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1   **[The R.M.C. 803 session was called to order at 0905,**  
2   **25 January 2024.]**

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

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

7           TC [COL KRAEHE]: Yes, they are, Your Honor.

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

9           Trial Counsel, can you also please affirm that these  
10 proceedings are being transmitted by closed-circuit television to the  
11 United States in compliance with this commission's order in Appellate  
12 Exhibit ----

13          LDC [MR. BOUFFARD]: Your Honor, I'm sorry to interrupt.  
14 We're having translation issues.

15          MJ [Lt Col BRAUN]: Okay.

16          I think I saw a thumbs up, Counsel. Can you confirm? Are  
17 we good?

18          LDC [MR. BOUFFARD]: We're good.

19          MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Amin, are you  
20 having translation issues, or is everything working on your end as  
21 well?

22          DC [LtCol HIGGINS]: We were. We're good now, sir.

23          MJ [Lt Col BRAUN]: Okay. Trial Counsel, can you affirm that

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1 these proceedings are being transmitted via closed-circuit television  
2 to the United States in compliance with this commission's order in  
3 Appellate Exhibit 0007.006 (TJ)?

4 TC [COL KRAEHE]: Yes, Your Honor. I can so confirm.

5 MJ [Lt Col BRAUN]: Thank you.

6 Counsel for Mr. bin Lep, can you confirm that all defense  
7 counsel who were present at the close of the previous session are  
8 again present?

9 LDC [MR. BOUFFARD]: That is confirmed, sir.

10 MJ [Lt Col BRAUN]: And, Counsel for Mr. bin Amin, same  
11 question to you.

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

13 MJ [Lt Col BRAUN]: Thank you.

14 Are there any other matters, then, that we need to take up  
15 before I call the panel?

16 Trial Counsel?

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

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

19 CDC [MS. FUNK]: Your Honor, I think it will come as no  
20 surprise to you that at this time the defense is asking that the  
21 Rules of Military Commissions be relaxed and that we be able to  
22 call -- I'm sorry -- Rules of Evidence, not Rules of Military  
23 Commissions -- rules, rules.

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1           We're requesting the opportunity to recall one of the  
2 government's witnesses to provide -- to read into the record a  
3 statement of a third party. I know the court has already ruled on  
4 this with the prior rules, but given that it's now the defense's  
5 turn, we're making that request.

6           MJ [Lt Col BRAUN]: Okay. Trial Counsel, any -- well, Counsel  
7 for Mr. bin Lep, any objection?

8           LDC [MR. BOUFFARD]: No objection, sir. We do have a brief  
9 matter to put on the record as well, though.

10          MJ [Lt Col BRAUN]: Understood. And we will get to that in  
11 just a second here.

12          We are in the defense's sentencing case.

13          Trial Counsel, any objection to the rules being relaxed?

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

15          MJ [Lt Col BRAUN]: Additionally, I'll ask: Any objection to  
16 the defense calling what has been noticed as a government witness,  
17 understanding that the defense has the ability to call witnesses?

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

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

20          Defense Counsel, your request to relax the rules in  
21 accordance with R.M.C. 1001 is granted. The rules are relaxed for  
22 purposes of foundation, authentication, and reliability, as  
23 articulated in that rule. I'll allow you to call that witness, then,

1 once we have the panel out here so the proceeding flows normally for  
2 them.

3 CDC [MS. FUNK]: Thank you, Your Honor.

4 MJ [Lt Col BRAUN]: Anything further, Counsel for  
5 Mr. bin Amin?

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

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

8 LDC [MR. BOUFFARD]: Thank you, Your Honor.

9 I wanted to clear something up both on the record outside  
10 the presence of the members and also in the judge's mind, perhaps,  
11 and to reiterate that the initiative to allow, through defense  
12 questioning, the victim impact statements from non-witnesses, this  
13 was not in any way any kind of collusion with or sub rosa-type  
14 agreement with the government.

15 And there is a -- there is, indeed, a mitigative purpose for  
16 it, and our client understands that, and that's why he, you know, he  
17 asked us to push forward with it. He not only wants these statements  
18 heard because it's right that they be heard, but it's also important  
19 for him to absorb them.

20 To do that, to honor the victims in this way, is part of his  
21 rehabilitation. So if there are any lingering concerns in the  
22 court's mind that this was the result of any kind of preexisting  
23 agreement, I just want to assure the court that that's not the case.

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1 MJ [Lt Col BRAUN]: Counsel, I appreciate that context. The  
2 commission doesn't ascribe intent to what the parties do. The  
3 commission appreciates, as a former litigator, that there are  
4 tactical decisions that are made, and there are decisions that are  
5 made on how one presents one's case based upon the scope and confines  
6 of the rules, be it a court-martial or be it a military commission.

7 The military commissions contain rules that don't always  
8 mirror what would occur or be permissible in a courts-martial. And I  
9 think when we talk about this issue of victim unsworn statements, one  
10 can look at the Manual for Courts-Martial current edition 1000  
11 R.M. -- R.C.M. 1001, I believe it's subsection (c), and it contains  
12 guidance at length on how victim unsworn statements can be used.

13 The rules for a military commission are derived from a  
14 Manual for Courts-Martial that predates that change. So  
15 it -- ultimately, the commission is merely asking the parties for a  
16 position for law supporting their position and then facts to apply to  
17 that law to reach a ruling.

18 So I appreciate your perspective. But to assure the  
19 parties, the commission does not engage in ascribing intent to any  
20 party aside from what the commission would expect those parties to be  
21 doing in their roles as officers of the court and representatives of,  
22 be it an accused or the United States, so.

23 Is there anything else the parties need to discuss as it

1     pertains to that matter?

2             Trial Counsel?

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

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

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

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

7             MJ [Lt Col BRAUN]:   Anything further, then, before I call the  
8     panel members?

9             Trial Counsel?

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

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

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

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

14            LDC [MR. BOUFFARD]:   Nothing, sir.   Thank you.

15            MJ [Lt Col BRAUN]:   Thank you.

16            Bailiff, please call the members.

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

18     **[The military commission was called to order at 0912,**  
19     **25 January 2024.]**

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

21            Parties are present.   Members are present.

22            Defense Counsel, you may proceed.

23            CDC [MS. FUNK]:   Thank you, Your Honor.

1           At this time, on behalf of Mr. bin Amin, we are recalling to  
2 the stand Solomon Lemane Miller.

3   **[Pause.]**

4           MJ [Lt Col BRAUN]: Before we begin, Trial Counsel, if you  
5 could swear the witness, please.

6           TC [COL KRAEHE]: Please stand and face me and raise your  
7 right hand.

8   **SOLOMON MILLER, was called as a witness for the defense, was**  
9 **re-sworn, and testified as follows:**

10          MJ [Lt Col BRAUN]: You may have a seat.

11               I have some preliminary questions before we get underway.

12               Are you the same Solomon Miller that testified yesterday in  
13 this same commission?

14          WIT: I am.

15          MJ [Lt Col BRAUN]: Okay. Thank you.

16               Defense Counsel.

17          CDC [MS. FUNK]: Thank you.

18                               **DIRECT EXAMINATION**

19   **Questions by the Civilian Defense Counsel [MS. FUNK]:**

20               Q. Good morning, Mr. Lemane Miller.

21               A. Good morning.

22               Q. Is it true, sir, that you and I had some conversations  
23 last night and again this morning about this testimony?

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1           A. Yes, it is.

2           Q. Okay. And when you testified yesterday, you indicated  
3 that you thought you were going to be able to read a letter from your  
4 grandmother for the jurors.

5           A. Yes.

6           Q. Okay. And did I explain to you and do you understand that  
7 the jurors already have that letter in their exhibits?

8           A. Yes, you did.

9           Q. But is it true, sir, that it is important to you and your  
10 family that you have the opportunity to read the statement to the  
11 jurors in court today?

12          A. Yes, it's extremely important. That's the reason I'm  
13 here.

14          Q. Okay. And you have a copy of that statement with you; is  
15 that correct?

16          A. Yeah, I do, in front of me.

17          CDC [MS. FUNK]: Your Honor, at this time I'd like to show the  
18 court the statement that is about to be read.

19          MJ [Lt Col BRAUN]: Okay. Are we going to use the document  
20 viewer for this, Counsel?

21          CDC [MS. FUNK]: I thought we would.

22          MJ [Lt Col BRAUN]: Okay. Just confirming.

23                If we could please, then, publish this exhibit only to the



1 bench and to the court security and information officer.

2 Please proceed, Defense Counsel.

3 CDC [MS. FUNK]: Certainly. And, for the record, this is  
4 Prosecution Exhibit 20.

5 MJ [Lt Col BRAUN]: Thank you.

6 **[Pause.]**

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

8 Defense Counsel, this exhibit may be published to the  
9 witness.

10 Q. Mr. Lemane Miller, at this time I am going to publish this  
11 statement to you. So I want you to take a look at your screen and  
12 confirm that this is, in fact, the statement that you wish to read to  
13 the jurors.

14 A. It is, yes.

15 Q. All right. Then without any further ado, I give you the  
16 floor to read the statement.

17 A. Thank you very much.

18 "Every day has been sad for the past 21 years. Each day  
19 I've grieved for and remembered my adored son, Nathaniel Dan Miller.

20 "For the first six months after October the 12th, 2002, I  
21 couldn't speak without tears rolling uncontrollably down my cheeks.  
22 As I walked in and around the house and garden, the agony of his  
23 death came with me. He was everywhere and nowhere, his spirit

1 permeating the home he so loved.

2 "My body was riven with the physical pain of heartbreak. It  
3 felt as if my heart was torn into two parts, raw pain all day and  
4 through long, wakeful nights. The wicked murder of my son created a  
5 schism in my life and that of my husband.

6 "The before life of a happy family, full of promise and  
7 enjoyment, the thrill of seeing one's children growing into happy  
8 adulthood, the prospect of grandchildren, and as parents growing  
9 contentedly into old age. And in the awful after, the shock, the  
10 horror, the disbelief, that random act of terror, which permanently  
11 fractured life, and through his inconsolable grief, shortened the  
12 life of my husband, and caused the life of my beloved daughter to  
13 take on the mantle of only child, alone responsible for her damaged  
14 parents, forever without the love, help, and support of her brother.

15 "In a blasted moment, those who loved Dan were condemned to  
16 a future bereft of him, lost to his love, his protection, his joys,  
17 his sorrows, his abundant love of love; a future of darkness, of  
18 unrelenting sadness, without any ray of hope without someone so  
19 precious to us all.

20 "My son Dan was, in every sense, a fine young man in body  
21 and mind; everything a mother would want a son to be. He was clever,  
22 a Cambridge law graduate. He had won scholarships at school, and  
23 after university, enabling him to become a barrister. He showed huge

1 prowess in a number of sports: Hockey, athletics, tennis, squash.  
2 He ran marathons for charities, and his special love was rugby.

3 "It was rugby which led him to Bali with his team, and his  
4 beautiful wife of just joyously happy five weeks. He had a wide  
5 circle of friends from many different backgrounds, cultures, and  
6 creeds. He was unprejudiced, tolerant, compassionate, kind, and  
7 loving, gregarious, and great company. He lived life to the full,  
8 sharing his energies with friends, his family, traveling, talking,  
9 listening, looking, inquiring, hardworking. He seemed to have  
10 everything.

11 "His sudden, violent, evilly-plotted death achieved nothing  
12 for the conspirators. The deaths of 202 innocent victims gained  
13 nothing. No greatness or martyrdom for the perpetrators of such  
14 evil. Only the sadness, the ruined lives, lifelong grief for the  
15 victims' families. No gods of any religion reward such an act of  
16 slaughter. There can't be any god who would give heavenly rewards  
17 for such a deliberately planned and plotted wickedness.

18 "His adoring mother -- as his adoring mother, my life was  
19 changed forever. The mantle of sadness caused by his death is  
20 wrapped around me and never leaves me. It's a lonely and separating  
21 consciousness that I'm different from others. I have to endure the  
22 pain of listening to my friends and other parents proudly recounting  
23 the progress and happiness of their sons' lives, tales of their

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1 grandchildren, looking at pictures of happy and complete families,  
2 together as they are meant to be, all the while hurting because this  
3 was taken from my son, from my husband, my daughter, my wider family,  
4 taken by people who didn't care for the consequences of terrorism.

5 "The grief borne by my husband was dreadful to observe.  
6 Anger and rage were often the manifestation of his grief in private,  
7 and this affected his health and existing heart condition, thereby  
8 shortening his life.

9 "Over the 21 years I've learned to wear my desolation with  
10 what I hope is dignity, never forgetting, but never parading my deep  
11 sadness, trying to be the mother to Susanna and grandmother to  
12 Solomon that Dan would have wanted me to be. I know I share this  
13 with the other 201 parents and families.

14 "But I know, too, I can be proud of my son and all he  
15 achieved in his 31 years, but this is something denied to your  
16 mother.

17 "What mother could ever be proud of a son who plotted,  
18 conceived, and carried out such an evil act, the killing of 202 young  
19 people?

20 "In our great love and wish that he should not be forgotten,  
21 Dan's wife, her family, our family and friends set up a charity  
22 bearing Dan's name. In the 21 years, this wonderful charity has  
23 helped victims of burns to live full, happy, and purposeful lives, a

1 living tribute to a wonderful person and a good way to bring  
2 out -- bring about good from your evil.

3 "This is my wonderful son's legacy: Helping and giving a  
4 better life to so many other people, whereas your life is  
5 ruined -- has been ruined, and is worthless."

6 Thank you.

7 Q. Thank you, Mr. Lemane Miller. I have no further  
8 questions.

9 A. Thank you.

10 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep, do you have any  
11 questions?

12 LDC [MR. BOUFFARD]: Mr. Miller, thank you.

13 We have no further questions.

14 MJ [Lt Col BRAUN]: Trial Counsel?

15 TC [COL KRAEHE]: No questions, Your Honor.

16 Thank you, Solomon.

17 WIT: Thank you.

18 MJ [Lt Col BRAUN]: Does any panel member have a question of  
19 this witness?

20 That is a negative response from all panel members.

21 Counsel, I appreciate we recalled this witness, but do you  
22 expect this witness subject to recall, further?

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

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

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

3 MJ [Lt Col BRAUN]: Trial Counsel?

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

5 MJ [Lt Col BRAUN]: Mr. Miller, I'm going to excuse you. You  
6 may return to your seat.

7 I just ask that while this trial continues, you not discuss  
8 your knowledge and testimony in this case with anyone other than  
9 accused and counsel.

10 Do you understand?

11 WIT: I do.

12 MJ [Lt Col BRAUN]: Okay. Thank you. You may depart.

13 WIT: Thank you.

14 **[The witness was warned, was permanently excused, and withdrew from**  
15 **the courtroom.]**

16 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin, your next  
17 witness.

18 DC [LtCol HIGGINS]: Your Honor, at this time the defense  
19 calls Mr. Mohammed Fadil bin Amin.

20 **[Pause.]**

21 TC [COL KRAEHE]: Mr. bin Amin, would you please stand and  
22 face me and raise your right hand.

23 **[END OF PAGE]**

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1   **MOHAMMED FADIL BIN AMIN, was called as a witness for the defense, was**  
2   **sworn, and testified as follows:**

3           TC [COL KRAEHE]:   You may be seated.

4                                   **DIRECT EXAMINATION**

5   **Questions by the Defense Counsel [LtCol HIGGINS]:**

6           Q.   Good morning.

7           A.   Good morning.

8           Q.   Mr. bin Amin, can you state your full name and spell your  
9   last.

10          A.   My name is Mohammed Fadil bin Amin, A-M-I-N, Amin.

11          Q.   And where do you currently live?

12          A.   I live in Kuala Lumpur in Malaysia.

13          Q.   And what is your occupation?   What do you do for a living?

14          A.   I am a freelance architect.

15          Q.   What education was required for that?

16          A.   I studied architecture in Birmingham in the U.K. for  
17   five -- six years now, yes.

18          Q.   Are you married?

19          A.   I am married, yes.

20          Q.   Do you have children?

21          A.   I have three children, all adopted.

22          Q.   And what does your wife do for a living?

23          A.   My wife runs a petrol city station in Shah Alam, just

1 outside of Kuala Lumpur.

2 Q. Does she own that station?

3 A. Yes. She operates the station. She doesn't own it, but  
4 she operates the station.

5 Q. Is it like a franchise thing?

6 MJ [Lt Col BRAUN]: Counsel, if you can give me one moment  
7 here. We're just going to adjust your mic so you're a little louder.

8 WIT: Thank you.

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

10 If you just want to repeat the question, then we'll have you  
11 answer.

12 Q. Is that like a franchise, then?

13 A. It is a franchise, yeah, correct.

14 Q. And what is your relationship to Mr. Mohammed Farik  
15 bin Amin?

16 A. I am the eldest brother of Mr. -- of Farik. He is the  
17 sixth in the family of ten children. I'm the eldest.

18 Q. And how old are you?

19 A. I am now 62.

20 Q. Okay. The members panel heard a lot of testimony from the  
21 victims in this case. What, if anything, do you have to say about  
22 that testimony?

23 A. You mean from the victims?



1 Q. To the victims or ----

2 A. It's the first time I hear such heartbreaking stories.  
3 All the time I think I'm more concerned about my brother. But now  
4 listening from the victims' side of stories, I am really very sorry  
5 for the effect it has on all of them.

6 I wish -- I wish I can hug everyone. Yeah, I'm really  
7 deeply sorry, yeah.

8 Q. And what, if anything, do you know about Mr. bin Amin's  
9 involvement in this crime?

10 A. Only from the material that I've read, given to me  
11 by -- by yourself, ma'am, and your team and what I hear over the  
12 media, TV, and news.

13 Q. And that news from Southwest Asia -- and from Asia?

14 A. Yes, from Asia. We have our own TV station. Sometimes  
15 the news about Mohammed Farik.

16 Q. And what do you know about Mr. bin Amin's specific  
17 involvement?

18 A. I do know that he's involved in movement of funds and  
19 maybe ----

20 Q. I'm sorry. Can you repeat that?

21 A. Some movement of funds. He was involved also in letting  
22 some people escape -- the name now escapes me -- and hides -- hides  
23 some of the people that was involved in the bombing, yes.

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1 Q. From your knowledge ----

2 A. He himself -- he himself is not involved, but he -- he  
3 let -- he was -- he was accessories, I guess call it.

4 Q. From your knowledge, did he plan the bombing?

5 A. No.

6 Q. Was he --

7 A. He was after. He was -- his involvement was after the  
8 bombing itself ----

9 Q. Was he the mastermind of the bombing?

10 A. Not at all.

11 Q. And what did you read?

12 A. I read ----

13 Q. You mentioned that you read some documents that were given  
14 you from the defense.

15 A. Oh, yeah. I read Stipulation of Facts, and I also read a  
16 signed statement by Mohammed Farik.

17 Q. And so from your knowledge, his involvement was after the  
18 bombing?

19 A. After the bombing, yes.

20 Q. So you have a really big family. How many nieces and  
21 nephews do you have?

22 A. At the last count, we have 24 niece and nephews. I've  
23 forgotten how many male and female.

1 DC [LtCol HIGGINS]: Your Honor, at this time, I would like to  
2 post -- I'm sorry -- publish for the members panel -- or, actually,  
3 publish in court, open court, the Defense Exhibit T (AMI), which is  
4 page 6 of 12.

5 MJ [Lt Col BRAUN]: If we could publish that to the bench and  
6 to the court security and information officer first, please.

7 **[Pause.]**

8 MJ [Lt Col BRAUN]: Trial Counsel, any objection to defense's  
9 request to publish Defense Exhibit T? Specifically page 6 of 12 of  
10 that exhibit.

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

12 MJ [Lt Col BRAUN]: Okay. Very well. That exhibit will be  
13 published to the witness, the panel, as well as the gallery.

14 Q. Mr. bin Amin, is this -- do you recognize this photo?

15 A. I do, yes.

16 Q. What is it?

17 A. It's a photo of your first trip to Malaysia, I believe.  
18 I'm not exactly sure what date it was, but you and a team of lawyers  
19 came to visit us in my mother's house in Kajang, Selangor. And  
20 before you left, we gathered together and had this group photo taken.

21 Q. So how often -- or does your family normally gather like  
22 this?

23 A. We do. But a big group like this would probably like once

1 a month where we celebrate whoever's birthday it was in that month,  
2 and we also have little prayer said for our brother, Mohammed Farik.  
3 That would occur every month.

4 But at weekends, we will try as many as -- of us as possible  
5 who can gather our parents' home, this house, at the weekends, either  
6 on Saturday night or on Sundays, whoever can make it. But once a  
7 month we would try and gather all together for the prayers and the  
8 birthday celebrations.

9 Q. And what do you do during -- so besides prayer, what do  
10 you do at those meetings or at those gatherings?

11 A. Everybody will bring a bit of food with them, and we eat,  
12 basically, and gather, and have family time together.

13 Q. Is everyone here still alive?

14 A. I believe. I think my sister was not here. She recently  
15 passed about four or five years ago, but I don't think she was here  
16 in this picture.

17 Q. And how is your parents' health?

18 A. Not very good.

19 My dad suffers, also, several ailments, when you are 80, 89.  
20 He has heart problem. He has divertic. He has high blood pressure.  
21 He can't move very much. He will have to take a few steps, and he  
22 has to support himself. That's how he moves.

23 My mother is now almost bedridden after she fell down some

1 stairs. As you can see, the house in the back is on two levels. So  
2 she fell down the stairs and hurt her -- broke her -- her hip. And  
3 she had an operation about five years ago, and she hasn't fully  
4 recovered. She mostly sits, but she can go to the bathroom by  
5 herself using -- using the wheeled crutches, yeah.

6 Q. How old are they?

7 A. My mom is 82, and my dad is 89.

8 Q. What do your siblings do to support your parents?

9 A. Other than the usual gathering and occasionally dropping  
10 by with news about their children, we try and -- within our -- among  
11 ourselves, we have a WhatsApp group, so we keep updating each other  
12 about our parents' situation at home.

13 At home my parents is looked after by our youngest sister  
14 and her family. And that's how we keep support, you know. So  
15 someone is always with them.

16 Q. What was the bedrock of the teachings of Islam in your  
17 family growing up?

18 A. I would say my mother was bedrock. She make sure that we  
19 pray five times a day, and we fast, and we have good behavior, and we  
20 don't talk bad about other people or each other. She wants us all to  
21 be honest and grow up as good human beings, being kind. We weren't  
22 rich or anything, but she tried to keep us all together.

23 Q. Was there talk of violent jihad in your family?

1           A. None. None at all. If there's any, it would be all  
2 within, you know ----

3           Q. So what is jihad to you?

4           A. Okay. Jihad is a word, I think, thrown around by the  
5 media, and it's always associated with violence.

6           But for us, jihad is within: How to be a better Muslim, how  
7 to be a better person. Jihad is striving always to be a good person.  
8 You know, you're always improving. So that is jihad. That is the  
9 fight within, yeah.

10          Q. In your household, was there talk of violence or hatred  
11 against Americans or Westernized societies?

12          A. No, no. None.

13          In fact, I think America or the West is -- it's like a  
14 source of, I would say, opportunity or education. For instance,  
15 myself, I was educated in the U.K. And my sister, who is two years  
16 younger than me, she studied in the U.S.

17          For someone from our village studying so far away, halfway  
18 around the world, is not normal. So when she was given opportunity  
19 to study, a lot of people are saying she's only a girl. How could  
20 you let your daughter to go so far away? But my dad was insistent  
21 that she goes to the U.S. and get educated, come back, and try and  
22 improve the family, just like myself.

23          Q. What was Farik's relationship with her like?

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1 A. Farik's relationship with my sister?

2 Q. Yes.

3 A. Was very good. Farik used to study ----

4 Q. And I'm sorry. I'm referring to him as Farik because we  
5 can't all be Mr. bin Amin at the same time, so...

6 A. Yeah.

7 Farik was very close to the sister. He used to study in the  
8 same, I would say, city where she lives. And although he lives in  
9 the college dormitory where they have rules, you can't kind of  
10 escape, but whenever he could at the weekends, he would go and stay  
11 with sister and her family, yeah. So they were very close.

12 Q. What do you remember about Farik as a young boy?

13 A. I don't have too much of a memory of him because of our  
14 gap. I'm 12 years older than him. When he was born, I was away in  
15 the boarding school. Later when he was going to school, I was away  
16 overseas.

17 So to say I have a very close relationship with him is not  
18 right. But I do see him at the holiday seasons and sometimes  
19 weekends, but we are close anyway. We see each other through the  
20 other brothers and sisters. So we always have news of each other,  
21 yes.

22 Q. How often -- or when is the last time you actually saw  
23 Farik, whether it was video or, you know, in person?

1           A. Yes. We have quite regular Skype sessions with Farik.  
2 Every three months the ICRC, International Red Cross, will arrange  
3 with Guantanamo a Skype session with Farik for the family.

4           Q. I'll come back to that, but I want to back up a little bit  
5 because I would like to talk about what it was like growing up in  
6 your household as a young bin Amin.

7           A. Yes, as a young bin Amin.

8           We lived with our grandmother when I was young. Our  
9 grandmother was a very strict person, so was not comfortable for our  
10 parents with small children to also live in the same house as her.  
11 So my mother would insist that we live away, all in the house.

12           So dad worked in a sawmill, would bring back bits of timber  
13 over a long period, and with that we built our own house at the back  
14 of grandmother's house.

15           Q. Just to clarify, your father worked at a sawmill?

16           A. Yes. He works in a sawmill, correct.

17           Q. And you all built a house yourself?

18           A. Yes. And with the bits of timber he brought back, every  
19 time he comes back home from work, we built our own house, little  
20 house, so we could live away from the parents.

21           It was a difficult time because as soon as the roof was up,  
22 he wanted to -- my mother wanted us to live in the house. There was  
23 no electricity. There was no water supply. It was a village.

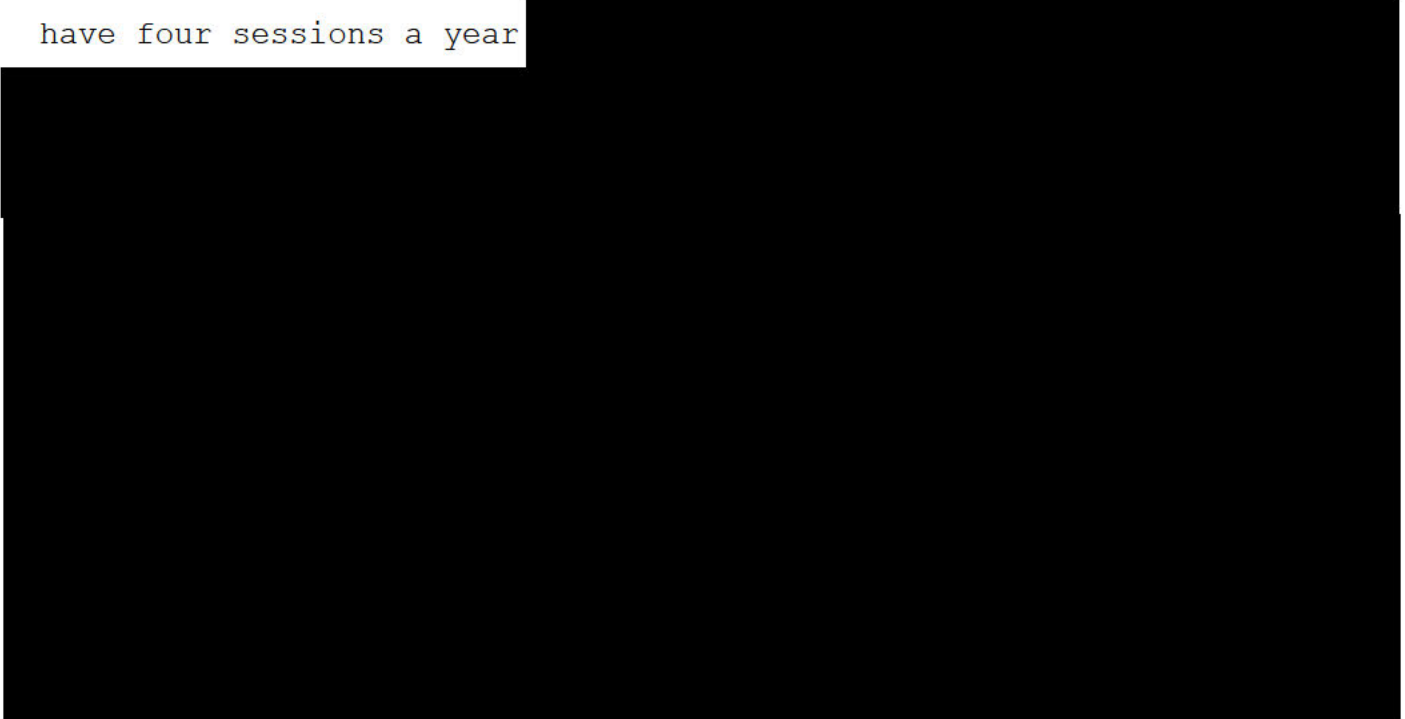


1           We had to gather firewood, of course, and  
2 electricity -- light at night is by some -- not really candle but  
3 paraffin lamp. And water, we would gather from the village  
4 well -- the village well for drinking purposes, for bathing the  
5 smaller children, for washing, yes.

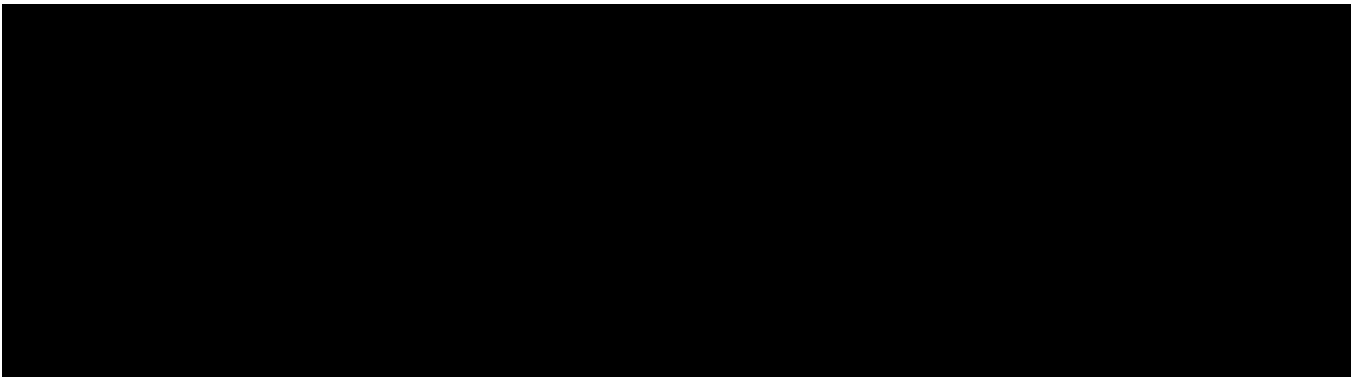
6           So for the first few children, I think for us was a very  
7 difficult life. Much later, then, when the government brings in the  
8 electricity and water, then it becomes much more bearable.

9           Q. Now, moving back to the Skype calls, how are those  
10 conducted? You said they were -- they happen about every three  
11 months. Has it always been that way?

12          A. No. When it started, it was like once a year or 18 months  
13 in between, but then it get -- gradually it gets better. And now we  
14 have four sessions a year



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Q. When were you first allowed to have those types of calls with Mr. bin Amin -- with Farik?

A. I believe about seven, eight years ago. And then during COVID, we still have those calls, but the number of people attending would be limited, yeah.

Normally we were allowed eight adults and any number of children. So out of eight adults, because it's such a big family, we'll take turns. But mom and dad is always in each -- in each call, in each Skype call. But the number of people who are attending would be from a list given by Farik himself, yes.

Q. How did you communicate with Farik before the Skype calls?

A. Before the Skype calls we had -- the very first time there was some -- there was a gentleman from Red Cross who came to the house, and he would gather whatever information, photographs. He would record our bits and pieces of news from the family. I remember he was a Swiss person. We called him Rudy. And then he will take those information or pictures he took of the family to Farik.

Q. When did you first realize that he was missing?

1           A. Oh, we know that he left the house to study. That was  
2 around 2000. And then intermittently after that, maybe about three  
3 years, we would hear from him, and he would come back occasionally.

4           But in 2006 is the first time we heard that he was in  
5 Guantanamo when the police came around and informed our parents  
6 during the day. There was no one else in the house. So we were  
7 shocked that he was so far away, you know.

8           Q. When did you first get communication from him directly?

9           A. Come -- what do you mean? Sorry, ma'am.

10          Q. So you said you had letters.

11          A. Uh-huh.

12          Q. Then you later had Skype.

13          A. Yeah.

14          Q. So when did you first hear from Farik himself?

15          A. From Farik himself was maybe 10, 12 years ago. We  
16 received letters by ICRC, but the letters was written about two or  
17 three years before that. So ----

18          Q. The letters were -- that you received were two or three  
19 years old?

20          A. Yes.

21          Q. Okay. Given how large the family is -- and I'm going to  
22 speak purely hypothetically. If Farik was to come home, how would he  
23 fit into all of this?

1           A. Oh, easily. We all miss him very much. He is  
2 like -- even with his absence, he's the glue. We always talk about  
3 him and we wish him to be home, not just for his sake, but for our  
4 parents, because our parents are getting on and very ill and hopes he  
5 comes back before they go.

6           Q. Where would he live?

7           A. Where would he live? He will live in this house, which is  
8 now upgraded. We have provided a room for him next to the parents so  
9 that he -- he can -- through the Skype session, he was telling us  
10 that he would like to come and look after them the rest of their  
11 lives. So we have built him a room in the house.

12          Q. Where would he work?

13          A. There's a few opportunities for work within the family.  
14 For instance, my wife's petrol service station, we need -- because  
15 she's dealing with cash, and she always need trustworthy people and  
16 honest, so Farik would be the perfect choice to be supervisor there.

17               Also, our -- his nephew is a contractor building  
18 construction, so can also -- he has also offered a position for Farik  
19 if he's interested. Also, my sister runs a little restaurant, if  
20 he's interested. So there's a few choices.

21          Q. I'm sorry. One minute, please. I'm looking at my notes  
22 here.

23          A. Okay, ma'am.

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1   **[Pause.]**

2           Q.   In all of your siblings, who was the most religious?

3           A.   Farik is.   Farik is the most religious.

4           Q.   Why do you believe that?

5           A.   We all pray five times a day, but he will do his five  
6 times in the mosque every -- every -- all the time.   And he would be  
7 attending if there's any lectures nearby, religious lectures, only he  
8 would be the one to attend -- attend those, yes.

9   **[Pause.]**

10          DC [LtCol HIGGINS]:   Your Honor, at this time I'd like to  
11 publish some exhibits to Mr. bin Amin, and that would be  
12 Exhibits -- Defense Exhibits B (AMI), B through G.

13          MJ [Lt Col BRAUN]:   Okay.   How we're going to do that,  
14 Counsel, so we'll first display those exhibits.   It may be  
15 easier -- do you plan on moving through them in succession with the  
16 witness?

17          DC [LtCol HIGGINS]:   It's actually better if I hand them to  
18 him and he can look at them, Your Honor.   I don't need to publish  
19 them to the gallery.   The members panel already has these.

20          MJ [Lt Col BRAUN]:   Okay.   That's fine.   I'm just going  
21 to -- I don't have an objection with you handing an exhibit to the  
22 witness.

23          DC [LtCol HIGGINS]:   Okay.

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1 MJ [Lt Col BRAUN]: I'd just ask that you identify what you  
2 are handing and that we step through that piece by piece ----  
3 DC [LtCol HIGGINS]: Yes, sir.  
4 MJ [Lt Col BRAUN]: ---- so that it's clear for the record.  
5 DC [LtCol HIGGINS]: Absolutely. This will be ----  
6 MJ [Lt Col BRAUN]: And then if you want to just reference it,  
7 and then the panel and I can follow along.  
8 DC [LtCol HIGGINS]: Sure.  
9 Q. I'm going to hand you what's been previously marked as  
10 Defense Exhibit B (AMI), B through G actually, and so I'm going ask  
11 you if you recognize these.  
12 DC [LtCol HIGGINS]: May I approach, Your Honor? May I  
13 approach?  
14 MJ [Lt Col BRAUN]: You may.  
15 **[Pause.]**  
16 Q. Do you recognize those documents?  
17 A. Yes. Yes, I do.  
18 Q. How were those documents created?  
19 A. I believe these are affidavits. You came in March 2023.  
20 You interviewed some members of my family and recorded those  
21 interviews. And then you came back in June the same year, 2023, and  
22 for them -- with these affidavits and for them to sign, sign them.  
23 Q. And is it a true and accurate depiction of the information

1 that we collected from those individuals?

2 A. I believe, yes. They're quite accurate, yeah.

3 Q. And you were -- you were there when those interviews were  
4 conducted, right?

5 A. Yes. I took the team around to each one, yes. You  
6 conducted the interview.

7 Q. One second.

8 **[Pause.]**

9 Q. Okay. I want to loop back a little bit here, as I got  
10 ahead of myself, and when we were talking about your parents. I just  
11 want to show a couple of exhibits.

12 DC [LtCol HIGGINS]: Your Honor, for identification, these  
13 exhibits are Defense Exhibit T, pages 9 and 10 of 12.

14 MJ [Lt Col BRAUN]: Are you looking to publish them, Counsel?

15 DC [LtCol HIGGINS]: Yes, Your Honor, to the gallery, and the  
16 members panel, and the witness.

17 MJ [Lt Col BRAUN]: Okay. Well, then we will start with  
18 Defense Exhibit T (AMI) page 9. If you could please publish that to  
19 the bench and to the court security officer.

20 Trial Counsel, any objection to publishing to the courtroom?

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

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

23 DC [LtCol HIGGINS]: Thank you, Your Honor.

1 LDC [MR. BOUFFARD]: No objection.

2 MJ [Lt Col BRAUN]: Very well. You may publish this exhibit  
3 to the courtroom and the witness and the members.

4 We just need to pause in place. It takes a moment, Counsel.

5 **[Pause.]**

6 Q. Is this your parents?

7 A. These are my parents.

8 Q. Do you recall when this picture was taken?

9 A. Some years ago. They're still -- they're relatively  
10 healthy here. They're much worse condition now.

11 DC [LtCol HIGGINS]: I'd like to publish the next exhibit,  
12 Your Honor.

13 MJ [Lt Col BRAUN]: You said you wanted to show 9, 10, and 11,  
14 Counsel?

15 DC [LtCol HIGGINS]: Just 9 and 10.

16 MJ [Lt Col BRAUN]: 9 and 10.

17 Trial Counsel, I know you have a copy of Exhibit 10. Any  
18 objection?

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

20 MJ [Lt Col BRAUN]: Okay. Counsel, as I also have a copy of  
21 Exhibit 10, you may proceed.

22 DC [LtCol HIGGINS]: Thank you.

23 Q. Is this a more recent picture of your parents?



1           A.   Yes.   This is more recent.

2           We've demolished the old house, and this is inside of the  
3 newer house with a room for Farik built in, yes.

4           Q.   Thank you.   I just have one more question.

5           If you could tell the members panel anything regarding  
6 sentencing your brother, what would it be -- I'm sorry.   Let me back  
7 up.

8           I want to speak purely hypothetically again.

9           No, I'm not going to ask that question.   I'll ask the  
10 question I was already asking.   Sorry.

11          If you could tell the members panel anything regarding what  
12 sentence to give your brother, what would it be?

13          A.   I know that he's accused of a huge crime.   He has hurt a  
14 lot of people, but this was a long time ago when he was a lot  
15 younger.   I know Farik is not that person.   He somehow got  
16 sidetracked, maybe.

17          I know he was more religious than the rest of us.   Maybe  
18 some -- he was following some groups of people who were using him,  
19 perhaps, for their own motivation -- well, he's highly motivated.  
20 He's very intelligent, and I think that was very useful to them.   So  
21 he was being used.   I believe in his -- he was quite idealistic, so  
22 he would have looked for something like this.   So they would have  
23 used that against him.

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1           So it would be a mistake -- it has been a mistake in his  
2     life at that time. At the point of time, it was a bad choice because  
3     that is not Farik that I knew. He is loved by the family, and by the  
4     parents, and even his aunt, his uncles, and our neighbors, who always  
5     asked about him.

6           So I would request the panel to be lenient and merciful, and  
7     look at it as a mistake, a big one. I'm sure he's very remorseful,  
8     and he has had a lot of time to ponder and change and try and find  
9     ways of making up for those mistakes.

10          I would request that you look at him as person and not as  
11     a -- not as a terrorist or anything because that's not my brother.  
12     Yes, please be merciful.

13          Also, before I forget, it's for our parents' sake that I  
14     came all the way here with my other brother to help in any way we can  
15     to maybe find ways of getting him home, basically to see our parents  
16     before they go.

17          So that's it, ma'am.

18          Q. Thank you.

19          DC [LtCol HIGGINS]: That's all I have, Your Honor.

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

21          LDC [MR. BOUFFARD]: Mr. bin Amin, thank you for being here.  
22     We have no questions.

23          MJ [Lt Col BRAUN]: Trial Counsel?

1 TC [COL KRAEHE]: No questions from the United States, Your  
2 Honor.

3 MJ [Lt Col BRAUN]: Does any panel member have a question of  
4 this witness?

5 That is a negative response from all panel members.

6 Counsel for Mr. bin Amin, is this witness subject to recall?

7 DC [LtCol HIGGINS]: No, Your Honor.

8 MJ [Lt Col BRAUN]: Sir, I'm going to permanently excuse you.

9 I ask that while this court -- while this trial continues,  
10 you not discuss your knowledge or testimony with anyone other than  
11 accused and counsel.

12 Do you understand?

13 WIT: Yes, Your Honor.

14 MJ [Lt Col BRAUN]: Okay. You may step down. Thank you.

15 WIT: Thank you.

16 **[The witness was warned, was permanently excused, and withdrew from**  
17 **the courtroom.]**

18 MJ [Lt Col BRAUN]: Thank you.

19 Panel Members, we are at that one-hour point. I think this  
20 is a good opportunity for us to take a 10-minute comfort recess, and  
21 then reconvene and continue with the taking of evidence.

22 So with that, this commission is in a 10-minute recess.

23 **[The military commission recessed at 1000, 25 January 2024.]**

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1   **[The military commission was called to order at 1015,**  
2   **25 January 2024.]**

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

6           DC [LCDR CURTIS]: Your Honor, defense for Mr. bin Amin would  
7   like to call Mr. Mohammed Faizal bin Amin to the witness stand.

8           TC [COL KRAEHE]: Sir, please stand and face me, and raise  
9   your right hand.

10   **MOHAMMED FAIZAL BIN AMIN, was called as a witness for the defense,**  
11   **was sworn, and testified as follows:**

12           TC [COL KRAEHE]: Thank you. You may be seated.

13                           **DIRECT EXAMINATION**

14   **Questions by the Defense Counsel [LCDR CURTIS]:**

15           Q. Good morning. Could you please state your full name for  
16   the court.

17           A. **[No audio].**

18           Q. Just wait one second. We can't hear you, I think, in the  
19   speakers.

20           MJ [Lt Col BRAUN]: Okay. Counsel, if you just want to re-ask  
21   that question so the answer can be appropriately annotated. I  
22   believe we've resolved the issue. Thank you.

23           Q. Could you please state your full name for the court.

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1 A. My name is Mohammed Faizal bin Amin.

2 Q. And where do you currently live, Mr. bin Amin?

3 A. I live in Putrajaya, Malaysia.

4 Q. Coming from Malaysia, is English your first language?

5 A. No. It is Malay.

6 Q. Well, I'll be asking you questions in English today, so if  
7 you'd like to take your time, and let me know if I can clarify  
8 anything for you, please.

9 A. Yeah, I will.

10 Q. Can you tell us how you got to Guantanamo Bay?

11 A. Oh, it's been -- this is my first time going to America.  
12 It's more than 38 hours flight to Norfolk. One night at Norfolk, and  
13 came here. I took five flights from Kuala Lumpur, KLA to  
14 LA -- sorry, to Haneda, Tokyo, then to LA, to Charlotte, then to  
15 Norfolk. I stay overnight there.

16 Q. Mr. bin Amin, can you tell us about your occupation?

17 A. Alhambra, I granted in artistic touch -- I guess it's from  
18 my father. And now I'm a graphic designer managing two others. I  
19 work with MIMOS Berhad, an agency under the Ministry of Science and  
20 Innovation, Malaysia.

21 Q. And can you describe your family?

22 A. My family -- okay. I'm married. I have four childrens,  
23 two girls and two boys. All of them grown up, and we all live

1 together. None of them married. The eldest is 28 and the youngest  
2 is 22.

3 Q. And how are you related to Mr. Mohammed Farik bin Amin?

4 A. He is my brother.

5 Q. What is your age difference?

6 A. I born in '71, and he's '75, which is four years apart.

7 Q. So where do you and Farik fall in your family lineage?

8 A. I'm number five. I'm number five out of ten, and he's  
9 number six, directly under me.

10 Q. How would you describe your relationship with Farik when  
11 you were younger?

12 A. I'm sorry.

13 We are very, very close, indeed very close. We grew up  
14 together. We play hide-and-seek together. The most -- I'm sorry.

15 Q. How do you remember Farik interacting with you and the  
16 rest of the family?

17 A. He's very polite, very humble, and easy to approach. He's  
18 the most religious among us, and he's the best brother and best  
19 friend of ----

20 DC [LCDR CURTIS]: Your Honor, at this time I'd like to  
21 display to the witness and publish to the rest of the court Defense  
22 Exhibit T (AMI).

23 MJ [Lt Col BRAUN]: Okay. If I could see that on the bench

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1 first, as well as to my court security officer.

2 I note this is a multiple-page exhibit, Counsel. Which  
3 pages?

4 DC [LCDR CURTIS]: Your Honor, this is Defense Exhibit T  
5 (AMI), page 1.

6 MJ [Lt Col BRAUN]: Okay. Do you plan on showing the witness  
7 any additional pages from this exhibit?

8 DC [LCDR CURTIS]: Yes, Your Honor. I also intend to publish  
9 page 12 of Defense Exhibit T (AMI).

10 MJ [Lt Col BRAUN]: Trial Counsel, any objection to displaying  
11 or publishing Defense Exhibit T (AMI), pages 1 and page 12, to the  
12 panel and the gallery?

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

14 MJ [Lt Col BRAUN]: Very well.

15 Trial Counsel **[sic]**, you may publish Defense Exhibit T  
16 (AMI), page 1 and page 12, to the witness, the panel, and the  
17 gallery. And I'll remind you it will take a minute to let the  
18 technology catch up with us.

19 DC [LCDR CURTIS]: Yes, Your Honor.

20 Q. Mr. bin Amin, can you describe this photo to the  
21 commission?

22 A. Okay. A small -- this photo taken, I think, around 1999.  
23 Behind Farik is my eldest, Farzana and Farah Syazwani, and on Farik's

1 left is Syahmi Fakhri.

2 I remember that absent of my wife going teaching during the  
3 break. I mean, during his break, semester break, he was the one who  
4 take care of my kids. He changed the diaper on my -- not only my  
5 family ----

6 Q. Mr. Bin Amin ----

7 A. ---- my brother also live in -- I mean, after married, my  
8 brother, Fadily, and I live together with my mom in the same house.  
9 He also take care of my brothers to ----

10 Q. I'm sorry, Mr. bin Amin. So you said that Farik on his  
11 semester breaks ----

12 A. Yeah.

13 Q. ---- from school would take care of your children as well  
14 as your brother's children?

15 A. Yeah. He's very fond with children.

16 Q. How would you describe Farik's personality?

17 A. He's very shy, actually, and very calm, and the most  
18 religious among us. Mom always -- he's the best reference for us.  
19 He shows a good example.

20 Q. You said that Farik was the most religious among you?

21 A. Yeah.

22 Q. Can you explain what you mean by that?

23 A. He always pray five times a day in the mosque, which not



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1 like us. We did five times, but we did at home. And Farik, as I  
2 know what I know, he always read the Quran before he went out from  
3 the house to get blessed from God.

4 Q. Mr. bin Amin, I'm going to show you another picture now.

5 A. Yes.

6 DC [LCDR CURTIS]: Your Honor, this is Defense Exhibit T  
7 (AMI), page 12.

8 MJ [Lt Col BRAUN]: And we can publish this exhibit to the  
9 witness, the bench, the panel, and the gallery.

10 **[Pause.]**

11 Q. Mr. bin Amin, can you please describe this photo that's  
12 being displayed?

13 A. This is -- this photo taken while Farik being a mahram to  
14 my mom during Hajj because of his -- mostly just compared to us, my  
15 mom trust him to be her mahram, to accompany for Hajj.

16 Q. Mr. bin Amin, can you -- you said that Farik was chosen to  
17 be mahram for your mom for Hajj.

18 A. Um-hmm.

19 Q. Can you please explain what Hajj is?

20 A. It is a Muslim pilgrimage to Mecca, it's happen on  
21 Zulhijjah, the month of Islamic calendar. It's the fourth pillar,  
22 fourth pillar of Islam; and we, as a Muslim, have to perform it at  
23 least once in a lifetime.

1 Q. Mr. bin Amin, what are some of your favorite memories of  
2 Farik?

3 A. The most needed is at the end of the year, which is a  
4 monsoon season where our house always been flood. My father worked  
5 at a sawmill, brought back a plank of -- a big plank -- a big plank.  
6 Then we used that to float during the flood.

7 I remember actually it is a depth of about waist, and during  
8 that time, we are very small and short. My brother, asked me,  
9 **[Speaking in Malay]**, which is how depth is it? And I said, Abdallah,  
10 it's only depth of duck breast. As we know, duck always float. And  
11 it's that **[indiscernible]** ----

12 Q. Mr. bin Amin, do you ever remember Farik to be an  
13 aggressive person?

14 A. No, not at all.

15 Q. Do you remember him ever being violent?

16 A. No. That's not him.

17 Q. From what you know of your brother, would you describe him  
18 as an honest person?

19 A. My father and mom brought us -- brought us up with a good  
20 foundation being truthful, honest, and don't ever judge people. It's  
21 bad thing. Never, never, ever, have prejudice to people.

22 Q. Did you feel like you could trust your brother when you  
23 were growing up?

1           A. Definitely. Definitely. He never betray me. And I  
2 don't know -- my whole family members, we don't have that issue at  
3 all. Plus, we know my father best for -- brought us for.

4           Q. And after all of these years, Mr. bin Amin, do you still  
5 feel like you can trust your brother, Farik?

6           A. Yeah. During this -- during his conversation, his  
7 gestures, from his letter he wrote to us, I know that is him, the one  
8 that I miss 20 years, more than 20 years.

9           Q. Mr. bin Amin, you described to us you grew up with Farik,  
10 and some childhood memories. Did your relationship with him change  
11 after he left home for college?

12          A. Actually, relationship doesn't change. But the  
13 communication too a bit hard for us since there is no mobile like  
14 today, or WhatsApp group like today.

15          Q. I'm sorry. You said there's no mobiles, mobiles?

16          A. No mobile at the time. But if there is an important  
17 thing, we would communicate through our sister, late sister, which is  
18 work at the Polytechnic where Farik study.

19          Q. So following that time after Farik left for college, when  
20 was it that you first found out that Farik was missing or arrested?

21          A. All that I know, he sit -- he went to gain knowledge in  
22 Islam and to learn more in Islam. But they -- but he  
23 communicate -- I mean, I did communicate **[Speaking in Malay]** ----

1 INT: He communicated, but it was really rare.

2 WIT: Thank you.

3 A. But we -- it was short.

4 Then in 2006, the police came to my mom's house, said Farik  
5 got arrested. We heard no more. We are shocked.

6 Q. Mr. bin Amin, I'm just going to repeat back what I think  
7 you said, if you can confirm.

8 You said in 2006, the police came to your home ----

9 A. Yeah.

10 Q. ---- and said he was arrested. And I believe you said you  
11 were shocked, but please correct me.

12 A. Yeah. That's correct.

13 Q. Mr. bin Amin, when is the last time you were able to see  
14 Farik before today?

15 A. It is December last year during his Skype session. I  
16 think that's the most recent Skype session to our family.

17 Q. And I guess I should clarify.

18 So that was the last time you were able to communicate with  
19 your brother Farik?

20 A. Exactly.

21 Q. Have you been able to see him this week in these court  
22 proceedings?

23 A. Again, sorry?

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1 Q. Have you been able to see him this week in these court  
2 proceedings?

3 A. Yeah. I -- I see from the gallery at the back.

4 Q. Mr. bin Amin, do you know what your brother pled guilty to  
5 last week?

6 A. Yes, I do.

7 Q. How do you feel about his decision to plead guilty to  
8 those crimes?

9 A. I'm -- truly, I don't -- I don't know what is the  
10 consequences, but really, I'm happy that he responsible what he did.  
11 That is what my dad taught us. He still keep that. That is my  
12 brother.

13 Q. Mr. bin Amin, what is it that your dad taught you?

14 A. Yeah. Being truthful, being honest, and don't  
15 shy -- don't ever shy -- don't afraid to apologize when you make a  
16 mistake.

17 Q. Has anyone else in your family been accused of involvement  
18 in terrorism or religious extremism?

19 A. No.

20 Q. Did you ever witness Farik engaging in extremist conduct?

21 A. During his -- at home? No.

22 Q. Do you remember any talk about violent jihad at home?

23 A. No.

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1 Q. Were you taught any negative views of Americans or  
2 Westerners at home?

3 A. My father always said we are born all white. Don't ever  
4 prejudice -- don't ever have prejudice to people.

5 Then he's -- he walk the talk and let my sister -- which  
6 is when she's 18, he let my sister came to U.S. to gain the  
7 knowledge, to study here, and before that, my brother to U.K.

8 My experience here, came to Guantanamo, I meet great people  
9 of -- I mean, American, you are very **[Speaking in Malay]** -- how to  
10 say, **[Speaking in Malay]**. You are warm, and even in this court ----

11 INT: I was not expecting that you were that nice.

12 A. Yeah. In this court, you are expect to prayer time, and  
13 even my -- the need to hear inshallah. During my supper prayer,  
14 there's only one lady sitting, and we apologize and we need the space  
15 for prayer, doing prayer at the one corner. And he said, do you need  
16 to move? And I said no need. No need. It's okay.

17 Then after our prayer, she give me Assalam Alaykum, which,  
18 oh, you American, it's so beautiful. I don't know. I have no  
19 experience about that. That's why my father -- I can relate to what  
20 my father's taught us.

21 Q. Mr. bin Amin ----

22 A. Yeah.

23 Q. ---- as you know, we're here today so that the panel

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1 members can decide about a sentence for your brother. If he were  
2 released to go home one day, would he be welcomed home by your  
3 family?

4 A. Definitely. Not only my family, even his uncle, aunties,  
5 and even our neighbor asking **[Speaking in Malay]**.

6 INT: Hopefully the return is speedy.

7 Q. From what you know of your brother and the communications  
8 you've had with him, do you believe that he is remorseful for what he  
9 did?

10 A. Yes. He did.

11 Q. And, Mr. bin Amin, I have one final question for you: If  
12 you could take this time to tell the members panel anything more  
13 about your brother as they consider his sentence, what would you like  
14 to tell them?

15 A. From what I heard direct firsthand from the gallery  
16 yesterday, I feel so sorry, deeply, deeply sorry on behalf of my  
17 family, on behalf of me. Truly, we deeply sorry of your loss. But  
18 to Panel, please have mercy to Farik, that his family miss him. And  
19 the most important, my parents getting older and getting ill. We  
20 want to have him back before they go.

21 Please, please have mercy. Thank you.

22 Q. Thank you, Mr. bin Amin.

23 DC [LCDR CURTIS]: And, Your Honor, I have no further

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1 questions.

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

3 Counsel for Mr. bin Lep?

4 LDC [MR. BOUFFARD]: Mr. bin Amin, thank you for being here,  
5 sir. We have no questions.

6 TC [COL KRAEHE]: No questions from the United States, Your  
7 Honor.

8 MJ [Lt Col BRAUN]: Does any panel member have a question of  
9 this witness?

10 I see a negative response from all panel members.

11 Defense Counsel, is this witness subject to recall?

12 DC [LCDR CURTIS]: No, Your Honor.

13 MJ [Lt Col BRAUN]: Sir, I want to thank you for your  
14 testimony. I'm going to permanently excuse you. You may return to  
15 your seat.

16 I'd just ask that while this trial continues you not discuss  
17 your knowledge or testimony in this case with anyone other than  
18 accused and counsel.

19 Do you understand?

20 WIT: Yes, Your Honor.

21 MJ [Lt Col BRAUN]: Thank you. You may step down.

22 WIT: Thank you.

23 [END OF PAGE]



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1   **[The witness was warned, was permanently excused, and withdrew from**  
2   **the courtroom.]**

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

4           CDC [MS. FUNK]:  Your Honor, my client wishes to make an  
5   unsworn statement.  However, before we get to that, I'm just asking  
6   for a brief recess so that I can be hooked up with a mic.

7           MJ [Lt Col BRAUN]:  Okay.  10 minutes sufficient to do that,  
8   Counsel?

9           CDC [MS. FUNK]:  10 minutes is more than enough.  Thank you.

10          MJ [Lt Col BRAUN]:  Okay.

11          Panel Members, I'm going to place us in a brief 10-minute  
12   recess.  I'm going to have the parties remain behind.

13          Panel Members, you are excused.

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

15          MJ [Lt Col BRAUN]:  Counsel for Mr. bin Amin, I just want to  
16   understand when you say "hooked up to a mic," I'm assuming you mean a  
17   wireless microphone.  I'm just trying to understand what presentation  
18   format you're proposing.

19          CDC [MS. FUNK]:  Certainly, Your Honor.  My client will be  
20   standing at the podium because it's an unsworn statement.  I will be  
21   standing to his right in support of him, but also there is a point  
22   during the unsworn statement where Mr. bin Amin indicates that he's  
23   uncomfortable talking about his torture.

1           However, he has some drawings. And in order to provide  
2 context, I'm going to be engaging in a Q and A with him about what  
3 the drawings depict and about things that are present or things that  
4 are happening that drawings can't actually show.

5           So this will be for Exhibits (AMI) W. There are a series of  
6 drawings in that exhibit. They have been cleared and are  
7 unclassified, and we have also shown them to your CISO. And we will  
8 be going through those photos, not exactly in the order that they are  
9 in the binder, but we will be going through those with Mr. bin Amin.

10          Then he will finish his statement and, assuming no  
11 questions, he'll be done.

12          MJ [Lt Col BRAUN]: Okay. So this will be a  
13 question-and-answer, unsworn. It sounds like Mr. bin Amin will be  
14 reading from portions of the unsworn statement that he has, but you  
15 may diverge -- not diverge, but go into a question-and-answer session  
16 through portions of that?

17          CDC [MS. FUNK]: Correct. And I don't want Mr. bin Amin and I  
18 to be competing for the single microphone. So that was my thought of  
19 having something on my lapel.

20          MJ [Lt Col BRAUN]: Understood. And, yeah, I think that will  
21 work better for all involved.

22          One caution, before I get ahead of myself. As we display or  
23 publish what has been previously admitted as Defense Exhibit W, or W

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1 (AMI), I need counsel to ensure that they're creating a complete  
2 record, so identifying the exhibit and then page number so that  
3 that's captured in the final record.

4 Counsel, as far as the publishing goes -- and I apologize if  
5 you stated this. I'm just thinking through what you've proposed  
6 here. Do you plan -- where do you plan to publish those contents of  
7 Defense Exhibit W (AMI)?

8 CDC [MS. FUNK]: I plan on using the ELMO, and I plan on  
9 requesting that the -- of course, first showing to the court and then  
10 requesting that it be shown to the gallery, the courtroom, the panel,  
11 wherever else it's transmitted.

12 MJ [Lt Col BRAUN]: Okay.

13 CDC [MS. FUNK]: Also, Your Honor, the first drawing in  
14 Exhibit W is a self-portrait that we would like to put up at the  
15 beginning of Mr. bin Amin's statement.

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

17 Counsel for Mr. bin Lep, do you have any objection based  
18 upon what counsel for Mr. bin Amin has proposed so far?

19 LDC [MR. BOUFFARD]: Not at all, sir.

20 MJ [Lt Col BRAUN]: Okay.

21 Trial Counsel, any question to the format, understanding  
22 this is an unsworn statement?

23 TC [COL KRAEHE]: Your Honor, no objection.

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1           Of course, if she veers off into 505 territory, then we'll  
2 have to make note of that as appropriate.

3           MJ [Lt Col BRAUN]: Understood.

4           I believe, based upon the approach Defense Counsel has  
5 articulated, identifying the exhibit -- it will break up the unsworn,  
6 unfortunately -- but identifying the exhibit, publishing to the bench  
7 so that the bench can ensure that it is indeed the exhibit that's  
8 been cleared, and then publishing to the courtroom writ large I think  
9 will address that.

10           Do you -- well, I'll ask if you have an objection at that  
11 time, just to make this easier for all involved, and so that I'm  
12 ensuring that I'm capturing everything, every position of the parties  
13 as we step through this.

14           But aside from that, any objections, Trial Counsel?

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

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

17           We will proceed per that plan. I think that will satisfy.  
18 And again, I just encourage counsel that they're identifying the  
19 exhibits as we're stepping through them. That will be, frankly, the  
20 challenging part for the record, so...

21           Anything else we can take up, then, before I place us in an  
22 eight-minute recess?

23           Trial Counsel?

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

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

3 CDC [MS. FUNK]: No, thank you, Your Honor.

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

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

6 MJ [Lt Col BRAUN]: Very well. This commission is in an  
7 eight-minute recess.

8 **[The military commission recessed at 1052, 25 January 2024.]**

9 **[The military commission was called to order at 1103,**  
10 **25 January 2024.]**

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

12 MJ [Lt Col BRAUN]: This court-martial will -- I'm sorry.  
13 This commission will come to order.

14 Parties are present. Members are present.

15 Counsel for Mr. bin Amin?

16 CDC [MS. FUNK]: At this time, Your Honor, we call  
17 Mr. bin Amin.

18 Your Honor, before we begin Mr. bin Amin's unsworn  
19 statement, I am asking to publish first to the court and then writ  
20 large Defense Exhibit W, page 1 of 14.

21 MJ [Lt Col BRAUN]: Trial Counsel, any objection?

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

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

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

2 MJ [Lt Col BRAUN]: Very well. Defense Exhibit W (AMI),  
3 page 1, can be published to the panel and the gallery.

4 CDC [MS. FUNK]: Yes. I don't see it on the screen.

5 MJ [Lt Col BRAUN]: And, Counsel, it does take a -- there's a  
6 lag.

7 ACC [MR. BIN AMIN]: **[Speaking in Malay]**.

8 **[Speaking in English]** Greetings. May it please the court.  
9 Your Honor and member of the panel, in the name of God, the most  
10 merciful, and especially Mrs. Funk.

11 I begin this unsworn statement. I ask you to please open  
12 your mind and your heart and lend me your ears.

13 Firstly, may I introduce myself. My name is Mohammed Farik  
14 bin Amin. I was born in Malaysia on February 16, 1975.

15 I have been in U.S. custody since June 2003. For the first  
16 three and a half years, I was held in a secret prison called black  
17 sites. I have been at Guantanamo Bay since fall of 2006.

18 I came from the small town of Kajang, Malaysia. Kajang is  
19 famous for its satay. If you visit my country, please come to this  
20 town and try the satay.

21 I have a big family. I am number six of ten siblings. My  
22 father made the only income for my family. He works as a deliverer  
23 at the nearest sawmill at the time. So he had to make ends meet and

1 fulfill his duty as husband and father.

2           If my father is the king of the house, my mother is his  
3 queen. She manage everything behind the curtain. Like people say:  
4 Behind every good man is a strong woman. She make sure everything is  
5 running smooth, including our religious education.

6           Born as a Muslim, my parents, especially my mother,  
7 constantly remind us of the important of praying and reciting the  
8 Quran. She make sure me and my siblings did everything necessary to  
9 be a good Muslim and human. She taught us worship none but God, and  
10 be good to parents and relatives and orphans and the needy, and speak  
11 nicely to people and pray regularly and give alms.

12           My mother is the duty sergeant in the house making sure we  
13 all do our duty as Muslim and house chores. Don't get me wrong, she  
14 is truly a very gentle lady when she needed as long as we follow her  
15 orders. She taught us how to recite the Quran, pray, and fast, and  
16 all the things that are necessary to be a good Muslim.

17           Time was passing fast. The boy who was so cuddly and easy  
18 to cry now was getting bigger. At seven years old, I started primary  
19 school quite close to my home. I skip kindergarten because it wasn't  
20 available at the time that close to my home.

21           I could not imagine a kid not liking school. I had a lot of  
22 friends, and there were lot of things to learn. It seemed like the  
23 world was wide open.

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1           My favorite subjects were art and religion. I would go to  
2 school library and read and borrow any books about the prophets,  
3 messengers, and their companions. Their story particularly had  
4 intrigued me because of their unshaken belief in God. Their faith  
5 helped them endure and survive their fights against injustice, in  
6 addition to their duty to spread the word of God. I wanted to follow  
7 their footsteps that lead to Heaven and God's approval.

8           As a Muslim, I always wanted to further my studies at  
9 religious school, where the teaching was advanced compared to school  
10 as school. But I could not attend a religious school because I got a  
11 scholarship to boarding school, which relieved the financial burden  
12 for my father.

13           Given this opportunity, I have to leave the idea of joining  
14 religious school behind me.

15           In the last year of high school, I must decide what I will  
16 do after finishing school, what is best for me. If I fail the exam,  
17 the life will be difficult for me. Graduating just from high school  
18 will not be enough. To enter college, I need good grades. To  
19 achieve that, I must study hard.

20           Human nature, when the others prayed and in a difficult  
21 situation, they will ask for help and feel close to God. There  
22 wasn't any exception with me.

23           After a long time, a once-abandoned idea come back to me. I



1 did not need to go to a religious school to be a good Muslim. I  
2 could attend classes, teachers, and lectures by Muslim scholar  
3 available everywhere.

4 Then I enter college. The environment was so perfect. I  
5 divided my time between college and Islamic studies. Again, I find  
6 out it wasn't enough. Like most young people, I was idealistic. I  
7 wanted to do something to make the world better and make my family  
8 proud.

9 Looking back, I want to apologize to my parents, my family,  
10 my teacher -- my teachers, my friends, and all Muslims. This is not  
11 what I was taught as a child.

12 I understand that we all have our own views. That is  
13 because we all have different level of knowledge, experience,  
14 culture, and background.

15 After graduating from college in the late '90s, Muslims in  
16 Ambon were being attacked. Mosques were burned, Muslims were being  
17 killed because of their faith, the gravity of the Islamophobia  
18 movement.

19 As a young man, I wanted to defend my Muslim -- my fellow  
20 Muslims in Indonesia. I want to protect them. But it is wrong to  
21 participate in a battle without training. It is a sin in my religion  
22 as it will just be a burden, not a help.

23 Afghanistan had history of training soldiers for conflict,

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1 including training the mujahideen, which mean "holy warrior." So I  
2 went to Afghanistan for military training so I could defend Muslims  
3 in Ambon.

4 While I was there, my view about jihad changed after  
5 training with people from around the world with different views and  
6 perspective. I learned the conflict was everywhere, not just Ambon,  
7 and jihad become global for me instead of regional. So the front  
8 line is not in the conflict area anymore because Muslims were  
9 suffering around the world.

10 I want to do my part. So while in Afghanistan, I agree to  
11 participate in martyrdom operation. The operation was later  
12 canceled.

13 I didn't know anything about the Bali bombing until after it  
14 happened. However, December of 2002, I agreed to transfer money. I  
15 know -- I knew the money would be used for operations, which include  
16 helping some of people who participate in the prior Bali bombing. I  
17 also knew it would be used for the families of those who were  
18 arrested or killed in the Bali bombing. I knew the money could be  
19 used for other attacks; however, I did not have any details.

20 To the victims: I'm sorry. I am sorry. I take  
21 responsibility for my action. As an older and wiser man, I regret my  
22 decision to participate in supporting action where so many people  
23 were killed. I am sorry for my action. There are no words. Words

1 are not enough. There are no words for me. No excuse. No words of  
2 comfort I can give them. Sorry is not enough. This is an  
3 uncomfortable situation for me because I have no words to express my  
4 remorse either by word or by action. This is not enough.

5           Next month I will be 49 years old if God willing, inshallah.  
6 So what kind of legacy do I want to leave behind for my children and  
7 the next generation? I know legacy is kind of a big word for use for  
8 someone like me. The world I knew 20-plus years ago is still the  
9 same and never changed, or just changed a little bit. That is the  
10 right thing.

11           But two decades ago, I believed I could change the world.  
12 But the Quran says: God does not change the condition of people  
13 until they change what is in themselves. Instead of trying to change  
14 the world, I can only change myself.

15           And over the past 20 years, I have changed. I'm not an  
16 angry young man anymore. I am a reformed man. My faith has evolved.  
17 I am feeling so much contentment and confidence in my faith. I am  
18 planning to go forward a good and peaceful Muslim.

19           Like everyone, I must continue to decide every day to be a  
20 good person. Learning from one's mistake and not repeating those  
21 mistakes is one way to be that person. I have plenty of time to  
22 contemplate and reflect on myself to do so.

23           I am grateful for everything that happened to me because

1 Islam taught me that was all part of God's plan.

2 I am uncomfortable talking to you about my torture. I'm not  
3 trying to compete with the victims and family members' pains. Again,  
4 no apology is enough.

5 When I arrived here in the fall of 2006, I was kept in  
6 solitary confinement for many years, but for three-and-a-half years  
7 before that I was held in two black sites, COBALT and ORANGE. I was  
8 held incommunicado. It was dark and difficult time in my life. This  
9 was painful physically, mentally, and emotionally.

10 I have created drawings that depict what I experienced for  
11 you to see. These drawings show what I carry in memory, and will be  
12 with me for the rest of my life.

13 CDC [MS. FUNK]: At this time, Your Honor, I would like to do  
14 a question-and-answer session with my client about the drawing  
15 currently on the screen and subsequent drawings, all as part of  
16 Exhibit W, Defense Exhibit W.

17 MJ [Lt Col BRAUN]: You may proceed, Counsel.

18 CDC [MS. FUNK]: Thank you.

19 **DIRECT EXAMINATION**

20 **Questions by the Civilian Defense Counsel [MS. FUNK]:**

21 Q. Mr. bin Amin, I'm going to ask you to look at the drawing  
22 up on the screen. Did you draw that?

23 A. Yes. That's my drawing.

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1 Q. And is it a picture of you?

2 A. Yes. This is picture of me smiling.

3 Q. Did you do some other drawings for us to look at today?

4 A. Pardon?

5 Q. Did you do some other drawings that we're going to look at  
6 today?

7 A. Yes. I got this here.

8 Q. And these other drawings depict some of the torture that  
9 you suffered at the hands of the United States of America?

10 A. Yes.

11 Q. You said you were uncomfortable talking about it.

12 A. Yes.

13 Q. Did I explain to you as your lawyer that the conditions  
14 that you were held in is an important part of what the jury can  
15 consider when determining the appropriate sentence?

16 A. Yes.

17 Q. So I'm going to show you these drawings, and I'm going to  
18 ask you questions about them. Is that all right?

19 A. Yeah. I try my best.

20 Q. Try your best. That's perfect.

21 CDC [MS. FUNK]: The first exhibit, Your Honor, for review for  
22 the court, Defense Exhibit W (AMI), page 2 of 14.

23 MJ [Lt Col BRAUN]: Okay. Before we switch that, if we can

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1 just have that published solely to the bench.

2 Trial Counsel, any objection?

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

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

5 LDC [MR. BOUFFARD]: No objection, Your Honor.

6 MJ [Lt Col BRAUN]: Very well. Defense Exhibit W (AMI),  
7 page 2, can be published to the panel, as well as the rest of the  
8 courtroom and gallery.

9 Q. Okay. Mr. bin Amin, you were disappeared from the streets  
10 of Bangkok; is that correct?

11 A. Yes.

12 Q. And that's in Thailand?

13 A. Yes.

14 Q. In looking at this picture, is this a picture of what  
15 happened immediately after you were taken into custody?

16 A. About that, yeah. Not immediately.

17 Q. Maybe an hour or so?

18 A. More than hours. I would think maybe half a days.

19 Q. Half a day?

20 A. Yeah, before this happens.

21 Q. Okay. And in looking at this picture, it appears that you  
22 are laying face down; is that right?

23 A. Yes.

1 Q. And you are not wearing any clothes; is that right?

2 A. Yes.

3 Q. Looking at the gentleman on the left, is he removing your  
4 clothing?

5 A. Yeah. Yeah, they strip down ----

6 Q. And they cut the clothes off of you; is that right?

7 A. Yes.

8 Q. And your hands appear to be in a zip tie behind your back;  
9 is that right?

10 A. Yes.

11 Q. And from that point, did you remain naked until you were  
12 transferred to what is described in the SSCI Report as site COBALT?

13 A. No. I mean, held in this country, in Thailand, for couple  
14 of weeks.

15 Q. You were held in Thailand for a couple of weeks?

16 A. Yeah.

17 Q. Okay.

18 A. For a couple of week, yeah.

19 Q. Okay. And how often were you held without any clothes  
20 during that time?

21 A. All the time.

22 Q. All the time.

23 **[The security classification button was pushed in the courtroom which**

3



1 **[The Military Commission resumed at 1123, 25 January 2024.]**

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

3 MJ [Lt Col BRAUN]: Okay. Counsel, given where we're at, I'm  
4 going to take a recess to see if the parties can discuss among  
5 themselves what the issue may be and if there is a resolution that  
6 can easily be achieved.

7 If not, then we can go into an appropriate session to then  
8 get the full basis of the objection into the record and then provide  
9 a ruling. That seems to be the prudent way to proceed at this time.

10 Objection, Trial Counsel? Given it's your objection.

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

12 MJ [Lt Col BRAUN]: Okay. Defense Counsel?

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

14 MJ [Lt Col BRAUN]: Okay. Very well, then. We're going to  
15 take a five-minute recess here, then, to allow the parties to do that  
16 and see if that can be resolved. If you've resolved it sooner than  
17 that, please let the bailiff know, and we can proceed.

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

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

20 This court's in a -- this commission's in a five-minute  
21 recess.

22 **[The military commission recessed at 1123, 25 January 2024.]**

23 **[END OF PAGE]**

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1   **[The R.M.C. 803 session was called to order at 1129,**  
2   **25 January 2024.]**

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

4           Parties are present. Members are absent.

5           Counsel, have we been able to resolve the matter?

6           TC [COL KRAEHE]: Yes, Your Honor. We explained the issue to  
7   defense counsel, and she's agreed to ask her questions accordingly in  
8   a way that will not venture into that area.

9           MJ [Lt Col BRAUN]: Okay. Defense Counsel?

10          CDC [MS. FUNK]: And I apologize to the court, Your Honor. I  
11   was truly attempting to get through this without a red light.

12          MJ [Lt Col BRAUN]: Understood.

13          Very well, then. Anything before we call the members?

14          Trial Counsel?

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

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

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

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

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

20          MJ [Lt Col BRAUN]: Very well.

21          Bailiff, please call the members.

22   **[The military commission was called to order at 1129,**  
23   **25 January 2024.]**

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

2 MJ [Lt Col BRAUN]: This court-martial will come to order.

3 Parties are present. Members are again present.

4 Members, just for your awareness, I know we're coming up  
5 along 1130. I'm going to keep us in session a little longer to try  
6 and hit a more natural spot, if I can, for a recess. I think we can  
7 press a little longer. So just so that you're all tracking kind of  
8 what I'm thinking up here on the bench.

9 With that, Defense Counsel, please continue.

10 CDC [MS. FUNK]: Thank you, Your Honor.

11 If we could bring that exhibit back up on the screen,  
12 please.

13 MJ [Lt Col BRAUN]: Yes.

14 Please publish Defense Exhibit W (AMI), page 2 of 14, to the  
15 courtroom, the bench, the panel, and the gallery.

16 **DIRECT EXAMINATION CONTINUED**

17 **Questions by the Civilian Defense Counsel [MS. FUNK]:**

18 Q. Because this is on a 40-second delay, I'm just going to  
19 briefly, Mr. Bin Amin, go over with you some of the highlights of  
20 this drawing for purposes of the public record.

21 This picture shows two men cutting your clothes off shortly  
22 after you were captured; is that right?

23 A. About ----

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1 Q. About half a day?

2 A. Yeah.

3 Q. Yeah. And it looks like you have zip ties holding your  
4 wrists together behind your back.

5 A. Yeah.

6 Q. And you were stripped naked in this photo.

7 Is it true that you were held naked until your transfer a  
8 couple of weeks later?

9 A. Yeah.

10 CDC [MS. FUNK]: I'm going to move on to Defense Exhibit W  
11 (AMI), page 12 of 14.

12 MJ [Lt Col BRAUN]: Okay. If we could just publish this  
13 exhibit to the bench, please.

14 Trial Counsel, any objection to the publishing of this  
15 exhibit to the panel and gallery?

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

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

18 LDC [MR. BOUFFARD]: No objection, Your Honor.

19 MJ [Lt Col BRAUN]: Okay. Defense Counsel, I'm assuming you'd  
20 like this published as well?

21 CDC [MS. FUNK]: Yes, please.

22 MJ [Lt Col BRAUN]: Very well.

23 This exhibit may be published to the courtroom, to include

1 the panel and the gallery.

2 Q. Mr. bin Amin, did you draw this?

3 Did you draw this, Mr. bin Amin?

4 A. Yes, ma'am.

5 Q. Is it a picture of you?

6 A. Yeah.

7 Q. And does it depict the conditions you were held in?

8 A. Yeah.

9 Q. Is it true that you have a hood over your head?

10 A. Yeah, all the time.

11 Q. All the time you had a hood over your head and nothing  
12 else to wear?

13 A. Yeah.

14 Q. Except I see you're wearing handcuffs in this photo?

15 A. Yeah.

16 Q. Are you free to move about this cell?

17 A. No.

18 Q. And is that because you were, in addition to being  
19 handcuffed, chained to the floor?

20 A. To the floor and the wall.

21 Q. To the floor and the wall.

22 CDC [MS. FUNK]: Your Honor, I'd like to move on to Defense  
23 Exhibit W, page 3 of 14.

1 MJ [Lt Col BRAUN]: Okay. If we could publish that to the  
2 bench first, please.

3 Trial Counsel, any objection to publishing this exhibit to  
4 the panel and the gallery?

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

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

7 LDC [MR. BOUFFARD]: No objection, Your Honor.

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

9 Without objection, this exhibit also can be published to the  
10 panel and gallery, to include the rest of the courtroom.

11 Q. Did you draw this, Mr. bin Amin?

12 A. Yes, ma'am.

13 Q. Does it depict the conditions that you were held in?

14 A. Yes.

15 Q. Okay. And this shows you in a seated position with chains  
16 around your ankles; is that correct?

17 A. Yes.

18 Q. And is it also true that your hands are handcuffed?

19 A. Yeah.

20 Q. And there's a hood over your head?

21 A. Yes.

22 Q. And you're still being held naked?

23 A. Yes.

1 Q. I'm looking at a drawing -- at the part of the drawing  
2 that is above your head. There's a little -- excuse me. There's a  
3 little -- it looks like half a circle.

4 Is that what you were chained to when you said you were  
5 chained to the wall?

6 A. Yes.

7 Q. So in the previous picture, when you were standing, you  
8 wouldn't have been able to sit down; is that right?

9 A. No.

10 Q. And in this picture where you're sitting, you're not able  
11 to stand up?

12 A. No.

13 Q. Okay. Was there any way that you could properly use the  
14 toilet in this picture?

15 A. No.

16 Q. And is it true that you were held there for such a long  
17 period of time that you were unable to prevent yourself from soiling  
18 yourself and from wetting yourself?

19 A. Can you repeat that question?

20 Q. Yes. That was badly worded.

21 Did you soil yourself while you were sitting in this  
22 position while you were being detained?

23 A. Yes.

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1 Q. What was the noise? Did you have any noise that you could  
2 hear while you were in this condition?

3 A. The only noise I could hear is white noise.

4 Q. Okay.

5 A. Buzzing all the time.

6 Q. Buzzing all the time, 24/7?

7 A. Yes.

8 Q. And it looks like this is a brightly lit room. Was it  
9 like this the entire time you were in this room?

10 A. Yes.

11 CDC [MS. FUNK]: I'd like to move on to Defense Exhibit W,  
12 page 13 of 14.

13 MJ [Lt Col BRAUN]: If you can publish that to the bench  
14 first, please.

15 CDC [MS. FUNK]: Of course.

16 MJ [Lt Col BRAUN]: Trial Counsel, any objection to publishing  
17 this exhibit to the panel and gallery?

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

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

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

21 MJ [Lt Col BRAUN]: Very well, Defense Counsel. You may  
22 publish page 13 of 14 of Defense Exhibit W (AMI) to the courtroom, to  
23 the include the panel and gallery.



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1 Q. And, Mr. bin Amin, this is -- yep. Sorry. Thank you.

2 Did you draw this, Mr. bin Amin?

3 A. Yes, same.

4 Q. And does this depict you after you had arrived at the site  
5 that's been identified as COBALT?

6 A. Yes.

7 Q. And to travel to COBALT, you took a flight; is that  
8 correct?

9 A. Yes.

10 Q. And during that flight, were you handcuffed?

11 A. Yes.

12 Q. Did you have something over your head?

13 A. Yes.

14 Q. Did you have earmuffs on?

15 A. Yes.

16 Q. And were you put in a diaper for this flight?

17 A. I can't remember.

18 Q. You can't remember. Okay.

19 A. Yes.

20 Q. Okay. Are you naked in this picture?

21 A. No. I have clothes.

22 Q. Okay. I got ahead of myself. I apologize.

23 CDC [MS. FUNK]: I'd like to move on to Defense Exhibit W

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1 (AMI), page 4 of 14.

2 MJ [Lt Col BRAUN]: Publish that to the bench first, please.

3 Trial Counsel, any objection to publishing?

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

5 LDC [MR. BOUFFARD]: No objection, Your Honor.

6 MJ [Lt Col BRAUN]: Thank you.

7 Defense Counsel, you may publish page 4 of Defense Exhibit W  
8 (AMI) to the courtroom, to include the panel and gallery.

9 Q. All right. Did you draw this, Mr. bin Amin?

10 A. Yes.

11 Q. And does this show you at your time at COBALT?

12 A. Yes.

13 Q. And it appears that someone is taking a picture of you; is  
14 that right?

15 A. Yes.

16 Q. And are you naked in this picture?

17 A. Yes.

18 Q. Had you ever been naked in front of someone before, and  
19 asked to pose for a picture?

20 A. No.

21 Q. Did you feel humiliation?

22 A. Of course.

23 Q. Of course.

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1           And when you tried to cover your nakedness, what was the  
2 response from the gentleman to your left in this picture?

3           A. They not allowed me to cover my nakedness. I try to cover  
4 my genital ----

5           Q. Okay.

6           A. ---- with my hand, but they slapped my hand.

7           Q. They slapped your hand away?

8           A. Yes.

9           CDC [MS. FUNK]: Okay. I'd like to move on to Defense Exhibit  
10 W, page 5 of 14.

11           MJ [Lt Col BRAUN]: If you could publish that to the bench  
12 first, please.

13           Trial Counsel, any objection to publishing page 5 of Defense  
14 Exhibit W (AMI)?

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

16           LDC [MR. BOUFFARD]: No objection, Your Honor.

17           MJ [Lt Col BRAUN]: Very well.

18           Defense Counsel, you may publish page 5 of Defense Exhibit W  
19 (AMI) to the courtroom, to include the panel and gallery.

20           Q. Does this show one of your earliest interrogation  
21 sessions, Mr. bin Amin?

22           A. Yes.

23           Q. And at that interrogation session, were you told that you

1 needed to follow the rules?

2 A. Yes.

3 Q. Did they let you know that if you didn't follow the rules  
4 and do what they said, that something bad would happen?

5 A. Yes.

6 Q. Did you have any idea what that would mean?

7 A. Little bit.

8 Q. A little bit?

9 Is that based on your experience in Thailand?

10 A. Yes.

11 Q. Okay.

12 MJ [Lt Col BRAUN]: Counsel, I'm going to ask you to slow  
13 down, please.

14 CDC [MS. FUNK]: Apologies.

15 MJ [Lt Col BRAUN]: Thank you.

16 CDC [MS. FUNK]: I'd like to move on to Defense Exhibit W,  
17 page 8 of -- page 6 of 14. I'd like to publish that first to the  
18 bench.

19 MJ [Lt Col BRAUN]: Trial Counsel, any objection?

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

21 MJ [Lt Col BRAUN]: Counsel ----

22 LDC [MR. BOUFFARD]: No objection, Your Honor.

23 MJ [Lt Col BRAUN]: Thank you, Counsel for Mr. bin Lep.

1 Defense Counsel, you may publish page 6 of Defense Exhibit W  
2 (AMI) to the courtroom, to include the panel and gallery.

3 Q. Did you draw this, Mr. bin Amin?

4 A. Yes, ma'am.

5 Q. Does it depict your experience at Camp -- at COBALT?

6 A. Yes.

7 Q. Are you naked in this picture?

8 A. Yes.

9 Q. Are there leg -- ankle chains on your feet?

10 A. Yes.

11 Q. And it looks like your hand is chained up above your head.

12 A. Yes.

13 Q. It also appears that you're shielding your eyes. Was this  
14 during a time when you were held in darkness?

15 A. Yes, all the time.

16 Q. All the time it was dark.

17 Was -- did you hear anything during this time?

18 A. Just loud music playing on the speaker outside my cell.

19 Q. Okay. And I would imagine that being held in this  
20 position, it would cause pain in many parts of your body; is that a  
21 fair statement?

22 A. Yes.

23 Q. Your shoulder, for example?

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1           A.    Yes.

2           Q.    Your back?

3           A.    Yes.

4           Q.    And having your hand in that shackle, hanging from the  
5 wall, did that cause abrasions on your hand?

6           A.    Yes.

7           Q.    Blisters?

8           A.    Yes.   My hand and my feet.

9           Q.    And your feet, okay.   Thank you.

10          CDC [MS. FUNK]:   I'd like to move on.   Defense Exhibit W,  
11 page 7 of 14, first publish to the trial -- to the bench.

12          MJ [Lt Col BRAUN]:   Trial Counsel, objection to publishing  
13 this exhibit?

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

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

16          LDC [MR. BOUFFARD]:   No objection, Your Honor.

17          MJ [Lt Col BRAUN]:   Very well.

18          Defense Counsel, you may publish page 7 of Defense Exhibit W  
19 (AMI) to the courtroom, to include the panel and gallery.

20          Q.    Did you draw this, Mr. bin Amin?

21          A.    Yes.

22          Q.    Are you depicted in the middle of the three people?

23          A.    Yeah.

1 Q. Your arms are in front of you. Are they handcuffed  
2 together?

3 A. Yeah.

4 Q. And your feet are also cuffed; is that right?

5 A. Yes.

6 Q. And it appears that there are men on either side of you  
7 that are holding you up.

8 A. Yes.

9 Q. Your feet appear to be dragging on the ground rather than  
10 you walking on them.

11 A. Yes, because they're swollen.

12 Q. Your ankles were swollen?

13 A. Yeah, and blister around ----

14 Q. And blistered. And that was because of the ankle  
15 shackles?

16 A. Yes.

17 Q. And they cut into your ankles?

18 A. Yes.

19 Q. And you couldn't walk?

20 A. Yes.

21 Q. And I see, again, that you have a black hood over your  
22 head.

23 A. Yes.

1 Q. Were they dragging you to an interrogation room?

2 A. Yes.

3 Q. Did you know, based on prior experience, that you were  
4 going to be tortured once you got into the interrogation room?

5 A. What I know is every time someone come, someone come into  
6 my cell, it will be torture.

7 Q. Okay. So every time someone opened the door to your cell,  
8 you were subject to acts of violence?

9 A. Yeah.

10 CDC [MS. FUNK]: I'd like to move on to Defense Exhibit W,  
11 page 8 of 14.

12 MJ [Lt Col BRAUN]: Okay. We could publish that to the bench  
13 first, please.

14 Trial Counsel, objection to publishing page 8 of Defense  
15 Exhibit W (AMI)?

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

17 MJ [Lt Col BRAUN]: Counsel for ----

18 LDC [MR. BOUFFARD]: No objection, Your Honor.

19 MJ [Lt Col BRAUN]: Okay. Thank you.

20 Defense Counsel, you may publish page 8 of Defense Exhibit W  
21 (AMI) to the courtroom, to include the panel and jury -- gallery.  
22 Excuse me.

23 Q. So this, Mr. bin Amin, did you draw this?



1 A. Yes.

2 Q. Does it show what you experienced?

3 A. Yes.

4 Q. As I understand it, you were moved to a different cell  
5 when the government determined you were not cooperating; is that a  
6 fair statement?

7 A. Yes.

8 Q. And in this cell, it appears that there's a bar running up  
9 above your head horizontally.

10 A. Yes.

11 Q. And it appears that your hands are cuffed together; is  
12 that right?

13 A. Yes.

14 Q. And it appears there's a chain that goes from one handcuff  
15 over the pipe to the other handcuff so your hands are forced to be  
16 above your head.

17 A. Yes.

18 Q. It also appears that you've sort of grabbed on to that  
19 chain.

20 A. Yes.

21 Q. And is that because your wrists were injured?

22 A. Yes.

23 Q. They were blistering?

1 A. Yes.

2 Q. And they were swollen?

3 A. Yes. My feet was also swollen.

4 Q. I was just getting to that.

5 I see that your ankles are also shackled. Did that lead to  
6 your feet also being blistered and swollen?

7 A. Yes.

8 Q. What was the temperature when you were at COBALT?

9 A. It was cold all the time.

10 Q. Cold all the time.

11 And it appears that you were frequently chained to things  
12 and left naked; is that a fair statement?

13 A. Yes.

14 Q. Do your feet stand comfortably on the floor in this  
15 drawing?

16 A. It's barely touch the floor.

17 Q. They barely touch the floor.

18 CDC [MS. FUNK]: I'd like to move on, Your Honor, to Defense  
19 Exhibit W (AMI), page 9 of 14. We'll publish first to the court.

20 MJ [Lt Col BRAUN]: Trial Counsel, objection to publishing  
21 this exhibit to the panel and gallery?

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

23 LDC [MR. BOUFFARD]: No objection, Your Honor.

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

2 Defense Counsel, you may publish page 9 of Defense Exhibit W  
3 (AMI) to the courtroom, to include the panel and gallery.

4 Q. So is this, Mr. bin Amin -- oops.

5 Did you draw this, Mr. bin Amin?

6 A. Yes.

7 Q. And it depicts sort of the front side of the last drawing  
8 that we saw?

9 A. Yes.

10 Q. And I can see that your hands are still shackled.

11 A. Yes.

12 Q. And your feet are also shackled?

13 A. Yes.

14 Q. In this picture, there's a bucket and a bottle of water.

15 Was that bucket for you to use if you needed to use a  
16 bathroom?

17 A. Yes.

18 Q. And the water was for you to wash your hands?

19 A. Yeah, for wash, yeah, for an ablution.

20 Q. And obviously, you can't use the bucket while you're  
21 chained like that. Would they come by periodically to allow you to  
22 get some water and use the bucket?

23 A. Sometime they will come to my cell and check me.

1 Q. Okay. But not every time?

2 A. Yeah.

3 Q. So there were times when you were forced to urinate and  
4 defecate on yourself?

5 A. Normally I hold it.

6 Q. You did your best to hold it?

7 A. Yeah.

8 Q. Okay. Did they feed you during this time?

9 A. No.

10 Q. Did they provide you with -- as I understand it, they  
11 provided you with no food; is that correct?

12 A. No, no food.

13 Q. No food.

14 Instead, they gave you bottles of Ensure?

15 A. Yeah.

16 Q. Was that on a regular schedule?

17 A. No.

18 Q. It was just random?

19 A. Yes.

20 Q. Was there loud music playing during this time?

21 A. Yeah.

22 Q. And you were held in darkness; is that correct?

23 A. Yes.

1 Q. Did you sometimes manage to fall asleep even being held or  
2 chained in this position?

3 A. Yes, too tired.

4 Q. Because you were so tired that even though you were  
5 chained like this, you'd fall asleep?

6 A. Yes.

7 Q. And did the guards come by and bang on the door to wake  
8 you up?

9 A. Yes.

10 CDC [MS. FUNK]: I'd like to move on to Defense Exhibit W  
11 (AMI), page 10 of 14.

12 MJ [Lt Col BRAUN]: If we could publish that to the bench,  
13 please.

14 CDC [MS. FUNK]: Yes.

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

16 LDC [MR. BOUFFARD]: No objection, Your Honor.

17 MJ [Lt Col BRAUN]: Very well.

18 Defense Counsel, you may publish page 10 of Defense Exhibit  
19 W (AMI) to the courtroom, to include the gallery and panel.

20 Q. Mr. bin Amin, did you draw this?

21 A. Yes.

22 Q. Does it depict an experience that you had while in  
23 custody?

1 A. Yes.

2 Q. Is it true this happened in the interrogation room?

3 A. Yes.

4 Q. And you are squatting in this photo; is that right?

5 A. Yes.

6 Q. And there's some sort of stick, maybe a broom stick,  
7 something behind your knees?

8 A. Yes.

9 Q. And you were forced to maintain that position?

10 A. Yes.

11 Q. And was it easy?

12 A. Not at all.

13 Q. Not at all.

14 And did it cause pain in your knees, your calves, and your  
15 back?

16 A. Yes.

17 Q. Okay. And you're naked in this photo?

18 A. Yes.

19 Q. Excuse me. In this drawing.

20 A. Yes.

21 Q. Is it fair to say that many, if not all, of these things  
22 caused, among other things, back pain?

23 Did your back hurt?

1 A. Yeah, my back hurt.

2 Q. Did you have back problems before?

3 A. Before this? No.

4 Q. Do you have back problems now?

5 A. Yes.

6 CDC [MS. FUNK]: I'd like to move on to Defense Exhibit W  
7 (AMI), page 11 of 14.

8 MJ [Lt Col BRAUN]: If you could publish that to the bench,  
9 please.

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

11 LDC [MR. BOUFFARD]: No objection, Your Honor.

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

13 Defense Counsel, you may publish page 11 of Defense Exhibit  
14 W (AMI) to the courtroom, to include the panel and the gallery.

15 Q. Did you draw this, Mr. bin Amin?

16 A. Yes.

17 Q. And is this something that took place in an interrogation  
18 room?

19 A. Yes.

20 Q. Were there individuals, four individuals, holding your  
21 limbs, your hands and your feet?

22 A. Yeah. They spread naked me -- spread -- eagle-hog me. I  
23 don't know what you call it, yeah.

1 Q. You're naked in this drawing?

2 A. Yes.

3 Q. And they're keeping you from getting up? You're lying on  
4 your back?

5 A. Yes.

6 Q. And there's another person standing over you sort of  
7 straddling your legs?

8 A. Yeah.

9 Q. And he's pouring water into your nose and mouth; is that  
10 right?

11 A. Cold water, literally.

12 Q. Cold water?

13 A. Yeah, cold water to my body and face, my mouth, yeah.

14 Q. Okay. So they poured the cold water all over you, and  
15 you're in a cold room at the time?

16 A. Yes.

17 Q. And that includes water being poured into your nose and  
18 your mouth?

19 A. Yes.

20 Q. Did you think you might drown?

21 A. Yes.

22 Q. Is that a plastic tarp that you're laying on?

23 A. Yeah. Brown color, actually.



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1 Q. Okay. And, again, I assume this was very humiliating as  
2 well as painful for you?

3 A. Yes.

4 Q. And while they're doing this, they're also questioning  
5 you; is that a fair statement?

6 A. Yes.

7 Q. And they're also hitting you?

8 A. They're punching my face.

9 Q. Okay. They're punching your face? Yes?

10 A. Yes.

11 CDC [MS. FUNK]: I'd like to move on to our last exhibit. I  
12 apologize. Page 14 of 14.

13 MJ [Lt Col BRAUN]: Trial Counsel, any objection to publishing  
14 page 14 of 14 of Defense Exhibit W (AMI)?

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

16 LDC [MR. BOUFFARD]: No objection, Your Honor.

17 MJ [Lt Col BRAUN]: Very well.

18 Defense Counsel, you may publish page 14 of Defense Exhibit  
19 W (AMI) to the courtroom, to include the panel and the gallery.

20 Q. And this is also you in this drawing?

21 A. Yes.

22 Q. During the time that you were held, were there times where  
23 you were unable to take a shower?

1 A. Maybe once time, maybe, I can remember.

2 Q. One time during the time you were allowed to take a  
3 shower?

4 A. Yeah.

5 Q. It was months and months ----

6 A. Yeah.

7 Q. ---- that you were not allowed to shower?

8 A. No.

9 Q. Did you have a toothbrush?

10 A. After long time.

11 Q. After a long time you got a toothbrush?

12 A. A short one.

13 Q. Okay. Do you still have nightmares about this time,  
14 Mr. bin Amin?

15 A. Yeah, always.

16 Q. All the time?

17 A. Yeah.

18 Q. Okay.

19 CDC [MS. FUNK]: Your Honor, my client would like to continue  
20 his statement. I would ask that we replace the current drawing with  
21 page 1, which has previously been viewed by the court.

22 MJ [Lt Col BRAUN]: Because that's already been published, I  
23 will permit you to do so. Then when you're ready, please proceed,

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1 Counsel.

2 ACC [MR. BIN AMIN]: **[Speaking in English]** So I will continue  
3 my unsworn statement.

4 Since 2014, I have been trying to take responsibility for my  
5 action. Part of myself is relief this day is finally here. The  
6 Quran says: They planned and God planned, but God is the best of  
7 planners.

8 All the torture, the bad things, the mistakes, the good  
9 things even, all are part of the journey to make me a better person.  
10 Humbly, I tell you I am a better person now.

11 Thank you for listening to my statement. I leave you -- I  
12 leave to you to decide.

13 I put trust in God. He is God, who is one. God, the  
14 eternal refuge. He neither begets nor is born, nor is there to Him  
15 any equivalent.

16 Again, thank you for everything. Sorry for everything.

17 CDC [MS. FUNK]: I don't have any other questions for  
18 Mr. bin Amin at this time.

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

20 Defense Counsel, you can return -- if this concludes the  
21 unsworn statement, you can return to the ----

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

1 MJ [Lt Col BRAUN]: ---- defense table.

2 Defense Counsel -- or excuse me, Defense Counsel for  
3 Mr. bin Amin.

4 CDC [MS. FUNK]: We have no other witnesses, Your Honor.

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

6 Members, I believe this is a good opportunity, then, for us  
7 to take our lunch recess for the day. It is just about noon, so I  
8 will just flex a little bit on other end and give us until 1330 so  
9 that you have sufficient time, and the parties have sufficient time,  
10 to get something to eat as well as attend to any other matters that  
11 may need to be attended to.

12 Before -- as this is one of the more lengthy recesses, I  
13 want to remind you of the instructions that I've been giving you  
14 periodically throughout this proceeding. In doing so, I want to  
15 stress to you that while I don't give you this caution before every  
16 recess, especially the short ones, it applies throughout this  
17 proceeding.

18 Panel Members, as you are not in your closed-session  
19 deliberations, you may not discuss this commission with anyone, to  
20 include amongst yourselves. You must wait until you are placed in  
21 your closed-session deliberations so that all panel members have the  
22 benefit of your discussion.

23 In addition, you may not communicate about this case to

1 anyone. That includes posting to any type of social media or e-mail,  
2 any type of digital communication.

3 Finally, you may not conduct any type of independent  
4 research as it pertains to this case. That includes reading media or  
5 news articles about the case, conducting searches on the Internet,  
6 reviewing satellite photos, consulting the Manual for Courts-Martial  
7 or the Manual for Military Commissions.

8 Do all panel members understand my caution?

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

10 Do all panel members agree to follow my instruction?

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

12 Then with that, this commission is in recess until 1330.

13 **[The military commission recessed at 1200, 25 January 2024.]**

14 **[The military commission was called to order at 1333,**

15 **25 January 2024.]**

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

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

19 Counsel for Mr. bin Amin, I know I asked you prior to the  
20 recess whether you had any more witnesses. Do you have any more  
21 evidence to present or do you rest?

22 CDC [MS. FUNK]: I do have more evidence to present, Your  
23 Honor. I'm going to read this stipulation into the record, with the

1 court's permission. It's a stipulation between the government and  
2 my -- and Mr. bin Amin.

3 MJ [Lt Col BRAUN]: Okay. Can I -- I don't -- can I see the  
4 stipulation?

5 CDC [MS. FUNK]: I know that you don't have it, and I  
6 apologize for that. I'll bring it up.

7 **[Counsel conferred with courtroom personnel.]**

8 MJ [Lt Col BRAUN]: Panel Members, there's something I want to  
9 take up outside of your presence. I'm going to have you retire to  
10 the deliberation room. I will have the bailiff come retrieve you  
11 when I'm ready to proceed.

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

13 MJ [Lt Col BRAUN]: Please be seated.

14 **[Pause.]**

15 MJ [Lt Col BRAUN]: Okay. I have been -- I have what has been  
16 marked as Appellate Exhibit 0097.001 (AMI). It's a one-page document  
17 consisting of -- I believe it's a part of an e-mail and then -- it  
18 looks like a complete e-mail on the bottom and then a part of an  
19 e-mail on the top.

20 So, Counsel for Mr. bin Amin, how is this a stipulation?  
21 I'm trying to understand what exactly I'm looking at. Generally  
22 stipulations are signed by and agreed to by all the parties, to  
23 include the accused.

1 I'm not sure what exactly -- is this a Stipulation of Fact?  
2 Is this a stipulation of something else?

3 CDC [MS. FUNK]: I apologize, Your Honor. This is my first  
4 commissions trial. I have been doing this for 30 years, and where I  
5 practice, simply reading an agreement into the record is permissible.

6 I also apologize for not providing the court with a clean  
7 copy, just of the language of the stipulation. I didn't think about  
8 the fact that it would become an exhibit. I just assumed my words on  
9 the record with the government's agreement would be sufficient. So  
10 that's my error.

11 But it is a Stipulation of Fact, and it goes directly to  
12 something that the jury is going to be instructed to consider, which  
13 is the cooperation of the accused.

14 While he said in his unsworn statement that he was working  
15 to cooperate with the government, trying to plead guilty since 2014,  
16 this is a statement which validates that in a more formal manner.

17 MJ [Lt Col BRAUN]: Okay. Trial Counsel, have you seen  
18 Appellate Exhibit 0097.001 (AMI)?

19 TC [COL KRAEHE]: Yes, I have, Your Honor.

20 MJ [Lt Col BRAUN]: Okay. What is your position as to this  
21 document?

22 TC [COL KRAEHE]: Your Honor, it's a stipulation as to a fact  
23 that informs prior offers of cooperation by Mr. bin Amin, which I

1 think in turn would inform his cooperation. It's just a fact. I  
2 believe he mentioned facts along these lines during his unsworn  
3 testimony.

4 If it's something that Ms. Funk wants to bring up in  
5 closing, the government will have no objection to mention of that  
6 fact.

7 If she wants to reference Mr. bin Amin's testimony to that  
8 effect, the government would have no objection to that.

9 If she wants to enter into a formal stipulation as to that  
10 fact, the government has no objection.

11 MJ [Lt Col BRAUN]: I believe, and I'm not trying to put words  
12 in your mouth, Defense Counsel, but I believe that's what you are  
13 attempting to do with this document, is enter into a formal  
14 stipulation; is that correct?

15 CDC [MS. FUNK]: That is correct, Your Honor.

16 MJ [Lt Col BRAUN]: So it's a little bit of a format problem  
17 because of the way that a stipulation of fact is generally used and  
18 admitted into evidence that is creating a little bit of the challenge  
19 here.

20 TC [COL KRAEHE]: I'd like to add, Your Honor, this is  
21 something that Ms. Funk and I discussed well over a month ago. Since  
22 then, I haven't heard anything more about it until just before lunch.

23 MJ [Lt Col BRAUN]: Okay. So if this is a stipulation of



1 fact, this is something that would be entered into evidence and  
2 presented to the panel members as evidence, just like Prosecution  
3 Exhibits 1 and 3 were entered as Stipulations of Fact.

4 So I need it in a format in which it can be  
5 presented -- one, preserved in the record, and then, two, presented  
6 to the panel in that fashion. I'm also going to require that that  
7 Stipulation of Fact be signed by counsel, the accused, and then Trial  
8 Counsel, as you're the parties entering into the Stipulation of Fact.

9 Once we have that in the proper format, I'm happy to then  
10 take up the admission of that, Defense Counsel, get it into the  
11 record marked as a defense exhibit, and then it can be presented to  
12 the panel as a stipulation of fact, just in the same fashion that  
13 Prosecution Exhibit 1 and 3 would be.

14 I will instruct them that that is indeed a stipulation of  
15 fact, if you so desire.

16 CDC [MS. FUNK]: Thank you, Your Honor.

17 May I suggest in the interest of time that I'll have someone  
18 from my staff take care of that while Mr. bin Lep goes forward with  
19 his defense? Thank you.

20 MJ [Lt Col BRAUN]: I think that is appropriate, and  
21 appreciate you trying to work that issue as we move on to other  
22 business.

23 Counsel for Mr. bin Lep.

1 LDC [MR. BOUFFARD]: We do have a bit of a problem with that,  
2 sir, and that is that we never saw a copy of this, whether we're  
3 entitled to it or not. We feel that there is a zero chance that the  
4 government would decline to enter into a similar agreement with us.

5 My plan was, and up until this point, had remained to simply  
6 argue it in my closing argument, and I feel confident that the  
7 government would not have objected to that.

8 Since we are now going to enter a piece of evidence that  
9 appears to be coming in in the last second, I would like the  
10 opportunity to formulate with the government a similar piece of  
11 evidence so that our clients, who are equally situated in almost  
12 every way, will be equally situated in this way as well.

13 So I would ask that I not be required to put on my case yet  
14 if there is another piece of evidence that is going to be created  
15 that would help my client.

16 MJ [Lt Col BRAUN]: Okay. You absolutely have the ability to  
17 enter into a stipulation of fact with the government, if you so  
18 choose, such as counsel for Mr. bin Amin are undertaking as we speak.

19 What we can do is I will proceed with the additional -- is  
20 there additional evidence, Counsel for Mr. bin Amin, that you want to  
21 present, or is this the only additional piece?

22 CDC [MS. FUNK]: This is the only additional piece.

23 MJ [Lt Col BRAUN]: Okay. So what we're going to do is we're

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1 going to take 10 minutes. I'm going to allow the parties to work  
2 this out.

3 If you need additional time, Counsel for Mr. bin Lep, let me  
4 know you need that additional time.

5 You can discuss with the government the language of the  
6 stipulation they are going to sign with Mr. bin Amin, and mirror that  
7 as you see appropriate. Of course, you're free to crosstalk with  
8 other defense counsel as you see fit as well.

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

10 Among the other benefits to this is since the court will  
11 have to go through the entire stipulation-of-fact colloquy on this  
12 new thing, then we would be able to do that jointly and perhaps not  
13 add too much additional delay.

14 MJ [Lt Col BRAUN]: Yeah. That's a fairly short colloquy for  
15 a stip of fact of this nature, and the court will do that, as that is  
16 appropriate. So please ensure your clients are ready for that brief  
17 colloquy, and they're aware of the contents of the stipulation of  
18 fact.

19 But this has to be presented in a manner that the commission  
20 can then present appropriately to the panel, and they can consider  
21 appropriately as a stipulation of fact.

22 So with that, then, absent anything else we can take up at  
23 this time, I'm going to place us in a 10-minute recess to allow the

1 parties to attend to that matter.

2 Trial Counsel?

3 TC [COL KRAEHE]: Nothing at this time, Your Honor.

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

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

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

7 LDC [MR. BOUFFARD]: Nothing further.

8 MJ [Lt Col BRAUN]: Thank you. This commission's in a  
9 10-minute recess.

10 **[The military commission recessed at 1345, 25 January 2024.]**

11 **[The R.M.C. 803 session was called to order at 1351,**

12 **25 January 2024.]**

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

14 Parties are present. Members are absent.

15 I have returned the appellate exhibit I was referencing  
16 previously on the record to the court reporter.

17 Parties, have you reached a way ahead as it pertains to a  
18 potential stipulation of fact?

19 And, Counsel for Mr. bin Amin, I will start with you.

20 CDC [MS. FUNK]: We have, Your Honor.

21 MJ [Lt Col BRAUN]: Okay. And that is?

22 CDC [MS. FUNK]: We'll withdraw the stipulation.

23 MJ [Lt Col BRAUN]: Very well.

1 Counsel for Mr. bin Lep, are you ready to proceed, then?

2 LDC [MR. BOUFFARD]: We are, Your Honor.

3 MJ [Lt Col BRAUN]: Okay. Trial Counsel?

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

5 LDC [MR. BOUFFARD]: Your Honor, do you want a roadmap from us  
6 or just to get into it?

7 MJ [Lt Col BRAUN]: Well, based upon the proffer from counsel  
8 for Mr. bin Amin, I'm assuming they will rest once I call the members  
9 out. We'll just get that clear on the record.

10 I'm assuming -- is that accurate?

11 CDC [MS. FUNK]: That is accurate, Your Honor.

12 MJ [Lt Col BRAUN]: Okay. Thank you.

13 Yeah, so, Counsel for Mr. bin Lep, yeah, a roadmap might be  
14 helpful at this time.

15 LDC [MR. BOUFFARD]: Just very quickly, we're going to call  
16 two witnesses. We're going to call Susanna Miller and Piers  
17 Gambrini. These are witnesses who will be on the stand essentially  
18 to read statements, under the relaxed rules, of other people.

19 Mr. bin Lep will then deliver an unsworn statement from the  
20 podium in English. Following that we will offer Defense Exhibit Z,  
21 and, if accepted, we will -- or, if admitted, we will publish that to  
22 the members, and then we will rest.

23 MJ [Lt Col BRAUN]: Okay. As it pertains to relaxing the

1 rules, just as a reminder, because this is a joint trial, it's a  
2 little different than what we're used to. We will need to relax the  
3 rules specifically as it pertains to United States v. Bin Lep.

4 LDC [MR. BOUFFARD]: Yes, sir. And to that point, in my  
5 experience, we relax specific rules based on specific objections,  
6 i.e., hearsay or authenticity.

7 Since no objections are forthcoming, how would you like that  
8 handled?

9 MJ [Lt Col BRAUN]: Yeah. So as I read 1001, it -- I do know  
10 that that is generally you get the objection as the defense -- trial  
11 counsel makes the objection, defense counsel asks to relax the rules,  
12 may ask for a scoping of that relaxing. I will allow you to make the  
13 request to the commission as you see appropriate.

14 1001(b), I believe it is, kind of explains the scope of the  
15 military commissions. But I'll just entertain your motion as you  
16 make it, your request as you make it.

17 LDC [MR. BOUFFARD]: Just as a general relaxation of the  
18 rules?

19 MJ [Lt Col BRAUN]: If you ask for a general relaxation, then  
20 I -- then, according to the rule, that would be a relaxation as to  
21 authenticity and reliability.

22 LDC [MR. BOUFFARD]: I would just add hearsay to that as well,  
23 then, sir.

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1 MJ [Lt Col BRAUN]: And I believe that that fits in the  
2 reliability aspect.

3 LDC [MR. BOUFFARD]: Oh, perfect.

4 TC [COL KRAEHE]: Your Honor, may I be heard on one minor  
5 matter?

6 MJ [Lt Col BRAUN]: You may.

7 TC [COL KRAEHE]: When releasing the witnesses, you have been  
8 instructing them that they may not discuss their testimony until the  
9 commission has been adjourned.

10 I know we have some witnesses, and two of whom will be  
11 released finally in just a few minutes. Would it be possible to  
12 modify that order to allow them to discuss their testimony perhaps  
13 with the media after they have been finally excused?

14 MJ [Lt Col BRAUN]: Okay. Let me get the perspective of the  
15 other parties on that request, Trial Counsel.

16 Counsel for Mr. bin Lep, do you have a position?

17 LDC [MR. BOUFFARD]: We don't have any position on them being  
18 released. I mean, we know if they're necessary, they're still here  
19 on the island for the foreseeable future.

20 MJ [Lt Col BRAUN]: But as far as modifying the instruction  
21 that I give them, the standard instruction that I give them that they  
22 shall not discuss their knowledge or testimony with anyone other than  
23 accused and counsel until the conclusion of the trial.

1 LDC [MR. BOUFFARD]: Honestly, Your Honor, I don't urge either  
2 way.

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

4 CDC [MS. FUNK]: I assume we're talking about all of the  
5 witnesses, not just the victim family members. And that's fine with  
6 us. Thank you.

7 MJ [Lt Col BRAUN]: Okay. I'm sorry, Counsel for Mr. bin Lep,  
8 I cut you off there.

9 LDC [MR. BOUFFARD]: No, no. A different issue that Colonel  
10 Kraehe, his comment just gave me time to remember. So as not to  
11 surprise the court and maybe to agree on a particular way forward.

12 So my second witness, Mr. Gambrini, has submitted a  
13 prosecution exhibit. It is in evidence, and it is Prosecution  
14 Exhibit 22.

15 He informs me that after submitting that document, which the  
16 government entered as PE 22, the document has since been modified  
17 further. So he has, essentially, a version of PE 22 that is similar  
18 to, but different in certain respects.

19 My suggestion and request would be that rather than showing  
20 him PE 22 and going through the colloquy on that, that I would just  
21 ask him: Have you brought with you a statement?

22 He'll say: Yes. I'll say, you know: Who was it from? And  
23 we'll go through that. Then I would then ask to allow him to read



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1 the statement that he has that he would like to read.

2 I don't have a problem with that, and I don't believe  
3 Colonel Kraehe does.

4 MJ [Lt Col BRAUN]: Trial Counsel?

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

6 MJ [Lt Col BRAUN]: Okay.

7 TC [COL KRAEHE]: It's my understanding that the modifications  
8 to his statement were non-substantive.

9 MJ [Lt Col BRAUN]: Okay. Counsel ----

10 LDC [MR. BOUFFARD]: Ms. Funk just asked me if I had a copy,  
11 and I don't.

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

13 CDC [MS. FUNK]: Your Honor, it's my understanding that the  
14 changes made to the document are changes that were made at the behest  
15 of the defense regarding assigning blame or asking for a specific  
16 sentence. And I honestly don't recall which was our concern with  
17 that letter, but it's my understanding that this reflects our  
18 concern. So, therefore, we do not object to it proceeding the way  
19 Mr. Bouffard suggests.

20 LDC [MR. BOUFFARD]: All I'll say, Your Honor, is that may not  
21 be correct. These changes may not relate to that. I don't know.

22 MJ [Lt Col BRAUN]: Well, should the witness be called, the  
23 witness will be called as any other witness is called under the Rules

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1 for the Military Commissions.

2 The witness will be placed under oath. The witness will  
3 then be available for any clarification questioning that either the  
4 proponent of the witness or any other party may want to ask. That's  
5 part of what led us down to the path that we are in with regard to  
6 witnesses making statements.

7 The relaxing of the rules is an ancillary piece that's  
8 permitting an ability under the rules to read a third party's  
9 statement. So I think that the basis of the statement can be  
10 challenged by counsel, if they so choose.

11 That being said, Counsel for Mr. bin Amin, if you want, you  
12 know, to make an objection, you are absolutely welcome to do that, to  
13 capture that on the record; and would encourage you, if appropriate  
14 to do so, to do so. If you need a 39(a), or a session without  
15 the -- excuse me, not an Article 39(a) session, but a session without  
16 the presence of the members to articulate that objection more fully  
17 on the record, you know, please request it from the commission and  
18 then I will entertain that request to ensure that you have the  
19 opportunity to make the record.

20 Same thing for trial counsel.

21 I think that is the normal course that we generally follow  
22 in both courts-martial and a military commission, as I interpret the  
23 rules. So that will be the process that I'm going to follow here

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1 today.

2 Do all parties understand my way ahead?

3 Trial Counsel?

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

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

6 CDC [MS. FUNK]: Understood, Your Honor.

7 LDC [MR. BOUFFARD]: We understand, Your Honor.

8 MJ [Lt Col BRAUN]: Okay. Anything -- I'm sorry.

9 So, Defense Counsel, you're saying you're going to call two

10 witnesses?

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

12 MJ [Lt Col BRAUN]: And ----

13 LDC [MR. BOUFFARD]: And then an unsworn statement, and then

14 admission of one piece of evidence, and subsequent publishing.

15 MJ [Lt Col BRAUN]: Okay. Very well. Anything further, then,

16 that we can take up before I call the members?

17 Trial Counsel?

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

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

20 LDC [MR. BOUFFARD]: Not from us, sir.

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

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

23 MJ [Lt Col BRAUN]: Thank you. Very well, then.

1           Bailiff, please call the members.

2   **[The military commission was called to order at 1410,**

3   **25 January 2024.]**

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

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

6           Parties are present. Members are present.

7           Counsel for Mr. bin Amin, do you rest your sentencing case?

8           CDC [MS. FUNK]: We do, Your Honor. Thank you.

9           MJ [Lt Col BRAUN]: Thank you.

10          Counsel for Mr. bin Lep?

11          LDC [MR. BOUFFARD]: Yes, sir. May I approach the podium?

12          MJ [Lt Col BRAUN]: Please.

13          LDC [MR. BOUFFARD]: Sir, Mr. bin Lep calls Ms. Susanna

14   Miller, who has previously been sworn.

15          MJ [Lt Col BRAUN]: Counsel, I do appreciate this is a recall

16   of a witness who has been previously sworn, but as I excused them,

17   I'm going to ask that they be re-sworn.

18          LDC [MR. BOUFFARD]: Of course, sir.

19          TC [COL KRAEHE]: Raise your right hand.

20   **SUSANNA MILLER, was called as a witness for the defense, was**

21   **re-sworn, and testified as follows:**

22          TC [COL KRAEHE]: Thank you. You may be seated.

23                           **[END OF PAGE]**

**DIRECT EXAMINATION**

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

Q. Ms. Miller, good afternoon.

A. Good afternoon.

Q. You had testified here yesterday for our panel, correct?

A. I did.

Q. Okay. And when you flew out here, was it your intent also, in addition to your own victim statement, to offer statements from other people?

A. It was. And they wrote their statements in the expectation that they'd be read out in court.

Q. Okay. And you did not get the chance to do that yesterday?

A. We didn't.

Q. Okay. Today you will.

A. Thank you.

Q. And to begin, I would like to ask you, you told us yesterday about your brother Dan's wife, Polly, who was also herself a victim of the Bali bombings.

A. She was.

Q. Is she one of the people whose victim impact statement you brought with you in the hopes of reading to the panel?

A. It is, yes.

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1 LDC [MR. BOUFFARD]: Your Honor, may I approach the witness?

2 MJ [Lt Col BRAUN]: You may. Counsel, can you identify what  
3 you have in your hand, please, for the record?

4 LDC [MR. BOUFFARD]: Yes, sir. Judge, I'm approaching the  
5 witness with Prosecution Exhibit 19.

6 MJ [Lt Col BRAUN]: Thank you.

7 LDC [MR. BOUFFARD]: And will leave that with her.

8 Q. Ms. Miller, do you recognize Prosecution Exhibit 19?

9 A. I do.

10 Q. Is that the statement that you had intended to read  
11 yesterday on behalf of Polly Brooks?

12 A. Yes, it is.

13 Q. Okay. Is it important to you that that statement be read  
14 aloud in court here today?

15 A. It is. It's not only important to me, but it's also  
16 important to Polly and all her friends who were killed, along with  
17 her and their families.

18 Q. Yes, ma'am. I invite you to do that at this time.

19 A. Thank you.

20 This is the victim impact statement of Polly Brooks,  
21 previously Polly Miller.

22 "Bereaved.

23 "My husband, Nathaniel Dan Miller, was killed in the bombing

1 just five weeks after we had got married. My other eight friends,  
2 including my bridesmaid and childhood best friend, Annika, were  
3 killed that night, too. I was the sole survivor of my group of 10  
4 that night, albeit with serious injuries. The weight of being left  
5 alone to cope was immense, and the overwhelming grief of such a great  
6 amount of loss was devastating. It changed not just my life, but my  
7 whole family's life, as they rushed to Australia to be by my bedside,  
8 and had to help me rebuild my life.

9 "Physically injured and traumatized.

10 "Having been blown up and literally dragged my burning body  
11 out onto the roof of the Sari Club, which was turned into an inferno  
12 by the detonation of the white van filled with TNT, I was deeply  
13 traumatized. Physically, my body was burned over 43 percent of my  
14 body, and I was flown from Bali to Australia for lifesaving  
15 treatment.

16 "By the time we arrived in Australia, we were all dealing  
17 with MRSA and very poorly. In Bali, there was no pain relief  
18 available other than IV paracetamol, and it was extreme -- it was an  
19 extremely painful weight for the Australians to airlift me out.

20 "Over 11 operations in Australia followed until I was well  
21 enough to fly back to the U.K. for further treatment and to deal with  
22 the funeral of my husband. Devastatingly, I missed all the other  
23 funerals of my friends, as I was too unwell in hospital.

1 "Battered emotionally.

2 "My life was destroyed overnight and my family's turned  
3 upside down, too. I lost my husband and my best friend and was left  
4 in a foreign country with life-threatening injuries and having to  
5 deal with the trauma, shock, and grief of dealing with such a vicious  
6 and unprompted attack.

7 "I had to totally replan my life. I lost my future, my  
8 husband, who was going to be partner in Herbert Smith Freehills. I  
9 have had to live a lifetime without Dan, Annika, and the others.

10 "I have also had to deal with significant scarring and pain  
11 to my body. The effects are still felt daily, and I have not slept a  
12 single night through since that fateful night due to the pain from  
13 the injuries.

14 "My left side of my body was left significantly shorter than  
15 my right due to the scarring, tightening, and, more recently, I've  
16 had a series of Z-plasty release operations, where they cut zigzags  
17 into your body to release the tightness down my whole left side of my  
18 arm, flank, and legs."

19 Q. Ma'am, may I ask you to pause just for a moment and slow  
20 your speech down just a little?

21 A. Apologies.

22 Q. Thank you.

23 A. "A lifetime of operations and pain.



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1            "It is hard to put into words what the bombers did that  
2 night, but they took my innocence, my belief that the world is good  
3 and that bad things happen elsewhere.

4            "I was terrified to use the 'Tube' for many years and have  
5 had to relearn to cope with open fires, bonfires, fireworks, and to  
6 this day, I'm still very badly affected by unexplained bangs and I'm  
7 fearful of fire. I had a year's worth of counseling to help me try  
8 and come to terms with the events of that night and help me come to  
9 terms with my battered and scarred body.

10           "The weight of pain, of loss of so many loved ones, and in  
11 particular my husband, has been immense and exhausting to live with.  
12 I have had to battle to keep positive and to rebuild my life. The  
13 memories and terror from that time will never go away.

14           "I am left with long-term tight and painful scarring and  
15 problems with my knees and hips, because one side of my body is  
16 shorter than the other due to the scarring. I live with pain on a  
17 day-to-day basis, and I'm left to mourn the loss of my loved ones and  
18 their lost chances in life.

19           "Conclusion.

20           "I want the bombers to know the depths of pain and  
21 devastation they caused reached far and wide. Innocent young people  
22 were murdered in the most despicable act of terror and many others  
23 left injured, like myself. The futures of 202 young people were

1 stolen.

2 "The bombing gave me a life history that no one would ever  
3 want, but I have had and continue to have to live with it. The pain  
4 never goes away."

5 That's the end of the statement.

6 Q. Thank you, ma'am.

7 LDC [MR. BOUFFARD]: Your Honor, with the court's permission,  
8 I'd like to approach the witness, retrieve Prosecution Exhibit 19,  
9 and present the witness with Prosecution Exhibit 29.

10 MJ [Lt Col BRAUN]: You may do so.

11 And, Counsel, while I've not received an objection, do you  
12 request the rules be relaxed for purposes of your sentencing?

13 LDC [MR. BOUFFARD]: I do, sir.

14 MJ [Lt Col BRAUN]: Okay. The rules shall be relaxed.

15 LDC [MR. BOUFFARD]: Thank you.

16 Q. Ms. Miller, I've just handed you Prosecution Exhibit 29.  
17 And let me just ask this question: Who was Peter Record?

18 A. Peter Record was the brother of Jenny Record, who's asked  
19 me to read this victim impact statement.

20 He was killed in the Bali bombing. I think he was 26, from  
21 memory, but the victim impact statement will go into his details.  
22 But he was playing -- he used to live in Hong Kong but had just moved  
23 to Singapore and was playing with the Singapore Cricket Club.

1 Q. Ma'am, is Prosecution Exhibit 29 the statement of Jenny  
2 Record that you had brought to read?

3 A. Yes, it is.

4 Q. And I invite you to do that now.

5 A. "Victim Impact Statement.

6 "Peter Clifford John Record, 20th of March, 1972 to the 12th  
7 of October, 2002.

8 "Pete was killed in the Bali bombings in 2002. He was 32  
9 years old. I think it's important you know that no words can ever  
10 convey the horror of the Bali bombings for all of us who lost members  
11 of our families.

12 "We were a family of four. I had grown up with a brother.  
13 Age 34, I no longer had a sibling. My parents no longer had a son.

14 "This was not the first child my parents had lost. Before  
15 we were adopted, they had two little girls who both died: Catherine,  
16 a day old, and Mary, three years old. They were advised not to try  
17 again, so they adopted us, first me in 1968 and then Peter in 1970.

18 When I came to live in our house in Fulham, London, my  
19 parents began to smile again. When Pete followed two years later, we  
20 were all overjoyed. I finally had the brother I had been asking for.

21 "Pete was a small and rather thin little boy. Kind to a  
22 fault, he was very special and adored by us all. Our parents had  
23 chosen us. And to our friends, we were the chosen ones.

1           "We were loved from the bottom of their hearts, and we were  
2 loved incredibly. Our house was warm and welcoming, always full of  
3 dogs, cats, guinea pigs, hamsters, rabbits, and people. It was the  
4 London base for all our friends.

5           "Peter wanted to follow in our father's footsteps to  
6 Stonyhurst College in Lancashire. He wanted to board, so he went to  
7 St. John's, Beaumont, near Windsor, a prep school where we would go  
8 and see him every weekend to watch him play rugby, his sport of  
9 choice.

10           "He loved his time at Stonyhurst. He made lifelong friends.  
11 His academic life at school was not remarkable, but he went on to  
12 study at the University of Canterbury, and then at the School of  
13 Oriental and African Studies, where he studied anthropology.

14           "He took a trip to Indonesia, where he ended up in  
15 IrianJaya, where he was thrown in jail for the night because he was  
16 teaching the locals English. He dined out on the story for years.

17           "This began his love of Indonesia, and Bali in particular.  
18 Peter had a brief spell in the city of London and soon discovered it  
19 wasn't for him, so decided to move to Hong Kong.

20           "He found his tribe. He loved his job, loved Hong Kong, and  
21 almost, best of all, started playing for the Hong Kong Football Club.  
22 There he met a group of people who became his away-from-home family.  
23 They played together, had fun together. He was in Hong Kong for six

1 years before moving to Singapore.

2 "He was living in Singapore when he traveled to Bali for the  
3 ill-fated weekend. He was then playing for the Singapore Cricket  
4 Club on a weekend away with his friends.

5 "I was in Holland on my way home to get a flight when my  
6 mother rang. She said there had been some sort of explosion in Bali  
7 and that Peter's phone was not answering. In that split second, I  
8 knew he was dead, not knowing about a bomb, but just instinctively  
9 feeling that if he hadn't tried to contact us, he was either very  
10 badly injured or couldn't call us, or the latter, which was  
11 unthinkable.

12 "I got on a plane at Schiphol Airport, and took the Heathrow  
13 Express. The horrors of what happened in Kuta were being screened in  
14 every carriage. I can't remember much of the rest of that day except  
15 the tears and the endless phone calls from worried family and  
16 friends. My elderly parents were in Derbyshire and had to drive back  
17 on the Monday.

18 "I slept fitfully and woke at 3:00 a.m., shivering so  
19 violently, I had to run a hot bath and drank a brandy. Shock coursed  
20 through me.

21 "My parents arrived home later that day, and we had no  
22 words, good or bad. We spent hours on the phone trying to get hold  
23 of somebody at the Foreign Office, but with no avail.

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1           "Pam and Bob Record, two of the finest people you could ever  
2 meet, coming home to a house they left for the weekend that was full  
3 of love, but now filled with tears and anguish. Our lives were  
4 shattered.

5           "We were asked for Pete's dental records. My mother had  
6 said he had no fillings, but I had a conversation with him where he  
7 said he had a filling in Hong Kong. He had near-perfect teeth, and  
8 was very proud of the fact. It was that one filling that allowed the  
9 identification of his body.

10           "He had been in Paddy's Bar when the explosion went off. I  
11 know he was killed instantly, as the blast tore through the bar.  
12 Knowing he went so quickly and didn't suffer brought me a small  
13 degree of comfort.

14           "202 people were killed that night, 26 of whom were British,  
15 and a large number of them were all friends. I met a friend of  
16 Pete's in Singapore, who had been standing just feet away from him,  
17 and had terrible burns on his arms. He survived. There for the  
18 grace of God go I.

19           "I flew to Singapore with his best friend Rory. We went  
20 ahead of my parents to try and arrange a funeral, and to get his  
21 remains flown in so that we could have them cremated. Finally, we  
22 had a service in a strange country, dazed by events, and not fully  
23 comprehending the reality of going home with Pete's ashes in a box.

1            "We held a memorial service for him at Farm Street, our  
2 church. 500 people attended. There were five priests on the altar  
3 who knew dad or who had taught Pete. He had a proper sendoff, and  
4 his ashes were scattered in the graveyard with my grandmother and  
5 mother's. He is at peace with the gentle sounds of the sheep grazing  
6 in the field.

7            "My father died in 2006. He died of cancer of the  
8 esophagus. He could never put his grief into words. The events of  
9 2002 certainly sped up his time on Earth. My mother followed him in  
10 2012. They are together now.

11           "Writing this has been extremely harrowing. I am  
12 traumatized, and will forever be. I have tried to bury a lot of the  
13 pain, but it affects me in ways I'm not even aware of.

14           "Pete had his life ahead of him. So many opportunities  
15 lost, wiped out by cowardice.

16           "Life changed in a flash on the 12th of October, 2002.  
17 Peter Clifford John Record was 32 years old."

18           That's the end.

19           LDC [MR. BOUFFARD]: Your Honor, may I approach the witness to  
20 retrieve the exhibit?

21           MJ [Lt Col BRAUN]: You may do so.

22           Q. Ms. Miller, is there anything at all that you would like  
23 to say to the panel?

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1 A. No, there isn't.

2 Q. Okay. Then I have no further questions. My colleagues  
3 may.

4 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin, do you have any  
5 questions for this witness?

6 CDC [MS. FUNK]: No, Ms. Miller. Thank you.

7 MJ [Lt Col BRAUN]: Trial Counsel?

8 TC [COL KRAEHE]: Thank you, Ms. Miller.

9 I have no further questions. Thank you.

10 MJ [Lt Col BRAUN]: Does any panel member have a question of  
11 this witness?

12 That is a negative response from all panel members.

13 Is this witness to be subject to recall?

14 LDC [MR. BOUFFARD]: No, sir.

15 MJ [Lt Col BRAUN]: Okay. Ma'am, I'm going to excuse you. I  
16 thank you for your testimony. I'm going to ask, though, however,  
17 while this trial continues you not discuss your testimony and  
18 knowledge with others, other than accused and counsel in this case.

19 Do you understand my instruction?

20 WIT: I do.

21 MJ [Lt Col BRAUN]: Thank you. You may step down.

22 WIT: Thank you.

23 **[The witness was warned, was permanently excused, and withdrew from**



1 **the courtroom.]**

2 MJ [Lt Col BRAUN]: Defense Counsel?

3 LDC [MR. BOUFFARD]: Your Honor, defense calls Mr. Piers  
4 Gambrini.

5 TC [COL KRAEHE]: Mr. Gambrini, would you please stand and  
6 face me?

7 **PIERS GAMBRINI, was called as a witness for the defense, was sworn,**  
8 **and testified as follows:**

9 TC [COL KRAEHE]: Thank you. You may be seated.

10 **DIRECT EXAMINATION**

11 **Questions by the Learned Defense Counsel [MR. BOUFFARD]:**

12 Q. Good afternoon, Mr. Gambrini.

13 A. Good afternoon.

14 Q. With respect, I'll remind you that we have to speak as  
15 slowly as we can manage, okay? Could you please introduce yourself  
16 to our panel.

17 A. Good afternoon. My name is Piers Nicholas Gambrini.

18 Q. Where are you from, sir?

19 A. I'm from London, in the United Kingdom.

20 Q. I guess maybe this is the best way to ask it: How would  
21 you describe your connection to the Bali bombings?

22 A. So Charles van Renen was murdered in the Bali bombings.  
23 He would be my brother-in-law, and I am here representing the van

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1 Renen family delivering a victim impact statement.

2 Q. Were you prepared yesterday to deliver that statement, had  
3 you been called as a witness?

4 A. Absolutely.

5 Q. Okay. And are you prepared now?

6 A. Yes, absolutely.

7 Q. Do you have it there with you now?

8 A. I do.

9 Q. Okay.

10 A. But before I do that, could I convey my thanks to the  
11 defense counsel for the offering of relaxation, relaxing the rules,  
12 to counsel and Your Honor.

13 Q. You are most welcome.

14 A. Really, for me to be able to read this on behalf of the  
15 family, Susanna Miller mentioned yesterday that people -- there's a  
16 lot of physical and emotional grief that people go through, and many  
17 of them wouldn't be able to come to Guantanamo Bay.

18 So being able to come here is hugely appreciated. And being  
19 able to deliver the victim impact statement is equally -- will be  
20 appreciated by the family.

21 Q. Are you prepared to read that statement on their behalf at  
22 this time?

23 A. I am.

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1 Q. Please do so.

2 A. Thank you.

3 "On the night of October 12th, 2002, in Bali, Charles van  
4 Renen was killed in a needless act of cowardice by individuals who,  
5 for no other reason than some misguided gratification, destroyed the  
6 lives of so many families.

7 "Charlie will never be forgotten by his loving family and  
8 friends all over the world. Nothing could prepare the family for the  
9 heart-wrenching pain, hurt, grief, and overwhelming anger that  
10 engulfs them, and continues to take over their lives.

11 "The family continue to hide their deep pain and grief by  
12 talking about Charlie constantly, remembering the fun, laughter, and  
13 joy he brought into their lives. But sadly, those happy memories can  
14 also bring huge amounts of grief and tears so powerful they can be  
15 all-overcoming.

16 "But they've tried to stop asking why. Why was a young man  
17 with so much to give so cruelly and senselessly taken? A loyal and  
18 loving friend to many, Charlie was always ready for a party, and able  
19 to bring fun and laughter to any occasion.

20 "How could a wonderful son, brother, cousin, uncle, and  
21 model for his extended family, simply be blown up? What were these  
22 individuals trying to achieve? Have they enjoyed destroying so many  
23 lives of their victims and extended families? No answers can be

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1 understood.

2 "A beloved son, brother, and friend of so many will continue  
3 to be loved and cherished. His memory will be passed lovingly down  
4 the generations. He will never be forgotten."

5 Q. Thank you, sir. Is there anything else you would like to  
6 say to our panel?

7 A. No, but thank you.

8 Q. Thank you. My colleagues may have questions for you. I  
9 do not.

10 A. Thank you.

11 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin, any questions?

12 CDC [MS. FUNK]: I do not have any questions, Your Honor.  
13 However, it's my understanding there's a translation issue.

14 It appears to have been fixed. Thank you.

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

16 Trial Counsel?

17 TC [COL KRAEHE]: Thank you, Mr. Gambrini. The United States  
18 has no questions.

19 WIT: Thank you.

20 MJ [Lt Col BRAUN]: Does any panel member have a question of  
21 this witness?

22 That's a negative response from all panel members.

23 Counsel, is this witness subject to recall?

1 LDC [MR. BOUFFARD]: No, sir.

2 MJ [Lt Col BRAUN]: Okay.

3 Thank you. Those are the questions we have for you today.  
4 I appreciate you coming in to testify. I'm going to excuse you.

5 I ask that while this trial continues you not discuss your  
6 knowledge or testimony in this case with anyone other than accused  
7 and counsel. You may step down. Thank you.

8 WIT: Thank you.

9 **[Pause.]**

10 MJ [Lt Col BRAUN]: Defense Counsel?

11 LDC [MR. BOUFFARD]: Your Honor, Mr. bin Lep wishes to make an  
12 unsworn statement to the court at this time from the podium.

13 MJ [Lt Col BRAUN]: Please proceed.

14 **[Pause.]**

15 ACC [MR. BIN LEP]: **[Speaking in English]** Peace be upon you.

16 My name is Nazir bin Lep. I am 47 years old. I was  
17 arrested in 2003 and moved to Guantanamo Bay in 2006. So I have now  
18 spent almost my -- almost half my life in detention.

19 I never thought that I will get the chance to speak to a  
20 jury or the people who I have hurt. So I'm grateful to the court and  
21 everyone here for this opportunity now.

22 First, I want to say that I'm guilty of my role in the Bali  
23 bombing. I know that the victims and their families deserve more

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1 than words, but I still want to say that I'm sorry.

2 I received pictures of some of the victims, and I will carry  
3 their face in my mind for the rest of my life. I imagine what their  
4 daily lives would be like and think about their future that I  
5 helped take away.

6 My actions were wrong, and I will live with my -- with what  
7 I did forever. This is why I have cooperated with the prosecution  
8 and will continue to do whatever is asked of me.

9 I will not take much time explaining how I became  
10 radicalized or what led me to this point, but I want to tell  
11 you -- but I want to tell you that I was young, immature, and  
12 stubborn. I trusted the wrong people.

13 I saw many injustice against Muslims that made me angry.  
14 The civil war between Muslim and Christian in Indonesia affected me a  
15 lot, especially a massacre on an island called Ambon.

16 I heard many violent stories about the genocide of Muslims.  
17 I wanted to help other Muslims like the people in Ambon, but I was  
18 misguided and tried to do it the wrong way and for the wrong reason.  
19 I listened to the wrong people.

20 I did not understand that then. Only with age and maturity  
21 do I fully understand.

22 You may be wondering whether I was tortured like  
23 bin Amin -- Mr. bin Amin. The answer is yes.

1 I have seen his drawing, and most of those acts were also  
2 done to me. And there were things that were done to me that are not  
3 in his drawing, but I do not wish to talk about it because it is very  
4 hard to talk about it, and because the most important thing is that  
5 it is now in the past. I do not want to -- want it to define who I  
6 am. I mention it to you now only because I do not want you to  
7 remember -- to wonder if I was also tortured. I was.

8 But I am here to fully cooperate with the prosecution,  
9 because that is how I can show what is in my heart: Sadness and  
10 regret about what I was part of and the innocent people who were  
11 murdered. I forgive the people who tortured me.

12 Since I have been here, I have also been treated with  
13 kindness from some. Many of guards have treated me like they would  
14 wish to be treated if they were me. My lawyers have treated me with  
15 kindness and respect as a human beings.

16 I choose to see America in this way, not the way I was  
17 taught when I was young. I choose to see American people as good  
18 people. I do not hate them. I cannot hate them.

19 Extreme Islam is not true Islam. Violent jihad is not true  
20 Islam. I have known this for many years now. I wish I had  
21 understood that when I -- then when it mattered.

22 I also want to say that my action are not what I was taught  
23 in my family or my community. I was born in Malaysia in a small

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1 village called Jeram, Mukim. Our family and our community were  
2 strong. I lived in a home filled with love, thanks to my mother.  
3 She had eight children, four girls and four boys. My family protect  
4 me because I was the youngest and because my father died two weeks  
5 before I was born.

6 As a child, I was very shy, so I never left my mother's  
7 side, and we were very close all throughout my childhood. My mother  
8 died in March 2007. When she died, I was here. And the hardest time  
9 when I was in pain and wished they will just kill me, I thought about  
10 my mother. I wish she was next to me.

11 I still feel guilty, because when it mattered, the more  
12 active I became, the less I talked to her. And because I never asked  
13 for her blessing when I left Malaysia, I should have been next to her  
14 when she was dying. I should have taken care of her like she took  
15 care of me, but I was here in Guantanamo because of my decisions.

16 I made many mistake in my life that I still have to talk  
17 about, but I am learning from my mistake, and I am a better person  
18 because of the lessen I have learned. I am better person was -- than  
19 I was 20 years ago. I wish I could go back in time and explain this  
20 to my younger self, to tell my younger self that I was not seeing my  
21 religion clearly.

22 All I wish now -- for now is peace. I wish the peace for  
23 everyone here, but especially the victims and their family. I'm very



1     sorry for what I have done.

2             Thank you for listening.

3             LDC [MR. BOUFFARD]: Your Honor, at this time, we would like  
4     to formally offer Defense Exhibit Z for identification.

5             MJ [Lt Col BRAUN]: How many pages is that document, Counsel?

6             LDC [MR. BOUFFARD]: That is a four-page document, sir.

7             MJ [Lt Col BRAUN]: And does the court reporter have an  
8     original of what has been marked as Defense Exhibit Z (LEP) for  
9     identification?

10            Okay.

11            LDC [MR. BOUFFARD]: Your Honor, Defense Exhibit Z is  
12     Mr. bin Lep's written unsworn statement that he just delivered. In  
13     case the members missed any part of it, it will be there for them in  
14     writing.

15            MJ [Lt Col BRAUN]: Have the other parties been provided a  
16     copy of Defense Exhibit Z (LEP) for identification?

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

18            MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin, any objection to  
19     what has been offered as Defense Exhibit Z (LEP) for identification?

20            CDC [MS. FUNK]: No objection.

21            MJ [Lt Col BRAUN]: Okay. Trial Counsel?

22            MR. KRAEHE: No objection, Your Honor.

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

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1 Defense Exhibit Z (LEP) for identification will be admitted  
2 as Defense Exhibit Z (LEP).

3 Please ensure the court reporter has the original. I'm  
4 going to hand the copy that was provided to me by the court reporter  
5 back to the court reporter.

6 LDC [MR. BOUFFARD]: Your Honor, request permission to publish  
7 that to the members at this time.

8 MJ [Lt Col BRAUN]: Any objection, Trial Counsel?

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

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

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

12 MJ [Lt Col BRAUN]: Very well, then. Permission granted.

13 LDC [MR. BOUFFARD]: Your Honor, with that, defense rests.

14 MJ [Lt Col BRAUN]: Okay. Panel Members, we've been on the  
15 record now for about an hour. I'm going to give -- I'm going to take  
16 a 10-minute recess, and then we will reconvene and proceed with the  
17 proceeding.

18 Trial Counsel, anything we can take up before I take that  
19 recess?

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

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

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

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

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

2 MJ [Lt Col BRAUN]: Very well. This commission's in a  
3 10-minute recess.

4 **[The military commission recessed at 1438, 25 January 2024.]**

5 **[The R.M.C. 803 session was called to order at 1451,**  
6 **25 January 2024.]**

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

8 Parties are present. Members are absent.

9 Counsel, I wanted to close the loop on your request that I  
10 modify the excusal instruction I was giving to the witnesses. I  
11 clearly did not.

12 I think, given the nature -- the unique nature of a military  
13 commission and the fact that the panel does have the right to seek  
14 evidence, which can include recalling witnesses to ask questions, and  
15 that's something that can happen during deliberations, that it is  
16 prudent in the administration of justice that I ensure that I  
17 preserve testimony, and one of the ways I do that is through the  
18 caution I give.

19 So as the court -- as the trial proceeds, I will continue to  
20 find it appropriate that witnesses not discuss their knowledge or  
21 testimony with anyone other than accused and counsel.

22 So insomuch as that closes the loop on that request that the  
23 parties did make, that is the determination that I have made and why

1 I gave the instructions I gave.

2 Trial Counsel, before I call the panel members, just trying  
3 to gauge where we are at. Do you anticipate a rebuttal case?

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

5 MJ [Lt Col BRAUN]: Okay. So, then, it is the intent that I  
6 will ask that on the record, inform the panel that they've heard all  
7 of the evidence at this point, and then I will tell them that this is  
8 one of those points where we have a little more lengthy recess.

9 So I'm going to excuse them for the day, the reason being  
10 then we can discuss sentencing instructions. I have some questions  
11 of the parties to finalize my version of the sentencing instructions,  
12 which I intend to provide the parties in hard copy for their review.

13 We will also discuss the sentencing worksheets at that time  
14 as well and determine if there's any objections that need to be  
15 covered; and then if the parties have any exhibits that -- or  
16 any -- excuse me, not exhibits, but audio-visual presentation they  
17 plan to present as part of argument, that that be prepared to be  
18 marked either now or when we come back on the record to finalize  
19 instructions after I have an opportunity to modify based upon our  
20 conversations.

21 So that's kind of the way ahead as I envision it. My intent  
22 is to get us to finalized product so that tomorrow morning when we  
23 reconvene at 0900, we can move straight into instructing the panel

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1 members, arguments, and then deliberations.

2 Are the parties prepared to proceed with that kind of intent  
3 in mind?

4 Trial Counsel?

5 TC [COL KRAEHE]: Yes, Your Honor. And, for clarification, we  
6 would proceed in the morning straight to closing arguments or...

7 MJ [Lt Col BRAUN]: Yeah, so I structure my sentencing  
8 instructions to allow me to provide the panel members the bulk of the  
9 instructions up front. Once I complete with the -- right before I  
10 begin the concluding, the standard concluding sentencing  
11 instructions, that's when I will entertain argument from counsel.  
12 Once counsel conclude argument, then I will provide the panel the  
13 concluding sentencing instructions.

14 So when you see my draft, you will see where I have laid in  
15 there: Counsel will present argument. But that is the way that I  
16 format or step through sentencing argument.

17 TC [COL KRAEHE]: Thank you, Your Honor.

18 MJ [Lt Col BRAUN]: Yeah.

19 Counsel for Mr. bin Amin?

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

21 MJ [Lt Col BRAUN]: Thank you.

22 Counsel for Mr. bin Lep?

23 LDC [MR. BOUFFARD]: Nothing, Your Honor. Thank you.

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1 MJ [Lt Col BRAUN]: Very well. Then, Bailiff, please call the  
2 members.

3 **[The military commission was called to order at 1455,**  
4 **25 January 2024.]**  
5 **[Members entered the courtroom.]**

6 MJ [Lt Col BRAUN]: This commission will come to order.  
7 Parties are present. Members are also present.  
8 Trial Counsel, any rebuttal?

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

10 MJ [Lt Col BRAUN]: Panel Members, you have heard all the  
11 evidence. At this time, this is one of those portions of the  
12 proceeding where I actually require a more lengthy recess to  
13 accomplish some things that don't require your presence.

14 So my intent is to, given the time and what I need to  
15 accomplish, to dismiss you for the day, with the understanding that I  
16 would need you back here tomorrow morning at 0900 to continue with  
17 the proceeding.

18 I will -- as this is, again, a more lengthy period of time,  
19 I'm going to again caution you that until you close to deliberate,  
20 you may not discuss this commission with anyone, even amongst  
21 yourselves. You must wait until you are together in that  
22 closed-session deliberation so that all panel members can benefit  
23 from discussion.

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1           Additionally, during the course of this trial, to include  
2   periods of recess and adjournment, you may not communicate with  
3   anyone about this case either in person or by e-mail, blog, text  
4   message, posting on Reddit, or other form of social media. For  
5   example, posting about this case on Facebook is considered a form of  
6   communicating about the case.

7           You must also not listen to or read any accounts of the case  
8   or visit any scene of the alleged incident -- or any incident alleged  
9   in the Specifications or mentioned during trial.

10          Do not consult outside sources of law or information,  
11   written or otherwise, as to any matters involved in this case, and do  
12   not conduct your own investigation or research. For example, you may  
13   not consult the Manual for Military Commissions, the Manual for  
14   Courts-Martial, dictionaries, reference materials, search the  
15   Internet, Google witnesses to learn more about them, review a  
16   Wikipedia entry, or consult a map or a satellite picture to learn  
17   more about any alleged crime scene.

18          Do all panel members understand my instruction?

19          Do all panel members agree to follow my instruction?

20          Okay. That's an affirmative response from all panel members  
21   to both of my questions.

22          With that, Panel Members, thank you for your time and  
23   attention today. You are dismissed until 0900 tomorrow morning.

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1 [Members withdrew from the courtroom.]

2 [The R.M.C. 803 session was called to order at 1508,  
3 25 January 2024.]

4 MJ [Lt Col BRAUN]: Please be seated. All parties are present  
5 as before except the members, who are now absent.

6 Mr. bin Lep, while you provided an unsworn statement, your  
7 counsel did not admit any evidence during your sentencing case.

8 Did you have an opportunity to discuss that fact with your  
9 defense counsel?

10 ACC [MR. BIN LEP]: Yes, I did.

11 MJ [Lt Col BRAUN]: And do you understand your rights under  
12 the Rules for Military Commission as it pertains to your ability to  
13 present matters in extenuation and mitigation as part of your  
14 sentencing case?

15 ACC [MR. BIN LEP]: Yes, I understand.

16 MJ [Lt Col BRAUN]: And did your counsel describe to  
17 you -- did your counsel answer all of your questions as it pertains  
18 to those rights?

19 ACC [MR. BIN LEP]: Yes, he did.

20 MJ [Lt Col BRAUN]: Did you have -- do you have any questions  
21 about those rights here now?

22 ACC [MR. BIN LEP]: I don't.

23 MJ [Lt Col BRAUN]: Very well.



1           Okay. Counsel, I intend to instruct the panel in the  
2 sentencing instructions on their range of confinement from 20 years  
3 to 25 years. Is that the correct amount per the pretrial agreement?

4           Trial Counsel?

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

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

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

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

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

10          MJ [Lt Col BRAUN]: Does any party request that I instruct on  
11 a fine?

12          Trial Counsel?

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

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

15          CDC [MS. FUNK]: No fine. Thank you.

16          LDC [MR. BOUFFARD]: We agree, Your Honor.

17          MJ [Lt Col BRAUN]: Thank you.

18          So as it pertains to the sentencing instructions, similar to  
19 the initial instructions I baseline to what is contained in the  
20 Military Judge's Benchbook, I also considered the submissions of the  
21 parties in their joint request for sentencing instructions and  
22 included some of those instructions in the version that I'm going to  
23 provide to the parties.

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1           That being said, based upon the presentation of the  
2 evidence, I plan to give the Wheeler factors, if you will, in a  
3 paragraph fashion. So I'm not going to have a list available to the  
4 panel members.

5           I'm going to include in that paragraph fashion that the  
6 panel members should consider specifically the accused's background,  
7 character, the duration of pretrial detention -- excuse me -- it's  
8 going to be detention, not pretrial, education, mental condition, and  
9 matters in extenuation and mitigation, as well as all other evidence  
10 presented.

11           They'll also be advised to consider all matters in  
12 aggravation.

13           Again, Counsel, you will have a copy of these in writing,  
14 but are there any additional Wheeler factors that counsel would  
15 particularly like added to that narrative portion?

16           Trial Counsel?

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

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

19           CDC [MS. FUNK]: We would respectfully request that the court  
20 consider adding the accused's conditions of confinement, the  
21 experience of the accused while in the custody of the United States  
22 Government, and pretrial punishment experienced by the accused.

23           MJ [Lt Col BRAUN]: Okay. Trial Counsel, do you have a

1 perspective as it pertains to those particular conditions -- or those  
2 particular factors?

3 TC [COL KRAEHE]: Your Honor, we would object to inclusion of  
4 any language regarding pretrial punishment, as there was none.

5 MJ [Lt Col BRAUN]: Yeah. So, I guess, Counsel for  
6 Mr. bin Amin, and I think some of this comes down to the way the  
7 Manual for Military Commissions discusses confinement and pretrial  
8 confinement explicitly. I think mentioning detention is absolutely  
9 appropriate; however, I'm not sure that pretrial confinement is the  
10 correct terminology used.

11 I believe detention also gets you -- should correlate with  
12 what I would expect defense to argue, again, just based upon the  
13 evidence as I observed it.

14 Also, I don't believe there was a motion for pretrial  
15 punishment provided, and there are limitations contained in the  
16 Military Commissions Act as to pretrial punishments. However, the  
17 commission is not opposed to mentioning detention, as that is a  
18 matter that the panel absolutely can consider in determining  
19 appropriate sentence.

20 CDC [MS. FUNK]: I'm searching my closing, Your Honor. I've  
21 got some rule language in here somewhere. I just need a minute.

22 MJ [Lt Col BRAUN]: Okay. While you're looking for that,  
23 Counsel for Mr. bin Lep?

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

2 I might be mistaken, but isn't one of the Wheeler factors  
3 the experience of the accused while in the custody of the United  
4 States Government?

5 MJ [Lt Col BRAUN]: It was included in the joint submission.  
6 I'm not sure if it is one of the exact Wheeler factors, as we sit  
7 here in this very moment. I do know there is a Wheeler factor that  
8 deals specifically with pretrial confinement. I'm not sure if it's  
9 worded the way that Wheeler factor number 11 on the joint submission  
10 is.

11 LDC [MR. BOUFFARD]: We'd just add that, you know, that would  
12 cover -- it seems to me that that would cover the issue without  
13 characterizing it as pretrial punishment. You know, in fact, in a  
14 way pretrial punishment is something that sometimes can be  
15 authorized, whereas what we're talking about here, perhaps different.

16 MJ [Lt Col BRAUN]: Understood, Counsel.

17 TC [COL KRAEHE]: And, Your Honor, the United States would not  
18 have any objection to inclusion of a factor that mentions the  
19 accused's experience while in United States Government custody.

20 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Amin -- excuse  
21 me.

22 Counsel for Mr. bin Amin, let me ask you this: If the  
23 commission were to include language directing the panel to consider

1 the experience of the accused while in the custody of the United  
2 States Government, would that resolve the matter for you?

3 CDC [MS. FUNK]: Yes, Your Honor. And I also would like to  
4 add that I overlooked a factor that I was planning on presenting  
5 evidence on in closing.

6 MJ [Lt Col BRAUN]: Okay.

7 CDC [MS. FUNK]: And that's the rehabilitative potential that  
8 comes from Defense Exhibit X.

9 MJ [Lt Col BRAUN]: Okay. We're going to get to -- hold on to  
10 rehabilitative potential. I'm going to actually ask that one next.

11 CDC [MS. FUNK]: Okay.

12 MJ [Lt Col BRAUN]: Yes.

13 So I'm not going to include that, actually, in the Wheeler  
14 factors. I'm going to look at the actual entirety of the  
15 rehabilitative potential standard instruction, which is a little  
16 more, I think, complete than just including it as a factor.

17 Does either counsel for the accused desire that the court  
18 advise the commission that they will not draw an adverse inference  
19 from the fact that the accused did not elect to testify under oath?

20 This is different than the unsworn piece, but specifically  
21 as it relates to the accused not testifying under oath.

22 Counsel for Mr. bin Lep, do you request that specific  
23 instruction? I'm going to start with counsel for bin Lep real quick.

1 LDC [MR. BOUFFARD]: I think whatever we do should be joint,  
2 so I would be happy to hear what Ms. Funk says.

3 MJ [Lt Col BRAUN]: Okay.

4 CDC [MS. FUNK]: Without discussing this with Mr. Bouffard, we  
5 are not asking for that instruction; although, I could be perhaps  
6 persuaded, if Mr. Bouffard feels strongly to the contrary.

7 LDC [MR. BOUFFARD]: No. We actually agree with that.

8 MJ [Lt Col BRAUN]: Okay. It would be my intent to give the  
9 standard, "The court will not draw any adverse inference from the  
10 fact the accused elected to make an unsworn statement."

11 CDC [MS. FUNK]: I'm sorry ----

12 MJ [Lt Col BRAUN]: Or I'm sorry. A statement which is not  
13 under -- how does this read?

14 LDC [MR. BOUFFARD]: I think we're saying we don't want that  
15 instruction, Judge.

16 CDC [MS. FUNK]: No, we're saying we don't want that, yep.

17 MJ [Lt Col BRAUN]: Yep. Nope, I'm -- instead, I would pick  
18 up with -- do you want any instruction whatsoever as it pertains to  
19 the accused's unsworn statement? Let me ask that. That's a pretty  
20 standard instruction.

21 LDC [MR. BOUFFARD]: Is it short enough to read here, sir? I  
22 just don't have it in front of me.

23 MJ [Lt Col BRAUN]: So how I would word it, to avoid the -- to

1 modify it so that it doesn't say -- well, one option is: "The court  
2 will not draw any adverse inference from the fact that an accused has  
3 elected to make a statement which is not under oath. An unsworn  
4 statement is an authorized means for an accused to bring information  
5 to the attention of the court, and must be given appropriate  
6 consideration."

7 That would be the standard instruction that I commonly give.

8 LDC [MR. BOUFFARD]: We would be in favor of that, but I'd  
9 defer to my colleague.

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

11 CDC [MS. FUNK]: I don't typically choose to draw attention to  
12 the fact that a client either didn't testify or provided unsworn  
13 testimony.

14 My preference would be that, while it may not be a Wheeler  
15 factor, that on the list of things the jury can consider would be the  
16 defendant's unsworn statement, and leave it at that -- excuse me, the  
17 accused's unsworn statement.

18 LDC [MR. BOUFFARD]: We're fine with that, Judge.

19 MJ [Lt Col BRAUN]: Okay. I'm going to take that under  
20 advisement. And then whatever I craft, you all have an opportunity  
21 to take a look at and if you have additional changes to it, then we  
22 can take those up. That might be the easiest way to try and step  
23 through this. But the perspective is helpful.

1           Okay. So as it pertains to -- I do plan to instruct that a  
2 plea of guilty is a matter of mitigation that must be considered. I  
3 think that somewhat came up earlier today, so that instruction will  
4 be in there.

5           As it pertains to rehabilitative -- evidence of  
6 rehabilitative potential, do the parties feel that that was  
7 reasonably raised by the evidence presented and should be instructed  
8 upon?

9           Trial Counsel, I'll start with you.

10          And if it's helpful, I would direct the parties to the  
11 definition of "rehabilitative potential" contained in the manual.

12          TC [COL KRAEHE]: Your Honor, other than the unsworn  
13 statements, which are not evidence, I don't know that there was any  
14 evidence of rehabilitative potential. Perhaps there was some witness  
15 testimony to that effect.

16          So I don't think it would be improper to have some  
17 instruction on that, given the evidence.

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

19          CDC [MS. FUNK]: I would also direct the court's attention to  
20 page 13 of Dr. Hawthorne Smith's report.

21          MJ [Lt Col BRAUN]: Which exhibit is that?

22          CDC [MS. FUNK]: I apologize. X.

23          MJ [Lt Col BRAUN]: Thank you.



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1           You said page 13, Counsel?

2           CDC [MS. FUNK]: Correct.

3           MJ [Lt Col BRAUN]: You're looking at the very top paragraph  
4 of that page, I'm assuming, correct?

5           CDC [MS. FUNK]: That's correct, Your Honor.

6           MJ [Lt Col BRAUN]: Okay. Trial Counsel, can you review  
7 Defense Exhibit X (AMI), page 13, it's the very top paragraph, and  
8 see if that changes -- I know you had said that you don't see harm in  
9 an instruction, but take a look at that, please, and tell me if that  
10 changes your thoughts.

11          TC [COL KRAEHE]: No, Your Honor. If this is something they  
12 want to argue, there is evidence that allows them to do so. And so I  
13 think it would be appropriate to have an instruction that provides  
14 the panel guidance on how to consider that evidence.

15          MJ [Lt Col BRAUN]: Yeah. So I will --

16          Counsel for Mr. bin Lep, do you concur?

17          LDC [MR. BOUFFARD]: We have no objection to that.

18          MJ [Lt Col BRAUN]: Okay. So I will tailor that the standard  
19 instruction envisions, which you commonly have in a military trial  
20 where somebody gives an opinion as to rehabilitative  
21 potential -- it's a very specific thing, -- I will tailor that -- I  
22 will use that as my base, try to tailor it so it fits a little better  
23 into the scenario we have.

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1 I don't know if we necessarily have a witness that the  
2 commission can point directly to as testifying clearly to  
3 rehabilitative potential, though I'm open to the parties' position on  
4 that if they see it differently, which witness. But I do appreciate  
5 Defense Exhibit X and the statement that defense counsel has drawn my  
6 attention to.

7 CDC [MS. FUNK]: I apologize, Your Honor. I don't have the  
8 definition in front of me, but I believe that Mr. bin Amin's brothers  
9 testified to what life might be like if he were to be released as far  
10 as a job and a place to live and a support system.

11 MJ [Lt Col BRAUN]: Yeah. So from the instruction, actually,  
12 rehabilitative potential refers to the accused's potential to be  
13 restored through vocational, correctional, or therapeutic training or  
14 other corrective measures to be a useful -- to a useful and  
15 constructive place in society.

16 While I appreciate that, I think that testimony runs up  
17 against a form of rehabilitative potential. I think it actually is  
18 more testimony of there is a plan, should -- I think as the testimony  
19 came out, there is a plan should Mr. bin Amin return home. We have  
20 somewhere he can live. There's work waiting for him. There's a plan  
21 there.

22 I can see the value to that. I'm just not positive if  
23 that's necessarily evidence of rehabilitative potential in itself.

1 But let me take a look at the instruction, see if I can craft  
2 something that might guide the panel into a context to place both  
3 X -- Defense Exhibit X (AMI), as well as that testimony, into a  
4 proper context.

5 Trial Counsel, do you anticipate that you may argue for a  
6 specific sentence that was included in the joint submission of  
7 instructions? So I took that to mean yes, that that is a  
8 possibility. If so, I would intend to argue that trial counsel may  
9 argue for right before the presentation of argument so that the panel  
10 members understand that that is a personal recommendation and not a  
11 recommendation of someone other than counsel.

12 TC [COL KRAEHE]: Do not plan on arguing for a particular  
13 specific sentence, because I think it is clearly obvious what the  
14 specific sentence should be.

15 MJ [Lt Col BRAUN]: Okay. I will be providing a tailored  
16 instruction as to witnesses who may have provided an opinion as to  
17 what an appropriate sentence may be, because I think the evidence has  
18 raised that. It will be tailored off of, frankly, the trial counsel  
19 instruction, standard trial counsel instruction that I just gave.

20 Okay. Aside from that, I would just use the standard  
21 concluding instructions. Are there any additional inclusions that  
22 the parties request?

23 Let's start with you, Trial Counsel.

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

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

3 CDC [MS. FUNK]: Somewhere on my list I had the word  
4 "cooperation" as something that could be considered in addition to a  
5 guilty plea, which, actually, I don't see that on here either.

6 MJ [Lt Col BRAUN]: It's not. I will be giving the  
7 instruction, though, that a plea of guilty is a matter of mitigation  
8 which must be considered. So I think that, based upon the evidence,  
9 perhaps gives you the ----

10 CDC [MS. FUNK]: I apologize, Your Honor. It appears that  
11 item 8, the accused's cooperation, is one of the Wheeler factors.  
12 Thank you.

13 MJ [Lt Col BRAUN]: I'll take that under advisement. Thank  
14 you.

15 Counsel for Mr. bin Lep?

16 LDC [MR. BOUFFARD]: Nothing else from us, sir.

17 MJ [Lt Col BRAUN]: Very well.

18 We are at 1516, so I'm going to -- I'm going to recess, work  
19 on my finalizing the draft instructions so that I can have them for  
20 the parties when we come back at 1545, give you an opportunity to  
21 read them. We can take up any objections on the record that may  
22 remain, as well as handle the sentencing worksheets at that time.

23 Anything else we can take up before I recess?

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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 at this time, Your Honor.

5 MJ [Lt Col BRAUN]: Thank you.

6 Counsel for Mr. bin Lep?

7 LDC [MR. BOUFFARD]: May we have just a moment, sir?

8 MJ [Lt Col BRAUN]: You may.

9 LDC [MR. BOUFFARD]: Sir, just to advise -- hang on.

10 **[Pause.]**

11 LDC [MR. BOUFFARD]: Sir, nothing at this time.

12 MJ [Lt Col BRAUN]: Okay. If I can also ask the parties

13 during the recess, to the extent practicable, if you are going to use

14 AV PowerPoint, if you could start preparing those documents so that

15 they could be marked by the court reporter as an appellate exhibit,

16 that would be helpful. Okay?

17 With that, this commission's in recess.

18 **[The R.M.C. 803 session recessed at 1518, 25 January 2024.]**

19 **[The R.M.C. 803 session was called to order at 1604,**

20 **25 January 2024.]**

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

22 All parties that were present when the commission last

23 recessed are again present.

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1 LDC [MR. BOUFFARD]: Your Honor, that's not quite accurate.  
2 Lieutenant Joseph is no longer here for us. Mr. bin Lep does waive  
3 her presence.

4 MJ [Lt Col BRAUN]: Okay. Mr. bin Lep, your counsel just  
5 correctly indicated that we are missing one member of your team,  
6 Lieutenant Joseph. I know I've advised you previously on your rights  
7 to have defense counsel present for all sessions of your commission.  
8 That would include this session right now. However, you do have the  
9 ability to waive the presence of any one of your detailed defense  
10 counsel if you so choose to do so.

11 Do you desire to waive the presence of Lieutenant Joseph  
12 this morning -- or this afternoon for purposes of this portion of our  
13 proceeding?

14 ACC [MR. BIN LEP]: Yes, I do.

15 MJ [Lt Col BRAUN]: Do you have any questions about your right  
16 to have your defense counsel present, as I have previously explained  
17 to you?

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

19 MJ [Lt Col BRAUN]: Okay. Did anybody make any promises or  
20 threats to get you to agree to proceed this afternoon, knowing  
21 Lieutenant Joseph wouldn't be present?

22 ACC [MR. BIN LEP]: No, there's none.

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

1 I find that you have knowingly and intelligently waived the  
2 presence of Lieutenant Joseph for the purposes of this proceeding,  
3 this commission this afternoon.

4 Thank you, Mr. Bouffard.

5 So during the break, I did provide the parties a copy of my  
6 proposed sentencing instructions, which have been marked as AE  
7 0099.001 (TJ).

8 Did the parties have an opportunity to review that  
9 submission?

10 Trial Counsel?

11 TC [COL KRAEHE]: Yes, we've reviewed.

12 MJ [Lt Col BRAUN]: Okay. Thank you.

13 Counsel for Mr. bin Lep?

14 LDC [MR. BOUFFARD]: We have, and no objection.

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

16 CDC [MS. FUNK]: We have had an opportunity to review.

17 MJ [Lt Col BRAUN]: You have not?

18 CDC [MS. FUNK]: I'm sorry. We have.

19 MJ [Lt Col BRAUN]: Oh, okay. I probably misheard you.

20 So with that, Mr. bin Lep, I heard no objection from you.

21 Trial Counsel, any objection based upon the draft provided  
22 from the government?

23 TC [COL KRAEHE]: No objection, Your Honor, other than we

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1 would request that the instructions include identification of what  
2 exhibits are going back to the panel.

3 MJ [Lt Col BRAUN]: Okay. And I did see that in the joint  
4 submission, and we can -- I'm actually going to confirm with the  
5 parties those exhibits here shortly and we can address that at that  
6 time, of how the parties think that might best be worded, because  
7 I think -- as I looked at it, it could potentially be confusing as  
8 well if not done correctly. So I'm open to the parties' positions,  
9 particularly with how that's worded in the instructions.

10 Counsel for Mr. bin Amin, do you have any -- aside from  
11 that, Trial Counsel, any other objection?

12 TC [COL KRAEHE]: Your Honor, I just wanted to point out a  
13 typo on page 2, line 9.

14 MJ [Lt Col BRAUN]: Caught it. On "unsewn"?

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

16 MJ [Lt Col BRAUN]: Yes. Yeah, thank you. And there are some  
17 other scrivener's errors. For example, page 3, line 3, you'll notice  
18 there was some repetitive language there. I'm going to insert  
19 a -- as I previously stated before that, page 3, line 23, I'm going  
20 to add the word "primary members" regarding those who must remain  
21 together.

22 So there will be some rather minor changes that I will make  
23 to this. I'll make sure the parties have a copy of the final as well



1 so that they can see those small changes. But once we leave today,  
2 there will be no more substantive changes I anticipate making that we  
3 don't discuss in this room.

4 Counsel for Mr. bin Amin, any objections to what has been  
5 provided for sentencing instructions by the commission?

6 DC [LtCol HIGGINS]: Judge, we don't have any objections;  
7 however, we notice that the joint sentencing proceeding and the  
8 separation of evidence related to mitigation and extenuation was not  
9 included.

10 The parties have taken special care to have different  
11 strategies, sentencing strategies and approaches to this case.  
12 They're drastically different, if you didn't notice. And the  
13 clients' experiences and backgrounds and everything else was  
14 different as presented in this case. And so we -- in order to  
15 prevent any prejudice to either, based on that premise, we would ask  
16 that that instruction be given.

17 MJ [Lt Col BRAUN]: Yeah. And I think that echoes what trial  
18 counsel is asking, merely that the commission identify -- and the  
19 commission would do it in that second paragraph there -- what  
20 exhibits pertain to which commission.

21 Now, in doing that, I would like to first confirm with the  
22 parties that we are all viewing the same exhibits as being admitted  
23 into -- into evidence. So, with that, the prosecution -- I am

1 tracking Prosecution Exhibits 1, 3, 5 through 24, 26 through 29, 32,  
2 34, and 35.

3 Do the parties concur?

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

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

6 CDC [MS. FUNK]: Apologies, Your Honor. That's fine. Okay.  
7 We agree.

8 MJ [Lt Col BRAUN]: And, Trial Counsel, those exhibits already  
9 are in the possession of the panel members through your earlier  
10 publication; is that correct?

11 TC [COL KRAEHE]: That is correct, Your Honor.

12 MJ [Lt Col BRAUN]: Okay. Then for defense exhibits (AMI),  
13 it's Defense Exhibits A through -- A through Y and then Exhibit AA;  
14 is that correct?

15 DC [LtCol HIGGINS]: That's correct, Your Honor.

16 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep, do you concur?

17 LDC [MR. BOUFFARD]: We do.

18 MJ [Lt Col BRAUN]: Okay. Trial Counsel, do you also concur?

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

20 MJ [Lt Col BRAUN]: Okay. And now, Counsel for Mr. bin Amin,  
21 those exhibits already are in the possession of the panel members  
22 through your earlier publication; is that accurate?

23 CDC [MS. FUNK]: Yes.

1 MJ [Lt Col BRAUN]: Okay. Thank you.

2 And then for Mr. bin Lep, it's Defense Exhibit (LEP) Z, or  
3 Zulu, and that is the only admitted exhibit.

4 Is that correct, Counsel for Mr. Bin Lep?

5 LDC [MR. BOUFFARD]: Yes, sir. That is the only admitted  
6 exhibit. He did reference Exhibit W in his unsworn statement, so we  
7 would just ask that the members be allowed to consider that for that  
8 purpose.

9 MJ [Lt Col BRAUN]: And that was the ----

10 LDC [MR. BOUFFARD]: The torture drawings.

11 MJ [Lt Col BRAUN]: ---- Defense Exhibit (AMI) W, correct?

12 LDC [MR. BOUFFARD]: I believe that's correct, sir.

13 MJ [Lt Col BRAUN]: The -- I think it was the sketches.

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

15 MJ [Lt Col BRAUN]: And that's why I wanted to have this  
16 conversation, because there is some cross-linkage that is involved,  
17 both in the government's case and then, to some extent, the defense's  
18 case.

19 So before we get there, now that we agree that the panel  
20 members have all of the exhibits that have been admitted through  
21 publication, do the parties feel it necessary for the panel members  
22 to receive the originals in addition to the copies they have already  
23 been provided through publication? Because it would be the

1 commission's intent not to provide them the originals on top of what  
2 they've already been provided.

3 Trial Counsel?

4 TC [COL KRAEHE]: Your Honor, I don't believe they need the  
5 originals. Copies are sufficient.

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

7 CDC [MS. FUNK]: We agree with it, Your Honor.

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

9 LDC [MR. BOUFFARD]: We agree as well.

10 MJ [Lt Col BRAUN]: Okay. Then we will proceed that way.

11 Now, as it pertains to the instructions, page 1,  
12 paragraph -- the paragraph that starts on line 7, what the commission  
13 can do is mirror ----

14 **[Pause.]**

15 MJ [Lt Col BRAUN]: In the joint submission contained in  
16 Appellate Exhibit 0078.003 (Gov), page 16, the very first paragraph,  
17 the parties provided language: In selecting a sentence, you should  
18 consider all matters in extenuation and mitigation, as well as those  
19 in aggravation, to include Prosecution Exhibits 001-013.

20 I would correct that reference, however, to include the  
21 actually admitted prosecution exhibits we just discussed in total.

22 Furthermore, Mr. bin Amin's -- for Mr. bin Amin's -- Mr.  
23 Bin Amin's, excuse me, sentence, you should consider defense -- and

1 I'll put (AMIN) **[sic]**, as we have notated it on the documents  
2 themselves -- exhibits and then reiterate the exhibits that we just  
3 all discussed.

4 I would make the similar corresponding change to the next  
5 sentence discussing Mr. bin Lep's sentence.

6 With Mr. bin Lep's sentence, based upon the request of  
7 counsel, I would also put that they can consider Defense Exhibit  
8 (AMIN) **[sic]** W, based upon the request you just made, absent the  
9 objection from any of the other parties.

10 I will then include language clarifying that Prosecution  
11 Exhibit 001 and 003 need to be used for the appropriate accused,  
12 because those are the two exhibits that are specific to each accused.  
13 And I think it's important that the panel be reminded -- while  
14 there's a caption on the top, that they be reminded which one belongs  
15 to which accused.

16 Again, I think it becomes rather clear when you start to  
17 read them, but I don't think there's any harm in doing that.

18 Does that approach satisfy the request of trial counsel?

19 TC [COL KRAEHE]: Yes, Your Honor. Perfect.

20 MJ [Lt Col BRAUN]: Does that approach satisfy the request you  
21 had, Counsel for Mr. bin Amin?

22 CDC [MS. FUNK]: We have nothing to add.

23 MJ [Lt Col BRAUN]: Okay. Thank you.

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1 Counsel for Mr. bin Lep?

2 LDC [MR. BOUFFARD]: We have nothing to add.

3 It's possible during sentencing argument that we may handle  
4 various items of evidence. My assumption is that anything that's in  
5 evidence is certainly useable by any party, correct?

6 MJ [Lt Col BRAUN]: Well, that's my question.

7 This is a joint trial. The parties clearly have admitted  
8 evidence. It's, I think, pretty clear that the prosecution exhibits,  
9 other than 1 and 3, which are very specific in their nature, and the  
10 signatories, correlate to potentially both accused, especially as we  
11 talk about the impact statements.

12 However, I think there is potential for disagreement here,  
13 and that's why I want to handle it on the record so at least I either  
14 understand the parties' way ahead or their respective positions so  
15 that I can make the best decision that I can based upon the  
16 application of the rules and my understanding of the complexities of  
17 a joint trial.

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

19 MJ [Lt Col BRAUN]: So, Trial Counsel, as to Mr. bin Lep's  
20 statement that any admitted piece of evidence should be able to be  
21 referenced by counsel and argued in the case, do you have a position  
22 on that?

23 TC [COL KRAEHE]: Your Honor, I would have no objection to

1 that, provided that counsel uses the evidence or refers to the  
2 evidence appropriately for purposes that are consistent with what the  
3 evidence supports.

4 MJ [Lt Col BRAUN]: Sure.

5 I think mischaracterization of evidence, right, is always  
6 something. It would be an impermissible argument, and the parties,  
7 of course, are welcome to object to that, and then the commission  
8 will rule based upon the argument at the time.

9 Counsel for Mr. bin Amin, I appreciate your sensitivity to  
10 there are different techniques here, different defense strategies.

11 So what is your perspective as it pertains to counsel being  
12 able to argue -- for example, counsel for Mr. bin Lep being able to  
13 argue, or use defense exhibits that you have admitted, and vice  
14 versa, your team being able to argue defense exhibits, perhaps,  
15 entered by Mr. bin Lep?

16 And I note that some of the witness testimony, because we  
17 relaxed the rules, right, there may be some crossover there.

18 DC [LtCol HIGGINS]: Yes, Your Honor.

19 I do recall -- and I'm inclined to agree with trial counsel,  
20 as long as that is what was admitted into evidence.

21 For example, Mr. bin Lep stated that some of those things in  
22 the drawings happened to him. So as long as that's what the members  
23 understand, then that's what the evidence said, then we wouldn't have

1 any objection to that.

2 MJ [Lt Col BRAUN]: I see that very much as potentially an  
3 argument objection that we'll have to take up, if improper argument  
4 and the perspective of counsel in arguing any particular piece of  
5 evidence may arise, and the commission's ready to do that. But,  
6 that's helpful.

7 Trial Counsel?

8 TC [COL KRAEHE]: For example, the SSCI Report and the U.N.  
9 Special Rapporteur Report would apply equally in parts, or at least  
10 sections of it, to one or the other accused. It seems reasonable to  
11 allow both parties to rely on that to the extent that it reflects  
12 evidence that pertains to them.

13 MJ [Lt Col BRAUN]: So that it appears the language that has  
14 been provided by the parties in the joint submission may not  
15 adequately satisfy, because that does break down the exhibits by ----

16 LDC [MR. BOUFFARD]: Your Honor, if it helps ----

17 MJ [Lt Col BRAUN]: ---- and I'm reading from the submission:  
18 "Furthermore, for Mr. bin Lep's sentence, you should consider..." and  
19 it's just those exhibits, and that may actually not be accurate based  
20 upon what the parties are explaining to me.

21 LDC [MR. BOUFFARD]: I can certainly assure the court that  
22 only Exhibit W would we handle, use extensively, physically,  
23 reference, you know, whatever, in our sentencing argument.



1           It's not for sure, but it is, you know, certainly possible.  
2 But I would say W and Z would be it for us.

3           MJ [Lt Col BRAUN]: Okay. Here's how I would like to handle  
4 this. I think the parties have an idea of what applies to what and  
5 how they're going to argue various things.

6           So what I want to do is I'm going to give you all 10  
7 minutes, and sit down with a list of exhibits amongst yourselves, and  
8 see if you can propose to the commission what that instruction should  
9 look like. That's probably an easier starting point than the  
10 commission trying to ascertain how the parties -- how the commission  
11 thinks the parties might want to argue something. That's going to  
12 take a long time and not get us very far very fast.

13           So let's take 10 minutes. If you need more than 10 minutes,  
14 let the bailiff know. I will accommodate that. If you need less,  
15 let the bailiff know, and we can come back on the record and move on  
16 to sentencing instructions. But I think that's going to be the best  
17 use of our time at this point.

18           So with that, then, this commission's in a 10-minute recess.

19 **[The R.M.C. 803 session recessed at 1620, 25 January 2024.]**

20 **[The R.M.C. 803 session was called to order at 1631,**  
21 **25 January 2024.]**

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

23           All parties that were present when the commission recessed

1 are again present.

2 Counsel, have you come to some proposed language as to how  
3 we can address the exhibits and the use of the exhibits?

4 CDC [MS. FUNK]: We're proposing that it stay as the court  
5 suggested.

6 MJ [Lt Col BRAUN]: Okay. So as it currently exists in the  
7 appellate exhibit I provided or ----

8 CDC [MS. FUNK]: No. As in the -- for Mr. bin Amin, A through  
9 Y and AA. And for Mr. bin Lep, W and Z.

10 MJ [Lt Col BRAUN]: Okay. Very well. Then I will take the  
11 language that the parties provided in that joint submission. I'll  
12 truncate the first sentence a little bit to fit it into where I  
13 currently have that second paragraph on page 1, beginning at line 7.

14 And I will provide the parties, then, that copy of that  
15 change along with a couple of other administrative changes I've made  
16 to the sentencing instructions.

17 Are there any other matters, then, that any party would like  
18 to address as it pertains to sentencing instructions before I move  
19 on?

20 Trial Counsel?

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

22 MJ [Lt Col BRAUN]: Thank you.

23 Counsel for Mr. bin Amin?

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

2 MJ [Lt Col BRAUN]: Thank you.

3 Counsel for Mr. bin Lep?

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

5 MJ [Lt Col BRAUN]: Very well.

6 So, then, moving on to the sentencing worksheet, I have two  
7 worksheets here: The first numbered AE 0098.001 (AMI) and the second  
8 marked Appellate Exhibit 0098.001 (LEP), both one-page documents.

9 Trial Counsel, are these the proposed sentencing worksheets  
10 for the two commissions?

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

12 MJ [Lt Col BRAUN]: Okay. Do the parties have copies of these  
13 two appellate exhibits?

14 CDC [MS. FUNK]: We do, Your Honor.

15 LDC [MR. BOUFFARD]: We do, Your Honor.

16 MJ [Lt Col BRAUN]: Very well.

17 Any objection to these two exhibits?

18 Trial Counsel?

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

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

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

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

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

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

2 Just for the commission's awareness, does any party plan to  
3 use audio-visual capabilities for purposes of their argument?

4 Trial Counsel?

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

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

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

8 MJ [Lt Col BRAUN]: Okay. What form of ----

9 CDC [MS. FUNK]: We'll plan on using the ELMO. There  
10 are -- there is one -- at this moment, there is one picture and two  
11 drawings, all of which have previously been admitted into evidence.

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

13 LDC [MR. BOUFFARD]: We are not, sir.

14 And once Ms. Funk is done with her argument, can we have  
15 just enough time to stow that back in the podium before I begin?  
16 Because I need to basically be standing where it sticks out there.

17 MJ [Lt Col BRAUN]: Yeah. No, that is fine. Just ask for the  
18 time if the commission doesn't give it to you, but that is not  
19 a -- that is not an unreasonable request.

20 Very well. Is there, then, anything else we can take up  
21 before I recess for the evening?

22 Trial Counsel?

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

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

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

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

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

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

6 This commission stands in recess until 0900 tomorrow  
7 morning.

8 **[The R.M.C. 803 session recessed at 1636, 25 January 2024.]**

9 **[END OF PAGE]**