

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID HICKS, *et al.*)
)
)
 Petitioners,)
)
 v.) Civil Action No. 02-CV-0299(CKK)
)
 UNITED STATES, *et al.*,)
)
 Respondents)
)
 _____)

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. 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 David Hicks that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto. I have redacted information that would personally identify certain U.S. Government personnel in order to protect the personal security of those individuals. I have also redacted internee serial numbers because certain combinations of internee serial numbers with other information become classified under applicable classification guidance.

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

Dated: 1 Oct 04

JAPalmer
Teresa A. McPalmer
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser:
30 September 2004

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From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # [REDACTED]**

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 # [REDACTED] meets the criteria for designation as an Enemy Combatant, in accordance with references (a) and (b).
2. This case is now considered final.

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)
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JCS (J5)
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OARDEC (Fwd)
CITF Ft Belvoir

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29 Sep 04

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # [REDACTED]

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 #5 of 17 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. During his initial interview with a Personal Representative on 9 September 2004 the detainee declined to elect whether or not to participate in the Tribunal until he had spoken to the lawyer assigned to represent him for his Military Commission case. He also declined to talk to his Personal Representative until he was authorized to do so by his Military Commission lawyer. The Personal Representative then closed the interview. A substitute Personal Representative subsequently interviewed the detainee on 17 September 2004. The detainee was appropriately informed that he did not have the right to be represented by counsel at the Tribunal. He was again asked if he wanted to participate in the Tribunal and he declined to participate. The Record of Proceedings forwarded from the Tribunal did not contain the first Detainee Election Form. In the interest of record completeness, I have inserted a copy of the first Detainee Election Form, dated 9 September 2004, into the Record of Proceedings behind exhibit D-A.

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 exhibits R-5, R-6 and R-7 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.

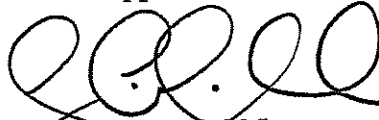
d. The detainee made no requests for witnesses or other evidence.

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

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Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # [REDACTED]

- 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 B. Cristfield Jr.
CDR, JAGC, USN

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Department of Defense
Director, Combatant Status Review Tribunals

17 Aug 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #5

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 Naval Reserve



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

27 September 2004

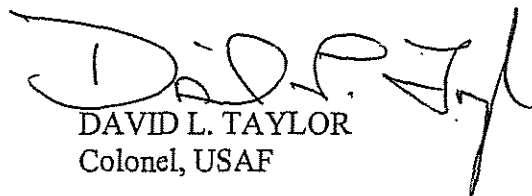
MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN# [REDACTED]

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 660-3088.


DAVID L. TAYLOR
Colonel, USAF

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

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

TRIBUNAL PANEL: _____ #5
ISN #: _____

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. 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 indicated that Detainee [REDACTED] is an al Qaida fighter. He participated in training on a number of occasions, both before and after he realized his trainers were part of al Qaida. The unclassified summary of the evidence also indicated that the detainee has met Usama bin Laden on approximately eight occasions, collected intelligence on the American embassy in Afghanistan for al Qaida, and was sent by a senior al Qaida leader to fight against Northern Alliance and United States forces in Afghanistan after 11 Sep 01. This exhibit also stated that the detainee agreed to fight on the front lines in Konduz, but while engaged in combat failed to wear a uniform or any type of emblem or distinctive military article designating him as a fighter, and did not follow any typical military chain of command. The detainee chose not to participate in the Tribunal process. He called no witnesses and requested no documents be produced.

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-19.

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

The Detainee requested no witnesses; no rulings were necessary.

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

5. Discussion of Unclassified Evidence

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

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.

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 consulted the CSRT Assistant Legal Advisor during the course of this hearing on the following matters: In his initial interview with his Personal Representative (PR), Detainee [REDACTED] handed the PR a document which is attached to this package as Exhibit R-3. This document was a letter from Detainee to the PR, informing him that the detainee is represented by counsel. The letter went on to state that because he is represented by counsel, Detainee [REDACTED] chooses not to speak to his PR unless and until he is authorized to do so by his attorney. The detainee's PR consulted the Assistant Legal Advisor and the Tribunal President regarding this letter. The Assistant Legal Advisor advised the Tribunal President and the PR that since detainees are not authorized to be represented by counsel for the CSRT process (see Reference (b), attached), Detainee [REDACTED] had no right to consult with his attorney prior to his CSRT hearing. The hearing then commenced on 15 Sep 04. Shortly after the hearing began, the Tribunal became concerned because the original Detainee Election Form did not appear to be consistent with statements made to the PR by the detainee during his initial interview. Specifically, the detainee had requested to meet with his attorney (both orally and through the aforementioned letter), but had not specifically declined to participate in the hearing process if his request were to be turned down. The Tribunal felt that the PR should be allowed to meet with the detainee, tell him that he would not be allowed to consult his attorney regarding the CSRT process, and ask him specifically if he wanted to participate in the process. The hearing was delayed to allow this to happen. After this decision was made, the original PR had to temporarily leave Guantanamo Bay for personal reasons. The Lead PR then assigned himself to the case, met with the detainee and satisfied himself that the detainee understood the process and the decisions he was being asked to make, and filled out a new detainee election form reflecting the detainee's decisions. The hearing was then restarted on 22 Sep 04. Since a week had passed since

the hearing had initially begun and a new PR was present, the Tribunal President decided to restart the hearing from the beginning of the script.

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. The detainee chose not to participate in the Tribunal process, as indicated in Exhibit D-a, so the Tribunal President questioned the PR on the record regarding his interaction with the detainee. The PR indicated that the detainee appeared to understand the process and made a conscious, informed decision to not participate in his CSRT hearing.
- c. The detainee is properly classified as an enemy combatant and is a member of or affiliated with al Qaida.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,


, Col, USAF
Tribunal President

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Summarized Unsworn Detainee Statement

The Personal Representative made the following statement on behalf of the detainee:

The Detainee will contest his enemy combatant status in the courts in January.

AUTHENTICATION

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

[REDACTED]

[REDACTED], Col, USAF

Tribunal President

FOUO

Recorder Exhibit List
For
ISN [REDACTED]

#	Title	Classification
R1	Unclassified Summary	UNCLASSIFIED
R2	FBI Certification Re: Redaction of National Security Information dtd 6 Aug 04	UNCLASSIFIED
R3	Defense Counsel Letter from David Hicks dtd 14 July 04	UNCLASSIFIED
R4	Sworn Statement from David Hicks dtd 21 Mar 03	FOUO//LES
R5	FBI 302 dtd 11 Feb 02	FOUO//LES
R6	FBI 302 dtd 16 Dec 02	FOUO//LES
R7	FBI 302 dtd 10 Jan 03	FOUO//LES
R8	JTF GTMO Baseball Card	SECRET//NOFORN
R9	CITF Transfer Recommendation Memorandum dtd 30 Jun 04	SECRET//NOFORN
R10	OSD/SOLIEC EC Review Checklist	SECRET//NOFORN
R11	IIR 6 034 0929 02 dtd 12 Dec 01	SECRET
R12	IIR 5 360 0710 02 dtd 05 Jan 02	SECRET
R13	IIR 6 034 0373 02 dtd 11 May 02	SECRET
R14	KB Brief dtd 07 Feb 02	SECRET//NOFORN
R15	Analyst Support Package	SECRET//NOFORN
R16	Form 40 dtd 16 Dec 02	FOUO//LES
R17	Form 40 dtd 23 July 04	FOUO//LES
R18	Form 40 dtd 23 Feb 03	FOUO//LES
R19	Form 40 dtd 29 Jan 03	FOUO//LES

FOUO

Unclassified

Combatant Status Review Board

7 September 2004

TO: Personal Representative

FROM: OIC, CSRT

Subject: Summary of Evidence for Combatant Status Review Tribunal – HICKS, David Matthew

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 was a fighter for the Taliban and engaged in hostilities against the United States or its coalition partners.

a. The detainee is an al-Qaida fighter:

1. The detainee affiliated himself with the Taliban.

2. The detainee knew his training was conducted by al-Qaida, which had declared war on the United States.

3. The detainee was trained to use grenades, landmines, rocket-propelled grenades and other small arms weapons.

4. The detainee attended the al-Qaida Information Course in Kabul, where the instructor cited the al-Qaida bombing of the *USS Cole* as a positive example of the uses of al-Qaida training.

5. The detainee met Osama Bin Laden on approximately eight occasions.

b. The detainee participated in military operations against the coalition.

1. The detainee personally collected intelligence on the American Embassy in Afghanistan for al-Qaida.

2. Following 9-11, the detainee met with a senior al-Qaida leader to discuss various locations to fight against the United States and Northern Alliance forces.

Unclassified

Exhibit R-1

Unclassified

3. After being stationed near the Khandahar airport, the Detainee agreed to fight on the frontlines in Konduz.

4. The detainee was captured by Northern Alliance forces near Bagram.

5. While engaged in combat, the detainee failed to wear a uniform or any type of emblem or distinctive military article designating him as a fighter; nor did he follow any typical military chain of command.

4. The detainee has the opportunity to contest his determination as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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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: [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.

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

²See Executive Order 12958

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Exhibit R-2

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David M. Hicks
Camp Echo
Unit 6-B
United States Naval Base
Guantanamo Bay, Cuba

July 14, 2004

Personal Representative
United States Department of Defense

Dear Personal Representative:

This letter is to inform you that I am represented by counsel and that all communications need to be made through my counsel. My military defense counsel is Maj. Michael D. Mori, USMC. He can be reached at (703) 607-1521 (extension 193). My civilian defense counsel is Joshua L. Dratel, Esq.; he can be reached at (212) 732-0707.

Upon the advice of my attorneys, since you are not my attorney (and instead constitute an agent of the Department of Defense, which has lodged charges against me that it has referred to, intends to try before, a military commission), and we do not share an attorney-client relationship, I am asserting my Fifth and Sixth Amendments rights under the United States Constitution not to speak to you. My attorneys will also be able to discuss with you in more detail my formal position with respect to the Combatant Status Review Tribunal.

~~Accordingly, I decline to speak with you at all unless and until authorized by my counsel. Please call them at the contact numbers set forth above for further information and discussion. Thank you for your consideration in this matter.~~

Very truly yours,

D Hicks

David M. Hicks

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DETAINEE ELECTION FORM

Date: 17 Sep 04

Start Time: 0730

End Time: 0740

ISN#: [REDACTED]

Personal Representative: [REDACTED], LT COL, USAF
(Name/Rank)

Translator Required? NO Language? ENGLISH

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:

Detainee remembered the CSRT Notice to Detainees that was read to him in July 04. I recapped
the notice and CSRT process with him. I explain the CSRT was not a legal proceeding and he did
not have the right to have a lawyer for the Tribunal. Detainee elected not to participate in the
Tribunal. He stated he would contest his status in court in January 2005. Detainee previously met
with PR-31 but due to circumstance beyond our control I replaced him.

Personal Representative: [REDACTED]

Personal Representative Review of the Record of Proceedings

I acknowledge that on 25 September 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN # [REDACTED]

I have no comments.

My comments are attached.

[REDACTED], Lt Col, USAF
Name

25 Sept 2004
Date

[REDACTED]
Signature

ISN # [REDACTED]
Enclosure (5)