

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 and provided a brief description of its contents. 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: Sabr Lal, I've been notified by the Personal Representative you requested witnesses for this hearing. I received that request on 18 December (2004), and I approved the request, as I considered all three witnesses that you requested would provide relevant testimony, on the 19th of December. I would like to confirm the identification of all three witnesses with you now. Witness number one is identified by the name of Sharifullah, is that correct?

Detainee: Yes it is correct.

Tribunal President: The second witness is identified as Haji Rohullah Wakil.

Detainee: Yes, that is correct.

Tribunal President: The third witness is identified as Sada Jan.

Detainee: That is correct.

Tribunal President: I've been notified that all three witnesses are in U.S. custody and the Personal Representative has contacted all three and they have agreed to provide testimony. However, one witness is unable to attend this Tribunal in person due to force protection reasons. I requested that alternative means of providing testimony be investigated for the third witness. The Personal Representative has been able to obtain alternative testimony from the third witness. That witness that will not be able to attend today; we will receive his testimony in oral form from the Personal Representative. That witness is identified as Haji Rohullah Wakil.

Detainee: Thank you.

Tribunal President: The final statement regarding the ruling: The final ruling is all three witnesses are available with one witness providing testimony by alternate means. The proceeding will continue in this fashion. Shortly I will ask if you wish to make a statement, and if you provide a statement we'll receive that. After receiving your statement we will then obtain

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the witnesses one at a time to attend your hearing where we can get testimony from them. Then we will receive the oral testimony from your third witness as provided by the Personal Representative at a later time. Sabr Lal, you may now present any evidence you have to the Tribunal. Your Personal Representative may assist you if you wish. From the Personal Representative Detainee Election Form provided to me earlier I understand you would like to speak to each item of evidence. Is that true?

Detainee: That is correct.

Tribunal President: I also understand from the Detainee Election Form that you wish to make your statement under oath?

Detainee: True.

The Recorder administered the Muslim oath to the Detainee.

Detainee: I swear that whatever I say in front of the Tribunal is the truth.

Tribunal President: Thank you very much.

The Tribunal President opened the Tribunal to the Detainee to make his statement. The Personal Representative read the allegations from Exhibit R-1 as listed below in italics.

3.a.1. The detainee aided al Qaida members in their escape from coalition forces.

Detainee: To begin with, I was a friend of American forces. I fought for six years against al Qaida forces. I got injured during that. My house caught on fire. How could that be possible?

3.a.2. The detainee had bodyguards.

Detainee: Can my translator explain to me what 'personal bodyguards' means? I was a commander. There were six hundred people working for me. I have admitted that I was a commander of the government. When I was a commander for the interim government I had people around me all the time when I was fighting against the Taliban in the company of the Northern Alliances.

Tribunal President: I would prefer to explain. You had asked a question regarding the explanation of a bodyguard. In the context of this statement, I believe bodyguards are people that are solely responsible for your security alone.

Detainee: I had six other people that I ordered. Somebody always followed me when I was going somewhere.

Tribunal President: Okay, thank you.

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3.a.3. The detainee called for a jihad against the United States.

Detainee: For the above explanation, I should tell you guys something. I was up on top of the mountains; I was hiding. When the Americans came, I came to the surface. I joined them, I ate with them, I went places with them, I helped them; that is all I have done. The American authorities were always in contact with me. They called me to talk to them about situations. We had gatherings and I helped them out, I never ran away from anybody.

3.a.4. The detainee assisted in the escape of Usama Bin Laden from Tora Bora.

Detainee: Tora Bora is in the province of Jalalabad and we're back in Kunar province. Tora Bora Mountain is in Jalalabad. I have only heard of Tora Bora Mountain by name. I have never made a trip there. How could I have assisted from Kunar in the mountain of Jalalabad to aid Usama Bin Laden to escape easy?

3.a.5. The detainee was one of Usama Bin Laden's commanders during the Soviet jihad.

Detainee: I was a young kid when the Russians were in Afghanistan. I was not a commander at all. Yes, I did fight against the Russians but I was not a commander. I was a fighter at that time. I had my own commanders at that time; I was not a commander. The first time I heard the name Usama Bin Laden was through the radio station in Pakistan when he had somehow managed to bomb an embassy in Tanzania. I don't remember exactly if it was Tanzania but this was the first time I had heard the name Usama Bin Laden. I remember exactly that I was listening to the radio; I was with Hazrat-e-Ali and Haji Jandad and we heard that news with somebody of the name of Usama Bin Laden had attacked the American embassy in Tanzania.

3.a.6. The detainee collaborated with regional al Qaida leadership.

Detainee: If you want to call me fighting against them "collaboration" then you can define it as such. I fought them; I did not cooperate with them. They were my enemy and I was their enemy. There is no cooperation between enemies.

3.b.1. The detainee coordinated a rocket attack against United States forces.

Detainee: I was not working on something like that. I couldn't have. I didn't have any problems with the Americans. What is the point for me to create such things like that?

Tribunal President: Again I go by what was provided and it says that you coordinated a rocket attack.

Detainee: I was hiding in the mountains; I was in the mountains. When the Americans came, I came down. I became a commander. I became involved with society. Before the Americans came I was walking, then when they came I had transportation. Due to the threats of the Taliban I was separated from my family; I did not have my family. I was in the mountains. When the Americans came I joined my family.

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Personal Representative: Sir, that concludes the summary of evidence.

Tribunal President: Sabr Lal does that conclude your statement?

Detainee: It is finished.

Tribunal President: At this time I would like to go over a few instructions regarding the witnesses. During the short recess we will have one witness brought in and he will be sitting on the opposite side of the Translator. During that recess you will remain seated where you are. The requirements dictate that no communication, no talking between yourself and the witness, may occur without the presence of the Tribunal. After the recess we will reconvene with all of the parties in the room. After I identify the witness and confirm with you that that is the gentleman that you wished, the witness will take an oath, and then the procedure will be that you may ask the witness questions to provide the testimony that you desire. The information that we are most interested in is related to the same information that you went through regarding these allegations. Your Personal Representative may assist during your questioning of your witness. After you've completed your questions, the Tribunal will then be free to ask questions as well. Do you have any questions about that process?

Detainee: No I don't. The only thing is that it is customary; can I please greet him when he comes in?

Tribunal President: Again, because of our regulations regarding your security this is standard that you will remain seated and restrained. A verbal greeting is okay.

Detainee: Yes, I just want to welcome him.

Tribunal President: I understand that and you will have that opportunity when we reconvene as well.

Detainee: Can I have some water?

Tribunal President: We can arrange that during the recess.

The Tribunal President called for a brief recess to bring in the first witness.

The Tribunal is called to order.

Tribunal President: Sharifullah, good morning.

Witness 1: Same to you.

Tribunal President: I would like to confirm with the detainee, Sabr Lal, that this is the witness that you requested.

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The Tribunal President called for a brief recess due to a medical emergency requiring the Translator.

The Tribunal is called to order.

Tribunal President: Lets continue where we left off. Again I had asked the question to Sabr Lal if this is the witness he requested.

Detainee: Yes.

Tribunal President: Sharifullah we require that you take an oath and promise to tell the truth. Will you take that oath please?

Witness 1: Yes.

The Recorder administered the Muslim oath to Witness #1, Sharifullah.

Witness 1: I swear to Allah that everything I say is the truth.

Tribunal President: Thank you. Sabr Lal you may ask your questions to the witness to obtain the testimony with the assistance of your Personal Representative.

Detainee: Yes. I have arranged the questions with the Personal Representative. Those are the questions that I wanted to ask, she knows all about it.

Tribunal President: Very well, please continue.

Detainee's questions for Sharifullah via Personal Representative

- Q. The detainee aided al Qaida members in their escape from coalition forces.
A. This is a lie, it is a very wrong statement because he lives in the province of Kunar and the Tora Bora Mountains are located in the province of Nankuhar. There is a long distance between Kunar to Tora Bora.
- Q. The detainee assisted in the escape of Usama Bin Laden from Tora Bora.
A. I think that the explanation of the first question totally applies to the second question. On top of that I know the detainee was a commander against the Taliban, so these two situations do not match with each other. He was against the Taliban and he was fighting against al Qaida, then all of a sudden he is helping them escape?
- Q. The detainee was one of Usama Bin Laden's commanders during the Soviet jihad.
A. I cannot answer this question.

Detainee: This does not apply to Sharifullah. It applies to Haji Rohullah.

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Tribunal President: It is really the detainee's opportunity to ask you questions and he may choose which questions to ask. So again Personal Representative restate the question and Translator please translate that. Witness, please do not answer until the detainee confirms that he wishes that question to be asked.

Q. The detainee was one of Usama Bin Laden's commanders during the Soviet jihad.

Detainee: I will not ask this question of him. He was just a little kid. How could he know my operation at that time? It has nothing to do with Sharifullah.

Witness 1: I think if I'm not mistaken, in the initial [interview] I said the same exact thing to the Personal Representative, that I was a little kid and I did not know his whereabouts at that time.

Tribunal President: Understood perfectly. We understand that. Please proceed with the next question.

Q. The detainee collaborated with regional al Qaida leadership.

A. It all relates to the same type of explanation. The man fought against the Taliban then fought against al Qaida. It's against our conscience; it's against our belief to be enemies with somebody then prepare ways for them to escape and things like that. Isn't it true even within you guys as well that you cannot be enemies and at the same time prepare ways for them to get out?

Personal Representative: Sir that is the end of the questions that were requested.

Tribunal President: Very well. Detainee do you have any other questions that you would like to ask this witness?

Detainee: No I don't have any other questions. I asked you earlier if I could greet him because it my custom to just say hi to him.

Tribunal President: Yes please.

The Detainee and witness had a brief exchange.

Tribunal President: Translator if you could please confirm that it was a greeting that was exchanged between the witness and the detainee.

Translator: Yes it was. He (the detainee) was saying "how are you, how's it going? Is everything okay?" He (the witness) said "fine."

The Tribunal President was informed of another medical emergency that required the Translator.

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Tribunal President: At this point we need to take another recess for another matter and then we will continue shortly with questions from the board for the witness. During this recess I ask that there be no conversation between the witness and detainee.

Detainee: That's perfectly all right.

Tribunal President: Thank you.

There was a brief recess and then the Tribunal President called the hearing to order.

Tribunal President: We are now ready for a question and answer period after the first witness testimony. Personal Representative do you have any questions for the witness?

Personal Representative: No sir.

Tribunal President: Recorder do you have any questions for the witness?

Recorder: Yes sir, just one.

Recorders questions for witness #1, Sharifullah

Q. Sharifullah, how do you know Sabr Lal, and did you work for him?

A. Yes I know Sabr Lal from the encounter when we both worked for Haji Khadir; he was a commander and that was in Balochistan (ph) and he used to come and see him. Then I used to go and see Qadir Khan as well and that's how I met him.

Q. One more question. What did you do?

A. I was working for Haji Khadir; I was like a security guard.

Personal Representative: No further questions sir.

Tribunal President: Does the board have any questions for the witness?

Tribunal Members questions for witness #1, Sbarifullah

Q. Can I just follow up? I understand that you work for Haji Khadir, is that correct?

A. At that time Haji Khadir was running a campaign with the Taliban and when the Taliban was not there anymore, he became the governor of Jalalabad.

Q. So you fought with Haji Khadir against the Taliban?

A. It's not like I worked for Haji Khadir in public. We just said let's all go fight together so it's not like that. He had a huge campaign, some people were doing operations against the Taliban, some people were trying to secure the areas and some people were trying to keep the peace in the towns and some people were there as guards. I was a guard.

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Q. Sabr Lal had some part to play in the efforts against the Taliban as well, is that what you're saying?

A. He was living a long distance away from me; all I know is that he too was coming to see Haji Khadir. I used to go there too as well as Haji Khadir supporters.

Q. Was Haji Khadir also fighting the al Qaida forces?

A. I heard of situations where Haji Khadir commanders had been engaged in fights and attacks with al Qaida members.

Q. What did the detainee do when U.S. forces arrived in Afghanistan?

A. When the American forces came there were a lot of fights everywhere and when the Taliban were getting finished, everybody tried to come and stand for something. At that time as far as I remember that I started to go towards my province of Jalalabad and he stayed in Kunar where he belongs.

Q. I just have one question. How long have you known Sabr Lal?

A. I do not remember exactly, around two years of my affiliation with Haji Khadir. I used to see him coming to see Haji Khadir. That's all I remember right now. When I came back to my hometown of Jalalabad, to the center of the city, after the Taliban was finished he (Sabr Lal) stayed in Kunar where he is from.

Tribunal President: That concludes our questions. Sharifullah, thank you for coming.

Witness 1: I do have one thing to say. I just came from my own Tribunal on the other side and Sabr Lal is in my position as well. I just have a question for the Tribunal Members. We were the people who fought the Taliban all the time. What is happening to us? How come you are detaining people who were in that category?

Tribunal President: I'm not in a position to answer that question specifically today. Both the detainee and the witness should understand that the purpose of these Tribunals is to review your classification as an enemy combatant. That is why we are here; we are answering that question for each detainee.

Witness 1: While you are checking into our situations, I look at Sabr Lal and I look at other people in orange out here and everybody's wondering if these guys came to get Taliban or did these guys come to get us.

Tribunal President: I understand your concern and I appreciate it. We cannot continue on that line of comments, thank you.

The Tribunal President called for a brief recess to bring in witness #2. The Tribunal is then called to order.

Tribunal President: Sada Jan, good afternoon. I've been notified by the operations of the camp that for medical reasons they would like to have Sada Jan return for medical care. I understand that you really wish to provide testimony today, and I respect that. However, your medical and

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personal health is more important than these proceedings. We will take a recess so you can be returned to medical care and we will address this issue further with Sabr Lal. I know I speak for the panel that I hope that you are feeling better soon.

Witness 2: Thank you so much; it is up to God to make me feel better.

Tribunal President: Thank you.

Detainee: Can I say hi to him?

Tribunal President: Yes please.

Detainee: You are sick?

Witness 2: God be with you.

Detainee: Are you okay? I hope you feel better. Please continue.

The Tribunal President called for a brief recess for witness #2 to be returned for medical care. The Tribunal is then called to order.

Tribunal President: Sabr Lal, sorry for all of the recesses and I appreciate your patience.

Detainee: Thank you so much, it is fine.

Tribunal President: As you know your witness, Sada Jan, could not attend this hearing due to a medical problem. I have spoken with the Personal Representative and she did discuss the proposed testimony with that witness previously. If it is acceptable with you, the Personal Representative can read her notes and provide the testimony since the witness tried to attend today's hearing but could not provide his testimony.

Detainee: It is not that necessary; he told you everything that I wanted him to tell you. I'm fine with that. The representative knows about his answers. She can talk to it; I don't have any specific requests.

Tribunal President: That would be very acceptable to us. Personal Representative please provide us the summary of what the witness informed you of yesterday, or whenever you had your previous meeting.

The Personal Representative reads her notes from the meeting with witness #2, Sada Jan

Personal Representative: Sabr Lal had only one question, that was:

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Q. The detainee coordinated a rocket attack against United States forces.

A. Sada Jan said, "I had heard of this detainee not until after the Taliban was defeated. Then he, this detainee, became an active member and became a deputy for (inaudible) against the Taliban."

Tribunal President: Was that his reply?

Detainee: That is exactly what I thought he would say.

Personal Representative: He had some additional comments. He stated, "This detainee was silently working for the government in the campaign against the Taliban." He knew him from the Karzai office because he worked for Karzai and he saw him in the governor's office. Sir, that concludes his testimony, or the witnesses' statement.

Tribunal President: I will let you categorize how you obtained that testimony. If the Personal Representative will please for the record explain how she obtained that testimony or statements from the witness and when you obtained it.

Personal Representative: I spoke with Sada Jan on 29 December and it was in reference to the allegations that had been explained earlier. At that time I was taking notes and proceeded to take notes, and this is what I had.

Tribunal President: Sabr Lal, does that satisfactorily substitute for having your witness, Sada Jan, attend today's hearing?

Detainee: I don't have any objections over this, unless you do.

Tribunal President: No, we tried our best to obtain your witness for you today. I'm sorry that he was not well and I hoped that this alternate testimony would be acceptable and I believe you said it is. Thank you.

Detainee: I also gave the representative one more question for Sada Jan, that I told him about one of the accusations was that I was campaigning and providing meetings to talk about Americans in a bad way and to campaign against America. Did you ask him about that?

Personal Representative: The only campaign that he mentioned was that he was silently working for the government campaigning against the Taliban.

Detainee: That's good, as long as he said that.

Tribunal President: Thank you. Now for our last witness testimony. As explained earlier Haji Rohullah Wakil could not attend this hearing today. The Personal Representative also obtained testimony in a similar fashion as previously mentioned. Personal Representative, if you would provide that testimony at this time.

Personal Representative: Yes sir.

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Tribunal President: First I would like to confirm that the detainee wishes that testimony to be provided to us. Let me rephrase that. Personal Representative, did you inform the detainee of what this testimony would be before this hearing?

Personal Representative: No sir.

Tribunal President: Just wanted to confirm that, please proceed.

The Personal Representative reads her notes from the meeting with witness #3, Haji Rohullah Wakil

Personal Representative: Haji was asked several questions.

- Q. The detainee called for a jihad against the United States.
A. He said, "Totally wrong. The detainee was always in agreement with the Americans."
- Q. The detainee assisted in the escape of Usama Bin Laden from Tora Bora.
A. Response, "The village is too far away. He stayed in his actual province and he wasn't staying in Tora Bora."
- Q. The detainee was one of Usama Bin Laden's commanders during the Soviet jihad.
A. Response, "He was only a commander during the Taliban. It was when it was against the Taliban. He had ties through the Northern Alliance. He had no connection with Usama Bin Laden. Sabr Lal's father was a member of Mahaz-e Milli headed by Gailani."
- Q. What was I (referring to the detainee) doing and did I fight against the Americans?
A. Response, "He worked as a member of border control during Karzai's government. He was fighting for the Americans not against the Americans. He showed a lot of resistance against the Taliban. He had done a lot of good work. He had caught a lot of smugglers of timber and he also put them in jail." Haji concluded, "[I or We] always tell you the truth. We are not hiding anything. We are on the same path as the Americans."
- Q. One last question, how long have you known the detainee?
A. Answer, "He is a villager and I've known him over twenty years."

Personal Representative: That's the conclusion of that testimony.

Tribunal President: Sabr Lal is that the testimony you expected?

Detainee: Yes.

Tribunal President: Personal Representative do you have any questions for the detainee?

Personal Representative: No sir.

Tribunal President: Recorder do you have any questions for the detainee?

Recorder: Sir, no sir.

Tribunal President: Does the board have any questions for the detainee?

Tribunal Member's questions

Q. I understand after the Taliban fell you came out of the mountains. What were you doing before then?

A. I was fighting the Taliban before that.

Q. Okay. I thought from your testimony you said that after the Taliban fell you came down from the mountain. I understand you now to be saying that you were part of the Northern Alliance fighting the Taliban before the Americans came. Is that correct?

A. Before the Taliban came Rabani was in power and when they came they were trying to penetrate into our area and we did a lot of fighting against them. They were very strong and we lost a lot of people. I could not fight them any further; we had to go to the mountains.

Q. After you came down from the mountains and you defeated the Taliban, who appointed you to be the commander of the border forces?

A. When we came down they had formed an assembly in that particular province, and assigned people to different areas. I was assigned to look over the borders.

Q. Who did you report to?

A. I was reporting to at that time the Minister of the Borders.

Q. Was that person a member of the central government?

A. Yes.

Q. What was the name of the Minister of the Border?

A. General Sameullah Katra.

Q. General Sameullah Katra reported to President Karzai?

A. Yeah, of course the President was Karzai. At that time it was completely a defense department. Now they could be doing internal operations as well. I was in the military branch of that particular ministry.

Q. You testified before that you were helping the Americans. What kind of help did you provide American forces?

A. The help was of such that when we reached Jalalabad, which is closer to Kabul than Kunar, we made a trip there to meet them there to talk to them. Then they came to our province of Kunar and we sat together, we fed them, we ate together.

Q. Did you personally go to Jalalabad?

A. Yes I did.

Q. What type of forces did you meet with there?

A. I did not see the forces but I saw the people in charge, commanders, and the head of the Army. I went and met him.

Q. When you were serving as a border guard did you run across any al Qaida members trying to escape into Pakistan?

A. The Taliban had fled right after the war had started. I started my operation, which took a couple of months when I became in charge of operations. So most of the Taliban had already fled.

Q. Does that include al Qaida?

A. Yes, the Taliban and al Qaida had supposedly left. I still do not know myself when you are referring the Taliban and al Qaida, who they were at that time.

Q. The only question I have is regarding item number three. The item was that you, the detainee, called for a jihad against the United States. I understand from your previous statement that that couldn't be possible because you were with the United States and American forces. I'm wondering if you've heard anyone else try to make that statement against you?

A. It is a question that I can't answer. If someone has said something about me, in that manner, where they made something up you will not see them in front of me. They might just go somewhere else and start a rumor about me. I was with you guys. You wouldn't just come and say this guy did this while I was with you. I was fighting with you guys, if somebody said this they said it somewhere else. All the people that declared war against the United States have animosity. They fled. The people who could not just come for a war could not just stand around you and come and eat with you. I was the guy who was sticking in the community.

Tribunal President: All right, I understand. Thank you very much. Sabr Lal do you have any other evidence you would like to present to this Tribunal?

Detainee: I don't have anything specific. All I can tell you is that I fought for six years against the Taliban. I killed a lot of them. The only thing I want to tell you that is so ironic here is that I see a Talib and then I see myself here to. I am in the same spot as a Talib. I see those people on an everyday basis, they are cursing at me, they say shame on you and how could you be doing this to us? I don't know what's going on here. They say "See you got what you deserved, you are here too."

Tribunal President: I understand your concerns.

The Tribunal President confirmed with the Personal Representative that he has no further evidence to submit during the unclassified portion of the Tribunal and that the Detainee had no previously approved witnesses to present to the Tribunal.

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The Tribunal President explained the remainder of the Tribunal process to the Detainee and adjourned the open session.

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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