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**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL DECISION**

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

TRIBUNAL PANEL:           #26            
 ISN #:           [REDACTED]          

**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, 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 Tribunal held this hearing on 17 December 2004. The Recorder presented Exhibit R-1 during the unclassified portion of the Tribunal. That Exhibit, the Unclassified Summary of Evidence, indicates, among other things, that: the detainee is associated with the Taliban; the detainee engaged in hostilities against the United States or its coalition partners; the detainee was part of a group that attacked the Shkin firebase with AK-47 rifles, PK machine guns, grenades, and rocket-propelled grenade launchers; and the detainee was armed for this attack with grenades and an AK-47 rifle. The Recorder called no witnesses.

The detainee participated actively in the Tribunal proceedings. He began by responding to each of the allegations on the Unclassified Summary of Evidence and answered questions from the Personal Representative and the Tribunal members. The detainee's sworn testimony and his answers to the questions posed to him are summarized in Enclosure (3) to the CSRT Decision Report.

The detainee called one witness, [REDACTED]. The Tribunal President ruled that the requested witness not reasonably available, and that alternative means of producing the witness's testimony were also not reasonably available. The detainee presented no other evidence nor requested any document be produced. The Tribunal President's evidentiary and witness rulings are explained in paragraph 4, below.

During the classified session of the Tribunal, the Recorder presented Exhibits R-2 through R-11, identifying those exhibits that directly addressed the allegations in the Unclassified Summary of Evidence and those that provided amplifying information. The Personal Representative neither presented classified documents nor commented on the classified evidence.

After considering all of the classified and unclassified evidence, the Tribunal determined that the detainee is properly classified as an enemy combatant.

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3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a and R-1 through R-11.
- b. Sworn statement of the detainee:

See Enclosure (3) to the CSRT Decision Report.

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]	not reasonably available	no*

\* The Tribunal President explained to the detainee, on the record, that he had determined this witness' testimony would be relevant, and asked the U.S. Government attempt to produce him. The CSRT legal advisor then used standard CSRT procedures to request that the U.S. Department of State attempt to contact this individual through the [REDACTED] Government. The Department of State subsequently informed the CSRT legal advisor that they had made a formal request on or about 27 October 2004 to the Government of [REDACTED] to locate this individual. The Government of [REDACTED] did not respond to the request. Later, when it was learned the witness is actually a [REDACTED] national, the CSRT legal advisor again used standard CSRT procedures to request the U.S. Department of State attempt to contact this individual through the [REDACTED] Government. The Department of State subsequently informed the CSRT legal advisor on 10 December 2004 that they did not have sufficient information on the witness requested to locate him (see enclosure 6). Moreover, no individual with the name the detainee provided was in U.S. custody. Therefore, lacking sufficient information to locate the requested witness, the Tribunal President ruled that this witness not reasonably available.

The detainee requested no additional evidence be produced.

5. Discussion of Unclassified Evidence

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

- a. 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. Accordingly, the Tribunal had to look to classified exhibits and to the detainee's statement for support for the Unclassified Summary of Evidence.

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b. Essentially the only unclassified evidence the Tribunal had to consider was the detainee's sworn testimony. A summarized transcript of the detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3). In sum, the detainee testified that he was tricked into joining a group that engaged in an attack against the Shkin firebase. He stated he met [redacted] at his Madrassah, who invited him to a different Madrassah in Pakistan. He waited several weeks for [redacted] to arrive, and eventually a man he had not met before called his name and said to join him. He got into a truck with several other people, and drove into Afghanistan. On the way, he learned the group had weapons with them. They asked the detainee to take a bag of bullets and grenades with him. The detainee stated he waited at the bottom of a hill, while [redacted] and others launched a rocket attack against a target from the top of the hill. Everyone in the attacking party ran, but the detainee got separated from the group, leaving him with the bag of bullets and grenades. He found some Afghan soldiers, and told them everything. U.S. personnel approached him, and took him into custody.

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 CSRT Assistant Legal Advisor was consulted regarding the witness issue discussed above.

The Tribunal consulted the CSRT Assistant Legal Advisor regarding allegations made by the detainee in his testimony that U.S. personnel had physically abused him in a U.S. facility in Bagram, Afghanistan. The OARDEC Forward Officer in Charge and the OARDEC Liaison to the Criminal Investigation Task Force were notified of the matters on 17 December 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 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 indicated that he understood the proceedings, fully participated in his hearing, asked relevant questions, and provided helpful information during his sworn statement.

c. The detainee is properly classified as an enemy combatant and is a member of, or affiliated with, the Taliban.

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**8. Dissenting Tribunal Member's Report**


None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Tribunal President

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