

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

Affirmation in Support of Motion

Case No. 04-CR-402 (TJM)

YASSIN MUHIDDIN AREF and
MOHAMMED MOSHARREF HOSSAIN

KEVIN A. LUIBRAND, being an attorney duly admitted to practice before the courts of the State of New York, states and affirms the following under penalty of perjury:

1. Affirmant is of counsel to the law firm of Tobin and Dempf, LLP, and is admitted to practice before the United States District Court for the Northern District of New York and the United States Court of Appeals for the Second Circuit, is counsel to defendant Mohammed Mosharref Hossain, and submits this affirmation in support of defendant Hossain's motion for an order precluding the testimony of Evan Kohlmann insofar as relates to Jamaat-e-Islami (hereinafter referred to as "JEI"), and an order striking from the record portions of the audio-recorded conversation for February 13, 2004.

2. At the audio-recorded transcript of February 13, 2004, a conversation between defendant Hossain and Malik occurred that reads as follows:

MH: I told you before and I'm saying it now, we are the members of Jamaat-e-Islami.

CW: Of what?

MH: Jamaat-e-Islami.

[Government Trial Exhibit]¹

3. In the original expert disclosure, the government stated that its expert, Rohan Gunaratna, would testify as to the following with respect to JIB:

*16.1 Jamaat-e-Islami **Bangladesh** (JIB, also referred to as 'Jamaat') is the largest and most influential Islamic party in Bangladesh. In the last general election of 2001, it secured 18 seats (among 300 seats) in the parliament and was awarded 2 ministries for its role in the formation of the four-party alliance that gained a landslide victory in the 2001 Parliamentary Election. Today the **BNP-Jamaat** alliance enjoys a two-third majority in the Parliament.*

*16.2 Jamaat-e-Islami was founded in pre-partition India by Syed Ab'ul Ala Maudidi in 1941. Maulana Maududi moved to Pakistan from India after independence and the current party in **Bangladesh** originated out of the East Pakistan wing of the party. According to some Bangladeshi scholars, **JIB's** political strategy is based on four components. The first component is an adherence to Islam and Islamic values, and to work towards laying the foundation for authoritarian hierarchical structures with its own leadership at the helm. The second component is based on compromises and accommodation with the established democratic order – which according to some scholars run counter to the first component. The third component is a network of social, educational, informational and economic institutions, aimed at providing social services to the deprived community, and to favourably juxtapose its institutions with the corruption and inefficiency of those of Bangali government institutes. The final component of **JIB's** programme is aimed at establishing satellites and proxies – believed to include terrorist group Jamatul Mujahideen, although **JIB** denies any connection with this militant group. According to some analysts, **JIB** serves as a recruitment channel for more radical organizations in **Bangladesh**.*

16.3 The key Jihad groups in Bangladesh are Harkat-ul-Jihad-al-Islami (HuJI), Jagrata Muslim Janata Bangladesh (JMJB) and Jama'atul Mujahideen Bangladesh (JMB). Their cadres are drawn from about 64,000 Madrasas, Islamic Chatra Shibir, and over 100,000 Rohingya refugees, many of whom live on the lands forcibly appropriated from indigenous Jumma peoples. Regarding the JMB, which first came to prominence in 2002, it is alleged to operate in 57 districts across Bangladesh. According to regional sources, the group is able to call on roughly 10,000 full-time and 100,000 part-time

¹ On February 25, 2004, there is a conversation in which Mohammed Hossain notes that he is a member of JEI in Bangladesh (“JIB”). Mohammed Hossain is from Bangladesh and there is no connection between he and any other JEI.

*cadres and has recently formed a 2,000-strong suicide squad. Similarly, Hull is reported to have 15,000 members, of whom 2,000 are described as hardcore. Media reports and political statements by Bangladeshi opposition figures link these Jihadi groups with the active religio-political organizations, like **JIB**, Islami Oikya Jote and some charitable organizations from Middle East. Investigations in the August 17, 2005 bombings have revealed the role of the **JIB**. A number of arrested members of the Jihadi groups reportedly confessed to having close ties with **JIB**. The political opposition, led by the Awami League of Begum Hasina Wajid, accuse **JIB** of promoting the reign of terror in the country through radicalization and imposition of Islamic law. Another opinion, which exists among the bureaucracy and civil society is that even if **JIB** is not directly responsible for acts of terrorism, its very inclusion in the government had encouraged radical Islamist groups to feel protected by the government to some degree.*

Annexed hereto and made a part hereof as Exhibit "A" is a copy of the excerpt from the report of Rohan Gunaratna as relates to JIB. Rohan Gunaratna was not disclosed to testify with respect to any other JEI group or from any other country.

4. Affirmant was prepared to cross-examine Rohan Gunaratna on his JIB opinions and the basis therefore shown in his reports. By way of summary, his sources are not accurate, and he had made improper references to the role of JIB within Bangladesh.

5. On September 24, 2006, the government substituted expert Evan Kohlmann in place of Rohan Gunaratna, and he prepared and submitted a report. In the one paragraph that he devotes to JEI, he does not talk about JEI Bangladesh, but rather switches to JEI generally, which is an organization which is markedly different in different countries.

6. On September 25, 2006, Evan Kohlmann was questioned about his expertise in **JIB**. Annexed hereto and made a part hereof as Exhibit "B" is an extract of the September 25, 2006 deposition testimony of Evan Kohlmann.

7. Evan Kohlmann described his background with respect to JEI Bangladesh as follows:

Q: *And have you written any papers on the topic of JEI Bangladesh?*

A: **No.**

[Exhibit "C" at page 91 line 1 through page 91 line 3]

Q: *And have you ever been interviewed on MSNBC or NBC news on the topic of JEI Bangladesh?*

A: **No.**

[Exhibit "C" at page 91 line 16 through page 91 line 18]

Q: *Have you ever interviewed any members of JEI Bangladesh?*

A: **No.**

[Exhibit "C" at page 98 line 8 through page 98 line 10]

8. With respect to his knowledge of political organizations in Bangladesh, including JIB,

Evan Kohlmann testified to the following:

Q: *How many political parties are there in Bangladesh?*

A: *Off the top of my head, I really couldn't tell you.*

[Exhibit "C" at page 86 line 23 through page 87 line 1]

Q: *Who is the current prime minister of Bangladesh?*

A: **I don't know.**

Q: *Who was the prime minister in 2003?*

A: **Don't know.**

Q: *Who was the leader of JEI in 2003?*

A: *In Bangladesh?*

Q: *In Bangladesh.*

A: **I am sorry, I don't know.**

Q: *Did JEI Bangladesh have a platform for its political party in 2003?*

A: *When you say platform, a written platform?*

Q: *Yes.*

A: **I don't have a copy if they did.**

Q: **Have you ever seen it?**

A: **No.**

Q: **Have you ever been to Bangladesh?**

A: **No.**

[Exhibit "C" at page 87 line 8 through page 88 line 1]

Q: *Do you know what role, if any, JEI Bangladesh has in the current Bangladeshi government?*

A: *I believe that they're a minority party involved in parliament. I know they're active politically, in terms of acquiring more seats, but I couldn't tell you more than that.*

[Exhibit "C" at page 88 line 5 through page 88 line 10]

Q: *What role, if any, does JEI Bangladesh have in the current executive branch for the Bangladesh government?*

A: *It's, I believe again, a minority involved in parliament, but I **don't know about that**, the executive powers.*

Q: *Does JEI have any role in the actual running of the Bangladeshi government?*

A: *Well, informally. But, formally, again, I **don't know**.*

[Exhibit "C" at page 88 line 20 through page 89 line 3]

Q: *Are there any elected JEI Bangladesh officials in the Bangladeshi government?*

A: *I **don't know**.*

[Exhibit "C" at page 89 line 14 through page 89 line 16]

Q: *Can you name any of the major political parties in Bangladesh from the year 2000 to the year 2004?*

A: *Other than Jamaat-e-Islami?*

Q: *Yes.*

A: *That's -- I'm not familiar off the top of my head.*

[Exhibit "C" at page 98 line 12 through page 98 line 16]

Q: *Have you ever heard of an organization known as the Bangladesh National Party?*

A: ***Vaguely.***

Q: *Do you know what it is?*

A: *I'm assuming it's a political party, but, again -- **the name vaguely sounds familiar**, but . . .*

Q: *Do you know what, if anything, it stands for politically within Bangladesh?*

A: ***Sorry, can't tell ya.***

Q: *You can't tell me because you don't know?*

A: *I **don't know off the top of my head**.*

[Exhibit "C" at page 98 line 17 through page 99 line 2]

9. Evan Kohlmann is not an expert with respect to JEI Bangladesh, and there has been no basis formed for him to testify in any fashion with respect to JEI Bangladesh.

10. Evan Kohlmann revealed that he has no basis to form any opinions with respect to JEI Bangladesh, or to explain JEI Bangladesh to the jury, based upon his expertise in the topic of JEI Bangladesh.

11. The report of Rohan Gunaratna was limited to JIB - which made perfect sense because Mohammed Hossain's associates himself politically with JIB. But JEI outside of Bangladesh generally was not part of what the defense reasonably expected to address, because Rohan Gunaratna did not address it and particularly where the government focused on JIB in the original report. In addition, Mohammed Hossain stated in the transcript his association with JIB.

12. At the eleventh hour, the government substituted Rohan Gunaratna with Evan Kohlmann, who has no basis to express an opinion with respect to JEI Bangladesh.

13. Now, the government may be apparently using the substitution to switch organizations from JEI Bangladesh to JEI, internationally, which the government did not disclose in the original Rohan Gunaratna report.

14. The evidentiary threshold that permitted the transcript to come into evidence is evaporated.

15. Defendant Hossain reasonably relied upon the expectation that Rohan Gunaratna would testify based solely upon his report, as there had been no issue raised with respect to Rohan Gunaratna's testimony until beginning September 21, 2006.

16. With the government unable to present expert testimony with respect to JEI Bangladesh, the identification and association of defendant Hossain with this organization is prejudicial.

17. Defendant Hossain respectfully requests that Evan Kohlmann be found to not be an expert in JEI Bangladesh, that he be precluded from testifying with respect to JEI Bangladesh or JEI, and that the translated February 13, 2004 exchange in which defendant Hossain and Malik discuss JEI Bangladesh be removed as an exhibit, and that the government be barred from referring to JEI Bangladesh and/or defendant Hossain's purported association with the group in summation.

Dated: September 26, 2004

Kevin A. Luibrand