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Summary of Administrative Review Board Proceedings for ISN 945

The Administrative Review Board was called to order.

The Designated Military Officer (DMO) was sworn.

The Board Reporter was sworn.

The Translator was sworn.

The Detainee entered the proceedings.

The Presiding Officer announced the convening authority and purpose of the Administrative Review Board proceedings.

The Administrative Review Board members were sworn.

The Assisting Military Officer (AMO) was sworn.

The Presiding Officer asked the Detainee if he wishes to make a statement under oath. (Muslim oath offered).

Detainee: Can I speak? I came to the meeting before and I am here now. I swore at that time and when Muslims swear, even if they are not right, for example if he swears that Cuba is his property, after the swearing it belongs to him. The last time I came here and swore and it did not help me. You did not release me and you did not do anything to me. If you want me to swear I will and when I swear that means that any problem that I have here will be solved.

Presiding Officer: Designated Military Officer please administer the appropriate oath.

Board Member: I don't think he wants to swear.

Presiding Officer: You do not have to take the oath if you do not want to. If you do not want to just say yes or no. We do not require you to take the oath. I understand you took it at the CSRT and this is a totally different process. We don't care whether you do or do not take the oath.

Detainee: I swore one time and that was enough. When I swear it does not matter to you guys.

Presiding Officer: Do you wish to take the oath?

Detainee: When I swore at the CSRT was that important or not?

Presiding Officer: Yes, it was very important.

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Detainee: I am a Muslim and when I swear one time that is enough for me.

Presiding Officer: The Detainee has declined to take the oath.

The Detainee declined taking the oath.

The Presiding Officer read the hearing instructions to the Detainee and confirmed that he understood.

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

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

Presiding Officer: Assisting Military Officer please read your comments from the Enemy Combatant Election Form.

Assisting Military Officer: The Detainee's ARB interview occurred on 09 September 2005 and lasted 92 minutes. After a review of the ARB's purpose and procedures, the Pashto translated Unclassified Summary of Evidence was read to the Detainee. When the Detainee was asked if he wanted to attend the ARB, present a written or oral statement, or have the AMO speak on his behalf, the Detainee stated, "At one point in my life I thought the American people were fair people and respected human rights and did not lie, but I have lost trust in America, and I will attend only if a representative of the International Commission of the Red Cross (ICRC) is present, to guarantee to me that you people are not lying about this ARB." I informed the Detainee that I, in my capacity as Assisting Military Officer, did not have the authority to grant that request but would see it was brought to the proper people for a decision. I again stressed upon him that it would be in his best interest to attend the ARB in person even if an ICRC member were not present. The Detainee was civil, and very cooperative during the interview. The Detainee elected to take with him a copy of the Pashto translated version of the Unclassified Summary of Evidence. Toward the end of the interview the Detainee asked if he could be allowed to think about attending the ARB and provide me an answer later. A follow-up interview was conducted on 12 September 2005 and lasted 28 minutes. The purpose of this interview was to allow the Detainee to submit documents on his behalf. The Detainee submitted one (1) letter as additional documentation to be presented before the ARB. A copy of this document was produced for translation, and the original letter returned to the Detainee. The Detainee was asked if he still wanted an ICRC representative present at the ARB. It was explained to the Detainee that he would be allowed the ICRC representative, but that he would need to request that via camp procedures. He stated that he would not require the ICRC representative and that he will attend the ARB in person. The Detainee was again offered assistance in preparing either a written or oral statement, or to have the Assisting Military Officer speak on his behalf, and he again declined.

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The Designated Military Officer presented the Unclassified Summary of Evidence, Exhibit DMO-1, and the FBI Redaction Memorandum, DMO-2, to the Administrative Review Board.

The Designated Military Officer stated that a copy of these exhibits had been previously distributed to the Assisting Military Officer.

The Presiding Officer noted from the Enemy Combatant Election Form that the Detainee did not elect how he would respond to the Unclassified Summary of Evidence.

Presiding Officer: Do you wish to comment at the end of the Unclassified Summary of Evidence or after each comment is made by the Designated Military Officer? It is not marked on Exhibit EC-B.

Detainee: Any way you would like me to answer.

Presiding Officer: It is up to you. You can answer after each [allegation] is presented or at the end of the entire summary. It is up to you.

Detainee: After each item is read.

Presiding Officer: You have chosen to answer the information in the Unclassified Summary of Evidence as it is presented is that correct?

Detainee: Yes sir.

The Designated Military Officer gave a brief description of the contents of the Unclassified Summary of Evidence, Exhibit DMO-1 to the Administrative Review Board to assist the Detainee with answering the statements.

Designated Military Officer: (3) The following primary factors favor continued detention: (3.a) Commitment: (3.a.1) The Detainee and three others were identified as planning terrorist attacks against United States forces in the Jalalabad area. Improvised explosive devices (IEDs) were made in Pakistan and transported to a military compound where these four men were going to use bicycles and motorcycles as delivery systems. A raid on the compound resulted in the discovery of the IEDs and associated material to include two bicycles and a motorcycle.

Detainee: When I was captured I did not have a bicycle and I did not have a motorcycle. I just had a government vehicle.

Designated Military Officer: (3.a.2) The IEDs were found in some bathrooms located adjacent to Qari Naqibullah's (aka Qari Naqib) room, both of the bathrooms were non-operational and used for storage.

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Detainee: I don't know about any explosive materials and I don't know Qari Naqib. Qari Naqib was an officer in the same compound that I was in. I don't know anything about him. That was the night I came to this compound and they captured me.

Designated Military Officer: (3.a.3) The other two individuals reportedly involved in the planned attack arrived at the compound before dark wearing civilian clothes and reportedly were the ones who transported the IEDs to the compound.

Detainee: I don't know.

Designated Military Officer: (3.a.4) The Detainee was very resistant and was in control of the IEDs at the time of capture. The Detainee admitted to spending some time at a madrassa in Pakistan.

Detainee: I don't know how to read the Koran and anyone who goes to a Madrassa the first thing they are able to do is read the Koran. When they go to the Madrassa their purpose is to learn the Koran.

Designated Military Officer: (3.a.5) The Detainee admitted that he was going to place the bombs the night before his arrest but was convinced to wait until morning. The Detainee is believed to have received training in al Qaida compounds in Pakistan.

Detainee: I was transferred by my commander's order and I went there and they gave me a vehicle to get there. My commander would not put bombs in my car to take there. That is not true.

Designated Military Officer: (3.a.6) The Detainee originally claimed that the IEDs in the room had been left by the Taliban years prior. He later changed his story, claiming that Qari Naqib had brought the IEDs to the compound.

Detainee: I told my interrogator at the time of my interrogation that I did not know Qari Naqib, I did not know about the explosives, and I don't know anything. The same place had Arabs... Taliban members were living there too... and now the present government's people are living there.

Designated Military Officer: (3.a.7) Qari Naqib was the leader of the bombing cell, and all members received training on the use of the bombs from the builder of the bombs at a madrassa in Pakistan. The group worked for M. Kabir's organization within the Taliban.

Detainee: First of all in the Madrassa people are learning religious stuff and the Koran. They should not teach and they do not teach how to make bombs and how to use them. I disagree [with that statement]. It is wrong.

Designated Military Officer: (3.b) Training: The Detainee received military training on the Kalashnikov, but claims he does not know how to operate RPGs, grenades, bombs, machine guns, and land mines.

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Detainee: I never got any training on the Kalashnikov, but in Afghanistan children, women, men, and everyone knows how to use the Kalashnikov. I don't know how to use mines or bombs.

Designated Military Officer: (3.c) Connections/Associations: (3.c.1) A four-man cell was planning to detonate bombs on 28 January in Jalalabad, targeting United States, United Nations, and non-Afghani support personnel. The bombers were promised participation in the operational planning cell of Kari Mohadin, deputy of Maulawi Kabir, once the bombing was completed successfully.

Detainee: I have a question to the board. Kari Mohadin was Talib and I fought the Taliban and they captured me and put me in jail. How could I be with them and work for them?

Presiding Officer: We will have questions and answers later. You make a good point.

Detainee: The answer to the question is no.

Designated Military Officer: (3.c.2) Mullah Kabir is the former Governor of Jalalabad and a Taliban Deputy.

Detainee: I don't know.

Designated Military Officer: (3.c.3) Naqib is friends with two al Qaida members who worked for a Taliban man named Noor Mohammad in Pakistan.

Detainee: I don't know Qari Naqib and when we came there was no Taliban.

Designated Military Officer: (3.c.4) Maulawi Noor Mohammad is the former Taliban district chief of Deh Bala and a trusted associate of the former Taliban Governor of Nangarhar Province, Maulawi Kabir. Noor Mohammad stockpiled weapons and recruited Afghans to agitate against the Afghan Transitional Administration.

Detainee: I was in the Taliban's jail and if there were district chiefs or governors or anyone there I don't know about them.

Designated Military Officer: (3.d) Other Relevant Data: (3.d.1) When the Taliban came to power in Afghanistan, the Detainee served as a "freedom fighter" for Haji Qadir, governor of Jalalabad, and enemy of the Taliban and al Qaida. The Detainee had four men under his direct supervision.

Detainee: Yes.

Designated Military Officer: (3.d.2) During a fight with the Taliban and al Qaida near Jalalabad, the Detainee was captured along with 120 other soldiers. The Detainee

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eventually was taken to Sarpuza prison in Kandahar, Afghanistan, where he was beaten and tortured by the Taliban, resulting in the loss of his two front teeth.

Detainee: Yes.

Designated Military Officer: (3.d.3) The Detainee was in the Sarpuza prison for no less than five years. He was freed from prison by coalition forces when the Taliban fell from power.

Detainee: Yes.

Designated Military Officer: (3.d.4) After his release from the Sarpuza prison, the Detainee became an officer in a military division assigned to patrol and protect the city of Jalalabad. The division was responsible for fighting smugglers of weapons and opium.

Detainee: The answer to this question is yes, but the division was not involved in preventing smuggling and things like that. It was a guard division but it was changed to infantry.

Designated Military Officer: (3.d.5) The Detainee took seven of his men and weapons to the Kandaki Toupchi military base, where he was ordered to rotate with some of the men assigned there. Upon arriving at Kandaki Toupchi, the Detainee was unable to locate the base commander, so he secured rooms for his group to spend the night.

Detainee: Yes, but in that division there are five brigades and they transferred me from the forth to the fifth.

Presiding Officer: What is the full number of that brigade?

Detainee: I don't know the whole number. There were not seven soldiers with me there were four soldiers with me. When they transferred me it was to a tank division. I did not come to see my officer. I went there to tell the guy that I was replacing to go to the place I came from and that I was his replacement.

Designated Military Officer: (3.d.6) The morning after his arrival at the compound, the Detainee was arrested along with one other suspect, although other suspects escaped.

Detainee: I don't know who was there, but they captured me.

Designated Military Officer: (3.d.7) Mir Agha Jan was working as an intermediary to Qari Naqib, a senior Taliban leader, and coalition forces by way of the Afghan National Army (ANA). Qari Naqib was attempting to secure the release of the Detainee and another unnamed man.

Detainee: Mir Agha Jan is my younger brother. I was an officer and he was a soldier. If I don't know Qari Naqib how would he know him?

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Designated Military Officer: (3.d.8) One of the Detainee's brother is named Mir Agha Jan.

Detainee: Yes sir.

Designated Military Officer: (4) The following primary factors favor release or transfer: (4.a) The Detainee adamantly denied any prior knowledge of the improvised explosive devices (IEDs) found in Kandaki Toupchi post near the Detainee's room.

Detainee: They did not find it next to my room, but the distance between my room and Qari Naqib's room was far away.

Designated Military Officer: (4.b) The Detainee indicated that he did not support the Taliban or al Qaida forces.

Detainee: Yes.

Designated Military Officer: (4.c) The Detainee expressed positive feelings toward the United States as he indicated that United States Forces in Afghanistan freed him from Sarpuza prison. He stated that from the beginning he took up arms to fight the Taliban and al Qaida forces.

Detainee: Yes sir.

The Designated Military Officer confirmed that he had no further unclassified information and requested a closed session to present classified information relevant to the disposition of the Detainee.

The Presiding Officer acknowledged the request.

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

Presiding Officer: Assisting Military Officer does the Detainee want to present any information to this Administrative Review Board including a written statement, oral statement, witness statements prepared on his behalf, or for you to speak on his behalf?

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

Presiding Officer: Assisting Military Officer please read the Detainee comments on the Enemy Combatant Election Form at this time.

Assisting Military Officer: Yes sir. Toward the conclusion of the first interview, the Detainee asked to make the following statement: "I was working for General Said Agha in the military compound. The General was transferred to Kabul to work with the Karzai

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Government. I/we had fought against the Taliban before America came; the Taliban imprisoned me for over 5 years in Afghanistan. The Americans (invasion) is what freed me. Why would I fight for the Taliban if they imprisoned me? I have letters from General Said Agha, he has given me his personal cellular phone number, and it has that. Would the General jeopardize himself by putting himself in contact with me, if I were Taliban or al-Qaida? I want to know what I did? Also, I was not arrested at Qari Naqib's place (residence), he was a military officer in the same military compound as me".

Presiding Officer: Assisting Military Officer does the Detainee wish to make any kind of statement? I don't recall hearing you say if he does or not.

Detainee: Yes.

Presiding Officer: You may begin your statement at this time. Anything you wish to present to the board, tell the board, or elaborate on, you can tell us now.

The Detainee made the following statement:

Detainee: This is all old stuff and I will repeat it again. I was in a Taliban prison for 5 years and General Said Agha was fighting the Taliban in Konar Province. General Said Agha is a senior General and he is from the era of the communist. When I was released from Kandahar I saw Haji Qadir and he gave me 20,000 Pakistani Rupees in Jalalabad city. He offered me any kind of job I wanted in Jalalabad. Haji Qadir was killed by his political enemies. When he was assassinated, General Said Agha offered for me to stay in Jalalabad and he would help me. General Said Agha gave me a job and he was my officer and anything he would tell me I would do. I never did any illegal stuff. When I was captured I had a letter and I signed my name to it everyday [indicating each person came to work]. If the United States forces did not come to Afghanistan I would still be in prison.

Presiding Officer: Does that conclude your statement?

Detainee: Yes.

Presiding Officer: Thank you. Assisting Military Officer do you have any other information to present?

Assisting Military Officer: Yes sir. During the course of the interview it was stated by the Detainee that the Detainee's general observation [is] the ARBs are showing no action. [The] Detainees are of the [notion] that since no action comes of this board that no participation by them will be forthcoming.

The translator asked the Assisting Military Officer to repeat the information.

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Assisting Military Officer: The Detainee, during conversations in the interview, stated that the Detainees as a whole felt that the ARBs were taking too long to get results and if no results were seen [or reported back] no other Detainees would participate in the ARB.

Presiding Officer: We understand your frustration in not seeing results in the ARBs, but there are results taking place.

Detainee: I have another question. Is the board over?

Presiding Officer: No it is not over yet. Assisting Military Officer is there anything else?

Assisting Military Officer: No sir.

The Assisting Military Officer had no questions for the Detainee.

The Designated Military Officer had the following question for the Detainee.

Designated Military Officer: Yes sir. Our report told us that when you were captured you were very resistant and you were in control of these explosive devices, yet in your testimony you are saying that you did not know anything about the explosives. There is a real disparity of information for us. Could you maybe comment on that for us?

Detainee: Yes. In our Pashtoon culture when someone helps you, you help them back and not fight them back. I did not see any explosive materials there and I did not know there were any there. I don't know if someone else resisted.

Designated Military Officer: That is all sir.

Administrative Review Board Member's questions:

Board Member: There are three reports that we have covered that say you have attended Madrassas in Pakistan and received training there and you deny all of these reports. Please comment on that.

Detainee: I was not in a Madrassa. I did not have my beard and I was in the Army. I was not in a Madrassa. When did I go to a Madrassa?

Board Member: Prior to your capture.

Detainee: I swear that in my whole life I did not go inside the Madrassa.

Board Member: Okay, so did you receive training outside the Madrassa in Pakistan to build bombs?

Detainee: I don't need to learn how to make bombs?

Board Member: Because you already know how?

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Detainee: No.

Board Member: So are all of these reports lies?

Detainee: Yes.

Board Member: That is all I am asking.

Detainee: It is a lie because I am a Muslim and Muslims should not do that. If you make bombs you have intentions to kill people. That is not a Muslim. Anyone who kills people is not a Muslim.

Board Member: Were you in a uniform when you were captured or civilian clothes?

Detainee: When you wear your uniform it is after [0800]. It was not [0800] when I was arrested.

Board Member: So you were in civilian clothes.

Detainee: I was drinking my tea and I was in civilian clothes.

Board Member: Now in the report it says that you were in control of the IEDs. To me that means the IED was in your hand. You are saying that is not true.

Detainee: No.

Board Member: Were you the senior ranking officer at the place you were captured?

Detainee: There was...in that...the brigade officer went to Mecca, someone else was doing his job, I was there, and the senior officer was there. You cannot do any kind of the stuff that is mentioned here in someone else's control. If someone new comes to this office with a bomb or holds a bomb is that possible if he is fighting with us here?

Board Member: The General that wrote the letter...why didn't the General ask us to release you?

Detainee: There are Generals in this camp and they are from the same Karzai Government and they captured me too and if anyone has money [they] benefit. Karzai does not have any power, but President Bush has power.

Board Member: What rank were you?

Detainee: Sergeant.

Board Member: What are you going to do if you go back to Afghanistan?

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Detainee: I will take the same job if they offer it to me under one condition and that is if they apologize for what I have been through. I will not do anything to them, but I will take it.

Presiding Officer: I believe that you are an honorable man, but this report confuses me with your answers as to the planned attack against the United States with the IEDs and your answer that says you did not do anything. That confuses me. The raid on the compound says that they discovered IEDs and associated materials to include bicycles and a motorcycle. Then, they go on to talk about your involvement in that stuff.

Detainee: No sir. It is not an easy job and the people that are doing it are big shots. Would you please use your logic? If I did that kind of stuff General Said Agha would not put his position in jeopardy and send me a letter or get in contact with me and send me his telephone number.

Presiding Officer: So, Are you denying that you and the three others were identified?

Detainee: I deny it and if I were making bombs and had a relationship with the Taliban or al Qaida the General would not send me a letter. General Said Agha fought the Taliban for five years. General Said Agha is working with United States Forces and he is in Kabul and that means I am innocent. You guys are not doing [right] by me.

Presiding Officer: I see the General has been transferred to Kabul now and he gave his mobile number, but as the other Board Member pointed out, why doesn't he ask for your release or mention transferring you? I am just curious as to why he doesn't solicit the board to grant you a transfer or release.

Detainee: I told you before that Karzai is the president, but he does not have any power. For example, there is a Detainee named Haji Roohullah in the camp and all of these big tribes came to President Karzai and asked for his release and it did not work out. You should know who the enemies are of the United States.

Presiding Officer: There was one other comment that was asked at statement 3.a.4 where you answered that you could not read the Koran, but you never answered the first part of the question about being resistant and in control of the IEDs at the time of your capture. You skipped away from answering that portion of the question.

Detainee: I gave an answer. I did not resist them at the time of my capture. They held me. I am a very weak guy and this is a very strong power (the United States). I could not do anything and I did not have the explosive materials. I was not captured at my place. What did you do with that bomb material? Where is it?

Presiding Officer: We don't have that in the report so I don't know. I don't know what they did with it.

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Detainee: I have another question. When they captured me, do you have any pictures of that, the materials, the bomb or anything? If I had the bomb, did I use it? If I had that bomb I would use it. When they captured me if I had the explosive materials and they don't have the documents then they are lying. That's very bad. [The U.S.] is a super power and they should not lie. If I had it in my custody or the intention to use it, then do not release me from custody. If I used it then tell me how many people were injured or died. It is a lie.

Presiding Officer: Was your younger brother a soldier in your unit or another unit?

Detainee: He is a teenager and he was with me in my group.

Presiding Officer: Was he one of the four men that went with you to Kandaki Toupchi?

Detainee: There were seven people that came from there. The four people you are mentioning were before the Taliban came. During the time of the Taliban my brother was a very small kid.

Presiding Officer: What I was referring to is that when we read the statement that the Detainee took seven of his men and weapons to Kandaki Toupchi military base, where you were ordered to rotate with some of the men assigned there, you corrected the board and said there were only four men.

Detainee: I may have said that, but it was a mistake. It was seven people.

Presiding Officer: I have no other questions.

Detainee: Isn't it amazing that Pakistanis who have crossed the border and those that would help the United States and the present government are poor guys that don't have anybody to look out for them are the ones that are still in prison. Is that fair? All Afghans are amongst themselves, saying they are not fair to us. The government of the United States is not fair to us and because of that they are on a hunger strike.

Presiding Officer: Since you brought it up, are you participating in the hunger strike?

Detainee: Up to this moment I am not. In the future I might. I am a poor guy and I cannot afford to be in this prison any more.

Presiding Officer: I only ask because you brought it up that's all.

Detainee: I will remember for the rest of my life the treatment you guys gave me here. For example, my leg hurts, I went to the doctor and he just gave me tablets for the pain. He did not x-ray it or anything like that.

Presiding Officer: In regards to that the only thing I can suggest is if it continues to hurt continue to ask for medical help. How is it right now?

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Detainee: I tried that. It has been hurting for one and a half months.

Presiding Officer: Again, ask for medical assistance when you get back to your area.

Detainee: What should I ask for? For the last one and a half years I have been asking for help.

Presiding Officer: Assisting Military Officer can you explain the last comment on the page entry by OL-24 on Exhibit EC-C? The [phone] number. I am not sure if that means someone called or what? *The translator explains that the number listed on Exhibit EC-C is [General Agha's] telephone number in case anyone needed to call him about Exhibit EC-C. The translator also provided his linguist identification number for translation purposes.*

Detainee: Would you like to talk to him?

Presiding Officer: No, I just want the verification on what was written on the EC-C.

Detainee: Can you help me to talk to [General Agha]?

Presiding Officer: I am not sure of the proper channels, but you can go through International Committee Red Cross (ICRC) for that. I am not familiar with what your procedures are.

Detainee: CRC or ICRC?

Presiding Officer: ICRC.

Detainee: What should I do?

Presiding Officer: You can always write to him and deal with him through the ICRC.

Detainee: I count them and you guys the same. They are working with you.

The Presiding Officer read the post-Administrative Review Board instructions to the Detainee and adjourned the open session of the Administrative Review Board.

The Presiding Officer opened the classified portion of the session.

The Presiding Officer adjourned the classified portion of the session and the Administrative Review Board was closed for deliberation and voting.

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AUTHENTICATION

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


Colonel, U.S. Marine Corps
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