A RESPONSE TO THE SETON HALL STUDY

An Assessment of 516 Combatant Status Review Tribunal (CSRT) Unclassified Summaries

25 July 2007

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Annex A - Assessment of the Seton Hall Report Findings

In early 2005 [1] the Department of Defense (Office for the Administrative Review of the Detention of Enemy Combatants) released 517 Combatant Status Review Tribunals (CSRT) unclassified summaries.[2] Of the 517 unclassified records, one of those records is a duplicate, which brings the total of CSRT unclassified summaries to 516. The DoD posted those 517 unclassified summaries (including the one duplicate) on its public website in response to a Freedom of Information Act (FOIA) request.[3]

The release of these 516 unclassified Combatant Status Review Tribunal (CSRT) summaries has contributed to the public debate over the ethical, legal and procedural dimensions of detention policy, enemy combatant status and the need for the Guantanamo Bay detention facility.

A research team affiliated with Seton Hall University and the Denbeaux & Denbeaux law firm conducted one of the first studies on the CSRT process drawing on the same 516 unclassified CSRT summaries used in this study.[4] The first report in the Seton Hall series concludes that the DoD is wrongfully holding individuals who, based on the DoD's own data, neither pose a serious threat to America's national security, nor seem to have been involved in conducting or supporting hostile action against the United States. Specifically, the Seton Hall study argues, "the data analyzed by [its] Report would suggest that many other detainees should likewise not be classified as enemy combatants."(SH, page 21).

The CTC's assessment and analysis of the same 516 CSRT reports used by the authors of the Seton Hall study, however, does not support that conclusion. Coding data from the CSRT summaries is not a precise process and does require some subjective interpretation. However, a number of the Seton Hall report's findings do not appear to be supported available evidence. This Annex identifies the CTC's comments with the Seton Hall study's methodology, data coding process, interpretation of statistical results and analyses. The CTC has three primary concerns with the Seton Hall report on the 516 CSRT summaries:

1. The Seton Hall study excludes a number of the data fields used in the CTC study from consideration. Disregarding this relevant information limits the explanatory potential of the Seton Hall study and provides a much less robust analysis of the data available on the detainees.

2. In multiple instances the Seton Hall study interprets language contained in the 516 unclassified CSRT summaries in ways that disregards the contextual meaning of the

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[1] The final CSRT hearing was held in January 2005 and the final Convening Authority letter was signed in March 2005.
[2] See Department of Defense website, <http://www.dod.mil/pubs/foi/detainees/OARDEC_docs.html>
[3] See Department of Defense website, <http://www.dod.mil/pubs/foi/detainees/OARDEC_docs.html>
[4] Available: <http://law.shu.edu/news/guantanamo_report_final_2_08_06.pdf>

summaries. By doing so, the Seton Hall report mischaracterizes the nature of a number of important variables.

3. In a number of cases, the Seton Hall report makes conclusions about the detainee data that lack factual support.

With regard to the first concern, the Seton Hall report limited its investigation to select variable fields. The Seton Hall report's selected variables, while important pieces of the overall picture of a given detainee, are still only a small number of the possible data fields that can be extracted from the CSRT unclassified summaries. The CTC chose to expand the variables reviewed and analyzed. Below is a comparison of the variables included in the CTC's study as compared to the Seton Hall report's study.

Variables Analyzed	CTC Report	Seton Hall Report
Captured By	YES (pg. 11-12)	YES (pg. 15)
Hostile Acts Conducted	YES (pg. 12)	YES (pg. 11-13)
Fighter Status	YES (pg. 13-14)	YES (pg. 8-10)
Training Camps Attended	YES (pg. 14-15)	NO
Combat Weapons Training	YES (pg. 17-18)	NO
Fulfilled Support Role	YES (pg. 18-19)	NO
Commitment to Violent Jihad	YES (pg. 20-21)	NO
Small Arms Training	YES (pg. 22)	YES (pg. 19)
Suspicious Group Affiliation	YES (pg. 22-23)	YES (pg. 8-10)
Suspicious Individual Connection	YES (pg. 23-25)	NO
Guest House Stay	YES (pg. 25-26)	YES (pg. 20)
Operationally Relevant Travel	YES (pg. 26-27)	NO
Pocket-Litter	YES (pg. 27-28)	MENTIONED (pg. 20)

Figure 29

The CTC's selected variables are important for any analysis of terrorist threats as they provide metrics for understanding the extent of one's involvement, knowledge, skill-sets, social connectivity and commitment to furthering violent Jihad.

With regard to the second point, in several instances, the Seton Hall report interprets language contained in the 516 unclassified CSRT summaries in ways that fail to consider the contextual meaning of the summaries. For instance, the Seton Hall report inaccurately defines the term 'safe-house' – a well-known tool leveraged by criminals and terrorists to facilitate discrete movement of associates – as an innocuous residence used by American tourists and travel agencies. By defining a safe-house as being equivalent with a youth hostel, arguing that "stopping at such facilities is common for all people traveling in the area," the Seton Hall report ignores the large amount of available data on the security challenges posed by Afghan and Pakistan based safe-houses, particularly with regard to terrorism (SH, page 20).

Additionally, language in the Seton Hall study can potentially mislead readers by suggesting that if a CSRT record does not contain a direct reference to a piece of evidence, that it does not exist. For instance, the Seton Hall report contends that "the Government concluded

that the detainee did not commit such an act and omitted the entire 3(b) section from the CSRT summary" (SH, page 7). This assumption neglects to recognize the inherently limited nature of these documents.

With regard to the affiliations of detainees to known organizations, the Seton Hall report asserted that only a fraction of the associations are considered hostile in nature. Specifically, the Seton Hall report argues:

> *Comparing the Combatant Status Review Board's list of 72 organizations that evidence the detainee's link to al Qaeda and/or the Taliban, only 22% of those organizations are included in the Terrorist Organization Reference Guide. (SH, page 18)*

The Seton Hall report is unclear about how it generated this list of 72 organizations. Presumably, the list of organizations is contained in the Seton Hall report's untitled Appendix B. However, that list in Appendix B contains 74 separate fields, not 72. An examination of the Appendix B in the Seton Hall report's list of detainee organizational associations highlights serious coding problems that call into question conclusions in this section. Below is the list of the problematically coded organizations in the Seton Hall report. The number before each listing refers to the row order in which it appeared in the Seton Hall report's unnumbered list.

3. Al Harmain - (the Seton Hall report double-counts this with "**12. Al-Haramayn"** the only difference being in the transliteration of the Arabic into English. These are not two separate organizations and ought not be coded as such in the Seton Hall report).

6. Al Nashiri - (this is not an organization, but most likely an individual from Saudi Arabia).

7. Al Wa'ad - (this is not an organizational delineation).

11. Algerian resistance group - (this is a generic term used to refer to any one of a number of groups. It is not an organizational delineation).

16. Ariana Airlines - (this is a civil Afghanistan-based air carrier still in service today. Although the U.S. government alleges that individuals may have used the company to advance terrorism, it is inappropriate to code the company as a terrorist organization).

19. Chechen rebels - (this is not an organizational delineation, it is a collection of individuals and groups in a loosely tied violent resistance movement).

23. Extremist organization linked to al-Qaeda - (this is not an organizational delineation).

28. Jama'at al Tablighi - (The Seton Hall report double-counts this coded

organization with **30. Jamat al Taligh,** the same organization only spelled incorrectly. These are not two separate organizations and ought not be coded as such).

42. Jemaah Ilamiah Mquatilah – (The Seton Hall report double-counts this coded organization with its English translation, **49. LIFG or the Libyan Islamic Fighting Group**).

43. Jihadist - (this is the term used to designate anyone who ideologically adheres to the principles of waging Jihad by the sword).

47. Lash ar-e-tayyiba – (The Seton Hall report double-counts this coded organization with its correct spelling, **48. Lashkar-e-Tayyiba**).

51. mujahadin - (this is an Arabic term for fighter, not a group).

53. mulahadin - (this is a mis-spelling of the Arabic term, mujahidin).

56. Pacha Khan - (he is a former Afghan provincial governor, not an organization).

60. Samoud – (this is not an organizational delineation).

62. Sharqawi Abdu Ali al-Hajj – (he is an individual, not an organization)

63. small mudafah in Kandahar – (this phrase refers to a guesthouse in Kandahar, not an organization and ought not to be so coded).

71. Turkish radical religious groups - (this is not an organizational delineation).

72. Uighers - (this is not an organizational delineation, it is a collection of individuals and groups in a loosely tied violent resistance movement).

74. Yemeni mujahid - (this is referencing an unknown individual, not an organization, and ought not be coded as such).

The Seton Hall report appears to either double-count or mischaracterize a number of Arabic words and phrases as organizations in their coding of organizational affiliation in at least 20 identifiable cases (or 27%). By incorrectly coding names of people, places and concepts as discrete organizations, and then using their list of 74 organizations as a basis for comparison against American government watch-lists, the Seton Hall report's conclusions are problematic.

Further, the Seton Hall report spent considerable time comparing its coded list against a variety of other government terrorist watch-lists in an effort to demonstrate inconsistencies across U.S. government agencies with regard to which organizations constitute a legitimate terrorist threat. Specifically, the Seton Hall report contended that it coded,

"72 organizations were compared to the list of Foreign Terrorist Organizations in the Terrorist Organization Reference Guide of the U.S. Department of Homeland Security, U.S. Customs and Border Protection and the Office of Border Patrol. This Reference Guide was published in January of 2004 which was the same year in which the charges were filed against the detainees." (SH, page 19).

This list of 74 terrorist groups produced by U.S. Customs and Border Protection in 2004, is meant, according to the document itself, to identify the "main players and organizations." The reference guide's purpose is stated below (and is also quoted in full in the Seton Hall study):

"Purpose: The purpose of the Terrorist Organization Reference Guide is to provide the Field with a who's who in terrorism. The main players and organizations are identified so the CBP Officer and BP Agent can associate what terror groups are from what countries, in order to better screen and identify potential terrorists." [5]

The operative language in the 2004 document's purpose is "main players and organizations." The document does not claim to be, nor is it, an exhaustive list of the multitude of organizations who move in and out of existence, and maintain often unknown ties to groups like al-Qa`ida, the Taliban and their associated forces. In practice, it is a useful compilation of generally well-known organizations involved in terrorism: a rough guide for officers in the field. [6]

As an example of the third point about the Seton Hall report's problematic conclusions, the CTC found that the Seton Hall study focused considerable attention on the 'captured by' variable field. For example, Seton Hall researchers contend that:

"Only 5% of the detainees were captured by United States forces. 86% of the detainees were arrested by either Pakistan or the Northern Alliance and turned over to United States custody. This 86% of the detainees captured by Pakistan or the Northern Alliance were handed over to the United States at a time in which the United States offered large bounties for capture of suspected enemies." (SH, pages 2-3)

The CTC did confirm that only 5% of the publicly released 516 CSRT unclassified summaries provide information that an individual was captured by U.S. forces. CTC faculty also found that the majority of those captured, for whom the CSRT unclassified summaries provide data, were captured by forces other than the United States.

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[5] "Terrorist Organization Reference Guide." U.S. Department of Homeland Security. U.S. Customs and Border Protection. Office of Border Patrol. January 2004. Available: http://www.mipt.org/pdf/TerroristOrganizationReferenceGuide.pdf>

[6] The U.S. government's most comprehensive base-line for comparison would have been the regularly updated list resulting from "Executive Order 13224 blocking Terrorist Property and a summary of the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), and Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), " available at, <http://www.treasury.gov/offices/enforcement/ofac/programs/terror/terror.pdf>, in which many of the suspect organizational associations identified in the 516 CSRT unclassified summaries can be found. The CTC will expand this discussion in the Part II.

The CTC's findings do, however, question the Seton Hall report's logic for concluding that the individuals are any less culpable for their actions if they were captured by non-U.S. forces on the two grounds put forth by the Seton Hall study: 1) because bounties were being offered for the capture of those individuals involved in committing or supporting hostile activities, or 2) because these individuals were captured by parties other than the United States.

Regarding the issuance of bounties, it is important to keep in mind that Taliban, al-Qa`ida and their associated forces had inhabited areas throughout Afghanistan and Pakistan for over a decade. In so doing, many of these individuals and groups employed bribes, threats, kinship bonds and friendships with local populations in order to continue operating in these areas. There is little reason to doubt that some people were motivated, for a multitude of reasons including profit incentives and vendettas, to identify and turn-in suspected militants. Each of these captured individuals, however, was subject to a screening process where the enemy combatant status of the detainee was assessed.

Regarding the fact that non-U.S. forces captured these individuals, the United States has found great success hunting down al-Qa`ida, Taliban and associated forces when it does so by proxy: through the use of non-U.S. forces. This technique is effective according to al-Qa'ida's own internal communications.[7] Allies of the United States, including Pakistan and the Northern Alliance, have consistently supported counterterrorism efforts in the region. As the Coalition bombing began on Sunday evening, October 7, 2001, many of the al-Qa`ida fighters, Taliban fighters and fighters of their associated forces began fleeing toward the Pakistani border, so the fact that Pakistani forces captured these individuals should not be viewed as surprising.

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[7] For further discussion on this issue, please see the CTC's *Jihadi After Action Report on Syria* and *Stealing Al-Qa`ida's Playbook*, both available at http://www.ctc.usma.edu