Testimony of

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United States Senate Committee on the Judiciary
Materials for testimony of Thomas P. Sullivan
concerning pending efforts to strip federal courts
of habeas corpus jurisdiction relating
to Guantanamo Prisoners

Thomas P. Sullivan
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STATEMENT REGARDING THE PROPOSED MILITARY COMMISSIONS BILL

My name is Thomas P. Sullivan, and I want to thank Chairman Specter and the members of the Committee for affording me the opportunity to address you today.

After graduating from Loyola Law School in Chicago in 1952,I served in the Army for two years, including a year in Korea. In the fall of 1954, I joined the law firm of Jenner & Block in Chicago. I've been a lawyer there since then, except for my term as United States Attorney for the Northern District of Illinois from June 1977 to April 198 1. My resume is attached as Tab 1.

In my career, I have been privileged to represent some of the finest men, women and corporations in our country. Together with other attorneys at our firm, I am now privileged to represent seven Saudi Arabian men currently held in custody at Guantanamo and three Saudi men who were released in May, 2006. I have been to Guantanamo three times this year. Each of our clients has spent more than four years at Guantanamo; none has been charged before any military tribunal, and we seriously doubt - based on the nature of the evidence against them - that they ever will be charged.

Presently, only 10 of the 465 men at Guantanamo have been charged before the military tribunals. As to the other men - our clients included - who are held indefinitely at Guantanamo and won't be charged before the tribunals, habeas corpus relief presents their only meaningful legal avenue for challenging the factual and legal basis for their detention. Congress is now considering proposals - on a very rushed basis - to deprive the federal court in Washington, D.C. of jurisdiction to even hear their existing habeas corpus claims.

The provisions relating to the writ of habeas corpus should be deleted from the proposed bill relating to military commissions. At the very least, thoughtful consideration should be given before Congress enacts a law that purports to revoke the rights of the prisoners at Guantanamo Bay to pursue their pending habeas petitions.

In 2004, the United States Supreme Court ruled that the federal District Court in Washington, D.C. has jurisdiction under 28 U.S.C. SS 2241 "to hear the prisoners' habeas corpus challenges to the legality of their detention at the Guantanamo Bay Naval Base." Rasul v. Bush, 542 U.S. 466,484 (2004). But while many of these prisoners have been held in custody for almost five years, none has yet had a habeas hearing.

Members of the Senate and House should reflect on the effect of the bills in their present form. They strip the federal court of jurisdiction over the pending habeas petitions and they do not substitute any alternative trial or hearing procedure, except for the relatively few prisoners who will be charged before the newly formed military commissions. As to the rest of these men - the overwhelming majority of the Guantanamo Bay prisoners - the purported legislation endorses the proceedings held in 2004 and 2005 by so-called Combatant Status Review Tribunals - CSRTs.

Here is a comparison of the procedures followed in the CSRTs and those to be followed in the military commissions, demonstrating the many ways in which the proposed bill will afford important due process protections to prisoners charged before the commissions that did not exist for prisoners who had CSRT proceedings: '

1. Burden of proof and presumption of innocence.

Commission: The accused is presumed innocent and cannot be convicted unless proven guilty beyond reasonable doubt. SS 9491(c)(l).

CSRT: There was no presumption of innocence. To the contrary, there was a presumption of guilt; the Order establishing the CSRTs provided, "Each detainee subject to this Order has been determined to be an enemy combatant through multiple levels of review by officers of the Department of Defense." Order, P a. The Tribunal was to determine whether the preponderance of the evidence supported that determination; however, the Deputy Secretary's Order provided, "There shall be a rebuttable presumption in favor of the Government's evidence." Order, P g(12). Further, if the Tribunal upheld the determination that the prisoner was an enemy combatant, there was a rebuttable presumption that the supporting evidence was genuine and accurate. Memorandum, Enclosure 1, P G(11).

2. Defense lawyers.

Commission: Prisoners have a right to military lawyers, and they may also retain civilian defense counsel. SS 948k(a)(l), 949c(b)(3).

CSRT: Prisoners were not permitted to be represented by legal counsel. Memorandum, Enclosure 1, P F(5).

3. Rules of evidence.

Commission: The commissions are regularly constituted courts, and are to afford all necessary judicial guarantees recognized as indispensable by civilized people under common article 3 of the Geneva Conventions. SS 948b (d). In general, the rules of evidence applicable in trials by general courts-martial shall apply. SS 949a.

CSRT: The Tribunal is not bound by the rules of evidence, and is free to consider any information it deems relevant and helpful to a resolution of the issues. Order, P g(9). Memorandum, Enclosure 1, P G(7).

4. Ability to confront government evidence.

Commission: The government must introduce evidence which supports the charges. The prisoner's lawyer may cross examine the government's witnesses. SS 949c(b)(6).

CSRT: No evidence was presented by the government. Instead, a summary of the charges was read to the prisoner and he was asked to respond. No explanation was given as to the source of or basis for the charges. Memorandum, Enclosure 3, P C(4).

5. Disclosure of classified evidence.

Commission: Classified portions of evidence may be presented to the presiding military judge outside the presence of the accused, but the defense must receive a summary of the information or relevant facts contained in the classified information. SS 949d(e)(2)(A).

CSRT: Much of the critical evidence was deemed classified, and was not disclosed to the prisoner. Order, 7 c; see also summary transcripts attached as Tabs 3,4 and 5.

6. Admissibility of evidence obtained by torture.

Commission: Evidence obtained by torture may not be considered. SS 948r(b). A statement allegedly obtained by coercion is admissible only if the military judge finds the statement is "reliable and possessing sufficient probative value," and admitting the statement would best serve the interests of justice. SS 948r(c). Statements made after December 2005 are inadmissible if obtained through methods that violate the Fifth, Eighth, and Fourteenth Amendments of the Constitution. SS 948r(d).

CSRT: There was no limitation on the kind of evidence which the CSRT members were permitted to consider, including evidence obtained by torture. See Memorandum, Enclosure 1, P G(7).

7. Prisoners' ability to call defense witnesses and produce evidence.

Commission: These rights will be hlly protected through the commission's subpoena power. SS 949j(a). The government is required to disclose exculpatory evidence to the accused. SS 949j(c).

CSRT: As a practical matter, prisoners had no ability to call their own witnesses, or to produce physical evidence from outside sources. See Memorandum, Enclosure 1, P F(6) and G(9), Tabs 3, 4 and 5. There was no requirement that exculpatory evidence be disclosed to the prisoner.

8. Appellate review.

Commission: The accused may appeal from the commission's ruling to the Convening Authority, to a Court of Military Commission Review, to the Court of Appeals for the District of Columbia Circuit, and to the United States Supreme Court. SS 950b, f, g. The accused is to be represented by military appellate counsel or retained civilian counsel. SS 950h.

CSRT: Rulings previously made were final and conclusive. Under the Detainee Treatment Act of 2005, (incorporated by reference into the proposed legislation), the United States Court of Appeals for the District of Columbia may review the CSRTs' determination, but was and is limited to deciding whether the CSRT followed its own procedures, and whether - if the Constitution is applicable (the government has asserted it is not) - those procedures are constitutional. SS 1005(2)(C).2

To illustrate the total unfairness of the CSRT proceedings and findings, I attach at Tab 2 a summary of the non-classified portion of the CSRT proceeding involving one of my clients, Abdul-Hadi Al Siba'i, and the official, non-classified non-verbatim transcript of that hearing which was provided by the government. Mr. Al Siba'i was imprisoned in virtual isolation for over four years at the Guantanamo Bay prison. Also attached at Tabs 3, 4 and 5 are three other nonclassified transcript summaries provided by the government which serve as further examples of the serious unfairness and lack of hndamental due process of law accorded the prisoners:

Mustafa Ait Idr (Tab 3): Mr. Idr, an Algerian who had been working in Bosnia, was initially detained by Bosnia at the request of the United States on charges that he planned to bomb the embassy in Sarajevo. After the Bosnian Supreme Court acquitted him following an intensive investigation, he was handed over to U.S. authorities and the U.S. transferred him to Guantanamo. During his CSRT hearing, Mr. Idr denied any involvement in any alleged plot, or any association with a1 Qaeda, and attempted to answer the Tribunal's questions as well as he could. The following exchange highlights the fundamental unfairness of CSRTs:

Tribunal Recorder: While living in Bosnia, the Detainee associated with a known al Qaida operative.

Detainee: Give me his name.

Tribunal President: I do not know.

Detainee: How can I respond to this?

Tribunal President: Did you know of anybody that was a member of al Qaida?

Detainee: No, no.

Detainee: [T]hese are accusations that I can't even answer. . . You tell me I am from al Qaida, but I am not al Qaida. I don't have any proof except to ask you to catch Bin Laden and ask him if I am part of al Qaida. . . What should be done is you should give me evidence regarding these accusations because I am not able to give you any evidence. I can just tell you no, and that is it.

The Tribunal upheld the determination that Mr. Idr was an enemy combatant and was part of al Qaida. Judge Joyce Hens Green, the federal judge appointed by the D.C. District Court to oversee the Guantanamo habeas cases following the Supreme Court's decision in Rasul, cited Mr. Idr's hearing as an example of the hndamental unfairness of the CSRT process. See 355 F. Supp. 2d 443 (D.D.C. 2005).

Murat Kurnaz (Tab 4): Mr. Kurnaz, a German resident of Turkish descent, was traveling through Pakistan with Islamic missionaries in November 2001 when he was detained by local police and eventually turned over to U.S. officials. The U.S. justified Mr. Kurnaz's detention on the basis that he was associated with a man who allegedly committed a suicide bombing in Turkey. In his CSRT hearing, Mr. Kurnaz explained how he knew the alleged suicide bomber but did not know he was a terrorist; and he believed terrorism is not the way of Islam. Based on classified evidence Mr. Kurnaz was not allowed to review or answer, the CSRT upheld the determination that Mr. Kurnaz was an enemy combatant and associated with al Qaida. However, when that information was later declassified, it contained no evidence directly linking Mr. Kurnaz to a1 Qaida, and showed U.S. and foreign intelligence agencies believed that Mr. Kurnaz did not have links to al Qaida. The alleged suicide bomber was found alive in Germany, and German authorities said they had no proof that he was a terrorist. After being detained for five years without charge, Mr. Kurnaz was released in August 2006. (See Carol D. Leonnig, Panel Ignored Evidence on Detainee: U.S. Military Intelligence, German Authorities Found No Ties to Terrorists, The Washington Post, March 27, 2005, p. Al.)

Abdur Rahman (Tab 5): In January 2002, Pakistani authorities came to Mr. Rahman's home searching for artifacts they said were looted. The authorities found nothing and Mr. Rahman said that he knew nothing about them. Mr. Rahrnan was detained and told he needed to pay a bribe to be released. While he was being held by Pakistani authorities, a soldier asked Mr. Rahrnan if there was someone else in his village by the same name; he said Mr. Rahman was arrested when Pakistani soldiers were looking for someone else. Mr. Rahman was blind-folded and taken to an airplane. The interrogators who took custody of him said he was not Abdur Rahman but was Abdur Rahman Zahid, the Deputy Foreign Minister of the Taliban. At his CSRT proceeding, Mr. Rahrnan testified he had been accused by interrogators of being three different people: a Taliban Deputy Foreign Minister, a Taliban security guard, and a Taliban military judge. Mr. Rahman vehemently denied these charges and insisted that he was a chicken farmer, that his detention was a case of mistaken identity, and he was being confused for another man with a similar name. Despite not showing Mr. Rahman any incriminating evidence, and despite Mr. Rahman's protests of innocence, the Tribunal upheld the determination that Mr. Rahman was an enemy combatant.

There is a shameful inconsistency involved here. It is difficult to believe the members of Congress intend to enact a law in which the few prisoners who are deemed by the government to be truly the "worst of the worst" will be charged an tried by the commissions, and accorded the full panoply of rights specified in the legislation creating the military commissions. Yet those rights have not been - and will not be - made available to any of the hundreds of other prisoners, including many whom we believe to have been innocent bystanders, captured and sold five years ago by the Northern Alliance to our government.3

Thus, the persons alleged to be the major culprits will be treated much better than those conceded by the government to be, at worst, lesser lights, including many we and the other lawyers for the prisoners believe to be completely innocent of any wrongdoing, but who have never had an opportunity to hear, see and confront the government's proof, or to introduce their own evidence of innocence.

Unless amended, the pending bill will retroactively ratify and approve what may fairly be described as "kangaroo court" proceedings, and purport to repeal the constitutional and statutory right to file petitions for writ of habeas corpus to all alien prisoners of the United States, past and present. The bill would remit the vast majority of Guantanamo Bay prisoners to legal limbo, without any effective way to seek fair hearings to test whether there is an evidentiary justification to extend their five years of isolated confinement.

The Great Writ has been an integral part of our system of justice since the colonists from England brought it with them as a safeguard against tyranny of the King, and it has been enshrined in our Constitution from the very beginning. If the bill is enacted in its present form, and the prisoners' right to challenge their detention through petitions for habeas corpus is revoked, years of litigation will follow as to whether the statute violates the Suspension Clause (U.S. Const. art. I, SS 9, cl. 2) of the United States Constitution and other constitutional provisions and legal principles. In the meantime, the prisoners will languish in their cells on a remote tip of Cuba. Here is what a group of prestigious former federal judges had to say about this proposed legislation:

"Eliminating habeas jurisdiction would raise serious concerns under the Suspension Clause of the Constitution. The writ has been suspended only four times in our Nation's history, and never under circumstances like the present. Congress cannot suspend the writ at will, even during wartime, but only in 'Cases of Rebellion or Invasion [when] the public Safety may require it.' U.S. Const. art. I, § 9, cl. 2. Congress would thus be skating on thin constitutional ice in depriving the federal courts of their power to hear the cases of Guantanamo detainees. At a minimum, Section 6 would guarantee that these cases would be mired in protracted litigation for years to come. If one goal of the provision is to bring these cases to a speedy conclusion, we can assure you from our considerable experience that eliminating habeas would be counterproductive.""

The lawyers who represent the prisoners believe that if the prisoners' habeas corpus petitions are permitted to proceed, only a few of the requested habeas hearings will occur; most of the prisoners will be returned to their homes, because the government has no evidence which justifies their continued detention. The few habeas petitions that will be contested will be disposed of after brief, summary hearings: these petitions do not involve full trials, or juries, and are handled routinely and expeditiously by federal judges. The federal courts know full well how to address petitions like those filed by my clients.

This is momentous, far reaching legislation, which is being rushed through on the eve of elections. The habeas stripping provision is opposed by many prestigious, high-ranking military lawyers, former federal judges, the American Bar Association, the American College of Trial Lawyers, state and local bar associations, former federal prosecutors, and hundreds of

experienced lawyers. These provisions also have been severely criticized in newspaper editorials around the country.

Under the doctrine of equivalence, the sauce for the gander will be our sanction of every other country to treat our citizens taken into custody in the very same way, allowing indefinite imprisonment without meaningful hearings or fair procedures.

Accordingly, I urge all members on both sides of the aisle to delete the habeas stripping provisions from this bill, take the time for rational discussions among those concerned on all sides, and then, if legislation is needed, enact legislation that is worthy of this body.

' References relating to the military commissions are to the Senate Bill reflecting the compromise reached between Senators Graham, McCain, and Warner and the White House on September 21,2006. References relating to "Order" are to the memorandum sent by the Deputy Secretary of Defense Paul Wolfowitz to the Secretary of the Navy, July 7, 2004, entitled "Order Establishing Combat Status Review Tribunal." References to "Memorandum" are to Enclosures 1 through 9 to the Memorandum of the Deputy Secretary of Defense, July 29, 2004, entitled "Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants detained at Guantanamo Bay Naval Base, Cuba" (hereafter "Memorandum").

2 In In re Guantanamo Cases, 355 F. Supp. 2d 443 (D.D.C. 2005), the CSRT procedures described above were held to be defective for multiple reasons, including (1) extensive reliance on classified information not shown to the prisoners, (2) prohibition of defense lawyers (pp. 468-72), (3) reliance on evidence that may have been obtained through torture or coercion (pp. 472-74), and (4) the vague, overly broad meaning of "enemy combatant" (pp. 474-77).

3 Whether the CSRTs provided any semblance of a fair process is not an academic issue; mistakes were clearly made. A confidential CIA report sent to Washington in August 2002 concluded that most of the Guantanamo detainees "didn't belong there." (Jane Mayer, The New Yorker, July 3, 2006, p. 44.) More recently, the former Guantanamo Commander, General Hood, and Deputy Commander, General Lucenti, as well as numerous government interrogators, have indicated that, "a large number" of the detainees "shouldn't be there. . . and have no meaningful connection to Al Qaeda or the Taliban." (Wisconsin State Journal, Aug. 16, 2004, p. 1A; Wall Street Journal, Jan. 26, 2005, p. Al.) As General Lucenti said, "Most of these guys weren't fighting. They were running." (Washington Post, Oct. 6, 2004, p. A16.)

4 Undated letter to Members of Congress from former federal judges John J. Gibbons, Shirley M. Hufstedler, Nathaniel R. Jones, Timothy K. Lewis, William A. Norris, George C. Pratt, H. Lee Sarokin, William S. Sessions and Patricia M. Wald. Former federal judges Susan Getzendanner, George N. Leighton, Frank J. McGarr, and Abner J. Mikva have joined in this letter.

Attachments:
Tab 1 - Resume of Thomas P. Sullivan.
Tab 2 - Summary of Abdul-Hadi a1 Siba'i CSRT hearing, and government's non-verbatim transcript of the hearing.
Tab 3 - Government's non-verbatim transcript of Mustafa Ait Idr's CSRT hearing.

Tab 4 - Government's non-verbatim transcript of Murat Kurnaz's CSRT hearing.
Tab 5 - Government's non-verbatim transcript of Abdur Rahman's CSRT hearing.

TAB 1

THOMAS P. SULLIVAN
Partner Jenner & Block LLP One IBM Plaza Chicago, IL 60611
Born: March 23, 1930, Evanston, Illinois.

Education and Service:
1947-49 Loras College, Dubuque, Iowa.
1949-52 Loyola University School of Law, Chicago, Illinois, LL.B., cum laude, 1952; Editor, Student Law Journal, 1952.
1952-54 United States Army. Served at Fort Bliss, Texas and Taegu, Korea. Discharged as Sergeant.

Professional:
Law firm of Jenner & Block, October, 1954 to July, 1977, and May 1, 1981 to present. Practice primarily trials and appeals of civil and criminal cases, internal investigations, arbitration and mediation.
United States Attorney for the Northern District of Illinois, July 19, 1977 to April 30, 1981.
Admitted to practice: Illinois (1952), California (1981) and New Mexico (1997).

Professional Activities:
Author and speaker on subjects relating to trials and appeals of civil and criminal cases, criminal justice reform, and police investigatory procedures.
Lecturer at Loyola University School of Law (night school) on federal and state civil practice and procedure, 1961 -67.
Member, Illinois Supreme Court Committee on Jury Instructions in Criminal Cases, 1961-1968.
Member, Illinois Supreme Court Rules Committee, 1972- 1977.
Chicago Bar Association (Chairman, Defense of Indigent Prisoners Committee, 1958-1 959; Chairman, Operation of Circuit Court Committee, 1968-1969).
Illinois State Bar Association (Member, Board of Governors, 1961 - 1962 and 1968-1972; Chairman, Junior Bar Section, 1959-1960; Chairman, Civil Practice and Procedure Section, 1963).
Member, California Bar Association; New Mexico Bar Association.
American Bar Association (Chairman, Illinois Committee on Defense of Indigent Persons, 1963-1969); Member, Steering Committee, Death Penalty Moratorium Implementation Project (2003-).
American Judicature Society (Member, Judicial Independence and Accountability Task Force (2003-); Member, Commission on Forensic Science and Public Policy (2005-)).
Federal Bar Association; Bar Association of the Seventh Federal Circuit; Chicago Council of Lawyers; American Law Institute; Lawyers Club of Chicago; National Association of Criminal Defense Lawyers; American Board of Criminal Lawyers.
Member, Federal Criminal Jury Instruction Committee of the Seventh Circuit, 1977- 1980, 1982-1985.

Fellow, American College of Trial Lawyers.
Member, Board of Directors, Constitutional Rights Foundation Chicago.
Chairman, United States Senate Nominations Commission, Northern District of Illinois (1997-1998).
Member, American Arbitration Association, Large Complex Case Panel. Member, CPR Institute For Dispute Resolution.
Co-Chair, Illinois Governor's Commission On Capital Punishment (2000-02).
Independent Monitor, Chicago Housing Relocation Process, 2002 and 2003.
Chair, Northwestern University Law School Center on Wrongful Convictions Advisory Board (2004-).
Chair, Illinois Capital Punishment Reform Study Committee (2005-).

Awards:
Loyola University Law School - Medal of Excellence Award (1965); Damen Award (2004).
Illinois Public Defender Association - Award for Contribution of Service to the Indigent Accused (1 972).
Constitutional Rights Foundation of Chicago - Service Award (1990); Bill of Rights in Action Award (1993).
American Alliance for Rights & Responsibilities - Civitas Award for exceptional service (1994).
Chicago Bar Foundation and Chicago Bar Association - Justice John Paul Stevens Award (2000).
American Bar Association Section of Litigation - John Minor Wisdom Public Service and Professionalism Award (2003).
Northwestern University Center on Wrongful Convictions Award for commitment to fairness and justice (2003).
Albert E. Jenner, Jr. Award for exceptional legal services to the needy (2003).
Laureate, Illinois State Bar Association Academy of Illinois Lawyers (2004).
American Judicature Society - Justice Award (2004).
Chicago Lawyer - 2004 Person of the Year Award (2004).
Legal Assistance Foundation of Metropolitan Chicago - Lifetime Achievement Award (2005).
University of Notre Dame - Honorary Doctor of Laws degree (2006).

TAB 2

AN EXAMPLE OF A COMBAT STATUS
REVIEW TRIBUNAL (CSRT) HEARING

Thomas P. Sullivan
9/19/06

Following is an example of a CSRT hearing held for a prisoner I represented at Guantanamo Bay, Cuba.

Abdul-Hadi Al Siba'i, ISN #064

Mr. Abdul-Hadi A1 Siba'i was taken into custody in Pakistan in December 2001. I became his lawyer in the latter part of 2005. After speaking with members of his family by telephone (with the aid of an Arabic interpreter), I filed a petition for writ of habeas corpus on his behalf in the

District Court of the District of Columbia in the summer of 2005. On January 17 and 18, 2006, I visited with him (speaking through an interpreter) at the Guantanamo Bay prison.

The CSRT hearing summary is attached as Tab 1. Here is what it shows:

Mr. Al Siba'i was not represented by a lawyer. He spoke through a translator, with the help of a "Personal Representative."

There were four charges, but the CSRT Tribunal President stated that the fourth suspected of being a Bosnian Mujahadin fighter captured in 1996) would not be considered against Mr. A1 Siba'i (pp. 2, 3).

Charge No. 1 : The Detainee was captured in Pakistan as he crossed the border shortly after Ramadan in December 2001.

Mr. A1 Siba'i explained that he has employed for almost 20 years as an officer in the Riyadh Police Department. He took a two month leave of absence in August 2001 in order to assist in building schools and a mosque in Afghanistan (P. 5):

"I didn't only go to build houses but anything that would help the poor and needy. I wanted to build a mosque, but I didn't finish it. I read Afghanistan was very poor and I wanted to do a lot of good work there. It would cost me two to three hundred thousand dollars to build a mosque in Saudi Arabia, however, in Afghanistan it would only cost about two thousand dollars. Saudi Arabia had several charities and they didn't need my
help."

He presented his passport and airline tickets to the Tribunal, which were in his custody when he was arrested. The passport showed the places he had gone, and the ticket showed the date he was required to return (p. 1 I). He requested the Tribunal to check with the police in Riyadh to verify that he was on a humanitarian mission. The President responded, "I denied that request because an employer has no knowledge of what their employees do when they are on leave" (p. 3).

Mr. A1 Siba'i explained what occurred when he arrived in Pakistan, was taken into custody by the Pakistan army, and was eventually turned over to United States forces (pp. 4-5). He added (p. 6):

"I told the interrogators before that I was the head of my family. I have a wife and kids. You can ask my country regarding my behavior. You can find out everything about me starting when I was young. 1 didn't have any problems with the courts because I didn't travel out of the country very often. I joined the Army when I was seventeen and I got married at eighteen. I have a wife, daughters, and a stable job. I had no problems whatsoever. Why am I here? I will try to prove anything you want ."

The Tribunal made no response to Mr. A1 Siba'i's statement.

Charges 2 and 3 related to a1 Haramain, an Islamic charity, namely, Mr. A1 Siba'i "worked as a volunteer for a1 Haramain" which "is a nongovernmental organization with known ties to a1 Qaida and Usama Bin Laden."

Mr. A1 Siba'i spoke about a trip he made to Sudan during the time of floods in the mid-1990s:

"1 didn't work for them. I donated my time to be charitable. I have no connection to a1 Haramain. I went there for twenty days, but I don't know anything about them. I was surprised when I was told they have an association with al Qaida. It was a known fact that al Haramain was a charitable organization. Everyone was aware of the charity work they were involved with. I donated my time, for twenty days, doing anything I could to help. If you want to know about my trip, I have no problem telling you about it.

"Personal Representative: The Detainee and I discussed that the trip was for twenty days to Sudan during the time of the floods. He recalled that to be about six or seven years ago.

"Detainee: I don't recall the exact dates.

"Personal Representative: Six or seven years would take us back to 1996 or 1997.

"Detainee: When I asked you to get the paperwork from Sudan, it was to prove that point and the dates.

"Personal Representative: The Detainee told me while he was in Sudan he met with the Saudi Ambassador. He remembered it was more than twice, possibly three or four times."

With regard to his alleged ties to a1 Qaida or Bin Laden, Mr. A1 Siba'i said:

"I don't know anything about that whatsoever. I am surprised this is even being brought up. This is an unbelievable accusation. Even though it isn't a government organization, it is a semi-government organization. Americans and the American Embassy know about this organization. You can ask about that organization and the past years they have been in operation. Because of Usama Bin Laden, all Muslims are being attacked. Just because someone has become a Muslim, they are associated with a1 Qaida? This is a disaster.

"Personal Representative: The Detainee and I also discussed at the time (approximately 1996, 1997 time frame) the charity group was recognized by the Saudi government and the Saudi Ambassador also knew about it.

"Detainee: It was one of the largest organizations in Saudi Arabia, if not in the Muslim countries. What happened to this organization? This must have happened since I have been here.

"Personal Representative: The detainee said the trip was documented by video [Personal Representative stated this was in 1996 or 1997].

"Detainee: I told the interrogator the trip was all on video.

"Personal Representative: The Detainee asked was the organization even on a list back then (1996, 1997) as a terrorist organization?

"Detainee: If a1 Haramain is a terrorist organization, why is it my problem? Am I guilty because they are terrorists?

"Personal Representative: The Detainee also mentioned, even though the Saudi Ambassador knew about it, he never said anything to me when he knew I was going to travel.

"Detainee: It was just a regular visit. I was checking on them and telling them about their needs and how I could help them. Sudan televised the story and the Sudan government was fully aware of it. There are several villages in Sudan. I rebuilt houses that had been destroyed. A clinical van delivered blankets. Seed was provided for planting. Everything was done to help the poor and needy. You can check this out with the Saudi and Pakistani governments. If this is not the truth you can keep me here, but if it is, why am I here?"

With regard to withdrawn Charge 4, A1 Siba'i explained he had no involvement with Bosnia (pp. 7-8). He said (p. 7):

"I am a peaceful man. Even before Bosnia, there was the Gulf war. I was there and received an award for appreciation. I was not involved with Bosnia. I'm not supposed to say anything or defend myself. You indicated I was arrested. If I was arrested and there is
proof, then there is no reason for you to ask me about it. It's better if you have to prove it."

In answer to the Tribunal's questions, Mr. A1 Siba'i said he is 34 years old; he was not funded by a1 Haramain; he did not have a weapon or ammunition while in Afghanistan; he helped begin a foundation for a mosque, but it was not finished; he had an annual two months of vacation from the Riyadh police force; and that he had no affiliation with a1 Haramain since he went to Sudan years ago (pp. 8-10).

Several months ago, without notice to me, and without explanation, compensation or apology, the United States government returned Mr. A1 Siba'i to Saudi Arabia.

Thomas P. Sullivan
September 19, 2006.

Additional submissions contained in full committee record.