

UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL DECISION

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

TRIBUNAL PANEL: #2
ISN #: 892

1. Introduction

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

2. Synopsis of Proceedings

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

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

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

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

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

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5. Discussion of Unclassified Evidence

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

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

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

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

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

6. Consultations with the CSRT Legal Advisor

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

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

7. Conclusions of the Tribunal

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

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was requested or deemed necessary.
- b. The detainee understood the Tribunal proceedings. He asked questions regarding his rights, appeared satisfied with the answers provided by the Tribunal President, and otherwise actively participated in the hearing.
- c. The detainee is properly classified as an enemy combatant.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,


Colonel, U.S. Marine Corps
Tribunal President

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