

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

COUNTERR GROUP

(AKA COUNTER-TERRORIST GROUP)

COUNTER-PLAINTIFF

CBS BROADCASTING SYSTEM, INC.,

COUNTER-DEFENDANTS

SUBPOENA IN A CIVIL CASE

DUCES TECUM WITH DEPOSITION

CASE NUMBER:

05 CV 7946 SDNY



TO: **AHMAD ALI JALILI, A CITIZEN OF THE UNITED STATES**

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case, related to the illegal arrest of Jack Idema and others.

PLACE OF DEPOSITION

CTG Conference Room, [REDACTED]

DATE AND TIME

10/2/2005 – 10:00am

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): All documents related to the arrest of Jack Idema, Captain Brent Bennett, Lt. Zorro Rasuli Banderas, Major Amin, FOX News, Press Conferences and other documents related to Jack Idema, copies of your resignation letters, and copies of all payments received from any news agency or any foreign (non-Afghan) government agency. To include photos, tapes, emails, and other documents

PLACE

CTG Conference Room, [REDACTED]

DATE AND TIME

10/2/2005 – 10:00am

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

Any place in Afghanistan where documents are stored related to Jack Idema

DATE AND TIME

10/3/2005 – 10:00am

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

[REDACTED]
(ATTORNEY FOR COUNTER-PLAINTIFF)

DATE

9/22/2005

ISSUING OFFICER'S NAME, ADDRESS, PHONE NUMBER
[REDACTED]

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

INTENTIONAL WITHHOLDING OF EXCULPATORY EVIDENCE AND RECKLESS DISREGARD FOR THE TRUTH IN 2004

129. In April 2004, Idema's counter-terrorist team, known as Task Force Saber, and later TF Saber 7, was back in Afghanistan again working closely with U.S. and Afghan military and intelligence activities. All of Idema's team members were officially employed by the Ministry of Defense or Afghan CIA, except one. Ed Caraballo, an Emmy award-winning journalist who had worked for CBS, ABC, NBC, and CNN, was now working as an embedded journalist with Task Force Saber.

130. In 2004, Rather and counter-plaintiffs had discussed an al-Qaida story set in Afghanistan, and Idema stayed in touch with CBS and Andaya from Afghanistan in a continuing attempt to resolve their contract disputes.

131. Andaya asked Idema what he was "working on" now that he was back in Afghanistan. In May and June 2004, Idema and Andaya, along with other CBS employees, discussed various stories regarding al-Qaida terrorists in Afghanistan, the Taliban infiltration of the new government, and the ineffectiveness of conventional military operations against the growing terrorist resistance and attacks.

132. CBS discussed these story ideas and explored the potential for stories that showed the American War On Terror in a favorable light instead of the drama of the ongoing Abu Ghraib scandal. Andrew Heyward was keen on these stories. Idema and Counterr were still willing to work with CBS if CBS settled their dispute over the *8mm VideoX Tapes* with the appropriate payment of damages and licensing fees.

133. In June 2004, CBS wanted to license counter-terrorist operations footage taken by Caraballo. Although he was under contract by another network, Caraballo was on the operation with DOD approval and Counterr Group owned the rights to the footage. Counterr Group required any footage which aired on any network to be vetted and approved by the DOD, especially if the footage contained images of Task Force 180 operators. Therefore, Caraballo directed CBS to discuss the issue with Idema.

134. In mid-June 2004, CBS, with the approval of Andrew Heyward, sent the acting American chief of the CBS office in Kabul to meet with Idema. The Afghan CBS Bureau Chief also met Idema at the Counter-Terrorist Group Task Force SABER compound in Kabul. Idema allowed CBS' bureau chief to enter the SABER 7 compound, including restricted areas where al-Qaida terrorists were being held. The meeting with CBS was to discuss the airing of a special broadcast on al-Qaida plots to bomb U.S. soldiers at Bagram Air Base and assassinate pro-American Afghan officials, by allowing CBS access to the terrorists being held.

135. CBS also wanted to confirm a report that Idema and his team had captured the brother-in-law of bin Laden's chief of security and the terrorists responsible for the murder of Canadian ISAF Corporal Jamie Brendan Murphy. Corporal Murphy had been murdered in a bombing on Darlaman Road in Kabul on January 27, 2004. Once CBS confirmed this they saw it as an important story in the war against terror.

136. Idema told CBS that approval for the story would have to be obtained from the Department of Defense before Idema could discuss his relationship with Bagram or Task Force 180. Idema told CBS that any story should focus on the United Front Military Forces' continued efforts to combat al-Qaida and why Massoud's UFMF needed continued American support in their counter-terrorist operations.

137. CBS' bureau chief, with the approval of CBS News president Andrew Heyward and others, was inside plaintiffs' SABER 7 Kabul compound during the time when numerous al-Qaida and Hezb-i-Islami terrorists were in custody and awaiting transfer to the U.S. Army's Task Force 180 at Bagram by Idema's Task Force Saber.

138. Additionally, CBS' Michael Brandenburg was at the compound on numerous occasions, and witnessed the interrogation of al-Qaida terrorists at the compound. Idema allowed CBS' representative to watch the interrogation of Corporal Murphy's killers, and view each of the terrorists in custody. Brandenburg was also allowed to speak directly with the brother-in-law of Bin Laden's Chief of Security, who

was cooperating fully and willingly. CBS employees saw the methods of interrogation, the physical condition of the terrorists, and the conditions of the terrorists' detention, and knew that no torture was occurring.

139. There was a vast difference in the terrorist interrogations done by Idema and the experienced intelligence agents working with him as compared to the young interrogators at Abu Ghraib and other locations. CBS' Bureau Chief said Heyward wanted to compare Idema's effective interrogation techniques with the poor techniques used at Abu Ghraib. CBS said they wanted to show how co-opting a terrorist accomplished more than humiliation by untrained interrogators. Idema allowed CBS to transmit interrogation video back to the U.S. from the CBS Kabul office.

140. On July 5, 2004, only a few hours after Michael Brandenburg last left the Task Force Saber compound, Idema was arrested by anti-UFGM forces, at the request of Interior Minister Ahmad Ali Jalali, a U.S. citizen. Idema and his team were falsely accused by Ahmad Ali Jalali of "running a torture chamber," "torturing innocent Afghans," and other illegal conduct. Three other false claims by Jalali were that Idema had "innocent Afghans hanging from the ceiling in his basement," that the terrorists were being "abused, tortured, and starved," and that Idema and his men were simply "rounding up innocent Muslims with long beards" (only 3 of 11 had long beards).

141. CBS and other news networks reported Jalali's false and fabricated claims and similar false allegations by Jalali's spokesman Lutfullah Mashal. Ahmad Ali Jalali was a former *Voice of America* radio news translator in Washington, DC. Jalali, a vehemently anti-UFGM (Northern Alliance) Pashtun from the south, is alleged to have had a prior relationship with CBS News and FOX News. CBS News had also worked with Lutfullah Mashal in the past. Mashal was a former translator for journalists during the 2001/2002 war and had close connections with the Taliban. Idema had warned both CBS and FOX News about Mashal's Taliban connections in 2001 and 2002 yet they still employed Mashal and worked with him during that time.

142. In 2003, Jalali left his job as a “journalist” and was appointed Minister of Interior for Afghanistan, thereafter appointing Lutfullah Mashal as his Ministry of Interior spokesman. Jalali and Mashal continued to maintain a close relationship with CBS News, including CBS RADIO News, but primarily FOX News.

143. In spite of the fact that CBS knew the allegations by Jalali and Mashal were completely false, CBS still reported these false claims. CBS had pictures, video, and documents disproving the criminal allegations by Jalali and Mashal yet withheld this information from their reporting. As an example, the CBS Bureau Chief had been throughout the house, and thus aware that there was NO basement—so therefore, any claims that terrorists “were hanging from the ceiling in a basement” or “by their feet in a basement” were made negligently and with reckless disregard of the truth. CBS also had eyewitness and video evidence directly refuting the charges that ANY terrorists were hanging from any ceiling. Furthermore, CBS had either actual disbelief or serious doubts that any torture had been conducted. CBS had seen Idema’s questioning techniques and level of terrorist cooperation and was aware there was no torture being conducted. CBS also had knowledge that these “innocent Afghans” were in fact terrorists. CBS had videotapes in their possession that confirmed, among other things, that: a) the detainees were terrorists, b) there was no torture, and c) Idema and his men were innocent of the false charges alleged by Jalali and Mashal.

144. However, when the story started to break after July 6, 2004, CBS withheld this exculpatory information and continued to falsely report the same story that other news agencies were reporting. CBS published those false statements about Idema negligently and with a reckless disregard for the truth. CBS withheld exculpatory evidence which would have aided Idema and his men who had been falsely accused by Jalali and Mashal. Upon information and belief, CBS executives met and decided that the “Jalali version,” regardless of how disingenuous it was, was in line with CBS’ Abu Ghraib reporting and therefore a “better” story for CBS.

145. Upon information and belief, CBS specifically prevented CBS Radio News from airing exculpatory information they had obtained from the Kabul bureau chief because it would have revealed CBS was present at the compound while the terrorists were there, and implicated CBS in what could be a “scandalous” story.

146. This withholding of information and knowingly false reporting by CBS caused other news agencies to continue to rely on false information and anonymous sources instead of facts and conceal the identity of those sources so they could not be refuted or disputed. CBS’ primary anonymous source was Mashal, who Carlotta Gall at the NY Times described as the most unreliable source in Afghanistan and who Gall stated had “repeatedly lied” to her. Mashal’s unreliability was widespread knowledge and CBS not only knew Mashal was an unreliable source, but were in possession of actual evidence completely contradicting Mashal’s statements to CBS.

147. Because CBS employees had been present at the Task Force Saber compound, CBS knew that Jalali and Mashal’s statements about the conditions there were also false. Counter-defendants were present for terrorist interrogations, and saw each of the terrorists in custody and the conditions the terrorists were subjected to. Yet, CBS, negligently and with reckless disregard for the truth, falsely reported the story and published statements CBS knew were false, misleading, and defamatory.

148. Upon information and belief, when CBS reporter Laura Winter brought this to CBS’ attention, CBS not only ignored it, but began pressuring Winter. Upon information and belief, CBS ordered Winter not to report the presence of CBS employees in the Task Force Saber compound or what those CBS employees had seen.

149. Upon information and belief, Tod Robberson, at the *Dallas Morning News*, called CBS and made false allegations about Winter and Idema. CBS used this as an excuse to promptly fire Winter from CBS Radio and prevent her from reporting what had really occurred in the Task Force Saber compound. With Winter fired and out of the way CBS continued to discredit Idema and his team.

150. According to one source, CBS discussed the benefits of the false story. With Idema in a third-world Afghan prison, unable to access his attorneys, CBS would be free to broadcast the *VideoX Tapes* in violation of their contracts with impunity, and conceal CBS' knowledge of the events at the SABER 7 compound.

151. By falsely reporting the events in the Afghan case against Idema and his team, CBS stood to profit immensely. The *8mm VideoX Tapes* were of great value to all networks, especially to CBS who was falling behind FOX News in their news coverage of the wars in Iraq and Afghanistan. Any networks' ability to usurp dominion and control over the *8mm VideoX al-Qaida Tapes* was and is paramount to increasing their ratings based on powerful and moving images of al-Qaida terrorists then and now.

152. CBS had an ethical and legal responsibility to provide exculpatory evidence to authorities under CBS' mandatory news reporting guidelines, entitled "CBS NEWS STANDARDS" and signed into mandatory practices for all CBS employees in February 1999 by CBS News president Andrew Heyward. Those guidelines, discuss providing information to law enforcement authorities on page II-5:

"However, there may be cases where overriding considerations dictate that we give this information [discovered during the course of news gathering] to an appropriate law-enforcement agency. Therefore, all such information about crimes or potential crimes should be brought immediately to the attention of the CBS Law Department and to CBS News management."

153. CBS therefore had a duty to disclose the exculpatory information they withheld to Afghan government authorities, counter-plaintiffs' defense counsel in their Afghan case, and to include this information in each and every one of their news reports about Idema's Afghan case on CBS News, CBS Radio, and the CBS website.

154. CBS acted wrongfully and engaged in defamation, libel, slander, and libel *per se*, by negligently and recklessly republishing false statements by Mashal, Jalali, terrorists, and others, which CBS knew firsthand to be false.