:05 a.m., United Airlines Flight 175 crashed into the South Tower of the World Trade Center, resulting in the collapse of the tower at approximately 9:55 a.m. At approximately 9:37 a.m., American Airlines Flight 77 crashed into the southwest side of the Pentagon in Arlington, Virginia. At approximately 10:03 a.m., United Airlines Flight 93 crashed in Stoney Creek Township, Pennsylvania. These crashes and subsequent damage to the World Trade Center and the Pentagon resulted in the deaths of 2,972 persons in New York, Virginia, and Pennsylvania.

Paragraph b. The Detainee served as the head of the al Qaida military committee and was Usama bin Laden's principal al Qaida operative who directed the 11 September 2001 attacks in the United States.

Paragraph c. In an interview with an al Jazeera reporter in June 2002, the Detainee stated he was the head of the al Qaida military committee.

Paragraph d. A computer hard drive seized during the capture of the Detainee contained information about the four airplanes hijacked on 11 September 2001 including code names, airline company, flight number, target, pilot name and background information, and names of the hijackers.

Paragraph e. A computer hard drive seized during the capture of the Detainee contained photographs of 19 individuals identified as the 11 September 2001 hijackers.

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Paragraph f. A computer hard drive seized during the capture of the Detainee contained a document that listed the pilot license fees for Mohammad Atta and biographies for some of the 11 September 2001 hijackers.

Paragraph g. A computer hard drive seized during the capture of the Detainee contained images of passports and an image of Mohammad Atta.

Paragraph h. A computer hard drive seized during the capture of the Detainee contained transcripts of chat sessions belonging to at least one of the 11 September 2001 hijackers.

Paragraph i. The Detainee directed an individual to travel to the United States to case targets for a second wave of attacks.

Paragraph j. A computer hard drive seized during the capture of the Detainee contained three letters from Usama bin Laden.

Paragraph k. A computer hard drive seized during the capture of the Detainee contained spreadsheets that describe money assistance to families of known al Qaida members.

Paragraph l. The Detainee's name was on a list in a computer seized in connection with a threat to United States airlines, United States embassies and the Pope.

Paragraph m. The Detainee wrote the *bojinka plot*, the airline bomb plot which was later found on his nephew Ramzi Yousef's computer.

Paragraph n. The *bojinka plot* is also known as the Manila air investigation.

Paragraph o. The Manila air investigation uncovered the Detainee conspired with others to plant explosive devices aboard American jetliners while those aircraft were scheduled to be airborne and loaded with passengers on their way to the United States.

Paragraph p. The Detainee was in charge of and funded an attack against United States military vessels heading to the port of Djibouti.

Paragraph q. A computer hard drive seized during the capture of the Detainee contained a letter to the United Arab Emirates threatening attack if their government continued to help the United States.

Paragraph r. During the capture of the Detainee, information used exclusively by al Qaida operational managers to communicate with operatives was found.

Paragraph s. The Detainee received funds from Kuwaiti-based Islamic extremist groups and delivered the funds to al Qaida members.

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Paragraph t. A computer hard drive seized during the capture of the Detainee contained a document that summarized operational procedures and training requirements of an al Qaida cell.

Paragraph u. A computer hard drive seized during the capture of the Detainee contained a list of killed and wounded al Qaida martyrs.

And lastly, Paragraph v. Passport photographs of al Qaida operatives were seized during the capture of the Detainee.

RECORDER: Sir, this concludes the summary of unclassified evidence.

PRESIDENT: Very well.

PRESIDENT: Personal Representative, does the Detainee have any evidence to present to this Tribunal?

PERSONAL

REPRESENTATIVE: Yes, sir. I am handing to the Tribunal the following unclassified exhibits marked as Exhibits D-b through D-d. Copies of these exhibits have been previously provided to the Recorder. [Documents presented to Tribunal]

PRESIDENT: Exhibit D-b appears to be a statement that the Detainee has provided.

PERSONAL

REPRESENTATIVE: Yes, Sir.

PRESIDENT: Alright. And Exhibit D-c contains hand written notes that appear to be Arabic and English as well as the typed version of that. Is that correct?

PERSONAL

REPRESENTATIVE: Yes, Sir.

PRESIDENT: Alright. And D-d is a written statement regarding alleged abuse or treatment that the Detainee received.

PERSONAL

REPRESENTATIVE: Yes, Sir.

PRESIDENT: Alright. We will go into those shortly.

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PRESIDENT: Khafid Sheikh Muhammad, you may now make an oral statement to the Tribunal, and you have the assistance of your Personal Representative in doing so. Do you wish to make an oral statement to this Tribunal?

DETAINEE: He will start, the Personal Representative; PR will read then later I will comment.

PRESIDENT: Very well, you may proceed.

RECORDER: Sir, would you hold one moment?

PRESIDENT: Yes.

RECORDER: Ah, before the Detainee makes a statement, ah, I'd like to ah.

PRESIDENT: Question of the oath?

RECORDER: Ah, no sir.

RECORDER: Concerning classified evidence.

PRESIDENT: Very well.

PRESIDENT: Do you have any further evidence to present at this time, Recorder?

RECORDER: Mr. President, I have no further unclassified evidence for the Tribunal but I respectfully request a closed Tribunal session at an appropriate time to present classified evidence relevant to this Detainee's status as an enemy combatant.

PRESIDENT: Very well, your request for a closed session is granted and will be taken up in due course.

PRESIDENT: You may proceed, PR.

PERSONAL

REPRESENTATIVE: The Detainee responds to the unclassified summary of evidence with the following key points.

PERSONAL

REPRESENTATIVE: "Some paragraphs under paragraph number 3, lead sentence are not related to the context or meaning of the aforementioned lead sentence. For example, paragraph 3-a is only information from news or a historical account of events on 11 September 2001, and note with no specific linkage being made in this

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paragraph to me or the definition of Enemy Combatant. As another example, sub-paragraph 3-n makes no linkage to me or to the definition of Enemy Combatant.”

DETAINEE: Are they following along?

PERSONAL

REPRESENTATIVE: Ah, they they have that in front of them for reference.

PRESIDENT: Yes.

DETAINEE: Okay.

PERSONAL

REPRESENTATIVE: Second main point; “There are two false statements in the Summary of Evidence. Sub-paragraph 3-c is false. I never stated to the Al Jazeera reporter that I was the head of the al Qaida military committee. Also, sub-paragraph 3-s is false. I did not receive any funds from Kuwait.”

PERSONAL

REPRESENTATIVE: Point number 3. “There is an unfair ‘stacking of evidence’ in the way the Summary of Evidence is structured. In other words, there are several sub-paragraphs under parent-paragraph 3 which should be combined into one sub-paragraph to avoid creating the false perception that there are more allegations or statements against me specifically than there actually are. For example, sub-paragraphs 3-m through 3-o, which pertain to the *bojinka* plot should be combined into one paragraph, as should paragraphs 3-a through 3-h, which pertain to 9/11.”

PERSONAL

REPRESENTATIVE: Lastly, my name is misspelled in the Summary of Evidence. It should be S-h-a-i-k-h or S-h-e-i-k-h, but not S-h-a-y-k-h, as it is in the subject line.

PRESIDENT: Would you like to add anything to that, Khalid Sheikh Muhammad ?

PERSONAL

REPRESENTATIVE: Final statement.

DETAINEE: No, I just want to ask about witnesses.

PRESIDENT: Okay, ah, let’s finish with these then I will get to the witnesses.

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DETAINEE: Okay.

PRESIDENT: Try to keep it in order.

PRESIDENT: You want to continue, PR? Do you have have another statement?

PERSONAL

REPRESENTATIVE: That concludes this Detainee's response to the, ah, unclassified summary of evidence, sir.

PRESIDENT: Oh.

CALLING OF WITNESSES

PRESIDENT: We will now allow for the calling of witnesses. All witnesses called before this Tribunal may be questioned by the Detainee if present, the Personal Representative, the Recorder, and the Tribunal Members.

PRESIDENT: Does the Recorder have any witnesses to present?

RECORDER: No, sir.

PRESIDENT: Alright.

PRESIDENT: From the Detainee Election Form and I was informed earlier that the Detainee requested the presence of two witnesses to testify here today. Ramzi bin al-Shibh and Mustafa Hawsawi. The Detainee believes the witnesses can provide testimony related to the Detainee's actions specified in the unclassified summary of the evidence.

PRESIDENT: I have had the opportunity to review the request for witnesses and I have made some findings and I'm going to place them on the record now and when I conclude that, Khalid Sheikh Muhammad, you may respond to that if you'd like.

PRESIDENT: First the request for Ramzi bin al-Shibh, the proffer of the testimony from the Detainee was that Ramzi is alleged to have been present during the al Jazeera interview in June 2002 during which it is said the Detainee claimed to be head of al Qaida Military Committee. The Detainee claims he never stated that, to be the head of the Military Committee, during the interview and states that Ramzi, if called, can confirm this.

PRESIDENT: This witness is not relevant in the President's view for the following reasons. In the totality of the circumstances and given the nature and quality of the other unclassified evidence, the Detainee's alleged statements as reported in al Jazeera

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are of limited value and negligible relevancy to the issue of combatant status. As such, any corroboration or contradiction by the proffered witness is not relevant. The credibility determinations with regard to R-2, which is the al Jazeera article, can be made by the Tribunal without the proffered testimony. As such, the Detainee's request for the production of that witness is denied.

PRESIDENT: As to the request for Mustafa Hawsawi, ah, it is proffered that Hawsawi, if called, could testify that the computer/hard drive referenced in the unclassified summary was not this Detainee's property and that the place of the Detainee's capture was not the house of the Detainee. In the President's view this testimony is not relevant to the issues regarding the Detainee's capture or his combatant status for the following reasons.

PRESIDENT: Whether the Detainee had actual legal title or ownership of the computer/hard drive or the house where the capture took place is irrelevant to the determination of the Detainee's status as an enemy combatant. Based on the proffer, if true, Hawsawi's testimony will not provide relevant information. The issue of ownership, while of some interest, is not relevant to status. What is relevant is possession, usage, connection and presence. Hawsawi's testimony will not speak to any relevant information in regard to such points. As such, the request for the production of that witness is denied.

PRESIDENT: If you would like to respond to that, I'll hear you.

DETAINEE: Most of these facts which be written are related to this hard drive. And more than eleven of these facts are related to this computer. Other things are which is very old even nobody can bring any witnesses for that as you written here if it will be ah a value for you for the witness near by you will do it. This computer is not for me. Is for Hawsawi himself. So I'm saying I need Hawsawi because me and him we both been arrested day. Same way. So this computer is from him long time. And also the problem we are not in court and we are not judge and he is not my lawyer but the procedure has been written reported and the way has mostly as certain charged against me; tell him, [Arabic Phrase].

TRANSLATOR: [Translating] They are only accusations.

DETAINEE: So accusations. And the accusations, they are as you put for yourself ah definition for enemy combatant there are also many definitions for that accusation of fact or charges that has been written for any ah. [Arabic Phrase]

TRANSLATOR: [Translating] Person is accused.

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- DETAINEE: So, if I been accused then if you want to put facts against me also the definition for these facts. If you now read number N now what is written the *bojinka* plot. Is known many lead investigation it is not related to anything facts to be against me. So when I said computer hard drive/ hard disk, same thing. All these point only one witness he can say yes or not cause he is this computer is under his possession him computer. And also specifically if he said Mohammad Atta picture been this hard drive. I don't think this should accepted. There are many 100 thousand Americans who have a lot of picture on their computer. You cannot say I find Muhammad Atta on your computer then you use this fact against you. Or you find any files in your computer to be what about it's mine, it's not my computer. If this witness, he will state that this known and here that has been ninety percent of what is written is wrong. And for Ramzi, for reporter in Jazeera, he claimed that I state this one and you know the media man. How they are fashionable. What they mean in their own way in a whole different way. They just wrote it so he say I state. But I never stated and I don't have any witnesses and witness are available here at Guantanamo. He is Detainee. He was with me. Which he been mostly in all my interview with him. Me and them, there was three person, me and Ramzi and this reporter. So if you not believe me, not believe him, believe my witness Ramzi. Then he's what he state the reporter most is false. I not denying that I'm not an enemy combatant about this war but I'm denying the report. It not being written in the proper way. Which is really facts and mostly just being gathered many information. General information that form in way of doing, to use in facts against me.
- PRESIDENT: I have heard and understood your argument. In order for me to make my determinations regarding the production of witnesses I first have to believe that they are relevant for the reasons that I have stated. For the reasons I have stated, I do not believe they are relevant. Whether or not they may be available here on Guantanamo, is a second decision to be made, but only if I decide they are relevant. I have heard your arguments. I noted them. However, my ruling stands.
- PRESIDENT: The Recorder has no witnesses, is that my understanding?
- RECORDER: No, sir.
- PRESIDENT: And there are no other approved witnesses to taken up. Ah, we will take a brief moment to review the unclassified evidence that we received so far and then we will pick back up in the proceeding.
- MEMBER: If I might ask a question real quick of the PR. This is the entire translation of the hand written notes?

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PERSONAL

REPRESENTATIVE: Yeah. The hand written notes are the Detainee is on yellow.

MEMBER: Yes.

PERSONAL

REPRESENTATIVE: and, then the next set of notes, hand written notes, are the Linguist's translation and then the final hard copy printed that's, ah, that...

MEMBER: Type written.

PERSONAL

REPRESENTATIVE: Typed from Linguist's notes.

MEMBER: Type from Linguist's translations. Okay.

PRESIDENT: Khalid Sheikh Muhammad, I did not offer you an oath early because I was informed by the Personal Representative that you would be making some statement later on in these proceedings relevant to the truthfulness of your comments. So, if you would like to take an oath I would administer one to you but I did understand that you going to make a statement.

DETAINEE: In the final statement, I will explain why then.

PRESIDENT: Alright. Thank you. [Tribunal pauses to review D-a thru D-d]

MEMBER: Seen those.

TRANSLATOR: Sir.

PRESIDENT: Yes.

TRANSLATOR: He wanted me to translate a Koranic verse on the spot.

PRESIDENT: I will permit it.

TRANSLATOR: Thank you.

TRANSLATOR: Can I ask him for clarification?

PRESIDENT: Yes.

PRESIDENT: Do you need a few more moments, Translator?

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TRANSLATOR: Yes, sir, about thirty seconds.

PRESIDENT: Go ahead and take your time.

TRANSLATOR: Would you me to read the English translation after he read Arabic verse or would like him to read it.

PRESIDENT: You want to save that for later?

TRANSLATOR: [Nods head]

PRESIDENT: Alright.

PRESIDENT: Let me take up a few things that have come up as based on my review of these documents that have been provided to us so far. D-d, appears to be a written statement regarding certain treatment that you claim to have received at the hands of agents of the United States government as you indicated from the time of your capture in 2003 up until before coming here to Guantanamo in September 2006.

PRESIDENT: Is that correct?

DETAINEE: Yes.

PRESIDENT: Alright.

PRESIDENT: Now, I haven't seen any statements in the evidence we receive so far that claim to come from you other than acknowledging whether you were or not the head of the Military Committee. Were any statements that you made as the result of any of the treatment that you received during that time frame from 2003 to 2006? Did you make those statements because of the treatment you receive from these people?

DETAINEE: Statement for whom?

PRESIDENT: To any of these interrogators.

DETAINEE: CIA peoples. Yes. At the beginning when they transferred me [REDACTED].

PRESIDENT: What I'm trying to get at is any statement that you made was it because of this treatment, to use your word, you claim torture. Do you make any statements because of that?

TRANSLATOR: Sir, for clarification.

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PRESIDENT: Can you translate it?

TRANSLATOR: I will translate in Arabic.

PRESIDENT: Yes.

TRANSLATOR: [Translating above]

DETAINEE: I ah cannot remember now [REDACTED] I'm senior man. Many people they know me which I don't them. I ask him even if he knew George Bush. He said, yes I do. He don't know you that not means its false. [REDACTED]. I said yes or not. This I said.

PRESIDENT: Alright, I understand.

PRESIDENT: Is there anything you would like to correct, amend, modify or explain to us from what you said back then?

DETAINEE: I want to just it is not related enemy combatant but I'm saying for you to be careful with people. That you have classified and unclassified facts. My opinion to be fair with people. Because when I say, I will not regret when I say I'm enemy combatant. I did or not I know there are other but there are many Detainees which you receive classified against them maybe, maybe not take away from me for many Detainees false witnesses. This only advice.

PRESIDENT: So you are aware that other...

DETAINEE: Yes.

PRESIDENT: People made false statement as a result of this?

DETAINEE: I did also.

PRESIDENT: Uh huh.

DETAINEE: I told him, I know him yes. There are and they are. Not even you show me. This I don't know him I never met him at all. So, unclassified which is both classified and unclassified so this is you know him you don't know him. You have to be fair with people. There are many many people which they have never been part of the Taliban. Afghanistan there have been many people arrested for example people who have been arrested after October 2001 after make attack against Afghanistan many of them just arrive after they don't what has happen. When Russian came to Afghanistan they felt they went back but they did anything with Taliban and al Qaida then came after that. I don't know why it was younger

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people same thing for Afghanis people they show Afghanis people. I will give example one. His name is Sayed Habib. This I remember. [REDACTED]

PRESIDENT: Alright.

PRESIDENT: Now what.

DETAINEE: For me nothing which was recorded. For which is written here is not related

PRESIDENT: I understand.

PRESIDENT: I do note that in one of the exhibits you indicate you are not under any pressure or duress today. Is that correct?

DETAINEE: That is about I'm hearing today. Yes.

PRESIDENT: So anything.

DETAINEE: Some of this information, I not state it to them.

PRESIDENT: The information that you are telling us today, so we are clear. You do not believe you are under any pressure or threat or duress to speak to us today, is that correct?

DETAINEE: Yes, that's correct.

PRESIDENT: Alright.

PRESIDENT: Now what you have told us about your previous treatment is on the record of these proceeding now and will be reported for any investigation that may be appropriate. Also, we will consider what you have told us in making our determination regarding your enemy combatant status.

DETAINEE: I hope you will take care of other Detainees with what I said. It's up to you.

PRESIDENT: I will do as I've said. I'll see to it that it is reported.

PRESIDENT: Alright. At this point, we are going to go into the final statement but I do want to give the opportunity to the Recorder, PR, and Tribunal member to ask questions if they would like. So, what will do is proceed then to the Detainee's final statement and then I'll have a question and answer session following that. Alright just give me a moment.

PRESIDENT: Alright.

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PRESIDENT: Khalid Sheikh Muhammad, this concludes the presentation of unclassified information to the Tribunal. We are about to conclude the unclassified portion of the hearing. Do you wish to now make any final statement to the Tribunal? You have the assistance of your PR.

DETAINEE: I make a two part. Maybe he will read then I will go also.

PRESIDENT: Very well. You may continue.

PERSONAL

REPRESENTATIVE: Mr. President, the Detainee has asked me to read his final statement to the Tribunal with the understanding he may interject or add statements if he needs to, to correct what I say. According to the Detainee:

“I hereby admit and affirm without duress to the following:

1. I swore Bay’aat (i.e., allegiance) to Sheikh Usama Bin Laden to conduct Jihad of self and money, and also Hijrah (i.e., expatriation to any location in the world where Jihad is required).
2. I was a member of the Al Qaida Council.
3. I was the Media Operations Director for Al-Sahab, or ‘The Clouds,’ under Dr. Ayman Al-Zawahiri. Al-Sahab is the media outlet that provided Al-Qaida-sponsored information to Al Jazeera. Four.”

DETAINEE: [speaking inaudibly to Personal Representative]

PRESIDENT: Please tell.

PERSONAL

REPRESENTATIVE: In other channels or other media outlets.

PRESIDENT: Thank you.

PERSONAL

REPRESENTATIVE: [continuing] “4. I was the Operational Director for Sheikh Usama Bin Laden for the organizing, planning, follow-up, and execution of the 9/11 Operation under the Military Commander, Sheikh Abu Hafs Al-Masri Subhi Abu Sittah.

5. I was the Military Operational Commander for all foreign operations around the world under the direction of Sheikh Usama Bin Laden and Dr. Ayman Al-Zawahiri.
6. I was directly in charge, after the death of Sheikh Abu Hafs Al-Masri Subhi Abu Sittah, of managing and following up on the Cell for the Production of Biological Weapons, such as anthrax and others, and following up on Dirty Bomb Operations on American soil.
7. I was Emir (i.e., commander) of Beit Al Shuhada (i.e., the Martyrs’ House) in the state of Kandahar, Afghanistan, which housed the 9/11 hijackers. There I was responsible for their

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training and readiness for the execution of the 9/11 Operation. Also, I hereby admit and affirm without duress that I was a responsible participant, principal planner, trainer, financier (via the Military Council Treasury), executor, and/or a personal participant in the following:

1. I was responsible for the 1993 World Trade Center Operation.
2. I was responsible for the 9/11 Operation, from A to Z.
3. I decapitated with my blessed right hand the head of the American Jew, Daniel Pearl, in the city of Karachi, Pakistan. For those who would like to confirm, there are pictures of me on the Internet holding his head.
4. I was responsible for the Shoe Bomber Operation to down two American airplanes.
5. I was responsible for the Filka Island Operation in Kuwait that killed two American soldiers.
6. I was responsible for the bombing of a nightclub in Bali, Indonesia, which was frequented by British and Australian nationals.
7. I was responsible for planning, training, surveying, and financing the New (or Second) Wave attacks against the following skyscrapers after 9/11:
 - a. Library Tower, California.
 - b. Sears Tower, Chicago,
 - c. Plaza Bank, Washington state.
 - d. The Empire State Building, New York City.
8. I was responsible for planning, financing, & follow-up of Operations to destroy American military vessels and oil tankers in the Straights of Hormuz, the Straights of Gibraltar, and the Port of Singapore.
9. I was responsible for planning, training, surveying, and financing for the Operation to bomb and destroy the Panama Canal.
10. I was responsible for surveying and financing for the assassination of several former American Presidents, including President Carter.
11. I was responsible for surveying, planning, and financing for the bombing of suspension bridges in New York.
12. I was responsible for planning to destroy the Sears Tower by burning a few fuel or oil tanker trucks beneath it or around it.
13. I was responsible for planning, surveying, and financing for the operation to destroy Heathrow Airport, the Canary Wharf Building, and Big Ben on British soil.
14. I was responsible for planning, surveying, and financing for the destruction of many night clubs frequented by American and British citizens on Thailand soil.
15. I was responsible for surveying and financing for the destruction of the New York Stock Exchange and other financial targets after 9/11.
16. I was responsible for planning, financing, and surveying for the destruction of buildings in the Israeli city of Elat by using airplanes leaving from Saudi Arabia.
17. I was responsible for planning, surveying, and financing for the destruction of American embassies in Indonesia, Australia, and Japan.

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18. I was responsible for surveying and financing for the destruction of the Israeli embassy in India, Azerbaijan, the Philippines, and Australia.
19. I was responsible for surveying and financing for the destruction of an Israeli 'El-Al' Airlines flight on Thailand soil departing from Bangkok Airport.
20. I was responsible for sending several Mujahadeen into Israel to conduct surveillance to hit several strategic targets deep in Israel.
21. I was responsible for the bombing of the hotel in Mombasa that is frequented by Jewish travelers via El-Al airlines.
22. I was responsible for launching a Russian-made SA-7 surface-to-air missile on El-Al or other Jewish airliner departing from Mombasa.
23. I was responsible for planning and surveying to hit American targets in South Korea, such as American military bases and a few night clubs frequented by American soldiers.
24. I was responsible for financial, excuse me, I was responsible for providing financial support to hit American, Jewish, and British targets in Turkey.
25. I was responsible for surveillance needed to hit nuclear power plants that generate electricity in several U.S. states.
26. I was responsible for planning, surveying, and financing to hit NATO Headquarters in Europe.
27. I was responsible for the planning and surveying needed to execute the Bojinka Operation, which was designed to down twelve American airplanes full of passengers. I personally monitored a round-trip, Manila-to-Seoul, Pan Am flight.
28. I was responsible for the assassination attempt against President Clinton during his visit to the Philippines in 1994 or 1995.
29. I was responsible for the assassination attempt against Pope John Paul the second while he was visiting the Philippines."

DETAINEE: I was not responsible, but share.

PERSONAL

REPRESENTATIVE: I shared responsibility. I will restate number twenty nine.

29. "I shared responsibility for the assassination attempt against Pope John Paul the second while he was visiting the Philippines.
30. I was responsible for the training and financing for the assassination of Pakistan's President Musharaf.
31. I was responsible for the attempt to destroy an American oil company owned by the Jewish former Secretary of State, Henry Kissinger, on the Island of Sumatra, Indonesia."

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PERSONAL

REPRESENTATIVE: Sir, that concludes the written portion of the Detainee's final statement and as he has alluded to earlier he has some additional comments he would like to make.

PRESIDENT: Alright. Before you proceed, Khalid Sheikh Muhammad, the statement that was just read by the Personal Representative, were those your words?

BEGIN DETAINEE ORAL STATEMENT

DETAINEE: Yes. And I want to add some of this one just for some verification. It like some operations before I join al Qaida. Before I remember al Qaida which is related to *Bojinka Operation* I went to destination involve to us in 94, 95. Some Operations which means out of al Qaida. It's like beheading Daniel Pearl. It's not related to al Qaida. It was shared in Pakistani. Other group, Mujahadeen. The story of Daniel Pearl, because he stated for the Pakistanis, group that he was working with the both. His mission was in Pakistan to track about Richard Reed trip to Israel. Richard Reed, do you have trip? You send it Israel to make set for targets in Israel. His mission in Pakistan from Israeli intelligence, Mosad, to make interview to ask about when he was there. Also, he mention to them he was both. He have relation with CIA people and were the Mosad. But he was not related to al Qaida at all or UBL. It is related to the Pakistan Mujahadeen group. Other operations mostly are some word I'm not accurate in saying. I'm responsible but if you read the heading history. The line there [Indicating to Personal Representative a place or Exhibit D-c].

PERSONAL

REPRESENTATIVE: [Reading] "Also, hereby admit and affirm without duress that I was a responsible participant, principle planner, trainer, financier."

DETAINEE: For this is not necessary as I responsible, responsible. But with in these things responsible participant in finances.

PRESIDENT: I understand. I want to be clear, though, is you that were the author of that document.

DETAINEE: That's right.

PRESIDENT: That it is true?

DETAINEE: That's true.

PRESIDENT: Alright. You may continue with your statement.

DETAINEE: Okay. I start in Arabic.

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PRESIDENT: Please.

DETAINEE

(through translator): In the name of God the most compassionate, the most merciful, and if any fail to retaliation by way of charity and. I apologize. I will start again. And if any fail to judge by the light of Allah has revealed, they are no better than wrong doers, unbelievers, and the unjust.

DETAINEE: For this verse, I not take the oath. Take an oath is a part of your Tribunal and I'll not accept it. To be or accept the Tribunal as to be, I'll accept it. That I'm accepting American constitution, American law or whatever you are doing here. This is why religiously I cannot accept anything you do. Just to explain for this one, does not mean I'm not saying that I'm lying. When I not take oath does not mean I'm lying. You know very well peoples take oath and they will lie. You know the President he did this before he just makes his oath and he lied. So sometimes when I'm not making oath does not mean I'm lying.

PRESIDENT: I understand.

DETAINEE: Second thing. When I wrote this thing, I mean, the PR he told me that President may stop you at anytime and he don't like big mouth nor you to talk too much. To be within subject. So, I will try to be within the enemy combatant subject

PRESIDENT: You can say whatever you'd like to say so long as it's relevant to what we are discussing here today.

DETAINEE: Okay, thanks.

DETAINEE: What I wrote here, is not I'm making myself hero, when I said I was responsible for this or that. But your are military man. You know very well there are language for any war. So, there are, we are when I admitting these things I'm not saying I'm not did it. I did it but this the language of any war. If America they want to invade Iraq they will not send for Saddam roses or kisses they send for a bombardment. This is the best way if I want. If I'm fighting for anybody admit to them I'm American enemies. For sure, I'm American enemies. Usama bin Laden, he did his best press conference in American media. Mr. John Miller he been there when he made declaration against Jihad, against America. And he said it is not no need for me now to make explanation of what he said but mostly he said about American military presence in Arabian peninsula and aiding Israel and many things. So when we made any war against America we are jackals fighting in the nights. I consider myself, for what you are doing, a religious thing as you

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consider us fundamentalist. So, we derive from religious leading that we consider we and George Washington doing same thing. As consider George Washington as hero. Muslims many of them are considering Usama bin Laden. He is doing same thing. He is just fighting. He needs his independence. Even we think that, or not me only. Many Muslims, that al Qaida or Taliban they are doing. They have been oppressed by America. This is the feeling of the prophet. So when we say we are enemy combatant, that right. We are. But I'm asking you again to be fair with many Detainees which are not enemy combatant. Because many of them have been unjustly arrested. Many, not one or two or three. Cause the definition you which wrote even from my view it is not fair. Because if I was in the first Jihad times Russia. So I have to be Russian enemy. But America supported me in this because I'm their alliances when I was fighting Russia. Same job I'm doing. I'm fighting. I was fighting there Russia now I'm fighting America. So, many people who been in Afghanistan never live. Afghanistan stay in but they not share Taliban or al Qaida. They been Russian time and they cannot go back to their home with their corrupted government. They stayed there and when America invaded Afghanistan parliament. They had been arrest. They never have been with Taliban or the others. So many people consider them as enemy but they are not. Because definitions are very wide definition so people they came after October of 2002, 2001. When America invaded Afghanistan, they just arrive in Afghanistan cause the hear there enemy. They don't know what it means al Qaida or Usama bin Laden or Taliban. They don't care about these things. They heard they were enemy in Afghanistan they just arrived. As they heard first time Russian invade Afghanistan. They arrive they fought when back than they came. They don't know what's going on and Taliban they been head of government. You consider me even Taliban even the president of whole government. Many people they join Taliban because they are the government. When Karzai they came they join Karzai when come they join whatever public they don't know what is going on. So, many Taliban fight even the be fighters because they just because public. The government is Taliban then until now CIA don't have exactly definition well who is Taliban, who is al Qaida. Your Tribunal now are discussing he is enemy or not and that is one of your jobs. So this is why you find many Afghanis people, Pakistanis people even, they don't know what going on they just hear they are fighting and they help Muslim in Afghanistan. Then what. There are some infidels which they came here and they have to help them. But then there weren't any intend to do anything against America. Taliban themselves between Taliban they said Afghanistan which they never again against 9/11 operation. The rejection between senior of Taliban of what al Qaida are doing. Many of Taliban rejected what they are doing. Even many Taliban, they not agree about why we are in Afghanistan. Some of them they have been with us. Taliban never in their life at all before America invade them the intend to do anything against America. They never been with al Qaida. Does not mean we are

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here as American now. They gave political asylum for many countries. They gave for Chinese oppositions or a North Korean but that does not mean they are with them same thing many of Taliban. They harbor us as al Qaida does not mean we are together. So, this is why I'm asking you to be fair with Afghanis and Pakistanis and many Arabs which been in Afghanistan. Many of them been unjustly. The funny story they been Sunni government they sent some spies to assassinate UBL then we arrested them sent them to Afghanistan/Taliban. Taliban put them into prison. Americans they came and arrest them as enemy combatant. They brought them here. So, even if they are my enemy but not fair to be there with me. This is what I'm saying. The way of the war, you know, very well, any country waging war against their enemy the language of the war are killing. If man and woman they be together as a marriage that is up to the kids, children. But if you and me, two nations, will be together in war the others are victims. This is the way of the language. You know 40 million people were killed in World War One. Ten million kill in World War. You know that two million four hundred thousand be killed in the Korean War. So this language of the war. Any people who, when Usama bin Laden say I'm waging war because such such reason, now he declared it. But when you said I'm terrorist, I think it is deceiving peoples. Terrorists, enemy combatant. All these definitions as CIA you can make whatever you want. Now, you told me when I ask about the witnesses, I'm not convinced that this related to the matter. It is up to you. Maybe I'm convinced but your are head and he [gesturing to Personal Representative] is not responsible, the other, because your are head of the committee. So, finally it's your war but the problem is no definitions of many words. It would be widely definite that many people be oppressed. Because war, for sure, there will be victims. When I said I'm not happy that three thousand been killed in America. I feel sorry even. I don't like to kill children and the kids. Never Islam are, give me green light to kill peoples. Killing, as in the Christianity, Jews, and Islam, are prohibited. But there are exception of rule when you are killing people in Iraq. You said we have to do it. We don't like Saddam. But this is the way to deal with Saddam. Same thing you are saying. Same language you use, I use. When you are invading two-thirds of Mexican, you call your war manifest destiny. It up to you to call it what you want. But other side are calling you oppressors. If now George Washington. If now we were living in the Revolutionary War and George Washington he being arrested through Britain. For sure he, they would consider him enemy combatant. But American they consider him as hero. This right the any Revolutionary War they will be as George Washington or Britain. So we are considered American Army bases which we have from seventies in Iraq. Also, in the Saudi Arabian, Kuwait, Qatar, and Bahrain. This is kind of invasion, but I'm not here to convince you. Is not or not but mostly speech is ask you to be fair with people. I'm don't have anything to say that I'm not enemy. This is why the language of any war in the

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world is killing. I mean the language of the war is victims. I don't like to kill people. I feel very sorry they been killed kids in 9/11. What I will do? This is the language. Sometime I want to make great awakening between American to stop foreign policy in our land. I know American people are torturing us from seventies. [REDACTED] I know they talking about human rights. And I know it is against American Constitution, against American laws. But they said every law, they have exceptions, this is your bad luck you been part of the exception of our laws. They got have something to convince me but we are doing same language. But we are saying we have Sharia law, but we have Koran. What is enemy combatant in my language?

DETAINEE

(through translator): Allah forbids you not with regards to those who fight you not for your faith nor drive you out of your homes from dealing kindly and justly with them. For Allah love those who are just. There is one more sentence. Allah only forbids you with regards to those who fight you for your faith and drive you out of your homes and support others in driving you out from turning to them for friendship and protection. It is such as turn to them in these circumstances that do wrong.

DETAINEE:

So we are driving from whatever deed we do we ask about Koran or Hadith. We are not making up for us laws. When we need Fatwa from the religious we have to go back to see what they said scholar. To see what they said yes or not. Killing is prohibited in all what you call the people of the book, Jews, Judaism, Christianity, and Islam. You know the Ten Commandments very well. The Ten Commandments are shared between all of us. We all are serving one God. Then now kill you know it very well. But war language also we have language for the war. You have to kill. But you have to care if unintentionally or intentionally target if I have if I'm not at the Pentagon. I consider it is okay. If I target now when we target in USA we choose them military target, economical, and political. So, war central victims mostly means economical target. So if now American they know UBL. He is in this house they don't care about his kids and his. They will just bombard it. They will kill all of them and they did it. They kill wife of Dr. Ayman Zawahiri and his two daughters and his son in one bombardment. They receive a report that is his house be. He had not been there. They killed them. They arrested my kids intentionally. They are kids. They been arrested for four months they had been abused. So, for me I have patience. I know I'm not talk about what's come to me. The American have human right. So, enemy combatant itself, it flexible word. So I think God knows that many who been arrested, they been unjustly arrested. Otherwise, military throughout history know very well. They don't war will never stop. War start from Adam when Cain he killed Abel until now. It's never gonna stop killing of people. This is the

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way of the language. American start the Revolutionary War then they starts the Mexican then Spanish War then World War One, World War Two. You read the history. You know never stopping war. This is life. But if who is enemy combatant and who is not? Finally, I finish statement. I'm asking you to be fair with other people.

PRESIDENT: Does that conclude your statement, Khalid Sheikh Muhammad?

DETAINEE: Yes.

PRESIDENT: Alright.

DETAINEE QUESTION & ANSWER

PRESIDENT: Does the Personal Representative have any questions for the Detainee based on his statement?

PERSONAL
REPRESENTATIVE: No, Sir.

PRESIDENT: Does the Recorder have any questions for the Detainee?

RECORDER: No, Sir.

PRESIDENT: Do either of the Tribunal members wish to question the Detainee?

MEMBERS: No, sir. Nothing further Sir.

PRESIDENT: Alright.

CLOSING UNCLASSIFIED SESSION

PRESIDENT: All unclassified evidence having been provided to the Tribunal, this concludes the open tribunal session.

PRESIDENT: Khalid Sheikh Muhammad, you shall be notified of the Tribunal decision upon completion of the review of these proceed by the Combatant Status Review Tribunal convening authority in Washington, D.C. If, the Tribunal determines that you should not be classified as an enemy combatant, you will be released to your home country as soon as arrangements can be made. If however, the Tribunal determines your classification as an enemy combatant you may be eligible for an Administrative Review Board hearing at a future date.

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