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UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL DECISION

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

TRIBUNAL PANEL: #27
ISN #: [REDACTED]

1. Introduction

As the Combatant Status Review Tribunal Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant: and is a member of, or affiliated with, associated forces that are engaged in hostilities against the United States or its coalition partners. 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. Any classified evidence considered by the Tribunal is discussed in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

2. Synopsis of Proceedings

The unclassified evidence presented to the Tribunal by the Recorder indicated that the Detainee is a member of forces associated with the Taliban. The Detainee was captured in the company of [REDACTED] Pacha Khan, a renegade Pashtun Commander, has conducted military operations against the Afghan Transitional Administration (ATA) and coalition forces. The Detainee claims to have worked as [REDACTED]

[REDACTED] The Detainee ran a safe house for [REDACTED]

[REDACTED] The Detainee was arrested by Americans at his neighbor's house in Khowst, Afghanistan on 20 September 2002, attempting to elude capture by hiding with a group of women.

The Detainee chose to participate in the Tribunal process. He called two witnesses, requested several documents be produced, and made an oral, sworn statement. The Tribunal President found the requested witnesses reasonably available although both of the witnesses' testimony had to be submitted in writing. The Tribunal President found that the off-island requested document and the requested pocket litter to be not reasonably available. The Personal Representative submitted a translated copy of a letter from the Detainee's brother in the unclassified session. He also presented documentary evidence about the pocket litter; however, this was presented during the classified session of the proceeding. The Detainee, in his oral statement, denied being a Taliban member. The Tribunal President's evidentiary and witness rulings are explained below.

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3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a through D-e, R-1 through R-36
- b. Testimony of the following persons: [REDACTED]
- c. Sworn 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>
[REDACTED]	reasonably available	yes*
[REDACTED]	reasonably available	yes**

* The Detainee proffered that the witness could testify to the fact that the Detainee worked for the [REDACTED] and that the Detainee supported the Karzai government. As such the original assigned Tribunal President determined that this witness request would be relevant to the Detainee's case. Due to cross-camp restrictions, this witness' testimony had to be submitted in writing and was submitted in evidence as Exhibit D-b.

** The Detainee proffered that this witness could testify that the Detainee did not run or know of Karim's safehouse for explosives making. As such the original assigned Tribunal President determined that this witness request would be relevant to the Detainee's case. Due to cross-camp restrictions, this witness' testimony had to be submitted in writing and was submitted in evidence as Exhibit D-c.

The Detainee requested the following additional evidence be produced:

<u>Evidence</u>	<u>President's Decision</u>	<u>Produced?</u>
Pocket Litter	Not reasonably available	no*
Hazaree papers (Employment Documents) from National Directorate of Security	not reasonably available	no**

* The Detainee requested several documents that he had on his person at the time of his capture be submitted to the tribunal. The Personal Representative took a number of steps to try and locate this Pocket Litter and has submitted this as Exhibit R-23. Due to the attempt to locate and failure to produce, the Tribunal President ruled that this

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documentation is not reasonably available. However, in lieu of the actual documents, the Personal Representative submitted the inventory and summary to the Tribunal.

** The Detainee proffered that these documents requested for the period from January 2002 to September 2002 would prove that the Detainee worked for the National Directorate of Security (NDS). As such the original assigned Tribunal President determined that this information could be relevant and made a request to obtain this document. In accordance with standard procedures, the request was sent to the U.S. Department of State on 28 December 2004 with a follow-up on 10 January 05. To date, the Department of State has indicated they have had no response back from the Foreign Embassy. As such, the Tribunal President determined that based on the attempt to locate and the lack of response, this document was not reasonably available.

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 for support of the Unclassified Summary of Evidence.

b. The Tribunal considered the Detainee's sworn testimony and the written documents submitted by the Detainee. A summarized transcript of the Detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3). In sum, the Detainee stated that he was not a Taliban member; in fact, he had several times openly defied the Taliban government which resulted in severe penalties. The Detainee went to [REDACTED]

He was acquainted with [REDACTED] through work and prayer. He did not run a safehouse for [REDACTED]. When the Taliban fell, the Detainee was asked to go to work for the National Security Division (NDS). The Detainee stated that he was [REDACTED]

He also video taped illegal activities and turned these tapes over to the U.S. forces. Additionally, in this job, he campaigned against the Taliban. Pacha Khan and [REDACTED] were his enemies. Pacha Khan had [REDACTED] on one occasion. The Detainee used his own money [REDACTED] so that they would be able to function. The Detainee also stated that they were paid a salary on a fairly regular basis, although he admitted that a few of the payments were a little late.

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c. Statements from two in-camp witnesses, [REDACTED] were provided by the Personal Representative as Exhibit D-b and D-c.

d. The Detainee made an allegation of physical mistreatment while he was in detention in Afghanistan at the hands of his U.S. captors. The Tribunal President made inquiry of the Detainee to note his statements about such alleged mistreatment. The Tribunal President has caused these allegations to be reported to the chain of command.

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 appropriate.
- 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 associated forces that are engaged in hostilities against the United States or its coalition partners.

8. Dissenting Tribunal Member's Report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

[REDACTED]
COL, U.S. Army
Tribunal President

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