

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 **[The R.M.C. 803 session was called to order at 1404, 01 May 2024.]**

2 MJ [Col McCALL]: Commission is called to order.

3 The parties are present. The accused are absent.

4 All right. So after we recessed the last open session, I
5 did have the ex parte session with the prosecution. They let me
6 know -- it appears that they're still gathering information. We're
7 not at a point where there's really anything for me to be able to
8 decide the matter on or to present to the government -- or I mean, to
9 present to the defense teams.

10 So I've excused Mr. Kohlmann for now. And, again, as I
11 mentioned to Mr. Sowards, I will definitely give the parties a chance
12 to present their positions before I decide any matter related to his
13 testimony. We'll see what the government can find out about this
14 issue.

15 All right. Any questions on that?

16 Apparently not.

17 So one other matter. I believe I need to do an ex parte
18 hearing with the al Hawsawi defense team tomorrow. It seems that
19 just with travel and giving them a chance to prepare for it, I think
20 it would be impossible to get it done any sooner than 0930.

21 So I anticipate we will be on in open -- in an open session
22 to start the testimony of Aaron Zebley at 1000. I don't think this
23 ex parte session is going to take that long. So that's

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 just -- adjust that for tomorrow.

2 Over the lunch hour, I did have a chance to review
3 AE 628YYYYY. That's the government's objection to Dr. Al Hammadi's
4 video declaration.

5 I'm going to allow Mr. Ali to play the video in court. I
6 believe the video appears to be relevant, and it may be helpful to me
7 in determining the voluntariness of Mr. Ali's LHM statement.

8 I understand the objections that the government raises, but
9 I can give the video the proper weight in determining what, if any,
10 value it has in deciding the question at issue. And I anticipate
11 that Mr. Connell will explain why it's very important and Mr. Trivett
12 will explain to me why it's not in the motion submissions.

13 So are we set up to -- to play that?

14 LDC [MR. CONNELL]: Yes, sir. We're ready to go.

15 MJ [Col McCALL]: Okay. And is this just going to be audio?

16 LDC [MR. CONNELL]: So what -- my understanding, after a
17 discussion with everybody involved, is that it will be audio and
18 video for the parties and the military commission, and the gallery
19 will only receive audio.

20 MJ [Col McCALL]: All right. That's fine.

21 LDC [MR. CONNELL]: Just in case they think they're missing
22 out on great special effects or something, the -- I will explain that
23 most of the video is just Dr. Al Hammadi sitting, you know, in front

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 of a wall. There are some maps that are displayed, and I -- I will
2 take just a second to explain what that is.

3 MJ [Col McCALL]: All right.

4 LDC [MR. CONNELL]: Your Honor, we're moving toward -- most of
5 the years of testimony now have been about what the FBI did, and
6 we're moving toward a portion of the defense presentation about
7 Mr. al Baluchi himself, which involves some elements of his personal
8 history, vulnerability to PTSD, preexisting factors, also
9 includes -- will include a diagnosis of him.

10 It will include an analysis of his environment, and you've
11 already heard from Dr. Mitchell, an analysis of how fear extinction
12 works in people with PTSD and without PTSD. That's quite important.

13 Dr. Al Hammadi, it's interesting that you asked doctor or
14 mister. He's a rare double doctor, in that he has an M.D./Ph.D. all
15 in -- with a focus on PTSD. He's an absolute world expert.

16 But there's a factual element of what he did, too, which is
17 that the government may know that Mr. al Baluchi grew up in Kuwait.
18 And in August of 1990, Iraq invaded Kuwait.

19 Dr. Al Hammadi stayed there and documented what happened
20 during the invasion, including in Mr. al Baluchi's neighborhood. So
21 there is a factual element of -- of his testimony as well.

22 And he documented his findings in this book on -- where he
23 goes neighborhood by neighborhood and talks about what happened

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 during the invasion. And there will be some maps during the video
2 which are elements of this book.

3 I've shown the book to the government, and I think they've
4 looked at it to their satisfaction. But I just wanted to explain
5 what these maps are. Hopefully, it will be clear in the video.

6 MJ [Col McCALL]: Okay. I appreciate that.

7 LDC [MR. CONNELL]: So, Your Honor, we're fine with the video
8 being displayed on the big screen. The government just asked about
9 that, and we're fine with it if the CISO's okay with that.

10 MJ [Col McCALL]: All right. Perfect.

11 All right. Ready when you are, then.

12 **[Video from AE 628TTTTT (AAA) played.]**

13 LDC [MR. CONNELL]: Sir, I don't know if you want a break, but
14 there's about 20 minutes more.

15 MJ [Col McCALL]: Sure. We can go ahead and take a recess.

16 So it's 1524. Let's take a ten-minute recess, so let's be
17 back in here at 1534.

18 The commission is in recess.

19 **[The R.M.C. 803 session recessed at 1524, 01 May 2024.]**

20 **[The R.M.C. 803 session was called to order at 1534, 01 May 2024.]**

21 MJ [Col McCALL]: Commission is called to order.

22 The parties are present. The accused are absent.

23 Go ahead, Mr. Connell. You can hit "play" whenever you're

1 ready.

2 **[Video from AE 628TTTTT (AAA) played.]**

3 MJ [Col McCALL]: Mr. Trivett?

4 MTC [MR. TRIVETT]: Sir, I just had an administrative question
5 regarding the record. Understanding that that was an appellate
6 exhibit, is there also going to be a verbatim translate -- or
7 transcript of what he said?

8 LDC [MR. CONNELL]: Yes, it's already in the record. I ----

9 MJ [Col McCALL]: Yeah, I assume so. I mean, we had the court
10 reporters here. We're on the record. So I assume everything that
11 was broadcast is going to be translated.

12 LDC [MR. CONNELL]: That's -- that's perfectly fine. I will
13 also say previously we had submitted this to the court reporters, had
14 a verbatim transcript prepared, and have already produced it to the
15 government in 2019. And I'm -- I'm pretty sure the transcript is
16 already in the record, which I can confirm.

17 MJ [Col McCALL]: Okay.

18 LDC [MR. CONNELL]: But we can -- we can -- I don't -- I don't
19 mind there being another transcript. I just wanted to be clear that
20 we had already provided the government a transcript.

21 MJ [Col McCALL]: No, I understand that. Yeah, I think just
22 the fact that we played it in open court, we're stuck with having it
23 in there twice, which I don't have a problem with that.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 LDC [MR. CONNELL]: Understood, sir.

2 MJ [Col McCALL]: All right.

3 All right. I know we had discussed potentially having oral
4 argument. I don't think that makes sense at this point during the
5 day. I'll give you back a little bit of time.

6 So we will go ahead and recess and start again tomorrow
7 morning. I'm starting off with the ex parte with the al Hawsawi
8 defense team at 0930, and then we'll plan on being in open session
9 with everyone at 1000 starting with Mr. Zebley -- or Agent Zebley.

10 All right. Any other administrative matters?

11 Apparently not.

12 All right. Commission's in recess.

13 **[The R.M.C. 803 session recessed at 1555, 01 May 2024.]**

14 **[END OF PAGE]**