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1    [The R.M.C. 803 session was called to order at 1004,

2    27 January 2026.]

3            MJ [Lt Col BRAUN]: This hearing is called to order.

4            Mr. Nurjaman is present.

5            Trial Counsel, please identify who is here on behalf of the  
6    United States.

7            TC [Lt Col GOEWERT]: Good morning. Representing the  
8    government today are Lieutenant Colonel Christopher Goewert, United  
9    States Air Force; Lieutenant Colonel Matthew Miller, United States  
10   Army; Commander Christopher Fletcher, United States Navy; Major  
11   Kristy Milton, United States Marine Corps; and Captain Christian  
12   Jones, United States Air Force.

13           Commander Fletcher and Captain Jones are making their first  
14   appearance.

15           All trial counsel present today have been detailed to this  
16   military commission by the chief prosecutor in accordance with Rule  
17   for Military Commissions 503.

18           All members of the government are qualified under Rule for  
19   Military Commissions 502(d).

20           All attorneys have been previously sworn in accordance with  
21   Rule for Military Commissions 807. No member of the government has  
22   acted in any manner which might tend to disqualify us in this  
23   proceeding.

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1                   The detailing document has been marked as Appellate  
2   Exhibit 0003.013 (Gov).

3                   The proceedings are not being transmitted today due to a  
4   snowstorm over the weekend that has caused OPM to close all  
5   facilities in the D.C. area, and Fort Meade is closed as well. So  
6   while there is a feed, there is no one to bring anyone into that room  
7   or allow public access in those things. However, I do note that  
8   currently proceedings are being observed today by at least two  
9   members of the media including the *New York Times*.

10                  The government is not utilizing this courtroom for this  
11  week's hearings, the means authorized in AE 0012.023 (TJ).

12                  MJ [Lt Col BRAUN]: Trial Counsel, you'd mentioned that all  
13  trial counsel are sworn. Commander Fletcher and Captain Jones don't  
14  require the oath?

15                  TC [Lt Col GOEWERT]: Oh, no, not by you, sir.

16                  MJ [Lt Col BRAUN]: Okay.

17                  TC [Lt Col GOEWERT]: I'm sorry. They do require to be sworn  
18  by you before we proceed further.

19                  MJ [Lt Col BRAUN]: Okay. Very well.

20                  Commander Fletcher and Captain Jones, if you could please  
21  rise, raise your right hand.

22   **[Counsel were sworn.]**

23                  MJ [Lt Col BRAUN]: Thank you. Please be seated.

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1                   Mr. Nurjaman, trial counsel just indicated that due to a  
2 snowstorm up in the National Capital Region, the two remote locations  
3 where we are generally broadcast to, one located at Fort Meade, one  
4 at the Pentagon, are not currently accessible to the public.

5                   Rule for Military Commissions 806, coupled with this  
6 commission's previous ruling in Appellate Exhibit 0007.006 generally  
7 require that -- or dictate that these proceedings will be broadcast  
8 to those two locations for the purposes of allowing members of the  
9 public to observe this proceeding.

10                  Now, I do note, as trial counsel mentioned on the record,  
11 that there are individuals in the gallery here with us on Guantanamo  
12 Bay that are observing this proceeding. However, I wanted to talk  
13 with you about the fact that we are not transmitting to those two  
14 additional locations where other members of the public would  
15 otherwise be able to observe the open portions of this proceeding.

16                  Have you had an opportunity to talk about the fact that we  
17 aren't broadcasting back to those two locations, along with Rule for  
18 Military Commissions 806, with your defense counsel?

19                  ACC [MR. NURJAMAN]: Yes, I have.

20                  MJ [Lt Col BRAUN]: Okay. Did they answer all your questions  
21 about the Rule for Military Commissions 806 and the fact that we  
22 aren't broadcasting to those two locations today?

23                  ACC [MR. NURJAMAN]: Yes.

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1 MJ [Lt Col BRAUN]: Okay. Are you -- do you have any  
2 objection to us proceeding today, understanding that we aren't  
3 broadcasting to those two additional sites?

4 **[Counsel conferred with the accused.]**

5 ACC [MR. NURJAMAN]: It should be no problem.

6 MJ [Lt Col BRAUN]: So you have no objection, then?

7 ACC [MR. NURJAMAN]: No.

8 MJ [Lt Col BRAUN]: Okay. Thank you, Mr. Nurjaman.

9 Defense Counsel, I want to turn to you. Anything you'd like  
10 to place on the record as it pertains to the commission's inability  
11 to broadcast to those two locations in the NCR, given the weather  
12 situation that we're -- that they're dealing with up there?

13 LDC [MR. FANNIFF]: Your Honor, we understand that for the  
14 limited purposes of this initial colloquy, that having -- we do not  
15 have an objection to proceeding with that, and then to move into a  
16 closed session thereafter.

17 MJ [Lt Col BRAUN]: Thank you, Defense Counsel. That is the  
18 commission's intent this morning, is to handle some preliminary  
19 matters in this open session and then handle some matters that we can  
20 take up in a closed session.

21 The commission doesn't intend to move into the other matters  
22 that -- that would be considered in an open session pursuant to the  
23 schedule that was provided to the commission by the parties, a joint

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1 schedule, previously and is located in the record.

2 At this time, if we have weather problems tomorrow, we'll  
3 have another discussion and figure out what the way ahead looks like.  
4 But for today, yeah, the commission just intends to handle these  
5 introductory matters.

6 LDC [MR. FANNIFF]: So no objection for that, Your Honor.

7 MJ [Lt Col BRAUN]: Thank you, Defense Counsel.

8 So, Mr. Nurjaman, I know I've discussed your rights to  
9 counsel in the past. However, I want to go over them with you again  
10 to ensure you understand your right to counsel.

11 Pursuant to the Manual for Military Commissions, you have  
12 the right to be represented by detailed military defense counsel free  
13 of charge.

14 Do you understand this?

15 ACC [MR. NURJAMAN]: Yes.

16 MJ [Lt Col BRAUN]: You also have the right to be represented  
17 by a military counsel of your own selection, provided that the  
18 counsel you request is reasonably available.

19 If you were represented by military counsel of your own  
20 selection, then your detailed defense counsel would normally be  
21 excused. However, you could request that your detailed counsel  
22 continue to represent you, but your request would not have to be  
23 granted.

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1                   Do you understand this?

2                   ACC [MR. NURJAMAN]: Yes, I understand.

3                   MJ [Lt Col BRAUN]: In addition to detailed military defense  
4                   counsel, you may be represented by qualified civilian lawyers. A  
5                   civilian lawyer would represent you at no expense to the government.  
6                   To be qualified, he or she must be a U.S. citizen; admitted to the  
7                   practice of law in a state, district, territory, or possession of the  
8                   U.S., or a federal court; may not have been subject to -- subject of  
9                   disqualifying action by a bar or other competent authority; be  
10                   eligible for a Secret clearance or higher as required; and agree in  
11                   writing to comply with the orders, rules, and regulations of these  
12                   military commissions.

13                   Do you understand this?

14                   ACC [MR. NURJAMAN]: Yes, I understand.

15                   MJ [Lt Col BRAUN]: If a civilian lawyer represents you, your  
16                   detailed military defense counsel will continue to represent you as  
17                   well unless you specifically waive the right to be represented by  
18                   detailed military defense counsel.

19                   Mr. Nurjaman, do you understand what I have just explained  
20                   to you?

21                   ACC [MR. NURJAMAN]: Yes.

22                   MJ [Lt Col BRAUN]: Finally, the Regulation for Trial by  
23                   Military Commission authorizes the chief defense counsel to detail

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1 DoD civilian attorneys performing duties with the Military Commission  
2 Defense Organization to represent you before a military commission.  
3 This is in addition to any military defense counsel detailed to  
4 represent you.

5 Mr. Nurjaman, do you understand what I've just explained?

6 ACC [MR. NURJAMAN]: Yes.

7 MJ [Lt Col BRAUN]: Okay.

8 Mr. Fanniff, if you could please indicate for the record,  
9 who is here on behalf of ----

10 INT: [Indiscernible interruption.]

11 MJ [Lt Col BRAUN]: Mr. Fanniff, could you please indicate for  
12 the record who is here on behalf of Mr. Nurjaman. And if you could  
13 also please indicate if any attorney is making their initial  
14 appearance before this commission.

15 LDC [MR. FANNIFF]: Yes, Your Honor. Representing  
16 Mr. Nurjaman in this hearing are myself, Mr. Todd Fanniff. With me  
17 is Lieutenant Brent Stricker and Captain Reid Hopkins, United States  
18 Marine Corps. I also have Captain Tara Trull, United States Air  
19 Force, and Lieutenant Desiree Fernandez, United States Navy.

20 All members are detailed, are qualified, and certified, and  
21 have been previously sworn. Not appearing today, but also detailed  
22 currently to this case, are Mr. Jim Hodes and Major Lindsey Parsons,  
23 United States Air Force. And they have been excused by yourself,

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1 Your Honor.

2 MJ [Lt Col BRAUN]: Thank you, Mr. Fanniff.

3 Mr. Fanniff, quickly, will you, Lieutenant Colonel Stricker,  
4 Captain Hopkins, Captain Trull, and Lieutenant Fernandez be  
5 physically present in the courtroom with Mr. Nurjaman during all  
6 sessions this week?

7 LDC [MR. FANNIFF]: Yes, Your Honor.

8 MJ [Lt Col BRAUN]: Mr. Nurjaman, your defense counsel just  
9 indicated that some members of your defense team are not present for  
10 today's session. I'm going to discuss the absence of those counsel  
11 with you.

12 Under Rule for Military Commissions 805, ordinarily no  
13 military commission proceeding should take place if any defense or  
14 assistant defense counsel is absent without your consent to that  
15 absence.

16 On 5 January 2026, your defense team filed a motion  
17 requesting the commission authorize the absence of Mr. James Hodes  
18 and Major Lindsey Parsons for the hearings we will conduct this week.  
19 In this motion the defense team represented you consented to the  
20 absence of these two counsel for just this week's proceedings.

21 So I would like to ask you directly while I have you here in  
22 the courtroom: Do you agree to the absence of Mr. Hodes and  
23 Major Parsons from this week's proceedings?

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1           ACC [MR. NURJAMAN]: Yes, only for this week.

2           MJ [Lt Col BRAUN]: Okay. Mr. Nurjaman, did you discuss this  
3 matter fully with your defense counsel?

4           ACC [MR. NURJAMAN]: I have.

5           MJ [Lt Col BRAUN]: Okay. Do you have any questions about  
6 your rights to have counsel present for this proceeding?

7           ACC [MR. NURJAMAN]: No.

8           MJ [Lt Col BRAUN]: Did anyone make any promises or threats to  
9 get you to agree to proceed this week without the presence of  
10 Mr. Hodes?

11          ACC [MR. NURJAMAN]: No.

12          MJ [Lt Col BRAUN]: Did anyone make any promises or threats to  
13 get you to agree to proceed this week without the presence of  
14 Major Parsons?

15          ACC [MR. NURJAMAN]: No.

16          MJ [Lt Col BRAUN]: Okay. Finally, was it your decision, and  
17 your decision alone, to agree to proceed with this week's hearings  
18 knowing that Mr. Hodes and Major Parsons would not be present?

19          ACC [MR. NURJAMAN]: Yes, after my discussion with the defense  
20 team.

21          MJ [Lt Col BRAUN]: Thank you, Mr. Nurjaman.

22          I find that you have voluntarily and intelligently waived  
23 the presence of Mr. Hodes and Major Parsons. I further find that you

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1 are represented by the detailed defense counsel previously identified  
2 on the record who are physically present with you in the courtroom  
3 this morning and will be present throughout the hearings this week.

4 I also find that at least one of those defense counsel is  
5 qualified in accordance with R.M.C. 502(d). As such, I find this  
6 commission can proceed this week in accordance with R.M.C. 805(c),  
7 given your waiver of the presence of Mr. Hodes and Major Parsons.

8 I do note, as defense counsel articulated on the record in  
9 AE 0127.005, the commission had approved the absence of Mr. Hodes and  
10 Major Parsons from this week's proceedings.

11 On 25 June 2026, I held an R.M.C. 802 conference here in the  
12 courtroom. Present were members from the prosecution and the  
13 defense, with the exception of Mr. Hodes and Major Parsons. The  
14 accused was also absent from that conference.

15 Generally, the commission discussed the scheduled prayer  
16 times for the week and how that would impact the timing of this  
17 week's hearings. Then the commission broadly discussed the way ahead  
18 for the hearings scheduled to occur this week, what matters the  
19 commission anticipated addressing and in what order, and received  
20 input from the parties as to those matters.

21 No evidence was received, argument entertained, nor ruling  
22 provided during that R.M.C. 802 conference.

23 Does either side wish to object to or supplement my summary

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1 of that R.M.C. 802 conference?

2 Trial Counsel?

3 TC [Lt Col GOEWERT]: No, Your Honor.

4 MJ [Lt Col BRAUN]: Defense Counsel?

5 LDC [MR. FANNIFF]: No, Your Honor.

6 MJ [Lt Col BRAUN]: Okay. In addition, I had a second  
7 R.M.C. 802 conference with the lead trial and lead defense counsel  
8 and myself this morning. We talked in that R.M.C. 802 conference  
9 just about the fact that the weather up in the National Capital  
10 Region is prohibiting us from utilizing the two remote viewing sites.  
11 And the commission inquired as to the parties -- the commission  
12 offered the parties some options as how we may proceed today and how  
13 that would impact our consideration of the matters that we have to  
14 consider this week moving forward.

15 The parties provided the commission with a desired way  
16 ahead, specifically that we could handle our introductory,  
17 preliminary matters this morning, then move into a closed session to  
18 consider some matters and then we could determine from there, based  
19 upon what the weather looks like tomorrow, how the rest of our week  
20 will look.

21 No argument was entertained, evidence received, nor  
22 substantive ruling provided in that R.M.C. 802 conference.

23 Does either side wish to object to or supplement my summary?

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1 Trial Counsel?

2 TC [Lt Col GOEWERT]: No, Your Honor.

3 MJ [Lt Col BRAUN]: Defense Counsel?

4 LDC [MR. FANNIFF]: No, Your Honor.

5 MJ [Lt Col BRAUN]: Very well.

6 So it's my understanding that two of the daily prayer times  
7 are scheduled during our normal court hours, with one taking place at  
8 approximately 1210, and the other taking place at approximately 1525.  
9 I note two later prayer times at approximately 1750 and then another  
10 one at 1900 each day.

11 It's my understanding that the dining facility will be open  
12 from 1100 to 1330 for lunch and then 1700 to 1900 for evening meal.  
13 To try and accommodate prayer and meal times, I intend to take a  
14 lunch recess from around 1200 to 1330 each day. We'll then take a  
15 break from 1515 to 1545 every afternoon to accommodate those  
16 afternoon prayer time -- that afternoon prayer time, excuse me. We  
17 would then reconvene after the afternoon prayer. I would then recess  
18 at 1730. If we're done for the day, that would be the point where  
19 I'd recess for the day. However, if we have some additional business  
20 I think we could get done, I reserve the right to recall us after  
21 that evening break to potentially close out some additional -- handle  
22 some additional matters.

23 Defense Counsel, if you could please confirm that this will

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1 work for Mr. Nurjaman.

2 Trial Counsel, if you could just pulse your team and make  
3 sure that those times work.

4 TC [Lt Col GOEWERT]: Your Honor, speaking for trial counsel,  
5 those work for us.

6 MJ [Lt Col BRAUN]: Okay, thank you.

7 LDC [MR. FANNIFF]: Those are acceptable to the defense as  
8 well, Your Honor.

9 MJ [Lt Col BRAUN]: Thank you, Defense Counsel.

10 So the commission granted oral argument in numerous matters  
11 to be taken up this week, one of which is AE 0129.001. That's a  
12 classified defense motion to dismiss **[sic]**.

13 Before the commission can take up the substance of that  
14 defense motion, the commission must address the issues raised in  
15 AE 0129.005, which is a defense notice pursuant to Military  
16 Commission Rule of Evidence 505(g).

17 In response to that defense notice, the government filed a  
18 request for an in camera hearing pursuant to Military Commission Rule  
19 of Evidence 505(h), and requested the accused be excluded from the  
20 hearing pursuant to -- hearing pursuant to Military Commission Rule  
21 of Evidence 505 -- the government filed a request for an in camera  
22 hearing pursuant to Rule 505(h) and requested the accused be excluded  
23 from that hearing. That government request can be found at

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1 AE 0127.007.

2 That filing included a declaration from a knowledgeable  
3 official pursuant to Military Commission Rule of Evidence  
4 505(h)(1)(C) regarding the classified information the defense  
5 anticipates presenting during that argument.

6 Now, Defense Counsel, I appreciate that we are still within  
7 the time frame for you to provide any matters -- any response you may  
8 have wanted to provide to the commission based upon the government's  
9 505(h) notice on this matter.

10 Are you prepared to place -- while I'm not going to require  
11 you to do it in writing, at least at this time, are you prepared to  
12 place any matters you would like the commission to consider related  
13 to the government's 505(h) notice on this matter on the record?

14 DDC [Capt HOPKINS]: So, sir, of course, we have not, you  
15 know, seen the declaration. Our understanding is that their request  
16 for a hearing, you know, must be granted. The defense has maintained  
17 its position that Mr. Nurjaman is entitled statutorily to be at all  
18 sessions of this commission, that's a standing objection, the  
19 government has made their motion. We have nothing further to add on  
20 a request for a 505(h) hearing.

21 MJ [Lt Col BRAUN]: Okay. Thank you, Defense Counsel.

22 So understanding your position, having the benefit of that  
23 position, appreciating the standing nature of that objection that

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1 you've made now in previous similar matters, I determine that the  
2 information noticed in AE 0129.005 is classified and a knowledgeable  
3 United States official has provided a declaration pursuant to  
4 Military Commission Rule of Evidence 505(h)(1)(C).

5 The commission finds that an in camera proceeding pursuant  
6 to Military Commission Rule of Evidence 505(h) is appropriate.

7 Regarding the presence of the accused at this session, the  
8 commission makes the finding following -- excuse me. The commission  
9 makes the following findings by a preponderance of the evidence:  
10 Defense intends to present oral argument in the AE 0129 series which  
11 addressed classified information. A knowledgeable United States  
12 official has provided a declaration pursuant to Military Commission  
13 Rule of Evidence 505(h)(1)(C).

14 An M.C.R.E. 505(h) hearing is necessary for the commission  
15 to make all determinations concerning the use, relevance, or  
16 admissibility of classified information that would otherwise be made  
17 during the trial or pretrial proceedings. The accused does not  
18 possess the requisite security clearance for access to the classified  
19 information noticed in AE 0129.005. A knowledgeable U.S. official  
20 has determined access of this information by the accused would be  
21 detrimental to national security.

22 So pursuant to Military Commission Rule of Evidence  
23 505(a)(1), classified information shall be protected and is

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1 privileged if disclosure would be detrimental to the national  
2 security. Under no circumstances may a military judge order release  
3 of classified information to any person not authorized to receive  
4 such information. This rule applies to all stages of the proceeding.

5 R.M.C. 804 states that for certain in camera and ex parte  
6 presentations as may be permitted under R.M.C. 701 through 703 and  
7 Military Commission Rule of Evidence 505, the accused shall be  
8 present at the arraignment; the time of the plea; every stage of the  
9 trial, including sessions conducted without members; voir dire, and  
10 challenges of the members; the announcement of findings; sentencing  
11 proceedings; and post-trial sessions, if any, except as otherwise  
12 provided by the rules.

13 When it is determined that a Military Commission Rule of  
14 Evidence 505(h) hearing is necessary, any hearing held pursuant to  
15 the subsection or any portion of such hearing specified in the  
16 request of a knowledgeable United States official possessing  
17 authority to classify information submitted to the military judge, a  
18 declaration that a public proceeding may result in the disclosure of  
19 classified information.

20 The court makes the following analysis and conclusions of  
21 law: The commission finds it has no authority to allow the  
22 disclosure of classified information pertaining to the AE 0129 series  
23 to the accused based on clear guidance provided in Military

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1 Commission Rule of Evidence 505(a)(1) and  
2 10 U.S.C. Section 949p-1(a): Under no circumstances may a military  
3 judge order the release of classified information to any person not  
4 authorized to receive such information.

5 The commission finds it has no authority to allow the  
6 disclosure of the classified information pertaining to the AE 0129  
7 series to the accused. Therefore, the accused will be excluded from  
8 the in camera proceeding held pursuant to Military Commission Rule of  
9 Evidence 505(h) as it relates to the consideration of the AE 0129  
10 series.

11 The government's request to exclude the accused from the in  
12 camera proceeding, therefore, is granted.

13 The commission reserves the right to supplement on the  
14 record a written ruling on these matters and those rulings would be,  
15 of course, subject to modification up to certification of the record  
16 of trial.

17 Does either side have any questions regarding the court's  
18 ruling on this matter?

19 Trial Counsel?

20 TC [Lt Col GOEWERT]: Your Honor, we have no questions.

21 Just one minor clerical amendment. I believe this is a  
22 motion for discovery. I just want to make the record clear that's  
23 what we're taking up.

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1 MJ [Lt Col BRAUN]: It is -- yes, Trial Counsel. It's a  
2 motion to compel, not a motion to dismiss. That was an error on my  
3 part.

4 TC [Lt Col GOEWERT]: I just wanted everyone in the back to  
5 know what we were taking up.

6 MJ [Lt Col BRAUN]: Defense Counsel?

7 LDC [MR. FANNIFF]: Nothing further, Your Honor.

8 MJ [Lt Col BRAUN]: Okay. Thank you, Defense Counsel.

9 So the accused will be absent from that hearing, as the  
10 court just -- or as the commission just ruled. In that hearing the  
11 commission will determine what potential classified matters are  
12 involved, obtain the parties' respective positions as to those  
13 matters. After that the parties can expect the commission will  
14 provide a ruling consistent with the requirements of the Military  
15 Commission Rule of Evidence 505 as to those matters, and that will  
16 have to occur before we move into, then, the full consideration of  
17 the defense motion, AE 0129.001.

18 I believe, as the commission has previously ruled upon on  
19 the -- the other matters this commission needs to consider, found in  
20 AE 0018.067 -- I believe that ruling can be found at  
21 AE 0018.070 -- but that also requires a closed session.

22 So absent any objection from the parties, it would be the  
23 intent of the commission at this time to move into that closed

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1 session so that we can take up the consideration of those two  
2 particular matters that require a closed session.

3 Is there any objection to that at this time?

4 Trial Counsel?

5 TC [Lt Col GOEWERT]: No, Your Honor.

6 MJ [Lt Col BRAUN]: Defense Counsel?

7 LDC [MR. FANNIFF]: No, Your Honor.

8 MJ [Lt Col BRAUN]: Okay. Very well. Then this commission  
9 will be in a 30-minute recess to allow us to transition to that  
10 closed session. If the parties can then be prepared to move in. I  
11 will want to consider 0018.067 first, just so you all can orient  
12 yourself to the way ahead.

13 With that, we are in a recess.

14 **[The R.M.C. 803 session recessed at 1032, 27 January 2026.]**

15 **[END OF PAGE]**