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1 [The R.M.C. 803 session was called to order at 0910,  
2 26 January 2024.]

3 MJ [Lt Col BRAUN]: This commission will come to order.

4 Trial Counsel, are all government counsel who were present  
5 at the close of the previous session again present?

6 TC [COL KRAEHE]: They are, Your Honor.

7 MJ [Lt Col BRAUN]: Okay. And can you confirm that these  
8 proceedings are being transmitted to the United States in compliance  
9 with commission order AE 0007.006?

10 TC [COL KRAEHE]: They are being so transmitted, Your Honor.

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

12 Counsel for Mr. bin Amin, can you confirm that all detailed  
13 defense counsel who were present at the close of the previous session  
14 are again present this morning?

15 CDC [MS. FUNK]: They are, Your Honor.

16 MJ [Lt Col BRAUN]: Thank you.

17 And, Counsel for Mr. bin Lep, are all counsel present that  
18 were present in the last session again present?

19 LDC [MR. BOUFFARD]: Good morning, Your Honor.

20 Yes, and Lieutenant Joseph has also rejoined us.

21 MJ [Lt Col BRAUN]: Thank you.

22 I also note that both accused are present this morning.

23 Prior to taking up the sentencing instructions that were

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1 provided to the parties over the evening break, I wanted to note on  
2 the record yesterday I referred to the two sentencing worksheets, and  
3 I had misstated an appellate exhibit. So I want to clarify that  
4 right now.

5 The appellate exhibit designation for the sentencing  
6 worksheet for Mr. bin Amin is AE 0098.001 (AMI), and the sentencing  
7 worksheet for Mr. bin Lep is AE 0098.002 (LEP).

8 So over the evening recess I provided to the parties, based  
9 upon their inputs at our last session on the record, sentencing  
10 instructions. They have been since marked as AE 0099.002 (TJ), a  
11 four-page document.

12 Trial Counsel, did you have an opportunity to review those  
13 instructions?

14 TC [COL KRAEHE]: Yes, Your Honor.

15 MJ [Lt Col BRAUN]: Any objection?

16 TC [COL KRAEHE]: No, Your Honor.

17 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Amin, have you  
18 had an opportunity to review those instructions?

19 CDC [MS. FUNK]: I have, Your Honor.

20 MJ [Lt Col BRAUN]: Any objection?

21 CDC [MS. FUNK]: No.

22 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Lep?

23 LDC [MR. BOUFFARD]: I have, and no objection.

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1 MJ [Lt Col BRAUN]: One last question. Do all counsel affirm  
2 that the instructions are correct -- a correct statement of law, to  
3 the best of your understanding?

4 Trial Counsel?

5 TC [COL KRAEHE]: Yes, Your Honor.

6 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

7 CDC [MS. FUNK]: To the best of my understanding, Your Honor.

8 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

9 LDC [MR. BOUFFARD]: Yes, Your Honor.

10 MJ [Lt Col BRAUN]: Thank you.

11 Is there anything else we need to take up, then, before I  
12 call the members?

13 TC [COL KRAEHE]: Not from the United States, Your Honor.

14 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

15 CDC [MS. FUNK]: Nothing, Your Honor.

16 LDC [MR. BOUFFARD]: Nothing, Your Honor.

17 MJ [Lt Col BRAUN]: Very well.

18 Bailiff, please call the members.

19 **[Members entered the courtroom.]**

20 **[The military commission was called to order at 0915,**

21 **26 January 2024.]**

22 MJ [Lt Col BRAUN]: This commission will come to order.

23 All parties are present. Members are also present.

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1           Members, I'm about to read some sentencing instructions to  
2 you. It's a lot of information. You are free to take notes, as you  
3 have been throughout this proceeding. However, because it's a lot of  
4 information, I'm going to provide you a hard copy of the instructions  
5 I'm about to give you.

6           So, again, feel free to take notes of things as I'm  
7 addressing them, but you will have a copy, so don't feel that you  
8 need to take verbatim notes as that would be rather challenging this  
9 morning.

10           Members, you are about to deliberate and vote on the  
11 sentences in this case. It is the duty of every member to vote for a  
12 proper sentence for the offenses of which the accused has been found  
13 guilty.

14           Your determination of the amount of punishment is a grave  
15 responsibility requiring the exercise of wise discretion. Although  
16 you must give due consideration to all matters in mitigation and  
17 extenuation, as well as to those in aggravation, you must bear in  
18 mind that each accused is to be sentenced only for the offenses of  
19 which he has been found guilty.

20           In determining a sentence for Mr. bin Amin, you should  
21 consider Prosecution Exhibits 1, 5 through 24, 26 through 29, 32, 34,  
22 and 35. You should also consider Defense Exhibits (AMI) A through Y  
23 and AA.

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1           In determining a sentence for Mr. bin Lep, you should  
2 consider Prosecution Exhibits 3, 5 through 24, 26 through 29, 32, 34,  
3 and 35. You should also consider Defense Exhibit (LEP) Z, as well as  
4 Defense Exhibit (AMI) W.

5           You must not adjudge an excessive sentence in reliance upon  
6 possible mitigation -- mitigating action by the convening or higher  
7 authority. A single sentence shall be adjudged for all offenses of  
8 which the accused has been found guilty. A separate sentence must be  
9 adjudged for each accused.

10           The maximum punishment that may be adjudged in this case is  
11 confinement for 25 years. The minimum punishment that can be  
12 adjudged in this case is confinement for 20 years. The maximum  
13 punishment is a ceiling on your discretion. You are at liberty to  
14 arrive at any lesser legal sentence so long as your sentence includes  
15 at least the minimum punishment I just stated.

16           There are several matters which you should consider in  
17 determining an appropriate sentence. You should bear in mind that  
18 our society recognizes four principal reasons for the sentence of  
19 those who violate the law.

20           They are: Rehabilitation of the wrongdoer, punishment of  
21 the wrongdoer, protection of society from the wrongdoer, and  
22 deterrence of the wrongdoer and those who know of his crimes and his  
23 sentence from committing similar -- committing the same or similar

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1 offenses.

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

5           A period of confinement is the only punishment available to  
6 be adjudged as to each accused. As I have already indicated, a  
7 sentence to confinement cannot exceed 25 years, nor be less than 20  
8 years. A sentence to confinement should be adjudged in either full  
9 days, full months, or full years. Fractions such as one half or  
10 one-third should not be employed.

11           So, for example, confinement for 20 and a half years should  
12 instead be expressed as confinement for 20 years and six months.  
13 This example is not to be taken as a suggestion. It's merely an  
14 illustration to show you how to properly announce your sentence.

15           In determining the sentence, you should consider all the  
16 facts and circumstances of the offenses of which each accused has  
17 been convicted and all matters concerning each accused. Thus, you  
18 should consider an accused's background, his character, any mental  
19 condition, the accused's cooperation, the duration and condition of  
20 the accused's detention, the experience of the accused while in  
21 custody of the United States Government, all matters in extenuation  
22 and mitigation, and any other evidence each accused presented. You  
23 should also consider all matters in aggravation.

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1           Both accused made an unsworn statement. An unsworn  
2 statement is an authorized means for the accused to bring information  
3 to the attention of the commission and must be given appropriate  
4 consideration.

5           A person making an unsworn statement cannot be  
6 cross-examined by the prosecution or defense or interrogated by  
7 members or me. However, evidence may be offered to rebut statements  
8 of fact contained in unsworn statements.

9           The weight and significance to be attached to an unsworn  
10 statement rests within the sound discretion of each member. You may  
11 consider that the statement is not under oath, its inherent  
12 probability or improbability, whether it is supported or contradicted  
13 by evidence in the case, as well as any other matter that may have a  
14 bearing upon its credibility.

15           In weighing an unsworn statement, you are expected to use  
16 your common sense and your knowledge of human nature and the ways of  
17 the world.

18           You have heard evidence concerning a witness' opinion as to  
19 the disposition of offenses not before this commission. It is not  
20 your duty to determine the relative blameworthiness of and whether  
21 appropriate disciplinary action has been taken against others who  
22 might have committed an offense, whether involved with these accused  
23 or not.

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1           If you believe a witness has made a statement recommending a  
2 specific sentence for either of the accused, you should discount that  
3 witness' specific sentence recommendation. Only you may determine  
4 what an appropriate sentence is for each accused.

5           This rule does not apply to statements by the accused  
6 regarding personal requests he may make. Whether an accused should  
7 receive any authorized legal punishment is a matter for you alone to  
8 decide in the exercise of your independent discretion based upon your  
9 consideration of all the evidence.

10           A plea of guilty is a matter in mitigation which must be  
11 considered along with all other facts and circumstances of the case.  
12 Time, effort, and expense to the government usually are saved by a  
13 plea of guilty. Such a plea may be the first step towards  
14 rehabilitation.

15           You have heard testimony and received evidence indicating an  
16 opinion regarding the accused's rehabilitative potential.  
17 Rehabilitative potential refers to an accused's potential to be  
18 restored through vocational, correctional, or therapeutic training,  
19 or other corrective measures, to be a useful -- to a useful and  
20 constructive place in society. You may consider this evidence in  
21 determining an appropriate sentence for each accused.

22           You may not consider testimony about an accused's  
23 rehabilitative potential as a recommendation regarding the



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1 appropriateness of any specific sentence because no witness may  
2 suggest a specific punishment or sentence. As I've previously  
3 stated, this rule does not apply to statements by the accused  
4 regarding personal requests he may make in relation to specific  
5 punishments.

6           Whether an accused should receive any authorized legal  
7 punishment is a matter for you alone to decide in the exercise of  
8 your independent discretion based upon your consideration of all of  
9 the evidence.

10           It is your independent responsibility to adjudge an  
11 appropriate sentence for the offenses of which each accused has pled  
12 guilt. However, if any or all of you wish to recommend clemency, it  
13 is within your authority to do so after the sentence is announced.  
14 Any such recommendation is not a part of the sentences to which you  
15 will adjudge.

16           Your responsibility is to adjudge a sentence for each  
17 accused that you regard as fair and just at the time it is imposed,  
18 and not a sentence that will become fair and just only if the  
19 mitigating action recommended in your clemency recommendation is  
20 adopted by the convening authority.

21           The convening authority is in no way obligated to accept  
22 your recommendation.

23           Trial Counsel, are you prepared to present argument?

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1 TC [COL KRAEHE]: Yes, Your Honor, I am.

2 MJ [Lt Col BRAUN]: Please proceed.

3 TC [COL KRAEHE]: Your Honor, Counsel, Members of the panel.

4 Over the course of the last few days you have seen a lot of  
5 photos. The prosecution showed you photos of the victims. The  
6 defense also showed us photos, photos of the accused's families. The  
7 photos of the accused's families and those of the victims share a lot  
8 of things in common. All these photos, they show beautiful, happy  
9 people; people with meaning, people with value, people who are loved.

10 But that's where the similarities end. The accused's photos  
11 show beautiful, happy people that are, God willing, still living, and  
12 who the accused hope one day to see again.

13 The prosecution's photos, however, are all mere reminders of  
14 beautiful, happy people. People just at the start of their lives.  
15 People with hope and promise. Such beautiful people. These are  
16 photos, however, of people who were torn apart, burned alive, and  
17 killed in a bomb blast. Beautiful people, happy people who those  
18 left behind will never see again.

19 This military commission has found the accused guilty of the  
20 murder of 202 innocent civilians, and the injury of hundreds more.  
21 The accused have admitted their guilt in these horrendous crimes.  
22 You have heard from the survivors of but a few of those who were so  
23 brutally and senselessly murdered and grievously injured and

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1 disfigured. It is now your duty to pass sentence on the accused.

2 I'm going to talk a little bit about how we got to this  
3 point, and why we're here. It all started in the 1990s when Usama  
4 bin Laden declared war on America and on Western civilization itself.  
5 He issued a fatwa declaring it, quote, an individual duty for every  
6 Muslim to kill Americans wherever and whenever found, closed quote.

7 He also directed all Muslims to, quote, kill the Americans  
8 and their allies, civilians, and military, end quote.

9 We are all familiar with this evil creed.

10 The accused heeded Usama bin Laden's call. In 2000, they  
11 traveled to Afghanistan where they received instruction in jihad.  
12 They knowingly and voluntarily took part in Al Qaeda's war against  
13 America and its allies. The accused wanted to train and participate  
14 in violent jihad, and to fight Americans, Westerners and Christians.

15 They met Encep Nurjaman, also known as Hambali, who was an  
16 Al Qaeda associate and the leader of a Southeast Asian Islamist  
17 organization known as Jemaah Islamiyah, and who -- which you'll hear  
18 referred to as JI. JI's leaders previously had stated that JI and  
19 Al Qaeda should fight together.

20 Now, not long after meeting Hambali, and with his  
21 assistance, the accused traveled to Afghanistan to obtain jihad  
22 training at an Al Qaeda training camp under Usama bin Laden's  
23 guidance and leadership.

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1           The accused trained at Al Qaeda's Al-Farouq Training Camp  
2 where they received training in basic military tactics, firearms,  
3 RPGs, and explosives. They were training to be soldiers, soldiers  
4 for Al Qaeda.

5           While the accused were attending this training camp, Usama  
6 bin Laden himself lectured the trainees about the need for violent  
7 jihad, and the purpose of fighting Americans. The accused heard  
8 these lectures. The accused intended to learn as much as possible in  
9 order to carry out a martyrdom operation against the United States  
10 military and coalition forces.

11           The accused were very eager to join violent jihad and were  
12 willing to become martyrs. The accused understood that jihad would  
13 require the accused to potentially become suicide operatives, and  
14 that their actions would directly or indirectly result in the killing  
15 of innocent civilians.

16           This is what the accused wanted. It's what they trained  
17 for, and it's what they pledged themselves to do.

18           Shortly after Al Qaeda's September 11th, 2001 attacks on  
19 America, the accused met with Usama bin Laden after the 9/11 attacks.  
20 And they swore a sacred oath, bayat, an oath of loyalty to Usama  
21 bin Laden and to Al Qaeda.

22           After 9/11, the whole world knew who Usama bin Laden was.  
23 The whole world knew what he had done. The whole world knew what he

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1 stood for. The whole world knew what he stood against. And it was  
2 then that they swore allegiance to Usama bin Laden.

3 At Al Qaeda's direction, the accused then went to work for  
4 Hambali, assisting him with his daily activities, evading  
5 authorities, seeking out and planning future terror operations.

6 Then sadly, tragically, the events of October 12th, 2002,  
7 the fiery bomb blasts, the seared flesh torn from bodies, the bodies  
8 mangled, disfigured beyond recognition. Over 200 innocent  
9 lives -- innocent lives -- snuffed out by the barbaric acts in which  
10 the accused made themselves willing co-conspirators.

11 This is what the accused wanted. This is what they trained  
12 for. This is what they pledged to do.

13 To their credit, the accused have admitted their role in the  
14 Bali bombings. They have pleaded guilty to the murder of 202  
15 innocent civilians, to injuring and maiming hundreds of others, to  
16 conspiring with Hambali and Al Qaeda to commit these crimes, and to  
17 being accessories after the fact to the crime of terrorism.

18 The accused have admitted the errors of their ways. They  
19 have told us that they are sorry and that they have had a change of  
20 heart.

21 I would be remiss if I did not thank this commission, if I  
22 did not thank Mr. Bouffard and Ms. Funk for giving the victims, the  
23 survivors, those broken, shattered people, the opportunity to be

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1 heard, to speak to you, to share with you their sorrow and pain.

2 It's so important, so very important. And we thank you for that.

3 And I would be remiss not to acknowledge what I believe were  
4 heartfelt expressions of contrition and apology by Mr. bin Amin and  
5 Mr. bin Laden [**sic**].

6 By all accounts, they were raised in happy, loving families,  
7 families where they learned the good value of religion, where they  
8 learned right from wrong. These men were raised in love. They were  
9 born in love.

10 But they chose to turn to hatred, to violence, and to  
11 unspeakable cruelty. There was no need for them to do that. That  
12 was their choice.

13 They have said they've had a change of -- a change of  
14 hearts. It is difficult to truly know another's heart. The  
15 accused's hearts may have changed, but we know whose hearts here  
16 haven't changed over the last 20 years, whose hearts will never  
17 change: The victims' hearts; people like Matthew Arnold, the Millers  
18 and Snodgrasses, the Heffernans and Panagoulas family, the van Renen  
19 family, Maggie Stephens, and thousands of others we haven't heard  
20 from. Thousands.

21 There are none who are stronger and braver than those who so  
22 eloquently argued for justice; arguments written with their tears,  
23 arguments written with their sorrow.

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1           There are none who are stronger and braver than those who  
2 have faced this terror attack and the heartbreak that followed with  
3 such dignity, as we saw through these victims who came here to  
4 testify and give testimony of their sorrow.

5           The accused's hearts may have changed, but not the victims'.  
6 No, their hearts were forever scarred, forever seared by the horror  
7 of the accused's acts. Their hearts are forever broken.

8           The accused may argue or suggest that their role in the  
9 conspiracy was minimal, that they are not responsible for the full  
10 scope of terror and suffering those Bali bombs unleashed. But do not  
11 be mistaken, it was bin Amin and bin Lep's conspiracy, the same as  
12 all the other conspirators.

13           The accused willingly, indeed, they enthusiastically and  
14 zealously made themselves Al Qaeda soldiers. So devoted were they to  
15 Usama bin Laden and his calls for global jihad, for mass murder of  
16 innocent civilians in service of a twisted and evil creed, so  
17 enthusiastic and zealous were they that they would gladly have given  
18 their own lives if it meant taking with them the lives of those they  
19 hated so completely.

20           The accused would do, and they in fact did, all they were  
21 told to do as soldiers of Al Qaeda's jihad. They never backed out.  
22 And in so doing, they became partners in Al Qaeda's infamy.

23           They knew what they were doing. They achieved what they

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1 sought to do. They aided and abetted the merciless killing of those  
2 they hated so much.

3           There is no way to mitigate or extenuate the death, the  
4 dismemberment, the disfigurement, and countless lifetimes of  
5 suffering their conspiracy caused. There is no context which  
6 justifies in any way or excuses in any way the accused's  
7 contributions, no matter how minimal, to this barbaric crime.

8           The defense may also ask you to consider as evidence  
9 supporting a finding of extenuation and mitigation the treatment and  
10 conditions of confinement the accused experienced while in the CIA's  
11 Rendition, Detention, and Interrogation Program, RDI.

12           The accused left this program approximately 18 years ago,  
13 shortly before the program was discontinued.

14           RDI was a product of and must be viewed in the context of  
15 its times, at the start of the war on terror when the United States  
16 sought to defend itself and the world from forces that had viciously  
17 attacked the United States, killing thousands of innocents, forces  
18 that had attacked other countries, forces that sought to destroy the  
19 American way of life.

20           This war continues to this day, as recent events make  
21 abundantly clear. But RDI is history; it will be judged by history.  
22 The accused, since their release from RDI, have been detained under  
23 humane conditions, consistent with international law. They have



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1 access to their families. They have access to the International  
2 Committee for the Red Cross. They have been provided access to  
3 counsel in a process that affords them fundamental fairness according  
4 to the evidence and law, in keeping with American traditions of  
5 justice.

6 The victims, they received no such things. Their execution  
7 was brief and brutal.

8 More to the point, it is not your task or anyone's task here  
9 to judge RDI, no matter how strong your feelings about it. The  
10 accused, no doubt, suffered in RDI, many believe unjustly. But their  
11 suffering does not compare -- does not come even close to the  
12 suffering they conspired to achieve and did achieve in Bali.

13 What happened to the accused in those early days of the war  
14 on terror should in no way detract from or undermine the justice owed  
15 the thousands, the hundreds and hundreds of dead and injured, should  
16 no way detract and undermine the justice owed the thousands left  
17 behind to lives bereft of their loved ones.

18 Our task here is not to give the accused justice; rather,  
19 our task here is to give the victims justice.

20 The accused may also argue or suggest that they are victims  
21 here. Let's be clear about one thing: The accused, regardless of  
22 what they say, are not the victims here, not in any sense of the  
23 word.

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1           The only victims here are the 202 killed in Bali. The only  
2 victims here are the hundreds who were injured and maimed and  
3 disfigured in the attack which the accused's conduct furthered. The  
4 only victims here are the thousands left behind, the mothers and  
5 fathers, wives and husbands, brothers and sisters and friends who  
6 have been rendered for their lifetimes horrified, terrorized, bereft  
7 of their precious loved ones, stolen from them by the accused's  
8 barbaric acts.

9           You heard but a few of these victims here. It would be  
10 impossible for you to hear from all of the victims. The victims of  
11 the accused's acts could fill this courtroom many times over.

12           So the accused's claims of victimhood are but a drop  
13 compared to the ocean of suffering that they and their  
14 co-conspirators caused. The tears that the accused have shed are but  
15 drops in the ocean of tears their acts caused the victims.

16           The suffering of the accused while in detention many years  
17 ago in the first day -- first days of Al Qaeda's war on Western  
18 civilization does not come close compared to the lifetimes upon  
19 lifetimes upon lifetimes of suffering the accused willingly and  
20 zealously made themselves agents of.

21           In considering the accused's request for extenuation and  
22 mitigation, you must do so in light of all of the evidence. You  
23 must, therefore, consider their requests in light of the evidence of

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1 the crimes the accused are adjudged guilty; the crimes that they have  
2 themselves admitted, crimes involving the murder of hundreds.

3 As a matter in aggravation, you must also consider evidence  
4 that the accused singled out Americans, Westerners, and Christians in  
5 respect of the crimes they committed.

6 As a matter in aggravation, you must consider evidence of  
7 the financial, social, psychological, and mental impact on the  
8 victims.

9 The evidence of aggravation in this case is simply  
10 monumental: 210 dead, hundreds injured, hundreds if not thousands of  
11 family members bereft of their loved ones, all targeted because of  
12 their religion and national origin. This mountain of aggravation far  
13 outweighs. Indeed, it makes trivial any evidence in extenuation and  
14 mitigation.

15 Notwithstanding this evidence of aggravation, the accused  
16 request mercy. The accused want your mercy. But in considering the  
17 accused's requests for mercy, ask yourselves: Where was their mercy  
18 for the victims?

19 There was none. The victims were shown no mercy at all.  
20 Those killed in the attacks received death sentences at the hands of  
21 the accused and their co-conspirators. The accused and their  
22 co-conspirators showed them no mercy. Those injured in the attacks  
23 now lead lives of daily trauma and pain: Physical, psychological,

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1 and spiritual. The accused and their co-conspirators showed them no  
2 mercy.

3 The countless mothers and fathers, wives, and husbands and  
4 brothers, sisters left behind were rendered bereft and heartbroken  
5 and will remain so for the remainder of their lives. The accused  
6 showed them no mercy.

7 Yet the accused now come before you and ask for mercy. They  
8 are not deserving of mercy. They and their co-conspirators executed  
9 202 innocent victims in a hot wind and fire bomb blasts. They  
10 sentenced countless others to lifetimes of physical and emotional  
11 torment. The accused are not deserving of mercy.

12 They should be shown exactly the same mercy they showed the  
13 dead, the injured, and those left behind. None at all.

14 While we should show the accused no mercy, while the accused  
15 showed the victims no mercy, we can show the victims mercy by giving  
16 them some measure of justice here. True justice would be justice  
17 that makes the victims whole, that restores to life those who were  
18 viciously killed, that makes whole the bodies and souls of those who  
19 were indelibly disfigured by unspeakable cruelty.

20 It is not within your power here to do true justice. It is  
21 not within anyone's power on earth to do true justice. True justice  
22 is for God alone.

23 But you can, you do have it within your power, to solve the

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1 victims' wounds and ease their pain by doing all in your power to  
2 grant them all the justice you have been given to mete out.

3 Let no one ever doubt that what the accused and their  
4 co-conspirators did was evil.

5 Let no one ever doubt that such evil acts should be  
6 condemned with all possible force.

7 Let no one ever doubt that you fought this evil and its  
8 barbaric ways with all your strength.

9 Let no one ever doubt that you stood for justice.

10 We have heard from but a handful of those whose lives were  
11 shattered by the accused's crimes. We heard about just -- we heard  
12 just a few of those. We heard about just a few of those that were  
13 murdered, loved ones who will never be forgotten. We saw their  
14 photos, slowly fading, even while their memories still shine bright  
15 and clear in the hearts of those left behind.

16 Let us never forget who these victims were.

17 We heard from the victim family members that there are no  
18 words for the acts that led to their loved ones' deaths. No words  
19 for the pain they feel in their loss.

20 But let me share with you some of the words they reached for  
21 that you heard here, words they reached for in trying to express  
22 their pain: Atrocity, traumatic, devastated, heartbroken, tormented,  
23 incalculable, damnable, agonizing, horror, unfathomable, destroyed,

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1 horrendous, depraved, cowardly, harrowing, wiped out, vicious,  
2 charred, battered, scarred, despicable, wicked, inconsolable,  
3 unremitting, ruined, slaughter, catastrophic, irrevocable, inferno,  
4 barbaric, darkness. A veritable lexicon of grief, pain, terror, of  
5 suffering, yet words still fall short.

6           It is difficult to hear these words. It is difficult to  
7 hear the facts of this case without feeling some very strong  
8 emotions. Hundreds of innocent people, most of them just at the  
9 start of their lives, killed and maimed in unprovoked and cowardly  
10 acts of terrorism.

11           But we ask you to put your emotions aside. You must. Do  
12 not allow passion or prejudice to enter your deliberations. Rather,  
13 we ask that you render your judgment solely on the evidence, the law,  
14 logic, and your God-given common sense. We are confident that on the  
15 evidence and on the law, you will return the only sentence, the only  
16 sentence that even comes close to justice.

17           But in considering the evidence, we also ask you to consider  
18 why, in the final analysis, are we here? Why did any of the victims  
19 and family members come before you from such distances to recall and  
20 to relive the pain and loss of what happened so long ago?

21           They told us why they came here. They told us they came  
22 here because they want you to know the loved ones they will never  
23 forget, people like Tim, Megan, Dan, Debbie, Neil, Dimitri, Pete,

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1 Charles, just a few of the victims, just a handful.

2 Our witnesses, they came here because they wanted you to  
3 know their pain. They want you to know the torture they've gone  
4 through since October 12th, 2002, the torture they've suffered every  
5 day since their loved ones were so violently and senselessly taken  
6 away from them.

7 They want you to have some sense of the torture they will  
8 continue to suffer for the rest of their lives. They want you to  
9 remember a face, a person, a life that for them will never fade with  
10 time.

11 They want you to remember, to never forget.

12 But most of all, they came here for justice. After all  
13 these years -- it's been a very long time. After all these years,  
14 they still believe in justice. The victims have come from distant  
15 countries, relived these horrors, to relive this pain, because they  
16 still believe this tribunal, this American court, can deliver some  
17 measure of the justice that has long eluded them.

18 And so we, on behalf of the United States, we believe, as  
19 the victims do, as countless others believe, that justice can be  
20 done. And we demand on their behalf, we demand on behalf of the  
21 living, we demand on behalf of the dead, we demand that justice be  
22 done here. We demand that justice be done now.

23 MJ [Lt Col BRAUN]: Thank you, Trial Counsel.

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1 Panel Members, the sentence you determine in this case is  
2 your own independent decision based upon the evidence and matters  
3 properly before this commission, applying the instructions on the law  
4 that I have given you.

5 No one in a position of authority over you expects you to  
6 return any particular sentence in this case. No one is permitted to  
7 discover what occurs during your deliberations, what was said by any  
8 court member, or how any member voted.

9 As the sentence will not require unanimous agreement, no one  
10 will ever know how you voted in this case or whether you concurred  
11 with the sentence ultimately announced. The sentence announced by  
12 the panel, regardless of what that is, will have neither a positive  
13 nor a negative effect on your career.

14 You are simply required to be fair to both sides, to  
15 determine the facts based upon the evidence provided to you, and  
16 apply the law that I provide you, and not be influenced by outside  
17 factors in reaching your sentence.

18 Do all panel members understand my instruction?

19 That's an affirmative response from all panel members.

20 Do all panel members agree to follow my instruction?

21 That's an affirmative response from all panel members.

22 Counsel for Mr. bin Amin, are you prepared to present  
23 argument?



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1 CDC [MS. FUNK]: I am, Your Honor. I had spoken with IT about  
2 wearing a lavalier. So I will need just a brief moment.

3 MJ [Lt Col BRAUN]: Okay. What we can do is we can take a  
4 quick comfort recess for 10 minutes, allow us to reorient the  
5 courtroom, and then move back into session to continue with argument.

6 I do ask the panel members that, again, during this recess,  
7 as in all other recesses, that you not discuss this case amongst  
8 yourselves or with anyone else.

9 Do all panel members understand my instruction?

10 That's an affirmative response from all panel members.

11 Very well. This commission's in a 10-minute recess.

12 **[The military commission recessed at 0956, 26 January 2024.]**

13 **[The military commission was called to order at 1010,**

14 **26 January 2024.]**

15 **[Members entered the courtroom.]**

16 MJ [Lt Col BRAUN]: This commission will again come to order.

17 All parties that were present when the commission last  
18 recessed are again present.

19 Counsel for Mr. bin Amin, are you prepared to present  
20 argument?

21 CDC [MS. FUNK]: I am, Your Honor.

22 MJ [Lt Col BRAUN]: Please proceed.

23 CDC [MS. FUNK]: Thank you.

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1           Brian Stevenson has said: Each of us is more than the worst  
2 thing we ever did. And the worst thing that Mr. bin Amin ever did  
3 was take money from a courier in December of 2002, knowing that it  
4 was going to be used, in part, to hide people who participated in the  
5 Bali bombing, and in part for the ongoing attempts to hide Mr.  
6 Hambali. That is the worst thing he ever did.

7           I want to talk to you a little bit about the law of  
8 conspiracy because it's important. You may be wondering: Why did he  
9 plead guilty to a murder that he didn't even know was going to  
10 happen? And it's because of the law of conspiracy. If you advance a  
11 conspiracy in any way by your actions, you become responsible for  
12 everyone's actions.

13           You have a clear roadmap as to what Mr. bin Amin did and did  
14 not know, and when he knew that, and that's in Exhibit 1 of the  
15 prosecution's exhibits, Mr. bin Amin's Stipulation of Fact.  
16 Mr. bin Amin's Stipulation of Fact is different than most  
17 stipulations of fact, and you will notice it if you look at it, for  
18 example, on page 9 of that exhibit.

19           The language in bold on the bottom of page 9 of that exhibit  
20 says: Based on evidence and facts made known to the accused, which  
21 the accused acknowledges the prosecution can prove beyond a  
22 reasonable doubt, number 43, that on October 12th of 2002, three  
23 bombs were detonated.

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1           If you look a few paragraphs lower -- just one paragraph  
2 lower, also in bold, it says: Based on personal knowledge or  
3 evidence, the accused acknowledges the prosecution can prove beyond a  
4 reasonable doubt.

5           Number 45: The accused read about the Bali bombings on the  
6 Internet, and saw Hambali's picture on the cover of *Time Magazine*,  
7 and read the article. The accused learned Mr. Hambali was wanted,  
8 and the accused helped hide Hambali avoid capture.

9           So when you're looking at the Stipulation of Facts, please  
10 take a minute to go up above to see whether this is a fact that the  
11 government has said that they can prove that he knows about, or this  
12 is a fact that he has no personal knowledge of.

13           MJ [Lt Col BRAUN]: Counsel, I apologize. Can you slow down a  
14 little bit, please.

15           CDC [MS. FUNK]: Oh, I'm so sorry. Yes. It was my worst  
16 fear.

17           That will help inform you as to the facts.

18           Mr. bin Amin is not the sum total of the worst thing he ever  
19 did. That's not who he is, but it is what he did.

20           The judge has instructed you, and those instructions will go  
21 back with you, that you are to consider evidence in mitigation and  
22 extenuation. It's not an option. The first thing you do is decide  
23 what is the appropriate sentence, and the second thing you do is

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1 consider items in mitigation and extenuation that may qualify for a  
2 recommendation of clemency.

3 But before I get into what you are legally to consider for  
4 clemency, I want to talk to you a minute about the victims.

5 I know some of you might have been wondering why the defense  
6 would put on somebody to read a statement about a family member who  
7 was lost. And I'll tell you why: Because we believe that the pain  
8 of the victims can coexist with the defendant's right to clemency.

9 So, for example, our team went to London to meet with some  
10 experts. We took the time to go to the memorial that Mr. Arnold told  
11 you about because we wanted to see it because it's important to us.

12 When we went to Australia to meet with some experts, we  
13 timed our trip to be there on the 20th anniversary of the Bali  
14 bombing because we wanted to attend a memorial service with those who  
15 were grieving.

16 Unlike Colonel Kraehe, I do not believe, and I don't believe  
17 the law supports, that this is a binary choice. Considering  
18 recommending clemency in no way diminishes the pain the victims feel.  
19 And considering the pain the victims feel in no way cancels out  
20 Mr. bin Amin's right to ask you to recommend clemency. These things  
21 can coexist.

22 So now I want to move into talking about what you can  
23 consider in clemency, in mitigation and extenuation. The first is

1 the defendant's age at the time of the actions.

2 This photo shows Mr. bin Amin in 1999. He was 24, I  
3 believe, when that photo was taken, and it was the next year that he  
4 traveled to Afghanistan. You can consider his youth when you are  
5 determining what is the appropriate sentence and whether it's  
6 appropriate to recommend clemency.

7 You can also consider his cooperation. And when you're  
8 looking for evidence of cooperation, I want to start with Exhibit X,  
9 which is a document written by Dr. Hawthorne Smith. Dr. Smith wrote  
10 a report for your consideration after meeting with the client through  
11 letters through the course of almost a year.

12 Dr. Smith has worked clinically with survivors of torture  
13 and significant human rights abuses for the past 28 years.  
14 Internationally recognized as an expert on the sequelae of torture,  
15 trauma-informed service provision, and the process of healing, the  
16 author utilized that experience when developing and disseminating  
17 clinical impressions found in this report.

18 We ask you to consider on page 3, the second paragraph, the  
19 language: Mr. bin Amin has been incarcerated in Guantanamo Bay since  
20 September of 2006. His medical and behavioral health records  
21 describe a detainee who was cooperative, deferential, pleasant, and  
22 calm.

23 On page 9 of his report, Dr. Smith at the bottom of the page

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1 indicates: Mr. bin Amin was arranging a plea deal back in 2014  
2 before the plea deal was scuttled due to events and issues that did  
3 not pertain to Mr. bin Amin directly.

4 Also, if you look at Exhibit Y -- and I apologize to the  
5 commission and to the jurors. Exhibit Y does not have any  
6 identifying information on it. Some of you may have recognized it.  
7 But, for the record, Exhibit Y is the report of the Senate Select  
8 Committee on Intelligence, committee study of the Central  
9 Intelligence Agency's Detention and Interrogation Program.

10 And if you look on page 309 of that report, you will see  
11 that when Mr. bin Amin was first disappeared and in the custody of  
12 Thai authorities, he provided them information immediately.

13 You can also consider Mr. bin Amin's guilty plea when  
14 deciding whether or not a recommendation of clemency is appropriate.  
15 By pleading guilty, he has saved the United States Government  
16 hundreds of thousands, possibly millions of dollars that it would  
17 take to transport all of the witnesses that would be necessary for a  
18 trial of this nature.

19 It's important for you to know that Mr. bin Amin will not  
20 get credit for the 20 years and eight months that he has already been  
21 in custody.

22 You are also able to consider the nature and the length of  
23 his detention. Mr. bin Amin spent three and a half years in a black

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1 site. He spent 10 years in solitary confinement.

2 In looking at Exhibit X, Dr. Smith's report, he describes  
3 Mr. bin Amin as suffering from complex PTSD. That's on page 4.

4 On page 5, he indicates that Mr. bin Amin has endured  
5 symptoms of reexperiencing, such as trauma-related nightmares,  
6 sometimes three to four times a week; insomnia and other sleep  
7 disturbances; and intrusive thoughts.

8 He has explained over time how triggers, such as  
9 interactions with the facility guards or administrators that  
10 heightened his sense of vulnerability, would increase his rumination  
11 and cause him to become even more introverted and closed off.

12 Mr. bin Amin has avoidant behaviors, alterations in arousal,  
13 affective dysregulation, disturbances in self, disturbances in  
14 relationships. He has not been provided with the therapy that he  
15 needs in order to deal with those past issues.

16 So, while the government says it's a very long time ago, the  
17 fact is Mr. bin Amin lives with those memories to this day.

18 At the end of the day, the bottom line is this: The  
19 government nearly broke Mr. bin Amin and then, during the length of  
20 his confinement, did nothing to help fix him.

21 Normally in the criminal justice system, there are certain  
22 things that are just sort of baked into the process: The right to  
23 confront and cross-examine witnesses, the right to a speedy trial,

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1 the right to victims to come forward and explain their pain.

2 But this isn't a normal court and this isn't a normal  
3 proceeding. This man was held for nearly 21 years before he was  
4 brought to justice.

5 You are also entitled to consider in the nature of  
6 his -- the nature of his punishment or detention what happened to him  
7 at those black sites.

8 According to the SSCI Report --

9 MJ [Lt Col BRAUN]: And, Counsel, please identify the exhibit  
10 you're publishing, please.

11 CDC [MS. FUNK]: Certainly. This is W, Defense Exhibit W,  
12 page 10.

13 If you look at page 309 of Defense Exhibit Y, it tells you  
14 that Mr. bin Amin, upon arrival in United States custody at the black  
15 site, was immediately tortured. Not immediately questioned;  
16 immediately tortured.

17 And then, on page 309, it says days later he was asked about  
18 the information that he gave in Thailand.

19 On page 99 of the SSCI Report, there is a description of  
20 what was going on at COBALT just before Mr. bin Amin arrived as well  
21 as several months after Mr. bin Amin arrived.

22 I stepped out of order. I apologize. We'll get to the  
23 SSCI Report in just a moment.



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1           But first, going back to Dr. Smith's report, having reviewed  
2 the medical records that were available, on the bottom of page 2,  
3 Mr. bin Amin has reportedly experienced torture consistent with the  
4 SSCI Report, including being water doused, being held naked for  
5 months at a time without being able to cover himself -- that means no  
6 blanket -- being shaved head to toe, not being allowed to shower or  
7 brush his teeth for months at a time; a lack of basic hygiene.

8           Being held in freezing conditions, being slapped during  
9 water torture with buckets of ice, being inundated with loud,  
10 unpleasant, noise and heavy metal music; being insulted verbally;  
11 subjected to stress positions, including where he was forced to hold  
12 his head against a wall while standing at an angle; as well as  
13 kneeling with a broom behind his knees; limited nutrition; and  
14 threats of more severe or ongoing treatment if he didn't cooperate.

15           If you look at the Senate Select Committee's investigation  
16 on page 99, you will see that the CIA officers at detention site  
17 COBALT, where Mr. bin Amin was first brought, described a number of  
18 interrogation activities in cables that were not approved by  
19 CIA Headquarters. CIA Headquarters failed to respond, inquire, or  
20 investigate.

21           Then it details some of the additional offenses, including  
22 cables revealing that the CIA's chief of interrogations used water  
23 dousing against the detainees, including with cold water and/or ice

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1 water baths as an interrogation technique without prior approval of  
2 CIA Headquarters.

3           It was the Wild, Wild West out there. They just did  
4 whatever they wanted. There's a long list on pages 100 through 104  
5 detailing other things that the -- happened at COBALT -- excuse me.  
6 On page 104, one of the last offenses listed.

7           It says: This list does not include examples in which CIA  
8 interrogators were authorized to use the CIA's enhanced interrogation  
9 techniques, but then implemented the techniques in a manner that  
10 diverged from the authorization.

11           That's this right here.

12           If you look at footnote 609: CIA Chief of Interrogations  
13 placed a broomstick behind the knees of Zubair -- also known as  
14 Mr. bin Amin -- when Zubair was in a stress position on his knees on  
15 the floor. Although stress positions had been approved for Zubair,  
16 the use of the broomstick was not approved.

17           Even if you think the CIA's program was great the way it was  
18 authorized, you need to bear in mind they weren't doing it the way it  
19 was authorized.

20           On page 105, it talks about how CIA Headquarters approved  
21 requests to use water dousing, nudity, dietary manipulation, despite  
22 the fact the techniques had not been reviewed by the Department of  
23 Justice.

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1 Interrogators used the water-dousing technique in various  
2 ways. At detention site COBALT, detainees were often held down,  
3 naked, on a tarp on the floor. This is Defense Exhibit W, page 11.

4 With the tarp pulled up around them to form a makeshift tub  
5 while cold or refrigerated water was poured on them, these same  
6 detainees were subsequently placed in rooms with temperatures ranging  
7 from 59 to 80 degrees Fahrenheit.

8 Although CIA Headquarters approved the use of water-dousing  
9 interrogations on several detainees, interrogators used it  
10 extensively on a number of detainees without seeking or obtaining  
11 prior approval from CIA Headquarters.

12 Some of you, I know, have had SERE training, and I  
13 understand that waterboarding is part of the training. But it's not  
14 the same thing, right? And here's why: When you were waterboarded,  
15 you knew you were not going to die. You knew it with every fiber of  
16 your being. The same cannot be said for Mr. bin Amin.

17 This is, frankly, un-American. This is not who we are. But  
18 it's what we did.

19 You are allowed, also, to consider other things that are  
20 going on with his ongoing confinement.

21 You have in your binder Exhibit V, which is a report issued  
22 by the United Nations Human Rights Special Procedures Group. This  
23 report is broken into three parts. The first part is about the

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1 victims of 9/11. The second part is about the ongoing detention of  
2 people here at Guantanamo Bay, including Mr. bin Amin.

3 On page 6, number 18, it reports: The U.S. Government  
4 procedures establish a structural deprivation and nonfulfillment of  
5 the rights necessary for humane and dignified existence, and  
6 constitute, at a minimum, cruel, inhuman, and degrading treatment  
7 across all detention practices at Guantanamo Bay.

8 First, all Joint Task Force personnel are required to  
9 address detainees by their internment serial number instead of their  
10 preferred name. The U.S. Government's deliberate choice not to use  
11 the correct personal name for detainees for over 20 years undermines  
12 each detainee's self-worth and dignity, particularly in the lived  
13 conduct -- context of profound deprivation of liberty, communication,  
14 and relationship with the outside world.

15 So when you're thinking about the 10 years of solitary  
16 confinement, not only was he mostly held alone, the only human  
17 interactions he had were with people who called him "2-1" instead of  
18 Farik or Mr. bin Amin. That dehumanization goes on to this day.  
19 When I go to meet with my client, the guard force says, "Who are you  
20 here to see?" And I'll say, "Mr. bin Amin." And they'll say, "Who's  
21 that?" It's 21.

22 I don't have much control over what goes on down here. But  
23 I do choose to cover my hair because it's out of respect for

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1 Mr. bin Amin, who has been subject to so many degrading, inhuman,  
2 cruel practices. What our team does when we meet with him is all the  
3 women cover their hair.

4 Now, not all the women have their hair covered here, and I'm  
5 sure I don't have to explain to you that a hair covering is not part  
6 of the standard uniform. But when we're with him in the meeting  
7 space, we cover.

8 You can also consider in Exhibit V a description of the  
9 healthcare provided here at Guantanamo Bay. Specialist care and  
10 facilities are not adequate to meet the complex and urgent mental and  
11 physical health issues -- this is on page 8, number 22 -- physical  
12 health issues of detainees, including permanent disabilities;  
13 traumatic brain injuries; chronic pain, including headaches and  
14 chest, stomach, back, rectal, and joint pains; gastrointestinal and  
15 urinary issues; complex untreated post-traumatic stress disorder,  
16 which Mr. bin Amin has; and other current physical and psychological  
17 manifestations of torture and rendition after 9/11, as well as the  
18 cumulative and intersectional harms arising from the continued  
19 detention; deep psychological distress; deprivation of physical,  
20 social, and emotional support from family and community while living  
21 in a detention environment without trial.

22 When you are considering the treatment of Mr. bin Amin while  
23 in U.S. custody, I want you to consider Defense Exhibit U. These are

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1 classified pictures of Camp VII, where Mr. bin Amin spent the  
2 majority of his time here.

3           You may recall several years ago a report about the  
4 detainees being moved out of Camp VII because it was no longer  
5 functional. But Camp VII had a special design. It wasn't your  
6 standard prison room.

7           I want you to consider international standards of human  
8 decency, our obligation as the United States to provide shelter.  
9 What does shelter mean? I mean, it keeps you safe from the elements,  
10 keeps you away from snakes and spiders and creepy-crawly things.

11           Please take a look at these pictures.

12           You heard Mr. bin Amin tell you that he has back issues.  
13 That's also in Dr. Smith's report, which I seem to have misplaced.

14           On page 10 of Dr. Smith's report, the reported abuses and  
15 mistreatment Mr. bin Amin suffered are detailed earlier in this  
16 report. As described, they meet the definition of torture, including  
17 a purposeful infliction of physical and emotional pain, an absolute  
18 lack of control regarding one's survival or well-being.

19           The reported incidents of mistreatment have created  
20 significant emotional distress for Mr. bin Amin. The treating  
21 clinicians at Guantanamo Bay have diagnosed him with complex  
22 post-traumatic stress disorder, exacerbated by the ambiguous grief  
23 that stems from his ongoing confinement under challenging

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1 circumstances.

2 Another thing you can consider is Mr. bin Amin's  
3 rehabilitative potential. If you look at Dr. Smith's report on  
4 page 9, Dr. Smith observes that Mr. bin Amin's views have moved more  
5 towards greater jihad over time. He writes about the battle to  
6 purify one's heart and live a clean life.

7 He strives to do good works, avoid evil, and become a better  
8 person. This is a theme that is also present in Defense Exhibit A,  
9 Mr. bin Amin's statement to you.

10 If you look on page 13 of Dr. Smith's report, his  
11 professional opinion is that Mr. bin Amin's evolution in thinking of  
12 jihad less as an external or potentially violent event and more as an  
13 internal struggle to purify one's heart and do good works indicates a  
14 low probability that he will be re-radicalized.

15 His desire to catch up with his life, to pay his respects,  
16 and provide service to his parents and to hopefully marry and have  
17 children of his own speaks of someone who is looking to build, not  
18 destroy.

19 You can consider Mr. bin Amin's character when you are  
20 evaluating whether or not to recommend clemency. What do we know  
21 about Mr. bin Amin's character? You heard from his brothers about  
22 the days of his youth.

23 I have here in a different classified envelope Defense

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1 Exhibits N to S. Inside this envelope is classified information that  
2 I can assure you is in the hands of foreign nationals as we speak.  
3 How do I know this? Because these are letters that Mr. bin Amin  
4 wrote to his family, that were mailed to his family in Malaysia.

5 I'm not allowed to talk about these letters in open session,  
6 because anything Mr. bin Amin writes down is presumed classified.  
7 But I would ask you to look at these five letters, which are just a  
8 few of the thousands and thousands of pages of letters we have from  
9 Mr. bin Amin to his family.

10 It is evident from those letters that he is a loving man.  
11 He is tender with his mother. He is thoughtful and kind. He is  
12 apologetic for the pain that he knows he has inflicted upon them, and  
13 that speaks to his character.

14 I will call to your attention again Defense Exhibit A. In a  
15 statement that Mr. bin Amin wrote over a series of months, carefully  
16 editing and reediting, changing words, moving paragraphs, he said to  
17 you: Instead of trying to change the world, I can only change  
18 myself. And over the past 20 years, I have changed. I'm not an  
19 angry young man anymore. I am a reformed man. My faith has evolved.  
20 I am feeling so much contentment and confidence in my faith. I am  
21 planning to go forward a good and peaceful Muslim.

22 Like everyone, I must continue to decide every day to be a  
23 good person. As you might imagine, I'm not allowed to call a fellow



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1 detainee to take the stand and testify as to Mr. bin Amin's  
2 character. But I hope through his statement and his letters to his  
3 family and these final letters, which are letters to his team, will  
4 give you some insight into who Mr. bin Amin really is.

5           These are excerpts from letters sent to the team over the  
6 course of several years. Exhibit -- Defense Exhibit H is a letter to  
7 a team member after they lost their mother.

8           And he writes: Salam, I hope this letter finds you well and  
9 healthy in this difficult time. I'm sorry about your mother. I hope  
10 your family was able to tend to her and be patient. Life is full of  
11 trials and tribulations. Please take care of yourself and your  
12 family. Hopefully, we can see each other soon.

13           Defense Exhibit I is a letter to another team member who  
14 lost his brother unexpectedly.

15           Mr. bin Amin writes: I hope my letter finds you well and in  
16 good health.

17           And then he quotes the Quran: Indeed, from Allah we all  
18 come, and indeed, to Allah we shall return. I am so sorry to hear  
19 about your brother. May Allah accept his deeds, forgive him, and put  
20 him in a better place along with good people.

21           When we had a new team member join, Defense Exhibit J: I  
22 look forward to meeting you in person and getting to know you more.  
23 Please send my best regards to your family, especially your little

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1 daughter. Please take care of yourself and your family and stay  
2 safe. See you soon, inshallah.

3 Defense Exhibit K is a letter written to another team member  
4 who lost her mother: I have about an hour and a half before they  
5 pick me up for today's meeting with the team, so I take this chance  
6 to compose a letter of my condolence. I just hope it will give you a  
7 little bit of comfort and tranquility, which I myself had doubt that  
8 my writing will do that. I'm sorry to hear about your mother. I was  
9 told by the team about it yesterday. I know that feeling when we  
10 lose someone we love and who was close to us. It will take time to  
11 heal. God creates and gives life, and then he will take it back.  
12 For all of us who are still breathing, we must remind ourselves that  
13 our time will come, and always be grateful to him for what we have.

14 For me, who never had a chance to meet her, I will remember  
15 her as a kind person, who was always asking her daughter about me, as  
16 a sign that she cares about me, and that she said: He's so small.  
17 Every time I remember that, I will smile by myself. Take care of  
18 yourself, and I hope we will be able to see each other soon.

19 Defense Exhibit L is a letter to one of our team members who  
20 was PCS'ing and was unable to come down here to say goodbye because  
21 of COVID.

22 He wrote: I just want to say thank you for everything, and  
23 sorry for everything. I wish you good luck in your next assignment,

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1 and send my regard to your family.

2 And finally, I direct your attention to Defense Exhibit M.  
3 Both Lieutenant Colonel Higgins and I experienced unexpected family  
4 health issues. That was in October of 2022.

5 And he wrote this letter on November 21st: First of all, I  
6 am sorry to both of you because I have not behaved or acted like a  
7 good human being, and very selfish. I am supposed to send you both a  
8 letter of comfort, or at least ask about your well-being, but I  
9 didn't. Please forgive me.

10 Secondly, I am not good at giving someone advice or comfort  
11 words, especially in a language I'm not a master of. Even in my own  
12 language, I am still kaput. I will try my best, and hopefully both  
13 of you could find something useful.

14 Thirdly, how are you both doing? How about the person you  
15 love? For Christine, I hope Jeff can get back on his feet. And, for  
16 Marie, I hope your mother is feeling much better after surgery.  
17 Calamity always comes without invitation. On the bright side, it is  
18 something meant to be, and there is wisdom behind it.

19 As a Muslim, I was taught to be thankful to God and be  
20 grateful in whichever condition I am in, either good or bad. I went  
21 through some difficult times in my life, and I don't have, and I  
22 didn't find, any being that I could make my complaint to except for  
23 God, because he is hearing and knowing.

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1           When I didn't have a single thread to cover my nakedness, he  
2 put me in a room that was full of darkness. I felt glad with the  
3 darkness because it blanketed and covered my nakedness. I truly  
4 understand that our faith and beliefs are different, but we all  
5 worship and pray to the same God. Don't despair, and leave our trust  
6 in God.

7           For Christine, please take care of your husband. And for  
8 Marie, please take care of your mother. They need your attention and  
9 support right now, and do it as best you can. Don't worry about me.  
10 Don't forget to take care of yourself, too.

11           That is the character that I ask you to consider. Those are  
12 the reasons that I ask that you consider, after coming up with an  
13 appropriate sentence, to make a recommendation of clemency.

14           It doesn't have to be fancy. It doesn't have to be long.  
15 Three simple words: We recommend clemency.

16           Thank you.

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

18           Before we proceed, Counsel for Mr. bin Lep, to your  
19 closing -- or to your closing statement -- your sentencing argument,  
20 excuse me, what I'm going to do is take a brief recess so that we can  
21 readjust the courtroom once again.

22           So Panel Members, this is also just a good opportunity just  
23 to take a comfort recess. So we will be in recess for 10 minutes.

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1 [The military commission recessed at 1053, 26 January 2024.]

2 [The military commission was called to order at 1107,  
3 26 January 2024.]

4 [Members entered the courtroom.]

5 MJ [Lt Col BRAUN]: This commission will come to order.  
6 Parties are present. Members are also present.

7 Counsel for Mr. bin Lep, are you prepared to present  
8 argument?

9 LDC [MR. BOUFFARD]: Absolutely.

10 MJ [Lt Col BRAUN]: Please proceed.

11 LDC [MR. BOUFFARD]: Members, there are some things that all  
12 human beings have in common. We all make choices. And sometimes  
13 those choices are irrevocable; can't take them back. Some choices,  
14 once made, are forever.

15 We are all here today because of exactly that kind of  
16 choice. And although Nazir bin Lep may not have planned these  
17 bombings, may not have helped carry them out, may not have known even  
18 when or where they would be carried out, he did provide assistance to  
19 those who did. And it is in this way that he is part of the  
20 conspiracy that resulted in the Bali bombings. It is in this way  
21 that he bears his share of responsibility for those bombings;  
22 participation in the conspiracy that led to them.

23 When you participate in a conspiracy to any degree, you bear

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1 responsibility for what comes out of it.

2           He is here in full and equivocal acceptance of  
3 responsibility for his role. He has accepted responsibility under  
4 the law in his formal pleas of guilty. He has accepted  
5 responsibility factually in his detailed stipulation with the  
6 government with the facts of the Bali bombing and his part in them.  
7 And he has accepted it emotionally in his conscience, demonstrated by  
8 his cooperation with the prosecution in this case and in his  
9 understanding and acceptance of the enormity of the pain that he  
10 helped cause.

11           At every point in this process of pleading guilty and  
12 accepting responsibility, at every point where he could be  
13 cooperative, he has been cooperative. He has also given sworn  
14 testimony to assist the government in the prosecution of a related  
15 defendant.

16           With due regard for Colonel Kraehe's sentencing argument, he  
17 is not here to call himself a victim, and he is not here to ask for  
18 mercy.

19           You may have noted our approach to this sentencing. We  
20 haven't said much. We have helped to streamline this process as best  
21 we can and so to honor the victims of the Bali bombings in this way.  
22 These have been Nazir's instructions to us as his lawyers.

23           Because, yes, this case is about Nazir bin Lep insofar as he

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1 is a defendant in this case, but he understands that this case, two  
2 decades old now, is about the victims of Bali. It is about the dead  
3 and the injured, the survivors and their families, and the price that  
4 they paid for the decisions of others, including his.

5 His remorse for that, though deeply felt, doesn't change  
6 that. During their testimony, you may have glanced at him and seen  
7 his lips moving. He offered prayers during the victims' testimony.  
8 That, too, changes nothing, and he knows that.

9 You have heard him speak his own words about this. And in  
10 those words, we are provided a glimpse of maybe what could have been  
11 for him; certainly should have been for him. But we all make our  
12 choices, and Nazir made his, a choice about what to embrace 20 years  
13 ago when he had that choice to make, and it wasn't to embrace his  
14 mother or his family or his community. And that glimpse of what his  
15 life could have been if he had made a different choice, if he had  
16 just said "no," is heartbreaking, as it is, frankly, for all of us.

17 We all as humans know what it feels like to look back on the  
18 choices that we made that changed the trajectory of our own lives.  
19 And, no, most of us have never made a decision anything like the one  
20 that Nazir made so long ago to become a party to an act of killing,  
21 even after the fact, of 202 innocent souls.

22 No, the kind of regrets that most of us have are far more  
23 ordinary, but they still make us reflect on some of the terrible

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1 decisions that we've made, big and small, the ones that still,  
2 decades later, we're still ashamed of, embarrassed by, maybe still  
3 grieving some of the decisions we've made that hurt other people, on  
4 those occasions when we even allow our minds to turn backward and  
5 take a look at some of the wreckage that we've left behind, or tried  
6 to. Choices we made that in hindsight it's hard to believe we ever  
7 made at all, decisions that never would we ever make today.

8           The fact that time moves only one way is probably a  
9 blessing; otherwise, so many of us would waste our adulthood trying  
10 to rewrite our youth. Youth. Nazir was young. And I use that word  
11 mindfully. He was in his early 20s when he began to become  
12 radicalized. He was born and raised in a rural Malaysian village, a  
13 life both slower and more culturally and religiously devout. Youth,  
14 or at least the kind of youth that I'm talking about, lasts longer  
15 under such conditions in some ways; maybe shorter in others.

16           And, of course, to talk about youth at all, once again,  
17 evokes the victims of Bali, so many of them youths themselves whose  
18 lives were cut short.

19           But it's worth taking a breath and a moment's pause and  
20 contemplating what youth is like. Everyone in this room has  
21 experienced it: The foolish certainties we had about seemingly  
22 everything when we knew virtually nothing; the way our strong  
23 emotions, like anger, especially as regards to what we perceived as



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1 injustice, could be overwhelming; the colors somehow brighter, the  
2 noises somehow louder, the desires so compelling, the  
3 righteousness -- maybe more accurately the self-righteousness -- so  
4 very intoxicating.

5 Nazir told you about the Indonesian island of Ambon and the  
6 fighting there in 1999 and after, and what could fairly be seen as  
7 atrocities against the Muslim population there, especially if you  
8 were a Muslim on the outside looking in the way Nazir was. The  
9 struggle animated and angered him. The world was burning, and he  
10 wanted to do something to defend his fellow Muslims.

11 And I submit to you, Members, using your knowledge of human  
12 nature and the ways of the world, there simply is no animated,  
13 motivated, restless, righteous anger like the kind of anger you feel  
14 when you are young. It's just different, and with limitless energy  
15 to feed it.

16 And while we're on the subject of youth and human nature,  
17 let's also pause to consider the calmness and the calculation and the  
18 charisma of the older men, the ones with agendas of their own, the  
19 ones who know how to spot the right kind of angry, young man who can  
20 be influenced to help bring about their goals, the ones who offer a  
21 dark mentorship to those young and angry who twist them, who  
22 weaponize them. We can reflect on human history and we can recognize  
23 such men. We can name some of them if we chose to.

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1           And it's not hard to imagine the allure of such men,  
2 especially to someone who didn't grow up with a father or a father  
3 figure like Nazir, whose own father died two weeks before he was  
4 born.

5           The holes in our hearts get filled, most often in a loving  
6 and caring way, but sometimes insidiously, an act of manipulation by  
7 certainly older men who can look at young men and see just useful  
8 instruments.

9           And Nazir bin Lep fell in with a den of vipers, with people  
10 and in places where the religion of his birth and of his mother was  
11 also twisted, corrupted, shaped into extremist, violent caricature of  
12 itself, something sharp and vicious, and with the glittering  
13 certainty of its own righteousness and, of course, the intolerable  
14 blasphemy of everything outside it.

15           Because the older men know that the angry young men need and  
16 want a sense of brotherhood, and they provide one. And what stronger  
17 brotherhood can one imagine than the one that the older men say is  
18 ordained by God himself? Holes in our hearts, they get filled.

19           When we talk about the Bali bombings and the role that Nazir  
20 played in facilitating them -- and more specifically when we turn to  
21 how to punish him for his role -- the genesis of his involvement  
22 matters. Other things matter too when we punish. It matters that he  
23 has already experienced punishment for what he did.

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1           And it matters whether such punishment was both legal and  
2 honorable or not. It matters whether it was in accordance with  
3 American values and morally obvious human rights standards or not.  
4 Perhaps it even matters whether it was authorized and inflicted upon  
5 a prisoner in a custody under our flag and in our name or not.

6           Nazir has asked me not to belabor or describe his torture,  
7 and so I won't. But I will call it by its true name. I will call it  
8 what it is. It's not RDI. It's not enhanced interrogation. It's  
9 torture. Torture is torture, and that is the name for it. What  
10 part the fact of his torture may play in your deliberations on a  
11 sentence is up to each of you and your own conscience.

12           Nazir also did not describe it or discuss it in detail,  
13 because for him, it is in the past. Not only in time, but in mental  
14 and emotional and physical distance. He has moved beyond it, as he  
15 told you. It does not define him.

16           Twenty years without a trial has resulted in injustice for  
17 everyone involved in this case, the victims of Bali chief among them.  
18 For Nazir, it also provided time to come to a morally mature  
19 acceptance of the things that he cannot change, the things that he  
20 did, the things that were done to him. He has not been made bitter  
21 by it as, I fear, frankly, that I would had I endured it.

22           He told you about some of the guards that have been in his  
23 life over the past two decades who have been positive figures. He

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1 told you about his legal team. And he has chosen to see America as a  
2 place that produces people who have shown him kindness instead of  
3 viciousness, Americans who have treated him as a human being and not  
4 as something far less than one. His humanity, our shared humanity,  
5 must be acknowledged in this place.

6 We have not made an enemy of the Nazir bin Lep who sits  
7 there today in 2024, nor any longer are we his enemy. Over the past  
8 20 years, he, like all of us, has grown up.

9 How can we know that? Because of the concrete steps he can  
10 take and has taken on a long road towards peace with himself. He has  
11 cooperated in every way he can, and that is not something very many  
12 people who have been held here ever do. He has been cooperating with  
13 the government since he was captured. He cooperated under torture.  
14 He cooperated when not under torture. He cooperated when he arrived  
15 at Guantanamo Bay, where he has remained ever since. We are here  
16 today in this room because he has cooperated, and he will continue to  
17 do so.

18 He is not here -- he is not here expecting to be forgiven.  
19 He has no right to anything of the kind. And forgiveness doesn't  
20 work like that anyway. It comes or it doesn't. And when it does, it  
21 is an act of grace. And grace, by its very nature, is undeserved.

22 He has the power to forgive those who tortured him and who  
23 authorized that torture, and he has done so. He isn't an angry young

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1 man anymore. He hasn't been one for a very long time. Like so many  
2 of us who somehow wish we could warn our younger selves away from  
3 acts or beliefs or people who proved poisonous to us, Nazir would go  
4 back if he could, to explain the truth to his angry, ignorant, young  
5 self, to change the path that he walked. And in doing so, to create  
6 a different timeline, one that never happened.

7           But if you close your eyes, you can see it, where he would  
8 have recognized the liars who were preaching a malignancy, a violent,  
9 extremist, murderous, false jihad where he turned away from them to  
10 return to his widowed mother, who had raised her precious, fatherless  
11 boy right, and who had watched him fall away from her as angry young  
12 men who love their mothers tragically sometimes do.

13           Instead, to stay with his family and one day meet a woman to  
14 be his wife and build a family of his own and a life to be proud of,  
15 and to be there on his mother's last day to hold her hand. That life  
16 of Nazir bin Lep, that never happened.

17           One final thing before I sit down and our judge entrusts  
18 Nazir's fate to you. I will not ask you to impose a particular  
19 number of years in the range that you've been instructed on.  
20 Instead, we ask that you consider everything that's been presented to  
21 you: The horror of Bali; the nature and scope of his role in that  
22 horror; what he endured in our custody; his two decades of  
23 confinement without trial; and his history of cooperation, and his

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1 unflinching acceptance of his responsibility here. We ask for a  
2 sentence that, as best it can, reflects all of these things.

3 Nobody envies you this task, but it is your task. Just as  
4 we must never lose sight of the victims of Bali and their humanity  
5 and the humanity of their grieving families and friends, likewise, we  
6 cannot lose sight of the humanity of Nazir bin Lep.

7 If history teaches us anything at all, it teaches us that to  
8 dehumanize others dehumanizes us. That is a trap we fell into;  
9 frankly, the same trap he fell into. We must be better than that.  
10 And I believe that we are, and it's 2024, two decades on. And to do  
11 what is just, we must keep Nazir bin Lep human in our sight.

12 Thank you.

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

14 Members, when you close to deliberate -- when you close to  
15 deliberate and vote, only the primary members will be present.  
16 Alternate members will not participate in deliberation or voting.

17 I remind you that all primary members must remain together  
18 in the deliberation room during deliberations. I also remind you  
19 that you may not allow any unauthorized intrusion into your  
20 deliberations. You may not make communications to or receive  
21 communications from anyone outside of the deliberations room, by  
22 telephone or otherwise.

23 Should you need to take a recess or have a question or when

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1 you have reached a decision, you may notify the bailiff who will then  
2 notify me of your desire to return to open court to make your desires  
3 or decision known.

4 Your deliberations should begin with a full and free  
5 discussion on the subject of sentencing. The influence of  
6 superiority and rank shall not be employed in any manner to control  
7 the independence of members in the exercise of their judgment.

8 When you have completed your discussion, then any primary  
9 member who desires to do so may propose a sentence. You do that by  
10 writing out on a slip of paper a complete sentence. Once again, I  
11 advise you that any proposed sentence must include at least  
12 confinement for 20 years.

13 The junior member collects the proposed sentences and  
14 submits them to the president, who will arrange them in order of  
15 their severity. You will then vote on the proposed sentence by  
16 secret, written ballot. All must vote. You may not abstain.

17 Vote on each proposed sentence in its entirety, beginning  
18 from the lightest, until you arrive at the required concurrence,  
19 which is three-fourths, or four, members.

20 The junior member will collect and count the votes. The  
21 vote -- the count is then checked by the president, who shall  
22 announce the result of the ballot to the members.

23 If you vote on all of the proposed sentences without

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1 arriving at the required concurrence, then you may repeat the process  
2 of discussion, proposal of sentences, and voting. But once a  
3 proposal has been agreed to by the required concurrence, then that is  
4 your sentence as to the accused.

5           You may reconsider your sentence at any time prior to it  
6 being announced in open court. If after you determine your sentence  
7 any member suggests that you reconsider the sentence, open the court,  
8 and the president should announce that reconsideration has been  
9 proposed without reference to whether the proposed re-ballot concerns  
10 increasing or decreasing the sentence. I will then give you specific  
11 instructions on the procedure for reconsideration.

12           As an aid in putting the sentence in proper form, the court  
13 may use the sentence worksheets, which the bailiff will now retrieve  
14 from me and hand to the president.

15           Bailiff?

16           I'm handing you Appellate Exhibit 0098.001 (AMI) as well as  
17 Appellate Exhibit 0098.002 (LEP). Please provide those to Panel  
18 Member Number 1.

19           **[Did as directed.]**

20           MJ [Lt Col BRAUN]: Please note that there's a different  
21 sentence worksheet for each accused. You will notice that that's  
22 indicated by the caption -- or by the name located at the very top of  
23 each sentence worksheet.



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1 Do you see where that difference is noted, Panel Member  
2 Number 1?

3 PRESIDENT: Yes, Your Honor.

4 MJ [Lt Col BRAUN]: Okay. Extreme care should be exercised in  
5 using this worksheet and in selecting the sentence from which  
6 the -- excuse me.

7 Extreme care should be exercised in using these worksheets  
8 and in selecting the sentence form which properly reflects the  
9 instruction of the commission as to each accused. If you have any  
10 question concerning sentencing matters, you should request further  
11 instructions in open court in the presence of all parties to the  
12 trial.

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

17 These instructions must not be interpreted as indicating an  
18 opinion as to any sentence which should be adjudged, for you alone  
19 are responsible for determining appropriate sentences in this  
20 commission.

21 In arriving at your determination, you should select the  
22 sentence for each accused which will best serve the ends of justice,  
23 the needs of the accused, and the welfare of society. When the

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1 commission has determined a sentence, the inapplicable portions of  
2 each sentence worksheet should be lined through.

3           The only permissible punishments are those listed on the  
4 sentence worksheet. When the court returns, I will examine the  
5 sentence worksheets.

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

8           Trial Counsel?

9           TC [COL KRAEHE]: No, Your Honor.

10          MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

11          CDC [MS. FUNK]: No, Your Honor.

12          MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

13          LDC [MR. BOUFFARD]: No, Your Honor.

14          MJ [Lt Col BRAUN]: Does any member have any questions?

15                 Sorry. I didn't get a response from you. Okay.

16                 That is a negative response from all panel members.

17                 Okay. So Members Number 13, 14, and 16, you are the  
18 alternate members. As alternate members, you will not be  
19 participating in deliberations, but you are still not released from  
20 the commission. So, again, I remind you, as I have been throughout  
21 this proceeding, that you may not discuss this case with anyone, to  
22 include amongst yourselves. You may return to your duties or  
23 quarters, but I ask that you be nearby for recall, as I have to have

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1 you present if I reconvene the court, even if it's to reconvene the  
2 court to recess it for some purpose. So I just ask that you be  
3 mindful of that as I have to make sure everybody's here before I can  
4 proceed to that next step.

5           Regardless of where you retire to, I'm going to ask that you  
6 not remain in or around the proximity of the courtroom so as to avoid  
7 unnecessary contact with parties and witnesses during the  
8 deliberative process.

9           For you alternate members, before you depart, you may leave  
10 your notes in the deliberation room in your folder.

11           I remind all members that you may not review each other's  
12 notes. They are not a substitute for the evidence that has been  
13 admitted before you. They are merely for you to refresh your own  
14 recollection as to the case as you observed it.

15           I ask that the primary members who will remain behind for  
16 deliberations to allow the alternate members to gather their personal  
17 belongings and depart before you begin any deliberations.

18           Panel President, if you desire a recess during your  
19 deliberations, I'm going to have to formally convene the commission  
20 and then place it into a recess.

21           So understanding that and appreciating that it is a little  
22 after 1130 right now, I'm going to ask shortly here whether you  
23 desire a recess before you begin your deliberations. I want you to

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1 confer with your own panel members before answering that question.

2           Additionally, if you do want to have lunch brought in to  
3 you, I will permit you to do that; however, that is not a  
4 requirement. You are free to take a lunch recess, go grab some food  
5 on your own, and then we can reconvene and you can begin your  
6 deliberative process. That really is a decision that is up to you as  
7 the panel president.

8           So take a moment now and please determine whether you would  
9 like a recess and, if so, for how long or if you would like to  
10 immediately begin your deliberative process.

11 **[Members conferred.]**

12           PRESIDENT: Your Honor, no recess.

13           MJ [Lt Col BRAUN]: Okay. Very well. As you've already been  
14 provided copies of all the admitted exhibits, I'm not going to give  
15 you additional copies of those exhibits. If you determine that you  
16 need a copy of one of them, you're free to notify the bailiff. We  
17 can reconvene, and I will provide that to you. However, I am going  
18 to have the bailiff provide you Appellate Exhibit 0099.002 (TJ),  
19 which is the sentencing instructions that I have just read to you.

20           Bailiff, if you could please retrieve this exhibit from me  
21 and provide it to Panel Member Number 1.

22 **[Did as directed.]**

23           MJ [Lt Col BRAUN]: Panel Member Number 1, please bring the

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1 sentencing worksheets along with the sentencing instructions when you  
2 return to any open proceeding, to include that one where you're  
3 prepared to announce sentence.

4 Are there any questions of this commission of any panel  
5 member before I close the commission for deliberations?

6 That is a negative response from all panel members.

7 Very well. This commission is closed.

8 **[Members withdrew from the courtroom.]**

9 **[The R.M.C. 803 session was called to order at 1143,**  
10 **26 January 2024.]**

11 MJ [Lt Col BRAUN]: This commission will come to order.

12 Parties are present. Members are absent.

13 Defense Counsel, have you advised the accused orally and in  
14 writing of his post-trial and appellate rights?

15 Counsel for Mr. bin Amin?

16 CDC [MS. FUNK]: Yes, Your Honor.

17 MJ [Lt Col BRAUN]: And counsel for Mr. bin Lep?

18 LDC [MR. BOUFFARD]: We have, sir. And it's been previously  
19 filed with the court.

20 MJ [Lt Col BRAUN]: I believe the post-trial and appellate  
21 rights advice for Mr. bin Amin is noted as Appellate Exhibit 0096.001  
22 (AMI).

23 Is that correct, Defense Counsel?

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1 CDC [MS. FUNK]: We provided it to the court, Your Honor, but  
2 we haven't had it marked yet. So I don't know if that's -- if that's  
3 the right -- have we?

4 **[Counsel conferred.]**

5 CDC [MS. FUNK]: We have had it marked, and that is the  
6 correct number.

7 MJ [Lt Col BRAUN]: Okay. And does Mr. bin Amin have a copy  
8 in front of him?

9 CDC [MS. FUNK]: Yes, Your Honor.

10 MJ [Lt Col BRAUN]: Thank you.

11 Mr. bin Amin, I have Appellate Exhibit 0096.001 (AMI). It's  
12 an appellate rights -- and I'm sorry -- post-trial and appellate  
13 rights advice form.

14 Is that your signature on this form?

15 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, Your Honor.

16 MJ [Lt Col BRAUN]: And, Counsel, I know you have a digital  
17 signature, but have you reviewed this form prior to its submission to  
18 the commissions? Defense Counsel?

19 CDC [MS. FUNK]: Yes, Your Honor.

20 MJ [Lt Col BRAUN]: Mr. bin Amin, did your defense counsel  
21 explain your post-trial and appellate rights to you?

22 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, Your Honor.

23 MJ [Lt Col BRAUN]: Do you have any questions about your

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1 post-trial and appellate rights?

2 ACC [MR. BIN AMIN]: **[Speaking in English]** None, Your Honor.

3 MJ [Lt Col BRAUN]: Okay. Defense Counsel, which counsel will  
4 be responsible for post-trial and appellate actions for  
5 Mr. bin Amin's case?

6 CDC [MS. FUNK]: Myself, Lieutenant Colonel Higgins, and  
7 Lieutenant Commander Curtis.

8 MJ [Lt Col BRAUN]: Who will be the primary focal point?

9 CDC [MS. FUNK]: That would be me, Your Honor.

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

11 Counsel for Mr. bin Lep, I'm looking at Appellate  
12 Exhibit 0096.002 (LEP). Is that the correct designation for the  
13 post-trial and appellate rights advice provided to Mr. bin Lep?

14 LDC [MR. BOUFFARD]: Your Honor, we have the properly executed  
15 document. Ours is not marked. When we sent it in, it was to be  
16 marked after that, but I have not seen it since. But we do have it  
17 and it's in front of him.

18 MJ [Lt Col BRAUN]: Given that it's appellate rights, could  
19 you please approach the court reporter and confirm that I'm looking  
20 at the correct document?

21 LDC [MR. BOUFFARD]: We are, sir.

22 MJ [Lt Col BRAUN]: Does Mr. bin Lep have a copy in front of  
23 him?

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1 LDC [MR. BOUFFARD]: He does.

2 MJ [Lt Col BRAUN]: Mr. bin Lep, I'm looking at Appellate  
3 Exhibit 0096.002 (LEP), an appellate -- a post-trial and appellate  
4 rights advice form. Is that your signature on this form?

5 ACC [MR. BIN LEP]: Yes, it's true.

6 MJ [Lt Col BRAUN]: And counsel for Mr. -- and counsel for  
7 Mr. bin Lep, is that also -- I know it's a digital signature, but is  
8 this also a form that you have digitally signed?

9 LDC [MR. BOUFFARD]: Yes, sir.

10 MJ [Lt Col BRAUN]: Mr. bin Lep, did your defense counsel  
11 explain your post-trial and appellate rights to you?

12 LDC [MR. BOUFFARD]: Yes, he did.

13 MJ [Lt Col BRAUN]: And do you have any questions about your  
14 post-trial and appellate rights?

15 ACC [MR. BIN LEP]: No, I don't.

16 MJ [Lt Col BRAUN]: Defense Counsel, which counsel will be  
17 primarily responsible for post-trial and appellate actions in this  
18 case?

19 LDC [MR. BOUFFARD]: Primarily responsible, sir, will be Major  
20 Cordova.

21 MJ [Lt Col BRAUN]: Very well. Are there any other matters,  
22 then, that we can take up as we await the panel members'  
23 deliberations?



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1 Trial Counsel?

2 TC [COL KRAEHE]: Not from the United States, Your Honor.

3 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

4 CDC [MS. FUNK]: Nothing, Your Honor. Thank you.

5 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

6 LDC [MR. BOUFFARD]: No, sir. Oh, stand by, please, sir.

7 Sir, we just -- as a housekeeping matter, we're curious what  
8 the procedure will be if the members were to come back with a  
9 sentence during a prayer time.

10 MJ [Lt Col BRAUN]: Yeah. If it's during one of the prayer  
11 times, I simply would have the panel members wait until the  
12 conclusion of that prayer time and then begin the recall process. I  
13 would likely have the bailiff reach out to the parties just to make  
14 them aware so that as soon as that prayer time ends we can come back  
15 on the record.

16 Is that sufficient?

17 LDC [MR. BOUFFARD]: Yes, sir. And we have nothing further  
18 than that.

19 MJ [Lt Col BRAUN]: Okay. Very well, then. This commission  
20 is in recess.

21 **[The R.M.C. 803 session recessed at 1149, 26 January 2024.]**

22 **[END OF PAGE]**

23

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1 [The military commission was called to order at 1412,

2 26 January 2024.]

3 [Members entered the courtroom.]

4 MJ [Lt Col BRAUN]: This commission will come to order.

5 Parties are present. Members are present.

6 Panel Member Number 1 -- the accused, both accused are also  
7 present in the courtroom.

8 Panel Member Number 1, it's my understanding that you have a  
9 question; is that correct?

10 PRESIDENT: Yes, Your Honor. We have completed our sentence,  
11 but there was an additional question.

12 MJ [Lt Col BRAUN]: Okay. Well, we will take up that question  
13 first, then. What is your question?

14 PRESIDENT: We have completed our sentencing, but there was a  
15 question about clemency.

16 MJ [Lt Col BRAUN]: Okay.

17 PRESIDENT: Were we supposed to apply clemency?

18 MJ [Lt Col BRAUN]: So let me ask you -- let me have you ask  
19 the question in its entirety before I attempt to answer it.

20 PRESIDENT: So the question was, we did the sentencing part,  
21 but because clemency was a part of the instruction, we wondered if  
22 that was something that we were supposed to do.

23 MJ [Lt Col BRAUN]: Okay. So I'm going to be referring you to

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1 the instructions I gave you, which is Appellate Exhibit 99.002 (TJ).  
2 If you flip to page 3 at line 8, it says that: You have an  
3 independent responsibility to adjudge an appropriate sentence to the  
4 offense for which each accused has pled guilty. However, if any or  
5 all of you wish to recommend clemency, it is within your authority to  
6 do so after the sentence is announced.

7           Insomuch as how that clemency plays into the sentence that  
8 you ultimately determined, I note the kind of next sentence there  
9 that says: It's your responsibility to adjudge a sentence for each  
10 accused that you regard as fair and just at the time it is imposed,  
11 and not a sentence that will become fair and just only if the  
12 mitigating action recommended in your clemency recommendation is  
13 adopted by the convening authority, as the convening authority has no  
14 obligation to accept your recommendation.

15           So the first part of your question insomuch as should you be  
16 considering the clemency piece as it pertains to your ultimate  
17 sentence, I think that directs you there; that the sentence you reach  
18 should be the fair and just sentence for the accused and the evidence  
19 you've been provided in application of the law, not one that relies  
20 upon a clemency recommendation.

21           Should a member decide to recommend clemency, that is  
22 something that they have the right to do. The form of that clemency  
23 is not particular. It can be something that is done on a -- not a

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1 looseleaf piece of paper, but a piece of paper from your notebooks  
2 that you all have. That is sufficient.

3 Does that answer the question that the panel has?

4 PRESIDENT: I see a "no" from number 11.

5 MJ [Lt Col BRAUN]: Okay. So I can have you -- I'm going to  
6 have you ask the question. What I want to caution you before I have  
7 you do that is I don't want to discuss the sentence or how the  
8 clemency request may or may not play into that sentence. Does that  
9 make sense?

10 UNIDENTIFIED MEMBER: Absolutely, Your Honor.

11 MJ [Lt Col BRAUN]: Okay. Then, I guess, ask me the question.

12 UNIDENTIFIED MEMBER: I think the question -- it's just, we  
13 would like a definition of clemency so that we can even understand  
14 what we're trying to ----

15 MJ [Lt Col BRAUN]: Okay. It's a question of what is  
16 clemency?

17 UNIDENTIFIED MEMBER: Absolutely. What's the definition that  
18 this court is using so that we can even take the -- take it back as a  
19 responsibility ----

20 MJ [Lt Col BRAUN]: Okay. So to paraphrase that back, so your  
21 question is: The panel member -- the panel members would like a  
22 definition of the term "clemency" so that the panel members can then  
23 take that definition of the term "clemency" and go back to determine

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1 whether they choose to recommend clemency to the convening authority.

2 Is that an accurate reflection? Just a yes or no.

3 PRESIDENT: Not for the entire panel, Your Honor. There was a  
4 few questions. Not for the entire panel, Your Honor.

5 MJ [Lt Col BRAUN]: And I appreciate that.

6 Insomuch as clemency can be individually recommended by a  
7 panel member, I can -- because, as I mentioned, clemency is separate  
8 from the sentence, right?

9 Do all panel members understand that?

10 Okay. That's an affirmative response from all the panel  
11 members.

12 Insomuch as a definition of clemency would be helpful, what  
13 I'm going to do is have -- I'm going to have you all return to the  
14 deliberation room. I'm going to have the alternate members return to  
15 the waiting area outside of the deliberation room.

16 I will endeavor to provide a response to that question that  
17 hopefully will be helpful. And then once I have that prepared, I  
18 will have you all recalled back in so that I can provide that  
19 information to you. I think that is the most prudent and probably  
20 expeditious way for me to -- expedient way for me to try and step  
21 through that particular reflection.

22 Before I do that, though, Panel Member Number 1, as I  
23 advised you earlier, once you reach a sentence -- you have reached a

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1 sentence, so I know that you have likely filled out the sentencing  
2 worksheet. I'm going to ask that you not re-examine that sentencing  
3 worksheet. I'm also going to ask that you not restart your  
4 deliberations.

5           If there is a request to reconsider the sentence reached by  
6 the panel, when you come back out, you can notify me of that fact. I  
7 don't want you to tell me whether that recommendation to reconsider  
8 is to increase or decrease or anything like that, merely that the  
9 panel wishes to reconsider its sentencing -- its determination of  
10 sentence. And then I will provide you specific instructions should  
11 that be the case.

12           Do you understand my instruction?

13           PRESIDENT: Yes, Your Honor.

14           MJ [Lt Col BRAUN]: Okay. Very well, then.

15           Panel Members, I'm going to excuse you from the courtroom at  
16 this time.

17           **[Members withdrew from the courtroom.]**

18           **[The R.M.C. 803 session was called to order at 1420.]**

19           MJ [Lt Col BRAUN]: This commission will again come to order.

20           Parties are present. Members are absent.

21           **[Pause.]**

22           MJ [Lt Col BRAUN]: Parties, as I'm examining some resources  
23 here on the bench, I would encourage you also to take an opportunity

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1 to determine if there is a definition of clemency or information as  
2 it pertains to clemency and its source that you would like to direct  
3 the commission to.

4 And if the parties would like permission to crosstalk in  
5 doing that, they may do so.

6 **[Counsel conferred.]**

7 MJ [Lt Col BRAUN]: Okay. This commission will again come to  
8 order.

9 Parties are present. Members remain absent.

10 Parties, the commission's attention is drawn to R.M.C. 1105,  
11 which discusses matters submitted by the accused, commonly referred  
12 to as clemency matters in the UCMJ -- or in a UCMJ or a court-martial  
13 context, which is fundamentally very similar to a military commission  
14 in some ways.

15 In R.C.M. -- or R.M.C., excuse me, 1105, subsection (a), it  
16 describes that the accused may submit to the convening authority any  
17 matters that may reasonably tend to affect the convening authority's  
18 decision whether to disapprove any finding of guilty or to approve  
19 the sentence.

20 Clearly in this context, we're not talking about  
21 disapproving a finding of guilty or adjusting a finding of guilty.  
22 What we're talking about is a submission of -- what we're talking  
23 about in clemency is a matter that the convening authority could

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1 utilize that might tend to affect the convening authority's exercise  
2 of discretion as it pertains to approval of the sentence as adjudged  
3 by the commission.

4           So it would be the commission's intent to use that  
5 definition almost verbatim from 1105, subtracting out the findings  
6 portion, as that clearly would be inapplicable and, frankly,  
7 confusing to the panel members.

8           What is the parties' position with regard to that approach?

9           Trial Counsel, I'll start with you.

10           TC [COL KRAEHE]: We think that's an appropriate approach,  
11 Your Honor. It's rules-based, and it, I think, adequately explains  
12 the purpose of clemency.

13           MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

14           LDC [MR. BOUFFARD]: Yes, sir. As far as it goes, I agree  
15 with Colonel Kraehe that it may be sufficient. My concern is that it  
16 may also be confusing.

17           And the reason for that confusion, I think, is this:  
18 Clemency implies only a downward movement in sentence. When we talk  
19 about it affects the convening authority's decision to approve, and  
20 then that's all they get, it could be inferred that it could be -- it  
21 could aggravate or raise the sentence.

22           So I would suggest as we craft an instruction, however the  
23 court wants to do it, to make clear that this is a one-way movement



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1 only, if that makes sense.

2 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Amin?

3 CDC [MS. FUNK]: I agree with Mr. bin Lep's counsel, Your  
4 Honor.

5 MJ [Lt Col BRAUN]: Okay. So, then, Counsel for Mr. bin Lep,  
6 how would you propose the commission couch that?

7 LDC [MR. BOUFFARD]: I think the term "lessen the severity"  
8 should be included. So I guess what I'm throwing out there is  
9 essentially exactly what the court announced, but with a phrase or a  
10 clause that clarifies the mitigating, as opposed to aggravating,  
11 nature of what clemency is or how clemency operates.

12 MJ [Lt Col BRAUN]: Okay. If the commission were to define  
13 clemency as a favorable action to reduce the severity of the sentence  
14 to be approved by the convening authority, would that be in line with  
15 the recommendation, Counsel?

16 LDC [MR. BOUFFARD]: A moment, Your Honor.

17 **[Counsel conferred.]**

18 LDC [MR. BOUFFARD]: We would also recommend -- the answer is  
19 yes, sir. We would also recommend, at least from our team, that they  
20 be advised that a clemency recommendation is something that can be  
21 done individually or as a group, but that doing it at all is not  
22 required and, of course, that it must be written.

23 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

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1 CDC [MS. FUNK]: I think the court has previously made clear  
2 the fact that clemency is discretionary. So I would amend it to take  
3 that part out.

4 MJ [Lt Col BRAUN]: Trial Counsel?

5 TC [COL KRAEHE]: Your Honor, we believe the approach  
6 recommended by Mr. Bouffard is acceptable.

7 MJ [Lt Col BRAUN]: Yeah. So what the commission is inclined  
8 to advise the panel of, upon their return, is clemency is a favorable  
9 action to reduce the severity of a sentence to be approved by the  
10 convening authority.

11 A clemency recommendation can be provided individually or as  
12 a group, but is not required -- I think it is simply just, "but it is  
13 not required," period.

14 The follow-on question, trying to think ahead and through  
15 this a little more thoroughly, Counsel, as you read the R.M.C.s,  
16 clemency, while something that the panel members absolutely can  
17 consider, something that the defense can present under 1001, is not  
18 part of the sentence.

19 I think that's abundantly clear based upon the instructions,  
20 based upon the R.M.C.s.

21 The panel has reached a sentence. So I think it is possible  
22 that some panel members may wish to provide a clemency statement. I  
23 would assume that that clemency statement would probably be

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1 transmitted to defense for inclusion in any submission that they may  
2 want to make, looking specifically at R.M.C. 1105.

3 How would defense counsel propose that that clemency  
4 submission be provided to them?

5 CDC [MS. FUNK]: I assume it would be entered as an exhibit in  
6 this case, and so we would obtain it through the court, Your Honor.

7 MJ [Lt Col BRAUN]: Well, I believe a panel member actually  
8 can provide a clemency statement after the case concludes. And so  
9 what I'm trying to ascertain is how would the parties propose  
10 that -- should a panel member decide to produce a clemency statement  
11 after the fact, appreciating we have sentence in this case and there  
12 is no request to reconsider, how would the parties propose that a  
13 panel member provide them that clemency submission?

14 Am I --

15 CDC [MS. FUNK]: You are. I'm relying only on the narrow  
16 experience of a different defendant, Mr. Majid Khan. It is my  
17 understanding that in that case, while the jury was still together, a  
18 clemency statement was written. The members who chose to sign the  
19 statement did so. The members who did not choose to sign the  
20 statement, didn't sign the statement, and it was produced while they  
21 were all together. And that's what I would ask the court do in this  
22 case.

23 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Lep?

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1 LDC [MR. BOUFFARD]: I don't disagree with that at all. I  
2 rise just to raise another potential issue that maybe we should think  
3 about. And that is it seems like it would be prudent to advise them  
4 fully about clemency and give them the opportunity if someone wants  
5 to reconsider the sentence. Because, depending on our definition and  
6 how that may play in there, someone indeed may want to do that.

7 MJ [Lt Col BRAUN]: So they have been advised on that. And,  
8 in fact, before I sent them back, I reminded them that they may  
9 request to reconsider the sentence if they so chose to do so, while  
10 cautioning them that they may not return to -- they may not move to  
11 reconsideration without advising the commission so that they may  
12 receive the appropriate instruction, as they have not been provided  
13 that yet.

14 So I'm not inclined to revisit that, as I think it's been  
15 made abundantly clear to them that there is a process for that. It  
16 is available to them. They just merely need to make me aware that  
17 that's what they'd like to do.

18 Trial Counsel?

19 TC [COL KRAEHE]: I agree with the commission, Your Honor.

20 LDC [MR. BOUFFARD]: One more thing, if I may, Judge.

21 As far as contacting us if there is a recommendation, we  
22 would propose just giving them our contact information so that if  
23 they wish to reach out to us, they may.

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1 MJ [Lt Col BRAUN]: And how -- I guess the question is: How  
2 do you propose the commission do that?

3 LDC [MR. BOUFFARD]: We could give it to the bailiff after  
4 court breaks. I mean, if it needs to be done on the record, we could  
5 announce it on the record, and they could take notes.

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

7 MJ [Lt Col BRAUN]: Counsel, I think -- I'm very hesitant to  
8 have anybody provide contact information in open court, whether it be  
9 this forum, a court-martial, that's not something that I think is  
10 appropriate.

11 However, I do think the recommendation that defense counsel  
12 make some type of contact information available to the bailiff. And  
13 then I will inform the members that if they desire to provide a  
14 clemency submission, they can receive contact information for the two  
15 defense teams through the bailiff, if they so choose to do so. It  
16 seems to be an appropriate approach.

17 It protects personal information that doesn't necessarily  
18 need to be publicly available, but also ensures that any panel member  
19 that may want to submit a clemency submission has the ability to do  
20 that. I don't want to somehow discourage that if that is the desire  
21 of a panel member, as I think it's their right to do so, and I think  
22 it's defense's right to have access to that information should they  
23 want to submit it to the convening authority.

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1           So I think that strikes that balance well.

2           As it pertains to the members being placed back into  
3 deliberations to produce a clemency statement, the commission is not  
4 going to permit that to happen because a sentence has been reached.

5           I appreciate that in a previous commission, during the  
6 deliberative process the members created a clemency recommendation,  
7 and that was their choice. This panel did not do that, so I'm not  
8 going to -- because deliberations are specific to sentence, sentence  
9 has been reached. The danger of placing the panel back into a  
10 deliberative process I think is far too great, and I'm not -- I'm not  
11 inclined to do that.

12           I do appreciate, Counsel for Mr. bin Amin, your objection to  
13 that approach and your request -- I believe your request to have the  
14 panel go back and to author clemency submissions, whether it be  
15 individually or as a group.

16           CDC [MS. FUNK]: I would call the court's attention to the  
17 jury instructions that were provided to them, which specifically say  
18 that any action about recommending clemency must be done after a  
19 sentencing determination has been made.

20           So I think it's unfair to say that to the jurors, and then,  
21 because you know they've made a sentencing decision, come back and  
22 say "and now you can't decide clemency as a group."

23           So I'd ask the court to look at that instruction.

1 [Pause.]

2 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Amin, looking  
3 at AE 0092.002, page 3, paragraph that begins -- or I'm sorry, the  
4 line 9. I do agree that it says that they may recommend clemency if  
5 they wish to do so after sentence is announced. It's very specific  
6 language.

7 So I'm going to do just that. And how I'm going to do that  
8 is I'm going to have the panel come in. I'm going to provide them  
9 the definition we discussed on clemency, the guidance we just all  
10 discussed. I'm then going to have them announce sentence, as I  
11 believe that that is the process, frankly, that also mirrors the  
12 instructions that I provided them.

13 I'm then going to give them the opportunity to utilize their  
14 deliberation space to produce any clemency letters or submissions  
15 that they wish to do at that time.

16 What I'm going to ask, before I recall the panel members, is  
17 that the defense teams give to the bailiff information so that any  
18 clemency submission could be provided to the defense teams by the  
19 panel members that if they individually decide to create those  
20 clemency submissions may do so, be that now or be that in two days.

21 And I think that both meets the intent of the R.M.C.s., It  
22 meets the intent of the standard instruction, and ensures that  
23 defense counsel have the ability to have access to information

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1 favorable to the accused that can be submitted to the convening  
2 authority for appropriate consideration under the rules. And then  
3 the convening authority can take those recommendations under  
4 advisement before action in the case. I -- and the commission.

5 I believe that strikes the appropriate balance. I think  
6 that meets the intent of the rules and still protects the privilege  
7 of the accused to have that information available to him for any  
8 post-trial submissions.

9 Is there any additional input, then, with that way ahead,  
10 objection or otherwise, if the commission -- the commission intends  
11 to proceed that way? So any objection?

12 Trial Counsel?

13 TC [COL KRAEHE]: No objection, Your Honor.

14 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Amin?

15 CDC [MS. FUNK]: No objection, Your Honor.

16 MJ [Lt Col BRAUN]: Thank you.

17 Counsel for Mr. bin Lep?

18 LDC [MR. BOUFFARD]: No objection.

19 MJ [Lt Col BRAUN]: Okay. Bailiff, please call the members.

20 **[The military commission was called to order at 1443,**

21 **26 January 2024.]**

22 **[Members entered the courtroom.]**

23 MJ [Lt Col BRAUN]: This commission will come to order.



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1 Parties are present. Members are again present.

2 Thank you for your patience, members. I wanted to ensure  
3 that the guidance I give you is as correct as possible before I give  
4 it to you.

5 So you asked for some context and a definition of clemency.  
6 What I can tell you is clemency is a favorable action to reduce the  
7 severity of the sentence to be approved by the convening authority.  
8 A clemency recommendation can be provided individually or as a group,  
9 but is not required.

10 As I have previously instructed, if any or all of you wish  
11 to recommend clemency, it is within your authority to do so after the  
12 sentence is announced. So after we announce the sentence, I'm going  
13 to make your deliberation space available to you so that if you want  
14 to produce a clemency recommendation, you may do so at that time.

15 The bailiff, shortly, will have available the contact  
16 information for a POC from each of the defense teams. You can use  
17 that contact information to ensure that the appropriate defense team  
18 has the clemency recommendation that you produce. They then will  
19 have the option to provide that clemency recommendation to the  
20 convening authority so that the convening authority has the benefit  
21 of that recommendation when the convening authority takes action on  
22 the final sentence in this case.

23 Do all panel members understand the information I have just

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1 provided?

2           Okay. That's an affirmative response from all panel  
3 members.

4           Does any panel member have a question based upon the  
5 information I have provided?

6           That is a negative response from all panel members.

7           With that, Panel Member Number 1, have you reached a  
8 sentence?

9           PRESIDENT: Yes, Your Honor.

10          MJ [Lt Col BRAUN]: Is that sentence reflected on the sentence  
11 worksheets?

12          PRESIDENT: Yes, Your Honor.

13          MJ [Lt Col BRAUN]: Okay. So, Panel President, what I'm going  
14 to have you do is please fold both of those worksheets in half, and  
15 then I'm going to have the bailiff collect both of them from you and  
16 bring them to me so that I may examine them.

17          **[Pause.]**

18          MJ [Lt Col BRAUN]: I've reviewed the sentencing worksheets  
19 and they appear to be in proper form.

20          Bailiff, if you could please return these worksheets to  
21 Panel Member Number 1.

22          Okay. Panel Member Number 1, I want you to unfold those  
23 worksheets that I've just provided you -- that you've just been

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1 provided by the bailiff, and I'm going to take them in turn.

2 So I'm going to start with Appellate Exhibit 0098.001 (AMI).  
3 This is the sentencing worksheet for Mr. bin Amin.

4 Do you see that exhibit?

5 PRESIDENT: Yes, Your Honor.

6 MJ [Lt Col BRAUN]: Okay. You will notice I highlighted on  
7 it. I want you to review what I've highlighted, and when you've done  
8 so, please look up at me.

9 Okay. Have the portions that I've highlighted on that  
10 worksheet accurately reflect the sentence you have determined in this  
11 case?

12 PRESIDENT: Yes, Your Honor.

13 MJ [Lt Col BRAUN]: Okay. Then we're going to do the same  
14 thing with the next one, the sentencing worksheet for Mr. bin Lep.

15 Please review the highlighted portions, and again look up at  
16 me after you have completed doing so.

17 Have the highlighted -- do the highlighted portions  
18 accurately reflect the sentence you have reached as a panel?

19 PRESIDENT: Yes, Your Honor.

20 MJ [Lt Col BRAUN]: Okay.

21 Okay. So as we have two commissions here, Panel Member  
22 Number 1, I'm going to have you announce the sentences. You will do  
23 that by reading the highlighted portions of the worksheets, and we

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1 will do them in turn, starting with the sentence for Mr. bin Amin.

2 Mr. bin Amin and Defense Counsel, please rise.

3 Panel President, please announce the sentence for  
4 Mr. bin Amin.

5 PRESIDENT: Mr. Mohammed Farik bin Amin, this commission  
6 sentences you:

7 **To be confined for a period of 23 years, zero months, and**  
8 **zero days.**

9 MJ [Lt Col BRAUN]: Thank you.

10 Mr. bin Amin, Counsel for Mr. bin Amin, you may be seated.

11 Mr. bin Lep and Defense Counsel, please rise.

12 Panel President, please announce the sentence for  
13 Mr. bin Lep.

14 PRESIDENT: Mr. Mohammed Nazir bin Lep, this commission  
15 sentences you:

16 **To be confined for a period of 23 years, zero months, and**  
17 **zero days.**

18 MJ [Lt Col BRAUN]: Mr. bin Lep, and Counsel for Mr. bin Lep,  
19 please be seated.

20 Bailiff, please retrieve the exhibits from panel president.  
21 And could you please provide those to the court reporter.

22 Members of this commission, before I excuse you, let me  
23 advise you of one matter. You should know that a very important

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1 right held by each of you as court members is the right to the  
2 privacy of your deliberations.

3           You were encouraged in those deliberations to speak openly  
4 in a full and free discussion of the issues in this case. Now that  
5 your duties are at an end, you should not be subject to any criticism  
6 by command authority or anyone else for views you may have expressed.

7           Thus, if you are asked about your service on this  
8 commission, I remind you of the oath you took. Essentially, that  
9 oath prevents you from discussing your deliberations with trial  
10 counsel, defense counsel, or anyone, to include stating any member's  
11 opinion or vote unless ordered to do so by a court.

12           You may discuss your personal observations in the courtroom  
13 and the process of how a military commission functions, but not what  
14 was discussed during your deliberations.

15           I also remind you of the protective order entered into  
16 this -- entered by this commission in AE 0006.006 (TJ), specifically  
17 as it relates to protecting the identities of the members of this  
18 commission. That order remains in effect.

19           I thank you for your attention and your service. You are  
20 excused. You can leave the notes that you have in the deliberation  
21 room. I will ensure that the bailiff, and only the bailiff, goes in  
22 to destroy all of those notes.

23           Does any panel member have any question for this commission

1 at this time?

2 That is a negative response.

3 Thank you, Panel Members. You may depart.

4 **[Members withdrew from the courtroom.]**

5 **[The R.M.C. 803 session was called to order at 1452,**  
6 **26 January 2024.]**

7 MJ [Lt Col BRAUN]: The members have withdrawn from the  
8 courtroom. All other parties are present.

9 Mr. bin Amin and Mr. bin Lep, we are now going to discuss  
10 the operation of the pretrial agreement you and the convening  
11 authority have entered into on the sentence of this court.

12 As I examine Appellate Exhibits 0090.003, the pretrial  
13 agreement between the United States and Mr. bin Lep, as well as  
14 Appellate Exhibit 0089.003, the pretrial agreement between United  
15 States and Mr. bin Amin, it is my understanding based upon both of  
16 those documents that the effect of the pretrial agreement on the  
17 sentence is that the convening authority may approve no confinement  
18 in excess of six years.

19 Do you agree with that interpretation, Mr. bin Amin?

20 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, Your Honor.

21 MJ [Lt Col BRAUN]: And do you agree with that interpretation,  
22 Mr. bin Lep?

23 ACC [MR. BIN LEP]: Yes, I agree.

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1 MJ [Lt Col BRAUN]: Do counsel also agree with that  
2 interpretation?

3 Counsel for Mr. bin Amin?

4 CDC [MS. FUNK]: Yes, Your Honor.

5 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

6 LDC [MR. BOUFFARD]: Your Honor, we are just kind of having an  
7 internal debate over here about the application of the ruling on the  
8 sanctions motion, whether that comes off of the announced or the  
9 approved sentence.

10 MJ [Lt Col BRAUN]: And I will -- I will discuss that in just  
11 a moment. But do you agree that the Appendix A to the pretrial  
12 agreement entered into between your client and the convening  
13 authority states that an approved sentence to confinement may be no  
14 more than six years of confinement?

15 LDC [MR. BOUFFARD]: Yes, sir. And I apologize.

16 MJ [Lt Col BRAUN]: That's all right.

17 Trial Counsel, do you also concur?

18 TC [COL KRAEHE]: I concur, Your Honor.

19 MJ [Lt Col BRAUN]: Okay. In accordance with this  
20 commission's joint ruling in Appellate Exhibit 0053.005 (TJ),  
21 0054.005 (TJ), and 0055.004 (TJ), Mr. bin Amin will be credited with  
22 311 days of administrative credit, and Mr. bin Lep with 379 days of  
23 administrative credit. This credit will be credited against the

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1 approved sentence to confinement consistent with those rulings.

2 Counsel, do you agree with my understanding of the credit  
3 based upon the rulings I just cited?

4 Counsel for Mr. bin Amin?

5 CDC [MS. FUNK]: Yes, Your Honor.

6 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

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

8 MJ [Lt Col BRAUN]: Trial Counsel?

9 TC [COL KRAEHE]: Just a moment, Your Honor.

10 **[Counsel conferred.]**

11 TC [COL KRAEHE]: Concurred, Your Honor.

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

13 Are there any other matters to take up before this  
14 commission adjourns?

15 Trial Counsel?

16 TC [COL KRAEHE]: Nothing further, Your Honor.

17 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

18 CDC [MS. FUNK]: No, Your Honor. Thank you.

19 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

20 LDC [MR. BOUFFARD]: No, Your Honor. Thank you.

21 MJ [Lt Col BRAUN]: This commission is adjourned.

22 **[The R.M.C. 803 session recessed at 1457, 26 January 2024.]**

23 **[END OF PAGE]**