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1 [The R.M.C. 803 session was called to order at 1301,  
2 15 December 2025.]

3 MJ [LtCol SCHRAMA]: I will announce my detailing and  
4 qualifications after we have accounted for who is here on behalf of  
5 the parties, covered the attendance rights of the accused, and  
6 discuss some administrative and housekeeping matters.

7 It is my understanding that the Remote Hearing Room, or the  
8 RHR, located in Virginia is unavailable today because it is being  
9 used by another military commission holding proceedings in  
10 Courtroom 3.

11 Accordingly, when the managing trial counsel and the four  
12 learned counsel in this case account for their attorneys of record,  
13 please only account for the attorneys who are present in Courtroom  
14 No. 2. If the RHR becomes available later in the week, I will ask  
15 you to also account for any of your attorneys present at the RHR.

16 Additionally, as you are identifying your team members,  
17 please indicate if any of them are making their first appearance  
18 before this commission so we can get on the record their detailing  
19 information, qualifications, status as to oath, and whether they have  
20 acted in any disqualifying manner in this case.

21 Trial Counsel, please confirm these proceedings are being  
22 transmitted by closed-circuit TV to the United States, and then  
23 identify who is in attendance on behalf of the United States.

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1 MTC [MR. TRIVETT]: Yes, sir. Good afternoon. My name is  
2 Clay Trivett, representing the United States today, along with  
3 Colonel Joshua Bearden, Lieutenant Eric Marshall, and Captain Allison  
4 Carr. Both Lieutenant Marshall and Captain Allison Carr are making  
5 their first appearance today, Your Honor.

6 The proceedings are being transmitted via closed-circuit  
7 television to sites in the continental United States pursuant to the  
8 commission's orders. I have been informed that there have been  
9 intermittent audio issues at the Pentagon site that the IT is still  
10 working through, sir.

11 MJ [LtCol SCHRAMA]: Thank you, Mr. Trivett.

12 Do Lieutenant Marshall and Captain Carr need to be sworn in?

13 MTC [MR. TRIVETT]: They do.

14 MJ [LtCol SCHRAMA]: Okay. Captain Carr, Lieutenant Marshall,  
15 I'm going to have you stand, please.

16 Please raise your right hand.

17 **[Counsel were sworn.]**

18 MJ [LtCol SCHRAMA]: Thank you. Please be seated.

19 Mr. Trivett, I understand that Mr. Dykstra is no longer part  
20 of your team. Who will be inheriting his role of interfacing with  
21 the Joint Task Force and the guard force on administrative matters  
22 involving the accused and their counsel?

23 MTC [MR. TRIVETT]: Yes, sir. For me -- for now, that will be

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1 me.

2 MJ [LtCol SCHRAMA]: Thank you, Mr. Trivett.

3 Mr. Sowards, good afternoon. Could you please indicate for  
4 the record who is in attendance on behalf of Mr. Mohammad? Also,  
5 please indicate if any of the attorneys are making their first  
6 appearance so we can capture for the record their detailing  
7 information, qualifications, status as to oath, and whether they have  
8 acted in any disqualifying manner in this case.

9 LDC [MR. SOWARDS]: Good afternoon, Your Honor. Gary Sowards;  
10 Elspeth Theis, Major, United States Air Force; and Ms. Gabriela  
11 McQuade, all appearing on behalf of Mr. Mohammad, who is present in  
12 court, and we have been with the commission for some time.

13 Thank you, sir.

14 MJ [LtCol SCHRAMA]: Thank you.

15 And I'm just going to backtrack one second. Trial Counsel,  
16 Lieutenant Marshall, could you please -- I kind of omitted  
17 this -- but could you please state your detailing information and  
18 qualifications for the record.

19 ATC [LTC MARSHALL]: Yes.

20 MJ [LtCol SCHRAMA]: And please step up to the podium also.

21 ATC [LTC MARSHALL]: Good afternoon, Your Honor. I'm  
22 Lieutenant Eric Marshall, United States Navy. I have been detailed  
23 to this commission by the Chief Prosecutor of Military Commissions,

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1 Rear Admiral Aaron C. Rugh. I am qualified under Rule for Military  
2 Commissions 502(d), and I've been previously sworn in accordance with  
3 Rule for Military Commissions 807. I've acted in no disqualifying  
4 manner.

5 MJ [LtCol SCHRAMA]: Thank you.

6 And, Captain Carr, could you do the same.

7 ATC [Capt CARR]: Good afternoon, Your Honor. I am Captain  
8 Allison Carr, United States Air Force. I have been detailed to this  
9 commission by the Chief Prosecutor of Military Commissions, Admiral  
10 Aaron C. Rugh.

11 I am qualified in accordance with Rule for Military  
12 Commission 502(d), and I have been previously sworn under Rule for  
13 Military Commission 807. I have not acted in any disqualifying  
14 manner.

15 MJ [LtCol SCHRAMA]: Thank you.

16 ATC [Capt CARR]: Thank you, sir.

17 MJ [LtCol SCHRAMA]: Mr. Engle, could you please account for  
18 your team.

19 LDC [MR. ENGLE]: Yes. Good afternoon, Your Honor. In  
20 addition to myself, Matthew Engle, the attorneys present are Captain  
21 Marian Messing to my right, and to my left, William Montross,  
22 Lieutenant Austin Ridgeway, and Tasnim Motala.

23 And if I may, I would also just like to thank Your Honor for

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1   delaying the start of today's hearing to enable us to meet with  
2   Mr. Bin'Attash.  There was some confusion this morning about whether  
3   we would be taking him to meet with us, but we were able to sort that  
4   out and meet with him this morning, and we appreciate the opportunity  
5   to do that.

6           MJ [LtCol SCHRAMA]:  Thank you.

7           Mr. Connell, could you please account for your team.

8           LDC [MR. CONNELL]:  Good afternoon, sir.  My name is James  
9   Connell.  With me on behalf of Mr. al Baluchi is Lieutenant Matthew  
10  Burns, who will be making his first appearance before the commission  
11  today.

12          MJ [LtCol SCHRAMA]:  Thank you.

13          Lieutenant Burns, could you please step up to the podium,  
14  and could you please announce your qualifications.

15          DC [LT BURNS]:  Yes, Your Honor.  I am Lieutenant Matthew  
16  Burns, United States Navy.  I've been detailed to this military  
17  commission by Captain Warren A. Record, Acting Chief Defense Counsel  
18  of the Military Commissions Defense Organization.  I have been  
19  certified in accordance with Article 27(b) and sworn in accordance of  
20  Article 42(a) of the Uniform Code of Military Justice, and I have not  
21  acted in any disqualifying manner.

22          MJ [LtCol SCHRAMA]:  Thank you.  Lieutenant Burns, have you  
23  previously been sworn?

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1 DC [LT BURNS]: Yes, Your Honor.

2 MJ [LtCol SCHRAMA]: Thank you.

3 Mr. Ruiz, good afternoon. Could you please account for your  
4 team.

5 LDC [MR. RUIZ]: Walter Ruiz, Ms. Suzanne Lachelier, and Major  
6 Nichole Timmreck. This will be her first appearance; Ms. Timmreck.

7 MJ [LtCol SCHRAMA]: Thank you. Major Timmreck, could you  
8 please step up to the podium, and could you please announce your  
9 qualifications.

10 DC [Maj TIMMRECK]: I am Major Nichole Timmreck, United States  
11 Air Force JAG Corps. I was detailed to this military commission by  
12 then-Chief Defense Counsel of the Military Commissions Defense  
13 Organization, Brigadier Jackie L. Thompson, Jr. My detailing  
14 memorandum is in the record at AE 4DDDD filed previously on 18  
15 July 2025. I am qualified and certified under Article 27(b) and  
16 previously sworn under Article 42(a) of the Uniform Code of Military  
17 Justice. I am also qualified and certified under the Rules for  
18 Military Commissions 502 and 503. I have read all relevant  
19 protective orders and signed all relevant memoranda of understanding,  
20 and I have not acted in any way that might tend to disqualify me.

21 MJ [LtCol SCHRAMA]: Thank you. Major Timmreck, have you  
22 previously been sworn?

23 DC [Maj TIMMRECK]: Yes, Your Honor.

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1 MJ [LtCol SCHRAMA]: Thank you.

2 I will note for the record that we will occasionally hear  
3 the voices of interpreters over the speaker system. They are  
4 listening and translating in realtime, but are not physically in the  
5 courtroom. They have previously been sworn in accordance with Rule  
6 for Commissions 807.

7 Additionally, because we'll be making use of these  
8 interpreters during our hearings, I will ask that all courtroom  
9 participants make a conscious effort to speak slowly when addressing  
10 the commission or questioning a witness, especially when quoting from  
11 published case or reading from a prepared text.

12 I will now advise the accused of their right to be present  
13 and their right to waive their presence.

14 You each have the right to be present during all sessions of  
15 the commissions. If you request to absent yourself from any session,  
16 such absence must be voluntary and of your own free will.

17 Your voluntary absence from any session of the commission is  
18 an unequivocal waiver of the right to be present during that session.  
19 Your absence from any session may negatively affect the presentation  
20 of the defense in your case.

21 Your failure to meet with and cooperate with your defense  
22 counsel may also negatively affect the presentation of your case.

23 Under certain circumstances, your attendance at a session

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1 can be compelled, regardless of your personal desire not to be  
2 present.

3           Regardless of your voluntary waiver to attend a particular  
4 session of the commission, you have the right at any time to decide  
5 to attend any subsequent session. If you decide not to attend the  
6 morning session but wish to attend the afternoon session, you must  
7 notify the guard force of your desires. Assuming there is enough  
8 time to arrange transportation, you will then be allowed to attend  
9 the afternoon session.

10           You will be informed of the time and date of each commission  
11 session prior to the session to afford you the opportunity to decide  
12 whether you wish to attend that session.

13           Mr. Mohammad, do you understand what I have just explained  
14 to you?

15           ACC [MR. MOHAMMAD]: Yes.

16           MJ [LtCol SCHRAMA]: Thank you.

17           Mr. Bin'Attash, do you understand what I've explained to  
18 you?

19           ACC [MR. BIN'ATTASH]: Yes.

20           MJ [LtCol SCHRAMA]: Thank you.

21           Mr. Ali, do you understand what I have just explained to  
22 you?

23           ACC [MR. AZIZ ALI]: Yes.



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1 MJ [LtCol SCHRAMA]: Thank you.

2 Mr. Hawsawi, do you understand what I have just explained to  
3 you?

4 ACC [Mr. Al HAWSAWI]: Yes.

5 MJ [LtCol SCHRAMA]: Thank you.

6 In conducting these hearings, I generally intend to continue  
7 the practices of my predecessors. I intend to start each court day  
8 at 0900 and to end by 1730. It is also my intent to break for prayer  
9 time and for meals.

10 To the extent that the guard force can accommodate it, I  
11 also intend to continue the practice of allowing individual accused  
12 to take latrine breaks as necessary or to rest in the adjacent  
13 facilities' holding areas without the commission having to take a  
14 recess for the movement of the accused.

15 I also intend to allow defense members to move around freely  
16 within the outside -- excuse me -- within and outside the courtroom  
17 and to communicate with each other and the accused so long as doing  
18 so does not become disruptive to the proceedings.

19 It is my understanding that three of the daily prayer times  
20 are scheduled during our normal court hours, with one taking place at  
21 approximately noon, another taking place at approximately 1500, and a  
22 third taking place at approximately 1730.

23 It is also my understanding that the dining facility is open

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1 from 1100 to 1300 for lunch and from 1700 to 1900 for the evening  
2 meal.

3 In order to accommodate prayer time and meal time, I intend  
4 to take a lunch recess from noon to 1330, a short afternoon recess at  
5 1500, and an evening recess no later than 15 -- excuse me -- 1730.

6 I assume that will work for everyone.

7 LDC [MR. SOWARDS]: Yes, Your Honor. Thank you.

8 MJ [LtCol SCHRAMA]: Thank you.

9 To the extent that the guard force can accommodate it, I  
10 intend to continue the practice of allowing individual accused to  
11 take latrine breaks as necessary or to rest at the adjacent areas  
12 without the commission having to take a recess for the movement of  
13 that accused. Unless counsel rise to tell me otherwise, I will  
14 assume that his client is departing voluntarily and is thereby  
15 waiving his presence.

16 I also intend to allow prosecution and defense members to  
17 move around freely within and outside the courtroom and communicate  
18 with each other and the accused so long as doing so does not become  
19 disruptive to the proceedings.

20 It is my understanding that it is more efficient and  
21 productive for attorney-client meetings to take place here in  
22 Courtroom No. 2 and/or the adjacent facilities during the times when  
23 Courtroom 2 is not actively being used for commission hearings.

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1           As with the practice under Judge McCall, it is my intent, as  
2 long as the guard force is able to accommodate, for the accused and  
3 counsel to be permitted to stay in the courtroom for at least an hour  
4 after the commission concludes for the day to be permitted to make  
5 use of the courtroom and/or the adjacent facilities at times that  
6 this commission was scheduled to be in session but is not.

7           For example, if the voir dire takes less time than I have  
8 anticipated and we are, therefore, not in court on Tuesday or  
9 Thursday, I would expect the accused and their counsel to be able to  
10 make use of Courtroom No. 2 and/or the adjacent facilities on those  
11 days.

12           However, because we are sharing the courtroom this week with  
13 the commission in United States v. Ramzi Binalshibh, I don't  
14 anticipate any of the counsel or accused in our case will be able to  
15 make use of Courtroom No. 2 for meetings on Wednesday or Friday.  
16 They may, however, still be available to make use of some, but not  
17 all, of the adjacent facilities during that time, but only if the  
18 guard force can accommodate it.

19           As noted in the docketing order, we have set aside Monday  
20 and Tuesday of this week for counsel to conduct voir dire questioning  
21 of me as to grounds for my disqualification. We will not be in  
22 session on Wednesday, as I mentioned, as a different military judge  
23 in another commission will be conducting voir dire in Courtroom No. 2

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1 on that day.

2 I anticipate that counsel in our case will make use of  
3 Wednesday to meet with their clients and prepare any challenges for  
4 cause that they may wish to lodge against me. We will then be back  
5 here on Thursday to hear any challenges the parties may have.

6 If there are no challenges, or if we otherwise end up with  
7 free time on Monday, Tuesday, or Thursday, I would be willing to  
8 receive ex parte presentations from any of the defense teams as to  
9 their theories of defense Rule of Evidence 505 purposes should they  
10 wish to do so.

11 I also know that Mr. Connell has asked to lodge an objection  
12 in regard to the exclusion of nongovernmental organization observers  
13 as noted in Exhibit 877J (AAA). Although I am willing to hear that  
14 objection, I am not inclined to do so prior to the completion of voir  
15 dire questioning.

16 Additionally, if time allows, I would be willing to  
17 entertain argument from counsel on any issues for which the briefing  
18 cycle has concluded and all counsel are prepared to argue.

19 In Exhibit 983, I provided notice that I intended to provide  
20 the parties with an opportunity to submit written voir dire questions  
21 and to, thereafter, ask oral questions of me in open court.

22 In response to AE 983, the prosecution and counsel for  
23 Mr. Ali submitted written questions and proposed topics for inquiry.

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1 Counsel for Mr. Mohammad and Mr. Hawsawi provided notice that they  
2 had no written questions of the military judge. Counsel for  
3 Mr. Bin'Attash submitted no written questions.

4 The prosecution filed Exhibit 983D wherein the prosecution  
5 moved to strike certain of the written questions and topics that were  
6 submitted by counsel for Mr. Ali on the grounds that they exceeded  
7 the scope of judicial voir dire examination and seek information that  
8 is irrelevant to my statutory qualifications, bias, and impartiality.

9 I did not issue a written ruling on Exhibit 983D as I am  
10 certain that I can evaluate each question or topic and simply decide  
11 not to answer any questions that may be improper for me to answer.  
12 Accordingly, the prosecution's motion in Exhibit 938D **[sic]** is  
13 denied.

14 My general plan for voir dire is to start by stating my  
15 qualifications and detailing information; thereafter, I would like to  
16 address the prosecution's questions. I intend to read each question  
17 out loud and thereafter provide a spoken answer.

18 After I have finished the prosecution's questions, I will  
19 permit counsel for all parties to ask follow-on questions. However,  
20 it would be my preference that only one person from each team ask  
21 follow-on questions.

22 Thereafter, I will begin answering Mr. Ali's questions.  
23 Because Mr. Ali's questions are logically grouped into 13 topics, I

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1 will read the questions and provide answers to all of the questions  
2 in the first topic and then invite one person from each team to ask  
3 follow-on questions related to that topic.

4           Thereafter, I will move on to the second topic and the third  
5 topic and repeat that process until we have completed all of  
6 Mr. Ali's written questions.

7           Once we have made it through all of the written questions  
8 and answers, I will provide each team the opportunity to ask any  
9 remaining appropriate questions they may still have.

10           Because we have a lot of questions to go through, I  
11 anticipate the voir dire process taking the rest of today and  
12 tomorrow.

13           I've been detailed to this commission by the Chief Judge of  
14 the Military Commissions Trial Judiciary pursuant to Rule for  
15 Military Commissions 503. Exhibit 001U is my detailing memorandum.

16           I am certified and qualified in accordance with Articles  
17 26(b) and (c) of the Uniform Code of Justice as well as R.M.C. 502(c)  
18 and 503(b). I've been previously sworn under Article 42(a) of the  
19 Uniform Code of Military Justice and R.M.C. 807. I possess a Top  
20 Secret clearance, and I have served more than two years as a military  
21 judge.

22           As noted in Exhibit 983, I am not aware of any grounds for  
23 challenge against me.

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1           To assist counsel in preparing their voir dire questions, I  
2   have previously provided the parties with a copy of my biography,  
3   which has been marked as Exhibit 001V.

4           Additionally, I have reviewed the names of the government  
5   and defense teams in order to determine if I recognize them or had  
6   any significant prior interactions with them.

7           As noted in Exhibit 983, after reviewing the prosecution and  
8   defense distribution list, I only recognized the following personnel:  
9   Major Nichole Timmreck. As I noted in Exhibit 983, the circumstances  
10   of our acquaintance are not such to warrant my recusal.

11          Furthermore, as I looked around the courtroom, and as I do  
12   so now, I do not recognize any other individuals as acquaintances.

13          Pending any questions from the parties, I will go ahead and  
14   proceed with the questions submitted by the prosecution by reading  
15   and answering those questions in the manner in which I previously  
16   noted.

17          LDC [MR. CONNELL]: My name's James Connell. Sir, this is  
18   just a housekeeping matter. I know that you noted our objection with  
19   respect to the exclusion of the NGOs. I just wanted to note for the  
20   record that the appropriate AE number was 987J. I think there might  
21   have been a typo.

22          MJ [LtCol SCHRAMA]: Yes. Thank you, Mr. Connell. You are  
23   correct.

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1           Okay. Prosecution questions: Question No. 1 was: Have you  
2 reviewed the charge sheet and its appendices in United States v.  
3 Mohammed, et al.?

4           Yes. I've reviewed the charge sheet and its appendices.

5           Question 2: Do you recognize any of the names contained  
6 within Appendix A or Appendix B of the charge sheet?

7           Yes. There was an ex-Georgetown football player who died in  
8 one of the World Trade Centers. His name was Joseph Eacobacci. I  
9 have never met this individual. He graduated from Georgetown several  
10 years before I became a student and athlete at the university. I am  
11 aware of him only because the following year, in 2002, my football  
12 coach started a tradition where a player was chosen to wear  
13 Mr. Eacobacci's number as a remembrance. As I said, I had never met  
14 this individual.

15           Further, this experience would in no way affect my adherence  
16 to and application of the law and the rules applicable to these  
17 commission proceedings. I've only disclosed this information out of  
18 an abundance of caution.

19           The military biography you furnished -- this is  
20 Question 3 -- to the parties indicates that you may have been in  
21 Washington, D.C. in September 2001. Where were you on September 11,  
22 2001? And how, if at all, was your life personally impacted by the  
23 attacks on that day, including on the Pentagon?



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1           On September 11, 2001, I was a student at Georgetown  
2 University and on campus on September 11, 2001. My life was not  
3 personally impacted by the events that transpired on September 11,  
4 2001.

5           I was approximately 19 at the time and, to be honest, I do  
6 not remember the day or the emotions of the day that well at this  
7 point in my life. Generally, I remember the day being surreal, and  
8 the events of the day seemed to be untrue. I felt bad for the people  
9 associated with the events of the day and for those who lost loved  
10 ones.

11           Other than that described, I was not personally affected by  
12 the events of 9/11 other than those conditions that all people  
13 experience, such as tighter security at the airport or street  
14 closures in Washington, D.C.

15           There is nothing about that day that I believe would affect  
16 my ability to be impartial in this case.

17           Question 4: Were any of your friends, family, or close  
18 associates victims of the September 11, 2001, attacks, even if not  
19 named in Appendix A or Appendix B to the charge sheet?

20           No.

21           Question 5: How long do you anticipate being assigned as a  
22 military judge at Joint Bank -- excuse me -- Joint Base  
23 Langley-Eustis?

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1           The assignment for an Air Force judge is typically a  
2 three-year assignment. Beyond that, my assignments will be based on  
3 the needs of the Air Force.

4           Question 6: Do you currently have any plans to retire  
5 within the next three years?

6           No. I have no plans to retire in the next three years and,  
7 based on my time in service, I would not be eligible to retire from  
8 the Air Force within the next three years.

9           Question 7: Do you intend to preside over military  
10 courts-martial cases while serving as the military judge in United  
11 States v. Mohammed, et al.?

12           Yes. As time and my commission schedule allows, I may be  
13 detailed to Air Force courts-martial.

14           Do you currently have any pending applications -- this is  
15 Question 8 -- for civilian employment with either the Department of  
16 Justice or the Department of Defense?

17           The answer is no.

18           Question 9: Do you currently have any pending applications  
19 for civilian employment with any other agency within the executive  
20 branch of the U.S. Government?

21           The answer is no.

22           Question 10: Do you intend to apply for civilian employment  
23 with either the Department of Justice or the Department of Defense in

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1 the future?

2 The answer: At this time, as I've already discussed, I have  
3 no post-retirement plans for employment.

4 Question 11: Will you commit to informing the parties  
5 immediately if you plan to retire or seek civilian employment with  
6 the U.S. Government?

7 Yes. If any of my plans on future retirement or employment  
8 decisions change, I would accordingly notify the parties in this  
9 case.

10 Question 12: Do you believe you can preside over this case  
11 with impartiality towards all parties?

12 Yes.

13 That concludes my answers to the prosecution's written  
14 questions.

15 Mr. Trivett, do you have any follow-up questions based on my  
16 responses?

17 MTC [MR. TRIVETT]: Just a few, sir.

18 MJ [LtCol SCHRAMA]: You may.

19 MTC [MR. TRIVETT]: So I believe in your answer to Question  
20 No. 2, sir, you had indicated that your coach had started a tradition  
21 giving a number out for the fallen player on 9/11. Did you wear that  
22 number?

23 MJ [LtCol SCHRAMA]: I did not.

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1 MTC [MR. TRIVETT]: Okay. And apologies. Questions 8 through  
2 11, I realize that you answered in the negative, but that would also  
3 apply to your clerks. We would ask that that question be asked of  
4 the clerks as well. I realize that you may not have those answers  
5 immediately available to you.

6 This became an issue in litigation in military commissions.  
7 We should have asked the question as to the judge and to any of the  
8 clerks you're using. We're just not certain exactly which clerks are  
9 assigned to your case.

10 So we would ask at some point if those answers could be  
11 given to us on the record at some point in the near future, we'd  
12 appreciate it.

13 MJ [LtCol SCHRAMA]: I can. And I think, Mr. Trivett, what I  
14 can tell you now is, based on my knowledge as of today, I am not  
15 aware that any of my clerks are intending to retire and/or have any  
16 pending applications with any of those agencies.

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

18 MJ [LtCol SCHRAMA]: If that changes or if I am incorrect,  
19 again, I will notify the parties.

20 MTC [MR. TRIVETT]: Thank you, sir.

21 MJ [LtCol SCHRAMA]: Mr. Sowards, do you have any follow-on  
22 questions based on my response to the government questions?

23 LDC [MR. SOWARDS]: No, Your Honor. And if it speeds things

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1 along, if I may just say that for the reasons that we've previously  
2 set forth in AE 982 (KSM WBA MAH) and also Your Honor's findings in  
3 AE 982C, specifically with regard to pages 8 to 9, paragraph c., we  
4 will not be asking or participating in the process today. But thank  
5 you for the courtesy.

6 MJ [LtCol SCHRAMA]: Thank you, Mr. Sowards. And if in the  
7 future, after there's resolution to issues, if there are additional  
8 questions, the court, if not already asked here today, would  
9 entertain those questions.

10 LDC [MR. SOWARDS]: Very generous of you, sir. Thank you.

11 MJ [LtCol SCHRAMA]: Mr. Engle, do you have any follow-on  
12 questions?

13 LDC [MR. ENGLE]: No, Your Honor. I would just say that we  
14 are in the same position that Mr. Sowards just articulated. So we  
15 will also not be asking any questions today due to our ethical  
16 obligations to abide by the terms of our pretrial agreement. So  
17 we're in the same boat.

18 MJ [LtCol SCHRAMA]: Understood. Again, as we proceed and if  
19 the time becomes appropriate at a later proceeding, if you have  
20 questions, I would allow the opportunity to ask additional questions  
21 as long as those topics and questions have not otherwise been covered  
22 here today.

23 LDC [MR. ENGLE]: Thank you, Your Honor.

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1 MJ [LtCol SCHRAMA]: So, Mr. Sowards and Mr. Engle, I'm -- as  
2 we proceed, I'm going to omit you from further questioning; however,  
3 if you decide that you want to participate today or you have a  
4 question, I just ask that you interject at the appropriate time.

5 LDC [MR. SOWARDS]: Understood, sir. Thank you.

6 MJ [LtCol SCHRAMA]: Mr. Connell, do you have any follow-on  
7 questions?

8 DC [LT BURNS]: Your Honor, you said that you would be taking  
9 other cases. Just a couple of follow-ups. How are you assigned  
10 those cases?

11 MJ [LtCol SCHRAMA]: My chief district judge would coordinate  
12 with our central docketing office based on a particular case and the  
13 availability of all judges. Based on that, she would then detail me  
14 to a particular case.

15 DC [LT BURNS]: And who is that person?

16 MJ [LtCol SCHRAMA]: Colonel Vicki Marcus.

17 DC [LT BURNS]: And do you often talk with her about your  
18 appointment -- or did you talk to her about your appointment to this  
19 case?

20 MJ [LtCol SCHRAMA]: I did not. I mean, she is my immediate  
21 supervisor. So she's generally tracking it, but I had no -- she  
22 didn't notify me and I had no substantive conversations with her  
23 regarding this appointment.

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1 DC [LT BURNS]: Do you tend to go to her for advice on cases  
2 ever or difficult rulings?

3 MJ [LtCol SCHRAMA]: Within -- she is my supervisor and she  
4 also shares judicial privilege with me. So on my Air Force cases, I  
5 have discussed cases with her, yes. I would have no intent on  
6 discussing with her any of the issues that are apparent in this case.

7 DC [LT BURNS]: Yes, Your Honor. That's all of the follow-ups  
8 I have.

9 MJ [LtCol SCHRAMA]: Thank you.

10 Mr. Ruiz, I'll extend you the same courtesy. Did you want  
11 to ask questions here today?

12 LDC [MR. RUIZ]: We do not, Judge. We adopt the positions of  
13 Mr. Mohammad, Mr. Bin'Attash, as well as their comments here in court  
14 today.

15 MJ [LtCol SCHRAMA]: Okay. So I'll say the same thing to you.  
16 If at a later point, if questions are not otherwise covered here  
17 today or topics, we'll allow you the opportunity to ask additional  
18 questions.

19 I will skip over you as we proceed, but if there's anything  
20 that you want to interject with, just please interject at the  
21 appropriate time.

22 LDC [MR. RUIZ]: Thank you.

23 MJ [LtCol SCHRAMA]: Thank you.

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1           Having covered the government's questions and follow-up  
2 questions, I'm now going to turn my attention to the questions  
3 submitted by Mr. Connell submitted on behalf of Mr. Ali, with the  
4 first topic being qualifications and initial detailing.

5           Question 1: Do you hold a TS/SCI clearance? Have you been  
6 read into the National Programs Compartment, and have you been read  
7 into the relevant ACCMs?

8           Yes. I have an active Top Secret clearance, and I've been  
9 granted access to Sensitive Compartmented Information, SCI, and  
10 Special Access Program, SAP, information.

11          Question 2: What was the length of your prior experience as  
12 a military judge?

13          I served as a military judge from July 2021 until July 2023.  
14 And then in June of 2025 -- excuse me -- June of 2025, I came back on  
15 to the bench, where I currently serve.

16          Question 3: When did you first learn you would be detailed  
17 to this case? What was your reaction? Did you ask to be detailed to  
18 this case or did you attempt to reject the detailing?

19          I first learned that I would be detailed to this case in  
20 approximately late May or early June of 2025. I was happy to have  
21 received the opportunity; however, I did not ask to be detailed to  
22 this case, and I did not attempt to reject the detailing in this  
23 case.



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1 Do you know who nominated you to be detailed to this case?

2 Yes, a colonel, Elizabeth Hernandez, who is the chief of the  
3 Air Force Trial Judiciary, nominated me to the military commissions.

4 Question 5 was: What steps did you take immediately after  
5 finding out you were detailed to this case?

6 Upon Colonel Hernandez notifying me that I was detailed, she  
7 told me to contact Colonel Matthew Fitzgerald, the chief judge of the  
8 military commissions, to receive follow-on information.

9 Did you -- Question 6 -- speak to any prior military members  
10 who were associated or assigned to this case in the past? If so,  
11 who? And what did you discuss?

12 I did not have any conversations with prior military members  
13 who were associated or assigned to this case; however, I will note  
14 that from 2021 through 2023, the first time that I was an Air Force  
15 Trial Judge, Colonel Matthew McCall was the chief judge -- chief  
16 district judge who oversaw my circuit.

17 Although I was generally aware of his commissions work and  
18 schedule, him and I never had any substantive conversations regarding  
19 the commissions or the specific work that he was doing on the  
20 commissions.

21 Question 7: Did you speak or did you have contact with any  
22 member of the administration about this case, for example, the  
23 Secretary of Defense or someone acting on his behalf?

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1           The answer is no.

2           Question 8: Did you receive any materials associated with  
3 this case prior to being detailed, for example, the 9/11 Commission  
4 Report or the SSCI Report?

5           The answer is no.

6           This concludes the first topic.

7           Mr. Connell, do you have any follow-up questions?

8           LDC [MR. CONNELL]: May I have just a moment with Lieutenant  
9 Burns?

10          MJ [LtCol SCHRAMA]: You may.

11   **[Counsel conferred.]**

12          DC [LT BURNS]: Your Honor, on Question No. 1, could you  
13 answer that -- the last part of the question? Have you been read  
14 into the relevant ACCMs?

15          MJ [LtCol SCHRAMA]: Yes.

16          DC [LT BURNS]: As far as materials that you reviewed, either  
17 after your assignment to this case or before your assignment to this  
18 case, have you read any books on 9/11, the popular ones like *Looming*  
19 *Tower* or anything like that?

20          MJ [LtCol SCHRAMA]: I have not, no.

21          DC [LT BURNS]: All right. And then what about books about  
22 the case specifically, like John Ryan's recent book, *America's Trial:*  
23 *Torture and the 9/11 Case on Guantanamo Bay*? Nothing like that?

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1 MJ [LtCol SCHRAMA]: No.

2 DC [LT BURNS]: What about mc.mil, the military commissions  
3 website that posts all the rulings and transcripts and things? Have  
4 you reviewed that, Your Honor?

5 MJ [LtCol SCHRAMA]: I have not. I mean, I'm -- do you mean  
6 prior to ----

7 DC [LT BURNS]: Prior to being assigned.

8 MJ [LtCol SCHRAMA]: No. I didn't know it existed prior to  
9 being detailed.

10 DC [LT BURNS]: And since you've been detailed, I assume you  
11 probably have been on there. Have you been on there?

12 MJ [LtCol SCHRAMA]: I've seen it. I'll be honest, though.  
13 You know, I get most of my repository information from the court, so  
14 I don't really have a need to frequent the website.

15 DC [LT BURNS]: And you said you didn't have any substantive  
16 conversations with Judge McCall about the case before you were  
17 assigned. Did you do a turnover with Judge McCall after you were  
18 assigned?

19 MJ [LtCol SCHRAMA]: I did not. He was retired from the Air  
20 Force and left his position as a commissions judge before I became a  
21 military judge again in June. So I've had no -- I haven't seen him  
22 and I've had no conversations about the commissions with him or  
23 turnover.

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1           And I actually believe Colonel Fitzgerald was sitting in as  
2 the interim commissions judge waiting for a permanent detailee.

3           DC [LT BURNS]: Did you have any substantive conversations  
4 with him about the case or...

5           MJ [LtCol SCHRAMA]: Not substantive. You know, he was the  
6 one that just kind of walked me through getting in touch with the  
7 people that would in-process me and just kind of explained, you know,  
8 what that step would be. But as far as the case and any substantive  
9 conversations, we did not have any.

10          DC [LT BURNS]: All right. Thank you, Your Honor.

11          MJ [LtCol SCHRAMA]: Thank you, Lieutenant Burns.

12          Mr. Trivett, does either my answers to the written questions  
13 or the questions just prompted by Lieutenant Burns prompt any  
14 additional questions from you?

15          MTC [MR. TRIVETT]: Negative, sir.

16          MJ [LtCol SCHRAMA]: Thank you.

17          So with that, then, we will move on to the second topic,  
18 which was capital cases.

19          Question 1: Have you reviewed the ABA guidelines for the  
20 appointment and performance of defense counsel in death penalty  
21 cases?

22          Yes.

23          Question 2: Have you participated as lead counsel or

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1 assistant counsel in any capital case?

2 No, I have not.

3 Have you attended any conferences targeted towards  
4 representation in capital cases or, likewise, any conferences geared  
5 towards education of military judges in capital cases?

6 I have not attended any conferences targeted towards  
7 practitioners in capital cases. However, I have attended The  
8 National Judicial College's Handling Capital Cases course.

9 Question 4: What is your understanding of the role of  
10 mitigating evidence in a capital case?

11 Mitigation evidence ensures that everyone involved in the  
12 process for determining whether to impose the death penalty has a  
13 complete and accurate picture of both the nature of the offense and  
14 of the person who is facing the possibility of capital punishment.

15 Having that full picture is a vital component to  
16 decision-making by the members of the commission, me as the military  
17 judge, the accused himself, and counsel for both the prosecution and  
18 the defense.

19 Question 5: What, if any, opinions do you hold about the  
20 scope of admissible mitigation evidence in the sentencing phase of a  
21 capital case?

22 I will apply Rule for Military Commissions 1004(b)(3), which  
23 states that the accused shall be given broad latitude to present

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1 evidence in extenuation and mitigation.

2 That concludes my written answers to the second topic.

3 Mr. Connell, do you have any follow-up questions on this  
4 topic?

5 DC [LT BURNS]: Your Honor, what was the dates of that  
6 judicial conference that you attended on capital cases?

7 MJ [LtCol SCHRAMA]: It was last week.

8 DC [LT BURNS]: Thank you, Your Honor.

9 MJ [LtCol SCHRAMA]: Thank you. And, Lieutenant Burns, will  
10 you be doing the individual voir dire?

11 DC [LT BURNS]: Yes, Your Honor.

12 MJ [LtCol SCHRAMA]: Okay. I'll refer to you, then, instead  
13 of Mr. Connell.

14 DC [LT BURNS]: Yes, Your Honor.

15 MJ [LtCol SCHRAMA]: Thank you.

16 Mr. Trivett, do you have any follow-up questions?

17 MTC [MR. TRIVETT]: I do not, sir.

18 MJ [LtCol SCHRAMA]: Thank you.

19 With that, we'll move on to the third topic, which is a  
20 review of issues in this case.

21 Question 1 was: What process will you use to get up to date  
22 on the prior filings in this case? Have you already reviewed all  
23 prior filings and transcripts or reviewed summaries of those?

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1 I have not reviewed all prior filings, nor have I reviewed  
2 the full transcript. As we continue to work through the pretrial  
3 proceedings in this case, it is my intent to ask counsel for the  
4 parties to orient me to the portions of the record, including the  
5 transcript, that contain relevant evidence and argument for the  
6 motion or other matter under consideration.

7 Question 2: Have you had prior experience replacing a prior  
8 military judge? And if so, what actions did you take to get up to  
9 speed on that case?

10 Yes. In the Air Force Trial Judiciary, it is not uncommon  
11 to be detailed to a case post motion practice. In that case, I would  
12 review the charge sheet. And for unresolved questions, I would ask  
13 counsel for the parties to orient me to the portions of the record,  
14 including the transcript, that contain relevant evidence and argument  
15 for the motion or issue or other matter under consideration.

16 What experience have you had as a trial attorney in cases  
17 with voluminous discovery? How did you handle reviewing the  
18 materials in such a case?

19 During my detail to the Department of Justice, I conducted  
20 civil discovery involving cases with tens to hundreds of thousands of  
21 pages of discovery. And generally I would review these items based  
22 on the primacy and relevancy to the specific issues that were before  
23 me.

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1           Question 4: Prior military judges have issued summaries and  
2 substitutions under M.C.R.E. 505, some of which Mr. al Baluchi has  
3 challenged. M.C.R.E. 505(f)(3) prohibits defense motions for  
4 reconsideration, but Exhibit 164C authorizes sua sponte  
5 reconsideration of M.C.R.E. 505 substitutions.

6           Have you reviewed Exhibit 164C? What, if any, opinion do  
7 you hold about when sua sponte reconsideration under Exhibit 164C is  
8 appropriate?

9           I have reviewed Exhibit 164C. I would consider sua sponte  
10 reconsideration based on the facts, the rules, and the issues before  
11 the court.

12          Question 5: The distinction between substitutions under  
13 M.C.R.E. 505(f) and substitutions under M.C.R.E. 505(h) has become a  
14 reoccurring issue in the case. What, if any, opinion do you hold  
15 about when substitutions are appropriate under M.C.R.E. 505(h) vice  
16 M.C.R.E. 505(f)?

17          Have you reviewed Exhibit 6500? What opinion, if any, do  
18 you hold about when an in camera hearing under M.C.R.E. 505(h)(3) is  
19 appropriate?

20          I am generally aware that there are filings and issues under  
21 M.C.R.E. 505. This question is before the commission and it would be  
22 inappropriate to discuss a specific issue that is pending before the  
23 court. In general, I will adhere to the facts and rules in deciding



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1 the issues before the court.

2 Question 6: The question of the existence or nonexistence  
3 of armed conflict between the United States and al Qaeda has been a  
4 major issue in this case. What experience do you have with the Law  
5 of Armed Conflict?

6 Have you reviewed Exhibit 502BBBB ruling and Exhibit 617K  
7 ruling?

8 What, if any, opinions do you hold about the existence or  
9 nonexistence of an armed conflict between the United States and al  
10 Qaeda prior to 7 October 2001?

11 I have no prior experience to this case dealing with the Law  
12 of Armed Conflict other than perfunctory trainings that all judge  
13 advocates of similar rank and experience obtain. I have no personal  
14 opinion on the existence or nonexistence of an armed conflict between  
15 the United States and al Qaeda. I would analyze any issue under the  
16 appropriate facts and law to develop a proper ruling.

17 Question 7: On multiple occasions the military commission  
18 has acted on prosecution requests for relief outside M.C.R.E. 505  
19 without providing the defense an opportunity to be heard.

20 Will you commit not to grant prosecution ex parte requests  
21 for relief unless specifically authorized by a statute or rule?

22 My role as the military judge is to follow the law, rules,  
23 and statutes I am charged to obey and enforce. In crafting a proper

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1 decision, I will apply the applicable law, rules, and statutes.

2           Question 8: In Exhibit 524LLL ruling, the military  
3 commission deferred on whether the investigative restrictions  
4 contained in Exhibit 524MM Protective Order #4, now amended, required  
5 suppression of the LHM statements or removal of the death penalty  
6 because the defense did not have the same opportunity to present a  
7 defense.

8           In Exhibit 942SSSS ruling, the military commission  
9 suppressed the LHM statements as involuntary and obtained by torture  
10 without resolving the question left open by Exhibit 524LLL.

11           How will you assess whether Mr. al Baluchi had the same  
12 opportunity to present a defense without viewing any presentation of  
13 evidence on the motion to suppress?

14           In deciding whether to grant relief in the 524 series, it is  
15 my intent to ask the parties to orient me to the portions of the  
16 record, including the transcript, that are relevant to the matter.

17           With that assistance from counsel, I am confident I can  
18 reach a fair decision despite not having been personally present  
19 during the testimony and argument captured in the transcript.

20           Question 9: The government's invocation of national  
21 security privilege to remove evidence from the purview of the  
22 military commission has been a reoccurring issue in this case. What,  
23 if any, opinions do you hold about the meaning, scope, and

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1 implications of government invocation of national security privilege  
2 outside the context of M.C.R.E. 505?

3 I have no personal opinion about the meaning, scope, and  
4 implications of government invocation of national security privilege  
5 outside the context of M.C.R.E. 505. I would analyze the appropriate  
6 facts, rules, and law in developing a proper ruling within the  
7 context of M.C.R.E. 505.

8 That concludes the third topic.

9 Lieutenant Burns, do you have any follow-up questions on  
10 this topic?

11 DC [LT BURNS]: No, Your Honor.

12 MJ [LtCol SCHRAMA]: Thank you.

13 Mr. Trivett, any follow-up questions?

14 MTC [MR. TRIVETT]: I do not, sir.

15 MJ [LtCol SCHRAMA]: Thank you.

16 We will now turn to the fourth topic, which was the  
17 professional development and career course.

18 Question 1: What is your current rating chain? Who is your  
19 rater and senior rater?

20 I had mentioned earlier that Colonel Vicki Marcus is my  
21 supervisor; however, Colonel Elizabeth Hernandez, the chief of the  
22 Air Force judiciary, is my rater, and The Judge Advocate General of  
23 the Air Force is my senior rater.

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1           Question 2: Have you ever had a rating chain which included  
2 Susan Escallier?

3           No.

4           Question 3: Have you ever had a rating chain which included  
5 any current political appointees within the executive branch?

6           No.

7           Question 4 is not applicable because I did not answer "yes"  
8 to either Questions 2 or 3.

9           That concludes the fourth topic.

10          Lieutenant Burns, do you have any follow-up questions?

11          DC [LT BURNS]: No, Your Honor.

12          MJ [LtCol SCHRAMA]: Mr. Trivett, follow-up questions?

13          MTC [MR. TRIVETT]: No, sir.

14          MJ [LtCol SCHRAMA]: Thank you. We will now turn to the fifth  
15 topic, which is prior assignments.

16          Question 1: Have you in any way participated, consulted, or  
17 investigated the 9/11 case?

18          The answer is no.

19          Have you done any prior work consulting or advising the FBI  
20 or CIA?

21          The answer is no.

22          Have you been on TDY missions, consulted, researched, or  
23 advised USSOUTHCOM, senior leadership at Naval Station Guantanamo

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1 Bay, Joint Task Force GTMO, or Joint Medical Group GTMO?

2 The answer is no.

3 Have you consulted or advised on the use of enhanced  
4 interrogation techniques? Likewise, have you ever consulted or  
5 advised on interrogations generally?

6 I have not been involved in enhanced interrogation  
7 techniques. In my general role as both -- or in my general role as a  
8 trial practitioner, both as government and defense counsel, I have  
9 had experience in advising law enforcement or clients on subject  
10 interviews; however, I do not have any experience with intelligent  
11 operational interrogations.

12 Question 5: As a SAUSA, your primary task appears to have  
13 been environmental law; however, did you ever work or consult or act  
14 as second chair on any criminal cases during your time as a SAUSA for  
15 the Department of Justice? If so, please list those cases and what  
16 criminal allegations were involved.

17 When -- so I have been detailed as a SAUSA from 2009 to 2011  
18 while I was a first assignment captain, or an O-3, at Goodfellow Air  
19 Force Base in San Angelo, Texas. In that role I prosecuted civilians  
20 in the local magistrate court who committed infractions on the  
21 military installation. Generally, the infractions consisted of drug  
22 possession, driving under the influence, and shoplifting. I don't  
23 remember any of the specific case names or, even more to the fact,

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1 any of the specific details of those cases.

2 Now, in 2018 and '19, I was detailed to the Department of  
3 Justice in the environmental and natural resources division,  
4 specifically the environmental defense section. In that capacity, I  
5 was detailed to cases in federal district courts where the United  
6 States was the named defendant, mostly in cases under the  
7 Comprehensive Environmental Response Compensation and Liability Act,  
8 otherwise known as CERCLA.

9 Question 6: As a prior defense attorney, did you represent  
10 any clients in murder cases? If so, can you tell us about the  
11 circumstances of that case and how you prepared that case for  
12 eventual trial or resolution?

13 No. However, I did represent a codefendant who was charged  
14 as an accessory to murder. The companion murder case was a  
15 noncapital case. However, I prepared for that case, and the  
16 strategic decisions I made in the representation of my client are  
17 protected by the attorney work product and the attorney-client  
18 communications privileges.

19 Generally, however, I can say that my role as a defense  
20 counsel in preparing a case for trial or other resolution was to  
21 conduct an investigation that went above and beyond the government's  
22 criminal investigation.

23 Question 7: As a prior defense attorney, what role did you

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1 play in investigating cases? What role did you play in collecting  
2 mitigation evidence?

3 My first duty was to uncover the facts for myself. I  
4 interviewed witnesses, scrutinized digital and physical evidence,  
5 consulted experts, and tested every part of the government's  
6 narrative. I never assumed their file told the full story.

7 At the same time, I built a mitigation record that explained  
8 who my client was beyond the allegation. I gathered personal  
9 history, performance records, treatment documentation, and character  
10 evidence to present a complete human picture.

11 These dual responsibilities, investigation and mitigation,  
12 ensured I protected my client's rights, challenged the government's  
13 case, and secured the fairest outcome possible.

14 Question 8: Have you ever been aboard NSGB prior to this  
15 assignment? If so, when and what were the details of that travel?

16 The answer is no.

17 That concludes the fifth topic.

18 Lieutenant Burns, do you have any follow-up questions on  
19 this topic?

20 DC [LT BURNS]: No, Your Honor.

21 MJ [LtCol SCHRAMA]: Mr. Trivett?

22 MTC [MR. TRIVETT]: I do not, sir.

23 MJ [LtCol SCHRAMA]: The sixth topic is future career plans.

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1           Question 1 under that topic is: What is your anticipated  
2 retirement?

3           As I've mentioned previously in the government's questions,  
4 I have no plans to retire at this point. I have more than three  
5 years before I would become eligible to retire and have made no  
6 decision in that regard.

7           Question 2: When are you next eligible to submit a board  
8 packet to seek promotion to colonel? Do you plan to submit such a  
9 packet?

10           My colonel board or O-6 board is in March of 2026, and I am  
11 eligible for promotion at that board.

12           Question 3: Do any further career plans after military  
13 retirement include seeking employment with the Department of Justice?

14           At this time I have no post-retirement plans for employment.

15           Question 4: Do you have any future plans to seek employment  
16 with the executive branch?

17           Again, at this time, I have no post-retirement plans for  
18 employment.

19           That concludes the sixth topic.

20           Lieutenant Burns, any follow-up questions?

21           DC [LT BURNS]: No, Your Honor.

22           MJ [LtCol SCHRAMA]: Mr. Trivett?

23           MTC [MR. TRIVETT]: No, sir.



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1 MJ [LtCol SCHRAMA]: We will now turn to the seventh topic,  
2 which is reactions to 9/11.

3 Question 1: Where were you when 9/11 happened?

4 As I stated earlier, I was a student at Georgetown  
5 University and on campus on September 11, 2001.

6 Question 2: What do you recall being your reaction to the  
7 event?

8 As I mentioned previously, generally I remember the day  
9 being surreal. I felt bad for the people associated with the events  
10 of those days and for those who lost loved ones.

11 Question 3: Did you volunteer or participate in any efforts  
12 to clean up, work with victim family members, or otherwise provide  
13 support to the local community after 9/11?

14 The answer is no.

15 Question 4: Did you know anyone or were you, yourself,  
16 personally affected by the events of 9/11?

17 I was not personally affected by the events of 9/11 other  
18 than those conditions that all people experience, such as tighter  
19 security at the airport and street closures, for example. There was  
20 nothing about that day that would affect my ability to be impartial  
21 in this case.

22 As I mentioned in the government voir dire questions, I was  
23 aware of a Georgetown football player who died on 9/11. However, as

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1 I already discussed, this experience would in no way affect my  
2 adherence to and application of the law and the rule applicable to  
3 these commissions proceedings.

4 That concludes the seventh topic.

5 Lieutenant Burns, any follow-up questions?

6 DC [LT BURNS]: No, Your Honor.

7 MJ [LtCol SCHRAMA]: Mr. Trivett?

8 MTC [MR. TRIVETT]: No, sir.

9 MJ [LtCol SCHRAMA]: We'll now turn to the eighth topic,  
10 higher level education. For my school of law, the question was:  
11 What organizations were you a member of during law school?

12 The only organization I can recall being a member of was the  
13 student bar association.

14 Question 2: Did you have to author any papers or conduct  
15 any presentations as a requirement for course completion or  
16 graduation? If so, what were the topics?

17 The answer is no. I didn't complete anything other than the  
18 general requirements for any of my individual course requirements.

19 Question 3: Did you practice as an intern or extern during  
20 law school? If so, where and what duties did you have?

21 During my first summer between my 1L and 2L year, I interned  
22 at the Governor of Rhode Island Donald Carcieri's office. I worked  
23 with his legal counsel on a variety of general law issues. My second

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1 summer between my 2L and 3L year, I interned with the United States  
2 Army JAG Corps.

3 Under the LLM George Washington section, Question 1: Did  
4 you write a final paper for any course as a requirement to obtain  
5 your LLM? And if so, what was the topic of that?

6 My answer is yes. My thesis to obtain my LLM explored the  
7 governmental cleanup and litigation of perfluorooctanoic acid, PFOA,  
8 and perfluorooctane sulfonate, or PFOS, chemicals.

9 And question 2: Did you give any oral presentations about  
10 9/11 or terrorism?

11 The answer is no.

12 And what extracurricular organizations, if any, did you  
13 participate or lead?

14 The answer is none.

15 For Air Command and Staff College, Question 1: What courses  
16 did you take? Specifically, did you take any course that focused on  
17 9/11 or terrorism?

18 I took the required courses for the online version of the  
19 Air Command and Staff College master's program. I do not recall any  
20 of those courses being focused on 9/11 or terrorism.

21 Did you write a final paper for any course as a requirement  
22 to graduate? If so, what was the topic of that paper?

23 There was no thesis requirement to complete this course;

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1 however, in one of my classes I explored the concept of the  
2 possibility of the adoption of a new punitive article under the  
3 Uniform Code of Military Justice.

4 Later, I used that paper and submitted it to *War on the*  
5 *Rocks*, which ultimately published the piece in July of 2023.

6 Question 3: Did you give any oral presentations about 9/11  
7 or terrorism?

8 The answer is no.

9 And what extracurricular organizations, if any, did you  
10 participate in or lead?

11 Again, as I mentioned, none. That course was virtual.

12 William & Mary and Bristol County Community College, what  
13 courses did you teach at William & Mary?

14 While I was there, I taught a -- or I still teach a military  
15 law course and an environmental law course. The military law course  
16 was a seminar course for 2Ls and 3Ls. For the class, I used the  
17 textbook by Eugene Fidell, Brenner Fissell, Franklin Rosenblatt, and  
18 Dwight Sullivan, which is the military justice case and materials.

19 The last chapter on the book concerns military commissions.  
20 That chapter includes a very brief history of the modern military  
21 commissions and has the Hamdi case as an excerpt.

22 Typically, I would assign this chapter for reading, but we  
23 did not typically cover this reading in class because it did not

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1 logically correspond with the other chapters and normally fell on the  
2 specific class where I would have a guest lecturer.

3 What courses did you teach at Bristol County Community  
4 College?

5 I taught the Introduction to English and Introduction to  
6 Writing.

7 Did you organize or run any extracurricular groups while at  
8 either location?

9 The answer is no.

10 That concludes the eighth topic.

11 Lieutenant Burns, any follow-up questions?

12 DC [LT BURNS]: Yes, Your Honor. During the military law  
13 course, have you ever had a student come up and ask you about  
14 military commissions, or have you ever had any private discussions  
15 with students about it who were inquisitive?

16 MJ [LtCol SCHRAMA]: No.

17 DC [LT BURNS]: Thank you, Your Honor.

18 MJ [LtCol SCHRAMA]: Mr. Trivett, any follow-up questions?

19 MTC [MR. TRIVETT]: Sir, in relation to your answer in 3(ii),  
20 whether you wrote a final paper for any course, you indicated that  
21 you wrote a paper that later got published proposing a new punitive  
22 article to the UCMJ?

23 MJ [LtCol SCHRAMA]: Yes.

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1 MTC [MR. TRIVETT]: What article did you propose?

2 MJ [LtCol SCHRAMA]: It would have been a new article targeted  
3 at domestic extremism in the military.

4 MTC [MR. TRIVETT]: And is that paper available for us to  
5 review?

6 MJ [LtCol SCHRAMA]: It is. If you Google "Schrama" and "*War*  
7 *on the Rocks*," it will pop up.

8 MTC [MR. TRIVETT]: Thank you.

9 MJ [LtCol SCHRAMA]: We will now turn to the ninth topic,  
10 which is deployments.

11 Question 1: What interaction did you have with people off  
12 base in Kuwait?

13 I would say I had minimal interaction with people. I did  
14 several times. I went off base to explore the local cuisine or  
15 tourist locations to learn more about the place and culture.

16 Question 2: What experience did you have with Islam at this  
17 time? Have you had another experience with Islam?

18 I have had no experience with Islam or with any other  
19 religion that would any way impact my adherence to and application of  
20 the law and the rules applicable to these commission proceedings.

21 Question 3: What types of matters did you handle as an SJA  
22 in Kuwait?

23 My responsibilities were comparable to a base-level staff

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1 judge advocate at a CONUS installation. I handled military law,  
2 ethics, civil law, and government procurement. I will note that  
3 detainee operations occasionally passed through the installation as a  
4 stopping point; however, I did not advise my commander on detainee  
5 operations and I had no involvement in the detainee operations.

6 I did, however, provide our security forces individuals a  
7 generic rules of engagement briefing, as they would sometimes augment  
8 security on the perimeter of the tarmac as the transport planes  
9 landed and before taking off again.

10 Southeast Asia. What did you do on your mission in  
11 Southeast Asia?

12 So in reference to Southeast Asia, this is actually the  
13 Kuwait deployment I just discussed. For a period of time, the  
14 location in Kuwait was not publicly disclosed. So in several places  
15 in my record it may still refer to Southeast Asia instead of Kuwait.  
16 But Southeast Asia and Kuwait can be used interchangeably in regards  
17 to my records.

18 What years were you in Southeast Asia?

19 I spent approximately seven months in Kuwait and Southeast  
20 Asia from January 2019 through August 2019.

21 What organizations or personnel did you work with there?

22 I did not liaise with any organizations or personnel not  
23 otherwise associated with the normal operations of a base-level staff

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1 judge advocate.

2 What was the mission?

3 Kuwait serves as the primary tactical airlift hub and  
4 gateway for delivering assets for the U.S. Central Command.

5 Why is this mission not on your military biography?

6 As I just explained, it is. It's referenced in my biography  
7 as serving as the staff judge advocate for the 386th Air  
8 Expeditionary Wing Ali Al Salem Air Base Kuwait.

9 That concludes the ninth topic. Do any of the parties have  
10 any follow-up questions on this topic?

11 Lieutenant Burns?

12 DC [LT BURNS]: Your Honor, I would just say thanks for  
13 clearing that up. We were confused about the Southeast Asia thing.  
14 But no, Your Honor, no follow-ups.

15 MJ [LtCol SCHRAMA]: Thank you.

16 Mr. Trivett?

17 MTC [MR. TRIVETT]: None from me, sir.

18 MJ [LtCol SCHRAMA]: Thank you.

19 The tenth topic is commendations.

20 Question 1: When did you receive the Global War on  
21 Terrorism Expeditionary Medal and what did you receive it for?

22 I received it in 2019 for serving six months or more at an  
23 installation that qualified for receipt of the medal, specifically,



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1 for me, the deployment I just discussed to Kuwait.

2 What did you receive the Military Outstanding Voluntary  
3 Service Medal for?

4 That was for my volunteer efforts from 2014 through 2017  
5 with several youth sport organizations. In my time in Maryland, I  
6 participated in and ran, for a period, several organizations whose  
7 mission was to teach young people the basic skills associated with a  
8 particular sport and the benefits of physical fitness.

9 That concludes the tenth topic.

10 Lieutenant Burns, any follow-up questions?

11 DC [LT BURNS]: No, Your Honor.

12 MJ [LtCol SCHRAMA]: Mr. Trivett?

13 MTC [MR. TRIVETT]: No, sir.

14 MJ [LtCol SCHRAMA]: With that, I will turn to the 11th topic,  
15 which is mental health.

16 Question 1: What prior experience do you have with clients  
17 with mental illness? What did you do to accommodate their mental  
18 illness during your representation of or interactions with these  
19 clients?

20 In my prior professional roles, I regularly encountered  
21 individuals who had experienced mental health concerns. In those  
22 settings, I worked to ensure they were treated with dignity,  
23 patience, and respect. I adjusted interview pacing, allowed breaks

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1 when needed, and created an environment that minimized  
2 retraumatization.

3 As a judge, my responsibility is different. I do not  
4 interact with the parties in the manner that an advocate or  
5 investigator would. My role is to ensure a fair, orderly process and  
6 to apply the law impartially. I will follow the applicable rules and  
7 make appropriate adjustments within my judicial authority.

8 Question 2: What prior experience do you have with clients  
9 or victims of trauma? What did you do to try to accommodate their  
10 past traumatic experiences?

11 In my prior professional roles, I regularly encountered  
12 individuals who had past traumatic experiences. In those settings, I  
13 worked to ensure they were treated with dignity, patience, and  
14 respect. I adjusted interview pacing, allowed breaks when needed,  
15 and created an environment that minimized retraumatization.

16 As a judge, as I mentioned, my responsibility is different.  
17 I do not interact with parties in the manner that an advocate or  
18 investigator would. My role is to ensure a fair, orderly process and  
19 to apply the law impartially.

20 If any party or witness requires accommodations, I will  
21 follow the applicable rules and make appropriate adjustments within  
22 my judicial authority.

23 Question 3: Did you have any defendants before you during

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1 courts-martial with either trauma experiences or mental health  
2 issues? How did you accommodate them?

3 As discussed earlier, if a defendant required  
4 accommodations, I followed the applicable rules and made appropriate  
5 adjustments within my judicial authority.

6 That concludes the 11th topic.

7 Do any of the parties have any follow-up questions?

8 Lieutenant Burns?

9 DC [LT BURNS]: No, Your Honor.

10 MJ [LtCol SCHRAMA]: Mr. Trivett?

11 MTC [MR. TRIVETT]: I do not, sir.

12 MJ [LtCol SCHRAMA]: We will now turn to the 12th topic, which  
13 is judicial guidance.

14 Question 1: During your prior experience as a military  
15 judge, what guided you in how you analyzed and dissected  
16 courts-martial?

17 A judge should not disclose a personal judicial philosophy  
18 during the voir dire with counsel. The judge's role at that stage is  
19 to ensure that an impartial panel maintain the integrity of the  
20 process -- excuse me -- and avoid any appearance of bias.

21 When a judge describes how they typically rule, what  
22 arguments they prefer, or how they interpret particular doctrines,  
23 they risk signaling predispositions on contested issues. That, in

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1 turn, invites strategic maneuvering that undermines confidence and  
2 neutrality.

3 Their proper approach is measured and limited. The judge  
4 explains the legal standards that govern the proceeding and assures  
5 both sides of impartiality.

6 Question 2: Are you familiar with the American Bar  
7 Association's Model Code of Judicial Conduct? Have you reviewed it?  
8 Do you have any disagreement with adhering to it?

9 I am familiar with the American Bar Association's Model Code  
10 of Judicial Conduct. I have no specific disagreement with the Model  
11 Code. However, I acknowledge that the rules are not binding. I will  
12 adhere to those ethical rules that are binding upon this court such  
13 as my state bar requirements and my service court obligations.

14 Question 3: Do you use any judicial resources to guide your  
15 decisions or actions in a case, for example, the military law desk  
16 book or any other secondary resources for military judges  
17 specifically?

18 I have consulted the federal canons of judicial conduct and  
19 ethics, the Manual for Military Commissions, the applicable statutes,  
20 applicable case law, the Military Judge's Benchbook in my service  
21 court capacity, the UCMJ, and my service court ethics mandates.

22 Question 4: Were you able to rely on law clerks or other  
23 servicemembers to summarize materials for you?

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1           The answer is no.

2           Question 5: Were you able to rely on law clerks or  
3 servicemembers to write orders?

4           The answer is no.

5           Question 6: Did any prosecutor or defense attorney file a  
6 motion to recuse you from your role as military judge?

7           The answer is no.

8           Question 7: What was the most difficult case you had before  
9 you as a military judge and why?

10           I would say that all cases I have presided over involved  
11 complex factual issues and significant emotional weight for everyone  
12 involved. My role is to balance the need for a fair, orderly  
13 proceeding with the reality that the parties, including witnesses,  
14 were dealing with sensitive and sometimes traumatic experiences.

15           I ensured that the rules were followed, that each side had a  
16 full and fair opportunity to present its case, and that the members  
17 received clear, accurate instructions while safeguarding the dignity  
18 of the courtroom and the well-being of those participating.

19           That concludes the 12th topic.

20           Do any of the parties have any follow-up questions?

21           Lieutenant Burns?

22           DC [LT BURNS]: No, Your Honor.

23           MJ [LtCol SCHRAMA]: Mr. Trivett?

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1 MTC [MR. TRIVETT]: I do not, sir.

2 MJ [LtCol SCHRAMA]: And the final topic, membership in  
3 outside organizations.

4 What organizations are you a member of?

5 Nothing that I believe is relevant to this case. Outside of  
6 my military practice, as I've mentioned, I teach a law school course  
7 at the William & Mary Law School, and I am involved in several of my  
8 children's youth sports organizations and teams.

9 Question 2: What organizations, if any, are your immediate  
10 family members members of?

11 Again, nothing that is relevant to this case. Generally,  
12 their organizations are related to school activities or school  
13 employment.

14 That concludes the 13th topic.

15 Lieutenant Burns, any follow-up questions?

16 DC [LT BURNS]: No, Your Honor.

17 MJ [LtCol SCHRAMA]: Mr. Trivett?

18 MTC [MR. TRIVETT]: No, sir.

19 MJ [LtCol SCHRAMA]: That concludes the written questions. I  
20 will now entertain any additional questions from the parties.

21 Mr. Trivett, I'll ask you first. Do you have any other  
22 further questions of anything that we haven't otherwise discussed?

23 MTC [MR. TRIVETT]: The prosecution has none, sir.

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1 MJ [LtCol SCHRAMA]: Thank you.

2 And, Lieutenant Burns, I'll ask you. Do you have any other  
3 questions outside of what we have already discussed?

4 DC [LT BURNS]: Yes, Your Honor.

5 Did you read *The New York Times* article by Karen [sic]  
6 Rosenberg naming you as the fifth military judge in this case?

7 MJ [LtCol SCHRAMA]: I did.

8 DC [LT BURNS]: Do you have any strong reactions to reading  
9 that article about yourself?

10 MJ [LtCol SCHRAMA]: I do not.

11 DC [LT BURNS]: Have you ever been a part of a case that has  
12 generated positive or negative sentiment in the public at large?

13 MJ [LtCol SCHRAMA]: May argue that all cases can conjure up  
14 sentiment at the public at large. But what I think I'm asking is,  
15 anything of this magnitude? And the answer would be no.

16 DC [LT BURNS]: Your Honor, did you follow the news coverage  
17 about the pretrial agreements in this case in 2024?

18 MJ [LtCol SCHRAMA]: I did not follow it. However, on large  
19 scale, you know, open-source media, I remember seeing some articles  
20 about it.

21 DC [LT BURNS]: Did you see any -- did any of those news  
22 articles contain backlash from the public as a result, on the  
23 military commission?

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1 MJ [LtCol SCHRAMA]: I don't recall that, no.

2 DC [LT BURNS]: Are you aware from that news coverage that  
3 then-Secretary of Defense Lloyd Austin attempted to back out of those  
4 pretrial agreements?

5 MJ [LtCol SCHRAMA]: Yes.

6 DC [LT BURNS]: And are you aware that Judge McCall issued a  
7 ruling that, despite the Secretary of Defense attempting to back out  
8 of those pretrial agreements, they were still enforceable as real?

9 MJ [LtCol SCHRAMA]: In open-source media, I was not aware of  
10 that at the time. I will say subsequent to being detailed to this  
11 case, I am aware of that.

12 DC [LT BURNS]: And are you aware that in response to that  
13 ruling, Judge McCall received a letter from the National Association  
14 of Police Organizations requesting that he reconsider his opinion?

15 MJ [LtCol SCHRAMA]: I'm not aware of that at all.

16 DC [LT BURNS]: It's AE Exhibit 971.

17 So would public backlash, anger, or admiration, or any other  
18 sentiment affect your ability to make decisions in this case?

19 MJ [LtCol SCHRAMA]: No.

20 DC [LT BURNS]: What is the -- what is your understanding of  
21 your role -- sorry -- your relationship in this position to the  
22 Executive Branch?

23 MJ [LtCol SCHRAMA]: I don't have a relationship with the



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1 Executive Branch. I've been appointed to be the judge in this case  
2 and my role within that is to interpret the laws, the rules, and the  
3 applicable evidence before me in making impartial decisions.

4 DC [LT BURNS]: And are you aware that several members of  
5 congress signed and sent a letter to former President Biden urging  
6 the Executive Branch not -- to not enter into any pretrial agreements  
7 which would remove the possibility of the death penalty in this case?

8 MJ [LtCol SCHRAMA]: I am aware of that now.

9 DC [LT BURNS]: And, sir, you've taken an oath as a military  
10 officer?

11 MJ [LtCol SCHRAMA]: Correct.

12 DC [LT BURNS]: And part of that oath is to defend the  
13 constitution from all enemies, foreign and domestic?

14 MJ [LtCol SCHRAMA]: Yes.

15 DC [LT BURNS]: Does that oath require you to follow all  
16 orders from the Executive Branch without question?

17 MJ [LtCol SCHRAMA]: In my judicial capacity or in my capacity  
18 as an officer?

19 DC [LT BURNS]: I would say both, Your Honor.

20 MJ [LtCol SCHRAMA]: In my role as an officer, I have the duty  
21 to obey all lawful orders. In my judicial role, I think my answer is  
22 what I've previously stated, right? I have been appointed this to be  
23 an impartial arbiter. And my role as a judge is to impartially rule

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1 upon, through my own judicial thought process, the issues that are  
2 before the court.

3 DC [LT BURNS]: Yes, Your Honor. And then separate from that  
4 oath, have you taken an oath as a military judge?

5 MJ [LtCol SCHRAMA]: Yes.

6 DC [LT BURNS]: And does that oath require you to follow the  
7 orders of the Executive Branch in forming opinions and rulings on  
8 issues in this case?

9 MJ [LtCol SCHRAMA]: I would have -- I mean, I have ethical  
10 obligations -- right? -- to follow the law set before me. Again, I  
11 think it's separate from my role as an officer. I don't believe  
12 that's inherent in my judicial code.

13 DC [LT BURNS]: Yes, Your Honor.

14 Do you feel that you'll be able to ignore the public  
15 opinions of the Executive Branch, the strongly worded letters from  
16 congress, and express public sentiment when making decisions in this  
17 case?

18 MJ [LtCol SCHRAMA]: Yes. They would have no bearing on my  
19 decision-making process.

20 DC [LT BURNS]: And do you agree that, as Mr. al Baluchi sits  
21 in this courtroom today, he's innocent of the charges referred  
22 against him?

23 MJ [LtCol SCHRAMA]: Yes.

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1 DC [LT BURNS]: So if later today the Secretary of Defense  
2 ordered the Convening Authority to enter a finding of guilty against  
3 Mr. al Baluchi and then sentenced him to be executed at dawn  
4 tomorrow, in your opinion, what would your oath require you to do?

5 MJ [LtCol SCHRAMA]: Lieutenant Burns, I'm not sure I  
6 understand that question.

7 DC [LT BURNS]: If the Executive Branch were to order the  
8 execution of Mr. al Baluchi tomorrow without the completion of this  
9 case, what would your oath require you to do in that situation?

10 MJ [LtCol SCHRAMA]: I mean, I think as a military judge I  
11 would use all of the rules and apparatuses within my discretion to do  
12 what was required to do under the applicable rules and law.

13 DC [LT BURNS]: That's all the questions that I have, Your  
14 Honor.

15 MJ [LtCol SCHRAMA]: Thank you, Lieutenant Burns.

16 Mr. Trivett, does that prompt any additional questions from  
17 you?

18 MTC [MR. TRIVETT]: It does not, sir.

19 MJ [LtCol SCHRAMA]: Okay. Counsel, let's do this: We are  
20 getting -- we've concluded voir dire, but we are also getting close  
21 to our 1500 break time. So what we're going to do is this: We're  
22 going to break early. We'll come back on the record -- we'll say  
23 1530. That will give everyone the appropriate amount of time to take

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1 a break and then also kind of orient what else we may be able to take  
2 up either today or over the next few days. Okay?

3 With that, this court's in recess.

4 **[The R.M.C. 803 session recessed at 1438, 15 December 2025.]**

5 **[The R.M.C. 803 session was called to order at 1532,**  
6 **15 December 2025.]**

7 MJ [LtCol SCHRAMA]: All parties previously present are again  
8 present.

9 First item: Challenges. Mr. Trivett, on the break, I don't  
10 know -- and this court is called to order.

11 Mr. Trivett, on the break, I'm not sure if you've had the  
12 opportunity to discuss challenges. With that, I don't know if you  
13 are ready to exercise challenges. And if so, do you have any  
14 challenges of me?

15 MTC [MR. TRIVETT]: We are ready to exercise, sir, and we have  
16 no challenge.

17 MJ [LtCol SCHRAMA]: Thank you.

18 Mr. Connell, I'll ask you the same item. I don't know if  
19 you are ready to exercise any challenges. And if so, do you have any  
20 challenges of me?

21 LDC [MR. CONNELL]: Sir, we are ready, and we have no  
22 challenge.

23 MJ [LtCol SCHRAMA]: Thank you.

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1           Counsel, the second item that I would at least like to  
2 address is I have put out my TCO for the remaining resolution of the  
3 LHM statements. The government's response to that is due the 23rd of  
4 December.

5           Now, I realize there has been some opposition regarding my  
6 scheduled dates by defense. My plan moving forward with that is I'm  
7 going to wait until I receive the government response. And based on  
8 that response, essentially what's present and how voluminous it is,  
9 things of that nature, I will then make the subsequent decision based  
10 on the defense ability to respond to that by December 30th, and then  
11 also my perceived ability for all parties to move forward in the  
12 first leg of that in January. So I will take all those items into  
13 consideration as I rule on those defense motions.

14           Next item. Trial Counsel -- oh, Mr. Trivett, go ahead.

15           MTC [MR. TRIVETT]: Yes, sir. We are hoping to have all of  
16 those responses to the TCO filed by Friday. That's our aspirational  
17 goal. That's before the 23rd. I just wanted to raise that to  
18 everyone's attention.

19           MJ [LtCol SCHRAMA]: Thank you. And obviously having it in  
20 sooner will better orient the court as to a future direction.

21           MTC [MR. TRIVETT]: Thank you.

22           MJ [LtCol SCHRAMA]: Counsel, what I'd like to do at this time  
23 is ----

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1 LDC [MR. SOWARDS]: Sorry.

2 MJ [LtCol SCHRAMA]: Oh, Mr. Sowards, I apologize. Go ahead.

3 LDC [MR. SOWARDS]: No, no, no. Quite all right. Quite all  
4 right.

5 Given Mr. Trivett's ambitious schedule, assuming he can  
6 comply with that, I didn't understand the court to have -- or rather,  
7 the commission to have indicated an opportunity for defense reply.  
8 And I was just wondering, since it's our -- a motion, ordinarily the  
9 reply wouldn't be due until the 30th of December, which I can  
10 understand is a little impracticable for your planning purposes and  
11 to advise us of what is required.

12 So if they are planning to file it by -- by Friday, trying  
13 to work with the dates, whether we could have until the -- sometime  
14 the following week to file a reply, if we deem it necessary. And if  
15 not, we'll -- we would inform the commission as soon as possible that  
16 we're not replying.

17 MJ [LtCol SCHRAMA]: Okay.

18 LDC [MR. SOWARDS]: Would that be acceptable to Your Honor, or  
19 have I just taken us into Christmas?

20 MJ [LtCol SCHRAMA]: What -- and, Mr. Sowards, just so I'm  
21 clear, there's two different replies. There's the one that  
22 is -- that is due the 30th by defense. Are you referring to that  
23 one?

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1           LDC [MR. SOWARDS]: No, and I'm sorry if I'm not being clear.  
2 We filed our motion to both cancel the January hearing on -- that  
3 Your Honor had described and also to relieve us of the obligation to  
4 file by the 30th our survey or summary of the entire record.

5           So we did all of that on the 9th. And as we calculated it,  
6 that would have made the government's response due by the  
7 14th -- let's see, I'm sorry -- by the 23rd, which would have been  
8 their due date for the other item. That was their -- their  
9 identification of the record that -- everything that supported  
10 voluntariness.

11           And then just coincidentally, a week that would be  
12 contemplated by the rules for us to file a reply to their opposition  
13 to our motion to cancel would be due on the 30th, which is also  
14 coincidentally the same date that we were supposed to be doing our  
15 omnibus review of the record.

16           So for purposes of assisting the commission, if -- if it's  
17 persuaded to defer, particularly our obligation on the 30th, perhaps  
18 it would assist you if they are filing this Friday that we file  
19 sometime before the 24th or 25th of next week.

20           MJ [LtCol SCHRAMA]: I'm not going to mandate that you do.

21           LDC [MR. SOWARDS]: I understand.

22           MJ [LtCol SCHRAMA]: But if you do that, that would certainly  
23 assist the court.

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1 LDC [MR. SOWARDS]: Okay. Very good. Thank you, sir.

2 Appreciate it.

3 MJ [LtCol SCHRAMA]: Thank you, Mr. Sowards.

4 Okay. The second thing that I would like to do is  
5 this -- or really the third thing now, is it might be appropriate to  
6 pause in place. And what I would ask trial and defense counsel to do  
7 is if there's an opportunity to discuss with the other, I'm curious  
8 if both sides have an agreement on any issues that are ripe for us to  
9 either discuss or to take up either in the time remaining today or in  
10 the time that we have scheduled while we're down here for Tuesday and  
11 Thursday.

12 So you might have those items that you both can agree on  
13 that might be timely and a good use of our time. If there's nothing  
14 else specific to take up, we'll reserve those times on Tuesday and  
15 Thursday for two purposes.

16 One is something may pop up through the course of the week  
17 that we could come into an open court session and take up on the  
18 record. Or conversely, as I've stated earlier in my prelogue, you  
19 know, as long as the guard force is able to accommodate the accused  
20 and counsel, obviously, if we're not in court, this time could be  
21 used appropriate to be in here for any discussions with counsel.

22 So with that, I'll give counsel an opportunity in place.

23 Yeah. Please go ahead, Mr. Engle.



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1 LDC [MR. ENGLE]: Thank you, Your Honor. Just as we're having  
2 that discussion, I wanted to put this out there because you had  
3 broached the possibility earlier today of doing ex parte hearings to  
4 hear defense theories, which is obviously -- in our recent motion, we  
5 suggested that, and we think that's a wonderful idea.

6 You had mentioned them -- doing them potentially, however,  
7 this week, which would be -- I don't think we could do that. I mean,  
8 there's a tremendous amount of work that goes into these things. And  
9 if we honestly were going to make it worth our time and yours, we  
10 need some time to pull that together.

11 We are perfectly willing, regardless of what else happens in  
12 January, to use that time to do that. We would welcome the  
13 opportunity to do it. So I just wanted to put that out there as  
14 we're contemplating scheduling, that we would be very much inclined  
15 to take you up on that opportunity.

16 MJ [LtCol SCHRAMA]: Okay. Thank you, Mr. Engle. I  
17 appreciate the insight.

18 Okay. With that, Counsel, Mr. Trivett, if you can get with  
19 counsel for a moment and see if there's anything we can -- that's  
20 ripe for our discussion. I'll give you a few minutes, and when  
21 you're ready, let me know.

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

23 **[Counsel conferred.]**

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1   **[The military judge conferred with courtroom personnel.]**

2           MJ [LtCol SCHRAMA]:   Discussing for a moment -- Mr. Trivett,  
3   I'll ask you, in your conferring, is there any sort of consensus on  
4   issues that we might be able to take up today or heading into  
5   tomorrow?

6           MTC [MR. TRIVETT]:   I think Mr. Connell would like to make  
7   some comments on the NGO motion -- or objection.   We have an update  
8   we can provide the commission at that time after he makes those  
9   statements.

10          MJ [LtCol SCHRAMA]:   Okay.

11          Anything else, Mr. Trivett?

12          MTC [MR. TRIVETT]:   I think that's the subject of them  
13   continuing to confer on their own.

14          MJ [LtCol SCHRAMA]:   Okay.

15   **[Counsel conferred.]**

16          MJ [LtCol SCHRAMA]:   Mr. Sowards, go ahead.

17          LDC [MR. SOWARDS]:   **[Microphone button not pushed, no**  
18   **audio]** ---- corrected, but I believe -- oh, I'm sorry.

19          I'm prepared to stand corrected, but I believe the only  
20   thing that we have to go forward on is whatever Mr. Connell is going  
21   to say on the issue just raised by Mr. Trivett ----

22          MJ [LtCol SCHRAMA]:   Okay.

23          LDC [MR. SOWARDS]:   ---- on the NGOs.

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1 MJ [LtCol SCHRAMA]: I will -- I'm going to allow Mr. Connell  
2 in a moment to speak on that. If either yourself or the other  
3 learned counsel would like to impart anything, you may. But I  
4 understand your current position.

5 LDC [MR. SOWARDS]: I appreciate it, Your Honor. Thank you  
6 for saying that. Thank you, sir.

7 MJ [LtCol SCHRAMA]: I know I've heard with -- from Mr. Engle  
8 regarding the ex parte theories of the defense case.

9 For the other learned counsel, if that is something that you  
10 are prepared to do while we are in station this week, if you notify  
11 the court, if that's something that you would like to do either  
12 Thursday or Friday, I'm certainly amenable to that. Similar to  
13 Mr. Engle, if you wish to defer that to a later time, then that's  
14 appropriate also.

15 With that, Mr. Connell, are you ready to speak to your  
16 motion on the NGOs?

17 LDC [MR. CONNELL]: I am, sir, but I'm also prepared to  
18 address the ex parte presentation issue. We could do our ex parte  
19 presentation on Thursday.

20 MJ [LtCol SCHRAMA]: Okay. We'll plan for that, then.

21 LDC [MR. CONNELL]: Sir, I recognize that the procedural  
22 posture is a little bit odd. We objected, and essentially, the  
23 military commission noted our objection and is giving us this

1 opportunity to argue, which we appreciate.

2           This, as the military commission may know, is the 55th  
3 hearing in this iteration of the commission. And for the first 54 of  
4 those hearings, the section of the gallery which is over my left  
5 shoulder, which you looked to to your right, was occupied by  
6 nongovernmental observers, that is, representatives of national and  
7 international groups who applied to the Department of Defense and  
8 were, pursuant to rule, transported to Guantanamo Bay to represent  
9 the interests of the public in observing these proceedings in person.

10           The last hearing, for example, the 54th hearing, there was a  
11 representative of a victim community, the 9/11 Families for Peaceful  
12 Tomorrows, who described their experience at AE 978 Attachment E.  
13 There were two observers from the National Institute for Military  
14 Justice; there was an observer from Georgetown University; and there  
15 were two observers from Judicial Watch. So a wide variety of people  
16 from a wide variety of interests who came at the case with different  
17 perspectives, but all representing the interests of the public.

18           Now, over the past 13 years, there have been hundreds of NGO  
19 observers. Some of their experiences are reflected in declarations  
20 that we submitted in the 978, such as the Association of Defence  
21 Counsel for International Courts and Tribunals found at AE 978  
22 Attachment C, and the Bar Human Rights Committee of England and Wales  
23 at Attachment D and, of course, Peaceful Tomorrows itself at AE 978

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1 Attachment E.

2 Now, on 6 February of 2025, all of that changed. The  
3 director of the Office of Military Commissions issued a memorandum  
4 found in the record at AE 978 Attachment B which suspended, ended  
5 for -- at least for a time, NGO travel to military commissions  
6 hearings.

7 The director of the Office of Military Commission cited two  
8 bases for these -- for this affirmative act ending NGO representation  
9 at Guantanamo. The first was resource constraints. The resource  
10 constraints around NGOs are the tents here at Camp Justice where  
11 they've traditionally stayed; seats on the flight, such as the 767  
12 that we'll be flying back on Saturday which carries up to 218  
13 passengers; and seats in the gallery, which are abundant.

14 Resource constraints have never been an issue for the NGOs  
15 which have traveled before, from initially in 2013 up to 14 NGOs, and  
16 then in 2018 that policy changed and was cut to 7 NGOs.

17 But the second reason that the director of Office of  
18 Military Commissions cited was, quote, current operational  
19 priorities. That is a policy decision as to whether public  
20 participation is important enough to merit the investment of the  
21 Office of Military Commissions. Apparently, they decided that it  
22 wasn't.

23 But the regulations, Your Honor, are to the contrary, which

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1 require in-person attendance by representatives of national and  
2 international organizations. That's reflected in two elements of  
3 military commission law.

4           The first is R.M.C. 806 regarding a public trial.  
5 R.M.C. 806 provides that: Except as otherwise provided in the  
6 Military Commissions Act, military commissions shall be publicly  
7 held.

8           It then goes on to define "public." Rule 806(a) says that  
9 for purposes of this rule, public includes representatives of  
10 national and international organizations.

11           It gives three -- four limiting factors. Access to military  
12 commissions may be constrained by location, the size of the facility,  
13 physical security requirements, and national security concerns.

14           None of those come into play here. The location has not  
15 changed over the past 13 years. The size of the facility allows NGOs  
16 to sit in, either 7 or 14 or however many are considered appropriate.  
17 The physical security requirements are well under control, and  
18 national security concerns are addressed through other elements of  
19 Rule 806. They have traditionally been excluded when  
20 national -- when classified information is involved. The -- so none  
21 of those constraints apply under Rule 806.

22           The second rule, Regulation for Trial by Military Commission  
23 19-6, which governs spectators, is even more clear. It states, the

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1 policy of the Department of Defense, that, quote: The proceedings of  
2 military commissions shall be public to the maximum extent  
3 practicable. In general, all persons granted permission to attend a  
4 session, except those who may be required to give evidence, shall be  
5 admitted as spectators. It continues to make clear that -- we're  
6 talking about in-person representation.

7 The rule continues: The Office of Military Commissions  
8 shall coordinate travel and attendance of all spectators except news  
9 media representatives.

10 So when the government argues in its responsive briefing in  
11 the 978 series that remote access to video is sufficient, that  
12 decision has, in fact, already been made by governing regulation in  
13 the Rules for Military Commission and the Regulation for Trial by  
14 Military Commission.

15 But it's not simply a matter of public policy.  
16 Mr. al Baluchi himself has a personal right to a public trial, as the  
17 Court for Military Commission Review held in Ali v. United States  
18 found at 398 F.3d 1200, a 2019 case from the CMCR. And this military  
19 commission itself has addressed the issue of public trial and its  
20 relationship to in-person versus remote viewing.

21 In AE 007T, this military commission identified three  
22 elements which satisfy, in the military commission's view at that  
23 time, the right to a public trial. The first was public access to

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1 proceedings in person, which has been effectively ended for the  
2 national and international representatives by the department  
3 of -- excuse me -- the director of OMC's policy.

4           The second is by CCTV access -- oh, excuse me. There's one  
5 other thing that I want to say about that. Over my right shoulder,  
6 where the representatives of the victim family members sit, is also a  
7 much diminished group, unfortunately.

8           In 2018 and '19, the General Accounting Office did a review  
9 of the transparency of the military commissions. And in its response  
10 to that review, the government committed to bringing five victim  
11 family members plus one escort each for each hearing of the COLE and  
12 9/11 cases.

13           Now, that five victim family members and one escort each has  
14 been divided not for each the COLE and the 9/11 hearing, as the  
15 government committed in AE 007U Attachment B, but they've now divided  
16 that down into two groups, and so that each case only gets half the  
17 number of allocated seats for victim family members. And, of course,  
18 there are no NGOs.

19           Now, with respect to CCTV access, it continues unchanged at  
20 Fort Meade. But the situation has, in fact, changed at the Pentagon,  
21 which has much more limited press access than it once did. In fact,  
22 according to public reporting, 55 of the 56 press organizations,  
23 which access to the facility at the Pentagon, press credentials, at



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1 the time of the last hearing, no longer have that access. Even CCTV  
2 access is much diminished from where it was.

3 And then, of course, the third element that the military  
4 commission identified in AE 007T is the access through mc.mil. And I  
5 won't belabor the point now, but the long delays associated with  
6 release of substantive proceedings on mc.mil are the subject to the  
7 AE 551 series.

8 It was over a month for the release of the order suppressing  
9 Mr. al Baluchi's statements on the basis of involuntariness and  
10 torture, 942SSSS. And Mr. Al Bahlul testified on 20th of November.  
11 I wasn't able to watch that proceeding, but I'm still waiting for  
12 that transcript, hoping to review what he said.

13 So we did object to proceeding with voir dire. And that was  
14 in 987J. But I think, because we're talking about a tradition of  
15 public access, it's important to note that the previous four voir  
16 dires in this military commission were all attended in person by  
17 NGOs.

18 This was not a passive occurrence. This is an affirmative  
19 act of closure which was implemented by the director of the Office of  
20 Military Commissions.

21 In AE 007T, the military commission drew that distinction  
22 between simply the operation of external factors and an affirmative  
23 act by someone to partially close the proceedings, which is what

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1 happened here.

2 Now, of course, if a military judge in the military  
3 commission had prevented NGO attendance, in person, to open hearings,  
4 that would violate 10 U.S.C. 949d(c), which sets out certain  
5 requirements related to national security information in order to  
6 close a hearing. But it wasn't the military judge who did it. It  
7 was the director of the Office of Military Commissions who has  
8 arrogated themselves -- to themselves a right that the military judge  
9 would not enjoy.

10 That was the -- the right to attend public hearings was, in  
11 fact, the core holding of the Ali case from the Office of  
12 Military -- excuse me -- from the CMCR. And by this action by the  
13 director of Office of Military Commissions, a nonjudicial actor is  
14 doing what a military judge could not: implementing an affirmative  
15 act of partial closure to deny Mr. al Baluchi's right to public trial  
16 and the public their right to access these judicial proceedings.

17 Appropriately, Your Honor, we do object, but given that  
18 that -- the voir dire has already taken place, we would suggest that  
19 granting AE 978 is an appropriate action to restore this element of  
20 public trial to these proceedings.

21 MJ [LtCol SCHRAMA]: Thank you, Mr. Connell.

22 LDC [MR. CONNELL]: Thank you, sir.

23 MJ [LtCol SCHRAMA]: Mr. Trivett, I would offer you the

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1 opportunity in rebuttal if you're prepared. I know you have not yet  
2 filed a response to the motion.

3 You also mentioned that you had an update that you wanted to  
4 share. So I'll give you the opportunity to do that, also.

5 MTC [MR. TRIVETT]: Yes, sir. And our response is 978a (Gov),  
6 and so we did file that.

7 MJ [LtCol SCHRAMA]: I'm sorry. I misspoke. I apologize.

8 MTC [MR. TRIVETT]: That's fine. I just want to make sure  
9 that the prosecution's position is clear on our conferring with  
10 counsel. Understanding that the court's direction was to confer and  
11 see if there was any unanimity with counsel as to what we can go  
12 forward on, understanding that the defense are taking the position  
13 that, due to the ongoing litigation and appeals on the pretrial  
14 agreements, that they cannot go forward, that is clearly not the  
15 government's position.

16 We are ready anytime, anywhere to argue any motion or to  
17 answer any questions that the military judge gives at any point in  
18 time for anything that's currently on the docket. That's going to be  
19 our position now and that will be our position throughout the  
20 pendency of these proceedings.

21 We would just need perhaps 24 hours' notice just so we're  
22 aware of what it is that you would like us to refresh our  
23 recollection on as far as the appellate exhibits that were filed and

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1 be able to answer any questions.

2 So our position is clear in the previous filings that this  
3 commission has denied the stay. The panel at the D.C. Circuit has  
4 denied the stay. Relying on the concession of the government  
5 attorney at that point that we wouldn't find any continuing  
6 litigation after August 1st to be in any way a violation of pretrial  
7 agreements that we believe have been voided.

8 So that's our position. We'll obviously take the direction  
9 from the commission. But whenever you want any questions answered or  
10 any argument, we're ready, willing, and able to do that. So I want  
11 to make sure that was clear that we weren't acquiescing to the fact  
12 that there was no unanimity on what we can go forward. We're ready  
13 to go forward with whatever the commission wants to go forward on.

14 So with that, response to Mr. Connell's argument is the  
15 update that we have is that the new NGO policy is being drafted. I  
16 was able to review a draft of it. It is not yet signed off, but the  
17 director believes it will be signed off imminently. And so that  
18 should resolve the issue. We had not come down since January, so  
19 this had not impacted any sessions before today's session. And it  
20 was done for operational purposes as set forth in 978a due to the  
21 migrant operations that were occurring early in time and the influx  
22 and stress that had on the resources of the base at the time.

23 So it's all in 978a. We'll rest on brief on that. But I

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1 did want to inform the commission that a new NGO policy will be  
2 hopefully shortly signed off on that will permit them to be able to  
3 come down.

4 MJ [LtCol SCHRAMA]: Thank you.

5 MTC [MR. TRIVETT]: Thank you, sir.

6 MJ [LtCol SCHRAMA]: Mr. Ruiz, did you have anything?

7 LDC [MR. RUIZ]: If I just may have a moment, Judge. I need  
8 to confer. I may have something for the court.

9 MJ [LtCol SCHRAMA]: You may.

10 **[Counsel conferred.]**

11 LDC [MR. RUIZ]: Just real quick from -- in terms of  
12 the -- the theory of defense issue that you've raised. At this stage  
13 what we'd like to do is just point you to the record where you can  
14 find our filings for the theory of defense. This can be found at  
15 1560 (MAH) and 1560 (MAH Sup).

16 And we have also presented previously to your predecessor,  
17 Judge McCall. That was on November 11th, 2021, and that can be found  
18 at transcript pages 33917 through 33972.

19 And at this time we're not prepared to ask for a  
20 presentation to the commission, but we would like to reserve the  
21 opportunity to do that at a later time if we think that we can do  
22 that and should do that.

23 MJ [LtCol SCHRAMA]: Understood, Mr. Ruiz. Thank you.

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1 LDC [MR. RUIZ]: And then just one clarification from  
2 Mr. Trivett's comments. I want to make sure he -- I understand their  
3 position is that they're ready to go forward anytime, anyplace,  
4 anywhere. But he did not talk about motions that have been fully  
5 filed, fully argued, and briefed.

6 I assume that the government's position is that any motions  
7 that have been fully filed, briefed, and argued before the commission  
8 can and should be ruled upon; is that right?

9 MTC [MR. TRIVETT]: 100 percent.

10 LDC [MR. RUIZ]: Thank you, Judge.

11 MJ [LtCol SCHRAMA]: Thank you, Mr. Ruiz.

12 Counsel, moving forward, my plan is this: Mr. Connell,  
13 you've expressed interest in doing your ex parte presentation. Would  
14 Thursday at 0900 work for you?

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

16 MJ [LtCol SCHRAMA]: Okay. So we'll plan on that.

17 As far as tomorrow's proceeding, at this point I don't see  
18 necessarily anything that we're going to move forward with on the  
19 record.

20 If that changes or if counsel think of something tonight in  
21 their planning purposes, if you notify the court, we're going to keep  
22 tomorrow open, as far as the court space to either go back on the  
23 record, if necessary, or my intent is that counsel and their clients

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1 can utilize this space as a meeting place for tomorrow.

2 For Thursday, Mr. Connell, we'll plan on going on at 0900  
3 for your presentation. If other counsel that I've not already heard  
4 from would like to present, then you can let me know.

5 If anything else pops up in the next few days that we can  
6 take up on the record, I'd just ask counsel to file that update with  
7 the court as appropriately, and then we can take that up.

8 With that said, Mr. Trivett, anything else we need to take  
9 up today?

10 MTC [MR. TRIVETT]: No, sir.

11 MJ [LtCol SCHRAMA]: Okay. Defense Counsel, anything at large  
12 that merits discussion at this moment?

13 Okay. That's a negative response.

14 Okay. With that, this court is in recess.

15 **[The R.M.C. 803 session recessed at 1616, 15 December 2025.]**

16 **[END OF PAGE]**