

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NAYIF FAHD MUTLIQ AL USAYMI,)
)
)
Petitioner,)
)
v.)
)
GEORGE W. BUSH, *et al.*,)
)
Respondents.)
_____)

Civil Action No. 05-0345 (JDB)

DECLARATION OF TERESA A. McPALMER

Pursuant to 28 U.S.C. § 1746, I, Commander Teresa A. McPalmer, 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:

1. I am the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants at U.S. Naval Base Guantanamo Bay, Cuba (OARDEC). In that capacity I am an advisor to the Director, Combatant Status Review Tribunals.

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 Nayif Fahd Mutliq al Usaymi that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto or were redacted by an OARDEC staff member. This staff member also redacted information that would personally identify certain U.S. Government personnel in order to protect the personal privacy and security of those individuals.

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

Dated: 15 August 2005

Teresa A. McPalmer

Teresa A. McPalmer
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser:108
23 September 2004

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From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # 436**

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 #436 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.

A handwritten signature in black ink, appearing to read "J. M. McGARRAH".

J. M. McGARRAH
RADM, CEC, USN

Distribution:

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

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2404

22 Sep 04

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

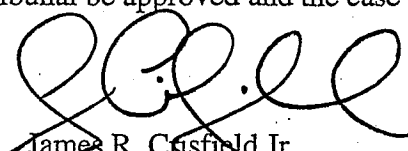
Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 436Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004Encl: (1) Appointing Order for Tribunal #4 of 6 August 2004
(2) Record of Tribunal Proceedings

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 voluntarily elected not to participate in the Tribunal
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal complied with the provisions of references (a) and (b). Note that some information in exhibit R-4 was redacted. The FBI properly certified in exhibit R-2 that the redacted information would not support a determination that the detainee is not an enemy combatant.
- d. The detainee made no requests for witnesses or other evidence.
- e. The Tribunal's decision that detainee # 436 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 to the Tribunal.

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.



James R. Cristfield Jr.
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

6 August 2004
Ser0038/ajs

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #4

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. Army; President

[REDACTED], Commander, JAGC, U.S. Navy; Member (JAG)

[REDACTED], Lieutenant Colonel, U.S. Marine Corps; 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

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN# 436

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].

A handwritten signature in black ink, appearing to read "D. L. Taylor", is written over the typed name.

DAVID L. TAYLOR
Colonel, USAF

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

(U) This Document is UNCLASSIFIED Upon Removal of Enclosures (2) and (3).

(U) TRIBUNAL PANEL: #4

(U) ISN#: 436

Ref: (a) (U) Convening Order for Tribunal #4 of 6 August 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

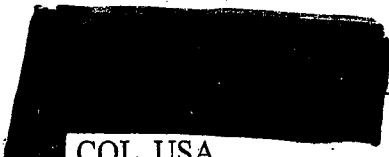
Encl: (1) (U) Unclassified Summary of Basis For Tribunal Decision (U)
(2) (U) Classified Summary of Basis for Tribunal Decision (S/NF)
(3) (U) Copies of Documentary Evidence Presented (S/NF)
(4) (U) Personal Representative's Record Review (U)

1. (U) This Tribunal was convened 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 7 September 2004, the Tribunal determined, by a preponderance of the evidence, that Detainee #436 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, Taliban forces, 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).



COL, USA
Tribunal President

UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL DECISION**(Enclosure (1) to Combatant Status Review Tribunal Decision Report)**

TRIBUNAL PANEL: _____ #4

ISN #: _____ 436

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 was part of or supporting Taliban forces. 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 Recorder presented Exhibit R-1 during the unclassified portion of the Tribunal. It indicates the Taliban recruited the detainee in February of 2001. He traveled to Kandahar, Afghanistan, via Pakistan, where he joined the Taliban. He subsequently trained near the front lines and learned to shoot the Kalashnikov rifle, the Beka gun, RPGs, and the bolt-action rifle. He then traveled to the front lines near Kwahajhar, Afghanistan, and manned the front lines on a rotating basis for the next 6½ months. In November 2001, Northern Alliance forces captured the detainee in Konduz, Afghanistan. The Recorder called no witnesses, but did introduce classified evidence during a closed session of the Tribunal. The detainee chose not to participate in the Tribunal process.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-15 and D-a.
- b. Testimony of the following persons: None.
- c. Statement of the detainee: None.

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

The Detainee requested no witnesses.

The Detainee requested no additional evidence be produced.

5. Discussion of Unclassified Evidence

The recorder offered Exhibit 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 supporting unclassified evidence. Because there was no other unclassified evidence for the Tribunal to consider, the Tribunal had to look to the classified exhibits to support the assertions on the Unclassified Summary of Evidence and the Tribunal's conclusions. 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

The Tribunal consulted the CSRT Assistant Legal Advisor and the OARDEC Forward Chief of Staff regarding certain matters raised by Exhibits R-4, R-11 and R-13, which are more fully discussed in paragraph 1.b. of Enclosure (2) to the CSRT Decision Report. As per instructions, the OARDEC Liaison to the Criminal Investigation Task Force and JTF-GTMO was notified of the matters on 8 September 2004.

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 chose not to participate in the Tribunal proceeding. No evidence was produced that caused the Tribunal to question whether the detainee was mentally and physically capable of participating in the proceeding, had he wanted to do so. Accordingly, no medical or mental health evaluation was requested or deemed necessary.

b. The Personal Representative informed the Tribunal that the detainee understood the Tribunal process, but chose not to participate, as indicated in Exhibit D-a.

c. The detainee is properly classified as an enemy combatant because he was part of or supporting Taliban forces.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,


COL, USA
Tribunal President

DETAINEE ELECTION FORM

St Col
O.K.
Tribunal

Date: 4 Sep 04

Start Time: 0758

End Time: 0818

ISN#: 436

Personal Representative: [Redacted] / Lt Col
(Name/Rank)

Translator Required? YES Language? Mod. ARABIC

CSRT 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:

Does not want to participate.

Will not attend Tribunal

Personal Representative: [Redacted]

Combatant Status Review Board

TO: Personal Representative

2 September 2004

FROM: OIC, CSRT

Subject: Summary of Evidence for Combatant Status Review Tribunal – Al Usaymi, Nayif Fahd Mutliq

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 he associated with the Taliban and engaged in hostilities against the United States or its coalition partners.

a. Detainee is associated with the Taliban.

1. In early February of 2001, the detainee met with a Taliban recruiter.

2. On more than one occasion, the detainee talked to the Taliban recruiter about military training in Afghanistan.

3. The recruiter provided the detainee instructions on obtaining a Pakistani Visa as well as a specific route to take. The detainee traveled to a Taliban guesthouse in Quetta, Pakistan, where the recruiter had sent him.

4. Many Taliban soldiers armed with Kalashnikov rifles walked in and out of the guesthouse. The detainee told a member of the Taliban guesthouse that he desired to receive military training.

5. In March of 2001, the detainee arrived in Kandahar, Afghanistan where he joined the Taliban.

6. The detainee and about thirty to fifty men were trained near the front line on shooting the Kalashnikov rifle. A Taliban member, who

Unclassified

claimed to handle the fighter and killer training of the soldiers, is the one who trained them.

7. The detainee was specifically trained on the Kalashnikov rifle, Beka gun, RPG (rocket propelled grenade), and the bolt-action rifle.

b. Detainee engaged in hostilities against the US or its coalition partners.

1. The detainee and about twenty to thirty Afghanistan fighter/soldiers traveled to Konduz, Afghanistan and stayed at a Taliban house.

2. The detainee went to the front line located near Kwahajhar, Afghanistan for approximately two weeks and then continued a two week rotating cycle for approximately six and a half months. At the front line, the soldiers used many weapons to include Kalashnikov rifles, PK and RPGs.

3. In November of 2001, the Northern Alliance Forces captured the detainee in Konduz, Afghanistan.

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.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

August 6, 2004

REQUEST FOR REDACTION OF NATIONAL SECURITY INFORMATION

ISN 436

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked¹. The FBI makes this request on the basis that said information relates to the national security of the United States². Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

CERTIFICATION THAT REDACTED INFORMATION DOES NOT SUPPORT A DETERMINATION THAT THE DETAINEE IS NOT AN ENEMY COMBATANT

The FBI certifies the aforementioned redaction contains no information that would support a determination that the detainee is not an enemy combatant.

FBI 302 2AUG02

¹Redactions are marked by means of pink/blue highlighter on the OARDEC provided FBI document.

²See Executive Order 12958

Personal Representative Review of the Record of Proceedings

I acknowledge that on 8 September 2004, I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #436.

I have no comments.

My comments are attached.

[Redacted Name]

Name

9 Sep 04
Date

[Redacted Signature]

Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOHAMMED ALI FOWZA,

Petitioner,

v.

GEORGE W. BUSH, *et al.*,

Respondents.

)
)
)
)
) Civil Action No. 05-280 (CKK)
)
)
)
)
)

DECLARATION OF TERESA A. McPALMER

Pursuant to 28 U.S.C. § 1746, I, Commander Teresa A. McPalmer, 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:

1. I am the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants at U.S. Naval Base Guantanamo Bay, Cuba (OARDEC). In that capacity I am an advisor to the Director, Combatant Status Review Tribunals.

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 Mohammed Ali Fowza that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto or were redacted by an OARDEC staff member. This staff member also redacted information that would personally identify certain U.S. Government personnel and foreign nationals in order to protect the personal privacy and security of those individuals.

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

Dated: 29 July 2005

Teresa A. McPalmer

Teresa A. McPalmer
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser: 752

23 JAN 2005

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From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # 440**

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 #440 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

Distribution:

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

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18 Jan 05

MEMORANDUM

From: Assistant Legal Advisor
To: Director, Combatant Status Review Tribunal
Via: Legal Advisor *SLC*

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 440

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 #24 of 26 November 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 elected to participate. *See* exhibit D-a. Detainee provided an unsworn statement to the Tribunal. In addition, he provided answers to questions posed by individual Tribunal members in an unsworn capacity. The Tribunal in its deliberations considered both the statement and the questions.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal substantially complied with all provisions of references (a) and (b). Note that some information in exhibit R-3 was redacted. The FBI properly certified in exhibit R-2 that the redacted information would not support a determination that the detainee is not an enemy combatant.
- d. The detainee requested 1 witness. The Tribunal found the witness to be relevant and submitted a request to the U.S. State Department to locate the witness in Yemen. On or about 9 November 2004 the U.S. State Department requested the Yemeni government locate this individual. Up to the time of the Tribunal hearing of 1 December 2004, the Yemeni government did not respond to the State Department request. Therefore, the Tribunal president determined that the detainee's requested witness was not reasonably available. It is my opinion that the Tribunal acted properly in determining the detainee's requested witness to not be reasonably available.

UNCLASSIFIED

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 440

e. The detainee also stated in his unsworn statement that he had requested certain evidence from members of his family in an effort to disprove the U.S. government's allegations against him. The Tribunal does not directly address whether the information was ever provided to the Personal Representative to present to the Tribunal on the detainee's behalf. While this evidence might have the potential to favor the detainee, it is my opinion that the Tribunal properly reached a determination as to whether the detainee should be classified an enemy combatant using the preponderance of evidence standard as outlined in references (a) and (b).

f. The Tribunal's decision that detainee #440 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



Department of Defense
Director, Combatant Status Review Tribunals

26 Nov 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #24

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. Air Force; President

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

[REDACTED], Lieutenant Commander, U.S. Navy; Member

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



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

27 December 2004

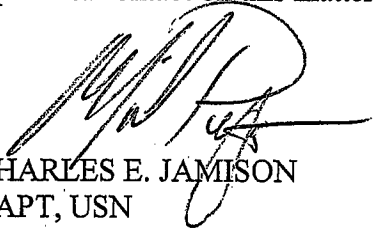
MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander ICO ISN 440

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].

FOR


CHARLES E. JAMISON
CAPT, USN

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

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

(U) TRIBUNAL PANEL: #24

(U) ISN#: 440

Ref: (a) (U) Convening Order for Tribunal #24 of 26 November 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 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 01 December 2004 the Tribunal determined, by a preponderance of the evidence, that Detainee #440 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 and the Taliban, 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, USAF
Tribunal President

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

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

TRIBUNAL PANEL: #24
ISN #: 440

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 and the Taliban. 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 a member of, or affiliated with, al Qaida and the Taliban. The unclassified evidence also indicated that the detainee received weapons training at the [REDACTED] training camp and that he engaged in hostilities against the United States and its coalition partners in Taloqan. Finally it indicated that he was captured in Mazar-e Sharif while fighting with the Taliban. He requested one witness, requested no documents be produced, and made an unsworn verbal statement. The Tribunal President found the requested witness not reasonably available to testify and that alternative means of producing the witness's testimony were not reasonably available. The Tribunal President's evidentiary and witness rulings are explained below.


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: none
- c. Unsworn statement of the detainee.

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

The Detainee requested the following witnesses be produced for the hearing:

<u>Witness</u>	<u>President's Decision</u>	<u>Testified?</u>
	Not reasonably available	No*

* The Tribunal President explained to the detainee on the record that he ruled this witness's testimony could be relevant, and asked that the U.S. Government attempt to produce him. The CSRT legal advisor then used standard CSRT procedures to request the U.S. Department of State attempt to contact this individual through the Yemeni Government. The Department of State subsequently informed the CSRT legal advisor that on or about 9 November 2004 they formally requested the Yemeni Government locate this individual. After a reasonable amount of time had elapsed, the Yemeni Government did not respond to the request. Therefore, lacking the cooperation of the Yemeni Government, the Tribunal President was forced to find this witness not reasonably available.

The Detainee requested no additional evidence be produced; no rulings were necessary.

5. Discussion of Unclassified Evidence

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

a. The recorder offered Exhibits R-1 and R-2 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 supporting unclassified evidence. Exhibit R-2 provided no usable evidence. Accordingly, the Tribunal had to look to classified exhibits (as well as the detainee's statement) for support of the Unclassified Summary of Evidence.

b. Essentially the only unclassified evidence the Tribunal had to consider was the detainee's unsworn testimony. A summarized transcript of the detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3). In sum, the detainee testified that his travel documents were not counterfeit and that he had changed his name legally to avoid retaliation from a family feud that his grandfather had been involved in. The detainee stated when he arrived in Afghanistan all the training camps were closed so he could not have received training. Additionally he stated that he had received training on the AK-47 in Yemen so he would not need to get training. The detainee stated he traveled with three Arabs on a commercial airline while in Afghanistan. The detainee stated while in Taloqan he did not fight, but was in the city working for a Non Governmental Organization (NGO) as a teacher. The detainee stated that he was

captured by General Dostum's forces, and was in the company of members of the Al Wafa NGO.

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

6. Consultations with the CSRT Legal Advisor

The Tribunal President consulted with the CSRT Assistant Legal Advisor concerning the witness request discussed above.

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 deemed necessary.
- b. The detainee understood the Tribunal proceedings. He asked no questions regarding his rights and actively participated in the hearing.
- c. The detainee is properly classified as an enemy combatant and is a member of, or affiliated with, al Qaida and the Taliban.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, USAF

Tribunal President

Summarized Unsworn Detainee Statement

The Tribunal President read the hearing instructions to the detainee. The detainee confirmed that he understood the process and had no questions.

The Recorder presented Exhibits R-1 and R-2 into evidence and gave a brief description of the contents of the Unclassified Summary of Evidence (Exhibit R-1).

The Recorder confirmed that he had no further unclassified evidence or witnesses and requested a closed Tribunal session to present classified evidence.

Tribunal President addressed the detainees' witness. The witness named [REDACTED] (ph) was considered relevant. The Tribunal President requested the United States government contact the Yemen government to locate the witness. The Yemen government was contacted on or about 9 November 2004 but as of the date of the hearing, the Yemen government had not responded to the request. Therefore lacking the cooperation of the Yemen government, the Tribunal President ruled that the witness was not reasonably available.

The Detainee did not want to take the Muslim oath.

The Personal Representative read the accusations to the detainee so that he could respond to the allegations. The allegations appear in italics, below.

3.a.1. The detainee traveled to Afghanistan using counterfeit travel documents.

Detainee: First of all my documents were not counterfeited; these documents were real. I got my passport from the Yemen government, but the only thing that changed was my last name from Muhammad to Osama.

3.a.2. The detainee attended weapons training on the Kalashnikov, PK, M-16, and G-3 at the [REDACTED] training camp in Afghanistan.

Detainee: When I first entered Afghanistan all the training camps were closed. I was trained on the Kalashnikov in Yemen when I was 7 years old, so why would I get training in Afghanistan. The M-16 and G-3, I did see them in Afghanistan, but I never used them there nor was I trained on them. I saw some people carrying those kinds of weapons.

Personal Representative: During our interview you had told me the reasons why you went to Afghanistan in reference to these two points.

Detainee: This is true.

Personal Representative: Would you like to explain that?

Detainee: Yes, I was in Sana studying, before that I was present in Hadratoom. There was a conflict between some groups; my grandfather stabbed somebody with his knife. Before that my grandfather had another problem similar to this one, I was trying to help him out of it. He was put in jail for that for 10 years. When the second problem occurred I fled to Sana when that happened. Since I helped my grandfather I thought they were going to retaliate. When I was in Sana; I met [REDACTED] who suggested that I should go to Afghanistan so I can solve my problem with my grandfather. He had a friend that was in Afghanistan and he would pay me 200 dollars a month, to work with his charity group. I decided to leave and I went to get a passport and I changed my real name from Muhammad to Osama, as well as my last name. When I got there and I studied computer programming. I traveled from Dubai to Pakistan, from Pakistan to Karachi, from Karachi to Quetta, from Quetta I entered into Afghanistan, from Afghanistan to Kandahar, from Kandahar to Kabul. You can verify this by [REDACTED] (ph) he is the man who owned 1000 sheep/lamb, he distributed all that through the poor villages, and on the border of Pakistan there was poor people that we distributed clothing, sugar and rice for the holiday. Then we traveled to Kabul with Baltians (ph) they were Arab from Kandahar. When we were in Kandahar we went to an Arab house, we didn't stay at the house at night because of the fear an air strike would hit the house. When I left the house at night is when I saw the Kalashnikov's, PKS', G-3 and M-16's. When I went to Kabul I stayed in Kabul, and [REDACTED] used to travel to Yemen and get some money and then came back. He was a famous well-known man and was in charge of an Islamic charity group. In Kabul I went to a (inaudible) and met a Palestinian man, I used to stay with him and I learned from him; he was the man I met in Sana and offered me a job. I used to go to the back border with him and played football there.

3.a.3. The detainee was transferred with a group of Arabs from Kabul to Mazar-e-Sharif on a Taliban owned aircraft.

Personal Representative: You had told me that it was not a Taliban owned aircraft it was a civilian airplane.

Detainee: That is true the airline was Ariana; a civilian airline. The price for the ticket was 1000 Pakistani. When I went to Mazar-e-Sharif, I traveled with [REDACTED] and 3 other Arabs. The aircraft was not a Taliban aircraft.

3.b.1. The detainee fought with the Taliban in Taloqan, Afghanistan after 11 September 2001, and was present in Taloqan after the U.S. air campaign begun.

Personal Representative: You told me that was not true, that you did not fight and you were in the city.

Detainee: First of all Taloqan wasn't a fighting city. Civilians lived there and it wasn't a battlefield. The fighting border was hundreds of miles away from Taloqan. It's true I was in Taloqan but there was never any fighting there. We had a legitimate place there so we could teach. We used to teach the curriculum of Sarafee (ph), a Taliban group shut it down since their curriculum was Sarafee (ph). I stayed in Taloqan until then.

3.b.2. The detainee fired his weapon in battle at the United States or its coalition partners.

Personal Representative: You stated that is not true.

Detainee: This is a strange thing I am hearing. Why would I fight the United States of America? I have nothing against them. The rice and flour we have is American. Why would I fight them? They are our food source. I was in that city but it is not a battlefield. I wasn't a fighter. You can ask [REDACTED] I was staying with him at the time. We were working; digging trenches for gas lines at the time.

3.b.3. The detainee was captured in Mazar-e-Sharif while fighting with the Taliban.

Detainee: This is not true at all; when I was captured I was in Konduz. When the city of Taloqan was captured I went to the city of Konduz. Me and some group, the Taliban left Konduz another group named Tustun (ph) came in; an they found out I was with a different group and they decided to interrogate me then gave me to the United Nations. I was with an Arabic guy and some guy from al Wafa. They took us to jail and from there to an intelligence agency. They said they were going to investigate some things and turn us over to the United Nations.

Tribunal President: United Nations or United States?

Detainee: United Nations. Then I stood there for two months then the American came to interrogate me. The people I was with were either killed or sent to a different jail. There was an Arabic translator working with me.

Tribunal President: Does that conclude your personal statement?

Detainee: That is all I have.

Tribunal President: Thank you for your statement.

Tribunal President: Personal Representative do you have any questions for the detainee.

Personal Representative: Yes I do.

Personal Representative Questions

Personal Representative: I have a clarification question from a meeting we had a month ago today. You had stated a lot more here then you did in the original meeting. None of the new information disputes the old information. There is one thing I want to make sure I know and the tribunal to know about your reasons to travel to Afghanistan. I feel it is important.

- Q. During our meeting you explained to me that your grandfather had stabbed an individual; and you went to the tribe leader and the police to take responsibility for your grandfather.
- A. Before I went to the police station I went to see the head of our group, and another leader of a different group. They went and talked to the people to see if we can post bail for the grandfather. They paid and took him from the prison. The police station has records that you can verify that. I am waiting for a letter from my parents to prove what happened at the police station there.
- Q. My question is; did you accept responsibility for your grandfather?
- A. Until now I am responsible; I cannot go back to my own town since I took responsibility for my grandfather. My grandfather stabbed another person and is in prison now.
- Q. Because you took responsibility you could not stay in your own country is that true?
- A. They were going to retaliate on me, that's why I couldn't stay.
- Q. That is the point I'm getting to; you told me that is the reason you went to get your passport name changed. Is that the truth?
- A. Yes, I changed my name. Everybody knows my name and that is why I changed it to Muhammad.
- Q. When did you travel to Afghanistan?
- A. I don't remember exactly.
- Q. If I can clarify from our meeting you had stated you traveled there about 8-9 months before the attacks on America?
- A. Approximately.

The Personal Representative and the Recorder had no further questions.

Tribunal Members' Questions

- Q. Did you fund your own travels to Afghanistan or did someone else fund your travels?
- A. I paid for my own traveling.

Detainee: If you would like I can give you the proof. I am ready.

Tribunal Member: No that is fine.

- Q. What job did you have in Afghanistan?
- A. I used to work for a charity group, and they used to teach children.

- Q. What charity group?
- A. The name Ahfad al Sabah. In the last days we used to have some association with the al Wafa group.

Q. What did you teach the children?

A. Talked about Koran.

Q. Do you speak the Afghan language?

A. We had many translators.

Q. While you were in Afghanistan did you own any weapons?

A. I didn't have any weapons, but I had a small knife to peel an apple.

Q. Why did you travel on the aircraft to Mazar-e-Sharif?

A. The trip was going to Mazar-e-Sharif.

Q. The purpose of going there was for what?

A. My purpose was for Taloqan.

Q. So Taloqan was near Mazar-e-Sharif?

A. Approximately, it takes about 3 hours by car.

Tribunal President asks the detainee if he had any other evidence to present to the tribunal.

Detainee: I have some videotapes that we use for charity purposes I can provide the tapes for you. They took them away from me when I was captured.

Tribunal President: I understand and if the tribunal requires those tapes we will attempt to locate them. At this time there is no need for them.

Tribunal Member: I want to clarify a few things. In your statement you said you wrote a letter to your parents. Did you ask them to get information from the police?

Detainee: I had asked my parents to make a copy of my file. They do have my file there of all what happened.

Tribunal Member: Do you know when that will get here?

Detainee: I hope soon.

Tribunal Member: Would that tell us that you did take responsibility for your grandfather?

Detainee: Yes, it would prove everything and my grandfathers' actions. I can have them fax it to me.

Tribunal President: If you do get it, please notify your Personal Representative so he can bring it to our attention.

Detainee: I will notify my Personal Representative if I receive anything.

Tribunal President: Your explanation for why you left was very complete and thorough. Thank you again for that.

The Tribunal President confirms that the detainee had no further evidence or witnesses to present to the Tribunal. The Tribunal President explains the remainder of the Tribunal process to the detainee and adjourns the Tribunal.

AUTHENTICATION

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



Colonel, USAF

Tribunal President

DETAINEE ELECTION FORMDate: 1 November 2004Start Time: 1240 hrsEnd Time: 1340 hrsISN#: 0440Personal Representative: [REDACTED] MAJOR, USAF
(Name/Rank)Translator Required? YESLanguage? 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 desires to participate in the Tribunal. Detainee requests 1 non-detainee witness who can attest to reasons why he traveled to Afghanistan. Witness relevancy request sent this day. Need to schedule a follow-up interview. Very cooperative and pleasant. No issues.

WITNESS SPECIFICS: [REDACTED] (witness) provided Mohammed Ali Abdullah Bwazier (detainee 0440) counterfeit documents for Bwazier (detainee) to travel into Afghanistan. Witness can also testify to the reasons why detainee used false papers. Essentially, detainee's grandfather had "stabbed" a man in Yemen. Detainee went to police and an agreement was made with the Police and town Shiek that detainee would take responsibility for his grandfather. However, grandfather later stabbed the man a second time, forcing detainee to flee Yemen from repercussions. This witness also met up with detainee in Afghanistan and has firsthand knowledge of detainee's circumstances and travels while in Afghanistan. According to detainee, the Al Qutan police force has the files to verify this story.

[REDACTED]
PERSONAL REPRESENTATIVE

Exhibit: D-a

UNCLASSIFIED

Combatant Status Review Board

TO: Tribunal Members

FROM: OIC, CSRT (12 October 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – BWAZIR, Mohammed Ali Abdullah

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 the Taliban and al Qaida and engaged in hostilities against the United States or its coalition partners.
 - a. The detainee is associated with the Taliban and al Qaida:
 1. The detainee traveled to Afghanistan using counterfeit travel documents.
 2. The detainee attended weapons training on the Kalashnikov, PK, M-16, and G-3 at the [REDACTED] training camp in Afghanistan.
 3. The detainee was transferred with a group of Arabs from Kabil to Mazar-e-Sharif on a Taliban owned aircraft.
 - b. The detainee engaged in hostilities against the United States or its coalition partners:
 1. The detainee fought with the Taliban in Taloqan, Afghanistan after 11 September 2001, and was present in Taloqan after the U.S. air campaign began.
 2. The detainee fired his weapon in battle at the United States or its coalition partners.
 3. The detainee was captured in Mazar-e-Sharif while fighting with the Taliban.
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.

UNCLASSIFIED

24341

Exhibit R-1

Memorandum

UNCLASSIFIED



To : Department of Defense
Office of Administrative Review
for Detained Enemy Combatants
Col. David Taylor, OIC, CSRT
Date 10/08/2004

From : FBI GTMO
Counterterrorism Division
Asst. Gen. Counsel [REDACTED]

Subject: REQUEST FOR REDACTION OF
NATIONAL SECURITY INFORMATION
[REDACTED]

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked¹. The FBI makes this request on the basis that said information relates to the national security of the United States². Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

CERTIFICATION THAT REDACTED INFORMATION DOES NOT SUPPORT A DETERMINATION THAT THE DETAINEE IS NOT AN ENEMY COMBATANT

The FBI certifies the aforementioned redaction contains no information that would support a determination that the detainee is not an enemy combatant.

The following documents relative to ISN 440 have been redacted by the FBI and provided to the OARDEC:

FD-302 dated 06/03/2002

¹Redactions are blackened out on the OARDEC provided FBI document.

²See Executive Order 12958

UNCLASSIFIED

1 of 2
2435
Exhibit A-2

UNCLASSIFIED

Memorandum from [REDACTED] to Col. David Taylor
Re: REQUEST FOR REDACTION, 10/08/2004


If you need additional assistance, please contact
Asst. Gen. Counsel [REDACTED],
[REDACTED] or Intelligence Analyst
[REDACTED],
Intelligence Analyst [REDACTED],
[REDACTED]

Personal Representative Review of the Record of Proceedings


I acknowledge that on 7 December 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #440.

I have no comments.

My comments are attached.

Major  USAF
Name _____

7 DEC 04
Date _____


Signature _____

ISN #440
Enclosure (5)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SURAJADIN ABIB

Petitioner,

v.

GEORGE W. BUSH, *et al.*,

Respondents.

Civil Action No. 05-1000 (PLF)

DECLARATION OF TERESA A. McPALMER

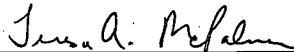
Pursuant to 28 U.S.C. § 1746, I, Commander Teresa A. McPalmer, Judge Advocate General's Corps, United States Navy, hereby state that to the best of my knowledge, information, and belief, the following is true, accurate and correct:

1. I am the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants at U.S. Naval Base Guantanamo Bay, Cuba (OARDEC). In that capacity I am an advisor to the Director, Combatant Status Review Tribunals.

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 Surajadin Abib that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto or were redacted by an OARDEC staff member. This staff member also redacted information that would personally identify certain U.S. Government personnel in order to protect the personal privacy and security of those individuals.

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

Dated: 24 April 2006



Teresa A. McPalmer
CDR, JAGC, U. S. Navy



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser: ~~1040~~ ^{3RT.}

1041

15 MAR 2005

~~FOR OFFICIAL USE ONLY~~

From: Director, Combatant Status Review Tribunal

Subj: REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # 458

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 #458 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

Distribution:

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

~~FOR OFFICIAL USE ONLY~~

8 Mar 05

FIRST ENDORSEMENT on CDR B. A. Ermentrout ltr of 2 Feb 05

From: Legal Advisor
To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 458

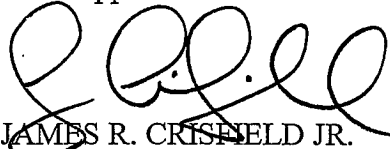
1. Forwarded, recommending the finding of the Tribunal be approved.
2. The Tribunal President denied witnesses requested by the detainee to rebut the allegation that he provided support to Jalaluddin Haqqani, a high-ranking Taliban official.¹ The President explained that she denied the requests because these witnesses did not have first-hand knowledge of events and were not disinterested witnesses. These were patently illegitimate reasons for finding the witnesses to be "not relevant." First, as noted by the Assistant Legal Advisor, whether or not a witness is biased goes to the weight a fact-finder assigns to their testimony. It does not affect the relevance of their testimony. Second, there is no requirement in the CSRT establishment or implementation directives that witnesses possess first-hand knowledge. Reference (b) states that, "[t]he Tribunal is not bound by the rules of evidence such as would apply in a court of law. Instead, the Tribunal shall be free to consider any information it deems relevant and helpful to a resolution of the issues before it." See paragraph G(7) of enclosure (1) of reference (b). The Directive states that the Tribunal has discretion to consider hearsay evidence, but I believe it would be an abuse of discretion for the Tribunal to consider *all* Government hearsay and at the same time deny *all* hearsay tendered by the detainee. Although it was improper for the Tribunal President to make her decision based on these reasons, there is no reason for us to turn a blind eye to reality when reviewing the Tribunal's decision. The simple fact is that, based on our experience with dozens of witness requests forwarded to the Government of Afghanistan, it is extraordinarily unlikely that a request for Afghan witnesses would have been responded to at all, let alone positively. It was an error, but an error without an effective solution.
3. The evidence to support the detainee's classification as an enemy combatant was relatively small. Nonetheless, it is not the role of the legal advisor to second-guess the tribunal's decision. In analyzing whether there was sufficient evidence to support a tribunal's status decision I have customarily used the test of whether there was sufficient evidence for a reasonable finder of fact to have found that the detainee was an enemy combatant by a preponderance of the evidence. In this case, there was evidence by which reasonable tribunal members could have found that the detainee's direct support to Jalaluddin Haqqani, went beyond simply providing shelter and was sufficient to characterize the detainee as an enemy combatant. Therefore, given the low evidentiary hurdle posed by a preponderance of the evidence standard,² I believe that the test is

¹ Due to the Tribunal's poor documentation, it is unclear exactly who these requested witnesses were.

² The preponderance of the evidence standard may be simply stated as "more likely than not."

minimally satisfied in this case. That is to say that reasonable finders of fact could determine that this detainee meets the definition of "enemy combatant" based on the evidence presented.

4. I recommend that the finding of the Tribunal be approved.

A handwritten signature in black ink, appearing to read "J. Crisfield Jr.", written in a cursive style.

JAMES R. CRISFIELD JR.
CDR, JAGC, USN

2 Feb 05

MEMORANDUM

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

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
 FOR DETAINEE ISN # 458

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 # 24 of 26 November 2004
 (2) Appointing Order for Tribunal # 27 of 9 December 2004
 (3) 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,¹ I find that:

a. The detainee was properly notified of and actively participated in the Tribunal process. The detainee provided a sworn oral statement at the Tribunal hearing.

b. The Tribunals were properly convened and constituted by enclosures (1) and (2).

1. Tribunal # 24 conducted two hearings. The detainee made sworn oral statements at both hearings. Exhibits R-1 through R-19 were available at the first hearing. The second hearing was held to review additional information.² The Tribunal recessed before deliberations were completed.

2. Tribunal # 27 was convened to review yet more information.³ At the time this additional information was received, two members of Tribunal # 24 were no longer available. Therefore, the case was assigned to a new tribunal.

c. The Tribunal substantially complied with all provisions of references (a) and (b). Note that some information in exhibits R-4 through R-6, R-24, and R-25 was redacted. The FBI properly certified in exhibits R-2 and R-20 that the redacted information would

¹ Tribunal # 27 issued the final determination in this case. For purposes of the legal review, since Tribunal # 27 reviewed the documents provided to Tribunal # 24, only the decision of Tribunal # 27 is relevant. However, for clarity the proceedings of both Tribunals will be discussed.

² Page 2 of enclosure (1) to the Tribunal Decision Report incorrectly states that the additional information was received in response to the detainee's request.

³ It is unclear from the record of proceedings what information was received by Tribunal # 24 at the second hearing and what additional information Tribunal # 27 reviewed.

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR DETAINEE ISN # 458

not support a determination that the detainee is not an enemy combatant. Note that some information contained in exhibit R-25 has been redacted. It is clear that the redacted information consists of portions of Internment Serial Numbers (ISNs) and classification marks and that the redacted information would not support a determination that the detainee is not an enemy combatant.

d. The detainee initially requested one witness, his brother. This witness was determined to be relevant and reasonably available and did testify on behalf of the detainee.

During the first rehearing, the detainee stated that if an additional charge of harboring Haqqani (a Taliban commander) was going to be added to the allegations against him, he was going to request additional witnesses to testify that Haqqani was not present at the time his house was bombed. He refused to name these witnesses, but said that he would name these witnesses if the Tribunal added a new allegation. The detainee also asked to introduce a letter from his village elder. He proffered that the letter would show that his house was bombed by accident (and not because he was harboring Haqqani).

The initial Tribunal President presumed the accuracy of the village letter, thereby eliminating the need to produce the letter. He also determined that the Tribunal did not have the authority to add allegations. The Tribunal recessed before deliberations were completed. (See enclosure (1) to the Tribunal Decision Report.)

Tribunal # 27 met to evaluate additional evidence. As part of its evaluation, it received all evidence presented to Tribunal # 24. It determined that the detainee's link to Haqqani was the only factor that might lead to continued detention of the detainee. The Tribunal President determined that this link was a de facto allegation, and therefore considered the detainee's request for additional witnesses. (See enclosure (1) to the Tribunal Decision Report.)

The Tribunal President determined that these witnesses were not relevant. First, he noted that the only witnesses who were present at the house were family members and therefore not disinterested. Second, he noted that any witness not present at the house could not have had first-hand knowledge of Haqqani's presence or absence. In my opinion, this was an abuse of the Tribunal President's discretion. The witnesses were clearly relevant. The fact that requested witnesses are not disinterested is irrelevant to the issue of relevancy and goes only to the weight to attach to the testimony. Second, witnesses not present at the house could be first-hand witnesses to Haqqani's *absence*.

The detainee did not request that any additional witnesses or evidence be produced.


e. The Tribunal's decision that detainee # 458 is properly classified as an enemy combatant was unanimous. Regrettably, the Tribunal relied on an article in *The New York Times* as well as other journalistic, rather than intelligence, sources. Nevertheless, in my opinion, sufficient information exists to classify the detainee as an enemy

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 458

combatant. The Tribunal members had to sift through conflicting documents. But despite conflicting information, sufficient evidence exists to classify the detainee as an enemy combatant. And the Tribunal members were in a better position to judge the credibility of the detainee and the witness.

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

2. The proceedings and decision of the Tribunal as reflected in enclosure (3) 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.


BREE A. ERMENTROUT
CDR, JAGC, USNR



Department of Defense
Director, Combatant Status Review Tribunals

26 Nov 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #24

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. Air Force; President

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

[REDACTED] Lieutenant Commander, U.S. Navy; Member

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



Department of Defense
Director, Combatant Status Review Tribunals

9 Dec 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #27

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. Army; President

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

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

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



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

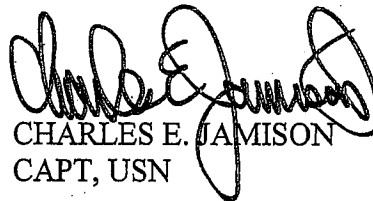
28 January 2005

MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander ICO ISN 458

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

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

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

(U) TRIBUNAL PANEL: #27

(U) ISN#: 458

Ref: (a) (U) Convening Order for Tribunal #24 of 26 November 2004 (U)
(b) (U) Convening Order for Tribunal #27 of 9 December 2004 (U)
(c) (U) CSRT Implementation Directive of 29 July 2004 (U)
(d) (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 by references (b) and (c) to make a determination as to whether the detainee meets the criteria to be designated as an enemy combatant as defined in reference (c). Tribunal #24 was previously convened by reference (a) to make the same determination, however, the previous Tribunal recessed to allow the Recorder to obtain additional evidence.

2. (U) On 3 December 2004 and 14 December 2004, Tribunal #24 recessed without making findings. Two board members from Tribunal #24 are no longer available. On 20 January 2005, Tribunal #27 determined, by a preponderance of the evidence, that Detainee #458 is properly designated as an enemy combatant, as defined in reference (d).

3. (U) In particular, the Tribunal finds that this detainee assisted a member of the Taliban, 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).


COL, U.S. Army
Tribunal President

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

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

TRIBUNAL PANEL: _____ #27
ISN #: _____ 458

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 because he was affiliated with the Taliban. 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 summary of the evidence presented to the Tribunal by the Recorder indicates the Detainee is associated with forces that have engaged in hostilities against the United States and its coalition partners. In September or October of 2001, the detainee allegedly worked as a recruiter for Pacha Khan, a renegade Pashtun Commander who has been conducting active field operations against the Afghan Transitional Administration (ATA). The Detainee was captured near Khowst, Afghanistan by U.S. forces on 20 January 2002 with a modified ICOM VHF transceiver. The recorder provided a news article from the New York Times which reported that the detainee's house had been bombed. The Detainee chose to participate in the Tribunal process. The detainee testified that he did work for Pacha Khan, at the behest of his village elders, however, he noted that Pacha Khan worked for United States forces. He did receive 30,000 rupees, but that amount was to assist with repairs to his house. His house was bombed shortly after the Taliban folded. He never saw any Americans and said there was no fighting in their area. He was arrested about a month after his house was bombed. No one fired a shot at the time he was arrested and he did not have a radio when he was arrested. The Detainee called one witness, his brother, who was arrested at the same time. The brother's testimony was consistent. He noted that he lived in his brother's house but was away when the house was bombed. The Detainee's son was also arrested at the same time. A fourth person, a Saudi neighbor, was arrested on the same day.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a and D-b, and R-1 through R-39.
- b. Testimony of the following persons: None.
- c. Sworn statement of the detainee.
- d. Sworn statement of the witness.

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

The Detainee initially requested one witness. The president of Tribunal #24 (hereinafter referred to as the initial Tribunal president) ruled that the witness was relevant and the witness testified in the proceeding.

The Detainee later requested additional evidence. During the first rehearing, the Detainee was invited back and given the opportunity to address additional documents. He stated that if the government were going to add an allegation about harboring Haqqani, he wanted to provide additional evidence. Specifically, he wanted to introduce a letter from his village elders that stated his house was mistakenly bombed. He also wanted to request additional witnesses to testify that Haqqani was not present at the time his house was bombed. He refused to name these witnesses, but said that he would tell his Personal Representative if the Tribunal decides to add a new allegation related to Haqqani. During deliberations the initial Tribunal president presumed the accuracy of the Village letter. Given that presumption, there was no need to see the letter. The initial President also ruled that the Tribunal does not have the authority to add allegations. The Tribunal merely hears the evidence before it. The case recessed before deliberations were completed.

Tribunal #27 met to evaluate additional evidence. It became clear that the link to Haqqani was the only factor that might lead to continued detention of the Detainee. Although the Haqqani link is not a named allegation on R-1, it is in essence, a de facto allegation. Thus, the Tribunal President considered the Detainee's request for additional witnesses to testify that Haqqani was not present at his house when it was bombed. The Tribunal President ruled that these witnesses were not relevant. Any witness who was present at the house would have been related to the Detainee. Thus, any such witness would not have been a disinterested witness. The Detainee had already testified that Haqqani was not present and the members would consider that testimony when evaluating the evidence. Any witness who was not present at the house could not be a first-hand witness to Haqqani's presence or absence.

5. Discussion of Unclassified Evidence

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

a. The recorder offered Exhibits R-1 through R-3 into evidence during the initial unclassified portion of the proceeding on 3 December 2004. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is usually 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 supporting unclassified evidence. Furthermore, the allegations in R-1 are refuted by unclassified Exhibit R-3. Exhibit R-2 provided no usable evidence. Exhibit R-3 provided no support for the statements asserted in R-1. R-3 is a New York Times newspaper article. The article appears to refute R-1 as it mentions that Pasha Khan was working for the Americans as his troops were providing security for the airport. The New York Times article, dated 2 Feb 02, does provide a separate possible reason for finding that the Detainee was an enemy combatant. The article notes that 20 of 22 people in detainee's house were killed by the bomb. At the time of the bombing a Taliban leader, Jalaluddin Haqqani, was at the detainee's house. The bomb killed the Detainee's wife and nine grandchildren and also killed ten of Haqqani's bodyguards. The only two survivors were Haqqani (who was injured) and the detainee. The Times used the Detainee's relatives as sources. They apparently obtained their knowledge from the Detainee. The relatives asserted that the detainee did not know Haqqani but permitted him to stay as a guest based on Pashtu custom. The article also notes that the Americans may have been misled because of a regional power struggle between Wazir Khan Zadran (Pasha Khan's younger brother) and Sakim Khan. The article notes that Americans were not involved in the arrest and does not mention any radio or shooting. The article notes that the men were seized out of their sleep. On 14 December 2004, Exhibits R-20, R-21, and R-22 were offered into evidence. Exhibit R-20 provided no usable evidence. Exhibits R-21 and R-22 are additional open source documents that show the Detainee's residence was bombed and that Haqqani was apparently present.

b. The Tribunal considered Detainee's sworn testimony. The Detainee testified on 3 December 2004 and on 14 December 2004. The summarized transcripts of the Detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3). Prior to the Detainee's testimony on 3 December 2004, the initial Tribunal president noted that the Detainee had apparently been told that if he testified under oath, he would be set free. The president clarified that any such promise did not apply here. The Detainee admitted he worked for Pacha Khan but insisted that Pacha Khan was a member of the coalition forces. The village elders had asked him to go to several villages to find recruits to fight the Taliban. If Pacha Khan turned on the United States, that was not his problem. He also testified about the bombing of his house. He did not know why his house was bombed, but received 30,000 rupees to help pay for repairs. He denied that he never had a VHF transceiver, denies that he was arrested with a VHF transceiver, and further states that he would not know how to use electronic equipment. He never saw any Americans

and said there was no fighting in their area. He was arrested about a month after his house was bombed. No one fired a shot at the time he was arrested and he did not have a radio when he was arrested. He did not know if a Saudi neighbor had a radio when that neighbor was arrested the same day. On 14 December 2004, the Detainee again testified and addressed the reported presence of Haqqani. He denied that Haqqani was at his residence. He noted that one of the sources named in one of the articles was his cousin Sadem (the Tribunal did not receive this document) who was not at his compound that day. He noted that the Council of Khost had provided a letter to the U.S. that stated that his house was bombed by accident. He was shown the letter by an interrogator and wanted it introduced into evidence. The Detainee asked whether harboring Haqqani was a new allegation and stated he wanted additional witnesses if that was the case. The initial President informed the Detainee that he was not changing the allegations.

c. The Tribunal considered the testimony of one witness, Khan Zaman. He is the Detainee's brother. The witness's testimony was consistent. The witness was arrested at the same time as the detainee. He stated that Pasha Khan was working for the Americans at the time of the arrest. Pasha Khan became the governor after the Taliban fell. He denied knowledge of any radio and said he had no training in electronics, nor did his brother have such training. He also stated that they had no weapons. He testified that a village elder, Nazim, brought the 30k rupees but did not know where Nazim got the money. He noted that he lived in his brother's house, but was away at Gardez (ph.) when the house was bombed. Per the witness, there were no shots fired when they were arrested. Detainee's son was also arrested at the same time. A fourth person, a Saudi neighbor, was arrested on the same day. He was a villager that lived next door. He did not know if that person was captured with anything.

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.

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 deemed necessary.

b. The Detainee understood the Tribunal proceedings. He asked no questions regarding his rights and actively participated in the hearing.

c. The Detainee is properly classified as an enemy combatant and supported the Taliban.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the Tribunal President.

COL, U.S. Army
Tribunal President

Summarized Detainee Sworn Statement

Tribunal President: This hearing shall come to order and for the record, this is a reconvening of a previous hearing for Sarajuddin. For the record the Tribunal panel is the same as previously convened however, there has been some changes in other Tribunal staff. At this time I would like the Recorder to be sworn in.

Tribunal President administered oath to the Recorder.

Tribunal President: The Reporter has also been changed for this Tribunal. The Reporter will now be sworn.

Recorder administered oath to the Reporter.

Tribunal President: For the record, the Translator will now be sworn.

Recorder administered oath to the Translator.***Hearing recessed to bring in detainee. The Tribunal President reopened the Hearing.***

Tribunal President: Sarajuddin we have reconvened this hearing because of additional information that we have received. Some of this information is unclassified and it is provided to this Tribunal in your presence. The three Tribunal panel members have been previously sworn and this is the same panel you met before. Also the Personal Representative is the same as you had before and he also has been sworn. Also previously the Recorder, Tribunal Reporter and the Translator who are new to this hearing have also been sworn. I will also remind you that the following applies during this hearing as it did at the previous hearing. You may be present at all open sessions of the Tribunal and that is why you were brought back today because this is another open session of the Tribunal. A reminder that if you become disorderly you will be removed from the hearing and the Tribunal will continue to hear evidence in your absence. You are also reminded that you do not have to testify at this Tribunal, but you may testify if you wish to do so. In your previous appearance at this Tribunal you provided a Muslim Oath and I remind you that any testimony would be considered to be under oath to tell the truth. You have the assistance of your Personal Representative as we conduct today's proceedings. Sarajuddin do you understand this process and why your here today.

Detainee: Yes I understand but I do have one concern, one question. Can I say it?

Tribunal President: Yes please.

Detainee: The allegation that I had before, I did answer it and I brought a witness too. If the Tribunal has some new additional information I can answer and I do have a witness for those also. If they just have some clarification on questions then I will answer it and ask the Tribunal to make a decision. That's why I'm here today.

Tribunal President: Okay. There are no new allegations or no new unclassified summary information. In our previous questions to your previous witness, your brother, one of the questions was why was your home bombed? Your witness, your brother, said that he did not know, that the United States should know. Part of the reason that you're here today is that the panel did want to know more about why your home was bombed. Related to that, was also another piece of evidence provided to this hearing at the previous assembly. Unclassified evidence identified by R-3 is a New York Times article. This article was provided to you previously for our first hearing. It also addresses the same issue related to the same question that we posed to your brother regarding why your home was bombed. At this time I believe I would like to ask the Recorder if he has any unclassified evidence to present to this Tribunal.

Recorder: Yes sir.

Detainee: If he has some allegation then I can provide a witness for that because I would like to provide a witness for the Tribunal. If they have any I would like to reconvene the Tribunal.

Tribunal President: I understand that you may have a witness for us regarding the information provided but again, a reminder, we have no new allegations regarding your status as an enemy combatant.

Detainee: Okay. Just make sure it's not a new allegation.

Tribunal President: I understand.

The Recorder presented Exhibit R-20 thru R-22 into evidence.

Tribunal President: For the record, the panel is reviewing the unclassified evidence provided.

Detainee: Okay.

The Recorder confirmed that he had no further unclassified evidence or witnesses and requested a closed Tribunal session to present classified evidence.

Tribunal Member's questions

- Q. I'm assuming you have seen this document. First of all, I do want to say every time I ask you a question about this, I want to state that I have the greatest sympathy. This is tough for me to ask questions. I guess I want to start off with some clarification by telling you the New York Times article basically implies that you were harboring Haqqani. When I look at this other document it says "U.S. bombs hit walled compound, four buildings of Abdul Gul killing his mother, six brothers and sisters." I wanted to see if I could get you to describe your house. Do you own all of the homes in your compound? Are they all your homes?
- A. There was an allegation about Haqqani that he was present in my house and that is why the United States struck. I swore before, I told them that he wasn't there. I did not know this person. I gave a witness. They can testify that that person wasn't in my house at that

time. Other than that, if you're asking the person who mentioned Haji Abdul it is his neighbor, his villager and he can answer more of your questions if you want to ask him.

Q. This article says you have a wall around your house. Is that common?

A. In our country they do have walls around the house. Under there they make rooms. Sometimes in the middle of the house. Sometimes they make a wall. That's for security for the house. The United States bombed two places. The bombing happened in the Zana Khil (ph) village, and it was my house. The person mentioned in the newspaper, the villager, he said his own house in the village and my own house in the village and they bombed my house. So if that is an allegation on me that Haqqani was there at my house then I will get a witness to present to the Tribunal which can testify that he was not there and I did not know him.

Q. How many people were in your house or on your property the night the bomb hit?

A. There was close to forty people in that house, including children, females and males.

Q. Everybody was a member of your family?

A. Yes.

Q. No guests were staying there that usually don't stay there?

A. No I didn't have guests. The guest that they referred to was that person Haqqani. I do have a witness to say that he wasn't there. If you have more allegations I would like to have a witness. I am innocent and poor and what happened to me wasn't fair. I just swore before in my interrogation and I can do it for the Tribunal as well. If you have more allegations I will go and get another witness for that and for the future also.

Q. Is it your brother you would bring back to say that nobody was there? Who is the witness in the camp that you're talking about? We would like the name today if possible.

A. When I see the allegation then I can see who would actually be a good witness for it, then I can give a name to my PR. If the Tribunal decides that it is acceptable then they can bring those people here.

Tribunal Member: There are no allegations.

Q. How many other buildings do you own? How many of the buildings?

A. That's the only house.

Q. Do you have a guesthouse?

A. No.

Q. Do you have a barn?

A. No.

Q. Haqqani was pretty famous during the war against the Russians. Do you know where he is from?

- A. You asked me before and I told you and I can take the oath again but I do not know this person, I never met him and I don't have any information about him. Why don't they ask people who do know him. It must be by mistake; somebody told him that they ask me about this person all the time. I told you a couple of times that I don't have any information on this person.
- Q. You know he's not in your village, correct?
- A. It is not fair. If it were true then it happened to me because of that one person which I had never known, they had information about him. They ask me about this person all the time, if I knew him and if he was there at the time, I brought a witness before, Abjah Khan, and he testified and gave witness that I really did not know him and I had no relation with him. It is not fair that because of him I lost twelve people, my family. I have been here for three years in jail and how long should I suffer just because somebody said I have information. If the government has information that I know this person or this person knows me then you can show it to me and I will answer it. If you have any evidence to show today then you can prove it to me and then you can kill me and I won't mind it. Twelve people of my family died and I have been here for three years in prison, what else does your government need from me, just because of a wrong accusation or wrong information? Any evidence that you wish to show to me, if they can prove it, then I'm in their hands, I'm here, they can kill me, I'm ready for it.
- Q. I know this must be trying for you but the question I want to ask is; this article said Haqqani had bodyguards. Did you see any armed people with weapons in your village that day?
- A. It was the nighttime, I did not see anything or anybody with a weapon but if somebody else did I don't know you can ask them; personally I didn't see any.
- Q. So you didn't see any strangers in his village, that day, the day before or maybe two days before?
- A. No. I did not see it but if you have more concerns or allegations you can give it to my PR and he will explain it to me and I will give you all the witness information and people. It was nighttime and I did not see anyone and I don't know if they did they bombed Afghanistan and a lot of places I don't know if they bombed by mistake or not. It was our loss and I am still suffering from it.
- Q. This is a question that I asked before. Were you arrested by Americans? Did they speak English?
- A. It was Americans.

Tribunal President's questions

- Q. Who would that witness be?
- A. There are many people in the country that I can provide the names and there are people in the camp also.
- Q. The person in the camp; could you give us a possible witness name?

- A. You can give this allegation to my PR and I will give him the witnesses name and if the president decide to accept it then yes I can bring it. If not, that's fine.
- Q. I would like to ask a question about your capture again. If you would again please review for us the circumstances of your capture, how you were approached, who approached you, what happened that evening as you were taken into custody.
- A. I was sleeping in the house around three o'clock at night and I heard the sound of airplanes flying. They were flying airplanes in the daytime also but not at nighttime so I woke up. So I got up and I put my shirt on and I saw a soldier coming to the house. I went and approached him thinking they wanted to ask more questions about the bombing that happened before. When I got there they just said to turn around and they handcuffed me. They handcuffed me and my brother and my son they brought them also. We have five or six houses in the village, in one area and the soldiers were around the whole village. They got us and they were putting us on the chopper and I saw another villager and they brought him also. So they brought us together to the base and finally they brought us here and then asked me if I had a radio with me. They asked me who's radio was that and I told them it wasn't mine because if it was mine they should have record that it was captured with me. They didn't have anything it was just asking and nothing else. If it is my neighbor's, I don't know about him because they surrounded all six houses. If they found it somewhere else I'm not responsible for it. I don't know how to use it and it wasn't mine.
- Q. Your area of your village; The New York Times article implied that a neighbor was your cousin Haji Abjah Gul. Is that correct? Is he your neighbor living next door?
- A. He is not my relative but we are close to each other.
- Q. Then you know him then?
- A. He is a villager yes.
- Q. Close as in across the street? Down the block?
- A. I don't really know the meters but I will tell you it is not that far and it is not that close.
- Q. I understand. I know it's difficult to have distances. I'm familiar with homes and compounds in the Middle East and I do have a question. Do you have more than one wife? I understand how difficult it is because you had lost your wife during the bombing so I have extreme sympathy and it is very hard for me to ask this question.
- A. Only one wife.
- Q. The reason I asked that question is, just so you understand, it is not normal for our culture to have more than one wife but I do understand it is tradition. If so, the compound would have different homes within the compound. That may explain some of the confusion we have about some of these reports of damage.
- A. It was a big house with seven to eight rooms. Since I was married, two of my brothers were married, and my sons, they are married so each one needs their own rooms. That's why I have this many rooms in one house.

- Q. I understand. Thank you. I'll ask one last question regarding the allegations that were provided to us. It goes back to the thirty thousand rupees provided by Pacha Khan through, I believe you said, the village elder to rebuild your home. At the time of your capture did you have any commitments or any occupation or relationship with the governor of Khost to repay the loan or repay any of these funds?
- A. The witness was there and he explained it also. What more information do you want from me?
- Q. I was just reconfirming that you didn't have any kind of relationship with Pacha Khan and it was just a village affair.
- A. Pacha Khan is from the Gardez province and I am from Khost. We don't even live in the same area. Like the witness said I did not know him and I never had any relation with him. The person in the village is Nazim; he had given me the money and if he knows him or has any relations with him, I don't know.

Tribunal President: That concludes this reconvened Tribunal.

Detainee: (inaudible) stuff to the PR about the village elders.

Tribunal President: Yes. That was what I was getting to next.

The Tribunal President confirmed with the Personal Representative that he had no further evidence and that the Detainee had no previously approved witnesses to present to the Tribunal.

Personal Representative: During the interview prior to the reconvene of this Tribunal with the detainee, he had mentioned that during one of his interrogations during the first half of his detention here at Guantanamo that he was shown a document that was written by the Counsel of Khost which is comprised of tribal elders. This document stated that his house was bombed by accident and requested, through the United States Army, that he be released.

Detainee: The Counsel wrote to the American government that the person is innocent and that nobody went to his house and America went and bombed his house. It was wrong information and they should pay him for his loss.

Tribunal President: I understand your request that the Personal Representative has provided us. I will consider requesting that document but that would be addressed in a closed session. For the record, your previous request for additional witnesses to address other matters is also taken under advisement. I would like the Tribunal to deliberate and if we require additional information we can review the status of your witness request. As the detainee is well aware, some of the matters discussed here are a matter of relevance, do they relate to your classification as an enemy combatant. We will adjourn this open session with the comment that I would like to make to the detainee that we will consider these matters carefully and make our determination accordingly.

Detainee: Can I say something?

Tribunal President: You may, we have not formally adjourned.

Detainee: They bombed my house and I was captured in my house. I wasn't a commander, I was never in any fight, I didn't want to fight against anyone. So how could I fit into the description of enemy combatant?

Tribunal President: I understand your comment and we will consider these matters.

Recorder: Can I ask two questions?

Tribunal President: That is a good point of order that the Recorder should have an opportunity to ask questions.

Recorder's Questions

Q. When the Americans came and captured you, did you ever go outside?

A. They captured me in the room, inside.

Q. You said you heard the airplane. Did you not go outside to investigate that?

A. Like I said the plane was flying in the daytime but I heard it I went outside to check it because they were flying the whole day.

Q. Did you hear any gunfire prior to you being captured?

A. No.

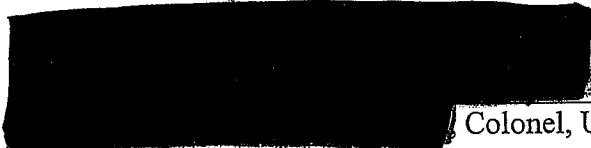
Detainee: The only thing I have a question or concern is that what happened to and I want to actually suffer. Because you all know what happened to me, it was wrong what happened, and it was [based on] wrong information. Nobody came to our house, nobody can say anyone was in my house and I do not know that person.

Tribunal President: I understand your comments.

The Tribunal President explained the remainder of the Tribunal process to the Detainee and adjourned the open session.

AUTHENTICATION

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

 Colonel, USAF

Tribunal President

Summarized Sworn Detainee Statement

The Tribunal President read the Hearing Instructions to the Detainee, and confirmed that he understood the Tribunal process.

The Recorder read the pertinent text from the Unclassified Summary of Evidence (Exhibit R-1) to the Tribunal.

The Tribunal President addressed the Detainee Election Form (Exhibit D-A), and informed the Detainee that his witnesses would be available for the Tribunal. The Tribunal President also addressed a comment made by the Detainee to the Personal Representative which is documented on the Detainee Election Form:

Tribunal President: It states that during an interrogation, the Detainee was told if he swore an oath on the Koran, and provided a statement, he'd be set free. (Addressing the Detainee) This is a separate hearing, and any promises, or statements made by an interrogator previously, is different when it comes to taking an oath. That is to say the oath we are offering today, which is your choice to take, is a promise to tell the truth; this would be very helpful to us in understanding your statement.

Detainee: I would like to take the oath, because I told the truth before, and I will tell the truth today.

The Detainee was then administered the Muslim oath by the Recorder.

At this time, the Personal Representative would read the Detainee's responses to the allegations gathered from a previous interview. In addition, the Detainee was permitted the opportunity to respond with additional information as he wished. The Tribunal President encouraged the Detainee to make a statement at this time.

Detainee: Nazim, an elder, a tribe elder, asked all the elders in the village to get together to fight against the Taliban. He told us he talked to Pacha Khan, and that he wanted cooperation from all the villagers. I went to four other villages close to our village and told them he (Nazim) wanted us to be together against the Taliban. At that time, the Taliban government fell down because America came and there was no fight. After a couple days, they bombarded my house. I was at the funeral after some of my family was killed, and Nazim came to me and gave me 30,000 rupees to help rebuild my house, and told me he would try to get money to help me from Pacha Khan. He said when the Americans came in the future, he would try to get more help from them, too. When they bombed my house, there was no fight in the Khost area yet. After a month, I was in my house in my village when the Americans came and captured us. We got captured in my own house; me, my brother and my son. They also captured one of my own villagers in his house. When they came to arrest us, nobody fired on them, or fired on anyone, there was no fight. We never heard any gunshots; they just came to arrest us and we went with them. In my house, I had no kind of radio, and they did not capture us with any such thing in my house. My only request is today is that they destroyed my house, and whatever I did was against the Taliban; Nazim wanted us to get together against them, and there were no Americans in the area

at the time; my only question is what did I do wrong against the Americans? They captured me, destroyed my house and destroyed my family. I'm sure that you will answer to God one day also, and there will be justice. I will answer each allegation if you want me to answer, and answer questions if you want me to.

Tribunal President: We will have questions for you later.

Personal Representative: Sir, I could go ahead and ask my questions now; and that would fill in some of the holes.

Tribunal President: (to the Personal Representative) If you could, please allow the Detainee to answer all the allegations first.

Personal Representative: The only accusation that he did not address was that Pacha Khan was a renegade commander; he had stated earlier that he didn't know what his actions were to be responsible for.

Detainee: I don't know him personally or ever worked with him; I've only heard of him, now I've been in the prison three years. He worked for the government, and I should not be responsible for that. It's been a month less than three years in the prison. His brother was a minister for the government, and Pacha Khan was a governor of Khost at that time. Nazim gave me 30,000 rupees to help my family from the governor; I never got any money directly from him and never met him personally. After three years, and if he's doing something bad now, why should I be responsible for that? I never saw him.

Personal Representative: One other thing, about the radio, or hand-held receiver.

Detainee: I answered before, none of my family has any such radio, and I have no knowledge of what they are talking about.

Personal Representative: He's covered all the points, sir.

Tribunal President: Does that conclude your statement?

Detainee: Yes.

The Tribunal President thanked the Detainee for his statement, and allowed the Personal Representative to ask questions at this time.

Personal Representative Questions to Detainee

Q: You stated you, your brother and son had no radio; what about the fourth person captured that same evening?

A: I have no knowledge of him being captured with a radio; they can ask him, but I have no knowledge. He was living in the same village with me, but he was captured in his own house.

Q: Do you know what Pacha Khan's job was while you were helping Nazim gather people to fight the Taliban?

A: That time with the Taliban, he was in Pakistan; during the last days of the Taliban, Nazim said to get together to fight with him against the Taliban.

The Recorder did not have any questions.

Tribunal Member Questions to Detainee

Q: What occupation did you have? Were you a farmer?

A: Yes, I was a farmer and I had my own land.

Q: Do you have any background in electronics or radios?

A: No. I've never been to school, and I don't know how to read and write. We had a farm and animals.

Q: What about your son or brother? Were they trained in the use of electronics?

A: No; they have no knowledge of anything like that. You can ask them also when they are here.

Q: Do you know of any reason anyone would turn you in?

A: I don't have any knowledge of who gave this information, but in Afghanistan, that's what people are doing. They are causing problems for people they don't like. After the bombardment, I was captured so quickly, I didn't have the time to find out who gave the information to them.

Q: What were you raising on your farm?

A: Wheat and corn.

Q: Your associate, your friend captured in his home at the same time, what was his occupation?

A: He was a laborer; before that he was in Saudi Arabia being a laborer over there.

Q: Have you had any experience in military operations; have you ever been a fighter against the Soviets or had any military training?

A: I never had any knowledge or training; during the time of the Taliban, I went to Pakistan as a refugee, and I never fought against the Russians.

Q: How long had you lived in Afghanistan before the bombing?

A: I didn't count the years, but when there was no fighting in Afghanistan, we came back from Pakistan.

Q: Were you in the house when it was bombed?

A: Yes.

Tribunal President: Do you have any other evidence to present to this Tribunal?

Detainee: No, I don't have anything else; you can ask the Witness questions.

At this time, the Tribunal took a short recess to permit the first Witness to be brought into the hearing. After reconvening, the Tribunal President confirmed the identity of the Witness and that he was the Witness the Detainee requested. The Witness then took the Muslim oath. The Detainee stated he wished the Personal Representative to ask questions on his behalf.

Personal Representative Questions to Witness

Q: Did your brother know Pacha Khan?

A: He heard of his name, but never met with him.

Q: Were you in your brother's house when it was bombed?

A: No, I wasn't in the house at the time it was bombed.

Q: At the time of your capture, you were in your brother's house?

A: Yes; we were all captured together.

Q: Did you see a hand-held radio in the house?

A: No; we did not have anything with us when we were captured.

Q: Did the fourth person captured in your village have a radio in his house that you were aware of?

A: No; I don't know if they captured anything with him in his own house.

Q: Do you know why the American forces would bomb your brother's house?

A: No; we didn't know why, but Americans should know why they bombed our house.

Q: Did your brother have any enemies that would make false statements about him?

A: We did not have any knowledge of such person, but I'm sure that in the country people are doing bad things because of personal differences.

Q: You had stated your brother was assisting the tribal elder in gathering people to fight against the Taliban; is that a true statement?

A: Yes, sir. The village elder asked my brother to go to areas around our village to ask more people to get together against the Taliban.

Q: When did he gather these people?

A: The Taliban was still in government, but it was their last days, so people were trying, at that time, to get together against them.

Q: At that time, was Pacha Khan for or against the U.S. forces?

A: He was with the Americans, and everybody was trying to help the Americans at that time against the Taliban.

The Tribunal President confirmed the Detainee had no questions of the first Witness, but the Detainee addressed the Tribunal with one question at this time.

Detainee: Did you ask him (the Witness) about all the allegations against me? Did he have knowledge all the evidence against me, so he could bear witness?

Tribunal President: The Witness did not receive the Unclassified Summary about you, but the Personal Representative did address all the major points in his questions of the Witness.

Detainee: OK.

Tribunal Members' Questions to Witness

Q: How many village elders are in your village?

A: There are 6 elders that represent our tribe to outside people or to the government.

Q: Was there any elder in particular that asked for aid in overthrowing the Taliban?

A: Yes, sir. Nazim asked my brother to go and bring more people from other villages to get together against the Taliban.

Q: What was your occupation?

A: I'm a farmer on my own land.

Q: I think your brother was concerned we didn't ask you all the questions; did you have any training in electronics?

A: No way; me and my brother didn't have any kind of education. We both can't read and write. I ask other people favors to read letters from home for me; but no, I received no training on electronics.

Q: As far as the bombing, the Personal Representative made the statement it was Americans that bombed your house; are you certain it was Americans that bombed your house?

A: It was midnight when they bombed from the air; we didn't know who the target was.

Q: Were there any casualties; was anyone killed?

A: Yes, sir. Our own family members, and my brother's wife was killed. I wasn't at the house that day, but when I came the next day, there were casualties in our family in the bombing.

Q: Do you live in the house with your brother?

A: In the same house, yes.

Q: Where were you the night the house was bombed?

A: In Guardez.

Q: When you were arrested with your brother and his son, were there any weapons or any fighting used during that arrest?

A: No; nobody fired any shots, and we had no weapons when we were captured. If we had no weapons in the house, then how can we fire on them? There were not any gunshots, and they just captured us.

Q: One other question; do you know who gave your brother 30,000 rupees to rebuild his home?

A: Nazim, the elder from our tribe in the village. He brought that to my brother, so we don't know where he got it, whether it was from Pacha Khan or the Americans. He gave it to our brother and said it was to rebuild our house, and said he would try to bring more help in the future.

Q: After the Taliban, who was the governor of your area?

A: Pacha Khan.

Tribunal Panel Member: (Directed to the Detainee) The Witness said your wife was killed in the bombing; were you not in the same room with your wife?

Detainee: I was in the same room, and the total people in the house was around 30-40; some were killed and some were injured. I was one that was injured. There are eight rooms in our house, and people were in each room, and six rooms were ruined and two were okay. Some got killed and some survived.

Tribunal President: That concludes this portion of the hearing with the Witness. On behalf of the Tribunal, I would like to thank you for your assistance today. Our questions today addressed your family's loss, and we do have sympathy for this occasion.

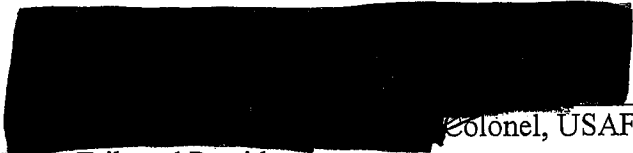
Detainee: Thank you for that. There is nothing in my heart against the Americans, because it may have been a mistake. Some of my family was killed, but some are still in our country. I request justice from you, and that we can go home and support and take care of our family.

Tribunal President: We understand, and we will continue to review all the information while making our determination on whether you are an enemy combatant.

The Tribunal President ordered a recess to remove the Witness. After reconvening, the Tribunal President confirmed the Detainee had no additional information for the Tribunal, and thanked the Detainee for his testimony and participation. The Tribunal President then explained the remainder of the Tribunal process, and adjourned the open session.

AUTHENTICATION

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

 Colonel, USAF

Tribunal President


DETAINEE ELECTION FORM

Date: 30 Nov 04

Start Time: 0920

End Time: 1020

ISN#: 458

Personal Representative:  LT COL

Translator Required? YES Language? PASHTU

CSRT 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:

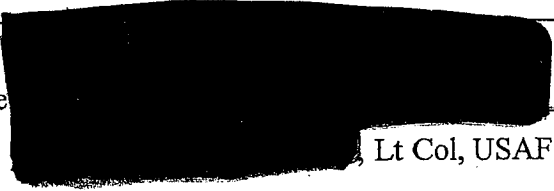
Will speak to each piece of evidence.

Has indicated he will take the oath. (Note: During an interrogation Detainee was told that if he swore on the Koran and provided his statements then he would be set free. PR stated that his enemy combatant status would be based on the available evidence and his testimony.)

Detainee requested one (1) in-camp witness. In-camp witness is ISN 460, Zaman Khan, who is his brother. Witness will testify that Detainee did not know Pacha Khan and could provide details concerning his capture.

Detainee did not request any documentary evidence.

Personal Representative

 Lt Col, USAF

Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (22 November 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – SARAJUDDIN, Abib.

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 forces that are engaged in hostilities, and participated in military operations against United States and its coalition partners.
 - a. The detainee is associated with forces that have engaged in hostilities against the United States and its coalition partners:
 1. In September or October of 2001, the detainee worked as a recruiter for Pacha Khan.
 2. Pacha Khan provided the detainee with 30,000 rupees in order to rebuild his compound when it had been destroyed by a United States air strike.
 3. Pacha Khan, a renegade Pashtun Commander, has been conducting active field operations against the Afghan Transitional Administration (ATA) and coalition military forces.
 - b. The detainee participated in military operations against the coalition.
 1. The detainee was captured near Khowst, Afghanistan by United States Forces on January 20, 2002.
 2. The detainee and his three associates when captured had in their possession a modified ICOM VHF transceiver.
 3. Coalition forces were fired upon during capture of the detainee.
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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UNCLASSIFIED

Exhibit R-1

2468

Memorandum from [REDACTED] to Col. David Taylor
Re: REQUEST FOR REDACTION, 11/20/2004

If you need additional assistance, please contact Asst.
Gen. Counsel [REDACTED]

or [REDACTED]

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Published on Saturday, February 2, 2002 in the New York Times

Villagers Add to Reports of Raids Gone Astray

by John F. Burns

ANI KHEL, Afghanistan — When allied soldiers arrived by helicopter in the dead of night last week to seize him and three other family members for questioning, a villager named Serajuddin may well have thought he was the most blighted man in Afghanistan.

His violent detention came weeks after an American airstrike hit his home, killing 20 people, including his wife and 9 young grandchildren.

Mr. Serajuddin's story appears to offer an example of the harm to noncombatants that has been caused by the American-led military campaign, much of which has been concentrated in this remote, arid region 150 miles south of Kabul.

An American commander in this region confirmed Mr. Serajuddin's arrest on Jan. 21 to a local Afghan leader, and said he continues to be held by the American military, although his release is under review.

Because of several reported incidents like these, Afghan villagers accuse American bombers and Special Operations troops of being careless in their choice of targets. Afghans claim that more than 150 civilians have been killed in recent weeks in this region, which includes the Zhawara caves south of Khost, a primary focus of American bombing and other operations.

There is no way to achieve an accurate reckoning of the number of civilian casualties from the American operation. The country remains a swirling pool of rumors. In addition, it is difficult to assess the effects of the American operation accurately because of the way that it has been conducted, mostly by high-altitude bombing and lightning raids by Special Operations troops.

But accounts of errors have become increasingly insistent. This week, Gen. Tommy R. Franks, the commander of operations in Afghanistan, ordered an inquiry into an American Special Forces assault this month on what was believed to be a compound used by Taliban forces in the southern town of Oruzgan. Residents there have said several people were killed in error and the United States may have been misled by false information from one of two rival factions in the town.

Afghan authorities in Kandahar said on Tuesday that they were pressing the United States military about 27 people detained in that raid, and they hoped that some would be released in the next few days.

A common theme in the reports is that the American airstrikes and ground raids sometimes produce unwanted outcomes because they are often based on information that relies at least partly on local Afghan factions with scores to settle among each other.

"Obviously, it is war and it isn't going to be risk-free," said Col. Rick Thomas, a spokesman for the United States Central Command in Tampa, Fla. "We try to mitigate collateral damage, but it is going to occur."

He added that American commanders require multiple sources of intelligence on a particular target before it is attacked. "We've been very deliberate to use various sources of intelligence to confirm what we believe to be ground truth," Colonel Thomas said.

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Exhibit R-3

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As for Mr. Serajuddin's fate, Colonel Thomas said he was not familiar with specific details about the raid on the Afghan man's compound last week. But another senior military official said that although the raid was based on intelligence gathered by American sources, the commando operation was carried out by forces from another unidentified country. He also suggested that Mr. Serajuddin may already have been released.

The origin of Mr. Serajuddin's problems appears to go back to Nov. 16. It was then, relatives say, that he and his family gave shelter to Jalaluddin Haqqani, the commander of Taliban forces in the southern provinces of Afghanistan who was fleeing from Kabul. Mr. Serajuddin's family and neighbors insist he did not know the commander, who was high on the list of America's most wanted men in Afghanistan, and his act was merely a sociality.

Just hours after the commander arrived at his family compound, two bombs destroyed Mr. Serajuddin's home and an adjacent guesthouse. Among the 20 people killed were his wife, Fatima, 3 grandsons and 6 granddaughters, relatives said.

Civilians have died in six different American-led attacks near here since Nov. 15, the villagers say. They include the bombing of a mosque in Khost on Nov. 16, just hours before the airstrike on Mr. Serajuddin's home. American military officials have confirmed that the mosque was hit by an errant bomb intended to hit a building belonging to Mr. Haqqani. On Dec. 21, a convoy of travellers on a country road was hit by an American airstrike.

Villagers and relatives of Mr. Serajuddin said that the only survivors of the American bomb that hit his compound in November were Mr. Serajuddin himself and Mr. Haqqani, the Taliban commander. After the attack, Mr. Haqqani fled with an injured shoulder, and remains at large today.

Last week misfortune struck Mr. Serajuddin again, when six helicopters arrived with commandos who smashed their way through steel gates into his battered compound.

"I don't know what is our sin," said Hajji Ajab Gul, Mr. Serajuddin's 75-year-old cousin.

The commandos burst into an undamaged building and seized seven men and boys asleep there, including Mr. Gul. He said the commandos bound their hands with plastic ties before searching the house, breaking open storage cupboards, then leaving again with Mr. Serajuddin, who is about 50, and three male relatives.

He said the commandos were accompanied by an Afghan interpreter who spoke Dari, the language of the Tajik people who predominate in northeastern Afghanistan. While one commando pointed his rifle at each of the men and boys, Mr. Gul said, another tied their hands.

"I'm angry," Mr. Gul said, as he recounted the events. "We are very poor people. Our expectation of the U.S.A. is that they will not bother us, in the way that the Soviets did when they were here. We need help from America, not banditry like this."

In November, after the bombing, Mr. Serajuddin told relatives and neighbors that he knew Mr. Haqqani by reputation only. He never had any association with the Taliban or Al Qaeda, he said, and agreed to take Mr. Haqqani into his compound only because of a Pashtun tribal tradition.

In Mr. Serajuddin's case, Wazir Khan Zadran, the brother of a local warlord, said he believed that a rival warlord with close ties to the Americans, Zakim Khan, may have deliberately misled the soldiers so as to make trouble for the Zadran clan, to which Mr. Serajuddin belongs.

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"I told them they made a big mistake, thinking that Serajuddin was a big friend of Jalaluddin Haqqani," Mr. Zadran said of his conversation with American officers at the airport in Khost, where about 100 American commandos are camped. "I told them, 'You have chosen the wrong friends in Khost, and they have been giving you the wrong information. Serajuddin is no more a friend of the Taliban or Al Qaeda than you are.' "

There may be relief for Mr. Serajuddin, however. Mr. Zadran said he has been told by American officers that Mr. Serajuddin and his three relatives had been flown 250 miles to Kandahar International Airport, where suspected Taliban and Al Qaeda men are being detained before some are flown on to the Guantánamo base in Cuba.

The officers in Khost said they would raise the case of Mr. Serajuddin and his family members with the American commanders based at the Kandahar airport. The American officer in charge at Khost, known locally as "General John," told Mr. Zadran that he thought that Mr. Serajuddin might be released and flown back to his village this week, like a number of other local men who have been seized in similar helicopter raids have been in the past month.

Attempts to reach the American commanders at the airport in Khost for their version of the raid were blocked by soldiers loyal to Pacha Khan Zadran, Wazir Khan Zadran's older brother, who said the Americans had given instructions that no reporters were allowed near the airport.

Mr. Zadran's heavily armed troops compete with Zakim Khan's followers for control of every street in Khost and also for the favor the American forces, a crucial factor in the scramble for power that is under way in every region of Afghanistan after the Taliban's collapse.

The Americans have distributed money, uniforms and in some cases weapons and ammunition to local militia commanders thought likely to help in hunting members of the Taliban and Al Qaeda. That has raised fears among Afghans of a new civil war if the tensions among the warlords get out of hand.

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Memorandum



To : Department of Defense Date 12/13/2004
Office of Administrative Review
for Detained Enemy Combatants
Capt. Charles Jamison, OIC, CSRT

From : FBI GTMO
Counterterrorism Division
Asst. Gen. Counsel [REDACTED]

Subject REQUEST FOR REDACTION OF
NATIONAL SECURITY INFORMATION
[REDACTED]

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked¹. The FBI makes this request on the basis that said information relates to the national security of the United States². Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

CERTIFICATION THAT REDACTED INFORMATION DOES NOT SUPPORT A DETERMINATION THAT THE DETAINEE IS NOT AN ENEMY COMBATANT

The FBI certifies the aforementioned redaction contains no information that would support a determination that the detainee is not an enemy combatant.

The following documents relative to ISN 458 have been redacted by the FBI and provided to the OARDEC:

FD-302 dated 05/24/02
FD-302 dated 08/19/02
FD-302 dated 09/16/02
FD-302 dated 09/16/02

¹Redactions are blackened out on the OARDEC provided FBI document.

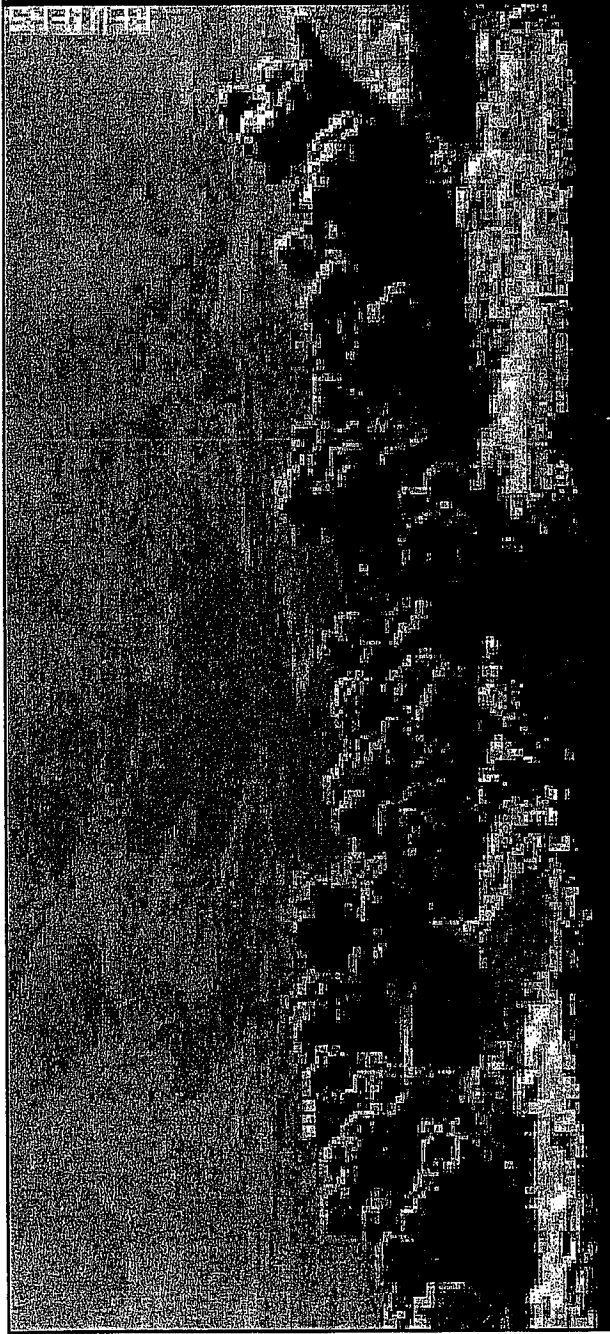
²See Executive Order 12958

Memorandum from [REDACTED] to Capt. Charles Jamison
Re: REQUEST FOR REDACTION, 12/13/2004

If you need additional assistance, please contact Asst. Gen.
Counsel [REDACTED]

or IS [REDACTED]

Appendix 4. Daily Casualty Count of Afghan Civilians Killed in U.S Bombing Attacks, October 7 until present day



"Carpet bombing by B-52s of Tutukhan hill, northwest of Kabul, overlooking Bagram airport on October 31, 2001 during 2nd phase of the U.S air war" (Telegraph 12/14/01)

Compiled by and excerpted from Marc W. Herold, "A Dossier on Civilian Victims of United States' Aerial Bombing of Afghanistan: A Comprehensive Accounting" [Durham, N.H.; unpublished manuscript, Departments of Economics and Women's Studies, University of New Hampshire, December 2001]. Professor Herold [B.Sc., M.B.A., Ph.D Econ] has been on the faculty of the University of New Hampshire since the fall of 1975, specializing in the area of Third World economic and social development.

Exhibit R-21

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Day

16-Nov

Ramazan start

Location	Province	Civilian deaths	Weapon	Commentary	Sources
Kandahar city	Kandahar	-	bomb	hit UN de-mining agency (DAFA). Loss of \$2 mn.	Dawn 11/17/01
oil tanker trucks near Tungi, 10 mi. from Pakistan	Kandahar	-	helicopters destroyed them	US special forces attack resting truckers at night	Times 11/24/01
Khost religious school - Jalaladin-and Light of Koran mosque	Paktia	34-65	GBU-12 500 lb bomb	bomb hits mosque at 10 am ET Friday. Us planes drop 3 GBU-12 500 lb bombs. 2 hit Al Qaeda facility, but third hits mosque, precisely day Ramadan begin. Madrassa hit in Matta Cheena district. Bomb aimed at Jalaluddin Haqqani who probably was wounded	T of I 11/19/01 Pak. Obs. 11/18/01 Jang newsp. 11/19/01 LAT 12/27/01 smh 1/26/02 - Nelson Reuters 11/16/01 cnn.com 11/16/01
Zani Khel village, 10 kms w. of Khost	Paktia	28	bomb	incl. 19 members of one family. US bombs hit walled compound of 4 bldgs. of Abdul Ajub Gul, killing his mother, six brothers and sisters	T of I 11/19/01 citing AFP PNS 11/19/01 Dawn 11/19/01 smh 1/24/02

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Day 13-Nov

Location	Province	Civilian deaths	Weapon	Commentary	Sources
2 houses in Kabul	Kabul		two 500 lb. bombs	hit offices of Al Jazeera and house nearby	Indep. 11/14/01 BBC News 11/13/01
Bibi Mahru district near Kabul airport	Kabul	1	500 lb. "slid" bomb	kills Ayesha Ghulam and destroys houses	Guardian 12/1/01
Macroyan housing district	Kabul	6	one 500 lb. bomb	four 500 lb dropped, aimed at garrison but only one bomb hits	Guardian 12/1/01
Wazir Akbar Khan district	Kabul	1	bombs and helicopters rockets	7 pm attack near to Jalaluddin Haqqani's house. Destroyed guard house and neighboring civilian house. Killed Ayesha, 30	Guardian 12/1/01 - McCarthy

Day 6-7 Jan

Location	Province	Civilian deaths	Weapon	Commentary	Sources
Khost	Paktia		heavy overnight bombing raids	bombed regions once headquarters of Haqqani	T of I 1/7/02

Day 6-7 Jan and 7 Jan

Location	Province	Civilian deaths	Weapon	Commentary	Sources
Zhwar and Khost areas	Paktia			heavy bombing by fighter jets of provinces and helicopter landing	BBC News 1/7/02 Guardian 1/8/02

UNCLASSIFIED

Afghan Official Discusses Future

By KATHY GANNON
Associated Press Writer

KABUL, Afghanistan (AP) — Echoing comments from Afghanistan's new leader, the country's foreign minister said the American military will leave "when the objectives of the eradication of terrorism and of al-Qaida forces have been met."

Dr. Abdullah said Wednesday he expects final agreement soon on the details of how foreign forces — both American troops and international peacekeepers — will operate.

"I wouldn't say there are disagreements ... Some points need further discussions," Abdullah said in his first news conference since taking office Saturday with the country's new interim government.

Asked when there would be an accord, he said, "It will be very soon ... I'm talking about days."

Afghanistan's government is spending its first week trying to organize the daunting task ahead. The country, wracked by war for more than two decades, is in tatters, and the new coalition government of ethnic groups that succeeded the Taliban militia faces obstacles from keeping the peace to avoiding the infighting that characterized pre-Taliban regimes.

The new prime minister, Hamid Karzai, said Wednesday that Afghans are happy to have peacekeepers in their nation despite a long tradition of resisting foreign fighters. He and Abdullah both said U.S. troops were still needed to pursue remaining terrorists in Afghanistan, particularly those from Osama bin Laden's al-Qaida network.

"We believe there are still some pockets of al-Qaida," Abdullah said, singling out both southern Afghanistan and Paktia province, which borders Pakistan to the east. He said Taliban leader Mullah Mohammed Omar may be there as well.

"He's hiding somewhere," Abdullah said.

His new boss, Karzai, told The Associated Press in an interview that the terrorists who had been sheltered under the Taliban had been mostly eliminated.

"Some may be still here, but I don't think they are in large numbers. I think that terrorism is largely defeated in Afghanistan," Karzai said, seated in a leather armchair in the presidential palace. "There are remnants in the form of individuals or small groups."

The new prime minister is well aware that people are analyzing his every move. Karzai — a member of the country's largest ethnic group, the Pashtuns — wore a traditional brown Uzbek robe, a possible gesture of unity.

Karzai also promised to pursue Omar. "If we find where he is, we will definitely arrest him," Karzai said. There have been reports Omar is hiding in the snowy peaks of Helmand province, northwest of Kandahar, the spiritual heart of the Taliban until it fell earlier this month.

Karzai met with his cabinet on Wednesday for the second time since their inauguration over the weekend. The defense and interior ministers gave briefings on the security situation. Karzai is seeking to form a national army to replace the numerous armed factions that control parts of the country.

Without exception, Karzai said all the estimated 1,600 people he has met since taking office Saturday have pressed for the deployment of international peacekeepers to maintain security for the six months he is in office.

"For a people who do not like foreign troops at all, they come and ask me to bring the peacekeeping troops," Karzai said.

About 80 British peacekeepers, the first deployed, rolled into Kabul last weekend. They came under cover of darkness and have kept their profile low. As many as 5,000 may be sent to Afghanistan according to the United Nations resolution which approved their deployment.

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In other Afghanistan-related developments:

- The Pakistan-based Afghan Islamic Press news agency reported that Jalaluddin Haqqani, a Taliban official and ally of Osama bin Laden's al-Qaida network, was critically injured in a U.S. airstrike last month and may be dead. It said Haqqani and five bodyguards were seriously wounded in the U.S. bombardment on Nov. 16 outside the Afghan city of Khost, near Pakistan's western border, and he has not been seen since.
- Pakistan's coast guard said it arrested 43 Afghan nationals Wednesday who may be linked to bin Laden and the Taliban. Maj. Mohammad Akram said the men were taken into custody near the port city of Karachi and were being interrogated.
- Seventy to 80 sorties were launched Wednesday from the USS Theodore Roosevelt aircraft carrier in the Arabian Sea, but — for the fourth consecutive day — none of the warplanes dropped any bombs. The planes have been flying in support of ground troops, something ship spokesman Lt. John Oliveira said was expected to continue Thursday.

Updated: December 27, 2001 11:41 AM

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Activity Contents

ID: 01320032371229 **Title:** AFGP 2002 700058 - [REDACTED]

Narrative:

AFGP-2002-700058 [REDACTED]
Query returned 6 of 106514 total documents. Displaying hit: 4

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Original Document Information
Document #: AFGP-2002-700058 Classification: U/FOUO
English Title: T237 LETTERS/BUSINESS CARDS (U/FOUO)
Language: PUSHTU

457 -
TRIBAL LEADER
FRIEND OF
458...

Document Date: Total Pages: Inclusive Pages:
Document Type: LETTER Format: PAPER ORIGINAL
Agency: DIA Project: ENDURING FREEDOM
Country Of Information: AFGHANISTAN

Title:
Country Of Origin: AFGHANISTAN Originators Classification:

Related Document Numbers
Document Number Type Document Number
Harmony Number AFGP-2002-700058

GUL ZAMAN
SON OF 458

Keyword Categories
Keywords
BIOGRAPHIC; TELEPHONE NUMBER; WOT (WAR ON TERRORISM)

Document Remarks
(U/FOUO) 1- BUSINESS CARDS. 2- A LETTER TO TALIBAN, TO ALLOW GUY NAME WALI ZAMAN TO CARRY ONE AK47. 3- A DOCUMENT FROM TALIBAN GOVERNMENT TRAFFIC DEPARTMENT, FOR A CAR TO BE TRANSPORTED. 4-A LETTER FROM HAQQANI TO KHOST PROVINCE HEAD OF EDUCATION SAYING THAT GUL ZAMAN IS A FRIEND PLEASE TAKE CARE OF HIM. 5- RECEIPT OF GAS. 6- MUJAHID TELEPHONE OFFICE. TELEPHONE NUMBER 00929297-310792 OUTSIDE OF PAKISTAN. TELEPHONE 009297-310792 FROM INSIDE PAKISTAN. [BATCH] 202_12JUL02 [BOX] 382 [BATCH REMARK] These documents were dropped off by the 202d. They are left over documents from January 2002. Locations unknown.

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Involved Participants

Role **Name**
Subject of Activity GUL, MOHAMMED
Attachments
No Data Found

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EXHIBIT R- 38

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Activity Contents

ID: 01320032371212 **Title:** AFGP 2002 700051 - [REDACTED]

Narrative:

AFGP-2002-700051 [REDACTED]

Query returned 6 of 106514 total documents. Displaying hit: 3

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Original Document Information

Document #: AFGP-2002-700051 Classification: U/FOUO

English Title: T237 LETTERS (U/FOUO)

Language: PUSHTU

Document Date: Total Pages: Inclusive Pages:

Document Type: LETTER Format: PAPER ORIGINAL

Agency: DIA Project: ENDURING FREEDOM

Country Of Information: AFGHANISTAN

Title:

Country Of Origin: AFGHANISTAN Originators Classification:

Related Document Numbers

Document Number Type Document Number

Harmony Number AFGP-2002-700051

Keyword Categories

Keywords

WOT (WAR ON TERRORISM)

Document Remarks

(U/FOUO) 1- A LETTER FROM HAQQANI TO THE GOVERNOR OF KHOST, ASKING HIM TO ALLOW A GUY BY THE NAME OF GUL ZAMAN TO INSTALL A COMMUNICATION SYSTEM IN HIS HOUSE. 2- A DAILY LOG FOR GAS. [BATCH] 202_12JUL02 [BOX] 382 [BATCH REMARK] These documents were dropped off by the 202d. They are left over documents from January 2002. Locations unknown.

UNCLASSIFIED/~~FOUO~~

Involved Participants

Role

Name

Subject of Activity GUL, MOHAMMED

Attachments

No Data Found


UNCLASSIFIED / ~~FOUO~~

EXHIBIT R- 39


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Personal Representative Review of the Record of Proceedings

I acknowledge that on 24 January 2005 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #458.


 I have no comments.

My comments are attached.

LT COL  USAF

Name

26 Jan 05
Date


Signature

ISN #458
Enclosure (5)