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Verbatim Transcript of Open Session Combatant Status Review Tribunal Hearing for ISN 10017

OPENING

REPORTER: We are on the record.

RECORDER: All rise.

PRESIDENT: This hearing shall come to order. Please be seated.

RECORDER: This Tribunal is being conducted at 1355 on 9 March 2007 on board U.S. Naval Base Guantanamo Bay, Cuba. The following personnel are present: Colonel [REDACTED], United States Air Force, President
Commander [REDACTED], United States Navy, Member
Lieutenant Colonel [REDACTED], United States Air Force, Member
Major [REDACTED], United States Air Force, Personal Representative
Sergeant First Class [REDACTED], United States Army, Reporter,
Major [REDACTED], United States Air Force, Recorder
Lieutenant Colonel [REDACTED] is the Judge Advocate member of the Tribunal.

OATH SESSION 1

RECORDER: All Rise.

PRESIDENT: The Recorder will be sworn. Do you, Major [REDACTED] swear or affirm that you will faithfully perform the duties as Recorder assigned in this Tribunal so help you God?

RECORDER: I do.

PRESIDENT: The Reporter will now be sworn. The Recorder will administer the oath.

RECORDER: Do you Sergeant First Class [REDACTED] swear that you will faithfully discharge your duties as Reporter assigned in this Tribunal so help you God?

REPORTER: I do.

CONVENING AUTHORITY

PRESIDENT: This hearing will come to order. You may be seated.

PRESIDENT: This Tribunal is convened by order of the Director, Combatant Status Review Tribunals under the provisions of his Order of 12 February 2007.

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PRESIDENT: This Tribunal will determine whether ABU FARAJ AL LIBI, meets the criteria to be designated as an enemy combatant against the United States or its coalition partners or otherwise meets the criteria to be designated as an enemy combatant.

OATH SESSION 2

PRESIDENT: The members of this Tribunal shall now be sworn. All rise.

RECORDER: Do you swear that you will faithfully perform your duties as a member of this Tribunal; that you will impartially examine and inquire into the matter now before you according to your conscience, and the laws and regulations provided; that you will make such findings of fact and conclusions as are supported by the evidence presented; that in determining those facts, you will use your professional knowledge, best judgment, and common sense; and that you will make such findings as are appropriate according to the best of your understanding of the rules, regulations, and laws governing this proceeding, and guided by your concept of justice so help you God?

TRIBUNAL: I do.

PRESIDENT: The Recorder will now administer the oath to the Personal Representative.

RECORDER: Do you affirm that you will faithfully perform the duties of Personal Representative in this Tribunal?

PERSONAL REP: I do.

PRESIDENT: Please be seated.

PRESENTATION OF UNCLASSIFIED INFORMATION

PRESIDENT: Personal Representative, please provide the Tribunal with the Detainee Election Form.

PERSONAL REP: I am handing the Tribunal the Detainee Election Form, which was previously marked as Exhibit Delta-Alpha.

PRESIDENT: Personal Representative, you have advised the Tribunal that the Detainee elected not to participate in this Tribunal proceeding. Is that still the situation?

PERSONAL REP: Yes Sir

PRESIDENT: Please explain.

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PERSONAL REP: Sir, FARAJ AL LIBI has decided that his freedom is far too important to be decided by an administrative process and is waiting for legal proceedings.

PRESIDENT: Very well, I note that from your uh detainee election form that he initially decided to attend but later changed his mind at a later meeting, can you expound upon that?

PERSONAL REP: Uh once questions were answered in regards to what was taking place and his representation; he decided to abstain from attending.

PRESIDENT: Very well, we will proceed without the detainee being present.

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PRESIDENT: Recorder, please provide the Tribunal with the unclassified evidence.

RECORDER: I am handing the Tribunal what has previously been marked as Exhibit R-1, the unclassified summary of the evidence that relates to this detainee's status as an enemy combatant. A translated copy of this exhibit was provided to the Personal Representative in advance of this hearing for presentation to the detainee.

PRESIDENT: Recorder, please read the unclassified summary of evidence for the record.

RECORDER: SUMMARY OF EVIDENCE FOR COMBATANT STATUS REVIEW TRIBUNAL ABU FARAJ AL LIBI: Under the provisions of the Deputy Secretary of Defense Memorandum, dated 14 July 2006, Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at U.S. Naval Base Guantanamo Bay, Cuba, a Tribunal has been appointed to determine if the detainee is an enemy combatant. 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. The following facts support the determination that the detainee is an enemy combatant. The detainee was a supervisor at the al Qaida training camp in Khowst, Afghanistan. The detainee assisted in the creation of an urban warfare training camp in Kabul, Afghanistan. A Federal Bureau of Investigation source stated he met the detainee in July to August 2001 at the al Qaida guest house in Kabul, Afghanistan. The same source also stated that the detainee managed the guest house, and the guest house also served as the Kabul communications hub for Al-Qaida. The detainee was the supervisor of an al Qaida communications site in Afghanistan, in 2002. The detainee was a senior al

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Qaida facilitator. His primary duty was the care of al Qaida families residing in Pakistan. Additionally, the detainee was involved in vetting and transporting al Qaida fighters to Afghanistan. Individuals wanting to fight in Afghanistan were required to be sponsored by an al Qaida member and be interviewed by the detainee to verify their bona fides. Once the detainee, a former commander in Afghanistan, was comfortable with the individual's background, the detainee would arrange travel to Afghanistan for the individual. The detainee was the deputy to al Qaida's third in command and was responsible for al Qaida activities and logistics throughout Pakistan. In December 2003, a large group of Islamic extremists; including the detainee, representatives of Hezb-e Islami Gulbuddin and Taliban officials met in Raiwand, Pakistan and discussed operations against the United States and coalition forces in Afghanistan. In September 2004, several members of al Qaida involved in terrorist operations, including the detainee, met in Syria to discuss a variety of terrorist operations, including planned operations in the United States, Europe and Australia. A computer seized during the capture of the detainee contained manuals related to explosives, detonator circuits, chemicals, military tactics, missiles and tanks. A computer seized during the capture of the detainee contained a detailed manual on fabricating and using circuitry for detonators.

An al Qaida and Libyan Islamic Fighting Group associate requested assistance from the detainee in acquiring explosives and weapons according to seized letters found on the associate's computer. 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 witness, excuse me, witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant and that is deemed relevant to that issue. The Tribunal President will determine the reasonable availability and relevance of evidence or witnesses. Sir, this concludes the summary of unclassified evidence.

PRESIDENT: Personal Representative, does the Detainee have any evidence to present?

PERSONAL REP: Yes Sir, I am handing the Tribunal the following unclassified exhibit marked as Exhibit D-b, copies of this exhibit have been previously provided to the Recorder. Sir, exhibit D-b is a signed statement from the detainee as a final oral statement to the Tribunal board.

PRESIDENT: Very well, the uh,- does the detainee want this to be read into the record at the appropriate location?

PERSONAL REP: That's correct sir.

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PRESIDENT: Understood and we'll address that shortly. Does the Recorder have any further unclassified evidence?

RECORDER: Mr. President, I have no further unclassified evidence for the Tribunal but I respectfully request a closed Tribunal session at an appropriate time to present classified evidence relevant to this detainee's status as an enemy combatant.

PRESIDENT: Recorder, your request for a closed session is granted and will be taken in due course.

PRESIDENT: At this portion of the hearing I would like to have the uh- Personal Representative read the uh- detainees statement into the record.

PERSONAL REP: Yes sir, just – just be clear, this is a final statement and not a rebuttal statement in regards to the unclassified statement of evidence.

PRESIDENT: Very well.

PERSONAL REP: ISN 17 ORAL STATEMENT FOR COMBATANT STATUS REVIEW TRIBUNAL TAKEN ON 5 MARCH 2007 BY PR3:
Mr. President and board members of the Combatant Status Review Tribunal; I Mustafa Al Libi thank you for your time. It is my opinion the forming of this Tribunal is a good initial step towards justice and righteousness. I was informed by my Personal Representative that this Tribunal is purely a military administrative proced - procedure and is not based on the Judicial Procedure of the United States. In regards to the issue - this issue I offer the following: This Tribunal should - should have been a procedure in accordance with – with the Judicial Procedure of the United States. I have been held by the United States for over two years without any indication of how the judicial system is going to deal with my situation. This is a ver - very long period of time without being subject to a court of justice. The handling and reviewing or determining of my Enemy Combatant status and legality of my detainment by the United States is a judicial matter and not administrative as described in the Combatant Status Review Tribunal detainee notice. Terms like allegations, relevant evidence, and hearings are used in the notice and the checklist that my Personal Representative read to me. These are all judicial terms. Additionally, this process has given me the opportunity to refute government evidence by submitting evidence and witness statements as exculpatory evidence. This right to face your accusers is a judicial right in the United States as well. It is my opinion the procedures for the Combatant Status Review Tribunal are incomplete for the following reasons: No lawyer, either assigned to the detainee or by the detainee's choosing, has been made available to the detainee to assist in

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determining the nature of the evidence presented against him, its legality, and its validity as evidence. The detainee needs legal guidance as to what kind of testimonies and statements are enough to refute the evidence presented against him. The lack of protection against detention or other legal or administrative actions make it impossible for me to introduce to produce any witnesses in my defense. For example the definition of Enemy Combatant includes the verbiage "supporting the Taliban or al Qaida forces, or associated forces". If I am classified as an Enemy Combatant, it is possible that the United States will deem my witnesses are Enemy Combatants and judicial or administrative action may be taken against them. It is my opinion the detainee is in a lose-lose situation. If not classified as an Enemy Combatant the detainee may not get released immediately. I was informed by my Personal Representative that the detainee would be released once arrangements could be made. This means from military custody. It is possible the detainee would still be retained by the United States. If the detainee is classified as an Enemy Combatant, he won't be transferred directly to the United States Judicial System but will remain under the supervision of the Military. He will then meet the Annual Review Board indefinitely to review the detention status. Mr. President and members of the board, to summarize; based on the information presented to me by my Personal Representative, I don't find myself attending the Tribunal unless the above mentioned factors are resolved such as being represented by a lawyer and legal protection for myself or my witnesses. I am extremely keen to exercise my rights fully according to the law of the United States. This process,- the processes associated with my detention are extremely important to me and my family and could prove detrimental to our well being. I am not prepared to have this matter linked to a mere "administrative procedure" where I don't fully understand the ramifications and extent of the process. Finally, I do not believe the Combatant Status Review Tribunal process is a complete process. The United States Government is fully represented while I have not been given the same opportunities. Mr President and members of the board, thank you for your attention and consideration during my statement. I affirm that these words – excuse me, I affirm that these are my words and truth as I know it, signed and dated.

PRESIDENT: And for the record the date here is 5 March 07?

PERSONAL REP: That's correct sir.

PRESIDENT: All right, a few questions uh- I'd like to ask you regarding the statement here to the detainee uh-exhibit marked D-b.

PERSONAL REP: Yes sir.

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PRESIDENT: The exhibit was marked – uh- headier – header of the first page taken on 20 February 2007 uh- when you started your reading you said 5 March; could you clarify that please?

PERSONAL REP: Uh Yes sir, the original statement was taken on 20 February, the pencil inputs that are the penned in changes that you have there were taken on 5 March.

PRESIDENT: Very well, I understand now; thank you.

DETAINEE QUESTION & ANSWER

PRESIDENT: Recorder, do you have any questions for the personal representative regarding the uh testimony he has read into the record?

RECORDER: No Sir.

PRESIDENT: Do any Tribunal members have any questions for the personal representative regarding the written testimony?

TRIBUNAL: No Sir – no sir.

PRESIDENT: Very well, we'll proceed with the proceedings.

CALLING OF WITNESSES

PRESIDENT: We will now allow for the calling of witnesses. All witnesses called before this Tribunal may be questioned by the Personal Representative, the Recorder, and the Tribunal Members.

PRESIDENT: Does the Recorder have any witnesses to present?

RECORDER: No Sir.

PRESIDENT: And uh - from Detainee Election Form provided by the Tribunal earlier - to the Tribunal earlier, I note that the Detainee has not specifically requested witnesses. In the detainee election form uh- I read that the detainee indicated he was not going to ask for any witnesses or evidence due to the lack of protection for the witnesses; personal representative, can you expound upon that statement made on your detainee election form?

PERSONAL REP: Yeah, it's actually expounded upon in the oral statement as well. It's in regards to protection of his witnesses. He did speak about calling his wife but didn't want to put her under any undue stress as well as the possibility of her being detained by the U.S. government for supporting her husband.

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PRESIDENT: And did you make any statements regarding uh –uh- any protection afforded any witness providing testimony at this hearing?

PERSONAL REP: The only statement was sir, that there would be no protection.

PRESIDENT: Very well.

CLOSING UNCLASSIFIED SESSION

PRESIDENT: All unclassified evidence having been provided to the Tribunal, this concludes the open Tribunal session. ABU FARAJ AL LIBI shall be notified of the Tribunal decision upon completion of the review of these proceedings by the Combatant Status Review Tribunal convening authority in Washington DC.

ADJOURN OPEN SESSION

PRESIDENT: The open session of this Tribunal hearing is adjourned.

RECORDER: The time is 1414. The date is 9 March 2007. All Rise.

REPORTER: We are off the record.

AUTHENTICATION

I certify the material contained in this transcript is a true and accurate verbatim of the testimony given during the Combatant Status Review Tribunal of ISN 10017

[REDACTED], Colonel, USAF
Tribunal President

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