

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
IN RE:)
) Misc. No. 08-mc-0442 (TFH)
GUANTANAMO BAY DETAINEE)
LITIGATION)
)
)
_____)

DECLARATION OF MAJ Heath E. Wells

Pursuant to 28 U.S.C. § 1746, I, Heath E. Wells., hereby declare:

1. I currently serve as an Operational Law Attorney at the Criminal Investigation Task Force (CITF). I have served in this position since March 2006. The statements contained in this declaration are based on my personal knowledge, upon information provided to me in my official capacity and upon conclusions and determinations reached and made in accordance therewith.
2. Under the direction of the Secretary of the Army, CITF conducts worldwide criminal investigations to substantiate or unsubstantiate alleged or suspected war crimes or acts of terrorism committed by certain individuals against U.S. persons, property or interests. The CITF is a joint, operational criminal investigation task force, comprised primarily of Special Agents from the U.S. Army Criminal Investigation Division, the U.S. Air Force Office of Special Investigations, and the U.S. Navy Criminal Investigation Service. Special Agents assigned to CITF conduct law enforcement interviews of suspects and memorialize records of those interviews on documents known as CITF Form 40s. The products of CITF investigations are used to determine whether jurisdiction and appropriate chargeable offenses exist for the cases to be brought before military commissions.

3. The “Privilege Review Team” consists of Department of Defense personnel who are tasked with reviewing correspondence and written materials that are created by Guantanamo detainees for use by their attorneys in ongoing habeas corpus proceedings in federal court. Because the Court’s Protective Order directed the detainees’ counsel to treat all information counsel learned from a detainee, including any oral and written communications with a detainee, as classified information, the Privilege Review Team was authorized to review these “presumptively SECRET” detainee communications and determine if any of the detainee’s letters or conversations with his counsel met the criteria to be classified under Department of Defense classification guidance.¹

4. CITF documents have been provided to counsel for the detainees as part of the habeas corpus litigation. These documents are typically marked as “Law Enforcement Sensitive,” which indicates that these documents contain information that is sensitive to the case or contain information about law enforcement methods and techniques. Information provided by detainees in law enforcement interviews usually included details of the detainees’ prior locations and travels, affiliations and involvement with other suspects, and activities taken in conjunction with terrorist organizations, or similar information about third parties. Although “Law Enforcement Sensitive” information is not classified, it is typically designated as “Protected Information” pursuant to the protective orders entered in the Guantanamo habeas litigation because of the aforementioned sensitivities with widespread release.

5. Under the terms of the Court’s January 15, 2009 Order, counsel for a petitioner is authorized “to review with the petitioner statements in the exhibits to the Classified Factual Return for that

¹ For detainees considered “high value detainees”, the information a counsel learns from the detainee is treated as presumptively classified at a higher level than SECRET and the DoD Privilege Review Team is supplemented by a security official from the Central Intelligence Agency, who reviews these detainee-created materials utilizing CIA classification guidance.

petitioner that the Privilege Review Team determincs were made by that petitioner to agents of the United States government.” Counsel are not permitted to share with the petitioner information beyond the text of petitioner’s statements, petitioner’s name, and the dates that the statements were made. Under the terms of the Court’s order, however, petitioner’s counsel would nonetheless be authorized to remove petitioner’s statements (including petitioner’s name and the date of the statement) from a document marked as “Law Enforcement Sensitive” by CITF, reprint that information into a new document, and provide the information to the petitioner without CITF authorization. As discussed below, disclosure of even this narrow category of information to a detainee is not authorized and risks harm to CITF’s law enforcement efforts.

6. The manner by which CITF gathers information from detainees is sensitive and release of that information could jeopardize pending law enforcement proceedings, risk national security, and/or interfere with future judicial proceedings. Disclosure of the information contained within CITF interview reports, even if limited to the detainees’ own statements, would permit detainees who are interviewed on future occasions to modify their prior statements or activities to take into account the information that law enforcement personnel have focused upon in their reports. CITF interviews with detainees frequently cover a wide range of topics, but the interview reports memorializing those interviews may focus on limited details and topics of particular interest to criminal investigators. Allowing a detainee to see this information, absent review by CITF in the first instance, risks compromising CITF’s legitimate law enforcement and criminal investigation interests.

7. Furthermore, CITF has never authorized the Privilege Review Team to review documents created by CITF. The Privilege Review Team is not authorized to conduct classification reviews or make determinations about whether information (including factual matters that were discussed

by the detainee in an interview with CITF personnel) found within CITF documents (including those marked “Law Enforcement Sensitive”) can be released to detainees or other third parties. That role and decision-making authority is reserved to personnel within CITF, who are in the position to evaluate the equities relevant to this decision. CITF has never authorized the Privilege Review Team to review CITF documents because the Privilege Review Team is not staffed by law enforcement personnel, has no experience conducting investigations and is not aware of the unclassified, law enforcement techniques that CITF has found useful in preparing cases.

8. Because the release, even to the detainee-speaker, of sensitive law enforcement information may jeopardize ongoing criminal investigations², CITF is the organization in the position to evaluate whether that harm will ensue if a particular statement is released to a detainee. The Privilege Review Team is not in a position to determine the status of CITF’s ongoing criminal investigations nor to evaluate the relative significance of a detainee’s statements documented by CITF during those investigations. Instead, this function must be performed by personnel with knowledge of and access to CITF’s deliberative process and the current investigative status of the cases.

9. In light of the potential adverse consequences flowing from the release of this information and to ensure that sensitive information is not inappropriately released by the Privilege Review Team to a detainee, CITF is involved in the Department of Defense’s Declassification Review Team, including having personnel assigned full-time to perform this function on behalf of CITF. This team is comprised of subject matter experts from various Department of Defense

² At the direction of the Secretary of Defense, the Department of Defense continues to investigate and evaluate cases for potential trial by military commission, although formal commission proceedings were continued in January for a 120-day period in order to provide the Administration sufficient time to conduct the presidentially-directed review of all detainees at Guantanamo.

organizations that are involved in detainee operations. The Declassification Review Team performs declassification and other reviews of DOD documents to determine what information, if any, is authorized for release to detainees and their counsel. When CITF information is reviewed and found to be releasable through that process, that information can be provided to detainees for use in the habeas litigation pursuant to the terms of the Court's Protective Order. To date, CITF has approved over 860 documents for release through this process and that work is ongoing.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true, accurate, and correct to the best of my knowledge.

Dated: March 10, 2009



Heath E. Wells
MAJ, Judge Advocate, US Army
Criminal Investigation Task Force