

Summarized Administrative Review Board Detainee Statement

The Presiding Officer read the hearing instructions to the Detainee and confirmed that he understood. When asked if he had any questions concerning the Administrative Review Board process, the Detainee asked the following question:

Detainee: How many sessions do we have?

Presiding Officer: This will be the only session.

Detainee: Is there a classified session?

Presiding Officer: There is a classified portion, but you will not be allowed participate.

Detainee: I don't have anything else.

The Assisting Military Officer presented Exhibit EC-A, the Enemy Combatant Notification Form to the Administrative Review Board.

The Assisting Military Officer presented Exhibit EC-B, the Enemy Combatant Election Form to the ARB.

The Designated Military Officer presented Exhibit DMO-1, the Unclassified Summary of Information to the Administrative Review Board.

The Designated Military Officer gave a brief description of the contents of Exhibit DMO-1, the Unclassified Summary of Information to the ARB.

The Designated Military Officer confirmed that he had no additional unclassified information to present.

The Presiding Officer opened the Administrative Review Board to the Detainee to present information with the assistance of the Assisting Military Officer.

Assisting Military Officer: For the record, I want to note that during my initial interview with the Detainee, he informed me that he would not make his decision until the morning of the Administrative Review Board to attend. It is evident that he has chosen to attend this morning. I am not aware of any written statements that he has prepared, it is evident, however, that he does wish to address the board orally and shortly. I also took notes during our initial interview and I would like to make some responses to the unclassified summary evidence.

3.a.2. Arbaysh trained at al Farouq; a known al Qaida training camp.

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Assisting Military Officer: The Detainee stated that he previously told his CSRT Personal Representative that he did train at al Farouq, but did not realize that it was an al Qaida training camp.

3.b.1. Arbaysh traveled the front lines in Tora Bora in order to fight the Northern Alliance.

Assisting Military Officer: The Detainee denies he traveled to the front lines, but agrees he was in Tora Bora during the time the fighting occurred. His reason for being in Tora Bora was that he was simply passing through on his way to Pakistan.

3.c. Arbaysh is an al Qaida/Taliban member.

Assisting Military Officer: The Detainee denied being a member of al Qaida or the Taliban. I have nothing else to report on our interview, sir.

Presiding Officer: Thank you. Ibrahimj Arbaysh, would you like to make an oral statement?

Detainee: I would like to ask if traveling to fight jihad is an accusation?

Presiding Officer: It is a statement. Also, if you would like to make an oral statement, would you like to do so under oath?

Detainee: I do not understand.

Presiding Officer: What do you not understand? Would you like to take an oath?

Detainee: Is it going to benefit me?

Presiding Officer: It is up to you if you desire to take an oath. If not, we will proceed.

Assisting Military Officer: Sir, may I interject something?

Detainee: I do not want.

Assisting Military Officer: If I may, sir. During my interview, the phrase that I used was he would be asked whether he wanted to make an oath, and that his answers were truthful. That might be a better way to phrase it so that he is aware of what you are asking.

Detainee: My answer is no. I do not want to take an oath. Is that an accusation against me?

Presiding Officer: Ibrahimj Arbaysh, you may begin.

Detainee: Is training to fight for jihad an accusation against me?

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Presiding Officer: It is a statement that was determined from your Tribunal.

Detainee: Is that a statement that a person will be prosecuted for?

Presiding Officer: I don't know the answer to that.

Detainee: Who would know the answer?

Presiding Officer: I don't know the answer. The purpose of this proceeding is to determine if you should be released or remain in custody. It has previously been determined that you are an Enemy Combatant. Those facts have already been discussed.

Detainee: But that statement is mentioned as one of the points against me. Is that one of the points against me or not?

Presiding Officer: It is a point against you.

Detainee: It's against me?

Presiding Officer: It's against you.

Detainee: Based on that point I am a threat to the United States?

Presiding Officer: That decision has not been made yet. That is what this board is for, to decide if you are a continued threat.

Detainee: Why mention that point with the points that are supporting continuing to detain me?

Presiding Officer: This is information that was used to determine if you were an Enemy Combatant in your previous Tribunal.

Detainee: Whoever trains for jihad is considered to be a threat against the United States and its allies?

Presiding Officer: I cannot say that. I need to hear from you if you consider yourself a threat.

Detainee: For sure [I am] not.

Presiding Officer: Tell this board why we should consider your release.

Detainee: I would like to ask the members why continue to detain me? Why should I be detained?

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Presiding Officer: If you are considered to be a continued threat, you will be detained. If you are not considered a threat, we will recommend release. But I need to know from you why we should consider you being released.

Detainee: In the world international courts the person is innocent until he is proven guilty. Why here is the person guilty until he is proven innocent?

Presiding Officer: This is not a legal proceeding. This is not a court. This an administrative review to determine whether you should be released or detained.

Detainee: How can this board decide that I am a continuous threat if they don't have evidence that I am a continuous threat against the United States?

Presiding Officer: The evidence that I have was presented to me, and you saw it, it was the unclassified summary.

Detainee: Like I said before, if a jihad, for God is willing, is considered to be a threat to the United States, then all Muslims are a threat to the United States. The jihad for one million four hundred years is considered to be a message from Islam to all the Muslims. It is a duty to all Muslims. When I entered al Farouq training camp, I did not know al Farouq training camp belonged to al Qaida. If I entered a suspected house, and I did not know the house was suspected of something, is that a crime against me?

Presiding Officer: Why were you at al Farouq?

Detainee: To train for the jihad for God.

Presiding Officer: Who did you train to fight?

Detainee: Whoever fights Muslims.

Presiding Officer: Do you have any further comments that you wish to make?

3.c.1. Arbaysh's name was found listed on a document found on the ALNEDA-internet site on 20 July 2002. It contained information regarding the capture of Taliban and al Qaida fighters who had crossed the border in Nangarhar province after the 11 September 2001 retaliation.

Detainee: My name being found on the ALNEDA website; is that proof against me?

Presiding Officer: It is a factor for your continued detention, yes.

Detainee: Who put my name in that place?

Presiding Officer: I don't have that answer. I do not know.

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Detainee: Someone should have asked before they put my name there.

Presiding Officer: You mean the name on the website?

Detainee: Yes. Maybe it was someone who wanted me to be accused of something, someone who wanted to get me into trouble.

Presiding Officer: Thank you for telling us. We will use that in our consideration.

Detainee: Who put my name on that computer?

Presiding Officer: I do not know.

Detainee: Maybe the person got my name off the internet or somewhere else, and put my name in there.

Presiding Officer: Do you know who might put your name in there?

Detainee: How would I know?

Presiding Officer: Do you have any other comments or statements you would like to make that we can use in consideration of your release?

Detainee: About my conduct; I did not understand some of the information that was mentioned previously in the meeting.

Presiding Officer: Assisting Military Officer, do you need to explain or re-read some of those statements to him?

Assisting Military Officer: No sir. However, I will provide some information that occurred after our initial interview with the Detainee. During the initial interview, the Unclassified Summary contained some information regarding his leading prayers and cross talking among the trailers in the camp in addition to his performing physical exercise in his cell block. I verified with the camp Detainee group that his conduct in relation to those activities was permitted. I edited those negative comments out of the Unclassified Summary, briefed the Designated Military Officer that those charges were not valid, and discussed those comments with the commander of the Detainee Operations Group who also concurred that the comments were not applicable. These are probably the comments that he is referring to that we initially briefed him on.

Presiding Officer: Are those the comments that you are referring to?

Detainee: Yes.

Assisting Military Officer: My point simply is, sir, regarding those comments we briefed him on, was that he was concerned that those were not accurate. He was correct, they were

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not accurate, and they were deleted as entries from the Unclassified Summary. Therefore, they are not pending against him in any way.

Presiding Officer: The board will take that into consideration.

Detainee: The rest of the points dealing with conduct of the Detainee; can you repeat that for me?

Assisting Military Officer: Yes sir. May I interject? He is referring to the Unclassified Summary of Evidence that refers to his resisting being moved from the cellblock. That would be paragraph 3.D.

Presiding Officer: Can you read that for the record so he knows what you are talking about?

3.d. Detainee's Conduct: Arbaysh has a past history of passive aggressive behavior. The Detainee has failed to comply with requirements to exit the cell and mild force was required. Other than the two forced cell extractions the Detainee has only assaulted guards on two other occasions.

The Assisting Military Officer read paragraph 3.d.

Detainee: The incident with the two guards was an assault; they assaulted me. Any person who gets assaulted would do something back. There will be a reaction.

Presiding Officer: So you are denying that this happened?

Detainee: It did happen?

Administrative Review Board Member: It did happen?

Detainee: Yes, it happened. I threw water at them.

Presiding Officer: Do you have any other comments?

Detainee: Honestly, I didn't think of making a statement to defend myself. I wasn't prepared.

Presiding Officer: You don't need to defend yourself. You need to tell us why you are no longer a threat; if released, and what guarantees can you give this board that you won't do harm to the United States or any of its allies?

Detainee: I think if an angel comes down from Heaven and tells that I'm not a threat to the United States or its allies, you would still think that I am a threat based on the secret information in your files. When I asked what is the classified information in the files, it could be anything. It could be a tissue that someone wiped their nose with and threw in the

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garbage. It could be anything. Those accusations on that piece of paper (referring to the Unclassified Summary of Evidence) are not enough to accuse anyone. If the United States thinks that those accusations are enough to make someone a threat against them, they should arrest millions of human beings all over the world. It appears to be that whoever wrote those accusations had to make some unlawful accusations and untrue to legalize my detention. He did not find anything else but those accusations, so anything that he found or made up he wrote it down. I think that those accusations mean that if we arrest a person because he is tall or short it's based on height. This session in my view is just an act. It's not going to benefit me one way or the other. The result is going to be that I am a continuous threat against the United States and its allies.

Presiding Officer: That decision has not been made yet by this board.

Detainee: This is just like it was in the Tribunals when they decided I was an Enemy Combatant. It's the same thing. When I read the accusations from the Assisting Officer, I went back to my brothers in the detention facility and told them about the accusations, it was a very fun evening. We laughed a lot at those accusations until one of them said when heard those points that this how they hook anyone up, and when will they decide? When will the report come?

Presiding Officer: I do not have an answer for you on when the decision will be made. The recommendation goes up the chain of command and that's all I can tell you. I do not know the time.

Detainee: About when will the answer come back?

Presiding Officer: I don't have an answer. Ibrahimj Arbaysh, does that conclude your statement?

Detainee: Will there be a court after this?

Presiding Officer: Not that I am aware of.

Detainee: I don't have anything else.

Presiding Officer: Assisting Military Officer, do you have any questions for the Detainee?

Assisting Military Officer: No, sir.

Presiding Officer: Designated Military Officer, do you have any questions for the Detainee?

Designated Military Officer: No, sir.

Presiding Officer: Do any Administrative Review Board Members have any questions for the Detainee?

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Administrative Review Board Members' questions

Q. To your best recollection how long of a period were you in Afghanistan?

A. I don't remember, but it was close to or about three months.

Q. You stated that you went to al Farouq to train to fight whoever fights Muslims; I would like to know if you think that the United States fights Muslims?

A. Before I mentioned that the United States is a partner with Saudi Arabia, so how could I consider it an enemy of Islam if it's a friend of Saudi Arabia?

Q. If you were released would you fight against the United States in jihad?

A. No.

Presiding Officer: Does the Designated Military Officer or Assisting Military Officer have any other information to present to this Administrative Review Board?

Assisting Military Officer: No, sir.

Designated Military Officer: No, sir. Sir, I think you explained the point that there will be a classified session following. For the record, I would like to make that request. I have no further unclassified information, but would like to request a closed session for the presentation of classified information.

The Presiding Officer determined that all unclassified had been presented and closed the open session of the Administrative Review Board.

Presiding Officer: Ibrahimj Arbaysh, you shall be notified of whether you will be detained further, transferred, or released upon completion of the review of these proceedings, and a decision by the Designated Civilian Official in Washington D.C.

Detainee: Transfer me where?

Presiding Officer: If the Designated Civilian Official determines that you should no longer be detained by the United States, you will be released or transferred to your home country or another country as soon as arrangements can be made. If the Designated Civilian Official determines that you should be continue to be detained, you may be eligible another Administrative Review Board in one year.

Detainee: To review what?

Presiding Officer: Another Administrative Review Board like what we had here today.

Detainee: It's going to look at if I'm a continuous threat or not?

Presiding Officer: Correct.

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Detainee: Is it possible that I am not a threat this year, and be considered a threat next year?

Presiding Officer: If you are considered not a threat there will be no board next year. You won't be here. But if you are considered to be a continued threat, then you will have a board in one year.

Detainee: Is it possible that if they consider me to be a threat this year, that next they might think I'm no longer a threat?

Presiding Officer: That is possible. I cannot predict the future. I cannot speculate.

Detainee: Today, if you decide that I am a threat based on my name being on the internet, and based on me going to Afghanistan, and so on, and next year you review the same information, are you going to say my name was not found on the internet, and I was not in Afghanistan? Will the information reverse?

Presiding Officer: I can't say what will happen. If you were to be detained, I can't say what's going to happen next year. I can't say if information will change. I can't if they will use the same information. I don't know the answer for that. I can't speculate.

Detainee: Like I said before, this is a funny act.

Presiding Officer: The open session of this Administrative Review Board hearing is adjourned.

AUTHENTICATION

I certify the material contained in this transcript is a true and accurate summary of the testimony given during the proceedings.



Captain, USN
Administrative Review Board Presiding Officer

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