



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser 684
16 JAN 2005

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From: Director, Combatant Status Review Tribunal

Subj: REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # 170

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Order of 29 July 2004

1. I concur in the decision of the Combatant Status Review Tribunal that Detainee ISN #170 meets the criteria for designation as an Enemy Combatant, in accordance with references (a) and (b).
2. This case is now considered final and the detainee will be scheduled for an Administrative Review Board.

J. M. McGARRAH
RADM, CEC, USN

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14 Jan 05

MEMORANDUM

From: Assistant Legal Advisor
To: Director, Combatant Status Review Tribunal
Via: Legal Advisor [REDACTED]

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 170

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004

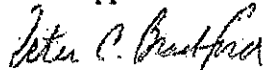
Encl: (1) Appointing Order for Tribunal #12 of 29 September 2004
(2) Record of Tribunal Proceedings

1. Legal sufficiency review has been completed on the subject Combatant Status Review Tribunal in accordance with references (a) and (b). After reviewing the record of the Tribunal, I find that:

- a. The detainee was properly notified of the Tribunal process and voluntarily elected not to participate. See exhibit D-a. The detainee affirmatively declined to attend, but he did prepare a written statement for his Personal Representative to present to the Tribunal.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal substantially complied with all provisions of references (a) and (b)
- d. The detainee did not request that any witnesses or evidence be produced
- e. The Tribunal's decision that detainee #170 is properly classified as an enemy combatant was unanimous.

2. The proceedings and decision of the Tribunal are legally sufficient and no corrective action is required.

3. I recommend that the decision of the Tribunal be approved and the case be considered final


PETER C. BRADFORD
LT, JAGC, USNR

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Department of Defense
Director, Combatant Status Review Tribunals

29 Sep 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #12

Ref: (a) Convening Authority Appointment Letter of 9 July 2004

By the authority given to me in reference (a), a Combatant Status Review Tribunal established by "Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba" dated 29 July 2004 is hereby convened. It shall hear such cases as shall be brought before it without further action of referral or otherwise.

The following commissioned officers shall serve as members of the Tribunal:

MEMBERS:

[REDACTED] Colonel, U.S. Marine Corps Reserve; President
[REDACTED] Lieutenant Colonel, JAGC, U.S. Army;
Member (JAG)
[REDACTED] Lieutenant Colonel, U.S. Air Force; Member

J. M. McGARRAH
Rear Admiral
Civil Engineer Corps
United States Navy

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HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

13 November 2004

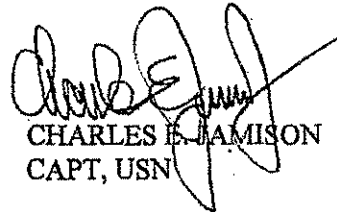
MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN# 170

1. Pursuant to Enclosure (1), paragraph (I)(5) of the *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba* dated 29 July 2004, I am forwarding the Combatant Status Review Tribunal Decision Report for the above mentioned ISN for review and action.

2. If there are any questions regarding this package, point of contact on this matter is the undersigned at DSN [REDACTED]


CHARLES E. JAMISON
CAPT, USN

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(U) Combatant Status Review Tribunal Decision Report Cover Sheet

(U) This Document is UNCLASSIFIED Upon Removal of Enclosures (2) and (4).

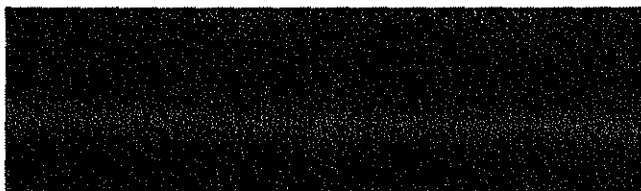
(U) TRIBUNAL PANEL: #12

(U) ISN#: 170

Ref: (a) (U) Convening Order for Tribunal #12 of 29 September 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

Encl: (1) (U) Unclassified Summary of Basis for Tribunal Decision (U//FOUO)
(2) (U) Classified Summary of Basis for Tribunal Decision (S//NF)
(3) (U) Summary of Detainee/Witness Testimony (U//FOUO)
(4) (U) Copies of Documentary Evidence Presented (S//NF)
(5) (U) Personal Representative's Record Review (U//FOUO)

1. (U) This Tribunal was convened on 23 October 2004 by references (a) and (b) to make a determination as to whether the Detainee meets the criteria to be designated as an enemy combatant, as defined in reference (c).
2. (U) On 23 October 2004 the Tribunal determined, by a preponderance of the evidence, that Detainee #170 is properly designated as an enemy combatant, as defined in reference (c).
3. (U) In particular, the Tribunal finds that this Detainee is a member of, or affiliated with, al Qaida, as more fully discussed in the enclosures.
4. (U) Enclosure (1) provides an unclassified account of the basis for the Tribunal's decision. A detailed account of the evidence considered by the Tribunal and its findings of fact are contained in enclosures (1) and (2).



Colonel, U.S. Marine Corps
Tribunal President

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**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: _____ #12
ISN #: _____ 170

1. Introduction

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this Detainee is properly classified as an enemy combatant and is a member of, or affiliated with Al-Qaida. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

2. Synopsis of Proceedings

The unclassified evidence presented to the Tribunal by the Recorder indicated that the Detainee was associated with Al-Qaida. He left Yemen and traveled to Kandahar, Afghanistan in June 2001 with the help of an Arabic speaking guide. The Detainee spent two months in various Arab houses in Afghanistan for religious training and in September 2001 went to Kabul and later on to Jalalabad. Then in late December 2001, the Detainee and a group of Arabs fled Jalalabad with the help of an Afghan guide, reaching a small Pakistani village where he surrendered to the Pakistani Army. The Detainee called no witnesses and requested no documents be produced. The Detainee chose not to attend the Tribunal proceeding, but requested the Personal Representative make a statement on his behalf. The Detainee, in his unsworn statement provided by his assigned Personal Representative, denied he was associated with Al-Qaida and that he went to Afghanistan for religious purposes to visit because it was an Islamic country. He claimed he did not go there for religious training but only to visit. He traveled to different places in Afghanistan in order to see how they did Islamic practices in other parts of the country. He indicated that he left Kabul because the Afghans were trying to kill Arabs at the market and he got scared. He went to Jalalabad and wanted to go to Yemen. Upon fleeing Jalalabad he joined up with a group of people who told him that he could not travel by himself. After traveling for days and losing all of his belongings including his passport they reached a Pakistani village and he surrendered to the Pakistani forces so they would take him to the Yemeni Embassy in Pakistan. Instead they put him in jail and transferred him to the Americans.

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Enclosure (1)
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3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

a. Exhibits: D-a and R-1 through R-17.

b. Testimony of the following persons: An unsworn statement, read by the Personal Representative on behalf of the Detainee.

4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested no witnesses and requested no additional evidence be produced; therefore, no rulings on these matters were required.

5. Discussion of Unclassified Evidence

The Tribunal considered the following unclassified evidence in making its determinations:

a. The Recorder offered Exhibits R-1 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the *Unclassified Summary of Evidence*. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without also providing the supporting unclassified evidence.

b. Essentially the only unclassified evidence the Tribunal had to consider was the Detainee's unsworn statement, which was read by the Personal Representative on the Detainee's behalf. A summarized transcript of the Detainee's unsworn statement is attached as CSRT Decision Report Enclosure (3). In sum, the Detainee denied he was associated with Al-Qaida and that he went to Afghanistan for religious purposes to visit because it was an Islamic country. He did not go there for religious training but only to visit. He traveled to different places in Afghanistan in order to see how they did Islamic practices in other parts of the country. He indicated that he left Kabul because the Afghans were trying to kill Arabs at the market and he got scared. He went to Jalalabad and wanted to go to Yemen. Upon fleeing Jalalabad he joined up with a group of people who told him that he couldn't travel by himself. After traveling for days and losing all of his belongings including his passport they reached a Pakistani village and he surrendered to the Pakistani forces so they would take him to the Yemeni Embassy in Pakistan. Instead they put him in jail and transferred him to the Americans.

The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

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Enclosure (1)
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6. Consultations with the CSRT Legal Advisor

No issues arose during the course of this hearing that required consultation with the CSRT legal advisor.

7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

a. The Detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was requested or deemed necessary.

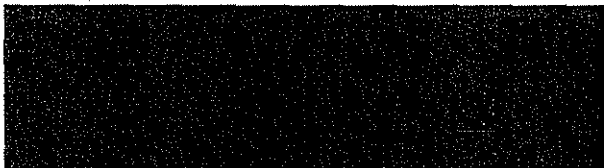
b. The Detainee chose not to attend the Tribunal proceeding, but requested the Personal Representative make a statement on his behalf. Although he did not actively participate, there was no reason to believe he did not understand the Tribunal process. The Detainee chose not to participate in the Tribunal process, as indicated in Exhibit D-a.

c. The Detainee is properly classified as an enemy combatant and is a member of, or affiliated with Al-Qaida.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, U.S. Marine Corps
Tribunal President

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Enclosure (1)
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Summarized Detainee Statement

The Detainee elected not to attend the Tribunal proceeding, but requested the Personal Representative make a statement on his behalf. The Personal Representative made the following statement:

- Regarding 3.a, I am not associated with al Qaida.
- Paragraph 3.a.1, I went there for religious purposes to visit because it was an Islamic country. I went before 11 September 2001. I was new so I went to two to three places where there were Arab people.
- Paragraph 3.a.2, true. In Kandahar, I spent two months in one place. I did not go there for religious training; I went there for a visit.
- Paragraph 3.a.3, yes, I went to Kabul but I don't remember the month. I spent two weeks in Kabul. I wanted to visit different places while I was in Afghanistan. I wanted to see how they did Islamic practices in different places in Afghanistan. I left Kabul because the Afghans were trying to kill Arabs at the market. I got scared and left to go to Jalalabad. Then, I wanted to go to Yemen. There was an Afghani person who spoke some Arabic and he had a taxi. He took me from Kabul to Jalalabad.
- Paragraph 3.a.4, there was a group of people who told me I couldn't travel by myself. I went with those people and we walked for days. We reached the Pakistani village and I surrendered to the Pakistani forces so they would take me to the Yemen Embassy in Pakistan. But, they put me in jail, then transferred me to the Americans. I did have a passport, but I had to leave it behind during my travels in the snow and the mountains. I thought I was dying. I was weak and could no longer carry my bag because it was really heavy. All of my belongings, including my passport, were in the bag.
- All the rules in the United States and in the world, the person is innocent until you prove he is guilty not innocent. But, here with Americans, the Detainees are guilty until proven innocent.

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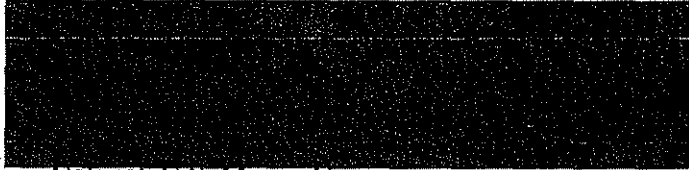
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AUTHENTICATION

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
Tribunal President

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DETAINEE ELECTION FORMDate: 22-Oct-04Start Time: 0800End Time: 0910ISN#: 170Personal Representative: 
(Name/Rank)Translator Required? YES Language? ARABICCSRT Procedure Read to Detainee or Written Copy Read by Detainee? YES**Detainee Election:**

- Wants to Participate in Tribunal
- Affirmatively Declines to Participate in Tribunal
- Uncooperative or Unresponsive

Personal Representative Comments:

Detainee has elected NOT to Participate/Attend the Tribunals. He has prepared a written statement for the PR to present. There are NO witness requests.

Personal Representative:  CDR, USN Exhibit: D-A

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (06 October 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – MASUD, Sharaf Ahmad Muhammad.

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that the detainee is associated with al Qaida and supported forces engaged in hostilities against the United States or its coalition partners.
 - a. The detainee is associated with al Qaida.
 1. In June 2001, detainee left Sana'a, Yemem, and traveled to Kandahar, Afghanistan with the help of an Arabic speaking guide.
 2. Detainee spent two months in various Arab houses in Afghanistan for religious training.
 3. Detainee in September 2001 went to Kabul, Afghanistan for two weeks and then traveled to Jalalabad, Afghanistan.
 4. In late December 2001, detainee and a group of Arabs fled Jalalabad with the help of an Afghan guide, reaching a small Pakastani village where he surrendered to the Pakastani Army.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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Exhibit RI

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Personal Representative Review of the Record of Proceedings

I acknowledge that on 04 November 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #170.

I have no comments.

My comments are attached.

LCDE [REDACTED] USN

Name

04 NOV 04
Date

[REDACTED]
[REDACTED]

ISN #170
Enclosure (5)

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