

# AS FRAUD HISTORY EMERGES FOR BALES, US PUSHES FISA COURT AS IDEAL FOR AFGHAN NIGHT RAID APPROVAL

The background for Staff Sergeant Robert Bales, the suspect in the mass killing of civilians in Afghanistan last week, became much murkier with the revelation that his career as an investment manager ended in a judgment of \$1.4 million against him for fraud. He was accused of “churning” a client’s retirement account, selling off holdings in safer investments to purchase more volatile penny stocks. In the meantime, the fallout from the attack continues, as the US continues its effort to reach a SOFA agreement with Afghanistan ahead of the NATO summit in Chicago scheduled for May. The latest offering appears to be establishment of a system in which Afghan judges would be put into position to approve “warrants” before night raids take place. Deputy National Security Adviser Denis McDonough took to the airwaves on NPR this morning to hold up the US FISA court as the shining example on which the Afghan system should be modeled.

In this morning’s Washington Post, we get quite a few details on the fraud case against Bales. The former client, Gary Liebschner, had employed the firm Bales worked for to manage his retirement account:

That is not the man that Liebschner said he dealt with when Bales was much younger and listed as the “investment executive” on his retirement account. The fund held stock that Liebschner had inherited and earned during his AT&T days, as well as other investments.

/snip/

A severe reaction to medication left Liebschner hospitalized and in a rehabilitation center from November 1998 until June 1999. At the time, his wife, Janet, who took time off from her nursing job, was pressed for money to cover car and mortgage payments, as well as the cost of renovations to their home to make it wheelchair-accessible, she said.

She hadn't previously been in charge of the couple's finances, she said, but after she began to examine account statements, she realized that the fund had been severely depleted.

Her husband's retirement account had nearly \$700,000 in 1998, his statements show. By early 2000, the fund had about \$30,000 in it.

That is an appallingly bad job of investment management, and it is easy to see how a finding of fraud was found against Bales and the firm for which he worked. A big caveat here, though, is whether Janet Liebschner withdrew funds to cover the home renovation and other expenses listed, and if so, how much was withdrawn. We don't have the exact dates of when the account sat at about \$700,000 or when it was found to be depleted, but the period of 1998 through 2000 was fairly robust for investments. Below is a chart of the Dow Jones Industrial Average from the beginning of 1998 through the end of 2000. There was a dip in mid-1998 that gave up the gains from earlier that year, but then from the fall of 1998 through the end of 2000, the market advanced by roughly 33%, from about 7500 to about 10,000:



Google Charts plot of Dow Jones Industrial Average, 1998-2000.

In order to deplete the account so completely during a period in which the market was doing so well, it appears that the churning had to consist of selling the original holdings only to buy stocks that underperformed the market by a very large amount. Considering the reports on Bales' current financial difficulties, it does not appear that he stole the money outright, so the accusation that the churning took place primarily to generate brokers' fees seems to fit.

Meanwhile, we learn from Reuters that the US is continuing its quest to somehow extend the practice of night raids even though they are the primary point of friction between the US and Afghan governments. The latest effort now appears to center on the creation of Afghan courts to review "warrants" for the raids:

With Karzai demanding a stop to night raids hated by Afghans, but seen by NATO as one of their most effective anti-insurgent tactics, a U.S. official said the United States was looking at modifying them and giving Afghans more oversight.

That would help seal agreement on a strategic pact with Karzai's government for a long-term U.S. presence in Afghanistan beyond a 2014 deadline for most NATO combat forces to withdraw, allowing advisers and possibly some special forces to stay on.

The Obama government was discussing options with the Afghans including a

warrant-based approach or possibly allowing Afghan judges to review raids before they took place, the U.S. official said on Monday, speaking on condition of anonymity because of the sensitivity of the negotiations.

To help push this concept, the Obama administration sent Deputy National Security Adviser Denis McDonough to speak with NPR this morning. The interview can be heard here. McDonough holds up the FISA court system in the US as the example he thinks a court for reviewing night raid warrants in Afghanistan should emulate.

To me, suggesting the FISA court as an example for the night raid court system is just one more inept move by the Obama administration. The FISA court, operating in secret, approves every warrant submitted and the government is quite effective in covering up errors that the court makes by invoking state secrets whenever challenged. When a night raid goes wrong, however, the damage done will still be entirely public and incontrovertible. There simply is no way to cover up a mistake in approving a raid that turns out to be improperly targeted and so this Afghan court system will be held to a level of accountability far beyond the total lack of accountability for the FISA courts.