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1 [The R.M.C. 803 session was called to order at 1319,
2 13 October 2017.]

3 MJ [COL WATKINS]: The commission is called to order. All
4 parties present when the commission recessed are again
5 present. The members are absent.

6 During the recess I provided counsel with a copy of
7 my instructions for their review. Do counsel have any
8 objections regarding those instructions?

9 TC [MR. SCHNEIDER]: The government has no objection, Your
10 Honor.

11 CDC [MR. KASSEM]: Your Honor, the defense has no
12 objections.

13 MJ [COL WATKINS]: Do counsel have any requests for any
14 special instructions?

15 TC [MR. SCHNEIDER]: No requests from the government, Your
16 Honor.

17 CDC [MR. KASSEM]: None from the defense, Your Honor.

18 MJ [COL WATKINS]: Are we ready for the members?

19 TC [MR. SCHNEIDER]: Yes, Your Honor.

20 CDC [MR. KASSEM]: Yes, we are, Your Honor.

21 [The R.M.C. 803 session terminated, the members entered the
22 courtroom, and the Military Commission was called to order at
23 1320, 13 October 2017.]

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1 MJ [COL WATKINS]: Please be seated. The commission is
2 called to order. All parties, to include the members, are
3 present.

4 Trial Counsel, you may present argument.

5 ATC [Capt HRACHO]: Thank you, Your Honor.

6 As a member of al Qaeda, the accused committed
7 several war crimes when he took actions that facilitated the
8 bombing of the Merchant Vessel Limburg, a civilian oil tanker,
9 that resulted in the death of one civilian and injury to 12
10 others.

11 After balancing the aggravating evidence in this case
12 with the mitigation evidence, the government is joining the
13 defense in recommending that you sentence the accused to 13
14 years' confinement.

15 On the morning of 6 October 2002, the MV Limburg is
16 off the coast of Yemen when a small boat filled with
17 explosives is deliberately steered by al Qaeda terrorists into
18 the side of the Limburg, fulfilling the aims, the terrible
19 aims of a longstanding al Qaeda plot. The men on board
20 detonate these explosives as it rams into the side of the
21 Limburg.

22 The explosion is so powerful that it shakes the
23 civilian crew members on board and rips a huge hole in the

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 side of the tanker as approximately 60,000 tons of crude oil
2 starts spilling into the water. Dark, thick smoke from the
3 explosion starts to make its way up to the deck as more
4 explosions could be heard throughout the tanker.

5 One crewmember later described the smoke as so thick
6 that it was like nighttime on the tanker, while another
7 described the scene as, quote, the whole ship was all on fire
8 and smoke. It was like hell, end quote.

9 Many members of the crew, including a man named
10 Atanas Atanasov, attempted valiantly to put out the fire and
11 to keep the ship afloat, but this fire cannot be contained.
12 And concern that the smoke and the flames are soon going to
13 overwhelm them, members of the crew start to abandon ship.
14 And the circumstances are so dire that the members start
15 leaping the 80 feet or so from the deck down into the water,
16 some sustaining injuries like broken arms and broken ribs.

17 And while most were able to avoid the fire that had
18 now developed in the water from the oil that had spilled, one
19 man did not survive, a Bulgarian citizen, Atanas Atanasov, the
20 same man that many on the crew had seen fighting the fire in
21 the moments after the explosion. His lifeless, burned body
22 was found floating in the water a few days after the attack.

23 Atanas woke up that day, just like the other members

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 of the crew, to go to work on the Limburg, a nonlegitimate
2 military target; now he is dead at the hands of terrorists.
3 He was 38 years old. He is survived by his grieving family.

4 Now, as you read in the stipulation of fact, Usama
5 bin Laden and al Qaeda took credit for this terrorist attack
6 on the MV Limburg. And what you also learned in the
7 stipulation of fact is that operations like these take more
8 than just a few al Qaeda terrorists that are willing to commit
9 suicide to be successful. They take leaders to plan and
10 execute these complex operations to be successful, leaders
11 like the accused, who worked diligently with the mastermind of
12 the USS COLE bombing, Abd al Nashiri, to accomplish this
13 nefarious and cowardly attack, an attack on a nonlegitimate
14 military target that was occupied by civilians.

15 And while the accused was in custody a few months
16 prior to the attack actually taking place, the accused took a
17 number of actions to ensure the successful completion of the
18 attack on the Limburg, including providing or obtaining visas
19 for the terrorists that actually took part in the attack,
20 providing them housing, purchasing equipment.

21 It was because of these actions and other actions
22 that the accused took as part of other operations in the
23 Persian Gulf that the accused was charged with and ultimately

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 pled guilty to six war crimes, including terrorism, attempted
2 terrorism, attacking civilians, attacking civilian objects,
3 hazarding a vessel and attempted hazarding a vessel.

4 The accused is a war criminal and he must be punished
5 for his actions, actions that led to the death of Atanas and
6 injury to 12 others on the Limburg that day. And, Members,
7 that is why you are here. You are here to sentence the
8 accused for his war crimes.

9 As you recall from the military judge's preliminary
10 instructions, Judge Watkins told you and will tell you again
11 that your duty today is, quote, a grave responsibility
12 requiring the exercise of wise discretion, end quote. Your
13 duty as a member to adjudge an appropriate sentence is
14 indispensable in our military commission system.

15 Now, the judge is going to instruct you that the
16 accused must be sentenced to a period of confinement between
17 13 years and 15 years, and he is also going to instruct you
18 that the accused will not receive day-for-day credit for the
19 time that he was in custody prior to his trial. So the
20 sentence that you adjudge today will be in addition to the
21 time that he was in custody prior to his trial.

22 With that said, after balancing the aggravating
23 evidence with the mitigation evidence in this case, what we

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 are going to talk about now, the government is joining the
2 defense in recommending the minimum sentence in this case,
3 which is 13 years' confinement.

4 So what is the mitigation in this case? I want to
5 highlight a few items from the mitigation in this case to you.
6 The first is that the accused has spent, has been in custody
7 since 2002. So he has had a lot of time, like he said in his
8 unsworn, to reflect on his crimes, as well as to abandon the
9 radical belief system that he was once a part of.

10 In fact, during that time since 2002, but especially
11 in the last three years, the accused has cooperated
12 extensively with the United States Government in providing
13 information about other al Qaeda members, including providing
14 sworn deposition testimony against two other al Qaeda leaders
15 in their military commission cases: Abd al Nashiri for his
16 role in the USS COLE and MV Limburg bombings, as well as Hadi
17 al-Iraqi, the former commander in Afghanistan when he was
18 fighting against the Northern Alliance.

19 In these depositions, which lasted over the period of
20 a few weeks, the accused told the truth, and his testimony in
21 those depositions will be valuable to the prosecution in those
22 military commission cases; and for that the accused deserves
23 credit and is a major factor for why the government is

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 recommending the minimum sentence in this case of 13 years'
2 confinement.

3 So in addition to the aggravating evidence in this
4 case, you should also consider the mitigation evidence when
5 deciding on the accused's sentence in this case.

6 Members, in a few moments -- before I get to that,
7 one more mitigation factor that I want to talk about is the
8 fact that the accused pled guilty. He admitted to all the
9 offenses that the government alleged against him. And as the
10 military judge will instruct you, by doing so he has saved the
11 government time, effort and expense. For that he deserves
12 credit.

13 Members, in a few moments you are going to go back
14 into the deliberation room and you are going to decide on an
15 appropriate sentence for the accused. While the accused is a
16 war criminal, took actions that led to the death of one
17 civilian and injuries to 12 others, when balanced with the
18 extensive mitigation in this case, the government joins the
19 defense in recommending to you that you sentence the accused
20 to 13 years' confinement. Thank you.

21 MJ [COL WATKINS]: Defense Counsel, you may present
22 argument.

23 CDC [MR. KASSEM]: Your Honor, may I have a moment to

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 confer?

2 MJ [COL WATKINS]: Certainly.

3 [Pause.]

4 CDC [MR. KASSEM]: Members of the Commission, good
5 afternoon. My name is Ramzi Kassem. I am a law professor at
6 the City University of New York. I have represented
7 Ahmed al Darbi since 2008. I am grateful for your time and
8 your attention to the arguments I respectfully present to you
9 today.

10 As the military judge presiding in this case
11 explained to you earlier, the question before you is not
12 whether Mr. al Darbi is guilty. That question was answered
13 nearly four years ago, in 2014, when Mr. al Darbi pled guilty
14 and accepted responsibility for his actions.

15 The only question before you is what the appropriate
16 sentence should be in this case. To determine what sentence
17 is proper and fair, you will naturally weigh two main
18 considerations. You will want to examine Mr. al Darbi's role
19 in the events at issue. Those are the facts in aggravation
20 that Judge Watkins will instruct you about shortly. And you
21 will also look carefully at how he has accepted responsibility
22 and atoned for his actions. Those are the facts in mitigation
23 and extenuation that you will hear about from the military

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 judge. Only then, after you weigh and analyze that
2 information, will you be able to say what a fair sentence
3 might be for Mr. al Darbi.

4 So let me address the first point, the exact role
5 that Mr. al Darbi played. It would not be fair to
6 Mr. al Darbi, nor would it be in the interests of justice, if
7 Mr. al Darbi were ascribed a lesser or a greater role than the
8 one he actually played during the events in question. This is
9 why the military judge will instruct you that Mr. al Darbi is
10 to be sentenced only for the offenses of which he has been
11 found guilty.

12 There are many world events mentioned in the evidence
13 we have asked you to review during our last recess yesterday,
14 the longer recess: The 1998 U.S. Embassy bombings in Kenya
15 and Tanzania; the bombing of the USS COLE; and the attacks of
16 September 11th, 2001. To avoid even the smallest risk of
17 confusion, I remind you that Mr. al Darbi had no prior
18 knowledge of these events and that he played no role in those
19 plots. The U.S. Government had never accused him of having
20 foreknowledge of or playing a role in those plots.

21 In your packets you will have seen a sheet listing
22 the five charges actually brought by the U.S. Government, the
23 charges to which Mr. al Darbi pled guilty in 2014. The first

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 four charges, as you have heard, are related to Mr. al Darbi's
2 role in the events leading up to an attack on a French oil
3 tanker, the MV Limburg, off the coast of Yemen which resulted
4 in the tragic death of one Bulgarian sailor, Mr. Atanas
5 Atanasov.

6 That attack took place on October 6, 2002, four
7 months after Mr. al Darbi was arrested in June of 2002. Among
8 the exhibits that you read during your long recess yesterday
9 was Prosecution Exhibit 001, a stipulation of fact signed by
10 the U.S. Government and Mr. al Darbi back in October 2013, and
11 it sets out undisputed facts.

12 The military judge will instruct you that this and
13 any other stipulation of fact you see in this case contain
14 undisputed facts in evidence. As the stipulations themselves
15 state at their beginning, these are facts that are accepted as
16 true by both the U.S. Government and Mr. al Darbi.

17 As you consider Mr. al Darbi's role, you should note
18 that he is not charged with carrying out the attacks on the
19 Limburg directly. He couldn't have been. Why? Simply
20 because he was already in custody roughly four months before
21 the attack on the Limburg occurred.

22 It is important that you understand that he was not a
23 direct perpetrator of any attacks himself. Again, Prosecution

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Exhibit 001, the 2013 stipulation of undisputed facts, lays
2 out Mr. al Darbi's acts in detail. It states at paragraph 19
3 that while he, quote, assisted in the attack, he did not
4 himself perform the substantive offense, did not know its
5 details and was not even present for the attack, end quote.
6 That's paragraph 19 of the 2013 stipulation.

7 The fifth charge to which Mr. al Darbi pled guilty
8 pertains to an attempted plot to attack oil tankers in the
9 Strait of Hormuz. That plot remained just that, a plot. As
10 the 2013 stipulation of undisputed facts makes clear, the plot
11 was canceled and never came to fruition. And Mr. al Darbi was
12 not accused of being the mastermind of that plot or, for that
13 matter, any other ones. So this was Mr. al Darbi's role,
14 nothing more and, equally importantly, nothing less.

15 These are serious offenses. No one here today denies
16 that, least of all Mr. al Darbi. But again, it is only fair
17 to consider just how much Mr. al Darbi contributed to those
18 events.

19 The military judge will instruct you to treat those
20 offenses as a single offense and to determine one sentence for
21 that single offense. So this brings us to the next
22 consideration that will come up for you during your
23 deliberations shortly: Has Mr. al Darbi accepted

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 responsibility for his actions? The answer to that question
2 is a single word, and that word is yes.

3 Yes, Mr. al Darbi has made himself accountable for
4 all his actions. He took responsibility in 2013 when he
5 signed the stipulation of fact that you have seen. He took
6 responsibility in 2014 when he pled guilty to all of these
7 charges. And he took responsibility again today. Today was
8 his first, his only opportunity to tell his side of the facts
9 to a jury. He has been waiting for this chance for many
10 years, his one chance, after more than 15 years in custody, to
11 finally speak on his own behalf. He could have made excuses,
12 but he didn't. He stood up here before you and told you he
13 was remorseful and he wishes he could change the past.

14 During your deliberations, I respectfully request
15 that you pay close attention to Defense Exhibit A, the
16 stipulation of facts signed this year, in 2017, by the
17 U.S. Government and Mr. al Darbi. That document tells you
18 that it is an undisputed and true fact in evidence that
19 Mr. al Darbi has firmly rejected violence and extremist
20 ideology, and that he hasn't wavered in that regard during
21 frequent meetings with government representatives since 2014.

22 The government agrees that he has even repeatedly
23 requested to be separated from detainees who espouse

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 extremists views, all the while counseling others in the
2 prison, other prisoners, to abstain from disruptive behavior.
3 Mr. al Darbi has owned up to his actions, he has renounced
4 what drove him to those actions, and he has done that fully,
5 unreservedly and unequivocally.

6 But Mr. al Darbi has gone well beyond the acceptance
7 and expression of guilt and the renunciation of past ways.
8 Again I ask you to please pay strict attention to the
9 stipulation of true facts in evidence that are before you. In
10 them you will see that Mr. al Darbi was arrested in June 2002;
11 that he was subsequently taken into U.S. custody; and that
12 shortly after his arrest, by August of 2002, he was already
13 cooperating with U.S. agents.

14 You now know that Mr. al Darbi warned the
15 U.S. Government about the plot to bomb a commercial oil tanker
16 or a cargo ship off the coast of Yemen before the attack on
17 the Limburg occurred. That is in Defense Exhibit C bearing
18 today's date, October 13, 2017.

19 He told U.S. Government agents what he knew about the
20 means to be employed in that attack, a small boat containing
21 explosives. He told the agents about the type of target, even
22 if he couldn't identify the specific target, the MV Limburg
23 ultimately. He told them about the planned site of the

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 attack, even if he didn't know its date and time. And he told
2 them about the goal, which was to disrupt sea traffic. He
3 even provided our government with identifying information and
4 physical descriptions of the members of the cell planning the
5 attack.

6 And Mr. al Darbi provided all this information on
7 August 12, 2002, that is to say, almost two months before the
8 attack on the Limburg occurred in October of 2002.

9 The U.S. Government attests that the information he
10 provided, beginning in August 2002, quote, proved very
11 valuable to ongoing U.S. operations against al Qaeda, end
12 quote. While it would be unrealistic to require the members
13 of this or any other military commission to read the
14 voluminous reports reflecting the extent of Mr. al Darbi's
15 cooperation over the years, both the U.S. Government and
16 Mr. al Darbi offer you a vivid and concrete picture in Defense
17 Exhibit A and in Defense Exhibit C of the breadth and depth of
18 the cooperation and assistance Mr. al Darbi has provided to
19 our country.

20 In the 15 long years he has spent in U.S. custody so
21 far, that's roughly 5,500 days, Mr. al Darbi sat down for
22 substantive interviews and other interactions with U.S. law
23 enforcement agents 564 times, for an estimated total of 798

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 hours. That converts to one meeting with U.S. Government
2 agents approximately every nine days for the last 15 years.

3 Additionally, in the last four years, Mr. al Darbi
4 submitted to 36 interviews to help prosecutors and
5 investigators with other military commission cases. That's an
6 additional total of approximately 187 hours. Not once has he
7 refused their requests, and each time he provided truthful and
8 complete answers.

9 As the prosecutors and investigators in those cases
10 would be the first to tell you, and as the trial counsel
11 representing the government who spoke to you before me in fact
12 told you most recently, right here in this courtroom,
13 Mr. al Darbi did what no other Guantanamo detainee has done
14 before; he provided a total of six days of testimony in two
15 other military commission cases, both of which are important
16 to our government.

17 Mr. al Darbi testified as a government witness in the
18 capital case brought against Abd al Rahim al Nashiri who is
19 accused of orchestrating the USS COLE bombing in 2000. The
20 second important case is against Abu Hadi al-Iraqi who is
21 accused of overseeing attacks on coalition forces in
22 Afghanistan. And the government will rely on Mr. al Darbi's
23 continued assistance moving forward. He is scheduled to

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 provide 12 to 16 days of additional testimony in those two
2 cases.

3 The government has already told you how much they
4 value Mr. al Darbi's testimony. Allow me to read to you from
5 the 2017 stipulation of fact which you have as Defense Exhibit
6 A. The government agrees with Mr. al Darbi that the following
7 is a true fact: Quote, the level of detail and breadth of
8 Mr. al Darbi's testimony was unprecedented in similar
9 counterterrorism prosecutions to date.

10 Remember, these are not my words alone. I don't get
11 to tell you if someone's testimony is valuable or
12 unprecedented for the U.S. Government. This is also the
13 conclusion of the U.S. Government. As Mr. al Darbi's lawyer,
14 I agree with the assessment, but the assessment is shared by
15 the United States. The government accepts as a true fact in
16 evidence that, compared to witnesses and cooperators who have
17 testified for the U.S. Government in all other prosecutions,
18 in all other terrorism prosecutions to date, Mr. al Darbi's
19 testimony remains, quote, unprecedented.

20 And I want to emphasize to the members of this
21 commission that Mr. al Darbi will continue to provide what the
22 government describes as full, valuable, complete and truthful
23 cooperation and testimony in public view in spite of any risk

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 to himself and to his family. As I am sure you understand,
2 the thought of harm coming to his family causes him great
3 concern and leaves him feeling helpless as a husband and as a
4 father.

5 Sitting here in his prison cell at Guantanamo, he is
6 not in a position to protect his wife and their two children
7 who are on the other side of the world from possible
8 retaliation for his cooperation here in this room and beyond,
9 but Mr. al Darbi agreed to cooperate with the government, and
10 he intends to continue to do so.

11 This brings us to the ultimate question: In light of
12 all the information provided to you, what is a fair sentence
13 for Mr. al Darbi? Again, the military judge will instruct you
14 shortly on the full range of punishment, including the minimum
15 and the maximum punishments allowable.

16 The sentence you consider for Mr. al Darbi must fall
17 within that range. In your deliberations, I am confident you
18 will look at Mr. al Darbi as a whole person, at his wrongs as
19 well as his acknowledgement of his role and his continued
20 assistance to make up for those harms.

21 The day of sentencing is the day of judgment for
22 Mr. al Darbi, and I respectfully ask you to consider the
23 totality of his actions. In other words, do not limit your

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 focus to what he did when he was a young, misguided and free
2 man, but also consider what he has done in the 15 years since
3 that time.

4 Mr. al Darbi has owned up to his actions. He has
5 accepted full responsibility for them. He is truly sorry.
6 Just look at what he has done over the last 15 years. He has
7 spent the last 15 years in U.S. custody cooperating with the
8 government, providing very valuable, indeed unprecedented
9 information and testimony. The United States has relied and
10 is still relying on his information and testimony in its
11 counterterrorism operations and cases.

12 When Mr. al Darbi addressed the members of this
13 commission earlier, you heard his voice. You saw his
14 demeanor. You could see and hear the deep regret he has for
15 his past wrongdoings that he cannot undo. So he did the next
16 best thing. He tried to do good.

17 What you see today is a man who has learned some very
18 difficult lessons in one of the most difficult of prisons.
19 Ahmed does not ask for the years of his life that he lost. He
20 knows that he is only responsible for that lost time because
21 it was lost as a result of the choices that he made when he
22 was younger, younger and misguided, I would add.

23 His father died without his son next to him while

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Ahmed sat here in his cell at Guantanamo. That pain will
2 remain with Ahmed for the rest of his life. He won't see his
3 father again. He also knows that with each year that goes by
4 as he remains at Guantanamo, his wife, Muna, ages without her
5 husband by her side and their two kids, Fatimah and Mohammed,
6 without him, without their father. That Ahmed has never held
7 his sons in his arms is a form of suffering that we can all
8 understand. And in that way and many others, Ahmed has been
9 suffering for 15 years already.

10 Ahmed takes very seriously his duty to make up for
11 his past wrongs. He has renounced his past ideology and his
12 actions and is trying to make up for them. I can't count the
13 number of times my colleagues, Major Medlyn and Lieutenant
14 Commander Young and I sat in meetings with prosecutors and
15 investigators where Ahmed meticulously explained certain
16 facts, making sure to correct and clarify where necessary. It
17 was clear to me and my colleagues in those meetings that Ahmed
18 wants to get it right.

19 Indeed, everything from his rejection of the ideology
20 he espoused when he was younger to his constructive role in
21 counseling other prisoners, to the warm rapport he has built
22 with guards, agents, and prosecutors, to his enthusiastic
23 pursuit of education and art, everything shows that Ahmed is a

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 changed man and that he is now on the right path. The change
2 is irreversible because Ahmed made sure to shut that
3 proverbial door once and for all by renouncing his past ways
4 and cooperating with the U.S. government as publicly as he
5 has.

6 Ahmed sits here before you today as an older, wiser,
7 more thoughtful man than he was when he was first brought to
8 Cuba almost 15 years ago. Through much painful reflection, he
9 has found peace, gratitude and, as you heard, even forgiveness
10 for those who mistreated him in U.S. custody.

11 Before I got up here to talk to you, trial counsel
12 speaking for the U.S. Government preceded me. He shared with
13 you the considered recommendation of the U.S. Government that
14 Mr. al Darbi should receive the minimum sentence of 13 years.
15 Why? Because our government recognizes the service that
16 Mr. al Darbi has provided to the United States.

17 The government also recognizes that cooperation sheds
18 light on the character of someone in Mr. al Darbi's position.
19 It shows that he appreciates now the full implication of the
20 choices he made in the past. It shows he decided to make a
21 clean and full break with that past and to change his life in
22 a significant way. There is no doubt that Mr. al Darbi has
23 done just that.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 The government is correct. A fair balancing of all
2 of the facts in this case should lead you to impose a sentence
3 of 13 years and not a day more. A sentence of 13 years is the
4 only just resolution of this case, because it allows you to
5 hold Mr. al Darbi responsible for his wrongdoing, on the one
6 hand, while probably -- while properly recognizing his
7 consistent and, quote, unprecedented cooperation, on the other
8 hand.

9 Even with that minimum sentence recommended by both
10 the government and the defense, Mr. al Darbi will have spent a
11 total of 24 years in captivity, almost a quarter of a century,
12 by the time he is free. Equally important, a sentence longer
13 than 13 years for the man who became a witness for the United
14 States against al Qaeda and who provided unprecedented
15 testimony would surely discourage other individuals from
16 following in Mr. al Darbi's footsteps.

17 In this way, a sentence of 13 years would not only be
18 fair to Mr. al Darbi and respect the U.S. Government's
19 recommendation, it would also promote the public good. Those
20 following Mr. al Darbi's case would see for themselves that
21 the United States can be trusted to treat fairly and justly
22 those who cooperate and redeem themselves.

23 To conclude, I join the government in asking the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 members of this commission to find that Mr. al Darbi should
2 receive a sentence of 13 years and not a day more. It is rare
3 that both the government and the defense in a case like this
4 one agree to jointly recommend a sentence.

5 I urge you to follow our joint recommendation because
6 the man who submits to your judgment here today has proven
7 through word and deed that he has changed. I urge you to
8 follow our recommendation because it is the right thing to do.
9 Thank you for your time and for your service.

10 MJ [COL WATKINS]: Members of the Commission, you are
11 about to deliberate and vote on the sentence in this case.
12 Some of you have taken notes during these proceedings. I
13 advise you that you will receive a copy of my instructions, so
14 while you may take notes, it's not necessary for this session.

15 It is the duty of each member to vote for a proper
16 sentence for the offenses of which the accused has been found
17 guilty. Your determination of the amount of punishment is a
18 grave responsibility requiring the exercise of wise
19 discretion.

20 Although you must give due consideration to all
21 matters in mitigation and extenuation, as well as to those in
22 aggravation, you must bear in mind that the accused is to be
23 sentenced only for the offenses of which he has been found

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 guilty.

2 The parties have agreed that the offenses charged in
3 this case are one offense for sentencing purposes. Therefore,
4 in determining an appropriate sentence in this case, you must
5 consider them as one offense.

6 You must not adjudge an excessive sentence in
7 reliance upon possible mitigating action by the convening or
8 higher authority.

9 The minimum permissible punishment that may be
10 adjudged in this case is confinement for 13 years. The
11 maximum permissible punishment that may be adjudged in this
12 case is confinement for 15 years. The maximum punishment is a
13 ceiling on your discretion. You are at liberty to arrive at
14 any lesser legal sentence within the range I have given you.

15 There are several matters that you should consider in
16 determining an appropriate sentence. Bear in mind that our
17 society recognizes certain principal reasons for the sentence
18 of those who violate the law. They are:

19 (1) rehabilitation of the wrongdoer;

20 (2) punishment of the wrongdoer;

21 (3) protection of society from the wrongdoer; and

22 (4) deterrence of the wrongdoer and those who know of
23 his crimes and his sentence from committing the same or

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1 similar offenses.

2 The weight to be given any or all of these reasons,
3 along with all other sentencing matters in this case, rests
4 solely within your discretion.

5 As I have already indicated, this commission may
6 sentence the accused to confinement for no more than 15 years
7 and no less than 13 years. A sentence to confinement should
8 be adjudged in either full days, full months or full years;
9 fractions such as one-half or one-third should not be
10 deployed.

11 So, for example, if you do adjudge confinement for 13
12 years and one-half month, it should instead be expressed as
13 confinement for 13 years, 15 days. This example should not be
14 taken as a suggestion, only as an illustration of how to
15 properly announce your sentence.

16 In selecting a sentence, you should consider all
17 matters in extenuation and mitigation, as well as those in
18 aggravation.

19 You should consider evidence admitted as to the
20 nature of the offenses of which the accused stands convicted,
21 plus the accused's age; the duration of the accused's time in
22 custody -- and I will give you further instructions on this in
23 a moment; the accused's unsworn testimony; the extent and

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 value of the accused's cooperation with law enforcement and
2 prosecutors; the accused's good behavior while in custody; and
3 the extent of the accused's participation in and contribution
4 to the completed offenses.

5 Further, you should consider the nature of the weapon
6 used in the commission of the crime, the nature and extent of
7 injuries suffered by the victims, and the periods of
8 hospitalization and convalescence required for the victims.

9 Under the law, the commission may not give the
10 accused credit for his time spent in custody before trial;
11 that is, you may not deduct this time served in custody from
12 the sentence you would otherwise have awarded and thus award a
13 sentence less than the minimum sentence of 13 years'
14 confinement.

15 However, you may consider this period of custody,
16 both as a matter in mitigation and as it bears upon the
17 accused's rehabilitation when determining an appropriate
18 sentence within the prescribed range. The weight and
19 significance to be attached to the accused's period of custody
20 prior to trial rests within the sound discretion of each
21 member.

22 The commission will not draw any adverse inference
23 from the fact that the accused has elected to make a statement

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 that is not under oath. An unsworn statement is an authorized
2 means for an accused to bring information to the attention of
3 the commission and must be given appropriate consideration.
4 The accused cannot be cross-examined by the prosecution or
5 interrogated by commission members or me upon an unsworn
6 statement, but the prosecution may offer evidence to rebut
7 statements of fact contained in it.

8 The weight and significance to be attached to an
9 unsworn statement rests within the sound discretion of each
10 commission member. You may consider that the statement is not
11 under oath, its inherent probability or improbability, whether
12 it is supported or contradicted by evidence in the case, as
13 well as any other matter that may have a bearing upon its
14 credibility. In weighing an unsworn statement, you are
15 expected to use your common sense and your knowledge of human
16 nature and the ways of the world.

17 A plea of guilty is a matter in mitigation which must
18 be considered along with all other facts and circumstances of
19 the case. Time, effort, and expense to the government have
20 been saved by a plea of guilty. Such a plea may be the first
21 steps towards rehabilitation.

22 The parties to this trial have stipulated or agreed
23 to facts in Prosecution Exhibit 001 and Defense Exhibits A and

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 C. When counsel for both sides, with the consent of the
2 accused, stipulate and agree to a fact, the parties are bound
3 by the stipulation, and the stipulated matters are facts in
4 evidence to be considered by you along with all the other
5 evidence in the case.

6 When you close to deliberate and vote, only the
7 members will be present. I remind you that you all must
8 remain together in the deliberation room during deliberations.

9 I also remind you that you may not allow any
10 unauthorized intrusion into your deliberations. You may not
11 make communications to or receive communications from anyone
12 outside the deliberation room, by telephone or otherwise.
13 Should you need to take a recess or have a question, or when
14 you have reached a decision, you may notify the bailiff, who
15 will then notify me of your desire to return to open session
16 to make your desires or decision known.

17 Your deliberations should begin with the full and
18 free discussion on the subject of sentencing. The influence
19 of superiority in rank shall not be employed in any manner to
20 control the independence of members in the exercise of their
21 judgment.

22 When you have completed your discussion, then any
23 member who desires to do so may propose a sentence within the

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 range of authorized punishment upon which you have been
2 instructed. You do that by writing out on a slip of paper a
3 complete sentence. The junior member collects the proposed
4 sentences and submits them to the president, who will arrange
5 them in the order of their severity.

6 You then vote on the proposed sentences by secret
7 written ballot. All must vote; you may not abstain. Vote on
8 each proposed sentence, beginning with the lightest, until you
9 arrive at the required concurrence, which is three-fourths, or
10 six members.

11 The junior member will collect and count the votes.
12 The count is then checked by the president who shall announce
13 the result of the ballot to the members.

14 If you vote on all of the proposed sentences without
15 arriving at the required concurrence, you will then repeat the
16 process of discussion, proposal of sentences, and voting. But
17 once a proposal has been agreed to by the required
18 concurrence, then that is your sentence.

19 You may reconsider your sentence at any time prior to
20 its being announced in open session. If, after you determine
21 your sentence, any member suggests you reconsider the
22 sentence, open the commission and the president should
23 announce that reconsideration has been proposed without

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 reference to whether the proposed reballot concerns increasing
2 or decreasing the sentence. I will then give you specific
3 instructions on the procedure for reconsideration.

4 As an aid in putting the sentence in proper form, the
5 commission will use the sentence worksheet marked Appellate
6 Exhibit 040, which the bailiff may now hand to the president.

7 Extreme care should be exercised in using this
8 worksheet and in selecting the sentence form which properly
9 reflects the sentence of the commission. If you have any
10 questions concerning sentencing matters, you should request
11 further instructions in open session in the presence of all
12 parties to the trial.

13 In this connection, you are again reminded that you
14 may not consult the Manual for Military Commissions, Manual
15 for Courts-Martial or any other publication or writing not
16 properly admitted or received during this trial.

17 These instructions must not be interpreted as
18 indicating an opinion as to the sentence that should be
19 adjudged, for you alone are responsible for determining an
20 appropriate sentence in this case. In arriving at your
21 determination, you should select a sentence which will best
22 serve the needs of the accused and the welfare of society.

23 When the commission has determined a sentence, the

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 inapplicable portions of the sentence worksheet should be
2 lined through. When the commission returns, I will examine
3 the sentence worksheet. The president will then announce the
4 sentence.

5 Do counsel object to the instructions as given or
6 request other instructions?

7 TC [MR. SCHNEIDER]: No objection from the government,
8 Your Honor.

9 CDC [MR. KASSEM]: None from the defense, Your Honor.

10 MJ [COL WATKINS]: Thank you.

11 Does any member of the commission have any questions?
12 Apparently not.

13 Mr. President, if you desire a recess during your
14 deliberations, we must formally reconvene the commission and
15 then recess. Knowing this, do you desire to take a brief
16 recess before you begin deliberations, or would you like to
17 begin immediately?

18 PRES: We would like to begin immediately, Your Honor.

19 MJ [COL WATKINS]: Members, please confirm that you were
20 provided copies of Prosecution Exhibits 001 through 022,
21 Defense Exhibits A and C, and Appellate Exhibit 041.

22 PRES: Your Honor, could you describe 041 for me, please?

23 MJ [COL WATKINS]: Yes. Appellate Exhibit 041 is a

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1 written copy of the accused's unsworn statement. Do you have
2 that?

3 So, Members, you have looked at the other evidence so
4 far. Appellate Exhibit 041 is a written copy of what the
5 accused presented in open court, and you may consider that in
6 determining an appropriate sentence.

7 The bailiff will now present to the president
8 Appellate Exhibit 043, which is a written copy of the verbal
9 instructions I just gave you.

10 Mr. President, please do not mark on any of the
11 exhibits except the sentence worksheet, and please bring all
12 the exhibits with you when you return to announce the
13 sentence.

14 The commission is closed.

15 [The military commission closed at 1409 October 2017.]

16 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1409,
2 13 October 2017.]

3 MJ [COL WATKINS]: Please be seated. All parties present
4 when the commission closed remain present, with the exception
5 of the members, who are in deliberations.

6 While the deliberations are ongoing, I will address
7 Mr. al Darbi's post-trial appellate rights.

8 Defense, have you advised the accused orally and in
9 writing of his post-trial appellate rights?

10 CDC [MR. KASSEM]: We have, Your Honor.

11 MJ [COL WATKINS]: May I have Appellate Exhibit 042,
12 please?

13 ADC [LCDR YOUNG]: Your Honor, the Post-Trial and
14 Appellate Rights Form, if that's what you are referring to,
15 has not been marked yet; Mr. al Darbi has not signed it. We
16 will review it with him and have him sign it during the next
17 recess, if that's acceptable.

18 MJ [COL WATKINS]: I guess that will have to be. I was
19 prepared to cover those rights now; but if it's not signed, I
20 want him to carefully review those again with counsel.

21 So the commission is in recess.

22 [The R.M.C. 803 session recessed at 1410, 13 October 2017.]

23 [END OF PAGE]

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