

RAFIQ BIN BASHIR BIN JALUD
AL HAMI,

Petitioner,

v.

GEORGE W. BUSH, *et al.*,

Respondents.

Pursuant to 28 U.S.C. § 1746, I, Commander J. L. Hunt, Judge Advocate General's Corps, United States Navy, hereby state that to the best of my knowledge, information and belief, the following is true, accurate and correct:

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Rafiq Bin Bashir Bin Jalud Al Hami that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto or are redacted. An OARDEC staff member has redacted information that would personally identify certain U.S. Government personnel and foreign nationals in order to protect the personal security of those individuals.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 25, 2005



J. L. Hunt
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser: 69
3 September 2004

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From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # 892**

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 #892 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, USNR

Distribution:
NSC (Mr. John Bellinger)
DoS (Ambassador Prosper)
DASD-DA
JCS (J5)
SOUTHCOM (CoS)
COMJTFGTMO
OARDEC (Fwd)
CITF Ft Belvoir

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1 Sep 04

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 892Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004Encl: (1) Appointing Order for Tribunal #2 of 2 August 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 was present for the unclassified portions of the Tribunal proceedings.

b. The Tribunal was properly convened and constituted by enclosure (1).

c. The Tribunal complied with all provisions of references (a) and (b). Note that some information in exhibits R-2 and R-3 was redacted. Based on the location and extent of the redactions we can be certain that the redacted information would not support a determination that the detainee is not an enemy combatant. Additionally, the Recorder mistakenly presented an unclassified exhibit that contained classification markings. The Tribunal President confirmed that the document was not, in fact, classified and a properly marked version of the document was subsequently inserted into the Record. As can be seen by comparing the two documents (R-1 and R-1-A), they are identical other than the spurious classification markings.

d. The detainee did not request the production of witnesses or other evidence.

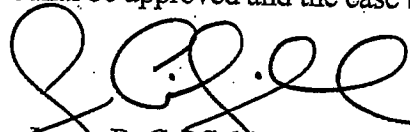
e. The Tribunal's decision that detainee # 892 is properly classified as an enemy combatant was unanimous.

f. The detainee's Personal Representative was given the opportunity to review the record of proceedings and declined to submit comments.

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

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 892

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



James R. Crisfield Jr.
CDR, JAGC, USN

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Department of Defense
Director, Combatant Status Review Tribunals

2 August 2004

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #2

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; President

[REDACTED] Lieutenant Colonel, U.S. Army; Member (JAG)

[REDACTED], Lieutenant Colonel, U.S. Air Force; Member

J. M. McGARRAH
Rear Admiral
Civil Engineer Corps
U.S. Naval Reserve



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

MEMORANDUM FOR DIRECTOR, CSRT

18 August 2004

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN# 892

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]

[REDACTED]
Colonel, USAF

UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL DECISION

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

TRIBUNAL PANEL: #2
ISN #: 892

1. Introduction

As the Combatant Status Review Tribunal Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant. 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 Combatant Status Review Tribunal Decision Report.

2. Synopsis of Proceedings

The unclassified evidence presented to the Tribunal by the Recorder indicated that the Detainee was a fighter for Al-Qaeda because he attended the [REDACTED] training camp in Afghanistan in 2000 or 2001 (although the Detainee denied this in his oral statement at the Tribunal on 7 August 2004). At the [REDACTED] training camp, the Detainee allegedly was trained how to use a Kalashnikov rifle, as well as heavy artillery and heavy weapons (the Detainee denied this as well in his oral statement). The unclassified evidence supported the Government's proposition that the Detainee freely chose to support Al-Qaeda through his actions. After an initial reluctance, the Detainee chose to participate in the Tribunal process. He did not request any witnesses be produced on his behalf. The detainee made an oral, sworn statement, in which he denied being a fighter as well as being a member or supporter of Al-Qaeda or the Taliban.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a, R-1 through R-8.
- b. Sworn statement of the detainee.

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

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

5. Discussion of Unclassified Evidence

The Tribunal found the following unclassified evidence persuasive in making its determinations: Exhibits R-2 (21 Feb 03) and R-3 (13 Mar 03), respectively. Exhibit R-2, in pertinent part, indicates that the Detainee admitted, after an initial reluctance, receiving free weapons training at the [REDACTED] training camp in Afghanistan for 10 days. This training included instruction on the Kalashnikov rifle, heavy artillery, and some type of anti-aircraft weapon. Upon being questioned further about his reasons for attending the [REDACTED] training camp, the Detainee could not provide an answer. Exhibit R-3 provides a detailed summary of the Detainee's account of how he got to Afghanistan (though his assertion of never having heard any discussion of "jihad" while studying at the Islamic Law institute in Kandahar is not credible, given the environment at that time in 2000-2001). The Tribunal notes that the Detainee also denies being a member of Al-Qaeda in Exhibit R-3.

In reviewing the evidence, the Tribunal was guided by Paragraph G-11 of Enclosure (b), and assigned a rebuttable presumption of genuineness and accuracy to the Government Evidence.

The Tribunal found the following unclassified evidence unpersuasive in making its determinations: the Detainee's sworn statement (even though during deliberations, the Tribunal considered the fact that the statement was sworn and weighed this evidence accordingly).

After changing his mind as to his decision to participate and his method of participating, the Detainee eventually chose to make a sworn statement. He claimed that he was tortured into initially making the admissions of military training (as reflected in Exhibit R-2) while being questioned in Afghanistan. He claimed that this information should have been in his file (it was not present in any information submitted to the Tribunal). He claimed not have been tortured after his arrival in Cuba. When reminded that he had made his statement as reflected in Exhibit R-2 after he arrived in Cuba and that it made no mention of previous torture, the Detainee asserted that he didn't change his story because he thought he would be tortured in Cuba as he had been in Afghanistan. The detainee claimed to have "recanted" the information provided as reflected in Exhibits R-2 and R-3 although there was no evidence presented that he had made any attempt to do so since February or March 2003.

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

6. Consultations with the CSRT Legal Advisor

One issue arose during the course of this hearing that required consultation with the CSRT legal advisor. One of the pieces of evidence as indicated in paragraph 3a3 of Exhibit R-1 was marked as SECRET/NOFORN. Observing that classified evidence is

not supposed to be provided to the Tribunal during the unclassified portion of the hearing, the Tribunal inquired as to whether the information really was classified. Upon review of Exhibit R-2, the Tribunal President noted that the information referenced in paragraph 3a3 was actually contained in R-2, an unclassified exhibit. The Tribunal President therefore found that the information referenced in paragraph 3a3 was actually unclassified, and therefore no improper release of classified information had occurred. The Deputy Legal Advisor considered the matter and advised that the Tribunal should reconvene on the record to resolve the issue. The Tribunal did so (in a closed session, as the discussion concerned classified information) and clarified this matter on the record.

7. Conclusions of the Tribunal

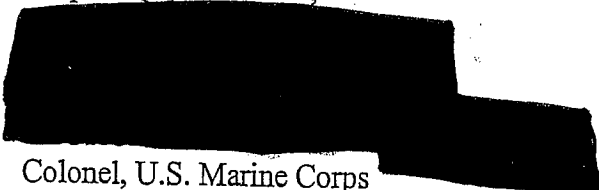
Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

- 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 understood the Tribunal proceedings. He asked questions regarding his rights, appeared satisfied with the answers provided by the Tribunal President, and otherwise actively participated in the hearing.
- c. The detainee is properly classified as an enemy combatant.

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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Summarized Detainee Statement

If it is possible can you please turn down the air conditioner? How come I am not comfortable sitting right here? It is a little bit chilly and I am still handcuffed. This is too tight on my hands. I cannot be comfortable like this. The handcuffs are cutting into my hands. I cannot talk like this. You talk about rights. *(Air conditioning unit was turned off; two military police guards were permitted in the Tribunal room to loosen hand restraints on detainee)*

Information like what. I did not fight. I don't understand. Can you please repeat. I do not have any information to provide. I did provide all the information I have earlier on. The lady who is sitting to my right did give me a choice yesterday of coming here to attend or if I would decline that. I expressed to her my interest in attending. I wanted to be present for this hearing. That is what she told me. Everything you have is recorded and is documented. That is correct. I have no further comment.

Answers in response to questions by the Tribunal Members:

No, I did not train on weapons while I was in Afghanistan. I have one question. Does it include or does it say in my file that I was a fighter or I fought? If I did not fight, why am I being labeled an enemy combatant? I recanted information that I attended a weapons training camp. What is your question? What additional information did you want me to provide? I did recant this information about a year ago. If there are some ambiguities you need to know about please ask me. It is incorrect, not true; I never attended the [REDACTED] training camp. I have never been to this place. I did tell the interrogator I had been there. I did mention this back in Afghanistan and I did mention this when I arrived in Cuba. I was very scared being here and I thought there was no difference whether I said I did or did not attend training. When I heard that maybe I would attend court or I would be tried, I thought it was better for me to correct this information.

I did not see any rights in Afghanistan when we were being interrogated. We were tortured. But it was different here. I first thought Cuba was identical to Afghanistan so I continued with the same story. I experienced better treatment here. Everything was different here. That's how it was. Back in Afghanistan I would be tortured. I was threatened. I was left out all night in the cold. It was different here. I spent 2 months with no water, no shoes, in darkness and in the cold. There was darkness and loud music for 2 months. I was not allowed to pray. I was not allowed to fast during Ramadan. These things are documented. You have them. How could you expect me to during interrogation knowing all this? That is why I tell the truth here. Of course not! I am not a member of Al Qaida or the Taliban.

What will I swear on and what is the form of the oath? You will have to explain to me before I will swear. Do I swear by God? I am a Muslim. I do not swear by anything but The Koran or by God.

In the name of Allah, the most compassionate, the most merciful, I swear by almighty God that my testimony before this tribunal shall be the truth.

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Answers in response to questions by the Personal Representative:

Yes we discussed the Tribunal when we met. Did I say to you yesterday I would make a sworn statement to the Tribunal? I don't really recall. Maybe you talked to me and I was not paying attention; or the linguist did not translate it clearly. I did say and it is in my file I was tortured. I don't understand why it is not written. I am pretty sure that it is written because I have had interviews before. I think it is written. I am certain it is written.

Answers in response to questions by the Recorder:

I was not a member of Al Nadah. When Al Nadah was a party, I was a very little kid. How could I have been a member when I was only seven years old? No, Mr. [REDACTED] did not encourage me to receive weapons training.

Answers in response to questions by the Tribunal Members:

I did not train. I did not fight. How could I have trained? If you look at my hands, I am injured. My hand is only 35% functional. This is an old wound, an old injury back from when I was a carpenter in Tunisia. I have all of my fingers except one. How could I have done that? I could not have trained. As far as combat, I have never participated in that.

I wanted to go to Pakistan not Afghanistan. Yes I was in Afghanistan but the reason for my travel to go to Pakistan. I was in Pakistan for a while. I was staying with an individual from Tunisia. During this time there was a campaign. People were under duress. My friend in Pakistan told me it would be a good idea to go through Afghanistan and then return afterwards. There was a crack down from the Government on foreigners. I was in Afghanistan, but I did not go to [REDACTED] camp.

Answers in response to questions by the Recorder:

I have not been tortured while I have been in Cuba. That is correct. I was tortured in Afghanistan. I did not change my statement the first two months I was here. I already told you why I did that 10 minutes ago.

Summarized Detainee Statement

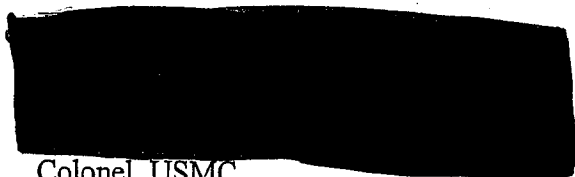
I have nothing else.

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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.

A large black rectangular redaction box covering the signature of the certifying official.

Colonel, USMC
President, CSRT

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Detainee Election Form

Date/Time: 6 AUG 04
START: 0818
END: 0833

ISN#: B92

Personal Representative: (#2) [REDACTED]
[Name/Rank]

Translator Required? yes Language? ARABIC

CSRT Procedures 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 DESIRES ATTENDANCE ONLY TO
TRIBUNAL. DOES NOT DESIRE TO PROVIDE
WRITTEN OR ORAL STATEMENTS. DOES
NOT DESIRE PERSONAL REPRESENTATIVE
TO SPEAK FOR HIM.

[REDACTED]

Personal Representative

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Recorder Exhibit List
For



#	Title	Classification
R1	Unclassified Summary	UNCLASSIFIED
R2	FBI 302 dtd 13 Mar 03	UNCLASSIFIED
R3	FBI 302 dtd 21 Feb 03	UNCLASSIFIED
R4	000892 KB 0 JTFGTMO para. 5(H)	SECRET/NOFORN
R5	Enemy Combatant Review Checklist	SECRET/NOFORN
R6	Baseball Card	SECRET/NOFORN
R7	CITF CDR Memorandum dtd 23 Feb 04	SECRET/NOFORN
R8	JTF GTMO CG Memorandum dtd 6 Mar 04	SECRET/NOFORN

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Combatant Status Review Board

TO: Personal Representative

FROM: Recorder

Subject: Summary of Evidence for Combatant Status Review Tribunal – AL HAMI, Rafiq Bin Bashir Bin Jalud

1. Under the provisions of the Department 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 he was a fighter for the al-Qaida and engaged in hostilities against the United States or its coalition partners.
 - a. The detainee is an al-Qaida fighter:
 1. ~~(FOUO/LES)~~ The detainee admitted he voluntarily attended the [REDACTED] training camp in Afghanistan.
 2. ~~(FOUO/LES)~~ At the [REDACTED] training camp, the detainee was trained on the Kalishnokov, heavy artillery and antiaircraft weapons.
 3. ~~(S/NF)~~ The detainee attempted to flee Afghanistan and hired a smuggler to guide him into Iran. Subsequently, he was arrested by Iranian authorities.
4. The detainee has the opportunity to contest his determination 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.

Combatant Status Review Board

TO: Personal Representative

FROM: Recorder

Subject: Summary of Evidence for Combatant Status Review Tribunal – AL HAMI, Rafiq Bin Bashir Bin Jalud

1. Under the provisions of the Department 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 he was a fighter for the al-Qaida and engaged in hostilities against the United States or its coalition partners.
 - a. The detainee is an al-Qaida fighter:
 1. The detainee admitted he voluntarily attended the [REDACTED] training camp in Afghanistan.
 2. At the [REDACTED] training camp, the detainee was trained on the Kalishnokov, heavy artillery and antiaircraft weapons.
 3. The detainee attempted to flee Afghanistan and hired a smuggler to guide him into Iran. Subsequently, he was arrested by Iranian authorities.
4. The detainee has the opportunity to contest his determination 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.

[REDACTED] LTC (L)

From: [REDACTED] LTC (L)

Sent: Monday, August 16, 2004 7:47 AM

To: [REDACTED] COL (L); [REDACTED] COL (L); [REDACTED] TC (L); [REDACTED] (L); [REDACTED] COL (L); [REDACTED] LTC (L); [REDACTED] A. CDR (L)

Cc: [REDACTED] CPT (L); [REDACTED] CIV (L); [REDACTED] LTC (L)

Subject: FW: CALL BACK

Team,

FYI. There was discussion earlier last week about reconvening a tribunal (892) to change out a document that was mismarked. The OIC decided to administratively correct the record. Please note below e-mail from legal advisor that discusses how to correct the record.

r/

Lt [REDACTED]

-----Original Message-----

From: Crisfield, James R (N3N5LD) [mailto:[REDACTED]]

Sent: Friday, August 13, 2004 6:27 PM

To: [REDACTED] (L) (E-mail)

Cc: [REDACTED] (E-mail)

Subject: CALL BACK

[REDACTED]

Sorry I didn't get back to you. I tried right after you left your message but I couldn't get through. Then I got yanked in three directions at the same time and didn't try again until 1820. It's possible that you were calling about the same thing [REDACTED] talked to me about this afternoon. If it is I think the solution is pretty simple, provided that the unclas summary with the classification markings was exactly the same as the unclas summary without the markings. Then we can substitute one for the other and simply have the Tribunal President record the reason for the substitution in his Tribunal Decision Report.

V/R,

[REDACTED]

Jay Crisfield
CDR, JAGC, USN
Legal Advisor
Combatant Status Review Tribunals
2000 Navy Pentagon, Rm 1B336
Washington, DC 20350-2000
Tel: [REDACTED]
SIPRNET email: [REDACTED]

4024

8/16/2004

Personal Representative Review of the Record of Proceedings

I acknowledge that on 16 August 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #892.

☒ I have no comments.

☐ My comments are attached.

Name

Date

Signature