

Summarized Sworn Detainee Statement

The Tribunal President read the hearing instructions to the detainee. The detainee confirmed that he understood the process and had a few comments during the administrative part.

Detainee: We have asked our great God that finally there is a tribunal. You are smart people and I have been hurt for the past 17 to 18 years; I could not get up and you brought me here as an enemy combatant. You think yourself how could I be an enemy combatant if I was not able to stand up?

Tribunal President: We have some administrative to go through here and there will be a place in the hearing for more comments. Bear with us. We look forward to hearing more about what you think about your status as an enemy combatant later.

Detainee: No problem I will not interfere again, but all I wanted to say was we were not against the government of Afghanistan and we are not the government of the United States. I would like to talk to you later, but right now I will not interfere. When I get the chance I would like to speak.

The Recorder presented Exhibits R-2 and R-3 into evidence and gave a brief description of the contents of the Unclassified Summary of Evidence (Exhibit R-1).

Detainee: May I speak now?

Tribunal President: No, not yet.

The Recorder confirmed that he had no further unclassified evidence or witnesses and requested a closed Tribunal session to present classified evidence.

Tribunal President: I understand that you requested the presence for testimony of three witnesses and an affidavit from another government's official. At this time I will review the availability of testimony of these four people. First witness you requested was that of your son, is that correct?

Detainee: Yes, that is correct.

Tribunal President: I have determined that your son is not able to attend today's session, but I have been able to obtain the testimony through alternative means. I have directed, and Personal Representative has attained the statements from your son regarding the requested testimony today.

Detainee: Very good.

Tribunal President: At this time I would like the Personal Representative to present that testimony for the record.

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Personal Representative: I am presenting the Tribunal the testimony of the detainee's son as Exhibit D-B.

Tribunal President: At this time please read the testimony for the record.

Unsworn Witness Statement: ISN 977

My father was with Mugagdice when I was a little boy during the Russian invasion. At that time there were a lot of disputes and he was forced to join the HIG. My father had a stroke about 15-17 years ago. Because of his stroke he lost the ability to walk and was very ill. Because of this, he left behind everything and stayed home and was not involved with the HIG after that and was not involved in anything.

After the Russians were defeated in Afghanistan, there was civil war and a lot of fighting among groups of people in Afghanistan. Because of this, there are a lot of enemies after the Russian war and we had civil war fighting. Our enemies used different tactics by lying about their enemies and the Americans are believing these lies and putting us in prison.

For a year and a half before I was captured, the defense ministry and the interior ministry gathered up all the heavy weapons and turned them in. They collected all the light weapons from the people and put them in a warehouse to be turned over at a later time. Rahim Wardak who was working for the government hired me and put me in charge of guarding the weapons and maintaining control of them for the government. The government provided me with 50 people to guard the weapons and the government paid these people to guard the weapons. All of this area belonged to the government. Everyday they give pay, money, and food to guard the weapons and then the American soldier arrested me. After 25 days, they arrested my father.

When I was arrested, my father went to see Kazai to get my release but was captured before he could.

I know 100% that the Tajik people provided wrong information about us, we have no problems with Americans. The Tajik people have a dispute with the Pastoons. I am Pastoon. I am 100% certain that the Tajik people provided false information resulting in my arrest and my fathers arrest.

If anyone can provide any proof that I did anything against the Kazai government, or American soldiers, I would take the worst punishment.

My father is a sick, old man and cannot even move around. The only times he goes out is to see the doctor, how could he possibly be guilty of any allegations.

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All allegations are nothing but a personal dispute with our personal enemies and are not true.

Rahim Wardak tried to get my release but was not successful. He told my father he would work hard to get me release but the power belongs to the Tajik people and Qardak is not Tajik.

I was with the HIG until 1996 then after that I had no connection with the HIG.

Personal Representative: That is the end of the statement.

Tribunal President: (Directed to the Detainee) In a short while you will have the opportunity to add anything you would like to your son statement.

Detainee: May I now?

Tribunal President: I would like to address the other witness requests you have. The second witness you asked for was identified as Engineer Wasil. I directed that the Personal Representative, with the assistance of the recorder, attempt to locate him.

Detainee: Engineer Wasil, I'll take your word ok. I didn't want him that is because he punished us.

Tribunal President: I understand, and I think you already know that we were unable to locate him and so he is unavailable to us today.

Detainee: What can I tell you? I will speak to you later when it is my time.

Tribunal President: The next witness you requested was Hamdulla. This individual is also not available to us today.

Detainee: No problem.

Tribunal President: The affidavit you requested was from Rahim Wardak. About a month ago on or about 29 October, I requested the United States government contact the Afghanistan government from Rahim Wardak as of today the Afghan government has not responded to our request. Without the cooperation of the Afghan government I am unable to provide any testimony to us today. My ruling as the President is that testimony is not reasonably available for this witness either.

Tribunal President: You may now present any evidence you have to the Tribunal your Personal Representative may assist you if you wish. Before you start I would like to ask you, would you like to make your statement under oath?

Detainee: Is this necessary? If you think that I am charged unlawfully. I will be able to swear to you; but if it is not necessary I don't want to swear.

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Tribunal President: The oath is your choice to make.

Detainee: If you are accusing some wrongdoing, I will be able to swear in Islamic way. If you are not accusing me of wrongdoing I don't find it necessary.

Tribunal President: Let me review one thing with you. This panel knows nothing of your record except what we heard today. This panel is not accusing you of anything. We are here to review information to see if you are properly classified as an enemy combatant. What we have heard today is the unclassified evidence of what the government believes classifies you as an enemy combatant. It would be very helpful to this panel to hear anything you would like to say regarding this information. An oath is a promise to tell the truth, but we don't require you to take an oath it is your decision.

Detainee: I swear from now on anything I tell you will be the truth, I didn't provide the wrong information and I will not provide wrong information to you any more. Lying is against my religion; I am very close to my grave at this age I will not lie to you in any matter.

Tribunal President: Very well you may proceed with your statement.

The Detainee took an Arabic verse of Koran oath of his own.

Detainee: In the beginning when the fighting began in Afghanistan I was with Hazarat with few weapons in hand. At the time you American were helping the Jardin HIG Matar and you were providing them with weapons. Unfortunately he can and took over all of our areas. When the time that he can from Charasia Kabul to Sarobi area in Jalalabad Area, believe in God and believe me that at that time I was there in my home. When President Nagee was in power; at that time I got sick. I am not the only one that will say this to you, but many others Afghan will tell you that we are very happy with United States of America that at the time of the war against the Russians you provided us with a lot of help. When the Taliban oppressive forces arrived in Afghanistan, and the American came to Afghanistan to defeat them the people of Afghanistan were very happy that we were going to received help from the United States. Unfortunately you are going over there and capturing us and bringing us over here. I will tell you that one thing that from a long time the Afghan people have artillery pieces and also weapons in their possession. When the American forces arrived to Afghanistan they gathered all the weapons from the wrong hands. Basically the American forces took the weapons from the wrong hands so they could not kill the Americans nor their own enemies from the area. I request that you pay attention to me in this matter. After 21 or 22 months that I have been here this is the first time I am in front of the Tribunal, please in two weeks let me know if I am an enemy combatant or not. Did I ever fire upon you or not. I am surprised that those wrongly accusing people are playing with you, they are giving you wrong information and they are against you. When you accused me of the HIG forces of having a plan to attack to United States forces and its' Allies to free Nazrat and Izat, then why didn't they arrest the individual who wanted to attack you, why didn't you capture

him? The weapon that you accused me of having at my compound they belonged to the Defense Ministry of Afghanistan. The weapons I told many other interrogators that they belonged to the government they had nothing to do with us. We have a good relationship with the Americans and they are trying to bring a bad relationship between the Pastian and the Americans in the Area. I swear to the great Allah, I didn't swear earlier but I am swearing now. I swear to my grey beard that any body prove these wrong accusations against me I will allow you to sacrifice all my children. I don't know why those oppressors are trying to oppress us.

Personal Representative: Would you like me to read the statement that you gave me then I will read the questions?

Detainee: Please Sir, you are allowed do anything you want. I would like to thank the leaders that are listening to me. Please forgive me if I talk too much and all the above.

Personal Representative: I can go to the allegations or I can read what you told me.

Detainee: Please read one by one so that I can individually answer all the questions.

Personal Representative: I don't need to read his statement, since he covered most of it.

Detainee: Very good, read one by one.

The Personal Representative read the accusations to the detainee so that he could respond to the allegations. The Personal Representative also responds that the detainee forgot to mention. The allegations appear in italics, below.

3.a.1. The detainee was a local commander in the HIG.

Detainee: I told you previously I was the commander for Hazrat. I didn't work for them but they captured our area.

Personal Representative: So you are saying that you are not the commander for HIG?

Detainee: No.

3.a.2. The detainee was a primary coordinator for the HIG in Sarobi, Afghanistan.

Detainee: This is not right for you to listen to the wrong accusation. The person who wrongly accused me of this, please bring him and make him face me in this tribunal.

3.a.3. HIG leadership reportedly had a plot to kidnap one or more coalition force members to use as hostages in exchange for arrested HIG leader HIG leader Haji Nazrat Khan (detainee) and his son Izat.

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Detainee: For God sakes why are you listening to these wrongly accusations, if they had such a plan to do that why didn't they do it? The individual who told you all these accusations bring him here so that I can ask him, when was I with the HIG.

3.a.4. The HIG is an active terrorist organization in Afghanistan with long established ties to Usama Bin Laden.

Detainee: It is not up to me I don't care about them, what should I do about it.

3.b.1. Large caches of weapons were recovered from the compound where detainee lived, including 107MM rocket launchers, PKM's, AK-47's and uniforms.

Detainee: Believe in Allah and in God that I have told you many times, that yes I had these weapons in my possession but I told you that they belonged to the government of Afghanistan and I had all of the numbers. Because of the security of these weapons the government of Afghanistan provided my son with 50 individual to guard the weapons with salary and food. A few days before our capture 3 Americans/ 3 Coalition forces came to my area and asked my son will he be able to go with them to the University? My son told them why not I will go with you. You are smart people, you think the people who have these kind of weapons who are against you or against the government of Afghanistan would they live in the same are so you can come catch them, come on you are smarter than that. I was living away from my sons' compound where the weapons were found; but then when I knew my son was captured 3 days later. I went to my sons' house to take care of my grandkids. A few days later I wanted to go to Kabul to be able to release my son. I couldn't go and then it was one early morning, the sun was up when your forces arrived and captured me. First I have a request from God, after God I have a request from you to pay attention to my case, how can I be an enemy combatant? Afghanistan people have good memories of you so please don't get mad I want to tell you something. When you helped us to defeat the Russians, while we defeated the Russians you didn't help us you turned your back to us and left. Afghanistan people are like your kids, you don't leave your kids and turn away from them. You are our leaders I am very old and I would like my son to bring me a glass of water.

Tribunal President: I can pass this request on; it is not in my power as a Tribunal President to grant this request. I believe the Personal Representative has one more thing to provide.

Detainee: Please.

3.b.2. At the time of detainee's captured, the HIG was conducting surveillance and planning rocket attacks against US forces in the area.

Detainee: Then why didn't the attack happen? First the attack didn't happen and that is not up to me. I didn't fire, my son didn't fire we were not against the American we were trying to help the Americans.

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Personal Representative: There are a few things that I wanted to remind you of.

Detainee: Please.

Personal Representative: You said you were at your son's house when you were captured, and you live 30 kilometers away from your son's house.

Detainee: Yes, it is like that.

Personal Representative: You were taking care of your grandkids at your son's house when you were arrested.

Detainee: I told you previously that this is correct.

Personal Representative: That the weapons were located at your son's house.

Detainee: Yes, my son probable told you they were at his house.

Personal Representative: But, they belonged to the Ministry of Defense for the country.

Detainee: Yes, they belonged to the Defense Ministry.

Personal Representative: After years of fighting you acquired enemies; and your enemies handed you over.

Detainee: Why Yes, Basically we have good memories against the United States of America we don't have bad memories against the United States of America so I could use the bad things against you. One thing I am mad inside about that I spent so much time and no one spent time on my case.

Personal Representative: The last thing that you wanted me to bring up, is that you have been in bed for the past 17 years and that you are sick and can't even get up.

Detainee: This is the most obvious, yes any time I needed to go to the doctor I went.

Tribunal President: Does that conclude your statement?

Detainee: I don't tell you what to do that is up to you.

The Personal Representative had no further questions and the Recorder had one clarifying question.

Recorder: I understand that the witness statement was already entered into evidence, is that correct?

Tribunal President: Yes that is correct.

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Recorder: It seems that since the witness is not here, I have a question for the Personal Representative. Was the affidavit or sworn statement sworn under oath or not under oath.

Personal Representative: It was not sworn under oath.

Tribunal President: Thanks for the clarification.

Tribunal Members' Questions

Q. How long were you at your son's house before you were captured?

A. When my son was captured three days later I knew about it and I left my house to go to his house. A few days later, I left my sons house and went to Kabul I met with the defense minister and our defense minister contacted your embassy. I then left Kabul and went to Sarobi and that is were I was captured.

Q. Sarobi is where you live and not your son?

A. My son was living in Sarobi; I was away from there. For a few days I was at my son's house.

Q. You went to Kabul and then went back to your son's house?

A. Yes.

Q. Then you were captured at your son's house?

A. Yes.

Q. Did you have weapons at your house?

A. No.

Q. They were your son's weapons, not yours. You were only staying at your son's house?

A. They were not mine personal weapons or my son's personal weapons. They belonged to the government the government told us any time we need you to surrender your weapons you surrender and in the future if we have a job for you. You give the weapons to the people we appoint for you.

Q. These weapons were guarded by 50 people at the time of your arrest. Were any of them there and did any of them resist?

A. They were around the area but we didn't have a plan to fight. My son when he was captured told the government officials that we have weapons inside his house he was taking care of the weapons.

Q. You were forced a long time ago to join HIG?

A. I will give you an example, Right now President Karzai is the leader of Afghanistan there are people like him and dislike him. They have to be with Karzai cause he is the

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President. It means the area that we were under control we had to go with the government with the most power.

Q. You had personal enemies; can you give us their names?

A. This is not necessary because I don't know who told you exactly who wrongly accused me in front of you. I leave it to God; God will punish them.

Tribunal President: Do you have any other evidence to present to this Tribunal? ... Actually we have one more follow up question (from a Tribunal Member).

Q: Were any of the guards who were being paid by the government arrested?

A: No; nobody was arrested.

Q: Just you and your son?

A: Yes. Nobody told me anything.

Tribunal President: I'll ask you again; do you have any other evidence to present to this Tribunal?

Detainee: This is the end of my statement. You are leaders here, and you are all leaders in Afghanistan; I have hope that you do whatever is necessary to decide if I am an enemy combatant or not. I believe that is my son's request so he could be close to me.

Tribunal President: We understand.

The Tribunal President confirms that the detainee had no further evidence or witnesses to present to the Tribunal. The Tribunal President explains the remainder of the Tribunal process to the detainee and adjourns the Tribunal.

AUTHENTICATION

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


Colonel, USAF

Tribunal President

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Detainee 977 testimony on behalf of his father Detainee 1009

My father was with the Mugagdide when I was a little boy during the Russian invasion. At that time there were a lot of disputes and he was forced to join the HIG. My father had a stroke about 15-17 years ago. Because of his stroke he lost the ability to walk and was very ill. Because of this, he left behind everything and stayed home and was not involved with the HIG after that and was not involved in anything.

After the Russians were defeated in Afghanistan, there was civil war and a lot of fighting among groups of people in Afghanistan. Because of this, there are a lot of enemies after the Russian war and we had civil war fighting. Our enemies use different tactics by lying about their enemies and the Americans are believing these lies and putting us in prison.

For a year and a half before I was captured, the defense ministry and the interior ministry gathered up all the heavy weapons and turned them in. They collected all the light weapons from the people and put them in a warehouse to be turned over at a later time. Rahim Wardak who was working for the government hired me and put me in charge of guarding the weapons and maintaining control of them for the government. All the serial numbers were recorded with the government. The government provided me with 50 people to guard the weapons and the government paid these people to guard the weapons. All of this area belonged to the government. Everyday they give pay, money, and food to guard the weapons and then the American soldiers arrested me. After 25 days, they arrested my father.

When I was arrested, my father went to see Kazai to get my release but was captured before he could.

I know 100% that the Tajik people provided wrong information about us, we have no problems with Americans. The Tajik people have a dispute with the Pastoons. I am Pastoon. I am 100% certain that the Tajik people provided false information resulting in my arrest and my fathers arrest.

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Rahim Wardak tried to get my release but was not successful. He told my father he would work hard to get me released but the power belongs to the Tajik people and Wardak is not Tajik.

I was with the HIG until 1996 then after that I had no connection with the HIG.

Exhibit D-b

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Summarized Detainee Sworn Statement

The Tribunal President read the Hearing Instructions to the Detainee and confirmed that the Detainee understood and had no questions.

The Personal Representative presented the Detainee Election Form (Exhibit D-A) to the Tribunal.

The Recorder presented the Unclassified Summary of Evidence (Exhibit R-1) to the Tribunal.

The Recorder presented Exhibits R-2 and R-3 into evidence and gave a brief description of the contents of the Unclassified Summary of Evidence (Exhibit R-1).

The Recorder confirmed that he had no further unclassified evidence or witnesses and requested a closed Tribunal session to present classified evidence.

The Tribunal President, referring to the Detainee Election Form, made the following statement:

Tribunal President: I see by the Detainee Election Form that you have elected to participate today as evidenced by your being here. I also see that you wish to make an oral statement, which we will provide you that opportunity in just a minute. Additionally, I see you requested three witnesses, two of which the Tribunal approved. Basically, these two witnesses we deemed relevant to your status as an Enemy Combatant. The Department of State was contacted on the ninth of November with follow up attempts on the 22nd and the 30th of November. As of today the Department of State has received no response from Afghanistan as to the status of these witness requests. Therefore, I have made the determination that based on the attempt to contact and the lack of response that the witnesses are not reasonably available. I will tell you however if the witness testimony becomes available at a later time, we will make a decision whether to reopen your case or not.

Tribunal President: Zahir Shah, you may now present any evidence you have to the Tribunal and you have assistance of your Personal Representative in doing so. Do you wish to present information to this Tribunal and would you like to make your statement under oath?

Detainee: Yes.

Tribunal President: Recorder, would you please administer the oath?

The Recorder administered the Muslim oath to the Detainee.

The Tribunal President opened the Tribunal to the Detainee to make his statement.