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1 [The R.M.C. 803 session was called to order at 0921, 24  
2 February 2016.]

3 MJ [COL POHL]: The commission is called to order.

4 Trial Counsel, any changes in your team?

5 CP [BG MARTINS]: Good morning, Your Honor. No changes.

6 MJ [COL POHL]: Okay. I notice that all the detainees are  
7 here except for Mr. Bin'Attash. Any changes from any defense  
8 team other than the one I just mentioned? Mr. Nevin?

9 LDC [MR. NEVIN]: No, sir.

10 MJ [COL POHL]: Ms. Bormann?

11 LDC [MS. BORMANN]: No, sir.

12 MJ [COL POHL]: Mr. Harrington?

13 LDC [MR. HARRINGTON]: No, Judge.

14 MJ [COL POHL]: Mr. Connell?

15 LDC [MR. CONNELL]: Good morning, Judge. No changes.

16 MJ [COL POHL]: Mr. Ruiz?

17 LDC [MR. RUIZ]: No changes.

18 LDC [MR. CONNELL]: Sir, there are no changes to the legal  
19 staff, but our linguist had a death of a close family member  
20 last night and has been on the fast boat. We arranged for a  
21 flight home. We've discussed the matter with Mr. Al Baluchi  
22 and are able to proceed in court today without the support of  
23 a linguist, but we do want to note the fragility of a system

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1 that only has one linguist available in it. There are  
2 long-term plans of trying to get a back-up, but, for today,  
3 there's no issue. We're willing to go forward.

4 MJ [COL POHL]: Thank you.

5 Mr. Swann.

6 MAJOR, U.S. ARMY, was called as a witness for the prosecution,  
7 was sworn, and testified as follows:

8 DIRECT EXAMINATION

9 Questions by the Trial Counsel [MR. SWANN]:

10 Q. Major, are you the same Major that has testified  
11 previously in these proceedings?

12 A. I am.

13 Q. Again, I remind you you're under oath.

14 A. I understand.

15 Q. Did you have occasion to advise Mr. Bin'Attash of his  
16 right to attend today?

17 A. I did. I met with Mr. Bin'Attash this morning and  
18 advised him that he had a commission hearing at 0-9 and then  
19 advised him in the English version of the advisement which was  
20 then translated into Arabic by the camp translator.

21 Q. Now, you've become quite an expert in doing this.  
22 Did you follow the procedures that are in place?

23 A. I did follow the procedures that are in place.

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1 Q. All right. And you used the Arabic form?

2 A. He signed the Arabic form filled out the top part  
3 with his name and he signed and dated it.

4 Q. Any question as to whether he understood?

5 A. Not at all.

6 Q. Did he sign the document?

7 A. He did sign the document.

8 Q. I have in front of me Appellate Exhibit 408G, is that  
9 the document that you have in front of you?

10 A. That is the document I have in front of me.

11 TC [MR. SWANN]: No further questions, Your Honor.

12 MJ [COL POHL]: Ms. Bormann, any questions?

13 LDC [MS. BORMANN]: No questions, Judge.

14 MJ [COL POHL]: Okay. Thank you, Major.

15 **[The witness withdrew from the courtroom.]**

16 MJ [COL POHL]: Trial Counsel, I understand there's an  
17 issue you wish to raise to the commission.

18 TC [MR. GROHARING]: Yes, Judge, thank you. Your Honor,  
19 the government would move -- moves to seal Exhibits 112K, L,  
20 and M. We have been advised that those exhibits may contain  
21 classified information. That matter is under review right  
22 now. We would ask that those exhibits be sealed and treated  
23 as classified. We expect to have additional guidance

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1 regarding the exhibits at some point later today.

2 MJ [COL POHL]: Where did the exhibits come from?

3 TC [MR. GROHARING]: The exhibits were materials provided  
4 by the government to the defense.

5 MJ [COL POHL]: No, what I'm saying is -- as I understand  
6 it, these were FOIA-released versions of these memos, correct?

7 TC [MR. GROHARING]: No. Originally, yes. The subsequent  
8 discovery was information provided by the government, which  
9 differed from the FOIA-released materials.

10 MJ [COL POHL]: Okay. So are you requesting -- is any of  
11 the FOIA-released materials under review?

12 TC [MR. GROHARING]: Not in the sense that we're looking  
13 to add redactions to the FOIA materials, if that's the  
14 question. And I think ----

15 MJ [COL POHL]: My question is this, is that, as  
16 represented in court, as I understood it, that most of these  
17 redactions were done from the FOIA process; is that correct?

18 TC [MR. GROHARING]: That's correct, Judge.

19 MJ [COL POHL]: Okay. And were these -- these are all DoJ  
20 documents. Was DoJ the IDA in this?

21 TC [MR. GROHARING]: Yes, Judge.

22 MJ [COL POHL]: Okay. I'm assuming they coordinated with  
23 other stakeholders in the documents before claiming a FOIA

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1 exemption?

2 TC [MR. GROHARING]: Yes.

3 MJ [COL POHL]: Okay.

4 TC [MR. GROHARING]: That's a fair assumption, Judge.

5 MJ [COL POHL]: Okay. And so all these documents appeared  
6 on the FOIA website?

7 TC [MR. GROHARING]: And I'll answer your question, Judge,  
8 but I do think -- to be able to fully explain the situation, I  
9 think it might be necessary to talk about classified  
10 information.

11 MJ [COL POHL]: Okay. I'm not going to talk about  
12 classified information, I'm just talking about process here.  
13 Okay. I'm just talking about process here because -- and,  
14 again, I understand the government's concern here. But I'm  
15 just -- you're asking me to seal a document?

16 TC [MR. GROHARING]: Correct.

17 MJ [COL POHL]: Because it's still undergoing  
18 classification review?

19 TC [MR. GROHARING]: We have been advised to treat the  
20 document as classified, that the document that we provided --  
21 which differed from the FOIA-released document.

22 MJ [COL POHL]: Okay. Is the information, then, that they  
23 want to review -- again, is information that was released by

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1 the government that was not part of the FOIA redactions? Do  
2 you understand my question? We got FOIA redactions here,  
3 correct?

4 TC [MR. GROHARING]: Yes, sir.

5 MJ [COL POHL]: And I'm assuming some of those are  
6 national security exemption?

7 TC [MR. GROHARING]: Yes.

8 MJ [COL POHL]: Okay. And we got -- and then after the  
9 government looked at it, they -- I'm going to use a double  
10 verb here, they redacted some of the FOIA redactions and put  
11 them in the discoverable document?

12 TC [MR. GROHARING]: They -- unredacted.

13 MJ [COL POHL]: Unredacted, yes, a better term.

14 TC [MR. GROHARING]: I don't know if that's a word either.

15 MJ [COL POHL]: Let's talk about -- we understand. We  
16 have two categories of information here. We've got the  
17 FOIA-released information over here, in my right hand. And in  
18 my left hand we've got unredacted information, but you  
19 understand that's the universe that's unredacted -- unredacted  
20 FOIA information. Okay?

21 And my question is, is the review -- the  
22 classification review, dealing with the FOIA-released version  
23 or the new, improved version, for want of a better term, or

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1 both?

2 TC [MR. GROHARING]: Any review has to take into  
3 consideration all the information, but what's the focus of it  
4 is the new information that was not redacted in the released  
5 documents. And I would -- again, Judge, it's difficult to  
6 really have a robust conversation about what's at issue  
7 without potentially going into classified matters, so I would  
8 urge the commission to continue this discussion.

9 MJ [COL POHL]: So you want them sealed pending  
10 classification review, temporarily?

11 TC [MR. GROHARING]: Correct, Judge, and treated as  
12 classified information. I've already advised the court  
13 reporter and the court security officer regarding the proper  
14 classification.

15 MJ [COL POHL]: What is that?

16 TC [MR. GROHARING]: SECRET/NOFORN is the appropriate  
17 classification for those documents.

18 Judge, I also have another exhibit that I would offer  
19 at this time, it's 1120. That's an e-mail that I sent to all  
20 the parties regarding this. That's also been marked "For  
21 Official Use Only." I'd ask that that document be admitted  
22 and sealed, as well -- I'd offer that document for your  
23 consideration as well.

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1 MJ [COL POHL]: Okay.

2 TC [MR. GROHARING]: I believe all parties have been  
3 provided a copy of the document.

4 MJ [COL POHL]: Okay.

5 Defense counsel want to be heard on this issue?

6 LDC [MR. CONNELL]: Yes, Your Honor. Counsel for the  
7 government has explained that information in 112L, that it  
8 believes to be the subject of controversy, so I don't have any  
9 objection to sealing L until that controversy is resolved.  
10 But I do have an objection to sealing K and M, where there is  
11 no controversy, as far as I know.

12 TC [MR. GROHARING]: Judge, I object again to the extent  
13 we need to discuss these matters in detail.

14 MJ [COL POHL]: Okay.

15 TC [MR. GROHARING]: It does need to take place in a  
16 closed session.

17 MJ [COL POHL]: Okay.

18 LDC [MR. CONNELL]: I'm not tracking what I said that was  
19 classified.

20 MJ [COL POHL]: No, no, he -- I don't -- I don't think you  
21 said anything that was classified. I think the -- by me  
22 articulating what I think the government was talking about --  
23 or the government articulating what I think the government was

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1 talking about is going to be the exact problem that the  
2 government was trying to avoid.

3 LDC [MR. CONNELL]: How about this, my objection is on the  
4 record. I won't say anything else.

5 MJ [COL POHL]: Just leave it at that. Okay.

6 LDC [MR. CONNELL]: The second issue is that I want to  
7 lodge an objection to -- prospectively to redaction of the  
8 public transcript on this matter, because this is exactly the  
9 issue that we talked about on Monday. I understand Mr. Schulz  
10 unfortunately has already left the island, but there's a First  
11 and Sixth Amendment interest in the public trial and it was  
12 our position on Monday that any redactions to the transcript  
13 which has not been as of 8:30 posted to the website should be  
14 done by the judge and not unilaterally by the government.

15 MJ [COL POHL]: Seems to me to resolve this issue we've  
16 got to discuss it in a closed session.

17 LDC [MR. CONNELL]: I understand, sir.

18 MJ [COL POHL]: Okay. I understand your point. Any other  
19 defense counsel want ----

20 LDC [MR. NEVIN]: Just to join those remarks. Thank you.

21 LDC [MR. CONNELL]: I have one other thing to say on that.

22 MJ [COL POHL]: Okay.

23 LDC [MR. CONNELL]: And that is, we're going to do General

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1 Baker, who's responsible for any ethical, disciplinary or  
2 security remediation that needs to be done, and that I would  
3 ask permission to consult him about this matter and permission  
4 for him to attend the closed hearing. If these documents are  
5 on our internal drive, Your Honor, I can't order remediation  
6 of it, I don't know if Baker can order remediation of it, or  
7 if I did something wrong in argument.

8 MJ [COL POHL]: Let's -- I'll reserve that to see, if  
9 necessary, you know -- the problem with -- General Baker's  
10 position puts him in -- he's not representing -- he does not  
11 and can't represent any individual client here. He's looking  
12 for the substitution, for want of a better term, as a whole,  
13 the organization as a whole. If we need to hear from him,  
14 I'll -- maybe we'll talk about it later. Let's see what  
15 the -- before we talk about remediation, let's find out what  
16 the issue really is.

17 And if we go to remediation that requires dipping  
18 into other people's databases, for want of a better term, then  
19 we'll discuss whose they are. Unfortunately, I suspect, in  
20 this particular case, there's a lot of them ----

21 LDC [MR. CONNELL]: Yes, sir.

22 MJ [COL POHL]: ---- not just defense counsel, and I'm not  
23 hearing anything from Mr. Groharing at this point that would

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1 indicate that there's an issue with the defense counsel doing  
2 anything wrong, as much as there's an issue that perhaps the  
3 big G in the sky permitted, perhaps, a spillage.

4 LDC [MR. CONNELL]: Yes, sir.

5 MJ [COL POHL]: Let's see where we're at before we decide  
6 what we're going to do.

7 LDC [MR. CONNELL]: I have just one more comment I'd like  
8 to make on that, is that the General Baker issue is not so  
9 much my defense of institutional military commission defensive  
10 organization interests, it's really defense of Mr. Al  
11 Baluchi's interests, because, you know, making sure that  
12 you're not the highest ranking person with a secret is an  
13 important way to protect yourself. And my supervisor is  
14 Brigadier General Baker and, you know, get left holding the  
15 bag if I'm the highest-ranking person holding the secret.

16 MJ [COL POHL]: I'm not quite sure what that means.

17 LDC [MR. CONNELL]: I think you will once you know what  
18 the spillage is.

19 MJ [COL POHL]: I understand your position. Sure.

20 LDC [MR. NEVIN]: May I be heard, Your Honor?

21 MJ [COL POHL]: Sure.

22 LDC [MR. NEVIN]: On reflection, I believe we can talk  
23 about this in open session without revealing classified

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1 information.

2 MJ [COL POHL]: I don't think we -- do you think we can  
3 talk about this fully in open session without having the  
4 context in closed session?

5 LDC [MR. NEVIN]: Yes, I think we should because I think  
6 the public has an interest in this, in this exact kind of  
7 development, in terms of sorting out and assessing how this  
8 process works and the way in which it gets hamstrung by these  
9 kinds of claims. And I'm not going to say anything about the  
10 content of the classified information. You don't have to to  
11 understand this situation.

12 MJ [COL POHL]: Okay.

13 LDC [MR. NEVIN]: You don't have to say a word about it,  
14 and we ought to do it in open session.

15 MJ [COL POHL]: Okay. Understand. Ms. Bormann,  
16 Mr. Harrington, Mr. Ruiz, anything you wish to add other than  
17 joining in the other comments? Apparently not. Ms. Bormann?  
18 Mr. Harrington?

19 LDC [MR. HARRINGTON]: No objection. We join.

20 MJ [COL POHL]: Mr. Ruiz.

21 LDC [MR. RUIZ]: We join on behalf of Mr. Al Hawsawi.

22 MJ [COL POHL]: The government motion to temporarily --  
23 remember the adverb -- temporarily seal these three exhibits

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1 is granted. We will discuss this in a closed session with the  
2 caveat that once we're done with the closed session, there's a  
3 substantial chance that we will discuss the unclassified  
4 portions of this in an open session. It strikes to the  
5 commission that we have to get the parameters of the  
6 classified information first and then determine whether or not  
7 we can address it intelligently in an open session.

8           So as to your request, Mr. Nevin, is if we can, we  
9 will discuss in open session but I first want to know the lay  
10 of the land of the classified information and we cannot do  
11 that -- start that in an open session.

12           LDC [MR. NEVIN]: Well, Your Honor, could we ask that that  
13 closed session -- the discussion in closed session take place  
14 tomorrow? This should get resolved at the earliest possible  
15 time, I believe.

16           TC [MR. GROHARING]: We would just ask that it be  
17 following the witness testimony already scheduled for  
18 tomorrow.

19           MJ [COL POHL]: Okay. And I will note that any copies  
20 that my staff have will be treated or handled, at least  
21 temporarily, as SECRET/NOFORN.

22           Okay. That being said, Mr. Connell?

23           LDC [MR. CONNELL]: Thank you, Your Honor. I just want to

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1 note my objection to parts of the "tomorrow idea," because  
2 the -- tomorrow is an 806 and the military commission knows my  
3 permission -- my position that we can't go directly from the  
4 505(h) on AE 1120 directly into an 806 without giving notice  
5 to the public and the media under your order in AE A -- excuse  
6 me AE 081A.

7 MJ [COL POHL]: Okay. When I said we're going into closed  
8 session tomorrow on "this issue," the issue is a 505(h)  
9 session. If we decide to discuss it in a closed session under  
10 806 tomorrow -- it's all I can say now, because it's  
11 speculative, due to the -- if I believe that the time  
12 constraints are such that this issue might be resolved  
13 immediately and, therefore, the notice to the public that we  
14 will discuss it tomorrow at an 806 session is a notice I'm  
15 giving right now. That is not my preferred procedure because  
16 there's supposed to be a gap in between.

17 Quite frankly, I'm not sure what value there is to  
18 the public to say, "Oh, by the way, we're going to discuss  
19 something in a closed session. We're not going to tell you  
20 what it is, but you're free to object to it." Anyway, that is  
21 the procedure and that's what I'll do. There are certain  
22 exigencies of the trial given the facts that when we can meet,  
23 that if I determine that when we have to resolve this this

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1 session, then I may go into the 806 on it on Thursday, but we  
2 will do a 505(h) first.

3 LDC [MR. CONNELL]: Thank you, sir. My actual suggestion  
4 is that depending on how 018 goes, we might be able to do the  
5 505(h) this afternoon with an 806 tomorrow.

6 MJ [COL POHL]: Let's see where it goes. Because that, of  
7 course, necessitates basically ending about two hours early.

8 LDC [MR. CONNELL]: Well, it's not ending. We're still  
9 working.

10 MJ [COL POHL]: No, I know. What I'm saying is -- I know  
11 we're still working. I got it. It's a matter of clearing the  
12 courtroom and everything else. I'm amenable to that, but  
13 we've got a lot on the docket now. If there's no objection to  
14 that procedure -- and, guys, think about it, we'll talk about  
15 it at the lunch break. If that's amenable to both sides, it  
16 would be cleaner to do that today because we have three 505(h)  
17 issues now that maybe it would be helpful to do it today. But  
18 that again means that we have to stop at a sufficient time to  
19 prevent the detainees -- permit the detainees to be escorted  
20 out and everything else but that may make sense. Let me think  
21 about it.

22 Okay. That being said the issue now is 152.  
23 Mr. Harrington, have you discussed an appropriate way to --

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1 for your client to take an oath or affirmation.

2 LDC [MR. HARRINGTON]: I have, Judge. We have it resolved  
3 I believe.

4 MJ [COL POHL]: You have it resolved. Okay. Just to be  
5 clear, every witness as far as I'm concerned is treated the  
6 same until they are otherwise -- there are going to obviously  
7 be some escorts thing with the detainee, but there will be no  
8 shackles and he will testify if he so choose. That being  
9 said, Mr. Harrington, do you have a witness you wish to call?

10 LDC [MR. HARRINGTON]: Yes, sir. We would like to call  
11 Mr. Binalshibh. Sir, briefly before the accused takes the  
12 stand, we would ask that he be reminded of the Third Amended  
13 Protective Order about classified information and he's not to  
14 speak about classified information in this open session and to  
15 the extent he needs to, we need to give 505(g) notice for  
16 that.

17 MJ [COL POHL]: Well, I'm not sure the accused has been  
18 given classification guidance so he would have an informed  
19 position on that. We know what it is. As I said yesterday,  
20 the topic under discussion is current camp conditions, not  
21 previous treatment.

22 Mr. Harrington, I'm giving you some leeway to ask  
23 leading questions on that, but that's the issue before me. If

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1 he goes off topic, then we will address it accordingly.  
2 Maybe I -- again, Mr. Harrington, I don't want to -- what I  
3 take it your client wants to talk about is the conditions of  
4 the current camp conditions that he finds unsettling, and so  
5 that to me is the issue. Prior treatment at other places is  
6 not the issue. If you want to go into that, that requires  
7 a -- something else.

8 LDC [MR. HARRINGTON]: I understand that, Judge, but there  
9 has to be a brief overview of that and I think I have a way  
10 that addresses that without a need to go into classified  
11 information.

12 MJ [COL POHL]: Okay. Mr. Binalshibh.  
13 RAMZI BINALSHIBH, the accused, was called as a witness for the  
14 defense, was sworn, and testified as follows:

15 **DIRECT EXAMINATION**

16 **Questions by the Chief Prosecutor [BG MARTINS]:**

17 Q. Mr. Binalshibh, do you affirm that the evidence you  
18 shall give in the case now in hearing shall be the truth, the  
19 whole truth and nothing but the truth?

20 A. [In English] Yes, I affirm.

21 LDC [MR. HARRINGTON]: Judge, just so you're aware, I'm  
22 going to do my questioning in English and there may come a  
23 time when it doesn't work but we'll try to do it that way.

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1 MJ [COL POHL]: English to English?

2 LDC [MR. HARRINGTON]: Yes.

3 MJ [COL POHL]: Go ahead.

4 **Questions by the Learned Defense Counsel [MR. HARRINGTON]:**

5 Q. Mr. Binalshibh, how old are you?

6 [Interpretation resumed.]

7 A. In the name of Allah, the most compassionate, the  
8 most merciful, and prayer and peace of Allah be on the Prophet  
9 of Muhammad, his family, his companions and followers. [In  
10 English] I'm 43 years old.

11 Q. And are you a detainee here at Camp VII at Guantanamo  
12 Naval Station?

13 A. Yes.

14 Q. And are you accused of committing various offenses  
15 against the United States on September 11 of 2001?

16 A. Yes.

17 Q. And can you tell us how long you have been in United  
18 States custody?

19 A. Now about 15 years.

20 Q. You were taken into custody on September 11 of 2002;  
21 is that correct?

22 A. Yes.

23 Q. And you were at some point in time brought to

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1 Guantanamo and have remained at Guantanamo since that time; is  
2 that right?

3 A. Yes.

4 Q. And that was September 6, 2006, correct?

5 A. Correct.

6 Q. And have you been housed in Camp VII since then?

7 A. Yes.

8 Q. Now, from September 11, 2002 to September 6, 2006,  
9 were you held in U.S. custody at other places?

10 A. Yes.

11 Q. And at the time that you were in these other places,  
12 were you subjected to harsh conditions?

13 A. Yes.

14 Q. And were you subjected to physical abuse?

15 A. Yes.

16 Q. Psychological abuse?

17 A. Yes.

18 Q. Were you subjected to torture through the use of  
19 noises?

20 A. Yes.

21 Q. Were you subjected to torture through the use of  
22 vibrations?

23 A. Yes.

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1 Q. And you are aware, are you not, that the United  
2 States Senate Select Committee on Intelligence issued a report  
3 that was made public in December of 2014, are you not?

4 A. Yes.

5 Q. And have you read that report?

6 A. Most of them.

7 Q. Okay. Have you read the part of the report that  
8 talks about you?

9 A. Yes.

10 LDC [MR. HARRINGTON]: Judge, could I have this marked as  
11 an appellate exhibit and show it to the witness?

12 MJ [COL POHL]: I think we already have the report itself.  
13 Isn't the report itself already a part of the exhibit or do  
14 you just have a portion of it?

15 LDC [MR. HARRINGTON]: I just have the portion that  
16 relates to him, Judge.

17 MJ [COL POHL]: Yes. Even though it's somewhere else,  
18 we'll repeat it. It will be the next in the 152 series. For  
19 the record, that will be 152QQ (RBS).

20 LDC [MR. HARRINGTON]: May I approach, Judge?

21 MJ [COL POHL]: Sure.

22 Questions by the Learned Defense Counsel [MR. HARRINGTON]:

23 Mr. Binalshibh, I have just handed you what's been marked as

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1 Appellate Exhibit 152QQ or Quebec Quebec. Do you have that in  
2 front of you?

3 A. Yes, I have.

4 Q. And you have seen that document before, have you not?

5 A. Yes, I did.

6 Q. And the pages that I have given to you are the pages  
7 that talk about you; is that correct?

8 A. It started from 75, the page 75, yes.

9 Q. And in that document there are things that are  
10 described that were done to you; is that correct?

11 A. Yes.

12 Q. And is it accurate that those things were done to  
13 you?

14 A. Yes.

15 Q. And does that cover all of the things that were done  
16 to you?

17 A. No.

18 Q. The document refers to the use of noises against you,  
19 does it not?

20 A. Does say something about it.

21 Q. And it also refers to the use of some vibrations  
22 against you, does it not?

23 A. No.

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1 MJ [COL POHL]: I'm sorry, was that "na'am" meaning "yes"?

2 ACC [MR. BINALSHIBH]: No, I said "no" for the second  
3 part.

4 **Questions by the Learned Defense Counsel [MR. HARRINGTON]:**

5 Q. Does not refer to vibrations?

6 A. No vibrations referred to.

7 Q. But they were used, right?

8 A. Yes.

9 Q. And other noises besides what is described there,  
10 correct?

11 A. Yes.

12 Q. And, these things were -- happened to you for a long  
13 period of time; is that right?

14 A. Yes, since then.

15 Q. Since you were taken into custody?

16 A. Yes till now.

17 Q. Now, during that period of time when you were other  
18 places other than Guantanamo, did those noises affect you and  
19 your ability to sleep?

20 A. Yes.

21 Q. And did they have other effects on you?

22 A. Yes.

23 Q. What effects?

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1           A.    Just the -- make all my life terrible, make it upside  
2 down.  You cannot concentrate, you cannot read, you cannot  
3 sleep, you cannot pray, you cannot do any of this because of  
4 living with this condition day and night, 24 hours a day.

5           Q.    Now, there came a time in 2006 when you were brought  
6 to Guantanamo, correct?

7           A.    Yes.

8           Q.    And were you -- have you been kept at Camp VII since  
9 you've been here?

10          A.    Yes.

11          Q.    And when you first got to Camp VII, were you  
12 subjected to any kind of noises?

13          A.    Yes.

14          Q.    What kind of noises then?

15          A.    They are different noises because they are changed  
16 from time to time.  First noises that I have -- or I have been  
17 subjected to, 2007 -- 2006, three weeks maybe later, after I  
18 arrived, was -- first thing was banging on my walls, on my  
19 cell walls and outside my Charlie rec.  Charlie rec is the  
20 backyard of my cell, small rec, individual rec, every brothers  
21 has their own recs behind -- backyard of the cell.

22          Q.    Did you move a little closer to the microphone?

23          A.    Yes.

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1 Q. And when you first got here, the first period of time  
2 that you were here, what kind of noises were you actually  
3 hearing?

4 A. That was a banging -- banging on my cell, and on the  
5 wall of my cell. And the other noises was outside my cell in  
6 my Charlie rec, what they call the Charlie rec, the backyard  
7 is a separate backyard for recreations that we have used that  
8 time. And that was the first things that they started with.

9 Q. And did there come a point in time where those --  
10 that type of noise changed?

11 A. Yes, it is -- they change always, all the time,  
12 frequently, from time to time.

13 Q. Let me ask you this, have the noises continued up  
14 until the present day?

15 A. Yes.

16 Q. Could you describe last night for you?

17 A. Last night was like every other night for me. I  
18 couldn't sleep. I left the courtroom and I went back to my  
19 cell for -- with homework to do for this court, especially for  
20 the testimony. But when I went there, I started working on my  
21 laptop to prepare myself. And then they start it from  
22 since -- making noises from the fence of my Charlie like  
23 always, banging the fence. Especially this started when they

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1 see me -- watch me starting working, some things, writings,  
2 praying or using my laptops. So they start doing these  
3 things. And then they started the vibration while I'm doing  
4 these things. Later on I turn back the laptop and I went to  
5 sleep at maybe around 11, 11:15, but they didn't -- they wait  
6 for me until I go to sleep, 30 minutes, 40 minutes, as always  
7 they did, and then they started the vibrations. It goes on  
8 and off, on and off, on and off. I tried to sleep. I was  
9 completely tired. So I couldn't sleep.

10           And then around 1:00 in the morning I called the  
11 intercom to stop the things. The guys responded to me in  
12 intercom that they are aware of the judge orders, they are not  
13 doing vibration or banging or noises in my cell. That's it.

14           But even after that, they didn't stop it. It  
15 continued till maybe 5:00 o'clock in the morning. So that was  
16 last night.

17           Q. Did it stop at 5:00?

18           A. I woke up anyways, so I have to woke up.

19           Q. Now, you mention that you called on the intercom.

20           What do you mean by that?

21           A. The intercom is a small device that the  
22 communicate -- we can communicate with the guard in the  
23 control room if we need a guard to bring us water or toilet

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1 paper or we want to go to rec or we need something from the  
2 guard. We use the intercom. We have two intercoms inside our  
3 cells, one inside the cells itself and then one inside the  
4 backyard, the "Charlie rec" as we call it.

5 Q. When you complained about the noises last night, did  
6 anybody, a guard or anyone else, come to your cell and attempt  
7 to find out what the noises were caused by?

8 A. No.

9 LDC [MR. HARRINGTON]: Judge, we have filed 152 (RBS Sup)  
10 in August of 2015 which is part of the record. I just want to  
11 have him adopt the allegations that are in -- the facts that  
12 are in here. Do you want to have this marked as a separate  
13 exhibit to do this?

14 MJ [COL POHL]: Do you want to just ask him the questions?

15 LDC [MR. HARRINGTON]: I am going to ask him to adopt  
16 them. I am going to show it to him. There's a long, long,  
17 long list. He can see it and attest to that.

18 MJ [COL POHL]: All right. Just show it to him, that's  
19 fine. Yes, you may.

20 **Questions by the Learned Defense Counsel [MR. HARRINGTON]:**

21 Q. Mr. Binalshibh, have you had a chance to look at  
22 AE 152 (RBS Sup)?

23 A. Yes.

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1 Q. And listed on there are a number of allegations of  
2 use of noises or sounds between January 1 of 2014 and July 22  
3 of 2015; is that right?

4 A. That's all the times that I was starting to send the  
5 letters to the JTF or the camp commanders. That's not  
6 everything, sir.

7 Q. But the period in there is from January of 2014 to  
8 July of 2015, correct?

9 A. Yes.

10 Q. And in there are a list of complaints that you made  
11 about the use of noises or vibrations against you; is that  
12 right?

13 A. Yes.

14 Q. And at the time that these events were occurring,  
15 were you notifying me or other members of your defense team  
16 about these issues?

17 A. Yes.

18 Q. And we prepared that document based upon the  
19 information you had provided; is that right?

20 A. Yes.

21 Q. And do you adopt each of those allegations in there  
22 as true?

23 A. Yes, I think so. Yes. Yes, they are true.

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1 Q. Now, since you've been at Camp VII, have you always  
2 been in the same cell or the same tier?

3 A. No.

4 Q. And how many times have you moved?

5 A. Maybe six times. Six times.

6 Q. And can you tell me, have the noises or vibrations  
7 continued, whether -- no matter which cell you were in?

8 A. Yes, everywhere.

9 Q. Are there other places where you experience them  
10 besides your cell and the Charlie rec?

11 A. Charlie rec is -- and then the outside rec, the big  
12 rec, the joint rec, media, so -- yes, those places.

13 Q. And the outside rec, that's a place that you go to  
14 that's separate from your cell; is that right?

15 A. Yes.

16 Q. All right. And the media room is something that's  
17 separate from your cell; is that right?

18 A. Yes.

19 Q. Now, can you tell me, was there of a time when you  
20 heard bird noises?

21 A. Yes.

22 Q. All right. Do you recall when that was?

23 A. That was first when we arrived to Camp VII, 2006.

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1 Q. And how long did that last?

2 A. From 2006, I believe, until 2009, '10, or when they  
3 start to...

4 LDC [MR. HARRINGTON]: Judge, could I have another exhibit  
5 marked?

6 MJ [COL POHL]: Sure.

7 LDC [MR. HARRINGTON]: Judge, I'm not going to show this  
8 to Mr. Binalshibh because it really doesn't -- isn't directed  
9 to him. But this is a memorandum from Mr. Trivett from back  
10 at the time when we were discussing the -- with the court the  
11 competency issue. And the exhibit basically says that the  
12 government is not going to use the hearing of bird noises as  
13 part of their proof when they were attempting to question  
14 Mr. Binalshibh's competence. The reason being that there was,  
15 in fact, a -- devices or device at the camp that enable the  
16 camp to broadcast artificial bird noises.

17 MJ [COL POHL]: Okay. And that's Exhibit 152 ----

18 LDC [MR. HARRINGTON]: RR.

19 MJ [COL POHL]: ---- RR (RBS). Okay. Go ahead.

20 **Questions by the Learned Defense Counsel [MR. HARRINGTON]:**

21 Q. Mr. Binalshibh, when you testified a few minutes ago,  
22 you mentioned that these noises and vibrations happened at  
23 particular times to you, during the day; is that right?

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1           A. They have some kind of plan sometimes, especially  
2 with the first group of the guard, the Army when they was  
3 taking care of the Camp VII in 2006 until 2009, maybe. But  
4 after that, things get changed. It is no -- you can hear it  
5 every time, anytime, there is no SOP. I mean, first group of  
6 the guard they were doing these things in a professional way.  
7 Certain times vibrations, certain times noises, certain times  
8 quiet, certain times banging outside, but the group after  
9 them, the Navy and the Army that we have now, the MP, they get  
10 out of the line. They are crazy.

11           Q. When you say "it was done in a professional way," are  
12 you saying that based on your experience before you came to  
13 Guantanamo?

14           A. No. Yes -- that's one thing. But I'm talking now  
15 about the things that happen now here in Camp VII ----

16           Q. Right.

17           A. ---- because we have Camp VII, three groups of army  
18 or people take charge of this camp. The first one was the  
19 U.S. Army. And they were doing this, noises, this vibrations,  
20 but they have some kind of SOP. If you follow them, every  
21 time you observe how they are doing these things, you know  
22 when going to start; when it going to stop; when it going to  
23 start the vibrations; when they going to start the banging;

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1 the other different noises from observations. You got that  
2 kind of experience. And you know that they are doing these  
3 things with plan, with SOPs. After that when the Navy came  
4 especially in 2010, they get out of the line, they do it --  
5 they did it in crazy ways. And they just -- they don't have  
6 that kind of professional abuse as I can call it, and the same  
7 things with the MP now.

8 Q. And when these -- do these things happen to you  
9 during the day when you are doing specific things? Are they  
10 more likely to happen?

11 A. Yes. As you know, we have camera inside our cells  
12 and we have people watching our -- watching us very closely.  
13 And they are watching us, eyes on us every movement we are  
14 doing in the cell. So, you know, when I start to go to sleep,  
15 they know when I go to pray. They know when I go to use, for  
16 instance, restroom or shower, or taking my lunch or dinner, or  
17 starting to write letters, or reading, or right now using  
18 laptop. Everything I'm doing there, they are following me,  
19 though.

20 So if I start now -- let's say now the vibration is  
21 off, there's no vibrations, I'm sitting there talking with  
22 brothers or taking my food and then I decided to write letters  
23 to you or to use laptop, once I start those things, they start

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1 the vibration. And that way that you cannot concentrate, make  
2 you very distracted, very annoying. And you get mad and upset  
3 and you have to call somebody to talk with them.

4           So that's how they do it, it's more than that, but  
5 just as an example for you.

6           Q. Right. Describe for the judge the vibrations that  
7 you hear now. What do you mean by "vibrations"?

8           A. Vibration has different types of thing. Vibrations  
9 now that they are using, I have to explain to you how they use  
10 it in our camps, because construction of the Camp VII now that  
11 we have ----

12 [The security classification button was pushed in the  
13 courtroom which caused the video feed to terminate at 1012, 24  
14 February 2016.]

15 [The Military Commission resumed at 1014, 24 February 2016.]

16           MJ [COL POHL]: Just to make it clear that the  
17 interruption of the audio feed was done by the court and not  
18 by anybody else. And obviously I don't want to get into  
19 specifics of why it was done in open session because that  
20 would defeat the purpose of it.

21           But, Mr. Binalshibh, I want to go back to what I just  
22 told you. Just describe your cell. Don't describe the  
23 outside of it. Do you understand?

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1 ACC [MR. BINALSHIBH]: Yes. Even now?

2 MJ [COL POHL]: Yes, even now. I only want you to focus  
3 on your cell and the vibrations in your cell don't go into a  
4 description of the external part of Camp VII. Do you  
5 understand that?

6 ACC [MR. BINALSHIBH]: I get it.

7 MJ [COL POHL]: Okay.

8 ACC [MR. BINALSHIBH]: My cell, like the other cells at  
9 Camp VII?

10 MTC [MR. TRIVETT]: Sir, are we back in open session  
11 immediately?

12 MJ [COL POHL]: Yes.

13 MTC [MR. TRIVETT]: Okay.

14 MJ [COL POHL]: I notice the gallery was cleared. The  
15 gallery can be told to come back.

16 MTC [MR. TRIVETT]: Can we have a two-minute recess for  
17 that, sir?

18 MJ [COL POHL]: No.

19 MTC [MR. TRIVETT]: Thank you.

20 MJ [COL POHL]: Go ahead, Mr. Harrington.

21 **Questions by the Learned Defense Counsel [MR. HARRINGTON]:**

22 Q. Mr. Binalshibh, we need you to describe what the  
23 vibrations are like in your cell in this time period.

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1           A.    Okay.  So the vibrations feelings is -- I'm going to  
2 give you a very close example.  It's not exact example, but  
3 something just so you and others can understand it.  It's like  
4 sitting in the car while the car is -- the engine -- the  
5 engine machine is on.  You feel this kind of vibrations, but  
6 the car is very, very nice movement or vibration in it.  The  
7 one that you are sitting on, the spot where you sit on, it is  
8 very annoying, very destructive, and very -- make you mad and  
9 cannot concentrate at all -- at all.  The vibrations -- this  
10 is -- if they just do it in very low level, it's bad.  If they  
11 put it up, you can get -- or go crazy.  And this is different  
12 from the other places that they have during these things here  
13 because the vibration in other places is far away from what we  
14 have here because we have this concrete building.

15           Q.    Where on your body do you feel the vibration?

16           A.    If I'm sitting, it is on the spot where -- my sitting  
17 spot, exactly there.  They started it there.  And then if I'm  
18 lying down, I'm sleeping, they keep moving it from my -- say  
19 from my stomach or legs back and forth, to my feet, and goes  
20 on and off.  And the bad way, if they are -- they can do it  
21 other -- if they -- if the guard is crazy in the courtroom  
22 control room, they can turn it on for the whole night as some  
23 female guards are doing.  But if they are -- and this is based

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1 on my experience with this.

2           If they are following the SOP or they're following  
3 what they've been told, they are going to turn it on and off  
4 and they're going to do it in -- like I said before, in a very  
5 professional abuse way.

6           Q. Now, you described a few minutes ago what happened  
7 last night and how you complained about it. Do you complain  
8 every time this happens?

9           A. Almost every night, every night and day.

10          Q. And do you complain through the intercom system?

11          A. Yes. Sometimes like if it's too late, like today,  
12 morning, at 1:00 in the morning and I don't have time to call  
13 the WC and come to my tier, the watch commander I see -- I  
14 just call the intercom to see if they're going stop it or not.

15          Q. And during the day do you use a different way of  
16 complaining?

17          A. During the day -- for right now, because we have  
18 this -- the commission laptops that we have, so every time  
19 that I request my laptop, the watch commanders came and  
20 delivered laptops to me. When he comes to my door, I ask him  
21 can you please tell the control room and make them stop this  
22 vibration and follow the judge orders. I tell him that every  
23 time. Every time he pick up the laptop from me, every time he

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1 deliver the laptop to me. This is the only way that I can  
2 address it in face to face. Because the watch commander,  
3 actually he is the camp commander for the day and night  
4 actions there, the camp commander's not every time at the  
5 camp. So I -- yes, I told them either verbally or I send them  
6 letters.

7 Q. Do you complain to anybody else besides through the  
8 intercom and the watch commander?

9 A. Sometimes to some guards.

10 Q. Now, this is going on -- has been going on for a  
11 long, long time, correct? When you make these complaints, has  
12 there ever been a time when somebody has come into your cell  
13 and tried to check and see if there was a vibration or noises?

14 A. No.

15 Q. Have they ever asked you to leave your cell so they  
16 could go in and check?

17 A. No.

18 Q. Are you aware of them bringing any experts in,  
19 electricians or anybody else to check on it?

20 A. No.

21 Q. And what is the response that you get when you  
22 complain?

23 A. The response is different from one to others. We

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1 have four watch commanders -- we -- two for day shift and two  
2 for night shift. And every watch commander, as I told you,  
3 just see -- as he is the camp commander and this is his  
4 backyard. And he has different rules. It's up to him if he  
5 wants to stop it, if he wants to increase it, if he wants to  
6 make it worse, all these things about -- tell the camp  
7 commander -- tell the watch commander and his group, the  
8 guards that he is working with.

9           So some of them, they are very strict with me. They  
10 said -- I call them, since this judge order has been issued in  
11 November 2, 2015. I called one of the watch commander -- I  
12 don't have his number, they should have this pseudonym -- but  
13 the camp commander prevent them to give it to us so I am going  
14 to call him the black one, the black guy.

15           So before he comes, I mention to him -- I mention to  
16 the camp commander about the judge orders and I told him, you  
17 know that the judge issued an order to stop this whole thing,  
18 and he said "yes." I told him, "Do you have it?" He said,  
19 "Yes." And he went back and he bring it -- the guard, and he  
20 posted at my door.

21           Later on, the night shift, the black watch commander  
22 comes to me to deliver the laptops. And I told him, "Are you  
23 aware of the judge orders?"

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1 He said, "No."

2 I told him, "Did you read it?"

3 He said, "No."

4 I said, "Why?"

5 He said, "I don't have time to read it."

6 I said to him -- told him just this one page, not  
7 longer stuff to read.

8 He said, "When I have time to read it again, I'll  
9 read it."

10 I said, "It's posted on my door. Just read it."

11 He said, "No, I don't have time for that now."

12 I told him, "You need to follow the judge orders and  
13 stop this vibration, the noises, and don't bother me."

14 He left without saying anything more than that.

15 But later on and before that he was saying we have  
16 our camp commander, we are following the SOPs. Every time I  
17 mentioned the judge orders, we are following our boss, the  
18 camp commander orders. I don't care about what you're telling  
19 me about.

20 I told him, "Look, you're talking about judge orders  
21 and I cannot tell my lawyers, I'm going to bring this stuff up  
22 to the, Judge, the commission."

23 He said, "I don't care." Whatever, what he wants.

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1 Q. Do you remember when that conversation took place in  
2 relation to the judge's order?

3 A. I told you, it is almost every day and I remember I  
4 gave you all these incidents, you have them in your record.

5 Q. But that particular conversation that you talked  
6 about with the judge's order, was that right after the judge  
7 had issued his order?

8 A. Yes.

9 Q. Now, when you complain about these orders, what  
10 manner do you do it in?

11 A. Talking with people, or sending letters.

12 Q. And do you ever yell at people?

13 A. Yes, sometimes. Many times.

14 Q. And what causes you to yell at people?

15 A. I told you, this drive you crazy, make you up for  
16 24 hours. You cannot sleep, you cannot read, you cannot pray,  
17 you cannot do anything. And they follow you everywhere you  
18 go, in rec, in your cell, in Charlie, in media, and they keep  
19 on doing these things. How do you want me to act?

20 So this is very -- it's very bad. It's very bad.  
21 But before I get mad, I call -- as I told you, I call people,  
22 I talk with them nicely, I ask them to just stop it. I told  
23 them I am not asking you for privilege stuff, I'm just asking

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1 you to stop these abuses. That's all I'm asking you, and I  
2 ask you just to follow the judge orders. That's all.

3 And one time, two times, three times, nobody  
4 listening, day or night shift. Then I go to sleep and they  
5 didn't let me sleep. So that's what made me so upset.

6 Q. Have there been times when these noises have stopped?

7 A. Not actually, no. Not -- very, very rare time, but  
8 it is not -- it is not -- it is always there.

9 Q. When -- last week when we were in court, there was a  
10 day that you did not come to court. Do you remember that?

11 A. Yes.

12 Q. And did the noises have something to do with you not  
13 coming?

14 A. Yes, the night abuse vibration, actually.

15 Q. All right. And the following night, did something  
16 happen where there were no noises?

17 A. Yes, I think the next night was very quiet, very  
18 quiet, because I made some problems with the guards the night  
19 before.

20 Q. And you slept through the whole night that night; is  
21 that right?

22 A. Yes.

23 Q. And is that the first time in a long time that you

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1 have had a night like that?

2 A. Yes, it's been a long time.

3 Q. You mentioned that Judge Pohl's order from November 2  
4 is on the wall outside of your cell; is that right?

5 A. On the door of my cell.

6 Q. All right. And has that been up there since the  
7 judge made the order?

8 A. He issued it on November 2. I think, in the morning,  
9 afternoon or by noontime, they posted on my door, but when I  
10 asked for it ----

11 Q. And since Judge Pohl made his order, have things  
12 gotten better, worse, or stayed the same?

13 A. Same and worse.

14 Q. Same and worse?

15 A. Yes.

16 Q. What do you mean by "worse"?

17 A. Same and bad, I mean. It means -- yesterday night  
18 and the night before and two night before I called the guard,  
19 for instance, to stop it, stop bothering me and let me sleep,  
20 I have commission tomorrow. I told them that. I went back to  
21 sleep, they started to increase the banging and -- on the  
22 fence, three, four, five times, in crazy way, and then they  
23 start -- they keep the vibration on for a while until they

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1 maybe turn it off, maybe just before the noontime, daytime.

2 Q. Now, for this period of time that you're talking  
3 about, have there been any guards or watch commanders,  
4 assistant watch commanders, Tier SUP or anybody, that have  
5 been helpful to you?

6 A. Very -- yes, but very little. Some of them.

7 Q. Anybody that you can identify?

8 A. For instance, the last group that just left the camp  
9 at -- on August, last year, before this new group came, we  
10 have two of them. One watch commander assistant, a female,  
11 she was giving testimony here last hearing in October. And I  
12 would call her and tell her, "Look, you need to make this  
13 stop," and she helped me. She said, "Okay. I'm going to take  
14 care of it." She goes, things go better. Many times if I  
15 know that she is on the shift, I call her back, and back and  
16 forth, and she helped with that. So some people, they take  
17 care of that.

18 And then there is another Tier SUP. The Tier SUP is  
19 the supervisor of the guards who acted with us. She is also a  
20 female, and I notice that every time I tell her to talk with  
21 the guards and the court ordered them to stop it, they stop  
22 it. Not they stop it, they keep it down, keep it down for a  
23 while.

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1 Q. And when did you talk to her?

2 A. The A-Dub or the Tier SUP.

3 Q. Tier SUP first?

4 A. She -- every time she is on shift.

5 Q. All right. What about the AWC?

6 A. She is gone, working with the escort now. She is the  
7 one carrying the laptops.

8 Q. That is Officer Jinx?

9 A. Jinx they called it, whatever.

10 Q. Now, can you tell me, has -- what you've experienced  
11 with how you describe these noises and sounds, has that  
12 interfered with or affected your ability to work with me and  
13 other members of your defense team?

14 A. Yes, a lot.

15 Q. In what ways?

16 A. In many ways. In -- you know, that you send me  
17 almost every day legal mail that I have to go through them and  
18 to respond to them and to read them, and to review all my  
19 documents to see what's going on. So when they start these  
20 noises and the vibrations, I cannot do anything.

21 I send you letters. You see my handwriting,  
22 sometimes goes up and down because of the vibrations, and I  
23 want to just get rid of this letter, to send it to you, and to

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1 make them at least -- not stop the vibrations; they are not  
2 going to stop it, but just to at least keep it down.

3           Because once they see me, watch me starting writing  
4 something, as I told you, they go crazy. I cannot sometimes  
5 concentrate in the meetings, legal meetings because always we  
6 meet together, since I know you, and I know my teams, I keep  
7 complaining about these things which make this topic is always  
8 on the top, affect me a lot. And they didn't give me a chance  
9 to talk about other issues that I have in front of me,  
10 especially this death penalty cases, so I cannot just talk  
11 about it. And other things besides this abuse that is going  
12 on for a while now, from 2004 to now.

13       Q. In the meetings that we have, we spend a lot of time  
14 talking about this, do we not?

15       A. Yes.

16       Q. And you have problems of being exhausted?

17       A. Yes, always.

18       Q. And does it cause you to be irritable?

19       A. Yes.

20       Q. You mention that you have difficulty concentrating;  
21 is that right?

22       A. Most of the time, yes. Yes.

23       Q. And that happens also when we meet together, you and

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1 the other members of our team, correct?

2 A. Yes.

3 Q. Have there been times where you have not come to  
4 attorney meetings because of these problems?

5 A. Yes.

6 Q. That's even though your team has come all the way  
7 from Washington down here, sometimes you cancel the meetings  
8 because of your distress; is that right?

9 A. Yes.

10 Q. In the Exhibit AE 152 (RBS Sup) which had the long  
11 list, you mention in there a number of dates, do you not,  
12 where you have canceled attorney-client meetings because of  
13 this problem?

14 A. Which page is that?

15 Q. It would be under 3.a, 41 and 42?

16 A. I see it, yes.

17 Q. And 3.b, 12, 15, 21, 14, and 36, right?

18 A. Yes. Which number again?

19 Q. I'm sorry. Under 3.b, which follows after 3.a,

20 12 ----

21 A. I'm not following. So you told me 41 and 42, and  
22 then ----

23 LDC [MR. HARRINGTON]: May I approach?

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1 MJ [COL POHL]: Yes, you may.

2 A. Yes, I got it.

3 **Questions by the Learned Defense Counsel [MR. HARRINGTON]:**

4 Q. And 15, 21, 24, and 36, same entries, correct?

5 A. Yes.

6 Q. All for different dates, right?

7 A. Different dates.

8 Q. And can you tell us before we come for court  
9 hearings, right, does this condition get worse, stay the same,  
10 or get better?

11 A. Actually I notice that if I have legal meetings or if  
12 I have commissions, it got -- it gets worse. So that make me  
13 believe that they are trying to interfere in this legal  
14 issues, especially like last night. They know that I have  
15 testimony today. They know that. And they know that I have  
16 commission. And despite all these things, they keep doing it  
17 that way. And, I mean, they don't care. They don't care  
18 anyways, yes.

19 Q. And has that caused you difficulty in being able to  
20 discuss with us the various motions and other things that are  
21 coming up in court?

22 A. Yes.

23 Q. You and I discussed that -- in the motion 152LL, that

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1 there was a date in there that said that a meeting was -- you  
2 canceled a meeting on November 17, and we reviewed that, did  
3 we not, and it was really November -- I'm sorry, October 18;  
4 is that right? Do you remember that?

5 A. Yes.

6 Q. And do you recall back when we had the October  
7 hearings that went from October 19 through October 30, that  
8 there were two days when the court did not have session,  
9 October 21, and October 27, and did you refuse to come to  
10 attorney meetings then because of the problems you were  
11 having?

12 A. Yes, I remember so. I think so, yes.

13 Q. And last week before the hearings started, you knew  
14 that Major Wichner and I and your translator were coming on  
15 December 5 to see you; is that right ----

16 A. Yes.

17 Q. ---- to prepare for these two weeks of hearings; is  
18 that right?

19 A. Yes.

20 Q. And you canceled that meeting, too, did you not?

21 A. I did.

22 Q. Was that because of this problem?

23 A. I did, yes.

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1 Q. Now, besides the watch commander that you described  
2 who talked about the judge's order, have other guard force  
3 persons made comments to you about the judge's order?

4 A. Yes, I think every watch commander make their  
5 comments because, as I told you, I have to deal with them  
6 every day. So one of them say, that you have in your record,  
7 that -- he said the guard are not doing anything wrong, they  
8 are following the SOP, they are following the orders. And  
9 other ones he said this camp is beyond the judge -- above and  
10 beyond the judge's orders. Some of them say -- I told them,  
11 "Look, I'm going to bring this stuff to the judge. I'm going  
12 to bring people to the courtroom."

13 He said, "Nobody can prove it." They don't care.  
14 They said, "Do whatever you wants."

15 I think that's the thing that applied, that he  
16 replied to me when they talked with me face-to-face. Until  
17 the Tuesday before the hearings when they change this whole  
18 system.

19 When I talk with them face to face, when they came to  
20 my cell or to media or to the tier, they tell me these things.  
21 And I wrote letters to the judge, since January 1, 2016 until  
22 the week before the hearings started I started to send a  
23 letter to commissions saying that watch commander so-and-so, I

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1 talked with him today, I told him to follow the judge orders.  
2 He refused. So-and-so refused. And this time and this date,  
3 with all these facts and details. I don't know if you saw it.

4 Then on Tuesday before the hearings, they start to  
5 tell the guard to respond through the intercom to me when I  
6 told them to stop the vibration and to follow the judge  
7 orders, they start to tell them to reply some statement. When  
8 I told them that, they keep saying, "We are aware of the judge  
9 orders, nobody is shaking or vibrating or making noises or  
10 banging in your cell." So why they do these things, because  
11 it is on the record. The off-record things that -- when I  
12 talked with them, nobody care about it. They didn't put it in  
13 the paper, they say whatever they want. But if they want to  
14 record it, my request or my talk with them and what they  
15 answer to me, they start to say these things, show the judge  
16 or the people that they are following the judge orders when  
17 they are not.

18 Q. And you mentioned that you have sent letters to the  
19 judge; is that right?

20 A. Yes.

21 Q. How did you -- who did you hand those letters to?

22 A. I hand it to the guard, sometimes the watch commander  
23 if he came to me.

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1 Q. You don't have any idea whether the judge got those  
2 letters, do you?

3 A. I don't know.

4 Q. And why did you send the judge letters?

5 A. Because this is his order. I have to tell him that  
6 nobody is following his orders.

7 Q. Now, you're aware, are you not, that when they -- the  
8 prosecution asked for a hearing about your competence, they  
9 made a claim that what you have testified today is a delusion  
10 in your mind, you know that; is that right?

11 A. Yes, I see it. Yes.

12 Q. And have you seen any psychiatrists or any  
13 psychologists while you've been at Camp VII?

14 A. They -- I saw some of them, not under my request.  
15 They want to see me, but I don't want to see them. I saw a  
16 few of them. Mostly three, I think, first three psychiatrists  
17 at Camp VII. And then one of them later and then one recently  
18 two years ago, maybe.

19 Q. Did you ask to see any of them?

20 A. No.

21 Q. And the first psychiatrist, when you got here, were  
22 you given heavy medication?

23 A. The first psychiatrist, she was female, she was Navy,

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1 she was very bad. She, for instance, when we complain about  
2 the bird sounds outside the rec, this bird is for everybody,  
3 everybody can hear it when they go to rec.

4 So when we complain about it, they say this is  
5 nature, this is bird, we cannot do anything to it. It wasn't  
6 just me who was complaining about these things. Almost  
7 everybody, and you can talk with brothers, if you want, what  
8 they are doing -- they were doing at times, they sent you the  
9 psychiatrist to talk with you.

10 I said, "Why send me her?" I'm talking about the  
11 birds that they have four speakers on the both sides in the  
12 rec that they play the sounds from it.

13 This is not a medical issue. Have you to turn it  
14 off, that's it, why send me the psychiatrist. And she comes  
15 and she ask me crazy questions about crazy things in her mind,  
16 not in my mind. And if you don't respond to her as she wants  
17 me to respond to her, she said he -- he was uncooperative, he  
18 is not -- he has poor judgment, he cannot decide, he cannot  
19 so-and-so, he's sick, he has so-and-so. Just -- she make this  
20 allegation without any proofs. That was the first one.

21 And as I told you before, when I came to Camp VII,  
22 2006, and I see this ongoing abuse is still there, from the  
23 black site to this site, I said, okay, this is not going to

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1 stop at all. That was because of the interrogations because  
2 they are not happy with what I'm saying, because whatever they  
3 believe. But now why they keep doing these things or the  
4 reason behind it, there's no reason. They have to stop it.

5 Besides the noises and the banging and the stuff they  
6 were manipulating the temperature in our cell. At that time  
7 we have only T-shirt on us, one blanket and our cell goes very  
8 cold, very cold that make you just shaking. So I told them  
9 many times, at that time to stop these things, and they never  
10 stopped it. And instead of that, they bring me the  
11 psychiatrist. She was the first one.

12 And then she said because if you -- of your behavior,  
13 we have to give you injection that make me completely dead in  
14 my bed. I cannot do anything for months. Every 30 days she  
15 comes without reasons and they give me injection and another  
16 injection, another injection. They killed me.

17 The worst time in my life was at that moment when  
18 they gave me injection, more worse than black site. Black  
19 site was abuse, was physical abuse, was torture. Okay. But  
20 this one, the injection without any reasons, that was the  
21 worst things that I have ever went through.

22 I couldn't even feed myself by myself. I cannot eat  
23 because of this -- this injection. I shake like this. I put

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1 the food in front of my mouth and then I drop it. I  
2 couldn't -- I was on the bed for 24 hours doing nothing. Even  
3 the prayer, I just pray so quick and fall down. Sleeves come  
4 out 24 hours. I have to have the towel to clean myself. I  
5 think she is war criminal.

6 She must be in the courtroom, in the jail now even  
7 though she is leaving now. She was the first person that I  
8 have met and I don't think she is a doctor, she's a monster.  
9 She administers all these things and keep lying on media and  
10 talking there and saw her on some interviews. And this  
11 doctor, based on what she did, all doctors came after her, all  
12 psychiatrists came after her, they just copy and paste what  
13 she said without even knowing me or interviewing me or seeing  
14 me.

15 I refused them, but -- if you see them, it's very  
16 funny to see my medical record. In my medical record -- I  
17 come here in 2006, September 6. The first -- my -- in the  
18 first paper in my medical record ----

19 MJ [COL POHL]: Mr. Binalshibh, I'm going to ask you to  
20 stop for a second because it's important that -- the way this  
21 works is you have to work a question and answer back and  
22 forth. I know you think this -- so let Mr. Harrington ask you  
23 questions and he can kind of direct you the way the answer has

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1 got to be because we permit any witness, not just you, just to  
2 go off without a question before you, okay? So if he wants to  
3 follow up on that he can, but we have got to use a question  
4 and answer format.

5 ACC [MR. BINALSHIBH]: I'm answering his questions. Go  
6 ahead.

7 MJ [COL POHL]: Mr. Harrington.

8 **Questions by the Learned Defense Counsel [MR. HARRINGTON]:**

9 Q. You mentioned this psychiatrist, you complained about  
10 the bird sounds; is that right?

11 A. That's one example.

12 Q. Did she say that they were just regular birds, or how  
13 did she respond?

14 A. They have different response. First they say there  
15 is no birds. Why? Because we are in the rec. Every time the  
16 guard came out, they move us outside to the rec, everything's  
17 off. Once the guard leaves the rec, nobody in the rec except  
18 me or me and brothers, they turn it on. We wait for the  
19 camera to send the guard back.

20 They came in. Before they get into the rec we heard  
21 them talking on the radio and then prepared to stop the  
22 noises. They came out to talk with us. When we talk with  
23 them, said there is some noises there, birds, said there's

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1 nothing there. Like you look like crazy. That's one way they  
2 do it.

3 Q. But did the psychiatrist say that to you, too?

4 A. Yes.

5 Q. Now, as a result of your experience with her, have  
6 you met with any other psychologist or psychiatrists?

7 A. The two after her that they -- I met with them  
8 because they forced -- they came to my cell and forced cell  
9 extractions and take me medical room. They met with me and  
10 talked with me, but I didn't request to talk with them at all  
11 because I didn't have issue.

12 Q. Is there a psychiatrist there now?

13 A. For right now, yes.

14 Q. Do you know him?

15 A. Yes, they said the one who was here in 2014,  
16 Dr. Homer.

17 Q. And you met with him, did you not?

18 A. Not now. I met with him back in 2014.

19 Q. Back in 2014 before he left, right?

20 A. Yes, in June 2014.

21 Q. How long a period did you meet with him?

22 A. It was very short time, because it was at the last  
23 days of his service at the camp.

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1 Q. And did he tell you things about how long he had been  
2 trying to meet with you?

3 A. Yes, because the meetings occurred while I'm -- while  
4 I was in the medical room, the treatment room, with the other  
5 doctor, the senior medical officers, and then he showed up,  
6 Dr. Homer. And he told me finally after nine months I try to  
7 meet with you. Finally you want -- finally I could see you,  
8 though.

9 Q. And at the present time you're not seeing any  
10 psychologist or psychiatrist, correct?

11 A. No.

12 Q. Are you taking any kind of medication other than for  
13 medical problems?

14 A. No.

15 Q. How long has it been since you've taken medication  
16 for anything emotional or psychiatric?

17 A. They forced me to do it before the first commission  
18 started in 2008. And first time I start to have my military  
19 counsels was at that time Susan Lachelier, they stopped it,  
20 they stopped the injection and they stopped these whole  
21 things, but they kept giving me these pills to take it.

22 Q. This what?

23 A. Pill.

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1 Q. Pills?

2 A. Yes, and then I stopped also.

3 Q. So how long has it been since you had any kind of  
4 that medication?

5 A. That was in end of 2007, maybe -- just months before  
6 the 2008 commissions started.

7 Q. Now, is there a program at the camp called a DSMP?

8 A. Yes.

9 Q. And what is that for?

10 A. DSMP is kind of meetings with some -- we find out  
11 that they are psychology doctors and they claim this is for  
12 social activities and just talk with people, know each other,  
13 watching movie or playing game or such things.

14 Q. Did you ever go to that program?

15 A. Not at the beginning. It started maybe 2007. I  
16 didn't participate it in DSMP until 2012, maybe, or end of  
17 2011.

18 Q. Do you still go?

19 A. No.

20 Q. When did you stop?

21 A. I stopped it in 2015, maybe the first -- first months  
22 of 2015 or the middle of 2015 or 2014. I don't remember, but  
23 they stopped it completely. There is no DSMP program.

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1 Q. Okay. Was that meant to try and give medical or  
2 psychiatric help to people?

3 A. Everybody works there together, they -- we know that  
4 they make reports, they read your mind, they want to know how  
5 you're acting, how you're developing, and in your thinking.  
6 And they ask you sometime questions about the news, about  
7 legal meetings, about this and that to see what you going to  
8 answer to them. They are studying you, though.

9 Q. Now, within the camp itself do you lead prayers?

10 A. Right now, yes.

11 Q. Okay. And what significance does that have that you  
12 lead prayers?

13 A. As you know, we are a couple of brothers, someone  
14 have to lead people for the prayer. I -- you have to know  
15 first the rules of the prayer, the rules of the Imam, the  
16 leader of the prayer, and you have to be in full awareness,  
17 know what you are doing, know what you are reciting, know how  
18 to pray because it's not just affecting you, it's affecting  
19 you and the followers.

20 Q. Have you memorized the Quran?

21 A. Yes.

22 Q. And when you're made the leader of the prayer, is  
23 that a sign of respect to you?

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1           A. I cannot say -- we are all brothers together, but  
2 this is the kind of circumstances where I became prayer  
3 leader.

4           Q. And do you read and study things in this case and  
5 other things about what's going on in the world?

6           A. Yes, sir.

7           Q. And do you discuss that with your brothers?

8           A. We discuss what we -- what we are watching, for  
9 instance, for the news outside the camp and what we are  
10 studying for Islamic books that we have -- Islamic lectures,  
11 Islamic teachings among the brothers, yes.

12          Q. Okay. Now, you mentioned before some of the  
13 frustration that you felt as a result of this. Have you done  
14 things inside your cell over a period of time to the cameras  
15 or to anything else?

16          A. Yes, I did.

17          Q. What have you done?

18          A. Back in 2007 I damaged cameras, many, because of  
19 this. From 2007 until 2010, maybe, I was doing these things.  
20 It depends if the things go worse and nobody's listening, the  
21 last resort is -- the last solution for me is to damage the  
22 camera.

23          Q. Do you still do that now?

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1 A. No.

2 Q. Now, you mentioned early in your testimony about some  
3 of the effects that these noises and vibrations and the other  
4 things that were done to you had on you personally ----

5 A. Yes.

6 Q. ---- before you came to Guantanamo. Do you remember  
7 testifying to that?

8 A. Say that again. I am not following.

9 Q. You testified early in your testimony about the  
10 effects of the things that were done to you ----

11 A. Okay.

12 Q. ---- before you came to Guantanamo.

13 A. Yes.

14 Q. All right. Since you've been at Guantanamo, when you  
15 hear these noises and vibrations, does that bring back the  
16 feelings that you had before you came to Guantanamo?

17 A. Same feelings, yes.

18 Q. Does that make it very hard for you to deal with  
19 that?

20 A. It is very hard to deal with it and say -- just bring  
21 me the question why.

22 Q. Why?

23 A. Yes. Are you asking or am I asking?

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1 Q. I'm asking why.

2 A. Okay. Good. There is many reasons that I notice  
3 that they are doing these things from the time I was at the  
4 black site until now. They tried to -- I'm going to make it  
5 so very -- I'm going to summarize the things. They tried to  
6 make me ----

7 Q. That will make the judge happy.

8 A. Okay. Good. They tried to make me work with them  
9 which I refused many, in many -- in many times, in black site  
10 or here. At the Camp VII. And they tried to offer me  
11 something, just make me work with them, like they did in other  
12 places; safety, good life, good future, just work with us.

13 For them I was -- before somebody else being  
14 captured, I was something special. So anyway, they tried  
15 these things until now, as I mentioned the psychiatrist, the  
16 first one, she told me because you are not helpful for our  
17 people. I understand language because I understand this kind  
18 of language from the black site, because I don't know her,  
19 there's nothing going on between me and her or any other staff  
20 at Camp VII that make her say, "You are not helpful." And  
21 then she said this is your life, you have to adjust your life,  
22 adjust yourself with it. Yes, they tried to turn me against  
23 my brothers. That's all.

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1 LDC [MR. HARRINGTON]: That's all I have right now, Judge.

2 MJ [COL POHL]: Trial Counsel, do you have any questions  
3 for Mr. Binalshibh?

4 MTC [MR. TRIVETT]: Sir, can we get a health and comfort  
5 break?

6 MJ [COL POHL]: Do you have questions for him?

7 MTC [MR. TRIVETT]: Yes, sir.

8 MJ [COL POHL]: Then we will recess for 15 minutes.  
9 Commission is in recess.

10 [The R.M.C. 803 session recessed at 1054, 24 February 2016.]

11 [END OF PAGE]

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