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On the case in Tora Bora

By Philip Smucker
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KUNAR PROVINCE, Afghanistan - I was at home last month in Virginia packing my bags for an embed with the 10th Mountain Division along Afghanistan's porous Afghanistan-Pakistan border. After seven-and-one-half years, I wasn't expecting to get a phone call from a lawyer representing anyone from Tora Bora.

As a journalist, I had worked that story and squeezed it for all of its sordid value. My trusted guide and interpreter from those heady days in 2001, Lutfullah Mashal, had moved on to become a senior intelligence officer in Kabul and then, last year, governor of one of Afghanistan's Pashtun provinces. We were - like a lot of old associates - now just good friends on Facebook.

Lutfullah and I had always joked about catching Osama bin Laden ourselves, but so many years later the prospect of the US military reigning in the 9/11 terror chief, sounded like an overused joke. Besides, Bin Laden was still in Pakistan's tribal areas, likely under the protection of Pashtun tribesmen.

Then came an odd phone call from an American attorney named Matthew Dodge who was calling on behalf of Awal Gul, an Afghan being held in Guantanamo Bay.

"Hi, this is a little awkward for me," began Dodge, who explained that he was from a law firm known as the Federal Defender Program out of Atlanta, Georgia. "I've been reading some of your reporting from the battle of Tora Bora and I'm hoping to ask you some questions about my client, Awal Gul."

"Yes," I said. "I remember him."

"I can't really disclose the actual charges against him due to federal laws, but I'm aware that you might know him and I would like to ask you some specific questions." Dodge sounded poised to

defend his client, for better or for worse.

I guessed that it wasn't easy defending a character as unsavory as Awal Gul, but, in the American justice system, somebody has to do it. Dodge wanted me to provide signed testimony, but I wasn't keen on that, so he shot me a series of questions. He said that they were "crucial to the case and to Mr Gul's fate". As he explained it to me, his client's defense would hang on whether he could prove a negative that his client had not aided and abetted the escape of Bin Laden from Tora Bora in late 2001. Dodge is scheduled to brief the court on the Gul case on April 20.

As a military "emir", or commander, for the Taliban, Gul had helped oversee a cruel and inhumane system in eastern Afghanistan for nearly 10 years. In mid-November of 2001, about a week after arriving in Jallalabad in a convoy of a pro-American warlord, Haji Zaman Ghamsharik, I had discovered that Gul was in control of the desert road that connected Jallalabad to Tora Bora in the Spinghar Mountains.

Indeed, when we probed further amid often heavy bombing of that old anti-Soviet redoubt, a heavy-set Sudanese commander for Gul, Haji Jamal had boasted to us that he controlled the supply lines to Bin Laden in Tora Bora.

But already, Bin Laden was laying the groundwork for what would be a Svengali-like getaway. At his last meeting in Jallalabad, a couple of days before our arrival on November 15, Bin Laden had entered the Taliban intelligence headquarters in town with an entourage of guards for a dinner of tribal chieftains.

At that dinner, Bin Laden had asked for assistance in the struggle against the Americans, which he compared to the fight against the Soviets in the 1980s. He gave the chiefs at the dinner an envelope of money equal to the size of the clan they controlled, effectively ensuring his own escape from beneath the wings of American bombers in the days ahead.

Far more important than Gul to this meeting, however, was Mujahid, the former director of the Islamic institute where the Taliban intelligence headquarters was located. He was the Gulf-educated son of Younus Khalis, a legendary mujahid chief who had backed the Taliban and befriended Bin Laden, even offering him a home in Jallalabad.

The red-bearded and sharp-tongued Khalis, whose anti-Soviet fighters used to pull him along on a snow sled, was also the power behind Gul. Within days of our arrival in Jallalabad in late 2001, we had watched Khalis' sons help the old "Muj" leader hobble into a key meeting of Afghanistan's eastern *shura*, even as the Central Intelligence Agency was still spreading its tentacles in Jallalabad, trying desperately to determine Bin Laden's whereabouts. Khalis and his son, Mujahid, already knew where Bin Laden was, because they had arranged his exodus from the city on November 12 and 13.

The US government had long known the decrepit old warrior and his wily dealings. It was Khalis, who with a small entourage of Afghan friends of al-Qaeda, met Bin Laden when he returned to Afghanistan from Africa. Bin Laden had flown into Jalalabad in 1996 from Sudan. His eldest son, Mujahid, was his link to the devout Bin Laden and his lieutenants. He was fluent

in Arabic and helped set up an Islamic studies institute in downtown Jallalabad when the Taliban were in power.

Gul, like a few other military commanders in eastern Afghanistan, had thuggish tendencies and was something of a buffoon. He only controlled the road to Tora Bora and a few rusted-out T-55 Russian tanks. When the Taliban lost power, he merely allied himself with the new power in town, which happened to be on the American payroll.

In an effort to bring charges against Gul, the US government, represented by military prosecutors, has apparently hung its case on a claim that Bin Laden did not leave Tora Bora and slip south into Pakistan as all credible sources at Tora Bora claimed he did, but, instead, doubled back across the Jallalabad highway, which extends into Afghanistan from the Khyber Pass.

The US case insists that Bin Laden continued across the highway and fled north up through Kunar province and over a snowy pass into Pakistan. There is not a paper trail, but Gul is reported, according to US government claims, to have received some US\$100,000 from Bin Laden for the express purpose of "helping Arabs" leave the region. Presumably, that pay-off, if it did take place, (in which case, it was probably a much smaller fee) was part of a large financial package that Bin Laden used to pave the way for his departure and chance to fight another day.

Ironically, the US government's case, if proven "true" in the court of law, would upend assertions of the American commanding general in Afghanistan at the time of Tora Bora, Tommy Franks, who insisted vociferously before and after he retired that the US military had no concrete evidence that Bin Laden was even present at Tora Bora. (Reality check: US military prosecutors can't have it both ways. Either they drop their case, or Franks has to eat crow.)

The case against Gul has been crafted over the past seven years based on dubious testimony and confessions - mostly from within US detention centers, including Guantanamo Bay. It is worth pointing out that Gul was first detained in early 2002 near Jallalabad on far different charges, which included US government allegations that he trained on Stinger missile, met on three occasions with Bin Laden and served as a military commander for the Taliban.

Dodge is building a considerable case in defense of his client. He has read a book I wrote in 2004, *Al-Qaeda's Great Escape: The Military and the Media on Terror's Trail*, in which I describe the dealings of the US-backed, "laughing warlord" Hazret Ali with a double-agent, Ilyas Khel, who Ali admitted took US assistance and helped Bin Laden escape.

The Atlanta-based attorney has also combed through the account of a Central Intelligence Agency team leader, Gary Berntsen, which hangs much of the blame for Bin Laden's exodus - falsely, I believe - on another warlord Haji Zaman Ghamsharik, who, rather than assist the slender Saudi sheikh, was an excellent source of Bin Laden's stealth movements for many journalists during the battle of Tora Bora.

Ilyas Khel, a cowardly, double-crossing character, who received several thousand American dollars and a satellite phone, for his trouble, did not stick around after the battle of Tora Bora. He fled with Bin Laden to Pakistan's tribal areas, far beyond the reach of American prosecutors. It

had been Khel who had come to Hazret Ali two weeks before the battle of Tora Bora and asked for a job, after having worked as a "sub-commander" for the Taliban emir, Awal Gul.

Ali, an illiterate peasant incapable of making distinctions between friend and foe, hired Khel immediately to work for him, entrusting him, as it turns out, with one of the most importing "blocking" tasks during the efforts to capture Bin Laden. Indeed, Gul claims that Ali had also asked him to work for him as well, rather than surrender to the Americans, a deal he also accepted, according to Dodge, prior to the battle of Tora Bora. It is important to remember that Ali was a fool, "but he was our fool", as one US Special Forces commander later told me.

Dodge is determined to prove that Ilyas Khel was no longer working for Gul when he assisted Bin Laden in his escape by running cover for him with a small contingent of fighters along the Pakistani border. He points out, in Gul's defense, that his client was standing around for everyone to see and talk to during the battle of Tora Bora. He certainly had not been the shy type.

Lutfullah and I interviewed him on a rooftop as the bombs were raining down on al-Qaeda's Tora Bora stronghold. He was in his element and in the middle of several dozen pro-American fighters, who were charging up a hill in the direction of one of al-Qaeda's last bunkers. Gul, who used triple-knit underwear to hold in his ballooning gut, rippled all over with laughter when we asked how Bin Laden had managed to slip the American-Afghan noose.

He told us that "Bin Laden has many friends" and argued vehemently that the Americans would never catch him. As he spoke to us that day, it was clear that he sympathized with Bin Laden, but it was also clear that he was not in a position, standing as he was with so many fighters and about 100 amused journalists, to be giving direct assistance to Bin Laden. That is not a guarantee, however, that he did not have any of his henchmen on the job.

So confident that there was no "smoking gun" pointing to his assistance to Bin Laden, Gul would meet voluntarily with US military personnel in the Jallalabad area several weeks after the battle of Tora Bora, Dodge insists. The earliest and most substantive evidence of Bin Laden's exfiltration route into Pakistan was revealed through a daring interview conducted by my colleague Lutfullah near to Tora Bora with a Saudi associate of Bin Laden, who contended in our story (that required being blindfolded and then beaten to obtain) that Bin Laden fled in late November and early December into the Pakistani town of Paracinar.

After pulling back from the front lines and fleeing his own bunker, he had stepped south into the small peninsula of Pakistan that juts into Afghanistan at that point on the map.

But Bin Laden and his Taliban associates were always in firm control of the battle space at Tora Bora, despite the millions of dollars tossed around by the CIA and the mega-tonnage of bombs dropped from 3,300 meters. The Saudi sheikh, displaying the same savvy it took to plan 9/11, paved his own exit, plain and simple with guns and money.

No one person is ultimately responsible for helping him flee. More culpable - albeit still unaccountable to the US taxpayer - in Bin Laden's unimpeded exit was the US commander in

chief in his office's refusal to send the crack troops when the time was ripe. (Both Berntsen and I estimate that some 5,000 well-trained US warriors would have turned the tables on the terror chief, dealing a knock-out blow from which al-Qaeda would never have recovered.)

The power base that Bin Laden used to buy local support in eastern Afghanistan was that of the old red fox, Yunus Khalis. His son Mujahid had been at Bin Laden's side when he and his hard core fighters decided to withdraw from Jalalabad to Tora Bora on a wretched, bomb-filled night in mid-November 2001.

A convoy of Arabs, Chechens and Taliban fighters fled to that now infamous redoubt, which had already been reinforced by al-Qaeda's henchmen. The strength of al-Qaeda's alliances with Khalis and the Taliban reverberates even today in the form of Mujahid's role as head of a movement called the "Tora Bora Front".