

Steven T. Wax, OSB #85012
Federal Public Defender
101 SW Main Street, Suite 1700
Portland, Oregon 97204
Tel: 503-326-2123
Fax: 503-326-5524
steve_wax@fd.org

Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADEL HASSAN HAMAD,

Petitioner,

v.

GEORGE W. BUSH, DONALD
RUMSFELD, JAY HOOD, and BRICE
GYURISKO,

Respondents.

CV 05-1009 JDB

DECLARATION OF WILLIAM J.
TEESDALE, ESQ.

I, William J. Teesdale, declare:

1. I am an investigator and attorney employed by the Federal Public Defender for the District of Oregon. I am a member of the bars of Oregon and England. Since October 2005 I have conducted a wide range of investigative and legal work on behalf of Mr. Hamad and several of our other Guantanamo detainee clients. In Mr. Hamad's case this has included collecting 15 sworn statements from witnesses in Afghanistan, Pakistan, and Sudan.

2. The evidence collected during this investigation has been provided to OARDEC, both through a submission to the Administrative Review Board on October 13, 2006, and pursuant to the new OARDEC procedure for review of new evidence, requesting a new CSRT hearing for Mr. Hamad. More than 90 days have passed since this new evidence has been provided to OARDEC and more than ten months have passed since the information was submitted through the ARB process. Mr. Hamad has repeatedly told the military authorities that he was not, and is not, an enemy combatant, a statement that is corroborated by the witness statements I have obtained.

3. On July 9, 2007, after several consultations with the Court Security Office and a member of the privilege team, Federal Defender Steve Wax and I had a preliminary conversation with one of the tribunal members, _____, who had originally sat on Mr. Hamad's Combatant Status Review Tribunal ("CSRT"). The tribunal member indicated that he/she was willing to speak to us and contacted the Department of the Army in Washington, D.C., in order to find out the procedure for making a formal request for a meeting. The tribunal officer provided me with the name of the appropriate official to whom to send the request.

4. On July 10, 2007, I made a written request to the Department of the Army to interview the officer. Permission for that interview was granted on July 24, 2007, by the Chief of the General Litigation Branch of the Department of the Army. That permission was limited in that it did not allow the officer to provide any opinion testimony or other statements that could be considered expert testimony. The officer was therefore unable to respond to my request for comment upon the new evidence discovered during counsel's investigation of Mr. Hamad's case or our request for a new CSRT pursuant to Office for the

Administrative Review of the Detention of Enemy Combatants ("OARDEC") instruction 5241.1, which allows for a new CSRT hearing in cases where there is new evidence.

5. On August 15, 2007, chief counsel for Mr. Hamad, Steve Wax, and I met with the officer and another officer acting as his representative. All of the participants at the meeting held security clearances at the Secret level. Approval in advance was received from the Court Security Office to discuss Hamad classified material, although no substantive discussion of such material took place at the meeting.

6. Prior to, and during, our meeting with the officer we indicated that his/her identity is protected from disclosure in our litigation and that we agreed, among other things, not to release the officer's name publicly without written permission. Mr. Wax and I agreed to file this declaration consistent with the protective order and memorandum of understanding in Mr. Hamad's case.

7. The information provided in the following subparagraphs (a) through (cc) in the next section of this declaration is the information provided to us by the tribunal officer on August 15, 2007. The tribunal officer has reviewed subparagraphs (a) through (cc) and agrees that they are accurate.

INFORMATION FROM HAMAD CSRT TRIBUNAL OFFICER

a. This declaration is limited to unclassified matters relating to my personal observations and experiences as a member of OARDEC. This declaration does not discuss any of the specific evidence used in any particular tribunal hearing.

b. I am presently on full-time _____ duty as a JAG officer
with the _____ I am on full-time military leave from a

District Attorney's Office in _____ and have been since 2003. I attended the University of _____ and was a member of the ROTC. I was commissioned as a 2nd Lieutenant in the Army Reserves in June 1993. I then attended _____ University School of Law, _____ graduating in May 1996. I was admitted to the _____ Bar in December 1996. After three years working at _____ Insurance Company, I was hired as a Deputy District Attorney in early 2000. I have experience prosecuting a wide range of criminal cases, from misdemeanors to attempted murder.

c. In September or October 2004 I volunteered for duty at OARDEC after reading there was a need for officers to work on Guantanamo detainee issues.

d. I was initially sent to training in Washington, D.C., for approximately one week before being transferred to Guantanamo. The training was minimal and solely involved being given a binder of documents to read and being told that I would be assigned to sit on CSRT panels in Guantanamo.

e. I have been shown the 7/7/2004 order establishing the CSRT tribunal and the Memorandum dated 7/29/2004 implementing the CSRT procedures. I recognize those documents as forming the major part of the training binder I was provided. The CSRT process was not well defined.

f. When I arrived in Guantanamo in September or October 2004, I was briefed on security matters. I also spoke informally to other CSRT

panel members, who gave me insight into the process, but mostly on logistical matters. During my first few days, I shadowed a Navy Reserve officer for 3 or 4 tribunals. That officer showed me the computer system and how to use it. There was no other training.

g. It was not clear to me what the JAG officer's role was on the tribunal. The CSRT rules required having a JAG officer on each CSRT panel but were silent as to the role. Some of the other JAG officers said that the JAG's were informal legal advisors to the other board members and in my experience that was generally the case.

h. From approximately October 2004 until my deployment ended in February 2005, I sat on 49 (this number is listed in my officer evaluation report) CSRT tribunals. In general the CSRT panels would begin as early as 7:00 a.m. and work sometimes as late as 9:00 p.m, six or seven days a week. There would sometimes be as many as three CSRT hearings in a day, although the average would be less than that. Some of the hearings would take an hour or so but others could take much longer if the detainee testified and called witnesses.

i. When a detainee called witnesses, they would always be other men in the prison in Guantanamo. I never saw any external witness presented for any detainee. There were requests made for such witnesses but that was an area for the State Department, who determined the availability of the requested witness or witnesses.

j. In Mr. Hamad's CSRT tribunal proceeding, the tribunal members had very little discussion of the evidence in his case. My primary concern in Mr. Hamad's case was that there was insufficient evidence to determine him to be an enemy combatant. After I drafted my dissenting opinion in that case I discussed it with the Navy Commander who was on the same CSRT panel. That officer's response, which I believe came from a lack of legal training, questioned the meaning of some of the definitions used in my dissenting report. I responded that reasonable people can differ and left it at that, but his response set me back a bit.

k. There was no separate exculpatory evidence presented in Mr. Hamad's case.

l. There was no exculpatory evidence presented separately, as required in the CSRT rules, in any CSRT hearing that I sat on. From time to time the CSRT panels did encounter exculpatory evidence by accident because some of the evidence presented by the recorder would contradict the allegations made against the detainee.

m. Sometimes the CSRT panel members would request more evidence. I believe that I did so approximately 6 times.

n. The role of the recorder differed from hearing to hearing. The general role of the recorder was to generate the evidence to present to the CSRT panel. Some of the recorders would just present a stack of documentary evidence and ask the panel members to review it. Other recorders took a much more prosecutorial position.

o. Some of the first recorders were JAG officers but a concern was raised that it might violate some state bar rules for JAG officers to question detainees who had appointed counsel, so it was decided that JAG officers should not take that role.

p. It was generally known that the recorders had the most difficult job in the process and were overwhelmed, starting earlier in the morning than the CSRT panel members and finishing later.

q. The recorders did not have much control over the content of the information to be presented to the CSRT hearings. Much of the material presented was supplied by intelligence agencies and were summaries that were not necessarily justified by the underlying evidence.

r. There was a sentiment among the JAG officers that many of the CSRT officers did not understand the distinction between conclusory statements and actual evidence.

s. The CSRT rules afforded the Government evidence a presumption of correctness. For me as a tribunal member this meant that when I had a piece of evidence with some small corroboration, then I had to view that with great significance and it would also have made it difficult for any detainee to rebut.

t. Some tribunal members did not understand that the presumption was to be given to evidence.

u. The role of the Personal Representative was also unclear. Some PR's did little while there was one Air Force Major who strongly

advocated for the detainees he was assigned to assist. I heard some CSRT tribunal members say that they did not appreciate the zeal with which he tried to assist the detainees.

v. I sat on up to 6 CSRT hearings where there was a unanimous decision that the detainee was a Non Enemy Combatant (“NEC”). In all of those NEC cases, the Command directed that a new CSRT be held or the original CSRT was ordered reopened. In each of those cases, the “new evidence” that was presented was in fact a different conclusory intelligence finding, which was not justified by the underlying evidence.

w. I sat on all but one of the new CSRT’s that were ordered after an NEC finding.

x. I participated in two meetings with many other tribunal members in which we were briefed by CID (intelligence) agents who were brought in by Command to explain why the NEC results were wrong.

y. There were discussions after these briefings among the CSRT members and between the JAG officers that this was an attempt to influence the results of CSRT hearings.

z. One of the briefings organized by the Command focused on the Uighur cases. We were told that some tribunals were finding the Uighurs NEC and some EC based on evidence that was essentially the same. During one briefing the CID agents made a PowerPoint presentation using facts that I recognized to be from a Uighur case where the finding had been that the detainee was an NEC. The CID agents used those facts to attempt

to explain why the CSRT panel was mistaken in finding the person to be an NEC. There was some acrimony in the meeting. Some CSRT panel members argued with the CID agents saying that their presentation used conclusory findings that were not justified by the underlying evidence.

aa. At the briefing, we were told that inconsistent results in the Uighur cases were a problem. I stated that the DOD view that there should be uniformity was misguided.

bb. In addition to the two general briefings, I participated in a heated conference that included Admiral McGarrah on the telephone. This occurred after the inconsistent decisions in the Uighur cases. Admiral McGarrah was the officer assigned to be the chief administrator of the CSRT process. I understand that Admiral McGarrah reported to the Secretary of the Navy on the CSRT's. Participating in the conference were senior officers at Guantanamo and Admiral McGarrah in Washington, D.C., and possibly other participants. The conference was to discuss the NEC findings in Uighur cases. The Admiral expressed the desire to obtain more uniformity of result across the spectrum of those cases. I recall that I suggested that inconsistent results were good for the system. I explained that based upon my experience of the criminal justice system, with different panels, recorders and personal representatives one could expect different results and that was not a bad thing and would show that the system was working correctly. There was no response from Admiral McGarrah to that statement.

cc. In addition to serving on 49 CSRT's, I spent one and a half months as a legal advisor in the CSRT's. I was stationed in Guantanamo for this work. As a legal advisor, I was never told that I could review the sufficiency of the evidence and write to or discuss that issue with a CSRT.

8. The tribunal officer approved the language contained in subparagraphs (a) through (cc) on August 29, 2007, and was provided this declaration in final form on September 4, 2007.

I hereby swear under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 4th day of September, 2007.



William J. Teesdale