

Exhibit B

I, Darrel Vandeveld, hereby declare as follows

1. I am a Lieutenant Colonel in the US Army Reserve Judge Advocate General's Corps. Since the September 2001 attacks, I have served in Bosnia, Africa, Iraq and Afghanistan. My awards include, among others, the Bronze Star Medal, the Iraqi Campaign Medal, the Joint Service Commendation Medal, and two Joint Meritorious Unit Awards. In civilian life, I am a Senior Deputy Attorney General

There is no credible evidence or legal basis to justify Mr. Jawad's detention in his prosecution by military commission. There is, however, reliable

information that was bad enough to be considered a travesty. C Case and with no A terminus C ds r rouhoy e

I was assigned as a prosecutor at the Office of Military Commissions - (OMC P"). At the time I reported for duty, attorneys in the office were in the process of bringing charges against a number of detainees at Guantanamo. The Chief of the OMC at the time, US Air Force Colonel Morris Davis, assigned me to review the information collected against literally dozens of detainees, including Mr. Jawad. In a short period of time, I assumed the role of lead prosecutor in the prosecution against Mr. Jawad. Initially, based on my long experience and thorough review of the materials in the case, I was confident that the case was also a potential OMC case.

potential Commissions cases, in that he seemed to be of little interest to any US military and certain and largely untrained military and certain for their rudimentary training and minimal

In 2002, Mr. Jawad had voluntarily joined a group called the Islamic Jihad Organization (IJO), which had

¹ To the best of my information and belief, this declaration does not contain any classified information. Indeed, virtually all of the information contained in this declaration has been publicly released in various forms including court filings cleared for release by the government and media accounts.

provided him with training and hand grenades, to be used to carry out an attack on U.S. forces. There is no doubt that someone conducted a brazen hand grenade attack on two U.S. Special Forces Soldiers and their Afghan interpreter, who were stuck in traffic in a crowded Kabul bazaar or marketplace on December 17, 2002. The Soldiers and the interpreter sustained significant injuries when the grenade exploded inside the victims' vehicle. Fortunately, because of the body armor worn by the Soldiers, they managed to survive the attack. Although Mr. Jawad was undoubtedly present in the bazaar at the time of the attack, there is considerable doubt in my mind about whether Mr. Jawad actually threw the hand grenade. Furthermore, the most credible evidence in the possession of the U.S. government is that Mr. Jawad was lured to Afghanistan under false pretenses – the promise of well paid work clearing landmines promised to him by unscrupulous recruiters for HIG. There is also evidence to suggest that HIG drugged Mr. Jawad and forced him to participate in the attack against his will.

5. The skeletal witness statements I received suggested that Mr. Jawad had been arrested almost immediately after the attack by Afghan police officials and by two members of what was then the Afghan National Army, who happened to present at the scene. According to these witness accounts, the Afghan police transported Mr. Jawad to an Afghan police station located nearby, where the Afghans interrogated him. The Afghan police officials maintained that once at the station, Mr. Jawad freely confessed to tossing the hand grenade in the victims' vehicle, and further that Mr. Jawad claimed sole responsibility for the attack. The Afghans produced a statement handwritten in the Dari language (Dari is the Afghan term for Farsi), which they claimed was Mr. Jawad's personal confession, with his thumbprint at the bottom, to his recruitment by the terrorist organization and his conduct of the attack. In this handwritten statement, and in translated summaries of other interviews of other purported percipient witnesses conducted several months after the attack, Mr. Jawad proclaimed his pride in conducting the attack, and, perhaps most inflammatory of all, claimed that he would repeat the attack if given the opportunity.

6. Following several hours in Afghan police custody, US Special Forces in Kabul from the same unit as the Soldiers wounded in the attack, retrieved Mr. Jawad from the Afghans and transported him to the unit's nearby forward operating base. The Afghan authorities were initially reluctant to hand Mr. Jawad over to US Forces, but ultimately agreed to do so. Once in U.S. custody, U.S. military personnel re-interrogated Mr. Jawad, who, after initial denials, eventually confessed to his role in the attack, this time on videotape recorded by U.S. personnel. Although the materials I had accumulated before charging Mr. Jawad did not include a copy of the videotape, I expected naively, as it turned out that I would be able to retrieve a copy of the taped confession through either the Special Forces unit itself, or from the Criminal Investigative Task Force ("CITF"), a joint activity charged with

investigating and collecting evidence of crimes allegedly commi

9. However, in July 2007, still clinging to the belief that the case could be prosecuted ethically and successfully as I worked to remedy the file's deficiencies, I briefed Brigadier General Thomas Hartmann, the newly appointed Legal Advisor to the Commission's Convening Authority, on the essential facts of the case. Brigadier General Hartmann was apparently impressed with my presentation, and later testified that it was one of the clearest and most succinct briefings that he received among the dozens presented when he first arrived at the Commissions. He was immediately and obviously enthusiastic about the case, evidently believing as did I at the time, that the case's factual simplicity and the uncontroversial elements of the potential charges rendered the case the primary candidate for immediate prosecution. Although it was clear that the Chief Prosecutor at the time, Colonel Morris Davis, did not share this enthusiasm, and harbored misgivings virtually identical to my own about the accessibility and organization of the evidence, I was directed to focus my efforts on preparing the Jawad case for charging because of the Legal Advisor's intense interest in the case. I do not fault Brigadier General Hartmann for his initial impressions of the case, since they were based on my own honest presentation.

10. We swore charges against Mr. Jawad on 9 October 2007. Col Davis had resigned the previous week and this was the first regular duty day that the Deputy Chief Prosecutor, LTC W.B.³ was serving as the Acting Chief Prosecutor. We alleged two sets of charges with three specifications each (one for each victim), but all were of course predicated on Mr. Jawad's alleged hand grenade attack. The charges alleged attempted murder in violation of the law of war and the intentional infliction of serious bodily harm. This latter charge also included the allegation consistent with the elements in the Manual for Military Commission that the act causing the injury was "in violation of the law of war." The Manual for Military Commissions does not have model specifications, so I modeled the charges and specifications on roughly equivalent offenses set forth in the Manual for Courts Martial (which does not contain these offenses). We theorized that because Mr. Jawad was an alien unlawful enemy combatant - not part of a regular armed force, not under responsible command, not wearing a uniform or other distinctive symbol, and had not been carrying arms openly - any criminal act that he committed would perforce be a violation of the law of war as defined by the operative statutory scheme, the Military Commissions Act of 2006 ("MCA"). Essentially, OMC P had taken the position that "attempted murder in violation of

the law of war" should be treated as the functional equivalent of "attempted murder by SA li ê

other lawyers from the Department of Justice who from time to time advised OMC P, but in the end, the consensus emerged that the facts stated charges under the MCA.⁴

11. At the time of the swearing of charges we had absolutely no idea that Mr. Jawad had ever been subjected to any abusive treatment of any kind by anyone involved in his capture and subsequent imprisonment. The documentation we did possess – photographs of Mr. Jawad unclothed, and written reports of physical examinations conducted by U.S. medical personnel after Mr. Jawad had been transferred to U.S. custody by the Afghans – seemed to demonstrate that he had not been severely physically abused (there was a fresh wound to the bridge of Mr. Jawad's nose, but no other visible marks.). In the absence of any evidence to the contrary, I proceeded on the assumption that he had not been subjected to mental cruelty either. Neither OMC P, CITF, nor Joint Task Force Guantanamo (JTF GTMO) appeared to possess any documentation concerning Mr. Jawad's treatment at Bagram or at Guantanamo. Although I was generally aware that there had been some excesses in the

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intelligence, or even unique or otherwise unknown information about the group. Mr. Jawad's youth, his lack of any b

time of capture. Although there is no question that JTF GTMO knew or should have known that Mr. Jawad was a minor when he arrived at Guantanamo, I never saw any documentation that they ever afforded him any special treatment as a juvenile. As far as I know, JTF GTMO housed and treated Mr. Jawad as an adult prisoner throughout the period of his minority.

15. As part of my ongoing effort to develop the case against Mr. Jawad, in December 2007, I travelled to Afghanistan to depose the Afghans who had participated in Mr. Jawad's capture and subsequent interrogation at the Afghan district police station. These witnesses included three police officials, and the Afghan Interior Minister at the time of Mr. Jawad's arrest. While I was puzzled by Av J " f. Jaw yeF i6

December 25, 2003, which he sought to accomplish by banging his head repeatedly against one of his cell walls. I sent a copy of the records to Major Frakt. Shortly thereafter, Major Frakt contacted me with some follow up questions about the records. The records reflected 112 unexplained moves from cell to cell over a two week period, an average of eight moves per day for 14 days. Upon further investigation, we were able to determine that Mr. Jawad had been subjected to a sleep deprivation program popularly referred to as the “frequent flyer” program. I realized that Mr. Jawad had been telling the truth at the last hearing. I lack the words to express the heartsickness I experienced when I came to understand the pointless, purely gratuitous mistreatment of Mr. Jawad by my fellow Soldiers.

20. Over the course of the summer, my concerns and doubts about the strength of the case continued to mount. Despite a diligent search for the videotape of Mr. Jawad’s original interrogation by U.S. personnel, a search that included a service wide inquiry about the tape and where it might be located, I was never able to find the tape. I also failed to locate two alleged eyewitnesses to the attack who had allegedly told a U.S. investigator that they had personally witnessed Jawad throw the grenade. All I had were two paragraph summaries of interviews conducted through an interpreter of these witnesses several months after the attack. The information on the summaries identifying these two witnesses consisted solely of their names, both of which were common in Afghanistan. The few statements that I did have were inconsistent in some respects with each other, but I convinced myself that the discrepancies were the natural and expected fading of witness recollections over time. Again, while this development gave me pause, I did not see it as fatal to the case because I continued to credit the accounts of Mr. Jawad’s supposed confessions to the crime. Nonetheless, I understood that attempting to reconstruct a crime that had occurred several thousand miles away, over five years earlier, in an active war zone, and in which little visible effort had been made to collect and preserve the evidence, was at best a daunting challenge, even if I did not see these de— J eØ

Hood's express order. Working from the records, I managed to locate at least one officer who had been in charge of the program, and he testified that the senior leadership (although I do not recall that the officer's testimony implicated MG Hood) at the detention camps were well aware of the program and that it was part of the standard operating procedure at the time.

25. At approximately the same time, by sheer happenstance, I stumbled across a summary of an interview with a CIA A n A A do t (°anvi w t s e a t i a n d c i w, E

one of the oft repeated rationales for adherence to the law of war is that it encourages one's enemies to reciprocate. I was also appalled that none of the prisoners whose files I had reviewed had been afforded any meaningful opportunity to establish their status before a tribunal legitimately interested in ascertaining the truth. The CSRT and ARB records that I reviewed in Mr. Jawad's case and others seemed to me to be the worst sort of cruel joke. I concluded personally that the hearings were little more than a heavily bureaucratized charade.

27. For these and other reasons, I became convinced that Mr. Jawad should not be prosecuted, but I knew that I would not be able to convince my superiors to seek the withdrawal of the charges. In any event, I also knew that dismissing the case would not result in Mr. Jawad's release. The Administration, it seemed clear, would continue to hold Mr. Jawad indefinitely as an enemy combatant, no matter the paucity or unreliability of the evidence asserted against him. I therefore, and with great reluctance, decided to focus my efforts on brokering a plea bargain that would enable Mr. Jawad to be released. I tried in vain to convince my superiors to approve a plea to time served or to a short period of additional custody (Mr. Jawad had, by this time, been imprisoned for almost six years), with Mr. Jawad's remaining months in captivity devoted to rehabilitating him and preparing him to reintegrate into civilian society. My efforts were repudiated, and my loyalty to the Commissions began to be viewed with the sort of suspicion harbored by only the truly embattled, as OMC P had certainly become by that point. The Chief Prosecutor was harshly dismissive, and even contemptuous of any proposal to resolve the case for less than a multi year sentence – even after Salim Hamdan, whom the government argued should receive a sentence of *thirty years*, received an effective sentence of little more than five months.

28. There were other problems with OMC P, beyond the glacial pace at which it undertook its work, its descent into chaos following the departure of Colonel Davis and LTC W.B., and its obdurate and credibility destroying pursuit of laughable legal positions. While many of the prosecutors were essentially harmless time servers, others – primarily the civilians who de facto run the Commissions – could not accept the poverty of their legal arguments and continued to press meritless arguments well past any recognizable degree of rationality.⁶

⁶ I do not wish to tar all of OMC P with the same broad brush. There were in fact several highly skilled, vastly experienced, and unquestionably ethical lawyers who understood the fundamental principle that “justice” is a noble concept not always defined by securing convictions at any cost. In particular, and I mention them in order to avoid any implication that they are to be confused with the dim ideologues just described, Mr. F.R., Majors O.A., J.G., and CPTs S.B. and K.P. embody the very highest aspirations of our shared profession. Not surprisingly, these prosecutors are the ones heard about the least.

31. Irrespective of the failed Commissions proceedings, I personally do not believe there is any lawful basis for continuing to detain Mr. Jawad. There is no reliable evidence of any voluntary involvement on Jawad's part with any terrorist groups. Even